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WAR RELOCATION AUTHORITY

Summary of remarks by Mr. Glick outlining the legal and constitutional basis upon which the program of the War Relocation Authority rests.

The Executive Order

At the present time no Act of Congress directs the activities of the War Relocation Authority. It operates under Executive Order No. 9102 under which the President, pursuant to his authority as President and Commander in Chief of the Army and Navy, established the War Relocation Authority. Paragraph two of the Executive Order is the heart of the order. It directs the Director of the War Relocation Authority to formulate and effectuate a program for the removal of certain persons designated by the Secretary of War from military areas, and for their relocation, supervision and maintenance after their removal.

The authority to establish military areas and a similar authority to evacuate persons from military areas was given to the Secretary of War in another Executive Order--No. 9066 issued in February, 1942. It is only from those areas that evacuation may be made. The Secretary of War it is to be noted has authority to evacuate persons under Executive Order No. 9066; the War Relocation Authority has similar authority under Order No. 9102. In order to guard against conflicts in the administration of these joint responsibilities, Executive Order 9102 does not affect persons in military areas without the approval of the Secretary of War. As the program has worked out, the evacuation function is primarily the responsibility of the military, while the relocation, maintenance and supervision of evacuees is the exclusive responsibility of the War Relocation Authority.

Executive Order 9102 contains provisions giving the Director of the War Relocation Authority broad authority to provide for the employment of evacuees, to secure the assistance of government agencies to prescribe necessary regulations, to make delegations of authority, to employ necessary personnel, make loans and grants, purchase real property and establish a War Relocation Work Corps. The Director is also directed to cooperate with the Alien Property Custodian in the custody and disposal by the Custodian of Alien Property.

Funds for Operation

The War Relocation Authority is now operating with funds allocated from a special appropriation of 100 million dollars, entitled "Emergency Fund of the President", that is contained

in the Independent Offices Appropriation Act of 1942. The President, by various allocation letters, has allocated funds from this appropriation for the program of the War Relocation Authority. The availability of these funds for expenditure for various purposes is dependent upon the language of the Executive Order, the appropriation, and the allocation letters of the President.

It is contemplated that the funds for operation, after the current fiscal year, will be obtained from a special congressional appropriation for the purpose rather than from an appropriation of emergency funds to the President.

Constitutional Bases of the War Relocation Authority Relocation Program

The constitutional question facing the WRA is the extent to which we can restrict the movement of, and otherwise control, the activities of the Japanese being evacuated from the military areas designated by the Secretary of War. Two-thirds of the Japanese are citizens of the United States--citizens who in law have precisely the same constitutional rights as other Americans. A great majority of the citizen Japanese are loyal or at least have given no other indication.

The constitutional issues arise solely with respect to citizen Japanese. Alien enemies--which of course include Japanese aliens in this country--have no constitutional rights whatever in time of war. Under the Alien Enemy Act of July 6, 1798, the President has the power to detain and control in his discretion the movement of enemy aliens. As to one-third of the evacuees in the relocation centers, therefore, there will be no question of our constitutional power to require them to remain there.

With respect to the citizen Japanese, the constitutional doctrine is that they may be detained and restrained to the extent reasonably necessary to the national safety in time of war. The extent of danger from their unrestricted movement and the reasonableness of the means used are entirely factual questions which will be ultimately determined by the courts in event of litigation.

This does not mean that the citizen Japanese have lost their constitutional rights. It is well settled that the constitution remains in effect even in war time and that citizens are entitled to life, liberty, and property under the Bill of Rights, but those rights are nevertheless subject to the paramount right of the President and of Congress to take all necessary measures to protect the Nation in time of war. To the extent that necessary

war measures impinge upon the rights of life, liberty and property, to that extent, those rights must be regarded as restricted.

In the present case, it is obvious that the Western Coast of the United States is a strategic area subject to invasion, and to espionage and sabotage of particularly vicious consequences. The Army has decided that it is necessary to clear from certain areas on the Western Coast people who may prove dangerous if they continue to live in those areas and who may interfere, under certain circumstances, with effective operations within a Theatre of War. The mere definition by the Army of the military areas and the classes of persons who must get out obviously is valid if the facts and circumstances appear necessary to the accomplishment of the purpose of winning the war. The detention of persons in relocation centers by the WRA is likewise valid, if the facts and circumstances further support the reasonableness of that detention as a war measure. The existing facts lead to the conclusion that detention of Japanese at relocation centers would be sustained by the courts. The facts supporting the reasonableness of that detention fall into three categories:

1. Prevention of Violence and maintenance of orderly government.

It is a fact that persons of Japanese extraction all over the country and particularly in the West are in danger of their lives. Violence and threats of violence are of everyday occurrence. Voluntary migration of Japanese from the West Coast to inland communities has created unrest and disorder in those communities. Unrestricted movement of the Japanese may well lead, therefore, to bloodshed and riot which cannot be readily controlled, particularly if there should be war reverses in the Pacific.

The prevention of violence to Japanese is related to the war effort in at least three distinct ways.

(a) Harsh treatment of Japanese in this country may well result in still harsher retaliatory measures against American prisoners in Japanese hands.

(b) Violence against Japanese would also provide excellent food for Japanese propaganda in India and other Asiatic countries that this is a racial war; such propaganda would be as effective, literally, as divisions of troops.

(c) Violence and disorder in any community will tend to degenerate morale and to lessen efficiency in war production.

2. Reducing danger of infiltration by Japanese troops.

A resident Japanese cannot well be distinguished from a disguised Japanese soldier landed by parachute. By mixing with Japanese residents, soldiers could congregate in areas of strategic importance. In view of the clear possibility of invasion, the removal of all Japanese from all vital defense localities and restrictions on their movements in other areas within range of feasible sea or air attack are undoubtedly justified.

