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IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GORDON K. HIRABAYASHI,)
)
 Petitioner,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

No. C83-122V

FILED ENTERED
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JAN 9 1986

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

VOLUME VI

June 26, 1985

ORIGINAL

1 MORNING SESSION

2 (9 a.m., June 26, 1985)

3 (The following proceedings
4 occurred in the chambers of
the Court:)5 THE COURT: Good morning, all. Let's look
6 at A-65. I think that's where I am.7 MR. HALL: We have to exclude that because
8 it's the same as A-7.

9 THE COURT: All right. A-65 is excluded.

10 MR. HALL: We have agreed to admit A-66 and
11 A-67 for laches purposes.

12 THE COURT: All right.

13 MR. HALL: And A-68 and A-69 are admitted.

14 THE COURT: Would you wait just one moment?
15 A-66 and A-67 on the issue of laches. Then A --16 MR. HALL: -68, -69, -70 and -71 we have
17 agreed to admit.18 THE COURT: A-68, -69, and -70 I don't seem
19 to have.20 MR. STONE: -70 is the cover letter only.
21 Richard, you just pulled it out. We might have a couple
22 there. It's a cover letter for A-7, and it was another copy,
23 an FBI copy. I will give these to the Court. It's exactly
24 the same as A-7 except it comes out of a different file and
25 it's got the distribution showing that memo went out to the

1 field.

2 THE COURT: Any objection to that.

3 MR. KAWAKAMI: A-70? No.

4 THE COURT: All right. And A-71, what did
5 you say about that, Mr. Hall?

6 MR. HALL: I thought we talked about it.
7 That's the Dewey letter.

8 THE COURT: Oh, that's the Marshall letter.
9 Okay.

10 THE CLERK: That has been admitted.

11 THE COURT: All right.

12 MR. HALL: -72 is something that was used
13 in cross-examining Mrs. Yoshinaga.

14 MR. STONE: Right. '72 was used to impeach
15 Mrs. Yoshinaga. That has to do with -- I think those are the
16 curfew papers. Are they the ones that start off by talking
17 about curfew?

18 MR. HALL: Are you going to offer this as a
19 substantive exhibit or was it just used for impeachment?

20 MR. STONE: No, I want to offer that as a
21 substantive exhibit. That's part of the Western Defense
22 Command. It has her name up on the top and she admitted she
23 had seen that.

24 MR. HALL: We object because it's not com-
25 plete.

1 MR. STONE: That's the one the judge said
2 if you want to offer other parts, go right ahead. I'm
3 delighted.

4 MR. HALL: I don't know if I have other
5 parts.

6 MR. STONE: Well, --

7 MR. KAWAKAMI: On this one, Your Honor, as
8 I recall, the testimony was that she left this note in
9 because Part IV was missing, and what is attached she said
10 was not Part IV. So I don't know that this relates --

11 MR. STONE: The document was offered to
12 show that she had seen this entire report. I attached the
13 relevant papers.

14 THE COURT: Would this go to laches?

15 MR. STONE: Yes, it would.

16 THE COURT: I think I'll let it in. That's
17 A-72.

18 Let me ask, Mr. Stone, if I can interrupt
19 right now, how much longer do you think you'll take?

20 MR. STONE: Well, it took longer than I
21 thought for the first witness. I thought he was going to be
22 short, and Mr. Hammond was up there quite a bit longer than
23 I thought.

24 THE COURT: Well, why don't you just give
25 me an estimate, because this Friday I am again tied up on

1 sentences and other things.

2 MR. STONE: Oh, gosh! All day?

3 THE COURT: Well, I'm tied up at various
4 times during the day, so it would just be impossible to
5 schedule the trial in there.

6 MR. STONE: I would think it's going to
7 take the next two days, if I squeeze in and I tell my wit-
8 nesses -- I can cut down on some of my questions.

9 THE COURT: Today, of course, is Wednesday.
10 Then, Thursday. Do you think we'd go over?

11 MR. STONE: I hope not, but I can't
12 guarantee it.

13 THE COURT: I would hope not, too. Not
14 so much for me, but staying over the weekend.

15 MR. STONE: I'll push those witnesses and
16 ask them a little less, but we have to finish Mr. Lowman.
17 It depends how long that takes.

18 THE COURT: Sure.

19 MR. STONE: Then we've got to do Mrs.
20 Zeidlik. Then we have just a few fact witnesses that we'll
21 try to push through a little faster than we did Mr. Hammond.
22 He took a little longer.

23 THE COURT: Okay. Any rebuttal?

24 MR. KAWAKAMI: We'll have one rebuttal
25 witness, Your Honor.

1 THE COURT: Well, let's see if we can't
2 squeeze it in in the next two days.

3 MR. HALL: I'm pessimistic.

4 THE COURT: You're pessimistic?

5 MR. HALL: We may have rebuttal in the
6 form of documents, too.

7 THE COURT: All right. But those, if it
8 were only documents, then we could squeeze it in on Friday,
9 I think.

10 THE CLERK: We have a status conference in
11 the afternoon that I could set over.

12 THE COURT: So we could do it Friday
13 afternoon?

14 THE CLERK: We could do it Friday afternoon,
15 but the morning is booked. Friday afternoon is okay.

16 THE COURT: I think some reporter has
17 called you and I think you told some reporter we would not
18 be trying it.

19 THE CLERK: That's right. but I also told
20 them to call back Thursday afternoon.

21 THE COURT: Oh, fine. I just didn't want
22 us telling her one thing and then we do another thing.

23 MR. STONE: So you'll be able to reserve
24 some time for us on Friday if we can't finish?

25 THE COURT: It looks as if Friday afternoon

1 we could.

2 MR. STONE: We're certainly willing if
3 Friday we have to run a little late. I'll make anybody stay
4 just we can wrap it up and go home whenever we get done.

5 THE COURT: That would be fine. I'd like
6 to do it if we can.

7 MR. STONE: Me, too.

8 THE COURT: You're not going to run into
9 this kind of weather back in Washington.

10 MR. STONE: You mean this nice and cool?

11 THE COURT: Yes.

12 MR. STONE: I haven't any idea. I haven't
13 even talked to Washington. It may be snowing there. I don't
14 know what it's doing.

15 THE COURT: All right. A-73?

16 MR. STONE: That's just an official War
17 Department circular, the kind of thing you could have taken
18 notice of, but you wanted us to have such documents in the
19 record.

20 THE COURT: That's about the destruction
21 of documents, isn't it?

22 MR. STONE: Yes.

23 THE COURT: That will be fine. That's
24 A-73.

25 A-74?

1 MR. STONE: That's a few pages from one
2 of the books that was on the Petitioner's list.

3 THE COURT: That has to do with laches?

4 MR. STONE: Yes, it does, as a matter of
5 fact.

6 THE COURT: All right.

7 MR. HALL: I only have one page.

8 MR. STONE: If you look down at the bottom
9 it discusses the fact that the author when he wrote that
10 book had access to Stetson Kahn's notes, and my witness will
11 testify unfortunately those notes are now long gone so
12 nobody has those notes any more. It gives an idea that they
13 did exist and when they existed.

14 THE COURT: For what it's worth, I'll admit
15 it. A-74.

16 Let me just say this off the record.

17 (Discussion off the record.)

18 THE COURT: All right. A-76?

19 MR. STONE: -76 is that cover sheet which
20 you let in to show the date when the person before me, Mr. --

21 THE COURT: Buckley?

22 MR. STONE: Buckley. Right. -- when Mr.
23 Buckley got it. That's who Mr. Irons testified he got it
24 from.

25 THE COURT: All right. That will be fine.

1 A-76.

2 MR. KAWAKAMI: A-75 I missed.

3 MR. STONE: A-75 was excluded by the judge.

4 MR. KAWAKAMI: Excluded.

5 THE COURT: I've forgotten what it was.

6 MR. STONE: That was the letter that
7 showed that the file had a letter in it that people had been
8 using in 1962. You said it wasn't particularly necessary.

9 THE COURT: All right. I'll go along with
10 my prior ruling.

11 MR. HALL: A-77 is the same as A-48.

12 MR. STONE: Yes, but we admitted '77, I
13 think.

14 THE CLERK: No; you admitted -48.

15 MR. STONE: Excuse me?

16 THE CLERK: -48 was excluded.

17 MR. STONE: -48 was excluded.

18 MR. HALL: So this should be admitted.

19 MR. STONE: That's right.

20 THE COURT: A-77 should be admitted. Had
21 I already made that ruling?

22 THE CLERK: Yes, you had.

23 THE COURT: All right. Then A-78.

24 MR. STONE: A-78. We had agreed that was
25 Command Decisions. That was on the original list. That's a

1 slightly earlier edition of Guarding America's Outposts,
2 which is A-11 which is in, and that's to show the publication
3 date. That's why it's in.

4 MR. HALL: Laches?

5 MR. STONE: Yes, laches.

6 THE COURT: A-78, then, will be admitted.

7 Is that all right, Mr. Kawakami?

8 MR. KAWAKAMI: Yes.

9 THE COURT: Then A-79?

10 MR. STONE: A-79 we excluded because we
11 allowed in a better copy, which is A-81.

12 THE COURT: All right. A-79 is excluded.

13 MR. STONE: And A-81 is in.

14 THE COURT: A-81 is the same.

15 MR. STONE: Yes, but it's more readable.

16 We got ahold of a bigger one.

17 THE COURT: You know, there was one letter
18 that was sent twice. It was sent by Alan Kirk, I believe, of
19 ONI. You know what happened there, I think? The Secretary
20 just forgot that she had written that letter, wrote it
21 again, he signed it again.

22 MR. STONE: It's typed on a different
23 typewriter.

24 THE COURT: It is typed on a different
25 typewriter.

1 MR. STONE: One is little type, one is big
2 type and one he signed A. K. Kirk and the other he signed
3 AGK, and I thought it was interesting.

4 THE COURT: Once in a while I'll get a
5 letter twice.

6 MR. STONE: Your Honor, there are one or
7 two things we numbered in afterwards which you might not
8 have on there. I'd like to just cover those and --

9 THE COURT: All right. Go ahead.

10 MR. HALL: What happened to -80?

11 MR. STONE: -80 we struck because it was
12 the same as A-50.

13 THE COURT: So A-80 is out?

14 MR. STONE: Yes.

15 THE COURT: All right.

16 MR. STONE: A-81 is in because that's the
17 one in place of A-79. A-82 was a -- which we handed to you
18 the other day was an original copy of A-24. It's a better
19 copy of a cable. We had given it to the clerk because
20 wherever we could get an original rather than the ones from
21 the "Magic" documents, because in the preliminary depositions
22 there were a lot of questions on it. This is exactly the
23 same as the original. We tried like the dickens to go back
24 to the original records to get a typed version rather than a
25 copy.

1 THE COURT: A-82 instead of what?

2 MR. STONE: Instead of A-24. They are

3 identical.

4 THE COURT: So exclude A-24?

5 MR. STONE: Well, I would just as soon

6 admit both so you have both copies. It doesn't say anything

7 different.

8 THE COURT: All right. Because some witness

9 may have referred to A-24.

10 MR. STONE: Right.

11 THE COURT: That would be fine.

12 MR. STONE: So I would like to let -82 in.

13 -83 was their document that we brought up in court yesterday

14 which was for completeness of Exhibit 102, tab 20. It was a

15 page by the FCC, Mr. Grieves, who wrote the letter that's

16 -120 and it shows completeness. It's the letter written the

17 day before.

18 THE COURT: Any objection to that, Mr.

19 Kawakami?

20 MR. KAWAKAMI: I'm not sure I have that

21 one.

22 MR. STONE: You allowed it in court.

23 THE COURT: Did I?

24 MR. STONE: Yes.

25 THE COURT: Give me the number again.

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MR. STONE: A-83.

THE COURT: Do you show an indication?

THE CLERK: I show nothing, Judge.

THE COURT: If it is what you say it is,
and I'm sure it is, I'll admit it, A-83.

MR. STONE: Okay. Now, I have just a couple
of other things here which is what I was getting here this
morning. I have an A-84 which is a Petitioner's exhibit
that they served on me and it's necessary to show complete-
ness of one of their other exhibits that they put in which
is a telephone conversation three days before, and the con-
versation three days before is incomplete unless you see
the conversation three days earlier.

THE COURT: That's between McCloy and
somebody, or --

MR. STONE: This one is between McCloy
and DeWitt. It's one of their exhibits. You see it's a
Petitioner's exhibit on the bottom. It's not one I brought
with me. It's one they served on me and so I think that
should go in for completeness of the other exhibit, which
is -- I think I can give that number to you in a moment.

THE COURT: Tell me the number down at the
bottom of the page of the exhibit that has gone in, if you
will.

MR. STONE: The exhibit that has already

1 gone in was 5148, tab 63, Exhibit 12, and this is their
2 exhibit No. 5149, so it relates directly to their 5148.

3 THE COURT: Any objection to this? I think
4 it would be well to admit it, if this is what it is. If it's
5 further pages of that same telephone conversation.

6 MR. STONE: It's the next conversation.

7 MR. KAWAKAMI: I'm not sure that this is --

8 THE COURT: This is a different conversa-
9 tion.

10 MR. KAWAKAMI: Yes.

11 MR. STONE: It's a different conversation
12 but it's on the same subject. They both are talking about
13 Admiral somebody.

14 THE COURT: O'Rere.

15 MR. STONE: Yes. The other one talks about
16 O'Rere and I think you can't figure out what they're talking
17 about unless you have this one as well, so I would like it
18 in for completeness, if they want to have in their Exhibit 12.
19 As I say, they served it on us. I know they have a copy and
20 have had a copy.

21 THE COURT: Served this one on you?

22 MR. STONE: Sure. That's why it was a
23 Petitioner's exhibit.

24 THE COURT: I would be inclined to admit
25 it for what it's worth. That is A-84, and there is a copy

1 for you.

2 THE CLERK: Thank you.

3 MR. STONE: A-85 is virtually the same thing
4 again. This also is a Petitioner's exhibit served on us, and
5 again, this one is one page and it goes to the completeness
6 of Petitioner's Exhibits 2, 87, 85, 86 and 111, which
7 respectively are tabs 89 through 93 that are already in.
8 It's the exact same period of time. It's the final report.
9 It's written by Mr. McCloy's executive assistant, and it
10 talks about this question of signaling in the final report.

11 THE COURT: Again, I would think that
12 should be admitted.

13 MR. HALL: How can it be 89 through 93 when
14 you only gave me four exhibits?

15 MR. STONE: In the tab numbers it's --

16 MR. HALL: You gave me Exhibits 2, 86, 87
17 and 111.

18 MR. STONE: I'm sorry. 2, 87, 86, 85 and
19 111. It relates to all of those.

20 THE COURT: This is A-85.

21 MR. STONE: Yes. This is now A-85.

22 THE COURT: But this is something that I
23 would be concerned about, and that is, discussions concerning
24 the brief in the Supreme Court. Apparently this is the
25 Korematsu brief.

1 MR. STONE: Right. So I'd like that to
2 be in. Again, those are from their list.

3 THE COURT: Any objection? All right.
4 A-85 will be admitted.

5 MR. STONE: Okay. And the last one that
6 I have, Your Honor, relates to what we discussed yesterday.
7 The last one I have here, which I will call A-86, yesterday
8 we talked about the delimitation agreement and I said that
9 there were amendments to it, and if you were going to admit
10 that, I thought it only appropriate. This is a two-page
11 document that describes the ongoing amendment. It's a Navy
12 document.

13 THE COURT: Do you want to give me just
14 one more copy, if you will, for the clerk?

15 MR. STONE: Yes. It describes the then
16 current - if you look at the second page - 1941 amendment
17 to the 1942 --

18 THE COURT: This was dictated on March 13th,
19 '41.

20 MR. STONE: Right, by Kirk, and he is
21 describing the oral amendment to the June 5, 1940 agreement
22 that you allowed in yesterday by virtue of an admission, and
23 I said if that comes in, since it said on or about, I thought
24 it was necessary that you have a document to tell you the
25 status of it when the case comes up.

1 MR. HALL: Did our delimitation agreements
2 all come in or is one of them still excluded?

3 MR. KAWAKAMI: One is still reserved.

4 MR. HALL: Then we want that in, too. If
5 the Court wants the full picture --

6 THE COURT: What is the number of the one
7 that was excluded.

8 MR. KAWAKAMI: 96.

9 THE COURT: Just 96. What was the date of
10 that?

11 MR. KAWAKAMI: February 18th, 1942.

12 THE COURT: '42.

13 MR. KAWAKAMI: Or something like that.

14 MR. STONE: I'm trying to think. Is there
15 another addendum to the February 18th one? There were some
16 discussions about it, but if you want to let that one in,
17 too, that's okay, Your Honor.

18 THE COURT: All right. And then this is
19 going to be, am I correct, 92, Petitioner's 92?

20 MR. KAWAKAMI: 96.

21 THE CLERK: 96.

22 THE COURT: 96. 96 will be admitted and
23 A-86, admitted.

24 MR. STONE: That also gets rid of one of
25 our offers of proof, I think. They wanted to make an offer

1 of proof on that.

2 THE COURT: All right. Anything more?

3 MR. STONE: Yes, there is one more item.

4 THE COURT: I do want to get to you, Mr.
5 Barnett, about the jury instructions.

6 MR. STONE: Your Honor, I was not only
7 surprised but I was very upset in court to hear yesterday
8 an objection to any of my documents. Mr. Kawakami sent me
9 this letter, and I made copies of it, in May, that said
10 there would be absolutely no objections to any of my docu-
11 ments if I represented what they were.

12 Now, I know Mr. Hall was not a party to
13 it, but it still seems to me he is bound to it. I don't
14 want to go into objections and it didn't say anything about
15 is it particularly self-authenticating, because he said
16 there would be no objections to authenticity.

17 MR. HALL: I've seen the documents. I
18 just object because you're trying to get this authenticated
19 by --

20 MR. STONE: No, no, no. I don't have to
21 authenticate any documents.

22 MR. HALL: You're trying to get him to
23 identify or talk about it. He doesn't know anything about
24 it. He's never seen it before.

25 THE COURT: Why don't you let me read this?

1 MR. HALL: Sure.

2 THE COURT: Let me ask about this. The
3 second sentence of this letter says, and you are speaking,
4 Mr. Kawakami. "For my part, I agree that I will not object
5 to admissibility on the basis of authenticity for documents
6 which I have received to date which you represented were
7 from FBI files or from other Government archives."

8 I think the ones that I excluded were the
9 ones that I could not see, you know, could not see the
10 source of them. Did you receive copies of those 3 by 5
11 cards?

12 MR. KAWAKAMI: No, not that I know of.

13 MR. STONE: Well, it is a supplemental
14 letter, Your Honor, which --

15 THE COURT: Why don't you show it to him?

16 MR. STONE: He's gotten this. I have
17 another one for you, as well. This was the supplemental
18 letter that said any documents offered at trial --

19 THE COURT: Let me say this to you. Those
20 3 by 5 cards are not going to make a darn bit of difference
21 in the final resolution.

22 MR. STONE: Okay, Your Honor, but I didn't
23 want that to come up again in any other documents. If I had
24 thought authenticity was an issue --

25 THE COURT: We've settled all the documents,

1 haven't we?

2 MR. STONE: Well, I'm going to have my
3 witness authenticate those 3 by 5 cards because it's a
4 matter of maybe pride to me, but if I showed up with a docu-
5 ment and I thought it was going to go in, it's going to go
6 in. It's not going to stay out on authenticity.

7 THE COURT: But let me ask, can you recall
8 whether you received the 3 by 5 cards?

9 MR. STONE: I know that they got them
10 along with a lot of others.

11 THE COURT: Well, I think it might be well
12 to identify them.

13 MR. STONE: Okay, I will. But if there is
14 going to be any other authenticity problems, I want to know
15 it.

16 THE COURT: Let me just say this: I don't
17 think there is going to be any authenticity problems on any
18 of those that bear on their face some kind of identification.

19 MR. STONE: Well, some of these don't
20 always bear on their face. They'll have a file number and a
21 stamp on them on the back, you know, and I can't take the
22 files out of that file. They won't give me original cards
23 so they give me a Xerox. The back of the file shows like
24 that one, stamped G-2 Military Intelligence Division.
25 Whether you call it the face or the back, I could bring the

1 card in here and you could see it has the stamp on it and
2 identify it.

3 MR. HALL: Why are we talking if we've
4 already admitted it and ruled on all the exhibits?

5 THE COURT: I think we're now talking about
6 I think there were two sets of 3 by 5 cards.

7 MR. STONE: That's right.

8 MR. HALL: We've already dealt with that.
9 Now he's talking about other exhibits. What other exhibits
10 are there? If they're not listed already and we've not
11 already ruled on them, we want to see them.

12 MR. STONE: That may come up again, Your
13 Honor. The reason I say that is because this exhibit was
14 admitted in here before they made the objection out there in
15 court. They made that when we were in court after you had
16 ruled in here it was admitted. You had admitted all my
17 telegrams, all my cover letters, and that comes in as one of
18 the distributions. You know, it's a problem. I don't want
19 it to come up. I was very much surprised. I thought we had
20 reached an agreement.

21 THE COURT: Well, I can understand the
22 objection where the materials did not bear on their face an
23 identification. The 3 by 5 cards I saw, one came out of ONI,
24 I believe, and one came out of the FBI; is that right.

25 MR. STONE: There is one set out of the

1 FBI, there is one set out of MID, and there is one set out
2 of ONI. I'm going to elicit some testimony on the 3 by 5
3 cards.

4 THE COURT: You're going to have them
5 identified.

6 MR. STONE: Yes, I am.

7 THE COURT: Now, let me ask, and this is
8 the question Mr. Hall asked. Do we have now a problem on
9 any outstanding exhibits that I should decide upon now?

10 MR. STONE: Not outstanding, that I know of.

11 THE COURT: All right. In other words,
12 you don't --

13 MR. STONE: I don't know anything else
14 that is not identified on its face.

15 THE COURT: Do you have any other exhibits
16 that you intend to offer by a witness?

17 MR. STONE: If my witnesses are impeached,
18 I may have a document or two, but only if they are impeached.

19 THE COURT: All right. Then, let me -- I'm
20 going to give these letters back to you. I think we've got
21 proofs of them. Now, have you had a chance to talk about
22 the Court's instructions at the trial?

23 MR. BARNETT: No.

24 THE COURT: We spoke about them yesterday.

25 MR. BARNETT: No, I haven't talked to

1 anybody about it.

2 THE COURT: Well, here is the understanding
3 I thought I had when we came away. That was that I said that
4 I would have more faith in your recollection of what the
5 instructions were than on these sort of incomplete shorthand
6 notes, and I was hoping that you could talk to Mr. Stone and
7 maybe get an agreement as to the Court's instructions.

8 I think that that agreement need not be
9 word for word the Court's instructions, but if there is
10 agreement, for example, that -- I just want to say this and
11 this may not be the exact words -- the Court did not submit
12 any constitutional questions to the jury, but only a question
13 as to whether if they found Mr. Hirabayashi was of Japanese
14 ancestry, that he did not comply with the curfew, that the
15 curfew order was outstanding, they they were to find him
16 guilty,

17 Do you think that you can reconstruct the
18 Court's instructions so that you and Mr. Stone can agree,
19 because I think it would be well to have in the record some
20 way or another what the Court instructed the jury.

21 MR. STONE: You know, we do have those
22 requested instructions. I'm not sure we have to go beyond
23 them. In other words, there is no request even to go to the
24 constitutional issue. I'm not sure we have to go behind it.

25 THE COURT: Well, that's fine with me.

1 MR. STONE: I feel a little troubled going
2 beyond the record Mr. Hirabayashi created on October 23rd,
3 1942, in the later hearing. That was the day that created
4 the record, and if both sides were happy then to go up on
5 requested instructions, I think it would change the nature,
6 perhaps, of what went up if we now try to reconstruct what
7 we didn't reconstruct then. They submitted then a summary of
8 the testimony which they believed was sufficient for the
9 record on appeal. It's sort of like we're supplementing
10 the last record on appeal.

11 When I looked at the whole chapter that
12 was supplied to me yesterday, it's clearly a chapter that's
13 meant to be from the book, and if there is one thing I've
14 had enough of, it's books about the Hirabayashi case, so I
15 don't really want to submit an editorial view of what
16 happened.

17 THE COURT: Have you all talked about the
18 Court's instructions, you know, after I spoke yesterday about
19 trying to reconstruct them?

20 MR. HALL: Not really.

21 MR. KAWAKAMI: Certainly, Your Honor, we
22 will sit down today, hopefully, and we'll put something down
23 in writing for everybody to see.

24 THE COURT: It's really up to you. That
25 is, I'm not the one here to make the record, but I feel that

1 I cannot accept those sort of truncated and fragmented notes
2 that were submitted. But I would feel that you probably
3 could make a statement that I think both of you could agree
4 to as to what the Court instructed. I don't know. You may
5 not feel that you can, and that's up to you.

6 MR. BARNETT: Your Honor, if I may be
7 allowed to repeat what I said yesterday at the time of the
8 offer of proof, in my opinion these notes are competent as
9 under 803(6) --

10 THE COURT: Well, they're not really
11 business records, kept in the normal course of business.

12 MR. BARNETT: They are the complete
13 sentences; not the et cetera, et cetera. They are good and
14 they are correct. It's just two or three things -- two or
15 three lines that don't have the et ceteras, et ceteras.

16 THE COURT: But they don't really come
17 under 803(6). They're not a record kept in the regular
18 course of business of somebody.

19 MR. BARNETT: But the rules provide that
20 any marks, any tapes, that are used regularly by the person
21 as a basis for writing or, as a journalist. I imagine if
22 we looked at journalistic reports, we would have all kinds
23 of --

24 THE COURT: I don't think these come under
25 that, either.

1 MR. BARNETT: That's an offer of proof,
2 though.

3 THE COURT: I'll accept it as an offer of
4 proof in here. Do we have a set of those now that have been
5 identified?

6 THE CLERK: Not that I know of, Judge.

7 MR. STONE: Yes, we did. We marked them
8 as 130 -- I can tell you in a moment.

9 THE COURT: Why don't you look at the last
10 of the Petitioner's exhibits? Do you have that here?

11 THE CLERK: I don't have that list in
12 here.

13 MR. STONE: We marked it as 142 yesterday.
14 We marked it as Petitioner's 142.

15 THE CLERK: We excluded 142.

16 THE COURT: We excuded it. Offered but
17 excluded. I think that --

18 MR. BARNETT: I can offer to write a
19 separate statement of my recollection.

20 THE COURT: Let me say this to you. Maybe
21 the better way to do it, and this may be already in the
22 record - it may be in the record - but to see which of the
23 Government's proposed exhibits were given, and the same way
24 with the Petitioner's. It may be that none of the defendant's
25 proposed instructions were given at that time. Now, is that

1 in the record, which were given and which were -- that's not
2 in the record?

3 MR. STONE: The instructions are in there
4 with a plank on top for numbering. In fact, they're not even
5 numbered. I looked through your file because I thought maybe
6 the judge had numbered them, and you know, you could get
7 the number on it as those he accepted and then he struck the
8 others, but the copies are in there with no marks on them,
9 so although they show that he received them, you can't tell
10 how he organized them or if he gave them.

