

~~CONFIDENTIAL~~

March 31, 1943

The President,
The White House.

Dear Mr. President:

I hesitate at this time to submit to you another inter-department difference of opinion. But the attitude of the Department of Justice jeopardizes the enforcement of an Executive Order promulgated by you in the interest of protecting the nation's industries against sabotage and espionage, and flouts the intent of Congress as expressed in what was virtually a ratifying act. And so I feel I have no other choice.

On February 19, 1942, by Executive Order 9066, in order to extend "every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities," you authorized me, and military commanders designated by me, to prescribe military areas "from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate military commander may impose in his discretion." In order to enforce the Executive Order and to put teeth into it, Congress on March 21, 1942, passed Public Law 503, 77th Congress, which states categorically that "whoever shall * * * remain in * * * any military area * * * prescribed * * * by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area * * * or contrary to the order of * * * any such military commander" shall, if he had notice of the order, be guilty of a misdemeanor.

It was early determined that there would be no mass evacuations on the East Coast, but that there would be excluded from the Eastern seaboard and Eastern industrial area those persons who were deemed potentially dangerous to war activities there. The purpose of such exclusions was to eliminate the dangerous people before they could do any damage, rather than to wait and punish them for damage already done. An elaborate hearing procedure was devised in order to sift out those who were really dangerous, and this procedure met with the approval of the Department of Justice. On December 10 last, the Attorney General in

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the presence of Assistant Secretary McCloy complimented General Drum on the procedure and said that it was "excellent".

Continued enforcement of this Executive Order and the effectiveness of continued operations thereunder to remove potentially dangerous persons have been seriously jeopardized by the attitude of the Department of Justice in the case of Julia Kraus. She is a woman born in Germany, who acquired American citizenship through the naturalization of her mother. In the summer of 1941 she acted as intermediary between the German Embassy and Laura Ingalls. About this time, she wrote: "I repeat my desire to join the only great and courageous nation, (viz. Germany), but was advised against it; that if I really wished to help their cause, I could do more here on the spot." Also, she stated: "Remember our cause will win and when it is all over, others will break their necks to get on the side we are on already." In the summer of 1942, Julia Kraus testified for the Government at the Laura Ingalls' trial.

Thereafter the files in her case were sent to the Commanding General, Military District of Washington, who convened a board which recommended that Julia Kraus be excluded from the entire Eastern Military Area. Kindly note this: Before this board recommendation of exclusion reached General Drum, it had been concurred in by representatives of the Federal Bureau of Investigation; by the Commanding General, Military District of Washington; by the U. S. Attorney for the District of Columbia; by a Board of Review convened by the Commanding General, Eastern Defense Command; and by the U. S. Attorney for the Southern District of New York, who acts in these matters as the personal representative of the Attorney General. Upon reviewing the papers, and with these concurrences before him, General Drum determined that Julia Kraus' further presence in the Eastern Military Area was potentially dangerous to the national defense, and ordered her excluded. According to the terms of the order, she should have left Washington, her place of residence, by, January 2, of this year. She has not complied with the order, but has retained counsel to contest any removal or any prosecution under Public Law 503 arising out of her violation of General Drum's order.

We have personally appealed to the Attorney General in an attempt to have him appreciate the seriousness of his refusal to uphold the action of General Drum. The Attorney General remains adamant.

The position of the Department of Justice, as expounded by the Attorney General, is that while it has no doubts about the basic Executive Order, it considers the case of the Kraus woman a

poor one for a test of the system. This conclusion is based on a number of grounds: (1) She is a woman; (2) she helped the Government in the Laura Ingalls' case, although there was no promise of immunity made to her; (3) the F.B.I. does not now consider her dangerous; (4) the zone from which she is excluded, which contains some 60% of the war plants of the country and most of its enemy aliens, is too large; (5) she is represented by two aggressive and able lawyers. One of these is Colonel O. R. McGuire, who successfully defended Viereck before the Supreme Court, and the other is former Senator Edward R. Burke of Nebraska.

