Cseh Dániel

The Exclusion and Incarceration of Japanese Americans, 1942-1945: Civil Liberty and National Security in the United States

A japán amerikaiak kitelepítése és internálása, 1942-1945: Polgári szabadság és nemzetbiztonsági érdekek az Egyesült Államokban

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Abstract


The main research area of the present doctoral thesis is the forced exclusion and incarceration of persons of Japanese ancestry in the United States between 1942 and 1945, focusing on analyzing the conflict between civil liberty and national security. The basis of the research is the incarceration of the Japanese American community and the Japanese American Supreme Court decisions – such as the Korematsu v. United States (1944) case – as they symbolize the ordeal that people of Japanese descent had to endure during World War II in the name of military necessity. The forced removal and relocation of the Japanese American community was the result of the breakdown of the Checks and Balances principle – separation of powers –, which should have guarded against excessive executive power and discriminatory laws in order to safeguard the rights and privileges of all Americans. President Franklin D. Roosevelt and the War Department were authorized by Congress, while his executive power was unchecked by the Judiciary Branch. The decisions of the Supreme Court upon the constitutionality of the military orders, and the exclusion and incarceration of Japanese Americans – based on race, collective guilt, and political interests under the guise of military necessity – indicates that the Court played a political role in support of the war effort.

The incarceration of Japanese American, Japanese aliens and American citizens of Japanese lineage, raised moral issues as the war situation forced the United States to again face the Japanese ‘problem’ and ‘question’ in the wake of Pearl Harbor. The moral standard of the United States – the ‘American way’ principle only prevailed on the Hawaiian Islands – was overshadowed by paranoia, war hysteria, and the primary importance of self-defense, as implied by the use of the terms such as “enemy alien” and “non-alien” for Japanese Americans, the Issei and the Nisei generations respectively, while the “Fifth Column” term was used generally. A “window of vulnerability” opened after the direct and unexpected attack on Pearl Harbor as the United States was no longer protected by the two natural defense lines, the Atlantic and Pacific Oceans. President Franklin D. Roosevelt signed Executive Order No. 9066 on February 19, 1942, authorizing the Secretary of War and the appointed Military Commander to designate military areas and to exclude any or all citizens from the prescribe zones on the West Coast, thereby the President approved the mass forced removal and incarceration of persons of Japanese ancestry citing national defense and the power to wage war successfully.

As the targets of the war effort Japanese Americans became scapegoats and faced collective guilt on the Continental United States, because they looked like and possessed the racial characteristics of the enemy, an example of racial profiling. The exclusion and eventual incarceration was not justified by national security or military necessity, but rather it was a result of racial prejudice that united the American people against a common enemy, the Japanese ‘Fifth Column’, in support of the war effort. The Supreme Court with its Korematsu v. United States (1944) majority decision accepted the arguments made by the Roosevelt Administration and the War Department, while counter arguments by the Department of Justice and Interior, and the War Relocation Authority were swept off the table. The Court played a key, somewhat political role,
in the discriminative second class citizen treatment of persons of Japanese descent, restricting the civil liberties of a minority if it served the interest of the nation and the well-being of the majority of Americans. The Supreme Court’s decision expanded the power of the Executive Branch, while the Bill of Rights had to bow down to national defense interests.

Civil liberty is once again under attack in the United States – citing national security and defense – in an era of increased terrorist threats and activity. Muslim Americans, immigrants, and migrants in a post-9/11 America have to face racial, religious, and national origin based profiling and prejudice, islamophobia, and discrimination as a consequence of their ethnic background. Donald J. Trump, the 45th President of the United States, suggested during his presidential campaign that he might have supported the exclusion and incarceration of Japanese Americans under the same circumstances that President Roosevelt had to deal with following the disaster of Pearl Harbor. The transitional team cited the incarceration of Japanese Americans as a factual and historical precedent in order to support President Trump’s Muslim registration and travel ban campaign program, and the detention of migrants. Once again the loyalty of a minority is called into question based on national origin, race, and religion in the name of national security. Examining the course of action taken by the Roosevelt Administration at a time of immense national crisis allows us to better understand the contemporary intolerance of American society and its political leadership in the face of fear, vulnerability, and national security threat.
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4. Executive Order No. 9066, February 19, 1942
5. Civilian Exclusion Order No. 1, March 24, 1942
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Introduction

We now know what we should have known then – not only was that evacuation wrong, but Japanese-Americans were and are loyal Americans.¹

President Gerald R. Ford, Proclamation 4417, February 19, 1976

General Introduction of the Topic

The surprise air assault on Pearl Harbor opened a window of vulnerability in America, which resulted in immense fear as the nation prepared for a possible Japanese invasion, which eventually never took place. The Imperial Japanese Navy (I.J.N.) delivered a crippling blow to the United States Navy stationed at the Island of Oahu, a defense outpost. War hysteria engulfed the American public and the American political establishment at every branch and level of the United States Federal Government. Following the Pearl Harbor disaster, in which over 2,000 American lives were lost, President Franklin D. Roosevelt delivered his Day of Infamy speech to a joint session of Congress on December 8, 1941. On that historic day Congress declared war on the Empire of Japan within only three hours of President Roosevelt’s momentous address. The apprehension of persons of Japanese ancestry began within hours of the attack on the Hawaiian Islands and the Continental United States. These individuals had been monitored and listed by the Office of Naval Intelligence (O.N.I.) and the Federal Bureau of Investigation (F.B.I.) as the intelligence authorities believed they presented a threat to national security. Nobody could have predicted that the Roosevelt Administration would implement a federal exclusion and incarceration program targeting collectively the West Coast Japanese population. Nevertheless, it has to be acknowledged that the Japanese had been subjected to racial and selective discrimination since the late 19th century – a repercussion of the exclusion of the Chinese laborers in 1882 and the subsequent increase in Japanese immigration –, and following Pearl Harbor this latent prejudice gained renewed momentum, taking the form of scapegoating and calls for retaliatory measures to counter the Japanese ‘Fifth Column’ threat. The shock of Pearl Harbor was the catalyst for the forced removal and incarceration of the West Coast Japanese, it

induced war hysteria and an environment of fear that fostered anti-Japanese sentiments amongst the American political leadership and the public.

President Franklin D. Roosevelt’s Day of Infamy speech, December 8, 1941:

Yesterday, December 7, 1941 -- a date which will live in infamy -- the United States of America was suddenly and deliberately attacked by naval and air forces of the Empire of Japan.

The Roosevelt Administration faced considerable pressure from the West Coast Congressional delegates, ‘patriotic’ anti-Japanese organizations, and from the American public for the mass ‘evacuation’ and ‘internment’ of persons of Japanese lineage from the Pacific Coast. The American people wanted to vent their anger and the Japanese Americans were ideal targets due to their racial characteristics. This climate of war hysteria created the image of the ‘enemy alien’ and the ‘non-alien’, Japanese aliens and American citizens of Japanese parentage respectively. The Japanese residents were arrested and interned in the United States, the detained individuals were mostly community leaders who were apprehended for their supposed disloyalty. Military and government officials were worried about subversive activities that could potentially target the strategic national defense infrastructure – the military industry complex –, which was vital for the war effort. On December 11, 1941, the Pacific Coast was declared a “theatre of war” and the Western Defense Command (W.D.C.) was established with Lt. General John L. DeWitt

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4 The author will use Japanese Americans as a collective term in the dissertation to refer to the Japanese population in the United States, while using the terms Issei and Nisei to differentiate between generations if needed.
appointed as the Military Commander. The “theatre of war” designation foreshadowed the establishment of the military zones within the limits of the W.D.C. across the West Coast.

Despite of the initial calls for unity, highlighting that the majority of Japanese Americans were loyal to America, such slogans as “Remember Pearl Harbor” was strongly voiced and Japanese persons became scapegoats as a repercussion of the trauma of Pearl Harbor. Their racial affinity to the enemy and their racial characteristics were interpreted as evidence of their suspected disloyalty, arguing that Japanese persons were proud of the military triumphs of the Empire of Japan and would support the enemy in case of an invasion. Furthermore, the Japanese population faced racial antagonism because of the predominant belief that they were inassimilable and un-Americanized; these views were frequently repeated in the Congressional Records of the House of Representatives and the Senate (Volume 87, 1941, and Volume 88, 1942) during the initial months of the war and the ‘evacuation’ program. The Hon. John E. Rankin, of Mississippi, declared on the floor of the House, “[o]nce a Jap, always a Jap. We cannot afford to trust any of them. The leopard cannot change his spots.” It was a common stereotype that the loyal and disloyal elements could not be differentiated, that due to their racial ties Japanese Americans were bound to support the enemy. Those who harbored feelings of prejudice and hatred towards the Japanese had their convictions reinforced by the events of December 7, 1941, and by the anti-Japanese comments made by members of the political establishment.

The Japanese American population was seen as a community of ‘Fifth Columnists’ engaged in espionage and sabotage to aid the Empire. The military necessity argument was raised by the United States Military and the Federal Government in urging for the collective exclusion and incarceration of the Japanese community, the Japanese aliens (Issei) and American citizens of Japanese parentage (Nisei) alike. On February 19, 1942, President Roosevelt issued Executive Order No. 9066 authorizing the Secretary War and the appointed Military Commander to designate military areas, “[…] from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever

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restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion.”

The Executive Order, drafted by the War Department with the concurrence of the Department of Justice, was broadly defined as it did not single out persons of Japanese descent. Nonetheless, the order issued by the President was selectively applied to the Japanese populace residing within the confines of the military areas established along the Pacific Coast. The collective ‘relocation’ of the Japanese was recommended by Lt. General DeWitt on February 11, while requesting on February 14, 1942, to implement this measures as a military necessity to defend the West Coast. In his Final Report, published in 1943, the Commanding General justified the indiscriminate removal of the Japanese population by calling attention to the concentration and distribution of approximately 120,000 Japanese residents along the coastal states, and to their racial characteristics and affiliation, which predisposed them according to the Military Commander to un-American activities.

Executive Order No. 9066 provided the groundwork for the military regulations – curfew and exclusion orders, and the incarceration – that followed, issued by Lt. General DeWitt after he was appointed Military Commander by Secretary of War Henry L. Stimson. Several military regulations were issued to establish the military areas and to restrict the liberties of the ‘enemy aliens’, predominantly the freedom of Japanese persons. Military Areas No. 1 and No. 2 were established by Public Proclamation No. 1 on March 2, 1942. Military Area No. 1 included the western parts of the State of Washington, Oregon, and California, and the southern portion of Arizona. Japanese persons could voluntarily leave the military zones, but ‘voluntary evacuation’ was prohibited afterwards on March 27 when Public Proclamation No. 4 was made public. In certain areas mandatory exclusion began as early as February 25 – 500 Japanese families were forcefully removed from Terminal Island, Los Angeles Harbor –, but the first Civilian Exclusion

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8 DeWitt, Final Report, 9.
Order\textsuperscript{11}, out of 108, was issued by the Commanding General on March 24, 1942. The order was drafted to remove the Japanese families from Bainbridge Island, State of Washington. Approximately 120,000 persons of Japanese descent were forcefully removed from their neighborhoods through the exclusion orders and were placed in one of the temporary detention camps called ‘assembly centers’, while the permanent detention facilities\textsuperscript{12} were being constructed. Ironically, the removal of the Japanese population was defined by the Federal Government as an ‘evacuation’ and the detention facilities were labeled ‘relocation centers’ as if to indicate that this process is not accomplished through the means of force, is peaceful and temporary, and is in fact in the interest and well-being of the Japanese population; this was a returning argument used by both military and government officials to justify the exclusion program. By the Summer of 1942 all Japanese persons were excluded from Military Area No. 1 and were held in some form of confinement. They were placed in one of fifteen temporary detention camps that operated between March and October of 1942. By the end of October the Japanese aliens and ‘non-aliens’, again a euphemism for American citizens of Japanese ancestry, were transferred to incarceration camps where they were detained for the duration of the war.

During World War II ten permanent detention centers – incarceration camps – were built on the Home Front and these facilities were used to house the tens of thousands of Japanese incarcerees. These camps were operated by the War Relocation Authority (W.R.A.), established in accordance with Executive Order No. 9102 issued by the President on March 18, 1942. The W.R.A. was a federal agency responsible for the management of the detention camps and their residents; later placed under the management of the Department of Interior on February 16, 1944. The camps\textsuperscript{13} were in operation between March of 1942 and March of 1946. The exclusion orders were revoked by the War Department on December 17, 1944, and the Japanese detainees were permitted to leave the camps on January 2, 1945. The last camp to close its gates was Tule Lake Incarceration Center on the 20\textsuperscript{th} of March, 1946. The peak number of detainees in the

\textsuperscript{11} “Civilian Exclusion Order No. 1,” March 24, 1942, National Archives Catalog, National Archives and Records Administration, accessed October 2, 2018, \url{https://catalog.archives.gov/id/48566387}. See Appendices, Primary Documents, Document 5 for a copy of Civilian Exclusion Order No. 1.

\textsuperscript{12} See Appendices, Tables, Table 10 for the Temporary Detention Camps and Table 11 for the Permanent Detention Camps, their peak and total number of detainees during their operations.

camps ranged from 7,000 to 18,000 between 1942 and 1946. The War Relocation Authority officially ceased its operations on June 30, 1946.

In order to enforce the military regulations and the exclusion and incarceration of Japanese Americans the United States Congress issued Public Law No. 503\(^\text{14}\) on March 21, 1942. It was at the request of Secretary of War Stimson and Lt. General DeWitt in order to be able to execute the task assigned to the Commanding General; the draft of the bill was prepared by the War Department. Public Law No. 503 essentially made it a federal crime to violate the military restrictions issued by the designated Military Commander under the authority of Executive Order No. 9066. Congress thus provided the legal means, the enforcement machinery, to remove and detain persons of Japanese ancestry. Those Japanese Americans who decided to violate Public Proclamation No. 3\(^\text{15}\) – established a curfew on March 24, 1942, for Japanese persons between 8:00 p.m. and 6:00 a.m. –, or the civilian exclusion orders – issued between March and August of 1942 to cover the numerous districts of the military areas\(^\text{16}\) – were charged with committing a federal crime under the Statute of March 21, 1942. During the war four Japanese American cases\(^\text{17}\) challenged the curfew regulation and the exclusion orders, all of which reached the highest court of the Judiciary and were argued before the Supreme Court. In the *Hirabayashi v. United States*, 320 U.S. 81 (1943), *Yasui v. United States*, 320 U.S. 115 (1943), and *Korematsu v. United States*, 323 U.S. 214 (1944) cases the Justices of the Supreme Court found the curfew order, and the exclusion and incarceration constitutional. In their opinions the Justices cited the paramount importance of national defense and the war effort of the Roosevelt Administration. In the *Ex parte Mitsuye Endo*, 323 U.S. 283 (1944) case the Associate Justices ruled that the Federal Government had no right to detain loyal citizens, however by this time the Japanese incarcerees had been detained for over two years. The legal

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\(^{15}\) Public Proclamation No. 3, March 24, 1942, Box 3, Folder Public Proclamation #3, 1942, Series 1, JACL History Collection, Japanese American National Library, San Francisco.

\(^{16}\) Wartime Civil Control Administration, Statistical Division, Exclusion Dates, Number Evacuated, and Destinations of Japanese by Civilian Exclusion Order, December 30, 1942, Box 2, Procedure – Japanese Evacuee Study [1 of 2], Record Group 83, Records of Adon Poli, 1941-1946, The National Archives at San Francisco.

challenges of Minoru Yasui, Gordon Hirabayashi, and Fred T. Korematsu all became landmark cases in which the Supreme Court failed to apply the principle of strict scrutiny, judicial review, to interpret and assess the military necessity argumentation of the War Department, and to check the power of the Federal Government.

In 1983 the Commission on Wartime Relocation and Internment of Civilians (C.W.R.I.C.), established by Congress to investigate the incarceration of Japanese Americans, published its official report *Personal Justice Denied*. The Commission’s findings centered on three main historical causes: race prejudice, war hysteria, and the failure of political leadership. Nevertheless, the exclusion and incarceration was not solely the result of these factors. We have to consider that Executive Order No. 9066 signed by President Roosevelt was drafted by the War Department with the approval of the Department of Justice. Furthermore, the military regulations and the exclusion orders were enforced by Public Law No. 503, once again drafted by the War Department and ratified by Congress in the support of the war effort, suggesting a symbiosis of the Executive and Legislative branches in time of war due to the national security implications of the military measures. On the other hand, the *Final Report* of the War Department contained numerous misstatements and misleading ‘facts’ to justify the exclusion of the Japanese Americans. The interdepartmental conflict between the War and Justice Department over the *Final Report* and the misstatements further complicated the management of the Japanese ‘problem’ by the Roosevelt Administration.

The plight of the Japanese and the restriction of their civil liberties was influenced by more than just racial prejudice, military necessity, and the failure of political leadership. In light of these factors the dissertation endeavors to examine the decision making process and the politics of the exclusion and incarceration program by the Roosevelt Administration from a historical perspective within the framework of the Checks and Balances, the three branches of the Federal Government.

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The Trump Presidency and the Current Significance of the Japanese ‘Internment’

The political discourse during the Trump Presidency has been dominated by increasing anti-immigration agitation, prejudice, and hostility towards people of color and Muslim faith. The era of the Trump Administration has been defined by fear of terror, anxiety over border security, and religious and ethnic intolerance. The current political and social environment in America reinforces the need to study the wartime exclusion and incarceration of Japanese Americans to better understand the consequences of political demagogue during a time of national crisis. Since Donald J. Trump announced his candidacy on June 16, 2015, for the office of the President of the United States, he has made numerous divisive statements on the issue of immigration. As a presidential candidate he has proposed a Muslim registration system, a Muslim travel ban, and the shutting down of mosques in America. These discriminatory proposals were made in the wake of the terrorist attack at San Bernardino, California, on December 2, less than a month after the Paris attacks of November 13, 2015. Donald Trump ran his presidential campaign on an anti-immigration platform often using derogatory language to demonize migrants, and even proposed building a wall along the U.S.-Mexico border and pledged to deport 11 million immigrants who have entered the country illegally. During his

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20 On the day that Donald J. Trump officially announced that he was running for President he introduced his anti-immigrant position by calling Mexican immigrants drug dealers, criminals, and rapists. “When Mexico sends its people, they’re not sending their best; they’re not sending you. They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people,” claimed Donald Trump. Brett LoGiurato, “The Long, Wild Ride To Iowa: How Donald Trump set the presidential campaign on fire,” Business Insider, February 1, 2016, https://www.businessinsider.com/donald-trump-presidential-campaign-iowa-caucus-polls-2016-1.

21 On January 27, 2017, President Trump fulfilled his campaign promise by signing an Executive Order – Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States – implementing a 90 day travel ban for immigrants and non-immigrants from seven Muslim-majority countries: Iraq, Syria, Sudan, Iran, Somalia, Libya, and Yemen. The Executive Order was revised by the Trump Administration twice after Federal Judges in Seattle, Washington, and in Hawaii blocked the travel ban. The final version of the travel ban was signed by President Trump on September 24, 2017, and it blocks the entry of foreign nationals from six Muslim countries, adding North Korea and government officials from Venezuela to the list. The Trump v. Hawaii case challenging the order was heard by the Supreme Court on April 25 and upheld the Muslim travel ban in a 5 to 4 decision on June 26, 2018. “Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States,” The White House, January 27, 2017, https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states/; “Timeline of the Muslim Ban,” ACLU Washington, accessed August 2, 2019, https://www.aclu-wa.org/pages/timeline-muslim-ban.

presidency Donald Trump has treated immigrants with contempt and disrespect. He has referred to the flow of migrants from Central America as “caravans” and on January 11, 2018, he made a demeaning statement on their places of origin, calling them “shithole countries.”

The contemporary significance of the wartime Japanese American experience is noted by President Donald J. Trump – the 45th President of the United States –, who insisted during the Republican Party primary that the ‘internment’ of persons of Japanese lineage has historic precedent. Donald Trump made the comment in a *Time* magazine interview published on December 8, 2015. The presidential nominee argued that he might have supported the ‘evacuation’ and ‘internment’ of persons of Japanese ancestry during World War II had he been in the same position as President Franklin D. Roosevelt. “I would have had to be there at the time to tell you, to give you a proper answer. […] I certainly hate the concept of it. But I would have had to be there at the time to give you a proper answer,” remarked the Republican frontrunner. Mr. Trump was later unwilling to give an unequivocal answer during an interview on MSNBC to the question whether the ‘internment’ of Japanese Americans violated American values. A certain percentage of Donald Trump’s supporters in Iowa embraced his standpoint on the issue in a survey conducted on December 15, 2015, by the Public Policy Polling center. The survey was taken after Donald Trump announced his Muslim travel ban proposal and the terrorist attack at San Bernardino. According to the data provided by Public Policy Polling 48% of Trump voters in the State of Iowa supported the Roosevelt Administration’s policy on the wartime Japanese ‘internment’ and only 21% opposed it. On a broader scale 29% of Republican voters supported

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23 The President made the comment during an Oval Office meeting with Senators focusing on protecting immigrants from Haiti, El Salvador, and African countries. Donald Trump opposed the initiative and rather expressed his interest in encouraging immigration from Europe and Asia, from nations that could help the American economy. Rep. Cedric L. Richmond, former Chairman of the Congressional Black Caucus, responded to the President’s pro-white immigration policy by rephrasing the “Make America Great Again” slogan to “Make America White Again”. Ibram X. Kendi, “The Day ‘Shithole’ Entered the Presidential Lexicon,” *The Atlantic*, January 13, 2019, [https://www.theatlantic.com/politics/archive/2019/01/shithole-countries/580054/](https://www.theatlantic.com/politics/archive/2019/01/shithole-countries/580054/).


25 In the State of Iowa 45% of Trump voters also supported the shutting down of mosques, while 23% opposed it. The majority of Republicans opposed the idea, 45%, with only 27% supporting the shutdown of Muslim places of worship. On the issue of a national Muslim database 59% of Trump voters supported the initiative and 18% opposed it. Republican supporters were equal divided on the issue, 40% to 40%. Tom Jensen, “Trump Edges Cruz in Iowa; His Supporters Think Japanese Internment Was Good; Clinton Still Well Ahead of Sanders in State,” Public Policy Polling, December 15, 2015, [https://www.publicpolicypolling.com/polls/trump-edges-cruz-in-iowa-his-supporters-think-japanese-internment-was-good-clinton-still-well-ahead-of-sanders-in-state/](https://www.publicpolicypolling.com/polls/trump-edges-cruz-in-iowa-his-supporters-think-japanese-internment-was-good-clinton-still-well-ahead-of-sanders-in-state/).

26 Jensen, “Trump Edges Cruz in Iowa.”
it and 39% opposed the ‘internment’ of the West Coast Japanese. The current support for the wartime exclusion and incarceration of Japanese Americans can be explained by the present-day combination of fear, prejudice, and bigotry in the United States. This might be due to what Zeeshan Aleem called “self-justification” in his analysis of the Iowa polling results.\textsuperscript{27}

Zeeshan Aleem’s conclusion is corroborated by George Skelton who juxtaposed Donald Trump’s anti-Muslim rhetoric and the anti-Japanese war hysteria following Pearl Harbor to compare the effect of fearmongering. During the presidential campaign on December 7, 2015, Donald J. Trump called for “a total and complete shutdown of Muslims entering the United States.”\textsuperscript{28} In George Skelton’s opinion it was an example of 21\textsuperscript{st} century “fear-mongering”. It is quite ironic that the G.O.P. candidate made the proposal on the anniversary of Pearl Harbor. Approximately \( \frac{2}{3} \) of Republican primary voters were in support of the ban. This overwhelming support was the result of racial prejudice, security concerns, and false rumors, which resembles the panic of 1941. George Skelton quoted Doug Usher, Director of the Bloomberg Politics/Purple Strategies PulsePoll, who stated that “[t]hese numbers are made up of some people who are truly expressing religious bigotry and others who are fearful about terrorism and are willing to do anything they think might make us safer.”\textsuperscript{29} During World War II fear of the Japanese ‘Fifth Column’ played a prominent role in the mass ‘evacuation’ and detention of the West Coast Japanese residents. It was the culmination of false rumors,\textsuperscript{30} fear of subversive activity, and war hysteria during a time of military emergency. This fear is also palpable today in the aftermath of September 11, 2001, with the recent terrorist attacks and the migrant crisis. Under such circumstances people might feel “self-justified” to condone a harsher rhetoric and the differential treatment of others, as for example the ‘internment’ of the Japanese after Pearl Harbor.

During a Fox News interview on “The Kelly File” between Megyn Kelly and Carl Higbie, a spokesperson for the pro-Trump Great America PAC, the incarceration of Japanese

\textsuperscript{27} Zeeshan Aleem, “Nearly 50% of Trump Supporters in Iowa Think Japanese Internment Camps Were a Good Idea,” \textit{Mic}, December 15, 2015, \url{https://www.mic.com/articles/130476/nearly-50-of-trump-supporters-in-iowa-think-japanese-internment-camps-were-a-good-idea#.mMKnh8HMk}.

\textsuperscript{28} Skelton, “Trump’s rhetoric on Muslims.”

\textsuperscript{29} Skelton, “Trump’s rhetoric on Muslims.”

Asians was again cited as a historic precedent in regards to President-elect Donald Trump’s proposed Muslim registration policy. Carl Higbie contended that there was historic precedent: “We’ve done it based on race, we’ve done it based on religion, we’ve done it based on region. We’ve done it with Iran back – back a while ago. We did it during World War II with [the] Japanese.” The “precedent” was a reference to the Korematsu v. United States, 323 U.S. 214 (1944) decision of the Supreme Court which was described by Justice Robert H. Jackson in his dissent as a “loaded weapon”, ready to be used by the Executive in times of crisis. In further support of his comment Mr. Higbie stated that “[t]here is historical, factual precedent to do things that are not politically popular and sometimes not right, in the interest of national security.”

In contrast to the divisive national security and immigration politics of the Trump Administration the exclusion program of the Roosevelt Administration had firm support in the aftermath of Pearl Harbor due to the combination of war hysteria, fear of a possible invasion, and over half a century of anti-Japanese agitation. Many Americans felt that their prejudice was justified in light of the sneak attack and called for strong action against the Japanese on the Pacific Coast, even placing political pressure on their Congressional delegates. Nevertheless, what sets apart the plight of the Japanese Americans is the overwhelming political support across the aisle, by Democrats and Republicans alike, and by all three branches of the Federal Government. There was no division or partisan politics, only unity for a common cause, to wage war successfully.

31 The proposed Muslim registration procedure was based on the National Security Entry-Exit Registration System implemented following the 9/11 terrorist attacks. It was Kris Kobach, a member of the Trump transition team, who suggested that the Trump Administration might reestablish the registration of immigrants for countries where terrorist groups were active. Mr. Kobach had helped to devise and implement the Registration System during his time at the Department of Justice while he worked for Attorney General John Ashcroft. The Pennsylvania State University’s Center for Immigrants’ Rights stated in its 2012 report that the Registration System, initially proposed in 2002, was discriminatory and used racial profiling to target immigrants based on their national origin and faith: Arabs, Middle Easterners, South Asians, and Muslims. Jonah Engel Bromwich, “Trump Camp’s Talk of Registry and Japanese Internment Raises Muslims’ Fears,” The New York Times, November 17, 2016, https://www.nytimes.com/2016/11/18/us/politics/japanese-internment-muslim-registry.html.
32 Bromwich, “Trump Camp’s Talk of Registry.”
33 Bromwich, “Trump Camp’s Talk of Registry.”
Thesis Statements

During my research the following six hypotheses were drawn up with additional questions that the dissertation intends to address.

1) The exclusion and incarceration of Japanese Americans was a ‘Perfect Storm’, a combination of factors which led to the infringement of the Checks and Balances principle at each branch and level of the Federal Government, and the restriction of the civil liberties and constitutional rights of a particular minority – based on racial prejudice, collective guilt, and military necessity – at a time of national security threat in the interest of the Roosevelt Administration’s war effort.

The forced removal and detention of the Japanese American community was the result of the breakdown of the Checks and Balances following the Pearl Harbor debacle and the ensuing war hysteria. All three branches of the Federal Government of the United States – the Executive, Legislative, and Judicial Branch – were fearful of hindering the ability of the Roosevelt Administration to wage war successful and disregarded their fundamental role in the system of separation of powers. Despite of the principle of the Checks and Balances neither the Legislative, nor the Judicial branch made any attempt to limit the power of the Executive and to uphold the constitutional rights of the Japanese Americans. The United States was at war with the Empire of Japan and according to the Supreme Court it was within the “war powers” of the Executive and the Legislative to exclude and incarcerate Japanese aliens and American citizens of Japanese lineage, justifying their selective treatment by citing military necessity. The “war powers” of the Federal Government reigned supreme in a time of national emergency and Executive power was allowed to run amok at the expense of the civil liberties of a selected minority as it was in the perceived interest of the majority of Americans. The Executive, Legislative, and Judicial branches accepted the collective responsibility for the war effort, yet neglected their individual responsibility to prevent the abuse of power by reviewing the military orders and legislation permitting the exclusion of the Japanese American community.
Questions: How and in what form did racial prejudice and the alienness of Japanese persons manifest itself at the various branches of the Federal Government? Why and how did the individual branches fail in protecting the civil liberties of persons of Japanese descent? Could the exclusion and incarceration of a minority recur in America, and under what specific circumstances?

2) The Roosevelt Administration sealed the fate of the Japanese American community with the contentious Final Report of Lt. General John L. DeWitt, which accentuated the role of racial prejudice under the guise of military necessity, while the War Department failed to address the inconsistencies and misstatements made in the report, and was in an interdepartmental conflict with the Justice Department. The Roosevelt Administration failed to acknowledge the lack of military necessity.

The War Department used hostile rhetoric which created war hysteria and fear, scapegoating the Japanese American populace for Pearl Harbor. The Final Report of Lt. General John L. DeWitt reinforced the military necessity argumentation and placed blame on the Japanese residents based on their racial affiliation to the Empire of Japan, racial profiling. The Final Report contained numerous misstatements and misleading ‘facts’, and was released without the knowledge or consent of the Department of Justice. The Roosevelt Administration did not acknowledge the lack of military necessity despite of the reports and memorandums at its disposal, all of which discredited the War Department, Lt. General DeWitt, and his Final Report. The Supreme Court was not made aware of these reports in spite of the pending Japanese American cases, raising the issue of suppression of evidence.

Questions: What efforts were made by the Roosevelt Administration to disprove the military necessity argumentation, and the Japanese ‘Fifth Column’ accusations? What role did partisan politics and political interests play in the continuation of the ‘evacuation’ program and the exclusion of Japanese persons from the Pacific Coast? How did the Final Report and the role of Lt. General John L. DeWitt as the Military Commander define the plight of the West Coast Japanese? How did the deteriorating
relation between the War and Justice Department contribute to the Japanese ‘question’? What evidence is there to support the argument that government misconducted further intensified the Japanese ‘problem’?

3) The United State Congress abdicated its role – congressional oversight – to check the power of the Executive by approving the military regulations imposed on the Japanese American population and their forced exclusion from the West Coast with Public Law No. 503. The Legislative Branch rubber stamped the actions of the Roosevelt Administration by providing the means of enforcement as a result of which any violation of the military restrictions was henceforth considered a federal crime.

The disaster of Pearl Harbor brought about the end of party politics as the United States Congress closed its ranks and called for unity under the shared burden of supporting the war effort of the Roosevelt Administration in the interest of national defense, although at the expense of civil liberty. The political discourse in Congress was shaped by the issue of the Japanese ‘menace’, scapegoating persons of Japanese ancestry based on such racial stereotypification as the image of the ‘Fifth Column’. Congress did not question the military necessity premise of the Executive and approved Public Law No. 503 to enforce President Franklin D. Roosevelt’s Executive Order and the military regulations drafted by the Commanding General of the Western Defense Command.

**Questions:** What was the role of the West Coast delegates in enforcing the selective and discriminatory treatment of the Japanese Americans? To what extent did racial prejudice and the anti-Japanese sentiments of members of Congress influence the Japanese ‘question’ on the floor of the House of Representatives and the Senate? How did persons of Japanese ancestry and American citizens of Japanese parentage become scapegoats according to the Congressional Records? How did the ratification of Public Law No. 503 define the relationship of Congress and the Administration of President Roosevelt?
4) The Supreme Court failed to apply judicial review to investigate the military necessity justification of the Roosevelt Administration and thus approved the exclusion and incarceration of persons of Japanese parentage by accepting the arguments made by the War Department despite of their racial connotations.

The Supreme Court found the curfew and exclusion orders constitutional, recognizing the war powers of the Executive and Congress in the Hirabayashi v. United States, 320 U.S. 81 (1943), Yasui v. United States, 320 U.S. 115 (1943), and the Korematsu v. United States, 323 U.S. 214 (1944) decisions. The Justices of the Supreme Court did not pursue the doctrine of judicial scrutiny to test the legitimacy of the military necessity arguments, as in the case of the Final Report in the Korematsu opinion. According to the judgment of the Justices national defense was paramount, meaning that in the opinion of the Supreme Court even the Bill of Rights has to bow to military necessity at times of national crisis, in wartime. The anti-Japanese prejudice of the period was reflected in the decisions of the Supreme Court as the Judiciary joined the war effort of the United States Government. The exclusion of persons of Japanese ancestry was authorized by Executive Order No. 9066, which was post factum ratified by Public Law No. 503, and the ruling of the Supreme Court in the Japanese American cases closed the circle. The role of the Judicial Branch is greatly criticized by legal scholars, because it meant that due to the lack of judicial review the executive power of the Roosevelt Administration went unchecked. The Supreme Court did not employ judicial activism, the Justice of the Court avoided a constitutional crisis by not engaging in a legal dispute with the War Department in time of war.

Questions: Why and how did Justices Owen J. Roberts, Frank Murphy, and Robert H. Jackson dissent in the Korematsu decision? Why did the Supreme Court rule in favor of Mitsuye Endo’s petition in the Ex parte Mitsuye Endo case? What are some of the factors that differentiate the cases of Fred T. Korematsu and Mitsuye Endo? How did the writ of error coram nobis cases correct the original verdicts made by the District Courts in 1942?
5) The exclusion and incarceration was not justified by military necessity with regards to the loyalty of the Japanese American community, which was corroborated by the Munson and Ringle Report, and the mission of the Japanese American Citizens League that advocated the assimilation and Americanization of the Nisei generation, the image of the ‘exemplary citizens’.

The Japanese American Citizens League represented the Nisei generation and pledged its support to the Roosevelt Administration, endorsing the war effort of the Federal Government to prove the loyalty of the Japanese Community. The efforts of the J.A.C.L. to portray persons of Japanese ancestry as ‘exemplary citizens’ is supported by intelligence reports of significant importance, such as the Japanese On The West Coast of November 7 and the Report On Hawaiian Islands of December 8, 1941, by Curtis B. Munson, and The Japanese in America: The Problem and the Solution by Lt. Commander Kenneth D. Ringle in the Autumn of 1942. These official government documents greatly undermine the ‘Fifth Column’ threat and discredit the military necessity argument advocated by the Roosevelt Administration.

**Questions:** Considering the mission of the Japanese American Citizens League and the findings of the intelligence reports on Japanese loyalty was there a Japanese ‘problem’ on the West Coast, as claimed by the Roosevelt Administration? Why was the policy and mission of the J.A.C.L. so controversial? Why and how did the J.A.C.L. embrace the image of the ‘exemplary citizen’? How did the J.A.C.L. react to the spread of war hysteria following the assault on Pearl Harbor? What were the consequences of the J.A.C.L.’s policy to support the Federal Government’s war effort? Why is the military service of the Nisei generation a topic of contradiction in light of their exclusion and incarceration?

6) The standpoint of the War Department that there was no time or means to determine the loyalty of the West Coast Japanese – so as to justify their collective treatment – does not correspond to the facts, as illustrated by the individual treatment of the Hawaiian Japanese.
During the war the fate of the Japanese Americans, the Issei and Nisei, was decided by either the collective or the case by case principle, on the Continental United States and on the Hawaiian Islands respectively. In the Territory of Hawaii the “American way” prevailed and the Japanese inhabitants were treated on an individual basis, which serves as a counterexample to the collective guilt and exclusion that persons of Japanese lineage had to endure on the Pacific Coast.

Questions: What were the main differences between the status of the Hawaiian and West Coast Japanese? Why did the case by case principle persevere on the Hawaiian Islands, while it failed on the West Coast? Were the Hawaiian Japanese more loyal than their West Coast counterparts according to the contemporary intelligence reports? How did the Japanese phobia and war hysteria manifest itself on the Hawaiian Islands? Did the Roosevelt Administration willingly approve of the individual apprehension and internment advocated by the Commanding General of the Hawaiian Department?

Historiography

The exclusion and incarceration of Japanese Americans is mainly researched by American scholars owing to the numerous research institutes, archives, and libraries in the United States focusing on the Japanese American ‘internment’. Due to the scarcity of resources available in Europe it is necessary for researchers to travel to America in order to access the crucial primary resources. The present dissertation is based on a collection of archival material and is supplemented by secondary sources. The primary sources were collected during research trips to the Japanese American National Library, the National Japanese American Historical Society, and National Archives at San Francisco, and the Roosevelt Institute for American Studies in Middelburg; the research and methodology is discussed in the following section.

Historians have approached the subject from several aspects such as the history of prejudice and the anti-Japanese agitation, the exclusion and incarceration of persons of Japanese ancestry, the operation of the War Relocation Authority, the Japanese American Supreme Court
cases, and the Redress Movement. Of the scholars who have published on the topic Roger Daniels and Peter Irons should be highlighted as two of the experts in their field of study. Roger Daniels has focused on the comprehensive analysis and documentation of the history of the anti-Japanese movement and the incarceration of Japanese Americans. The work of Peter Irons has tackled the Japanese American legal challenges and the significance of the Supreme Court decisions.

Within the works published in this field of research we can identify several groups of sources. Some of the sources focus on the general history of Japanese Americans and deal with the subject of the wartime treatment within this context. These publications deal with the social situation and treatment of the Japanese Americans on the Pacific Coast and tend to neglect the wartime experience of the Japanese residents of the Hawaiian Islands after Pearl Harbor. Dennis M. Ogawa and Evarts C. Fox Jr. address this issue in their study on the Hawaiian Japanese, examining their individual treatment and internment during the war. A further group of sources concentrates on the exclusion and incarceration of the West Coast Japanese and the politics of the Roosevelt Administration. These sources examine the causes of the collective ‘evacuation’, the development and execution of the exclusion program, and the role played by military and

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government officials. The main factors identified are war hysteria, racial prejudice, and the failure of political leadership. However, there is a lack of comprehensive analysis of the cooperation between the three branches of the Federal Government while making the decision to carry out the forced removal and incarceration of Japanese Americans in support of the war effort. The significance of the wartime ‘internment’ and military regulations is emphasized by the Japanese American legal challenges. There are several publications that examine the Supreme Court cases of Gordon Hirabayashi, Minoru Yasui, Mitsuye Endo, and Fred Korematsu. The findings published in these sources point out how the power of the Executive Branch increased at the expense of civil liberty due to “military necessity” in wartime.

The publications of the War Relocation Authority is an additional sources of research material. The government publications focus on the management of the W.R.A. and the administration of the incarceration centers, including a historical overview of the exclusion program. The other sources that need not be neglected are the document collections on the Presidency of Franklin D. Roosevelt and historical reference guides on the history of Japanese Americans. Roger Daniels has compiled a detailed collection of documents on the exclusion and incarceration of Japanese Americans which has been published in several volumes. The Japanese American Citizens League and the National Japanese Historical Society has published several resource guides for educational purposes. These publications provide a general


introduction to Japanese American society, culture, and their wartime experience with selected primary documents for analysis.

The exclusion and incarceration of Japanese Americans has not been widely covered by Hungarian researchers. István Kornél Vida published an informative article on the internment of Japanese Americans in the 2012 Summer issue of *Múlt-kor*. In the article he introduces the post-Pearl Harbor treatment of persons of Japanese ancestry, their exclusion and incarceration after President Roosevelt signed Executive Order No. 9066. A further study was published in *Világtörténet* by Attila Vargha on the history of the Japanese American community. In his well-researched work he introduces the story of the Japanese American community between the second half of the 19th century and 1945. The author mostly focuses on the period of the wartime internment by examining the war hysteria, the exclusion process, and the life of the Japanese residents in the permanent detention camps, closing the study with their resettlement and redress.

The core of the dissertation is based on the primary sources gathered at numerous research institutions and archives. The archival material can be grouped into four essential collections. The microfilm collections of the Roosevelt Study Center contains the official files of President Franklin D. Roosevelt and the papers of Henry L. Stimson. These sources encompass essential correspondences, memorandums, and reports on the Japanese ‘problem’. The documents provide an insight into the decision making process of the Roosevelt Administration to collectively exclude the Japanese from the Pacific Coast. The second collection is the bound edition of the *Congressional Records* (1st and 2nd session of the 77th Congress, 1941-1943) held at the Library of the Hungarian Parliament. The records of the United States Congress were studied to examine the debates in the House and Senate on the Japanese ‘menace’ and their exclusion from the Pacific Coast. The National Archives at San Francisco


46 *Franklin D. Roosevelt Office Files, 1933-1945, Part 1: “Safe” and Confidential Files*, microfilm, Roosevelt Study Center, Middelburg; *Franklin D. Roosevelt Office Files, 1933-1945, Part 3: Departmental Correspondence File*, microfilm, Roosevelt Study Center, Middelburg; *Papers of Henry Lewis Stimson*, microfilm, Roosevelt Study Center, Middelburg; *Diaries of Henry Lewis Stimson*, microfilm, Roosevelt Study Center, Middelburg.

holds a compilation of documents from the Korematsu v. United States\textsuperscript{48} (1944) legal proceedings. The collection of legal documents details the case between 1942 and 1984, from the charges filed against the defendant, the decision of the court, the appeal process, and the coram nobis petition to vacate Fred Korematsu’s conviction. The compiled sources enable the analysis of the legal proceedings, the arguments raised for and against the exclusion of Japanese Americans. The primary sources examined provide evidence of government misconduct by the Roosevelt Administration. The Japanese American Citizens League represented the Nisei during World War II and cooperated with the Federal Government during their incarceration. The documents of the J.A.C.L.\textsuperscript{49} are held at the Japanese American National Library and constitutes the fourth collection of primary sources. The archival material contains official documents on the wartime policy and mission of the League, on Japanese American loyalty.

**Research and Methodology**

The exclusion and incarceration of the Japanese American community has been the focus of my research for the past years during my PhD studies, an immensely engrossing subject for someone who had lived and studied in the United States for four years. This dark and neglected past of America was never a part of the educational curriculum during my studies in elementary and junior high in California, nor during my freshman year in high school. After having returned to Hungary I continued my studies in American history and culture while attending a bilingual school. I came upon my current research topic during my Master’s studies at the American Studies Department, Eötvös Loránd University, when I attended my supervisor Professor Tibor Frank’s seminar on historiography. While consulting a history textbook for a presentation a found a brief paragraph on the wartime experiences of Japanese Americans during World War II, which I found intriguing. The root of this interest is that I found it hard to reconcile the plight of the Japanese American community with the themes of democracy and civil liberties that I had


\textsuperscript{49} JACL History Collection, Japanese American National Library, San Francisco; JACL Redress Collection, Japanese American National Library, San Francisco.
learned about in California, the State that forcefully removed its Japanese residents and detained them behind barbed wire fences between 1942 and 1945.

During my research I focused on the policy of the Roosevelt Administration, on how it tackled the Japanese ‘problem’ following Pearl Harbor and on the decision making process to exclude the Japanese population with the active participation of the three branches of the Federal Government. I also studied the wartime experience of the Japanese American community, with special consideration to the Japanese American Citizens League and the Japanese American cases that challenged the constitutionality of the wartime exclusion. As a consequence of the lack of sources in Hungary – the topic has not been widely covered by domestic researchers of American history and there have been limited scientific studies published on the topic – during my research I placed emphasis on collecting archival primary sources in the previously mentioned areas of focus. My research was made possible by several scholarships that enabled me to conduct on site research at various libraries and research institutes in the Netherlands, the United Kingdom, and the United States. The primary sources collected during my research trips provided the central core of the dissertation, supplemented by secondary sources. The author has published his research results and findings in his current field of interest in several scientific studies50.

I conducted research at the Roosevelt Study Center, Middelburg, the Netherlands, for two weeks (February 2-15, 2014) on a research grant awarded by the Roosevelt Study Center. At the R.S.C. research institute I was able to gain access to essential microfilm collections: President Franklin D. Roosevelt’s Office Files, 1933-1945, Part 1. Safe and Confidential Files and Part 3. Departmental Correspondence Files; the Papers of Henry Lewis Stimson; and the Diaries of Henry Lewis Stimson. During my research at the Roosevelt Study Center I also managed to consult secondary sources documenting the presidency of Franklin D. Roosevelt.

During the Summer of 2014 I spent one month (July 1-28, 2014) in London, the United Kingdom, and carried out research at the British Library. The research trip was made possible through a CAMPUS Hungary Scholarship; my host institution was the Institute for North American Studies, King’s College. The British Library contains a collection of government publication on the operation of the War Relocation Authority, highlighting the work of the agency in administrating the incarceration camps and caring for the Japanese residents. The collection includes numerous secondary sources documenting the incarceration of the Japanese Americans and the record of the Roosevelt Administration.

My research progressed further with the Visiting Student Researcher post-graduate Fulbright Grant awarded by the Hungarian Fulbright Commission in 2015. I was able to conduct on-site research in California, the United States, for four months (January 15 – May 14, 2016); my host institution was the Asian American Studies Department, College of Ethnic Studies, San Francisco State University. During those four months spent in the San Francisco Bay Area I visited and explored the collections of the Japanese American National Library (San Francisco), National Japanese American Historical Society (San Francisco), and the National Archives and Records Administration (San Bruno). The J.A.N.L. is a repository for the Japanese American Citizens League and contains the J.A.C.L. History Collection and the J.A.C.L. Redress Collection which provided an indispensable insight into the policy and mission of the League, and the wartime treatment of the Japanese American community by the Roosevelt Administration. The N.J.A.H.S. has a great collection on Japanese American history and their experience during the war, including a copy of the Final Report: Japanese Evacuation From The West Coast published in 1943 by the War Department under the name of Lt. General John L. DeWitt. The N.A.R.A. was a further site of research because of the Korematsu v. United States collection, which chronicles in great detail the legal challenge of Fred T. Korematsu from the initial charges filed against the defendant to the writ of error coram nobis petition in 1983 to vacate his original 1942 conviction. Furthermore, I was able to conduct interviews with former incarcerees: Sara S. Ishikawa, Jimi Yamauchi, Joseph Y. Yasutake, Roy Y. Matsuiki, and Paul M. Okimoto. As part of my investigation I also visited the Manzanar National Historic Site at

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51 See Appendices, Oral History, Oral History 1 for excerpts from the interview with Roy Matsuiki.
Independence, California, on May 24, 2016, to document the former site of the Manzanar Incarceration Camp.52

Structure of the Dissertation

The dissertation is divided into three main sections – studying the prelude to exclusion and incarceration of Japanese Americans, the ‘evacuation’ program as part of the war effort of the Roosevelt Administration, and its ramifications with regards to the Japanese American legal challenges – in a thematic and chronological order, subdivided into seven chapters supplemented with the Conclusion and the Epilogue. The dissertation includes an elaborate Appendix which provides supplementary information to aid the readers in exploring the topic, such as a list of terminology and a table of preferred vocabulary advocated by the Japanese American Citizens League, a list of abbreviations, a chronology of events, primary documents, an oral history section with excerpts from the interview with Roy Y. Matsuzaki, and a list of figures documenting the attack on Pearl Harbor and the Manzanar National Historic Site.

Section I of the dissertation focuses on the Japanese ‘problem’ and the ‘Fifth Column’ threat with Chapter 1 dealing with the events of Pearl Harbor, the ‘Day of Infamy’, and Chapter 2 examining the status of the Hawaiian Japanese. Chapter 1 discusses the events of December 7, 1941, and the chain of reactions it unleashed. The issue of responsibility gripped the Roosevelt Administration, questioning the state of preparedness on the Island of Oahu with concerns over suspected Japanese subversive activity, the role of the Japanese ‘Fifth Column’. The chapter examines the issue of responsibility in light of Secretary of Navy Frank Knox’s assessment that Pearl Harbor was the most effective ‘Fifth Column’ operation of the war. In the context of the Pearl Harbor Inquiry the chapter will address the role and responsibility of the United States Army and Navy, and the Federal Bureau of Investigation, to examine if there was a Japanese ‘problem’ in the Territory of Hawaii on that infamous day. The closing sub-chapter will introduce the 24-hour period of December 7 and 8, 1941, that changed the fate of the Japanese American community. The section will discuss how President Franklin D. Roosevelt prepared to address the nation and request Congress to declare war while reports were still received in Washington on the devastation caused at Pearl Harbor.

52 See Appendices, Figures, II. Manzanar National Historic Site for photos of Manzanar Incarceration Camp.
Chapter 2 elaborates on the significance of the Hawaiian Japanese population during World War II, briefly introducing their history and comparing their cultural and social status with their West Coast counterparts. The chapter intends to highlight the main difference between the Hawaiian and West Coast Japanese by detailing the individual treatment of the Japanese on the Island of Oahu. It serves as a counter example to the collective principle implemented on the Continental United States which led to the forced removal and detention of approximately 120,000 persons of Japanese ancestry. There was tangible Japanese phobia preceding Pearl Harbor with the frequent island and sight-seeing visits made by the Japanese sailors and servicemen of the Imperial Japanese Navy, the case of the Japanese naval tanker Ondo and the Waimea incident is discussed in detail as an example of the national security implications. The Japanese ‘Fifth Column’ was already a matter of national security concern prior to December 7, 1941. In the aftermath of the attack the loyalty of the Japanese residents was questioned by the Federal Government, the issue of disloyalty is examined by reflecting on Curtis B. Munson’s Report On Hawaiian Islands from December 8, 1941. The chapter will address how the “American way” prevailed, as requested by Lieutenant General Delos C. Emmons, despite of the Japanese paranoia, and how the Japanese inhabitants were treated on a case by case principle.

Section II of the dissertation places the Executive and Legislative Branch of the Federal Government in the center of attention by examining the role of the Roosevelt Administration and Congress, along with the influence of racial prejudice and scapegoating in the decision making process to exclude and incarcerate the West Coast Japanese. Chapter 3 deals with the judgment of the Roosevelt Administration to initiate the ‘evacuation’ program by citing military necessity and the role of partisan politics in delaying the revocation of the exclusion orders. The relation between the War Department and Justice Department will be studied with consideration to the interdepartmental conflict over the Final Report of Lt. General John L. DeWitt, the issue of misstatements and misleading ‘facts’ on Japanese subversive activity. The chapter will review the official reports, correspondences, and memorandums between officials of the War and Justice Department, and the intelligence authorities, to investigate the Government’s misconduct in handling the Japanese ‘question’.

The role of the United States Congress is discussed in Chapter 4 by examining the remarks of members of the House of Representatives and the Senate between December 8, 1941, and December 16, 1942, in the Congressional Records. The chapter scrutinizes the debates about
and passage of Public Law No. 503 following the requests of the War Department to provide the enforcement machinery needed for the ‘evacuation’ program. The approval of the statute came at a time when the fear of the Japanese ‘menace’ and ‘Fifth Column’ had a profound impact on Congress, as indicated in the comments made in the House and Senate, most certainly by the West Coast delegates who pressured the White House to exclude and detain the Japanese populace. The importance of the statute and racial prejudice is underlined by reviewing the anti-Japanese regulations of the Roosevelt Administration and the consecutive Public Proclamations issued by Lt. General DeWitt, which established the military areas and military provisions. The chapter closes with a brief study of the exclusion and incarceration of the Pacific Coast Japanese and the operation of the War Relocation Authority. The exclusion process is studied through the example of Civilian Exclusion Order No. 1 and the instructions issued for the removal of Japanese families from Bainbridge Island.

Chapter 5 examines the image of the ‘exemplary citizens’, as portrayed by the Japanese American Citizens League in order to stimulate the assimilation and Americanization of Japanese persons. By investigating the policy and mission of the J.A.C.L. we are able to discuss how the League intended to secure the loyalty and patriotism of the Japanese community in order to cooperate with the Roosevelt Administration, going as far as encouraging the military service of the Nisei. The J.A.C.L.’s The Japanese American Creed (1941) and the A Declaration Of Policy (1942), analyzed in the chapter, reflected the endeavor of the organization to assume the moral and political leadership of the Japanese community. The Japanese American community was greatly divided as a consequence of the politics of the J.A.C.L. under the leadership of Saburo Kido and Mike Masaoka since the League supported the Selective Service and draft of the Nisei, and the segregation of suspected ‘radicals’. This expression of loyalty by the Nisei is confirmed by studying the correspondences of members of the J.A.C.L. and the misconception over the Japanese ‘problem’ in light of the official intelligence reports. The ‘Fifth Column’ threat is examined through the findings of Lt. Commander Kenneth D. Ringle’s Office of Naval Intelligence report and Curtis B. Munson’s Japanese On The West Coast Report.

Section III introduces the last branch of the Federal Government, the Judiciary, and its role in the wartime history of the Japanese American community. Chapter 6 examines the landmark Japanese American cases argued by the Supreme Court on the issue of citizenship and subsequent military regulations during World War II, such as the Gordon Kiyoshi Hirabayashi v.
United States, 320 U.S. 81 (1943) and the Minoru Yasui v. United States, 320 U.S. 115 (1943) on the constitutionality of the curfew regulations targeting citizens and the Japanese minority. The conflict between civil liberty and national security at times of war emergencies is examined at the beginning of the chapter as a precedent to the prohibition of dissent and the Japanese American cases. The case of Takao Ozawa v. United States, 260 U.S. 178 (1922) is also studied as a precursor to the anti-Japanese restrictions since Japanese aliens were found to be ineligible for citizenship due to the color of their skin, their race. The case of Mitsuye Endo, Ex parte Mitsuye Endo, 323 U.S. 283 (1944), is discussed in the closing sub-chapter to provide a counterexample to the challenges of Gordon Hirabayashi and Minoru Yasui in light of the fact that the Supreme Court conceded the inability of the Federal Government to detain loyal citizens.

The constitutional challenge of Fred T. Korematsu is studied in-depth in Chapter 7, reviewing the Korematsu v. United States, 323 U.S. 214 (1944) case from the charges raised against Mr. Korematsu for violating Civilian Exclusion Order No. 34 through the court case, the appeal procedure, and the opinion of the Supreme Court on the constitutionality of the exclusion orders and the incarceration of persons of Japanese descent. The chapter is a thorough overview of the legal challenge on the exclusion program, and on the debate over the civil liberties and constitutional rights violated by the U.S. Government. In this framework the chapter introduces the legal arguments raised by Attorneys Clarence E. Rust and Wayne M. Collins, the representatives for the Defendant, and by United States Attorneys Frank J. Hennessy and A. J. Zirpoli for the Plaintiff on Executive Order No. 9066, Civilian Exclusion Order No. 34, and Public Law No. 503, and the issue of military necessity and the war powers of the Federal Government. The ruling of the Supreme Court is discussed at length, the majority opinion of Justice Hugo L. Black is supplemented by the dissent of Justice Owen J. Roberts, Justice Frank Murphy, and Justice Robert H. Jackson as a point of contrast. The Section does not neglect to address the legacy of the Japanese American cases, the writ of error coram nobis petitions for the reversal of the conviction of Gordon Hirabayashi, Minoru Yasui, and Fred Korematsu.

The Conclusion briefly summarizes the topic of the scholarly thesis and analyzes the findings of the research, reflecting on the hypotheses and the questions raised in the Introduction. The closing section of the dissertation is the Epilogue which goes beyond the timeframe of the wartime exclusion and provides an outlook on its legacy and contemporary interpretation, briefly elaborating on the question whether such violation of civil liberties could occur again in the
United States. The Epilogue discusses the redress and reparations movement leading to the establishment of the Commission on Wartime Relocation and Internment of Civilians and President Ronald Reagan signing the Civil Liberties Act of 1988, which prescribed individual reparations amounting to $20,000 and a formal presidential apology to the remaining survivors. The section also intends to tackle the present-day perception of the Japanese American incarceration, focusing on the Trump Administration and its nativist rhetoric in light of the Muslim registration proposal, the travel ban, and the plans to detain migrants in a former incarceration camp.
SECTION I.

THE JAPANESE ‘PROBLEM’ AND THE ‘FIFTH COLUMN’ THREAT
Chapter 1.
The Day of Infamy:  
Pearl Harbor and the Japanese Population, ‘Problem’

“Remember Pearl Harbor!”

As United States-Japan relations and negotiations were deteriorating the War Department decided to send a message of warning to Lieutenant General Walter C. Short on November 27, 1941. The message, quoted by Gillon, went as the following: “Japanese future action unpredictable but hostile action possible at any moment.” Admiral Harold R. Stark from the Department of Navy, Chief of Naval Operations, sent a similar, but more powerful warning message to Admiral Husband E. Kimmel, “[t]his dispatch is to be considered a war warning. Negotiations with Japan . . . have ceased, and an aggressive move by Japan is expected within the next few days.” The Japanese message received by the War Department on December 6, 1941, and the information on the severing of diplomatic relations was not received by the Army Chief of Staff until the morning of December 7. The message was delivered to Army personnel by an officer of the G-2 intelligence division only after 9:00 A.M. General George C. Marshall, the Army Chief of Staff – after having gone through all the fourteen parts of the Japanese message on “breaking off diplomatic relations” – decided to warn all American outposts from the West Coast to the Pacific. The message stated: “Japanese are presenting at one pm eastern standard time today what amounts to an ultimatum. Also, they are under orders to destroy their code machine immediately. Just what significance the hour set may have we do not know but be on alert accordingly.” Afterwards Admiral Stark agreed that the Navy should be warned as well and accordingly General Marshall added to his message, “[i]nform naval authorities of this

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53 A patriotic slogan, a call to arms, meant to rally the American people in support of the war effort. Similar slogans were used previously, such as “Remember the Maine!” after the U.S.S. Maine sank due to an explosion in 1898 in Havana Harbor, Cuba, or the battle cry “Remember the Alamo!” at the Battle of San Jacinto in 1836, present-day Texas. Steven M. Gillon, Pearl Harbor: FDR Leads the Nation into War (New York: Basic Books, 2011), 168.
54 Gillon, Pearl Harbor, 27.
56 Henry L. Stimson, Statement of the Secretary of War Regarding the Pearl Harbor Disaster, August 29, 1945, President Harry S. Truman’s Office Files, 1945-1953. Part 3: Subject File, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 35 (hereafter cited as Statement of the Secretary of War, August 29, 1945).
57 Gillon, Pearl Harbor, 39-40.
communication.”\textsuperscript{58} Unfortunately, the message was not sent until 11:58 a.m. and due to atmospheric conditions it could not be sent to the Hawaiian Islands. The message was first sent to the Caribbean Defense Command, then to Manila at 12:06 p.m., and afterwards to the Presidio of San Francisco. The Army Signal Center sent the warning message to Hawaii at 12:17 p.m. through Western Union and was picked up by the messenger in Honolulu at 7:33 a.m. Hawaiian time.\textsuperscript{59} The message was not marked “urgent”, thus it was delivered only after the attack. The warning message proved to be late as the Imperial Japanese Navy (I.J.N.) seized the element of surprise and attacked the unprepared American defense outpost on the Island of Oahu in order to destroy the Pacific Fleet, to eliminate the United States from the list of potential belligerents with a single blow.

\textbf{1.1. December 7, 1941: The Attack on Pearl Harbor}

The attack on Pearl Harbor is still widely debated, historians and researchers to this day question whether the attack was foreseeable, was it anticipated, did the United States Government know of the plans formulated by Japan, and why government and military officials were caught off-guard or unprepared. This uncertainty resulted in smear campaigns, wild rumors, and conspiracy theories. Nonetheless, it is indisputable that the attack of December 7, 1941, caused immense loses in life and was a shocking blow – by an enemy thought to be inferior – that immobilized the Pacific Fleet. The attack on Pearl Harbor opened a “window of vulnerability”. The United States was no longer protected by the Atlantic and Pacific Ocean, as a natural shield or barrier, from a direct attack. The onslaught shook the American leadership and populace to its core. All things considered, there were warnings about and references to a possible devastating attack to the United States Navy stationed at Pearl Harbor, Oahu, which could cripple the American Fleet.

From the perspective of foreign policy United States-Japan relations had deteriorated over the past years prior to 1941. Despite of the ongoing negotiations between the two parties the intentions of Japan proved to be misleading. Joseph C. Grew, U.S. Ambassador to Japan, sent a telegram from Tokyo to Secretary of State Cordell Hull on January 27, 1941. According to Ambassador Grew’s warning the Japanese National Government was preparing for an attack on

\textsuperscript{58} Gillon, \textit{Pearl Harbor}, 40.
\textsuperscript{59} Gillon, \textit{Pearl Harbor}, 40.
Pearl Harbor. In his telegram he stated, that “[…] the Japanese military forces planned, in the event of trouble with the United States, to attempt a surprise mass attack on Pearl Harbor using all of their military facilities.” The Ambassador based this allegation on information provided by a Peruvian Colleague, who had told a member of the American staff. The Peruvian diplomat also claimed that he heard the information from numerous people, including a Japanese source. What convinced a career diplomat of Joseph C. Grew’s caliber, who during a long career of over three decades had held numerous foreign-service positions all over the World, was the fact that he had heard of the mass surprise attack from many sources. He felt the need to pass on this vital information despite of its supposedly far-fetched nature.

The political, foreign relations warning provided by Ambassador Joseph C. Grew is supplemented by a letter from Secretary of Navy Frank Knox to Henry L. Stimson, the Secretary of War; the letter was sent just three days prior to Ambassador Grew’s telegram to the Secretary of State. Secretary Knox sent the letter to Secretary Stimson on January 24, 1941, after the Navy Department finished assessing the security of the U.S. Pacific Fleet and the Pearl Harbor Naval Base. Based on the findings of the study Secretary Knox claimed that “[i]f war eventuates with Japan, it is believed easily possible that hostilities would be initiated by a surprise attack upon the Fleet or the Naval Base at Pearl Harbor.” The Secretary of Navy not only envisioned the possibility of a sudden attack, as the start of hostilities between the two powers, but also the forms and means of the offensive that could cause major damage to the fleet anchored at Pearl. The study was deemed necessary due to the deteriorating relation with Japan and the effectiveness of their previous air bombing and torpedo attacks against ships and naval bases in the region in their effort to establish the Greater East Asia Co-Prosperity Sphere.

The forms of attack were listed by Secretary Knox according to the order of their significance and probability:

1. Air bombing attack.
2. Air torpedo plane attack.
3. Sabotage.
4. Submarine attack.
5. Mining.
6. Bombardment by gun fire.

As claimed by the Secretary of Navy the defense against such attacks was satisfactory, except for the first two. The air bombing and air torpedo attacks could be carried out “successively, simultaneously, or in combination with any of the other operations enumerated”. The surprise air attacks were possible and could be carried out from carrier strike forces aided by support vessels, and Pearl Harbor was identified as a potential target. However, proposals were also made to prepare the defense of Oahu and the Naval Base. The report outlined the strategy of December 7th by identifying the soft spots of the American outpost and Pearl Harbor, but also suggested countermeasures for an enemy attack.

There were numerous security threats and gaps in the defense of Pearl Harbor, and these problems had to be dealt with before the proposed countermeasures could be accomplished. The task of the U.S. Navy was to locate the enemy carrier strike force before an attack. Nevertheless, the Naval Fleet would not be able to accomplish its objective in case of an attack launched without warning, that is to say a declaration of war (1. Countermeasure). Secretary Knox foresaw the events of December 7, 1941, the worst case scenario for the U.S. Armed Forces. A further problem was the inability to locate the enemy aircrafts due to the inadequate number of U.S. Army pursuit aircrafts (thirty-six aircrafts), and the air warning system at the time depended on visual observation and sound locators that were only effective within four miles (2. Countermeasure). Moreover, it would be hard for naval personnel to repulse enemy aircrafts because the U.S. Army suffered from a lack of men to operate the anti-aircraft batteries, and the caliber and number of anti-aircraft guns (twenty-six fixed 3" guns, fifty-six mobile 3" guns, hundred and nine .50 caliber machine guns) was insufficient (3. Countermeasure). Secretary of War Henry L. Stimson was informed by the Secretary of Navy that by the Summer of 1941 the defense of Oahu would be reinforced by addressing these shortcomings.

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63 Frank Knox to Henry L. Stimson, January 24, 1941, Papers of Henry Lewis Stimson.
64 Frank Knox to Henry L. Stimson, January 24, 1941, Papers of Henry Lewis Stimson.
Regardless of the plans for improving the defense of the Hawaiian Islands it remained a fact that on the morning of December 7, a Sunday, the American forces were asleep and unprepared for the air assault launched by Japan. Representative John D. Dingell made a sharp comment on December 9, 1941, relating to The Battle of Hawaii, “[…] the Army and Navy in Hawaii obviously were caught off guard if they were not sound asleep in the same bed.” The issue of responsibility and unpreparedness will be revisited in a later section of the present chapter, studying the role of the Army and Navy leadership in more detail, and in The Legislative Branch Chapter on the role of the United States Congress with calls for the removal of Admiral Kimmel and General Short for dereliction of duty. On December 7, 1941, the American public was reassured by the Times that the United States Navy was “first-rate”, as it was in the middle of a three years long expansion. The Times reported that Secretary of Navy Knox, who released his annual report just the day before, announced that the United States Navy “has at this time no superior in the world [sic]”, quoted by Gillon. The Battle of Pearl Harbor commenced at around 7:12 a.m. Hawaii time when the destroyer U.S.S. Ward reported that it had sighted and attacked in the channel entrance of the harbor an enemy submarine, and presumably successfully destroyed it with depth-charges. The report made by Lieutenant W. W. Outerbridge, commander of the destroyer, was accurate, but due to the numerous previous incidents – submarine contacts – Secretary Knox believed that it was not handled with due significance by Rear Admiral Claude

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65 Representative John D. Dingell, speaking on The Battle of Hawaii, on December 9, 1941, 77th Cong., 1st sess., Congressional Record 87, pt. 14: A5507.
66 Steven M. Gillon quoted the “Navy Is Superior to Any, Says Knox” article that was published in the New York Times on December 7, 1941. Gillon, Pearl Harbor, 4.
67 The author consulted several primary sources to establish an accurate timeline and narrative of the events of the December 7th Japanese attack on Pearl Harbor. Frank Knox, Report by the Secretary of the Navy to the President, December 14, 1941, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7 (hereafter cited as Knox, December 14, 1941, Report by the Secretary of the Navy to the President); Claude C. Bloch to The Chief of Naval Operations, December 24, 1941, Report on the Battle of Pearl Harbor, December 7, 1941, Box 1, Folder Report of Battle of Pearl Harbor, December 7, 1941, Series Pearl Harbor Attack After-Action Reports (Formerly Classified), 1941-1942, The National Archives at San Francisco (hereafter cited as Bloch, December 24, 1941, Report on the Battle of Pearl Harbor); C. C. Baughman to Commandant, Fourteenth Naval District and Navy Yard, December 20, 1941, Report on Japanese Air Attack on Pearl Harbor on December 7, 1941, Box 1, Folder Air Raid Reports Battle of Pearl (Harbor), December 7, 1941 (Narrative Reports), Series Pearl Harbor Attack After-Action Reports (Formerly Classified), 1941-1942, The National Archives at San Francisco (hereafter cited as Baughman, December 20, 1941, Report on Japanese Air Attack on Pearl Harbor).
68 Bloch, December 24, 1941, Report on the Battle of Pearl Harbor. According to the report compiled by Secretary Knox the U.S. destroyer noticed and reported the Japanese enemy submarine shortly after 7:00 a.m. Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
C. Bloch, Commandant of the Fourteenth Naval District at Pearl Harbor. Rear Admiral Bloch dismissed the notion that it might signal the beginning of a surprise offensive and referred to these incidents as “false alarms”, he acknowledged in his report that it was difficult to assess the dispatch by the U.S.S. Ward.


In the immediate aftermath of the Battle of Pearl Harbor the U.S. Armed Forces were still assessing the strength of the Japanese task force. The Knox Report\(^70\) suspected an enemy force consisting of 3 to 6 carriers with the ability to launch a striking force of 150 to 300 planes. After more information was gathered the military authorities were able to perceive a more accurate picture of the Japanese fleet. The downed enemy planes contained numerous clues for the U.S. Army and Navy on the enemy strike force, as well as on its objectives, capabilities, and technology. The Secretary of the Navy gave an account of the information gathered from an enemy plane: “Papers discovered on a Japanese plane which crashed indicate a striking force of six carriers, three heavy cruisers and numerous auxiliary craft including destroyers and other vessels.”\(^71\) The objectives of the enemy raid were the three Army fields, one Navy field, and Pearl Harbor, with the bombing concentrating on the airfields and the torpedo attacks targeting the vessels anchored in the harbor. Secretary Knox claimed in his report\(^72\) that the American naval forces were unprepared and first returned fire approximately 4 minutes after the first Japanese torpedo was fired. Although the American forces were caught off guard Admiral Bloch

\(^70\) Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
\(^71\) Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
\(^72\) Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
commented, “[b]y the end of this initial attack, they [ships] were delivering about one-half of their total firing effect.”

Most of the damage during the Japanese raid was dealt to the vessels moored at Ford Island, Battleship Row, and was caused by torpedo attacks – some vessels hit by more than one torpedo –, and not by bombs. Frank Knox commented that apart from the total loss of the U.S.S. Arizona – the front magazine exploded following a bomb strike –, the bombs failed to inflict severe damage. The Knox Report informed the President of the status of the fleet in the aftermath of the air strike and the timeframe for the salvage works. There were eight battleships anchored in the harbor of which only three evaded significant damage and were in operational status a few days later after they were repaired: the U.S.S. Maryland, U.S.S. Pennsylvania, and the U.S.S. Tennessee. Considering the condition of the damaged battleships the U.S. Navy believed that the salvage works would take months, after which all of the vessels required a one or two year long overhaul. F.B.I. Director J. Edgar Hoover talked with his Honolulu Agent “Shivers” on the morning of December 8, at 6:30 a.m., to receive information on the damage suffered at the hand of the Japanese attack. Attorney General Francis Biddle made reference to this in his cabinet notes for that notorious day. The Agent stated, that “[o]ur friends L. K. Cook, E. E. Kuhnel, M. G. Banister, R. B. Hood, J. F. Sears and H. R. Duffy, were killed here today.” The names were cryptic codes for the battleships: U.S.S. West Virginia, U.S.S. Tennessee, U.S.S. California, U.S.S. Oklahoma, U.S.S. Pennsylvania, and the U.S.S. Arizona.

Secretary Frank Knox on the destruction caused by the Japanese forces, December 14, 1941: The final resultw [sic] of the three attacks left the Army air fields and the Naval stations very badly damaged and resulted in the practical immobilization of the majority of the Navy’s battle[ship] fleet in the Pacific for months to come, the loss of 75% of the Army’s

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73 Bloch, December 24, 1941, Report on the Battle of Pearl Harbor.
74 See Appendices, Figures, I. Pearl Harbor Attack, December 7, 1941, for a selection of the official U.S. Navy photographs taken of the devastation caused by the Japanese air raid.
75 Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
76 Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
78 Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
air forces on the Islands, and the loss of an even larger percentage of the Navy’s air force on Oahu.

Immediately after the attack the Roosevelt Administration, Congress, and the American people were demanding answers to the question that everyone was asking, how could the United States Army and Navy – the U.S. Navy that was heralded on December 7 as “first-rate”, having no superior in the World – be unprepared for a Japanese air assault. Congressman John D. Dingell, U.S. Representative from Michigan, went as far as demanding the court martial of the highest ranking Army and Navy commanders, this meant the possible court martial of Admiral Kimmel and General Short. The December 9th issue of the *New York Times* quoted Congressman Dingell saying, that “[h]undreds of our boys have paid with their lives for the seeming deficiency of their superiors”\(^{80}\), with the Army and Navy caught off guard. A thorough investigation followed the Pearl Harbor debacle with Admiral Kimmel and General Short charged with dereliction of duty, and the Japanese Americans accused of ‘Fifth Column’ activity; the topic of a subsequent section. The Pearl Harbor air assault raised questions over the issue of responsibility, concerns over the Japanese ‘Fifth Column’ with rumors spreading like wild fire. The Hawaiian and West Coast Japanese, due to paranoia, were considered a source of threat by the intelligence agencies and the public even before the assault, and subsequently were judged as a national defense concern by the Roosevelt Administration. The ‘Fifth Column’ threat embodied what the White House and the Executive had feared, the participation of local Japanese inhabitants in espionage or sabotage activity in aid of the enemy.

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\(^{80}\) Steven M. Gillon quoted the “Dingell Urges Court-Martial for Officers He Says Were ‘Napping at Pearl Harbor’” article that was published in the *New York Times* on December 9, 1941. Gillon, *Pearl Harbor*, 92.
1.2. The Issue of Responsibility and the State of Preparedness

On April 28, 1944, after the sudden death of Secretary of Navy Frank Knox, President Roosevelt recollected during a press conference that it was the Secretary of Navy who had told him that the Japanese had bombed Pearl Harbor and immediately asked for permission to travel to Oahu in order to investigate. Secretary Knox left the next day and after two days of travel he arrived in Pearl Harbor and reported his findings to the White House the following day. After his return Secretary of Navy Knox submitted his report on the Japanese air raid on the Island of Oahu to President Roosevelt on December 14, 1941. After visiting and witnessing first-hand the damage and devastation caused by the Imperial Japanese Navy the Secretary of Navy placed part of the responsibility on the local Japanese residents, and described the attack as the result of the most effective ‘Fifth Column’ work during World War II. It is important to note that “sabotage” was only third on the list of possible forms of attack included in the letter sent to the Secretary of War on January 24, 1941. It is also ironic that the I.J.N. meticulously planned a combination of surprise air bombardment and torpedo attack, as Secretary Knox had anticipated the means of attack based on the apparent vulnerabilities of Pearl Harbor. Furthermore, the countermeasures outlined by the Secretary of Navy were not executed on December 7, such as locating and engaging the enemy task force and aircrafts. When studying the attack on Pearl Harbor, or discussing the issue of responsibility – apart from sabotage –, we also have to keep in mind the implementation of the proposed countermeasures drawn up by the Secretary of Navy, and the alertness of the U.S. Army and Navy, or rather the lack of it.

Pearl Harbor report by Secretary of Navy Frank Knox, December 14, 1941:

The Japanese air attack on the Island of Oahu on December 7th was a complete surprise to both the Army and the Navy. Its initial success, which included almost all the damage

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81 Secretary of Navy Frank Knox died at 1:08 p.m. on April 28, 1944, and President Roosevelt briefed members of the press of his sudden death. The President referred to Secretary Knox as a casualty of war: “He can be called just as much a war casualty as you or I, if we fell off the dock here and got drowned.” A very ominous assertion, considering that Franklin D. Roosevelt’s health was rapidly deteriorating and would die less than a year later on April 12, 1945. President Franklin D. Roosevelt, “Press and Radio Conference #947” (press conference, Bernard Baruch’s Plantation, South Carolina, April 28, 1944), in Complete Presidential Press Conferences of Franklin D. Roosevelt, Vol. 23, 1944-1945 (New York: Da Capo, 1972), 137, 139 (hereafter cited as Roosevelt, “Press and Radio Conference #947”).

82 Knox, December 14, 1941, Report by the Secretary of the Navy to the President.

83 Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
done, was due to a lack of a state of readiness against such an air attack, by both branches of the service. This statement was made by me to both General Short and Admiral Kimmel, and both agreed that it was entirely true.

The Knox Report clearly stated that the U.S. Army and Navy were unprepared, were caught off guard by the surprise attack – Army and Navy commanders did not consider such an attack feasible due to the vulnerability of the Japanese fleet –, and neither General Short nor Admiral Kimmel opposed this assessment. The Secretary noted\(^84\) that neither Admiral Kimmel nor General Short made any attempt to “alibi” the unpreparedness for the onslaught. They did not expect an air raid, thus did not take “adequate measures” to oppose one. General Short and Admiral Kimmel believed that if an attack were to take place, it would be implemented in the Far East, closer to Japan’s lines of military and naval operations. An air assault on the army airfields and the naval stations was considered improbable by both commanders due to the great distance the Japanese strike force would have travel, the threat of discovery, and its vulnerability to the superior firepower of the U.S. Navy. Furthermore, an attack was inconceivable since diplomatic negotiations were still ongoing between Japan and the United States. Rear Admiral Bloch formulated the same argument in his Report on the Battle of Pearl Harbor\(^85\), stating that despite of the warning reports on U.S.-Japan tension, the air assault was a surprise, since diplomatic negotiations were ongoing between the two nations, and the Japanese invasion of Thailand and the Dutch East Indies was considered more probable. The preparedness of both the Army and Navy against a surprise air assault was inadequate; to be discussed in greater length in the present chapter.

A major factor in the unpreparedness of the U.S. Army and Navy was the seeming lack of information. A “general war warning” was received by Admiral Kimmel and General Short on November 27\(^{th}\). Nevertheless, the crucial “special war warning” message\(^86\) of December 7\(^{th}\) on the imminent outbreak of conflict sent by General George C. Marshall from the War Department only reached General Short four or five hours after the assault had commenced. Secretary Knox

\(^84\) Knox, December 14, 1941, Report by the Secretary of the Navy to the President.

\(^85\) Bloch, December 24, 1941, Report on the Battle of Pearl Harbor.

\(^86\) The Secretary of the Navy indicated in the report that the message was sent to General Short on Saturday night, at midnight. However, as discussed in an earlier section of the chapter, General George C. Marshall sent the warning message on December 7, at 12:17 p.m. Gillon, Pearl Harbor, 40.
underscored in his report the presumed sources of threat and the readiness of the U.S. forces on Oahu prior to the attack. Examining the readiness of the U.S. Army\(^87\) the Secretary of the Navy pointed out that General Short repeated on several occasions that he considered the danger of sabotage as their primary concern, “most imminent danger”, due to the large number of Japanese aliens. As a precaution a “Sabotage Alert”\(^88\) was issued by General Short and the Army grouped the aircrafts closer together on the airfields so that it would be easier to protect them from subversive activity, sabotage committed by Japanese agents. The concentration of planes presented a larger and easier target for the Japanese pilots. Consequently, it also meant that it took several hours to get an essential number of planes into the air for defense purposes. The air defense\(^89\) of Pearl Harbor by the Army was controversial, considering the number of planes in the air and the status of the anti-aircraft guns; the Secretary of Navy had called for an increase in the anti-aircraft artillery in January of 1941. Most of the Army and Navy aircrafts were destroyed on the ground during the first wave of the air raid, since there were no Army planes in the air or being warmed up to engage the enemy during the attack. Apart from having no air cover during the first wave, the anti-aircraft batteries were not manned, nor were the mobile units in position for firing. The air defense initially consisted all but solely of light and ineffective .50 caliber machine gun fire. Contrary to the Knox findings, Admiral Bloch\(^90\) insisted that the subsequent waves following the initial assault were unable to inflict any serious damage due to the anti-aircraft barrage by the U.S. Navy.

According to Secretary Knox the U.S. Navy was more troubled by the threat of an unexpected Japanese submarine attack\(^91\) and the essential preventive measures were taken to counter such a “principle danger”. Simultaneously with the air raids the Japanese submarines also executed their attack, but no loses were inflicted on the U.S. fleet. As in the case of the Army, the Navy did not prepare for an air assault, apart from distributing the vessels in the

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\(^87\) Knox, December 14, 1941, Report by the Secretary of the Navy to the President.

\(^88\) Knox, December 14, 1941, Report by the Secretary of the Navy to the President; Statement of the Secretary of War, August 29, 1945.

\(^89\) The Secretary of Navy believed that the number of fighter planes and anti-aircraft batteries was inadequate for the defense of Oahu. The Army Commander was not held responsible for these shortcomings, since requests were made for additional anti-aircraft artilleries, and the fighter planes were shipped to Europe before Pearl Harbor. Knox, December 14, 1941, Report by the Secretary of the Navy to the President.

\(^90\) Bloch, December 24, 1941, Report on the Battle of Pearl Harbor.

\(^91\) Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
harbor to establish a “field of fire”\textsuperscript{92} so as to cover all angles of approach by air. The level of readiness of the U.S. Navy was “Condition Three”\textsuperscript{93}, meaning that about 90\% of the crew – officers and navy personnel – were on board their ships, and around $\frac{1}{2}$ of the anti-aircraft and broadside guns were manned at the time of the bombing raid. The neglected defense against a potential air bombardment and torpedo assault is inexplicable in light of the warnings and recommendations in advance of the Japanese offensive, keeping in mind that defense capabilities against such forms of attack were found to be unsatisfactory only ten months earlier. All things considered, military and naval authorities placed their priorities on protecting Pearl Harbor from a potential submarine attack and/or sabotage, even though Secretary Knox attached less significance to them.

Numerous failures, or dereliction of duties were attributed by the Secretary of the Navy to the U.S. Military defending the Island of Oahu on December 7, 1941. There were no Army patrols in the air, and the Navy sent its patrol southward. The situation was made worse by the technical failures of the radar detection system. The radars installed on U.S. naval vessels were useless when anchored in Pearl Harbor due to interference caused by the surrounding mountains. Consequently, the defense of Hawaii relied upon the three Army “detector stations”\textsuperscript{94} installed on Oahu, which however were only in operation between 4:00 a.m. and 7:00 a.m. Despite of the permission given by the Control Office to close the radar stations one Army officer continued his assignment. The radar indicated a group of planes 130 miles northward about half an hour before the air raid. The duty officer\textsuperscript{95} duly notified the Air Craft Warning Information Center of the approaching planes, but the Second Lieutenant in charge did not report it to the responsible Army and Navy commanders. The U.S.S. Enterprise was at sea and the Lieutenant believed that the radar signals were the aircrafts from the carrier. Secretary Knox drew attention to the importance of the radar stations – radio locators and an air warning net – for the readiness of the

\textsuperscript{92} Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
\textsuperscript{93} Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
\textsuperscript{94} The radar stations were generally managed for most of the day, but permission was given by the Control Office on December 6\textsuperscript{th} to only operate the radars for three hours on Sunday, between 4:00 a.m. and 7:00 a.m. Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
\textsuperscript{95} The officer plotted the course of the enemy aircrafts as they approached Oahu, and also their bearing as they returned to the Japanese aircraft carriers following the raid; Secretary Knox saw the radar plot. The U.S. Navy only received information of the radar report two days afterwards. According to a chart recovered from a downed enemy plane the Japanese forces withdrew northward. The Japanese fleet did not encounter the American task forces that were at sea. Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
Army and Navy forces. He concluded that the report by the officer “[…] would have given both Army and Navy sufficient warning to have been in a state of readiness, which at least would have prevented the major part of the damage done, and might easily [sic] have converted this successful air attack into a Japanese disaster.”

The Secretary of the Navy placed part of the blame directly on the Japanese ‘Fifth Column’ in Hawaii and compared their activity to the success of the ‘Fifth Columnists’ in Norway. “It cannot be too strongly emphasized that there was available to the enemy in Oahu probably the most efficient fifth column to be found anywhere in the American possessions, due to the presence of very large numbers of alien Japanese. […] The work of the fifth column artists in Hawaii has only been approached in this war by the success of a similar group in Norway” observed Secretary Knox. The Japanese ‘Fifth Columnists’ were accused of intelligence gathering, that proved to be efficient and precise. The documents and charts recovered from a beached Japanese midget-submarine indicated that the Imperial Japanese Navy possessed vital tactical information on the location of the naval vessels when anchored at Pearl Harbor, and on its air defenses capabilities. It is also mentioned, as a further evidence, that subsequent to the attack ‘Fifth Columnists’ started to spread conflicting rumors via radio on the course of the retreating enemy planes and the position of the enemy ships.

The Secretary of the Navy also took the occasion in his report to praise the courage and resourcefulness of the Imperial Japanese Navy in carrying out such a meticulously planned attack. Secretary Frank Knox on the efficiency of the I.J.N., December 14, 1941:

This attack has emphasized the completeness of the Naval and military information in the hands of the Japanese, the meticulous detail of their plans of attack, and their courage, ability and resourcefulness in executing and pressing home their operations. It should serve as a mighty incentive to our defense forces to spare no effort to achieve a final victory.

96 Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
97 The documents recovered from the Japanese submarine showed the precise location of every ship in the harbor to aid a submarine attack. Secretary Knox brought up the total loss of the U.S.S. Utah as a compelling evidence for the active ‘Fifth Column’ intelligence work. The retired battleship, then a training vessel, on December 7th occupied a berth usually designated for aircraft carriers. Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
98 Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
Curtis B. Munson’s Report And Suggestions Regarding Handling Japanese Question On The Coast made reference to Secretary Frank Knox’s ‘Fifth Column’ statement as well, after his visit to inspect and assess the damage following the Pearl Harbor attack. The Secretary of Navy after returning to Washington made the following statement to reporters: “I think the most effective Fifth Column work of the entire war was done in Hawaii with the possible exception of Norway.” His ‘Fifth Column’ remarks were made public in the December 15th issue of the Los Angeles Times and the December 16th issue of the Los Angeles Herald and Express. C. B. Munson suggested the use of “complete physical espionage” instead of the ‘Fifth Column’ phrase, a term which he found to be “loose” and “widely abused”. It created the wrong impression and had already resulted in objectionable reaction on the Pacific Coast following the Secretary’s statement. The primary reason for the use of the phrase “physical espionage” is that according to Munson such action can be unintentional on the part of the perpetrator, “[p]hysical espionage’ is supplied unwittingly by the gabble of Navy wives, by the gabble of loyal second generation Japanese, by the gabble of the postman and the milkman and classified by definite agents of a foreign government.” Physical espionage is a source of threat and would be effective due to the number of Japanese living on the West Coast and Hawaii. There were potentially two reasons for Secretary Knox’s statement, the comparison drawn between the ‘Fifth Column’ in Hawaii and Norway, as explained by C. B. Munson’s interpretation of the events. It was his impression that the Secretary of Navy was either caught off guard by a reporter, or during his brief visit to Oahu he was exposed to the “eat ‘em up alive” school, which was


100 Munson, December 20, 1941, Report and Suggestions Regarding Handling Japanese Question.

101 Curtis B. Munson further added such examples of physical espionage as photographing and “look seeing” by disloyal elements and paid agents. Munson, December 20, 1941, Report and Suggestions Regarding Handling Japanese Question. The “look seeing” might refer to the island trips taken by the crews of Japanese naval and mercantile vessels. The crews of the Japanese vessels were frequently entertained on the Hawaiian Islands by the Japanese residents who were their hosts and guides. Their activities included “sight-seeing tours” around the islands. During these infamous “sight-seeing tours” the Japanese officers and sailors were often observed taking pictures and making sketches of the harbors and fortifications, as well as taking measurements of the docks. Local Joint Planning Committee to The Commanding General, Hawaiian Department, and The Commandant, Fourteenth Naval District, May 25, 1936, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 31 (hereafter cited as Local Joint Planning Committee to The Commanding General, May 25, 1936).
common within the U.S. Navy. This mentality displayed by the Navy and represented by Secretary Knox was based on prejudice and explains their commitment to the plan for the mass removal of persons of Japanese descent from Oahu, Hawaii, in the interest of national defense, even though in the end it did not come to pass. This push for mass ‘evacuation’ is given more gravity if we consider that the Island of Oahu was an “enemy country” according to the Secretary of Navy.

Apart from questioning the readiness of the U.S. military and naval forces prior to Pearl Harbor the alertness of the intelligence agencies was also under scrutiny. The intelligence gathering by Japanese agents was a topic of heated debates as the Federal Bureau of Investigation (F.B.I.) was accused of failing to prevent the attack and was treated as a potential scapegoat. J. Edgar Hoover, Director of the agency, in his March 7, 1942, memorandum addressed this process as scapegoating. Director Hoover remarked, “[t]he Federal Bureau of Investigation has not been spared in an attempt to find a scapegoat.” Not only were persons of Japanese parentage treated as scapegoats for the attack, but also members of the United States Army, Navy, and the intelligence agencies. Examining these cases sheds light on the failures of the various branches of the United States Military, as well as on the lack of evidence to support the theory of subversive operations committed by the Hawaiian Japanese. In his memorandum the Director of the F.B.I. dealt with the issue of jurisdiction, responsibility, and the work of the agency in regards to the activity of the Japanese intelligence network and the rumored Japanese ‘Fifth Column’. Elaborating on the role of the F.B.I. in handling Japanese intelligence activity Director Hoover firmly stated that the agency did not have “full responsibility”. The Presidential directive of September 6, 1939, assigned the F.B.I. the role of “coordinating agency” in

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102 Curtis Munson described in his own words the “eat ‘em up alive” mentality as the following: “In Honolulu your observer noted that the seagoing Navy was inclined to consider everybody with slants eyes bad. This thought stems from two sources, from self-interest – largely in the economic field –, and from the pure lack of knowledge and the good old “eat ‘em up alive” school in the U.S. Navy.” Munson, December 20, 1941, Report and Suggestions Regarding Handling Japanese Question.


105 Hoover, “Memorandum RE: Pearl Harbor,” 368.
intelligence affairs. Nevertheless, the Military Intelligence Division, Office of Naval Intelligence (O.N.I.), and the F.B.I. agreed that the United States Navy would continue its lead role in countering Japanese intelligence. In J. Edgar Hoover’s opinion, this entailed that the Bureau had no “primary jurisdiction” in handling Japanese intelligence activities in Hawaii. In spite of not being in charge Mr. Hoover and the special agents of the F.B.I. were praised by the Committee on Appropriations for their alertness.

Report of the Committee on Appropriations:

From the facts supplied to the committee by the Director of the Bureau, it would appear that the primary responsibility for investigation of subversive activity in Hawaii did not rest upon the Federal Bureau of Investigation. In spite of the fact, however, that they were not charged directly with that responsibility, it would appear that the agents of the Federal Bureau of Investigation were entirely diligent in the matter of obtaining vital information which was placed in the hands of the responsible military and naval authorities in ample time to have been of most valuable assistance had it been heeded.

Turning to the issue of F.B.I. activity in Hawaii the memorandum indicates that the agency made several recommendations prior to the raid on Oahu. These allegations raised many questions, considering that the devastation at Pearl Harbor and the subsequent incarceration of Japanese Americans might have been preventable. It was known by the F.B.I. that the Japanese Consulate in Hawaii served as a “clearinghouse”, the point of origin from where sensitive information was transmitted to Japan. The Consulate employed over 250 consuls, more than in any other country. The Bureau recommended the arrest of the Japanese consuls during the Summer of 1941 for failing to register as foreign agents. The proposal was not accepted – no action was taken – by the United States Army, officials argued that the apprehension of the consuls would undermine their efforts in fostering “friendly feeling” and relations towards the

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107 Considering that a potential conflict with Japan would predominantly be a naval issue the Office of Naval Intelligence had amassed a vast amount of information on Japanese espionage over the years. The F.B.I. would cooperate with the O.N.I., but would not assume full responsibility until it had acquired the necessary experience, manpower, and required facilities. Hoover, “Memorandum RE: Pearl Harbor,” 368.
United States by the resident Japanese aliens and Japanese Americans.\textsuperscript{110} This information on the over 200 Japanese agents is confirmed by Rear Admiral Bloch in his \textit{Report on the Battle of Pearl Harbor}\textsuperscript{111}. Admiral Bloch suggested in his report that the Japanese had an advanced “network of espionage” prior to the air raid, able to communicate through cable with Japan. The U.S. Navy had no authority to analyze these transmissions. Moreover, the U.S. Navy was informed by the F.B.I. and the United States District Attorney that the Japanese agents were not registered and they intended to prosecute, Admiral Bloch agreed with this initiative. The U.S. Army felt that this procedure was “undesirable”, but the Navy was certain that this network of Japanese agents – subsequently apprehended – greatly contributed to the success of the Pearl Harbor attack.

Congressman Louis C. Rabaut addressing the House of Representatives, February 16, 1942:\textsuperscript{112} 

It was established to our satisfaction that the FBI did not have primary jurisdiction in Hawaii, but in spite of that fact they have been duly diligent. Had some of the recommendations which the Federal Bureau of Investigation made to other departments of Government been carried out during the past year, the whole sordid picture of Pearl Harbor might have been changed.

Exploring the matter of cable and radio messages\textsuperscript{113} sent from Honolulu to Tokyo the F.B.I. denied all rumors that they received copies of these transmissions from either the U.S. Army or Navy. The Bureau was right in denying these allegations, since the Federal Communications Act of 1934 prohibited for the agents to “intercept any communications and divulge or publish them.”\textsuperscript{114} The intelligence organizations were not permitted to access cable or radio messages transmitted through commercial communication systems. Notwithstanding,

\textsuperscript{110} Hoover, “Memorandum RE: Pearl Harbor,” 369-370.
\textsuperscript{111} Bloch, December 24, 1941, Report on the Battle of Pearl Harbor.
\textsuperscript{112} Hoover, “Memorandum RE: Pearl Harbor,” 369.
\textsuperscript{113} According to the press the F.B.I. received copies of the messages transmitted through commercial radio circuits during the weeks prior to Pearl Harbor. It was also assumed that the U.S. Army and Navy kept the commercial circuits under surveillance and provided copies of these messages to the F.B.I. However, the Bureau denied these allegations and issued the following statement: “Any statement implying that cable or radio messages between Hawaii and Tokyo prior to Pearl Harbor were cleared through or shown to the FBI is absolutely inaccurate and emphatically denied by the FBI.” Hoover, “Memorandum RE: Pearl Harbor,” 370.
\textsuperscript{114} Hoover, “Memorandum RE: Pearl Harbor,” 370.
contrary to these regulations F.B.I. agents were able to intercept a twenty minute long telephone conversation between Honolulu and Tokyo on December 5, 1941.\textsuperscript{115} The discussion between the individuals was characterized by the authorities as casual and friendly. Nevertheless, the strength and location of the U.S. Pacific Fleet was also mentioned in the conversation. The message referred to the weather conditions and “flowers blooming in the Islands”. The conversation was construed by the agency as a form of code intended to provide information on the disposition of the ships and air squadrons at Oahu. The F.B.I. attached great significance to the telephone conversation between Oahu and Tokyo, and accordingly it was handed over to the military and naval authorities. The Army and Navy did not share the Bureau’s concern over this message. In spite of all, the memorandum clearly states, that “[ha]d the military and naval authorities heeded the message intercepted by the FBI, the Japanese attack on Pearl Harbor would not have caught American armed forces napping.”\textsuperscript{116} The document also alluded to the findings of the Roberts Commission, which confirmed the activities and recommendations of the F.B.I.

Exploring the ‘Fifth Column’ problem in Hawaii – approximately 160,000 Japanese lived on the Islands, with 108,000 of them between the ages of 18 and 64 – the Hoover memorandum asserted that the Bureau had compiled files on suspected “enemy aliens” well before December 7, 1941.\textsuperscript{117} Following the raids the agency apprehended the alleged saboteurs, spies, and enemy agents who were later detained in detention facilities. Not only did the F.B.I. imprison the “enemy aliens”, but its agents also investigated rumors of sabotage and espionage, ‘Fifth Column’ activities related to Pearl Harbor. Numerous cases were reported, such as the rumors of arrows cut into the sugarcane fields pointing towards potential military targets, that advertisements published in newspapers contained codes intended for the local Japanese ‘Fifth Column’, or that Japanese truck drivers deliberately tried to delay the pilots who were hurriedly driving to Hickam Field during the ongoing Japanese air raid. Director Hoover clearly stated that the ‘Fifth Column’ accusations and rumors quickly spread like “wildfire”, even though there was a lack of evidence to substantiate the allegations, and did not reflect the actual situation on the Hawaiian Islands. “As a matter of fact, there was not one single act of sabotage committed in Hawaii on December 7, 1941,”\textsuperscript{118} asserted J. Edgar Hoover. It was also added by the Director

\textsuperscript{115} Hoover, “Memorandum RE: Pearl Harbor,” 370.
\textsuperscript{116} Hoover, “Memorandum RE: Pearl Harbor,” 370.
\textsuperscript{117} Hoover, “Memorandum RE: Pearl Harbor,” 372.
\textsuperscript{118} Hoover, “Memorandum RE: Pearl Harbor,” 373.
that since the assault there had been no further reports from Hawaii on subversive activities or vigilanism. The memorandum of March 7, 1942, was intended by J. Edgar Hoover to demonstrate the efficiency of the F.B.I. in their past and present activities in Hawaii, but it also greatly undermined the ‘Fifth Column’ claim reported by Secretary Frank Knox less than a mere three months earlier. The picture presented by Director Hoover contradicts the post-Pearl Harbor hysteria and anti-Japanese sentiments. The F.B.I. was ready to handle the task at hand and the potential Japanese subversives were known and monitored. The Japanese paranoia and ‘Fifth Column’ threat on the Hawaiian Islands will be the topic of the following chapter on The ‘American Way’ and will provide a greater insight into the intelligence and reports on the Hawaiian Japanese and their individual internment.

1.3. The Pearl Harbor Investigations

There were remarks about Secretary of Navy Frank Knox’s report on the Japanese ‘Fifth Column’ activity in Hawaii after his return from Pearl Harbor. At a press conference held by President Franklin D. Roosevelt on December 16, 1941, the President stated: “Of course, it is being analyzed, in order to try to prevent a recurrence of it in other parts of the world.”119 The President made this comment in response to a question on the Pearl Harbor report and any further inquiry into the subject. The situation was under investigation and a Board of Inquiry was assigned by the President. The President’s answer – preventing recurrence of ‘Fifth Column’ activity – indicated that this allegation, theory, made an impression not just on the American public, but also on the Administration, and it was accepted that the “Japs” – used to designate Japanese aliens and American citizens of Japanese ancestry – were to be blamed for Pearl Harbor.

While Secretary Knox was conducting his on-site post-attack inspection at Pearl Harbor he recommended to President Roosevelt the organization of an “investigation group”, describing it as “[...] the biggest possible little group, not experts but common sense people who have the confidence of the country.”120 Consequently, Justice Roberts was selected to head the Pearl Harbor

Harbor inquiry commission, the Roberts Commission. Considering the composition of the investigative committee the President received suggestions from the Secretary of War as early as December 16, 1941. The letter\(^{121}\) sent by Henry L. Stimson referred to the Secretary of Navy, who informed him that President Roosevelt was looking for their suggestions on the investigating board. Secretary Stimson provided his suggestions for the “civilian head” and for the “War Department representatives”. Justice Owen J. Roberts was recommended as the “civilian head” of the commission, described by the Secretary as having “[…] an outstanding reputating [sic] among our people for getting down to the bottom of a factual situation”.\(^{122}\) According to his opinion, by designating Justice Roberts the inquiry board would secure the public’s trust; he felt that Secretary Knox agreed with his proposal. On the other hand, for the “War Department representatives” the Secretary of War had two nominees: Major General Frank R. McCoy of the Army and Brigadier General Joseph T. McNarney of the Air Corps. General George C. Marshall agreed with Secretary Stimson’s recommendations for the Pearl Harbor commission. Both candidates were described as competent men with an excellent character, outstanding record, and great reputation. President Roosevelt was also informed by the Secretary of War of the “housecleaning” that was conducted by the War Department. Lieutenant General Walter C. Short, the Army Commander of the Hawaiian Department, and Major General Fredrick L. Martin, the Air Commander of the Hawaiian Air Force, were relieved of command and were replaced respectively by Lieutenant General Delos C. Emmons and Brigadier General Clarence L. Tinker who were sent to Hawaii.\(^{123}\)

Even after the findings of the Roberts Commission the investigation of the Pearl Harbor disaster did not cease and continued throughout the presidency of Franklin D. Roosevelt, and well into the presidency of Harry S. Truman. According to a Joint Resolution of the United States Congress on June 13, 1944, the Secretary of War and the Secretary of Navy were instructed to conduct a thorough fact finding investigation on the Pearl Harbor attack, and to initiate proceedings against the appropriate individuals. On September 22, 1944, President

\(^{121}\) Henry L. Stimson to President Franklin D. Roosevelt, December 16, 1941, *Papers of Henry Lewis Stimson*, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 105 (hereafter cited as Henry L. Stimson to President Franklin D. Roosevelt, December 16, 1941).

\(^{122}\) Henry L. Stimson to President Franklin D. Roosevelt, December 16, 1941.

\(^{123}\) The Secretary of War recommended that a similar “housecleaning” should be conducted by the Navy Command, and announced at the same time. Henry L. Stimson to President Franklin D. Roosevelt, December 16, 1941.
Franklin D. Roosevelt was asked during a press conference\textsuperscript{124} whether he would order the court martial of Admiral Kimmel and General Short. The President did not provide a direct answer, rather he evaded, asserting that there were two committees investigating Pearl Harbor at the time and the press should hear from them on the issue.

Secretary of War Henry L. Stimson’s views on the Pearl Harbor investigation:\textsuperscript{125}

To say merely that I believe that the facts do not warrant the institution of any proceedings against any officer of the Army would, I believe, inevitably give the impression that I was trying entirely to absolve all Army officers from any criticism including General Short, who has already after a careful and public review been held by the Roberts Board responsible for dereliction of duty.

In a November 22, 1944, memo\textsuperscript{126} to President Roosevelt the Secretary of War expressed his views on the Pearl Harbor investigation, asserting that he hoped to avoid the implication that he was trying to vindicate the U.S. Army and its officers of any responsibility, or that the Army intended to hide the findings from the American public. Secretary Stimson also enclosed a summary draft on the investigation of the Army Pearl Harbor Board. The draft\textsuperscript{127} stated that according to the Joint Resolution the Secretary of War conducted the required investigation by having established on July 8, 1944, the Army Pearl Harbor Board.\textsuperscript{128} The Army Board held hearings in Hawaii, San Francisco, and Washington, and over all questioned 151 witnesses. Secretary Stimson studied the report in detail along with the Judge Advocate General of the


\textsuperscript{125} Henry L. Stimson to President Franklin D. Roosevelt, November 22, 1944, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 33 (hereafter cited as Henry L. Stimson to President Franklin D. Roosevelt, November 22, 1944).

\textsuperscript{126} Henry L. Stimson to President Franklin D. Roosevelt, November 22, 1944.

\textsuperscript{127} President Franklin D. Roosevelt was advised by Secretary Stimson to withhold the report of the Army Pearl Harbor Board until the successful conclusion of the war, so as not to jeopardize the war effort and the lives of the American soldiers. Additionally, publishing parts of the report would also prove detrimental as it could distort the facts and conclusions of the Board. The report was sealed until after the end of the war, when it was deemed appropriate to release it on behalf of the public. Henry L. Stimson, Army Pearl Harbor Board report draft, November 22, 1944, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 33 (hereafter cited as Stimson, November 22, 1944, Army Pearl Harbor Board report draft).

\textsuperscript{128} Stimson, November 22, 1944, Army Pearl Harbor Board report draft.
Army. According to the Secretary of War the facts did not give grounds for further proceedings against officers of the U.S. Army.

The Board concluded that individual officers in the field and in the War Department did not carry out their tasks with the expected efficiency and skill, nor did they make the appropriate decisions under the given circumstances, and recommended no disciplinary action; the Secretary agreed with some of the conclusions. In the case of Lieutenant General Walter C. Short, Commanding Officer of the Hawaiian Department, Secretary Stimson was of the opinion that it was an adequate decision to relive him from command, since the General committed an “error of judgment”. The Commander of the Hawaiian Department was regard as a “conscientious and sensitive officer”. With this in mind, the Secretary believed that for a man of such character the repercussions of being relieved from command was already serious enough. General Walter C. Short was relieved from “command status” on January 11, 1942.

The official report of the Secretary of War was released on August 29, 1945. The end of the armed conflict in the Pacific Theatre made it possible for Secretary Stimson to release his conclusions on the Pearl Harbor investigation, the sources were not divulged due to security concerns. The Secretary had continued his investigation after his statement on December 1, 1944. Secretary Stimson’s conclusions centered on the responsibility of Lieutenant General Walter C. Short and the War Department, including the War Plans Division and the Army Chief of Staff George C. Marshall. It however did not address the potential accountability of the Japanese Americans, the issue of Japanese espionage or sabotage, potential subversive activity. The Secretary of War maintained in his report that his conclusions in the case of General Short were by and large in accordance with the findings of the Roberts Commission, report of January 23, 1942, and the Army Pearl Harbor Board.

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129 Stimson, November 22, 1944, Army Pearl Harbor Board report draft.
130 Statement of the Secretary of War, August 29, 1945.
131 The initial pages of the report were based on his public statement delivered on December 1, 1944. The draft of statement was included in the memo of November 22, 1944, addressed to President Franklin D. Roosevelt; cited previously in the section. The report was confidential until it was released on August 29, 1945; note attached to the report by Charles G. Ross, Secretary to the President. Statement of the Secretary of War, August 29, 1945.
132 The Army Pearl Harbor Board mentioned Secretary of State Cordell Hull as the only other individual who could be criticized for the Pearl Harbor disaster. The Board’s conclusion suggested that Secretary Hull’s demeanor contributed to the failure in diplomatic negotiations, if prolonged the Army and Navy could have been better prepared for the hostilities. Henry L. Stimson did not agree with the Board’s assumption, “[…] I feel that the Board’s comment in this respect was uncalled for and not within the scope of their proper inquiry.” No other individuals were charged by the Board. Statement of the Secretary of War, August 29, 1945.
The U.S. Army followed the policy of “decentralized responsibility”. As Commanding Officer he was responsible for the defense of the Island of Oahu and Pearl Harbor, meaning that it was the duty of Lt. Gen. Short to draw up and implement the defense plans and operations according to the local conditions. The report found that General Short was informed and counseled on the developments in U.S.-Japan relations, most notably during the month of October and November of 1941. It is emphasized that on November 27 he was warned by Washington of the imminent “break in diplomatic relations” and “hostilities” with Japan.  

Apart from the reports from Washington General Short was also advised by his Intelligence Section, and received “military estimates” from his staff and the Chief of Staff that a surprise air raid and submarine attack represented the primary source of danger.

Secretary Stimson emphasized that “General Short received ample warning in order to execute his defense duties, to implement a status of alertness and prepare for a possible surprise Japanese air assault.” This failure in the level of preparedness represented an “error of judgment” by the Commanding Officer. General Short neglected the fact that the defense of the Hawaiian outpost was his “paramount duty”. The source of his “error of judgment” was the psychology of underestimating the enemy force, the military capability of the Empire of Japan. It was the predominant belief that Japan would not attack Pearl Harbor, a view shared by many in the War Department and Washington. The Knox Report of December 14, 1941, also identified this firm belief held by both the Army and Navy that such an attack was “unfeasible” and most likely would take place in Southeast Asia. This meant that even the U.S. Naval Command believed that an air attack on Hawaii was improbable. General Short knew of the Naval Command's position, but believed that the U.S. Navy was more-well informed. Nevertheless, according to the Secretary of War the General possessed sufficient information via the War Department messages and warnings he had received.

General Short placed emphasis on alertness against sabotage instead due to the extent of the Hawaiian Japanese population and warnings issued by the War Department. Matters were made worse when the War Department did not object to his November 27, 1941, report in which

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133 Statement of the Secretary of War, August 29, 1945.  
134 Statement of the Secretary of War, August 29, 1945.  
135 Statement of the Secretary of War, August 29, 1945.  
136 Statement of the Secretary of War, August 29, 1945.
he declared that he was “alerted against sabotage”.137 The miscommunication between the War Department and the Hawaiian Department had serious consequences as the Lieutenant General was confident that his sabotage alertness was approved. Secretary Stimson was of the opinion that the sabotage warnings should not have been interpreted by the General as a reason to neglect his duty to maintain alertness against all potential means of enemy attack. This assessment meant that the sabotage warnings did not justify General Short’s decision to implement the “Sabotage Alert”. The Secretary of War assessed the findings of his investigation and concluded that no further action was warranted against General Walter C. Short, nor against the officers of the War Plans Division as their failures were deemed to be “scattered and individual errors” and “error[s] of judgment”.

Secretary Henry L. Stimson on the evident miscommunication between the War Department and Lt. General Short on the degree of alertness:138

I think it is probably true that the emphasis on sabotage in several War Department warnings and the Department’s caution against alarming the civilian population, coupled with this failure to comment on Short’s report of November 27th, confirmed him in his conviction that he had chosen the correct form of alert and might disregard all others.

Certain blame was also shared by the War Department. According to Secretary Stimson’s conclusions crucial information was not forwarded to the Commander of the Hawaiian Department. Information, as claimed by the Secretary, “[…] [that] might have sharpened General Short’s attention or emphasized further the imminence of war.”139 The essential information not forwarded by the Department before or on December 7, 1941, was highlighted in the Stimson statement.140 This included the November 17th and 22nd warning that according to the Japanese

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137 Statement of the Secretary of War, August 29, 1945. The “Sabotage Alert” issued by the General is also noted in the Secretary of Navy’s report. Knox, December 14, 1941, Report by the Secretary of the Navy to the President. 
138 This assessment does not exonerate General Walter C. Short, it was not the intent of the Secretary War, but it does provide a more accurate picture of the Commanding Officer’s actions leading up to the Pearl Harbor debacle. Statement of the Secretary of War, August 29, 1945. 
139 Parts of the information in question were forwarded by the U.S. Navy to Admiral Kimmel. The Admiral and the Commander of the Hawaiian Department frequently communicated with one another. Nonetheless, the flow of information and consultations between the two branches of service were not adequate, regardless of the rule that the Army and Navy should share its information at Pearl Harbor. The War Department assumed that General Short received all the necessary information. Statement of the Secretary of War, August 29, 1945. 
140 Statement of the Secretary of War, August 29, 1945.
Government’s deadline it intended to end negotiation by November 25, 1941, subsequently extended to November 29. The Commanding Officer had no knowledge of the information at hand on December 6th and 7th that the Japanese Government had no intention to yield to any further demands, as was instructed Ambassador Kichisaburo Nomura and envoy Saburo Kurusu. Additionally, on the morning of December 7th, 1941, the Commander had no knowledge that the Japanese Embassy was directed to deliver its reply that afternoon at precisely 1:00 P.M. (Eastern Standard Time), and to destroy its ciphering and code machines, suggesting that Japan planned to sever diplomatic relations. Considering the issue of miscommunication the Army Pearl Harbor Board determined that the War Department failed to share vital information with General Walter C. Short. Even though these warnings were not received by the General, Secretary Stimson maintained that he was in fact forewarned by the War Department that war with Japan was imminent. The Statement of the Secretary of War assessed the responsibility of the Commanding Officer of the Hawaiian Department and the officers of the War Department. However it did not place blame upon the Japanese American community, rather it highlighted the lack of adequate cooperation and communication between the Army and Navy, miscommunication between the officers of the various departments, and cited individual failures and errors of judgment.

1.4. President Roosevelt and the ‘Day of Infamy’

On the afternoon of December 7, 1941, President Franklin D. Roosevelt was about to finish his lunch in the oval study of the White House when he received an urgent telephone call and was informed that Pearl Harbor had been attacked by the Imperial Japanese Navy shortly before 8 a.m., Hawaiian Time. He first learned of the still ongoing air raid attack on Pearl Harbor at 1:47 p.m. Eastern Standard Time when Secretary Knox called him in his study. The President began to receive “official damage reports” on the attack by 3:00 p.m., however it

142 Gillon, Pearl Harbor, 51-52. After having learned of the surprise attack the President first called Secretary of War Stimson at 2:05 p.m. and then he called Secretary of State Cordell Hull, just as the Secretary of State was about to meet Ambassador Kichisaburo Nomura and “peace” envoy Saburo Kurusu. Originally the Ambassador and the envoy requested a meeting for 1:00 p.m., later rescheduled for 1:45 p.m., but were already at that time twenty minutes late. Secretary of State Hull was instructed to receive the Japanese representatives, but was told not to disclose his knowledge of the Pearl Harbor attack. The Japanese diplomats were officially received at 2:20 p.m. Gillon, Pearl Harbor, 53-54.
143 Gillon, Pearl Harbor, 59.
was at 3:50 p.m. when he received a report that dispelled all hope that the U.S. forces – as Steven Gillon put it – “[...] had managed an effective counterattack and repelled the main Japanese forces”\textsuperscript{144}. Taking a closer look at the memorandum sent by Admiral Harold Stark, Chief of Naval Operations, it provided partial, incomplete information on the level of damage caused by the I.J.N. The memorandum\textsuperscript{145} was received at 3:50 p.m. and stated that Pearl Harbor was attacked about 8:00 o’clock in the morning by Japanese aircrafts equipped with bombs and torpedoes. Due to the shock and confusion the report even included such misleading information that some of the aircrafts had swastika symbol on them.

Throughout the day the President continued to ceaselessly receive vital reports on the Japanese advances, military actions in the Pacific region, and on the damage and casualties suffered in Hawaii. President Roosevelt met with his cabinet members the same day, a full cabinet meeting was called together by the President for 8:30 p.m. Exceptional insight is provided into the factual events that transpired during the meeting, the emotional and psychological state of the participants, if we examine Francis Biddle’s cabinet notes of December 7, 1941.\textsuperscript{146} Attorney General Francis Biddle was informed of the attack at 2:30 p.m.\textsuperscript{147} Eastern Standard Time, before he was to deliver his speech to the American-Slavic group in Detroit. He left Detroit on a Navy plane and managed to return to Washington around 8:15 p.m., allowing him to take part in the conference. The cabinet meeting began on time at 8:30 p.m. – Harry Hopkins’ Memorandum: December 7, 1941 – and all cabinet members were present, they formed a ring around President Roosevelt who was sitting at his desk.\textsuperscript{148}

Attorney General Biddle described how President Roosevelt opened the meeting and how he summed up the events of that Sunday to his cabinet. “He opened his remarks by saying that this was the most serious Cabinet Meeting since the Spring of 1861, that at the moment when the Japanese Ambassador was scheduled to talk to the Secretary of State with respect to the negotiations, the Japanese were actually bombing Pearl Harbor, that Guam had been taken, and

\begin{footnotes}
\footnoteline{144} Gillon, \textit{Pearl Harbor}, 68.
\footnoteline{146} Biddle, “Cabinet Meeting,” December 7, 1941.
\footnoteline{147} The time difference between Washington D.C. and Honolulu, Hawaii, is -6 hours, meaning that the Attorney General received news of the attack as it was still ongoing.
\footnoteline{148} Gillon, \textit{Pearl Harbor}, 146.
\end{footnotes}
there had been an attack on Wake Island and possibly on Midway; [...]” recalled the Attorney General. ‘1861’ was a clear reference by the Commander-in-Chief to the outbreak of the Civil War (1861-1865), a conflict that divided America and caused immense suffering to its people for four long years. The President also referred to the shocking circumstances of the unprovoked attack, without a formal declaration of war, and the military advances by the Imperial Japanese Navy across the Pacific. The attack was interpreted by President Roosevelt as a “[…] concerted effort running over several or many weeks with Germany […]”, adding that he anticipated war with Germany and Italy.

