
Ending the Exclusion

Historical writing about the exclusion, evacuation and detention of the ethnic Japanese has two great set pieces—analysis of events which led to Executive Order 9066, and life in the relocation camps.¹ In large measure, these events were accessible to historians from the moment they took place; equally important events have remained obscure—most significantly, the end of the exclusion from the West Coast. Examining how exclusion ended brings one full circle to a deeper understanding of the forces and ideas behind Executive Order 9066.

The ending of the exclusion should logically depend on its beginning: when the circumstances that justified exclusion no longer exist, exclusion itself should cease. Three separate justifications for exclusion suggested two distinct sets of circumstances in which it would end. Through the first six months of 1943, a long struggle was waged in the War Department to determine which of these theories and programs would prevail.

General DeWitt and the Western Defense Command embraced at one time or another two theories for exclusion. The first, which DeWitt relied on in his final recommendation to Stimson urging exclusion, was that loyalty was determined by ethnicity.² For that reason the ethnic Japanese would ultimately be loyal to Japan. The second theory employed the stereotype of the “inscrutable Oriental;” it was adopted by the Western Defense Command in its supplement to the *Final Report*, the fully developed apologia for evacuation. The ethnic

Japanese were so alien to the patterns of American thought and behavior, this theory suggested, that it was impossible to distinguish the loyal from the disloyal.³ For the Western Defense Command, both theories justified the exclusion of Nisei and Issei from the West Coast for the duration of the war; in the first case, because they were presumptively dangerous and ultimately enemies and, in the second, because no one could distinguish enemy from friend.

The third theory held that loyalty was a matter of individual choice and that the loyal could be distinguished from the disloyal, but urgency required exclusion because it was impossible to conduct individual loyalty reviews in early 1942, under imminent threat of Japanese raids or sabotage. The War Department in Washington, particularly McCloy and Stimson, held this view.⁴ Its logical conclusion was that no good reason existed to exclude from the West Coast at least those Issei and Nisei who cleared a loyalty review. At root, this theory held that the ethnic Japanese were a greater threat to security than ethnic Germans and Italians, and it did not extend the presumption of loyalty to American citizens of Japanese descent; but it also saw limits to the danger they were believed to present—and made government responsible for reviewing loyalty and reassessing the military position so as to return people to normal life as soon as possible.

The intensity of the argument between the Western Defense Command and the War Department over how and when to end the exclusion demonstrated the truth of what the Tolan Committee suspected as early as March 1942: there had been no common understanding of the basis of the original decision to exclude nor of how to treat loyal ethnic Japanese after exclusion.⁵ As McCloy told Bendetsen in April 1943: "We never thought about it."⁶ In early 1943, debate over ending exclusion ranged over a number of issues: starting a loyalty review in connection with raising the volunteer combat unit (which the Western Defense Command recognized as logically leading to the end of exclusion for the loyal); the question of the conditions under which Nisei soldiers and other classes of ethnic Japanese who presented no obvious security risk could return to the West Coast; the language for General DeWitt's *Final Report* justifying the evacuation; and, finally, the conditions under which the War Department would revoke the exclusion orders.

The War Department recognized by early 1943 that military necessity could not justify the exclusion from the West Coast of loyal American citizens or resident aliens of Japanese ancestry, but it was unwilling to force a revision of the exclusion orders or to make public

the opinions which Stimson, Marshall and McCloy then held. Only in May 1944 did Stimson recommend to President Roosevelt and the Cabinet the ending of exclusion, and only after the 1944 election did the President act on the recommendation. Just as the exclusion was born of political pressure, it was continued out of political considerations long after those who first believed it to be militarily justified had abandoned that position.

THE WESTERN DEFENSE COMMAND VS. THE WAR DEPARTMENT

On January 14, 1943, the same day that McCloy received word that the project for raising the Nisei combat unit was launched, General DeWitt first became aware of the full dimensions of the project, including the plan for a review and determination of loyalty. His reaction was immediate and candid. DeWitt telephoned his old ally General Gullion, the Provost Marshal General, and expressed his concern, reminding him that "[t]here isn't such a thing as a loyal Japanese and it is just impossible to determine their loyalty by investigation—it just can't be done."⁷ DeWitt got the lay of the land at the War Department, then cabled General Marshall asking an opportunity to comment before the plan was put into operation.⁸

Between January 14 and 27, when DeWitt dispatched formal comments to Marshall, DeWitt and his aides (including Bendetsen) honed their arguments.* By the time the comments were prepared, they believed the loyalty review program would undermine total exclusion—first, by adopting a rationale for exclusion which included individual review of loyalty and, second, by permitting the loyal to return to the West Coast. Both actions would expose the War Department

*Although it is difficult to distinguish the voices of DeWitt and Bendetsen in the documents, it is clear their points of view differed. DeWitt was strident and assured; he never hesitated to make racist remarks and never expressed doubts about the wisdom of his position. Even after the War Department had endorsed the loyalty questionnaire, DeWitt continued to assert that loyalty could not be determined. Bendetsen was hesitant. Although the written documents are undoubtedly the work of both men, final responsibility for positions of the Western Defense Command was DeWitt's, and we have attributed them to the Commanding General.

and the Western Defense Command to bitter criticism. The first issue immediately drew everyone to reexamine the original decision to evacuate. It had always been DeWitt's view, expressed often and publicly, that the loyal could not be separated from the disloyal. The loyalty review program, established to do exactly that, was, by its very existence, a repudiation of DeWitt. As DeWitt described it to McCloy:

I feel that I wouldn't be loyal to you or honest to you if I didn't say that it is a sign of weakness and an admission of an original mistake. Otherwise—we wouldn't have evacuated these people at all if we could determine their loyalty.⁹

While DeWitt was unwavering in believing the evacuation decision sound, Bendetsen was sufficiently disturbed by the War Department's position that he apparently began to question the original decision. Discussing the issue with Captain John Hall, one of McCloy's assistants, Bendetsen remarked:

Of course [the difficulty of determining loyalty] is probably true of white people, isn't it? You know that old proverb about "not being able to look into the heart of another"? And "not even daring to look into your own" . . . well maybe there's something in that.¹⁰

Both DeWitt and Bendetsen must have realized that their contention that loyal could not be separated from disloyal was unlikely to prevail at the War Department strictly on the merits; the loyalty program was too far along for that. Instead, they argued that the public would react badly to the Army's shift of position and the Department would look foolish for changing its mind. Bendetsen mentioned this several times in conversation with War Department staff:

[T]he record shows that (1) that it was a concentration of a large number of persons of Japanese ancestry in strategic areas near war plants and all that. And that it could not be permitted. And (2) That you couldn't determine loyalty and therefore you had to take the wheat with the chaff. Not that there wasn't time, but that you just couldn't. So that's what the original record shows. So whatever you do, I think you ought to bear that pretty closely in mind. That's what the record shows out here where the main record was made . . . in the Press and the Periodicals.

* * *

I'm scared to death principally because of the public relations part of it. That's it, to put it in a nutshell.¹¹

DeWitt was somewhat more circumspect but raised essentially the same issues in his formal comments.¹²

The War Department hierarchy, however, was not persuaded.

Regardless of what DeWitt had said, for McCloy the issue was one of timing. His view had never been that loyal could not be separated from disloyal, but that they could not have been distinguished *fast enough*. Now, McCloy argued, the Department was moving to determine loyalty, as it had always planned to do.¹³ But Bendetsen and DeWitt believed this would also expose the Department to criticism. If the plan had always been to determine loyalty, why had it not been done earlier, when evacuees were still in the assembly centers? If loyalty review had only been postponed, then the government had unnecessarily prolonged the confinement of 100,000 people and wasted \$80 million building relocation centers. Bendetsen and Braun, drafting comments for DeWitt, explored this point:

Braun: You had them under control [in the assembly centers] but you had not yet moved them inland—you had not yet spent any 80 million dollars—you had accomplished the main thing as to time and space. And at that point, if you could determine loyalty, it should then have been done.

