

Statement of Edward J. Ennis
in Support of
"The Civil Liberties Act of 1983"

Presented to the Subcommittee
on Administrative Law and Governmental Relations
of the Committee on the Judiciary of
the United States House of Representatives
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Introduction; My name is Edward J. Ennis and I am retired from private practice of law in New York City. I thank the Subcommittee for the invitation to testify which I requested in order to give the Committee the view of the civilian Government of the United States, Department of Justice, in 1942 when the military expulsion of all persons of Japanese nationality occurred. I do not know whether the Committee requested or received the views of the present Department of Justice or Department of Defense but I do know that former Assistant Secretary of War, John J. McCloy testified in defense of the expulsion which I have not read. In view of the 10 minute restriction on oral testimony I shall be as brief as possible in stating the views of the Department of Justice in 1942 and then answer any questions of members of the Committee.

I - Alien Enemy Control; The Department of Justice under Attorney General, Francis Biddle, First Assistant to the Attorney General, James Rowe, Jr., both deceased, and myself as Director of the Alien Enemy Control Unit, were responsible for the detention and, after hearing, the internment, parole or release of aliens of enemy nationality during World War II including for the most part German, Italian and Japanese nationals. Under the Alien Enemy Act of 1798 as amended (50 USC §21), following universal international practice, the Government was given control over alien enemies by detention, removal from the country and travel restrictions. In addition, in the absence of martial law the civil government had responsibility for internal security in the United States.

After World War II began abroad in 1939 the FBI under Director Hoover, now deceased, gathered information on foreign nationals who might become enemy nationals, and by December, 1941 a plan was in place to arrest immediately, if

the United States became involved in the war, those of enemy nationality with factual connections with enemy governments or agencies who might be dangerous if left at large. Beginning on December 7, 1941 thousands of Japanese, German and Italian aliens were detained and after hearings were interned for the duration of the war, paroled or released in the absence of evidence warranting control. Travel restrictions were placed on alien enemies.

Neither native born or naturalized citizens of enemy ancestry were subject to any special statutory controls and if deemed dangerous to security because of information about individuals could be dealt with under the laws applicable to all citizens.

II - War Time Racial Hysteria; Beginning December, 1941 Assistant Secretary of War McCloy and Lt. Gen. J. L. DeWitt, Commanding General of the Western Defense Command, and their assistants began to confer with Attorney General Biddle and his Assistants on any special measures which should be taken by the Department of Justice for security of the West Coast. At first small zones around military and naval installations from which persons could be excluded were suggested by General DeWitt and the Department of Justice advised that all persons generally could be excluded from such zones and then individuals permitted to enter as needed but that entire groups, such as all persons of German or Japanese ancestry, could not be barred on a racially or nationally discriminatory basis without evidence against individuals. As these discussions proceeded anti-Japanese hysteria arose alarmingly in the press and among the public nationally and particularly on the West Coast. I cannot adequately describe the breadth and depth of this hysteresis but a slight glimpse into the situation is presented by the example of Walter Lippman, a distinguished and generally responsible journalist, writing in his nationally syndicated column that people could not resist being removed from a "battlefield" which of course, the West Coast was not and never became. The California Attorney General, later Chief Justice of the United States, joined in such preposterous charges as that failure of sabotage was proof that the Japanese community was awaiting a more strategic opportunity for such treason. Soon removal of all persons of Japanese ancestry from the states of California, Oregon and Washington was being urged. The farmer organizations seized the opportunity to obtain, at bargain prices, the farms of their citizen neighbors of Japanese ancestry

by urging Congress to support the expulsion. At that time under the Alien Land Laws Japanese aliens could not own land in West Coast States. Under this pressure the West Coast delegation at a meeting instructed me to tell the Attorney General that if the Department of Justice would not remove all persons of Japanese ancestry from the West Coast the military authorities would be urged to do so. General DeWitt quickly perceived that his original modest proposals could be expanded to exclusion from his entire command. The virulent racial discrimination against United States citizens of Japanese ancestry was neatly summarized in General DeWitt's deathless phrase that "a Jap is a Jap."

III War Department Action; The civilian heads of the War Department were three distinguished attorneys, Secretary of War Henry L. Stimson, Under Secretary of War Robert P. Patterson and Assistant Secretary John J. McCloy, Attorney General Biddle, supported completely in this matter by Director Hoover of the FBI, explained to these War Department officials that there was no evidence that warranted removal of all United States citizens of Japanese ancestry from the West Coast. Reports from Naval Intelligence supported this view. Mr. Biddle stated that the Department of Justice would not conduct such an exclusion, not warranted by any security facts, and taking these people from their homes and farms where they were productive in the war effort and rendering them a useless burden on the Government. He stated that such an exclusion if done would have to be done as a military action.