The Secretary of Agriculture Claude Wickard noted down in his diary, recounting the events of that Sunday, that President Roosevelt held Germany responsible for the onslaught. Secretary Wickard wrote, quoted by Steven M. Gillon, that there was “‘no question but that the Japanese had been told by the Germans a few weeks ago that they were winning the war and that they would soon dominate Africa as well as Europe.’ […] ‘The Japs had been told if they wanted to be cut in on the spoils they would have to come in the war now.’” According to Steven Gillon it was inconceivable for President Roosevelt that Japan could accomplish such devastating onslaught on Oahu without the support of the German military, he viewed the strike on Pearl Harbor as an extension of the European conflict and the Japanese as “German puppets.” These views might be construed as proof of the prejudice held against the ‘inferior’ Japanese, of the belief that they were incapable of planning and executing a successful attack, on their own, against the United States.

After the cabinet meeting Senate and House leaders met with the President during which time Members of Congress were briefed on the attack. President Roosevelt requested that a resolution be passed allowing him to address a Joint Session of Congress, implying that he was going to ask Congress for a declaration of war. The Attorney General noted that the President had already drafted a brief speech that he planned to deliver before the Joint Session on December 8, asking Congress to recognize that a state of war existed between the two nations. The President’s demeanor did not reflect the magnitude of the situation, according to Francis

149 Biddle, “Cabinet Meeting,” December 7, 1941.
150 Gillon, Pearl Harbor, 146-147.
151 Gillon, Pearl Harbor, 147.
152 Gillon, Pearl Harbor, 147.
153 Biddle, “Cabinet Meeting,” December 7, 1941.
Biddle he was “his usual calm self”\textsuperscript{154}, unlike members of the Cabinet and Congress who felt the shock and weight of the losses suffered at Pearl Harbor. They were unable to comprehend how they were “taken off our guard”,\textsuperscript{155} as Senator Tom Connally commented.

The Congressional leaders were summoned for an emergency meeting\textsuperscript{156} to the White House for 9:00 p.m., both Democrats and Republicans – representing the whole political spectrum (conservatives and liberals, isolationists and internationalists) –, who were personally picked by the President. The conference ended at 11:00 p.m. Tom Connally, the Chairman of the Senate Foreign Relations Committee, was one of the members of Congress whose presence was requested for the conference; Harry Hopkins, Secretary of Navy Knox, Secretary of War Stimson, and Vice-President Wallace also attended the meeting. The President briefed the Congressmen, but as Steven Gillon noted, he was misleading by overstating the state of readiness of the U.S. Navy, but at the same time he downplayed the damage caused by the Japanese forces. Over all, President Roosevelt did provide a “fair picture” during the briefing.\textsuperscript{157} As the Commander-in-Chief he wanted to control the flow of information because he was worried that details of the devastation and unpreparedness of the U.S. Military would swiftly reach the press, spread like wildfire and thus shock the American people. The President did not want to go into detail, or we might also state that he could not, since he himself continued to receive reports throughout the day, often times conflicting dispatches. The meeting had immense impact on the Congressional leaders. “‘The effect on the Congressmen was tremendous.’ […] ‘They sat in dead silence and even after the recital was over they had very few words’”\textsuperscript{158}, as Gillon quoted Henry L. Stimson’s diary entry for December 8, 1941. The motive behind the meeting was not only to inform Congress on the attack, but also to ask the Congressmen to invite the President to address the Nation the following day.

For the President and his speech writers\textsuperscript{159} it generally took three to ten days to prepare a speech. Nevertheless, despite of the turbulent events of that Sunday, it took him only a day to

\begin{footnotes}
\item[154] Biddle, “Cabinet Meeting,” December 7, 1941.
\item[155] Biddle, “Cabinet Meeting,” December 7, 1941.
\item[158] Gillon, \textit{Pearl Harbor}, 156.
\item[159] The President’s speechwriters Samuel I. Rosenman and Robert Sherwood were in New York City and did not help in drawing up the speech. President Roosevelt did most of the work in preparing the draft of the ‘\textit{Day of Infamy}’ address. “FDR’s ‘Day of Infamy’ Speech: Crafting a Call to Arms.”
\end{footnotes}
prepare the ‘Day of Infamy’ address that many consider to be one of the most famous speeches of 20th century American history. He decided to dictate the first draft of the speech, Draft No. 1, to his secretary Grace Tully. The speech would be brief, concise, approximately 500 words, and only took the President six minutes to deliver the following day. President Roosevelt wanted to address Congress and the American people with a speech that would be emotionally powerful, that would unite them and prepare them for war. Just like his fireside chats during the Great Depression and during the years preceding the American support for the Allies fighting fascism in Europe.

After having dictated his speech the President began to make several changes, revisions to Draft No. 1, and he also updated the message as he was presented with new military reports throughout the next 24 hours. The speech embodied the shock and anger that the average American felt over the inherently deceptive foreign policy of Japan, and at the fact that an attack of such precision and devastation had to be planned months in advance. The revisions made to the address were intended not just to reflect on the circumstances and the character of the assault, but also to establish a sense of mission and to unite the Nation against the common enemy in the interest of the war effort. It was a call to arms. As the President affirmed in his message to Congress and the American people, “[n]o matter how long it may take us to overcome this premeditated invasion, the American people in their righteous might will win through to absolute victory.”

Draft No. 1, ‘Day of Infamy’ speech extract, December 7, 1941:

Yesterday, December 7, 1941, [-] a date which will live in [infamy] world history, [-] the United States of America was [suddenly] simultaneously and deliberately attacked by naval and air forces of the Empire of Japan [without warning].

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160 “FDR’s “Day of Infamy” Speech: Crafting a Call to Arms”; Gillon, Pearl Harbor, 71-72.
The United States was at the moment at peace with that nation and [at the solicitation of Japan] was continuing the [still in] conversations with its Government and its Emperor looking toward the maintenance of peace in the Pacific. Indeed, one hour after, Japanese air squadrons had commenced bombing in [Oahu] Hawaii and the Philippines, the Japanese Ambassador to the United States and his colleague delivered to the Secretary of State a formal reply to a [recent American message] from the Secretary. [While] This reply contained a statement [stated] that [it seemed useless to continue the existing] diplomatic negotiations must be considered at an end, but [it] contained no threat [or] and no hint of [war or] an armed attack.

It will be recorded that the distance of Manila, and especially of Hawaii, from Japan make[s] it obvious that these attacks were [was] deliberately planned many days [or even weeks] ago. During the intervening time the Japanese Government has deliberately sought to deceive the United States by false statements and expressions of hope for continued peace.

President Franklin D. Roosevelt delivered his ‘Day of Infamy’¹⁶³ war message to a Joint Session of Congress on December 8, 1941, at 12:30 p.m., less than a day after the attack on Pearl Harbor. Before his address could commence Speaker Sam Rayburn brought the House to order at 12:15 p.m., after some minutes members of the Senate entered the chamber for the Joint Session; President Roosevelt was announced at 12:29 p.m.¹⁶⁴ Previously Harry L. Hopkins had advised the President¹⁶⁵ to invite the Justices of the Supreme Court, to which President Roosevelt agreed; Mr. Hopkins attended the address together with Mrs. Roosevelt. The six minute address was broadcasted nation-wide on radio. It was a historic turning point for the United States and for the American public, the Nation shifted from isolationism and the troubles of the Great Depression to a state of war and a war economy. Even decades later many Americans would remember precisely where they were on that infamous day, at that precise moment, when they learned of

¹⁶³ See Appendices, Primary Documents, Document 3 for the final version of the ‘Day of Infamy’ speech, as delivered, with the on the spot changes indicated.
¹⁶⁴ Gillon, Pearl Harbor, 172-173.
the Japanese “sneak attack”, or when they heard President Roosevelt deliver his speech as they listened to the radio broadcast.

After the President delivered his speech the debate\textsuperscript{166} began over the declaration of war. Senator Connally introduced the war resolution at 12:51 p.m. and by 1:06 p.m. the Senate voted 82 to 0 in favor of the resolution, 13 senators were not present. The debate in the House of Representatives lasted a bit longer, the vote began at 1:04 p.m. and finished at 1:26 p.m. with 388 to 1 in favor of the declaration of war. Representative Jeanette Rankin was the only one who voted against the resolution to declare war on Japan, just as she opposed in 1917 America’s entry into World War I. The war resolution was signed by Speaker Sam Rayburn, representing the House of Representatives, at 3:14 p.m. and by Vice-President Henry A. Wallace on behalf of the Senate at 3:25 p.m. President Franklin D. Roosevelt signed the declaration of war at 4:10 p.m., December 8, 1941, less than four hours after his war message. Only three days later on December 11, 1941, Germany and Italy declared war on the United States. The Japanese attack brought about the end of partisan politics, henceforth all branches of the Federal Government stood firmly in support of the President’s war effort, including the domestic measures needed to wage war successfully. America and her political leadership were united in a common cause, national defense and the successful prosecution of the war.

1.5. Summary

The media and the American public learned of the raid on Pearl Harbor after Steve Early, the White House Press Secretary, contacted the Associated Press, United Press, and the International News Service wire services on behalf of the President. President Roosevelt wanted to “manage the news” and to “control the flow of information”\textsuperscript{167}, as Steven Gillon described the circumstances under which news of the attack was made public. The Press Secretary dictated President Roosevelt’s statement over the telephone from his home at 2:22 p.m.: “The Japanese have attacked Pearl Harbor from the air and all naval and military activities on the Island of Oahu, the principal American base in the Hawaiian Islands.”\textsuperscript{168} News of Pearl Harbor gradually

\textsuperscript{166} Steven Gillon provides a great summary account of the debate and vote over the war resolution in the House of Representatives and Senate following President Roosevelt’s war message. Gillon, \textit{Pearl Harbor}, 178-180.

\textsuperscript{167} Gillon, \textit{Pearl Harbor}, 55.

\textsuperscript{168} Within only a few minutes after Steve Early’s call the radio stations announced the news of the attack and the newspapers hurried to publish “extra” editions. Gillon, \textit{Pearl Harbor}, 56, 79.
spread throughout the United States, followed by shock and anger over the attack, and the spread of false rumors. President Franklin D. Roosevelt understood the significance of the Pearl Harbor attack, that the Empire of Japan fired the first shots. He no longer had to bridge the divide between the isolationists and the internationalists, to justify the help provided to the Allies in an escalating and unavoidable war, and preparing the nation for the inevitable. The United States was too significant of a player in global political and economic affairs to remain on the sidelines. The Japanese raid gave the Commander-in-Chief – according to Steven M. Gillon – a “moral and psychological advantage”, an opportunity to “mold public outrage” and the mission of a united nation as he planned to declare war on Japan.169

The raid on Pearl Harbor did not only open a “window of vulnerability” – creating a sense of fear and war hysteria –, but also produced patriotism and calls for revenge. The American servicemen were in high spirit and harbored feelings of vengeance that led to a successful campaign in the Pacific. Secretary Knox informed the President on December 14, 1941, that “[i]nstead of dampening their spirits, the Japanese attack has awakened in them a stern spirit of revenge that would be an important factor in the successful resistance of any new enemy approach.”170 Patriotism swept over the American public and men flocked to the recruiting stations all across the country. Lewis B. Hershey, Director of the Selective Service System, highlighted in his memorandum for the President on December 20, 1941, that the attack created “patriotic fervor”, “wave of enthusiasm”, and resulted in crowded recruiting stations. This “patriotic fervor”171 is also mentioned by Steven Gillon who cites specific figures to support how the American people answered the call to arms. Following President Roosevelt’s war message thousands of men visited the local recruiting offices, in Chicago alone about 2,000 men, with over 60 waiting at the recruiting station at 8:00 a.m. in the morning on December 8.

Following the Pearl Harbor investigations President Harry S. Truman placed equal blame on the entirety of the country, the general public, the political leadership, and the United States Military, and not on one specific ethnic group based on its racial affiliation. There were derelictions of duty and errors of judgment committed by individual officers of the War Department, the U.S. Army and Navy, which jointly lead to a lack of alertness and preparedness.

169 Gillon, Pearl Harbor, 125-126.
170 Knox, December 14, 1941, Report by the Secretary of the Navy to the President.
171 Gillon, Pearl Harbor, 182.
The United States Military was unprepared for the Japanese air raid on the Island of Oahu. The Pearl Harbor investigation painted a picture that the U.S. was caught napping on a Sunday morning, December 7, 1941. The Pearl Harbor inquiry highlighted the numerous failures and shortcomings on part of the War Department, the Hawaiian Department, and the United States Army and Navy. The intelligence services also shared a portion of the blame with attempts made to scapegoat the F.B.I. It has to be concluded, based on the primary sources and data examined, that the investigation reports did not provide any concrete evidence to support the Japanese ‘Fifth Column’ accusations, claims of espionage and sabotage committed by the Japanese inhabitants. In fact, J. Edgar Hoover stated in his March 7, 1942, memo that there was no act of sabotage committed in Hawaii on December 7, 1941.

The trauma of Pearl Harbor was the catalyst behind the war hysteria which resulted in the forced removal and detention of the West Coast Japanese. The size and distribution of the Japanese population, and their culture, customs, and religion were regarded as proof of their disloyalty, an evidence of their inability to assimilate and Americanize. Nevertheless, the main factor behind the anti-Japanese agitation and the military necessity justification was that the Japanese were an enemy race due to their racial affiliation. It is surprising, but the previously listed reasons, arguments, were made by military and government officials of the Roosevelt Administration, and by prominent members of Congress; to be discussed in the chapters on the role of the Executive, Congress, and the Japanese American cases argued by the Supreme Court.

President Harry S. Truman’s press release on the issue of responsibility, August 30, 1945:172

I have read it (the Pearl Harbor reports) very carefully, and I came to the conclusion that the whole thing is the result of the policy which the country itself pursued. The country was not ready for preparedness. Every time the President made an effort to get a preparedness program through the Congress, it was stifled. Whenever the President made a statement about the necessity of preparedness, he was vilified for doing it. I think the country is as much to blame as any individual in this final situation that developed in Pearl Harbor.

172 President Harry S. Truman, Statement by the President, August 30, 1945, President Harry S. Truman’s Office Files, 1945-1953. Part 3: Subject File, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 35.
Chapter 2.

The ‘American Way’:

The Forced Removal and Internment of the Hawaiian Japanese

*While we have been subjected to a serious attack by a ruthless and treacherous enemy, we must remember that this is America and we must do things the American Way.*

Lieutenant General Delos C. Emmons, 1942

Distinguishing between loyalty and disloyalty was a primary concern for the authorities and the Roosevelt Administration – after the sudden attack on Pearl Harbor on December 7, 1941 – in determining how to deal with the Japanese ‘problem’, and the forced exclusion and incarceration of persons of Japanese ancestry from the Hawaiian Islands and the West Coast. There was an obvious push for the mass removal and detention of the Japanese community in order to counter the alleged subversive activity and ‘Fifth Column’ threat posed by the Japanese Americans that endangered the national defense of the United States. In spite of the intelligence and reports on the Japanese ‘issue’ on February 19, 1942, President Franklin D. Roosevelt signed Executive Order No. 9066. It was carried out on a collective basis on the West Coast without any regard to age, gender, or citizenship. Ten incarceration centers were established on the Mainland and roughly 120,000 American citizens of Japanese parentage and Japanese nationals – approximately 86% of the Japanese population of the Continental United States – were excluded from the states along the Pacific Coast and were detained in permanent detention camps until the conclusion of the war.

Notwithstanding, contrary to the experiences of the West Coast Japanese the military government employed a case by case principle on the Hawaiian Islands in dealing with the local Japanese ‘problem’ in an effort to distinguish between the loyal and the potentially dangerous

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173 Samuel W. King to Japanese American Citizens’ League, February 26, 1942, Box 1, Folder Fifth Column Rumors 1941-1942, Series 1, JACL History Collection, Japanese American National Library, San Francisco.

elements. The attack on Pearl Harbor affected a civilian population of approximately 423,330 residents due to forced restrictions and regulations, including 157,905 persons of Japanese ancestry. Immediately after the attack martial law was implemented in the Territory of Hawaii on December 7, 1941, and was only lifted on October 24, 1944, when President Franklin D. Roosevelt signed Executive Order No. 9489, thereby terminating it. The Presidential order also granted the Commanding General the authority to detain and remove dangerous persons from the Territory of Hawaii; it provided the same power as Executive Order No. 9066 on the West Coast. The potentially dangerous Japanese were identified and were under surveillance by the authorities, the counterintelligence agencies compiled a list of suspects to be apprehended in case of conflict with Japan. The apprehensions were based on these lists and the first arrest was made on December 7, 1941, at 11:00 a.m. Throughout the war about 10,000 individuals were investigated by the intelligence agencies, as a result of this procedure 1,569 people were arrested, 1,466 of them were Japanese. Overall 1,250 Hawaiian Japanese were interned, representing less than 1% of the Japanese population of Hawaii. This data is contrary to the findings and recommendations of the military officials of the War Department, more specifically Lt. General John L. DeWitt’s *Final Report*, which stated that the authorities were unable to determine the loyalty of the Japanese residents and called for their mass ‘evacuation’ from the Pacific Coast. In the opinion of military and government officials the distribution and concentration of the Japanese population on the West Coast, and their culture and homogenous community presented a threat to the national defense of America.

The study of the forced removal and incarceration of the Hawaiian Japanese offers a point of comparison that needs to be examined in depth to better understand the Japanese ‘problem’ and the status of the Japanese inhabitants of the Hawaiian Islands, and the West Coast Japanese. Such crucial factors have to be examined as Japanese immigration to and the ethnic diversity of the Hawaiian Islands, which created a multicultural environment that proved to be more accepting than the West Coast. The labor needs of Hawaii played an important role as well in opposing the mass removal of the Japanese community, even though according to President Roosevelt military and naval safety should have been absolutely paramount. Furthermore, the standpoint of the intelligence agencies, the pivotal departments, and the Roosevelt Administration will also be introduced. The present chapter will study how the Japanese question was handled and how the ‘American way’ – called for by Lieutenant General Delos C. Emmons,
Commanding General of the Hawaiian Department, and Military Governor of Hawaii – prevailed in the Territory of Hawaii despite of the direct attack against the American outpost, the ‘Fifth Column’ hysteria, and the push for the mass exclusion of the Japanese populace. The chapter serves as an alternative to the collective incarceration program of the Roosevelt Administration, undermining the military necessity and national defense justification cited by Washington. There was no prevailing Japanese menace as documented in the reports scrutinizing the loyalty of the Hawaiian Japanese.

2.1. The Hawaiian Japanese: A General Historical Overview

Before discussing the national security threat in relation to the defense of the Hawaiian Islands and the concerns associated with the Japanese population prior to the outbreak of the conflict it is instrumental to briefly introduce the Hawaiian Japanese community in question. The history of the Hawaiian Japanese can be traced back to the arrival of Manjiro Nakahama on June 27, 1841, one of the most well documented Japanese immigrants to reach the Kingdom of Hawaii. The first Japanese to arrive were eight shipwrecked sailors who were brought to Hawaii in 1806 after they were rescued at sea. Japan had been isolated for centuries by the Tokugawa bakufu from the outside world and foreign influence; during the mid-19th century the port of Nagasaki was the sole point of access to Japan. The isolation of Japan came to an abrupt end when Commodore Matthew Perry’s fleet arrived in the Bay of Tokyo in 1854 to forcefully open up its ports and establish trade between the United States and Japan. It proved to be a turning point in the history of Japan as it ended over 200 years of isolation and destabilized the Tokugawa bakufu due to growing dissatisfaction over the slow pace of modernization. The age of the shogunates and the rule of the Tokugawa bakufu came to an end when it was overthrown in 1868, heralding the reinstatement of the rule of Emperor Meiji and the onset of the Meiji

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177 The bakufu was a militaristic Japanese government during the era of the Tokugawa shogunate.


Thomas Sowell characterized the significance of the Meiji period as the following: “The Meiji Restoration of 1868 marked the beginning of modern Japan, emerging from centuries of feudalism and isolation into modern industrialism and into international commerce, cultural exchange, and war.”\(^{181}\) One crucial aspect of Meiji Japan that should not be neglected is that modernization in the field of education, industry, military, and even the Japanese social construct were based on Western influence. It symbolized a certain degree of obsession with anything Western, for example American.

The subjects of Meiji Japan expressed a high regard for the United States, the “American way of life” and “American freedom”, with Benjamin Franklin and President Abraham Lincoln regarded as role models. Moreover, America was described as “an earthly paradise” and a “benefactor’ to Japan by ending its isolation”.\(^{182}\) As a direct consequence of this obsession Sowell concluded that “[p]erhaps never before has a foreign people been so indoctrinated with the American way of life as those of Meiji Japan.”\(^{183}\) A noteworthy argument if we consider that during the end of the 19\(^{th}\) century and first half of the 20\(^{th}\) century nativists and the anti-Japanese movement described the Japanese immigrants and Japanese Americans as un-American, unassimilable, alien, and as disloyal after Pearl Harbor. In his Final Report the Commanding General reasoned for the collective removal of the Japanese by arguing that the Japanese Americans were indoctrinated by the enemy. We can pose the question that if the Japanese were looking for the acceptance of the Americans and were obsessed with the American way of life, how could their presence in the United States be interpreted as a threat and the Japanese community as a ‘problematic’ population? The issue will be addressed in the following sections of the study.

Nevertheless, it was 1868 that marked the beginning of migration from Japan with the departure of a group of 148-150 Japanese contract laborers\(^{184}\) who left for Hawaii. They were called the ‘Gannen Mono’, ‘first-year people/men’, since they left during the first year of the

Meiji Period. There was a need for laborers in Hawaii and the Hawaiian Trading Commissioner was stationed in Tokyo to recruit workers for the sugarcane plantations. What is unique about Japanese immigration is the close involvement of the Japanese Government, the policy of the government to intervene and regulate the emigration of its nationals. The Japanese Government cooperated with Hawaiian officials due to fear of the Japanese immigrants being associated with the Chinese laborers, that Japan would become the origin of cheap labor comparable to China of the mid-19th century and face exclusion from the United States. Chinese immigrants and laborers were excluded from the United States after Congress passed the Chinese Exclusion Act of 1882, thereby prohibiting entry to Chinese immigrants – except for merchants, diplomats, and students – for 10 years. The Chinese had been allowed to enter the United States following the signing of the Burlingame Treaty in 1868, which authorized the immigration of Chinese laborers, interestingly the year that the first Japanese immigrants arrived in the Hawaiian Islands. In 1880 the treaty was modified allowing the United States to restrict the flow of Chinese laborers, even so only two years later Congress unilaterally passed the Act of 1882 excluding Chinese immigrants and declaring them “ineligible for citizenship”. The Act was extended for a further ten year period in 1892 and was made indefinite in 1902. It was only repealed in 1943 during the Second World War when China received a minimal quota. The exclusion of Chinese laborers created a labor shortage and resulted in an increase in immigration from Japan. By 1900 the Japanese population of Hawaii reached 61,111, making up 40% of the total population. A remarkable population increase from the previous 12,610 Japanese residents only a decade earlier in 1890. The Japanese community on the Continental United States experienced a similar notable growth from 2,039 (1890) to 24,326 (1900), the data however shows that the Hawaiian Islands was the main destination for Japanese emigrants; see Table 1 and Table 2 for further details on Hawaii’s Japanese population statistics. This shift meant that in 1884 the immigration of contract laborers from Japan to Hawaii began to gain momentum and

during the next decade approximately 30,000 arrived to seek their fortune,\(^{189}\) while over the next some thirty years almost 300,000 Japanese emigrated to Hawaii and California.\(^{190}\) It is noteworthy how the Japanese replaced the Chinese, who were regarded with prejudice as a possible source of competition due to their large numbers. The Japanese were used as a “counterweight” in this sense, as it was interpreted by Daniels, to balance the significant Chinese population of the Hawaiian Islands. By 1884 there were roughly 18,000 Chinese, a number worthy of attention since it represented \(\frac{1}{5}\) to \(\frac{1}{4}\) of the population of the Hawaiian Islands.\(^{191}\)

The Japanese Government became more invested in regulating the emigration of its citizens in order to avoid the Chinese ‘problem’. Thomas Sowell summarized the effort of the Japanese officials the following way: “Japan’s interest in Japanese overseas, and its possession of the national power and prestige to intervene in their behalf, were factors distinguishing Japan from contemporary China, which was too weak to prevent itself from being dismembered, much less effectively act on behalf of overseas Chinese.”\(^{192}\) The source of the problem was that the initial Japanese laborers in Hawaii were recruited from the streets of Tokyo and Yokohama, they were unsuitable for a plantation lifestyle and most of the emigrant laborers eventually returned.

The Japanese workers complained about the living and working conditions, low wages, and the alien nature of Hawaii. Japanese officials became more interested and began an investigation, signifying the origin of the precedent that Japanese emigrants would turn to their government for protection, and that the government was attentive to sending the best that Japan could offer.\(^{193}\) This precedent, or rather greater involvement of the Japanese Government in the life of the Japanese community, became a source of concern for the United States Government and counterintelligence agencies prior to and during World War II; the topic is further explored in the subsequent sections. After the complaints filed by the Japanese laborers and the Hawaiian officials the Japanese Government did not allow further emigration until 1886, when it reevaluated its position due to the economic problems of the time. Regardless of the government’s efforts the Japanese immigrants eventually inherited the racial prejudice and

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\(^{189}\) Daniels, *Asian America*, 100. By 1890 approximately 12,000 Japanese settled in Hawaii and over 2,000 on the Mainland, mostly in California. Kitano, “Japanese,” 561.

\(^{190}\) Kitano, “Japanese,” 561.

\(^{191}\) Daniels, *Asian America*, 101.


discrimination from their Chinese peers and became the targets of racially motivated discriminatory state and federal statutes for decades to come.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Population</th>
<th>Percentage Japaneseᵃ</th>
<th>Number of Japanese</th>
</tr>
</thead>
<tbody>
<tr>
<td>1900</td>
<td>154,001</td>
<td>40</td>
<td>61,111</td>
</tr>
<tr>
<td>1910</td>
<td>191,909</td>
<td>42</td>
<td>79,675</td>
</tr>
<tr>
<td>1920</td>
<td>255,912</td>
<td>43</td>
<td>109,274</td>
</tr>
<tr>
<td>1930</td>
<td>368,336</td>
<td>38</td>
<td>139,631</td>
</tr>
<tr>
<td>1940</td>
<td>423,330</td>
<td>37</td>
<td>157,905</td>
</tr>
<tr>
<td>1950</td>
<td>499,794</td>
<td>37</td>
<td>184,611</td>
</tr>
<tr>
<td>1960</td>
<td>632,772</td>
<td>32</td>
<td>203,455</td>
</tr>
<tr>
<td>1970</td>
<td>768,561</td>
<td>28</td>
<td>217,175</td>
</tr>
</tbody>
</table>

An “informal agreement” was reached in 1886 between the Japanese Government and Hawaii to facilitate the emigration of contract laborers, after emigration was sanctioned by the Japanese officials. The emigration of the Japanese to Hawaii was a “conscious decision”, as described by Daniels, made by the white plantation owners who were at the top of the power hierarchy, as opposed to the migration of Japanese to North America. According to the agreement Japan provided contract laborers for the sugarcane plantations after a thorough selection process, “quality control”, to find the most suitable work force for the task. Japanese laborers were recruited to work in Hawaii on the sugarcane plantations, later in the agriculture sector on the West Coast, from Hiroshima, Yamaguchi, and Kumamoto agricultural prefectures. Many of the laborers were ‘sojourners’: migratory workers who temporarily traveled overseas in search of financial opportunities, but planned to return to Japan. Many decided not to return however, since according to statistics in the case of the Japanese emigrants, whose destination was the United States, less than half of the passports issued between the 1880s

³Daniels, Asian America, 101.
³According to reports by the Hawaiian authorities by the end of 1894 771 Japanese, laborers who had completed their contracts, had left for the United States; there were no legislative means to keep them out. Daniels, Asian America, 107.
and the 1890s were returned. See Table 2 for a comparison of the Japanese population in the Continental United States and Hawaii.

The screening of emigrants meant that Japan did not send its “tired” and “poor” citizens, rather the Issei\textsuperscript{201} generation – Japanese aliens – represented a “highly selected sample of their homeland population”. The migrants also took more money with themselves than their Southern and Eastern European counterparts, $11 in 1896 and $26 by 1904.\textsuperscript{202} Most of the “trans-Pacific migrants” came from the countryside of Japan and within 25 years after 1880 approximately less than 400,000 individuals left for Hawaii and North America.\textsuperscript{203} Some people made more than one trip. Based on their characteristics the Japanese workers presented a serious competition to American laborers, they were viewed as “excellent employees” and rivals of the American workforce, labor unions, and the American Federation of Labor (A.F.L.).\textsuperscript{204}

Japanese immigrants\textsuperscript{205} to Hawaii and the United States were predominantly young and healthy men, ambitious, educated and literate, from agricultural backgrounds with limited financial means. The migrants were vouched for by their family and village. They had a good reputation as hard workers who were willing to work long hours in difficult conditions, without complaint, and for lower wages. These migratory workers would send back money to support their families, pay back their accumulated debts, or upon their return buy land or start their own business. There was a large discrepancy between the earnings that migrants were able to make in the United States and back home in Japan. If we take the migrants from Hiroshima prefecture as an example, from Thomas Sowell’s study, at the start of the 20\textsuperscript{th} century the average sum of savings sent back annually was more than the average Japanese earnings for a two year period.\textsuperscript{206}

\textsuperscript{201} The Issei were the first generation of Japanese Americans – Japanese-born immigrants, aliens, 55 to 65 years old – who were ineligible for citizenship until the McCarran-Walter Immigration and Nationality Act of 1952. The Munson Report of 1941 on the West Coast Japanese described them as “loyal romantically” to Japan. However, it did not neglect to clarify that they possessed deep roots in and a strong connection to America. Curtis B. Munson on the loyalty of the Issei: “They have made this their home. They have brought up children here, their wealth accumulated by hard labor is here, and many would have become American citizens had they been allowed to do so.” Curtis B. Munson, Japanese On The West Coast Report, November 7, 1941, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 33 (hereafter cited as Munson, November 7, 1941, Japanese On The West Coast Report).
\textsuperscript{203} Daniels, Asian America, 102.
\textsuperscript{204} Sowell, “The Japanese,” 162.
Table 2. Japanese in the Continental United States and Hawaii 1870-1970

<table>
<thead>
<tr>
<th>Year</th>
<th>Mainland</th>
<th>Hawaii</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1870</td>
<td>55</td>
<td>–</td>
<td>55</td>
</tr>
<tr>
<td>1880</td>
<td>148</td>
<td>116</td>
<td>264</td>
</tr>
<tr>
<td>1890</td>
<td>2,039</td>
<td>12,610</td>
<td>14,649</td>
</tr>
<tr>
<td>1900</td>
<td>24,326</td>
<td>61,111</td>
<td>85,437</td>
</tr>
<tr>
<td>1910</td>
<td>72,157</td>
<td>79,675</td>
<td>151,832</td>
</tr>
<tr>
<td>1920</td>
<td>111,010</td>
<td>109,274</td>
<td>220,284</td>
</tr>
<tr>
<td>1930</td>
<td>138,834</td>
<td>139,631</td>
<td>278,465</td>
</tr>
<tr>
<td>1940</td>
<td>126,947</td>
<td>157,905</td>
<td>284,852</td>
</tr>
<tr>
<td>1950</td>
<td>141,768</td>
<td>184,611</td>
<td>326,379</td>
</tr>
<tr>
<td>1960</td>
<td>260,059</td>
<td>203,455</td>
<td>463,514</td>
</tr>
<tr>
<td>1970</td>
<td>371,149</td>
<td>217,175</td>
<td>588,324</td>
</tr>
</tbody>
</table>

The Japanese population of the Hawaiian Islands endured discrimination, but it was not as considerable as on the Mainland, the West Coast of the United States. The discriminatory measures included pay and occupational discrimination. The Japanese community could be described as self-controlled, a monitored community, as it paid close attention to the image it portrayed to the Hawaiian and American authorities, and the community at large. The Japanese populace was characterized by a lack of crime or juvenile delinquency, and in case of any deviant behavior the defiant individuals in question were shipped back to Japan in the interest of the community. As a direct result crimes committed by Japanese perpetrators were fewer in number and less serious. Nonetheless, this lack of crime and subversive activity was interpreted during the war as a sign of concern, proof that such activities will be committed by the Japanese residents in the future. The Japanese placed greater importance on the welfare of the community than on the individual, “unbridled individualism was not part of the Japanese system of values, in which the well-being of the community was paramount.” This well-being mentality is also a factor behind the push for assimilation, Americanization, and the show of loyalty towards the adopted land on part of the older Issei, and the Nisei generation during the war. The Nisei established the Japanese American Citizens League (J.A.C.L.) in 1929 on the West Coast, a

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protective civil rights organization that promoted the Americanism and patriotism of American citizens of Japanese ancestry. The wartime policy and mission of the J.A.C.L. will be analyzed in greater depth in the following chapter as it displayed a commitment to cooperation with the authorities during their exclusion and incarceration.

By the time the war broke out the Japanese community experienced a generational conflict, cultural gap, see Table 3. The Issei supported, tried to rationalize, Japan’s war effort and aggression during the 1930s, even though many saw their children’s future in America. As opposed to their parents, the Nisei grew up in the United States, identified themselves with its culture and values, and showed willingness to defend it. The Nisei were permitted to serve in the United States Army during World War II after the War Department announced the formation of a segregated all-Japanese American combat unit in January of 1943 and reclassified the draft status of the Nisei from 4-C, ‘enemy aliens’, in January of 1944; the subject is discussed at greater length in a later section.

<table>
<thead>
<tr>
<th>Table 3. “Generation Gap” within the Japanese American Community 1924</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Issei Males</strong></td>
</tr>
<tr>
<td>Average age:</td>
</tr>
<tr>
<td>Spoken language:</td>
</tr>
<tr>
<td>Religion, 1930s:</td>
</tr>
</tbody>
</table>

The Hawaiian Islands were a multiethnic and cultural society as a result of its plantation past with laborers from China, Japan, Korea, the Philippines, Portugal, and other nations. The labor needs of the Hawaiian Islands played a decisive part in the formation of a Japanese community and was later a crucial factor in the opposition to the forced removal of the Hawaiian Japanese during World War II. The plantation owners set up a system of having separate isolated areas/camps for the various ethnic laborers, this promoted the introduction of Japanese village life in Hawaii. The Japanese supported this plantation policy as the Issei’s objective was “dochyaku” – “to remain on the soil” –, to have ethnic communities. The communities that

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211 The Nisei are second generation Japanese Americans – American citizens of Japanese ancestry, 1 to 30 years old – who were raised and educated in the United States. They embraced their Americanism and as Curtis B. Munson emphasized it in his West Coast report, “[...] in spite of discrimination against them and a certain amount of insults accumulated through the years from irresponsible elements, [the Nisei] show a pathetic eagerness to be Americans.” The Nisei were generally 90% to 98% loyal to the United States, which they were “pathetically eager” to prove. Munson, November 7, 1941, Japanese On The West Coast Report.


emerged were the birthplaces of Japanese village institutions, language schools, and churches, and were shaped by individuals who helped establish Japanese organizations, and also fought for the rights of the Japanese in Hawaii.

In the end the Japanese became the largest ethnic group, while the whites were in minority, yet they were not victims of forced mass removal and incarceration on a collective basis after the attack on Pearl Harbor. In 1940 the Japanese population reached 157,905, representing 37%, over ⅓ of the total population. As a point of comparison, on the Continent there were 126,947 persons of Japanese ancestry in 1940; see Table 1 and Table 2. The data relating to Japanese population statistics is important, considering that the Japanese were in greater numbers on the Hawaiian Islands than on the Mainland. The Japanese were fewer in number on the West Coast, comprised a smaller percentage of the national, state, and local population, but a point of concern was their concentration near vital military and naval installations along the Pacific Coast, especially in the State of California. This fear further strengthened the military necessity and national defense argument of the War Department, although these fears were predominantly based on racial ties and racial affiliation to the Empire of Japan.

2.2. The Defense of Hawaii: A Matter of National Security

As a repercussion of deteriorating foreign relations with the Empire of Japan the United States Government became more and more concerned with the defense of Hawaii, focusing primarily on the Japanese aliens and American citizens of Japanese descent residing on the islands. The intelligence agencies noted the frequency and timing with which Japanese vessels were arriving in the ports, and how the local Japanese population acted as hosts to the officers and crew. President Franklin D. Roosevelt addressed the urgent problem in a memo to his Chief of Naval Operations on August 10, 1936, the memorandum referred to the June 30th espionage report from Hawaii. The President argued that the individuals who meet the Japanese ships on the Island of Oahu and had contact with the Japanese personnel should be identified and

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215 President Franklin D. Roosevelt to The Chief of Naval Operations, August 10, 1936, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 33 (hereafter cited as President Franklin D. Roosevelt to The Chief of Naval Operations, August 10, 1936).
their names listed. The list in the event of a crisis could be used to detain the individuals in a “concentration camp”\textsuperscript{216} Apart from the Japanese population the President was also interested in the defense of Hawaii, that is, could or should the Island of Hawaii be defended against a landing operation. In the President’s opinion, “[t]he chief objective should be to prevent its occupation as a base of operations against Oahu and other islands.”\textsuperscript{217} Its occupation would have little strategic means for the enemy if it cannot be used as a base of operations. The Chief of Naval Operations was also advised by the President to consider further plans for the Japanese residents of the islands. This exchange of memos marked the beginning in the listing of persons of Japanese parentage for apprehension in time of national emergency. Intelligence and law enforcement officers later made full use of the Japanese lists in the aftermath of the Pearl Harbor assault as they swiftly began to detain the listed Japanese inhabitants.

The Japanese population by 1941 was already at the center of attention of the military and government officials in anticipation of a conflict between the two nations, the Japanese having been associated with the actions of the Japanese National Government. The present section of the study will focus on how the intelligence gathering was reorganized and coordinated in light of this danger, the perceived Japanese threat, and how the Japanese population was regarded as a ‘problem’. It has to be mentioned that the main concern was the interaction between the personnel of the Japanese vessels and the local Japanese community on the Hawaiian Islands for the reason that this interaction was seen as a means of spreading Japanese nationalism and disloyalty, which in turn could lead to espionage and sabotage, subversive activities amongst the locals. Acting Secretary of War Harry Hines Woodring replied to the President’s secret memorandum, at the request of the Navy Department, on August 29, 1936. According to the memorandum a Joint Defense Plan was drawn up by Army and Navy Commanders in Hawaii and the Army was vested with the responsibility of controlling the Japanese aliens and sympathizers. The Commanding General of the Hawaiian Department established the “Service Command”: it would serve as a connection between the military and civil control forces in wartime, prevent sabotage, disturbances, uprisings, and control the civil population.\textsuperscript{218} The defense of the Island of Hawaii and the further outlying islands was addressed

\textsuperscript{216} President Franklin D. Roosevelt to The Chief of Naval Operations, August 10, 1936.
\textsuperscript{217} President Franklin D. Roosevelt to The Chief of Naval Operations, August 10, 1936.
\textsuperscript{218} Harry Hines Woodring to President Franklin D. Roosevelt, August 29, 1936, \textit{President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files}, microfilm, Roosevelt Study Center,
by the Secretary of War, indicating that the matter was studied not long ago by the General Staff, and the Secretary also approved of the President’s view on the issue. The War Department decided not to garrison the Islands in peacetime since it had no defense value for the Island of Oahu, but to rather strengthen the defense of the Hawaiian Island before a major conflict or during the early stages of war.\(^\text{219}\)

In a Joint Letter on October 22, 1936, Secretary of War Woodring and the Secretary of Navy Claude A. Swanson informed the President of the threat of espionage in Hawaii and the need for the cooperation of the other Departments to counter this menace to national defense. The Joint Letter was in reference to the President’s memo on August 10, and the Acting Secretary of War’s letter on August 29, 1936. As recommended by the President, the military intelligence divisions were responsible for keeping lists of suspects and those individuals would be the first ones to be “interned” in case of war.\(^\text{220}\) The Secretary of War and Navy also confronted the topic of espionage and indicated that the Joint Board for years had suspected Japan of committing espionage activities. The Joint Board supported the introduction and implementation of practical measures – not too drastic or impracticable, such as garrisoning the Hawaiian Islands or closing the commercial ports – to counter espionage; in accordance with the proposal the War and Navy Department took several steps. Executive Orders No. 7404 (July 1, 1936) and No. 7405 (July 6, 1936) were implemented, amended the civil service rules, allowing the Secretary of War and Navy to fill in military and naval civil service vacancies in Hawaii with loyal citizens.\(^\text{221}\) The authorities questioned the loyalty of both citizens of Japanese descent and Japanese aliens, and proposed further restrictions to curtail their rights and freedoms. The loyalty of the Issei and Nisei became a reoccurring problem that was only directly addressed in 1943 with the ‘Loyalty Questionnaire’, although by that time the Japanese American community was collectively excluded from the West Coast and its members were detained in incarceration camps in the interior of the Western United States.

\(^{219}\) Harry Hines Woodring to President Franklin D. Roosevelt, August 29, 1936.

\(^{220}\) Secretary of War and Navy to President Franklin D. Roosevelt, October 22, 1936, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 31 (hereafter cited as Secretary of War and Navy to President Franklin D. Roosevelt, October 22, 1936).

\(^{221}\) Secretary of War and Navy to President Franklin D. Roosevelt, October 22, 1936.
For the 74th Congress the War and Navy Department proposed the ratification of several bills to regulate the ownership and use of fishing boats, the use of motion picture and still picture cameras, and the making of photos, sketches, or maps of critical military and naval installations.\textsuperscript{222} None of the proposed bills were ratified by Congress, therefore the parties recommended the introduction of similar legislations during the upcoming Congressional Session and several were drafted. S. 1815 / H. R. 5705 for example would have required documents for vessels not owned by American citizens and navigated in the territorial waters of the United States, its territories or possessions. The bill would have regulated alien-owned or operated boats used for fishing or other purposes. By means of restrictive regulations the Japanese fishing fleet was later seized by the Hawaiian authorities after Pearl Harbor. Section 3 of S. 4495, if amended, would have restricted ownership of boats used in fisheries to U.S. citizens. S. 92 or H. R. 3436 was formulated to restrict the making of photographs, sketches, or maps of military and naval installations, and equipment; the Japanese activities are further analyzed, with examples provided, in \textit{The Japanese ‘Problem’} section. Moreover, officials also wanted to regulate the use of motion picture and still picture cameras at such vital military installations.

The Joint Letter called the President’s attention to the need for cooperation between the seven departments: Department of State, Department of Justice, Department of Treasury, Department of Labor, Department of Commerce, Department of War, and the Department of Navy. The letter referred to the opinion of the Judge Advocate General of the Navy that Japan had violated the Espionage Act, Public No. 24, 65th Congress; all Departments were affected by these violations and were interested in joint action. The need for cooperation in face of the Japanese activities in Hawaii was crucial for the Army and the Navy. It was firmly stated in the document, that “[t]he Secretaries of War and Navy deem[ed] the curbing of espionage activities in the Hawaiian area to be of the highest importance to the interests of national defense.”\textsuperscript{223}

A memorandum was drawn up on May 20, 1937, and President Roosevelt designated the Secretary of War to Chair an Interdepartmental Committee – consisting of the Secretaries of State, Justice, Interior, Treasury, Labor, Navy, and War – with the task of investigating the

\textsuperscript{222} Secretary of War and Navy to President Franklin D. Roosevelt, October 22, 1936.
\textsuperscript{223} Secretary of War and Navy to President Franklin D. Roosevelt, October 22, 1936.
Japanese problem, the activities of the Japanese personnel and citizens. The President expressed his belief that through cooperation a solution may be found for the problem at hand. Similar memorandums, with the enclosure of the Joint Letter, were sent out to the respective Secretaries of the Departments to notify them of the decision to establish the Interdepartmental Committee and that the Secretary of War had been selected as the Chairman of said Committee. The insecurities over the Japanese residents played a key role in the introduction of the new committee.

The Interdepartmental Committee examined the activities of Japanese naval personnel, aliens, and citizens of Japanese ancestry in Hawaii in its report on November 17, 1937. The Committee focused on the activities that the Department of War and Navy wanted to bring to a definite end. The report listed such harmful activities on the Islands like Japanese public vessels leaving military and naval personnel behind, the illegal presence of Japanese Army and Navy personnel, presence of crafts fitted for illegitimate purposes or with unidentified personnel on board, military and naval intelligence gathering by means of photographs, using cameras and instruments. Members of the Committee decided upon several measures to put into effect in order to stop the previously listed and other harmful activities. The Committee also asked to be given the required authority in order to find a solution for these detrimental actions, and that Congress pass the previously recommended legislations. The Committee also introduced bill S. 1485 that intended “[t]o prohibit the making of photographs, sketches, or maps of vital military and naval defensive installations and equipment, and for other purpose.” The Secretary of War also meant to amend Section 4311 (R.S. 4311-4390; U.S.C. Title 46, secs. 251 to 356) to ensure that all vessels of fisheries would be owned by U.S. citizens. The proposed legislations highlight two returning themes if we reflect upon the similar proposals made by the Secretary of War and Navy in their Joint Letter of October 22, 1936. President Roosevelt approved the report

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224 President Franklin D. Roosevelt to Secretary of Navy, May 20, 1937, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 31 (hereafter cited as President Franklin D. Roosevelt to Secretary of Navy, May 20, 1937).
225 President Franklin D. Roosevelt to Secretary of Navy, May 20, 1937; President Franklin D. Roosevelt to Secretary of Interior, May 20, 1937, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 31.
226 Secretary of War to President Franklin D. Roosevelt, November 17, 1937, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 1: “Safe” and Confidential Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7 (hereafter cited as Secretary of War to President Franklin D. Roosevelt, November 17, 1937).
227 Secretary of War to President Franklin D. Roosevelt, November 17, 1937.
228 Secretary of War to President Franklin D. Roosevelt, November 17, 1937.
of the Interdepartmental Committee in a secret memorandum on November 26, 1937. In a
response memo on November 29th the Secretary of War sent draft letters for the President’s
signature, letters that would be sent to the Chairmen of the House and Senate Committees
requesting the ratification of the recommended legislations.\textsuperscript{229}

Despite of the work of the Interdepartmental Committee – responsible for investigating
and handling information on un-American activities – the work of the Committee was considered
inefficient by the Attorney General. Attorney General Frank Murphy informed the President in a
letter on June 17, 1939, that the work of the board was “neither effective nor desirable”.\textsuperscript{230} The
intelligence gathered on subversive activities was transmitted to the Federal Bureau of
Investigation (F.B.I.), the Military Intelligence Division Section (G-2 Section), and the Office of
Naval Intelligence (O.N.I.), and since the great proportion of the work was done by these
agencies the work of the Committee was inefficient. According to the Attorney General the listed
agencies had proven their worth as they “have not only gathered a tremendous reservoir of
information concerning foreign agencies operating in the United States, but have also perfected
methods of investigation and have developed channels for the exchange of information”.\textsuperscript{231}

Based on the previous reasoning Attorney General Murphy recommended that the intelligence
gathering activities of the United States should be reorganized by abandoning the
Interdepartmental Committee and focusing on the work of the F.B.I., G-2 Section, and the O.N.I.
in investigating espionage and sabotage. Confidential memorandums were sent to the respective
Secretaries of the seven Departments informing them of the changes that were to take place; the
memorandums were drafted by the Department of Justice for the President’s approval. The
draft\textsuperscript{232} was approved by the President in a memo on June 24, 1939, asking for seven copies to be
signed, and stated that a further memorandum was being prepared for the Secretary of State.\textsuperscript{233}

\textsuperscript{229} Secretary of War to President Franklin D. Roosevelt, November 29, 1937, \textit{President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 1: “Safe” and Confidential Files}, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7.
\textsuperscript{230} Frank Murphy to President Franklin D. Roosevelt, June 17, 1939, \textit{President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 1: “Safe” and Confidential Files}, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7 (hereafter cited as Frank Murphy to President Franklin D. Roosevelt, June 17, 1939).
\textsuperscript{231} Frank Murphy to President Franklin D. Roosevelt, June 17, 1939.
\textsuperscript{232} Confidential Memorandum draft to Department Secretaries, June 17, 1939, \textit{President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 1: “Safe” and Confidential Files}, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7.
\textsuperscript{233} President Franklin D. Roosevelt to R. F., June 24, 1939, \textit{President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 1: “Safe” and Confidential Files}, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7.
The approved memorandum of June 26, 1939, clearly intended the F.B.I., G-2 Section, and the O.N.I. to handle all counter-espionage and sabotage activities, and all other investigative agency heads were instructed to refer all information to the nearest office of the F.B.I. The intelligence divisions were – in theory and de facto – in possession of all the relevant data on subversive activities committed by foreign agents and local residents.

In the name of the President the Memorandum stated the following:

“It is my desire that the investigation of all espionage, counter-espionage, and sabotage matters be controlled and handled by the Federal Bureau of Investigation of the Department of Justice, the Military Intelligence Division of the War Department, and the [O]ffice of Naval Intelligence of the Navy Department.”

The F.B.I. and the O.N.I. were tasked with an eminent role in intelligence gathering, counter espionage, and in the fate of the Japanese population on Hawaii and the West Coast. The F.B.I.’s role was later questioned after the events of December 7, 1941, with some attempting to scapegoat the Bureau. The reorganization of intelligence gathering shows that the F.B.I. had no sole responsibility. In addition, the agencies had accumulated immense amount of data on the Japanese residents. The F.B.I. investigated the ‘Fifth Column’ rumors and found no evidence of subversive activity. The validity of the push for the collective removal of persons of Japanese ancestry can be called into question based on the counterintelligence measures that were implemented prior to and immediately following the Japanese offensive.

2.3. Paranoia: The Japanese ‘Problem’ and Phobia

Considering the threat associated with the Japanese elements in the Hawaiian Islands and the frequent visits of the Japanese vessels – a heated subject of the debates over the handling of intelligence, the formation of the Interdepartmental Committee, and the restructuring of intelligence gathering –, it is important to discuss two reports from 1936 on this topic to address the most frequent ‘problems’ related to the presence of Japanese persons. On May 3, 1936, H. C.

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234 Confidential Memorandum for The Secretary of State, June 26, 1939, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 1: “Safe” and Confidential Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7.
Gilchrist Major, Infantry, Commanding Hawaii District, sent a memorandum to the Assistant Chief of Staff, G-2, Hawaiian Department, and the subject of the memo was the Report on the Visit of Japanese Naval Tanker “Ondo”.\textsuperscript{235} The report highlighted the most recurrent problems, that is to say the security threats associated with visiting Japanese vessels and their crew and personnel. The Imperial Japanese Naval Tanker “Ondo” arrived at the port of Hilo on April 16 and departed on April 19, 1936; a three day visit to take on water while on its journey from San Pedro, California, to Kara, Japan. While the Japanese personnel were on the island their activities were observed by the authorities and they were precisely detailed in the report in question. It was very common that after docking a delegation of local Japanese would board the Japanese ships and greet the crew, the officers and crew would be entertained, and selected officers were often taken on round the island trips by their hosts. The crew would also be observed making sketches, measurements, and photographs of the docks, just like in the case of the I.J.N. vessel “Ondo”. It is mentioned in the report that members of the delegation were saluted by the seaman and the salutes were returned, alluding to some form of “official capacity” on part of the locals, the delegation included community leaders Dr. E. Yoshimura, Mr. Kango Kawasaki, and Mr. Kiyosaki.\textsuperscript{236}

Mr. Kango Kawasaki is not only mentioned in the “Ondo” report, but is also the subject of a letter by R. H. Anderson, Deputy Collector, on April 30, 1936.\textsuperscript{237} He is a prime example of a Japanese inhabitant who was in the scope of local officials for his behavior and links to Japan. The topic of the letter addressed to J. Walter Doyle, the Collector of Customs at Honolulu, was the investigation of Mr. Kawasaki. Mr. Kawasaki was a Japanese attorney who was barred from practicing law in the courts, even though he was a graduate of an American Law School. He worked as an interpreter, prepared legal documents, and served as an intermediary between local officials and the Japanese residents. Based on the two documents Mr. Kawasaki was an alien and a local Japanese leader, who aroused the suspicion of the responsible authorities due to his

\textsuperscript{235} H. C. Gilchrist to Assistant Chief of Staff, G-2, Hawaiian Department, May 3, 1936, \textit{President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files}, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 31 (hereafter cited as H. C. Gilchrist to Assistant Chief of Staff, G-2, Hawaiian Department, May 3, 1936).

\textsuperscript{236} H. C. Gilchrist to Assistant Chief of Staff, G-2, Hawaiian Department, May 3, 1936.

\textsuperscript{237} R. H. Anderson to J. Walter Doyle, April 30, 1936, \textit{President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files}, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 31 (hereafter cited as R.H. Anderson to J. Walter Doyle, April 30, 1936).
frequent contacts with the Japanese training ships and tankers arriving in the port of Hilo. He was referred to as a “habitual visitor” who spent a lot of time aboard Japanese vessels, he was also an active member of the reception committees and was responsible for entertaining the crew and officers, and even took them on sight-seeing tours.\(^{238}\) Mr. Anderson was distrustful of Mr. Kawasaki’s character and loyalty, and was convinced of his connection to the Japanese National Government, though this suspicion was based on circumstantial evidence and the sources were not named in his letter. Mr. Kawasaki was accused of having received naval training from the Japanese Government and gifts from Japanese officials. According to Mr. Anderson, “his actions, his connections, conversations with local residents, all tend to build up a chain of circumstantial findings which are the basis for my conviction.”\(^{239}\) The Deputy Collector’s suspicion was further underpinned by Mr. Kawasaki’s troubles with customs, lack of appropriate cooperation. This is just one example, but it does highlight the close surveillance and accumulation of data from various sources on the activities of Japanese alien and non-alien residents in the Territory of Hawaii.

In the case of the “Ondo” the Police Inspector at Hilo, Mr. George K. Richardson, provided the authorities a list of the Japanese who waited for and boarded the vessel while it was anchored in port, and also those who accompanied the officers on the island. It was a list of individuals who were suspected of being possible agents and sympathizers due to the nature of their character. We have to keep in mind that President Roosevelt in a memorandum to his Chief of Naval Operations (August 10, 1936) approved of keeping a list of individuals who had contact with the Japanese crews. The list included the following names: Mr. Kango Kawasaki, Dr. E. Yoshimura, Mr. Frank Arakawa, Mr. Shinoda, Mr. Ishikawa, the Kiyosaki Brothers, Mr. Matsusakaya, Mr. Minoru Murakami, and K. Omanaka.\(^{240}\) Within the list each individual was introduced in a brief paragraph. Based on the summary of the investigation the local Japanese aroused suspicion if they were aliens, local leaders, active members of the Japanese community, members of Japanese associations, boarded and spent quite some time on the vessels, handled mail or documents taken on or off the ships, entertained the crew, took the officers on round the island trips, were knowledgeable about the geography of the island, were former members of or

\(^{238}\) H. C. Gilchrist to Assistant Chief of Staff, G-2, Hawaiian Department, May 3, 1936; R. H. Anderson to J. Walter Doyle, April 30, 1936.
\(^{239}\) R. H. Anderson to J. Walter Doyle, April 30, 1936.
\(^{240}\) H. C. Gilchrist to Assistant Chief of Staff, G-2, Hawaiian Department, May 3, 1936.
had family members who served in the Japanese Navy, or were Japanese Army or Imperial Japanese Navy reserves. Some of the individuals on the list were often referred to as “habitual visitor” or “frequent visitor” to all Japanese ships as they spent much time aboard. The crew was entertained by members of the Japanese community in their homes or at tea houses, some were even taken on a “round the island trip”, because they were interested in the port of Hilo, the Waimea District, and the Kona Coast. On April 19 the officers of the I.J.N. “Ondo” were reported to have been seen in a private home in Waimea as they were making sketches and taking ranges; the event is referred to as the Waimea incident.

Major H. C. Gilchrist drew the conclusion that the main reason behind the visit of the Japanese Naval Tanker “Ondo” was to acquire information, establish contact with active agents, and to take on enough water to continue its journey to the units of the Japanese Navy stationed in the Pacific. He also called for a more direct action against active agents operating in Hilo, to remove alien residents from the island, and to restrict the leeway granted to foreign vessels in order to counter the threat. The report did touch upon that not all members of the Japanese community were welcoming. As a matter of fact, according to the report “[…] the Japanese populace as a whole did not appear to be overly enthusiastic in their reception of the ‘Ondo’”.

The incidents presented in the “Ondo” report were also addressed in Alfred W. Carter’s letter to Colonel G. S. Patton, April 27, 1936. Mr. Carter enclosed a letter written by Mr. A. A. Akina on April 25, the topic of the letter was the visit of the Japanese officers to Waimea, the Waimea incident. The information provided by Mr. Akina was based on Mrs. Kanakanui’s description of the events that transpired on Sunday, April 19th, between 7:30 a.m. and 11:00 a.m. According to Mrs. Kanakanui three cars stopped before her house on Sunday morning at around 7:30 or 8:00 a.m. and ten Japanese men in uniforms, appearing to be naval officers, and three civilians got out of their cars and entered a house that was under construction. The men in the house were seen setting up an object that resembled a telescope and were seen observing

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241 H. C. Gilchrist to Assistant Chief of Staff, G-2, Hawaiian Department, May 3, 1936.
242 H. C. Gilchrist to Assistant Chief of Staff, G-2, Hawaiian Department, May 3, 1936.
243 H. C. Gilchrist to Assistant Chief of Staff, G-2, Hawaiian Department, May 3, 1936.
244 H. C. Gilchrist to Assistant Chief of Staff, G-2, Hawaiian Department, May 3, 1936.
245 Alfred W. Carter to Colonel G. S. Patton, April 27, 1936, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 31.
246 A. A. Akina to Mr. Alfred W. Carter, April 25, 1936, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 31.
Waikoloa, Keamoku, and Waikii through the window in the back room; the room had a great view of the surrounding area. Mrs. Kanakanui noticed that other men put white sheets of paper on the walls and were drawing or writing on them, meanwhile the position of the telescope like object kept changing. The men seemed even more suspicious when they disappeared from her sight for a few minutes just as a milk delivery car disturbed them, but after the car left they immediately carried on with their task until around 11:00 a.m. when they left. It is worth noting that the “Ondo” departed Hilo port on the same day, April 19th, at 2:15 p.m., giving enough time for the men in question to return.247

The Ondo was not the only Japanese vessel to visit the port of Hilo in 1936. Based on the Report of Meeting, Local Joint Planning Committee, May 25, 1936, during the previous twelve months until May 10, 1936, twelve Japanese vessels visited the Hawaiian Islands. The Committee discussed the reports of the Assistant Chief of Staff for Military Intelligence, Hawaiian Department, and the District Intelligence Officer, 14th Naval District.248 The document addressed the frequency with which the Japanese vessels visited the Hawaiian ports, the conduct of the personnel, and the threat posed by these visits and by the interaction of the crew and the Japanese residents. During the twelve month period numerous vessels made calls on the Hawaiian ports: naval cruisers, naval oil takers, and mercantile training vessels, while complements of the vessels were members of the Japanese Navy; see Table 4, Table 5, and Table 6 for the Japanese vessels that visited Hawaii. The report states that the Japanese ships added 800 nautical miles to their journey. The authorities were of the opinion that there was no reason for these visits, the ships had enough water for a direct route back to their respective destinations.

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Port and Date of Call</th>
<th>Officers</th>
<th>Cadets</th>
<th>Crew</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asama</td>
<td>Honolulu, June 15-19, 1935</td>
<td>145</td>
<td>174</td>
<td>1,277</td>
</tr>
<tr>
<td>Yakumo</td>
<td>-</td>
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The conduct of the crew raised many questions and concerns, several examples were given in the report to highlight the national security threat that such actions represented. A

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247 H. C. Gilchrist to Assistant Chief of Staff, G-2, Hawaiian Department, May 3, 1936.
248 Local Joint Planning Committee to The Commanding General, Hawaiian Department, and The Commandant, Fourteenth Naval District, May 25, 1936, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 31 (hereafter cited as Local Joint Planning Committee to The Commanding General, May 25, 1936).
249 Local Joint Planning Committee to The Commanding General, May 25, 1936.
significant example is the incident at the Royal Hawaiian Hotel in February of 1936,\textsuperscript{250} when the manager of the hotel informed the military and naval officials that six Japanese seaman went up to the tower of the hotel and were seen taking pictures of the local harbor and fortifications. The crews on these infamous sight-seeing tours, or rather round the islands trips, would be also seen taking pictures, making sketches, and taking measurements of the docks and harbors, just as in the case of the Ondo in April of 1936; a reference to the “Ondo” report of May 3, 1936. The Local Joint Planning Committee placed greater significance on the round the island trips by alluding to the Waimea incident, discussed in the letters by Mr. Alfred W. Carter and Mr. A. A. Akina. It seems that in spite of the efforts of the United States Government the violations of the Espionage Act continued, as indicated years earlier by the Judge Advocate General.

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Port and Date of Call</th>
<th>Officers</th>
<th>Cadets</th>
<th>Crew</th>
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</thead>
<tbody>
<tr>
<td>Sunosaki</td>
<td>Honolulu June 14-17, 1935</td>
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<td>-</td>
<td>-</td>
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<tr>
<td>Sata</td>
<td>Honolulu June 28-July 1, 1935</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Sunosaki</td>
<td>Honolulu July 14-17, 1935</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Tsurumi</td>
<td>Honolulu Dec. 4-7, 1935</td>
<td>12</td>
<td>-</td>
<td>163</td>
</tr>
<tr>
<td>Sata</td>
<td>Honolulu Dec. 27/35 - Jan. 2/36</td>
<td>16</td>
<td>-</td>
<td>144</td>
</tr>
<tr>
<td>Ondo</td>
<td>Honolulu Jan. 20-22, 1936</td>
<td>12</td>
<td>-</td>
<td>133</td>
</tr>
<tr>
<td>Erimo</td>
<td>Honolulu Feb. 25-26, 1936</td>
<td>16</td>
<td>-</td>
<td>142</td>
</tr>
<tr>
<td>Ondo</td>
<td>Hilo April 16-19, 1936</td>
<td>12</td>
<td>-</td>
<td>136</td>
</tr>
<tr>
<td>Sata\textsuperscript{*252}</td>
<td>Honolulu May 24-27, 1936</td>
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A further source of anxiety was the timing of the visits by the Japanese vessels, which by accident or due to careful planning coincided with U.S. Army and Navy activities and exercises. The Committee drew the following conclusion after years of investigation: “Japanese government vessels, particularly the naval oil tankers, adjust their schedules so as to observe most effectively all special activities of the U.S. Army and Navy.”\textsuperscript{253} In 1925 the tanker Hayatomo shadowed the U.S. Fleet, taking part in a Joint Army-Navy exercise, from San Francisco to Honolulu. In 1928 three Japanese tankers visited Honolulu at the time when Joint Operations were conducted, while in 1932 the tanker Erimo called on the port of Honolulu as

\textsuperscript{250} At the time the Japanese Naval Tanker Erimo was docked in the port of Honolulu. Local Joint Planning Committee to The Commanding General, May 25, 1936.
\textsuperscript{251} The highlighted ships in bold are discussed as specific examples in the present section. Local Joint Planning Committee to The Commanding General, May 25, 1936.
\textsuperscript{252} The Ships marked by * were scheduled to arrive later on in 1936, after the report was written.
\textsuperscript{253} Local Joint Planning Committee to The Commanding General, May 25, 1936.
Army-Navy exercises were taking place. Another occurrence was reported by George H. Piltz, Captain of the Commercial Pacific Cableship Dickinson anchored at Midway. He described how the tanker Tsurumi, after having departed Honolulu, sailed for Midway Island and arrived on December 11, 1935. The Tsurumi, while observing Midway, circled southward of the island and then proceeded to Wake Island.

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Port and Date of Call</th>
<th>Officers</th>
<th>Cadets</th>
<th>Crew</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taisei Maru</td>
<td>Hilo Aug. 20-29, 1935</td>
<td>13</td>
<td>67</td>
<td>42</td>
</tr>
<tr>
<td>Kaiyo Maru</td>
<td>Hilo Dec. 29/35 - Jan. 9/36</td>
<td>14</td>
<td>81</td>
<td>39</td>
</tr>
<tr>
<td>Nippon Maru*</td>
<td>Kahului June 8-14, 1936</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Nippon Maru*</td>
<td>Kealakehua June 15-18, 1936</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Nippon Maru*</td>
<td>Kailua June 18-20, 1936</td>
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</table>

The Joint Planning Committee concluded that the interaction between the Japanese naval personal and the local Japanese residents presented numerous threats. The vessels were a means of contact between Hawaii and the homeland, an opportunity to spread Japanese nationalism and foster loyalty within the community. Additionally, the visit of the tankers was an excellent opportunity to commit espionage. In the opinion of the Committee – with the active involvement of the Japanese crews – “[t]hrough lectures, moving pictures, exhibitions, etc., is born home to the local Japanese the ‘greatness’ of Japan, her virility, and her absolute superiority over all other countries.” The Japanese ‘problem’ fueled the suspicion of the intelligence bureaus and the distrust of the Federal Government, which had a clear impact on the issue of responsibility and the Pearl Harbor investigation that followed December 7, 1941. The Japanese were labeled the ‘Fifth Column’ by military and government officials, the enemy within. From that point onwards Japanese aliens were categorized as ‘enemy aliens’ and American citizens of Japanese parentage became ‘non-aliens’.

2.4. The ‘American Way’: The Wartime Internment of the Hawaiian Japanese

The Hawaiian Japanese community had to endure restrictions of their rights and liberties after the Territory of Hawaii was placed under martial law and its cultural institutions

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254 Local Joint Planning Committee to The Commanding General, May 25, 1936.
255 Local Joint Planning Committee to The Commanding General, May 25, 1936.
256 Local Joint Planning Committee to The Commanding General, May 25, 1936.
257 Even before the attack on Pearl Harbor the Japanese population of the Hawaiian Islands was already in the focus of attention as a consequence of Japanese aggression in the Pacific, and were the subjects of a possible
were ordered closed, or were taken over by the authorities for the duration of the war. Immediately after the attack on Pearl Harbor martial law was announced in the Hawaiian Islands which affected a civilian population of 423,330 residents, including 157,905 persons of Japanese descent (about 35,000 aliens and 68,000 dual citizens). The martial law lasted from December 7, 1941, until it was lifted on October 24, 1944, at which time civilian officials were tasked with certain government roles, not counting security and military duties. All government responsibilities were transferred back to the civilian authorities on October 24, 1945. The present sub-chapter offers us a counter example to the wholesale exclusion and detention of the Japanese populace on the Pacific Coast. The treatment of the Hawaiian Japanese is a topic of interest in light of the arguments made by the Military Commander that the loyalty of the West Coast Japanese could not be determined due to the lack of time and means for individual treatment.

“reprisal contest” between the two powers; a proposal by John D. Dingell, U.S. Representative from Michigan, in a letter to President Franklin D. Roosevelt on August 18, 1941. As a form of retaliation for the freezing of Japanese assets in the United States the Japanese Government prevented the departure of a hundred American citizens, based on press reports. Mr. Dingell proposed a “reprisal contest” – accepting the challenge by Japan – by having 10,000 Hawaiian Japanese aliens forcefully detained and imprisoned in a “concentration camp” as “hostages”. A hundred Japanese for one American, if the American citizens were not allowed to leave within 48 hours. Representative Dingell also mentioned that there were additionally 150,000 Japanese aliens in America to be considered as “reprisal reserve” to ensure that Japan would distance itself from further aggressive behavior. Edwin M. Watson, Secretary to the President, forwarded a memorandum to the State Department on August 19 for a response to Congressman Dingell’s letter, at the President’s request. It was Secretary of State Cordell Hull who replied to the Congressman in a letter dated August 23, in which he expressed the commitment of the Department to “[...] constantly giving close and serious attention to all aspects of our relations with Japan and to the protection and preservation of the rights and interests of our citizens abroad”. The State Department was prepared to help American citizens abroad in any way possible. The Federal Government later showed interested in using the Hawaiian Japanese detained for repatriation agreement with Japan, however the Military Government of Hawaii objected to the proposal. John D. Dingell to Pres. Franklin D. Roosevelt, August 18, 1941, in *Documentary History of the Franklin D. Roosevelt Presidency*, Vol. 9, U.S.-Japanese Relations, January-December 1941, ed. George McJimsey (Bethesda, MD: UPA, LexisNexis, 2001), 350; Edwin M. Watson to Department of State, August 19, 1941, in *Documentary History of the Franklin D. Roosevelt Presidency*, Vol. 9, U.S.-Japanese Relations, January-December 1941, ed. George McJimsey (Bethesda, MD: UPA, LexisNexis, 2001), 363; Cordell Hull to John D. Dingell, August 23, 1941, in *Documentary History of the Franklin D. Roosevelt Presidency*, Vol. 9, U.S.-Japanese Relations, January-December 1941, ed. George McJimsey (Bethesda, MD: UPA, LexisNexis, 2001), 375-376.


259 Apart from the introduction of martial law there were also other tragic events, such as the attack on the Japanese Sampans, traditional fishing boats, returning to port on the morning of December 7 to Kewalo Basin, Honolulu. The fishing boats were attacked and machine-gunned by American P-40 fighter aircrafts killing the Issei and Nisei fishermen aboard. Clifford Uyeda, “Japanese Hawaiians,” *Nikkei Heritage* 4, no. 1 (Winter 1992): 4.


The cooperation between the responsible branches of administration – Department of the Interior, Department of Justice, Governor of Hawaii, and the Military Governor of Hawaii – to eventually return civilian government to the Territory of Hawaii was a difficult problem to solve according to Attorney General Francis Biddle. The United States Army intended to maintain its military tasks: martial law, suspension of habeas corpus, and emergency powers. In a December 17, 1942, confidential memo to President Roosevelt the Attorney General wrote: “It is a tough job, because the military, who are now running Hawaii lock, stock and barrel, don’t want to give an inch.” Based on reports by the Interior and the Justice Department Lt. General Delos C. Emmons was described in the confidential memorandum as a person who “styled himself Military Governor” and enforced the law by the means of 180 military orders. In his reply on December 18 the President insisted that the state of affairs was bad and that Attorney General Biddle should discuss the matter with the Secretary of War. President Roosevelt placed immense emphasis on the situation in Hawaii as it was at the center of attention. The President observed: “The real point of the matter is that while Hawaii will not, in all probability, be attacked again, the eyes of the country are, and will be, on Hawaii and all conditions there.” The defense of Hawaii, the Japanese population, and the ‘evacuation’ of the Japanese remained a subject of debate, even though the Commander-in-Chief of the United States Armed Forces undermined the military necessity – less than two weeks following the bombing of Pearl Harbor – by writing that Hawaii in all likelihood will not be attacked. A contradictory statement compared to the arguments made by the Department of Navy, Admiral Ernest J. King, and Secretary of Navy Frank Knox.

262 Francis Biddle to President Franklin D. Roosevelt, December 17, 1942, Franklin D. Roosevelt Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 4 (hereafter cited as Francis Biddle to President Franklin D. Roosevelt, December 17, 1942).
263 The civilian work by officials was done under the administration of the military which was described by the Attorney General as autocratic, wasteful, and unjust, while criticism was suppressed. At the meantime General Emmons was accused of obtaining most of his knowledge from influential planters, whom the memo identifies as the “Big Five”. This has negative implications because one of the reasons why General Emmons opposed the mass removal of the Japanese population from Hawaii was his consideration for the local labor needs. Francis Biddle to President Franklin D. Roosevelt, December 17, 1942.
264 It is significant that in his reply the President also mentioned that he had learned from other sources that General Emmons received information on the circumstances, “knowledge of conditions”, from the “Big Five”. It can be assumed as one of the reasons why President Roosevelt did not approve of the labor needs as a factor in opposing the evacuation of the Hawaiian Japanese. The role of the “Big Five” and labor needs are further discussed in connection to Curtis B. Munson’s report on the Hawaiian Islands in a later section on The ‘Fifth Column’. President Franklin D. Roosevelt to Francis Biddle, December 18, 1942, Franklin D. Roosevelt Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 4.
The easing of government control produced further policy conflict, particularly over the issue of martial law and military government in the Territory of Hawaii, since the United States Navy strongly opposed any relaxation of the Military Governor’s powers. The Secretary of Navy informed the President on August 19, 1942, that the Navy Department opposed any change in the “status quo” and the authority of the military government.\textsuperscript{265} Several high ranking officials—Admiral Chester W. Nimitz, Admiral Ernest J. King, and Secretary of Navy Frank Knox—approved of and supported this standpoint. Secretary Knox quoted Admiral Nimitz’s view on the subject: “The Japanese capacity to inflict damage in this area is still very great. I, therefore, recommend that the Navy Department oppose any change in status quo or any limitation of the authority of the Military Governor.”\textsuperscript{266} The reasoning behind this opposition, apart from a military perspective, was the fear of the ‘Fifth Column’, the pro-Japanese menace in Oahu. Secretary Knox disapproved of the belief that the threat no longer existed and placed greater emphasis on security interests, “[t]he assumption that the war in the Pacific is already practically won and that there is no longer any menace of significant proportions to the security of Hawaii is, to my view, extremely dangerous and unjustified.”\textsuperscript{267} It should be noted that the United States Navy won a pivotal victory over the Imperial Japanese Navy during the Summer of 1942, June 3-6, at the Battle of Midway. A decisive victory and a turning point in the Pacific Theater, at which point the West Coast was no longer in danger of invasion.

In a later letter, October 17, 1942, Secretary Knox expressed the same opinion to the President on the subject of Japanese sympathizers and agents, and the potential enlistment of Japanese Americans in the United States Navy, the former representing greater concern.\textsuperscript{268} The Navy Department was reluctant to approve of the enlistment of American citizens of Japanese parentage, possibly in a civilian capacity in the field of intelligence service. Over all, the U.S. Navy refused to accept Japanese American servicemen. The main problem for the Secretary was still the Japanese in Oahu. According to the Secretary of Navy nothing was being done in spite of

\begin{footnotes}
\footnote{Frank Knox to President Franklin D. Roosevelt, August 19, 1942, \textit{Franklin D. Roosevelt Office Files, 1933-1945. Part 1: Safe and Confidential Files}, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 6 (hereafter cited as Frank Knox to President Franklin D. Roosevelt, August 19, 1942).}
\footnote{Frank Knox to President Franklin D. Roosevelt, August 19, 1942.}
\footnote{Frank Knox to President Franklin D. Roosevelt, August 19, 1942.}
\footnote{Frank Knox to President Franklin D. Roosevelt, October 17, 1942, \textit{Franklin D. Roosevelt Office Files, 1933-1945. Part 3: Departmental Correspondence Files}, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 8 (hereafter cited as Frank Knox to President Franklin D. Roosevelt, October 17, 1942).}
\end{footnotes}
– in his opinion – their large numbers and the threat of collaboration with the enemy in case of an attack. He called for the ‘evacuation’ of the Japanese.\textsuperscript{269} The anti-Japanese conviction of the Secretary of Navy echoes that of Lt. General John L. DeWitt, studied in \textit{The Executive Branch} Chapter.

President Roosevelt passed on Secretary Knox’s letter of October 17, 1942, to Henry L. Stimson, asking for comments or recommendations from the Secretary of War on the “Japanese situation in Hawaii”. Secretary of War Stimson responded in a letter on October 28\textsuperscript{270} and firmly stated that all known hostile and subversive persons of Japanese descent had been taken into custody and detained in ‘internment’ camps in the Hawaiian Islands or on the Continental United States. Discussing the removal of Japanese persons from the Hawaiian Islands the Secretary of War commented that, although there were diverging opinions on the issue, after deliberation naval and army branches agreed to ‘evacuate’ about 5,000 Japanese aliens and American citizens of Japanese ancestry to the Continental United States within the following six months.\textsuperscript{271} Secretary Stimson mentioned in his letter that Lt. General Delos C. Emmons was authorized to ‘evacuate’ as many as 15,000 Japanese persons, but having taken into account the labor needs of the islands opposed escalating the quota. Those individuals ‘evacuated’ were received by the U.S. Army on the West Coast and were transferred to the War Relocation Authority (W.R.A.) permanent detention camps.

During the military government residents of the Territory of Hawaii had to face certain restrictions and regulations, and were subjects of investigations and surveillance. The United States Army was responsible for the courts, distribution of the food supply, commerce, communications, traffic, hospitals, civilian defense, rationing of gasoline, and other various tasks.\textsuperscript{272} Apart from the standard wartime restrictions such as travel, curfew, and rationing that all locals had to abide by there were further regulations that the Japanese had to adhere to. Dennis M. Ogawa and Evarts C. Fox Jr. provide a general overview of the regulations that defined the daily life of the Japanese population:\textsuperscript{273} aliens were required to register, report

\textsuperscript{269} Frank Knox to President Franklin D. Roosevelt, October 17, 1942.
\textsuperscript{270} Henry L. Stimson to President Franklin D. Roosevelt, October 28, 1942, \textit{Franklin D. Roosevelt Office Files, 1933-1945. Part 3: Departmental Correspondence Files}, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 8 (hereafter cited as Henry L. Stimson to President Franklin D. Roosevelt, October 28, 1942).
\textsuperscript{271} Henry L. Stimson to President Franklin D. Roosevelt, October 28, 1942.
\textsuperscript{272} Francis Biddle to President Franklin D. Roosevelt, December 17, 1942.
\textsuperscript{273} Ogawa and Fox Jr., “Japanese Internment and Relocation: The Hawaii Experience,” 135.
foreign military service, observe stricter curfew period and travel restrictions, the use of communication equipment was regulated, anti-government publications were banned, and the Japanese fishing fleet was seized. Members of the Japanese community were also required to hand over the weapons, ammunition, and explosives in their possession. It has to be underlined that even though Japanese organizations and institutions were suspected of fostering disloyalty, social and cultural gatherings were not disallowed. Rather than banning these functions altogether the meetings attended by aliens had to be reported to the Provost Marshal.

During the war around 10,000 individuals were investigated by the intelligence agencies in Hawaii, as a result of the procedures 1,569 people were arrested, 1,466 of them were Japanese, and 1,250 Japanese were interned; it meant that less than 1% of the Japanese population of Hawaii was detained. The arrests were based on a list of potentially dangerous suspects compiled by the counterintelligence agencies. The list was divided into two groups with List 1-A: individuals to be arrested at once after war broke out with the Axis powers, and List 1-B: individuals placed under surveillance with their activities restricted. The compiled catalogue of aliens was the product of years of work and surveillance by the designated agencies, since 1936 when President Roosevelt suggested the listing of Japanese aliens who could be interned in case of war with Japan. Based on investigations prior to the attack on Pearl Harbor the counterintelligence agencies concluded that in the event of Japanese landing or occupation of the Hawaiian Islands the likelihood of “active disloyalty” by the Japanese was low. The Army Counter Intelligence (C.I.C.), with the cooperation of the F.B.I., O.N.I., and the Honolulu Police, began to take into custody the suspects included in List 1-A and the first arrest was made on December 7, 1941, approximately at 11:00 a.m. The C.I.C.’s counterintelligence was especially active in the first year of the martial law with such operations as search and seizure,

274 The number given by Clifford Uyeda is much greater, based on the data provided by him the number of Japanese detained reached 5,000. Gary Okihiro also provides a slightly greater figure, in his study he notes that 1,875 Japanese Americans were apprehended and transferred to the Mainland in addition to the 1,466 who were held on the Hawaiian Islands. Uyeda, “Japanese Hawaiians,” 4; Gary Y. Okihiro, “An American Story,” in Impounded: Dorothea Lange and the Censored Images of Japanese American Internment, ed. Linda Gordon and Gary Y. Okihiro (New York: W. W. Norton and Company, 2008), 59.
277 The agencies swiftly took action and by the end of the day 200 individuals were in custody at the Honolulu Immigration Station and 400 people by December 10, % of them were Japanese. The Immigration Station was used for the temporary detention of aliens waiting for the conclusion of their investigation and hearings. Ogawa and Fox Jr., “Japanese Internment and Relocation: The Hawaii Experience,” 136.
and arresting civilians. The Japanese individuals detained were mostly Buddhist and Shinto priests, consular agents, language school teachers and officials, members of Japanese organizations and societies, businessmen, commercial fishermen, and the Kibei.278 These community leaders were also the first ones to be targeted on the West Coast.

The individuals interned were treated on a case by case principle and their cases were reviewed by four separate boards before a definitive decision was made on whether to intern or release the accused. The suspects were first taken before a hearing board consisting of officials representing the C.I.C., F.B.I., and O.N.I.279 In the event that the board found sufficient evidence for internment the case was passed on to the Civilian Hearing Board, the board was composed of two army officers and three civilians. It was the task of the board to make recommendations which were then reviewed by the Intelligence Review Board representing the before mentioned counterintelligence agencies. The final stage of the review process was the Military Governor’s Review Board where the definitive decision was made in the defendant’s case, to intern or release the detainee. The Hawaiian case by case principle was contrary to what followed Executive Order No. 9066 on the West Coast during the Spring and Summer of 1942. There were no court hearings, no jury, and no legal proceedings, or due process of law280, a clear violation of Amendment V of the U.S. Constitution.

The mass forced removal of the Hawaiian Japanese population was at the center of debate between the Military Government of the Territory of Hawaii, the War Department, Navy Department, and the Roosevelt Administration. Whether to initiate the mass exclusion of the Japanese population to one of the Hawaiian Islands, to the Continental United States, or to commence the removal of potentially dangerous persons on an individual basis. Based on the proposals and arguments made we can conclude that there was an evident push for the transfer of the Japanese residents from Hawaii. Nevertheless, the Military Government employed the individual basis solution to the Japanese ‘problem’. Already on February 12, 1942, President Franklin D. Roosevelt was presented with proposed solutions to the Japanese question in a memorandum by William J. Donovan. The President received the attached memorandum – A

279 The authors provide an insight into the various stages of the hearing proceedings that were held to review the individual cases of the Japanese detainees before making the final recommendation on whether to intern them. Ogawa and Fox Jr., “Japanese Internment and Relocation: The Hawaii Experience,” 137.
280 See The Judiciary and the Legacy of the Japanese American Cases Section for an analysis of the constitutional issues involving the Japanese American cases argued by the Supreme Court during World War II.
Proposed Solution For The Japanese Question In Hawai"\textsuperscript{281} – of Mr. Atherton Richards, a resident of Hawaii, who presented it to Mr. Donovan. Mr. Atherton pointed out that the Japanese inhabitants represented a non-negligible “military hazard” to the Island of Oahu due to their “unpredictable activities and loyalties”. The Island of Oahu was described as a critical area with a high concentration of Japanese population. This argument contradicted the conclusions drawn by intelligence officers, that is to say that “active disloyalty” by the Japanese was low. The Hawaiian ‘Fifth Column’ threat will be interpreted in light of the government reports and memos in the subsequent section.

Mr. Atherton Richards provided three possible options to the Japanese ‘question’:\textsuperscript{282}

1. Permit these enemy aliens and unmatured citizens to continue their usual occupations and occupy their customary residences, unmolested, but maintain thereover strict military surveillance, and establish prohibited zones;
2. Require evacuation of such groups to a selected safe proscribed area on the Mainland United States;
3. Isolate and concentrate the “dubious” within the territory but away from the Island of Oahu.

Mr. Atherton himself favored the third alternative, because in his opinion it ensured the “maximum military security”, meant minimum disruption to the morale of the civilians, without excessive federal aid and transportation facilities.\textsuperscript{283} Furthermore, it would not provoke the harsh treatment of American citizens in captivity, possible form of retaliation by the Japanese Government. The Island of Hawaii was suggested as an “[…] obligatory rendezvous for the ‘doubtful’ Islands residents”, which would allow the Japanese to be self-supporting, provide for

\textsuperscript{281} Mr. Atherton Richards used such terms and expressions like “enemy aliens”, “unmatured citizens”, “dubious”, “‘doubtful’ Island residents”, and “tourists” to refer to Japanese aliens and American citizens of Japanese descent to be removed. The terms have a negative connotation that indicate anti-Japanese views, prejudice. There is no date provided for the attached memorandum by Atherton Richards. William J. Donovan to President Franklin D. Roosevelt, February 12, 1942, Box 1, Folder Roosevelt Lib. Materials, 1941-1942, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco (hereafter cited as William J. Donovan to President Franklin D. Roosevelt, February 12, 1942).

\textsuperscript{282} William J. Donovan to President Franklin D. Roosevelt, February 12, 1942.

\textsuperscript{283} William J. Donovan to President Franklin D. Roosevelt, February 12, 1942.
the self-sustenance of the Island, and solve the labor shortage.\textsuperscript{284} The transfer of the Japanese would also entail that the ‘problem’ would be localized with the remaining threat under constant scrutiny. The eventual solution was the combination of the three alternatives, with the continued investigation and surveillance of the Japanese residents, the apprehension and detention of suspects in detention facilities and internment camps on the main islands (the Island of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii), and the forced removal of dangerous persons and their family from the Hawaiian Islands.

The Secretary of Navy informed the President in a memorandum on February 23, 1942, that he favored the removal of persons of Japanese ancestry from Oahu to other islands, as a ‘policy’. Secretary Knox expressed his commitment to mass ‘evacuation’ from Oahu, to which he referred to as an “enemy country”,\textsuperscript{285} by writing: “Personally, I shall always feel dissatisfied with the situation until we get the Japanese out of Oahu and establish them on one of the other islands where they can be made to work for their living and produce much of their own food.”\textsuperscript{286} Oahu had strategic and national security importance as a defense outpost from where the United States Navy waged its war in the Pacific.

A central issue concerning the evacuation was the constitutional rights of the Nisei, violating the rights of American citizens of Japanese parentage. The Secretary of Navy wondered whether the constitutional problem was resolved, since Executive Order No. 9066 was signed by the President only a few days earlier and settled the Japanese ‘question’ on the West Coast.\textsuperscript{287} The Secretary of Navy through this inquiry implied that the evacuation from Oahu was within the authority of the Executive Order. In his reply on February 26 President Roosevelt shared the Secretary’s views, writing in his memo, “[I]like you, I have long felt that most of the Japanese

\textsuperscript{284} William J. Donovan to President Franklin D. Roosevelt, February 12, 1942.

\textsuperscript{285} By “enemy country” the Secretary of Navy meant that the defense of the Hawaiian Islands was conducted in a hostile environment, with a population that expressed “enemy sympathies and affiliations”. Frank Knox to President Franklin D. Roosevelt, February 23, 1942, Franklin D. Roosevelt Office Files, 1933-1945. Part 1: Safe and Confidential Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 6 (hereafter cited as Frank Knox to President Franklin D. Roosevelt, February 23, 1942).

\textsuperscript{286} Frank Knox to President Franklin D. Roosevelt, February 23, 1942. Michi Weglyn notes that Frank Knox was the general manager of the Hearst press during the 1920s, which might have influenced his perception of and attitude towards persons of Japanese parentage. Frank Knox to President Franklin D. Roosevelt, February 23, 1942, in Years of Infamy: The Untold Story of America’s Concentration Camps, ed. Michi Nishiura Weglyn (Seattle and London: University of Washington Press, 1999), 174.

\textsuperscript{287} Frank Knox to President Franklin D. Roosevelt, February 23, 1942.
should be removed from Oahu to one of the other Islands."²⁸⁸ He was not troubled by the constitutional problems and cited "war emergency".²⁸⁹ As the President pointed out: "I do not worry²⁹⁰ about the constitutional question -- first, because of my recent order [Executive Order No. 9066] and, second, because Hawaii is under martial law. The whole matter is one of immediate and present war emergency."²⁹¹ The Hawaii Department did not fall under the control of the Western Defense Command as indicated earlier, thus Executive Order No. 9066 did not apply to the Territory of Hawaii.

Not everyone was supportive of the push for the ‘evacuation’ of the Japanese community from Hawaii. A key figure who objected to such action, as mentioned earlier, was Lieutenant General Delos C. Emmons, Commanding General of the Hawaiian Department, and Military Governor of Hawaii. In the previously cited Knox memo of February 23, 1942, the Secretary of Navy discussed a letter that General Emmons sent, in which he opposed the “wholesale movement”.²⁹² Secretary Knox believed that this was the general opinion of the Army, as it was sent through the military channels. There were different views on how to handle the Japanese situation, how to deal with the number of people to be evacuated from the Islands. Introduced earlier in the present section was the letter sent by the Secretary of War on October 28, 1942, which indicated that General Emmons did not intend to increase the quota set for the removal of the Japanese from Hawaii – even though he was given the authority to move 15,000 people --, as he believed that the situation was properly handled and labor demands were also reviewed.

President Roosevelt replied to Secretary Stimson’s letter with a joint memorandum addressed to the Secretary of War and the Chief of Staff of the Army, November 2, 1942. The President did not approve of this point of view, consideration for labor demands was not of primary

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²⁸⁸ President Franklin D. Roosevelt to Frank Knox, February 26, 1942, Franklin D. Roosevelt Office Files, 1933-1945. Part 1: Safe and Confidential Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 6 (hereafter cited as President Franklin D. Roosevelt to Frank Knox, February 26, 1942).
²⁸⁹ President Franklin D. Roosevelt to Frank Knox, February 26, 1942.
²⁹⁰ Indeed, it seems that overall the President was not worried by the implications of the Japanese ‘evacuation’, as indicated by the fact that later on in his memorandum he advised the Secretary of Navy and War to agree and proceed with it as a “military project”. To some the use and interpretation of this expression might seem like the President downplayed the significance of this proposal. President Franklin D. Roosevelt to Frank Knox, February 26, 1942.
²⁹¹ President Franklin D. Roosevelt to Frank Knox, February 26, 1942.
²⁹² Frank Knox to President Franklin D. Roosevelt, February 23, 1942.
importance to him – bearing in mind his remarks on the “Big Five”\textsuperscript{293} and the General –, “I think that General Emmons should be told that the only consideration is that of the safety of the Islands and that the labor situation is not only not a secondary matter but should not be given any consideration whatsoever.”\textsuperscript{294}

After the Pearl Harbor attack the potentially dangerous Japanese inhabitants of the Hawaiian Islands were apprehended. Individuals who were taken into custody by the authorities were interned in detention camps like the Kalaheo Stockade in Kauai, Haiku Camp in Maui, and at Sand Island Army Internment Camp in Honolulu Harbor, or at the Honouliuli Army Internment Camp in Central Oahu.\textsuperscript{295} The Sand Island detention camp began its operation on December 8, 1941 – in only one week around 300 Japanese were relocated from the Immigration Station to Sand Island –, and was active for fifteen months, until it was closed on March 1, 1943.\textsuperscript{296} After Sand Island was closed the detainees were either transferred to Honouliuli or to

\textsuperscript{293} The Munson Report discusses the relevance of the “Big Five”, a subject of the correspondences by the President in opposing the consideration of the labor needs of the Territory of Hawaii. Mr. Munson was not as harsh on the “Big Five” as the President, rather he underscored the role of the elite families in ensuring the stability and safety of the Islands. Their paternalistic control had positive contributions and was a component in the safety of the Islands, managing the Japanese ‘problem’. The report referred to the centralized control they had as a form of ‘monopoly’: “The Islands are really a huge monopoly, centralized under the ownership of five families and an independent or two. These five families are called the ‘Big Five’.” The presence of this monopoly was not only felt in business, the economy, but also in the politics and everyday social life of the Island community. C. B. Munson described the white elite group as the following, “[t]he ‘Howies’ or white people at the head of Island affairs centralize in the Big Five.” The “Howies” governed the business and politics of the Islands. The “Big Five” were influential white families, descendants of missionaries and traders, who had a great interest in the “paternalistic capitalism” of the Hawaiian Islands, to which they want to hold on to. They made money on and had a stake in the continued cheap labor of the Japanese, Philippines, Hawaiians, and the Portuguese. Although they paid low wages they treated their laborers well and did not abuse them. The white elite managed Hawaii politically, even though the Japanese could have gained political control if they voted based on racial motives. This political control was seen as an important factor in the stability and safety of the Hawaiian Islands. Curtis B. Munson, Report On Hawaiian Islands, December 8, 1941, Box 1, Folder Roosevelt Lib. Materials, 1941-1942, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco (hereafter cited as Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands).

\textsuperscript{294} President Franklin D. Roosevelt sent a memorandum to the Secretary of the Navy on November 2, 1942, to which he enclosed a copy of the joint memorandum intended for the Secretary of War and the Chief of Staff of the Army on that day. The President wanted the Secretary of War and the Chief of Staff of the Army to advise General Emmons and Admiral Nimitz, that “Military and naval safety is absolutely paramount.” President Franklin D. Roosevelt to Henry L. Stimson and George C. Marshall, November 2, 1942, Franklin D. Roosevelt Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 8.

\textsuperscript{295} Uyeda, “Japanese Hawaiians,” 4; Ogawa and Fox Jr., “Japanese Internment and Relocation: The Hawaii Experience,” 136. See Appendices, Maps, Map 4 for the location of all the detention and internment facilities in the Territory of Hawaii (the main islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii) and the United States.

W.R.A. and Department of Justice (D.O.J.) facilities on the Mainland. Between 1942 and 1943 there were six internee transfers – 700 aliens, of whom 675 were Japanese.\textsuperscript{297} The transfers began in February of 1942. The initial group of internees left Sand Island on February 19, 1942,\textsuperscript{298} 200 internees out of which 175 were Japanese; the day Executive Order No. 9066 was signed by President Roosevelt. Four civilian groups with over one thousand individuals (1,037 persons) were also transferred for family reunification, so they could join their loved ones.\textsuperscript{299} The first group of 107 individuals left on November 23, 1942. They were joined later on by a second group of 443 persons on December 28, 1942. The third group of 261 departed on January 26, 1943, while the fourth and final group of 226 set sail on March 2, 1943. The last group left for Topaz Permanent Detention Camp located in Utah and included 176 Kibei, the group arrived on March 14, 1943. After the last group the Hawaiian authorities decided to cease the removal of Japanese civilians, the War Department agreed, however the relocation of the internees remained an ongoing operation. When martial law ended on October 24, 1944,\textsuperscript{300} there remained sixty-seven Japanese Americans and fifty Japanese aliens at the Honouliuli Internment Camp.\textsuperscript{301} The Japanese Americans were transferred to Tule Lake on November 9, 1944, while the aliens were slowly released on parole until only twenty two remained on V-J Day (August 15, 1945), when they were finally allowed to leave.\textsuperscript{302}

\textsuperscript{297} Ogawa and Fox Jr., “Japanese Internment and Relocation: The Hawaii Experience,” 137. The figure provided by Clifford Uyeda for the number of Japanese transferred to permanent detention camps in the Continental United States is 1,500. If we add the number of civilians (1,037) to the Japanese aliens (675) shipped to the Mainland (in total 1,712), based on the numbers cited by Dennis M. Ogawa and Evarts C. Fox we can conclude that the removal indeed involved over 1,500 Japanese Hawaiians. Uyeda, “Japanese Hawaiians,” 4.


\textsuperscript{299} Ogawa and Fox Jr., “Japanese Internment and Relocation: The Hawaii Experience,” 137.

\textsuperscript{300} Even before martial law ended it was a known fact that the Hawaiian Islands were no longer a defensive outpost. President Franklin D. Roosevelt visited Honolulu, Oahu, after 10 years and held a press conference on July 29, 1944. At the press conference he discussed the status of the Hawaiian Islands and stated that Hawaii was no longer a defensive outpost. As the President explained: “Today the outermost points of our defense line are thousands of miles to the westward. Hawaii is still the main distributing point, but not the outpost. It is our main depot nearest to where we are meeting the enemy in the Pacific.” President Franklin D. Roosevelt, “Press and Radio Conference #962” (press conference, Waikiki, Honolulu, July 29, 1944), in Complete Presidential Press Conferences of Franklin D. Roosevelt, Vol. 24, 1944-1945 (New York: Da Capo, 1972), 26-28.

\textsuperscript{301} Ogawa and Fox, Jr., “Japanese Internment and Relocation: The Hawaii Experience,” 138.

\textsuperscript{302} Their detention and transfer, separation from their family and community, placed an enormous psychological and emotional tension on the Japanese. There were tragic events such as the death of Kanesaburo Oshima, a barber from Hawaii, who was detained in a D.O.J. internment camp at Fort Sill (OK). Mr. Oshima showed signs that he was emotionally unstable and one day ran toward the fence and started to climb over it, while shouting “I want to go home. I want to go home.” He was shot and killed by the armed guard on duty. It was unknown at the time that he was worried about his family, his wife and twelve children, and simply wished to be reunited with them.
2.5. The ‘Fifth Column’: The Hawaiian Japanese and the War Hysteria

As discussed in the earlier section of the chapter the responsibility of the intelligence gathering – to handle counter-espionage and sabotage activities – was assigned to the F.B.I., the G-2 Section, and the O.N.I. by President Franklin D. Roosevelt on June 26, 1939. In the Report On West Coast Japanese Situation, November 18, 1941, John Franklin Carter gave account of the progress that had been made.\(^303\) After having consulted with the War Department and the F.B.I. Carter declared, that “[t]he matter of arrests of suspects on the West Coast is now in charge of F.B.I. and similar agencies of War and Navy, with prompt, concerted action ready on notification.”\(^304\) A publicity program was also initiated to put loyal Japanese American at ease and also to pacify public animosity and suspicion of Japanese Americans. It was evident that the F.B.I. and the O.N.I. were ready to take action, and the loyalty of persons of Japanese descent was an apparent intelligence concern even before the attack on Pearl Harbor.

An individual whose work was instrumental in assessing the loyalty of Japanese Americans was Curtis B. Munson, a businessmen commissioned by John Franklin Carter to assess the loyalty of Japanese Americans in California, the West Coast, and in Hawaii. John Franklin Carter prepared a summary memorandum on the West Coast and Honolulu reports submitted by Curtis B. Munson prior to Pearl Harbor, the memorandum was sent to the President on December 16, 1941.\(^305\) The reports placed great emphasis on the need to reassure the loyal Japanese aliens and Japanese Americans, taking into account the comments made by the Secretary of Navy on December 15, 1941, after his return from Honolulu, Hawaii. There was no substantial threat of ‘Fifth Column’ activity, which contradicted Secretary Knox’s statements. The J.F.C. memorandum clarified the statements by specifying that the Secretary of Navy’s report referred to espionage conducted from the Japanese Consulate General at Honolulu. Mr.

\(^303\) John Franklin Carter to President Franklin D. Roosevelt, November 18, 1941, Box 1, Folder Roosevelt Lib. Materials, 1942-1942, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco (hereafter cited as John Franklin Carter to President Franklin D. Roosevelt, November 18, 1941).

\(^304\) John Franklin Carter to President Franklin D. Roosevelt, November 18, 1941.

\(^305\) John Franklin Carter to President Franklin D. Roosevelt, December 16, 1941, Box 1, Folder Roosevelt Lib. Materials, 1941-1942, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco (hereafter cited as John Franklin Carter to President Franklin D. Roosevelt, December 16, 1941).
Munson during his work evaluated the intelligence agencies and based on his findings the F.B.I. had a lead role both on the West Coast and at Honolulu, before the Army Intelligence and the O.N.I.

The *Memorandum On Summary Of West Coast And Honolulu Reports By Munson ETC.* summarized the key points of both reports:306

1. No substantial danger of Fifth Column activities by Japanese.
2. Considerable [sic] danger of sabotage to strategic points left unguarded.
3. Need to arrest all suspects without regard to citizenship.
5. Army Intelligence poor or non-existent on West Coast; F.B.I. pretty good; Navy Intelligence also good.
6. Navy Intelligence poor at Honolulu; F.B.I. excellent; Army Intelligence pretty good.
7. Good cooperation between services along Mexican Border. Need for coordination and change of methods or attitude at Washington.
8. Munson continues to work at Los Angeles; Irwin is completing his “tour” of Northwest Mexico to Mazatlan and back. Irwin has already reported an Axis “underground railway” into Mexico leading out of Phoenix or Tucson.

The Atherton memorandum stated that the unpredictable loyalty of Japanese nationals and American citizens of Japanese descent was a source of potential danger. The Munson reports represented a different standpoint on the issue of loyalty. Curtis B. Munson’s *Report On Hawaiian Islands*307 was attached by John Franklin Carter to the *Memorandum on Japanese Problem* submitted to the President Roosevelt on December 8, 1941, the day following the attack on Pearl Harbor. Mr. Munson was on a tour of the West Coast, where he completed a four week long survey on the Japanese ‘problem’ after which he left for Honolulu. Altogether he spent only nine days in Honolulu, Oahu,308 and did not visit the other Islands. During his survey he received

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306 John Franklin Carter to President Franklin D. Roosevelt, December 16, 1941.
307 Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands; John Franklin Carter to President Franklin D. Roosevelt, December 8, 1941, Box 1, Folder Roosevelt Lib. Materials, 1941-1942, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco.
308 Mr. Munson explained this decision by writing in his report: “This reporter was advised that he would be more or less wasting time to visit these other Islands.” Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands.
the comprehensive cooperation of the Army and Navy Intelligence Services, the F.B.I., and conducted numerous personal interviews with second and first generation Japanese residents.

The report assessed the work of the intelligence services in Honolulu, Oahu. The F.B.I. had the leading role with a long background on the “Japanese question”, before the Army and the O.N.I. Mr. Munson does mention that the O.N.I. was a latecomer and would take four to five months till it reached its full capability as it was expanding its organization and activities. As mentioned earlier in Mr. Carter’s memorandum the work of the F.B.I. was determined to be “excellent”, while the Army was “pretty good”, and the O.N.I. was “poor”. The intelligence services established the same cooperation that he witnessed on the West Coast. The F.B.I. and the Intelligence Services advocated the “well-balanced middle view” in dealing with the Japanese ‘question’, as opposed to the Navy, which regarded the Hawaiian Islands as a naval base at the expense of civilian life, or the “Big Five” that wished to keep its “paternalistic capitalism” and control over the Islands. The evaluation of the intelligence agencies is crucial information considering their role in the listing and apprehension of the identified Japanese suspects. The Hawaiian report added further credibility to the work of the F.B.I. and O.N.I., the intelligence divisions responsible for investigating the Japanese ‘menace’. The report intended to introduce the middle path and how it could contribute to the safety of the Islands.

The chief point of the report was assessing the loyalty, the Americanism of the Japanese populace and the potential danger they represented to the defense of the Island of Oahu. A key point of the conclusion drawn by Mr. Munson was that there was no threat of racial uprising by the Japanese in Honolulu, in fact Hawaii was a true “melting pot” that resulted in a quintessential difference between the Japanese ‘problem’ on the West Coast and Hawaii. A large proportion of the Issei were considered to be loyal because they lived and worked on the Island, they were devoted to the land. This love of the Island was not uncommon among the laboring classes: “It

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309 Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands.
310 Curtis B. Munson associated the exaggerated and extreme anti-Japanese views with the United States Navy and its interest in securing installations and treating the Hawaiian Islands as a naval base, or with the anti-“Big-Five” groups. Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands.
311 According to Curtis B. Munson the general background and characteristics of the Japanese on the Hawaiian Islands was the same as on the West Coast. Considering Mr. Munson’s conclusion the question that needs to be explored is why did the ‘American way’ prevail, what distinguished the Hawaiian Islands from the West Coast that was engulfed by prejudice and anti-Japanese hysteria. Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands.
312 Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands.
may be as well to state here in a general way that everyone in Hawaii, especially in the dark-skinned laboring classes, places loyalty to Hawaii first, and the United States second. This is not meant to impugn their loyalty – but they love the Islands"313, wrote C. B. Munson. The Nisei showed similar allegiance, if not greater, with roughly 98% of them estimated to be loyal.314

Due to the extent of the Japanese population this meant that about 1,500 Nisei were disloyal. Nonetheless, the F.B.I. informed Mr. Munson that the agency had 400 suspects, and only fifty to sixty were characterized as “sinister”.315 The Army Intelligence had a map of the suspects (Issei, Nisei, and other nationalities) illustrating their distribution and known location, and addresses. This ensured that each and every suspect could be located and picked up by the authorities in a matter of hours. On the issue of sabotage perpetrated by potential Japanese suspects the report stated that there will be “planted Japanese and agents” to commit such acts. It did not however mention the likelihood of local Japanese aliens and Japanese American residents committing subversive activities. Nevertheless, the primary targets of a potential sabotage, the Army and Navy installations, were under the protection of the concerned services. One might concentrate on and emphasize the possible threat of sabotage and espionage despite of the lack of concrete evidence to support this fear, as did President Roosevelt in the case of the West Coast report.

Curtis Munson also noted the differences between the Japanese situation in Hawaii and on the West Coast, one of them being the importance of labor supply. As noted previously President Roosevelt did not approve of the labor needs of Lt. General Delos C. Emmons as a firm counterargument against the mass removal of the Japanese population, for the President national defense had the primary importance. Notwithstanding, the Hawaiian report by Mr. Munson brought up labor needs as a crucial factor. On the West Coast the Japanese population could be forcefully removed if determined to be disloyal, as it did happen only a few months later after the report was submitted. On the Hawaiian Islands however – even though the United States Military Forces had numerical superiority to overwhelm the Japanese residents –, a crackdown on the Japanese would have meant the loss of its “labor supply”. Thousands of laborers would have to be imported to fill in the vacant positions, they would have to be housed

313 Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands.
314 Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands.
315 Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands.
and fed. This meant that the Japanese should be kept loyal, “[s]ince a large part of the vital and essential work of the Islands is ably carried on by the Japanese population, it is essential that they should be kept loyal, – at least to the extent of staying at their tasks”, reasoned Curtis B. Munson. The importance of the Japanese labor is further highlighted by the ‘reporter’, implying that a general “Japanese sit-down strike”, inspired by Imperial Japan, would cause immense economic and financial problems, and would jeopardize the operations of the Islands. Mr. Munson declared his surprise that the Japanese Government did not exploit this means of interference, ‘attack’. A repeated emphasis of the practicality, the economics of opposing the removal of the Hawaiian Japanese. At the time the report was prepared there was no call for the wholesale removal of the Japanese and the author did not make any reference or allude to such measures.

Curtis B. Munson mentioned in his investigative report that there was a fundamental difference between the West Coast and the Hawaiian Japanese ‘problem’, the form of discrimination. On the West Coast persons of Japanese ancestry faced discrimination on a racial basis, while in Hawaii discrimination was based on social and economic status. The ‘reporter’ implied that the Hawaiian discrimination was peculiarly American due to its materialistic culture. Based on this theory in a materialistic culture social status is determined by ones income, as a consequence the Hawaiian Japanese found their place among the majority of the population, the dark-skinned inhabitants, and did not socially mix with the whites. This social and economic discrimination had unexpected relevancy to the Japanese question. The Hawaiian Japanese did not have an inferiority complex. According to Mr. Munson, “[t]he result of this is that the Hawaiian Japanese does not suffer from the same inferiority complex or feel the same mistrust of the whites that he does on the mainland.” The plantation economy and lifestyle contributed to the diversity and multicultural nature of the Hawaiian Islands. Mr. Munson concluded that Hawaii was more of a “melting pot”, because of the great proportion of dark-skinned inhabitants (Japanese, Hawaiian, Chinese, and Filipinos). The example provided to demonstrate the validity of the “melting pot” metaphor was the lack of conflict between the

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316 Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands.
317 Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands.
318 Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands.
319 Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands.

Even though Curtis B. Munson compiled a thorough report on the loyalty of the Japanese population during his survey of the Island of Oahu he could not ascertain the level of loyalty in case of an attack, although a great proportion would be neutral or actively loyal. It is undeniable that in the report the threat of sabotage was considerable and the danger of espionage was unavoidable due to the size and population density of Oahu, Hawaii. Still, since the bulk of the Issei and 98% of the Nisei were loyal in Hawaii it is a restrained conclusion to state that the majority would be neutral or loyal. If we compare Curtis B. Munson’s and Lt. Commander Kenneth D. Ringle’s statements, O.N.I., based on their reports from 1941, we can infer that 90% to 98% of the Nisei and approximately the bulk or 75% of the Issei were loyal.²²⁰ Kenneth D. Ringle found no evidence of espionage or sabotage by the Nisei or the long-time resident Issei during his investigation either on the West Coast or Hawaii. Compared to the Munson Report Commander Ringle insisted that domestic threat was negligible since both the Nisei and the Issei were overwhelmingly loyal to the United States.

Curtis B. Munson concluded his report by questioning the loyalty of the Hawaiian Japanese:²²¹

In summarizing, we cannot say how loyal the Japanese in the Hawaiian group would be if there were an American Naval disaster and the Japanese fleet appeared off the Hawaiian Islands. Doubtless great numbers of them would then forget their American loyalties and shoug [sic] “Banzai!” from the shore. Under those circumstances if this reporter were there he is not sure that he might not do it also to save his own skin, if not his face. Due to the fact that there are more than enough soldiers in the Islands to take care of any Japanese, even if not so inclined, the Japanese will doubtless remain quietly at their tasks. However, in fairness to them it is only right to say that we believe the big majority anyhow would be neutral or even actively loyal.

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²²⁰ Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands; Daniels, Asian America, 210-211.
²²¹ The last sentence of the quotation was highlighted by the author. Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands.
The issue of ‘Fifth Column’ activity in Hawaii was the focus of attention due to widespread rumors and sensationalized articles on the local Japanese aiding the attacking forces and hindering the work of the defenders of Pearl Harbor. There was a wide range of rumors and gossip, ‘fake news’ as it is labeled nowadays. The Washington Post published an article on February 9, 1942, and included the following examples: Japanese truck drivers intentionally drove their trucks into planes on the ground, Japanese individuals disabled the vehicles of U.S. Army and Navy officers, and blocked the roads with furniture while the attack was taking place. The present issue of the Washington Post was singled out by Delegate Samuel W. King, House of Representatives, in a radiogram sent to Roy A. Vitousek, Chairman of the Citizens Council, Honolulu, on February 12, 1942. In the radiogram Delegate King called for a verifiable statement from trustworthy officials that would either deny or confirm the ‘facts’ stated by the Washington Post. In a reply on February 14, 1942, Roy A. Vitousek and Leslie A. Hicks, President of the Honolulu Chamber of Commerce, informed the House Representative that “[…] upon consultation with Chief of Police and with heads of Army and Navy Intelligence informed that to date there has been no single instance of Japanese truckdrivers or other truckdrivers [sic] running machines into U.S. planes on the ground, of Japanese or others disabling automobiles of Army and Navy officers […]”. There was no evidence of such subversive activities like the ones listed in the Washington Post. A copy of the radiograms exchanged by Mr. Ray A. Vitousek and Delegate Samuel W. King was sent by the latter to the J.A.C.L. and was received on February 26, 1942. The report also contained further documents of significance that discussed the subject of ‘Fifth Column’ rumors, extracts from the radio address by Lt. Col. Kendall J. Fielder and the radio speech delivered by Lt. Gen. Delos C. Emmons.

The designated military officers also took the floor to reassure the public and to ease the war hysteria in Hawaii. Just two days after the attack on Pearl Harbor on December 9, 1941, Lt. Col. Kendall J. Fielder, Department G-2, gave a radio address in Honolulu in which he tackled the issue of ‘Fifth Column’ activity. In the radio address Lt. Col. Fielder asked for the continued cooperation and support of the public for the successful military effort of the United States Armed Forces. However, he also requested that they do not take the law into their own hands,


323 Samuel W. King to Japanese American Citizens League, February 26, 1942.
nor to spread rumors, emphasizing that such actions would hinder the effort of the officials responsible for the safety and security of the Hawaiian Islands. He specifically mentioned some of the rumors that were proven to be false, such as the supposed landings on the Hawaiian Islands, reports of parachutists, and glider troops.

Lt. Col. Kendall J. Fielder wanted to reassure the public:  

"You may rest assured that the constituted authorities will handle subversive and unlawful elements swiftly, adequately and fairly. A number of enemy agents have been apprehended and detained. Many others have been apprehended on suspicion but most of them found to be innocent and were released. There is no desire on the part of the authorities to organize mass concentration camps."

Lt. Col. Fielder finished his radio address by calling for unity: "The loyal citizens of all racial ancestries must work and fight together to the end. Your armed forces can operate effectively and successfully only when we are not hampered by a citizenry that is divided and discordant."

Less than two weeks later Lieutenant General Delos C. Emmons delivered a radio speech of a similar tone on December 21, 1941. In his speech the Lieutenant General depicted the Hawaiian Islands as a military base, a powerful "American outpost of war", and her population has accepted the responsibility that it now had to shoulder. Notwithstanding, these responsibilities according to Lt. Gen. Emmons also meant that "[…] it is important that Hawaii prove that her traditional confidence in her cosmopolitan population has not been misplaced." There were restrictions introduced as a result of the attack, but those were in the interest of the public. Although in his speech the Lieutenant General called for moderation, spoke up against unnecessary actions and discrimination, there were numerous cases of dismissal from employment due to fears or suspicions of disloyalty by the employers. In case of any doubt the public was advised to turn to the authorities before any steps were taken. In order to maintain the courage and moral of the population "[…] we cannot afford to unnecessarily and

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324 Samuel W. King to Japanese American Citizens League, February 26, 1942.
325 Samuel W. King to Japanese American Citizens League, February 26, 1942.
326 Samuel W. King to Japanese American Citizens League, February 26, 1942.
indiscriminately keep a number of loyal workers from useful employment”, said the Lieutenant General.327

Lt. General Emmons called for continued alertness and vigilance against possible saboteurs, subversive elements, but also for calmness. It was announced that several arrests were made and the individuals detained were not prisoners of war, however based on the continued investigation additional suspects could be arrested. Individuals, no matter if they were citizens or aliens, who were not connected to subversive activities had no cause for concern. Furthermore, it was again confirmed that the authorities had no desire to establish mass concentration camps. The harmful effect of gossip was also confronted and false rumors were described as insidious and corruptive. They have even greater detrimental effects during wartime. “Unless they are guarded against they can be just as destructive as guns and bombs,”328 asserted General Emmons. The hardship that befell the West Coast Japanese community proved how right the General was, how war hysteria swept persons of Japanese descent from their homes and placed them in incarceration camps. The speech also dealt with the issue of loyalty, the importance of distinguishing between loyal and disloyal individuals, a returning theme during World War II and at times of war emergencies. The views represented by General Emmons safeguarded the freedom and liberty of the Hawaiian Japanese until the end of the war, keeping true to the ‘American way’. The press did not only publish articles on the suspected disloyalty of the Japanese, but also on how the Nisei and Issei had proven their loyalty to their adopted land. One such example is the March 12, 1942, issue of the Berkeley Gazette. Quotations taken from the issue were recorded and preserved by the Japanese American Citizens League. Based on the document Professor Blake Clark of the University of Hawaii was quoted saying: “[The] Japanese have proved loyal to the United States since the first bomb fell on Pearl Harbor.”329 Japanese faculty members of the University of Hawaii reported for service to the F.B.I., while Japanese surgeons treated the wounded soldiers and sailors when Pearl Harbor was bombed. Moreover, the number of Japanese blood donors was greater than that of the other ethnic groups combined.

