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AFFIDAVIT

JOHN L. BURLING, being sworn, deposes and says as follows:

I am a member of the bar of the State of New York and of the Supreme Court of the United States. From July 1, 1939 until June 3, 1946 I was employed by the United States Department of Justice. At all times relevant to this suit I was assigned to the Alien Enemy Control Unit of the War Division of the Department of Justice, and during substantially all of the relevant period I had the title of Assistant to the Director of that Unit. The Alien Enemy Control Unit had assigned to it not only the administration of the Alien Enemy Act of 1798 but also cognate matters relating to the internal security of the United States and to exceptional wartime security controls. At all times from January 1942 until the surrender of Japan, the Unit was active for the Department of Justice in problems relating to Japanese aliens resident in the United States and to American citizens of Japanese ancestry resident before the war on the West Coast. From January 1942, when agitation in favor of evacuation of all persons of Japanese ancestry arose on the West Coast, onward, I was active in the Department of Justice in dealing with the various problems to which that agitation led, including the ultimate removal from the West Coast by military authorities of all persons of Japanese ancestry. The Department of Justice and, through it, I, personally, was aware of substantially all of the governmental developments and the policy determinations leading to that evacuation and to the creation of the War Relocation Authority. Thereafter, I was one of the officials of the Department of Justice who was most closely in touch with the officials of the War Relocation Authority and who sought to coordinate

the activities of the Department of Justice with that agency where appropriate. It may be said, in general, that I am thoroughly familiar with the problems created by the evacuation and particularly with the problems related to internal security, many of which problems arose especially at the Tule Lake Center of the War Relocation Authority located at Modoc County, California.

Subsection (i) of Section 401 of the Nationality Code which authorizes renunciation of American citizenship under certain circumstances was added to the Nationality Code of 1940 by Act of July 1, 1944. The enactment of that law came about under the following circumstances:

In the early winter of 1943, coupled with an effort to recruit combat teams of American citizens of Japanese ancestry to serve with the armed forces, the War Relocation Authority undertook to have a questionnaire or questionnaires filled out by a large number of the residents of its ten centers into which the very great majority of persons of Japanese ancestry previously residing on the West Coast had been moved. This questionnaire included questions relating to loyalty to the United States on the part of both aliens and citizens. Due probably in part to the manner in which the questionnaire was handled both by military authorities and by officials of the War Relocation Authority and probably in part to distress at having been moved into these guarded, barbed-wire-enclosed camps and probably in part to genuine loyalty on the part of some toward Japan, a considerable number of persons, both citizens and aliens, either answered the questions pertaining to loyalty in the negative or declined to answer.

Thereafter, in the spring of 1943, the War Relocation Authority encountered unfavorable publicity in certain sections of the press. At the same time a subcommittee of the House Select Committee to Investigate Un-American Activities conducted an investigation into the policies of the War Relocation Authority. In the course of this investigation and in the press the War Relocation Authority was very

strongly urged to segregate those whom it deemed disloyal to the United States from those whom it deemed loyal. The preparation for this segregation process was carried on in the spring and summer of 1943. Very generally, it may be said that those persons who had answered the loyalty question above referred to in the negative and who failed subsequently to withdraw their negative answer and to substitute an affirmative answer were scheduled for segregation. Similarly, persons who requested to be repatriated to Japan were scheduled for segregation. A small number of others as to whom there was specific security information provided by one or more Government agencies or who failed to persuade the War Relocation Authority of the genuineness of their amendment to the negative answer to the loyalty questionnaire were scheduled for segregation. The very great majority of all persons designated for segregation, however, received such designation as a result of either a negative loyalty answer or a request for repatriation. In addition to adults selected for segregation, minor children of segregants and family members of segregants who desired to remain in the family unit were permitted to be segregated.

Prior to the completion of the preparation of lists of persons designated for segregation, the War Relocation Authority announced that the Tule Lake Center in Modoc County, California, which was at that time one of the Authority's ten relocation centers, would be selected as the segregation center. Inasmuch as many of the persons of Japanese ancestry who had been moved by the Army first from their homes to Army camps and then from Army camps to War Relocation Authority centers regarded such movement as an exceptional hardship, a considerable number of persons who had already been moved to the Tule Lake Center in 1942 did not desire to move to another Center in the process of transforming the Tule Lake Center from a relocation center to a segregation center and, therefore, desired

to remain there notwithstanding their knowledge that the Tule Lake Center was to become the segregation center for persons of Japanese loyalty. The precise number of persons who would not have been segregated by the War Relocation Authority's criteria who remained in Tule Lake because of unwillingness to move is not known but it was thought to be slightly more than 6000.

In general, therefore, it may be seen that few of the persons segregated were segregated against their will. Segregants had ordinarily elected that status either by giving and adhering to a negative loyalty answer or by making and not withdrawing a request for repatriation or by refusing to leave Tule Lake when the status of that center was changed. It was announced throughout all centers at the time of segregation that the principal purpose of the War Relocation Authority would be to relocate in American life the evacuees who were not segregated but that it was not intended that any relocation be carried on directly from the Tule Lake Center (although in some exceptional cases persons in the Tule Lake Center might be moved to relocation centers for further processing.) The general spirit in which segregation was carried on both by the War Relocation Authority and by the evacuees themselves was that those persons of Japanese ancestry, whether United States citizens or aliens, who desired to look to the United States for their future, should remain in or go to one of the nine relocation centers, while those persons of Japanese ancestry, whether United States citizens or aliens, who desired to look to Japan for their future, should go to the Tule Lake Segregation Center until exchanged or repatriated.

In 1942 and again in 1943 the exchange vessel Gripsholm made voyages between the United States and neutral ports at which exchanges took place of Japanese returning to Japan from the United States and of United States citizens returning to the United States from the Orient. Although these exchanges were extremely difficult to arrange, hope to arrange further exchanges in order to save the lives of Americans held

in Asia was never abandoned by the State Department and likewise hope to return to Japan, even during the war, was never abandoned by those desiring repatriation. Many of those who accepted segregation in the summer of 1943 did not anticipate a long stay in the Tule Lake Center but hoped to be returned to Japan by diplomatic exchange.

With the exception of infants, therefore, and family members incapable of independent decision, substantially all persons who went to or remained in Tule Lake after the segregation date in the autumn of 1943 had indicated an acceptance of a Japanese dominated future which involved going to or remaining in a camp guarded with barbed wire and sentry towers as opposed to the option of going to or remaining in one of the nine relocation centers (only a few of which were so guarded) to await relocation at liberty in the United States. These persons also knowingly accepted the stigma of disloyalty to the United States.

The physical movement of persons among the various centers commenced in the autumn of 1943 and was substantially complete on November 1, 1943. On that date there were approximately 18,000 persons of Japanese ancestry living in the Tule Lake Center, many of whom had come from other camps, some of whom comprised the leadership of the pro-Japanese factions of each of the ten relocation centers and who, to some extent, thereupon commenced to compete with each other for leadership of the new segregation center.

Prior to November 1, 1943 a number of grievances had been urged by at least some of the residents of the Tule Lake Center relating to living conditions, food and the like. On November 1, 1943 Dillon S. Myer, the National Director of the War Relocation Authority, was at the Center on an inspection trip. On that day a crowd of at least a thousand persons of Japanese ancestry gathered around the administration building in such a way as to create the impression among some Caucasian members of the War Relocation Authority staff that the crowd was imprisoning the administrative officials within the administrative

building. Leaders of this crowd then conferred with Mr. Myer and with Mr. Ray O. Best, the Director of the Tule Lake Center, and further pressed demands. As a result of the pressure put upon the administrative officials by the crowd, Mr. Myer addressed the crowd from the porch of the building. During this time some members of the staff were physically prevented from entering or leaving the area surrounding the building and also during this period some persons of Japanese ancestry walked through corridors of the center hospital against orders and, as a result of that incident, a scuffle ensued between the chief physician of the center and persons of Japanese ancestry. The physician was knocked unconscious, dragged outside and severely beaten. Four days later a group of youths entered the area in which motor equipment was parked which they were forbidden to enter at night. They thereupon approached the house of Mr. Best in such a manner as to cause him to believe he was about to be attacked and he then requested the assistance of the Military Police who were camped immediately outside the main gate. The soldiers entered on the night of November 4 completely equipped with armored cars, gas, machine guns and the like and assumed control of the camp.

The reverberations of these two incidents were immediate. The press called great attention to what it described as rioting. A number of employees of the War Relocation Authority became afraid and declined to remain within the fenced area. A committee of the California legislature took testimony from some of these persons and others having knowledge of the incidents, which testimony was strongly critical of the War Relocation Authority and insistent that more stringent measures be taken. Within a month the same subcommittee of the House Select Committee to Investigate Un-American Activities which had held hearings in the spring held additional hearings concerning the Tule Lake incident which hearings also were markedly critical of the situation as it then existed.