The War Department civilian officials accepted DeWitt's recommendation and President Roosevelt, over Attorney Biddle's objections that the proposed exclusion was not justified by any substantial security evidence, accepted the War Department's recommendation and issued Executive Order 9066 of February 19th, 1942 authorizing subsequent evacuation.

It is of interest to note that no similar action was proposed in Hawaii where a much larger percentage of population was of Japanese ancestry but there was no similar economic pressure for evacuation.

It is also worthy of note that the theory of

our Government that military officials are subordinate to their civilian superiors does not operate in a perceived wartime security emergency because the civilian superiors do not and will not take responsibility of opposing the military commanders even in non-combat situations and even in the absence of martial law. The evacuation of Japanese-Americans is an example of the actual relationship between the civilians and military authorities in war time.

IV - Detention After Evacuation; General DeWitt and the War Department were concerned with removal of all persons of Japanese ancestry from the West Coast states and not with their subsequent detention which came about only when it became clear that the population of the interior states would not peaceably receive the evacuees. The War Relocation Authority in the Department of Interior was established to operate the camps built to receive and shelter the evacuees rather than to detain them. Detention which was not expressly authorized by Executive Order 9102 of March 18, 1942, arose administratively because of the regulations adopted to release the detainees as they obtained residences and jobs around the country. Inevitably delay resulted in long "temporary" detention which eventually was held not to have been authorized. Ex Parte Endo 323 U. S. 283 (1943).

V - Litigation; The Department of Justice faithfully performing its duty to represent the Government in all litigation, successfully defended the constitutionality of the evacuation in the district courts, Court of Appeals and the Supreme Court Hirabayashi v. United States 320 US 81; Korematsu v. United States 323 US 214. The War Department on its part however, concealed from the Department of Justice that it has prepared a report on the evacuation in a 618 page book "Final Report Japanese Evacuation from the West Coast 1942" which asserted factual support for the evacuation which was incorrect and untrue (and some which is conveniently summarized in Justice Murphy's dissent in Korematsu 323 US at 235 ff.). When the Department of Justice heard that such report was being prepared which included statements of Department of Justice conferences and activities it asked for an opportunity to review, it before publication but was informed at first that such report was a private communication from DeWitt not to be published and later that it was too late for any reviews. It was published without review or corrections when the Korematsu case was in the supreme Court. The only course then available to the Department of Justice was to advise the Court in a footnote to its brief (p.11)

that the Final Report was relied upon only for statistics and details concerning the actual conduct of the evacuation and that the Government relied only on facts stated in the brief as justification for the evacuation. The brief did not state that the Report was false and inaccurate on statements of facts of justification for the evacuation. The Final Report however, was distributed by the War Department to the Attorneys General of California, Oregon and Washington so that they had access in Supreme Court briefs to the erroneous statements of justification for the evacuation. This conduct strikingly disclosed the War Department's own doubts about judicial acceptance of the justification for the evacuation which it had swallowed whole from DeWitt. This factual situation has finally come to public attention. Recently the U. S. District Court has granted a writ of coram nobis setting aside the convictions of Fred Korematsu for not obeying an exclusion order on the ground that the factual justification for the evacuation had not been fairly presented to the courts Korematsu v. United States (N.D. Cal. No Cr.-27635 April 19, 1984); cf. "Personal Justice Denied" Report of the Commission on Wartime Relocation and Interest of Civilians; Irons "Justice at War" (1983).

V - Japanese-American Conduct; In fact no basis for the drastic military evacuation was ever established before or after that disgraceful event. Japanese-Americans as a group proved entirely loyal to their country of birth or adoption. There was no mass resistance to the evacuation but on the contrary there was surprising cooperation. Beyond the call of duty young men of draft age both on the mainland and in Hawaii volunteered for the 442nd Regimental Combat Team which suffered more casualties than any unit of similar size. There was no espionage or sabotage from this group of citizens as was erroneously feared or falsely claimed. By their conduct the Japanese Americans have established a strong claim upon our Government for recognition of and redress for the harsh discrimination and detention they suffered.

Conclusion; The mass evacuation and detention was the greatest deprivation of liberty in the United States since slavery. Even if it were conceded charitably that General DeWitt did not exercise a personal racial bias but honestly feared sabotage or espionage on the West Coast it cannot now be denied that a cruel and infamous mistake was made which should be rectified. Several years ago hundreds of demonstrators in Washington against the Viet Nam war were awarded damages in court for their temporary

detention by the police. Congress appropriated millions of dollars to pay for this very temporary detention. It is urged that this Committee recommend that the recommendations of the Commission on Wartime Relocation and Internment of Civilians be effectuated and that surviving victims of the evacuation be financially reimbursed. It takes the Government of a great sovereign people, which cannot be coerced, to voluntarily and magnanimously admit a wrong and grant amends well within its means. I strongly believe ours is such a Government.

Edward J. Ennis

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