Bendetsen: And that will have to be answered.

Braun: It will have to be answered.

Bendetsen: . . . [T]he answer may be that you could have, but that's not such a hot public relations answer.

Braun: I've just been talking that over . . . and I said "If you fellows were to say to me tomorrow,—that is the big rub, what were we going to do about it?—because we're going thru with this anyway," the best thing I had thought of up to this moment was for us to be completely honest and say "well maybe we could, though we didn't think so at the time."

Bendetsen: Right. We still don't think so [at the Western Defense Command].

Braun: No but I'm talking now about suppose we were told "you gotta' do it" and "how are we going to do it?" That's the only answer I could think of that would make any sense.

Bendetsen: Didn't think so then but we do now. Maybe our ideas on the Oriental have been all cock-eyed.

Braun: We've got more information now than we had . . . and than we thought we could get.

Bendetsen: That's right. Maybe he isn't inscrutable.¹⁴

There is no record of how Stimson and McCloy would have explained why they had waited so long to separate loyal from disloyal. It may be that with the other massive problems of fighting the war, this question had occupied little or none of their attention; there is no evidence that, when they addressed it, they believed that detention camps, at least for the loyal, could be justified. As Stimson said: "We have gone to the full limit in evacuating them."¹⁵

The second and more vexing problem for DeWitt was the possible effect of the loyalty program on the evacuated area. The plan itself was silent on this point, but a Nisei certified loyal by the government could hardly be considered too dangerous to return to the West Coast. If exclusion of the loyal were to end, DeWitt's judgment would be publicly reversed and, particularly on the West Coast, the War Department might look very foolish for spending millions of dollars on relocation camps and uprooting the lives of thousands of people. It would, as Bendetsen put it, be "confess[ing] an original mistake of terrifically horrible proportions." Bendetsen was not prepared to make the confession:

Even if the decision was wrong I wouldn't make it a practice gallop. Even in that case. I would find it very hard to justify the expenditure of 80 million dollars to build Relocation Centers, merely for the purpose of releasing them again. That, I would find difficult to do.¹⁶

If, on the other hand, the exclusion policy were not ended, then the loyalty review plan would be logically inconsistent. Bendetsen discussed this with Captain Hall, McCloy's assistant:

Bendetsen: How could you keep him out of the evacuated zone, if you said he was [loyal enough] to work in a war plant?

Hall: [The program is] . . . going to be limited to the areas outside of the evacuated area.

Bendetsen: How can you be consistent—do one and say that he can't come in the other?

Hall: Simply sensitivity of the West Coast to enemy attack. The reasons justifying the original evacuation still exist in certain degree.

Bendetsen: No, I don't see how they do . . . [t]he plan says that you assume that one of the reasons for evacuation was that there was no time to determine loyalty. One of the primary reasons. So that now that you decide that you can determine loyalty you've erased that reason, haven't you?

Hall: Well not necessarily. As far as the loyalty of this fellow is concerned, we feel that he is completely loyal. But because of certain military considerations—partly responsible for the evacuation, we feel at least for the present he should not go back into the evacuated area.

Bendetsen: Kind of beats the devil around the bush, doesn't it?¹⁷

In fact, in January, McCloy was not prepared to press this point with the Western Defense Command. When McCloy first discussed the loyalty program with DeWitt on January 14, he assured the General that it would not affect exclusion from the West Coast.¹⁸ McCloy did

not explain why he took this position. There are various possible explanations: he may have believed that continuing military necessity required the exclusion of the loyal; the War Department may not have wished or been able to overcome political opposition on the West Coast; or McCloy may not have wanted to invite charges that the Department had wasted money building relocation camps. Only military necessity would provide a defensible explanation and, a few months later, McCloy made clear that he could not find military reasons for excluding people the government found loyal.

McCloy's assistant, Captain Hall, in discussing the matter with Bendetsen, attempted to argue for such a course and merely succeeded in demonstrating how hopeless the task was:

Bendetsen: . . . when you come out with a plan and say that you can determine loyalty for working in a warplant around high-explosives . . . you can hardly say that "well he can" [sic] go back to San Francisco . . . it will be difficult to say that he can't" and when you do that you confess a very original, horrible mistake.

Hall: . . . confess an original horrible mistake. [What about] the possibility of Fifth Column activity of landing of parachute troops dressed as civilians, the possibility of confusion. I think those are still very real factors. . . .

Bendetsen: Suppose you drop white troops dressed as civilians. You don't evacuate all the white folks. That's no point. Suppose white people drop dressed as civilians. You don't evacuate all the white people.

Hall: Your danger on the West Coast is . . . Japanese.

Bendetsen: Well your danger on the East Coast is from Germans and Italians, who are white.

Hall: Yes but there are too many of them out here.

Bendetsen: Too many what?

Hall: Far more assimilated than the Japanese population ever has been.

Bendetsen: You mean too many white people on the East Coast. That's not a point, because the enemy could drop white soldiers dressed as civilians, and [who] could speak English. That . . .

Hall: But that would be on the East Coast.

Bendetsen: Well, they could do it on either coast.

Hall: Not so easily on the West Coast.

Bendetsen: I'm just trying to give you my reaction to the point.

Hall: There is a logicity there, there's no doubt about it. But I think it might be wise to take this as a first step, perhaps looking toward (if this works all right) toward eventual return to the evacuated area providing the military situation warrants it.

Bendetsen: Well I think that's certainly true, when the peace comes. That's when I think the military situation would warrant it with consistency.¹⁹

For the moment, the debate on lifting the exclusion order did not move beyond McCloy's position of January 14; loyalty would be determined and loyal evacuees released, but exclusion would not be terminated. But the argument could not and did not end, simply shifting to other issues, first to the question of exceptions to the universal ban of ethnic Japanese from the West Coast.

During the early months of 1943 DeWitt fought an unrelenting war of attrition with McCloy, who tried to persuade the General to introduce some humane common sense by allowing some return to the West Coast. DeWitt opposed every such effort. For instance, at the WRA's urging,²⁰ McCloy suggested that loyalty to the United States would be a better standard than race for dealing with "mixed marriage" cases because, as part of the War Department's effort to solve the "Japanese problem," he wanted to recognize the loyalty of individuals rather than to presume the disloyalty of the entire group. DeWitt did not accept the suggestion.²¹

The breaking point came over the issue of letting Nisei soldiers on furlough into the excluded area. DeWitt fought for months to prevent or encumber such entries, but McCloy drew the line at this and was supported by Stimson and Marshall.²² If a Jap was a Jap to DeWitt, a GI was a GI to McCloy. The War Department ordered that Nisei soldiers be allowed onto the West Coast with a minimum of interference and control.

This argument clarified the connection between loyalty and exclusion and forced a conscious reassessment of the military justification for exclusion. On April 8, 1943, McCloy set out the disagreements between the War Department and the Western Defense Command in a frank letter to General DeWitt. He first addressed the circumstances that had changed since early 1942:

The threat of Japanese attack is far from what it was. We are better organized to meet such an attack if it occurred. And we know a great deal more about our Japanese population. Furthermore, the War Department has established a combat team for volunteer American citizens of Japanese ancestry. This program has been indorsed by the President who looks upon it as "a natural and logical step toward the reinstatement of the Selective Service procedures, which were temporarily disrupted by the evacuation from the West Coast." Similarly, the War Department has initiated a process for loyalty investigations of all Japanese Americans to determine their eligibility for work in plants and facilities vital to the war effort. In other words, in the face of manpower difficulties, the policy of the national Government, as well as that of the War

Department, is presently looking toward the restoration to all loyal persons of Japanese ancestry of all their normal rights and privileges, to the end that they may be able to make their maximum contribution to the war effort. The very "entering wedge" which you appear to dread is precisely what must be accomplished.

