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National Origin, Alienage, and Loyalty

Denton L. Watson

During World War II, Americans were consumed by fears over national security owing to the presence within our borders of a large alien population and citizens who were descendants of immigrants from countries that were then fighting against us. The Roosevelt administration's reaction to the hysteria over threats from "enemy aliens" are a sobering lesson for the nation, especially given the response of the Bush administration to similar post-September 11 fears. These have led the administration to take even more drastic steps, ostensibly to protect our national security in its fight against terrorism, that specifically target Arabs and Muslims. Although the Japanese suffered the brunt of the anti-alien hysteria between 1940 and 1946, other alien groups, notably Germans and Italians, also were targeted for discriminatory treatment, which included refusal to hire them for war-related jobs and confinement to relocation camps. As associate director of field operations of the Fair Employment Practice Committee (FEPC), Clarence Mitchell Jr. worked to end discrimination against those groups as the agency sought to uphold the national nondiscrimination policy President Franklin D. Roosevelt established under Executive Order 8802, which created it on 25 June 1941.

Ending discrimination based on national origin and alienage, or noncitizenship, was especially challenging for the FEPC because questions of loyalty and national security were oftentimes intertwined in those issues, and the distinction between them could be fuzzy. Furthermore, many employers did not distinguish between noncitizens and citizens of foreign origin, so the issues of national origin and alienage often merged or overlapped. In fact, practically all complaints of discrimination based on national origin the FEPC received, for example, were from Mexicans, whether or not they were American citizens. Their complaints were similar to those from African Americans. National origin complaints from Japanese and Jews, and sometimes from Germans and Italians, however, were essentially alienage cases,

often resulting from national security concerns.¹

Because it felt that discrimination against any ethnic group undermined its efforts to obtain fair treatment of African Americans, the FEPC made no distinction in its aggressive treatment of complaints based on race, creed, national origin, or alienage. Similarly, it fought to ensure that temporary, foreign agricultural workers, notably Mexicans, Jamaicans, and Bahamians, were covered by its nondiscrimination policies.²

Alienage and Loyalty

Disclosures in Europe over fifth-column activities in countries that had been conquered by the German war machine made Americans especially worried about their national security. Consequently, aliens, as in past periods of war, were regarded as a people apart. Section 11(a) of the act "To expedite national defense, and for other purposes," of 28 June 1940 (Public, No. 671, 76th Congress, 3rd Session) provided that:

No aliens employed by a contractor in the performance of secret, confidential, or restricted Government contracts shall be permitted to have access to the plans or specifications, or the work under such contracts, or to participate in the contract trials, unless the written consent of the head of the Government department concerned has first been obtained

Its precursor, the Air Corps Act of 1926, said:

... no aliens employed by a contractor for furnishing or constructing aircraft parts of aeronautical accessories for the United States shall be permitted to have access to the plans or specifications or the work under construction or to participate in the contract trials without the written consent beforehand of the Secretary of the Department concerned.³

Another law, the Alien Registration Act of 1940, which was fully enacted the following day, on 29 June 1940, required the Department of Justice to

¹See draft report, "FEPC and Discrimination Against Mexicans" (n.d.), used in note at 4 December 1943; and United States Civil Service Commission Circular Letter No. 3982, 27 March 1943, used in note at 17 April 1943.

²See Mitchell's memoranda of 6 May 1943, 28 June 1943, 27 January 1944, 26 February 1944, and 21 November 1944, and his report of 17 February 1944; FEPC *Final Report*, 40.

³"The Alien Myth," 374-78; the texts of the statutes, provided in a Bureau of Employment Security advisory, 7 July 1941, to all state employment security agencies informing them of operating policy and procedures under them, are in (FEPC microfilm headquarters collection group 65) HqR65, Aliens in Defense, D-H folder. For complete text of the act, see: United States Statutes at Large, 76th Congress, 2nd and 3rd Sessions, 1939-41, Vol. 54, Part 1, Public Laws and Reorganization Plans, Washington, D.C., Government Printing Office, 1941, 676-83. (Section 11 is on pp. 680-81.)