I would not trouble you with a mere difference of opinion between two departments as to whether a particular case is a good one for a test. That is not the point. I do not think we can safely permit to go unpunished a notorious violator of the law on her own statements. If the Kraus woman can violate Executive Order 9066 and Public Law 503 with impunity, then the door is open to wholesale violations, to a complete breakdown in enforcement, and to the return to the Eastern Military Area of potentially dangerous persons already excluded therefrom. The refusal of the Department of Justice to proceed against the Kraus woman challenges the authority of the military commander.

Moreover, Executive Order 9066 is the basis upon which rests the entire program of blackout, dimout, air-raid protection, and plant security; and the power of individual exclusion is the real sanction whereby all these phases of the present integrated system of security in effect in the Eastern Military Area are enforced. I need hardly point out that this is a militarily sensitive area. If we are unable to remove from the Eastern Military Area those persons who, like Julia Kraus, feel that they can more successfully further the cause of the Axis by remaining in this country, the possibilities of serious danger are, of course, tremendous.

As I have said, if one person can disobey with impunity, then all can. I am far from being impressed by the reasons assigned by the Department of Justice to support its refusal to prosecute Julia Kraus. But even if those reasons were far more cogent than I think they are, they would still be substantially outweighed by the other considerations I have mentioned.

In my opinion we cannot compromise with or surrender to those who brazenly ignore the exclusion order of a military commander. It is only because I have come to the reluctant conclusion that I cannot bring the Department of Justice to an appreciation

of the dangers of non-enforcement that I am impelled to lay these facts before you; and, if you approve the views above expressed, to request that you inform the Attorney General to proceed in the Julia Kraus case.

Sincerely yours,

Secretary of War

P.S. Since dictating the above, my apprehensions have been realized. I have just heard that a naturalized Italian named Sylvester Andriano, who last October was ordered excluded by General DeWitt from the sensitive coastal strip of the Western Defense Command as a potentially dangerous individual and who had left the area pursuant to the order, has now returned to California in open and flagrant violation of it. I do not believe that it is an unreasonable assumption that Andriano's disobedience is the direct and logical consequence of the Department of Justice's failure to prosecute the Kraus woman.

As soon as Andriano returned to California, General DeWitt communicated with my office and likewise notified the local United States Attorney and representatives of the Federal Bureau of Investigation. The local United States Attorney stands ready to initiate prosecution for violation of Public Law 503, but must await final instructions from the Attorney General before taking action.

The Solicitor General has informed this department that the Attorney General declines to take any action whatsoever. As in the Kraus case, the Department of Justice suggests to the War Department that if the individual is dangerous to national security, he be forcibly removed through the use of Federal troops.

The use of bayonets when the Congress has prescribed criminal prosecution through the courts of violations of military orders of this nature is undesirable for obvious reasons. I do not believe that it is any argument to assert that the case might be lost in the courts. If it is lost on constitutional grounds, we can act accordingly, and the sooner the test is made, the better.

As in the Kraus case, the Department of Justice has asserted a right of further review and has come to a conclusion different from that of the responsible military commander and his own review board

as to the military necessity for exclusion. Of course, this renders ineffective, through failure to prosecute admitted violations, the powers placed in the military by Executive Order 9066.

The Attorney General should not be permitted to thwart the military commanders. I have very strong and, in my judgment, completely justifiable protests from both General DeWitt, Commanding General of the Western Defense Command, and General Drum, Commanding General of the Eastern Defense Command. Were it not for the fact that Congress has specifically provided the punishment for violations of orders issued under Executive Order 9066, I would myself assume the responsibility of directing these Generals to enforce their orders by direct action. However, as this is the case, I request that you direct the Attorney General to enforce these orders in accordance with the provisions of Public Law 503, or in the alternative, to authorize me to support the orders of my duly designated Commanders by directing them to remove, by force of arms if necessary, those who have violated their orders.

H.L.S.

Copies to: OSW, C. & R.
 Chief of Staff, Records
 C.G., Eastern Defense Command
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