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Executive Order 9066

At dawn on December 7, 1941, Japan began bombing American ships and planes at Pearl Harbor. The attack took our forces by surprise. Japanese aircraft carriers and warships had left the Kurile Islands for Pearl Harbor on November 26, 1941, and Washington had sent a war warning message indicating the possibility of attack upon Pearl Harbor, the Philippines, Thailand or the Malay Peninsula. Nevertheless, the Navy and Army were unprepared and unsuspecting. After a few hours of bombing, Japan had killed or wounded over 3,500 Americans. Two battleships were destroyed, four others sunk or run aground; a number of other vessels were destroyed or badly damaged. One hundred forty-nine American airplanes had been destroyed. Japan lost only 29 planes and pilots.¹

That night President Roosevelt informed his Cabinet and Congressional leaders that he would seek a declaration of war.² On December 8 the President addressed a joint session of Congress and expressed the nation's outraged shock at the damage which the Japanese had done on that day of infamy. The declaration of war passed with one dissenting vote.³ Germany and Italy followed Japan into the war on December 11.

At home in the first weeks of war the division between isolationists and America Firsters, and supporters of the western democracies, was set aside, and the country united in its determination to defeat the Axis powers. Abroad, the first weeks of war sounded a steady drumbeat

of defeat, particularly as the Allies retreated before Japanese forces in the Far East. On the same day as Pearl Harbor, the Japanese struck the Malay Peninsula, Hong Kong, Wake and Midway Islands, and attacked the Philippines, destroying substantial numbers of American aircraft on the ground near Manila. The next day Thailand was invaded and within days two British battleships were sunk off Malaysia. On December 13 Guam fell, and on Christmas the Japanese captured Wake Island and occupied Hong Kong. In the previous seventeen days, Japan had made nine amphibious landings in the Philippines. General Douglas MacArthur, commanding Army forces in the islands, evacuated Manila on December 27, withdrew to the Bataan Peninsula, and set up headquarters on Corregidor. With Japan controlling all sea and air approaches to Bataan and Corregidor, after three months the troops isolated there were forced to surrender unconditionally in the worst American defeat since the Civil War. On February 27 the battle of the Java Sea resulted in another American naval defeat with the loss of thirteen Allied ships.⁴ In January and February 1942, the military position of the United States in the Pacific was bleak indeed. Reports of American battlefield deaths gave painful personal emphasis to the war news.*

Pearl Harbor was a surprise. The outbreak of war was not. In December 1941 the United States was not in the state of war-readiness which those who anticipated conflict with the Axis would have wished, but it was by no means unaware of the intentions of Japan and Germany. The President had worked for some time for Lend-Lease and other measures to support the western democracies and prepare for war. In

*Some have argued that mistreatment of American soldiers by the Japanese Army—for instance, the atrocities of the Bataan Death March—justifies or excuses the exclusion and detention of American citizens of Japanese ancestry and resident Japanese aliens. The Commission firmly rejects this contention. There is no excuse for inflicting injury on American citizens or resident aliens for acts for which they bear no responsibility. The conduct of Japan and her military forces is irrelevant to the issues which the Commission is considering. Congressman Coffee made the point eloquently on December 8, 1941: "It is my fervent hope and prayer that residents of the United States of Japanese extraction will not be made the victim of pogroms directed by self-proclaimed patriots and by hysterical self-anointed heroes. . . . Let us not make a mockery of our Bill of Rights by mistreating these folks. Let us rather regard them with understanding, remembering they are the victims of a Japanese war machine, with the making of the international policies of which they had nothing to do." *Congressional Record*, 77th Cong., 1st Sess. (Dec. 8, 1941), p. A5554.

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.⁵ 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

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."⁶ The Justice Department, defending the exclusion before the Supreme Court, made no claim that there was identifiable subversive activity.⁷ 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.⁸

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.⁹

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-

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.¹⁰ 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.¹¹ 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

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.¹² Carter summarized five points in the report, which may be all the President read,¹³ the War Department also reviewed the report at Roosevelt's request.¹⁴ 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].

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.¹⁵

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.¹⁶ 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,"¹⁷ 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."¹⁸

Munson had also come to respect the views of Lieutenant Commander K. D. Ringle of the Office of Naval Intelligence in southern California.¹⁹ Ringle had spent much time doing intelligence work in both Japan and southern California²⁰ where he had assisted in breaking a major Japanese spy ring through a surreptitious entry²¹ 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.²²

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.²³ 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.²⁴

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.²⁵

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.²⁶ People in the "A," "B," and "C" categories were promptly arrested in early December.²⁷ 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.²⁸ 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

crime had been committed—the usual standard for arrest. Such arrests were not to occur until the FBI was ready to initiate criminal charges,²⁹ 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.³⁰ 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 Italians³¹ and arrests continued even after that date. Many arrested in the early sweeps were Issei leaders of the Japanese American community and its organizations.³²

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 espionage³³—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.

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.”³⁶ 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.³⁷

The Secretary raised the matter again at the Cabinet meeting of

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.^{38*} John Franklin Carter also disputed Knox in a memo to Roosevelt.³⁹ Nor were his views supported by General Short,⁴⁰ 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.⁴¹ 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.⁴² 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."⁴³ 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.⁴⁴

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,⁴⁵ 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.⁴⁶

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 sabotage⁴⁷ 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."⁴⁸

Robert L. Shivers, the FBI's Special Agent in Charge in Hawaii (and a man Munson thought highly of)⁴⁹ 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.⁵⁰ These men were arrested immediately after Pearl Harbor and kept in custody. Shivers offered documentary proof to support his views, and testified

that there were no acts of sabotage in Hawaii during the Pearl Harbor raid.⁵¹

Despite such telling testimony, the Roberts Report did not use language designed to allay the unease spread by Knox. In fact the Report tended to have the opposite effect; in March a House Committee stated that public agitation in favor of evacuation dated from publication of the Roberts Report.⁵² Predictions which the Commission heard in Hawaii may have caused this silence. Besides Roberts, the Commissioners were high-ranking military officers who, at Secretary Stimson's direction, used the Commission's inquiry to look into the future defense of the islands.⁵³ They asked intelligence staff in Hawaii about the prospects for future sabotage or fifth column activity and received conflicting advice.

Shivers asserted that "just as soon as Japan achieves some temporary decisive victory, the old spirit will begin to bubble forth" and that:

[If] there should be an out-and-out attack on this island by the Japanese Navy, reinforced by their air arm, I think you could expect 95% of the alien Japanese to glory in that attack and to do anything they could to further the efforts of the Japanese forces.

