

PATRIOTISM AND PREJUDICE
SPHEX CLUB
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Turn back the clock to Sunday, December 7, 1941. Most of you remember the day vividly. You must have been on edge. Hitler had rolled over Poland, Denmark, Norway, Belgium. France collapsed in four days. DeGaulle was in exile in London, and London was being blasted daily by the Luftwaffe. Russia was invaded. Italy entered the war on the side of Germany. And Japan, those little Japs, were throwing their tiny bodies around the Far East like they were big stuff. ToJo was obnoxious; he was making life miserable for his neighbors. And we at home did not like the Japs very much either, as we shall see. On this day our world turned upside down. Your life came unglued.

About 7:55 a.m., 360 Japanese planes zoomed down on our naval base at Pearl Harbor, and within two hours our Pacific fleet had lost 15 vessels. It was a day that has lived in infamy. We were now at war - a war which would change the geopolitical structure of Europe and Asia and the balance of world power.

At the same time, the sneak attack on Pearl Harbor provoked a constitutional crisis which erupted within several weeks after our declaration of war. The climate in America provided a fertile soil for patriotism and at the same time xenophobia - deep racial prejudices - from which this crisis sprung - full grown. There was immediate concern, in some cases almost panic, that the Japanese would make an attack on our west coast. Settled in pockets were communities of Japanese Americans, called Nisei, and Japanese aliens, known as Issei - potential saboteurs to aid in a another sneak attack against our west coast defenses. Patriotism swelled - our government must take immediate action to protect our coastline from attack; or was this an opportunity to break forever the backbone of a yellow race who had migrated to this country, kept to themselves in small, coherent communities, and had outworked and out-performed the white man in business and agriculture?

A review of the historical setting for the crisis is helpful. There was understandable nervousness in December, 1941, over these tight little Japanese communities scattered along the west coast. The Japanese immigrants had been first welcome as docile farm laborers in the 1890's, but

these immigrants soon startled their Californian neighbors. They saved their money, bought land and became competitors. While retaining much of their own culture, and a dual citizenship, they became increasingly Americanized. However, in spite of their eagerness to be identified as Americans, the Japanese on the west coast were unfortunately subject to every sort of discrimination - some historians have said a discrimination as brutal and mindless as anything the south ever inflicted upon the negro. For example, in 1924, white Californians clamored for and won an end to Japanese immigration and began striking out at those already there. Japanese were legally barred from white schools and housing, prevented in many cases from buying land, discriminated against in employment and housing, and were often beaten and lynched. The newspapers were often critical in their reporting of the Japanese people. As late as 1935 a group called the Southern California Committee of 1,000 was stating that "wherever the Japanese have settled, their nest's pollute the communities like the running sores of leprosy. They exist like the yellow butts in an overfull ashtray, vilifying the air with their

loathsome smells, filling all who look upon them with a wholesome disgust and a desire to wash".

To exacerbate the Nation's nervousness, there were colonies of Japanese fisherman in port areas, farm lands operated by Japanese close to war plants and little Tokyos in the heart of the big coastal cities. There were suspected spys among the Japanese population; there was legitimate fear of sabotage. Thus, after the attack of Pearl Harbor, no group seemed a more likely target of retribution than the 112,000 Japanese aliens and American citizens of Japanese descent who lived on the west coast.

However, surprisingly, initial reaction on the west coast after Pearl Harbor was one of tolerance and understanding. Most of the Japanese there and in other cities were "good Americans born and educated as such" said the Los Angeles Times in an editorial on December 8. The Times urged its readers that "there should be no precipitation, no riots, and no mob law." Other papers gave prominent display to statements by Americans of Japanese descent proclaiming loyalty. However, within several weeks after Pearl Harbor the tide of public opinion began changing. In the weeks that followed

Pearl Harbor, there were graphic reports in the press of Japanese brutality as they overran Southeast Asia. Americans were shocked: public attitudes shifted rapidly. The dikes of tolerance broke and swept away the pleas for tolerance into a sea of social hostility and fright. Both in the press and in statements by public officials, demands for the removal of Japanese Americans from the west coast replaced the earlier calls for tolerance. Politicians caught the fever. On January 16, 1942, California Congressman, Leland Ford, urged Navy Secretary, Frank Knox, and FBI Director, J. Edgar Hoover, that "all Japanese, whether citizens or not, be placed in inland concentration camps." The tide had run out for tolerance and the stage was set for a six month campaign initiated by the military and War Department, and reluctantly conceded to by the Justice Department, which ended in all Japanese Americans, whether aliens or United States citizens, being uprooted from their homes and businesses and carried away to "assembly centers" and then to relocation centers - what many critics termed a euphuism for "concentration camps". Within a year our United States Supreme Court was called upon to determine the legality of the executive and military orders and a congressional

act which gave the military the authority to uproot, detain and relocate all Japanese Americans without any criminal charges being placed against them, and without an opportunity to be heard anywhere. Our Supreme Court was confronted with an unprecedented issue: Did the constitutional power of the Congress and the executive to wage war successfully and protect our homeland from enemy sabotage and invasion override the constitutional rights of a racial minority of United States citizens where there was ostensibly a "military necessity".