327 Samuel W. King to Japanese American Citizens League, February 26, 1942.
328 Samuel W. King to Japanese American Citizens League, February 26, 1942.
329 Berkeley Gazette Quotes, March 12, 1942, Box 1, Folder Nisei Loyalty, 1934, 1938-1942, Series 1, JACL History Collection, Japanese American National Library, San Francisco.
According to Lieutenant General Delos C. Emmons the “American Way” of handling such a shocking event should be the following: \[330\]

While we have been subjected to a serious attack by a ruthless and treacherous enemy, we must remember that this is America and we must do things the American Way. We must distinguish between loyalty and disloyalty among our people. Sometimes this is difficult to do, especially under the stress of war. However, we must not knowingly and deliberately deny any loyal citizen the opportunity to exercise or demonstrate his loyalty in a concrete way.

The fight against war hysteria was also waged by the F.B.I., trying to reassure the public that the intelligence agency was ready and up to the task after the devastating attack on Pearl Harbor. The Bureau was quick to tackle the ‘Fifth Column’ accusations and also the attempts to scapegoat the agency, studied in the previous The Day of Infamy Chapter. J. Edgar Hoover, as the Director of the F.B.I., wrote an article titled “Wiping Out Saboteurs-Pearl Harbor Found FBI Ready”, published in the St. Paul Pioneer Press. \[331\] According to the information provided by Director Hoover, a detailed account of the post-attack action taken by the organization, the F.B.I. Headquarters in Washington was notified by the Honolulu Office at 1:25 p.m. (7:55 a.m. Hawaiian Standard Time), Sunday, December 7, 1941.

The F.B.I. immediately decided to initiate its “war plans”, setting a series of orders and events into motion: \[332\]

1. FBI Field Offices were alerted from Juneau, Alaska, to San Juan, Puerto Rico.
2. FBI agents and approximately 150,000 peace officers were mobilized.
3. FBI employees in fifty-six offices were on duty in less than an hour.
4. Nineteen orders were issued by the FBI to special agents to pick up all dangerous Japanese.

\[330\] Samuel W. King to Japanese American Citizens League, February 26, 1942.


\[332\] J. Edgar Hoover, “Wiping Out Saboteurs”.
5. Air lines [sic] were instructed to refuse the transportation of Japanese passengers, and those on board were removed; air shipments to or from any Japanese were also not accepted.

6. Overseas communication lines into and out of the United States were cut off.

7. Guards were placed at the Japanese, German, and Italian Embassy.

As a result of the orders issued by the F.B.I. in less than twenty-four hours 1,771 enemy aliens were taken into custody nationwide and were detained by the United States Immigration and Naturalization Service; following the declaration of war by the Axis Powers German, Italian, Bulgarian, and Hungarian aliens were also detained. The article provided an interesting fact to underline the swift response of the agency, in comparison only sixty-three enemy aliens were arrested during the initial twenty-four hours of World War I.

J. Edgar Hoover felt that the article was also an important opportunity to address the issue of “public hysteria” and “rumor mongering”, the F.B.I. even initiated a “Tell-it-to-the-FBI” campaign. War and public hysteria was a cause for concern not only in the Hawaiian Islands, but also in the United States, and the Bureau investigated all reported wild rumors. The rumors were proven to be false, parachute troops were identified as white puffs of smoke from exploding anti-aircraft shells, and Japanese residents accused of possessing explosives were using powdered dynamite as ant repellent. Although the West Coast did not have to endure an attack of a Pearl Harbor magnitude, due to the shock – the opening of the “window of vulnerability” by Japan –, the public hysteria was similar. The fear of the ‘Fifth Column’ was present on the West Coast, just like in Hawaii. Nevertheless, based on J. Edgar Hoover’s views they subsided as a direct result of the action taken by the agency, “[i]mmediate investigation of the wild rumors, augmented by a vigorous “Tell-it-to-the-FBI” campaign, did much to restore jittery nerves.” Based on this he concluded that the fear of the ‘Fifth Column’ not only subsided, rather it no longer existed. The forced removal and detention of the Japanese American population contradicts Director Hoover’s assessment on the lack of war hysteria and anxiety, rather a more

333 J. Edgar Hoover, “Wiping Out Saboteurs”.
334 J. Edgar Hoover, “Wiping Out Saboteurs”.
335 J. Edgar Hoover, “Wiping Out Saboteurs”.
appropriate conclusion would be – based on the available intelligence and reports examined – that there were no grounds for such hysteria.

2.6. Summary: Comparison of the Hawaiian and West Coast Japanese

There are several compelling conditions that distinguished the status of the Japanese residents of the Hawaiian Islands from the plight of the Japanese community on the Continent, ensuring that the “American way” prevailed in handling the Japanese ‘problem’. The immigration and population statistics have been introduced in the previous sections and they indicated that a significant proportion of Hawaii’s population was Japanese, in 1940 there were 157,905 Japanese residents and they represented 37%, over ⅓ of the population. Such great proportion can be converted into labor factors that could not be disregarded in the war effort. As stated by Dennis M. Ogawa and Evarts C. Fox, contemplating the correlation between the economy of Hawaii and the Japanese labor force, “[…] mass internment or relocation based on the West Coast model was not practical.”

Lt. General Emmons took the labor needs into consideration to which President Roosevelt strongly objected on the grounds that national defense was of prime importance. Nevertheless, Curtis B. Munson’s Hawaiian report, the Atherton memorandum, and the Office of Chief of Staff memorandum all supported Lieutenant General’s standpoint and referred to the Hawaiian labor needs and issues.

J. Edgar Hoover’s assessment, the lack of fear of the ‘Fifth Column’, is in direct contradiction with the military necessity argumentation of the Final Report and the call for the mass exclusion of Japanese persons from the Pacific Coast. Nonetheless, the F.B.I.’s findings are supported by the investigation of Curtis B. Munson and Lt. Commander Kenneth D. Ringle, examined more thoroughly in The ‘Exemplary Citizens’ Chapter. Furthermore, if there is no ‘Fifth Column’ hysteria or military necessity the remaining factors are racial prejudice and anti-Japanese sentiments, components which greatly influenced officials of the Roosevelt Administration and members of Congress.

The mass internment of the Japanese population was also “not practical” from a counterintelligence\textsuperscript{338} point of view. The C.I.C. argued that those persons of Japanese ancestry who were considered to be dangerous were identified, investigated, and were detained. In addition, the round-the-clock surveillance and the possibility of arrest and detention was a “deterrent” to potential subversive activity. The counterintelligence agencies believed that the internment of individuals together with the restrictions and regulations imposed on the Japanese population was more effective than their collective detention in Hawaii or transfer and incarceration on the Mainland.\textsuperscript{339} A similar argument was made by Director Hoover who insisted that the potentially dangerous Japanese aliens and citizens of Japanese parentage had been identified and apprehended as a result of the swift response of the agency. Director Hoover insisted that the F.B.I. was ready at the time of Pearl Harbor.\textsuperscript{340} Based on his views the ‘Fifth Column’ fear not only subsided as a direct result of the action taken by the Bureau, but rather it no longer existed. It is noted by Clifford Uyeda how the Japanese were regarded, that “[e]ven when interned, the Hawaiian Issei believed that Hawaii’s military focused on what the Japanese could contribute to the war effort instead of what the Japanese might or could do in the way of sabotage, as the West Coast military powers did.”\textsuperscript{341}

A further point is that the majority of the population was ethnically diverse, racially mixed, which fostered greater acceptance by the overall population for the Hawaiian Japanese, the largest ethnic group in a multicultural and -ethnic environment. Due to its ethnic and cultural diversity Hawaii was seen as a “melting pot”, as stated in the \textit{Munson Report}, where the Japanese population only encountered economic discrimination and did not suffer from an inferiority complex like the West Coast Japanese.\textsuperscript{342} Eventually roughly 1% of the Japanese population of Hawaii was incarcerated from a population of approximately 157,905, while on the other hand around 120,000 persons of Japanese ancestry, around 86% of the Japanese population, were collectively removed and detained on the Continental United States out of a population of about 126,947. Based on the Census of 1940\textsuperscript{343} the total population of the United States was 131,669,275 and the population of California was 6,907,000. Analyzing the

\begin{thebibliography}{9}
\bibitem{338} Ogawa and Fox Jr., “Japanese Internment and Relocation: The Hawaii Experience,” 137.
\bibitem{340} J. Edgar Hoover, “Wiping Out Saboteurs”.
\bibitem{341} Uyeda, “Japanese Hawaiians,” 5.
\bibitem{342} Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands.
\bibitem{343} Uyeda, 	extit{Due Process}, 87.
\end{thebibliography}
population statistics we can draw the conclusion that in 1940 the ethnic Japanese residents comprised roughly 1.4% of California’s population with a community of 93,717 persons of Japanese descent, a much lower figure than the 37% in the case of the Hawaiian Islands. Still, as a repercussion of racial prejudice and war hysteria on the Pacific Coast the significantly smaller Japanese community presented a greater threat to national defense than the Japanese residents of the Territory of Hawaii, a defense outpost of the United States that in fact was directly attacked by the Imperial Japanese Navy.

The fact that the ‘American way’ prevailed and the Hawaiian Japanese were not incarcerated on a collective basis resulted in a greater display of willingness by the Nisei to serve in the United States Armed Forces during World War II. Japanese Americans of draft age were classified as 4-C, ‘enemy aliens’, after the war broke out. They were only allowed to serve by the War Department in January of 1943 after it was announced that it planned to form an all Japanese American segregated combat team. The quota for the Hawaiian volunteers was set at 1,500 and around 10,000 applied. In comparison, the quota for Mainland Japanese Americans was 3,000 and only 1,200 volunteered. The draft status of the Nisei was restored by the War Department in January of 1944 and during the war 33,000 Japanese Americans served in the United States Army. The 442nd Regimental Combat Team became the most highly decorated unit, considering its size and length of service, in the history of the United States Army.

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345 The 100th Infantry Battalion – a Hawaiian Nisei unit that was formed in May of 1942 and was attached in June of 1944 to the 442nd Regimental Combat Team – and the 442nd R.C.T. received 18,143 individual decorations (including 9,486 Purple Hearts, 21 Congressional Medal of Honors, 52 Distinguished Service Crosses, 1 Distinguished Service Medal, 560 Silver Stars / 28 with Oak Leaf Clusters, and 4,000 Bronze Stars / 1,200 with Oak Leaf Clusters), and 7 Presidential Unit Citations. The 100th Infantry Battalion/442nd R.C.T. suffered a 28.5% casualty rate during the war. Uyeda, Due Process, 70, 72-73.
SECTION II.

THE ‘WAR EFFORT’:

THE EXCLUSION AND INCARCERATION OF JAPANESE AMERICANS
Chapter 3.
The Executive Branch:
The Roosevelt Administration and the Decision to Exclude Persons of Japanese Ancestry

The impelling military necessity had become such that any measures other than those pursued along the Pacific Coast might have been “too little and too late”.\(^{346}\)


The reaction of the Roosevelt Administration to the attack was swift, and following the recommendation of Attorney General Francis Biddle President Roosevelt signed a proclamation on the 7\(^{th}\) of December authorizing the arrest and detention of suspected enemy Japanese aliens. Based on the cabinet meeting notes of the Attorney General there were roughly 800 suspects, the Hawaiian Islands included, and under the authority of the proclamation 736 arrests were made by the following morning, Monday, December 8, 1941.\(^{347}\) It was the intention of Attorney General Biddle to draft similar proclamations for the arrest of German and Italian suspects. The Presidential Proclamations of December 7 and 8, 1941, declared all nationals of countries at war with the United States “enemy aliens”: Japanese, German, and Italian aliens.\(^{348}\) The Attorney General and the Department of Justice were entrusted to enforce the proclamations in the Continental United States. Attorney General Biddle had the authority\(^{349}\) to establish “prohibited


\(^{347}\) Francis Biddle, “Cabinet Meeting,” December 7, 1941, Selected Documents on the Pearl Harbor Attack, December 6, 1941 – December 8, 1941, FRANKLIN, FDR Presidential Library and Museum, accessed April 3, 2017, [http://www.fdrlibrary.marist.edu/_resources/images/ph/ph009.pdf](http://www.fdrlibrary.marist.edu/_resources/images/ph/ph009.pdf). Roger Daniels provides further data on the number of Japanese arrested on the night of December 7\(^{th}\) – indicating that the number of detainees was much greater – which he estimated to be about 1,500 Issei; in the end the number of individuals detained reached more than 2,000. Those arrested were mostly community leaders, elders and family heads who were officials of Japanese associations and organizations, Japanese language-school teachers, Buddhist priests, and business leaders. As a consequence of the arrests the Japanese community lost its stability at a time of immense need and vulnerability. Roger Daniels, *Asian America: Chinese and Japanese in the United States since 1850* (Seattle: University of Washington Press, 1988), 202.


zones” near essential military installations on the Pacific Coast. ‘Enemy aliens’ could be excluded from these prohibited zones or denied entry, and a list of contraband was drawn up making the possession of various items unlawful. Furthermore, the Attorney General had the jurisdiction to approve the internment of “enemy aliens” who threatened the national defense of the United States.

The Japanese enemy alien suspects were apprehended on the night of December 7th by the Federal Bureau of Investigation based on lists provided by the Office of Naval Intelligence and the Military Intelligence Service (M.I.S.). The subjects of the arrests were mostly male enemy aliens, Issei community leaders who allegedly had connections to the Japanese Government and harbored pro-Japanese sentiments. The Japanese ‘enemy aliens’ taken into custody were detained based on what Roger Daniels defined as “the principle of guilty by association”.

The individuals who were arrested were interrogated and later transferred to internment camps under the authority of the Immigration and Naturalization Service located in the State of Montana, New Mexico, North Dakota and various other locations. The following day on December 8th the Department of Justice issued further restrictive regulations in the interest of national security, thereby closing the borders with Canada and Mexico to enemy aliens and persons of Japanese descent, citizens and aliens; Daniels regards the regulation as one of the first wartime discriminatory acts against citizens and held Attorney General Francis Biddle personally responsible. During the initial phase of the apprehensions approximately 2,000 people, ‘enemy aliens’, were detained by the authorities. Already towards the end of December, 1941, Lt. General John L. DeWitt made requests for even stricter actions on the West Coast by the War

350 Japanese nationals, the Issei, were classified as ‘enemy aliens’. The Issei were unable to become American citizens as they were designated as ‘aliens ineligible for citizenship’. The J.A.C.L. advocated granting the status of ‘friendly alien’ to Issei who had sons or daughters enlisted in the United States Armed Forces. The parents whose children were fighting for their adopted nation should be eligible for a change in their status from ‘enemy alien’ to ‘friendly resident alien’. The general problem according to Mike Masaoka, the National Secretary and Field Executive of the J.A.C.L., was that the classification did not consider the individual’s loyalty: “The arbitrary term ‘enemy alien’ is one of general classification and does not necessarily reflect the individual loyalties and attitudes of the persons in question.” A further proposal by the J.A.C.L. was to allow the young Issei to serve in the United States Army in order to show their loyalty and gain citizenship by means of military service. The League brought up the case of the Issei veterans who served during World War I and gained American citizenship in 1935. Mike M. Masaoka to Mr. Lewis, May 22, 1944, Box 1, Folder Reports – Mike Masaoka 1941, 1944, Series 1, JACL History Collection, Japanese American National Library, San Francisco.

351 Daniels, Asian America, 202.

352 Daniels, Asian America, 205.

353 DeWitt, Final Report, 3.
and Justice Department. The later Military Commander was seeking the authority to enforce the Presidential Proclamations concerning the restrictions on contraband items and the establishment of prohibited zones. In the *Final Report* it is stated that “[t]he Commanding General had become convinced that the military security of the coast” 354 required these measures.” 355

Curtis B. Munson played a key role in investigating the loyalty of the Japanese population, a further individual was Lt. Commander Kenneth D. Ringle from the Office of Naval Intelligence. Mr. Munson in October of 1941 declared that “‘the Japs here are in more danger from us than we are from them.’” 356 In February of 1942 he went a bit further and in fact compared the treatment of the Japanese to that of the Jews by Nazi Germany, “‘we are drifting into a treatment of the Japanese corresponding to Hitler’s treatment of the Jews.’” 357 Curtis Munson’s view was shared by Justice Frank Murphy who stated in his concurring Hirabayashi opinion, that the treatment of the Japanese resembled the plight of the Jewish people in Germany. 358 The harsh remark by Mr. Munson is more meaningful in light of his report on the Japanese question on the West Coast and Honolulu, Hawaii. The *Munson Report* 359 was sent to John Franklin Carter who forwarded the report along with his one page summary to President Franklin D. Roosevelt on November 7, 1941, a month prior to the attack on Pearl Harbor; the document was then sent by the President to the Secretary of War Henry L. Stimson. The Roosevelt Administration thus was informed on the predominantly loyal nature of the Japanese Americans, and their alien parents. The authorities were briefed on the conceivably dangerous elements of the community who were listed, monitored, and in due course apprehended following Pearl Harbor. The intelligence authorities were prepared and immediate action was taken in the interest of national security.

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354 Lt. General DeWitt’s military security argument was based on intercepted supposedly unauthorized radio communications – “hostile shore-to-ship” communication –, which he believed were corroborated by the frequent submarine attacks on ships leaving the West Coast in the weeks ensuing Pearl Harbor. These statements were later proved to be false by the Federal Communications Commission, addressed in a later section of the chapter on government misconduct. DeWitt, *Final Report*, 4.
356 Daniels, *Asian America*, 212.
357 Daniels, *Asian America*, 212.
359 The *Munson Report*, and the work of Curtis B. Munson and Lt. Commander Kenneth D. Ringle are analyzed in depth in *The ‘Exemplary Citizens’ Chapter*. 

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Nevertheless, persons of Japanese lineage were excluded from the Pacific Coast on a collective basis, suggesting that more factors played a role in their selective treatment than merely the racial characteristics of the Japanese residents, or their racial affiliation to the Empire of Japan. The present chapter will examine the role of the War Department in drafting Executive Order No. 9066, which authorized the Secretary of War and the appointed Military Commander to designate military areas and to exclude persons of Japanese ancestry in the name of military necessity. Furthermore, the chapter will introduce the interdepartmental conflict between the War and Justice Department over the factual inaccuracies of Lt. General John L. DeWitt’s *Final Report* on the necessity to collectively remove the Japanese community from the military zones established within the Western Defense Command. The misstatements and misleading ‘facts’ of the report will be analyzed in-depth in order to examine the Japanese ‘problem’, the issue of racial prejudice, and the suppression of evidence with regards to the pending Japanese American cases. Most notably the *Korematsu* case, which challenged the constitutionality of the exclusion orders. The termination of the ‘evacuation’ program and the role of partisan politics will also be addressed as a key factor, the political pressure and the continued opposition to the resettlement of the Japanese and the revocation of the exclusion order. The exclusion orders were only revoked on December 17, 1944, after President Franklin D. Roosevelt was re-elected for a fourth term.

3.1. **Scapegoating: War Hysteria, the Media, and Public Opinion**

The shock and hysteria created by the attack of December 7, 1941, served as a pretext to target the Japanese population living in the United States. The Japanese residents have long been living in the shadows of the aggression committed by the Empire of Japan in the Pacific. It was not a surprise that already in 1936 President Franklin D. Roosevelt suggested to the Chief of Naval Operations – memo of August 10, 1936, discussed previously – to list Japanese citizens and non-citizens who met the Japanese ships and personnel on the Island of Oahu, as the lists could be used in case of a crisis to detain those individuals in “concentration camps”. It was a proposal to use the Japanese as scapegoats, identifying the local Japanese with the crimes committed by Japan. There were other manifestations of scapegoating and war hysteria that targeted the Japanese populace. Another prominent figure that could be mentioned was General Douglas MacArthur who called for the “reciprocal retaliatory” treatment of Japanese nationals.
living in the United States. The proposal was made in a radiogram sent from Fort Mills, the Philippines, to the Adjutant General on February 1, 1942.\textsuperscript{360} The radiogram was sent at a time when the United States Army and the Imperial Japanese Army and Navy were waging the Battle of Bataan (January 7 – April 9, 1942). General MacArthur wanted the State Department to take appropriate actions through diplomatic channels to ease the conditions endured by the Americans and the British in the occupied areas of the Philippines. The treatment in the radiogram was described as harsh and rigid, dictated by abuse and humiliation in order to disgrace the white race.\textsuperscript{361} The General wanted to use the Japanese aliens as the means to achieve this goal, referring to the restriction imposed on them as negligible and recommended the use of “retaliatory measures”. The harsh treatment imposed on the Americans and their Allies was seen as a plan to “[...] discredit the white races”, since the Filipinos received moderate treatment.\textsuperscript{362}

General Douglas MacArthur on the reciprocal treatment of Japanese nationals:\textsuperscript{363}

I earnestly recommend that steps be taken through the State Dept to have these conditions alleviated STOP The negligible restrictions apparently applied in the United States to the many thousands of Japanese nationals there can easily serve as the lever under the threat of reciprocal retaliatory measures to force decent treatment for these interned men and women STOP The only language the Japanese understand is force and it should be applied mercilessly to his nationals if necessary STOP

The feeling of retribution and patriotic fervor to serve in the U.S. Military was a manifestation of the frustration over the shock of Pearl Harbor and how U.S.-Japan relations had deteriorated leading to the outbreak of war against a former foreign relations partner. The public felt an overwhelming need to defend America, which was also reflected in the media as the press turned against the Japanese inhabitants on the Pacific Coast. The media began to print

\begin{flushleft}{\footnotesize 360}Douglas MacArthur to the Adjutant General, February 1, 1942, MichiWeglyn.com, accessed September 27, 2017, http://www.michiweglyn.com/years-of-infamy-2/michis-research.\end{flushleft}

\begin{flushleft}{\footnotesize 361}Douglas MacArthur to the Adjutant General, February 1, 1942.\end{flushleft}

\begin{flushleft}{\footnotesize 362}Douglas MacArthur to the Adjutant General, February 1, 1942.\end{flushleft}

\begin{flushleft}{\footnotesize 363}Douglas MacArthur to the Adjutant General, February 1, 1942. This ‘reciprocal retaliatory’ treatment of the Japanese did not materialize. Government and military officials were worried about a possible retaliation by the Empire of Japan. In their remarks government officials called for the humanitarian treatment of the detained Japanese due to fear of retaliation against the American prisoners of war.\end{flushleft}
sensationalized articles on the ‘enemy aliens’, the West Coast Japanese. The *Los Angeles Times* reasoned in favor of the exclusion of the Japanese population from the West Coast, writing that “the rigors of war demand proper detention of Japanese and their immediate removal from the most acute danger spots”\(^{364}\). This was a turning point considering that immediately after the attack on Pearl Harbor the West Coast newspapers assured the “jitter[y] public”, in the words of Peter Irons, of the loyalty of the Japanese Americans. The *Los Angeles Times* on December 8, 1941, informed its readers that the majority of the “‘thousands of Japanese here and in other coast cities’ […] were ‘good Americans, born and educated as such’”\(^{365}\). As time progressed and the war hysteria became more palpable the media went as far as demanding harsher treatment for the Japanese, rebuffing their rights and liberties, even those of American citizens. Walter Lipmann, a well-respected journalist of the time, strongly disapproved of the Federal Government’s inaction in implementing the mass exclusion and incarceration of persons of Japanese descent. In Mr. Lipmann’s opinion: “Nobody’s constitutional rights include the right to reside and do business on a battlefield.”\(^{366}\) Peter Irons notes that Mr. Lipmann’s argumentation is that of a judge. In light of this interpretation he might have been hinting at military necessity, which indeed was one of the central arguments by government and military officials for the forced removal and detention of the Japanese populace. Westbrook Pegler, another popular journalist, voiced his support for the military detention of the West Coast Japanese, and implied the willingness to sacrifice their constitutional rights for the common good. “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,”\(^{367}\) argued Westbrook Pegler. It is worth to note that similar arguments were made by the attorneys of the U.S. Government in the Japanese American cases over the sacrifice of civil liberties in time of war. In the *Korematsu*\(^{368}\) case the U.S. attorneys argued that the war powers of the Executive and Congress were supreme to the rights and privileges – the protections of the Bill of Rights – of American citizens in wartime.


\(^{365}\) Irons, “A Jap’s a Jap,” 348.

\(^{366}\) Irons, “A Jap’s a Jap,” 349.

\(^{367}\) Irons, “A Jap’s a Jap,” 349.

\(^{368}\) Frank J. Hennessy and A. J. Zirpoli, Brief Of Plaintiff In Opposition To Demurrer, July 8, 1942, Box 383, Fred T. Korematsu Folder 1 (1 of 2, Docket Nos 1-9), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco. See the *Fred Korematsu’s Legal Challenge* Chapter discussing the constitutionality of the exclusion and incarceration of Japanese Americans.
media campaign against the Japanese coincided with the shift in the public’s opinion and the calls for the exclusion and imprisonment of Japanese persons. These calls became more and more frequent on the floor of the House of Representatives and the Senate, with political pressure exerted by the delegates of the Pacific Coast states; discussed in The Legislative Branch Chapter. The shift in public opinion and politics was reflected by the media, however these publications also reinforced the anti-Japanese stereotypes and sentiments, as well as the national defense and military necessity justification. Public opinion turned against the Japanese community weeks after the air assault on Pearl Harbor as local politicians and elected members of Congress began to turn against their fellow citizens due to their ancestry. One notable figure is Congressman Leland Ford from Los Angeles, California, who on January 16, 1942, voiced his anti-Japanese sentiments by demanding that “all Japanese, whether citizens or not, be placed in inland concentration camps”\textsuperscript{369}.

Surveys\textsuperscript{370} conducted in California between January and March of 1942 show a clear shift in the public’s opinion in favor of the removal and detention of Japanese Americans, analyzed by Gary Y. Okihiro. During the end of January 36% of the respondents believed that Japanese Americans were “virtually all loyal” and only 38% believed that they were “virtually all disloyal”. What is significant is the great shift in anti-Japanese sentiments following President Franklin D. Roosevelt signing Executive Order No. 9066. By the end of February 77% of Californians distrusted the Japanese residents and the majority of Americans believed that the Government’s response to the situation was inadequate. In March the supporters of the ‘internment’ of Japanese persons jumped to 93% with 59% of the respondents also approving the exclusion of all Japanese Americans, both American citizens and Japanese aliens.

The call for the removal of the Japanese community was a manifestation of the growing public pressure and the political influence of the West Coast delegates\textsuperscript{371}, one of whom was Representative Ford, Chairman of the Japanese Evacuation Committee. Public opinion polls conducted by the W.R.A. also assessed the hysteria and the public’s perception of how the Japanese population should be handled, along with their views on their eventual evacuation from the West Coast. John A. Bird, Director of Information War Relocation Authority, sent Assistant

\textsuperscript{369} Irons, “A Jap’s a Jap,” 349.
\textsuperscript{371} The topic is studied at greater length in The Legislative Branch Chapter.
Secretary of War John J. McCloy on April 22, 1942, the initial results of a nation-wide survey conducted by the Office of Facts and Figures for the W.R.A.; a confidential matter as the W.R.A. did not intend to make the report public at the time.\(^{372}\) The subject of the survey was the public opinion on the exclusion of the Japanese, which began in March of 1942. Analyzing the results, just a month after the forced removal began from the West Coast designated military areas, we can see that the American public was a bit divided on the issue, but still supported the military measure.

Studying the results of the survey\(^{373}\), the responses to the eight questions included, we can see that according to public opinion Americans regarded the Germans (47%) as a greater source of threat than the Japanese (36%), while the number of those who voted for the Italians (2%) was negligible. This contradicts the War Department that considered the Germans and Italians less dangerous, two communities that received a differential case by case treatment. The German and Italian Americans and aliens were treated on an individual basis during the war, they were not collectively relocated and detained in incarceration centers. Another striking piece of data is the overwhelming support for the exclusion of Japanese aliens from the West Coast, 92% of Americans answered Yes and only 2% were against it. The difference in the case of the American citizens of Japanese descent is not that significant, but it is still immense since 59% were in favor and 25% were against their ‘evacuation’. It is noteworthy that in Question 3. the “citizens” noun was added in parenthesis after “Japanese born in the United States” to further highlight the fact that the individuals in question were in fact fellow citizens. Question 4. explored the matter of keeping the Japanese under strict guard or allowing them to move freely. The question specifically referred to the Japanese as “prisoners of war”, suggesting that being kept under guard would mean being detained behind barbed wire under military guard as prisoners. The result was demonstrative, 64% of the respondent were in support of keeping the Japanese under guard, and 29% would have allowed them to move freely. It also meant that the detention of citizens of Japanese ancestry was also approved overwhelmingly.

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\(^{373}\) John A. Bird to John J. McCloy, April 22, 1942.
Question 5. and 6. contemplated the issue of government control over the Japanese community, that is the work and wages people of Japanese descent would be allowed to have. The majority (67%) believed that the Federal Government should have the power to decide what work the ‘evacuated’ Japanese would do, the result signified the increasing importance of government control over the Japanese community. Those respondents who were in favor of the Federal Government’s decision identified various reasons behind their judgment. The motivating force was the war with Japan. 18% believed that the Japanese were not trustworthy, according to 10% the authorities otherwise would not have satisfactory control over the Japanese, 6% were motivated by the precautions required during a state of war, and 6% claimed that the United States Government had the right to use the Japanese. Those who were against government control (23%) felt that Japanese American self-determination would be more efficient (8%), the majority of the Japanese were “harmless or blameless” (6%), and it would have preferable psychological effects on them (4%). The responses for Question 6. on equal wages were equally divided, while 33% were for same wages, 26% decided on smaller wages, and 27% only supported room and board for the Japanese detainees. The results on equal wages were in a stark contrast to the matter of government control.

In addition to the previous questions the survey also addressed the composition of the Japanese community, the differences in generation and education. Based on the results of Question 7. those Americans citizens of Japanese ancestry who studied in Japan (Kibei vs Nisei generation), raised and educated in Japanese nationalism, were deemed by the public to be more dangerous (75%) than the Nisei (7%) who were educated in the United States. The respondents differentiated between the Nisei and the Issei generations in the last question of the survey, 69% believed that the Nisei were less dangerous than their alien parents. This result is fascinating when we reflect on Question 3. and the 59% who approved the removal of the Nisei from the Pacific Coast. The result contradicts the belief of the military officials from the War Department who concluded that the Nisei were more dangerous. One prominent example would be Secretary of War Henry L. Stimson based on his diary entries during these crucial initial months of the war and the ‘evacuation’ program; studied in a later sub-chapter.
3.2. The Role of the Roosevelt Administration: Military Necessity and the Exclusion

As the crisis and hysteria was mounting on the Pacific Coast the Secretary of War decided to send a representative of the War Department to investigate the West Coast situation. The representative brought back the recommendations of Lt. General John L. DeWitt, requesting a means to ‘evacuate’ all persons of Japanese descent and conceivably dangerous aliens, enemy aliens, from strategic military areas. The recommendation was forwarded in a memorandum to the Chief of Staff of the United States Army, dated February 14, 1942, and was presented to Secretary of War Henry L. Stimson on February 16. Officials of the War and Justice Department conducted a meeting and concluded that an executive order should be drafted, which would authorize the Secretary of War to designate military areas and implement military measures as required in the interest of national defense. The executive order was eventually drafted by the War Department with the Justice Department and the Attorney General concurring.

Two days prior to signing Executive Order No. 9066 President Franklin D. Roosevelt received a detailed memorandum on February 17, 1942, from Attorney General Francis Biddle detailing the West Coast situation. In his analysis he introduced the various factors that dictated the pressure to ‘evacuate’ the Japanese: agricultural “special interests” to remove the Japanese competition, the local media creating an environment of fear, with special emphasis on Walter Lippmann and Westbrook Pegler, and the West Coast Congressional delegation. Nevertheless, it was clearly stated in the memorandum that based on the most recent information from the War Department there was no evidence of an impending Japanese attack, nor did the F.B.I. report of any threat of widespread sabotage. Francis Biddle expressed his doubts on the issue of military necessity, cautioning President Roosevelt against giving too much credit to those who were “shouting FIRE” – threat of an attack and subversive activities – when there was none, such as the irresponsible journalist who were acting as “Armchair Strategists”, or the “Junior G-Men”. Mr. Biddle was concerned that this war hysteria and anti-Japanese agitation would build up to

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376 Francis Biddle to President Franklin D. Roosevelt, February 17, 1942, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 1: “Safe” and Confidential Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 6 (hereafter cited as Francis Biddle to President Franklin D. Roosevelt, February 17, 1942).
377 Francis Biddle to President Franklin D. Roosevelt, February 17, 1942.
378 Francis Biddle to President Franklin D. Roosevelt, February 17, 1942.
379 Francis Biddle to President Franklin D. Roosevelt, February 17, 1942.
race riots. Executive Order No. 9066 was a direct result of the ongoing discussions between the War and Justice Department, as exemplified by the diary entries of Secretary of War Stimson and the *Final Recommendation* and *Final Report* of Lt. General John L. DeWitt; the primary documents are studied in a later sub-section.

### 3.2.1. Executive Order No. 9066

In spite of the data gathered and reports by the intelligence agencies the time came when on February 19, 1942, President Franklin D. Roosevelt signed Executive Order No. 9066[^380]—*Authorizing The Secretary Of War To Prescribe Military Areas*—that approved the mass forced removal and incarceration of persons of Japanese ancestry due to “military necessity” and “national defense”. The United States Government implied in the Executive Order that it was in the interest of the war effort, “the successful prosecution of the war”, to protect against espionage and sabotage that might target “national-defense material, national-defense premises, and national-defense utilities”. The Secretary of War and the appointed Military Commander were authorized by the President to designate military areas[^381], to exclude any or all persons from the military zones, and to restrict the freedom of persons to enter, leave, or remain in these districts. We have to take note that at this point the subjects of the exclusion were broadly defined in the order, the Executive Order did not specifically identify persons of Japanese ancestry.

**Executive Order No. 9066, February 19, 1942:**[^382]

> NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the

[^380]: See the Appendices, Primary Documents, Document 4 for the complete text of Executive Order No. 9066.

[^381]: The designation of military areas by the Military Commander overrode the prohibited and restricted areas declared by the Attorney General in the Proclamations of December 7 and 8, 1941. DeWitt, *Final Report*, 27.

[^382]: The last part of the quotation was highlighted by the author to indicate that at the time Executive Order No. 9066 was broadly defined and did not single out persons of Japanese lineage. Exec. Order. No. 9066, 7 Fed. Reg. 1407 (February 25, 1942), accessed May 24, 2017, [https://catalog.archives.gov/id/5730250](https://catalog.archives.gov/id/5730250); DeWitt, *Final Report*, 26-27.
appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion.

The Secretary of War and the Military Commander were also ordered to provide the necessary transportation, food, clothing, medical care, shelter, and accommodations for the residents removed from the military areas. Moreover, they were permitted to enforce the restrictions, “[…] to take such other steps as he [Secretary of War] or the appropriate Military Commander may deem advisable to enforce compliance with the restrictions applicable to each Military area hereinabove authorized to be designated, […]”383 This meant the use of federal agencies, troops, and the support of state and local agencies. President Franklin D. Roosevelt instructed all Departments of the Executive and Federal Agencies to provide support for the Secretary of War and the Military Commander with the task at hand, to carry out the Executive Order. The enforcement of the military regulations was accomplished through the ratification of Public Law No. 503 by the United States Congress on March 21, 1942, at the specific request of the War Department following the approval of President Roosevelt. The Commanding General solicited legislation which would permit the enforcement of the regulations issued in compliance with Executive Order No. 9066; the topic is scrutinized at greater length in The Legislative Branch Chapter.

The following day on February 20, 1942, the Attorney General sent a letter384 to President Roosevelt with a memorandum attached explaining the powers of the Executive Order. The memorandum385 – Memorandum Re Executive Order of February 19, 1942 – gave the full particulars of the order, the broad powers it authorized for the Secretary of War and the designated Military Commander to exclude any individual from the military areas, or ‘evacuate’ groups of persons. The last sentence of the first paragraph narrowed the scope of the order, because Francis Biddle specifically mentioned the Japanese, aliens and citizens. “The order is

384 Francis Biddle to President Franklin D. Roosevelt, February 20, 1942, Box 1, Folder Documents: Francis Biddle, 1942-1944, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco.
385 Francis Biddle, Memorandum Re Executive Order of February 19, 1942, February 20, 1942, Box 1, Folder Documents: Francis Biddle, 1942-1944, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco (hereafter cited as Biddle, February 20, 1942, Memorandum Re Executive Order of February 19, 1942).
not limited to aliens but includes citizens so that it can be exercised with respect to Japanese, irrespective of their citizenship,” elaborated the Attorney General on the subjects of the exclusion orders. The military authorities had the right to control the movement of aliens and citizens alike – focusing on the Japanese populace – in time of war. The exclusion of the Japanese was not regarded as “punitive measure” by Mr. Biddle due to the war powers of the President, but was in fact interpreted as a “precautionary measure” in the interest of national defense to protect the war effort against any disruption or interference caused by the movement of various classes of persons. Francis Biddle stated in his memorandum that “[i]t 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.”

Although the Attorney General referred to unspecified classes the order did apply solely to the Japanese community on a collective basis, as indicated by a subsequent memorandum sent to President Roosevelt on German and Italian residents.

It is intriguing to further address the power of the President and the scope of Executive Order No. 9066. The purview of the Executive Order was the topic of a memorandum prepared by Attorney General Francis Biddle for President Roosevelt, dated April 17, 1943. Previously the President had instructed the Attorney General to consult with the Secretary of War on the criminal cases brought against Julia Kraus and Sylvester Andriano; conferences were held between the two departments on the issue. In the memo Mr. Biddle firmly stated that as Attorney General it is his purview to decide which cases to bring before the courts, and would not introduce criminal proceedings based on exclusion orders that he considers unconstitutional. The Attorney General explained that the Executive Order was drafted so as to authorize the exclusion of persons of Japanese lineage, it was not intended to apply to German and Italian aliens. The memorandum confirmed the differential treatment of the German and

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386 Biddle, February 20, 1942, Memorandum Re Executive Order of February 19, 1942.
387 Biddle, February 20, 1942, Memorandum Re Executive Order of February 19, 1942.
388 Francis Biddle to President Franklin D. Roosevelt, April 17, 1943, Box 1, Folder Documents: Francis Biddle, 1942-1944, Series 1, JACl Redress Collection, Japanese American National Library, San Francisco (hereafter cited as Francis Biddle to President Franklin D. Roosevelt, April 17, 1943).
389 Sylvester Andriano and Julia Kraus were accused of espionage and sabotage, subversive activities. Nonetheless, Attorney General Biddle argues in his memorandum that there was no evidence against Mr. Andriano, who had lived in San Francisco for thirty years and expressed pro-Mussolini views before the war. In the case of Mrs. Kraus, she was accused of supporting pro-German propaganda in America. Francis Biddle to President Franklin D. Roosevelt, April 17, 1943.
390 Francis Biddle to President Franklin D. Roosevelt, April 17, 1943.
Italian community. This is crucial information with regards to the wording of the order as it does not identify the Japanese as the primary subjects of the military measures, rather it refers to “any or all persons” who might be excluded and their movements restricted within the military areas. It was up to the Supreme Court to decide whether the exclusion order was unconstitutional, with the Japanese American cases already set into motion in the court system. Notwithstanding, the Attorney General did put his personal opinion about Lt. General John L. DeWitt on paper. Mr. Biddle drew President Roosevelt’s attention to the remarks made by the Commanding General: “A Jap’s a Jap.” The statement was unfortunate according to Francis Biddle, even more so with the Japanese cases to be argued before the Supreme Court. The *Yasui v. United States* and *Hirabayashi v. United States* cases were pending in the Supreme Court, with the opinion of the court delivered on June 21, 1943, in favor of the Federal Government, upholding the constitutionality of the exclusion and the curfew order. Lt. General Dewitt’s judgment was called into question, which was concerning considering his key role within the War Department’s exclusion program. The Department of Justice later became aware of the misstatements and misleading ‘facts’ that were listed in the Commanding General’s *Final Report* in support of the military necessity basis of the ‘evacuation’ program.


Within the framework of the War Department it is indispensable to discuss the role of key military officials, such as Secretary of War Henry L. Stimson and Lt. Gen. John L. DeWitt, the designated Military Commander and his *Final Report*. The present section will focus on the military necessity – examining primary documents and reports, including the *Stimson Diaries* and the *Final Report* – argumentation of the War Department, including the issue of racial prejudice.

#### 3.3.1. The Stimson Diaries and the Japanese Question

The *Stimson Diary* provides an intriguing picture on the operation of the War Department and the personal opinion of the Secretary of War during the initial phase of the exclusion of persons of Japanese descent. Secretary Henry L. Stimson was in firm support of the removal of Japanese residents from the Pacific Coast and their incarceration. It was his belief that the military situation required their collective ‘relocation’. His judgment on the military necessity is
quite evident based on his diary entries between December 19, 1941, and September 15, 1942, although he did express sympathy towards the Japanese populace. During this time he comments in his diary – keeping detailed entries on the events of the given day – on the ongoing meetings with key government and military officials, discussing how to handle the Japanese ‘problem’. It is an essential document that provides an insight into the thinking of the Secretary of War, how he was initially uninterested, but by February of 1942 approved the detention of the West Coast Japanese in the interest of national defense.

After studying the Henry L. Stimson Diaries the first entry dealing with the incarceration of the Japanese was made on December 19, 1941, and the Secretary of War did not show much interest in the subject of the cabinet meeting for that day. “[…] I had Cabinet and it was one Cabinet at its worst. For two long dreary hours I had to sit on my chair without any interest in much of anything in what was brought up and longing to be in my office where I could be doing some really useful work,” commented the Secretary, even though one of the topics was the internment of all of the aliens in Hawaii. The Army was to detain and relocate the aliens from

391 The Henry L. Stimson diary entries investigated were included in Reel 7 of the Diaries of Henry Lewis Stimson microfilm collection with the cited entries made between August 1, 1941, and October 31, 1942.
392 Henry L. Stimson, December 19, 1941, Diaries of Henry Lewis Stimson, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7, Frame 366.
393 The internment of the Hawaiian Japanese was revisited on several occasions in Secretary Stimson’s diary, starting with his entry for February 26, 1942, following his meeting with the Secretary of Navy. Mr. Knox was concerned about the significant number of Japanese residents on the Hawaiian Islands, recommending their mass relocation from the Island of Oahu to another island or islands. The Secretary of War agreed with Secretary Knox’s case for removal, noting “I think Knox is right and I am trying to press the matter.” The internment of the Hawaiian Japanese represented a legal predicament for the Administration, rather a “legal problem” in case of American citizens of Japanese ancestry according to Secretary Stimson. The issue came up during the April 7, 1942, meeting with Assistant Secretary John J. McCloy. The matter at hand was the arrest of numerous Japanese in Hawaii, citizens who were apprehended without any evidence of disloyalty, and were later transferred and detained in the United States. Both Mr. McCloy and Stimson agreed that this procedure was against the law, the Secretary of War commenting “[…] while we have a perfect right to move them away from defenses for the purpose of protecting our war effort, that does not carry with it the right to imprison them without convincing evidence.” The later part of the quotation needs to be stressed, considering that this legal argument did not influence the treatment of the West Coast Japanese who were forcefully excluded and incarcerated without due process, without charges, no evidence of subversive activity, and no trial by jury with legal representation. The issue of the Japanese ‘problems’ in Hawaii was eventually resolved during the Cabinet meeting of April 24, one which Secretary Stimson did not look forward to, but noted in his diary that it passed peacefully. From his summary of the meeting we can gather that President Roosevelt insisted on the ‘relocation’ and ‘internment’ of the Hawaiian Japanese Americans in the United States. This however brought up legal questions due to the habeas corpus proceedings initiated by the Japanese. Mr. Stimson concluded that the program had no legal basis since martial law had not been declared in the United States, unlike in the Hawaiian Islands, and those interned were transferred back to Hawaii where they could be detained, possibly on one island. The Secretary of Navy and the President were still troubled by the issue, Secretary Stimson noting on April 28 after a meeting with members of the Department of Navy, “[h]e [Secretary Knox] and the President’s first thought was that we should send them all over to the United States but, when we
Oahu to a different island. Not only did the Japanese aliens present a problem for the United States Army, but the Japanese servicemen as well, who were drafted in Hawaii. On January 30, 1942, Secretary Stimson remarked that the loyalty of the “soldiers of Japanese extraction” was questionable. The Department decided to transfer the Japanese American soldiers to other parts of the Continental United States where, according to the Secretary of War, “their loyalty would not be tempted.” The Nisei soldiers presented a threat to national defense and their transfer was an urgent matter for many officials. President Roosevelt was informed of this plan, which was already being studied by George C. Marshall, Chief of Staff of the United States Army. It seems that the racial affiliation of the Japanese American soldiers was a national security concern, as indicated by the term “Japanese extraction”, differentiating the Nisei soldiers from their fellow servicemen.

The question of the West Coast Japanese first came up in the entry of February 3, 1942, when Secretary Stimson had a conference with General Allen W. Gullion, the Provost Marshal General of the United States Army. The subject of the meeting was the difficulty of handling the Japanese on the Pacific Coast, there being approximately 100,000 residents, majority of whom were the second generation Nisei possessing American citizenship. The Army had an uncommon perspective on the Japanese situation, because according to the entry the Nisei generation was considered to be more dangerous than the Issei due to their less faithful character. This is a contrary opinion to the findings of Curtis B. Munson and Kenneth D. Ringle, both of whom had stated in their reports that the majority of the Issei and Nisei generations were loyal to

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394 Henry L. Stimson, January 30, 1942, Diaries of Henry Lewis Stimson, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7, Frame 487.

America. By the beginning of February Lt. General John L. Dewitt was calling for the exclusion and incarceration of the Japanese community, which is noted in the diary entry. “General DeWitt, the commander of the west coast, is very anxious about the situation and has been clamoring for the evacuation of the Japanese of the area surrounding the intensely important area at San Diego, Los Angeles, San Francisco, and Puget Sound, […]”, commented Secretary Stimson. These areas were vital according to the Military Commander as a consequence of the nearby airplane factories and naval shipyards.

The Secretary of War elaborated on the means and purpose of the ‘evacuation’, sharing his thoughts on the problem in his February 3 entry. The grounds for the ‘evacuation’ could not be based on removing ‘enemy aliens’ alone, since it would mean that American citizens of Japanese descent, the Nisei, would be allowed to remain. Furthermore, in case of collective removal the ‘evacuation’ has to be based on military necessity so as to avoid discrimination amongst citizens based on racial origin. The Japanese ‘problem’ was revisited on February 10 when the Secretary Stimson had a meeting with John J. McCloy, Assistant Secretary of War. The removal of the Nisei, the “citizen Japanese”, was causing problems for the Department of War because it could only be done under supervised collective ‘evacuation’, or on the cause of their racial character. “The second generation Japanese 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,” elaborated Secretary Stimson on the scope of the ‘evacuation’. The program that was outlined by Mr. Stimson was later realized by Lt. General DeWitt, with Japanese spies being accused of communicating with enemy submarines stationed off the coast, assisting in the regular attacks on almost every American vessel leaving port. These misleading statements were shared with the Secretary of War to support the military necessity calls for immediate action. Stimson, February 3, 1942, Diaries of Henry Lewis Stimson.

Stimson, February 3, 1942, Diaries of Henry Lewis Stimson.

The Secretary of War believed that in case of Japanese naval dominance in the Pacific they would endeavor to invade the West Coast, which would present a dangerous military situation. In a reflection on the military difficulties, Secretary Stimson writes the following: “The people of the United States have made an enormous mistake in underestimating the Japanese. They are now beginning to learn their mistake.” In his diary entry he recalls his meeting with Homer Lea when he was the Secretary of War during the presidency of William Howard Taft. Mr. Lea was an author who wrote a book titled The Valor of Ignorance, a work on the Japanese peril, menace to the security of America. It is mentioned that at the time the book was published it seemed “fantastic”, but now he remarked that it was conceivable, almost prophetic. Henry L. Stimson, February 10, 1942, Diaries of Henry Lewis Stimson, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7, Frame 512 (hereafter cited as Stimson, February 10, 1942, Diaries of Henry Lewis Stimson).

Stimson, February 10, 1942, Diaries of Henry Lewis Stimson.
persons being collectively excluded from the West Coast based on their racial ties to the Empire of Japan, racial prejudice and anti-Japanese sentiments under the guise of military necessity, and on the premise that the Japanese could not be trusted due to their racial ties to the enemy. The Secretary believed that this would raise legal questions, writing in his diary that “I am afraid it will make a tremendous hole in our constitutional system to apply it.” He foreshadowed the Japanese American Supreme Court cases that challenged the military measures.

Eventually Lt. General John L. Dewitt, the Commanding General, made the request to ‘relocate’ around 120,000 Japanese, aliens and American citizens, from the Pacific Coast, something that Secretary Stimson called a “drastic step”. The request was discussed on February 11 during a meeting with Assistant Secretary McCloy and General Clark, with the Secretary of War directing them to initially concentrate on the most strategic areas since this was an enormous task. Secretary Stimson informed President Roosevelt of Lt. General DeWitt’s proposition through a telephone conversation. The President gave the go-ahead, instructing Secretary Stimson to act according to the best of his knowledge. The conversation was described as the following in the Stimson diary: “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.” It seems that President Roosevelt was actively in support of the exclusion and incarceration of the Japanese, giving the Secretary of War a blank check, the freedom to act in the interest of national security.

Just two days prior to President Roosevelt signing Executive Order No. 9066 there was an essential conference on February 17, 1942. The meeting was attended by key military personnel:

400 Secretary Stimson expressed similar anti-Japanese conviction when he recounted in his diary how he directed Lt. General John L. DeWitt on February 24, 1942, to confine and report the names and details of the Japanese Reserve Officers who were detained on the West Coast, according to the press. This seems to imply a form of retribution considering that it was ordered following the telegram sent by General MacArthur informing the War Department that the Japanese Commander had captured 36 Filipino Reserve Officers—who had civilian status—and had the prisoners executed in a cemetery in Manila. The Secretary of War was furious and sent the telegram to the White House, but received only a memorandum advising that a formal statement should be made in response to the incident. This was not satisfactory for Secretary Stimson, therefore he order the Military Commander to detain the Japanese officers who had been previously apprehended together with the Japanese residents. Henry L. Stimson, February 24, 1942, Diaries of Henry Lewis Stimson, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7, Frame 565-566.

401 Stimson, February 10, 1942, Diaries of Henry Lewis Stimson.


403 Stimson, February 11, 1942, Diaries of Henry Lewis Stimson, Frame 515.
Colonel Karl R. Bendetsen, Assistant Secretary John J. McCloy, General Allen W. Gullion, Provost Marshal General, and General Clark. During that Tuesday afternoon the key officials attending the discussion worked out the outline of the order which the President would later on sign to authorize the forced removal and detention of Japanese aliens and American citizens of Japanese parentage; it was drafted later during the evening by General Gullion.\(^404\) The proposed plan was an immense task, but as claimed by the Secretary of War it would allow the War Department to take immediate action. According to Secretary Stimson, “[i]t 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.”\(^405\)

The following day on February 18, 1942, the officials of the Department of Justice and War held a joint conference at 11:15 to discuss the West Coast situation.\(^406\) The Justice Department was represented by Attorney General Francis Biddle, Assistant Attorney General James H. Rowe, Edward J. Ennis, the Director of the Alien Enemy Control Unit during the war, and Tom C. Clark the Civilian Coordinator of the Alien Enemy Control Program. The Department of War was represented by Assistant Secretary of War McCloy, General Gullion, and Colonel Bendetsen. During the previous evening the Attorney General Biddle, Assistant Secretary of War McCloy, and General Gullion had worked out the issues between the two Departments and thereafter the Attorney General drafted a presidential executive order incorporating the results of the conferences of February 17 and 18. The draft was approved by Secretary Stimson after a few suggestions, noting in his diary, “[t]his 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

\(^{404}\) Henry L. Stimson, February 17, 1942, *Diaries of Henry Lewis Stimson*, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7, Frame 547 (hereafter cited as Stimson, February 17, 1942, *Diaries of Henry Lewis Stimson*).

\(^{405}\) There seemed to be a developing conflict with the Department of Justice over the defense of the West Coast, with Secretary Stimson commenting that the attitude of the D.O.J. did not help, including some of the other agencies which were not specifically mentioned. The Secretary of War did however highlight that President Roosevelt was supportive of the effort of the War Department. Stimson, February 17, 1942, *Diaries of Henry Lewis Stimson*, Frame 545, 547.

actions which will be taken under it.”407 The Secretary of War anticipated opposition to the actions to be taken by the Army and he was right. Nonetheless, the next day President Roosevelt signed the infamous Executive Order marking the beginning of the removal and incarceration of a community based solely on the origin of its race.

The day after the Executive Order was signed the Secretary of War had a conference with Assistant Secretary McCloy and Colonel Bendetsen, the officials discussed the President’s order and drafted the necessary instructions for the Lt. General to carry it out.408 During the evening the official copy was delivered by Colonel Bendetsen to Secretary Stimson who signed the instructions, which were sent out to the Military Commander the very same night. The issue of the West Coast “mass evacuation” was brought up again in detail during the Cabinet meeting of May 15, a Friday afternoon. In the opinion of Secretary Stimson the President was pleased with his report and the situation. This is an important comment, because it is noted in the diary that there were conflicts between the Justice and War Department, more specifically the troubles caused by the Attorney General over the authorization provided by Executive Order No. 9066. “I think I satisfied the President so that, if the Attorney General had any hopes of getting a change made in the powers which the President had given to me, he must have been disappointed,” 409 asserted the Secretary Stimson. This conflict between the War and Justice Department became more evident with the officers of the D.O.J. investigating the misstatements incorporated into the Final Report and the need to inform the Supreme Court of these misleading ‘facts’ to avoid obstruction of justice, error of facts in the Japanese American cases. During the conference the Secretary of War highlighted how Lt. General DeWitt had carefully proceeded with the ‘evacuation’ of the Japanese residents, a process that was nearly completed.

The exclusion of the Japanese was accomplished by the Autumn of 1942, discussed by Secretary Stimson and Assistant Secretary McCloy during their meeting on September 15, 1942. The Secretary of War claimed in his diary entry410 that the United States Army had done fine

408 Henry L. Stimson, February 20, 1942, Diaries of Henry Lewis Stimson, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7, Frame 554.
409 Henry L. Stimson, May 15, 1942, Diaries of Henry Lewis Stimson, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7, Frame 750.
work and received little criticism, although he expected some legal cases challenging the exclusion and incarceration. The standpoint of the War Department was that they had the power to exclude the Japanese, “[...] our position has been rather advanced in respect to the Executive’s power to evacuate even people who were citizens from danger spots.” Nevertheless, Mr. Stimson neglects to mention that those who were excluded were removed from the West Coast based on their racial affiliation, as only Japanese aliens and American citizens of Japanese ancestry were excluded collectively. This differential treatment is explained by comparing the mass and individuals ‘evacuation’ of the Japanese and German aliens. The conclusion of the War Department – according to the Secretary of War – was “common sense”, although one that is hard to justify. “The real thing is that we can get a more intelligent evidence as to the Germans than we can as to the Japanese whose language and characteristics our investigators necessarily know less about,” maintained Secretary Stimson in order to justify the discriminative treatment of the West Coast Japanese. The quotation expresses the belief in the alienness of the Japanese community, racial prejudices, because a ‘Jap’ is only a ‘Jap’, as stated by Lt. General John L. DeWitt.

3.3.2. The Final Report: Japanese ‘Evacuation’ from the West Coast

Lt. General John L. Dewitt was designated as the Military Commander by Secretary of War Stimson in a letter dated February 20, 1942, only a day after President Roosevelt signed Executive Order No. 9066. As authorized, Secretary Stimson empowered the Commanding General to “carry out the duties and responsibilities imposed by said Executive Order for that
portion of the United States embraced in the Western Defense Command, including such changes in the prohibited and restricted areas heretofore designated by the Attorney General as you deem proper to prescribe.”

Lt. General DeWitt was delegated the authority and power as the Military Commander, in accordance with Executive Order No. 9066, to determine military areas, to protect the Pacific Coast and its national defense installations against espionage and sabotage. It is noteworthy that the Secretary of War requested in his letter that the Military Commander does not agitate the Italian community, only in case of probable threat to the West Coast. “[…] I desire, so far as military requirements permit, that you do not disturb, for the time being at least, Italian aliens and persons of Italian lineage except where they are, in your judgment, undesirable or constitute a definite danger to the performance of your mission to defend the West Coast,” wrote Secretary Stimson. This was a clear preferential treatment of the Italian American community, although no definite intelligence justification was given. According to the Secretary of War’s personal opinion the Italian population was less dangerous, as opposed to other enemy aliens such as the Japanese. Considering the size of the Italian community, the troops and military infrastructure required to handle the Italians would have presented an immense burden on the United States Army. Lt. General DeWitt was advised that he might exempt Italian aliens from complying with the Attorney General’s order on prohibited military areas and from the classes of aliens excluded therefrom in the State of California. The Commanding General was authorized to request the assistance of Federal Government agencies. However, as opposed to “mass evacuation”, the Secretary of War cautioned against “unnecessary hardship and dislocation of business and industry.” The ‘evacuation’ of persons should be carried out progressively, encouraging the “voluntary exodus” and resettlement of Japanese persons, with the necessary provisions (housing, food, transportation, and medical care) provided to those who are unable to leave on their own. Secretary of War Stimson expanded the authority of the Military Commander on March 2, 1942, by delegating the Commanding General further powers. The Lt. General was given the freedom “[…] to obligate funds, to enter into contracts

and to acquire the services of any persons, firms or corporations in accomplishing the evacuation.” Defined by Lt. General DeWitt as a “full freedom of action” in his *Final Report*.

Further assistance was provided by John J. McCloy in his memorandum of February 20, 1942, which was prepared by the War Department in order to provide a blueprint on the ‘evacuation’ program. The memorandum touched upon the numerous critical points of the ‘evacuation’, such as the classification of persons, the groups to be excluded, the designation of the military areas, the restrictive measures to govern people, the removal of the Japanese persons, and the responsibilities of the Commanding General. It should be noted that originally there were five groups included in the classification of persons of interest within the limits of the Western Defense Command (W.D.C.). Naturally the classification included the Japanese aliens and American citizens of Japanese ancestry, but also German and Italian aliens, and individuals who were potentially dangerous, the category for subversives or ‘Fifth Columnists’.

Lt. General DeWitt was advised to designate military areas to such an extent within the Western Defense Command that would provide the utmost security against subversive activities in order to protect the defense installations, although keeping in mind the responsibilities of the United States Military and the available means for the removal of the selected classes. According to the War Department Classes 1, 2, and 5 should be excluded from the military zones, meaning that collectively the Japanese population should be removed, including those individuals in Class 5 who were potentially a threat to the war effort, but not the German or the Italian aliens. Restrictive military regulations were also recommended to manage the movement and activities of the classes of persons, their freedom to enter, leave, or remain in the military areas. In order to complete the ‘evacuation’ program the Commanding General was encouraged to coordinate with various Executive Departments and Federal Agencies – as provided in the Executive Order – and request assistance if needed, with the Department Heads and agencies required to comply with the requests in order to carry out the order. The planning and timeframe

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421 There were exceptions when it came to the exclusion of classes of persons. The Military Commander was given the authority to exempt the elderly – people over the age of 70 –, the infirm, and the sick from being removed. German aliens were also given special treatment, the Commanding General was instructed not to disturb them, except for national defense reasons. The Secretary of War made similar requests in regards to the Italian and German community. DeWitt, *Final Report*, 28.
of the ‘evacuation’ was essential for budgetary reasons, encouraging beforehand the “voluntary exodus” of the classes of persons and allowing enough time for their resettlement outside of the military areas, and for establishing the facilities and camps to house those individuals who are unable to resettle on their own; \(^{422}\) Secretary Stimson made similar suggestions in his letter, discussed earlier in the present section. The ‘evacuees’ had to be notified in advance in order to give them enough time to prepare and resettle, thus being less of a burden on the Army:

“Representatives of the Departments of Justice and Agriculture advise that in those instances where it is consistent with the safety to afford evacuees reasonable advance notice that they will be able greatly to decrease the numbers of evacuees to be cared for by the Army, and thereby greatly decrease the drain on our military resources; […]”\(^{423}\) The ‘evacuees’ could only be transported after the camps had been completed and were ready to receive them.

The Assistant Secretary of War’s memorandum outlined in great extent and detail the responsibilities of the Commanding General and the United States Army. “Yours will be the military responsibility for processing, evacuation, supplying, rationing and transportation to the points of shelter,”\(^{424}\) specified John J. McCloy. Furthermore, the Army had the authority to provide accommodations, food, and medical care to those who had been detained. It was the duty of Lt. General DeWitt to cause as little hardship to those affected by the ‘evacuation’ program, not neglecting the disruption of businesses and industries along the Pacific Coast. In his \textit{Final Recommendation} the Commanding General introduced a program which greatly relied on the previously studied memorandums and guidelines.

Lt. General John L. DeWitt executed the “mass evacuation” of persons of Japanese lineage according to the recommendations and guidelines of the War Department with Civilian Exclusion Order No. 1\(^{425}\) issued on March 24, 1942, to remove Japanese families from Bainbridge Island, Washington, which was located in Military Area No. 1. The first temporary detention camp\(^{426}\) was opened at Santa Anita, California, on March 27 and the number of detainees was 18,719, it was closed on October 27. Manzanar Incarceration Camp, California, was the first permanent detention camp to open its gates on March 21 and held 11,062 detainees.

\(^{425}\) See the Appendices, Primary Documents, Document 5 for the complete text of Civilian Exclusion Order No. 1.  
\(^{426}\) See the Appendices, Tables, Table 10 for the Temporary Detention Camps and Table 11 for the Permanent Detention Camps with the dates of operation, and the peak and total number of detainees.
in total during its operation, the camp was closed on November 21, 1945. The process of the exclusion and incarceration of the West Coast Japanese residents is discussed in detail in The Legislative Branch Chapter.

The Final Report\textsuperscript{427} was prepared by Lieutenant General John L. DeWitt and it was published in 1943 by the United States Government. The publication of the report was a source of conflict between the Department of War and Justice as it was published without the latter’s knowledge or consent; the topic is examined in a later subchapter on government misconduct. The report was transmitted by Lt. General DeWitt to General George C. Marshall\textsuperscript{428} on June 5, 1943. In the letter of transmittal\textsuperscript{429} the Military Commander summarized the findings of the report – including the circumstances and reasons for the ‘evacuation’ of the West Coast Japanese –, and its structure and contents. The key factor behind the ‘relocation’ and continued exclusion of the Japanese residents was determined to be “military necessity” following the unprovoked attack on Pearl Harbor. “The security of the Pacific Coast continues to require the exclusion of Japanese form the area now prohibited to them and will so continue as long as that military necessity exists,”\textsuperscript{430} specified Lt. General Dewitt the standpoint of the Western Defense Command in the second point of the letter. He further elaborated on the importance of the defense of the West Coast by listing\textsuperscript{431} the various ways the presence of the Japanese threatened national defense. According to General DeWitt the surprise attack on Pearl Harbor immobilizing the Pacific Fleet of the United States Navy thereby providing an opportunity for the enemy to

\begin{footnotes}
\item[427] The Final Report consists of nine parts, and twenty-eight chapters. The present section focuses on Part I Evacuation – Its Military Necessity, which deals with the initial advancement of the ‘evacuation’ program and its military necessity, and the establishment of military control with Executive Order No. 9066. During the exclusion the Western Defense Command accumulated a great volume of primary sources which were bound together. Three volumes were prepared, one set kept at the Headquarters of the Western Defense Command, one dispatched to the Adjutant General, War Department, and one for the Library of Congress. DeWitt, Final Report, viii, x.
\item[429] DeWitt, Final Report, vii.
\item[430] DeWitt, Final Report, vii.
\item[431] The Japanese organizations were featured prominently on the list, emphasizing that there were hundreds of such organizations in the State of California, Oregon, Washington, and Arizona, and they were active in supporting the objectives of the Japanese Government. This support would manifest itself in such forms as attending Emperor worshipping ceremonies and financial aid, millions of dollars in contribution to the “Japanese imperial war chest”. From a social perspective the report called attention to the Kibei generation, Japanese Americans who were born and raised in the United States, but were educated for a length of time in Japan. The Kibei, estimated to be in the thousands, were portrayed as American citizens of Japanese ancestry who were “pro-Japanese” because they were indoctrinated in Japanese nationalism. DeWitt, Final Report, vii.
\end{footnotes}
attack or invade the Pacific Coast, a coastline that had a concentration of approximately 115,000 Japanese inhabitants near locations that were vital for the military industry and the war effort.\footnote{DeWitt, \textit{Final Report}, vii.}

In the \textit{Forward}\footnote{DeWitt, \textit{Final Report}, v.} section of the \textit{Final Report} Secretary of War Stimson reiterates the “military necessity” notion, while introducing the report as a comprehensive account on the exclusion of the West Coast Japanese. The Secretary of War officially commended the work of Lt. General DeWitt and the U.S. Army for the way they managed the enterprise, using such terms as “humane” and “efficient” to describe the ‘evacuation’ of the Japanese. According to Secretary Stimson it was an unfortunate event that persons of Japanese ancestry were treated collectively, despite of their individual loyalty, but it was dictated by the military situation. In relation to the differential treatment of the Japanese we can identify an often repeated justification, or rather excuse. In the defense of the ‘evacuation’ Secretary Stimson stresses the need to restrict the liberties of the few in the interest of national defense and the nation, writing that “[…] where the safety of the Nation is involved, consideration of the rights of individuals must be subordinated to the common security.”\footnote{DeWitt, \textit{Final Report}, v.} It is a reoccurring argument that the liberties of the few, the Japanese minority, are secondary to that of the majority of Americans, and national security. Apart from the military necessity argument the report does place great emphasis on the position that racially the Japanese, due to their racial ties and affiliation, were predisposed to be un-American, alien, and possibly disloyal. Such arguments were also made by members of Congress in the House of Representatives and the Senate attacking the racial ancestry and character of the Japanese.

Lt. Gen. John L. DeWitt on racial affiliation as a source of military threat:\footnote{The assessment of the Military Commander is highly questionable, if not controversial, considering that the War Department was informed on the loyalty of the West Coast and Hawaiian Japanese by the Munson reports, not forgetting that the Office of Naval Intelligence also possessed the \textit{Ringle Report}. Furthermore, the last line of the quotation stressed the lack of time and means to identify individual loyalty as a factors in the decision to ‘evacuate’ the Japanese; emphasis added by the author. This will be of significance in a later section on government misconduct. DeWitt, \textit{Final Report}, vii.}

The continued presence of a large, unassimilated, tightly knit racial group, bound to an enemy nation by strong ties of race, culture, custom and religion along a frontier vulnerable to attack constituted a menace which had to be dealt with. Their loyalties were unknown and time was of the essence.

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\textit{\textsuperscript{435}DeWitt, \textit{Final Report}, vii.}
\end{flushright}
The Military Commander was in support of the mass exclusion of the Japanese and recommended this means of military measure to the War Department as early as February 14, 1942.\textsuperscript{436} The defense of the Pacific Coast was paramount, therefore the ‘evacuation’ was a necessity in order to counter Japanese subversive activities. Executive Order No. 9066 provided the authorization to the Secretary of War and the designated Military Commander to carry out the defense measures. The military authorities completed the exclusion of 110,442 persons of Japanese descent within 90 “operating days”.\textsuperscript{437} General DeWitt defined this procedure as a mandatory “mass migration”, which was supervised by the military without any significant incident. The Japanese were commended for their cooperation, “[t]o the Japanese themselves great credit is due for the manner in which they, under Army supervision and direction, responded to and complied with the orders of exclusion,” noted the General.

The need for military control and ‘mass evacuation’ is discussed in Chapter II of the \textit{Final Report} and Lt. General DeWitt presents his arguments in great detail. Nonetheless, his military necessity argumentation relies heavily on the question of race, and does not provide tangible evidence of subversive activities committed by the Japanese population; the report does not include data on Japanese persons being charged with and found guilty of espionage or sabotage. In his report Lt. General DeWitt cites numerous reasons for the ‘mass evacuation’ of the Japanese residents from their communities located along the West Coast. The spot raids had been effective in finding thousands of rounds of ammunition, and weapons, although as we know it is not illegal in the United States to own firearms. The \textit{Final Report} also mentions illegal communications\textsuperscript{438}, including reports of intercepted radio transmissions, the use of signal lights, and shore-to-ship signaling along the coast. However, the report does not elaborate any further on the illegal communications – the number of cases, their frequency, or arrests made by the authorities –, and fails to state if these accounts were proven to be valid. These allegations were later disproven in D.O.J. communications with the Federal Communications Commission and the F.B.I., to be analyzed in a later subsection. Even so, Lt. General DeWitt seems to suggest in an attached footnote\textsuperscript{439} that following the collective removal of the Japanese the number of

\textsuperscript{436} DeWitt, \textit{Final Report}, vii.  
\textsuperscript{437} DeWitt, \textit{Final Report}, viii.  
\textsuperscript{438} DeWitt, \textit{Final Report}, 8.  
\textsuperscript{439} DeWitt, \textit{Final Report}, 8.
intercepted transmissions and shore-to-ship signals and the attacks on American vessels departing from Pacific Coast harbors seemed to have decreased. These initial factors were widely published in the media, the frequent subjects of sensationalized articles and reports since Pearl Harbor. The Commanding General noted that the illegal radio transmissions and shore-to-ship signaling, the contraband articles found during the spot raids, the submarine attacks on coastal shipping, and the Japanese victories in the Pacific Theatre had created mass war hysteria. The ‘evacuation’ of the Japanese was in the interest of their own safety and well-being according to Lt. General DeWitt, suggesting that the turn of events “[…] had so aroused the public along the West Coast against the Japanese that it was ready to take matters into its own hands.”

The Lt. General was influenced by the events of Pearl Harbor and by the rare direct attacks on the Continental United States inflicted by the Imperial Japanese Navy. The West Coast strategic installations were targeted in three separate incidents in 1942: the shelling of Goleta near Santa Barbara, California; the incendiary bombing of Mount Emily near Brookings; and the shelling of the coastal batteries near Astoria in Oregon. The incidents were still fresh in the memory of the American public and generated war hysteria and sensationalized articles, and the belief that the invasion of the West Coast was a possibility. Furthermore, they seemed to support the opinion that the enemy forces were provided information on the defense installations by means of illegal communications by the Japanese residents. The Ellwood Oil Field at Goleta, near Santa Barbara, was attacked on February 23, 1942, by a Japanese submarine. On September 9, 1942, an enemy airplane launched off the coast from a submarine dropped incendiary bombs at Mount Emily, near Brookings, with the objective of starting a forest fire. The third attack targeted the coastal battery guns near Astoria, Oregon, which were shelled by an enemy submarine on June 21, 1942. Although the Japanese attacks along the Pacific Coast did not cause

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441 DeWitt, Final Report, 18.
442 J. Edgar Hoover prepared a memorandum for Attorney General Francis Biddle on February 7, 1944, in which he informed the Attorney General that the F.B.I. found no evidence to suggest that illicit radio transmission or shore-to-ship signaling was used to aid the enemy in the coastal attacks. The oil refinery near Santa Barbara was attacked at 7:10 p.m., February 23, 1942, by an unidentified enemy submarine. The incendiary bombing at Mount Emily was carried out by an enemy plane that took off from a submarine off Cape Blanco, it was observed at 6:00 a.m., September 9, 1942, and dropped a 132 pound bomb to start a forest fire. Fort Stevens was shelled between 11:30 and 11:45 p.m. on June 21, 1942, by an enemy submarine. The vessel was 6,000 yards at sea when it fired nine shots while moving North. There was no return fire from Fort Stevens. J. Edgar Hoover to Francis Biddle, February 7, 1944, Box 383, Fred T. Korematsu Folder 2 (4 of 7, Docket Nos 39), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco.
significant damage they did influence the decision to exclude the Japanese as it reinforced the opinion that their presence presented a national security threat. This belief was based on the disaster of Pearl Harbor, meaning that the attack might have influenced the decision of Lt. General DeWitt in light of Admiral Husband E. Kimmel’s and Lt. General Walter C. Short’s relieve from command, the calls for their court martial, and the fear of being a scapegoat in case of an attack. The issue of dereliction of duty must have certainly been on the mind of the Commanding General after Japanese naval operations along the coast. The F.B.I. had no evidence to support the theory that unauthorized Japanese activities contributed, or played a part in the three incidents mentioned earlier. Attorney General Biddle was informed of this by Director Hoover on February 7, 1944.

The central focus of Chapter II is on the racial and cultural ties of the Japanese community to the Empire of Japan, and on the distribution of the Japanese population along the Pacific Coast. Lt. General DeWitt spends considerable effort on depicting the Japanese residents as a national security risk due to their racial affiliation with the enemy, implying that the Japanese are a ‘Fifth Column’ community who would turn against America. The Japanese community is introduced as a “tightly-knit racial group” with its members sharing common culture, traditions, and language. With approximately 120,000 Japanese persons living on the West Coast – the Japanese population of the Pacific (112,353) and Mountain (8,574) division of the region – they represented a substantial segment of the local population in particular areas of the Western Theatre of Operation. Their location gave ground for conspiracy theories amongst military and government officials, some going as far as questioning the loyalty of the Japanese. Lt. General DeWitt states in the report that while some Japanese were loyal to America, many of them held allegiance to Japan. Their place of residents could have been by coincidence, or it was the result of a deliberate and well planned action. The location of the Japanese inhabitants constituted a threat to the strategic installations that were crucial for the war effort and could be ideal targets of subversive activities. “Whether by design or accident, virtually always their communities were adjacent to very vital shore installations, war plants, etc. […] To complicate

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444 Population by Race, for the United States, by Division and States, 1940, Table 2 on Racial Composition of the Population for the United States, by States, 1940, on November 20, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 7: 9017. See the Appendices, Tables, Table 9 for the Japanese population of the United States in 1940 by region, division, and states.
the situation no ready means existed for determining the loyal and the disloyal with any degree of safety. It was necessary to face the realities – a positive determination could not have been made,” reasoned the Commanding General in his Final Report. The report neglects to refer to the case of the Hawaiian Japanese where internment was based on an individual basis, determining the loyalty of the Japanese persons following hearings, and even providing the opportunity to appeal the verdict of the committee. Moreover, the loyalty of the West Coast Japanese was evaluated with the ‘Loyalty Questionnaire’ in 1943, although by that time the community was placed behind barbed wire in incarceration camps.

Just like their loyalty the character of the Japanese was also an issue in the opinion of the Military Commander due to the supposed pro-Japanese sentiments and activities of the Japanese American community. These pro-Japanese activities included membership in Japanese associations, donations for the Japanese war effort, participating in Emperor worship ceremonies, attending Japanese language schools, and going back to Japan to attend school. There were more than 124 Japanese organizations on the West Coast, with 310 local branches. These associations were accused of promoting pro-Japanese attitudes, nationalistic and/or militaristic ideologies, including encouraging war donations. The Final Report highlighted two

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445 The Final Report lists examples to support the argument that the distribution of the Japanese population was not a coincidence. One of the examples is Santa Maria Valley, the cities of Santa Maria and Guadalupe, where the Japanese inhabitants were located near strategic installations: air field, bridge, telephone and power lines, and oil fields. In the nearby Santa Ynez Valley there were no Japanese, even though it was agriculturally productive, but according to Lt. General DeWitt there were no strategic installations. A further example is Santa Barbara County where the Japanese lived in the proximity of such vital installations as the El Capitan Oil Field, Summerland Oil Field, Elwood Oil Field, the Santa Barbara airport, the Santa Barbara lighthouse and harbor. In the northern part of the county along a 15 to 20 mile long part of the coastline there were mostly Japanese residents, a beach that could be suitable for landing enemy forces according to the report. Based on these examples the Commanding General concluded in the Final Report that their distribution was more than a simple coincidence and it could serve subversive purposes, “[...] it was certainly evident that the Japanese population of the Pacific Coast was, as a whole, ideally situated with reference to points of strategic importance, to carry into execution a tremendous program of sabotage on a mass scale should any considerable number of them have been inclined to do so.” DeWitt, Final Report, 9-10.

446 Emperor worship ceremonies were deemed to be an expression of patriotism and support for the Japanese Greater East Asia Co-Prosperity Sphere program of the Empire of Japan, a conclusion by the War Department based on the Japanese language newspapers that published articles on how these ceremonies were intended to encourage pro-Japanese sentiments. One example is the ceremony held by the Japanese Association of Sacramento on February 11, 1940, to commemorate the 2,600th anniversary of the foundation of Japan. Three thousand people attended the ceremony. DeWitt, Final Report, 11.

447 A newspaper article from July 6, 1941, published that the Central California Japanese Association alone collected $3,542.05 in donations to contribute to the war funds of the War Ministry. There is no further data provided on the number or total sum of donations, but considering the number of Japanese associations and organizations it would be a significant amount. DeWitt, Final Report, 10.
of the Japanese associations\textsuperscript{448} for their nationalistic and militaristic program: The Hokubei Butoku Kai (the Military Virtue Society of North America) was established in 1931, and the Heimusha Kai was founded on October 24, 1937. The intelligence agencies – the F.B.I., M.I.S., O.N.I. – regarded these associations as organizations engaged in espionage, with militaristic members who were eligible for service. Contrary to this assessment, many of the pro-Japanese societies were abandoned by 1940 as relations between Japan and the United States deteriorated. Many Issei felt that they should remain neutral, while others celebrated the Nisei who were drafted into the United States Army.\textsuperscript{449}

The Japanese language schools were also a major source of concern for Lt. General DeWitt, arguing that the schools hindered the assimilation of the Nisei children, it was an “obstacle in the path of Americanization”.\textsuperscript{450} The curriculum and the education in the language schools relied on textbooks that were published by the Department of Education, the Japanese Imperial Government. The Japanese language schools and the Zaibei Ikuei Kai (Society of Educating the Second Generation in America) were construed by the War Department as means by which the Japanese Government intended to Japanize the second generation of Japanese Americans. The Zaibei Ikuei Kai, established in April of 1940 in Los Angeles, declared that it was organized “[…] to Japanize the second and third generations in this country for the accomplishment of establishing a greater Asia in the future.”\textsuperscript{451} When the war broke out there were 248 schools with a faculty of 454 educators and 17,800 students in the State of California.

\textsuperscript{448} The Final Report included a list of the most prominent Japanese associations: the Togo Kai, Kanjo Kai (Society for Defending the Country by Swords, or the Sword Society), the Nipponjin Kai (Japanese Association of America), Kaigun Kyokai (Navy Association), Aikoku Fujin Kai (Patriotic Women’s Society), Jugo Sekisei Kai (Behind the Gun Society or Red Heart Society), Hokoku Kai (Society for Service to the Country), Aikokuki Kenno Kisei Domei (Patriotic League for Contribution to the Airplane Fund), Jugo Kai (Behind the Gun Society), Ko-A-Sokushin Kai (Society for the Promotion of Asiatic Co-Prosperity), Kokuryu Kai (Black Dragon Society), Kibei Shimin Kai (Kibei Society), Hokyoku Kai (Rising Sun Society), Zaibei Nipponjin Kai (Japanese Association of America), Zaibei Nipponjin Kai Renraku Nikkai Kinji Kai (United Councilor’s Convention for Japanese Associations in North America), Nanka Teikoku Gunjin Dan (Japanese Imperial Army Men’s Corps of Southern California), Jugo Haibutsu Riyodan (Behind the Gun Waste Utilization Society), Josho Kai (Ever-Victorious or Invincible Society), Hinode Kai (Imperial Japanese Reservists), Hokubei Zaigo Shokuin Dan (North American Reserve Officers’ Association), Sokoku Kai (Fatherland Society), Suiko Kai (Los Angeles Reserve Officers’ Association), and the Zaibei Ikuei Kai (Society of Educating the Second Generation in America). These were deemed mostly militant organizations by the Western Defense Command and were accused of engaging in and promoting Japanese interests. The translations of the names were provided in the Final Report. DeWitt, Final Report, 12-13.


\textsuperscript{450} DeWitt, Final Report, 12.

\textsuperscript{451} The quotation was taken from New World Sun, April 13, 1940: 4:1. DeWitt, Final Report, 13.
An additional headache for the Commanding General was the number of American born citizens of Japanese descent who were raised in America, but were educated for a length of time in Japan and later returned to the United States, the Kibei. The return of the Kibei to the United States was encouraged by the Japanese Association of America, with a potential pool of approximately 20,000 American citizens of Japanese ancestry residing in Japan. According to government estimates in 1941 1,573 Japanese Americans and 1,147 Japanese aliens entered the United States from Japan, the number of Nisei arriving on the West Coast outnumbered the Issei. The average age of the Kibei at the time of their return to America was 17.5 years after having lived in Japan on average 7.4 years. A considerable amount of time that was an origin of concern for the War Department owing to the influence of the Japanese education system, the risk of being indoctrinated in Japanese nationalism and militarism. To a certain degree the Kibei were deemed to be more fanatically Japanese than the Issei, some of whom had lived in the United States for decades. The Final Report quotes Andrew W. Lind, Professor of Sociology at the University of Hawaii, who stated on the Hawaiian Kibei that “[m]any of these individuals have returned from Japan so recently as to be unable to speak the English language and some are unquestionably disappointed by the lack of appreciation manifested for their Japanese education.” This of course is a generalization of an entire group based on a few individuals, and it contradicts the findings of Curtis B. Munson on the Kibei. From Mr. Munson’s perspective the return of the Nisei to Japan added a greater sense of appreciation for their American upbringing and loyalty to the United States.

As discussed earlier the distribution of the Japanese communities was a national security threat due to the strategic defense installations located along the West Coast. The Final Report details the importance of the military industry complex, the industrial plants and transportation infrastructure established in the States of Washington, Oregon, and California were crucial for war production. The West Coast was vital to the war effort due to the number of army and navy facilities, airplane factories, shipyards, airports, airfields, harbors, and its lumber and petroleum industry. It is no coincidence that the established military areas and zones encompassed

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452 DeWitt, Final Report, 14.
453 DeWitt, Final Report, 15.
454 The Kibei generation is also addressed in The ‘Exemplary Citizens’ Chapter in relation to the Munson Report, Curtis B. Munson’s assessment of the Nisei and Kibei, and their loyalty to America.
455 DeWitt, Final Report, 15, 17.
numerous strategic defense facilities. The ports along the Pacific coastline – Seattle, Portland, San Francisco, Los Angeles, and San Diego, all of which had historical Japantowns – were the lifeline of the war effort, with the continuous flow of manpower and war material needed for the defense of America. The Commanding General notes the central role of California – the state with the largest population of Japanese residents – with its petroleum production, and its vital role in shipbuilding and the manufacture of aircrafts. The objective of Lt. General DeWitt was to defend the Pacific Coast against an enemy attack, an attack that could be inflicted by a foreign entity, or by an unassimilable minority. From the perspective of the War Department the enemy was the Japanese community due to its cultural, religious, and racial ties to the Empire of Japan. The Final Report concluded that the Japanese population was “[…] a relatively homogenous, unassimilated element bearing a close relationship through ties of race, religion, language, custom, and indoctrination to the enemy.”457 The ‘evacuation’ was a military necessity for the Military Commander in order to ensure the war effort against the menacing presence of the Japanese on the West Coast, which was a theater of operation critical for war production and the successful prosecution of the battle against Japan in the Pacific.

The Final Report’s conclusion on the Japanese ‘menace’:458

In his estimate of the situation, then, the Commanding General found a tightly-knit, unassimilated racial group, substantial numbers of whom were engaged in pro-Japanese activities. He found them concentrated in great numbers along the Pacific Coast, an area of the utmost importance to the national war effort. These considerations were weighed against the progress of the Emperor’s Imperial Japanese forces in the Pacific.

3.4. “A Jap’s a Jap” and Racial Prejudice

There was no evidence to support the predominant argument that due to the threat of subversive activities the incarceration of Japanese persons was based on military necessity. Lt. General John L. DeWitt at some point used the lack of evidence to support his own agenda for mass incarceration, stating in his Final Recommendation to the Secretary of War, “[t]he very fact

457 DeWitt, Final Report, 15.
458 DeWitt, Final Report, 17.
that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken.”\textsuperscript{459} The lack of subversive activity was construed by the designated Military Commander as proof of the disloyalty of the Japanese Americans, whom he regarded as an ‘enemy race’. “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,”\textsuperscript{460} reasoned Lt. General DeWitt. This is reminiscent of the Nativist, anti-immigration thoughts of the late 19\textsuperscript{th} and early 20\textsuperscript{th} century. The belief that due to their blood bond Japanese persons cannot be loyal to America, or that the alien blood would dilute the pure American blood and could bring about the downfall of the political and cultural institutions the United States. Racial affinity to the enemy was the key element in the formula that resulted in the incarceration of the Japanese community. As the Commanding General put it quite clearly when speaking before a congressional committee: “A Jap’s a Jap, […] it makes no difference whether he is an American citizen or not. I have no confidence in their loyalty whatsoever.”\textsuperscript{461}

Peter Irons comments that many of the military and government officials – those who were instrumental in orchestrating the forced imprisonment of approximately 120,000 persons of Japanese parentage – attended some of the most distinguished and prestiges law schools of the United States, such as Harvard and Stanford Law School. In spite of their legal training these officials were influenced to some degree by their racial prejudice and antagonism towards the Japanese. Peter Irons explained this contradiction by adding, “[e]ven those officials with qualms about the constitutional basis for mass internment fell prey to racial stereotypes.”\textsuperscript{462} Colonel Karl Bendetsen was instrumental in drafting the Final Recommendation of Lt. General DeWitt despite of the lack of facts to justify the national defense rationale. Even though he was a graduate of Stanford Law School Colonel Bendetsen provided no evidence to support his rationalization that the Japanese American community was loyal to the Empire of Japan and would take part in ‘Fifth Column’ activities on behalf of the enemy. The basis of his argument was, according to Peter Irons, that due to their “racial affinities” American citizens of Japanese ancestry were

\textsuperscript{459} Irons, “A Jap’s a Jap,” 350.
\textsuperscript{460} Irons, “A Jap’s a Jap,” 350.
\textsuperscript{461} Irons, “A Jap’s a Jap,” 350.
\textsuperscript{462} Irons, “A Jap’s a Jap,” 350.
susceptible to acts of disloyalty. Secretary of War Henry L. Stimson, a Harvard graduate, acknowledged that Japanese Americans cannot be discriminated on a racial basis, but General DeWitt’s *Final Recommendation* had made an immense impression on him and he too “fell prey” to anti-Japanese prejudice. Secretary Stimson after having read Lt. General DeWitt’s recommendation consented to the initiative, reasoning that “their racial characteristics are such that we cannot understand or trust even the citizen Japanese.” Assistant Secretary of War John J. McCloy was also a Harvard lawyer, but he still proclaimed that “the Constitution is just a piece of paper.”

Not only did racial prejudice and stereotypes influence the image of the Japanese Americans – as introduced in relation to the work of the War Department –, but also genetic theory. Attorney General Biddle’s legal advisers – Benjamin Cohen, Oscar Cox, and Joseph Rauh – were Harvard graduates, but argued that due to their physical features loyal Japanese persons cannot be differentiated from disloyal elements. “Since the Occidental eye cannot readily distinguish one Japanese resident from another,’ […] ‘effective surveillance of the movement of particular Japanese residents suspected of disloyalty is extremely difficult if not impossible,” stated the Attorney General’s legal advisors. Charles Burdell, Special Assistant to Attorney General Biddle, went a step further in his racial classification, establishing the allegiance and loyalty of the Japanese populace to the Empire of Japan on a genetic level. The Special Assistant highlighted the physical and psychological ties of Japanese persons to Japan, characterizing disloyalty as a type of ‘germ’ that is present in all of the ‘Japs’, both in American citizens and aliens.

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464 The Secretary of War threw his weight behind the exclusion and incarceration program despite of being a Harvard lawyer, and acknowledging that the detention of American citizens based on their race would “[…] ’make a tremendous hole in our constitutional system’”. Irons, “A Jap’s a Jap,” 351.
466 Irons, “A Jap’s a Jap,” 351.
Special Assistant Burdell’s genetic theory on the disloyalty of Japanese persons:

*Jap* citizens are inevitably bound, by intangible ties, to the people of the Empire of Japan. They are alike, physically and psychologically. [...] Even now, though we have been separated from the English people for over 100 years, we still take pride in the exploits of the RAF over Berlin, and the courageous fighting of the Aussies in Northern Africa. Why? Because they are people like us. They are Anglo-Saxons. [...] Who can doubt that these *Japs* in this country, citizens as well as aliens, feel a sense of pride in the feats of the *Jap* Army – this feeling of pride is strong in some, weak in others, but the *germ* of it must be present in the mind of every one of them.

3.5. The Department of War and Justice and the ‘Enemy Alien’ Control

There were a number of meetings between the War and Justice Department in Washington D.C. in order to finalize the ‘evacuation’ program and plans for handling subversives on the West Coast. Furthermore, Lt. General Dewitt also requested that a representative of the Justice Department should meet with him in San Francisco, after which several conferences were held. At the San Francisco conferences, held between January 2 and 5, 1942, James Rowe Jr., Assistant Attorney General, represented the Justice Department, and N. J. L. Pieper, of the F.B.I., and Major Karl R. Bendetsen also attended the meetings. The Commanding General persistently instigated the Department of Justice during these meetings to declare prohibited zones on the Pacific Coast near military installations, to conduct “spot-raids”, and to authorize the confiscation and storage of contraband articles. The Justice Department eventually agreed to the requests made by the Military Commander. Prohibited zones were declared in the proximity of installations vital for national defense and enemy aliens were to be excluded from these military areas. Nonetheless, the parameter of these prohibited zones – extent and location – was determined according to the instructions of the Military Commander.

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467 Special Assistant Charles Burdell expressed his views in a brief submitted to the Federal District Court in a case challenging the incarceration orders, which he hoped the District Court judge would dismiss. The words in italics were highlighted by the author to indicate the derogatory terms used by Special Assistant Burdell. Irons, “A Jap’s a Jap,” 351.
A memoranda was exchanged between the Lt. General John L. DeWitt, War Department, and James Rowe Jr., Department of Justice, on January 6, 1942, in which the parties present summarized the procedure for executing the proclamations of December 7 and 8, 1941, and the control of the “enemy aliens” on the West Coast. It dealt with such issues as the restricted areas, the registration of enemy aliens, apprehension of enemy aliens, the searches of enemy alien residences, and the seizure of contraband items. The memorandum defines the Pacific Coast as the Western Theater of Operations with the Attorney General declaring the “restricted areas”, however the Army had to ascertain and recommend each zone. In case the “restricted area” included a significant number of ‘enemy aliens’ the alien population would be removed according to a comprehensive proposal for their “evacuation and resettlement”, submitted by the Army at the request of the Attorney General. The “enemy aliens” would be registered with the Department of Justice and the procedure included the finger printing, photographing, and filing the detailed information of the alien enemies with the local authorities by their nationality and race. Alien enemies would be detained by F.B.I. special agents in compliance with “apprehension warrants” issued by U.S. Attorneys. Prior to the arrests the Army had to submit written requests for the apprehension. Nevertheless, warrants were not necessary in case the alien violated the regulations issued by the Attorney General. “In any case where an alien enemy is found in violation of any of the provisions of the proclamation or any part of the regulations of the Attorney General thereunder, he is subject to summary apprehension with or without a warrant,” affirms the memoranda. Warrants were issued to search “enemy alien” residences for contraband articles and the application only had to state that it is an enemy alien dwelling. The place of residence of an alien enemy could be searched without warrant in case it was an emergency, however mixed occupancy houses could only be searched with warrants; the homes would be kept under surveillance in case of emergency until a warrant was obtained. Attorney General Biddle did not permit the use of the term “mass raid”, and only authorized “spot raids” and multiple searches, provided the F.B.I. prepared a list of enemy alien residences in a given area and warrants were issued facilitating their simultaneous perquisition.

471 DeWitt, Final Report, 4.
472 DeWitt, Final Report, 5-6.
473 DeWitt, Final Report, 5.
474 DeWitt, Final Report, 5.
475 The spot raids were authorized by the Department of Justice and were carried out by the field agents of the F.B.I. In the Final Report Lt. General DeWitt provides a specific example of a spot raid conducted by the F.B.I. in the
Following the agreed upon sequence of procedure Lt. General DeWitt recommended the establishment of 99 prohibited areas in California, including two restricted zones, in a letter dated January 21, 1942. The recommendation was forwarded by the Secretary of War to the Attorney General on January 25, 1942. Similar recommendations were made for the State of Arizona, Oregon, and Washington. Francis Biddle, as requested, designated the recommended areas as prohibited zones in a succession of bulletins. The regulations only affected Japanese aliens, and not American citizens of Japanese ancestry.

The “mass evacuation” of the Japanese had been a topic of discussion between the Department of War and Justice since January 5, 1942, when the Military Commander sent a memorandum to Mr. Rowe while the San Francisco conferences were still in progress. In response to the memorandum the Department of Justice felt that “mass evacuation” could only be justified and implemented in case of military necessity, supported by evidence. Furthermore, the D.O.J. did not regard the ‘evacuation’ as one of its duties, its responsibility. The Attorney General contacted the Secretary of War on February 9, 1942, to further elaborate on the problem of “mass evacuation” and the necessity of proper justification in regards to the establishment of prohibited zones in the State of Washington and Oregon, as requested by the Military Commander in his recommendation. In his letter Attorney General Biddle points out that no reasons were given by the Commanding General for the mass evacuation of enemy aliens from the proposed prohibited zones. The Department of Justice was not equipped to carry out such a project, and since the collective ‘evacuation’ could include American citizens of Japanese ancestry it must be based on military necessity and should be administered by the War Department.

Attorney General Biddle on ‘mass evacuation’ and the role of the War Department:

The proclamations directing the Department of Justice to apprehend, and where necessary, evacuate alien enemies, do not, of course, include American citizens of the Monterey area, California, on February 12, 1942. During the raid the agents found more than 60,000 rounds of ammunition, numerous rifles, shotguns, and maps. This seems to have justified in the mind of the Commanding General the need for more conclusive action, the ‘mass evacuation’ of the local Japanese. DeWitt, Final Report, 8.

479 DeWitt, Final Report, 8.
Japanese race. If they have to be evacuated, I believe that this would have to be done as a military necessity in these particular areas. Such action, therefore, should in my opinion, be taken by the War Department and not by the Department of Justice.

The Japanese residents\textsuperscript{480} of Bainbridge Island were the first ones required to ‘evacuate’ from the prohibited military areas following the issuance of Civilian Exclusion Order No. 1 on March 30, 1942. An additional 107 orders were issued later on to exclude the entire Japanese population from the Pacific Coast. Nonetheless, it is a correct assessment that the enemy alien control phase of the program was the precursor of the exclusion and incarceration of the Japanese community. Although, at the time it was presumed by the authorities that the program would be, as stated in the \textit{Final Report}, a “general enemy alien evacuation”.\textsuperscript{481}

3.6. Partisan Politics: Government Misconduct and the Revocation of the Exclusion Orders

The conduct of the Executive, with special focus on the Department of War and the \textit{Final Report} of Lt. General John L. DeWitt, can be further scrutinized with regard to the potential of misconduct going as far as misleading officials of the Department of Justice and therefore the Justices of the Supreme Court in the Japanese American cases. The documents\textsuperscript{482} analyzed in the present section shed light on the role of the War Department, most notably the Commanding General, in the exclusion program, the validity of the \textit{Final Report}’s military necessity argumentation, and the coordination between the War and Justice Department during the ‘evacuation’ program and the Japanese American cases on the constitutionality of the exclusion order and the incarceration.

\begin{itemize}
\item \textsuperscript{480}See \textit{The Legislative Branch} Chapter for more information on the anti-Japanese provisions of the Roosevelt Administration and the forced removal of the Japanese community.
\item \textsuperscript{481}DeWitt, \textit{Final Report}, 6.
\item \textsuperscript{482}The documents studied are included in the \textit{Korematsu v. United States} collection of the National Archives at San Francisco. They were collected and filed with the District Court for the Northern District of California by attorneys Dale Minami and Peter Irons on January 19, 1983, in the petition for writ of error coram nobis to vacate Fred T. Korematsu’s 1942 conviction. The attorneys for the Petitioner filed numerous documents with the District Court alleging that errors were committed during the initial legal procedure, the Government withheld information from the court and meanwhile filed misleading evidence in the \textit{Korematsu} case. See the \textit{Fred Korematsu’s Legal Challenge} Chapter for more information on the coram nobis case. Exhibits To Petition For Writ Of Error Coram Nobis, January 19, 1983, Box 383, Fred T. Korematsu Folder 2 (4 of 7, Docket Nos 39), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco.
\end{itemize}
3.6.1. A Conflict of Interests: The Final Report and the Department of Justice and War

On April 19, 1943, Edward J. Ennis, the Director of the Alien Enemy Control Unit, notified Solicitor General Charles Fahy in a memorandum⁴⁸³ that the War Department had received the printed report of Lt. General DeWitt on the ‘evacuation’ of the West Coast Japanese. John J. McCloy received two bound copies of the report from the Commanding General for personal use on April 15, 1943.⁴⁸⁴ It is noteworthy that the additional copy by Lt. General DeWitt was meant for the Attorney General, however as discussed later the Justice Department did not receive a copy of the confidential report and it was subsequently released without the knowledge of the D.O.J. At the time of the Ennis memorandum the War Department was deliberating whether to release the Final Report, which could be used by the attorneys of the U.S. Government as factual evidence in the pending Japanese American cases: the Hirabayashi, Yasui, and Korematsu case.

After the Department became aware of Lt. General DeWitt’s report in April of 1942 it was informed that the Final Report will not be made public as it was classified confidential by the Secretary of War. Edward J. Ennis provides a historical account of the relation and coordination between the two departments leading up to the publication of the Final Report in his memorandums⁴⁸⁵ to Herbert Wechsler and Attorney General Francis Biddle. The War Department kept the report from the officials of the Justice Department for months, and was published without their consent. The confidential treatment of the report was contrary to Lt. General DeWitt’s standpoint – disclosed to the Assistant Secretary of War in his letter⁴⁸⁶ on

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⁴⁸⁶ John L. DeWitt to John J. McCloy, April 15, 1943.
April 15, 1943 –, that the classification of the Final Report should be removed and the report should be distributed publicly. Edward J. Ennis was not allowed to see the report – was refused a copy in preparation for the Hirabayashi brief for the Supreme Court case – and was only provided 40 pages that were torn out of it, but only on the condition that he would return them, which he did to his regret. Mr. Ennis firmly believed that the torn pages were only given to the D.O.J. to support the ‘evacuation’ by providing carefully selected facts on the program, an opinion which he shared with the Attorney General on February 26, 1944.

The Assistant Secretary of War regarded the report as a “draft”, and according to Mr. Ennis the Attorney General was told that it would not be published. It was only by accident that the Justice Department later came into possession of a revised copy of the Final Report: Dillon S. Myer, Director of the W.R.A., had a copy which was borrowed by Edward Ennis. The Department of Justice was not informed, was not shown the Final Report, nor did it have the opportunity to study the document. After having reviewed the borrowed copy it was noticed that the report also dealt with the relations between the two departments and depicted the Justice Department in a negative way. Nevertheless, when the Justice Department requested clarification on the status of the report – also to withhold its release – the D.O.J. was informed by Captain John M. Hall, the Assistant Executive Officer of Mr. McCloy, that the Final Report had already been published. However, the newspapers began to publicize the findings of report only two weeks later, meaning that in actuality the Final Report was published without having been shown to the Department of Justice, or allowing it to respond to its content. “It is perfectly clear from the course of events that the War Department deliberately evaded submitting this report, discussing our mutual activities, to us before publication,” expressed his frustration Edward Ennis to Attorney General Francis Biddle. The Public Relations Office of the War Department confirmed that the report was not released when Captain Hall said it was, the Captain mislead the D.O.J. Mr. Ennis summarized his view on the course of action taken by the War Department by stating that the Justice Department was not obliged to handle the Final Report with respect: “In view of the War Department’s course of conduct with respect to the report, we are not required to deal with the report very respectfully.”

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487 Edward J. Ennis to Herbert Wechsler, September 30, 1944; Edward J. Ennis to Francis Biddle, February 26, 1944.
488 Edward J. Ennis to Francis Biddle, February 26, 1944.
489 Edward J. Ennis to Francis Biddle, February 26, 1944.
490 Edward J. Ennis to Herbert Wechsler, September 30, 1944.
coordinated with the Western Defense Command to rewrite the erroneous statements in the Final Report.

Director Edward J. Ennis on the ethical obligation of the Justice Department:491

This Department has an ethical obligation to the Court to refrain from citing it [Final Report] as a source of which the Court may properly take judicial notice if the Department knows that important statements in the source are untrue and if it knows as to other statements that there is such contrariety of information that judicial notice is improper.

A further reason why Mr. Ennis opposed the Final Report was the inference that the Army blamed the Justice Department for the necessity of the ‘evacuation’, which he intended to clarify.492 According to Edward J. Ennis the D.O.J. was accused of “inaction” and “timidity” to enforce the ‘enemy alien’ provisions which contributed to the mass removal of persons of Japanese lineage. The report highlight that the Justice Department did not approve the mass raids, nor searches in mixed occupancy dwellings to seize radio transmitters. However, based on the information in possession of the D.O.J. the alleged extensive radio transmissions and the shore-to-ship signaling did not threaten the national defense of the United States, these subversive activities did not exist, and the Commanding General was aware of the falsity of his statements. As Mr. Ennis declared in his memorandum493 to Mr. Wechsler on September 30, 1944, these statements by Lt. General DeWitt were lies printed in an official government report, and these deliberately misleading statements victimized a racial minority. Additionally, seven months earlier on February 26, 1944, Edward Ennis expressed in a memo494 to Mr. Biddle the need for a final record in order to counter the allegations made by Lt. General DeWitt and the War Department, the accusations that the Attorney General and the D.O.J. were in any way responsible for the ‘evacuation’. Mr. Ennis opposed the idea that these misstatements and misleading evidence of military necessity should go undisputed by the Department.

491 Edward J. Ennis to Herbert Wechsler, September 30, 1944.
492 Edward J. Ennis to Herbert Wechsler, September 30, 1944.
493 Edward J. Ennis to Herbert Wechsler, September 30, 1944.
494 Edward J. Ennis to Francis Biddle, February 26, 1944.
One of the controversial issues between the Department of War and Justice was the footnote in the Korematsu brief disclosing the contradictory nature of Lt. General Dewitt’s *Final Report* on the military necessity of the ‘evacuation’. For Edward Ennis keeping the Korematsu brief was a means of correcting the wrongs committed against the Japanese. There were discussions between the War Department and the Solicitor General on changing the footnote, however Edward J. Ennis maintained that the Justice Department should not alter it. In a memorandum to Herbert Wechsler on September 30, 1944, Mr. Ennis provided three primary reasons for keeping the footnote: the “ethical obligation” of the Department to the Courts, the War Department publishing “misstatements of fact” in its report, and the *Final Report* was published without the knowledge and consent of the Justice Department.

The footnote on page 11 of the Korematsu brief was revised by the Solicitor General as he made certain additional changes. Assistant Attorney General Wechsler was informed of the changes in a memorandum by John L. Burling on September 11, 1944. The footnote stated that the D.O.J. did not ask the Supreme Court to take judicial notice of the information in the *Final Report* due to its conflicting nature based on the judgment of the Department. The misstatements that the Solicitor General referred to were about the alleged radio transmissions and ship-to-shore signaling by Japanese, discussed later in the present section. Mr. Burling argued in favor of asking the Supreme Court not to take judicial notice of the “misstatements of facts” included in the *Final Report* to justify the ‘evacuation’ program, since they contradicted the information possessed by the Department of Justice. It was evident that the War Department would oppose the footnote, Mr. Burling insisting that “I assume that the War Department will object to the footnote and I think we should resist any further tampering with it with all our force.” This opposition was certainly due to the misleading information scapegoating a minority as a consequence of their racial ties to the enemy, but also because of the insinuation that the Department of Justice had committed dereliction of duty.

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495 Edward J. Ennis to Herbert Wechsler, September 30, 1944.
497 John L. Burling to Herbert Wechsler, September 11, 1944.
Solicitor General Charles Fahy’s revised footnote:498

The Final Report of General DeWitt (which is dated June 5, 1943, but which was not made public until January 1944), hereinafter cited as Final Report, is relied on in this brief for statistics and other details concerning the actual evacuation and the events that took place subsequent thereto. The recital in the Final Report of circumstances justifying the evacuation as a matter of military necessity, however, is in several respects, particularly with reference to the use of illegal radio transmitters and shore-to-ship signalling by persons of Japanese ancestry, in conflict with the views of this Department. We, therefore, do not ask the Court to take judicial notice of the recital of those facts contained in the Report.

As foreshadowed by Edward J. Ennis the War Department did object to the footnote on page 11 of the Korematsu brief draft. The last two sentences of the footnote – highlighted in the quotation above by the author – were controversial and the officials of the War Department wanted to strike them out of the brief. They opposed the statement made by the Solicitor General that the Supreme Court does not have to take judicial notice of the Final Report with regards to the matters of radio communication and ship-to-shore signaling. Even though Mr. Ennis and Mr. Burling previously stated that the D.O.J. should stand firmly on the issue on keeping footnote 11 by October of 1944 the Department was willing to make concessions, offering two revised versions of the controversial footnote. Mr. Wechsler offered two possible alternative versions and Captain Fisher forwarded them, together with his personal preference, in the memorandum499 of October 2, 1944, to the Assistant Secretary of War. Although the War Department did not concur with either of the alternatives its officials opted for the first version, quoted bellow, which was included in the Korematsu brief. The final version of footnote 11 made no mention of the contradicting reports and the misstatements, misleading evidence provide by the Commanding General on subversive activity, all of which entailed the exclusion and detention of the Japanese population.

498 The last two sentences of the footnote were later altered by the Department of Justice after consultations with the Department of War. John L. Burling to Herbert Wechsler, September 11, 1944.
Version 1 of the alternative last two sentences of footnote 11 forwarded by Captain Fisher:500

1. We have specifically recited in this brief the facts relating to the justification for the evacuation, of which we ask the court to take judicial notice, and we rely upon the Final Report only to the extent that it relates to such acts.

3.6.2. Government Misconduct and the Question of Military Necessity

The Final Report included numerous misstatements according to the Department of Justice, dealing with such central issues as the illegal radio transmissions and shore-to-ship signaling that were cited by the War Department as critical national security threats that warranted the exclusion of the Japanese residents. These statements were contentious and were contradicted by the Office of Naval intelligence, the Federal Communications Commission (F.C.C.), and by the Federal Bureau of Investigation. The Final Report and Lt. General DeWitt’s judgment contradicted the work of the officers of the O.N.I., most notable the findings of Lt. Commander Kenneth D. Ringle and his report on the West Coast Japanese. The Solicitor General was briefed in a memorandum on an article published in Harpers Magazine in October of 1942, titled “The Japanese in America, The Problems and Solutions.”501 The article was published anonymously, only indicating that it was written by “An Intelligence Officer”. The D.O.J. was preparing the Hirabayashi brief at the time and Edward J. Ennis believed that the article could prove useful for the case. In the memo502 of April 30, 1943, Mr. Ennis highlighted certain portions of the article, focusing on the lack of military necessity, since the report stated that there were less than 3,500 subversive Japanese aliens and citizens, the majority of Japanese were “passively loyal” to America, the Nisei had Americanized, and the Kibei generation were identified as possibly dangerous. The article concluded, quoted by Edward Ennis: “The ‘Japanese Problem’ has been magnified out of its true proportion largely because of the physical characteristics of the Japanese people. It should be handled on the basis of the individual, regardless of citizenship and not on a racial basis.”503 Commander Ringle’s conclusion

500 Captain Fisher to John J. McCloy, October 2, 1944.
502 Edward J. Ennis to Charles Fahy, April 30, 1943.
503 It is mentioned in the memorandum that Edward J. Ennis believed that the Ringle Report did not receive wide attention in the intelligence sphere because of Secretary Frank Knox’s focus on Japanese ‘Fifth Column’ activity at
undermined the *Final Report*’s collective mass removal argument, and was in line with the treatment of the Hawaiian Japanese by Lieutenant General Delos C. Emmons. The article was attached greater significance once Mr. Ennis identified the source after he compared it with a previous W.R.A. memorandum prepared by Lt. Commander Ringle. The *Ringle Report* represented not only the views of Commander Ringle, but also that of the Naval Intelligence officers who were responsible for the Japanese counter-intelligence, and believed that the ‘evacuation’ program was carried out poorly. According to Commander Ringle and the O.N.I. officers it would have been adequate to remove approximately 10,000 Japanese persons: the Kibeis, the parents of the Kibeis, and Japanese aliens and American citizens of Japanese ancestry who were listed members of pro-Japanese associations. These individuals were known to the authorities, as introduced earlier, and were listed for their supposed un-American activities. In the opinion of the Navy 90% of the exclusion was unnecessary. Mr. Ennis drew the conclusion that it was a mistake by the Department of Justice not discussing the Japanese situation with the O.N.I. – the agency responsible for investigating the Japanese –, as it would have enabled the Department to call Lt. General DeWitt’s attention to the intelligence reports that contradicted the standpoint of the War Department.

The *Ringle Report* was depicted by Edward Ennis in the memorandum as “the most reasonable and objective discussion of the security problem presented by the presence of the Japanese minority”. The Department of Justice found itself in a predicament, since it represented the Army and argued against the “selective evacuation” the Japanese, but now came into the possession of the Ringle memorandum which advocated the case by case principle, the “selective evacuation”, which was the more desirable means of managing the Japanese ‘question’. Based on this assessment Mr. Ennis reflected on the duty of the D.O.J., whether to inform the Supreme Court on the Ringle memorandum that represented the judgment of the

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504 Edward J. Ennis to Charles Fahy, April 30, 1943.
505 Edward J. Ennis to Charles Fahy, April 30, 1943.
506 Edward J. Ennis to Charles Fahy, April 30, 1943.
Naval Intelligence. Not advising the Supreme Court could be regarded as “suppression of evidence” according to Edward J. Ennis, adding however that since the report came from the W.R.A. it should be verified. This additional statement by Mr. Ennis could be considered a loophole, since the memorandum was received through informal channels and the verification of the report could be stalled. It has to be noted that during the study of the Japanese American cases, the Korematsu collection and the Supreme Court decisions, there was no reference made to the Ringle Report, or for that matter to the Munson Report. The Department of Justice attorneys who wanted to inform the Supreme Court of the false military claims were overruled by their superiors.  

A further obstacle to the Commanding General’s military necessity argument was the comprehensive work of the F.B.I. As early as December 17, 1941, Director J. Edgar Hoover reported in a memorandum that the Bureau had furnished the Army with two to three lists of potentially dangerous Japanese who had already been detained. Director Hoover was convinced, not underestimating the seriousness of the situation, that the Army was getting frantic and were “losing their heads”: “[…] I thought the army was getting a bit hysterical, and although I believe the condition is very critical and serious, I do not believe that they can put over any plan to clean people out of that area unless there is some very imminent prospect [sic] of attack.” The F.B.I. Director was worried about the plans of the Army to remove aliens and American citizens, and did not want to be caught “holding the bag” in case of any public outcry, therefore it was advised that recommendations should be added on the listed individuals. Director Hoover seems to imply a fear of scapegoating in the aftermath of the ‘evacuation’ program of the War Department. The Attorney General was also notified by Director Hoover in a confidential

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507 Edward J. Ennis proposed to the Solicitor General that an inquiry should be made to the Secretary of Navy on the Ringle memorandum requesting confirmation that Lt. Commander Ringle’s report reflected the judgment of the Office of Naval Intelligence. Edward J. Ennis to Charles Fahy, April 30, 1943.

508 While there are no references made to the Final Report in the Hirabayashi and Yasui Supreme Court opinions the Court referred to the document 10 times in the Ex parte Mitsuye Endo opinion and 14 times in the all-important Korematsu decision. See The Supreme Court and the Japanese American Cases and the Fred Korematsu’s Legal Challenge Chapters for a detailed study of the Japanese American wartime cases.