In my capacity as the Department of Justice officer designated to keep in touch with this general problem, I attended several of these hearings held in Washington, was in close touch with the officers of the War Relocation Authority and was generally familiar with developments. It was the opinion of other officers of the Department, and it was my own, that it would be necessary to modify the manner in which the problem was being dealt with. As the problem was envisaged in November 1943 by the then Attorney General, Francis Biddle, by my immediate superior, the Director of the Alien Enemy Control Unit, Edward J. Ennis, and by me, judging from the general information available to the Department of Justice and particularly the testimony at the various hearings and the statements made to us by officers of the War Relocation Authority, especially Dillon S. Myer, it was as follows:

Take [Whether out of necessity or out of no necessity, wisely or unwisely, constitutionally or unconstitutionally, the Army had in fact moved over 100,000 persons of Japanese ancestry, over two-thirds of whom were American citizens, out of their homes and into camps. Thereafter, the War Relocation Authority had carried out what might be termed a voluntary segregation, as a result of which those who for one reason or another wished to be in a camp of persons known to be loyal to Japan were to live at the Tule Lake Center. This camp at that time housed 18,000 persons, some of whom could be presumed to have been at all times loyal to Japan. Some others of them could be presumed to have been so seriously shocked and distressed at the entirely unprecedented act of moving and detaining a group of persons selected solely on a racial basis and at its consequent great economic and social distress and at the actual hardships of moving and being placed in unprepared, crude barracks as to have become disaffected.

An unknown number, probably in excess of 2,000, of the inhabitants were what is known as Kibei, which is the term given in Japanese to young men (and very occasionally women) who have been born in the United States and who have been sent to Japan to be educated and who returned to the United States only after having spent most of their formative years in Japan. A very large proportion of these Kibei were wholly Japanese in culture and education and could speak little or no English.

Within this population of 18,000 (including women and children) there was undoubtedly some group of persons whose loyalties were to Japan and who desired to create trouble and difficulty for the United States Government. Although the exact facts are still in dispute, undoubtedly some degree of physical force was employed by Japanese loyalist elements on November 1 and 4, 1943. It was the stated opinion of Mr. Myer that there was one or two thousand men in the Tule Lake Center who were at that time loyal to Japan. It was also his opinion that many of these were to be found among the Kibei, some of whom were Japanese by race, ties of family, ties of friendship, education and language and who were United States citizens and Americans solely as a matter of place of birth. [The exigencies of the war and the reasonable demands of the public that persons of Japanese ancestry avowedly loyal to Japan not be permitted at complete liberty within the United States made it obviously impossible for the United States Government or any agency thereof to embark on any program of releasing from custody this small inner group of segregants who made no secret whatever of their loyalty to Japan and of their desire to see that country defeat the United States.]

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[The Department of Justice regarded it as a patent necessity that that small group, however identified or defined, should be detained. This, however, raised a most serious constitutional problem. It is my understanding of the feeling and belief of the then Attorney General and of his advisers that the detention of American citizens not charged with crime even in wartime on the basis of an administrative determination of disloyalty under circumstances not sufficiently grave to warrant the declaration of martial law was repugnant not only to the Constitution but to the basic principles of liberty upon which this Government was founded. It was recalled that never before in this country had such detention been resorted to and that the right of habeas corpus went back in British law to Magna Carta.] (It was known, of course, that the British during the existing war had authorized a cabinet officer to detain British subjects on security grounds without judicial review but it was hoped that that extraordinary departure from all prior concepts of civil liberties would not be necessary in this country). [The dilemma posed, therefore, was that it was imperative to detain this group of admittedly disloyal American citizens of Japanese ancestry. Martial law might have made the detention of the group lawful but it is extremely doubtful whether conditions on the West Coast in 1943 were such as to warrant a declaration of martial law. Thus there appeared to be no way by which to detain them without doing violence to basic constitutional principles.]

[It was the belief of the officials of the Department of Justice considering this matter that the way out of this dilemma was to be found in the attitude and conduct of the members of disloyal group themselves. It was believed that this group was so openly pro-Japanese and so desirous of making a demonstration of that loyalty that, if given an opportunity, they would voluntarily abandon their United States citizenship, and thereby voluntarily abandon their standing as citizens to object to the detention which their conduct rendered imperative.] It was further believed in the Department of Justice that Japanese law provided that a person born in the United

States of Japanese citizen parents prior to December 1, 1924 automatically acquired Japanese citizenship and retained it unless he affirmatively divested himself thereof and that such a person born after that date might acquire Japanese citizenship through registration of his birth by his parents with the Japanese Consul or consular agent. It was, therefore, thought proper to presume, until the presumption was rebutted by competent evidence, that those persons of Japanese ancestry who voluntarily gave up their American citizenship and asserted their loyalty to Japan were in legal fact dual nationals. As such, when their United States citizenship ceased to exist, their Japanese nationality remained and they were, accordingly, alien enemies under the provisions of the Alien Enemy Act of 1798 (Title 50, USC Section 21 et seq.).

[Thus, the proposal that American citizens should be permitted, in time of war, to renounce their citizenship as an act of their own free will, subject only to the control that the Attorney General might disapprove the renunciation if it affirmatively appeared to him to be contrary to the interests of national defense, was made for the purpose of devising a system of controlling the disloyal and riotous elements at Tule Lake while not doing injury to the Constitution and to the traditions of the Nation.]

This problem became acutely one for the Attorney General on December 8, 1943. Up to that time he had never been asked to give nor had he given an opinion as to the constitutionality of the detention of American citizens of Japanese ancestry in the various camps. On that date a request was addressed to him by the Chairman of the subcommittee of the House Select Committee to Investigate Un-American Activities to appear before that subcommittee to make recommendations concerning what should be done concerning the general problem existing at Tule Lake. The Attorney General was then confronted with the necessity of making a recommendation either for the detention

of American citizens not charged with crime and not under martial law by an administrative act of a military or civil official, or of recommending a means for accomplishing the detention of this group without violating the Constitution. In this situation Attorney General Biddle accepted the recommendation made to him by his advisers named above and on December 9, 1943 he recommended the enactment of legislation to permit voluntary renunciation of citizenship. Thereafter a bill was drafted which became the Act of July 1, 1944, which is subsection (i) to Section 401 of the Nationality Act of 1940, as amended. The Attorney General testified again in favor of this legislation before the House Committee on Immigration in January 1944 and the legislation was introduced, and passed.

While this legislation was pending and while the Army was gradually returning the control of the Tule Lake Center to War Relocation Authority officials following the incidents of November 1943, the leadership of the persons of Japanese ancestry in the Tule Lake Center began to change and a group arose which did not favor violent action against the administration because of food, housing, etc. but which favored correct relations with the administration coupled with spiritual and physical preparation for return to Japan. This latter group reasoned that Japanese victory or at least repatriation was near and that the true Japanese should be prepared to resume life in Japan and that the young men should be prepared to fight for the Japanese Emperor. This group felt that the presence within the center of persons who were not truly loyal to Japan but who were loyal to the United States or who had remained out of inertia or who were waiting to see how the war would end were undesirables. The group, accordingly, demanded what was called "resegregation", by which was meant a second segregation and removal from Tule Lake of those whose loyalty to Japan was questionable. Members of the undesirable group were called "inu" or "dogs". Petitions for resegregation were circulated and were sent to the War Relocation Authority, to the Secretary of the Interior,

the Department of Justice, the Department of State and to the Spanish Legation in Washington which was the Legation of the protecting power for Japanese interests in this country under international law. At least 7,000 signatures were affixed to these petitions.

After these petitions had been procured, the group which had procured them, namely the group of persons most eager to return to Japan and least willing to associate with other persons of Japanese ancestry not fanatically loyal to the Emperor, formed themselves into a society for the general promotion of repatriation and of preparation for return. One of the principal concerns of this group was that American-born children other than Kibei had been exposed to American education and American life and therefore were not adequately trained to return to Japan. This group set out to provide education in ways of Japanese thinking, history and Japanese culture and the like.

The Japanese Language Schools, which existed parallel to a system of American schools in the center, to a considerable extent cooperated with this group in preparing the children for return to Japan. Inasmuch as it was the assumption of many of the members of the staff of the War Relocation Authority that the center population would go to Japan either by exchange or at the conclusion of the war, this preparation of Americanized children for Japanese life was not universally regarded as evil. One school which was conducted at the center until January 1943 was called the Greater East Asia School after the notorious Greater East Asia Co-Prosperity Sphere.