You would find some second- and third-generation Japanese, who are American citizens but who hold dual citizenship, and you would find some of those who would join forces with the Japanese attackers for this and other reasons. Some of them may think they have suffered discrimination, economic, social, and otherwise, and there would probably be a few of them who would do it.⁵⁴

He also thought the Japanese community in the United States and Hawaii was highly organized, and so in theory had the ability to assist the Axis. Finally, Shivers believed only individuals, not the Japanese in the United States collectively, would become potential saboteurs.⁵⁵

Angus Taylor, the United States Attorney for Hawaii, a man of vehement and strident views, not directly engaged in intelligence work, testified that in the event of subsequent Japanese attack, even the third-generation citizens would "immediately turn over to their own race."⁵⁶

The Intelligence Officer of the 14th Naval District, Irving Mayfield, believed that the Japanese system of spies and saboteurs would not rest on race or ethnicity.⁵⁷ This point had, of course, been made repeatedly by Hoover, Munson and Ringle. The professionals largely agreed that the Japanese did not rely on Issei and Nisei for espionage, and there was no reason to believe they would for sabotage. In a 1943 memorandum, Mayfield set out the logic of his position: it had to be

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.⁵⁸

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,⁵⁹ and on the mainland the few people convicted of being illegal agents of Japan were predominantly not ethnic Japanese.⁶⁰

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.⁶¹ Roberts also visited General DeWitt and one may assume that he presented similar views to the General.⁶²

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

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 approaches⁶³) 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.⁶⁴

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.⁶⁵ 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

accepted that, in time of war, aliens of enemy nationality could be controlled and interned without the need for any justification beyond their status. Internment began immediately after December 7 and, as FBI figures show, its weight fell disproportionately on the Japanese—against whom it was particularly effective since the ineligibility of Issei for citizenship and the status of the ethnic Japanese as comparatively recent immigrants allowed the government to round up most leaders of the Japanese American community.

The government took other actions which affected the business life of the ethnic Japanese.⁶⁶ Earlier in 1941 the fixed deposits (similar to savings certificates) which many ethnic Japanese maintained in the Japanese banks which had branches on the West Coast were in effect frozen when commercial relations with Japan were curtailed.⁶⁷ At the time of Pearl Harbor, all Japanese branch banks were immediately closed and taken over by the state bank superintendent or the Alien Property Custodian who called in all outstanding loans.⁶⁸ In addition, approximately \$27.5 million of business enterprises and real estate owned by Japanese aliens was taken over by the Alien Property Custodian.⁶⁹ Finally, the Treasury froze the dollar deposits of both citizens and aliens who had been dealing with Japan before the war, releasing only small monthly payments to the account holders.⁷⁰ Cumulatively, these measures affected not only most Issei and people in the import-export business but a very large proportion of the Japanese American community.

Other steps were taken as well. Congress passed and the President implemented a plan for censorship, primarily of the mail.⁷¹ Military officials began to consider transferring American soldiers of Japanese ancestry away from the West Coast.⁷²

Although many of these government measures were applied equally to all aliens of enemy nationality, even in the early days after Pearl Harbor, the military on the West Coast tended to single out ethnic Japanese for harsher treatment. The Nisei reacted to these gathering clouds by actions to persuade the country of their loyalty. In the San Joaquin Valley, they enlisted as air raid wardens and helped guard the water supply at Parlier against possible sabotage. In Seattle, the creator of the Joe Palooka comic strip was persuaded to introduce some Nisei GIs into the cartoon as loyal Americans. Other communities drew up pledges of loyalty.⁷³ The Japanese Association of Fresno wired Congressman Gearhart offering its services against Japan, and the Congressman placed the message in the *Congressional Record*.⁷⁴ But these efforts did not turn the rising tide of suspicion which became more

apparent with the development through December and January of two programs run cooperatively by the Justice Department and the War Department through the Western Defense Command: the seizure of contraband from enemy aliens and the establishment of prohibited areas.

As part of the Presidential Proclamations issued immediately after Pearl Harbor, Roosevelt ordered confiscation of cameras, weapons, radio transmitters, and other instruments of possible espionage and sabotage belonging to enemy aliens. The War Department was concerned at the slow pace of the Justice Department's implementation of the proclamations, including the portions relating to search and seizure.⁷⁵ The Army was particularly concerned that alien Japanese inside the United States were making radio transmissions to Japanese ships offshore.

In time, and clearly under pressure from the Army, the FBI and Department of Justice cooperated to develop plans for search and seizure in enemy alien homes. At first, search warrants were not issued without probable cause.⁷⁶ When the Attorney General insisted that probable cause in the usual constitutional sense be found, DeWitt pressed the proposition that merely being an enemy alien was sufficient to constitute probable cause. The Justice Department at first rejected the idea.⁷⁷ The FBI was not convinced that the perceived problem 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 DeWitt continued to stress the need for searches and arrests, including those of citizens, without warrants.⁸⁰ In early January, the Justice Department reached an accommodation with the Western Defense Command. All enemy aliens were to deposit prohibited articles with the local police within a few days, and merely being an enemy alien would be sufficient cause for a search.⁸¹

The Justice Department, firm that mass raids should not be conducted,⁸² gave in to multiple spot searches without a warrant.⁸³ The compromise was important for government policy toward Japanese Americans because the Justice Department was the crucial bulwark of civil liberties and due process; yet, under military pressure, Justice was gradually giving way to the Army's fear of espionage and sabotage.

This change of policy came despite reports from the Federal Com-

munications 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 other's broadcasts as Japanese.⁸⁶

Similar discord arose between the Justice and War Departments over Justice's power, exercised upon War Department request, to prohibit enemy aliens from entering designated areas of military significance. As on the contraband issue, General DeWitt pressed for broad powers in terms of both geographic area and affected persons. The Army wanted the military commander in each theatre of operations to be able to designate restricted areas;⁸⁷ the Justice Department wanted exclusive authority to name areas where civilian restrictions would apply, although it agreed to designate any area specified by the military.⁸⁸ By early January the Justice Department was prepared to make any designations DeWitt wanted, on its understanding that areas would be limited and carefully drawn. Although there was some confusion on this point,⁸⁹ the Army appears not to have been contemplating a mass exclusion from large areas.

At this point, on January 4, designation of restricted areas appeared to be a device to exclude only aliens, not citizens.⁹⁰ However, as early as January 8, some military officers began to consider broadening the definition of "enemy aliens." Major Carter Garver, Acting Assistant Adjutant General of the Army, wrote to General DeWitt:

Upon being consulted in this connection, Admiral C. S. Freeman, Commandant 13th Naval District, recommended that all enemy aliens be evacuated from the states of Washington and Oregon; that all American [sic] born of Japanese racial origin who cannot show actual severance of all allegiance to the Japanese government be classified as enemy aliens, and lastly that no pass or temporary permit to enter these states be issued to enemy aliens. He based this recommendation on the fact that communications and industry in these states are so vital to the operations of the Naval District

that any hostile activities in the two states will be a serious embarrassment. This view is also held by this headquarters.