510 J. Edgar Hoover to Mr. Tolson et al., December 17, 1941.

511 J. Edgar Hoover to Mr. Tolson et al., December 17, 1941.

512 J. Edgar Hoover to Mr. Tolson et al., December 17, 1941.
memorandum of the lack of shore-to-ship signaling by Japanese agents, the false statement made in the report.\footnote{Edward J. Ennis to Francis Biddle, February 26, 1944.}

It was in the memorandum\footnote{Exhibit W. J. Edgar Hoover to Francis Biddle, February 7, 1944, Box 383, Fred T. Korematsu Folder 2 (4 of 7, Docket Nos 39), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco (hereafter cited as J. Edgar Hoover to Francis Biddle, February 7, 1944).} of February 6, 1944, that Director Hoover informed Attorney General Francis Biddle that the Bureau had no evidence on shore-to-ship signaling that could be associated with the submarine attacks on coastal shipping or enemy attacks along the coastline following Pearl Harbor. J. Edgar Hoover unequivocally stated in the memo that “there is no information in the possession of this Bureau as the result of investigations conducted relative to submarine activities and espionage activity on the West Coast which would indicate that the attacks made on ships or shores in the area immediately after Pearl Harbor have been associated with any espionage activity ashore or that there has been any illicit shore-to-ship signaling, either by radio or lights.”\footnote{J. Edgar Hoover to Francis Biddle, February 7, 1944.} The attacks that Director Hoover referred to were the shelling of Goleta near Santa Barbara, California, on February 23, the incendiary bombing near Brookings (Mount Emily), Oregon, on September 9, and the shelling near Astoria (Fort Stevens), Oregon, on June 21, 1942;\footnote{J. Edgar Hoover to Francis Biddle, February 7, 1944.} all three of the events were also cited in the Final Report. However, the F.B.I. had no evidence that shore-to-ship signaling played a role or that the Japanese residents aided in the aforementioned incidents. Director Hoover also commented that despite of the forced removal of the Japanese population there was no reduction in the number of complaints on enemy submarine activity along the coast. The memorandum did make a reference to the crime rate\footnote{J. Edgar Hoover to Francis Biddle, February 7, 1944.} in the Japanese community, with the annual rate of 4.5% per 1,000 Japanese persons in 1941. This did increase by 450% during a period of six months in the temporary detention centers, a rate of 20.6%. The crimes committed in the centers were mostly petty thefts, disorderly conduct, assaults, and other minor offenses. Nonetheless, Mr. Hoover did not attach greater significance to this spike or the types of crimes committed, commenting that these minor offenses “always occur when large populations are concentrated into small areas under abnormal conditions,”\footnote{J. Edgar Hoover to Francis Biddle, February 7, 1944.} to which we might also add the shock and disillusionment over their forced
exclusion and detention without due process. Mr. Hoover supported limited removal, but not the wholesale ‘evacuation’ of the Japanese community.

The importance of the illegal radio transmissions and shore-to-ship signaling is further emphasized, to a limited extent, in Part I (Chapters 1 and 2) of the Final Report as one of the factors behind the ‘evacuation’ of the Japanese. This controversial issue was a key component of the military necessity and the demands to establish military areas on the West Coast, a Theatre of Operation according to the Military Commander. Lt. General DeWitt was worried about the illegal radio transmitters operated by ‘enemy aliens’ who were sending messages to the Japanese vessels off the coast, sharing his opinion with George E. Sterling, Assistant Chief Engineer and Chief of the Radio Intelligence Division (R.I.D.), during a conference on January 9, 1942. Mr. Sterling stated in his memo on the conference that General DeWitt overemphasized the fear of the Japanese ‘menace’, “Gen’ [L.] DeWitt seemed concerned and, in fact, seemed to believe that the woods were full of Japs with transmitters, […]”. Despite of the Final Report’s conclusion on the overwhelming presence of enemy radio transmissions and signals the Commanding General had to be briefed on how illegal radio signals are identified, how these transmitters are located with the use of mobile units, and on the types of equipment used by the radio intelligence. The radio intelligence operation of the Western Defense Command was described as “hopeless” by Mr. Sterling, the W.D.C. deploying only two radio direction finding companies with “untrained” and “unskilled” personnel, who were inexperienced and were hampered by the lack of understanding and cooperation. As a result of their failures the W.D.C. regarded the Federal Communications Commission as the authority on radio transmission. Mr. Sterling told Lt. General DeWitt that with a 24-hour surveillance of radio communication it would hardly be possible for Japanese agents to operate a station without being identified and located by the F.C.C. Moreover, it was highly unlikely that there was even one in operation on the West Coast. A joint Radio Intelligence Center (R.I.C.) was proposed – requested by the Commanding

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520 George E. Sterling was highly critical of the radio intelligence of the W.D.C., noting in his memorandum that the personnel had no prior knowledge of radio signal identification and radio intelligence procedures. “It’s pathetic to say the least,” commented Mr. Sterling on the radio intelligence work of the W.D.C. Sterling, January 9, 1942, “Conference With General DeWitt at San Francisco.”
General from the War Department on January 15, 1942 --, and it was operated in San Francisco by the personnel of the F.C.C. together with members representing the Army and Navy. The R.I.C. was established in March of 1942 and coordinated the gathered radio intelligence between the Army, the Navy, and the F.C.C.; it was funded by the War Department. The F.C.C. investigated the Army and Navy complaints on radio signals, and reported the lack of illegal radio transmissions to Lt. General DeWitt.

The claims of the F.C.C., that statements of illegal radio transmissions were misrepresented by the Commanding General, were also supported in the memorandum of John L. Burling to Edward J. Ennis on February 23, 1944. The memo summarized Mr. Burling’s conference with Mr. George E. Sterling and Mr. Denny, General Counsel of the F.C.C., on the unauthorized radio communication and signaling on the Pacific Coast after Pearl Harbor. Mr. Burling went further than the previously mentioned officials in his assessment of the statements made by Lt. General DeWitt, they were not misstatements, but rather they were categorized as “deliberately misleading” remarks on Japanese radio communication since the Commanding General knew that the complaints of the W.D.C. were unfounded. He was not willing to go so far as to say that Lt. General DeWitt was openly untruthful, which was due to the ambiguous nature of his remarks.

Mr. Burling’s conclusion on the character of Lt. General DeWitt’s statements:

I have formed the conclusion that General DeWitt’s statements are not only misleading, but were made by him at a time when he personally knew the facts to be otherwise. Since his statements are slightly ambiguous, it cannot be flatly said, however, that General

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523 John L. Burling to Edward J. Ennis, February 23, 1944.

524 John L. Burling to Edward J. Ennis, February 23, 1944.
DeWitt was deliberately untruthful. We can say, however, that he was deliberately misleading.

As stated earlier the F.C.C. provided all the necessary aid, equipment, and personnel to the W.D.C. in order to counter the prohibited radio transmissions, including establishing the Radio Intelligence Center. Mr. Burling was informed at the conference that all of the radio stations were located by the F.C.C. at the request of the Army, and all of them were either authorized and identifiable stations within the confines of the United States, or a station in Japan, or the signal originated from a Japanese submarine. According to Mr. Denny and Mr. Sterling the F.C.C. identified all of the signals reported and found no illegal radio transmitters during its operation until the Fall of 1943, when two stations were located at the Tule Lake Incarceration Center. This proved the efficiency of the Radio Intelligence Division personnel of the F.C.C., their ability to identify and locate with pinpoint accuracy the location of the unauthorized radio stations. This is of immense importance if we keep in mind that one of the main arguments made by Lt. General DeWitt in support of the mass raids and ‘evacuation’ was the inability of the authorities to locate these illicit radio transmissions. George E. Sterling confirmed it to Mr. Burling that the F.C.C. had the capability not only to identify and locate the illegal radio transmitters, but was able to determine its exact location by narrowing it down to a given floor and room of a specific building. This meant that in case of an illicit radio transmission Lt. General DeWitt would have been able to request a search warrant, there was no need for mass raids, nor for the collective removal of the Japanese population. The information gained at the conference with the F.C.C. clearly damaged the credibility of Lt. General DeWitt, and the allegation of dereliction of duty by the Department Justice. According to John L. Burling the D.O.J. could not be held accountable for the exclusion of the Japanese for failing to aid in countering the illegal radio communication, since there were no unauthorized radio transmissions. Furthermore, even if there had been any the F.C.C. would have been able to locate them, after which the W.D.C. could have obtained search warrants.

The data on the monitoring operations of the F.C.C. on the West Coast proves the effectiveness of the Radio Intelligence Division. Mr. Sterling, the Chief of the R.I.D., prepared a

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525 John L. Burling to Edward J. Ennis, February 23, 1944.
526 John L. Burling to Edward J. Ennis, February 23, 1944.
memorandum on its operations at the request of the Attorney General. The memorandum\(^{527}\) of March 25, 1944, divulged the location of the primary monitoring stations\(^{528}\) and the number of secondary stations within the limits of the Western Defense Command. The secondary stations had “mobile loop direction finders” that were able to go into the field and locate the illicit radio signals.\(^{529}\) Between December of 1941 and July 1, 1942, the R.I.D. handled 760 reported cases of unidentified or unauthorized radio signals in the evacuated military areas of the W.D.C.\(^{530}\) The F.C.C. found no unidentifiable or illicit radio stations within the evacuated military areas of the W.D.C. despite of the hundreds of cases reported during the initial months of the war. This was later confirmed to the Attorney General by James Lawrence Fly in a memorandum on April 4, 1944, writing that “[i]n no case was the transmission other than legitimate.”\(^{531}\) Mr. Sterling included an interesting personal remark in the memo, noting that as the tide of war began to favor the United States the number of complaints by the public began to drastically decrease. These changes in the number of complaints shows a correlation between the mood of the public and the military, the influence of the war hysteria on the Pacific Coast.

Summary result on the F.C.C.’s investigation of the 760 reported cases of unidentified signals:\(^{532}\)

1. In 641 cases no radio signaling was found.
2. 119 cases in which the radio signaling was identified as lawful transmission.

\(^{527}\) George E. Sterling to the Chief Engineer, March 25, 1944.
\(^{528}\) The F.C.C. had two primary monitoring stations and fourteen secondary stations between December 7, 1941, and July 1, 1942. The primary stations were located at Portland, Oregon, and San Pedro, California. The secondary stations were established in Seattle, Washington; Spokane, Washington; Portland, Oregon; Great Falls, Montana; Boise, Idaho; Arcata, California; Larkspur, California; Fresno, California; Los Angeles, California; San Diego, California; Reno, Nevada; Yuma, Arizona; Tucson, Arizona; and Salt Lake City, Utah. The Larkspur stations was later moved to San Leandro, California, and was expanded to a primary station. The Yuma secondary station was moved to Salinas, California. George E. Sterling to the Chief Engineer, March 25, 1944; James Lawrence Fly to Francis Biddle, April 4, 1944.
\(^{529}\) George E. Sterling to the Chief Engineer, March 25, 1944.
\(^{530}\) George E. Sterling to the Chief Engineer, March 25, 1944.
\(^{531}\) James Lawrence Fly to Francis Biddle, April 4, 1944.
\(^{532}\) During this investigation 19 unlicensed radio stations were identified by the F.C.C., but neither of them were located on the West Coast in California, Oregon, or Washington. George E. Sterling to the Chief Engineer, March 25, 1944; James Lawrence Fly to Francis Biddle, April 4, 1944.
d. Others:
   i. Local Police: 12.
   ii. Phonograph Oscillators: 3.

3. No cases of unidentifiable sources.

The data provided by George E. Sterling was corroborated by James Lawrence Fly, Chairman of the Federal Communications Commission, in a memorandum to Attorney General Biddle. The memorandum\(^{533}\) of April 4, 1944, was written in response to the Attorney General’s letter of February 26 on verifying the statements made by Lt. General DeWitt in the *Final Report*, particularly placing concern on the remarks made about illicit radio communications and signaling. The F.C.C. investigated all reports of unauthorized communications and found that all of the complaints were unfounded. Moreover, in reference to Lt. General DeWitt’s memorandum\(^{534}\) of January 5, 1942, to James H. Row, Assistant to the Attorney General, Mr. Fly asserted that the W.D.C. had all the necessary equipment to locate and confiscate the unlawful radio transmitters.\(^{535}\) The F.C.C. had the necessary equipment at the disposal of the W.D.C. and operated the Radio Intelligence Centers together with the representatives of the Army and the Navy.

In light of the misstatements made by Lt. General DeWitt Edward J. Ennis brought Attorney General Francis Biddle’s attention to the need to correct them in the memo of February 26, 1944, “I believe it to be a matter of primary practical and historical importance that we correct on the public record the misstatements in General Dewitt’s justification for the Japanese evacuation contained in his Final Report (a book of 600 pages) which has been published by the War Department and made available to the public thru [sic] the Superintendent of Documents.”\(^{536}\) Both the F.B.I. and the F.C.C. were alarmed by the false nature of the statements

\(^{533}\) James Lawrence Fly to Francis Biddle, April 4, 1944.
\(^{534}\) Previously the Commanding General complained that the W.D.C. did not have the required implements to locate the radio communications in order to seize the devices. The Lt. General argued that the signals could not be located more precisely than a city block, and was wondering what action could be taken in case of evidence of radio transmissions and shore-to-ship signaling. This statement was untrue considering that the hardware developed by the engineers of the F.C.C. could locate the signal of an unlawful transmitter to its exact location, even the room from which the signal originated. James Lawrence Fly to Francis Biddle, April 4, 1944.
\(^{535}\) James Lawrence Fly to Francis Biddle, April 4, 1944.
\(^{536}\) Edward J. Ennis to Francis Biddle, February 26, 1944.
made by the Commanding General. Nonetheless, the Final Report—despite of the controversy over the footnote in the Korematsu brief—was cited as a compelling evidence on the military necessity of the ‘evacuation’ in the Korematsu case.

### 3.6.3. Partisan Politics and the Debate Over Revoking the Exclusion Order

The presidential election of 1944 and President Franklin D. Roosevelt’s fourth term dictated the end of the incarceration program, and the Supreme Court’s ruling in the *Korematsu v. United States* (1944) and the *Ex parte Endo* (1944) case. Political interests overruled the importance of civil liberties with ongoing political pressure by the West Coast delegates and public opposition to the return of the Japanese. The analysis of the correspondences between government officials sheds light on the underlying interests in the decision making process which led to the prolonged incarceration of persons of Japanese descent. Dillon S. Myer, the Director of the War Relocation Authority, contacted John J. McCloy as early as in October of 1943 to end the incarceration program and to allow Japanese persons to return to the Pacific Coast. In his letter the Director of the W.R.A. cited the lack of military necessity to continue their exclusion and imprisonment, “the military necessity for total exclusion from this area no longer exists,”537 Mr. Myer stated firmly. Assistant Secretary of War McCloy implied in his response that the Japanese could not return and that the program had to continue due to political pressure from the West Coast, specifically pressure groups from California. “This means that considerations other than of mere military necessity enter into any proposal,”538 insisted John J. McCloy. These other considerations also included the unwillingness of the War Department to act on its own, even though it was quite evident that military necessity no longer justified the continued exclusion of the Japanese from the established military areas.

In a memorandum539 addressed to the Commanding General on May 3, 1943, Karl R. Bendetsen, the Chief of Staff of the Western Defense Command and Fourth Army, informed Lt. General DeWitt on the topics discussed at the conference with Mr. Cloy. At the meeting the Assistant Secretary of War clearly stated that there no longer was any military necessity for the

537 Irons, “A Jap’s a Jap,” 358.
continued exclusion of the Japanese from the West Coast, however the War Department was unwilling to take any action on its own initiative to revoke the exclusion orders. Nonetheless, if the War Department were to be faced with the question from the White House (the President), Congress, or any federal agency whether the Department had any military objection to the return of the loyal Japanese the answer would be “No”. The unwillingness of the War Department to act on its own was a result of the continued political pressure and opposition of the West Coast to the resettlement of the Japanese persons detained. Colonel Bendetsen notes in his memo that the public confidence in theCommanding General would be shaken if the Department were to relax or revoke the exclusion, if it were to seem that the exclusion was no longer a military necessity.

W.R.A. Director Myer endeavored to avoid a post-war “racial minority problem”, therefore his objective was to support the relocation and resettlement of the loyal Japanese instead of their ongoing incarceration. President Franklin D. Roosevelt was informed of his plans by Milton S. Eisenhower on April 22, 1943. Mr. Eisenhower wrote the President, “[t]he director of the Authority is striving to avoid, if possible, creation of a racial minority problem after the war which might result in something akin to Indian reservations.” President Roosevelt was encouraged to consult with Director Myer on the relocation of the Japanese incarcerees.

The termination of the exclusion and detention of the Japanese populace was a recurring subject in the correspondences between leading officials of the Roosevelt Administration. Harold L. Ickes addressed the conditions in the Japanese American incarceration camps in his April 13, 1943, letter addressed to President Roosevelt. The Secretary of the Interior called the President’s attention to the deteriorating conditions in the camps, with persons of Japanese descent – aliens and American citizens alike –, disillusioned with their treatment at the hand of the Federal Government. Secretary Ickes was worried that the treatment would turn the

541 Colonel Bendetsen feared that the return of the Japanese would be followed by a potential “race war”, rioting and bloodshed, which would serve the Axis propaganda. Karl R. Bendetsen to John L. DeWitt, May 3, 1943.
thousands of loyal Japanese ‘evacuees’ into angry and hostile prisoners, based on the information received from several sources. “I do not think that we can disregard, as of no official concern, the unnecessary creating of a hostile group right in our own territory consisting of people who are engendering a bitterness and hostility that bodes no good for the future,” wrote the concerned Secretary of Interior. It should be mentioned at this point that the incarceration centers were established on lands under the administration of the Department of the Interior, with the Department granted jurisdiction over the ‘evacuation’ program, a task that was not welcomed by its officials as they did not approve of the treatment accorded the Japanese community. This view was expressed by Under Secretary of the Interior Abe Fortas to Eugene V. Rostow, Professor of Law at the University of Yale, School of Law. In the letter dated June 28, 1945, Mr. Fortas disclosed that the War Relocation Authority was transferred to the Department of the Interior on February 16, 1944, and the Department was reluctant to take on the role of guardianship, mostly notably because Secretary Ickes and the Under Secretary both believed that the ‘evacuation’ was a mistake. The reason for the transfer was that President Roosevelt believed that it would alleviate the ongoing attacks on the agency by the Dies Committee and ‘patriotic’ West Coast anti-Japanese organizations. According to Mr. Fortas the Dies Committee accused the W.R.A. of “mollycoddling” the Japanese, and relocating Japanese Americans who were dangerous to the security of the United States. This is symbolic of the continued attacks on the Japanese, the pressure to maintain the exclusion orders and to deter their resettlement on the West Coast. These attacks ceased after the agency was transferred to the Department of the Interior.

544 Harold L. Ickes to President Franklin D. Roosevelt, April 13, 1943.
546 Under Secretary Fortas agreed with Eugene Rostow’s criticism of the Supreme Court’s decision in the Korematsu case. Professor Rostow had previously published a study examining the significance of the Japanese American Cases, the study was published in The Yale Law Journal in June of 1945. Mr. Fortas informed Professor Rostow that it was an immense struggle to take the case of Mitsuye Endo before the Supreme Court. The Army intended to issue a leave permit to Miss. Endo to allow her to leave the incarceration camp and relocate to the East Coast. This move would have made the Endo case moot before the Supreme Court and the Solicitor General was willing to support it in order to avoid a probable defeat. The comment made by Mr. Fortas stresses the struggle between the various departments and the Army over the ‘evacuation’ program. Abe Fortas to Eugene Rostow, June 28, 1945; Eugene V. Rostow, “The Japanese American Cases: A Disaster,” The Yale Law Journal 54, no. 3, (1945): 489-533.
547 Abe Fortas to Eugene Rostow, June 28, 1945.
In his response\textsuperscript{548} to Secretary Ickes’ letter President Roosevelt emphasized the military necessity behind the exclusion and the burden it imposed on the Japanese community, acknowledging that the detainees were becoming embittered in the incarceration camps. Although it was inevitable according to the President, since many of the ‘evacuees’ regarded the program as a form of racial discrimination. “Like you I regret the burdens of evacuation and detention which military necessity has imposed upon these people,”\textsuperscript{549} argued President Roosevelt in his April 24 letter, conveying the impression that he was remorseful for the handling of the Japanese question. As proof of the changing attitude towards the Japanese he notified the Secretary of Interior that he approved the War Department’s initiative to permit the employment of the Nisei in the war industries and to enable their military service in the United States’ armed forces.\textsuperscript{550}

President Roosevelt’s reply to Secretary Ickes was prepared by Milton S. Eisenhower, the former head of the W.R.A. for three months between March and June of 1942. Mr. Eisenhower, then the Associate Director of the Office of War Information, sent the President the prepared reply\textsuperscript{551} on April 22, 1943, and took the opportunity to advise the Commander-in-Chief on the Secretary’s letter and the Japanese situation. He informed the President that his former colleagues in the W.R.A. were worried by the impact of the forced removal and detention upon the Japanese, mostly notably on the young Nisei. Mr. Eisenhower contended that the Nisei were unable to reconcile the democratic principles and teachings they received during their public education with their unfortunate situation, noting that the Japanese felt they were victims of


\textsuperscript{549} President Franklin D. Roosevelt held the conviction that the best possible solution to the Japanese ‘problem’ was to encourage the countrywide resettlement of Japanese Americans, outside the West Coast, and to turn over the incarceration centers to the War Department to be used as prisoner of war camps. The President was previously informed by Milton S. Eisenhower that the plan of the W.R.A. was to assist the loyal Japanese in relocating and to be reabsorbed into American society. The agency hoped that by the end of the war only those individuals would be detained whose loyalty to America was questionable, and those who were unable to resettle on their own due to their age or other circumstances. President Franklin D. Roosevelt to Harold L. Ickes, April 24, 1943; Milton S. Eisenhower to President Franklin D. Roosevelt, April 22, 1943.

\textsuperscript{550} President Franklin D. Roosevelt to Harold L. Ickes, April 24, 1943.

\textsuperscript{551} Milton S. Eisenhower to President Franklin D. Roosevelt, April 22, 1943. Milton S. Eisenhower’s letter can also be found in the archives of the Japanese American National Library. Milton S. Eisenhower to President Franklin D. Roosevelt, April 22, 1943, Box 1, Folder Documents: Francis Biddle, 1942-1944, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco.
racial prejudice. “It is hard for them to escape a conviction that their plight is due more to racial
discrimination, economic motivations, and wartime prejudices than to any real necessity from the
military point of view for evacuation from the West Coast,”\footnote{Milton S. Eisenhower to President Franklin D. Roosevelt, April 22, 1943.} ascertained Mr. Eisenhower the
disillusionment of the Japanese Americans. Person of Japanese ancestry felt that they were not
welcome as a community, with this Milton Eisenhower alluded to the anti-Japanese statements
and legislation by state legislatures and members of the United States Congress\footnote{See The Legislative Branch Chapter for the analysis of the anti-Japanese sentiments and agitation in the House of Representatives and the Senate on the issue of the Japanese ‘problem’.}, not neglecting
the influence of the local ‘patriotic’ organizations from the West Coast. The Japanese incarcerees
held the Federal Government accountable for their plight, knowing that the military officials
responsible for their exclusion accused them of disloyalty based on racial profiling, without any
attempt to distinguish between individuals on basis of their loyalty. “[I]n the opinion of the
evacuees the Government may not be excused for not having attempted to distinguish between
the loyal and the disloyal in carrying out the evacuation,”\footnote{Milton S. Eisenhower to President Franklin D. Roosevelt, April 22, 1943.} insisted Milton S. Eisenhower.

Attorney General Francis Biddle argued on behalf of the loyal American citizens in his
letter addressed to President Roosevelt on December 30, 1943. “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,”\footnote{Francis Biddle to President Franklin D. Roosevelt, December 30, 1943, Box 1, Folder Roosevelt Lib. Materials, 1941-1942, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco; Irons, “A Jap’s a Jap,” 358.} reasoned the
Attorney General. He called attention to the issue of racial profiling, stressing that although
detaining loyal citizens was allowed due to national security the military necessity, which made
it possible, no longer existed. President Roosevelt did not respond to Attorney General Biddle’s
letter. Ending the incarceration was also discussed during the cabinet meetings, Francis Biddle
noted that on one occasion in May of 1944 Secretary of War Stimson raised the issue and
admitted that the exclusion program could be ended “without danger to defense considerations
but doubted the wisdom of doing it at this time before the election”\footnote{Irons, “A Jap’s a Jap,” 358.}. The President firmly
agreed with his judgment.

\begin{thebibliography}{9}
\bibitem{552} Milton S. Eisenhower to President Franklin D. Roosevelt, April 22, 1943.
\bibitem{553} See The Legislative Branch Chapter for the analysis of the anti-Japanese sentiments and agitation in the House of Representatives and the Senate on the issue of the Japanese ‘problem’.
\bibitem{554} Milton S. Eisenhower to President Franklin D. Roosevelt, April 22, 1943.
\bibitem{555} Francis Biddle to President Franklin D. Roosevelt, December 30, 1943, Box 1, Folder Roosevelt Lib. Materials, 1941-1942, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco; Irons, “A Jap’s a Jap,” 358.
\bibitem{556} Irons, “A Jap’s a Jap,” 358.
\end{thebibliography}
Secretary Harold Ickes made an earnest request to President Roosevelt on June 2, 1944, to put an end to the incarceration program, to revoke the exclusion of the Japanese from the West Coast. The Secretary maintained that “the continued exclusion of American citizens of Japanese ancestry from the affected areas is clearly unconstitutional in the present circumstances.” Secretary Ickes remarked in his letter that the Secretary of War believed that there was no longer any military necessity for the continued exclusion of Japanese persons from California, the West Coast. For further clarity the Secretary of Interior included a list of six points in support of revoking the exclusion orders: lack of justification for the exclusion on a military security position, the exclusion is unconstitutional, the continued exclusion from the West Coast hindered the efforts of the W.R.A. to relocate the Japanese Americans to other parts of the country, the negative psychological effects of the incarceration, and Japanese children becoming maladjusted to American society due to predominant Japanese influence in the closed incarceration centers. A further point of concern was the influence of the ongoing exclusion program on the treatment of American prisoners of war and civilians by the Empire of Japan, and the efforts made by the United States Government to secure better circumstances for them. Secretary Ickes makes an interesting observation in regards to the international implications of the exclusion, commenting that in many areas the Japanese Government did not intern American citizens until the incarceration of the West Coast Japanese. Furthermore, a recent State Department complaint on the treatment of American nationals was countered by Japanese officials citing the exclusion of Japanese persons and the conditions in the incarceration centers. Secretary Harold Ickes held a negative standpoint on the exclusion, but did not express his personal opinion to the President on the lack of military justification. Nonetheless, he did comment on its historical implications: “I do say that the continued retention of these innocent people in the relocation centers would be a blot upon the history of this country.”

557 Harold L. Ickes to President Franklin D. Roosevelt, June 2, 1944, Box 1, Folder Documents: Francis Biddle, 1942-1944, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco (hereafter cited as Harold L. Ickes to President Franklin D. Roosevelt, June 2, 1944); Irons, “A Jap’s a Jap,” 358.
558 Harold L. Ickes to President Franklin D. Roosevelt, June 2, 1944.
559 Further elaborating on the issue, Secretary Ickes informed the President that state and local officials opposed the relocation of Japanese Americans by citing the military necessity behind the valid exclusion orders. The officials argued that if the Japanese were dangerous on the West Coast than they should not be allowed to resettle in their states. Harold L. Ickes to President Franklin D. Roosevelt, June 2, 1944.
560 Harold L. Ickes to President Franklin D. Roosevelt, June 2, 1944.
In response to the Secretary of Interior’s concerns the President maintained his focus on the importance of the upcoming elections, notes Peter Irons. “I think the whole problem, for the sake of internal quiet, should be handled gradually,” affirmed Franklin D. Roosevelt. President Roosevelt refused to acknowledge the lack of national security justification for the continued incarceration of the Japanese population throughout 1943-1944, an election year. He turned down the appeals made by the Department of Justice and Interior, and by the W.R.A., to terminate the program. One notable example is when the President dismissed the United States Army’s plan for the resettlement of Japanese Americans to the Pacific Coast. Irons notes President Roosevelt’s reaction to John J. McCloy’s proposal, how the President of the United States “put thumbs down on this scheme.” The Assistant Secretary of War noted the President’s reaction during their conference in the White House and the circumstance surrounding his refusal to resettle the incarcerees. “‘He was surrounded at the moment by his political advisors,’ […] ‘and they were harping hard that this would stir up the boys in California and California, I guess, is an important state’” as Mr. McCloy explained the President’s political decision to the officials of the United States Army, quoted by Irons. The incarceration could not end sooner than November 6, the date of the Presidential election in 1944, which Franklin D. Roosevelt won by a wide margin against Thomas E. Dewey. Peter Irons reflected on the role of partisan politics in his work Justice at War in which he concluded that President Roosevelt’s determination to have a political advantage in the election of 1944 was the main factor in delaying the termination of the ‘internment’. From the perspective of the Japanese American community the election of 1944, the Democratic Party’s and Franklin D. Roosevelt’s political agenda – partisan politics –, overruled their civil liberties and their chances of returning to their homes at an earlier date. The irrationality of the Roosevelt Administration’s actions and the impact of the election is best summarized by Irons, “Japanese Americans, who had been deprived of their right to vote, remained behind barbed wire fences while Roosevelt celebrated his victory in the White House.”

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The Roosevelt Administration waited until the end of 1944 to announce the end of the incarceration and the closing of the camps. President Roosevelt refused to end the exclusion program and permit the resettlement of Japanese Americans before the Presidential election of November 1944. The announcement came on December 17, 1944, only one day before the Supreme Court issued its opinion in the Korematsu and the Ex parte Endo cases. Irons notes that in all probability Justice Felix Frankfurter warned the Federal Government and military officials of the pending decisions, especially of the Endo opinion which found the continued detention of loyal citizens unconstitutional. War Department press releases announced the revocation of the exclusion orders and the end of the detention on December 17, 1944. It signaled the release of those loyal citizens of Japanese ancestry whose “records have stood the test of Army scrutiny during the past two years.” The revocation became effective on January 2, 1945, at which point the Japanese were allowed to leave the detention camps and return to the West Coast.

3.7. Summary

The resolution to exclude Japanese persons was the result of successive decisions according to Lt. General DeWitt’s Final Report, declaring that “[i]t was predicated upon a series of intermediate decisions, each of which formed a part of the progressive development of the final decision.” As follows, the plight of the Japanese aliens – ‘enemy aliens’ – and American citizens of Japanese parentage – ‘non-aliens’ – was influenced by more than just national defense interests. The Japanese community faced collective discrimination, unlike the Germans and Italians who were treated on an individual basis as they were considered to be less dangerous by the War Department. This selective treatment reinforces the notion that racial profiling and prejudice played a role in the discriminatory regulations victimizing Japanese persons. The mass ‘evacuation’ of the West Coast Japanese was dictated by military necessity according to the Final Report due to their distribution and concentration along the Pacific Coast, their un-American activities – threat of sabotage and espionage –, and their racial ties, affiliation to the Empire of Japan. The military necessity argumentation of the War Department relied greatly on

567 DeWitt, Final Report, 3.
the racial characteristics of the Japanese, but at the meantime provided no tangible evidence of subversive activity.

Executive Order No. 9066 was drafted by the War Department – in an environment of fear and war hysteria –, with the concurrence of the Department of Justice, to authorize the exclusion of persons of Japanese ancestry from the military areas designated by the Secretary of War and the Military Commander. The order was issued by President Franklin D. Roosevelt on February 19, 1942, and it did not single out Japanese persons, but was rather broadly defined and applied to “any or all persons”.

Nevertheless, the Final Report published under the name of Lt. General John L. DeWitt contained numerous misstatements and misleading ‘facts’ that were proven to be false in the investigations and reports prepared by the O.N.I., F.B.I., and F.C.C. The reports were received by the Commanding General, meaning that Lt. General DeWitt knew of the false nature of the arguments made in support of the wholesale exclusion of the Japanese residents from the Pacific Coast. It was also alleged by Military Commander that the ‘evacuation’ was necessitated by the inaction of the D.O.J. over the ‘mass raids’, thereby charging the Department with dereliction of duty. This is of immense significance considering that the attorneys of the D.O.J. defended the exclusion orders in the Japanese American legal challenges, yet did not receive a copy of the report. The Final Report was released without the knowledge or consent of the Department of Justice.

The War Department deliberately mislead the Department of Justice with regards to the findings made in the Final Report, indicating an interdepartmental conflict over the ‘evacuation’ program. The War Department did not release the report even though the D.O.J. was responsible for defending the exclusion order before the Supreme Court in the pending legal challenges: Hirabayashi v. United States, 320 U.S. 81 (1943), Yasui v. United States, 320 U.S. 115 (1943), and Korematsu v. United States, 323 U.S. 214 (1944). The War Department justified the collective ‘relocation’ based on military necessity, while placing part of the blame on the D.O.J. In spite of the opposition of members of the Department of Justice the Supreme Court was not advised in the Korematsu brief not to take judicial notice of the deceptive and ambiguous statements made in the Final Report, as originally stated in the infamous footnote on page 11 of

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the brief. The Supreme Court upheld the constitutionality of the exclusion order and the incarceration of Japanese Americans in the *Korematsu v. United States*, 323 U.S. 214 (1944) decision without being advised on the inaccuracies of Lt. General DeWitt’s report, nor about contradicting findings on the lack of military necessity; the *Final Report* was cited 14 times in the *Korematsu* decision.\(^{570}\) This is highly questionable considering the investigations conducted by the O.N.I., the F.C.C., and the F.B.I., and the objections of the Department of Justice over the factuality of the report.

The suppression of evidence and the obstruction of justice for political purposes is unequivocally contrary to the principle of checks and balances. The Judiciary was unable to properly assess the constitutionality of the exclusion and incarceration – exercise its power of judicial review –, because it did not possess all the available factual information on the issue at hand. The War Department was accused by Edward Ennis of providing selective facts on the ‘evacuation’ in order to support the argumentation made in the *Final Report*. The suppression of evidence and errors of facts by the Federal Court were later cited in the error coram nobis petitions to reopen the cases of Gordon Hirabayashi, Minoru Yasui, and Fred Korematsu. The revocation of the exclusion orders was announced on December 17, 1944, a day prior to the Supreme Court ruling in *Ex parte Mitsuye Endo*, 323 U.S. 283 (1944)\(^{571}\) decision that the Federal Government could not detain loyal citizens lawfully, but at the meantime upholding the constitutionality of the exclusion and incarceration of persons of Japanese descent in the *Korematsu* opinion.

We must not forget that 1944 was an election year with President Roosevelt running for an unprecedented fourth term in office. In this sense partisan politics also played an important role in the continued exclusion of the Japanese populace with the Roosevelt Administration seeking the vote of the West Coast, particularly that of the State of California. The Roosevelt Administration waited until the last minute to terminate the ‘evacuation’ program despite of the calls by members of the Administration – Harold L. Ickes, Secretary of Interior; Dillon S. Myer, Director of the W.R.A.; Milton S. Eisenhower, former Director of the W.R.A.; and Attorney General Francis Biddle – to end the exclusion and permit the resettlement of the Japanese as


early as April of 1943. This introduces a further factor, the influence of partisan politics due to political pressure by congressional delegates and West Coast politicians. The War Department was unwilling to act on its own to terminate the ‘evacuation’ program, while facing an all-important wartime election. President Roosevelt refused to acknowledge the lack of military necessity, rather he focused on the importance of internal political stability and the gradual revocation of the exclusion orders. The continued exclusion and detention of Japanese Americans thus served a political purpose, the appeasement of the West Coast delegates, anti-Japanese pressure groups, and the public’s sentiment.

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Chapter 4.
The Legislative Branch:
The Role of the United States Congress
and the Exclusion and Incarceration of Japanese Americans

The issue cannot be in doubt. Partisan differences perished in the fires of Pearl Harbor.
All became Americans dedicated to a common and an assured victory.\textsuperscript{573}

Senator Ralph Brewster
Maine Republican State Convention, 1942

The United States Congress provided immense support for the war effort of the Roosevelt Administration by issuing Public Law No. 503 post factum: “To provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones.”\textsuperscript{574} It was signed by Sam Rayburn, Speaker of the House of Representatives, and was approved on March 21, 1942. The Act of Congress essentially made it a federal crime to violate the regulations and restrictions issued by the Military Commander concerning persons of Japanese ancestry living on the West Coast. The forced removal and imprisonment of persons of Japanese descent will be studied in the present chapter with respect to the role of Congress in handling the Japanese ‘problem’. This analysis is justified in light of the fact that any violation of the military orders were interpreted as a federal crime and resulted in the Japanese American cases\textsuperscript{575}. We have to keep in mind that by March 21\textsuperscript{st} President Franklin D. Roosevelt had already assented to the exclusion and incarceration by signing Executive Order No. 9066 (February 19\textsuperscript{th}) and Executive Order No. 9102 (March 18\textsuperscript{th}), while Lt. General John L. DeWitt, the designated Military Commander, had issued Public Proclamation

\textsuperscript{573} Senator White, speaking on Address by Senator Brewster to Maine Republican State Convention, on April 6, 1942, 77th Cong., 2nd sess., \textit{Congressional Record} 88, pt. 3: 3333 (hereafter cited as Senator White, speaking on Address by Senator Brewster, 88, pt. 3).
\textsuperscript{574} “Public Law No. 503,” March 21, 1942, National Archives Catalog, National Archives and Records Administration, accessed October 2, 2018, \url{https://catalog.archives.gov/id/5730387}. See Appendices, Primary Documents, Document 10 for a copy of Public Law No. 503, the approved version of H.R. 6758 from March 21, 1942.
\textsuperscript{575} The constitutional aspects of the military orders, restrictions, and regulations are addressed in \textit{The Judiciary and the Legacy of the Japanese American Cases} Section.
No. 1 (March 2nd). Other proclamations and civilian exclusion orders were to follow the initial restrictions. The Legislative Branch of the Federal Government supported the war measures of the Administration by having provided the legislative means to enforce the anti-Japanese provisions in close cooperation with the Department of War, which requested the proper legal means to enforce its restrictions. The exclusion of the Japanese communities began as early as February 25, 1942, when the Japanese American residents, approximately 500 families, living on Terminal Island576 near Los Angeles Harbor were informed by the United States Navy that they had only 48 hours to leave their homes. The war effort was not the only factor behind the end of partisan politics, the anti-Japanese sentiments were also a component in uniting members of Congress.

4.1. The Pearl Harbor Debacle and Members of Congress

The United States Congress swiftly responded to the passionate “Day of Infamy” Speech delivered by President Franklin D. Roosevelt on December 8577, 1941, to a joint meeting of the two Houses of Congress. After the address, in which President Roosevelt asked for a declaration of war, the Senate met to discuss and vote on S. J. Res. 116.578 The resolution affirmed that a state of war existed between the Japanese Imperial Government and the Government of the United States. The result of the Senate vote579 assured President Roosevelt of overwhelming support with 82 Yeaś and 0 Nayś, 13 Senators did not vote as they were unable to make it back to Washington. Just as the Senate, the House of Representatives also convened following the address and discussed H. J. Res. 254, a joint resolution on the state of war. The resolution passed

576 The Japanese families forced to leave Terminal Island found new residents within Los Angeles County, but were later excluded by the United States Army. Roger Daniels, Asian America: Chinese and Japanese in the United States since 1850 (Seattle: University of Washington Press, 1988), 214.
578 Address by the President, S. J. Res. 116, on December 8, 1941, 77th Cong., 1st sess., Congressional Record 87, pt. 9: 9506 (hereafter cited as Address by the President, S. J. Res. 116, 87, pt. 9).
579 Address by the President, S. J. Res. 116, 87, pt. 9: 9506.
with 388 *Yeas* and 1 *Nays*, 41 members of the House did not partake in the vote.\(^{580}\) Subsequent to the vote the Representatives were informed of the Senate Joint Resolution, requesting the concurrence of the House. S. J. Res. 116 was read to the Representatives by the Clerk and since it was the same resolution it passed.\(^{581}\) At the request of Representative McCormack of Massachusetts House Joint Resolution 254 was vacated without any objection. The Speaker of the House was allowed to sign S. J. Res. 116 after Mr. McCormack asked for the unanimous consent of the Representatives, again there was no objection.\(^{582}\)

A distinctive embodiment of American patriotism are the proclamations made by members of Congress who did not manage to return to Washington D.C. for President Roosevelt’s Pearl Harbor address, and the historical vote on the declaration of war. Members of the House of Representatives and the Senate felt the need to confirm their initial intention to vote *Yes*, with several declarations included in the Congressional Records to attest their loyalty. These statements are apologetic, almost remorseful for being unable to cast a vote in favor of the defense of America. The Honorable Noble J. Gregory, Representative from Kentucky, Honorable C. Jasper Bell, Representative of Missouri, and Honorable Caroline O’Day, Representative from New York, were all unable to reach Washington, but affirmed in their remarks\(^ {583}\) delivered on December 11, 1941, that they would have voted in favor of declaring war on Japan, had they been able to.

The attack on Pearl Harbor was one of, if not the most devastating blow to the United States Navy and the pride of the American people. Representative Stephen M. Young went as far as to state to the Speaker of the House on December 9, 1941, that “[…] in the entire history of our Republic no naval defeat equals the magnitude of the disaster suffered by us on December 7

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\(^{580}\) War Resolution, H. J. Res. 254, on December 8, 1941, 77th Cong., 1st sess., *Congressional Record* 87, pt. 9: 9536.

\(^{581}\) Declaration of War, H. J. Res. 254 and S. J. Res. 116, on December 8, 1941, 77th Cong., 1st sess., *Congressional Record* 87, pt. 9: 9537.

\(^{582}\) Representative McCormack, speaking on Speaker Authorized To Sign Senate Joint Resolution 116, S. J. Res. 116, on December 8, 1941, 77th Cong., 1st sess., *Congressional Record* 87, pt. 9: 9538.

\(^{583}\) Representative Noble J. Gregory, speaking on War Against Japan, on December 11, 1941, 77th Cong., 1st sess., *Congressional Record* 87, pt. 14: A5544; Representative C. Jasper Bell, speaking on War Against Japan, on December 11, 1941, 77th Cong., 1st sess., *Congressional Record* 87, pt. 14: A5545; Representative Caroline O’Day, speaking on The War Resolutions, on December 11, 1941, 77th Cong., 1st sess., *Congressional Record* 87, pt. 14: A5565.
It seems it was inevitable that Congress would call for inquiries into the events and negligence, derelict of duty, and unpreparedness leading up to that fateful day. The American political leadership was looking for scapegoats and initially they investigated amongst the circle of the Army and Navy Command on the Hawaiian Islands to find those responsible for the failure to defend against the surprise air attack launched by the Imperial Japanese Navy. A frequent question concerning Pearl Harbor was: “Where was our vaunted Navy?”

One of the prominent Representatives calling for punishment of those responsible was the Honorable John D. Dingell of Michigan. In his speech to the House of Representatives on December 9, 1941, he addressed the issue of negligence and the need for a comprehensive inquiry. He did not hold back in his choice of words and placed blame on the United States Army and Navy stationed at Oahu. Representative Dingell demanded from the Secretary of War and Navy the commencement of court martial proceedings against Lt. General Walter C. Short, Commander of the Hawaiian Department, and Admiral Husband E. Kimmel, Commander in Chief of the Pacific Fleet, to determine their role in the Pearl Harbor debacle.

Others were not as quick to judge and place blame on the officers of the Army and Navy. In response to Representative Dingell’s hasty criticism the Honorable James E. Van Zandt defended Admiral Kimmel and Lt. General Short on the floor of the House of Representatives. The Representative from Pennsylvania stressed the need for an official inquiry and report before placing blame on the two Commanders. Furthermore, he also emphasized that the enlisted men under their command were gallant men fighting on the front line of the battle for the Pacific. “What Member of Congress has the unmitigated gall to stand up here and criticize military officials engaged in doing their duty as they see it 6,000 miles from home?” asked Representative Zandt, questioning the intent of Representative Dingell. It is understandable that

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584 Representative Stephen M. Young, speaking on Pearl Harbor, on December 9, 1941, 77th Cong., 1st sess., Congressional Record 87, pt. 14: A5500 (hereafter cited as Representative Young, speaking on Pearl Harbor, 87, pt. 14).
585 Representative Young, speaking on Pearl Harbor, 87, pt. 14: A5500.
Mr. Zandt would defend the Commandants considering that he served on the staff of Admiral Kimmel while stationed on the Hawaiian Islands as a Lieutenant of the U.S. Naval Reserves.590

Eventually Admiral Kimmel and Lt. General Short were discharged from their duties by President Roosevelt and an investigative committee was established, the Roberts Commission: Owen J. Roberts, W. H. Standley, J. M. Reeves, Frank R. McCoy, and Joseph T. McNarney. The Commission591 appointed by the President made public its report on January 23, 1942. Pearl Harbor and the work of the Commission was extensively deliberated in Congress. As a brief summary of the “Pacific debacle” it is worth to refer to the radio address592 of H. V. Kaltenborn on the network of the National Broadcasting Co. on January 25, 1942. The address was included the following day in the Congressional Records by the Honorable L. Mendel Rivers of South Carolina, the Representatives described the program as an “excellent analysis” of the Roberts Report. According to Mr. Kaltenborn’s analysis there was no problem with the United States Army or Navy. Citing from the report of the Pearl Harbor Investigating Committee: “Officers and enlisted men, in defending against attack, demonstrated excellent training and high morale. Both officers and men responded immediately in the emergency and exhibited initiative, efficiency, and bravery in meeting the raid.”593 Nonetheless, there were significant failures in preparedness according to the conclusions of the Commission, and the dereliction of duty – lack of communication and cooperation between the Army and Navy Commands, misinterpretation of warnings issued between October 27 and December 3594 – by Admiral Kimmel and Lt. General Short were in the focus of attention, since the Commanders were caught off guard by the surprise Japanese attack. It has to be highlighted, however, that neither Mr. Kaltenborn’s address nor the Roberts Report provided clear evidence of subversive activities by Japanese American residents, by either members of the Issei or Nisei generations.

“Future generations of Americans will recall Pearl Harbor and December 7, 1941, and say that was our black Sunday. Hundreds of years from now, will this disaster be cited as a

591 The Pearl Harbor disaster is discussed at greater length in The Day of Infamy Chapter.
593 H. V. Kaltenborn’s radio address, on The Roberts Report, on January 26, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 8: A254 (hereafter cited as H. V. Kaltenborn’s radio address, 88, pt. 8).
594 H. V. Kaltenborn’s radio address, 88, pt. 8: A254.
flagrant example of inattention, carelessness, and failure?”, philosophized Representative Stephen M. Young only two days after the assault on the Island of Oahu. He was right since the Pearl Harbor disaster is still a topic of heated debates, however, it also applies to the forced removal and incarceration of Japanese Americans as a repercussion of scapegoating in the endeavor to avenge the losses suffered on December 7, 1941. In the search for scapegoats the alien Japanese and American citizens of Japanese ancestry were the ones to be named next on the list of suspects. Representative Young’s philosophical question can thus be also applied to the suffering of the Japanese community and how it is interpreted today after more than half a century.

4.2. The United States Congress and the ‘Japanese Menace’

Before examining the debate over Public Law No. 503 it is important not to neglect the political atmosphere prior to March of 1942, the approval of the aforementioned public law and the beginning of the mass scale exclusion of persons of Japanese descent. Members of Congress were deeply affected by the assault on Pearl Harbor, questioning the preparedness of the United States Army and Navy and expressing their allegiance and loyalty to the Roosevelt Administration in its endeavor to defend the nation against the Empire of Japan. The remarks and speeches delivered on the floor of the Senate and the House of Representatives – chronicled in the Congressional Records – paint a dark picture of Japanese “enemy aliens” and subversives, the Japanese ‘Fifth Column’ menace. A frequent subject of the remarks is the lack of assimilation, Americanization, the issue of dual citizenship, and the Japanese ‘problem’ on the West Coast. The debates in Congress and the political discourse were dominated by anti-Japanese sentiments and racial prejudice.

Over the succeeding weeks members of the House and Senate shared their views on the Japanese ethnic community, only a few making a distinction between Japanese nationals and Japanese Americans, aliens and American citizens of Japanese parentage living in the United States. The Honorable Harry L. Haines, Representative from Pennsylvania, went as far as to state on December 9, 1941, that someone is either an American or not. Mr. Haines, quoting an unidentified previous President, argued that “[a]ny man who says he is an American and

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595 Representative Young, speaking on Pearl Harbor, 87, pt. 14: A5500.
something else also is no American at all." Representative Hines voted for the declaration of war, because it was a war for the defense of liberty; he would not have voted for a war if it was waged in the name of aggression. It was not a war of conquest, but rather a call to “take up arms in defense of our own national security.” The characterization by Mr. Haines was shared by his fellow representatives, such as the Honorable William H. Sutphin from New Jersey. Representative Sutphin accused the Japanese of misleading officials of the State Department during their negotiations, adding that “[t]he Japanese have poured from the poison teapot, even while engaged in friendly conservations [sic].” The ‘war resolutions’ frequently mention the fact that the United States was involved in ongoing peaceful negotiations with the Empire of Japan prior to the attack on Pearl Harbor.

Apart from appealing for allegiance and unity some called on the American people, and politicians, to support President Franklin D. Roosevelt in the war effort. Representative Karl M. LeCompte of Iowa spoke up against partisan politics on December 9, 1941: “All good Americans will rally to the support of the President. This is no time for partisan politics.” From the previous quotation the second sentence is of great significance, because it deals with the all-out support of the Roosevelt Administration’s war effort by all agencies, departments, and all three branches of the National Government. This concept, the end of ‘partisan politics’, was reiterated by Senator Brewster in his address at the Maine Republican State Convention.

Senator Brewster called attention to the end of partisan politics, the “great crusade in the cause of

596 Representative Hines referred to the Japanese as godless and pagan, describing the attack on Pearl Harbor as “cowardly” and “cruel”: “Mr. Speaker, Sunday, December 7, 1941, will go down as one of the darkest days in history. Peaceful, liberty loving people were stunned by the acts of the godless, pagan Japan upon a Nation whose Executive at that very hour was urging the people of Japan to further consider means of maintaining peace.” Representative Harry L. Haines, speaking on War Resolution, on December 9, 1941, 77th Cong., 1st sess., Congressional Record 87, pt. 14: A5490 (hereafter cited as Representative Haines, speaking on War Resolution, 87, pt. 14).
597 Representative Haines, speaking on War Resolution, 87, pt. 14: A5490.
598 Representative William H. Sutphin, speaking on War Resolution, on December 9, 1941, 77th Cong., 1st sess., Congressional Record 87, pt. 14: A5490.
599 Representative Karl M. LeCompte, speaking on War Resolution, on December 9, 1941, 77th Cong., 1st sess., Congressional Record 87, pt. 14: A5493.
600 The speech was included in the Congressional Record for April 6, 1942, at the request of Senator White. Senator White, speaking on Address by Senator Brewster, 88, pt. 3: 3333.
human freedom" had forged a unified force of Democrats and Republicans. The Imperial Japanese Navy did not only deliver a devastating blow to the United States Navy, but also to the culture of political dividedness. “At Pearl Harbor the Japanese sank far more than they have yet realized. Down with our battleships went the partisan differences in America upon which the totalitarians depended to divide and destroy the democracies,” declared Mr. Brewster to the participants of the Republican assembly. America was unified by a common goal, the war effort in the enterprise of defeating the Axis Powers. This of course also entailed that defending the military industry complex and the West Coast became a military necessity, a national security interest.

Notwithstanding, there were voices raised in defense of the Japanese population as early as December 10, 1941. The Honorable Bertrand W. Gearhart requested permission from the Speaker of the House to transmit a telegram addressed to President Roosevelt by a Japanese persons whom he introduced as “an American patriot of Japanese origin.” The author of the telegram, dated December 9, 1941, was the President of the Japanese Association of Fresno and wrote to Representative Gearhart to offer through him the services of the association to the President in support of the national defense of the United States. Mr. S. G. Sakamoto pledged the commitment of the organization and hoped that they will be called upon, writing: “No sacrifice

603 Representative James F. O’Connor of Montana included in the House Records on January 19, 1942, a letter signed by 18 Japanese persons from House, Mont., as an extension of his remarks on Japanese aliens. In the letter the Japanese aliens noted that the conflict was brought about by the Empire of Japan and they pledged their loyalty and allegiance to the United States, since most of them had been living in American for 30 to 40 years. The undersigned proclaimed, “[...] we Japanese aliens residing in House, Mont., wish to have it known that we have no connections whatsoever with the Japanese aggressors and do not favor them.” A further illustration of the concern for the Japanese in the Congressional Records was provided by the Federal Council of the Churches of Christ in America. A copy of the Federal Council Bulletin of April was shared by Senator Reynolds on May 12, 1942. Mr. Reynolds was visited by Bishop Adna Wright Leonard and Dr. Samuel McCrea Covert. The Bulletin touched upon the plight of the Japanese who were at the time being ‘evacuated’ from the West Coast. The Council appealed to the Protestant Churches on the Pacific Coast, not located in the designated evacuation zones, to find employment opportunities for American citizens of Japanese descent. The pastors were advised to interview the potential persons and to recommend the most capable ones for the available job openings. Representative James F. O’Connor, speaking on Japanese Aliens at House, Mont., Pledge Loyalty, on January 19, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 8: A170; Senator Robert Reynolds, speaking on Actions of Executive Committee, on May 12, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 3: 4082.
604 Representative Bertrand W. Gearhart, speaking on Telegram by S. G. Sakamoto, on December 10, 1941, 77th Cong., 1st sess., Congressional Record 87, pt. 9: 9630.
will be too great which we may be called upon to make. It will be fulfilled willingly.”

At this point no one could have foreseen that the sacrifice demanded of the Japanese would entail their collective removal from the Pacific Coast. It is noteworthy that at this time, despite of the recent disaster, there was no sign of overwhelming anti-Japanese sentiments, no calls were made for the collective exclusion and incarceration of persons of Japanese ancestry. Even so, there were clear signs of changing sentiments from January of 1942 onwards with voices of concern raised over the Japanese ‘problem’ and potential ‘Fifth Column’ activities on the Pacific Coast.

The West Coast residents felt the urgent need to handle the Japanese population and pressured their representatives to raise the issue in Congress. On February 9, 1942, Representative John M. Costello of California addressed the House and stated that a West Coast Committee was established by the delegates of the three Western states, with members from the House and Senate, in order to examine the Japanese ‘problem’ and to publish its findings and recommendations. The Committee felt that the Federal Government had to consider the removal of the Issei and Nisei from defense areas, and their relocation to the interior. To make his assessment more profound Representative Costello included in his remarks the radio address of Fletcher Bowron, the Mayor of Los Angeles, from February 5, 1942. The address served to illustrate the threat of the Japanese ‘Fifth Column’, the menace of the disloyal Japanese residents. It seems that by February the people and the state administration of California were looking for actual federal policy and action. There was clear evidence of war hysteria, considering that California was arguing for the ‘evacuation’ of Japanese persons because of their ‘overwhelming’ numbers, their concentration and distribution in the State. According to the data provided by Mayor Bowron the Los Angeles Japanese accounted for about 1/5 of all the Japanese in America, and ¼ of California’s Japanese lived within the city limits of Los Angeles. Altogether there were 126,000 Japanese residents in the Continental United States and 93,000 of them lived in California, with 39% residing in Los Angeles County and 23,321 in Los Angeles. Of the 10,000 aliens only a few hundred Issei were taken into custody and imprisoned by the

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605 Telegram by S. G. Sakamoto to Representative Bertrand W. Gearhart, on December 10, 1941, 77th Cong., 1st sess., Congressional Record 87, pt. 9: 9630.
authorities. Mayor Bowron’s portrayed Los Angeles as the center of Japanese subversive activities, of sleeping agents waiting to betray Angelenos in case of an invasion, going as far as to refer to L.A. as the “human sacrifice” if attacked by invading Japanese forces. His prejudice towards Japanese people was based on racial antagonism, the belief that the Japanese race could not be assimilated on account of its different physical appearance, training, and philosophy.

Mayor Fletcher Bowron’s address on the Japanese ‘Fifth Column’ threat, February 5, 1942:

If there is intrigue going on – and it is reasonably certain that there is – right here is the hotbed, the nerve center of the spy system, of planning for sabotage. Right here in our own city are those who may spring to action at an appointed time in accordance with a prearranged plan wherein each our little Japanese friends will know his part in the event of any possible attempted invasion or air raid.

The Mayor called for the wholesale exclusion of the Japanese nationals from the coastal areas, or their detention in “concentration camps”. Nonetheless, it would not solve their problems, because there was the pressing issue of the Japanese Americans, encompassing those who were loyal, and a number of individuals “[…] who are doubtless loyal to Japan, waiting probably, with full instructions as to what to do, to play their part when the time comes.”

Needless to say, no facts were provided to support the claims made on Japanese disloyalty and subversive activities. In fact, any proof of loyalty was immediately undermined by Mayor Bowron who could not, or would not believe in the truthfulness of their allegiance to America for fear of being misled. There was no proof of their loyalty, insisted Mr. Bowron. Moreover, the lack of espionage and sabotage was interpreted as evidence of disloyalty by the Mayor of Los Angeles; “[t]he way they could serve the cause of Japan most effectively would be to lay low, appear docile, entirely harmless, so as to not be disturbed in this or any other important area, in order that they might go about freely, make observations as to war preparations, the presence and transportation of troops, the coming and going of warships or cargo vessels, in order that they might learn of the departure of armed forces, planes, and other munitions of war from our harbors, and assist in getting such valuable military information to the Japanese Government,

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possibly to lurking submarines off our coast.” Mayor Bowron’s perception of the Japanese Americans and their persecution greatly resembles Arthur Miller’s play *The Crucible* on the Salem witch trials.

Fletcher Bowron supported the relocation of Japanese persons to federal lands in the interior, hundreds of miles from the West Coast, where they could contribute to the war effort with their labor. This treatment of a community based on its ethnicity did not seem in any form or shape inhumane to him. Even though previously Mayor Bowron stated that he did not believe in the truth of Japanese loyalty he contradicted himself by stating that the “burden of proof of loyalty” was the responsibility of the Japanese. He believed that they should voluntarily accept their removal and incarceration. “If the American-born Japanese feel that they are loyal American citizens, they would have no cause for complaint; they should willingly do their part in the service of the United States Government in time of war.” A great majority of the American public felt similarly, believing that Japanese Americans should sacrifice their freedoms and liberties at the altar of national defense and military necessity, even though other ‘enemy aliens’ were not forced to face the same choice. The separate treatment of the German and Italian community – treated on an individual basis – reflects the selective discriminatory treatment of the Japanese, the victims of racial profiling. This notion of voluntary relocation as proof of allegiance to America was shared by other members of Congress, for example Representative Leland M. Ford of California. Mr. Ford was of the firm conviction that if the Japanese, citizens and aliens, relocate of their free will their sacrifice would be a worthy contribution to the war.

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612 Mayor Bowron felt that the relocation was a means to get rid of the Japanese American troublemakers, maintaining, “[c]ertainly, some way should be devised for keeping the native-born Japanese out of mischief.” Representative Costello, speaking on The Japanese Problem in California, 88, pt. 8: A458.
614 Attorney General Francis Biddle insisted in his memorandum to President Franklin D. Roosevelt on April 17, 1943, that Executive Order No. 9066 was drafted to authorize the exclusion of persons of Japanese ancestry from the West Coast, and was not intended to apply to German and Italians. Lt. General John L. DeWitt was also requested in a letter by Secretary of War Henry L. Stimson, dated February 20, 1942, that the Italian community should be treated differently so as not to be agitated by the military provisions, only in case of clear danger to the national security. The differential treatment of the German and Italian aliens further supports the argument that Japanese Americans, aliens and American citizens of Japanese lineage, faced selective discrimination. Further references are made to the selective treatment of the Germans and Italians in *The Executive Branch* Chapter. Francis Biddle to President Franklin D. Roosevelt, April 17, 1943, Box 1, Folder Documents: Francis Biddle, 1942-1944, Series 1, JA CL Redress Collection, Japanese American National Library, San Francisco; John L. DeWitt, *Final Report: Japanese Evacuation From The West Coast, 1942* (Washington, D.C.: U.S. Government Printing Office, 1943), 25-26.
effort. Representative Ford regarded it as the responsibility of the loyal Japanese residents. “How better could they prove their loyalty?” pondered the Representative. A Catch-22 situation: either you sacrificed your privileges of citizenship to be accepted as a loyal American citizen or were forced to face the harsh alternative of being labeled a disloyal for not going cheerfully to an incarceration camp to be detained for the duration of the war.

The Japanese ‘menace’ came up on numerous occasions as the delegates of the Pacific Coast states met four times by February 23, 1942. Two committees were formed to investigate the “Japanese question” and the matter of national defense. The West Coast delegates of these committees were in contact with the Executive, exchanged correspondences with the Secretary of War, Secretary of Navy, Secretary of States, and the Attorney General, including the F.B.I. This again is a proof of the close interaction and coordination between the Legislative and the Executive branches to execute the exclusion and incarceration program. According to Representative Leland M. Ford the conclusion of the investigation, shared with the before mentioned officials, was that all Japanese persons, aliens and loyal American citizens, should be removed from the defense areas. It would be considered a “derelict of duty” if Congress did not do everything in its power to prevent a Japanese attack. The delegates reasoned that the defense of America was paramount. At the meantime, the Representative from California insisted that the relocation of the Japanese populace should be handled in a democratic way, with consideration, justice, and humanity. “Is it not evident, therefore, that removal of all Japanese is a very humanitarian way to treat this whole problem?” remarked Representative Ford on the relocation program.

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615 Representative Leland M. Ford, speaking on Defense of the West Coast Area, on February 23, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 8: A661 (hereafter cited as Representative Ford, speaking on Defense of the West Coast Area, 88, pt. 8).
616 Representative Ford, speaking on Defense of the West Coast Area, 88, pt. 8: A661.
617 Representative Ford, speaking on Defense of the West Coast Area, 88, pt. 8: A661.
618 Representative Ford believed that Americans must provide an example to the Axis powers on how people should be treated. The Japanese families would not be split up, and the persons removed from the defense areas must be fed, clothed, and housed. Furthermore, their ‘relocation’ is in the interest of their own safety, because they would be removed from the dangers of war. Representative Ford, speaking on Defense of the West Coast Area, 88, pt. 8: A661.
619 Representative Ford, speaking on Defense of the West Coast Area, 88, pt. 8: A661.
The representatives of the West Coast states placed significant political pressure^620^ on the Roosevelt Administration and the National Government, demanding immediate federal action. The West Coast delegation^621^ met on February 13, 1942, in the office of Senator Hiram Johnson. It was decided that they would recommend to President Franklin D. Roosevelt the ‘evacuation’ of Japanese persons from the Pacific Coast. If the Japanese ‘question’ was not handled appropriately then the West Coast states would take direct action, which might result in race tension and violence. The Honorable Leland M. Ford called the attention of Congress to this possibility in his remarks on February 23, 1942, “[…] if the departments will act quickly and do this promptly, any cause for the people of California, either individually or collectively, to take direct action, will be removed, and there will be no disorder, no riots, and no violations of race against race.”^622^ This statement is in contrast with his earlier remarks on the humanitarian treatment of the Japanese community, and it can be interpreted as a warning to the Government and Japanese Americans, or may be even seen as a threat. If the Federal Government did not respond to the political pressure race tension, or violence, could have been a possible alternative due to the spread of war hysteria throughout the Pacific Coast.

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^620^ Political pressure was also exerted by anti-Japanese organizations that petitioned for the removal and detention of the West Coast Japanese. One such organization was the America Legion which sent a letter to Representative Homer D. Angell of Oregon, a member of the Committee on Alien Enemy and Sabotage. Representative Angell shared the letter with members of the House. A resolution was passed by Federal Post No. 97 (Portland, Oregon) of the American Legion on February 17, 1942, after a unanimous vote. The Legion expressed the need for immediate action, its firm support of the removal of ‘enemy aliens’ and persons of “enemy-alien extraction” 300 miles in the interior. The resolution cited rampant sabotage, the free movement of ‘enemy aliens’, and the ‘Fifth Column’ threat as justification for the recommended measures. The letter of the America Legion, dated February 28, 1942, was written by Lee C. Swafford (Chairman, Americanism Committee) and C. T. Blakeslee (Commander). The Resolution declared the following: “Resolved, That this is no time for namby pamby pussyfooting, fear of hurting the feelings of our enemies; that it is not the time for consideration of minute constitutional rights of those enemies; but that it is time for vigorous, whole-hearted, and concerted action in support of the Pacific Coast Committee on Alien Enemies and Sabotage toward the removal of all enemy aliens and citizens of enemy alien extraction form all areas along the Coast, and that only those be permitted to return that are able to secure special permit for that purpose […].” The America Legion was not alone on the issue of restricting the rights of the Japanese Americans, nor the last one to urge members of Congress and the President to act. The Long Beach Chapter (No. 2) of the Mothers of the Armed Forces of America passed a resolution on revoking the civil rights of all Japanese Americans until the end of the war. The resolution was introduced on June 24, 1942, in the House of Representatives as Petition 3124. Representative Homer D. Angell, speaking on Immediate Action Necessary In Coping With Japanese Menace on Pacific Coast, on March 3, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 2: A1916-A1917; House Petitions, Etc., 3124. on Mothers of the Armed Forces of America Resolution, on June 24, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 4: 5522.


^622^ Representative Ford, speaking on Defense of the West Coast Area, 88, pt. 8: A662.
Members of the House of Representatives and Senate from the Pacific Coast states – Washington, Oregon, and California – seized the initiative and established a committee to address the defense and civilian problems of the West Coast. In the words of Representative Martin F. Smith of Washington, “[w]e took the initiative in starting the action which resulted in having evacuated therefrom enemy aliens, particularly the Japanese, including second generation or so-called Japanese nationals born in this country.”

It should be highlighted from the quotation that the Representative proudly declared the decisive role of the committee in excluding the Japanese, to whom he referred to as ‘enemy aliens’, while dealing with the Japanese Americans (Nisei) as Japanese nationals born in America. The defense committee established by the West Coast delegation included subcommittees, including a subcommittee headed by Representative Leland M. Ford of California which dealt with the ‘evacuation’ of aliens. The delegates had frequent contact with the Executive, discussing the Japanese ‘problem’ with high level officials from the Navy, War, Justice and the State Department. Secretary of Navy Frank Knox, Admiral Harold R. Stark, Major General Mark W. Clark, Major General William N. Porter, Hon. James H. Rowe, Assistant to the Attorney General, Col. Karl R. Bendetson from the Alien Division, Capt. J. B. Waller, Office of the Chief of Naval Operations, Commander W. S. Wharton, Office of Naval Intelligence, Lt. Col. J. K. Tully, Office of the War plans Division, and the Hon. Milton C. Eisenhower, who was in charge of the ‘evacuation’ program at the time. The names were listed by Mr. Smith in his remarks, adding that the delegates had established direct contact with further officials of the departments. The West Coast delegates expressed their concern and placed pressure on the officials of the Executive, those


624 The defense committee consisted of members from the Pacific Coast states: Senator Hiram W. Johnson (California) was the Chairman of the Committee, and Senator Rufus C. Holman (Oregon) Chairman of Subcommittee on coast defense. Certain responsibilities and duties were assigned to subcommittees consisting of Representatives. One of the subcommittees: Hon. Carl Hinshaw (California) Chairman, Hon. John M. Costello (California), Hon. John Z. Anderson (California), Hon. James W. Mott (Oregon), and Martin F. Smith (Washington). They were the voices of concern when it came to political pressure over the Japanese ‘problem’ and threat of ‘Fifth Column’ activity. Representative Smith, speaking on Defense of the Pacific Coast, 88, pt. 5: 6669.


626 Representative Smith, speaking on Defense of the Pacific Coast, 88, pt. 5: 6669.
who would later call for and implement the ‘evacuation’ program. The Pacific Coast members of Congress reaffirmed their continued support for the agencies responsible for the exclusion and incarceration program.

There were also more moderate voices from the West Coast, for example the statement of Representative Jerry Voorhis on the problems of the Pacific Coast. The Representative from California acknowledge the necessity of President Roosevelt’s order to establish military areas in the interest of national defense, characterizing the steps taken by the President on February 25, 1942, as a “wise” and “proper move”. America was at war with a “ruthless enemy” who had developed an effective espionage network and the F.B.I. had taken into custody numerous ‘enemy aliens’, argued Mr. Voorhis. Nonetheless, the Representative warned against any unnecessary persecution and hardship, showing consideration for the vast majority of loyal persons of Japanese ancestry. “People known to be loyal to this country should be appealed to to assist with the job of resettlement and to take responsibilities”, commented Rep. Voorhis. This appeal was motivated by his firm belief that by taking proportional measures America would be able to prove that it can act decisively in the interest of its self-defense, yet maintain the loyalty of its citizens.

The Congressional representatives of the Pacific Coast states summarized their findings in a recommendation prepared for President Franklin D. Roosevelt. The Recommendation was quoted on the floor of the House of Representatives by the Honorable Richard J. Welch of California on February 23, 1942. The document cited the need to defend strategic industrial and military areas (Los Angeles, San Francisco, Portland, and Seattle) by relocating all Japanese persons into the interior across the Sierra Nevada and Sierra Madre Mountains. “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,” stated the West Coast delegation’s Recommendation, as quoted by

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627 Representative Jerry Voorhis, speaking on Problems of the Pacific Coast, on February 25, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 2: A1659 (hereafter cited as Representative Voorhis, speaking on Problems of the Pacific Coast, 88, pt. 2).
628 Representative Voorhis, speaking on Problems of the Pacific Coast, 88, pt. 2: A1659.
629 Representative Richard J. Welch, speaking on The Alien Transfer Problem, on February 23, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 8: A663 (hereafter cited as Representative Welch, speaking on The Alien Transfer Problem, 88, pt. 8).
630 As a supporting argument Representative Welch attached to his remarks an article titled “The Alien Transfer Problem”, it was published in the San Francisco News on February 16, 1942. The author of the report called for the
Representative Welch. In this way the West Coast states certainly made a case for the removal of the Japanese aliens and citizens. Notwithstanding, some felt that the Federal Government had not taken to heart the warnings and recommendations made by the western delegates. On March 7th Representative Carl Hinshaw accused the Government of “diddling around with this Japanese problem on the West Coast.” Mr. Hinshaw’s claim was motivated by the fear of a second wave of Japanese attacks by April 15. The presumed “second phase” of the enemy offensive would have consisted of an attack on the Hawaiian Islands and the onset of subversive activities on the West Coast. The Representative from California based his allegations on information provided by ‘reliable’ sources, although unnamed. “Word has come to us from a source which has been heretofore reliable, though unheeded by our Government, that the Japanese timetable will bring the second phase of their plans into action about April 15,” alleged Representative Hinshaw, thereby reinforcing the demand for the collective ‘evacuation’ of the Japanese. On July 27, 1942, Representative Smith firmly declared that President Roosevelt acted on the recommendations of the West Coast committee by authorizing the removal of all persons of Japanese descent from strategic defense areas on the Pacific Coast, implying that it was the result of a prompt removal of all ‘enemy aliens’ from the West Coast, a “combat zone”, due to fear of ‘Fifth Column’ activity. The F.B.I. raids were no longer deemed to be sufficient means of managing the Japanese issue, there was a need for “final action”. The aliens should be moved far away from the coastal areas, their loyalty should be assessed – those considered to be disloyal should be isolated –, and their property should be handled by an alien property custodian. The relocation programs should be administered by the United State Military. The articles conclusion was that civil liberty could only be ensured by sacrificing it temporarily: “Civil liberties can be ultimately preserved only by sacrificing them temporarily until the fire is out.” This notion was shared by many, especially in relation to sacrificing the liberties of the few, the Japanese, in the interest of the many, the American public. Representative Welch, speaking on The Alien Transfer Problem, 88, pt. 8: A663.

Representative Hinshaw, speaking on The Japanese Situation on the West Coast, on March 7, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 2: A2032 (hereafter cited as Representative Hinshaw, speaking on The Japanese Situation on the West Coast, 88, pt. 2).

Representative Hinshaw, speaking on The Japanese Situation on the West Coast, 88, pt. 2: A2032.

A further accusation by Representative Hinshaw targeted the Japanese Language Schools. These Japanese institutions were charged with indoctrinating the Nisei students with Japanese nationalism, making them into potential recruits for the Japanese Army, Navy, and ‘Fifth Column’. Mr. Hinshaw referred to these schools as “educational mills for the production of American-born fifth columnists.” He was concerned by the fact that many Nisei students went to Japan after their graduation for a year or more, and then returned to America. Representative Hinshaw asserted that many of the graduates represented a threat to national defense because of their willingness to carry out the orders of the Japanese Government. “Doubtless a good number of those postgraduates are ready and willing to carry out any orders which may be given to them by the Japanese Government, and yet they retain their American citizenship, granted them by virtue of their birth in this country,” argued the Representative for the legal means to prohibit the operation of Japanese Language schools and the restriction of their American citizenship. Representative Carl Hinshaw, speaking on Japanese Language Schools, on March 23, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 2: A2809.

Representative Smith, speaking on Defense of the Pacific Coast, 88, pt. 5: 6669.
of continued pressure on the Roosevelt Administration. The exclusion, incarceration, and resettlement of Japanese persons “were expedited by our efforts” stated Representative Martin F. Smith. The opinion of the Representative was underscored by the resolution of the special committee of the delegates, published in the House Congressional Records for July 27, 1942. The committee acknowledged the efforts of the United States Army, and Federal and State law enforcement agencies in countering the threat represented by ‘enemy aliens’ on the Pacific Coast, designated as ‘military area’ and a potential ‘combat zone’. Nevertheless, the resolution called for urgency in relocating the Japanese and establishing the proper facilities where they could be segregated for the duration of the war. The removal and detention of Japanese persons was regarded as a necessity for public safety and the well-being of those involved, recognizing the contribution of the Japanese population to the war effort. “We commend every proper effort on the part of the evacuated persons in recognizing the necessity of their segregation and their cooperation in executing this necessary procedure for the public good and their own safety,” ascertained the resolution. The importance of public safety and military necessity is further emphasized by the $300,000 funding for the Attorney General to prosecute Japanese persons in the State of California, Oregon, and Washington, a clear reference to the Japanese Americans cases following the violations of the military orders issued by Lt. General John L. DeWitt.

On March 18, 1942, President Franklin D. Roosevelt signed Executive Order No. 9102, thereby establishing the War Relocation Authority (W.R.A.), the civilian agency responsible for the removal and detention of Japanese persons until June 30, 1946. The order and the description of the duties of the W.R.A. were understood by some as a fulfillment of the previous recommendations made to the President, notably the telegram of February 28, 1942. According to Representative John J. Sparkman of Alabama, speaking to the House only a day after the Executive Order was signed, the order was in line with the recommendations of the

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635 The special House committee consisted of Representatives Clarence F. Lea Chairman (California), and John M. Costello (California), Jerry Voorhis (California), Homer D. Angell (Oregon), and Martin F. Smith (Washington). The resolution was included in the Honorable Martin F. Smith’s remarks made on the floor of the House of Representatives. Representative Smith, speaking on Defense of the Pacific Coast, 88, pt. 5: 6669.
636 Representative Smith, speaking on Defense of the Pacific Coast, 88, pt. 5: 6669.
637 Representative Smith, speaking on Defense of the Pacific Coast, 88, pt. 5: 6669.
congressional committee investigating defense migration. In the telegram addressed to President Roosevelt the committee expressed the need for an alien property custodian – to handle the property of the Japanese –, and a coordinator to manage the Japanese problems, particularly the welfare, health, and resettlement of the community. Representative Sparkman referred to the order of the President in his extension of remarks and introduced the central purpose of the W.R.A. According to Executive Order No. 9102 – “Executive Order Establishing The War Relocation Authority In The Executive Office Of The President And Defining Its Functions And Duties” –, the Director of the W.R.A. was authorized to carry out the removal of persons from the military areas and their relocation, maintenance, and supervision. A Liaison Committee was formed within the agency. The Committee consisted of the Secretary of War, Secretary of Treasury, Attorney General, Secretary of Agriculture, Secretary of Labor, Federal Security Administrator, Director of Civilian Defense, Alien Property Custodian, and various other appointees. The Committee would meet at the request of the Director of the W.R.A. and was required to inform the President.

The pressure to relocate Japanese persons and to detain them in ‘concentration camps’ intensified day by day, going as far as to accuse civil liberties organizations of un-American activity. Representative John E. Rankin, of Mississippi, accused the Civil Liberties Union of being a Communist and un-American organization in the House of Representatives on February 23, 1942, in response to its protest against the removal order. Mr. Rankin was in favor of placing the “treacherous Japs” in ‘concentration camps’ in the Territory of Alaska and Hawaii, and in the Continental United States. The Representative cited the false rumors from the sensationalized articles and headlines that filled the newspapers after Pearl Harbor; discussed in The ‘American Way’ Chapter. The remarks of Representative Rankin showed evidence of racial prejudice towards the Japanese, who according to his opinion could not be assimilated and threatened the American Government, way of life, and civilization, “[…] these treacherous Japs,

639 Representative Sparkman, speaking on Alien Evacuation, 88, pt. 8: A1092.
640 Representative Sparkman, speaking on Alien Evacuation, 88, pt. 8: A1092.
641 Representative Sparkman, speaking on Alien Evacuation, 88, pt. 8: A1093.
who have sponged on our generosity for their very existence, are now driving the dagger in our backs.”

Further elaborating that they could not be assimilated: “Once a Jap, always a Jap. We cannot afford to trust any of them. The leopard cannot change his spots.”

This view of the Japanese was shared by military officials, Lt. General John L. DeWitt would later make a similar declaration arguing that citizenship did not change the status or loyalty of Japanese Americans, nor their ties to the Empire of Japan. These views support the racial prejudice factor behind the exclusion and incarceration program, and the disregard for racial equality and the rule of law.

Mr. Rankin did not recognize the citizenship of the Nisei, because the practice of dual citizenship within the Japanese community raised certain constitutional questions. They could not become American citizens if they remained subjects of the Empire of Japan, registered as Japanese citizens with the Japanese Consulate. Representative Rankin maintained, that “[w]hile born in the United States, they did not become citizens because they were not subject to the jurisdiction thereof, but were subjects of Japan.” He did not believe that the children of Japanese aliens were covered by the provisions of the 14th Amendment of the Constitution, since they were Japanese citizens. This meant a complete disregard of the Supreme Court’s decision in

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643 Representative Rankin, speaking on Concentration Camps for Japanese, 88, pt. 8: A768.
644 Representative Rankin accused the Japanese ‘Fifth Column’ of causing racial tensions between whites and ‘Negroes’ in America, trying to advance the cause of African Americans and desegregation in the hope of starting race riots. From Mr. Rankin’s perspective the white people had been the friends of the ‘Negroes’ and had no troubles with the colored race if not for the ‘Fifth Columnists’. The Japanese were blamed for the race tensions which had been bubbling below the social and political surface even as America was fighting for democracy abroad, yet had second class citizens on the Home Front working as part of the ‘Arsenal of Democracy’. “The white people of the South who have always been the Negroes best friends, and who know the Negro problem, will have no trouble with the colored race if these fifth columnists and the flannel-mouthed agitators throughout the country will let them alone,” contended the Representative from Mississippi. Mr. Rankin’s opinion that the Japanese were stirring up race troubles in the South resurfaced on September 24, insisting that according to the F.B.I. numerous African-American organizations were “honeycombed” by the Japanese ‘Fifth Column’, thereby blaming the Japanese for the deteriorating race relations. Representative O’Connor of Montana shared his view, “[o]nce a Jap, always a Jap”, reinforcing the belief in racial affiliation. He also believed that the loyal and disloyal Japanese could not be differentiated, asking the question “how is one to tell a good Jap from a bad Jap?” He favored the relocation of all enemies to ‘concentration camps’ in the interior of the United States. In the opinion of the representatives the safety of Americans comes first. Representative Rankin, speaking on Concentration Camps for Japanese, 88, pt. 8: A768-769; Representative John E. Rankin, speaking on Japanese Fifth Column and race trouble in the South, on September 24, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 6: 7456; Representative James F. O’Connor, speaking on Enemy Aliens, on February 24, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 2: A1566.
645 Representative Rankin, speaking on Concentration Camps for Japanese, 88, pt. 8: A769.
646 Representative Rankin, speaking on Concentration Camps for Japanese, 88, pt. 8: A769.
the United States v. Wong Kim Ark, 169 U.S. 649 (1898)\(^{647}\) case on the citizenship clause of the 14\(^{th}\) Amendment of the Constitution. According to the opinion of the Court children born in the United States to parents who are aliens, but have permanent residence in America are citizens of the United States as provided in Section 1. of the 14\(^{th}\) Amendment.

The issue of citizenship remained to haunt the Japanese community, some going as far as proposing an amendment to end the practice of dual citizenship. A joint resolution was introduced on September 21, 1942, in the Senate to address the problem of dual citizenship. Senate Joint Resolution 163\(^{648}\) was introduced by Senator Rufus Holman and it targeted the Japanese community to redress the constitutional position and to prohibit dual citizenship. The Senator characterizing the circumstances as a “perilous situation” due to the number of Japanese aliens and native-born American citizens of Japanese parentage who were by that time excluded from the Pacific Coast under duress. The Senator from Oregon opposed the institution of dual citizenship proclaiming that no one could be a loyal subject of two nations, suggesting that those who held dual citizenship could be the agents of a foreign power, e.g. the ‘Fifth Column’. The statement is reminiscent of Representative Haines’ remarks on who is an American. Senator Holman argued, “‘[n]o man can serve two masters’; nor can any person be a perfectly loyal citizen of two separate national governments at the same time; yet our Federal Constitution does not now prevent persons from enjoying all the rights and privileges of American citizenship while at the same time they owe and acknowledge allegiance to a foreign power – even to a foreign enemy power with which we are at war.”\(^{649}\) The S. J. R. 163 remained all but a failed proposed amendment, however it did signify the intent and the extent to which some were willing to go to strip those they regarded a national security threat – un-American and alien – of their American citizenship.


\(^{648}\) Senator Rufus Holman, speaking on Dual Citizenship – Proposed Constitutional Amendment, S. J. Res. 163, on September 21, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 6: 7193-7194 (hereafter cited as Senator Holman, speaking on Dual Citizenship, 88, pt. 6).

\(^{649}\) Senator Holman, speaking on Dual Citizenship, 88, pt. 6: 7193.
ARTICLE

SECTION 1. Persons who under the laws of any foreign nation are deemed to be citizens or subjects of such foreign nation shall not become citizens of the United States, whether born in the United States or not, except to the extent and subject to such terms and conditions as the Congress may prescribe.

The questions of citizenship was not only a constitutional issue, but also a racial one with Mr. Rankin proclaiming in the House that “America [is] for Americans”, and the Japanese

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650 A proposed amendment passed by ⅔ of both houses of Congress needs to be ratified by ¾ of the legislatures of the States within 7 years of its submission by Congress. Senator Holman, speaking on Dual Citizenship, 88, pt. 6: 7194.

651 Representative Rankin’s views on the Japanese ‘problem’ and the issue of citizenship was shared by Senator Stewart of Tennessee who welcomed President Roosevelt’s Executive Order No. 9066. Mr. Stewart introduced a bill on the floor of the Senate on February 26, 1942, which would have mandated the detention of all Japanese in the United States and its Territories in the interest of national defense, even if they were American citizens. Senate bill 2293 would have authorized the Secretary of War to detain any person who was the citizen of an enemy nation at war with the United States. Bill S. 2293 targeted those who were ineligible for citizenship, mostly the Japanese. Senator Stewart accused the Japanese of being “cowardly” and “immoral”, the “worst enemy”. He condemned the institution of dual citizenship as he felt the Japanese remained a subject of the Emperor. The Japanese born in America should not be allowed to become citizens within the framework of the 14th Amendment, referring to the *United States v. Wong Kim Ark* Supreme Court (1898) decision; also cited by Representative Rankin. His prejudice towards the Japanese is exemplified by his following statement: “A Jap is a Jap anywhere you find him, and his taking the oath of allegiance to this country would not help, even if he should be permitted to do so.” To him the Japanese represented an ‘alien’ ethnic group who did not believe in God, had no respect for the oath, and conspired against America. They represented a threat to the national security and should be removed from the United States. “They do not share the views of Americans; our social, political, and religious views are as different and as far apart as is the East from the West. [...] Their customs are not our customs, and ours can never be theirs. They retain allegiance to Japan, and we must deal with them accordingly”, reasoned Senator Stewart for stripping Japanese Americans of their citizenship and detaining all persons of Japanese descent. The exclusion of all Japanese from U.S. citizenship came up again on March 20, 1942, the proposed bill was under consideration by the Committee on Immigration. According to Senator Stewart the Nisei were only American citizens by accident of their birth, while the Issei were ineligible for naturalization. The Senator concluded that in time of war the Federal Government had to “get tough”. His conviction was fueled by the nature of the Japanese assault on Pearl Harbor, with Senator Stewart noting, “Mr. Hull was negotiating in the State Department Building when the Japs blew hell out of Pearl Harbor, and he sat there in the presence of those slant-eyed devils when he received the message that American blood was being shed in Hawaii.” The Senator expressed his prejudice towards persons of Japanese descent, blaming the West Coast Japanese community for the crimes of the Japanese Government. Senator Stewart’s thoughts on citizenship were shared by Miller Freeman, a former member of the Republican National Committee, who published editorials on the Japanese situation. Following Pearl Harbor Mr. Freeman suggested that America’s problem was the Japanese population which was “[...] a growing, threatening, incubus upon the United States”, while he defined Japanese immigration as an “infiltration” that threatened the safety of the nation. Furthermore, American citizens of Japanese ancestry were only citizens due to the “accident of birth”, some loyal, but many of them disloyal. There was a greater need for firm action — closing the Japanese language schools, denouncing the Emperor, and ousting the disloyals —, than for words of support and oaths of loyalty by the
should be deported since they can never become citizens or Americans, because of their racial and religious differences.\textsuperscript{652} The racial prejudice held by the Representative is quite evident in his closing remarks, “[t]hey are pagan in their philosophy, atheistic in their beliefs, alien in their allegiance, and antagonistic to everything for which we stand.”\textsuperscript{653}

Mr. Rankin firmly believed that the Japanese spies and ‘Fifth Columnists’ were swarming not only on the West Coast, but also on the Hawaiian Islands. He would use this comparison to argue that the subversive activities conducted by Japanese persons on the Pacific Coast were similar to the ones committed by Hawaiian Japanese leading up to and during the Pearl Harbor disaster. In his March 10, 1942, remarks he again called for removing all the Japanese, and interning them in ‘concentration camps’, “[w]e must get rid of the last one of them.”\textsuperscript{654} Following the coastal shelling by a Japanese submarine near Santa Barbara Mr. Rankin argued that the Japanese were signaling the enemy from the mountains in Hawaii, just like in case of the Santa Barbara incident. These instances of direct attack on the Continental United States were also cited by Lt. General John L. DeWitt in the Final Report\textsuperscript{655} and were used to overemphasize the potential threat of subversive activity, although the military necessity was based on misleading statements and half-truths. “They are doing the same thing in Hawaii now. From the mountain tops in the Hawaiian Islands the Japs are flashing lights and signaling Japanese submarines and war vessels out at sea,”\textsuperscript{656} stated the Representative, although he provided no evidences that would support his claim. These were in fact false accusations with not merit, used as proof of acts of disloyalty by the West Coast Japanese.

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\textsuperscript{652} Representative Rankin, speaking on Concentration Camps for Japanese, 88, pt. 8: A769.
\textsuperscript{653} Representative Rankin, speaking on Concentration Camps for Japanese, 88, pt. 8: A769.
\textsuperscript{655} See The Executive Branch Chapter for Lt. General DeWitt’s Final Report on the issue of military necessity.
\textsuperscript{656} Representative John E. Rankin, speaking on Japanese in California, on February 24, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 2: A1565.
This fear of invasion, war hysteria, was firmly imbedded in the conscience of the Representatives and Senators who were responsible for their constituents. There were incidents that did not help the cause of the Japanese American community, rather these events reinforced the call for swift and firm action in countering the Japanese ‘menace’. One of these incidents was the shelling of the West Coast near Santa Barbara, California, on the night of February 23, 1942, by a Japanese submarine. It was the district of Representative Alfred J. Elliott\(^{657}\), who addressed the House on February 24 in response to the Japanese attack. He called attention to two armed Japanese individuals who were arrested after the attack while driving on the highway along the coastline, because they violated the mandatory blackout. They were accused of wanting to collaborate with the enemy, those who had bombarded the coast; no evidence was provided to support the alleged crime. The attack further intensified the question over the loyalty of the Japanese community. Representative Elliott believed that the Japanese presented a national security threat to the “defense infrastructure”, ideal targets for the Japanese ‘Fifth Column’:\(^{658}\) oil fields, hydroelectric and steam plants, forests, and airfields within the proximity of Japanese communities. The Representative from California demanded the removal of all Japanese on the grounds that “[i]t is known that many of the American-born Japanese put loyalty to Japan above loyalty to America.”\(^{659}\) To Mr. Elliott the West Coast was a potential war zone and he believed that the Japanese should not be permitted to stay in the “front line”, since the Japanese were ready “to strike a dagger at the heart of America.” America was at war, but he had the impression that the Federal Government had not comprehended the seriousness of the situation. “Let us realize that we are at war and let us take steps that common sense dictate,”\(^{660}\) reasoned Representative Elliott in favor of the collective removal of the Japanese from strategic areas.

Representative Ford joined his fellow member of the House in addressing the concerns over the Japanese in California by referring to newspaper accounts of the shelling near Santa Barbara.\(^{661}\)

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\(^{657}\) Representative Alfred J. Elliott, speaking on Permission to address the House, on February 24, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 2: A1565 (hereafter cited as Representative Elliott, speaking on Permission to address the House, 88, pt. 2).

\(^{658}\) Representative Elliott, speaking on Permission to address the House, 88, pt. 2: A1565.

\(^{659}\) Representative Elliott, speaking on Permission to address the House, 88, pt. 2: A1565.

\(^{660}\) Representative Elliott also regarded the removal as beneficial for the Japanese, a means to protect them from acts of violence. He also considered the possibility of retaliation by the Japanese against American prisoners of war. Representative Elliott, speaking on Permission to address the House, 88, pt. 2: A1565.

\(^{661}\) Representative Leland M. Ford, speaking on Japanese in California, on February 24, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 2: A1565.
According to the press the Japanese submarine was supported by the signals from the coast to guide the attack, this heightened anxiety and racial tension. A further proof of war hysteria was an event that transpired on the night of February 24, 1942, when anti-aircraft guns opened fire in Los Angeles, from Palos Verde Hills to Long Beach. The false air raid on Los Angeles came only a day after the bombardment near Santa Barbara, a clear sign of heightened tension on the West Coast. Representative Leland M. Ford called for action against the Japanese a day after the false air raid, if it was proven that they signaled the unidentified planes.

It is quite fascinating to read such statements and claims in the Congressional Record, to know that these Representatives and Senators of the United States Congress made the final decision over the fate of the Japanese by voting for a statute that allowed the Federal Government and the officials of the United States Military to execute the regulations leading to the collective forced removal and incarceration of an entire ethnic community based on racial affiliation. Citing the separation of powers they could have decided to check the power of the Executive, however they opted to support the war effort of the Roosevelt Administration due to military necessity, fear of the Japanese ‘menace’. The records of the House of Representatives and the Senate illustrate how at a time of immense crisis – such as the disaster of Pearl Harbor – political discourse can be dominated by racial prejudice and racial profiling, scapegoating a minority for political means. Members of Congress were overwhelmed by fear and war hysteria, and hoped to avenge the disgrace suffered at the hands of an enemy who was believed to have been inferior. The Japanese populace became scapegoats, due to their racial ties, upon whom America and her political leadership could vent its anger and frustration. The American public seemed to perceive enemies where there were none, only fellow citizens and neighbors who might have been aliens, because they were ineligible for citizenship due to their national origin.

662 Representative Leland M. Ford, speaking on Unidentified Planes Over West Coast, on February 25, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 2: A1629.
663 The false air raid was also a subject of Secretary Henry L. Stimson’s diary. In his entry for February 26, 1942, he commented on Tuesday night’s events, which the Secretary of Navy called a “false alarm” during his press conference. However, even on Thursday a dispatch came to the War Department maintaining that there were planes in the air. This further intensified the war nerves and hysteria in California. Henry L. Stimson, February 26, 1942, Diaries of Henry Lewis Stimson, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7, Frame 573.
4.3. The Senate and House Debates over Public Law No. 503

One of the controversial laws passed by the Senate and the House of Representatives was Public Law No. 503, which provided the necessary legal enforcement requested by the War Department to proceed with the exclusion of persons of Japanese descent from the Pacific Coast military zones. The debate over Senate bill 2352 was held on March 19, 1942. The analysis of the Congressional Record of Proceedings and Debates of the 77th Congress, 2nd Session, allows us to investigate the issues that defined the discussion in the Senate and the House, and the role of Congress in restricting the freedom of aliens in the military areas.

Based on the Congressional Records it cannot be disputed that there was a symbiosis between Congress and the Department of War in providing an adequate means of enforcement of the military regulations to be issued by the Western Defense Command. It was Henry L. Stimson, the Secretary of War, who requested of Senator Robert Reynolds, Chairman of the Committee on Military Affairs, on March 9, 1942, to introduce Senate bill 2352. In his letter the Secretary War sent a draft of the bill and described it as the following: “A bill to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, or leaving military areas or zones, which the War Department recommends to be enacted into law.” Secretary Stimson wished to have a means of legal enforcement of the military orders in the federal criminal courts, the restrictions issued under authority of Executive Order No. 9066. The bill was referred to the Senate Committee on Military Affairs. The Committee on Military Affairs was assembled on March 13, 1942, to discuss and review the bill with Col. B. M. Bryan representing the War Department.

On the floor of the Senate Mr. Reynolds addressed the circumstances and the reason for introducing bill 2352, painting an image of the enemy alien menace on the West Coast. He did not fail to mention that according to the Attorney General there were at the time more than 5,000,000 aliens in the United States, fostering a need for the protection of the American people and the defense industry on the Home Front against ‘Fifth Column’ activities. In order to

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justify this military necessity he shared with his fellow Senators events from Pearl Harbor that could best be described as misinformation, or half-truths. These events were false rumors – similar rumors were investigated by the F.B.I. and were found to be false –, but when cited on the Senate floor they gained greater significance and prominence in the public’s opinion. Senator Reynolds argued that the forces of the Imperial Japanese Navy were aided by the Japanese on the Island of Oahu:668 arrows were cut into the sugarcane fields pointing towards military targets, Japanese merchants kept records of the naval supplies purchased from them in order to assess the movement of the American fleet, and that Japanese fishermen informed the Japanese Navy and military intelligence.

The fear of the Japanese populace was based on their numbers, distribution, location, and the status of their loyalty to the United Sates. Based on the population census there were around 127,000 Japanese in America with 120,000 living on the Pacific Coast. On the West Coast the Japanese residents became the frequent targets of raids with more than 7,000 ‘enemy aliens’ arrested by March 19, 1942.669 Senator Reynolds noted that during the raids in the Japanese neighborhoods numerous contraband were confiscated. “West-coast raids on Japanese colonies have yielded truckloads of guns, ammunition, dynamite, and bombs, as well as cameras and radio sets in various quantities and numbers,”670 stated the Senator. It is however not mentioned whether these objects were in any way illegally used, and by whom. The problem of dual citizenship was also raised by Senator Reynolds671 as a point of concern, since many of the American citizens of Japanese parentage were also Japanese citizens, except in cases when it was renounced by the individual. The question of dual citizenship, including Japanese language schools promoting Japanese nationalism and propaganda, were recurring issues for the Senators and Representatives, a frequent subject of their address on the Japanese ‘question’, as in the case of Representative Rankin. These issues were discussed in the previous section on the Japanese ‘menace’.

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668 According to Senator Reynolds the local Japanese residents even sabotaged the defense of Oahu by blocking traffic with their cars. Furthermore, some of the Japanese pilots who were shot down were wearing Honolulu high school badges and American college rings. Fear of Japanese disloyalty had been an issue in the case of the Territory of Hawaii since 1937, when opponents of Hawaii’s statehood questioned the loyalty of the approximately 163,000 Japanese inhabitants during the congressional committee hearings on statehood. Senator Reynolds, speaking on S. 2352, 88, pt. 2: 2722-2723.


The bill requested by the War Department provided “broad powers” to defend the military zones, this authority applied to ‘enemy aliens’ and also American citizens of Japanese ancestry in order to provide a penalty for violating the military restrictions. Senator Reynolds quoted Colonel Bryan who stated before the Committee on Military Affairs that “[t]he purpose of this bill is to provide for enforcement in the Federal courts of orders issued under the authority of this proclamation.” At the time there was no penalty provided for violating the military regulations. Lt. General John L. DeWitt informed Colonel Bryan the day before the Committee convened that the passage of the bill was necessary in order to duly execute the provisions of the Executive Order issued by President Franklin D. Roosevelt.

The conclusions of Colonel Bryan and Lt. General Dewitt, together with the report of the Committee on Military Affairs, were accordingly shared by Mr. Reynolds with members of the Senate. The report of the Committee was favorable and recommended that the Senate confirm S. 2352. The report underscored how crucial the proposed bill was for the Commanding General of the Western Defense Command to enforce the military orders issued in the military zones of the Pacific Coast. Lt. General DeWitt was designated by the Secretary of War and acted under the authority of Executive Order No. 9066 signed by President Roosevelt. Members of the Committee felt that the passage of the Senate bill 2352 was a “military necessity”.

Secretary of War Stimson had urged the ratification of the bill in a letter to Senator Robert Reynolds, dated March 9, 1942. Only four days later Senator Reynolds was also contacted by Robert Patterson, Acting Secretary of War, on March 13, 1942. The letter was attached to the proceedings on bill S. 2352. It provides grounds for further analysis, the military necessity argumentation of the Department of War. Acting Secretary of War Patterson informed Mr. Reynolds of his telephone conversation with Lt. General DeWitt on March 12, 1942. The Commanding General appealed to the Acting Secretary to accelerate the legislative process with regards to S. 2352 and H. R. 6758. Furthermore, he desired a bill which would be broad enough to enforce restrictions within the designated military areas, such as a curfew order, in the interest of national defense. Lt. General DeWitt did not want to act without proper legal basis. “General

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De Witt indicated that he was prepared to enforce certain restrictions at once for the purpose of protecting certain vital national defense interests, but did not desire to proceed until enforcement machinery had been set up,” wrote Acting Secretary Patterson. This letter indicates a close cooperation between Congress and the Department of War, with only minor changes made to the draft incorporating the needed provisions for the legal enforcement of the military orders. No indication is provided that the Committee, members of Congress, investigated the military necessity justification, or scrutinized the arguments listed by the War Department in its request to pass the drafted bill on Public Law No. 503.

After Senator Reynolds’ introduction of S. 2352 and the military necessity for its expedited ratification the Senate began to debate the bill. During the proceedings Senator Danaher pointed out the vagueness of the bill, he questioned Senator Reynolds on the extent of the unclarified military restrictions and when criminal charges could be filed against an individual who violated the military orders. Senator posed the question to his colleague: “If we do not know what the restrictions are, and if we do not know what the extent is how can others be presumed to know?” Senator Danaher insisted that such orders should be published beforehand, before someone could be held accountable for violating it. A further voice of concern was raised by Senator Taft who shared his opinion on the indefinite and uncertain nature of the bill. Public Law No. 503 was vague, an issue which was later raised by the legal representatives of the Japanese American petitioners who dared to challenge the constitutionality of the exclusion order and the incarceration.

Senator Robert A. Taft’s assessment of Public Law No. 503 on the floor of the Senate: “Mr. President, I think this is probably the ‘sloppiest’ criminal law I have ever read or seen anywhere. I certainly think the Senate should not pass it. I do not want to 

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676 Senator Danaher, speaking on S. 2352, on March 19, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 2: 2725-2726.
object, because the purpose of it is understood. It does not apply only to the Pacific coast. It applies anywhere in the United States where there is any possible reason for declaring a military zone.

[...]

All that does is to let somebody say what a military zone is.

[...]

It does not say who shall prescribe the restrictions. It does not say how anyone shall know that the restrictions are applicable to that particular zone. It does not appear that there is any authority given to anyone to prescribe any restriction.

[...]

Mr. President, I have no doubt an act of that kind would be enforced in wartime. I have no doubt that in peacetime no man could ever be convicted under it, because the court would find that it was so indefinite and so uncertain that it could not be enforced under the Constitution.”

Senator Robert A. Taft’s interpretation called attention to some of the basic failures of S. 2352. It is a notable incident that Public Law No. 503 was challenged on the Senate floor as it was later cited in the Korematsu v United States case. Senator Taft was described as a proven statesman and veteran lawyer in the Brief of Defendant in Support of Demurrer678. Senator Taft characterized the Act of Congress as the “‘sloppiest’ criminal law” he had ever seen, which the Senate should not pass as it is “indefinite” and “uncertain”, and could not be imposed under the Constitution. In light of the national defense implications of Senate bill 2352 the Senator did not intend to object to the legislation. Nevertheless, he believed that it should be redrafted in a legal form, as opposed to the military order.679 The attorneys for Mr. Korematsu did not agree with the Senator’s assessment that Public Law No. 503 could be applicable in wartime, during the Korematsu case they argued that a statute which is unenforceable in peacetime is also unenforceable in wartime.

Public Law No. 503, approved on March 21, 1942:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whoever shall enter, remain in, leave, or commit any act in any military area or military zone prescribed, under the authority of an Executive order of the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be guilty of a misdemeanor and upon conviction shall be liable to a fine of not to exceed $5,000 or to imprisonment for not more than one year, or both, for each offense.

The House of Representatives had already passed bill H. R. 6758, which was considered by members of the Senate and passed on March 19, 1942; S. 2352 was an identical bill. The bill was introduced at the request of Secretary of War Stimson in the House of Representatives on March 10, 1942. Secretary Stimson had exchanged correspondence and the draft of the proposed legislation simultaneously with the Chairman of the Senate Committee on Military Affairs and also with the Speaker of the House of Representatives. The Secretary of War expressed his conviction that Public Law No. 503 would provide the measures and tools necessary to implement the regulations and orders issued under the authorization provided by the President’s Executive Order. The Department of Justice concurred with the content of the bill, and was included in the drafting of the legislation, just as in the drafting of Executive Order No. 9066. The tools for enforcing the orders were the restrictive regulations realized by Lt. General DeWitt and Public Law No. 503 provided the enforcement in the Federal Criminal Courts.

In his second letter to Congress on March 14, 1942, the Secretary of War introduced an amendment to the legislation, which he urged Congress to enact. In his correspondence with Hon. Andrew J. May, Chairman of the Committee on Military Affairs, House of Representatives,

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680 “Public Law No. 503,” March 21, 1942. See Appendices, Primary Documents, Document 10 for a copy of Public Law No. 503, the approved version of H.R. 6758 from March 21, 1942
681 Control of Aliens and Others in Military Zones, S. 2352, 88, pt. 2: 2726.
683 DeWitt, Final Report, 30.
Secretary Stimson expressed Lt. General John L. DeWitt interest in facilitating the passage of bills S. 2352 and H. R. 6758 in order to provide penalties for violating the military regulations. The Commanding General shared his opinion on the pending legislation with the Secretary of War in a telephone conversation on March 12, 1942, and urged that Congress should pass the bills. The Military Commander was ready to take action and introduce the measures, but was waiting for Congress to set up the required legal framework, what Secretary Stimson referred to in his letter as the “enforcement machinery”.

Bill H. R. 6758 was introduced for consideration on the floor of the House of Representatives on March 19, 1942, by Representative May from Kentucky. The title of the proposed bill was: *Penalty For Violation Of Restrictions Or Orders With Respect To Persons Entering Or Leaving Military Areas Or Zones*. Representative May introduced the bill at the request of Representative Michener, stating that the bill was reported by the House Military Committee after a unanimous vote and it would establish a criminal penalty for any individual who violates the military orders. It was clarified to the representatives that the criminal penalty – a misdemeanor – only applied if the person charged knew or should have known of the restrictions. Furthermore, the legislation would apply to the West Coast situation, Representative May agreeing with Mr. Michener that the purpose of the bill was to enforce the Executive Order.

Representative Sparkman interposed to convey Lt. General DeWitt’s request for the bill under consideration as it would allow him to enforce the military regulations. The Commanding General had pointed it out to members of Congress visiting the West Coast, including Mr. Sparkman, that even though he was authorized to designate the military areas and zones, he had no means of enforcing the military orders by penalty in case it was violated. “All he could do was to move them off. If they came back, there was no penalty provided in the law” argued Representative Sparkman in his depiction of the West Coast situation. The statement given by the Representative was in line with Mr. Michener’s and May’s declarations. Following the discussion on the legislation, with no objection to Representative May’s request, bill H. R.

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685 *Penalty For Violation Of Restrictions Or Orders With Respect To Persons Entering Or Leaving Military Areas Or Zones*, HR 6758, on March 19, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 2: 2729-2730 (hereafter cited as *Penalty For Violation Of Restrictions Or Orders*, HR 6758, 88, pt. 2).
686 Representative John J. Sparkman, speaking on HR 6758, on March 19, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 2: 2730.
6758 was read by the Clerk to members of the House for a third time, and passed. The War Department and the Commanding general received the statute – the means to enforce the military regulations – which they had requested from Congress. The draft prepared by the War Department was approved, thereby Public Law No. 503 became the symbol of a united Congress. The Legislative Branch decided to abdicate its power in support of the war effort and national defense, the authority of the Executive went unchecked.


Within hours of the assault on Pearl Harbor the Federal Bureau of Investigation (F.B.I.) began its crackdown on the Japanese community based on the lists provided by such agencies as the Office of Naval Intelligence. Roger Daniels describes this crackdown by the security authorities as the “destruction” of Japanese Americans since persons of Japanese parentage, predominantly the Issei community leaders, were detained based on the “principle of guilt by association”. These individuals were apprehended, questioned, and then transferred to internment camps administered by the Immigration and Naturalization Service. During the night of December 7, 1941, approximately 1,500 Issei were taken into custody, in the end over 2,000 were detained and incarcerated. The data provided by Daniels is corroborated by J. Edgar Hoover, Director of the F.B.I., who stated that within twenty-four hours the agency arrested 1,771 enemy aliens. Daniels notes in his study that the physical differentiation between white and yellow was more crucial than the legal between a citizen and an alien. As a direct consequence of the spread of hysteria and discrimination Chinese Americans began to wear buttons stating that they were not Japanese, and declaring their anti-Japanese sentiments: “I’m Chinese.”, some adding “I Hate Japs Worse than You Do.”

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687 The title of the amended version of legislation became: “A bill to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones.” Penalty For Violation Of Restrictions Or Orders, HR 6758, 88, pt. 2: 2730.
688 The responsibility of leadership was inherited by the Nisei, the second generation, and by the Japanese American Citizens League; the topic is studied at greater length in The ‘Exemplary Citizens’ Chapter. Daniels, Asian America, 202.
689 Daniels, Asian America, 202.
691 Daniels, Asian America, 205.
The Japanese were targeted within the United States during the post-Pearl Harbor war hysteria with the Asian community caught in the middle. The discernment between American citizens of Japanese ancestry and Japanese aliens was maintained by the Federal Government until March 2, 1942, according to the declarations of the Roosevelt Administration. Nevertheless, the measures suggest otherwise as the Japanese American community was terrorized. The U.S. Government froze the bank accounts of the Japanese aliens, shut down the branches of Japanese banks operating in the United States, Japanese homes were kept under surveillance. Furthermore, Japanese residences were continuously raided – often times without search warrants in case of alleged emergencies – for contraband, with the authorities referring to these incidents as “spot raids”, or rather “mass raids”.  

692 Focusing on the issue of raids and warrants, the correspondence between the United States Army and the Department of Justice confirms the lack of need for warrants in case of aliens and emergencies, and the use of mass raids in a designated area as a means to search for contrabands. These actions are quite questionable from a constitutional perspective given that Amendment IV of the Constitution asserts the right to be secure against “unreasonable searches and seizures”, requiring warrants to be issued on probable cause.  

693 The information contradicts Attorney General Biddle’s memoirs in which he referred to the raids as “spot raids” and insisted on the use of warrants.  

Memoranda on search and seizure between General John L. Dewitt and James Rowe, Jr., Assistant Attorney General, on January 6, 1942:  

4. Searches and Seizures: A warrant authorizing the search of the premises of an enemy alien for the presence of contraband may be obtained merely on application to the United States Attorney. It is only necessary to support the issuance of such a warrant that it be stated that the premises are those of an enemy alien. In an emergency where the time is

692 The freezing of Japanese assets created a financial crisis within the Japanese community making it almost impossible for Japanese businesses to continue to operate, and leaving many families without financial support. Their financial situation deteriorated even further after many Japanese Americans were laid off by their Caucasian employers. Daniels, Asian America, 206, 208.  


694 The memoranda is quoted by Daniels from the Final Report: Japanese Evacuation from the West Coast prepared by the War Department in 1942. Daniels, Asian America, 206-207.
insufficient in which to procure a warrant, such premises may be searched without a warrant.

[...]

6. Multiple Searches: The term “mass raid” will not be employed by the Attorney General. Instructions . . . will permit “spot raids.” That is to say, if lists of known alien enemies with the addresses of each are prepared by the F.B.I. and warrants are requested to cover such lists, a search of all the premises involved may be undertaken simultaneously. Thus all of the alien enemy premises in a given area can be searched at the same moment.

In spite of their privileges as citizens – constitutional guarantees against unreasonable search and seizure – Japanese Americans became the targets of ‘spot raids’, implying that their Japanese ancestry might have served as the only probable cause in the spirit of national defense. There was a lack of sufficient cause, a fact acknowledged by Francis Biddle in May of 1942: “We have not uncovered through these searches any dangerous persons that we could not have otherwise known about. [...]”\(^{695}\), wrote the Attorney General. It has to be noted that by this time the Roosevelt Administration and the War Department had already made the decision to exclude the Japanese community from the West Coast and to incarcerate them. There was no national widespread anti-Japanese hysteria in the initial months following Pearl Harbor, until the West Coast delegation began to apply political pressure on the Roosevelt Administration. Attorney General Francis Biddle remarked, “there was little hysteria for the first few months after Pearl Harbor, almost none until the West Coast suddenly discovered that the Japanese were a menace,”\(^{696}\) as quoted by Daniels. The dissemination of fear and hysteria was followed by a series of restrictions specifically targeting Japanese persons. These regulations are examined in the present subchapter.

Public Proclamation No. 1\(^{697}\) was issued by Lt. General John L. DeWitt, Commander of the Western Defense Command and Fourth Army, on March 2, 1942, and established Military

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\(^{695}\) Daniels, *Asian America*, 208.

\(^{696}\) Daniels, *Asian America*, 205.

Area No. 1 and 2 along the Pacific Coast. The Western Defense Command was established by the War Department on December 11, 1941, and comprised of the States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah, Arizona, and the Territory of Alaska. The territory covered by the Command was identified as a “Theatre of Operation” by Lt. General DeWitt due to the threat of attack and invasion by enemy forces. The Headquarters of the Western Defense Command was located in the Presidio of San Francisco, California. The proclamation was addressed to the residents of the States of Arizona, California, Oregon, and Washington. The inhabitants of these states were notified of the establishment of the Western Defense Command and the military areas, detailing the executive authorization provided by the President of the United States and the Secretary of War to prescribe the military areas along the Pacific Coast, to exclude “any or all persons”, and to restrict their movement, their right “to enter, remain in, or leave” the specified zones. The designation of the military areas was justified as a “military measure”, a consequence of the geographic location of the states enumerated and the danger of subversive activities.

Lt. General John L. DeWitt on the adoption of “military measures” along the Pacific Coast:

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

“Military necessity” was cited by the Commanding General in prescribing military areas and zones within the territory of the Western Defense Command, more specifically Military Area No. 1 and 2, see Map 1 for Zones A-1 to A-99. Military Area No. 1 included the western half of the coastal States of Washington, Oregon, and California, and the southern portion of Arizona; the states were further divided into prohibited and restricted zones. Military Area No. 2

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698 The Federal Bureau of Investigation was still responsible for preventing any subversive activity since Proclamation No. 1 did not confine the duty of the agency. Public Proclamation No. 1 of March 2, 1942.
699 Public Proclamation No. 1 of March 2, 1942.
incorporated those parts of the listed states that were not included within Area No. 1. The proclamation foreshadowed the later treatment of persons of Japanese ancestry on a collective basis, stating that “persons or classes of persons” could be excluded from the military zones.

“Such persons or classes of persons as the situation may require will by subsequent proclamation be excluded from all of Military Area No. 1 and also from such of those zones herein described as Zones A-2 to A-99, inclusive, as are within Military Area No. 2,” stated the proclamation. All persons of Japanese ancestry were later excluded from the entire State of California. The limits of Military Area No. 1 were based on the local infrastructure, the highways, which were easily distinguishable, and the zones established within the military areas were indicated with “zone signs” at each entrance. The signs were posted by the Commanding Generals of the Sectors, Military Area No. 1: Northwest, Northern California, Southern California, and the Southern Land Frontier Sectors, Western Defense Command. The “classes of persons” were American citizens of Japanese ancestry and all Japanese, German, and Italian aliens residing within the bounds of Military Area No. 1, although the exclusion would later on only apply solely to persons of Japanese descent. They were also obligated to apply for “Change of Residence Notice”, not more than 5 days prior to change of residence; the form could be acquired at a local United States Post Office.

Public Proclamation No. 2 was issued on March 16, 1942, by Lt. General DeWitt, only two weeks after Military Areas No. 1 and 2 were prescribed by the Western Defense Command. The second proclamation expressed the need to expend the existing number of military areas and zones, in the name of “military necessity”, so as to include the States of Montana (Military Area No. 4), Idaho (Military Area No. 3), Nevada (Military Area No. 5), and Utah (Military Area No. 6). Furthermore, additional zones were created in Military Areas No. 1 and 2. The number of military zones were drastically increased ranging from Zones A-100 to A-1033. The regulation

700 Public Proclamation No. 1 of March 2, 1942.
701 DeWitt, _Final Report_, 32.
702 Enemy aliens were required by the Attorney General to apply for a travel permit, through their attorneys, and to inform the Federal Bureau of Investigation and the Commissioner of Immigration of changes in their permanent address. The procedure for the Change of Residence Notice did not alter the existing regulations applicable to aliens from enemy nations. Public Proclamation No. 1 of March 2, 1942.
704 Public Proclamation No. 2 of March 16, 1942. See Appendices, Maps, Map 2 for the numerous additional military zones established in the State of California, Exhibit No. 5, from Public Proclamation No. 2.
for “Change of Residence Notice” was also extended to Military Areas No. 3, 4, 5, and 6. The military zones were designated at or near installations or facilities that were vital for national defense in the given area. As an example, the State of Arizona705 – Exhibit No. 2 – included Zone A-100 with the Tucson Municipal Airport, Zone A-101 with Davis-Monthan Air Field near Tucson, Zone A-102 with Luke Field near Phoenix, Zone A-103 with William-Higley Field near Chandler, Zone A-104 with the Gila Bend Air Field near Gila Bend, Zone A-105 with the Gila Bend Gunnery Range near Gila Bend, Zone A-106 with Thunderbird Air Field in Glendale, and Zone A-107 with Sky Harbor Airport in Phoenix. Tucson, Phoenix, and Glendale were located within restricted Zone “B” in Military Area No 1. Proclamation No. 2 widened the scope of the Command to incorporate territories into the military zones in the interest of national defense, and to enforce the regulations within those areas. The authorities were able to cast a bigger net over the Japanese inhabitants.

