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Hirabayashi v. United States

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12-5-1983

## Appendix to Request for Judicial Notice of Facts and Documents

United States District Court Western District of Washington

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APPENDIX I

Adjudicative Facts To Be Judicially Noticed and Exhibits in Support Thereof.

- a. Executive Order 9066, the Civilian Exclusion Orders and curfew regulation implementing it were based upon the assertion of War Department and military officials that "military necessity" required the mass evacuation, curfew and exclusion from the West Coast of all persons of Japanese ancestry.

Executive Order 9066, as cited in Roger Daniels, The Decision to Relocate the Japanese Americans (J.B. Lippincott Co., Philadelphia, 1975), pp. 113-114.

Commission on Wartime Relocation and Internment of Civilians, Personal Justice Denied, Washington D.C., 1982, pp. 6, 86. (Hereinafter, "Personal Justice Denied".)

J. L. DeWitt, Final Report: Japanese Evacuation From The West Coast, 1942 (Washington, D.C., 1943), pp. vii-viii, 25, 33-38. (Hereinafter, "Final Report".)

Brief for the United States, Hirabayashi v. United States, No. 870, October Term, 1942, pp. 39-49, n. 60, 45-46, 98-99, 102, 106-107, 121-122. (Hereinafter, "U.S. Brief".)

- b. Public Law 77-503 and its enactment by Congress were based upon and ostensibly justified by the assertions of military necessity for Executive Order 9066.

Personal Justice Denied, p. 99.

Final Report, pp. 29-31.

U.S. Brief, pp. 39-40, n. 60, 45-46.

- c. The military orders authorized under Executive Order 9066 were intended to be directed specifically against persons of Japanese ancestry.

Personal Justice Denied, pp. 49, 85.

U.S. Brief, p. 38, n. 58.

- d. Military officials justified the military necessity of the curfew, exclusion and internment of Petitioner and other

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persons of Japanese ancestry on the ground that such persons posed a danger of espionage and sabotage.

Personal Justice Denied, pp. 7, 87.

Final Report, pp. 3-4, 8-9, 33-35.

U.S. Brief, pp. 60-61, 97-124 (106-107).

Exhibits to Petition for Writ of Error Coram Nobis,  
Exhibit L. (Hereinafter, "Petition Exhibits".)

- e. In 1942, the Western Defense Command, at the direction of General DeWitt, initiated an investigation to demonstrate that ethnic Japanese posed a danger to West Coast military security, but no such evidence was found in the course of the investigation.

Personal Justice Denied, pp. 198-199.

- f. Subsequent to the declaration of war with Japan, not a single verified act of espionage, sabotage, or fifth column activity was committed by an American citizen of Japanese ancestry or by a resident Japanese alien on the West Coast.

Personal Justice Denied, pp. 3, 50.

Petition Exhibit W.

Army G-2 Reports No. 4, 13, 14, 15, 17, 18, 19.

Letter to Federal Communications Commission (San Francisco) (Mr. Greaves) from Lt. Col. Forney, December 31, 1941.

- g. Allegations that citizens and permanent resident aliens of Japanese ancestry engaged in espionage and sabotage connected with the attack on Pearl Harbor were unfounded.

Personal Justice Denied, pp. 55-57, 95-96, 264.

- h. At the time of and after the issuance of Executive Order 9066, the military, War Department and Justice Department had substantial, credible evidence from the Office of Naval Intelligence, the Federal Bureau of Investigation and the Federal Communications Commission which directly contradicted the allegations of espionage and sabotage upon which the curfew, exclusion and internment of persons of Japanese ancestry were based.

Personal Justice Denied, pp. 55, 62, 62-63, 64-65, 65, 72-73, 86-92.

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Petition Exhibits B, N, O, P, Q, R, S, T, U, V, W, X, Y, Z.

Letter to Mr. Lloyd Wright from Mr. R. P. Alexander, dated February 18, 1942.

- i. Military officials also justified the exclusion from the West Coast and internment of Petitioner and other persons of Japanese ancestry on the grounds that such persons were members of an "enemy race," presumptively disloyal to the United States and predisposed by their "racial characteristics" to loyalty to Japan.

Personal Justice Denied, p. 8, 82.

Final Report, pp. 9-10, 33-34.

Petition Exhibit L.

- j. Responsible military and intelligence officials, after extensive investigation of the question, concluded that it was possible, prior to the initiation of the curfew, exclusion and internment program, to individually identify those persons of Japanese ancestry who could be considered to be potentially disloyal to the United States and to segregate such persons.

Personal Justice Denied, pp. 51-55, 59-60.

Petition Exhibit T.

- k. In its brief to the United States Supreme Court in Hirabayashi vs. United States, the Government asserted that the curfew, exclusion and internment of persons of Japanese ancestry was justified by military necessity on the grounds that such persons were likely to engage in espionage, sabotage and fifth column activity and that persons of Japanese ancestry, because of their race, were predisposed to be loyal to Japan.

U.S. Brief, pp. 33-34, 46, 60-61, 106-107.

- l. Military necessity was asserted as the grounds for the curfew, exclusion and internment of persons of Japanese ancestry in the amicus briefs of the States of California, Oregon and Washington in Hirabayashi vs. United States.

Brief of the States of California, Oregon and Washington, Amicus Curiae, Hirabayashi vs. United States, No. 870, October Term, 1942, pp. 36-46.

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1 m. The War Department altered DeWitt's Final Report in antici-  
2 pation of litigation surrounding the curfew, exclusion and  
internment program. The alterations created a more defen-  
3 sible justification for the treatment of Japanese Americans.  
The attempt to destroy all evidence of the initial version  
4 of the Final Report and its alteration was deliberately  
withheld from the Justice Department. The Justice Depart-  
5 ment, after discovery of the War Department's actions, failed  
to inform the Petitioner or the Court.

6 Petition Exhibit G.

7 Telex, dated April 26, 1943.

8 Telex, dated April 27, 1943.

9 Telex, dated May 3, 1943.

10 Telex, dated May 5, 1943.

11 Paraphrase of Radio, No. 2846.

12 Paraphrase of Radio, No. 2540.

13 Transcript of telephone conversation, May 27, 1943.

14 n. The Government, in its brief to the United States Supreme  
15 Court in Hirabayashi vs. United States, did not inform the  
Court of or indicate the existence of information which it  
16 knew existed which contradicted the allegations that mili-  
tary necessity required the curfew, exclusion and internment  
17 of persons of Japanese ancestry.

18 U.S. Brief.

19 Petition Exhibits B, Q, V, W, X, Y, Z.

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Documents in Support of  
Adjudicative Facts to be Judicially Noticed

Reproduced at the National Archives at Seattle

a. Executive Order 9066 and the Curfew Regulations and Civilian Exclusion Orders implementing it were based upon the assertion of War Department and military officials that "military necessity" required the mass evacuation and exclusion from the West Coast of all persons of Japanese ancestry.

Executive Order 9066, as cited in Roger Daniels, The Decision to Relocate the Japanese Americans, (J. B. Lippincott Co., Philadelphia, 1975), pp. 113-114.

Commission on Wartime Relocation and Internment of Civilians, Personal Justice Denied, Washington, D. C., 1982, pp. 6, 86. (Hereinafter, "Personal Justice Denied.")

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Brief for the United States, Hirabayashi v. United States, No. 870, October Term, 1942, pp. 39-40, n.60, 45-46, 98-99, 102, 106-107, 121-122. (Hereinafter, "U. S. Brief.")



14

# The Right to Relocate Citizens: The Delegation of Authority

Document 14†

Executive Order—No. 9066

WHEREAS the successful prosecution of the war requires every possible protection against espionage and against sabotage to national defense material, national defense premises, and national defense utilities as defined in Section 4, Act of April 20, 1918, 40 Stat. 533, as amended by the Act of November 30, 1940, 54 Stat. 1220, and the Act of August 21, 1941, 55 Stat. 655 (U.S.C., Title 50, Sec. 104):

Now, THEREFORE, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders who he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, 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. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary, in the judgment of the Secretary of War or the said Military Commander, and until other arrangements are made, to accomplish the purpose of this order. The designation of military areas in any region or locality shall supersede designations of prohibited and restricted areas by the Attorney General under the Proclamations of December 7 and 8, 1941, and shall supersede the responsibility and authority of the Attorney

†From: U.S., Congress, House, Tolan Committee, 77th Cong., 2d sess., 1942, H. Rept. 2124.

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Source: Roger Daniels, The Decision to Relocate the Japanese Americans (J.B. Lippincott & Co., Philadelphia, 1975).

General under the said Proclamations in respect of such prohibited and restricted areas.

I hereby further authorize and direct the Secretary of War and the said Military Commanders to take such other steps as he or the appropriate Military Commander may deem advisable to enforce compliance with the restrictions applicable to each Military area hereinabove authorized to be designated, including the use of Federal troops and other Federal Agencies, with authority to accept assistance of state and local agencies.

I hereby further authorize and direct all Executive Departments, independent establishments and other Federal Agencies, to assist the Secretary of War or the said Military Commanders in carrying out this Executive Order, including the furnishing of medical aid, hospitalization, food, clothing, transportation, use of land, shelter, and other supplies, equipment, utilities, facilities, and services.

This order shall not be construed as modifying or limiting in any way the authority heretofore granted under Executive Order No. 8972, dated December 12, 1941, nor shall it be construed as limiting or modifying the duty and responsibility of the Federal Bureau of Investigation, with respect to the investigation of alleged acts of sabotage or the duty and responsibility of the Attorney General and the Department of Justice under the Proclamations of December 7 and 8, 1941, prescribing regulations for the conduct and control of alien enemies, except as such duty and responsibility is superseded by the designation of military areas hereunder.

THE WHITE HOUSE,  
February 19, 1942.

*Document 14-a†*

WAR DEPARTMENT  
Office of the Provost Marshal General

Aliens Division  
PMG 014.311

February 20, 1942.

MEMORANDUM for the Chief of Staff.

Subject: Control of Alien Enemies and other Subversive Persons on the Pacific Coast.

This is in reference to your request for a summary of developments regarding the above subject.

1. The initial approach to the problem was on an alien enemy basis. The Attorney General stated that he did not have facilities to undertake a study for the purpose of designating areas prohibited to alien enemies surrounding vital installations. Accordingly, the Army submitted recommendations and these were in turn adopted in part by The Attorney General. In 88 areas in California alien enemies are now under an exclusion order with a February 24 deadline.

†From: Record Group 107, National Archives, Washington, D.C.

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"The exclusion of the ethnic Japanese from the West Coast was recommended to the Secretary of War, Henry L. Stimson, by Lieutenant General John L. DeWitt, Commanding General of the Western Defense Command with responsibility for West Coast security. President Roosevelt relied on Secretary Stimson's recommendations in issuing Executive Order 9066.

"The justification given for the measure was military necessity."

Personal Justice Denied, p. 6.

"After the decision [on Executive Order 9066], there was no further dissent at the highest levels of the federal government. The War Department stood behind the facts and the Justice Department stood behind the law which were the foundation of the Executive Order."

Personal Justice Denied, p. 86.

Reproduced at the National Archives at Seattle

HEADQUARTERS WESTERN DEFENSE COMMAND  
AND FOURTH ARMY  
OFFICE OF THE COMMANDING GENERAL  
PRESIDIO OF SAN FRANCISCO, CALIFORNIA

June 5, 1943

SUBJECT: Final Report on the Evacuation of Japanese from Certain Military Areas in Western Defense Command.

TO: Chief of Staff, United States Army, War Department, Washington, D. C.

1. I transmit herewith my final report on the evacuation of Japanese from the Pacific Coast.

2. The evacuation was impelled by military necessity. The security of the Pacific Coast continues to require the exclusion of Japanese from the area now prohibited to them and will so continue as long as that military necessity exists. The surprise attack at Pearl Harbor by the enemy crippled a major portion of the Pacific Fleet and exposed the West Coast to an attack which could not have been substantially impeded by defensive fleet operations. More than 115,000 persons of Japanese ancestry resided along the coast and were significantly concentrated near many highly sensitive installations essential to the war effort. Intelligence services records reflected the existence of hundreds of Japanese organizations in California, Washington, Oregon and Arizona which, prior to December 7, 1941, were actively engaged in advancing Japanese war aims. These records also disclosed that thousands of American-born Japanese had gone to Japan to receive their education and indoctrination there and had become rabidly pro-Japanese and then had returned to the United States. Emperor worshipping ceremonies were commonly held and millions of dollars had flowed into the Japanese imperial war chest from the contributions freely made by Japanese here. The continued presence of a large, unassimilated, tightly knit racial group, bound to an enemy nation by strong ties of race, culture, custom and religion along a frontier vulnerable to attack constituted a menace which had to be dealt with. Their loyalties were unknown and time was of the essence. The evident aspirations of the enemy emboldened by his recent successes made it worse than folly to have left any stone unturned in the building up of our defenses. It is better to have had this protection and not to have needed it than to have needed it and not to have had it—as we have learned to our sorrow.

3. On February 14, 1942, I recommended to the War Department that the military security of the Pacific Coast required the establishment of broad civil control, anti-sabotage and counter-espionage measures, including the evacuation therefrom of all persons of Japanese ancestry. In recognition of this situa-

vii

Final Report, pp. vii-viii.

tion, the President issued Executive Order No. 9066 on February 19, 1942, authorizing the accomplishment of these and any other necessary security measures. By letter dated February 20, 1942, the Secretary of War authorized me to effectuate my recommendations and to exercise all of the powers which the Executive Order conferred upon him and upon any military commander designated by him. A number of separate and distinct security measures have been instituted under the broad authority thus delegated, and future events may demand the initiation of others. Among the steps taken was the evacuation of Japanese from western Washington and Oregon, California, and southern Arizona. Transmitted herewith is the final report of that evacuation.

4. The report comprises nine Parts and reference matter. Its twenty-eight chapters are supplemented by a pictorial summary. In Part I, I have traced the developments which led to the issuance by the President of Executive Order No. 9066, establishing military control over the Pacific Coast. The military necessity for the specific action reported is outlined in Chapter II. Part II, Chapters IV to VI, inclusive, presents a résumé of the evacuation method. In these chapters the means provided to protect the persons, the property and the health of evacuees are described. In succeeding Parts a more detailed account of each phase of the operation is found. Part III describes the military organization established to accomplish the evacuation. Part IV, Chapters VIII to XII cover evacuation operations. Part V comprises Chapters XIII to XIX. These offer a narrative of Assembly Center Operations—the selection, construction and administration by the Army of the temporary residences provided evacuees pending their transfer to Relocation Centers in the interior. Part VI includes Chapters XX to XXII. This section reports the Army's participation in preparing semi-permanent facilities for the relocation of evacuees and the methods pursued in their transfer to these accommodations. In Part VII is found Chapters XXIII to XXVI, in which collateral aspects of the program are discussed, such as curfew and travel control, public relations, inspection and repatriation activities. Part VIII, consisting of Chapter XXVII and XXVIII, presents a fiscal and statistical summary. Part IX concludes the report with a series of photographs pictorializing the entire operation. Only those data essential to an understanding of the subject are included in the appendices.

5. There was neither pattern nor precedent for an undertaking of this magnitude and character; and yet over a period of less than ninety operating days, 110,442 persons of Japanese ancestry were evacuated from the West Coast. This compulsory organized mass migration was conducted under complete military supervision. It was effected without major incident in a time of extreme pressure and severe national stress, consummated at a time when the energies of the military were directed primarily toward the organization and training of an Army of sufficient size and equipment to fight a global war. The task was, nevertheless, completed without any appreciable divergence of military personnel. Comparatively few were used, and there was no interruption in a training program.

6. In the orderly accomplishment of the program, emphasis was placed upon



## CHAPTER III

### Establishment of Military Control—Executive Order No. 9066

After a series of conferences between War and Justice Department representatives, in Washington, D. C., the Secretary of War ordered a representative of the Department personally to survey the situation along the Pacific Coast. The War Department representative carried back to the Secretary the recommendation of the Commanding General that some method be developed empowering the Federal Government to provide for the evacuation from sensitive areas of all persons of Japanese ancestry, and any other persons individually or collectively regarded as potentially dangerous. The Commanding General's proposal was reduced to writing in a memorandum for the Secretary of War, dated February 14, 1942. It is reproduced in full at the end of this chapter. This recommendation was presented to the Secretary of War on or about February 16th. After consultation between War and Justice Department representatives, it was determined that a Presidential executive order should be sought authorizing the Secretary of War to institute civil control measures. A proposed order was drafted in the War Department. With the concurrence of the Department of Justice it was presented to the President.

Executive Order No. 9066, dated February 19, 1942, was the direct result of these steps. On the day following its signature by the President, the Secretary of War designated the Commanding General, Western Defense Command, as a Military Commander within the meaning of the Executive Order. This meant that the power and authority granted by the Order had been delegated to the Commanding General. The letter of authority, enclosing a copy of the Order, from the Secretary of War was as follows:

"February 20, 1942

"COMMANDING GENERAL,  
Western Defense Command and Fourth Army,  
Presidio of San Francisco, California.

"Dear General DeWitt:

"By Executive Order, dated February 19, 1942, copy inclosed, the President authorized and directed me, through the Military Commander whom I designate, to prescribe military areas for the protection of vital installations against sabotage and espionage. The cited Executive Order also authorized and directed the administering authority to impose such restrictions upon the right to enter, remain in, or leave any such areas as may be appropriate to the requirements in each instance. Accordingly, I designate you as the Military Commander to carry out the duties and responsibilities imposed by said Executive Order for that portion of the United States embraced in the Western Defense Command, including such changes in the prohibited and restricted areas heretofore designated by the Attorney General as you deem proper to prescribe.

"In carrying out your duties under this delegation, I desire, so far as military requirements permit, that you do not disturb, for the time being at least, Italian aliens and persons of Italian lineage except where they are, in your judgment, undesirable or constitute a definite danger to the performance of your mission to defend

## APPENDIX TO CHAPTER III

**Final Recommendation of the Commanding General,  
Western Defense Command and Fourth Army,  
Submitted to The Secretary of War.**  
(see page 1 of this Chapter III)

**HEADQUARTERS WESTERN DEFENSE COMMAND AND  
FOURTH ARMY**

Presidio of San Francisco, California  
Office of the Commanding General

February 14, 1942

014.31 (DCS)

MEMORANDUM FOR: The Secretary of War,  
(Thru: The Commanding General,  
Field Forces, Washington, D. C.)

SUBJECT: Evacuation of Japanese and other Subversive Persons from the  
Pacific Coast.

1. In presenting a recommendation for the evacuation of Japanese and other subversive persons from the Pacific Coast, the following facts have been considered:

a. Mission of the Western Defense Command and Fourth Army.

- (1) Defense of the Pacific Coast of the Western Defense Command, as extended, against attacks by sea, land or air;
- (2) Local protection of establishments and communications vital to the National Defense for which adequate defense cannot be provided by local civilian authorities.

b. Brief Estimate of the Situation.

(1) Any estimate of the situation indicates that the following are possible and probable enemy activities:

- (a) Naval attack on shipping in coastal waters;
- (b) Naval attack on coastal cities and vital installations;
- (c) Air raids on vital installations, particularly within two hundred miles of the coast;
- (d) Sabotage of vital installations throughout the Western Defense Command.

Hostile Naval and air raids will be assisted by enemy agents signaling from the coastline and the vicinity thereof; and by supplying and otherwise assisting enemy vessels and by sabotage.

Sabotage, (for example, of airplane factories), may be effected not only by destruction within plants and establishments, but by destroying power, light, water, sewer and other utility and other facilities in the immediate vicinity thereof or at a distance. Serious damage or destruction in congested areas may readily be caused by incendiarism.

(2) The area lying to the west of the Cascade and Sierra Nevada Mountains in Washington, Oregon and California, is highly critical not only because the lines of communication and supply to the Pacific theater pass through it, but also because of the vital industrial production therein, particularly aircraft. In the war in which we are now engaged racial affinities are not severed by migration. The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become "Americanized", the racial strains are undiluted. To conclude otherwise is to expect that children born of white parents on Japanese soil sever all racial affinity and become loyal Japanese subjects, ready to fight and, if necessary, to die for Japan in a war against the nation of their parents. That Japan is allied with Germany and Italy in this struggle is no ground for assuming that any Japanese, barred from assimilation by convention as he is, though born and raised in the United States, will not turn against this nation when the final test of loyalty comes. It, therefore, follows that along the vital Pacific Coast over 112,000 potential enemies, of Japanese extraction, are at large today. There are indications that these are organized and ready for concerted action at a favorable opportunity. The very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken.

#### c. Disposition of the Japanese.

(1) *Washington.* As the term is used herein, the word "Japanese" includes alien Japanese and American citizens of Japanese ancestry. In the State of Washington the Japanese population, aggregating over 14,500, is disposed largely in the area lying west of the Cascade Mountains and south of an east-west line passing through Bellingham, Washington, about 70 miles north of Seattle and some 15 miles south of the Canadian border. The largest concentration of Japanese is in the area, the axis of which is along the line Seattle, Tacoma, Olympia, Willapa Bay and the mouth of the Columbia River, with the heaviest concentration in the agricultural valleys between Seattle and Tacoma, viz., the Green River and the Puyallup Valleys. The Boeing Aircraft factory is in the Green River Valley. The lines of communication and supply including power and water which feed this vital industrial installation, radiate from this plant for many miles through areas heavily populated by Japanese. Large numbers of Japanese also operate vegetable markets along the Seattle and Tacoma water fronts, in Bremerton, near the Bremerton Navy Yard, and inhabit islands in Puget Sound opposite vital naval ship building installations. Still others are engaged in fishing along the southwest Washington Pacific Coast and along the Columbia River. Many of these Japanese are within easy reach of the forests of Washington State, the stock piles of seasoning lumber and the many sawmills of southwest Washington. During the dry season these forests, mills and stock piles are easily fired. (See inclosed map.)

(2) *Oregon.* There are approximately 4,000 Japanese in the State of Oregon, of which the substantial majority reside in the area in the vicinity of Portland along the south bank of the Columbia River, following the general

line Bonneville, Oregon City, Astoria, Tillamook. Many of these are in the northern reaches of the Willamette Valley and are engaged in agricultural and fishing pursuits. Others operate vegetable markets in the Portland metropolitan area and still others reside along the northern Oregon sea coast. Their disposition is in intimate relationship with the northwest Oregon sawmills and lumber industry, near and around the vital electric power development at Bonneville and the pulp and paper installations at Camas (on the Washington State side of the Columbia River) and Oregon City, directly south of Portland). (See inclosed map.)

(3) *California.* The Japanese population in California aggregates approximately 93,500 people. Its disposition is so widespread and so well known that little would be gained by setting it forth in detail here. They live in great numbers along the coastal strip, in and around San Francisco and the Bay Area, the Salinas Valley, Los Angeles and San Diego. Their truck farms are contiguous to the vital aircraft industry concentration in and around Los Angeles. They live in large numbers in and about San Francisco, now a vast staging area for the war in the Pacific, a point at which the nation's lines of communication and supply converge. Inland they are disposed in the Sacramento, San Joaquin and Imperial Valleys. They are engaged in the production of approximately 38% of the vegetable produce of California. Many of them are engaged in the distribution of such produce in and along the water fronts at San Francisco and Los Angeles. Of the 93,500 in California, about 25,000 reside inland in the mentioned valleys where they are largely engaged in vegetable production cited above, and 54,600 reside along the coastal strip, that is to say, a strip of coast line varying from eight miles in the north to twenty miles in width in and around the San Francisco bay area, including San Francisco, in Los Angeles and its environs, and in San Diego. Approximately 13,900 are dispersed throughout the remaining portion of the state. In Los Angeles City the disposition of vital aircraft industrial plants covers the entire city. Large numbers of Japanese live and operate markets and truck farms adjacent to or near these installations. (See inclosed map.)

#### d. Disposition of Other Subversive Persons.

Disposed within the vital coastal strip already mentioned are large numbers of Italians and Germans, foreign and native born, among whom are many individuals who constitute an actual or potential menace to the safety of the nation.

#### 2. Action recommended.

a. Recommendations for the designation of prohibited areas, described as "Category A" areas in California, Oregon and Washington, from which are to be excluded by order of the Attorney General all alien enemies, have gone forward from this headquarters to the Attorney General through the Provost Marshal General and the Secretary of War. These recommendations were made in order to aid the Attorney General in the implementation of the Presidential Proclamations of December 7 and 8, 1941, imposing responsibility on him

for the control of alien enemies as such. These recommendations were for the exclusion of all alien enemies from Category "A." The Attorney General has adopted these recommendations in part, and has the balance under consideration. Similarly, recommendations were made by this headquarters, and adopted by the Attorney General, for the designation of certain areas as Category "B" areas, within which alien enemies may be permitted on pass or permit.

b. I now recommend the following:

(1) That the Secretary of War procure from the President direction and authority to designate military areas in the combat zone of the Western Theater of Operations, (if necessary to include the entire combat zone), from which, in his discretion, he may exclude all Japanese, all alien enemies, and all other persons suspected for any reason by the administering military authorities of being actual or potential saboteurs, espionage agents, or fifth columnists. Such executive order should empower the Secretary of War to requisition the services of any and all other agencies of the Federal Government, with express direction to such agencies to respond to such requisition, and further empowering the Secretary of War to use any and all federal facilities and equipment, including Civilian Conservation Corps Camps, and to accept the use of State facilities for the purpose of providing shelter and equipment for evacuees. Such executive order to provide further for the administration of military areas for the purposes of this plan by appropriate military authorities acting with the requisitioned assistance of the other federal agencies and the cooperation of State and local agencies. The executive order should further provide that by reason of military necessity the right of all persons, whether citizens or aliens, to reside, enter, cross or be within any military areas shall be subject to revocation and shall exist on a pass and permit basis at the discretion of the Secretary of War and implemented by the necessary legislation imposing penalties for violation.

(2) That, pursuant to such executive order, there be designated as military areas all areas in Washington, Oregon and California, recommended by me to date for designation by the Attorney General as Category "A" areas and such additional areas as it may be found necessary to designate hereafter.

(3) That the Secretary of War provide for the exclusion from such military areas, in his discretion, of the following classes of persons, viz:

(a) Japanese aliens.

(b) Japanese-American citizens.

(c) Alien enemies other than Japanese aliens.

(d) Any and all other persons who are suspected for any reason by the administering military authorities to be actual or potential saboteurs, espionage agents, fifth columnists, or subversive persons.

(4) That the evacuation of classes (a), (b), and (c) from such military areas be initiated on a designated evacuation day and carried to completion as rapidly as practicable.

That prior to evacuation day all plans be complete for the establishment of initial concentration points, reception centers, registration, rationing, guard-

ing, transportation to internment points, and the selection and establishment of internment facilities in the Sixth, Seventh, and Eighth Corps Areas.

That persons in class (a) and (c) above be evacuated and interned at such selected places of internment, under guard.

That persons in class (b) above, at the time of evacuation, be offered an opportunity to accept voluntary internment, under guard, at the place of internment above mentioned.

That persons in class (b) who decline to accept voluntary internment, be excluded from all military areas, and left to their own resources, or, in the alternative, be encouraged to accept resettlement outside of such military areas with such assistance as the State governments concerned or the Federal Security Agency may be by that time prepared to offer.

That the evacuation of persons in class (d) be progressive and continuing, and that upon their evacuation persons in class (d) be excluded from all military areas and left in their own resources outside of such military areas, or, in the alternative, be offered voluntary internment or encouraged to accept voluntary resettlement as above outlined, unless the facts in a particular case shall warrant other action.

(5) The Commanding General, Western Defense Command and Fourth Army, to be responsible for the evacuation, administration, supply and guard, to the place of internment; the Commanding Generals of the Corps Areas concerned to be responsible for guard, supply and administration at the places of internment.

(6) That direct communication between the Commanding General, Western Defense Command and Fourth Army and the Corps Area Commanders concerned for the purpose of making necessary arrangements be authorized.

(7) That the Provost Marshal General coordinate all phases of the plan between the Commanding General, Western Defense Command and Fourth Army, on the one hand, and the Corps Area Commanders on the other hand.

(8) That all arrangements be accomplished with the utmost secrecy.

(9) That adult males (above the age of 14 years) be interned separately from all women and children until the establishment of family units can be accomplished.

(10) No change is contemplated in Category "B" areas.

3. Although so far as the Army is concerned, such action is not an essential feature of the plan, but merely incidental thereto, I, nevertheless, recommend that mass internment be considered as largely a temporary expedient pending selective resettlement, to be accomplished by the various Security Agencies of the Federal and State Governments.

4. The number of persons involved in the recommended evacuation will be approximately 133,000. (This total represents all enemy aliens and Japanese-American citizens in Category "A" areas recommended to date.)

5. If these recommendations are approved detailed plans will be made by this headquarters for the proposed evacuation. The number evacuated to be apportioned by the Provost Marshal General among the Corps Area Com-



manders concerned as the basis for formulating their respective plans. It is possible that the State of California, and perhaps the State of Washington, will be able to offer resettlement facilities for a given number of evacuees who may be willing to accept resettlement.

6. Pending further and detailed study of the problem, it is further recommended: (1) That the Commanding General, Western Defense Command and Fourth Army, coordinate with the local and State authorities, in order to facilitate the temporary physical protection by them of the property of evacuees not taken with them; (2) That the Commanding General, Western Defense Command and Fourth Army, determine the quantity and character of property which the adult males, referred to in paragraph 2b (9), may be permitted to take with them; and (3) That the Treasury Department or other proper Federal agency be responsible for the conservation, liquidation, and proper disposition of the property of evacuees if it cannot be cared for through the usual and normal channels.

J. L. DEWITT,  
Lieutenant General, U. S. Army,  
Commanding.

1 Incl: Map (in dup.).

Congressional authority for the promulgation of the curfew and evacuation orders is clear. The very purpose of the Act of March 21, 1942, was to confirm and implement Executive Order No. 9066. The bill which became the Act of March 21, 1942, was introduced in the Senate on March 9, 1942, and in the House on March 10, 1942, at the request of the Secretary of War, who stated explicitly that the purpose of the legislation was to provide a means for enforcement of orders issued under Executive Order 9066.<sup>22</sup> Representative Costello for the House Military Affairs Committee made plain the legislative understanding that curfew restrictions and the removal of persons, citizens as well as aliens, from military areas were

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"The purpose of the proposed legislation is to provide for enforcement in the Federal criminal courts of orders issued under the authority of the Executive order of the President No. 9066, dated February 19, 1942. This Executive order authorizes the Secretary of War to prescribe military areas from which any and all persons may be excluded for purposes of national defense."

The Secretary of War wrote to the Chairman of the Senate and House Committee on Military Affairs in identical letters dated March 13 and 14, 1942, respectively, as follows (Cong. Rec., Vol. 88, part 2, p. 2725; H. Rep. No. 1906, p. 3) that "the bill, when enacted, should be broad enough to enable the Secretary of War or the appropriate military commander to enforce curfews and other restrictions within military areas and zones."

U.S. Brief, p. 39.

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contemplated." When the bill was discussed in the Senate, Senator Reynolds, Chairman of the Senate Military Affairs Committee, read a newspaper item stating that "evacuation of the first Japanese aliens and American-born Japanese from military area No. 1" was about to commence; described the proposed evacuation; read to the Senate the Report of the Committee on Military Affairs, which included the letters of the Secretary of War, referred to in footnote 59, *supra*; read General DeWitt's Public Proclamation No. 1; and stated the common understanding of the bill."<sup>1</sup>

On the House Floor when the bill was being considered for enactment, its immediate passage

[<sup>2</sup>"The necessity for this legislation arose from the fact that the safe conduct of the war requires the fullest possible protection against either espionage or sabotage to national defense material, national defense premises, and national defense utilities. In order to provide such protection it has been deemed advisable to remove certain aliens as well as citizens from areas in which war production is located and where military activities are being conducted. To make such removal effective, it is necessary to provide for penalties in the event of any violation of the orders or restrictions which may be established, as well as to enforce curfews, where they may be required" (H. Rep. No. 1906, 77th Cong., 2d Sess., p. 2).]

"It is my understanding that in order to carry out the objectives of the Proclamation, and thus keep clear the military areas which have been defined by General DeWitt, the commander of the western area, we are asked to provide the department with authority to keep certain individuals from entering or leaving military zones, or not complying with any of the curfew laws, or any regulations which might be established within those zones" (Cong. Rec., Vol. 88, part 2, pp. 2722-2726).

Article I, but, in addition, Article II confers most sweeping authority directly upon the President.

(a) Pursuant to its power under Article I, Congress adopted on December 8, 1941, and the President approved a joint resolution, declaring a state of war between the United States and the Imperial Government of Japan. See Appendix B, *infra*, p. 86. The resolution directed the President to employ the entire naval and military forces of the United States and the resources of the Government to prosecute the war; and it pledged all the resources of the country to bring the conflict to a successful termination.

[The events which had occurred between the attack on Pearl Harbor and the enactment of the Act of March 21, 1942, amply warranted such legislation. The extent of the disaster at Pearl Harbor, only recently disclosed to the public, was all too well known to the military authorities, and left the military and naval installations, shipyards, airplane and other war manufacturing plants on the West Coast exposed to destructive enemy attack. It was learned that Japanese espionage had supplied the Japanese forces with precise information as to the disposition of the vessels of the fleet at Pearl Harbor, the nature and location of anti-aircraft defenses and the time and course of flight of air patrols." On December

"Report dated January 23, 1942, of the Commission Appointed by The President Of The United States To Investigate And Report The Facts Relating To The Attack Made

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U.S. Brief, p. 45.

11, 1941, the Western Defense Command had been established and designated a theatre of operations; the commanding general was charged with the duty, *inter alia*, of protecting that area against enemy attack. The overwhelming majority of persons of Japanese ancestry in the United States resided on the West Coast. See *supra*, p. 18. Great apprehension was felt that even if the majority of those Japanese were loyal to the United States, a number of them, citizens and aliens alike, might be disposed to assist the enemy, particularly in the case of an attack. And there was also concern lest the resident Japanese be subjected to mass local violence in the event of an attack." These circumstances and the imperative need for prompt protective action were fully known to the President when he issued Executive Order No. 9066, which was to form the basis for the curfew and evacuation regulations. And both the House and the Senate were informed of the grave dangers inherent in permitting the Japanese to remain in the numerous critical areas along the West Coast, and of the peril to the nation that might result from the treacherous action of some of those Japanese.]

By Japanese Armed Forces Upon Pearl Harbor In The Territory Of Hawaii On December 7, 1941 (The Roberts' Committee Report), pp. 12-13, Senate Document No. 159, 77th Congress, 2nd Sess.

"See Tolun Committee Report, pp. 145-147, 149-150; Hearings, pp. 11044, 11156.

<sup>324</sup>  
U.S. Brief, p. 46.

such designated commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, 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; and

Whereas the Secretary of War on February 20, 1942, designated the undersigned as the Military Commander to carry out the duties and responsibilities imposed by said Executive Order for that portion of the United States embraced in the Western Defense Command; and

Whereas the Western Defense Command embraces the entire Pacific Coast of the United States which by its geographical location is particularly subject to attack, to attempted invasion by the armed forces of nations with which the United States is now at war, and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations:

[ Now, therefore, I, J. L. DeWitt, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General of the Western Defense Command, do hereby declare that:

U.S. Brief, p.98.



1. The present situation requires as a matter of military necessity the establishment in the territory embraced by the Western Defense Command of Military Areas and Zones thereof as defined in Exhibit 1, hereto attached, and as generally shown on the map attached hereto and marked Exhibit 2.

2. Military Areas Nos. 1 and 2, as particularly described and generally shown hereinafter and in Exhibits 1 and 2 hereto, are hereby designated and established.

3. Within Military Areas Nos. 1 and 2 there are established Zone A-1, lying wholly within Military Area No. 1; Zones A-2 to A-99, inclusive, some of which are in Military Area No. 1, and the others in Military Area No. 2; and Zone B, comprising all that part of Military Area No. 1 not included within Zones A-1 to A-99, inclusive; all as more particularly described and defined and generally shown hereinafter and in Exhibits 1 and 2.

Military Area No. 2 comprises all that part of the States of Washington, Oregon, California and Arizona which is not included within Military Area No. 1, and is shown on the map (Exhibit 2) as an unshaded area.

4. Such persons or classes of persons as the situation may require will by subsequent proclamation be excluded from all of Military Area No. 1 and also from such of those zones herein described as Zones A-2 to A-99, inclusive, as are within Military Area No. 2.

Certain persons or classes of persons who are by subsequent proclamation excluded from the zones last above mentioned may be permitted,

Idaho, Nevada, Utah and Arizona and the Territory of Alaska has been established as the Western Defense Command and designated as a Theatre of Operations under my command; and

Whereas by Executive Order No. 9066, dated February 19, 1942, the President of the United States authorized and directed the Secretary of War and the Military Commanders whom he may from time to time designate, whenever he or any such designated commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which the right of any persons 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; and

Whereas the Secretary of War on February 20, 1942, designated the undersigned as the Military Commander to carry out the duties and responsibilities imposed by said Executive Order for that portion of the United States embraced in the Western Defense Command; and

Whereas the Western Defense Command by its geographical location is particularly subject to attack, to attempted invasion by the armed forces of nations with which the United States is now at war, and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations:

U.S. Brief, p. 102.

ignated and established Military Areas Nos. 3, 4, 5 and 6 and Zones thereof, and

Whereas the present situation within these Military Areas and Zones requires as a matter of military necessity the establishment of certain regulations pertaining to all enemy aliens and all persons of Japanese ancestry within said Military Areas and Zones thereof;

Now, therefore, I. J. L. DeWitt, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General, Western Defense Command, do hereby declare and establish the following regulations covering the conduct to be observed by all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the Military Areas above described, or such portions thereof as are hereinafter mentioned:

1. From and after 6:00 A. M., March 27, 1942, all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the geographical limits of Military Area No. 1. or within any of the Zones established within Military Area No. 2, as those areas are defined and described in Public Proclamation No. 1, dated March 2, 1942, this headquarters, or within the geographical limits of the designated Zones established within Military Areas Nos. 3, 4, 5, and 6, as those areas are defined and described in Public Proclamation No. 2, dated March 16, 1942, this headquarters, or

U.S. Brief, p. 106-107.

within any of such additional Zones as may hereafter be similarly designated and defined, shall be within their place of residence between the hours of 8:00 P. M. and 6:00 A. M., which period is hereinafter referred to as the hours of curfew.

2. At all other times all such persons shall be only at their place of residence or employment or traveling between those places or within a distance of not more than five miles from their place of residence.

3. Nothing in paragraph 2 shall be construed to prohibit any of the above specified persons from visiting the nearest United States Post Office, United States Employment Service Office, or office operated or maintained by the Wartime Civil Control Administration, for the purpose of transacting any business or the making of any arrangements reasonably necessary to accomplish evacuation; nor be construed to prohibit travel under duly issued change of residence notice and travel permit provided for in paragraph 5 of Public Proclamations Numbers 1 and 2. Travel performed in change of residence to a place outside the prohibited and restricted areas may be performed without regard to curfew hours.

4. Any person violating these regulations will be subject to immediate exclusion from the Military Areas and Zones specified in paragraph 1 and to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled: "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing Any Act in Military Areas or Zones."

(Instructions published with Civilian Exclusion  
Order No. 57)

Western Defense Command and Fourth Army  
Wartime Civil Control Administration, Presidio  
of San Francisco, California

INSTRUCTIONS TO ALL PERSONS OF JAPANESE  
ANCESTRY

Living in the following area: All that portion of the County of King, State of Washington, within the boundary beginning at the intersection of Roosevelt Way and East Eighty-fifth Street; thence easterly along East Eighty-fifth Street and East Eighty-fifth Street extended to Lake Washington; thence southerly along the shoreline of Lake Washington to the point at which Yesler Way meets Lake Washington; thence westerly along Yesler Way to Fifteenth Avenue; thence northerly on Fifteenth Avenue to East Madison Street; thence southwesterly on East Madison Street to Fifth Avenue; thence northwesterly along Fifth Avenue to Westlake Avenue; thence northerly along Westlake Avenue to Virginia Street; thence northeasterly along Virginia Street to Fairview Avenue North; thence northerly along Fairview Avenue North to Eastlake Avenue; thence northerly along Eastlake Avenue to Roosevelt Way; thence northerly along Roosevelt Way to the point of beginning.

[Pursuant to the provisions of Civilian Exclusion Order No. 57, this Headquarters, dated May 10,

U.S. Brief, pp. 121-122.

1942, all persons of Japanese ancestry, both alien and non-alien, will be evacuated from the above area by 12 o'clock noon, P. W. T., Saturday, May 16, 1942.]

No Japanese person living in the above area will be permitted to change residence after 12 o'clock noon, P. W. T., Sunday, May 10, 1942, without obtaining special permission from the representative of the Commanding General, North-western Sector, at the Civil Control Station located at: Christian Youth Center, 2203 East Madison Street, Seattle, Washington. Such permits will only be granted for the purpose of uniting members of a family, or in cases of grave emergency.

The Civil Control Station is equipped to assist the Japanese population affected by this evacuation in the following ways:

1. Give advice and instructions on the evacuation.
2. Provide services with respect to the management, leasing, sale, storage or other disposition of most kinds of property, such as real estate, business and professional equipment, household goods, boats, automobiles and livestock.
3. Provide temporary residence elsewhere for all Japanese in family groups.
4. Transport persons and a limited amount of clothing and equipment to their new residence.

The following instructions must be observed:

1. A responsible member of each family, preferably the head of the family, or the person in whose name most of the property is held, and each

b. Public Law 77-503 and its enactment by Congress were based upon and ostensibly justified by the assertions of military necessity for Executive Order 9066.

Personal Justice Denied, p. 99.

Final Report, pp. 29-31.

U.S. Brief, pp. 39-40, n.60, 45-46.

"There was no civil liberty opposition in Congress to making criminal any violation of the Executive Order. There were, of course, few Nisei of voting age and they had no voice in Congress. No one publicly questioned the military necessity of the action or its intrusion into the freedom of American citizens."

Personal Justice Denied, p. 99



through the development of suitable means to acquire permits to return to prohibited zones or to remain therein.

"12. I desire that you make known to me your detailed plans for evacuation as soon as practicable in order to enable the War Department to coordinate with the Corps Area Commanders concerned any movement you propose to undertake of evacuees outside of your command to places of temporary shelter. You will not entrain any evacuees for transportation beyond your command until you have been informed by the War Department that accommodations are prepared to receive them at the places of destination.

"13. Yours will be the military responsibility for processing, evacuation, supplying, rationing and transportation to the points of shelter. This, of course, applies only to those evacuees who are unable to re-settle themselves on their own resources or for whom public and private agencies have been unable to arrange re-settlement. For persons in this class, the Army will provide shelter, food and other accommodations, including medical aid and hospitalization in selected places in the interior until civil authorities can make other arrangements.

"14. It will, of course, be necessary that your plans include provision for protection of the property, particularly the physical property, of evacuees. All reasonable measures should be taken through publicity and other means, to encourage evacuees to take steps to protect their own property. Where evacuees are unable to do this prior to the time when it is necessary for them to comply with the exclusion orders, there is always danger that unscrupulous persons will take undue advantage or that physical property unavoidably left behind will be pillaged by lawless elements. The protection of physical property from theft or other harm is primarily the responsibility of state and local law-enforcement agencies, and you will doubtless call upon them for the maximum assistance in this connection. Where they are unable to protect physical property left behind in military areas, the responsibility will be yours, to provide reasonable protection, either through the use of troops or through other appropriate measures. The appointment by you of a property custodian and the creation by him of an organization to deal with such property in military areas may become necessary. The provisions of the Executive Order and the necessity in each given instance are such that you have authority to take such action, either directly or through another federal agency. In the development of your program, it is desired that you accomplish it with the minimum of individual hardship and dislocation of business and industries consistent with safety. Report to me from time to time by telephone, with confirmation in writing, of important action and events, indicating particularly the location and extent of military areas prescribed by you and the character of the restrictions promulgated."

Immediately upon the promulgation of Executive Order No. 9066, the War Department, with the approval of the President, requested the Congress to enact legislation to provide sanctions for the enforcement of directives issued under the authority of the Executive Order. A draft of proposed legislation for this purpose was transmitted by the Secretary of War simultaneously to the Chairman of the Senate Military Affairs Committee, and to the Speaker of the House of Representatives. The concurrence of the Department of Justice as to the form and substance of the bill had been obtained.

The body of each letter of transmittal from the Secretary of War to the Congress read as follows:

"There is enclosed herewith draft of a bill entitled 'A bill to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, or leaving military areas or zones,' which the War Department recommends to be enacted into law.

"The purpose of the proposed legislation is to provide for enforcement in the Federal criminal courts of orders issued under the authority of Executive order of the President No. 9066, dated February 19, 1942. This Executive order authorizes the Secretary of War to prescribe military areas from which any and all persons may be excluded for purposes of national defense.

"It is impossible to estimate the probable cost to the Government consequent upon the enactment of such legislation.

"The Bureau of the Budget has advised that there is no objection to the submission of this proposed legislation for the consideration of the Congress, as the enactment thereof would not be in conflict with the program of the President."

While the legislation was under consideration, the Secretary of War, on March 14, 1942, transmitted another letter to the Congress suggesting an amendment and urging immediate enactment. The letter of March 14th is as follows:

"Hon. ANDREW J. MAY,  
Chairman, Committee on Military Affairs,  
House of Representatives.

"Dear Mr. May:

"By telephone on Thursday, March 12, 1942, Lt. Gen. John L. DeWitt, commanding the Western Defense Command, requested that action be taken to expedite passage of S. 2352 and H. R. 6758, bills to provide penalties for violation of restrictions or orders with respect to persons entering, remaining in, or leaving military areas or zones.

"General DeWitt is strongly of the opinion that the bill, when enacted, should be broad enough to enable the Secretary of War or the appropriate military commander to enforce curfews and other restrictions within military areas and zones. To that end, it is suggested that in line 3, page 1, of H. R. 6758 the word 'or' be stricken and that after the word 'leave' there be inserted the words, 'or commit any act in.'

"General DeWitt indicated that he was prepared to enforce certain restrictions at once for the purpose of protecting cert in vital national defense interests but did not desire to proceed until enforcement machinery had been set up.

"The War Department recommends immediate passage of the proposed law.

"Sincerely yours,

"HENRY L. STIMSON,  
"Secretary of War."

This bill became the vehicle for enactment of Public Law No. 503, 77th Congress, approved March 21, 1942. The Department of Justice was consulted in the drafting of this legislation as well as in the drafting, processing and presentation of Executive Order 9066.

Public Law No. 503 follows:

"To provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever shall enter, remain in, leave, or commit any act in any military area or military zone prescribed, under the authority of an Executive order of the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and

extent of the restrictions or order and that his act was in violation thereof, be guilty of misdemeanor and upon conviction shall be liable to a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both, for each offense."

Previous to that time, on February 14, 1942, the Commanding General had forwarded his recommendations to the Chief of Staff, United States Army, as to the necessary measures to be taken. (See Appendix to this chapter, Memorandum for The Secretary of War from the Commanding General, February 14, 1942.) Included in these proposals were provisions for property protection and the rendering of necessary social service. It will be noted that the military authorities contemplated appropriate provision against undue economic and social dislocation from the beginning. This did not emerge as an underlying policy after the program had been initiated but, on the contrary, constituted an essential feature during all of the pre-evacuation discussions.

On February 23, the Secretary of War again dispatched a War Department representative to San Francisco to act as liaison officer between the Department and the Commanding General and to be of any possible assistance. Acting upon recommendations of the Western Defense Command, the Assistant Secretary of War called upon certain federal agencies to designate personnel to participate in developing the evacuation program. Prompt responses followed, and by February 27th the first of these representatives arrived in San Francisco. Dr. C. L. Dedrick of the Census Bureau, Department of Commerce, reported at San Francisco. He was shortly followed by representatives of the Treasury Department, the Federal Reserve System, the Department of Agriculture, the Federal Security Agency, the Department of Justice, the Alien Property Custodian, and the Office of Price Administration.

In a subsequent communication dated March 2, 1942, the Secretary of War broadened the authority of the Commanding General which had been granted him under the previous delegation of February 20, 1942 (see p. 2, chapter III, *supra*). Full freedom of action was granted to obligate funds, to enter into contracts and to acquire the services of any persons, firms or corporations in accomplishing the evacuation. The letter was as follows:

"March 2, 1942

"LIEUTENANT GENERAL JOHN L. DEWITT.  
Commander, Western Defense Command,  
San Francisco, California.

"Dear General DeWitt:

"By letter dated February 20, 1942, I designated you as one of the appropriate Military Commanders to exercise the powers vested in me under Executive Order No. 9066, February 19, 1942, and I delegated to you such powers as are necessary to carry out the purposes of that Executive Order. Incident to the exercise of those powers, you are authorized to employ without regard to Civil Service or Classification laws or regulations, all persons or agencies necessary to carry out your duties. You are also authorized to employ the service of any association, firm, company, or corporation in furtherance of your mission. You will fix the rates of compensation so as to correspond as nearly as possible to the rate prevailing for similar service in the community in which the services are to be rendered.

"Under the terms of Executive Order No. 9001, dated December 27, 1941, and subject to the limitations thereof and of the Act of December 18, 1941 (First War

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U.S. Brief, pp. 39-40, n.60.

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"It is my understanding that in order to carry out the objectives of the Proclamation, and thus keep clear the military areas which have been defined by General DeWitt, the commander of the western area, we are asked to provide the department with authority to keep certain individuals from entering or leaving military zones, or not complying with any of the curfew laws, or any regulations which might be established within those zones" (Cong. Rec., Vol. 88, part 2, pp. 2722-2726).

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U.S. Brief, pp.45-46.

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11, 1941, the Western Defense Command had been established and designated a theatre of operations; the commanding general was charged with the duty, *inter alia*, of protecting that area against enemy attack. The overwhelming majority of persons of Japanese ancestry in the United States resided on the West Coast. See *supra*, p. 18. Great apprehension was felt that even if the majority of those Japanese were loyal to the United States, a number of them, citizens and aliens alike, might be disposed to assist the enemy, particularly in the case of an attack. And there was also concern lest the resident Japanese be subjected to mass local violence in the event of an attack.<sup>44</sup> These circumstances and the imperative need for prompt protective action were fully known to the President when he issued Executive Order No. 9066, which was to form the basis for the curfew and evacuation regulations. And both the House and the Senate were informed of the grave dangers inherent in permitting the Japanese to remain in the numerous critical areas along the West Coast, and of the peril to the nation that might result from the treacherous action of some of those Japanese.]

By Japanese Armed Forces Upon Pearl Harbor In The Territory Of Hawaii On December 7, 1941 (The Roberts' Committee Report), pp. 12-13, Senate Document No. 159, 77th Congress, 2nd Sess.

<sup>44</sup> See Tolson Committee Report, pp. 145-147, 149-150; Hearings, pp. 11044, 11156.

c. The military orders authorized under Executive Order 9066 were intended to be directed specifically against persons of Japanese ancestry.

Personal Justice Denied, pp. 49, 85.

U.S. Brief, p. 38, n.58.



1940, he had broadened the political base of his Cabinet, bringing in as Secretary of the Navy Frank Knox, the publisher of the *Chicago Daily News* who had been Alfred M. Landon's vice-presidential candidate in 1936. Roosevelt drafted as Secretary of War one of the most distinguished Republican public servants of his time, Henry L. Stimson, who had served as Secretary of War under Taft and Secretary of State under Hoover. Stimson, who brought with him the standing and prestige of half a century of active service to his country, carried a particularly impressive weight of principled tradition. He brought into the War Department other, younger easterners, many of whom were fellow lawyers and Republicans. John J. McCloy came from a prominent New York law firm to become first a Special Assistant and then Assistant Secretary for War, and after the outbreak of war he was the civilian aide to Stimson responsible for Japanese American questions.<sup>5</sup> Roosevelt later named Francis Biddle, a Philadelphian who was a firm defender of civil rights, as Attorney General when Robert Jackson was appointed to the Supreme Court.

Ten weeks after the outbreak of war, on February 19, 1942, President Roosevelt signed Executive Order 9066 which gave to the Secretary of War and the military commanders to whom he delegated authority, the power to exclude any persons from designated areas in order to secure national defense objectives against sabotage and espionage. The order was used, as the President, his responsible Cabinet officers and the West Coast Congressional delegation knew it would be, to exclude persons of Japanese ancestry, both American citizens and resident aliens, from the West Coast. Over the following months more than 100,000 people were ordered to leave their homes and farms and businesses. "Voluntary" resettlement of people who had been branded as potentially disloyal by the War Department and who were recognizable by their facial features was not feasible. Not surprisingly, the politicians and citizens of Wyoming or Idaho believed that their war industries, railroad lines and hydroelectric dams deserved as much protection from possible sabotage as did those on the Pacific Coast, and they opposed accepting the ethnic Japanese. Most of the evacuees were reduced to abandoning their homes and livelihoods and being transported by the government to "relocation centers" in desolate interior regions of the west.

As the Executive Order made plain, these actions were based upon "military necessity." The government has never fundamentally reviewed whether this massive eviction of an entire ethnic group was justified. In three cases the Supreme Court reviewed the Executive

Personal Justice Denied, p. 49.

"There was no direct mention of American citizens of Japanese descent, but unquestionably the Order was directed squarely at those Americans. A few months later, when there was talk of the War Department using the Executive Order to move Germans and Italians on the East Coast, the President wrote Stimson that he considered enemy alien control to be 'primarily a civilian matter except of course in the case of the Japanese mass evacuation on the Pacific Coast.' 172/"

172/ Memo, Roosevelt to Stimson, May 5, 1942.  
NARS. RG 107 (CWRIC 196).

Personal Justice Denied, p. 85.

by the Secretary of War "to prescribe military areas in such places and of such extent as he \* \* \* may determine," General DeWitt issued Public Proclamation No. 1, which established as a military area the region in which the defendant resided.

[ General DeWitt's subsequent orders excluding persons of Japanese ancestry from this area were unquestionably authorized by the provision of Executive Order 9066 that "any or all persons may be excluded" from the duly prescribed areas, as well as by the provision that in all such areas "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." It is equally clear that the curfew order with respect to the duty of specified classes of persons in the military area to remain within their homes during specified hours was within General DeWitt's power to impose restrictions on the "right of any person to enter, remain in, or leave" the area and thus was in the discretionary power delegated by Executive Order 9066." ]

[ "While the fact that General DeWitt's orders are within the scope of the terms of Executive Order 9066 is sufficient authorization, it may be noted also that the Executive Order followed closely, both in time and content, the recommendations by members of Congress that military authority be used to execute the evacuation of persons of Japanese ancestry from the Pacific Coast states. Tolan Committee Preliminary Report (H. Rep. No. 1911, 77th Cong., 2d Sess.), pp. 3-5. ]

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U.S. Brief, p. 38, n. 58.

d. Military officials justified the military necessity of the curfew, exclusion and internment of the Petitioner and other persons of Japanese ancestry on the ground that such persons posed a danger of espionage and sabotage.

Personal Justice Denied, pp. 7, 87.

Final Report, pp. 3-4, 8-9, 33-35.

U.S. Brief, pp. 60-61, 97-124 (106-107).

Exhibits to Petition for Writ of Error Coram Nobis,  
Exhibit L (Hereinafter, "Petition Exhibits.").

"In his 1943 Final Report, General DeWitt cited a number of factors in support of the exclusion decision: signaling from shore to enemy submarines; arms and contraband found by the FBI during raids on ethnic Japanese homes and businesses; dangers to the ethnic Japanese from vigilantes; concentration of ethnic Japanese around or near militarily sensitive areas; the number of Japanese ethnic organizations on the coast which might shelter pro-Japanese attitudes or activities such as Emperor-worshipping Shinto; and the presence of Kibei, who had spent some time in Japan."

Personal Justice Denied, p. 7.

DeWitt's *Final Report* bases the War Department decision on a number of factors: signaling from shore to enemy submarines; arms and contraband found by the FBI during raids on Nikkei homes and businesses; danger to evacuees from vigilantes; concentration of the ethnic Japanese population around or near militarily sensitive areas; the number of Japanese ethnic organizations on the coast which might shelter pro-Japanese attitudes or activities such as Emperor-worshipping Shinto; the presence of the Kibei, who had recent ties to Japan. "It was, perforce, a combination of factors and circumstances with which the Commanding General had to deal. Here was a relatively homogenous, unassimilated element bearing a close relationship through ties of race, religion, language, custom and indoctrination to the enemy."<sup>174\*</sup>

Two items in DeWitt's list stand out as demonstrable indications of military danger: shore-to-ship signaling and the discovery of arms and contraband. Reading the *Final Report* while preparing to defend the exclusion in the Supreme Court, Justice Department attorneys

Committee did not doubt that fifth column elements were present among Germans and Italians as well as Japanese but concluded, "Surely some more workable method exists for determining the loyalty and reliability of these people than the uprooting of 50 trustworthy persons to remove one dangerous individual." Moreover, in comparing German and Italian aliens to Japanese aliens, the Committee found only two significant differences: the Japanese tended to live in separate communities and an unusually high proportion were engaged in agriculture and produce distribution. Neither has any obvious military significance. Given this line of reasoning it is not surprising that in its March report, the Committee reported "[a] profound sense of certain injustices and constitutional doubts attending the evacuation of the Japanese," and in its May report stated, "The Nation must decide and Congress must gravely consider, as a matter of national policy, the extent to which citizenship, in and of itself, is a guaranty of equal rights and privileges during time of war." Report of the Select Committee Investigating National Defense Migration, House of Representatives, 77th Cong., 2d Sess., House Report No. 1911, pp. 15, 21-22, 25; Fourth Interim Report of the Select Committee Investigating National Defense Migration, 77th Cong., 2d Sess., House Report No. 2124, pp. 11, 25.