The reputed operations of Axis spies and Fifth Columnists in Europe and the known activities of such elements during the recent Japanese attack on Hawaii clearly indicate the danger of temporizing with such a menace. It is deemed to be a certainty that any hostile operations against the Northwestern Sector will be characterized by a similar treacherous activity. From what is known of the Japanese character and mentality it is also considered dangerous to rely on the loyalty of native born persons of Japanese blood unless such loyalty can be affirmatively demonstrated.⁹¹

Inaccurate reports from Hawaii and incongruous notions of Japanese racial characteristics were causing these military officers to consider extending their exclusion of aliens from restricted military areas to include American citizens of Japanese ancestry.

The West Coast had been declared a theatre of operations—but never placed under martial law—and, in the normal course, great discretion was given the commanding general with field responsibility. Exercising that discretion and directly confronting the issue of military security was Lieutenant General John L. DeWitt, a lifelong Army man who was, in 1942, in command of the Western Defense Command (WDC). DeWitt's approach was routinely to believe almost any threat to security or military control; not an analyst or careful thinker who sought balanced judgments of the risks before him, DeWitt did little to calm the fears of West Coast people.

Major General Joseph W. Stilwell, who in the first month of the war served under DeWitt in charge of southern California, recorded in his diary that the San Francisco headquarters of the WDC continually gave credence to every rumor that came in. No cool mind sifted fact from fiction; indeed, there was a willingness to believe the sky was falling at every news report: "Common sense is thrown to the winds and any absurdity is believed." Stilwell summed up his view of DeWitt's G-2, the Army intelligence branch, very succinctly:

The [Fourth] Army G-2 is just another amateur, like all the rest of the staff. RULE: the higher the headquarters, the more important is calm. Nothing should go out unconfirmed. Nothing is ever as bad as it seems at first.⁹²

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 instances where "[h]ysteria and lack of judgment"

were evident in the Military Intelligence Division.⁹³ 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."⁹⁴ 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 station as Jap enemy stations."⁹⁵ Abysmal intelligence capability was not conducive to any rational approach to military problems such as sabotage or espionage.

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

Given the speed with which the disgraced General Short and Admiral Kimmel were forced out of the military after Pearl Harbor,⁹⁹ it is not surprising that the Commanding General on the West Coast would take a very cautious, even nervous, approach to any threat of attack or disruption; as DeWitt himself put it, he was "not going to be a second General Short."¹⁰⁰ But DeWitt's views had another aspect. His opinions are remarkable even for the racially divided America of 1940. In January 1942 he personally gave James Rowe, the Assistant Attorney General, his views on sabotage and espionage: "I have little confidence that the enemy aliens are law abiding or loyal in any sense of the word. Some of them, yes; many, no. Particularly the Japanese, I have no confidence in their loyalty whatsoever. I am speaking now of the native born Japanese—117,000—and 42,000 in California alone."¹⁰¹

Five weeks later, recommending to Stimson the exclusion of Nisei from the West Coast, DeWitt was direct indeed:

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.¹⁰²

A year later before a Congressional committee, discussing his exclusionary policy, DeWitt reiterated his views:

Gen. DeWitt: . . . I have the mission of defending this coast and securing vital installations. The danger of the Japanese was, and is now,—if they are permitted to come back—espionage and sabotage. It makes no difference whether he is an American citizen, he is still a Japanese. American citizenship does not necessarily determine loyalty.

Mr. Bates: You draw a distinction then between Japanese and Italians and Germans? We have a great number of Italians and Germans and we think they are fine citizens. There may be exceptions.

Gen. DeWitt: You needn't worry about the Italians at all except in certain cases. Also, the same for the Germans except in individual cases. But we must worry about the Japanese all the time until he is wiped off the map. Sabotage and espionage will make problems as long as he is allowed in this area—problems which I don't want to have to worry about.¹⁰³

The General made the point again the next day in an off-the-record press conference. DeWitt condensed his opinion of a policy he had opposed, allowing American soldiers of Japanese ancestry into the excluded areas, by telling the reporters that "a Jap is a Jap."¹⁰⁴

These declarations came at important moments when the General could fairly be expected to speak his mind. Those who had agitated against the Japanese in the forty years before the war could not have given the racial argument more blood-chilling bluntness.

Under General DeWitt's guidance from the Presidio, the War Department moved toward the momentous exclusion of American cit-

izens from the West Coast without any thoughtful, thorough analysis of the problems, if any, of sabotage and espionage on the West Coast or of realistic solutions to those problems. In part there was an easy elision between excluding Issei and Nisei. The legal basis for excluding aliens was essentially unquestioned; no rigorous analysis of military necessity was needed because there were no recognized interests or rights to weigh against the interest in military security that was served by moving enemy aliens. The very word "Japanese," sometimes used to denote nationality and at other times to indicate ethnicity, allowed obvious ambiguities in discussing citizens and resident aliens. The War Department came toward the problem with a few major facts: the Japanese were winning an incredible string of victories in the Far East; the West Coast was lightly armed and defended, but now appeared far more vulnerable to Japanese raid or attack than it had been before Pearl Harbor—although General Staff estimates were that the Japanese could not make a sustained invasion on the West Coast. But after the surprise of Pearl Harbor, laymen, at least, doubted the reliability of military predictions: it was better to be safe than sorry.¹⁰⁵ And laymen had a great deal to say about what the Army should do on the West Coast.

THE STORM OF WEST COAST REACTION

It was the voices of organized interests, politicians and the press on the West Coast that DeWitt heard most clearly—and the War Department too. The first weeks after Pearl Harbor saw no extensive attacks on the ethnic Japanese, but through January and early February the storm gathered and broke. The latent anti-Japanese virus of the West Coast was brought to life by the fear and anger engendered by Pearl Harbor, stories of sabotage in Hawaii and Japan's victories in Asia. Among private groups the lead was typically taken by people with a long history of anti-Japanese agitation and by those who feared economic competition. It is difficult forty years later to recreate the fear and uncertainty about the country's safety which was generally felt after Pearl Harbor; it is equally impossible to convey in a few pages the virulence and breadth of anti-Japanese feeling which erupted on the West Coast in January and February of 1942.¹⁰⁶