3. Prevention of sabotage and fifth column activity.

The third and most important basis for detaining Japanese as such depends upon the existence of facts showing disloyalty or probability of disloyalty among them to an extent justifying the precaution. It is believed that there are facts to support the reasonableness of detaining Japanese upon this ground.

In the first place, it is well known that the Japanese Government attempts to retain control over Japanese in other countries. It regards Japanese in those countries as still being subjects of the Emperor. It encourages Japanese to educate their children in Japan; its consulates keep close check on all persons of Japanese extraction and attempt to strengthen their ties to Japan. It subsidizes Japanese businesses in foreign countries for the purpose of furthering its economic control in those countries. There are evidencies in other countries, particularly in South America and countries now overrun by Japanese, that the Japanese Government maintains an active espionage organization.

It is also clear that the Japanese have not been absorbed into American culture as have other immigrants. We have refused them the right to become citizens by naturalization; we have refused them the privilege of holding land and otherwise discriminated against them. In a sense, we treat them as much as an inferior race as we do the negro. Partly as a result of this and partly as a result of their own culture, Japanese tend to congregate in colonies. Many of them maintain Japanese customs and religion and keep their contacts with the mother country.

We also know that many Japanese in this country are disloyal; many American citizens of Japanese extraction have been found to be Japanese Reserve Officers. There have been a

number of instances of subversive propaganda and other activities traceable to Japan. In addition, citizen Japanese have engaged in various types of suspicious activities. The charting of the West Coast by Japanese fishing sloops and their presence in fleet-maneuver areas have been given wide publicity. Japanese cameras have often been found in vital defense areas.

It is impossible to tell the loyal from the disloyal. This in itself probably would be sufficient to justify the detention of all citizen Japanese in view of the increased probability of disloyalty among them as distinguished from other citizens. Furthermore, we cannot be sure even in the case of the loyal that should the occasion present itself, as in the case of actual invasion, they would not, because of ties of race, color and religion, do an "about-face". It would certainly be constitutional to refuse to take so grave a risk. As a matter of fact, the courts, at least during war time, even if they disagreed as to the risk involved, would likely genuflect to the decisions of the military as to the need for detention.

The constitutional basis for detention would further be strengthened if sufficient flexibility were provided in the relocation centers so that under exceptional circumstances and after due investigation, individual Japanese could be permitted to leave the centers either temporarily or, if conditions warranted, permanently.

Employment of Japanese at Relocation Centers

1. It is probably impossible to compel Japanese to work against their will. While their detention can be shown to relate to the National safety as a war measure, the product of their work would be in no different category from the standpoint of war need than the product of the work of any other American citizen. Furthermore, it would be unwise to attempt to compel them to work in view of present negotiations between the State Department and the Japanese Government, under which the Geneva Convention of 1929 regarding treatment of prisoners of war would be extended to civilian internees and under which the compulsory labor of civilian internees would be prohibited. It is not expected that the lack of authority to compel labor will be a practical obstacle in view of the administrative devices of preferential treatment that can be used.

2. An enlistment in the War Relocation Work Corps will probably not bind the enlistee for the duration of the war. The enlistment creates a contractual relationship which would entitle the WRA to damages for breach, but it would probably not create a status which the courts would perpetuate since the enlistment is not under military law, and a court will not ordinarily enforce a contract for personal services.

3. Enlistment in the Army and assignment to the War Relocation Work Corps, as a device for obtaining permanency of enlistments, is subject to a number of difficulties. Army enlistment is limited to males over 18. Enlistees would be entitled to Army compensation. The statutory responsibility for the enlistee would then rest with the War Department.

4. The use of the Selective Service Act as a device to achieve permanency in enlistment would be subject to the same difficulties as voluntary enlistment in the Army, with several additional difficulties. The Selective Service Act requires that it shall be administered without discrimination on account of race. Also, it requires the induction of men on the basis of state quotas. The induction of all eligible Japanese would of course throw out of line the state quotas for the states from which the Japanese come.

5. The possibility of using the device of freezing Japanese assets as a means of keeping them on the project is still being considered. Obviously, if a Japanese has no money, he cannot leave a relocation center.

The Legal Framework of Project Self-Government

It is obviously impracticable to use existing state laws for the creation of local governmental units in the relocation centers, primarily because if cities were organized under state laws, the elected officers would have complete control over city government and would have powers inconsistent with the administration of the project by the Federal Government. It is nevertheless possible to set up a procedure under which a "mayor", a "city council" and "courts" can be established within the relocation centers with much the same functions as they would have under the regular city form of government. In legal theory the Project Manager would merely delegate certain of his administrative functions to persons designated by election or otherwise by the Japanese. He would retain in that manner such degree of control or veto power as might be necessary for him to discharge his responsibility.

The WRA through the Project Manager could create a form of criminal court within each relocation center which would operate in the same manner as a city police court in trying petty offenses and other actions prohibited by "ordinances" of the city council. This mechanism would be nothing more than an expression of the function of the Project Manager to maintain law and order, delegated to a body operating as a "criminal court". It will probably be advisable in the case of major offenses such as aggravated assault, murder, and rape, to bring the Japanese involved before the appropriate state or federal court.

With respect to civil disputes between the Japanese at the centers, an arbitration court procedure can be set up under which parties may bring their disputes before somebody appointed by the Project Manager or elected by the Japanese. In the event one of the parties refuses to submit to this type of arbitration, the Project Manager could probably require an administrative hearing before him. In other cases, it might be desirable to require the Japanese to go into the state courts to settle their difficulties. In some cases it will be necessary to have recourse to state courts. The WRA cannot create courts with the power, for example, to grant divorces, appoint legal guardians, or probate wills.