\*DeWitt also referred to three "striking illustrations" of the need for evacuation—shellings by the Japanese of Goleta, California, and Astoria, Oregon, and a bombing of Brookings, Oregon. All three incidents took place after the Executive Order was signed. Moreover, the military importance of these episodes was clearly negligible. (Grodzins, *Americans Betrayed*, pp. 294-95.)

/174. De Witt, *Final Report*, p. 15.

Page 59, Personal Justice  
Denied

## CHAPTER I

### Action Under Alien Enemy Proclamations

The ultimate decision to evacuate all persons of Japanese ancestry from the Pacific Coast under Federal supervision was not made coincidentally with the outbreak of war between Japan and the United States. It was predicated upon a series of intermediate decisions, each of which formed a part of the progressive development of the final decision. At certain stages of this development, various semi-official views were advanced proposing action less embracing than that which finally followed.

On December 7th and 8th, 1941, the President issued proclamations declaring all nationals and subjects of the nations with which we were at war to be enemy aliens. This followed the precedent of the last war, and was based upon the same statutory enactment which supported the proclamations of President Wilson in this regard. (See 50 U.S.C. 21.) By executive action, certain restrictive measures were applied against all enemy aliens on an equal basis. In continental United States, the Attorney General, through the Department of Justice, was charged with the enforcement and administration of these proclamations. Where necessary fully to implement his action, the Attorney General was assigned the responsibility of issuing administrative regulations. He was also given the authority to declare prohibited zones, to which enemy aliens were to be denied admittance or from which they were to be excluded in any case where the national security required. The possession of certain articles was declared by the proclamations to be unlawful, and these articles are described as contraband. Authority was granted for the internment of such enemy aliens as might be regarded by the Attorney General as dangerous to the national security if permitted to remain at large. In continental United States internment was left in any case to the discretion of the Attorney General.

On the night of December 7th and the days that followed, certain enemy aliens were apprehended and held in detention pending the determination whether to intern. Essentially, the apprehensions thus effected were based on lists of suspects previously compiled by the intelligence services, the Federal Bureau of Investigation, the Office of Naval Intelligence, and the Military Intelligence Service. During the initial stages of this action, some 2,000 persons were apprehended. Japanese aliens were included in their number. However, no steps were taken to provide for the collection of contraband and no prohibited zones were proclaimed.

The Commanding General, during the closing weeks of December, requested the War Department to acquaint the Department of Justice with the need for vigorous action along the Pacific Coast. He sought steps looking toward the enforcement of the contraband prohibitions contained in the proclamations and toward the declaration of certain prohibited zones surrounding "vital installations" along the coast. The Commanding General had become convinced that the military security of the coast required these measures.

His conclusion was in part based upon the interception of unauthorized radio communications which had been identified as emanating from certain areas along the coast. Of further concern to him was the fact that for a period of several weeks following December 7th, substantially every ship leaving a West Coast port was attacked by an enemy submarine. This seemed conclusively to point to the existence of hostile shore-to-ship (submarine) communication.

The Commanding General requested the War Department to send a representative, and to arrange with the Department of Justice for an officer of that agency to meet with him at San Francisco, in order to consider the situation "on the ground." His objective was to crystallize a program of forthright action to deal with subversive segments of the population. Preliminary to this a number of discussions had been held between War and Justice Department representatives in Washington, D. C. The Provost Marshal General, Major General Allen W. Gullion, the Assistant Secretary of War, Honorable John J. McCloy, the Chief of the Enemy Alien Control Unit, Department of Justice, Mr. Edward J. Ennis, and the Chief of the Aliens Division, Office of the Provost Marshal General, participated in these meetings.

These conferences between War and Justice Department representatives in Washington were followed by conferences in San Francisco. Mr. James Rowe, Jr., Assistant to the Attorney General, represented the Department of Justice. The Commanding General urged that the Justice Department provide for spot raids in various areas to determine the presence and possession of contraband; that it authorize the ready seizure of contraband, and adopt means for collecting and storing it. He further requested that the Attorney General declare prohibited zones surrounding certain coastal installations. These conferences continued over the period between January 2nd and 5th, 1942, and, as an outgrowth of these meetings, the Department of Justice agreed to a program of enforcement substantially as desired, with certain important exceptions. These exceptions are described in an exchange of memoranda dated January 5, 1942, between the Commanding General and Mr. Rowe (Appendix to Chapter II *infra*).

The salient feature of the intended program was an agreement arranging for creation of prohibited zones. The Department of Justice agreed to declare prohibited zones surrounding vital installations and to provide for the exclusion from these zones of enemy aliens. The extent and location of these zones was to be determined on the basis of recommendations submitted by the Commanding General. At the conclusion of these conferences, identical memoranda were exchanged on January 6, 1942, between the Commanding General and the Assistant Attorney General, Mr. James Rowe, Jr., crystallizing the intermediate understandings which had been developed. These were:

- \* "Following is a summary of the principles applicable and procedure to be followed in the implementation of the proclamations of the President dated December 7th and 8th, 1941, and the instructions and regulations of the Attorney General, respecting alien enemies in the Western Theater of Operations. These principles and procedure



## JAPANESE EVACUATION FROM THE WEST COAST

the War Department with further details and further material before any action is taken on these recommendations. I shall, therefore, await your further advice.

"\* \* \* The evacuation \* \* \* from this area would, of course, present a problem of very great magnitude. The Department of Justice is not physically equipped to carry out any mass evacuation. It would mean that only the War Department has the equipment and personnel to manage the task.

"The proclamations directing the Department of Justice to apprehend, and where necessary, evacuate alien enemies, do not, of course, include American citizens of the Japanese race. If they have to be evacuated, I believe that this would have to be done as a military necessity in these particular areas. Such action, therefore, should in my opinion, be taken by the War Department and not by the Department of Justice."

The Commanding General thereafter submitted a résumé of the military considerations which prompted his recommendation for a prohibited zone in Washington and Oregon embracing virtually the westerly half of those states. The Department of Justice, however, concluded that it was not in a position to undertake any mass evacuation, and declined in any event to administer such general civil control measures.

Meanwhile, the uncertainties of the situation became further complicated. The enforcement of contraband provisions was impeded by the fact that many Japanese aliens resided in premises owned by American-born persons of Japanese ancestry. The Department of Justice had agreed to authorize its special field agents of the Federal Bureau of Investigation to undertake spot raids without warrant to determine the possession of arms, cameras and other contraband by Japanese, but only in those premises occupied *exclusively* by enemy aliens. The search of mixed occupancy premises or dwellings had not been authorized except by warrant only. (See Memo 1/5/42 at end of this chapter.)

In the Monterey area in California a Federal Bureau of Investigation spot raid made about February 12, 1942, found more than 60,000 rounds of ammunition and many rifles, shotguns and maps of all kinds. These raids had not succeeded in arresting the continuance of illicit signaling. Most dwelling places were in the mixed occupancy class and could not be searched promptly upon receipt of reports. It became increasingly apparent that adequate security measures could not be taken unless the Federal Government placed itself in a position to deal with the whole problem.

The Pacific Coast had become exposed to attack by enemy successes in the Pacific. The situation in the Pacific theatre had gravely deteriorated. There were hundreds of reports nightly of signal lights visible from the coast, and of intercepts of unidentified radio transmissions. Signaling was often observed at premises which could not be entered without a warrant because of mixed occupancy. The problem required immediate solution. It called for the application of measures not then in being.<sup>1</sup>

Further, the situation was fraught with danger to the Japanese population itself. The combination of spot raids revealing hidden caches of contraband, the attacks on coastwise shipping, the interception of illicit radio transmissions, the nightly observation of visual signal lamps from constantly changing locations,

<sup>1</sup>It is interesting to note that following the evacuation, interceptions of suspicious or unidentified radio signals and shore-to-ship signal lights were virtually eliminated and attacks on outbound shipping from west coast ports appreciably reduced.

#### NEED FOR MILITARY CONTROL AND FOR EVACUATION

and the success of the enemy offensive in the Pacific, had so aroused the public along the West Coast against the Japanese that it was ready to take matters into its own hands. Press and periodical reports of the public attitudes along the West Coast from December 7, 1941, to the initiation of controlled evacuation clearly reflected the intensity of feeling. Numerous incidents of violence involving Japanese and others occurred; many more were reported but were subsequently either unverified or were found to be cumulative.

The acceptance by the Attorney General of the Washington and Oregon recommendations would not have provided the security which the military situation then required. More than two-thirds of the total Japanese population on the West Coast were not subject to alien enemy regulations. The action ultimately taken was based upon authority not then existing. It had become essential to provide means which would remove the potential menace to which the presence of this group under all the circumstances subjected the West Coast. It is pertinent now to examine the situation with which the military authorities were then confronted.

Because of the ties of race, the intense feeling of filial piety and the strong bonds of common tradition, culture and customs, this population presented a tightly-knit racial group. It included in excess of 115,000 persons deployed along the Pacific Coast. Whether by design or accident, virtually always their communities were adjacent to very vital shore installations, war plants, etc. While it was believed that some were loyal, it was known that many were not. To complicate the situation no ready means existed for determining the loyal and the disloyal with any degree of safety. It was necessary to face the realities—a positive determination could not have been made.

It could not be established, of course, that the location of thousands of Japanese adjacent to strategic points verified the existence of some vast conspiracy to which all of them were parties. Some of them doubtless resided there through mere coincidence. It seemed equally beyond doubt, however, that the presence of others was not mere coincidence. It was difficult to explain the situation in Santa Barbara County, for example, by coincidence alone.

Throughout the Santa Maria Valley in that County, including the cities of Santa Maria and Guadalupe, every utility, air field, bridge, telephone and power line or other facility of importance was flanked by Japanese. They even surrounded the oil fields in this area. Only a few miles south, however, in the Santa Ynez Valley, lay an area equally as productive agriculturally as the Santa Maria Valley and with lands equally available for purchase and lease, but without any strategic installations whatever. There were no Japanese in the Santa Ynez Valley.

Similarly, along the coastal plain of Santa Barbara County from Gaviota south, the entire plain, though narrow, had been subject to intensive cultivation. Yet, the only Japanese in this area were located immediately adjacent to such widely separated points as the El Capitan Oil Field, Elwood Oil Field, Summerland Oil Field, Santa Barbara airport and Santa Barbara lighthouse and harbor entrance. There were no Japanese on the equally attractive lands between these

## APPENDIX TO CHAPTER III

**Final Recommendation of the Commanding General,  
Western Defense Command and Fourth Army,  
Submitted to The Secretary of War.**  
(see page 1 of this Chapter III)

**HEADQUARTERS WESTERN DEFENSE COMMAND AND  
FOURTH ARMY**

Presidio of San Francisco, California  
Office of the Commanding General

February 14, 1942

014.31 (DCS)

MEMORANDUM FOR: The Secretary of War,  
(Thru: The Commanding General,  
Field Forces, Washington, D. C.)

**SUBJECT:** Evacuation of Japanese and other Subversive Persons from the  
Pacific Coast.

1. In presenting a recommendation for the evacuation of Japanese and other subversive persons from the Pacific Coast, the following facts have been considered:

**a. Mission of the Western Defense Command and Fourth Army.**

- (1) Defense of the Pacific Coast of the Western Defense Command, as extended, against attacks by sea, land or air;
- (2) Local protection of establishments and communications vital to the National Defense for which adequate defense cannot be provided by local civilian authorities.

**b. Brief Estimate of the Situation.**

(1) Any estimate of the situation indicates that the following are possible and probable enemy activities:

- (a) Naval attack on shipping in coastal waters;
- (b) Naval attack on coastal cities and vital installations;
- (c) Air raids on vital installations, particularly within two hundred miles of the coast;
- (d) Sabotage of vital installations throughout the Western Defense Command.

Hostile Naval and air raids will be assisted by enemy agents signaling from the coastline and the vicinity thereof; and by supplying and otherwise assisting enemy vessels and by sabotage.

Sabotage, (for example, of airplane factories), may be effected not only by destruction within plants and establishments, but by destroying power, light, water, sewer and other utility and other facilities in the immediate vicinity thereof or at a distance. Serious damage or destruction in congested areas may readily be caused by incendiarism.

Final Report, pp. 33-35.

(2) The area lying to the west of the Cascade and Sierra Nevada Mountains in Washington, Oregon and California, is highly critical not only because the lines of communication and supply to the Pacific theater pass through it, but also because of the vital industrial production therein, particularly aircraft. In the war in which we are now engaged racial affinities are not severed by migration. The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become "Americanized", the racial strains are undiluted. To conclude otherwise is to expect that children born of white parents on Japanese soil sever all racial affinity and become loyal Japanese subjects, ready to fight and, if necessary, to die for Japan in a war against the nation of their parents. That Japan is allied with Germany and Italy in this struggle is no ground for assuming that any Japanese, barred from assimilation by convention as he is, though born and raised in the United States, will not turn against this nation when the final test of loyalty comes. It, therefore, follows that along the vital Pacific Coast over 112,000 potential enemies, of Japanese extraction, are at large today. There are indications that these are organized and ready for concerted action at a favorable opportunity. The very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken.

#### c. Disposition of the Japanese.

(1) *Washington.* As the term is used herein, the word "Japanese" includes alien Japanese and American citizens of Japanese ancestry. In the State of Washington the Japanese population, aggregating over 14,500, is disposed largely in the area lying west of the Cascade Mountains and south of an east-west line passing through Bellingham, Washington, about 70 miles north of Seattle and some 15 miles south of the Canadian border. The largest concentration of Japanese is in the area, the axis of which is along the line Seattle, Tacoma, Olympia, Willapa Bay and the mouth of the Columbia River, with the heaviest concentration in the agricultural valleys between Seattle and Tacoma, viz., the Green River and the Puyallup Valleys. The Boeing Aircraft factory is in the Green River Valley. The lines of communication and supply including power and water which feed this vital industrial installation, radiate from this plant for many miles through areas heavily populated by Japanese. Large numbers of Japanese also operate vegetable markets along the Seattle and Tacoma water fronts, in Bremerton, near the Bremerton Navy Yard, and inhabit islands in Puget Sound opposite vital naval ship building installations. Still others are engaged in fishing along the southwest Washington Pacific Coast and along the Columbia River. Many of these Japanese are within easy reach of the forests of Washington State, the stock piles of seasoning lumber and the many sawmills of southwest Washington. During the dry season these forests, mills and stock piles are easily fired. (See inclosed map.)

(2) *Oregon.* There are approximately 4,000 Japanese in the State of Oregon, of which the substantial majority reside in the area in the vicinity of Portland along the south bank of the Columbia River, following the general

line Bonneville, Oregon City, Astoria, Tillamook. Many of these are in the northern reaches of the Willamette Valley and are engaged in agricultural and fishing pursuits. Others operate vegetable markets in the Portland metropolitan area and still others reside along the northern Oregon sea coast. Their disposition is in intimate relationship with the northwest Oregon sawmills and lumber industry, near and around the vital electric power development at Bonneville and the pulp and paper installations at Camas (on the Washington State side of the Columbia River) and Oregon City, directly south of Portland). (See inclosed map.)

(3) *California.* The Japanese population in California aggregates approximately 93,500 people. Its disposition is so widespread and so well known that little would be gained by setting it forth in detail here. They live in great numbers along the coastal strip, in and around San Francisco and the Bay Area, the Salinas Valley, Los Angeles and San Diego. Their truck farms are contiguous to the vital aircraft industry concentration in and around Los Angeles. They live in large numbers in and about San Francisco, now a vast staging area for the war in the Pacific, a point at which the nation's lines of communication and supply converge. Inland they are disposed in the Sacramento, San Joaquin and Imperial Valleys. They are engaged in the production of approximately 38% of the vegetable produce of California. Many of them are engaged in the distribution of such produce in and along the water fronts at San Francisco and Los Angeles. Of the 93,500 in California, about 25,000 reside inland in the mentioned valleys where they are largely engaged in vegetable production cited above, and 54,600 reside along the coastal strip, that is to say, a strip of coast line varying from eight miles in the north to twenty miles in width in and around the San Francisco bay area, including San Francisco, in Los Angeles and its environs, and in San Diego. Approximately 13,900 are dispersed throughout the remaining portion of the state. In Los Angeles City the disposition of vital aircraft industrial plants covers the entire city. Large numbers of Japanese live and operate markets and truck farms adjacent to or near these installations. (See inclosed map.)

#### d. Disposition of Other Subversive Persons.

Disposed within the vital coastal strip already mentioned are large numbers of Italians and Germans, foreign and native born, among whom are many individuals who constitute an actual or potential menace to the safety of the nation.

#### 2. Action recommended.

a. Recommendations for the designation of prohibited areas, described as "Category A" areas in California, Oregon and Washington, from which are to be excluded by order of the Attorney General all alien enemies, have gone forward from this headquarters to the Attorney General through the Provost Marshal General and the Secretary of War. These recommendations were made in order to aid the Attorney General in the implementation of the Presidential Proclamations of December 7 and 8, 1941, imposing responsibility on him

Nor, in view of the extraordinarily unique situation in this case, will it be profitable to explore the various decisions either approving (*Gong Lum v. Rice*, 275 U. S. 78; *Clarke v. Deckebach*, 274 U. S. 392; *Terrace v. Thompson*, 263 U. S. 197; *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313; *Frick v. Webb*, 263 U. S. 326; *Crain v. New York*, 239 U. S. 195; *Patson v. Pennsylvania*, 232 U. S. 138; *Plessy v. Ferguson*, 163 U. S. 537), or disapproving (*Mitchell v. United States*, 313 U. S. 80, 97; *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337; *Truax v. Raich*, 239 U. S. 33; *Meyer v. Nebraska*, 262 U. S. 390; *Yu Cong Eng v. Trinidad*, 271 U. S. 500; *Yick Wo v. Hopkins*, 118 U. S. 356) various classifications based upon racial or similar grounds.

The situation which gave rise to the curfew and evacuation measures was wholly unprecedented in the history of this country. The validity of those measures must be tested, not in the light of the military situation as it exists today, nor even in the light of the military situation as it existed at that time viewed as a matter of hindsight. Rather, the crucial question is whether the action taken was, in the honest judgment of those charged with the responsibility of defending our shores, reasonably necessary from a military point of view. We submit that, as recounted above (p. 12 *et seq.*), the military situation was so grave, the danger of an enemy attack was so far within

the realm of probability, and the peril to be apprehended from treacherous assistance to the enemy on the part of an unknown number of Japanese concentrated in critical areas along the West Coast was so substantial, it was a matter of high military necessity to take prompt and adequate precautionary steps.

Our Pacific Fleet had been rendered all but powerless for the time being, and the Japanese forces were making bold and impressive strides. Indeed, our very coast had been shelled. Faced with the responsibility of repelling a possible Japanese invasion which might have threatened the very integrity of our nation, it was the duty of the commanding general to take into account the plain fact that over 100,000 Japanese were grouped along the coast. It was essential to recognize that although the majority of these people might be regarded as loyal to the United States, a disloyal minority, if only a few hundreds or thousands, strategically placed, might spell the difference between the success or failure of any attempted invasion.

This grave emergency called for prompt and decisive action. It was imperative that adequate protective measures be taken. If those Japanese who might aid the enemy were either known or readily identifiable, the task of segregating them would probably have been comparatively simple. However, the identities of the potentially disloyal

U. S. Brief, p.61

APPENDIX D

Public Proclamation No. 1, 7 F. R. 2320

WAR DEPARTMENT

(Public Proclamation No. 1)

Headquarters Western Defense Command and  
Fourth Army, Presidio of San Francisco,  
California

MILITARY AREAS NOS. 1 AND 2 DESIGNATED AND  
ESTABLISHED

MARCH 2, 1942.

To: The people within the States of Arizona,  
California, Oregon, and Washington, and the  
Public Generally.

Whereas by virtue of orders issued by the  
War Department on December 11, 1941, that por-  
tion of the United States lying within the States  
of Washington, Oregon, California, Montana,  
Idaho, Nevada, Utah and Arizona and the Terri-  
tory of Alaska has been established as the Western  
Defense Command and designated as a Theatre of  
Operations under my command; and

Whereas by Executive Order No. 9066, dated  
February 19, 1942, the President of the United  
States authorized and directed the Secretary of  
War and the Military Commanders whom he may  
from time to time designate, whenever he or any

(17)

U.S. Brief, pp. 97-124.



such designated commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, 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; and

Whereas the Secretary of War on February 20, 1942, designated the undersigned as the Military Commander to carry out the duties and responsibilities imposed by said Executive Order for that portion of the United States embraced in the Western Defense Command; and

Whereas the Western Defense Command embraces the entire Pacific Coast of the United States which by its geographical location is particularly subject to attack, to attempted invasion by the armed forces of nations with which the United States is now at war, and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations:

Now, therefore, I, J. L. DeWitt, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General of the Western Defense Command, do hereby declare that:

1. The present situation requires as a matter of military necessity the establishment in the territory embraced by the Western Defense Command of Military Areas and Zones thereof as defined in Exhibit 1, hereto attached, and as generally shown on the map attached hereto and marked Exhibit 2.

2. Military Areas Nos. 1 and 2, as particularly described and generally shown hereinafter and in Exhibits 1 and 2 hereto, are hereby designated and established.

3. Within Military Areas Nos. 1 and 2 there are established Zone A-1, lying wholly within Military Area No. 1; Zones A-2 to A-99, inclusive, some of which are in Military Area No. 1, and the others in Military Area No. 2; and Zone B, comprising all that part of Military Area No. 1 not included within Zones A-1 to A-99, inclusive; all as more particularly described and defined and generally shown hereinafter and in Exhibits 1 and 2.

Military Area No. 2 comprises all that part of the States of Washington, Oregon, California and Arizona which is not included within Military Area No. 1, and is shown on the map (Exhibit 2) as an unshaded area.

4. Such persons or classes of persons as the situation may require will by subsequent proclamation be excluded from all of Military Area No. 1 and also from such of those zones herein described as Zones A-2 to A-99, inclusive, as are within Military Area No. 2.

5. Certain persons or classes of persons who are by subsequent proclamation excluded from the zones last above mentioned may be permitted,

under certain regulations and restrictions to be hereafter prescribed, to enter upon or remain within Zone B.

The designation of Military Area No. 2 as such does not contemplate any prohibition or regulation or restriction except with respect to the zones established therein.

5. Any Japanese, German, or Italian alien, or any person of Japanese Ancestry now resident in Military Area No. 1 who changes his place of habitual residence is hereby required to obtain and execute a "Change of Residence Notice" at any United States Post Office within the States of Washington, Oregon, California and Arizona. Such notice must be executed at any such Post Office not more than five nor less than one day prior to any such change of residence. Nothing contained herein shall be construed to affect the existing regulations of the U. S. Attorney General which require aliens of enemy nationalities to obtain travel permits from U. S. Attorneys and to notify the Federal Bureau of Investigation and the Commissioner of Immigration of any change in permanent address.

6. The designation of prohibited and restricted areas within the Western Defense Command by the Attorney General of the United States under the Proclamations of December 7 and 8, 1941, and the instructions, rules and regulations prescribed by him with respect to such prohibited and restricted areas, are hereby adopted and continued in full force and effect.

The duty and responsibility of the Federal Bureau of Investigation with respect to the investi-

gation of alleged acts of espionage and sabotage are not altered by this proclamation.

J. L. DeWITT,  
*Lieutenant General,*  
*U. S. Army, Commanding.*

Confirmed:

J. A. ULIO,  
*Major General,*  
*The Adjutant General.*

(F. R. Doc. 42-2601; Filed, March 25, 1942;  
11:54 A. M.)

Public Proclamation No. 2, 7 F. R. 2405

WAR DEPARTMENT

(Public Proclamation No. 2)

Headquarters Western Defense Command and  
Fourth Army Presidio of San Francisco,  
California

ESTABLISHMENT OF MILITARY AREAS 3, 4, 5, AND 6

MARCH 16, 1942.

To: The people within the States of Washington,  
Oregon, California, Montana, Idaho, Nevada,  
Utah and Arizona, and the Public Generally.

Whereas by virtue of orders issued by the  
War Department on December 11, 1941, that por-  
tion of the United States lying within the States  
of Washington, Oregon, California, Montana,

Idaho, Nevada, Utah and Arizona and the Territory of Alaska has been established as the Western Defense Command and designated as a Theatre of Operations under my command; and

Whereas by Executive Order No. 9066, dated February 19, 1942, the President of the United States authorized and directed the Secretary of War and the Military Commanders whom he may from time to time designate, whenever he or any such designated commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which the right of any persons 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; and

Whereas the Secretary of War on February 20, 1942, designated the undersigned as the Military Commander to carry out the duties and responsibilities imposed by said Executive Order for that portion of the United States embraced in the Western Defense Command; and

Whereas the Western Defense Command by its geographical location is particularly subject to attack, to attempted invasion by the armed forces of nations with which the United States is now at war, and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations;

Now therefore, I, J. L. DEWITT, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General of the Western Defense Command, do hereby declare that:

1. The present situation requires as a matter of military necessity the establishment in the territory embraced by the Western Defense Command of Military Areas and Zones in addition to those established in Public Proclamation No. 1, this headquarters, dated March 2, 1942.

2. Pursuant to the determination and statement of military necessity in paragraph 1 hereof, there are hereby designated and established the following Military Areas:

Military Area No. 3, embracing the entire State of Idaho.

Military Area No. 4, embracing the entire State of Montana.

Military Area No. 5, embracing the entire State of Nevada.

Military Area No. 6, embracing the entire State of Utah.

3. Within Military Areas Nos. 1 and 2 as designated and established in Public Proclamation No. 1, above mentioned, and within Military Areas Nos. 3, 4, 5 and 6, as defined herein, there are hereby established, pursuant to paragraph 1 hereof, Zones A-100 to A-1033, inclusive, all as more particularly described and defined in Exhibit 1,

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hereto attached, and as generally shown on the maps attached hereto and marked Exhibits 2, 3, 4, 5, 6, 7, 8 and 9.

4. Such persons or classes of persons as the situation may require will by subsequent proclamation be excluded from Zones A-100 to A-1033, inclusive.

The designation of Military Areas Nos. 3, 4, 5, and 6 as such does not contemplate any prohibition, regulation or restriction except with respect to the Zones established therein, and except as provided in paragraph 5 hereof.

5. Any Japanese, German, or Italian alien, or any person of Japanese ancestry now resident in the states of the Western Defense Command, namely, Washington, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona, who changes his place of habitual residence is hereby required to obtain and execute a "Change of Residence Notice" at any United States Post Office within any of the states mentioned. Such notice must be executed at any such Post Office not more than five nor less than one day prior to any such change of residence. Nothing contained herein shall be construed to affect the existing regulations of the U. S. Attorney General which require aliens of enemy nationalities to obtain travel permits from U. S. Attorneys and to notify the Federal Bureau of Investigation and the Commissioner of Immigration of any change in permanent address.

6. The duty and responsibility of the Federal Bureau of Investigation with respect to the in-

vestigation of alleged acts of espionage and sabotage are not altered by this proclamation.

J. L. DeWitt,  
Lieutenant General,  
U. S. Army, Commanding.

Confirmed:

J. A. Ullo,  
Major General,  
The Adjutant General.

(F. R. Doc. 42-2673; Filed, March 27, 1942;  
10:29 A. M.)

Public Proclamation No. 3, 7 F. R. 2543

WAR DEPARTMENT

(Public Proclamation No. 3)

Headquarters Western Defense Command and  
Fourth Army Presidio of San Francisco, California

CONDUCT OF ENEMY ALIENS IN MILITARY AREAS

MARCH 24, 1942.

To: The people within the States of Washington,  
Oregon, California, Montana, Idaho, Nevada,  
Utah and Arizona, and the Public Generally.

Whereas by Public Proclamation No. 1, dated  
March 2, 1942, this headquarters, there were designated and established Military Areas Nos. 1 and 2 and Zones thereof, and

Whereas by Public Proclamation No. 2 dated  
March 16, 1942, this headquarters, there were des-



ignated and established Military Areas Nos. 3, 4, 5 and 6 and Zones thereof, and

Whereas the present situation within these Military Areas and Zones requires as a matter of military necessity the establishment of certain regulations pertaining to all enemy aliens and all persons of Japanese ancestry within said Military Areas and Zones thereof;

Now, therefore, I. J. L. DeWitt, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General, Western Defense Command, do hereby declare and establish the following regulations covering the conduct to be observed by all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the Military Areas above described, or such portions thereof as are hereinafter mentioned:

1. From and after 6:00 A. M., March 27, 1942, all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the geographical limits of Military Area No. 1, or within any of the Zones established within Military Area No. 2, as those areas are defined and described in Public Proclamation No. 1, dated March 2, 1942, this headquarters, or within the geographical limits of the designated Zones established within Military Areas Nos. 3, 4, 5, and 6, as those areas are defined and described in Public Proclamation No. 2, dated March 16, 1942, this headquarters, or

within any of such additional Zones as may hereafter be similarly designated and defined, shall be within their place of residence between the hours of 8:00 P. M. and 6:00 A. M., which period is hereinafter referred to as the hours of curfew.

2. At all other times all such persons shall be only at their place of residence or employment or traveling between those places or within a distance of not more than five miles from their place of residence.

3. Nothing in paragraph 2 shall be construed to prohibit any of the above specified persons from visiting the nearest United States Post Office, United States Employment Service Office, or office operated or maintained by the Wartime Civil Control Administration, for the purpose of transacting any business or the making of any arrangements reasonably necessary to accomplish evacuation; nor be construed to prohibit travel under duly issued change of residence notice and travel permit provided for in paragraph 5 of Public Proclamations Numbers 1 and 2. Travel performed in change of residence to a place outside the prohibited and restricted areas may be performed without regard to curfew hours.

4. Any person violating these regulations will be subject to immediate exclusion from the Military Areas and Zones specified in paragraph 1 and to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled: "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing Any Act in Military Areas or Zones."

In the case of any alien enemy, such person will in addition be subject to immediate apprehension and internment.

5. By subsequent proclamation or order there will be prescribed those classes of persons who will be entitled to apply for exemptions from exclusion orders hereafter to be issued. Persons granted such exemption will likewise and at the same time also be exempted from the operation of the curfew regulations of this proclamation.

6. After March 31, 1942, no person of Japanese ancestry shall have in his possession or use or operate at any time or place within any of the Military Areas 1 to 6 inclusive, as established and defined in Public Proclamations Nos. 1 and 2, above mentioned, any of the following items:

- (a) Firearms.
- (b) Weapons or implements of war or component parts thereof.
- (c) Ammunition.
- (d) Bombs.
- (e) Explosives or the component parts thereof.
- (f) Short-wave radio receiving sets having a frequency of 1750 kilocycles or greater or of 540 kilocycles or less.
- (g) Radio transmitting sets.
- (h) Signal devices.
- (i) Codes or ciphers.
- (j) Cameras.

Any such person found in possession of any of the above-named items in violation of the foregoing

will be subject to the criminal penalties provided by Public Law 503, 77th Congress, approved March 21, 1942, entitled: "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing Any Act in Military Areas or Zone."

7. The regulations herein prescribed with reference to the observance of curfew hours by enemy aliens, are substituted for and supersede the regulations of the United States Attorney General heretofore in force in certain limited areas. All curfew exemptions heretofore granted by the United States Attorneys are hereby revoked effective as of 6:00 a. m., PWT, March 27, 1942.

8. The Federal Bureau of Investigation is designated as the agency to enforce the foregoing provisions. It is requested that the civil police within the states affected by this Proclamation assist the Federal Bureau of Investigation by reporting to it the names and addresses of all persons believed to have violated these regulations.

J. L. DEWITT,  
*Lieutenant General,*  
*U. S. Army, Commanding.*

Confirmed:

J. A. ULIO,  
*Major General,*  
*The Adjutant General.*

(F. R. Doc. 42-2880; Filed, April 1, 1942; 10:19 a. m.)

Headquarters Western Defense Command and  
Fourth Army, Presidio of San Francisco,  
California

PUBLIC PROCLAMATION No. 4

MARCH 27, 1942.

To: The people within the States of Washington,  
Oregon, California, Montana, Idaho, Nevada,  
Utah and Arizona, and the Public Generally:

WHEREAS, By Public Proclamation No. 1, dated  
March 2, 1942, this headquarters, there was design-  
ated and established Military Area No. 1, and

WHEREAS, It is necessary, in order to provide  
for the welfare and to insure the orderly eva-  
cuation and resettlement of Japanese voluntarily  
migrating from Military Area No. 1, to restrict  
and regulate such migration:

NOW, THEREFORE, I, J. L. DEWITT, Lieutenant  
General, U. S. Army, by virtue of the authority  
vested in me by the President of the United  
States and by the Secretary of War and my pow-  
ers and prerogatives as Commanding General,  
Western Defense Command, do hereby declare  
that the present situation requires as a matter of  
military necessity that, commencing at 12:00 mid-  
night, P. W. T., March 29, 1942, all alien Japanese  
and persons of Japanese ancestry who are within  
the limits of Military Area No. 1, be and they are  
hereby prohibited from leaving that area for any  
purpose until and to the extent that a future  
proclamation or order of this headquarters shall  
so permit or direct.

Any person violating this proclamation will be subject to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled: "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing Any Act in Military Areas or Zones." In the case of any alien enemy, such person will in addition be subject to immediate apprehension and internment.

J. L. DEWITT,  
*Lieutenant General,*  
*U. S. Army, Commanding.*

Headquarters Western Defense Command and  
 Fourth Army, Presidio of San Francisco, California

PUBLIC PROCLAMATION NO. 8

JUNE 27, 1942.

To: The people within the States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona, and the Public Generally:

WHEREAS, By Public Proclamation No. 1, dated March 2, 1942, this headquarters, there were designated and established Military Areas Nos. 1 and 2, and by Public Proclamation No. 2, dated March 16, 1942, this headquarters, there were designated and established Military Areas Nos. 3, 4, 5 and 6, and

WHEREAS, The present situation within these military areas requires as a matter of military ne-

cessity that persons of Japanese ancestry who have been evacuated from certain regions within Military Areas Nos. 1 and 2 shall be removed to Relocation Centers for their relocation, maintenance and supervision and that such Relocation Centers be designated as War Relocation Project Areas, and that appropriate restrictions with respect to the rights of all such persons of Japanese ancestry, both alien and non-alien, so evacuated to such Relocation Centers, and of all other persons to enter, remain in, or leave such areas be promulgated;

NOW, THEREFORE, I, J. L. DEWITT, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General of the Western Defense Command, do hereby declare that:

1. Pursuant to the determination of military necessity hereinbefore set out, all the territory included within the exterior boundaries of each Relocation Center now or hereafter established within the Western Defense Command, as such boundaries are designated and defined by orders subsequently issued by this headquarters, are hereby designated and established as War Relocation Project Areas.

2. All persons of Japanese ancestry, both alien and non-alien, who now or shall hereafter be or reside, pursuant to exclusion orders and instructions from this headquarters, or otherwise, within the bounds of any established War Relocation Project Area are required to remain within the bounds of such War Relocation Project Area at

all times unless specifically authorized to leave as set forth in Paragraph 3 hereof.

3. Any person of Japanese ancestry, both alien and non-alien, who shall now or hereafter so be or reside within any such War Relocation Project Area shall, before leaving said Area, obtain a written authorization executed by or pursuant to the express authority of this headquarters setting forth the effective period of said authorization and the terms and conditions upon and purposes for which it has been granted.

4. No persons other than the persons of Japanese ancestry described in Paragraph 2 hereof, and other than persons employed by the War Relocation Authority established by Executive Order No. 9102, dated March 18, 1942, shall enter any such War Relocation Project Area except upon written authorization executed by or pursuant to the express authority of this headquarters first obtained, which said authorization shall set forth the effective period thereof and the terms and conditions upon and purposes for which it has been granted.

5. Failure of persons subject to the provisions of this Public Proclamation No. 8 to conform to the terms and provisions thereof shall subject such persons to the penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving, or Committing any Act in Military Areas or Zones".

J. L. DEWITT,  
*Lieutenant General,*  
*U. S. Army, Commanding.*



Headquarters Western Defense Command and  
Fourth Army, Presidio of San Francisco,  
California

MARCH 24, 1942.

CIVILIAN EXCLUSION ORDER NO. 1

1. Pursuant to the provisions of Public Proclamations Nos. 1 and 2, this headquarters, dated March 2, 1942, and March 16, 1942, respectively, it is hereby ordered that all persons of Japanese ancestry, including aliens and non-aliens, be excluded from that portion of Military Area No. 1, described as "Bainbridge Island," in the State of Washington, on or before 12 o'clock noon, P. W. T., of the 30th day of March, 1942.

2. Such exclusion will be accomplished in the following manner:

(a) Such persons may, with permission, on or prior to March 29, 1942, proceed to any approved place of their choosing beyond the limits of Military Area No. 1 and the prohibited zones established by said proclamations or hereafter similarly established, subject only to such regulations as to travel and change of residence as are now or may hereafter be prescribed by this headquarters and by the United States Attorney General. Persons affected hereby will not be permitted to take up residence or remain within the region designated as Military Area No. 1 or the prohibited zones heretofore or hereafter established. Persons affected hereby are required on leaving or entering Bainbridge Island to register and obtain

a permit at the Civil Control Office to be established on said Island at or near the ferryboat landing.

(b) On March 30, 1942, all such persons who have not removed themselves from Bainbridge Island in accordance with Paragraph 1 hereof shall, in accordance with instructions of the Commanding General, Northwestern Sector, report to the Civil Control Office referred to above on Bainbridge Island for evacuation in such manner and to such place or places as shall then be prescribed.

(c) A responsible member of each family affected by this order and each individual living alone so affected will report to the Civil Control Office described above between 8 a. m. and 5 p. m. Wednesday, March 25, 1942.

3. Any person affected by this order who fails to comply with any of its provisions or who is found on Bainbridge Island after 12 o'clock noon, P. W. T., of March 30, 1942, will be subject to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled "An Act to Provide a Penalty for Violation of Restrictions or Orders With Respect to Persons Entering, Remaining in, Leaving, or Committing Any Act in Military Areas or Zone," and alien Japanese will be subject to immediate apprehension and internment.

J. L. DEWITT,  
*Lieutenant General,*  
*U. S. Army, Commanding.*

**Western Defense Command and Fourth Army  
Wartime Civil Control Administration**

**INSTRUCTIONS TO ALL JAPANESE LIVING ON  
BAINBRIDGE ISLAND**

All Japanese persons, both alien and non-alien, will be evacuated from this area by twelve noon Monday, March 30, 1942.

No Japanese person will be permitted to leave or enter Bainbridge Island after 9:00 a. m. March 24, 1942, without obtaining special permission from the Civil Control Office established on this island near the ferry boat landing at the Anderson Dock Store in Winslow.

The Civil Control Office is equipped to assist the Japanese population affected by this evacuation in the following ways:

1. Give advice and instructions on the evacuation.
2. Provide services with respect to the management, leasing, sale, storage or other disposition of most kinds of property, including: farms, livestock and farm equipment, boats, tools, household goods, automobiles, etc.
3. Provide temporary residence for all Japanese in family groups, elsewhere.
4. Transport persons and a limited amount of clothing and equipment to their new residence, as specified below.
5. Give medical examinations and make provision for all invalided persons affected by the evacuation order.
6. Give special permission to individuals and families who are able to leave the area and pro-

ceed to an approved destination of their own choosing on or prior to March 29, 1942.

The following instructions must be observed:

1. A responsible member of each family, preferably the head of the family, or the person in whose name most of the property is held, and each individual living alone, will report to the Civil Control Office to receive further instruction. This must be done between 8:00 a. m. and 5:00 p. m. Wednesday, March 25, 1942.

2. Before leaving the area all persons will be given a medical examination. For this purpose all members of the family should be present at the same time, when directed by the Civil Control Office.

3. Under special conditions, individuals and families will be permitted to leave the area prior to the date for complete evacuation indicated above. In general, the conditions imposed on voluntary evacuation are as follows: (a) That the destination be outside of Military Area No. 1, prescribed by Proclamation No. 1 of the Commanding General, Western Defense Command and Fourth Army, March 2, 1942; (b) That arrangements have been made for employment and shelter at the destination.

4. Provisions have been made to give temporary residence in a reception center elsewhere. Evacuees who do not go to an approved destination of their own choice, but who go to a reception center under Government supervision, must carry with them the following property, not exceeding that which can be carried by the family or the individual:

ginia Street; thence northeasterly along Virginia Street to Fairview Avenue North; thence northerly along Fairview Avenue North to Eastlake Avenue; thence northerly along Eastlake Avenue to Roosevelt Way; thence northerly along Roosevelt Way to the point of beginning.

2. A responsible member of each family, and each individual living alone, in the above described area will report between the hours of 8:00 A. M. and 5:00 P. M., Monday, May 11, 1942, or during the same hours on Tuesday, May 12, 1942, to the Civil Control Station located at Christian Youth Center, 2203 East Madison Street, Seattle, Washington.

3. Any person subject to this order who fails to comply with any of its provisions or with the provisions of published instructions pertaining hereto or who is found in the above area after 12 o'clock noon, P. W. T., of Saturday, May 16, 1942, will be liable to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing any Act in Military Areas or Zones," and alien Japanese will be subject to immediate apprehension and internment.

4. All persons within the bounds of an established Assembly Center pursuant to instructions from this Headquarters are excepted from the provisions of this order while those persons are in such Assembly Center.

J. L. DeWITT,  
*Lieutenant General,*  
*U. S. Army Commanding.*

(Instructions published with Civilian Exclusion  
Order No. 57)

Western Defense Command and Fourth Army  
Wartime Civil Control Administration, Presidio  
of San Francisco, California

INSTRUCTIONS TO ALL PERSONS OF JAPANESE  
ANCESTRY

Living in the following area: All that portion of the County of King, State of Washington, within the boundary beginning at the intersection of Roosevelt Way and East Eighty-fifth Street; thence easterly along East Eighty-fifth Street and East Eighty-fifth Street extended to Lake Washington; thence southerly along the shoreline of Lake Washington to the point at which Yesler Way meets Lake Washington; thence westerly along Yesler Way to Fifteenth Avenue; thence northerly on Fifteenth Avenue to East Madison Street; thence southwesterly on East Madison Street to Fifth Avenue; thence northwesterly along Fifth Avenue to Westlake Avenue; thence northerly along Westlake Avenue to Virginia Street; thence northeasterly along Virginia Street to Fairview Avenue North; thence northerly along Fairview Avenue North to Eastlake Avenue; thence northerly along Eastlake Avenue to Roosevelt Way; thence northerly along Roosevelt Way to the point of beginning.

Pursuant to the provisions of Civilian Exclusion Order No. 57, this Headquarters, dated May 10,

1942, all persons of Japanese ancestry, both alien and non-alien, will be evacuated from the above area by 12 o'clock noon, P. W. T., Saturday, May 16, 1942.]

No Japanese person living in the above area will be permitted to change residence after 12 o'clock noon, P. W. T., Sunday, May 10, 1942, without obtaining special permission from the representative of the Commanding General, Northwestern Sector, at the Civil Control Station located at: Christian Youth Center, 2203 East Madison Street, Seattle, Washington. Such permits will only be granted for the purpose of uniting members of a family, or in cases of grave emergency.

The Civil Control Station is equipped to assist the Japanese population affected by this evacuation in the following ways:

1. Give advice and instructions on the evacuation.
2. Provide services with respect to the management, leasing, sale, storage or other disposition of most kinds of property, such as real estate, business and professional equipment, household goods, boats, automobiles and livestock.
3. Provide temporary residence elsewhere for all Japanese in family groups.
4. Transport persons and a limited amount of clothing and equipment to their new residence.

The following instructions must be observed:

1. A responsible member of each family, preferably the head of the family, or the person in whose name most of the property is held, and each

individual living alone, will report to the Civil Control Station to receive further instructions. This must be done between 8:00 A. M. and 5:00 P. M. on Monday, May 11, 1942, or between 8:00 A. M. and 5:00 P. M. on Tuesday, May 12, 1942.

2. Evacuees must carry with them on departure for the Assembly Center, the following property:

(a) Bedding and linens (no mattress) for each member of the family;

(b) Toilet articles for each member of the family;

(c) Extra clothing for each member of the family;

(d) Essential personal effects for each member of the family.

All items carried will be securely packaged, tied and plainly marked with the name of the owner and numbered in accordance with instructions obtained at the Civil Control Station. The size and number of packages is limited to that which can be carried by the individual or family group.

3. No pets of any kind will be permitted.

4. No personal items and no household goods will be shipped to the Assembly Center.

5. The United States Government through its agencies will provide for the storage, at the sole risk of the owner, of the more substantial household items, such as iceboxes, washing machines, pianos and other heavy furniture. Cooking utensils and other small items will be accepted for storage if crated, packed and plainly marked with the name and address of the owner. Only one name and address will be used by a given family.



6. Each family, and individual living alone, will be furnished transportation to the Assembly Center or will be authorized to travel by private automobile in a supervised group. All instructions pertaining to the movement will be obtained at the Civil Control Station.

Go to the Civil Control Station between the hours of 8:00 A. M. and 5:00 P. M., Monday, May 11, 1942, or between the hours of 8:00 A. M. and 5:00 P. M., Tuesday, May 12, 1942, to receive further instructions.

J. L. DEWITT,

*Lieutenant General, U. S. Army, Commanding.*

May 10, 1942.

See Civilian Exclusion Order No. 57.

U. S. GOVERNMENT PRINTING OFFICE: 1942

e. In 1942, the Western Defense Command, at the direction of General DeWitt, initiated an investigation to demonstrate that ethnic Japanese posed a danger to West Coast military security, but no such evidence was found in the course of the investigation.

Personal Justice Denied, pp. 198-199.

public relations problem and perhaps raised doubt about the original decision to evacuate—both unpalatable. Two choices remained: one, to determine that the security risk still outweighed the right to individual liberty and, thus, to release as few people as possible. This was, in essence, the view of the WDC, which had never conceded the validity of the loyalty program. The other alternative was to find a compromise to balance the claims of security and liberty in individual cases. This was the position adopted by the JAJB and WRA. But, lacking common assumptions or precedent to guide their task, and having differing views on the matter, the two agencies found actual decisions about leave confusing, inconsistent and a cause of friction.

### The Western Defense Command

On January 14, DeWitt first learned of the loyalty review program. For months, he had argued that the War Department's responsibility on Japanese American issues had ended with the exclusion from the West Coast; now the loyalty review program undermined DeWitt's fundamental premise that the loyal could not be separated from the disloyal. Rejection of that premise implied that the War Department was reversing DeWitt and his policy. Worse still from DeWitt's point of view, it would be difficult to sustain the exclusion of certified loyal evacuees from the Western Defense Command. DeWitt and Bendtson turned to defeating the plan. They failed, but they did not change their minds. DeWitt and his associates remained firm in their belief that the evacuees were a risk to security. As long as they believed that the loyal could not be separated from the disloyal, they would find all ethnic Japanese suspect. Far from rethinking their position, they worked to substantiate it through a project designed to demonstrate "danger" from the ethnic Japanese.

The WDC research project began in 1942 to remedy the dearth of information on individual evacuees.<sup>74</sup> It was designed too to collect adverse information on as many ethnic Japanese as possible. The project's approach was to collect masses of material on the Japanese American community—newspapers, immigration records, magazines and pamphlets of evacuee organizations—and to use it to identify dangerous organizations and individuals. For example, four Japanese language newspapers were analyzed from 1937 to 1942; information thus gained about organizations and their members were noted in individual files. Upon deciding that an organization was suspect, for example, because it had sent money to Japan to support the Russo-Japanese War, the WDC would identify all members of the organization and label them

Personal Justice Denied, pp. 198-199.

suspicious as well. From there, it might implicate their close relatives. The idea was to investigate an entire population and to evaluate individuals not by their statements or illegal acts but primarily by their affiliations and travel patterns. From records of entirely legal prewar activities, the WDC tried to evaluate an individual's potential risk to military security. The task was mammoth, the method crude and, by the WDC's own admission, fraught with error. After two and a half years, shortly after General Emmons took over the Western Defense Command, the research project remained incomplete but was halted due to insufficient manpower.

The most notable feature of the WDC project was the extraordinarily large effort it devoted to extracting a minimum of useful information. There is no indication that it uncovered evidence of criminal activity, much less espionage or sabotage. The entire project was based on dubious assumptions. The finding that 40% of adult Nisei had been to Japan at some time is important only if one accepts the assumption that those who went to Japan were potentially dangerous;<sup>75</sup> that there were 29,704 accounts of fixed deposits (similar to savings certificates) in Japanese banks is irrelevant unless fixed deposits are linked to security risk.<sup>76</sup> The connection WDC attempted to make between carefully researched material and security risk was simply not credible.

Nevertheless the WDC did not abandon its fundamental premise that individuals could be judged by the organizations and programs in which they participated. Rather, they concluded that more time and planning should be devoted to the task. The WDC urged that the military be better prepared for the next crisis and recommended, in its postwar analysis of the program,

That there be created a peacetime unit within the Federal government charged with the continued study and research relative to all organizations with foreign connections within the United States. This unit should be small, but composed of highly trained personnel who will have access to all intelligence information. In wartime this personnel should form the nucleus of a central organization that would make security determinations.

That complete planning be instituted by the War Department as to necessary civilian controls in the event of a future war, upon the assumption that the next war will involve a large portion of our civilian population from the outset. The planning should include types of controls, the mechanics of putting the control into force, the methods of notification, and the means of enforcement.<sup>77</sup>

The WDC did not flinch from the conclusion that they were urging abandonment in wartime of the normal protections of American con-

65. WDC, *Supplemental Report on Civilian Controls Exercised by Western Defense Command*, Jan. 1947, p. 32. NARS. RG 338.
66. Spicer, *Impounded People*, p. 152.
67. Myer, *Uprooted Americans*, p. 73; Hosokawa, *Nisei*, p. 365.
68. Testimony, Chiyoji Iwao, San Francisco, Aug. 12, 1981, pp. 111-12.
69. Testimony, Albert Nakai, San Francisco, Aug. 12, 1981, pp. 140-41.
70. Testimony, Arthur T. Morimitsu, Chicago, Sept. 23, 1981, p. 50.
71. Testimony, Ben Takeshita, San Francisco, Aug. 11, 1981, p. 219.
72. Testimony, Harry Taketa, Chicago, Sept. 22, 1981, p. 272.
73. Murphy, *Ambassadors in Arms*, p. 111.
74. All of the material on the research project is taken from WDC, *Supplemental Report on Civilian Controls Exercised by Western Defense Command*, Jan. 1947, pp. 188-417 and recommendations (last) page, which is unnumbered. NARS. RG 338.
75. *Ibid.*, p. 229.
76. *Ibid.*, p. 281.
77. *Ibid.*, recommendations (last) page.
78. *Ibid.*, pp. 682-84.
79. Memo, DeWitt to Marshall, Jan. 27, 1943. NARS. RG 107 (CWRIC 5114-23).
80. *Idem.*
81. *Idem.*
82. Jacobus tenBroek, Edward N. Barnhart and Floyd W. Matson, *Prejudice, War, and the Constitution: Causes and Consequences of the Evacuation of the Japanese Americans in World War II* (Berkeley: University of California Press, 1954), pp. 153-57.
83. WRA *Story*, p. 59.
84. WDC, *Supplemental Report*, p. 152.
85. Report of the WRA, Jan. 1-June 30, 1943, p. 15.
86. *Ibid.*, p. 16.
87. Myer, *Uprooted Americans*, pp. 138-39.
88. tenBroek, *Prejudice, War*, pp. 151-52.
89. *Ibid.*, p. 153.
90. Memo, John P. Frank, Office of the Under Secretary of the Interior, to Ickes, Secretary of the Interior, no date. NARS. (CWRIC 8776-78).
91. tenBroek, *Prejudice, War*, p. 153.
92. *Idem.*
93. Telegram, Mayor Fiorello LaGuardia to Abe Fortas, Under Secretary of the Interior, April 11, 1944. NARS. RG 48 (CWRIC 6371).
94. Letter, LaGuardia to Ickes, April 21, 1944. NARS. RG 48 (CWRIC 6372).
95. Letter, Dillon S. Myer to the Attorney General, Feb. 1, 1944. DOJ 146-42-26 (CWRIC 9524-26).
96. Myer, *Uprooted Americans*, p. 140.
97. Dorothy S. Thomas, *The Salvage: Japanese American Evacuation and Resettlement* (Berkeley: University of California Press, 1952), p. 111.
98. *Ibid.*, pp. 116-17.
99. U.S. Department of the Interior, *People in Motion: The Postwar*



f. Subsequent to the declaration of war with Japan, not a single verified act of espionage, sabotage or fifth column activity was committed by an American citizen of Japanese ancestry or by a resident Japanese alien on the West Coast.

Personal Justice Denied, pp. 3, 50.

Petition Exhibit W.

Army G-2 Reports No. 4, 13, 14, 15, 17, 18, 19.

Letter to Federal Communications Commission (San Francisco office) (Mr. Greaves) from Lt. Col. Forney, December 31, 1941.

"...not a single documented act of espionage, sabotage or fifth-column activity was committed by an American citizen of Japanese ancestry or by a resident Japanese alien on the West Coast."

Personal Justice Denied, p. 3.

Order in the context of convictions for violations of military orders issued pursuant to it, but the Court chose not to review the factual basis for military decisions in wartime, accepting without close scrutiny the government's representation that exclusion and evacuation were militarily necessary. Forty years later, the nation is sufficiently concerned about the rights and liberties of its citizens and residents, that it has undertaken to examine the facts and pose to itself the question of whether, in the heat of the moment, beset by defeat and fearful of the future, it justly took the proper course for its own protection, or made an original mistake of very substantial proportion. "Peace hath her victories/No less renowned than war."

[Was a policy of exclusion militarily justified as a *precautionary* measure? This is a core initial question because the government has conceded at every point that there was no evidence of actual sabotage, espionage or fifth column activity among people of Japanese descent on the West Coast in February 1942. The Commanding General of the Western Defense Command, John L. DeWitt, put the point plainly, conceding in his recommendation to the War Department "[t]he very fact that no sabotage has taken place to date."<sup>6</sup> The Justice Department, defending the exclusion before the Supreme Court, made no claim that there was identifiable subversive activity.<sup>7</sup> The Congress, in passing the Japanese-American Evacuation Claims Act in 1948, reiterated the point:

[D]espite the hardships visited upon this unfortunate racial group by an act of the Government brought about by the then prevailing military necessity, there was recorded during the recent war not one act of sabotage or espionage attributable to those who were the victims of the forced relocation.<sup>8</sup>

Finally, the two witnesses before the Commission who were most involved in the evacuation decision, John J. McCloy and Karl R. Bendetsen, who was first liaison between the War Department and the Western Defense Command and later General DeWitt's chief aide for the evacuation, testified that the decision was not taken on the basis of actual incidents of espionage, sabotage or fifth column activity.<sup>9</sup>

One may begin, then, by examining the competent estimates of possible future danger from the ethnic Japanese, citizen and alien, on the West Coast in early 1942. This is not to suggest that a well-grounded suspicion is or should be sufficient to require an American citizen or resident alien to give up his house and farm or business to move hundreds of miles inland, bearing the stigma of being a potential danger to his fellow citizens—nor that such suspicion would justify condem-

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## INTELLIGENCE

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## Executive Order 9066

1. Samuel Eliot Morison, *Oxford History of the American People* (New York: Oxford University Press, 1965), pp. 1001-03. Three other aircraft carriers were at sea, and therefore unaffected. These carriers and their airgroups constituted a striking force far more valuable than the lost battleships. The perception of the destruction, however, did not account for this fact.

2. See, e.g., Notes of Cabinet meetings, Francis Biddle, Attorney General. Dec. 7, 1941. FDRL. Biddle Papers (CWRIC 3790-91).

3. Jeannette Rankin, a pacifist Representative from Montana, voted against the declaration with tears streaming down her face. Francis Biddle, *In Brief Authority* (Garden City, NY: Doubleday & Co. Inc., 1962), pp. 206-07.

4. Morison, *Oxford History of the American People*, p. 1003.

5. James MacGregor Burns, *Roosevelt: The Soldier of Freedom* (New York: Harcourt Brace Jovanovich, 1970), pp. 38-39.

6. J. L. DeWitt, *Final Report: Japanese Evacuation From the West Coast, 1942* (Washington, DC: U.S. Government Printing Office, 1943), p. 34. [hereafter *Final Report*].

7. Brief for the United States, *Korematsu v. United States*, No. 22, Oct. Term 1944, pp. 11-12.

8. House Report No. 732, 80th Cong., 1st Sess., reprinted in Hearings before Subcommittee No. 5 of the Committee on the Judiciary, U.S. House of Representatives, 83rd Cong., 2d Sess., on HR 7435 (Serial No. 23), p. 60a.

9. Testimony, John J. McCloy, Washington, DC, Nov. 3, 1981, pp. 45-66; testimony, Karl Bendetsen, Washington, DC, Nov. 2, 1981, p. 32. Like McCloy, Bendetsen believes the evacuation decision was right in the context of the time:

*Senator Brooke:* One final question. Looking back in hindsight now, do you still think that the decision that was made in 1942 to place the Japanese Americans in camps was the right decision?

*Mr. Bendetsen:* Viewing it in the circumstances of the time and not from today's time, yes; I think it was. (Testimony, Bendetsen, Washington, DC, Nov. 2, 1981, p. 71).