11 THE COURT: Well, let me ask the
12 Petitioner's counsel here to think what you'd like to do and
13 see whether you can come to any agreement as to what you'd
14 like to do, and then talk to Mr. Stone and Mr. Edwards.

15 MR. BARNETT: In the meantime, then, may
16 I give this to the clerk?

17 THE COURT: I think we have a copy.

18 THE CLERK: We have a copy. It was marked
19 142.

20 THE COURT: We have a copy, and I will
21 accept that as an offer of proof.

22 MR. HALL: May I bring up one more point?

23 THE COURT: Certainly.

24 MR. HALL: I bring this up with some
25 trepidation but I would rather do it here than out in the

1 courtroom. Counsel for the Government is enthusiastic and
2 I have been told that during cross-examination he is
3 especially enthusiastic with head nodding and gestures.

4 THE COURT: Let me tell you, that is true.
5 You may be unconscious of it, but you just must refrain from
6 doing that, from giving any indication.

7 MR. STONE: I will calm it down.

8 THE COURT: I think that was true with
9 Lowman.

10 MR. STONE: I guess I wasn't conscious of
11 it. I'll watch it. Thank you for telling me, Your Honor.

12 THE COURT: All right. Then I will see
13 you as soon as you're ready.

14 (The following proceedings
15 occurred in open court:)

16 THE COURT: Good morning.

17 Mr. Hall.

18
19 DAVID D. LOWMAN, resumed the witness stand and
20 testified further, as follows:

21 CROSS-EXAMINATION (resumed)

22 BY MR. HALL:

23 Q Good morning, Mr. Lowman.

24 A Good morning.

25 Q Yesterday we were talking about the Tachibana and Okada

1 arrests and I'm wondering if you know what if any efforts
2 were undertaken by the Federal Bureau of Investigation
3 following those arrests to investigate the Okada and
4 Tachibana contacts in the United States.

5 A Yes, sir. Is this on?

6 THE CLERK: Yes.

7 A I am aware that the FBI followed up on many of the
8 leads from the material they found in the Tachibana files.

9 Q You are aware, are you not, that the FBI and J. Edgar
10 Hoover even directed that the investigation be pursued as
11 vigorously and as rapidly as possible?

12 A I have seen that, yes.

13 Q And you're also aware that as a result of the investi-
14 gations, there was no determination that there were any
15 Japanese-Americans or Japanese aliens residing in the
16 United States identified as contacts with Tachibana and
17 Okada, aren't you?

18 A I am not aware of that because in an ONI 4 December
19 report, they named some of the organizations as being suspect
20 which were on the Tachibana list.

21 Q I'm talking about individuals.

22 THE COURT: You said individuals, didn't
23 you?

24 MR. HALL: Yes.

25 Q (by Mr. Hall) You're not aware as you sit here today,

1 Mr. Lowman, of any individual Japanese-Americans or Japanese
2 aliens residing in the United States who were implicated as
3 a result of the Tachibana and Okada post-arrest and exclusion
4 investigation?

5 A There was, of course, Kono, who worked closely with
6 Tachibana.

7 THE COURT: And where was he located?

8 THE WITNESS: He was located in Los Angeles.
9 He worked very closely with Tachibana. He was in fact paid
10 \$25,000 by the Japanese government not to testify against
11 Tachibana, and Kono had been a resident of the United States
12 for many years.

13 THE COURT: Was he a citizen or an alien?

14 THE WITNESS: He was an alien, I believe.
15 He used to be Charlie Chan's chauffeur.

16 Q (by Mr. Hall) You're not aware of any other individuals?

17 A I'm not offhand aware of any others, no.

18 Q Yesterday at the end of testimony we were talking about
19 the need of the Japanese to set up networks in Latin America
20 and in Spain as a result of December 7th, 1941 activities
21 and war declared between the United States and Japan. Do you
22 recall that line of inquiry?

23 THE COURT: Was the word "the need," did
24 you say?

25 MR. HALL: The need.

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THE COURT: The need to set up.

A Would you repeat that question, please?

Q (by Mr. Hall) Do you recall at the end of yesterday's examination we were talking about the directives from Tokyo to various diplomats that it was necessary to set up a network, a spy network, in Latin America and in Spain as a consequence of the declaration of war between the United States and Japan?

A Yes, I recall our discussion yesterday.

Q I'd like to have the witness review Exhibit A-40, please.

THE COURT: What, in particular, do you want him to look for?

MR. HALL: Several things.

Q (by Mr. Hall) We can start with page 10, the second to the last paragraph.

A Which paragraph do you have reference to?

Q Page 10, the second to the last paragraph. To begin with, Exhibit 40 is the document about which you testified yesterday dated December 4, 1941, from ONI about Japanese intelligence and propaganda in the United States?

A Yes.

Q And is this what you call a wrapup document?

A Yes. It is so labeled. It's not labeled wrapup, but that's what I call wrapup. Yes, I do.

Q And is this what you would call a reasonably thorough

1 analysis of Japanese intelligence and propaganda in the
2 United States during 1941?

3 A Yes, I would characterize it as such.

4 Q Now, are you aware of the next to the last paragraph
5 on page 10, or were you aware during your testimony of this
6 paragraph, which reads: "Reports of activities within the
7 United States Army are sought from second generation Japanese
8 in that branch of the armed services, and although the infor-
9 mation has not yet been confirmed, there are reports which
10 indicate second generation Japanese are working in West
11 Coast airplane plants for intelligence purposes.:

12 Were you aware of that?

13 A What paragraph are you reading from?

14 THE COURT: Paragraph 5 from the top, I
15 believe. And is your question, you said, "Are you aware of
16 that?"

17 MR. HALL: Was he aware of that paragraph
18 yesterday when he testified.

19 THE COURT: Aware that it was in this docu-
20 ment?

21 A Yes, I was.

22 Q (by Mr. Hall) Now, have you seen any document which
23 confirms the activities of second generation Japanese in the
24 armed services as alluded to in this paragraph?

25 MR. STONE: Your Honor, --

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THE COURT: Wait just one moment.

MR. STONE: Okay.

THE COURT: All right.

MR. STONE: I thought the point of him introducing that language and tracing it on direct was simply to show that the intelligence services passed the information along at various levels and endorsed it. To the extent that he's asking whether it's true or not, has he seen any confirmation of it in fact, that goes to military necessity; not whether or not it was passed along. That goes, I think, to the wisdom of putting it in here.

THE COURT: All right. I'm going to permit the question to be asked and answered.

Q (by Mr. Hall) Mr. Lowman, my question was have you seen any document which confirms --

THE COURT: -- the activities of any second generation Japanese.

Q -- Japanese in the armed services?

A There are, of course, the "Magic" messages themselves which state that that is the situation. In addition to that, there were some intelligence reports going back to Japan discussing aircraft production in the Los Angeles area. There is a good possibility, of course, that those two are related. The fact that the Japanese said that they had second generation working in aircraft factories and the fact

1 that they were sending reports back after that statement to
2 Tokyo containing aircraft production information.

3 MR. HALL: I move that the answer be
4 stricken as not responsive.

5 THE COURT: It is not responsive to the
6 question. I'm going to leave it in. Would you want to ask
7 the question again?

8 Q (by Mr. Hall) I'd like you to cite to me a document
9 or documents which you have knowledge of as you sit in the
10 courtroom right now, that confirm the fact that -- confirm
11 in writing that somebody -- strike that -- that confirms in
12 writing that second generation Japanese in the branches of
13 the armed services have been giving espionage reports to the
14 Japanese government?

15 MR. STONE: Your Honor, my objection is
16 that the statement says the information although the infor-
17 mation has not yet been confirmed. He's asking him to
18 contradict the document.

19 THE COURT: No, I'm going to permit the
20 question to be asked and answered.

21 A Well, it was confirmed by the Japanese government, but
22 I have seen nothing other than just the relay of this infor-
23 mation and document labeled highly reliable information.

24 Q (by Mr. Hall) Now, let's talk about second generation
25 Japanese working in West Coast airplane factories. Do you

1 know the results of any investigations with regard to whether
2 second generation Japanese actually worked in airplane
3 factories?

4 A Yes. I'm aware of the fact that there was an FBI follow-
5 up to the report that there were second generation Japanese
6 working in aircraft factories. The FBI field office made
7 an investigation. The preliminary investigation covered
8 several people, as I recall, working in the factories but
9 found no derogatory information at that point. However, that
10 investigation and the results that he said on his preliminary
11 report apparently was not taken up by the Military Intelligence
12 Services because they continued to report that fact right on
13 through the rest of the year.

14 Q You are aware, are you not, because of your review of
15 the records, that the Federal Bureau of Investigation in
16 Los Angeles on June 9th, 1941, prepared a report relating
17 to the Nakazawa matter which, in part, stated: "No Japanese
18 employed at aircraft plants in Los Angeles except two at
19 Douglas Aircraft Company, Santa Monica, California, and a
20 houseboy for Major Carl Trevor, General Manager of Douglas.

21 You're aware of that, aren't you?

22 A I am aware of that as being in the preliminary report.
23 Is that a preliminary report?

24 Q You tell me. Are you also aware --

25 MR. STONE: Your Honor, before he

1 continues, can I ask that the document be handed to the
2 witness so he can see if it's a preliminary report he's
3 talking about?

4 THE COURT: Would you do that?

5 MR. STONE: I ask that it be marked, too,
6 please.

7 THE COURT: No, I don't think it would be
8 necessary, but I would like to have you --

9 MR. HALL: May I approach the witness?

10 THE COURT: Yes. You can go to the witness
11 first, but repeat what you said. You said "Are you aware
12 that it said that," and then what was it? "Two employees
13 at Douglas."

14 MR. HALL: Right. My statement, I believe,
15 was "You are aware, are you not, that the Federal Bureau of
16 Investigation on June 9th, 1941, in connection with the
17 Nakazawa investigation, prepared a report which provided
18 in part 'No Japanese employed in aircraft plants in Los
19 Angeles, except two at Douglas Aircraft Company, Santa
20 Monica, California, and houseboy for Major Carl Trevor,
21 General Manager at Douglas'."

22 I am handing the witness the report taken
23 from the Nakazawa file.

24 THE COURT: I think your question was, was
25 that a preliminary report?

1 THE WITNESS: Yes, that was my question.

2 THE COURT: You can check it, if you will.

3 While he's doing that, will you spell that name? Was it
4 Nakazawa?

5 MR. HALL: I'm sorry not to have done it.
6 N-a-k-a-z-a-w-a.

7 THE COURT: Thank you.

8 MR. HALL: Mr. Nakazawa's name appears
9 frequently in the documents which are already in evidence.

10 THE COURT: I suppose the question now is
11 are you aware of that statement having been made in the FBI
12 report?

13 THE WITNESS: Yes, I am aware of that.

14 THE COURT: Then the next question.

15 MR. HALL: Is it my turn?

16 THE COURT: Yes.

17 Q (by Mr. Hall) Does the witness need to review the docu-
18 ment any further?

19 A I would like to say that the report says consideration
20 will be given to conducting further investigations concerning
21 the above-named Japanese. In other words, it is not a
22 complete report.

23 Q And the above-named Japanese is who?

24 A One Tabata.

25 Q How do you spell that?

1 A T-a-b-a-t-a.

2 MR. HALL: I would like now to go to page
3 11, if I may, Your Honor, of Exhibit 40, the last paragraph
4 and the top paragraph on page 12.

5 THE COURT: I heard you say first page 11.

6 MR. HALL: Exhibit 40, page 11, last para-
7 graph.

8 THE COURT: Last paragraph.

9 Q (by Mr. Hall) If I may, I would like to read that para-
10 graph, going on to page 12:

11 "Before war broke out between Germany and
12 Russia, Communist machinists of German origin who are members
13 of labor organizations at the Bremerton Navy Yard, and Boeing
14 Airplane factories," and airplane is spelled a-e-r-o-p-l-a-n-e,
15 "factories were supplying information to Japanese authorities.
16 This is but another example of the effort Tokyo is making to
17 obtain information on military efforts, construction of ships,
18 aeroplane," -- a-e-r-o-p-l-a-n-e -- "production, production
19 of copper, zinc, aluminum, yield of tin from cans and labor
20 resources through competent Americans."

21 Do you see that reference, Mr. Lowman?

22 A Yes, I do.

23 Q When you testified yesterday, you were aware of that
24 reference?

25 A Yes.

1 Q I would like to go to Exhibit 23, if I may, A-23, and
2 in particular, the paragraph starting on the middle of the
3 first page, "Economic Contacts." You testified yesterday,
4 did you not, that this paragraph on A-23, beginning No. 2,
5 "Economic Contacts," was an example of Japanese espionage
6 in the United States?

7 A Well, I testified that the message as a whole passed on
8 information which would tend to make that conclusion, yes.
9 I didn't vouch for every single sentence in the message but
10 I think the message itself speaks for itself.

11 Q And the inference that you were providing to the Court
12 was that this was Japanese espionage supplied by Japanese-
13 Americans or Japanese aliens residing in the United States
14 to Tokyo from the United States?

15 A There is certainly the inference of espionage here, yes,
16 in this message.

17 Q Isn't it accurate that paragraph 2 -- let me read para-
18 graph 2, if I may, beginning on page 1 of Exhibit A-23.

19 "(2) Economic Contacts. We are using
20 foreign company employees as well as employees in our own
21 companies here for the collection of intelligence having to
22 do with economics as it pertains to the military effort,
23 principally along the lines of the construction of ships,
24 the number of airplanes produced, and the various types,
25 the production of copper, zinc and aluminum, the yield of

1 tin for cans and lumber. We are now exerting our best
2 efforts toward the acquisition of such intelligence through
3 competent Americans. From an American whom we contacted
4 recently we have received a private report of machinists of
5 German origin who are Communists and members of the labor
6 organizations in the Bremerton Navy Yard and Boeing Airplane
7 factory. Second generation Japanese (sentence doesn't
8 complete."

9 Isn't it accurate to state that the infor-
10 mation in Exhibit 23-A, paragraph numbered 2, is essentially
11 the same as the information which I read from Exhibit 40, the
12 last paragraph on page 11 and the top part of page 12?

13 A I think the main omission in the report is using "as
14 well as our own employees in our own companies here." That
15 has been omitted.

16 Q Is there anything that indicates that "our own
17 employees" in that quote are Japanese?

18 A No. It just says "our own employees." "As well as
19 employees of our own companies."

20 Q And there is nothing that states in there that the
21 "employees of our companies" are Japanese, is there?

22 A No.

23 Q Excuse me?

24 A Yes, that's correct.

25 THE COURT: He said no.

1 MR. HALL: Page 23 of Exhibit 40, Your
2 Honor, the top paragraph.

3 A Top of page 23?

4 Q (by Mr. Hall) Yes. The top paragraph.

5 A Top paragraph.

6 Q That paragraph reads, "Since the freezing of the funds
7 in July of this year, all Japanese business houses in the
8 United States are closing or are continuing operations with
9 a skeleton force."

10 Can you tell us a little bit about the
11 freezing of funds, if you have any information based upon
12 your research?

13 A I have no expertise in that area. I am aware that the
14 funds were frozen but I simply cannot tell you the ramifi-
15 cations of that.

16 Q Isn't it accurate that one of the sources that Tokyo --

17 MR. STONE: Your Honor, he just said that
18 he had no expertise.

19 THE COURT: Let's see what the question is.

20 Q (by Mr. Hall) Isn't it accurate that you testified
21 that one of the sources that Tokyo was relying upon for its
22 espionage network was Japanese businesses in the United
23 States?

24 A Yes. One of the earlier messages did marshal all the
25 Japanese representatives into an intelligence force, yes.

1 Q And if those businesses were closing, that would, in
2 effect, impede if not dry up that source of espionage infor-
3 mation?

4 A I would certainly think it would have an impact on it.

5 Q Now, the last page of Exhibit 40, under "Conclusions."
6 Without laboring the record, because I think the Court and
7 you can, Mr. Lowman, if you wish, read this, the "Conclusions"
8 as I read it basically state that because of the developments
9 in relationships between the United States and Japan, there
10 is a mass exodus of Japanese residents under way to Latin
11 America and that secret documents and ciphers of consulates
12 and embassies are being burned, and various businesses
13 mentioned in the second paragraph are transferring personnel
14 out of the country, or plan to do so, and in the last
15 sentence of the conclusion, it states, by the Office of
16 Naval Intelligence: "However, in anticipation of possible
17 crisis, the FBI is prepared to take into custody and detain
18 all persons whose activities are inimical to the best
19 interests of the United States."

20 Do you see that reference?

21 A Yes, I see it.

22 Q In point of fact, this is generally a discussion, is it
23 not, in this "Conclusions" part of this ONI report, of the
24 collapse of at least a major part of the Japanese espionage
25 network in the United States?

1 A No, I don't agree with that at all. As a matter of
2 fact, there were two ONI reports after this that said that
3 the Japanese espionage net was intact and working.

4 Q And isn't it a fact that the FBI was prepared to take
5 into custody all persons whose interests were adverse to the
6 interests of the United States in relation to the war?

7 A They were prepared to round up people where there was
8 information about them which might indicate they might be
9 disloyal, yes, but the two ONI documents I referenced was
10 also after the FBI roundup where the ONI continued to conclude
11 that the espionage nets were intact and functioning.

12 Q You testified yesterday at some length about Exhibit 50.
13 Maybe we could have that exhibit -- A-50; I'm sorry -- handed
14 to the witness.

15 Do you remember this exhibit?

16 A Yes, I do.

17 Q Now, you were asked by counsel and also by the Court to
18 provide us with the specific "Magic" cables which supported
19 the statement on the third page that the Japanese espionage
20 net containing Japanese aliens, first and second generation
21 Japanese and other nationals is now thoroughly organized
22 and working underground."

23 And, frankly, between the time that question
24 was asked and the end of your testimony, I wasn't sure exactly
25 what specific cables you were relying upon to support that

1 statement. Was it --

2 THE COURT: That would be, if I might, the
3 statement is at page 3, paragraph 6(b); is that the one
4 you're referring to?

5 MR. HALL: That's correct, Your Honor.

6 THE COURT: 6(b).

7 MR. HALL: Yes.

8 Q (by Mr. Hall) I wondered if you could give us now --
9 well, my understanding was you testified with regard to
10 Exhibits A-17, -22 and -23 as being the specific cables, and
11 my question is, is that a correct understanding on my part,
12 or if it's incorrect, will you correct it?

13 A As I recall my statement about this particular paragraph
14 6(b), was that it was routed and the whole "Magic" complex
15 of intelligence had stemmed from that. The messages which
16 I would use to support that is the total history of the
17 "Magic" messages on this issue, because I don't think any
18 specific messages, taken by themselves, out of context, is
19 going to lead you to that conclusion. But if you take the
20 whole mosaic, all of the messages, setting up the network
21 in early 1941, instructing consulates on their requirements
22 and then going ahead and telling them to recruit agents,
23 and then all the reports going back to Tokyo containing
24 national defense information, that whole complex of infor-
25 mation is what supports my statement.

1 Q Okay. Exhibit A-17, please, Your Honor.

2 To begin with, this is a "Magic" cable,
3 is it not, of 30 January 1941?

4 A Correct.

5 Q I have a few preliminary questions which hopefully will
6 help me understand the exhibit. The first is right under
7 the date in the upper left-hand corner is a blank space
8 that looks like it was covered up when the Xeroxing process
9 occurred. Do you know what that was or what that coverup
10 means?

11 A Yes, I do. As I testified the other day, it was a
12 decision when these messages were declassified to take out
13 technical information. That was technical information in
14 that space containing the name of the crypt system that this
15 particular message was transferred from.

16 Q In the lower left-hand corner, typed in, are the
17 letters "JD-1:" Do you know what that means?

18 A No, I guess I don't.

19 Q And next to that in a different form of stamp are the
20 numbers 777. Do you know what that means?

21 A No, I guess I don't.

22 Q And to the right of that are different numbers and
23 different print, 14383. Do you know what that means?

24 A Yes. Those were the serial numbers, according to this
25 message, by the cryptologic service. That was their

1 serialization.

2 Q Does that mean that there were 14,383 prior messages
3 decoded?

4 A I'm not positive whether they started with an absolute
5 one system or not, but I would imagine they did.

6 Q On the next page in the lower left-hand corner of the
7 text are some initials written in that look like maybe JF.
8 Do you know what those initials are?

9 A That could have been the initials of the translator.

10 Q And after the reference in the lower right-hand corner,
11 Navy Trans (2-7-41) (S), do you know what the S means?

12 A No, I don't. They are not typical numbers. I notice
13 there are no such numbers on the previous exhibit we were
14 working with, Exhibit 23.

15 Q Well, I'd like to go back to the substance of the docu-
16 ment now. On page 1, paragraph 5, it says that in this
17 message -- well, the first part, this says it's in two
18 parts complete, up in the upper right-hand corner. Does
19 that mean that this came in two different sections and was
20 decoded in two parts, or what does that mean?

21 A Yes. When it says "complete," that means that both
22 parts are here. When they are put out in different parts,
23 it will say Part 1, Part 2, but when it's complete, it's
24 all here.

25 Q Paragraph 5 of this message from Tokyo to Washington,

1 D.C., talks about the utilization, quote-close quote, of
2 United States citizens of foreign extraction other than
3 Japanese and aliens other than Japanese. Do you see that
4 reference?

5 A Yes.

6 Q Now, in paragraph 6 it talks about the utilization of
7 our second generation nationals. See the reference?

8 A Yes.

9 Q In your understanding of the "Magic" cables, what does
10 the word "utilization" mean?

11 A Employment.

12 Q Do you know if any United States citizen of foreign
13 extraction other than Japanese, or aliens other than
14 Japanese, or second generation and resident nationals, were
15 employed or utilized?

16 THE COURT: Is this aliens other than
17 Japanese and of extraction other than Japanese?

18 MR. HALL: That's right, or utilization of
19 second generation and resident nationals -- let me start
20 over again.

21 THE COURT: You are here excluding all
22 those of Japanese extraction?

23 MR. HALL: No, I'm going to include.

24 THE COURT: You're going to include. All
25 right.

1 MR. HALL: I'm going to include paragraph
2 5 and paragraph 6 on the first page of A-17.

3 Q (by Mr. Hall) Mr. Lowman, do you know whether any
4 United States citizens of foreign extraction other than
5 Japanese, or aliens other than Japanese, or second
6 generation and resident nationals were employed or utilized
7 by Tokyo in espionage activities other than those who are
8 indicated by name in the documents and exhibits before the
9 Court today?

10 A Well, you are excluding the ones that I mentioned the
11 other day, specifically named Japanese people who were
12 employed by the consulate. Those are excluded in your ques-
13 tion. The only other information I have is, of course, all
14 of the military intelligence and FBI reports which names a
15 number of people as being involved in intelligence for the
16 consulates.

17 Q I would like to, then, in respect to that answer, if
18 you'll look at Exhibit A-17(f) and A-17(h), please. You
19 recall testifying about these two exhibits yesterday? These
20 are FBI --

21 A One of them, I believe, is an FBI and one of them is an
22 ONI report.

23 Q 17(f) is FBI and 17-(h) is an ONI report?

24 A That's correct.

25 Q Now, these are fairly complete reports, are they not,

1 listing names and circumstances of suspected spies?

2 A I can't answer that. I don't know whether this was an
3 exhaustion of all the names that the Navy and the FBI had.
4 There are certainly a good many in here.

5 Q And this indicates the fact that the FBI and the ONI
6 has the names of individuals who are suspected at least of
7 being utilized by Tokyo in its espionage work?

8 A That appears to be the thrust of this ONI document, yes.

9 MR. HALL: Your Honor, we would ask that
10 while counsel has only offered the parts of these two
11 exhibits which are not crossed out that for purposes of
12 elucidating the witness's testimony with regard to the names
13 that intelligence forces had, both the FBI and the military,
14 of suspected espionage agents, that the Court review the
15 entire exhibit with at least that thought in mind.

16 MR. STONE: We would be delighted to have
17 those two exhibits, 17(h) and 17(f), come in totally.

18 THE COURT: They will be admitted in toto.

19 Q (by Mr. Hall) Isn't it true that "Magic" provided the
20 intelligence forces of the United States with a great deal
21 of information so that they had within their resources the
22 ability to identify, locate, track down, and in many cases,
23 apprehend both suspected and actual espionage agents of Japan?

24 A No. Very few names were actually named in the "Magic"
25 cables, as you're aware. Half a dozen or so is all.

1 Q Half a dozen names were in the "Magic" cables?

2 A The ones we've discussed here, as I recall, were five
3 or six specific named individuals. They just simply did not
4 transmit very many names of agents.

5 Q How did the FBI, then, or the Naval Intelligence get
6 the names which appear in Exhibit 17(h) and 17(f)?

7 A Well, in 17(h) several of the names came out of "Magic,"
8 but the great bulk of other names I assume came out of their
9 own investigation.

10 Q And isn't it true that if the "Magic" cable says we have
11 spies in the Army that that at least tells the FBI or the
12 military that they ought to look at the Army to see if there
13 are spies there?

14 THE COURT: I think that's a matter for
15 argument. It's in the record.

16 Q (by Mr. Hall) I'd like you to look at Exhibit A-22 --
17 I think it's A.

18 THE COURT: A-22(a) appears to be an ONI
19 letter to Hoover.

20 MR. HALL: Correct, of May 21, 1941.

21 THE COURT: Yes.

22 Q Now, I'd like you to take a look at the third from the
23 last and the second to the last paragraphs.

24 THE COURT: Let's -- that would be on page
25 2, paragraphs 2 and 3; is that right?

1 MR. HALL: Page 1.

2 THE COURT: Oh, you're talking about page 1?

3 MR. HALL: Yes. I'm sorry.

4 THE COURT: Let's number them at the top,

5 if you will.

6 MR. HALL: One, two, three, four and five

7 from the top.

8 THE COURT: Of A-22.

9 Q (by Mr. Hall) The fourth paragraph from the top says

10 that the Japanese are maintaining relations with second

11 generation Japanese who are now in the United States, and

12 the next paragraph says they already have representatives

13 among the second generation.

14 MR. STONE: Your Honor, it actually says

15 United States Army.

16 MR. HALL: United States Army.

17 Q (by Mr. Hall) And the next paragraph says they already

18 have representatives among the second generation Japanese

19 working in airplane plants. Do you have any knowledge as you

20 sit here today that the FBI or the Military Intelligence was

21 not aware of the second generation Japanese referred to in

22 this paragraph who were in the United States Army at or about

23 the time that this memorandum was prepared?

24 A Aware by name?

25 Q By identity. Name.

1 A No, I am not aware.

2 Q And we've already talked about the FBI investigation in
3 June of 1941, a month or so after this exhibit was prepared,
4 about Japanese working in airplane factories. The question
5 I have is do you have any knowledge as to whether the FBI
6 or other military intelligence had the names of all second
7 generation Japanese working in airplane plants who were
8 referred to in the fifth paragraph on page 1 of Exhibit 23?

9 A The names of all Japanese working in airplane plants?
10 No, I'm not aware.

11 Q Wouldn't it be fairly simple to determine the names of
12 all Japanese working in airplane plants on the West Coast of
13 the United States?