McCloy next assailed the corrupt policy he believed the Army acceded to on the West Coast:

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 longer California luxuriates in the total absence of the Japanese the more difficult it will be to restore them to the economy of California. They have a place in California as well as in any other state as long as military considerations do not intervene. I cannot help but feel that social considerations rather than military ones determine the total exclusion policy. 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 assume really threatening proportions. I certainly deplore any policy which prohibits an American soldier from entering areas in the United States for fear of the consequences which may attend such entry.²³

McCloy concluded by urging on DeWitt the policy of gradual resettlement onto the Pacific Coast that had been debated all that spring. McCloy suggested allowing the reentry of screened individuals in four broad categories: wives, parents, brothers and sisters of soldiers; wives of Caucasians; individuals whose employment on the coast would aid the war effort; and veterans of the First World War and their families.

On April 13, 1943, DeWitt appeared before a House Committee looking into the effect of large military facilities on local communities; he used the occasion to answer McCloy publicly. Asked whether he had any problems he would like to discuss, DeWitt fired both barrels:

I haven't any except one—that is the development of a false sentiment on the part of certain individuals and some organizations to get the Japanese back on the West Coast. I don't want any of them here. They are a dangerous element. There is no way to determine their loyalty. The West Coast contains too many vital installations essential to the defense of the country to allow any Japanese on this coast. There is a feeling developing, I think, in certain sections of the country, that the Japanese should be allowed to return. I am opposing it with every proper means at my disposal.²⁴

DeWitt did resist pointing the finger directly at McCloy and Stim-

son in public. Asked whether "the element responsible for bringing them back [was] the same one that wants them put in the Army," the General replied that he didn't know what element the Congressman was referring to. Congressmen Izac, who had earlier claimed credit for getting the evacuation ordered, and Mott opposed any such change of policy and told the General they would watch the situation.²⁵

The next day, for good measure, DeWitt once more aired his differences with the War Department over allowing Nisei soldiers on the West Coast. At an off-the-record news conference he told sympathetic reporters:

As I told the War Department, the Japanese Government finding out we are bringing these men in, it is the ideal place to infiltrate men in uniform. . . . [A] Jap is a Jap. The War Department says a Jap-American soldier is not a Jap; he is American. Well, all right. I said, I have the Jap situation to take care of and I'm going to do it . . .²⁶

Of course, DeWitt mixed this with avowals of being a loyal soldier who did not oppose his superiors, but his conduct could not have been more clearly calculated to sabotage any War Department effort to achieve quiet, gradual resettlement of evacuees on the West Coast.

These episodes occurred while General DeWitt was preparing his *Final Report* on the Japanese evacuation. The document was to be both the Army's official explanation of the reasons for the exclusion and evacuation and its account of this massive movement of people. The *Final Report* was to be formally submitted to Secretary Stimson, but there was an understanding that a draft would be reviewed and discussed with McCloy beforehand. McCloy was surprised when it came to him in printed form in mid-April, and livid after reading the first few chapters. He found it "too self-glorifying and too self-serving for the type of document that I think should be perpetuated,"²⁷ but two statements particularly angered McCloy: first, that it was impossible to determine the loyalty of the ethnic Japanese and that this impossibility, not urgency, was the "military necessity" on which exclusion rested; second, that the ethnic Japanese should not be allowed to return to the West Coast until after the war, regardless of the improved military situation.²⁸

McCloy plainly considered the printed report DeWitt's attempt to talk past his War Department superiors to politicians and the public. Because DeWitt's gambit put the War Department in a most uncomfortable political position, a major negotiation between DeWitt and McCloy over the *Report's* final language followed. First, Bendetsen

McCloy over the *Report's* final language followed. First, Bendetsen was called to Washington to work on revisions and get McCloy's views and objections firsthand.²⁹ He was then sent to DeWitt, who was in Alaska, to discuss the changes McCloy wanted, though the General would not be compelled to make them.³⁰ At first the General was adamant in opposing any changes,³¹ but after Bendetsen's visit to Alaska DeWitt not only accepted McCloy's suggestions but set out to destroy every copy of the April version.³² One can only speculate on what persuaded DeWitt, but it may have been Bendetsen's memorandum on the War Department's position about excluding loyal ethnic Japanese from the West Coast:

After an extended discussion, Mr. McCloy stated his conclusion to be that there no longer existed any military necessity for the continued exclusion of all Japanese from the evacuated zone. He stated that the War Department, of its own motion, would not take any action to direct or require the revision or revocation of present restrictions in this regard. He did say, however, that if the question were to be presented officially to the Secretary of War by the White House or by any other official federal agency having a legitimate interest whether from the viewpoint of the War Department there is longer any military objection to the return of those Japanese "whose loyalty had been determined," the answer had to be, "No."³³

McCloy told Bendetsen that these views were shared by Stimson and Marshall.³⁴ Persistence by DeWitt might have resulted in a public break with the War Department over exclusion. DeWitt was obviously unwilling to press this far, and McCloy seemed remarkably determined not to let their differences become a matter of public debate. This is demonstrated by three incidents. After DeWitt's appearance before the House subcommittee, Secretary Ickes wrote in sarcastic outrage about press reports of the General's testimony, but McCloy replied merely that DeWitt had been inaccurately quoted and did not disclose his disagreement with the General.^{35*}

Next, in late May, McCloy would not spread the public impression that DeWitt was being relieved of his command and kicked upstairs, as he was in Fall 1943, because of his stand on the exclusion policy. The Assistant Secretary urged that DeWitt be kept on the West Coast

*The press had used DeWitt's off-the-record remark that "a Jap is a Jap." Ickes repeated this in his letter to McCloy and the Assistant Secretary, no doubt unaware of the press conference, denied that the General had made the remark.

a short time longer to avoid this inference,³⁶ and later he vetoed a draft announcement by General Emmons, DeWitt's successor, identifying the exclusion policy as DeWitt's rather than the War Department's.³⁷

Finally, McCloy and Stimson faced the problem of answering a long letter from Dillon Myer of the WRA about plans for getting evacuees out of the relocation centers. The letter fairly, though indirectly, asked the War Department's justification for continued exclusion from the West Coast.³⁸ Stimson, in a letter apparently drafted by McCloy,³⁹ commented only on the WRA's administrative problems and avoided discussing the military justification for continuing exclusion, a matter plainly within the War Department's competence.⁴⁰

This was extraordinary: the War Department no longer believed that military necessity justified excluding loyal ethnic Japanese from the West Coast, but it was unwilling to reverse its orders. What is more, officials of the first rank consciously withheld their views from others both in and outside the government although the context fairly demanded some expression of opinion. Probably they feared a political firestorm—the War Department was reluctant, or perhaps felt itself unable, to face down strong political objection to returning Issei and Nisei, regardless of loyalty, to the West Coast.

