

1 Bendetsen relative to General DeWitt's Final Report, which had just
2 been received by the War Department in Washington, D.C. Colonel
3 Bendetsen was at the time in charge of the Wartime Civil Control
4 Administration of the Western Defense Command. The typed
5 transcript (Ex. 66) of that conversation reveals that Mr. McCloy
6 was more than a little exercised because the Final Report had been
7 printed in final form and distributed without any prior
8 consultation by the Western Defense Command with the War Department
9 about its contents. Mr. McCloy was particularly disturbed that
10 General DeWitt had stated in his report that the security of the
11 West Coast would continue to require the exclusion of the Japanese
12 for the duration of the war.

13 Thereafter, on April 26, 1943, Brigadier General James W.
14 Barnett sent a message (Ex. 67) to General DeWitt which in
15 pertinent part was as follows:

16 "Bendetsen informs me he conferred on final report
17 in Washington today. He was given oral directive
18 to revise the report with the assistance of Capt.
19 Hall. He made the point that he was in no position
20 to do this since it was your report. Bendetsen
21 told me that he could recommend the acceptance of
22 some parts of the suggested revision but that two
23 points went to the fundamental concept of
24 evacuation. The principal one of these was that

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1 loyalty could not be determined and for that reason
2 mass evacuation was ordered. He requested
3 instructions. I told him it was your report and
4 that the War Department could not tell you what to
5 say. He had made that point and said that the
6 instructions he received were to make a draft of
7 the proposed revision for presentation to you for
8 acceptance or revision. If you have additional
9 instructions I will transmit them to Bendetsen by
10 telephone."

11 On April 27, 1943, General DeWitt responded to the message
12 from Brigadier General Barnett with the following message (Ex. 68):

13 "My report as signed and submitted to Chief of Staff
14 will not be changed in any respect whatsoever either
15 in substance or form and I will not repeat not
16 consent to any repeat any revision made over my
17 signature. Higher authority may of course prepare
18 and release whatsoever they so desire as views of
19 that authority but statements in my signed report of
20 evacuation are mine and so submitted. Submission of
21 prepared revisions for presentation to me for
22 acceptance or revision will accomplish nothing as
23 final word on subject so far as I repeat I am
24 concerned has been said."

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1 On May 3, 1943, Colonel Bendetsen sent the following message
2 (Ex. 70) to General DeWitt relative to conferences between himself
3 and Assistant Secretary of War McCloy:

4 "Mr. McCloy stated that he strongly desired to avoid
5 creating the impression that he had any wish to
6 prescribe what the Commanding General should say or
7 not say in the final report. He did say, however,
8 that he thought it could be improved upon.

9 Following this vein, he expressed an earnest desire
10 to have transmitted to the CG the nature of his
11 specific suggestions with an explanation of why he
12 felt the making of revisions conforming to these
13 suggestions would result in improvement."

14 . . .

15 "In brief, Mr. McCloy's suggestions cover three
16 points:

17
18 "a. In paragraph 2 of the letter of transmittal the
19 statement appeared that the necessity for exclusion
20 of all Japanese from the Pacific coast 'will
21 continue for the duration of the present war.' He
22 said he could see no objection to a statement to the
23 effect that exclusion will be essential so long as
24 any military necessity exists therefor, but he said

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1 no one could foresee what the situation would be a
2 year or two hence, and therefore he felt it
3 stultified the report to make such a statement. He
4 drew a parallel to the fact that in the last war a
5 formal state of war continued in existence until
6 1921, although hostilities had ceased on November
7 11, 1918.

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9 b. "The second objection was to that portion of
10 Chapter II which said in effect that it is
11 absolutely impossible to determine the loyalty of
12 Japanese no matter how much time was taken in the
13 process. He said that he had no objection to saying
14 that time was of the essence and that in view of the
15 military situation and the fact that there was no
16 known means of making such a determination with any
17 degree of safety the evacuation was necessary."

18 (Emphasis in the original.)