14 A I have no idea. All I know is they continued to
15 report the fact that they were there right on through the
16 year.

17 Q Now, I'd like you to take a look, if I may, at Exhibit
18 A-22 and A-22(d). A-22 is -- actually both of these are
19 documents you testified about yesterday. A-22 is a "Magic"
20 cable of --

21 A I don't have A-22 as such here, do I?

22 THE CLERK: You should have.

23 THE WITNESS: Previously?

24 THE COURT: No.

25 THE CLERK: Sorry. I thought you had it.

1 Q (by Mr. Hall) A-22 is a "Magic" cable of May 9, 1941.

2 A Yes. I have it.

3 Q And the first paragraph on that page states, in part,
4 "We have decided to make use of white persons and Negroes
5 through Japanese persons whom we can trust completely." Do
6 you have any information that the Japanese persons referred
7 to in that paragraph were Japanese-Americans or Japanese
8 aliens residing in the United States?

9 A Yes, I have such information.

10 Q And what is your information?

11 A The information is the "Magic" cables which names a man
12 named Hikida who was working amongst the Negroes and training
13 them for sabotage and infiltrating their movements and was
14 working with them.

15 Q Who is Mr. Hikida?

16 A He is identified in several Naval documents with more
17 information, but I can't -- I don't know the document off-
18 hand. I would have to get them for you.

19 THE COURT: Would you spell the name,
20 please?

21 THE WITNESS: I believe it's H-i-k-i-d-a.

22 Q (by Mr. Hall) And is he or was he a Japanese-American
23 or Japanese alien residing in the United States?

24 A I don't know, but he was certainly residing in the
25 United States. I do not know whether or not he was an

1 alien or an American citizen.

2 Q I thought you testified a few minutes ago that the
3 "Magic" cables did not include names of people.

4 THE COURT: He said only a few, relatively
5 few.

6 Q (by Mr. Hall) This is one of the few?

7 A Yes.

8 Q Now, do you have any documented information which is
9 before the Court now in the form of exhibits which you've
10 reviewed that indicates to you what the term "make use" as
11 used in the sentence which I've just read means?

12 THE COURT: Well, I don't think he needs to
13 answer that. I think that's plain on its face.

14 Q (by Mr. Hall) In the next paragraph and in the same
15 paragraph, the second line from the bottom, it says "Main-
16 tain close connections with Japanese associations." Do you
17 have any information with you that is before the Court as to
18 what "close connections" means?

19 A Well, it's listed as one of the things they could do to
20 gather intelligence, so I suppose it would be to associate
21 themselves with various Japanese associations for the purpose
22 of gathering intelligence, among other things.

23 Q Is there anything that demonstrates that the Japanese
24 associations were providing, knowingly providing espionage
25 intelligence which they knew to be against the interests of

1 the United States in connection with this maintenance of
2 "close connections" referred to in this paragraph.

3 A Yes. I believe that there is such information available.
4 I think that the document 17(h) is one of the documents which
5 provides that kind of information. There the Japanese took
6 over a whole Japanese consul to go over a whole complex of
7 Japanese associations for the purpose of intelligence.

8 Q Is that the only example you have?

9 A There is a message which says that certain of these
10 associations are subsidized by the Japanese government, and
11 of course, the ONI report, for example, of 4 December 1941,
12 lists in great detail a number of associations that they
13 believe are connected with either potential intelligence or
14 potential sabotage.

15 Q In the next paragraph in the middle of that paragraph
16 is the phrase, "We hope to be able to obtain accurate and
17 detailed intelligence reports." Do you see that phrase?

18 A Yes.

19 Q Am I correct in assuming that then as of the date of
20 this cable the Japanese had not yet been obtaining accurate
21 and detailed intelligence reports?

22 A This message, if you note, references a previous
23 Japanese message 180. That 180 asked, in essence, for a
24 status report on how well the various consulates and the
25 embassies were doing in following the directions that had

1 been sent out in 180. This report is an answer to that. It
2 is a status report back, and like all status reports, it
3 includes what has already been done, what is being done, and
4 what they consider the next step to be.

5 Q In Exhibit A-22(d), paragraphs, for example on that,
6 Exhibit b, c, d and e, talking about close contact, close
7 surveillance, close contact. Is there anything in this
8 document which implies that the people with whom contact was
9 close were consciously aiding the enemy?

10 THE COURT: Well, I think the document
11 speaks for itself.

12 Q Exhibit A-22(j), please, to the witness. You testified
13 yesterday about this document which is a memorandum of
14 subversive activities by consular and diplomatic services
15 of the Japanese government in the United States dated June
16 27, 1941?

17 A Yes.

18 Q Is this prepared by the Federal Bureau of Investigation?

19 A That's what it says, yes.

20 Q And on the second page in the Forward, the first para-
21 graph, if you could glance at that. Then I have a question.

22 A "During September"?

23 Q No; the first paragraph in the Forward.

24 A Oh, in the Forward. "The information contained . . .?"

25 Q Right. Just glance at that so I can ask you a question

1 about it.

2 A Yes, I have read it.

3 Q That paragraph indicates, does it not, that the FBI is
4 utilizing "Magic" or at least the information in sanitized
5 versions of "Magic" as a part of its effort to gain intelli-
6 gence about the Japanese espionage activities in the United
7 States?

8 A At this period of time the FBI certainly didn't have the
9 intelligence from "Magic" and there is an implication --

10 THE COURT: Did you say did or did not
11 have?

12 THE WITNESS: Did have.

13 A (continuing) And so I think there is an inference in
14 here it might come from "Magic", yes.

15 Q As with the other exhibits, the numbers of which I can't
16 remember at the moment, which were offered by counsel except
17 for the X'd out parts, we would ask that the X'd out parts
18 be included to show the --

19 THE COURT: In this A-22(j)? All right.
20 I'll consider that material.

21 Q (by Mr. Hall) I have one question, however, about the
22 A-22(j). On the third page of the exhibit and on another
23 page of the exhibit are portions which are blacked out. Do
24 you know what that means? It looks as if it's been censored
25 in some fashion.

1 A I would suppose that the FBI --

2 MR. STONE: Your Honor, before he answers
3 this, there was supposed to be a stipulation. My custodians
4 are not here. May I explain why they're blacked out, since
5 that only goes to the document?

6 THE COURT: Do you know why it's blacked
7 out?

8 MR. STONE: Yes, I do.

9 THE COURT: Is that all right, Mr. Hall?

10 MR. HALL: Fine.

11 MR. STONE: In order to get this document
12 released, the FBI goes through and does their own sanitizing.
13 Any blacking out on this document was done within the last
14 month by the FBI and I'll be happy to provide the guide that
15 explains the letters on the side which is a standard guide,
16 like an A might mean that there is a name in there and
17 they're not sure if that person has been identified publicly,
18 and a B might be something else, so any of the blacking out --

19 THE COURT: That's enough. It was done
20 recently and done by the FBI?

21 MR. STONE: Yes. There is one other thing
22 about the document that I think I ought to say on its face
23 as long as it's going in totally.

24 Under many of the paragraphs where the
25 typing you can see in the Xeroxing is of a carbon and thick.

1 There is also occasionally what looks like a clean thin
2 designation of an FBI file number. That's because I chose
3 in going through the FBI files to pick a carbon, which was
4 their internal copy and which they had then put in their own
5 records. There are other copies, presumably the distributed
6 ones, that did not include their own internal files that they
7 got that from, so where there is thin typing under a para-
8 graph, that just shows that this was the FBI's internal copy.

9 THE COURT: All right. That's fine.

10 MR. HALL: Exhibit A-23(a), please?

11 THE COURT: Before you leave that, let me
12 just go back and -- this has nothing to do with this case,
13 but I want to ask this witness. On A-22(j) in that Forward
14 and the paragraph that was read to you, I know Secretary
15 Stimson back in the twenties, I believe when he was with
16 the Government --

17 THE WITNESS: He was President Hoover's
18 Secretary of State.

19 THE COURT: He said that gentlemen don't
20 read other people's mail.

21 THE WITNESS: That's correct. It shut down
22 our communications intelligence efforts at that time.

23 THE COURT: And then this surprises me.
24 Is it true that when a person was identified with the
25 Consular or Diplomatic Service, of a foreign government,

1 that the investigation as to that individual was discontinued.

2 Was that the practice at that time?

3 THE WITNESS: Oh, I don't think that was
4 true, sir, insofar as the Japanese Consul were concerned,
5 because they hired a great, great many people who actually
6 worked for the Consular who were -- the name was, as I recall
7 in Japanese, soritsen. They were --

8 THE COURT: Let me stop you, though. This
9 says when a person was identified as being a member of the
10 Consular or Diplomatic Service of a foreign government, and
11 thus entitled to diplomatic immunity, I suppose it would
12 have to be one of those persons, entitled to diplomatic
13 immunity?

14 THE WITNESS: I would think so. The people
15 I have reference to at the Consul in Hawaii, for example,
16 there were 224 so-called consular employees, but they didn't
17 have diplomatic immunity.

18 THE COURT: If they had diplomatic
19 immunity, then the investigation was discontinued, apparently.

20 THE WITNESS: As I would read this, yes.

21 THE COURT: I see. Well, it surprised me,
22 but that's what it says.

23 Q (by Mr. Hall) Mr. Lowman, I think you have before you
24 Exhibit A-22(d). It's a memo from the War Department to the
25 Chief, Counterintelligence Branch, May 21, 1941, one page.

1 THE COURT: Was that A-22(d), D as in
2 David?

3 MR. HALL: Yes.

4 A Yes, I have it.

5 Q (by Mr. Hall) Now, the paragraph -- I was asking a
6 few minutes ago about this document. In paragraphs lettered
7 B and E, it says "Close contact" in each instance. Do you
8 see those references?

9 A Yes.

10 Q Now, what does "contact" mean in that context?

11 MR. STONE: Excuse me, Your Honor. I
12 thought you already said it spoke for itself.

13 THE COURT: I didn't on this particular
14 one, but I would say that. I think it speaks for itself.

15 MR. HALL: Well, respectfully, I think not
16 and I have a followup question, and if the Court will permit
17 me, I would like to have the witness --

18 THE COURT: Well, I would permit you to
19 ask him does the phrase "close contact" in this message have
20 anything other than its normal meaning.

21 Q (by Mr. Hall) Well, let me put it this way: Does the
22 phrase "close contact" mean that the entities or individuals
23 referred to in Paragraphs B and E on Exhibit A-22(d) were
24 collaborating with one another in espionage activities for
25 the government of Japan?

1 THE COURT: I don't think it means that.
2 I would not so interpret it. Would you?

3 THE WITNESS: Would you say that again,
4 sir?

5 MR. HALL: I don't really care what the
6 witness thinks; it's what the Court thinks.

7 THE COURT: I'll tell you what he said.
8 Does the "close contact" in that context mean that those
9 organizations were collaborating, and I said I would not so
10 understand.

11 MR. HALL: Then I would call the Court's
12 attention, just because it is part of this line of inquiry,
13 to Exhibit A-23(a).

14 THE CLERK: It should be on the top there.

15 MR. HALL: Does the Court have that exhibit?

16 THE COURT: Yes, I do.

17 MR. HALL: Which in the first paragraph
18 talks about Japanese intelligence making the following
19 "contacts" and then it names three individuals, and I just
20 want to tie up this line of logic or thought in the context
21 of the words of use of the word "contact" and the individuals
22 referred to, et cetera.

23 MR. STONE: I wonder, for the purpose of
24 this line of questioning, Your Honor might not want to
25 substitute X, Y and Z for the names.

1 THE COURT: I would think so.

2 MR. HALL: I wasn't going to say any names.

3 THE COURT: Just don't use the names.

4 MR. HALL: I wasn't even going to say A,
5 B and C.

6 THE COURT: But in this context, you're
7 going to ask about the word "contacts"?

8 MR. HALL: No, I'm not, because the Court
9 has said the Court construes the word "contact" in a certain
10 way. I just wanted to link up with this line of inquiry, and
11 while it is maybe more argumentative than anything, the use
12 of that word in the exhibit that I have just referred to.

13 THE COURT: Yes. All right.

14 Q (by Mr. Hall) Exhibits A-37 and A-38, please. Do you
15 have Exhibits A-37 and A-38?

16 A I do.

17 Q You testified yesterday that these exhibits provide
18 examples of the kind of espionage information that was
19 clandestinely gathered in the United States and sent to Japan?

20 A I don't know that I used the word "clandestinely," but
21 it is labeled strictly secret.

22 Q Well, isn't it at least the inference from your testimony
23 that this espionage information was gathered clandestinely?

24 A Information is gathered any way you can get it, clan-
25 destinely, through the press, or through contacts with people.

1 Espionage intelligence gathering includes every source of
2 information.

3 Q This is information concerning orders placed with
4 various aircraft manufacturers in Southern California?

5 A That's what it's about.

6 Q Number of employees, presumably -- I don't know if it's
7 payroll or what on the face of Exhibits A-37 and A-38, to a
8 number of aircraft on order from various airplane manufacturers
9 in Southern California?

10 A Yes, that's what it is.

11 Q Now, is it or is it not your testimony that this infor-
12 mation that you want to leave the Court with the inference
13 that this information was clandestinely gathered?

14 A I've already explained, I think, that intelligence
15 includes all sorts of sources to gather your information.
16 It includes, particularly in this country, the open press
17 which is a great source of intelligence for all foreign
18 nations. It includes contact with individuals who can give
19 you information. It includes clandestine information in
20 some instances.

21 Q And which are Exhibits A-37 and A-38?

22 A You're asking me to break -- how the Japanese obtained
23 this information and break it down into these individual
24 categories? I have no idea how much they gathered from the
25 press, how much they gathered from contact, how much they

1 gathered from clandestine sources. They said they had second
2 generation Japanese working in aircraft factories. I would
3 suppose that some of this information might have come from
4 them.

5 I would suppose also some of it may have
6 come from the press --

7 Q Well, you know, don't you --

8 A -- or individuals.

9 Q You know, don't you, because it has been called to your
10 attention on previous occasions that the information in these
11 two exhibits was in fact gathered from the Los Angeles Times.

12 A Yes, I know there was information about this time about
13 aircraft activities, and some of that is probably in here.
14 Why not? They're after aircraft production. If they can get
15 it for free, they'll take it. This is not a transmission of
16 a press article.

17 Q In the ten days prior to this cable, this information
18 appeared in the Los Angeles Times, did it not?

19 A Not all of this information appeared, no. Some of it
20 appeared.

21 Q And is it your implication that there is anything clan-
22 destine about taking information from the newspapers?

23 A No. Absolutely not.

24 Q Exhibit A-33, please, Your Honor.

25 Isn't it true, Mr. Lowman, that in January

1 of 1942, Secretary of War Stimson concluded that the procedures
2 for using "Magic" had to be revised and that thereafter the
3 "Magic" cables and sanitized versions of "Magic" would be
4 supplemented with collateral intelligence material so that
5 the whole picture would be made available and not just the
6 date in "Magic"?

7 A What was the date on that?

8 Q January of '42.

9 A January what?

10 Q '42.

11 A I don't know. We were at war at that time and I cer-
12 tainly assumed that some adjustments were made in the
13 distribution of "Magic" so that it could be utilized to
14 fight a war.

15 Q You know, do you not, that there was criticism of the
16 use of unevaluated "Magic" cables, the raw data, and that
17 the Secretary of War determined that in order to provide
18 accuracy with regard to the consideration of "Magic"
19 intelligence, it was necessary to include with the "Magic"
20 reports other intelligence data?

21 A If you're asking me if there was some deficiency in the
22 distribution of "Magic" intelligence, I would certainly agree
23 with you. It was not handled as expeditiously as it might
24 have been and it had an impact, I might add, on Pearl Harbor.

25 Q That wasn't the question.

1 A I don't know the specific act that Secretary Stimson
2 took.

3 MR. HALL: Does the Court wish to take
4 the recess?

5 THE COURT: Yes, we should. We'll take a
6 recess until 11 o'clock.

7 (Recess.)

8 Q (by Mr. Hall) Mr. Lowman, before the recess we were
9 talking about whether Secretary Stimson had changed procedures
10 regarding "Magic" and the distribution of "Magic" because of
11 some concerns about interpretations or the way "Magic" was
12 being used, and you said generally, I think, that you didn't
13 really have a recollection of that occurring.

14 A I don't know the exact terms that he said, no.

15 Q Do you know of any instances where it has been estab-
16 lished that "Magic" cables were -- that were utilized were
17 incorrect or had incorrect translations?

18 A Had incorrect translations? Yes. I do know of some
19 areas where the translation is in dispute. It was a diffi-
20 cult job to translate these because most of the translators
21 were people who were the sons of missionaries, the
22 missionaries themselves, or Army or Navy language officers
23 who had served tours in Japan. Finding adequate linguists
24 was a constant chore. No Nisei were allowed in the operation
25 because of security considerations, so language continued to

1 be a great problem.

2 Q Let's go back for a moment to Exhibit A-22, if we may.
3 It's the "Magic" cable from 9 May 1941, the first paragraph
4 in that cable, the second sentence.

5 A I have A-22.

6 Q A-22. The first sentence talks about establishing
7 outside contacts in connection with gathering of intelligence
8 and the second sentence reads, "In this regard, we have
9 decided to make use of white persons and Negroes through
10 Japanese persons whom we can trust completely." Do you see
11 that reference?

12 A Yes, I see it.

13 Q You know, don't you, that that quote is mistaken? There
14 is a mistake in that quote.

15 A No. As a matter of fact, I know the difference you're
16 alluding to, but I think this is the correct one because
17 this comes from record Group 80, which moved directly from
18 Pearl Harbor here and into the archives. There is a change,
19 I know, in the "Magic" background message, but that was
20 compiled much later.

21 Record Group 80 were the actual messages
22 used in the Joint Congressional Inquiry of the Pearl Harbor
23 attack, the messages which President Truman declassified for
24 them to use - there was a special liaison group; that's
25 what the LO stands for there - which assembled these messages,

1 and when the Joint Congressional Committee had made its study,
 2 these moved eventually into the archives, so this is as close
 3 to the original as you can get. The fact that there was a
 4 slight difference in that particular sentence that you were
 5 talking about, that occurred much later, somewhere along the
 6 line a typo or something like that.

7 Q Did you testify before the Japanese, American and Aleutian
 8 Wartime Relocation hearing on June 27th, 1984?

9 A Yes, I did.

10 Q And did you offer exhibits in connection with your testi-
 11 mony?

12 A Yes.

13 Q And indeed, one of the exhibits that you offered to the
 14 Congressional Committee was in fact this very cable, was it
 15 not?

16 A Yes, it was.

17 MR. HALL: If I may approach the witness,
 18 Your Honor?

19 THE COURT: Yes, but let me ask, is this
 20 something that I really need to be concerned about?

21 MR. HALL: I think you need to be concerned
 22 about the next question. Maybe I could hand to the witness
 23 a copy of an excerpt from his -- from the Commission hearings.

24 THE COURT: Well, you pass it up.

25 Q (by Mr. Hall) Now, is it not accurate that that docu-

1 ment which I've just handed to you is an exact copy of the
2 document which you handed to the Committee on the Judiciary
3 of the House of Representatives on the 27th of June, 1984?

4 A Yes, that is correct.

5 Q I'd like to read the sentence in that document which
6 matches, more or less, the sentence which I have read out
7 of Exhibit A-22:

8 "In this regard, we have decided to make
9 use of white persons and Negroes through Japanese persons
10 whom we can't trust completely."

11 Do you see that?

12 A Yes, I see that.

13 Q Is there any particular reason in your testimony about
14 this exhibit earlier why you didn't point out the discrepancy
15 between the document you submitted to Congress and the docu-
16 ment which has been submitted to this Court?

17 A Yes. The document that I have here, the one which you
18 brought me, which says "can't trust completely" has the
19 apostrophe T. This is right out of the "Magic" background
20 of Pearl Harbor. I had no reason to -- it was awkward
21 wording, it seemed to me, but I had no reason to know what
22 the original might have been. I used this message in the
23 form that was published in the "Magic" background.

24 Since that time, however, in looking
25 through record Group 80, I discovered that there is

1 apparently a typographical difference between the two. But
 2 again, the record Group 80 is the closest to the original
 3 because this one here has been massaged through several
 4 different sources.

5 Q Exhibit A-33 which you have --

6 A A-33?

7 Q Yes. The last page.

8 THE COURT: About how much longer will you
 9 be examining?

10 MR. HALL: Oh, about eight and a half
 11 minutes.

12 THE COURT: All right.

13 Q (by Mr. Hall) The reference on the last page --

14 A I haven't yet got it.

15 Q Maybe it will be nine and a half, then.

16 A Is that a document, a message, or what?

17 THE COURT: It's a message, A-33.

18 Q July 4, 1941, Exhibit A-33, four pages long.

19 A Oh, I have it.

20 Q Now, the last page, please. The third line says some-
 21 thing to the effect, there is no clear distinction made
 22 between the question of this route, et cetera. Do you know
 23 what "route" means, or "route," means in the context of that
 24 comment?

25 A I can't say for certain. Of course, there were a number

1 of cables between concerning getting the information out of
 2 the United States in case of war and in crossing over
 3 different routes was discussed in which the material would
 4 be transported into Mexico. It's possible it refers to that.
 5 Don't know.

6 Q The next sentence in that paragraph reads as follows:
 7 "However, it is clear that the question of the intelligence
 8 route does not imply the establishment of the espionage net
 9 in the United States by civilian agents."

10 Do you see that reference?

11 A Yes.

12 Q Does this mean that Mexico is informing Tokyo that they
 13 have no assurance that there is an espionage net in the
 14 United States?

15 THE COURT: I think the message is going
 16 to have to stand on its own.

17 Q (by Mr. Hall) In your notes which you provided to me
 18 last night, from which you've been testifying, and a copy of
 19 which I received, I think, at least some of the notes, on
 20 Saturday --

21 A From the deposition, it was.

22 Q Yes. On the second page of the documents that were
 23 supplied to me Saturday is the reference: "Tokyo requests
 24 status report on intelligence organizations," and then there
 25 is a reference 1/165 April. Do you have those notes with

1 you?

2 A What was the reference, the cable reference again?

3 Q 1/165. It's on the second page of the document I have.

4 A Yes, I have that.

5 Q Now, in the text under that reference you say "Report
6 on Progress, reference to 1/118. Strengthen intelligence
7 organization and prepare for the worst. 1/119.

8 "Recruit agents and fallback position will
9 be Mexico. 1/131.

10 What did you mean by the reference "fall-
11 back position will be Mexico"?

12 A What you're referring to here are some notes which I
13 made out for myself so that I could equate quick content to
14 the numbers of messages. That particular statement that I
15 just phrased in order to refresh my memory on what was in
16 that particular message, that's what that is based upon.

17 I'd like to look at the message, if I
18 might, and see. I think that you will find that that is a
19 key to what is in the message.

20 Q Well, but these are your notes and I'm wondering what
21 you meant by "fallback"?

22 A That identifies the message to me, and there are words
23 to that effect in the message, I assume.

24 Q Why was it necessary to have a fallback position in
25 Mexico?

1 A In case of war. The whole thrust of these early cables
2 was that they were to form an intelligence network which
3 would be able to function in time of war. In other words,
4 when the consular offices and the embassies left, they wanted
5 to leave in tact an operative intelligence net, and that's
6 what that has reference to. Mexico was the fallback position.
7 That's why they discussed routes that we talked about a
8 minute ago, to get information out after war from these
9 intelligence nets which were left in tact. The question now
10 is how do you get the information out once you've lost
11 your consulate outlet.

12 Q What was the To Group, T-o organization or To Group?

13 A About three days after the Pearl Harbor attack, the
14 Japanese ambassador in Madrid went to the Spanish Foreign
15 Minister and discussed with him the possibility of the
16 Spaniards establishing an espionage net in the United States,
17 working for the Japanese.

18 About four days later the Spanish govern-
19 ment agreed to act as a conduit for intelligence purposes
20 back to Japan. A number of agents were sent from Spain,
21 some of them with radio receiving sets. They were to go into
22 the United States and try to pick up, if they could, some
23 information. They are in some cases referred to as liaison
24 officers or agents. Presumably they would be making contact
25 with people who could provide them with intelligence

1 information, and in point of fact, there were some 80 To
2 reports sent back from the United States to Madrid. Some of
3 these contained information on convoys leaving the West
4 Coast or the East Coast, because the information came from
5 both coasts from the To arrangement. This information was
6 quite often sent back through the Spanish Diplomatic facilities.
7 It got back to Madrid. It was handed over to the
8 Japanese ambassador who promptly transmitted the intelligence
9 to Tokyo over, of course, "Magic" communications which the
10 United States intercepted, and therefore we knew exactly
11 what was coming out through the To network.

12 We allowed the To network to operate
13 because we made certain comparisons. We didn't want to tip
14 off the fact that we were reading their reports through this
15 security route, and so we allowed it to exist for some time.
16 We knew the operators' names after a while and, in general,
17 that was the To net.

18 There was also a net, a similar net, run
19 by the Spanish government for the Germans in England.

20 THE COURT: Let me stop you there. You
21 speak about the net. What was the word before that?

22 THE WITNESS: To.

23 THE COURT: T-o-e?

24 THE WITNESS: T-o.

25 THE COURT: Just T-o?

1 THE WITNESS: It means "door" in Japanese.

2 THE COURT: All right.

3 Q (by Mr. Hall) The agents in the To network were not
4 Japanese, though?

5 A No, they were not.

6 Q And the Latin American network about which you testified,
7 the agents in that network were not Japanese?

8 A No. They appeared to be all South Americans.

9 Q Now, aside from the To group about which you just testi-
10 fied, and aside from the Latin American group about which
11 you've also testified, is there any other indication of
12 espionage activities after Pearl Harbor in the United States
13 gathered from communications intelligence?

14 A After Pearl Harbor? That's all I'm aware of.

15 MR. HALL: No further questions.

16 THE COURT: Any redirect?

17 MR. STONE: Yes, Your Honor.

18

19 REDIRECT EXAMINATION

20 BY MR. STONE:

21 Q Mr. Lowman, would you please take out A-33 and A --
22 well, take out A-33 and I'll get the other number for you.
23 And A-17.

24 Looking at A-33 first, I'd like you just
25 to direct your attention to the very bottom material in the

1 bottom roughly half inch of the cable, below the actual text,
2 and starting from left to right, does that information --

3 A What page are you on?

4 Q I'm on page 1 of Exhibit A-33.

5 A All right.

6 Q Going from left to right, does that information tell you
7 which military service translated the cable? Can you just
8 interpret for me, going left to right?

9 A Yes. For one thing, it says Army but five digit
10 serialization was the Army serialization, whereas the Navy
11 used four digit serialization. And moving on --

12 Q Please be more specific. Tell me the words and who put
13 them there and what they are, please. This is for the
14 record.

15 THE COURT: Let me stop you, if you will.
16 I know Mr. Hall asked questions about it. I don't know why
17 those questions were asked. I am disinterested in it.

18 MR. STONE: May I make the offer of proof?

19 THE COURT: Tell me why I should be
20 interested.

21 MR. STONE: Okay. Because I think that if
22 Mr. Lowman is asked to direct his attention to the difference
23 between the Army insignia on the bottom and the Navy insignia,
24 he can explain those symbols which were pointed out to him
25 before.