10. Brief for the United States, *Hirabayashi v. United States*, No. 870, Oct. Term 1942, pp. 16-17.

11. Proposal for Coordination of FBI, ONI and MID, June 5, 1940, approved and signed by Louis Johnson, Acting Secretary of War on June 25, 1940. NARS. RG 107 (CWRIC 7362-63); memo, signed by G-2, ONI and FBI, Feb. 9, 1942, approved and signed by Henry L. Stimson, Secretary of

**G-2 PERIODIC REPORT**

From: 12:00 Noon, 17 January 1942 GMT  
To : 12:00 Noon, 24 January 1942 GMT

Headquarters Western Defense Command and Fourth Army,  
Presidio of San Francisco, California  
12:00 Noon 24 January 1942 GMT

No. 4

MAPS: See sketch attached.

**1. ENEMY SITUATION AT END OF PERIOD**

a. Troops of the Western Defense Command and Fourth Army are not in contact with hostile ground forces. There are no definite indications of the presence of hostile submarines or surface vessels anywhere off the PACIFIC COAST including ALASKA and LOWER CALIFORNIA except that a hostile transmitter heard again about 800 miles southwest of KODIAK ISLAND after cessation of about one week, indicated the possible presence of an enemy surface ship or ships. No hostile attack of our shipping off the CALIFORNIA COAST has been reported since 24 December. No hostile ground forces are believed to be nearer than the enemy forces in the JALUIT - KOTKE area of the eastern MANDATED ISLANDS, 2000 miles west by south of the HAWAIIAN ISLANDS.

b. Hostile naval forces which may operate in the waters of the PACIFIC off the west coast could be reinforced by special task forces, locations not definitely known, or by elements of the enemy FIRST and FOURTH FLEETS estimated to be in the MANDATED ISLANDS. It is possible for elements of these units, including carriers, to elude our naval defense and air patrols in the vast expanse of the PACIFIC especially to the northwest. Ground troops for raids or attack in force of the PACIFIC SWIFT or our island possessions in the eastern Pacific are available in JAPAN, FORMOSA, and possibly in the MANDATED ISLANDS.

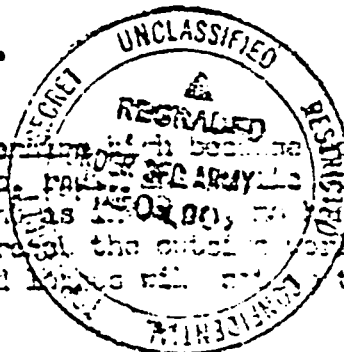
**2. ENEMY OPERATIONS DURING PERIOD**

No hostile operations were conducted within this theatre of operations.

**3. DISCUSSION**

a. Enemy Casualties.  
No contact with enemy was gained.

b. Morale.  
The hostile morale undoubtedly remains high because of his successes so far. In a country where press, radio, and public opinion are controlled entirely by the Gov. mental as in Germany, the risk of lowering of national morale is likely to reach the outside world. It is equally certain that reverses and losses will be truthfully reported to the public.



Army G-2 Report No. 4.

~~CONFIDENTIAL~~

c. Supply and equipment.

The supply and equipment of the enemy is believed to be adequate for the campaign he is waging outside of this theatre. It is probable that he will be equally well supplied and equipped in the event he operates in this theatre for sometime in the future, at least as far as quality of weapons and equipment is concerned.

d. Terrain not under our control.

The seas off the PACIFIC COAST, particularly those to the north-west, are so vast as to be considered "not completely under our control."

e. Weather and visibility, including meteorological conditions, in enemy territory.

Unknown.

f. Enemy's probable knowledge of our situation.

The enemy's probable knowledge of our situation has not been gained by observation or reconnaissance but by information learned during peace and the activities of fifth columnists. Efforts to deny this information to the enemy include general surveillance of enemy aliens, internment of alien leaders and suspected spies and agents, seizure of contraband in possession of enemy aliens, adoption of stringent censorship measures, and (probably) transfer of many other Japanese, including second generation Japanese members of our military forces, from this theatre.

4. ENEMY CAPABILITIES

a. Surprise raids or attacks against any portion of the PACIFIC COAST, including ALASKA and the PANAMA CANAL, or against HAWAII.

b. Harassing attacks by submarines or surface craft, including commerce raiders, against shipping in PACIFIC waters of this theatre.

c. Intensification of the campaigns in MALAYA and the PHILIPPINES and the continuation of operations against the DUTCH EAST INDIES, in the NORTH AUSTRALIAN area and against our supply and ferry lines from SAMOA to AUSTRALIA.

d. Attacks on the Maritime Provinces of eastern SIAM to eliminate menacing Russian air power, while continuing action elsewhere.

e. Negative reports relative to a, b, and d and known activity relative to c leads to the assumption that the enemy will confine himself to this capability at present. Activity relative to b may be renewed at any time.

- ~~SECRET~~
- 6-2 f. The destruction of American and British naval, air and ground forces in the Far East and the reduction or seizure of the SINGAPORE Naval Base are among the immediate objectives of the enemy in order to free his hands for action against the SOUTH CHINA and possibly AUSTRALIA as the ultimate objectives. He probably plans to exploit the raw materials of this area for his own benefit in continuing war, to secure this region against attack by the Allies, to interfere with our plans to bring supplies, reinforcements and material to the SOUTH CHINA and AUSTRALIAN areas, and to protect the homeland and the sea and air routes to the SOUTH SEA.

D. A. STUART,  
Colonel, G.S.C.,  
A. C. of S., C-2

Reproduced at the National Archives at Seattle

**G-2 PERIODIC REPORT**

From: 12:00 Noon 21 March 1942 GMT  
To : 12:00 Noon 28 March 1942 GMT

Headquarters Western Defense Command and Fourth Army  
Presidio of San Francisco, California

12:00 Noon 28 March 1942 GMT

No. 13

MAPS: See Sketch.

**1. ENEMY SITUATION AT END OF PERIOD**

a. Troops of the Western Defense Command and Fourth Army are not in contact with hostile ground forces.

(1) Reports indicating the presence of enemy submarines have increased considerably, particularly in ALASKA. All suspected sound contacts and attacks thereon produced negative results. Air search in all cases was likewise negative. There were no attacks on shipping during the period of this report. This would indicate that the submarines, if present, are engaged on reconnaissance missions. This is particularly indicated in the ALASKA-ALEUTIAN area where the more definite indications of the presence of one and possibly two hostile submarines have appeared.

(2) Radio operation by the enemy in the adjacent ocean area has been noticeably slight. Radio indication of the presence of enemy vessels is shown on the attached sketch.

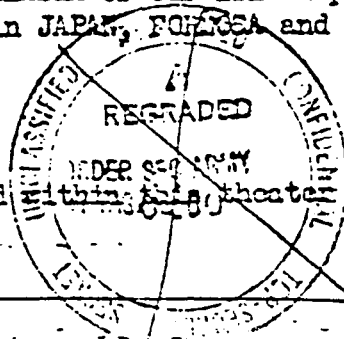
(3) No hostile ground units are believed nearer than the enemy forces in the JALUIT-WOTJE area of the eastern MANDATED ISLANDS.

b. Hostile naval forces which may operate in the PACIFIC OCEAN off the west coast can be reinforced by special task forces being organized near the OGASAWARA ISLANDS (BOTEN ISLANDS), or by elements of the enemy FIRST and FIFTH FLEETS estimated to be near JAPAN and the MANDATED ISLANDS, the SIXTH FLEET, believed to be in the MARSHALL ISLANDS or by special task forces, locations not definitely known. It is possible for elements of these units, including carriers, to evade our naval defense and air patrols in the vast expanse of the Pacific particularly to the northwest. Ground troops for raids or an attack in force on the PACIFIC COAST, including ALASKA or our island possessions in the eastern Pacific, are available in JAPAN, FORMOSA and possibly the MANDATED ISLANDS.

**2. ENEMY OPERATIONS DURING PERIOD**

No hostile ground operations were conducted within this theater of operations.

Army G-2 Report No. 13



E.O. 12958, Sec. 3-402

POB dir 5200.30 6/18/79  
By 6666 WISCONS, Date 2/1/82

### 3. MISCELLANEOUS

#### a. Enemy Casualties

No known enemy casualties were inflicted by any forces of this theater.

#### b. Morale

The hostile morale undoubtedly remains high because of his successes so far. In addition to his known victories extravagant claims are made of other successes, largely imaginary. In a country where press, radio and public opinion are controlled entirely by the Government as in Japan, no hint of lowering of national morale is likely to reach the outside world. It is equally certain that reverses and losses will not be truthfully reported to the public. Efforts on our part to enlighten the Japanese general public by short wave radio will likely to be abortive since possession of this type of radio is prohibited in the enemy country.

#### c. Supply and Equipment

The supply and equipment of the enemy is believed to be adequate for the campaign he is waging outside of this theater. It is probable that he will be equally well supplied and equipped in the event he operates in this theater during the early stages of the campaign, at least, as far as quality of weapons and equipment is concerned.

#### d. Terrain not under our Control

##### Mexico

- (1) It is reported by a reliable informant that apparently Mexicans in CHIHUAHUA are receiving chiefly Axis versions of the news in radio news-casts. The informant believes that these newscasts originate on the west coast of MEXICO since the receiving sets are generally cheap, short range, broadcast band receivers.
- (2) An informant, reported by A. C. of S., G-2, 8th Corps Area, to be reliable, is of the opinion that the Japanese plan a bombing attack on SAN FRANCISCO between 1 April and 16 April. This will be in the nature of a token raid to prove to the Mexicans that the United States is vulnerable to aerial attack.
- (3) Reports are persistent in SONORA and SINALOA to the effect that a Jap or other enemy submarine landed an armed party just south of MAZATLAN to secure fresh water some time between 5 March and 15 March. All efforts to definitely verify these rumors have been unsuccessful.

e. Sabotage

Evidence of sabotage appeared in damage to the SS W.R. Chamberlain in dry dock at the San Diego Marine Construction Company, SAN DIEGO, where it is being overhauled and equipped as a salvage vessel for the Army. Evidence of sabotage included: puncturing of de-Gaussing equipment cables, short circuiting of wiring system, damage to jacking engine, tampering with electric generators.

f. Weather and Visibility, including Meteorological conditions in Enemy Territory.

(1) Enemy Territory

Weather conditions in enemy territory are unknown.

(2) Own Territory

(a) Alaska

The weather has been generally poor with scattered rain and snow throughout the entire period.

(b) Pacific Coast

The weather has been generally fair with light showers, in OREGON-WASHINGTON the first two days of the period. Visibility for the coast as a whole has been about 90 percent.

4. CONCLUSIONS


a. Enemy Capabilities

- (1) Surprise raids or attacks of the PACIFIC COAST, the PANAMA CANAL, HAWAII, and ALASKA.
- (2) Harassing attacks by submarines or surface craft, including commerce raiders, against shipping in the PACIFIC waters of this theater.
- (3) Continuation of attacks on the BATAAN PENINSULA and extension of occupation to other islands of the PHILIPPINES: intensification of operations in (a) EURPA and in the INDIAN OCEAN, (b) against NEW GUINEA, SOLOMON ISLANDS, and other islands to the southeast with a view to their use as sea and air bases for operations against AUSTRALIA and our supply and ferry lines to AUSTRALIA: and invasion of AUSTRALIA.
- (4) Attack of EASTERN SIBERIA and the ALEUTIAN ISLANDS.

~~CONFIDENTIAL~~

- b. (1) The enemy will probably confine himself to capability (3) for the present. Activity relative to (1), (2), and (4) can be resorted to any time by the enemy.
- (2) Japanese seizure of the ANDAMAN ISLANDS, augmentation of air strength and intensification of the attacks in Upper BURMA indicated the keenest enemy interest in this area not only in the hope of synchronizing with probable Axis strategic plans but chiefly in fulfillment of Japan's cherished "Greater East Asia co-prosperity Sphere".
- (3) The conquest of the south coast of NEW GUINEA and neutralization or invasion of Allied bases on the north coast of AUSTRALIA would secure for the enemy the comparatively free use of the TORRES STRAITS and would deny the use of northern AUSTRALIA as a base for future Allied offensive. The apparent delay in starting these operations beyond NEW GUINEA is apparently caused by the desire to consolidate present gains in the NETHERLANDS EAST INDIES, to initiate reconnaissance, construct airfields or by lack of shipping and fatigue.
- (4) An attack against EASTERN SIBERIA in furtherance of a joint Axis plan or for the elimination of the Russian air threat, might be accompanied by an attack on the ALEUTIAN ISLANDS to prevent United States reinforcements, particularly aircraft, from reaching SIBERIA, and to protect the northern flank. With the approach of spring, weather for such a venture is improving.

2 Inclosures  
Incl #1 - Sketch  
Incl #2 - Fourth Air Force  
Intelligence Report.

  
JOHN WEAVERLING,  
Colonel, G.S.C.,  
A. C. of S., G-2.



G-2 PERIODIC REPORT

DECLASSIFIED

E.O. 12065, Sec. 3-402

From: 12:00 Noon 26 March 1942 GMT

To : 12:00 Noon 4 April 1942 GMT

500 dir 5200.30 6/18/79

By W. C. Lewis NARS, Date 2/1/82 Headquarters Western Defense Com and Fourth Army  
Presidio of San Francisco, California

12:00 Noon 4 April 1942 GMT

No. 14

MAPS: See Sketch.

1. ENEMY SITUATION AT END OF PERIOD

- a. Troops of the Western Defense Command and Fourth Army are not in contact with hostile ground forces.
  - (1) Reports of indications of hostile submarines have decreased since the last report, none having been reported from Alaska for the period of this report.
  - (2) Signal intelligence reports of enemy vessels have also been lacking during the period of this report.
- b. Hostile naval forces which may operate in the PACIFIC OCEAN off the west coast can be reinforced by special task forces, organized from elements of the Japanese navy now in the vicinity of JAPAN, the BONIN (OGASAWARA) ISLANDS, or the MANDATED ISLANDS. It is possible for a naval force, including carriers, to evade our naval defense and air patrols in the vast expanse of the Pacific particularly to the northwest. Ground troops for raids or an attack in force on the PACIFIC COAST, including ALASKA, or our island possessions in the eastern Pacific, are available in JAPAN, FORMOSA and possibly the MANDATED ISLANDS.

2. ENEMY OPERATIONS DURING PERIOD

No hostile ground operations were conducted within this theater of operations.

3. MISCELLANEOUS

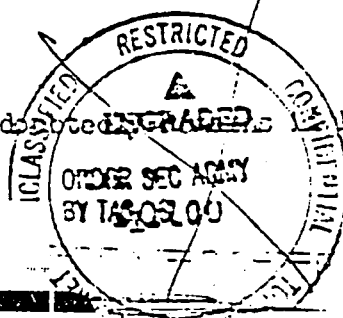
a. Enemy Casualties

No known enemy casualties were inflicted by any forces of this theater.

b. Morale

The hostile moral undebated because of his successes

Army G-2 Report No. 14.



are made of other successes, largely imaginary. In a country where press, radio and public opinion are controlled entirely by the Government as in Japan, no hint of lowering of national morale is likely to reach the outside world. It is equally certain that reverses and losses will not be truthfully reported to the public. Efforts on our part to reach the Japanese general public by short wave radio are likely to prove abortive since possession of this type of radio has long been prohibited in the enemy country.

c. Supply and Equipment

The supply and equipment of the enemy is believed to be adequate for the campaign he is waging outside of this theater. It is probable that he will be equally well supplied and equipped in the event he operates in this theater during the early stages of the campaign, at least, as far as quality of weapons and equipment is concerned.

d. Terrain not under our Control

(1) Mexico

An unverified rumor has been received to the effect that there will be an "Axis directed revolution" in north and west MEXICO within the next thirty days. According to this rumor the "revolution" will be sufficiently serious to require the services of U. S. troops in MEXICO which, inferentially, will be used for propaganda purposes in LATIN AMERICA by the Axis.

(2) Siberia

Reports from ALASKA state that the Russians have increased their colony on BIG DIOMEDE ISLAND in BERING STRAIT to a total of 10 whites. The Russian men of the settlement wear uniform and have constructed four new houses. No armament or fortifications have been observed. All youths between the ages of 14 and 18 have been moved to EAST CAPE, SIBERIA, for military training. The natives report the Russians are very secretive but are believed to be friendly toward the United States.

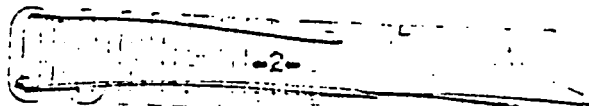
e. Sabotage

Sabotage was definitely indicated in the burning of two Southern Pacific Railroad bridges near NILES, CALIFORNIA, 29 March.

f. Weather and Visibility, including Meteorological conditions in Enemy Territory

(1) Enemy Territory

Weather conditions in enemy territory are unknown.



(2) Own Territory

(a) Alaska

Generally overcast with scattered rain and snow.

(b) Pacific Coast

The weather was generally fair with morning and evening fogs off the coast except for the last two days of the period when rain was general.

#### 4. CONCLUSIONS

##### a. Enemy Capabilities


- (1) Surprise raids or attacks of the PACIFIC COAST, the PANAMA CANAL, HAWAII, and ALASKA.
- (2) Harassing attacks by submarines or surface craft, including commerce raiders, against shipping in the PACIFIC waters of this theater.
- (3) Continuation of attacks on the BATAAN PENINSULA and extension of occupation to other islands of the PHILIPPINES; intensification of operations in (a) BURMA and in the INDIAN OCEAN, (b) against NEW GUINEA, SOLOMON ISLANDS, and other islands to the southeast with a view to their use as sea and air bases for operations against AUSTRALIA and our supply and ferry lines to AUSTRALIA, and invasion of AUSTRALIA.
- (4) Attack of EASTERN SIERRA and the ALIUTIAN ISLANDS.

- b. (1) The enemy will probably confine himself to capability (3) for the present. Activity relative to (1), (2), and (4) can be resorted to any time by the enemy.
- (2) Japanese seizure of the ANDAMAN ISLANDS, augmentation of air strength, and intensification of the attacks in Upper BURMA indicated the keenest enemy interest in this area not only in the hope of synchronizing with probable Axis strategic plans but chiefly in fulfillment of Japan's cherished "Greater East Asia Co-prosperity Sphere". The enemy hopes, apparently, not only to prevent supply of war materials reaching China via India, but that Indian pacifism, disunity, and apathy can be depended upon to further realization of his political ambitions to control all of east Asia.
  - (3) The conquest of the south coast of NEW GUINEA and neutralization or invasion of Allied bases on the north coast of AUSTRALIA would secure for the enemy the comparatively free use of the TONKIN STRAITS and would deny the use of northern AUSTRALIA as a base for future Allied offensive. The delay

~~CONFIDENTIAL~~

in starting these operations beyond NEW GUINEA is apparently caused by the desire to consolidate present gains in the NETHERLANDS EAST INDIES, to initiate reconnaissance, construct airfields or by lack of shipping, and fatigue.

- (4) An attack against EASTERN SIBERIA in furtherance of a joint Asia plan or for the elimination of the Russian air threat, might be accompanied by an attack on the ALEUTIAN ISLANDS to prevent United States reinforcements, particularly aircraft, from reaching SIBERIA, and to protect the northern flank. With the approach of spring, weather for such a venture is improving, especially for a single operation against the ALEUTIANS.

  
JOHN WICKERLING  
Colonel, G.S.C.,  
A. C. of S., G-2

2 Inclosures,  
Incl #1 - Sketch  
Incl #2 - Fourth Air Force  
Intelligence Report.

~~CONFIDENTIAL~~

**G-2 PERIODIC REPORT**

DECLASSIFIED

E.O. 12065, Sec. 3-402

From: 12:00 Mon 4 April 1942 GMT

To : 12:00 Noon 11 April 1942 GMT

Headquarters Western Defense Command and Fourth Army  
Presidio of San Francisco, California

12:00 Noon 11 April 1942 GBT

HC. 15

**MAPS:** See Sketch.

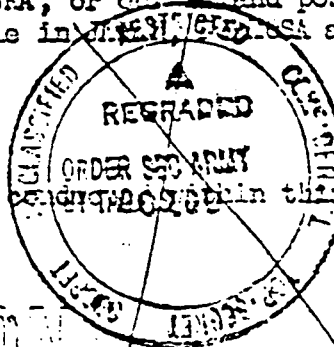
1. EMELY SITUATION AT END OF PERIOD.

- g. Troops of the Western Defense Command and Fourth Army are not in contact with hostile ground forces.
- (1) Indications of the presence of hostile submarines increased slightly during the period. The most credible of these were reports of submarines near the SANTA BARBARA CHANNEL and one sighted in the waters off ALASKA. The presence of at least one submarine off CALIFORNIA and one near ALASKA is indicated. (See sketch).
  - (2) Enemy activity as revealed by radio intelligence was noted during the period of this report in the area around HAWAII. (See sketch).
  - (3) LOS ANGELES was blacked out from 9:00 PM PWT to 10:52 PM PWT 9 April when an unidentified plane was detected in the area by instruments. This plane was later believed to have been a navy plane overdue at 8:30 PM PWT.
- h. Hostile naval forces which may operate in the PACIFIC OCEAN off the west coast can be reinforced by special task forces, organized from elements of the Japanese navy now in the vicinity of JAPAN, the BONIN (OGASAWARA) ISLANDS, or the MANDATED ISLANDS. It is possible for a naval force, including carriers, to evade our naval defense and air patrols in the vast expanse of the Pacific particularly to the northwest. Ground troops for raids or an attack in force on the PACIFIC COAST, including ALASKA, or our island possessions in the eastern Pacific, are available in MEXICO, GUATEMALA and possibly the MANDATED ISLANDS.

2. ENTRY OPERATIONS DURING PERIOD.

No hostile ground operations were conducted in the theater of operations.

Army G-2 Report No. 15.



Army G-2 Report No. 15.

### 3. MISCELLANEOUS

#### a. Enemy Casualties

No known enemy casualties were inflicted by any forces of this theater.

#### b. Morale

The hostile morale undoubtedly remains high because of his successes so far. In a country where press, radio and public opinion are controlled entirely by the Government as in Japan, no hint of lowering of national morale is likely to reach the outside world. It is equally certain that reverses and losses will not be truthfully reported to the public. Efforts on our part to reach the Japanese general public by short wave radio are likely to prove ineffective since possession of this type of radio by the general public has long been prohibited in the enemy country.

#### c. Supply and Equipment

The supply and equipment of the enemy is believed to be adequate for the campaign he is waging outside of this theater. It is probable that he will be equally well supplied and equipped in the event he operates in this theater during the early stages of the campaign, at least, as far as quality of weapons and equipment is concerned.

#### d. Terrain not under our Control

##### Mexico

- (1) A report has been received that Mexican Army reservists along the border south of COLUMBUS, NEW MEXICO, are being issued standard Mauser rifles with a limited amount of ammunition.
- (2) "El Herald", a Mexican newspaper published in TIA JUANA, BAJA CALIFORNIA, stated on 19 March, 1942, that as the result of persistent rumors concerning secret Axis submarine bases on the coasts of the GULF of MEXICO, the Mexican Naval authorities have investigated the entire Atlantic and Pacific coast line and found nothing to substantiate these rumors.
- (3) The recently announced program of compulsory military training in Mexican schools is to be extended to all classes, according to the Mayor of DECATE, BAJA CALIFORNIA.
- (4) It was reported by G-2, Southern Land Frontier, SDC, that General Jaime Quinones of the Mexican Army expressed the opinion in conversation with General Swift that he thought the Jap submarines operating off the west coast were being

refueled from cached gas and oil supplies which may have been hidden for a number of months or even years. It was not reported that General Quinones indicated any specific knowledge as to dates or whether these supplies may have been hidden along the west coast of Mexico or the United States.

e. Sabotage

The fires which have been reported on Southern Pacific Railroad property in SOUTHERN CALIFORNIA are apparently the work of a pyromaniac or person with a grudge against the railroad and are not the result of co-ordinated efforts at sabotage.

f. Weather and Visibility, including Meteorological conditions in Enemy Territory.

(1) Enemy Territory

Weather conditions in enemy territory are unknown.

(2) Own Territory

(a) Alaska

Generally overcast with rain squalls and snow flurries first and last part of the period. The Alaska Defense Command reported that the general weather conditions for either air or sea operations were improving.

(b) Pacific Coast

Generally overcast with local showers throughout the period.

4. CONCLUSIONS

a. Enemy Capabilities

- (1) Surprise raids or attacks of the PACIFIC COAST, the PANAMA CANAL, HAWAII, and ALASKA.
- (2) Harassing attacks by submarines or surface craft, including commerce raiders, against shipping in the PACIFIC waters of this theater.
- (3) Continuation of attacks on FORT MILES and the other harbor forts at MANILA, and extension of occupation to other islands of the PHILIPPINES; intensification of operations in (a) INDIA and in the INDIAN OCEAN, (b) against NEW GUINEA, SOLOMON ISLANDS, and other islands to the southeast with a view to their use as sea and air bases for operations against AUSTRALIA and our

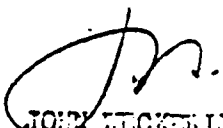
~~CONFIDENTIAL~~

supply and ferry lines to AUSTRALIA, and invasion of AUSTRALIA.

(4) Attack of EASTERN SIBERIA and the ALEUTIAN ISLANDS.

- b. (1) The enemy will probably confine himself to capability (3) for the present. Activity relative to (1), (2), and (4) can be resorted to at any time by the enemy.
- (2) The enemy naval and air effort in the INDIAN OCEAN and the reinforcement of forces there and in BURMA indicate a keen desire on the part of the enemy to intensify the campaign in this area before the monsoon season and to influence the attitude of Indian leaders against cooperation with Britain; or if cooperation is decided upon, to terminate the campaigns before Indian military effort can be made effective. Japanese efforts in this theater are in accordance with her known desire to extend the cherished "Greater East Asia Co-prosperity Sphere" to include the Indian Empire.
- (3) The conquest of the south coast of NEW GUINEA and neutralization or invasion of Allied bases on the north coast of AUSTRALIA would secure for the enemy the comparatively free use of the TORRES STRAITS and would deny the use of northern AUSTRALIA as a base for future United Nations offensive. The delay in starting these operations beyond NEW GUINEA is apparently caused by the desire to consolidate present gains in the NETHERLANDS EAST INDIES, to initiate reconnaissance, and to construct airfields; or by lack of shipping, and fatigue. Progressive extension of control through the SOLOMON ISLANDS is apparently underway to assist in the protection of the east flank for operations against NEW GUINEA and AUSTRALIA. These operations, if successful, may become a serious threat to our supply and ferry routes to AUSTRALIA.
- (4) An attack against EASTERN SIBERIA in furtherance of a joint Axis plan or for the elimination of the Russian air threat, might be accompanied by an attack on the ALEUTIAN ISLANDS to prevent United States reinforcements, particularly aircraft, from reaching SIBERIA, and to protect the northern flank. With the approach of spring, weather for such a venture is improving, especially for a single operation against the ALEUTIANS.

2 Inclosures,  
Incl #1 - Sketch  
Incl #2 - Fourth Air Force  
Intelligence Report.

  
JOHN W. ECKERTLING  
Colonel, G.S.C.,  
A. C. of S., G-2



From: 12:00 Noon 15 April 1942 GMT  
 To : 12:00 Noon 25 April 1942 GMT

Headquarters Western Defense Command and Fourth Army  
 Presidio of San Francisco, California

12 Noon 25 April 1942 GMT

NO. 17

MAPS: See Sketch

# 1. ENEMY SITUATION AT END OF PERIOD

- a. Troops of the Western Defense Command and Fourth Army are not in contact with hostile ground forces.
  - (1) No hostile submarines were reported in Canadian or Alaskan waters during this period. Indications of hostile submarines off the Pacific Coast of the UNITED STATES remained about the same as the preceding period (see sketch).
  - (2) One Japanese radio fix which Federal Communications Commission rates as "very good" was secured during the period. This fix was obtained from bearings taken by F. C. C. stations at PORTLAND and SANTA ANA. Call letters were TETU4 on frequency of 6470 KC. The fact that this fix was determined from only two bearings serves to decrease credibility.
  - (3) Radio silence ordered in SAN FRANCISCO from 1:20 AM PWT to 4:30 AM PWT, 19 April because of unidentified target later identified as friendly vessel. Radio silence ordered at ANCHORAGE and CORDOVA, Alaska, from 7:10 AM AWT to 12:00 Noon AWT 16 April because of the presence of unidentified vessels later identified as friendly.
- b. Hostile naval forces which may operate in the PACIFIC OCEAN off the west coast can be reinforced by special task forces, organized from elements of the Japanese navy now in the vicinity of JAPAN, the BONIN (OGASAWARA) ISLANDS, or the MANDATED ISLANDS. It is possible for a naval force, including carriers, to evade our naval defense and air patrols in the vast expanse of the Pacific particularly from the northwest. Ground troops for raids or an attack in force on the PACIFIC COAST, including ALASKA, or our island possessions in the eastern Pacific, are available in JAPAN, FORMOSA and possibly the MANDATED ISLANDS.

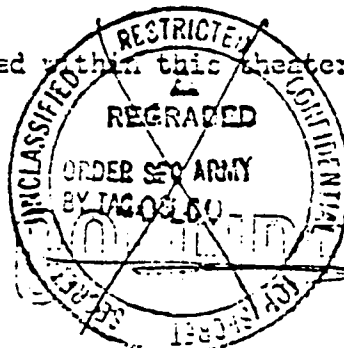
# 2. ENEMY OPERATIONS DURING PERIOD

No hostile ground operations were conducted within this theater of operations.

Army G-2 Report No. 17.

- 1 -

By W. G. Lewis, Date 2/1/82  
 Army G-2



Reproduced from the National Archives

### 3. MISCELLANEOUS

#### a. Enemy casualties

No known enemy casualties were inflicted by any forces of this theater.

#### b. Morale

The hostile morale remains high because of his successes so far. In a country where press, radio and public opinion are controlled entirely by the Government as in Japan, the gauging of national morale by the outside world is difficult. The recent air attacks of the large cities of JAPAN have undoubtedly shaken the morale of the Japanese to some degree. The effect of shortages of food upon civilian morale is unknown but probably not serious. The probable effects of constant bombing is likewise unknown but in time will become serious.

#### c. Supply and Equipment

The supply and equipment of the enemy is believed to be adequate for the campaign he is waging outside of this theater. It is probable that he will be equally well supplied and equipped in the event he operates in this theater during the early stages of the campaign, at least, as far as quality of weapons and equipment is concerned. Shortages of equipment and material will probably result as the war progresses unless the enemy has been successful in replenishing his supply of raw materials in the SOUTH SEAS and readjusting and expanding production.

#### d. Sabotage

Possibility of sabotage in connection with burning of a short trestle on the Oregon Trunk Line three miles east of LOCKIT, Oregon (on DESCUTES River about 17 miles southeast of THE DALLES), 20 April 1942, is being investigated.

#### e. Weather and Visibility including Meteorological conditions in Enemy Territory.

##### (1) Enemy Territory

Weather conditions in enemy territory are unknown.

##### (2) Own Territory

###### (a) Alaska

The weather was generally overcast with scattered rain.

###### (b) Pacific Coast

Generally clear with scattered showers in Oregon and Washington.

#### 4. CONCLUSIONS

##### a. Enemy Capabilities

- (1) Surprise raids or attacks on the PACIFIC COAST, the PANAMA CANAL, HAWAII, AND ALASKA.
- (2) Harassing attacks by submarine or surface craft, including commerce raiders, against shipping in the PACIFIC waters of this theater.
- (3) Continuation of attacks on FORT MILLS (CORREGIDOR) and the other harbor forts at MANILA, and extension of occupation to other islands of the PHILIPPINES; intensification of operations in (a) BURMA and in the INDIAN OCEAN, (b) against NEW GUINEA, SOLOMON ISLANDS, and other islands to the southeast with a view to their use as sea and air bases for operations against AUSTRALIA and our supply and ferry lines to AUSTRALIA, and invasion of AUSTRALIA.
- (4) Attack of EASTERN SIBERIA and/or the ALEUTIAN ISLANDS.

- b.
- (1) The enemy will probably confine himself to capability (3) for the present. Activity relative to (1), (2), and (4) can be resorted to at any time by the enemy.
  - (2) The possibility of activity relative to capabilities (1) and perhaps (2) increases as the enemy desires to retaliate for air raids suffered by him recently. He may decide to sacrifice certain units in an effort to take revenge in the form of a determined attack against our aircraft and other defense installations.
  - (3) The reinforcement of the enemy forces in BURMA and the apparent withdrawal of the naval and air task force formerly operating in the BAY OF BENGAL against CEYLON and the east coast of INDIA indicated that the Japanese might attempt to conclude the campaign in BURMA before extending their invasion to INDIA proper. It is evident that the Japanese are increasing their pressure in BURMA probably with the idea of reaching their objectives before the monsoons set in. Eventual extension of the campaign to INDIA will probably be attempted to bring this empire into the "Greater East Asia Co-prosperity Sphere", the long cherished dream of Japanese expansionists.
  - (4) The conquest of the south coast of NEW GUINEA and neutralization or invasion of allied bases on the north coast of AUSTRALIA would secure for the enemy the comparatively free use of the TORRES STRAITS and would deny the use of northern AUSTRALIA as a base for future United Nations offensive. The delay in starting these operations beyond NEW GUINEA is apparently caused by the desire to consolidate present gains in the NETHERLANDS EAST INDIES, to initiate reconnaissance, to await the arrival of reinforcements and the stabilization of the BURMA situation, and to construct airfields; or by lack of shipping. Slow

but steady extension of control of the islands to the east and southeast of NEW BRITAIN is underway to assist in the protection of the east flank for operations against NEW GUINEA and AUSTRALIA. These operations, if successful, may become a serious threat to our supply and ferry routes to AUSTRALIA.

- (5) An attack against EASTERN SIBERIA in furtherance of a joint Axis plan or for the elimination of the Russian air threat, might be accompanied by an attack on the ALUTIAN ISLANDS to prevent United States reinforcements, particularly aircraft, from reaching SIBERIA, and to protect the northern flank. With the approach of spring, weather for such a venture is improving, especially for a single operation against the ALUTIAN ISLANDS.

*J.M.*  
JOHN WICKERLING  
Colonel, G. S. C.,  
A. C. of S., G-2

2 Inclosures

Incl #1 - Sketch

Incl #2 - Fourth Air Force  
Intelligence Report.

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~~CONFIDENTIAL~~  
G-2 PERIODIC REPORT

From: 12:00 Noon 25 April 1942 GMT

To : 12:00 Noon 2 May 1942 GMT

HEADQUARTERS WESTERN DEFENSE COMMAND AND FOURTH ARMY  
Presidio of San Francisco, California  
12 Noon 2 May 1942 GMT

NO. 18.

MAPS: See Sketch.

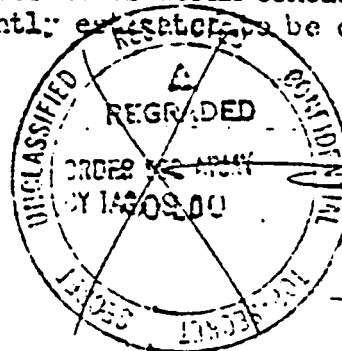
1. ENEMY SITUATION AT END OF PERIOD

a. Troops of the Western Defense Command and Fourth Army are not in contact with hostile ground forces.

- (1) Report of unidentified submarine in CLARENCE STRAIT, west of KETCHIKAN, ALASKA, may indicate presence of hostile submarine in INLAND PASSAGE waters. There has been a decided decrease in indications of hostile submarines off the Pacific Coast of the UNITED STATES during the period (see sketch).
- (2) The Northwest Sea Frontier reports that call signs and frequencies indicating Japanese submarines were moderately active during the week ending 24 April, but that all fixes obtained indicated their presence well to the westward of the HAWAIIAN ISLANDS and in the Southwest Pacific area. During the same period no D/F fixes were produced indicating the presence of any enemy craft east of 180° in the PACIFIC OCEAN. In view of the Navy's wide frequency coverage by the D/F net, it is assumed that if any enemy mobile units were in the Eastern Pacific complete radio silence must have been maintained.
- (3) Subsequent investigation has established fact that location of Japanese radio fix referred to in paragraph 1 a (2) of G-2 Periodic Report No. 17, 25 April, was erroneous. Signals intercepted were actually coming from land station in RABAU, NEW BRITAIN.
- (4) Radio silence ordered in LOS ANGELES and 50 mile radius from 3:45 AM PWT to 4:20 AM PWT, 29 April as result of deram contact with unidentified object which was subsequently established to be cloud or fishing vessel.

Army G-2 Report No. 18.

-1-



REQUEST FOR JUDICIAL NOTICE-120

APPENDIX NO. 1

boat. Area from LOS ANGELES to MEXICO went on radio silence at 10:23 PM PWT and SAN DIEGO blacked out at 10:37 PM PWT, 29 April because of contact with unidentified planes later identified as friendly. All clear ordered in all foregoing areas at 11:11 PM PWT 29 April. Radio silence again ordered in LOS ANGELES area from 12:55 AM PWT to 1:35 AM PWT 1 May as result of derax contact with unidentified object at first thought to be planes.

- b. Hostile naval forces which may operate in the PACIFIC OCEAN off the west coast can be reinforced by special task forces, organized from elements of the Japanese navy now in the vicinity of JAPAN, the BONIN (OGASAWARA) ISLANDS, or the MANDATED ISLANDS. It is possible for a hostile naval force, including carriers, to evade our naval defense and air patrols in the vast expanse of the Pacific particularly from the northwest. Ground troops for raids or an attack in force on the PACIFIC COAST, including ALASKA, or our island possessions in the eastern Pacific, are available in JAPAN, FORMOSA and possibly the MANDATED ISLANDS.

## 2. ENEMY OPERATIONS DURING PERIOD

No hostile ground operations were conducted within this theater of operations.

## 3. MISCELLANEOUS

### a. Enemy Casualties

No known enemy casualties were inflicted by any forces of this theater.

### b. Morale

The hostile morale remains high because of his successes to date. In a country where press, radio and public opinion are controlled entirely by the Government as in JAPAN, the gauging of national morale by the outside world is difficult. The recent air attacks on the large cities of JAPAN have undoubtedly shaken the feeling of security of the Japanese against attacks by the United States to some degree. The effect of shortages of food upon civilian morale is unknown but probably not serious. The probable future effects of constant bombing is unknown.

### c. Supply and Equipment

The supply and equipment of the enemy is believed to be adequate for the campaign he is waging outside of this theater. It is probable that he will be equally well supplied and equipped in the event he operates in this theater during the early stages of the campaign at least, as far as quality of weapons and equipment is concerned. Shortages of equipment and material will probably result as the war progresses unless the enemy has been very successful in replenishing his supply of raw materials in the SOUTH SEAS and readjusting and expanding production.

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d. Sabotage

- (1) Possibility of sabotage is indicated in connection with a fire in one of the ways at the WESTERN PINE AND STEEL COMPANY, SOUTH SAN FRANCISCO, California, on 26 April, which buckled two plates on a 10,000 ton cargo vessel being converted to aircraft carrier for the Navy.
- (2) Investigation by the FBI, railroad inspectors and Counterintelligence Branch Officers of the burning of a short trestle on the Oregon Trunk Line three miles east of LOCKIT, Oregon (reported in G-2 Periodic Report No. 17, 25 April) revealed that no sabotage was involved. Fire appears to have been caused by hot box on train preceeding the one which was wrecked.

e. Weather and Visibility including Meteorological conditions.

(1) Enemy Territory

Weather conditions in enemy territory are unknown.

(2) Own Territory

(a) Alaska

The weather was generally broken to overcast with light to moderate rains.

(b) Pacific Coast.

California weather was generally clear with scattered clouds and some showers. The weather in Oregon and Washington was broken to overcast with showers and rains..

- f. Two Russian merchant ships recently arrived in SEATTLE from VLADIVOSTOK on their first trip to the United States. Both ships followed the route TSUSHIMA STRAIT, PETROPAVLOVSK, BERING SEA and UNELAK PASS. One was stopped by Japanese patrol vessels in TSUSHIMA STRAIT and the master of the other reported intense shipping activity in TSUSHIMA STRAIT by armed cargo vessels from SHANGHAI and FORMOSA.

4. CONCLUSIONS

a. Enemy Capabilities

- (1) Surprise raids or attacks of the PACIFIC COAST, the PANAMA CANAL, HAWAII, and ALASKA.
- (2) Harassing attacks by submarine or surface craft, including commerce raiders, against shipping in the PACIFIC waters of this theater.
- (3) Continuation of attacks on FORT WILLS (CORREXIDOR) and the other harbor forts at MANILA, and extension of occupation to other islands of the

PHILIPPINES; extension of the campaign in BURMA to the north toward the BURMA ROAD or to the west preparatory to attack of INDIA; intensification of operations against NEW GUINEA, SOLOMON ISLANDS, and other islands to the southeast with a view to their use as sea and air bases for operations against AUSTRALIA and our supply and ferry lines to AUSTRALIA; and invasion of AUSTRALIA.

(4) Attack of EASTERN SIBERIA and/or the ALUTIAN ISLANDS.

b. (1) The enemy will probably confine himself to capability (3) for the present. Activity relative to (1), (2) and (4) can be resorted to at any time by the enemy.

(2) The possibility of activity relative to capabilities (1) and (2) but particularly the former is enhanced by the enemy's desire to retaliate for air raids of his homeland suffered by him recently. It is possible that airplane carriers plus supporting units could be employed in such an attack against our aircraft and other installations at any time after 10 May. There is also the possibility that the enemy might reinforce his attacking forces with airplanes based on LOWER CALIFORNIA fields.

(3) The recent enemy successes in BURMA and the apparent withdrawal of the naval and air task force formerly operating in the BAY OF BENGAL against CEYLON and the east coast of INDIA seem to indicate that the Japanese propose to conclude the campaign in BURMA before extending their invasion to INDIA proper.

(4) The conquest of the south coast of NEW GUINEA and neutralization or invasion of allied bases on the north coast of AUSTRALIA would secure for the enemy the comparatively free use of the TORRES STRAITS and would deny the use of northern AUSTRALIA as a base for future United Nations offensive. The delay in starting these operations beyond NEW GUINEA is apparently caused by the desire to consolidate present gains in the NETHERLANDS EAST INDIES, to initiate reconnaissance, to await the arrival of reinforcements and the stabilization of the BURMA situation, and to construct airfields; or by lack of shipping. Slow but steady extension of control of the islands to the east and southeast of NEW BRITAIN is underway to assist in the protection of the east flank for operations against NEW GUINEA and AUSTRALIA. These operations, if successful, may become a serious threat to our supply and ferry routes to AUSTRALIA.

(5) An attack against EASTERN SIBERIA in furtherance of a joint Axis plan or for the elimination of the Russian air threat, might be accompanied by an attack on the ALUTIAN ISLANDS to prevent United States reinforcements, particularly aircraft, from reaching SIBERIA, and to protect the northern flank. A study of weather records over a period of years indicates that the month of May is one of the most favorable times of the year for air and surface operations in the vicinity of the ALUTIAN ISLANDS.

JOHN MECHERLING  
Colonel, U.S.C.  
A. C. of S., G-2



G-2 PERIODIC REPORT

From: 12:00 Noon 2 May 1942 GMT  
To : 12:00 Noon 9 May 1942 GMT

HEADQUARTERS WESTERN DEFENSE COMMAND AND FOURTH ARMY  
Presidio of San Francisco, California  
12 Noon 9 May 1942 GMT

No. 19

Maps: See Sketch.

1. ENEMY SITUATION AT END OF PERIOD

a. Troops of the Western Defense Command and Fourth Army are not in contact with hostile ground forces.

(1) Reports of two unidentified submarines in Canadian coastal waters between VANCOUVER ISLAND and PRINCE OF WALES ISLAND indicate that at least one hostile submarine may be operating in the INLAND PASSAGE. There were no reports of unidentified submarines off the Pacific Coast of the UNITED STATES during the period. (See sketch).

(2) According to the Northwest Sea Frontier, radio communications in submarine activities for the week ending 1 May continued moderately active, with all fixes produced lying well to the west of 180°. An apparent screening force of what appears to be at least four craft, type unknown, seems to be placed along the 160th East Meridian between 35°N and 45°N. No radio D/F fixes have been obtained which would indicate the presence of any enemy craft east of 180° in the PACIFIC OCEAN since 13 March 1942.

(3) SAN FRANCISCO BAY area was blacked out from 11:13 PM until 11:55 PM PWT 3 May, 1942, as result of derax contact with unidentified "target" thought to be planes. Subsequent investigation disclosed that no Army or Navy planes were in the area in question at time of blackout. It is concluded that (1) a hostile plane or planes of type carried by Japanese cruiser-type submarines approached coast in vicinity of SAN FRANCISCO and turned back to the west about time blackout ordered or (2) mechanical defects. Radio silence ordered from SAN FRANCISCO south to MONTEREY from 9:22 PM until 9:45 PM PWT, 5 May 1942, because of derax contact with object later identified as friendly plane.

b. Hostile naval forces which may be operating in the PACIFIC OCEAN off the west coast can be reinforced by several task forces, organized from elements of the Japanese navy, based in the vicinity of JAPAN, the BONIN (OGASA) ISLANDS, or the IZU ISLANDS where Japanese Naval units are reported to be gathering in the 50°N area. It is possible for a hostile naval force, including aircraft, to evade our naval defense and air patrols in the vast expanse of the Pacific, particularly from

F.O. 12035, Sec. 3-402  
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By Walew SPNRS, Date 2/1/82

the northwest. Ground troops for raids or an attack in force on the PACIFIC COAST, including ALASKA, or our island possessions in the eastern Pacific, are available in JAPAN, FORMOSA and possibly the MANDATED ISLANDS.

## 2. ENEMY OPERATIONS DURING PERIOD

No hostile ground operations were conducted within this theater of operations.

## 3. MISCELLANEOUS

### a. Enemy Casualties

No known casualties were inflicted by any forces of this theater.

### b. Morale

The hostile morale remains high because of his successes to date. In a country where press, radio and public opinion are controlled entirely by the Government as in JAPAN, the gauging of national morale by the outside world is difficult. The recent air attacks on the large cities of JAPAN undoubtedly have shaken to some degree the Japanese feeling of security against attacks by the United States. The effect of food shortages upon civilian morale is unknown but probably not serious. The probable future effects of constant bombing is unknown.

### c. Supply and equipment

The supply and equipment of the enemy is believed adequate for the campaign he is waging outside of this theater. It is probable that in the event he operates in this theater, he will be equally well supplied and equipped, during the early stages of the campaign at least. Shortages of equipment and material will probably result as the war progresses unless the enemy has been very successful in replenishing his supply of raw materials in the SOUTH SEAS and in readjusting and expanding production.

### d. Terrain not under our control

#### (1) Mexico

The following resume of recent developments in the attitude of Mexicans is taken from reports of various individuals recently returned from visits to Mexico and other Central American countries.

(a) Mexico City:

The attitude of the populace seems to divide itself into two groups. The first group, being pro-Ally and especially pro-United States, is composed of the upper middle class and wealthy families. The second group is pro-Axis and consists of some lower middle class elements, laborers and peons. Anti-Semitism is becoming pronounced particularly demonstrated during several labor strikes. Axis agents are giving hoodlums free tickets to motion picture theatres, instructing them to hiss any reference to the United States, according to reports. Many German firms have been able to continue in business by reason of ample stocks accumulated prior to the war. Swastika buttons were observed being openly sold by street merchants.

(b) Acapulco, Guerrero:

In contrast to the above reports, in part, the upper class residents give the impression of being pro-Axis while the middle and peon groups seem to be anti-United States. The officials outwardly profess co-operation but informants stated this is solely in furtherance of their own ends. Many persons, believed to be of German origin, appeared to have the freedom of the city and to be without definite occupations, although they show no signs of impoverishment. The oil industry here is deteriorating for lack of repairs to equipment. "Eighty percent of the white population in this area" are of German origin and they control most of the businesses. This port was visited in 1939 by a German naval training vessel and it is suspected that the cadets and officers made an extensive reconnaissance of the vicinity.

(c) Monterrey, Nuevo Leon

The army as a whole gives the impression of being loyal to the incumbent administration and to favor co-operation with the United States. The local populace is not patronizing German owned businesses and as a result, several have been forced to close.

(d) Guaymas and Hermosillo, Sonora

Anti-American feeling is still noted in the vicinities of HERMOSILLO and GUAYMAS, SONORA, but thought to be less outspoken.

(a) General

1. In the 21 March 1942 issue of "El Sinarquista", the official organ of the union, the original sixteen points of the order have been elaborated by the addition of the following statements:  
"Our cry is: Long live Mexico! And our motto is: Country, Justice and Liberty!"
2. Interviews with tourists returned from MEXICO via NOGALES during week ending 3 May disclosed reports of a definite improvement in the attitude of the Mexican people toward the United States, especially in the vicinity of MEXICO CITY, TAMPICO, and VERA CRUZ. There, they stated, people are beginning to feel that the AXIS powers are not able to keep their payments or promises for oil purchased from MEXICO.
3. Tourist informants reported that definite anti-British feeling was noted in all parts of MEXICO among all classes of Mexicans, but most pronounced among the upper social strata and Mexican officials. British propaganda is laughed at as obsolete and ineffective.

(2) Japanese-Russian Relations

The master of a Russian ship which recently arrived at PORT ANGELES, WASHINGTON, in ballast, en route to SAN FRANCISCO from VLADIVOSTOK stated that while proceeding along Japanese Coast about 60 miles off shore in vicinity of TOKYO his ship was observed at hourly intervals by Japanese patrol planes of small scouting type. Mounting tension between Japanese boarding parties and Russian shipmasters, probably because of Japanese realization that Russian vessels are bound for the United States, was observed.

e. Sabotage

Investigation discloses that the fire at the Western Pipe and Steel Company, San Francisco, 27 April, which damaged a ship being converted for Navy use was not of incendiary origin but caused by a short circuit in a badly worn electric cable.

f. Weather and Visibility including Meteorological conditions

(1) Enemy Territory

Weather conditions in enemy territory are unknown.

(2) Our territory

(a) Alaska

The weather was generally broken to overcast with light rain and showers.

(b) Pacific Coast

California weather was generally clear to scattered. The weather in Oregon and Washington ranged from scattered to overcast with light rain and showers.

4. CONCLUSIONS

a. Enemy Capabilities

- (1) Surprise raids or attacks of the PACIFIC COAST, the PANAMA CANAL, HAWAII, and ALASKA.
- (2) Harassing attacks by submarine or surface craft, including commerce raiders, against shipping in the PACIFIC waters of this theater.
- (3) Extension of occupation to other islands of the PHILIPPINES; extension of the campaign in BURMA to the north along the BURMA ROAD or to the west preparatory to attack of INDIA; intensification of operations against NEW GUINEA, SOLOMON ISLANDS, and other islands to the southeast with a view to their use as sea and air bases for operations against AUSTRALIA and our supply and ferry lines to AUSTRALIA; and invasion of AUSTRALIA.
- (4) Attack of EASTERN SIBERIA and/or the ALEUTIAN ISLANDS.

- b. (1) The enemy will probably confine himself to capability (3) for the present. Activity relative to (1), (2) and (4) can be resorted to at any time by the enemy.
- (2) The possibility of activity relative to capabilities (1) and (2) but particularly the former, is enhanced by the enemy's desire to retaliate for air raids of his homeland suffered by him recently. It is possible that airplane carriers plus supporting units could be employed in such an attack against our aircraft and other installations at any time after 10 May. There is also the possibility that the enemy might reinforce his attacking forces with airplanes based on LOWER CALIFORNIA fields.

- (3) The recent enemy successes in BURMA and the apparent withdrawal of the naval and air task force formerly operating in the BAY OF BENGAL against CEYLON and the east coast of INDIA indicate that the Japanese propose to conclude the campaign in BURMA before extending their invasion to INDIA proper.
- (4) The conquest of the south coast of NEW GUINEA and neutralization or invasion of allied bases on the north coast of AUSTRALIA would secure for the enemy the comparatively free use of the TORRES STRAITS and would deny the use of northern AUSTRALIA as a base for future United Nations offensive. Slow but steady extension of control of the islands to the east and southeast of New Britain is underway to assist in the protection of the east flank for operations against NEW GUINEA and AUSTRALIA. These operations, if successful, may become a serious threat to our supply and ferry routes to AUSTRALIA.
- (5) An attack against EASTERN SIBERIA in furtherance of a joint Axis plan or for the elimination of the Russian air threat, might be accompanied by an attack on the ALEUTIAN ISLANDS to prevent United States reinforcements, particularly aircraft, from reaching SIBERIA, and to protect the northern flank. A study of weather records over a period of years indicates that the month of May is one of the most favorable times of the year for air and surface operations in the vicinity of the ALEUTIANS. Weather research reports indicated that there are three relatively favorable periods for military operations along the MANCHURIAN-SIBERIAN border;- (1) late winter, (2) late spring, (3) autumn.

2 Incls:

- #1 - Sketch
- #2 - 4th Air Force  
Intelligence  
Report.

JOHN WICKERLING,  
Colonel, G.S.C.,  
A. C. of S., G-2.

December 31, 1941

I

X FCC San Francisco (Mr. Greaves) G-2 WDC and 4A (CI Br)  
(Lt. Col. Forney)

1:30 PM

F.C.C.

Mr. Greaves was asked if he had answered Gen. DeWitt's letter. He replied that he had not because he did not know how to answer it. He then went on with an explanation of which the following is the gist.

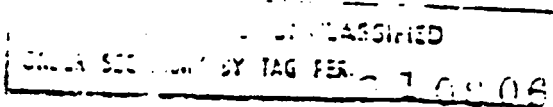
He operates only a monitoring service and has only a very few men. These will cooperate as well as possible in tracing cases of radio interference and in trying to locate specific sending stations that may be reported. His entire force is now engaged in this work. He has no record of suspected illegal sets on this coast. Such records and reports are handled by an inspectorate operating out of Washington and all such records are in Washington. There probably are a large number of these records in Washington pertaining to this area but they are not immediately available to him. He has no means of knowing how many of the suspected cases in this area relate to enemy aliens. He is of the opinion that even with access to the records in Washington there would not be more than ten to twenty-five cases of reasonably probable illegal operation of radio sending sets on the entire Pacific Coast.

The impression gained from the conversation with Mr. Greaves is that he is not in position to take an extensive part in solving the problem being considered by the Commanding General. He states that he is entirely willing to give any technical assistance he can with the limited force at his disposal but that any actual seizure would have to be by other agencies.

Mr. Greaves further stated that a representative of the FCC would arrive in San Francisco on January 8, 1942 to discuss this matter.

L. R. F.

Letter to Federal Commissions (S.F. Office) (Greaves) from <sup>FORNEY</sup>  
Lt. Col. Forney, December 31, 1941.



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g. Allegations that citizens and permanent resident aliens of Japanese ancestry engaged in espionage and sabotage connected with the attack on Pearl Harbor were unfounded.

Personal Justice Denied, 55-57, 95-96, 264.



crime had been committed—the usual standard for arrest. Such arrests were not to occur until the FBI was ready to initiate criminal charges,<sup>29</sup> and the same standards applied to those of German, Italian and Japanese nationality or descent.

By December 10, 1942, FBI Director J. Edgar Hoover reported that "practically all" whom he initially planned to arrest had been taken into custody: 1,291 Japanese (367 in Hawaii, 924 in the continental United States); 857 Germans; 147 Italians.<sup>30</sup> In fact, however, the government continued to apprehend enemy aliens. By February 16, 1942, the Department of Justice held 2,192 Japanese; 1,393 Germans; and 264 Italians<sup>31</sup> and arrests continued even after that date. Many arrested in the early sweeps were Issei leaders of the Japanese American community and its organizations.<sup>32</sup>

FBI views on the need for mass exclusion from the West Coast were provided at the Attorney General's request shortly before the Executive Order was signed, and must be read in that context. Hoover did not believe that demands for mass evacuation were based on factual analysis. Although he doubted Nisei loyalty in case of invasion and grasped the obvious point that people excluded from the West Coast could not commit sabotage there, he pointed out that the cry for evacuation came from political pressure. The historical experience of the FBI showed that Japan had used Occidentals for its espionage<sup>33</sup>—which Ringle had learned from his clandestine raid on the Japanese consulate.<sup>34</sup> Hoover balanced his own opinions by sharing with the Attorney General his West Coast field offices' views of evacuation, which varied from noncommittal in Los Angeles to dismissive in San Francisco to vehemently favorable in San Diego and Seattle.<sup>35</sup> Nevertheless, Hoover's own opinion, and thus the Bureau's, was that the case to justify mass evacuation for security reasons had not been made.

These mainland intelligence views were blurred by sensational and inaccurate reports from Hawaii. On December 9, 1941, Secretary of the Navy Knox went to Hawaii to make the first brief examination of the reasons for American losses at Pearl Harbor. He returned to the mainland on December 15 and told the press, "I think the most effective Fifth Column work of the entire war was done in Hawaii with the possible exception of Norway."<sup>36</sup> This laid major blame for the Pearl Harbor defeat at the door of the ethnic Japanese in the United States. Knox's statement was not only unfounded: it ignored the fact that Japanese Americans in large numbers had immediately come to the defense of the islands at the time of the attack.<sup>37</sup>

The Secretary raised the matter again at the Cabinet meeting of

Personal Justice Denied, pp. 55-57.

