Rachel Maddow presents: Burn Order
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Episode 5: Sheep and Goats

What the Supreme Court wasn't told

As the cases of the four Japanese Americans challenging the U.S. government's mass incarceration policy arrive at the Supreme Court, a crisis suddenly erupts inside the Justice Department and the War Department as the true motivations behind the policy are now at risk of being revealed. A fierce battle is waged inside the government over whether to disclose the information to the courts, or cover it up.

Rachel Maddow: The article appeared in Harper's Magazine. And there was a little mystery as to how it got in there. The byline said it had been written by "An Intelligence Officer," but that's all it said. No other identifying information. No name. In the spring of 1943, this anonymous article by some anonymous person purporting to be an intelligence officer, it landed on the desk of Justice Department lawyer Edward Ennis.

Edward Ennis, at that moment, was in an unenviable and stressful position at his job. He had been one of the most insistent, most impassioned voices inside the Justice Department fighting to try to stop a policy that he believed was unconstitutional and immoral. The mass incarceration of Japanese immigrants and Japanese American citizens on the U.S. West Coast.

Edward Ennis: It was an unnecessary military act and perhaps the greatest violation of civil liberties in the United States.

Rachel Maddow: Edward Ennis had lost that fight. But now in the spring of 1943, the policy is being fought in court. Four young Japanese Americans—Gordon Hirabayashi, Min Yasui, Fred Korematsu, and Mitsuye Endo—are challenging their incarceration, and their cases are all heading to the U.S. Supreme Court. And in a kind of twisted irony, at the Justice Department, it's him, Edward Ennis who is put in charge of preparing the government's defense against those cases.

Edward Ennis: My office prepared the briefs for the government in Korematsu, Yasui and Endo, which, as I say, is a curious commentary on the responsibility of the Department of Justice, in defending policies which it, in fact, opposed.

Rachel Maddow: It is certainly not the job he wanted, but it's the job he has. And so Edward Ennis puts his feelings aside. He gets to work. He starts looking for evidence that will help DOJ defend the incarceration policy in court. And it is during that search when this anonymous article from Harper's Magazine lands on his desk. The headline on the article is: "The Japanese in America. The Problem and the Solution."

This anonymous intelligence officer says in the article that Japanese Americans quote, "could be accorded a place in the national war effort without risk or danger." He says Japanese Americans were more than eager to help U.S. counterintelligence against Japan's spying efforts in the United States.

He says Japanese American communities are loyal—he says they pose no threat to the U.S. or the war effort. He says any concerns about loyalty or any other security risks can and should be handled on an individual basis. The Harper's article also makes clear that these expert conclusions, these intelligence findings, have been conveyed up the chain.

Well, that's odd. Because everything in this article, Edward Ennis knows, is the opposite of what the architects of this policy have told him. It's the opposite of everything he and the Justice Department are preparing to tell the Supreme Court, to defend this damn policy. Why is this in Harper's Magazine of all places, and who is this anonymous intelligence officer? Edward Ennis decides he needs to find out. He starts calling around to friends inside the government, asking if anybody knows the mystery man behind this article. And of course it doesn't take long. He gets the name. He finds out that the author of this piece is Naval Intelligence officer Ken Ringle.

Kenneth Ringle: Somebody saw the Ringle Report and gave it to Harper's, and they asked him if they could use it. And he said, "Well, I've got to check with my superiors." And they said, "You can use it, but you can't use his name."

Rachel Maddow: This is Kenneth Ringle, the son of Naval Intelligence officer Ken Ringle. By the time Ringle's anonymous article had come out in Harper's Magazine, he was actually out at sea with the Navy. He was out fighting this war.

Kenneth Ringle: He was in the South Pacific. He was busy being shot at.

Rachel Maddow: While he was in the South Pacific, somebody who had seen Ringle's intelligence report on Japanese Americans had apparently shown it to Harper's, in the belief that the public should see what U.S. military intelligence had concluded. The public should know that military intelligence didn't support this policy of locking up all these immigrants and U.S. citizens. That they were not a risk.