This organization of persons loyal to Japan underwent a number of changes of name but continued to exist substantially until the end of the war, although from December 1944 onward efforts were made to stamp it out.

At some undetermined time in the summer of 1944 this organization, which was principally but not entirely composed of aliens, sponsored another organization for young men roughly between the ages of 18 and 30 who were principally but not entirely citizens

(although many of them were Kibei). This organization in some respects was independent and in some respects bore the relation to the older one of an auxiliary to a parent organization. This organization also had several Japanese names at different times, the general meaning of all of which was Young Men's Fatherland Association. From mid-summer 1944 until January 1945, when efforts were made to stamp it out by removing all of its members to Department of Justice internment camps, this organization became steadily more openly pro-Japanese and more active in flaunting these activities in the face of the American authorities. The existence of the two Japanese patriotic organizations and of their more and more open activities was not known to the officials of the Department of Justice above-named until December 5, 1944.

The bill permitting renunciation of citizenship in time of war became law on July 1, 1944. Considerable time was spent in preparing regulations and forms to implement this statute and it was not until the autumn of 1944 that the Department of Justice was prepared to administer it. Commencing in July 1944 individual letters and group petitions began to come in to the Department of Justice containing requests for permission to renounce citizenship. After the proper forms for applying for such permission were mailed out in October 1944, several hundred typewritten copies of such forms were mailed from the Tule Lake Post Office to the Department. These were nearly identical and seemed to have been prepared by the same typist. At the same time petitions were received for permission to renounce bearing the signatures of hundreds of persons. Because of the ease with which the signatures to petitions might be coerced or forged by anyone interested, some concern was felt by officials of the Department of Justice familiar with the matter (who by this time included, in addition to those named above, Assistant Attorney General Herbert Wechsler, in charge of the War Division). As a result, it was

determined that all available steps should be taken to insure that no person renounced his citizenship unless he understood what he was doing and desired to do it.

The Act itself provides for renunciation merely by appearing before an official named by the Attorney General and by signing a designated form. There is no requirement for any determination whatever other than the implicit ones that the renunciant knows what he is doing and wishes to do it, and the stated condition in the statute that the renunciation be found not contrary to the interests of national defense. At one time, the Attorney General's advisers considered setting up very simple forms which could have been executed rapidly in the presence of any competently trained Government clerk. In order to slow down the process, however, for the precise purpose of minimizing the possibility of coercion or mistake, the regulations were made far more cumbersome than necessary. Pursuant to the regulations and to the Department's interpretation of them, it was necessary for an applicant first to write to the Department in Washington requesting a form. Upon receipt of the form it was then necessary for the applicant to fill out and return it to the Department requesting permission to renounce. Thereafter the regulations called for a hearing to be held, and in practice, as will be said further, that hearing was far fuller than necessary to fulfill the statutory requirements.

In order to determine whether or not coercion existed, I was sent by Assistant Attorney General Wechsler to the Tule Lake Center, at which I arrived on December 5, 1944. On that date I and, through me, the officials of the Department of Justice first learned of the existence of the disloyal groups above referred to. At the outset of my investigation at Tule Lake I arranged to have a hearing room set aside for my sole use and I was assigned a Caucasian interpreter and a Caucasian stenographer by the War Relocation Authority.

I first called in and questioned separately about 62 persons who had filled in the typewritten copies of the printed form requesting permission to renounce citizenship, above referred to, and which officials in Washington had feared might indicate coercion. I questioned each of these persons in detail as to their desire to renounce citizenship, their reasons therefor and the circumstances surrounding the filing by them of the typewritten forms.

Although each person was alone with no other person of Japanese ancestry in the room and although each person was carefully questioned, every person questioned stated without hesitation that it was his or her own wish to renounce American citizenship so as to be solely Japanese. Substantially all of these persons indicated a desire to return immediately to Japan and substantially all of those who were questioned about it stated they desired to see Japan win the war. No one stated that he had been forced to sign the form and most of them stated that they had procured the form through friends. A few of them asserted that the form had been passed out to them by volunteers but that, since they had been trying to get forms from Washington in vain, they regarded this as a helpful service. The names of the persons who had typed the forms were obtained by me and they also were questioned. They admitted typing the forms but stated that they did this to help out friends and others desiring renunciation. They explained that many persons were distressed at the slowness of the Department of Justice in putting the renunciation program into operation and that they had typed the forms to allay the impatience of the prospective renunciants. In the course of this exhaustive investigation, all of which is available in stenographic transcripts, I was able to find no hint of coercion as I understood that term as a lawyer. I did, however, learn of the organizations and did learn that they favored renunciation. I also heard other cases of individuals who wished to renounce for reasons not directly related to loyalty,

such as desire to return to Japan with a husband or parent. These considerations are discussed below.

In December 1945 I learned that the young men's patriotic association had procured a considerable number of bugles and that they were conducting exercises each morning at 6 o'clock which were a combination of gymnastics, drilling in formation and patriotic observances. (On the evening of December 8, which was the anniversary of the attack on Pearl Harbor as measured by Japanese dates, a large memorial gathering was held in the center.) The young men wore a uniform at that time consisting of blue work trousers, a white sweatshirt and a white head band. It was estimated by officials of the center to whom I talked that about a thousand young men participated in these exercises each morning. The week-day exercises were engaged in by the young men in small groups and on Sunday at a later hour all the young people would exercise together. In addition to the exercising, they would engage in bowing toward the Imperial Palace and calisthenics which, I was informed, commemorated historic Japanese events and heroes. Much of the calisthenics, furthermore, closely resembled actual military drill.

Because of the obviously undesirable nature of this organization, I undertook to ascertain the identity of the leaders thereof with the view to permitting them to renounce their citizenship first so as to cause them to become alien enemies, at which time they might be apprehended upon alien enemy process and interned in Department of Justice internment camps for alien enemies. In a series of hearings which I conducted in the cases of the leaders I learned that the organization was entirely open in its activities and that it had an office in one of the buildings regularly assigned it, that inside this office the Rising Sun flag was displayed and that there was a sign in Japanese that anyone who spoke English on the

premises would be fined ten cents. These leaders were quite open in stating to me that their purpose was to prepare the young men so that when they should be exchanged they would be prepared to fight in the Japanese Army. They stated to me that they understood that when the segregants had arrived at Tule Lake they had made up their minds to go to Japan and, since they desired to go to Japan, it was only reasonable that they should train themselves to be Japanese.

In order to expedite the removal of the leaders, both of the parent league of pro-Japanese fanatics and of the young men's auxiliary, I prepared a list, by means of interrogation, of all of the leaders in the two groups and then called in each of them. Those who were citizens were asked whether they had applied for renunciation and substantially without exception they had. In every case they voluntarily executed the form for renunciation of citizenship.

On or about December 23, 1944 I returned to Washington and reported to Edward J. Ennis, Assistant Attorney General Wechsler and Attorney General Biddle. On my recommendation the Attorney General approved the renunciation of citizenship of the citizen leaders of the group referred to and authorized the apprehension on alien enemy process of those who had originally been aliens, as well as those who became alien enemies through renunciation. I reported to these officials the existence of the very active pro-Japanese movements in the center. It was agreed that the two organizations must be dissolved and that the measure most likely to succeed was the internment as alien enemies of the leaders. It was further agreed that if additional leaders should be chosen to replace those interned they also should be removed to Department of Justice internment camps.

Attorney General Biddle then directed me to arrange to return to Tule Lake in charge of a Department of Justice mission to handle the processing of renunciation applications. In order that the operation might be carried on as carefully and as intelligently as possible, I was instructed not to rely on persons with merely clerical

training but to take with me from Washington trained personnel. I did take from Washington three attorneys from the Alien Enemy Control Unit and one officer from that Unit who was not an attorney but who had been assigned to the Unit only during the war and who was regularly a high career officer of the Immigration and Naturalization Service. In addition, six stenographers and a clerk were dispatched to Tule Lake from various offices of the Department of Justice.