On January 2 the Joint Immigration Committee sent a manifesto to California newspapers which summed up the historical catalogue of

charges against the ethnic Japanese. It put them in the new context of reported fifth column activity in Hawaii and the Philippines and a war that turned the Japanese into a problem for the nation, not California alone. Repeating the fundamental claim that the ethnic Japanese are "totally unassimilable," the manifesto declared that "those born in this country are American citizens by right of birth, but they are also Japanese citizens, liable . . . to be called to bear arms for their Emperor, either in front of, or behind, enemy lines." Japanese language schools were attacked as "a blind to cover instruction similar to that received by a young student in Japan—that his is a superior race, the divinity of the Japanese Emperor, the loyalty that every Japanese, wherever born, or residing, owes his Emperor and Japan."¹⁰⁷ In these attacks the Joint Immigration Committee had the support of the Native Sons and Daughters of the Golden West and the California Department of the American Legion, which in January began to demand that "all Japanese who are known to hold dual citizenship . . . be placed in concentration camps."¹⁰⁸ By early February, Earl Warren, then Attorney General of California, and U.S. Webb, a former Attorney General and co-author of the Alien Land Law, were actively advising the Joint Immigration Committee how to persuade the federal government that all ethnic Japanese should be removed from the West Coast.¹⁰⁹

The Native Sons and Daughters of the Golden West saw the war as a fulfillment of everything they had feared and fought. In the January 1942 issue of *The Grizzly Bear*, the organization's publication, the editor emphasized the consequences of ignoring past predictions:

Had the warnings been heeded—had the federal and state authorities been "on the alert" and rigidly enforced the Exclusion Law and the Alien Land Law; had the Jap propaganda agencies in this country been silenced; had the legislation been enacted . . . denying citizenship to offspring of all aliens ineligible to citizenship; had the Japs been prohibited from colonizing in strategic locations; had not Jap-dollars been so eagerly sought by White landowners and businessmen; had a dull ear been turned to the honeyed words of the Japs and the pro-Japs; had the yellow-Jap and the white-Jap "fifth columnists" been disposed of within the law; had Japan been denied the privilege of using California as a breeding ground for dual-citizens (nisei);—the treacherous Japs probably would not have attacked Pearl Harbor December 7, 1941, and this country would not today be at war with Japan.¹¹⁰

Through the first few weeks of 1942, local units of the Native Sons passed resolutions demanding removal of the ethnic Japanese from the coast.¹¹¹

mass evacuation. In the meantime, all Nisei had been removed from the city payrolls. The Los Angeles County Board of Supervisors fired all its Nisei employees and adopted a resolution urging the federal government to transport all Japanese aliens from the coast.¹¹⁸ Following Los Angeles, 16 other California counties passed formal resolutions urging evacuation; Imperial County required the fingerprinting, registration and abandoning of farming by all enemy aliens; San Francisco demanded suppression of all Japanese language newspapers. Portland, Oregon, revoked the licenses of all Japanese nationals doing business in the city.¹¹⁹ The California State Personnel Board ordered all "descendants" of enemy aliens barred from civil service positions, and Governor Olson authorized the State Department of Agriculture to revoke the produce-handling licenses of enemy aliens. Attorney General Warren found these measures unlawful, but he sympathized with their basic aim, laboring to persuade federal officials that the military should remove ethnic Japanese from what Warren thought sensitive areas on the West Coast.¹²⁰

In Washington, most West Coast Congressmen and Senators began to express similar views, Congressman Leland Ford of Los Angeles taking the early lead. On January 16, 1942, he wrote the Secretaries of War and Navy and the FBI Director informing them that his California mail was running heavily in favor of evacuation and internment:

I know that there will be some complications in connection with a matter like this, particularly where there are native born Japanese, who are citizens. My suggestions in connection with this are as follows:

1. That these native born Japanese either are or are not loyal to the United States.
2. That all Japanese, whether citizens or not, be placed in inland concentration camps. As justification for this, I submit that if an American born Japanese, who is a citizen, is really patriotic and wishes to make his contribution to the safety and welfare of this country, right here is his opportunity to do so, namely, that by permitting himself to be placed in a concentration camp, he would be making his sacrifice and he should be willing to do it if he is patriotic and is working for us. As against his sacrifice, millions of other native born citizens are willing to lay down their lives, which is a far greater sacrifice, of course, than being placed in a concentration camp.¹²¹

On January 27, Congressmen Alfred J. Elliott and John Z. Anderson met with officials of the Justice Department to press for evacuation.¹²² On January 30, House members from the Pacific Coast urged the President to give the War Department "immediate and complete

control over all alien enemies, as well as United States citizens holding dual citizenship in any enemy country, with full power and authority to require and direct the cooperation and assistance of all other agencies of government in exercising such control and in effecting evacuation, resettlement or internment." The War Department in turn was urged to develop and consummate "as soon as possible . . . complete evacuation and resettlement or internment" of all enemy aliens and dual citizens.¹²³

This clamor for swift, comprehensive measures against the ethnic Japanese both reflected and was stimulated by the press. In December the West Coast press had been comparatively tolerant on the issue of the Nikkei, but by January more strident commentators were heard. John B. Hughes, who had a regular Mutual Broadcasting Company program, began a month-long series from Los Angeles which steadily attacked the ethnic Japanese, spreading rumors of espionage and fifth column activity and even suggesting that Japanese dominance of produce production was part of a master war plan.¹²⁴

Nurtured by fear and anger at Japanese victories in the Far East and by eagerness to strike at the enemy with whom the Nisei were now identified, calls for radical government action began to fill letters to the editor and newspaper commentary. Private employers threw many ethnic Japanese out of their jobs, while many others refused to deal with them commercially.¹²⁵ Old stereotypes of the "yellow peril" and other forms of anti-Japanese agitation provided a ready body of lore to bolster this pseudo-patriotic cause. By the end of January the clamor for exclusion fired by race hatred and war hysteria was prominent in California newspapers. Henry McLemore, a Hearst syndicated columnist, published a vicious diatribe:

The only Japanese apprehended have been the ones the FBI actually had something on. The rest of them, so help me, are free as birds. There isn't an airport in California that isn't flanked by Japanese farms. There is hardly an air field where the same situation doesn't exist. . . .

I know this is the melting pot of the world and all men are created equal and there must be no such thing as race or creed hatred, but do those things go when a country is fighting for its life? Not in my book. No country has ever won a war because of courtesy and I trust and pray we won't be the first because of the lovely, gracious spirit. . . .

I am for immediate removal of every Japanese on the West Coast to a point deep in the interior. I don't mean a nice part of

the interior either. Herd 'em up, pack 'em off and give 'em the inside room in the badlands. Let 'em be pinched, hurt, hungry and dead up against it . . .