fingerprint them as part of the process. In signing the law, Roosevelt said it “should be interpreted and administered as a program designed not only for the protection of the country but also for the protection of the loyal aliens who are its guests.” He cautioned: “It would be unfortunate if, in the course of this regulative program, any loyal aliens were subjected to harassment.” In enacting the law, he said, Congress intended “to provide a uniform method of handling this difficult problem of alien registration,” but enforcing it fairly was another matter. The main objective of this law was to destroy the American Communist Party and other left-wing political groups in the country (William Green, president of the AFL, also named the German-American Bund as another organization that engaged in “traitorous activities”), but its scope covered all aliens, whether loyal or disloyal. Under this law, 4,741,971 aliens were registered. Section 1 of the act prohibited certain subversive activities and made it a crime to advocate violent overthrow of the government. Popularly known as the Smith Act of 1940 (named after Congressman Howard W. Smith of Virginia), the law assumed a notoriety of its own.⁴

Owing to those laws and the general suspicion of aliens, some employers had a rule of not hiring them. Many labor unions, too, made citizenship a requirement for membership, in effect presenting aliens with a closed shop, since without membership they could not be employed in related areas. Furthermore, many states (including New York), federal agencies, and the civil service for years prohibited the employment of aliens on public works.⁵

Consequently, prior to the issuance of Executive Order 8802, an employer had discretion to apply for a permit to employ an alien and to base

⁴The Alien Registration Act, H.R. 5138, also of 28 June 1940, Public, No. 670, required the Department of Justice to register all aliens over 14 years old; for the text of the act, see United States Statutes at Large, 76th Congress, 2nd and 3rd Sessions (as in note 3 above), 670–76. <http://tucnak.fsv.cuni.cz/~calda/Documents/1940s/Alien%20Registration%20Act%20of%201940.htm>; <http://www.spartacus.schoolnet.co.uk/USAalien.htm>; *New York Times*, 30 June 1940, 5; *Congress and the Nation, 1945–1964*, 1647–48; http://www.bc.edu/bc_org/avp/cas/comm/free_speech/smithactof1940.html. See also Albert Fried’s *McCarthyism, The Great American Scare, A Documentary History* (New York: Oxford University Press, 1996), 10–15.

⁵Report, “Number of Alien Registration Schedules Received Cumulative Through and During the Week Ending November 1, 1940,” in HqR65, Aliens in Defense, D-H; see Boris Shishkin, member of the FEPC policy-making committee, cited below at note 18. The texts of the 1926 and 1940 acts are provided by Bureau of Employment Security, 7 July 1941, in HqR65, Aliens in Defense, A. See also “Discrimination Against Aliens in Defense Industries, 8/23/41,” in HqR66, U.S. Department of Justice; and news bulletin of Public Administration Clearing House, 22 September 1941, “Few Laws to Restrict Aliens’ Occupations Enacted in 1941,” in HqR66, Japanese.

his decision solely on the person's status or origin. With the issuance of the order, the employer was still responsible for vouching for the employee's loyalty. Nevertheless, he was prohibited by a national nondiscrimination policy from excluding a person solely on the basis of national origin, so he had to find other reasons for doing so.

That procedural looseness in a time of extreme national anxiety made the FEPC's challenge considerable. The dangers of sabotage were widely publicized, and the belief that aliens were the most likely to engage in such actions worsened their plight. The problem was compounded by employers' misdirected patriotism towards aliens. A study by the Bureau of Employment Security of the Federal Security Agency revealed that of approximately 40,000 persons hired during a short period by the aircraft industry, those employers required that 99.99% be citizens; out of 6,600 shipbuilding employees hired, 94.1% had to be citizens; in the automobile industry, 93.5% of 9,000 hired had to be citizens. The study showed that the tendency was aggravated by federal statutes that restricted the employment of aliens on certain types of contracts, which provisions were widely misinterpreted to completely prohibit the employment of aliens. In some areas of the country, discrimination was extended to people of foreign-born parents and with foreign-sounding names. The attitudes of defense employers were often copied in nondefense industries.⁶

Consequently, twelve days after Executive Order 8802 was issued, the Bureau of Employment Security began efforts to establish standard procedures by issuing an Operating Policy and Procedure regarding statutes and their interpretation relating to the employment of noncitizens in defense industries. The bureau felt it was essential that local employment offices have information on procedures and laws concerning the employment of those persons in defense industries by private employers on government contracts.⁷

A draft government statement on the employment of aliens and persons of foreign origin in national defense industries similarly noted that the negative attitude toward foreign-born and alien workmen did not contribute to the national welfare, and neither was it in the best interest of the defense effort. The practice, it said, held many dangers for the entire country.

⁶Cramer memorandum, 9 March 1942, to Edward F. Prichard Jr. of the War Production Board, HqR66, Central Files, United States Government, Aliens in Defense, Specific Groups, O-S.

⁷Advisory of 7 July 1941 from Martin F. Carpenter, chief, United States Employment Service Division, to all state employment security agencies, with interpretation attached, in HqR65, Aliens in Defense, A.