December 19, when Attorney General Biddle noted that "Knox told me, which was not what Hoover had thought, that there was a great deal of very active, fifth column work going on both from the shores and from the sampans" in the Pearl Harbor attack.<sup>38\*</sup> John Franklin Carter also disputed Knox in a memo to Roosevelt.<sup>39</sup> Nor were his views supported by General Short,<sup>40</sup> who had been in command at the time of the Pearl Harbor attack, and they were contradicted a few days later by the new Commanding General in Hawaii, Delos Emmons, who stated in a broadcast to the islands that there had been very few acts of sabotage at the time of the attack.<sup>41</sup> The basis of Knox's statement has never been clear; he may have relied on rumors which had not yet been checked, or he may have confused prewar espionage by Japanese agents with fifth column activity.<sup>42</sup> Nevertheless, because military news from Hawaii was carefully censored and the Secretary appeared to speak from firsthand knowledge, Knox's statement carried considerable weight. His accompanying recommendation for the removal of all Japanese, regardless of citizenship, from Oahu is one of the first calls for mass racial exclusion. The alarm Knox had rung gave immediate credence to the view that ethnic Japanese on the mainland were a palpable threat and danger. The damage was remarkable. When Knox's official report came out on December 16, there was no reference to fifth column activities; it described espionage by Japanese consular officers and praised the Japanese Americans who had manned machine guns against the enemy. Nevertheless, the story ran in major West Coast papers headlined "Fifth Column Treachery Told," "Fifth Column Prepared Attack" and "Secretary of Navy Blames 5th Column for Raid."<sup>43</sup> Nothing was promptly done at the highest level of the government to repudiate Knox's initial statement or publicly to affirm the loyalty of the ethnic Japanese, even though Munson (through Carter) emphasized

\*Hoover did not believe that fifth column activities were prevalent in Hawaii, having heard from the FBI's special agent in charge in Honolulu as early as December 8, that General Short had reported absolutely no sabotage during the attack and, on December 17, he advised the Attorney General that it was believed that the great majority of the population of foreign extraction in the islands was law-abiding. Hoover directly questioned Knox's opinion, but did not do so publicly, and it is unknown whether his views were heard outside the Justice Department. Memo, Hoover to Tolson, Tamm and Ladd, Dec. 8, 1941; Memo, Hoover to Attorney General, Dec. 17, 1941. FBI (CWRIC 5786-89; 5830).

Knox's inaccuracy and urged that such a statement be made by the President or Vice President.<sup>44</sup>

Much calmer (though opaque) views were reported by the first official inquiry into the Pearl Harbor disaster. The Roberts Commission, appointed by the President and chaired by Supreme Court Justice Owen J. Roberts,<sup>45</sup> issued a report on January 23, 1942, which never mentioned sabotage, espionage or fifth column activity in its conclusion. Regarding such activity, the body of the report says in part:

There were, prior to December 7, 1941, Japanese spies on the island of Oahu. Some were Japanese consular agents and other [sic] were persons having no open relations with the Japanese foreign service. These spies collected and, through various channels transmitted, information to the Japanese Empire respecting the military and naval establishments and dispositions on the island. . . .

It was believed that the center of Japanese espionage in Hawaii was the Japanese consulate at Honolulu. It has been discovered that the Japanese consul sent to and received from Tokyo in his own and other names many messages on commercial radio circuits. This activity greatly increased toward December 7, 1941. The contents of these messages, if it could have been learned, might have furnished valuable information. In view of the peaceful relations with Japan, and the consequent restrictions on the activities of the investigating agencies, they were unable prior to December 7 to obtain and examine messages transmitted through commercial channels by the Japanese consul, or by persons acting for him.

It is now apparent that through their intelligence service the Japanese had complete information.<sup>46</sup>

Testimony at secret hearings lay behind the conclusions. General Short, in command of the Army on Hawaii at the time of Pearl Harbor, had misinterpreted the warning message of late November as an alert against sabotage<sup>47</sup> and so should have been particularly conscious of it; Short testified that "I do not believe since I came here that there has been any act of sabotage of any importance at all, but the FBI and my intelligence outfit know of a lot of these people and knew they probably would watch the opportunity to carry out something."<sup>48</sup>

Robert L. Shivers, the FBI's Special Agent in Charge in Hawaii (and a man Munson thought highly of)<sup>49</sup> testified that Japanese espionage before Pearl Harbor "centered in the Japanese consulate;" he held responsible the 234 consular representatives who had not been prosecuted in 1941 for failure to register as foreign agents.<sup>50</sup> These men were arrested immediately after Pearl Harbor and kept in custody. Shivers offered documentary proof to support his views, and testified

23. Ringle, Report on Japanese Question, Jan. 26, 1942. NARS. RG 107 (CWRIC 277).

24. Letter, Ringle to Barnhart, Mar. 23, 1951 (CWRIC 19566).

25. The Proclamation is reproduced at U.S. House of Representatives, Select Committee Investigating National Defense Migration (Tolan Committee), 77th Cong. 2d Sess., 1942, HR Report 2124. Proclamation 2526 applied the promulgated rules and regulations to German aliens; Proclamation 2527 applied them to Italian aliens. Both Proclamation 2526 and 2527 were issued on Dec. 8, 1941.

26. Paul Clark, "Those Other Camps: Japanese Alien Internment during World War II," unpublished manuscript, no date, p. 7, and materials cited (CWRIC 4409).

27. Telegrams, J. Edgar Hoover to All Special Agents in Charge, Dec. 7, 1941. FBI (CWRIC 5826, 5827, 5828); Dec. 8, 1941. FBI (CWRIC 5784-85).

28. Press release, Department of Justice statement of policy, released by Attorney General Francis Biddle, Dec. 10, 1941. FBI (CWRIC 5814-15).

29. Memos, L. L. Laughlin to D. M. Ladd, Dec. 8, 1941. FBI (CWRIC 5781); Francis M. Shea to Hoover, Dec. 10, 1941. FBI (CWRIC 5780).

30. Memo, Lemuel B. Schofield to Edward J. Ennis, Director, Alien Enemy Control Unit, Dec. 10, 1941. FBI (CWRIC 10373).

31. Clark, "Those Other Camps," p. 9, refers to Department of Justice press release, Feb. 16, 1942. (CWRIC 4411).

32. Jacobus tenBroek, Edward N. Barnhart and Floyd W. Matson, *Prejudice, War and the Constitution* (Berkeley: University of California Press, 1954), p. 101.

33. Memo, Hoover to Attorney General, Feb. 2, 1942. FBI (CWRIC 5794-803).

34. Ringle, *Washington Post Magazine*, Dec. 6, 1981.

35. Memo, Hoover to Attorney General, Feb. 2, 1942. FBI (CWRIC 5794-803).

36. Report by Munson, Dec. 20, 1941. FDRL. PSF Carter (CWRIC 19481).

37. Bill Hosokawa, *Nisei: The Quiet Americans* (New York: William Morrow & Co., Inc., 1969), pp. 463-64.

38. Notes of Cabinet meetings, Biddle, Dec. 19, 1941. FDRL. Biddle Papers (CWRIC 3793-94); memo, Hoover to the Attorney General, Dec. 17, 1941:

With reference to the statement made by the Secretary of Navy to the effect that the Fifth Column activities in Hawaii were exceeded only by the Fifth Column activities in Norway, I wanted to make the suggestion that you might wish to keep in mind the desirability of asking the Secretary of Navy for any specific evidence which he has supporting this statement.

I have already addressed a memorandum to you outlining directly what the scope of the so-called Fifth Column activities in Hawaii has been, and while there no doubt have been agents of the Japanese government active, it is very definitely the opinion of the intelligence officers of the various services in Hawaii that there is no such widespread activity similar to that

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which occurred in Norway. In fact, it is believed a great majority of the population in Hawaii of foreign extraction is law-abiding and is not indulging in any such activities. If the Secretary of Navy has any specific information of the magnitude that he has indicated by his press statement, it might be desirable for you to make inquiry of him for it. FBI (CWRIC 5830).

39. Memo, Carter to Roosevelt. FDRL. PSF Carter (CWRIC 12006).

40. Memo, Hoover to Tolson, Tamm and Ladd, Dec. 8, 1941. FBI (CWRIC 5786).

41. *Honolulu Advertiser*, Dec. 22, 1941, pp. 1, 6 (CWRIC 29567-69).

42. Report by Munson, Dec. 20, 1941. FDRL. PSF Carter (CWRIC 19481-82).

43. Morton Grodzins, *Americans Betrayed* (Chicago: University of Chicago Press, 1949), p. 399.

44. Cover note, Carter to Roosevelt, Dec. 22, 1941; report by Munson, Dec. 20, 1941. FDRL. PSF Carter (CWRIC 19481-90).

45. Report of Roberts Commission, Jan. 23, 1942, contained in Hearings before the Joint Committee on the Investigation of the Pearl Harbor Attack, 79th Cong., Part 39, 1946 (Washington, DC: U.S. Government Printing Office, 1946) [hereafter "Pearl Harbor Investigation"].

46. Pearl Harbor Investigation, Part 39, pp. 12-13.

47. Elting E. Morison, *Turmoil and Tradition* (Boston: Houghton Mifflin Co., 1960), pp. 527-34.

48. Pearl Harbor Investigation, Part 22, p. 86.

49. Report by Munson, Dec. 20, 1941. FDRL. PSF Carter (CWRIC 19483).

50. Pearl Harbor Investigation, Part 23, p. 867 and preceding pages.

51. *Ibid.*, pp. 872-73.

52. Report of the Select Committee Investigating National Defense Migration, HR Report No. 1911, 77th Cong., 2d Sess., March 19, 1942, p. 2.

53. Diary, Stimson, Jan. 20, 1942, p. 3, Sterling Library, Yale University (CWRIC 19598).

54. Pearl Harbor Investigation, Part 23, p. 874.

55. *Ibid.*, pp. 879-80.

56. *Ibid.*, p. 884.

57. *Ibid.*, pp. 642-43, 651.

58. Pearl Harbor Investigation, Part 35, p. 559.

59. Gordon W. Prange, *At Dawn We Slept* (New York: McGraw-Hill Book Co., 1981), pp. 310-12, 650.

60. Carey McWilliams, *Prejudice: Japanese-Americans, Symbol of Racial Intolerance* (Boston: Little, Brown and Co., 1945), pp. 110-11.

61. Diary, Stimson, Jan. 20, 1942, p. 3, Sterling Library, Yale University (CWRIC 19598).

62. Telephone conversation, DeWitt, Gullion and Bendetsen, Feb. 1, 1942. NARS. RG 389 (CWRIC 4316).

63. Memo, Carter to Roosevelt, Dec. 19, 1941. FDRL. PSF Carter (CWRIC 12007).

64. Memo, Hoover to Shea, Dec. 17, 1941. FBI (CWRIC 5777-79).

personal burden of rage or resignation or despair to the assembly centers and camps which the government had hastily built to protect 130 million Americans against 60,000 of their fellow citizens and their resident alien parents.

### CONGRESS ACTS

The Executive Order gave the military the power to issue orders; it could not impose sanctions for failure to obey them. The Administration quickly turned to Congress to obtain that authority. By February 22, the War Department was sending draft legislation to the Justice Department. General DeWitt wanted mandatory imprisonment and a felony sanction because "you have greater liberty to enforce a felony than you have to enforce a misdemeanor, viz. You can shoot a man to prevent the commission of a felony."<sup>1</sup> On March 9, 1942, Secretary Stimson sent the proposed legislation to Congress. The bill was introduced immediately by Senator Robert Reynolds of North Carolina, Chairman of the Senate Committee on Military Affairs, and by Representative John M. Costello of California.<sup>2</sup>

The Executive Order was what the West Coast Congressional delegation had demanded of the President and the War Department. Congressman John H. Tolan of California, who chaired the House Select Committee which examined the evacuation from prohibited military areas, characterized the order as "the recommendation in almost the same words of the Pacific coast delegation."<sup>3</sup> With such regional support and military backing, there were only two circumstances under which one might have expected Congressional opposition: if Tolan's Committee, which held hearings on the West Coast in late February, immediately after the Executive Order was signed, had returned to Washington prepared to argue against the Executive Order; or if, given the fact that there was no evidence of actual sabotage or espionage, members concerned with civil rights and civil liberties had protested.

Members of the Tolan Committee did not openly abandon support of the Executive Order after their West Coast hearings. They went out persuaded that espionage and fifth column activity by Issei and Nisei in Hawaii had been central to the success of the Japanese attack. Censorship in Hawaii meant that the only authoritative news from the islands was official. With regard to sabotage and fifth column activity,

Personal Justice Denied, pp. 95-96.



activity, that version of events was still largely made up of two pieces: Secretary Knox's firmly-stated December views that local sabotage had substantially aided the attack, and the Roberts Commission's silence about fifth column activity.<sup>4</sup> Thus there was no effective answer to be made when Tolan challenged pro-Nisei witnesses:

We had our FBI in Honolulu, yet they had probably the greatest, the most perfect system of espionage and sabotage ever in the history of war, native-born Japanese. On the only roadway to the shipping harbor there were hundreds and hundreds of automobiles clogging the street, don't you see.<sup>5</sup>

Not privy to the facts in Hawaii, advocates of Japanese American loyalty such as the Japanese American Citizens League, were frequently reduced to arguing lamely that the mainland Nisei were different from, and more reliable than, the residents of Hawaii.<sup>6</sup> This view of Pearl Harbor goes a long way toward explaining the argument, repeated by the Congressmen, that the lack of sabotage only showed that enemy loyalists were waiting for a raid or invasion to trigger organized activity.<sup>7</sup>

The Nisei spoke in their own defense; a few academics, churchmen and labor leaders supported them.<sup>8</sup> Even much of this testimony, assuming that a mass evacuation was a *fait accompli*, addressed secondary issues such as treatment during evacuation. Traditional anti-Japanese voices such as the California Joint Immigration Committee testified firmly in favor of the Executive Order, reciting again the historical catalogue of anti-Japanese charges.<sup>9</sup>

Earl Warren, then Attorney General of California and preparing to run for governor, joined the anti-Japanese side of the argument. One of the first witnesses, Warren presented extensive views to the Committee; he candidly admitted that California had made no sabotage or espionage investigation of its own and that he had no evidence of sabotage or espionage.<sup>10</sup> In place of evidence Warren offered extensive documentation about Nikkei cultural patterns, ethnic organizations and the opinions of California law enforcement officers; his testimony was illustrated by maps vividly portraying Nikkei land ownership. This was nothing but demagoguery:

I do not mean to suggest that it should be thought that all of these Japanese who are adjacent to strategic points are knowing parties to some vast conspiracy to destroy our State by sudden and mass sabotage. Undoubtedly, the presence of many of these persons in their present locations is mere coincidence, but it would seem equally beyond doubt that the presence of others is not coinci-

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## Exclusion and Evacuation

1. Letter, McCloy to Biddle, Feb. 22, 1942; memo, Bendetsen to McCloy, with attachment, Feb. 22, 1942. NARS. RG 107 (CWRIC 100; 97-99).
2. *Congressional Record*, March 9, 1942, p. 2071; March 10, 1942, p. 2230.
3. Hearings before the Select Committee Investigating National Defense Migration [hereafter "Tolan Committee"], U.S. House of Representatives, 77th Cong., 2d Sess. (Washington, DC: U.S. Government Printing Office, 1942), p. 11010; Cong. Sparkman expressed the same view, p. 11018.
4. Tolan Committee, p. 11226.
5. *Ibid.*, p. 11181.
6. *Ibid.*, pp. 11141 (Masaoka), 11153 (Tatsuno); but see Louis Goldblatt, Secretary, California State Industrial Union Council, p. 11181.
7. *E.g.*, Tolan Committee, p. 11012.
8. Tolan Committee, pp. 11137 (Masaoka), 11148 (Tani), 11153 (Tatsuno), 11220 (Iiyama and Kumitani), 11240 (Bellquist), 11203 (Chapman), 11207 (Smith), 11178 (Goldblatt).
9. *E.g.*, Tolan Committee, p. 11068.
10. Tolan Committee, pp. 11011-12.
11. *Ibid.*, p. 10974.
12. *Ibid.*, p. 11247.
13. *Ibid.*, pp. 11636-37.
14. *Ibid.*, pp. 10965-70.
15. Francis Biddle, *In Brief Authority* (Garden City, NY: Doubleday & Co., Inc., 1964), p. 207.
16. Cable, Tolan to Biddle, Feb. 28, 1942. NARS. RG 107 (CWRIC 92). Fourth Interim Report of the Select Committee Investigating National Defense Migration, U.S. House of Representatives, 77th Cong., 2d Sess., HR Report No. 2124.
17. *Congressional Record*, March 19, 1942, p. 2726.
18. *Idem.*
19. *Ibid.*, pp. 2729-30.
20. Morton Grodzins provides a comparatively thorough account of what Congressional discussion there was. *Americans Betrayed* (Chicago: University of Chicago Press, 1949), pp. 331-44.
21. *Korematsu v. United States*, 323 U.S. 214 (1944).
22. Executive Order 9066, Feb. 19, 1942. 3 CFR, 1938-1943 Comp., pp. 1092-3.



the Territory to the commanding general of the Hawaiian Department.<sup>8</sup> Enemy agents and "suspicious characters" were immediately rounded up by Army Intelligence; by December 10, 449 Japanese, German and Italian nationals were interned, along with 43 American citizens.<sup>9</sup>

Sabotage at the time of Pearl Harbor would have been easy, since the city's utilities as well as the storage tanks of private oil companies were concentrated in a limited area and were not adequately protected. After the attack, rumors of sabotage and fifth column activities abounded. People reported cars zig-zagging along highways or parking across roads to block traffic, shots being fired from ambush or from cars, guiding swaths cut in sugarcane or pineapple fields to point out important installations, and signals to enemy planes. After investigation, Naval Intelligence, the FBI and Military Intelligence all agreed that no sabotage in fact took place.<sup>10</sup> At the time a quite different public impression was created. We have already described the background and impact of the reports made by Secretary Knox following his brief trip to Hawaii in mid-December and the more extensive investigation of the Roberts Commission.<sup>11</sup> It is sufficient here to emphasize that the Roberts Commission heard conflicting opinions from the intelligence services about the security danger, if any, posed by the ethnic Japanese in the islands. The Roberts Commission did not attempt to sift or evaluate these opinions and make a judgment of future threats. It simply reported that "There were, prior to December 7, 1941, Japanese spies on the island of Oahu. Some were Japanese consular agents and other [sic] were persons having no open relations with the Japanese foreign service."<sup>12</sup> The report did not assert that sabotage or fifth column activity had been carried on to aid the Japanese attack; nor did it make clear whether espionage had been carried on only by Japanese nationals or also by other aliens or American citizens of any particular ethnic background, but it was widely understood at the time to mean that Japanese Americans had aided the attack. On his return to Washington, Justice Roberts personally conveyed to Secretary Stimson his fear that ethnic Japanese in the islands posed a major risk of espionage, sabotage and fifth column activity.<sup>13</sup> These official reports, although based on the divided opinions of intelligence officers, on rumors rife in the islands, and on the Niihau Incident,<sup>14</sup> created doubts about the ultimate loyalty of the Japanese Americans—doubts treated very differently in Washington and in Honolulu.

At the December 19 Cabinet meeting, Knox recommended that the Secretary of War remove all Japanese aliens in the Hawaiian Islands and intern them on an island other than Oahu.<sup>15</sup> The unpublished

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## Hawaii

1. William Petersen, *Japanese Americans* (New York: Random House, 1971), p. 59.
2. Tamotsu Shibutani, *The Derelicts of Company K* (Berkeley: University of California Press, 1978), p. 21.
3. The G-2 staff in Hawaii "stated repeatedly to the [Western Defense Command] staff members that there was no problem in judging whether or not a person of Japanese ancestry was dangerous or non-dangerous; for all one had to do was sit and talk to the man for fifteen minutes and the [sic] would be no question in one's mind." WDC, *Supplemental Report on Civilian Controls Exercised by Western Defense Command*, Jan. 1947, pp. 174-75. NARS. RG 338.
4. Robert Wilson and Bill Hosokawa, *East to America* (New York: William Morrow & Co., 1980), p. 27.
5. *Ibid.*, pp. 140-52.
6. Report, C. H. Coggins, "The Japanese in Hawaii," undated. NARS. RG 80 (CWRIC 6964-84); Bureau of the Census, *Census of Population 1940*, vol. 3, Characteristics of the Population, part 1 (Washington, DC: U.S. Government Printing Office, 1943), pp. 585-601.
7. Wilson and Hosokawa, *East to America*, p. 153.
8. Brief for United States, *Duncan v. Kahanamoku*, No. 14, Oct. Term 1945 (CWRIC 12166-75).
9. Stetson Conn, Rose C. Engelman and Byron Fairchild, *The United States Army in World War II, The Western Hemisphere: Guarding the United States and its Outposts* (Washington, DC: Office of the Chief of Military History, Department of the Army, 1964), p. 199. [hereafter "Guarding"].
10. Memo, District Intelligence Officer, Fourteenth Naval District to District Intelligence Officer, Third Naval District, Feb. 9, 1942, reprinted in Hearings before the Joint Committee on the Investigation of the Pearl Harbor Attack, 79th Cong. (Washington, DC: U.S. Government Printing Office, 1946), Part 35, pp. 337-38 [hereafter "Pearl Harbor Investigation"].
11. See Chapter 2, *Executive Order 9066*.
12. Pearl Harbor Investigation, Part 39, p. 120.
13. Diary, Stimson, Jan. 20, 1942. Sterling Library, Yale University (CWRIC 19596-98).
14. On the tiny isolated Hawaiian Island of Niihau where news of the Pearl Harbor bombing had not yet arrived, a crippled Japanese plane crashed on its return from the successful attack. A Hawaiian discovered the pilot and

confiscated his weapons and papers. Ishimatsu Shintani, an Issei, and Yoshio Harada, a Nisei, acted as interpreters; the latter spent a short time privately with the pilot. After the meeting, Harada freed the pilot, helped him set up two machine guns in the village, and threatened to kill everyone unless the military papers were produced. In an unguarded moment six days later, two Hawaiians taken hostage jumped the pair. The pilot was killed and Harada fatally shot himself. Gwenfread Allen, *Hawaii's War Years* (Westport, CT.: Greenwood Press, 1971 [1950]), pp. 44-46.

15. Notes of Cabinet meeting, Biddle, Dec. 19, 1941. FDRL. Biddle Papers (CWRIC 3793).

16. *Honolulu Advertiser*, Dec. 22, 1941, pp. 1 and 6 (CWRIC 29567-69).

17. Ruth E. McKee, *History of WRA—Pearl Harbor to June 30, 1944*, unpublished manuscript, 1944, p. 165; Shibutani, *Derelicts of Company K*, p. 38.

18. Shibutani, *Derelicts of Company K*, p. 38.

19. McKee, *History of WRA*, p. 165.

20. *Ibid.*, p. 164.

21. Shibutani, *Derelicts of Company K*, p. 35.

22. McKee, *History of WRA*, p. 165.

23. Allen, *War Years*, p. 167.

24. *Ibid.*, pp. 141-42.

25. *Ibid.*, p. 396.

26. Conn, *Guarding*, p. 200.

27. Allen, *War Years*, pp. 141, 146-48, 402.

28. *Ibid.*, p. 120. The ID registration project was suggested in June 1941 by the Office of Civilian Defense to enable identification of persons killed in an attack. Plans had progressed so far that by 1:30 p.m. on December 7, the first ID cards were printed. By the end of the war, registration records and cards had been consulted 300,000 times by police and security agencies.

29. *Ibid.*, p. 92.

30. *Ibid.*, pp. 172-73.

The commission tried only eight cases during its four years of existence. Among them were three cases of murder, one of which resulted in the death sentence, later commuted to imprisonment. In that case, the defendant was represented by an officer who had no legal training, although the prosecution was in the hands of a trained attorney. The five commissioners were not lawyers, and in its study of the trial, the Department of Interior noted that the commissioners had not been told the distinction between first and second degree murder, even though the evidence strongly suggested the lesser charge.

The three Honolulu provost courts tried nearly 19,000 cases by the end of the first half of 1942. Trials were generally held on the same day as the arrest. Typically, "After the defendant had made his plea, all witnesses stood in a semicircle before the judge and were each peremptorily questioned by him. When the judge felt that he had sufficient evidence, he rendered an immediate decision, imposed sentence, and proceeded to the next case. The defendant could make a statement on his own behalf, but his allotment of time was frequently limited. He had little opportunity to cross-examine witnesses.

h. At the time of and after the issuance of Executive Order 9066, the military, War Department and Justice Department had substantial, credible evidence from the Office of Naval Intelligence, the Federal Bureau of Investigation and the Federal Communications Commission which directly contradicted the allegations of espionage and sabotage upon which the curfew, exclusion and internment of persons of Japanese ancestry was based.

Personal Justice Denied, pp. 55, 62, 62-63, 64-65, 65, 72-73, 86-92.

Petition Exhibits B, N, O, P, Q, R, S, T, U, V, W, X, Y, Z.

Letter to Mr. Lloyd Wright from Mr. R. P. Alexander, February 18, 1942.

F T

"FBI views on the need for mass exclusion from the West Coast were provided at the Attorney General's request shortly before the Executive Order was signed, and must be read in context. Hoover did not believe that demands for mass evacuation were based on factual analysis. Although he doubted Nisei loyalty in case of invasion and grasped the obvious point that people excluded from the West Coast could not commit sabotage there, he pointed out that the cry for evacuation came from political pressure. The historical experience of the FBI showed that Japan had used Occidentals for its espionage 33/ --which Ringle had learned from his clandestine raid on the Japanese consulate. 34/ Hoover balanced his own opinions by sharing with the Attorney General his West Coast field offices' views of evacuation, which varied from noncommittal in Los Angeles to dismissive in San Francisco to vehemently favorable in San Diego and Seattle. 35/ Nevertheless, Hoover's own opinion, and thus the Bureau's, was that the case to justify mass evacuation for security reasons had not been made."

Reproduced at the National Archives at Seattle

33/ Memo, Hoover to Attorney General, Feb. 2, 1942. FBI. (CWRIC 5794-803)

34/ Ringle, Washington Post Magazine, Dec. 6, 1981.

35/ Same as n. 33, supra.

Personal Justice Denied, p. 55.

"The FBI was not convinced that the perceived problem [of possession of contraband by Japanese and enemy aliens] was real; Hoover suggested that the Army submit any specific evidence of disloyalty to the FBI. 78/ Later Hoover pointed out to Biddle that reports in the San Francisco area about radios and weapons were often unfounded; in some instances only low-frequency shortwave radios had been found, and the guns were small-caliber weapons such as any person, especially a farmer, might possess. 79/"

78/ Telegram, Hoover to Rowe, Jan. 7, 1942. NARS.  
RG 338. CWRIC 1246-47).

79/ Memo, Hoover to Attorney General, Feb. 2, 1942.  
FBI (CWRIC 5798).

Personal Justice Denied, p. 62.

The Commission noted that the Justice Department. agreed to multiple spot searches without warrants as a concession to Army pressure.

"This change of policy came despite reports from the Federal Communications Commission (FCC), which monitored all broadcasts, that illegal transmitter operation was minimal. At the turn of the year, V. Ford Greaves of the FCC in California guessed that, including the records in Washington, 'there would not be more than ten to twenty-five cases of reasonably probable illegal operation of radio sending sets on the entire Pacific Coast.' 84/ Checking FCC records on the West Coast and in Washington, Greaves found that there were 'no active cases on file indicating the possession of radio transmitters by alien enemies. Several active cases have been closed during the past few months through court action.' 85/ In short, the Army's fears were groundless. In mid January one reason became apparent: FCC staff on the West Coast reported that the military was woefully deficient in radio intelligence work, to the point where the Army and Navy were reporting each others broadcasts as Japanese. 86/"

84/ Memo by Forney, conversation with V. Ford Greaves. FCC. Dec. 3], 1942. NARS. RG-338 (CWRIC 3164)

85/ Letter, Greaves to De Witt, Jan. 1, 1942.. NARS. RG 338 (CWRIC 8606-07b).

86/ Report of conference with DeWitt by George Sterling, FCC, Jan. 9, 1942. NARS. RG-173 (CWRIC 8598-602). Petition Exhibit U.

Personal Justice Denied, pp. 62-63.

"WDC's alarmism may have come partly from its inferior intelligence and information gathering ability. In a February 1 memo to Biddle, J. Edgar Hoover severely criticized the intelligence capability of the Army on the West Coast, finding it untrained, disorganized, incapable and citing circumstances where '[h]ysteria and lack of judgment' were evident in the Military Intelligence Division. <sup>93/</sup> Hoover had earlier sarcastically dismissed the Western Defense Command's gullible, intemperate approach to internal security problems, noting 'that although the situation was critical, there was no sense in the Army losing their heads as they did in the Booneville Dam affair, where the power lines were sabotaged by cattle scratching their backs on the wires, or the "arrows of fire" near Seattle, which was only a farmer burning brush as he had done for years.' <sup>94/</sup> The FCC found the same ramshackle operation when helping the Army on radio interception: 'I have never seen an organization that was so hopeless to cope with radio intelligence requirements....The personnel is unskilled and untrained....They know nothing about signal identification, wave propagation and other technical subjects, so essential to radio intelligence procedure....As a matter of fact, the Army air stations have been reported by the Signal Corps as Jap enemy stations.' <sup>95/</sup> Abysmal intelligence capability was not conducive to any rational approach to military problems such as sabotage or espionage."

Reproduced at the National Archives at Seattle

<sup>93/</sup> Memo, Hoover to Biddle, Feb. 1, 1942. DOJ 146-42-012 (CWRIC 10447-56).

<sup>94/</sup> Memo, Hoover to Tolson, Tamm & Ladd, Dec. 17, 1941. FBI. (CWRIC 5831-33). Petition Exhibit T.

<sup>95/</sup> Report by Sterling, Conference with De Witt, Jan. 9, 1942. NARS. RG 173 (CWRIC 8598-602). Petition Exhibit U.

Personal Justice Denied, pp. 64-65.



"General DeWitt appears not to have consulted the intelligence services to correct his views or ask factual analysis. For instance, ignoring FCC evidence, he reported to Stimson on February 3 that 'regular communications are going out from Japanese spies in those regions [California cities and Puget Sound] to submarines off the coast assisting in the attacks by the latter which have been made upon practically every ship that has gone out.' 96/ One finds no extended examination of Munson's views, which were shared with the Western Defense Command, 97/ and no interest was shown in consulting Ringle who twice traveled to San Francisco in vain attempts to see Colonel Bendetsen. 98/"

96/ Stimson Diary, Feb. 3, 1942. Sterling Library, Yale University. (CWRIC 19632).

97/ Memo, Munson to Carter, Jan. 12, 1942. Franklin D. Roosevelt Library. PSF Carter (CWRIC-19496-97).

98/ Ringle, Washington Post Magazine, Dec. 6, 1981.

Personal Justice Denied, p. 65.

"The Justice Department was unpersuaded of the military need for a mass movement of aliens or citizens away from the coast, and it opposed General De Witt on those grounds. On February 3, J. Edgar Hoover sent the Attorney General his analysis of the fervor for mass exclusion:

'The necessity for mass evacuation is based primarily upon public and political pressure rather than on factual data. Public hysteria and in some instances, the comments of the press and radio announcers, have resulted in a tremendous amount of pressure being brought to bear on Governor Olson and Earl Warren, Attorney General of the State, and on the military authorities.... Local officials, press and citizens have started widespread movement demanding complete evacuation of all Japanese, citizen and alien alike.' 129/"

129/ Memo, Hoover to Attorney General, Feb. 2, 1942.  
FBI. (CWRIC 5794, 5796).

Personal Justice Denied, pp. 72-73.

for the Military authorities. Authority over the movement of persons, whether citizens or noncitizens, may be exercised in time of war. . . . This authority is no more than declaratory of the power of the President, in time of war, with reference to all areas, sea or land.

The President is authorized in acting under his general war powers without further legislation. The exercise of the power can meet the specific situation and, of course, cannot be considered as any punitive measure against any particular nationalities. It is rather a precautionary measure to protect the national safety. It is not based on any legal theory but on the facts that the unrestricted movement of certain racial classes, whether American citizens or aliens, in specified defense areas may lead to serious disturbances. These disturbances cannot be controlled by police protection and have the threat of injury to our war effort. A condition and not a theory confronts the nation.<sup>173</sup>

After the decision, there was no further dissent at the highest levels of the federal government. The War Department stood behind the facts and the Justice Department stood behind the law which were the foundation of the Executive Order.

### JUSTIFYING THE DECISION

Any account which relies on finding documents forty years after a decision may reasonably be questioned when it concludes that little or nothing in the record factually supports the reasons given at the time to justify the decision. For that reason, the two major justifications of the exclusion composed during the war by the War Department and the Justice Department must be considered: General DeWitt's *Final Report: Japanese Evacuation from the West Coast, 1942*, which he forwarded to the Secretary of War in June 1943, and the Justice Department's brief in *Hirabayashi v. United States*, filed in the Supreme Court in May 1943.\*

\*The House Select Committee Investigating National Defense Migration, commonly known as the Tolan Committee, was the first official body to examine the exclusion, holding hearings on the West Coast in late February and March 1942. It chose to treat the exclusion as a *fait accompli*, but in its reports it noticeably failed to offer an effective defense of the exclusion. In the context of the Germans and Italians, it emphasized "the fundamental fact that place of birth and technical noncitizenship alone provide no decisive criteria for assessing the alinement [sic] of loyalties in this world-wide conflict." The

Personal Justice Denied, pp. 86-92.

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DeWitt's *Final Report* bases the War Department decision on a number of factors: signaling from shore to enemy submarines; arms and contraband found by the FBI during raids on Nikkei homes and businesses; danger to evacuees from vigilantes; concentration of the ethnic Japanese population around or near militarily sensitive areas; the number of Japanese ethnic organizations on the coast which might shelter pro-Japanese attitudes or activities such as Emperor-worshipping Shinto; the presence of the Kibei, who had recent ties to Japan. "It was, perforce, a combination of factors and circumstances with which the Commanding General had to deal. Here was a relatively homogenous, unassimilated element bearing a close relationship through ties of race, religion, language, custom and indoctrination to the enemy."<sup>174</sup>

Two items in DeWitt's list stand out as demonstrable indications of military danger: shore-to-ship signaling and the discovery of arms and contraband. Reading the *Final Report* while preparing to defend the exclusion in the Supreme Court, Justice Department attorneys

Committee did not doubt that fifth column elements were present among Germans and Italians as well as Japanese but concluded, "Surely some more workable method exists for determining the loyalty and reliability of these people than the uprooting of 50 trustworthy persons to remove one dangerous individual." Moreover, in comparing German and Italian aliens to Japanese aliens, the Committee found only two significant differences: the Japanese tended to live in separate communities and an unusually high proportion were engaged in agriculture and produce distribution. Neither has any obvious military significance. Given this line of reasoning it is not surprising that in its March report, the Committee reported "[a] profound sense of certain injustices and constitutional doubts attending the evacuation of the Japanese," and in its May report stated, "The Nation must decide and Congress must gravely consider, as a matter of national policy, the extent to which citizenship, in and of itself, is a guaranty of equal rights and privileges during time of war." Report of the Select Committee Investigating National Defense Migration, House of Representatives, 77th Cong., 2d Sess., House Report No. 1911, pp. 15, 21-22, 25; Fourth Interim Report of the Select Committee Investigating National Defense Migration, 77th Cong., 2d Sess., House Report No. 2124, pp. 11, 25.

\*DeWitt also referred to three "striking illustrations" of the need for evacuation—shellings by the Japanese of Goleta, California, and Astoria, Oregon, and a bombing of Brookings, Oregon. All three incidents took place *after* the Executive Order was signed. Moreover, the military importance of these episodes was clearly negligible. (Grodzins, *Americans Betrayed*, pp. 294-95.)

were drawn to the signaling contention. It was investigated by the FCC and found to be so utterly unsubstantiated that, in its brief to the Supreme Court, the Justice Department was careful not to rely on DeWitt's *Final Report* as a factual basis for the military decision it had to defend.<sup>175</sup> There simply had not been any identifiable shore-to-ship signalling.

The Justice Department had dismissed the arms and contraband argument earlier. By May 1942 the FBI had seized 2,592 guns of various kinds; 199,000 rounds of ammunition; 1,652 sticks of dynamite; 1,458 radio receivers; 2,014 cameras and numerous other items which the alien Japanese had been ordered to surrender in January. But numbers alone meant little; a truckload of guns and ammunition had been picked up in a raid on a sporting goods store and another large supply of material was found in the warehouse of a general store owner. The Department of Justice concluded that it all had negligible significance:

We have not, however, uncovered through these searches any dangerous persons that we could not otherwise know about. We have not found among all the sticks of dynamite and gun powder any evidence that any of it was to be used in bombs.

We have not found a single machine gun nor have we found any gun in any circumstances indicating that it was to be used in a manner helpful to our enemies. We have not found a camera which we have reason to believe was for use in espionage.<sup>176</sup>

To the government's official military historian of the evacuation, Stetson Conn, this was the most damaging tangible evidence against the evacuees, and he clearly believed it was insubstantial.<sup>177</sup>

The argument that the exclusion served to protect the Nikkei against vigilantism had wide currency. The violence against ethnic Japanese on the West Coast cannot be dismissed lightly. Between Pearl Harbor and February 15, 5 murders and 25 other serious crimes—rapes, assaults, shootings, property damage, robbery or extortion—were reported against ethnic Japanese.<sup>178</sup> This was no lynch mob on the loose, but it was serious and, in fact, more violence against ethnic Japanese followed the signing of the Executive Order. tenBroek describes it succinctly:

During March an attempt was made to burn down a Japanese-owned hotel at Sultana. On April 13 at Del Ray five evacuees were involved in a brawl with the local constable—following which a crowd of white residents, some armed with shotguns, threatened violence to a nearby camp of Japanese Americans. On succeeding nights the windows of four Japanese stores were smashed, and similar incidents occurred in Fresno. In northern Tulare County,

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a group known as the "Bald Eagles"—described by one observer as a "guerrilla army of nearly 1,000 farmers"—armed themselves for the announced purpose of "guarding" the Japanese in case of emergency. A similar organization was formed in the southeast part of the county, where a large number of evacuees were concentrated.<sup>179</sup>

Protecting ethnic Japanese from vigilantes is a justification for the exclusion which has been repeatedly emphasized over the years. Stimson's autobiography relied on it as a principal reason:

What critics ignored was the situation that led to the evacuation. Japanese raids on the west coast seemed not only possible but probable in the first months of the war, and it was quite impossible to be sure that the raiders would not receive important help from individuals of Japanese origin. More than that, anti-Japanese feeling on the west coast had reached a level which endangered the lives of all such individuals; incidents of extra-legal violence were increasingly frequent.<sup>180</sup>

McCloy emphasized the same point in his testimony before the Commission<sup>181</sup> and it appears in his papers in 1942 as a subsidiary reason for exclusion.<sup>182</sup> Tom Clark, writing long after the war, gave protection against vigilantism as the reason he was willing to support the exclusion.<sup>183</sup>

This explanation sounds lame indeed today. It was not publicly advanced at the time to justify the exclusion and, had protection been on official minds, a much different post-evacuation program would have been required. McCloy himself supplied the most telling rebuttal of the contention in a 1943 letter to General DeWitt:

That there is serious animosity on the West Coast against all evacuated Japanese I do not doubt, but that does not necessarily mean that we should trim our sails accordingly. . . . The Army, as I see it, is not responsible for the general public peace of the Western Defense Command. That responsibility still rests with the civil authorities. There may, as you suggest, be incidents, but these can be effectively discouraged by prompt action by law enforcement agencies, with the cooperation of the military if they even [sic] assume really threatening proportions.<sup>184</sup>

That is the simple, straightforward answer to the argument of protection against vigilantes—keeping the peace is a civil matter that would involve the military only in extreme situations. Even then, public officials would be duty-bound to protect the innocent, not to order them from their homes for months or years under the rubric of a military measure designed to maintain public peace.

DeWitt's analysis in the *Final Report* of Japanese population con-

centration and Japanese organizations is lifted, virtually verbatim, from testimony by Earl Warren before a Congressional committee after the Executive Order was promulgated. The pattern of land purchases near "military" areas means very little when one realizes that sensitive military installations included aircraft plants, oilfields, dams, isolated areas of the coast and powerlines as well as forts or Navy bases. The fact that a number of Japanese ethnic organizations shared the same post office box seems equally meaningless. A similar "analysis" of Italians and Italian Americans who lived under dual citizenship laws more strict than the Japanese in claiming the allegiance of children born to Italian citizens,<sup>185</sup> would have produced an equally alarming and meaningless pattern. Morton Grodzins has neatly set out the usual indices of probable Japanese disloyalty in terms of the Italians:

Because of their concentration in the fishing industry, Italians if anything were located in more strategic coastal locations than the Japanese. This was especially true of the San Francisco Bay area and adjoining counties.

The Italians had their full quota of language schools and their own churches. They and their children made numerous trips to their home country. The Italian consuls were active and important members of the community, and Fascist propaganda was reflected in a vernacular press which supported Mussolini's domestic and foreign policies. If naturalization were any indication of acculturation, then the single fact that more than half the foreign-born Italians had not become citizens of the United States demonstrated a low degree of Americanization. Educational achievement rates of children of Italian ancestry were lower, and their delinquency rates were higher, in comparison with those of Japanese ancestry. Italians in California had contributed funds to the Italian relief agencies following the conquests of Ethiopia and Albania.<sup>186</sup>

For good measure, one might add the spectre of the Mafia as a well-organized force willing to resort to any illegal means to achieve its ends. For "evidence" of this sort to be credible, one must be predisposed to believe that a well-organized conspiracy is in progress. The development of such views is hindered when the alleged conspirators are well-known, familiar neighbors. It is equally important to recognize that the military would not usually be expected to have expertise about these social and cultural patterns; on such issues, if anyone's judgment deserves deference it would be that of sociologists, not generals.

The Justice Department did no better than the War Department in producing a factual record to support the evacuation decision. It made a virtue of necessity:

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count of the facts which gave rise to the exclusion and curfew measures here involved. These facts, which should be considered in determining the constitutionality of the Act [prohibiting violation of military orders issued under the Executive Order], embrace the general military, political, economic, and social conditions under which the challenged orders were issued. These historical facts . . . are of the type that are traditionally susceptible of judicial notice in considering constitutional questions, and in particular, many of these facts appear in official documents, such as the contemporary Tolan Committee's reports, which are peculiarly within the realm of judicial notice.<sup>187</sup>

The first point the *Hirabayashi* brief made about reasons to conclude that the ethnic Japanese might be disloyal, reviewed the discriminatory history of the immigration and alien land laws as well as economic discrimination in the west. The passage concludes by suggesting that such hostile treatment might well have caused an absence of loyalty to the United States—in other words, the resident Japanese ought to be disloyal. Next, the high percentage of aliens in the community was stressed (though the relevance of this to a case involving an American citizen is by no means clear). The remaining points repeat the tired catalogue of West Coast anti-Japanese propaganda; the headings of the brief tell the story: *Dual Nationality*, *Shintoism*, *Education of American-born Children in Japan*, *Japanese Language Schools on the West Coast*, *Japanese Organizations* and, finally, *Possibility of Civil Disorder*.<sup>188</sup> The argument cites a vast array of general articles and books, refers liberally to Congressional committee hearings and quotes newspaper articles. This matches the Department's position that the facts of the case should be determined on judicial notice—in other words, everyone knew that the Japanese were likely to be disloyal, so all the government needed to show was that opinion's respectability and near-universality. No particular facts were needed. And no particular facts of probative force were supplied.

Unhappily, on the West Coast and across most of the country in February 1942, these baseless canards made respectable opinion. The old prejudicial propaganda of the anti-Japanese faction, unopposed, had won the day. As a Joint Immigration Committee official put it in early February, "This is our time to get things done that we have been trying to get done for a quarter of a century."<sup>189</sup> The War Department and the President, through the press and politicians with the aid of General DeWitt, had been sold a bill of goods. In accepting the vicious views of California's ugly past, they came to believe that the Issei and Nisei represented a threat to the security of the coast. Perhaps only



later did John J. McCloy, an easterner with little experience of the west before Pearl Harbor,<sup>190</sup> discover whose program he had been carrying out on the Pacific Coast after the War Department had failed to scrutinize General DeWitt's demands closely and critically. It was certainly with an air of disgust that McCloy wrote to General DeWitt's successor, introducing California after his transfer from Hawaii:

The situation in California is not the same [as in Hawaii]. You have no doubt become aware of the existence of active and powerful minority groups in California whose main interest in the war seems to take the form of a desire for permanent exclusion of all Japanese, loyal or disloyal, citizen or alien, from the West Coast or, at least, from California. . . . This means that considerations other than of mere military necessity enter into any proposal for removal of the present restrictions.<sup>191</sup>

The program could not be ended on the basis of "mere military necessity," largely because it did not begin that way.

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171. Executive Order No. 9066, Feb. 19, 1942. *Federal Register*, vol. 7 no. 38, Feb. 25, 1942 (CWRIC 4481).

172. Memo, Roosevelt to Stimson, May 5, 1942. NARS. RG 107 (CWRIC 196).

173. Letter, Biddle to Roosevelt, Feb. 20, 1942, and memorandum re Executive Order of Feb. 19, 1942. FDRL OF 4805 (CWRIC 5756-58); compare language of final paragraph quoted with memo by Cohen, Cox and Rauh, "The Japanese Situation on the West Coast," no date. DCJ 146-13-7-2-0 (CWRIC 12682-89).

174. DeWitt, *Final Report*, p. 15.

175. Brief for the United States, *Korematsu v. United States*, No. 22, Oct. Term 1944, p. 11, n. 2 (CWRIC 15760):

The Final Report of General DeWitt (which is dated June 5, 1943, but which was not made public until January 1944), hereinafter cited as Final Report, is relied on in this brief for statistics and other details concerning the actual evacuation and the events that took place subsequent thereto. We have specifically recited in this brief the facts relating to the justification for the evacuation, of which we ask the Court to take judicial notice, and we rely upon the Final Report only to the extent that it relates to such facts.

The Justice Department's internal memoranda dealing with the *Final Report* in the process of preparing the *Korematsu* brief are scathing:

We are now therefore in possession of substantially incontrovertible evidence that most important statements of fact advanced by General DeWitt to justify the evacuation and detention were incorrect, and furthermore that General DeWitt had cause to know, and in all probability did know, that they were incorrect at the time he embodied them in his final report to General Marshall. (Memo, Burling to Solicitor General, April 13, 1944. DOJ 146-42-7 [CWRIC 5759-64]).

176. Grodzins, *Americans Betrayed*, pp. 134-136; Biddle, *In Brief Authority*, 1962, p. 221.

177. Stetson Conn, Rose C. Engelman and Byron Fairchild, *The United States Army in World War II, The Western Hemisphere: Guarding the United States and Its Outposts* (Washington, DC: Office of the Chief of Military History, United States Army, 1964), p. 147.

178. Grodzins, *Americans Betrayed*, pp. 138-43.

179. tenBroek, *Prejudice, War*, p. 91.

180. Henry L. Stimson and McGeorge Bundy, *On Active Service In Peace and War* (New York: Harper & Brothers, 1947), p. 406. Stimson's brief account of the exclusion and evacuation must be given in full so that his final reckoning of the events can be understood:

[M]indful of its duty to be prepared for any emergency, the War Department ordered the evacuation of more than a hundred thousand persons of Japanese origin from strategic areas on the west coast. This decision was widely criticized as an unconstitutional invasion of the rights of individuals many of whom were American citizens, but it was eventually approved by the Supreme Court as a legitimate exercise of the war powers of the President. What critics ignored was the situation that led to the

evacuation. Japanese raids on the west coast seemed not only possible but probable in the first months of the war, and it was quite impossible to be sure that the raiders would not receive important help from individuals of Japanese origin. More than that, anti-Japanese feeling on the west coast had reached a level which endangered the lives of all such individuals; incidents of extra-legal violence were increasingly frequent. So, with the President's approval, Stimson ordered and McCloy supervised a general evacuation of Japanese and Japanese Americans from strategic coastal areas, and they believed in 1947 that the eventual result of this evacuation, in the resettlement of a conspicuous minority in many dispersed communities throughout the country, was to produce a distinctly healthier atmosphere for both Japanese and Americans.

It remained a fact that to loyal citizens this forced evacuation was a personal injustice, and Stimson fully appreciated their feelings. He and McCloy were strong advocates of the later formation of combat units of Japanese-American troops; the magnificent record of the 442nd Combat Team justified their advocacy. By their superb courage and devotion to duty, the men of that force won for all Japanese-Americans a clear right to the gratitude and comradeship of their American countrymen. (*Idem.*)

181. Testimony, John J. McCloy, Washington, DC, Nov. 3, 1981, p. 8.

182. Letter, McCloy to Gen. H. A. Drum, Commanding General, Eastern Defense Command, Nov. 16, 1942. NARS. RG 107 (CWRIC 26742-43).

183. Chuman, *Bamboo People*, preface by Tom C. Clark, p. vii.

184. Letter, McCloy to DeWitt, April 8, 1943. NARS. RG 165 (CWRIC 26369-71).

185. Grodzins, *Americans Betrayed*, pp. 152-53.

186. *Ibid.*, pp. 172-73.

187. Brief for the United States, *Hirabayashi v. United States*, No. 870, Oct. Term 1942, pp. 10-11 (citations omitted) (CWRIC 14953-54).

188. *Ibid.*, pp. 24-31 (CWRIC 14967-74).

189. tenBroek, *Prejudice, War*, p. 78.

190. Testimony, John J. McCloy, Washington, DC, Nov. 3, 1981, p. 49.

191. Letter, McCloy to Emmons, Nov. 5, 1943. NARS. RG 107 (CWRIC 26605-07). In reviewing the matter forty years later, McCloy told the Commission the wartime decisions should be defended:

My belief and hope is the Commission will conclude, after an objective investigation, that under the circumstances prevailing at the time and with the exigencies of wartime security, the action of the President of the United States and the United States Government in regard to our then Japanese population was reasonably undertaken and thoughtfully and humanely conducted. There has been, in my judgment, at times a spate of quite irresponsible comment to the effect that this wartime move was callous, shameful and induced by racial or punitive motives. It was nothing of the sort.

I know of the decisions that were made, and I think I know who made them, and I think I know generally what the motivation was of those individuals who made them. One fact I would urge the Commission to refer to if any report is made in connection with its examination of the

relocation program is the role which the 442nd Combat Team played in establishing once and for all the fundamental loyalty of our Japanese population. . . .

I therefore believe in the interests of all concerned, the Commission would be well advised to conclude that President Roosevelt's wartime action in connection with the relocation of our Japanese-descended population at the outbreak of our war with Japan, was taken and carried out in accordance with the best interests of the country, considering the conditions, exigencies and considerations which then faced the nation. (Testimony, John J. McCloy, Washington, DC, Nov. 3, 1981, pp. 13-14, 16).

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1660 Rosa Villa St.  
Pasadena, Cal.  
Feb. 18, 1942

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Mr. Lloyd Wright,  
111 West 7th Street  
Los Angeles

Dear Mr. Wright:-

This will confirm my conversation with you of this afternoon upon the question of the mass evacuation of all Japanese from California. A Variety of motives have brought about the increasing demands from local individuals and local institutions for the mass evacuation of all Japanese - aliens and citizens alike - from California, or, in some instances, for their removal to a certain specified distance from the Pacific coast line. Amongst these motivational impulses may be numbered the following:

(1) A genuine desire for Security, based upon the widely spread belief that the presence of a large "Japanese" population renders probable wide-spread fifth column work, espionage, etc. This is attributable, in part of course, to the part played in Honolulu by Japanese fifth columnists and the undue emphasis played up in the papers for this "explanation" for the disaster in Pearl Harbour, whereas, in fact, this is far from being more than a contributing factor. The dangers of the Japanese organization on the West Coast, in my opinion, consist roughly of 75% observation, 20% sabotage and 5% fifth column work. All which has been observed in California up to the outbreak of the war is already known in Tokyo and care must be taken to minimize possibilities of observation of new fortifications, movements of troops, movements of ships, etc., etc. The Naval Intelligence and the F.B.I. have probably accounted for the bulk of those "Japanese" individuals who would engage in such work, in sabotage and in fifth column activities. It must be kept in mind when considering the "Security" to be derived from the mass evacuation of all Japanese, that the Japanese in all probability employed many more "whites" than "Japanese" for carrying out their work and this "white" danger is not eliminated by the evacuation of Japanese.

(2) Economic Competition in Vegetable Markets, etc.

There is evidence both in the press and in activities, of a desire to eliminate "Japanese" from the truck gardening business which, up to the present, has been dominated by Japanese particularly in the marketing and distribution phases. In Orange County for example and also in Stockton, there is a demand for the removal of all Japanese from a position of operating farms combined with a demand for their retention for use as farm labourers.

(3) Pressure from Big Business.

In the belief that the continued presence of Japanese in Southern California may result in the establishment of new defense industries in other localities and may even result in the transfer of certain defense industries from Southern California to other States, there has been much pressure on Mayor Bowron for immediate removal of all Japanese.

(4) Newspaper Hysteria.

Herst seems to be behind a good deal of this. There have been played up sensational accounts of anti-American activities. The Martin Dies report have accused the Japanese spy organizations of acquiring certain informants (appeared in detail in American newspapers and magazines!!) have fanned the frightened, too, by the lectures of Mr. James R. Young, the broadcasts of

APPENDIX NO. 1 -

L. Letter to Lloyd Wright from  
R.P. Alexander, February 18,  
(more - 1942.

(5) Politicians

an endeavour to please the bulk of voters in California (who in the main seem to favour the expulsion of all Japanese), Mayor Bowron, Governor Olson and others have taken stands entirely based to the utterances of the Federal Government and, in the case of both gentlemen, statements have been issued which are not calculated to ease the position; on the contrary, they have directly aided in the creation and extension of hysteria, either through ignorance or uncalculated appreciation of the fact that this is an "election year."

(6) The "vigilante" Tradition in California.

Need I make any comments?

(7) The absence of full reports from Washington.

The failure of the Federal Government to reveal full particulars of the disaster in Pearl Harbour to the American public has been conducive to the spread of many wild rumours which amongst many powerful Women's Organizations in California have grown both in volume and intent, thus adding to hysteria and their demand for removal of all Japanese "before it is too late and we all wake up dead".

Objections to Mass Evacuation of all Japanese:

The Japanese on the West Coast may be divided into "Issei" or first generation Japanese, born in Japan and thus unable, under American law to acquire American citizenship (although all of them have been here for at least eighteen years and many of them for thirty, forty and more years, and the "Nisei" or second-generation Japanese who possess American citizenship. And it not been for legal bars, at least three-quarters of the Issei would be American citizens today. I have many objections to the mass evacuation of all Japanese which I will list but before doing so, I wish to go on record as advocating the immediate removal from defense districts of all individuals, regardless of race or citizenship, if such a step is considered advisable, not by politicians, but by the Army and the Navy.

1) Creation of Dissatisfaction and Probable Sabotage.

If all Japanese, aliens and citizens alike, are evacuated from California, they will, they assure me, regard it as evidence of distrust of them, as a body, by the American authorities and this will be keenly resented even if it is coupled with the mass evacuation of alien Italians and Germans. Two-thirds of the Japanese are American citizens and many of them have shown their loyalty in many ways, not the least of which is the assistance they have given to the F.B.I., and to Naval Intelligence. Some 5,000 of them are in the American Army, many of whom were volunteers. They have contributed to Defense Funds, have purchased Defense Bonds and done Red Cross work, etc., to a greater extent than any other body of citizens of like size and means. If they are all lumped, through stupidity, as "dangerous aliens" and treated as such, sabotage ultimately will be the answer and this will be sabotage not for the love of Japan but for anger against the American government.

2) Place of Settlement.

All proposals for mass evacuation so far have not contained any hint as to the proposed area for resettlement which so far has had a very bad effect upon the morale of the Japanese.

3) Citizenship.

Mayor Bowron, Leland Ford and others harp upon "dual citizenship." I am more interested in the preservation of the loyalty of the Nisei citizens we now have. This loyalty is worth preservation, but, if they are all herded into camps, their loyalty will be extinguished and their and our situation after the war will be a much larger problem than it is at the present time.

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#### (4) Preservation of Unity

as evacuation of Japanese will be a blow to national unity, and if this is done on purely racial grounds, we will be the losers in the long run as Japanese propaganda inevitably will utilize such an act to swing, on racial grounds, the Chinese and the British Indians into their camp and against us, thus possibly putting 700,000,000 allies into the hands of our enemies.

#### Suggestions for Treatment of the Japanese Problem.

- 1) The entire removal of this problem from the hands of the local civil authorities.
- 2) The removal of all alien Japanese from any district regarded by the Army and Navy as inadvisable and their resettlement with federal aid, to districts where they may engage in peaceful business and farming, but, for the sake of the morale of their sons and daughters - the Nisei - where they will not suffer economic and other restrictions.
- 3) The similar removal of those alien Italians and alien Germans, who, after individual examination, it is considered advisable to have moved in the judgment of the Army and Navy.
- 4) The placing of entire control in the hands of the Army and the Navy, who are responsible for the conduct of the war on the grounds that they, too, are responsible for national defense. This question is one of national defense and national defense alone or it should be so.
- 5) The retention in the American Army of all Nisei soldiers. The worst possible thing to be done, which has been advocated by one local military gentleman, would be to take all Nisei soldiers out of the army and make them an armed guard for their parents. I understand that their officers think highly of the qualities of the Nisei under their command.
- 6) Generally, the treatment of all individual Nisei as entirely loyal citizens until and unless it can be shown in individual cases that they do not merit such trust, i.e., treat them as American citizens which is just what they are.
- 7) For the sake of the democratic ideal, for which we are fighting, I would appeal for the preservation, if possible, of all citizenship rights and obligations of all citizens, regardless of their differing racial origins, failing which, for the same treatment to be accorded all citizens in this country.
- 8) Authorization to be given to the Federal Authorities here, the Naval Intelligence, the Army Intelligence and the F.B.I. to arrest any American citizens whose conduct is considered by them to be detrimental to the proper carrying out of the war and, after trial and if found guilty, for their imprisonment for the duration of the war.
- 9) Detention of all Nisei who spent 5 to 10 years in Japan, their parents and all members of all Japanese nationalistic associations on the West Coast.

