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WAR RELOCATION AUTHORITY

Office of the Solicitor

WASHINGTON

JAN 7 1943

To: The Director

Subject: Recommendations on administrative policy and procedure, growing out of the recent outbreaks of violence at Poston and at Manzanar, including, among others, recommendations on trial and punishment for offenses against law and order; organization of police, intelligence, and social analysis services; rules to govern the making of arrests; a segregation policy, and a procedure for determining the facts immediately after an outbreak of violence at a relocation center.

Because of the recent incidents at Poston and at Manzanar, you have asked several members of the staff to consider various segments of administrative policy and procedure within WRA. Policies are being formulated for some wholly new activities that have been proposed, such as segregation, and changes are being proposed in some procedures that we have been following for quite some time.

The questions raised by these incidents are complex. They raise many questions of basic democratic theory, on which there is a good deal of difference of opinion among the members of the staff who are working on these problems. Many of us are bothered by questions as to the legal validity of some procedures that have been proposed. This last point is particularly important because many of the procedures that have been proposed for dealing with trouble-makers in the centers bristle with problems of legality.

I have therefore decided to try to organize, in one connected discussion, all the major proposals that are now under consideration -- chiefly in an attempt to clarify my own thinking, but also with the hope that this may contribute to the work others are doing. I shall at least try to answer the more important legal problems raised by the particular procedures you have asked various people to study. This is a field, however, in which legal and policy problems are very closely intertwined.

I shall try, however, to do more than merely state the problem and my reaction to the various solutions that have been offered. In each case I shall try to outline in considerable detail what administrative action I believe should be taken, and what should be contained in the Administrative Instruction (or other appropriate document) to be issued to establish that action. (I am not equally certain of my own view on all the details. I shall try, however, to be specific even on those details of which

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I am uncertain, because I believe that is the best way to get specific criticism so that you may make specific decisions.)

This memorandum will discuss the following:

I. The trial and punishment of offenders against law and order in the relocation centers.

II. The organization of police services in the centers.

III. The organization of intelligence and social analysis work in the centers.

IV. Rules to govern the making of arrests.

V. A program for segregating aggravated trouble-makers.

VI. Procedures for securing a comprehensive and objective report, immediately after the occurrence of an outbreak of violence in one of the centers, as to just what took place.

There are two or three things I should like to say in general about these six topics before discussing the first:

A. These six topics don't, by any means, exhaust the administrative steps we need to take to improve administration of our program and to prevent a recurrence of outbreaks of violence. Toward the end of this memorandum I shall briefly comment on some other administrative steps I believe we ought to take. But these six are in some sense the more immediate steps we need to take. Also, they are the ones that raise most of the difficult legal problems.

B. All six of these topics deal, it might be said, with the social pathology of our centers. They are all related to the problem of crime, violence, lawlessness. Of course it is true that only a small minority of the evacuees living in our centers -- just as it is only a small minority in any other group of 110,000 Americans -- engage in lawless or criminal behavior. But if we are to protect the health of the entire community, make it possible for the evacuees to live in peace and safety within the

centers, and develop the best possible general public opinion toward the evacuees so as to encourage their permanent relocation, we must carefully formulate and administer appropriate procedures for dealing with the criminal element. I hope nobody will assume from the fact that so much of this memorandum must necessarily deal with criminal behavior and methods of repression, that I am arguing for a generally repressive policy toward the evacuees. The only way we can fully realize a genuinely liberal program for the overwhelming majority of the evacuees is to deal intelligently and effectively with the small minority of criminals among them.

C. The six topics I have listed cover the whole range of the procedure that normally needs to be followed in dealing with crime in any community. I have not, however, arranged the six steps in their normal sequence. The normal sequence would probably be: first, the organization of police; second, the formulation of intelligence work; third, the arrest; fourth, the trial and punishment. The last two items — segregation and a procedure for investigating violent outbreaks — are, of course, special adaptations to our particular problem. I plan to discuss the trial and punishment of offenders before discussing the problems of police, intelligence work, and the making of arrests, because I believe that certain things we shall need to decide in connection with trial and punishment will affect the decisions we make on these other three problems.

I. The trial and punishment of offenses against law and order in the centers.

A. One of our difficulties is the fact that our own administrative personnel is not fully informed on the present procedure, established by Administrative Instruction No. 34 and some related memoranda, for dealing with such trial and punishment. Let me briefly summarize the present structure.

We have made provision for two different time-periods: the period from organization of the center until ratification of a permanent plan of government in a referendum of the evacuees, and the period of operation under that permanent plan of government.

In the first, or temporary period, we are relying for the trial and punishment of offenders on the direct disciplinary action of the Project Director. Administrative Instruction No. 34 does provide for establishing a temporary community council, with only advisory functions: it has no functions other than advisory and can take no final action on its own behalf. Neither in that Instruction nor in any other document, however, have we provided for a temporary mechanism by which the evacuees themselves can participate in the trial and punishment of offenders during this first time-period. At a number of the centers, however, the evacuees have been encouraged to organize what are called "temporary judicial commissions" that are supposed to exercise advisory powers to the Project Director in disciplining offenders. At several centers such "temporary judicial commissions" have held trials of offenders in such cases as theft and assault and battery and have recommended punishments to the Project Director.

During this temporary period, in addition to the disciplinary power of the Project Director, we have relied upon the fact that the general jurisdiction of the State and county legally applies to the relocation center and therefore people who commit crimes within the center may be turned over to State and county courts for trial and punishment. In addition, of course, if a Federal offense is committed, the offender may be turned over to the Federal courts.

To succeed the temporary period, Administrative Instruction No. 34 provides for the selection by the Project Director, from among the evacuees, of an Organization Commission. That commission is to prepare a permanent plan of government to be submitted for evacuee approval in a referendum. The Instruction lays down certain things that the permanent plan of government may not contain, and lays down certain other things that it must contain. In the field of law and order enforcement, Administrative Instruction No. 34 provides that the permanent plan of government must provide for a community council that shall have authority to establish regulations which will define offenses and prescribe penalties for the commission of such offenses. It is provided, however, that the regulations may establish only such offenses as are misdemeanors under State law. If the offense would be a felony under State law, the community council cannot adopt a regulation on that subject. It also provides that the plan of government must establish a judicial commission which will have authority to try and punish offenders who violate regulations of the community council.

The Instruction goes on to say that the general jurisdiction of the Project Director to take direct disciplinary action shall not be affected by the powers conferred in the permanent plan of government upon the council and the judicial commission.

After the permanent plan of government has been put into effect in any one center, therefore, the following methods would be available for the trial and punishment of offenses:

1. The Project Director can still summon any offender before him, give him a hearing, impose a punishment, and carry the punishment into effect.

2. If the offense is a violation of a regulation of the community council, then the judicial commission may try and punish the offender.

3. If the offense is a felony under State or Federal law, the offender may be turned over to the appropriate State or Federal court for prosecution.

B. I have said that this present structure is not widely understood by our own administrative people -- and that is part of our difficulty. However, even if every officer and employee understood it perfectly we should still be in difficulty. Let me state some of the reasons:

1. The permanent plan of government has not yet been established in a single center. The evacuees have shown a tendency to appoint endless numbers of committees, to engage in weeks of debate over the provisions to be written into the permanent plan of government. Administrative Instruction No. 34 was issued on August 24. This is the last week of December, and only this week have we received word that the first permanent plan of government has been approved for the Central Utah Relocation Center in a referendum of the evacuees. That center is now getting ready to hold the elections to fill the offices provided for in the permanent plan of government. The plan of government for the Granada center is ready for the referendum. The other plans of government are still being debated.

Therefore, during all this period there has been no judicial commission of evacuees to maintain law and order within centers. The "temporary judicial commissions" that have functioned at some of the centers could hardly gain much prestige

when their functions were purely advisory.

2. At the same time we have all been expecting that, at least in most cases, the evacuees would themselves try and punish offenses against law and order. In our thinking, we have tended to skip over the intervening period, and to think only of what would happen after a permanent plan of government had been approved. As a result, we have not spelled out a complete procedure for the Project Director to follow in taking direct disciplinary action. In the absence of such a complete procedure the Project Directors have not been sure as to the extent of their powers or as to the procedure they should follow. The police were not instructed that whenever an offense has been committed they should try to discover the offender and arrest him. There is no regular procedure for investigating cases to decide definitely which are to be tried directly by the Project Director, which are to be turned over to State or Federal courts, and which are to be placed on "trial" before the temporary, advisory, judicial commission so that it may make a recommendation to the Project Director. Many offenses went completely unpunished. The temporary judicial commission tended to advise very light punishments, or suspended sentences, in cases that pretty clearly called for stern disciplinary action.

3. When a permanent plan of government gets established, disciplinary power of the Project Director will duplicate or overlap the authority of the judicial commission for every offense that is a violation of a regulation of the community council. In such cases either the judicial commission or the Project Director can act. That this will tend to weaken the sense of responsibility of the judicial commission for maintaining law and order is clear from what has been going on in the temporary period. In this temporary period there has been a similar duplication or over-lap between the Project Director's disciplinary authority and such "authority" as the temporary judicial commission has had to hold trials and recommend punishments for offenses. Clearly a sharper line of demarcation between the cases to be tried by the Project Director, those to be tried by the judicial commission, and those to be turned over to the State and Federal courts, is needed.

4. No one has defined what constitutes an offense against law and order within one of the centers, except to the extent that such offenses are defined by applicable Federal and State law. (It should be recalled that our Administrative Instructions limit themselves to telling our administrative personnel

what to do and what not to do; they do not lay down any rules of conduct for the evacuees.) As a result, when a Project Director has tried an offender for beating somebody up, and when a temporary judicial commission has placed an evacuee on "trial" before it, neither could point to any specific regulation that the offender had violated. Both had to rely upon a sort of rough analogy to what is usually called an offense by municipal ordinance or State statute. There is no question that the Project Director had legal authority to take direct disciplinary action in such cases, even though no regulation specifically defined the offense. My point is, rather, that the absence of such specific regulations contributed to the general confusion as to what was and was not permitted, and as to what agency could punish for what conduct. Here again, the reason that no offenses were defined is that we all kept waiting for the permanent community councils to get organized and to adopt their regulations. Those were to be the regulations that would define the offenses.

C. It is rather difficult to go on to make recommendations on how we can clarify the procedure for trying and punishing offenses, because the whole question of structure for community evacuee government is now being reconsidered. The Project Directors have been asked to submit their recommendations, and not all of them have yet come in. Obviously, the procedure for law and order enforcement can be discussed only in terms of what is to be our policy for community evacuee government. If, for example, Administrative Instruction No. 34 is to be completely revised and evacuee judicial commissions abolished, our answers will be considerably different than if the present general structure is continued.

I believe we shall find that we either do not want to, or are not able to (or both), abolish the evacuee judicial commissions. I shall assume, for the purposes of this memorandum, that the general structure of community evacuee government, with its provision for an evacuee judicial commission, will be continued -- even though major changes may be made on such questions as the eligibility of aliens for membership in the community council. I want next to discuss some proposals that have recently been made for clarifying responsibility for trial and punishment.

1. It has been suggested that the judicial commission be made completely responsible for trying and punishing all offenders against the law and order in the center, except felony

cases which are to be turned over to the State and Federal courts. The Project Director is not to exercise any disciplinary function under normal circumstances. When, however, the Project Director is satisfied that the judicial commission is not acting effectively and that law and order is breaking down in the center, he will then post a public notice to that effect on the bulletin board, will suspend the operation of the judicial commission, and will then, through his own procedures, try and punish offenders until law and order is restored and the judicial commission can be re-established. Thereafter the judicial commission will again operate until another such break-down. It is true that this suggestion will avoid the criticism of duplication and over-lap between the responsibility of the Project Director and that of the judicial commission. I recommend against the proposal, however, because I believe it will encourage periodic disturbances in the centers. It will mean that the Project Director cannot take direct disciplinary action without condemning the judicial commission as ineffective. Whenever the Project Director exercises the power that this formula would confer upon him, it seems to me that he would necessarily heighten the tension at the center. The evacuees may very well feel that the procedure establishes something psychologically akin to a state of martial law.

2. It has also been suggested that we leave the assignment of responsibility as between the Project Director and the judicial commission very much as they are now, but issue instructions to the effect that the Project Director is not to act until he finds that in a particular case the judicial commission has not acted with the necessary speed or firmness. In such a case the Project Director shall place the offender on trial before him. I recommend against this suggestion, also. I believe it shares with the present situation the weakness that the judicial commission is not given a sense of responsibility since it can always shirk a case where it does not want to act, by waiting for the Project Director to do so. Further, this proposal would mean that every time the Project Director does act, he is necessarily announcing that in his judgment the judicial commission has failed to be speedy enough or firm enough. It ought to be possible for the Project Director to take direct disciplinary action where necessary, without thereby indicting the judicial commission or showing any disrespect for it.

3. It has been suggested that the evacuee judicial

commission be abolished and that there be established at each center an administrative board of three staff members to exercise all the disciplinary and judicial functions now exercised by either the Project Director or the evacuee judicial commission. It is urged that the evacuees are reluctant to sit in judgment on each other because they think of all of themselves as constituting what the anthropologists call a single "in-group" and Government officers are an "out-group". It thus becomes toadying, or disloyalty to one's own group, or participation in an injustice to the in-group, for an evacuee to impose a penalty on another evacuee. It is said that this pattern becomes particularly strong when the defendant in a case before the judicial commission is a member of a strong gang. It is said, also, that evacuees are reluctant to testify in such case, because that converts the witness into an "informer". It is also said that there is a good deal in the culture pattern of the American-Japanese that causes them to have much more respect for a trial administered by staff members than for one administered by other evacuees.

I think there are many elements of truth in this position. Possibly if we had the whole thing to do over again, we would want to separate the function of maintaining law and order from the other functions of local government, and keep the law and order function as one to be administered by WRA. We can never forget, however, that we are in the middle of a process and not at the beginning. The statements we have made to the evacuees about community evacuee government represent promises that they will be permitted to govern themselves within large limits. Because of what has recently happened at Manzanar, we probably could get away with abolition of the judicial commission at that center. I am afraid that to do so at the other centers would be interpreted by the evacuees as a "broken promise". One of our present difficulties is that the evacuees consider themselves to be suffering from a series of "broken promises". I recommend against this solution.

4. It has also been suggested that we make provision for a single judicial commission of six members, three of whom are to be evacuees and three are to be members of the Project Director's staff. This judicial commission would exercise all of the disciplinary functions now contemplated for either the Project Director or the judicial commission. Three members would be a quorum of the commission and could dispose of any case. It is said in favor of this proposal that it would make it possible for

the commission to determine for itself who best should sit in judgment on a particular case. In the case of strong gangs the three administrative members could sit. In many cases the three evacuee members could sit. In many others, all six could sit, or a mixture of staff and evacuee members numbering anywhere from 2 to 5. There would never be any danger of refusal to act by the commission since the three administrative members would constitute a quorum. If, in a particular case, the commission dividend evenly (either because all the administrative members voted one way and all the evacuees another, or because of any other equal split), the case would go to the Project Director for decision.

