

EXHIBIT

CC

2 October 1944

MEMORANDUM FOR MR. McCLOY:

Subject: Footnote at bottom of Page 11 in Draft Brief in the Korematsu case.

The footnote at the bottom of page 11 in the draft brief in the Korematsu case reads as follows:

"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 remaining two sentences of the footnote, in which the Solicitor General does not ask the court to take judicial notice of the Final Report insofar as it deals with matters as to the use of radio transmitters and shore-to-ship signalling, is objectionable to the War Department for obvious reasons.

Today Mr. Wechsler called me up and stated that the Department of Justice was willing to strike the last two sentences of the footnote and substitute one or the other of the following alternatives:

1. "We have specifically recited in this brief the facts relating to the justification for the evacuation, of which we ask the court to take judicial notice; and we rely upon the Final Report only to the extent that it relates to such facts."

2. "We do not ask the court to notice judicially such particular details recited in the report as justification for the evacuation as the use of illegal radio transmitters and shore-to-ship signalling by persons of Japanese ancestry, which conflict with information derived from other sources."

After considering the matter I phoned them and said that although the War Department did not agree to either alternative, nevertheless the first would be preferable.

AB Fisher
FISHER

KOREMATSU

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