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THE COURT: All right.

MR. STONE: It has to do with the difference as to who translated the cable.

THE COURT: I don't care who translated them. I'm disinterested in that.

MR. STONE: Well, I thought that was an attempt to impeach his understanding of the cables.

MR. HALL: I didn't know what it meant and that's why I asked.

THE COURT: And I don't care.

He didn't know and I don't care.

Q (by Mr. Stone) Mr. Lowman, you were asked yesterday if any of the "Magic" cables themselves used the word "sabotage" and your answer was, I recall, no, but you answered that several of the reports which came from the "Magic" messages or which were associated with the "Magic" messages did use the word "sabotage."

Can you please point me -- well, would you pick up Exhibit -17(h) and point me to anything in there that you think --

THE COURT: Let me do this: It's only because I want to see if we can't get this, primarily for you, get this all handled this week. The messages are in the record. If there is a reference to sabotage in some of the sanitized messages, call it to my attention.

1 MR. STONE: Well, it's in the reports. I
2 thought Mr. Lowman --
3 THE COURT: Or the reports. Call it to my
4 attention.
5 MR. STONE: Okay.
6 Q (by Mr. Stone) With respect to Mr. Okada and Tachibana,
7 Mr. Lowman, there was a series of questions on that. Would
8 you please pick up document A-40 and turn to page 14.
9 THE CLERK: I have it here.
10 Q Under the words "The Tachibana Case" there is a para-
11 graph the first sentence of which I would like to focus on.
12 Does that first sentence -- is that where you got the idea
13 that Mr. Tachibana was a language officer?
14 A Yes, that's one of several sources.
15 Q And just for the Court's information, I believe the
16 second sentence of that paragraph is an example where there
17 was an arrest for violation of the espionage statutes and
18 the State Department intervened, as per that question you
19 asked about the State Department intervening if they thought
20 there might be an immunity question.
21 THE COURT: I see.
22 Q Would the clerk hand the witness Exhibit A-50 and also
23 A-81?
24 Mr. Lowman, I believe you testified on
25 direct examination that A-81 was the cover letter of A-50.

1 Am I correctly recalling your testimony?

2 A Yes, that's correct.

3 Q Then you were asked on cross-examination whether there
4 was something about A-50 which specifically called -- directed
5 you to know whether or not A-50 related to Hawaii only or the
6 West Coast.

7 Taking the two documents together, looking
8 both at A-81 and A-50, can you tell me what it is about them
9 that makes you believe that A-50 related to the West Coast?

10 A A-81 is a cover letter relaying A-50, which is the
11 Military Intelligence Division report. The subject of the
12 transmittal letter is Enemy Aliens on the West Coast.

13 Q So that is the --

14 A That is, therefore, what the attachment is about.

15 Q I see. You were asked several times, Mr. Lowman,
16 whether you thought -- do you have -17(h) in front of you?

17 A -17(h)?

18 Q Yes.

19 A Yes.

20 Q You were asked several times whether there was something
21 that led you to believe that after Pearl Harbor the intelli-
22 gence services believed that the pre-Pearl Harbor espionage
23 nets continued to function and had not been broken up by the
24 activities of the FBI on the few days following Pearl Harbor.
25 Can you identify the language, if it exists, in this document

1 which led you to that conclusion?

2 A If you turn to page 1 of that document, which is an
3 Office of Naval Intelligence report dated 24 December 1941,
4 and which had a distribution to all Naval Districts except
5 Naval District 16, to the FBI, to the Military Intelligence
6 Division, to the Collector of Information which was the
7 Donovan, Wild Bill Donovan organization, OSS, predecessor to
8 the CIA, and to the State Department and to the Special
9 Defense Unit, Department of Justice.

10 On page 1 of this document I read, and I
11 quote, "Although handicapped by the detention of many of its
12 key individuals, the Japanese intelligence network in this
13 hemisphere continues in operation."

14 Q Is there another reference in the document which leads
15 you particularly to believe that this time after Pearl
16 Harbor the organization continued in operation?

17 A If you turn to the bottom of page 21 of that document,
18 starting with the last sentence there, it reads: "It must
19 be constantly -- it must constantly be kept in mind in this
20 connection that Japan strove to put into operation in the
21 United States and its territories a highly integrated and
22 specialized intelligence network which could take over from
23 regular established agencies in wartime."

24 It goes on to say, "Under such circum-
25 stances, Japanese Nationals, pro Japanese Nisei, who are

1 well settled in normal yet strategic occupations, are likely
2 to be the mainstay of Japanese espionage, sabotage operations
3 in this country."

4 I note that espionage-sabotay is hyphenated
5 either/or.

6 Q Right under that paragraph you just read, are there any
7 individuals who were named there who are Niesi whose names
8 appear in any of the "Magic" cables you've previously talked
9 about?

10 A Yes. If you look down you'll see Ito, Kinji. Kinji Ito
11 was mentioned in a "Magic" cable, Exhibit A-23.

12 Q I don't think we need to read that whole paragraph. I
13 am sure the judge can find it.

14 A On the next page, the top of the next page, 23, Okimura,
15 Welli Soji, also mentioned in the same cable, Exhibit A-23.
16 In that same paragraph, Commander Okada mentioned in that
17 same message. Moving on, Kaneko, also mentioned in that
18 same exhibit.

19 THE COURT: Would you spell that name,
20 please?

21 THE WITNESS: K-a-n-e-k-o.

22 A (continuing) And those names, or at least one of those
23 names, is picked up again. There is a list on the next to
24 the last page of the document we're referring to of some 39
25 Japanese, of which Kinji Ito is one of them. And this is a
diagram, if you'll notice there, of the activities these

1 individuals are involved in, whether they're members of sub-
 2 versive groups, whether they're working with the consulate,
 3 how they are categorized as espionage suspects.

4 THE COURT: And that was known, apparently,
 5 on December 24, 1941? That's the date of the report.

6 THE WITNESS: Yes, sir. That's the date
 7 of the report.

8 Q (by Mr. Stone) Just for the record, Mr. Ito's name is
 9 No. 39 on that next to the last page, just so the Court can
 10 find it.

11 Is there also -- do you have more you want
 12 to say about this document, Mr. Lowman, at the moment?

13 A Yes. I'd like to discuss this document.

14 THE COURT: Well, the question was, I
 15 believe it had to do with what from that document led you to
 16 believe that the network continued to exist even after
 17 Pearl Harbor. I think you've answered that.

18 Q (by Mr. Stone) Okay. Is there an Army MID document
 19 also dated after Pearl Harbor that leads you to believe, or
 20 led you to believe that Military Intelligence agencies came
 21 to a similar conclusion to this one?

22 A Yes. That's a January 3, Military Intelligence Division.

23 Q I believe that's A-6.

24 A A-6 is correct.

25 Q May A-6 be handed to the witness?

1 A A-6 is a War Department, Military Intelligence Division
2 report. Note in the upper left-hand corner it references
3 the Japanese Tokyo Club. Turning to page 3 of that document,
4 the second full paragraph down, I quote:

5 "The widespread decentralization system of
6 Japanese clubs, labor organizations, and legitimate business
7 groups, have been converted into an important unit of the
8 Central Japanese Intelligence network. There can be no
9 doubt that most of the leaders have been and still continue
10 to function as key operatives for the Japanese government
11 along the West Coast."

12 Q And again, would you just repeat the date of when
13 they're saying still continues?

14 A The date of that document was January 3rd, 1942. That
15 was after the sweep.

16 THE COURT: When you speak about the sweep,
17 those are the arrests immediately after Pearl Harbor?

18 THE WITNESS: Yes. Right. There was an
19 FBI roundup immediately after Pearl Harbor. I think it was
20 the next day.

21 Q (by Mr. Stone) Could A-7 be handed to the witness,
22 please?

23 A I have that.

24 Q Just let the record show that the substantive document
25 on A-7 is a February 7 memo or K. D. Ringle from the Eleventh

1 Naval District, and it has several cover letters. Mr. Lowman,
2 focusing your attention on the underlying February 7th, 1942
3 memo itself, can you tell me if there is anything in that
4 underlying memo of February 7th, 1942, which leads you to
5 believe that the intelligence officers at that time felt
6 that the Japanese intelligence network had not yet been
7 totally rounded up by the FBI on December 7th, 8th and 9th?

8 A Yes. In that document, the February 7 ONI document by
9 Commander Ringle, if you turn to page 3 of that document --
10 that's paragraph 4, it's titled, the particular paragraph
11 which answers your question is entitled Analysis of the
12 Hazards to the Security of the United States Due to the
13 Japanese Colony on Terminal Island. I quote:

14 "It has been pointed out it is very evi-
15 dent that a hazard definitely exists due to the location of
16 this large Japanese colony in the heart of Los Angeles Harbor
17 District. It is considered that this hazard can be broken
18 down as followsL (a) Physical observation and espionage
19 75 per cent; sabotage, 20 per cent; fifth column activity,
20 five per cent. By fifth column activity is meant preparation
21 for and assistance to any attempted attack or invasion from
22 the outside sources.

23 On analysis, the above hazards follow:
24 It is evident that observation and espionage has been going
25 forward for a great many years. Therefore, it is evident

1 that the physical location of all fixed defense work and
2 harbor improvements and the like are already known to the
3 Japanese. These fixed installations would include such items
4 as the exact location and extent of Reeves Field, Naval
5 operating base, Fort McArthur, oil, gas, power lines, tank
6 farms, marine oil loading terminals, important docks, oil
7 refineries, shipbuilding installations, railway lines and
8 bridges, antisubmarine nets and buoys, harbor approaches and
9 aids to navigation and the like.

10 The items which would be of value to the
11 enemy and which these people are in an unexcelled position
12 to observe and report on are such items as the arrival and
13 departure of convoys, including size, strength of escorts --"

14 THE COURT: Well, I'm familiar with it.

15 MR. STONE: Okay.

16 THE COURT: And your point is that Ringle
17 still believed that at that time?

18 MR. STONE: And it is a post-Pearl Harbor
19 roundup, FBI roundup.

20 THE WITNESS: Yes. This was distributed
21 to a number of people.

22 Q (by Mr. Stone) You were asked a series of questions at
23 the end, Mr. Lowman, about the To cable, To set of cables
24 which involves Madrid and Tokyo which were intercepted and
25 the cables from Japan to Latin America. Can you tell us

1 whether the To group that was set up in London used mobile
2 transmitters to send their information back to Madrid?

3 A Yes. They had a fixed receiving site but for trans-
4 mission they had mobile units that they moved about so they
5 couldn't be located by regular intervention finders.

6 Q Did the cables which the United States possessed in
7 December '41 and January '42 describe that the Japanese-
8 Spanish To network in London in fact used mobile trans-
9 mitters?

10 A Yes. There were two of the agents sent who brought them
11 with them.

12 Q Did the Latin American cables which were intercepted
13 suggest that the Latin American agents were to establish an
14 entirely new net or did it suggest that those individuals
15 were liaison agents?

16 A The inference is that they are liaison agents and that
17 they are being sent to contact somebody. They obviously
18 just couldn't come in cold and start gathering the kinds of
19 requirements which were laid on them, so the inference was
20 that they were to contact somebody.

21 Q Do the Latin American cables use some Japanese cover
22 names to describe information transmitted from the United
23 States?

24 A Yes. There is a cable which -- a "Magic" message
25 being sent from, I believe, Santiago, to another capitol

1 in South America which references information received from
2 -- it was a Japanese word. The transmitter on the message
3 put down probably covering for an agent, but it's not certain
4 who he was. But this information did come from the East
5 Coast.

6 Q The East Coast of the United States to Latin America?

7 A Well, it got to Latin America and then was reflected
8 in a Latin American cable, and the cable said it came from
9 Washington.

10 Q With respect to information that you have already testi-
11 fied might have appeared in American newspapers but then
12 appears in cables several days after, which are labeled
13 strictly secret, the first question I have is were the cables
14 themselves which we intercepted a repetition in English of
15 the information in the newspapers?

16 A The cables we intercepted were of course in Japanese,
17 and it was being transmitted back to Tokyo and contained
18 information about the aircraft industry.

19 Q You had said yesterday that one of the considerations
20 as to whether a document went by cable or pouch was whether
21 it was time sensitive information.

22 A That's correct.

23 Q Does that relate, perhaps, to the aircraft industry
24 information?

25 A That message estimated that what information they were

1 sending was approximately 40 per cent of the entire aircraft
2 production in the Southern California area, I believe 10 per
3 cent in the San Diego area, and I would think that they
4 would want to get that back to Tokyo fairly soon and there-
5 fore I guess they considered it time sensitive and they
6 sent it by code and cable.

7 Q You are not able to determine what part of the message is
8 sent because it's time sensitive or because it's secretly
9 obtained, are you?

10 A I'm sorry. Would you rephrase that?

11 Q The messages on their face don't code, they don't tip
12 off the reader to whether a particular paragraph is sent
13 because it is time sensitive or because it was secretly
14 obtained, do they?

15 A Oh, no. It is interesting, though, that that particular
16 message is labeled strictly secret.

17 Q Is that what suggests to you that there may be some
18 secret components in that message?

19 A Well, I certainly would think so.

20 THE COURT: It's going to have to speak
21 for itself.

22 MR. STONE: Okay.

23 Q (by Mr. Stone) There was some testimony with respect
24 to Mr. Nakazawa who was mentioned in that Exhibit A-22, I
25 believe. Would you look at A-22, if you haven't already.

1 Do you recall, Mr. Lowman, how long the FBI continued to
2 investigate Mr. Nakazawa? There was some testimony about a
3 June 9 memo on Mr. Nakazawa.

4 THE COURT: After what date? Do you mean
5 the entire period?

6 MR. STONE: Yes. Do you know whether --
7 let me rephrase that.

8 Q (by Mr. Stone) Do you know, Mr. Lowman, if June 9, 1941
9 is when the FBI stopped investigating Mr. Nakazawa?

10 A No. I think the investigation went on for some time.
11 I'm not certain of that, though.

12 Q You testified on cross-examination that the investigation
13 report dealing with Mr. Nakazawa was a preliminary investi-
14 gation?

15 A Yes, which included the other investigation. It was a
16 preliminary investigation.

17 Q Have you seen FBI documents that indicate that the
18 investigation continued after that June 9 date?

19 A On Nakazawa?

20 Q Yes.

21 A Yes, I believe that's true.

22 Q While you have that cable out, if I may, Your Honor,
23 I'd like to ask him if he knows what the last notes on the
24 very bottom left of the cable are, JD-1:2598.

25 A I figured out that stands for Japanese Diplomatic 1,

1 and 2598 is apparently a separate numbering system which was
2 going on.

3 Q This cable was translated by whom, Mr. Lowman?

4 THE COURT: I don't care.

5 MR. STONE: Okay.

6 THE COURT: I still don't care.

7 MR. STONE: Okay. I won't go into that.

8 Q (by Mr. Stone) Would you look at A-23 for a minute,
9 Mr. Lowman, and also A-40?

10 A Yes, I have the documents.

11 Q Would you turn in A-40 to page 22? I can't find the
12 specific language that was quoted to you before, but you
13 were asked before on cross-examination whether when the
14 summary, the sanitized summary of the cable said "Our own
15 employees and our companies," you were asked whether that
16 had any specific meaning to the intelligence agencies at
17 that time.

18 Does page 22 of Exhibit A-40 indicate the
19 meaning which the Japanese government had when they said
20 "our companies"?

21 MR. HALL: Well, I object. This is a
22 document from the ONI. I don't think --

23 THE COURT: I think the documents are going
24 to have to speak for themselves.

25 MR. STONE: Well, Your Honor, he was asked

1 before was there any indication of what "our companies" or
2 "our employees" meant.

3 THE COURT: What did he say?

4 MR. STONE: Well, he said that he didn't
5 have documents in front of him, as I recall it, so I wanted
6 him to open to a page and see if that --

7 THE COURT: Why don't you go ahead on some-
8 thing else?

9 MR. STONE: Okay.

10 Q (by Mr. Stone) Mr. Lowman, I don't believe it was made
11 totally clear, at least not to me, from your cross-examination
12 why some names might be used "Magic" messages and why many
13 were not. Can you tell us why that would be?

14 A The general policy in declassifying --

15 Q No, no. I don't mean in declassification. I mean in
16 the original transmission.

17 A Oh, in the transmission itself?

18 Q Yes.

19 A Well, as the Japanese Foreign Minister said when he went
20 out to the various diplomatic posts, he said "If there is
21 some particular sensitive information, don't send it, unless
22 it's time sensitive, don't send it by radio. Send it by
23 courier," and the actual names of agents is sensitive infor-
24 mation. If the Japanese were to send back lists like that
25 from the people they had working for them in espionage types

1 of activities, it certainly wouldn't have been going back by
2 radio. So occasionally they did get a name in for some
3 reason because they wanted to talk about, for example,
4 Okada, they wanted to bring him back to Japan after the war
5 started so they had to name him. Occasionally a few got
6 named, but in general, you don't put the names of secret
7 agents in cables.

8 Q With respect to the "Magic" documents as a whole, at
9 that point in time what was the view of the military as to
10 the evaluation of their importance?

11 THE COURT: He's already testified about
12 that. Exceedingly high. I think that's what you said.
13 Their importance?

14 THE WITNESS: Yes. I do have a number of
15 statements from prominent individuals, like General Marshall,
16 and most of all, the analysis of the Joint Congressional
17 Committee of the value of these messages.

18 THE COURT: Well, I think the message
19 which is in evidence from Marshall to Dewey certainly indi-
20 cates his evaluation, and I think you've testified that they
21 thought they were of extreme value.

22 THE WITNESS: Yes.

23 THE COURT: Is it not true that copies of
24 "Magic" messages were not even left with the people who were
25 permitted to see them?

1 THE WITNESS: They did -- sometimes they
2 did leave them, particularly with the State Department,
3 because at one point in time Hull was showing the messages
4 to President Roosevelt, so they kept them sometimes in pouches,
5 though, in the State Department or a day or so, and then,
6 interestingly enough, President Roosevelt himself on at least
7 one occasion asked to retain a particular message.

8 THE COURT: I see.

9 THE WITNESS: But you are correct, that
10 certainly was the usual practice.

11 MR. STONE: Your Honor, do you need us to
12 offer the specific Latin American and To cables, or was the
13 testimony about them sufficient?

14 THE COURT: I hesitate to say this. It
15 was more than sufficient.

16 MR. STONE: Okay.

17 Q (by Mr. Stone) Oh, yes. Mr. Lowman, you were asked
18 about document A-23(a), I believe. I wonder if you could
19 look at that document, and also at A-23 for a moment.

20 A Yes, I have them.

21 Q A-23(a), just for the record, I think we established
22 this on direct, is dated the exact same date as the date
23 that the cable is actually translated from which it comes.
24 Correct?

25 A Yes. It was translated on June 9th and the document is

1 June 9th.

2 Q Therefore, the use of the word "contacts" on page 1 of
3 A-23(a), which was discussed at some length with you before,
4 would there have been an opportunity to corroborate,
5 independently, the cable before A-23(a) was sent out?

6 A I would not think so.

7 Q Also, with respect to the word "contacts" on A-23(a),
8 if you look down at the bottom of the page where an indi-
9 vidual named Keniko is mentioned, and then on the next page
10 there is a reference to a man named Lieutenant Commander
11 Okada, and also a reference further down on the second page
12 to one Okamaru, and further down to one named Ito.

13 Do you believe that describing those
14 individuals as "contacts" in A-23(a) was something which
15 military intelligence corroborated and believed throughout
16 the end of the year?

17 MR. HALL: I object. I think it would be
18 speculation.

19 THE COURT: I think it would be, too,
20 unless there is something towards the end of the year.

21 Q (by Mr. Stone) Can you point to a document towards the
22 end of the year which shows that the use of the word
23 "contacts" was appropriate?

24 MR. HALL: We don't deny that the use of
25 the word "contacts" was appropriate. We have never made any

1 contentions it was inappropriate.

2 MR. STONE: Your Honor, there was a whole
3 series of cross-examination questions on whether the use of
4 the word "contacts" was misrepresenting things.

5 MR. HALL: I was just trying to get to the
6 meaning of the word.

7 THE COURT: I think the meaning of the
8 word seems to me to be apparent, and apparently these names
9 are mentioned.

10 You ask the question you now want to ask.

11 MR. STONE: Okay.

12 Q (by Mr. Stone) Mr. Lowman, can you identify simply a
13 document number for us and page numbers where that language
14 appears to be borne out after Pearl Harbor?

15 A Let me check for one moment, if I might. I think that
16 Exhibit 17(h) goes to that question, page 23. The first
17 paragraph on that page reads, "Okamaru, Weli Soji, an
18 American-educated Nisei with Kebai classification, Class A
19 espionage suspect - A is the highest - reported July 1941 to
20 have repudiated his American citizenship. For the past six
21 or seven years has been in the Japanese consulate service,
22 Seattle, as secretary and as consular assistant, is known to
23 have cooperated and worked closely with Lieutenant Commander
24 Saratomo Okada and Chancellor Konji Kaneko, both of Seattle,
25 in the local Japanese intelligence system. Okamaru is

1 reported to head a unit which contacts labor unions, par-
2 ticularly members of the Communist Party in the AFL-CIO."

3 This message itself --

4 THE COURT: Let's wait for another question.
5 Most of these things you can call to my attention after trial.

6 MR. STONE: You're right, Your Honor. I'm
7 close to the end. I'm wondering if I can have him finish.

8 THE COURT: Are you going to leave any
9 time for Mr. Hall?

10 MR. STONE: Excuse me?

11 THE COURT: Are you going to leave any
12 time for recross?

13 MR. STONE: Well, I have two or three more
14 questions which I thought might just take me to the break,
15 and then if I had one or two questions afterwards, that
16 would be all and then we would do cross.

17 THE COURT: All right. I thought we might
18 be able to finish with this witness before noon.

19 MR. STONE: Probably pretty close to after-
20 noon.

21 THE COURT: Let's go ahead. Let's see
22 what we can do.

23 MR. STONE: If that document speaks for
24 itself, Your Honor, then I guess I am done and I can just
25 leave the time for Mr. Hall. I would just say for the

1 record that the notes that Mr. Lowman has which were
2 referred to were not delivered on Saturday. They were
3 delivered on Friday.

4 THE COURT: That's fine.

5 All right. Why don't you ponder your
6 questions. Do you think you can do them all in two minutes?

7
8 RECROSS-EXAMINATION

9 BY MR. HALL:

10 Q Approximately how many "Magic" cables were intercepted
11 to your knowledge -- intercepted by the United States
12 Government, to your knowledge?

13 THE COURT: During the entire war?

14 MR. HALL: During the entire war.

15 THE COURT: That would be during and before,
16 I assume?

17 MR. HALL: Yes. The whole history of the
18 interception of "Magic" cables, which I gather started some-
19 time in about 1940?

20 A Early '41.

21 Q (by Mr. Hall) And it carried through, presumably, to
22 the end of the war in late '45?

23 A That's correct, for that period, so we're talking
24 approximately five years. Yes, I got some figures on that
25 just recently. There have been declassified --

1 MR. STONE: I know that's interesting,
2 but I was cut off from letting him give a narrative at the
3 opening, and that was not a matter which was brought up in
4 my cross so it's not appropriate for redirect.

5 THE COURT: He's testified so much about
6 "Magic," so I'll permit him to answer.

7 Approximately how many?

8 A There is listed in the National Archives as "Magic"
9 messages, declassified, and I understand that they have now
10 come to the end of them, 116,000. Now, in addition to that,
11 in the latter part of the war the Army put out something
12 called "Magic Summaries," and there is an additional number
13 of pages there, numbering perhaps 25,000, but that didn't
14 include some other non-Magic materials.

15 Q On what document do you rely when you make the statement
16 that the time sensitive documents were to be sent by courier
17 and not by "Magic"?

18 A On a message from the Foreign Minister of Japan to his
19 diplomatic posts.

20 Q Do you have handy the exhibit reference?

21 A In the "Magic" background book, that is Volume II,
22 message 373.

23 MR. STONE: That's A-31 in the record.

24 THE COURT: A-31. All right.

25 MR. HALL: No further questions.

1 THE COURT: All right. Very well.
2 Then, can this witness be excused? Or you
3 can stay if you want to, stay in court if you want to. Is
4 that all right?
5 MR. STONE: Yes. There won't, I don't
6 believe, be time for any kind of surrebuttal. Am I right?
7 THE COURT: It's up to you. Well, you're
8 asking whether there will be time for it? Probably not.
9 Probably not for surrebuttal. Why don't you make the decision?
10 MR. STONE: All right, Your Honor. I'll
11 instruct him accordingly.
12 THE COURT: Why don't you tell him that if
13 he wants to stay in court, he can. Even though he were
14 recalled, I doubt if there would be anything of monumental
15 impact.
16 MR. STONE: Okay. Thank you, Your Honor.
17 MR. HALL: If that happens, we would like
18 Mr. Herzig to be able to sit in court as well. He's been
19 sitting in the conference room for a week, or two weeks.
20 THE COURT: It's been so long, I've for-
21 gotten. Has he testified?
22 MR. HALL: No.
23 THE COURT: Then I think he had better stay
24 there, if he hasn't testified.
25 I'll see you all at 1:30.
(Noon recess.)

1 AFTERNOON SESSION

2 (1:30 p.m., June 26, 1985)

3 THE COURT: Good afternoon.

4 Yes?

5 MR. HALL: We have two issues we would
6 like to raise. First is a motion to strike Mr. Lowman's
7 testimony on the basis it is irrelevant under, among other
8 things, under Rules 402, 403 and 801.

9 The second is with regard to Mr. Lowman
10 himself and whether he's been discharged and can sit in on
11 the rest of the proceedings. The reason that we believe his
12 testimony is irrelevant, just briefly, is that it goes to
13 governmental misconduct -- rather, it goes to military
14 necessity and not to the issue of governmental misconduct.

15 THE COURT: I'm going to deny that motion.
16 Now, was there another one about sitting in?

17 MR. HALL: There was some discussion just
18 before we recessed about Mr. Lowman sitting in. I don't have
19 any problem unless he's going to be used as a surrebuttal
20 witness, and then I think on the same basis that counsel has
21 objected to our witnesses being present, I would object to
22 Mr. Lowman being present.

23 THE COURT: My understanding is he will
24 not be called unless perhaps on surrebuttal; is that correct?
25 I'll let him stay and then make a decision later as to

1 whether he can be called to testify in surrebuttal or not.

2 All right, Mr. Stone, Mr. Edwards.

3 MR. EDWARDS: For its next witness, Your
4 Honor, the United States calls Robert Mayer.

5
6 ROBERT E. MAYER, called as a witness on behalf of
7 the Respondent, being duly sworn,
8 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. EDWARDS:

10 Q Mr. Mayer, could you state your name for the record,
11 please?

12 A Yes. It's Robert E. Mayer, M-a-y-e-r.

13 Q And could you state your address, please?

14 A I live at 968 Palm Avenue in San Mateo, California.

15 Q How old are you, Mr. Mayer?

16 A I'm seventy.

17 Q What is your present occupation?

18 A I am the Western Regional Representative of the United
19 States Secretary of Transportation.

20 Q Mr. Mayer, did you ever serve in the FBI?

21 A Yes, I did.

22 Q Could you briefly outline the locations and dates of
23 your FBI service?

24 A Well, I was appointed, I think, in around June of 1940.
25 I went through training at Quantico, Virginia, and then was

1 assigned to Seattle where I remained only a few weeks and
2 was sent to Spokane to work under a seasoned agent for some
3 months, and then was transferred to San Francisco where I
4 reported. I remember I arrived on Thanksgiving Day, 1940.