Shortages of labor, it said, were developing in many industries vital to the national well-being, so it was “imperative that the skills and services of all able-bodied and loyal persons—citizens and aliens alike—be utilized. Unnecessary dislocations of labor and turnover of employees must be avoided.”

The statement explained that federal laws contained “no absolute prohibitions against the employment of aliens in national defense industries.” It reiterated that in certain special instances involving government contracts an employer must secure permission under PL No. 671 to employ them from the head of the government department concerned.⁸

The Japanese attack on Pearl Harbor brought the issue to a new peak. On 7 and 8 December 1941 Roosevelt issued proclamations prescribing regulations “for the conduct and control of alien enemies.” Attorney General Francis Biddle promptly announced that the FBI had been directed to take into custody for questioning and temporary detention a selected group of Japanese aliens. Throughout the country, he said, “a comparatively small number” of Japanese were “being rounded up in view of the situation.” On 12 December 1941, Roosevelt issued Executive Order 8972, which specifically suspended the employment of Japanese Americans pending a careful investigation of their loyalty by the War Department. Previously, Japanese, as well as Chinese, long had been barred from naturalization. With exceptions made in a few special cases, furthermore, they had not been allowed for many years to settle in the United States. Only those born in the United States were therefore citizens.⁹

⁸Draft of general statement of 20 October 1941, HqR65, Aliens in Defense, D-H. Bureau of Employment Security advisory, 7 July 1941 to all state employment security agencies, in HqR65, Aliens in Defense, D-H.

⁹In Executive Order 9066, issued 19 February 1942, “Authorizing the Secretary of War to Prescribe Military Areas,” Roosevelt said it did not modify or limit “in any way the authority heretofore granted under Executive Order 8972,” issued on 12/12/41, <http://www.parentseyes.arizona.edu/wracamps/execorder9066.html>; *New York Times*, 8 December 1941, p. 6; see headnote in *The Papers of Clarence Mitchell, Jr.*, Volume I on Japanese Americans for the extent of discrimination they suffered, as well as Memorandum of Understanding of 10 March 1943, between the FEPC, War Department, and Provost Marshal General, in HqR4; *Enemy Aliens*, 88–100; for a contemporary bibliography, see, in addition to David Cole’s *Enemy Aliens: Double Standards and Constitutional Freedom in the War on Terrorism*, <http://humanrights.uchicago.edu/enemyaliens/further-reading.html>; “The Enemy Alien Files: Hidden Stories of World War II,” <http://humanrights.uchicago.edu/enemyaliens/>; <http://www.enemyaliens.com/facts.html>; “World War II—The Internment of German American Civilians,” <http://www.foitimes.com/internment/>; “WWII Violations of German American Civil Liberties by the US Government,” <http://www.foitimes.com/internment/gasummary.htm>; “Internment of Japanese Americans,” <http://academic.udayton.edu/race/02rights/intern01.htm>; “Confinement and Ethnicity,” http://www.cr.nps.gov/history/online_books/anthropology74/ce3d.htm.

Alarmed, however, about the harmful impact of the hysteria over aliens on the war effort, Biddle tried to moderate anti-Japanese passions. He had a tough job doing so, given the security concerns and often blatant racial prejudices of the War Department and the FBI. He appealed to state and local law enforcement agencies and to the general public to “help guard at home the freedoms our country is now fighting to defend by protecting the civil liberties of our loyal non-citizen population.” The response to the appeal to keep the hysteria and antagonism toward noncitizens at a minimum was heartening; nevertheless, he said, there remained “a serious problem in adjusting our sights to our one great objective; it is the problem of discrimination against aliens in private employment.”

He reminded employers who were “discharging workers because of some vague ‘suspicion’ that they may be disloyal aliens,” or because they had “foreign-sounding names” that of America’s total noncitizen population of about 5,000,000, fewer than 3,000—six out of ten thousand—had been regarded as dangerous. Federal authorities, he repeated, had taken those persons into custody. He also reminded those employers that many of the “foreigners” they had discharged had sons serving in the United States army and navy. “Among those who died fighting off the treacherous attacks upon Manila and Pearl Harbor were men named Wagner and Petersen and Monzo and Rossini and Mueller and Rasmussen.” War, Biddle said, threatened all civil rights:

... and although we have fought wars before, and our personal freedoms have survived, there have been periods of gross abuse, when hysteria and hate and fear ran high, and when minorities were unlawfully and cruelly abused. Every man who cares about freedom, about a government by law—and all freedom is based on fair administration of the law—must fight for it for the other man with whom he disagrees, for the right of the minority, for the chance for the under privileged with the same passion of insistence as he claims for his own rights. If we care about democracy, we must care about it as a reality for others as well as for ourselves; yes, for aliens, for Germans, for Italians, for Japanese, for those who are with us as well as those who are against us: For the Bill of Rights protects not only American citizens but all human beings who live on our American soil, under our American flag. The rights of Anglo-Saxons, of Jews, of Catholics, of negroes, of Slavs, Indians—all are alike before the law. And this we must remember and sustain—that is if we really love justice, and really hate the bayonet

and the gun, and the whole Gestapo method of a way of handling human beings.¹⁰

President Roosevelt, too, sought to ease the hysteria. He said: "It is one thing to safeguard American industry, and particularly defense industry, against sabotage; it is very much another to throw out of work honest and loyal people who, except for the accident of birth, are sincerely patriotic." He said such a policy was "stupid" as it was "unjust." Responding to the FEPC's request for clarification of his now contradictory policy on aliens, Roosevelt wrote the committee on 3 January 1942, that it was his intention to include

... non-citizens in the scope of the committee's responsibilities. I, therefore, feel it appropriate that your Committee investigate cases in which non-citizens allege that they have been discriminated against because of their national origin in a manner more restrictive than required by the law governing their employment in defense industries.

The Bureau of Employment Security study and the draft statement showed that the problem was not a new one; neither was it isolated to the Japanese, Germans, or Italians. The *First Report* confirmed that reality. The rush of letters and memoranda between Eugene Davidson, FEPC field representative in New York, and Lawrence Cramer, executive secretary, over how to handle differing problems underscored the complexity of the many challenges of developing effective policy. Stumped over the question of hiring aliens in New York, Davidson on 23 January 1942, wrote Cramer for assistance. But before Cramer could respond on 29 January 1942, that he had earlier provided Davidson with a statement, Davidson on 28 January sent Cramer a memorandum on other aspects of the problem, to which Cramer responded on 31 January 1942.

As an example of the problem, Davidson in his 23 January letter informed Cramer that, "The situation in regards to employment of aliens in New York City is exceedingly serious." He inquired "whether or not our Committee had jurisdiction over aliens in law as well as in fact" and asked whether he should continue handling such cases. One question, he said, resulted from the practice by the "great majority of private defense contractors" in the New York area who were "refusing employment to aliens even to the extent of advertising in newspapers that American citizenship was

¹⁰*Enemy Aliens*, 88–100; Department of Justice press release, 28 December 1941, in HqR75, Statement by Attorney General Biddle—employment of aliens in private industry.

essential.” He cited the example of Arnold Burger, who a company refused to hire because “they did not employ aliens.” Cramer responded that he seriously doubted whether the Navy Department had

... given any employer instructions not to hire aliens. It may well be that the Navy Department inspector on the grounds does not fully understand the directive issued by the Navy department relating to the employment of aliens in the execution of classified contracts. In order to clarify this matter, I suggest that you prepare a careful statement of facts relating to the Arnold Burger case indicating that he was refused employment because the company to which he applied did not employ aliens, setting forth the information which you have secured from the personnel director of the company in question and setting forth also information as to the source of the instructions alleged to have been given the company.

Nevertheless, Cramer in his 31 January memorandum to Davidson, summarized the basic position that everyone, including President Roosevelt, had been trying to establish. He told Davidson that it was his judgment that E.O. 8802 placed “a positive duty on employers not to refuse to employ and not to dismiss employees simply because they” were aliens. “In order to conform with the spirit and letter” of the order, he said, the employer must “base such refusal or dismissal not on the mere fact of the alien status of the worker but rather on the question of his individual loyalty or trustworthiness.” Overwhelmed by reality, nevertheless, Cramer told Edward F. Prichard of the War Production Board that, “This obviously is something that should not be left to private individuals to do, but should be a function of the Government itself.”¹¹

Thus the government was hard-pressed to improve upon its earlier efforts to moderate its policies, especially since some job applicants could not produce birth certificates to prove their American citizenship. The Undersecretaries of War and Navy issued a joint statement in June 1942 attempting to address the birth certificate problem that said:

¹¹Press release, 2 January 1942, on Statement by the President, in HqR86; Davidson’s letter and memorandum to Cramer and his responses, and circular letter, 9 January 1942 by Robert L. Glenn, labor representative, Office of Production Management, to which Roosevelt’s 2 January 1942 statement regarding the employment of aliens or foreign born citizens is attached, are in HqR65, Aliens in Defense, D-H. For reference to Federal Security Agency study, see, “Discrimination Against Aliens in Defense Industries,” 23 August 1941, in HqR66, U.S. Government, Department of Justice. Cramer to Prichard, 9 March 1942, HqR66, Aliens in Defense. *Final Report*, 146-47.