705 Public Proclamation No. 2 of March 16, 1942. See Appendices, Maps, Map 3 for the military zones established in the State of Arizona, Exhibit No. 2 from Public Proclamation No. 2.
Map 1. Zones A-1 to A-99 established within Military Area No. 1 and 2, Proclamation No. 1

In the series of proclamations issued by the Western Defense Command Public
Proclamation No. 3 was the next in line on March 24, 1942, to define the daily life of the

706 Military Area No. 1 and 2 consisted of further prohibited zones, subdivisions, within the State of Washington, Oregon, California, and Arizona. Zone A-1 was located entirely in Military Area No. 1, and Zones A-2 to A-99 were established in Military Area No. 1 and 2. Zone B incorporated the restricted parts of Military Area No. 1 that were not included within Zones A-1 to A-99. The prescribed prohibited and restricted zones, including the regulations and restrictions established by the Attorney General’s Proclamations of December 7 and 8, 1941, were not altered by Public Proclamation No. 1. Public Proclamation No. 1 of March 2, 1942.

707 Public Proclamation No. 3, March 24, 1942, Box 3, Folder Public Proclamation #3, 1942, Series 1, JACL History Collection, Japanese American National Library, San Francisco (hereafter cited as Public Proclamation No. 3 of March 24, 1942).
Japanese community in the previously designated military zones. The Military Commander again cited “military necessity” for implementing regulations applicable to all ‘enemy aliens’ and persons of Japanese descent living on the West Coast, in the States of Washington, Oregon, California, Montana, Idaho, Nevada, Utah, and Arizona. According to the proclamation all Japanese, German, and Italian aliens, and persons of Japanese ancestry residing within the boundaries of Military Areas No. 1, No. 2, No. 3, No. 4, No. 5, and No. 6 were required to remain within their homes between 8:00 P.M. and 6:00 A.M. from March 27, 1942, onwards. Proclamation No. 3 was a curfew order which racially profiled the Japanese American community, since the hours of curfew was enforced in their case on a collective basis, not just for aliens. Additionally, it also restricted their movement, considering that at all other times they were only allowed to be at their home or place of employment, and could only travel within a 5 mile radius. Those individuals who violated the curfew and travel restriction faced exclusion from the military area, whereas enemy aliens risked immediate arrest and internment. Furthermore, the “curfew exemptions” that were issued by attorneys were also revoked. The threat of criminal prosecution is no coincidence in light of the statute passed by Congress only three days earlier on March 21, 1942.

Lt. General DeWitt also provided a list of prohibited items that Japanese persons could not be in possession of following March 31, 1942, within Military Areas Nos. 1 through 6. The list centered on items which could present a national security threat: firearms, weapons or implements of war, ammunition, bombs, explosives or components, short-wave radio receiving and transmitting sets, signal devices, codes or ciphers, and cameras. Violating the curfew order and being found in possession of prohibited items meant that the person committed a federal crime, which entailed a number of consequences due to Public Law No. 503. It was the duty of the F.B.I. to enforce the regulations with the assistance of local law enforcement agencies in the states concerned.

Although voluntary ‘evacuation’ was permitted by the Western Defense Command following the establishment of the military zones officials decided to prohibit it by March 27, 1942. Public Proclamation No. 4 formally forbade alien Japanese and American citizens of

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708 Public Proclamation No. 3 of March 24, 1942.
Japanese ancestry, living within Military Area No. 1., to leave their area of residence after 12:00 o’clock midnight, March 29, 1942. According to the Commanding General’s proclamation the restriction was a military provision so as to be able to manage the orderly ‘resettlement’ of Japanese persons. Individuals of Japanese ancestry could apply for exemption from the civilian exclusion orders that systematically directed the forced removal of the Japanese population from selected neighborhoods. They were permitted to stay within the limits of Military Area No. 1 under special circumstances, if their application was approved. The regulation for the exemption procedure was issued in Public Proclamation No. 5710 dated March 30, 1942. It was asserted in the military regulation that it applied to all aliens, German aliens, Italian aliens, and Japanese aliens and persons of Japanese parentage living within the Military Areas. The persons residing within the military zones could apply for exemptions from exclusion if they belonged to a certain category or “classes”. They had to fill out a written application form, Application Form WDC-PM 5 could be found at any local post office or United States Employment Service office. Those who qualified for exemption were also exempt from the curfew regulation and could live in any of the military zones, prohibited areas. It seems that according to the instructions German and Italian aliens waiting for naturalization, and those with relatives in the United States Military on active duty, or who had lost a family member in combat since December 7, 1941, were exempt. Despite of applying to all aliens German and Italian aliens could apply for exemption in numerous categories. On the other hand, the Japanese populace was ineligible for exemption in most of the categories even though many of them had family members serving in the United States Army, while many of the Issei generation had lived in the United States for years, if not decades, but were excluded from the naturalization process based on their racial ancestry.

Classes of persons eligible for exemption from exclusion, Public Proclamation No. 5:711

a) German and Italian aliens seventy or more years of age.

b) In the case of German and Italian aliens, the parent, wife, husband, child of […] an officer, enlisted man or commissioned nurse on active duty in the Army of the United States […], U.S. Navy, U.S. Marine Corps, or U.S. Coast Guard.


711 “Public Proclamation No. 5” of March 30, 1942, 332.
c) In the case of German and Italian aliens, the parent, wife, husband, child of [...] an officer, enlisted man or commissioned nurse who on or since December 7, 1941, died in line of duty with the armed services of the United States indicated in the preceding subparagraph.

d) German and Italian aliens awaiting naturalization who had filed a petition for naturalization and who had paid the filing fee therefor in a court of competent jurisdiction on or before December 7, 1941.

e) Patients in hospital, or confined elsewhere, and too ill or incapacitated to be removed therefrom without danger to life.

f) Inmates of orphanages and the totally deaf, dumb, or blind.

The Application for Exemption from Military Evacuation⁷¹², prepared by the Western Defense Command, details the numerous questions that all aliens had to answer and the “classes” that were eligible for exemption. The aliens had to provide the reason for their request: seeking exemption due to retirement, to carry on their work, for business, for vocational or professional reasons in their home town or city, or to commute to that specific place for the previously mentioned reasons. The aliens had to give their names on the form, as stated in their 1940 Alien Registration Card and the 1941 Enemy Alien Certificate of Identification. ‘Non-alien’ Japanese, a euphemism for American citizens of Japanese descent, had to provide their names and their 1940 Alien Registration No., and 1941 Alien Registration No. on their certificate of identification. The applicants had to also give their age, place of birth, sex, place of residence, and how they identify themselves, their ‘classification’: U.S. citizen of Japanese ancestry, Japanese alien, German alien, or Italian alien. In the 7th point of the exemption form the applicants had to state whether they had entered lawfully the United States (they had to give the exact date, port or town of entry) together with the original copy of the certificate of the port authority, or the Immigration and Naturalization Service. Furthermore, they also had to state

⁷¹² In the 8th point of the form, paragraph (a), the applicants had to promise that they will adhere to the regulations of the Western Defense Command: “I promise that I shall conform to all the rules, regulations, and proclamations of the Western Defense Command and Fourth Army governing my choice of place of residence and my travels to and from such residence within the Western Defense Command territorial jurisdiction.” “Application for Exemption from Military Evacuation,” in American Concentration Camps: A Documentary History of the Relocation and Incarceration of Japanese Americans, 1942-1945, Vol. 1, ed. Roger Daniels (New York and London: Garland Publishing, 1989), 345 (hereafter cited as “Application for Exemption from Military Evacuation”).
whether they had any prior criminal record, if they had committed a crime and had been
convicted of a felony (they had to provide the date and court of conviction, the length of their
sentence and the penitentiary or prison where they served it).\(^{713}\) It was a serious effort to collect
and arrange the required documentation, for example in the case of immigrants who had arrived
years, if not decades earlier.

The 9\(^{th}\) point\(^{714}\) is of special interest as it includes the “classes of persons” eligible for
exemption, the grounds upon which one could apply; there is an overlap between the application
form and Public Proclamation No. 5. Out of the seven categories Japanese aliens and persons of
Japanese ancestry could only seek exemption in three “classes”: \(e\) (patients), \(f\) (minors), and \(g\)
deaf, dumb, and blind individuals). In case of medical reasons the applicant had to provide a
“sworn statement” by his or her doctor detailing the nature of the illness, the individual’s medical
condition, and how the exclusion would affect it. Aliens who were minors had to specify whether
they lived with their parents, a guardian, or in an orphanage. Those aliens who suffered from a
disability had to mark their condition and provide the persons who cared for them. The
proclamation and the application form only offered the possibility of exemption to the Japanese
in “classes” \(e, f\), and \(g\), individuals who were patients and could not be moved due to their
condition, orphans, and persons with physical or mental disability. By March of 1942 the
Japanese community was informed of the military areas and of the military regulations applying
to the Issei and Nisei. Nonetheless, even during the Spring of 1942 Japanese residents could not
fathom that they will become subjects of a mass ‘evacuation’ from the Pacific Coast.

4.5. The Exclusion and Incarceration of Japanese Americans, 1942-1945

_It is my recommendation that all Japanese, both alien and American-born, be evacuated
from the Pacific Coast States, and other defense areas, and kept in the interior under
strict control for the duration of the war._\(^{715}\)

Miller Freeman

Tolan Congressional Committee Investigating National Defense Migration, March 2, 1942

\(^{713}\) “Application for Exemption from Military Evacuation,” 345.

\(^{714}\) “Application for Exemption from Military Evacuation,” 346-347.

\(^{715}\) The statement is quoted from Mr. Freeman’s editorial which was published in the _Senate Congressional
The year 1942 began for the Japanese American community with calls for their ‘relocation’ and ‘internment’ due to fears of sabotage and espionage. West Coast delegates and the American public were worried about subversive activities and argued that the population of over 120,000 persons of Japanese ancestry presented a threat to national security. The Roosevelt Administration was not indifferent to these concerns and President Franklin D. Roosevelt issued Proclamation No. 2537 on January 14, 1942. According to the proclamation all aliens (Issei) 14 years of age and older were required to register in order to acquire a Certificate of Identification. Aliens of the enemy nations were treated henceforth as ‘enemy aliens’ – ‘non-citizens of enemy nationality’ – despite of their years of residence and loyalty to the United States. The Attorney General was responsible for the program, to have all of the ‘enemy aliens’ registered in the interest of national defense by collecting additional information on German, Italian, and Japanese aliens. The Attorney General argued, quoted in a J.A.C.L. memo, that “[t]he objective of the Department of Justice in issuing identification certificates to aliens of enemy nationalities is the dual one of strengthening our internal safety and protecting the loyal alien, even if he has become technically an alien enemy.” The Department of Justice drafted the procedure after having consulted with Lt. General John L. DeWitt. The Attorney General insisted that it was not a “re-registration” of the alien population, rather it was a means to protect the loyal aliens and to ensure the national defense of America as part of the wartime regulations. This meant that as part of the program, according to Attorney General Francis Biddle’s address delivered on February 1 over the Columbia Broadcasting System, approximately 1,100,000 Germans, Italians, and Japanese had to register based on the 1940 Alien Registration. The Department of Justice began processing the registrations of ‘enemy aliens’ on February 2, 1942, so they could receive their

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718 As part of the regulations by February 2 around 3,200 ‘enemy aliens’ were detained by the F.B.I. for what the Attorney General called “divided loyalty”. These individuals had to remain in custody until their innocence was proven, civilian hearing boards were established for that purpose. In the opinion of Francis Biddle the “blanket regulations” were needed because of the risk that unregulated movement presented. This signified the collective treatment of aliens, with Mr. Biddle noting “[...] because of the disloyal few the many must be inconvenienced.” It would later on apply to the collective exclusion and incarceration of Japanese persons, the many forcefully
The identification program had two phases,\textsuperscript{719} the first phase lasted from February 2 to 7 for ‘enemy aliens’ living in West California, Oregon, Washington, Nevada, Arizona, Montana, Utah, and Idaho, the critical defense areas along the Pacific Coast. The second phase lasted from February 9 to 28 and included all the other states.

The registrations were conducted at post offices where the aliens could apply for their certificates. They needed to have with them their valid alien registration card and a photograph taken no more than 30 days ago. According to the Japanese American Citizens League the entire application procedure lasted from February 2 until February 28, 1942.\textsuperscript{720} The J.A.C.L. memo of January 23, 1942, introduces the proclamation, including the official justification and objective of the alien registration, and details on the application process. It was mandatory for those living on the West Coast to apply by February 7. On the other hand, the alien residents of Colorado, Wyoming, Nebraska and all other states – those states which were not part of the Western Defense Command, the designated military areas – had to complete their application during the second phase. After a successfully completed procedure the ‘enemy aliens’ received their Certificate of Identification, which included the applicants photograph, fingerprint (index finger), and signature. The National Office of the J.A.C.L. called on all of its chapters to assist the Japanese community in the application process, especially in case of the Issei generation. All alien enemies were required to have their identification card with them at all times. Those aliens who violated the regulation could face the penalty of internment for the duration of the war. According to the Attorney General’s justification the objective of the registration was to defend against ‘Fifth Column’ activities. Nevertheless, he also warned against the unjust treatment of aliens who were loyal to America. “At the same time I want to point out that persecution of aliens – economic or social – can be a two-edged sword. Such persecution can easily drive people, now loyal to us, into fifth-column activities,”\textsuperscript{721} argued the Attorney General in favor of the fair-minded treatment of aliens dedicated to America. This view was later echoed by leading government officials who called on President Roosevelt to terminate the exclusion program\textsuperscript{722} for fears that it would create racial tension in America. He further elaborated on the issue by

\textsuperscript{719} Senator Van Nuys, speaking on Identification of Alien Enemies, 88, pt. 8: A351.
\textsuperscript{720} J.A.C.L., January 23, 1942, RE: Alien Registration.
\textsuperscript{721} Senator Van Nuys, speaking on Identification of Alien Enemies, 88, pt. 8: A351.
\textsuperscript{722} See \textit{The Executive Branch} Chapter for the correspondences on revoking the exclusion order.
stating, “[l]et’s encourage that loyalty rather than discourage it. Let us judge people by what they do and not by what they are.” It is quite unfortunate that Mr. Biddle’s recommendations were not realized, Japanese Americans were later on judged by the Federal Government solely based on their ancestry, their racial affinity, and not by their actions or character.

Proclamation No. 2537 as quoted in the J.A.C.L. memo of January 23, 1942:

All alien enemies within the continental United States, Puerto Rico, and the Virgin Islands are hereby required, at such times and places in such manner as may be fixed by the Attorney General of the United States, to apply for and acquire certificates of identification; and the Attorney General is hereby authorized and directed to provide, as speedily as may be practicable, for the receiving of such applications and for the issuance of appropriate identification certificates, and to make such rules and regulations as he may deem necessary for effecting such identifications; and all alien enemies and all other persons are hereby required to comply with such rules and regulations.

By the second half of February, 1942, it was probable that members of the Japanese community would have to face removal from the West Coast. The United States Army, with the help of the Census Bureau, divided the Military Areas into 107 districts, each with a Japanese population of about 1,000 people, over all 108 exclusion orders were issued. The Japanese persons were excluded from the designated districts between March and June of 1942. Within only a few months following Executive Order No. 9066, by the Summer of 1942, the Japanese residents of the Pacific Coast were in some form of confinement. See Table 12 for the initial ten exclusion orders with the designated areas, the date of exclusion, the number of Japanese affected, the temporary detention facility, and the eventual incarceration camps where the Japanese ‘incarceree’ were transferred by November.

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725 Roger Daniels notes that Calvert L. Dedrick, a Census Bureau official, proposed that the exclusion and incarceration process should be called “residential control program”. Daniels, Asian America, 216.
The first exclusion order – Civilian Exclusion Order No. 1.\textsuperscript{727} – was issued by Lt. General DeWitt on March 24, 1942. The exclusion order, used here as a primary example, was issued in accordance with Public Proclamation No. 1 and 2, and applied to persons of Japanese parentage, aliens and non-aliens, who were residents of Bainbridge Island in the State of Washington, located within Military Area No. 1. They were ordered to leave on or before 12 o’clock, P.W.T., March 30, 1942. Japanese residents had less than a week to prepare to leave behind their homes and community. Residents were required to acquire the permission of the Civil Control Office (C.C.O.) when leaving or entering Bainbridge Island. The remaining inhabitants were instructed to present themselves at the C.C.O. on March 30 for ‘evacuation’, a euphemism used for their forced removal. Japanese persons were not authorized to remain within Military Area No. 1, or within military areas and zones to be prescribed from then on. Those individuals who did not abide by the order, remained within the military zone, were liable to criminal penalties according to the Statute of March 21, 1942. Exclusion Order No. 1 directly quoted the Act of Congress in order to emphasize the potential federal crime committed\textsuperscript{728} by entering, remaining in, or leaving the military areas, considering that those who violated the regulations or restrictions were to be apprehended and interned by the authorities. Daniels described the removal of around 50 Japanese families from Bainbridge Island as a “dress rehearsal” for the systematic exclusion and incarceration of over 100,000 Japanese, approximately \( \frac{3}{5} \) of them, 70,000, were American citizens.\textsuperscript{729} Altogether 227 Japanese persons were ‘evacuated’ from Bainbridge Island and were taken to Manzanar Incarceration Camp, southeastern California, which was in operation between March 21, 1942, and November 21, 1945, and held a total of 11,062 detainees. Exclusion Order No. 108\textsuperscript{730}, the last of the authoritative instructions issued by the Western Defense Command, affected Tulare County in California and a Japanese population of 1,732 individuals who were excluded on August 11, 1942, and were taken directly to Colorado River, Arizona; the center was also known as Poston Incarceration Camp. Poston was in operation between May 8, 1942, and November 28, 1945, and the peak number of incarcerees detained was 17,814.

\begin{footnotes}
\textsuperscript{727} “Civilian Exclusion Order No. 1,” March 24, 1942, National Archives Catalog, National Archives and Records Administration, accessed October 2, 2018, \url{https://catalog.archives.gov/id/48566387}. See Appendices, Primary Documents, Document 5 for a copy of Civilian Exclusion Order No. 1.
\textsuperscript{728} See \textit{The Supreme Court and the Japanese American} Cases Chapter for a detailed analysis of the Japanese American cases.
\textsuperscript{729} Daniels, \textit{Asian America}, 216.
\textsuperscript{730} W.C.C.A., December 30, 1942, Exclusion Dates, Number Evacuated, and Destinations by Civilian Exclusion Order.
\end{footnotes}
The exclusion orders were accompanied by an Instructions To All Japanese within the specified restricted area, prepared by the Wartime Civil Control Administration (W.C.C.A.) in the name of Lt. General DeWitt. The W.C.C.A. was established on March 11, 1942, and was responsible for executing the mass ‘evacuation’ of the Japanese, and administered the temporary detention centers. The Instructions to All Japanese Living On Bainbridge Island, for Civilian Exclusion Order No. 1., was issued to prepare the Japanese community for its ‘evacuation’ on March 30, 1942; used as a reference to discuss the exclusion process in general. Japanese persons from 9:00 a.m. of March 24 were not allowed to enter or leave Bainbridge Island without the permission of the Civil Control Office. The C.C.O. was designated as the agency responsible for aiding the Japanese in their forced removal, with the Instructions listing its functions: provide guidance and detailed information on the exclusion, services (management, leasing, sale, or storage of private property), temporary residence, transportation, and medical examination. Nonetheless, even though the Government provided for the storage of personal belongings through its agencies, it was “at the sole risk of the owner”.

A seven-day timetable for an “evacuation district” is provided by Roger Daniels, citing the United States War Department’s Final Report:

A. Posting of the Exclusion Order throughout the area: From 12:00 noon of the first day to 5:00 A.M. the second day.
B. Registration of all persons of Japanese ancestry within the area: From 8:00 A.M. to 5:00 P.M. on the second and third days.
C. Processing, or preparing evacuees for evacuation: From 8:00 A.M. to 5:00 P.M. on the fourth and fifth days.
D. Movement of evacuees in increments of approximately 500: On the sixth and seventh days.

732 “Instructions To All Japanese Living On Bainbridge Island,” March 24, 1942.
733 Daniels, Asian America, 217.
Table 12. Exclusion Dates, Number Evacuated, and Destination of Japanese by Civilian Exclusion Order

<table>
<thead>
<tr>
<th>CEO</th>
<th>Area</th>
<th>Exclusion Date</th>
<th>Number Evacuated</th>
<th>Assembly Center Destination</th>
<th>Relocation Destination</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bainbridge Island</td>
<td>3/30/1942</td>
<td>227</td>
<td>Manzanar</td>
<td>Manzanar</td>
</tr>
<tr>
<td>2</td>
<td>San Pedro, Long Beach</td>
<td>4/5/1942</td>
<td>2,469</td>
<td>Santa Anita</td>
<td>Jerome</td>
</tr>
<tr>
<td>3</td>
<td>San Pedro, Long Beach</td>
<td>4/2/1942</td>
<td>3,060</td>
<td>Manzanar</td>
<td>Manzanar</td>
</tr>
<tr>
<td>4</td>
<td>San Diego W.</td>
<td>4/8/1942</td>
<td>1,210</td>
<td>Santa Anita</td>
<td>Colorado River</td>
</tr>
<tr>
<td>5</td>
<td>San Francisco W.</td>
<td>4/7/1942</td>
<td>642</td>
<td>Santa Anita</td>
<td>Central Utah</td>
</tr>
<tr>
<td>6</td>
<td>Lawndale, Downey</td>
<td>4/14/1942</td>
<td>2,450</td>
<td>Santa Anita</td>
<td>Rohwer</td>
</tr>
<tr>
<td>7</td>
<td>Santa Monica</td>
<td>4/28/1942</td>
<td>1,137</td>
<td>Manzanar</td>
<td>Manzanar</td>
</tr>
<tr>
<td>8</td>
<td>W. Los Angeles</td>
<td>4/28/1942</td>
<td>1,299</td>
<td>Manzanar</td>
<td>Manzanar</td>
</tr>
<tr>
<td>9</td>
<td>San Fernando Valley</td>
<td>4/28/1942</td>
<td>1,461</td>
<td>Manzanar</td>
<td>Manzanar</td>
</tr>
<tr>
<td>10</td>
<td>Hollywood</td>
<td>4/29/1942</td>
<td>612</td>
<td>Santa Anita</td>
<td>Heart Mountain</td>
</tr>
<tr>
<td>108</td>
<td>Tulare County</td>
<td>8/11/1942</td>
<td>1,732</td>
<td>Colorado River</td>
<td>Colorado River</td>
</tr>
</tbody>
</table>

The Japanese residents of Bainbridge Island had to adhere to numerous instructions issued according to the exclusion order. The head of each family (owner of the property) and each individual person was required to report to the C.C.O. on March 25 for further information and directions, between 8:00 a.m. and 5:00 p.m. All Japanese persons were subjected to medical examination before their removal, with families instructed to be present together. Those individuals or families affected by the order were allowed with the consent of the Western

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734 The list of the 108 exclusion orders compiled by the Statistics Division of the Wartime Civil Control Administration, Western Defense Command and Fourth Army, is seven pages long and includes all the vital information on 108,398 Japanese residents who were removed. Due to the size of the Japanese population some counties (Alameda County, King County, Orange County, or Sacramento County) and cities (Los Angeles, Portland, San Francisco, or Seattle) had several areas and orders of exclusion. Some of the Japanese were transferred directly to the incarceration camps, such as the families of the Manzanar advance group. Out of the ten permanent detention centers only Colorado River / Poston (AZ), Gila River (AZ), Manzanar (CA), and Tule Lake (CA) were designated both as an assembly and relocation destination, meaning that the Japanese residents from some areas were directly taken to these incarceration centers. Additionally, apart from the exclusion orders Alaska is also included on the list as the last exclusion area. The 132 Japanese inhabitants from the Territory of Alaska were removed on April 28, 1942, and were taken to Puyallup Temporary Detention Camp (WA), and subsequently to Minidoka Incarceration Camp (ID). W.C.C.A., December 30, 1942, Exclusion Dates, Number Evacuated, and Destinations by Civilian Exclusion Order.

735 Exclusion Order No. 3 applied to the families of the Manzanar advance group, mainly from the San Pedro – Long Beach area.

736 The Central Utah Incarceration Camp is also known as the Topaz Incarceration Camp.

737 “Instructions To All Japanese Living On Bainbridge Island,” March 24, 1942.
Defense Command to voluntarily leave before March 29 to an approved location outside the prohibited military area, given that they had previously obtained a specific permit from the C.C.O. There were particular criteria for a “voluntary evacuation” permission: the destination is not located within Military Area No. 1 according to Proclamation No. 1, and that the person in question had beforehand arranged for employment and accommodation. These permissions were referred to as Change of Residence Notice and allowed the Japanese to leave Military Area No. 1 during the month of March. According to figures provided by Roger Daniels 10,000 Japanese took the opportunity to leave the zone and moved to Military Area No. 2 within the eastern part of California, they were excluded by the United States Army at a later date.\textsuperscript{738} The rest of the Japanese persons had to prepare for their subsequent exclusion and transfer to their assigned temporary detention facility. They were instructed to only take with themselves what they could carry on their own, except for contraband items, and their personal property would be packed and numbered: blankets, linens, toilet articles, clothing, and kitchen utensils for each member of the family. “All items carried will be securely packaged, tied and plainly marked with the name of the owner and numbered in accordance with instructions received at the Civil Control Office,”\textsuperscript{739} stated clearly the Instructions. The only ‘relief’ for persons of Japanese ancestry in their time of distress, if it can be called that, was that the United States Government provided for the means of transportation to the temporary detention facilities and food for the journey. The families were predominantly moved as a unit and were not informed of their destination. It was unknown to them at the time to which of the 15 temporary detention facilities were they to spend the upcoming weeks, if not months, prior to their final transfer to one of the permanent detention camps.

The 10 incarceration camps – also called barrack cities – were established between the Sierra Nevada Mountains and the lower Mississippi River; 200 potential sites were evaluated by the W.R.A. in three months.\textsuperscript{740} Several factors were considered by the Agency and the Army: prospective agricultural development of the area, employment opportunities, national security concerns, and their distance from local strategic installations. The land upon which the incarceration centers were to be constructed had to be under federal ownership, or available for

\begin{itemize}
  \item Daniels, \textit{Asian America}, 214.
  \item “Instructions To All Japanese Living On Bainbridge Island,” March 24, 1942.
\end{itemize}
purchase. A conference was also held by the W.R.A. in Salt Lake City\textsuperscript{741}, Utah, on April 7, 1942, to persuade the governors and officials of the interior states where the incarceration camps would be located to support the exclusion program. The conference was organized by Colonel Karl R. Bendetsen, Assistant Chief of Staff of the Western Defense Command, Tom C. Clark, Chief of the Civilian Staff, W.C.C.A., and Milton S. Eisenhower, Director of the W.R.A. The officials did not regard the exclusion and detention of the Japanese in a favorable way, they believed that California was using their states as a “dumping ground” for the dangerous Japanese. The interior states refused to recognize the rights of the Japanese and demanded the Government’s promise that they would be removed after the war. Colonel Bendetsen recommended that the U.S. Army would guard the detention camps, although not in the case of the centers with a population of less than 5,000 persons. The Salt Lake City conference was a decisive moment in the incarceration of the Japanese Americans since the permanent detention facilities were later secured by armed guards and all of the centers had a population greater than 5,000 incarcerees.

The ‘relocated’ Japanese were placed in ‘assembly centers’, temporary detention camps\textsuperscript{742}, before they were transferred to the permanent detention centers, the incarceration camps. The Japanese population was under the administration of the War Relocation Authority, the federal agency was established by Executive Order No. 9102, signed by President Franklin D. Roosevelt on March 18, 1942. The objective of the W.R.A. was twofold:\textsuperscript{743} satisfactory management of the permanent detention camps, and the resettlement of Japanese persons into civilian life with as little economic and social disturbance as possible. The Authority was responsible for providing housing, food, medical service, and education opportunity to the detainees and their family members. The operating cost\textsuperscript{744} of the W.R.A. was appropriated by the United States Congress and for the fiscal year of 1943 it was estimated to be $70,000,000, as requested by the President on June 9, 1942. In Executive Communication 1733.\textsuperscript{745} President

\textsuperscript{742} See Appendices, Tables, Table 10 for the Temporary Detention Camps, their peak and total number of detainees between March and October of 1942.
\textsuperscript{744} The total appropriation of the W.R.A. during its operation between 1942 and 1946 reached $190,170,000. War Relocation Authority, \textit{Administrative Highlights of the WRA Program}, 30.
\textsuperscript{745} House Executive Communications, Etc., 1733. on War Relocation Authority Appropriation, on June 9, 1942, 77th Cong., 2nd sess., \textit{Congressional Record} 88, pt. 4: 5086-5087.
Roosevelt referred to the expenses of the W.R.A., a projection estimated to enable the agency to fulfill its functions and responsibilities in accordance with the Executive Order. Further detail is provided on the funding of the W.R.A. by the First Supplemental National Defense Appropriation Bill for 1943, discussed in the House during the second session of the 77th Congress. H. R. 7319 proposed appropriation for the fiscal year of 1943 in the amount of $1,830,487,615.47, out of which the agency was allotted $70,000,000.00. It is quite telling that the funding of the W.R.A. was categorized as “appropriation for war activities”. Out of the funding $10,000,000 were spent on salaries of the ‘incarcerees’ who were employed in various fields. There were three categories: $12/month (common labor), $16/month (semi-skilled labor), and $19/month (skilled labor).

Life in the camps was depicted in quite a positive way during the debate on H. R. 7319, Representative Hinshaw of California shared a letter from Manzanar Incarceration Camp with members of the House. The author of the letter is anonymous – it was not indicated in the Congressional Record, but it was written by a Japanese woman detained in Manzanar, California. The letter characterized the incarceration as a vacation, the author writing: “I don’t think I could ever dream of having a vacation in such a place otherwise.” The individual mentions in the correspondence that the person was working for the time being as a janitor, and that the Japanese were “eating all day long”, being served breakfast, lunch, and supper. The camp on her side consisted of 24 blocks with further blocks on the other side of the camp; altogether there were 36 blocks. The blocks consisted of residential barracks, providing housing in separate family units or apartments; the apartment in question housed 8 individuals.

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746 There was no resolution on H. R. 7319 on June 29, 1942. Representative Cannon, speaking on HR 7319, on June 29, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 4: 5734-5735, 5739 (hereafter cited as Representative Cannon, speaking on HR 7319, 88, pt. 4). By July 14 the figure of the supplemental national defense appropriation reached $1,856,801,710.90 in the Senate. First Supplemental National Defense Appropriation, HR 7319, on July 14, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 5: 6115.
747 The appropriation of the War Relocation Authority was listed in Table D: Comparative statement of appropriations for war activities, fiscal years 1942 and 1943 (as of July 24, 1942), prepared by the Bureau of the Budget. The table was one of five printed in the Senate Congressional Records on appropriation estimates for the first and second session of the 77th Congress, submitted by Senator Hayden on August 6, 1942. The total appropriations for fiscal year 1942 amounted to $118,015,542,514.15, but no data was provided in the tables in regards to the funding of the W.R.A. for that year. Senator Hayden, speaking on Estimates and Appropriations, Seventy-Seventh Congress, on August 6, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 5: 6743, 6747.
748 Representative Cannon, speaking on HR 7319, 88, pt. 4: 5739.
749 Representative Carl Hinshaw, speaking on HR 7319, on June 29, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 4: 5739 (hereafter cited as Representative Hinshaw, speaking on HR 7319, 88, pt. 4).
750 Representative Hinshaw, speaking on HR 7319, 88, pt. 4: 5739.
Letter by a Japanese person from Manzanar Incarceration Camp, 1942:751

Thank you very much for your kind letter, and it surely has been a pleasure to know there are people still think of me and welcome me to work when I should be able to go back there.

The life here is so much difference from what I used to and getting tired of not having enough to do.

It seems to me we are just about eating all day long, 7-8 breakfast, 12-1 lunch, 5-6 supper, and just about thinking of next meal when you get through with one. I am temporarily working as janitor as you know I couldn’t be kept idle any time.

I am living with Glendale people of six in family making total of eight in the apartment.

Each persons is given steel-framed single bed with straw stuff mat as mattress and three Army blankets.

There are about 24 blocks in our side and there are number more blocks on other side of sentry lines.

The snow-capped hills are very pretty and picturesque and sure enjoy living here in spite of wind.

I don’t think I could ever dream of having a vacation in such a place otherwise.

There are still dusty and dry for there is not any green lawns or much of trees at present, but soon as they begin to put in lawns here there will be entirely different Manzanar in future.

I am earnestly hoping that they soon will start on landscaping or that sort of improvement so that I can be of any use in that line.

Well I will be closing now, but I must tell you that I have given another baby girl. Weighs 6 pounds 15 ounces – May 20 at county hospital, and both mother and baby doing well. I am naming my baby Nancy Sumiko. Please say “Hello” to everybody and

751 The connection between the Japanese individual and Representative Hinshaw is not explained. The source of the letter is not identified. Representative Hinshaw, speaking on HR 7319, 88, pt. 4: 5739. See Appendices, Figures, II. for photos of the Manzanar National Historic Site taken by the author.
let me know about your garden and future planning. How are the strawberries and vegetables?

Sincerely yours,

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One of the infamous incarceration camps was Manzanar Detention Center\textsuperscript{752} in California, which opened its gates on March 21, 1942, and ceased its operation on November 21, 1945. During the debates in Congress on the incarceration of Japanese persons Manzanar came up as a topic of discussion, including the issue of relocation and the Manzanar riots. Initially some delegates opposed the relocation of the Japanese to the Owens Valley, where the Manzanar Detention Camp was later established. Representative Thomas F. Ford of California objected to the relocation of 10,000 Japanese from Los Angeles to Owens Valley only two weeks prior to Manzanar beginning its operation, because of its strategic significance. The area in question provided approximately $\frac{2}{3}$ of the essential water supply needed by the city and its 1,500,000 residents.\textsuperscript{753} The Representative feared that the reservoirs and the aqueduct found in the Owens Valley would be a potential target for sabotage. Manzanar had a peak population of 10,046 incarcerees, with the total number of detainees reaching 11,062.

Another notorious camp was Tule Lake with the 13,540 Japanese who were segregated for their supposed disloyalty following the ‘Loyalty Questionnaire’ of February 8, 1943. The camp community of the Tule Lake Segregation Center\textsuperscript{754} consisted of the 5,127 Japanese who had requested their repatriation to Japan, and those who answered “No-No” to Question 27 and 28 on the ‘Loyalty Questionnaire’. They were deemed disloyal by the intelligence authorities for their answers, and many were accompanied by their family members. The 6,200 non-segregants of Tule Lake were distributed amongst six of the other incarceration camps; Manzanar, Colorado River, and Gila River did not receive incarcerees.\textsuperscript{755} Carey McWilliams reasons that the number of disloyals was exaggerated since 28% were children under 18 from Manzanar, and those who

\textsuperscript{752} See Appendices, Tables, Table 11 for the Permanent Detention Camps, their peak and total number of detainees between 1942 and 1946.
\textsuperscript{753} Representative Thomas F. Ford, speaking on Evacuation of Japanese in the Los Angeles Area, on March 6, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 8: A868.
\textsuperscript{754} McWilliams, What About Our Japanese-Americans?, 19.
\textsuperscript{755} War Relocation Authority, WRA: A Story of Human Conservation, 65.
requested their repatriation did so for family reasons.\textsuperscript{756} Over all, about 120,000 Japanese persons were detained in temporary detention facilities and were subsequently moved to incarceration camps to be confined for the duration of the war. The last camp to close its gates was the Tule Lake Segregation Center on March 20, and the War Relocation Authority ceased its operation three months later on June 30, 1946.

4.6. Summary

The basis of the forced removal and incarceration of Japanese Americans was best articulated by Representative Leland M. Ford: “I think that the safety of the great majority of our own people should come before the consideration of the minority of Japanese citizens, even though many of them may be loyal.”\textsuperscript{757} It summarizes the many failures of Congress in handling the Japanese ‘problem’: the US v. Them mentality, racial prejudice, the half-truths and misinformation on Japanese subversive activity and disloyalty, and the expectation that American citizens of Japanese ancestry should sacrifice their privileges and voluntarily submit to their unconstitutional treatment until the conclusion of the war as proof of their allegiance. The United States Congress – the House of Representatives and the Senate – approved the draft of Public Law No. 503 on March 21, 1942, at the request of Lt. Commander John L. DeWitt, even though it was prepared by the War Department. Members of Congress failed to investigate the military necessity motivating the appeal of the Secretary of War and the Commanding General, one might say that in the name of political unity and the war effort the Legislative Branch abdicated its power to check the Executive, the military and political officials responsible for the ‘evacuation’ program. It is no surprise that Senator Robert A. Taft\textsuperscript{758} defined Public Law No. 503 on the floor of the Senate as the sloppiest criminal law he had ever read, but nevertheless did not object to the bill because of its purpose.

Furthermore, the attack on December 7, 1941, brought an end to the partisan politics of the previous years, the dividedness of Congress between conservatives and liberals, Republicans and Democrats. Members of Congress were united by the disillusionment and frustration over the breakdown of U.S.-Japan relations, and the disaster of Pearl Harbor on the day when \textit{Time}

\begin{footnotes}
\item[757] Representative Leland M. Ford, speaking on Defense of the West Coast Area, on February 23, 1942, 77th Cong., 2nd sess., \textit{Congressional Record} 88, pt. 8: A661.
\item[758] Senator Taft, speaking on S. 2352, 88, pt. 2: 2725-2726.
\end{footnotes}
magazine announced that according to Secretary of Navy Frank Knox’s report the U.S. Navy had no superior in the world. The anti-Japanese rhetoric dominated the political discourse on the floor of both the House and the Senate. Persons of Japanese lineage became scapegoats as a consequence of the war hysteria that swept across the American public and political leadership. It gave fertile ground for the spread of racial profiling and racial prejudice under the guise of military necessity, as examined in The Executive Branch and The ‘Exemplary Citizens’ chapters. The West Coast delegates exemplified the political pressure exerted on the Roosevelt Administration. The Hon. Leland M. Ford even brought up on February 23, 1942, the possibility of racial tension and violence – citing the threat of espionage and sabotage on the Pacific Coast – as a consequence of the direct action of the people of California, if no steps were taken to remove the Japanese residents. Nevertheless, the argumentation focused on the racial affiliation of the local Japanese, their supposed un-America character and unassimilability.

The mounting pressure eventually lead to the exclusion and incarceration of persons of Japanese ancestry following the establishment of the military areas and zones along the West Coast, the territory under the jurisdiction of the Western Defense Command was defined as a “Theatre of Operation”. Japanese aliens (Issei) and ‘non-aliens’ (Nisei, American citizens of Japanese ancestry) were subjected to military restrictions and regulations based on their race. Between March and November of 1942 the West Coast Japanese were forcefully removed from their neighborhoods after 108 civilian exclusion orders were issued, and they were placed in temporary detention camps. The Japanese detainees were later transferred to one of ten permanent detention facilities (incarceration camps) managed by the War Relocation Authority, which were in operation between March 21, 1942, and March 20, 1946.

The ‘evacuation’ program was facilitated by Public Law No. 503, the statute provided the enforcement machinery – as requested by the Commanding General –, and directly contributed to the legality of the restriction of civil liberty based on ancestry. The Japanese Americans who violated the military provisions, such as the curfew and exclusion orders, were subject to criminal proceedings and could be found guilty of committing a federal crime. The Supreme

760 Representative Ford, speaking on Defense of the West Coast Area, 88, pt. 8: A662.
Court, the last bastion of the checks and balances, discussed four cases\textsuperscript{761} during the war in 1943 and 1944, but failed to restrict the power of the Executive. National defense was paramount in time of war compared to the liberties of an ethnic minority.

Chapter 5.

The ‘Exemplary Citizens’:

The Japanese American Divide and the Japanese American Citizens League

*We believe that we must be exemplary citizens in addition to being good Americans, for, as in the case of our parents, one may be a good American and yet be denied the privilege of citizenship.*

*A Declaration of Policy, Japanese American Citizens League, 1942*

The politics of racial prejudice had for over half a century targeted persons of Japanese parentage by means of discriminatory federal and state legislations. The Japanese did not fit into the cultural and social framework of America, they were not W.A.S.P.s, or potential candidates to become “ideal Americans”. Japanese immigrants encountered numerous obstacles such as racially motivated prejudicial immigration and naturalization laws, and alien land laws. The anti-Japanese movement was motivated by nativists, anti-immigration and anti-oriental organizations, who believed that the alien blood of the Japanese would bring about the downfall of American culture and society, and its institutions. The peak of the anti-Japanese sentiments came after the unprovoked and sudden attack on Pearl Harbor ensuing Franklin D. Roosevelt’s Executive Order No. 9066, signed by the President on February 19, 1942; discussed in The Executive Branch Chapter.

The pre- and wartime policy and mission of the Japanese American Citizens League (J.A.C.L.) to counter the anti-Japanese phobia – the image of the disloyal Japanese American – was quite controversial and is the focus of the present chapter. The J.A.C.L. was established by the second generation Nisei in 1929 and promoted the assimilation and Americanization of the Japanese American community. The leadership of the J.A.C.L. was convinced that it was a crucial time to confirm the Americanism of citizens of Japanese descent as relations were deteriorating and military conflict between the United States and the Empire of Japan was imminent. The portrayal of Japanese Americans as loyal, patriotic, and 'model citizens’ was

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762 A Declaration of Policy by the Japanese American Citizens League, 1942, Box 1, Folder Nisei Loyalty, 1934, 1938-1942, Series 1, JAACL History Collection, Japanese American National Library, San Francisco (hereafter cited as A Declaration of Policy by the Japanese American Citizens League, 1942).
intended to change the previous stereotypes that had dominated the identity and history of the community: the image of the ‘alien’, the ‘enemy within’, and the ‘Fifth Column’. Since the arrival of the first Japanese immigrants the Japanese American community had been the target of racial discrimination and prejudice, as well as anti-Japanese fear and paranoia as a direct consequence of the expansionist foreign policy of the Empire of Japan.

The League’s policy advocated the image of the ‘exemplary citizen’ in clear contrast with the ‘Fifth Column’ stigma. The organization called for loyalty and patriotism in support of the war effort. It was the sacred privilege of the Nisei to bear part of the burden in wartime despite of the racial profiling, the exclusion and incarceration of Japanese Americans. The Japanese American community was the subject of increased investigation before Pearl Harbor on the Hawaiian Islands and on the West Coast. The loyalty of the West Coast Japanese was also thoroughly scrutinized at the request of the White House. The objective of the investigations was to determine the degree of threat posed by the Japanese. The investigative reports by Curtis B. Munson and Lt. Commander Kenneth D. Ringle of the Office of Naval Intelligence (O.N.I.), including crucial Government memorandums on the subject, will be meticulously examined in the chapter to assess the validity of the military necessity and national defense argument of the Roosevelt Administration with regards to the wartime policy of the J.A.C.L. Based on the work of the J.A.C.L. and the results of the investigative reports on Japanese loyalty the military necessity argument for the collective exclusion and incarceration is highly questionable.

5.1. The Politics of Racial Prejudice: The ‘Ideal American’ and the Anti-Japanese Movement

After Pearl Harbor the average American felt that his or her prejudice was justified and wanted retribution for the unprovoked attack, not because of military necessity, but rather because Japanese Americans looked like the enemy. The road to the incarceration centers began long before Pearl Harbor and was paved by racial prejudice that had defined the history of the West Coast Japanese for over half a century. The Japanese American Citizens League was founded with the intent to overcome this discriminatory treatment by encouraging the assimilation and Americanism of the Japanese community.
At the beginning of the 20th century it was still widely accepted by sociologists and anthropologists that mankind could be divided into biologically distinct races.\textsuperscript{763} It re-enforced the belief of the Americans in the practice of segregation and discrimination based on racial differences, as in the case of the Japanese who were deemed to be inferior. The Federal Government did not ensure equal treatment, meaning that according to the Commission on Wartime Relocation and Internment of Civilians “[t]he federal government accepted the predominant racial views and prejudices of the American people.”\textsuperscript{764} Oscar Handlin summarized the basic characteristics of the ‘ideal American’ as the following: “[The American was basically Anglo-Saxon, an offspring of the English people, and it was the obligation of many new arrivals to conform to the patterns of life and to institutions that already existed here.”\textsuperscript{765} Immigrants were required to swiftly assimilate and Americanize if they were not W.A.S.P.s: White, Anglo-Saxon, and Protestant. It follows that only people who possessed such characteristics could become citizens of the United States. Naturalization was a vital way of restricting immigration, for the United States to be populated by the desired groups or classes of immigrants.

The Naturalization Act passed on March 26, 1790, stated the following: “Any alien, being a free white person, who shall have resided within . . . the United States . . . two years, may be admitted to become a citizen, on . . . making proof . . . of good character and taking the oath . . . to support the constitution.”\textsuperscript{766} Non-whites were excluded and later modifications of the Act only altered the required period of residency for someone to be eligible for naturalization. People of African descent had to wait until 1870 to become eligible for naturalization. The Naturalization Law of 1870 extended the specifications to people of African nativity and persons of African descent. Nonetheless, the free white specification was only removed three years later, though due to the new wave of immigration it was later reinstated. The Naturalization Law of 1875 applied to aliens who were free white persons, persons of African nativity, and African descent.\textsuperscript{767} The brief overview of the modifications made to the Naturalization Law – provided

\begin{itemize}
\item \textsuperscript{765} Handlin, \textit{Immigration as a Factor in American History}, 146-147.
\item \textsuperscript{766} Moritoshi Fukuda, \textit{Legal Problems of Japanese-Americans: Their History and Development in the United States} (Tokyo: Keio Tsushin, 1980), 5.
\item \textsuperscript{767} Fukuda, \textit{Legal Problems of Japanese-Americans}, 6-8.
\end{itemize}

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by Moritoshi Fukuda – shows how the changes were made at times when America felt threatened by the new waves of immigrants reaching the ports of the United States. Asians were excluded by being labeled ‘ineligible for citizenship’. The Naturalization Act was subsequently employed by the Federal Government to prohibit the immigration of Asian ineligible for citizenship, and by state and local authorities to restrict the rights and liberties of persons of Japanese ancestry.

In 1922 in the *Takao Ozawa v. United States*, 260 U.S. 178768 Supreme Court case the ineligibility of Asians to become naturalized citizens was legally upheld by the Court.769 Takao Ozawa applied for U.S. citizenship in 1914 after having lived in the country for 27 years. His appeal was denied as the Court found that Japanese people were ineligible for citizenship, did not classify as Caucasian. While undesired immigrants were denied the right to become naturalized citizens American citizens could lose their citizenship through intermarriage. The Cable Act was passed by Congress in 1922, meant to modify the Expatriation Act of 1907. An American woman, no matter if she was a naturalized or native born citizen, could lose her citizenship if she married a foreigner. The Cable Act modified the restriction and only applied if she married an alien ineligible for citizenship, in our case a Japanese person.770 One of the initial objectives of the J.A.C.L. was to amend the Cable Act; it was repealed in 1936. Ineligibility for citizenship was the basis by which Japanese aliens were targeted by restrictive state and local laws that denied them their basic rights and privileges. Congress subsequently utilized it as a means of restricting immigration. In order to counter the waves of undesired immigrants entering the country anti-immigration organizations were established by nativists and anti-Japanese agitators to pressure the Federal Government into passing restrictive laws.

The Native Sons of the Golden West, established in 1875, was one of the most prominent anti-Japanese and nativist organization. It’s Grand President William P. Canber declared in April of 1920 that California belonged to the white people, “California was given by God to a white people, and with God’s strength we want to keep it as He gave it to us.”771 The Native Sons of the Golden West was the most well-known and influential organization, it even had its own monthly publication titled *The Grizzly Bear*. The paper was openly racist and characterized

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768 The case of Takao Ozawa is further examined in *The Supreme Court and the Japanese American Cases* Chapter.
California as “Japanized” and the south as “Negroized.”\textsuperscript{772} There were further anti-Japanese groups such as the Native Daughters of the Golden West, the American Legion, the Japanese and Korean Exclusion League\textsuperscript{773}, the California State Federation of Labor, and the California State Grange. Daniels described these organizations as “pressure groups” that were politically influential because of their anti-Japanese platforms.

Nativism in the United States always identifies various sources of danger that seem to threaten American institutions and society. Roger Daniels characterizes these dangers as “real or imagined” in his study on nativism and identifies three definite phases: anti-Catholic, anti-Asian, and anti-all Immigrants.\textsuperscript{774} The anti-Asian phase of the nativist movement is of importance in the present section. It began with the increase in Chinese immigration during the 1870s until the Chinese Exclusion Act of 1882, meant to stop the immigration of laborers for ten years; the Chinese immigration factor was discussed briefly in \textit{The ‘American Way} Chapter. An important period of American immigration history that brought about the modification of the Naturalization Law to exclude Asians. It was extended in 1892 for an additional ten years by the Geary Act, but was later made permanent in 1902. According to Roger Daniels the Act greatly influenced the immigration policy of the United States and also how ethnic groups were treated. The motive of the anti-immigration movement and the racial discrimination that inspired the anti-Chinese lobby is concisely summarized by President Grover Cleveland’s statement, as quoted by Daniels, the “[…]‘experiment of blending the social habits and mutual race idiosyncrasies of the Chinese laboring classes with those of the great body of the people of the United States’[…] [has been] ‘proved [...] in every sense unwise, impolitic, and injurious to both nations.’”\textsuperscript{775}

The Chinese Exclusion Act proved to be a turning point, ending in 1882 the era of “open door” in American immigration policy\textsuperscript{776} due to the increasing number of “new” Southern- and

\textsuperscript{772} Daniels, \textit{The Politics of Prejudice}, 85.
\textsuperscript{774} Daniels, \textit{Coming To America}, 265.
\textsuperscript{775} Daniels, \textit{Coming To America}, 272.
Eastern-European immigrants on the East Coast and Asians, mostly Chinese and Japanese immigrants, on the West Coast. It was a watershed moment in the immigration policy of the United States because it was the first time that immigration was no longer restricted based on the character of the individual, rather eligibility for immigration was henceforth prohibited on national origin and race. Racial discrimination was institutionalized and became a part of federal immigration policy, thereby establishing an ominous precedent. Éva Eszter Szabó notes that based on the restriction of European and Asian immigration we can differentiate between East and West Coast nativism respectively based on its objectives. The goal of the West Coast nativist was to exclude Asian immigrants and were much more successful in their endeavor than their East Coast counterparts. This success is partly attributed to the more violent and forceful nature of nativism on the Pacific Coast following the 1850s as more and more Chinese laborers arrived to work on the transcontinental railroad following the gold rush. The hostility towards the Chinese laborers intensified due to their racial background, the belief in their unassimilability, and their central distribution on the West Coast, more specifically in the State of California. They became the subjects of the anti-Chinese political rhetoric, the targets of race riots and the victims of lynchings.

The Japanese were targeted by the immigration policies and naturalization laws of the United States Government as a consequence of inheriting this form of racial discrimination and prejudice from the Chinese. This can be considered a form of selective discrimination compared to the deep hatred and racial violence suffered by the Chinese immigrants at the hand of anti-Asian agitation. The turning point came about following the census of 1890, which warned intellectuals that there was a shift in the immigration trend. In 1894 a group of Harvard graduates formed the Immigration Restriction League to promote the modification of the immigration policy. Daniels quoted Prescott F. Hall, a former member of the group, on the decision that America had to make, “[…] ‘to be peopled by British, German and Scandinavian stock, historically free, energetic, progressive, or by Slav, Latin and Asiatic races’ [this latter referred to Jews rather than Chinese or Japanese] ‘historically down-trodden, atavistic and

Numerous immigration restrictions were introduced such as the Gentlemen’s Agreement of 1907-1908, the Dillingham Quota Bill of 1920, and the Immigration Act of 1924.

In accordance with the Gentlemen’s Agreement of 1907-1908, which limited the number of Japanese immigrants, the Japanese Government agreed to limit the number of passports that were issued. The Japanese Government stopped to issue passports to picture brides on March 1, 1920, but were still issued to non-laborers: parents, wives, and children under 20. It meant that emigration was limited by the Japanese Government voluntarily, while the United States promised not to ban overall immigration. The reason for the international agreement was that on May 6, 1905, the San Francisco School Board voted in favor of segregating its schools. Apart from the Gentlemen’s Agreement there were other attempts to restrict immigration, such as the Literacy Test of 1917 together with the Asiatic Barred Zones, since the Gentlemen’s Agreement was in effect the barred zones did not include Japan.

The year 1919 was the beginning of the second wave of anti-Japanese movement and increased agitation, which would lead to the exclusion of Japanese immigrants with the Immigration Act of 1924. Previously the anti-Japanese agitation subsided between 1913 and 1919 when the Empire of Japan was the ally of the United States. In September of 1919 the California Oriental Exclusion League was founded in Sacramento and during its meeting members accepted a five point program: cancelling the Gentleman’s Agreement, exclusion of picture brides, exclusion of Japanese immigrants, barring Asiatics from American citizenship, and stripping children born in the United States of their citizenship unless both parents were eligible for citizenship. It was the exclusion of Japanese immigrants which united the multitude of anti-Japanese groups.

The most effective way to restrict immigration was to set up a system of quotas which was introduced by William P. Dillingham, Republican Senator from Vermont. The objective of the system was to limit the number of immigrants entering the United States to a given quota, a

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779 Daniels, *Coming To America*, 276.
percentage of the nationalities living in the country at the time of the 1910 census. The national origin quota was originally planned to be 5%, but was decreased to 3% when Congress passed the bill; it was extended in 1922 for two years. The quota law did not restrict immigration from Japan, as it was already regulated by an agreement. Nativists were not satisfied with the Immigration Act of 1921 and wanted to further restrict the admission of foreigners. The nativist movement was supported by Congressman Albert Johnson, Republican Representative from Washington State and the chief author of the 1924 Immigration Act. Congressman Albert Johnson firmly believed, quoted by Daniels, that “‘the day of unalloyed welcome to all peoples, the day of indiscriminate acceptance of all races, has definitely ended.’” The acceptance of all races had to end, since their ‘alien blood’ threatened the existence of the American institutions, values, and principles. The Immigration Act of 1924 was formulated and the quota was further restricted to 2% based on the census of 1890. Nativists wanted to correct the failure of the previous immigration act by promoting the old stock of immigrants. As follows, the second step of the Immigration Act of 1924 would have carried into effect the quota system based on the census of 1790, but was never implemented. Japanese immigration was halted since Japanese people were identified as aliens ineligible for citizenship due to the naturalization laws. The bill was signed by President Calvin Coolidge who wrote an article titled “Whose Country Is This?”, when he was still vice-President. In the article he expressed his belief in the theory of Nordic supremacy and strongly opposed intermarriage. The Immigration Act of 1924 was a significant victory for nativists who had championed the exclusion of the inferior and unassimilable races. The National Origins Act was approved by Congress without any considerable opposition, within the 500 pages of the Congressional Record only about 14 pages address the debate over the national origin quota. According to Éva Eszter Szabó’s assessment the lack of debate over the national origin quota system is proof that by 1924 even the United States Congress accepted the concept of a “racial/national origin” immigration policy.

The Asian Exclusion Act of 1924 had political ramifications apart from the exclusion of Asian immigrants. The Empire of Japan had its citizens excluded from the United States as Japan

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784 Daniels, Coming To America, 284.
785 Daniels, Coming To America, 283.
786 Daniels, Coming To America, 283.
did not receive even the minimal quota of 100 immigrants per year. Éva Eszter Szabó points out in her research that the Act of 1924 greatly offended the Japanese elite. This insult upon Japan’s honor reinforced the power of the nationalists at the expense of the liberal regime and was a factor in the deteriorating relations between the United States and the Empire. Secretary of State Charles Evans Hughes was deeply troubled by its possible implications: “I am deeply concerned […] an irreparable injury has been done, not to Japan but to ourselves. […] It is a dangerous thing to plant a deep feeling of resentment in the Japanese people. […] I dislike to think what the reaping will be after the sowing of this seed.”

The racial aspect of the anti-immigration movement has already been discussed concerning the issue of who should populate the United States, naturalization, and the national origin quota based immigration restrictions. The anti-Japanese movement has to be introduced briefly, focusing on its views on the importance of race and the purity of the subject’s blood. The assimilation of different races was widely disputed, yet one factor united the political players: Asian blood. The opposing views will be represented by Sidney Lewis Gulick who was a congregational missionary and Secretary of the Committee on American-Japanese Relations, and by John F. Miller, a Representative from the State of Washington.

*The American Japanese Problem* was Sidney Lewis Gulick’s main work and it was published in 1914. In his book he argued that there was no need for the anti-Japanese movement, asserting that compared to the average immigrant the Japanese already possessed the needed amount of white blood in order to assimilate. In his own words: “’The Japanese race already contains considerable white blood.’” Based on this reasoning he felt that the need for exclusion was hysterical, unscientific, and un-Christian. Furthermore, he believed that the Japanese were superior to other immigrant groups from Southern Europe and Africa. Contrary to his arguments he opposed unrestricted immigration and the intermarriage of races.

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789 This argument is supported by the response of the Japanese newspapers to the Asian Exclusion Act. Tokyo newspapers published on April 20, 1924, described the Act of 1924 as “unequitable and unjust”, a “grave insult to Japan”, and “harsh, cruel, and unjust”, declaring that it “would cause a grave set-back to all glorious enterprise.” The *Tokyo Nichi-Nichi* formulated a stern rebuke, “[t]he honor of Japan has been mercilessly destroyed.” Buell, “Japanese Immigration,” 314.


John F. Miller during the hearings held before the Committee on Immigration and Naturalization in the House of Representatives on December 27, 1923, expressed his belief that the assimilation of Japanese and Chinese immigrants was impossible. Representative Miller questioned the theory of assimilation: “No, you can not assimilate any race. God and nature made them to be maintained as near as can be in their purity.” The Japanese were a ‘menace’ considering that the intermarriage of races would create a ‘hybrid race’. Mr. Miller argued that people of impure blood, that is persons of Japanese descent, would cause the downfall of America, “I believe the perpetuity of nations rests upon the purity of the blood of their people; that is the experience of history.” Two different views were introduced concerning the theory of assimilation, but both were founded on racial prejudice and the theory of eugenics.

The Pacific Coast became a political battleground for the exclusion of the Japanese because by 1940 70% of Japanese Americans lived on the West Coast. The Japanese community was mainly centered in California, but despite of this it only made up approximately 1.6% of the State’s population in 1940, and 2.1% at its peak. Nevertheless, fear of the ‘Yellow Peril’, invading ‘Chinese and Japanese masses’, presented a great threat and was substantially influenced by foreign policy clashes over Japanese military expansion. Apart from the racial aspect financial interests also played a role due to the presence of the Japanese Americans in the economy, especially in the field of agriculture. In 1940 one-third of the crops in the State of California was produced by Japanese farmers. Considering truck crops in 1942 Japanese farmers were expected to produce 30% to 40% of the harvest. These results were achieved in spite of the restrictive Land Laws passed between 1913 and 1923 in California. Similar restrictive laws were passed in the State of Washington, Oregon, Idaho, Montana, Arizona, New Mexico, Nebraska, Texas, Kansas, Louisiana, Missouri, and Minnesota. The Alien Land Act passed in 1913 made it illegal for ‘aliens ineligible to citizenship’, Japanese aliens, to buy land or

795 Committee On Immigration And Naturalization House Of Representatives, Restriction of Immigration, 108.
798 Commission On Wartime Relocation And Internment Of Civilians, Personal Justice Denied, 43.

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to lease land for a period greater than three years. The Land Law of 1920 denied Japanese aliens the right to lease land and to own or purchase stocks in agricultural organizations that owned or leased land. In 1923 the Land Law was amended and Japanese aliens were excluded from sharecropping contracts. Additionally, it prohibited the practice of buying land in the name of their Nisei children, who were U.S. citizens; previously Japanese aliens ‘ineligible for citizenship’ used this loophole to bypass the restrictive Land Acts.

The anti-Japanese movement questioned the effectiveness of the assimilation of races and their Americanization. Representative Miller claimed that the Asian blood of Japanese people would create a hybrid race that was un-American. Based on the Anglo-Saxon Complex the nativists argued that those who were not W.A.S.P.s should not be permitted to populate America. The anti-immigration groups were united in their effort, both in its racial and economic aspects, to exclude Japanese persons and American citizens of Japanese descent. Nativist groups were established over the decades, such as the Native Sons of the Golden West, the California Oriental Exclusion League, California Joint Immigration Committee, and the Japanese Exclusion League to resolve the Japanese ‘problem’.

The road to the incarceration camps began with the anti-immigration movement and the politics of racial prejudice. The Japanese were considered inferior and were treated accordingly, as they were deemed to be undesirable due to their race and impure blood. After Pearl Harbor West Coast pressure groups began to lobby for the exclusion of Japanese Americans and due to their social and political isolation, their dividedness, the Japanese community was unable to protect its rights. The ‘American way’ did not prevail on the West Coast, unlike on the Hawaiian Islands where the Hawaiian Japanese were not removed and incarcerated on a collective basis. The topic is discussed further in *The ‘American Way’* Chapter. The loyalty of the Japanese community was disregarded and what remained was the general opinion of the time, as expressed by Lieutenant General John L. DeWitt: “A Jap’s a Jap, and it makes no difference whether he is a citizen, or not.”

5.2. The Japanese American Citizens League: A Controversial History, Policy, and Mission

The history of the Japanese American Citizens League can be traced back to the early 1920s with a series of loyalty leagues established on the West Coast. The first recorded meeting

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organized by American citizens of Japanese parentage was held in Seattle, with the Progressive Citizens League being founded on September 27, 1921.\textsuperscript{801} The formation of the Seattle Progressive Citizens League is of significant importance in light of the fact that the motivation and support for such organization came from the Issei. The first generation wished for the Nisei to embrace their Americanism. The \textit{JACL Historical} record described the desire of the Issei as the following, for “[…] the Second Generation to ‘become more deeply conscious of their American citizenship and obligations’”.\textsuperscript{802} It signified a clear support by the Issei to have an enlightened second generation, Japanese Americans who were aware of their rights, privileges, and obligations as citizens of the United States. Furthermore, the Progressive Citizens League was a principal entity in founding the Japanese American Citizens League in 1929, a national Japanese American civil rights organization. The Progressive Citizens League of Seattle was followed by subsequent American Loyalty Leagues\textsuperscript{803} established by the Nisei along the Pacific Coast, predominantly in California and the State of Washington; there is a scarcity of records on the initial period of the earliest Japanese American citizens groups.

The Japanese American Citizens League was established in 1929 as a result of the combined effort of the leagues after the various Japanese American citizens groups of the West Coast merged to form the first national organization. Nevertheless, it should not be neglected that the initial push came from the Issei. The Issei encouraged the assimilation and Americanization of their children. In order to better understand the wartime policy and mission of the Japanese American Citizens League we have to consider the relevance of Japanese American identity and the public image advocated by its leadership with regard to the threat of war with Japan. It was the intent of the League to assume the moral leadership of the Japanese American community based on the principle of American values. Under the leadership of Saburo Kido\textsuperscript{804} and Mike Masaoka\textsuperscript{805} 1941 proved to be a turning point in the history of the J.A.C.L. and the Japanese American community. Two crucial documents have to be mentioned and analyzed in relation to the mission and policy of the J.A.C.L., \textit{The Japanese American Creed} and the \textit{A Declaration Of

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\item \textsuperscript{801} \textit{JACL Historical, Box 1, Folder Early History of JACL 1937, Series 1, JACL History Collection, Japanese American National Library, San Francisco} (hereafter cited as \textit{JACL Historical}).
\item \textsuperscript{802} \textit{JACL Historical}.
\item \textsuperscript{803} \textit{JACL Historical}.
\item \textsuperscript{804} Saburo Kido (1902-1977) was the President of the J.A.C.L. during the wartime years.
\item \textsuperscript{805} Mike Masaoka (1915-1991) was the National Secretary and Field Executive of the J.A.C.L. and a prominent member of the leadership during its controversial years.
\end{itemize}
\end{footnotesize}
The Japanese American Creed\textsuperscript{806} was written by Mike Masaoka in 1941 and expressed the philosophy of what it meant to be an American, and the loyalty and patriotism of Japanese Americans. The message was read before members of Congress on May 9, 1941. It stated that American citizens of Japanese ancestry should believe in and be proud of being citizens of the United States. Notwithstanding, Mike Masaoka’s message did not mention the Issei and could be interpreted as a way of distancing the second generation from Japanese aliens in order to strengthen the image of the loyal and patriotic Nisei, to portray Japanese Americans as exemplary or model citizens. This intent is quite contentious if we take into account the role of the Issei in the establishment of the League and that there was no Japanese ‘problem’ on the West Coast according to the Munson Report\textsuperscript{807} of 1941.

The Japanese American Creed by Mike Masaoka, May 9, 1941.\textsuperscript{808}

I am proud that I am an American citizen of Japanese ancestry, for my very background makes me appreciate more fully the wonderful advantages of this nation. I believe in her institutions, ideals, and traditions; I glory in her heritage; I boast of her history; I trust in her future. She has granted me liberties and opportunities such as no individual enjoys in this world today. She has given me an education befitting kings. She has entrusted me with the responsibilities of the franchise. She has permitted me to build a home, to earn a livelihood, to worship, think, speak, and act as I please – as a free man equal to every other man.

In The Japanese American Creed, which can be interpreted as an ode to what it means to be an American, the author does allude to existing discrimination and prejudice that Japanese Americans had to face, however it is stated that such mentality does not represent the majority of Americans. Masaoka emphasizes that discrimination should be discouraged, but by means of the

\textsuperscript{806} Mike M. Masaoka, The Japanese American Creed, May 9, 1941, Box 1, Folder Nisei Loyalty, 1934, 1938-1942, Series 1, JACL History Collection, Japanese American National Library, San Francisco (hereafter cited as Masaoka, May 9, 1941, The Japanese American Creed). See Appendices, Primary Documents, Document 8 for the complete text of The Japanese American Creed.

\textsuperscript{807} Curtis B. Munson, Japanese On The West Coast Report, November 7, 1941, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 33 (hereafter cited as Munson, November 7, 1941, Japanese On The West Coast Report).

\textsuperscript{808} Masaoka, May 9, 1941, The Japanese American Creed.
“American way”: openly, via the courts of law, education, and by proving to be worthy of equal treatment. This in itself is contradictory, since the League initially did not support the test cases that questioned the constitutionality of the restrictive military orders and the incarceration of persons of Japanese descent. The “American way” is a recurring policy/expression considering the corresponding intent of Lieutenant General Delos C. Emmons, Commanding General of the Hawaiian Department and Military Governor of Hawaii, in dealing with the Japanese ‘question’ in the Hawaiian Islands after Pearl Harbor; analyzed earlier in The ‘American Way’ chapter. Furthermore, those individuals who did resort to the ‘American way’ by challenging the military orders in the courts were later treated as dissenters by the League, and as disloyal by the U.S. Government. A Catch-22 scenario, if we consider that Japanese Americans were deemed disloyal for standing up for their rights as citizens, a proof of their Americanism. The J.A.C.L. later cooperated with the authorities in segregating the disloyal persons in the permanent detention camps. The National Secretary expressed his unyielding belief in the values of “American sportsmanship” and “fair play”: “I am firm in my belief that American sportsmanship and attitude of fair play will judge citizenship and patriotism on the basis of action and achievement, and not on the basis of physical characteristics.” The Japanese American Creed concludes with a pledge of allegiance to defend the United States and to shoulder obligations as a citizen in order to become a “better American”. The leadership of the J.A.C.L. was willing to “cheerfully” bear this burden, although they did so unilaterally in the name of the entire community.

The Japanese American Creed’s pledge to become a “better American”: I pledge myself to do honor to her at all times and in all places; to support her constitution; to obey her laws; to respect her flag; to defend her against all enemies, foreign or domestic; to actively assume my duties and obligations as a citizen, cheerfully and without any reservations whatsoever, in the hope that I may become a better American in a greater America.

809 Masaoka, May 9, 1941, The Japanese American Creed.
810 Masaoka, May 9, 1941, The Japanese American Creed.
811 Masaoka, May 9, 1941, The Japanese American Creed.
The manifesto *A Declaration of Policy* was prepared by the J.A.C.L. and was approved by the National Board in 1942 as the official policy that governed the organization. It was a critical time for the Japanese American community that was forced to endure anti-Japanese prejudice, the fallout and shock of Pearl Harbor, and the war with Japan. The reason for the *Declaration of Policy* was, as stated in the proclamation, that “[…] the Japanese American Citizens League is devoted to those tasks which are calculated to win for ourselves and our posterity the status outlined by our two national slogans: ‘For Better Americans in a Greater America’ and ‘Security Through Unity’.” The term ‘calculated’ does have a negative connotation, invoking doubts over such expression as Justice, Americanism, Citizenship, and Leadership, all that the J.A.C.L. stood for as claimed in its policy. Moreover, the ‘calculative’ nature of the League casts a dark shadow over its founding and core principle as a civil rights organization, considering how a proportion of the Japanese community was left behind in the name of public and political acceptance.

The mission statement was represented by the letters of the J.A.C.L. acronym: “J” for Justice, “A” for Americanism, “C” for Citizenship, and “L” for Leadership. The J.A.C.L. represented the ideas formulated as its official standpoint to attain equal treatment and the privileges of citizenship from a legal perspective. In addition, to be considered “good Americans” and worthy citizens who embodied the American ideals, traditions, and institutions, and over all to become “exemplary citizens”. The policy placed emphasis on *The Japanese American Creed* by Mike Masaoka – again neglecting to mention the Issei, placing greater importance on American citizens of Japanese descent – and provided a direct reference to military service as an inherent obligation and duty of citizenship. The declaration not only focused on the Nisei, but also consolidated the status of the J.A.C.L. as the sole national organization to represent and lead the community. It was a bit of an overstatement, since according to *The Japanese-American Directory of 1941* – cited in the *Munson Report* of 1941 – there were roughly 1,563 Japanese associations in the United States. The portrayal of the

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812 A Declaration of Policy by the Japanese American Citizens League, 1942. See Appendices, Primary Documents, Document 9 for the complete text of *A Declaration of Policy* by the Japanese American Citizens League.
813 A Declaration of Policy by the Japanese American Citizens League, 1942.
814 A Declaration of Policy by the Japanese American Citizens League, 1942.
815 Munson, November 7, 1941, Japanese On The West Coast Report.
League as the only national organization can be construed as a means to be recognized as a political partner, an attempt to gain political acceptance and influence.

The League’s *A Declaration of Policy* and *The Japanese American Creed* are two fundamental documents that cast a shadow over the unity of the Japanese American community during the wartime period. The status of the Issei was now in limbo with the organization focusing on American citizens of Japanese ancestry. What’s more, the Nisei generation did not accept the leadership of the J.A.C.L. whole-heartedly due to its cooperation with the Federal Government during the wartime forced mass removal and incarceration of Japanese Americans, its support for the military service and draft of the Nisei, and approval of the segregation of suspected disloyal persons; to be discussed in the subsequent sections of the present chapter. The Japanese community experienced a division during World War II with the J.A.C.L.’s leadership assuming a central role.

5.3. The Call for Loyalty and Patriotism by the League

In response to the war hysteria Mike Masaoka, the National Secretary and Field Executive – as directed by the J.A.C.L. –, sent a letter to the Honorable Culbert L. Olson, the Governor of California, on December 22, 1941. The letter forwarded the unanimous *A Resolution* of the Northern California District Council of the League in which it condemned the attack on the United States by the Empire of Japan, “[…] we American citizens of Japanese ancestry, appreciative of our priceless heritage of American traditions and ideals of liberty, fair play, and sportsmanship, do unanimously condemn the infamous and perfidious attack of the Imperial Japanese Government upon our American soil; […]”.

The Northern California District Council of the J.A.C.L. gathered for a ‘special session’ in San Francisco on December 21, 1941, with twenty-seven chapters represented at the emergency meeting. A resolution was drafted in the name of the Nisei and signaled the commitment of American citizens of Japanese descent to defend the country with their lives against all enemies, since it was their “sacred privilege” as Americans. The J.A.C.L. called on the Nisei to support the national defense of

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816 Mike M. Masaoka to Honorable Culbert L. Olson, December 22, 1941, Box 1, Folder States-Wartime Legislation Against Japanese Americans 1941, 1943, Series 1, JACL History Collection, Japanese American National Library, San Francisco (hereafter cited as Mike M. Masaoka to Honorable Culbert L. Olson, December 22, 1941).
America, declaring: “[…] That we do hereby urge and direct every American citizen of Japanese extraction to volunteer for the military and the civilian defense of our beloved land, […]”. 817

When the war broke out the J.A.C.L. was a national organization with over sixty chapters and approximately 20,000 members in over 300 communities. 818 The League called on all Americans of Japanese parentage to support the national war effort at all levels, and by all means. The Nisei were encouraged to purchase defense bonds and stamps as a form of monetary assistance, also to cooperate with the Federal Bureau of Investigation, the Navy and Army Intelligence to counter subversive activities. Japanese Americans were advised to support state and local government officials, to volunteer for the Red Cross and other social service agencies, and to conserve and contribute to the production of essential defense materials. The Japanese American community was instructed by the J.A.C.L. to do their part in achieving complete victory, “[…] [t]o do everything possible to insure the complete and ultimate victory of freedom’s forces over those of greed, hate, and tyranny; […]”. 820 Moreover, the organization offered its services and facilities, and pledged its allegiance to the Roosevelt Administration.

In order to propagate patriotism and as a show of loyalty the Japanese American Citizens League implemented an Oath of Allegiance in 1942 as a strict prerequisite for membership, it can be considered as a forerunner of the national ‘Loyalty Questionnaire’ of 1943 introduced by the War Department and the War Relocation Authority (W.R.A.); the ‘Loyalty Questionnaire’ will be studied in a later section of the chapter. The form was filled out by its members who were required to provide their personal information, such as the individual’s name, place of residence, height, weight, distinctive marks, birthplace, and the name of his or her J.A.C.L. chapter. The document even included the member’s photo and the fingerprint of the right index finger. The Oath of Allegiances were certified by a public notary who signed and stamped the document. Certain parts of the oath distinctly possessed the features of an institutional loyalty program,

817 Mike M. Masaoka to Honorable Culbert L. Olson, December 22, 1941.
819 Mike M. Masaoka to Honorable Culbert L. Olson, December 22, 1941.
820 Mike M. Masaoka to Honorable Culbert L. Olson, December 22, 1941.
821 The Oath of Allegiances filled out by Saburo Kido (J.A.C.L. President) and Mike Masaoka (National Secretary and Field Executive) were used as examples for studying the relevance of the document. Kido, March of 1942, Japanese American Citizens League Oath Of Allegiance; Mike Masaru Masaoka Japanese American Citizens League Oath Of Allegiance, March 20, 1942, Box 2, Folder JACL Oath of Identification + Allegiance, 1942, Series 1, JACL History Collection, Japanese American National Library, San Francisco.
focusing on forswearing any other allegiance and defending the Constitution from foreign or
domestic forces. The League was strict when it came to compliance with the *Oath of Allegiance*
forms, because it helped acknowledge the loyalty of the organization.

**Japanese American Citizens League *Oath of Allegiance*:**

> I, the undersigned, do solemnly swear (or affirm) that I will support and defend the
Constitution of the United States of America against all enemies, foreign and domestic;
that I will bear true faith and allegiance to the same; that I do hereby forswear and
repudiate any other allegiance which I knowingly or unknowingly may have held
heretofore; and that I take these obligations freely, without any mental reservation
whatsoever or purpose of evasion. So help me God.

### 5.4. The ‘Sacred Privilege’ of the Nisei Servicemen

One of the controversial J.A.C.L. programs worth highlighting is the military service by
Nisei volunteers and draftees during World War II. The League encouraged the military
service of the second generation Japanese Americans to demonstrate their patriotism and
loyalty. It was a way to once and for all end the accusations that persons of Japanese lineage
were disloyal. This policy by the League was described as the following in an Inter-Office
Correspondence, "[u]pon inauguration of a special Japanese American combat team, the
Japanese American Citizens League through its National Secretary [Mike Masaoka] urged
Japanese Americans to volunteer in order to demonstrate the patriotism of all Americans,
regardless of race, to crush the common foe." Mike Masaoka wired Secretary of War Henry L.

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822 Saburo Kido to Terry T. Hayashi, January 28, 1944, Box 3, Folder Correspondence – Saburo Kido 1944, Series 1, JACL History Collection, Japanese American National Library, San Francisco (hereafter cited as Saburo Kido to Terry T. Hayashi, January 28, 1944).
824 According to the J.A.C.L. in the Summer of 1942 there were approximately 4,000 Nisei soldiers serving in the U.S. Army in the Continental United States and several thousand in the Hawaiian Territorial Guard. J.A.C.L. to John W. Thomas, June 10, 1942, Box 4, Folder JACL Telegrams 1942, Series 1, JACL History Collection, Japanese American National Library, San Francisco.
825 J.A.C.L. Inter-Office Correspondence, Salt Lake City Widow Has Five Sons In The U.S. Army, circa 1944, Box 1, Folder Reports – Mike Masaoka 1941, 1944, Series 1, JACL History Collection, Japanese American National Library, San Francisco (hereafter cited as Inter-Office Correspondence, circa 1944, Salt Lake City Widow Has Five Sons In The U.S. Army).
826 Inter-Office Correspondence, circa 1944, Salt Lake City Widow Has Five Sons In The U.S. Army.
Stimson to volunteer for military service, four of his brothers followed his example and volunteered as well. Mr. Masaoka first volunteered when the War Department made public the formation of an all-Japanese American combat unit.

The National Secretary felt that if Japanese Americans acted courageously on the battlefield they would be able to break down the barrier of hatred that had hindered their life on the Pacific Coast, a clear intent by the League to counter prejudice with courage and patriotism. As Masaoka wrote in a letter dated May 22, 1944: “We [Nisei soldiers] feel, and naturally, that since we are soon to risk life and limb for our country, ‘our people’ should be given every possible consideration. While we realize that the combination of war hysteria and professional West Coast agitators will be a difficult barrier to overcome, we are ever hopeful that should we conduct ourselves with valor and credit in battle even these formidable obstacles can be broken down.”827 It was an uphill battle in the face of escalating public and press agitation against the Japanese, which even reached Congress as the West Coast delegation openly pressured the Roosevelt Administration for the removal of the Japanese residents.

In a previous letter he touched upon the same topic, writing that he and his fellow soldiers would be privileged to prove their loyalty – beyond a doubt – on the battlefield. Even so, he expressed his doubt over their sacrifice: “[…] I am tempted to ask myself whether all our sacrifices will again be in vain, whether it is worth while to risk life and limb for the perpetuation of what some Californians seem to believe is the American way of life.”828 He shared the common thoughts of the ‘evacuee’ volunteers on the same issue, what they discussed as they were being shipped overseas to fight for the nation that had removed and incarcerated their families and loved ones. They were requested to prove their loyalty earlier by going to the camps on their own and now by serving in combat duty, while their family and relatives were behind barbed wire fences. According to Masaoka’s letter the volunteers were optimistic and agreed that they were fighting not to preserve the America they knew, but rather for a ”greater America” that was to come as a result of their contribution. They also believed that the present-day West Coast

827 Mike Masaoka wrote the letter to Mr. Lewis aboard a U.S. vessel while being shipped overseas as a member of the 442nd Infantry Regiment bound for an unknown destination. Mike M. Masaoka to Mr. Lewis, May 22, 1944, Box 1, Folder Reports – Mike Masaoka 1941, 1944, Series 1, JACL History Collection, Japanese American National Library, San Francisco (hereafter cited as Mike M. Masaoka to Mr. Lewis, May 22, 1944).
828 Mike M. Masaoka to Mr. Pickett, May 20, 1944, Box 1, Folder Reports – Mike Masaoka 1941, 1944, Series 1, JACL History Collection, Japanese American National Library, San Francisco (hereafter cited as Mike M. Masaoka to Mr. Pickett, May 20, 1944).
hatred directed against Japanese Americans originated more from war hysteria than prejudice. The Nisei still possessed a “child-like faith” – as described by Masaoka – in the American value of sportsmanship and fair play. They believed that if they fought with valor against the common enemy they would be recognized as “co-Americans” after the war, accepted even by such nativist organizations as the Native Sons and Daughters. The Nisei volunteers needed to become “Japyanks”, “‘damn’ good soldiers”, in order to achieve their objectives.

The J.A.C.L. promoted the volunteerism and service of the Nisei after they became eligible for military service and Selective Service was reinstated for Japanese Americans by the War Department. The League was concerned over how the War Department will publicize the achievements of the 442nd Regimental Combat Team (R.C.T.) on the battlefields. It was assumed after the formation of the unit that the accomplishments of the Combat Team would be published to depict their Americanism, to show what kind of Americans they were. Mike Masaoka insisted that the J.A.C.L. was interested in the media coverage of the 442nd R.C.T. not because of self-publicity, but because of the opportunity to enlighten the public on how the Japanese American servicemen were fighting for America. However, we should not fail to recall the importance of “acceptance” for the League, public and political. The courage, patriotism, and sacrifice of the Nisei GIs was widely publicized in view of the fact that it was seen as a means of gaining acceptance for Japanese Americans and their resettlement, return to the West Coast. As a direct consequence of this policy draft resisters were condemned by the J.A.C.L. and the organization placed great emphasis on discouraging young Nisei from following in their footsteps, some were even pressured. The J.A.C.L. sponsored meetings to promote

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829 Mike M. Masaoka to Mr. Pickett, May 20, 1944.
830 Mike M. Masaoka to Mr. Pickett, May 20, 1944.
831 Mike M. Masaoka to Mr. Pickett, May 20, 1944.
832 The volunteers believed that they had three major objectives: help the United States win the war and achieve peace, to ensure for themselves and future generations of Japanese Americans the privilege of living with dignity and decency in the United States, and to give justification for the faith and confidence invested in Japanese Americans. Mike M. Masaoka to Mr. Pickett, May 20, 1944.
833 The J.A.C.L. supported the Selective Service program and believed that it should be liberalized, allowing the draft of the Japanese Americans. Considering the equal rights of American citizens of Japanese parentage they should be drafted and inducted on the same basis. According to this principle the League did not approve of the segregated units and held that future draftees should be allowed to pick their branch of service and serve in regular units. The 442nd Regimental Combat Team and the 100th Infantry Battalion had proven the loyalty of Japanese Americans. Mike M. Masaoka to Mr. Pickett, May 20, 1944.
834 Mike M. Masaoka to Mr. Pickett, May 20, 1944.
registration and enlistment into the United States Army, such as the meeting held at the Gila River Incarceration Center on February 9, 1943.

The Nisei had to fill out an Application For Voluntary Induction form, the volunteers provided such personal information as their age, date of birth, and their order number, as well as the number and location of the local Selective Service board. Based on the data provided by the W.R.A. Statistics Section by June of 1945 the number of Nisei conscripts and volunteers from the ten incarceration camps reached 6,090 since January 20, 1944. Altogether 2,315 were serving in active duty, 1,427 were rejected, and 177 refused to report for physical. On the other hand, the number of draft resisters arrested was 310, with 144 convicted, 97 cases in progress, and 27 awaiting trial. According to the weekly report prior to January 20 of 1944 there were 805 volunteers inducted from the camps, but only 36 volunteers for pre-induction physical examination after the reestablishment of their eligibility for Selective Service; for further data see Table 7. Selective Service and Volunteers, Weekly Report No. 41.  

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1/ Enlisted Reserve Corps.
2/ Includes number unable to report and number held over for further examination, etc.
3/ Volunteers for pre-induction physical examination included in Number Called and Volunteering Since 1-20-44.
4/ Volunteers inducted prior to reestablishment of Selective Service on January 20, 1944.
5/ Reflects recapitulation of data by center.
6/ Center closed June 30, 1944. Does not include 108 persons called but not inducted who transferred to other centers or relocated when center closed.
7/ Report for Minidoka not received; figures used as June 2, 1945.
Table 7. Selective Service and Volunteers, Weekly Report No. 41.

### a.) Number Called And Volunteering Since 1-20-44

<table>
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<tr>
<th>Center</th>
<th>Total</th>
<th>No Rpt. From Select. Service</th>
<th>Accepted by Selective Service</th>
<th>Inducted</th>
<th>E.R.C. 1/</th>
<th>Active Duty</th>
<th>Refused Indn.</th>
<th>Class 1-A</th>
<th>Rejected</th>
<th>Refused to Rpt. Phys.</th>
<th>Other 2/</th>
<th>Released from Army</th>
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### b.) Arrested

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<tr>
<th>Center</th>
<th>Total</th>
<th>Chgs. Dismissed</th>
<th>Awaiting Trial</th>
<th>Brought to Trial</th>
<th>Volunteers for Phys. Since 1-20-44 3/</th>
<th>Volunteers Inducted Prior 1-20-44 4/</th>
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<tr>
<td>Total</td>
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<td>23</td>
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</table>
Just a few days after Selective Service was reestablished Saburo Kido shared his views on the draft in a letter addressed to S. Nomura. There was much uncertainty in the incarceration camps over the draft. According to the reports received by Kido and the League the Nisei living in the camps believed that they will not be drafted. It was the J.A.C.L.’s opinion that the Nisei ‘incarcerees’ would be drafted, just the same as those who had already resettled, with the likelihood that the resettled Japanese Americans with jobs could receive deferment and postpone their induction. The state of suspense on part of the Japanese American community and the League’s position on the draft foreshadowed the conflict and division over its policy, how it could be and was eventually credited for the draft.

The J.A.C.L.’s observations on the upcoming draft:

We do not know any detail as to how the draft is to be applied, but our observations are that those in the centers will be drafted in the same manner as those who have resettled. In fact, I [Saburo Kido] personally believe that those who have resettled and who can get deferment [sic] because of their work will be the last ones to go.

It was the policy of the J.A.C.L. to support the draft and the military service of the Nisei, and to this effect a general meeting was held by the Butte Chapter in the Gila River Incarceration Center – camp two was named Butte Camp –, on February 9, 1943. The assembly exemplified the debate over military service throughout the incarceration centers and the dividedness of the camp communities. At the meeting Captain Norman Thompson answered the questions submitted by the audience, the subject discussed was the Army registration and enlistment; Captain Thompson closed the meeting with a speech. In his speech he asserted that

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838 Saburo Kido to S. Nomura, January 25, 1944.
839 Butte Chapter J.A.C.L. Army Registration and Enlistment Meeting, Q and A, February 9, 1943, Box 3, Folder JACL Gila (Butte) + Tulare Chapters 1943, Series 1, JACL History Collection, Japanese American National Library, San Francisco (hereafter cited as J.A.C.L., February 9, 1943, Army Registration and Enlistment Meeting).
840 Captain Norman Thompson’s Speech, February 9, 1943, Box 3, Folder JACL Gila (Butte) + Tulare Chapters 1943, Series 1, JACL History Collection, Japanese American National Library, San Francisco (hereafter cited as Captain Norman Thompson’s Speech, February 9, 1943).
the War Department felt that it was better to create a Japanese American combat unit than to generally assign the Nisei to every branch of the United States Army.

Captain Thompson believed that a Japanese American combat unit would enable the community to get the better of the anti-Japanese “public opinion”\textsuperscript{841}. Changing the public’s perception of Japanese Americans was a motive for forming the combat team. According to Captain Thompson it was a well-earned opportunity to prove to the American people that they are just as loyal, in fact they are more loyal than the people who had criticized them. He encouraged the Nisei to go together as a single unit in order to amplify their sacrifice and contribution to the war effort: “You will be twice magnified for doing so. If you are infused throughout the Army, six months from now, no one will know and no one can tell what the Japanese Americans did in this war.”\textsuperscript{842} He was worried that the efforts of the Nisei would go unnoticed and brought up the all-Japanese American 100\textsuperscript{th} Infantry Battalion as an example, which was already regarded by that time as a formidable unit of the U.S. Army. Considering the argument given, the example of the 100\textsuperscript{th} Infantry Battalion was intended to demonstrate how counterproductive it could have been to have the Nisei generally assigned to outfits throughout the Army. Nevertheless, it can be interpreted as justifying the existence of a segregated unit\textsuperscript{843} and the policy of the League. It can be also construed as a form of pressure since the wartime mission of the Japanese American community was “two fold” in the opinion of Captain Thomson, to serve the United States and the Japanese American people.\textsuperscript{844} The \textit{A Declaration of Policy} and \textit{The Japanese American Creed} of the J.A.C.L. expressed and promoted this specific mission of the Nisei.

**Captain Thompson on the character and determination of the Japanese American soldiers:**\textsuperscript{845}

> Up to three weeks ago, I have never seen three Japanese American soldiers. I have found that they are just as American as I am. Their reactions are just as America as mine. They have a keen sense of duty; a keen sense of humor, a keen sense of responsibility of what

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{841} Captain Norman Thompson’s Speech, February 9, 1943.
  \item \textsuperscript{842} Captain Norman Thompson’s Speech, February 9, 1943.
  \item \textsuperscript{843} The United States Military was desegregated by President Harry S. Truman on July 26, 1948, when he issued Executive Order No. 9981, thereby ensuring equality of treatment and opportunity for all military personnel of the armed services.
  \item \textsuperscript{844} Captain Norman Thompson’s Speech, February 9, 1943.
  \item \textsuperscript{845} Captain Norman Thompson’s Speech, February 9, 1943.
\end{itemize}
\end{footnotesize}
this war is all about and the part they are going to play in it. They have a keen determination to see it through to final victory.

Apart from the speech delivered by Captain Thompson a Q and A session\textsuperscript{846} was also held by the organizers, altogether there were eighty seven questions that incorporated a wide range of subjects: return to the West Coast, families left in the camps, loyalty, the “4-C” classification, the Selective Service, the draft, privileges in the U.S. Army, Question 27 of the \textit{Statement Of United States Citizen Of Japanese Ancestry}, refusal of induction, volunteering, being used as cannon fodder, family security, and their possible combat duty. What stands out in the responses are the repeated contradictions by the representative of the War Department. For example: the Selective Service applied to American citizens of Japanese ancestry because they were treated no differently than any other citizen; Japanese American soldiers would be permitted to return to the West Coast, but not their parents who had to remain in the camps due to fear of being mistaken for the enemy; the U.S. Army did not want men who did not know what democracy stood for; they were classified “4-C” ‘enemy aliens’ because of military necessity, the U.S. Army was not ready to have Nisei soldiers; or that those who opposed the violations of their constitutional rights were considered disloyal. Resistance and dissent is an accepted form of patriotism in the United States – it would shape the America of the 1950s and 1960s –, but not during times of war hysteria. The topic of resistance and dissent will be revisited in \textit{The Supreme Court and the Japanese American Cases} Chapter.

The responses provided by Captain Thompson for the selected sample questions are briefly summarized to introduce the standpoint of the War Department on a variety of issues:\textsuperscript{847}

Q and A 1/33. The prospective volunteers wondered if their parents, wives, children would be permitted to return to the West Coast, if joining the Army would influence the status of their loved ones in a positive way. However, the family members of the volunteers were not allowed to return to California due to military necessity, as the West Coast was still a war zone. In addition, not permitting their return was for the sake of

\textsuperscript{846} The Butte Chapter of the J.A.C.L. recorded the eighty seven questions and answers from the meeting. J.A.C.L., February 9, 1943, Army Registration and Enlistment Meeting.

\textsuperscript{847} J.A.C.L., February 9, 1943, Army Registration and Enlistment Meeting.
their safety and interest, according to the War Department. The concern was that it would be difficult for the troops to distinguish between the returning Japanese Americans and the enemy aliens. Joining the Army and active combat service did not have any significant impact on the families left behind the barbed wire fences.

Q and A 2. On the definition of “loyalty”, who was a loyal America citizen, Captain Thompson referred to what President Roosevelt said previously: “A good American is one who is loyal to this country and to our creed of liberty and democracy.”


Q and A 6. Fighting for the United States after being excluded and incarcerated brought up the issue of “democracy” for one Japanese American. According to Norman Thompson it is too late to explain if he doesn’t know what to fight for, cynically adding “[w]e don’t need the services of men who don’t know what democracy stands for.”

Q and A 20. Dissenting was a crucial and divisive topic, refusing to join the U.S. Army. The response to this question was a bit ominous: “We have, I believe, somewhere in this country a group known as conscientious objectors -- they that do not wish to serve. Where they are, I do not know, I am not interested to find out; I don’t think you are either.”

Q and A 34. The Nisei were also worried that they would be used as cannon fodder, sent to the front lines to bear the burden. Captain Thompson promised that the United States Army would not do that.

Q and A 43/77. Many of the prospective Nisei volunteers and soldiers were concerned about their families, what would happen to them in their absence. The families would have a “double security”, a roof over their heads, satisfactory meals, and medical care.

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848 J.A.C.L., February 9, 1943, Army Registration and Enlistment Meeting.
849 J.A.C.L., February 9, 1943, Army Registration and Enlistment Meeting.
850 J.A.C.L., February 9, 1943, Army Registration and Enlistment Meeting.
851 The person asking the question brought up the Japanese serving in the Canadian Army as an example. According to the question, during World War I the Canadian Army sent the Japanese volunteers to the front lines before the white soldiers and many were killed in action. J.A.C.L., February 9, 1943, Army Registration and Enlistment Meeting.
They would be provided a security that was greater than what 75% of other American parents received, according to Captain Thompson. Nevertheless, the security of the Japanese families – in case the only son was drafted – could not be guaranteed after the war; the United States had to win the war first. Despite of all the arguments it remained a fact that the Japanese families left behind by the enlisting Nisei were locked up in incarceration camps.

The discrimination that Nisei soldiers had to face was a common topic within the community. The Nisei served within specific units of the United States Army and were not deployed to the Pacific Theatre according to the directive of the War Department. The issue was the subject of a correspondence between Samuel D. Menin, Counselor at Law in Denver, Colorado, and Lt. Col. Harrison A. Gerhardt, General Staff Corps, Executive to the Assistant Secretary of War. The letter provides an opportunity to analyze the policy of the War Department and the reasons behind the segregated combat unit. Mr. Menin sent a letter to the Secretary of War, Henry L. Stimson, on February 28, 1944, in which he inquired about the status of Japanese Americans and the reason behind their discrimination. The inquiry was made on behalf of American citizens of Japanese ancestry and the information provided by Lt. Col. Gerhardt was shared with the J.A.C.L. through Teiko Ishida, the Acting National Secretary.

Lt. Col. Gerhardt insisted to point out that the policy of the War Department to assign Japanese Americans to specific units of certain branches of the U.S. Army was not based on discrimination, but on military needs. Considering the rational for their use in specific units and area of combat he provided several reasons. The Department believed that it was inadvisable to deploy Japanese Americans to the Pacific Theatre because of the “confusion” and “hazards” it would have created, for example the risk of “enemy infiltration” and the difficulty of distinguishing between the Nisei and enemy Japanese. The enemy would have been able to obtain American uniforms from the fallen soldiers and infiltrate the Japanese American units.

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854 Harrison A. Gerhardt to Samuel D. Menin, March 4, 1944.

855 Harrison A. Gerhardt to Samuel D. Menin, March 4, 1944.
Furthermore, if Nisei soldiers were captured they might not be treated as “prisoners of war”, rather they could face “extreme torture” as a form of retribution. There were also security reasons that supported the introduction of the segregated combat team. If under normal conditions the Nisei were assigned to any unit those military units would then have to be screened before their deployment to the Pacific operational area. The screening of the units would delay their readiness for battle and deployment into combat. “It has therefore been deemed advisable to utilize this group in a homogeneous combat organization”\textsuperscript{856}, concluded Lt. Col. Gerhardt.

Despite of its “homogeneous” status the Nisei still had the opportunity to serve in the various units that formed the “combat team”\textsuperscript{857}: in the Infantry, Field Artillery, Engineers, or as medical personnel; addressed in the Q and A session by Captain Norman Thompson. Moreover, there were Nisei interpreters/linguists – approximately 6,000 were assigned to combat units as members of the Military Intelligence Service (M.I.S.)\textsuperscript{858} who served and played an important role in the Pacific Theatre. The War Department regarded “requesting assignment” to a particular branch of service as a privilege, not an obligation. Therefore, it was the Department’s established policy to assign individuals to their requested branch of service if it was in accordance with its “military needs”.\textsuperscript{859} This meant that the individual’s choice would often be subordinated to the needs of the United States Armed Forces.

Lt. Col. Harrison A. Gerhardt’s personal opinion on the military service of the Nisei soldiers:\textsuperscript{860}

I feel that the Japanese American citizens who will now be inducted should accept their assignments, wherever they may be, with the spirit that they are fulfilling an obligation to their country and that largely upon their manner of performance will be judged the loyalty and sincerity of all American citizens of Japanese descent.

Special consideration was paid to those Nisei who volunteered from “behind the barbed wire” to show their unwavering faith in America. It was Mike Masaoka’s personal opinion that

\textsuperscript{856} Harrison A. Gerhardt to Samuel D. Menin, March 4, 1944.
\textsuperscript{857} Harrison A. Gerhardt to Samuel D. Menin, March 4, 1944.
\textsuperscript{858} Uyeda, Due Process, 70.
\textsuperscript{859} Harrison A. Gerhardt to Samuel D. Menin, March 4, 1944.
\textsuperscript{860} Harrison A. Gerhardt to Samuel D. Menin, March 4, 1944.
volunteers from the incarceration camps should be singled out and to have their stories published in newspapers on the West Coast. It was a way to counter the “race-baiters” and “professional jingoists” who said that the Nisei volunteers were either from Hawaii or from non-Pacific Coast states. Contemplating the importance of reporting on the exploits of the 442nd R.C.T. Mike Masaoka wrote the following on May 20, 1944, while being shipped overseas with his combat unit: “I believe that this great opportunity to produce tangible and unequivocal evidence of our loyalty as a group should not be overlooked and that the War Department ought to be approached immediately on the subject of assigning a special officer, preferably one who knows the problems now and from a long range view, to handle the public relations for our Combat Team and to orient correspondents who may chance upon us with the proper background and attitude.”\footnote{861} He added that the War Department should also make available its files on the activity of the Nisei serving in the M.I.S. and in various other branches of the United States Armed Forces. Masaoka’s opinion enforces Lt. Col. Harrison’s remarks on how Japanese American loyalty and sincerity will be judged by the American public. The League was interested in the publicity because they felt that the opportunity to live in the United States, on the West Coast, depended on it, as well as whether persons of Japanese ancestry continued to remain “second class citizens”.\footnote{862} The status of Japanese Americans as an inferior class is emphasized by Masaoka who argued that in America there should only be “first class citizens”.

The J.A.C.L. publicized the war effort of the Japanese Americans, one instance is the lecture tour of infantryman Pfc. Thomas Higa – organized and sponsored by the League – which lasted for more than a hundred days from August 15 until December 10, 1944.\footnote{863} Private Higa was on a 121 day long furlough from the United States Army. Based on Thomas Higa’s itinerary during the speaking tour he attended about sixty engagements in twenty states with his destinations including the Gila River (AZ), Heart Mountain (WY), Manzanar (CA), Minidoka (ID), Poston (AZ), Rohwer (AR), and Topaz Incarceration Camps (UT). The purpose of the tour was to inform the Japanese in the incarceration centers, mainly the Issei, on what their sons were doing in the United States Army, to counter the rumors that the Nisei soldiers were used as “cannon fodder”, and to tell the Nisei generation that the Japanese American soldiers have

\footnote{861}{Mike M. Masaoka to Mr. Pickett, May 20, 1944.}
\footnote{862}{Mike M. Masaoka to Mr. Pickett, May 20, 1944.}
\footnote{863}{Itinerary of Pfc. Thomas Higa Speaking Tour, 1944, Box 1, Folder Private Higa’s Lecture Tour 1944, Series 1, JACL History Collection, Japanese American National Library, San Francisco.}
realized that they can disprove the rumors of disloyalty on the battlefield. During the tour Pfc. Higa was interviewed by the *Ann Arbor News* and the *New York Times*, the articles were published on November 6 and 10 respectively. The accounts were used to introduce Pfc. Thomas Higa, his military service, and the objectives of the speaking tour.

Those Nisei who decided to volunteer were inducted starting around March 1, 1943. The 442nd Regimental Combat Team was activated a few weeks later in April. Quotas were assigned for the Japanese living on the Hawaiian Islands and the Continental United States, the number of volunteers was set at 1,500 for the Hawaiian Japanese and about 10,000 applied; the quota for the Mainland Japanese Americans was set at 3,000 and only 1,200 volunteered. We have to keep in mind that by the Spring of 1943, the registration of the Nisei volunteers, the incarceration of the Japanese community on the West Coast was in full swing, meaning that the 1,200 Mainland Nisei volunteers came from the detention camps. The number of volunteers from the Continent was much lower, even with the support of the J.A.C.L., although it is quite understandable taking into account the series of traumatic events that transpired on the Pacific Coast after February 19, 1942. On the contrary, the greater number of volunteers from Hawaii can be considered as a form of exemplary conduct by American citizens of Japanese parentage, the product of the greater ethnic and cultural diversity of the Hawaiian Islands; see *The ‘American Way’* Chapter for a study of the Hawaiian Japanese.

The 100th Infantry Battalion was formed in May of 1942 and consisted of the Hawaiian Nisei, the unit was later attached to the 442nd Regimental Combat Team in June of 1944. According to Private Higa the great number of Hawaiian volunteers was an answer by the Nisei

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865 Private Thomas Higa, 28 years old, was born in Hawaii and was a member of the Hawaiian National Guard in 1941. He was on duty, patrolling at Scofield Barracks on December 7, when Pearl Harbor was attacked by the Imperial Japanese Navy. His unit captured the crew of a Japanese two-manned submarine that was forced aground, the first prisoners of war of World War II. When the war broke out Pfc. Higa along with 1,420 Nisei soldiers was sent to the Mainland in May of 1942. The unit, later designated as the 100th Infantry Battalion, trained at Camp McCoy, Wisconsin, and later was transferred to Camp Shelby, Mississippi. In August of 1943 the 100th Infantry Battalion was shipped overseas to Oran, Algeria. Private Higa took part in the Italian Campaign, was a veteran of the invasion of Salerno, and was wounded twice by shrapnel at the Battle of Volturno River and Cassino.

to the ever-present question on whether Japanese Americans were loyal.\textsuperscript{867} Pfc. Higa also noted the acceptance of Japanese American servicemen by the United States Military: “Japanese-Americans who serve in the United States Army are accorded the same treatment as other GI Joes, [...].”\textsuperscript{868} He further added, “[…] ‘the Caucasian units we fought with in Italy treated us like more than brothers. They didn’t care about features and color,’ […] ‘It was the uniform that mattered.’”\textsuperscript{869} The Nisei had to wait until January of 1944 to have their draft status restored and have it imposed by the War Department. By and large during the war 33,000 Nisei served in the United States Army. Due to the courage and patriotism of the Nisei servicemen the 442\textsuperscript{nd} Regimental Combat Team became the most decorated unit in the history of the United States Army, considering the size of the Combat Team and its length of service. The 100\textsuperscript{th} Infantry Battalion/442\textsuperscript{nd} R.C.T. received 18,143 individual decorations and suffered a casualty rate of 28.5%.

5.5. The ‘American Problem’: The J.A.C.L. and the War Relocation Authority

The forced removal and incarceration of persons of Japanese parentage affected the day-to-day life of the Japanese American community as it was defined by “military necessity”, the justification given by the United States Government. Mike Masaoka related to this by writing in 1944 that “military necessity” had dictated most of his actions for the past two years.\textsuperscript{870} In a previous letter on May 20, 1944, he referred to the exclusion and incarceration as a “tragic and un-American treatment” and to Japanese Americans as “innocent victims of war”.\textsuperscript{871} The exclusion program was more than just party politics, or a Japanese ‘problem’, it was an ‘America problem’ according to the J.A.C.L. Masaoka felt that the plight of the Japanese American community was a national problem that affected all minorities, and touched upon the elementary American questions. “Ours is an American problem concerning all Americans because the implications of our treatment may influence the treatment of other minorities in this country and because our exodus raises grave constitutional issues.”,\textsuperscript{872} wrote Mr. Masaoka on May 22, 1944.

\textsuperscript{867} \textit{New York Times}, “Japanese-American, Wounded In Italy, Says Unit Was Treated Like Other GI’S”.
\textsuperscript{868} \textit{New York Times}, “Japanese-American, Wounded In Italy, Says Unit Was Treated Like Other GI’S”.
\textsuperscript{869} \textit{New York Times}, “Japanese-American, Wounded In Italy, Says Unit Was Treated Like Other GI’S”.
\textsuperscript{870} Mike M. Masaoka to Mr. Lewis, May 22, 1944. A similar argument was made in a previous letter to Mr. Pickett. Mike M. Masaoka to Mr. Pickett, May 20, 1944.
\textsuperscript{871} Mike M. Masaoka to Mr. Pickett, May 20, 1944.
\textsuperscript{872} Mike M. Masaoka to Mr. Lewis, May 22, 1944.
His assessment was right considering that the Supreme Court’s decision in the Japanese American cases remained on the books for the next 74 years, with the Korematsu decision only overruled in 2018 in the Trump v. Hawaii No. 17-965, 585 U.S. (2018) case. This means that the Supreme Court’s opinion in the Japanese American challenges served as precedent for nearly eight decades.

The date of the letter is extremely important since it was an election year and Mr. Masaoka emphasized its potential implication for the Japanese American community. The J.A.C.L., understand Mike Masaoka, was worried that the Japanese question will become a national political issue at the upcoming election. He was worried that West Coast and anti-Japanese candidates would use the platform to call for further restrictions upon American citizens of Japanese ancestry and Japanese nationals. As stated by Mr. Masaoka, the “race-baiting candidates” were not concerned about the outcome of their proposals, but rather they were interested in inflaming the public against Japanese persons.\textsuperscript{872} He was worried about the revival of the anti-Japanese prejudice with its destructive lies and wild rumors, for example the sensationalized reports on the supposed subversive activities by Hawaiian Japanese during the attack on Pearl Harbor. A further cause for concern according to Masaoka was the wrongful criticism of the War Relocation Authority. Mike Masaoka foreshadowed an anti-Japanese campaign for the fall elections of 1944, “I’m afraid that the fall elections will be the signal for a gigantic anti-Japanese American program and that race-baiters and kindred spirits will have a Roman holiday at our expense again.”\textsuperscript{874} Partisan politics did in actuality generate problems for it prolonged the incarceration program. The closing of the camps had been delayed by the Roosevelt Administration since 1943 and it was a source of concern for those involved with the project, with the election year playing a key part in delaying the resettlement of the Japanese. The topic is studied at length in The Executive Branch Chapter.

The progress made by the W.R.A. was portrayed by Mike Masaoka in 1944 in a positive light, although he was unable to participate actively in the J.A.C.L. during the past year due to his military service. “In the main, the progress made has been most gratifying and too much credit cannot be given Mr. Dillon Myer and his WRA staff for their generally courageous,

\textsuperscript{873} Mike M. Masaoka to Mr. Lewis, May 22, 1944.
\textsuperscript{874} Mike M. Masaoka to Mr. Lewis, May 22, 1944.
visionary, and humane handling of this difficult problem,” wrote Mr. Masaoka. A similar sentiment was expressed by Saburo Kido who wanted to assure the W.R.A. of his and the over all support of the Japanese Americans for its programs. The J.A.C.L. felt an uneasiness over the attacks endured by the W.R.A.: “[E]verytime we read about the War Relocation Authority being investigated or attacked it gives us the jitters. We always hope that no amount of pressure will discourage you and make you feel that you might as well throw overboard such a nuisance.”

Strong words, if we were to interpret the W.R.A.’s role of taking care of and providing for the incarcerated Japanese Americans as a “nuisance”. Kido hoped that Dillon S. Myer – despite of the criticisms – would remain at his post, “[j]ust as we have to take it on the chin and come back smiling, I hope you will be patient with all these rabid critics and remain at your post.” Saburo Kido encouraged the Director of the W.R.A. in his correspondence. The previous quotations suggest a strong relationship and cooperation between the W.R.A. and the J.A.C.L., their wartime coexistence, or we might say symbiosis of the two organizations.

A point of difference for Masaoka was the resettlement program of the W.R.A., which he approved, but believed that it should be liberalized and all the incurred expenses should be paid for. In his opinion the agency should “go all the way, and not halfway”. A smooth and liberalized resettlement program meant that the agency should ease the transportation of the ‘incarcerees’ and their household possessions to the chosen destination. The resettlement of the Japanese Americans was supported by Mike Masaoka on the ground that military necessity no longer existed, “[i]n my mind, the “military necessity” which dictated the exodus of persons of Japanese race two years ago no longer obtain and any further attempt to use that argument is based upon other than purely military considerations.” Those Japanese who were chosen should be allowed to return to their former lives, thereby facilitating the return of the rest of the Japanese community after the war has ended. It should be added that the National Secretary was

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875 Mike M. Masaoka to Mr. Pickett, May 20, 1944.
877 Saburo Kido to Dillon S. Myer, January 11, 1944.
878 An example of the close relationship between the J.A.C.L. and the W.R.A. is the exchange of Christmas greetings between the leading figures. Dillon S. Myer to Saburo Kido, January 6, 1944, Box 3, Folder Correspondence – Saburo Kido 1944, Series 1, JACL History Collection, Japanese American National Library, San Francisco.
879 Mike M. Masaoka to Mr. Pickett, May 20, 1944.
880 Mike M. Masaoka to Mr. Pickett, May 20, 1944.
highly skeptical of the local Californian authorities’ ability to keep law and order, but placed his confidence in the capability of the U.S. Army to protect those who would be allowed to return.

5.6. The Japanese ‘Problem’: The West Coast Japanese and the ‘Fifth Column’ Threat

It is essential to refer to Lt. Commander Kenneth D. Ringle\textsuperscript{881} at this point as he was an officer of the O.N.I. who was stationed in Los Angeles and investigated the Japanese community. Lt. Commander Ringle accumulated great knowledge in Japanese language and culture over a period of time as a Navy language student in Japan between 1928 and 1931, as a result of his expertise he was assigned to Los Angeles in 1940. According to the Lieutenant Commander’s research the domestic threat to the security of the United States was “negligible” due to the Americanization of the Nisei in public schools, the decreasing number of Issei with an average age of 50, the arrest of known potentially dangerous persons of Japanese descent, and the overwhelming loyalty of both generations. Commander Ringle provided specific data in his letter to Edward N. Barnhart to support this argument, February 21, 1952.\textsuperscript{882} He estimated the number of persons of Japanese ancestry in 1940 to be approximately 150,000, with 60\%\textsuperscript{883} of them having been born in the United States. The Commander also stated in his letter that the security agencies had the ‘enemy aliens’ under surveillance, “‘[t]he service intelligence services, local police, immigration and other federal agencies had been observing these people for many years and compiling records on many individuals.’”\textsuperscript{884} The data gathered was used to detain individuals, and in the Los Angeles area alone about 450 people were arrested before midnight on December 7, 1941.\textsuperscript{885} Needless to say the data cited by Commander Ringle refers to the West

\textsuperscript{881} Lt. Commander Kenneth D. Ringle (1900-1963) was an officer of the Office of Naval Intelligence who investigated the Japanese American community. Based on his investigations he opposed the forced mass removal and incarceration of persons of Japanese parentage. In the Autumn of 1942 his report from January was published in the article titled “The Japanese in America: The Problem and the Solution,” under the pseudonym “An Intelligence Officer,” in Harper’s Magazine. The article was based on his investigation of Japanese Americans, whom he found to be loyal and argued against their exclusion. The report was given to the magazine by an unknown person from the W.R.A. and was mistakenly approved by the Navy Office of Public Relations. Roger Daniels, Asian America: Chinese and Japanese in the United States since 1850 (Seattle: University of Washington Press, 1988), 210-211.

\textsuperscript{882} Roger Daniels cites Lt. Commander Kenneth D. Ringle’s letter to Edward N. Barnhart, February 21, 1952. Daniels, Asian America, 210-211.

\textsuperscript{883} Daniels puts the figure at 126,947, with 62.7\% of them American citizens. Daniels, Asian America, 210.

\textsuperscript{884} Daniels, Asian America, 210.

\textsuperscript{885} Daniels, Asian America, 210.
Coast, but further value is added to his findings since similar results were recorded by Curtis B. Munson in his report on the Hawaiian Islands and the Pacific Coast.

Lt. Commander Kenneth D. Ringle to Edward N. Barnhart on the exclusion and incarceration of persons of Japanese ancestry, February 21, 1952:886

Where then was the potential danger that made it necessary to intern every other person of Japanese ancestry in the Spring of 1942? This I can say with authority. In later careful investigations on both the West Coast and Hawaii, there was never a shred of evidence found of sabotage, subversive acts, spying, or fifth column activity on the part of the Nisei or long-time local residents. . . . I reported officially in 1941 that it was my considered opinion that better than 90% of the Nisei and 75% of the original immigrants were completely loyal to the United States.

Lt. Commander Ringle stated in his 1942 O.N.I. report that people of Japanese descent were overwhelmingly loyal. He estimated that approximately 3% of the Japanese community could be considered dangerous, a potential threat to national security. In his view the Japanese ‘problem’ was exaggerated and the loyalty of the Japanese community should have been determined on an individual “case-by-case” basis, not by collective guilt.887 Kenneth Ringle further supported the concept that the assimilation and Americanization of the second generation Nisei was successful and was supported by their Issei parents.888

Commander Ringle, before his report was published in Harper’s Magazine during the Autumn of 1942, had arranged in the Spring of 1941 a break-in at the Japanese Consulate located in Los Angeles.889 It was an operation that included the cooperation of local police, the F.B.I., and even employed the services of a safecracker. The break in was a success as they were able to gather information on Japanese espionage activities and vital proof that Japanese Americans were not involved. The intelligence collected revealed that the Japanese consular officials did not

886 Daniels, Asian America, 210-211.
889 Daniels cites Kenneth D. Ringle’s son Kenneth from a story that was published in the Washington Post, December 6, 1981. Daniels, Asian America, 212.
trust Japanese Americans, neither generation, as they were deemed “cultural traitors.” The use of the term “cultural traitors” further strengthens the standpoint on the successful assimilation and Americanism of the Japanese community, as well as the data on the loyalty of the Nisei (90%) and Issei (75%). Lt. Commander Ringle shared his findings with Curtis B. Munson, who greatly respected Mr. Ringle. The Lt. Commander was singled out as one of the intelligence officers, before the outbreak of the war, who embodied the most intelligent views on the Japanese. “Your observer must note without fear or favor that 99% of the most intelligent views on the Japanese, by military, official and civil contacts in Honolulu and the mainland, was best crystalized by two Intelligence men before the outbreak of the war.” wrote C. B. Munson in one of his reports on December 20, 1941. This opinion adds to the credibility of the Ringle Report and the findings on the overwhelming Americanism and loyalty of the Japanese American community. The Ringle Report – introduced by Edward J. Ennis in the memorandum of April 30, 1943, as reasonable and objective – was also a topic of interest by the Department of Justice as it undermined Lt. General John L. DeWitt’s Final Report on the military necessity justification for the mass ‘evacuation’ of Japanese persons from the Pacific Coast. The O.N.I. report contradicted the judgment of the Military Commander.

