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National Council for Japanese American Redress

September 22, 1984

Dear Friends:

We would like to acknowledge the kind assistance of Nicholas V. Chen, Esq., who has given a great deal of his time and energy in educating groups and individuals on the merits of the class action lawsuit to obtain justice through the courts for Japanese Americans affected by their 1942 exclusion from the West Coast and subsequent detention, in putting us in contact with Congressional staffers regarding a proposed bill which, if passed by Congress, would permit us to file a suit against the federal government, and in helping NCJAR to disseminate information, such as the material enclosed*, to interested parties.

Nick Chen, through the headquarters office of his lawfirm, Kay, Scholer, Fierman, Hays & Handler, has been serving pro bono and we are grateful for his unswerving support.

Aiko and Jack Herzig

*Testimony given before the House Judiciary subcommittee on Administrative Law & Governmental Relations on redress bill, H.R.4110, September 12, 1984.

An Issue for All Americans

The full written statement by Jack Herzig is available for \$3.00 (includes postage). Please make check payable to Redress Legal Fund, 325 W. Diversey Parkway, Chicago, IL 60614. National Council for Japanese American Redress)

JAPANESE AMERICANS AND "MAGIC"

Oral Testimony*

By John A. Herzig, Lt. Col., U.S. Army (Ret.)

Mr. Chairman and members of the Committee, thank you for this opportunity. I am John Herzig, Lt. Col., U.S. Army (Ret.), a former Regular Army counter-intelligence officer.

After the Commission on Wartime Relocation and Internment of Civilians had submitted its findings to the Congress in early 1983, several newspaper articles appeared criticizing the Commission's report on grounds that it ignored the role of MAGIC intercept cables in the decision to exclude and incarcerate the west coast Japanese Americans in 1942. These stories accused the Commission of "shoddy research and workmanship," and are attributed to, or written by, one man, a former official of the National Security Agency, who testified before your Committee on June 27, 1984. Last month in Los Angeles, he presented the same information to Sen. Ted Stevens' subcommittee at a hearing on S.2116, the counterpart to H.R.4110. He had not contacted the Commission during its hearings and research period, despite wide publicity given to it by Hawaii newspapers, radio, TV and magazines, where he lived. I have over two dozen articles from Hawaiian papers ranging from May 1980 through February 1983 concerning the establishment of the Commission, its hearings, and its report. He has directly attacked the loyalty of Japanese Americans and is attempting to overturn the findings of the last 40 years of authoritative historians on this subject, using only a few unevaluated cables to support his premise. The people and the Congress deserve to have his allegations analyzed. Details of my statement are contained in the written testimony that I have submitted. I do not, in any way, act on behalf of the former Commissioners, nor have I contacted or have been contacted by any of them or John J. McCloy about my testimony.

Mr. Lowman said living in Hawaii, he had not known about the Commission.

David Lowman's attack on the Commission and on the loyalty of Japanese Americans is a mixture of fact and fantasy. The facts are that the U.S. had developed a system of intercepting Japanese diplomatic coded cables and this system was called MAGIC. It was a valuable source of information on Imperial Japan's actions and plans. MAGIC was only one source of raw information. Intelligence production is the collection of all available data from all sources. Secretary of

*Hearing before the House Judiciary subcommittee on Administrative Law and Government Relations, Washington, D.C., September 12, 1984.

War Stimson recognized this, and procedures for handling MAGIC were drastically revised in January of 1942. Prior to that time MAGIC had been passed along without attempts to supplement it with collateral intelligence, an obvious and recognized weakness in accepting the information in MAGIC cables alone. The fantasy part of Mr. Lowman's statement is the interpretation of and additions to 47 MAGIC cables and intelligence authorities he has cited. Equally important are those portions of statements from his secondary sources that he has chosen not to include.

He charges that the Commission was ignorant of MAGIC. However, a review of the verbatim transcripts of the Commission hearings clearly indicate that MAGIC was discussed, and that Mr. McCloy was indeed questioned as to espionage by Japanese Americans on the west coast. At that time Mr. McCloy mentioned MAGIC only in connection with the war in the Pacific but not in relation to Japanese Americans. He mentioned that they were only a potential threat.

Mr. Lowman stated that Gen. DeWitt's intelligence staff had received information based on MAGIC messages indicating disloyal acts by Japanese Americans. This was completely refuted by the testimony of Gen. DeWitt's chief of counter-intelligence, who said he had no information concerning espionage by Japanese Americans.

One of today's witnesses, Col. Karl Bendetsen, was described in "Who's Who in American, 1948-49," as the officer who "prepared the executive order [9066] ... conceived [the] method, formulated [the] details and directed [the] evacuation..." Archival documents also indicate that he was instrumental in developing Public Law 503, the legislation which provided penalties for violation of E.O. 9066. Col. Bendetsen was specifically asked by the Commission if there was any information concerning espionage or sabotage by Japanese Americans and he replied that he had received no such information.