5 Q And upon arriving in San Francisco in the FBI office,
6 what were your duties there?

7 A I was assigned to the Communist Squad.

8 Q Could you tell the Court what the Communist Squad was?

9 A Well, the Communist Squad was a group of agents who
10 acted under a supervisor and they conducted investigations
11 of possible violations of the Smith Act, and also background
12 investigations concerning the leadership in the Communist
13 Party.

14 Q Were there other squads in that unit of the FBI or that
15 office of the FBI?

16 A Yes, there were several.

17 Q Could you name them, please?

18 A Well, there was the German Squad, the Italian Squad,
19 the Japanese Squad and the General Criminal Squad. I think
20 that's about it.

21 Q Did you ever serve on the Japanese Squad?

22 A No, I did not.

23 Q Did there come a time when you quit in your capacity
24 as serving on the Communist Squad?

25 A Yes. I was named as the liaison supervisor with the

1 Military Intelligence Agencies.

2 Q Could you tell us which Military Intelligence Agencies
3 you're referring to?

4 A Yes. The Office of Naval Intelligence and G-2 of the
5 Army.

6 THE COURT: I take it you were still with
7 the FBI?

8 THE WITNESS: Yes, Your Honor.

9 Q (by Mr. Edwards) Could you tell us about what time you
10 changed from the Communist Squad to the liaison person?

11 A Well, I guess it must have been probably about mid-'41,
12 something like that. I don't remember exactly.

13 THE COURT: Was it before Pearl Harbor?

14 THE WITNESS: Yes, Your Honor.

15 Q (by Mr. Edwards) What were your duties in your capacity
16 as the liaison?

17 A Well, the Intelligence agency would constantly send
18 over inquiries to our office for information from our files,
19 mostly on individuals, and I had two agents working with me
20 who continually prepared these summary memorandums which
21 were then sent over to the other agencies and I signed off
22 on them.

23 And then, in addition, I went to some of
24 the weekly intelligence conferences of FBI, ONI and G-2,
25 accompanying my boss who was the man in charge of the office.

1 Q What was his name?

2 A The name was Nat Pieper.

3 Q Could you spell that, please?

4 A That's P-i-e-p-e-r. Nathaniel Pieper.

5 Q And he was the Special Agent in charge of that office?

6 A Yes, he was.

7 Q At these weekly conferences which you sometimes attended,
8 can you recall what tended to be discussed at those meetings?

9 A Well, there was a wide range of subjects. They dis-
10 cussed, of course, continually the security problem growing
11 out of the very tense situation because of the war in Europe
12 and the war in Asia, and the political pressures, inter-
13 national political pressures that everybody recognized. The
14 very warlike situation in the world and the pressures that
15 were on the United States, and then of course the various
16 elements that we were investigating under the Internal
17 Security Act, the Germans and the Italians and all the rest
18 of it, and then following Pearl Harbor, of course, there was
19 a very great concern about the possibility of invasion.

20 Q Did any of the discussions include the topic of sub-
21 versive activities by persons of Japanese ancestry in the
22 United States?

23 A Well, as a general background, yes. We discussed the
24 activities of all of the squad subjects that we were
25 investigating, the Germans, the Italians and the Japanese

1 and the Communists.

2 Q As you sit here today, can you remember any specifics
3 of your discussions with regard to possible subversive
4 activities by people of Japanese ancestry?

5 A Do you mean individuals?

6 Q Yes, sir.

7 A No. No, the individual's names did not come up in those
8 conferences.

9 Q Was information exchanged between the agencies you
10 mentioned, G-2, ONI and the FBI, at any time other than at
11 these weekly meetings?

12 A Will you repeat that question, please?

13 Q Yes. In addition to the weekly meetings that you
14 referred to --

15 A Yes.

16 Q -- are you aware whether any information was exchanged
17 between and among ONI, G-2 and the FBI?

18 A Well, only in these memoranda that my unit sent over in
19 response to their inquiries.

20 Q Could you tell us about how many memoranda there would
21 be in an average day?

22 A Oh, many. I can't say now. Probably - this is a wild
23 guess - maybe twenty. Maybe more.

24 THE COURT: He said per day. Are you
25 responding per day?

1 THE WITNESS: Yes, per day. Yes, sir.

2 MR. EDWARDS: Thank you.

3 Q Mr. Mayer, did you personally ever have any direct
4 responsibility for investigating possible subversive activities
5 by persons of Japanese ancestry?

6 A No.

7 Q Do you recall if your office, by that I mean the San
8 Francisco FBI office, had any information with regard to
9 possible subversion by people of Japanese ancestry?

10 A Well, I can only assume so. We had a Japanese Squad
11 formally constituted and that was their designation

12 Q Do you know whether the people in the Japanese Squad
13 were busy?

14 THE COURT: Were what? The last word?

15 MR. EDWARDS: Were busy.

16 A Well, I can assure you we were all very busy. We worked
17 -- we were required to work a hundred hours a month overtime,
18 which we did.

19 Q (by Mr. Edwards) And you spoke earlier of memos that
20 your office sent out and your role as liaison. Do you recall
21 whether any of those memos concerned persons of Japanese
22 ancestry?

23 A Oh, I don't know. I can only assume that they did, yes.

24 Q Again directing your attention to these conferences,
25 these weekly meetings, do you recall that anyone at those

1 meetings expressed opposition to the advisability of a curfew
2 or evacuation?

3 A I have no recollection of anybody so expressing them-
4 selves.

5 Q Do you recall, not just at these meetings but in any
6 of your contacts with individuals involved in intelligence
7 activities, hearing any such individual express opposition
8 to a curfew or an evacuation?

9 A No, I have no such recollection.

10 Q Were you personally ever asked by your superiors for
11 your recommendation as to the advisability of a curfew or
12 evacuation?

13 A No, I was not.

14 Q Do you know whether SAC Pieper was ever asked for such
15 a recommendation one way or another?

16 A Well, no. I don't -- I'm almost certain that he was not.
17 One thing that was engrained into us in our training was that
18 the FBI was a fact-finding organization and that's where they
19 stopped. They submitted their facts to the attorney -- the
20 District Attorney in the area and they made determinations
21 that were of a policy nature, and Mr. Hoover himself, I can
22 remember, made public statements to that effect before the
23 Congress on occasions. I can't say how many, but it was a
24 very important point that they made in the Bureau that we
25 were simply fact gatherers and were not to become a federal

1 police outfit like some of those in Europe.

2 Q Do you remember whether your office ever received
3 reports of suspected radio transmissions by Japanese sub-
4 marines?

5 A Yes.

6 Q Can you remember if any of those reports were subse-
7 quently followed up?

8 A Yes.

9 Q Could you give us an instance?

10 A Yes. I was personally involved in it. We had what we
11 called complaint desks in the FBI where we assigned agents
12 every day to take the calls that came in to the office con-
13 cerning activities of a suspicious character, and we began
14 to get repeated phone calls from -- this was right after
15 Pearl Harbor, just days afterwards -- this man said that he
16 was monitoring signals from a Japanese submarine.

17 Q When you say "this man," --

18 A This individual phoning.

19 Q I see.

20 A So we finally determined that we must go and interview
21 the man because we didn't think it was very likely but we
22 felt nevertheless we should do it, and so we did. The other
23 fellow and I, Phil Bowzer was his name, we drove one night
24 to Point Reyes in California which is a little tiny village
25 out on one of the points in Marin County, which is the first

1 county north of San Francisco, right across the bridge, and
2 we sat and visited with this man. He had been the manager
3 of the RCA commercial radio station at Point Reyes, which
4 was a huge block building with a lot of equipment in it and
5 a big piece of land with all these directional antennas
6 strung between telephone poles.

7 Of course, the minute that Pearl Harbor
8 occurred, they were out of business because it was practically
9 100 per cent used for radio communications of a commercial
10 nature between the United States and Japan, and so they were
11 out of business. But he remained as the custodian and he
12 kept some of these pieces of equipment on, and so we went
13 and visited him that evening in his home, and he had -- I
14 remember he had boxes of tape recordings of these things.

15 And so we said, "Well, now, what makes you
16 think this could be a Japanese submarine?" and he said,
17 "Well, because it's a Japanese sending on the key." And we
18 kind of chuckled at that and said, "Well, now, this is dot
19 dash. How do you identify a Japanese individual versus a
20 European or an American on the key?" He said because they
21 have a sloppy mode. Those were the exact words he used.
22 We said "What do you mean, 'sloppy mode'?" and he said,
23 "Well, there is the very slightest difference in the dis-
24 tinction between the dot and the dash."

25 MR. HALL: Your Honor, if this testimony

1 is being offered for the truth, I move it be stricken as
2 being hearsay.

3 THE COURT: No; I'm going to permit it.
4 It may not be offered for the truth of the matter asserted
5 but it goes to the state of mind of the FBI agent.

6 MR. EDWARDS: Exactly, Your Honor.

7 Q (by Mr. Edwards) Please continue, Mr. Mayer.

8 A Then we questioned him further. We said "How can you --"
9 and he said, "Well, I was on the ships for twenty years."
10 That is, he was a radio operator on a steamship between San
11 Francisco and Japan for a great many years. He said, "You
12 listen to these constantly and you can distinguish what
13 might be this individual who is sending."

14 So then we began to talk about the trans-
15 missions that he had monitored. And I said, "Well, what
16 makes you think that that's a submarine?" and he said "Well,
17 I can't think of what else it might be." Then he gave the
18 three qualities of transmission, and I've forgotten what they
19 are, but they relate to clearness and volume and something
20 else.

21 So he convinced us that we had to at least
22 do something about it, and so we went back to our offices
23 then and the next day I had a friend at Pan American Airways
24 and they then operated out of Treasure Island which was
25 right dead center in San Francisco Bay, and I asked him if

1 he would put me in touch with his radio people, which he did,
2 and then we called the FCC in Portland, Oregon and the FCC
3 in Santa Ana, California, and we told each of them what we
4 were trying to do. We had these transmissions that we were
5 suspicious of and we wanted to see if we could get a fix on
6 them by triangulation or whatever it's called. I'm not a
7 technical person.

8 And we asked the man at Pan American if he
9 would be the one who would plot it for us. He said he would.
10 We said, "All right, then you be on the alert and we will
11 phone you." We had these two desks in sort of a bull pen
12 in the FBI office, and I think it was just the second day or
13 the third day the fellow called from Point Reyes and he
14 said, "He's sending right now on frequency so and so." So
15 I grabbed one phone and called - I don't know - either
16 Portland or Santa Ana and Phil Bowzer called the other one
17 and we told them that the fellow was sending and what the
18 frequency was and to please get on it.

19 Then we called the fellow at Pan American.
20 I called him because I was the contact with him and said
21 "Now be on the alert, and here, you get on this one, too."
22 It all happened so fast that it was a miracle that the
23 fellows came back immediately from both places and said the
24 direction is so and so. I phoned to Pan American and the
25 fellow said "He's right off the Mendocino Coast."

1 Q When you say "right off," how far does that mean?

2 A Oh, I don't know. A mile or two. And he said --
3 Mendocino, that's the name of a county north of Marin on the
4 Coast. So I immediately called -- he gave me the location,
5 the latitude and longitude fix and I called to the Office of
6 Naval Intelligence, and then I thought immediately afterwards,
7 "Well, they're going to prepare a memo like we do and it will
8 take time, and this thing is something you can't take any
9 time with, so I remembered the fellow that worked -- I'm
10 afraid I'm taking an awful lot of time with this -- a fellow
11 who worked at Dean Witter in our building, an investment
12 fellow who had gone into active duty in the Naval Head-
13 quarters. I knew he was an operational guy so I called him.
14 I said, "Look! This is what we just did," and I described
15 it like that, and he said "Hold the phone." And I couldn't
16 believe what happened next because he said "I've got a PBY-2
17 right in the area."

18 Q Can you tell us what a PBY is?

19 THE COURT: I happen to know what it is.

20 A It's an amphibious aircraft. And he said "Just a
21 minute," and I heard him say something. The next thing I
22 heard was the fellow in the aircraft calling through on the
23 speaker which came through and came right through the phone
24 to me, and he said "Attackign enemy submarine, Opal 18,"
25 Opal being one designation for the grid. They use numbers

1 one way and colors the other.

2 So naturally we reported this to the boss
3 right away and he said, "Well, I wonder what happened." And
4 we scoured around and I think probably the next day or so
5 I was able to get in contact with the young man who was in
6 the rear observation position of his aircraft and I asked
7 him, I said -- we had asked the Navy what had occurred, had
8 they destroyed it or anything, and they said "We can't tell
9 you," because they had a system of determining to what extent
10 or whether or not they had destroyed the underwater craft,
11 and it had to do with the amount of material that they found
12 floating. I don't remember all the details.

13 But I asked this young man, I said, "What
14 happened?" and he said "We blew it right out of the water,
15 the tail end of it." Things were flying all over and it
16 went right straight down.

17 So then we were instructed to maintain
18 this sort of haywire operation we had --

19 Q At the FBI?

20 A Yes. -- until the military informed us that they had
21 an equivalent thing going, and we did this. We maintained
22 it for some time until -- well, until finally I got a call
23 from the Office of Naval Intelligence and they wanted me to
24 go out to the Operations office. I remember it was in the
25 old Federal Building right off the Civic Center. I went out

1 there and they had a room about the size of this one with
2 these high type ceilings, and on one side of it there was a
3 map of the Pacific, and they had vessels located. I guess
4 they must have accomplished some magnetic field behind it,
5 and it was obvious that they were -- there was an attempt to
6 see what the vessel situation was in the Pacific.

7 Then, out in front of it, like out here,
8 they had four different -- three or four different desks -
9 I can't remember now - and each desk was long, and as I
10 recall, four positions on it where men would sit, and each
11 had a phone, too. So they were demonstrating that they had
12 in fact established a substitute for the little funny
13 operation we had going.

14 Q Did they tell you what the phones were to be used for?

15 A I asked them. I said, "Well, now, who sits here?" and
16 he said ONI. And I said "Who sits here?" and he said G-2.
17 I said "Who sits here?" and it wasn't Joint Chiefs but it
18 was some sort of a joint operation between the two of them.

19 I said "Who sits in No. 4?" and he said
20 an FBI agent. I said, "Well, now, look. The FBI is a
21 civilian organization and I can tell you almost for a
22 certainty that our organization is not going to permit any-
23 body to sit out here and get involved in military activities."

24 THE COURT: Let me stop you. I really
25 don't see the relevance of this so far.

1 MR. EDWARDS: One last question.

2 Q (by Mr. Edwards) Did the FBI allow your office to have
3 somebody at that center?

4 A No.

5 Q Thank you. Moving on to another matter, do you recall
6 whether anybody in the FBI ever expressed any racially
7 derogatory views towards the Japanese-Americans?

8 A No, I don't.

9 Q Do you recall whether anybody in G-2 or ONI with whom
10 you dealt ever expressed such views?

11 A No, sir.

12 Q Did you know General DeWitt?

13 A Well, I met him on four or five occasions in intelli-
14 gence conferences. I didn't have any social contact with him
15 outside of that.

16 Q Just very briefly, could you describe General DeWitt?

17 A Well, he seemed to me to be a very serious person, a
18 very conscientious person, a religious person, a fellow who
19 was obviously emotionally burdened with the decision that
20 had been passed on to him to make by the President, and he
21 was very worried about it.

22 Q Do you have an opinion as to whether General DeWitt was
23 likely to be affected in his decision making by political
24 pressures?

25 A I don't think he was that kind of a man. No, I do not.

1 Q Do you remember General DeWitt ever making any derogatory
2 racial remarks?

3 A No.

4 Q At the meetings you described with General DeWitt, was
5 the subject of a curfew or an evacuation ever discussed?

6 A Well, in these conferences -- well, yes. He said that
7 he was struggling with the problem of making the decision
8 which had been given him as a responsibility.

9 Q Do you recall attending a meeting with General DeWitt
10 shortly before the curfew or the evacuation decision was
11 announced?

12 A Yes, I do.

13 Q Just briefly, could you describe for us who was present
14 at that meeting?

15 A Well, my boss was there.

16 Q Mr. Pieper.

17 A Nat Pieper, and I'm almost certain the man from ONI and
18 from G-2 because they were very careful about attending all
19 those meetings, and I don't think they would have missed
20 that one because things were fevering up to a high pitch.

21 Q Do you recall what was discussed at that meeting?

22 A Yes. General DeWitt repeated again that he was re-
23 quired to make this decision, and it was coming down upon
24 him and that it was something of considerable concern, and
25 he recognized that he had to make it alone.

1 Q Did he appear to be deliberating seriously about that
2 decision?

3 A He most certainly did.

4 Q Do you recall whether at that meeting or at any other
5 meetings with General DeWitt at which the subject of curfew
6 or evacuation was discussed, whether any of the intelligence
7 people at such a meeting ever spoke in opposition to the
8 advisability of such a curfew or evacuation?

9 A No. No, I do not.

10 MR. EDWARDS: We have no further direct
11 questions, Your Honor.

12 THE COURT: Any questions?

13

14 CROSS-EXAMINATION

15 BY MR. HALL:

16 Q When was this submarine event that you testified about?
17 After Pearl Harbor or before?

18 A Well, let's see now. Mr. Hoover wrote a letter to my
19 boss simply saying "I want to commend the agents who had
20 the alertness to bring this about," and that was dated
21 right around Christmastime, so it was between December 7th
22 and December 25th, some place in there.

23 Q It's true, is it not, that as you sit here today you
24 have no information about the information the San Francisco
25 office of the FBI had with regard to Japanese citizens or

1 aliens residing in the United States being involved in
2 espionage or sabotage?

3 A I was not involved in that assignment.

4 Q And it's true, is it not, that as you sit here today
5 you're not aware of any specific instance of espionage,
6 sabotage or fifth column work by any Japanese-American
7 citizen or any Japanese alien residing in the United States?

8 A No, I can't name any individuals.

9 MR. HALL: No further questions, Your
10 Honor.

11 THE COURT: Anything further?

12 MR. EDWARDS: One second, Your Honor.

13 Yes, Your Honor. I have just one question.

14

15 REDIRECT EXAMINATION

16 BY MR. EDWARDS:

17 Q With regard to instances of specific individuals
18 involved with Japanese-American -- involved in possible sub-
19 versive activities, do you know whether General DeWitt when
20 he was making this decision was relying on specific acts of
21 individual espionage or sabotage by Japanese-Americans?

22 MR. HALL: I think that again calls upon
23 rank hearsay, Your Honor.

24 MR. EDWARDS: I asked him did he know.

25 MR. HALL: This has to be hearsay and

1 cannot be offered for anything other than the truth because
2 it's what DeWitt knew that the question is based upon, and
3 that's the relevant issue; not whether this witness knew
4 anything.

5 THE COURT: I think it goes to the state of
6 mind of DeWitt. I'll permit it.

7 MR. EDWARDS: Thank you, Your Honor.

8 A Will you repeat the question, please?

9 Q (by Mr. Edwards) I'll try to. Do you know whether
10 when General DeWitt was making his decision with regard to
11 evacuation and curfew he was relying on specific instances
12 of subversive activities by persons of Japanese ancestry?

13 THE COURT: That would have to be where
14 he so stated in your presence.

15 MR. EDWARDS: That's right.

16 A Oh, I see. No, he never so stated in my presence, but
17 I had an idea of the background of how he made up his mind
18 finally.

19 Q (by Mr. Edwards) Well, one last thing. Did he ever
20 describe to you or in your presence what factors he con-
21 sidered?

22 A Well, we talked continually about the -- I don't know
23 whether helplessness is the right word -- but the defenseless,
24 almost, nature of the whole Pacific slope. With half the
25 fleet gone we were surprised militarily and militarily we

1 were in a terrible state. There were only two railroad
 2 tunnels through the big mountain ranges and we relied upon
 3 them for materiel back and forth, and it was commonly dis-
 4 cussed publicly that we didn't have a large defense force,
 5 military force, on the Pacific Coast, and I guess frankly
 6 people were very, very concerned about invasion.

7 Q And just for clarification, were you present when he
 8 actually made his decision?

9 A No.

10 MR. EDWARDS: No further questions, Your
 11 Honor.

12 THE COURT: Anything further?

13 MR. HALL: No.

14 THE COURT: All right. You may step down.

15 (Witness excused.)

16 THE COURT: If you have some materials,
 17 you could bring them right up here with you to the witness
 18 stand.

19
 20 HANNAH ZEIDLIK, called as a witness on behalf of
 21 the Respondent, being duly sworn,
 testified as follows:

22 THE COURT: I'm going to ask you to move
 23 a little bit closer to that microphone.

24 THE WITNESS: Is that better?

25 THE COURT: That should so it.

DIRECT EXAMINATION

BY MR. STONE:

Q Would you please state your name for the record and spell your last name?

A Hannah Margaret Zeidlik, Z-e-i-d-l-i-k.

THE COURT: The middle name was?

THE WITNESS: Margaret.

Q (by Mr. Stone) Do you have a degree in history, Ms. Zeidlik?

A Yes, I do, from American University.

Q Have you also had training as an archivist and in library science?

A Yes, I have.

Q That's university level training?

A Yes. Archival Science from American University and library from George Mason University in Virginia.

Q What is your current occupation?

A Chief of the Historical Records Branch of the U.S. Army Center of Military History.

Q How long have you held --

THE COURT: Since this is important, would you say it more slowly? Chief of the Military History?

THE WITNESS: No. I am Chief of the Historical Records Branch, U.S. Army Center of Military History.

1 THE COURT: Where is that center?

2 THE WITNESS: It's in Washington, D.C.

3 It's part of the Department of the Army.

4 Q (by Mr. Stone) How long have you held that position?

5 A Since 1978.

6 Q And before that, what position did you hold?

7 A I was Chief of the General Reference Branch for about a
8 year. Prior to that I was --

9 THE COURT: General Reference Branch?

10 THE WITNESS: Of the U.S. Army Center of
11 Military History.

12 A (continuing) Prior to that I held the position of
13 Deputy Chief of the General Reference Branch from 1970 to
14 1978.

15 Q How long have you worked for the U.S. Center for
16 Military History?

17 A Since 1950.

18 Q Would you just please name some of the various historical
19 and archival organizations to which you have belonged?

20 A I belong to the -- I did belong to the D.C. Historians,
21 the Federal Historians, which is nationwide, the Society of
22 American Archivists, the U.S. Commission of Military History,
23 which works jointly with the International Commission on
24 Military History, the International Commission for Archivists.

25 Q Have you attended any international conferences of

1 archivists as the United States representative?

2 A Yes, I have.

3 Q Have you been listed in Who's Who, for example, of
4 American Women?

5 A I was listed in the International Who's Who for Women
6 and also in the International Who's Who for Intellectuals.

7 Q Have you done research, for example, outside your
8 particular organization, for example, for any particular
9 war memorial foundation or anything?

10 A I did extensive research for the Corregidor Memorial,
11 Corregidor-Bataan Memorial Commission that was used in the
12 building and establishment of the memorial in the Philippine
13 Islands.

14 Q Can you estimate about how many researchers you have
15 assisted over the last 35 years?

16 THE COURT: Is that projects, did you say?

17 MR. STONE: How many individual researchers.

18 THE COURT: Researchers. All right.

19 Q (by Mr. Stone) If you can estimate in round numbers.

20 A Oh, I would say at least three, four thousand.

21 Q Do you know how many published books acknowledge your
22 contribution to their research?

23 A Well, several years ago I had the occasion to check the
24 various books available in the library where I work and also
25 in our local library, and I found there were over a hundred

1 that had given me acknowledgments for the services I had
2 rendered for them.

3 Q Are you generally familiar with U.S. military records?

4 A Yes, I am. I have been working with them for about 35
5 years.

6 Q Are they difficult to use?

7 A I do not find them so because they have -- the National
8 Archives does have finding aids to the documents. They may
9 be in house documents. The Department of the Army records
10 are the ones that I have worked with most, and many of them
11 for the period from I guess about 1920 to into the middle
12 1950's were filed under a decimal system, and there is a
13 manual available to look at to determine what numbers various
14 subjects are filed under.

15 Q Are you familiar with the records of the Western Defense
16 Command?

17 A Yes. I have researched in the Western Defense Command
18 records.

19 Q Do the Western Defense Command records have a finding
20 aid of some sort?

21 A Yes, they do. They have an in house document that was
22 created to -- by subjects and to the various boxes that the
23 records are filed in.

24 Q Let me see if I can put my hands on that exhibit for a
25 moment, Your Honor.

1 I'll come back to that question when I can
2 get my hands on that document. Would you please hand the
3 witness A-109?

4 Are you familiar with that document?

5 A Yes, I am.

6 Q Can you tell me what it is and what it means?

7 A It's the accession inventory that was prepared by the
8 Adjutant General's office, Department of the Army, for when
9 the records were accessioned into the National Archives.

10 Q Does it allow you to trace where the current Western
11 Defense Command records came from?

12 A Record Group 98 indicates a number, the record group
13 number, in which these records were filed until about the
14 middle of the 1960's. It was because the record group was
15 so large, it covered all the records of the various Army
16 commands for the World War II period, the record group was
17 split into three different record groups. The records of
18 the Western Defense Command went into Record Group 338, and
19 if you saw this 98 on a document, you would ask the archivist
20 helping you to check to find out if that is actually the
21 record group, or you could check the guide to the records
22 at the National Archives which would indicate that this
23 number had been changed.

24 Q Do you know where those records were before they got to
25 Washington, D.C.?

1 A Yes. They were stored in the Kansas City Records Center
2 and they were held there until I think it was 1968 when they
3 were transferred to the Washington area.

4 Q Do you know any of the people who would have been
5 custodians of the records before they got to Washington?

6 THE COURT: Let me ask, I thought you said
7 they were held in Kansas City until 1968?

8 THE WITNESS: That's right.

9 THE COURT: This accession inventory seems
10 to be dated 1956.

11 THE WITNESS: You're right. Part of the
12 records of the Western Defense Command were out in Kansas
13 City and part of them obviously were in Alexandria. These
14 would have been the ones that were transferred from
15 Alexandria, Virginia to the National Records.

16 THE COURT: But part of them still remained
17 in Kansas City?

18 THE WITNESS: Yes, at that point.

19 THE COURT: Until 1968?

20 THE WITNESS: That's correct.

21 Q (by Mr. Stone) Do some of those records still currently
22 remain in Kansas City?

23 A No. They've all been transferred to the Washington area.

24 Q In attempting to obtain some of the records from Kansas
25 City, do they still represent a totally complete collection?