Saul Slick D.

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9-22-43

THE ANSWER IS RELOCATION

Twenty months ago, just two months after the disastrous attack on Pearl Harbor, the Commanding General of the Western Defense Command issued the first of a series of orders under which 112,000 Americans of Japanese ancestry, two-thirds of them citizens of the United States, were evacuated from their homes on the West Coast. Only the hospitalized were permitted to remain behind; no charges were filed against individual evacuees; the test applied to the individual was Japanese ancestry; the advance notice was only a few weeks; the attendant property losses were very large; the disruption of normal living habits was enormous; and evacuation has been followed by detention, first in an assembly center and later in a relocation center. Permission to depart from a relocation center can, even today, twenty months later, be secured only by applying for it in writing and only by those who can satisfy certain administratively prescribed requirements, and even they remain excluded from the evacuated area.

These events have necessarily raised ~~acute~~ large issues. They pose problems of racial discrimination, the content of civil liberties, the scope of the war power of a sovereign nation fighting for national survival. It is not surprising that counsels are divided ~~in the~~ and extreme. What gives these issues all the more point today is the fact that now is the time for important decision on the basic ~~issues.~~ problem. The die is not yet cast. The true definition that future historians will give to this West Coast evacuation will depend largely on the further steps that the Government will now take. It is not an over-statement that we still have it in our

power to make of the evacuation either ~~into~~ an unmitigated catastrophe or an achievement of statesmanship.

At one extreme it is urged that the evacuation and detention, particularly in the case of the citizens, was a wholly unconstitutional performance and completely unjustifiable, that "military necessity" provided not the occasion but only the excuse, that raw race prejudice, reinforced by an eagerness to take over the farms and businesses of the evacuees at sacrifice prices, was the "real" reason for the evacuation. Reasoning from such premises, these critics naturally demand for the evacuees the right of immediate return to the evacuated areas and compensation to the evacuees for losses endured. This charge is so grave that if it can be substantiated we ought to know promptly that that is the issue we face. As a self-confident democracy we shall know what to do if that sort of an indictment can be made to stand. The evacuation orders themselves, however, assert that a military crisis and the uniquely dangerous concentration of Japanese-Americans on the West Coast combined to make evacuation a military necessity. If that is the fact then a wholly different perspective becomes relevant in ~~considering and~~ weighing the evacuation and deciding on next steps.

~~There is still~~ Another set of critics ~~of the way the Government is dealing with this set of problems. They~~ maintains that the Japanese-American population constitutes a special danger to the war program; that their release in large numbers gravely endangers national security; that to permit their return to the evacuated area before the end of the war would be to invite civil disorder, espionage, and sabotage; and that our military position requires their internment for the duration of the war. The more extreme

among these extremists ask also that the citizenship of the Japanese-Americans be taken away from them, and that the entire group be deported to Japan when the war is over.

The Evacuation Facts

In the two months after the Pearl Harbor attack a number of groups argued the need for mass evacuation of the Japanese-Americans for quite dissimilar reasons. That some advocates were animated largely or wholly by racial antipathies and greed for property is almost certainly a fact. I don't believe, however, that any dispassionate review of all the evidence will conclude that these advocates had a controlling influence on the final decision. It was the President who made that decision, and the evidence is strong and clear that, mistaken or otherwise, the responsible military commanders and the President concluded that the evacuation was a military necessity.

It is easy to forget today, in the strong tide of favorable war developments, how grim was the position of the United States in February 1942. The Japanese had struck simultaneously at Pearl Harbor, Malaysia, Hong Kong, the Philippines, and Wake and Midway Islands. One day later the Japanese army invaded Thailand. Shortly thereafter the British battleships Wales and Repulse were sunk. On December 13 Guam was taken; on December 24 Wake Island; on December 25 Hong Kong; on January 2, Manila, and on February 10 Singapore. On the 27th of February the Battle of the Java Sea resulted in a naval defeat to the United Nations. Thirteen United Nations' warships were sunk and one damaged whereas Japanese

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initiation of the evacuation program, it was of the utmost military importance to prepare against the invasion of the Pacific Coast.

That Coast was an area of special military concern. Important army and navy bases and a large proportion of this nation's vital war production facilities were located in that region. For the period June 1940 through December 1941, contracts equalling in value approximately one-fourth of the total value of the major aircraft contracts let by the principal procurement agencies were to be performed in California. During that period, also, California ranked second and the State of Washington fifth with respect to the total value of shipbuilding contracts. California was in first place with about one-tenth of the total value of supply contracts of all types let during this period.

Approximately 126,000 persons of Japanese descent lived in the United States when war was declared. 112,000 of these, 90 percent of the total, lived in California, Washington, and Oregon. Even within these three States there was a further concentration within particular counties and cities, notably in or near Seattle, Portland, and Los Angeles. The Japanese-Americans were a special problem on the West Coast. They were discriminated against and disliked; in self-defense they huddled together and the rate of assimilation was slow; alien land laws and statutes prohibiting marriage with Caucasians increased the bitterness; employment opportunities were limited; there was relatively little social intercourse between the Japanese and the white population; they lived largely in segregated residential areas; one-third of the total number, and this included the overwhelming majority of parents and heads of families, were aliens ineligible to citizenship; ~~while over 60 percent of the native-born population was under the age of 20, over 95 percent of the foreign-born population was~~

~~between the ages of 19 and 70~~; approximately 24 percent of the alien Japanese population on the West Coast had last arrived in the United States since 1929 and thus were in Japan during the period of its emphasis on nationalism and expansion; the Japanese consuls were viewed as persons of considerable prestige by the alien population; the best estimate is that approximately 47 percent of the American-born persons of Japanese parentage in California held dual citizenship; the prevalence of Shintoism, reverence for the Japanese imperial family, among the West Coast Japanese-Americans, was a matter of concern but difficult to determine; approximately 10,000 American-born children of Japanese parents had been sent to Japan for part or all of their education; Japanese language schools were a potent influence and at the outbreak of the war there were 248 such schools with 19,000 pupils in Southern California, 14 schools in Oregon, and 9 in Seattle; there is evidence that the Japanese in this country were highly organized and many of the local associations were part of an integrated structure dominated by the Japanese Association of American which had been organized under the guidance of the Japanese Consulate; there was a considerable possibility of civil disorder arising from local violence against the Japanese minority.