Here, too, there is a great deal to be said for the proposal. It avoids the present difficulty of duplication and over-lap. It would give the commission a sense of responsibility. The mixed membership would probably result in better considered judgments and better procedure. The proposal could easily be interpreted by the evacuees, however, as a move to "pack the judicial commission" with administrative members. The evacuee members of the commission could be taunted with being merely a front for the administrative members. The proposal could be charged with being a broken promise, quite as effectively as the proposal discussed immediately above.

I believe there is enough of merit in this proposal to justify its being discussed with the Project Directors, members of their staffs, and representative evacuees. If the proposal is liked at some centers and not at others, we could, of course, try it at some centers even though other centers were to have different arrangements. I recommend that we do discuss the proposal in this manner, and that we do establish it at some centers if we find that it is welcomed at one or more centers by the evacuees. It will at least constitute an interesting experiment. I definitely recommend, however, that we do not adopt this proposal at any center where the evacuees have not indicated in advance rather considerable support for the experiment.

In the rest of this discussion I shall assume that we shall have at the centers an all evacuee judicial commission of the kind provided for in Administrative Instruction No. 34. The recommendation I shall make below concerning the lines of demarcation to be drawn between the cases to be tried by the Project Director, those to be tried by the judicial commission, and those to be tried by the Federal and State courts, will not apply, of course, to a

project where such a mixed commission is to be established, since the mixed commission will exercise all the disciplinary functions proposed for either the Project Director or the judicial commission.

D. I have so far discussed some of the problems in the field of trial and punishment for offenses against law and order and some proposals that have been suggested for solving those problems, recommending against the adoption of any of those proposals (except for the adoption of the mixed judicial commission at a few centers, if the evacuees at those centers indicate a strong preference for it). I want now to outline in some detail the steps I believe we should take in this field:

1. The Director should issue an Administrative Instruction establishing certain acts as offenses against the peace and security of the relocation center. The offenses should be clearly defined and for each offense there should be specified either maximum penalties or both minimum and maximum penalties. This Instruction, I believe, should contain the following provisions:

a. The following offenses should be stated to be offenses against the peace and security of the relocation center when performed by any evacuee within the center: assault; assault and battery; carrying concealed weapons; inciting to riot; leading a riot; rioting; disorderly conduct; malicious mischief; trespass; injury to public property; maintaining a public nuisance; resisting lawful arrest; refusal to obey a lawful subpoena; refusing to aid an officer; abduction; theft; embezzlement; fraud; forgery; receiving stolen property; extortion; operating a confidence game; operating a gambling house; reckless driving; maintaining a place of prostitution; giving venereal disease to another; contributing to the delinquency of a minor; bribery; perjury; escape; disobedience to a lawful order. (I have already drafted definitions of these offenses. I am not including the list of definitions at this point, in order to save space.)

b. After each offense should be stated the applicable penalty. Among the penalties that can be provided are imprisonment; forfeiture (or loss of right to receive) for a stated period of time, or in a stated amount of all or part of the cash advances, clothing allowances, unemployment compensation benefits, or any other benefit, in cash or otherwise, which the offender would otherwise be entitled to receive from the WRA; and removal

from the center. A "fine" should not be imposed, because it is doubtful that WRA has legal authority to impose or collect such a fine. Almost the same effect can be achieved by withholding benefits that the offender would otherwise be entitled to receive from WRA, and such withholding is within our legal authority. (This Administrative Instruction will not be the place to provide for establishing the jail, but at this point I want to make the recommendation that the project jail should not be established within the boundaries of the relocation area. We have learned from experience that the evacuees can readily surround the jail when they wish to protest an arrest. The jail can therefore become a focal point for a riot. We should either rent a jail in a nearby town or establish the jail on a piece of land not far from the relocation center, perhaps close enough to enable the military police assigned to the center to serve also as guards for the jail. If the military police cannot perform that function, our project police can be given authority to guard the jail outside the relocation area.)

c. The trial and punishment of an evacuee for commission of an offense defined in this Administrative Instruction shall be held only before a board of three members of the Project Director's staff. (The organization of the board and the procedure that it should follow should probably be made the subject of a separate Instruction, and so it is discussed below.)

d. The Project Director's board should continue to exercise jurisdiction to try and punish those who commit the offenses defined in this Instruction until such time as the community council at the project duly adopts a regulation defining the same offense, and prescribing a punishment therefor. Thereafter, the Project Director's board shall not try or punish persons who commit that offense, but such offenders shall be tried and punished by the evacuee judicial commission on the ground of having violated a regulation of the community council.

The purpose of the foregoing provisions is, first of all, to take care immediately of the interim situation that confronts us, until a permanent plan of government has been approved in an evacuee referendum, a community council and a judicial commission have been fully organized, and the community council has managed to adopt regulations defining certain offenses. In that interim period, under the proposed Instruction, an Administrative Instruction of the Director would determine what

shall be offenses against the peace and security of the project, and the Project Director's board will try and punish persons who commit the offenses. When the community council gets organized and adopts a regulation establishing the offense of assault and battery, for example, then the evacuee judicial commission on that project automatically acquires jurisdiction to try and punish those who violate the council's regulation. Thereafter, the Project Director's board would no longer try and punish offenders who commit that offense. Gradually, as the community council adopted enough regulations to define all the offenses that are defined in this Administrative Instruction, the Project Director's board would no longer need to try and punish for those offenses.

There will still be, however, a field in which the Project Director, through his board, will have to exercise disciplinary functions, and that will fall outside the field of evacuee judicial commissions. That is the point I want now to turn to.

Before we turn to that next point, may I emphasize one aspect of the theory on which I am proceeding. Regulations established by the Director of WRA should be administered and enforced by WRA officers and employees. I believe, therefore, that during this interim period in which offenses can be defined only by the Director of WRA, trial and punishment of all those offenses should be in the hands of the Project Director's board. When the community council, however, has adopted regulations defining certain offenses, there is good reason for letting the evacuee judicial commission be responsible for punishing violation of those regulations. The judicial commission, on this theory, cannot punish any offense which is not a violation of a regulation adopted by the community council. That is supposed to have been the theory on which we have been operating from the beginning. The "temporary judicial commissions" at some of the projects, however, as I have pointed out above, have been trying people for committing offenses that have not been defined by regulations of the community council — or by anyone else.

2. What, then, should be the lines of demarcation between the cases to be tried by the judicial commission, the cases to be tried by the Project Director's board, and the cases to be turned over to the State and Federal courts. I recommend the following division of responsibility:

a. In the case of an <u>offense that is a felony under the law of the State in which the center is situated</u>, the offender should be turned over by the Project Director to the State courts for prosecution, unless the Project Director — he

can be assisted on these points by the Project Attorney -- determines that it is improbable that a prosecution of the felony would result in a conviction, or it is not certain whether the offense is a felony or a misdemeanor under State law, or the offense is a felony under State law but is only a misdemeanor under Federal law.

b. In the case of an offense that is a felony under Federal law, the offender should be turned over by the Project Director to the United States Attorney for prosecution in the Federal courts, unless it is improbable that a prosecution of the felony would result in a conviction, or it is not certain whether the offense is a felony or a misdemeanor, or the offense is a felony under Federal law but is only a misdemeanor under State law.

c. In the case of an offense that is a violation of a regulation of the community council, the offender should be tried only before the judicial commission.

d. The Project Director's board will try and punish the commission of any offense defined in the Director's Administrative Instruction that is not covered by a regulation of the community council, any other unlawful act that is not covered by a regulation of the community council, and that is not a felony under State or Federal law, and any act for which the offender should be turned over to a State or Federal court but cannot be so turned over because it falls under the exceptions stated in a. or b. immediately above in this subsection.

I am afraid that the material in this section must sound rather legalistic. The general pattern is that if an offense violates a regulation of the judicial commission, only the judicial commission will try the offender and punish him; if the offense is a felony under State law, the offender will be turned over to the State courts; if the offense is a felony under Federal law the offender will be turned over to the Federal courts; if the offense is not a violation of a regulation of the community council, and for the technical reasons stated the offender cannot be turned over to the State or Federal courts, then the Project Director's board will try the case.

It should be recalled that under Administrative Instruction No. 34 the community council can define as offenses only acts that are not felonies under the law of the State in which the project is situated. That Instruction should be changed

to provide that the community council can define as offenses only acts that are not felonies under either State or Federal law. (This was always intended, but was an oversight in the drafting of Administrative Instruction No. 34.)

It should be noted that inasmuch as only the judicial commission can try and punish an offense that is a violation of a regulation of the community council, the division of responsibility that I have here outlined would do away with the present duplication and over-lap between the disciplinary jurisdiction of the Project Director and that of the judicial commission. Part of the price that we will be paying, however, for doing away with this over-lap is the fact that we shall have to rely exclusively on the judicial commission to try and punish offenses that do violate a regulation of the community council and that are misdemeanors under State and Federal law. In the past we have been afraid to place such exclusive reliance upon the judicial commissions for such misdemeanors and therefore have reserved to the Project Director a general residual disciplinary power. In gaining the advantage of clear-cut jurisdictional fields, without duplication, we are surrendering the advantage of such residual power in the Project Director. I believe that, because of the importance of giving the judicial commissions a real sense of responsibility, we should undertake to rely upon the judicial commissions to deal with such offenses. If the judicial commission, in a particular project, refuses to act over a rather long period of time, or acts ineffectively, we can decide what to do about that situation when we meet it. It may never arise.

It should also be clearly noted that this division of responsibility will still leave a considerable disciplinary function to be exercised by the Project Director through his board. We know from experience that the community councils will be late in adopting regulations defining offenses. The Project Director's board will have to act in such cases until the community councils define the offense. We also know from experience that frequently when an evacuee has committed an offense that is a felony under State or Federal law, there may be sufficient evidence to satisfy the project administrative staff, because of their familiarity with the center and with the evacuees, that a particular evacuee has committed the offense, and yet not enough evidence to warrant turning the defendant over to the State or Federal courts. In such cases the Project Director's board willstill have jurisdiction.

It is important, therefore, to spell out clearly what should be the organization of the Project Director's board and what procedure it should follow. That is the point to take up next.

3. An administrative Instruction should be issued establishing the procedure to be followed by the Project Director's board. The procedure needs to have a certain amount of formality and dignity in order to be effective. The common law has learned by experience that formality in judicial procedures has tremendous value. The Instruction should provide:

a. The Project Director shall exercise his disciplinary power through a board composed of the chief of the Division of Community Management, the Project Attorney, and one other member of his staff. (It could be called the Project Director's Disciplinary Board.)

b. A clerk should be appointed to keep a calendar of pending cases, a record of decisions, and a set of files. A bailiff should be appointed to keep order during proceedings before the board, and to take charge of witnesses. A court reporter (stenographer) should be appointed to make a transcript of all proceedings before the board. The transcript need not be verbatim but should come close to that. The transcript of the proceedings in each case should be corrected and approved in writing by the presiding officer of the board. The presiding officer should be designated by the Project Director, and the designation may be changed, to rotate among the members of the board.

c. The board should be authorized to issue subpoenas over the signature of the presiding officer to subpoena witnesses needed at a hearing. The board should be authorized to punish for contempt witnesses who refuse to appear. A maximum permissible punishment for such contempt should be stated.

d. The board should be required to assign an advisor to the defendant if he does not choose one for himself, to help him present his case. The advisor need not be an attorney, although so far as possible, it is preferable to assign an attorney.

e. The board should assign some person to present the case against the defendant in the hearing. This person need not be the same one at all proceedings before the board. The evacuee attorneys assigned to the office of the Project Attorney can rotate in this assignment. The person given this assignment

in a particular case need not, however, be a lawyer. The board shall itself be responsible for seeing that a complete case is fairly presented. The defendant's advisor and the person assigned to present the case against the defendant are intended to help in this process, but the responsibility should rest with the board rather than with these persons. The board should have the right to question freely the defendant and the witnesses, supplementing the questions asked by the defendant's advisor and the person presenting the case against the defendant.

f. The trial procedure should consist of the following:

(1) The presiding officer should state clearly to the defendant the nature of the charge against him.

(2) The defendant should be asked to plead guilty or not guilty.

(3) The substance of the case against the defendant should be stated by the person assigned for that purpose.

(4) The substance of the case for the defendant should be stated by the defendant or his advisor.

(5) The evidence and testimony against the defendant should be fully presented. The defendant and his advisor should be permitted to cross examine the witnesses.

(6) The evidence and the testimony on behalf of the defendant should then be presented with similar right of cross examination by the person assigned to present the case against the defendant.

(7) The hearing may be adjourned when necessary to secure more information or for other reasons in the discretion of the board.

(8) Any evidence that is relevant shall be admissible. The board shall, however, in weighing the evidence consider its reliability.

(9) The board may announce its decision immediately or may take the case under advisement.

(10) The decision of the board shall be based only on the evidence presented in the hearing.

(11) It can either be provided that the decision of the board shall be advisory to the Project Director, and that the Project Director shall definitely decide guilt or innocence and impose the penalty; or the board can be given this authority, with or without provision for an appeal by the defendant from the board to the Project Director. I recommend that the board be given this authority and that no appeal to the Project Director be provided. I believe that under the circumstances in our relocation centers, the board can be trusted to do a careful unbiased job, and that little will be gained by providing for either review by, or appeal to, the Project Director.

g. The records of the board shall be maintained as part of the official files of the project.

h. Hearings before the board shall be open to the public except that the board may, in its discretion, bar spectators from the hearing where the nature of the testimony or other circumstances may make that appropriate. The hearings shall always be open to the public, however, where the defendant shall ask that as a matter of right.

i. Should the same trial procedure be required to be followed by the evacuee judicial commissions? Administrative Instruction No. 34 contemplates that the trial procedure of the judicial commission is to be determined either in the permanent plan of government or by the judicial commission itself. I believe we should first try to persuade the evacuee commissions to adopt voluntarily much the same kind of procedure that is outlined above for the Project Director's Disciplinary board. If particular judicial commissions persist in following a careless and unimpressive procedure, we shall have to determine what to do in each case on the basis of all the facts.

II. The organization of police services in the centers.

Recently you asked J. Edgar Hoover to assist us in selecting competent chiefs of police for the centers, in selecting competent Caucasian staffs to assist the chiefs of police, and in providing the necessary training for both the Caucasian and evacuee police officers. John Provinse and I have pursued the discussion with Mr. Ladd of the FBI. We have submitted to Mr. Ladd various material describing the present organization of government and internal security in the centers. Mr. Hoover and Mr. Ladd have not promised to work with us on these problems; they have merely promised to look into the question and advise us later what they can do. With or without their assistance, I recommend that we adopt the following policies in this field, many of which are, by no means, original with me, but which I wish to bring together in this memorandum for the reasons stated at the very beginning:

A. We should have at each center a professionally trained and competent chief of police. I think he should be called chief of police, and not chief of internal security or any other euphemism. Also, I believe his men should be called policemen and not internal security officers or wardens. There is nothing dishonorable in being a policeman. It is an ancient and honorable profession. (As a matter of fact, to me "warden" suggests a prison or an insane asylum; and "internal security officer" sounds like being afraid of the police.) I believe, also, that we should, if we possibly can, buy and distribute to the policemen complete uniforms that will unmistakably identify them as policemen. I think we have lost a great deal by identifying the policemen merely with arm bands. There are good reasons behind the universal use of complete uniforms for policemen.