Personally, I hate the Japanese. And that goes for all of them.¹²⁶

By the end of January the western Congressional delegation and many voices in the press and organized interest groups were pressing for evacuation or internment of aliens and citizens. The Presidio at San Francisco listened, and by January 31, General DeWitt had embraced the Representatives' view that all enemy aliens and dual citizens should be evacuated and interned; action should be taken at the earliest possible date "even if they [the aliens and dual citizens] were temporarily inconvenienced."¹²⁷

FEBRUARY 1942

The struggle within the government over the "Japanese problem" crystallized by February 1. DeWitt was now expressing prevailing opinion on the West Coast. War Department headquarters in Washington was undecided. DeWitt was no longer satisfied with the Justice Department program for excluding enemy aliens from carefully-drawn prohibited areas, although it was now moving forward rapidly on the basis of recommendations from the Western Defense Command and the War Department. In a series of press releases between January 31 and February 7, the Attorney General announced 84 prohibited areas in California, 7 in Washington, 24 in Oregon, and 18 in Arizona—135 zones around airports, dams, powerplants, pumping stations, harbor areas and military installations. In most cases the areas were small, usually circles of 1,000 feet or rectangles of several city blocks. The Justice Department also announced "restricted" areas for enemy aliens, including an extensive part of the California coast in which the movement of enemy aliens was very carefully controlled. But the Justice Department balked at quarantining extensive populated areas such as all of Seattle and Portland.¹²⁸

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 DeWitt 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

Both on their reading of the facts from Hoover and by philosophical inclination, top Justice Department officials—Biddle, James Rowe and Edward Ennis, who ran the Alien Enemy Control Unit—opposed the exclusion. The only major Justice Department figure not against it was Tom C. Clark, later a Supreme Court Justice, who was West Coast liaison with the Western Defense Command; he was clearly ready to go along with some form of mass evacuation.¹³⁰

Nevertheless, despite the urging of aides such as Ennis, the Attorney General was not prepared to argue that a mass exclusion was illegal or unconstitutional under the war powers of the Constitution if the War Department insisted on it as a matter of wartime necessity based on military judgment.¹³¹ It would have been acceptable to the Justice Department at that point to have excluded all citizens and aliens from designated areas, such as the vicinity of aircraft plants, and then to allow back only those the Army permitted.¹³² These views were no doubt confirmed by a memorandum prepared for Biddle by Benjamin Cohen, Oscar Cox and Joseph Rauh, liberal and respected Washington lawyers, who opined that everyone of Japanese ancestry, both alien and citizen, could constitutionally be excluded from sensitive military areas without excluding people of German or Italian stock from similar areas; although they argued for limited measures, they did not contend that the facts of the West Coast situation failed to justify exclusion.¹³³

On February 1, the Justice Department drafted a press release to issue jointly with the War Department in order to calm public fears about sabotage and espionage, and to let the public know that the government was working on the "Japanese problem." The draft set out the extensive steps being taken to control any problem from enemy aliens:

The Army has surveyed and recommended 88 prohibited areas in California. Further areas have been studied by the Army and are being recommended in California, Washington, Oregon and the other West Coast states. The Attorney General designated these areas immediately upon the recommendation of the War De-

partment to be evacuated of all alien enemies, Japanese, German and Italians. . . .

All alien enemies in the Western Defense Command will be registered between Feb. 2nd and February 7th. They will be identified, photographed, fingerprinted and their residence and employment recorded. These steps will insure compliance with control over alien enemies exercised in the restricted areas.

The draft release tried to calm groundless fears of sabotage and to address the situation of Nisei citizens:

The Federal Bureau of Investigation has charge of the investigation of the [sic] subversive activities. To date there has been no substantial evidence of planned sabotage by any alien. The FBI and the other agencies of the Federal Government are, however, very much alive to the possibility of acts of sabotage, particularly in case of a possible attack on our shores by the enemy. . . .

The government is fully aware of the problems presented by dual nationalities, particularly among the Japanese. Appropriate governmental agencies are now dealing with the problem. The Department of War and the Department of Justice are in agreement that the present military situation does not at this time require the removal of American citizens of the Japanese race.¹³⁴

As General Gullion, the Provost Marshal General, described it, the meeting to discuss the press release between Stimson, McCloy and Bendetsen from the War Department and Biddle, Hoover and Rowe from Justice was heated indeed:

[The Justice officials] said there is too much hysteria about this thing; said these Western Congressmen are just nuts about it and the people getting hysterical and there is no evidence whatsoever of any reason for disturbing citizens, and the Department of Justice, Rowe started it and Biddle finished it—The Department of Justice will having [sic] nothing whatsoever to do with any interference with citizens, whether they are Japanese or not. They made me a little sore and I said, well listen Mr. Biddle, do you mean to tell me that if the Army, the men on the ground, determine it is a military necessity to move citizens, Jap citizens, that you won't help me. He didn't give a direct answer, he said the Department of Justice would be through if we interfered with citizens and write [sic] of habeas corpus, etc.¹³⁵

The sticking point in the press release was the final statement that the removal of Nisei was unnecessary. Secretary Stimson and Assistant Secretary McCloy wanted DeWitt to consider the draft before they responded. Later that day Bendetsen and Gullion read the release over the phone to DeWitt. Gullion said he knew DeWitt now believed mass evacuation of Japanese Americans, including citizens, was essential, although Justice officials believed that DeWitt earlier had opposed

mass evacuation. Gullion reported the position he had outlined to the Attorney General at the meeting: "I suggested that General DeWitt has told me that he has travelled up and down the West Coast, he has visited all these sectors, he has talked to all the Governors and other local civil authorities and he has come to this conclusion, it is my understanding that General DeWitt does favor mass evacuation. . . ." ¹³⁶

This, of course, was not a persuasive military justification for moving 100,000 people, but despite numerous conversations with DeWitt it was all that Gullion and Bendetsen could report. This was probably accurate: DeWitt favored moving the Japanese American community on the basis of his own opinions and those of the politicians he had consulted amid the flood of anti-Japanese rhetoric on the West Coast. Both the Governor of California and the Mayor of Los Angeles met with DeWitt, who was apparently interested primarily in their recommendations for action rather than in communicating what the military situation required. ¹³⁷ The General reiterated his conclusory views about exclusion in the call about the press release: protection against sabotage "only can be made positive by removing those people who are aliens and who are Japs of American citizenship. . . ." ¹³⁸ Gullion told DeWitt that he should put in writing his views and the justification for them, so his arguments could persuade McCloy and the Justice Department. DeWitt promised a memorandum for McCloy in the next few days.