Who were the important players? Edward J. Ennis was general counsel of the Immigration and Naturalization Service. He was considered a political liberal and had a long standing concern for civil liberties.

John J. McCloy was a Harvard Law School graduate and a Wall Street lawyer. He had a broad knowledge of German subverse methods making him a prize find for the War Department. Within six months after joining the War Department in October, 1940, he became Assistant Secretary of War with responsibility of political affairs.

Attorney General Francis Biddle was a "Philadelphia lawyer" wedded by mainline heritage to the Pennsylvania Railroad and the Republican party. Somewhat mysteriously, he experienced a mid-life conversion to the democratic party. He entered Roosevelt's New Deal administration in 1934 as chairman of the first National Labor Relations Board. He was elevated to Attorney General when Robert Jackson was selected to the Supreme Court in June 1941.

Henry L. Stimson was Secretary of War. Stimson was a product of the New England establishment. He practiced law on Wall Street for 16 years. He served as Secretary of War under William Howard Taft and as Herbert Hoover's Secretary of State. By 1940 he was the genuine elder statesman, and at 73, he was still articulate and aggressive interventionist, a perfect man for Roosevelt's war cabinet.

Lt. Gen. John L. DeWitt had been the commander of the west coast since December 5, 1939. He was a 61 year old career officer, and his assignment to the Presidio Fortress overlooking the Pacific in San Francisco was intended to be his last before retirement. No person who participated in

the debates over evacuation and internment would play a greater role than DeWitt.

General Allen Gullion was a career military lawyer, being appointed Judge Advocate General in 1937. In 1941 the War Department revived the law enforcement position of Provost Marshall General, which Gullion assumed shortly after Pearl Harbor. He was a strict disciplinarian and a no nonsense guy - a strong advocate for the mass evacuation of Japanese Americans.

Major Karl Bendetsen was an ambitious, industrious young lawyer. He joined Gullion's office in the War Department and moved with Gullion the next year to the Provost Marshall's office. He was single minded and dedicated to Gullion's evacuation and internment campaign. He became the major architect of evacuating and relocating the Japanese Americans in assembly centers.

James Rowe, an assistant Attorney General, was the Attorney General's alter ego. He brought to his relations with the War Department political savvy and assertiveness that Biddle lacked. He was close to President Roosevelt.

Finally, the President, Franklin D. Roosevelt. Naturally he was obsessed with the effort to win the war. He was greatly influenced by his military leaders. He had no particular sensitivity towards Japanese Americans who were portrayed to him by some of his military aides and advisors as the enemy. He would have no difficulty sublimating the civil rights of Japanese Americans, citizens and aliens alike, to his own war efforts.

What were the politics of internment, what were the military justifications for its internment program, and what was its legal structure?

Gullion first floated the idea of mass evacuation on December 26, 1941, but DeWitt rejected the concept. At this point, DeWitt was confident that the army could "weed the disloyal out of the loyal and lock them up if necessary." (An assertion that governmental lawyers would later deny in briefs and arguments before the Supreme Court); it did not make sense to intern the entire Japanese population. But DeWitt wanted authority to seize all contraband that might be used for espionage or sabotage. After an initial delay, Biddle moved promptly in issuing DeWitt's requested regulations regarding the alien population, and on December 29, 1941 all alien enemies on

the west coast were ordered to surrender radio transmitters, short wave receivers, and certain types of cameras to local police. DeWitt's appetite was whetted for more sweeping and stringent control. The War and Justice Department leaders agreed to meet in San Francisco on January 4, 1942.

At this meeting, Rowe was shocked with the proposals of DeWitt and Bendetsen for blanket authority to enter alien premises and to search and seize immediately without waiting for normal processes of law or Justice Department approval. DeWitt proposed that the Justice Department carry out a compulsory alien registration program, complete with identity cards and finger prints. A final demand was to exclude aliens from "restricted zones on the west coast". These demands left Rowe in a state of shock and speechless. Fundamentally, the War Department wanted to snatch the enemy alien program from the Justice Department.

Rowe talked with Biddle, and responded to DeWitt the next morning. He promised to begin a new alien registration program within a few weeks. He skirted the request for military restricted zones. The Justice Department, DeWitt was informed, would not condone mass raids on enemy

aliens. If the army tried to conduct such indiscriminate raids, Biddle would appeal to Roosevelt. If Roosevelt overruled him, Biddle would request the army to supercede the Department of Justice in the alien program. Ironically, this is just what Gullion and DeWitt desired.