Kenneth Ringle: He was proud of it, that it got in Harper's, but he was proud of it mostly because it got the point of view across. He was very gratified by that. It was too little, too late, but it was better than nothing.

Rachel Maddow: It was too little too late. Yes and no. Edward Ennis figures out that it is Naval Intelligence officer Ken Ringle who has written this piece in Harper's. He then pursues it. He decides to run it down. He gets his hands on the source material—the official military intelligence document that was the basis for this article in the magazine. He gets a hold of the report that Ringle had rushed to finish before the Army could jam through its plan to lock up all Japanese Americans on the West Coast.

Chuck Rosenberg: The government in court was largely deferring time and time again to the military's view that internment, mass internment, was a necessity. And Ringle found something quite the opposite.

Rachel Maddow: Former Justice Department official Chuck Rosenberg.

Chuck Rosenberg: What Ringle found was there was no justification for the mass internment of Japanese Americans.

Rachel Maddow: In addition to getting his hands on Ringle's report, Ennis also discovers that between the Army and the Navy, the Navy had been given responsibility for intelligence issues related to Japan. And that means that when General John DeWitt and Karl Bendetsen said that it was the U.S. military's assessment that mass incarceration of Japanese Americans was a military necessity, they were lying when they said that. So, if you're a lawyer who has discovered this information, if you're Edward Ennis, what do you do now?

Chuck Rosenberg: Ennis thought that this was very important, important for the courts to know. Important for the Justice Department to articulate. Ennis was concerned that the Ringle Report was something that the courts had to know about. And the Justice Department had to tell them.

Rachel Maddow: And so Ennis wrote to the man whose job it was at the Justice Department to argue these cases before the Supreme Court. He wrote to Solicitor General Charles Fahy. Ennis says to him, in effect, hey, this undercuts the government's whole defense of this policy. Edward Ennis raises the alarm. He tells the solicitor general of the United States that he has to let the Supreme Court know. They have to be told. What happened next, what happened in response to Ennis raising that alarm, would become one of the most consequential and malignant cover-ups in U.S. history. One that worked in the short run. But in the short run only, before it all came apart. I'm Rachel Maddow, and you're listening to "Rachel Maddow Presents: Burn Order."

Aiko Herzig-Yoshinaga: We cannot have an official document that's full of this kind of nonsense.

Chuck Rosenberg: The Supreme Court wasn't told the things that it should have been told.

Frank Abe: Bendetsen ordered that the burning and destruction be witnessed and recorded and documented in writing.

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Rachel Maddow: Episode Five: Sheep and Goats.

At the U.S. Department of Justice, it's the lawyer's equivalent of pulling the fire alarm. Edward Ennis, a senior lawyer at DOJ, he's the head of the Alien Enemies Control Unit, he goes to paper. He sends a tense, terse memo to the solicitor general of the United States.

Chuck Rosenberg: Ennis writes a memo to Fahy. He, as we sometimes say at the Department of Justice, goes to paper.

Rachel Maddow: Ennis has just discovered the existence of the Ringle Report, the U.S. military intelligence findings on Japanese Americans that explicitly and entirely undercut the government's purported justification for its radical new policy of mass incarcerating all Japanese Americans. One of the protections we get from our U.S. Constitution to ensure that everybody gets a fair trial is that

every prosecutor has a duty to tell the whole truth, to disclose to the court any evidence that he or she knows about that might cut against their case. Well what Edward Ennis had was evidence that definitely cut against the government's case. Ennis' message is very clear—if you don't tell the Supreme Court about the Ringle Report, if you don't tell the Supreme Court that the Army had evidence that their incarceration policy was unjustified—well, that's a cover-up. That is illegal suppression of evidence.

Chuck Rosenberg: Not only does he reduce this to writing, but he writes, "It occurs to me that any other course of conduct might approximate the suppression of evidence." And I don't think anybody in the Department of Justice could read that and not understand how serious Ennis was about this issue.