The instructions to DeWitt were sound, for Secretary Stimson and McCloy were not yet persuaded. ¹³⁹ In his diary for February 3, 1942, Stimson wrote that DeWitt was anxiously clamoring for evacuation of Japanese from the areas around San Diego, Los Angeles, San Francisco and Puget Sound, where important airplane factories and shipyards were located:

If we base our evacuations upon the ground of removing enemy aliens, it will not get rid of the Nisei who are the second generation naturalized Japanese, and as I said, the more dangerous ones. If on the other hand we evacuate everybody including citizens, we must base it as far as I can see upon solely the protection of specified plants. We cannot discriminate among our citizens on the ground of racial origin. We talked the matter over for quite a while and then postponed it in order to hear further from General DeWitt who has not yet outlined all of the places that he wishes protected. ¹⁴⁰

McCloy also hesitated. On February 3, 1942, DeWitt and McCloy spoke by phone, DeWitt reading to McCloy the memorandum he had promised Gullion on the first. It was another installment in the Gen-

eral's talks with the politicians. DeWitt urged deleting the line in the press release stating that the military situation did not require removal of American citizens of Japanese race. The reason? DeWitt had conferred with California Governor Olson the day before and agreed that all male adult Nisei should leave the California combat zone. The General's military reasoning on this sweeping proposition defies paraphrase:

[T]o protect the Japanese of American birth from suspicion and arrest, they should also have to carry identification cards to prove that they are not enemy aliens, as the enemy alien by not carrying identification card on his person could claim to be an American Japanese. In other words, all Japanese look alike and those charged with the enforcement of the regulation of excluding alien enemies from restricted areas will not be able to distinguish between them. The same applies in practically the same way to alien Germans and alien Italians but due to the large number of Japanese in the State of California (approximately 93,000), larger than any other State in the Union, and the very definite war consciousness of the people of California, as far as pertains to the Japanese participation in the war, the question of the alien Japanese and all Japanese presents a problem in control, separate and distinct from that of the German and Italian.

The general consensus of opinion as agreed to by all present at this conference was that, due to the above facts, the removal of all male adult Japanese, that is over 18 years of age, whether native or American born, alien enemy or Japanese, from that area of California defined as a combat zone [should be achieved].¹⁴¹

Governor Olson wanted to achieve this by "voluntary" evacuation and General DeWitt thought this excellent. * Not surprisingly, McCloy was baffled, suggesting that dangerous people would not voluntarily leave a sensitive military area. DeWitt, who described himself as sitting on the sidelines during the conference in Olson's office, replied that he didn't know how Olson would handle that, but that if something weren't done soon the public would take matters into its own hands because "Out here, Mr. Secretary, a Jap is a Jap to these people now." It is remarkable that McCloy did not press DeWitt in this conversation for some military justification for moving the Nisei, but perhaps DeWitt's

*Olson's central role in devising this program is corroborated by one of the group of Nisei with whom he met on February 6 to explain the plan and to whom Olson stated that "he has been asked by the Federal authorities to recommend" the best procedure to handle "this complicated Japanese situation." (Letter, Ken Matsumoto to Ringle, Feb. 7, 1942 [CWRIC 19547]).

assurance that the Governor thought only 20,000 would have to move (and voluntarily) may have veiled the importance of what was afoot. In any event, McCloy was most concerned about the legality of any government action. He favored the procedure of designating restricted zones and letting people back in by permit; he would allow in "[e]veryone but the Japs." The dictates of military necessity were not part of the dialogue; McCloy, like the Justice Department, was satisfied with a legalistic procedure which only masked exclusion on the basis of ethnicity.¹⁴²

Public pressure, of course, continued. FBI officials reported that the Los Angeles newspapers were carrying reports that Attorney General Warren of California and "approximately one hundred sheriffs and district attorneys throughout the State of California have recommended and demanded that all Japanese aliens be moved from all territories of the State of California."¹⁴³ But public opinion was not uniform. Archibald MacLeish of the Office of Facts and Figures summarized for McCloy a California opinion poll which showed that "the situation in California is serious; that it is loaded with potential dynamite; but that it is not as desperate as some people are said to believe. . . . We can be pretty definite in saying that a majority of people think that the Government (chiefly the FBI) has the situation in hand." Between 23 and 43 percent of the population felt further action was needed. The report suggested that these people "tend to cluster in the low income, poorly educated groups, and they are the ones who are most suspicious of local Japanese in general."¹⁴⁴

After the discussion of February 3, events moved quickly. On the 4th, McCloy met with Gullion, Rowe, Ennis and Ennis's assistant, Burling, to discuss possible legislation that might be drawn up to remove both citizens and aliens from parts of the West Coast.¹⁴⁵ On the same day Bendetsen outlined his views and concluded that the enemy alien problem was primarily a Japanese problem, encompassing both aliens and citizens. He recommended the designation of military areas surrounding all vital installations in the Western Defense Command; all persons who did not have express permission to enter and remain would be excluded. He rejected mass evacuation as unjustified by military necessity and expected his recommendation to involve moving approximately 30,000 people. Bendetsen's position rested on his belief that "by far the vast majority of those who have studied the Oriental assert that a substantial majority of Nisei bear allegiance to Japan, are well controlled and disciplined by the enemy, and at the proper time will engage in organized sabotage, particularly, should a

raid along the Pacific Coast be attempted by the Japanese."¹⁴⁶ It is unknown who these Oriental experts were, but Bendetsen, the one westerner close to War Department decision makers in Washington, may merely have repeated prejudices common on the West Coast.

On February 5, Rowe and McCloy discussed the alien problem by telephone¹⁴⁷ and Gullion gave McCloy his views of what steps should be taken about the "Japanese problem." This discussion shows that by early February the focus was shifting from military necessity to operations, from the question of "whether" to "how." The War Department draft proposal began:

The War Department recommends the following steps be taken in connection with the "alien enemy-potential saboteur" problem on the West Coast and elsewhere in the United States:

Step 1

The establishment of military areas surrounding all vital national defense installations within the United States as designated by the appropriate Commanding Generals and approved by the War Department. From these areas will be excluded all persons, whether aliens or citizens, who are deemed dangerous as potential saboteurs, espionage agents and fifth columnists by the administering military authorities.

Step 2

The continuation, vigorously, of the alien enemy apprehension and internment program.¹⁴⁸

This approach still covered narrow geographic areas but it affected aliens and citizens alike. Doubts of the necessity for evacuation were drowning in details of how to accomplish it.