B. At each center that consists wholly of a single unit, such as Granada, I believe the present policy of employing up to 6 Caucasian policemen per 10,000 of evacuee population may be adequate. This will enable 2 men to be on duty in 8-hour shifts around the clock, and the chief of police will also be on duty during 8 hours or more. (It may be advisable, however, to increase the number to 9 or 12, so that 3 or 4 Caucasian policemen may be on duty around the clock.) In those centers, such as Poston, where there is more than one unit, I believe the number of Caucasian policemen authorized should be increased so that not less than 2 Caucasian policemen are on duty in each shift at each unit.

C. It has been suggested that the presence of so many young men on our police forces is a mistake. I am inclined to agree. The chiefs of police should be instructed to select a suitable age distribution.

D. Possibly policewomen should be included in the evacuee members of the police force.

E. It should be made the definite responsibility of the chief of police, under the supervision of the chief of the Division of Community Management of the project and the Project Director, to appoint, organize, train, and direct the police officers. The chief of police should be made responsible for the general efficiency and conduct of the police officers. It should be made his duty to keep himself informed as th the efficiency of the police; to inspect them at regular intervals; to inform them as to their duties; and to keep an accounting of the equipment issued to them. It should be his duty, further, to detail such officers as may be necessary to carry out the orders of the Project Director's Disciplinary board, and the judicial commission, and to preserve order during the hearings of the board and commission. It should be his responsibility to investigate all reports and charges of misconduct on the part of police officers, and to recommend to the Project Director proper disciplinary measures. It should be his duty to maintain, as circumstances require, classes of instruction for police officers in order to familiarize the officers with the manner of making searches and arrests, the proper handling of prisoners, the keeping of records of offenses and police activities, and other subjects of importance for official police duty.

F. An Administrative Instruction should provide that no one shall be appointed a police officer unless he shall be in sound physical condition and of sufficient size and strength to perform the duties required; shall possess courage, self-reliance, intelligence, and a high sense of loyalty and duty; and shall never have been convicted of a felony, nor have been convicted of any misdemeanor for a period of one year prior to his appointment.

G. It should be clearly stated to be the duties of the police officer to inform himself as to the laws and regulations applicable to the center where employed, to obey promptly orders of the chief of police, or of the board or commission when assigned

to that duty; to lend assistance to other police officers; to investigate and report all violations of law or regulations coming to his notice or reported for attention; to arrest all persons observed by him to be violating the laws and regulations for which he is held responsible; to prevent violation of law or regulations; to abstain from using intoxicants while on duty; to refrain from the use of profane, insolent or vulgar language, and to use no unnecessary force or violence in making or maintaining an arrest, search, or seizure, or against the person of any one in custody.

H. The chief of police should be authorized to remove any police officer for noncompliance with duty or for neglect of duty, or for using extreme or unnecessary force or violence, or for other appropriate cause.

I. The Caucasian police officers should carry guns; the evacuee police officers should carry night sticks.

J. The Caucasian police officers should be deputized as deputy sheriffs of the county and State in which the center is situated.

K. There is one point on which we face a real dilemma. So far, experience has shown that evacuee police officers are not willing to assert themselves against organized gangs among the evacuees, and are almost wholly unreliable when a large mob gathers and serious outbreak is threatened -- such as occurred during the recent incidents. This means that if we do not have more than 6 to 12 Caucasian policemen at a center we shall not have enough Caucasian policemento deal with a major incident when it occurs. On the other hand, to call in the military police means newspaper headlines of a very adverse sort, and may mean tear gas and shooting. If we seek to avoid having to call in the military police when such outbreaks occur, we shall probably have to have from 50 to 100 Caucasian policemen at each center. That would definitely establish an inferior caste status for the evacuees. In this dilemma, I believe the horn of lesser difficulty is to rely upon the military police in the event of serious riot and to work on the assumption that our procedures can be so improved that such riots will not occur.

III. The organization of intelligence and social analysis work in the centers.

In the past we have taken the position that we did not want to build up a "snooping service" within WRA. We have said we did not want to duplicate the work of the FBI and that we were not qualified in this field. The result, however, has been that there has been no organized intelligence or investigational work at the centers. The FBI has sent representatives to the centers, so far as I know, only when specific request was made in connection with a particular occurrence, in which event one or more investigators appeared, made an investigation, and prepared a report, of which we did not always see a copy.

Although most of our centers have been in operation for several months, the Project Director and the chief of police do not know what gangs exist on their projects, who are the members of the gangs, what are the characteristics of the gangs, who are the habitual trouble-makers; when major riots or beatings occur nobody seems to know who were the principal participants. We stab in the dark, looking for evidence to identify the more severe cases of trouble-makers whom the Project Directors wish to remove from the centers.

I recommend that we organize at each center, as a unit independent of the police force but cooperating with the police force, and located in the division of Community Management, an investigation unit. This unit should be responsible for the usual type of police investigations, providing information concerning crime and trouble-making. That unit, however, will supply only a small part of what I think we need.

Because I believe that we need something much more than the usual kind of investigational unit -- although as I have said, that in itself is an important need which we have not so far filled. Administering a relocation center is a more difficult and subtle problem than governing the typical town of 10,000 people, because the evacuee residents of the center naturally refuse to accept the major premise that brought them to the center, namely, the need for their evacuation from the West Coast. Over and above the work of the police investigational unit, therefore, I believe we need to follow the suggestion that has been made tat

we organize "Social Analysis" work at each center. The people assigned to this work will probably need training in sociology, anthropology, social psychology. Obviously it shouldn't be an academic group; but there are specialized techniques in this field that are practically indispensable and that even intelligent people can't acquire just by osmosis. It should be the job of the social analysis group to sketch the cultural patterns of the evacuees. It is from the work of such a group that we can hope to get answers to the problems that have been bothering us from the beginning about the role and characteristics of the aliens, the alien bachelors, the kibei, the repatriates, the various city and neighborhood gangs, the pattern of parental influence, the significance of Judo, of Shinto; the social effect of excluding aliens from elective membership in the community council; as well as concrete information concerning individuals and families that will give the police investigation unit very valuable leads and that can give us a much more secure basis for operation of a disciplinary program, and a segregation program. It is such material, also, that will help us to discover, when a major outbreak of violence has occurred, what were the basic causes of the difficulty, and what was the pattern of the incident, what steps should be taken in controlling similar incidents that may subsequently occur, and what steps may be taken to forestall such incidents.

Even those who object to the organization of a police investigation unit (through, what I believe to be, a mistaken idea that the activities of such a unit must be illiberal) should welcome the organization of such a social analysis unit.

I would suggest, also, that the Project Director of each center should call together frequently for consultation and staff conference, the chief of the Division of Community Management on the project, the man who devotes special attention to the functioning of community evacuee government, the Project Attorney, the Chief of police, the chief of the investigation unit, and the man in charge of the social analysis work — more than one of these functions may, of course, be assigned to one man — to compare notes and information. Such a group ought to be able to provide valuable guidance to the Project Director in dealing with the peace and security of the project, as well as in attempting to predict the impact upon the evacuees of proposed administrative actions.

There is one further point, however, that is part of this whole field that we have hinted at but not yet discussed, and that is the rules that ought to govern the making of arrests by the police. I believe we need a special Administrative Instruction to deal with that, and shall outline that as the next point.

IV. Rules to govern the making of arrests.

We have already discussed the fact that there has been a lack of clarity at the projects as to what are offenses against law and order in the centers, and as to what agency is supposed to provide trial and punishment for particular offenses. That lack of clarity has also resulted in a rather loose procedure in the making of arrests. Apparently, in some instances, evacuees have been arrested in the absence of evidence that would reasonably indicate that the person arrested had committed any particular wrongful acts. This lack of clarity also resulted in the detention of arrested persons for several days while the project personnel tried to decide what charges to file and before whom to file them. The circumstances under which such arrests were made has, in turn, led to the organization of mobs to release the prisoners. The evacuees have felt, or have said that they felt, doubt that the arrested evacuee would receive a fair trial — particularly where it was rumored or announced that the evacuee would be turned over to the State courts for prosecution. At one project the evacuees made a special point of the fact that an arrested evacuee had been detained for more than 72 hours without the filing of charges, whereas the law of the State with which they were familiar requires such charges to be filed within 72 hours.

I believe we need, therefore, an Administrative Instruction that will outline carefully some rules to govern the making of arrests. This is an Instruction that I believe should be brought to the attention of the evacuees. When the evacuees come to recognize that a carefully safeguarded procedure for making arrests has been established, there should be less occasion for their becoming concerned when a particular arrest has been made. The Administrative Instruction should contain the following:

A. The Instruction should make clear that it applies to any arrest that is to be made of any evacuee for the purpose of placing him on trial on the charge of having committed an offense,

whether the trial is to be held before the Project Director's disciplinary board, the judicial commission, or the State or Federal courts.

B. No evacuee shall be arrested, with or without a warrant of arrest, unless --

1. There are reasonable grounds to believe that an offense has been committed; and there are reasonable grounds to believe that the person or persons arrested committed the offense; or

2. the person arrested has refused to obey a subpoena issued under the procedure set forth below.

C. A police officer may make an arrest without a warrant only of an evacuee who has committed, or is committing, an offense in his presence.

D. An arrest of an evacuee may be made for an offense not committed in the presence of a police officer only pursuant to warrants of arrest issued by the Project Attorney. In the absence of the Project Attorney such warrants may be issued by that member of the Project Director's staff designated for this purpose b the Project Director, and the person so designated may, in the absence of the Project Attorney, exercise the authority conferred on the Project Attorney in connection with arrests.

E. The Project Attorney shall issue a warrant of arrest on the application of a police officer who makes a signed, written statement that he has reason to believe that an offense has been committed and that the person for whom the warrant is requested has committed the offense. The Project Attorney, in his discretion, may require such additional details to be included in the statement as he may believe desirable. Where it is urgent that the warrant be issued at the earliest possible moment the Project Attorney shall normally not require more than the statement of the officer that he believes an offense has been committed and that the person for whom the warrant is requested has committed it. Where the issuance of the warrant is less urgent, the Project Attorney shall normally require the police officer to state briefly why he believes the person for whom the warrant is requested has committed an offense. In any case in which the Project Attorney

finds that the belief of the police officer that an offense has been committed, or the officer's belief that the person for whom the warrant is requested has committed it, is clearly unwarranted, he shall refuse to issue a warrant. The Project Attorney's finding in such cases shall be made in writing and a copy shall be at once transmitted to the Project Director. The Project Director may advise the Project Attorney that in his judgment the arrest should be made. If he so advises the Project Attorney, the Project Attorney shall immediately issue a warrant.

F. The Project Attorney shall also issue a warrant of arrest on the application of any evacuee, any member of the staff of WRA, or any other person within a relocation center, who makes a signed, written statement that he has reason to believe an offense has been committed, setting forth his reasons for such belief, and that he has reason to believe that the person for whom the warrant is requested has committed the offense, setting forth his reasons for such belief -- except that the Project Attorney shall not issue a warrant in these cases unless he is satisfied from the statement that there are reasonable grounds to believe that an offense has been committed and that the person for whom a warrant is sought has committed it.

G. The Project Attorney shall also issue a warrant of arrest on application of the Project Director for the arrest of a person who has refused to obey a subpoena under the procedure provided below.

H. All signed, written statements on the basis of which warrants of arrest are issued shall be preserved and made a part of the record in the case.

I. All warrants of arrest shall be issued in the name of the Director of WRA; shall state the name of the defendant; shall state the date and exact time at which it was issued; shall briefly, but substantially, set forth the nature of the offense; and shall be signed by the Project Attorney or other person authorized to issue it.

J. The Project Director should be given authority to issue a subpoena, to be served by a police officer, requiring any person who has reason to believe has information pertaining to the commission of an offense, to appear at a time and place

designated in the subpoena for examination either by the Project Director or by a person designated by him. A person on whom such a subpoena is served shall be given a reasonable time in which to appear. In determining what is a reasonable time, the Project Director shall consider the nature of the offense and any other pertinent circumstances. If a person fails to obey a subpoena, the Project Attorney, at the request of the Project Director, shall issue a warrant for his arrest. The Project Director should be given authority to punish a person who has refused to obey a subpoena, by confinement for a period not to exceed 10 days.

(I have recommended above that the Administrative Instruction to be issued by the Director to define the acts that shall constitute offenses against law and order should provide that refusal to obey a lawful subpoena is such an offense. A person who refused to obey a lawful subpoena will therefore be an offender who can be arrested, tried and punished under the regular procedure. It seems to me to be wise, however, to provide special authority to the Project Director to subpoena people for examination where an offense has been committed, and to enable the Project Director to punish by confinement up to 10 days a refusal to obey such a subpoena.)

K. When an evacuee is arrested he shall be informed promptly of the charges against him. A specific charge must be entered on the record within 48 hours after his arrest. Additional charges may be entered later. Within 48 hours after an arrest, except where the arrest is for refusing to obey a subpoena issued by the Project Director, the case shall be referred to the secretary of the Project Director's Disciplinary board, or the secretary of the judicial commission, if the case is to be tried by either of these agencies, so that the case may be entered on their dockets for trial. If the case is to be referred to the State or Federal courts for prosecution, such referral shall be made within the 48 hour period, and the person arrested shall be held for turning over to the proper authorities.

L. The Project Director's Disciplinary board and the evacuee judicial commission shall hear the cases on their docket promptly, and in no case shall a trial be unduly delayed.

M. When a charge has been filed against a person and his case has been entered on the docket of either the judicial commission or the Project Director's Disciplinary board for trial, the Project Director shall consider whether the internal security

of the center will be adversely affected if the defendant is released pending trial. Where the Project Director shall be satisfied that such internal security will not be adversely affected, the defendant shall be released from confinement pending trial, if he will give a personal undertaking to report for trial when notified, but the Project Director shall require him to remain at all times within the boundaries of the relocation center until his case has been tried. If the Project Director shall believe that the internal security of the center will be adversely affected by the defendant's release pending trial, the defendant shall be kept in custody until the case is tried; but, in this event, the Project Director shall insert a signed, written statement in the record setting forth why he believed it necessary to keep the defendant in custody.

N. Where a person placed in custody is to be tried in either the State or Federal courts, he shall be retained in custody, and not released, until such time as he is turned over to the appropriate State or Federal authorities.

O. A person in custody, either while awaiting trial or while serving a sentence imposed upon him, shall not be eligible to receive any kind of leave under the leave regulations.

P. We shall probably need some procedure for authorizing a police officer to make a search and seizure of premises or property. There are some special legal difficulties involved in this problem, however, that need further study. I shall submit recommendations on this point later.