The responsible military commanders concluded that to guard against espionage, sabotage, and civil disorder, to protect the rear of the armies that might need to fight an invasion of the West Coast, and to avoid the creation of incidents that would have given Japan ideal propaganda material throughout the Far East, the entire Japanese-American population ~~should~~ be evacuated from the West Coast to inland areas. One may quarrel with the conclusion drawn from the available evidence; one can hardly deny that a responsible military commander could reasonably conclude in February 1942 that the evacuation was a military necessity.

At first the army did no more than announce that the area must be evacuated, and encouraged the Japanese to move under their own power. Some 8,000 people left during this period of "voluntary" evacuation. Many of them, however, settled in eastern California and were later evacuated therefrom. The voluntary evacuation produced rumblings in all the Western States. Some of the evacuees ran into difficulties. There was believed to be serious danger of violence. The very fact of evacuation had xxxx tagged the evacuees "If he's dangerous in California, why isn't he here". The President then established the War Relocation Authority (WRA) by an Executive Order issued in March 1942 and charged it with responsibility for formulating and effectuating a program for the relocation, maintenance, and supervision of the evacuees. The Director of the Authority was instructed to provide for the needs of the evacuees, to supervise their activities, to provide for their employment, and to "provide for the relocation of such persons in appropriate places".

On April 7 the Director of WRA and army officers of the Western Defense Command met with a group of Governors and other State officials of western States in Salt Lake City to discuss plans for relocating the evacuated people. The reaction of the Governors was unmistakable. They expressed strong opposition to any type of unsupervised relocation. Some said they would refuse to be responsible for maintenance of law and order unless evacuees brought into their States were kept under constant military surveillance. It was decided to construct enough temporary "assembly centers" in fair grounds and other suitable places to house all the evacuees, since evacuation was in full swing, and thereafter to construct "relocation centers" in which the evacuees could be provided war-duration homes and jobs, or in which they could live

until more suitable relocation proved feasible.

The Relocation Program

WRA has since conceived itself to have two functions, the primary one of assisting the evacuees in finding jobs in communities willing to accept them, and the secondary one of maintaining the relocation centers as places of residence for the evacuees not yet reestablished in normal American communities.

In October 1942 Dillon S. Myer, Director of WRA, published the "Leave Regulations" of the Authority. They provide that any evacuee residing in a center, citizen or alien, who wishes to leave must file an application for that purpose in writing. Leave is then to issue to the evacuee, after suitable investigation, "as a matter of right", if four conditions are met. The applicant must have a job or means of support; he must be planning to go to a community in which WRA's surveys indicate that opinion is prepared to receive evacuees for indefinite residence and employment; his record with the intelligence agencies of the Government and with WRA must be such that the Director has no reasonable ground to believe that issuance of leave in the particular case will interfere with the war program or otherwise endanger the public peace and security; he must agree to keep the Director informed of his changes of address. The regulations recite that the Director reserves the right to revoke a leave when conditions are so far changed or when such additional information has become available that an original application by such person for leave would be denied.

A major alternative to the leave regulations was carefully weighed before they were published. The Director considered whether the gates of the centers might not be thrown open and the evacuees informed that they were free to leave at will, but encouraged to

remain until WRA could help them find jobs and could prepare community acceptance through a program of public information that would make clear that while a complex of social and military facts made evacuation from the West Coast necessary, there was no reason to suspect the loyalty or integrity of individual evacuees. This alternative clearly would have restored ~~the rights of~~ freedom of movement of the evacuees sooner and more completely than ~~they are~~ it is restored under the leave regulations; the issues of constitutionality of detention of citizens under such circumstances could be obviated; and the relocation centers would at once become converted from places of detention into havens of refuge. The alternative was extremely tempting. It was, nevertheless, decided that the military situation, the state of public opinion throughout the country, and the absence of data on the basis of which a screening of the evacuees might promptly be made, to separate the small minority who might readily engage in espionage and sabotage if released, from the great majority, compelled the adoption of the slower, less dramatic, more confining expedient of the leave regulations. This meant that every effort must at once be made to secure a basis for identifying the potentially dangerous. The constant effort of WRA since last October has been to process leave applications, to secure data concerning individual evacuees, and to locate jobs and secure community acceptance for those evacuees wishing to relocate and able to satisfy the requirements.

In February 1943 the War Department announced a decision to organize a combat team, one-third of a division, of American soldiers of Japanese ancestry. In all ten relocation centers the male citizens of military age were asked to fill in questionnaires on the basis of which selections could be made among the volunteers for the combat team. WRA converted this registration into a general registration of all evacuees over the age of 17 in order to secure, in one grand effort, basic data concerning all the evacuees.

That this preponderant majority cooperated so splendidly in the exasperating requirements of the evacuation, and have retained a strong and resilient faith in the democracy that tried their patience so sorely, should be always remembered in their favor.