Yours sincerely,

(Signed) R. P. Alexander

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work.

i. Military officials also justified the exclusion from the West Coast and internment of Petitioner and other persons of Japanese ancestry on the ground that such persons were members of an "enemy race", presumptively disloyal to the United States and predisposed by their "racial characteristics" to loyalty to Japan.

Personal Justice Denied, pp. 8, 82.

Final Report, pp. 9-10, 33-34.

Petition Exhibit L.



"...General DeWitt apparently believed what he told Secretary Stimson: ethnicity determined loyalty. Moreover, he believed that the ethnic Japanese were so alien to the thought processes of white Americans that it was impossible to distinguish the loyal from the disloyal. On this basis he believed them to be potential enemies among whom loyalty could not be determined."

Personal Justice Denied, p. 8.

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guarantee protection to all loyal persons, alien and citizen alike, whose safety may be endangered by some wanton act of sabotage.<sup>160</sup>

Roosevelt forwarded the letter to Secretary Stimson,<sup>161</sup> although the views of the West Coast delegation were well known to the War Department, which had already briefed the Congressmen.<sup>162</sup>

At this late date of February 14 General DeWitt finally sent to the Secretary of War his final recommendation on the "Evacuation of Japanese and Other Subversive Persons from the Pacific Coast." Having estimated that the West Coast was open to air and naval attacks as well as sabotage, but without suggesting that a Japanese raid or invasion would land troops on the West Coast, the General set out his military justification for requesting the power to exclude ethnic Japanese:

The area lying to the west of Cascade and Sierra Nevada Mountains in Washington, Oregon and California, is highly critical not only because the lines of communication and supply to the Pacific theater pass through it, but also because of the vital industrial production therein, particularly aircraft. In the war in which we are now engaged racial affinities are not severed by migration. The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become "Americanized," the racial strains are undiluted. To conclude otherwise is to expect that children born of white parents on Japanese soil sever all racial affinity and become loyal Japanese subjects, ready to fight and, if necessary, to die for Japan in a war against the nation of their parents. That Japan is allied with Germany and Italy in this struggle is no ground for assuming that any Japanese, barred from assimilation by convention as he is, though born and raised in the United States, will not turn against this nation, when the final test of loyalty comes. It, therefore, follows that along the vital Pacific Coast over 112,000 potential enemies, of Japanese extraction, are at large today. There are indications that these are organized and ready for concerted action at a favorable opportunity. The very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken.<sup>163</sup>

The only justification for exclusion here, beyond DeWitt's belief that ethnicity ultimately determines loyalty, is the unsupported conclusion that "indications" show that the Japanese "are organized and ready for concerted action." The General's best argument for the truth of this was the fact that it hadn't happened yet. It would be hard to concoct a more vicious, less professional piece of military reasoning. Perhaps DeWitt's final recommendation came too late to shock McCloy

/163. DeWitt, Final Report, pp. 33-34.

#### NEED FOR MILITARY CONTROL AND FOR EVACUATION

and the success of the enemy offensive in the Pacific, had so aroused the public along the West Coast against the Japanese that it was ready to take matters into its own hands. Press and periodical reports of the public attitudes along the West Coast from December 7, 1941, to the initiation of controlled evacuation clearly reflected the intensity of feeling. Numerous incidents of violence involving Japanese and others occurred; many more were reported but were subsequently either unverified or were found to be cumulative.

The acceptance by the Attorney General of the Washington and Oregon recommendations would not have provided the security which the military situation then required. More than two-thirds of the total Japanese population on the West Coast were not subject to alien enemy regulations. The action ultimately taken was based upon authority not then existing. It had become essential to provide means which would remove the potential menace to which the presence of this group under all the circumstances subjected the West Coast. It is pertinent now to examine the situation with which the military authorities were then confronted.

Because of the ties of race, the intense feeling of filial piety and the strong bonds of common tradition, culture and customs, this population presented a tightly-knit racial group. It included in excess of 115,000 persons deployed along the Pacific Coast. Whether by design or accident, virtually always their communities were adjacent to very vital shore installations, war plants, etc. While it was believed that some were loyal, it was known that many were not. To complicate the situation no ready means existed for determining the loyal and the disloyal with any degree of safety. It was necessary to face the realities—a positive determination could not have been made.

It could not be established, of course, that the location of thousands of Japanese adjacent to strategic points verified the existence of some vast conspiracy to which all of them were parties. Some of them doubtless resided there through mere coincidence. It seemed equally beyond doubt, however, that the presence of others was not mere coincidence. It was difficult to explain the situation in Santa Barbara County, for example, by coincidence alone.

Throughout the Santa Maria Valley in that County, including the cities of Santa Maria and Guadalupe, every utility, air field, bridge, telephone and power line or other facility of importance was flanked by Japanese. They even surrounded the oil fields in this area. Only a few miles south, however, in the Santa Ynez Valley, lay an area equally as productive agriculturally as the Santa Maria Valley and with lands equally available for purchase and lease, but without any strategic installations whatever. There were no Japanese in the Santa Ynez Valley.

Similarly, along the coastal plain of Santa Barbara County from Gaviota south, the entire plain, though narrow, had been subject to intensive cultivation. Yet, the only Japanese in this area were located immediately adjacent to such widely separated points as the El Capitan Oil Field, Elwood Oil Field, Summerland Oil Field, Santa Barbara airport and Santa Barbara lighthouse and harbor entrance. There were no Japanese on the equally attractive lands between these

points. In the north end of the county is a stretch of open beach ideally suited for landing purposes, extending for 15 or 20 miles, on which almost the only inhabitants were Japanese.

Such a distribution of the Japanese population appeared to manifest something more than coincidence. In any case, it was certainly evident that the Japanese population of the Pacific Coast was, as a whole, ideally situated with reference to points of strategic importance, to carry into execution a tremendous program of sabotage on a mass scale should any considerable number of them have been inclined to do so.

There were other very disturbing indications that the Commanding General could not ignore. He was forced to consider the character of the Japanese colony along the coast. While this is neither the place nor the time to record in detail significant pro-Japanese activities in the United States, it is pertinent to note some of these in passing. Research has established that there were over 124 separate Japanese organizations along the Pacific Coast engaged, in varying degrees, in common pro-Japanese purposes. This number does not include local branches of parent organizations, of which there were more than 310.

Research and co-ordination of information had made possible the identification of more than 100 parent fascistic or militaristic organizations in Japan which have had some relation, either direct or indirect, with Japanese organizations or individuals in the United States. Many of the former were parent organizations of subsidiary or branch organizations in the United States and in that capacity directed organizational and functional activities. There was definite information that the great majority of activities followed a line of control from the Japanese government, through key individuals and associations to the Japanese residents in the United States.

That the Japanese associations, as organizations, aided the military campaigns of the Japanese Government is beyond doubt. The contributions of these associations towards the Japanese war effort had been freely published in Japanese newspapers throughout California.<sup>2</sup>

The extent to which Emperor worshiping ceremonies were attended could not have been overlooked. Many articles appearing in issues of Japanese language newspapers gave evidence that these ceremonies had been directed toward the stimulation of "burning patriotism" and "all-out support of the Japanese Asiatic Co-Prosperity Program."

Numerous Emperor worshiping ceremonies had been held. Hundreds of Japanese attended these ceremonies, and it was an objective of the sponsoring organization to encourage one hundred per cent attendance. For example, on

<sup>2</sup>Some of these newspaper items are as follows:

"March 13, 1941. Thirty-two bales of tin foil were shipped to Japan through the Japanese Consulate General and were contributed by Japanese Associations of Fresno County, Kern County, Delano and San Bernardino."

"July 4, 1941. Central California Japanese Association announces the collection and transmission to the War Ministry of the sum of \$3,542.05."

The Japanese Veterans Association was similarly engaged:

"March 20, 1941. It is announced that the War Veterans Associations in Japan, Germany and Italy, in keeping with the spirit of the Axis Treaty have formed joint and advisory committees to aid and establish the new world order. There are 1 1/2 million veterans and reservists headed by General Imet who have pledged their cooperation to Axis aims."

(All quotations in this note taken from the Extension of the Testimony of the Attorney General of California given before the House of Representatives, Select Committee on National Defense Migration, pursuant to House Resolution 113, 77th Congress, San Francisco Hearings, part 29. Italics supplied.)

## APPENDIX TO CHAPTER III

**Final Recommendation of the Commanding General,  
Western Defense Command and Fourth Army,  
Submitted to The Secretary of War.**  
(see page 1 of this Chapter III)

**HEADQUARTERS WESTERN DEFENSE COMMAND AND  
FOURTH ARMY**

Presidio of San Francisco, California  
Office of the Commanding General

February 14, 1942

014.31 (DCS)

MEMORANDUM FOR: The Secretary of War,  
(Thru: The Commanding General,  
Field Forces, Washington, D. C.)

SUBJECT: Evacuation of Japanese and other Subversive Persons from the  
Pacific Coast.

1. In presenting a recommendation for the evacuation of Japanese and other subversive persons from the Pacific Coast, the following facts have been considered:

a. Mission of the Western Defense Command and Fourth Army.

- (1) Defense of the Pacific Coast of the Western Defense Command, as extended, against attacks by sea, land or air;
- (2) Local protection of establishments and communications vital to the National Defense for which adequate defense cannot be provided by local civilian authorities.

b. Brief Estimate of the Situation.

(1) Any estimate of the situation indicates that the following are possible and probable enemy activities:

- (a) Naval attack on shipping in coastal waters;
- (b) Naval attack on coastal cities and vital installations;
- (c) Air raids on vital installations, particularly within two hundred miles of the coast;
- (d) Sabotage of vital installations throughout the Western Defense Command.

Hostile Naval and air raids will be assisted by enemy agents signaling from the coastline and the vicinity thereof; and by supplying and otherwise assisting enemy vessels and by sabotage.

Sabotage, (for example, of airplane factories), may be effected not only by destruction within plants and establishments, but by destroying power, light, water, sewer and other utility and other facilities in the immediate vicinity thereof or at a distance. Serious damage or destruction in congested areas may readily be caused by incendiarism.

(2) The area lying to the west of the Cascade and Sierra Nevada Mountains in Washington, Oregon and California, is highly critical not only because the lines of communication and supply to the Pacific theater pass through it, but also because of the vital industrial production therein, particularly aircraft. In the war in which we are now engaged racial affinities are not severed by migration. The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become "Americanized", the racial strains are undiluted. To conclude otherwise is to expect that children born of white parents on Japanese soil sever all racial affinity and become loyal Japanese subjects, ready to fight and, if necessary, to die for Japan in a war against the nation of their parents. That Japan is allied with Germany and Italy in this struggle is no ground for assuming that any Japanese, barred from assimilation by convention as he is, though born and raised in the United States, will not turn against this nation when the final test of loyalty comes. It, therefore, follows that along the vital Pacific Coast over 112,000 potential enemies, of Japanese extraction, are at large today. There are indications that these are organized and ready for concerted action at a favorable opportunity. The very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken.

c. Disposition of the Japanese.

(1) *Washington.* As the term is used herein, the word "Japanese" includes alien Japanese and American citizens of Japanese ancestry. In the State of Washington the Japanese population, aggregating over 14,500, is disposed largely in the area lying west of the Cascade Mountains and south of an east-west line passing through Bellingham, Washington, about 70 miles north of Seattle and some 15 miles south of the Canadian border. The largest concentration of Japanese is in the area, the axis of which is along the line Seattle, Tacoma, Olympia, Willapa Bay and the mouth of the Columbia River, with the heaviest concentration in the agricultural valleys between Seattle and Tacoma, viz., the Green River and the Puyallup Valleys. The Boeing Aircraft factory is in the Green River Valley. The lines of communication and supply including power and water which feed this vital industrial installation, radiate from this plant for many miles through areas heavily populated by Japanese. Large numbers of Japanese also operate vegetable markets along the Seattle and Tacoma water fronts, in Bremerton, near the Bremerton Navy Yard, and inhabit islands in Puget Sound opposite vital naval ship building installations. Still others are engaged in fishing along the southwest Washington Pacific Coast and along the Columbia River. Many of these Japanese are within easy reach of the forests of Washington State, the stock piles of seasoning lumber and the many sawmills of southwest Washington. During the dry season these forests, mills and stock piles are easily fired. (See inclosed map.)

(2) *Oregon.* There are approximately 4,000 Japanese in the State of Oregon, of which the substantial majority reside in the area in the vicinity of Portland along the south bank of the Columbia River, following the general

j. Responsible military and intelligence officials, after extensive investigation of the question, concluded that it was possible, prior to the initiation of the curfew, exclusion and internment program, to individually identify those persons of Japanese ancestry who could be considered to be potentially disloyal to the United States and to segregate such persons.

Personal Justice Denied, pp. 51-55, 59-60.

Petition Exhibit T.

nation of a racial group rather than individual review—but it does address the analysis that should be made by the War Department charged with our continental defenses.

## INTELLIGENCE

The intelligence services have the task of alerting and informing the President, the military and those charged with maintaining security about whether, where and when disruptive acts directed by an enemy may be expected. Intelligence work consists predominantly of analytical estimate, not demonstrably comprehensive knowledge—there may always be another, undiscovered ring of spies or a completely covert plan of sabotage. Caution and prudence require that intelligence agencies throw the net of suspicion wide, and take measures to protect vital information or militarily important installations. At the same time, if intelligence is to serve the ends of a society which places central value on personal liberty, even in time of war, it must not be overwhelmed by rumors and flights of fancy which grip a fearful, jittery public. Above all, effective intelligence work demands sound judgment which is immune to the paranoia that treats everyone as a hostile suspect until his loyalty is proven. In 1942, what credible threat did Japan pose to the internal peace and security of the United States?

It was common wisdom that the Nazi invasions of Norway and Western Europe had been aided by agents and sympathizers within the country under attack—the so-called fifth column—and that the same approach should be anticipated from Japan.<sup>10</sup> For this reason intelligence was developed on Axis saboteurs and potential fifth columnists as well as espionage agents. This work had been assigned to the Federal Bureau of Investigation and the Navy Department but not to the War Department.<sup>11</sup> The President had developed his own informal intelligence system through John Franklin Carter, a journalist, who helped Roosevelt obtain information and estimates by exploiting sources outside the government. None of these organizations operated with the thoroughness of, say, the modern CIA, but they were the best and calmest eyes and ears the government had.

Each of these sources saw only a very limited security risk from the ethnic Japanese; none recommended a mass exclusion or detention of all people of Japanese ancestry.

On November 7, 1941, John Franklin Carter forwarded to the

Personal Justice Denied, pp. 51-55.



President a report on the West Coast situation by Curtis B. Munson, a well-to-do Chicago businessman who had gathered intelligence for Carter under the guise of being a government official.<sup>12</sup> Carter summarized five points in the report, which may be all the President read;<sup>13</sup> the War Department also reviewed the report at Roosevelt's request.<sup>14</sup> Regarding sabotage and espionage, Munson wrote:

There will be no armed uprising of Japanese. There will undoubtedly be some sabotage financed by Japan and executed largely by imported agents or agents already imported. There will be the odd case of fanatical sabotage by some Japanese "crackpot". In each Naval District there are about 250 to 300 suspects under surveillance. It is easy to get on the suspect list, merely a speech in favor of Japan at some banquet, being sufficient to land one there. The Intelligence Services are generous with the title of suspect and are taking no chances. Privately, they believe that only 50 or 60 in each district can be classed as really dangerous. The Japanese are hampered as saboteurs because of their easily recognized physical appearance. It will be hard for them to get near anything to blow up if it is guarded. There is far more danger from Communists and people of the Bridges type on the Coast than there is from Japanese. The Japanese here is almost exclusively a farmer, a fisherman or a small business man. He has no entree to plants or intricate machinery.

The Japanese, if undisturbed and disloyal, should be well equipped for obvious physical espionage. A great part of this work was probably completed and forwarded to Tokio years ago, such as soundings and photography of every inch of the Coast. . . . An experienced Captain in Navy Intelligence, who has from time to time and over a period of years intercepted information Tokio bound, said he would certainly hate to be a Japanese coordinator of information in Tokio. He stated that the mass of useless information was unbelievable. This would be fine for a fifth column in Belgium or Holland with the German army ready to march in over the border, but though the local Japanese could spare a man who intimately knew the country for each Japanese invasion squad, there would at least have to be a terrific American Naval disaster before his brown brothers would need his services. The dangerous part of their espionage is that they would be very effective as far as movement of supplies, movement of troops and movement of ships out of harbor mouths and over railroads is concerned. They occupy only rarely positions where they can get to confidential papers or in plants. They are usually, when rarely so placed, a subject of perpetual watch and suspicion by their fellow workers. They would have to buy most of this type of information from white people. . . .

Japan will commit some sabotage largely depending on imported Japanese as they are afraid of and do not trust the Nesei [sic].

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There will be no wholehearted response from Japanese in the United States. They may get some helpers from certain Kibei. They will be in a position to pick up information on troop, supply and ship movements from local Japanese.

For the most part the local Japanese are loyal to the United States or, at worst, hope that by remaining quiet they can avoid concentration camps or irresponsible mobs. We do not believe that they would be at least any more disloyal than any other racial group in the United States with whom we went to war.<sup>15</sup>

Munson sent three or four more reports to Carter between December and February, including a long review of the situation in Hawaii; he did not change his estimate of the West Coast situation.<sup>16</sup> Most of these reports found their way to Roosevelt's desk. After Pearl Harbor, where Japan received no aid from fifth column activity or sabotage, Munson pointedly noted that "[a]n attack is the proof of the pudding,"<sup>17</sup> and remained firmly persuaded that the number of people on the West Coast who could reasonably be suspected of a menacing degree of loyalty to the enemy was small—and not demonstrably greater among the ethnic Japanese than other racial groups. In addition, the physical characteristics of the Japanese which made them readily identifiable made it more difficult for them to engage in sabotage unnoticed or to do any espionage beyond collecting public information open to anyone.

Although Munson was an amateur at intelligence, he talked at length to professionals such as the FBI agent in charge in Honolulu and the people in Naval Intelligence in southern California. He was also in touch with British Intelligence in California and reported that they shared his principal views. The British intelligence officer made one point, repeated by other professionals, which gave savage irony to the exclusion program: "It must be kept in mind when considering the 'Security' to be derived from the mass evacuation of all Japanese, that the Japanese in all probability employed many more 'whites' than 'Japanese' for carrying out their work and this 'white' danger is not eliminated by the evacuation of the Japanese."<sup>18</sup>

Munson had also come to respect the views of Lieutenant Commander K. D. Ringle of the Office of Naval Intelligence in southern California.<sup>19</sup> Ringle had spent much time doing intelligence work in both Japan and southern California<sup>20</sup> where he had assisted in breaking a major Japanese spy ring through a surreptitious entry<sup>21</sup> and developed an effective system of Nisei informants (which he shared with the FBI). When Ringle wanted the membership list of the "Black Dragon" society, a super-patriotic Japanese group, for example, the society's orig-

inal books for the western half of the United States were delivered to him three days later.<sup>22</sup>

In late January 1942, Ringle estimated that the large majority of ethnic Japanese in the United States were at least passively loyal to this country. There were both citizens and aliens who could act as saboteurs or espionage agents, but he estimated the number to be 3% of the total—or 3,500 in the entire United States who were identifiable individually. Many Nisei leaders had voluntarily contributed valuable anti-subversive information to federal agencies, said Ringle, and if discrimination, firings and personal attacks became prevalent, *that* conduct would most directly incite sabotage and riots.<sup>23</sup> Ringle saw no need for mass action against people of Japanese ancestry. It is difficult to judge how far one should go in equating Ringle's views with those of Naval Intelligence, since there is no single statement of their position, but he claimed that Naval Intelligence sympathized with his opinions.<sup>24</sup>

The third major source of intelligence was the FBI, which assessed any danger to internal security and had plans ready in case of war. Immediately after Pearl Harbor, President Roosevelt signed Proclamation 2525 pursuant to the Alien Enemy Act of 1798, as amended, which gave the government the authority to detain enemy aliens and confiscate enemy property wherever found. The Proclamation permitted immediate and summary apprehension of "alien enemies deemed dangerous to the public health or safety of the United States by the Attorney General or Secretary of War." On December 8, similar proclamations were issued for the summary apprehension of suspect Germans and Italians.<sup>25</sup>

The FBI had already drawn up lists of those to be arrested—aliens "with something in their record showing an allegiance to the enemy." Three categories of suspects had been developed: "A" category—aliens who led cultural or assistance organizations; "B"—slightly less suspicious aliens; and "C"—members of, or those who donated to, ethnic groups, Japanese language teachers and Buddhist clergy.<sup>26</sup> People in the "A," "B," and "C" categories were promptly arrested in early December.<sup>27</sup> Throughout the initial roundup, Attorney General Biddle was concerned that arrests be orderly. He did not want citizens taking matters into their own hands or directing hostility toward American citizens on the basis of descent, and on December 10 issued a press release stating these themes loudly and clearly.<sup>28</sup> The Attorney General was also firm from the beginning that citizens would not be arrested or apprehended unless there were probable cause to believe that a

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crime had been committed—the usual standard for arrest. Such arrests were not to occur until the FBI was ready to initiate criminal charges,<sup>29</sup> and the same standards applied to those of German, Italian and Japanese nationality or descent.

By December 10, 1942, FBI Director J. Edgar Hoover reported that "practically all" whom he initially planned to arrest had been taken into custody: 1,291 Japanese (367 in Hawaii, 924 in the continental United States); 857 Germans; 147 Italians.<sup>30</sup> In fact, however, the government continued to apprehend enemy aliens. By February 16, 1942, the Department of Justice held 2,192 Japanese; 1,393 Germans; and 264 Italians<sup>31</sup> and arrests continued even after that date. Many arrested in the early sweeps were Issei leaders of the Japanese American community and its organizations.<sup>32</sup>

FBI views on the need for mass exclusion from the West Coast were provided at the Attorney General's request shortly before the Executive Order was signed, and must be read in that context. Hoover did not believe that demands for mass evacuation were based on factual analysis. Although he doubted Nisei loyalty in case of invasion and grasped the obvious point that people excluded from the West Coast could not commit sabotage there, he pointed out that the cry for evacuation came from political pressure. The historical experience of the FBI showed that Japan had used Occidentals for its espionage<sup>33</sup>—which Ringle had learned from his clandestine raid on the Japanese consulate.<sup>34</sup> Hoover balanced his own opinions by sharing with the Attorney General his West Coast field offices' views of evacuation, which varied from noncommittal in Los Angeles to dismissive in San Francisco to vehemently favorable in San Diego and Seattle.<sup>35</sup> Nevertheless, Hoover's own opinion, and thus the Bureau's, was that the case to justify mass evacuation for security reasons had not been made.

These mainland intelligence views were blurred by sensational and inaccurate reports from Hawaii. On December 9, 1941, Secretary of the Navy Knox went to Hawaii to make the first brief examination of the reasons for American losses at Pearl Harbor. He returned to the mainland on December 15 and told the press, "I think the most effective Fifth Column work of the entire war was done in Hawaii with the possible exception of Norway."<sup>36</sup> This laid major blame for the Pearl Harbor defeat at the door of the ethnic Japanese in the United States. Knox's statement was not only unfounded: it ignored the fact that Japanese Americans in large numbers had immediately come to the defense of the islands at the time of the attack.<sup>37</sup>

The Secretary raised the matter again at the Cabinet meeting of

## Executive Order 9066

1. Samuel Eliot Morison, *Oxford History of the American People* (New York: Oxford University Press, 1965), pp. 1001-03. Three other aircraft carriers were at sea, and therefore unaffected. These carriers and their airgroups constituted a striking force far more valuable than the lost battleships. The perception of the destruction, however, did not account for this fact.

2. See, e.g., Notes of Cabinet meetings, Francis Biddle, Attorney General, Dec. 7, 1941. FDRL. Biddle Papers (CWRIC 3790-91).

3. Jeannette Rankin, a pacifist Representative from Montana, voted against the declaration with tears streaming down her face. Francis Biddle, *In Brief Authority* (Garden City, NY: Doubleday & Co. Inc., 1962), pp. 206-07.

4. Morison, *Oxford History of the American People*, p. 1003.

5. James MacGregor Burns, *Roosevelt: The Soldier of Freedom* (New York: Harcourt Brace Jovanovich, 1970), pp. 38-39.

6. J. L. DeWitt, *Final Report: Japanese Evacuation From the West Coast, 1942* (Washington, DC: U.S. Government Printing Office, 1943), p. 34. [hereafter *Final Report*].

7. Brief for the United States, *Korematsu v. United States*, No. 22, Oct. Term 1944, pp. 11-12.

8. House Report No. 732, 80th Cong., 1st Sess., reprinted in Hearings before Subcommittee No. 5 of the Committee on the Judiciary, U.S. House of Representatives, 83rd Cong., 2d Sess., on HR 7435 (Serial No. 23), p. 60a.

9. Testimony, John J. McCloy, Washington, DC, Nov. 3, 1981, pp. 45-66; testimony, Karl Bendetsen, Washington, DC, Nov. 2, 1981, p. 32. Like McCloy, Bendetsen believes the evacuation decision was right in the context of the time:

*Senator Brooke:* One final question. Looking back in hindsight now, do you still think that the decision that was made in 1942 to place the Japanese Americans in camps was the right decision?

*Mr. Bendetsen:* Viewing it in the circumstances of the time and not from today's time, yes; I think it was. (Testimony, Bendetsen, Washington, DC, Nov. 2, 1981, p. 71).

10. Brief for the United States, *Hirabayashi v. United States*, No. 870, Oct. Term 1942, pp. 16-17.

11. Proposal for Coordination of FBI, ONI and MID, June 5, 1940, approved and signed by Louis Johnson, Acting Secretary of War on June 25, 1940. NARS. RG 107 (CWRIC 7362-63); memo, signed by G-2, ONI and FBI, Feb. 9, 1942, approved and signed by Henry L. Stimson, Secretary of

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War. NARS. RG 107 (CWRIC 7366-73). This document indicates that ONI and FBI had joint coverage of "Japanese activities."

12. Kenneth Ringle, Jr., "What Did You Do Before The War, Dad?," *Washington Post Magazine*, Dec. 6, 1981; report by Curtis B. Munson, "Japanese on the West Coast," attached to Nov. 7, 1941 memo from John Franklin Carter to the President. FDRL. PSF 106 Stimson (CWRIC 3672-89).

13. Memo, Carter to Roosevelt re Munson report, "Japanese on the West Coast," Nov. 7, 1941. The five points certainly suggest that sabotage and espionage by Japanese Americans may occur but conveyed the opinion that there was not very much to fear from the Nisei. The one point that Roosevelt marked for Stimson's attention spoke generally of the fact that key points such as dams and bridges were unguarded and vulnerable. In the text of Munson's report, it was clear that he did not perceive danger from the ethnic Japanese in this situation as much as from the Communists and Nazis, but this may not have been clear if only Carter's brief cover note were read. Memo, FDR to the Secretary of War, Nov. 8, 1941. FDRL. PSF 106 Stimson (CWRIC 3672; 3671).

14. Letter, Stimson to Roosevelt, Feb. 5, 1942. FDRL. PSF 106 Stimson (CWRIC 3670).

15. Report by Curtis B. Munson, "Japanese on the West Coast," attached to memo from Carter to Roosevelt, Nov. 7, 1941. FDRL. PSF 106 Stimson (CWRIC 3673-89).

16. Cover note, Carter to Roosevelt, Dec. 22, 1941, enclosing Munson report of Dec. 20, 1941 (CWRIC 19480-90); cover note, Carter to Roosevelt, Dec. 13, 1941, enclosing Munson update of Jan. 12, 1942 (CWRIC 19495-97); cover note, Carter to Roosevelt, Jan. 28, 1942, enclosing letter with enclosures from Munson (CWRIC 19518-20); memo, Munson to Grace Tully, with enclosures, about Feb. 21, 1942 (CWRIC 19539-50); "Report on Hawaiian Islands," by Munson, attached to memo from Carter to Roosevelt, Dec. 8, 1941. FDRL. PSF Carter (CWRIC 19499-516).

17. Report by Munson, "Report and Suggestions regarding Handling Japanese Question on the Coast," Dec. 20, 1941. FDRL. PSF Carter (CWRIC 19483).

18. E.g., Letter, Bob Alexander to Lloyd Wright, Feb. 18, 1942. FDRL. PSF Carter (CWRIC 19543-46). Nor was the threat limited to coastal areas. German saboteurs landing from submarines had instructions to destroy many inland installations. Letter, Hoover to McIntyre, Secy. to President, with attached memo, June 27, 1942. FDRL. PSF 77 (CWRIC 3691-93).

19. E.g., Memo, Carter to Roosevelt, Jan. 28, 1942. FDRL. PSF Carter (CWRIC 19518).

20. Memo, Lieut. Cmdr. K. D. Ringle to Chief of Naval Operations, Jan. 26, 1942. NARS. RG 107 (CWRIC 275-84). Ringle had three years' study of the Japanese language and people during a tour at the embassy in Tokyo, a year as Assistant District Intelligence Officer in Hawaii; from June 1940 he had directed Naval Intelligence in Los Angeles. Ringle, Report on Japanese Question, Jan. 26, 1942. NARS. RG 107 (CWRIC 277).

21. Ringle, *Washington Post Magazine*, Dec. 6, 1981.

22. Letter, Ringle to Edward N. Barnhart, Mar. 23, 1951 (CWRIC 19567).

23. Ringle, Report on Japanese Question, Jan. 26, 1942. NARS. RG 107 (CWRIC 277).

24. Letter, Ringle to Barnhart, Mar. 23, 1951 (CWRIC 19566).

25. The Proclamation is reproduced at U.S. House of Representatives. Select Committee Investigating National Defense Migration (Tolan Committee), 77th Cong. 2d Sess., 1942, HR Report 2124. Proclamation 2526 applied the promulgated rules and regulations to German aliens; Proclamation 2527 applied them to Italian aliens. Both Proclamation 2526 and 2527 were issued on Dec. 8, 1941.

26. Paul Clark, "Those Other Camps: Japanese Alien Internment during World War II," unpublished manuscript, no date, p. 7, and materials cited (CWRIC 4409).

27. Telegrams, J. Edgar Hoover to All Special Agents in Charge, Dec. 7, 1941. FBI (CWRIC 5826, 5827, 5828); Dec. 8, 1941. FBI (CWRIC 5784-85).

28. Press release, Department of Justice statement of policy, released by Attorney General Francis Biddle, Dec. 10, 1941. FBI (CWRIC 5814-15).

29. Memos, L. L. Laughlin to D. M. Ladd, Dec. 8, 1941. FBI (CWRIC 5781); Francis M. Shea to Hoover, Dec. 10, 1941. FBI (CWRIC 5780).

30. Memo, Lemuel B. Schofield to Edward J. Ennis, Director, Alien Enemy Control Unit, Dec. 10, 1941. FBI (CWRIC 10373).

31. Clark, "Those Other Camps," p. 9, refers to Department of Justice press release, Feb. 16, 1942. (CWRIC 4411).

32. Jacobus tenBroek, Edward N. Barnhart and Floyd W. Matson, *Prejudice, War and the Constitution* (Berkeley: University of California Press, 1954), p. 101.

33. Memo, Hoover to Attorney General, Feb. 2, 1942. FBI (CWRIC 5794-803).

34. Ringle, *Washington Post Magazine*, Dec. 6, 1981.

35. Memo, Hoover to Attorney General, Feb. 2, 1942. FBI (CWRIC 5794-803).

36. Report by Munson, Dec. 20, 1941. FDRL. PSF Carter (CWRIC 19481).

37. Bill Hosokawa, *Nisei: The Quiet Americans* (New York: William Morrow & Co., Inc., 1969), pp. 463-64.

38. Notes of Cabinet meetings, Biddle, Dec. 19, 1941. FDRL. Biddle Papers (CWRIC 3793-94); memo, Hoover to the Attorney General, Dec. 17, 1941:

With reference to the statement made by the Secretary of Navy to the effect that the Fifth Column activities in Hawaii were exceeded only by the Fifth Column activities in Norway, I wanted to make the suggestion that you might wish to keep in mind the desirability of asking the Secretary of Navy for any specific evidence which he has supporting this statement.

I have already addressed a memorandum to you outlining directly what the scope of the so-called Fifth Column activities in Hawaii has been, and while there no doubt have been agents of the Japanese government active, it is very definitely the opinion of the intelligence officers of the various services in Hawaii that there is no such widespread activity similar to that

the operating premise of counterespionage that Japan's spying operation might be made up of only ethnic Japanese, only non-ethnic Japanese or a combination of the two. A solely ethnic Japanese group might be able to rely on people of known loyalty to Japan with close ties to that country, but American suspicion of such people and the possibility that they might be detained in time of war might well lead Japan to rely entirely on people who were not ethnic Japanese. Variations of these extremes were equally possible:

For purposes of security, the vital core of the organization might be composed of non-Japanese. . . . On the other hand, the nucleus of the organization may be composed of Japanese, who will make use of non-Japanese as the need and opportunity arises. This group might even have available a non-Japanese whose sole function would be to assume direction of the espionage organization in case the members of the original core are immobilized or rendered ineffective by security or counter-espionage measures.<sup>58</sup>

Mayfield's thorough approach to the problem exposed the flimsy reasoning behind the policy of exclusion—without evidence, there was no sound basis for expecting the Japanese to employ any particular ethnic group as spies or saboteurs. This proved true; in Hawaii one of the few alien residents brought to trial for war-related crimes was Bernard Julius Otto Kuehn, a German national in the pay of Japan,<sup>59</sup> and on the mainland the few people convicted of being illegal agents of Japan were predominantly not ethnic Japanese.<sup>60</sup>

But these views did not reach the topmost level of the War Department. Secretary Stimson recorded in his diary a long evening with Justice Roberts after his return from Hawaii, noting Roberts' expressed fear that the Japanese in the islands posed a major security risk through espionage, sabotage and fifth column activity.<sup>61</sup> Roberts also visited General DeWitt and one may assume that he presented similar views to the General.<sup>62</sup>

Thus, in the early months of war, the intelligence services largely agreed that Japan had quietly collected massive amounts of useful information over recent years, in Hawaii and on the mainland, a great deal of it entirely legally, and that the threat of sabotage and fifth column activity during attack was limited and controllable. Significantly, the intelligence experts never focused exclusively on ethnic Japanese in the United States: logically the Japanese would not depend solely on the Issei and Nisei, and experience showed that they did not trust the Nisei, employing Occidentals for espionage.

The prophecy about who might conduct future espionage and

Personal Justice Denied, pp. 59-60.



sabotage was based on a number of factors. No significant sabotage or fifth column activity had helped destroy Pearl Harbor. Insofar as the Japanese would rely on the Issei or other Axis aliens' assistance, those who were at all suspect had been interned by the Department of Justice. Insofar as the Japanese would rely on the Nisei, there was no knowledge or evidence of organized or individual Nisei spying or disruption. Ringle and Munson did not believe there would be any greater disloyalty from them than from any other American ethnic group; Taylor, and perhaps Shivers in Hawaii, dissented. The course recommended by Hoover (Ringle and Munson suggested similar approaches<sup>63</sup>) was one of surveillance but not arrest or detention without evidence to back up individualized suspicion. Hoover recommended registering all enemy aliens in the United States; also, to protect against fifth columnists, he wanted specific authority (either suspension of the writ of habeas corpus or a "so-called syndicalism law") to permit the apprehension of any citizen or alien "as to whom there may be reasonable cause to believe that such person has been or is engaging in giving aid or comfort to the enemies of the United States;" and he backed Department of Justice evaluation of lists of suspect citizens to determine who should be taken into custody under any such extreme authority.<sup>64</sup>

These restrained views did not prevail. Those with intelligence knowledge were few, and they rarely spoke as a body. Navy Intelligence, for instance, felt it had enough on its hands without contradicting or challenging the Army. Whatever its intelligence officers thought, the Navy was intent on moving the ethnic Japanese away from its installations at Terminal Island near Los Angeles and Bainbridge Island in Puget Sound, and Secretary Knox's support of stern measures against the ethnic Japanese seemed unlikely to change.<sup>65</sup> Few voices were raised inside the War Department, which was responsible for security on the West Coast. Stronger political forces outside the intelligence services wanted evacuation. Intelligence opinions were disregarded or drowned out.

#### THE GOVERNMENT'S INITIAL REACTIONS TO WAR

Action on the West Coast after Pearl Harbor lay immediately with those dealing with the "enemy alien problem." This initially led the Army down the road toward the Executive Order. The government

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which occurred in Norway. In fact, it is believed a great majority of the population in Hawaii of foreign extraction is law-abiding and is not indulging in any such activities. If the Secretary of Navy has any specific information of the magnitude that he has indicated by his press statement, it might be desirable for you to make inquiry of him for it. FBI (CWRIC 5830).

39. Memo, Carter to Roosevelt. FDRL. PSF Carter (CWRIC 12006).

40. Memo, Hoover to Tolson, Tamm and Ladd, Dec. 8, 1941. FBI (CWRIC 5786).

41. *Honolulu Advertiser*, Dec. 22, 1941, pp. 1, 6 (CWRIC 29567-69).

42. Report by Munson, Dec. 20, 1941. FDRL. PSF Carter (CWRIC 19481-82).

43. Morton Grodzins, *Americans Betrayed* (Chicago: University of Chicago Press, 1949), p. 399.

44. Cover note, Carter to Roosevelt, Dec. 22, 1941; report by Munson, Dec. 20, 1941. FDRL. PSF Carter (CWRIC 19481-90).

45. Report of Roberts Commission, Jan. 23, 1942, contained in Hearings before the Joint Committee on the Investigation of the Pearl Harbor Attack, 79th Cong., Part 39, 1946 (Washington, DC: U.S. Government Printing Office, 1946) [hereafter "Pearl Harbor Investigation"].

46. Pearl Harbor Investigation, Part 39, pp. 12-13.

47. Elting E. Morison, *Turmoil and Tradition* (Boston: Houghton Mifflin Co., 1960), pp. 527-34.

48. Pearl Harbor Investigation, Part 22, p. 86.

49. Report by Munson, Dec. 20, 1941. FDRL. PSF Carter (CWRIC 19483).

50. Pearl Harbor Investigation, Part 23, p. 867 and preceding pages.

51. *Ibid.*, pp. 872-73.

52. Report of the Select Committee Investigating National Defense Migration, HR Report No. 1911, 77th Cong., 2d Sess., March 19, 1942, p. 2.

53. Diary, Stimson, Jan. 20, 1942, p. 3, Sterling Library, Yale University (CWRIC 19598).

54. Pearl Harbor Investigation, Part 23, p. 874.

55. *Ibid.*, pp. 879-80.

56. *Ibid.*, p. 884.

57. *Ibid.*, pp. 642-43, 651.

58. Pearl Harbor Investigation, Part 35, p. 559.

59. Gordon W. Prange, *At Dawn We Slept* (New York: McGraw-Hill Book Co., 1981), pp. 310-12, 650.

60. Carey McWilliams, *Prejudice: Japanese-Americans, Symbol of Racial Intolerance* (Boston: Little, Brown and Co., 1945), pp. 110-11.

61. Diary, Stimson, Jan. 20, 1942, p. 3. Sterling Library, Yale University (CWRIC 19598).

62. Telephone conversation, DeWitt, Gullion and Bendetsen, Feb. 1, 1942. NARS. RG 389 (CWRIC 4316).

63. Memo, Carter to Roosevelt, Dec. 19, 1941. FDRL. PSF Carter (CWRIC 12007).

64. Memo, Hoover to Shea, Dec. 17, 1941. FBI (CWRIC 5777-79).

k. In its brief to the United States Supreme Court in Hirabayashi v. United States, the Government asserted that the exclusion, curfew, and internment of persons of Japanese ancestry was justified by military necessity on the grounds that such persons were likely to engage in espionage, sabotage, and fifth-column activity and that persons of Japanese ancestry, because of their race, were predisposed to be loyal to Japan.

U. S. Brief, pp. 33-34, 46, 60-61, 106-107.

The central question is whether there is support in the Constitution for the statute as applied. Article I grants comprehensive powers to the Congress, and Article II independently confers sweeping authority directly upon the President as Commander in Chief. The Joint Resolution of December 8, 1941, declared a state of war between the United States and Japan, and directed the President to employ the entire naval and military forces of the country and the resources of the Government to prosecute the war.

[The Act of March 21, 1942 was amply warranted in the circumstances. The extent of the disaster at Pearl Harbor, only recently revealed to the public, left the West Coast exposed to destructive enemy attack. The Japanese, during the winter of 1942, were at the crest of their military fortunes, and were making bold and impressive strides in many theaters of war. The condition of our temporarily crippled Pacific fleet and the course of the war at that time rendered it imperative that those charged with the defense of our shores take adequate protective measures against a possible invasion of the West Coast.

The great majority of persons of Japanese ancestry in this country were concentrated on the West Coast. About one third of them were aliens, and the majority of the American-born were in the younger age groups. A significant number of the American-born had been sent to Japan for

U.S. Brief, pp. 33-34.

their education, and many of them were regarded, by reason of their training abroad, as highly dangerous. The fact that the so-called fifth column type of warfare had been so apparently successful in recent years, and the fact that there had been evidence of extensive espionage at Pearl Harbor, made it imperative to take adequate precautionary steps.

Although it may be assumed that the majority of the Japanese residents on the West Coast were loyal to the United States, the very presence of the entire group presented grave danger because that group comprehended an unknown number of unidentified persons who constituted a serious threat. Prompt and decisive action was necessary, and it cannot be said that it was unreasonable to determine to exclude the Japanese as a whole from these vital areas, and to adopt such supplementary measures as the curfew.]

The action thus taken did not result in any denial of due process. The exercise of governmental power generally interferes with one's liberty to a greater or lesser degree, and the only question is whether that interference is wholly unreasonable or arbitrary.

The exigencies of war may demand the imposition of restraints that would be unwarranted in times of peace. Indeed, an individual may be required to give up his freedom and lay down his life.

11, 1941, the Western Defense Command had been established and designated a theatre of operations; the commanding general was charged with the duty, *inter alia*, of protecting that area against enemy attack. The overwhelming majority of persons of Japanese ancestry in the United States resided on the West Coast. See *supra*, p. 18. Great apprehension was felt that even if the majority of those Japanese were loyal to the United States, a number of them, citizens and aliens alike, might be disposed to assist the enemy, particularly in the case of an attack. And there was also concern lest the resident Japanese be subjected to mass local violence in the event of an attack.<sup>65</sup> These circumstances and the imperative need for prompt protective action were fully known to the President when he issued Executive Order No. 9066, which was to form the basis for the curfew and evacuation regulations. And both the House and the Senate were informed of the grave dangers inherent in permitting the Japanese to remain in the numerous critical areas along the West Coast, and of the peril to the nation that might result from the treacherous action of some of those Japanese.]

By Japanese Armed Forces Upon Pearl Harbor In The Territory Of Hawaii On December 7, 1941 (The Roberts' Committee Report), pp. 12-13, Senate Document No. 159, 77th Congress, 2nd Sess.

<sup>65</sup> See Tolson Committee Report, pp. 145-147, 149-150; Hearings, pp. 11044, 11156.

U. S. Brief, p. 46

REQUEST FOR JUDICIAL NOTICE -184a

APPENDIX NO. 1

Nor, in view of the extraordinarily unique situation in this case, will it be profitable to explore the various decisions either approving (*Gong Lum v. Rice*, 275 U. S. 78; *Clarke v. Deckebach*, 274 U. S. 392; *Terrace v. Thompson*, 263 U. S. 197; *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313; *Frick v. Webb*, 263 U. S. 326; *Crain v. New York*, 239 U. S. 195; *Patson v. Pennsylvania*, 232 U. S. 138; *Plessy v. Ferguson*, 163 U. S. 537), or disapproving (*Mitchell v. United States*, 313 U. S. 80, 97; *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337; *Truax v. Raich*, 239 U. S. 33; *Meyer v. Nebraska*, 262 U. S. 390; *Yu Cong Eng v. Trinidad*, 271 U. S. 500; *Yick Wo v. Hopkins*, 118 U. S. 356) various classifications based upon racial or similar grounds.

The situation which gave rise to the curfew and evacuation measures was wholly unprecedented in the history of this country. The validity of those measures must be tested, not in the light of the military situation as it exists today, nor even in the light of the military situation as it existed at that time viewed as a matter of hindsight. Rather, the crucial question is whether the action taken was, in the honest judgment of those charged with the responsibility of defending our shores, reasonably necessary from a military point of view. We submit that, as recounted above (p. 12 *et seq.*), the military situation was so grave, the danger of an enemy attack was so far within

the realm of probability, and the peril to be apprehended from treacherous assistance to the enemy on the part of an unknown number of Japanese concentrated in critical areas along the West Coast was so substantial, it was a matter of high military necessity to take prompt and adequate precautionary steps.

Our Pacific Fleet had been rendered all but powerless for the time being, and the Japanese forces were making bold and impressive strides. Indeed, our very coast had been shelled. Faced with the responsibility of repelling a possible Japanese invasion which might have threatened the very integrity of our nation, it was the duty of the commanding general to take into account the plain fact that over 100,000 Japanese were grouped along the coast. It was essential to recognize that although the majority of these people might be regarded as loyal to the United States, a disloyal minority, if only a few hundreds or thousands, strategically placed, might spell the difference between the success or failure of any attempted invasion.

This grave emergency called for prompt and decisive action. It was imperative that adequate protective measures be taken. If those Japanese who might aid the enemy were either known or readily identifiable, the task of segregating them would probably have been comparatively simple. However, the identities of the potentially disloyal



ignated and established Military Areas Nos. 3, 4, 5 and 6 and Zones thereof, and

[Whereas the present situation within these Military Areas and Zones requires as a matter of military necessity the establishment of certain regulations pertaining to all enemy aliens and all persons of Japanese ancestry within said Military Areas and Zones thereof;

Now, therefore, I. J. L. DeWitt, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General, Western Defense Command, do hereby declare and establish the following regulations covering the conduct to be observed by all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the Military Areas above described, or such portions thereof as are hereinafter mentioned:

1. From and after 6:00 A. M., March 27, 1942, all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the geographical limits of Military Area No. 1, or within any of the Zones established within Military Area No. 2, as those areas are defined and described in Public Proclamation No. 1, dated March 2, 1942, this headquarters, or within the geographical limits of the designated Zones established within Military Areas Nos. 3, 4, 5, and 6, as those areas are defined and described in Public Proclamation No. 2, dated March 16, 1942, this headquarters, or

U. S. Brief, p.106

within any of such additional Zones as may hereafter be similarly designated and defined, shall be within their place of residence between the hours of 8:00 P. M. and 6:00 A. M., which period is hereinafter referred to as the hours of curfew.

2. At all other times all such persons shall be only at their place of residence or employment or traveling between those places or within a distance of not more than five miles from their place of residence.

3. Nothing in paragraph 2 shall be construed to prohibit any of the above specified persons from visiting the nearest United States Post Office, United States Employment Service Office, or office operated or maintained by the Wartime Civil Control Administration, for the purpose of transacting any business or the making of any arrangements reasonably necessary to accomplish evacuation; nor be construed to prohibit travel under duly issued change of residence notice and travel permit provided for in paragraph 5 of Public Proclamations Numbers 1 and 2. Travel performed in change of residence to a place outside the prohibited and restricted areas may be performed without regard to curfew hours.

4. Any person violating these regulations will be subject to immediate exclusion from the Military Areas and Zones specified in paragraph 1 and to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled: "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing Any Act in Military Areas or Zones."

U. S. Brief, p. 107

1. Military necessity was asserted as the grounds for the curfew, exclusion and internment of persons of Japanese ancestry in the amicus brief of the States of California, Oregon and Washington in Hirabayashi v. United States.

Brief of the States of California, Oregon and Washington, Amicus Curiae, Hirabayashi v. United States, No. 870, October Term, 1942, pp. 36-46.

from portions of Military Area No. 1, declared that Lieutenant General J. L. DeWitt, pursuant to the authority vested in him by the President of the United States and by the Secretary of War and under his powers as Commanding General, ratified the Civilian Exclusion Orders and excluded all persons of Japanese ancestry from all portions of Military Area No. 1.

- A. The curfew and exclusion orders, applied on a group basis within the military areas, were conceived in good faith in the face of emergency and were directly related to the mission of the Commanding General in defending the Pacific Coast and preventing sabotage and espionage.

The need for action being clear, and the authority to exclude persons from military areas having been granted, the remaining consideration concerns the propriety of excluding all persons of Japanese ancestry as a group from the military area and imposing curfew as an incident thereto. In judging the reasonableness of dealing with the problem upon a group basis, the three Pacific Coast States appearing here as *amici curiae* believe that it is of the utmost importance for the members of the Court to judge the good faith and validity of the Commanding General's action in the light of the facts as they existed on the Pacific

the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be guilty of a misdemeanor and upon conviction shall be liable to a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both, for each offense." (77th Cong., 2nd Sess., Ch. 191.)

Brief for the States of California, Oregon,  
and Washington, Amicus Curiae, pp. 36-46.

Coast when the curfew and evacuation orders were issued in March and in May, 1942—a period when the Japanese were at the height of their military fortunes. (*Mitchell v. Harmony*, 13 How. 115 (1851).) In passing upon the group exclusion, judgment should not be based on conditions as they now exist a year after the exclusions were ordered and when the dangers have somewhat subsided, although the possibility of raids remains and precautions against sabotage and espionage must be maintained until the war is over.

It is clear that the exclusion was considered entirely as a matter of military necessity and that no foundation exists for any claim that the action of the President or Commanding General was the result of a public clamor born of old prejudices.<sup>30</sup>

If it cannot be said that group exclusion was not an unreasonable method with which to meet the emer-

<sup>30</sup>What arguments were presented to the President by the military authorities of this district have not been made known, but to assume that General DeWitt, the Federal Bureau of Investigation, the Army and Naval Intelligence were motivated by race prejudice, greed for land, or popular hysteria, as this letter calmly does, is just silly. And, it was the arguments of this group that plainly impressed the President.

"One has but to recall the original objections of the administration, as voiced by Attorney General Biddle, to removal of the Japs, to realize that it was not popular clamor that influenced the President, but very cogent evidence submitted by the military command. The implication that the President would be swayed by race prejudice, greed, or hysteria is no compliment. His instincts are in the other direction. . . . The exclusion was a military measure and was recognized as such, and as necessary, by the Japanese themselves, who submitted to it . . . . These Japanese knew that there were traitors to the United States in their midst and further that complete identification of all of them was impossibly difficult."—An editorial on the proposal of the Post-War Council's plea to President Roosevelt to revoke evacuation order—Los Angeles Times, May 19, 1942.

gency, the Court will not substitute its judgment for that of the military commander. As this Court said in *Moyer v. Peabody*, 212 U.S. 78 (1909), speaking through Mr. Chief Justice Holmes:

"When it comes to a decision by the head of the State upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment. Public danger warrants the substitution of executive process for judicial process. See *Kelly v. Sanders*, 99 U.S. 441, 446. This was admitted with regard to killing men in the actual clash of arms, and we think it obvious, although it was disputed, that *the same is true of temporary detention to prevent apprehended harm.* \* \* \*" (p. 85.)

Similarly, this precept will apply when the President through his military commanders excludes persons from vital military areas to prevent apprehended harm.

The scope of the powers of the President in time of war, acting as Commander-in-Chief, were thus described in *Stewart v. Kahn*, 11 Wall. 493 (1870):

"The President is the Commander-in-Chief of the Army and Navy, and of the militia of the several States, when called into service of the United States, and it is made his duty to take care that the laws are faithfully executed. Congress is authorized to make all laws necessary and proper to carry into effect the granted powers. The measures to be taken in carrying on war and to suppress insurrection are not defined. The decision of all such questions rests wholly in the discretion of those to whom the substantial powers involved are confided by the Constitution. In the

latter case the power is not limited to victories in the field and the dispersion of the insurgent forces. It carries with it inherently the power to guard against the immediate renewal of the conflict, and to remedy the evils which have arisen from its rise and progress." (pp. 506-507.)

There were many among those excluded who were undoubtedly loyal—some of them are now proudly wearing the American uniform. But in the light of the military situation (*supra*, page 9) and the characteristics of the Japanese population on the Pacific Coast as a whole (*supra*, page 11), there was undoubtedly reason to believe that, among this group of over 112,000 people possessing strong racial and cultural ties with the enemy, there was enough potential disloyalty, which could not be sifted by administrative hearings in sufficient time, to justify the removal of the danger within the group by the removal of the group as a whole.

Although adhering to the majority dictum in *Ex parte Milligan*, 4 Wall. 2 (1866), as to the occasion when a military commander may exercise control over civilians, the trial Court in *United States v. Yasui*<sup>22</sup> recognized that in view of the situation on the Pacific Coast, persons of Japanese ancestry, aliens and citizens alike, represented a reasonable classification for the regulations issued:

"The conditions and necessities of preparation for modern war had previously been recognized

<sup>22</sup>Now before this Court. *Yasui v. United States*, No. 871.

by this court. The areas and zones outlined in the proclamations became a theatre of operations, subjected in localities to attack and all threatened during this period with a full scale invasion. The danger at the time this prosecution was instituted was imminent and immediate. The difficulty of controlling members of an alien race, many of whom, although citizens, were disloyal with opportunities of sabotage and espionage, with invasion imminent, presented a problem requiring for solution ability and devotion of the highest order." (U.S.D.C., D. of Ore., No. 16056; Tr. 18-19.)

The emergence of a substantial group of the supporters of Japan among the persons of Japanese ancestry at the Manzanar Relocation Center<sup>40</sup> resulting in serious riot and bloodshed substantiates the belief of the military authorities that there were potentially

<sup>40</sup>Excerpt from news report in San Francisco (California) Call-Bulletin, December 7, 1942:

"MANZANAR, Dec. 7 (AP). A pro-Axis celebration of the sneak attack on Pearl Harbor caused a riot in the Japanese relocation center here last night and troops called to restore order fired several shots into the surging mob, killing one Japanese and wounding nine.

Ralph P. Merritt, project director, said the rioting started Saturday night when Japanese loyal to America interfered with a meeting called by the Kibei, anti-American group. Merritt called for military assistance and the disturbance was quelled.

• • • • •  
Last night the factions began fighting and soon there were 4,000 in a milling crowd. Shouts of 'Pearl Harbor, Banzai! Banzai!' had precipitated a free-for-all. • • • • •



disloyal elements in considerable numbers among Pacific Coast Japanese."

The subsequent declaration of loyalty for Japan by twenty-four per cent of American Japanese of draft age is a further indication of the existence of

"Excerpt from editorial in Seattle (Washington) Post-Intelligencer, December 9, 1942:

"Riots staged by anti-American Japanese in Arizona and California camps lead to two conclusions. One is that the Army moved none too soon in its general evacuation of Japanese from coastal areas. . . ."

Excerpt from editorial in Los Angeles (California) Times, December 9, 1942:

"Events at the Japanese centers at Manzanar and at Poston, Arizona, prove up to the hilt the necessity of Gen. DeWitt's order clearing all persons of Japanese ancestry out of the Pacific Coast military areas. The evacuation order, it will be remembered, was roundly criticized by uniformed Easterners and by some Westerners who should have known better. It is now clear that the feeling of too many Japanese was entirely unfriendly to the United States, and that considerable members of Japanese born here were included in the unfriendly group. For the safety of the Japanese themselves—and the safety of Japanese loyal to the United States at least was entitled to protection—the evacuation was wise and necessary."

Excerpt from editorial in Long Beach (California) Press-Telegram of December 8, 1942:

"The riot furnished a sufficient answer to those who have been questioning the wisdom of the Army's isolation of Japanese inhabitants of this country. All Japanese were moved away from potential war zones along the coast and placed under guard in camps of the interior for the good and sufficient reason that some of them were dangerous to the United States when this nation and Japan were involved in war, and nobody could tell certainly which of the Japanese were loyal to America and which were enemies at heart.

The violent demonstration by pro-Axis Japanese at Manzanar does not provide the evidence whereby a complete separation of the sheep and the goats can be made, but it does prove beyond any doubt that a considerable percentage of the Japanese in this big relocation camp are loyal to Japan and consequently are enemies of the United States."

a disloyal attitude toward America.<sup>42</sup> It is a speculation that such an expression for Japan would have been forthcoming at a hearing which would have had for its purpose the determining of whether or not the individual should remain in a Pacific Coast Military Area. The possibility that the disloyal elements would have been disclosed through the holding of individual hearings is, at least, sufficiently doubtful that it cannot be said that the Commanding General committed an abuse of discretion when he decided on the more certain course of removing all disloyal elements by removing the group as a whole.<sup>43</sup>

The apparent reasonableness of the evacuation was set forth by the Tolan Committee in its report<sup>44</sup> to Congress, wherein it declared:

"This committee does not deem its proper province to encompass a judgment on the military need for the present (and any subsequent) evacu-

<sup>42</sup>Elmer M. Rowalt, Deputy Director of the War Relocation Authority (WRA), states that answers to the War Department's recruiting questionnaire show that the number of professedly disloyal Japanese will total about 24% of the military eligibles, ranging from 3% at the Minadoka Center in Idaho to 52% at Manzanar, California. Each of the camps has a population of about 10,000.—San Francisco Examiner (Wash. Bureau), April 30, 1943.