1 A Of the records from Kansas City?

2 Q Yes.

3 A At the time the records were transferred from Kansas
4 City to Washington, prior to the transfer the General
5 Services Administration hired numerous people, what they
6 call off the street hires, who were unfamiliar with the
7 record system, and asked them to go through the records and
8 destroy all duplicate copies. In most of the cases the
9 archivists who were responsible for the record collection
10 were horrified because they said many of the people didn't
11 really check the documents very closely and oftentimes they
12 threw away documents that were similar.

13 Q So we don't necessarily any longer have a complete
14 collection of Western Defense Command records?

15 A It's very possible we do not.

16 Q In the course of preparing for this case, did you also
17 check whether the San Bruno Records Center in California
18 had a complete collection of Twelfth Naval District records?

19 A Yes, I did.

20 Q Who did --

21 A I talked to Michael Anderson who works there. He
22 informed me that seventeen boxes of the records of the Naval
23 District were transferred back to the Naval District. They
24 were going to go through them and I don't know what they
25 were going to do with them. Anyhow, they did not return

1 them to San Bruno, but when that Naval District closed they
2 were transferred to San Diego Naval District. When that
3 closed, they were unable to find any track of where the
4 records were transferred to. They may have gone back to San
5 Bruno under a different accession number without an inventory.
6 It's possible they may have been sent to the Washington area
7 without any record of these particular records coming to
8 Washington, or going to Washington.

9 THE COURT: Or they may have gone to the
10 deep six?

11 THE WITNESS: That's correct.

12 Q (by Mr. Stone) Did you also at my request go out to
13 the Naval Intelligence Command?

14 A That's correct. I did, and I examined nine boxes of
15 material -- eight boxes of the material. There were nine
16 altogether that dealt with the Naval Intelligence office
17 and Naval Intelligence activities. One of the boxes, box
18 No. 1, was missing. An extensive search was made for this
19 box out at the Federal Records Center in Alexandria but they
20 were -- I mean Suitland, Maryland, but they were unable to
21 locate it.

22 Q Would the clerk please hand Exhibit A-124 to the witness?
23 Can you tell me what that document is?

24 A Yes. This is the document I got mixed up with the other
25 one. This document is an in house guide to records in the

1 Modern Military Field Branch in Suitland, Maryland.

2 Q Of whom?

3 A Of the Western Defense Command. These are the documents,
4 this collection of records was transferred to Washington
5 from Kansas City. These are the documents that were trans-
6 ferred from Kansas City.

7 Q I see. And the other records, the other accession
8 record?

9 A They came from the Departmental Records Branch,
10 Adjutant General's office over in Alexandria, Virginia. This
11 list was made up at the time when the --

12 Q Excuse me. Talking about A-124 now?

13 A A-124. That's correct. Was made up by Mr. Butler when
14 he transferred the records from record boxes into archival
15 boxes. The record box is about a foot, contains about a
16 linear foot of records; the archives box about four to five
17 inches, and it's easier to handle.

18 Q With respect to the records that were at Alexandria,
19 the other set of records that the accession list talks about,
20 are you familiar, personally, with some of the people who
21 were the custodians of those records at the time, the
22 archivists?

23 A Yes, I knew them personally. It was Wilbur Nye, Lois
24 Eilers -- it's been quite a long time ago. I don't remember
25 the others, the names of some of the others. They knew the

1 records very well. They were very cooperative when researchers
2 went in to look for documents.

3 MR. HALL: I'm going to object to the
4 hearsay if it's offered for the truth.

5 MR. STONE: She testified she knew the
6 people directly, Your Honor.

7 THE COURT: Well, that's right. Let me
8 ask you this: Was he helpful to you, or was she helpful to
9 you?

10 THE WITNESS: Yes. Very helpful.

11 THE COURT: You're speaking from your own
12 experience?

13 THE WITNESS: Yes.

14 THE COURT: All right. I'll leave it in.

15 Q (by Mr. Stone) Were the records that are now in the
16 National Archives in Washington from both the Kansas City
17 and the Alexandria groups, when did they first become avail-
18 able, if you know, to researchers?

19 A To researchers? All the unclassified records among
20 these documents were available to researchers -- they are
21 public documents and they were available to researchers. The
22 classified documents --

23 THE COURT: The question is when did they
24 first become available.

25 THE WITNESS: When did they first become

1 available?

2 THE COURT: The unclassified documents.

3 THE WITNESS: The unclassified ones, I
4 would imagine after the war when they were located in either
5 of the records centers.

6 Q (by Mr. Stone) Can you put a date on that?

7 A 1945-46.

8 Q And the classified documents?

9 A I have records -- we have records in the office where I
10 work that unofficial researchers clearances to classified
11 Army records were granted as early as 1948.

12 Q Would the clerk please hand the witness A-22(c)? While
13 you're getting that, let me ask one more question about A-124.
14 Do you have any difficulty at all using A-124 as a finding
15 index, Ms. Zeidlik?

16 A No, I do not.

17 Q Do you find that the decimal or alternative systems or
18 Navy indexing are particularly complicated?

19 A No, I do not.

20 Q Have you ever been told that they are inefficient or
21 unintelligible by trained researchers?

22 A I have found that many researchers coming in expect the
23 records in the record collections in the National Archives
24 to be in exactly the same kind of format that you would find
25 books in the library shelves, and records are not created

1 that way. When you want a record, you have to specify,
2 number one, tell people what you're working on, what kinds
3 of records you're looking for, what kind of basis it is to
4 your paper or document, whatever you're working on, and they
5 will assist you. Sometimes you may have to go back two or
6 three times to explain your questions to the individuals so
7 that they will know exactly what you're looking for, because
8 sometimes they just don't know. People just don't understand
9 each other, so you have to go back and ask.

10 Q As long as we're on that subject, while you were -- in
11 the last few years, did you see people from the Commission
12 on Relocation and Internment of Civilians at the facility
13 where you work?

14 A Yes. I saw one lady come in. I talked to her very
15 briefly. I believe, if I remember correctly, I pulled a
16 couple of documents for her and I made a couple of suggestions,
17 but someone else was helping her with her research and she
18 informed me that somebody was helping her so I said that was
19 all right.

20 Q You offered aid, though?

21 A Yes, I did.

22 Q And you gave whatever aid was requested?

23 A That's right.

24 Q Okay. Do you have A-22(c) in front of you right now?

25 A Yes, I do.

1 Q Would you turn -- first, there are three pages to it.
2 Could you turn them all and look at them.

3 A Yes.

4 Q Can you please identify for us exactly what they are?
5 First of all, do you know what these are copies of?

6 A Yes. They're cards, copies of cards that were prepared
7 by the Office of Naval Intelligence out on the West Coast
8 in San Diego, California and Los Angeles.

9 Q Have you seen the originals in the files?

10 A Yes, I did, in the Military Intelligence Division files.

11 Q Can you tell me, do you know why those cards were pre-
12 pared back then and how they were used?

13 A Yes. They were used to keep -- to pass on -- to collect
14 and to pass on information dealing with intelligence activi-
15 ties on the West Coast.

16 Q Would you look at the second page, and at the top is
17 something that says No. 4. Is that card No. 4?

18 A Yes, it is.

19 Q Can you tell from the bottom line of card No. 4 what
20 the distribution of these cards were?

21 A Yes. A copy went to the Military Intelligence Division
22 and one to the FBI. One to the War Department.

23 Q Do you know approximately how many cards of this type
24 were distributed at the beginning of World War II and
25 whether this was an important source of information

1 distribution in the Navy?

2 A Yes, it was a very important source of distribution
3 because these cards were made up and turned over to the
4 Counterintelligence Corps where they evaluated their contents
5 and then they disseminated it to the interested agencies. I
6 think there were, all told, during the war period, the early
7 war period, there were over a million of these cards prepared.

8 Q And that was the way they indexed them back then?

9 A By information, yes.

10 Q On the right-hand side of the bottom of card No. 4 it
11 says B7J. Do you know offhand what that indicates on the
12 card?

13 A Yes. It indicates that it was the Office of Naval
14 Intelligence, the 7 is Counterintelligence, and the J is the
15 Japanese desk.

16 Q Are you familiar with -- if I can have the witness
17 handed the black volume which is the first draft of the final
18 report of General DeWitt?

19 MR. HALL: I object to the characterization
20 of the exhibit as "first draft".

21 MR. STONE: Oh! No characterization. Just
22 have the witness handed the volume in the black cover.

23 THE COURT: Is that, correctly, Exhibit 17?

24 MR. STONE: I think it's Exhibit 4, tab 17,
25 and it's also separately bound.

1 THE COURT: It is Exhibit 4?

2 THE CLERK: Yes.

3 Q (by Mr. Stone) Have you seen the original of that

4 document, Ms. Zeidlik?

5 A Yes, I have.

6 Q Can you tell us where it is?

7 A It's in the National Archives, in the Modern Military

8 Headquarters Branch of the National Archives and Record

9 Service, filed in the Western Defense Command, record group

10 338, under "Reports".

11 Q Is that where it should be?

12 A Yes, it is.

13 Q Is there any indication that it was lost or misfiled?

14 A I know of no indication that it was lost or misfiled.

15 THE COURT: Let me ask you, and I don't

16 know whether you would know any better than we, but on the

17 fourth page there is some handwriting, it says "Marked copy."

18 Can you read the word above that?

19 THE WITNESS: It's Meyers.

20 THE COURT: It's Meyers?

21 THE WITNESS: Yes, it is.

22 THE COURT: Are you sure of that?

23 THE WITNESS: Yes.

24 THE COURT: It could be read as either one.

25 It could be read as Angus or it could be read as Meyers.

1 THE WITNESS: Yes. I agree, it could.

2 Q (by Mr. Stone) Mrs. Zeidlik, is that marking on the
3 original copy in the -- whatever that word is; whether it's
4 Angus or Meyers -- is that on the original copy in the
5 archives?

6 A Yes, it is.

7 Q Okay. Can I have the witness handed A-108, please?

8 THE COURT: Let me ask another question.
9 I know it's in the record, but who was Meyers?

10 MR. STONE: That's just what I was going
11 to get to, Judge. It's in A-108.

12 THE COURT: Oh, all right. That's fine.
13 I don't think you have A-108 yet. I'll
14 wait until you get it.

15 THE CLERK: Do you have a copy for the
16 judge, Mr. Stone?

17 MR. STONE: Oh, sure. I'm sorry. Yes,
18 I do. I thought we had distributed this one, but maybe we
19 haven't.

20 Q (by Mr. Stone) Would you turn to the very last page
21 of A-108? There are some corrections, just for the record,
22 there are some corrections at the top of the page and then
23 there is the signature of Robert E. Meyers, and it says
24 Chief, Statistical Section, and on the left-hand side it
25 says "Included one copy of final report."

1 Mrs. Zeidlik, is that the individual,
2 Robert C. Meyers, whom you believe whose copy you think we're
3 looking at?

4 A Yes.

5 Q Would you turn just to the second page now of this same
6 document.

7 THE COURT: He is Chief of the Statistical
8 Section of what?

9 THE WITNESS: It's in the Western Defense
10 Command. Western Defense Command.

11 THE COURT: I see.

12 Q (by Mr. Stone) On the second page of that document,
13 Mrs. Zeidlik, there are a number of paragraphs that begin
14 "Final Report" on the left side. The second one says "Final
15 Report: Japanese Evacuation from the West Coast, First
16 Printing, copy available contains notes for revisions."

17 Do you believe -- do you have an idea
18 whether the copy of the final report you're looking at is
19 that copy?

20 A Yes, I believe it is.

21 Q Above that there is a document -- there is a description
22 of Japanese Evacuation from the West Coast, first printing,
23 loose leaf canvas covers for official use only, not issued."
24 And it says "Number bound: 1, still available, 1."

25 Do you have any idea if we know where that

1 version is?

2 A No.

3 Q Okay.

4 A May I say something right here? These records that
5 this document came from were on file in the Adjutant
6 General's office in Alexandria, Virginia. They were trans-
7 ferred and moved to the National Archives in 1968, but they
8 were not physically moved to the National Archives in
9 Washington in 1968, and here again we had an incident where
10 the General Services Administration hired people from off
11 the street to go through the records and throw away duplicate
12 copies. And we have found going through records that quite
13 often documents are missing that may have been similar in
14 type, and it's very possible at this time that these copies
15 may have been destroyed because it indicates that they went
16 into the records.

17 Q Okay. By the way, this particular document itself,
18 A-108, do you know if it is itself properly filed in the
19 Western Defense Command records?

20 A Yes, it is.

21 Q It's not lost?

22 A No. I have a copy of it with the file number on the
23 back.

24 Q And it's just where it should be?

25 A That's right.

1 Q Okay. Going back to page 2 for a moment, and the left-
2 hand column where there are four different paragraphs that
3 each begin "Final Report." We haven't discussed the third
4 or the fourth paragraph. There is a published bound version
5 printed by the Government Printing Office of General DeWitt's
6 Final Report which I believe is Xerox copied for you in this
7 record. It has a red binder around it. Do you want to just
8 look at that, please?

9 A Yes.

10 Q The red binder version.

11 For the record, Your Honor, I believe that
12 is Exhibit 29, tab 85.

13 THE COURT: Would you give us those again,
14 the numbers, please?

15 MR. STONE: Yes. The Xeroxed copy of the
16 bound version is Exhibit 29, tab 85.

17 THE COURT: Thank you.

18 Q (by Mr. Stone) That version actually reflects that it
19 was printed by the Government Printing Office; isn't that
20 right, Mrs. Zeidlik?

21 A Yes, it does, in 1943.

22 Q Looking for a moment at page 2 of A-108, can you tell
23 whether that printed version is the third final report
24 described of which it describes fourteen copies, or the
25 fourth final report described that says printed for

1 Government Printing Office, and available through that
2 source.

3 A It's the fourth item listed.

4 Q Okay. Are you thoroughly familiar with A-108?

5 A Yes, I have reviewed it.

6 Q Would you turn the pages until you reach the page that
7 is at the beginning of a letter that says 14 September 1943
8 on the top? It's about eight pages down. Are you on that
9 page?

10 A Yes, I am.

11 Q Do you know if the corrections which are listed as being
12 requested from the Recorder Printing and Publishing Company
13 and Sunset Press on 14 September 1943 appear in that red
14 covered version?

15 A Yes, they do.

16 Q Can you therefore state as a researcher and historian
17 that the red covered version was not printed until sometime
18 after September 14, 1943?

19 A That's correct. I could.

20 Q And is that your opinion?

21 A Yes, it is. Very definitely.

22 Q Going back to page 2 of Exhibit 108, then, do we in fact
23 have identified in the record group somewhere what we know
24 to be that revision for second printing of the final report
25 which is the third entry on the page?

1 A I have not found any record of that particular document.

2 Q Okay. And the printed red volume we spoke about a minute
3 ago is the one described in the fourth paragraph that says
4 "Final Official or Third Printing."

5 A That's correct.

6 THE COURT: Now, this says, "Still avail-
7 able, 2," I believe. Isn't that right? We're talking about
8 the third version, I believe. Here is my understanding of
9 the testimony. With respect to the third one, I understood
10 you to say that you've not been able to find a copy of that.
11 Am I wrong?

12 THE WITNESS: You are correct in saying
13 I have not been able to find a copy of that one in the
14 record.

15 THE COURT: That's the third one of these
16 four versions.

17 THE WITNESS: That's correct.

18 THE COURT: Then I am correct.

19 MR. STONE: As far as we know, we have the
20 second one which says "first printing" and the fourth one
21 which says "third printing."

22 THE COURT: That's right. And you also
23 have the first, do you not?

24 MR. STONE: No.

25 THE COURT: The first one is not?

1 THE WITNESS: That's right.

2 Q (by Mr. Stone) Mrs. Zeidlik, would you please turn in

3 the blue-covered binder to Exhibits 7 and 15 which are

4 tabbed 73 and 74. Do you have Exhibits 73 and 74?

5 A Yes, I do.

6 Q Okay. Let me ask you, have you compared the changes

7 described in Exhibit 73 - there are 55 suggested changes -

8 with the first 55 changes in Exhibit 74?

9 A Yes, I did.

10 Q Are they the same?

11 A The first 55?

12 Q Yes.

13 A Yes, they are the same.

14 Q Okay.

15 A I was going to say, in addition to the ones listed here,

16 I found several other changes.

17 Q Okay. With respect to page 4 of Exhibit 74 --

18 THE COURT: Wouldn't that be probably

19 Exhibit 15, tab 74?

20 MR. STONE: I'm sorry. Yes. I'm sorry.

21 Q (by Mr. Stone) Tab 74, page 4, Exhibit 15.

22 A Would you give me that again?

23 Q For you it will be Exhibit 15, page 4.

24 A Okay. I'm sorry.

25 Q Do you see at the top it says "End of Captain Hall's

1 draft"?

2 A Yes, I do.

3 Q Are you aware of any information which tells us whose
4 changes proceed from change No. 56 through the end of the
5 document which is change No. 140?

6 A No, I don't. I didn't find anything in the records to
7 show who did that, who made those recommended changes.

8 Q Okay. Going back for one moment to document 108, do
9 you have that in front of you?

10 MR. HALL: A-108?

11 MR. STONE: A-108.

12 Q (by Mr. Stone) The last six pages of that document have
13 a series of changes. Can you tell from the last page of
14 A-108 who suggested these changes?

15 A Yes. Robert C. Meyers.

16 Q The individual who was working in the Western Defense
17 Command?

18 A That's correct, from the Chief, Statistical Section,
19 Western Defense Command.

20 Q Okay.

21 THE COURT: Would you wait just one
22 moment?

23 MR. STONE: Surely.

24 THE COURT: I'm looking at his letter of
25 September 14th, '43, to the printer, and I have three pages

1 in which there looks to be 35 suggested changes. Then there
2 is his name and then --

3 MR. STONE: Then there's pages 2, 3 and
4 4 of his earlier letter to the printer dated 11 September,
5 which are almost the same changes, Your Honor, signed by
6 him. Somehow the first page of that letter is not here,
7 and I'm not sure whether to credit that to my Xerox operator
8 or to the people who moved the records from Alexandria.

9 THE COURT: All right. Let me just --
10 that's the last six pages?

11 MR. STONE: Right.

12 THE COURT: And you say that it was
13 marked Robert C. Meyer, who suggested all of those changes?

14 THE WITNESS: Yes.

15 Q (by Mr. Stone) Mrs. Zeiglik, --

16 MR. HALL: Well, I object. She can't say
17 that. She doesn't know. She wasn't there, and besides, the
18 letter says to the contrary.

19 THE COURT: Well, let me just ask, I
20 suppose you're saying that because his name is signed?

21 THE WITNESS: That's correct.

22 THE COURT: At the bottom of the third page.

23 THE WITNESS: That's correct.

24 THE COURT: That's the only basis for your
25 opinion?

1 THE WITNESS: That's correct.

2 THE COURT: All right.

3 Q (by Mr. Stone) Now, Mrs. Zeidlik, have you looked at
4 all the changes in Exhibit 15, which is tab 74, the 140
5 changes?

6 A Yes, I did.

7 Q Are all of them actually made in the published version
8 of the final report which the Government Printing Office put
9 out?

10 A No.

11 Q Would you turn to page 2 again of Exhibit A-108? On the
12 right-hand column that says "Disposition of others," the
13 second entry in discussing Final Report, Japanese Evacuation
14 from the West Coast, first printing, copy available contains
15 notes for revisions, enclosure No. 1, all the way on the
16 right it says "Eight destroyed; three unknown."

17 Is there anything unusual about listing
18 eight destroyed copies?

19 A No, because at the time the Army Regulation 380-5
20 required that all Government -- all Army agencies keep a
21 close record of each classified document in their custody,
22 and at such time as a document was either transferred from
23 their agency or destroyed, a record had to be made, and when
24 a document was destroyed, they had to have a listing of each
25 document that was destroyed and it had to be certified by a

1 witness.

2 Q Could we have the clerk hand the witness, please,
3 Document A-63?

4 Are you familiar with A-63, Mrs. Zeidlik?

5 A Yes, I am.

6 Q Can you tell me when that was in effect, the regulation?

7 A It went into effect on June 18, 1941.

8 Q Is there a part of that regulation that deals with
9 preservation or destruction of records?

10 A Yes, there is.

11 Q Can you point us, please, to the page and paragraph, if
12 you would?

13 A Yes. It's on page 11.

14 Q Okay. What paragraph number is it, please?

15 A Paragraph No. 22, Destruction of Classified Documents,
16 Secret and Confidential documents.

17 Q Could you just read those two paragraphs, the ones that
18 you think apply?

19 THE COURT: I don't think it will be
20 necessary. I glanced at that regulation before and it's in
21 the record.

22 Let me do ask you this question, though.
23 At the time of this destruction of these versions, were those
24 reports classified?

25 THE WITNESS: Yes, they were confidential.

1 THE COURT: They were. Even though they
2 were later printed by the Government Printing Office?

3 THE WITNESS: Yes. The classification was
4 removed.

5 Q (by Mr. Stone) Could the clerk hand the witness Docu-
6 ment A-73. Does this document have some bearing on why the
7 documents were destroyed?

8 A Yes, it does.

9 Q Could you just briefly tell us?

10 A Yes, I will. By the fall of 19 -- summer of 1941, with
11 the beginning of mobilization, the Department of the Army
12 began to collect a tremendous amount of records. In fact,
13 before the war was over, the Department of Defense Agency
14 had collected enough records or created enough records to
15 go around the world at the equator, which is 25,000 miles
16 of records, and in order to curb some of the creation or
17 some of the collection of records, the War Department issued
18 on September 25th, 1941, a circular, Circular 201, requesting
19 that the beginning of papers and records be sort of curtailed
20 somewhat, and usually a single record copy of documents were
21 kept. The others were destroyed. All drafts, galleys, and
22 that kind of material became non-record material and not
23 record material - therefore destroyed.

24 Q Would the clerk please hand the witness Document A-43
25 and Document 11, which is -- 11 is at tab 87.

1 THE COURT: While the clerk is looking for
2 those, let me ask you about the mileage of those records.
3 Is that file drawers that way around the equator?

4 THE WITNESS: You could take it side by
5 side.

6 THE COURT: Side by side.

7 THE WITNESS: That's right.

8 MR. STONE: Sounds like the Clerk's office
9 here, Your Honor?

10 THE COURT: It's like my desk here.

11 Q (by Mr. Stone) Would you please take a look at Document
12 A-43 and Document 11?

13 For the record I just want to say that
14 Document 11 is the 29 June 1943 document signed by Theo. E.
15 Smith, and Document A-43 is the 30 June 1943 document by
16 Theo. E. Smith.

17 Ms. Zeidlik, are these two documents excep-
18 tional in any way or do they comply with the regulations you
19 just cited to us?

20 A These two documents comply with the Army Regulation
21 380-5.

22 Q Is there anything secretive or reflecting bad faith
23 about these two documents?

24 A No. It would seem to me if there was bad faith they
25 wouldn't have kept the copies of them. They had to account

1 for what happened to these classified documents they once had
2 on their register. This is why they had to keep the certifi-
3 cates.

4 THE COURT: Are these certificates of
5 destruction?

6 THE WITNESS: Yes.

7 THE COURT: By the warrant officer?

8 MR. STONE: Yes.

9 Q (by Mr. Stone) Mrs. Zeidlik, while we're on this
10 subject, you stated you were generally familiar with the
11 records in Record Group 338; isn't that right?

12 A That's correct, I am.

13 Q Have you looked at some of the correspondence, letters,
14 written out phone conversations, teletypes and cover letters
15 with respect to the distribution of General DeWitt's Final
16 Report?

17 A Yes, I have.

18 Q About how many different documents, if you had to esti-
19 mate, discuss the fact that there are various versions of
20 the Final Report in existence?

21 A I would say there are at least four or five about
22 changes.

23 Q Are any of those classified documents?

24 A No, they are not.

25 Q Is there anything at all about those documents or any

1 of these -- or about the Final Report in either version --
2 well, let me say, you have gone through both versions of
3 the Final Report, haven't you?

4 A That's correct.

5 Q The marked version which is the version we decided was
6 the second paragraph version, openly shows the changes that
7 were made; isn't that right?

8 A Yes, it does.

9 Q Is there anything about that version, about the pub-
10 lished version, or about any of this correspondence which
11 leads you as a trained archivist to think that somebody was
12 trying to hide changes?

13 A No. If somebody were trying to hide the changes they
14 would have destroyed them. They would destroy all record of
15 having the changes made.

16 Q In the conversations that you have seen published
17 between General DeWitt and the War Department in connection
18 with this litigation in the records group, are there indi-
19 cations that General DeWitt disagreed with the War Department's
20 views even before his published book?

21 A Yes, there is. There is a record of a telephone con-
22 versation that shows he's at difference with McCloy, and
23 this was, I think, in January or February of 1943, long
24 before the report came out.

25 Q Would a properly trained World War II records researcher

1 know about regulations which deal with the routine creation
2 and disposition, including destruction, of those World War II
3 records?

4 A Well, if I came across something that indicated that
5 records had been destroyed, I would check the Army regula-
6 tions to find out what the policy was, what the regulation
7 required of the destruction of records.

8 MR. STONE: Your Honor, I think I've gone
9 over the break. Excuse me.

10 THE COURT: Gosh, yes. You should have
11 called it to my attention.

12 MR. STONE: I did.

13 THE COURT: All right. We will take a
14 recess, then, until five after three.

15 (Recess.)

16 Q (by Mr. Stone) Could the clerk hand the witness Docu-
17 ments --

18 Let me say before we start, Your Honor,
19 that the reason my co-counsel is not here is that we're
20 moving along so fast, I sent him out to see if he could
21 locate another witness for us to have them in the witness
22 room.

23 THE COURT: Do like GSA, go out in the
24 street and hire somebody.

25 MR. STONE: That's just what he did. He

1 went out to see if he could locate one of the witnesses who
2 was having a long lunch and whom we didn't think we would
3 get to.

4 THE COURT: All right.

5 Q (by Mr. Stone) Could you hand the witness A-11, A-78
6 and A-74?

7 THE COURT: That was A-11, A-78 and A-74?

8 MR. STONE: Yes.

9 Q (by Mr. Stone) Starting with A-11, Mrs. Zeidlik, can
10 you tell us what that is?

11 A Yes. It's an abstract from the Official Volume, U.S.
12 Army in World War II, Guarding the United States and its
13 Outposts, and the extract deals with the Japanese Evacuation
14 from the West Coast.

15 Q When was that document published?

16 A In 1970.

17 Q Do you know when it was originally published?

18 A 1964.

19 Q Okay. Could you now look at A-78? If you'd look at
20 the -- if you'll page through the contents until you get to
21 the page that really begins Chapter V. Is that the exact
22 same chapter that appears in the 1964 version that we just
23 discussed, which is A-11?

24 A Yes, it is.

25 Q This version, the A-78 version, can you tell from the

1 second page of that document when it was first copyrighted
2 and printed?

3 A On the second page?

4 Q Yes, on the second page is a copyright date, I believe.

5 A U.S. Government documents cannot be copyrighted.

6 Q Excuse me. I'm talking about A-78 now.

7 A Oh, yes. I see. 1959.

8 Q Okay.

9 THE COURT: Now let's see. That was the
10 copyright?

11 THE WITNESS: Right.

12 MR. STONE: Yes.

13 Q (by Mr. Stone) Okay. Let's take A-78, and please turn
14 to -- if I can give you a page here. This will take just a
15 moment. On the top it says page 132, and I'd like you to
16 look at Footnote 17.