It should be mentioned at this point that according to the Office of War Information (O.W.I.) Japanese Intelligence depended on non-Japanese agents living in the U.S. Japanese Intelligence officers concluded that Japanese Americans, persons of Japanese descent, were untrustworthy. This information further supports the characterization of Japanese American as “cultural traitors”, since according to the agency they were loyal to the United States, they were already Americanized. Considering the issue of espionage and sabotage activities, or rather the lack of it, Carey McWilliams noted in 1944: “No Japanese-Americans, either in Hawaii or on the mainland, have been convicted of either sabotage or espionage.” The O.W.I. reported on June

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890 Daniels, Asian America, 212.
14, 1943, that the signaling at Pearl Harbor was done by Nazi agents, and no Japanese Americans were convicted of sabotage or espionage.

A further influential individual whose work was instrumental in investigating the loyalty of Japanese persons was Curtis B. Munson, commissioned by John Franklin Carter to assess the loyalty of Japanese Americans in California and on the West Coast. Daniels noted that Mr. Munson was shocked and worried that his reports might have contributed to the Japanese crisis on the Pacific Coast\(^895\), his fear being that the treatment of the Japanese resembled that of the Jewish community by the Nazi regime in Germany. The *Munson Report* was sent to John Franklin Carter who forwarded the document along with his one page summary to President Franklin D. Roosevelt in November of 1941, which was then forwarded to Secretary of War Henry L. Stimson on November 8, 1941. President Roosevelt received a further memo – *Full Report On Program For Dealing With West Coast Japanese Problem*\(^896\) – sent by Mr. Carter on December 22, 1941. The President was informed that copies of Munson’s final report and recommendations to clean up the Japanese ‘problem’ were also submitted to the Attorney General, the State Department, the Army, and the C.O.I.

In a November 7, 1941, memorandum\(^897\) John Franklin Carter forwarded Curtis B. Munson’s report on *Japanese On The West Coast* to the President. Mr. Carter included in the memo his *own summary* of the key points of the investigation, quoting from the original report. The memorandum highlighted and sensationalized points of the report on hypothetic radical Japanese who would wear dynamite and act as “human bombs”, suspected Japanese espionage and sabotage – by imported agents – that threatened the crucial infrastructure of California. The one page memo overshadowed C. B. Munson’s conclusions. Nevertheless, the J.F.C. memo and the *Munson Report* did acknowledge that there was no Japanese ‘problem’ on the West Coast and that the local Japanese were mostly loyal to the United States. The information also supported the Ringle and O.W.I. reports on the lack of evidence to support the allegations of subversive activities committed by the Nisei, since the Japanese Intelligence did not trust the Nisei “cultural traitors” and employed non-Japanese agents.

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895 Daniels, *Asian America*, 212.
896 John Franklin Carter to President Franklin D. Roosevelt, December 22, 1941, Box 1, Folder Roosevelt Lib. Materials, 1941-1942, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco.
897 John Franklin Carter to President Franklin D. Roosevelt, November 7, 1941, *President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files*, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 33.
Considering the emphasis placed by J.F.C. in the memo on the potential threat presented by Japanese “human bombs” and “crackpot[s]” certain disturbing parts of the report gained greater focus than the conclusions of the original Munson Report. President Roosevelt forwarded the memo and the report to Secretary of War Henry L. Stimson on November 8, 1941. In his memo\textsuperscript{898} the President placed emphasis on paragraph five, the guarding of strategic points; according to F.D.R. there was nothing new in relation to the first four paragraphs. This is significant, because it implies that the President knew, had information in his possession, that there was no Japanese ‘menace’ and that the majority were loyal, but rather he concentrated on the supposed threat. In his response\textsuperscript{899} on February 5, 1942, the Secretary of War insisted that the War Department gave careful attention to the Munson Report, “the Japanese situation on the West Coast”. Secretary Stimson ensured the President that “radical steps” had been taken since December 7 in order to manage the situation and to guard vital points in the area. Department officials consulted with Curtis B. Munson on the defense of the West Coast and Lt. Gen. John L. DeWitt’s troops were responsible for guarding the most crucial strategic installations. The Secretary added: “We have worked out with the Attorney General a more expeditious legal method than formerly prevailed in the Western theatre of operations in connection with the search and seizure of enemy aliens and their property.”\textsuperscript{900} Secretary Stimson felt little need to additionally comment on the information enclosed in Mr. Munson’s report.

Curtis B. Munson compiled his findings on the Japanese ‘problem’ in his Japanese On The West Coast\textsuperscript{901} report after having spent three weeks on the Pacific Coast, a week in each the 12\textsuperscript{th} (Northern California), the 13\textsuperscript{th} (Washington and Oregon), and the 11\textsuperscript{th} (Southern California) Naval Districts. He characterized the facts on the subject as “fairly clear” and the opinion towards the ‘problem’ “exceedingly uniform”. During his investigation he received the full

\textsuperscript{898} President Franklin D. Roosevelt to Henry L. Stimson, November 8, 1941, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 33.

\textsuperscript{899} Henry L. Stimson to President Franklin D. Roosevelt, February 5, 1942, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 33 (hereafter cited as Henry L. Stimson to President Franklin D. Roosevelt, February 5, 1942).

\textsuperscript{900} Henry L. Stimson to President Franklin D. Roosevelt, February 5, 1942.

\textsuperscript{901} Curtis B. Munson’s Japanese On The West Coast Report was attached to John F. Carter’s memorandum dated November 7, 1941. During his investigation C. B. Munson consulted with and obtained the opinions of the various segments of West Coast society: intelligence services, businesses, employees, universities, white workers, students, fish packers, lettuce packers, farmers, and religious groups. Carefully chosen Japanese were also sampled. Munson, November 7, 1941, Japanese On The West Coast Report.
cooperation of the F.B.I., as well as the Naval and Army Intelligence, it is mentioned that even the British Intelligence provided certain assistance; the ‘reporter’ does not go into detail on the contribution of the British Intelligence. All things considered the work of the Naval Intelligence is highlighted, having tackled the ‘problem’ for the past ten to fifteen years. The ‘reporter’ – as C. B. Munson referred to himself – maintained at the beginning of the work that “[y]ou have to feel this problem – not figure it out with your pencil.” A striking thread of though, it points to the complexity of the issue and the need for familiarity with Japanese culture and society. The issue is addressed by the “Background” summary section of the report which focuses on the “study of Japan”, the Japanese people, their history, religious and family background. The “Background” section serves as an introduction of the uniqueness, the singularity of Japanese culture, and was possibly intended to aid those who were to deal with the Japanese ‘question’, but had no prior knowledge in the matter.

The account continues with further sections focusing on the Japanese Americans. The report states that at the time there were approximately 1,563 Japanese associations in the United States. In light of this C. B. Munson described the Japanese as the “greatest joiner in the world”. The author made reference to The Japanese-American Directory of 1941 publication, the volume was a two inches thick listing of the existing Japanese associations. He was also provided lists of the most important associations in the various Naval Districts. The Japanese American family structure is also analyzed to better comprehend the family hierarchy.

Within the Japanese American community four generations were identified by Mr. Munson: the Issei, Nisei, Kibei, and the Sansei. Each division will be briefly analyzed while focusing on C. B. Munson’s conclusions and the relevance of loyalty to the United States. The Issei were the first generation of Japanese Americans – Japanese-born immigrants, aliens, 55 to 65 years old – who were ineligible for citizenship. The Munson Report notes that in all probability they were “loyal romantically” to Japan. However, the investigation does not neglect

903 The report provides a brief, but informative introduction of such topics as the Japanese race, Shintoism, Buddhism, Japanese feudal society / clan system, filial piety, family / clan loyalty, the Meiji Restoration, and ‘giri’ (obligation). These cultural traits were later cited as causes for concern by members of Congress and the Commanding General in the Final Report. Munson, November 7, 1941, Japanese On The West Coast Report.
904 Munson, November 7, 1941, Japanese On The West Coast Report.
905 The Sansei are the third generation of Japanese Americans, but since they were babies at the time C. B. Munson disregarded their analysis in his report. Munson, November 7, 1941, Japanese On The West Coast Report.
to clarify their deep roots in and strong connection to America both from a financial and personal perspective. Curtis B. Munson on the Issei: “They have made this their home. They have brought up children here, their wealth accumulated by hard labor is here, and many would have become American citizens had they been allowed to do so.”\(^{906}\) The Issei were the head of the family with strict authority over the “disciplined and honorable” family, while their children were described as “obedient” and “virtuous”. It is no wonder then that the detention of the Issei leaders and family heads resulted in immense hardship for the Japanese community.

The Nisei are second generation Japanese Americans – American citizens of Japanese ancestry, 1 to 30 years old – who were raised and educated in the United States. They embraced their Americanism, and as Munson emphasized, “[…] in spite of discrimination against them and a certain amount of insults accumulated through the years from irresponsible elements, show a pathetic eagerness to be Americans.”\(^{907}\) Although “pathetic eagerness” is a negative element in their portrayal, it implies the loyalty and Americanism of the second generation. This level of Americanism and assimilation was also greatly encouraged by the J.A.C.L. Notwithstanding, within the second generation a specific subgroup is identified, the Kibei. The Kibei are American citizens of Japanese parentage who were sent back to be educated in Japan, the most ‘dangerous’ group within the Japanese community. Munson further divided the Kibei into two distinct classes: “Those who received their education in Japan from childhood to about 17 years of age and those who received their early formative education in the United States and returned to Japan for four or five years of Japanese education.”\(^{908}\) The Kibei were also a topic of interest for Lt. General DeWitt, as they were seen as a threat to national security due to the indoctrination they received in the nationalistic educational institutions back in Japan. Nonetheless, the author noted that from those who traveled to Japan after their formative education in America many come back with “an added loyalty to the United States”. According to Mr. Munson the Kibei’s visit to Japan was a “painful experience” since as foreigners they were treated with contempt. He cites a saying in regard to this painful experience and how it provided an added loyalty to America, “[in] fact it is a saying that all a Nisei need is a trip to Japan to make a loyal American out of him.”\(^{909}\)

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\(^{906}\) Munson, November 7, 1941, Japanese On The West Coast Report.

\(^{907}\) Munson, November 7, 1941, Japanese On The West Coast Report.

\(^{908}\) Munson, November 7, 1941, Japanese On The West Coast Report.

\(^{909}\) Munson, November 7, 1941, Japanese On The West Coast Report.
The main body of the report concentrates on the possible reaction of the Japanese American community in case war broke out with Japan. Munson commences this section of the report by stating: “There are still Japanese in the United States who will tie dynamite around their waist and make a human bomb out of themselves. We grant this but today they are few.”\textsuperscript{910} The same sentence was quoted by J. F. Carter in his November 7, 1941, memorandum, introduced earlier. However, the sensationalized “human bomb” claim is more meaningful if we consider the previous paragraph of the report; left out of the J.F.C. summary memo sent to the President. Mr. Munson alleges that there were sinister Japanese associations, some originating from Japan, with connections to the Japanese Consulate. It implied the use and activity of foreign agents, not necessarily Japanese Americans. In this sense the Japanese ‘problem’ is depicted as a ‘punkin’, “[t]here is real fire in it, yet in many ways it is hollow and dusty.”\textsuperscript{911}

On the loyalty of Japanese American and the threat of espionage or sabotage the conclusion of C. B. Munson is quite convincing. The Nisei were generally 90% to 98% loyal to the United States – the Kibei subgroup excluded –, which they were “pathetically eager” to prove.\textsuperscript{912} Cooperation with the Japanese American Citizens League was recommended in order to ensure the continued loyalty of the Nisei, to hinder the Japanese Government’s attempts to take advantage of the situation, “[…] to see that Tokio [sic] does not get its finger in this pie – which it has in a few cases attempted to do.”\textsuperscript{913} As a consequence of racial prejudice they suffered from an “inferiority complex”\textsuperscript{914}, they were eagerly waiting not only to be accepted, but also for a gesture of protection. The Issei had already established deep roots in the United States through their home, businesses, and family, many would have become naturalized American citizens if they had not been labeled ‘ineligible for citizenship’. Their loyalty to Japan was weakened, but were alarmed that they could be placed in “concentration camps”\textsuperscript{915}. Although legally they were Japanese citizens they broke off this bond to the motherland by encouraging and supporting the military service of their Nisei children in the United States Army. Compared to the Nisei and the Issei, the Kibei were the most likely to be dangerous.

\textsuperscript{910} Munson, November 7, 1941, Japanese On The West Coast Report.  
\textsuperscript{911} Munson, November 7, 1941, Japanese On The West Coast Report.  
\textsuperscript{912} Munson, November 7, 1941, Japanese On The West Coast Report.  
\textsuperscript{913} Munson, November 7, 1941, Japanese On The West Coast Report.  
\textsuperscript{914} Curtis B. Munson, Report On Hawaiian Islands, December 8, 1941, Box 1, Folder Roosevelt Lib. Materials, 1941-1942, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco.  
\textsuperscript{915} Munson, November 7, 1941, Japanese On The West Coast Report.
Tackling the threat of sabotage Curtis B. Munson hints at the uniformity of his interviewees’ responses and concludes that there was no Japanese ‘problem’.\textsuperscript{916}

As interview after interview piled up, those bringing in results began to call it the same old tune. […] The story was all the same. There is no Japanese ‘problem’ on the Coast. 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’.

The number of dangerous suspects under surveillance was estimated to be around 250 to 300 in each Naval District, with only 50 to 60 of them classified as “really dangerous”; a speech in support of Japan was enough justification to be placed on the list.\textsuperscript{917} The physical appearance of the Japanese, apart from creating their ‘inferiority complex’, also hindered their ‘Fifth Column’ activity because of racial profiling. Their physical features in itself was an argument against the Japanese ‘menace’ for it was enough ground for suspicion and differential treatment. The Japanese were “hampered” by their physical appearance, unable to get in the proximity of guarded facilities as they could be easily recognized, they looked like the enemy. Additionally, the Japanese Americans were predominantly farmers, fishermen, and small business owners, they had no access to high value military installations.

Besides sabotage, the Federal Government was also worried about the danger of physical espionage. The \textit{Munson Report} does not evade the issue and firmly states that the disloyal Japanese would “be well equipped for obvious physical espionage”, the gathered intelligence material on the West Coast has already been sent to Tokyo some years ago.\textsuperscript{918} Even so, according to a Navy Intelligence Captain the material received by Tokyo was a “mass of useless information”.\textsuperscript{919} His assessment was based on the information intercepted over the previous years. The role that the Japanese disloyal could play effectively would be taking part in the movement of supplies, troops, and ships out of harbors and over railroad lines. The reason given by Munson is that the Japanese seldom occupied positions of importance and their access to

\textsuperscript{916} Munson, November 7, 1941, Japanese On The West Coast Report.
\textsuperscript{917} Munson, November 7, 1941, Japanese On The West Coast Report.
\textsuperscript{918} Munson, November 7, 1941, Japanese On The West Coast Report.
\textsuperscript{919} Munson, November 7, 1941, Japanese On The West Coast Report.
confidential information was restricted due to general suspicion, they would have been forced to buy intelligence material from white persons. Concern over the unguarded strategic points was brought up in the document, especially how infrastructures (dams, bridges, harbors, and power stations) vital for the national defense were unprotected and could be destroyed even by subversives armed with hand grenades. The destruction of such key installations could hinder the war effort. The conclusion of Curtis B. Munson is fascinating after having studied the Final Report’s military necessity reasoning for the exclusion of Japanese persons. Mr. Munson’s inference contradicts Lt. General DeWitt’s findings on the national defense basis of the removal of Japanese residents from the strategic military areas.

Curtis B. Munson deduced in the Summary of his investigation that sabotage supported by Japan would be carried out mostly by imported agents as the Japanese Government placed no confidence in the Nisei, some help could be expected from the Kibei. The Japanese on the whole are loyal to America, or as claimed in the report, “[…] at worst, hope that by remaining quiet they can avoid concentration camps or irresponsible mobs.” Mr. Munson did not believe that the Japanese were more prone to be disloyal than the other ethnic groups affected by the war, though, the President’s ‘reporter’ was worried about the safety of vital installations, since the West Coast was vulnerable to sabotage. Munson showed willingness in his investigation, but was unable to unequivocally state that there was no potential Japanese threat due to the apparent vulnerability of the Pacific Coast: “The Japanese are loyal on the whole, but we are wide open to sabotage on this Coast and as far inland as the mountains, and while this one fact goes unrectified I cannot unqualifiedly state that there is no danger from the Japanese living in the United States which otherwise I would be willing to state.” It seems that the unpreparedness of the United States and shortcomings in national defense played a key role in the anti-Japanese hysteria and significantly influenced the status of the Japanese Americans.

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921 Munson’s comments on the shortcomings in the guarding of critical infrastructure was included in John F. Carter’s summary memorandum of November 7, 1941. Despite of the comprehensive nature of the Munson Report it was the quotation on the unguarded strategic points that caught President Roosevelt’s interest. The President forwarded the J.F.C. memo and the Munson Report to the Secretary of War the following day on November 8. In his memo Roosevelt specifically called Henry L. Stimson’s attention to paragraph five of the Carter memo, the guarding of key points. Munson, November 7, 1941, Japanese On The West Coast Report.
923 Munson, November 7, 1941, Japanese On The West Coast Report.
924 Munson, November 7, 1941, Japanese On The West Coast Report.
The conclusion provided in the Munson Report corroborates the information made available by the Office of War Information and Lt. Commander Kenneth D. Ringle’s report, both introduced earlier. According to the O.W.I. the Japanese Intelligence relied on non-Japanese agents in view of the conviction that Japanese Americans were considered untrustworthy.\textsuperscript{925} As claimed by Lt. Commander Ringle the potential threat to the security of the United States was “negligible”, there was no evidence that supported the espionage, sabotage, and ‘Fifth Column’ activity of the Nisei, and the long-time resident Issei.\textsuperscript{926} Furthermore, it was reported in 1941 by the Lt. Commander that in his opinion better than 90% of the Nisei and 75% of the Issei were loyal to the United States. Based on his judgment the Japanese ‘problem’ was exaggerated given that only about 3% of the Japanese community could be treated as potentially dangerous.\textsuperscript{927} Nonetheless, the probable logic followed by President Roosevelt and Lt. General DeWitt was that one potential saboteur – one “Japanese ‘crackpot’” or “human bomb”, as claimed in the John F. Carter memo of November 7, 1941 – could be enough to cause considerable damage to the strategic defense infrastructure.

Additional reports were filed by Curtis B. Munson on the Japanese situation, as indicated by John Franklin Carter’s Memorandum On Summary Of West Coast And Honolulu Reports By Munson ETC\textsuperscript{928} on December 16, 1941. The J.F.C. report summarized in eight points C. B. Munson’s findings after his investigation on the West Coast and the Hawaiian Islands; the Munson reports were submitted prior to the attack on Pearl Harbor. The summary highlighted the fact that there was no substantial ‘Fifth Column’ threat by the Japanese. An interesting contradiction to the statement made by Secretary of Navy Frank Knox on December 15, 1941, after his visit to Oahu to inspect the aftermath of the Japanese attack. There was a lack of significant ‘Fifth Column’ danger, “([d]espite Secretary Knox’s contrary statement, his report shows he was referring to close physical espionage at Honolulu directed by the Japanese Consulate General).”\textsuperscript{929} The reference to Secretary Knox’s “Fifth Columnist” statement adds

\textsuperscript{926} Daniels, Asian America, 210-211.
\textsuperscript{928} John Franklin Carter to President Franklin D. Roosevelt, December 16, 1941, Box 1, Folder Roosevelt Lib. Materials, 1941-1942, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco (hereafter cited as John Franklin Carter to President Franklin D. Roosevelt, December 16, 1941).
\textsuperscript{929} John Franklin Carter to President Franklin D. Roosevelt, December 16, 1941.
further value to the conclusion made by C. B. Munson on the loyalty of Japanese Americans, and his call for the reassurance of those who were loyal in the aftermath of the Secretary’s assertions.

The significance of keeping the Japanese American loyal was quite important and J. F. Carter in a December 19, 1941, memo titled *Summary Of Report On Program For Loyal West Coast Japanese* summarized the program for the loyal Japanese by Curtis B. Munson. By the time the memorandum was prepared it was reported by Mr. Munson from Los Angeles that five local Japanese Americans had committed suicide because their honor was insulted after their loyalty was questioned. Mr. Munson outlined a program for maintaining the loyalty of Japanese Americans and creating “wholesome race-relations”; to a great extent the program was based on Lt. Commander Ringle’s O.N.I. proposals. The principle of the program was described by Carter as the following: “Its essence is to utilize Japanese filial piety as hostage for good behavior.” The basis of the concept was to encourage and reassure the Nisei through statements made by notable officials from high authority, to foster their sense of responsibility. Furthermore, the war effort – “patriotic cooperation” – of the Nisei should be welcomed, such as their work for civil and public service agencies (Civilian Defense, Red Cross, and United Service organizations), and their contribution within the defense industries (ship-building and aircraft plants). The self-monitoring of the Japanese Americans was proposed by placing the responsibility of their behavior and the production of food on the Japanese American Citizens League. These proposals were in addition to the previous recommendation on cooperation with the J.A.C.L., recommended by Munson in his report on November 7, 1941. The J.A.C.L.’s *The Japanese American Creed* (1941) and the *A Declaration Of Policy* (1942) – introduced earlier – reflects the endeavor of the organization in assuming the moral and political leadership of the Japanese American community. Only a few days later on December 21, 1941, the Northern California District Council of the J.A.C.L. held a ‘special session’ and drafted a resolution – on behalf of the Nisei – in support of the war effort and national defense.

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932 Mike M. Masaoka to Honorable Culbert L. Olson, December 22, 1941.
The *Munson Report* corroborated that there was no Japanese ‘problem’ or threat of uprising or race riot on the West Coast, just like in the case of the Hawaiian Islands. The loyalty of the Japanese American community was encouraged to promote their ‘patriotic cooperation’. The J.A.C.L.’s wartime policy filled in this role and supported the war effort under the leadership of the Nisei. However, this was to no avail when the exclusion of all persons of Japanese descent began in the Spring of 1942 based on the *Final Recommendation* and the *Final Report* of Lt. General John L. DeWitt, the Military Commander of the Western Defense Command. The findings of Mr. Munson and Lt. Commander Ringle were not taken into consideration when the mass exclusion of the Japanese was contemplated by the War Department; no mention was made of these reports in the Supreme Court’s decisions in the Japanese American cases even though they discredited the military necessity argument. There was reference made to the Ringle memorandum in a Department of Justice correspondence\(^{933}\), the Solicitor General was briefed by Edward J. Ennis on April 30, 1943. Despite of its objectivity Solicitor General Charles Fahy did not inform the Supreme Court of the report’s existence, in spite of the fact that Mr. Ennis warned that doing so could amount to “suppression of evidence”.

### 5.7. A Divided Community: ‘Misconceptions’ and the J.A.C.L.

The Japanese American Citizens League assumed leadership of the Japanese community at a time of great need, stressing the Americanism and loyalty of American citizens of Japanese ancestry as ‘exemplary citizens’. Many of the decisions made and actions taken by the League were resented or misinterpreted, according to Mike Masaoka: “In assuming leadership among the Japanese when leadership was sorely needed, JACL necessarily had to make many decisions which were resented, misinterpreted, or misjudged.”\(^{934}\) Mr. Masaoka was of the opinion that at least one organization should remain to speak on behalf of the Japanese American populace and that should be the J.A.C.L., which in turn should be supported. He believed that many “misconceptions” remained among the Japanese Americans about the role of the organization, making the League into a “scapegoat” and blaming it for their troubles and misfortunes.

One of the central problems that the J.A.C.L. encountered was the Selective Service and the subsequent segregation of suspected radicals as a result of the loyalty program of 1943.

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\(^{933}\) Edward J. Ennis to Charles Fahy, April 30, 1943.

\(^{934}\) Mike M. Masaoka to Mr. Pickett, May 20, 1944.
Saburo Kido acknowledged that the J.A.C.L. was in favor of the Selective Service, the draft, and consequently received ‘credit’ for it, its members were called names for its policy. In a letter to Terry T. Hayashi he admitted, “[t]here is no doubt that we have advocated such a policy.”\textsuperscript{935} As Masaoka explained, the J.A.C.L.’s standpoint on the Selective Service was used as an “opening wedge” and a source of criticism, with the League fearing violence.\textsuperscript{936} In spite of the negative judgment of its principle of action, the League believed that segregation was the only solution to end the intimidation of loyal Japanese Americans by “pro[-]axis elements” – as Mike Masaoka referred to them in a telegram to W.R.A. Director Dillon S. Myer\textsuperscript{937} on December 21, 1942 –, and the fear of violence. Reports from Poston Incarceration Camp gave account of “agitators” pressuring Americans and that loyal Nisei were planning to form “protective gangs”.\textsuperscript{938} Masaoka further stated in his telegram, “[p]eople there [Poston] urgently request complete investigation and segregation of non[-]loyal groups.”\textsuperscript{939}

“Segregation seems to be the only answer,”\textsuperscript{940} an incarceree claimed in a letter addressed to Mike Masaoka on February 7, 1942, expressing support for the purging of radicals. The organization was working with the Administration and the Internal Security Department to remove the “disrespecters [sic] of law and order”\textsuperscript{941}, although there was a lack of adequate evidence. The League was committed to this cause in the name of those who planned to leave and were afraid of being attacked for their decision, and were worried for those who chose to remain in the camps until the end of the war. This firm belief is well demonstrated by the following quotation, “[…] we are leaving no stone unturned and we hope to do a good job of

\begin{footnotesize}
\begin{enumerate}
\item Saburo Kido to Terry T. Hayashi, January 28, 1944.
\item Mike M. Masaoka to Dillon S. Myer, December 21, 1942, Box 4, Folder JACL Telegrams 1942, Series 1, JACL History Collection, Japanese American National Library, San Francisco (hereafter cited as Mike M. Masaoka to Dillon S. Myer, December 21, 1942).
\item The telegram also referred to reports from the Manzanar Incarceration Center that the Kibei were inspecting outgoing mail in the camp and that the loyal Americans were fearful of being beaten. Mike M. Masaoka to Dillon S. Myer, December 21, 1942.
\item Mike M. Masaoka to Dillon S. Myer, December 21, 1942.
\item The sender of the letter cannot be fully identified, only the name Kaz is provided on the last page. It was sent from the J.A.C.L. chapter of the Poston Incarceration Camp. J.A.C.L. Poston Chapter to Mike Masaoka, February 7, 1943, Box 1, Folder Poston, Arizona (WRA), Series 1, JACL History Collection, Japanese American National Library, San Francisco (hereafter cited as J.A.C.L. Poston Chapter to Mike Masaoka, February 7, 1943).
\item J.A.C.L. Poston Chapter to Mike Masaoka, February 7, 1943.
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purging the radical element before we leave this camp [Poston], ‘merely’ for the sake of ourselves, and for those who will choose to remain here for the duration.”

The Statement Of United States Citizen Of Japanese Ancestry, or more popularly known as the ‘Loyalty Questionnaire’, was prepared in early 1943 by the War Department and the War Relocation Authority to assess the loyalty of the Japanese living in the United States, American citizens of Japanese ancestry (the Nisei) and Japanese aliens (the Issei). On February 8, 1943, persons of Japanese parentage held in the incarceration centers – men and women, 17 years of age and older – were instructed to fill out D.S.S. Form 304A. The form was four pages long and contained twenty-eight questions on various subjects. Those who provided false information or concealed material facts were liable to a fine of no more than $10,000 or ten years imprisonment, or both. The Japanese were required to complete a comprehensive questionnaire that covered a wide range of topics: personal information (name, date and place of birth, sex, height, weight, and marital status), registration for and cancelation of Japanese citizenship, application for repatriation to Japan, current and previous two addresses, party affiliation if a registered voter, personal details of relatives living in the United States and Japan, education (from kindergarten to any type of military training), foreign travels, employment, religion, memberships in organizations (clubs, societies, and associations), foreign investments, contributions made to any organization, knowledge of foreign languages (reading, writing, and speaking skills), sports and hobbies, subscriptions to magazines and newspapers, criminal record, and any further references. It should be noted that it took more than a year for the authorities after the attack on Pearl Harbor to work out the means of assessing the loyalty of the Japanese community, while one of the main arguments in favor of exclusion was the lack of time and means to differentiate between the loyal and the disloyal. The survey of 1943 facilitated the procedure of releasing and relocating the loyal Japanese from the incarceration camps, as well as the Army registration and enlistment of American citizens of Japanese ancestry. Based on the

942 J.A.C.L Poston Chapter to Mike Masaoka, February 7, 1943.
944 See Appendices, Primary Documents, Document 7 for the complete text of the Statement Of United States Citizen Of Japanese Ancestry, the ‘Loyalty Questionnaire’.
945 “Loyalty Questionnaire,” D.S.S. Form 304A, 1943.
'Loyalty Questionnaire’ those Nisei who were previously classified as “4-C” following Pearl Harbor could be reclassified, would become eligible for military service. It allowed the War Department to draft and accept Nisei volunteers to serve in the United States Army through the Selective Service System. In spite of the *Statement Of United States Citizen Of Japanese Ancestry* the War Department believed even in January of 1944 that the segregation of the disloyal was not completed. According to John J. McCloy, Assistant Secretary of War, “[t]he segregation program is still in progress, and will be for some time”. The information quoted is included in the letter addressed to the American Civil Liberties Union. The reason given was that the program applied to those individuals who were excluded from the West Coast and were located in the incarceration centers. There was a considerable number of persons of Japanese descent who did not live on the West Coast, or voluntarily relocated to other parts of the country outside of the Military Areas. They were not placed in the centers and were not subjected to the segregation procedure. In addition, the Assistant Secretary of War claimed that it cannot be presumed that all persons of Japanese ancestry not transferred to the Tule Lake Segregation Center were loyal to the United States. Five months after the ‘Loyalty Questionnaires’, on July 15, 1943, the Tule Lake Incarceration Center (CA) was designated by the W.R.A. as the segregation center to detain the ‘disloyal’ Japanese. Assistant Secretary McCloy also stated, that the “[…] War Department policy favors full participation of loyal persons of Japanese descent in the war effort.”

D.S.S. Form 304A (1-23-43), *Statement Of United States Citizen Of Japanese Ancestry*:  
*Question 27.* Are you willing to serve in the armed forces of the United States on combat duty, wherever ordered?  
*Question 28.* Will you swear unqualified allegiance to the United States of America and faithfully defend the United States from any or all attack by foreign or domestic forces, and forswear any form of allegiance or obedience to the Japanese emperor, or any other foreign government, power, or organization?

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947 John J. McCloy to American Civil Liberties Union, January 4, 1944.  
948 “Loyalty Questionnaire,” D.S.S. Form 304A, 1943.
The ‘Loyalty Questionnaire’ brought up many problems if we consider Question 27 and 28, whether answering “No” would be interpreted as being disloyal to the United States. The responders were required to swear allegiance to the United States and show willingness to serve in the U.S. Armed Forces to defend America. At the same time they had to forswear any allegiance to the Empire of Japan. This was problematic if we take into account the Issei who were ineligible for American citizenship according to the naturalization law. It was also a religious question if we consider the firm belief of the Japanese in Shintoism, traditionally regarding the Emperor as its high priest and the descendent of the gods. On the other hand, the Nisei were asked to serve in the Armed Forces while being detained in incarceration centers with family members who would remain imprisoned despite of their combat service. As stated by Captain Thompson – Gila River registration meeting – on February 9, 1943, “[m]y interpretation is either that a person is disloyal to the United States or he is a panty-waist.”

In his opinion, those individuals who answer “No” cannot be considered loyal. This belief was shared by many within the Roosevelt Administration, the Department of War and Justice, and even by the Supreme Court in its Japanese American decisions. Nonetheless, those who answered No-No, or refused to answer the questions, did so with the intention of either wanting to repatriate or return to Japan due to the prejudice and discrimination they endured, did not want to be separated from their family members who were already segregated, or took a stand against the infringement of their civil liberties as American citizens. Those persons of Japanese ancestry who dissented did so under duress: political, legal, and cultural pressure.

There was significant political pressure bearing in mind that the American Government expected persons of Japanese descent to portray their loyalty by answering Yes-Yes to Question 27 and 28. President Roosevelt stated in regard to American loyalty, that a “good American” is someone who is loyal to the United States and keeps true to its creed on liberty and democracy. From a legal perspective the Nisei believed that the Yes-Yes answer was required to be eligible for release from the camps, since a No response would be interpreted as proof of disloyalty. It also presented a Catch-22 dilemma for the Issei, a legal conundrum, since they were ineligible for American citizenship. The Issei were urged to renounce their allegiance to Japan, their only means of diplomatic representation as Japanese citizens. A No answer would have

949 J.A.C.L., February 9, 1943, Army Registration and Enlistment Meeting.
950 J.A.C.L., February 9, 1943, Army Registration and Enlistment Meeting.
ultimately meant that the Issei became potential subjects for deportation as aliens. Cultural and family compulsion should also be taken into account as well with primary focus on the filial piety of the Nisei towards their Issei parents. Many Nisei did not want to be separated from their parents and loved ones, and therefore replied No-No, even if deep down in their hearts they wanted to firmly express their devotion to the United States. Although a No-No response was construed by the Federal Government and the Courts as an affirmation of disloyalty the situation was not as unambiguous as the authorities portrayed it to be. The No-No dissent by the Nisei also exemplified their true Americanism since they defended their constitutional rights and freedoms in view of the fact that they were American citizens.

A further issue of division was the test cases to challenge the constitutionality of the exclusion and incarceration; to be examined in The Supreme Court and the Japanese American Cases Chapter. In a letter to Dillon S. Myer, Saburo Kido expressed his feelings on a possible detention case: “Many times I have felt that it may be of importance to the WRA and Nisei as a whole if a detention case could be tested at court and have the Supreme Court definitely decide that all loyal citizen are entitled to leave the centers whenever they so desire.” Despite of this favorable opinion he maintained the standpoint that the J.A.C.L. was not going to take part in such a suit. The reasoning behind this stand was the conviction that many persons of Japanese ancestry had no intention to leave the camps until the end of the war. Saburo Kido felt that with such actions they would anger and alienate the Japanese at a time when they intended to regain their support. The ‘mission’ of the League according to Mr. Kido was to regain “[…] the confidence of the Japanese people as we did prior to evacuation”952. The organization wanted to increase its membership, which had dropped significantly as a consequence of its wartime policy.

The supportive position of the J.A.C.L. for Selective Service and the following segregation of disloyal persons – ‘non-loyal’, ‘agitators’, and ‘radical’ elements – created further heightened tension within the community, and in some cases it even resulted in reprisal and violence in the incarceration camps. One notable case of reprisal violence was the attack against

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951 Saburo Kido informed Dillon S. Myer that organizations such as the A.C.L.U. were waiting for the appropriate time to start “test cases”, even if the cases were ready to be filed. Saburo Kido to Dillon S. Myer, January 11, 1944.
952 Saburo Kido to Dillon S. Myer, January 11, 1944.
wartime J.A.C.L. President Saburo Kido\textsuperscript{953} at the Poston Incarceration Center\textsuperscript{954} in 1943, with the F.B.I. investigating the incident. Mr. Kido was assaulted by eight men, seven of the perpetrators admitted their guilt before the Superior Court in Yuma County and were waiting for their sentences. The other assailant, Kataru Urabe, pleaded not guilty and was waiting for the court to discuss his case at the time of the letter. The incident forced Saburo Kido\textsuperscript{955} and his family to leave Poston for Salt Lake City, Utah, after he recovered from his injuries. The local J.A.C.L. consulted with James D. Crawford, Unit II Administrator, to approve their leave as early as possible. There was fear of further violence on the part of the Kibei and Issei, “[…] a strong undercurrent of rumors regarding more possible attacks in ‘retribution’ for the ‘purge of the agitators’”.\textsuperscript{956} The incident was an obvious manifestation of a divided community if we consider that it targeted the leader of the Japanese American civil rights group, an organization intended to represent the rights and freedoms of the very persons who committed the crime. The author of the letter dated February 7, 1943, noted the discord and its implications, that persons of Japanese ancestry had to be “on guard” against one another. Furthermore, the motivation behind the attack was the work of the J.A.C.L.: “The fact that we are fighting for our rights as loyal American citizens is the basis for the many foolish occurrences, instigated by those who have a misguided, perverted, sense of the true meaning of Bushido.”\textsuperscript{957} Due to this fear of violence the number of active participants dropped as J.A.C.L. members were reluctant to fill in positions, were hiding or concealing their membership. The League was worried that this conduct will continue if the “so-called agitators” were allowed to remain in the camps and harass loyal American citizens and its members.\textsuperscript{958}

\textsuperscript{953} J.A.C.L. Poston Chapter to Mike Masaoka, February 7, 1943.
\textsuperscript{954} Poston was the site of further tension and unrest due to a backlog of payments, cash advances and clothing allowances were roughly three months behind. In order to alleviate the tension Mike Masaoka recommended to John Provinsie, Chief Community Management Division of the W.R.A., the prompt disbursement of the cash advances and clothing allowances. Mike M. Masaoka to John Provinsie, November 25, 1942, Box 4, Folder JACL Telegrams 1942, Series 1, JACL History Collection, Japanese American National Library, San Francisco.
\textsuperscript{955} After leaving Poston Saburo Kido became a member of the Japanese Language Department’s faculty at the University of Utah. He taught Japanese to army students and referred to his job in his correspondences as the position of a “drill master”. He was also a “student of law” preparing for the Utah State bar exam. In addition to these responsibilities and duties he remained the National President of the J.A.C.L. Saburo Kido to Dr. T. T. Hayashi, January 10, 1944, Box 3, Folder Correspondence — Saburo Kido 1944, Series 1, JACL History Collection, Japanese American National Library, San Francisco (hereafter cited as Saburo Kido to Dr. T. T. Hayashi, January 10, 1944); Saburo Kido to Dillon S. Myer, January 11, 1944.
\textsuperscript{956} J.A.C.L. Poston Chapter to Mike Masaoka, February 7, 1943.
\textsuperscript{957} J.A.C.L. Poston Chapter to Mike Masaoka, February 7, 1943.
\textsuperscript{958} J.A.C.L. Poston Chapter to Mike Masaoka, February 7, 1943.
As a direct consequence of its controversial and polarizing wartime policy – the ‘misconceptions’ over its cooperation with the Government – the popularity and membership\textsuperscript{959} of the J.A.C.L. dropped significantly, from close to 20,000 at the beginning of the war to about 4,000 in 1943. The League was hoping to surpass a membership of 5,000 in 1944. Saburo Kido was happy to note in a letter to Dillon S. Myer in January of 1944 that J.A.C.L. membership started to gradually increase among those who had left the camps and resettled.\textsuperscript{960} During the war the organization was looking to promote its cause and dispel the misunderstandings. A draft letter\textsuperscript{961} from 1944 serves as an example of how the J.A.C.L. contacted the public in the endeavor of asking for their “moral and material support”. The letter introduced how Americans of Japanese ancestry had faced tough obstacles and problems during the conflict, and had loyalty met the sacrifices that were demanded of them. Their efforts were described by J.A.C.L. supporters as an “American cause” and “democratic cause”.\textsuperscript{962} The resettlement and post-war rehabilitation of Japanese Americans was more important for the League than the struggle against discriminatory laws and the test cases on citizenship rights.

\textbf{5.8. Summary}

The need to demonstrate Japanese American loyalty and patriotism was crucial since for over half a century persons of Japanese ancestry endured racial prejudice and discrimination. The Nativist believed in the supremacy of the Nordic races and the W.A.S.P.s, the Japanese were not ideal candidates to become Americans. Their ‘alien blood’ was impure and threatened American culture, society, and politics, and over all the perpetuity of the United States. It was the revised Naturalization Law of 1875 that ‘color coded’ the right to become naturalized citizens, declaring that only free white persons, persons of African nativity, and of African descent were eligible for citizenship. The ineligibility of Asian aliens was later upheld in 1922 by the Supreme Court in the \textit{Takao Ozawa v. United States} 260 U.S. 178 decision. The ineligibility for citizenship ruling was used by the Federal Government and state officials to restrict the rights of Japanese immigrants and residents. The Immigration Act of 1924 excluded Asian immigrants, not even granting the Empire of Japan the minimum quota of 2\% based on the census of 1890. State laws

\textsuperscript{959} Saburo Kido to Dr. T. T. Hayashi, January 10, 1944.
\textsuperscript{960} Saburo Kido to Dillon S. Myer, January 11, 1944.
\textsuperscript{962} J.A.C.L. Draft Letter of 1944.
also infringed the rights of Japanese aliens, as for example the Land Laws introduced between 1913 and 1923 in the State of California. The Alien Land Laws made it illegal for Japanese aliens ineligible to citizenship to buy or lease land for a longer period than three years, were denied the right to own or purchase stocks in agricultural organizations that owned or leased land, could not buy land in the name of their children, and were even excluded from sharecropping contracts. Persons of Japanese parentage were treated like second class citizens with racial prejudice boiling beneath the surface long before the United States declared war on the Empire of Japan in the aftermath of the attack on Pearl Harbor.

Following Pearl Harbor the Japanese were stigmatized as ‘aliens’, ‘enemy aliens’, ‘subversives’, and as the ‘Fifth Column’. The Japanese American Citizens League issued *The Japanese American Creed* (1941) and *The Declaration of Policy* (1942) to demonstrate the allegiance of the community to the United States. The overstated concept of Americanism by the League – the extent to which the Nisei should go to prove their patriotism – proved to be divisive, since the organization no longer represented all of its fellow Japanese Americans. The J.A.C.L. was only open to the Nisei (American citizens) while the Issei (Japanese aliens) were denied membership, even though they provided the initial push to establish the citizen groups and leagues during the 1920s with the establishment of the Seattle Progressive Citizens League in 1921. Those individuals who did not accept and support the wartime policies of the J.A.C.L. were left defenseless. The Japanese who opposed cooperation with the United States Government during their forced mass removal and incarceration, who wanted to test the constitutionality of the restrictive military orders and the incarceration, the No-No responders to the *Loyalty Questionnaire*, and the Nisei draft resisters were all labeled as ‘dissenters’ or ‘radicals’ by the organization. The League opposed and criticized the dissenters, they were not seen as patriots who embraced and embodied the concept of true Americanism. They were radicals who threatened the public and political acceptance of Japanese Americans as loyal and patriotic citizens, ‘exemplary citizens’. Due to its wartime policy the League was accused of “selling out” due to its emphasis on patriotism and support for the Government.963

The ‘Fifth Column’ threat, fear of the Japanese subversive activity, was one of the building blocks of the military necessity argument behind the exclusion and incarceration of the

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Pacific Coast Japanese, the *Final Report* prepared by the War Department. Nevertheless, the Roosevelt Administration before the Pearl Harbor air assault had already received intelligence and investigative reports on the loyalty of the Japanese residents. The decision to forcefully remove and incarcerate the entire Japanese population was made in light of these reports, even though the accounts undermined the ‘Fifth Column’ justification. The *Japanese On The West Coast*\(^{964}\) investigative report by Curtis B. Munson on November 7, 1941, claimed that there was no Japanese ‘menace’. As a matter of fact, 90% to 98% of the Nisei were loyal to the United State and were eager to prove their patriotism. The Issei were only “loyal romantically” to the Empire of Japan. The data collected by C. B. Munson was supported by the research of Lt. Commander Kenneth D. Ringle\(^{965}\) of the O.N.I. who reported in 1941 that about 90% of the Nisei and 75% of the Issei were loyal to America. There was no overwhelming Japanese ‘problem’, rather the fear of the Japanese community was a manifestation of the nationwide war hysteria and scapegoating. Referring to Carey McWilliams’ work, it has to be clearly stated that no Japanese American was convicted of sabotage or espionage either on the Continental United States or the Hawaiian Islands during World War II.\(^{966}\) Both reports supported the Americanization and integration of the Japanese Americans, and their findings were forwarded to the military and government authorities. The *Munson Report* was received by President Roosevelt and the War Department, including the Attorney General of the Department of Justice, and the State Department. The reports significantly undermined the *Final Report* and the military necessity judgment of the War Department.

The J.A.C.L.’s standpoint on Selective Service and the subsequent segregation of disloyal persons, following the ‘Loyalty Questionnaire’ of 1943, created further division and tension within the community, and in some cases it resulted in violence; for instance the Saburo Kido incident at the Poston Incarceration Center in 1943. The Nisei were classified as “4-C”, ‘enemy aliens’, after Pearl Harbor and were thus ineligible for military service. However, their classification was reversed by the War Department in January of 1943, the formation of a Japanese American combat unit – the 442\(^{nd}\) Regimental Combat Team – was also announced. It took another year for the War Department to reinstate the draft status of the Nisei. During World

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\(^{964}\) Munson, November 7, 1941, Japanese On The West Coast Report.  
\(^{965}\) Daniels, *Asian America*, 210-211.  
War II approximately 33,000 Japanese Americans served in the United States Army and their military service (volunteerism and draft) was encouraged by the J.A.C.L. in cooperation with the United States Military.

As a consequence of its controversial wartime mission – support for the war effort of the Roosevelt Administration – the membership\(^{967}\) of the J.A.C.L. dropped considerably, from close to 20,000 in 1941 to about 4,000 by 1943. The Japanese American division stigmatized the community with some perceiving the divide and violence as proof of disloyalty, especially considering the results of the ‘Loyalty Questionnaire’. The acceptance of the exclusion and incarceration by the League also meant that the civil rights organization failed to politically and legally ensure the freedoms, liberties, and rights of the Japanese community, all in the name of Americanism. The fundamental mistake of the J.A.C.L.’s policy was the failure to acknowledge dissent and resistance as a form of patriotism. The Federal Government and the Supreme Court made the same mistake by regarding the approximately 5,000 No-No responders as individuals who refused to swear unqualified allegiance to America, citing it as a proof of disloyalty and ‘Fifth Column’ threat in the *Korematsu v. United States* case. The dissenters exemplified their deeply rooted Americanism, their status as conscientious objectors or ‘exemplary citizens’, by taking a stand for their rights and liberties as American citizens. The question that the J.A.C.L. should have asked: *What is more American than protesting against injustice, and the violations of your civil liberty and constitutional rights?*

\(^{967}\) Saburo Kido to Dr. T. T. Hayashi, January 10, 1944.
SECTION III.
THE JUDICIARY AND THE LEGACY OF THE JAPANESE AMERICAN CASES
Chapter 6.

The Supreme Court and the Japanese American Cases:
The Constitutionality of the Military Orders

_We will not, under any threat, or in the face of any danger, surrender the guarantees of liberty our forefathers framed for us in our Bill of Rights._

President Franklin D. Roosevelt, December 15, 1941

The Supreme Court accepted the military necessity argument of the Federal Government and the Military Authorities in the Japanese American cases, the priority of protecting the war effort, the war materials and installations, and the national defense of the United States. The Justices of the Court did not scrutinize the reasoning behind the collective exclusion and incarceration of a minority based on its racial affinity to the enemy. Due to the importance of national defense in wartime they accepted the judgments of the military officials responsible for the exclusion program. The findings\(^{969}\) of the present research suggest that had the Associate Justices insisted on strict judicial review they would have found that the conclusions of government and military officials were greatly influenced by the shock of Pearl Harbor, racial prejudice, the dread of invasion on the West Coast, fear of scapegoating in the event of subversive activity – fearful of accusations of dereliction of duty –, and congressional and public pressure. The civil liberties of the Japanese American community were violated despite the promises made by the Roosevelt Administration, as indicated by the above quotation. Attorney General Francis Biddle addressed a similar message to the nation with regards to civil liberties, insisting that it was “essential at such a time as this that we keep our heads, keep our tempers, - above all, that we keep clearly in mind what we are defending”\(^{970}\), as quoted by Irons. Nonetheless, the promise of safeguarding the fundamental privileges of American citizens, as enumerated in the Bill of Rights, did not happen for persons of Japanese descent. The Japanese

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\(^{969}\) The listed factors were examined in The Executive Branch and The Legislative Branch Chapters.

\(^{970}\) Irons, “We Live by Symbols,” 342.
community seemed to be alien from American society in its culture and heritage, and to make matters worse, in its physical appearance as well.

The Supreme Court did not employ the doctrine of “strict scrutiny” during the Japanese American cases, which would have guarded against the legislation and regulations motivated by racial prejudice. It was Justice Harlan Fiske Stone who wrote Footnote Four for the *United States v. Carolene Products* decision in 1938, which later on became an effective legal defense against the denial of minority rights. Peter Irons refers to Footnote Four as “the deadliest weapon in the judicial war against those who deny minorities their rights.”  

According to Footnote Four, Amendment XIV of the Constitution incorporated certain provisions from the Bill of Rights, meaning that they apply not just to the Federal Government, but also at the state level. “There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth,” wrote the Associate Justice. Justice Stone established in his opinion the “strict scrutiny” doctrine, thereby reversing the previous trend that laws – based on the “rational basis” test – were presumed to be constitutional when dealing with individual rights, especially minority rights.  

Laws addressing national, religious, and racial minorities are subjected to “strict scrutiny” to protect them against judicial or legal prejudice, which might restrict their rights. This emphasis is to be regarded as a central point of concern given that the Japanese cases fit the criteria. The Court failed to apply the “strict scrutiny” doctrine in the Japanese American cases even though the author of Footnote Four served as the Chief Justice of the Supreme Court during World War II and was the author of the *Hirabayashi v. United States* unanimous opinion. The national defense arguments of the Federal Government are incompatible with the principle of “strict scrutiny” established by Chief Justice Stone. In the opinion of Peter Irons, “[t]he author of the “strict scrutiny” doctrine proved highly lenient in judging the Government’s “military necessity” claims.”  

This lack of commitment to rigid scrutiny can only be explained by the

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971 Irons, “We Live by Symbols,” 333.
972 Irons, “We Live by Symbols,” 335.
973 Irons, “We Live by Symbols,” 335.
Supreme Court’s own loyalty to the Roosevelt Administration as it based its defense on the importance of national security in the interest of the war effort.

Furthermore, it is apparent that the Supreme Court did not want to obstruct the power of the Government to wage war, nor its national defense. Nonetheless, it is the author’s opinion that if the Federal Government and the Military go unchecked it threatens the constitutional rights of American citizens and the separation of powers. The Judiciary did not check the power of the Legislative, nor the authority of the Executive Branch. Executive Order No. 9066, the military proclamations – curfew and exclusion orders –, and Public Law No. 503 were seen as one unit, described in the Hirabayashi decision by Chief Justice Harlan F. Stone as essentially parts of one program. According to this interpretation Public Law No. 503 was “an adoption by Congress of the Executive Order and of the proclamations.” The proclamations were authorized by the Executive Order, while the Act of Congress of March 21, 1942, sanctioned that authorization.

Four cases reached the Supreme Court during World War II, all questioning the constitutionality of the restrictive measures that targeted one specific community on the West Coast. Gordon Hirabayashi and Minoru Yasui challenged the curfew order after they were arrested for violating the regulations of Public Proclamation No. 3, issued on March 24, 1942. Fred Korematsu challenged the validity of Civilian Exclusion Order No. 34 issued on May 3, 1942, after he was arrested for remaining within Military Area No. 1; the military zone was established by Proclamation No. 1 on March 2, 1942. The case of Mitsuye Endo is quite different since her attorney filed a habeas corpus petition on her behalf after she was detained, reasoning that loyal citizens cannot be confined in incarceration camps.

All three of the defendants – Mr. Hirabayashi, Yasui, and Korematsu – were found guilty of committing a federal crime in violation of Public Law No. 503. The constitutionality of the curfew order was upheld by the Supreme Court in the Hirabayashi v. United States and Yasui v. United States cases on June 21, 1943, while the exclusion order and the incarceration was upheld by the Korematsu v. United States decision on December 18, 1944. However, the Ex parte Mitsuye Endo case proved to be a benchmark decision as the Supreme Court ruled on the same

975 These decisive military regulations were previously introduced and examined in The Legislative Branch Chapter.
977 The case of Fred Korematsu is analyzed at greater length in the Fred Korematsu’s Legal Challenge Chapter.
One of the central problems of the Japanese American cases was the issue of loyalty, or rather the supposed disloyalty of persons of Japanese parentage. Race and ancestry were more important for the Department of War and Justice than any substantial evidence of actual subversive activity, or the lack thereof; see *The Executive Branch* Chapter for the influential role of racial prejudice in the wartime treatment of Japanese Americans. Patriotism and loyalty were key features of the Justices of the Supreme Court. Peter Irons noted that the Justices also had to pass their own “test of loyalty”. 79 Seven of the nine Justices were appointed by President Roosevelt and he also appointed Harlan F. Stone to the position of Chief Justice, previously appointed to the bench by President John Calvin Coolidge. Despite of his previous failed attempt to pack the Court over the years President Roosevelt managed to assemble a Supreme Court that reflected his views and policy; see Table 13 above for President Roosevelt’s Supreme Court and his appointments. During his Presidency the Supreme Court had greatly changed. In 1933, when Franklin D. Roosevelt took office, the average age of a predominantly conservative Court was 71 years. On December 8, 1941 – as he delivered his “Day of Infamy” speech –, the President faced

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78 Irons, *A People’s History of the Supreme Court*, 505.
a younger and more reformed Court, with Justices whose average age was in the mid-forties. Following Pearl Harbor the Justices were also affected by the high fervor of patriotism and loyalty, the national religion of the United States in times of crisis, and supported the war effort of the Commander-in-Chief without question or judicial review. Apart from ruling on the constitutionality of the curfew order and the exclusion program the Associate Justices also had to determine whether the civil liberties guaranteed by the Constitution are protected in wartime, or not. This question is especially important in light of the views of John J. McCloy, Assistant Secretary of War, who candidly said “the Constitution is just a piece of paper.” A highly controversial remark in itself, but more so when it is uttered by a Harvard lawyer.

The Japanese American cases centered on the failure to abide by the military orders on purpose and/or on the intent to challenge their constitutionality – the subject of “test cases” – on principle as American citizens. It was proof of the Americanism of the second generation Nisei since they were not willing to renounce or relinquish their constitutional rights and privileges. We might ask the question: what is more American than to challenge the U.S. Federal Government in order to protect your privileges and constitutional rights as American citizens?

Based on the Court’s rulings we might say that the United States Military could not be held accountable for its actions in wartime if it is in the interest of national defense. The Supreme Court exercised judicial restraint to such an extent that it resulted in what Jacobus tenBroek et. all referred to as “judicial abdication”. The matter is made more contentious by the deliberate misinformation of the Supreme Court by officials of the War and Justice Department, the subject of the chapter on the role of the Executive Branch. The Government withheld and altered reports that would have painted quite a different picture of the Japanese ‘problem’.

6.1. Civil Liberty in Wartime: A Historical Introduction

In time of war and national emergency the United States Government and the American public are susceptible to being overcome with fear, war hysteria, and patriotic fervor with a willingness to scapegoat aliens and dissenters. This tendency has left a distinct mark on the

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981 Irons, “A Jap’s a Jap,” 351.
history of civil liberty in the United States, most notably during the Federalist Government of President John Adams with the Alien Sedition Acts of 1798, the suspension of the writ of habeas corpus by the Lincoln Administration during the Civil War, and the Espionage Act of 1917 and the Sedition Act of 1918 by President Woodrow Wilson’s Administration as a response to the opposition to American intervention during World War I. These events suggest a pattern of systematic prohibition of dissent at times of national emergencies, with the restriction of such fundamental liberties as the freedom of speech, press, assembly, and due process. These liberties encoded within the Bill of Rights fell victim to national defense interests. Geoffrey R. Stone983 observes that the equilibrium between personal liberty and national security has remained a central issue in the United States since the time of the Founding Fathers.984 The conflict between civil liberty and national security is a recurring problem in American history and the present section intends to provide a brief introduction of selected events that offered an opportunity to interpret the U.S. Constitution and the limits of Executive power in wartime.

Following the French Revolution the American establishment was worried about the possible spread of conflict with France which became a prevailing power in Europe by 1798. John Adams became the 2nd President of the United States in 1796 after having defeated Thomas Jefferson in a highly contested election waged between the Federalist and the Democratic-Republican factions. The Federalists regarded the French Revolution as a threat, while the Democratic-Republicans viewed it as an extension of the American Revolution and all that it had promised, notes Geoffrey R. Stone.985 The Administration of President Adams feared that a possible war with France could erupt at any moment and Congress led by a Federalist majority introduced certain defense measures. With bipartisan support the United States Congress enacted the Alien Enemies Act of 1798, which stipulated that “in the case of a declared war, citizens or subjects of an enemy nation residing in the United States could be incarcerated or deported at the direction of the president”986. This has remained a tool of Executive authority in wartime wielded by the President against (enemy)aliens during war emergencies.

984 According to Geoffrey R. Stone even the Founding Fathers were uncertain about the limits of the Constitution and regarded it as “an experiment”. Stone, War and Liberty, 1.
985 Stone, War and Liberty, 3.
986 Stone, War and Liberty, 6.
The two factions subsequently however came to clash over the ratification of the Alien Friends Act of 1798, a statute that provided even greater Executive power to the President; it expired three years later in 1801. President Adams was provided the authority “to detain and deport any noncitizen he deemed dangerous to the United States.” In Stone’s interpretation the Act provided the President absolute power over the noncitizens and violated the basic principles of the Constitution, the right to due process: there were no hearings or trials, the accused were not informed of the charges filed against them, and no evidence could be presented to the court in their favor. This is quite similar to the plight of the Japanese Americans during World War II. The Democratic-Republicans opposed the statute, but the Federalist argued that the defense of the Nation made it necessary, reasoning that, “the times are full of danger and it would be the height of madness not to take every precaution in our power”.

The next step taken by the Adams Administration was the ratification of the Sedition Act of 1798, an “infamous” piece of legislation as introduced by Stone. The “Act for the Punishment of Certain Crimes Against the United States” was approved on July 14, 1798, during the Second Session of the Fifth Congress of the United States; the Act expired on March 3, 1801. According to Stone’s analysis the Federalists did not believe in “the freedom of speech, or of the press”, they feared that false and deceptive information could be spread by the Republican press to slander the Government. The Act was designed to punish any type of action (malicious speech, writing, or publication) that might damage the good reputation of the President and Congress, and could aid the hostile actions and interests of a foreign government. Those individuals who were convicted under the Sedition Act could face a fine of two thousand dollars and a prison term of up to two years.

The Democratic-Republicans opposed the Sedition Act on the ground that it violated the First Amendment of the Constitution by restricting the freedom of speech and press, an allegation that the Federalists flatly denied. It cannot be ignored that the Act of 1798 had a

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987 Stone, War and Liberty, 6.
988 Stone, War and Liberty, 6.
991 Stone, War and Liberty, 7.
partisan political purpose, with the upcoming presidential election in 1800, to silence Republican politicians and their supporters who were accused of “treasonable conspiracy” by attempting to excite insurrection against the Federal Government. During the Administration of President John Adams 14 indictments were filed against Republican Congressmen and sympathisers, leading publicists and newspapers, who were prosecuted under the Sedition Act. Stone notes that several papers had to temporarily cease publication or their entire operation as a repercussion of the political battle between the two factions. 

The suspension of habeas corpus by President Abraham Lincoln during the Civil War was met with similar mass opposition. The Lincoln Administration was confronted with dissent on such issues as conscription because the Federal Government enforced the recruitment program, with nationwide protests against waging a war to end slavery, to free the black minority. Stone comments that the loyalty of the American public was significantly divided and the Administration feared that this divisiveness could provide fertile ground for espionage and sabotage. President Lincoln intended to maintain the loyalty of the American people and discouraged dissent by suspending the writ of habeas corpus on eight occasions.

The writ of habeas corpus is an essential part of the United States Constitution and the “separation of powers”. As defined by Stone, the habeas corpus is “a judicial mandate directing a government official to present to the court an individual held in custody so the court can determine whether the detention is lawful.” As follows, this principle provides a check on the Executive since the Judiciary can determine whether the incarceration is within the limits of the law. According to the Constitution the suspension of habeas corpus is the exclusive right of the Legislative Branch. Article I, Section 9. of the Constitution states that “[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Case of Rebellion or Invasion the
public Safety may require it.” The first occasion when President Lincoln suspended the writ of habeas corpus was on April 27, 1861, in order to defend the capital. The Executive Order applied to the State of Maryland where there was a significant presence of Confederate supporters and collaborators. The prelude to the order was an incident in April of 1861 when federal troops on their way to Washington D.C. were blocked and attacked by rioting mobs in Baltimore.

John Merryman presented the first challenge to the suspension of habeas corpus after he was charged with rebellious activity by the military authorities and was subsequently detained at Fort McHenry. Chief Justice Roger B. Taney presided over Merryman’s petition for writ of habeas corpus in the Ex parte Merryman, 17 Fed. Cas. No. 9487 (1861) case. On May 26, 1861, Chief Justice Taney ruled that only Congress can suspend habeas corpus, “the president has exercised a power which he does not possess under the constitution.” The Lincoln Administration openly opposed the ruling of the Court and the Federal Marshall was denied access to Fort McHenry to deliver the writ to General George Cadwalader, informing the commanding officer to appear before the court and to deliver the prisoner in question.

A further suspension of habeas corpus was implemented on September 24, 1862, with the Proclamation Suspending the Writ of Habeas Corpus in response to the spread of violence, protest, and disarray. The Proclamation declared that “all persons … guilty of any disloyal practice … shall be subject to martial law.” Under the authority of the President’s

998 President Abraham Lincoln was characterized by the press as a “caesar”, “usurper”, “demagogue”, “tyrant”, “dictator”; quoted by Geoffrey R. Stone. Stone, War and Liberty, 34, 38.
999 Stone, War and Liberty, 25.
1000 A further challenge was filed in the case of Lambdin Milligan who was detained in the State of Indiana for plotting to support the Confederate States. He was found guilty of seditious acts and was sentenced to death. The Defendant filed a writ of habeas corpus reasoning that he was unlawfully kept in detention. Mr. Milligan’s case reached the Supreme Court and in the Ex parte Milligan, 71 U.S. 4 Wall. 22 (1866) decision the Justices ruled that the Federal Government could not employ military courts to try and convict civilians when the civil courts are open, even in time of war. The opinion of the Supreme Court concluded: “The Federal authority having been unopposed in the State of Indiana, and the Federal courts open for the trial of offences and the redress of grievances, the usages of war could not, under the Constitution, afford any sanction for the trial there of a citizen in civil life not connected with the military or naval service, by a military tribunal, for any offence whatever.” Stone, War and Liberty, 39, Ex parte Milligan, 71 U.S. 4 Wall. 22 (1866), accessed August 1, 2018, https://supreme.justia.com/cases/federal/us/71/2/.
1002 Stone, War and Liberty, 26.
1003 Stone, War and Liberty, 29.
Proclamation Secretary of State William H. Seward was authorized to prescribe the arrest of individuals charged with disloyalty. Government officials defended the Proclamation by reasoning that it was within the “war power” purview of the President as Commander-in-Chief of the United States Armed Forces. The United States Congress post facto ratified the actions taken by President Lincoln in 1863 with a statute which sanctioned the power of the Executive to suspend the writ. Geoffrey Stone commended Chief Justice Taney’s ruling, observing that according to the strict interpretation of the Constitution only Congress has the power to suspend habeas corpus. The Founding Fathers would not give such extensive power to the President, the power to define the limits of his own authority and office, and to restrict the right of the American people to due process. As a consequence of the suspension of habeas corpus during the Civil War approximately 13,000 to 38,000 people were detained by the military authorities for political dissent, draft evasion, and subversive activity.

More than a century after the Alien Sedition Acts of 1798 and half a century following the Civil War the United States was once again facing a military emergency following the declaration of war against Germany as a response to President Woodrow Wilson’s address to a joint session of Congress on April 2, 1917. The Wilson Administration illustrated little tolerance for dissent and opposition to the war effort. In the words of President Wilson, “if there should be disloyalty, it will be dealt with with a firm hand of stern repression”, as quoted by Geoffrey Stone. The Administration was alarmed that disloyalty and disapproval of the war could spread and threaten the ability of the Federal Government to wage war successfully: the moral of the public, recruitment efforts, as well as arms production. Within weeks of the declaration of war Congress began to debate the Espionage Act of 1917, which intended to restrict the freedom of speech by introducing provisions that Stone refers to as “press censorship”, “disaffection”, and “nonmailability”.

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1004 Stone, War and Liberty, 30.
1006 Stone, War and Liberty, 42.
1007 On the authority of the provisions it would be against the law to print information that would be beneficial for the enemy, to cause discontent within the United States Army and Navy, and the Postmaster General had the power to prohibited and exclude from the mail all material that could be treasonous. Stone, War and Liberty, 45-46.
The persecution of dissent led to the prosecution of some 2,000 American civilians, many of whom faced long prison term sentences, while non-citizens were deported. The legal challenges of World War I permitted the Supreme Court to confront and interpret the First Amendment of the Constitution, the limits of “freedom of speech, or of the press”, in a series of cases during 1919; although Stone comments that the decisions established a bad precedent. The possibility of press censorship was met with great opposition in Congress during the debates on the floor of the House and Senate, even though President Wilson reasoned that it was a necessity for the welfare of the American people. Eventually the “press censorship” provision was defeated in the House of Representatives on May 31, 1917, in a vote of 184 to 144. The “nonmailability” provision was also under scrutiny due to the implication that it would give extensive authority to the Postmaster General. Congress decided to amend the provision on June 7, 1917, permitting the restriction of mail in case of “containing any matter advocating or urging treason, insurrection or forcible resistance to any law of the United States.” The backbone of the Espionage Act of 1917 was the “disaffection” provision. Gilbert Roe, a civil liberty attorney for the Free Speech League quoted by Geoffrey R. Stone, argued before the House Judiciary Committee that the provision was more radical than the Sedition Act of 1798.

The opposition reasoned that any form of criticism or disapproval, such as questioning the conscription, could potentially be met with indictment and prosecution for interfering with the war effort. In spite of the voices of concern the Espionage Act was ratified by the United States Congress in June of 1917 after nine weeks of grueling debate and was followed by numerous legal cases. The Espionage Act prescribed twenty years of prison for any person “who shall wilfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of the United States, or shall wilfully obstruct the recruiting or enlistment service of the United States” as quoted by Peter Irons.

The Wilson Administration was quite active in prosecuting dissenters who violated the Act of 1917, individuals who were charged with committing a federal crime and could be

1008 Stone, War and Liberty, 62-63.
1009 Stone, War and Liberty, 43.
1010 Stone, War and Liberty, 47.
1011 Stone, War and Liberty, 47.
1012 Stone, War and Liberty, 48.
sentenced to twenty years of prison. Stone points out that a possible reason for this high rate of prosecutorial activity was the disillusionment of the Administration with the amended version of the legislation. Attorney General Thomas Gregory exemplify the opinion of the Government on dissenters, “[M]ay God have mercy on them, for they need expect none from an outraged people and an avenging government.” The Sedition Act of 1918 was ratified by Congress in due course to further broaden the scope of illicit and suspected disloyal acts. The statute prohibited the use of “abusive language about the form of government of the United States, or the Constitution of the United States, or the military or naval forces of the United States, or the flag of the United States, or the uniform of the Army or Navy of the United States.” The Act of 1918 closely resembled the Alien Sedition Acts of 1798, however Senator James Reed noted that the new statute did not establish a burden of proof, the Government was not required to prove the malicious intent of the accused; the Sedition Act was revoked in 1920.

During this period of heightened tension and war hysteria numerous individuals were apprehended and charged with seditious acts, and were convicted for violating the Espionage Act of 1917. The Wilson Administration regarded all opposition as “seditious” or “treasonous”. Several cases reached the Supreme Court permitting the highest tribunal of the United States to examine the validity of the First Amendment and the “freedom of speech” in wartime. The cases of *Schenck v. United States*, 249 U.S. 47 (1919), *Debs v. United States*, 249 U.S. 211 (1919), and *Abrams v. United States*, 250 U.S. 616 (1919) became landmark decisions, although for all the wrong reasons. It is noted by Peter Irons that not just the public, but the Justices of the Supreme Court also responded to the call to arms, “the call of patriotism”.

The *Schenck v. United States* was the first notable instance when the Justices of the Supreme Court examined the First Amendment, comments Geoffrey R. Stone. Charles Schenck, a member of the Socialist Party, was charged with hindering the conscription of soldiers by encouraging draft resistance amongst the young men who were eligible for military service. Mr. Schenck drafted a pamphlet in which he maintained that the draft was

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1014 Stone, *War and Liberty*, 49.
1015 Stone, *War and Liberty*, 49.
1017 Stone, *War and Liberty*, 57.
1018 Irons, “Falsely Shouting Fire in a Theatre,” 266.
unconstitutional, the conscription was a “monstrous wrong”, and “a conscript is little better than a convict”. The Socialist Party approved the printing of 15,000 leaflets on August 13, 1917, and Schenck was instructed to mail them to those young men who had passed their physical examination. The authorities were informed of the leaflets and raided the party headquarters. Charles Schenck was arrested for violating the Espionage Act and was found guilty in December of 1917. After his appeal the case reached the Supreme Court and was argued on January 9-10, 1919. The Associate Justices did not approve of what Mr. Schenck wrote in his pamphlet and in a unanimous decision upheld the original verdict on March 3, 1919, and ruled that Amendment I did not protect the Defendant’s anti-war criticism.

The opinion was authored by Justice Oliver Wendell Holmes who referred to “freedom of speech” in his argument, which according to the Court did not protect Charles Schenck: “We admit that, in many places and in ordinary times, the defendants, in saying all that was said in the circular, would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.” 1021 According to the analysis of the Justices “freedom of speech” has to be interpreted within the given situation and context, meaning that under certain circumstance – in wartime – the Defendant’s constitutional rights can be restricted. Irons refers to the use of the term “circumstances” by Justice Holmes as a trap set up for Charles Schenck, since during his unlawful act the United States was at war and his action was thus constitutionally unprotected, as indicated by the last sentence of the previous quotation on “falsely shouting fire in a theatre”. 1022 This is similar to the later Japanese American challenges when the Supreme Court held that in wartime the Bill of Rights must bow the ability of the Federal Government to wage war successfully. Justice Holmes also established the “clear and present danger” test in his opinion, reasoning that Mr. Schenck had “the tendency and the intent” to promote “draft-law violations” 1023, which presented a threat to the national defense of the United States and the war effort.

Justice Oliver Wendell Holmes on the “clear and present danger” test:1024  
Words which, ordinarily and in many places, would be within the freedom of speech protected by the First Amendment may become subject to prohibition when of such a nature and used in such circumstances a to create a clear and present danger that they will bring about the substantive evils which Congress has a right to prevent. The character of every act depends upon the circumstances in which it is done.

A further case that provided an opportunity for the Supreme Court to defend the First Amendment was the challenge of Eugene V. Debs1025, the President of the Socialist Party of America. Mr. Debs was charged under the Espionage Act for obstructing recruitment and was sentenced to ten years in prison for delivering a speech in Canton, Ohio, on June 16, 1918, in which he protested against the imprisonment of Socialists who had impeded military recruitment. Mr. Debs was convicted for his dissent and his case was argued by the Supreme Court on January 27-28, 1919. His conviction was unanimously affirmed by the Supreme Court on March 10, 1919. The opinion of the Court was written by Justice Oliver Wendell Holmes and introduced the “bad tendency” test based on the tendency of Eugene V. Deb’s speech to hinder military recruitment.1026 In the opinion of Peter Irons this test provides a greater scope for restricting freedom of speech.

The last wartime challenge to the Espionage Act and the prohibition of dissent came with the prosecution of Jacob Abrams1027 six months following the decisions in the Schenck and Debs cases. Mr. Abrams was taken into custody after he and a group of young Russian-Jewish immigrants dropped leaflets – titled “The Hypocrisy of the United States and Her Allies” – from the rooftop of a building in New York City on August 22, 1918. They called for a general strike in protest of the Allied intervention and American military presence in Russia. He was convicted under the Sedition Act of 1918 in October of the same year and was sentenced to twenty years in prison. The Supreme Court argued the case of Jacob Abrams on October 21-22, and affirmed his conviction in a majority decision on November 10, 1919. The opinion of the Court was written

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by Justice John H. Clarke and held that the Sedition Act of 1918 did not violate the First Amendment, arguing that “the language of these circulars was obviously intended to provoke and to encourage resistance to the United States in the war”.

In his analysis of civil liberty in wartime Geoffrey R. Stone concludes, based on the Supreme Courts comprehension of the First Amendment, that in national emergencies the Government and the Federal Courts were quick to judge suspected acts of dissent and opposition. “While the nation is at war, ‘serious, abrasive criticism’ was ‘beyond constitutional protection’”, comments Stone. The history of civil liberty illustrates a continuous restriction of the fundamental rights of “free speech” and due process in the name of national security. This bad precedent had a direct result on the constitutional challenges of the Japanese American conscientious objectors as the Government attorneys cited the previously introduced cases to uphold the exclusion and incarceration program of the Roosevelt Administration.

Geoffrey R. Stone on inciting fear and war hysteria for political gain:

A time-honored strategy for consolidating power is to inflate the public’s fears, inflame its patriotism, and then condemn political opponents as “disloyal”. A national crisis (real, fabricated, or imagined) invites this strategy.


The issue of citizenship and race had been a source of debate since the second half of the 19th century as an entailment of the arrival of the masses of immigrants, the new wave of immigrants from Southern and Eastern Europe, and Asia. The naturalization acts of the period reflect the changes in perception, how as a result of anti-Asian sentiments immigrants from Asia were not designated as eligible for citizenship in either the Naturalization Act of 1870 or 1873. The Naturalization Act of 1875 stated that aliens who were free white persons, aliens of African nativity, and persons of African descent were eligible to become naturalized citizens. Asians were not mentioned and the question remained whether they qualified for citizenship based on either racial category according to the Naturalization Act of 1906.

1029 Stone, War and Liberty, 62.
1030 Stone, War and Liberty, 18.
It was Takao Ozawa who challenged the naturalization process and his long-drawn-out case – *Takao Ozawa v. United States (1922)*[^1031] – finally reached the Supreme Court in 1922 to decide whether Japanese aliens were racially eligible for naturalized citizenship. Mr. Ozawa was a person of Japanese ancestry who was born in Japan and applied for naturalization on October 16, 1914, at the United States District Court in the Territory of Hawaii. His application was opposed by the District Attorney for the District Court of Hawaii even though he had lived in the United States continuously for the past 20 years. The Supreme Court’s opinion, delivered by Justice George Sutherland, introduces the Appellant as an ideal candidate for citizenship. He was a graduate of Berkeley High School, was a student of the University of California for three years, his children were educated in American schools, and his family attend church and used the English language even at home. The Supreme Court maintained, “[t]hat he was well qualified by character and education for citizenship is conceded.”[^1032]

The District Court of Hawaii had previously ruled that Mr. Ozawa was ineligible for citizenship considering that he was born in Japan and was of Japanese race, Act of June 29, 1906. The Appellant took his case before the Circuit Court of Appeals for the Ninth Circuit, following which the case reached the Supreme Court. The Supreme Court had two important questions to decide:[^1033] 1) is a person of Japanese race, born in Japan, eligible for citizenship under the naturalization laws? 2) if, according to the Act of 1906 naturalization is limited to aliens who are free white persons, aliens of African nativity, and persons of African descent, is a Japanese alien eligible for naturalization? After having examined the series of Naturalization Acts between 1790 and 1906 the Court concluded that the right of naturalization had been bestowed upon free white persons, and subsequent to the Act of 1870 the privilege was extended to include persons of African nativity and descent. The naturalization law between 1790 and 1870 maintained its consistency in that it restricted naturalization to “aliens being free white persons”. However, the Naturalization Act of 1870 with Section 7 broadened its scope to include “aliens of African nativity” and “persons of African descent”. It was confirmed by the Court that the Naturalization Act of 1906 restricted the naturalization process to the same effect, to the same “classes of persons”. The “classes of persons” characterization is a familiar language when

used in relation to Japanese people knowing that it was later used to designate the Japanese community as the subjects of domestic military regulations during World War II.

The attorneys for the Appellant wanted the Court to extend the meaning of the “free white persons” phrase to include those of Japanese race. It was argued that the framers of the Naturalization Act of 1790 formulated the phrase with the aim of denying persons of African nativity and descent, and Native Americans, the privilege of citizenship. Nonetheless, considering the language of the naturalization laws the Supreme Court reasoned that the “free white person” stipulation granted citizenship to a given class of persons, while at the meantime it denied the right to those who could not be incorporated in this category. “It is not enough to say that the framers did not have in mind the brown or yellow races of Asia. It is necessary to go farther and be able to say that had these particular races been suggested the language of the act would have been so varied as to include them within its privileges” stated the opinion of the Supreme Court, determining who the framers meant to include in, or exclude from the ‘color coded’ naturalization process.

The question remained whether Japanese persons could be included in the “free white person” category. The Court paid no attention to the “free” classification as the institution of slavery no longer existed in the United States, and the word had previously been used to exclude those whites who were in state of enslavement as indentured servants. The decision cited numerous federal and state court cases which had previously ruled that the expression “white person” referred to a person who was of Caucasian race. The Justices did not object to the inference that the “white person” classification is a synonym for “a person of the Caucasian race”. Mr. Ozawa was a Japanese person, he was of a race that did not qualify as Caucasian, and thus did not meet the classification and was not eligible for naturalization. The Supreme Court was confined to interpreting the meaning of the naturalization laws and to validate the intent of Congress in restricting the privilege of citizenship. It was accentuated in Justice Sutherland’s opinion that the Court’s decision did not imply any “individual unworthiness or racial inferiority”. The Court did not challenge the appraisal included in the Appellant’s briefs, which called attention to the enlightenment of the Japanese people. In the Ozawa case

citizenship was debated on a racial ground, but following Pearl Harbor the issue of citizenship and race resurfaced once again only to be supplemented with concerns over national security interests and loyalty.


Gordon Hirabayashi’s challenge centered on the legality of the curfew order that targeted persons of Japanese ancestry. In the Hirabayashi case the Supreme Court could have issued a decision upon the constitutionality of the curfew and the exclusion order, but employing the doctrine of “concurrent sentence” the Court only tackled the curfew restriction. Irons interpreted Chief Justice Stone’s opinion as a means to avoid the central issue of the legal challenge, providing ample time for the Roosevelt Administration to end the incarceration of Japanese Americans before the Korematsu case would be argued by the Justices. “Stone most likely dodged the more difficult issue of evacuation in hopes that government officials might end the internment program before Fred Korematsu’s case, which directly challenged the evacuation orders, returned from the circuit court,” analyzes Irons the motivations behind the Stone opinion. The Supreme Court avoided the possibility of addressing an even more complex constitutional question, a “well-established rule” according to William H. Rehnquist. By sustaining the District Court’s ruling on the curfew violation the Supreme Court steered clear of issuing a decision on the ‘relocation’ of Japanese Americans. “The Hirabayashi decision, upholding only the curfew, left the more difficult question of the relocation program for another day,” summarized William Rehnquist.

Gordon Hirabayashi was born near Seattle in 1918 to Japanese alien parents and attended public schools in the State of Washington. He was a senior at the University of

1038 Chief Justice Stone’s opinion stated: “Since the sentences of three months each imposed by the district court on the two counts were ordered to run concurrently, it will be unnecessary to consider questions raised with respect to the first count if we find that the conviction on the second count, for violation of the curfew order, must be sustained.” The defendant faced no further penalty for violating the exclusion order. Hirabayashi v. United States, 320 U.S. 81 (1943).
1039 According to his analysis Justice Stone wanted to avoid a “head–on collision” with the upcoming Korematsu opinion by Justice Hugo L. Black which found the military orders constitutional. Irons, “A Jap’s a Jap,” 356, 360.
1041 Rehnquist, “Postwar Criticism,” 205.
1042 Gordon Hirabayashi was born in Auburn, near Seattle, and his father managed a fruit market. The case history of the Supreme Court gives Seattle as his birthplace. He was an Eagle Scout during high school and was the
Washington when he was apprehended. Mr. Hirabayashi had complied with the curfew order for over a month, forced to rush back to his dormitory every day before the 8 p.m. curfew until May 4. “Why the hell am I running back? Am I an American or not? Why am I running back and nobody else is?”\textsuperscript{1043} the recollections of Hirabayashi as quoted by Peter Irons. On May 16, 1942, Gordon Hirabayashi was arrested as a conscientious objector to the curfew and exclusion order. He told Special Agent Francis Manion, at the local F.B.I. office in Seattle, that he had no intention to present himself at the Puyallup Temporary Detention Camp.\textsuperscript{1044} All persons of Japanese ancestry were to be excluded from the prescribed area of Seattle from 12:00 noon of May 16, 1942, according to Civilian Exclusion Order No. 57, but Gordon Hirabayashi refused.

Gordon Hirabayashi’s statement of objection as recorded by Special Agent Francis Manion:\textsuperscript{1045}

It was the principle of the Society of Friends that each person should follow the will of God according to his own convictions and that he could not reconcile the will of God, a part of which was expressed in the Bill of Rights and the United States Constitution, with the order discriminating against Japanese aliens and American citizens of Japanese ancestry.

Mr. Hirabayashi stated in his defense during his trial that he had never been a subject of the Empire of Japan, nor had he ever sworn allegiance, and had never been to Japan. The evidence against the Defendant clearly demonstrated to the jury that on May 11 or May 12, 1942, Gordon Hirabayashi did not report at the designated Civil Control Station in Seattle to register for his ‘evacuation’ from Military Area No. 1 as prescribed by Civilian Exclusion Order No. 57, issued on May 10, 1942. Additionally, he did not adhere to the curfew regulation on May 9, 1942. Judge Lloyd Black, who presided over the case in Seattle, did not accept the argument of the defense that Lt. General John L. DeWitt’s curfew and exclusion orders were in violation of Gordon Hirabayashi’s Fifth Amendment rights, his rights to due process. Judge Black reasoned on behalf of the military necessity nature of the restrictions, noting the “diabolically clever use of

\textsuperscript{1043} Irons, “A Jap’s a Jap,” 352.
\textsuperscript{1044} Irons, “A Jap’s a Jap,” 352.
\textsuperscript{1045} Irons, “A Jap’s a Jap,” 352.
infiltration tactics” of Japanese soldiers and saboteurs, and the inability to differentiate between the enemy and Japanese Americans. “They are shrewd masters of tricky concealment among any who resemble them. With the aid of any artifice or treachery they seek such human camouflage and with uncanny skill discover and take advantage of any disloyalty among their kind,” stated Judge Lloyd Black and asked members of the jury to find the accused guilty of the criminal offense. After only ten minutes of deliberation the jury returned with a guilty verdict, as requested by the District Court Judge.

Gordon Hirabayashi was sentenced to three months imprisonment on both counts, violation of the exclusion and curfew order, to run concurrently. The defense appealed to the Court of Appeals for the Ninth Circuit and the case reached the Supreme Court. It was the duty of the Supreme Court to determine whether Proclamation No. 3 – a restriction forcing persons of Japanese ancestry to observe a curfew between 8:00 p.m. and 6:00 a.m. – was an unconstitutional delegation of power by Congress, and an unconstitutional and discriminatory measure that targeted persons of Japanese ancestry. Arguments in the Hirabayashi case were heard by the Supreme Court Justices in April of 1943 after the Circuit Court of Appeals had upheld the District Court’s ruling. The Government defended the exclusion by arguing in its brief that as a repercussion of the anti-Japanese sentiments the Japanese population had “racial pride” towards the advances made by the Empire of Japan and were as a result disloyal to America. The only solution to the ‘problem’ was the collective exclusion of the Japanese in order to remove the disloyal individuals. Such anti-Japanese sentiments were also expressed in Solicitor General Charles Fahy’s defense of Lt. General John L. DeWitt’s military orders. The Solicitor General argued that in general Japanese Americans had not assimilate into American society. Moreover, members of the Japanese community could support the enemy. As follows, it was not racial prejudice or discrimination that motivated the military orders issued by the Western Defense Command, but military necessity. Gordon Hirabayashi was represented before the Associate Justices by Harold Evans who cited the Supreme Court’s 1866 Ex parte Milligan decision, arguing that “legislative authority over civilians may not be delegated to the military

when the area in question is not a strictly military area.” Justice Felix Frankfurter, a firm supporter of the President and the war effort, was not convinced by this rationalization. Justice Frankfurter insisted that the Milligan opinion would not stand in 1943, “‘[t]here’s a lot in Milligan,’ […] ‘that will not stand scrutiny in 1943, a lot of talk that is purely political.’”

The Hirabayashi v. United States case was decided on June 21, 1943, and the unanimous opinion of the Supreme Court was delivered by Chief Justice Harlan F. Stone. The opinion outlined the case history, introducing Gordon Kiyoshi Hirabayashi as a U.S. citizen of Japanese descent who was found guilty of a misdemeanor by the District Court for violating Public Law No. 503. Justice Stone’s opinion affirmed Mr. Hirabayashi’s conscientious objector action, “[h]e admitted failure to do so, and stated it had at all times been his belief that he would be waiving his rights as an American citizen by so doing.” The Supreme Court’s opinion discussed in detail the recent history of the forced exclusion and incarceration of persons of Japanese ancestry, documenting the key events and regulations effecting persons of Japanese descent. Mr. Hirabayashi believed that the military orders issued by Lt. General DeWitt were based on the unconstitutional delegation of power by Congress to the Military Commander, and the discriminatory regulations were in violation of the Fifth Amendment of the United States Constitution.

The Supreme Court’s decision settled the debate by tackling the “legislative history” of the case, arguing that the Act of Congress authorized the curfew order. The objective of Public Law No. 503 was the execution of regulations issued on the authority of Executive Order No. 9066, and the curfew order was one of those restrictions based on the correspondence of the Secretary of War, cited by the Court. In a letter to the Chairman of the House Military Affairs Committee the Secretary wrote that Lt. General DeWitt was ready to implement restrictions immediately in the interest of national defense, but requested that before the proper steps were taken Congress arrange for the “enforcement machinery”; see The Legislative Branch Chapter

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1050 Justice Frankfurter was a “Roosevelt loyalist”. His law clerk described him in 1943 as a staunch supporter of the President, who viewed himself as a member of the President’s war team. Robert A. Levy and William Mellor, “Civil Liberties Versus National Security,” in The Dirty Dozen: How Twelve Supreme Court Cases Radically Expanded Government and Eroded Freedom (Washington, D.C.: CATO Institute, 2009), 130.
for the debate on Public Law No. 503. According to Secretary Stimson’s letter of March 14, 1942, Lt. General DeWitt was in favor of a broad bill allowing the introduction of various restrictions. “‘General DeWitt is strongly of the opinion that the bill, when enacted, should be broad enough to enable the Secretary of War or the appropriate military commander to enforce curfews and other restrictions within military areas and zones,’ […]” wrote the Secretary of War. Chief Justice Stone concluded that based on the “legislative history” the United States Congress not only approved, but also confirmed Executive Order No. 9066 by passing Public Law No. 503. In addition, on the issue of constitutionality and the delegation of power the Supreme Court declared, “we conclude that it was within the constitutional power of Congress and the executive arm of the Government to prescribe this curfew order for the period under consideration and that its promulgation by the military commander involved no unlawful delegation of legislative power.” The Commander-in-Chief and the United States Congress has the power to wage war on the authority of Article II and I of the Constitution. On the basis of that argumentation Justice Stone reasoned that Executive Order No. 9066 and the Public Law No. 503 were respectively such exercises of power. Taking into account that it is the responsibility of the Executive and Legislative Justice Stone defines the war powers of the Federal Government as “the power to wage war successfully,” with all of its aspects related to the military effort on the battlefield and the Home Front, including the protection of war materials in the interest of national defense. The Supreme Court was thus unwilling to apply judicial scrutiny, it failed to examine the “judgment” and “discretion” of the Government ensuing the attack on Pearl Harbor on account of this responsibility.

Chief Justice Harlan F. Stone on the responsibility of military officials and the Federal Government in the Hirabayashi opinion of June 21, 1943:

Although the results of the attack on Pearl Harbor were not fully disclosed until much later, it was known that the damage was extensive, and that the Japanese by their successes had gained a naval superiority over our forces in the Pacific which might enable them to seize Pearl Harbor, our largest naval base and the last stronghold of

defense lying between Japan and the west coast. That reasonably prudent men charged with the responsibility of our national defense had ample ground for concluding that they must face the danger of invasion, take measures against it, and in making the choice of measures consider our internal situation, cannot be doubted.[…] The challenged orders were defense measures for the avowed purpose of safeguarding the military area in question, at a time of threatened air raids and invasion [320 U.S. 81, 95] by the Japanese forces, from the danger of sabotage and espionage.

The opinion of the Supreme Court placed immense emphasis on the national defense justification proclaimed by the military authorities and the Roosevelt Administration, reiterating the threat of invasion, sabotage, espionage, and the menace of the ‘Fifth Column’. Justice Stone did not make any reference, nor did he allude to the memorandums or reports discussed in the previous chapters, such as the Munson reports on the West Coast and the Hawaiian Islands, both of which would have provided ample reason for scrutinizing the military necessity reasoning, nor to the findings of Commander Kenneth D. Ringle’s investigation. On the contrary, the opinion accentuated the threat of potential subversive activities targeting the national defense and war production facilities\(^\text{1059}\) in Military Area No. 1 and 2, with special consideration paid to the army and naval bases, and installations located in California and Washington. Chief Justice Stone cited Japanese espionage prior to Pearl Harbor as a prime example for the ‘Fifth Column’ dangers, even bringing up as a comparison the German invasion of Western Europe. “Espionage by persons in sympathy with the Japanese Government had been found to have been particularly effective in the surprise attack on Pearl Harbor. At a time of threatened Japanese attack upon this country, the nature of our inhabitants’ attachments to the Japanese enemy was consequently a matter of grave concern,”\(^\text{1060}\) wrote the Chief Justice without providing any concrete evidence to support this statement. The Court’s conclusion is further contradicted by the effective work of the Federal Bureau of Investigation, the lack of evidence of subversive activity. The only indisputable data included to support the previous quotation is the geographic concentration of the Japanese American community along the Pacific Coast.

\(^{1059}\) Similar reasoning was used by the Commanding General, focusing on the distribution of the Japanese near areas of defense production. *Hirabayashi v. United States*, 320 U.S. 81 (1943).

An additional argument brought up is the alleged lack of assimilation and Americanization by members of the Japanese community, although it is acknowledged that the social and political circumstances – the anti-Japanese movement and discrimination – had contributed to the lack of “social intercourse”. The Supreme Court maintained, however, that this tendency had “[…] intensified their solidarity and have in large measure prevented their assimilation as an integral part of the white population.” This ascertainment can be construed to imply that persons of Japanese descent were twofold the victims of prejudice. Firstly, the victim of racial prejudice with numerous aspects (social, economic, and political). Secondly, their victimization was interpreted to have fostered their greater attachment to the Empire of Japan. Some of the concerns raised included the education of Japanese children in Japanese language schools, the roughly 10,000 Kibei who studied in Japan, the legal restrictions enforced on persons of Japanese ethnicity, and their isolation, as well as the practice of dual-citizenship by the Japanese Government. The Supreme Court accepted the arguments of the United States Congress and the Executive, declaring that the justification provided by the military authorities was not unsubstantiated. The Justices believed that there were disloyal Japanese persons, although their number and strength could not be determined, nor could they be differentiated or isolated from loyal persons during a national defense crisis. The Supreme Court did not examine in detail the judgment of the military officials, the possibility of the individual basis treatment instead of the collective exclusion of the Japanese; no reference was made to the individual internment of the Hawaiian Japanese; see The ‘American Way’ Chapter. The Associate Justices indirectly reiterated the arguments that were brought up by Lt. General DeWitt in his Final Report in support of the mass ‘evacuation’ of Japanese Americans.

The Supreme Court on the issue of loyalty and the inability of the military authorities to differentiate between loyal and disloyal Japanese elements at a time of crisis.\textsuperscript{1064}

Whatever views we may entertain regarding the loyalty to this country of the citizens of Japanese ancestry, we cannot reject as unfounded the judgment of the military authorities

\textsuperscript{1061} Hirabayashi v. United States, 320 U.S. 81 (1943).
\textsuperscript{1062} The Nisei, the children of Japanese alien parents, born in the United States before December 1, 1924, were automatically citizens of Japan according to Japanese law. Hirabayashi v. United States, 320 U.S. 81 (1943).
\textsuperscript{1063} Hirabayashi v. United States, 320 U.S. 81 (1943).
\textsuperscript{1064} Hirabayashi v. United States, 320 U.S. 81 (1943).
and of Congress that there were disloyal members of that population, whose number and strength could not be precisely and quickly ascertained. We cannot say that the war-making branches of the Government did not have ground for believing that in a critical hour such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety, which demanded that prompt and adequate measures be taken to guard against it.

The Hirabayashi Supreme Court decision was based on the validity of the military necessity reasoning of the military officials, which it expressed in its opinion. It is difficult to reconcile “judicial appraisal” or “judicial inquiry” with the question of military necessity. Rehnquist reasons that judicial inquiry\(^\text{1065}\) is inappropriate for ascertaining issues of military necessity. Nevertheless, it followed that the Court accepted the national defense argument by highlighting that immediate action was imperative, citing the threat of invasion following Pearl Harbor. The work of the intelligence authorities and reports prepared on the Japanese ‘threat’\(^\text{1066}\) were not mentioned in the Court’s opinion.

In the Hirabayashi case the Supreme Court ruled that based on the ‘evidence’ government and military officials had ample grounds to assume the disloyalty of the Japanese residents and the danger of subversive activities, accepting without judicial scrutiny the ‘Fifth Column’ threat. Gordon Hirabayashi argued that the discriminatory treatment of persons of Japanese parentage was unconstitutional, in spite of the fact that a curfew was a suitable means to counter espionage. Nonetheless, in Chief Justice Stone’s opinion the curfew order did not violate the Appellant’s Fifth Amendment right.\(^\text{1067}\) Even though legislative differentiation between citizens based on race or ancestry is considered to be a denial of equal protection and is prohibited in peace time, it does not mean that it applies when the nation faces the threat of war. According to the Supreme Court the Executive and the United States Congress had the power to distinguish between citizens, to “place citizens of one ancestry in a different category from others”. This type of racially motivated differentiation was rationalized on the basis of national

\(^{1065}\) Rehnquist, “Postwar Criticism,” 205.

\(^{1066}\) The Japanese phobia and ‘Fifth Column’ threat were discussed along with the Pearl Harbor investigation and the issue of responsibility in *The Day of Infamy* and *The ‘American Way’* Chapters.

\(^{1067}\) The Fifth Amendment protects against the denial of due process, due process of law clause. It does not contain the equal protection of the law, Amendment XIV, Section 1, July 9, 1868. *Hirabayashi v. United States*, 320 U.S. 81 (1943).
defense, the threat of subversive activity and invasion.\textsuperscript{1068} Chief Justice Stone concluded in his opinion that the “peril of war” allowed the distinction made between residents and citizens based on their ethnic affiliation: “The adoption by Government, in the crisis of war and of threatened invasion, of measures for the public safety, based upon the recognition of facts and circumstances which indicate that a group of one national extraction may menace that safety more than others, is not wholly beyond the limits of the Constitution and is not to be condemned merely because in other and in most circumstances racial distinctions are irrelevant.”\textsuperscript{1069} The Supreme Court affirmed Gordon Hirabayashi’s conviction as it could not disregard the fact that the United States was at war with the Empire of Japan and that the curfew order was in accordance with the war powers due to military necessity. The Court failed to define in the Hirabayashi case the limits of the war powers of the Executive branch.

The Hirabayashi v. United States, 320 U.S. 81 ruling was a unanimous decision against the Appellant with no dissent, but Justice William O. Douglas, Justice Frank F. Murphy, and Justice Wiley B. Rutledge Jr. filed concurring opinions. Justice Douglas credited the military officials with “good faith” in their assessment of the ‘Fifth Column’ menace, although there was a lack of facts to support the argument that thousands of Japanese aliens and citizens of Japanese lineage represented any danger to national security. It seems from Justice Douglas’s concurrence that the Supreme Court abdicated its duty of judicial scrutiny by clearly stating that it did not place judgment on the military authority. The role of the Court ended by affirming that the restrictions faced by persons of Japanese descent were justified by military necessity, the ‘protection against espionage and against sabotage’. Justice Douglas did not question the practicality of the collective treatment of the Japanese community – not separating the loyal from the disloyal by means of investigations and hearings – due to the necessity of national security in wartime. Justice Douglas did not question the judgment of the military officials even though he acknowledged that the Court did not have all the facts relating to the decisions made in those critical days. The Supreme Court has to be informed in order the make a legally valid judgment in a case, especially in one which involves the constitutional rights of American citizens, but the fundamental requirement of judicial investigation did not apply to the Japanese American challenges. The concurrence did deviate from the majority opinion by arguing that the core issue

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\textsuperscript{1068} Hirabayashi v. United States, 320 U.S. 81 (1943).
\textsuperscript{1069} Hirabayashi v. United States, 320 U.S. 81 (1943).
\end{footnotes}
of the case was the question of loyalty, not assimilation. “Loyalty is a matter of mind and of heart not of race,” wrote Justice Douglas. The detention of individuals is permitted based on sufficient cause, but not on ancestry or collective guilt. On the other hand, the concurrence of Justice Rutledge did touch upon the power of the Court to review the operations of the military authorities when it comes to the treatment of citizens. Justice Rutledge maintains that the courts have the power to protect civilians when military officers exceed their authority. The military officers have a scope of freedom of action, “[b]ut it does not follow there may not be bounds beyond which he cannot go and, if he oversteps them, that the courts may not have power to protect the civilian citizen.”

Justice Frank F. Murphy initially intended to dissent from the Court’s opinion, but was persuaded to concur by Justice Felix Frankfurter in the interest of “wartime unity”. It was pointed out to Justice Murphy by Felix Frankfurter that his dissenting opinion could be construed to imply that the Justices of the Court were “playing into the hands of the enemy”, as quoted by Peter Irons. In his concurrence Justice Murphy expressed the same sentiments as Justice Douglas, stressing the “good faith” of the Military Commander who acted under the authority bestowed upon him by Congress and the Executive in the interest of “public safety” and national security. In addition, he recognized the validity of the military necessity arguments under the peril of war. Nevertheless, his concurrence did allude to the boundaries of the war powers, arguing that the civil liberties guaranteed by the Bill of Rights – due process of law ensured by the Fifth and Fourteenth Amendment – are not restricted in time of war. “It has been frequently stated and recognized by this Court that the war power, like the other great substantive powers of government, is subject to the limitations of the Constitution,” wrote Justice Murphy. Through his course of reasoning Justice Murphy argues that discrimination based on race or ancestry is in conflict with the American principle and tradition of “just and equal laws”, citing the Mayflower Compact of the Plymouth Colony. The differentiation made according to ancestry and the allegation that persons of Japanese ancestry did not, or could not assimilate, meant, according to Frank Murphy, that “the great American experiment has failed”. The Associate

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1072 Irons, “A Jap’s a Jap,” 357.
Justice did not accept the issue of ancestry and the problem of assimilation as a justifiable reason for the restriction of civil liberties. He warned that it could create “classes of citizens” – previously emphasized in the Takao Ozawa case as “classes of persons” – who could be the targets of permitted prejudice and discrimination, if there is a separate law for the majority of Americans and another for persons of a distinct race. The treatment of American citizens of Japanese parentage was compared to the plight of the Jewish community in Germany.

Justice Frank Murphy on the constitutionality of wartime discrimination based on race:

In this sense it bears a melancholy resemblance to the treatment accorded to members of the Jewish race in Germany and in other parts of Europe. The result is the creation in this country of two classes of citizens for the purposes of a critical and perilous hour-to-sanction discrimination between groups of United States citizens on the basis of ancestry. In my opinion this goes to the very brink of constitutional power.


Minoru Yasui was born in 1916 in Hood River, Oregon. As stated in the case history of the Supreme Court. Mr. Yasui was a person of Japanese parentage born in the United States to Japanese alien parents. During his childhood Minoru Yasui – the Appellant – spent a summer in Japan when he was eight years old and for around three years he attended a Japanese language school. He was an object-lesson of the potentially dangerous persons, because he was educated for a while in Japan. Government and military officials feared those individuals who were raised or educated in the Empire of Japan due to the influence and level of nationalistic propaganda and indoctrination. Mr. Yasui was educated in state public schools and subsequently attended the Law School of the University of Oregon, he graduated with an A.B. and LL.B. degree in 1939. Following his graduation he became a member of the Oregon bar and

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1077 Minoru Yasui began his studies at the University of Oregon in 1933 and after having completed the reserve officer training program he became a Second Lieutenant of the United States Army in 1937. After graduating from the University of Oregon with a law degree he was employed by the Japanese Consulate in Chicago and was registered with the State Department as a “foreign agent”. As part of his duties he gave speeches defending Japan’s foreign policy in Asia. Irons, “A Jap’s a Jap,” 352-353.
was employed by the Japanese Consulate in Chicago. In the aftermath of Pearl Harbor Minoru Yasui immediately resigned from his Consulate position on December 8, 1941, and reported for military service as a 2nd Lieutenant of the United States Army, Infantry Reserve. He was encouraged by his father via a telegram: “Now that this country is at war and needs you, and since you are trained as an officer, I as your father urge you to enlist immediately.” Mr. Yasui received an order from the U.S. Army to report for duty at Fort Vancouver, but was informed after his arrival that he was ineligible for military service. He returned eight more times, but was turned away on each and every occasion.

Minoru Yasui intended to test the constitutionality of the curfew order, he even consulted with an agent of the Federal Bureau of Investigation on the issue. On March 28, 1942, he requested his arrest from a police officer in Portland. He informed the officer that he was a person of Japanese descent and that he had violated the curfew order. The officer initially turned him away, but after convincing a sergeant at the police headquarters he was eventually arrested. He was apprehended for violating the curfew order and spent nine months in solitary confinement before his trial began.

Minoru Yasui recalled his arrest in Portland on March 28, 1942, as quoted by Peter Irons:

I pulled out this order that said all persons of Japanese ancestry must be in their place of abode, and I pulled out my birth certificate and said, ‘Look, I’m a person of Japanese ancestry, arrest me.’ And the policeman said, ‘Run along home, you’ll get in trouble.’

The Defendant was convicted by the District Court in Portland for infringing the curfew order, although the court ruled that Public Law No. 503 (56 Stat. 173, 18 U.S.C.A. 97a) was unconstitutional when applied to American citizens. Nevertheless, the court held that as a consequence of his actions Mr. Yasui had renounced his American citizenship, therefore the Act of March 21, 1942, did apply in his case. The case was heard by Judge Alger Fee without a jury and found Minoru Yasui guilty of violating General DeWitt’s curfew order. The Appellant’s citizenship status and rights became an issue on technical grounds, due to national security and

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1080 Irons, “A Jap’s a Jap,” 353.
racial prejudice, as he was deemed an ‘alien’. His supposed conduct and connection to the Empire of Japan – his visit to his parents’ homeland and knowledge of the language, not to mention his employment by the Japanese Consulate – became a central question in the legal argument presented by the prosecution. Furthermore, the Federal Government was represented by Charles Burdell, Special Assistant to Attorney General Francis Biddle, who asserted the “genetic disloyalty” of Japanese persons.\footnote{Irons, “A Jap’s a Jap,” 355.} Mr. Yasui was charged with failing to comply with the curfew restriction on March 28, 1942, which was established by Public Proclamation No. 3 issued by Lt. Gen. John L. DeWitt on March 24, 1942.\footnote{Yasui v. United States, 320 U.S. 115 (1943).} It was a federal criminal offense and he was sentenced to one year imprisonment despite of his testimony that he had not renounced his citizenship, and was fined $5,000. Though he was an American born citizen Minoru Yasui was deemed by Judge Fee to be “a citizen of Japan and subject to the Emperor of Japan”.\footnote{Irons, “A Jap’s a Jap,” 355.}

The \textit{Yasui} case\footnote{Yasui v. United States, 320 U.S. 115 (1943).} was a concurrent case to the \textit{Hirabayashi v. United States}, 320 U.S. 81 (1943) legal proceeding to test the constitutionality of the curfew orders that subjected persons of Japanese ancestry to discriminatory restriction within the military areas. The case reached the Supreme Court after the Court of Appeals for the Ninth Circuit requested instructions in the matter on “questions of law”. The United States Government was represented by Solicitor General Charles Fahy, while E. F. Bernard and A. L. Wirin spoke on behalf of the Appellant. The Supreme Court heard the arguments in the \textit{Yasui} case in April of 1943. It was the Court’s decision that the curfew order was valid and applied to American citizens, consequently Minoru Yasui’s citizenship was irrelevant to the Government’s problem for debate. The Supreme Court did not support the District Court’s justification that the Appellant renounced his citizenship on the basis of his conduct. The opinion of the Court was delivered by Chief Justice Stone\footnote{The Supreme Court sustained Minoru Yasui’s conviction, but the judgment was vacated and remanded for resentencing to the lower court. The District Court was given the opportunity to “strike its findings” relating to Mr. Yasui’s loss of his American citizenship. \textit{Yasui v. United States}, 320 U.S. 115 (1943).} on June 21, 1943, stating that the conviction of the Appellant must be “sustained” on the grounds specified in the \textit{Hirabayashi} case.
6.5. Ex parte Mitsuye Endo, 323 U.S. 283 (1944)

The case of Mitsuye Endo was quite different compared to the Hirabayashi, Yasui, and Korematsu legal challenges as she was considered to be a loyal citizen and faced no real opposition on the matter from the Federal Government. Mitsuye Endo, as mentioned in the case history, was an American citizen of Japanese parentage who was excluded from Sacramento, California, in accordance with the military’s Civilian Exclusion Order No. 52 dated May 7, 1942. The order excluded all persons of Japanese descent from the designated area on May 16, 1942. She was transferred from the Sacramento Temporary Detention Camp to Tule Lake Detention Camp on June 19, 1942, established at Newell, Modoc County, California, and subsequently she was relocated to Topaz Detention Camp located in Central Utah. She filed a writ of habeas corpus petition with the District Court for the Northern District of California in July of 1942 challenging her detention and requesting that the court reestablish her freedom. The petition argued that she was “[…] a loyal and law-abiding citizen of the United States, that no charge has been made against her, that she is being unlawfully detained, and that she is confined in the Relocation Center under armed guard and held there against her will.”

The habeas corpus petition was denied by the District Court in July of 1943 on grounds that she failed to take advantage of all of the legal remedies at her disposal. In due course Endo’s case reached the Circuit Court of Appeals in August of 1943 following the Appellant’s appeal.

The Supreme Court argued the Ex parte Mitsuye Endo case on October 12, 1944, and Solicitor General Charles Fahy represented the Federal Government of the United States, while attorney James C. Purcell spoke on behalf of Mitsuye Endo. As an American citizen of Japanese ancestry she challenged the right of the United States Government to imprison a loyal citizen who presented no national security threat to the war effort according to the assessment of the military officials. The unanimous opinion of the Court was delivered by Associate Justice William O. Douglas two months later on December 18, 1944. Justice Douglas’ opinion details not just Endo’s case history, but also the history of the incarceration of persons of Japanese ancestry and the work of the W.R.A. The opinion particularizes the leave procedures followed by the W.R.A. after Lt. General John L. DeWitt authorized the agency to issue leave

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1089 Ex parte Mitsuye Endo, 323 U.S. 283 (1944).
1090 Ex parte Mitsuye Endo, 323 U.S. 283 (1944).
permits in a letter dated August 11, 1942. Japanese persons were allowed to leave the War Relocation Project Areas\textsuperscript{1091}, such as in Endo’s case Tule Lake and Topaz Detention Camps. The leave procedure had great relevance for the Endo case.

Previously authorizations were issued by the Commanding General’s headquarters as required by Civilian Restrictive Order No. 1. of May 19, 1942, and Public Proclamation No. 8, but now the W.R.A. was given authority over the leave procedure. According to the policy an applicant required clearance and the individual had to meet several conditions, fourteen conditions over all. In case of an ‘indefinite leave’ Justice Douglas provided several examples:\textsuperscript{1092} employment offer approved by the W.R.A., the applicant has sufficient financial resources to support him or herself, public attitude in the suggested area of resettlement was inspected and is considered acceptable by the agency, the Authority has approved the place of residence (hotel or private home) while obtaining employment, the applicant is willing to accept employment by a federal or local government agency, or the applicant is going to live with relatives. The ‘leave program’ was an effort by the Authority to separate the loyal citizens from the disloyal persons through resettlement into communities outside of the military areas. The segregation of the disloyal and the relocation of loyal citizens was in accordance with the main features of the W.R.A. program according to the Supreme Court.

The three main responsibilities of the W.R.A. program according to the Supreme Court:\textsuperscript{1093}

1) the maintenance of Relocation Centers as interim places of residence for evacuees;
2) the segregation of loyal from disloyal evacuees;
3) the continued detention of the disloyal and so far as possible the relocation of the loyal in selected communities.

On February 19, 1943, Mitsuye Endo applied for leave clearance and her application was approved almost six months later on August 16, 1943, but she did not apply for indefinite leave. By this time her habeas corpus petition was denied by the District Court. In the aftermath of her

\textsuperscript{1091} The War Relocation Project Areas, or in other words ‘Relocation Centers’, were established by Public Proclamation No. 8 on June 27, 1942, stating that “the present situation within these military areas requires as a matter of military necessity’ that the evacuees be removed to ‘Relocation Centers for their relocation, maintenance and supervision’”. \textit{Ex parte Mitsuye Endo}, 323 U.S. 283 (1944).

\textsuperscript{1092} \textit{Ex parte Mitsuye Endo}, 323 U.S. 283 (1944).

\textsuperscript{1093} \textit{Ex parte Mitsuye Endo}, 323 U.S. 283 (1944).
leave clearance the Department of Justice and the War Relocation Authority conceded that Mitsuye Edo was a loyal citizen and that the W.R.A. had no authority to detain loyal citizens for a longer period of time than required to separate the loyal individuals from disloyal persons. The Federal Government no longer challenged Endo’s petition to reestablish her liberty. In the Endo case the Government no longer defended the continued imprisonment of loyal American citizens of Japanese descent. Accordingly, Justice Douglas held that Mitsuye Endo should be given back her freedom, since the W.R.A. – a civil agency – had no power to detain a loyal citizen and should unconditionally release her.

The Supreme Court confirming the status of Mitsuye Endo as a loyal and law-abiding citizen:

It is conceded by the Department of Justice and by the War Relocation Authority that appellant is a loyal and law-abiding citizen. They make no claim that she is detained on any charge or that she is even suspected of disloyalty. Moreover, they do not contend that she may […] be held any longer in the Relocation Center. They concede that it is beyond the power of the War Relocation Authority to detain citizens against whom no charges of disloyalty or subversiveness have been made for a period longer than that necessary to separate the loyal from the disloyal and to provide the necessary guidance for relocation.

Justice Douglas’ opinion was indeed a step forward in declaring that loyalty and detention, pursuant to the war measures, should not be a racial issue. “Loyalty is a matter of the heart and mind not of race, creed, or color. He who is loyal is by definition not a spy or a saboteur. When the power to detain is derived from the power to protect the war effort against espionage and sabotage, detention which has no relationship to that objective is unauthorized,” stressed Justice Douglas. Nonetheless, it has to be noted that Justice Douglas did not touch upon the constitutional questions. The Ex parte Endo opinion is in stark contrast to the Hirabayashi and Yasui decisions, and the legal challenge of Fred Korematsu, the topic of the following chapter.

1095 Ex parte Mitsuye Endo, 323 U.S. 283 (1944).
1096 Ex parte Mitsuye Endo, 323 U.S. 283 (1944).
Justice Frank Murphy and Justice Owen Roberts wrote concurring opinions, joining the Supreme Court’s unanimous decisions, but on different legal grounds. Justice Murphy held that the incarceration of persons of Japanese ancestry was unauthorized by the Legislative and the Executive. The incarceration of Japanese persons was a manifestation of racial discrimination and was unconstitutional regardless of the loyalty of the individual: “As stated more fully in my dissenting opinion in Fred Toyosaburo Korematsu v. United States, 323 U.S. 214, 65 S.Ct. 193, racial discrimination of this nature bears no reasonable relation to military necessity and is utterly foreign to the ideals and traditions of the American people.” Justice Roberts concurred, arguing that the power to detain persons of Japanese descent was not just implied by Public Law No. 503 or Executive Order No. 9066, considering that Congress provided the appropriations for the W.R.A. following committee hearings. The appropriations provided to the Authority was regarded by Justice Roberts as an endorsement and authorization of its activities and the ‘evacuation program’. Furthermore, the Supreme Court avoided the constitutional issues at the heart of the case, such as Mitsuye Endo’ detention violating the Bill of Rights and the United States Constitution, the due process of law. These questions were answered by Justice Hugo L. Black in his opinion in the Korematsu v. United States, 323 U.S. 214 (1944) case.

6.6. Summary: The Legacy of the Supreme Court’s Decision

The rulings in the Japanese American cases have been widely condemned and denounced by legal scholars and historians during the past more than half a century. One of the initial criticisms was published as early as 1945 by Eugene V. Rostow – Professor and afterward Dean of Yale Law School –, who characterized the Japanese American incarceration cases in the Yale Law Journal as a “disaster”. William H. Rehnquist referred to Rostow’s study in All the Laws but One and construed it as a criticism of abandoning the “traditional subordination of military to civil authority”, while at the same time the cases approved racially motivated discrimination against persons of Japanese descent. Rehnquist in his assessment provides numerous
problems concerning the Japanese American cases that justifies this criticism: such concepts as military necessity, scapegoating, and public opinion.

