

BETRAYAL

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Presented to the Chit Chat Club November 10, 2008

The surprise attack by Japan on the United States at Pearl Harbor, Hawaii on Sunday morning, December 7, 1941, set in motion events that led to the greatest betrayal in modern times of American values and of the constitutional rights of approximately 110,000 persons. President Franklin Roosevelt called December 7, 1941, a "Day that will live in infamy". What followed that day in the next few months might well be called a period of betrayal as we, as a nation, forgot our basic obligations to our fellow citizens who happened to be of Japanese ancestry.

The Pearl Harbor attack created a feeling of panic among many on the West Coast particularly after the Japanese followed that attack with attacks in the Philippines, Netherland East Indies (Indonesia), the Malay Peninsula and other places throughout the Pacific. Losses sustained by the U.S. and its allies grew daily and the Japanese appeared unstoppable and omnipotent. But that feeling of panic did not translate into fear by the resident population of persons of Japanese ancestry. In fact, in the days immediately after Pearl Harbor both official and unofficial sources and editorials emphasized the loyalty of resident persons of Japanese ancestry. For the first few months persons of Japanese ancestry were treated normally and continued to live routine lives. Extremely few attacks were made on them and they lived in relative security among their neighbors.

Japanese had begun emigrating to the United States in the last quarter of the nineteenth century. Between 1885 and 1894 over 25,000 Japanese went to Hawaii, primarily as workers in agriculture. The flow increased, and between 1901 and 1908 127,000 Japanese entered the United States. By 1940 there were 158,000 persons of Japanese ancestry living in Hawaii making up 35% of the population of the territory. 75% of them were born in the United States. In the continental United States there were approximately 127,000 persons of Japanese ancestry of whom approximately 112,000 lived in three western states, with most living in California. They made up approximately 1.6% of the California population and approximately 64% were native born.

Persons of Japanese ancestry met with a considerable amount of prejudice in California. Anti-Japanese activity commenced in earnest in 1900 and resulted in a major international incident when the San Francisco Board of Education barred Asian children from white primary schools. Although only 93 students of Japanese ancestry (of whom 25 were native born Americans) were affected, the Japanese Government was highly offended and President Theodore Roosevelt and the U.S. Congress had to get involved, resulting in the 1907 so called "Gentlemen's Agreement" leading to sharply reduced emigration from Japan to the U.S.

Various groups had made concerted efforts against persons of Japanese ancestry over the years, and after Pearl Harbor they raised their voices very considerably and began to create anti-Japanese political pressure. Groups such as the Western Growers Protective Association, The Grower-Shipper Vegetable Association, The California Farm Bureau Federation and many others began to exert political pressure on members of Congress and state officials seeking restrictions on persons of Japanese ancestry. Their efforts were successful as Governor Cuthbert Olson and Attorney General Earl Warren became strongly involved in the restrictions on persons of Japanese ancestry. The effectiveness of the pressure groups can be seen from the following statistics of communications received by U.S. Attorney General Francis Biddle who was responsible for measures against enemy aliens until February 19, 1942. Between December 8, 1941 and February 20, 1942, he received 764 communications of which 671 (88%) urged evacuation of persons of Japanese ancestry. Almost all of these communications were received in the three weeks from February 1, 1942 to February 22, 1942.

Immediately after Pearl Harbor the F.B.I. carried out plans it had previously developed and arrested a small number of Germans, Italians and Japanese. By February 16, 1942, the Department of Justice held 2192 Japanese, 1393 Germans and 264 Italians in its custody. The FBI did not believe that demands for mass evacuation were based on a factual evaluation but came from political pressure. Its director, J. Edgar Hoover, was of the opinion that the case to justify mass evacuation of security reasons had not been made.

The military also did not feel any urgency to take actions against persons of Japanese ancestry. Certain restrictions against enemy aliens were quickly put in place after Pearl Harbor but these did not, at first, apply to U.S. citizens of Japanese ancestry. It was not until political pressure on the West Coast, particularly in California, became quite strong that Lt. General John L. DeWitt, the military commander for the West Coast, began placing restrictions on all persons of Japanese ancestry and then, under continued political pressure, ultimately ordered total exclusion and relocation.

A completely different result happened in Hawaii. There the military quickly realized the importance of persons of Japanese ancestry to the economy of the islands, the diversion from the war effort that their exclusion or interment would cause, and the fact, that despite inflammatory rumors of acts of sabotage and aiding the enemy, there had been no evidence to support such rumors or acts of disloyalty. Thus the military commander resisted all political pressure from Washington and U.S. citizens of Japanese ancestry were not restricted or singled out.

The political pressure on the mainland resulted in the promulgation of Executive Order 9066 by President Roosevelt on February 19, 1942. In his capacity as Commander in-Chief he authorized the Secretary of War and such military commanders as he might designate to prescribe "military areas" at their discretion from which any and 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. At first the military areas designated

by General DeWitt were along the coast and small areas in the interior around vital installations. Then later, under continued political pressure, the areas for total exclusion of persons of Japanese ancestry were expanded.

The broad authority delegated by the President to the Secretary of War and through him to military commanders caused concern to War Department officials. There were concerns that the President's executive order making evacuation possible was of doubtful constitutionality and they felt that obtaining congressional approval of the President's order would strengthen the legality of the contemplated evacuation. The result was Public Law 503 passed by the 77th Congress in March 1942, which created criminal penalties for violating orders issued by the military under Executive Order 9066.