On December 19, 1944, shortly after I had left Tule Lake, Major General H. C. Pratt, Commanding General, Western Defense Command, withdrew the public proclamations and orders of 1942 which had ordered the exclusion of all persons of Japanese ancestry from the West Coast area and permitted all such persons to return to California with the exception only of named individuals who were served with individual exclusion orders. Simultaneously the War Relocation Authority issued an announcement throughout all of its centers that all the relocation centers would be closed within approximately one year or by December 31, 1945. There is a dispute as to whether it was intended by Dillon S. Myer, the Director of the War Relocation Authority, that this be understood at Tule Lake as an announcement that that center would be closed on or before the date set, but there can be no dispute as to the fact that there was an announcement by the War Relocation Authority officials at Tule Lake to the residents of that camp that it likewise would be closed within one year and that all of the War Relocation Authority staff at that center and all of the persons confined in the center understood that the camp was to be closed within a year. For reasons which will be discussed below, the announcement that the center would be closed within one year coincided with an extremely sharp upswing in the number of applications for permission to renounce citizenship filed with the Department of Justice. The announcement as to the closing of the center was made on December 22, 1944. December 25 fell on a Monday. On December 26 approximately 2,000 pieces of mail were received in the Department from Tule Lake indicating a desire to renounce citizenship,

In the first week of January 1945 I left Washington for California by train with the following hearing officers: Charles M. Rothstein, Joseph J. Shevlin, Ollie Collins and Lillian C. Scott. I devoted a considerable part of the time spent in travel in an endeavor to give these hearing officers as full a background concerning the general problem of the Japanese evacuation as I could. I told them in detail of the agitation arising in 1942, of the fact that there was no evidence of any espionage or sabotage committed by any person of Japanese ancestry either at the time of Pearl Harbor or thereafter. I told them of the hardships caused by the evacuation and of the circumstances surrounding the segregation. I particularly told them that it was my opinion that the loyalty questionnaire had been ineptly handled and that a negative answer to the loyalty question was not necessarily indicative of disloyalty but might be due to mistake, confusion or resentment over the evacuation. I further explicitly told them that it was my own opinion that the entire evacuation had been a tragic mistake due almost entirely to the unfortunate giving way by certain military and other officials of the Government to an unreasoned wave of public hysteria. I further told them that the segregation of 1943 could not be relied on in every case as a positive determination of Japanese loyalty but that it had been in most cases a voluntary choice which in fact might have been dictated by such loyalty or by a number of other factors such as desire to keep a family unit together, resentment at treatment given to United States citizens by their Government, a desire to avoid the draft, etc., etc.

Coming specifically to the task of administering the renunciation statute, I told the hearing officers of the strong pro-Japanese pressure in the center and instructed them to be particularly diligent in endeavoring to detect any sign of coercion. I then told them that, even though they were satisfied that a particular applicant

for renunciation might fully understand the nature of the act and at the moment desire to accomplish it, the hearing officer nevertheless was not bound to recommend approval if he felt in the particular case that the subject was not truly loyal to Japan and was imbued with American principles, ideals and culture but was acting because of some unusually difficult family situation or because of resentment at his evacuation and subsequent detention. In such cases the hearing officers were instructed neither to approve nor to disapprove but to dictate a memorandum on the record so that the entire file, the transcript of the hearing and the hearing officer's memorandum might be studied in Washington. With the exception of this instruction, the hearing officers were told that, as a legal matter, all that was necessary was for the applicant to come before the officer, satisfy the officer that he understood what he was doing and wished to do it and then sign the renunciation form. Nevertheless fuller and more careful hearings were desired. The purposes of these hearings, they were told, were threefold:

First, to explore every possibility of coercion. If any sign of coercion were noted, the applicant was, of course, not to be permitted to sign the form.

Second, to determine whether there was any group which, although voluntarily renouncing, nevertheless was so clearly pro-American and so clearly acting solely out of bitterness that some change in the regulations or in the statute should be considered.

Third, to obtain information concerning the entire problem of the administration of the Tule Lake Center since at that time it was thought not unlikely that the center would be transferred to the Department of Justice to administer.

With respect to the general issue of coercion, I specifically explained to the hearing officers that renunciation, as any other legal act, would be coerced and hence void if it were done under imminent

or immediate threat of physical injury to one's self or to a member of one's family. I gave this definition of the legal concept of coercion and went further to say that if there was any indication whatever in any case that renunciation was being made under any threat at all without regard to its imminence, the applicant for renunciation should not be permitted to sign the form and that the matter should be reported to me for further consideration. I said further, however, that the law gave every citizen of the United States in time of war a right to renounce his citizenship subject only to the proviso that, if it affirmatively appeared that such renunciation would be contrary to the interests of national defense, then the Attorney General might disapprove the renunciation. For that reason it was not legally relevant to determine the ultimate motivation which might lead a renunciant to abandon his citizenship beyond the determination that he understood what he was doing and at that moment desired to do it. I said that many motivations other than ultimate loyalty to Japan might be at work and that, for example, persons might renounce because they believed that all aliens would be repatriated at the end of the war and because they desired to remain with their alien parents. A renunciant might renounce because he was the eldest son and, as such, was responsible for the family property in Japan. Renunciants might abandon their citizenship because their parents feared that otherwise they would be drafted or forced out of the Tule Lake Center. I said that these reasons were not grounds for determining that renunciation was coerced and that an intentional act of renunciation free from fear was as valid if done for the motive of remaining with a parent as if done out of the truest loyalty to Japan. I stated to the hearing officers that the legal act of renunciation was comparable to the legal act of marriage and that a renunciant had legal capacity to renounce even though he was not loyal to Japan, just as a man or woman might

have legal capacity to marry even though not devoted to the proposed spouse. In conclusion, I repeated to the hearing officers the instructions given me by Assistant Attorney General Wechsler which were to the effect that the duty of the hearing officer was comparable to the duty of a careful and humane judge in accepting a plea of guilty and that just as a judge will accept a plea of guilty if he is satisfied that the accused understands the nature of the charge and the nature of his response thereto and is not in fear of injury either to himself or to a member of his family without regard to what reasoning leads the accused to make the plea, similarly the sole legal issue before a hearing officer was whether renunciation was a voluntary and comprehended act.

The Department of Justice mission arrived at Tule Lake on January 11, 1945. A special office building outside of the inner fence of the center was made available which consisted of a large waiting room, five hearing rooms and a stenographer's room. The War Relocation Authority made available to the mission two Caucasian interpreters, both of whom were women who had served as schoolteachers in Japan. The mission was also assigned one guard in the building and another guard to drive renunciants in an automobile from the gate to the building. The procedure which was followed was that the Department of Justice staff would, from the list of persons who had applied for permission to renounce, prepare a calendar or schedule of persons to be heard 24 hours in advance. This list would be given to the internal security officers of the War Relocation Authority. They would inform the applicants that their cases would be heard on the following day at an approximate time. Each applicant would then present himself at one of the gates and in course would be let through the gate and driven by automobile to the hearing building. He would then come into the waiting room and would be given a number by the clerk. When his turn came he would be escorted alone to one of the hearing rooms where there would be present the hearing officer, the stenographer

and, if necessary, one of the Caucasian interpreters above referred to, With the exception of a few cases where women found it necessary to bring children with them, no person of Japanese descent other than the renunciant was ever permitted in the hearing room. On a few occasions more than one hearing officer would be present during a hearing and in at most twenty cases out of the more than 5,000 hearings held an anthropologist employed by the War Relocation Authority, Dr. Marvin Opler, was present. So far as I am aware, no other employee of the War Relocation Authority was present at any hearing. Although the lengths of the hearings varied from a few minutes to more than an hour and although the line of questioning was varied, where there was no particular information desired by the hearing officer for policy or security reasons and where the case appeared usual, the practice was for the hearing officer first to obtain the necessary statistical facts, such as name, place of birth and the like, from the renunciant and for the officer then to show the renunciant his application for permission to renounce. In each case the officer inquired whether the signature was that of the applicant and then asked the applicant why he had signed it. He was then asked in each case whether he signed it of his own free will or whether he had been instructed or ordered to sign. There then followed a period of questioning designed to explore the renunciant's reason for desiring renunciation, both in an effort to detect coercion and to make sure that the legal effect of the act was clear. When this examination was complete the renunciant would be shown the final form and asked whether he understood it. If he did, he would be shown where to sign the form and once more told that it was his own choice and that no one could require him to sign. He was also told that if he did sign he would forever cease to be an American citizen or to be entitled to any of the rights of citizens and that he would in all probability be returned to Japan at the close of the war. He was further told that if he did return to

Japan he would in all probability never be allowed to return to the United States. When these matters had been made clear the hearing officer would either endorse his recommendation of approval of the renunciation as not contrary to the interests of national defense or, in a few cases, would dictate a memorandum indicating that the case should be further reviewed in Washington. Although in the cases of three Japanese accorded renunciation hearings in Hawaii and three or four cases of persons not of Japanese ancestry and having no relation to the instant cases, the Attorney General has authorized renunciation hearings to be held by other officers, no person of Japanese ancestry has ever renounced his citizenship in the continental United States before any hearing officer other than affiant, Charles M. Rothstein, Joseph J. Shevlin, Ollie Collins or Lillian C. Scott. Every renunciation hearing conducted by any of these persons followed the general pattern stated here. Every renunciation hearing was taken down by a stenographer and, to the best of my knowledge and belief, was transcribed and the transcript is contained in the files of the Department of Justice.