The previous memorandum [of 16 July 1941] is suspended and in lieu of the procedure set forth therein it is recommended that contractors and subcontractors require applicants for employment in the performance of any secret, confidential or restricted contract, or any contract for furnishing aircraft, aircraft parts, or aeronautical accessories, to sign a statement in the presence of an Army or Navy District Procurement, Factory or Plant Protection representative, to the effect that he is a citizen of the United States and that he has read and understands the pertinent provision of the act of June 28, 1940 (Public Law 671, 76th Cong.), as indicated by the inclosed form entitled "Declaration of Citizenship."

The foregoing recommended procedure does not relieve the employer from the duty of seeking further investigation when there is any reason to doubt the truth of applicant's declaration that he is a citizen.

The United States Employment Service (USES), in a memorandum on 3 July 1942, noted earlier efforts to ease difficulties applicants were still encountering in getting jobs under an Army or Navy contract because they could not immediately produce their birth certificate to prove their American citizenship. The USES instructed its local offices to inform such applicants of its 16 July 1941 memorandum to all Army and Navy contractors and subcontractors of its policy to ease the problem. It further instructed its local offices to refer those applicants "to the contractor with the suggestion that they request the employer to accept their 'Declaration of Citizenship' as a basis for employment."¹²

Nevertheless, the mass evacuations of the Japanese from the West Coast under Executive Order 9066 heightened concern over enemy aliens. The Council for Democracy noted that the slightly more than 1,000,000 aliens of German, Italian, and Japanese extraction listed by the 1940 Alien Registration Act could be "swelled" by the inclusion of Hungarians, Bulgarians, and Rumanians. Unquestionably, the council said, the overwhelming majority of these aliens were loyal. Many had been in the United States for decades. Many others were essential workers in war industries. Approximately 200,000 of them were refugees, whose citizenship in a majority of cases had been revoked by the Axis powers. Their bitter experience

¹²Joint statement, 4 June 1942, by the undersecretaries of War and Navy, in HqR66, U.S. Government, Employment of Aliens, T to XYZ; Bureau of Employment Security, USES Operations Bulletin No. C-29, Supplement No. 2, 3 July 1942, in HqR66, U.S. Government, Application Forms.

with fascism abroad gave them more reason to fight against the system than most Americans. Nevertheless, the council said, “news of the Japanese evacuation, plus inept announcements from the military authorities,” had created increasing “uneasiness among all aliens of enemy nationality, and only to a slightly lesser degree among naturalized citizens.” The council explained that grave psychological harm had been wreaked, a problem worsened by the widespread use of the invidious term “enemy alien.”¹³

On 11 July 1942, Roosevelt sought further to clarify the nondiscrimination policy regarding aliens and other persons of foreign birth. He said in a comprehensive statement that:

1. Persons should not hereafter be refused employment, or persons at present employed discharged, solely on the basis of the fact that they are aliens or that they were formerly nationals of any particular foreign country. A general condemnation of any group or class of persons is unfair and dangerous to the war effort

2. There are no legal restrictions on the employment of any person (a) in non-war industries, and (b) even in war industries, if the particular labor is not on “classified” contracts, which include secret, confidential, restricted, and aeronautical contracts.

The laws of the United States do provide that in certain special instances involving Government contracts an employer must secure from the head of the government department concerned permission to employ aliens

After citing sections of the Act of 28 June 1940, he said there were no other laws that restricted the employment of aliens by private employers in national war industries. Neither was there any “Federal laws restricting the employment of foreign born citizens of any particular national origin.”¹⁴

The Secretary of War on 28 January 1943, further attempting to moderate his department’s harsh policy toward Japanese Americans, announced its “confidence in loyal Japanese Americans” and that he was extending to them the right to serve as soldiers in the army. He said:

¹³For the text of E.O. 9066, see <http://www.parentseyes.arizona.edu/wracamps/execorder9066.html>; “Plan for Reclassification of Aliens of Enemy Nationality,” 26 June 1942, Council for Democracy, in HqR65, Aliens in Defense, A.