V. A program for segregating especially severe trouble-makers.

When the procedures so far discussed have all been established, we shall have made provision, it would seem, for the usual offenses against the peace and security of the centers. If a beating occurs, or a theft, or a fraudulent gambling game, a police officer who sees the event occur can make an immediate arrest. If no police officer sees the event occur, then any person who believes that it occurred can report it through channels to the Project Director. The Project Director can, with the assistance

of the police and the persons in charge of the social analysis and police investigation units, attempt to discover what took place and who was involved. He can issue subpoenas to summon people who are believed to know what took place in order to question them. Statements can then be made to the Project Attorney who will issue warrants of arrest for the appropriate people. They can be arrested, tried, and punished by the appropriate agency.

To this extent we shall have provided a pattern for maintaining law and order that corresponds rather closely to the general pattern that obtains in any average town of 10,000 people. (We thought we had provided such a pattern last August when we issued the Administrative Instructions on community evacuee government and internal security. As I have pointed out, however, those Instructions looked to the permanent plans of government to be prepared by the Organization Commission and to the community councils to provide most of these procedures. Months have gone by while we have waited for the permanent plans of government to be prepared and for the community councils to get organized. Under these recommendations we shall establish the basic procedures immediately. As the community councils adopt various regulations defining offenses, the council and the judicial commission can take over much of the work that the Project Director's Disciplinary board will be performing in the meantime.)

The relocation center is not, however, just an average town of 10,000 people. The average town doesn't have to have a company of military police guarding the exterior boundaries, and it isn't peopled with persons who have been removed against their will from homes and jobs and properties and normal living habits to be transported over considerable distances under military guard. The evacuees resent the evacuation. Many of them have been made extremely bitter. Nearly all of them have received a severe shock.

If the evacuees were permitted to find their own homes in different places throughout the United States, and were given some reasonable assistance in doing so, then all the resources and facilities of governmental and community agencies would be available to deal with any special lawlessness that the evacuees in their anger and resentment might be driven to. We have decided, however, that in the interest both of the country in time of war and of the evacuees themselves, it is not wise to permit all

110,000 of them to leave the centers simultaneously to seek homes and jobs wherever they will. That decision means that evacuation is followed by detention in our relocation centers. True, it is a qualified detention, and our leave regulations have established that each evacuee has an unbreakable right to leave the center if he wishes to do so, provided he meets the requirements of having a job or means of support in a community that shows no strong sign of being unwilling to receive him, has no subversive record with the FBI, and says that he will report his changes of address. As a practical matter, it takes us a long time to find the jobs and the communities and the FBI clearances. In the meantime, most of the evacuees have to remain in the centers.

Still further, for various reasons, many of them beyond anybody's control, there is much in the physical conditions of the centers against which any reasonable person will complain. At best, also, the evacuees are quite rightly disturbed over crowding, community mess facilities, inadequate internal transportation, and similar difficulties. There is an inevitable weakness of communication between WRA and the evacuees so that the evacuees draw inferences from existing difficulties as to WRA's motives and purposes that are distinctly less creditable than our actual motives and purposes.

Still further, people with criminal records and members of tough gangs, who would normally be treated with rough justice by policemen, police court judges and the like, have been treated in our centers with much more gentleness, because we have been unable to distinguish the criminal from the resentful. I should add, too, that the alien enemy hearing boards of the Department of Justice and law enforcing agencies on the West Coast seem to have assumed when they first heard about the relocation centers of WRA, that they were intended to be concentration camps and therefore sent to our relocation centers -- without even warning or information to us concerning what they knew about them -- many people whom otherwise they would have interned for the duration of the war, or placed in jail for trial for specific offenses.

I believe that this combination of circumstances -- even without considering the fairly strong probability that there exists among the evacuees in at least some of our centers an influential, though small, minority of evacuees who want Japan to win the war and are willing to sabotage the evacuation and relocation program in order to create incidents that will help

Japanese war propaganda, and will interrupt the Americanization of the evacuees -- means that our relocation centers are being asked to carry a law and order problem that is far heavier and more difficult than the law and order problem of the average town. We have to meet the problem, also, with policemen who have little or no professional training for that work. Also, we have a much more limited population from which to select community leaders, members for the local legislature, judges for the judicial commission, policemen, and other necessary officers.

I believe, therefore, that we need to use a special form of surgery to remove the most severe and aggravated cases of incorrigible trouble-making from the centers. Only with their persistent evil influence removed can the law and order mechanism, in my judgment, have a fighting chance to work successfully. It is for the performance of this surgical operation that I believe a segregation program is needed.

The term "segregation" has been used by so many different people with different meanings, and some forms of segregation that have been strongly urged are so inherently cruel and unfair, that I should like to make a few preliminary comments on the general subject of segregation before outlining the procedure that I recommend we follow.

A. It has been suggested that all aliens and kibei be segregated. To soften this somewhat, advocates of this idea have suggested that a hearing board procedure be established to give hearings to those aliens and kibei who don't want to be segregated. The purpose of this segregation was supposed to be to separate those who are disloyal to the United States from the rest. After the separation, public announcement was to be made of the fact. It was believed that those not segregated could then be more quickly relocated on an individual basis. The segregated evacuees, being thus labeled, would presumably have to go back to Japan when the war is over.

I believe this proposal has lost most of its sponsors. We know that a great many among the aliens and the kibei are loyal to the United States, and law abiding. In any such hearing board procedure many of them will be completely unable to offer "proof" of this, and they ought not to be put into the position of being

considered guilty until they prove themselves innocent. When the families of those who would need to be segregated, in this plan of segregation by categories, are added to the total, something close to 30,000 people would be condemned wholesale in the absence of evidence and solely on the basis of a generalized judgment that the aliens and kibei are dangerous.

B. It has been suggested that all those who have asked for repatriation to Japan be segregated. A man may make up his mind that he wants to go back to Japan to live and still be law abiding, and determined to give no trouble whatever to the authorities while he lives in the United States. He may even be a "milquetoast". There is apparently good ground for believing, also, that a good many people asked for repatriation in the first flush of resentment and fear over evacuation. Many of them have apparently since reconsidered and are again good material out of which to make good Americans. I can see no objection to asking those who have formerly asked for repatriation to make up their mind again whether they want to stay in the United States or be repatriated, and then segregating those who again ask to be repatriated in a separate center to be maintained just for them. I believe the evacuees should be told in advance that those who now indicate that they want to be repatriated will be moved to such a separate center and that no one else among the evacuees will be moved there. Such a separate center should then be a way station in which the evacuees can live until they leave for Japan. Obviously WRA need apply no special restrictive policies to that special center. I should think that all our policies could continue to apply to that center, except that the leave policy ought to be made inapplicable except, perhaps, for short term and possibly also work group leaves.

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I believe it would be exceedingly unwise, however, to place in the same center with such repatriates the thugs, plug-uglies, and exceedingly difficult disciplinary cases, who represent, in my judgment, the real group that needs to be segregated.

C. We have more often thought of segregation as a method of dealing with those whose sympathies are with Japan rather than with the United States, than we have thought of it as a tool of discipline and maintenance of law and order. I have myself. For some time I have been among those who advocated segregation as a way of removing the small, "pro-Axis" group from among the evacuees on the basis of individual investigations. I feel now, however, that we should distinguish between those who are the sources of

continuing violence because of their pro-Axis beliefs,and those who simply entertain a sentimental attachment to the land of their fathers. Where pro-Axis sentiment is joined with anti-social activity and becomes an aggravated case, I believe it presents for us a problem of segregation. Where it is not, I believe that our regular program of administration of the centers is adequate to deal with it.

D. If we stop thinking about segregation as something that is to be done to whole categories of people without evidence against individuals; and separate it from the problem of dealing with repatriates; and consider it as a tool for helping us maintain law, order, peace, security, and creative activity within the centers, our problem becomes much simpler. We need then only ask: do we need such a program at all? What procedure can we establish for selecting the right people to be segregated? In what kind of a place shall the segregated people be kept, and under what policies? How can we accomplish the segregation without stirring up trouble in the centers? The first of these questions I have tried to answer above. I believe we need a policy of segregation because the special conditions I have summarized above at pages 28 to 31 convince me that the relocation center cannot maintain law and order if the aggravated and incorrigible trouble-makers are allowed to remain there. To these other questions I shall try to recommend answers in the proposed outline of an Administrative Instruction, given a little further on.

The purpose of this kind of segregation is, then, chiefly preventive. It seeks to skim off the sources of serious violence and trouble-making. It is not a substitute for the operation of the regular procedures for handling criminal offenses. Those regular procedures will continue and will from time to time help reveal particular individuals who will need to be segregated. Furthermore, segregation is not primarily intended as a punishment for those segregated. As a matter of fact it would be quite appropriate for the Project Director's Disciplinary board and the judicial commission to recommend segregation, but that would be a recommendation arising out of their knowledge of special facts and not merely a punishment for a particular offense. Far from being just a punitive measure, I would strongly urge that we make a special effort to provide guidance and social rehabilitation to those who are segregated, but that raises questions of the policies to be applicable to the segregation center, which I want to discuss later.

E. I have already suggested that segregation should not be used as a device for setting apart people merely because they are aliens or kibei, or those suspected of pro-Axis sympathies. I think we also need to emphasize that segregation must not be used to remove evacuees from relocation centers solely because they are critical of WRA policy or WRA administration. The right to criticize and protest by lawful means is an exceedingly important democratic principle. We should protect that right, and should welcome the criticism. This does suggest that our procedures for selecting those to be segregated must be such as to enable us to guard against misguided zeal in this direction at the project level. Similarly, segregation should not be used to take care of psychopathic or other abnormal cases merely because it is difficult to handle them. If commitment to an institution is not required, we may have to make special provisions at the centers for dealing with such cases.

To guard against misunderstanding, perhaps I should add that evidence of criticism of WRA, of psychopathic or of anti-social behavior, or of pro-Axis sympathies, is relevant in making determinations concerning segregation of particular individuals. Such evidence, however, is never by itself an adequate substitute for evidence that any given person is, in fact, a responsible agent in fomenting disorder, who is addicted to trouble-making, is a serious case and is beyond the capacity of the regular law and order processes at the center to keep under control.

F. I recommend that an Administrative Instruction be issued to establish the following procedure and policies for segregation:

1. The Instruction should state the purposes of segregation, and the basic theory on which it is supposed to operate. (I believe that this Instruction should not be made generally public, as most instructions are, but should be treated as a restricted document and limited to the members of the Project Director's staff who will need to administer its provisions. The effect upon the centers of a sudden publication of the policy will, I believe, be bad. I am not urging this caution because I believe that the evacuees themselves will not welcome the policy. On the contrary, once we have had a chance to demonstrate by

performance how the policy will work, that there will be no sudden swooping down upon individuals and that the policy is designed to help the community deal with its own most aggravated cases of disruptive conduct, I believe the evacuees will welcome the policy and feel more secure because it is in operation. Precisely as citizens generally feel more secure because of the existence of Alcatraz. The danger lies, rather, in the fact that the evacuees don't yet know how to interpret the announcement of a new policy by WRA. Many of them are still in the stage of fearing and distrusting the government. It will be easy for outrageous rumors to start circulating as to what is "really" behind the announcement of a new policy. The very individuals who need to be segregated, but whom we will not yet have located, will have a field-day for stirring up trouble over the launching of the new policy. Thereafter, the attempted operation of the policy can lead to one incident after another. This is an activity in which we must move confidently but thoughtfully, with ill-considered action being just as dangerous as not taking the action. It is, of course, true that in the course of the operation of the segregation program its existence will become generally known among the evacuees. My point is, however, that it is best for them to come to know about it by observing how it operates, rather than by listening to a flood of false rumors that would accompany its sudden publication.)

2. There should be established at each relocation center a 3-man board consisting of the Project Director as chairman, the chief of the Division of Community Management, and the Project Attorney. The function of this board should be to investigate every case in which it appears that an evacuee should be considered for segregation.

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3. The board should prepare a complete docket on every case seriously considered by it, whether segregation is finally recommended or not.

4. In every case in which the board believes that removal of the evacuee from the relocation center is necessary, it should submit that docket to the Director, with its recommendations.

5. The docket on each case should contain:

a. A recommendation from the board to the Director stating the board's recommendation.

b. A copy of the Individual Record, Form WRA-26, for the evacuee.

c. A copy of any application for leave clearance that the evacuee may have filed. If he has not filed one, such an application form should be filled in for the evacuee and placed in the docket. (That form calls for a great deal of information concerning education, travel outside the United States, and associations and affiliations, that will be of value on this problem.)

d. A summary of the charges against the evacuee that have been brought to the board's attention. The summary should give the names of the persons making the charges, any circumstances throwing light on the credibility of such persons, and a statement of the opinion of the board as to the bias and credibility of such persons, with an indication of the board's reasons.

e. A summary of the types of evidence available to support the charges, such as signed statements of project officials or of evacuees based on personal knowledge; oral evidence based on personal knowledge; circumstantial evidence; confessions concerning particular statements or conduct; police record; etc.

f. A statement of all available evidence (except that already given in the summaries called for above in subsection d.) indicating the source of each item of evidence.

6. In the course of its consideration of a particular case, the board may come to believe that the particular evacuee should not be sent to the segregation center but that it is nevertheless important that he be removed from the center in which he is then living. Such a case may occur where an individual is excessively subject to undesirable influence through association with particular individuals. In such a case the board may recommend that the evacuee, in lieu of being sent to the segregation center, shall be transferred to another relocation center. In every such case the board shall consider and recommend, also, whether the evacuee concerned should be separated from his family, or whether the family should accompany him to the new center. In such cases the board shall discuss the problem with the appropriate other members of the family.

7. The board shall make an attempt to include in each docket a rounded statement of the relevant circumstances. This will require indication, so far as possible, of the personal history and social background of the evacuee, his history before evacuation, his history in the assembly center and in the relocation

center, and factors that may have influenced his conduct. All project records should be checked and all project officials who know the evacuee should be questioned; the reputation of the evacuee in the center should be stated; discreet inquiry among the evacuee's acquaintances in the center is desirable.

8. The proceedings of the board are not intended to be in the nature of an administrative hearing. The board, rather, is to conduct a careful investigation and to embody the results of that investigation in the docket. In many cases it would be desirable for the board to interview the evacuee, discussing with him the charges against him and asking for his version of the facts, but without indicating the purpose of the interview. It will be desirable for this interview to be conducted by the Project Director alone. (No due process requirements will be violated by the absence of the formal hearing since segregation, if decided upon, violates no rights of the evacuees. It is merely an administrative determination to move him to another center, in order to make possible more effective administration of the general program of WRA. Segregation is not imprisonment; nor is it a "punishment", even if the policies to be made applicable to the segregation center are, in some respects, more restrictive than the policies applicable at other centers. Similarly, some of our centers provide better housing than do others, and the climate is better at some than at others. Nevertheless, it would not be a violation of due process for WRA to assign to the best centers those evacuees who have given the least trouble, have demonstrated the greatest amount of Americanization, or who, for other reasons, the WRA feels it wishes to encourage. Judgments such as those can enter into the assignment to centers without necessity for a hearing.)

