10 August 1943

MEMORANDUM FOR COLONEL FRIEDLICH:

Subject: Proposed Legislation to Supplement Public Law No. 503.

1. Receipt is acknowledged of your memorandum of 9 August 1943 together with file on the above subject. This is a matter in which I feel Mr. McCloy would be very much interested. However, he will be away from the office for approximately two weeks. Pending his consideration of the matter upon his return, I have one or two comments which may prove helpful.

2. In his memorandum of 29 July 1943 to the Chief, Legislative and Liaison Division, the Assistant Provost Marshal General states in paragraph 1 that "the scope of Public Law 503 has been materially limited by administrative interpretations that it applies only to the evacuation of persons from areas threatened with invasion." So far as I know there is no basis for this statement.

3. In the next sentence of the same paragraph the Assistant Provost Marshal General states: "The question has also been raised informally as to the constitutionality of Public Law 503 because of the generality of its delegation of legislative power by the Congress." It is true that this question has been raised, but its constitutionality has already been upheld in the Hirabayashi case recently decided last June by the United States Supreme Court.

4. There is ample authority under Executive Order 9066 for the issuance of regulations by the military authorities in designated military areas. Violation of regulations thus issued would, by virtue of Public Law 503, constitute a federal crime. Thus the argument can be made with some force that the statute proposed for enactment is unnecessary.

5. However, to proceed under Executive Order 9066 requires the designation of a military area. The question may be raised whether it is desirable to be compelled to designate a military area in order to furnish increased protection for a sensitive spot. The following situation exists.

   a. At the present time the entire Western and Eastern
Defense Commands have been designated military areas.

b. The Commanding General, Eastern Defense Command, has elected to proceed by creating selected restricted and prohibited zones within the Eastern Military Area in which more vigorous restrictions are in force than in other parts of the Area.

c. The Commanding General, Western Defense Command, abandoned recognition of sensitive spots and imposed general restrictions over Military Areas 1 and 2 of his command, consisting of the states of Washington, Oregon, California, and Arizona, although additional restrictions recently have been imposed on one sensitive spot in Washington.

d. In the Southern Defense Command a series of "countywide" military areas were established along the Gulf of Mexico and the Mexican border. In addition, a military area of very small dimensions has been created in another part of the command to take care of specific critical installations.

e. In the Central Defense Command only one military area has been established. This embraces the Soo Locks area.

6. It is not at all clear to me that the enactment of the proposed legislation would enhance security in the Eastern Defense Command to any degree, or to any substantial degree in the Western Defense Command. However, industrial areas like Chicago, Cleveland, and Detroit are not now subject to military restrictions. There may be similar, if less vital areas in the Southern Defense Command. However, the file fails to disclose any urgent need for military intrusion in such areas. Unless such need exists, I know that Mr. McCloy would be opposed to further military participation in what is essentially a civilian field. To superimpose military on the top of local, state and federal regulations, all more or less designed to accomplish the same purpose, would certainly not be justified unless necessary.

7. The imposition of military restrictions under Executive Order 9066 has been generally confined to the coastal strips the integrity of which has been considered to have a military significance. For this reason the power of individual exclusion has been exercised only in those areas. It might be concluded that where the military interest is not of a tactical nature, the military should stay out, even if this means greater military protection for Boston than Detroit.

JOHN M. HALL
Captain, F.A.
Assistant Executive
9 August 1943.

MEMORANDUM FOR THE ASSISTANT SECRETARY OF WAR.

SUBJECT: Proposed Legislation to Supplement Public Law No. 503.

1. Attached is file forwarded to this Office by Legislative and Liaison Division, OCS, for comment.

2. The undersigned has heretofore discussed the Navy statute, referred to in the file, with you and will appreciate any comments you may have concerning the proposed legislation designed to cover the War Department.

3. In the opinion of the undersigned, the proposed draft of bill should be revised in the interest of clarity. For example, the word "thereon" in the tenth line of the draft of proposed bill refers back to "war material, war premises, or war utilities" and does not seem to be apt. The same comment is applicable to the word "therefrom" in the eleventh line.

HERBERT A. FRIEDLICH,
Lt. Colonel, JAGD,
Legislative Division,
Office of the Under Secretary of War.

encl.