¹⁴Roosevelt’s statement and, “A Report on Utilization of Non-Citizens in War Industries,” 4 September 1942, by the American Committee for Protection of Foreign Born, a New York-based group, which is a comprehensive review of the problem up to that date in view of the president’s 11 July 1942 statement. HqR65, Aliens in Defense, A.

It is the inherent right of every faithful citizen, regardless of ancestry, to bear arms in the Nation's battle. When obstacles to the free expression of that right are imposed by emergency considerations, those barriers should be removed as soon as humanly possible. Loyalty to country is a voice that must be heard, and I am glad that I am now able to give active proof that this basic American belief is not a casualty of war.

The War Department also informed the FEPC that it was collaborating with the War Relocation Authority in examining the loyalty qualifications of all Japanese Americans released from the War Relocation Centers for work in essential war industries. The United States Civil Service Commission, in its Circular Letter No. 3982 to its regional and division chiefs, also once more sought futilely to provide a coherent policy and procedure for the utilization of American citizens of Japanese origin who had been in the centers.¹⁵

The FEPC's *First Report* further documented the struggles within the government with the issue. It provided an excerpt of a joint statement by the Secretary of War, the Attorney General, the Secretary of Navy, and the chairman of the Maritime Commission on the Employment of Aliens (paragraphs 6 and 7, 7 June 1943), which was that the nondiscrimination clause

... has been included in all War and Navy Department and Maritime Commission contracts entered into since June 25, 1941. This clause requires the granting of full employment opportunities to all loyal and qualified workers regardless of race, creed, color, or national origin. This clause is intended to apply equally to citizens and noncitizens. For contractors or subcontractors of the War or Navy Department, or of the Maritime Commission to require American citizenship as an essential condition for employment is considered a breach of the clause in the contract and is contrary to the national policy as expressed in the Executive order.

Even on aeronautical and classified contracts, if a qualified applicant whose services the contractor needs is an alien whose loyalty to the United States the contractor has no reason to doubt, the contractor is obligated to cooperate with the applicant in applying for consent to his employment. Failure to request consent for the employment of, or to employ such an alien upon securing consent, if except for his alien status he

¹⁵John J. McCloy, assistant secretary of War, to Cramer on 23 April 1943; Circular Letter No. 3982, 27 March 1943, which amended Circular Letter No. 3615, 7 March 1942, is in HqR66, Japanese.

would have been employed, constitutes a breach of the antidiscriminatory clause of the contract and is contrary to national policy as expressed in the Executive order. If a contractor refuses employment to a qualified and authorized alien worker, he should be prepared to present specific and sufficient reasons to avoid a charge of discrimination.¹⁶

With policy and practice conflicting, nevertheless, Congressman Vito Marcantonio had told Roosevelt that the procedures of the Army and Navy Departments were creating many serious problems. Marcantonio's experience was that many employers were willing to cooperate in enforcing the federal policies that Roosevelt himself had established, but they were being discouraged from utilizing noncitizens by the manner in which the War and Navy Departments were administering the law. He noted that one of the problems that was deterring employers who wished to hire or to continue employing aliens, was that they had to apply to the War or Navy Department for permission to do so. After applying for such permission, however, employers had to wait several months before receiving a decision. The employer could not be expected to hold open the position indefinitely, he explained, so many stopped giving consideration to noncitizens.

Marcantonio said the situation was further aggravated by the insistence of the War and Navy Departments that an employer receive renewed permission for the employment of an alien for each job that person performed. "Thus a sub-contractor, working on a series of jobs, each of two weeks duration, must obtain permission again and again to employ the same alien." Probably the greatest demoralizing factor, he said, was the refusal of the two departments to give reasons for their denying permission to employ an alien. The practice caused "widespread confusion and hopelessness among great numbers of non-citizens and their families." Another consequence of the practices of the War and Navy Departments was that a noncitizen who had worked for a firm for many years and was fired when that firm was converted to classified work had great difficulty in finding other employment in a nonclassified firm because he could not give a reason for his dismissal because those departments gave him none.¹⁷

Roosevelt's assertions notwithstanding, the government required contracting agencies to obtain certain information to aid them in their investi-

¹⁶Appendix 1, *First Report*, 147.

¹⁷Marcantonio's letter, 4 September 1942, along with "A Report on Utilization of Non-Citizens in War Industries," and other materials are in HqR65, Aliens in Defense, A folder.

gations of job applicants or workers they hired. The enforcement of PL No. 671 required that plants executing confidential (secret, restricted, or aeronautical) contracts to submit an application to the contracting agency involved for consent before hiring an alien. Consequently, the employer had to have the information about the nationality or citizenship status of applicants. In order to facilitate an investigation, additional information, such as the applicant's national origin, was considered helpful. The FEPC therefore held that in those cases it could not take exception to the inclusion of such inquiry on employment application forms regarding national origin. The committee maintained that:

Where, however, it cannot be shown that the information on nationality or national origin has a direct relationship to national security, these inquiries should be eliminated.