This ~~would then~~ enabled a great speeding-up of checking the names of the evacuees against the records of the intelligence agencies and ~~could~~ enabled the issuance of "leave clearance" to the evacuees in advance of their application for release from a center. With the accumulation of a large back-log of leave clearances WRA could thereafter greatly speed up the relocation process, moving as rapidly as jobs could be located in suitable communities.

On the basis of the data secured from these registration questionnaires and the experience of processing thousands of leave applications, WRA has decided that the "potentially dangerous" evacuees to whom leave should be denied, whether citizen or alien, are those who have made formal request for repatriation or expatriation to Japan, who have answered in the negative a direct question as to their loyalty to the United States and persist in that answer, who are the subjects of an evaluated derogatory report from the intelligence agencies of the Government, or who have spent so much of their life in Japan and so little in the United States that they are quite thoroughly Japanese in culture, language, sympathies, and loyalties, and have had little opportunity to acquire American loyalties or affiliations.

Applying these criteria, it is anticipated that some 17,000 persons (including dependent members of families) will be denied indefinite leave if they request it. The central job of WRA ~~then~~ has become the reestablishment of the remaining 94,000 in normal ways of life. Insert clipped Reports

Some 18,000 have already been permanently relocated. On the whole, their relocation has been quite without incident and distinctly encouraging as to the prospects for relocation of the others. The Tule Lake Center in northeast California has been

set aside as a special center for those who are to be ineligible for leave. When the process of transfer of these 17,000 from the other nine centers to Tule Lake has been completed, the other nine can become, in a genuine sense, "free" centers in which the evacuees may live during the time it must take to find them jobs, to build up community acceptance, and to reassure the evacuees as to the safety of their departure from the center.

Civil Liberties and the Constitution

The United States Supreme Court has already had opportunity to decide some of the constitutional issues here discussed. During the evacuation period the Commanding General of the Western Defense Command prescribed, in addition to the exclusion orders, curfew regulations under which all persons of Japanese ancestry, whether citizen or alien, and all German and Italian aliens, were required to remain in their homes from 8:00 p.m. to 6:00 a.m. Gordon Hirabayashi, of Seattle, Washington, and Minoru Yasui, of Portland, Oregon, both citizens, deliberately violated the curfew order to test its constitutionality. Hirabayashi also disobeyed the order to appear at a designated place to receive instructions in connection with the evacuation, as did Fred Korematsu of San Leandro, California, also a citizen. All three men were convicted in District Courts under an Act of Congress punishing by fine and imprisonment the violation of military orders issued under Executive Order 9066 which authorized the evacuation. The Hirabayashi and Yasui cases were brought to the Supreme Court. Now, the significant

fact is that all the constitutional questions as to the scope of the war power, the validity of Executive Order 9066, and of the Act of Congress referred to, the permissibility of the racial distinctions drawn, the effect of the absence of individual administrative notice and hearing, or even of charges directed against individuals --- all these questions are involved in the validity of the curfew order quite as much as in the evacuation itself. True, the evacuation is a far greater interference with freedom of movement than is the curfew order and a stronger showing of military necessity must therefore be made to validate the evacuation. This is a difference of degree which it is not difficult to meet under the facts as summarized in the Court's opinion.

The opinion of the Court was handed down in Hirabayashi v. United States on June 21, 1943. The Court was unanimous in deciding that the war power of the Congress and the President, acting together as in this case, are broad enough to permit interference with the liberty of citizens, the question as to each interference being whether the military necessity at the time of action is such that the particular interference involved can be reasonably regarded by the military commander as being a military necessity; that the Court will give great weight to the judgment of the military commander as to the facts of the military necessity and will not substitute its judgment on the facts; and that differences of race and ancestry, when such differences are significant facts in a total military complex, can validly become reasons for dealing with one group of citizens differently than another.

Hirabayashi had, in fact, been indicted on two counts, one for violating curfew and one for violating the exclusion order. He

had been convicted on both counts and given a 3-month sentence on each, the sentences to run concurrently. The Court had presented to it, therefore, the question of validity of evacuation and could readily have disposed of that issue. It held, instead, that since the sentence could be supported adequately on the validity of the curfew order, it did not need to consider the validity of evacuation. That the Court took advantage of its opportunity to avoid passing on that complex constitutional issue is significant. It is reasonable to conclude that that ~~avoidance~~ avoidance was due, at least in part, to the Court's feeling that evacuation is more difficult to sustain than curfew, and detention in a relocation center even more difficult than evacuation. Mr. Justice Murphy in a concurring opinion said, concerning the curfew order, "In my opinion this goes to the very brink of constitutional power". The Court may have restricted its decision to curfew in order to go no farther than the unanimous Court was prepared to go. Justices Douglas and Rutledge also filed concurring opinions in which they made clear ~~emphasized~~ their uneasiness over the questions raised.

Because the Hirabayashi decision traverses most of the ground the Court will need to cover to sustain the constitutionality of evacuation, it is a reasonably safe guess that the Court will hold that evacuation was valid at the time it was decided upon. The Korematsu case which will present that question squarely for decision is now in the Circuit Court of Appeals for the 9th Circuit in San Francisco, and may well reach the Supreme Court this winter. The Court will soon have occasion to determine also the validity of detention in a relocation center under the leave regulations. Miss Mitsuye Endo has filed a petition for the writ of habeas corpus, denying the validity of her detention in a center. Her petition was denied by a United States District Court in San Francisco and that decision is being appealed to the

same Circuit Court which is considering the Korematsu case.

To direct attention exclusively to the interference with the liberty of citizens that occurs in the evacuation and relocation program, and to ignore the question of the scope of the war powers of a sovereign nation in a war for survival, is as much to miss the point as it would be to make light of the facts of racial discrimination and loss of freedom of movement. One distinction is central and should not be forgotten: The question of the existence of constitutional power to act when necessity requires is distinct from the question of whether the necessity in this case existed and the action was in this case wise. The power to act must be vindicated and kept clear, even where the wisdom of exercise of the power may be legitimately questioned.