The case for the forced removal and incarceration of the Japanese community was presented to the Supreme Court on the basis of military necessity, the importance of protecting the national defense of the United States. The arguments made by officials of the Federal Government were accepted by the Supreme Court even though the representations by the military were “exaggerated” and underlined how the Issei and Nisei were ethnically and racial diverse, and diverged from the West Coast residents. In the U.S. Military’s defense it is not the military’s role to safeguard civil liberties, but rather against subversive activities. Following this line of thinking, Rehnquist argues, “[…] these officials were not entrusted with the protection of anyone’s civil liberties; their task instead was to make sure that vital areas were as secure as possible from espionage and sabotage.”

It was not their responsibility to protect civil liberties, a prime example is Lt. General John L. DeWitt’s role in the removal of the Japanese Americans from the West Coast. It is noteworthy that initially Lt. General DeWitt did not favor nor did he propose the ‘evacuation’ of the Japanese. However, following the dismissal of General Walter C. Short and Admiral Husband E. Kimmel from command after the disaster of Pearl Harbor – charged and later found guilty of derelict of duty by the Robert’s Commission – he recommended their forced removal. This change in judgment might reflect the fear of scapegoating by Washington and the intensifying public pressure in support of the collective removal of the Japanese residents from the Pacific Coast. It seems that public pressure was a crucial component that influenced the military’s assessment and decision. Rehnquist maintains that public opinion should not be a decisive factor, however it is unavoidable, “… it is bound to occur to those engaged in that task that their names will very likely be “Mudd” if they reject a widely popular security measure that in retrospect will prove to have been necessary.”

The fear of accountability could have also played a part in the unbending support of the Justices for the President’s war effort and the military regulations, implemented under the banner of national defense and national security.

1101 Rehnquist, “Postwar Criticism,” 203.
1102 Rehnquist, “Postwar Criticism,” 204.
1103 Rehnquist, “Postwar Criticism,” 204.
1104 Rehnquist, “Postwar Criticism,” 204.
There was no significant public opposition\textsuperscript{1105} to the removal and incarceration which explains the lack of concern for civil liberties within the Federal Government, and the War and Justice Department: for example by President Franklin D. Roosevelt, Secretary of War Henry L. Stimson, and Assistant Secretary of War John J. McCloy. According to Rehnquist the Secretary of War would have been expected to make a thorough assessment of the Japanese ‘problem’ and the recommendation for their removal, since the “civilian heads” of the departments are the superiors of the “military chiefs” and can have a “detached view” of the comprehensive issue.\textsuperscript{1106} In light of this Attorney General Francis Biddle’s dissent was ineffectual. A further criticism by Rehnquist is that the cases were based on racial discrimination. Still and all, he comments that some of the criticism is unjustified, “[…] its principal fault is that it lumps together the cases of the Issei – immigrants from Japan – and the Nisei – children of those immigrants who were born in the United States and citizens of the United States by reason of that fact.”\textsuperscript{1107} The constitutional challenges involved the Nisei, the cases of Gordon Hirabayashi, Minoru Yasui, Mitsuye Endo, and Fred Korematsu.

\textsuperscript{1105} Despite of the briefs filed with the Supreme Court in support of the cases of Gordon Hirabayashi and Fred Korematsu the American Civil Liberties Union remained silent during the initial phase of the exclusion and incarceration. Rehnquist, “Postwar Criticism,” 204.

\textsuperscript{1106} Rehnquist, “Postwar Criticism,” 204.

\textsuperscript{1107} Rehnquist, “Postwar Criticism,” 203.
Chapter 7.

Fred Korematsu’s Legal Challenge:
The Constitutionality of the Exclusion and Incarceration

Again it is a new doctrine of constitutional law that one indicted for disobedience to an unconstitutional statute may not defend on the ground of the invalidity of the statute but must obey it though he knows it is no law and, after he has suffered the disgrace of conviction and lost his liberty by sentence, then, and not before, seek, from within prison walls, to test the validity of the law.1108

Justice Owen J. Roberts, Korematsu dissent, December 18, 1944

In the interest of identifying and understanding the numerous aspects of the wartime Japanese American cases the Korematsu v. United States decision was selected for further in depth analysis. Korematsu’s legal challenge is closely followed in the present chapter from the initial charges filed against the Defendant up to the decision of the Supreme Court. The detailed examination of the Korematsu case provides an accurate picture of the arguments made by military and government officials in the legal defense of the exclusion program. Through the legal documents of the Korematsu case – the author studied the Korematsu v. United States collection of the National Archives at San Francisco – we are provided an overview of the judicial procedure from the issuance of the bench warrant to the Circuit Court of Appeals for the Ninth Circuit affirming Korematsu’s conviction, and the later writ of error coram nobis petition. Fred Korematsu’s 1109 story is a tale of an individual who unexpectedly found himself in the center of attention for violating Civilian Exclusion Order No. 34 so as not to be separated from his Caucasian girlfriend. Korematsu was born in 1919 in Oakland, California, and received his high school diploma in 1938, but failed to finish his college education due to financial problems. Following his studies he attended welding school and became a shipyard welder, but in the

aftermath of Pearl Harbor he lost his job after he was kicked out of the union along with the other Japanese American members.

Fred Korematsu on his reasons for opposing the exclusion order:\footnote{Fred Korematsu did not see Miss Ida Boitano after his arrest and in the only correspondence he received, in response to his letters, he was asked not to write anymore. Irons, “A Jap’s a Jap,” 354.}  

I stayed in Oakland to earn enough money to take my girl with me to the Middle West. Her name is Miss Ida Boitano. She is a different nationality – Italian. The operation was for the purpose of changing my appearance so that I would not be subjected to ostracism when my girl and I went East.

After President Roosevelt signed Executive Order No. 9066 and the exclusion orders were posted throughout the West Coast he became the subject of a “test case” in order to challenge the incarceration of persons of Japanese ancestry, an ‘unlikely’ hero for defending the civil liberties of the Japanese Americans. ‘Unlikely’, because at the beginning he tried to prevent his exclusion from the military area by all means necessary. He changed his name to Clyde Sarah, altered his draft card, and even had cosmetic surgery on his eyelids and nose in the endeavor to pass as an American of Spanish-Hawaiian descent. His efforts were to no avail since he was taken into custody by local police on May 30, 1942, in San Leandro, California. Korematsu accepted the legal counsel of Ernest Besig, Director of the American Civil Liberties Union (A.C.L.U.) in San Francisco, who was looking for a “test case”. Although he did not seek to challenge the exclusion and incarceration he believed that Japanese Americans were stripped of their constitutional rights and freedoms. Mr. Korematsu’s handwritten statement on his “test case” stated – as quoted by Peter Irons – that Japanese Americans “should have been given a fair trial in order that they may defend their loyalty at court in a democratic way, but they were placed in imprisonment without a fair trial!”\footnote{Irons, “A Jap’s a Jap,” 354.} He raised the issue that that the plight of the Japanese community was a racial issue, and intended to find out whether that was the case or not. Fred Korematsu, a young man who only wished to be with his girlfriend, found himself at the center of a legal battle over the constitutionality of the exclusion program. His legal challenge
became one of the landmark decisions of the Supreme Court, although for all the negative reasons, and remained on the books of legal history for over half a century.

7. 1. Fred Korematsu v. United States, 323 U.S. 214 (1944)

The Case Information\footnote{See Appendices, Primary Documents, Document 11 for the complete text of the Fred T. Korematsu Case Information. Fred T. Korematsu Case Information, June 12, 1942, Box 383, Fred T. Korematsu Folder 1 (1 of 2, Docket Nos 1-9), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States, 1942-1984, The National Archives at San Francisco.} against Fred T. Korematsu was filed by Frank J. Hennessy, United States Attorney for the Plaintiff, on June 12, 1942, with the Federal District Court of San Francisco, Southern Division of the United States District Court for the Northern District of California. Fred Korematsu, referred to as “said defendant” of Japanese ancestry in the legal document, was charged with committing a misdemeanor for violating the Civilian Exclusion Order No. 34 of May 3, 1942, by remaining within the limits of Military Area No. 1, prescribed by Proclamation No. 1 issued on March 2, 1942. According to the civilian exclusion order all persons of Japanese descent were to be removed from San Leandro after 12 o’clock noon on May 9, 1942. Based on Frank Hennessy’s argumentation the Defendant failed to comply with the military orders issued by Lt. Gen. John L. DeWitt, the designated Military Commander, which were in accordance with Executive Order No. 9066 signed by President Franklin D. Roosevelt on February 19, 1942. Korematsu did not abide by the military orders and “unlawfully” and “wilfully” stayed in San Leandro, thereby he committed a criminal act in violation of the restrictions. The charges followed the same line of reasoning as in the Hirabayashi and Yasui case. The arraignment\footnote{Fred T. Korematsu Custody Order, June 13, 1942, Box 383, Fred T. Korematsu Folder 1 (1 of 2, Docket Nos 1-9), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco.} was held in San Francisco on June 13, 1942, after Fred Korematsu was charged with having violated Public Law No. 503, 77\textsuperscript{th} Congress, Chapter 191, Second Session, H.R. 6758. Bail was set at $1,000, but due to default of bail the court ordered that Korematsu be held in the custody of the United States Marshal until his trial. Previously on June 12, 1942, a bench warrant\footnote{Fred T. Korematsu Bench Warrant, June 12, 1942, Box 383, Fred T. Korematsu Folder 1 (1 of 2, Docket Nos 1-9), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco.} was also issued by Judge Martin I. Welsh for his arrest based on the criminal
information on record, to be apprehended and presented to the court by a United States Marshal for the Northern District of California.

The different, rather contradictory points of view are represented by the opposing legal teams, the representatives for the Defendant and the Plaintiff, and also by the different parties petitioning to file briefs with the court. Considering the rival petitioners we can mention the American Civil Liberties Union and the State of California, respectively against or for the Japanese exclusion case; the briefs by Wayne M. Collins (A.C.L.U.) and by Attorney General Earl Warren for the State of California will be introduced following the legal statements of the Defendant and Plaintiff. The main points of interest are the legal arguments made for and against the exclusion and incarceration, its legality and constitutionality, while also reflecting on the neglected or missing evidence in support of the lack of military necessity.

7.1.1. Korematsu’s Legal Challenge: The Constitutionality of the Exclusion Program

The attorney for the Defendant, Mr. Clarence E. Rust, formulated and filed his Demurrer to Information\textsuperscript{1115} on June 20, 1942; the representatives for the Plaintiff received a copy of the document on the same day. The defense summarized its objection to the charges of the Case Information with the arguments broken down to three primary sections, focusing on Executive Order No. 9066, Civilian Exclusion Order No. 34, and Public Law No. 503 respectively. The central argument of the objection was that the executive order, the exclusion order, and the statute – based on which Fred T. Korematsu was accused of having committed a federal crime – were “unconstitutional” and “void”. Furthermore, the Information did not provide sufficient facts to confirm a breach of the laws of the United States in light of the previously mentioned orders and statute. Mr. Rust systematically organized his reasoning, the legal and constitutional grounds,\textsuperscript{1116} in support of the lack of offense by the Defendant. The main argument of the demurrer was that the Constitution of the United States and the rights of American citizens (the Fifth and Sixth Amendment) cannot be suspended, even in wartime; Clarence E. Rust cited the

\textsuperscript{1115} Clarence E. Rust, Demurrer to Information, June 20, 1942, Box 383, Fred T. Korematsu Folder 1 (1 of 2, Docket Nos 1-9), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco (hereafter cited as Rust, June 20, 1942, Demurrer to Information).

\textsuperscript{1116} See Appendices, Primary Documents, Document 1 for excerpts from the Constitution of the United States cited by Clarence E. Rust.
Ex parte Milligan, 71 U.S. 4 Wall. 2 2 (1866)\textsuperscript{1117} decision of the Supreme Court.\textsuperscript{1118} Martial law was not declared by Congress, therefore Executive Order No. 9066 and Civilian Exclusion Order No. 34 were exceeding executive power.

Executive Order No. 9066 and Civilian Exclusion Order No. 34 were both introduced as an “usurpation and exercise of legislative power”, which is solely invested in Congress, and it had never been delegated to the President or to his subordinate executive officials; referring to Section 1 and Section 8 of Article I of the Constitution.\textsuperscript{1119} Moreover, Executive Order No. 9066 was also an abuse of executive power by the President, a power not conferred upon the Secretary of War or the designated Military Commander – considering Civilian Exclusion Order No. 34 –, as provided by Article II of the Constitution. This repressive exercise of delegated executive power denied to Fred Korematsu the “privileges” and “immunities” of his American citizenship, his national and state citizenship rights, which is contradictory to the provisions of Section 2 of Article IV of the Constitution.\textsuperscript{1120} It seems that in the opinion of Korematsu’s representatives Executive Order No. 9066 and Civilian Exclusion Order No. 34 were void – legally not biding –, in the words of Clarence E. Rust they were “void for uncertainty, indefiniteness and vagueness and as wanting a proper delegation of such power from Congress […]”.\textsuperscript{1121} This line of reasoning is supported by Senator Robert A. Taft’s comment on Public Law No. 503, calling it “the ‘sloppiest’ criminal law”\textsuperscript{1122} on March 19, 1942, during the debate over the statute; see The Legislative Branch for the debate on Public Law No. 503.

The demurrer not only disputed the delegation and use of legislative and executive power, but also thoroughly scrutinized the violations of constitutional rights that it entailed. In Mr.

\textsuperscript{1117} In the subsequent Brief Of Plaintiff In Opposition To Demurrer the attorneys for the Plaintiff argued that the Milligan case did not apply since the courts were open at the time and the Defendant was properly prosecuted, therefore his due process and trial by jury rights were not violated. The Plaintiff suggested that the Justices of the Supreme Court who argued the Milligan case would have upheld all acts challenged in the Korematsu case and would have confirmed the Government’s arguments. Frank J. Hennessy and A. J. Zirpoli, Brief Of Plaintiff In Opposition To Demurrer, July 8, 1942, Box 383, Fred T. Korematsu Folder 1 (1 of 2, Docket Nos 1-9), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco (hereafter cited as Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer); Ex parte Milligan, 71 U.S. 4 Wall. 2 2 (1866), accessed August 1, 2018, https://supreme.justia.com/cases/federal/us/71/2/.
\textsuperscript{1118} Rust, June 20, 1942, Demurrer to Information.
\textsuperscript{1119} Rust, June 20, 1942, Demurrer to Information.
\textsuperscript{1120} Rust, June 20, 1942, Demurrer to Information.
\textsuperscript{1121} Rust, June 20, 1942, Demurrer to Information.
\textsuperscript{1122} Senator Taft, speaking on S. 2352, 88, pt. 2: 2725-2726.
Rust’s opinion Korematsu’s liberties and constitutional rights were violated as a direct
consequence of Executive Order No. 9066 and Civilian Exclusion Order No. 34. In his list of
grievances he specifically punctuated the infringement of the Fourth, Fifth, Sixth, Eight,
Thirteenth, Fourteenth, and the Fifteenth Amendment of the United States Constitution.\textsuperscript{1123} To
begin with, the Defendant was subjected to unreasonable search and seizure, as well as having
been apprehended and detained without a warrant in breach of the Fourth Amendment\textsuperscript{1124}. This
type of treatment was characterized by Mr. Rust as a means to deny his client his due process
rights and equal protection.

The Fifth Amendment was analyzed at greater length by the defense and was cited in the
demurrer on numerous occasions. Mr. Rust alleged that Executive Order No. 9066 and Civilian
Exclusion Order No. 34 were utilized to not only deny Fred Korematsu’s liberty, but also his
privileges as an American citizen: the freedom of speech, movement, press and assembly, the
right to own private property, and to live and work according to his choosing.\textsuperscript{1125} The executive
and exclusion order violated the Fifth Amendment, which states: “No person shall be […]
deprived of life, liberty, or property, without due process of law; nor shall private property be
taken for public use, without just compensation.”\textsuperscript{1126} In addition, the forced exclusion and
incarceration denied persons of Japanese descent the right to a trial by jury, unlike their peers on
the Hawaiian Islands where the accused were treated on an individual bases and were able to
present their cases before the hearing boards; see \textit{The ‘American Way’} Chapter. There were no
warrants, indictments, nor trials where the defendants would have been judged by a jury of their
fellow citizens. A compelling reason why the forced removal was unconstitutional is that
Japanese Americans were denied “the right to a speedy and public trial”\textsuperscript{1127}, thereby failing to
comply with the Sixth Amendment of the Constitution.\textsuperscript{1128} This constitutional issue was evoked
by Public Law No. 503, which made it a federal crime to oppose the proclamations issued under
the authority of the executive order signed by President Roosevelt. Persons of Japanese ancestry

\textsuperscript{1123} Rust, June 20, 1942, Demurrer to Information.
\textsuperscript{1124} U.S. Constitution, amend. 4, American Bar Association, accessed July 13, 2018,
\textsuperscript{1125} Rust, June 20, 1942, Demurrer to Information.
\textsuperscript{1126} U.S. Constitution, amend. 5, American Bar Association, accessed July 13, 2018,
\textsuperscript{1127} U.S. Constitution, amend. 6, American Bar Association, accessed July 13, 2018,
\textsuperscript{1128} Rust, June 20, 1942, Demurrer to Information.
were forced to cooperate with the military authorities under the threat of committing a federal crime if they were to oppose their removal from the military area.

It was a “Catch-22” scenario: either they submit to their treatment and thus waive their constitutional rights, or they challenge their exclusion and face the possibility of being found guilty of a federal crime. This dilemma, the regulations and proclamations orchestrated by the military authorities, is introduced in more detail in *The Legislative Branch* Chapter. The statute can be interpreted as a form of intimidation, since it foreshadowed the potential arrest and imprisonment of those who thought of staying, as in the case of Fred Korematsu. Mr. Rust described the distinctive nature of the Defendant’s plight as “a cruel and unusual punishment”, referring to the Eight Amendment. If he submitted to the ‘evacuation’ he would have lost his national and state citizenship rights. On the other hand, he could face arrest and imprisonment according to Public Law No. 503. Mr. Rust poignantly summarized his argument by comparing the treatment of Fred Korematsu and the Japanese community to involuntary servitude. “It imposes upon defendant a choice between exclusion and evacuation from the areas to be prescribed thereunder and arrest, fine and imprisonment pursuant to said Public Law. No. 503 for the exercise of constitutional rights and thereby imposes upon him, in the event of such evacuation, a condition of slavery and involuntary servitude which is forbidden by the provisions of the Thirteenth Amendment,” asserted Mr. Rust in his *Demurrer to Information*. This argument is further scrutinized in the *Brief of Defendant in Support of Demurrer*, referring to Public Law No. 503 as a “tragic caricature of a statute” which punishes Mr. Korematsu for practicing his constitutional rights, and imprisoning him based on the accident of his birth as a person of Japanese ancestry. This argument did not convince the Justices of the Supreme

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1129 It is noted by Robert A. Levy and William Mellor that Fred Korematsu would have been found liable for violating the March 27 and May 3 orders of Lt. General John L. DeWitt. Levy and Mellor, “Civil Liberties Versus National Security,” 132.
1130 Rust, June 20, 1942, Demurrer to Information.
1131 Rust, June 20, 1942, Demurrer to Information. The Thirteenth Amendment of the Constitution states that “[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” The Amendment was ratified on December 6, 1865. U.S. Constitution, amend. 13, sec. 1, American Bar Association, accessed July 13, 2018, [https://www.americanbar.org/content/dam/aba/images/public_education/constitution.pdf](https://www.americanbar.org/content/dam/aba/images/public_education/constitution.pdf).
Court, stating that the Defendant should have petitioned for his release once he had been incarcerated.

Wayne M. Collins and Clarence E. Rust on the issue of “involuntary servitude” as Japanese Americans were forced to leave their homes and possessions under the threat of imprisonment:

If you are an American citizen of Japanese ancestry and you do not voluntarily exile or banish yourself for an unknown and indefinite period from a geographical zone where you have a right absolute to be under the Constitution and laws you will be forcibly deported in “protective custody” by the military authorities and thereafter remain “a guest of the federal government” under military guard in a “concentration camp” wheresoever and for such time as the military authorities determine and, in addition thereto, because you were discovered to be in a geographical area where crime could conceivably be committed against this nation or country by any other person you are guilty of a crime punishable by fine and imprisonment although you had no criminal intent and were not guilty of wrongdoing.

The defense not only brought up the Thirteenth Amendment, which abolished slavery in the United States after it was ratified following the Civil War, but also the citizenship rights and voting rights amendments of the Constitution. The Executive Order and the Civilian Exclusion Order were interpreted by the defense as an infringement of the citizenship rights – national and state citizenship rights –, and the voting rights of the Defendant, the Fourteenth and Fifteenth Amendments. The Fourteenth Amendment was ratified on July 9, 1868, and addresses the privileges and immunities of citizenship, such as the due process and equal protection of the

1134 Rust, June 20, 1942, Demurrer to Information.
1135 The Fifteenth Amendment declares: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” The defense reasoned that Fred Korematsu was unable to exercise his right to vote within the boundary of the military area, from which zone he was forcefully removed from due to his racial ancestry. The Amendment was ratified on February 3, 1870. U.S. Constitution, amend. 15, sec. 1, American Bar Association, accessed July 13, 2018, https://www.americanbar.org/content/dam/aba/images/public_education/constitution.pdf.
laws. The problem with the Amendment was that according to the courts it failed to extended the rights and liberties granted by the Bill of Rights to the States.

Section 1. of the Fourteenth Amendment of the United States Constitution on the naturalization of citizenship and the rights of American citizens to due process and equal protection at the State level, July 9, 1868:1136

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The constitutionality of Public Law No. 503 was analyzed in a separate section of the Demurrer to Information. Clarence E. Rust argued that the Case Information did not contain sufficient facts to support the charges and that the statute was “unconstitutional” and “void”, just like the previously mentioned Executive Order No. 9066 and Civilian Exclusion Order No. 34. The statute was characterized as “an arbitrary, unreasonable and oppressive exercise of legislative power in that it denies to citizens, and to defendant as a citizen, the privileges and immunities of national citizenship and also of state citizenship […]”.1137 This exercise of excessive legislative power was in violation of Subdivision 1 of Section 2 of Article IV of the Constitution in the opinion of Mr. Rust. Additionally, the liberties of the Defendant were also breached by Public Law No. 503, most importantly the rights shielded by the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Eight Amendment, the Thirteenth Amendment, the Fourteenth Amendment, and the Fifteenth Amendment. The defense considered the $5,000 fine and the period of imprisonment an excessive punishment proscribed by the Constitution. These Amendments were studied in detail earlier in the present section when the arguments of the demurrer were discussed in relation to the executive and civilian exclusion

1137 Rust, June 20, 1942, Demurrer to Information.
order in question. A point of deviation in the reasoning of Clarence E. Rust is that in the case of Public Law No. 503 he also referred to the First Amendment. He noted that the statute violated Mr. Korematsu’s right to freely exercise his religion, and restricted the freedom of speech, press, and assembly, nor did the defendant have the opportunity to petition the Government to address the injustice that persons of Japanese parentage had to endure in the military area.

Unlike in the previous sections of the legal document in subsection (B) of the analysis of Public Law No. 503 Mr. Rust discussed in detail why the statute was also unconstitutional and void due to its vagueness and indefiniteness, and provided specific reasons in support of this argument. Korematsu’s attorneys reasoned that it could not be determined what the military areas were or where they may be set up, nor were their geographic boundaries known at the time. Additionally, the statute was vague on the features of the applicable restrictions mentioned – in regards to the military zones set up by the military authorities –, and on the actions to be prohibited by the order of the Secretary of War. The defense was also interested in the authority and power delegated to the President, the Secretary of War, and any Military Commander by the Constitution of the United States, or by Congress, to prescribe military areas, restrictions, and to control the conduct of American citizens in the designated zones.

7.1.2. In Defense of the Exclusion Program: Executive Power and Military Necessity

The court did not have to wait long for the Government’s response to the Demurrer to Information, which was interpreted by the representatives of the Federal Government as a direct attack on the constitutionality of Executive Order No. 9066, Civilian Exclusion Order No. 34, and Public Law No. 503. Frank J. Hennessy and A. J. Zirpoli prepared the brief of opposition on behalf of the Plaintiff, and filed it on July 8, 1942. The Brief of Plaintiff in Opposition to Demurrer defended the constitutionality of the orders and alluded to the fear of ‘Fifth Column’ activity and the power of the President and Congress to wage war successfully, since the United States was at war with the Empire of Japan. The brief concluded that the President and the designated Military Commander had the constitutional power to issue Executive Order

1139 Rust, June 20, 1942, Demurrer to Information.
1140 Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
No. 9066 and Civilian Exclusion Order No. 34, while Congress had the authority to approve these regulations and the delegation of power challenged by the defense. The legal stance of the Plaintiff was introduced through the documents in question, the background of the exclusion of persons of Japanese descent, and the constitutional grounds for the power and authority of the U.S. Government. The court document portrayed a detailed overview of the sequence of authorizations to enforce Executive Order No. 9066 in defense of the actions taken by the Administration.

Before focusing on the legal grounds of the forced removal and incarceration of persons of Japanese ancestry it is critical to discuss the language of the brief and the alleged military necessity according to the Plaintiff. The given period was described as a “time of great national peril” by Frank J. Hennessy and A. J. Zirpoli, needless to say the United States Congress declared war on the Empire of Japan on December 8, 1942. The United States was in a state of “total war”, according to Mr. Hennessy and Mr. Zirpoli, since the military operations were no longer limited to the conventional battlefields, but rather it encompassed the American coastline and its harbors, as well as the industrial, transportation, and agricultural centers. Furthermore, one of the pivotal lessons of modern warfare was the importance of preventing espionage and sabotage, and domestic disorder committed by citizens or aliens sympathizing with the enemy. In support of this argument the fall of France, Norway, and Denmark were mentioned, their failure to guard against subversive activities. This was not the first instance when the ‘Fifth Column’ argument was used to justify the forced removal of the Japanese American community. We have to bear mind that Secretary of Navy Frank Knox blamed the Japanese ‘Fifth Columnists’ and intelligence work in Hawaii for the success of the surprise air attack on Pearl Harbor following his inspection of Oahu, and compared it to the activity of the subversives in Norway. Moreover, the threat of subversive activity was a key component of the Final Report by Lt. General John L. DeWitt in which he argued for the mass ‘evacuation’ of the West Coast Japanese residents; see The Executive Branch Chapter. Following this line of thinking, the

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1141 Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
1142 Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
1143 Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
1144 See The Day of Infamy Chapter on the Pearl Harbor disaster and the issue of intelligence, the scapegoating of the Japanese Americans. Frank Knox, Report by the Secretary of the Navy to the President, December 14, 1941, President Franklin D. Roosevelt's Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7.
Federal Government argued that in the interest of national defense it was vital to monitor the activities of the potentially dangerous persons and the steps taken accordingly were now the ones challenged by the Defendant. “Since the outbreak of hostilities, those responsible for the conduct of our Government have repeatedly expressed the opinion that the defense effort demands a close and constant supervision over all persons, of any race or nationality, who might or could engage in activities which endanger the preservation and security of our institutions,”\textsuperscript{1145} asserted the attorneys for the Plaintiff.

The war effort was directed against an enemy described by the representatives of the U.S. Government as “unassimilated”, “ruthless, barbaric and treacherous”, and “blood relatives” and a “potent weapon” of the enemy, the “mortal enemies” of the American people.\textsuperscript{1146} The language of the brief seems to use racial profiling\textsuperscript{1147} and demonizes persons of Japanese descent. The data by the Government applied to Japanese persons living within a strip of land 100 miles inland along the coast from the Canadian to the Mexican border. Persons of Japanese parentage represented a security risk due to their large numbers in the Theater of Operations. In the words of Mr. Hennessy and Mr. Zirpoli: “Because of the peculiar racial characteristics of these sons and grandsons of Nippon, they have not been assimilated into the community life of the population inhabiting this area.”\textsuperscript{1148} The citizenship of the Japanese Americans was not taken into consideration, in actuality their status as American citizens did not factor into their loyalty. According to the Government their loyalty could not be adjudged by the appropriate intelligence organizations; some were loyal to the United States, while others were loyal to the Empire of Japan. “The loyalties of others and their willingness or unwillingness to lend aid to further the Japanese cause were uncertain factors and beyond the discernment of the duly instituted law enforcement officers of this country,”\textsuperscript{1149} stated firmly the U.S. Government’s brief. The Justices of the Supreme Court accepted the claims made by the military and the Federal Government

\textsuperscript{1145} Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
\textsuperscript{1146} Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
\textsuperscript{1147} It is argued by Robert Levy and William Mellor that the Korematsu case was about racial and ethnic profiling, as was claimed by Fred Korematsu. The authors define racial profiling as the following, “the selection by government officials of persons – for investigation or stronger action – based on race, nationality, or ethnicity.” For the exclusion and incarceration of Japanese Americans the only standard was their ethnicity and racial affiliation. Levy and Mellor, “Civil Liberties Versus National Security,” 128.
\textsuperscript{1148} Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
\textsuperscript{1149} Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
without any judicial review. The Court did not scrutinize the allegation that Japanese disloyalty, a military and national defense threat, was based on racial prejudice and affinity to the enemy.

Nonetheless, the brief of the Plaintiff failed to provide any data that would have supported this argument, only adding that no one could dispute that they had more than enough opportunity to commit subversive activities. It is as if the Government cited the lack of evidence for subversive activities as proof that such activities will certainly take place in the future. At the meantime they conveniently neglected to make reference to any of the reports and memorandums which would have contradicted the military’s assertions. The allegation that the threat level could not be ascertained is implausible in light of the numerous documents cited in the present study: *The Japanese in America: The Problem and the Solution* by Lt. Commander Kenneth D. Ringle in the Autumn of 1942, the *Japanese On The West Coast Report* by Curtis B. Munson on November 7, 1941, and the *Report On Hawaiian Islands* also by Curtis B. Munson on December 8, 1941, to mention a few of the reports and memorandums received by the Roosevelt Administration and the authorities. It should also be mentioned that J. Edgar Hoover insisted that the Federal Bureau of Investigation acted swiftly and the potentially dangerous Issei and Nisei were identified and detained. In spite of the apprehensions the Plaintiff contended: “From a military standpoint there was no alternative to the taking of all steps which might reasonably contribute to that security […] the failure to take all reasonably necessary action would have meant the placing in the hands of the enemy of a potent weapon to be used in the defeat of this nation’s war aims, […]”1151 As a matter of fact, the alternative to the collective exclusion and incarceration was the case by case principle employed on the Hawaiian Islands where following the Pearl Harbor air assault individual Japanese persons were detained and hearing boards investigated their cases, whether to incarcerate them or not. Eventually, on an individual basis only approximately 1,500 Japanese Hawaiians were transferred to the Continental United States to be detained in permanent detention camps. This suggestion of racial affinity1152 and loyalty to the enemy directly contradicts the research and findings of the

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1151 Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.

1152 Wayne M. Collins and Clarence E. Rust alleged in their *Brief in Support of the Demurrer* that persons of Japanese descent were denied their privileges of their American citizenship due to their ancestry, their crime being that they were not of “pure-blood” or “Aryan stock”. The treatment of the Japanese community in this sense was
intelligence authorities on the negligible domestic security threat posed by the Japanese Americans due to their Americanization and loyalty to the United States. Persons of Japanese ancestry were not prone to be more disloyal than any other ethnic group or nationality during the war, nor were they in such great numbers as the German and Italian Americans.

On May 22, 1941, the “theater of war”, “theater of operations”, and “combat zone” terms were defined in the “Field Service Regulations – Operations”, Wartime Bulletin PM 100-5, cited in the brief prepared in support of the Plaintiff. The “theater of war” classification was not as restricted as during the Civil War in the Ex parte Milligan 71 U.S. 4 Wall. 2 (1866) case, as argued by the Defendant. The brief referred to the United States vs. McDonald, 265 Fed. 750 case from World War I – a spy arrested and tried in New York –, which stated that due to the advances in technology and military weaponry the term “theater of war” no longer signified solely the area of active combat, but rather included New York Harbor, the United States within the “field of active operations”. In this regard, the technological innovations brought the conflict closer to home and the Theatre of Operations declared by the War Department on the West Coast on December 11, 1941, was intended to safeguard the war effort of the United States, and the “Arsenal of Democracy.” Along the Pacific there were numerous defense installations: army camps, naval installations, ports, airfields, training centers, and arsenals.

Wartime Bulletin PM 100-5 on defining the theater of war and operations, May 22, 1941:

1. The theater of war comprises those areas of land, sea, and air which are, or may become, directly involved in the conduct of war.

compared to the myth of the “Aryan supremacy”, the revival of the tale of the “Nietzscheian superman”, and the legend of the “Nordic master-race”, theories of racial superiority supported by the Nazi regime under Hitler, Goering, and Goebbels. The attorneys concluded that the treatment of Japanese Americans could establish a bad precedent in relation to the treatment of other minorities (the Jewish and African American communities) in post-war America. Rust and Collins, July 20, 1942, Brief of Defendant in Support of Demurrer.

1153 “One of the lessons taught by this war is that the ocean is no longer a barrier for safety or an insurance against America’s being involved in European wars. She cannot now become an asylum of safety for spies”, quoted Frank J. Hennessy and A. J. Zirpoli the United States vs. McDonald, 265 Fed. 750 decision. Even before the Pearl Harbor air raid the Atlantic and the Pacific Ocean were no longer regarded as a natural defense shield. Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.

1154 It was a slogan used by President Franklin D. Roosevelt on December 29, 1940, during one of his fireside chats to encourage support for the Allied war effort. It was also a speech on national security, since it served the national interest of the United States to support the Allies through the production of war material.

1155 Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
2. A theater of operations is an area of the theater of war necessary for military operations and the administration and supply incident to military operations. The War Department designates one or more theaters of operations.

3. A combat zone comprises that part of a theater of operations required for the active operations of the combatant forces.

Under the authority of the Executive Order Lt. Gen. John L. DeWitt issued Proclamation No. 1 – cited in the *Opposition To Demurrer* – on March 2, 1942. The proclamation cited ‘military necessity’, the threat of enemy operations on the Pacific Coast, and declared the requisite to establish Military Areas Nos. 1 (Zone A-1) and 2 (Zones A-2 to A-99, parts of which were included in Area No.1). The Military Commander issued further proclamations, including the controversial Civilian Exclusion Order No. 34, challenged by the Defendant, which excluded all persons of Japanese ancestry (aliens and non-aliens alike) from that portion of Military Area No. 1 by 12 o’clock noon on May 9, 1942. Those who violated the proclamation were legally held accountable under Public Law No. 503 for committing a federal crime, apprehended and placed in internment.

Civilian Exclusion Order No. 34, May 3, 1942:

Any person subject to this order who fails to comply with any of its provisions or published instructions pertaining hereto or who is found in the above area after 12 o’clock noon, P.W.T., of Saturday, May 9, 1942, will be liable to the criminal penalties provided by Public Law No. 503, 77th Congress, approved March 21, 1942, entitled ‘An Act to Provide a Penalty for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing any Act in Military Areas or Zones,’ and alien Japanese will be subject to immediate apprehension and internment.

Frank J. Hennessy and A. J. Zirpoli meticulously introduced the legal grounds for and the facts supporting the forced removal and incarceration by introducing the national defense scope of the case, the war powers of Congress and the Executive. The attorney also referred to the legal

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1156 Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.

1157 Emphasis added by the author. Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
precedent behind the orders and proclamations under which the exclusion entered into force. It was the Plaintiff’s central argument that “[t]he defendant’s demurrer is predicated primarily upon his erroneous conclusion that there is no constitutional authorization for the Executive Order, Proclamations, Military Order and Congressional Act involved.”1158 As follows, according to the Plaintiff President Roosevelt had the power to issue Executive Order No. 9066 and Lt. Gen. DeWitt had the authority to issue Civilian Exclusion Order No. 34, while Congress approved Public Law No. 503. The President and the Congress of the United States had the constitutional power to wage war successfully. In the opinion of Mr. Hennessy and Mr. Zirpoli the Constitution of the United States endowed the Commander-in-Chief of the Armed Forces and Congress with the necessary war powers. Congress has the power to declare war, raise and support Armies, to provide and maintain a Navy, to make rules for the Government and to regulate the land and naval Forces of the United States, as well as to make laws in order to carry out its powers; as declared in Article I, Section 8 of the Constitution.1159 On the other hand, Article II states that executive power is bestowed upon the President and he is the Commander-in-Chief of the Army and Navy of the United States of America. Based on these arguments President Franklin D. Roosevelt and Lt. Gen. John L. DeWitt, the designated Military Commander, had the authority to issue Executive Order No. 9066, Proclamations No. 1 and 2, and Civilian Exclusion Order No. 34. Therefore, the executive actions and subsequent regulations – prescribing military areas and excluding persons of Japanese ancestry – were pursuant to the Executive Order and were ratified by Congress with Public Law No. 503 on March 21, 1942;1160 even if the defense were to argue that the authority of the President was insufficient on its own, or that the regulations were not according to the will of Congress. Public Law No. 503 was thus interpreted as a statute necessary to wage war successfully.

1158 Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
1159 The Constitution of the United States, Article I, Section 8, on the powers of Congress: “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” U.S. Constitution, art. 1, sec. 8, American Bar Association, accessed July 13, 2018, https://www.americanbar.org/content/dam/aba/images/public_education/constitution.pdf.
1160 Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
Frank J. Hennessy and A. J. Zirpoli on the role of Congress in ratifying the designation of military areas and the forced exclusion of any or all persons: 1161

Under these authorities there can be no doubt but that when Congress passed Public Act 503, it ratified and approved Executive Order 9066, thereby authorizing and directing the Secretary of War and the Military Commanders designated by him to take every precaution against espionage and against sabotage to National-defense material, National-defense premises, and National-defense utilities, and to this end to “prescribe Military Areas in such places and of such extent” as the Secretary of War or the appropriate Military Commander might determine, “from which any or all persons may be excluded, and with respect to which the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion.”

Mr. Hennessy and Mr. Zirpoli contended that the war effort is not limited to the battlefield. When the United States is engaged in warfare restrictions are needed, it requires laws that go beyond the peacetime regulations. An example brought up by the Plaintiff is World War I with its cases dealing with the power of the Executive Branch, cases such as Schaefer v. United States, 251 U.S. 466 (1920); Abrams v. United States, 250 U.S. 616 (1919); and Schenck v. United States, 249 U.S. 47 (1919). 1162 The defendants were accused of and convicted for violating the controversial Espionage Act of 1917. They were found guilty of hindering the war effort by restricting the recruitment and enlistment of persons into the United States Army by spreading false reports to support the success of the German forces (Schaefer v. United States) 1163; condemning the war in leaflets and encouraging the general strike of workers in ammunition factories, thereby reducing the quantity of munitions produced (Abrams v. United States) 1164; and by distributing circulars criticizing and discouraging the recruitment and

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1161 Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
1162 Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
enlistment of men drafted and accepted for military service (Schenck v. United States)\textsuperscript{1165}. There were numerous other cases referenced which gave the Executive Branch the power to control the railroads, secure economic priorities, seize the properties of enemy aliens, to ban commercial connections with hostile or enemy nations, and to enlist its citizens in the United States Military in wartime. These cases were cited as evidence of the power of the Executive and Congress to draft and approve legislations promoting the war effort, such as the regulations challenged by Mr. Korematsu. “The above cases amply demonstrate that the Supreme Court of the United States has not construed the war powers of Congress narrowly, but, on the contrary, has upheld all legislation which might reasonably be construed as related directly or indirectly to a war effort,”\textsuperscript{1166} argued the Plaintiff.

The Defendant contested the decentralization of power by the United States Congress to the President and the designated Military Commander. However, Congress was authorized to delegate the authority to promote the regulations challenged in the Korematsu case. This delegation of power was upheld by the Judicial Branch, more specifically, “[t]he Supreme Court has repeatedly held that Congress may not only authorize selected instrumentalities to determine specific facts, but may establish primary standards, devolving upon others the duties to carry out legislative policies, […].”\textsuperscript{1167} The Plaintiff cited the McKinley v. United States, 249 U.S. 397 (1919)\textsuperscript{1168} decision as a legal precedent on the delegation of legislative power. The case dealt with the prohibition of prostitution by Congress, stating that the Secretary of War was authorized to enforce the regulation by proscribing “house[s] of ill fame” within a certain distance of military camps. Apart from raising and supporting an army, Congress also has the authority to protect the well-being of the men of the United States Army. The prohibition of “houses of ill fame” was challenged on the ground of unconstitutional delegation of power. Nonetheless, the Supreme Court sided with the Government in its decision, declaring that Congress can assign regulations to the head of an Executive Department and to appropriately punish those who infringe the restrictions.\textsuperscript{1169} The U.S. Government attorneys placed special emphasis on the fact

\textsuperscript{1166} Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
\textsuperscript{1167} Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
\textsuperscript{1169} Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
that the President is authorized to act as Commander-in-Chief of the United States Armed Forces, this indicates that the President is assigned a greater authority in war situations, than in his standard role as the head of the Government. The opinion of the Plaintiff is supported by Charles Evans Hughes, the 11th Chief Justice of the Supreme Court between 1930 and 1941, who wrote of the need for flexibility in the legislative functions of Congress in wartime. Due to this flexibility there is an increase in administrative authority and legislative action, with war powers assigned to Congress and the President. It follows that from the Plaintiff’s perspective the power of the Executive to prescribe military areas and to exclude any or all persons was ratified by Congress, and the orders and proclamations issued by the Military Commander to carry it into effect were a proper delegation of power. Based on these arguments the Government reasoned that the exclusion of Japanese persons and the military regulations were within the war powers of the Executive and the Legislative Branch, considering that these defense initiatives were in the interest of the war effort.

Former Chief Justice Charles Evans Hughes on the judicial question of delegation of power: 1170
Congress cannot be permitted to abandon to other its proper legislative functions; but in time of war when legislation must be adapted to many situations of the utmost complexity, which must be dealt with effectively and promptly, there is special need for flexibility and for every resource of practicality; and, of course, whether the limits of permissible delegation are in any case over-stepped always remains a judicial question. We thus not only find these great war powers conferred upon the Congress and the President, respectively, but also a vast increase of administrative authority through legislative action springing from the necessities of war.

In response to Clarence E. Rust’s reasoning the Brief1171 stated that the war power of Congress is supreme to the rights and privileges established in the Constitution and the Bill of

1170 Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer. The “practicality” – highlighted in the quotation by the author –, that Chief Justice Charles Evans Hughes referred to is a double edged sword. The opposition to the collective removal and detention of the Hawaiian Japanese was practical from an economic and labor perspective. On the other hand, the mass exclusion and incarceration of the West Coast Japanese was practical from a national defense and military perspective, not neglecting the political and economic interests of the anti-Japanese organizations.

1171 Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
Rights. The Constitution was characterized as “a unit”, meaning that no part could be interpreted in a way to restrict or destroy the right granted by another. The *Billings v. United States*, 232 U.S. 261 (1914) decision and Chief Justice Charles Evans Hughes were quoted to emphasize this justification. From one perspective the *Billings* decision stated that “[…] the Constitution is not self-destructive. In other words *** the power which it confers on the one hand, it does not immediately take away on the other.”\(^{1172}\) Chief Justice Hughes elaborated on the correlation between the war powers and the Fifth (due process) and Sixth Amendment (trial by jury and the right to counsel), which in his opinion are not universally applicable in wartime, as under peaceful circumstances. According to his analysis the power of Congress to wage war, and the legislative power needed to carry out its duty, are not impaired by the other articles or amendments of the Constitution. “These may all be construed so as to avoid making the constitution [sic] self-destructive, so as to preserve the rights of the citizen from unwarrantable attack, while assuring beyond all hazard the common defence [sic] and the perpetuity of our liberties,”\(^{1173}\) the Plaintiff quoted Chief Justice Hughes. In this sense the war powers are not affected by the Fifth and Sixth Amendment. The attorneys for the Plaintiff concluded that the legislations dealing with the war powers – the authority to defend the United States successfully – has precedence over civil liberties, the rights and privileges guaranteed by the Constitution.\(^{1174}\)

In the Government’s opinion the war powers of the Constitution (Article I, Section 8.) are “paramount” in time of war, while civil liberty (the Bill of Rights) is exercised under “ordinary circumstance”, peacetime. Such interpretation of the Constitution raises a number of problems from the perspective of all American citizens, irrespective of ancestry or nationality. In the case of the Japanese Americans this narrowed interpretation of the Constitution meant that their rights and liberties as citizens were limited according to the scope of the wartime legislations in the name of national defense. Interestingly, it also meant that it safeguarded those same rights and liberties, which were denied from them in wartime: “The protection of our country and its institutions is paramount, for rights and liberties would, of course, mean nothing if the country were to fall.”\(^{1175}\)

\(^{1172}\) Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
\(^{1173}\) Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
\(^{1174}\) Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
\(^{1175}\) Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
A further point of controversy is the depiction of the treatment of Fred Korematsu as involuntary servitude (Amendment XIII). The Government countered with an unexpected comparison for the treatment of persons of Japanese descent, the Selective Service Acts\textsuperscript{1176}. The Acts were brought up to indicate that it, just like the orders and proclamations, pertained to a certain class of individuals. The conscription applied to men who were born within a given timeframe and are physically fit for service, the criteria for the class of citizens suitable for the United States Military. The classification of citizens was not viewed as discriminatory by the Plaintiff, even though the Defendant reasoned that the scope of the orders and the proclamations were broadly defined, and should have included other classes of citizens and not just persons of Japanese ancestry.\textsuperscript{1177} The equal protection of the law, as interpreted by the Government, does not entail that the classification would necessarily be applied to all classes of persons. The authorities are not obligated to extend the regulations in all possible cases.\textsuperscript{1178}

Involuntary servitude was a proper legislative exercise of the war powers of Congress and the Executive in wartime, according to the judgment of the Government. “The right of Congress to compel the citizens to assist in the preservation of the nation takes precedence over the rights of property and liberty which exist in more fortunate times\textsuperscript{1179}, reasoned Mr. Hennessy and Mr. Zirpoli. This train of thought implies that the forced removal and incarceration was a type of sacrifice that the Japanese community had to endure at the altar of national defense. Furthermore, the war powers undermine the protections offered by the Constitution; grievances extensively listed in the Demurrer to Information by Clarence E. Rust. The right to free speech (Amendment I), the right to due process (Amendment V), and the right to equal protection of the law (Amendment XIV) are all subject to the war powers of Congress and the Executive in wartime; the Plaintiff referred to cases addressing the specific guarantees listed.

\textsuperscript{1176} The Selective Service Acts allow the Federal Government to conscript all male citizens of a certain age into the United States Armed Forces for the defense of the nation.
\textsuperscript{1177} Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
\textsuperscript{1178} Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
\textsuperscript{1179} Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
The Plaintiff’s attorneys on the role of the Bill of Rights in times of war.\textsuperscript{1180}

It therefore follows that the Constitutional guarantees under the Bill of Rights which might be applicable in time of peace must bow to the paramount necessity of preserving the nation in time of war.

7.1.3. The Debate Over Civil Liberties and the Separation of Power

In response to the Brief Of Plaintiff In Opposition To Demurrer a Supplement to Demurrer\textsuperscript{1181} was drawn up Clarence E. Rust to complete the argumentation of the defense, the document was filed with the court on July 20, 1942. Additional objections to the Government’s Information were raised by Korematsu’s representatives. The legal defense argued that Civilian Exclusion Order No. 34 and Public Law No. 503 were unconstitutional and invalid from the perspective of Judicial Power. Considering the Civilian Exclusion Order Mr. Rust stated that it was “[…] an unlawful usurpation of Judicial Power forbidden by the provisions of Section 1 of Article III of the U.S. Constitution.”\textsuperscript{1182} On the same legal grounds, the defense argued that Public Law No. 503 was unconstitutional as it would validate Civilian Exclusion Order No. 34, meaning that it would unlawfully entrust Judicial Power to the Military Authorities. This transfer of legal power was in violation of the U.S. Constitution.

Apart from the legal statements by the Defendant and the Plaintiff we can mention the petitions by the A.C.L.U. and the State of California, respectively against or for the Japanese exclusion case. The State of California was interested in the Korematsu case and showed intention to file an amicus curiae, friend of the court brief. An Application for Permission to File Brief as Amicus Curiae\textsuperscript{1183} was presented to the District Court by Earl Warren, Attorney General of the State of California, and Herbert E. Wenig, the Deputy Attorney General, on June 25, 1942. The application for the brief was authorized by District Judge Martin I. Welsh and an affidavit was prepared the same day in order to support the Attorney General’s petition for the friend of

\textsuperscript{1180} Hennessy and Zirpoli, July 8, 1942, Brief Of Plaintiff In Opposition To Demurrer.
\textsuperscript{1181} Clarence E. Rust, Supplement to Demurrer to Information, July 20, 1942, Box 383, Fred T. Korematsu Folder 1 (2 of 2, Docket Nos 10-17), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco (hereafter cited as Rust, July 20, 1942, Supplement to Demurrer to Information).
\textsuperscript{1182} Rust, July 20, 1942, Supplement to Demurrer to Information.
\textsuperscript{1183} Earl Warren and Herbert E. Wenig, Application for Permission to File Brief as Amicus Curiae, June 25, 1942, Box 383, Fred T. Korematsu Folder 1 (1 of 2, Docket Nos 1-9), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco.
the court brief. The affidavit\textsuperscript{\textcopyright 1184} was drawn up by Herbert E. Wenig, on behalf of Earl Warren, in order to represent California’s standpoint in clarifying the military order. The legal statement\textsuperscript{\textcopyright 1185} attested that Earl Warren was the legal advisor of various state agencies, boards, and commissions, and the principal law-enforcement official of California. The declaration implied that neither the Attorney General of California nor the State of California were to be impartial in the issue up for debate. The State of California was concerned over the validity of the civilian exclusion order issued by Lt. Gen. John L. DeWitt, the authority and right of the U.S. Military to issue restrictive orders applying to civilians. The case provided an opportunity for the court to define the right of the California state law-enforcement authorities to collaborate in the implementation of the instructions. Mr. Wenig reasoned in his statement that “[t]his matter of the right of said Commanding General to validly exercise such authority is of the utmost concern to local and state authorities inasmuch as they may be required to do many of the things otherwise covered by orders of said Commanding General.”\textsuperscript{\textcopyright 1186}

The Northern California Branch of the American Civil Liberties Union presented a formal appeal as well with the Hon. Martin I. Welsh to grant an application to file an amicus curiae brief with the court in the \textit{Korematsu} case. Director Ernest Besig informed Judge Welsh in a letter\textsuperscript{\textcopyright 1187} on July 16, 1942, of the A.C.L.U.’s intent to file a brief and enclosed an application and requested that he consent to it. The \textit{Application for Permission to File Brief as Amicus Curiae}\textsuperscript{\textcopyright 1188} was dated July 15, 1942, and was signed by the Director; the petition was granted by Judge Welsh on July 17, 1942. The A.C.L.U. attached an affidavit\textsuperscript{\textcopyright 1189} in support of the written

\begin{itemize}
\item \textsuperscript{\textcopyright 1184} Herbert E. Wenig, Affidavit in Support of Application for Permission to File Brief as Amicus Curiae, June 25, 1942, Box 383, Fred T. Korematsu Folder 1 (1 of 2, Docket Nos 1-9), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco (hereafter cited as Wenig, June 25, 1942, Affidavit in Support of Application for Permission to File Brief as Amicus Curiae).
\item \textsuperscript{\textcopyright 1185} Wenig, June 25, 1942, Affidavit in Support of Application for Permission to File Brief as Amicus Curiae.
\item \textsuperscript{\textcopyright 1186} Ernest Besig to Hon. Martin I. Welsh, July 16, 1942, Box 383, Fred T. Korematsu Folder 1 (1 of 2, Docket Nos 1-9), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco.
\item \textsuperscript{\textcopyright 1187} Ernest Besig, Application for Permission to File Brief as Amicus Curiae, July 15, 1942, Box 383, Fred T. Korematsu Folder 1 (2 of 2, Docket Nos 10-17), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco.
\item \textsuperscript{\textcopyright 1188} Ernest Besig, Affidavit in Support of Application for Permission to File Brief as Amicus Curiae, July 15, 1942, Box 383, Fred T. Korematsu Folder 1 (2 of 2, Docket Nos 10-17), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco (hereafter cited as Besig, July 15, 1942, Affidavit in Support of Application for Permission to File Brief as Amicus Curiae).
\end{itemize}
formal request. The national institution was typified as a “[..] non-profit, non-partisan, non-sectarian organization, whose purpose is to protect and defend fundamental American civil liberties, particularly as guaranteed in the Bill of Rights, wherever, whenever and by whomsoever attacked.”. As it has been introduced, the issue of civil liberty in wartime was quite contested, both parties placing immense emphasis on the rights and powers established by the Constitution. However, the Federal Government went as far as to assert that the war power is paramount, and the Bill of Rights must bow before the war effort of the nation.

The A.C.L.U. was interested in the legal action due to its implications upon persons of Japanese descent in general, not just the defendant Fred Korematsu, and how it could define their prerogatives, rights and liberties as American citizens. Wayne M. Collins filed the amicus curiae brief1191 with the court together with Clarence E. Rust on July 20, 1942. The Brief of Defendant in Support of Demurrer discussed the nature of the case, focusing primarily on the legal uncertainties concerning Public Law No. 503 by providing an in-depth analysis. The Act had previously been challenged by the Defendant in the Demurrer to Information as void and unconstitutional. The brief by Mr. Collins and Mr. Rust argued that Public Law No. 503 was not only vague, but also indefinite and meaningless, and could serve as a dangerous precedent. “The rule has long been established that where the terms of an Act are so vague as to convey no definite meaning to those whose duty it is to execute it, ministerially or judicially, it is inoperative,”1192 stated the brief of the Defendant. The Act failed to define the military area or zone, its purpose, and who was authorized to prescribe these areas and impose detailed restrictions on the conduct of the persons living within its confines.1193 The number, location, and geographical limits of the military areas were not specified by the authorities, nor the restrictions – its character, duration, and limitations – that could be imposed on the activities of the persons living within the zone. Public Law No. 503 also neglected to provide for proper notifications to the public on the military areas and restrictions, and it did not clarify how the people affected would be informed. The attorneys of the Defendant aptly characterized this dereliction as leaving the matter to “the realm of vagary”. This level of neglect denied the due

1190 Besig, July 15, 1942, Affidavit in Support of Application for Permission to File Brief as Amicus Curiae.
The Brief of Defendant on Public Law No. 503 and the responsibility of Congress:1196

Congress has conjured a grotesque statute and left it dangling in mid-air and resembling nothing either of heaven or earth. Its deficiencies are not supplied by the executive orders in any particular and therefore it lacks certainty and, in consequence, lacks validity.

Public Law No. 503 was further challenged as it could not ratify an order, which was issued subsequently; Civilian Exclusion Order No. 34 (May 3, 1942) was issued forty-three days after the Act went into force (March 21, 1942). Congress has the authority to ratify prior actions of executive and administrative officials, the governing principle being that “[…] what Congress ‘could have authorized, it can ratify if it can authorize at the time of ratification.’”1197 However, in the present case the statute was used to ratify beforehand the actions to be taken against persons of Japanese descent by the Executive. The defense insisted that Congress does not have the power to ratify actions that violate the constitutional rights— for example the Fifth and Sixth Amendments— of American citizens. Nevertheless, the Civilian Exclusion Order did not establish hearings and judicial trials for those persons of Japanese ancestry who would be forcefully removed from their residence on the Pacific Coast, and it deprived them of their due process of law and public trial by jury rights. This treatment of the Japanese residents was described as a means of arbitrary discrimination since it applied “with an evil eye and an unequal hand”1198 to American citizens of Japanese parentage, contrary to the Fifth Amendment1199 of the

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1199 It is argued in the Brief of the Defendant that the Fifth Amendment includes the equal protection of the laws within the meaning of the due process clause, citing the Truax v. Corrigan, 257 U.S. 312 (1921) decision. The Supreme Court decision stated: “The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society.” Rust and
Constitution. It would seem that the war effort and the national defense of the United States suspended the Bill of Rights, however the Defendant argued that a “state of war” does not suspend the privileges of citizenship, and as a matter of fact can only be suspended in a “theatre of war” where martial law applies. This is a conflicting view compared to the Plaintiff’s arguments, who reasoned in the *Brief Of Plaintiff In Opposition To Demurrer* that the war powers of the Government are paramount in wartime to the constitutional guarantees under the Bill of Rights.

A point of contention in the brief is the issue of the Checks and Balances, the separation of power among the three separate branches of the United States Government. The Checks and Balances system is in danger if Congress abdicates its powers by incorporating orders and proclamations of the Executive in its own Acts. The defense contended that it would be an “unprecedented” and “dangerous practice” for Congress to include in its statutes restrictions – singling out the activities of its own civilians –, which would be imposed by executive orders issued at a later date. Through such action Congress could pre-validate the rules and regulations of the United States Military, thereby providing “blanket authorization to the military class to establish a dictatorship” and allowing it to manage Congress and the Judiciary, becoming its instrument. It was construed as an abdication by Congress of its duty and constitutional power, relinquishing it to the Executive, which the American public had not authorized.

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1200 It should be noted that martial law was declared on the Hawaiian Islands, despite of which hearings were held and potentially dangerous persons of Japanese ancestry were apprehended and incarcerated on an individual basis; see *The ‘American Way’* Chapter. Rust and Collins, July 20, 1942, Brief of Defendant in Support of Demurrer.


1202 The attorneys for the Defendant asked a simple, but poignant question in the brief concerning the rule of law and governing: “Are we so unfit to govern ourselves that we must let the military do our thinking and legislating for us and abjectly submit to their dictation and permit them to substitute an unauthorized military rule over civilians for the civil rule guaranteed by the Constitution and laws of Congress?” The argument is more serious considering that Public Law No. 503 was drafted by the War Department at the request of the Commanding General to ensure the legal enforcement of the military regulations. Rust and Collins, July 20, 1942, Brief of Defendant in Support of Demurrer.
Wayne M. Collins and Clarence E. Rust on the separation of powers: No case in American law seems ever to have decided that Congress may incorporate orders or proclamations of the President or opinions of the Judiciary. If this could be done republican government would cease – there would be no reason for the existence of separate divisions of government – one, the executive branch, would suffice and a dictatorship over the people from above would be a reality.

7.2. The Korematsu Verdict and the Appeal Procedure

After almost three months – following the Case Information filed by the U.S. Attorney for the Plaintiff on June 12 – the District Court of San Francisco heard Korematsu’s criminal case and delivered its Judgment on September 8, 1942. Judge Adolphus St. Sure presided over the trial on behalf of Martin I. Welsh. Fred Korematsu was treated with respect by District Judge St. Sure, a significant difference according to Irons, when compared with the legal challenges deliberated by the courts in Seattle and Portland. The court convened to hear the plea of the Defendant and the Demurrer to Information with the Honorable A. F. St. Sure. Fred T. Korematsu was present, but remained in the custody of the Military Authorities. “As a citizen of the United States I am ready, willing, and able to bear arms for this country,” Korematsu informed the court. He had previously applied for military service, before the attack on Pearl Harbor, but was refused due to medical reasons. The Defendant’s statement left a positive impression on Judge St. Sure, but did not sway the case in his favor.

The Order and Judgment legal document offers a glimpse into the court proceedings of that decisive day. Mr. Korematsu plead “Not Guilty” to the charges filed against him in the Information by the United States and thereafter he and his lawyers waived a trial by jury. The trial began with A. J. Zirpoli’s, Assistant United States Attorney, opening statement for and on behalf of the Plaintiff. Evidence was presented to the court against the Defendant and exhibits were also filed in support of the Government’s case. Following the prosecution’s arguments

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1207 Order and Judgment of September 8, 1942.
Wayne M. Collins proposed that the court dismiss the charges and find the defendant “Not Guilty”, the motion was denied. Mr. Korematsu testified on his behalf after which the defense rested. Mr. Collins made another last attempt to have the Information dismissed and the court deliver a verdict of “Not Guilty”, but the motion was again denied. After the arguments were heard the District Court delivered its guilty verdict in Criminal Case No. 27635 on the same day. Fred T. Korematsu was sentenced to five years probation and the bond was ordered exonerated since the Defendant appeared before the court.

The District Court of San Francisco ruled as the following.\footnote{1208}{See Appendices, Primary Documents, Document 12 for the complete text of the Order and Judgment of the United States District Court in the Korematsu case. Order and Judgment of September 8, 1942.}

\begin{quote}
IT IS BY THE COURT, ORDERED that the defendant Fred Toyosaburo Korematsu be, and he is hereby adjudged GUILTY of the offense charged in the Information.
\end{quote}

Judge St. Sure was informed by Korematsu’s legal counsel that he intended to appeal the verdict and therefore bail was set at $2,500, implying that legally speaking the Defendant was free.\footnote{1209}{Irons, “A Jap’s a Jap,” 348-364, 355.} Nonetheless, he was immediately taken into custody by military police after he left the courthouse. Fred Toyosaburo Korematsu was handed over to the United States Wartime Civil Control Administration (W.C.C.A.). He was not detained in a federal or state prison, but rather was incarcerated at the Tanforan Assembly Center – a horse racetrack –, in San Bruno, California. The Tanforan Assembly Center\footnote{1210}{See Appendices, Tables, Table 10 for the Temporary Detention Camps.} was one of the fifteen temporary detention camps, so called ‘assembly centers’, which operated between April 28 and October 13, 1942, and held approximately 8,033 detainees. Korematsu was reunited with his family at the Tanforan Racetrack, who were living in horse stalls that were converted into family units. The appeal by Fred Korematsu’s legal defense was filed on September 10, 1942. The \textit{Notice of Appeal}\footnote{1211}{Wayne M. Collins, Notice of Appeal, September 10, 1942, Box 383, Fred T. Korematsu Folder 2 (1 of 7, Docket Nos 18-23, 26-36), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco (hereafter cited as Collins, September 10, 1942, Notice of Appeal).} was prepared by Wayne M. Collins through which the Appellant requested from the United States Circuit Court of Appeals for the Ninth Circuit to have the District Court’s judgment reversed.
The document introduced the misdemeanor offenses committed by Fred Korematsu and contained the judgment of the court. The grounds for the appeal\textsuperscript{1212} were listed, centering on the mistakes committed by the District Court. According to Mr. Collins the court erred in rejecting the defense’s *Demurrer to Information, Supplement to Demurrer to Information*, in denying his motion to dismiss the *Information*, and to find the defendant not guilty. Additionally, there was insufficient evidence to corroborate the court’s decision that the defendant was guilty of the charges brought up against him by the United States Government. The representatives of the Plaintiff, Mr. Frank J. Hennessy and Mr. A. J. Zirpoli’s, were notified the same day and received original copies of the *Notice of Appeal*. The Hon. A. F. St. Sure was informed of the appeal the next day by Walter B. Maling, Deputy Clerk.\textsuperscript{1213} The attorneys for the Plaintiff and Defendant were ordered to appear before Judge Sure on September 16, 1942, for instructions on the appeal procedure. On the designated day the instruction on the appeal\textsuperscript{1214} were delivered by the District Judge to Wayne M. Collins Esq. and A. J. Zirpoli Esq. The representative for the Defendant (Appellant) and the Plaintiff (Appellee) were respectively ordered to prepare the “Bill of Exceptions”\textsuperscript{1215} – a legal statement by a party in objection to the court’s ruling, which is signed and sealed by the trial judge, and is included in the records for the appellate court – and the amendments. The Defendant had thirty days to prepare and submit the Bill of Exceptions, while after that the Plaintiff had ten days to file its amendments. Afterwards the parties had an additional ten days to settle on the Bill of Exceptions. Subsequently to launching the appeal process Fred T. Korematsu was excluded from the State of California by military authorities.\textsuperscript{1216} After a lengthy legal process, more than a year since the charges and appeal were filed, the

\textsuperscript{1212} Collins, September 10, 1942, Notice of Appeal.


\textsuperscript{1214} Instructions re appeal, September 16, 1942, Box 383, Fred T. Korematsu Folder 2 (1 of 7, Docket Nos 18-23, 26-36), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco.


Circuit Court of Appeals delivered its opinion in the *Korematsu* case, No. 27635-W, and affirmed the District Court’s judgment on December 2, 1943.\(^{1217}\)

### 7.3. The Supreme Court’s Decision and the “Loaded Weapon”

The *Korematsu v. United States*, 323 U.S. 214\(^{1218}\) case eventually reached the highest court of the United States and was argued by the Supreme Court between October 11 and 12, with the 6 to 3 decision ruling handed down by the Court on December 18, 1944. Just as in the proceedings of the lower courts one of the central issues was racial prejudice and stereotypes cited by Government representatives in order to persuade the Justices to judge against the Appellant. It was a turning point in their defense of the incarceration that Japanese ancestry was no longer a military threat, but was rather a source of hate crimes that targeted Japanese persons who were scapegoats for the devastation suffered at Pearl Harbor and for the ongoing war with the Empire of Japan. Solicitor General Charles Fahy contended that ‘racial hostility’ justified Fred Korematsu’s incarceration. The continued detention of Japanese Americans was in their own personal interest, “[…] mass internment was necessary to protect Japanese Americans against racial hostility, rather than to protect military installations against their hostile reaction to discrimination,”\(^{1219}\) as Irons outlines the Government lawyers’ brief. Irons described this turn of events as an “about-face” in the position of government and military officials,\(^{1220}\) which reflected another turn of events that took place on the Pacific Front, the military advances made by the United States. By 1944 the Japanese forces presented no real threat to the West Coast which made the military necessity argument unfounded. Nonetheless, Justice Black did not share this opinion, he rejected the notion that there was no threat of Japanese invasion on the West Coast. The Supreme Court had accepted the military and national defense justification of the exclusion program without any definitive judicial scrutiny. Korematsu had challenged that by May of 1942, when Exclusion Order No. 34 came into effect, there was no Japanese menace, but Justice

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\(^{1219}\) Irons, “A Jap’s a Jap,” 359.

\(^{1220}\) Irons, “A Jap’s a Jap,” 359.
Black was of a different judgment due to the supposed “disloyal members” of the Japanese population, the ‘Fifth Column’. 1221

In the Korematsu decision Justice Black claims that the Supreme Court applied the doctrine of rigid scrutiny1222 in its deliberation, because of the legal restrictions that affected a specific racial minority, although not all restrictions are unconstitutional in the event of military necessity. Nevertheless, it is clearly asserted that “racial antagonism” cannot justify legal restrictions, only public or military necessity can. Even though the Court disapproved of racial antagonism the opinion cites “Japanese descent” and “Japanese ancestry” all together twelve times, “Japanese origin” twice, “Japanese invasion” and “Japanese attack” once, while “disloyal[ty]” is mentioned four times. It is essential to refer to the wording of the opinion, because it highlights the emphasis that military and government officials, and the Justices of the Court, placed on Japanese ancestry and racial affinity. The racial affiliation of Japanese Americans to the Empire of Japan was a reoccurring argument.

Justice Hugo L. Black on the tests of rigid scrutiny:1223

It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.

Justice Black’s opinion1224 starts off by introducing Fred T. Korematsu as an American citizen of Japanese descent and the charges against him, it is however stated that the Petitioner’s loyalty to the United States was not questioned in the case. The introduction of the Petitioner is followed up by the ascertainment that Exclusion Order No. 34 was authorized by Executive

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1222 Rigid scrutiny is the means by which the Supreme Court would invalidate legislations unless they serve the Federal Government’s interests and are “narrowly tailored”. However, the exclusion program was “overinclusive” – the West Coast Japanese were collectively ‘evacuated’ – and “underinclusive” – German and Italian Americans were treated on an individual basis – at the same time. Levy and Mellor, “Civil Liberties Versus National Security,” 135.
1224 In the opinion of William H. Rehnquist Justice Black’s opinion used the same train of thought as Chief Justice Harlan F. Stone in the Hirabayashi decision. Rehnquist, “Postwar Criticism,” 205.
Order No. 9066, and his actions amounted to a federal crime under Public Law No. 503. Justice Black referred to the national defense significance of Executive Order No. 9066, quoting from the order, with regards to the threat of subversive activity, which would have endangered the war effort.

Justice Black made references to the Hirabayashi case in regards to the issue of the curfew order and the disloyalty of the Japanese Americans. According to Justice Black the Hirabayashi and the Korematsu case were defined by the Act of March 21, 1942, and the same military orders that were intended to counter the danger of subversive activities, Japanese espionage and sabotage. Initially the curfew order was issued to prevent the danger of espionage and sabotage, and it was within the bounds of the war powers of Congress. The Supreme Court in its Hirabayashi decision had previously upheld the curfew order, it was “an exercise of the power of the government to take steps necessary to prevent espionage and sabotage in an area threatened by Japanese attack.” As time went on it seems that the curfew order was no longer a sufficient means to respond to the ‘Japanese threat’ and the exclusion orders were implemented as a security measure. The exclusion of persons of Japanese ancestry, just like the curfew order, was not beyond the powers of the Congress or the Executive, in the opinion of the Supreme Court. The Justices acknowledged the arguments made by the military officials that the curfew order was an ineffective means to protect the West Coast and the exclusion of the Japanese community was inevitable. The exclusion of Japanese Americans from the military areas was carried out under the authority of Congress. The curfew and exclusion orders were ‘hardships of war’, as stated by Justice Black, and American citizens had to accept this hardship as part of their civic responsibilities. The Associate Justice neglected to highlight that in this case an ethnic minority, based on race, was required to carry a greater share of the burden than the rest of the nation, for example German and Italian Americans.

On the question of racial prejudice and discrimination, ‘racial hostility’, Justice Black firmly claimed that it had no impact on the Korematsu case, the Defendant was detained because

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1228 "But hardships are part of war, and war is an aggregation of hardships. All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its responsibilities as well as its privileges, and in time of war the burden is always heavier," claimed Justice Hugo L. Black. Korematsu v. United States, 323 U.S. 214 (1944).
the United States was at war with the Empire of Japan. Even though the Korematsu opinion contradicted the claim of ‘racial hostility’ towards Japanese Americans, race did matter. The author of the opinion disclosed years later that racial stereotypes did influence the decision, even his own opinion. “‘People were rightly fearful of the Japanese,’ [...] ‘they all look alike to a person not a Jap,’” he told a reporter during an interview. Even if the Court maintained that the Petitioner was not the victim of racial animosity the main argument in favor of the incarceration was the national security threat presented by the “disloyal members” of the Japanese community. This suspected disloyalty was based on race, the racial association with Japan, although the actual number and strength of the disloyal elements was not specified. This unknown number of subversives jeopardized the national defense of the United States to such an extent that at a time of crisis government and military officials had no other option but to exclude and detain them, according to Justice Black’s argument. It is evident that the Supreme Court was reluctant to call into question the judgment of the military authorities at a time of war on such issues as the collective treatment of Japanese people and the inability to isolate the small percentage of dangerous individuals from the majority of the community, who were loyal. “We cannot say that the war-making branches of the Government did not have ground for believing that in a critical hour such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety, which demanded that prompt and adequate measures be taken to guard against it,” stipulated the majority opinion. However, the Justices had to admit that the majority of the Japanese community was loyal to America. The only data cited by Justice Black is the number of individuals who voted No-No to Questions 27. and 28. of the ‘Loyalty Questionnaire’ – the Statement Of United States Citizen Of Japanese Ancestry –, D.S.S. Form 304A, in 1943; the topic was also discussed in The ‘Exemplary Citizens’ Chapter. As stated in the Korematsu opinion roughly 5,000 Japanese Americans refused to swear unqualified allegiance to the United States and forswear their allegiance to the Japanese Emperor, and there were several thousand Japanese who applied for repatriation to Japan. Such statistical data, although a significant figure, is miniscule when considering that on a

1230 According to the military authorities the disloyal elements could not be immediately segregated from the loyal citizens of Japanese ancestry. This argument, the collective nature of the military orders, was accepted by the Supreme Court by ruling against Gordon Hirabayashi in the curfew order case, and against Fred Korematsu’s challenge of the exclusion order. Korematsu v. United States, 323 U.S. 214 (1944).
national level approximately 120,000 persons of Japanese lineage were incarcerated on the Continental United States.

Justice Hugo L. Black issued the Supreme Court’s opinion in the Korematsu case on behalf of six of his fellow Justices. Justice Felix Frankfurter concurred with the majority opinion, noting that the military orders enforced by Congress were clear and the actions taken by the Federal Government were valid under the war powers of the Constitution during a time of war, even if they would be considered lawless in time of peace. “Therefore, the validity of action under the war power must be judged wholly in the context of war. That action is not to be stigmatized as lawless because like action in times of peace would be lawless,” argued Justice Frankfurter. His opinion reinforced the arguments made by Charley Fahy. The Supreme Court in its divided opinion affirmed the constitutionality of the exclusion and incarceration of persons of Japanese ancestry. Nevertheless, there were three dissenting Justices who wrote poignant opinions and criticized not just the Supreme Court, but also the Federal Government. Justices Owen J. Roberts, Frank Murphy, and Robert H. Jackson wrote opinions that sharply criticized military and government officials. The Justices listed had previously voted to uphold the curfew order in the Hirabayashi case. Taking a closer look at the dissenting opinions allows us to interpret the legal and constitutional split amongst Pres. Franklin D. Roosevelt’s New Deal Justices. Justice Roberts, Murphy, and Jackson drew a line in the sand, arguing that it should not be crossed even in wartime, for it would be one of the greatest mistakes in the history of America.

Justice Owen J. Roberts characterized the incarceration process in his dissent as a “cleverly defined trap” to have Fred Korematsu detained, but generally all Japanese persons, in an incarceration camp; a counter argument to Justice Black’s opinion and Justice Frankfurter’s concurrence. In his dissent Justice Roberts provides a detailed outline of the sequence of events from President Roosevelt issuing Executive Order No. 9066 to Lt. General DeWitt’s public proclamations and Civilian Exclusion Order No. 34. Furthermore, he highlight the contradictory nature of the military orders; Justice Jackson shared this opinion. Justice Black addressed the contradicting orders issued by the Military Commander, that is Public Proclamation No. 4 of

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March 27, 1942, and Civilian Exclusion Order No. 34 dated May 3, 1942; the military orders are investigated in *The Legislative Branch* Chapter. He found no contradiction and reasoned that the only order that applied to the Petitioner on the day of his arrest, May 30, 1942, was Civilian Exclusion Order No. 34. The issue at hand is not as clear-cut as Justice Black portrays it to be.

Public Proclamation No. 4 prohibited persons of Japanese ancestry to leave the military zones of Military Area No. 1 after March 29. On the contrary, the Civilian Exclusion Order required that all Japanese persons leave the designated military zones before 12 o’clock, noon, May 9, 1942. This created a state of perplexity, leaving Fred Korematsu no alternative than to violate one or the other military order, thereby committing a federal crime, resulting in his forced removal from the West Coast. According to Public Law No. 503, had Korematsu decided to leave Military Area No. 1 he would have committed a misdemeanor based on the limitations of Proclamation No. 4. However, once he decided to remain within the designated military zone he was in clear violation of Exclusion Order No. 34, a misdemeanor if found guilty following federal prosecution. The contradictory orders were ratified by Public Law No. 503 and were a means to remove all persons of Japanese parentage from the West Coast into temporary detention camps within Military Area No. 1 until their relocation to incarceration centers. In Justice Roberts’ opinion the Defendant found himself in a predicament that denied his right to due process of law. The contradictory orders were a means to imprison Japanese Americans, citizens of Japanese ancestry were forced to surrender their liberty and were required to petition for their freedom after they had been imprisoned in temporary or permanent detention camps.

Unlike Justice Roberts the majority of the Supreme Court was not of the opinion that this was a “cleverly defined trap” to have persons of Japanese descent confined in incarceration centers for the duration of the war. “Had petitioner here left the prohibited area and gone to an assembly center we cannot say either as a matter of fact or law, that his presence in that center would have resulted in his detention in a relocation center,” contended Justice Black. The Court’s judgment is countered by Justice Roberts who refers to Fred Korematsu as a “loyal citizen of the nation”, which the Court did not question, and a possible reference to the *Ex parte*

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1236 *Korematsu v. United States*, 323 U.S. 214 (1944). Justice Hugo L. Black’s conclusion is highly questionable considering that Mitsuye Endo, a loyal American citizen according to military and government officials, was incarcerated in Topaz Incarceration Camp and was only able to leave in 1945 after the Supreme Court ruled in favor of her petition on December 18, 1944.
Endo decision. He argues that an American citizen should not be punished for not complying with a military order that would lead to his inevitable detention based on his descent, without being afforded the right to due process. In the words of the Associate Justice, “[...] it is the case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based on his ancestry, and solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States.”

For Justice Roberts the treatment of Fred Korematsu was a clear infringement of his Constitutional rights.

Justice Frank Murphy dissented in the Korematsu decision against what he deemed to be “this legalization of racism”, as opposed to his previous concurrence in the Hirabayashi case. The exclusion and incarceration of American citizens of Japanese descent crossed the threshold of constitutional power. “This exclusion of ‘all persons of Japanese ancestry, both alien and non-alien,’ from the Pacific Coast area on a plea of military necessity in the absence of martial law ought not to be approved. Such exclusion goes over ‘the very brink of constitutional power’ and falls into the ugly abyss of racism,” wrote Justice Murphy. In his opinion the military necessity argument of the U.S. Government had no “substance nor support”, reasoning that judicial review should be exercised to determine the rationality of the military claims and to establish the limits of the military measures. The exclusion was based on “racial guilt”, citing the language of Lt. General DeWitt’s report to support this claim. The Final Report referred to persons of Japanese ancestry as “subversive” and “an enemy race” despite the lack of substantial evidence to prove the disloyalty of the West Coast Japanese. The dissent clearly contradicted the majority Court’s opinion that Korematsu was not the victim of “racial hostility”. Justice Murphy went as far as stating in footnote 2 that Lt. General DeWitt held prejudice towards Japanese

1239 Justice Frank Murphy acknowledged that due to the military and naval situation during the Spring of 1942 there was a heightened state of fear of a possible invasion on the West Coast, and potential subversive activities. The Military Commander had a legitimate reason to implement the military orders to counter the national security threat. Nonetheless, the collective exclusion of persons of Japanese ancestry was unreasonable and deprived American citizens of their due process, and their “constitutional rights to live and work where they will, to establish a home where they choose and to move about freely.” Individual disloyalty does not mean the collective guilt of the Japanese population. According to the American legal system, as stated by Justice Murphy, individual guilt can be the only motive for the restriction of personal rights. Korematsu v. United States, 323 U.S. 214 (1944).
1241 Justice Murphy cites Lt. General DeWitt’s testimony before the House Naval Affairs Committee in San Francisco on April 13, 1943. “I don’t want any of them (persons of Japanese ancestry) 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
people. The judgment of the Commanding General was based on debatable racial and sociological grounds with inconclusive evidence to support the conclusions of the military officials. It was brought up in the dissent that the evidence of Japanese disloyalty was not supported by the F.B.I., nor by the military and naval authorities. There was no evidence that the intelligence authorities did not have the Japanese ‘problem’ under control, or that there was no adequate time to establish “loyalty hearings” for the Japanese residents. “The reasons appear, instead, to be largely an accumulation of much of the misinformation, half-truths and insinuations that for years have been directed against Japanese Americans by people with racial and economic prejudices-the same people who have been among the foremost advocates of the evacuation,” concluded Justice Frank Murphy. The Justice maintained that racial discrimination had overshadowed the Korematsu case. By noting the “misinformation” and “half-truths” behind the decision to exclude Japanese persons Justice Murphy exemplifies judicial scrutiny at work, something that was greatly lacking in the Japanese American cases. The “misinformation” and “half-truths” characterization can also be applied to the Final Report and the military necessity argument of the War Department. It should be noted that due to these reasons Edward J. Ennis argued unsuccessfully in favor of keeping the controversial footnote on page 11 of the Korematsu brief – in opposition to the objections of the War Department –, asking the Supreme Court not to take judicial notice of the Final Report, because of the “misstatements of fact” included in it; see The Executive Branch for an analysis of government misconduct.

Justice Robert H. Jackson’s dissent drew the metaphor of the “loaded weapon” to illustrate the influence of the Supreme Court’s opinion upon posterity. The Defendant is described in the dissent as a loyal and law-abiding citizen of the United States – noting that no charges were brought up other than the issue of the case –, whose only crime was his ancestry.

defense of the country to allow any Japanese on this coast. ... 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. ... 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,” firmly stated Lt. General DeWitt before members of the Committee. It seems that the Japanese community had no way to prevent its exclusion and incarceration due to this deeply rooted racial prejudice. Korematsu v. United States, 323 U.S. 214 (1944).


even though in Justice Jackson’s opinion “guilt is personal and not inheritable.”

Korematsu’s crime was the result of being a member of a different “racial stock”. Justice Jackson notes that if Korematsu were an American-born citizen convicted of treason but out on parole, a German or an Italian enemy alien remaining in the military zone, he would not have violated the military order.

Justice Jackson also called into question the constitutionality of the military orders and the credibility of Lt. General John L. Dewitt’s Final Report. Considering the military orders, the Associate Justice did not state that they were not appropriate military measures based on the evidence, or rather the lack of it. In his interpretation, even if the military actions were authorized it did not mean that they were necessarily constitutional, or can last longer than the military necessity, since it can be revoked by the Commanding General. Furthermore, if the Supreme Court’s opinion sanctions it – stating after its judicial review that it complies with the Constitution – than the military order becomes a “doctrine of the Constitution”.

From that moment onwards the Supreme Court’s opinion stands as a precedent, a principle allowing the racial discrimination of a minority in the name of national defense. Due to the precedent set by the Supreme Court: “The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need,” warns Justice Jackson. Lt. General Dewitt’s credibility was also disputable, but the Court had to accept his report – without any cross-examination – due to the lack of sufficient evidence at the disposal of the Justices. Justice Jackson was highly critical of Lt. John L. Dewitt and his report, which was characterized as “self-serving”.

Justice Hugo L. Black did not find it justifiable to call the temporary detention facilities and the incarceration centers “concentration camps”, or to state that the Petitioner was a loyal citizen, drawing a clear distinction between the Korematsu and Endo case. “Our task would be simple, our duty clear, were this a case involving the imprisonment of a loyal citizen in a

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1249 "There is sharp controversy as to the credibility of the DeWitt report. So the Court, having no real evidence before it, has no choice but to accept General DeWitt’s own unsworn, self-serving statement, untested by any cross-examination, that what he did was reasonable,” elaborated Justice Jackson on the dependability of the Final Report and the evidence provided by the Commanding General. Korematsu v. United States, 323 U.S. 214 (1944).
concentration camp because of racial prejudice,” reasoned Justice Black in the closing paragraph of his opinion. The Supreme Court declared that this was not a case of “racial prejudice” due to wartime military necessity and national defense interests. The Supreme Court held that there was evidence of disloyalty within the Japanese community and due to the urgency of the situation the military authorities had no time to segregate the loyal citizens from the disloyal individuals.

Justice Black on the “military imperative” nature of Fred T. Korematsu’s exclusion:

Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily, and finally, because Congress, reposing its confidence in this time of war in our military leaders—as inevitably it must—determined that they should have the power to do just this.

7.4. Summary: The Japanese American Cases Revisited, the Coram Nobis Petitions

The Japanese American community had to wait for decades for the reversal of the Korematsu, Hirabayashi, and Yasui decisions, until 1981 when the writ of error coram nobis petitions were filed at the specific District Courts where the original verdicts were delivered. Just about four decades had passed since the District Courts convicted the defendants in 1942 and the reversal of the decisions had been the subject of debate without any significant results ever since. The Japanese American Citizens League considered the possibility of revisiting the wartime Japanese American cases and conducted research on the writ of error coram nobis petition. By studying the exchanges of letters amongst the leadership of the J.A.C.L. and Peter M. Nakahara—attorney at law and author of the writ of error coram nobis memorandum—we can conclude

1252 Peter M. Nakahara, Availability of Writ of Error Coram Nobis for Reversal of Wartime Japanese American Cases, Box 16, Folder Renunciants 1956-1960, Series 2, JACL History Collection, Japanese American National Library, San Francisco; Mike M. Masaoka to Peter M. Nakahara, September 24, 1956, Box 16, Folder Renunciants 1956-1960, Series 2, JACL History Collection, Japanese American National Library, San Francisco; Frank F. Chuman to Peter M.
that the organization was interested reversing the decisions, but also brought up the renunciant cases as an alternative. These cases focused on those Nisei who renounced their citizenship during their incarceration and aspired to regain it through the courts. Frank F. Chuman, National J.A.C.L. Legal Counsel, received Peter Nakahara’s memorandum and in a response letter\textsuperscript{1253} on September 26, 1956, expressed his personal and professional stand on the subject. The research was regarded as a “starting point” for the procedure to reverse the wartime convictions. The writ of error coram nobis was a legal means to vacate a judgment based on “error in fact” in order to achieve justice. As Frank Chuman observed in his letter, “I note with interest that in the Federal District Court the Writ of Error Coram Nobis may be used to vacate a judgment of conviction based on an error in fact unknown to the court of rendition.”\textsuperscript{1254} It was Mr. Chuman’s specific wish to reverse the \textit{Korematsu} decision, but the \textit{Hirabayashi} and \textit{Yasui} cases were just as significant. Nevertheless, he brought up Mr. Ennis’ and Judge Aiso’s proposal, both of whom argued that the constitutionality of the wartime exclusion should be retested through the renunciant cases.\textsuperscript{1255} The standpoint of the J.A.C.L. was to inform the Supreme Court that the “military necessity” justification for the exclusion orders was unfounded, with “racial affinity” to the enemy cited as the only logic behind the military’s conclusion to remove persons of Japanese descent.

\textsuperscript{1253} Frank F. Chuman to Peter M. Nakahara, September 26, 1956, Box 16, Folder Renunciants 1956-1960, Series 2, JACL History Collection, Japanese American National Library, San Francisco.
\textsuperscript{1254} Frank F. Chuman to Peter M. Nakahara, September 26, 1956.
\textsuperscript{1255} A potential test case is provided by Frank Chuman, \textit{Abo v. Clark}, in which Judge Goodman reflected on the wartime treatment that effected the renunciation of citizenship. Judge Goodman argued that the renunciations were “invalid” due to the circumstances of the forced exclusion. The District Judge’s ruling was reversed by the Court of Appeals, 9\textsuperscript{th} Circuit. Mr. Chuman recalled that the Court of Appeals held that “the circumstances of the renunciations should be tried on the individual merits of each renunciant.” The renunciant case was described as a precedent decision that could be used to test the constitutionality of the exclusion. Frank F. Chuman to Peter M. Nakahara, September 26, 1956.
Preceding Frank Chuman’s response Peter Nakahara received a reply from Mike Masaoka\textsuperscript{1256} concerning the error coram nobis memorandum of September 18, 1956. Mike Masaoka showed interest in retesting the constitutionality of the ‘evacuation’ and praised Nakahara’s memo and thorough research. With regard to the coram nobis cases it is noted by Masaoka that Nakahara was also in favor of retesting the constitutionality of the wartime curfew, ‘evacuation’, and exclusion orders via a renunciant case to be appealed to the Supreme Court.\textsuperscript{1257} It is implied that Nakahara’s position was supported by Edward J. Ennis, by then counsel to the J.A.C.L. and the American Civil Liberties Union, and by John J. Aiso. Mr. Masaoka shared their thoughts on the matter, “I happened to ask them for off-the-cuff opinions, and they both believed that the renunciant cases afforded us our best opportunity for the desired review.”\textsuperscript{1258}

Mr. Nakahara’s memorandum on the \textit{Availability of Writ of Error Coram Nobis for Reversal of Wartime Japanese American Cases}\textsuperscript{1259} explored the prospect of a legal remedy to the convictions of Gordon Hirabayashi, Minoru Yasui, and Fred Korematsu. The memo includes a quotation from \textit{Prejudice, War and the Constitution}\textsuperscript{1260} by Jacobus tenBroek, Edward N. Barnhart, and Floyd W. Matson, published in 1954, on the fundamental errors committed by the Supreme Court. It was concluded by the authors that: “In the Japanese American cases, the Supreme Court carried judicial self-restraint to the point of judicial abdication. […] Apparently all that the court required to foreclose judicial scrutiny was that the action had been taken by the military. The military thus was allowed finally to determine the scope of its own power.”\textsuperscript{1261} On the other hand, Mr. Korematsu’s legal defense reasoned in his case that Public Law No. 503 and

\begin{footnotesize}
\begin{enumerate}
\item[1256] Mike M. Masaoka to Peter M. Nakahara, September 24, 1956, Box 16, Folder Renunciants 1956-1960, Series 2, JACL History Collection, Japanese American National Library, San Francisco. It is suggested in the letter that a “special committee” was established for this problem by the J.A.C.L. at its National Convention and Peter Nakahara was a member of it (hereafter cited as Mike M. Masaoka to Peter M. Nakahara, September 24, 1956).
\item[1257] Mike M. Masaoka to Peter M. Nakahara, September 24, 1956.
\item[1258] Mike M. Masaoka to Peter M. Nakahara, September 24, 1956. At the suggestion of Mike Masaoka the memorandum was sent to Dr. Roy Nishikawa, J.A.C.L. National President, and to Mas Satow, National Director of the J.A.C.L. The memorandum \textit{Availability of Writ of Error Coram Nobis for Reversal of Wartime Japanese American Cases} – retesting the constitutionality of the military orders through the judicial forum – was sent to Mas Satow on September 26, 1956. Peter M. Nakahara to Mas Satow, September 26, 1956, Box 16, Folder Renunciants 1956-1960, Series 2, JACL History Collection, Japanese American National Library, San Francisco.
\item[1260] Nakahara, Availability of Writ of Error Coram Nobis for Reversal of Wartime Japanese American Cases.
\item[1261] Nakahara, Availability of Writ of Error Coram Nobis for Reversal of Wartime Japanese American Cases.
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Civilian Exclusion Order No. 34 were not an abdication, but rather an unlawful delegation of
Judiciary Power to the U.S. Military.

The Supreme Court failed to examine the “factual justification” of the military orders that
restricted the rights and liberties of American citizens. The Court accepted the “factual
hypotheses”\textsuperscript{1262} that American citizens of Japanese descent and Japanese alien residents were a
potentially greater source of threat in time of war than any other ethnic minority due to their
racial affiliation to the common enemy. Furthermore, the “judicial self-restraint” also meant that
the Justices of the Supreme Court did not scrutinize the War Department’s collective program
(curfew and exclusion) during the Spring-Summer of 1942, the lack of case by case principle to
determine individual loyalty, nor the military necessity arguments behind the incarceration.
There was no “judicial investigation” whether there was military peril to justify the wartime
treatment of persons of Japanese ancestry, or whether the military orders infringed the
constitutional rights of those affected. According to Jacobus tenBroek et al all the military was
unchecked because of its “unreasonableness”\textsuperscript{1263} The Supreme Court did not inquire into the
factuality of the military actions taken under the authority of Executive Order No. 9066, thereby
we can also state that the Court did not check the Roosevelt Administration, nor the U.S.
Congress. These branches of the Federal Government approved and provided legal support for
the orders and restrictions issued by the military authorities.

Peter M. Nakahara on the legal remedy afforded by a writ of error coram nobis petition:\textsuperscript{1264}

The efficacy of the writ of coram nobis lies in the fact that it is employed to vacate a
judgment of conviction based on an error in fact unknown to the court of rendition.
Moreover, these errors in fact could not have been brought to the attention of the
appellate court by appeal since they did not appear in the record.

As stated in the memo the writ of error coram nobis\textsuperscript{1265} is a “common law remedy” to
correct errors of the court: matters of form, clerical errors, and mistakes of fact; Irons defines it

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\textsuperscript{1262} Nakahara, Availability of Writ of Error Coram Nobis for Reversal of Wartime Japanese American Cases.
\textsuperscript{1263} Nakahara, Availability of Writ of Error Coram Nobis for Reversal of Wartime Japanese American Cases.
\textsuperscript{1264} Nakahara, Availability of Writ of Error Coram Nobis for Reversal of Wartime Japanese American Cases.
\textsuperscript{1265} Peter Nakahara defined the coram nobis petition as the following: “A writ of coram nobis to correct an error of
fact can be issued only by the same court which rendered the judgment, nor can a court by such a writ reach a
judgment of a higher court affirming its own judgment”. The error of fact is not considered to be the error of the
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as “the only exception to the ‘finality’ rule”. From a legal perspective it is the last means to rectify an erroneous judgment. In order to file a writ of error coram nobis the “mistake of fact” must be beyond the knowledge of the applicant, a failure of the judicial procedure that the Defendant was unaware of at the time of the trial or was hindered by “duress, fear, or other sufficient cause”. The verdict can also be the result of “prosecutorial misconduct". This means of legal remedy is considered to be an expansion of the “due process clause” by the Supreme Court, according to Nakahara, including not only the judicial proceedings, but also post-trial after the final verdict had been delivered. It has to be punctuated that even if the conviction is vacated as a result of the coram nobis petition the Supreme Court’s decision remains on the legal books, can still be referred to as a legal precedent. Despite of the research and proposal to use the writ of error coram nobis petition the wartime Japanese American decisions were not challenged until the Redress Movement due to the lack of evidence of legal and government misconduct, which was needed as part of the error of fact prerequisite to justify the appeal.

The legal grounds for an error coram nobis case:

1) The government lawyers withheld evidence that would prove favorable to the defendant.
2) False evidence was introduced at the trial to prove the guilt of the accused.

The possibility of rectifying the Japanese American verdicts was revisited during the Redress Movement when error coram nobis petitions were filed for Gordon Hirabayashi, Minoru Yasui, and Fred Korematsu in their respective District Courts where they were found guilty in 1942. It was in 1981 that Peter Irons found the much needed evidence of government misconduct while collecting research material for a book on the Supreme Court cases. He acquired the judges, by ruling in favor of the error coram nobis they are not reversing their judgments. Nakahara, Availability of Writ of Error Coram Nobis for Reversal of Wartime Japanese American Cases.

1267 Nakahara, Availability of Writ of Error Coram Nobis for Reversal of Wartime Japanese American Cases.
1269 The writ of error coram nobis is available in civil and criminal courts to remedy “errors of fact” and the District Courts have the authority to grant such petitions. Nakahara compiled in his memorandum a brief list of causes for which writ of error coram nobis motions were filed in the past in the federal courts with the respective cases: insanity (Robinson v. Johnston, 118 F. 2d 998), perjury by witness (Carrison v. United States, 154 F. 2d 107; Tinkoff v. United States, 129 F. 2d 21), lack of counsel (United States v. Morgan, 346 U.S. 502; United States v. Steese, 144 F. 2d 439). Nakahara, Availability of Writ of Error Coram Nobis for Reversal of Wartime Japanese American Cases.
Hirabayashi, Yasui, and Korematsu case files from the Department of Justice through the Freedom of Information Act. Irons referred to these ‘new’ or ‘unearthed’ documents as the “smoking guns” of prosecutorial misconduct. A well phrased characterization if we consider how Justice Robert H. Jackson depicted the Korematsu opinion as a “loaded weapon”. The documents provided evidence of legal misconduct by government lawyers in the Hirabayashi and Korematsu cases, such as the misconduct of Solicitor General Charles Fahy in April of 1943 and September of 1944. The issue of government misconduct – misstatements and misleading ‘facts’ on the Japanese ‘Fifth Column’ threat and military necessity – and the documents found by Peter Irons are the subjects of The Executive Branch Chapter.

The team of legal representatives headed by Dale Minami prepared a 150 page long petition, it was submitted in 1983 in the District Courts of Seattle, Portland, and San Francisco. Fred Korematsu’s coram nobis case was argued before District Judge Marilyn Hall Patel. Korematsu’s conviction was vacated in spite of the attempts made by Victor Stone, attorney for the U.S. Government, to dismiss the petition. Nevertheless, the Korematsu decision remained on the pages of legal history until 2018, when it was rejected by the Supreme Court’s opinion in the Trump v. Hawaii, No. 17-965, 585 U.S. case on June 26. The convictions of Gordon Hirabayashi and Minoru Yasui were later also overturned, a decisive victory for the

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1272 Solicitor General Charles Fahy was contacted by Edward Ennis, Director of the Alien Enemy Control Unit within the Justice Department, in April of 1943. He called the Solicitor General’s attention to the inaccuracies in Lt. General John L. DeWitt’s reports. Previously Edward Ennis had briefed Lt. General DeWitt on the lack of evidence to support the allegations of Japanese American disloyalty. The Solicitor General disregarded the memorandum and confirmed to the Supreme Court in the Hirabayashi case that Lt. General DeWitt had evidence of Japanese American disloyalty prior to the initiation of the exclusion program. We cannot underestimate the significance of the Solicitor General’s misconduct in light of Chief Justice Harlan F. Stone’s opinion – his emphasis on the conclusions of the military authorities –, “[...] we cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members of that population”. The Supreme Court accepted the central argument that the Japanese Americans were a menace to the national defense of the United States as a consequence of “judicial abdication”. In another memorandum in September of 1944 Edward Ennis notified Solicitor General Fahy of the intelligence reports that contradicted the claims made by Lt. General DeWitt in his Final Report, such as the evidence of “overt acts of treason” by Japanese Americans. The Final Report was cited in the Government’s brief and by Justice Hugo L. Black in his Korematsu opinion. Charles Fahy dispelled the doubts of the Associate Justices by vouching for “every sentence, every line, and every word” of the Final Report. Irons, “A Jap’s a Jap,” 362-363.
Japanese American community. “Ancestry is not a crime,” said Gordon Hirabayashi following his victory, summarizing the main issue of the wartime convictions and treatment of persons of Japanese lineage.

Conclusion

The wartime experience of the Japanese American community and its implications cannot be examined without giving due consideration to the Pearl Harbor debacle. December 7, 1941, not only dragged the United States into a global conflict, but also served as the catalyst for the forced removal and detention of 120,000 persons of Japanese descent living on the Pacific Coast. This meant that in compliance with Executive Order No. 9066 – signed by President Franklin D. Roosevelt on February 19, 1942 –, 86% of the Japanese Americans living on the Continental United States were incarcerated. The United States was unprepared for Pearl Harbor which opened a window of vulnerability, thereby shaking the Roosevelt Administration to its core. Attorney General Francis Biddle’s vividly illustrated the state of shock on that fateful day in his cabinet meeting notes. The American political leadership and public were overcome by war hysteria, a combination of anger over the sneak attack, fear of possible invasion on the West Coast, and a deeply rooted anti-Japanese racial prejudice. Members of the Japanese American community were adjudged as ‘Fifth Columnists’ who could potentially commit subversive activities, espionage and sabotage. The Japanese residents of the Pacific Coast were scapegoated for the Pearl Harbor disaster because of their racial ties to the Empire of Japan, even though it was the Japanese Government that orchestrated the assault on the Island of Oahu.

The Knox report of December 14, 1941, clearly stated that the American forces stationed on the Island of Oahu were unprepared despite of the early warnings given by the Department of War and Navy of imminent conflict, and the intelligence provided by the F.B.I., O.N.I., and G-2. The United States Army and Navy under the leadership of Lt. General Walter C. Short and Admiral Husband E. Kimmel were caught off guard due to their lack of communication, cooperation, and state of readiness; these were some of the primary failures of Army and Navy officials based on the conclusions of the Army Pearl Harbor Board and the

1277 Frank Knox, Report by the Secretary of the Navy to the President, December 14, 1941, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 7.
1278 Henry L. Stimson to President Franklin D. Roosevelt, November 22, 1944, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, Roosevelt Study Center, Middelburg, Netherlands, Reel 33 (hereafter cited as Henry L. Stimson to President Franklin D. Roosevelt, November 22, 1944).
Roberts Commission. Lt. General Short and Admiral Kimmel were relieved of their command and were later found guilty of dereliction of duty. The officers of the Army and Navy committed individual errors, in the words of Secretary of War Henry L. Stimson they committed an “error of judgment”. Nonetheless, Japanese Americans were accused of ‘Fifth Column’ activity and intelligence gathering. These allegations were proven to be false by J. Edgar Hoover on March 7, 1942. The Director of the F.B.I. maintained that not a single act of sabotage was committed on December 7, 1941. Furthermore, all suspected “enemy aliens” in Hawaii had been identified, listed, and monitored by the intelligence authorities as part of the counter espionage measures approved by President Franklin D. Roosevelt in the memo of August 10, 1936. No reference was made to Japanese American subversive activity in the conclusions of either the Roberts Commission (January 23, 1942) or the Army Pearl Harbor Board (August 29, 1945). After having studied the issue of responsibility and the findings of the Pearl Harbor investigations it can be concluded that no blame was placed on the Japanese residents of the Hawaiian Islands during the Pearl Harbor investigations.

Despite of the lack of Japanese subversive activity Japanese Americans were scapegoated for the actions perpetrated by the Empire of Japan. As a repercussion of war hysteria and “military necessity”, and a long history of anti-Japanese sentiments on the West Coast, the Roosevelt Administration issued Executive Order No. 9066, thereby authorizing the establishment of military areas and the exclusion and incarceration of persons of Japanese ancestry. The Executive Order was broadly defined and did not single out persons of Japanese parentage, but was drafted according to Attorney General Francis Biddle to authorize the

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1279 Henry L. Stimson to President Franklin D. Roosevelt, November 22, 1944.
1281 President Franklin D. Roosevelt to The Chief of Naval Operations, August 10, 1936, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence File, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 33.
1282 The Roberts Report was added to the Congressional Records at the request of Representative Hatton W. Sumners in his extension of remarks. Roberts Report, on January 27, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 8: A257-A263.
1283 Henry L. Stimson to President Franklin D. Roosevelt, November 22, 1944.
The exclusion program was justified as a defense measure in order to ensure “the successful prosecution of the war”. The entire Japanese American community was excluded from the Pacific Coast by August of 1942 as a result of mounting political pressure from West Coast congressional delegates and war hawks citing “military necessity”.

The power to wage war successfully became a crucial factor in the mass exclusion and detention of Japanese Americans. Neither Congress nor the Supreme Court intended to restrict the war effort of the Roosevelt Administration in response to concerns over the war emergency. There was a lack of congressional oversight and judicial review to assess the military justification and constitutionality of the collective removal and detention of an ethnic minority. Members of Congress approved on March 21, 1942, Public Law No. 503. The Act of Congress approved the restrictions issued under the authority of Executive Order No. 9066 and prescribed that those who violated the military orders committed a federal crime. The Japanese Americans who challenged the legality of the curfew and civilian exclusion orders were found guilty of having violated Public Law No. 503. The Supreme Court upheld the constitutionality of the military regulations in support of the Roosevelt Administration’s war effort. The Associate Justices failed to apply the doctrine of strict scrutiny to review the authority of the Executive and Legislative Branches of the Federal Government. Despite of the principle of Checks and Balances neither branch scrutinized the Roosevelt Administration’s wartime treatment of Japanese Americans, rather they reiterated the frequently referenced anti-Japanese rhetoric. The evidence suggests that due to the war emergency all three branches of the Federal Government demonstrated signs of racial profiling and anti-Japanese sentiments while debating the Japanese ‘question’. It has to be added that government misconduct, the suppression of evidence by the Department of War and Justice, and the partisan politics of the 1944 election further contributed to the plight of the Japanese Americans. After a detailed analysis of the role of the Roosevelt Administration, the United States Congress, and the Japanese American Supreme Court cases it can be asserted that the exclusion and incarceration of persons of Japanese ancestry was a ‘Perfect Storm’, a series of bad decisions that made the final outcome inevitable; the primary hypothesis of the dissertation. The principles of the Checks and Balances were derailed by the

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1285 Francis Biddle to President Franklin D. Roosevelt, April 17, 1943, Box 1, Folder Documents: Francis Biddle, 1942-1944, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco.

prevailing notion of “military necessity” with members of Congress and the Justices of the Supreme Court firmly reinforcing the Roosevelt Administration’s power to wage war successfully. In the interest of the war effort the Federal Government was willing to restrict the civil liberties and constitutional rights of a particular minority, although the military measures were based on collective guilt and racial prejudice.

The Final Report\textsuperscript{1287} of 1943 was prepared by Lt. General John L. DeWitt and contained numerous misstatements and half-truths, misleading evidence, in support of the mass exclusion of Japanese Americans from the West Coast. The Commanding General’s reasoning heavily relied on racial profiling and prejudice to support the “military necessity” justification – the Japanese are unassimilable and un-Americanized –, neglecting to provide any definitive evidence of ‘Fifth Column’ activity. The analysis of the correspondences between officials of the War and Justice Department provide significant evidence of government misconduct in relation to the Final Report, a basis upon which we can question the validity of the “military necessity” claims made by the Military Commander.

The Final Report was received by the Assistant Secretary of War John J. McCloy on April 15, 1943, and was published without the knowledge or consent of the Department of Justice. The D.O.J. did not receive a copy, despite of the pending Japanese American cases, until Edward J. Ennis obtained one from Dillon S. Myer, the Director of the W.R.A. It was an erroneous report that contained allegations of illegal radio signaling and transmissions, and shore-to-ship signaling, all of which were subsequently disproven by the F.C.C. and by the F.B.I. The Bureau\textsuperscript{1288} informed Attorney General Francis Biddle that it had no information on shore-to-ship signaling. It was also confirmed by the F.C.C. to the Attorney General that all reported cases of unauthorized signals were identified and there were no illicit transmissions.\textsuperscript{1289} The statements made by Lt. General DeWitt on Japanese illegal radio transmissions were not only unfounded, but were also misleading.


\textsuperscript{1288} J. Edgar Hoover to Francis Biddle, February 7, 1944, Box 383, Fred T. Korematsu Folder 2 (4 of 7, Docket Nos 39), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco.

\textsuperscript{1289} James Lawrence Fly to Francis Biddle, April 4, 1944, Box 383, Fred T. Korematsu Folder 2 (4 of 7, Docket Nos 39), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco.
As a consequence of the contradictory nature of the report the Department of Justice intended to include a footnote in the Korematsu brief asking the Associate Justices no to take judicial notice of the “misstatements of facts” included in the Final Report. The Solicitor General revised footnote 11 due to pressure from the War Department. The altered footnote made no reference to the misleading statements of the Final Report and requested the Supreme Court to take judicial notice of the facts relating to the justification of the ‘evacuation’ program. Nonetheless, the Final Report – despite of the controversy over footnote 11 – was cited as a compelling evidence in the Korematsu case on “military necessity” and the justification of the exclusion program.

The detailed analysis of the Final Report and the correspondences between officials of the War and Justice Department, and the F.C.C., provide significant evidence of government misconduct in relation to the factuality of the “military necessity” premise of the incarceration of Japanese Americans. In light of these facts it can be inferred that the 2nd hypothesis of the dissertation is well-founded. The Roosevelt Administration sealed the fate of the Japanese American community with Lt. General John L. DeWitt’s contentious Final Report. The Commanding General’s report exaggerated the military necessity justification of the exclusion program and obscured the impact of racial prejudice as a motivating factor. Additionally, the War Department failed to address the inconsistencies and misstatements made in the report, and was in an interdepartmental conflict with the Justice Department over its contradictory nature. Officials of the Roosevelt Administration committed governmental misconduct by failing to amend the Final Report and neglecting to inform the Supreme Court on the lack of military necessity.

The United States Congress confirmed Executive Order No. 9066 with the approval of Public Law No. 503 on March 21, 1942. There was a close cooperation between members of the Senate, the House of Representatives, and the War Department. Based on the analysis of the Congressional Records this collaboration might be described best as a symbiosis between

1292 “Public Law No. 503,” March 21, 1942.
Congress and the Department of War. It was Secretary of War Henry L. Stimson who requested
of Senator Robert Reynolds on March 9, 1942, to introduce Senate bill 2352; introduced in
the House of Representatives as H.R. 6758. Lt. General John L. DeWitt had requested a
legislation with broad powers, an “enforcement machinery”, that would ensure the legal
enforcement of the military orders in the Federal Courts. The draft of Public Law No. 503 –
prepared by the War Department – was vague, uncertain, and indefinite. Senator Robert A.
Taft went as far as calling it the “‘sloppiest’ criminal law” that he had ever seen. The Senate
and the House passed the bill because of its wartime need and purpose. This corroborates the 3rd
hypothesis of the study that the United State Congress abdicated its role of congressional
oversight since it failed to check the power of the Executive. Congress approved the military
regulations imposed on Japanese Americans and their forced exclusion from the West Coast with
Public Law No. 503. The Act of March 21 rubber stamped the actions of the Roosevelt
Administration by providing the means of enforcement.

It has to be stated that the debate on the floor of the Senate and House of Representatives
was dominated by an overwhelming anti-Japanese rhetoric and members of Congress did not
question the “military necessity” line of reasoning propagated by officials of the Administration.
The approval of Public Law No. 503 can be explained as their contribution to the war effort.
After having examined the Congressional Records between October of 1941 and December of
1942 it can be concluded that the political discourse over the forced removal of Japanese
Americans was dominated by anti-Japanese bias and racial prejudice, the image of the Japanese
‘menace’. An evidence of this is the lack of any comprehensive debate over Public Law No. 503,
representing only seven pages in the Congressional Records.

President Roosevelt was not troubled by the constitutional implications due to the state of
“war emergency”, he firmly believed that Executive Order No. 9066 provided the necessary
authorization to remove and detain persons of Japanese lineage. Four Japanese American cases
reached the Supreme Court to challenge the curfew and exclusion orders of the Western Defense
Command. After having studied the documents of the Korematsu legal proceedings and the

1293 Secretary of War Henry L. Stimson’s letter of March 9, 1942, S. 2352, on March 19, 1942, 77th Cong., 2nd sess.,
Congressional Record 88, pt. 2: 2722.
1294 Senator Robert A. Taft, speaking on S. 2352, on March 19, 1942, 77th Cong., 2nd sess., Congressional Record 88,
pt. 2: 2725-2726.
1295 President Franklin D. Roosevelt to Frank Knox, February 26, 1942, Franklin D. Roosevelt Office Files, 1933-1945,
Part 1: Safe and Confidential Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 6.
Supreme Court opinions it can be inferred that the Justices of the Court accepted the “military necessity” arguments of the Federal Government without exercising strict scrutiny to assess the claims of Japanese American disloyalty. There was a lack of judicial review to investigate the validity of the “military necessity” judgment of the War Department and the credibility of the evidence provided in the Final Report of Lt. General John L. DeWitt. Seven of the Justices of the Supreme Court were New Dealers who were nominated by President Franklin D. Roosevelt, and it was President Roosevelt who appointed Harlan F. Stone to the position of Chief Justice. The Justices were loyal to the President and did not want to obstruct the war effort. The decisions in the Japanese American cases can be interpreted as the wartime contribution of the Court to ensure that the Federal Government had the power to wage war.

In the *Hirabayashi v. United States*\(^\text{1296}\) (1943), *Yasui v. United States*\(^\text{1297}\) (1943), and *Korematsu v. United States*\(^\text{1298}\) (1944) Supreme Court opinions Executive Order No. 9066 and 9102, and the Act of March 21 were construed by the Justices as the constitutional power of the Executive and the Legislative to wage war successfully. The Public Proclamations and the Civilian Exclusion Orders of the Western Defense Command were authorized by Executive Order No. 9066, while Public Law No. 503 provided the necessary authority to enforce the military regulations issued by the designated Military Commander. Furthermore, the Executive and Congress had the power to differentiate between residents based on ethnicity due to the “peril of war”, and had the authority to exclude and detain them in the interest of national defense. The Associate Justices would not question the judgment of the military officials in wartime, thereby acknowledging that the Supreme Court could rule otherwise. The Supreme Court rejected in its December 18, 1944, *Korematsu*\(^\text{1299}\) decision the defense’s argument that there was a lack of “military necessity”. On the other hand in the *Ex parte Endo*\(^\text{1300}\) (1944) case the Government conceded that it did not have the power to detain loyal citizens. In light of the Japanese American cases the war powers of the Executive and Legislative have precedence over

the civil liberties guaranteed by the Constitution. In war emergencies and at times of national crisis the Bill of Rights must bow to national defense interests. The practicality of wartime national defense struck down on the civil liberty of the Japanese American minority.

The language of racial profiling that had previously demonized persons of Japanese ancestry was incorporated into the Supreme Court’s opinions. The exclusion and incarceration of Japanese Americans was constitutional. Compared to the unanimous Hirabayashi and Yasui decisions three Associate Justice decided to dissent in the Korematsu case, although by that time the War Department had announced the revocation of the exclusion orders. Justice Frank Murphy referred to the Korematsu decision as the “legalization of racism”, while Justice Robert H. Jackson questioned the credibility of the Final Report and characterized the Court’s decision as the “loaded weapon” that expanded the power of the Executive. The findings of the research on the constitutionality of the military orders supports the 4th hypothesis of the dissertation. Based on the legal information on the Japanese American cases it can be concluded that the Supreme Court failed to apply judicial review to investigate the “military necessity” justification of the Roosevelt Administration. The Associate Justices approved the exclusion and incarceration of persons of Japanese parentage without questioning the arguments cited by the War Department despite of their racial connotations, evidence of racial profiling.

By the time persons of Japanese descent were excluded from the West Coast and placed in permanent detention facilities during the Autumn of 1942 there was no longer any “military necessity” to justify their incarceration. The Imperial Japanese Navy had suffered immense loses at the Battle of Coral Sea (May 7-8, 1942) and the Battle of Midway (June 3-6, 1942), and were thenceforth unable to mount any significant aspiration to directly attack the Continental United States. Additionally, President Franklin D. Roosevelt admitted to Attorney General Francis Biddle on December 18, 1942, that the Hawaiian Islands will not be attacked again in all probability. The Pacific Coast was no longer in danger of an invasion which the Roosevelt Administration and the military authorities had feared since the night of December 7, 1941. President Roosevelt had several reports at his disposal, reports that had assessed the loyalty of the Hawaiian and West Coast Japanese. Curtis B. Munson and Lt. Commander Kenneth D.

