The Solicitor General has gone over the revised page proof of the brief and has made certain additional changes. I desire to invite your attention particularly to the footnote which appears on page 11 of the revised page proof. As set out in the first page proof at page 26, the footnote read:

"The Final Report of General DeWitt (which is dated June 5, 1943, but which was not made public until January 1944) is relied on in this brief for statistics and other details concerning the actual evacuation and the events that took place subsequent thereto. The recital of the circumstances justifying the evacuation as a matter of military necessity, however, is in several respects, particularly with reference to the use of illegal radio transmitters and to shore-to-ship signalling by persons of Japanese ancestry, in conflict with information in the possession of the Department of Justice. In view of the contrariety of the reports on this matter we do not ask the Court to take judicial notice of the recital of those facts contained in the Report."

As Mr. Foy has revised it, it reads:

"The Final Report of General DeWitt (which is dated June 5, 1943, but which was not made public until January 1944) hereinafter cited as Final Report, is relied on in this brief for statistics and other details concerning the actual evacuation and the events that took place subsequent thereto. The recital in the Final Report of circumstances justifying the evacuation as a matter of military necessity, however, is in several respects, particularly with reference to the use of illegal radio transmitters and shore-to-ship signalling by persons of Japanese ancestry, in conflict with the views of this Department. We, therefore, do not ask the Court to take judicial notice of the recital of those facts contained in the Report."

You will recall that General DeWitt's Report makes flat statements concerning radio transmitters and ship-to-ship signalling which are categorically denied by the FBI and by the Federal Communications Commission. There is no doubt that these statements were intentional falsehoods, inasmuch as the Federal Communications Commission reported in detail to General DeWitt on the absence of illegal radio transmission.
addition, there are other misstatements of fact which seek to blame
the Department with the evacuation by suggesting that we were derelict
in our duties. These are somewhat more complicated but they are neverthe-
less demonstrably false.

In view of the fact that General DeWitt in his official report
the evacuation as recorded because of misstatements of fact, I think it important that this Department correct the record
as soon as possible and certainly we should not ask the Court to take
ficial notice of these facts.

The War Department has no proper complaint as to our disavowal
of the recital of the facts. When we were preparing the Hirabayashi brief
heard that the report had been made and asked for a copy of it for
use. We were told that it was secret but that the Army would temporarily
id us certain pages torn out of the report. We did examine these pages
May 1943 and then returned them to the War Department. (Some of these
pages then turned up in a brief filled in the Hirabayashi case, without our
knowledge, by the State of California, Oregon and Washington as amici
raiae) Mr. McGrady advised Mr. Ennis at this time that DeWitt's Final
port would not be made public.

We next heard of the report in January 1944. At Mr. Ennis'
request, I called Captain Hall, who was Captain Fisher's predecessor,
did ask that the publication of the report be withheld until this
port might examine the full report and make comments concerning
the report's discussion of the role played by this Department. Captain
all stated that the report had already been published and it was too late
do anything about it. The report, however, was not published until the
self later when it was released to the press. I verified this through the
army's Publications and Public Relations officers and there was no question
at Captain Hall's statement on this subject was untrue and that there
would have been time to permit this Department to make representations
with respect to the publication of a report placing the responsibility on
It in part for the necessity of the evacuation, had the War Department esem
fit to permit this Department to inspect the report prior to publication.

In view of all these circumstances, it seems to me that the present
bomeilization of the footnote is unfortunate. There is in fact a
contrariness of information and we ought to say so. The statements made
by General DeWitt are not only contrary to our views but they are contrary
to detailed information in our possession and ought to say so.

I press the point not only because I would like to see the foot-
ote restored to its earlier form, if possible, but because it is now
contemplated that the revised brief be submitted again to the War Department.
I assume that the War Department will object to the footnote and I think we
should resist any further tampering with it with all our force.