In further refutation of Mr. Lowman's contention that MAGIC was a factor in the decision to exclude and detain the Japanese Americans, testimony from official representatives of the Army, Navy, Justice, Interior, and State Departments gave no evidence to the Commission that MAGIC was a consideration. Dr. David Trask, U.S. Army historian, when asked by this committee in June of 1984, answered specifically that he had no reason to believe that MAGIC had an impact on the decision to expel persons of Japanese ancestry from the west coast.

Out of the more than 2,000 MAGIC cables which appear in the Defense Department's published history of MAGIC, Mr. Lowman cites 47 messages to support his thesis. The cables he has chosen as references are a strange mixture; most are either to or from Tokyo and Latin American countries and have no relevance to Japanese Americans. Of the remaining cables, only six mention second generations, and these are either from Tokyo -- some with suggestions to recruit second generations, among other groups -- or they originate from Japanese consulates reporting their plans and hopes to use Nisei for intelligence activities. One would expect to see spy reports about American war plans, our codes and ciphers, details of the Norden bombsight -- all of which would clearly indicate, as Mr. Lowman implies, that Japanese Americans were the source of such data. Mr. Lowman acknowledges that when he says, "...agents were to be contacted. They were to include both aliens and citizens." No evidence of success in recruiting Japanese Americans as spies is contained in any of these cables.

Here is one example of Mr. Lowman's overstatement of his case. He cites MAGIC messages #428 and #429, dated September 16, 1941, as espionage nuggets, and states that the information in them was obtained through espionage. He also implies that Japanese Americans were the spies from whom this data came. An examination of these nuggets show that they came from the Los Angeles Japanese Consulate. They mention amounts of government contracts given to various west coast aircraft plants for production of medium and heavy bombers and P-38 pursuit planes, and they give the amount of the payroll and number of employees at these plants. One message also reports that some of this production is designated for the British. But the text of the messages give no indication that the data was obtained through espionage. As a matter of fact, within ten days prior to those cables, at least two Los Angeles Times articles reported that Douglas, Consolidated, and Vega were awarded multimillion dollar contracts to produce heavy bombers, P-38 pursuit planes, that Douglas employed 35,000 persons, and that some planes were scheduled for delivery to the British. So, rather than having to smuggle a spy with Asian features into an aircraft factory, the same data was easily collectible by any reader of the local newspapers. An objective and serious researcher would not resort to embellishing data to fit a preconceived conclusion.

Mr. Lowman resorted to an attack on the integrity of the Commission itself. In one instance he accused it of having to rely on Commander Kenneth Ringle's report "because he was the only Naval Intelligence Officer that the Commission was able to find who thought the evacuation was not necessary." The validity of the Ringle Report that had been ordered by the Chief of Naval Operations was attested to by Dr. Dean Allard, the head of the Operational Archives Branch of the Naval Historical Center. Dr. Allard's testimony before the Commission that the Navy had taken no position on the need for evacuation directly contradicts Mr. Lowman's misleading statement that the Navy officials supported the evacuation.

→ Again relying on what is his sole primary resource, MAGIC, Mr. Lowman criticizes the Commission for referring to a "couple of amateurs," John Franklin Carter and Curtis Munson. Munson carried on an investigation and reported to Carter that there was no reason to believe the west coast Japanese presented any particular security problem. The study was funded through Carter who, in turn, was one of Pres. Roosevelt's covert investigators. The President had set up Carter to provide information outside the formal intelligence structure and supported him with hundreds of thousands of dollars and the prestige of the Office of the President. Carter's reports to Pres. Roosevelt fill an impressive number of 18 archival file boxes in the FDR Library. Because Mr. Lowman was unaware of Carter's operation, that does not qualify him to call Carter and Munson amateurs.

There are several larger issues involved beyond the exclusion and detention of the Japanese Americans. In 1940 and 1941 beaches on our east coast were awash with oil and debris from Allied ships sunk by Nazi submarines. American Nazis were drilling in the streets of New York City and assaulting Jews in the subways; they had training camps in rural areas, and their own radio stations through which they contacted Berlin. Why was no serious question raised as to the danger of 5th column activities of the 20,000-member German American Bund, or of evacuating alien enemies of all Axis countries from the vicinity of our seaports and military installations on the east coast? Selective justice is no justice at all.

→ It is even more ironic to know that Nazi spies were indicted for espionage in the fall of 1941. Their targets included eight of the aircraft factories in the Western Defense Command under Gen. DeWitt's jurisdiction. Yet he took no mass action against the 26,255 German alien enemies in his area, despite very specific espionage operations against what Mr. McCloy has referred to as "our second line of defense." Yet DeWitt would incarcerate Japanese American citizens.