In the first half of 1943, anti-Japanese forces on the West Coast, reacting to the leave program and loyalty review, were stirring again. The first prominent group to act was the California American Legion which, in January, began to pass resolutions urging deportation of all ethnic Japanese, both citizens and aliens.⁴¹ Soon grand juries, local governments, and state legislatures joined the crusade, while numerous civic groups were created expressly to voice anti-Japanese sentiment.⁴²

The issue reached Washington in the form of a resolution to transfer the WRA to Army control, accompanied by allegations that evacuees were being "pampered" and "coddled."⁴³ The resolution was referred to a Senate subcommittee headed by Senator A. B. Chandler of Kentucky, who, seeing an opportunity for headlines, determined to hold hearings and visit four camps himself. His tour featured a number of sensational announcements. Chandler thought 60 percent of the residents at one center were disloyal, adding that "in my mind there is no question that thousands of these fellows were armed and prepared to help Japanese troops invade the West Coast right after Pearl Harbor."⁴⁴ In May the committee released its report, with conclusions that had little to do with the Senator's previous announcements but

recommended that the draft be resumed, that disloyals be segregated, and that loyal ethnic Japanese be privately employed.⁴⁵

The committee had nevertheless again aroused people around the country on the "Japanese problem." Seeing the agitation in California, other states and local governments began to consider restrictive legislation. Arizona passed a bill curtailing the liberties of released evacuees and Arkansas made it illegal for ethnic Japanese to own land there.⁴⁶

General DeWitt's remarks before the House Naval Affairs Committee in April had set the newspapers to editorializing against the ethnic Japanese once again. *The San Francisco Chronicle* put its view simply in the caption, "DeWitt Is Right," and, waving aside "the ethical factors, the constitutional factors, the question of the Bill of Rights," went on to announce that the return of ethnic Japanese cleared by the loyalty review would mean riots. *The Los Angeles Times* summarized its view of the possible end of exclusion in three words, "Stupid and Dangerous," and concluded its lengthy editorial by underscoring the political consequences:

How much of the recent smashing defeat for reelection of former Governor Olson of California was due to his suggestion that the Japs be recalled for agricultural work cannot be estimated, but it was undoubtedly considerable. There are worse things than food shortages.

As a race, the Japanese have made for themselves a record for conscienceless treachery unsurpassed in history. Whatever small theoretical advantages there might be in releasing those under restraint in this country would be enormously outweighed by the risks involved.⁴⁷

In April 1943, when the Western Defense Command announced that Nisei soldiers on furlough would be allowed to return to the coast and rumors circulated that General DeWitt might be relieved,⁴⁸ anti-Japanese forces renewed their assault by urging the Dies Committee on Un-American Activities to investigate. Even before the Committee began its work, Representative J. Parnell Thomas visited Los Angeles and, without touring a single camp, began to issue press releases about the evacuees. He accused the WRA of pampering and overfeeding them and declared that there had been an organized division of the Japanese Army on the West Coast before Pearl Harbor. He called for halting the "WRA policy of releasing disloyal Japs" until the Dies Committee had completed its report.⁴⁹

Even the Pacific Coast Committee on American Principles and Fair Play, a group of prominent citizens under honorary chairman Dr.

Robert Gordon Sproul, President of the University of California, expressly took no position on the issue of whether persons of Japanese ancestry should return to the Pacific Coast at that time, even though the group had issued a statement in June favoring an "opportunity for loyal Americans of Japanese ancestry to resettle in the manner, which, in the judgment of the federal government, is best designed to meet the manpower shortage."⁵⁰

Dies Committee hearings began on June 8, starting with the anti-evacuee group. The most sensational witness was H.H. Townshend, a former WRA employee who claimed, among other things, that evacuees cached food in the desert and that over 1,000 Japanese soldiers lived in the Poston Center.⁵¹ Throughout the hearings, committee staff made other observations to the press, for example, that WRA was releasing spies and saboteurs.⁵²

This time the WRA decided to fight back. Demanding to testify, the agency prepared a strong statement in which the Committee was accused of seeking publicity by making and soliciting "sensational statements based on half-truths, exaggerations, and falsehoods."⁵³ One WRA document rebutted the Townshend testimony, pinpointing 42 lies or misleading statements. In his autobiography, Myer recounts the reaction of Committee Chairman Costello to this document. After reviewing it, the Chairman opened the session:

Mr. Myer we have reviewed your document on the Townshend testimony in which you say there were 42 lies or half-truths, but we find only 39.

Myer agreed to "settle for 39."⁵⁴

Once again, the final committee report of September 1943 was extremely mild, advocating segregation, a new board to investigate evacuees to be released, and an "Americanization" program in the camps. For the first time the government had taken on the anti-Japanese groups, and it had won. Not only were the Committee's recommendations consistent with WRA policy and planning, but, every bit as important, the Committee was denounced by the national press for its prejudice and procedure.⁵⁵

The tide had turned. The rest of the country no longer shared the West Coast view. A *Washington Post* editorial responding to General DeWitt's succinct analysis that "a Jap is a Jap," put the matter in simple terms:

The general should be told that American democracy and the Constitution of the United States are too vital to be ignored and flouted by any military zealot. The panic of Pearl Harbor is now

past. There has been ample time for the investigation of these people and the determination of their loyalty to this country on an individual basis. Whatever excuse there once was for evacuating and holding them indiscriminately no longer exists.⁵⁶

President Roosevelt may have helped a little during the summer by responding to a Senate request for Administration views on returning ethnic Japanese to the West Coast; the President announced that while there were no present plans to end exclusion, its continuation depended only on military considerations.⁵⁷ It is unknown whether Roosevelt had in hand the War Department's opinion at that time on the military necessity for continuing exclusion, but the President's statement certainly suggested that the government did not foresee exclusion for the rest of the war.

As his support at the top of the government ebbed, General DeWitt did not stop trying to maintain complete exclusion. Alerted in early July by Governor Warren that two ethnic Japanese were reported to be on a fishing trip near Dinuba, California, DeWitt not only mounted a thorough investigation but also wrote the Governor about his fears of the future:

I am fully aware that persons released from the War Relocation Authority Camps may in considerable numbers attempt to return to the prohibited zones, perhaps as a trial effort to learn the official reaction to their presence. It is only through the mutual efforts of the military authorities and the Federal and State law enforcement officers that such plans will be defeated.⁵⁸

Given such constant effort to defeat any humane, orderly return of ethnic Japanese to the West Coast, it was a palpable relief to McCloy when, in Fall 1943, DeWitt and Bendetsen left the Western Defense Command and General Delos Emmons took command at the Presidio.⁵⁹ Emmons did not immediately urge that the exclusion be revoked, but he began to review individual hardship cases more leniently, and cautiously prepared for ending exclusion before the war was over.⁶⁰

WAITING FOR THE ELECTION

At the end of 1943, Attorney General Biddle returned to the fray. He wrote the President about a group of Californians and the Hearst press, who continued to make trouble for people of Japanese ancestry, stressing that:

The important thing is to secure the reabsorption of about 95,000 Japanese, of whom two-thirds are citizens and who give every indication of being loyal to the United States, into normal American life. The present practice of keeping loyal American citizens in concentration camps on the basis of race for longer than is absolutely necessary is dangerous and repugnant to the principles of our Government. It is also necessary to act now so that the agitation against these citizens does not continue after the war.

Biddle, aware of the political problems from public hostility to resettlement on the West Coast, recommended that the WRA be made part of a permanent cabinet agency, most likely the Interior Department, to give it a more effective voice with the public and within the government. "Care should be taken to make it clear that any change of administration is not a reflection upon the WRA relocation policy or administration. . . ." ⁶¹

On January 5, 1944, President Roosevelt directed that an Executive Order be prepared placing "the whole of WRA under the Interior," ⁶² and on February 16, the President signed Executive Order 9423, transferring authority over WRA to the Department of the Interior; the authority of the Director went to the Secretary of the Interior, who retained Dillon Myer as operating head of the program. ⁶³ Harold Ickes, already a champion of the evacuees, was now their spokesman.