9. The Washington office should supply to the segregation boards such information as it can secure that will help the boards in considering individual cases. Thus, we should secure from the office of Naval Intelligence, Army Intelligence, and the FBI, such information as is available concerning particular cases. The segregation boards should, of course, be cautioned not to draw adverse conclusions from the mere fact that information concerning a particular evacuee has been supplied from Washington, but to consider all such information carefully, as they would any other evidence. It has been reported to us that the Army has developed a list of questions that has been used in Hawaii in guiding the selected evacuation program in that Territory, which has proved very effective. We should examine that

list since we may want to send it to the segregation boards as another tool of inquiry.

10. Where the segregation board determined that segregation is not nedessary, its investigation may nevertheless indicate disciplinary action that should be taken at the center. In such a case it should see that the appropriate disciplinary action is instituted. That determination should be entered in the docket.

11. The dockets on individual cases should be maintained in the confidentail files.

12. To assist the Director in reviewing such dockets when they are received in Washington, it would be desirable to provide for a board of review in the Washington office. This board could consist of a Deputy Director, the chief of the Division of Community Management, and the Solicitor. The board should review such dockets promptly and should be free to make such further check with the FBI, G-2 and ONI as may be appropriate. It should then attach a memorandum transmitting the docket to the Director with its findings and recommendations.

13. On reviewing the docket and the recommendations of the board of review, the Director may order segregation; or may return the docket to the Project Director without action, assigning the reasons therefor; or may order the transfer of the evacuee to another relocation center; or, if the evacuee is an alien, he may certify the case to the Department of Justice as appropriate for internment.

We have already laid a basis with the Department of Justice for certifying such aliens to them for internment. It should be emphasized that it does not necessarily follow that an alien evacuee whom the Director may wish to assign to a segregation center should, in all cases, be certified to the Department of Justice for internment. Internment will in almost all cases be for the duration of the war. I shall recommend below that the leave regulations be made applicable to the segregation center so that, unless the specific evidence available in the case of the evacuee should make him ineligible for leave under the leave regulations, on the ground of danger to the internal security of the country, he may still secure leave from the segregation center if he can find a job and meet the other conditions. A man may be a troublemaker in a relocation center, or even in the segregation center,

and still be able to get along quite well at large after he has found a job. Whether to certify such an alien evacuee to the Department of Justice or to assign him to the segregation center should be determined on the basis of the facts in the docket.

It has been suggested that the decisions on segregation can be adequately made at the project level and that such cases need not come to Washington for review. My recommendation that they be required to come to Washington is based on these considerations: I believe it is desirable to have a uniform set of policy judgments, and a uniform degree of strictness or liberality applied to all segregation cases. I don't see how that can be true if decisions are made by the 10 project boards. There are many things yet to be learned about the whole segregation program. The Washington office can better supply the necessary guidance, and can better recognize the policy issues involved, if it is in close touch with the administration of the segregation program. Further, the need for segregation can hardly be of such urgency in any particular case that the delay necessitated by reference to Washington will be hazardous. Where disorder or violence threatens, the Project Director has ample authority to deal with offenders directly through arrest and imprisonment. To take care of this point further, however, the Administrative Instruction could provide that where the project may deem the need for segregation to be urgent, even though no overt action has been performed that constitutes an offense for which the evacuee can be arrested, the Project Director may telegraph or telephone a summary of the most important items in the segregation docket, together with his recommendations. The Director, or the board of review, can then act upon such recommendations immediately.

G. A segregation center should be established to house only the persons segregated under this Instruction. Present indications are that the number of persons whom it may be necessary to segregate willnot be large. A center accommodating 1,000 persons may very well be adequate, and will almost certainly be adequate for quite some time to come. Obviously, therefore, we won't need to devote one of our existing centers entirely to this purpose. A mile or more separates the units at some of our centers from the other units. Such a separate unit could, of course, be used for this purpose.

H. The administration of the segregation center should

be the responsibility of WRA. Segregation is one phase of the treatment of social maladjustment among the evacuees and as such is properly a WRA function.

I. Since segregation is not intended as a punishment, but merely as a basic adjustment necessary to enable our law and order system to operate under the unique conditions with which it must deal, there is no a priori reason why the general WRA policies applicable to all relocation centers should not apply to the segregation center. Within the frame-work of existing WRA policies, therefore, the evacuees in the relocation centers should be entitled to: subsistence, including food, clothing, shelter and medical care; work opportunities within the center; operation of community enterprises; education; assistance in property management and personal affairs; and the other privileges of evacuees in relocation centers. I have omitted from this list two important provisions of WRA that apply to the other centers and that require special discussion, namely, the provisions for community evacuee government and for leave.

I believe we ought to attempt to organize community evacuee government in the segregation center. After all, a certain amount of self-government has been found to be an excellent administrative tool even in prisons, and the segregation center will be a much less restrictive place than a prison. I believe it would be desirable, however, to rely exclusively upon the Project Director's Disciplinary board for trial and punishment of offenses, at least for an initial period of a few weeks or months. Thereafter, if conditions indicate that it may work well, provision can be made for establishing a judicial commission as at other centers. A community council should, I believe, be provided for from the beginning, but here, too, it may be advisable to make it a purely advisory body to the Project Director for a preliminary period. If the persons segregated turn out to be primarily or largely aliens, aliens should be made eligible to serve in any position in the community evacuee government whether or not such a provision is followed at the other centers.

I believe, also, that the leave regulations of WRA should be made applicable to the segregation center. When an application for leave is received from an evacuee in this center, the evidence on the basis of which he was segregated will, of course, be relevant for consideration on the question of leave. If, however, that

evidence does not destroy his eligibility for leave, I do not see on what basis the leave can be denied.

On first consideration, it may seem strange that an evacuee whom we have found it necessary to segregate should nevertheless be eligible for leave. It should be recalled, however, that particularly in the case of a citizen of the United States, it is neither proper nor lawful to use detention in a relocation center against his will as a punishment for the fact that a man is a trouble-maker. Our leave regulations are built on the premise that, as a matter of constitutional law, a citizen is entitled to his freedom from a center when he asks for that freedom if there is no evidence that he is dangerous to the internal security of the country and can support himself in a community that seems willing to accept him. This premise is just as true in the case of a trouble-maker as it is in the case of an evacuee who has been the most loyal of our cooperators. The same evidence that justified the segregation may justify denial of leave, but we should not assume that it will necessarily do so in every case.

Paradoxically, an application for a short term leave or a work group leave will raise a slightly more difficult problem than an application for indefinite leave. I have already indicated why we cannot assume that every application for indefinite leave must be denied to a segregated evacuee. The evidence of trouble making may be such that it would be exceedingly unwise to permit such an evacuee to go out on either short term leave or work group leave since he is expected to return to the relocation center after the leave expires. It seems to me, however, that that risk, too, must be run. If such a person should perform an unlawful act while he is out on leave or has left the center on indefinite leave, there exists all the usual law enforcing procedures for dealing with him. The trouble he gets into will, of course, hurt our program, and reflect on WRA in the public mind, but that can happen in the case of any other evacuee who has never been segregated but has been given a leave. That is a risk we are running every day. Our whole leave policy indicates we recognize that is a risk we must take.

If you decide that you do not want to make the leave policy applicable to the segregation center, I shall be glad to consider the legal question further. Possibly we can make that sick in court. It will be a difficult case.

J. As I have hinted above in the discussion of the procedure to be followed in determining whom to segregate, I believe the segregation center should be able to accommodate families. Involuntary separation from one's family is a punishment and segregation is not intended as a punishment. The family of the evacuee to be segregated should be given its choice in determining whether it wishes to accompany the evacuee or remain where it is.

K. Emphasis should be placed on rehabilitating those who are segregated. Since the segregation center will have a small population, rehabilitation should be easier since there will be more opportunity for working with individuals. There will also be relatively more positions of responsibility in center government, project administration, and operation of community enterprises to distribute among the evacuees. Special efforts should be made to obtain group work in nearby localities as part of such rehabilitation.

L. The Moab camp presents a special problem. Since it is not suitable for housing families, I believe it should be considered as merely a way station for any evacuees who are sent to that camp prior to the establishment of the segregation center. As soon as any evacuees are sent to Moab, however, it becomes necessary to indicate what policies and procedures are to be followed at that camp. I believe all of our regular program should apply except the provisions for community evacuee government. If the camp will be in existence for even as much as a few weeks, I believe an advisory council should be provided for but no judicial commission. Discipline should be enforced by the Project Director. Applications for leave should be sent by the Project Director of the Moab camp to the Project Director of the center from which the applicant came for regular processing at that center. Assistance in business and personal affairs can be similarly handled. This will reduce the number of administrative people needed at the Moab camp.

M. One further point on segregation: When the Director has ordered segregation, it is important that the individual evacuee be moved without creating a disturbance at the center. I believe the Administrative Instruction should authorize the

Project Director, when he has received a segregation order from the Director, to "arrest" the evacuee in the same manner as he would if an arrest were called for for commission of an offense. The evacuee could then be taken to the project jail (which I have recommended be located outside the boundaries of the relocation area), and there informed that he is to be transferred to the segregation center. His personal effects should be transported at the same time or as soon thereafter as possible. Arrangements for transferring his family, where his family is to accompany him, should also be made as promptly as possible.

The segregation order to be issued by the Director will be all the authority that the Project Director will need for taking the evacuee out of the center for purposes of segregation. If questions are asked of the Project Director as to the reason for removing the evacuee and as to where he has been sent, the Project Director should be authorized to state that the evacuee has been transferred to another center because he was a trouble-maker at this center. It is preferable that the Project Director should not name the center to which he has been segregated, until the existence of the segregation center has become known among the evacuees. Thereafter, the existence of the segregation center and the procedure followed in transferring evacuees to that center will, I believe, be a source of strength in administering the centers, rather than an occasion for incidents or disturbances in the centers.

VI. Procedures for securing a comprehensive and objective report, immediately after the occurrence of an outbreak of violence in one of the centers, as to just what took place.

In the past when we have received word that some sort of serious incident had occurred at one or another center, we have had to improvise our administrative procedure for dealing with the incident on a day by day basis.

A certain amount of improvisation, or adaptation of existing procedures to meet the special situation, may need to be made whenever a major incident occurs. But it would obviously be

helpful if an established procedure were in existence and clearly understood by everybody, that would spell out certain basic essential steps that are to be taken in every case when such an incident occurs.

For this purpose I am inclined to feel we need at least two different documents:

A. A statement to Project Directors giving them advice, suggestions, and instructions on how to deal with such an incident while it is in process, and how to secure the restoration of order;

B. An Administrative Instruction that provides for an orderly method of securing a reliable, objective report, immediately after the incident is over, of just what took place, together with, so far as possible, an indication of why it took place and recommendations for preventing its recurrence.

I should like to outline at least some of the material that should be provided for in each of these documents.

A. Statement to Project Directors on How to Deal with Outbreaks of Violence. This statement should include the following:

1. The Project Director should recognize that he has general authority to maintain law and order within the relocation center, including authority to take such immediate and direct action as may be necessary to quell the disturbance and restore order. In taking such action he may feel assured that he will receive the support and backing of the Director.

2. In general, it is desirable to follow a policy of firmness. The Project Director should not assume that the way to terminate a mob incident is promptly to give in on the particular point of administrative policy or procedure to which the mob objects. Hasty concessions under such circumstances may serve simply to give the impression of administrative weakness and may increase, rather than diminish, the violent temper of the mob.

3. As a point immediately related to the above, it is not desirable for the Project Director to bargain with the mob. It is desirable, on the other hand, so far as conditions permit, for the Project Director to state clearly what his position is on

what purports to be, or is stated to be, the occasion for the violence. This should be stated firmly, and the mob or its representatives given no indication that there is any willingness to compromise concerning the action taken. This is consistent, however, with the Project Director's stating the real nature of the administrative action complained of, and the reasons that lay behind it. He can also, of course, explain to the mob or its representatives, insofar as conditions permit, that he is willing to examine any serious criticisms or objections that may be entertained against the administrative action complained of, but that such consideration cannot begin until the mob is dispersed and order is restored.

4. The Project Director should call together his principal staff officers to assist him in dealing with the situation. They should stay on the job and not leave the center while the incident is in process. O.K.

5. The Project Director should have an official translator who is reasonably well at home in both the English and the Japanese languages, upon whom he can rely in correctly translating communications between the Project Director and evacuees who cannot speak or understand English. The translator should be aware of the need for translating the full meaning rather than the literal words. O.K.

6. Some comments should be made on the use of mediators, but I am not sufficiently informed on this subject to know just what to recommend. The Project Director may very well be instructed that if the mob does not appoint a committee to state its demands calmly and quietly, the Project Director may tell the mob that obviously he cannot talk to hundreds of people at the same time, and that they should choose four or five of their number of represent them so that he can discuss the issue with that group and find out what the trouble is all about. The Project Directors should consider the wisdom of appointing a key member of the administrative staff to serve as a mediator in conferring with the representatives of the evacuees. The evacuee representatives and the mediator may then be able to narrow the issues and submit them to the Project Director for decision.

7. It may be desirable to include a recommendation that, so far as possible, threats and promises be equally avoided. It is difficult at the height of a violent incident to see clearly

all the considerations that may bear on a particular proposed action. It is therefore not desirable to promise or threaten any action until the implications of the action can be more coolly examined.

8. The statement should discuss the circumstances under which military police may be called in. It should make clear that the military police should be called in only when it is reasonably clear that order cannot be maintained and danger of serious violence averted unless they are called in.

9. Members of the administrative staff who know the evacuees by name should be available to look over the mob and to note the names of members of the mob whom they recognize. In particular, the names, so far as possible, should be noted of those who seem to be leading the mob or playing a conspicuous part in one way or another. In addition, of course, a record should be made of the names of all committees or representatives who may be chosen or may become self-appointed to represent the evacuees.

10. An order to the mob to disperse and go home should be issued clearly, and it should be made clear that a refusal to disperse when ordered to do so is an offense against the regulations governing the relocation center.

11. Whenever the temper of the mob will make such action possible, as many members of the administrative staff as possible should circulate among the evacuees and try to get from the evacuees expressions of their sentiments, asking them why they are there, what they want, what the trouble is. As soon as possible they should make notes of the replies, noting the name of the evacuees who gave particular statements whenever possible to do so. This will greatly facilitate subsequent interpretation of the attitude of the mob.

12. The Project Director should at the earliest opportunity telephone the Director in Washington and give him all the information then available about the incident. He should thereafter keep in close touch with the Director by telephone and telegraph. Insofar as conditions permit, it would seem to be desirable for the Project Director to check with the Director before

announcing any major concessions to those who have participated in the violence. It should usually be possible for the Project Director to check with the Director on any important action he proposes to take after the violence itself has subsided.

13. The rules governing the making of arrests that are discussed earlier in this memorandum, and that will presumably already be covered in an Administrative Instruction when future incidents occur, should in general, be followed even in the course of a serious incident. Arresting people without adequate reason may in itself make an incident worse. However — and this is important — the Project Director may feel free to arrest promptly evacuees who are reported to be playing a prominent part in the continuation of any violence, even in the absence of more reliable evidence than a single person's unsupported statement to that effect. Clearly, also, he may arrest at once persons seen to be stirring up the mob, carrying inflammatory posters, or flags, shouting improper slogans, or otherwise contributing to the continuance of the incident. Such arrests may be made without securing a warrant of arrest. It is sometimes important, at the height of an incident, that arrests of those who seem to be involved in the incident, or to carry special responsibility for it, be made immediately. If subsequent investigation reveals that there is no reliable evidence to press any charge against one who has been arrested, he can promptly be released.