Rachel Maddow: Edward Ennis does his job. He tells the solicitor general that he has to let the Supreme Court know about Navy intelligence's findings. And then it got worse. In the course of preparing the Justice Department to defend these cases in court, Ennis and other DOJ lawyers get in touch with the FBI. They ask the FBI about those fantastical and conspiratorial stories that were spread after Pearl Harbor—about supposed sabotage by Japanese Americans on the West Coast. The arrows of fire in the fields, using flashlights to secretly signal Japanese pilots. Justice Department lawyers ask the FBI if they had ever investigated any of those claims. The FBI tells the Justice Department, yeah, we did look into all of that, we found that it was all bull. And that's what we told the Army at the time. That's what we told General DeWitt's Western Defense Command. Justice Department lawyers then went to the FCC to ask them if there was any truth to the Army's claims that Japanese Americans had been using radios to signal to Japanese boats and submarines. And they got back an answer very similar to what they'd heard from the FBI. The FCC told them that they had investigated those claims thoroughly, there was no truth to those claims, and that they had conveyed that information at the time to the Army. Here's writer and historian Frank Abe.

Frank Abe: The Justice Department lawyers went back to the FBI and the FCC and verified, confirmed that these stories were lies.

Chuck Rosenberg: Both the FBI and the FCC had done investigations which undermined the notion that Japanese Americans living on the West Coast were committing acts of sabotage. It turned out to be essentially no truth to that whatsoever.

Rachel Maddow: Findings from the FBI. Findings from the FCC. Findings from Naval Intelligence and the Ringle Report. It's all documented evidence that Japanese Americans on the West Coast posed no threat to the United States, and importantly that the Army knew that, that the Western Defense Command knew that when they said they wanted to lock them all up anyway.

This is a fairly shocking pile of evidence to discover while at that moment there are more than 100,000 Japanese immigrants and Japanese Americans who are still locked up in prison camps because of this policy. It is a moral disaster. It's also a legal disaster for the Justice Department. The whole point of digging up all of this evidence was to try to defeat the legal challenges to the incarceration policy in court. Mass incarceration of Japanese Americans had been justified as a matter of military necessity. The Army—supposedly in good faith—believed that incarcerating all

Japanese Americans on the West Coast was the only way to keep the country safe. Well, what Edward Ennis had his hands on now is a pile of evidence that proves the exact opposite. When the Justice Department argued before the Supreme Court that the mass imprisonment of Japanese Americans was legal and justified, DOJ never revealed to the justices any of these things. So, when they were deciding the legal challenges brought by Gordon Hirabayashi, and Min Yasui, and Fred Korematsu, and Mitsuye Endo, when the justices were deciding whether the government had the right to keep Japanese Americans in prison camps, the justices were not told that the Ringle Report existed. They were not told that the FBI and the FCC had debunked all the crazy sabotage claims. Because the solicitor general—despite that warning from Ennis—he just decided not to tell them.

Chuck Rosenberg: All the things that the line attorneys in the Department of Justice knew and believed, which would've been material to the hearing and to the determination by the Supreme Court whether or not this was a lawful and constitutional policy of the executive branch, they weren't included. The Supreme Court wasn't told the things that it should have been told.

Rachel Maddow: DOJ never handed over any of this stuff to the court.

Chuck Rosenberg: Ennis obviously felt passionately and worked hard within the Justice Department to surface the Ringle report. On the other hand, he signs the briefs that are filed in the Supreme Court that omit mention of it. I imagine he was conflicted. I imagine he was angry. I imagine he was frustrated. But there is a degree of capitulation here, too.

Rachel Maddow: Years later, Edward Ennis said, "Now when I look back on it, I don't know why I didn't resign." And there was one more damning piece of evidence that was kept from the Supreme Court. And this one, it was something that not even the lawyers at the Justice Department knew about. As part of his fact-finding mission to prepare for these cases, Ennis had requested that the Army should turn over to him any published material they had about the mass incarceration policy. DOJ had to have everything the Army had produced that related to that policy if they were going to defend that policy in court. The Army, it turns out, did have something that they never handed over. Something important. It was a report on the whole policy—and how the policy came to be and how it was carried out. It was a report written by the architect of mass incarceration, Karl Bendetsen, who wrote it on behalf of General John DeWitt. Bendetsen's report described the prison camps as pastoral, happy places. It explained how he had used census data and other sensitive government documents to effectively hunt down Japanese Americans. It explained the logistics of how the camps were set up. It laid out also the Army's assertion that it was military necessity to do it, military necessity to put these tens of thousands of Japanese American families under military guard.