In the present cases the Court has properly held that it cannot substitute its judgment as to military necessities for that of the responsible military commander. What our constitutional system does require, is that the Court shall independently examine the facts asserted by the military commander to create the necessity for action, but merely to determine whether, in the exercise of his responsibility, the commander could reasonably determine that the interference with liberty was a military necessity.

Liberty in a democracy represents a continuous balance between the claim of the citizen for freedom, and the assertion by the Government of the power to regulate and qualify freedom in the interest of the common good. The right to freedom of movement can no more be absolute than the right of property if the democratic state is to remain positive and strong.

~~It is~~ The facts summarized earlier in this article, on which

"PROBABLE ATTITUDE OF TITLE INSURANCE COMPANIES IN CALIFORNIA WITH RESPECT TO INSURING TITLES IN CHINESE PERSONS".....

By Peter S. Sommer, of the San Francisco Bar

IN A RECENT ARTICLE appearing in the January-February issue of the STATE BAR JOURNAL (Vol. XIX, No. 1, Jan-Feb. 1944) certain conclusions arising from the recent amendment by Congress of section 703, U.S.C.A., making it lawful for Chinese to acquire real property (Public Law 199, Chapter 344) were set forth.

Title insurance companies in California are now confronted with the practical application of these principles and collateral matters when called upon to issue policies of title insurance to Chinese or persons of Chinese descent.

The attitude that title insurance companies in California will probably assume in such matters is set forth in this article and is the result of a series of inquiries submitted to representatives of some of the title insurance companies. All contingencies are not covered and, even within the broad outlines herein set forth, each case will have to be determined on its own facts.

Of course, any violation of the Alien Land Laws prior to the passage of said amendment is not cured or condoned by the enactment of said amendment.

If title to real property in California was acquired by an alien, ineligible to citizenship, prior to August 17, 1923 (the effective date of the California Alien Land Law of 1923) even though such a title was acquired in violation of the prior California Alien Land Law of 1920, such alien could pass good title to a citizen prior to escheat proceedings being initiated by the Attorney General or District Attorney of the County wherein the real property was located.

SUPREME COURT ACTION

It was held in the "Estate of Yano," 188 Cal. 645, that under the Alien Land Law of 1913 (Act May 19, 1913, p. 206) a prohibited transfer of real property to an ineligible alien conveyed a defeasible title, which was good against everyone except the state. Our Supreme Court announced in the case of "Mott v. Cline", 200 Cal. 434, at page 448, that:

> "The exaction imposed for all other violations of the Act inhibiting transfers is that the conveyance is rendered void as to the state and the real property escheats to the state upon action brought by the attorney-general or district attorney of the county in which the violation occurs."

The State not having instituted escheat proceedings, it was held that the alien could transfer his title or interest to an eligible person (California Delta Farms v. Chinese American Farms, Inc., 207 Cal. 298) and title companies insured such titles.

In 1923 the Alien Land Act was amended (effective August 17, 1923) to provide (section 7) that:

> "Any real property hereafter acquired in violation of the provisions of this act by any alien . . . shall escheat as of the date of acquiring to, and become the property of the State of California."

Therefore, any title to real property acquired by a Chinese ineligible to citizenship between August 17, 1923, and December 17, 1943 (the effective date of Public Law 199, 78th Congress, Chapter 344, First Session) has not been and will not be insured by title companies in California even though title were to be conveyed to a citizen of the United States.

Title companies in California have agreed among themselves that the words "Chinese persons or persons of Chinese descent" (Section 703, U.S.C.A., as amended by Public Law 199, Chapter 344, 78th Congress) will be held applicable to a class, and not to the individuals within that class.

RULES SET FORTH

I believe that the following rules will be followed in connection with the following facts:

1. If title to real property was acquired by an ineligible Chinese prior to August 17, 1923, and no escheat proceedings have been initiated, title companies in California will insure such title after December 17, 1943, if the real property is conveyed to a citizen or to a Chinese person or persons of Chinese descent after December 17, 1943, but title insurance companies are not in accord as to their willingness to insure title in a "Chinese person" after December 17, 1943, where such Chinese person acquired the title prior to August 17, 1923, and continues to hold said title, such Chinese person having been an alien at the time of acquisition.

2. If title to real property was acquired by an ineligible Chinese between August 17, 1923, and December 17, 1943, title companies in California will not insure such title. This is true even though the ineligible Chinese may have since become a citizen or title may have been subsequently conveyed to a citizen or to an eligible Chinese alien. This would also be true if it should appear that the title was taken between said dates in the name of a citizen who was in fact holding it for an alien Chinese.

3. Title insurance companies will insure title to real property passing into a Chinese person or persons of Chinese descent after December 17, 1943, provided, however, that the foregoing requirements are complied with.

There are likely to be some cases where a Chinese who was eligible to and did own real property which was acquired between August 17, 1923, and December 17, 1943, and who will desire to transfer title to another Chinese or to a citizen, or where such a Chinese executed a deed of trust thereon as security for a loan and who will desire to renew said loan secured by said deed of trust, and, as a part of said renewal, may desire to transfer title of said real property

to a Chinese person who was formerly ineligible to citizenship.

In any of such cases I believe that when title companies are requested to insure such titles which were acquired between August 17, 1923, and December 17, 1943, by a citizen and title is sought to be conveyed to a Chinese who was ineligible to citizenship prior to December 17, 1943, they will refuse to insure such titles unless the conveyance is based upon a transfer handled through the facilities of the title companies and the consideration is commensurate with the actual value of the property. In the event of a renewal of a loan andtitle is sought to be vested in the name of a Chinese who was formerly ineligible to citizenship, the same attitude is likely to prevail.