14. If the regular project jail is maintained within the center (I have recommended to the contrary above), then at least the persons arrested during an incident should be removed from the center and turned over either to the military police or placed in the jail of a nearby town. If they are detained in a jail within the center, there will be a tendency for the mob to use the jail as a new focal point for its activity and to attempt to storm the jail and secure their release.

This policy statement should be marked confidential, or at least restricted, and should be available only to Project Directors and to those members of their administrative staff who would normally be called upon to assist in dealing with an emergency.

A good many scientific studies have been made on how to deal with mobs and mob violence. I am not read up on this literature. I believe we should consult both the sociologists and the police technicians for further suggestions on material to be included in this policy statement.

B. Administrative Instruction Providing for a Board of Inquiry to Investigate a Completed Incident, and to Report to the Director. I believe this Instruction should contain such provisions as the following:

1. Immediately after the occurrence of such a major incident as the kibei meeting at Manzanar, the sit-down strike at Tule Lake, or the recent incidents at Poston and at Manzanar, the Director will appoint a 3-man Board of Inquiry.

2. The Board of Inquiry, in general, will be selected from the administrative staffs of other relocation centers. A Field Assistant Director may, in particular cases, be appointed to serve as a member or chairman of such Board of Inquiry. One or more members of the Washington staff may also, on occasion, be appointed to membership of such Board. The membership of the Board of Inquiry will be decided by the Director in each case, and a memorandum appointing the Board will be issued by him.

3. Immediately upon receipt of notice of this appointment, the members of the Board of Inquiry are to leave for the relocation center where the incident took place, and are there to convene for the performance of their work.

4. The Board of Inquiry shall make a complete investigation of the entire incident, and shall then promptly submit a written report to the Director in Washington, in which they shall cover as fully as possible the following items;

a. A statement of what took place.

b. As complete as possible a list of who among the evacuees participated in the incident and what each did, with names and characterizations.

c. A statement of what are, or seem to be, the events or causes that produced the incident, with a statement of the evidence that leads the Board of Inquiry to believe those may be the causes.

d. The recommendations of the Board of Inquiry. These recommendations should cover both what might be done with specific evacuees who played prominent parts in connection with the incident, and changes that may be called for in administrative policy or procedures within the center.

Items a. and b. should be bound together. Items c. and d. may contain confidential material and shall, therefore, be submitted as a separable part of the report.

5. A copy of the entire report should be given to the Project Director at the same time that the original is sent to the Director. The Project Director shall feel free to send to the Director any comments, supplements, criticisms, or suggestions he may wish to make on the report of the Board of Inquiry.

6. It should be made quite clear -- and the Administrative Instruction should specifically so state -- that the Board of Inquiry is in no sense an Inquisition: it should under no circumstances seek a scapegoat; administrative ineptitude on the part of particular staff members may become revealed in the course of such an inquiry, but the purpose in appointing such a Board of Inquiry is not to make a search for such administrative weaknesses. The function of the Board is rather to provide an objective summary of the facts relating to the incident, together with suitable recommendations for the assistance of the Project Director and the Director.

7. It should be made clear that the Project Director need not hold up taking any action that he would normally take in connection with administration of the relocation center, or the punishment of those who were guilty of crimes in connection with the violence, until the report of the Board of Inquiry is available. Such action as the Project Director has taken or is taking while the Board of Inquiry is making its investigation should, of course, be noted in the report of the Board.

8. The Board of Inquiry should interview as many people as possible in the course of its investigation. It should, of course, take statements from the Project Director and from every member of the administrative staff who had a hand in dealing with the incident. It should investigate especially the circumstances surrounding the particular administrative action or policy which is stated by the evacuees to be the cause of the particular incident. It should also secure statements from the police officers, the police investigation unit, and the social analysis unit, and should attempt to get as much background information as possible concerning each evacuee who is believed to have played a prominent part in the incident or who is charged with having done so. If the military policy have been called in during the incident, a statement should be secured, if possible, from the appropriate officer or officers.

9. The Board of Inquiry should be discreet as to the way in which it interviews evacuees. Since some evacuees may be arrested or may be segregated as a result of the work of theBoard of Inquiry, it is important that none of the evacuees who are interviewed by the Board of Inquiry shall thereafter become labelled within the center as "informers".

10. The full report of each Board of Inquiry should be treated as a confidential document until the Director has read it. At that time the Director will indicate whether the report should thereafter continue to be treated as a confidential document in whole or in part.

11. The Director should be under no obligation to announce any decisions or take any action after receipt of the report of a Board of Inquiry. If, however, he believes some further instructions to the Project Director or other action is called for he will, of course, take such action or issue such instructions.

VII. Some General Administrative Considerations.

I have indicated at the beginning of this already much too long memorandum that, unfortunately, most of the topics to be discussed are repressive in nature. The principal subject of this memorandum is methods for maintaining law and order, and for dealing with violence and lawlessness.

Everybody knows, of course, that even the best procedures for dealing with violent incidents after they occur can work only if the basic administrative pattern is sufficiently sound to make the violent incident an exception rather than the rule.

A number of suggestions have been made for improvement of our general work in administering the centers. Some of these are, in my opinion, so important to the effective maintenance of law and order in the centers that I want specially to mention them and endorse them.

I am more than ever convinced that our leave policy is sound. I think we should concentrate a temendous amount of attention and a large proportion of our manpower on the task of finding jobs for the evacuees and of speeding up permanent individual relocation. The psychological effect upon the evacuees

of seeing substantial numbers of their members leaving the centers will, I believe, be tremendous. Furthermore, when substantial numbers of them get out they will be the best possible aid in finding jobs for still other evacuees and in showing communities generally that they are nice people and make good neighbors.

Since we cannot hope that a majority of the evacuees will leave the centers on indefinite leave during the next few months, I am convinced we must strengthen our administration of employment possibilities within the centers. I don't need to go into any of these points at length, I know. It has been suggested that we use a close parallel to a Civil Service procedure, with competitive examinations, as a basis for recruiting evacuee workers for particular jobs in the centers. I think that would be a much better system than the present one which allows for too much favoritism. We need standards as to how many workers are needed on particular jobs, and we need a good personnel administration program in connection with such workers.

It has been suggested that our project staffs make affirmative efforts to bring out other groups than the young English-speaking nisei. The less articulate and the less prepossessing evacuees, particularly those that don't speak English well, are being, to a large extent, ignored. They become a fertile field for dissatisfaction and for agitation. It is natural and easy to work with those who first come forward and who are most Americanized — but it is dangerous to limit our attention virtually exclusively to this group. A related suggestion is that the project staff go out of their way to recognize the older people and seek them out for responsible jobs. Also related is the suggestion that we avoid a disproportionate number of young policemen. I have referred to this point in the discussion of the police organization.

There is some evidence that caste attitudes are developing at the centers. The evacuees are a proud people and are no more ready to accept an inferior caste status than the WRA administrative personnel would be. How to go about correcting this is a difficult administrative problem that I believe should be assigned to the appropriate people for study and report.

Further attention should be given to the advantage of the Director's issuing a statement on the citizenship status of the evacuees who are citizens, and on what WRA intends to do to protect that status. This has been considered at various

times and the general public opinion picture has so far not been right for issuance of such a statement. As soon as we can build up public opinion to the point where such a statement can be issued, it would help evacuee morale a great deal.

I need do no more than mention the program for extending Selective Service to evacuees.

I want to endorse, also, the recommendations that the FBI be asked to make their investigations more discreetly so that evacuees whom they interrogate don't become labelled "informers", and that a manual on Japanese-American psychology be issued for the guidance of administrative personnel.

We have not had much time in WRA for personnel training. Even Project Directors have had to take up their duties with very little advance training. I think we badly need occasional all-day conferences at the projects and elsewhere at which particular segments of WRA program and policy can be analyzed, discussed, questions answered, suggestions received, and suggestions made.

My final suggestion is concerned with this memorandum itself. I should like to go to work on the legal questions involved in preparing drafts of Administrative Instructions to deal with the problems and policies discussed here. May I suggest that if you would be willing to indicate your specific reaction to the various points here outlined, we can embody the points you accept in drafts of Administrative Instructions. You have already assigned some of these problems for study by specific persons; others still need to be assigned.

P M G

Solicitor

PMGlick:hb
1-5-43

WAR RELOCATION AUTHORITY

Office of the Solicitor

WASHINGTON

June 15, 1943

MEMORANDUM FOR THE DIRECTOR

Dear Dillon:

You will recall the discussion at the recent Project Directors conference on the question of authorizing the Project Directors and the Judicial Commissions to impose fines.

The attached opinion concludes that you have legal authority to authorize the imposition of fines provided the judgment is placed in this form: that the defendant shall either pay a stated fine or, if he shall refuse to do so, shall serve a stated term in jail. An appropriate Administrative Instruction is also attached.

At the Project Directors meeting you will remember that I stated as a curbstone opinion, subject to later check, that fines imposed by the Project Director would probably have to go into Miscellaneous Receipts, while fines imposed by the evacuee Judicial Commission can probably be used for community purposes. We have considered this question carefully and I am now of the opinion that the Comptroller General will probably hold that even fines imposed by the evacuee Judicial Commission must be deposited in the Treasury as Miscellaneous Receipts. The attached opinion says so, and the attached Administrative Instruction so requires.

In the course of our investigation of this point we realized that the same conclusion necessarily applies to license fees which the Community Councils are authorized to impose under Administrative Instruction No. 34. The attached Administrative Instruction therefore repeals that authorization, since there is obviously no purpose in authorizing the Councils to impose such license fees if the money will have to go into Miscellaneous Receipts. None of the Community Councils has yet imposed any license fee under this power, and therefore there is no problem about the existence of this power in the past.

You will see from the foregoing that lawyers, like judges, sometimes make mistakes — and sometimes confess them publicly.

Philip M. Glick

Solicitor

Solicitor's Opinion No. 66 is hereby reissued, with a change made on page two thereof.

~~Mimeographing Copy~~

WAR RELOCATION AUTHORITY

Office of the Solicitor

WASHINGTON

JUN 5 1943

OPINION No. 66

To: The Director

Subject: Punishment of offenses by fines

This office has orally advised you in the past that it probably would be unwise to adopt a policy of permitting imposition of fines as a punishment for commission of law and order offenses at the relocation centers. The basis upon which this advice was given was twofold: (1) there is a complete absence of judicial authority affirmatively upholding this method of punishment of disciplinary offenses under administrative authority; (2) we have no machinery whereby we could enforce the collection of the fine levied against an evacuee who might be unwilling to pay it.

Administrative Instruction No. 34 provides that "in lieu of a fine the Council may provide for the suspension of the defendant from work privileges, pay privileges, or other privileges to which he would otherwise be entitled". Under Administrative Instruction No. 85, Part II, C, the Project Director is authorized to impose punishments similarly withholding pay privileges.

During the last several months we have engaged in further study of the legal as well as the practical aspects of Community Government and disciplinary control under administrative authority. We still have not discovered any judicial decisions expressly dealing with the propriety of imposition of fines as such, to punish violations of regulations promulgated under the type of administrative authority possessed by the War Relocation Authority. It should be said, however, that on principle, the judicial decisions which support other types of punishment tend equally to support punishment by fine. The fact is that the cases make no distinction as to the type of punishment involved, requiring merely that it be a reasonable one. See Op. Sol. No. 32. It is true also that in somewhat similar situations the imposition of fines is customary. In systems of student government at schools and colleges, for example, fines constitute a usual method of punishing violations of administrative regulations imposed by agencies of self-government legally comparable to those which exist at relocation centers.

WAR RELOCATION AUTHORITY
Office of the Solicitor
WASHINGTON

JUN 5 1943

The remaining reason against employment of a system of fines at relocation centers is the probable difficulty of collection. A suggestion has been made under which this difficulty can be minimized. This suggestion is that Judicial Commissions and Project Directors be authorized to permit payment of fixed sums of money as an alternative to the serving of sentences of imprisonment. Thus, in a particular case, an evacuee might be sentenced to serve one month in jail or to pay a $100 fine at his option. In that situation, there need be no concern about nonpayment of the fine; if the fine were not paid, the sentence of imprisonment could be enforced.

A top limit, perhaps of $300, could be set on the amount that could be levied as a fine. It is probably wise to credit collections arising from the imposition of fines to the Miscellaneous Receipts fund of the Treasury (31 U. S. C. A. 487), though there is no authoritative ruling requiring that this be done.

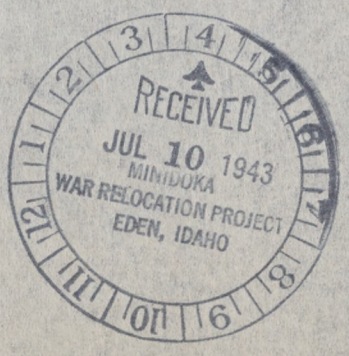
If it is deemed administratively desirable to include provision for money payments as an alternative to other punishment, in the systems of Community Government, there is no legal objection to doing so. There are attached hereto, for your consideration, two proposed Administrative Instructions to accomplish that result. The first would repeal the prohibition on fines now contained in Administrative Instruction No. 34. The second would confer the needed authority on the Project Directors and on the evacuee Judicial Commissions.

Philip M. Glick

Philip M. Glick
Solicitor

Enclosures (2)

Philip M. Glick



WAR RELOCATION AUTHORITY
Washington

ADMINISTRATIVE INSTRUCTION No. 95
Supplement No. 1

July 5, 1943

Subject: Punishment of offenses - authority to impose fines

Section XV, Paragraph C, and Section XV, Paragraph C of Administrative Instruction No. 95, are amended by adding thereto the following:

> The Project Director may permit a defendant to pay a fine of a fixed sum of money as an alternative to serving a fixed period of imprisonment. The maximum fine so imposed shall not exceed the sum of $300 for any single offense. The Community Council may provide, by regulation duly promulgated, that the Judicial Commission may, in cases tried before it, also impose a fine, in the same manner, and subject to the same limitation as to amount. Amounts received as a result of such sentences, whether imposed by the Project Director or by the Judicial Commission, shall be paid into the United States Treasury as miscellaneous receipts.

/s/ D. S. Myer

Director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Washington

July 3, 1943

ADMINISTRATIVE INSTRUCTION No. 34
Supplement No. XII

Subject: Community Evacuee Government

I. That part of Administrative Instruction No. 34, Section IV, Paragraph A, Part I, which reads as follows:

"but it shall not provide for the imposition of a fine."

is deleted, and is superseded by Supplement I to Administrative Instruction No. 85.

II. Part 4 of Paragraph A of Section IV of Administrative Instruction No. 34 is hereby cancelled.

One effect of this cancellation is to cancel corresponding provisions in charters and other instruments of community evacuee government. It should be explained to the Community Councils that the reason for this cancellation is that it has been concluded that the Federal law requiring all moneys received from whatever source for the use of the United States to be paid into the Federal Treasury probably is applicable to community evacuee governments. It is understood that no collections have been made under the cancelled provisions by the Councils at any of theprojects. Funds received and disbursed by private evacuee organization are not affected by this Instruction.

