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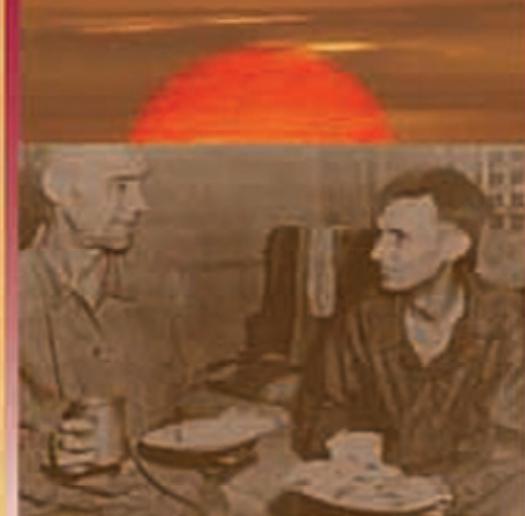
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LINDA GOETZ HOLMES

UNJUST ENRICHMENT

American POWs
Under the Rising Sun



"A TRIUMPH OF INVESTIGATIVE RESEARCH"
—Iris Chang, author of *The Rape of Nanking*

From the preface of *Unjust Enrichment*

Much has been clarified since this book went to press in 2001. First, the hopes of several hundred ex-POWs to obtain justice in California courts were thwarted by our own government's interference. This allowed the Japanese companies that used our POWs so mercilessly for slave labor to get away with it, whereas German companies did not.

The class action lawsuit filed September 1999 in Albuquerque, described in Chapter 14, was withdrawn "without prejudice," after a judge ruled in a European slave-labor case that laborers forced to work at different locations might not have had exactly the same experiences, so they could not join in a class-action suit.

The focus then shifted to Lester Tenney's suit filed in California, and others that followed shortly thereafter. According to lead POW attorney David Casey, thirteen separate cases were filed in California state courts against several Japanese corporations that had used Americans for slave labor in World War II. Mitsui and Mitsubishi immediately sought to remove all of these cases to Federal Court, which they thought would be more favorable to them. Nine cases remained in Federal Court, and the remaining four were returned to State Court, where they were consolidated in Orange County. Meanwhile attorney Casey was asked by a Federal Judge about the position of the State Department on this matter. Casey told the court that in similar litigation involving Holocaust victims, our State Department had declined to intervene, or to file a "Statement of Interest," and that special Treasury Department representative Stuart Eizenstat had facilitated a settlement of those claims.

So the Federal Court sent a request to our State Department asking its position on claims involving Japanese corporations Mitsubishi and Mitsui. To the shock, dismay and anger of the ex-POWs, our State Department took a position supporting the Japanese companies against our American veterans. As Casey explained, judges are asked to defer to the State Department when it appears in court. The United States House of Representatives was so outraged that it passed a budget bill prohibiting the State Department from using taxpayer money to oppose our ex-POWs in court. The Senate passed a similar bill, as its last order of business—on September 10, 2001. The next day, September 11, our world changed forever. Despite the fact that this bill had passed both chambers of Congress, it was stripped from the budget by the Congressional Conference Committee at the request of the White House, which cited the need not to offend Japan, one of our new allies in what would become "The War on Terror."

Meanwhile, in Federal court, the judge followed the lead of the State Department, ruling that the 1951 Treaty of Peace with Japan barred such claims from being heard. POW attorneys, led by Casey, appealed through the court system all the way to the U.S. Supreme Court, which in October 2003 declined to hear Lester Tenney's case.

But in California's State Court system, at least one judge ruled that the POW cases could proceed. American attorneys representing Japanese companies appealed, and California's highest court, the Court of Appeal, reversed the

lower court's decision, effectively ending the hopes of ex-POWs to have their day in court. The appeal judges noted that they believed the ex-POWs were entitled to an explanation of why their government was treating them this way. It makes interesting reading.

In addition to the ex-POWs, their attorneys and many members of Congress, others were also troubled by the outcome of the POW cases. In a telephone conversation with me, as well as in his 2003 book *Imperfect Justice*, Eizenstat expressed concern that our State Department appeared to be applying a double standard: supporting slave labor claims against the Germans, but not against the Japanese.

Attorney David Casey probably summed up the court outcome best, noting: "The State Department could have declined to file a Statement of Interest and allowed the courts to interpret the 1951 Treaty of Peace without its intervention. Had that occurred, on the merits [of their cases] the POWs would have won, allowing the world's greatest judicial system to work, without political interference."



Photo by Lt. Henry Taylor (from the collection of Frederick Taylor)

LINDA GOETZ HOLMES has been interviewing and writing about World War II prisoners in the Pacific for over 30 years. She is the first Pacific War historian appointed to the U.S. Government Interagency Working Group (IWG), formed in 1999 under the aegis of the National Archives to locate and declassify material about World War II war crimes. To date, she has interviewed over 500 ex-prisoners of war, their families, American and Japanese military personnel and historians, government and banking officials and archivists from around the globe to authenticate what happened to our prisoners in Japanese hands, and why.

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