Rowe continued to think that DeWitt thought mass evacuation was nonsense, because their negotiations had solely dealt with aliens. However, within six weeks, DeWitt capitulated to a growing furor for mass evacuation and internment. There were two sources of pressure. Internally, Gullion and Bendetsen continued to apply pressure. External pressure came from west coast politicians and the press. These sporadic and isolated campaigns took a dramatic turn on January 16, 1942 when Congressman Ford sent letters to Stimson and Biddle urging "that all Japanese, whether citizens or not, be placed in inland concentration camps." Ford's rationalization for his proposal was truly a Catch 22: any truly loyal Japanese American "by permitting himself to be placed in a concentration camp" would thereby prove that "he is patriotic and working for us." Congressman Ford's statement shifted the points of discussion both within the government and outside from a focus on

aliens to American citizens as well. Other Congressmen jumped on the band wagon and got into the act, urging the Justice Department to support evacuation.

Racial prejudice was evident. Caucasian farmers, who made no secret that they did not like the Japanese joined in the public comment on evacuation. The Grower-Shippers Vegetable Association said "we are charged with wanting to get rid of the Japs for selfish reasons; we might as well be honest. We do. It's a question of whether the white man lives on the Pacific Coast or the brown man."

A report by Chief Justice Owen J. Roberts based on an investigation of the Pearl Harbor attack found that prior to the attack an espionage network in Hawaii had sent information to the Japanese Empire respecting the military naval establishments on the island. The imputation of disloyal acts to Japanese Hawaiians in this report (flatly asserted but never documented) inflamed the mainland press, and inspired a imminent press campaign for the mass evacuation of Japanese Americans from the West Coast.

The San Francisco examiner turned hostility to hatred: "I am for the immediate removal of every Japanese on the West Coast to a point deep in the interior. I don't mean a nice part of the interior either. Herd them up, pack them off and give them the inside room in the bad lands." Another newspaper wrote "Personally I hate the Japanese and that goes for all of them."

The Roberts' report gave bi-partisan support to mass evacuation. California Governor Olson a liberal Democrat, who originally had urged tolerance, now faced a tight reelection race in November. He advocated at least a limited evacuation from coastal cities. None other than Earl Warren, California Republican Attorney General, gave support for evacuation.

The West Coast Congressional Delegation got into the act drawing up a detailed plan designed to remove Japanese Americans from the coastal cities. Those who agreed to voluntarily resettle and evacuate as a patriotic contribution would receive assistance from federal agencies in finding housing and employment outside the prohibited zones. Those who resisted would face internment in civilian concentration camps.

Bendetsen realized in order to get political support for the program he would have to gain assurances from the military of the necessity for the evacuations to assuage constitutional doubts and questions of its legality. Bendetsen informed DeWitt that his opinion on the matter would carry great weight and asked him to speak out. (DeWitt was leaning toward mass internment by this time.)

Meanwhile, Ennis and Rowe urged Biddle to intervene with Stimson to block the evacuation plan. A meeting in Biddle's office of these adversaries was acrimonious. Rowe blasted Bendetsen: "there is too much hysteria about this thing" and "there is no evidence whatsoever of any reason for disturbing citizens on the West Coast." Biddle said that the Justice Department "will have nothing whatsoever to do with any interference with citizens whether they are Japanese or not.

Gullion for the War Department struck back "Mr. Biddle, do you mean to tell me that if an Army, the men on the ground, determine it is a military necessity to move citizens, Jap citizens, you won't help?"

The meeting concluded with no agreement, and Biddle agreed to withhold a press release denouncing the plan until DeWitt had a chance to submit a written recommendation.

The next day the War Department mapped its strategy. Gullion called DeWitt to secure his approval for mass evacuation. DeWitt had come full circle: "Hell, it would be no job as far as the evacuation was concerned to move 100,000 people." "A Jap is a Jap to these people now."

Still, there was the issue of "military necessity" for the internment plan. Gullion and Bendetsen mapped the course for DeWitt to follow. Stimson had to be convinced of the military necessity for the plan. Then there had to be approval from the oval office. There were formidable obstacles: General Mark Clark and Admiral Stark both believed that the existing west coast defense facilities were sufficient and discounted any Japanese attack on the mainland.