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JAPANESE NATIONALITY IN CASES OF PERSONS BORN IN THE UNITED STATES TO JAPANESE PARENTS

A Japanese domiciled in the United States but born in Japan is referred to in Japanese as an Issei (first generation); a Japanese born in the United States of parents born in Japan is referred to as a Nisei (second generation); and a Japanese born and resident in the United States but educated in Japan is referred to as a Kibei (returned to America).

The pertinent portions of Japanese law governing nationality in cases of persons born in the United States to Japanese parents are quoted below:

Japanese Law No. 66 of March 1899. As revised by law No. 27 of March 1916, and by Law No. 19 of July 1924, effective from December 1, 1924.

Articlel. A child is regarded as a Japanese if its father is at the time of its birth a Japanese. The same applies if the father who died before the child's birth was at the time of his death a Japanese.

ARTICLE 20. A person who acquires foreign nationality voluntarily loses Japanese nationality.

ARTICLE 20 (2). A Japanese who, by reason of having been born in a foreign country designated by Imperial Ordinance, has acquired the nationality of that country, and who does not as laid down by order express his intention of retaining Japanese nationality, loses his Japanese nationality retroactively from his birth.

Persons who have retained Japanese nationality in accordance with the provisions of the preceding paragraph, or Japanese subjects who, by reason of having been born in a designated foreign country before its designation in accordance with the provisions of the preceding paragraph, have acquired the nationality of that country, may, when they are in possession of the nationality of the country concerned and in possession of a domicile in that country, renounce Japanese nationality if they desire to do so.

Persons who shall have renounced their nationality in accordance with the provisions of the preceding paragraph lose Japanese nationality.

ARTICLE 24. Notwithstanding the provisions of article 19, article 20, and the preceding three articles, a male of full 17 years of age or upward does not lose Japanese nationality, unless he has completed active service in the Army or Navy, or unless he is under no obligation to serve.

A person who actually occupies an official post, civil or military, does not lose Japanese nationality notwithstanding the provisions of the preceding eight articles until after he or she has lost such official post.

ARTICLE 26. If a person who has lost Japanese nationality in accordance with the provisions of article 20 to article 21, inclusive, is domiciled in Japan, he or she may, with the permission of the Minister of the Interior, recover Japanese nationality. But this rule does not apply to case in which the persons mentioned in article 16 have lost Japanese nationality.

It is understood that the expression of intention of retaining Japanese nationality, provided for in article 20 (2) must be made by the parent within 2 weeks after the birth of the child, if the child is to retain the Japanese nationality acquired at birth under article 1. In this connection reference may be made to the provisions of article 2 of the Japanese regulations (Ordinance No. 26) of November 17, 1942, the first paragraph of which reads as follows:

"ARTICLE 2. Those desiring to preserve their nationality in accordance with the provisions of clause 1 of article 20 (2) of the Nationality Law, and being those who are required to submit a report of birth by clause 1 or clause 2 of article 72 of the Census Domicile Law, shall file a report to that effect, together with a report of birth, within the period set forth in article 69 of the Census Domicile Law."

The period for the registration by the parent of the birth of a child, provided in article 69 of the Census Domicile Law, is 14 days.

From the foregoing provisions it would appear that a person of Japanese parentage born in the United States is regarded as a Japanese subject only if he has been declared a Japanese subject by his parents within 14 days of his birth.

While it might appear that the provisions of article 24 would preclude any Japanese male from divesting himself of Japanese nationality unless he has completed military service or has no obligation to serve, and while this provision is expressly applicable to article 20, the Department has been informed that it is not applicable to article 20 (2), which is regarded as a separate article.

--from War Relocation Centers
Hearings on S. 444

SOCIC

STATEMENT REGARDING OPINION OF IDAHO ATTORNEY GENERAL CONCERNING RIGHT OF CHILDREN OF EVACUEES TO FREE SCHOOL PRIVILEGES

1. An opinion issued by the Attorney General of Idaho, dated May 14, 1943 holds that children of Japanese parents "who are placed in a school district in Idaho by the Federal war relocation authorities," are not entitled to attend the public schools of the district without paying tuition fees on the ground that their parents do not become legal residents of the district. The Idaho statutes restrict free high school privileges in a school district to children whose parents maintain their legal residence in such district.

2. The opinion of the Attorney General asserts that the evacuees do not obtain legal residence or domicile in the districts to which they move and are, therefore, not entitled to free school privileges, because "they are virtually prisoners or at least charges of the United States Government", are "moved from their places of residence and domicile in coastal and defense areas involuntarily", and have "no right to exercise their own volition in choosing a residence or domicile." The reasons given by the Attorney General indicate a complete lack of knowledge of the leave regulations of the Authority and the restrictions applicable to evacuees who have been granted indefinite leaves, if the opinion was intended to apply to persons granted indefinite leave.

It is not clear that the opinion was intended to refer to persons granted indefinite leave. The State Superintendent of Public Instruction is withholding instructions to the school districts of the State until he has had further word from WRA.

3. The legal residence or domicile of a person is a question of intention. The intention to acquire domicile of choice necessarily involves an exercise of freedom of choice not prescribed or dictated by external necessity. A person cannot acquire domicile by any act done under legal or physical compulsion. A person who moves from a particular state under legal or physical compulsion and remains in a new abode involuntarily and under compulsion does not obtain a residential status in the new abode.

However, a person voluntarily moving from one place to another, choosing the place to which he moves and remaining there voluntarily, acquires legal residence or domicile at his new home, if he intends to remain there indefinitely.

