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May 8, 1942

Dear Francis:

I am inclosing herewith re-draft of proposed understanding between our Departments with respect to action under Executive Order No. 9066.

You may recall that at our conference with the Secretary of War on April 29th I handed you our original draft of this understanding. Late Thursday we received from Mr. Ennis a complete redraft of our memorandum, as the counter suggestion of the Department of Justice. I do not think that there is so wide a divergence of views as to require a complete re-draft, and we have, accordingly, modified our original memorandum to cover the points which seem to need clarification as a result of our discussions with Mr. Ennis. While the inclosed draft has not been shown to Mr. Ennis, it was prepared after a discussion between Mr. Jaretski and Mr. Ennis, in which Mr. Ennis explained the reasons for the changes embodied in your Department's results.

In connection with the inclosed memorandum, I would like to comment as follows:

1. Executive Order No. 9066 vests certain responsibilities and duties in the Secretary of War and the Commanding Generals designated by him. Mr. Ennis' re-draft in effect provides for a joint administration of Executive Order No. 9066. I think in form and substance, this is inappropriate. We are agreeing, except in emergencies, to clear with the Department of Justice before putting into effect matters of general policy and general programs pertaining to the control of civilians under this Order. As this is the substance of the arrangement between us, I think that the memorandum of understanding should take the same form.

2. The Department of Justice draft contains an agreement on its part not to issue any proclamations, orders or instructions without prior consultation with us. We do not ask for this. All that we ask is that our regulations, after approval by you, which require the application of sanctions by the Department of Justice, be enforced by your Department. It is unnecessary to furnish us with your inter-departmental instructions or orders.

3. The Department of Justice draft binds both of us not to issue any publicity concerning matters covered by the

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ASW 014.311 General

copy of this to
Mr. Jaretski
Mr. Ennis
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Gurnea
Mr. Hendon
Mr. Pennington
Mr. Quinn
Mr. Nease
Miss Gandy

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memorandum without the approval of the other. As a result of our experience, we think it in the interest of expedition if we hold down to a minimum the matters that must be cleared. If we have our general policies cleared and well-understood by the responsible heads in the respective Departments, neither of us ought to have to clear with each other the details of publicity. We are, however, suggesting in our memorandum that in any cases of possible conflict, both Departments will endeavor to clear such matters with each other.

4. We have endeavored in paragraph 5 of our inclosed memorandum to meet what we understood to be the purpose of your paragraph 2.

5. The War Department cannot, and would not if it could, undertake to supervise in Washington the details of any program that may be adopted. This is a matter for the appropriate Commands. In other respects we think that paragraph 3 of the Department of Justice draft is covered by our paragraph 2.

6. We have accepted your objection to an agreement on the part of the Department of Justice to act promptly on matters submitted to it by the War Department, but we feel that we can properly ask that you respect our judgment as to the urgency of any matters which we may submit to you for your consideration.

7. As we do not ask your Department to submit its rules and regulations to us, there is no need for a provision for emergency action on the part of the Department of Justice. In so far as the War Department is concerned, the Secretary of War must retain the freedom of action which we have reserved in paragraph 4, as the responsibility is his under the Order. In case of threatened invasion or raid, the appropriate Commanding Generals must, of course, have authority to take emergency action. Once having acted under emergency powers, we cannot agree to undo such action if the same does not meet with the approval of the Department of Justice. We, do, however, agree that we will endeavor thereafter to work matters out to the satisfaction of the Department of Justice. If, as I doubt will be the case, there is still a disagreement between us, the matter can be adjusted by appeal to the President. I believe that this is as far as we can reasonably be asked to go.

I would appreciate very much if an early agreement could be reached on the proposed memorandum of understanding. I urge this as we are most anxious to work out promptly with you the disposition we are to take on the West Coast with respect to Italians and Germans. As it seems

That this cannot be done until a basic understanding is worked out, it is of primary importance to get the basic understanding cleared. The Japanese evacuation is proceeding on the West Coast at a rate which will bring the other questions to a head very shortly.

Sincerely yours,

(SIGNED) JOHN J. MCCLOY

JOHN J. MCCLOY,
Assistant Secretary of War.

1 Inclosure
Memorandum dtd. 5-7-42.

Honorable Francis Biddle,
The Attorney General,
Washington, D. C.

OASW
AJ, JR:PB