Inquiries on application for employment forms pertaining to "Descent," in which the applicant is asked to disclose whether he is "Aryan," "Semitic," "Asiatic," "Non-Caucasian," etc., rather than specific information pertaining to nationality, are not acceptable and should be eliminated, since such information concerns *racial origin* (editor's emphasis).¹⁸

In January 1944, however, the FEPC still had no policy regarding aliens, and that gap increased the frustrations of its field staff in resolving related issues. George Johnson, deputy chairman, therefore suggested to the committee that the position of members in the "field operation" should be that the policy on aliens is similar to that with respect to other minority groups. He said "the staff was concerned with what variations, if any, should be made." Boris Shishkin, too, stressed that there was "no clear delegation to this Committee to deal with aliens. If we have that jurisdiction we ought to have it defined so there is no question. If we want to assume jurisdiction we ought to have it defined, so there is no question."¹⁹

Shishkin saw the loyalty issue in a much broader context that involved groups other than Japanese aliens. Discussing the case of a Mr. Miyakawa, who charged he was denied employment because of his Japanese ancestry even though he was born in California, Shishkin reiterated that

¹⁸Rough draft, Operations Bulletin Re: Application for Employment Forms, ca. 14 March 1944 (estimate based on letter of 4 January 1944 by Roy A. Hoglund, director, FEPC Region IX-Kansas City, St. Louis), in HqR4, Office Files of George M. Johnson, Nov. 1941–Oct. 1945, Application for Employment.

¹⁹Transcript of Proceedings, 15 January 1944, 63, HqR66, Central Files: Transcripts, Specific Transcripts, 15 Jan. 1944–4 Sept. 1945.

... a tremendous amount of abuse in cases of this kind has occurred to American citizens who are eligible to jobs because of the inadequacy of the procedure and the incompetence of the staff of the Civil Service Commission. One flagrant example was a case where a supervisor of the Civil Service Commission who was investigating a girl who had been in my employ came to my office. He asked about her locality, patriotism, etc. This was not a direct investigation. He said "she had been with the International Labor Organization, a 'commie' outfit from the name of it, and I wonder what you know about that organization, what its purpose is and what its objectives are."

Miyakawya, Shishkin noted, was denied a job that did not involve war production but which handled work in civilian requirements in the area of non-ferrous metals.²⁰

With the FEPC's approval, Johnson suggested a policy that the committee adopted at its 4 March 1944 meeting. It stated:

Executive Order 9346, issued May 27, 1943, refers to "the policy of the United States to encourage full participation in the war effort by all persons in the United States" and specifically states that the new Committee [established 27 May 1943, under E.O. 9346] "shall assume jurisdiction over all complaints and matters pending before the old Committee." The intention to vest the new Committee with such jurisdiction over alien complaints as was given to the old Committee, is clear.

The Committee, therefore, recognizes its jurisdiction over problems of discrimination in employment in war industries because of non-citizenship and exercises the powers vested in it by Executive Order 9346 to obtain the elimination of such discrimination in this field as it finds to exist.²¹

Emphasizing his approval of the policy, Charles Hamilton Houston, another member of the committee, said it seemed to him that the president expressly extended the FEPC's jurisdiction "to include all workers, whether they are citizens or aliens." Shishkin, however, who had been absent from

²⁰Transcript of Proceedings, 12 February 1944, 62-66, HqR66, Central Files.

²¹Transcript of Proceedings, FEPC Committee 4 March 1944, 10-13, 18 March 1944, 73-78, HqR66, Central Files; Summary Minutes, 4 March 1944, and 18 March 1944, in HqR1, Summaries of Actions Taken by the Committee at Its Meetings, 11 September 1942-15 March 1943; 6 July 1943-21 July 1945. See also *First Report*, 49-50; Press Release, Statement by the President, 2 January 1942, HqR86, Press Releases, Aug. 1941-Nov. 1945; Johnson to Maslow, 7 March 1944, HqR38, Central Files, Meetings folder; FEPC Chronology, *The Papers of Clarence Mitchell, Jr.*, Volume I.