Frank Abe: Passages which said it was impossible to establish who among the Japanese Americans were loyal to the U.S. or disloyal. And it was simply a matter of fact that it was impossible to separate the sheep from the goats.

Rachel Maddow: The sheep from the goats. The loyal from the disloyal. Even with all the time in the world to look at everyone individually, it would've been pointless to even try to do that with people of Japanese descent, since their loyalty, inherently, could never be discerned. Karl Bendetsen laid out in this report his justification for the policy that he had devised, and what he laid out was that it was

based on the immutable racial characteristics of the Japanese people, his own assertion that as a race, they could never be trusted. Bendetsen writes in this report that all people of Japanese descent are members of a quote “enemy race,” and must be dealt with accordingly. The fact that Bendetsen and DeWitt had put this all down in print—this was not wise. This was going to be a problem.

Frank Abe: This was clearly racial. It was an overtly racist statement that was flatly unconstitutional.

Rachel Maddow: Karl Bendetsen writes this up as the final report explaining the policy of mass incarceration of Japanese Americans on the West Coast. He prints 10 copies of it. And he has each of the 10 copies bound like a book.

Frank Abe: Bendetsen had printed 10 copies of this final, this original final report without asking permission. And when the War Department saw this—when John J. McCloy saw this—he flipped out.

Rachel Maddow: Assistant Secretary of War John McCloy hits the ceiling. He understands instantly that this thing is a bomb ready to go off in court. McCloy had not known what was going to be in this report. He had not authorized its printing and its binding and its distribution. He certainly hadn’t authorized Karl Bendetsen to admit in print that the Army’s whole justification for mass incarceration had been a provable and outrageous lie. McCloy orders Karl Bendetsen to clean this mess up.

Frank Abe: He ordered Karl Bendetsen to rewrite the final report to remove overtly racist statements that were flatly unconstitutional, in favor of the more politically palatable party line, that the mass removal was driven by the lack of time to determine loyalty.

Rachel Maddow: Karl Bendetsen gets his orders. He has to erase the part about the sheep and the goats and instead get back to the party line that mass incarceration was a military necessity. It was a military necessity because there was no time to do it any other way, no time to individually assess people and give them individual justice. McCloy told Bendetsen effectively to lie—to take all that stuff out, to change the report, and then pretend that the original had never existed. And as far as Assistant Secretary of War John McCloy is concerned, this sort of solves the problem. There is now a squeaky-clean new version of the final report ready to send over to the Justice Department, ready to show the court.

But what about the old one that he told Bendetsen to get rid of? What about that mess? What if anybody ever saw that? Well, Bendetsen had a solution for that, too.

Frank Abe: Bendetsen recalled all 10 copies of this printed final report and ordered that they be burned and that the burning and destruction be witnessed and recorded and documented in writing.

Rachel Maddow: Karl Bendetsen issues a burn order. He orders that all 10 copies of his original report should be returned to him—removed from the files anywhere in the military, removed from the files in the War Department. He orders that all copies of this document must be incinerated, as if they never existed. He receives a memo from a warrant officer certifying that the deed has been done. Quote, “I certify that this date I witnessed the destruction by burning of the galley proofs, galley pages, drafts and memorandums of the original report of the Japanese evacuation.” The original

report was never given to the Justice Department. It was never shown to the court. Other than the burn order, there was no reference that it had ever existed. In addition, the solicitor general kept from the court Ken Ringle's military intelligence assessment. He kept from the court the FBI and the FCC's debunking of all the sabotage conspiracy theories. The Supreme Court wasn't told about any of these things, despite the fact that all of them were central and relevant evidence for these cases.

