WAR RELOCATION AUTHORITY

Office of the Solicitor

WASHINGTON

February 28, 1944

MEMORANDUM FOR THE UNDER SECRETARY

Subject: Bills Pending in the 78th Congress Dealing with Denationalization and Deportation of Certain Persons, and either Specifically or Apparently Aimed at Persons of Japanese Ancestry.

Dear Mr. Fortas:

You have asked, through Mr. Frank, for a summary of the major provisions of bills pending in the 78th Congress which would provide for loss of citizenship of certain persons, and are either specifically or apparently aimed at persons of Japanese ancestry. There are a number of such bills and they are listed below in the order of their introduction into Congress, except that Congressman Allen's bill, H. R. 4103, is reserved for discussion at the end of the list.

Involuntary Denationalization Bills in the 78th Congress

1. H. R. 2701; Henry R. Sheppard of California; May 13, 1943; to Committee on Immigration and Naturalization; entitled "A Bill to provide for the expatriation of certain nationals of the United States".

This bill would amend Chapter IV of the Nationality Act of 1940, to provide that a national of the United States, whether by birth or naturalization, shall lose his nationality if he is convicted of knowingly and intentionally expressing, either orally or in writing, loyalty to a foreign state.

In such cases, the United States District Attorney, upon affidavit showing good cause, is to institute proceedings in a United States District Court. Upon conviction, the defendant is to cease to be a national of the United States.

2. H. Con. Res. 29; J. Leroy Johnson of California; June 21, 1943; to Committee on Foreign Affairs.

This Concurrent Resolution would recite that it is the sense of the Congress that any treaty of peace made by the United States with the government of Japan at the end of the present war should include a provision that all Japanese nationals in the United States and all other persons of Japanese descent in the United States who are found, "by any court of competent jurisdiction or any agency of the United States which may be charged with the duty of making such a finding", to have given aid or comfort to any enemy of the United States in the present war, or to have advocated or taught the overthrow by force or violence of the Government of the United States, or in the case of any such persons owing allegiance to the United States, to have knowingly and intentionally expressed by deed or by word, either orally or in writing, loyalty to a foreign state, shall be deported and the expense of such deportation shall be borne by the government of Japan.

3. H. R. 3012; J. Leroy Johnson of California; June 21 1943; to Committee on Immigration and Naturalization; entitled "A Bill to create the Japanese deportation Commission, and for other purposes".

This bill would establish a Japanese Deportation Commission, and make it its duty to determine whether persons of Japanese descent who are nationals of the United States and found within the United States have given aid or comfort to any enemy of the United States in the present war or have been or are advocating or teaching the overthrow by force or violence of the Government of the United States or have knowingly or intentionally expressed by deed or by word, either orally or in writing, loyalty to a foreign state.

Whenever such a person is charged with one of these acts the Commission is to serve a complaint upon him and give him a hearing on the charges. If the Commission shall then be of the opinion that any personnamed in the complaint has performed one of these acts, it is to transmit its decision to the Attorney General "who shall thereupon issue a warrant of deportation and take such person into custody for deportation to Japan or to such other place outside the western hemisphere as may be determined upon by the Attorney General.

The Commission is given full investigatory power. Decisions of the Commission may be reviewed by the appropriate Circuit Court of Appeals of the United States.

Any person of Japanese descent deported under the provision of the bill is to cease to be a national of the United States on the date of his deportation.

4. H. R. 3489; W. F. Herrell of Arkansas; October 19, 1943; to Committee on Immigration and Naturalization; entitled "A Bill relating to certain Japanese residents of the United States and to certain citizens of Japanese descent found to be unfriendly to the United States."

This bill would provide that all alien residents of the United States of Japanese origin shall immediately be taken into custody,"and the President is requested to make, through the appropriate channels, arrangements with the government of Japan for the exchange of such aliens for a like number of citizens of the United States (not of Japanese origin or descent) who are resident in or interned in Japan or held as prisoners of war by Japan. If such arrangements cannot be made, or if any of such alien residents cannot be so exchanged,such alien residents, or those who cannot be so exchanged, as the case may be, shall, after the termination of hostilities in the present war with Japan, be deported in the manner provided by sections 19 and 26 of the Act of February 5, 1917".

It would also provide that "all citizens of the United States of Japanese descent who are found to be unfriendly to the United States" shall also be immediately taken into custody and the President is requested to make similar arrangements for their exchange. Those who cannot be so exchanged are likewise to be so deported after the termination of hostilities.

5. H. R. 4127; Bertrand W. Gearhart Of California February 7, 1944; to the Committee on Immigration and Naturalization; entitled "A Bill to require certain persons to renounce all allegiance to Japan and the Japanese Emperor."