19
20 c. His other comments related to certain changes in
21 style and tone, which were orally described as
22 designed to eliminate redundancy. These were
23 indicated by him with blue pencil. In a number of
24 cases he made comments on changes in tone which he
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1 believed were calculated to eliminate unnecessary
2 pointedness with regard to certain sins of omission
3 on the part of the Department of Justice. He said
4 he felt this could be accomplished without in any
5 way departing from an accurate factual account.

6 On May 5, 1943 General DeWitt sent the following message (Ex.
7 71) to Brigadier General Barnett:

8 "Have no desire to compromise in any way govt case
9 in Supreme Court and do not understand how substance
10 and form of report as submitted can have this
11 effect. Both you and Bendetsen know my crews
12 [views] and my attitude. Do not understand McCloy's
13 proposal. Report is now factual and I solemnly see
14 my views and actions determined as necessary at time
15 of evacuation weakened or undermined if report
16 changes. I cannot conscientiously change or put
17 into separate document proposals for future
18 disposition of evacuees without by my own act
19 invalidating my assigned mission and
20 responsibilities thereunder. If time permits send
21 Bendetsen by air to Anchorage reporting to me from
22 there so he will know where to meet me and I can be
23 fully informed and settle the matter." (Emphasis in the
24 original)

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1 On May 9, 1943, Colonel Bendetsen sent the following message
2 (Ex. 72) to Brigadier General Barnett:

3 "General DeWitt directs that final report of
4 evacuation be revised as indicated by Colonel
5 Bendetsen to Major Moffitt in Major Moffitts copy of
6 report together with style changes given to Major
7 Moffitt orally... You are prohibited from submitting
8 to Assistant Secretary of War any drafts of amended
9 report. Further the revised report will not be
10 given to anyone until DeWitt finally approves. All
11 copies heretofore sent to the War Department (not
12 including inclosures) will be called in by you and
13 you will have War Department records of receiving
14 report destroyed inasmuch as such revision as is
15 finally sent to War Department will have a later
16 dated transmittal letter. ..."

17 Exhibits 73 and 74 relate to the changes in the Final Report
18 suggested by the War Department. Fifty-five changes were listed.
19 The proposed changes most relevant to this proceeding were these:

20 Page iii, paragraph 2, second sentence: Eliminate
21 the words "and will continue for the duration of the
22 present war."

23 Page iii, paragraph 2, end of the second sentence:
24 Insert "The surprise attack at Pearl Harbor by the
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1 enemy crippled a major portion of the Pacific Fleet
2 and exposed the West Coast to an attack which could
3 not have been substantially impeded by defensive
4 fleet operations. More than 120,000 persons of
5 Japanese ancestry resided in colonies adjacent to
6 many highly sensitive installations. Their
7 loyalties were unknown, and time was of the
8 essence."

9
10 Page 9. Strike the following: "It was impossible
11 to establish the identity of the loyal and the
12 disloyal with any degree of safety. It was not that
13 there was insufficient time in which to make such a
14 determination; it was simply a matter of facing the
15 realities that a positive determination could not be
16 made, that an exact separation of the 'sheep from
17 the goats' was unfeasible."

18 And replace with the following: "To complicate
19 the situation, no ready means existed for
20 determining the loyal and the disloyal with any
21 degree of safety. It was necessary to face the
22 realities - a positive determination could not have
23 been made."

24 On June 5, 1943, General Dewitt issued a revised version (Ex.

1 85) of his final report on the Japanese evacuation. In that version
2 of the report the underlined portions of the following statements
3 were either deleted from or added to the original version of the
4 Final Report:

5 Page iii, paragraph 2: "The security of the
6 Pacific Coast continues to require the exclusion
7 of Japanese from the area now prohibited to them
8 and will continue for the duration of the
9 present war."

10 (Deleted from the original version.)

11
12 Page iii, paragraph 2: "More than 120,000
13 persons of Japanese ancestry resided in colonies
14 adjacent to many highly sensitive installations.
15 Their loyalties were unknown, and time was of
16 the essence." (Added to the original version.)

17
18 Page 9. "It was impossible to establish the
19 identity of the loyal and the disloyal with any
20 degree of safety. It was not that there was
21 insufficient time in which to make such a
22 determination; it was simply a matter of facing
23 the realities that a positive determination
24 could not be made, that an exact separation of

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1 the 'sheep from the goats' was unfeasible."