In no hearing which I personally conducted was there any evidence or indication whatever of coercion or duress. In no hearing which was ever reported to me by any of the above named hearing officers or by anyone else was there any such indication. To the best of my knowledge and belief there was no claim of duress, as that term has ordinary legal significance, in any of the more than 5,500 renunciation hearings conducted at Tule Lake. In about two hearings conducted by me and in a few others of which I was told, the applicant stated that he did not in fact desire to renounce. In each such case the applicant was not given the final form to sign and the hearing was forthwith terminated.

Upon my return to Tule Lake early in January 1945, I at once observed that the tension among the persons confined in the center had greatly increased since the middle of December and that the situation

generally had deteriorated. The activities of the openly disloyal persons were more flagrant and the demand for quick renunciation had increased. Prior to my arrival, an announcement had been published in the center newspaper to the effect that applications for permission to renounce and correspondence with the Department concerning renunciation might be addressed to me at Tule Lake. By the time of my arrival, over 1,000 pieces of mail had been addressed to me registered mail, return receipt requested, at the center from persons confined therein, thus causing a temporary breakdown in the postal system. While some of these were merely requests for application forms or application forms themselves duly filled in, many of these thousand pieces of mail contained requests to be heard out of order and in advance of others. Substantially all of these letters were courteous in tone but insistent as to the writer's urgent desire to become a renunciant and to abandon United States citizenship. In addition to these registered letters, very many other pieces of mail were addressed to me at the Tule Lake Center at this time.

I learned that the disloyal young men's organization had increased its activities and had promulgated a rule that its members should shave their heads. Although all of its officers had been removed to an internment camp in New Mexico on December 27, 1944, by early January the entire hierarchy of officers had again been filled, which involved fifty individuals. The hierarchy of officers of the older disloyal organization had also been replaced. In addition to requiring shaven heads, the youngmen's organization had now embroidered a Rising Sun on the breast of the white sweatshirt which constituted a part of the uniform. In conjunction with the Rising Sun, there were stenciled some Japanese characters in black ink which represented a patriotic slogan. The patriotic exercises were being conducted more regularly and, on the first Sunday after I returned to Tule Lake, the young men's organization, having learned in which part of the administration quarters I was living, arranged to hold its Sunday

ceremonies, complete with a corps of buglers, at that point of the fence nearest my room.

At this time I also learned that the older disloyal organization had for sometime been putting out a paper in Japanese having as its title a word which can be translated approximately as "fatherland". This paper, which was mimeographed at regular intervals, contained much material glorifying the Japanese Army in its war aims and asserting loyalty to the Emperor. One article referred to the war between the United States and Japan as a holy war.

At the time of my second return to Tule Lake, the young men's organization prepared and furnished me a list which purported to be its membership list. During the succeeding weeks substantially everyone whose name appeared on the list was questioned and substantially each person on the list admitted his membership and his adherence to the principles of the organization. Substantially every person on the list appeared before the hearing officers dressed in the sweatshirt already described having the Rising Sun stenciled on the breast. Each such person had his head shaven and the hearing officers were informed, whenever the question was asked, that the shaven head was the symbol of the Japanese soldier. In a few cases it was established that there was a mistake in names and in a number of other cases it was stated that the member had resigned. In no case, however, of which I have knowledge did the renunciant assert that his name had been placed on this list because he had been coerced or forced in any manner to join the organization. On a number of occasions persons stated or wrote in indicating that they had resigned from the organization and the files of the Department of Justice contain at least five letters from the officers of the association informing the Department of Justice mission of deletions from the membership rolls due to resignations. In no case of resignation was it suggested in any manner that any harm was inflicted on the resigner.

Since it was deemed important to minimize the influence of the disloyal organizations and to terminate military drilling in a species of uniform preparatory to service in the Japanese Army, it was at once determined that the entire second list of officers of both organizations should be removed and interned as soon as practicable. Accordingly, the hearing officers set about giving hearings to this second group and, pursuant to an approval of renunciation by the Attorney General and authorization of apprehension, the second group of officers was removed to Department of Justice internment camps on January 26, 1945. Thereafter, and with substantially no delay, a complete third slate of officers was elected and the Department of Justice was informed at this time that the organizations contemplated continuing to elect officers so long as the Department of Justice continued removing them. Since the organizations had by now survived the removal of two complete sets of leaders, it became evident that they had broad support and were not the work of a few fanatics. It was, therefore, determined, after telephonic consultations conducted by me with my superiors in Washington, that the entire membership of the militant young men's organization should be removed and the hearing officers were, accordingly, directed to hear first the cases of persons on this list. About 650 members of the organizations were removed on February 11, 1945 after processing as described above, and about 125 more were moved on March 4, 1945. By this time all the leaders and all the members who were active members on the list furnished in January 1945 had been removed. In addition, several sets of the leaders of the older disloyal organization had been removed, as well as the writers for the "fatherland" magazine above described, the teacher of the Greater East Asia School, teachers at a number of other Japanese Language Schools who had been found to be active in pro-Japanese propaganda, and a number of Buddhist priests who had been active in propaganda. It was hoped that at this time when the leadership of the

pro-Japanese group had been removed that there would be a substantial withdrawal of applications for renunciation. This movement did not take place, however, and substantially everyone who applied for renunciation went through the process which continued for sometime after the last of the leadership group had been removed. It would be incorrect, however, to state that all of the members of the young men's group were removed since, as renunciation was only permitted for boys and men of the age of 13 or over, younger boys who remained took up when their older brothers were removed and blew the bugles and drilled for Japan. Similarly, since no women were removed, a women's organization was started which joined the boys in Sunday morning drilling.

The statute authorizes the Attorney General to disapprove renunciation only if it appears contrary to the interests of national defense. The Army had determined that it would not accept any men from the Tule Lake Center and the Selective Service System at the time of the hearings was making no effort to induct any males of Japanese descent from the center. It thus appeared that there was no problem of national defense in any of these cases and, indeed, in no case did it appear that the interests of national defense required disapproval and, therefore, there was no case in which the Attorney General could properly have disapproved renunciation on any ground providing that it was uncoerced and understood. The residents of the center, however, failed to understand this and believed that there was some discretion or option lodged in the hearing officers. For this reason they appeared most anxious to persuade the hearing officers of the necessity of permitting their renunciation and, to do this, they made extreme claims of loyalty to Japan. Because of this it frequently became impossible to conduct a frank and free examination of the renunciant's state of mind and became useless to ask many questions which would otherwise have been of interest. For example, it was observed that if the renunciant were asked his opinion of the Emperor he would usually, if not always, leap to his feet and stand at

rigid attention and then assert that he regarded the Emperor as the Living God. Similarly, substantially every renunciant who was asked stated that he believed that Japan would win the war and that he hoped for this result. Although this tendency of the answers to become stereotyped in an effort to persuade the hearing officer of the active disloyalty of the applicant, the hearing officers in every case were able to ask enough questions to make sure that the applicant understood the nature of renunciation and that it was the applicant's desire not only to sign the application form but to persuade the officer that the applicant was actively disloyal to the United States and that his application should, accordingly, be approved.

On the occasion of my second trip I remained in Tule Lake for nearly three weeks. During this time I arranged the procedures and conducted some hearings myself. A great deal of my time, however, was spent in discussing with various officials of the War Relocation Authority and of the Army detachment there the reason for the very great rush of persons to renounce. Estimates as to the number of persons who would renounce had been made prior to the enactment of the statute by various officials ranging between 500 and 2,000. Even during my first trip to Tule Lake in December 1944, it was not expected by anyone that, of the 7,000 citizens over 18, over 5,000 would renounce. Yet this number of applications for renunciation flooded in at the time of my second trip. This caused concern both in Tule Lake and in Washington and I devoted considerable effort to endeavoring to understand the reasons for this development since it was hoped that in some way this flood might be stopped and some of those persons who were not in fact disloyal but merely disgruntled might be dissuaded from throwing away their citizenship. Accordingly, I talked at great length with Mr. Ray Best, the Director of the center, Mr. Louis H. Noyes, the War Relocation Attorney at the center, the Chief of the Internal Security Guard, to many of the guards

themselves, to the Colonel commanding the troops stationed immediately at the camp gate, to his security officers and to many other experienced persons at the center. I also talked to the head of the War Relocation Authority's regional office in San Francisco and, upon my return to Washington, I talked to Mr. Myer, the Director of the War Relocation Authority, and his subordinates. At Tule Lake I particularly talked also to Dr. Marvin Opler, an anthropologist who was employed by the War Relocation Authority as what was called a "community analyst", whose job was solely to gather social information concerning the community and to report on community trends. On this job he had a staff of persons of Japanese ancestry living in the community and reporting to him on developments. I also talked to ministers and social workers and doctors and to Miss Rosalie Hankey, an anthropologist employed by the Evacuation and Resettlement Study under the auspices of the University of California and who, not being a Government representative, was able to talk to the residents of the center and to meet less reserve and resentment. Both in Tule Lake and in Washington, in addition, I read many of the reports filed on Tule Lake from sometime prior to the commencement of the renunciation hearings up to and including that period.