And then the court's rulings started coming down. In the case of the Seattle college student Gordon Hirabayashi, the Supreme Court upholds his conviction. In the case of Min Yasui, the young lawyer from Portland, the Supreme Court upholds his conviction. In the case of Fred Korematsu, the young welder from Oakland, the Supreme Court upholds his conviction. In a series of decisions that will live in infamy, the Supreme Court gives the government the green light for this policy. The Supreme Court upholds the government's right to incarcerate every Japanese American who contested this policy. Except one. The one the government had been most afraid of from the beginning.

Frank Abe: Endo's case was found to have violated the principle of habeas corpus and the Supreme Court ruled in Endo's favor.

Rachel Maddow: Mitsuye Endo, the secretary from California, who turned down a plea deal, a chance to go free herself, she instead chose to stay in the prison camps so her case hopefully could free them all. Her case, it worked. The Supreme Court ruled unanimously that her incarceration violated the Constitution.

Chuck Rosenberg: They rule unanimously that she should be given her liberty. The government has no authority to subject citizens who are concededly loyal. A citizen who is concededly loyal presents no problem of espionage or sabotage. Justice Douglas goes on to write that loyalty is a matter of the heart and mind and not of race, creed, or color.

Rachel Maddow: With the Endo decision comes the undoing of the policy. The Army actually announced that they would be closing the camps the day before the Endo ruling came down from the Supreme Court. That was likely not a coincidence.

Chuck Rosenberg: It seems that the decision was leaked before officially issued. The military issued Public Proclamation Number 21, essentially announcing the end of internment for Japanese Americans. So was the timing of Public Proclamation Number 21 on December 17, one day before the Endo decision was issued on December 18, a coincidence? Most scholars think not.

Rachel Maddow: Most scholars think not. With Mitsuye Endo's case—with her victory at the Supreme Court—the military orders that all the camps must close. It wasn't principled politicians in Washington, it wasn't mass protests in the streets. It was four stubborn, independent young Japanese Americans who took this fight on themselves when nobody else would. And in the end, of course, the U.S. wins the war. American troops return home. And then the country moves on. There is no immediate reckoning with what the government has just done to tens of thousands of its own citizens. Nor are there any immediate consequences for the architects of this policy. Including for the suppression of evidence, the lies, the burn order—it all stays buried. But not forever.

Aiko Herzig-Yoshinaga: I noticed in the margin many handwriting: “delete,” “scratch,” “change to,” “move to page so and so.” And, oh, my goodness, you know, this is one of the first versions.

Rachel Maddow: And that is next.

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Rachel Maddow: Aiko Herzig-Yoshinaga was 54 years old. A retired clerical worker. A housewife. Happily married to her husband Jack, who was a retired Army paratrooper. They were living in Washington, D.C. One afternoon in the late 1970s, Aiko took a drive to the FBI. Kind of just for fun. As you do.

Aiko Herzig-Yoshinaga: I decided I’d like to know what kind of information the FBI had on me for having marched in the streets of New York, anti-Vietnam War demonstration and all that. So I wondered if the FBI had anything on me.

Rachel Maddow: In the 1960s, Aiko had been active in the protest movement against the Vietnam War. That’s years ago now, but she’s retired, she has some time on her hands, and she figures it might be interesting to see if the FBI ever opened up a file on her, during her activist days. On that, she comes up empty-handed.

Aiko Herzig-Yoshinaga: I went down and they said, “No, we don’t have anything. Maybe New York office has.” But nothing on me.

Rachel Maddow: After she hits that dead end, Aiko decides to pursue something else. To see if there might be anything new to learn in the government’s files about a different chapter of her family history. Aiko Yoshinaga was a high school senior when she and the rest of her family were rounded up by the government and put into prison camps. She’d been a great student—she was an honors student at high school—but she hadn’t been allowed to graduate or get her diploma. The principal at her high school told her and other Japanese American students that they didn’t deserve to get a diploma because they were Japanese, and because Japan had just attacked America. Aiko spent several years in the camps. She had her first baby there, when she herself was just a teenager. But all that was decades ago, and now, in her retirement, with this bit of time on her hands, she decides she’ll just check to see. Maybe the National Archives has records about her family’s time in the prison camps.