17 A Which volume?

18 Q Of A-78. This is Command Decisions, the 1959 version.

19 A Page 132?

20 Q Yes. Page 132, Footnote 17.

21 A Yes, I see it.

22 Q Just so we know what footnote 17 refers to, could you
23 just read the sentence, the one sentence footnote 17 is
24 appended to?

25 A "GHQ, G-2 information --"

1 Q No, no. Before you read the footnote, read the actual
2 sentence in the text, if you will.

3 A Oh, I'm sorry.

4 Q So we know what it refers to.

5 A "Army estimates of the situation reflected this sus-
6 picion. An Intelligence bulletin of January -- of 21 January
7 concluded that there was an espionage net containing Japanese
8 aliens, first and second generation Japanese and other
9 nationals, thoroughly organized and working underground."

10 Q Okay. Now would you read the footnote?

11 A "GHQ, G-2, Information Bulleting 6. 21 January 1942.
12 Copy, Assistant Secretary of War, McCloy file 014.311 WDC
13 General."

14 Q Is that a sufficient footnote for a trained researcher
15 to find that document?

16 A Yes, it is.

17 Q Okay. Would you please take a look at Document A-81?
18 I'm sorry. I think it's A-50. Let me see if I've got that
19 right. Yes, A-50.

20 Can you tell me if Document A-50 is in
21 fact the document described in the beginning of Footnote 17?

22 A Yes, it is.

23 Q And do you know which page of that document the quote
24 comes from?

25 THE COURT: Well, if it's in there, you

1 can refer me to it.

2 MR. STONE: Okay. I can direct your
3 attention to page 3 -- direct the Court's attention to page
4 3, paragraph 6(b).

5 THE WITNESS: That's right.

6 Q (by Mr. Stone) Now, would you please take a look at
7 Document A-81? Does Document A-81 come out of the second
8 -- the file described in the last few words of Footnote 17?

9 THE COURT: That would be the McCloy file?

10 MR. STONE: Yes.

11 THE COURT: 014.311?

12 MR. STONE: Yes.

13 A Yes, it does.

14 Q (by Mr. Stone) Did you personally go look and find --
15 look at these documents?

16 A Yes, I did.

17 Q Did you have any trouble finding them?

18 A No.

19 THE COURT: Now let me ask you - it should
20 be plain to me - but when you say 'Did you look at these
21 documents?' which ones are you now referring to?

22 MR. STONE: I'm talking about A-50 and
23 A-81, the ones referenced in the footnote.

24 THE COURT: All right.

25 Q (by Mr. Stone) Is that right, Ms. Zeidlik?

1 A That's correct.

2 Q Would you for a moment please take A-74 now and open it
3 up to the page that says little Roman numeral VII in
4 acknowledgments.

5 A Yes.

6 Q It says on that page - I'd just like to read one
7 sentence, a little bit of it. It says, "There are, however,
8 a few obligations which in justice must be noted more fully.
9 Chief of these is to Dr. Stetson Kahn, former Chief Military
10 Historian of the United States Army, whose pioneering work
11 on the decision for relocation is indispensable."

12 Ms. Zeidlik, is that the same Stetson Kahn
13 who wrote that article which appears in two books which we
14 were just talking about?

15 A Yes, it is.

16 Q The article continues, "In the summer of 1969 Dr. Kahn
17 made his personal notes available to me; as many of them
18 cited materials that can no longer be located in the National
19 Archives, their value was enormous."

20 Have you tried to locate Dr. Stetson
21 Kahn's notes?

22 A Yes, I did.

23 Q Are they -- have you contacted Dr. Kahn?

24 A I called Dr. Kahn but either he couldn't understand --
25 he couldn't hear what I was saying, or else he just really

1 was old and he just wasn't able to cope with the question,
2 and he referred me to his wife who wasn't there.

3 Q Is he pretty old at this point? Do you know?

4 A Yes, I know Dr. Kahn, yes. He didn't even remember who
5 I was when I called.

6 Q How many years have you known him?

7 A Since 1950.

8 Q Is he able to help you find those notes?

9 A No, he is not. Not at this point. We also asked the
10 National Archives and Records Administration to check their
11 files, and also the records of the U.S. Army Military History
12 Institute at Carlyle, thinking there was a possibility they
13 may have been sent there.

14 Q Were they able to find the notes?

15 A No, they did not have them.

16 Q Can they tell you why Dr. Kahn's notes would not have
17 been saved?

18 A Yes. Dr. Kahn's notes taken by historians in the
19 preparation of military history are not considered record
20 material and the National Archives will not accept them,
21 and an office that is housed in as small an area as ours,
22 we just do not have room to store materials of that type,
23 so many times they just get thrown away.

24 Q Okay. Would you now go to Document A-81? For the
25 record, this is Information Bulletin No. 6, a three-page

1 document dated January 21.

2 THE COURT: That's January 21, what year?

3 MR. STONE: 1942.

4 THE COURT: Information bulletin by what
5 agency?

6 MR. STONE: Information Bulletin No. 6 --

7 THE COURT: Of the ONI?

8 MR. STONE: It says G-2 Section, General
9 Headquarters, U.S. Army.

10 Q (by Mr. Stone) Ms. Zeidlik, can you tell me what the
11 General Headquarters, U.S. Army, and then it says Army War
12 College, Washington, D.C., what role that played in the
13 U.S. Army at that time, January 21, 1942?

14 A Yes. The General Headquarters, United States Army,
15 can under the Chief of Staff's office. It was responsible
16 for the training of troops and for the various operations in
17 the theaters of operation. It really took care of what they
18 call the field forces.

19 The Western Defense Command came under the
20 G-2 Section -- I mean came under the General Headquarters.
21 The Headquarters was physically located in the Army War
22 College in what is now called Fort McNair, Washington, D.C.

23 Q If you still have in front of you A-81, would you take
24 a look at that for a moment? That is a letter signed by
25 Mark Clark dated February 12th, 1942. Where does that

1 originate from? What does Mark Clark appear to be on that
2 letter?

3 A General Clark was the Deputy Chief of Staff of the
4 General Headquarters of the United States Army at that time.
5 It was a position similar to the Chief of Staff at a lower
6 level than the Chief of Staff of the Army, but each Army
7 organization has their own little organizational structure.

8 MR. STONE: Just to make a point of
9 clarification, Your Honor, I would like to just ask Ms.
10 Zeidlik two questions about the Army chart. I think it will
11 help you follow for a moment. May I just put it up and ask
12 two questions?

13 THE COURT: That will be fine. You go
14 ahead.

15 MR. HALL: Is counsel going to offer this
16 exhibit?

17 MR. STONE: No. I am using it for demon-
18 strative purposes only.

19 THE COURT: Can you see the writing?

20 THE WITNESS: Yes, I can.

21 THE COURT: You've got better eyes than
22 I have.

23 THE WITNESS: Maybe my glasses are a
24 little better.

25 Q (by Mr. Stone) Mrs. Zeidlik, do you see the General

1 Headquarters Unit anywhere on that chart?

2 A No. It's not on here. It should be above where the
3 Aide to the Chief of Staff is.

4 MR. HALL: I object. We haven't offered
5 this, are not going to offer it, and it's now being impeached.
6 We're just going up a blind alley.

7 THE COURT: Well, I don't really place that
8 much importance on it. The Deputy Chief of Staff of General
9 Headquarters is not shown on this.

10 Q (by Mr. Stone) The second question: There is a line
11 that shows Mark Clark that comes right off of George
12 Marshall's office. Is that where he came off?

13 A No. He came off of the Commander of the General
14 Headquarters office.

15 Q So he is the Deputy Chief of Staff --

16 A For the General Headquarters.

17 Q Okay. The block that's missing?

18 A That's right.

19 Q And that is the block that was in charge of all of our
20 fighting forces including the Western Defense Command?

21 A Yes. Training of fighting forces, yes.

22 Q Okay. Would that have been the appropriate person for
23 John J. McCloy to address if he wanted to find out about the
24 G-2 information regarding the fighting forces in the
25 Western Defense Command?

1 A Yes. He would have gone through General Headquarters.

2 Q Okay. Turning now for a moment to A-50. Can you tell
3 me the document assigned on the third page, P. M. Robinett.
4 Do you know who P. M. Robinett was or is?

5 THE COURT: And for the court reporter,
6 would you spell that, please?

7 MR. STONE: R-o-b-i-n-e-t-t.

8 Q (by Mr. Stone) Did you know P. M. Robinett?

9 A Yes. I knew General Robinett from about 1950 until
10 probably the early 1960's. At that time he was assigned to
11 the office where I now work. He was at that time the
12 Assistant Chief of Staff for Intelligence. His job -- in
13 his job he was responsible for disseminating intelligence
14 information to the various Army commands, the divisions,
15 the Corps areas, the Armies, everything down to a Division
16 level.

17 Q So then he was the highest G-2 office who reported to
18 Mark Clark; is that right?

19 A That's correct.

20 Q Could you just for information sake, because the chart
21 up there -- well, I guess I should state for the record,
22 the chart up there under Military Intelligence Division
23 does not list Mr. Robinett at all. That's just a statement
24 for the record, but it does list Sherman Miles.

25 Could you just explain how he functioned

1 as compared with Sherman Miles?

2 A Sherman Miles was assigned to the Headquarters, War
3 Department, and he reported to the Chief of Staff, and infor-
4 mation that Miles would have wanted disseminated to the
5 troops would have gone to the General Headquarters and to
6 the G-2 Section, and it would have been transmitted by
7 General Robinett. He is listed here as Colonel but I knew
8 him as a General.

9 Q Was General Robinett, then, in roughly an equivalent
10 position in a parallel organization?

11 A Yes, he was.

12 Q To Sherman Miles?

13 A That's correct.

14 Q From your knowledge of General Robinett, your personal
15 knowledge, is he the kind of individual who would write a
16 report based on information he was not sure of?

17 A No. He was a very meticulous researcher and he was
18 very careful to make sure the facts were as accurate as
19 information available would make them.

20 Q Did I in fact ask you to go to the actual files in
21 Military Intelligence Division, or what is left of them,
22 that would have been available to General Robinett's G-2
23 Section when he drafted this report?

24 A Yes.

25 THE COURT: Incidentally, this is A-50 we

1 are talking about. I don't have it before me right now,
2 but what is the date? I'll pull it out. What is the date?

3 MR. STONE: It's January 21, 1942.

4 THE COURT: And then your question was?

5 MR. STONE: Did she actually go to the
6 file that would have been available to Mr. Robinett when
7 he wrote this document.

8 THE COURT: And is your answer --

9 THE WITNESS: Yes.

10 Q (by Mr. Stone) Would you hand the witness A-6, A-64,
11 A-40 and A-70. Let's start with A-40, if you would. Ms.
12 Zeidlik, did you personally find A-40 in the files? This,
13 let me just say for the record, is the ONI memo of December
14 4, 1941, which has been -- which is in evidence.

15 Did you personally find that document in
16 the Military Intelligence Division files that General
17 Robinett would have had at that time?

18 A Yes, I did, and I also found copies of it in the records
19 of the office of the Provost Marshal and in the Western
20 Defense Command --

21 THE COURT: Did you say the Provost
22 Marshal in the Western Defense Command?

23 THE WITNESS: No, the Provost Marshal
24 general records in the Washington area.

25 THE COURT: And the Western Defense Command?

1 THE WITNESS: And in the Western Defense
2 Command, and also in the Adjutant General's records. The
3 reason a copy would have gone there is at that time the
4 Adjutant General was the Army's record-keeping agency and
5 all the copies of all documents went to the Adjutant
6 General's office.

7 Q (by Mr. Stone) How many different copies of A-40 did
8 you find around the military files you looked in?

9 A I found five, I believe.

10 Q All in different files?

11 A All in different files.

12 Q Now, would you look at, please, A-6? Where did you find
13 this document?

14 THE COURT: You might quickly identify it.

15 MR. STONE: A-6 is January 3rd, 1942 War
16 Department MID memo which references the ONI 12-24-41
17 Japanese Tokyo Club memo.

18 Q (by Mr. Stone) Where did you find this document?

19 A I found a copy of this document in the MID files in the
20 General Headquarters files.

21 Q The same file as the last one?

22 A That's right.

23 Q Okay. Would you now look at A-7? For the record, A-7
24 is the Commander Ringle February 7 memo entitled Japanese
25 Menace on Terminal Island, and it includes several cover

1 letters.

2 Mrs. Zeidlik, where did you find A-7, if
3 you can tell us?

4 A I found a copy in the Provost Marshal General's office
5 and also one in the MID file.

6 Q The same file General Robinett had access to?

7 A Yes.

8 Q Would you now look at A-64?

9 THE COURT: And would you identify that,
10 please?

11 MR. STONE: A-64 is a memo from B. L.
12 Canaga, District Intelligence Officer, Eleventh Naval
13 District, dated May 26th, and a cover letter dated June 7th.

14 THE COURT: Of what year?

15 MR. STONE: Both 1942.

16 Q (by Mr. Stone) Can you tell me what file you found
17 this record in, Mrs. Zeidlik?

18 A A copy of this memorandum, this document, was also in
19 the Headquarters G-2 GHQ file.

20 Q Right.

21 A The same file as the materials that would have been used
22 by General Robinett in preparing this memorandum.

23 Q This particular document appears in later sections of
24 that file, does it not? General Robinett's memo is dated
25 January 21.

1 A Yes.

2 Q So this is in later sections of that file?

3 A Yes, it is.

4 Q Is that a rather substantial file? These are not the
5 only documents in that file?

6 A Oh, no, no. There are many other documents with various
7 subjects on them.

8 Q But that file, am I correct, the name of that file is
9 MID 000.24 Japanese Activities?

10 A That's correct.

11 Q For the record, do you know the relationship between
12 B. L. Canaga, District Intelligence Officer of the Eleventh
13 Naval District, and K. D. Ringle?

14 A Canaga was Ringle's superior.

15 Q Okay. Do you know, Mrs. Zeidlik, whether General
16 Robinett on January 21, 1942, had access to the actual
17 physical "Magic Cables"?

18 A In January, 1942? Yes, he did. He was given access to
19 the "Magic Cables" about five days after Pearl Harbor.

20 MR. HALL: Was that last question about
21 General Robinett?

22 MR. STONE: Yes, it is.

23 THE COURT: Yes, it was.

24 Q (by Mr. Stone) Would you please hand the witness A-49?
25 Mrs. Zeidlik, are you generally familiar with the document,

1 Morton Grodzin's book "Americans Betrayed" of which these are
2 selected pages?

3 A Yes, I am.

4 Q Are the references in this book sufficient to send you
5 to the correct agency when looking for records?

6 A Yes. I would say if the records aren't in the National
7 Archives, they would be held by the agency that created them.

8 Q Can you tell me whether all federal agencies are
9 required after twenty years automatically to turn over their
10 records to the National Archives?

11 A The Public Records Act of 1950 requires that the
12 agencies turn records that are no longer being used over to
13 the National Archives. However, many files within agencies
14 are held for various reasons, and among them that they're
15 still using them as working files, or they may contain infor-
16 mation that deals with investigative type information.

17 Q Is it commonly known whether the FBI turns their files
18 over to the Archives?

19 A Yes. That they turn them over to the National Archives?

20 Q Do they?

21 A They turn over certain parts of them but they do not
22 turn all their records over to the National Archives.

23 Q Going how far back does the FBI retain its records?

24 A I really can't --

25 THE COURT: By not turning them over, you

1 mean --

2 THE WITNESS: Retaining them within the
3 agency.

4 THE COURT: Yes. That's what you mean?

5 MR. STONE: Yes.

6 Q (by Mr. Stone) If you can give us an estimate, or if
7 you know exactly.

8 A I don't really know.

9 MR. HALL: I'd like a foundation laid
10 because I don't think she has established that she's an
11 expert on FBI records. The question leads me to believe
12 that it was based on an estimate.

13 THE COURT: Let's see what foundation
14 questions you can ask about her knowledge of the practices
15 of the FBI.

16 MR. STONE: Okay.

17 Q (by Mr. Stone) You are aware of what is in the Archives,
18 generally; is that right?

19 A That's correct.

20 Q Do you know if all of the classified records of the
21 various agencies have been turned over to the National
22 Archives?

23 A In many cases they have not been turned over to the
24 National Archives.

25 Q Does your own office retain records that are not turned

1 over to the National Archives?

2 A That's correct. We do.

3 Q How old are some of those records?

4 A Some of them are about a hundred years old.

5 Q In searching records, Mrs. Zeidlik, does a trained
6 researcher know to ask for enclosures if they want bulky
7 documents?

8 A Yes. They should know to ask for them because if
9 they're not there, they should be asked for because they may
10 show up some place else in the records.

11 Q Mrs. Zeidlik, are you aware that in 1943 the Joint
12 Chiefs of Staff tried to take all of the radio intelligence
13 functions away from the FCC during the war?

14 A Yes, I am.

15 Q Are you aware whether General DeWitt agreed with that
16 Joint Chiefs' recommendation?

17 A Yes. General DeWitt did agree with the recommendation
18 and so did, I think, nine or ten other flag officers including
19 Admiral Nimitz and Drum.

20 Q Do you know roughly what month -- do you know what month
21 it was?

22 A I think it was around May of 1943.

23 Q That's the same time the Final Report was being written,
24 isn't it?

25 A That's correct.

1 MR. HALL: I object. She testified to it
2 being written in September.

3 MR. STONE: Your Honor, the testimony is
4 it was written during that whole period.

5 THE COURT: Well, the record will show
6 that.

7 MR. STONE: Okay.

8 Q (by Mr. Stone) Would you hand Document A-85 to the
9 witness, please?

10 For the record, this is a 1 May 1944
11 memorandum for the Assistant Chief of Staff G-2 from the
12 Executive to the Assistant Secretary of War, who would have
13 been John J. McCloy.

14 THE COURT: It was a memo, I thought, to
15 the Assistant Chief of Staff G-2 from --

16 MR. STONE: The Executive Assistant to
17 John J. McCloy.

18 THE COURT: All right.

19 Q (by Mr. Stone) Mrs. Zeidlik, can you tell us whether
20 this memo relates to the Department of Justice's criticisms
21 of General DeWitt's Final Report?

22 Yes.

23 Q Can you tell us the import -- perhaps I had better read
24 it first -- of the last paragraph. Would you read it and
25 then just tell us the import of it? It's one sentence long.

1 A "It would be appreciated if your office could carry --
2 could supply this office with its views on these questions,
3 indicating what can be used in the discussions with the
4 Department of Justice and what is of a classified nature."

5 Q Does this document reveal that the G-2 -- that Mr.
6 McCloy's assistant was not at liberty to make all the infor-
7 mation available to him available to the Department of
8 Justice?

9 MR. HALL: Objection. Leading question.

10 THE COURT: Well, let me go back, if you
11 will, to A-85. That is the exhibit which you identified as
12 Assistant Chief of Staff, G-2, and that was G-2, was it
13 Western Defense Command?

14 MR. STONE: No. This is in Washington, D.C.

15 THE COURT: In Washington.

16 MR. HALL: I don't have A-85, Your Honor.
17 Before we proceed further, I would like to have it.

18 THE COURT: I don't know that I have it,
19 either.

20 MR. STONE: It's the one I distributed this
21 morning, Your Honor. It is a Petitioner's document, No.
22 5152, one they served on us last summer.

23 MR. HALL: I don't have a copy.

24 MR. STONE: I've got an extra one here.

25 THE COURT: All right. I have a copy.

1 Would you see that Mr. Hall gets a copy?

2 MR. STONE: I just gave one to him.

3 THE COURT: All right. Let me just take
4 a quick look at it.

5 All right. Have you had a chance to read
6 the last paragraph now, Mr. Hall?

7 MR. HALL: I've read the last paragraph.
8 It doesn't make any sense.

9 THE COURT: All right. I'll let you ask
10 a question and then I'll hear any objections to the question.
11 Q (by Mr. Stone) From your knowledge as a historian of
12 the Western Defense Command records and Government classifi-
13 cation procedures, Ms. Zeidlik, can you tell me in your own
14 words what the last paragraph means, what this inquiry is
15 about?

16 MR. HALL: I object. I think that the
17 paragraph has to speak for itself. She didn't write it.

18 THE COURT: I think it does. I think it
19 speaks for itself. It seems to me it's clear, as I read it,
20 that McCloy and his people did not know how much they could
21 disclose.

22 Q (by Mr. Stone) Mrs. Zeidlik, are you generally familiar
23 with the Western Defense Command records that are called
24 Delimitation Agreements?

25 A Yes, I am.

1 Q Do those Delimitation Agreements deal with the investi-
2 gation of espionage and sabotage activities, or do they deal
3 with the evaluation of espionage and sabotage activities?

4 A They dealt with the investigation of espionage and
5 sabotage activities.

6 Q They in no way -- correct me if I understand you -- they
7 therefore do not reflect on whether or not one of the
8 signatories was or was not permitted --

9 THE COURT: Wait just a moment. Is the
10 objection leading?

11 MR. HALL: It is clearly leading.

12 THE COURT: It is leading. Why don't you
13 see if you can ask it in a non-leading way?

14 Q (by Mr. Stone) Does that Delimitation Agreement in any
15 way bear on the authority of the various intelligence
16 agencies to evaluate intelligence information?

17 A No.

18 Q Does it suggest that the various intelligence agencies
19 are not required to share all their investigative reports?

20 A Would you repeat that, please?

21 Q Does the Delimitation Agreement bar various agencies
22 from receiving the investigative reports of the other
23 agencies?

24 A No.

25 MR. HALL: Just a minute. I object to

1 this line of questioning. The agreements speak for themselves.

2 They are the best evidence. This person is a historian.

3 THE COURT: I'm going to permit it.

4 Q (by Mr. Stone) Do the records of the Western Defense
5 Command show that the records of the various intelligence
6 agencies were in fact shared?

7 A Yes.

8 MR. STONE: I don't think I have anything
9 else, Your Honor.

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

12 MR. HALL: Yes, Your Honor.

13 THE COURT: One of the questions in my mind
14 is this, and you might want to ask about it: My understand-
15 ing and my thinking is that we're talking about the laches
16 of Mr. Hirabayashi who was not a trained researcher but who
17 was, from his own testimony, a layman, and I would be
18 interested in any problems that a layman might have in find-
19 ing records, Mr. Stone.

20 MR. STONE: Yes. That's why I addressed
21 the first of questions as to the assistance they offered to
22 anybody who walked in the office.

23 THE COURT: I see.

24 MR. STONE: That was the point of that.

25 THE COURT: All right.

CROSS-EXAMINATION

BY MR. HALL:

Q Mrs. Zeidlik, my name is Camden Hall. I'm one of the attorneys for Mr. Hirabayashi in this proceedings. I would like you, if you will, to look at the red and black books that you have that contain the final report versions, and the red book is exhibit what?

A 85.

Q The red book is exhibit what?

A 85.

Q And the black book?

A Exhibit No. 17.

THE COURT: I think there is a tab 85.

MR. HALL: Tab 85, I think, contains excerpts.

THE COURT: Which is Exhibit 29.

MR. HALL: All right. Tab 85 is Exhibit 29. Tab 85 only contains excerpts of the full exhibit, and tab 17 is Exhibit 4 which only contains excerpts of the full exhibit.

THE COURT: So can you identify the red and black versions?

MR. HALL: The red version, I am told, Exhibit 29, tab 85, and the black version is Exhibit 4, tab 17.

THE COURT: That's fine.

1 Q (by Mr. Hall) Now, based upon your research, can we
2 agree that Exhibit 4, tab 17, preceded the preparation and
3 drafting of Exhibit 29, tab 85?

4 A Excuse me. Since these have another number on them, I
5 think it would be helpful if you could identify them.

6 Q That's why I was --

7 A -- as the red and the black book. That's probably not
8 the best way to do it, unless I could write them on here.

9 Q I would be glad to. What number does the black book
10 have on the front of it?

11 A It has No. 17.

12 Q What number does the red book have?

13 A The red book has No. 85.

14 Q Can we agree that the black book draft or version pre-
15 ceded the red book draft or version?

16 A That's correct.

17 Q And your testimony today with regard to a version being
18 corrected in September of 1943 was directed to corrections
19 which appear in the red book?

20 A No. The black book -- the black book was sent to the
21 printers with corrections on it, and with it they had
22 additional -- they made changes, and it was published -- no,
23 the red book went to the -- let me think here a minute.

24 Q Let me help you. Let me strike my question.

25 Will you hand the witness Exhibit A-108,

1 please? Now, Exhibit 108 about which you testified contains
2 several pages in the middle, a letter from - is it Colonel
3 Meyer, Lieutenant Colonel Meyer - dated September 14th, 1943?

4 A Yes.

5 Q And you testified that those corrections or comments
6 in that letter were incorporated in one of the versions of
7 the final report which is before you.

8 A Incorporated in the one that's red.

9 Q That's what I asked you.

10 A 85. Sorry. I misunderstood your question.

11 Q And you did not testify that any of those corrections
12 are contained in the volume bound in black?

13 A The corrections?

14 Q In Exhibit A-108?

15 A No.

16 Q Were you asked to look at the black bound version to see
17 if the corrections had been placed in it?

18 THE COURT: Now let me ask, by that do you
19 mean by pen and ink, or printed?

20 MR. HALL: Either way.

21 A They're in here in pen and ink.

22 MR. STONE: Would she identify which the
23 "here" is?

24 A And they're keyed to the list that began with the
25 suggestion -- Hall's suggested changes, which they're keyed

1 in there to those changes, in addition to those changes.

2 Q Are any of the corrections in Exhibit 108 --

3 THE COURT: Wait just one moment, if you
4 will. I will say this: The witness is looking at the black
5 version, I believe.

6 THE WITNESS: Yes.

7 THE COURT: Just to identify it. All right.
8 Now you go ahead.

9 Q (by Mr. Hall) Will you look at Exhibit A-108, please?
10 Will you demonstrate for the record what corrections con-
11 tained in Exhibit 108 are found in the black book?

12 A They're all found in there, but written in ink or by
13 pencil, by hand. They're not typed in.

14 THE COURT: Why don't we take just one of
15 them, if you will. Show me that, will you? The No. 2 one
16 says page 7, second paragraph, third line from the end,
17 "change lead, l-e-a-d, to l-e-d."

18 Q (by Mr. Hall) Taking the Court's question, on the
19 first page of the September 14, 1943 letter, Exhibit A-108,
20 suggestion No. 2, saying "On page 7, second paragraph, third
21 line from end, change lead, l-e-a-d, to led, l-e-d." Can
22 you show me int he black book at page 7 where that correction
23 is made in pen?

24 A No. It's not made on this. I think that's when they
25 went -- the document was sent to the printer, and when the

1 document went to the printer, the letter was saying that
2 these were additional changes that should be made.

3 Q I thought you just testified a minute ago that the
4 changes in Exhibit A-108 were contained in the black volume.
5 Are you changing your testimony?

6 A I did not check the changes on here with the changes
7 in this volume. I checked them with the ones in the red
8 volume.

9 Q So that the record is clear, you just stated that you
10 did not check the changes in Exhibit A-108 to see if they
11 were in the black volume book?