Then on February 7, Biddle had lunch with the President and communicated his views about mass evacuation:

I discussed at length with him the Japanese stating exactly what we had done, that we believe mass evacuation at this time inadvisable, that the F.B.I. was not staffed to perform it; that this was an Army job not, in our opinion, advisable; that there were no reasons for mass evacuation and that I thought the Army should be directed to prepare a detailed plan of evacuation in case of an emergency caused by an air raid or attempted landing on the West Coast. I emphasized the danger of the hysteria, which we were beginning to control, moving east and affecting the Italian and German population in Boston and New York. Generally he approved being fully aware of the dreadful risk of Fifth Column retaliation in case of a raid.¹⁴⁹

By the time he made his decision, therefore, Roosevelt knew Biddle's views,¹⁵⁰ but it is important to note that, while the Attorney General

did not believe evacuation was necessary, he did not tell the President that evacuation would fail to pass constitutional muster on the facts.

Stimson's diary entry for February 10, 1942, reiterates his previous view that "The second generation Japanese [Nisei] can only be evacuated either as part of a total evacuation, giving access to the areas only by permits, or by frankly trying to put them out on the ground that their racial characteristics are such that we cannot understand or trust even the citizen Japanese. This latter is the fact but I am afraid it will make a tremendous hole in our constitutional system to apply it." His concern was heightened by his view that Japan might try to invade the United States; the Secretary mused on Homer Lea's predictions twenty-five years earlier in *The Valor of Ignorance* that in the Pacific geopolitical forces were shifting so that Japan was capable of invading a lightly populated and defended West Coast and holding the Pacific slope to the crest of the Sierras: "In those days [Lea's] book seemed fantastic. Now the things that he prophesied seem quite possible."¹⁵¹

At this point Stimson's mind was still not made up, at least about the scope of evacuation, and he still wanted from DeWitt a specific recommendation based on a careful review of military necessity.¹⁵² There is no indication that Stimson received such a memo immediately, but he must have been persuaded that the case had been or would be made, for the next day his diary notes:

I then had a conference in regard to the west coast situation with McCloy and General Clark who has been out there. This is a stiff proposition. General DeWitt is asking for some very drastic steps, to wit: the moving and relocating of some 120,000 people including citizens of Japanese descent. This is one of those jobs that is so big that, if we resolved on it, it just wouldn't be done; so I directed them to pick out and begin with the most vital places of army and navy production and take them on in that order as quickly as possible. . . .

I tried to get an interview with the President over these various matters but was unable to do so. I then arranged for a telephone call which finally came through about one thirty.

I took up with him the west coast matter first and told him the situation and fortunately found that he was very vigorous about it and told me to go ahead on the line that I had myself thought the best.¹⁵³

Stimson may not have had in mind the massive evacuation of all citizens and aliens of Japanese descent; his description of what he supported

resembled most the designation of military areas and entry into them by permit, which would be denied to Japanese citizens and aliens.

The first ten days of February had not yet produced a better rationale for evacuation from General DeWitt than his fundamental racial mistrust of the ethnic Japanese. Now, perhaps by dint of repetition or exposure to the anti-Japanese view of West Coast interest groups and politicians, mistrust had taken hold at the top of the War Department. Clamor from the press and politicians was relentless. Incessant West Coast demands for evacuation were countered by no one of stature who knew the Pacific Coast.

On February 12, Walter Lippmann, a prominent, intellectually respected syndicated columnist, wrote of his serious concern about a Japanese raid on the United States and potential sabotage. Because Lippmann thought saboteurs would be native-born Nisei as well as aliens, the procedure he recommended which "ought to be used for all persons in a zone which the military authorities regard as open to enemy attack" was to compel everyone to prove that he had a good reason to be there. "Under this system all persons are in principle treated alike."¹⁵⁴ He recommended that the West Coast be made a combat zone open only to those with a reason to be present. This was the plan being discussed in the War Department; Lippmann had talked over the issue with Attorney General Warren, who had spoken extensively to federal officials, and there is no reason to believe Lippmann formed an opinion without knowing the basic issues the government was looking at.¹⁵⁵ Lippmann's article was taken as a recommendation to exclude all ethnic Japanese from the West Coast, and from the strident right Westbrook Pegler popularized the suggestion a few days later:

Do you get what [Lippmann] says? . . . the enemy has been scouting our coast. . . . The Japs ashore are communicating with the enemy offshore and . . . on the basis of "what is known to be taking place" there are signs that a well-organized blow is being withheld only until it can do the most damage. . . .

We are so dumb and considerate of the minute constitutional rights and even of the political feelings and influence of people whom we have every reason to anticipate with preventive action!

Pegler put his central point very simply: "The Japanese in California should be under armed guard to the last man and woman right now and to hell with *habeas corpus* until the danger is over."¹⁵⁶ The entire spectrum of press opinion was uniting to advocate exclusion.

At the same time, Manchester Boddy, liberal editor and publisher

of the *Los Angeles Daily News* who had earlier written a book on the ethnic Japanese in America,¹⁵⁷ sent first a telegram, then a letter, to Attorney General Biddle warning that the "alien Japanese situation [is] deteriorating rapidly." To forestall irresponsible citizen action, Boddy suggested prompt evacuation of alien Japanese who "have anticipated evacuation and are in state of readiness," and placement into a concentration camp now, with consideration of their ultimate disposition later. Boddy found "no distinction in public mind regarding Japanese aliens and their dual citizenship children" and therefore expressly assumed that aliens and citizens would both be moved.¹⁵⁸

Fear of violence against Japanese Americans had grown markedly among law enforcement officials in California.

At a conference of California district attorneys and sheriffs on February 2, it was announced that various civic and agricultural groups were actively fostering extra-legal action against the Japanese. Subsequently the sheriff of Merced County reported "rumblings of vigilante activity"; the chief of police of Huntington Beach described anti-Japanese feeling as "at fever heat"; the police chief at Watsonville announced that "racial hatred is mounting higher and higher" and that Filipinos were "arming themselves and going out looking for an argument with Japanese"; and Oxnard's police chief reported that "it has been planned by local Filipinos and some so-called '200 percent Americans' to declare a local 'war' against local Japanese, during the next blackout."¹⁵⁹

Pressure for government action was also increasing in Congress. On February 13 Congressman Clarence Lea, the senior West Coast Representative, wrote to President Roosevelt on behalf of the members of Congress from California, Oregon and Washington:

We recommend the immediate evacuation of all persons of Japanese lineage and all others, aliens and citizens alike, whose presence shall be deemed dangerous or inimical to the defense of the United States from all strategic areas.

In defining said strategic areas we recommend that such areas include all military installations, war industries, water and power plant installations, oil fields and refineries, transportation and other essential facilities as well as adequate protective areas adjacent thereto.

We further recommend that such areas be enlarged as expeditiously as possible until they shall encompass the entire strategic area of the states of California, Oregon and Washington, and Territory of Alaska.