Although the opinions of the various officials and others differed widely as to the social considerations leading to renunciation and as to the proper policies to pursue, no official at this time ever stated or suggested to me in any way that coercion, as that term has been understood in the law for centuries, was a factor of any significance. It was the universal opinion that the population of the Tule Lake Center, consisting as it did of 18,000 persons taken from their normal homes and occupations, and placed in a wired-in area of about six square miles of black volcanic ash, and living in uncomfortable black tar-paper barracks, under a pall of black smoke in winter and ash and dust in summer, with wholly inadequate occupation to keep them busy, and with substantially no effective control by the Government as to what activities

were carried on inside the fence, had become highly emotional and excited. It was universally agreed that the rush toward renunciation was illogical and unreasoned and that many of the young men who were now marching up and down between the barracks with the Japanese emblem stenciled on their sweatshirts had been, before the war, loyal American citizens and that the asserted loyalty to Japan was often a kind of hysteria. It was a commonplace witticism among the officials of the center at the time of these hearings that the population of the center was largely mad and that the center might properly be taken from the management of the War Relocation Authority and transferred to the Public Health Service to be run as a species of mental institution. All of the discussion and speculation as to the reason for the unforeseen volume of renunciation related to the reason for this hysterical public behavior and none of it related to coercion and it was never suggested contemporaneously in any way that it might be due to coercion.

It is true that there were extensive rumors of the use of force within the center. During the summer of 1944 one person of Japanese ancestry who had been prominent in assisting the administration was murdered and this murder was not solved. While it was believed by some that the motive for the murder was disapproval of decedent's prominent pro-administration activities, Mr. Best informed me that the most probable explanation was that the man was murdered because of improper relations with another man's wife. In addition to this, there were a number of stories of beatings and of threats thereof. These, however, related to struggles for political leadership and did not relate to private behavior. Thus, there is no doubt but that, had strong leadership arisen contrary to the leadership of the young men's organization and opposed to renunciation, the struggle as to who should lead the young men might have led to the use of physical force. At no time while I was at Tule Lake, however, was it suggested to me by any one that physical force or its threat was being employed against persons who did not aspire to leadership but who

merely themselves did not desire to renounce. In this connection it may be recalled that about 1,500 persons eligible to renounce did not do so and that many persons openly resigned from the disloyal organizations and yet no record of physical violence in connection therewith came to the attention of the authorities. What is said here concerning my observations and conversations with persons familiar with the Tule Lake scene relates with equal force to the reports filed with the War Relocation Authority by officials at Tule Lake and reviewed by me for the Department of Justice. Not any of the contemporary reports which I have seen assert that coercion was a significant factor in renunciation.

At the end of January 1945 I left Charles M. Rothstein in charge of the Department of Justice mission at Tule Lake and returned to Washington and again reported in full to my superiors describing especially the mass hysteria prevailing among the residents and the fanatical expressions of loyalty to Japan which followed it, as well as the great number of persons seeking to renounce. At this time some discussion was had as to possible measures to prevent renunciation at that time, such as the suspension of hearings, but it was the ultimate determination of the responsible officers of the Department that Congress had provided that persons who in time of war desire to renounce their citizenship may do so provided only that the Attorney General might disapprove if he found that the renunciation was contrary to the interests of national defense. It was decided that since no such consideration existed in the present cases the Department of Justice was without authority to proceed otherwise than to carry out the law and to permit renunciation by all persons who understood what they were doing and wished to do it. Although it was felt that there was a state of great excitement among the residents, nevertheless it was thought that that excitement was not of a character (such as insanity) which could be given legal effect. With respect to those cases previously discussed in which the hearing officer felt that the renunciant was in fact

Americanized and was acting solely out of resentment at evacuation or some similar motive and in which the hearing officer desired that a further review as to policy be conducted in Washington, a disagreement arose among the responsible officials and no decision was made at that time as to the disposition of the cases, and they were merely set aside. These cases were not acted on before Attorney General Biddle and Assistant Attorney General Wechsler left the Department and, in fact, had not been acted upon as of the date of my leaving the Department, June 3, 1946.

Following my departure from Tule Lake, Charles M. Rothstein continued to receive renunciations until the list was completed on March 17, 1945. A number of renunciation applications came in thereafter from Tule Lake and Mr. Rothstein again went there in July 1945 and held additional hearings. Although additional persons deemed undesirable by the War Relocation Authority were interned at the request of that agency by the Department of Justice during June and July 1945, the Department of Justice had completed its removal of disloyal persons it considered troublemakers by March 4, 1945. Thereafter, there was substantially no move to withdraw or cancel renunciation until June 1945, in which month a number of applications came in. None of the first applications asserted that the renunciation had been made under coercion but appeared to assume that, since renunciation was a voluntary matter, its cancellation would likewise be. Firm letters were written to such persons explaining that it was not within the power of the Attorney General to restore citizenship once lost through renunciation and that the renunciation itself was valid because it had been made in the absence of coercion and with a clear understanding of what was being done. Thereafter, the tenor of the letters seeking cancellation of renunciation changed and careful statements concerning coercion were made in many of them. In this connection it was noted that persons who at the time of their hearings could speak little or no English and who, according to the files of the Department of Justice, had substantially no American education, at

this time appeared as the purported authors of letters containing arguments previously advanced by members of the War Relocation Authority staff or by members of the families of that staff couched in English to be expected of educated persons.

Although 3,557 persons are plaintiffs in the instant suits or have otherwise now indicated a desire to withdraw their renunciation of citizenship, as of the sixth day of August, on which the atom bomb was dropped on Hiroshima, very few had written to the Department of Justice indicating a desire for withdrawal, and even the Japanese surrender did not start the great rush away from renunciation. Thereafter, however, counsel for the plaintiffs arrived at Tule Lake in person and was retained by some of the plaintiffs herein. This set off a chain of reactions said by competent observers to be closely parallel to the rush toward renunciation in December 1944 and January 1945. Groups were set up to encourage persons to join in the suits and much the same social rush to be listed as a plaintiff in the instant group of suits arose as previously had arisen to be listed as a renunciant.

As has been said, none of the contemporary statements made by responsible War Relocation Authority officials at Tule Lake indicated a belief that coercion was a significant factor in renunciation and none of the contemporary reports which I have seen indicates this. It came to be the opinion of some of the persons in the War Relocation Authority, however, in the spring and summer of 1946 that coercion was a factor although it is not clear that these persons also understood what the word "coercion" means in contemplation of law. The development of this opinion held by officials not responsible for the conduct of the hearings and who, with one exception, did not attend any hearings may be viewed in the light of the fact that at the time of the hearings and thereafter until the cessation of hostilities it was believed by all responsible officials of the Department of Justice that all renunciants would have to be detained for the duration of the war and that they would thereafter

be repatriated to Japan. This belief was communicated to Dillon S. Myer early in the program and he and his subordinates strongly disapproved of it, feeling that it would be possible and desirable to relocate renunciants in the United States at an early date. This and other differences of view between the War Relocation Authority and the Department of Justice gave rise to a disapproval by the War Relocation Authority of the renunciation program generally and, when it became apparent that the only way in which renunciation could be set aside was by proof of coercion, it came to be thought by some members of the War Relocation Authority's staff that the renunciations had been coerced. At the time that this view was formulated, a parallel view was expressed in parallel phraseology by persons of Japanese ancestry desiring to set aside renunciation.