/s/ D. S. Myer

Director

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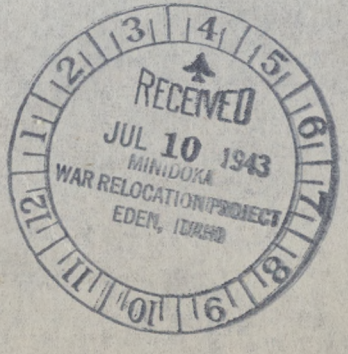
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WAR RELOCATION AUTHORITY

Office of the Solicitor

WASHINGTON

February 9, 1945

Memorandum to: The Director

Subject: Eligibility of Japanese aliens for naturalization under H. R. 1809 and H. R. 1810, 79th Congress

You have asked whether H. R. 1809 and H. R. 1810, introduced by Representative Hartley on January 29, 1945, are broad enough to permit the naturalization of Japanese aliens whose sons or daughters are citizens and have served with the military or naval forces of this country during the present war. H. R. 1809 would amend the Nationality Act of 1940 to provide that:

> "Any person not a citizen of the United States whose son or daughter is a citizen of the United States and has served or is serving honorably in the military or naval forces of the United States during the present war and who, if separated from such service, was separated under honorable conditions, may be naturalized upon compliance with all the requirements of the naturalization laws, except that no declaration of intention shall be required, and the provisions of section 326 of this Act shall not apply to a petition filed under this section: Provided, That the petition is filed not later than one year after the termination of the present war. For the purposes of this section, the present war shall be deemed to have commenced on September 1, 1939, and shall continue until such time as the United States shall cease to be in a state of war."

H. R. 1810 is identical except that it also waives existing educational requirements.

In my opinion, neither of these bills would permit naturalization of Japanese aliens. Naturalization is conditioned upon "compliance with all the requirements of the naturalization laws." One of the requirements of the naturalization laws is the racial requirement, limiting the right of naturalization to white persons, persons of African nativity or descent, descendants of races indigenous to the Western Hemisphere, and Chinese persons or persons of Chinese descent. (See section 303 of the Nationality Code of 1940, as amended; 8 U.S.C. 703, 57 Stat. 600.) This particular requirement is not waived in either of the bills.

In order to broaden these bills to include Japanese aliens, an additional exception should be added. I believe that this could be accomplished by revising the last clause preceding the proviso to read as follows:

> "and the provisions of Sections 303 and 326 of this Act shall not apply to a petition filed under this section:"
> (New language underscored)

Section 326 of the Nationality Act of 1940, about which you asked, contains certain restrictions upon the right of enemy aliens to naturalization. It provides that enemy aliens may be naturalized if the alien's declaration of intention was made not less than two years prior to the beginning of state of war, or if he was at the beginning of state of war entitled to become a citizen without making a declaration of intention, or if his petition for naturalization was pending at the beginning of state of war and he was otherwise entitled to admission. This section also provides that the President may, upon investigation and report by the Department of Justice establishing the loyalty of any alien enemy not included in the foregoing, except the alien in the classification of enemy alien; in that case the alien has the privilege of applying for naturalization. Section 326 is construed by the regulations of the Immigration and Naturalization Service to apply only to enemy aliens who would be entitled to naturalization except for the fact of enemy status. 8 C.F.R. 335.2.

EDWIN E. FERGUSON

Edwin E. Ferguson
Solicitor

March 29, 1945

Memorandum to: The Director

From: Edwin E. Ferguson

In response to your inquiry, I believe it is doubtful that H. R. 2756, introduced by Mr. Philbin on March 23, would be construed to apply to aliens ineligible for citizenship. Despite the reference to "any person not a citizen of the United States", you will note that the only requirements of the naturalization laws that are expressly waived are the declaration of intention, the educational requirements, and the provisions of section 326 of the Nationality Act of 1940 which contains special limitations upon the naturalization of enemy aliens. The most natural inference to be drawn is that the other requirements of the Nationality Act with respect to naturalization are not waived. One of these requirements is the racial requirement limiting the right of naturalization to white persons, persons of African nativity or descent, descendants of races indigenous to the Western Hemisphere, and Chinese persons or persons of Chinese descent, (See section 303 of the Nationality Code of 1940, as amended; 8 U.S.C. 703, 57 Stat. 600.)

In order to make sure that the bill permits naturalization of aliens presently ineligible for citizenship who have citizen sons or daughters in the armed forces, the last sentence of the bill should be changed to read: "For the purposes of this section, sections 303 and 326 of the Nationality Act of 1940 shall not apply to any petition filed hereunder."

EDWIN E. FERGUSON

Solicitor

79th Congress
1st Session

H. R. 2756

In the House of Representatives

March 23, 1945

Mr. Philbin introduced the following bill; which was referred to the Committee on Immigration and Naturalization

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A B I L L

To permit the naturalization of certain persons whose sons and daughters have served with the land or nval forces or the maritime services of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person not a citizen of the United States may be naturalized without declaration of intention, and without complying with existing educational requirements, which shall be waived: Provided, That such person shall have a son or daughter who is a citizen of the United States, and who has served, or is serving, honorably in the land or naval forces, or the Merchant Marine Service of the United States, during the present war or some previous war, and who, if separated from such Service, was separated under honorable conditions. For the purposes of this section, section 326 of this Act shall not apply to any petition filed hereunder.

To: The Director

APR 24 1945

Attention: H. Rex Lee

From: E. E. Ferguson

Subject: State Laws Affecting Land Ownership by Aliens

Alien evacuees contemplating leaving the center or interested in acquiring a home or other real property either immediately or at some future date or evacuees concerned with inheritance laws may require information about the alien land laws of the several States in order to select intelligently a locality for relocation. The following compilation and analysis presents the principal aspects of the alien land laws of all the States, with brief mention of the alien land laws of California, Oregon, and Washington, which have been fully digested and analyzed in Solicitor's Opinions 80, 81 and 82.

The common law rule as to ownership of real property by aliens is to the effect that aliens may take lands by purchase, gift or devise. After such acquisition, however, the alien's rights were subject to forfeiture by the sovereign. Aliens could not acquire lands by descent. See Op. Sol. No. 80. These rules have been changed or modified, however, by practically all State statutes. These statutes do not follow a uniform pattern. Some are liberal, permitting aliens the same rights as citizens. Others follow a rule more rigid than the common law. Some prohibit aliens of some particular nationality from acquiring realty under any circumstances. A number distinguish between resident and non-resident aliens or between aliens eligible and aliens ineligible to citizenship. Others limit the right of ownership to aliens who have applied for citizenship. Still others differentiate between alien "residents" and alien non-residents; "resident" as used in a State constitution or statute is generally interpreted as meaning a resident of the State. See V Vernier, American Family Laws (1938) p. 307.

States Without Restrictions

Considering the State alien land laws, particularly as they affect Japanese aliens, it may be stated generally that in 18 States of the Union Japanese aliens who are residing in the United States may acquire and dispose of real property without restriction. These 18 States are: Alabama, Colorado, Connecticut, Delaware, Florida, Maine,

Massachusetts, Michigan, Nevada,[1] New York, North Carolina, North Dakota, Ohio, Rhode Island, South Dakota, Tennessee, West Virginia, Wisconsin.

Aliens resident in the United States may also freely acquire and dispose of real property in Alaska, Hawaii and the District of Columbia.

States with Residence Restrictions

The right of aliens to acquire and dispose of real property without restriction is recognized in 4 additional States upon the establishment of residence in the State. These States are: Iowa, Mississippi, New Hampshire, and Oklahoma. In addition, the constitutions of Arkansas and Wyoming provide that no distinction shall be made between resident aliens and citizens with respect to the possession or enjoyment of property. The Arkansas statute passed in 1943 prohibiting land ownership by persons of Japanese descent, and the 1943 Wyoming law prohibiting land ownership by aliens ineligible to citizenship, very probably would be held to violate these State constitutional provisions with respect to aliens resident in the State. See Applegate v. Lum Jung Luke, 291 S.W. 978 (Arkansas 1927). The Arkansas law insofar as it affects American citizens of Japanese descent also clearly violates the equal protection guaranty of the Federal Constitution.

Restrictions upon Enemy Aliens

Georgia, Kentucky, Maryland, New Jersey, Pennsylvania, and Virginia restrict the right to hold land to alien friends. Under the New Jersey law, however, enemy aliens resident in this country, who are licensed or permitted by the Federal Government to do business, are not arrested or interned, and whose property has not been confiscated, are in the same category as alien friends. This means that the vast majority of Japanese aliens in this country are eligible to hold land in New Jersey.

The restrictions as to enemy alien status in these States will, of course, be important to Japanese aliens only for the duration of the war with Japan. Thereafter they will not be subject to any restrictions so far as Georgia, Maryland, and New Jersey are concerned. In Kentucky

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[1] The Nevada law provides that any non-resident alien, except a subject of the Chinese Empire, may freely acquire and dispose of real property, but says nothing about resident aliens. It seems obvious that the same rights would be granted to resident aliens.

ownership of land by Japanese aliens after the war will be permitted for a term of 21 years if the aliens reside in the State. In Pennsylvania such ownership will be limited to a maximum of 5,000 acres in area, and $20,000 in net annual income.

Restrictions Based on Eligibility for Naturalization

Aliens ineligible to citizenship, hence Japanese aliens, are prohibited from owning land or interests therein in the following States: Arizona, California, Idaho, Kansas, Louisiana, Montana, New Mexico, Oregon, Utah, and Wyoming. As noted above, the Wyoming law is probably unconstitutional with respect to aliens resident in the State. The Louisiana prohibition is contained in the State constitution, but has not yet been implemented by statute. In some of these States, the prohibition is modified to the extent that land acquired by inheritance, or land acquired in satisfaction of a judgment, lien or mortgage, may be held for a short period; the leasing of land for 1 or 2 years is permitted under a few statutes.

In several other States aliens who have not declared their intention to become citizens may also be prohibited from owning land or restricted in the amount of land they can hold. See "Miscellaneous Restrictions" below. These limitations would probably be construed to apply to Japanese aliens, since they are ineligible for citizenship by naturalization.

Miscellaneous Restrictions

In Illinois an alien may take title to real property but may not hold it for more than 6 years unless he becomes a citizen in the meantime.

In Indiana an alien may acquire up to 320 acres of land without restriction. Any excess must be disposed of within 5 years.

As noted above, in Iowa alien residents of the State are not restricted with respect to land ownership. Non-resident aliens may acquire up to 320 acres of land; they may also acquire land within the corporate limits of any city or town.

In Kentucky friendly aliens who have declared their intention of becoming citizens may hold land without restriction. Other friendly aliens resident in the State may hold land for a term not to exceed 21 years.

In Minnesota an alien who has not declared his intention to become a citizen may not acquire real property exceeding 90,000 square feet. This limitation does not apply to actual settlers upon farms of not over 160 acres, and hence Japanese aliens may acquire up to 90,000 square feet of land in Minnesota without restriction, and if they actually occupy farm lands with an intent to continue to reside there, they may acquire title to those lands up to a maximum of 160 acres.

In Missouri an alien who has not declared his intention to become a citizen may not acquire realty except by inheritance or in the collection of debts unless the right is secured by treaty.

In Nebraska aliens may acquire realty within the corporate limits of cities and towns, and may lease other lands for not more than 5 years.

Pennsylvania limits land ownership by friendly aliens to a maximum of 5,000 acres in area and $20,000 in net annual income.

Aliens may acquire up to 500 acres of land in South Carolina.

In Texas aliens may acquire realty in any incorporated or platted city, town, or village. If they are bona fide residents of the State and (1) were residents of Texas on June 12, 1921, and (2) have declared their intention to become citizens, (3) are natural born citizens of Mexico or Canada, or (4) are nationals of a country permitting United States citizens to own land therein, they may acquire land without restriction.

In Vermont persons of good character who have sworn allegiance to the State may acquire land without restriction. The requirement of an oath of allegiance may conceivably be construed to prohibit Japanese aliens, who are ineligible to citizenship, from acquiring land in Vermont.

Numerous States which prohibit acquisition of real property by purchase permit aliens to inherit land or to hold title to realty taken in satisfaction of a judgment, lien or mortgage, either for definite stated periods or permanently. Some alien land statutes also include provisions restricting ownership of land by corporations controlled by aliens or where more than a certain percentage of the stock is held by aliens. The more important provisions relating to various conditions imposed upon ownership of real property by aliens are set forth in the attached digest of the statutes of the individual States.

Our research into the case law interpreting the State constitutional and statutory provisions has not been exhaustive, and a number of

collateral problems relating to land ownership or disposition have not been touched upon. We shall be glad to elaborate upon any of the laws summarized and to answer specific questions that may be raised concerning their interpretation.

EDWIN E. FERGUSON

Edwin E. Ferguson
Solicitor

Attachment

Alabama

Const., Sec. 34, Art. 1;
Alabama Code of 1940, Title 47, sec. 1

An alien may take, hold, dispose of and transmit real and personal property to the same extent as a native citizen.

Alaska

Comp. L. 1933, Sec. 4594 (dower)
8 U. S. C. A. 71-77

An alien who is resident in the United States, or who has declared his intention of becoming a citizen, or whose right to hold or dispose of lands is secured by a treaty, may acquire or own lands as freely as a citizen. Any alien may acquire lands by descent, or under judicial process to collect a debt or enforce a lien, but when not otherwise permitted to own he must sell lands so acquired within ten years. Any alien is entitled to acquire and own plots in a municipal corporation, mine or mining claim, but may not acquire any public lands.

Arizona

Arizona Code Anno. 1939, § 71-201
Laws, 1943, Ch. 89, § 1-4

An alien ineligible for citizenship may acquire, possess, and transfer realty only to the extent prescribed by treaty "now existing" between the United States and the country of which he is a national. Corporations controlled by aliens ineligible to citizenship may not hold real property.

Arkansas

Const. Art. II, Sec. 20;
Act 47, 1943

The constitutional provision cited provides that no distinction shall be made between "resident" aliens and citizens with respect to possession or enjoyment of property. The 1943 statute prohibits Japanese aliens and persons of Japanese descent from purchasing or holding title to realty and declares sales, conveyances, and leases to such persons void, except that they may lease land for a period not to exceed one year.

California

Const., Art. I, Sec. 17;
Deering's Calif. Genl. Laws, 1944
Act 261, secs. 1-2

Ineligible aliens may acquire rights in land only to the extent prescribed under treaty existing between the United States and the country of which the alien is a national. No ineligible alien may hold for longer than two years possession of any agricultural land acquired in the enforcement or satisfaction of a mortgage or other lien or security for a debt. Corporations controlled by ineligible aliens are subject to these restrictions. Real property inherited by ineligible aliens must be sold by court order and the proceeds paid to such aliens. For further discussion of the California law, see Op. Sol. No. 80.