Aiko Herzig-Yoshinaga: And I decided, “Well, I want to find out what they have in terms of the camp life on my family.” So that started me out.

Rachel Maddow: At first, she starts going to the archives once a week, for a few hours at a time. Then once a week becomes once a day. A few hours at a time turns into 12-hour sessions. She sometimes enlists the help of Jack, her husband. She taps into her years of experience as a clerical worker not only to wade through these dusty boxes and files but also to start trying to make sense of it. She starts cataloging it essentially, rationalizing all these disparate puzzle pieces that are all jumbled up in these archives.

Aiko Herzig-Yoshinaga: I guess my training and my experience made me look at a lot of the little trees, not just the forest, but the details, and to try to connect dots.

Rachel Maddow: Pretty quickly after she starts this work, it's clear that there's nobody out there who knows these archives any better than she does. She started all this as a hobbyist researcher. But she is becoming the leading expert anywhere on what the government knows. What the government knew. What's in the files.

By the time Aiko has begun frequenting the National Archives in the late 1970s, something has started to shift in the country in terms of how we thought about what happened to Japanese Americans during the war. It was nearly 40 years in the rear-view mirror. But in the Japanese American community, in the younger generation in particular, something was shifting.

Frank Abe: Growing up in the '60s, our, my generation's idea was that there was this mysterious thing called "camp" that our parents would not talk about or they would talk about in the most general terms as if it were summer camp. Once we learned more facts, we would ask our parents, collectively, "Mom, Dad, why didn't you resist?"

David Mineta: Especially among my generation of folks that were wondering like, "What the heck, man? How, how did this happen?" And you know, sort of almost even the, "How did you even let this happen?"

Frank Abe: We grew up kind of resenting our parents for not talking about it and not understanding why they wouldn't talk about it, because to us it seemed so apparent how wrong this was.

Rachel Maddow: On Thanksgiving weekend in 1978, Frank Abe was part of a group of young Japanese American activists who organized what they called a Day of Remembrance in Seattle. The plan was to recreate the mass eviction of Japanese immigrants and Japanese Americans. It was a commemoration of the fact that it had happened in 1942, but it was also a rallying cry for what should maybe happen now. They worked around the clock for a couple of months organizing this event. They printed out posters that looked like the original wartime evacuation orders. They hung them on telephone poles in Seattle. They tried to put together the widest coalition of support within the Japanese American community—Christians, Buddhists, veterans groups, civil rights groups, advocacy organizations. Even some groups that had really disagreed with each other during the war years and after. They tried to get them all together. And they weren't exactly sure what to expect when the Day of Remembrance finally arrived.

Frank Abe: We were shocked to find hundreds of people in their cars waiting to register.

Rachel Maddow: Hundreds of people, the morning of, waiting to register. More than three thousand Japanese Americans came out that day. The plan was to drive from Seattle, to form a chain of cars, to drive the same route that was taken nearly 40 years before when the U.S. Army brought Japanese Americans from Seattle to the nearby assembly center and then off to the prison camps.

Frank Abe: We formed a car caravan and the car caravan stretched down Interstate 5 for miles. As far as you could see, there were headlights of this car caravan.

Rachel Maddow: And inside that miles-long stretch of cars, Frank says something important started to change. That day. On that long drive.

Frank Abe: Inside the cars something interesting really happened. This event provided the context for these parents to finally open up to their children, and they started telling stories about, “Oh, yes, I remember riding down old Highway 99 when I was a child, a teenager, and what it felt like to see the farmlands passing by and saying goodbye to Seattle,” and slowly these stories would come out from the parents, and their children were amazed that their fathers and mothers were finally telling them these stories. And anthropologists would later write that it was, this burst open the tomb of Japanese American history.

Rachel Maddow: It burst open the tomb. These conversations in the cars that day, these experiences that had been buried inside,with all that pain and shame and real injury and anger, the stories all started coming out.