Allow me to comment on Mr. McCloy's testimony here when he stated that the incarceration of Japanese Americans permitted another year's production of heavy bombers, and that these bombers were instrumental in the Battle of Midway, the turning point of the Pacific War. First, the Battle of Midway occurred in June of 1942, not 1943, as Mr. McCloy had indicated. Secondly, there is no relationship between bomber production and the incarceration of the west coast Japanese residents. To infer otherwise is false and misleading. It was not one year for bomber production but 3½ months between the signing of E.O. 9066 and the victory at Midway. By that time the Japanese Americans, under armed guards, were already in, or on their way to, the horse stalls at Santa Anita and other assembly points, but not yet in permanent camps. If, as Mr. McCloy stated, he knew that that significant battle had turned the tide of victory in our favor and that we would now certainly win the war, what prevented the government from reversing the movement and further mistreating the Japanese Americans by continuing to place them in the camps? Lastly, it is an incontrovertible fact that the B-17s and B-26s of the Army Air Force were absolutely ineffectual in the Battle of Midway and that it was the Navy dive and torpedo bombers, fighters and even reconnaissance planes that led to the victory, although they suffered terrible losses.

Mr. McCloy made a very startling statement in his written testimony, and I quote: "It is indisputable that the direct and proximate cause of the President's decision was the [Pearl Harbor] attack itself and nothing else." He did not say it was the state of war, but specifies the attack as the reason. He gave this same opinion as a witness before the Commission, that Japanese Americans were removed and imprisoned as "retribution for the attack that was made on Pearl Harbor." This is an amazing statement. What does this do to the heretofore officially-stated argument that "military necessity" and "protective custody" were the reasons for excluding, then confining the west coast Japanese population?

One of your colleagues, Rep. Samuel Stratton, made some erroneous statements before your Committee on June 27th. He said that two days after the attack on Pearl Harbor a Japanese submarine fired several shells along the Pacific Coast. In fact, the first of three submarine attacks against the continental United States in World War II occurred on February 23, 1942, some 11½ weeks after the December 1941 attack. Also, this was four days after the signing of E.O. 9066, so those who say that the detention was justified because of Japanese attacks on our west coast have the sequence of events confused; therefore, their excuse collapses.

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Then Mr. Stratton stated that in the days following the Pearl Harbor attack, "German saboteurs had already hit the East Coast." He continues, "Certainly, it was reasonable to believe that ethnic Japanese saboteurs might well do the same thing on the West Coast." In fact, German would-be saboteurs landed on Long Island, New York, at midnight June 12, 1942, and near Jacksonville, Florida, on June 17, 1942 -- again, four months after E.O. 9066 had been put into law, so the comment is historically wrong. Even more significant, however, is that it shows a kind of thinking that attempts to re-write history. It also typifies those who find it "reasonable to believe" that the "ethnic Japanese" might engage in similar activities simply because the Nazis had done so. This argument rejects the fact that Japanese Americans never did the the same things as the Germans and, as I stated before, these persons were, by June of '42, already under Army control.

Ninety-one persons were convicted of spying in the U.S. during 1938-1945 -- 64 of whom were American citizens. Not one of these 64 was a Japanese American. Suppose one case of espionage by a Japanese American had been found, or ten cases, or a hundred -- would even that have provided reason to incarcerate 1,000 times that number of innocent persons? That is the theory of retaliation practiced by the Nazis.

Every nation seeks a scapegoat for its problems. This is exemplified in the treatment of the Japanese Americans by their own government. Had the same standards for "loyalty" been applied to Italian and German Americans, a huge number would have suffered a similar fate. Among them would have been General Walter Krueger, one of MacArthur's senior Army commanders, a German-born, naturalized American citizens. There would have been a countless number of the country's top social, political, and military leaders and their families "evacuated" and uprooted from their homes.

Mr. McCloy has made a disturbing suggestion: He testified that the government should not be restricted, for example, in "moving those people out" if Cuba were to invade Florida!¹ Ethnicity must not be equated with loyalty. Suspensions, assumptions, and unsubstantiated allegations about an ethnic minority, then as now,

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Transcript of testimony by John J. McCloy, p. 42, hearing before the Commission on Wartime Relocation & Internment of Civilians, November 3, 1981 (NARS Record Group 220).

provide fertile grounds for discriminatory action. This is clearly set forth in the findings of the Commission report, based on concrete facts, substantial testimony, and sound research.

David Lowman's claim that the government was justified, based on MAGIC, in doubting the loyalty of Japanese Americans, and his charges that the Commission was ignorant of the intercept cables are refuted by authoritative documentation in this analysis. His conclusions lack factual support.