In the spring of 1944, the War Department finally proposed to the President that the exclusion be ended. Secretary Stimson took the issue to the Cabinet on May 26, 1944. Attorney General Biddle noted:

The Secretary of War raised the question of whether it was appropriate for the War Department, at this time, to cancel the Japanese Exclusion Orders and let the Japs go home. War, Interior, and Justice had all agreed that this could be done without danger to defense considerations but doubted the wisdom of doing it at this time before the election. ⁶⁴

The fact that "military necessity" no longer justified exclusion was repeated often during the following months. In June, Secretary Ickes bluntly urged the President to decide the issue:

[T]he continued retention of these innocent people in the relocation centers would be a blot upon the history of this country. ⁶⁵

Edward Stettinius, Jr., the Under Secretary of State, summarized the matter for the President: "The question appears to be largely a political one, the reaction in California, on which I am sure you will probably wish to reach your own decision." ⁶⁶

Roosevelt expressed his views to Ickes and Stettinius on June 12, 1944:

The more I think of this problem of suddenly ending the orders excluding Japanese Americans from the West Coast the more I think it would be a mistake to do anything drastic or sudden.

As I said at Cabinet, I think the whole problem, for the sake of internal quiet, should be handled gradually, i.e., I am thinking of two methods:

a. Seeing, with great discretion, how many Japanese families would be acceptable to public opinion in definite localities on the West Coast.

b. Seeking to extend greatly the distribution of other families in many parts of the United States. I have been talking to a number of people from the Coast and they are all in agreement that the Coast would be willing to receive back a portion of the Japanese who were formerly there—nothing sudden and not in too great quantities at any one time.

Also, in talking to people from the Middle West, the East and the South, I am sure that there would be no bitterness if they were distributed—one or two families to each county as a start. Dissemination and distribution constitute a great method of avoiding public outcry.

Why not proceed seriously along the above line—for a while at least?⁶⁷

Whatever the military, legal or moral virtues of the evacuees' cause, the President would not do anything precipitous to upset the West Coast. There would be an election in November.

In 1942 political pressures for exclusion came from the West Coast and, somewhat transformed, wound through the War Department to the President. In 1944 the President was plainly leading his subordinates by responding to political demands for which they could no longer find military justification. Even the Western Defense Command was prepared to abandon the military rationale. The new Commanding General, C. H. Bonesteel, wrote McCloy on July 3, 1944:

My study of the existing situation leads me to a belief that the great improvement in the military situation on the West Coast indicates that there is no longer a military necessity for the mass exclusion of the Japanese from the West Coast as a whole. There is still a definite necessity for the exclusion of certain individuals.⁶⁸

Moreover, after a July courtesy visit to Roosevelt in San Diego, Bonesteel reported to McCloy that the President's plans for scattering the Nikkei population lacked realism:

The solution envisaged by the President would be entirely satisfactory if the Japanese excludées would conform. However, al-

though a few thousand will do so, it is my opinion and the opinion of all of those who are closely connected with the problem that the great majority of the Japanese will insist on going back to the areas from which they were originally removed. There is more than a question of obstinacy involved, for if one or two families should be located in a single white community, they would be isolated from their own people and would particularly be deprived of the religious, social and cultural contacts to which they are accustomed and which the Japanese particularly treasure. In addition, it must be appreciated that the economic factor is an important one. For example, a Japanese dentist or merchant will have great difficulty in establishing himself in a white community.

I think that we must base our action on the fact that a major portion of the excludées will wish to return to their original homes and that if they are not returned a very large number of them will bring legal action to accomplish it.⁶⁹

Now that sobriety and sympathetic common sense were the order of the day at the Presidio, the hollowness of the existing policy was discussed more openly. McCloy began one meeting with the old Justice Department adversaries of exclusion by remarking to J. L. Burling that

it was curious how the two major cases in which the Army had interfered with civilians had started out for serious military reasons and had ended being required by wholly non-military considerations. For example, the Japanese were evacuated back in the dark days before Midway when an attack on the Pacific Coast was feared. Now the exclusion is being continued by the President for social reasons.⁷⁰

Finally, and importantly, in September 1944 even the Navy came around. Admiral E. J. King, the Commander-in-Chief, United States Fleet, concurred that "the military situation no longer justifies the mass exclusion of persons of Japanese ancestry from the Western Defense Command."⁷¹

Through 1944, the new guard at Western Defense Command had been reexamining the mass exclusion orders. During the spring, General Emmons suggested that the size of the prohibited area be reduced, and that the War Department end the exclusion of individuals not actually or potentially dangerous.⁷² This position reversed DeWitt and brought the WDC into line with the War Department. Despite the lack of movement on this broad proposition, Emmons began issuing Certificates of Exemption from the exclusion orders; these allowed people who had passed security investigations to return permanently to the West Coast. Other individual exemptions were granted as well: for travel and temporary residence on business; for a serious illness within the immediate family; for travel to relocation centers and public

institutions inside the exclusion zone (at WRA's request); or for induction into the armed forces. Applications were extremely low at first; by April 1, 1944, 40 had been filed; by August 1 there were 235 and 515 by September 15. By the end of 1944, 1,485 ethnic Japanese were residing in the Western Defense Command by special exemption. Most were spouses of Caucasian residents.⁷³ In a very quiet way, General Emmons had begun the return of the Nikkei to the West Coast.

Emmons and Bonesteel were also concerned about lawsuits brought by the ethnic Japanese.⁷⁴ Three cases were central: *Shiramizu v. Bonesteel*, *Ochikubo v. Bonesteel*, and *Ex parte Endo*. In *Shiramizu*, the Nisei widow of a sergeant in the 100th Battalion who had died of combat wounds and against whom there was no evidence of disloyalty, challenged the continued exclusion of such Japanese from the Western Defense Command, and sought to restrain interference with her return to California.⁷⁵ *Ochikubo*, a dentist, sought similar relief.⁷⁶ In *Endo*, pending for some time in the courts and under review in the Supreme Court, Mitsuye Endo, a concededly loyal American citizen, had been granted leave clearance by the WRA, but was not permitted to reenter the Western Defense Command.⁷⁷

The government's lawyers, including the Judge Advocate of the Western Defense Command, no longer believed that the exclusion policy could be justified to a judge.⁷⁸ They knew it would be difficult to prevail on the two available grounds: the present possibility of espionage and sabotage, and the unrest which resettlement would cause—the so-called “social resistance defense.”⁷⁹ To avoid a court ruling on these questions, the government considered granting special exemptions to the plaintiffs. But exemptions might signal that anyone who sued would receive an exemption, thereby forcing a flood of uncontrolled reentries.

When the government offered Mrs. Shiramizu an exemption, more than a personal interest was at stake; “she had brought legal action in order to restore the rights of her race which she felt had been improperly taken away.”⁸⁰ Nevertheless, the Department of Justice recommended that the exemptions be granted and that the cases of Mrs. Shiramizu and Dr. Ochikubo be rendered moot. The government needed time to develop some administrative method for dealing with its increasingly untenable position.⁸¹ In *Ochikubo's* case an exemption was not granted because he had been denied leave clearance by the Japanese American Joint Board,⁸² but the government was still able to prevail because the court determined that Dr. Ochikubo was unlikely to face immediate use of force if he returned; therefore an injunction against the use of force was not appropriate.⁸³ These cases showed the

government that it had to develop promptly a plan for orderly return to the West Coast or the courts might well permit a less controlled return.

The War Department now assumed that the exclusion would end soon, and the Western Defense Command focused on maintaining the power to exclude individuals and assure an orderly return. On August 8, 1944, General Bonesteel sent General Marshall a long, detailed memorandum outlining reasons to terminate mass exclusion and institute an individual exclusion program. Recognizing that public opinion against the ethnic Japanese might lead to unrest, Bonesteel thought it could be confined if dangerous individuals were excluded. A number of important groups stood ready to assist the returning Nisei, he noted, because they "feel strongly that the Japanese who are citizens are entitled to their rights as such."⁸⁴ The memorandum brought no response.