Here’s David Mineta again.

David Mineta: I think that opened up a lot of dialogue, a lot of healthy, important dialogue. All of a sudden now it’s generating discussion within families that had been dormant for decades.

Rachel Maddow: That discussion, these painful conversations within families, started to fuel a new, organized effort to figure out how the country had done this. To confront what had really happened. To start talking about the possibility of some kind of redress, maybe some kind of apology for what had happened. For those who had been just kids at the time of the camps, kids like Norman Mineta—

Norman Mineta: —and for a 10-, 11-year-old kid, this was, “Oh boy, an overnight train ride.”

Rachel Maddow: By the late 1970s, he definitely wasn’t a kid anymore. He was a man who was in a position to get something done. Norm Mineta had gotten involved in politics in San Jose. He had served as mayor of San Jose. And then he won a seat in Congress. He was the first Japanese American member of the House from the U.S. mainland. And in Congress, he helped lay the ground for a definitive investigation. A congressional commission to investigate the policy of mass incarcerating Japanese Americans.

Jane Pauley: A congressional commission is currently listening to testimony in Washington on one of the sadder periods of recent American history.

Roger Mudd: The commission was created to study how Japanese Americans were treated during World War II.

Rachel Maddow: The commission would need testimony from witnesses. It would need to hold hearings. But it would also need documents. They needed an expert on the government’s files.

Someone who knew better than anyone else what was in them. They hired as their lead researcher Aiko Herzig-Yoshinaga.

Aiko Herzig-Yoshinaga: I documented everything I got, exactly where I found it, what file, what box, what record group, so that when the commission wrote its report, people couldn't say, "How can that be?"

Rachel Maddow: Aiko Herzig-Yoshinaga was a master of the government files on this subject. She knew where every document was, and all the stories that they told. And she came to believe that one of the stories contained in the archives, one of the stories buried there, was the story of the U.S. Army realizing at the time that what they were doing was wrong. Or at least, that what they were doing was something that they better cover up.

Aiko Herzig-Yoshinaga: The records I saw showed that there was a lot of conversation—telephone as well as memos and cablegrams—depicting this disagreement about the original report.

Rachel Maddow: As Aiko sorted through the mountain of memos and files and cables, she started to uncover evidence of Bendetsen's report, the report where he wrote that it was impossible to separate "the sheep from the goats." Effectively that no person of the Japanese race could ever be considered loyal. Outside of the U.S. Army, outside of the people directly involved in this, nobody even knew that that earlier report had existed. Not until Aiko Herzig-Yoshinaga figured it all out.

What Aiko finds in the archives are cables, memos, notes, documenting this long-buried fight over Bendetsen's original report.

Aiko Herzig-Yoshinaga: Mr. McCloy called Mr. Bendetsen, Colonel Bendetsen, and raised hell with him. He said, "How, you can't do this. We cannot have an official document, with approval of the War Department stamp on it, that's full of this kind of nonsense."

Rachel Maddow: What she finds is evidence of the frantic effort to change and sanitize the original report.

Aiko Herzig-Yoshinaga: The records I saw showed lists of changes being made.

Rachel Maddow: She also found evidence that they buried the original draft. They buried the truth. So that they could pretend like it had never existed.

Aiko Herzig-Yoshinaga: I saw evidence of the frantic search for all ten copies to be destroyed.

Rachel Maddow: But she also found one brief mention, one passing reference, that made her think it might be possible that the destruction wasn't complete.

Aiko Herzig-Yoshinaga: There had been ten copies. Messages and cablegrams went back and forth between McCloy's office and the Western Defense Command saying, "Hey, we got nine copies back. Where is the tenth copy? We've got to find it." I never saw any documents saying, "Here is the tenth copy."

Rachel Maddow: Nine out of ten certified to have been incinerated. Decades after the burn order, if there was one surviving copy of the report, there really was just one person in the world who might recognize what it was. One person who was so well studied, so steeped in this history and its documentation, one person who might recognize that an old, unremarkable-looking, 40-year-old government report could be the lynchpin to exposing one of the biggest miscarriages of justice in U.S. history. For Aiko Herzig-Yoshinaga, it was just another day at the archives when something on the edge of a desk caught her eye.