A FBI report discounted the army's claim of sabotage and espionage on the part of Japanese Americans. Ennis was arguing to Congress that an earlier "roundup" of suspected Japanese agents on the west coast had

effectively neutralized any threat to military security. Yet, Biddle opened a crack in the door by saying that "the military must determine the risk and undertake the responsibility for evacuation of citizens of Japanese descent." Given this opening, Bendetsen quickly importuned Congress of the military necessity for the plan, telling a congressional committee DeWitt's "military judgment on the west coast on whether or not this evacuation should take place was positively in the affirmative." At the conclusion of these committee hearings, there was still no strong support for a total evacuation policy. Undaunted Gullion then went to work on McCloy. On February 6, he sent him a letter stating, "If our production for war is seriously delayed by sabotage in the west coast states, we very possibly shall lose the war. From reliable reports from military and other sources, the danger of Japanese inspired sabotage is great." McCloy was concerned with this report and dispatched none other than Bendetsen to confer with Gullion and draft recommendations.

Biddle went to see FDR for the first time about the Japanese situation. He told the president that Justice Department believed mass evacuation at this time was inadvisable, that the FBI was not staffed to

perform it, and that the army had offered no reason for mass evacuation as a military measure. The discussion ended with FDR saying he "was fully aware of the dreadful risk of fifth column retaliation in the case of a raid" tacitly accepting the Roberts commission report on Pearl Harbor. Biddle was in a box. He could not read Roosevelt's remarks as discouraging the army's stand, and while pressed by Rowe and Ennis to remain firm, he was unwilling to challenge Stimson and Roosevelt.

The attorney general was in a quandary. Remarkably, he sought the advice of three lawyers on the constitutionality of evacuation. In their report, three well respected lawyers balanced conflicting constitutional claims, but the report clearly endorsed forced internment for Japanese Americans. Relying on the military necessity claims, this Committee concluded: "In time of national peril any reasonable doubt about the loyalty of Japanese Americans must be resolved in favor of action to preserve national security."

Over the next few days, the hot potato of evacuation and internment was tossed back and forth between Stimson at the War Department and Biddle at the Justice Department. Biddle clearly still opposed mass

evacuation of Japanese Americans, and the only way he could have possibly justified it would be on "military necessity". Such a plan would have to be undertaken by the War Department, not the Justice Department. However, Stimson did not want the responsibility for such a program and had just as many doubts about the legality of the evacuation as Biddle did.

In a secluded moment, Ennis reflected to Biddle, "constitutional law on a high level is politics."

Realizing that DeWitt was going to recommend mass evacuation and wilting under the incessant pressure of Gullion and west coast politicians, Stimson decided to put the question to President Roosevelt. The issue: Is the President willing to authorize us to remove Japanese citizens as well as aliens from restricted areas?" Asking Roosevelt to settle the question sealed the fate of Japanese Americans, both aliens and citizens alike. FDR had no particular sensitivity to Japanese Americans (he was not any Eleanor Roosevelt) and to make matters worse, the Japanese had conquered Singapore the day before, February 10, the last allied stronghold on the mainland of southeast Asia.

Yet, Stimson did not get a direct answer to any of his questions. Obviously, President Roosevelt was preoccupied. Roosevelt told Stimson to "go ahead on the line that I myself thought best." Stimson's impression was that Roosevelt had a very vigorous desire for a prompt resolution in the matter and would be willing to back any action taken by Stimson with an executive order conferring on to the War Department the authority that Biddle was eager to relinquish. In transmitting Roosevelt's rather vague comment to Bendetsen on the west coast McCloy interpreted FDR's remarks to mean "we have carte blanche to do what we want to as far as the President is concerned." Mass evacuation would have to be backed up by "military necessity". FDR was quoted "Be as reasonable as you can be".

The sequence of events flew quickly. On February 13, DeWitt's final recommendation called for mass evacuation based on arguments that lumped together racial and sociological stereotypes about Japanese Americans with conspiratorial fears of imminent outbreak of sabotage.

The press was generally favorable. The prestigious columnist Walter Lippman wrote "Nobody's constitutional rights include the right to

reside and do business on a battlefield and nobody ought to be on a battlefield who has no good reason for being there. There is plenty of room elsewhere for him to exercise his rights."

Westbrook Pegler in his usual vitriolic manner quipped: "The Japanese in California should be under armed guards to the last man and woman right now - and to hell with habeas corpus until the danger is over."

On February 19, 1942, Roosevelt signed executive order 9066 without ceremony. It stated the reason for issuing the order as protection against espionage and against sabotage to national defense materials, premises, and utilities and provided that certain military commanders might in their discretion "prescribe military areas and define the extent" 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 military commander may impose in his discretion.

One significant problem remained. In order to enforce executive order 9066, there had to be a statute to impose criminal sanctions for violations. The War Department took it upon itself to draft the statute,

Bendetsen taking the lead. It zoomed through both houses of Congress with minimal debate. There was no scrutiny of the broad impact of this legislation - many Congressmen did not realize that it applied to United States citizens as well as aliens. On March 21, 1942, President Roosevelt signed public law 503 which provided criminal sanctions for violations of executive order 9066.