On September 19, 1944, Bonesteel wrote a rather alarmed followup memorandum. More requests for travel and residence permits in the prohibited area, and more publicity about changes in the exclusion program suggested by the settlement of suits such as *Shiramizu*, led Bonesteel to fear forced change by the courts if mass exclusion were not lifted.⁸⁵ Two days later another Bonesteel memorandum repeated that prompt action was essential and outlined the West Coast publicity given to *Shiramizu* and *Ochikubo*; again he insisted "[i]t would be most unfortunate if the return of Japanese Americans should be accomplished abruptly and without adequate controls."⁸⁶

Bonesteel wrote again on October 24, this time to McCloy, whom he asked for a personal meeting. A week later McCloy at last began to address the matter, revealing why the Department had been lethargic:

[F]rom what I can judge to be the sense of those who will have the ultimate decision on most of these questions, there is a disposition not to crowd action too closely upon the heels of the election. As many of the considerations will have to be dealt with on high political rather than military levels, I am inclined to think we shall have a greater opportunity for constructive plans at a date somewhat later than November 6th.⁸⁷

THE END OF EXCLUSION

The presidential election brought matters to a head. At the first Cabinet meeting after the election, on November 10, it was decided to lift the

exclusion. On November 13, a meeting in the Attorney General's office discussed how to implement that decision, talking of plans and a tentative date for lifting the order.⁸⁸ Clearly, impending decisions in the Supreme Court cases, which would address the legality of exclusion and detention, were spectres harrying the decision makers.

On November 20, 1944, Attorney General Biddle wrote McCloy that rumors of the proposed releases are "about the West Coast" and he emphasized "utmost secrecy."⁸⁹ The President didn't drop his guard on the subject. At a press conference on November 21 he was directly asked about ending the exclusion:

Q. Mr. President, there is a great deal of renewed controversy on the Pacific Coast about the matter of allowing the return of these Japanese who were evacuated in 1942. Do you think that the danger of espionage or sabotage has sufficiently diminished so that there can be a relaxation of the restrictions that have been in effect for the last two years?

The President: In most of the cases. That doesn't mean all of them. And, of course, we have been trying to—I am now talking about. . . . Japanese Americans. I am not talking about the Japanese themselves. A good deal of progress has been made in scattering them through the country, and that is going on almost every day. I have forgotten what the figures are. There are about roughly a hundred—a hundred thousand Japanese-origin citizens in this country. And it is felt by a great many lawyers that under the Constitution they can't be kept locked up in concentration camps. And a good many of them, as I remember it—you had better check with the Secretary of Interior on this—somewhere around 20 or 25 percent of all those citizens have re-placed themselves, and in a great many parts of the country.

And the example that I always cite, to take a unit, is the size of the county, whether it's in the Hudson River valley or in western "Joe-gia" (Georgia) which we all know, in one of those counties, probably half a dozen or a dozen families could be scattered around on the farms and worked into the community. After all, they are American citizens, and we all know that American citizens have certain privileges. And they wouldn't—what's my favorite word?—discombobolate—(Laughter)—the existing population of those particular counties very much. After all—what?—75 thousand families scattered all around the United States is not going to upset anybody. . . . And, of course we are actuated by the—in part by the very wonderful record that the Japanese in that battalion in Italy have been making in the war. It is one of the outstanding battalions we have.

Q. But, sir, the discussion on the West Coast is more about the relaxation of the military restrictions in that prohibited area, as to whether they should be allowed in the areas from which they have been excluded. It isn't about allowing them to go elsewhere in

the country. I was wondering if you felt that the danger of espionage had sufficiently diminished so that the military restrictions that were passed could be lifted?

The President: That I couldn't tell you, because I don't know.⁹⁰

Thus, the government entered December with the decision made but not publicly announced.

By December 9, the government was establishing policies and procedures for the "final phase of the program" and preparing press statements to be issued when exclusion was lifted. The statement noted that the WRA would extend its relocation program to cover the entire country, but lifting the order did not mean that a hasty mass movement would return all evacuees to the West Coast. "One of the major WRA aims, from the beginning, has been to encourage the widest possible dispersal of evacuees throughout the Nation, and this will continue as a prime objective during the final phase of the program." By December 1944, 35,000 of the 110,000 persons originally evacuated had relocated outside the Western Defense Command area. The statement also noted that WRA would work toward early shutdown of the relocation centers, with all to be closed within a year.⁹¹

As an essential part of ending exclusion, the Departments of War and Justice began to develop lists of individual evacuees. Separately enumerated were Japanese aliens under segregation parole orders prohibiting them from leaving Tule Lake Segregation Center; ordinary parolees at Tule Lake who might be excluded from military areas; Japanese aliens paroled under Immigration Service safeguards that forbade their return to the Coast; and individuals under ordinary parole outside Tule Lake who might be excluded from the West Coast. The Justice Department believed that being on parole was not a sufficient basis for exclusion.⁹² On December 9 the Western Defense Command delivered to the Chief of Staff a list of persons it thought had to be excluded from critical areas of the WDC and detained in a camp similar to Tule Lake.⁹³ The list consisted of 4,963 persons, of whom 3,066 were in the Tule Lake Segregation Center; others were in a number of other camps; 510 were unaccounted for.⁹⁴ The Army suggested to Dillon Myer that the number might grow to approximately 5,500.⁹⁵ The standards by which excludées were selected were:

- Refusal to register on the Selective Service questionnaire.
- Refusal to serve in the United States armed forces.
- Refusal, without qualification, to swear allegiance to the United States.
- Voluntary submittal of a written statement of loyalty to Japan.
- Agents or operatives of Japan.

- Voluntary request of revocation of American citizenship.⁹⁶

Finally, after extensive preparation, the termination plan was presented to Roosevelt for concurrence. On December 13, 1944, Secretary Stimson told the President, yet again, that continued mass exclusion was no longer a matter of military necessity—the loyal had been separated from the disloyal and the morale of Japanese American soldiers was suffering because of continued exclusion. Stimson worried about sabotage and espionage, but was persuaded that return of most Japanese to the West Coast should nonetheless be carried out. He set forth safeguards to assure that return would be gradual and that efforts would continue to relocate those of Japanese descent in other parts of the country. An individual exclusion program would be instituted. The Department of Justice would ultimately take responsibility for detention and for determining who should be released. Because it would be announced that only persons cleared by the military authorities would be permitted to return, Stimson was confident that any civil unrest could be handled. Finally, Stimson noted that a system to permit orderly return was much preferable to an unfavorable court decision that might require sudden, unplanned return.⁹⁷ In a cover memorandum to Roosevelt's secretary, Stimson noted that he wanted to be sure the President had no objection, but that he was not asking Roosevelt to make the decision.⁹⁸ The President did not object to the announcement.⁹⁹

Implementation remained. On December 15, Colonel William Ryan of the Western Defense Command sent Dillon Myer the so-called "white list" of 95,975 names of those who would not be excluded. He noted that an additional 19,956 persons under age 14 were in the same category (totaling over 115,000).¹⁰⁰ On December 16, 1944, the Solicitor General sent copies of correspondence about the rescission of exclusion and a copy of Public Proclamation Number 21 to Chief Justice Stone, presumably in the hope of mooted any decision in the *Endo* case.¹⁰¹

Finally, on December 17, 1944, Public Proclamation Number 21 was issued. General DeWitt's mass exclusion orders were rescinded, and individual exclusions from "sensitive" areas of the Western Defense Command took their place. Even in the proclamation the federal government worked to protect its political position on the West Coast by stressing the care it took before restoring the ethnic Japanese to their full rights:

The people of the states situated within the Western Defense Command, are assured that the records of all persons of Japanese

ancestry have been carefully examined and only those persons who have been cleared by military authority have been permitted to return. They should be accorded the same treatment and allowed to enjoy the same privileges accorded other law abiding American citizens or residents.¹⁰²

An accompanying press release rehearsed the history of the exclusion order, then stated that persons of Japanese ancestry had their loyalty investigated "probably more thoroughly than any other segment of our population."¹⁰³ Another press release stressed that "[t]hose persons who will be permitted to return have been cleared by Army authorities."¹⁰⁴

Secretary Ickes marked the occasion by sending appropriate thanks to the entire staff of the War Relocation Authority:

Behind you is a record of accomplishment of which you may all be proud. You have efficiently and devotedly carried out one of the most difficult and trying jobs that has been entrusted to an agency of Government. You, and particularly Mr. Dillon Myer, the Director of the War Relocation Authority, have been subjected to a good deal of abuse from persons who could not or would not understand the problem with which you were dealing. But in spite of this, you have carried through a carefully devised program with regard not only for the conditions imposed by military authority, but also for the human values concerned.¹⁰⁵

THE SUPREME COURT RULINGS

Immediately after the announcement the Supreme Court handed down opinions in both *Korematsu* and *Ex parte Endo*.¹⁰⁶ In *Korematsu*, a divided court upheld the criminal conviction of Fred Korematsu for failing to report to an assembly center in May 1942 pursuant to the plan through which he would be excluded from California and sent to a relocation center. Justice Hugo Black wrote a short opinion for the majority which is remarkable in its treatment of both the facts and the law. The Court did not undertake any careful review of the facts of the situation on the West Coast in early 1942. It avoided this task by choosing to give great deference to the military judgment on which the decision was based. This approach of deferring to the military judgment rather than looking closely at the record which the government had been able to pull together was the only plausible course for the Court to follow if it were to conclude that exclusion was consti-

tutionally permissible. If the Court had looked hard, it would have found that there was nothing there—no facts particularly within military competence which could be rationally related to the extraordinary action taken. Justice Murphy's vehement dissent made that plain as he dissected and destroyed General DeWitt's *Final Report*. It is the inevitable conclusion which the Commission has also reached after extensive study of a very substantial body of facts. It was also the conclusion of those who carefully studied the opinion, the briefs and the record immediately after *Korematsu* was decided. Eugene Rostow wrote the seminal article about the cases in 1945 and dealt pointedly with the issue of factual proof of "military necessity." Rostow believed a convincing and substantial factual case had to be made before civil rights could be permissibly invaded as they were here, but he concluded that one did not have to insist upon that rule of proof to conclude that the Japanese American cases were wrongly decided:

No matter how narrowly the rule of proof is formulated, it could not have been satisfied in either the *Hirabayashi* or the *Korematsu* cases. Not only was there insufficient evidence in those cases to satisfy a reasonably prudent judge or a reasonably prudent general: there was no evidence whatever by which a court might test the responsibility of General DeWitt's action, either under the statute of March 21, 1942, or on more general considerations. True, in the *Hirabayashi* case the Court carefully identified certain of General DeWitt's proclamations as "findings," which established the conformity of his actions to the standard of the statute—the protection of military resources against the risk of sabotage and espionage. But the military proclamations record conclusions, not evidence. And in both cases the record is bare of testimony on either side about the policy of the curfew or the exclusion orders. There was every reason to have regarded this omission as a fatal defect, and to have remanded in each case for a trial on the justification of the discriminatory curfew and of the exclusion orders.

Such an inquiry would have been illuminating. General DeWitt's *Final Report* and his testimony before committees of the Congress clearly indicated that his motivation was ignorant race prejudice, not facts to support the hypothesis that there was a greater risk of sabotage among the Japanese than among residents of German, Italian, or any other ethnic affiliation. The most significant comment on the quality of the General's report is contained in the government's brief in *Korematsu v. United States*. There the Solicitor General said that the report was relied upon "for statistics and other details concerning the actual evacuation and the events that took place subsequent thereto. We have specifically recited in this brief the facts relating to the justification for the evacuation,

of which we ask the Court to take judicial notice, and we rely upon the Final Report only to the extent that it relates such facts." Yet the Final Report embodied the basic decision under review and stated the reasons why it was actually undertaken. General DeWitt's Final Recommendation to the Secretary of War, dated February 14, 1942, included in the Final Report, was the closest approximation we have in these cases to an authoritative determination of fact.¹⁰⁷

We have already analyzed the conclusory beliefs about ethnicity determining loyalty which are central to DeWitt's final recommendation, and have pointed out the weakness of the government's case when it was put to its proof on the facts in cases such as *Ebel* and *Schueler*.

No one reading the Supreme Court's opinion today with knowledge of the exclusion, evacuation and detention can conclude that the majority opinion displays any close knowledge of the reasoning used by the government in the momentous historical events under review. The only concrete item pointed out to show disloyalty among evacuees was the fact that approximately 5,000 American citizens in the relocation camps had refused to swear unqualified allegiance to the United States, a fact that is meaningless without understanding conditions within the camps.

What of the law on which the case was based? There are two principles in contention in the majority opinion; the presumption against invidious racial discrimination which requires that racial classifications be given strict scrutiny, and the deference to military judgment in wartime based on the war powers of the Constitution and expressed in the banal aphorism that the power to wage war is the power to wage war successfully. In this case, of course, the Court found that military interests prevailed over the presumption against racial discrimination.

Today the decision in *Korematsu* lies overruled in the court of history. First, the Supreme Court, a little more than a year later in *Duncan v. Kahanamoku*, reviewed the imposition of martial law in Hawaii and struck it down, making adamantly clear that the principles and practices of American government are permeated by the belief that loyal citizens in loyal territory are to be governed by civil rather than military authority, and that when the military assumes civil functions in such circumstances it will receive no deference from the courts in reviewing its actions.¹⁰⁸ *Korematsu* fits the *Duncan* pattern—the exclusion of the Nikkei not only invaded the recognized province of civil government, it was based on cultural and social facts in which the military had no training or expertise. General DeWitt had assumed the role of omniscient sociologist and anthropologist. *Duncan* makes

clear that no deference will be given to military judgments of that nature.

The other legal leg of the opinion, the failure to strike down an invidious racial discrimination, stands isolated in the law—the Japanese American cases have never been followed and are routinely cited as the only modern examples of invidious racial discrimination which the Supreme Court has not stricken down. Typically, Justice Powell wrote in 1980:

Under this Court's established doctrine, a racial classification is suspect and subject to strict judicial scrutiny. . . . Only two of this Court's modern cases have held the use of racial classifications to be constitutional. See *Korematsu v. United States*, 323 U.S. 214 (1944); *Hirabayashi v. United States*, 320 U.S. 81 (1943). Indeed, the failure of legislative action to survive strict scrutiny has led some to wonder whether our review of racial classifications has been strict in theory, but fatal in fact.¹⁰⁹

Moreover, the law has evolved in the last forty years and the equal protection of the laws, once applicable only to the states by the language of the Fourteenth Amendment, has now been applied through the due process clause of the Fifth Amendment to actions of the federal government.¹¹⁰ Thus the constitutional protection against federal discrimination has been strengthened. *Korematsu* is a curiosity, not a precedent on questions of racial discrimination.

Finally, insofar as *Korematsu* relied on the inherent authority of an executive order from the Commander in Chief and not on a program articulated and defined by statute, that precedent has been overruled by the decision of the Court in the steel seizure case.¹¹¹

Korematsu has not been overruled—we have not been so unfortunate that a repetition of the facts has occurred to give the Court that opportunity—but each part of the decision, questions of both factual review and legal principles, has been discredited or abandoned.