Aiko Herzig-Yoshinaga: I saw this one report sitting on this archivist's desk. I didn't recognize it right away, but as soon as I opened it, "Wow." I noticed in the margin many handwritings: "delete," "scratch," "change to," "move to page so and so." And, oh, my goodness, you know. This is one of the first versions. I recognized this as that one, the 10th copy that was missing. And I told the archivist, I said, "Do you know what you have here?" It was luck. If I hadn't walked in that day, it might not have been there.

Rachel Maddow: Whether or not it was luck, there it was. This original report, paired with all the documents and the cables and the memos that she had found, this was the proof that the government had lied not just to the public and not just to the people they had put in prison. They had lied to the Supreme Court. And in court, you're not supposed to be able to do that.

Aiko Herzig-Yoshinaga: The government knew that there were certain things they should have told the Supreme Court. They relied on this book that was full of lies, alright, and didn't mention to the Supreme Court that this book is not truthful and that things had been changed.

Rachel Maddow: Aiko knew the historical significance of what she had just discovered. But she also knew this document could have legal significance too—that this evidence, this proof, could perhaps start to undo a decades-long injustice.

Aiko Herzig-Yoshinaga: I called Peter Irons right away.

Rachel Maddow: Aiko Herzig-Yoshinaga called up her friend Peter Irons. Peter Irons was another researcher who was digging into this chapter of history for his own reasons. Peter Irons also happened to be a trained lawyer.

Aiko Herzig-Yoshinaga: He came down from one of the universities where he was teaching at the time to confirm it. He said, "Oh, yes. This is it."

Rachel Maddow: This is what a new generation of Japanese-Americans have been waiting for.

Peter Irons: Here is something we can use. If we can do this, that can change American history.

Kenneth Ringle: One book refers to you essentially as the Adolf Eichmann of the American Japanese.

Karl Bendetsen: Well I cannot imagine that you would seriously entertain that.

Kenneth Ringle I don't, because—

Karl Bendetsen: Well, you are. You're seriously entertaining it because you're bringing it up. And just, what is your purpose in bringing it up? Is that what you think?

Rachel Maddow: And that is next time on the final episode of "Rachel Maddow Presents: Burn Order."

"Rachel Maddow Presents: Burn Order" is a production of MS NOW. This episode was written by myself, Mike Yarvitz, Kelsey Desiderio, and Jen Mulreany Donovan. The series is executive produced by myself and Mike Yarvitz. It's produced by Kelsey Desiderio and Jen Mulreany Donovan. Our associate producer is Vasilios Karsaliakos. Archival support from Holly Klopchin. Katie Lau is the senior manager of audio production for MS NOW. Additional audio engineering and sound design by Bob Mallory and Mark Yoshizumi. Bryson Barnes is the director of podcasts and livestreaming for Versant Media. Our web producer is Will Femia. Our senior executive producers are Cory Gnazzo and Laura Conaway. Aisha Turner is the executive producer for MS NOW Audio, and Madeleine Haeringer is the senior vice president for audio, digital, and longform. Original music, including our theme music, was created by New York-based Japanese composer Miu Sato. An enormous thanks to the organization Densho for providing archival material for the series and for everything that they do. You can find out much more about this series at our website, MS.NOW/BurnOrder.

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Aiko Herzig-Yoshinaga: This was sort of like a second career for me. Getting married and going down there, "Oh, what am I gonna do now? Okay, I'll look at the archives." And then in my amateurish way, starting to collect some of these and saying, "Oh, this sounds very interesting and important. I think I'll save a copy." And having that small notebook accumulate to a total of 154 boxes that I sent over, that UCLA has. I still have a few more boxes to go through, but it was, I think, 152, 154 boxes that we donated, mostly documents. So I feel good about, you know, if there is whatever can be called contribution, that I had a little part in it.