This bill would provide that any person who is a citizen of the United States of Japanese origin ordescent shall be required, within sixty days after enactment of the Act, or within sixty days after attaining the age of twenty-one, to file with the clerk of a naturalization court a signed and verified notice of his intention to take an oath before the judge of such court "renouncing tand abjuring absolutely and entirely all allegiance and fidelity to Japan and the Japanese Emperor". The bill prescribes an elaborate oath to be taken by such persons while subject to examination by the judge of the naturalization court and by members of the Immigration

and Naturalization Service assigned for such purpose. Any person who is a citizen of the United States of Japanese origin or descent who fails to file such notice of intention or fails to take the required oath or is for cause denied by the court the right to take the oath "shall be conclusively presumed to have expatriated himself, shall forthwith be taken into custody and as soon as practicable after the termination of hostilities in the present war, as proclaimed by the President, shall be deported in the manner provided by law for the deportation of aliens".

6. S. 1118; Rufus C. Holmen of Oregon; May 20, 1943; to the Committee on Immigration; entitled "A Bill to amend the Nationality Act of 1940, providing for loss of nationality".

This bill would provide that "a person born with dual nationality" shall be deemed to have lost his United States citizenship as of the date of the occurrence of either one of the following acts: (1) the registration of his birth with the consul or other diplomatic representative of a foreign county; or (2) the admission to the foreign country of which he is also a national without a passport, if passports are required generally of noncitizens entering such country.

In connection with the first of these two acts, it is provided that for the purposes of this bill "any person having dual nationality and owing allegiance to any foreign country which has provided for such registration of the children of its nationals shall be presumed to have been so registered as of one year following the date of the birth of such a person"; and that the provision of the paragraph shall not apply to any person who, prior to reaching his twenty-first birthday, has taken affirmative action to have any such registration of his birth with a foreign consul or other diplomatic officer expunged from the records of such consullate or other foreign registration office. The bill also provides that it shall not apply to any person who can affirmatively establish that his father or mother renounced the country of his or her former allegiance and in good faith filed a declaration of intention to become a citizen of the United States.

7. S. 1583; Ernest W. McFarland of Arizona and Tom Stewart of Tennessee; December 17, 1943; to the Committee on the Judiciary; entitled "A Bill to provide for the expatriation of citizens of the United States who indicate allegiance and fidelity to a foreign country, and for other purpose".

This bill would amend section 401 of the Nationality Act of 1940 by providing that a citizen of the United Stabs may lose his citizenship by making any written statement to the United States or any agency or officer thereof to the effect that he considers himself to be a citizen or subject of a foreign country, or that he adheres to or bears allegiance and fidelity to a foreign country, or that he denies that he bears allegiance and fidelity to the United States; or in response to an inquiry or request lawfully made by an agency or officer of the United States, expressing a refusal to swear unqualified allegiance to the United States or to forswear any form of allegiance or obedience to any foreign government. In addition, the bill provides that any citizen of the United States "indicating by his course of conduct and utterance that he adheres to or bears allegiance and fidelity to a foreign county" shall likewise lose his citizenship except that insuch case it is made the duty of the United States Attorneys upon affidavit showing good cause therefor to institute proceedings in accordance with section 338 of the Nationality Act of cancel the nationality of any person on the ground that he has lost his nationality through such course of conduct and utterances.

Any person who has lost his nationality through any of the ways specified above is declared subject to deportation.

(I might also mention H.J. Res. 61, introduced by Congressman Jerry Voorhis of California on January 20, 1943, and referred to the Committee on the Judiciary. This is a Joint Resolution "proposing an Amendment to the Constitution of the United States". The Resolution would propose a new Article to provide that:

"Citizenship in the United States and the several States thereof is exclusive of that in any other nation and imports the common equal right of each and every citizen thereof, as free people, to govern themselves under laws established by themselves in their free exercise of such right; and it is expressly declared,without prejudice by so declaring to full exercise of religious liberty or other application of said principle, that no person shall inculcate, teach, or induce any minor citizen of the United States in derogation or contravention of such citizenship, or shall conspire thereto or participate in any such inculcating, teaching of inducing".)

INVOLUNTARY DENATIONALIZATION BILLS IN THE 77th CONGRESS

Three related bills that died in the 77th Congress are also worth noting:

1-A. S. 1949; Robert R. Reynolds of North Carolina; October 6, 1941; to the Committee on Immigration; entitled "A Bill to amend the Nationality Act of 1940, approved October 14, 1940, for the clarification of the dual citizenship status of certain persons, and for other purposes".

1-B. H. R. 5379; Samuel Dicstein of New York; October 21, 1941; to the Committee on Immigration and Naturalization; same title as bill immediately above.

1-C. H. R. 6109; reported to the House by the Committee on Immigration as alternative to the two bills listed immediately above; December 16, 1941; entitled "An Act to amend the Nationality Act of 1940, approved October 14, 1940, to provide for the clarification of the dual nationality of certain persons, and for other purposes".

The bills listed immediately above as 1-A and 1-B were identical bills, initiated by the War Department and introduced at its request. The bill listed as 1-C was reported by the House Committee on Immigration as an alternative to the bill recommended by the War Department, passed the House of Representatives on December 15, 1941, and was then referred to the Senate Committee on Immigration, but no action was taken on it by that Committee.

The War Department bill sought to provide by amendment to the Nationality Act of 1940, that a person who is a national of the United States, whether by birth or naturalization, may lose his nationality by making a formal renunciation of nationality before the clerk of any naturalization court within the United States in such form as may be prescribed by the Attorney General.