12 A That's correct. I did not check.

13 Q But you did testify a few minutes ago, did you not,
14 when I asked you the questions that the changes in A-108
15 were in the black volume book.

16 MR. STONE: The record shows that, Your
17 Honor. She clarified that she was dealing with the red book.

18 THE COURT: I think that's right.

19 Q (by Mr. Hall) When was the black volume book version
20 prepared?

21 THE COURT: Now, by that I would assume
22 you mean when was that printed?

23 Q (by Mr. Hall) When was it printed?

24 A The date on it is 15 April, April 15th, 1943. However,
25 it would have been prepared prior to that time in order to

1 have that kind of a date on it.

2 Q But to your knowledge, and you're testifying today in
3 this court, that the black volume version of the DeWitt Final
4 Report was prepared in printing no later than April 15th, 1943?

5 A The date of April 15th, 1943 is on there. However, it
6 may not have been printed at that time.

7 Q Well, being an expert researcher, when was the black
8 volume book printed?

9 MR. STONE: Your Honor, I object to the
10 tone of that question.

11 THE COURT: I think she's given the best
12 answer that she can give. You were stating, I suppose, since
13 the transmittal letter is dated April 15, 1943, in the black
14 book --

15 THE WITNESS: In the book, yes.

16 THE COURT: -- it is your opinion it was
17 printed before that?

18 THE WITNESS: No, it would have been
19 printed after that because this went to the printer with the
20 date on it, April 15th, and that was when it was ready to go
21 to the printer.

22 THE COURT: But the black book itself,
23 was that printed before or after April 15th, 1943?

24 THE WITNESS: I would say it was printed
25 after April 15th, 1943.

1 Q (by Mr. Hall) How much after?

2 A There is no record on here of when it was printed.

3 Q So it could have been, to take your testimony, a day
4 after; two days after; three days after; a week after?

5 MR. STONE: She's already testified and
6 answered that, Your Honor. He's just looking for speculation
7 now.

8 THE COURT: Well, let's see if you can give
9 any estimate at all.

10 A Based on my experience with printing, it would have been
11 at least a week or two afterwards, or probably longer,
12 because they would have to -- well, if they had to set the
13 type, it would have taken longer than that.

14 Q (by Mr. Hall) And in your experience, the type is never
15 set before the transmittal date on the document? For example,
16 type for a Government document such as that which appears in
17 the black book would never have been set prior to the date
18 which appears on the -- I don't know what you call the
19 transmittal page, Roman numeral III?

20 A Sir, my experience with working with documents that are
21 published, far -- it's much later than the period 1942-43.
22 They may have been doing things completely differently to a
23 certain extent than that, but it has been my experience with
24 the people in my office who do publications that the date
25 when they send it to the printer is the one that they had

1 used in the letter of transmittal.

2 Q So you're not even experienced with regard to the print-
3 ing issue concerning documents printed in 1942-43?

4 MR. STONE: Your Honor, there was no effort
5 to tender her as an expert on printing.

6 THE COURT: I think that's right.

7 Q (by Mr. Hall) So to finish off this line of questioning,
8 you just simply don't know when the black volume was printed?

9 A No, I don't.

10 Q Do you know when Mr. Meyers, assuming they're Mr. Meyers
11 handwritten comments, were inserted in the black volume,
12 initially?

13 A Well, I don't mean to sound flip, but it is obvious it
14 was after it was published, somewhere between --

15 Q I'll buy that.

16 A -- between the time when it was -- I'm sorry. It was
17 from the time -- between the time it was printed, the print-
18 ing that was April 15th, and September when this volume went
19 to the printer. So it could have been in the summer of 1943.

20 THE COURT: When you said "this," you
21 pointed to the red volume?

22 THE WITNESS: To the red volume, yes.

23 Q (by Mr. Hall) But that's the best estimate you can give
24 is the handwriting in the black volume edition was put in
25 sometime after it was printed and sometime before the red

1 volume edition was published.

2 A That's correct.

3 Q I'd like to call your attention to page 9 of each volume,
4 and in particular, I'd like to call your attention to the
5 last half of the paragraph in each volume which begins,
6 "Because of of the ties of race." Do you see the paragraph
7 I'm referring to?

8 A Yes.

9 Q Now, that paragraph at least begins that way in each
10 version, does it not?

11 A That's correct.

12 Q Both the red version and the black version?

13 A That's correct.

14 Q Now, it has already been established in this case,
15 however, that the language in the black version at the end
16 of that paragraph is different from the language in the red
17 version.

18 A That's correct.

19 Q And you've already looked at the difference, haven't you?

20 A Yes, I have.

21 Q When was that editing or change made between the version
22 which appears in the black volume and the version which
23 appears in the red volume?

24 A When the change was made? When it was made?

25 Q Yes.

1 A It was made between the time this came out from being
2 published and it was reviewed and the other one was printed.

3 Q Now, you've in your --

4 A Which would have been the spring or summer of 1943.

5 Q Now, in your research you've looked into why this change
6 was made, haven't you?

7 A The change was made during the review of the document.
8 There was no indication in the records I went through with
9 respect to stating why it was changed.

10 Q That wasn't the question I asked you. The question I
11 asked you could have been answered yes or no. You, as a
12 researcher and in connection with this lawsuit, have looked
13 into why the change was made, haven't you?

14 MR. STONE: Your Honor, that subject was
15 not opened up on the direct, why it was made. That was
16 admitted, as I understand, by Petitioner's witnesses about
17 why it was made. She only testified about what the editing
18 changes looked like and those records. She's not testifying
19 that --

20 THE COURT: I'm going to permit the ques-
21 tion. And your inquiry is simply did you look in to try to
22 determine why it was made?

23 A Well, I --

24 THE COURT: I think you can say yes or no
25 to that.

1 A Yes.

2 Q (by Mr. Hall) Yes. And you found out what?

3 A I found out that basically when you went to the core of
4 the question of what's in there, they basically say the same
5 thing in different words.

6 Q That's your testimony?

7 A That's my testimony.

8 Q You found out no other reason why the change was made?

9 A No.

10 Q You reviewed, however, did you not, the communications
11 from Mr. McCloy to Colonel Bendetson with regard to the
12 request by Mr. McCloy that changes be made in General
13 DeWitt's Final Report?

14 A Yes.

15 Q And you found nothing in there which would illuminate
16 your search as to why the change was made in the two para-
17 graphs on page 9 of the black book and the red book?

18 A No, I did not.

19 Q When did you begin your research in connection with
20 your -- in connection with this trial which is going on today?

21 A About two years ago I did a brief survey of records
22 looking through the documents. I spent about two days at
23 that time. I did not start doing research on this particular
24 aspect of it until about the end of April.

25 Q Of this year?

1 A Of this year. That's correct.

2 Q And when did you complete your research?

3 A I completed it the week of the 7th of June.

4 Q And in that process of research, how many documents did
5 you look at?

6 A I would estimate I looked at four or five thousand, at
7 least.

8 Q And how many linear feet of documents did you look at?

9 A I would imagine at least 30 or 40 linear feet of docu-
10 ments.

11 Q And how many locations did you look at documents?

12 A I looked at them in four different locations.

13 Q And where are those four locations?

14 A The Modern Military Headquarters Branch, National
15 Archives, Modern Military Field Branch, National Archives,
16 the Navy Investigative Service and the U.S. Army Military
17 History Institute. Six. I looked at our records, if we had
18 anything in our files.

19 THE COURT: Just as a matter of curiosity,
20 are all of those located in or around Washington, D.C.?

21 THE WITNESS: No. The U.S. Army Military
22 History Institute is in Carlisle, Pennsylvania.

23 THE COURT: All the rest are around
24 Washington?

25 THE WITNESS: That's correct.

1 Q (by Mr. Hall) At the Modern Military -- what did you
2 say?

3 A Headquarters.

4 Q -- Headquarters Archives, how many places in those
5 archives did you look for documents in connection with the
6 Hirabayashi proceedings today?

7 A Two. I looked in the Navy and Old Army Branch and the
8 Modern Military Headquarters Branch.

9 Q And how many places in the Modern Military Field Branch,
10 or however you described it?

11 A Modern Military Field Branch.

12 Q -- did you look?

13 A Well, there is really only one place there to look for
14 records because they bring them up to the research room.

15 Q And in the Modern Military Headquarters Archives, how
16 did you know where to look?

17 A I was familiar with many of the records. I went to the
18 footnotes in the volume regarding the United States and its
19 outposts, the chapter dealing with the evacuation of the
20 Japanese. I asked for the assistance of some of the
21 archivists as to the record foot numbers, and I also used
22 the guide of the Army decimal system they were using at that
23 time for subject entries, and I looked over their inventories.

24 Q And in the Modern Military Field Branch, how did you
25 know where to look?

1 A I knew that the records existed. I got some of the
2 information off the Guide to the National Archives. I knew
3 the Western Defense Command records were out there. I knew
4 that two of the intelligence records were out there. And I
5 also asked the assistance of the archivist who was helping
6 me.

7 THE COURT: Is that at Carlisle?

8 THE WITNESS: No, that's out at Suitland,
9 Maryland.

10 THE COURT: When you said "out there," you
11 just meant outside the city?

12 THE WITNESS: I'm sorry. I should have
13 said Suitland, Maryland.

14 Q (by Mr. Hall) Now, the third place was the Navy --

15 A Navy Intelligence Service.

16 Q -- Intelligence Service.

17 A Naval Investigative Service.

18 Q How many locations there did you look at when you were
19 unearthing documents in connection with this case?

20 A There was one office.

21 Q How did you know where to look there?

22 A Mr. Stone told me they had records out there.

23 Q Who's Mr. Stone?

24 A Mr. Stone. Victor Stone, the defense attorney.

25 THE COURT: I think that's sort of an

1 insulting remark, isn't it? "Who is Mr. Stone?"

2 Q (by Mr. Hall) Was Mr. Stone your archivist?

3 A No. Mr. Stone is the defense attorney.

4 Q Okay. And he told you where to look out there?

5 A He told me that the records were out there and

6 recommended that I look at them.

7 Q Which you did?

8 A That's right.

9 Q And the U.S. Army Military --

10 A History Institute.

11 Q -- History Institute, at how many places did you look

12 there for documents?

13 A I looked one place, and then I talked to one of the

14 members of the staff who advised me on the sources.

15 Q Okay. And at your own place of work for the Army, how

16 many places did you look?

17 A Well, there was only one place to look. I looked in our

18 library and I also looked in our reference collection.

19 Q Did you ever find in your research that there were

20 documents which had been misplaced?

21 THE COURT: Is that in research on this

22 particular case?

23 MR. HALL: On this case. I'm sorry.

24 Q (by Mr. Hall) In connection with your research with

25 Mr. Stone or in connection with this lawsuit, did you find

1 some documents were misplaced?

2 A Not that -- no, I didn't.

3 Q Did you ever tell any individual who was doing research
4 on the Japanese relocation or curfew issues involved in this
5 case that documents related to those issues had been mis-
6 placed?

7 A No.

8 Q You never told anyone that records relating to --

9 MR. STONE: It's been asked and answered,
10 Your Honor.

11 Q -- relocation or curfew --

12 THE COURT: I'll permit it. Re-ask the
13 question, please.

14 Q -- should have been placed in record group 338 but they
15 were not?

16 A Would you repeat that, please?

17 Q You never told anybody who was doing research with
18 regard to --

19 THE COURT: I wonder if you would do this:
20 If you know a particular instance, would you give the date
21 and the person.

22 Q (by Mr. Hall) Did you ever tell Mrs. Herzig-Yoshinaga
23 -- do you know who Mrs. Herzig-Yoshinaga is?

24 A Yes, I do.

25 Q Do you see her here in the courtroom right now?

1 A Yes.

2 Q Did you ever tell her when she was doing research
3 either for the Commission for which she worked or in
4 connection with this lawsuit that documents that she had
5 asked you for were misplaced and couldn't be found?

6 A That she asked me for? No.

7 Q Or that she asked you to help her find?

8 A I was over in the National Archives one day doing
9 research and she and her husband approached me. We were
10 talking about records, and I advised her where she might find
11 some of the records. But we were both busy. I was in a
12 hurry and I told her when she got back to Washington I
13 would make every effort to assist her in any way I could,
14 which I did.

15 Q In that discussion, did you confirm to Mrs. Herzig-
16 Yoshinaga or to her husband, Mr. Herzig, that certain MID
17 records were not in the record group where they should have
18 been placed?

19 A I don't recall saying that.

20 Q How many years of experience in research and archives
21 work have you hade?

22 A I've had 35 years.

23 Q Thirty-five years.

24 A It's 35 years the 25th of August, it will be.

25 Q It will be or was?

1 A It will be on the 25th of August. It will be 35 years
2 that I've worked for the U.S. Army Central Military --

3 Q What awards have you received from professional groups
4 or the Government for your skill in your profession?

5 THE COURT: You know, I don't think we need
6 to go into that again. She certainly has indicated great
7 experience in the field.

8 Q (by Mr. Hall) You stated that when you went to these
9 five locations to find documents, that in many cases you knew
10 of the document already before becoming involved in this law-
11 suit, or you knew where to find them?

12 A I'm familiar with the records so I know where about in
13 the records they would be.

14 Q And to what extent did that help facilitate your location
15 of the records that have been utilized one way or another in
16 this lawsuit?

17 A I'm sure it was very helpful. To what extent I can't
18 estimate at this time.

19 Q How many feet, lineal feet, of documents are there in
20 the Western Defense group of documents?

21 A There are about 70 linear feet of records, according to
22 the guide, to the National Archives Guide. There are about
23 70 linear feet and over 600 microfilm reels.

24 THE COURT: That would be in addition, I
25 suppose?

1 THE WITNESS: Yes, in addition, the
2 microfilm reels.

3 Q (by Mr. Hall) My experience is that there are about
4 two thousand frames on a microframe reel; is that correct?

5 A I believe it's closer to one thousand frames, depending
6 on the size of the document being filmed, the size of the
7 page.

8 Q And do the archives -- have you come in contact in your
9 work with the archives with FCC war-related documents?

10 A Yes, I have seen some FCC records.

11 Q Approximately how many lineal feet of those sorts of
12 documents are you acquainted with?

13 A That's very difficult to estimate because many of the
14 FCC records are mixed in with the other Army records. Of
15 the FCC records, I probably examined maybe a couple linear
16 feet.

17 Q And the same with regard to the FBI documents. How many
18 linear feet?

19 A The FBI documents that I saw, with the exception of the
20 copies that were shown to me, given to me by Mr. Stone, the
21 defense attorney. The only other FBI documents I saw were
22 those mixed among the records, the official records that I
23 went through of the War Department.

24 Q Have you ever worked with the Department of Justice
25 with Department of Justice records to try to, for example,

1 get from them FBI documents which had not been placed in the
2 archives?

3 A I have no need to do that in my work.

4 Q So the answer is no?

5 A That's correct.

6 Q When did you call Mr. Stetson Kahn to make the inquiry
7 that you testified about a few minutes ago?

8 A It was toward the end of May.

9 Q Of this year?

10 A Of this year. That's correct.

11 MR. HALL: May I have a minute here, Your
12 Honor?

13 THE COURT: Take your time.

14 MR. HALL: May counsel and I go out in
15 the hall for a minute? We just need about one minute.

16 THE COURT: That's fine.

17 (Counsel confer.)

18 MR. HALL: Thank you, Your Honor.

19 Q (by Mr. Hall) Approximately how many hours have you
20 spent in research in connection with preparing for your
21 testimony today or helping the Government prepare for the
22 defense of this litigation?

23 A I have another job to do besides just researching for
24 this, I want to call to your attention. The first two or
25 three weeks I worked on it I probably worked in the office

1 maybe about 20 to 25 hours, and after that I put more time
2 into it. I was working almost full-time toward the end. I
3 did some reading at home which would have been probably 40
4 to 60 hours that I did on my own free time.

5 Q And approximately, aside from the first 25 hours, how
6 many hours of time have you devoted on office time?

7 A I would say about 15 per cent of my time went to taking
8 care of the office and researching.

9 Q Does that mean that 85 per cent of your time went into
10 this research for this case?

11 A Just in the last two, three weeks. I would say that
12 the first week I spent probably 20 to 25 hours on it.

13 THE COURT: I think you said, if I am
14 correct, you started on this --

15 THE WITNESS: In late April.

16 THE COURT: -- in late April.

17 THE WITNESS: That's correct.

18 THE COURT: So the first two weeks, was
19 it 20, 25 hours during each of those weeks?

20 THE WITNESS: Yes, and then it probably
21 went up to about 30 hours, and the last couple three weeks
22 it was probably about 35 hours a week.

23 Q (by Mr. Hall) A week?

24 A Yes.

25 Q In the last month or so, would it be safe to say that

1 your activities in connection with these proceedings have
2 occupied the major part of your working time?

3 A That's correct.

4 MR. HALL: No further questions, Your Honor.

5 THE COURT: Any redirect?
6

7 REDIRECT EXAMINATION

8 BY MR. STONE:

9 Q Mrs. Zeidlik, with respect to the time you have put in
10 on this case in the last month, the total amount of time,
11 can you give us a global estimate of how much of that time
12 was directed towards documents which have not been permitted
13 to be offered in this case?

14 A Do you want it in percentage?

15 Q Yes, please.

16 THE COURT: Let's put it this way: That
17 were not listed by you.

18 MR. STONE: That were not listed by me.

19 MR. HALL: I think we need a foundation.

20 MR. STONE: The foundation was laid by
21 you. You asked how much time was spent on the case. I
22 would like to show Your Honor how much of it turned out to
23 be irrelevant.

24 MR. HALL: We need a foundation that she
25 knows what documents were not listed by counsel.

1 Q (by Mr. Stone) Mrs. Zeidlik, do you know roughly what
2 documents were excluded by the Court?

3 A Yes, I have a very good idea which ones were excluded.

4 Q As a matter of fact, Mrs. Zeidlik, you brought a
5 collection of documents for me to use in this case, didn't
6 you?

7 A That's correct.

8 Q Was I able to use any of them?

9 A No.

10 THE COURT: Do you know why he wasn't?

11 THE WITNESS: Yes.

12 THE COURT: You do? All right.

13 Q (by Mr. Stone) Now, can you give me a global estimate
14 of how much time --

15 THE COURT: What do you mean by "global"?

16 Q (by Mr. Stone) A percentage estimate of how much time
17 you spent that turned out to involve documents not used in
18 this case.

19 A I would say that more than 50 per cent of my time was
20 spent on documents not used.

21 Q Okay. Before on your direct examination, you stated
22 that there was a conversation in January of 1943 between
23 John J. McCloy and General DeWitt which evidenced at that
24 time, before the printing, any printing of the Final Report,
25 a controversy between General DeWitt and John J. McCloy?

1 A That's correct.

2 Q Did that controversy at that time have to do with the
3 subject of page 9 that was read to you dealing with separating
4 the sheep from the goats?

5 A No.

6 MR. HALL: Just a minute. I'm going to
7 object. I think the records speak for themselves. All these
8 documents are in front of us and this is just this person's
9 opinion and the Court is just as capable of reaching an
10 opinion as this witness.

11 THE COURT: I think that's right. You refer
12 them to me.

13 MR. STONE: Okay.

14 Q (by Mr. Stone) Mrs. Zeidlik, --

15 THE COURT: No; when I ask for final
16 argument.

17 MR. STONE: Right.

18 THE COURT: Refer them to me.

19 MR. STONE: I'm going to pursue this, a
20 different thread, Your Honor, if I may.

21 Q (by Mr. Stone) Do the conversations between General
22 DeWitt and John J. McCloy generally show that General DeWitt
23 did not stand his ground?

24 A No.

25 THE COURT: I think that goes contrary to

1 my ruling.

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

3 THE COURT: You just bring it to my
4 attention in argument.

5 MR. STONE: Okay.

6 Q (by Mr. Stone) Mrs. Zeidlik, have you referred and
7 read and looked at all the documents which the Petitioner
8 has offered between documents tab 63 to 82-92.

9 Do you want me to give all the exhibit
10 numbers, Your Honor.

11 THE COURT: No. Between 63 and 92, what
12 do they relate to?

13 MR. STONE: They are a whole series of
14 documents that relate to the changes in the Final Report,
15 telegrams, teletypes, letters, phone conversations.

16 Q (by Mr. Stone) Have you read all of those documents,
17 Mrs. Zeidlik?

18 A No, I have not.

19 Q In the blue volume?

20 A No. I have not seen all the ones in the blue volume.

21 Q Have you seen most of them?

22 A Yes, I've seen most of them.

23 Q Have you seen many of them in the original in the
24 Western Defense Command records?

25 A Yes, I have.

1 Q Do those records relate to the fact that a change was
2 made in the two volumes, from the black volume to the red
3 volume?

4 A They show changes, that changes were made, yes.

5 THE COURT: I take it these have been
6 admitted, have they not?

7 MR. HALL: Yes.

8 MR. STONE: Yes, Your Honor.

9 Q (by Mr. Stone) Do any of those documents tell you what
10 was in General DeWitt's mind when he agreed to the changes?

11 MR. HALL: Well, again, same objection.

12 THE COURT: That's speculation.

13 MR. STONE: Well, Your Honor, that is the
14 question she was asked before when I objected.

15 THE COURT: You can call it to my attention.
16 If they're in the record, I think I can interpret them as
17 well as she can.

18 MR. STONE: That was the objection that I
19 had when the question was asked before, did she know why the
20 changes were made, and I would like to bring out, Your Honor,
21 if I may, that she's well aware of the changes but that
22 simply in her view she cannot tell why General DeWitt either
23 stood his ground or didn't stand his ground.

24 THE COURT: You can call that to my
25 attention.

1 MR. STONE: Okay.

2 Q (by Mr. Stone) Mrs. Zeidlik, have you worked with the
3 Department of Justice prior to working with me on this case?

4 A Yes, I've worked with attorneys from the Justice
5 Department on cases. I've never served as a witness.

6 Q You've helped them do their research at the Department
7 of Justice?

8 A In the Army records.

9 Q Would you look for a moment, please, at Document 108?

10 THE COURT: Is this A-108?

11 MR. STONE: A-108.

12 THE COURT: And what page?

13 MR. STONE: Page 2.

14 Q (by Mr. Stone) You previously identified, Mrs. Zeidlik,
15 the black volume in front of you as the second paragraph, the
16 second version, the second entry on that page; not the first
17 entry but the number bound 12, it being one of those twelve
18 which eight are destroyed, three unknown, and it says,
19 "Available copy contains notes for revisions," didn't you?

20 A Yes.

21 Q Does the fact that there is a first printing above it
22 indicate that the black volume could have been put out
23 relatively quickly since it was already a revision of the
24 one above?

25 A That's correct.

1 MR. HALL: Just a minute. (a) speculation;
2 (b) leading question.

3 MR. STONE: Your Honor, he went into --

4 THE COURT: It is leading. Let me just
5 look at those.

6 I'm going to sustain the objection. I
7 think it's her speculation.

8 MR. STONE: Well, she testified on direct,
9 Your Honor, --

10 THE COURT: Let's have the next question.

11 Q (by Mr. Stone) Mrs. Zeidlik, would you look at the
12 red volume which is the Government Printing Office printed
13 version? It is pretty clear that that version -- you testi-
14 fied before the Government Printing Office version includes
15 the changes that we have seen in Exhibit A-108 which were
16 only suggested in September, 1943; isn't that right?

17 A That's right.

18 MR. HALL: I will object to the leading
19 question.

20 MR. STONE: I was just summarizing her
21 prior testimony.

22 THE COURT: I want to try to move ahead as
23 quickly as we can. Are we going to finish with this witness
24 today?

25 MR. STONE: Yes.

1 Q (by Mr. Stone) Would you look inside the cover of the
2 red version at the first date that appears on page little
3 three. Does that date at the top of that page relate to
4 September, 1943?

5 A No. It's July, 1943.

6 Q So then that date inside the book must have been pre-
7 dated before it went to the printers?

8 A That's correct.

9 Q Can you now go to page little seven, little Roman
10 numeral VII. This, for the record, is the page that starts,
11 "Subject: Final Report of the Evacuation of Japanese from
12 Certain Military Areas in the Western Defense Command, Chief
13 of Staff, U.S. Army."

14 Mrs. Zeidlik, what is the date on the top
15 of that page?

16 A June 5, 1943.

17 Q Could this book have been put out June 5, 1943?

18 A No.

19 Q So then very clearly --

20 THE COURT: You say that because it had to
21 be printed after that?

22 THE WITNESS: That's correct.

23 Q (by Mr. Stone) So then very clearly, the dates in the
24 book do not necessarily relate to printing dates; isn't that
25 right?

1 A That's correct.

2 MR. HALL: That's a leading question.

3 THE COURT: Oh, I think it's so obvious
4 that I'll leave it in there.

5 Q (by Mr. Stone) Finally, Mrs. Zeidlik, -- could the
6 clerk hand her A-43?

7 While the clerk is finding A-43, the red
8 volume transmittal letter date, the transmittal date on the
9 letter in the red volume is what date again, Mrs. Zeidlik?

10 A 19 July 1943.

11 Q Okay. And the underlying letter from the Western Defense
12 Command in it is?

13 A June 5th, 1943.

14 Q And the transmittal letter in the black version, can
15 you give me the date on that?

16 A April 15th, 1943.

17 Q Okay. Now I'd like to direct your attention to A-43.

18 THE CLERK: Just a moment, Mr. Stone.

19 MR. STONE: I have an extra copy if you
20 would like one.

21 THE CLERK: That would be fine.

22 Q (by Mr. Stone) From that document can you tell me what
23 final proof date -- the date of the final proof that's being
24 destroyed in that document?

25 A May 15th, 1943.

1 Q Does that lead you to believe that there's an awful lot
2 of proofs of this document?

3 A Yes.

4 THE COURT: Why don't we do this: Why
5 don't we ask her, "What does that indicate to you?"

6 Q (by Mr. Stone) What does that indicate to you, Mrs.
7 Zeidlik?

8 THE COURT: This is A-43. Right?

9 A That would indicate there were many versions of the
10 document.

11 Q And am I correct that I interpret your direct testimony
12 that in various movings over the records over the last forty
13 years, we no longer have a complete total trail of all the
14 versions and all the documents?

15 A That's correct.

16 MR. STONE: Thank you. I have no further
17 questions.

18 MR. HALL: No questions.

19 THE COURT: All right. We did it right on
20 the dot.

21 You then are excused. You may stay in
22 court if you want to or go back to Washington. You talk to
23 Mr. Stone, of course, about that.

24 THE WITNESS: Thank you.

25 THE COURT: Be careful of that step as you

1 step down.

2 (Witness excused.)

3 THE COURT: Let's see. Tomorrow is
4 Thursday. How many more witnesses do you think you'll have?

5 MR. STONE: I've cancelled two or three,
6 Your Honor, and I think we should be through them if not by
7 lunch, by the first break after lunch.

8 THE COURT: All right. Then we should be
9 able to finish tomorrow with the evidence?

10 MR. KAWAKAMI: I hope so, Your Honor.

11 THE COURT: All right. That's fine. I
12 guess I don't need to see you at 9 o'clock so I'll see you
13 at 9:30 tomorrow morning.

14 (Court adjourned.)
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