Colorado

Const. Art. 2, Sec. 27;
1935 Colo. Stat. Anno., Ch. 7, sec. 6

All aliens may take realty by deed, will, or otherwise and may alienate, sell, convey and transmit the same regardless of citizenship.

Connecticut

General Statutes, 1930, Secs. 5055-56

Any alien resident in the United States may purchase, hold or transmit realty in as full a manner as native-born citizens. Non-resident aliens may acquire realty for the purposes of quarrying, mining or smelting ores on the same.

Delaware

Revised Code, 1935, Secs. 3655-57

Realty may be acquired and disposed of by an alien in the same manner as a citizen and good title to realty may be derived through, from or in succession to an alien in the same manner as though through, from or in succession to a citizen of the State.

District of Columbia

8 U. S. C. A. 78

Same as Alaska.

Florida

Const., Declaration of Rights, Sec. 15;
Florida Statutes, 1941, §731.28

An alien may devise, bequeath, inherit and transmit inheritance in real property as if he were a citizen of the United States.

Georgia

Code of 1933, §79(303), 79(304)

Alien subjects of a Government at peace with the United States are entitled to all rights of citizens for the purposes of holding, purchasing or conveying of realty.

Hawaii

8 U. S. C. A. 71-77.

Same as Alaska.

Idaho

1932 Code Anno., §23(101)-23(112)

An alien ineligible for citizenship may acquire, hold and dispose of realty only to the extent prescribed by treaty "now existing" between the United States and the country of which the alien is a national, but may lease land for agricultural purposes for a period not longer than five years. No ineligible alien may hold for a period longer than two years agricultural land taken in the enforcement or in satisfaction of a mortgage or other lien taken as security for a debt. Corporations controlled by ineligible aliens are subject to these restrictions. Real property inherited by ineligible aliens must be sold and the proceeds paid to such aliens.

Illinois

Revised Statutes, 1943, Ch. 6, sec. 1-3

Aliens may take title to realty by deed or devise but may hold it only six years from the time of acquisition. If under 21 years of age,

an alien may hold title for six years from the time he becomes of age. If at the end of this period realty had not been conveyed to bona fide purchasers for value or if the alien has not become a citizen, escheat proceedings may be instituted. No contract, agreement or lease by which realty is demised or leased by an alien or his agent for farming may contain any provision requiring tenant to pay taxes on the realty.

Indiana

Burns, Ann. Stat., 1933, §56-504, 56-505
Baldwin's Stat. Ann., 1934, §14707-8

An alien may acquire land not in excess of 320 acres. If more than this amount is acquired, an alien is required to convey the excess within five years from the date of acquisition or from the date he becomes 21 years of age if he acquired the property while a minor, or it becomes subject to escheat. When an interest of an alien has been conveyed in good faith and for valuable consideration, it is not prejudiced by the alienage of the person from whom it was acquired.

Iowa

Const. Art. I, Sec. 22;
Code of 1939, §10214-5

Aliens who are residents in the State enjoy the same rights in respect to possession and enjoyment of property as native-born citizens. Non-resident aliens may acquire land within the corporate limits of any town or city and may acquire land not to exceed 320 acres. Non-resident aliens may also hold for a period of ten years land which is taken under a judgment. Non-resident alien devisees may hold lands by devise for a period of 20 years, but must dispose of it within that period, unless they become residents.

Kansas

Const., Bill of Rights, Sec. 17;
Laws of Kansas, 1939, c. 180, §280

An alien ineligible for citizenship may acquire, possess, and transfer realty only to the extent prescribed by treaty "now existing" between the United States and the country of which he is a national. Land acquired under a judgment may not be held by an ineligible alien for a period longer than two years. Corporations controlled by ineligible aliens are subject to these restrictions. Real property inherited by ineligible aliens must be sold and the proceeds paid to such aliens.

Kentucky

Rev. Stat., 1944, §381.290, 381.300, 381.320, 381.330, §393.150, 393.160

An alien, not an enemy alien, who has declared his intention to become a citizen may hold realty and devise the same in the same manner as a citizen. Other friendly aliens resident in the State may take and hold any lands for the purposes of residence, business or trade for a term not over 21 years. Non-resident aliens may take realty by devise but must alienate the property within eight years after settlement of the estate.

Louisiana

Const. Art. XIX, Sec. 21

No alien who is ineligible to citizenship shall be permitted or allowed or shall have any right whatsoever to acquire by purchase, devise, inheritance, lease, assignment, gift or otherwise, or shall own or control, directly or indirectly, in his or her name, or through another interposed or by means of any corporation or association, or through ownership in his or her own name or through another of any stock or other form of security, any land or real property or any real rights or interests therein, including mortgage rights.

Maine

Rev. Stat., 1944, Ch. 154, sec. 2

Aliens may hold, convey and devise realty without any restrictions.

Maryland

Flack's Code, 1939, Art. 3, sec. 1

An alien, not an enemy alien, may take and hold realty acquired by purchase and may sell, devise and dispose of the same in the same manner as if a citizen of the State.

Massachusetts

Genl. Laws, 1932, Ch. 184, sec. 1

Aliens may hold and convey real estate as citizens and no title to

realty shall be invalid on account of alienage of a former owner.

Michigan

Const. Art. XVI, Sec. 9;
Mich. Stat. Anno., 26.1105

Aliens enjoy the same rights in respect to possession and enjoyment of property as native-born citizens.

Minnesota

Mason's Minn. Stat. 1927, §9076, 8079-80

No person, unless he is a citizen or declared his intention to become a citizen, may acquire realty exceeding 90,000 square feet except such as is acquired by devise or inheritance. This prohibition does not apply, however, to actual settlers upon farms of not more than 160 acres, to lands acquired in the collection of debts or the enforcement of liens (which must however be disposed of within ten years), or to any person engaged in the business of selling lands to actual settlers. Corporations more than 20 per cent of whose stock is owned by aliens are prohibited from acquiring, owning, or holding real estate.

Mississippi

Code of 1942, §842

A resident alien may acquire, hold and dispose of land in the same manner as a citizen of the State. Non-resident aliens may not acquire or hold land except under a lien or a foreclosure sale; under such circumstances the land may be held for not longer than 20 years.

Missouri

Rev. Stat. 1939, §15228-30

An alien who has not declared his intention to become a citizen cannot acquire, hold, or own realty except realty acquired by inheritance or in the collection of debts, unless such right is secured by existing treaty between his country and the United States.

Montana

Const. Art. III, Sec. 25
Rev. Code, 1935, Secs. 6802.1, .2, .4, .5, .7, .8

An alien not eligible to citizenship may not take or hold title to any land or interest therein except mines and mining property, nor is any person permitted to take or hold land or title to land for any such alien. Such alien may, however, acquire land by inheritance or in good faith under mortgage foreclosure, or in ordinary course of justice in collection of debts, and hold it for not over 12 years. Corporations controlled by aliens are subject to these restrictions. Aliens eligible to citizenship have the same rights as citizens to acquire, hold and convey real estate.

Nebraska

Const., Art. I, Sec. 25;
Rev. Stat., 1943, §76402-415

Aliens may acquire realty lying within the corporate limits of a city or town. They may not acquire, take or hold title to other real estate, or a leasehold interest therein for more than five years, or other greater interest less than fee, except in satisfaction of a lien on the property. Property acquired in satisfaction of a lien must be sold within ten years after title is obtained. A resident alien may acquire title by inheritance and hold for not more than five years.

Nevada

Comp. L. 1929 (Hillyer)
§6365; 1941 Laws, p. 396 (Hill)

Any non-resident alien or person except subjects of the Chinese Empire may take, hold, and enjoy any realty as fully and upon the same conditions and terms as resident citizens. A recent provision, however, (Laws of 1941, p. 396 (Hill)), provides that an alien not residing in the United States cannot inherit property or take under a will except where his country gives similar rights to American citizens.

New Hampshire

Rev. Laws, 1942
Ch. 259, Sec. 19
Ch. 340, Sec. 9 (dower)

A resident alien may take, purchase, hold, convey or devise real estate, and the same at the decease of the alien descends in the same manner as in the case of a citizen.

New Jersey

Rev. Stat. 1937
Title 3, Ch. 3, Sec. 13
Title 46, Ch. 3, Sec. 18
Laws 1943, Ch. 145.

An alien not an enemy alien may acquire, hold, and convey realty as fully as a natural-born citizen, and may acquire realty by devise. Under a recent law (Laws of 1943, ch. 145) an alien enemy resident in this country, licensed or permitted by the Federal Government to do business, and not interned or his property confiscated, was put in the same category as an alien friend. ~~In other words, any Japanese alien whose funds were unblocked or who operated under a license could acquire real property in New Jersey.~~

New Mexico

Const. Art. 2, Sec. 22;
State Anno. 1941
Sec. 75-121

The Constitution of this State was amended in 1921 to deny to aliens ineligible to citizenship the previously held right to hold realty in New Mexico. At the present time aliens ineligible to citizenship and corporations controlled by such aliens cannot acquire title to or a leasehold or other interest in real estate.

New York

Cons. Laws, Real Property Law
Sec. 10, Sec. 15
Amended L. 1944, c. 272, March 22, 1944

Under the 1944 law cited above New York has conferred upon aliens the same rights to hold lands as native-born citizens, a privilege theretofore conferred only upon aliens not enemy aliens.

North Carolina

Gen. Stat. 1943, §64-1

Aliens may take realty by purchase or by operation of law and may convey the same as fully as citizens of the State.

North Dakota

Rev. Code, 1943, §47-0111, 56-0116

Any person whether citizen or alien may take, hold, and dispose of real property.

Ohio

Throckmorton's 1940 Anno. Code, §10503-13

Aliens may hold, possess and enjoy lands as fully and completely as citizens.

Oklahoma

Const. Art. XXII, Sec. 1;
Stat. 1941, Title 60, Secs. 121-123;
Title 60, Sec. 121-127

Aliens who are bona fide residents of the State may acquire and hold lands upon the same basis as citizens. If an alien ceases to be a resident he must dispose of his land within five years. Non-resident aliens may acquire realty by devise or under lien foreclosures but if the realty is not disposed of within five years after acquisition, it is subject to escheat.

Oregon

Const. Art. I, Sec. 31; Art. XV, Sec. 8
Compiled Laws Anno. 1940, §61-101 to 111

An alien ineligible to citizenship may acquire, possess, or transfer realty only to the extent prescribed by treaty "now existing" between the United States and the country of which the alien is a national. Corporations controlled by ineligible aliens are subject to the same restrictions. Real property inherited by ineligible aliens must be sold by court order and the proceeds paid to such aliens. For a further discussion of the alien land laws of this State, see Op. Sol. No. 82.

Pennsylvania

Purdon's Stat. Anno., Title 68, Sec. 22-32

Aliens, except alien enemies, may take, hold and dispose of realty. Such holdings may not exceed 5,000 acres in area or $20,000 in net annual income. Where an alien has acquired real estate in excess of the limit prescribed by law and has conveyed to any citizen authorized to hold the same, the title thereto is indefeasible.

Rhode Island

General Laws 1938, Ch. 432, Sec. 1.

Aliens may take and hold and convey realty in the same manner and with the same effect as if they were citizens.

South Carolina

Const. Art. III, Sec. 35;
Code of 1942, §8687, 8907-8, 7790

An alien, or a corporation controlled by aliens, may not own or control any right in land in excess of 500 acres. This does not apply, however, to land purchased under mortgage foreclosure but when so acquired any excess over 500 acres must be sold within five years. Subject to the foregoing, realty may be acquired and disposed of by an alien in the same manner as by a citizen.

South Dakota

Const. Art. VI, Sec. 14;
Code of 1939, §51.0205, 56.0120

The Constitution of this State provides that no distinction shall ever be made by law between resident aliens and citizens in reference to the possession and enjoyment of property. Under statute, any person whether citizen or alien may take, hold, and dispose of realty.

Tennessee

Michie's Code of 1938, Anno., §7187-90

An alien may take, hold, and dispose of real property in the same manner as a native citizen.

Texas

Vernon's Texas Civil Stat.
Title 5, Art. 166-172, 176.

Aliens may acquire and hold lands in any incorporated or platted city, town, or village without restriction. Title to or leasehold or other interest in any other land in State may not be acquired or held by aliens except bona fide inhabitants who: (1) were bona fide residents of State on June 12, 1921; (2) are inhabitants of State and have according to naturalisation laws, declared intention of becoming United States citizens; (3) are natural-born citizens of nation having common land boundary with United States; or (4) are citizens or subjects of nation which permits United States citizens to own land in fee therein. The above-mentioned classes may own real estate or interests therein while residents of State and are allowed five years after ceasing to be residents in which to dispose of same. Property not so disposed of escheats to State. Aliens prohibited from holding lands under above may acquire and hold lands in the ordinary course of justice in the collection of debts and may acquire and foreclose liens for the securing and collecting of debts, and may acquire title to land by devise or descent, but any land so acquired may only be held for five years and will thereafter be subject to escheat.

Utah

Code Anno. 1943, §78-6a-1 to 10 (added by Laws 1943, c. 85)

An alien ineligible to citizenship may not hold or acquire real estate except as provided by treaty between the United States and his native country. Aliens ineligible to citizenship may, however, lease lands for agricultural purposes for a period not exceeding one year. These restrictions are applicable to corporations controlled by ineligible aliens. Real property inherited by ineligible aliens must be sold and the proceeds paid to such aliens.

Vermont

Const. Ch. II, Sec. 62

Every person of good character having first taken oath or affirmation of allegiance to the State may purchase or by other means acquire, hold or transfer realty.

Virginia

Michie's Code, 1942, §66, §5267

Any alien, not an enemy alien, may purchase and hold realty in the same manner as a citizen.

Washington

Const. Art. II, Sec. 33;
Remington Rev. Stat. §10581 et seq.

Aliens, other than those who have in good faith declared an intention to become United States citizens, may not own interests in land, except that they may hold for sixteen years land acquired by inheritance, under mortgage, or in ordinary course of justice in collection of debts. These provisions do not apply to mineral lands or land necessary for mills and machinery used in conjunction therewith. Corporations controlled by aliens are subject to the above restrictions.

West Virginia

Const. Art. II, Sec. 5;
Michie's Code of 1943 Anno., §3541

An alien may take by devise, gift, purchase and may hold, convey or devise realty as if he were a citizen.

Wisconsin

Const. Art. I, Sec. 15;
Statutes, 1943, §234.22, 234.23

Aliens may acquire, transfer, and inherit property like citizens except that an alien not resident in the United States, foreign corporations, or corporations in which over 20 percent of the stock is owned by such non-resident aliens cannot acquire more than three hundred and twenty acres of land by purchase. Alien women not barred of dower in lands owned by husband at time of decease.

Wyoming

Const. Art. I, Sec. 29
Rev. Stat. 1931, §88-4004,
Laws 1943, c. 35

The constitutional provision cited states that no distinction shall ever be made between resident aliens and citizens as to the possession or enjoyment of property. The 1943 statute provides that aliens not eligible to citizenship (except the Chinese) may not acquire, possess, enjoy or inherit real property in Wyoming or any interest therein or have in whole or in part the beneficial use thereof; this restriction applies to corporations controlled by ineligible aliens.