We make these recommendations in order that no citizen, located in a strategic area, may cloak his disloyalty or subversive activity under the mantle of his citizenship alone and further to

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

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

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.¹⁶³

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

and Stimson into demanding sound military arguments for what was now rolling forward. Perhaps the poverty of DeWitt's position also explains the growing emphasis on the danger of vigilantism, which argued that the Nisei now must be moved for their own protection.

In the face of still-swelling demands for evacuation and the recommendation of his Secretary of War, Roosevelt was not likely to reconsider his decision. Nevertheless, on February 17 Attorney General Biddle sent a memorandum to the President in the guise of a briefing paper for a press conference. Biddle opposed evacuation once again, elaborating the arguments he had made to Stimson:¹⁶⁴

For several weeks there have been increasing demands for evacuation of all Japanese, aliens and citizens alike, from the West Coast states. A great many of the West Coast people distrust the Japanese, various special interests would welcome their removal from good farm land and the elimination of their competition, some of the local California radio and press have demanded evacuation, the West Coast Congressional Delegation are asking the same thing and finally, Walter Lippman [sic] and Westbrook Pegler recently have taken up the evacuation cry on the ground that attack on the West Coast and widespread sabotage is imminent. My last advice from the War Department is that there is no evidence of imminent attack and from the F.B.I. that there is no evidence of planned sabotage.

I have designated as a prohibited area every area recommended to me by the Secretary of War, through whom the Navy recommendations are also made. . . .

We are proceeding as fast as possible. To evacuate the 93,000 Japanese in California over night would materially disrupt agricultural production in which they play a large part and the farm labor now is so limited that they could not be quickly replaced. Their hurried evacuation would require thousands of troops, tie up transportation and raise very difficult questions of resettlement. Under the Constitution 60,000 of these Japanese are American citizens. If complete confusion and lowering of morale is to be avoided, so large a job must be done after careful planning. The Army has not yet advised me of its conclusion in the matter.

There is no dispute between the War, Navy, and Justice Departments. The practical and legal limits of this Department's authority which is restricted to alien enemies are clearly understood. The Army is considering what further steps it wishes to recommend.

It is extremely dangerous for the columnists, acting as "Armchair Strategists and Junior G-Men," to suggest that an attack on the West Coast and planned sabotage is imminent when the military authorities and the F.B.I. have indicated that this is not the fact. It comes close to shouting FIRE! in the theater; and if race riots

occur, these writers will bear a heavy responsibility. Either Lippman [sic] has information which the War Department and the F.B.I. apparently do not have, or is acting with dangerous irresponsibility.¹⁶⁵

No minds were changed, and by this time the Attorney General was taking coarse and threatening abuse for his unwillingness to join the stampede to mass evacuation. Seven months later, Congressman Ford recalled speaking to Biddle at this point:

I phoned the Attorney General's office and told them to stop fucking around. I gave them twenty four hours notice that unless they would issue a mass evacuation notice I would drag the whole matter out on the floor of the House and of the Senate and give the bastards everything we could with both barrels. I told them they had given us the run around long enough . . . and that if they would not take immediate action, we would clean the god damned office out in one sweep. I cussed at the Attorney General and his staff himself just like I'm cussing to you now and he knew damn well I meant business.¹⁶⁶

On February 17 Stimson recorded meeting with War Department officials to outline a proposed executive order; General Gullion undertook to have the order drafted that night: "War Department orders will fill in the application of this Presidential order. These were outlined and Gullion is also to draft them." Further, Stimson said, "It will involve the tremendous task of moving between fifty and one hundred thousand people from their homes and finding temporary support and sustenance for them in the meanwhile, and ultimately locating them in new places away from the coast."¹⁶⁷ In short, whatever his views during discussion with the President a few days before, Stimson now contemplated a mass move.

On February 18, 1942, Stimson met about the executive order with Biddle, Ennis, Rowe, and Tom Clark of the Department of Justice; and Robert Patterson, Under Secretary of War; McCloy; Gullion; and Bendetsen from the War Department. Stimson wrote:

Biddle, McCloy and Gullion had done a good piece of work in breaking down the issues between the Departments the night before, and a draft of a presidential executive order had been drawn by Biddle based upon that conference and the preceding conference I had had yesterday. We went over them. I made a few suggestions and then approved it. This marks a long step forward towards a solution of a very dangerous and vexing problem. But I have no illusions as to the magnitude of the task that lies before us and the wails which will go up in relation to some of the actions which will be taken under it.¹⁶⁸

The Attorney General remembered the tenor of the meeting somewhat differently, but, writing in his autobiography, agreed about the result:

Rowe and Ennis argued strongly against [the Executive Order]. But the decision had been made by the President. It was, he said, a matter of military judgment. I did not think I should oppose it any further. The Department of Justice, as I had made it clear to him from the beginning, was opposed to and would have nothing to do with the evacuation.¹⁶⁹

In Los Angeles on the night of February 19, the United Citizens Federation, representing a wide range of pro-Nisei interests, held its first meeting of more than a thousand people. Plans were laid to persuade the press, the politicians and the government that their attacks upon the ethnic Japanese were unfounded.¹⁷⁰ It was too late.

Earlier in the day, President Roosevelt had signed Executive Order 9066. The Order directed the Secretary of War and military commanders designated by him, whenever it was deemed necessary or desirable, to prescribe military areas "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."¹⁷¹ 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

The next day, to underscore the government's new-found unity on this decision, Attorney General Biddle sent to the President's personal attention a memorandum justifying the Executive Order and its broad grant of powers to the military. Biddle's note paraphrased liberally from the memorandum he had received earlier from Cohen, Cox and Rauh:

This authority gives very broad powers to the Secretary of War and the Military Commanders. These powers are broad enough to permit them to exclude any particular individual from military areas. They could also evacuate groups of persons based on a reasonable classification. The order is not limited to aliens but includes citizens so that it can be exercised with respect to Japanese, irrespective of their citizenship.

The decision of safety of the nation in time of war is necessarily

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.¹⁷³

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

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."^{174*}

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.¹⁷⁵ 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.¹⁷⁶

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.¹⁷⁷

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.¹⁷⁸ 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,

a group known as the "Bald Eagles"—described by one observer as a "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.¹⁷⁹

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.¹⁸⁰

McCloy emphasized the same point in his testimony before the Commission¹⁸¹ and it appears in his papers in 1942 as a subsidiary reason for exclusion.¹⁸² Tom Clark, writing long after the war, gave protection against vigilantism as the reason he was willing to support the exclusion.¹⁸³

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.¹⁸⁴

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,¹⁸⁵ 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.¹⁸⁶

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:

The record in this case does not contain any comprehensive ac-

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.¹⁸⁷

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*.¹⁸⁸ 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."¹⁸⁹ 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,¹⁹⁰ 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.¹⁹¹

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