4. Evacuees who have been granted indefinite leaves are free to decide whether they will leave the relocation centers and, if they leave, where they will go to establish their new residence, except they may not enter restricted military areas. Any of them, except aliens, may change their places of residence at will without obtaining the permission of anyone. Aliens are, of course, subject to the Department of Justice alien enemy regulations which

require the permission of the United States Attorney for travel but which do not substantially affect the right of aliens to choose places of residence.

The only requirements by the War Relocation Authority of persons granted indefinite leave is that they inform the Authority of their arrival at the destination to which they move, their business and residential addresses, and each subsequent change of address. The Authority does not attempt to select a new residence for the evacuees or to regulate their selection of places of residence, once they have been granted indefinite leave. Moreover, an evacuee who is on indefinite leave may not return to a Center without the expressed permission of the Project Director. Whether an evacuee will remain indefinitely in a place of residence that he chooses is entirely up to him.

5. The regulations of the Western Defense Command prohibit persons of ~~the~~ Japanese ancestry from entering designated military areas. However, the regulations do not prevent a person of Japanese ancestry from establishing legal residence or domicile outside the military areas, if the place to which he moves is one of his choice. An evacuee cannot establish legal residence or domicile in a State while living in a relocation center because his presence in the center is not voluntary, but the presence of an evacuee in the place to which he moves from a center would be voluntary and the fact that he was in a relocation center involuntarily and is excluded from his former home should not in any way prevent his establishing domicile outside of the center, since the domicile he establishes would be voluntary and could continue indefinitely.

6. It seems quite clear that the evacuees who are on indefinite leave may establish legal residence or domicile in a public school district when they move from a relocation center. This entitles their children to attend the public high schools without paying tuition charges under the State statutes.

7. A discussion of this matter with the State Superintendent of Public Instruction and the Attorney General should be helpful in clarifying the status of the evacuees who are on indefinite leave and the restrictions that are applicable to them.

CROPPING PERMIT

The United States (hereinafter called the Government), acting through the War Relocation Authority, hereby gives to _____ _____ license and permission to plant, cultivate, and harvest crops on the following-described lands during the 194__ cropping season; and to use not to exceed _____ acre feet of Government-owned water during such season in connection with such lands:

And to use the following building and structures located on such lands:

The license and permission hereby granted may be revoked in whole or in part at any time in the discretion of the Government by giving notice to the permittee in writing and in no event shall extend beyond _____.

The permittee agrees to use the lands in accordance with the requirements of good husbandry and in accordance with the following conditions:

Crops to be grown

Other conditions

The permittee, in return for the privileges herein granted, shall pay to the Government the following consideration:

For water furnished to the permittee by the Government, $_____ per acre foot as measured at _____ weir, payable as follows:

For the right to use the buildings and structures described above, $_____ payable as follows:

For the right to plant, cultivate, and harvest crops on the lands described above, $_____ per acre of cultivation, payable as follows:

In the event of termination of this permit before any of the crops planted by the permittee are harvested, the permittee shall not be obligated to make any payments which come due after the effective date of such termination. In the event of termination of this permit before all but after some of the crops planted by the permittee are harvested, the permittee shall not be obligated to make any payments for cropping privileges or water charges which come due after the effective date of such termination and which are attributable to the acreage which has not been harvested. In the event of partial termination of the permittee's privileges pursuant hereto, the permittee shall not be obligated to make any payments which come due after the effective date of such termination and which are attributable to the privileges so terminated.

The Government retains the right to use the above-described lands during the time this permit remains in force for any purpose not inconsistent with the license and permission herein granted.

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this permit or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to this permit, if the permit is for the general benefit of a corporation or incorporated company.

WAR RELOCATION AUTHORITY

_____
Witness

By_____
Project Director

_____ Relocation Center

_____
Witness

_____
Permittee

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GRAZING PERMIT

The United States (hereinafter called the Government), acting through the War Relocation Authority, hereby gives to _____ _____ license and permission to graze sheep and cattle* on the following-described lands during the 194___ grazing season:

And to use the following buildings and structures located on such lands:

The license and permission hereby granted may be revoked in whole or in part at any time in the discretion of the Government by giving notice to the permittee in writing and in no event shall extend beyond _____.

The permittee agrees to use the lands in accordance with good grazing practices. No more than _____ cattle and _____ sheep shall be grazed on such lands at any one time unless the Project Director of the _____ Relocation Center grants to the permittee written permission to increase these amounts.

The permittee, in return for the privileges herein granted, shall pay to the Government the following consideration:

For the grazing privileges, as follows:

*If only sheep or cattle are to be grazed on the lands, strike whichever is inapplicable.

For the right to use the buildings and structures described above, the sum of $_____, payable as follows:

The Government retains the right to use the above-described lands during the time this permit remains in force for any purpose not inconsistent with the license and permission herein granted.

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this permit or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to this permit, if the permit is for the general benefit of a corporation or incorporated company.

WAR RELOCATION AUTHORITY

_____ By_____
Witness Project Director

_____Relocation Center

_____ _____
Witness Permittee

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PRESS NOTICE

The Project Attorney announces a ruling by the Alien Enemy Control Unit of the Department of Justice that the original evacuation of persons of Japanese ancestry from the West Coast, or their removal from an assembly center to a relocation center, does not constitute a permanent change of address and, therefore, change of address notices need not be filed by aliens under the regulation of the Department of Justice to cover these two moves. However, such notices will be necessary when aliens depart from a relocation center for an indefinite leave. Administrative Instruction No. 22 now provides for a change of address notice only to U. S. attorneys, but it will most likely be amended to provide for similar notices to the Immigration and Naturalization Service and the Federal Bureau of Investigation.