A letter to a private citizen signed by Mr. Abe Fortas, then Under Secretary of the Interior, has been annexed to a pleading in this case and has been stricken as improperly pleaded. This letter, of which Mr. Fortas has assured affiant he has no present recollection or knowledge, contains a statement that the very high percentage of renunciations among those eligible to renounce was brought about by the disloyal organizations, hereinbefore described. This statement contains a major ambiguity. It might mean either that the organizations forced or coerced the renunciations or that they crystallized a spirit of loyalty to Japan and disloyalty to this country which led to renunciation. If the letter is given the first meaning, then it is at variance with all of the contemporaneous statements made by the War Relocation Authority's own staff on the scene and all of the contemporaneous reports of that staff insofar as affiant is familiar with them. It is also at variance with the experience of the hearing officers who in fact conducted the hearings and which is recorded in more than 5,000 stenographic transcripts of hearings. If, however, the statement is given the second meaning, then the letter is not very far from correct since the organizations

unquestionably had an important place in whipping up sentiment in favor of Japan and in favor of renunciation. The crystallization of sentiment in favor of an ideal, however, is a far cry from legal coercion to do a specified act. By way of illustration, it may be said that the churches of the various denominations throughout the nation are unquestionably a major source of devotion to religion, yet no one would suppose that ministers and priests coerced the members of the congregations into church attendance. Based on many extensive observations of conditions at Tule Lake, it is my belief that the organizations played an important role in providing leadership for Japanese patriotic sentiment. It is my belief that this is substantially the only relevant function performed by the organizations. Their members may have used force to maintain control of their own organizations. They did not use force to augment their membership. In concluding this section of the affidavit, it may be pointed out that Mr. Fortas has not only never conducted or attended a renunciation hearing, but , insofar as the affiant is aware, has never been within the gates of the Tule Lake Center.

It is asserted in the amended complaint that the Commanding General , Western Defense Command, affirmatively found as a fact that each renunciant at Tule Lake was loyal to the United States and presented no threat to the peace and security of the United States. The basis of this argument presumably is that on December 19, 1944 he lifted the general ban on all persons of Japanese ancestry within the Pacific Coast area and excluded only specific persons by individual orders, that he did not serve individual exclusion orders upon renunciants and that, therefore, he found them safe to permit back upon the Coast. It is within my personal knowledge that this argument is fallacious and that no such finding was made by the Commanding General. At the time that the Commanding General determined to reopen the Pacific Coast area to all except individually-named persons of Japanese ancestry, he determined to prepare a list of individuals as to whom there was information

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sufficient to form a basis for the judgment that that individual should not be permitted to return. This was to be done by means of transferring all of the security information which had been secured from various Government agencies and filed in the headquarters of the Western Defense Command at the Presidio in San Francisco into punched Hollerith cards and to determine in advance what security information was sufficient to warrant the preliminary classification of individuals as excludable. The list was then to be prepared mechanically. Persons on such a list were then to be given hearings by Boards of Officers and recommendations were then to be made to the Commanding General and the decision was to be made by the General personally. At this time a request was received by me for the Department of Justice from officers of the Commanding General's staff for lists of all persons who had applied for permission to renounce their citizenship. It was contemplated that this information would be placed on the cards and that each individual who had made such a request would automatically be placed on the exclusion list. I did not furnish the information at that time but subsequently after discussion with Attorney General Biddle and Assistant Attorney General Wechsler, I called upon Brigadier General Wilbur, Chief of Staff, Western Defense Command, and assured him that the Department of Justice would cause the internment of every person of Japanese ancestry who renounced his citizenship for the duration of hostilities and that, accordingly, no military problem existed since no renunciant would be at liberty within the United States. For this reason, the General agreed to withdraw the request for names. This inter-departmental agreement was on several occasions renewed by my superiors and it was at all times explicitly understood, both in the Western Defense Command and in the Department of Justice, that the sole reason why exclusion orders were not issued to the renunciants was that an exclusion order was not necessary since they would be excluded by the Department of Justice by the fact of internment.

Not only did the General not consider applicants for renunciation eligible for return to the Coast during wartime but also he contemplated preparing a list of all such applicants and some citizens in addition and recommending to the Attorney General that persons whose names appeared thereon be detained during hostilities. It was only as a result of the agreement to detain all renunciants that the General was persuaded to refrain from recommending the detention of a larger list of persons including many citizens.

[Folk] As has been stated, affiant is of the opinion that there were many motives which lead to renunciation. [The most obvious one was a genuine disaffection with the United States and loyalty to Japan.] As has been said, there were 2,000 or more Kibei who had been brought up entirely in Japan and who had no experience with American life whatever. Particularly in view of the sentiment of the population of the coastal states regarding persons of Japanese ancestry which prevailed during hostilities, it is not surprising that many Kibei felt that they had no chance for life in the United States and that they might as well return to the country to which they were accustomed. Feeling that, it is not surprising that sentiments of loyalty to the country to which they were bound, both by ancestral ties and by cultural and educational ties, sprang up. In addition, it may be remembered that over 100,000 persons were evacuated and that generally those who were most loyal to Japan were distilled out into one group. The loyalty questionnaire of 1943, the segregation hearings and segregation itself had had some tendency to separate out from the general group those who were disloyal. This separating process had continued at Tule Lake and it would not be surprising if out of the 100,000 persons of Japanese ancestry evacuated, [some 2,000 or more, including Kibei, genuinely felt loyal to Japan.] Granted the existence of a nucleus of Japanese loyalty, it is furthermore not surprising that agitators and leaders acting in what was for all practical purposes a concentration camp managed to instill and fan

sentiments of Japanese loyalty in young men who had been brought up in American schools to believe that all men, including themselves, were created equal, only to learn that this principle of the Declaration of Independence did not apply to them.

Although feelings of loyalty to Japan undoubtedly were important, it is affiant's opinion that ^{by} far the most significant cause of renunciation viewed from the point of view of numbers was the announcement to which reference has already been made that the center was to be closed within one year. It should be recalled that the War Relocation Authority gave printed statements to all persons arriving at its center in 1942 that the centers were to be available as shelters to their residents throughout hostilities. In 1943 the War Relocation Authority went further in relation to Tule Lake and informed segregants that they could find a home there until they could be returned to Japan. The attitude of many of the Tule Lake residents prior to the closing announcement was that they had been asked by the Government to decide whether they wished to be relocated in the United States or to be sent back to Japan when practicable and that they had decided in favor of a future in Japan. Their attitude further was that, having made that decision and having accepted the stigma of disloyalty, ^{many} they had rendered themselves incapable of returning, particularly during wartime, to life in the United States outside of a War Relocation Authority center. Although prior to the lifting of the general ban the residents of Tule Lake were in fact detained there by barbed wire and sentries and although the lifting of the ban meant that all those not specifically named for detention were free to go out, there was no demonstration of a sense of joy at this sudden freedom but, on the contrary, there were wide-spread expressions of dismay and anger and very few did leave for some months. When this announcement was followed immediately by a further announcement that the center was to close within a year the utmost dismay was created since it appeared that those persons would be forced out into the general

community of the West Coast during hostilities branded as disloyal and with no place whatever to go. It should be noted that at the time of the announcement the war with Japan was still in process, and there was no clear indication that it would be over within a year. [It is the opinion of affiant that it was this announcement made on or about December 20 which led to the great rush to apply for renunciation which reached the mail rooms of the Department of Justice on December 26th.]

It is relevant to point out that the notice that the War Relocation Authority centers were to close in a year caused concern not only at Tule Lake but elsewhere. Distress over the center closing program was created in the other centers and in February 1945 delegates from all the centers met in Salt Lake City, Utah and adopted resolutions calling for the rescission of the closing order. Strong pressure from residents of the centers to induce the Government to keep the other centers open continued until the surrender of Japan.

Upon my second arrival at Tule Lake in January, I at once observed that the threatened closing of the Tule Lake Center was having the effect described and I, therefore, conferred with Mr. Best, the Director of the center, who agreed and both of us reported to our superiors recommending a withdrawal of the announcement. The War Relocation Authority, however, did not do this but instead announced that the center would not be closed within one year, that residents could remain at the Tule Lake Center or some similar center until January 1, 1946 and that plans for a segregation center beyond that date had not been completely worked out. [At this time a rumor became wide-spread in the center that the Department of Justice would operate the segregation center, if any, which was to be kept open after January 1, 1946. Since the Department of Justice was thought to have authority only to operate internment camps, it followed that, in order to remain in a camp, it would be necessary for one to become subject to internment as an alien enemy. It is affiant's opinion that about half of all renunciations are

attributable to this factor alone.]

A related factor is that of the draft. Whatever the loyalty of the citizen children may have been, it cannot be doubted that many of the alien parents who in 1943 determined to take their children back to Japan at this time felt loyal to that country. Understandably, they were most concerned over the possibility that their sons might be drafted into the American Army, particularly in view of the very heavy casualties encountered by the widely publicized Japanese-American combat organizations in Italy. The announcement that the center might be closed and the lifting of the general ban on persons of Japanese ancestry gave rise to a rumor that men of draft age were once more to become subject to induction. [It is affiant's belief that a very considerable number of renunciations came about either because the renunciant himself feared he would be drafted if he did not renounce or because his parents persuaded him to renounce because they feared that result.]

