

7 September 1944

Honorable Abe Fortas
Under Secretary of the Interior
Department of the Interior
Washington 25, D. C.

Dear Abe:

I have your letter of September 1st transmitting your comments on the proposed Executive Order relating to Hawaii. The drafting changes which you recommended have been incorporated in the Executive Order which I am transmitting to you under separate cover.

Regarding the proclamation, a draft of which you submitted on August 19, it is my feeling that martial law should be terminated by a proclamation of the President. It is my understanding that martial law in Hawaii was instituted by proclamation of Governor Poindexter and approved by the President in accordance with the provisions of the Hawaiian Organic Act (48 U.S.C. 532). I feel that this section vests in the Governor a merely interim power while awaiting the President's decision, and as a matter of fact, it is this decision which is the legal act establishing martial law. Hence, the proclamation which disestablishes it should be a proclamation by the President. It may also have a deterrent effect on the filing of civil suits for false imprisonment against General Richardson and others who would then be able to plead respondent superior and to have this proof on record. Of course, this would not preclude the Governor also issuing a proclamation if he so chose.

In the draft which you submitted I might suggest the deletion of the word "confirmed" in line 5 and the substitution thereof of the word "approved." This is the phraseology used in the radiogram sent to Governor Poindexter by the President. I also believe the last sentence should be deleted since the proclamation of the Governor could add nothing in the way of legality to the acts of the military commander, as their validity depends upon whether martial

X- Interior (Fortas, Abe)
a- Fortas, Abe

7 Sept 44

law was lawfully in existence at the time of the commission of the acts and whether such acts were required by military necessity.

At first glance, and except for the matter of the proclamation, I think the procedure which you have outlined would be a satisfactory basis for a discussion of the details.

Sincerely,

(SIGNED) JOHN J. McCLOY

John J. McCloy