1302 President Franklin D. Roosevelt to Francis Biddle, December 18, 1942, Franklin D. Roosevelt Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 4.
Ringle had evaluated the loyalty of the Japanese Americans and concluded that there was no substantial Japanese ‘Fifth Column’ threat, 90% to 98% of the Nisei and the bulk or approximately 75% of the Issei were loyal. President Franklin D. Roosevelt received Curtis B. Munson’s Japanese On The West Coast Report\textsuperscript{1303} on November 7, and the Hawaii Report\textsuperscript{1304} on December 8, 1941. The Munson report on the West Coast situation was also given to the Department of War, Justice, and State. Solicitor General Charles Fahy was briefed by Edward J. Ennis\textsuperscript{1305} on the existence and findings of the Ringle Report on April 30, 1943, as the D.O.J. was preparing for the Hirabayashi and Korematsu case. Despite the warnings of Edward J. Ennis the Solicitor General failed to inform the Supreme Court of the report and the lack of “military necessity”, an example of suppression of evidence. Neither the Munson nor the Ringle Report on Japanese loyalty were cited in the Japanese American cases argued by the Associate Justices.

The loyalty and patriotism of the Japanese Americans was supported by the Japanese American Citizens League. The Japanese American Creed\textsuperscript{1306} by Mike Masaoka and the A Declaration of Policy\textsuperscript{1307}, a manifesto of the J.A.C.L., stressed the Americanism and patriotism of the Japanese American community. The League aspired to represent a community that had no real political voice. The policy of the League heavily relied on portraying the image of the ‘exemplary citizen’, encouraging the community to contribute to the war effort, to serve in the United States Army, and even supported the segregation of the disloyal through its collaboration with the W.R.A. The policy of the J.A.C.L. was quite divisive and was carried out by its leadership at the expense of its own popularity. The “military necessity” argument is further undermined by the fact that the Nisei became eligible for military service in January of 1943 and their draft status was restored by the War Department in January of 1944.

\textsuperscript{1303} Curtis B. Munson, Japanese On The West Coast Report, November 7, 1941, President Franklin D. Roosevelt’s Office Files, 1933-1945. Part 3: Departmental Correspondence Files, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 33.

\textsuperscript{1304} Curtis B. Munson, Report On Hawaiian Islands, December 8, 1941, Box 1, Folder Roosevelt Lib. Materials, 1941-1942, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco.


\textsuperscript{1306} Mike M. Masaoka, The Japanese American Creed, May 9, 1941, Box 1, Folder Nisei Loyalty, 1934, 1938-1942, Series 1, JACL History Collection, Japanese American National Library, San Francisco.

\textsuperscript{1307} A Declaration of Policy by the Japanese American Citizens League, 1942, Box 1, Folder Nisei Loyalty, 1934, 1938-1942, Series 1, JACL History Collection, Japanese American National Library, San Francisco.
The work of the Japanese American Citizens League, and the findings of Curtis B. Munson and Lt. Commander Kenneth D. Ringle greatly undermined the “military necessity” judgment of the War Department. The data provided during the analysis of the Japanese ‘problem’, the ‘Fifth Column’ threat, and the politics of the J.A.C.L. are in line with the relevance of the 5th hypothesis of the dissertation. The exclusion and incarceration of persons of Japanese ancestry was not justified by “military necessity”. The loyalty of the Japanese American community was corroborated by the Ringle Report and the reports prepared by Curtis B. Munson. The Japanese American Citizens League envisioned the future of the Japanese in the United States, just like their Issei parents who had encouraged the establishment of the progressive citizen leagues, and therefore advocated the assimilation and Americanization of the Nisei.

The Japanese population of the Pacific Coast was the victim of collective guilt and were excluded and incarcerated without due process: no evidence of disloyalty, no charges, no hearings or trials, and were not judged by a jury of their peers. They were denied their civil liberties due to the wartime crisis on the West Coast. The War Department reasoned in the Final Report that there was no time or means to distinguish between the loyal and potential dangerous individuals. As a point of comparison the forced removal and internment of the Hawaiian Japanese was examined to introduce the case by case principle, the individual treatment of the Japanese inhabitants of the Hawaiian Islands. Following the attack on Pearl Harbor martial law was declared in Hawaii which was in effect between December 7, 1941, and October 24, 1944. The potentially dangerous Japanese were apprehended and detained in internment camps in Hawaii, and were later transferred to the Mainland between 1942 and 1943. The Commanding General of the Hawaiian Department was authorized to detain 15,000 Japanese, but Lt. General Delos C. Emmons opposed. All hostile subversives were identified and listed by the authorities, and within hours of the attack all potentially dangerous individuals were taken into custody. Altogether 10,000 people were investigated out of which 1,466 Japanese were arrested and 1,250 – 1% of the Hawaiian Japanese population of 157,905 inhabitants – were interned after a lengthy hearing procedure. This is a considerable discrepancy compared to the

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overinclusive West Coast crackdown. The Hawaiian Japanese were treated on a case by case basis in compliance with the principle of due process of law. The treatment of the Hawaiian Japanese exemplified the ‘American way’ that Lt. General Emmons called for on December 21, 1941, to distinguish between loyal and disloyal people. This supports the 6th hypothesis of the dissertation. The insistence of the War Department that the lack of time and means to distinguish between loyal and disloyal Japanese warranted their collective exclusion does not stand the test of scrutiny. Furthermore, the case by case principle could have served as an alternative to the mass exclusion of the West Coast Japanese who were indiscriminately removed based on their racial affiliation. The individual treatment of the Hawaiian Japanese – as a possible solution to the Japanese ‘question’ – was not mentioned in the Korematsu legal documents investigated by the author, nor in the Japanese American Supreme Court opinions.

1309 Samuel W. King to Japanese American Citizens League, February 26, 1942, Box 1, Folder Fifth Column Rumors 1941-1942, Series 1, JACL History Collection, Japanese American National Library, San Francisco.
Epilogue:
The Legacy of the Japanese American Experience

The redress of the exclusion and incarceration of persons of Japanese ancestry was a long and grueling process. Japanese Americans had to wait for more than four decades to receive reparations and a formal government apology for their wartime treatment. The resettlement of the Japanese incarcerees began on December 17, 1944, when the War Department announced the revocation of the exclusion orders, but they were only permitted to leave the camps and return to the West Coast on January 2, 1945. All persons of Japanese lineage were allowed to resettle after the exclusion orders were revoked. Historian Ruth E. McKee summarized this procedure as the following, “[…] all except the comparatively small number of evacuees who had lost faith in American democracy and so wished to repatriate or expatriate to Japan were permitted to return to the Pacific Coast.” The reference to Japanese Americans losing their faith in democracy are harsh words considering that it was made in the Wartime Exile, a government report published in 1946 by the W.R.A.

Two days prior to the announcement made by the Roosevelt Administration Governor Earl Warren was already warned in a letter by Robert H. Lewis, Major General of the United States Army, to allow the return of the Japanese Americans to the State of California. The Governor was informed on December 15, 1944, that the “military situation” had progressed to such an extent on the Pacific Coast that the danger of a Japanese invasion no longer existed. Major General Lewis restated that in 1942 the “military situation” demanded the exclusion of the West Coast Japanese, however the authority provided to the Commanding General of the Western Defense Command depended on the continued existence of “military necessity”. It was also acknowledged by the Major General that the majority of the Japanese residents, aliens and American citizens of Japanese ancestry, were loyal to America and had cut their ties to the Empire of Japan. It was at this point in time of the war – following the November

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Presidential election – that the White House and the War Department recognized the lack of “military necessity” and that the loyalty of the Japanese could be determined, they could be treated on an individual basis following the ‘Loyalty Questionnaire’ of 1943. The disloyal elements had been transferred from the detention camps to the Tule Lake Incarceration Center after it was designated by the W.R.A. as a segregation center on July 15, 1943. The change in policy was dictated by the improved “military situation” and by the constitutional rights of loyal American citizens after the Ex parte Endo decision. Major General Lewis appealed to the Governor of California to reassure the public that the Japanese Americans who were permitted to resettle had been cleared by the Army, adding that many of these families had sons serving in the United States Military. The Japanese began to leave the incarceration camps in larger numbers only in August, between August and November of 1945 45,000 people left the centers.

During the operation of the ‘evacuation’ program 120,313 Japanese Americans were placed into the custody of the War Relocation Authority, the majority of them were transferred from the temporary detention camps, or through means of direct exclusion; see Table 14. It is noteworthy that 5,981 Japanese Americans were born in the incarceration camps during their four years of operation, and 219 persons were voluntary residents. Following their incarceration only 54,127 Japanese returned to the Pacific Coast, while 52,798 decided to resettle in other parts of the United States, or on the Hawaiian Islands. It should not be neglected that unfortunately 1,862 persons of Japanese descent died during their incarceration. There were also those who decided to repatriate to Japan following the war, altogether 4,724. This was made possible through the combination of the Denaturalization Act of 1944 (Public Law No. 405), signed by President Franklin D. Roosevelt on July 1, and Presidential Proclamation No. 2655 signed by President Harry S. Truman on July 14, 1945. The Denaturalization Act permitted American citizens to renounce their citizenship. On the other hand, the Presidential Proclamation enabled the deportation of “enemy aliens” under the authority of the Attorney General if they

were deemed “dangerous to the public peace and safety of the United States”.1317 From another perspective, offered by Roger Daniels, the Denaturalization Act was drafted by the Justice Department – with the support of Francis Biddle and Edward J. Ennis – to permit the continued detention of disloyal persons in case the Supreme Court found the incarceration of Japanese Americans unconstitutional.1318 Once the disloyal elements renounced their citizenship they could be easily detained in Justice Department camps. Attorney General Biddle received 5,7001319 applications for denaturalization, 95% of the renunciants were from Tule Lake.1320

A Japanese American incarceree on his decision to leave the United States:1321

I am an American citizen...I have never been outside of the United States, and I don’t know Japan or what Japan stands for…Put me down as disloyal if you will, but I’m going where I won’t have to live on the wrong side of the tracks just because my face is yellow. I will find my future in the Orient.

The W.R.A. had to open field offices to assist the Japanese in their return to the West Coast, resettlement committees were formed to tackle cases of discriminatory policies and prejudice.1322 The last field office was closed on May 15, 1946. The Japanese faced numerous difficulties upon their resettlement in the West Coast states:1323 denied licenses and permits by local boards, prohibited to purchase or lease rural homes according to a law passed in 1943, and the boycott of Japanese products and goods. The financial compensation of Japanese incarcerees had been an issue since the Truman Administration. It was President Harry S. Truman who

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1317 The proclamation applied to “enemy aliens” who supported enemy governments, meaning that it referred to the “enemy aliens” of Japan, Germany, Italy, Bulgaria, Romania, and Hungary. “Presidential Proclamation No. 2655,” in Years of Infamy: The Untold Story of America’s Concentration Camps, by Michi Nishiura Weglyn (Seattle and London: University of Washington Press 1999), 181.
1322 War Relocation Authority, WRA, 153.
1323 War Relocation Authority, WRA, 152.
signed the Evacuation Claims Act of 1948 to reimburse the economic and financial losses suffered by the Japanese American incarcerees. Although it was ineffective the Act of 1948 was the initial step in providing reparations. The Federal Government paid in total $38,474,140 to cover the Japanese claims, even so it only amounted to 10% of the actual value of accumulated losses. According to the estimates of the Federal Reserve Bank of San Francisco the value of the Japanese property in 1942 was $400,000,000.1324

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<tr>
<th>Table 14. The Evacuated People1325</th>
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<tr>
<td>FROM</td>
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<tr>
<td>90,491 W.C.C.A. Assembly Centers</td>
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<tr>
<td>17,915 Direct Evacuation</td>
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<tr>
<td>5,981 Births</td>
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<tr>
<td>1,735 Dept. of Justice Internment Camps</td>
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<tr>
<td>1,579 Seasonal Workers</td>
</tr>
<tr>
<td>1,275 Institutions</td>
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<tr>
<td>1,118 Hawaiian Islands</td>
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<td>219 Voluntary Residents</td>
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It was during the Bicentennial Year commemorations that the Federal Government symbolically acknowledged the mistakes made in the exclusion and incarceration of the Japanese American community. On February 19, 1976, President Gerald R. Ford signed Proclamation No. 4417 titled “An American Promise”, thereby revoking the authority of Executive Order No. 9066. President Ford declared in his address that America must recognize not only its achievements, but also its “national mistakes” in order to avoid repeating them. As there was no official statement on the termination of Executive Order No. 9066 – an “obsolete document” according to the President Ford – many Japanese Americans were still anxious that the events of the war could be repeated. President Gerald R. Ford reconfirmed the loyalty of Japanese Americans by stating: “We now know that we should have known then – not only was that evacuation wrong, but Japanese-Americans were and are loyal Americans.”

President Gerald R. Ford terminating the authority conferred by Executive Order No. 9066:

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, do hereby proclaim that all the authority conferred by Executive Order No. 9066 terminated upon the issuance of Proclamation No. 2714, which formally proclaimed the cessation of the hostilities of World War II on December 31, 1946.

The Redress Movement of the 1970s realized its true objectives when the United States Congress passed the Civil Liberties Act of 1988, signed by President Ronald Reagan on August 10, 1988. These advances were made as the Japanese American community began to be portrayed as the “model minority” – model citizens – following William Petersen’s New York Times article titled Success Story, Japanese-American Sytle, published in 1966. The Civil Liberties Act provided a reparation payment of $20,000 and an official presidential apology

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1327 “Proclamation 4417: An American Promise,” 162.
1328 “Proclamation 4417: An American Promise,” 162.
1329 Scott Kurashige notes in his critique of the “model minority” image that it was “distorted and exaggerated”, used to integrate the Japanese into the white majority during a period of social and cultural conflicts. Scott Kurashige, “From “Yellow Peril” to “Model Minority”: Japanese Americans and Racial Ideology in U.S. History,” Rikkyo American Studies 33 (March 2011): 65-66, 68, 70.
1330 According to Howard-Hassmann the reparations claim of the Japanese Americans was successful for a number of reasons: the perpetrators and claimants were easily identifiable, the harm was finite, many of the victims were
to the remaining survivors. The Act of 1988 was the product of the recommendations of the Commission on Wartime Relocation and Internment of Civilians (C.W.R.I.C.). The total cost of the reparations reached about $1.6 billion. The official letter of apology\textsuperscript{1331} to the individual survivors was signed by President George H. W. Bush, dated October of 1990. In the letter the White House recognized the grave injustice perpetrated against persons of Japanese ancestry, being mindful of the fact that no amount of reparation could ease the memories of their wartime experience, nor could it restore the years lost while detained behind barbed wire fences. With the Civil Liberties Act of 1988 and the Presidential letter of apology the American people “renewed their traditional commitment to the ideals of freedom, equality, and justice.”\textsuperscript{1332}

Letter of apology from the White House, President George H. W. Bush, October 1990:\textsuperscript{1333}

A monetary sum and words alone cannot restore lost years or erase painful memories; neither can they fully convey our Nation’s resolve to uphold the rights of individuals. We can never fully right the wrongs of the past. But we can take a clear stand for justice and recognize that serious injustice were done to Japanese Americans during World War II.

The convictions of Gordon Hirabayashi, Minoru Yasui, and Fred Korematsu were vacated by the District Courts in the coram nobis cases during the 1980s due to new evidence of government misconduct and the suppression of evidence. Although the rulings in the Japanese American cases were discredited by history the decision of the Supreme Court remained on the legal books as precedent\textsuperscript{1334}. The Department of Justice finally admitted its misconduct and the


\textsuperscript{1332} “Apology Letter From The White House.”

\textsuperscript{1333} “Apology Letter From The White House.”

suppression of evidence in the *Korematsu* case on May 20, 2011. In an official announcement Neal Katyal, the Acting Solicitor General, disclosed that by the time of the *Hirabayashi* and *Korematsu* Supreme Court cases Solicitor General Charles Fahy had learned of the *Ringle Report*. The D.O.J. conceded that the O.N.I. report undermined the “military necessity” justification, yet the Solicitor General did not inform the Supreme Court of the report’s existence. Furthermore, Charles Fahy did not inform the Associate Justices that the allegations listed in the *Final Report* were disproven by the F.B.I. and F.C.C. Acting Solicitor General Katyal added: “And to make matters worse, he relied on gross generalizations about Japanese Americans, such as that they were disloyal and motivated by ‘racial solidarity.’” The Solicitor General was not forthright with the Supreme Court and suppressed evidence that could have persuaded the Associate Justices to rule in favor of the Appellants.

The *Korematsu* decision was renounced by the Supreme Court after more than seven decades in the *Trump v. Hawaii* No. 17-965, 585 U.S.* decision on June 26, 2018. The decision of the Supreme Court upheld President Donald J. Trump’s Presidential Proclamation No. 9645, the Muslim travel ban. Nonetheless, despite of the Court’s opinion it is still regarded by many as applicable in times of national crisis. “So long as Korematsu is still technically good law, the possibility remains that government officials will invoke it to support acts of racism masquerading as national security measures,” assessed the ruling Richard Primus, a legal scholar. The reason for this anxiety is found in the wording of the majority opinion written by Chief Justice John Roberts. “The dissent’s reference to *Korematsu*, however, affords this Court the opportunity to make express what is already obvious: *Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and -- to be clear -- ‘has no place in law under the Constitution,’” wrote the Chief Justice. Nevertheless, the majority opinion also states the following, “[w]hatever rhetorical advantage the dissent may see in doing so,

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1336 Katyal, “Confession of Error.”


Korematsu has nothing to do with the case.”[1340] The Supreme Court argued that the exclusion and incarceration of American citizens of Japanese ancestry was unlawful, but it did not apply to the policy of restricting the entry of foreign nationals into the United States. The reasoning of Chief Justice Roberts was interpreted by Jared Keller as an attempt to “dodge, duck, dip, and dive”. Therefore, even though the Court overruled its 1944 decision the “spirit” of the Korematsu opinion remains since the discriminatory policy was upheld in case of foreign nationals.[1341]

In her dissent[1342] Associate Justice Sonia Sotomayor referred to the Korematsu decision due to the “stark parallels” in the Court’s reasoning in both cases. “[T]he Government invoked an ill-defined national-security threat to justify an exclusionary policy of sweeping proportion,”[1343] argued Justice Sotomayor. The repudiation of the Korematsu decision was welcomed by the Associate Justice, however it did not make the discriminatory travel ban acceptable. In her opinion the Supreme Court’s rationale replaced one erroneous decision with another based on claims of national security concerns. Associate Justice Sonia Sotomayor’s dissent in the Trump v. Hawaii opinion:[1344] “This formal repudiation of a shameful precedent is laudable and long overdue. But it does not make the majority’s decision here acceptable or right. By blindly accepting the Government’s misguided invitation to sanction a discriminatory policy motivated by animosity toward a disfavored group, all in the name of a superficial claim of national security, the Court redeploy the same dangerous logic underlying Korematsu and merely replaces one “gravely wrong” decision with another.”

Only a year after the Korematsu decision was overturned by the Supreme Court the Trump Administrations currently plans to detain approximately 1,400 migrants – unaccompanied

[1342] The Korematsu decision has been greatly criticized by prominent liberal and conservative Justices prior to the Trump v. Hawaii ruling. Associate Justice Ruth B. Ginsburg – a liberal member of the Supreme Court since 1993 – had stated in a dissent that “a Korematsu-type classification ... will never again survive scrutiny”. Antonin G. Scalia – a conservative Associate Justice between 1986 and 2016 – had asserted that the Korematsu decision was wrong, but warned that “[i]n times of war, the laws fall silent.” Justice Scalia’s comment can be interpreted as a warning that such events and decisions could happen again under the ‘right circumstances’. This is a cautionary message by the former member of the Supreme Court in light of Carl Higbie’s remarks, on the historical precedent offered by the wartime ‘internment’ of Japanese persons, in support of the Muslim registry proposal of the Trump Administration. Abby Vesoulis and Abigail Simon, “The Supreme Court Overturned a Ruling That Enabled Internment of Japanese-Americans During World War II,” Time, June 26, 2018, https://time.com/5322290/trump-travel-ban-japanese-internment/.
children taken into custody at the U.S. border – at Fort Sill, Oklahoma, a camp that had previously held around 700 Issei during World War II.\textsuperscript{1345} The Department of Health and Human Services described the Fort Sill facility as a “temporary emergency influx shelter”.\textsuperscript{1346} This seems to be a euphemisms similar to the ones used by the Roosevelt Administration – “assembly center”, “relocation center”, or “evacuation” – all of which seemed to imply a temporary procedure in the interest and safety of the Japanese community. The use of the former Japanese ‘internment’ site brought forth condemnation because of its xenophobic and national security connotations. Jared Keller commented in his article on the legacy of the Japanese ‘internment’ that “it’s the family separation element of military-administered detention, a Trump-specific policy triggered by xenophobia-tinged national-security concerns, that echoes the cruelty of Japanese internment, […].”\textsuperscript{1347} This is in line with the belief of the Trump Administration that the exclusion and incarceration of Japanese Americans still has historical precedent in modern-day America.

\textit{I hope that it couldn’t happen again, that the safeguards of civil liberties are more deeply entrenched than they were in 1941. Even though bigotry is present, you get more pushback today. We’ve advanced as a society, although not as much as we’d hope.}\textsuperscript{1348}

Jack Pitney, Professor of Political Science at Claremont McKenna College

\textsuperscript{1345} Keller, “The Legacy of Japanese Internment Lives on in Migrant Detention.”
\textsuperscript{1346} Keller, “The Legacy of Japanese Internment Lives on in Migrant Detention.”
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Appendices

Appendix A. Terminology\textsuperscript{1349} and The ‘Power of Words’

Vocabulary:
442\textsuperscript{nd} Regimental Combat Team: a segregated all-Japanese American combat unit activated by the War Department in 1943 after persons of Japanese parentage were ruled eligible for military service. During the war 33,000 Nisei served in the United States Army and the combat team became the most decorated unit – for its size and length of service – in its history. The 442\textsuperscript{nd} R.C.T. received 18,143 individual decorations and suffered a 28.5% casualty rate during the war.

Assembly Center: a euphemism for the 15 temporary detention camps where Japanese persons were held until their permanent exclusion from the military areas of the Western Defense Command, the West Coast, and were transferred to inland incarceration camps.

Civilian Exclusion Orders: orders issued by the Military Commander of the Western Defense Command and Fourth Army to all persons of Japanese ancestry, aliens and American citizens, who resided within the limits of Military Area No. 1 and were thereby excluded, removed to temporary detention facilities and subsequently to incarceration camps.

Executive Order No. 9066: order issued by President Franklin D. Roosevelt on February 19, 1942, which authorized the Secretary of War and the designated Military Commander to prescribe military areas and exclude any or all persons from the West Coast in the name of national defense. The order approved the mass forced exclusion and incarceration of persons of Japanese ancestry citing military necessity and national defense. The order was broadly defined and did not single out Japanese aliens and American citizens of Japanese descent, yet it only applied to persons of Japanese parentage on a collective basis. Ten incarceration camps were established on the Continental United States and

over 110,000 persons of Japanese lineage were incarcerated without any regard to the individual’s age, gender, or citizenship.

Internment Camp: a euphemism for the 10 incarceration camps, or illegal detention centers, where the West Coast Japanese were detained; preferred use for the Department of Justice and Army facilities where enemy aliens were held during World War II.

Issei: the first generation of Japanese Americans – Japanese-born immigrants, aliens, 55 to 65 years old at the time – who were ineligible for citizenship until the McCarran-Walter Immigration and Nationality Act of 1952.

Japanese American Citizens League (J.A.C.L.): the Japanese American Citizens League is a civil rights organization that was established in 1929 by the second generation Nisei. The J.A.C.L. promoted the rights, privileges, and obligations of American citizens of Japanese parentage, their assimilation and Americanism. The League cooperated with the United States Government during World War II as proof of its loyalty and patriotism.

Kibei: a subgroup of Nisei who were born in the United States, but were sent back to Japan by their parents where they were raised and educated, after which they returned to America.

Nisei: the second generation of Japanese Americans – American citizens of Japanese ancestry, 1 to 30 years old at the time – who were born, raised, and educated in the United States.

Public Law No. 503: a statute approved by the United States Congress on March 21, 1942, to provide the enforcement machinery requested by the War Department so as to proceed with the exclusion of persons of Japanese descent from the Pacific Coast. Those individuals who violated the military regulations, issued in accordance with the authority provided by Executive Order No. 9066, could be found guilty of committing a federal crime and upon their conviction were liable to a fine not exceeding $5,000, or to imprisonment for not more than one year.

Relocation Center: a euphemism for the incarceration camps, permanent detention camps, or illegal detention centers, where Japanese excluded from the designated military areas were held until their eventual release on January 2, 1945, when the exclusion orders were revoked.

War Relocation Authority (W.R.A.): the W.R.A. was established on March 18, 1942, by

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1350 For relocation center the Power of Words Handbook also recommends the use of the term incarceration camp or “American concentration camp”.

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President Franklin D. Roosevelt by signing Executive Order No. 9102, it was a civilian agency responsible for the removal and detention of Japanese persons, the agency ceased it operations on June 30, 1946.

The Power of Words:
The Power of Words Handbook was produced by the National Japanese American Citizens League Power of Words II Committee to address the euphemistic and deceptive vocabulary previously used by the Federal Government and historians in dealing with the exclusion and incarceration of Japanese Americans; below you can find the recommended terminology.

<table>
<thead>
<tr>
<th>Euphemism</th>
<th>Accurate Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>evacuation</td>
<td>exclusion, or forced removal</td>
</tr>
<tr>
<td>relocation</td>
<td>incarceration in camps; also used after release from camp</td>
</tr>
<tr>
<td>non-aliens</td>
<td>U.S. citizens of Japanese ancestry</td>
</tr>
<tr>
<td>civilian exclusion orders</td>
<td>detention orders</td>
</tr>
<tr>
<td>any or all persons</td>
<td>primarily persons of Japanese ancestry</td>
</tr>
<tr>
<td>may be excluded</td>
<td>evicted from one's home</td>
</tr>
<tr>
<td>native American aliens</td>
<td>renunciants (citizens who, under pressure, renounced U.S. citizenship)</td>
</tr>
<tr>
<td>assembly center</td>
<td>temporary detention facility</td>
</tr>
<tr>
<td>relocation center</td>
<td>American concentration camp, incarceration camp, illegal detention center; inmates held here are ‘incarcerees’</td>
</tr>
<tr>
<td>internment center</td>
<td>reserved for D.O.J. or Army camp holding alien enemies under Alien Enemies Act 1798</td>
</tr>
</tbody>
</table>

Appendix B. List of Abbreviations

A.F.L.: American Federation of Labor
C.C.O.: Civil Control Office
C.I.C.: Army Counter Intelligence
C.W.R.I.C.: Commission on Wartime Relocation and Internment of Civilians
F.B.I.: Federal Bureau of Investigation
F.C.C.: Federal Communications Commission
G-2: Military Intelligence Division Section
I.J.N.: Imperial Japanese Navy
J.A.C.L.: Japanese American Citizens League
M.I.S.: Military Intelligence Service
O.N.I.: Office of Naval Intelligence
R.I.C.: Radio Intelligence Center
R.I.D.: Radio Intelligence Division
W.C.C.A.: Wartime Civil Control Administration
W.D.C.: Western Defense Command
W.R.A.: War Relocation Authority
Appendix C. Chronology of Events

Chronology of Events: A brief overview of Japanese American history.¹³⁵³

1790 March 26. The Naturalization Act of the United States was approved by Congress. The Act stated that “any alien, being a free white person who shall have resided within the limits and under the jurisdiction of the United States for a term of two years, may be admitted to become a citizen thereof.”

1841 June 27. (1843) Manjiro Nakahama lands in the Kingdom of Hawaii, one of the earliest known Japanese arrivals, later he emigrated to the U.S. He served as the interpreter of Commodore Matthew Perry when he arrived in Tokyo Bay in 1853.

1854 Commodore Matthew Perry arrived with his fleet in Tokyo Bay for the second time in order to end the 200 year long isolation of Japan and to open her ports for trade.

1868 Japanese immigrants arrive in the Hawaiian Islands.

1869 The first group of Japanese immigrants reached the Continental United States and established the Wakamatsu Colony at Gold Hill, California, the lost colony of Wakamatsu.

1870 56 Japanese counted in the United States, while the scale of the Chinese population had already reached 63,000.

1873 The amended Naturalization Act of the United States extended the naturalization process to include “persons of African nativity or descent”. Japanese immigrants (Issei) and Asians would be denied American citizenship, they were deemed “aliens ineligible” for citizenship until the McCarran-Walter Act of 1952.

1880 According to U.S. Census data there were 148 Japanese living in the United States.

1882 May 6. Congress passed the Chinese Exclusion Act to prohibit the entry of Chinese immigrants and laborers for 10 years; Chinese immigrants were excluded from U.S. citizenship. The Act was later extended in 1892 for an additional 10 years, and was made permanent in 1902. The Act was only repealed in 1943.

1893 The San Francisco Board of Education approved the segregation of Japanese children in schools designated for Chinese students. The regulation was withdrawn after the Japanese Government’s protest.

1894 The beginning of the First Sino-Japanese War (1894-1895).

1898 The Hawaiian Islands were annexed by the United States allowing the roughly 60,000 Japanese inhabitants to travel to the Continental United States.

1900 The Japanese Government stopped issuing passports to laborers traveling to the United States; Japanese persons continued to emigrate to the Hawaiian Islands as it was not stipulated in the U.S.-Japan Agreement.
May 7. Labor groups organized the first mass anti-Japanese protest in the State of California.


1905 Japan and Russia signed the Treaty of Portsmouth. During the negotiations the United States acted as intermediary under the leadership of President Theodore Roosevelt. The treaty was not well received in Japan and caused riots, anti-government and anti-American sentiments. Due to growing anti-Japanese sentiments the California Legislature called on Congress to limit the flow of Japanese immigrants.
May 14. The Asiatic Exclusion League was established in San Francisco, based on 67 organization, and signaled the beginning of an organized anti-Japanese movement.

1906 October 11. The San Francisco School Board decided to remove 93 students of Japanese descent and placed them in a segregated school, 25 of the children were American citizens.

1907 The San Francisco School Board revoked the segregation order after President Theodore Roosevelt intervened. Anti-Japanese riots broke out in San Francisco in May and October. The United States Congress passed an immigration bill, Immigration Act of 1907, which prohibited the entry of Japanese laborers via Hawaii, Mexico, and Canada.

1908 United States Secretary of State Elihu Root and Japanese Foreign Minister Hayashi drew
up the “Gentlemen’s Agreement” (1907-1908). The Japanese Government agreed not to issue passports to laborers, in return the United States agreed not to halt immigration overall.


1913 May 19. The Alien Land Law (Webb-Haney Act) was passed in California, the statute denied “aliens ineligible for citizenship” – all Asians, except for Filipinos who were deemed subjects of the United States – the right to own land. Japanese aliens were only permitted to lease land for three years. Similar land laws were later passed in the States of Washington, Oregon, Idaho, Montana, Arizona, New Mexico, Nebraska, Texas, Kansas, Louisiana, Missouri, and Minnesota.

1915 The Hearst newspapers escalated the anti-Japanese propaganda and sentiments, the “Yellow Peril”, by publishing a series of sensationalized articles.

1920 The Japanese Government stopped issuing passports to picture brides who married their husbands residing in the United States by proxy, came into force in 1921. November. The Alien Land Law was amended in California, further restrictions were implemented in order to close the loopholes. The Act prohibited to short-term lease of land by aliens ineligible to citizenship and stock companies owned by such persons could not acquire agricultural land.

1922 September 22. Congress passed the Cable Act which stated that a woman could lose her American citizenship if she married an “alien ineligible for citizenship”. November 13. In the Takao Ozawa v. United States decision the Supreme Court ruled that Takao Ozawa was ineligible for naturalization. The Supreme Court decision legitimized the racial exclusion of Asians from citizenship, Japanese immigrants were found to be “aliens ineligible for citizenship”.

1923 The Alien Land Law was amended once more prohibiting the practice of “aliens ineligible for citizenship” buying land in the name of their Nisei children who were U.S. citizens.

1924 May 26. Congress passed the Immigration Act of 1924, the Asian Exclusion Act, which established a national quota of 2% based on the Census of 1890, and banned immigration from Japan altogether.

1929 The Japanese American Citizens League was established.

1931 The Cable Act was amended, it prescribed that a Nisei woman could keep her citizenship if she married an Issei.

1936 The Cable Act was repealed.

1939 President Franklin D. Roosevelt placed an embargo on materials essential for Japan, the embargo was expanded in 1940 risking Japan’s expansionist policy.

1941 July. The United States Government implemented an oil embargo on Japan and froze Japanese assets in the U.S.
August 18. Congressman John D. Dingell, U.S. Representative from Michigan, proposed in a letter to President Franklin D. Roosevelt the incarceration of 10,000 Hawaiian Japanese as hostages to ensure the good behavior of the Japanese Government. October 16. The civilian government under the leadership of Prince Konoye falls after the resignation of the Prime Minister, he was followed by General Hideki Tojo.
November 7. The Munson Report on the West Coast Japanese population, prepared by special investigator Curtis B. Munson, was presented to President Franklin D. Roosevelt, the State Department, and the Secretary of War Henry L. Stimson. The report highlighted the loyalty of Japanese Americans to the United States.
December 7. The Imperial Japanese Navy launched a surprise attack on the Pacific Fleet of the United States Navy stationed at the Pearl Harbor Naval Base, Oahu, Hawaii.
December 8. President Franklin D. Roosevelt delivered his “Day of Infamy” speech to a joint session of Congress asking for a declaration of war; on the same day Congress declared war on the Empire of Japan. In only a matter of hours F.B.I. agents arrested 736 Japanese aliens in Hawaii and on the Mainland due to national security threat. Within 48 hours the F.B.I. apprehended 1,291 Japanese, mostly Issei community leaders.
December 9. Japanese language schools were closed by the Federal Government.
December 11. The United States declared war on Germany and Italy. The West Coast was declared a theater of war and the Western Defense Command was established to coordinate the defense of the Pacific Coast, Lt. Gen. John L. DeWitt was appointed as Commander of the W.D.C. Over 2,000 Issei were imprisoned by the Federal Government in Hawaii and on the Mainland.
December 15. After his return from a brief visit to Pearl Harbor Secretary of Navy Frank Knox told reporters – without any supporting evidence – that the attack on Hawaii was the result of the most effective ‘Fifth Column’ work of the war. The misleading statement incriminated the Japanese population.
December 27. All “enemy aliens” on the Pacific Coast were ordered by the Attorney General to turn in their cameras and shortwave radios.

1942 January 5. Japanese American men, the Nisei generation who were of draft age, were classified by the War Department as “4-C”, ‘enemy aliens’.
January 14. All ‘enemy aliens’ on the West Coast were ordered to re-register.
February 19. President Franklin D. Roosevelt signed Executive Order No. 9066 and authorized the Secretary of War to designate military areas from which civilians could be excluded, the order did not specify persons of Japanese parentage. This would lead to the forced removal and incarceration of approximately 120,000 persons of Japanese descent, aliens and citizens alike.

February 20. Lt. General John L. DeWitt was designated by the Secretary of War as the Military Commander to carry out the ‘evacuation’ program under the authority of Executive Order No. 9066.

February 25. Japanese residents, about 500 families, living on Terminal Island, near Los Angeles Harbor, were informed by the United States Navy that they had 48 hours to leave their homes.

March 2. Lt. General John L. DeWitt issued Public Proclamation No.1 which identified Military Areas No. 1 and No. 2. Military Zone No. 1 included the western halves of California, Washington, and Oregon, and the southern half of Arizona. Military Area No. 2 included the remaining portions of the four states. Any or all civilians could be excluded from Military Area No. 1 and the entire State of California.

March 11. The Wartime Civil Control Administration was established by Lt. General John L. DeWitt to handle the forced removal and temporary detention of Japanese Americans. Colonel Bendetsen was appointed as the Director of the ‘evacuation’ program. The W.C.C.A. built and managed 15 temporary detention facilities to house around 92,000 people until the incarceration camps were constructed.

March 18. President Franklin D. Roosevelt signed Executive Order No. 9102 thereby creating the War Relocation Authority. The W.R.A. was the federal agency that administered the incarceration of persons of Japanese descent.

March 21. The United States Congress issued Public Law No. 503, which made it a federal crime to violate the regulations and restrictions issued by the Military Commander concerning the prescribed military areas and zones along the West Coast.

March 24. Lt. General John L. DeWitt issued the first Civilian Exclusion Order removing 50 families of Japanese ancestry from Bainbridge Island, Washington, Military Area No. 1. The families had only one week to prepare and were relocated to Puyallup Temporary Detention Camp. Altogether, by the end of October 108 orders were issued to remove all Japanese persons from Military Area No. 1 and the California portions of Area No. 2.

Public Proclamation No. 3 was also issued on the same day and introduced a curfew regulation for all persons of Japanese descent, citizens and aliens residents of the Military Areas, between 8 p.m. and 6 a.m.

March 27. Lt. General John L. DeWitt issued Public Proclamation No. 4, thereby ending the ‘voluntary evacuation’ from the Military Area No. 1. All persons of Japanese descent were prohibited from leaving the designated military zone.

March 28. Minoru Yasui, a Japanese American lawyer, was arrested in Portland, Oregon, after he decided to intentionally violate the curfew order in order to test its constitutionality. He turned himself in to the Portland police.

March 30. The War Department terminated the induction of Nisei soldiers on the West Coast.

May 5. Gordon Hirabayashi, a University of Washington student, refused to follow the curfew order. He turned himself in to the F.B.I., Seattle office, on May 16 and announced
that he had the intention to violate the exclusion order. He wanted to test the constitutionality of the military orders.

May 30. Fred T. Korematsu was arrested in San Leandro, California, for violating the Civilian Exclusion Order issued on May 3 and for refusing to report for exclusion to a temporary detention center.

June 3-6. The United States Navy dealt a decisive blow to the Imperial Japanese Navy at the Battle of Midway, a turning point of the Second World War in the Pacific Theater. Following the Summer of 1942 the West Coast was no longer in danger of a Japanese invasion, and the military necessity cause of the ‘evacuation’ program was no longer justified.

June 5. All persons of Japanese descent were removed from Military Area No. 1.

June 17. Milton S. Eisenhower resigned and Dillon S. Myer was appointed as the new Director of the W.R.A.

July 12. Mitsuye Endo’s lawyer filed a writ of habeas corpus on her behalf, the case was only decided in 1944.

July 20. The W.R.A. approved a leave policy allowing the Nisei to leave the detention camps to work in the Midwest.

October 30. Japanese detainees were transferred by the United States Army from the temporary detention facilities to one of the ten permanent incarceration centers operated by the W.R.A.

December 6. Protest at the Manzanar Detention Camp over the arrest of a resident, which was followed by military control and martial law in the camp, and soldiers opening fire into a group of demonstrators killing two individuals.

1943

January 28. It was announced by the War Department that it planned to form a Japanese American combat unit.

February 8. Persons of Japanese ancestry, detained in the incarceration centers – men and women, 17 years of age and older –, were instructed to fill out the ‘Loyalty Questionnaire’. The results of the questionnaire were used for Army recruitment and the segregation of potentially disloyal incarcerees.

April. The 442nd Regimental Combat Team, an all-Japanese American unit, was activated by the War Department. The 442nd R.C.T. was sent to Italy in May of 1944.

April 13. Lt. General John L. DeWitt testified before the House Naval Affairs Subcommittee and defended the incarceration by stating that it was impossible to determine the loyalty of Japanese Americans, “A Jap’s a Jap.”

June 21. The Supreme Court delivered its opinion in the Yasui v. United States and the Hirabayashi v. United States cases and upheld the constitutionality of the curfew and exclusion orders.

July 15. The Tule Lake Incarceration Center in California was selected by the W.R.A. as the segregation center to detain disloyal – based on the ‘Loyalty Questionnaire’ – persons of Japanese descent.

November 1-4. Demonstrations and violence at the Tule Lake Segregation Center, the camp was under military supervision until January of 1944.

1944

January 14/20. The draft status of American citizens of Japanese ancestry, the Nisei, was restored by the War Department.
February 16. The W.R.A. was transferred to the Department of Interior.

June 30. The Jerome Incarceration Center is the first camp to close its gates. The detainees were transferred to Rohwer Incarceration Center.

July 1. President Roosevelt signed Public Law No. 405, the Denaturalization Act of 1944, permitting American citizens to renounce their citizenship, enabling the deportation of Japanese persons who renounced their citizenship and requested their repatriation to Japan.

December 17. The War Department announced the revocation of the exclusion orders; it became effective on January 2, 1945. The Federal Government anticipated the upcoming negative decision of the Supreme Court in the *Ex parte Endo* case.

December 18. In a 6 to 3 decision the Supreme Court upheld the constitutionality of the exclusion order, thus the incarceration, in the *Korematsu v. United States* case. In the *Ex parte Endo* case the Supreme Court ruled that the Government could not lawfully detain loyal citizens.

1945 January 2. Persons of Japanese ancestry were allowed to leave the incarceration centers, permitting their nationwide resettlement, including their return to the West Coast.

May 8. Germany surrendered and the war ended in Europe, V-E Day.

August 1. About 44,000 Japanese ‘incarcerees’ were still living in the camps since they had nowhere to go. Many were afraid to return due to prevailing anti-Japanese violence/hostility on the West Coast and refused to leave the camps.

August 6. The United States dropped the first atomic bomb, “Little Boy”, on Hiroshima.

August 9. The second atomic bomb, “Fat Man”, was dropped on Nagasaki.

August 15. The end of the war in the Pacific Theatre after Japan surrendered, V-J Day.

September 2. The formal surrender of Japan aboard the battleship U.S.S. Missouri in Tokyo Bay.

September 4. The Western Defense Command issued Public Proclamation No. 24, which revoked the exclusion orders and military restrictions on the Pacific Coast.

1946 January 9. Pfc. Sadao S. Munemori – killed in action in Italy on April 5, 1945 – was posthumously awarded the Congressional Medal of Honor, the first Medal of Honor to be awarded to a Japanese American.

March 6. The Western Defense Command was disbanded.

March 20. The Tule Lake Segregation Center was the last W.R.A. camp to be closed.

June 30. The War Relocation Authority ceased its operation.

July 15. President Harry S. Truman received the 442nd Regimental Combat Team in the White House: “You not only fought the enemy but you fought prejudice … and you won,” declared President Truman.

1947 December 12. President Harry S. Truman granted pardons to all 315 Nisei draft resisters.

1948 July 2. The Evacuation Claims Act was signed by President Harry S. Truman to compensate the financial and personal property losses suffered by Japanese residents during their exclusion and incarceration; the Act paid less than 10 cents/dollar. The Japanese had until January 3, 1950, to file their claims. In total the United States Government paid $31 million in damages to the incarcerees.
1952 June 27. Congress passed the McCarran-Walter Immigration and Nationality Act despite of President Harry S. Truman’s veto. President Truman opposed the restrictive quota system of the 1924 National Origins Act that continued to favor Europe. The McCarran-Walter Act allowed the naturalization of Japanese and Asian immigrants who were previously categorized as “aliens ineligible for citizenship”. Japan also received a token immigration quota.

1959 August 21. Hawaii became the fiftieth state of the United States and Daniel Inouye was elected as the first Japanese American member of the U.S. House of Representatives.

1962 Daniel Inouye became the first Japanese American member of the United States Senate.

1965 October 3. The Immigration Law of 1965 eliminated the national origin basis of the quota system. Asian nations were allocated equal quotas of 20,000/nation.


1970 July 10. The Japanese American Citizens League adopted a resolution that sought reparations for the exclusion and incarceration of Japanese Americans during World War II. The redress proposal was supported by Nisei civil rights advocate Edison Uno. The J.A.C.L. wanted the United States Congress to pass a bill for individual reparations to the survivors.

1974 Norman Y. Mineta (CA) became the first Japanese American from the Mainland elected to the U.S. House of Representatives. The Seattle Evacuation Redress Committee of the Seattle J.A.C.L. Chapter launched the first legislative plan for redress. The legislative plan included reparations for the Aleuts and Latin American Japanese.


1978 July. At the Salt Lake City national convention of the J.A.C.L. the National Redress Committee was established and a resolution was passed for individual reparations of $25,000 for the incarceration of Japanese Americans. The convention marked the beginning of a national campaign for redress. November 25. The first “Day of Remembrance” was held at the Puyallup fairgrounds in the State of Washington, the site of “Camp Harmony” detention center.

1979 May. The National Council for Japanese American Redress (N.C.J.A.R.) was established in Seattle for reparations through legal means, the courts. August 2. Senators Daniel Inouye and Spark Matsunaga introduced S. 1647, the Commission on Wartime Relocation and Internment of Civilians Act (C.W.R.I.C.). The C.W.R.I.C. investigated whether any injustice was committed against persons of Japanese descent during their exclusion and incarceration.
1980  July 31. President Jimmy Carter signed the bill to establish the Commission on Wartime Relocation and Internment of Civilians.

1981  July 14. The C.W.R.I.C. held its first public hearing in Washington, D.C., further public hearings were held throughout the year in nine cities nation-wide and heard testimonies from more than 750 witnesses on the incarceration of Japanese Americans.

1983  Fred Korematsu, Minoru Yasui, and Gordon Hirabayashi filed writ of error coram nobis petitions to reopen their cases and vacate their convictions. June 23. The C.W.R.I.C. issued its report titled *Personal Justice Denied*. The investigation concluded that the exclusion and incarceration of Japanese Americans was not justified by military necessity, but rather it was based on racial prejudice, war hysteria, and the failure of political leadership. The C.W.R.I.C. recommended to Congress that each surviving ‘incarceree’ should be provided an individual redress payment in the amount of $20,000 and a formal apology should be made.

October 4. Fred Korematsu’s conviction was vacated by the Federal District Court in San Francisco.

1984  February 19 was recognized by the California State Legislature as a “Day of Remembrance” to remember the exclusion and incarceration of 120,000 persons of Japanese ancestry.

1985  October. Minoru Yasui’s conviction was invalidated by the Federal District Court in Portland, Oregon.

1986  Gordon Hirabayashi’s conviction was invalidated by the Federal District Court in Seattle, Washington.

1987  January 6. Redress bill H.R. 442 was introduced in the House of Representatives by Thomas Foley. April 10. Redress bill S. 1009 was introduced in the Senate by Spark Matsunaga.

1988  August 10. President Ronald Reagan signed H.R. 442 into law, the Civil Liberties Act of 1988, to provide for individual reparations in the amount of $20,000 and a formal apology to the roughly 60,000 survivors, and a $1.25 billion education fund.


1990  October 9. The oldest nine survivors were presented a letter of apology signed by President George H. W. Bush and the individual redress payment of $20,000 at an official ceremony in Washington, D.C.

1992  March 3. The Manzanar National Historic Site was established and became a National Park Service Unit, the first former Japanese American incarceration camp site. Minidoka
in 2001, Tule Lake in 2008, and Honouliuli in 2015 followed as National Park Service Units.

1994 August 26. President Bill Clinton approved the Civil Liberties Public Education Fund for public education on the exclusion and incarceration of Japanese Americans during World War II. The Commissioners of the C.L.P.E.F. were appointed by President Clinton and were sworn in in 1996.

1998 June 12. Japanese Latin Americans were offered a letter of apology and only $5,000 in reparations by the Office of Redress Administration. The Japanese Latin Americans took their case to the U.S. Court of Claims asking for $20,000 in compensation.

1999 The 100th Battalion, the 442nd Regimental Combat Team, and the Military Intelligence Service Memorial was dedicated in Los Angeles.

2000 October 22. Twenty Japanese American veterans of World War II were awarded Congressional Medals of Honor after their Distinguished Service Medals were upgraded. November 9. The National Japanese American Memorial was dedicated in Washington, D.C. to remember the patriotic contributions of the Japanese American community during World War II.

Appendix D. Oral History

Oral History 1.
Roy Matsuzaki

Date of birth: June 5, 1933.
Place of birth: Elk Grove, California.
Age: 82.
Date of interview: February 26, 2016.
San Jose, California.
Length of interview: 33 minutes.
Image: Roy Matsuzaki

Time Stamp Topic: Pearl Harbor and the anti-Japanese sentiments.
0:00:28

Narrator: Well, I come from family of five sisters and three brothers. I have a mother and a father. I was brought up in a little countryside, in Elk Grove California, Sacramento County. So, during my youth days my father was a farmer and we raised strawberries, and thing like that, and before or before the World War II started my father had his home built, and then we were there for about two years. That was when we heard about the bombing of Pearl Harbor. But, at that same time, my brother was visiting us from camp. He was in the United States Army, he was drafted and he was (uninterpretable). So he, when we heard about the bombing they notified him to return to his branch of service. So he said: “Looks like I got to go back to Army base”. This, this how I quietly remember what happened during that time. I was really young, but I didn’t know what the heck happened, and I didn’t even know what the, I didn’t even know what Pearl Harbor was, you know. But, after all the news happened we, we discovered, you know, the Japanese had bombed Pearl Harbor.

So, during that time when that happened I guess the people around our community got pretty upset about us. I mean, they didn’t want us around and they threatened us, and so it just like happening right now, you know. We had to have our front door closed and we had to put the shades on our windows so the light won’t be coming back. So, there a lot of suspicions among the Japanese during that time. And even if I was going school kids make fun of us and things like that, you know.

The following interview excerpt has been edited to facilitate the understandability of the oral history. The narrator tells his personal account of the Japanese American incarceration. Roy Matsuzaki, interview by the author, Japanese American Museum of San Jose, San Jose, CA, February 26, 2016.

Roy Matsuzaki, photo by the author, Japanese American Museum of San Jose, San Jose, CA, February 26, 2016.
So, but then, at one time when I was coming home from school I saw this big sign, you know, posted on the telephone post that we had to be interned. Well, I didn’t know what it said so my sister had to read the announcement and said: “Oh, looks like they gonna put us into internment camp”. I didn’t know what internment camp was meant. But then, when the time came before we had to do that. When we had to sell lot of our stuff, our belongings. My mother had to burn a lot of stuff up, and they said the F.B.I.s would come and search our house, and stuff like that. So my mother had to burn up all her possession of Japanese stuff, in fact she had the pictures of Emperor Hirohiro, Hirohito. He was Emperor of Japan. So, of course, she burned that stuff up. She made sure she didn’t have any subject or material of Japanese stuff.

But my father was told to turn in his guns and short wave radio, and samurai sword. But my father was so stubborn that he wouldn’t, he wouldn’t turn it in. He buried it, he buried it into the garage until we came back. To make sure, because he knew if he turned it in he never would have gotten it back. But during that time, you know, it was getting pretty bad. We had people coming by our house and somebody shot a gun into our front window and it hit the front. So we had to vacate that front door.

So the time came that we had to evacuate. We finally, we had our crops are growing so pretty bad, you know. We couldn’t pick the crops. And then, the day we had to report to the train station. I still remember my sister taking us. What if the car? We couldn’t sell the car, because we needed the transportation. So we took the car. She drove us to the train station and we dropped us off and she just dropped the car off to the garage, and left it there. So, I… That’s how much I can remember arriving at the train station where they had military, made sure we boarded the train to the assembly center. So, is that, that’s how much I can remember and tell you what happened to that point.

Oh, okay. There is (uninterpretable) about 16 or 17 center that you could probably think about. Well, my family went to Fresno Assembly Center. They drove us into the Fresno Assembly Center on a bus and I would look up and see barbed wire fence, and I didn’t know what the heck that was until that evening. When they came to check our room to make sure we’re there I looked outside, I saw a search lights and guards along the barbed wire fences. I said: “God, this looks like a prison.” To me it was a prison, you know. We couldn’t escape the nature, we couldn’t escape, and things like that. We were there for about four months. During the four months they had some education for us, and things like that. And I could remember getting flu shots, not flu shots, but inoculation since we were all in a group, and things like that. But, being in an internment camp I guess everything they did for us was free, because we were provided. We were provided food, we were provided education, but things like that, but we were provided things to eat. My mother would say: “Hey, this is pretty good. I mean, they give you a place stay. They even fed you and even paid her. This better than living in the outside.” (laughs) Things like that. Okay, I’m sorry if I then go any further.
Okay, in the Assembly Center we were there for about four months, because during that four months they were building these ten permanent camps. So, during the four months we were there we were able to, you know, stay among ourselves. And then they put us on a train from Fresno and we were able to take train for about four, four days. I don’t know if I took a shower or was able to sleep, but standing up. I think. But then, the funny thing happened. We were taking the train from California to Arkansas. We were sent to Arkansas. In New Mexico we stopped at (name of the town uninterpretable) and the people asked us: “What tribes are you from?” They thought we were Indian, because you know, because of our feature, high cheekbones and stuff. But that was something funny. I guess they thought we were a bunch of Indians moving across the country.

But we arrived at Jerome, Arkansas. This was, this was the first camp I went to. It was cold and every day we would have to burn coal, you know, in our stove. I think you seen stove inside the barracks. Well, after the coal ran out we had to burn wood. So the men went out to the forest and chopped wood and so that’s the way we had to keep ourselves warm. It was a quite experience for me, for being a child yet. I experienced the sad things, sad thing and happy thing that happen in camp. We were, we were limited to doing things. We never was able to observe holidays like Christmas, New Years, Halloween, and things that normally happen during the American days, because even during Halloween we could not go trick or treating. Things like that, you know. Where would you go? And, and you never had things like birthday parties, you know. You never had birthday parties, because we couldn’t go out buy cake. We couldn’t buy present, things like that.

But the one thing I was able to observe was, since I had (uninterpretable) five sister, three sister they lived in one compartment. The soldier from Mississippi, they were in the 442nd training. They would come to visit our camp and they would come to, of course, to visit the girls. (laughs) They would always tell me, once you go out to see a movie they don’t want me around. (laughs) But, to them it was news, or something surprising. I mean, they were, they discovered. Hey, what are you people doing in internment camp. Well, their people in Hawaii wasn’t, didn’t have to go to camp and they were surprised. So, during that time the Nisei soldiers from Hawaii and the Nisei soldiers from America was able to become one unit. Arming the Hawaiian men kinda, you know. They then didn’t like the Japanese American in the state side, but after they heard or found out, hey you guys are put in the camp, that became united, one group.

But, (laughs) I was during my time in camp. I was able to see my friends’ son, you know, leave for camp and go to the Army, and things like that. And some would come back alive, but some of my friends’, you know, brothers did not make it back. Fortunately, my brother was stationed in Missouri, next to, pretty close to Arkansas. And he was able to visit us, and then things like that happen.

But, during the camp. During our, my stay in Jerome they had to close Jerome down. That was one camp in Arkansas, because they had to bring in prisoner, German prisoners. So they told us: “Well, you could transfer to other camp.” Which we chose Rohwer. Rohwer was next door to
Jerome. So we chose Rohwer, which was close right to, which was pretty close to Jerome. Other, other families transferred themselves to Gila and to Poston. Whereas, during that time... But, during that time when we were in Jerome… I guess you heard the government issued out a loyalty oath to see if, how loyal you would be.

0:12:14  Incarceration Camps.

Well, my mother, my father wanted to go back to Japan. Because they said: “Hey we got no place to go.” But my sister told my mother: “Hey, No. We’re not…We can’t go, because we still had a brother here.” Which I am glad, which they committed. So, they voted to say Yes-Yes, rather than saying No-No. Otherwise, if they said No-No they would have been sent to Tule Lake. (laughs) This is corny an exchange of prisoner. Tule Lake, some of the people in Tule Lake came back to Arkansas.

In Rohwer we were able to attend school, till about the ending of the war, 1945. They brought in teacher from the outside to help us educate ourselfe more, because during that time we were in school we had only teachers that had high school education. So, they wanting to teach us reading, writing, (arithmetic, uninterpretable), but we didn’t have any books. So, when we brought these teachers in from the outside we were able to get lab classes, and things like that. And we had field trip where we didn’t have to go anywhere. No field trips, right (uninterpretable).

Time Stamp  Topic: Life in Rohwer Incarceration Camp, adults and children in the camp, and resettlement.
0:14:25

But, then after the military guards left camp we were, we were able to leave camp. They said: “You could go to where ever you wanted to go.” I mean, but some of my sisters and my brother, they left Rohwer to go to Minneapolis. To just, you know, just to move out of there. So, they did house work in Minneapolis, and things like that. Where my brother later on attended the M.I.S. school in Minneapolis, the Military Intelligence School. So, he was able to see that.

But, during that time we remained at Rohwer. At Rohwer I was able to play lots of marbles. I was a marble champ! I don’t know how many hours. I don’t know if you remember, in the younger days kids used to shoot marbles for keeps. And that was one of our outlet. And I played a lot games. Of course I learned a lot of girls’ game, hopscotch, you know, and jump rope, and stuff like that, because I had five sisters that would engage in girls’ activities.

My father was a kenbu (uninterpretable) sensei, it was dance with sword. He though that while he was in Japan. So when he came back to the United States he was able to perform that, and he also thought that in camp. And then of course they had shigin, is a singing lesson in Japanese. It’s just like opera singing, and they had those things. So, the men and women had enough time for themself to do these.

So my father was kept busy doing that. My mother kept busy doing cafeteria work in a restaurant, in the mess hall, because the mess hall needed help and the government would pay
her to become a waitress in a mess hall. So, would you believe, the people that had teachers’ degree or doctors degree, or things like that, was paid to teach us. The government paid them to teach us, or to make sure we did things like that. So the government provided funds for the adults. Where, whereas they were able to send for supplies in the Montgomery Wards and Sears and Roebuck. I don’t know if I remember those order right. They furnished the internees with stuff like clothing and material so they would be able to make these.

**Time Stamp**  
**Topic:** Facing and understanding incarceration, prejudice, and discrimination as a child, and returning home.

During, during my camp days I still didn’t remember, I still didn’t know why we were in the internment camp. I heard so much things like going on, but I was probably 10, 11 years old, but I still couldn’t remember why we were in a camp. Nobody would tell us, talk about why. (uninterpretable) But, toward the end of 1945. Toward the end of war we were allowed to visit the next camp, next town like McGehee Arkansas. Was in between Rohwer. They allowed us to visit McGehee. So, when we got on the bus and we got to McGehee this women says: “You people could sit in the front.” Where the blacks had to go to the back. And to me that didn’t mean anything, because when I went into McGehee they had separate grocery store, separate laundry, and separate theatre for the blacks. I couldn’t understand what was going until I returned here to California and I said: “Hey, I saw that! Things are going on in Akansas against the blacks, where they were being prejudiced and discriminated.” And to this day I think they still being discriminated. Those things that kept on going on and on, but I was able to see that. So I was able to understand what those things meant.

Because even when we were allowed to come back we were discriminated. I couldn’t get a haircut. This barber told me how. And the Grocery stores told us to get out of here. And we couldn’t sit down in a restaurant and get served. So, and we couldn’t even buy homes until law was really passed here in the community here. Even in San Jose, I have heard, it was pretty bad. And to me. When I came back kids would make fun of us, and we had fights and things like that, you know. They incriminated us, because when I came back it was a white community where they didn’t want the Japanese to return to California. It was that bad. You even hear that right now, you know. Governors of each state that want the Muslim to return to (uninterpretable).

**Time Stamp**  
**Topic:** Resettlement and returning to California, Camp Kohler,  
0:21:15  
the family business and agriculture.

Oh, okay! I guess I was in two camps almost four years, because I was there till... When did the war end? September 1944, 45? We stayed there until the government allowed us to return to California. So, I guess I was in Rohwer about year and a half, and then I was in Jerome what year and a half, you know.

We were allowed to return to California, but we didn’t have a home. So, we were moved into a Army camp in Sacramento called Camp Kohler. I mean, they had free (laughs) barracks like black, just like living in camp again. But, then we had to live, we had to provide our own food. They provided the facility, you know, shower places, and place to eat. But then, after that a
friend of us, a friend of ours provided us a home to come home. To stay with them until we were able to, you know, get organize.

Well, I think it took probably about, I think 45. Probably took about 10 years for us to get back into civilization, you know. Because, when we got back into civilization my father had a hard time finding a job. I remember him going to the Red Cross to see if he could get some help, you know. And then they did help my father, because they probably knew the area he was in. It was, took quite a while until our friend provided us with a land, which we were able to harvest strawberry, and to pick the crops to make a living.

**Time Stamp**  Topic: Military service and the Korean War.
0:25:20

Anyway, this is how we were able to accomplish ourselves. And then myself, would you believe, I was in the Army. I was drafted in the Army. After I got out I was 13 years old and at 19 I get a draft notice from the Army! This is during the Korean War, and I served myself a patriotic. This is, this is the American for you! They throw you into internment camp and then (laughs) they now wanna draft you. But anyway, I served my country very well. I didn’t have to fight combat, but, because I... The peace was signed (uninterpretable) during the Korean War during the 14th week with my basic camp. I wasn’t happy. I mean, I have been trained to fight, but then the peace was signed. So, I didn’t have to go to a fight.

**Time Stamp**  Topic: Japanese Americans and Muslim Americans, a comparison, and contemporary prejudice.
0:28:58

Well, I kind a think there is a little similarity. Because, you know, when we were addressed or we were forced to go into internment camp I think the people felt that we were the enemies and they felt, yeah, I think they should go in, we don’t want them around. Just like the people here in California and in other states don’t want the Muslim move into the community. So, it’s happening to them as is, as it is happening to us and they are being ridiculed. The women are dressed in their clothing (uninterpretable) and they are being threatened. And I think United State is the home of the brave, the land of the free, but to me that’s a bunch of bull! You know. I think there is a lot of prejudice against the American people. The way they live and the way they’re brought up, you know, like that. I don’t think they believe on the principle of how they’re brought up. I’m not too sure, but I’m sure other nationalities probably feel the same way. I don’t, I see a little similarity in that group. Even (laughs) our candidate that’s running for President, you know. He has this all the same. So, everybody has their own, own way of thinking.
Appendix E. Primary Documents

Document 1. Excerpts from the Constitution of the United States\textsuperscript{1356}

\textit{We the People} of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

\textbf{Article I}

\textbf{Section 1.}

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

[...]

\textbf{Section 8.}

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;


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To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, arsenals, dock-Yards, and other needful Buildings;--And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

[...]
Article II

Section 1.

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows.

[...]

Section 2.

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

[...]

Article IV

Section 1.

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2.

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.
Section 3.

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4.

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

[...]

Bill of Rights: Amendments I-X
(Ratified December 15, 1791)

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be
Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[...]

Amendment XIII (Ratified December 6, 1865)
Section 1.
Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2.
Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV (Ratified July 9, 1868)

Section 1.
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[...]

Amendment XV (Ratified February 3, 1870)

Section 1.
The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2.
The Congress shall have power to enforce this article by appropriate legislation.

[...]
**Document 2. Day of Infamy Speech, Draft No. 1, December 7, 1941**

The attack yesterday on Manila and on the Island of Guam has caused severe damage to American naval and military forces. Very many American lives have been lost. In addition American ships have been torpedoed on the high seas between San Francisco and Honolulu.

Yesterday the Japanese Government also launched an attack against Malaya.

Japan has, therefore, undertaken a surprise offensive extending throughout the Pacific area. The facts of yesterday speak for themselves. The people of the United States have already formed their opinions and well understand the implications these attacks bear on the safety of our nation.

As Commander-in-Chief of the Army and Navy I have directed that all measures be taken for our defense.

Long will we remember the character of the onslaught against us.

No matter how long it may take us to overcome this Newtonian mission, the American people will in their righteousness might win through to absolute victory.
I speak the will of the Congress and of the people of this country when I assert that we will not only defend ourselves to the uttermost but will see to it that this form of treachery shall never endanger us again. Hostilities exist. There is no mincing the fact that our people, our territory and our interests are in grave danger.

I, therefore, ask that the Congress declare that since the unprovoked and dastardly attack by Japan on Sunday, December seventh, a state of war exists between the United States and the Japanese Empire.

[Signature]
[Confidence in our mission]
Malaya.

Last night Japanese forces attacked Hong Kong.

Last night Japanese forces attacked Guam.

Last night Japanese forces attacked the Philippine Islands.

Last night the Japanese attacked Wake Island.

And this morning the Japanese attacked Midway Island.

Japan has, therefore, undertaken a surprise offensive extending throughout the Pacific area. The facts of yesterday and today speak for themselves. The people of the United States have already formed their opinions and well understand the implications to the very life and safety of our nation.

As Commander-in-Chief of the Army and Navy I have directed that all measures be taken for our defense.

But always will (we) our whole nation remember the character of the onslaught against us. (applause)

No matter how long it may take us to overcome this premeditated invasion, the American people in their righteous might will win through to (loud and prolonged cheers and applause) absolute victory.

I believe that I interpret the will of the Congress and of the people when I assert that we will not only defend ourselves to the uttermost but will make it very certain that this form of treachery shall never again (endanger us) endanger us (again). (applause)

Hostilities exist. There is no blinking at the fact that our people, our territory and our interests are in grave danger.

With confidence in our armed forces -- with the unbounding determination of our people -- we will gain the inevitable triumph -- so help us God. (applause)
I ask that the Congress declare that since the unprovoked and
cowardly attack by Japan on Sunday, December seventh, 1941, a state of
war has existed between the United States and the Japanese Empire. (loud
and prolonged cheers and applause).

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,

December 8, 1941.
Executive Order No. 9066, February 19, 1942

WHEREAS the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities as defined in Section 4, Act of April 20, 1918, 40 Stat. 533, as amended by the Act of November 30, 1940, 54 Stat. 1220, and the Act of August 21, 1941, 55 Stat. 659 (U. S. C., Title 50, Sec. 104):

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military

---

Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary, in the judgment of the Secretary of War or the said Military Commander, and until other arrangements are made, to accomplish the purpose of this order. The designation of military areas in any region or locality shall supersede designations of prohibited and restricted areas by the Attorney General under the Proclamations of December 7 and 8, 1941, and shall supersede the responsibility and authority of the Attorney General under the said Proclamations in respect of such prohibited and restricted areas.

I hereby further authorize and direct the Secretary of War and the said Military Commanders to take such other steps as he or the appropriate Military Commander may deem advisable to enforce compliance with the restrictions applicable to each Military area hereinabove authorized to be designated, including the use of Federal troops and other Federal Agencies, with authority to accept assistance of state and local agencies.
I hereby further authorize and direct all Executive Departments, independent establishments and other Federal Agencies, to assist the Secretary of War or the said Military Commanders in carrying out this Executive Order, including the furnishing of medical aid, hospitalization, food, clothing, transportation, use of land, shelter, and other supplies, equipment, utilities, facilities, and services.

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

THE WHITE HOUSE,

February 14, 1942.

[Signature]

THE NATIONAL ARCHIVES
FILED AND MADE AVAILABLE FOR PUBLIC INSPECTION

FEB 21 12:51 PM '42
IN THE DIVISION OF THE FEDERAL REGISTER
Document 5. Civilian Exclusion Order No. 1, March 24, 19421360

WESTERN DEFENSE COMMAND AND FOURTH ARMY
WARTIME CIVIL CONTROL ADMINISTRATION

INSTRUCTIONS TO ALL
JAPANESE
LIVING ON BAINBRIDGE ISLAND

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

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

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

1. Give advice and instructions on the evacuation.
2. Provide services with respect to the management, leasing, sale, storage or other disposition of most kinds of property, including: farms, livestock and farm equipment, boats, tools, household goods, automobiles, etc.
3. Provide temporary residence for all Japanese in family groups, elsewhere.
4. Transport persons and a limited amount of clothing and equipment to their new residence, as specified below.
5. Give medical examinations and make provision for all invalided persons affected by the evacuation order.
6. Give special permission to individuals and families who are able to leave the area and proceed to an approved destination of their own choosing on or prior to March 29, 1942.

The following instructions must be observed:

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

2. Before leaving the area all persons will be given a medical examination. For this purpose all members of the family should be present at the same time, when directed by the Civil Control Office.
3. Under special conditions, individuals and families will be permitted to leave the area prior to the date for complete evacuation indicated above. In general, the conditions imposed on voluntary evacuation are as follows: (a) That the destination be outside of Military Area No. 1, prescribed by Proclamation No. 1 of the Commanding General, Western Defense Command and Fourth Army, March 2, 1942; (b) That arrangements have been made for employment and shelter at the destination.

4. Provisions have been made to give temporary residence in a reception center elsewhere. Evacuees who do not go to an approved destination of their own choice, but who go to a reception center under Government supervision, must carry with them the following property, not exceeding that which can be carried by the family or the individual:
   (a) Blankets and linens for each member of the family;
   (b) Toilet articles for each member of the family;
   (c) Clothing for each member of the family;
   (d) Sufficient knives, forks, spoons, plates, bowls and cups for each member of the family;
   (e) All items carried will be securely packaged, tied and plainly marked with the name of the owner and numbered in accordance with instructions received at the Civil Control Office;
   (f) No contraband items may be carried.

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

6. Each family, and individual living alone, who goes to a reception center will be furnished transportation and food for the trip. Transportation by private means will not be permitted. Instructions will be given by the Civil Control Office as to when evacuees must be fully prepared to travel.

Go to the Civil Control Office at the Anderson Dock Store in Winslow between 8:00 A. M. and 5:00 P. M. on March 25, 1942, to receive further instructions.

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


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12. Relatives in Japan (see instruction above item 11):

<table>
<thead>
<tr>
<th>Name</th>
<th>Relationship to you</th>
<th>Citizenship</th>
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<table>
<thead>
<tr>
<th>Complete address</th>
<th>Occupation</th>
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13. Education:

<table>
<thead>
<tr>
<th>Name</th>
<th>Place</th>
<th>Years of attendance</th>
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<table>
<thead>
<tr>
<th>Kindergarten</th>
<th>From</th>
<th>to</th>
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<tbody>
<tr>
<td>Omsa school</td>
<td></td>
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<tr>
<td>Japanese Language school</td>
<td>From</td>
<td>to</td>
</tr>
<tr>
<td>High school</td>
<td>From</td>
<td>to</td>
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<tr>
<td>Junior college, college, or university</td>
<td>From</td>
<td>to</td>
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<thead>
<tr>
<th>(Type of military training, such as R. O. V. C. or Gungii Kyo-ku)</th>
<th>(Where and when)</th>
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<thead>
<tr>
<th>Other schooling</th>
<th>(Years of attendance)</th>
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14. Foreign travel (give dates, where, how, for whom, with whom, and reasons therefor):

<table>
<thead>
<tr>
<th>Date</th>
<th>Where</th>
<th>How</th>
<th>For whom</th>
<th>With whom</th>
<th>Reason</th>
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15. Employment (give employers' names and kind of business, addresses, and dates from 1935 to date):

<table>
<thead>
<tr>
<th>Employer's name</th>
<th>Kind of business</th>
<th>Address</th>
<th>From</th>
<th>To</th>
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16. Religion

<table>
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<tr>
<th>Membership in religious groups</th>
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17. Membership in organizations (clubs, societies, associations, etc.). Give name, kind of organization, and dates of membership.

<table>
<thead>
<tr>
<th>Name of organization</th>
<th>Kind of organization</th>
<th>Date of membership</th>
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18. Knowledge of foreign languages (put check mark (✓) in proper squares):

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<tr>
<th></th>
<th>Good</th>
<th>Fair</th>
<th>Poor</th>
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<tr>
<td>(a) Japanese</td>
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<tr>
<td>Writing</td>
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<td>Speaking</td>
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<tr>
<td>(b) Other</td>
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<td></td>
<td></td>
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<tr>
<td>Good</td>
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<td>Fair</td>
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<tr>
<td>Poor</td>
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19. Sports and hobbies


20. List five references, other than relatives or former employers, giving address, occupation, and number of years known:

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<tr>
<th>Name</th>
<th>(Complete address)</th>
<th>Occupation</th>
<th>(Years known)</th>
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21. Have you ever been convicted by a court of a criminal offense (other than a minor traffic violation)?

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<thead>
<tr>
<th>Offense</th>
<th>When</th>
<th>What court</th>
<th>Sentence</th>
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22. Give details on any foreign investments.

(a) Accounts in foreign banks. Amount, $__________________

Bank

Date account opened

(b) Investments in foreign companies. Amount, $__________________

Company

Date acquired

(c) Do you have a safe-deposit box in a foreign country?

What country? __________________ Date acquired __________________

Contents
23. List contributions you have made to any society, organization, or club:

<table>
<thead>
<tr>
<th>Organization</th>
<th>Place</th>
<th>Amount</th>
<th>Date</th>
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24. List magazines and newspapers to which you have subscribed or have customarily read:

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<thead>
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<th>Magazine/Title</th>
<th>Place</th>
<th>Amount</th>
<th>Date</th>
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25. To the best of your knowledge, was your birth ever registered with any Japanese governmental agency for the purpose of establishing a claim to Japanese citizenship?

(a) If so registered, have you applied for cancellation of such registration? 

(Yes or no)

When? 

Where?

26. Have you ever applied for repatriation to Japan?

27. Are you willing to serve in the armed forces of the United States on combat duty, wherever ordered?

28. Will you swear unqualified allegiance to the United States of America and faithfully defend the United States from any or all attack by foreign or domestic forces, and forebear any form of allegiance or obedience to the Japanese emperor, or any other foreign government, power, or organization?

(Date) 

(Signature)

NOTE—Any person who knowingly and willfully falsifies or conceals a material fact or makes a false or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States is liable to a fine of not more than $10,000 or 10 years' imprisonment, or both.
The Japanese American Creed, May 9, 1941

I am proud that I am an American citizen of Japanese ancestry, for my very background makes me appreciate more fully the wonderful advantages of this nation. I believe in her institutions, ideals, and traditions; I glory in her heritage; I boast of her history; I trust in her future. She has granted me liberties and opportunities such as no individual enjoys in this world today. She has given me an education befitting kings. She has entrusted me with the responsibilities of the franchise. She has permitted me to build a home, to earn a livelihood, to worship, think, speak, and act as I please—as a free man equal to every other man.

Although some individuals may discriminate against me, I shall never become bitter or lose faith, for I know that such persons are not representative of the majority of the American people. True, I shall do all in my power to discourage such practices, but I shall do it in the American way: above-board, in the open, through courts of law, by education, by proving myself to be worthy of equal treatment and consideration. I am firm in my belief that American sportsmanship and attitude of fair play will judge citizenship and patriotism on the basis of action and achievement, and not on the basis of physical characteristics.

Because I believe in America, and I trust she believes in me, and because I have received innumerable benefits from her, I pledge myself to do honor to her at all times and in all places, to support her constitution, to obey her laws, to respect her flag; to defend her against all enemies, foreign or domestic; to actively assume my duties and obligations as a citizen, cheerfully and without any reservations whatsoever, in the hope that I may become a better American in a greater America.

—Mike Masaoka.

1363 Mike Masaoka, The Japanese American Creed, May 9, 1941, Box 1, Folder Nisei Loyalty, 1934, 1938-1942, Series 1, JACL History Collection, Japanese American National Library, San Francisco.
A DECLARATION OF POLICY
BY THE
JAPANESE AMERICAN CITIZENS LEAGUE

We, the members of the National Board of the Japanese American Citizens League of the United States of America, believe that the policies which govern this organization and our activities as their official representatives are fourfold in nature and are best illustrated by an explanation of the alphabetical sequence of the letters J-A-C-L.

"J" stands for Justice. We believe that all peoples, regardless of race, color, or creed, are entitled to enjoy those principles of "life, liberty, and the pursuit of happiness" which are presumed to be the birthright of every individual; to the fair and equal treatment of all, socially, legislatively, judicially, and economically to the rights, privileges, and obligations of citizenship. To this end, this organization is dedicated.

"A" stands for Americanism. We believe that in order to prove ourselves worthy of the justice which we seek, we must prove ourselves to be, first of all, good Americans — in thought, in words, in deeds. We believe that we must personify "The Japanese American Creed"; that we must acquaint ourselves with those traditions, ideals, and institutions which made and kept this nation the foremost in the world. We believe that we must live for America — and, if need be, to die for America. To this end, this organization is consecrated.

"C" stands for Citizenship. We believe that we must be exemplary citizens in addition to being good Americans. As in the case of our parents, one may be a good American and yet be denied the privilege of citizenship. We believe that we must accept and even seek out opportunities in which to serve our country and to assume the obligations and duties as well as the rights and privileges of citizenship. To this end, this organization is committed.

"L" stands for Leadership. We believe that the Japanese American Citizens League, as the only national organization established to serve the American citizens of Japanese ancestry, is in a position to actively lead the Japanese people residing in the United States. We believe that we have the inspired leadership and membership necessary to carry into living effect the principles of Justice, Americanism, and Citizenship for which our League was founded. We offer cooperation and support to all groups and individuals sincerely and legitimately interested in these same aims, but we propose to retain our independent and separate status as the Japanese American Citizens League. To this end, this organization is pledged.

Summed up briefly, the Japanese American Citizens League is devoted to those tasks which are calculated to win for ourselves and our posterity the status outlined by our two national slogans: "For Better Americans in a Greater America" and "Security Through Unity."

---

1364 A Declaration of Policy by the Japanese American Citizens League, 1942, Box 1, Folder Nisei Loyalty, 1934, 1938-1942, Series 1, JACL History Collection, Japanese American National Library, San Francisco.
Document 10. Public Law No. 503, March 21, 1942

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

UNITED STATES OF AMERICA, vs. FRED TOYOSABURO KOREMATSU,

Plaintiff, Defendant.

No. 27635 W

INFORMATION

(Public Law No. 503, Seventy-Seventh Congress
Chapter 101, Second Session, H. R. 6750)

Leave of Court being first had, FRANK J. HENNESSY,
United States Attorney for said District, comes, and for
the United States of America informs this Court, THAT
FRED TOYOSABURO KOREMATSU,
(henceforth called "said defendant"), being at all the
times herein mentioned a person of Japanese ancestry, and
being within the geographical limits of Military Area No. 1
as said Area is defined and described in Proclamation No. 1,
dated March 2, 1942, issued by J. L. De Witt, Commanding
General, Western Defense Command, and Military Commander
designated by the Secretary of War, pursuant to Executive
Order No. 8086 of the President of the United States,
dated February 19, 1942, did, on or about the 30th day of
May, 1942, at the City of San Leandro, County of Alameda,
State of California, within said division and district,
and within the geographical limits of Area No. 1, unlawfully,
willfully and knowingly commit an act contrary to the

restrictions applicable to said Area, and contrary to the
order of the Secretary of War and of such Military Commander,
in that he, the said defendant, was, at said time and
place, and did, at said time and place, remain in that
portion of Military Area No. 1 covered by Civilian Exclusion
Order No. 34 of said Commanding General, J. L. de Witt, issued
on May 3, 1942, in which all persons of Japanese ancestry
are excluded from, and not permitted to remain in, the said
City of San Leandro, County of Alameda, State of California,
after 12 o'clock, noon, P.W.T. May 9, 1942; that at said
time said defendant knew of the existence of said restric-
tions and order, and that his said act was in violation
thereof.

Frank Hennessey
United States Attorney
Document 12. Order and Judgment, September 8, 1942

United States District Court

FOR THE
Northern District of California

AT A STATED TERM of the United States District Court for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 8th day of September, in the year of our Lord one thousand nine hundred and forty-two.

PRESENT: the Honorable A. F. St. Surk, District Judge

UNITED STATES OF AMERICA,

Plaintiff,

VS.

FRED TOYOSABURO KOREMATSU,

Defendant.

CRIMINAL NO. 27635

This case came regularly this day for the entry of the plea of the defendant Fred Toyosaburo Korematsu, and for hearing on demurrer to information. The defendant was present in Court in the custody of the Military Authorities and with his attorneys Wayne M. Collins, Esq., and Clarence E. Dunn, Esq. A. J. Zirpoli, Esq., Assistant United States Attorney, was present for and on behalf of the United States.

The defendant was called to plead and thereupon the defendant entered a plea of NOT GUILTY to the charges contained in the information. The defendant and the attorneys orally waived a trial by jury. Thereupon the case proceeded to trial. Mr. Zirpoli made an opening statement to the Court on behalf of the United States. Oliver J. Mansfield was sworn and testified on behalf of the United States. Mr. Zirpoli offered in evidence and filed certain exhibits on behalf of the United States, which were marked U.S. exhibits No's. 1, 2, 3 and 4. Thereupon the United States rested. Defendant through his counsel moved to continue the case to another day.

I declare on oath that the foregoing is a full, true, and correct copy of an original order made and entered in the above entitled

Attest my hand and seal of said District Court this 26th day of December 1942.

[Signature]

CLERK

[Signature]

CLERK

attorney Mr. Collins, moved the court to dismiss the information herein and to enter a judgment of not guilty. Ordered said Motion be denied. Defendant Fred Toyosaburo Korematsu was sworn and testified in his own behalf, and the defendant rested.

Thereupon the evidence was closed. Mr. Collins renewed the Motion to Dismiss Information and to enter a Judgment of Not Guilty. Ordered said Motion be denied. Thereupon the case was submitted to the Court, without argument, for consideration and decision and the same being fully considered, IT IS BY THE COURT, ORDERED that the defendant Fred Toyosaburo Korematsu be, and he is hereby adjudged GUILTY of the offense charged in the Information.

The defendant was called for judgment. Mr. Collins made a Motion in Arrest of Judgment. After hearing Mr. Collins and Mr. Zirpoli, it is ordered that the defendant Fred Toyosaburo Korematsu be placed on probation for the period of five (5) years, the terms and conditions of the Probation Officer of this Court. Further ordered that the bond heretofore given for the appearance of the defendant be exonerated. Ordered pronouncing of judgment be suspended.

**************

473

PRELIMINARY RESULTS OF NATION-WIDE SURVEY OF PUBLIC OPINION ON JAPANESE EVACUATION

1. Which of the enemy alien groups in the United States do you think is most dangerous?
   - Japanese – 36%
   - Germans – 47%
   - Italians – 2%
   - All the same – 11%
   - Don’t Know – 6%

2. Do you think we are doing the right thing in moving Japanese aliens (not citizens) away from the Pacific Coast?
   - Yes – 92%
   - No – 2%
   - Don’t know – 6%

3. How about Japanese born in the United States (citizens)? Do you think they should be moved?
   - Yes – 59%
   - No – 25%
   - Don’t know – 16%

4. With regard to those Japanese who are moved, do you think they should be kept under strict guard as prisoners of war or do you think they should be allowed to go about fairly freely in their new communities?
   - Should be kept under strict guard – 64%
   - Should be permitted to move about fairly freely – 29%
   - Don’t know – 7%

5. Should the Government alone decide what kind of work evacuated Japanese will do or should the Japanese have some voice in the matter?

---

Government alone should decide – 67%
Japanese should have voice – 23%
Don’t know – 10%

Of those who felt the Government alone should decide, the following reasons were mentioned:
  Japanese not trustworthy – 18%
  Government would not have sufficient control – 10%
  We are in a war and must take all precautions – 6%
  Government should have right to use Japanese where most needed – 6%

Of those who felt Japanese should have some voice in the matter, the following reasons were mentioned:
  Would be most efficient – 8%
  Majority of Japanese are harmless or blameless – 6%
  Psychological effect on Japanese would be better – 4%

6. Should the Japanese who are moved to new communities get the same wage as others, smaller wages, or merely room and board? 1/
   Same wages – 33%
   Smaller wages – 26%
   Room and board – 27%
   Don’t know – 14%

7. Of the Japanese born in the United States are those who returned to Japan for their education more or less dangerous than those who have been educated in this country?
   More dangerous – 75%
   Less dangerous – 7%
   About the same – 8%
   Don’t know – 10%

8. Do you think that on the whole the Japanese born in this country are more or less dangerous than those who came here from Japan?
   More dangerous – 10%
   Less dangerous – 69%
   About the same – 10%
   Don’t know – 11%
Appendix F. Tables

Table 1. Japanese in Hawaii, 1900-1970

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Population</th>
<th>Percentage Japaneseᵃ</th>
<th>Number of Japanese</th>
</tr>
</thead>
<tbody>
<tr>
<td>1900</td>
<td>154,001</td>
<td>40</td>
<td>61,111</td>
</tr>
<tr>
<td>1910</td>
<td>191,909</td>
<td>42</td>
<td>79,675</td>
</tr>
<tr>
<td>1920</td>
<td>255,912</td>
<td>43</td>
<td>109,274</td>
</tr>
<tr>
<td>1930</td>
<td>368,336</td>
<td>38</td>
<td>139,631</td>
</tr>
<tr>
<td>1940</td>
<td>423,330</td>
<td>37</td>
<td>157,905</td>
</tr>
<tr>
<td>1950</td>
<td>499,794</td>
<td>37</td>
<td>184,611</td>
</tr>
<tr>
<td>1960</td>
<td>632,772</td>
<td>32</td>
<td>203,455</td>
</tr>
<tr>
<td>1970</td>
<td>768,561</td>
<td>28</td>
<td>217,175</td>
</tr>
</tbody>
</table>


Table 2. Japanese in the Continental United States and Hawaii, 1870-1970

<table>
<thead>
<tr>
<th>Year</th>
<th>Mainland</th>
<th>Hawaii</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1870</td>
<td>55</td>
<td>–</td>
<td>55</td>
</tr>
<tr>
<td>1880</td>
<td>148</td>
<td>116</td>
<td>264</td>
</tr>
<tr>
<td>1890</td>
<td>2,039</td>
<td>12,610</td>
<td>14,649</td>
</tr>
<tr>
<td>1900</td>
<td>24,326</td>
<td>61,111</td>
<td>85,437</td>
</tr>
<tr>
<td>1910</td>
<td>72,157</td>
<td>79,675</td>
<td>151,832</td>
</tr>
<tr>
<td>1920</td>
<td>111,010</td>
<td>109,274</td>
<td>220,284</td>
</tr>
<tr>
<td>1930</td>
<td>138,834</td>
<td>139,631</td>
<td>278,465</td>
</tr>
<tr>
<td>1940</td>
<td>126,947</td>
<td>157,905</td>
<td>284,852</td>
</tr>
<tr>
<td>1950</td>
<td>141,768</td>
<td>184,611</td>
<td>326,379</td>
</tr>
<tr>
<td>1960</td>
<td>260,059</td>
<td>203,455</td>
<td>463,514</td>
</tr>
<tr>
<td>1970</td>
<td>371,149</td>
<td>217,175</td>
<td>588,324</td>
</tr>
</tbody>
</table>

Table 3. “Generation Gap” within the Japanese American Community, 1924

<table>
<thead>
<tr>
<th></th>
<th>Issei Males</th>
<th>Nisei Males</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average age</td>
<td>55</td>
<td>17</td>
</tr>
<tr>
<td>Spoken language</td>
<td>Japanese, spoke little English</td>
<td>English, spoke little Japanese</td>
</tr>
<tr>
<td>Religion, 1930s</td>
<td>¼ of them were Buddhists</td>
<td>½ of them were Christians</td>
</tr>
</tbody>
</table>


Table 4. Japanese Naval Cruisers, 1935

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Port and Date of Call</th>
<th>Officers</th>
<th>Cadets</th>
<th>Crew</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asama</td>
<td>Honolulu, June 15-19, 1935</td>
<td>145</td>
<td>174</td>
<td>1,277</td>
</tr>
<tr>
<td>Yakumo</td>
<td></td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Table 5. Japanese Naval Oil Tankers, 1935-1936

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Port and Date of Call</th>
<th>Officers</th>
<th>Cadets</th>
<th>Crew</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sunosaki</td>
<td>Honolulu June 14-17, 1935</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Sata</td>
<td>Honolulu June 28-July 1, 1935</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Sunosaki</td>
<td>Honolulu July 14-17, 1935</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Tsurumi</td>
<td>Honolulu Dec. 4-7, 1935</td>
<td>12</td>
<td>-</td>
<td>163</td>
</tr>
<tr>
<td>Sata</td>
<td>Honolulu Dec. 27/35 - Jan. 2/36</td>
<td>16</td>
<td>-</td>
<td>144</td>
</tr>
<tr>
<td>Ondo</td>
<td>Honolulu Jan. 20-22, 1936</td>
<td>12</td>
<td>-</td>
<td>133</td>
</tr>
<tr>
<td>Erimo</td>
<td>Honolulu Feb. 25-26, 1936</td>
<td>16</td>
<td>-</td>
<td>142</td>
</tr>
<tr>
<td>Ondo</td>
<td>Hilo April 16-19, 1936</td>
<td>12</td>
<td>-</td>
<td>136</td>
</tr>
<tr>
<td>Sata*</td>
<td>Honolulu May 24-27, 1936</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Table 6. Japanese Mercantile Training Vessels, 1935-1936

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Port and Date of Call</th>
<th>Officers</th>
<th>Cadets</th>
<th>Crew</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taisei Maru</td>
<td>Hilo Aug. 20-29, 1935</td>
<td>13</td>
<td>67</td>
<td>42</td>
</tr>
<tr>
<td>Kaiyo Maru</td>
<td>Hilo Dec. 29/35 - Jan. 9/36</td>
<td>14</td>
<td>81</td>
<td>39</td>
</tr>
<tr>
<td>Nippon Maru*</td>
<td>Kahului June 8-14, 1936</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Nippon Maru*</td>
<td>Kealakehua June 15-18, 1936</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Nippon Maru*</td>
<td>Kailua June 18-20, 1936</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>


1374 The Ships marked by * were scheduled to arrive later on in 1936, after the report was written.

### Table 7. Selective Service and Volunteers, Weekly Report No. 41

#### c.) Number Called and Volunteering Since 1-20-44

<table>
<thead>
<tr>
<th>Center</th>
<th>Total</th>
<th>No Rpt. From Select. Service</th>
<th>Accepted by Selective Service</th>
<th>Refused to Rpt. Phys.</th>
<th>Other Released from Army</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Inducted</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>E.R.C. 1/Active Duty</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Refused Indn.</td>
<td>Class 1-A</td>
</tr>
<tr>
<td>Total</td>
<td>6,090</td>
<td>232</td>
<td>183</td>
<td>2,315</td>
<td>157</td>
</tr>
<tr>
<td>Cent/5</td>
<td>565</td>
<td>5</td>
<td>21</td>
<td>341</td>
<td>4</td>
</tr>
<tr>
<td>Colo</td>
<td>1,405</td>
<td>0</td>
<td>10</td>
<td>417</td>
<td>110</td>
</tr>
<tr>
<td>Gila</td>
<td>666</td>
<td>0</td>
<td>22</td>
<td>331</td>
<td>0</td>
</tr>
<tr>
<td>Gran</td>
<td>613</td>
<td>2</td>
<td>35</td>
<td>297</td>
<td>3</td>
</tr>
<tr>
<td>HtMt</td>
<td>914</td>
<td>1</td>
<td>39</td>
<td>282</td>
<td>2</td>
</tr>
<tr>
<td>Jero/6</td>
<td>103</td>
<td>0</td>
<td>0</td>
<td>15</td>
<td>0</td>
</tr>
<tr>
<td>Manz</td>
<td>291</td>
<td>12</td>
<td>13</td>
<td>90</td>
<td>0</td>
</tr>
<tr>
<td>Mini/7</td>
<td>966</td>
<td>207</td>
<td>13</td>
<td>338</td>
<td>38</td>
</tr>
<tr>
<td>Rohw</td>
<td>487</td>
<td>5</td>
<td>30</td>
<td>204</td>
<td>0</td>
</tr>
<tr>
<td>Tule</td>
<td>80</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

#### a.) Arrested

<table>
<thead>
<tr>
<th>Center</th>
<th>Total</th>
<th>Chgs. Dismissed</th>
<th>In Jail</th>
<th>Release On Bond</th>
<th>Volunteer Prior Indict.</th>
<th>Brought to Trial</th>
<th>Volunteers for Phys. Since 1-20-44</th>
<th>Volunteers Inducted Prior 1-20-44</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3/</td>
<td>4/</td>
</tr>
<tr>
<td>Total</td>
<td>310</td>
<td>5</td>
<td>4</td>
<td>23</td>
<td>9</td>
<td>97</td>
<td>144</td>
<td>28</td>
</tr>
<tr>
<td>Cent/5</td>
<td>9</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Colo</td>
<td>111</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>96</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>Gila</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Gran</td>
<td>35</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>30</td>
<td>1</td>
</tr>
<tr>
<td>HtMt</td>
<td>84</td>
<td>1</td>
<td>0</td>
<td>19</td>
<td>1</td>
<td>0</td>
<td>63</td>
<td>0</td>
</tr>
</tbody>
</table>

---

1/ Enlisted Reserve Corps.

2/ Includes number unable to report and number held over for further examination, etc.

3/ Volunteers for pre-induction physical examination included in Number Called and Volunteering Since 1-20-44.

4/ Volunteers inducted prior to reestablishment of Selective Service on January 20, 1944.

5/ Reflects recapitulation of data by center.

6/ Center closed June 30, 1944. Does not include 108 persons called but not inducted who transferred to other centers or relocated when center closed.

7/ Report for Minidoka not received; figures used as June 2, 1945.

Table 8. Population, by race, for the United States, 1940 and 1930

<table>
<thead>
<tr>
<th>Race</th>
<th>1940</th>
<th>1930</th>
<th>Increase Amount</th>
<th>Increase Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Classes</td>
<td>131,669,275</td>
<td>122,775,046</td>
<td>8,894,229</td>
<td>7.2</td>
</tr>
<tr>
<td>White</td>
<td>118,214,870</td>
<td>110,286,740</td>
<td>7,928,130</td>
<td>7.2</td>
</tr>
<tr>
<td>Native</td>
<td>106,795,732</td>
<td>96,303,335</td>
<td>10,492,397</td>
<td>10.9</td>
</tr>
<tr>
<td>Foreign-born</td>
<td>11,419,138</td>
<td>13,983,405</td>
<td>-2,564,267</td>
<td>-18.3</td>
</tr>
<tr>
<td>Negro</td>
<td>12,865,518</td>
<td>11,891,143</td>
<td>974,375</td>
<td>8.2</td>
</tr>
<tr>
<td>Other Races</td>
<td>588,887</td>
<td>597,169</td>
<td>-8,276</td>
<td>-1.4</td>
</tr>
<tr>
<td>Indian</td>
<td>333,969</td>
<td>332,397</td>
<td>1,572</td>
<td>0.5</td>
</tr>
<tr>
<td>Chinese</td>
<td>77,504</td>
<td>74,954</td>
<td>2,550</td>
<td>3.4</td>
</tr>
<tr>
<td>Japanese</td>
<td>126,947</td>
<td>138,834</td>
<td>-11,887</td>
<td>-8.6</td>
</tr>
<tr>
<td>Filipino</td>
<td>45,563</td>
<td>45,208</td>
<td>355</td>
<td>0.8</td>
</tr>
<tr>
<td>Hindu</td>
<td>2,405</td>
<td>3,130</td>
<td>-725</td>
<td>-23.2</td>
</tr>
<tr>
<td>Korean</td>
<td>1,711</td>
<td>1,860</td>
<td>-149</td>
<td>-8.0</td>
</tr>
<tr>
<td>All Other</td>
<td>788</td>
<td>780</td>
<td>8</td>
<td>1.0</td>
</tr>
</tbody>
</table>

Table 9. Population by Race, for the United States, by Division and States, 1940

<table>
<thead>
<tr>
<th>Region, Division, and State</th>
<th>Japanese</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>4,971</td>
</tr>
<tr>
<td>South</td>
<td>1,049</td>
</tr>
<tr>
<td>West</td>
<td>120,927</td>
</tr>
<tr>
<td>The West</td>
<td></td>
</tr>
<tr>
<td>Mountain</td>
<td>8,574</td>
</tr>
</tbody>
</table>


1378 The races listed under the All Other title are the Hawaiians, Samoans, and Siamese.

1379 “Population by Race, for the United States, by Division and States, 1940, Racial Composition of the Population for the United States, by States, 1940,” table, November 20, 1942, 77th Cong., 2nd sess., Congressional Record 88, pt. 7: 9017.
<table>
<thead>
<tr>
<th>Camp</th>
<th>1942 Opened</th>
<th>1942 Closed</th>
<th>Number of Detainees Peak</th>
<th>Number of Detainees Total</th>
<th>Destination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fresno (CA)</td>
<td>May 6</td>
<td>Oct. 30</td>
<td>5,120</td>
<td>5,344</td>
<td>Gila River, Jerome</td>
</tr>
<tr>
<td>Marysville (CA)</td>
<td>May 8</td>
<td>June 29</td>
<td>2,451</td>
<td>2,465</td>
<td>Tule Lake</td>
</tr>
<tr>
<td>Mayer (AZ)</td>
<td>May 7</td>
<td>June 2</td>
<td>245</td>
<td>251</td>
<td>Poston</td>
</tr>
<tr>
<td>*Merced (CA)</td>
<td>May 6</td>
<td>Sept. 15</td>
<td>4,508</td>
<td>4,669</td>
<td>Granada</td>
</tr>
<tr>
<td>Pinedale (CA)</td>
<td>May 7</td>
<td>July 23</td>
<td>4,792</td>
<td>4,823</td>
<td>Poston, Tule Lake</td>
</tr>
<tr>
<td>Pomona (CA)</td>
<td>May 7</td>
<td>Aug. 24</td>
<td>5,434</td>
<td>5,514</td>
<td>Heart Mountain</td>
</tr>
<tr>
<td>*Portland (OR)</td>
<td>May 2</td>
<td>Sept. 10</td>
<td>3,676</td>
<td>4,290</td>
<td>Heart Mountain, Minidoka, Tule Lake</td>
</tr>
<tr>
<td>*Puyallup (WA)</td>
<td>Apr. 28</td>
<td>Sept. 12</td>
<td>7,390</td>
<td>7,628</td>
<td>Minidoka, Tule Lake</td>
</tr>
<tr>
<td>*Sacramento (CA)</td>
<td>May 6</td>
<td>June 26</td>
<td>4,739</td>
<td>4,770</td>
<td>Tule Lake</td>
</tr>
<tr>
<td>*Salinas (CA)</td>
<td>Apr. 27</td>
<td>July 4</td>
<td>3,594</td>
<td>3,608</td>
<td>Poston, Tule Lake</td>
</tr>
<tr>
<td>Santa Anita (CA)</td>
<td>Mar. 27</td>
<td>Oct. 27</td>
<td>18,719</td>
<td>19,348</td>
<td>Topaz, Poston, Gila River, Heart Mountain, Rohwer, Granada</td>
</tr>
<tr>
<td>*Stockton (CA)</td>
<td>May 10</td>
<td>Oct. 17</td>
<td>4,271</td>
<td>4,390</td>
<td>Gila River, Rohwer</td>
</tr>
<tr>
<td>*Tanforan (CA)</td>
<td>Apr. 28</td>
<td>Oct. 13</td>
<td>7,816</td>
<td>8,033</td>
<td>Topaz</td>
</tr>
<tr>
<td>Tulare (CA)</td>
<td>Apr. 20</td>
<td>Sept. 4</td>
<td>4,978</td>
<td>5,061</td>
<td>Gila River</td>
</tr>
<tr>
<td>Turlock (CA)</td>
<td>Apr. 30</td>
<td>Aug. 12</td>
<td>3,662</td>
<td>3,699</td>
<td>Gila River</td>
</tr>
</tbody>
</table>

Table 10. Temporary Detention Camps, 1942

### Table 11. Permanent Detention Camps, 1942-1946

<table>
<thead>
<tr>
<th>Camp</th>
<th>Opened</th>
<th>Closed</th>
<th>Number of Detainees Peak</th>
<th>Number of Detainees Total</th>
<th>Origin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gila River (AZ)</td>
<td>07/20/42</td>
<td>11/10/45</td>
<td>13,348</td>
<td>16,655</td>
<td>Sacramento River Delta, Fresno County, Southern Calif. Coast, Los Angeles</td>
</tr>
<tr>
<td>*Heart Mountain (WY)</td>
<td>08/12/42</td>
<td>11/10/45</td>
<td>10,767</td>
<td>14,025</td>
<td>Santa Clara Valley, Los Angeles, Central Washington</td>
</tr>
<tr>
<td>Jerome (AR)</td>
<td>10/06/42</td>
<td>06/30/44</td>
<td>8,497</td>
<td>10,241</td>
<td>Central San Joaquin Valley, San Pedro Bay Area</td>
</tr>
<tr>
<td>**Manzanar (CA)</td>
<td>03/21/42</td>
<td>11/21/45</td>
<td>10,046</td>
<td>11,062</td>
<td>Seattle, Pierce County (WA), Portland, Northwestern Oregon</td>
</tr>
<tr>
<td>*Minidoka (ID)</td>
<td>08/10/42</td>
<td>10/28/45</td>
<td>9,397</td>
<td>13,078</td>
<td>Southern California, Monterey Bay Area, Sacramento County, Southern Oregon</td>
</tr>
<tr>
<td>Poston (AZ)</td>
<td>05/08/42</td>
<td>11/28/45</td>
<td>17,814</td>
<td>19,534</td>
<td>Sacramento County, Southern Arizona</td>
</tr>
<tr>
<td>*Rohwer (AR)</td>
<td>09/18/42</td>
<td>11/30/45</td>
<td>8,475</td>
<td>11,928</td>
<td>Los Angeles, Stockton</td>
</tr>
<tr>
<td>*Topaz (UT)</td>
<td>09/11/42</td>
<td>10/31/45</td>
<td>8,130</td>
<td>11,212</td>
<td>San Francisco Bay Area</td>
</tr>
<tr>
<td>*Tule Lake (CA)</td>
<td>05/27/42</td>
<td>03/20/46</td>
<td>18,789</td>
<td>29,490</td>
<td>Initially: Sacramento, East Sacramento Valley, Southwestern Oregon, Western Washington. After segregation: from all West Coast states and Hawaii.</td>
</tr>
</tbody>
</table>

---

1381 **From 03/21 to 06/07/42 Manzanar was considered a temporary detention camp.  
* Historical landmark designation, with plaque and/or monument, and pilgrimage.  
**Table 12. Exclusion Dates, Number Evacuated, and Destination by Civilian Exclusion Order**

<table>
<thead>
<tr>
<th>CEO</th>
<th>Area</th>
<th>Exclusion Date</th>
<th>Number Evacuated</th>
<th>Assembly Center Destination</th>
<th>Relocation Destination</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bainbridge Island</td>
<td>3/30/1942</td>
<td>227</td>
<td>Manzanar</td>
<td>Manzanar</td>
</tr>
<tr>
<td>2</td>
<td>San Pedro, Long Beach</td>
<td>4/5/1942</td>
<td>2,469</td>
<td>Santa Anita</td>
<td>Jerome</td>
</tr>
<tr>
<td>3</td>
<td>San Pedro, Long Beach</td>
<td>4/2/1942</td>
<td>3,060</td>
<td>Manzanar</td>
<td>Manzanar</td>
</tr>
<tr>
<td>4</td>
<td>San Diego W.</td>
<td>4/8/1942</td>
<td>1,210</td>
<td>Santa Anita</td>
<td>Colorado River</td>
</tr>
<tr>
<td>5</td>
<td>San Francisco W.</td>
<td>4/7/1942</td>
<td>642</td>
<td>Santa Anita</td>
<td>Central Utah</td>
</tr>
<tr>
<td>6</td>
<td>Lawndale, Downey</td>
<td>4/14/1942</td>
<td>2,450</td>
<td>Santa Anita</td>
<td>Rohwer</td>
</tr>
<tr>
<td>7</td>
<td>Santa Monica</td>
<td>4/28/1942</td>
<td>1,137</td>
<td>Manzanar</td>
<td>Manzanar</td>
</tr>
<tr>
<td>8</td>
<td>W. Los Angeles</td>
<td>4/28/1942</td>
<td>1,299</td>
<td>Manzanar</td>
<td>Manzanar</td>
</tr>
<tr>
<td>9</td>
<td>San Fernando Valley</td>
<td>4/28/1942</td>
<td>1,461</td>
<td>Manzanar</td>
<td>Manzanar</td>
</tr>
<tr>
<td>10</td>
<td>Hollywood</td>
<td>4/29/1942</td>
<td>612</td>
<td>Santa Anita</td>
<td>Heart Mountain</td>
</tr>
<tr>
<td>108</td>
<td>Tulare County</td>
<td>8/11/1942</td>
<td>1,732</td>
<td>Colorado River</td>
<td>Colorado River</td>
</tr>
</tbody>
</table>

**Table 13. President Franklin D. Roosevelt's Supreme Court (and Appointments), 1943-1944**

<table>
<thead>
<tr>
<th>Associate Justices</th>
<th>Years on the Bench</th>
<th>Appointed by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harlan F. Stone</td>
<td>1925-1941</td>
<td>John Calvin Coolidge</td>
</tr>
<tr>
<td>Owen J. Roberts</td>
<td>1930-1945</td>
<td>Herbert C. Hoover</td>
</tr>
<tr>
<td>Hugo L. Black</td>
<td>1937-1971</td>
<td>Franklin D. Roosevelt</td>
</tr>
<tr>
<td>Stanley F. Reed</td>
<td>1938-1957</td>
<td>Franklin D. Roosevelt</td>
</tr>
<tr>
<td>Felix Frankfurter</td>
<td>1939-1962</td>
<td>Franklin D. Roosevelt</td>
</tr>
<tr>
<td>William O. Douglas</td>
<td>1939-1975</td>
<td>Franklin D. Roosevelt</td>
</tr>
<tr>
<td>Francis W. Murphy</td>
<td>1940-1949</td>
<td>Franklin D. Roosevelt</td>
</tr>
<tr>
<td>Robert H. Jackson</td>
<td>1941-1954</td>
<td>Franklin D. Roosevelt</td>
</tr>
<tr>
<td>Wiley B. Rutledge Jr.</td>
<td>1943-1949</td>
<td>Franklin D. Roosevelt</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chief Justice</th>
<th>Years on the Bench</th>
<th>Appointed by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harlan F. Stone</td>
<td>1941-1946</td>
<td>Franklin D. Roosevelt</td>
</tr>
</tbody>
</table>

---

1382 Assistant Chief of Staff for Civil Affairs, Wartime Civil Control Administration, Statistical Division, Exclusion Dates, Number Evacuated, and Destinations of Japanese by Civilian Exclusion Order, December 30, 1942, Box 2, Procedure – Japanese Evacuee Study [1 of 2], Record Group 83, Records of Adon Poli, 1941-1946, The National Archives at San Francisco.

1383 Exclusion Order No. 3 applied to the families of the Manzanar advance group, mainly from the San Pedro – Long Beach area.

1384 The Central Utah Incarceration Camp is also known as the Topaz Incarceration Camp.

Table 14. The Evacuated People

<table>
<thead>
<tr>
<th>FROM</th>
<th>TO</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>90,491</strong> WCCA Assembly Centers</td>
<td><strong>54,127</strong> Relocated to West Coast Evacuated Area</td>
</tr>
<tr>
<td><strong>17,915</strong> Direct Evacuation</td>
<td><strong>52,798</strong> Relocated to other sections of United States and Hawaii</td>
</tr>
<tr>
<td><strong>5,981</strong> Births</td>
<td><strong>120,313</strong> WRA Custody</td>
</tr>
<tr>
<td><strong>1,735</strong> Dept. of Justice Internment Camps</td>
<td><strong>4,724</strong> To Japan</td>
</tr>
<tr>
<td><strong>1,579</strong> Seasonal Workers</td>
<td><strong>3,121</strong> Dept. of Justice Internment</td>
</tr>
<tr>
<td><strong>1,275</strong> Institutions</td>
<td><strong>2,355</strong> U.S. Armed Forces</td>
</tr>
<tr>
<td><strong>1,118</strong> Hawaiian Islands</td>
<td><strong>1,862</strong> Deceased</td>
</tr>
<tr>
<td><strong>219</strong> Voluntary Residents</td>
<td><strong>1,322</strong> Institutions</td>
</tr>
</tbody>
</table>

WRA Custody (Includes 757 institutionalized cases and 753 seasonal workers released by WCCA who were never assigned to nor inducted into a WRA center.)

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Appendix G. Maps

Map 1. Zones A-1 to A-99 established within Military Area No. 1 and 2, Proclamation No. 11387


1387 Military Area No. 1 and 2 consisted of further prohibited zones, subdivisions, within the State of Washington, Oregon, California, and Arizona. Zone A-1 was located entirely in Military Area No. 1, and Zones A-2 to A-99 were established in Military Area No. 1 and 2. Zone B incorporated the restricted parts of Military Area No. 1 that were not included within Zones A-1 to A-99. The prescribed prohibited and restricted zones, including the regulations and restrictions established by the Attorney General's Proclamations of December 7 and 8, 1941, were not altered by Public Proclamation No. 1. "Military Area Legend, Zones A-1 to A-99 established within Military Area No. 1 and 2," map, in Public Proclamation No. 1, March 2, 1942, Box 383, Fred T. Korematsu Folder 2 (4 of 7, Docket Nos 39), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco.
Map 2. Military zones established in the State of California, Public Proclamation No. 21388

Map 3. Military zones established in the State of Arizona, Public Proclamation No. 2\textsuperscript{1389}

Map 4. Map of U.S. Internment Camps During World War II

The map contains the location of the War Relocation Authority and Army Internment Camps, Justice Department and other detention centers used to detain over 110,000 persons of Japanese ancestry, American citizens and Japanese nationals. The facilities were also used to detain Hawaiian Japanese, Japanese Latin Americans, and German and Italian immigrants, including American citizens. “Map of U.S. Internment Camps During World War II,” map, in Fred T. Korematsu: “Don’t be afraid to speak up” Teachers Guide, by Fred T. Korematsu Institute (San Francisco: Fred T. Korematsu Institute, 2015), 87.
Map 5. Map of Assembly Centers and Internment Camps

The map illustrates the location of the temporary detention facilities, the incarceration camps, and the internment camps located in the United States. The map also highlights Military Area 1. and Military Area 2., which was a free zone until March 29, 1942. “Map of Assembly Centers and Internment Camps,” map, in Years of Infamy: The Untold Story of America’s Concentration Camps, by Michi Nishiura Weglyn (New York: William Morrow, 1976), 6.

1391 The map illustrates the location of the temporary detention facilities, the incarceration camps, and the internment camps located in the United States. The map also highlights Military Area 1. and Military Area 2., which was a free zone until March 29, 1942. “Map of Assembly Centers and Internment Camps,” map, in Years of Infamy: The Untold Story of America’s Concentration Camps, by Michi Nishiura Weglyn (New York: William Morrow, 1976), 6.
Appendix H. Figures

I. Pearl Harbor Attack, December 7, 1941

Figure 1. The battleships U.S.S. WEST VIRGINIA and U.S.S. TENNESSEE.  

Figure 2. The battleship U.S.S. ARIZONA sinking.  

Figure 3. The explosion of the destroyer U.S.S. SHAW.  

Figure 4. The destroyers U.S.S. CASSIN and U.S.S. DOWNES in drydock.  

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1392 The description of the photographs includes the U.S. Navy’s official captions. Naval photographs documenting the Japanese attack on Pearl Harbor, December 7, 1941, Box 31, Folder Re Lloyd C. Duncan, 1941-1944, Series Application for Writ of Habeas Corpus Cases, 1900-1952, The National Archives at San Francisco.


Figure 5. Abandoning ship aboard the U.S.S. CALIFORNIA.\textsuperscript{1397}

Figure 6. Battleship row.\textsuperscript{1398}

Figure 7. Burning barracks at Ford Island.\textsuperscript{1399}

Figure 8. The capsized U.S.S. OKLAHOMA.\textsuperscript{1400}

Figure 9. A two-man Japanese submarine.\textsuperscript{1401}

\textsuperscript{1397} Official U.S. Navy Photograph. “[14 (5)] Abandoning ship aboard the U.S.S. CALIFORNIA after the ship had been set afire and started to sink from being attacked by the Japanese in their attack on Pearl Harbor on Dec. 7, 1941.” Photograph. December 7, 1941. From National Archives at San Francisco: In Re Lloyd C. Duncan, 1941-1944.

\textsuperscript{1398} Official U.S. Navy Photograph. “[14 (12)] Battleship row after the Japanese attack on Pearl Harbor on Dec. 7, 1941.” Photograph. December 7, 1941. From National Archives at San Francisco: In Re Lloyd C. Duncan, 1941-1944.


\textsuperscript{1400} Official U.S. Navy Photograph. “[14 (15)] Keel of the capsized U.S.S. OKLAHOMA with the U.S.S. MARYLAND in the background during the Japanese attack on Pearl Harbor Dec. 7, 1941.” Photograph. December 7, 1941. From National Archives at San Francisco: In Re Lloyd C. Duncan, 1941-1944.

\textsuperscript{1401} Official U.S. Navy Photograph. “[14 (23)] A beached two-man Japanese submarine found on the edge of Bellows Field, Hawaii, after the sneak Jap attack on Pearl Harbor on Dec. 7, 1941.” Photograph. December 7, 1941. From National Archives at San Francisco: In Re Lloyd C. Duncan, 1941-1944.
Figure 10. The battleship U.S.S. NEVADA.  

Figure 11. Cleaning up at Ford Island Naval Air Station.

Figure 12. The U.S.S. SHAW.

Figure 13. The capsized U.S.S. OGLALA.

Figure 14. A bombed hangar at the Naval Air Station.

1402 Official U.S. Navy Photograph. “[14 (24)] The smoldering battleship U.S.S. NEVADA silhouetted in the fire and smoke of the destroyer U.S.S. SHAW which exploded when her magazine was hit by bombs from Japanese aircraft during the attack on Pearl Harbor on Dec. 7, 1941.” Photograph. December 7, 1941. From National Archives at San Francisco: In Re Lloyd C. Duncan, 1941-1944.

1403 Official U.S. Navy Photograph. “[14 (25)] Cleaning up the apron at Ford Island, Naval Air Station at Pearl Harbor, after the Japanese attack on Dec. 7, 1941.” Photograph. December 7, 1941. From National Archives at San Francisco: In Re Lloyd C. Duncan, 1941-1944.


1406 Official U.S. Navy Photograph. “[14 (34)] Burned and wrecked hangar at the Naval Air Station, Pearl Harbor, after the Japanese attack on Pearl Harbor on Dec. 7, 1941.” Photograph. December 7, 1941. From National Archives at San Francisco: In Re Lloyd C. Duncan, 1941-1944.
II. Manzanar National Historic Site

Figure 1. Manzanar Visitor Center (a).

Figure 2. Manzanar Visitor Center (b).

Figure 3. Sentry posts at Manzanar.

Figure 4. Reconstructed guard tower.

Figure 5. Block 14 (of 36 blocks) with barrack 8 and the recreational area.

Figure 6. Block 14, recreational area with the communal mess hall in the background.

Figure 7. Barrack 8 of Block 14 with the mess hall in the background.

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\(^{1407}\) Manzanar National Historic Site, photographs by the author, Independence, California, May 24, 2016.
Figure 8. Interior view of barracks 8 (a).

Figure 9. Interior view of barracks 8 (b).

Figure 10. Signs indicating the former location of the 14 barracks of Block 14.

Figure 11. The layout of Block 14.

Figure 12. The mess hall of Block 14.

Figure 13. Interior view of the mess hall (a).

Figure 14. Interior view of the mess hall (b).
Figure 15. The Cemetery Monument.