2 (Deleted from the original version and replaced
3 by the following sentence.)

4
5 Page 9: "To complicate the situation, no ready
6 means existed for determining the loyal and the
7 disloyal with any degree of safety. It was
8 necessary to face the realities - a positive
9 determination could not have been made."

10 (Added to the original version.)

11 On June 21, 1943, the Supreme Court handed down its decision,
12 affirming the conviction of petitioner on the count charging curfew
13 violation.

14 That General DeWitt did in fact believe that it was impossible
15 to separate the loyal Japanese from the disloyal ones, is borne out
16 by the transcripts of two telephone conversations which took place a
17 few months before the publication of the initial version of the
18 Final Report.

19 The first was a conversation between General DeWitt and Major
20 General A. W. Gullion, the Provost Marshal General, on January 14,
21 1943. The subject matter of the conversation was the possibility
22 that the Western Defense Command might be called upon to make thirty
23 thousand or more loyalty investigations of individuals in the
24 relocation centers. In the transcript (Ex. 63) of that telephone

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1 conversation the following appears:

2 DeWitt: I don't see how they can determine the
3 loyalty of a Jap by interrogation...or
4 investigation.

5 Gullion: They've got a questionnaire that the
6 Navy -- some psychologist over there in
7 the Navy sold to them.

8 DeWitt: There isn't such a thing as a loyal
9 Japanese and it is just impossible to
10 determine their loyalty by investigation --
11 it just can't be done...

12 The other was a conversation just four days later between
13 General DeWitt and Assistant Secretary of War McCloy. General
14 DeWitt was disturbed that he had been instructed to prepare for
15 about 30,000 loyalty investigations. In the transcript (Ex. A-84)
16 of that conversation the following appears:

17 DeWitt: Because I feel that I wouldn't be loyal
18 to you or honest to you if I didn't say
19 that it is a sign of weakness and an
20 admission of an original mistake.
21 Otherwise -- we wouldn't have evacuated
22 these people at all if we could
23 determine their loyalty.

24 McCloy: I don't know whether we are at one on
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1 that --

2 DeWitt: I know we are not one on it --

3 McCloy: We evacuated them from the West Coast
4 because we thought the front was
5 immediate. We couldn't sort them out
6 immediately.

7 It is further borne out by his statement in the original
8 version of the Final Report that the security of the Pacific Coast
9 required the exclusion of the Japanese from that area for the
10 duration of the war. This can only be interpreted to mean that in
11 his opinion the loyalty of a person of Japanese extraction could not
12 be determined no matter how long the war might last.

13 In its brief to the Supreme Court in petitioner's appeal the
14 government did not take the position that it was impossible to
15 separate the loyal Japanese residents from those who were not.
16 Rather, it was a lack of time that prevented that separation.

17 On page 35 of its brief the government stated:

18 "The classification was not based upon invidious
19 race discrimination. Rather, it was founded
20 upon the fact that the group as a whole
21 contained an unknown number of persons who could
22 not readily be singled out and who were a threat
23 to the security of the nation and in order to
24 impose effective restraints upon them it was

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1 necessary not only to deal with the entire
2 group, but to deal with it at once." (Emphasis
3 added)

4 On page 61 it stated:

5 "The grave emergency called for prompt and
6 decisive action."

7 On page 62 it stated:

8 "What was needed was a method of removing at
9 once the unknown number of Japanese persons who
10 might assist a Japanese invasion, and not a
11 program for sifting out such persons in the
12 indefinite future." (Emphasis added)

13 On page 63 it stated:

14 "The operative fact on which the classification
15 was made was the danger arising from the
16 existence of a group of over 100,000 persons of
17 Japanese descent on the West Coast and the
18 virtually impossible task of promptly
19 segregating the potentially disloyal from the
20 loyal." (Emphasis added)

21 The opinion of the Supreme Court in Hirabayashi vs. United
22 States, reflected the court's acceptance of the government argument
23 that the lack of time to separate the loyal from the disloyal
24 justified action directed toward all individuals of Japanese

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