Bendetsen was charged with implementing executive order 9066. His first order designated restricted military areas but did not order evacuation. Instead DeWitt offered economic incentives to those who would voluntarily relocate. He began organizing reception centers into which Japanese Americans could be funneled from the restricted military zones. They were to provide temporary housing for those who were unable to undertake their own voluntary evacuation. Very few of the Japanese left the areas voluntarily either because they thought hysteria would abate or they believed that they would not be bothered or they had nowhere else to go.

On March 18, President Roosevelt signed executive order 9102 which created the War Relocation Authority (WRA) as the agent jointly responsible

with the War Department for the evacuation program. Milton Eisenhower was the first director.

Further orders were issued by DeWitt. Public proclamation three imposed a curfew on Japanese Americans. Proclamation number 4 virtually ended any voluntary migration. On March 22, this proclamation forbade those Japanese Americans who lived within the boundaries of military area one - 90% of Japanese Americans resided in this area - from leaving the area without permission. The Japanese were frozen. They could only wait helplessly for an inevitable exclusion order.

Still, Eisenhower who believed in the loyalty of the Japanese Americans announced a five point program which envisioned that most Japanese American willing to relocate would be settled in rural areas and work on farms. His plan never got any attention, and within three months Eisenhower resigned.

Army engineers were now busy in assembly centers, whitewashing horse stalls and hammering together barracks for ten relocation centers located from California to Arkansas. Virtually, all Japanese Americans were

excluded from the west coast under 107 exclusion orders. The last exclusion order that required the departure of Japanese Americans took effect on June 7, 1942. It was six months after Pearl Harbor, and two days after a stunning American naval victory in the battle of Mid Way. Bendetsen staff had been singularly successful in carrying out the evacuation plan. By October 30, 1942, 112,000 persons of Japanese ancestry had been placed under guard in relocation centers or concentration camps.

In the court cases which challenged this blatant violation of due process, the lynch pin of the constitutionality of the evacuation and internment program was "military necessity". The military convinced the United States district courts and ultimately the United States Supreme Court that "military necessity" required that Japanese Americans be removed from the west coast without any protection of due process of law. They cited examples of espionage and sabotage, and the government lawyers maintained with a straight face that it was impossible to tell a loyal from a disloyal Japanese within a reasonable time. Any attempt to do so would take too long and would thwart the effectiveness of the war department's military plans

which had to be implemented immediately to protect us from espionage and sabotage.

Was this a true and accurate representation of the extant facts by the military upon which it sought to justify its program to intern Japanese Americans. Did the court have a full, true and complete record upon which to decide these cases? As you will see, "not hardly".

When FDR signed execution order 9066 and Congress passed blithely public law 503, there were at least three documents in the possession of the military that contradicted the essential facts which the War Department stridently argued to our courts to prove the military necessity of their internment plan.

In the army's files was a report from a navy lieutenant commander by the name of Kenneth duVal Ringle. (He is the father of my next door neighbor, Sally Hotchkiss.) He had a background in Japanese languages, having lived in Tokyo and learning this little known tongue. He had engaged in intelligence work at a time when espionage was looked on with askance. Stimson said naively "Gentlemens don't read each others mail".

Remember, at this time, there was no CIA. Intelligence was a crazy patchquilt of new deal advisors, business emissaries, and guilt-edged amateurs who covertly roamed the globe on the President's business. Roosevelt's personal CIA operated not from the White House but from out of the national press building. One of his agents was Curtis B. Munson, a wealthy Chicago businessman, who lived in Georgetown. Prior to Pearl Harbor, Munson was asked by FDR to make a secret independent assessment of Japanese American loyalties on the west coast. At the same time Ringle was making the same investigation for the navy. Subversion had primarily been a concern of the FBI until 1940. In July of that year the navy became concerned about the security of its west coast bases, and Ringle was assigned to organize a wide range of counter espionage efforts throughout southern California. Ringle's assignment, in addition to catching spies, was to gage the danger, if any, of fifth column activity among California's American born Japanese. He moved among vegetable farmers, tuna fisherman, and small businessmen of southern California asking questions and observing the Japanese way of life.

Ringle quickly encountered two important facts: One, the west coast Japanese were vastly different from the Japanese he had known a decade earlier in Japan. While retaining much of their culture, they were increasingly Americanized. Second, in spite of their eagerness to be identified as Americans and their record of industry and responsibility, the Japanese on the west coast were continually subjected to every sort of discrimination.

As Ringle mingled with the Japanese Americans, he gained their confidence. They told him which organizations in the community were pro American and which were militant Japanese. They alerted him to suspicious new arrivals and membership lists for the Black Dragon Society, a fiercely right wing organization espousing loyalty to the Japanese emperor.