the 4 March committee meeting when the matter had been discussed, strongly dissented from the statement at the committee's meeting on 18 March. Their disagreement showed the differing attitudes of Jews and African Americans over the issue. Shishkin said he objected to "government by press release," a reference to the committee's earlier announcement of its latest position on the issue, and to basing FEPC authority on informal statements of the president. Neither Executive Order 8802 nor Executive Order 9346, he said, explicitly referred to discrimination because of noncitizenship. The committee's assumption of jurisdiction in such cases placed upon it "the responsibility for action involving legal rights and equities of persons." Yet it was "doubtful that such action by the Committee, if subjected to a judicial test, would be sustained by the courts in the absence of a clear and valid grant of authority." Noncitizens, he noted, were "denied employment by the federal government itself and by the majority of state governments. This fact must be faced and its implications met." FEPC policy would have to be accommodated to civil service law. He therefore urged the committee to seek clear and explicit grants of power from the president regarding the employment of aliens.

In response, the FEPC on 18 March 1944, modified its decision and agreed to "request the President to issue an Executive Order giving the Committee jurisdiction over alien complaints, spelling out the authority extended to other specified agencies of the government in cases of alien employment involving questions of national security, and an explicit enumeration of wartime employment policy of the federal government with regard to aliens." The FEPC further agreed that regional offices should continue processing such complaints but if they got to the committee level they would be held pending action on the FEPC's recommendation to the President. Roosevelt took no action on the request.²²

On 23 March 1944, Congress also took up the jurisdiction issue when members of the House Sub-Committee on Appropriations considered the FEPC's budget request for fiscal year 1944-1945. Johnson reported that the congressmen questioned the FEPC's representatives regarding its "authority to process complaints involving 'enemy aliens.'" He said the FEPC's representatives responded that the agency did so according to its "jurisdiction over complaints of this type." Although it had "processed only a small number of complaints involving 'enemy aliens' there appeared to be no basis for

²²Minutes, 4 March 1944, HqR1, Summaries of Actions Taken; see also "A Report on Utilization of Non-Citizens," cited above.

distinguishing between complaints from ‘enemy aliens’ and those received from other aliens.” Nevertheless, the FEPC’s representatives agreed “that pending a clarification of its jurisdiction over all alien complaints, the FEPC would suspend processing complaints of this type.” Subsequently, Malcolm Ross, chairman of the committee, said that by unanimous action of its seven members on 27 March 1944, “the agency had voted to stop processing all complaints involving aliens, and its regional directors have been so instructed.” Processing alien cases was still suspended in January 1945, when the committee agreed to further discussions with Congressman Ellis D. Patterson, chairman of the House sub-committee, who had recommended that the FEPC handle “resident alien complaints.”²³

With the end of the war, the overriding focus of loyalty concerns shifted to communists, real or imagined. The FEPC suffered some of those attacks during the hearings by the Special Committee to Investigate Executive Agencies (Smith Committee), when members suggested that it was “communist” for promoting “social equality” and subsequently from racist demagogues like James O. Eastland and Theodore G. Bilbo, both senators from Mississippi, during a budget appropriations debate in 1945. Several FEPC staff members were also labeled “subversive.” But those attacks were a political stretch based on fears concerning national security. They should serve as reminders that in times of national crises, such as these caused by September 11, special efforts must be made to protect the rights of those who are especially vulnerable to scapegoating.²⁴

²³“Exhibit A” regarding FEPC action on 27 March 1944, HqR4, Office Files of George M. Johnson, Deputy Chairman, Nov. 1941–Oct. 1945, Policy folder; Johnson to Congressman Ellis D. Patterson, 26 January 1945, HqR4, Records of the Legal Division, Office Files of George M. Johnson, Director, Dec. 1941–Nov. 1945, Correspondence from Congressmen folder; FEPC, *First Report*, 97–98. For references to individual alienage cases, suspension of action on them, and continued handling of them, see Mitchell’s memoranda of 14 January 1944, 27 January 1944, 26 February 1944, 12 October 1944, and 21 November 1944, and 23 January 1945, *The Papers of Clarence Mitchell, Jr.*, Volume I.

²⁴For attacks on the FEPC, see, for example, Malcolm Ross, *All Manner of Men*, 113; “Legislation in the 79th Congress,” *The Crisis* (January 1945), 29–30; “Negroes! Jews! Catholics!” *The Crisis* (August), 217–19, 237–38; and Charles L. Horn’s letter to Malcolm Ross, 19 April 1945, and Ross’ response, 2 May 1945, noting the FEPC staffers, including himself, who had been labeled “subversive,” in HqR38, Central Office Files, Memoranda, Horn, Charles L.