Acting pursuant to Executive Order 9066 General DeWitt moved quickly from restrictions to exclusion to relocation. By a proclamation on March 24, 1942, he established a curfew of 8 p.m. to 6 a.m. for all enemy aliens and persons of Japanese ancestry. Then on March 29, 1942, persons of Japanese ancestry were prohibited from moving out of Military Area #1 without permission, thus putting into place the beginning of mandatory evacuation and relocation. During the next 10 weeks all persons of Japanese ancestry were evacuated from Military Area #1 to assembly centers from which they were ultimately sent to ten Relocation Centers in California, Arizona, Colorado, Wyoming, Idaho, Utah and Arkansas.

The forceful evacuation and relocation of over 100,000 individuals obviously created some major legal problems. The slow process through the courts began in the summer of 1942 and reached the U.S. Supreme Court in 1943 and 1944 resulting in three decisions. The first, *Hirabayashi v. U.S.*, 320 U.S. 81, decided June 21, 1943, unanimously upheld the conviction of Mr. Hirabayashi for violating the curfew imposed on all enemy aliens and persons of Japanese ancestry. The majority opinion stated

“Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason legislative classification or discrimination based on race alone has often been held to be a denial of equal protection. (Citations) We may assume that these considerations would be controlling here were it not for the fact that the danger of espionage and sabotage, in time of war and threatened invasion, calls upon the military authorities to scrutinize every relevant fact bearing on the loyalty of populations in the danger areas. Because racial discriminations are in most circumstances irrelevant and therefore prohibited, it by no means follows that, in dealing with the perils of war, Congress and the Executive are wholly precluded from taking into account those facts and circumstances which are relevant to measures for our national defense and for the successful prosecution of the war, and which may in fact place citizens of one ancestry in a different category from others. The adoption by Government, in the crises 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.”

The next case was *Ex parte Mitsuye Endo*, 323 U.S. 283, decided December 18, 1944. In that habeas corpus case the issue was whether Ms. Endo, whose loyalty was stipulated by the government, could nevertheless be detained in a relocation camp. The court, in an opinion by Justice Douglas, unanimously said “no” stating that nothing in Executive Order 9066 and Public Law 503 specifically authorized the detention of a loyal citizen.

The third and most important case was *Korematsu v. U.S.*, 323 U.S. 214, also decided 12-18-44. In a majority opinion by Justice Black in which Justice Frankfurter concurred, but from which Justices Roberts, Jackson and Murphy dissented in three separate opinions, the court upheld the conviction of Mr. Korematsu for remaining in an area (San Leandro, CA) from which he was excluded by a military order. The majority stated that Korematsu was not excluded from the military area because of hostility to him or his race. He was excluded because we were at war with Japan. The reasoning of the *Hirabayashi* case was extended to exclusion and relocation which caused Justice Jackson much concern. As he pointed out, *Hirabayashi* involved a very limited restriction, a curfew, while *Korematsu* involved imprisonment since Mr. Korematsu was prohibited from leaving the exclusion area except through imprisonment at an assembly center. Justice Murphy addressed the racial discrimination issue directly and impassionedly:

“I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting, but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must, accordingly, be treated at all times as the heirs of the American experiment, and as entitled to all the rights and freedoms guaranteed by the Constitution.”

What the Justices did not know when they decided *Korematsu* was that the “military necessity” on which they based their majority opinion in fact had not existed. Department of Justice lawyers knew this and their draft brief included a vital footnote in effect so informing the court. But they were forced to remove this vital footnote by pressure from the War Department and thus the court relied on a report by General DeWitt which was known by the Justice Department to be wrong.

The final judicial chapter was written in 1984 when Judge Patel of our local United States District Court vacated Mr. Korematsu’s conviction on a writ of *coram nobis*.

She found

“At oral argument the government acknowledged the exceptional circumstances involved and the injustice suffered by petitioner and other Japanese-Americans...Moreover, there is substantial support in the record that the government deliberately omitted relevant information and provided misleading information in papers before the court. The information was critical to the court’s determination, although it cannot now be said what result would have obtained had the information been disclosed. Because the information was of the kind peculiarly within the government’s knowledge, the court was dependent upon the government to provide a full and accurate account. Failure to do so presents the “compelling circumstance” contemplated by Morgan. The judicial process is seriously impaired when the government’s law enforcement officers violate their ethical obligations to the court.”

She concluded

“Korematsu remains on the pages of our legal and political history. As a legal precedent it is now recognized as having very limited application. As historical precedent it stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees. It stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused.”

With the ruling in the Endo case the process of releasing the internees began. On January 2, 1945, the exclusion order was rescinded in its entirety and internees began to leave the camps and rebuild their lives. They were given \$25 and a train ticket home. What would they face when they returned? By 1944 Robert W. Kenny was California’s Attorney General and Earl Warren was its governor. They worked extensively with law enforcement agencies throughout the state to assure that there would be civil tranquility and they generally succeeded.

People returned and started rebuilding their lives. In 1948 Congress passed the American Japanese Claims Act allowing Japanese-Americans to apply for compensation for property losses as result of their evacuation and relocation. Most did not have the paperwork to support claims but ultimately approximately 2,600 claims were filed and \$37 million was approved and paid. In 1988 Congress passed the Civil Liberties Act of 1988 which provided redress payments of \$20,000 to each surviving detainee.

The emotions and fears loosened by Japan's attack on December 7, 1941, joined with the existing racial prejudice against Japanese on the West Coast and in other parts of the country and the economic interests of some farm groups and others, all combined to cause us to abandon our values and principles. We must be on guard to make sure it does not happen ever again.

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