<sup>43</sup>A news article on disloyalty among Japanese at relocation centers states:

"Many actively subversive alien Japanese have already been confined in detention camps, but it is said that fully as many, undetected in the first stages of the war, are still mingling in the centers with Japanese who have been pronounced harmless to date by military intelligence and the Federal Bureau of Investigation." (San Francisco Examiner, dated May 1, 1943.)

<sup>44</sup>H.R. No. 1911, 77th Cong., 2nd Sess., March 19, 1942, pp. 13-14.

ation orders. In time of war the military authorities are obligated to take every necessary step and every precaution to assure the internal safety of the Nation. The need for these safeguards appears the more pressing when we consider that present-day warfare has developed the fifth-column technique in unprecedented fashion. It is naive to imagine that the enemy powers will not exploit these techniques to the full. The tragic events of Pearl Harbor have created in the public mind a consciousness, whatever the character of the evidence, that the dangers from internal enemies cannot be ignored." (p. 13.)

"Various arguments were adduced in testimony before the committee why the Japanese, both citizen and alien, should be evacuated from the west coast. Most commonly it was said that homogeneity of racial and cultural traits made it impossible to distinguish between the loyal and the disloyal. Law enforcement officials were particularly concerned lest enraged public sentiment and possibly mob action, occasioned by reverses in the Pacific war theater, would work injury to innocent and guilty alike. Protection for Japanese residents as well as for the whole Nation was said to require the immediate evacuation of all Japanese." (p. 14.)

- B. The military commander as a matter of law was entitled to employ the precautionary and preventive measures of curfew and exclusion without conducting individual hearings.

One of appellant's principal contentions is that he and the others evacuated with him were denied due process because the military authorities should have conducted individual hearings to determine the loyalty of persons to be evacuated. (Tr. p. 41.) As previously

noted the ready answer to this suggestion is that this Court will not attempt to judge the merits of the procedure by which the Commanding General met the military situation as against another method which might have been employed. The Court will have performed its function when it has determined that the Commanding General acted in good faith and that the adoption of the method of group evacuation was within the range of honest judgment which military commanders are allowed in meeting military problems within their jurisdiction. (*Sterling v. Constantin*, 287 U. S. 378 (1932); *Moyer v. Peabody*, 212 U. S. 78 (1909); *Stewart v. Kahn*, 11 Wall. 493 (1870).)

Because the Japanese population has remained apart from the rest of the people of the Pacific Coast and because inscrutability is a definite racial characteristic, it was at least doubtful whether any safe and practical measure for determining prospective disloyalty could have been employed.

Regarding the lack of an adequate test, former Attorney General Earl Warren of California testified before the Tolan Committee as follows:

"We believe that when we are dealing with the Caucasian race we have methods that will test the loyalty of them, and we believe that we can, in dealing with the Germans and the Italians, arrive at some fairly sound conclusions because of our knowledge of the way they live in the community and have lived for many years. But when we deal with the Japanese we are in an entirely different field and we cannot form any opinion that we believe to be sound."<sup>18</sup>

<sup>18</sup>Tolan Committee Hearings, Part 29, p. 11015.

The Attorney General of California is the chief law enforcement officer of the State. (Calif. Const., Art. V, Sec. 21.) The above statement, therefore, representing the opinion of the law enforcement officers who have observed the Pacific Coast Japanese for many years, is particularly significant.

Only a brief consideration of the task of investigating and holding hearings for 100,000 people will reveal the difficulties and scope of the task and the time required. From the matters already discussed it is evident that there were many pro-Japanese influences which might have offset the loyalty to this country which otherwise might be assumed to exist. To judge such an imponderable thing as loyalty in these cases would call for a consideration of those influences and experiences of a lifetime which go to make up the final spirit and feeling of loyalty to a country. Now, if the immediate danger has been removed and time has become available for thorough investigation, it may be possible to devise an adequate test and to separate the loyal from the disloyal. However, this would not mean that General DeWitt, in the face of the emergency, should have taken the time or have resolved doubts against employing the precaution of removing the entire group in order to secure the safety of the military area."

"\* \* \* it can hardly be said to be unreasonable to go on the assumption that among the Japanese communities along the coast there is enough dis-

"Recent developments at Relocation Centers, where admittedly disloyal elements have revealed themselves, indicate that previous checks for disloyalty were misleading. (News report, San Francisco Examiner, May 1, 1943, *supra* note 43.)

loyalty, potential if not active, to make it expedient to evacuate the whole. Perhaps ninety-nine peaceful Japanese plus an unascertainable one who would signal to a submarine would add up to a sufficient reason for evacuating. If it were a matter of punishment, this sort of reasoning would be brutal. But no one supposes that evacuation, any more than detention under Regulation 18B in England, is *defensible on any other basis than prevention*. When one considers the irreparable consequences to which leniency might lead, the inconvenience, great though it may be, seems only one of the unavoidable hardships incident to the war. In this judgment General DeWitt doubtless acted on such intelligence as was available, and, it is to be remembered, with the express sanction of the President and the Congress." (Fairman, *The Law of Martial Rule and the National Emergency*, 55 Harv. L. R. 1254, 1302 (June, 1942).)

The curfew and evacuation orders were issued solely as a military measure to insure the defense of the area and to prevent sabotage and espionage rather than waiting to punish such acts after the injury has occurred. As Professor Fairman has acutely observed:

"A commander should not be put in a worse position legally because he has contrived to keep disaster at arm's length." (Fairman, *The Law of Martial Rule and the National Emergency*, 55 Harv. L. R. 1254, 1288 (June, 1942).)

m. The War Department altered DeWitt's Final Report in anticipation of litigation surrounding the curfew, exclusion, and internment program. The alterations created a more defensible justification for the treatment of Japanese Americans. The attempt to destroy all evidence of the initial version of the Final Report and its alteration was deliberately withheld from the Justice Department. The Justice Department, after discovering the War Department's actions, failed to inform either the Petitioner or the Courts.

Petition Exhibit G.

Telex dated April 26, 1943.

Telex dated April 27, 1943.

Telex dated May 3, 1943.

Telex dated May 5, 1943.

Paraphrase of Radio No. 2846.

Paraphrase of Secret Radio No. 2540.

Transcript of telephone conversation, May 27, 1943.

Letter to John J. McCloy from Gen. DeWitt,  
June 15, 1943.

~~CONFIDENTIAL~~

(CLASSIFICATION)

DATE APRIL 26 1943

(URGENT) (URGENT)

(OPERATIONAL PRIORITY)

(PRIORITY)

(ROUTINE)

(DEFERRED)

SEND THE FOLLOWING

HEADQUARTERS WESTERN DEFENSE COMMAND AND FOURTH ARMY  
PRESIDIO OF SAN FRANCISCO, CALIF.

~~SENT IN CONFIDENTIAL CODE~~

319.1

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CG ADV CP ADC ALS

INITIALS

JWB/sm

FINAL REPORT ON EVACUATION IS SUBJECT STOP FOR GEN DEWITT FROM BARNETT  
STOP CS0405 STOP BENDETSEN INFORMS ME HE CONFERRED ON FINAL REPORT IN  
WASHINGTON TODAY STOP HE WAS GIVEN ORAL DIRECTIVE TO REVISE THE REPORT  
WITH THE ASSISTANCE OF CAPT HALL STOP HE MADE THE POINT THAT HE WAS IN  
NO POSITION TO DO THIS SINCE IT WAS YOUR REPORT STOP BENDETSEN TOLD  
ME THAT HE COULD RECOMMEND THE ACCEPTANCE OF SOME PARTS OF THE SUGGESTED  
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EVACUATION STOP THE PRINCIPAL ONE OF THESE WAS THAT LOYALTY COULD  
NOT BE DETERMINED AND FOR THAT REASON MASS EVACUATION WAS ORDERED  
STOP HE REQUESTED INSTRUCTIONS STOP I TOLD HIM IT WAS YOUR REPORT  
AND THAT THE WAR DEPARTMENT COULD NOT TELL YOU WHAT TO SAY STOP  
HE HAD MADE THAT POINT AND SAID THAT THE INSTRUCTIONS HE RECEIVED  
WERE TO MAKE A DRAFT OF THE PROPOSED REVISION FOR PRESENTATION TO  
YOU FOR ACCEPTANCE OR REVISION STOP IF YOU HAVE ADDITIONAL INSTRUCTIONS  
I WILL TRANSMIT THEM TO BENDETSEN BY TELEPHONE

OFFICIAL:

~~SENT IN CONFIDENTIAL CODE~~

NO SIG

APR 26 1943 8 18 PM

JOHN C. WOOD  
2nd Lieut., A.G.D.  
Asst. Adjutant Gen.

~~CONFIDENTIAL~~

APPENDIX NO. 1

~~CLASSIFIED MESSAGE ONLY~~



Signal Corps, United States Army

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COMMANDING GENERAL

WEST DEF COMD & 4TH ARMY

PRES OF SF CALIF

FINAL REPORT OF EVACUATION IS SUBJECT STOP FOR GENERAL BARNETT STOP  
DEWITI SENDING STOP MY REPORT AS SIGNED AND SUBMITTED TO CHIEF OF  
STAFF WILL NOT BE CHANGED IN ANY RESPECT WHATSOEVER EITHER IN SUBST-  
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If reply to this message is made by  
radio or telegraph, please note on  
its face for the information of the  
message center;

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"The making of an exact copy of this message is required for the Western Defense Command, without delay."  
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CLASSIFICATION

DATE MAY 5 1945

SEND TO: THE POLYLINE

2670

HEADQUARTERS, WESTERN DEFENSE COMMAND AND FOURTH ARMY

CG ADV CP ADC ALASIA

~~SECRET IN SECRET CODE~~

WCCLOY ANDIOUS THAT HENDRISEN CONFEE WITH YOU AT ONCE CONCERNING

CHANGES IN FINAL REPORT SUGGESTED BY ASSISTANT SECRETARY WHICH THE LATTER FEELS YOU MAY WISH TO MAKE ONCE THE BASIS HAS BEEN FULLY EXPLAINED PERIOD FOR DEDUCT FROM BARBETT PERIOD SECRETARY CONVINCED FINAL REPORT IMPORTANT TO GOVERNMENT CASE IN SUPREME COURT AND THAT TIME IS SHORT PERIOD HE DOES NOT ASK ANY REVISIONS BE MADE UNLESS YOU CONSIDER THEM AS NOT REPEAT NOT COMPROMISING YOUR PERSONAL VIEWS PERIOD IN SUBSTANCE THESE SUGGESTIONS RELATE TO CONFINING SCOPE OF REPORT TO FACTUAL STATEMENT INCLUDING REASONS FOR EVACUATION SUBSAGATING YOUR PROPOSALS FOR FUTURE DISPOSITION OF EVACUEES AND PLACING LATTER IN SEPARATE DOCUMENT PERIOD HANDEISEN HERE PERIOD SHOULD HE FOLLOW MCCLLOY'S WISH QUEST IF REPORT IS TO BE USED IN TEST CASE THE QUESTION MUST BE SETTLED AT ONCE

SETTLED AT ONCE

*[Signature]*

W. H. T. ADLER  
Lieut. Colonel, AGD  
Assistant Adjutant General

Adjutant General

MAY 3 1963  
2 34 PM

Telex Dated May 3, 1943.

**SECRET**

~~MESSAGE ONLY~~

MAY 5 1943 2-20

# Signal Corps, United States Army

MAY 5 1943

Received at

~~RECEIVED IN SECRET CODE~~

PRIORITY

#2540

ADV CP HQ ADC ADAK ALS

MAY 5, 1943

O P E R A T I O N A L P R I O R I T Y

COMMANDING GENERAL

WEST DEF COMD & 4TH ARMY

PRES OF SF CALIF

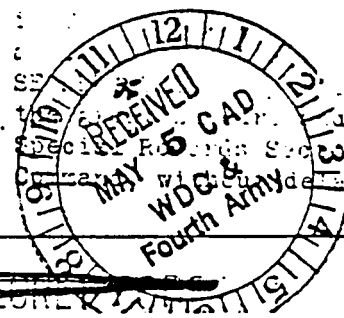
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FINAL REPORT ON EVACUATION IS SUBJECT STOP TO BARNETT FROM DEWITT  
STOP ATTEMPTED IN PREVIOUS RADIO TO MAKE MY POSITION CLEAR THIS  
SUBJECT STOP HAVE NO DESIRE TO COMPROMISE IN ANY WAY GOVT CASE IN  
SUPREME COURT AND DO NOT UNDERSTAND HOW SUBSTANCE AND FORM OF REPORT  
AS SUBMITTED CAN HAVE THIS EFFECT STOP BOTH YOU AND BENDETSSEN KNOW  
MY CREWS AND MY ATTITUDE STOP DO NOT UNDERSTAND MCCLOYS PROPOSAL  
STOP REPORT IS NOW FACTUAL AND I SOLEMNLY SEE MY VIEWS AND ACTIONS  
DETERMINED AS NECESSARY AT TIME OF EVACUATION WEAKENED OR UNDERMINED  
IF REPORT CHANGES STOP I CANNOT CONSCIENTIOUSLY CHANGE OR PUT INTO

If reply to this message is made by  
radio or telegraph, please note on  
the face for the information of the  
receiving center;

This is a reply to No. #2540

RT CAD



FILE

#C.D. 5-10-43

~~RECEIVED IN SECRET CODE~~

Telex Dated May 5, 1943.

May 1943

~~SECRET~~

Paraphrase of radio No. 2846 to Chief of Staff, WDC & 4A, from Assistant Chief of Staff, CAD.

1943  
3 19 1

ADJ. GEN.  
AMC-021, WDC  
MAY

BRIGADIER GENERAL JAMES W. BARNETT  
WDC & FOURTH ARMY  
P OF SF

GENERAL DEWITT DIRECTS THAT FINAL REPORT OF EVACUATION BE REVISED AS INDICATED BY COLONEL BENDETSEN TO MAJOR MOFFITT IN MAJOR MOFFITT'S COPY OF REPORT TOGETHER WITH STYLE CHANGES GIVEN TO MAJOR MOFFITT ORALLY. PD GALLEY PROOFS OF REVISED REPORT WILL BE OBTAINED AT ONCE AND REPORT WILL BE IN FORM FOR DEWITT'S APPROVAL AND EXECUTION UPON DEWITT'S RETURN. PD YOU ARE PROHIBITED FROM SUBMITTING TO ASSISTANT SECRETARY OF WAR ANY DRAFTS OF AMENDED REPORT PD FURTHER THE REVISED REPORT WILL NOT BE GIVEN TO ANYONE UNTIL DEWITT FINALLY APPROVES PD ALL COPIES HERETOFORE SENT TO THE WAR DEPARTMENT PAREN NOT INCLUDING INCLOSURES CLOSE PAREN WILL BE CALLED IN BY YOU AND YOU WILL HAVE WAR DEPARTMENT RECORDS OF RECEIVING REPORT DESTROYED INASMUCH AS SUCH REVISION AS IS FINALLY SENT TO WAR DEPARTMENT WILL HAVE A LATER DATED TRANSMITTAL LETTER PD SEND MESSAGE TO BENDETSEN AT ADC ADVANCED COMMAND POST BEFORE CLOSE OF BUSINESS NINTH OF MAY SUBMITTING YOUR SUGGESTED REWRITING OF SECOND PARAGRAPH OF TRANSMITTAL LETTER AND THAT PART OF REPORT APPEARING IN SECOND CHAPTER PAGE NINE GREEN NUMBER 27

BENDETSEN

CAD  
FILE

~~SECRET~~

- APPENDIX NO. 1

~~SECRET~~

May 5, 1943

Paraphrase of Secret radio #2540  
Fr CG, WDC-4A, at Advance Command Post,  
Alaska, to General Barnett

REFERENCE MY EARLIER TELEGRAM IN WHICH I SOUGHT TO CLARIFY MY STANDPOINT  
IN REGARD TO FINAL EVACUATION REPORT. I DO NOT SEE HOW FORM AND CONTENT  
OF FINAL EVACUATION REPORT SUBMITTED CAN COMPROMISE GOVERNMENT CASE  
IN SUPREME COURT AND DO NOT WISH THIS TO HAPPEN. PROPOSAL OF J. J.  
MCCLOY NOT CLEAR. BENDETSEN AND BARNETT KNOW MY STANDPOINT AND IDEAS.  
IN ORDER THAT I MAY BE INFORMED AND TAKE CARE OF MATTER HAVE BENDETSEN  
FLY TO ANCHORAGE REPORTING TO ME FROM THERE TO FIND WHERE TO MEET ME.  
REPORT IS FACTUAL. MY ACTS AND ATTITUDE DEEMED ESSENTIAL AT TIME OF  
EVACUATION AND IF REPORT CHANGED I SINCERELY FORMER UNDERMINING OR  
WEAKENING. TO CHANGE REPORT OR PREPARE ANOTHER REPORT GIVING PROPOSALS  
FOR DISPOSITION OF EVACUEES IN FUTURE I CANNOT CONSCIENTIOUSLY DO  
WITHOUT RENDERING INVALID MY DUTIES, RESPONSIBILITIES AND PROGRAM.

~~SECRET~~

# Signal Corps, United States Army

773

Received at

~~RECEIVED IN SECRET CODE~~

#2540

PAGE #2

PRIORITY

SEPARATE DOCUMENT PROPOSALS FOR FUTURE DISPOSITION OF EVACUEES WITHOUT  
BY MY OWN ACT INVALIDATING MY ASSIGNED MISSION AND RESPONSIBILITIES  
THEREUNDER STOP IF TIME PERMITS SEND BENDETSEN BY AIR TO ANCHORAGE  
REPORTING TO ME FROM THERE SO HE WILL KNOW WHERE TO MEET ME AND I  
CAN BE FULLY INFORMED AND SETTLE THE MATTER

NOSIG

77 5 1943 2 20

If reply to this message is made by  
radio or telephone, please place on  
its face for the information of the  
message center;

This is a reply to #2540

RT

"The subject of this message is a copy of a letter  
is a copy of a letter from the Signal Corps  
at the Signal Corps, United States Army, marked  
SECRET. This letter is a copy of a letter with  
the grade at the Signal Corps, United States Army, returned to  
Special Records Section, Western Defense  
Command, without delay."

~~RECEIVED IN SECRET CODE~~

APPENDIX NO. 1

HEADQUARTERS WESTERN DEFENSE COMMAND AND FOURTH ARMY  
OFFICE OF THE COMMANDING GENERAL  
PRESIDIO OF SAN FRANCISCO, CALIFORNIA

#974 /pwt  
1315  
27 May 43.

Transcript of telephone conversation between General DeWITT and Mr. McCLOY, Assistant Secretary of War, Washington, D.C.

General DeWitt: How do you do, Mr. Secretary.

Mr. McCloy: Yes, General.

DeW: There is one thing I forgot . . . I had made those changes in actions in the report that you spoke to Bendetsen about and I went over them this morning and they have gone to the printer again and they have all been made as suggested. I am certain that they will be allright. I think that if we can get the number, we ought to print the larger number now if you can give me the number that you think ought to be printed.

McC: I could do that. I better check up again . . . I have somewhere the figure that we had tentatively set up for that. I'll call Bendetsen back and tell him what that figure was.

DeW: Fine.

\* \* \* \*

Transcript of telephone  
conversation, May 27, 1943.

My dear Mr. McCloy:

I am enclosing for your personal use two bound copies of my Final Report as revised covering the execution of all persons of Japanese ancestry from certain military areas of Western Defense Command during 1942. These are forwarded in substitution for those previously sent you.

I am also forwarding revised copies of the Final Report for the personal use of the Secretary of War and the Chief of Staff in lieu of those previously sent to them.

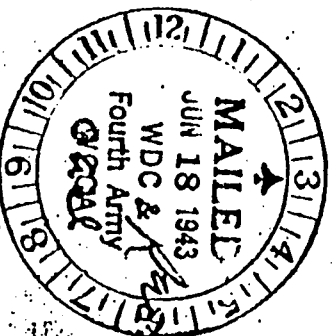
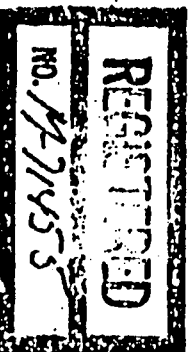
With every good wish, I am

Sincerely,

J. L. DEWITT,  
Lieutenant General, U. S. Army.  
Commanding.

Honorable John F. McCloy,  
Assistant Secretary of War,  
War Department,  
Washington, D. C.

3 Incls.



APPENDIX NO. 1

REQUEST FOR JUDICIAL NOTICE-206

Letter to John J. McCloy from  
Gen. Dewitt, June 15, 1943.



n. The Government in its brief to the United States Supreme Court in Hirabayashi v. United States, did not inform the Court of or indicate the existence of information which it knew existed which contradicted the allegations that military necessity required the curfew, exclusion, and internment of persons of Japanese ancestry.

U. S. Brief.

Petition Exhibits B, Q, V, W, X, Y, Z.

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 870

GORDON KIYOSHI HIRABAYASHI

—VS.—

THE UNITED STATES OF AMERICA.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

CHARLES FAHY,  
*Solicitor General.*

EDWARD J. ENNIS,  
*Director, Alien Enemy Control Unit.*

ARNOLD RAUM,  
*Special Assistant to the Attorney General.*

JOHN L. BURLING,  
NANETTE DEMBITZ,  
LEO GITLIN,  
*Attorneys.*

APPENDIX NO. 1 -

REQUEST FOR JUDICIAL NOTICE-208

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*In the Supreme Court of the United States*

OCTOBER TERM, 1942

No. 870

GORDON KIYOSHI HIRABAYASHI

v.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court for the Western District of Washington (R. 9-18) is reported in 46 F. Supp. 657. The opinion of Circuit Judge Denman, dissenting from the certification of questions by the Circuit Court of Appeals, is not reported.

JURISDICTION

The certificate of questions of law upon which the Circuit Court of Appeals desired instruction for the decision of this case was filed on March 30, 1943. On April 5, 1943, this Court directed that the entire record be certified up to this Court

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so that the whole matter in controversy might be considered. The jurisdiction of this Court rests on Section 239 of the Judicial Code as amended by the Act of February 13, 1925.

#### QUESTIONS PRESENTED

The defendant, an American citizen of Japanese ancestry, was convicted under the Act of March 21, 1942, which made it a misdemeanor to violate restrictions prescribed by a military commander for a military area which had been designated as such in accordance with an executive order of the President. The violations consisted of wilful failure to observe an 8 P. M. to 6 A. M. curfew and to report at a designated place in connection with the exclusion of all persons of Japanese ancestry from that area. The validity of the conviction raises the following questions:

1. Whether the curfew and exclusion measures were within the war powers granted by the Constitution to Congress and the President.
2. Whether the exclusion of all persons of Japanese ancestry as a group was an unreasonable classification and denial of due process under the Fifth Amendment.
3. Whether the Act of March 21, 1942, making it a misdemeanor to violate orders of military commanders involves an invalid delegation of legislative power.

#### CONSTITUTION, STATUTES, ORDERS, AND PROCLAMATIONS INVOLVED

The various provisions of the Constitution, statutes, orders and proclamations involved are set forth in Appendices A, B, C, and D, *infra*, pp. 83-124.

The important statutory provisions, orders and proclamations may be summarized chronologically as follows:

The Joint Resolution of Congress of December 8, 1941, declared a state of war to exist with the Empire of Japan, authorized and directed the President to employ the entire naval and military forces and the resources of the Government to carry on the war and pledged all of the resources of the country to bring the conflict to a successful termination.

On December 11, 1941,<sup>1</sup> the eight Western States and the Territory of Alaska were activated by the War Department as the Western Defense Command and designated as a "theater of operations." An area approximately 100 miles wide extending from the Canadian border along the Pacific Coast to the California-Mexican border was declared to be a "combat zone."<sup>2</sup>

<sup>1</sup> General Order No. 1, December 11, 1941. See record in *Yasui v. United States*, No. 871, pp. 79-80.

<sup>2</sup> "The theater of war comprises those areas of land, sea, and air which are, or may become, directly involved in the conduct of the war.

"A theater of operations is an area of the theater of war necessary for military operation and the administration and



On February 19, 1942, the President issued Executive Order No. 9066 in which he recited the necessity for protection against espionage and sabotage and in which he authorized the Secretary of War and Military Commanders designated by him, whenever such action was necessary—

\* \* \* to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, 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 \* \* \*.

Pursuant to the aforesaid Executive Order and the authority vested in him by the Secretary of War, Lieutenant General John L. DeWitt, Commanding General of the Western Defense Command and Fourth Army, in Public Proclamation No. 1, *infra*, p. 97, on March 2, 1942, declared the Pacific Coast of the United States (which area is included in the Western Defense Command) to be, because of its geographical location—

supply incident to military operation. The War Department designates one or more theaters of operation.

“A combat zone comprises that part of a theater of operations required for the active operation of the combatant forces fighting” (Field Service Regulations—Operations, War Department, May 22, 1941, Field Manual 100-5, pars. 1-2).

\* \* \* particularly subject to attack, to attempted invasion by the armed forces of nations with which the United States is now at war, and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations.

This proclamation designated certain areas within the Western Defense Command as “Military Areas” and “Military Zones” and declared that “such persons or classes of persons as the situation may require” would, by subsequent proclamation, be excluded from certain of these areas, and further declared that with regard to other of said areas “Certain persons or classes of persons” would be permitted to enter or remain therein under certain regulations and restrictions to be subsequently prescribed.

Public Proclamation No. 2, *infra*, p. 101, dated March 16, 1942, issued by General DeWitt, designated further Military Areas and Military Zones, and contained a recital similar to the one in Public Proclamation No. 1 concerning the exclusion of persons or classes of persons, from these areas, and regulations and restrictions applicable to persons remaining within them.

Executive Order No. 9102, dated March 18, 1942 (7 F. R. 2165), established the War Relocation Authority in the Office for Emergency Management in the Executive Office of the President;

authorized the Director of the War Relocation Authority to regulate and effectuate a program for the removal, relocation, maintenance, and supervision of persons from areas designated pursuant to Executive Order No. 9066; and authorized the Director to prescribe regulations necessary or desirable to promote effective execution of the program.

The Act of March 21, 1942, *infra*, p. 86, provides that whoever shall enter, remain in, leave or commit any act in any military area or zone prescribed under the authority of Executive Order of the President by the Secretary of War or a military commander designated by him, contrary to the restrictions applicable to any such area or zone, or contrary to the order of the Secretary of War or any such military commander shall, if it appears that he knew or should have known of the restrictions and order and his act was in violation thereof, be guilty of a misdemeanor.

Public Proclamation No. 3, *infra*, p. 105, dated March 24, 1942, recited that the present situation within the previously described Military Areas and Zones required—

as a matter of military necessity the establishment of certain regulations pertaining to all enemy aliens and all persons of Japanese ancestry within said Military Areas and Zones \* \* \*

and this Proclamation established the following regulations:

1. From and after 6:00 A. M., March 27, 1942, all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the geographical limits of Military Area No. 1, or within any of the Zones established within Military Area No. 2, as those areas are defined and described in Public Proclamation No. 1, dated March 2, 1942, this headquarters, or within the geographical limits of the designated Zones established within Military Areas Nos. 3, 4, 5, and 6, as those areas are defined and described in Public Proclamation No. 2, dated March 16, 1942, this headquarters, or within any of such additional Zones as may hereafter be similarly designated and defined, shall be within their place of residence between the hours of 8:00 P. M. and 6:00 A. M., which period is hereinafter referred to as the hours of curfew. \* \* \*

Beginning March 24, 1942, General DeWitt also issued a series of Civilian Exclusion Orders, pursuant to the provisions of Public Proclamation No. 1, each such order relating to a specified area within the territory of his command. The order applicable to the defendant herein was Civilian Exclusion Order No. 57, issued May 10, 1942, *infra*, p. 119; it declared that from and after 12 o'clock noon, May 16, 1942, all persons of

Japanese ancestry be excluded from a specified portion of Military Area No. 1 in Seattle, Washington, including the place of residence of the defendant, and required a responsible member of each family and each individual living alone affected by the order, to report on May 11 or 12, 1942, to a designated Civil Control Station in Seattle, Washington.

Meanwhile, General DeWitt had issued Public Proclamation No. 4 on March 27, 1942, which recited the necessity of providing for the welfare and assuring the orderly evacuation and resettlement of the Japanese, and provided that commencing midnight March 29, 1942, all Japanese were prohibited from leaving the military area until future orders would permit or direct.

#### STATEMENT

The defendant was found guilty under an indictment for violating the Act of March 21, 1942 (Public Law No. 503, 77th Congress, 2d Sess.). The indictment had been returned in the United States District Court for the Western District of Washington, and was in two counts. The first count charged that the defendant, a person of Japanese ancestry residing in Seattle, Kings County, Washington, failed to report to a designated Civil Control Station in Seattle on May 11 or 12, 1942, as required by the terms of Civilian Exclusion Order No. 57 of May 10, 1942, *infra*, p. 119, issued by Lieutenant General John L. DeWitt, Commanding

General of the Western Defense Command and Fourth Army, and that the defendant knew or should have known of the existence and extent of the order. (R. 1-2.)

The second count of the indictment charged that the defendant on or about May 4, 1942, between the hours of 8 p. m. and 6 a. m., was not within his place of residence as required by General DeWitt's Public Proclamation No. 3 of March 24, *infra*, p. 105, effective on and after 6 a. m. March 27, 1942, for all persons of Japanese ancestry, and that the defendant knew or should have known of the existence and extent of those restrictions (R. 2-3).

An amended demurrer (R. 5-8) and a plea in abatement (R. 8-9) alleging that the defendant never was a subject of, and never bore allegiance to, the Empire of Japan, were overruled and denied (R. 18-19).

The Government's evidence showed that the defendant had failed to report to the Civil Control Station on May 11 or May 12, 1942, to register for evacuation, and that the defendant had admitted his failure to do so by reason of a conviction that he would be waiving his rights as an American citizen (R. 32). The evidence also showed that for like reason he was away from his residence after 8 p. m. on May 9, 1942 (R. 33).

The defendant offered to prove that his parents were born in Japan of Japanese ancestry; that subsequent to their conversion in the Christian reli-

gion they came to the United States; that they were married in the United States and have never returned to Japan (R. 31-32); that the defendant was born in Seattle on April 23, 1918, and educated in the public schools and at the time of his arrest was a senior at the University of Washington majoring in mathematics (R. 34); that the defendant has never been to Japan and has never had any connection with the Japanese living in Japan; that the defendant has been active in the Boy Scout Movement and the University Y. M. C. A. (R. 34); that the defendant honestly believed that the exclusion order and curfew regulation discriminated against him purely on the basis of race or color and were unconstitutional and that for him to obey them voluntarily would be a waiver of his constitutional rights; that the defendant believed that it was his right and his duty as an American citizen to refuse to obey the exclusion order and the curfew regulation and to defend the prosecution in order to have the constitutional questions determined. (R. 34-35.)

The defendant was found guilty on both counts (R. 19), and was sentenced to three months imprisonment on each count, the execution of the sentence on both counts to run concurrently (R. 24).

#### FACTS UNDERLYING THE CHALLENGED ORDERS AND PROCLAMATIONS

The record in this case does not contain any comprehensive account of the facts which gave rise to the exclusion and curfew measures here

involved. These facts, which should be considered in determining the constitutionality of the Act of March 21, 1942, as here applied, embrace the general military, political, economic, and social conditions under which the challenged orders were issued. These historical facts, which we shall endeavor to set forth, are of the type that are traditionally susceptible of judicial notice in considering constitutional questions,<sup>3</sup> and in particular, many of these facts appear in official documents, such as the contemporary Tolan Committee's reports (H. Rep. No. 1911 and No. 2124, 77th Cong., 2d Sess.), which are peculiarly within the realm of judicial notice.<sup>4</sup>

<sup>3</sup> See *Chastleton Corp. v. Sinclair*, 264 U. S. 543, 548; *Adkins v. Children's Hospital*, 261 U. S. 525, 560; *The Apollon*, 9 Wheat. 362, 374; *Mugler v. Kansas*, 123 U. S. 623, 622; *Austin v. Tennessee*, 179 U. S. 343, 348; *Schaefer v. United States*, 251 U. S. 466, 472-473; *Meyer v. Nebraska*, 262 U. S. 390, 403; *Liggett Co. v. Baldridge*, 278 U. S. 105, 113-114; *Alberto v. Nicolas*, 279 U. S. 139; *The Atchison, etc. Ry. Co. v. United States*, 284 U. S. 248, 260; *Central Kentucky Co. v. Comm'n*, 290 U. S. 264, 274; *Ashwander v. Valley Authority*, 297 U. S. 288, 327; *West Coast Hotel Co. v. Parrish*, 300 U. S. 379, 399; *Labor Board v. Jones & Laughlin*, 301 U. S. 1; *Ohio Bell Telephone Co. v. Comm'n*, 301 U. S. 292, 301. See also Wigmore, *Evidence* (3rd ed. 1940), sec. 4L, 2555; Barnett, *External Evidence of the Constitutionality of Statutes*, 58 Am. L. Rev. 88 (1924); Bikle, *Judicial Determination of Questions of Fact Affecting the Constitutional Validity of Legislative Action*, 38 Harv. Law Rev. 6 (1924).

<sup>4</sup> See *Hoyt v. Russell*, 117 U. S. 401, 405; *Jones v. United States*, 137 U. S. 202, 216; *Brown v. Piper*, 91 U. S. 37, 42; *Shapleigh v. Mier*, 299 U. S. 468, 475; *Labor Board v. Jones & Laughlin*, 301 U. S. 1, 43; *Arizona v. California*, 283 U. S. 423, 453; *United States v. Carolene Products Co.*, 304 U. S.

THE MILITARY SITUATION ON THE PACIFIC COAST

The exact and detailed military situation affecting the Pacific Coast after the attack on Pearl Harbor, which was within the personal and official knowledge of the President, the Secretary of War and General DeWitt when it was determined that the entire Japanese population should be evacuated, was a closely guarded military secret. It was not a matter of public knowledge then or now, and probably cannot be a matter of public knowledge at least until the military authorities decide that there is no possible military risk. However, the facts about the military situation which were then publicly known or have since been disclosed may be stated in support of the action taken.

*Japanese Victories.*—On the morning of December 7, 1941, the Japanese attacked the United States Naval Base at Pearl Harbor without warning. Simultaneously they struck against Malaysia, Hong Kong, the Philippines, and Wake and Midway Islands.

On the day following, the Japanese Army invaded Thailand. Shortly thereafter, the British battleships "H. M. S. Wales" and "H. M. S. Repulse" were sunk off the Malay Peninsula. The

144, 148-150; *H. J. Heinz Co. v. Labor Board*, 311 U. S. 514, 523-524; *Nebbia v. New York*, 291 U. S. 502, 516-521; *Muller v. Oregon*, 208 U. S. 412, 419-421; *Phelps Dodge Corp. v. Labor Board*, 313 U. S. 177, 183-184; cf. *Jacobson v. Massachusetts*, 197 U. S. 11, 31-34. See also Wigmore, *Evidence* (3rd ed. 1940), Sec. 2567a; Thayer, *Preliminary Treatise on the Law of Evidence* (1898), pp. 307-308.

enemy's successes continued without interruption. On the 13th of December, Guam was taken, and on December 24th and 25th, respectively, the Japanese captured Wake Island and occupied Hong Kong. On January 2nd Manila fell and on February 10th Singapore, Britain's great naval base in the East, fell; on the 27th of February the battle of the Java Sea resulted in a naval defeat to the United Nations. Thirteen United Nations' warships were sunk and one damaged, whereas Japanese losses were limited to two warships sunk and five damaged.

On the 9th of March the Japanese forces established full control over the Netherlands East Indies; Rangoon and Burma were occupied. Bataan and Corregidor, which were then under attack, subsequently gave way on April 9 and May 6, respectively. The Philippines had completely fallen.

Thereafter, on June 3rd, Dutch Harbor, Alaska, was attacked by Japanese carrier-based aircraft. And on June 7th, contemporaneously with an attack on Midway the Japanese gained a foothold on Attu and Kiska Islands,<sup>a</sup> from which they have not yet been dislodged. Moreover, on two occasions, once in February and once in June 1942, the coasts of California and Oregon, respectively, had been shelled.<sup>a</sup> The extent of the danger can be seen from the contem-

<sup>a</sup> *New York Times* for June 13, 1942, p. 1, col. 8; *World Almanac* for 1943.

<sup>a</sup> *New York Times*, June 23, 1942, p. 1, col. 4; p. 9, col. 4.

poraneous attempt of the Japanese to occupy Midway Island in June. If that attack had succeeded and Midway Island had fallen, Hawaii would have again been under the immediate threat of occupation, and peril to the West Coast itself would have mounted.

Although the effect of the Japanese attack of December 7, 1941, on the security of the continental United States for military reasons was not fully brought home to the American public at the time, the extent and the significance of the damage were revealed by the Secretary of the Navy in December 1942.<sup>7</sup> In explanation of the Secretary's report on the damage, it was stated that the Japanese had a naval superiority of three or four to one in the Pacific Ocean following the Pearl Harbor attack, and that the Japanese could have seized Oahu Island, on which Pearl Harbor is located, if they had realized the full extent of the inability of the United States to defend itself. The Secretary pointed out that a follow-up attack had been feared.<sup>8</sup> The importance to the security of the continental United States of the damage done in the at-

<sup>7</sup> *New York Times* for December 6, 1942, p. 69, col. 2 (report of Secretary of the Navy Knox on the extent of the damage at Pearl Harbor); see previous statement by Secretary Knox, *New York Times* for December 16, 1941, p. 1, col. 7; p. 7, col. 2; *New York Times* for December 18, 1941, p. 2, col. 3.

<sup>8</sup> *New York Times* for December 6, 1942, p. 71, col. 2; p. 69, col. 3.

tack on Hawaii is underlined by the facts that the Island of Oahu constituted the largest naval base of the United States, and probably its strongest fortified area of any nature, and that it was the last stronghold of defense lying between Japan and the West Coast.<sup>9</sup>

Accordingly, at the time of the initiation of the evacuation program here in issue, it was the utmost military importance to prepare against an invasion of the Pacific Coast. It was incumbent to consider whether any condition existed within the West Coast area which might obstruct its successful defense in the event of an attempted invasion. There also was a danger, even in the absence of attempted invasion, of bombing raids on the West Coast, particularly in view of the American raid over Japan for which reprisal raids seemed possible.<sup>10</sup> Whether the success and effect of Japanese air raids might be influenced by internal conditions on the West Coast was plainly a consideration that had to be taken into account. Therefore, attention neces-

<sup>9</sup> See comment by Lt. Col. Franz J. Jonitz, Quartermaster Corps Headquarters, Hawaiian Department, in the *Quartermaster Review* for May-June 1941, p. 17; A. R. Elliott, *United States Defense Outposts in the Pacific*, Foreign Policy Reports (published by the Foreign Policy Association) for March 15, 1941, particularly p. 5; F. MacLiesh and C. Reynolds, *Strategy of the Americas* (1941), pp. 67, 71; George Fielding Eliot, *The Ramparts We Watch* (1938), pp. 161, 167-169; Hanson W. Baldwin, *Our Gibraltar in the Pacific*, *New York Times* for February 16, 1941, sec. 7, p. 4.

<sup>10</sup> See statements of Secretary of War Stimson in the *New York Times* for May 15, 1942, p. 14, col. 6; for May 29, 1942, p. 1, col. 5.

sarily had to be directed to the nature of modern warfare and the disposition of the inhabitants of that area toward the war.

*Fifth Column Threat.*—The threat of invasion and attack inevitably created apprehension of the use by the enemy of the so-called fifth column technique of warfare. The history of modern warfare prior to December 7, 1941, had amply demonstrated that one of the most effective weapons of an invader consists of sabotage and other forms of assistance afforded by sympathizers residing within the country under attack. Citizen and alien alike have been employed to carry on this type of warfare; and the full extent of such assistance is, of course, not subject to determination until the invasion or attack has been completed or is at least well under way.<sup>11</sup>

<sup>11</sup> See Col. William Donovan and Edgar Mowrer, *Fifth Column Lessons for America* (with introduction by Secretary of the Navy Knox) (published by the American Council on Public Affairs), pp. 6 *et seq.*; C. Porter, *Crisis in the Philippines* (1942), p. 140. See *Ex parte Liebmann* [1916], 1 K. B. 268, where it was stated (p. 278): "methods of warfare or ancillary to warfare have come into practice on the part of our foes which involve the honeycombing the realm with enemies, not only for the purpose of obtaining and dispatching information, but for purposes directly helpful to the carrying out of enterprises either actually warlike or eminently calculated to assist the successful prosecution of war." It was also stated that "the Courts are entitled to take judicial notice of certain notorious facts which may be summarized thus: 'There are a large number of German subjects in this country. This war is not being carried on by

*West Coast War Industries.*—The concentration of war facilities and installations on the West Coast made it an area of special military concern at any time and especially after the sensational Japanese successes. Important Army and Navy bases<sup>12</sup> and a large proportion of this nation's vital war production facilities were located in that region.

For the period from June 1940 through December 1941 contracts equalling in value approximately one-fourth of the total value of the major aircraft contracts let by the principal procurement agencies, were to be performed in the State of California. During the same period, California ranked second, and the State of Washington ranked fifth, of the States of the Union with respect to the total value of shipbuilding contracts to be performed therein. Of the total value of supply contracts of all types let by these agencies during this period, California was again in first place with about one-tenth of the total. The relative importance of California and Washington for the entire period from June 1940 to February 1943 in the combined production of aircraft and

naval and military forces only. Reports, rumours, intrigues play a large part. Methods of communication with the enemy have been entirely altered and largely used" (pp. 274-275).

<sup>12</sup> See MacLiesh and Reynolds, *op. cit. supra*, pp. 66-67; Eliot, *op. cit. supra*, p. 162.

ships is approximately the same as for the earlier period.<sup>13</sup>

In view of such concentration of defense facilities in this region and in view of the course of the war at that time, it was of the highest order of military importance to take into account the extent and nature of the Japanese residents on the West Coast and their possible cooperation with the enemy.

## B

### THE JAPANESE POPULATION WITHIN THE WESTERN DEFENSE COMMAND

Approximately 112,000 persons of Japanese descent, constituting almost ninety percent of the total number of approximately 126,000 of such persons in the United States, resided in the three West Coast states of California, Washington, and Oregon at the time of the promulgation

<sup>13</sup> See *State Distribution of War Supply and Facility Contracts—June 1940 through December 1941* (issued by Office of Production Management, Bureau of Research and Statistics, January 18, 1942); *State Distribution of War Supply and Facility Contracts—Cumulative through February 1943* (issued by War Production Board, Statistics Division, April 3, 1943). While complete information on the location of the individual plants is not available to the public, it has been stated that more than half of the airplane plants in the country were on or near the Pacific Coast and that many of the key aircraft plants were in Los Angeles County (See *New York Times* for February 26, 1942, p. 1, col. 3). See also C. F. McReynolds, *Condors and Humming Birds, Aviation* (August 1941), p. 80, as to the concentration of aircraft plants in Southern California.

of the military regulations here in issue. About two-thirds of the total number and of the number residing in these three states are native-born citizens of the United States.<sup>14</sup> Not only were the great majority of persons of Japanese descent within this country concentrated on the West Coast, but also they were concentrated within particular counties and cities in the three West Coast states, notably in or near Seattle, Portland, and Los Angeles.<sup>15</sup>

*Japanese Problem on the West Coast.*—Japanese immigration to this country had created special problems at least since the close of the nineteenth century when the Japanese began to come to this country in substantial numbers.<sup>16</sup> The intensity

<sup>14</sup> See *16th Census of the United States, for 1940, Population, 2nd Series, Characteristics of Population* (Dept. of Commerce)—for California, p. 10; for Oregon, p. 10; for Washington, p. 10; Fourth Interim Report of the Select Committee Investigating National Defense Migration, House of Representatives, House Report No. 2124, 77th Cong., 2d Sess., pp. 94, 96, hereinafter called the Tolan Committee Report.

<sup>15</sup> See *16th Census of the United States, supra*, for California, p. 61; for Oregon, p. 50; for Washington, p. 52.

<sup>16</sup> See Mears, *Resident Orientals on the American Pacific Coast* (1927), pp. 19-22, 39-43, 146-147, 156, 193; P. J. Treat, *Japan and the United States* (1928), p. 275; E. K. Strong, *The Second-Generation Japanese Problem* (1934), p. 1, ch. 4, p. 149; R. D. McKenzie, *Oriental Immigration*, 11 *Encyclopedia of Social Sciences* (1935), 490, 492-493; Hans Kohn, *Race Conflict*, 13 *Encyclopedia of Social Sciences* (1935), 36, 38; R. L. Buell, *Anti-Japanese Agitation in the United States*, 37 *Political Science Quarterly* (1922), 605, 608, et seq., 38 *Pol. Science Quarterly* (1923), 57, *passim*; B.



of the situation, involving their relationship to the rest of the community, has fluctuated under the stimulus of politics and some parts of the press.<sup>17</sup> The prevailing viewpoint towards them was expressed in state legislation prohibiting alien Japanese from owning land<sup>18</sup> and prohibiting inter-marriage with Caucasians,<sup>19</sup> and by Section 13c of the Federal Immigration Law of 1924 (c. 190, 43 Stat. 161, U. S. C., Tit. 8, Sec. 213) which, rather than allowing a quota to enter as in the case of non-Asiatics, excluded persons of the Mongolian race with limited exceptions. On the economic level, the Japanese could secure professional or skilled employment, with rare exceptions, only among others of the Japanese race and such employment opportunities were not sufficient to satisfy the number of Japanese who desired to engage in such work.<sup>20</sup>

Schrieke, *Alien Americans, A Study of Race Relations* (1936), pp. 24-36, 43.

<sup>17</sup> Mears, *op. cit. supra*, at p. 398; P. J. Treat, *op. cit. supra*, p. 281; S. L. Gulick, *The American Japanese Problem* (1914), p. 169; H. A. Millis, *The Japanese Problem in the United States* (1915), pp. 249-250; J. Pajus, *The Real Japanese California* (1937), p. 167.

<sup>18</sup> 1913 Cal. Stat. 206, 1 Deering Gen. Laws, Act 261; 5 Oregon Comp. Laws Ann. Sec. 61-102; Washington, Rem. Rev. Stat. Sec. 10581-10582.

<sup>19</sup> California Civil Code Sec. 60; 2 Idaho Code Ann Sec. 31-206; Revised Code of Montana, Sec. 5702; Arizona Code Ann. (1939), Sec. 63-107.

<sup>20</sup> Mears, *op. cit. supra*, p. 188 *et seq.*, particularly pp. 198-209, 402-403; Strong, *op. cit. supra*, pp. 1-11, c. 10; *Hearings Before the House Committee Investigating National Defense*

There was relatively little social intercourse between the Japanese and the white population,<sup>21</sup> and the Japanese were, in general, physically isolated with respect to their places of residence.<sup>22</sup>

The reaction of the Japanese to their lack of assimilation and to their treatment is a question which of course does not admit of any precise answer. It is entirely possible that an unknown number of the Japanese may lack to some extent a feeling of loyalty toward the United States as a result of their treatment,<sup>23</sup> and may feel a consequent tie to Japan, a heightened sense of racial solidarity, and a compensatory feeling of racial pride or pride in Japan's achievements.

*Alienage.*—An additional factor to be considered is the alienage of a substantial portion of the

*Migration*, 77th Cong. 2d Sess., hereinafter called Tolan Committee Hearings, pp. 11558, 11560.

<sup>21</sup> Millis, *op. cit. supra*, pp. 288-289; Gulick, *op. cit. supra*, pp. 169-171; Schrieke, *op. cit. supra*, pp. 39-40.

<sup>22</sup> Mears, *op. cit. supra*, at pp. 341-342, 348-349; Steiner, *The Japanese Invasion* (1917), pp. 104-107, c. 8.

<sup>23</sup> Iyenago and Sato, *Japan and the California Problem*, pp. 167-168, 172-177; Mears, *op. cit. supra*, pp. 106, 109-110, 153-154, 342; H. B. Johnson, *Discrimination Against the Japanese in California* (1907), *passim*; Ichihashi, *Japanese in the United States*, at p. 347. Cf. Strong, *op. cit. supra*, pp. 30-31.

On the other hand, an officer of the Japanese-American Citizens League expressed the view that he had not "become bitter" or lost faith as the result of discrimination and wished to combat it exclusively by democratic methods. Tolan Committee Hearings, pp. 11138, 11196-11197. And it was stated in H. Rep. No. 1911, 77th Cong., 2d Sess., p. 20, that "most of the evacuees are loyal to this country."

Japanese who were born abroad and are therefore ineligible for citizenship. *Ozawa v. United States*, 260 U. S. 178. Although the alien Japanese comprised only about one-third of the Japanese on the West Coast,<sup>24</sup> they represented a much greater proportion of those who were likely to be an active force in the community. While over 60% of the native-born population was under the age of 20, over 95% of the foreign-born population was between the ages of 19 and 70.<sup>25</sup> Furthermore, approximately 24% of the alien Japanese population on the West Coast had last arrived in the United States since 1929,<sup>26</sup> and thus have been in Japan during the period of its emphasis on nationalism and expansion. The influence of the first, or alien, generation on the second generation must be considered in the light of the preponderance of persons of mature years among the former as compared with the latter, and also in the light of the family relationships between persons of the two generations, for filial obligation and emphasis on the family unit constitute a conspicuous phase of Japanese culture. It may be noted, however, that because of the stress of the attempt by second-

<sup>24</sup> See *16th Census of the United States*, loc. cit. supra, note 14.

<sup>25</sup> Source of computation: Bureau of Census Figures contained in Hearings before the Subcommittee of the Committee on Military Affairs of the United States Senate on S. 444, Part I, 1943, p. 65.

<sup>26</sup> Tolan Committee Report, p. 96.

generation Japanese to become assimilated and because of language difficulties between children and parents who have not learned to speak English fluently, parents have in many cases been unsuccessful in attempting to perpetuate the view that their children should follow their guidance, and a marked cleavage between the viewpoints and associations of the first and second generations has been observed.<sup>27</sup>

As to those of the first generation, the fact of their alienage would tend to cause them to have some association with the Japanese Consulate.<sup>28</sup> And in general, the Japanese consuls were viewed as persons of considerable prestige by the alien population, and even some of the second generation seem to have regarded them as personages of some importance.<sup>29</sup> The possibility of Japanese propaganda through this means, as part of its preparations for any war against this country, is obvious.

<sup>27</sup> See Ichihashi, *op. cit. supra*, at p. 348; Tolan Committee Hearings, pp. 11148, 11223; Second Quarterly Report (June 1 to September 30, 1942) of the War Relocation Authority, pp. 55-58; Schrieke, *op. cit. supra*, pp. 36-39.

<sup>28</sup> See H. Rep. No. 1911, Preliminary Report of Select Committee Investigating National Defense Migration, House of Representatives, 77th Cong., 2d Sess., p. 17.

<sup>29</sup> See Miyamoto, *Social Solidarity Among the Japanese in Seattle*, 11 University of Washington Publications in the Social Sciences (December 1939), pp. 112-113; Tolan Committee Hearings, p. 11637.

*Dual Nationality.*—The possibility of a continuing loyalty to Japan, even on the part of the second generation is a significant consideration when viewed in the light of the provisions for dual nationality.<sup>30</sup> A child born in the United States of Japanese alien parents prior to December 1, 1924, automatically became entitled to and retained Japanese citizenship unless a petition of renunciation was filed on his behalf by a legal representative before his 15th birthday, or by him at any time between his 15th and 17th birthdays. Such petitions would not become effective as renunciation of Japanese citizenship, however, unless personally approved by the Japanese Minister of the Interior.<sup>31</sup>

On the other hand, a child of Japanese alien parentage born in the United States after December 1, 1924, could claim or qualify for Japanese citizenship only if within 14 days of birth there had been filed on his behalf with the Japanese Consulate a written statement of intention to retain Japanese nationality.<sup>32</sup>

<sup>30</sup> Cf. Nationality Law of Japan, Article 1, Flournoy and Hudson, *Nationality Laws*, p. 382.

<sup>31</sup> Nationality Law of Japan, Article 20, Section 3, Regulations (Ordinance No. 26) of November 17, 1924, Flournoy and Hudson, *Nationality Laws*, pp. 385-387. See also *Foreign Relations of the United States*, 1924, Vol. 2, p. 412 (Note of Honorable Jefferson Caffrey, The Chargé in Japan to the Secretary of State); Mears, *Resident Orientals on the American Pacific Coast*, pp. 107-108.

<sup>32</sup> See Mears, *Resident Orientals on the American Pacific Coast*, p. 108.

No official census of the number who did so is available. The Japanese consulates in the United States, however, have issued from time to time reports of the number of American-born children of Japanese parentage who still retain their Japanese citizenship, and the number of such children who have renounced or otherwise lost their Japanese nationality. On the basis of statistics released in 1927 by the Consul General of Japan at San Francisco, it appears that over 51,000 of the approximately 63,700 American-born persons of Japanese parentage in the United States held Japanese citizenship.<sup>33</sup> A census of the Japanese in the United States conducted in 1930 under the auspices of the Japanese Government purported to disclose that approximately 47% of the American-born persons of Japanese parentage in California held Japanese citizenship.<sup>34</sup>

An important aspect of dual citizenship was that the Japanese Government regarded all Japanese citizens as liable to military conscription and required them to apply for out-of-Empire deferment in order to avoid it.<sup>35</sup>

*Shintoism.*—Another factor to be taken into account in considering the viewpoints and loyalties

<sup>33</sup> See Mears, *op. cit. supra*, p. 429.

<sup>34</sup> See Strong, *op. cit. supra*, p. 142.

<sup>35</sup> See, e. g., military conscription notice appearing in *Rafu Shimpō* (Los Angeles Japanese language daily newspaper), October 11, 1941.

of the West Coast Japanese is the existence and nature of Shintoism. It seems to be accepted that the basic doctrine of Shinto is the apotheosis of, and reverence for, the Japanese Imperial Family, and that the Japanese Government has, since at least the middle of the 19th century, made it a primary function of government to spread belief in Shinto throughout Japan.<sup>36</sup> As an amplification of the doctrine of the divinity of the Emperor, an attempt has been made in Japan to identify the extension of Japanese rule or influence as a sacred purpose.<sup>37</sup>

While the force of Shinto in Japan as a source of stimulation for patriotism and loyalty to the

<sup>36</sup> See Yamashita, Yoshitaro (formerly chancellor, Imperial Japanese Consulate, London), *The Influence of Shinto and Buddhism in Japan*, Transactions and Proceedings of the Japan Society of London, Vol. 14, p. 257, quoted in D. C. Holtom, *The National Faith of Japan* (1938), pp. 4-5; *Japan, Religion*, 15 Encyclopedia Britannica (11th Ed., 1911), p. 222; *Japan, Religion*, 12 Encyclopedia Britannica (14th Ed., 1936), pp. 926-927; *Shintoism*, 20 Encyclopedia Britannica (14th Ed., 1936), p. 504; M. Anesaki, *Shinto*, 14 Encyclopedia of Social Sciences (1935), p. 24; A. M. Young, *Rise of a Pagan State* (1939), ch. 6; A. M. Underwood, *Shintoism* (1934), ch. 9; D. C. Holtom, *The Political Philosophy of Modern Shinto; A Study of the State Religion of Japan*, 49 Transactions of the Asiatic Society of Japan, Part II (1922), pp. 299-301; D. C. Holtom, *Modern Japan and Shinto Nationalism* (1943), ch. 1, 2, and 3. For complete accuracy this form of Shinto is frequently termed State Shinto, since sects exist which emphasize reverence of others than the Emperor.

<sup>37</sup> See D. C. Holtom, *The National Faith of Japan* (1938), p. 289; Otto D. Tolischus, *Tokyo Record* (1934), pp. 13-16.

Japanese Emperor cannot be doubted, the prevalence of Shintoism among the West Coast Japanese is a difficult factor to evaluate. For one thing, religious surveys do not show the number of its adherents since belief in Shintoism together with simultaneous belief in another religion is possible and common, and also because the Japanese Government has frequently maintained that Shintoism could not properly be classed as a religion.<sup>38</sup> However, there can be no doubt that at least those Japanese who were at any time in Japan were exposed to Shinto indoctrination. And it has been stated that there was an increase in Shintoism on the West Coast in recent years.<sup>39</sup>

While Shinto doctrine was not originally a part of the Buddhist religion, Buddhism in Japan has

<sup>38</sup> See Holtom, *The National Faith of Japan* (1938), p. 290, *et seq.*

<sup>39</sup> See Schrieke, *op. cit. supra*, p. 41.