To expand his knowledge, Ringle decided sometime in the spring of 1941 to break into the Japanese council - the first Watergate or should I say Jap gate. With police watching outside and the FBI providing a safe cracker who had checked out of prison, Ringle burglarized the Japanese council in Los Angeles and cracked the safe, photographing everything in the sight.

With this information Ringle produced lists of agents, codes, and contact points for the Japanese west coast spy network, headed by a Japanese naval officer named Itaru Tachibana. Tachibana was ostensibly an English language student, but had been protected by quasi diplomatic status. Using information obtained in Jap gate, the FBI trapped Tachibana and deported him for attempting to purchase military secrets. With the documents seized by Ringle, our government had effectively dismantled the Japanese entire espionage efforts on the west coast before Pearl Harbor ever occurred. What was the most intriguing and revealing fact ascertained in Jap gate was overwhelming evidence that Tachibana and other official agents of imperial Japan looked upon most American Japanese, both ISSEI and Nisei, not as potential allies but as cultural traitors not to be trusted.

Concurrently, Munson's west coast report, dated October 19, 1941, to FDR reached the same conclusion. He said "the almost unanimous verdict on the Japanese Americans is that in case of war, they will keep very, very quiet. There will probably be some sabotage by paid Japanese agents and the odd fanatical Jap . . . but ninety percent like our way of life best and

are straining every nerve to show their loyalty. The Jap is an extremely good citizen and it is only because he is a stranger to us that we may distrust him." FDR referred Munson's report to Stimson on November 8, 1941.

Overlooked in congressional hearing and in DeWitt's recommendation was a pregnant fact. Within 48 hours after the Japanese attack on Pearl Harbor Ringle and other intelligence officers working from FBI and naval files rounded up some 450 known agents of Japan in southern California.

By December 19, 1941, Munson and Ringle were preparing a program for FDR for maintaining the loyalty of Japanese Americans and establishing wholesome race relations. It was referred to the FBI and Biddle but, for some unknown reasons, it was never considered by the FBI or Justice Department as a factual basis for a fair, reasonable and coherent plan to deal with Nisei and Issei.

Ringle perceived the sweeping hysteria of the west coast, and was concerned with what he saw. He travelled twice to San Francisco to acquaint Bendetsen with the realities of the Japanese situation. Bendetsen would not see him. Munson, whose views coincided with Ringle's, wrote Roosevelt on

December 22 stating that ninety percent of most intelligent views on the Japanese by military, official, and civil contacts on the west coast and Hawaii were crystallized by Lieutenant Ringle.

On December 30, Ringle made a report, the basic tenet being that over 90% of all Japanese Americans was loyal to the United States and the ultimate solution was to deliberately and officially encourage the American citizens of Japanese ancestry in their efforts to be loyal citizens and to help them to be so accepted by the general public.

Ringle suggested that review boards be established to pass upon cases of any suspected individual disloyalty. He warned against the foreboding prospect of removal and internment. He said "The proposal for the removal and internment in concentration camps of all residents of Japanese extraction is not only unwarranted but very unwise, since it would undoubtedly alienate the loyalty of many thousands of persons who would otherwise be entirely loyal to the United States." He finished, "In short the entire Japanese problem has been magnified out of its true proportions, largely because of the physical characteristics of its people. It is not more serious

than the problem of the German, Italian, and communist proportions of the U.S. population. It should be handled on the basis of the individual and not on a racial basis."

Time ran out on the Ringle report. It reached the War Department on February 14, 1942, several days before FDR issued executive order 9066. No one knows whether Roosevelt ever saw it before he issued this order; but certainly Stimson and McCloy had seen it; Ennis had read it; and Biddle had access to it.

Fred Toyosaburo Korematsu was arrested on May 30, 1942 in San Leandro, California for violating Executive Exclusion Order 34 which forbid Japanese Americans (but no other American citizens) from remaining in this restricted military area. Paradoxically, at the same time there was an existing Order #4 which forbid Korematsu from leaving the area.

Koromatsu was tried in the United States District Court for the northern district of California. The evidence was straight forward. Koromatsu had made a confession. Still, he testified on his own behalf. He had applied for military service but was rejected on medical grounds. He was

still ready, willing, and able to bear arms for the country. He had no attachment to Japanese culture, he had never been to Japan, did not claim dual citizenship, did not read Japanese and spoke the language poorly. There was no dispute that he was a loyal American citizen. Nonetheless, he was found guilty and sentenced to a five year probationary period. The court set Koromatsu's bail at \$2,500 which was posted immediately. He was free to go. Wrong! He was arrested by military police pursuant to DeWitt's military orders and he was taken from the courtroom, escorted back to an assembly center, then taken to a relocation center where he remained for the duration of the war.