The result in the companion case of *Ex parte Endo* was very different. The Court unanimously reversed *Endo* and ruled that an admittedly loyal American citizen could not be held in a relocation camp against her will. But even this ruling was on the narrow ground that no statute or even an explicit executive order supported this course of conduct. The Supreme Court does not reach constitutional issues unnecessarily, but the tone of Justice Douglas's writing in *Endo* was nonetheless crabbed and confined. Even this very substantial and important victory for the evacuees did not come with an air of generosity or largeness of spirit.¹¹²

GOING HOME

Resettlement now moved forward, although the government continued to develop lists of individual excludees, with the WRA and the War Department disputing how many were on the lists and whether new persons could be added. For example, Dillon Myer was concerned that the Western Defense Command continued to exclude those who had been granted leave clearance by WRA, most Buddhist priests, and other previously unlisted persons.¹¹³ The Eastern Defense Command was anxious about accepting people of Japanese descent excluded from the West Coast.¹¹⁴ Governor Wallgren, newly-elected in the State of Washington, continued to favor mass exclusion; he was "extremely antagonistic toward the Japanese and . . . positive in his assertion that a mistake had been made, from the point of view of the war effort, in allowing any to return and that this mistake should be remedied."¹¹⁵ But generally the Army was pleased with the course of events on the West Coast. General Pratt, now in charge of the WDC, wrote, "The first reactions to the change in the policy with reference to control of Japanese Americans has been even more favorable than I hoped. While I anticipate that this favorable reaction will continue and will be a strong factor in preventing the development of unfavorable agitation, we should be prepared in case any untoward incident occurs."¹¹⁶

Whether and how quickly to close the relocation centers was another concern. Proclamation No. 21 indicated that the centers would be closed within a year. WRA believed that such an announcement was essential to assure that people in the centers would move out, and that evacuees in the camps would not become a dependent group like the American Indians. The public and some government officials, however, expressed concern that some persons of Japanese ancestry would be left homeless and without livelihoods if the centers were permanently closed.¹¹⁷ On the other side, Congressman May suggested introducing legislation to have the centers closed by June 30, 1945. Secretary Ickes, sensitive to the need to provide for relocatees, opposed the bill.¹¹⁸ Indeed, all centers but Tule Lake were closed by January 1946. Tule Lake was kept open to permit the Justice Department to complete its hearings on detainees there.¹¹⁹

The end of mass exclusion did not spell the end of hardship for the evacuees. Throughout 1945, evacuees returned to the West Coast, not only from the camps but also from interior states where they had been resettled. For many, leaving the camps was as traumatic as entering them. However unpleasant their lives in camp, it was preferable

to an unknown, possibly hostile reception on the West Coast. By January 1945, only one of every six Issei had left.¹²⁰ Now they would have to be persuaded to leave.¹²¹ Suicides, especially among elderly bachelors, were reported.¹²² Many were frightened, particularly of reintegrating with whites after the segregated life of the camps.¹²³ Some came to resettlement lacking self-esteem, and perhaps identifying with the stereotypes that had been projected upon them.¹²⁴ Some felt shame when they were let out of camp.¹²⁵ A great many felt the burden of starting over, at an older age and for a second time.¹²⁶ After encouraging everyone to leave and scheduling closing dates for each camp, the WRA finally gave the remaining evacuees train fare to the point of their evacuation, and made them leave.¹²⁷

They returned by the trainload to Los Angeles, San Francisco and Seattle. Often elderly and infirm or burdened with heavy family responsibility, the last evacuees to leave "piled into temporary shelters, hotels, converted Army barracks, and public housing."¹²⁸ Each person was given an allowance of \$25.¹²⁹ Very few could come back to their prewar holdings. Only about 25 percent of the prewar farm operators, for example, retained property.¹³⁰

Many testified that their stored possessions had been lost or stolen.¹³¹ Sometimes taxes had not been paid, and special measures to keep property from tax sales were required.¹³² Others found their homes or farms ill-cared-for, overgrown with weeds, badly tended or destroyed.¹³³ Furnishings, farm equipment and machinery were lost or stolen.¹³⁴ One person reported finding strangers living in his former home.¹³⁵

Almost uniformly, those who did not return to homes they owned testified that housing was extremely hard to find because of postwar shortages and discrimination against Japanese Americans.¹³⁶ The WRA concluded that "no other problem has provided so widespread an obstacle to satisfactory adjustment."¹³⁷ Families lived in a single room, sometimes with a common bathroom or kitchen down the hall, or they lived in hotels or churches.¹³⁸ Some, particularly women, took room-and-board jobs—low-skilled and low-paying work—in order to have a place to live.¹³⁹ Indeed, it was not uncommon that almost every family member had to work in order to make ends meet.¹⁴⁰ John Saito's experience typifies much of the testimony:

My father first came back to Los Angeles in July of 1945, and worked as a dishwasher at a skid row restaurant on 5th Street. I came back to Los Angeles after my father and stayed at his hotel room in the skid row area. There was only one room, and only

one bed, he worked the graveyard shift and I went to school during the day, therefore, we managed to use the same bed at different hours of the day. My mother was still in Idaho working as a cook at a farm labor camp. My older brother was still overseas with the 442nd Regimental Combat Team. My mother had scrimped and saved her salary as a cook for over three years, and finally had enough money for a down payment on a house. We purchased the house in 1946, and tried to move in only to find two Caucasian men sitting on the front steps with a court injunction prohibiting us from moving in because of a restrictive covenant. If we moved in, we would be subject to \$1,000 fine and/or one year in the County Jail. We were in a financial bind because we could not afford both mortgage and rental payments. We had to sell our house during a period of a housing shortage.¹⁴¹

Housing was not the only problem—during the first six months of 1945, violence was relatively common. One of the first incidents occurred on January 8, when someone tried to dynamite and burn an evacuee's fruit packing shed. About thirty incidents followed, mostly shots fired into evacuee homes.¹⁴² Boycotts of evacuee produce were threatened.¹⁴³ General harassment, such as signs announcing "No Japs allowed, no Japs welcome," was widespread.¹⁴⁴

Although jobs on the West Coast were relatively plentiful, much employment discrimination blocked evacuees,¹⁴⁵ and many had to take menial jobs.¹⁴⁶ Although they had little difficulty finding work as farm laborers,¹⁴⁷ the number who ran their own establishments was much lower than it had been before the war. Only a fourth as many were farming now, which meant severely curtailed opportunities for wholesale and retail operations.¹⁴⁸ So the majority moved into other fields, scattered among many different jobs. Others were compelled to take welfare payments.¹⁴⁹ Almost all worked long and hard to restore their former status. The Issei were particularly burdened, for many would otherwise have retired; but now they had to work.¹⁵⁰

Another matter of great concern during this period was reuniting families. In many cases the younger, more employable members had relocated to the east during 1943 and 1944. Their parents were likely to return to the West Coast on leaving the camps. Thus the resettlement process was marked by much second-time resettling, as children came from the east to join their parents or vice versa.¹⁵¹

Despite the many problems faced by the returning evacuees, most were successful in rebuilding their lives. The political leadership, both federal and state, was working to expedite their return. The West Coast was experiencing tremendous postwar growth and the ethnic

Japanese were becoming just one of many minority groups. Equally important were the groups working for justice for the ethnic Japanese. Many were church people, particularly Quakers and liberals, who worked with the Army and WRA. They offered temporary shelter, provided moral support, sponsored public talks about the Nisei military record and tried to counteract anti-Japanese movements.¹⁵² At long last the Nikkei captivity was over; the arduous task of creating new lives had begun.