While it is true that a 1936 census listed only one Shintoist Temple in Los Angeles (see 1 Religious Bodies, 1936, Department of Commerce, Bureau of Census, 1941, p. 7), there were in 1941, according to directories published by the West Coast Japanese language papers, 28 Shinto shrines in California, 2 in Washington, and 2 in Oregon. (The New World Sun Year-Book for 1941, pp. 122, 112, 517, 319, 371, 279, 393, 190, 90, 497, 209, 612, 17, 492, 282, 629, 591; Japanese-American Directory (Nichibei Jusho Roku) for 1941, pp. 77, 82, 530, 268, 503, 232, 307, 156, 56, 177, 2, 429, 236, 549, 579). Some of these shrines, however, may have been devoted to the practice of sects of Shinto other than State Shinto. As to the number of shrines in Los Angeles, see also Japanese Telephone & Business Directory of Southern California, No. 29.

accommodated itself to, and has aided in the indoctrination of State Shinto.<sup>40</sup> On the West Coast a substantial number of Japanese were Buddhists,<sup>41</sup> and it has been stated that some of the Buddhist priests in the West Coast communities also attempted to indoctrinate their congregations with Japanese nationalism.<sup>42</sup>

*Education of American-born children in Japan.*—It has been estimated by the Tolan Committee that approximately 10,000 American-born children of Japanese parents had been sent to

<sup>40</sup> D. C. Holtom, *Modern Japan and Shinto Nationalism* (1943), pp. 124, 148–151. Compare Sir Charles Eliot, *Japanese Buddhism* (1935), pp. 179–196.

<sup>41</sup> According to the 1936 survey, there were 65 Japanese clergymen, together with two deans and one bishop, connected with the Buddhist Mission of North America on the West Coast. The Mission had 31 churches in the three West Coast states, with 12,718 members, out of a total of 35 churches with 14,388 members in the United States as a whole. In connection with the Buddhist churches, some Japanese Language Schools of a religious nature were maintained (2 *Religious Bodies*, 1936, Department of Commerce, Bureau of Census, 1941, pp. 341–346).

<sup>42</sup> See Millis, *op. cit. supra*, pp. 267–268. Thus, a Buddhist priest at a dedication ceremony of a new Temple, was reported in the Los Angeles Japanese language daily, *Rafu Shimpo*, for November 22, 1940, as suggesting to his audience that "We are the race of Yamato which has received and carried on the flesh and blood of our ancestors over a period of 2,600 years. Therefore, there is no necessity for us to give up our spirit to the United States merely because we have received a little education."

Japan for part or all of their education. See H. Rep. No. 1911, 77th Cong., 2d Sess., p. 16.<sup>43</sup> Although some of them have doubtless become antagonistic towards the Japanese Government as a result of their visits,<sup>44</sup> this group of 10,000 is nevertheless regarded as containing some of the most dangerous elements in the Japanese community. H. Rep. No. 11, *supra*. Youths thus educated in Japan are essentially and culturally "Japanese, and it is probable that many of them are intensely loyal to Japan."<sup>45</sup> It is reasonable to assume that such students were inculcated with Japanese nationalistic philosophy and were exposed to the religious training which identifies the Emperor as a deity.<sup>46</sup>

<sup>43</sup> The foregoing report estimates that there are about 60,000 American-born Japanese who had not been sent to Japan. These estimates should be compared with a survey conducted by the San Francisco Chapter of The Japanese American Citizens League in October 1940 which disclosed that 22.8% of the second generation were American-born and had been to Japan. See Tolan Committee Hearings, p. 11151. See also *id.*, pp. 11199–11200.

<sup>44</sup> See Tolan Committee Hearings, pp. 11220–11229.

<sup>45</sup> Ichihashi, *op. cit. supra*, pp. 319–320.

<sup>46</sup> *The Japanese in America*, Harpers Magazine (October 1942), pp. 489, 491, 492.

<sup>47</sup> See Holtom, *Modern Japan and Shinto Nationalism* (1942), pp. 6–7, 26, which indicates that religious training is an integral part of the Japanese educational program. Not only does such education stress the national character of Japan, but it focuses upon the divinity of the Imperial Family. See Holtom, *The National Faith of Japan* (1938), pp. 79–85, 125, 131–138.

*Japanese Language Schools on the West Coast.*—A further potential influence on the Japanese on the West Coast were the Japanese language schools. It has been stated that there were 248 such schools with 19,000 pupils in Southern California at the outbreak of the war,<sup>48</sup> that there were 14 schools in Oregon and 9 in Seattle, Washington.<sup>49</sup> The sessions at these schools were held outside the regular hours of the public schools.<sup>50</sup>

Although it has been suggested that the children were sent to these schools so that they might more easily converse with their parents<sup>51</sup> and because of increased employment opportunities in Japanese firms,<sup>52</sup> it nevertheless appears likely that the schools may have afforded a convenient medium for indoctrinating the pupils with Japanese nationalistic philosophy. There is evidence that the textbooks used at these schools were printed in Japan,<sup>53</sup> and that the Japanese

<sup>48</sup> Statement in the *Los Angeles Times* of January 23, 1942, quoted in Report on Japanese Activities, Appendix 6 to Hearings before a Committee on Un-American Activities, House of Representatives, 77th Cong., 1st Sess., p. 1894.

<sup>49</sup> Tolan Committee Hearings, pp. 11393, 11394; see also pp. 11348, 11338, 11702.

<sup>50</sup> See Mears, *op. cit. supra*, p. 358; Tolan Committee Hearings, pp. 11145, 11223.

<sup>51</sup> See Tolan Committee Hearings, p. 11,145.

<sup>52</sup> See Mears, *op. cit. supra*, p. 358; Strong, *op. cit. supra*, at p. 203; Tolan Committee Hearings, pp. 11144–11145, 11222–11223.

<sup>53</sup> See *Los Angeles Times*, cited in footnote 48, *supra*.

Government assisted the schools both financially and by sending teachers from Japan.<sup>54</sup>

*Japanese Organizations.*—There is evidence that the Japanese in this country were highly organized, and that many of the local associations were part of an integrated structure dominated by The Japanese Association of America which had been organized under the guidance of the Japanese Consulate.<sup>55</sup> Moreover, there were numerous other Japanese organizations which maintained close ties with Japan.<sup>56</sup> Whatever may be the full significance of these organizations, it is apparent that they probably tended to stimulate cohesiveness and social solidarity of the Japanese community and that they offered the Japanese Consulate a means at least for the dissemination of propaganda.

*Possibility of Civil Disorder.*—Finally, a consideration that cannot be ignored in viewing the

<sup>54</sup> See *Un-American Activities in California* (Report to California legislature 1943), pp. 327–328. Cf. Tolan Committee Hearings, p. 11637.

<sup>55</sup> See Tolan Committee Hearings, p. 10975, *et seq.*; *Beikoku Chuo Nihonjin Shi* (History of the Central Japanese Association of America) edited by Shiro Fujioka (published in Tokyo in 1940), pp. 15, 170, 171, 175, 191, 303–304; cf. Mears, *op. cit. supra*, p. 342.

<sup>56</sup> For example, *Heimusha Kai*, The Society of Men Eligible For Military Duty, was listed as having 15 branches in California by The New World Sun Year-Book for 1941. As to its activities and relationship to Japan, see *Zaibei Nihonjin Shi* (History of Japanese Residents in the United States published by Zaibei Nihonjin Kai (Japanese Association of America) in Tokyo, 1940, p. 672.

situation at the time the exclusion program was carried out was the possibility of civil disorder arising from local violence against the Japanese. There was substantial reason to believe that the likelihood of such physical violence was more than a mere theoretical possibility, and that protective measures were necessary.<sup>37</sup>

#### SUMMARY OF ARGUMENT

##### I

The evacuation and curfew measures were authorized by the Act of March 21, 1942. That statute was enacted for the express purpose of implementing Executive Order No. 9066, which had been promulgated on February 19, 1942, and the evacuation and curfew measures adopted under that Order were plainly within its contemplation.

##### II

The Act of March 21, 1942, was a valid exercise of the war powers and is constitutional as applied here. This case does not involve any question of martial law. There has been no suspension of the privilege of the writ of habeas corpus, and the civil courts have not been superseded by military tribunals. This case does not present any of the large issues discussed in *Ex parte Milligan*, 4 Wall. 2.

<sup>37</sup> See Tolan Committee Report No. 2124, pp. 145-147, 149-150; Tolan Committee Hearings, p. 11156.

The central question is whether there is support in the Constitution for the statute as applied. Article I grants comprehensive powers to the Congress, and Article II independently confers sweeping authority directly upon the President as Commander in Chief. The Joint Resolution of December 8, 1941, declared a state of war between the United States and Japan, and directed the President to employ the entire naval and military forces of the country and the resources of the Government to prosecute the war.

The Act of March 21, 1942 was amply warranted in the circumstances. The extent of the disaster at Pearl Harbor, only recently revealed to the public, left the West Coast exposed to destructive enemy attack. The Japanese, during the winter of 1942, were at the crest of their military fortunes, and were making bold and impressive strides in many theaters of war. The condition of our temporarily crippled Pacific fleet and the course of the war at that time rendered it imperative that those charged with the defense of our shores take adequate protective measures against a possible invasion of the West Coast.

The great majority of persons of Japanese ancestry in this country were concentrated on the West Coast. About one third of them were aliens, and the majority of the American-born were in the younger age groups. A significant number of the American-born had been sent to Japan for

their education, and many of them were regarded, by reason of their training abroad, as highly dangerous. The fact that the so-called fifth column type of warfare had been so apparently successful in recent years, and the fact that there had been evidence of extensive espionage at Pearl Harbor, made it imperative to take adequate precautionary steps.

Although it may be assumed that the majority of the Japanese residents on the West Coast were loyal to the United States, the very presence of the entire group presented grave danger because that group comprehended an unknown number of unidentified persons who constituted a serious threat. Prompt and decisive action was necessary, and it cannot be said that it was unreasonable to determine to exclude the Japanese as a whole from these vital areas, and to adopt such supplementary measures as the curfew.

The action thus taken did not result in any denial of due process. The exercise of governmental power generally interferes with one's liberty to a greater or lesser degree, and the only question is whether that interference is wholly unreasonable or arbitrary.

The exigencies of war may demand the imposition of restraints that would be unwarranted in times of peace. Indeed, an individual may be required to give up his freedom and lay down his life.

*Selective Draft Law Cases*, 245 U. S. 366. The curfew and exclusion measures herein are certainly less drastic than compulsory military service.

Nor is there any absence of due process in that all the Japanese have been evacuated as a group. The classification was not based upon invidious race discrimination. Rather, it was founded upon the fact that the group as a whole contained an unknown number of persons who could not readily be singled out and who were a threat to the security of the nation; and in order to impose effective restraints upon them it was necessary not only to deal with the entire group, but to deal with it at once. Certainly, it cannot be said that such a conclusion was beyond the honest judgment, reasonably exercised, of those whose duty it was to protect the Pacific Coast against attack.

The Act of March 21, 1942, does not involve any unconstitutional delegation of legislative power. To the extent that it constitutes a ratification of the previously issued Executive Order No. 9066, there is no delegation whatever. And to the extent that the curfew and exclusion measures were thereafter adopted, they were well within the scope of the statute, as construed in the light of its history. Moreover, as in the field of foreign relations, the war power admits of far wider latitude of authority delegable to the executive branch than is permissible in the case of ordinary

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domestic affairs. Cf. *United States v. Curtis-Wright Corp.*, 299 U. S. 304.

### III

This case does not properly involve any question as to the validity of any subsequent detention of the Japanese as a group which followed evacuation. It is important to bear in mind precisely what occurred in the execution of the evacuation program.

In order to assure the effectiveness of the evacuation, the Japanese were temporarily placed under restraint at nearby so-called Assembly Centers. At the time the orders herein were issued there was no provision whatever for detention at the Relocation Centers to which they were subsequently transferred. Moreover, this defendant was not sent to any Relocation Center. Upon being admitted to bail after conviction, he was permitted to leave the military area, and to proceed inland for the purpose of accepting employment. Furthermore, the regulations adopted for the Relocation Centers provide for leave where there is opportunity for employment and residence of the individual at his proposed destination and where such leave is consistent with the public safety, etc. Thus, even if the defendant had been sent to a Relocation Center, there is no reason to believe that he could not have qualified for such leave, and he therefore has no standing to com-

plain of the detention of others who are presently at such centers.

### ARGUMENT

#### I

THE EVACUATION AND CURFEW MEASURES WERE AUTHORIZED BY THE ACT OF MARCH 21, 1942

The defendant did not contend in the court below that the curfew and evacuation orders of General DeWitt, which he violated, were outside the scope of the authority delegated by the President in Executive Order 9066, and by Congress in the Act of March 21, 1942. He rested his case on the contention that the Executive Order, the statute and the action taken thereunder were unconstitutional. Nevertheless, it will be helpful to review the history of the curfew and evacuation orders, for the purpose of showing that they were properly authorized.

On February 20, 1942, the Secretary of War designated General DeWitt as the military commander authorized to carry out the duties imposed by Executive Order 9066 within the area encompassed in the Western Defense Command, which had been established on December 11, 1941. See Public Proclamations Nos. 1 and 2. See Appendix D, *infra*, pp. 97-124. See also record in *Yasui v. United States*, No. 871, pp. 62-63. Acting under the provision of Executive Order 9066, empowering a military commander duly designated

by the Secretary of War "to prescribe military areas in such places and of such extent as he \* \* \* may determine," General DeWitt issued Public Proclamation No. 1, which established as a military area the region in which the defendant resided.

General DeWitt's subsequent orders excluding persons of Japanese ancestry from this area were unquestionably authorized by the provision of Executive Order 9066 that "any or all persons may be excluded" from the duly prescribed areas, as well as by the provision that in all such areas "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." It is equally clear that the curfew order with respect to the duty of specified classes of persons in the military area to remain within their homes during specified hours was within General DeWitt's power to impose restrictions on the "right of any person to enter, remain in, or leave" the area and thus was in the discretionary power delegated by Executive Order 9066.<sup>58</sup>

<sup>58</sup> While the fact that General DeWitt's orders are within the scope of the terms of Executive Order 9066 is sufficient authorization, it may be noted also that the Executive Order followed closely, both in time and content, the recommendations by members of Congress that military authority be used to execute the evacuation of persons of Japanese ancestry from the Pacific Coast states. Tolson Committee Preliminary Report (H. Rep. No. 1911, 77th Cong., 2d Sess.), pp. 3-5.

Congressional authority for the promulgation of the curfew and evacuation orders is clear. The very purpose of the Act of March 21, 1942, was to confirm and implement Executive Order No. 9066. The bill which became the Act of March 21, 1942, was introduced in the Senate on March 9, 1942, and in the House on March 10, 1942, at the request of the Secretary of War, who stated explicitly that the purpose of the legislation was to provide a means for enforcement of orders issued under Executive Order 9066.<sup>59</sup> Representative Costello for the House Military Affairs Committee made plain the legislative understanding that curfew restrictions and the removal of persons, citizens as well as aliens, from military areas were

<sup>59</sup> Identical letters from the Secretary of War to the Speaker of the House and to the Chairman of the Senate Committee on Military Affairs stated (Cong. Rec., Vol. 88, part 2, p. 2722; H. Rep. No. 1906, 77th Cong., 2d Sess., p. 2) :

"The purpose of the proposed legislation is to provide for enforcement in the Federal criminal courts of orders issued under the authority of the Executive order of the President No. 9066, dated February 19, 1942. This Executive order authorizes the Secretary of War to prescribe military areas from which any and all persons may be excluded for purposes of national defense."

The Secretary of War wrote to the Chairman of the Senate and House Committee on Military Affairs in identical letters dated March 13 and 14, 1942, respectively, as follows (Cong. Rec., Vol. 88, part 2, p. 2725; H. Rep. No. 1906, p. 3) that "the bill, when enacted, should be broad enough to enable the Secretary of War or the appropriate military commander to enforce curfews and other restrictions within military areas and zones."

contemplated.<sup>40</sup> When the bill was discussed in the Senate, Senator Reynolds, Chairman of the Senate Military Affairs Committee, read a newspaper item stating that "evacuation of the first Japanese aliens and American-born Japanese from military area No. 1" was about to commence; described the proposed evacuation; read to the Senate the Report of the Committee on Military Affairs, which included the letters of the Secretary of War, referred to in footnote 59, *supra*; read General DeWitt's Public Proclamation No. 1; and stated the common understanding of the bill.<sup>41</sup>

On the House Floor when the bill was being considered for enactment, its immediate passage

<sup>40</sup> "The necessity for this legislation arose from the fact that the safe conduct of the war requires the fullest possible protection against either espionage or sabotage to national defense material, national defense premises, and national defense utilities. In order to provide such protection it has been deemed advisable to remove certain aliens as well as citizens from areas in which war production is located and where military activities are being conducted. To make such removal effective, it is necessary to provide for penalties in the event of any violation of the orders or restrictions which may be established, as well as to enforce curfews, where they may be required" (H. Rep. No. 1906, 77th Cong., 2d Sess., p. 2).

<sup>41</sup> "It is my understanding that in order to carry out the objectives of the Proclamation, and thus keep clear the military areas which have been defined by General DeWitt, the commander of the western area, we are asked to provide the department with authority to keep certain individuals from entering or leaving military zones, or not complying with any of the curfew laws, or any regulations which might be established within those zones" (Cong. Rec., Vol. 88, part 2, pp. 2722-2726).

was urged on the basis that "evacuation is taking place now" (Cong. Rec., Vol. 88, part 2, p. 2730).

At the time the bill was approved by the President and became law on March 21, 1942, General DeWitt had already issued Proclamation No. 1 of March 2, 1942, designating certain military areas and military zones, and providing that such classes of persons as the situation may require would by subsequent proclamation be excluded from the areas and zones. Proclamation No. 2 of March 16, 1942, designating additional military areas and zones, repeated the provision that such classes of persons as the situation might require would by subsequent proclamation be excluded from zones within the military areas, and provided that German and Italian aliens, and persons of Japanese ancestry residing in the Western Defense Command who changed their places of habitual residence were required to obtain and execute change-of-residence notices.

Immediately subsequent to March 21, 1942, Proclamation No. 3, issued on March 24, 1942, provided the curfew for Germans and Italian aliens, and all persons of Japanese ancestry, and announced that exclusion orders would thereafter be issued. Proclamation No. 4 of March 27, 1942, prohibited further voluntary evacuation of Japanese persons from Military Area No. 1. On May 10, Civil Exclusion Order No. 57, involved in this case, was issued.

It is submitted that the Act of March 21, 1942, constituted not only clear authorization of the action taken, but also a plain legislative ratification of Executive Order 9066, and of the orders issued thereunder. *Swayne & Hoyt, Ltd. v. United States*, 300 U. S. 297, 300-303; *Silas Mason Co. v. Tax Comm'n*, 302 U. S. 186, 208; *Isbrandtsen-Moller Co. v. United States*, 300 U. S. 139, 146-148; *Tiaco v. Forbes*, 228 U. S. 549, 556; *United States v. Heinszen & Co.*, 206 U. S. 370, 382, 384; *Prize Cases*, 2 Black 635, 671. Cf. *Standard Oil Co. v. Johnson*, 316 U. S. 481, 484. Moreover, the Congressional authorization is further confirmed by the \$70,000,000 appropriation made by the Act of July 25, 1942, for the War Relocation Authority, in connection with the evacuation program. Public Law No. 678, 77th Cong., 2d Sess., c. 524, 56 Stat. 704. Such appropriation acts are a familiar form of expression of Congressional understanding and approval. *Brooks v. Dewar*, 313 U. S. 354, 360-361; *Isbrandtsen-Moller Co. v. United States*, *supra*, at page 147.

## II

THE ACT OF MARCH 21, 1942, WAS A VALID EXERCISE OF THE WAR POWERS AND IS CONSTITUTIONAL AS APPLIED HERE

1. *This case does not present any question of martial law.*—It is important at the outset to bring the constitutional issue into proper focus.

This case does not involve any question of martial law as that term is commonly understood. There has been no suspension of the privilege of the writ of habeas corpus, and the civil courts have not been superseded by military tribunals. Indeed, this very case commenced as a prosecution in a United States District Court. The question is not whether the defendant may be tried by a military tribunal (cf. *Ex parte Quirin*, 317 U. S. 1). There is not here involved any of the large issues discussed in *Ex parte Milligan*, 4 Wall. 2, and considered by the District Court in *Yasui v. United States*, No. 871. Nor is it necessary to determine whether the principles enunciated by the majority in the *Milligan* case should be reexamined.<sup>42</sup>

The defendant was charged with violating an act of Congress. The law that is here being enforced was enacted by the legislature, and to the extent that there has been any delegation to the executive branch of the Government, the problem in this respect does not differ from that presented in *McKinley v. United States*, 249 U. S. 397. If the delegation is a valid one, as we contend that it is

<sup>42</sup> Those principles, once accepted in Great Britain (see Fairman, *The Law of Martial Rule and the National Emergency*, (1942), 55 Harv. L. Rev. 1253, 1254), have not been followed in some of the more recent cases in the English and Irish courts. Cf. *Ex parte Marais*, [1902] A. C. 109; *The King v. Allen*, [1921] 2 Ir. R. 241; *The King (Garde) v. Strickland*, [1921] 2 Ir. R. 317; *The King (Ronayne and Mulcahy) v. Strickland* [1921], 2 Ir. R. 333. See Carr, *A Regulated Liberty* (1942), 42 Col. L. Rev. 339.

(*infra*, pp. 65-70), then the only question is whether there is support in the Constitution for the statute as applied.

We contend that the war powers in the Constitution furnish ample authority for the evacuation and curfew measures<sup>33</sup> adopted under the Act of March 21, 1942, and that those measures were not framed in such manner as to be violative of the requirements of due process.

2. *The scope of the war powers under the Constitution.*—The war powers are not concentrated in any one clause in the Constitution. They consist of the aggregate of many powers, set forth in full in Appendix A, *infra*, pp. 83-85. Not only are comprehensive powers delegated to Congress by

<sup>33</sup> The indictment herein was in two counts, the first charging the defendant with failing to report to the Civil Control Station on May 11 or May 12, 1942, as required by Civil Exclusion Order No. 57, in connection with the evacuation which was to take place pursuant to that order on May 16, 1942 (R. 1-2). It is assumed that the defendant may raise the validity of the evacuation measure, since the requirement that he report at the Civil Control Station was merely ancillary to evacuation. The second count charged violation of the curfew provision of Public Proclamation No. 3 (R. 2-3). The defendant was found guilty upon both counts, but the three-month sentences which he was given on each count were to run concurrently (R. 24). Accordingly, if the conviction was proper on either count, it would be unnecessary to consider the other count. Cf. *Pierce v. United States*, 252 U. S. 239, 252-253; *Brooks v. United States*, 267 U. S. 432, 441; *Abrams v. United States*, 250 U. S. 616, 619; *Evans v. United States*, 153 U. S. 608, 609; *Claassen v. United States*, 142 U. S. 140, 146; *Doe v. United States*, 253 Fed. 903, 904 (C. C. A. 8).

Article I, but, in addition, Article II confers most sweeping authority directly upon the President.

(a) Pursuant to its power under Article I, Congress adopted on December 8, 1941, and the President approved a joint resolution, declaring a state of war between the United States and the Imperial Government of Japan. See Appendix B, *infra*, p. 86. The resolution directed the President to employ the entire naval and military forces of the United States and the resources of the Government to prosecute the war; and it pledged all the resources of the country to bring the conflict to a successful termination.

The events which had occurred between the attack on Pearl Harbor and the enactment of the Act of March 21, 1942, amply warranted such legislation. The extent of the disaster at Pearl Harbor, only recently disclosed to the public, was all too well known to the military authorities, and left the military and naval installations, shipyards, airplane and other war manufacturing plants on the West Coast exposed to destructive enemy attack. It was learned that Japanese espionage had supplied the Japanese forces with precise information as to the disposition of the vessels of the fleet at Pearl Harbor, the nature and location of anti-aircraft defenses and the time and course of flight of air patrols.<sup>34</sup> On December

<sup>34</sup> Report dated January 23, 1942, of the Commission Appointed by The President Of The United States To Investigate And Report The Facts Relating To The Attack Made

11, 1941, the Western Defense Command had been established and designated a theatre of operations; the commanding general was charged with the duty, *inter alia*, of protecting that area against enemy attack. The overwhelming majority of persons of Japanese ancestry in the United States resided on the West Coast. See *supra*, p. 18. Great apprehension was felt that even if the majority of those Japanese were loyal to the United States, a number of them, citizens and aliens alike, might be disposed to assist the enemy, particularly in the case of an attack. And there was also concern lest the resident Japanese be subjected to mass local violence in the event of an attack.<sup>65</sup> These circumstances and the imperative need for prompt protective action were fully known to the President when he issued Executive Order No. 9066, which was to form the basis for the curfew and evacuation regulations. And both the House and the Senate were informed of the grave dangers inherent in permitting the Japanese to remain in the numerous critical areas along the West Coast, and of the peril to the nation that might result from the treacherous action of some of those Japanese.

By Japanese Armed Forces Upon Pearl Harbor In The Territory Of Hawaii On December 7, 1941 (The Roberts' Committee Report), pp. 12-13, Senate Document No. 159, 77th Congress, 2nd Sess.

<sup>65</sup> See Tolan Committee Report, pp. 145-147, 149-150; Hearings, pp. 11044, 11156.

See Cong. Rec., Vol. 88, part 2, pp. 2722-2726, 2729-2730.

It is in the light of these circumstances that the validity of the Act of March 21, 1942 and the related orders must be examined under the war powers. The plenary character of the power to wage war and its extension to every matter relating to the carrying on of war have been repeatedly emphasized. As former Chief Justice Hughes remarked during the first World War, "The power to wage war is the power to wage war successfully." (Hughes, *War Powers under the Constitution*, 42 A. B. A. Rep. 232, 238.) And in *United States v. Macintosh*, 283 U. S. 605, this Court indicated the extraordinary breadth of the war power as follows (pp. 622-623):

From its very nature, the war power, when necessity calls for its exercise, tolerates no qualifications or limitations, unless found in the Constitution or in applicable principles of international law. In the words of John Quincy Adams,—“This power is tremendous; it is strictly constitutional; but it breaks down every barrier so anxiously erected for the protection of liberty, property and of life.” To the end that war may not result in defeat, freedom of speech may, by act of Congress, be curtailed or denied so that the morale of the people and the spirit of the army may not be broken by seditious utterances; freedom of the press curtailed to preserve

our military plans and movements from the knowledge of the enemy; deserters and spies put to death without indictment or trial by jury; ships and supplies requisitioned; property of alien enemies, therefore under the protection of the Constitution, seized without process and converted to the public use without compensation and without due process of law in the ordinary sense of that term; prices of food and other necessities of life fixed or regulated; railways taken over and operated by the government; and other drastic powers, wholly inadmissible in time of peace, exercised to meet the emergencies of war.

These are but illustrations of the breadth of the power; \* \* \*

Moreover, as noted in *Stewart v. Kahn*, 11 Wall. 493, upholding the power of Congress to toll state statutes of limitations during and after the Civil War (p. 507):

\* \* \* the power is not limited to victories in the field and the dispersion of the insurgent forces. It carries with it inherently the power to guard against the immediate renewal of the conflict, and to remedy the evils which have arisen from its rise and progress. \* \* \*

See also *Ashwander v. Valley Authority*, 297 U. S. 288, 326; *Home Bldg. & L. Assn. v. Blaisdell*, 290 U. S. 398, 426, 447-448; *Hamilton v. Kentucky Distilleries Co.*, 251 U. S. 146, 161; *McKinley v. United States*, 249 U. S. 397; *Schenck*

*v. United States*, 249 U. S. 47; *Selective Draft Law Cases*, 245 U. S. 366; *Raymond v. Thomas*, 91 U. S. 712, 714-715; *Miller v. United States*, 11 Wall. 268.

Thus, under the war powers, this Court has sustained the compulsory draft of persons to serve in the armed forces (*Selective Draft Law Cases*, *supra*); suppression of prostitution in military areas (*McKinley v. United States*, 249 U. S. 397); prohibition of the sale of liquor even after hostilities had ceased (*Hamilton v. Kentucky Distilleries Co.*, 251 U. S. 146; *Jacob Rupert v. Caffey*, 251 U. S. 264); Government operation of the railroads (*Northern Pac. Ry. Co. v. North Dakota*, 250 U. S. 135); Government operation of systems of communications (*Dakota Cent. Tel. Co. v. South Dakota*, 250 U. S. 163); and regulation of maximum prices (*Highland v. Russell Car Co.*, 279 U. S. 253).<sup>66</sup>

The evacuation and related curfew measures herein plainly constituted an exercise of the war powers, and indeed were more directly concerned

<sup>66</sup> *United States v. Cohen Grocery Co.*, 255 U. S. 81, relied upon by petitioner in the court below as indicating a more restricted view of the war powers, is plainly distinguishable. The Court there held invalid certain provisions of the Lever Act because they did not establish a sufficiently ascertainable standard of guilt. That decision certainly can have no application here, for, under the Act of March 21, 1942, the prosecution must show that the accused "knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof." Cf. *Gorin v. United States*, 312 U. S. 19, 27-28.

with the actual conduct of the war than many of the measures which have been sustained in the foregoing decisions. Evacuation of persons from critical areas is a familiar exercise of war power and constitutes recognized military strategy both here and abroad. *Lockington's Case*, Brightly N. P. (Pa.) 269; *Lockington v. Smith*, 1 Pet. C. C. 466, 15 Fed. Cas. p. 758, No. 8448 (C. C. Pa.) (requiring alien enemies to evacuate to 40 miles beyond Atlantic tidewater); *Ronnfeldt v. Phillips* (K. B. 1918) 35 T. L. R. 46 (evacuation of an individual from a military area); *Emergency Powers (Defense) Act*, 1939 (2 & 3 George VI., c. 62); War Measures Act (c. 206, Rev. Stat. Canada 1927).<sup>47</sup> Cf. *Respublica v. Sparhawk*, 1

<sup>47</sup> Under the English Act which authorizes regulations necessary for securing the public safety and the efficient prosecution of the war, the British Government provided by the Defense (General) Regulations, 1939, Part 2, Section 21 (S. R. & O., 1939, No. 927, as amended. 32 Halsbury's Statutes of England, pp. 1294-1295):

"(1) A Secretary of State or the Admiralty, \* \* \* may, if it appears to him or them to be necessary or expedient so to do for the purpose of meeting any actual or apprehended attack by an enemy or of protecting persons and property from the dangers involved in any such attack, make, as respects any area in the United Kingdom \* \* \*

"(a) an order directing that after such time as may be specified in the order, no person other than a person of such a class as may be so specified shall be in that area without the permission of such authority or person as may be so specified;

"(2) An order made under paragraph (1) of this Regulation for the removal of persons or property from any area—

Dall. 357 (removal of goods to prevent seizure by the enemy). Indeed, under the recent British legislation, it has been held that a British subject may be arrested and detained in prison merely because the Home Secretary "had reason to believe" that he was a person of "hostile origin or associations". *Liversidge v. Anderson*, [1942] A. C. 206; *Greene v. Secretary of State for Home Affairs*, [1942] A. C. 284.

(b) In considering the evacuation and curfew measures above, we directed our discussion to—

"(a) may prescribe the routes by which persons or property, or any particular classes of persons or property, are to leave or be removed from the area;

"(b) may prescribe different times as the times by or at which different classes of persons or property in the area are to leave or be removed therefrom;

"(c) may prescribe the places to which persons are to proceed on leaving that area in compliance with the order;

"(d) may make different provision in relation to different parts of the area; and may contain such other incidental and supplementary provisions as appear to the authority or person making the order to be necessary or expedient for the purposes of the order."

The Defence of Canada Regulations are similar to the quoted English regulations and the Order of the Minister of Justice of August 18, 1942, under the Regulations (Canada Gazette, Extra No. 96, August 31, 1942) provided for a specific protected area in the Province of British Columbia along the Pacific Coast similar to our military areas, and stated in part as follows:

"9. Every person of the Japanese race shall leave the protected area aforesaid forthwith.

"10. No person of Japanese race shall enter such protected area except under permit issued by the Royal Canadian Mounted Police."



wards establishing the validity of the Act of March 21, 1942, under which those measures were taken. But even if that statute had not been enacted the President had ample power under the Constitution to authorize such measures without supporting legislation.

During the Civil War, President Lincoln, in the absence of congressional action, dealt with an unprecedented national emergency by his Proclamations of April 15, 1861 (12 Stat. 1258), announcing the rebellion and calling for volunteers, and of April 19, 1861 (12 Stat. 1258), announcing the blockade of the ports of the southern states by naval forces and providing that any vessel running the blockade might be condemned as prize. In the *Prize Cases*, 2 Black 635, this Court sustained the legality of the President's exercise of the executive war power to provide a blockade and stated (p. 670):

Whether the President in fulfilling his duties, as Commander-in-chief, in suppressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions as will compel him to accord to them the character of belligerents, is a question to be decided by him, and this Court must be governed by the decisions and acts of the political department of the Government to which this power was entrusted. "He must determine what degree of force the crisis demands."

The proclamation of blockade is itself official and conclusive evidence to the Court that a state of war existed which demanded and authorized a recourse to such a measure, under the circumstances peculiar to the case. [*Italics by the Court.*]<sup>68</sup>

It is submitted that if, as in the *Prize Cases*, prior to a declaration of war the executive war power could be constitutionally exercised against loyal citizens solely on the basis of their residence in the states where the rebellion was active, but in which they had no part, and could designate them as enemies and subject their property to forfeiture as prize, *a fortiori* after the declaration of war of December 8, 1941, directing him to use all resources of the government (55 Stat. 795, 77th Cong., 1st Sess., c. 561), the unprecedented emergency which faced the Chief Executive in this case could be dealt with constitutionally by the exercise of the executive war power to evacuate all persons of Japanese ancestry from the most crucial area in the country and to place them under a curfew as a restriction supplemental to the evacuation. See Corwin, *The President, Office and Powers* (1940), p. 158 *et seq.*; Randall, *Constitutional Problems Under*

<sup>68</sup> Lincoln's action had been thereafter approved by Congress, and the Court stated (p. 671) that even if his action were illegal, the congressional ratification operated to cure the defect.

*Lincoln* (1926), pp. 29 *et seq.*, 514 *et seq.*; Berdahl, *War Powers of the Executive in the United States* (1921), pp. 182, *et seq.*; Taft, *The Presidency* (1916), pp. 85, *et seq.*; 2 Story, *Commentaries on the Constitution*, pp. 327, *et seq.* (5th Ed. 1891).

Moreover, apart from the war power committed to the President by the Constitution, the measures herein could be sustained under Article II, Section 3 which provides that the President "shall take Care that the Laws shall be faithfully executed \* \* \*." In *In re Neagle*, 135 U. S. 1, this Court ruled that a Federal marshal could not be detained by state authorities upon a charge of murder for killing an individual who had attempted to attack Mr. Justice Field. In commenting upon the sweep of executive authority, this Court stated (pp. 63-64, 67):

If we turn to the executive department of the government, we find a very different condition of affairs [from that in the legislative department]. The Constitution, section 3, Article 2, declares that the President "shall take care that the laws be faithfully executed," and he is provided with the means of fulfilling this obligation by his authority to commission all the officers of the United States, and, by and with the advice and consent of the Senate, to appoint the most important of them and to fill vacancies. He is declared to be commander-in-chief of the army and navy of the United States. The duties which are

thus imposed upon him he is further enabled to perform by the recognition in the Constitution, and the creation by acts of Congress, of executive departments, which have varied in number from four or five to seven or eight, the heads of which are familiarly called cabinet ministers. These aid him in the performance of the great duties of his office, and represent him in a thousand acts to which it can hardly be supposed his personal attention is called, and thus he is enabled to fulfil the duty of his great department, expressed in the phrase that "he shall take care that the laws be faithfully executed."

Is this duty limited to the enforcement of acts of Congress or of treaties of the United States according to their *express terms*, or does it include the rights, duties and obligations growing out of the Constitution itself, our international relations, and all the protection implied by the nature of the government under the Constitution?

\* \* \* \* \*

We cannot doubt the power of the President to take measures for the protection of a judge of one of the courts of the United States, who, while in the discharge of the duties of his office, is threatened with a personal attack which may probably result in his death, \* \* \*.

Thus, if a United States Marshal in the exercise of the federal executive power may kill a man in the course of protecting a federal judge,

it would seem that the commanding general of the Western Defense Command may be designated to exercise the power of the chief executive to evacuate a group of civilians to protect the public safety of the entire country and the preservation of the sovereignty of the United States. Compare *Ex Parte Siebold*, 100 U. S. 371, 395; *In re Debs*, 158 U. S. 564.

However, it is unnecessary to determine whether the curfew and evacuation measures could have been carried out by executive action, unaided by legislation, for the Act of March 21, 1942, was enacted for the express purpose of throwing the full weight of Congressional power behind these measures. Compare *Hamilton v. Dillin*, 21 Wall. 73, 87-88:

Whether, in the absence of Congressional action, the power of permitting partial intercourse with a public enemy may or may not be exercised by the President alone, who is constitutionally invested with the entire charge of hostile operations, it is not now necessary to decide, although it would seem that little doubt could be raised on the subject. \* \* \*

But without pursuing this inquiry, and whatever view may be taken as to the precise boundary between the legislative and executive powers in reference to the question under consideration, there is no doubt that a concurrence of both affords ample

foundation for any regulations on the subject.

See also *Prize Cases*, 2 Black 635, 671.

3. *The petitioner has not been denied due process of law.*—It is, of course, familiar doctrine that the exercise of governmental powers may interfere with one's liberty to a greater or lesser degree. The constitutional requirement of due process stands in the way only where the interference is of such character as to be wholly unreasonable, arbitrary, or capricious.

Thus, in sustaining provisions for compulsory vaccination in *Jacobson v. Massachusetts*, 197 U. S. 11, this Court said (p. 26):

But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. \* \* \*

See also *Compagnie Francaise &c. v. Board of Health*, 186 U. S. 380; *Minnesota v. Probate Court*, 309 U. S. 270; *Moyer v. Peabody*, 212 U. S. 78.<sup>99</sup> And since the reasonableness of the restraint

<sup>99</sup> Compare the decisions upholding the confinement for reasons related to the public welfare of such persons as merchant seamen, jurors, material witnesses, etc. *Robertson v. Baldwin*, 165 U. S. 275; *Dinsman v. Wilkes*, 12 How. 389;

must always be measured in terms of the surrounding circumstances, it is apparent that restrictions demanded by the exigencies of war may go far beyond the limits permissible in periods of tranquillity.

The all-pervasive character of the war power has been discussed above, pp. 47-49. Its reach extends over the entire range of human affairs. Under the war power, the Government may, consistently with due process, regulate or take over the economic life of the country (*Highland v. Russell Car Co.*, 279 U. S. 253; *Northern Pac. Ry. Co. v. North Dakota*, 250 U. S. 135; *Dakota Cent. Tel. Co. v. South Dakota*, 250 U. S. 163); it may regulate the morals of the community (*McKinley v. United States*, 249 U. S. 397; *Hamilton v. Kentucky Distilleries Co.*, 251 U. S. 146); it may deny freedom of speech to an extent not permissible during times of peace (*Schenck v. United States*, 249 U. S. 47, 52); and it may command an individual to give up his freedom and lay down his life (*Selective Draft Law Cases*, 245 U. S. 366).

The curfew and exclusion measures herein are certainly less drastic than compulsory military service, and we do not understand petitioner to contend otherwise. The core of his contention is, however, that due process is lacking because the

*Lively v. State*, 22 Okla. Cr. 271, 276-278, 211 Pac. 92, 94; *United States v. Von Bonin*, 24 F. Supp. 867 (S. D. N. Y.); *State v. Netherton*, 128 Kan. 564, 279 Pac. 19.

Japanese have been treated arbitrarily as a racial group<sup>70</sup> and because no opportunity was afforded for hearings to relieve individual members of that group from compliance with those measures. We submit that in the unique circumstances here presented the action taken was reasonable and therefore not violative of the requirements of due process.

Since, as we shall undertake to show, the classification is a reasonable one in the circumstances, it will be unnecessary to place more than passing reliance upon the fact that the Fifth Amendment, unlike the Fourteenth, contains no equal protection clause (see *Helvering v. Lerner Stores Corp.*, 314 U. S. 463, 468; *Sunshine Coal Co. v. Adkins*, 310 U. S. 381, 401; *Currin v. Wallace*, 306 U. S. 1, 14; *United States v. Carolene Products Co.*, 304 U. S. 144, 151; *Steward Machine Co. v. Davis*, 301 U. S. 548, 584; *LaBelle Iron Works v. United States*, 256 U. S. 377, 392), or to attempt to determine what, if any, type of governmental action is restrained by the equal protection clause that is not already fully subject to the due process clause (cf. *Heimer v. Donnan*, 285 U. S. 312, 317, 326, 338).

<sup>70</sup> It is, of course, a misconception to assert that only Japanese have been subjected to curfew or have been removed from critical areas. Public Proclamation No. 3 imposed curfew restrictions for Italian and German aliens, and many individuals, alien and citizen alike, have been excluded under individual exclusion orders promulgated pursuant to Executive Order No. 9066.

Nor, in view of the extraordinarily unique situation in this case, will it be profitable to explore the various decisions either approving (*Gong Lum v. Rice*, 275 U. S. 78; *Clarke v. Deckebach*, 274 U. S. 392; *Terrace v. Thompson*, 263 U. S. 197; *Porterfield v. Webb*, 263 U. S. 225; *Webb v. O'Brien*, 263 U. S. 313; *Frick v. Webb*, 263 U. S. 326; *Crain v. New York*, 239 U. S. 195; *Patson v. Pennsylvania*, 232 U. S. 138; *Plessy v. Ferguson*, 163 U. S. 537), or disapproving (*Mitchell v. United States*, 313 U. S. 80, 97; *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337; *Truax v. Raich*, 239 U. S. 33; *Meyer v. Nebraska*, 262 U. S. 390; *Yu Cong Eng v. Trinidad*, 271 U. S. 500; *Yick Wo v. Hopkins*, 118 U. S. 356) various classifications based upon racial or similar grounds.

The situation which gave rise to the curfew and evacuation measures was wholly unprecedented in the history of this country. The validity of those measures must be tested, not in the light of the military situation as it exists today, nor even in the light of the military situation as it existed at that time viewed as a matter of hindsight. Rather, the crucial question is whether the action taken was, in the honest judgment of those charged with the responsibility of defending our shores, reasonably necessary from a military point of view. We submit that, as recounted above (p. 12 *et seq.*), the military situation was so grave, the danger of an enemy attack was so far within

the realm of probability, and the peril to be apprehended from treacherous assistance to the enemy on the part of an unknown number of Japanese concentrated in critical areas along the West Coast was so substantial, it was a matter of high military necessity to take prompt and adequate precautionary steps.

Our Pacific Fleet had been rendered all but powerless for the time being, and the Japanese forces were making bold and impressive strides. Indeed, our very coast had been shelled. Faced with the responsibility of repelling a possible Japanese invasion which might have threatened the very integrity of our nation, it was the duty of the commanding general to take into account the plain fact that over 100,000 Japanese were grouped along the coast. It was essential to recognize that although the majority of these people might be regarded as loyal to the United States, a disloyal minority, if only a few hundreds or thousands, strategically placed, might spell the difference between the success or failure of any attempted invasion.

This grave emergency called for prompt and decisive action. It was imperative that adequate protective measures be taken. If those Japanese who might aid the enemy were either known or readily identifiable, the task of segregating them would probably have been comparatively simple. However, the identities of the potentially disloyal

were not readily discoverable. Even assuming that administrative hearings might have been held for each Japanese, such hearings would have been virtually worthless unless each were preceded by an investigation carefully conducted by a trained investigator. Many months, or perhaps years, would be required for such investigations and hearings.<sup>11</sup> Meanwhile the threat of a Japanese attack would persist. What was needed was a method of removing at once the unknown number of Japanese persons who might assist a Japanese invasion, and not a program for sifting out such persons in the indefinite future.

Moreover, even if there had been time for individual hearings, there is no reason to suppose that they could have solved the problem. A hearing to determine what a particular Japanese would do in the event that the Japanese forces should succeed in effecting a landing on the Pacific Coast would have been of doubtful utility. In every such hearing there would undoubtedly be evidence of thrift, industry, devotion to family, absence of criminal record, etc. And it would be upon the basis of such evidence that the Hearing Board would be asked to look deep into the mind of a particular Japanese and determine whether his

<sup>11</sup> Based on investigations by the Federal Bureau of Investigation over a course of years, about 10,000 hearings have been granted to alien enemies throughout the United States since December 7, 1941.

allegiance to the United States was so dominant within him as to overcome the ties of kinship or other intangible forces which might bind him to the members of an invading Japanese army.

It can hardly be said, therefore, that the exclusion of all Japanese from the critical West Coast area was unreasonable or capricious. They were treated as a group, not because of racial discrimination, but because the group contained an unknown number of persons whose continued presence on the West Coast was thought to be highly dangerous to the safety of the entire country. Their removal was imperative. Since they were not easily identifiable, the only certain way of removing them was to remove the group as a whole.

Furthermore, where the class as a whole is the proper object of official action a hearing for any individual is entirely irrelevant except to determine membership in the class. The operative fact on which the classification was made was the danger arising from the existence of a group of over 100,000 persons of Japanese descent on the West Coast and the virtually impossible task of promptly segregating the potentially disloyal from the loyal. "It does not follow that because a transaction [person in this case] separately considered is innocuous it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the Gov-

ernment." *Jacob Ruppert v. Caffey*, 251 U. S. 264, 291-292.

It is the central misapprehension of the argument for individual loyalty hearings to suppose that the action here was directed against persons on the basis of their individual loyalty. It is entirely irrelevant, therefore, to assert that the majority of the individuals evacuated were perfectly loyal citizens of the United States. The rationale of the action here in controversy is not the loyalty or disloyalty of individuals but the danger from the residence of the class as such within a vital military area. If there was a rational basis for this judgment, then the only question that remains is whether a given individual was or was not a person of Japanese ancestry.

In times of war a citizen may be required, under the Constitution, to make the supreme sacrifice (*Selective Draft Law Cases, supra*). Can it be said that there is an absence of due process where he is required to evacuate critical areas in order to insure the evacuation of persons within his group whose presence is reasonably regarded as a significant threat to the safety of the nation? In sustaining the detention of a British subject merely upon the ground that the Home Secretary had reason to believe that he was a person of "hostile origin or associations", Lord Macmillan de-

clared (*Liversidge v. Anderson*, [1942] A. C. 206, 257):

At a time when it is the undoubted law of the land that a citizen may by conscription or requisition be compelled to give up his life and all that he possesses for his country's cause it may well be no matter for surprise that there should be confided to the Secretary of State a discretionary power of enforcing the relatively mild precaution of detention. \* \* \*

The objection that the exclusion measure was invalid because it did not include Italians and Germans is without substance. The principal danger to be apprehended was a Japanese invasion, and the possible assistance to attacking Japanese forces would be most likely to come from the Japanese residing on the West Coast. It is not a denial of due process to recognize degrees of danger or harm and if the law strikes at the evil where it is most felt, "it is not be overthrown because there are other instances to which it might have been applied." See *West Coast Hotel Co. v. Parrish*, 300 U. S. 379, 400, and cases cited.

4. *The Act of March 21, 1942, does not involve any unconstitutional delegation of legislative power.*—The contention that the Act of March 21, 1942, contains an invalid delegation of legislative authority is without merit. It should be recalled that Executive Order 9066, under which the evacuation and curfew orders were issued, had been pro-

mulgated on February 19, 1942, more than a month before the enactment of the statute. And, as shown above, p. 39, it was the recognized purpose of the statute to implement Executive Order 9066 and to place its legality beyond the possibility of challenge. Moreover, the history of the Act shows that Congress was plainly concerned with the projected evacuation program and with such subsidiary protective measures as the curfew. See *supra*, pp. 38-41. Accordingly, even tested by the usual standards applicable to legislation dealing with ordinary domestic affairs, the Act of March 21, 1942, when construed in the light of its history, did not go beyond the limits of permissible delegation. Cf. *Field v. Clark*, 143 U. S. 649; *Buttfield v. Stranahan*, 192 U. S. 470; *Union Bridge Co. v. United States*, 204 U. S. 364; *United States v. Grimaud*, 220 U. S. 506; *Hampton & Co. v. United States*, 276 U. S. 394; *Curriu v. Wallace*, 306 U. S. 1; *United States v. Rock Royal Co-op.*, 307 U. S. 533; *Sunshine Coal Co. v. Adkins*, 310 U. S. 381; *Opp Cotton Mills v. Administrator*, 312 U. S. 126. Indeed, to the extent that the statute may be viewed as ratifying prior executive action (see *supra*, p. 42), there was no delegation whatever. Cf. *Prize Cases*, 2 Black 635, 671; *Hamilton v. Dillin*, 21 Wall. 73, 87, 88.

But there is an even more conclusive answer to the contention that there was an invalid delegation. We are here concerned with the war power which

requires a far wider latitude for executive judgment and action than is involved in the exercise of ordinary governmental powers.

Where the war power is involved, the very fate of the nation may at times depend upon prompt and effective measures taken under a general program outlined by the legislature that might otherwise be impossible under a statute which too narrowly circumscribed the area of executive discretion. Moreover, in view of the wide range of human affairs to which the war power extends and in view of the rapidly changing state of conditions during times of strife, it is peculiarly appropriate, as it is traditional, to avoid legislative particularization.

Thus, during the first World War a statute authorized the President "to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable." *Northern Pac. Ry. Co. v. North Dakota*, 250 U. S. 135, 142. And without differentiating between the executive and legislative branches of the Government, the Court gave effect to the statute on the basis of the "complete and undivided character of the war power." 250 U. S. at 149.



Similarly in *Dakota Cent. Tel. Co. v. South Dakota*, 250 U. S. 163, which involved a statute empowering the President to assume control of any system of communication (p. 181) "and to operate the same in such manner as may be needful or desirable for the duration of the war," the Court stated (p. 183):

That under its war power Congress possessed the right to confer upon the President the authority which it gave him we think needs nothing here but statement, as we have disposed of that subject in the *North Dakota Railroad Rate Case*. And the completeness of the war power under which the authority was exerted and by which completeness its exercise is to be tested suffices, we think, to dispose of the many other contentions urged as to the want of power in Congress to confer upon the President the authority which it gave him.

That the generality of the Congressional mandate can not be subject to successful attack if it is as specific as circumstances reasonably permit was recognized in *United States v. Chemical Foundation*, 272 U. S. 1. In referring to legislation dealing with the disposition of enemy property, the Court said (p. 12):

The Act went as far as was reasonably practicable under the circumstances existing. It was peculiarly within the province of the Commander-in-Chief to know the

facts and to determine what disposition should be made of enemy properties in order effectively to carry on the war. \* \* \*

See also *McKinley v. United States*, 249 U. S. 397; *Highland v. Russell Car Co.*, 279 U. S. 253.<sup>72</sup>

The war power is in this respect similar to the general federal power in the field of foreign relations under which, as this Court has ruled, Congress may accord the Executive "a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved." *United States v. Curtiss-Wright Corp.*, 299 U. S. 304, 320.<sup>73</sup> And the opin-

<sup>72</sup> Compare *The Thomas Gibbons*, 8 Cranch 420, where the Court dealt with a statute authorizing the President "to establish and order suitable instructions for the better governing and directing the conduct of private armed vessels," under which the President had commissioned privately owned vessels and instructed their masters as to the capture of prize (8 Cranch at 426). The Court said that it did "not think it necessary to consider how far he (the President) would be entitled, in his character of commander in chief \* \* \* independent of any statute" to take such action because he was clearly authorized to take it by the statute. On this point, the Court held: "The language of this provision (quoted above) is very general, and in our opinion, it is entitled to a liberal construction, both upon the manifest intent of the legislature, and the ground of public policy" (8 Cranch at 426).

<sup>73</sup> Only in two instances has this Court declared legislation invalid on the ground of excessive delegation. *Panama Refining Co. v. Ryan*, 293 U. S. 388; *Schechter Poultry Corp. v. United States*, 295 U. S. 495. However, the Court in the *Curtiss-Wright* case apparently thought that those decisions were wholly irrelevant where the field of foreign relations is

ion of the Court made clear that the power "to declare and wage war" is to be treated as cognate to the power "to make treaties [and] to maintain diplomatic relations with other sovereignties (299 U. S. at p. 318) "

Finally, the contention that there has been an unconstitutional delegation of legislative power must fail for an entirely different reason. As we have endeavored to show above, pp. 52-56, the various orders here under review were a proper exercise of executive power derived directly from the Constitution. If that position is correct, then they do not need any Congressional support. The mere fact that Congress has undertaken to implement those orders by declaring that one who violates them shall be guilty of a misdemeanor, does not detract from the central consideration that the orders may be treated as resting independently upon their own foundation. Cf. *Ky. Whip & Collar Co. v. I. C. R. Co.*, 299 U. S. 334.

involved, for it did not even cite the *Schechter* case, and it made only an oblique reference to the *Panama Refining* case, 299 U. S. at p. 327.

"The opinion also adverted to numerous instances in the history of the United States where Congress had conferred exceedingly broad authority upon the Executive. 299 U. S. at 322-327. Thus, as early as 1794, the President was "authorized" "whenever, in his opinion, the public safety shall so require" to lay an embargo upon all ships and vessels in ports of the United States "under such regulations as the circumstances of the case may require, and to continue or revoke the same, whenever he shall think proper" (c. 41, 1 Stat. 372).

### III

#### NO DETENTION OF THE DEFENDANT IN A WAR RELOCATION CENTER IS INVOLVED IN THIS CASE

In addition to the curfew violation, the defendant has been convicted of failure to report to a Civil Control Station in the locality of his residence for instructions pertaining to evacuation. The defendant did not appear for the instructions and thereafter did not appear for the evacuation and was not evacuated. He did not become a resident of any assembly center operated by the military authorities or of any war relocation center operated by the War Relocation Authority. He was confined in King County Jail, Seattle, Washington, until after his conviction (R. 28). Thereafter, he was admitted to bail and granted permission by the military authorities to leave the military area and to proceed inland to reside and to accept employment.

It was contended in the court below that the conviction involves the question of the constitutionality of the restraint upon the liberty of Japanese persons not only during evacuation and during temporary residence in assembly centers but also subsequently in war relocation centers. The Government has not urged that the defendant's failure to report for evacuation instructions limits his contentions to the question whether this requirement to report was a reasonable aid to

evacuation and that he is barred from questioning the validity of the evacuation. In other words, it is not urged that the defendant's standing to contest the constitutionality of the evacuation would be greater if he had appeared for the preliminary instructions on May 11 or 12, 1942, but had failed to appear for evacuation as instructed on or before May 16, 1942. The Government contends that the requirement that all persons affected report for preliminary instructions was a reasonable regulation ancillary and incidental to valid evacuation and that the evacuation was valid as applicable to the defendant. Moreover, the Government does not contend that the defendant could not question the validity of such temporary restrictions on his personal liberty as would necessarily be required in connection with providing food, shelter, and protection for so large a group of people during the temporary period required to assemble them and to evacuate them from the military area to places where they could safely reside.

On the other hand, the Government does urge that this defendant has no standing whatsoever to question the constitutionality of any restraint which may have been placed subsequently upon the freedom of movement of other persons of Japanese ancestry who have been removed from the military areas and are residing in war relocation centers pending the procurement of places

of residence and employment elsewhere for them without any restraint in various communities throughout the United States. It is true, as appears from General DeWitt's proclamations summarized below, that if the defendant had appeared for evacuation he probably would have been sent to an assembly center and subsequently to a war relocation center and prohibited from departing from the assembly center or war relocation center without obtaining permission. It must be noted, however, that the defendant has indicated that he was able to arrange for a residence and employment inland even after conviction and while imprisoned. If he had complied with the evacuation program he might have been able to obtain such employment at the time of evacuation and to have obtained permission to proceed inland to the place of employment either before being transported to an assembly center or thereafter while residing in an assembly center or in a war relocation center as has happened in the case of numerous other evacuees. In view of these numerous alternatives which were available to the defendant to obtain freedom from restraint on personal movement, he cannot now contend that evacuation was unconstitutional because other persons who have been evacuated are still residing in war relocation centers. A fuller chronological account of the various steps taken in connection

with the execution of the evacuation program will perhaps be helpful.

*Restraint on movement of Japanese persons in military areas pending evacuation.*—In order to conduct evacuation of so large a group of persons in an orderly manner and in order to protect them from the resistance of inland communities to an unregulated voluntary migration of Japanese, the proclamations and civilian exclusion orders placed the following restraints on the movements of Japanese in designated military areas.

Civilian Exclusion Order No. 1 of March 24, 1942, *infra*, p. 114, pursuant to Public Proclamations Nos. 1 and 2, ordered that all persons of Japanese ancestry be excluded from that portion of Military Area No. 1 described as "Bainbridge Island" in the State of Washington on or before noon March 30, 1942, either by voluntary removal of such persons to a place of their own choice outside of Military Area No. 1 on or prior to March 29 or by evacuation on March 30 to such place as should then be prescribed. Instructions to all Japanese living on Bainbridge Island, which accompanied Civilian Exclusion Order No. 1, advised them that no Japanese person would be permitted to leave or enter Bainbridge Island after 9 A. M. on March 24 without obtaining permission from the Civil Control Office established on the Island; that individuals and families would be permitted to leave prior to the date for

complete evacuation on condition that their destination be outside of Military Area No. 1 and that arrangements would have been made for employment and shelter at the destination; and that evacuees who did not go to an approved destination of their own choice would be given temporary residence in a Reception Center under Government supervision outside of Military Area No. 1.