Koromatsu's case was appealed to the U.S. Supreme Court. Attorneys for the government realized that they had to marshal facts of a military necessity to justify the deprivation of the civil liberties of a class of citizens singled out for discrimination. There were three theories: (1) detention as a precautionary measure to thwart a vigilante violence against the Japanese; (2) loyal Japanese could not readily be distinguished from the disloyal; and (3) Japanese Americans were more likely to engage in fifth

column work than any other class of residents - the lawyers needed facts to support these theories.

DeWitt made a final report of the circumstances on the west coast dated January 7, 1944; it provided most of the factual basis for the government lawyers to argue that military necessity required detention and internment for the protection of our country. It was edited several times to delete damaging admissions without knowledge of the Justice Department. For example, it eliminated an earlier admission by DeWitt that lack of time had not been a factor in his evacuation decision (now it was a factor and Justice Department lawyers had made this assertion as a part of their argument in the lower court); it deleted a blatant racist assertion that it was impossible under any means to determine the loyalty of a Japanese (inserted was an explanation that the army had no ready means by which to perform this task). All copies and proofs of this first edition were burned or placed in a confidential file.

Accounts of espionage by Japanese Americans dominated the report, the major architect of which was Bendetsen. Japanese were linked to

submarine attacks on coastal shipping, citing hundreds of reports of signal lights from the coast and intercepts of unidentified radio transmissions from mainland to offshore subs. Rubbing salt in sores at the Justice Department, it was asserted that Biddle's failure to enforce restrictions against the Japanese prevented the army from checking and preventing these attacks.

Ennis was furious; he set out to do something about it. He asked Biddle to put the FBI to work on a dissection of the DeWitt report. He also contacted the Federal Communications Commission to report on DeWitt's specific charges that the Japanese Americans had maintained radio contact with Japanese submarines along the west coast. The response of J. Edgar Hoover is eye opening. After investigating the claims in DeWitt's report, the FBI said there was no information which would indicate that the attacks made on ships or shore immediately after Pearl Harbor have been associated with any espionage activity ashore or that there had been any illegal shore to ship signal either by radio or lights. The FBI rejected DeWitt's claim that "substantially every ship leaving a west coast port was attacked by enemy submarines."

The FCC did not find any evidence to support DeWitt's charge of illicit radio transmission to Japanese submarines. Ennis received a memo from the FCC documenting that DeWitt had been personally informed by the FCC staff, both before and after his evacuation recommendation in February, 1942, that not one of the reports of illicit radio transmissions had been verified. This memo made it clear that army personnel were incompetent and did not have the training to determine if reports of illicit signals were well founded. However, the most conclusive evidence of misrepresentation was a report by George E. Sterling of the FCC's radio intelligence division. On February 9, 1942, more than a month before DeWitt recommended the mass evacuation of Japanese Americans and more than a year before his final report (in which DeWitt cited the interception of illicit radio transmissions as a justification for evacuation), Sterling told DeWitt the procedures of the FCC radio monitoring operations and if there had been any unauthorized stations operating on the coast, they would have known of them immediately. The facts were clear: no such illicit radio operations were found. Ennis was convinced that DeWitt's final report was full of inaccuracies, errors, and plain lies.

John Burling, an assistant Attorney General who was preparing the Justice Department brief in the Korematsu case, did not mince words: "We are now therefore in a position of substantially incontrovertible evidence that the most important statements of fact advanced by General DeWitt to justify the evacuation and detentions were incorrect, and furthermore General DeWitt had cause to know, and in all probability did know, that they were incorrect at the time he embodied them in the final report to General Marshall. Burling wanted to alert the court to the misleading information in DeWitt's final report. He prepared a footnote in the initial draft of the government's brief in which the court was told that in several respects DeWitt's report was inaccurate, particularly with reference to the use of illegal radio transmitters and shore to ship signalling by persons of Japanese ancestry. In the view of the contrariety of the reports on these matters the Justice Department did not ask the court to take judicial notice of the recital of the facts in the report.

The War Department under McCloy wanted to remove the footnote. Ennis and Burling strenuously objected; they felt they had an ethical obligation to the court to refrain from citing the final report. Realizing that

it may be the last time for the record to reflect facts, Ennis and Burling protested. "If we fail to act forthrightly on our own ground in the courts, the whole historical record of this matter will be as the military choose to state it. The Attorney General should not be deprived of the present, and perhaps only chance to set the record straight."

Again politics prevailed. With the War Department wanting to delete the footnote and Justice arguing a forthright admission to the court of the "contrariety of reports", the solicitor general bowed to the War Department. The footnote made no mention of the conflict between DeWitt's report and those of the FBI and FCC (not to mention Ringle's report); and in effect asked the court to take judicial notice of the facts set forth therein. In a six to three decision, our Supreme Court affirmed Koromatsu's conviction.