The bill sought also to provide, by adding a new section to the Nationality Act, that any national of the United States, whether native born or naturalized, who is considered under the laws of any other country to be a citizen or subject of such country or to owe allegiance to such country or to any potentate or sovereign thereof, may be required by the Commissioner, if he has reasonable grounds to believe that such person recognizes the application of any such law as to him either (1) to make a formal renunciation of his United States nationality before the clerk of any naturalization court upon a form to be

prescribed, or (2) to take in open court in any naturalization court the formal oath of allegiance to the United States prescribed in the Nationality Act, which ever such national elects. Every national of the category described who either (1) would than make a formal renunciation of his United States nationality or (2) would refuse to take the formal oath of allegiance to the United States, was then to be taken into custody on warrant of the Attorney General and deported to the foreign country of which he was a national. Refusal to take the formal oath of allegiance required under the proposed new section of the Nationality Act, or taking such oath with any mental reservation or purpose of evasion, or wilfully or knowingly swearing falsely therein, was to result in loss of nationality.

Other provisions of the bill dealing with service in the armed forces by persons in the categories described need not be here summarized.

The substitute bill passed by the House sought to provide that a dual national may on reaching the age of 18 years or at any time thereafter "renounce and abjure his foreign nationality, allegiance, and fidelity" by taking the formal oath of allegiance to the United States prescribed in the Nationality Act. The remaining provisions of the bill relate to the requirement of the taking of an oath of allegiance to the United States by persons about to enter military service.

2. H. J. Res. 303; John E. Anderson of California; April 21, 1942; to the Committee on the Judiciary.

This Joint Resolution would have proposed an amendment to the Constitution of the United States, to provide that no person born after the date of ratification of the amendment, of parents either of whom is, at the time of such birth, ineligible by law to become a naturalized citizen of the United States because of race, shall, by reason of being born in the United States, be a citizen of the United States or any State thereof.

Some Vices in some of the Foregoing Bills

In the first place, there is serious doubt as to the constitutionality of most of the foregoing bills. Several of the bills apply exclusively to citizens of Japanese ancestry,

and so probably violate the due process clause of the 5th Amendment for unlawful discrimination. Several of them are probably invalid as ex post facto laws in that they impose what amounts to a severe punishment, loss of citizenship and loss of the right to remain in the United States, for acts performed prior to passage of the legislation. In the unlikely event that a court should hold that these bills are not technically ex post facto bills, they are probably still invalid under the due process clause because of their retroactive features. (We have not yet made more than a preliminary check of the cases on the problem of constitutionality of these bills.) Some of the bills are probably invalid under the due process clause for indefiniteness. It seems clear, however, that legislation can be properly drafted to avoid these constitutional pitfalls and successfully provide for involuntary denationalization.

A more serious vice in these bills is, therefore, that they are wholly undesirable legislation. To deprive a man of his citizenship on the basis of such vague standards as are provided in most of the foregoing bills will render uncertain the citizenship of many people who would do no more than criticize very strongly some established interest, institution or practice. Particularly in time of war, when feelings ran high, the dangers of abuse under such legislation are obvious. A Nation made up so largely of minorities as is the United States must expect that many of its citizens will have a fondness for the cultural practices and traditions and perhaps even some of the political forms of some other nation while genuinely feeling complete loyalty to the United States. We can have an excellent illustration of the harm that such legislation can do by applying it to the very group to which most of the authors of these bills have intended them to apply -- the young second generation Japanese-Americans in our relocation centers. Many of the things they said and did in innocent protest against what they regarded as an unjustified evacuation, disruption of their lives and interference with their freedom of movement, could easily be interpreted, out of context, as assertions and deeds of disloyalty to the United States.

The Bill Sponsored by the Attorney General

1. H. R. 4103; A. Leonard Allen of Louisiana; February 1, 1944; entitled "A Bill to Provide for Loss of United States Nationality under Certain Circumstances"; reported favorably by the Committee on Immigration and Naturalization February 3, 1944 with House Report No. 1075; passed the House of Representatives February 23, 1944.

The War Relocation Authority and the Department of Justice conferred on a number of occasions about the bills summarized above. It was agreed that the Department of Justice and the Authority would oppose the enactment of such legislation. As a result of these discussions, there was drafted in the Department of Justice, in Collaboration with the Authority, a proposed bill that the Attorney General submitted to the Speaker of the House of Representatives on January 25, 1944, and which was subsequently introduced as H. R. 4103. The Attorney General's letter is quoted in House report No. 1075 on H. R. 4103.

H. R. 4103 is designed to head off objectionable legislation by providing adequately for the only need not met under existing law. It provides that any citizen of the United States may voluntarily surrender his United States nationality while on American soil by making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall approve such renunciation as not contrary to the interests of national defense.

The debate in the House that proceded the passage of the bill indicates that members of the House are quite fully aware of the various legal and policy considerations briefly referred to in this memorandum.

Sincerely,

/s/ D. S. Myer

Director