Public Proclamation No. 4 of March 27, 1942 (7 F. R. 2601), *infra*, p. 110, provided that whereas it was necessary to restrict and regulate the migration in order to provide for the welfare and assure the orderly evacuation and resettlement of Japanese voluntarily migrating from Military Area No. 1, commencing at midnight March 29, 1942, all Japanese persons were prohibited from leaving the military area for any purpose until and to the extent that a future proclamation or order would permit or direct.<sup>75</sup>

Thereafter Japanese persons were not permitted to depart from Military Area No. 1 to places of their own choice but were required to report for evacuation to Civil Control Stations of General DeWitt's Wartime Civil Control Administration in their neighborhood, and were evacuated to Assembly Centers established and operated by the WCCA. A series of similar Civil Exclusion

<sup>75</sup> Voluntary and unregulated evacuation had resulted in threats to the Japanese and public disturbance in communities outside of Military Area No. 1, in which the Japanese had sought to resettle. Tolson Committee Report, pp. 17, 201 *et seq.*

Orders up to and including Civilian Exclusion Order No. 99 dated May 30, 1942 (7 F. R. 4437), were issued for particular portions of Military Area No. 1 and pursuant to these orders the Japanese population was transferred to Assembly Centers and then to War Relocation Authority Relocation Centers when they became ready for occupancy.

Public Proclamation No. 6 of June 2, 1942 (7 F. R. 4436), provided that all Japanese persons within the California portion of Military Area No. 2 (all of California not within the coastal Military Area No. 1, were prohibited from leaving that area or, if outside, from entering Military Areas Nos. 1 and 2 without permission.<sup>76</sup> This proclamation extended the curfew for all Japanese persons to the California portion of Military Area No. 2. Civilian Exclusion Order No. 100 dated June 30, 1942 (7 F. R. 5369, 5370), to Civilian Exclusion Order No. 108 dated July 22, 1942 (F. R. 5915, 5916), excluded all Japanese from designated parts of the California portion of Military Area No. 2.

Public Proclamation No. 7 of June 8, 1942 (7 F. R. 4498), ratified and confirmed all exclusions under Civilian Exclusion Orders Nos. 1 to 99 and excluded all persons who might not already have

<sup>76</sup> Public Proclamation No. 5 of March 30, 1942 (7 F. R. 2713), not here involved, provided that certain classes of German and Italian aliens could apply for exemption from any evacuation or from observance of the curfew regulation applied to all alien enemies and persons of Japanese ancestry by Public Proclamation No. 3 (7 F. R. 2543).

been excluded by the Civilian Exclusion Orders with the exception of those already within established Wartime Civil Control Administration Assembly Centers or the area of a War Relocation Authority Project.

Public Proclamation No. 8 of June 27, 1942 (7 F. R. 8346), established each War Relocation Authority Center within the Western Defense Command as a War Relocation Project Area and required all Japanese persons within such area to remain therein unless the Japanese person should, before leaving the area, "obtain a written authorization executed by or pursuant to the express authority of this [General DeWitt's] headquarters setting forth the effective period of said authorization and the terms and conditions upon and purposes for which it has been granted." "

<sup>77</sup> Public Proclamation No. 9 of June 27, 1942 (7 F. R. 5719), not here involved, rescinded paragraph 6 of Public Proclamation No. 1 which had adopted and continued in effect the designation of prohibited and restricted areas by the Attorney General pursuant to Presidential proclamations of December 7 and 8, 1941. Public Proclamation No. 10, of August 5, 1942 (7 F. R. 6631), not here involved, provided dimout and lighting restrictions within a zone of restricted lighting. Public Proclamation No. 12 of October 10, 1942 (7 F. R. 8377), not here involved, amended Public Proclamation No. 10 in respect of lighting regulations. Public Proclamation No. 13 of October 13, 1942 (7 F. R. 8565), not here involved, following the amendment of the Attorney General's Regulations exempting all Italian aliens from the general classification of alien enemies, exempted Italian aliens, and all alien enemies during military service in the armed forces of the United States, from military curfew and travel regulations.

Public Proclamation No. 11 of August 18, 1942 (7 F. R. 6703), ratified and confirmed Civilian Exclusion Orders Nos. 100 to 108 inclusive and excluded from the California portion of Military Area No. 2 all Japanese persons not heretofore excluded with the exception of those within the bounds of an established Wartime Civil Control Administration Assembly Center or the area of the War Relocation Authority Project, and those within penal or internment institutions or those with military permits.

Pursuant to Executive Order No. 9102, the War Relocation Authority adopted regulations dated September 26, 1942 (7 F. R. 7656) in respect of issuance of leave "as a matter of right" for departure from War Relocation Areas.<sup>18</sup> These regulations provide for a short term leave for not more than 30 days, leave to participate in a work group outside the relocation center or indefinite leave for residence outside the relocation Area. The Project Director of the relocation center in which the applicant resides is authorized to grant a short term or work group leave. Indefinite leave is granted by the Director of the War Relocation Authority after securing from the Federal Bureau of Investigation any information obtainable and

<sup>18</sup> Regulations for enlistment in the War Relocation Authority Work Corps pursuant to Executive Order No. 9102 were issued on April 29, 1942 (7 F. R. 3231), but were thereafter revoked on December 19, 1942 (7 F. R. 10667).

after taking steps necessary to satisfy himself concerning the applicant's means of support, willingness to make required reports, opportunity for employment and residence at proposed destination, probable effect of the leave upon the war program and the public peace and safety, and such other conditions and factors as may be relevant. Reports of changes of address and employment are required from the persons on leave. The regulations provide that the Director may revoke any leave when conditions are so far changed or when such additional information has become available that an original application for leave would be denied. Upon expiration of any leave the applicant shall return to the Relocation Center unless otherwise directed by the Director of the War Relocation Authority.

Under the public proclamations and civilian exclusion orders, on and after March 29, 1942, no Japanese person including the defendant could leave Military Area No. 1 voluntarily and every such person was required to be evacuated into an assembly center or relocation center from which he could not depart without violation of a military regulation and the Act of March 21, 1942, or without permission granted by the military authorities or the War Relocation Authority.

*Release of Japanese from restrictions.*—During and subsequent to evacuation the military and war relocation authorities pursued the policy

of releasing Japanese from assembly and relocation centers as quickly as employment and residences could be found for them in communities which would accept them. An undetermined but considerable number of Japanese at the time of evacuation were permitted to go directly inland instead of going through assembly centers when they were able to establish that residence and employment were provided for them through the assistance of relatives or others. A large number of Japanese were evacuated directly to agricultural areas to assist in harvesting the sugar beet and other crops and thereafter obtained other employment or entered assembly or relocation centers. Numerous Japanese persons were released from assembly centers for purposes of employment and residence elsewhere. A principal purpose of the program of the War Relocation Authority is to grant indefinite leave to Japanese for whom employment and safe residence can be found outside of military areas.

The group of 808 Japanese affected by Civilian Exclusion Order No. 57, applicable to the defendant, was evacuated to the Puyallup Assembly Center in the State of Washington within Military Area No. 1, and thereafter was transferred to the Minidoka War Relocation Center in the State of Idaho. Over 10% of the 10,000 residents of this relocation center already have been

released upon indefinite, group, or temporary leave; and a much larger percentage of the young adult American educated men in the center, such as the defendant, have been released.

It is clear from the actual operation of the evacuation and relocation program that the defendant, who was granted permission to leave the military area and to take up residence and employment inland even after the conviction, would have had substantial opportunities to have proceeded to a residence and employment inland if he had complied with the evacuation and relocation program. It cannot be contended that if he had complied he would now be in detention in a war relocation center and therefore has a standing to raise the validity of that detention in this criminal proceeding. An individual will not be heard to question the constitutionality of the application of a regulation to other persons under circumstances not applicable to him. Cf. *Tyler v. Judges of Court of Registration*, 179 U. S. 405, 410; *Corporation Commission v. Lowe*, 281 U. S. 431; *Hatch v. Reardon*, 204 U. S. 152; *Electric Bond Co. v. Comm'n*, 303 U. S. 419, 443.

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## CONCLUSION

The judgment of the District Court should be affirmed.

Respectfully submitted.

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MAY 1943.

## APPENDIX A

## Constitution of the United States:

## ARTICLE I

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imports and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States:

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers



vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

## ARTICLE II

SECTION 1. The executive Power shall be vested in a President of the United States of America.

SECTION 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States;

SECTION 3. . . . he shall take Care that the Laws be faithfully executed, . . .

### Fifth Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### Fourteenth Amendment:

SECTION 1. All persons born or naturalized in the United States, and subject to the

jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## APPENDIX B

## STATUTES

**Declaration of War Between United States and Japan (c. 561, 55 Stat. 795):**

Whereas the Imperial Government of Japan has committed unprovoked acts of war against the Government and the people of the United States of America: Therefore be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the state of war between the United States and the Imperial Government of Japan which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial Government of Japan; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

Approved, December 8, 1941, 4:10 p. m.  
E. S. T.

Act of March 21, 1942 (Public Law 503, 77th Cong., 2d Sess., c. 91, 56 Stat. 173, U. S. C., Tit. 18, Sec. 97a):

*Be it enacted by the Senate and House of Representatives of the United States of*

*America in Congress assembled,* That whoever shall enter, remain in, leave, or commit any act in any military area or military zone prescribed, under the authority of an Executive order of the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be guilty of a misdemeanor and upon conviction shall be liable to a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both, for each offense.

Approved, March 21, 1942.

Act of April 20, 1918, c. 59, 40 Stat. 531, as amended by c. 926, 54 Stat. 1220, and c. 398, 55 Stat. 655 (U. S. C., Tit. 50, Secs. 104, 105):

SEC. 4. DEFINITION OF NATIONAL-DEFENSE TERMS.—The words "national-defense material" as used herein, shall include arms, armament, ammunition, livestock, stores of clothing, food, foodstuffs, fuel, supplies, munitions, and all other articles of whatever description and any part or ingredient thereof, intended for the use of the United States in connection with the national defense or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transporting of any of the materials or other articles hereinbefore mentioned or any part or ingredient thereof.

55-274-41-1

The words "national-defense premises", as used herein, shall include all buildings, grounds, mines, or other places wherein such national-defense material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other military or naval stations of the United States.

The words "national-defense utilities", as used herein, shall include all railroads, railways, electric lines, roads of whatever description, railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, or aircraft, or any other means of transportation whatsoever, whereon or whereby such national-defense material, or any troops of the United States, are being or may be transported either within the limits of the United States or upon the high seas; and all dams, reservoirs, aqueducts, water and gas mains and pipes, structures, and buildings, whereby or in connection with which water or gas may be furnished to any national-defense premises or to the military or naval forces of the United States, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply water, light, heat, power, or facilities of communication to any national-defense premises or to the military or naval forces of the United States.

SEC. 5. DESTROYING OR INJURING NATIONAL DEFENSE MATERIALS, ETC.—Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, shall wilfully injure or destroy, or shall attempt to so injure or destroy, any national-defense material, national-defense premises, or national-defense utilities, as herein defined, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than ten years, or both.

## APPENDIX C

**EXECUTIVE ORDER No. 9066, dated February 19, 1942, 7 F. R. 1407**

### **AUTHORIZING THE SECRETARY OF WAR TO PRESCRIBE MILITARY AREAS**

WHEREAS the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities as defined in Section 4, Act of April 20, 1918, 40 Stat. 533, as amended by the Act of November 30, 1940, 54 Stat. 1220, and the Act of August 21, 1941, 55 Stat. 655 (U. S. C., Title 50, Sec. 104):

Now, THEREFORE, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, 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. The Secretary of War is hereby

(90)

authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary, in the judgment of the Secretary of War or the said Military Commander, and until other arrangements are made, to accomplish the purpose of this order. The designation of military areas in any region or locality shall supersede designations of prohibited and restricted areas by the Attorney General under the Proclamations of December 7 and 8, 1941, and shall supersede the responsibility and authority of the Attorney General under the said Proclamations in respect of such prohibited and restricted areas.

I hereby further authorize and direct the Secretary of War and the said Military Commanders to take such other steps as he or the appropriate Military Commander may deem advisable to enforce compliance with the restrictions applicable to each Military area hereinabove authorized to be designated, including the use of Federal troops and other Federal Agencies, with authority to accept assistance of state and local agencies.

I hereby further authorize and direct all Executive Departments, independent establishments and other Federal Agencies, to assist the Secretary of War or the said Military Commanders in carrying out this Executive Order, including the furnishing of medical aid, hospitalization, food, clothing, transportation, use of land, shelter, and other supplies, equipment, utilities, facilities, and services.

This order shall not be construed as modifying or limiting in any way the authority heretofore

granted under Executive Order No. 8972, dated December 12, 1941, nor shall it be construed as limiting or modifying the duty and responsibility of the Federal Bureau of Investigation, with respect to the investigation of alleged acts of sabotage or the duty and responsibility of the Attorney General and the Department of Justice under the Proclamations of December 7 and 8, 1941, prescribing regulations for the conduct and control of alien enemies, except as such duty and responsibility is superseded by the designation of military areas hereunder.

EXECUTIVE ORDER No. 9102, dated March 18, 1942,  
7 F. R. 2165

**ESTABLISHING THE WAR RELOCATION AUTHORITY IN  
THE EXECUTIVE OFFICE OF THE PRESIDENT AND  
DEFINING ITS FUNCTIONS AND DUTIES**

By virtue of the authority vested in me by the Constitution and statutes of the United States, as President of the United States and Commander in Chief of the Army and Navy, and in order to provide for the removal from designated areas of persons whose removal is necessary in the interests of national security, it is ordered as follows:

1. There is established in the Office for Emergency Management of the Executive Office of the President the War Relocation Authority, at the head of which shall be a Director appointed by and responsible to the President.
2. The Director of the War Relocation Authority is authorized and directed to formulate

and effectuate a program for the removal, from the areas designated from time to time by the Secretary of War or appropriate military commander under the authority of Executive Order No. 9066 of February 19, 1942, of the persons or classes of persons designated under such Executive Order, and for their relocation, maintenance, and supervision.

3. In effectuating such program the Director shall have authority to—(a) Accomplish all necessary evacuation not undertaken by the Secretary of War or appropriate military commander, provide for the relocation of such persons in appropriate places, provide for their needs in such manner as may be appropriate, and supervise their activities.

(b) Provide, insofar as feasible and desirable, for the employment of such persons at useful work in industry, commerce, agriculture, or public projects, prescribe the terms and conditions of such public employment, and safeguard the public interest in the private employment of such persons.

(c) Secure the cooperation, assistance, or services of any governmental agency.

(d) Prescribe regulations necessary or desirable to promote effective execution of such program, and, as a means of coordinating evacuation and relocation activities, consult with the Secretary of War with respect to regulations issued and measures taken by him.

(e) Make such delegations of authority as he may deem necessary.

(f) Employ necessary personnel, and make such expenditures, including the making of loans and grants and the purchase of real property, as may be necessary, within the limits of such funds as may be made available to the Authority.

4. The Director shall consult with the United States Employment Service and other agencies on employment and other problems incident to activities under this order.

5. The Director shall cooperate with the Alien Property Custodian appointed pursuant to Executive Order No. 9095 of March 11, 1942, in formulating policies to govern the custody, management, and disposal by the Alien Property Custodian of property belonging to foreign nationals removed under this order or under Executive Order No. 9066 of February 19, 1942; and may assist all other persons removed under either of such Executive Orders in the management and disposal of their property.

6. Departments and agencies of the United States are directed to cooperate with and assist the Director in his activities hereunder. The Departments of War and Justice, under the direction of the Secretary of War and the Attorney General, respectively, shall insofar as consistent with the national interest provide such protective, police and investigational services as the Director shall find necessary in connection with activities under this order.

7. There is established within the War Relocation Authority the War Relocation Work Corps. The Director shall provide, by general regulations,

for the enlistment in such Corps, for the duration of the present war, of persons removed under this order or under Executive Order No. 9066 of February 19, 1942, and shall prescribe the terms and conditions of the work to be performed by such Corps, and the compensation to be paid.

8. There is established within the War Relocation Authority a Liaison Committee on War Relocation which shall consist of the Secretary of War, the Secretary of the Treasury, the Attorney General, the Secretary of Agriculture, the Secretary of Labor, the Federal Security Administrator, the Director of Civilian Defense, and the Alien Property Custodian, or their deputies, and such other persons or agencies as the Director may designate. The Liaison Committee shall meet at the call of the Director and shall assist him in his duties.

9. The Director shall keep the President informed with regard to the progress made in carrying out this order, and perform such related duties as the President may from time to time assign to him.

10. In order to avoid duplication of evacuation activities under this order and Executive Order No. 9066 of February 19, 1942, the Director shall not undertake any evacuation activities within military areas designated under said Executive Order No. 9066, without the prior approval of the Secretary of War or the appropriate military commander.

11. This order does not limit the authority granted in Executive Order No. 8972 of December 12, 1941; Executive Order No. 9066 of February 19, 1942; Executive Order No. 9095 of March

11, 1942; Executive Proclamation No. 2525 of December 7, 1941; Executive Proclamation No. 2526 of December 8, 1941; Executive Proclamation No. 2527 of December 8, 1941; Executive Proclamation No. 2533 of December 29, 1941; or Executive Proclamation No. 2537 of January 14, 1942; nor does it limit the functions of the Federal Bureau of Investigation..

## APPENDIX D

Public Proclamation No. 1, 7 F. R. 2320

WAR DEPARTMENT

(Public Proclamation No. 1)

Headquarters Western Defense Command and  
Fourth Army, Presidio of San Francisco,  
California

MILITARY AREAS NOS. 1 AND 2 DESIGNATED AND  
ESTABLISHED

MARCH 2, 1942.

To: The people within the States of Arizona, California, Oregon, and Washington, and the Public Generally.

Whereas by virtue of orders issued by the War Department on December 11, 1941, that portion of the United States lying within the States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona and the Territory of Alaska has been established as the Western Defense Command and designated as a Theatre of Operations under my command; and

Whereas by Executive Order No. 9066, dated February 19, 1942, the President of the United States authorized and directed the Secretary of War and the Military Commanders whom he may from time to time designate, whenever he or any

(17)

such designated commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, 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; and

Whereas the Secretary of War on February 20, 1942, designated the undersigned as the Military Commander to carry out the duties and responsibilities imposed by said Executive Order for that portion of the United States embraced in the Western Defense Command; and

Whereas the Western Defense Command embraces the entire Pacific Coast of the United States which by its geographical location is particularly subject to attack, to attempted invasion by the armed forces of nations with which the United States is now at war, and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations:

Now, therefore, I, J. L. DeWITT, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General of the Western Defense Command, do hereby declare that:

1. The present situation requires as a matter of military necessity the establishment in the territory embraced by the Western Defense Command of Military Areas and Zones thereof as defined in Exhibit 1, hereto attached, and as generally shown on the map attached hereto and marked Exhibit 2.

2. Military Areas Nos. 1 and 2, as particularly described and generally shown hereinafter and in Exhibits 1 and 2 hereto, are hereby designated and established.

3. Within Military Areas Nos. 1 and 2 there are established Zone A-1, lying wholly within Military Area No. 1; Zones A-2 to A-99, inclusive, some of which are in Military Area No. 1, and the others in Military Area No. 2; and Zone B, comprising all that part of Military Area No. 1 not included within Zones A-1 to A-99, inclusive; all as more particularly described and defined and generally shown hereinafter and in Exhibits 1 and 2.

Military Area No. 2 comprises all that part of the States of Washington, Oregon, California and Arizona which is not included within Military Area No. 1, and is shown on the map (Exhibit 2) as an unshaded area.

4. Such persons or classes of persons as the situation may require will by subsequent proclamation be excluded from all of Military Area No. 1 and also from such of those zones herein described as Zones A-2 to A-99, inclusive, as are within Military Area No. 2.

Certain persons or classes of persons who are by subsequent proclamation excluded from the zones last above mentioned may be permitted,



under certain regulations and restrictions to be hereafter prescribed, to enter upon or remain within Zone B.

The designation of Military Area No. 2 as such does not contemplate any prohibition or regulation or restriction except with respect to the zones established therein.

5. Any Japanese, German, or Italian alien, or any person of Japanese Ancestry now resident in Military Area No. 1 who changes his place of habitual residence is hereby required to obtain and execute a "Change of Residence Notice" at any United States Post Office within the States of Washington, Oregon, California and Arizona. Such notice must be executed at any such Post Office not more than five nor less than one day prior to any such change of residence. Nothing contained herein shall be construed to affect the existing regulations of the U. S. Attorney General which require aliens of enemy nationalities to obtain travel permits from U. S. Attorneys and to notify the Federal Bureau of Investigation and the Commissioner of Immigration of any change in permanent address.

6. The designation of prohibited and restricted areas within the Western Defense Command by the Attorney General of the United States under the Proclamations of December 7 and 8, 1941, and the instructions, rules and regulations prescribed by him with respect to such prohibited and restricted areas, are hereby adopted and continued in full force and effect.

The duty and responsibility of the Federal Bureau of Investigation with respect to the investi-

gation of alleged acts of espionage and sabotage are not altered by this proclamation.

**J. L. DeWitt,**  
*Lieutenant General,*  
*U. S. Army, Commanding.*

Confirmed:

**J. A. Ullo,**  
*Major General,*  
*The Adjutant General.*

(F. R. Doc. 42-2601; Filed, March 23, 1942;  
11:54 A. M.)

**Public Proclamation No. 2, 7 F. R. 2405**

**WAR DEPARTMENT**

**(Public Proclamation No. 2)**

**Headquarters Western Defense Command and  
Fourth Army Presidio of San Francisco,  
California**

**ESTABLISHMENT OF MILITARY AREAS 3, 4, 5, AND 6**

**MARCH 16, 1942.**

**To: The people within the States of Washington,  
Oregon, California, Montana, Idaho, Nevada,  
Utah and Arizona, and the Public Generally.**

Whereas by virtue of orders issued by the War Department on December 11, 1941, that portion of the United States lying within the States of Washington, Oregon, California, Montana,

Idaho, Nevada, Utah and Arizona and the Territory of Alaska has been established as the Western Defense Command and designated as a Theatre of Operations under my command; and

Whereas by Executive Order No. 9066, dated February 19, 1942, the President of the United States authorized and directed the Secretary of War and the Military Commanders whom he may from time to time designate, whenever he or any such designated commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which the right of any persons 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; and

Whereas the Secretary of War on February 20, 1942, designated the undersigned as the Military Commander to carry out the duties and responsibilities imposed by said Executive Order for that portion of the United States embraced in the Western Defense Command; and

Whereas the Western Defense Command by its geographical location is particularly subject to attack, to attempted invasion by the armed forces of nations with which the United States is now at war, and, in connection therewith, is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations:

Now therefore, I, J. L. DeWitt, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General of the Western Defense Command, do hereby declare that:

1. The present situation requires as a matter of military necessity the establishment in the territory embraced by the Western Defense Command of Military Areas and Zones in addition to those established in Public Proclamation No. 1, this headquarters, dated March 2, 1942.

2. Pursuant to the determination and statement of military necessity in paragraph 1 hereof, there are hereby designated and established the following Military Areas:

Military Area No. 3, embracing the entire State of Idaho.

Military Area No. 4, embracing the entire State of Montana.

Military Area No. 5, embracing the entire State of Nevada.

Military Area No. 6, embracing the entire State of Utah.

3. Within Military Areas Nos. 1 and 2 as designated and established in Public Proclamation No. 1, above mentioned, and within Military Areas Nos. 3, 4, 5 and 6, as defined herein, there are hereby established, pursuant to paragraph 1 hereof, Zones A-100 to A-1033, inclusive, all as more particularly described and defined in Exhibit 1,

hereto attached, and as generally shown on the maps attached hereto and marked Exhibits 2, 3, 4, 5, 6, 7, 8 and 9.

4. Such persons or classes of persons as the situation may require will by subsequent proclamation be excluded from Zones A-100 to A-1033, inclusive.

The designation of Military Areas Nos. 3, 4, 5, and 6 as such does not contemplate any prohibition, regulation or restriction except with respect to the Zones established therein, and except as provided in paragraph 5 hereof.

5. Any Japanese, German, or Italian alien, or any person of Japanese ancestry now resident in the states of the Western Defense Command, namely, Washington, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona, who changes his place of habitual residence is hereby required to obtain and execute a "Change of Residence Notice" at any United States Post Office within any of the states mentioned. Such notice must be executed at any such Post Office not more than five nor less than one day prior to any such change of residence. Nothing contained herein shall be construed to affect the existing regulations of the U. S. Attorney General which require aliens of enemy nationalities to obtain travel permits from U. S. Attorneys and to notify the Federal Bureau of Investigation and the Commissioner of Immigration of any change in permanent address.

6. The duty and responsibility of the Federal Bureau of Investigation with respect to the in-

vestigation of alleged acts of espionage and sabotage are not altered by this proclamation.

J. L. DeWITT,  
Lieutenant General,  
U. S. Army, Commanding.

Confirmed:

J. A. ULIO,  
Major General,  
The Adjutant General.

(F. R. Doc. 42-2673; Filed, March 27, 1942;  
10:29 A. M.)

Public Proclamation No. 3. 7 F. R. 2543

WAR DEPARTMENT

(Public Proclamation No. 3)

Headquarters Western Defense Command and  
Fourth Army Presidio of San Francisco, California

CONDUCT OF ENEMY ALIENS IN MILITARY AREAS

MARCH 24, 1942.

To: The people within the States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona, and the Public Generally.

Whereas by Public Proclamation No. 1, dated March 2, 1942, this headquarters, there were designated and established Military Areas Nos. 1 and 2 and Zones thereof, and

Whereas by Public Proclamation No. 2 dated March 16, 1942, this headquarters, there were des-

ignated and established Military Areas Nos. 3, 4, 5 and 6 and Zones thereof, and

Whereas the present situation within these Military Areas and Zones requires as a matter of military necessity the establishment of certain regulations pertaining to all enemy aliens and all persons of Japanese ancestry within said Military Areas and Zones thereof;

Now, therefore, I. J. L. DeWitt, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General, Western Defense Command, do hereby declare and establish the following regulations covering the conduct to be observed by all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the Military Areas above described, or such portions thereof as are hereinafter mentioned:

1. From and after 6:00 A. M., March 27, 1942, all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the geographical limits of Military Area No. 1, or within any of the Zones established within Military Area No. 2, as those areas are defined and described in Public Proclamation No. 1, dated March 2, 1942, this headquarters, or within the geographical limits of the designated Zones established within Military Areas Nos. 3, 4, 5, and 6, as those areas are defined and described in Public Proclamation No. 2, dated March 16, 1942, this headquarters, or

within any of such additional Zones as may hereafter be similarly designated and defined, shall be within their place of residence between the hours of 8:00 P. M. and 6:00 A. M., which period is hereinafter referred to as the hours of curfew.

2. At all other times all such persons shall be only at their place of residence or employment or traveling between those places or within a distance of not more than five miles from their place of residence.

3. Nothing in paragraph 2 shall be construed to prohibit any of the above specified persons from visiting the nearest United States Post Office, United States Employment Service Office, or office operated or maintained by the Wartime Civil Control Administration, for the purpose of transacting any business or the making of any arrangements reasonably necessary to accomplish evacuation; nor be construed to prohibit travel under duly issued change of residence notice and travel permit provided for in paragraph 5 of Public Proclamations Numbers 1 and 2. Travel performed in change of residence to a place outside the prohibited and restricted areas may be performed without regard to curfew hours.

4. Any person violating these regulations will be subject to immediate exclusion from the Military Areas and Zones specified in paragraph 1 and to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled: "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing Any Act in Military Areas or Zones."

In the case of any alien enemy, such person will in addition be subject to immediate apprehension and internment.

5. By subsequent proclamation or order there will be prescribed those classes of persons who will be entitled to apply for exemptions from exclusion orders hereafter to be issued. Persons granted such exemption will likewise and at the same time also be exempted from the operation of the curfew regulations of this proclamation.

6. After March 31, 1942, no person of Japanese ancestry shall have in his possession or use or operate at any time or place within any of the Military Areas 1 to 6 inclusive, as established and defined in Public Proclamations Nos. 1 and 2, above mentioned, any of the following items:

- (a) Firearms.
- (b) Weapons or implements of war or component parts thereof.
- (c) Ammunition.
- (d) Bombs.
- (e) Explosives or the component parts thereof.
- (f) Short-wave radio receiving sets having a frequency of 1750 kilocycles or greater or of 540 kilocycles or less.
- (g) Radio transmitting sets.
- (h) Signal devices.
- (i) Codes or ciphers.
- (j) Cameras.

Any such person found in possession of any of the above-named items in violation of the foregoing

will be subject to the criminal penalties provided by Public Law 503, 77th Congress, approved March 21, 1942, entitled: "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing Any Act in Military Areas or Zone."

7. The regulations herein prescribed with reference to the observance of curfew hours by enemy aliens, are substituted for and supersede the regulations of the United States Attorney General heretofore in force in certain limited areas. All curfew exemptions heretofore granted by the United States Attorneys are hereby revoked effective as of 6:00 a. m., PWT, March 27, 1942.

8. The Federal Bureau of Investigation is designated as the agency to enforce the foregoing provisions. It is requested that the civil police within the states affected by this Proclamation assist the Federal Bureau of Investigation by reporting to it the names and addresses of all persons believed to have violated these regulations.

J. L. DeWitt,  
Lieutenant General,  
U. S. Army, Commanding.

Confirmed:

J. A. ULIO,  
Major General,  
The Adjutant General.

(F. R. Doc. 42-2880; Filed, April 1, 1942; 10:19 a. m.)

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**Headquarters Western Defense Command and  
Fourth Army, Presidio of San Francisco,  
California**

**PUBLIC PROCLAMATION No. 4**

**MARCH 27, 1942.**

**To:** The people within the States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona, and the Public Generally:

**WHEREAS**, By Public Proclamation No. 1, dated March 2, 1942, this headquarters, there was designated and established Military Area No. 1, and

**WHEREAS**, It is necessary, in order to provide for the welfare and to insure the orderly evacuation and resettlement of Japanese voluntarily migrating from Military Area No. 1, to restrict and regulate such migration:

**NOW, THEREFORE**, I, J. L. DeWitt, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General, Western Defense Command, do hereby declare that the present situation requires as a matter of military necessity that, commencing at 12:00 midnight, P. W. T., March 29, 1942, all alien Japanese and persons of Japanese ancestry who are within the limits of Military Area No. 1, be and they are hereby prohibited from leaving that area for any purpose until and to the extent that a future proclamation or order of this headquarters shall so permit or direct.

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Any person violating this proclamation will be subject to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled: "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing Any Act in Military Areas or Zones." In the case of any alien enemy, such person will in addition be subject to immediate apprehension and internment.

**J. L. DeWitt,**  
*Lieutenant General,*  
*U. S. Army, Commanding.*

**Headquarters Western Defense Command and  
Fourth Army, Presidio of San Francisco, California**

**PUBLIC PROCLAMATION No. 8**

**JUNE 27, 1942.**

**To:** The people within the States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah and Arizona, and the Public Generally:

**WHEREAS**, By Public Proclamation No. 1, dated March 2, 1942, this headquarters, there were designated and established Military Areas Nos. 1 and 2, and by Public Proclamation No. 2, dated March 16, 1942, this headquarters, there were designated and established Military Areas Nos. 3, 4, 5 and 6, and

**WHEREAS**, The present situation within these military areas requires as a matter of military ne-

cessity that persons of Japanese ancestry who have been evacuated from certain regions within Military Areas Nos. 1 and 2 shall be removed to Relocation Centers for their relocation, maintenance and supervision and that such Relocation Centers be designated as War Relocation Project Areas, and that appropriate restrictions with respect to the rights of all such persons of Japanese ancestry, both alien and non-alien, so evacuated to such Relocation Centers, and of all other persons to enter, remain in, or leave such areas be promulgated;

Now, THEREFORE, I, J. L. DeWitt, Lieutenant General, U. S. Army, by virtue of the authority vested in me by the President of the United States and by the Secretary of War and my powers and prerogatives as Commanding General of the Western Defense Command, do hereby declare that:

1. Pursuant to the determination of military necessity hereinbefore set out, all the territory included within the exterior boundaries of each Relocation Center now or hereafter established within the Western Defense Command, as such boundaries are designated and defined by orders subsequently issued by this headquarters, are hereby designated and established as War Relocation Project Areas.

2. All persons of Japanese ancestry, both alien and non-alien, who now or shall hereafter be or reside, pursuant to exclusion orders and instructions from this headquarters, or otherwise, within the bounds of any established War Relocation Project Area are required to remain within the bounds of such War Relocation Project Area at

all times unless specifically authorized to leave as set forth in Paragraph 3 hereof.

3. Any person of Japanese ancestry, both alien and non-alien, who shall now or hereafter so be or reside within any such War Relocation Project Area shall, before leaving said Area, obtain a written authorization executed by or pursuant to the express authority of this headquarters setting forth the effective period of said authorization and the terms and conditions upon and purposes for which it has been granted.

4. No persons other than the persons of Japanese ancestry described in Paragraph 2 hereof, and other than persons employed by the War Relocation Authority established by Executive Order No. 9102, dated March 18, 1942, shall enter any such War Relocation Project Area except upon written authorization executed by or pursuant to the express authority of this headquarters first obtained, which said authorization shall set forth the effective period thereof and the terms and conditions upon and purposes for which it has been granted.

5. Failure of persons subject to the provisions of this Public Proclamation No. 8 to conform to the terms and provisions thereof shall subject such persons to the penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving, or Committing any Act in Military Areas or Zones".

J. L. DEWITT,  
Lieutenant General,  
U. S. Army, Commanding.

**Headquarters Western Defense Command and  
Fourth Army, Presidio of San Francisco,  
California**

**MARCH 24, 1942.**

**CIVILIAN EXCLUSION ORDER No. 1**

1. Pursuant to the provisions of Public Proclamations Nos. 1 and 2, this headquarters, dated March 2, 1942, and March 16, 1942, respectively, it is hereby ordered that all persons of Japanese ancestry, including aliens and non-aliens, be excluded from that portion of Military Area No. 1, described as "Bainbridge Island," in the State of Washington, on or before 12 o'clock noon, P. W. T., of the 30th day of March, 1942.

2. Such exclusion will be accomplished in the following manner:

(a) Such persons may, with permission, on or prior to March 29, 1942, proceed to any approved place of their choosing beyond the limits of Military Area No. 1 and the prohibited zones established by said proclamations or hereafter similarly established, subject only to such regulations as to travel and change of residence as are now or may hereafter be prescribed by this headquarters and by the United States Attorney General. Persons affected hereby will not be permitted to take up residence or remain within the region designated as Military Area No. 1 or the prohibited zones heretofore or hereafter established. Persons affected hereby are required on leaving or entering Bainbridge Island to register and obtain

a permit at the Civil Control Office to be established on said Island at or near the ferryboat landing.

(b) On March 30, 1942, all such persons who have not removed themselves from Bainbridge Island in accordance with Paragraph 1 hereof shall, in accordance with instructions of the Commanding General, Northwestern Sector, report to the Civil Control Office referred to above on Bainbridge Island for evacuation in such manner and to such place or places as shall then be prescribed.

(c) A responsible member of each family affected by this order and each individual living alone so affected will report to the Civil Control Office described above between 8 a. m. and 5 p. m. Wednesday, March 25, 1942.

3. Any person affected by this order who fails to comply with any of its provisions or who is found on Bainbridge Island after 12 o'clock noon, P. W. T., of March 30, 1942, will be subject to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled "An Act to Provide a Penalty for Violation of Restrictions or Orders With Respect to Persons Entering, Remaining in, Leaving, or Committing Any Act in Military Areas or Zone," and alien Japanese will be subject to immediate apprehension and internment.

**J. L. DEWITT,**  
*Lieutenant General,*  
*U. S. Army, Commanding.*



**Western Defense Command and Fourth Army  
Warline Civil Control Administration**

**INSTRUCTIONS TO ALL JAPANESE LIVING ON  
BAINBRIDGE ISLAND**

All Japanese persons, both alien and non-alien, will be evacuated from this area by twelve noon Monday, March 30, 1942.

No Japanese person will be permitted to leave or enter Bainbridge Island after 9:00 a. m. March 24, 1942, without obtaining special permission from the Civil Control Office established on this island near the ferry boat landing at the Anderson Dock Store in Winslow.

The Civil Control Office is equipped to assist the Japanese population affected by this evacuation in the following ways:

1. Give advice and instructions on the evacuation.

2. Provide services with respect to the management, leasing, sale, storage or other disposition of most kinds of property, including: farms, livestock and farm equipment, boats, tools, household goods, automobiles, etc.

3. Provide temporary residence for all Japanese in family groups, elsewhere.

4. Transport persons and a limited amount of clothing and equipment to their new residence, as specified below.

5. Give medical examinations and make provision for all invalided persons affected by the evacuation order.

6. Give special permission to individuals and families who are able to leave the area and pro-

ceed to an approved destination of their own choosing on or prior to March 20, 1942.

The following instructions must be observed:

1. A responsible member of each family, preferably the head of the family, or the person in whose name most of the property is held, and each individual living alone, will report to the Civil Control Office to receive further instruction. This must be done between 8:00 a. m. and 5:00 p. m. Wednesday, March 25, 1942.

2. Before leaving the area all persons will be given a medical examination. For this purpose all members of the family should be present at the same time, when directed by the Civil Control Office.

3. Under special conditions, individuals and families will be permitted to leave the area prior to the date for complete evacuation indicated above. In general, the conditions imposed on voluntary evacuation are as follows: (a) That the destination be outside of Military Area No. 1, prescribed by Proclamation No. 1 of the Commanding General, Western Defense Command and Fourth Army, March 2, 1942; (b) That arrangements have been made for employment and shelter at the destination.

4. Provisions have been made to give temporary residence in a reception center elsewhere. Evacuees who do not go to an approved destination of their own choice, but who go to a reception center under Government supervision, must carry with them the following property, not exceeding that which can be carried by the family or the individual:

(a) Blankets and linens for each member of the family;

(b) Toilet articles for each member of the family;

(c) Clothing for each member of the family;

(d) Sufficient knives, forks, spoons, plates, bowls and cups for each member of the family;

(e) All items carried will be securely packaged, tied and plainly marked with the name of the owner and numbered in accordance with instructions received at the Civil Control Office;

(f) No contraband items may be carried.

5. The United States Government through its agencies will provide for the storage at the sole risk of the owner of only the more substantial household items, such as iceboxes, washing machines, pianos and other heavy furniture. Cooking utensils and other small items must be crated, packed and plainly marked, with the name and address of the owner. Only one name and address will be used by a given family.

6. Each family, and individual living alone, who goes to a reception center will be furnished transportation and food for the trip. Transportation by private means will not be permitted. Instructions will be given by the Civil Control Office as to when evacuees must be fully prepared to travel.

Go to the Civil Control Office at the Anderson Dock Store in Winslow between 8:00 A. M. and 5:00 P. M. on March 25, 1942, to receive further instructions.

J. L. DEWITT,

Lieutenant General, U. S. Army, Commanding.

**Civilian Exclusion Order No. 57, 7 F. R. 3725**

**WAR DEPARTMENT**

(Civilian Exclusion Order No. 57)

Headquarters Western Defense Command and Fourth Army, Presidio of San Francisco, California

Persons of Japanese Ancestry Excluded from Restricted Area King County, Washington

MAY 10, 1942.

1. Pursuant to the provisions of Public Proclamations Nos. 1 and 2, this Headquarters, dated March 2, 1942, and March 16, 1942, respectively, it is hereby ordered that from and after 12 o'clock noon, P. W. T., of Saturday, May 16, 1942, all persons of Japanese ancestry, both alien and non-alien, be excluded from that portion of Military Area No. 1 described as follows:

All that portion of the County of King, State of Washington, within the boundary beginning at the intersection of Roosevelt Way and East Eighty-fifth Street; thence easterly along East Eighty-fifth Street and East Eighty-fifth Street extended to Lake Washington; thence southerly along the shoreline of Lake Washington to the point at which Yealer Way meets Lake Washington; thence westerly along Yealer Way to Fifteenth Avenue; thence northerly on Fifteenth Avenue to East Madison Street; thence southwesterly on East Madison Street to Fifth Avenue; thence northwesterly along Fifth Avenue to Westlake Avenue; thence northerly along Westlake Avenue to Vir-

ginia Street; thence northeasterly along Virginia Street to Fairview Avenue North; thence northerly along Fairview Avenue North to Eastlake Avenue; thence northerly along Eastlake Avenue to Roosevelt Way; thence northerly along Roosevelt Way to the point of beginning.

2. A responsible member of each family, and each individual living alone, in the above described area will report between the hours of 8:00 A. M. and 5:00 P. M., Monday, May 11, 1942, or during the same hours on Tuesday, May 12, 1942, to the Civil Control Station located at Christian Youth Center, 2203 East Madison Street, Seattle, Washington.

3. Any person subject to this order who fails to comply with any of its provisions or with the provisions of published instructions pertaining hereto or who is found in the above area after 12 o'clock noon, P. W. T., of Saturday, May 16, 1942, will be liable to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled "An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing any Act in Military Areas or Zones," and alien Japanese will be subject to immediate apprehension and internment.

4. All persons within the bounds of an established Assembly Center pursuant to instructions from this Headquarters are excepted from the provisions of this order while those persons are in such Assembly Center.

J. L. DeWITT,  
Lieutenant General,  
U. S. Army Commanding.

(Instructions published with Civilian Exclusion Order No. 57)

Western Defense Command and Fourth Army  
War-time Civil Control Administration, Presidio  
of San Francisco, California

INSTRUCTIONS TO ALL PERSONS OF JAPANESE  
ANCESTRY

Living in the following area: All that portion of the County of King, State of Washington, within the boundary beginning at the intersection of Roosevelt Way and East Eighty-fifth Street; thence easterly along East Eighty-fifth Street and East Eighty-fifth Street extended to Lake Washington; thence southerly along the shoreline of Lake Washington to the point at which Yesler Way meets Lake Washington; thence westerly along Yesler Way to Fifteenth Avenue; thence northerly on Fifteenth Avenue to East Madison Street; thence southwesterly on East Madison Street to Fifth Avenue; thence northwesterly along Fifth Avenue to Westlake Avenue; thence northerly along Westlake Avenue to Virginia Street; thence northeasterly along Virginia Street to Fairview Avenue North; thence northerly along Fairview Avenue North to Eastlake Avenue; thence northerly along Eastlake Avenue to Roosevelt Way; thence northerly along Roosevelt Way to the point of beginning.

Pursuant to the provisions of Civilian Exclusion Order No. 57, this Headquarters, dated May 10,

1942, all persons of Japanese ancestry, both alien and non-alien, will be evacuated from the above area by 12 o'clock noon, P. W. T., Saturday, May 16, 1942.

No Japanese person living in the above area will be permitted to change residence after 12 o'clock noon, P. W. T., Sunday, May 10, 1942, without obtaining special permission from the representative of the Commanding General, Northwestern Sector, at the Civil Control Station located at: Christian Youth Center, 2203 East Madison Street, Seattle, Washington. Such permits will only be granted for the purpose of uniting members of a family, or in cases of grave emergency.

The Civil Control Station is equipped to assist the Japanese population affected by this evacuation in the following ways:

1. Give advice and instructions on the evacuation.
2. Provide services with respect to the management, leasing, sale, storage or other disposition of most kinds of property, such as real estate, business and professional equipment, household goods, boats, automobiles and livestock.
3. Provide temporary residence elsewhere for all Japanese in family groups.
4. Transport persons and a limited amount of clothing and equipment to their new residence.

The following instructions must be observed:

1. A responsible member of each family, preferably the head of the family, or the person in whose name most of the property is held, and each

individual living alone, will report to the Civil Control Station to receive further instructions. This must be done between 8:00 A. M. and 5:00 P. M. on Monday, May 11, 1942, or between 8:00 A. M. and 5:00 P. M. on Tuesday, May 12, 1942.

2. Evacuees must carry with them on departure for the Assembly Center, the following property:

- (a) Bedding and linens (no mattress) for each member of the family;
- (b) Toilet articles for each member of the family;
- (c) Extra clothing for each member of the family;
- (d) Essential personal effects for each member of the family.

All items carried will be securely packaged, tied and plainly marked with the name of the owner and numbered in accordance with instructions obtained at the Civil Control Station. The size and number of packages is limited to that which can be carried by the individual or family group.

3. No pets of any kind will be permitted.
4. No personal items and no household goods will be shipped to the Assembly Center.

5. The United States Government through its agencies will provide for the storage, at the sole risk of the owner, of the more substantial household items, such as iceboxes, washing machines, pianos and other heavy furniture. Cooking utensils and other small items will be accepted for storage if crated, packed and plainly marked with the name and address of the owner. Only one name and address will be used by a given family.

6. Each family, and individual living alone, will be furnished transportation to the Assembly Center or will be authorized to travel by private automobile in a supervised group. All instructions pertaining to the movement will be obtained at the Civil Control Station.

Go to the Civil Control Station between the hours of 8:00 A. M. and 5:00 P. M., Monday, May 11, 1942, or between the hours of 8:00 A. M. and 5:00 P. M., Tuesday, May 12, 1942, to receive further instructions.

J. L. DEWITT,

*Lieutenant General, U. S. Army, Commanding.*

May 10, 1942. \*

See Civilian Exclusion Order No. 57.



## APPENDIX 2

### Non-Adjudicative Facts To Be Judicially Noticed

1       a. The Commission on Wartime Relocation and Internment of  
2       Civilians was established by an act of Congress and was  
3       directed to "review the facts and circumstances surrounding  
4       Executive Order 9066, issued on February 1942, and the impact  
5       of such Executive Order on American citizens and permanent  
6       resident aliens" and to "review directives of the United States  
7       military forces requiring the relocation and, in some cases,  
8       detention in internment camps of American citizens, 'including  
9       those of Japanese ancestry.'"

10       b. The Commission included among its membership present  
11       and former members of Congress, the Supreme Court, and the  
12       Cabinet as well as distinguished private citizens. In carrying  
13       out its Congressional mandate, the Commission held some 20 days  
14       of hearings in cities across the country, heard testimony from  
15       more than 750 witnesses, including government decision-makers  
16       involved in the issuance of E.O. 9066 and the military orders  
17       implementing it, and made an extensive review of government  
18       records and other sources of information.

19       c. The factual findings and conclusions of the Commission  
20       are set forth in Personal Justice Denied (submitted to Congress  
21       in February, 1983) as supplemented by the Addendum and  
22       Additional Views to the Commission's Report) submitted to  
23       Congress June, 1983.

24       d. The findings and conclusions of the Commission set  
25       forth in the report were made with the unanimous support of the  
26       Commission's members.

27       e. The findings and conclusions of the Commission include  
28       the specific findings and conclusions set forth in Appendix 1  
29       as indicated by appropriate citations.

30       f. In addition to making specific findings, the Commis-  
31       sion concluded that Executive Order 9066, Public Law 77-503 and  
32       the military orders implementing it, were not justified by  
33       military necessity and that the governmental decisions  
34       resulting in the exclusion from the West Coast and subsequent  
35       internment of Japanese Americans were based on race prejudice,  
36       war hysteria and the failure of political leadership by  
37       responsible government officials.

38       g. The recommendations of the Commission are set forth in  
39       Personal Justice Denied, Part 2: Recommendations (June, 1983).

40       h. Exhibits A through FF to the Petition to Writ of Error  
41       Coram Nobis are copies of authentic government documents,  
42       prepared by government personnel on behalf of the government at

or reasonably near the time of the events or observations they record, and the contents of those documents are stated therein.

i. The government and amicus curiae filed legal briefs in Hirabayashi v. United States, and the copies of excerpts from the briefs included in Appendix 3 are authentic.

j. G-2 reports 4, 13, 14, 15, 17, 18, 19; letter to Federal Communications Commission from Lt. Col. Forney, December 31, 1941. Telexes dated April 26 and 27, 1943; May 3 and 5, 1943; Paraphrase of Radio No. 8246; Paraphrase of Secret Radio no. 2540; Transcript of Telephone Conversation, May 27, 1943; Letter to J. J. McCloy from General DeWitt, June 15, 1943; Letter to John Franklin Carter, dated October 19, 1941; Letter to Lloyd Wright, dated February 18, 1942; are copies of authentic government documents prepared by government personnel on behalf of the government at or reasonably near the time of the events or observations they record, and the contents of those documents are stated therein.

2491D

REQUEST FOR JUDICIAL NOTICE - 278

APPENDIX NO. 2

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BEFORE: THE HONORABLE MARILYN HALL PATEL, JUDGE

FRED TOYOSABURO KOREMATSU, )  
 )  
 PETITIONER, )  
 )  
 VS. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 RESPONDENT. )  
 \_\_\_\_\_ )

CRIM. NO. 27635-W

REPORTER'S TRANSCRIPT

MONDAY, MARCH 14, 1983

REPORTED BY:

VIVIAN A. PELLA

REQUEST FOR JUDICIAL NOTICE - 279

APPENDIX NO. 3



A P P E A R A N C E S:

## FOR THE PETITIONER:

DALE MINAMI  
MINAMI, TOMINE & LEW  
370 GRAND AVENUE  
OAKLAND, CALIFORNIA 94610

PETER IRONS  
429 PARKWOOD LANE  
LEUCADIA, CALIFORNIA 92024

## FOR THE RESPONDENT:

VICTOR STONE  
GENERAL LITIGATION SECTION  
CRIMINAL DIVISION  
DEPARTMENT OF JUSTICE  
WASHINGTON, D.C. 20530

WILLIAM T. MC GIVERN  
ASSISTANT UNITED STATES ATTORNEY  
NORTHERN DISTRICT OF CALIFORNIA  
450 GOLDEN GATE AVENUE, BOX 36055  
SAN FRANCISCO, CALIFORNIA 94102

---000---

1 THE DOCUMENTS HAVE BEEN ALREADY ASSEMBLED AND COMPILED  
2 BY THE COMMISSION. WE'D LIKE TO SEE THOSE FILES FIRST.

3 IN ADDITION, WE'D LIKE TO SEE THE DEPARTMENT OF  
4 JUSTICE LITIGATION FILES ON THESE CASES, WHICH I THINK ARE  
5 APPROPRIATE. THERE IS LEGAL AUTHORITY FOR CIVIL DISCOVERY IN  
6 CORAM NOBIS PROCEEDINGS. WE CAN CITE CASES, IF YOUR HONOR  
7 PLEASES.

8 I THINK JUST ONE LAST COMMENT IS THAT THE CONCERN  
9 THAT WE HAVE ABOUT THE DELAY IS THAT THE GOVERNMENT CANNOT  
10 GUARANTEE THAT THEY WILL MAKE A RESPONSE ONCE THE COMMISSION'S  
11 RECOMMENDATIONS ARE MADE. IN OTHER WORDS, THERE IS NO  
12 GUARANTEE THEY WILL ~~LASH DOWN~~ <sup>FOLLOW</sup> THESE RECOMMENDATIONS. THERE'S  
13 NO GUARANTEE OF WHAT THE RECOMMENDATIONS WILL EVEN BE.

14 AT THIS POINT, WE ARE REPRESENTING INDIVIDUAL  
15 PETITIONERS. THESE INDIVIDUAL PETITIONERS ARE TOTALLY SEPARATE  
16 FROM ANYTHING THE COMMISSION DOES. OUR JOB IS TO REPRESENT  
17 THESE PEOPLE WHO ARE ~~YASUJIN~~ <sup>ADVANCED</sup> AGE, WHO WOULD LIKE TO SEE THIS  
18 ~~"BLOCK"~~ <sup>BLOT</sup>, AS THEY PUT IT, REMOVED BEFORE THEY LEAVE THIS EARTH.

19 SO WE HAVE SOME TIME CONSTRAINTS AS FAR AS THE AGE  
20 OF OUR PARTICULAR CLIENTS, AND THE FACT THAT THEIR CASES ARE  
21 TOTALLY SEPARATE FROM WHAT THE COMMISSION DOES.

22 WE WOULD OFFER THIS, YOUR HONOR: IF THE GOVERNMENT  
23 IS WILLING TO ALLOW THIS REPORT INTO EVIDENCE, IF A TRIAL OR  
24 A HEARING IS MADE, WE'D BE WILLING TO STIPULATE TO AN EXTENSION  
25 OF TIME ANYWHERE PAST THE -- OR SOME TIME PAST THE RECOMMENDATIONS

1 IF THE CREDIBILITY OF THE REPORT AND THE INTEGRITY OF THE REPORT  
2 IS AS MR. STONE REPRESENTS, I DON'T SEE ANY REASON WHY WE  
3 COULDN'T INTRODUCE THIS AS EVIDENCE AND STIPULATE TO THAT AND  
4 LET THEM HAVE AN EXTENSION AND SEE WHAT HAPPENS AFTER THE  
5 RECOMMENDATIONS ARE MADE.

6 THE COURT: MR. STONE, AS TO THE LATTER SUGGESTION,  
7 YOU REFER TO LODGING IT WITH THE COURT?

8 MR. STONE: ABSOLUTELY. I'M AT A LOSS TO UNDERSTAND  
9 WHAT MY OPPONENTS WANT. THE RECORDS ARE OPEN TO THEM. THERE  
10 WOULDN'T BE ANY PROBLEM IF MR. IRONS WANTED TO COME HERE TO  
11 SEE THOSE RECORDS. THEY ARE AVAILABLE AS LONG AS YOU MAKE A  
12 PRIOR APPOINTMENT. I HAVE BEEN INTO THE ARCHIVES PERSONALLY  
13 IN PREPARATION FOR COMING HERE, THE NATIONAL ARCHIVES. THOSE  
14 RECORDS ARE OPEN. THOSE INCLUDE THE FILES OF EVERY CRIMINAL  
15 CASE SCATTERED THROUGH AN ENTIRE WALL OF DOCUMENTS THAT WAS  
16 HANDLED DURING THIS PERIOD. I HAVEN'T GOTTEN THE DEPARTMENT  
17 OF JUSTICE TO SEE IF THEY HAVE COPIES OF THE RECORDS THAT GO  
18 BACK THAT FAR. I'VE GOT BOXES OF DOCUMENTS AND THEY'RE ALL  
19 PUBLIC RECORDS. THE DOCUMENTS THEY WANT ARE IN THE LOCAL  
20 LIBRARY.

21 THE COURT: ADMITTING IT INTO EVIDENCE, WHAT I'M  
22 SUGGESTING HAS, OF COURSE, THE SAME EFFECT. IT SEEMS TO ME  
23 TO GIVE THEM WHAT THEY SAID ABOUT THE DOCUMENT WAS ALL OF THE  
24 NECESSARY PRELIMINARY DETERMINATIONS. YOU WOULD AGREE THAT  
25 IT IS APPROPRIATE FOR THE COURT TO TAKE JUDICIAL NOTICE OF THE

## REPORT

1 GOVERNMENT? JP

2 MR. STONE: ABSOLUTELY.

3 THE COURT: IF YOU LODGE IT WITH THE COURT, WE WILL  
4 HAVE A SUBSTANTIAL AMOUNT OF READING. NOW, WHAT I WOULD SUGGEST  
5 YOU DO IS THE FOLLOWING: DETERMINE WHAT YOU CAN AGREE UPON  
6 IS ACCESSIBLE TO YOU AND HOW LONG IT'S GOING TO TAKE FOR YOU  
7 TO DO THAT. AND YOU HAVE AN INFORMAL DISCOVERY CONFERENCE  
8 WITHIN THE NEXT WEEK OR TWO TO DO THAT, AND THEN IF THERE ARE  
9 ISSUES RELATING TO DISCOVERY THAT YOU CANNOT AGREE UPON, THAT  
10 THAT MATTER BE SUBMITTED TO THE COURT.

11 IN OTHER WORDS, IF THERE ARE DOCUMENTS TO WHICH THEY  
12 CLAIM THEY DO NOT HAVE ACCESS AND YOU AGREE THEY DO NOT HAVE  
13 ACCESS, AND THEY BELIEVE THEY'RE ENTITLED TO DISCOVER AND YOU  
14 CANNOT WORK OUT A SYSTEM FOR HANDLING THAT OR AGREEMENT, THAT  
15 THAT ISSUE BE BRIEFED AS TO WHETHER THEY'RE ENTITLED TO  
16 DISCOVERY IN THESE PROCEEDINGS.

17 IF THERE IS SOME REASON WHY THOSE PARTICULAR DOCUMENTS  
18 CANNOT BE DISCOVERED, AND LET'S SET A DEADLINE FOR DOING THAT  
19 THEN.

20 LET'S SEE, IS 30 DAYS SUFFICIENT TIME FOR THAT?

21 MR. IRONS: I WOULD THINK SO, YOUR HONOR.

22 MR. MINAMI: I BELIEVE SO.

23 THE COURT: I DON'T KNOW WHY YOU DON'T SUBMIT  
24 CROSS BRIEFS AND COME IN AND ARGUE IT. IF YOU HAVE A DISCOVERY  
25 CONFERENCE, YOU'RE GOING TO KNOW WHERE YOU AGREE AND DISAGREE.

CERTIFICATE OF REPORTER

I, VIVIAN A. PELLA, THE UNDERSIGNED OFFICIAL  
REPORTER OF THE UNITED STATES DISTRICT COURT OF THE  
NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVENUE,  
SAN FRANCISCO, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, PAGES NUMBERED  
1 THROUGH 25, INCLUSIVE, CONSTITUTE A TRUE, FULL AND CORRECT  
TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH OFFICIAL  
REPORTER OF THE PROCEEDINGS HEREINBEFORE ENTITLED, AND  
REDUCED TO TYPEWRITING TO THE BEST OF MY ABILITY.

(SIGNED) 

VIVIAN A. PELLA  
CSR NO. 4806