In reading the majority opinion of Justice Black and the concurring opinion of Justice Frankfurter and the stinging, separate dissents of Justices Roberts, Murphy and Jackson it is readily apparent that the court was rend asunder by Korematsu's case. (The court had been unanimous a year earlier in upholding the conviction of Hirabayashi for violation of a curfew order).

Black at the outset stated "All legal restrictions which curtail the civil rights of a single racial group are immediately suspect." Yet, not all such restrictions are unconstitutional when viewed with rigid scrutiny there is a public necessity for the restriction. Black and the majority found the public necessity the threat to our public safety and our war effort through acts of espionage and sabotage of Japanese Americans. Executive Order 9066, Congressional Act 503, and Order 34 were proper exercises of the power of the Congress and President to take steps necessary to prevent espionage and sabotage in an area threatened by Japanese attacks - what the majority found was "grave imminent danger". The factual basis for the majority conclusion was the military finding (DeWitt's report) and judgment based thereon. The court reasoned: "We cannot reject as unfounded the judgment of the military authorities and of congress that there were disloyal members of that population whose number and strength could not be percisely 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 regularly 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 court could not reject the military authority's finding that it was impossible to bring about an immediate segregation of the disloyal from the loyal. The court concluded it was not unmindful of the hardship imposed upon a large group of American citizens "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 measures. Citizenship has its responsibilities as well as privileges and in time of war the burden is always heavier."

The dissenters did not take the "military necessity" bait. Justice Roberts chided the majority, unequivocally finding that the undisputable facts exhibit a clear violation of constitutional rights. Korematsu was convicted under a law requiring a citizen to submit to imprisonment in a concentration camp because of his ancestry, without evidence or inquiry concerning his loyalty to the United States.

Justice Murphy tore apart DeWitt's final report, denounced it for its odious racism and illogic and charged that Order 34 was one of the most sweeping and complete deprivations of constitutional rights in our nation's history. While recognizing that the court must accord great respect to military judgments in wartime, it was essential that military orders be subject to judicial review so that individuals are not left impoverished of their constitutional rights on plea of military necessity which had no substantial basis. The deprivation must bear a reasonable relation to a public danger that is "immediate, imminent and impending" as not to admit to delay or ordinary constitutional processes. Murphy found no such basis for Order 34. Murphy saw no reliable evidence in DeWitt's report or anywhere else to show that Japanese were generally disloyal, or constituted a special menace to our defense or to our war industry or otherwise by their behavior furnished reasonable grounds for exclusion as a racial group. He found specious justification for the exclusion order based on racial and social characteristics such as religion, family customs, language, dual citizenship, emperor worshipping, and racial togetherness in family relationships. There was no

evidence of any overt act of espionage or sabotage - no evidence that any Japanese American participated overtly or covertly with the three shellings of the Pacific Coast. For Murphy, the real reason for the Order was prejudice. He concluded "The real reasons [for the exclusion order] appear 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. A military judgment based upon such racial and sociological considerations is not entitled to the great weight ordinarily given the judgments based upon strictly military considerations. Especially is this so when every charge relative to race, religion, culture, geographical location, and legal and economic status has been substantially discredited by independent studies made by experts in these matters."

Justice Jackson reasoned that his duty as a judge did not require him to make a military judgment that DeWitt's order was a reasonable military necessity. He said there was no real or proper evidence before the court to make such a judgment in any event [just DeWitt's report - no testimony on

military necessity]. Then Jackson concluded that courts should not attempt to interfere with the army in carrying out its military task. But courts should not be asked to execute a military order that has no place in law under the Constitution.

Never in our history has there been anything comparable to the constitutional dilemma faced by our Supreme Court. At the request of the military with the support of politicians, press, and lawyers 112,000 Japanese Americans were uprooted from their homes, deprived of their property, and ordered to live in concentration camps for most of World War II. There were no criminal charges, no hearings, no convictions of guilt. The reason - military necessity in wartime to protect our west coast defenses and industry and to forestall an invasion - was affirmed by a majority of the highest court in our land - relying primarily on the judgment of military leaders who were present and supposedly knew the facts the best. We have turned back the clock. You have heard the facts surrounding the most colossal collapse of a minority's constitutional right in the history of our nation. Now return to the present. Was the internment of Japanese Americans a patriotic response

by our political and military leaders to the legitimate wartime fears of espionage and sabotage. Or was the response a fire, kindled by racial prejudices of businessmen, the military and politicians, ignited by war hysteria and raged out of control through a loss of moral leadership. Are you with Black and Frankfurter; or do you side with minority view which discerned that racial prejudice was the driving force behind our government's internment of 112,000 U.S. citizens and resident aliens for over four years. Finally, leap forward into the future: could such a crises even happen again? Has our Supreme Court given our legal system, which bears heavily on precedent, the constitutional basis to blatantly deprive a racial minority's constitutional rights when our military determines it is a necessity for our national security!