[Another feature of great importance is family loyalty. (As has been said,) a rumor was in circulation that all aliens at that center were to be repatriated. There was substance to this rumor to the extent that most of the aliens had gone to or remained at this center as a result of requests for repatriation. It was believed by many officials of the Department of Justice and of the War Relocation Authority that repatriation of this group of aliens would be ordered after the war. In addition, an announcement by the Japanese Government looking to additional exchanges during the war was published in the middle of January 1945 in the newspapers which freely circulated in the center. [Aliens who expected to be repatriated, (therefore,) were concerned over the possibility that their American citizen children might either be drafted or forced to relocate in the United States and that they might forever be separated.] The idea was circulated that, since aliens were to be repatriated, they would be interned by the Department of Justice and permitted to stay in some camp, whereas citizen children would not be interned, which again

would work a separation. On the other hand, renunciation would put all members of the family in the same group and thereby avoid this danger. In this connection it may be said that many authorities believe that family ties and filial obedience are unusually strong in Japanese culture. Those citizen children who had become sufficiently Americanized not to feel this tie had either caused their parents not to accept Tule Lake in the first place or had left their parents and had relocated. By and large, it was those children who were more dependent on their parents who had gone to Tule Lake and it is not surprising that to some extent it was they who accepted parental instructions to renounce in order to preserve the family unit. Pressure for renunciation was particularly strong in the case of eldest sons who, in Japanese culture, are responsible for caring for the parents and maintaining the family. If parents believed that they would be repatriated, this would constitute an additional reason for the son's renouncing his citizenship.

[It is also affiant's opinion that in the case of any citizens who expected to go to Japan to live permanently renunciation was thought desirable in order to have a record of pro-Japanese loyalty and activity with which to establish oneself in Japan.]

[A further factor which increased the fear of forcible expulsion from the camp and also increased determination to go to Japan was the exaggeration of reports of atrocities committed against persons of Japanese ancestry returning to their pre-war West Coast homes.] In addition to those incidents which did in fact occur, there were numerous rumors, circulating in the camp, of families burned alive in their houses, and the like.

[Another factor was a sense of pride in consistency and in determination to adhere to a decision earlier made. Although it is generally agreed that the loyalty questionnaire of February 1943 was submitted to and filled out by the occupants of the centers in conditions of great confusion, nevertheless affiant believes that some who answered

in the negative felt that having publicly adopted that position they would lose prestige by failing to adhere later to a pro-Japanese position.

Lastly, it is affiant's opinion that an entirely irrational mass hysteria activated the people to a very great extent. There were in the center 18,000 persons with wholly inadequate work or occupation, living under not cruel but certainly unpleasant circumstances. The center had no dividing fences or walls and the people were free to do substantially whatever they liked within the outer fence, which had a perimeter of over five miles. While there were Caucasian staff members in the center during working hours, there were substantially no staff members inside the fence during the evening and at night and during Sunday except a few guards patrolling in automobiles. Although there was some entertainment, there was not much. These people had been in detention for $2\frac{1}{2}$ years and inside the Tule Lake fence for more than a year. Although they had access to newspapers and magazines, to a very great extent these were disbelieved as American propaganda. Rumors of the most foolish or fantastic nature circulated widely and were given wide credence. For example, during these hearings it was generally believed that General MacArthur was being permitted to advance into the Philippines so as to entrap his Army and most of the fleet. When this General broadcast from Tokyo following the surrender, the fact that he was in Tokyo was cited as evidence not that Japan had surrendered but that the General had been taken prisoner. When in October 1945 the Military Police were withdrawn from the center and the duty of guarding it was transferred to the Border Patrol of the U. S. Immigration and Naturalization Service, the rumor^{was}/that at noon on that day the American flag was to be run down on the flagpole and the Japanese Army, which was marching southward from the Columbia River, would march in and hoist the Rising Sun. Given all these social conditions and a group of 18,000 substantially idle persons, most of whom had suffered racial discrimination for years and who had just been the victims of what must

have appeared to them as the most outrageous incident of racial discrimination in American history, it was foreseeable that a state of very great emotional excitability would be created. Given further a nucleus of genuinely pro-Japanese leaders, it seems, at least in the light of hindsight, also foreseeable that this group could be whipped up into a sort of hysterical frenzy of Japanese patriotism. In fact, it was to be expected that boys from 18 to 20 having little or nothing to do would adhere with great fervor to some cause and, since the cause perforce was Japanese, it was expectable that they would shave their heads to emulate Japanese soldiers and wear a uniform with the Rising Sun on it and engage in drilling and Japanese ceremonial exercises. Indeed, these Japanese patriotic activities carried on by these persons behind barbed wire fences may be likened to a very high degree to the hysterical "yammering" which sometimes occurs in ill-run prisons.

In view of the fact that, of the more than 5,000 persons who received the careful hearings above described, not one asserted that he was being coerced into renunciation, in view of the fact that no incident relating to coercion came to the attention of the Department of Justice mission which was explicitly instructed to be on the alert to observe any such incident, and in view of the fact that no Government official in any department asserted that coercion was a significant factor until months after the fact and, finally, in view of the fact that no important volume of withdrawal of renunciations took place until the outcome of the war was a moral certainty, affiant is of the opinion that substantially none of the renunciations was brought about due to coercion in the sense that the renunciant did not wish to renounce his citizenship but nevertheless signed the form because he was afraid that if he did not physical injury would be inflicted upon him or upon his family. Affiant is further of the opinion that substantially no renunciation took place because of any kind of threat or intimidation other than parental instruction.

It is patent, however, that all renunciants at Tule Lake were confined in a concentration camp at the time they renounced. Realistically, either they or their parents had chosen to go there, but nevertheless, at the time of that choice, they had been in another concentration camp. The only choice was whether to remain in a relocation center with the hope of relocation in a part of the country other than that where their home was or to proceed to the Tule Lake Center for segregation during the war. It is also true that no court has ever passed upon the constitutionality of detention at Tule Lake. It is also patent that there was existing at Tule Lake at the time described a very high degree of excitement whipped up by organizations admittedly extremely pro-Japanese. It is also true, as has been stated, that most of the renunciations took place at the time when the renunciants and their families were in extreme fear of being forced out of the center into a hostile community and when they believed that the only way of making sure of protective detention during the war was to make themselves eligible for Department of Justice internment. If these factors and this hysteria render the act of renunciation by persons detained under these circumstances void, then the renunciations are void. If the court is now to hold that the totality of the circumstances described in this affidavit constitutes coercion, then these renunciations were coerced. If, however, the court rules that if a man or woman, of whatever race and however badly treated by the community, refuses to assert his loyalty in 1943, and, in practical effect, voluntarily accepts segregation and thereafter applies in writing for permission to renounce his citizenship and still thereafter files a second form asking for permission to renounce and still thereafter appears before a hearing officer and asserts loyalty to Japan and disloyalty to the United States in time of war and, in the absence of any fear of immediate injury to himself or to his family, has performed a formal act of renunciation within the scope of the statute which was passed by

Congress for the precise purpose of permitting the very renunciations here in question is to be held accountable for his actions, then these instant renunciations are not void and were not coerced. It may be said that the hardships inflicted upon these persons were very great and that the hysteria and mental confusion was likewise great. It must also be considered, however, that the obligation and significance of citizenship is great and when, in time of war, one voluntarily, with full understanding, casts that citizenship aside and asserts loyalty to the enemy, that constitutes a legal act which should not lightly be set aside. Inaffiant's opinion, it is a legal act which cannot be set aside by recourse to any existing legal concept. Such renunciation would not be set aside as a result of a determination that legal coercion existed but only as an expression of the regret of the American people over the original act of evacuation and detention. If the renunciations are ultimately set aside, in affiant's opinion, that ultimate decision will only be justified as a determination that the persons of Japanese ancestry resident on the Pacific Coast were so goaded that some of them took the foolish step of renunciation and that, because the moral blame is ultimately elsewhere, these persons shall not suffer the legal consequences of their own acts. Whether this step should or will be taken is not within the purview of this affidavit. It is, however, affiant's belief that this analysis should be clearly understood.

/s/ JOHN L. BURLING

Subscribed and sworn to before me
this _____ day of November, 1946.

(SEAL) /s/ JANE K. CASKEY
NOTARY PUBLIC

My commission expires January 31, 1951.

November 8, 1946

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