

C O P Y

WAR RELOCATION AUTHORITY
INTEROFFICE MEMORANDUM
GILA RIVER PROJECT
RIVERS, ARIZONA

February 14, 1943.

MEMORANDUM TO: L. H. Bennett,
Project Director

SUBJECT: Opinion Re Construction and Legal Effect of Certain
Questions in Military Registration Questionnaire and
Answers Thereto.

I have been informed that there has been widespread misconstruction of the meaning and effect of Questions Nos. 27 and 28 of the questionnaire used in connection with military registration now in progress here. Inasmuch as it appears that misunderstandings may be based, at least in part, on deliberate misrepresentations by subversive elements in order to defeat the opportunities present and future for Americans of Japanese blood and their families in this country, I believe that an opportunity should be given to all who so desire to rectify any incorrect, mistaken answers given, without penalty. Of course, every person has a right to make any true answer without coercion, but he should be fully aware of the significance and consequences of his act.

My opinion, submitted herein, is offered with the caveat that since the registration is a War Department matter, interpretation and subsequent action to be taken based on answers to the questionnaire are solely for the determination of the War Department and the Department of Justice. Nevertheless, my opinion is supported, I believe, by legal principles of construction and by the laws of the United States.

A. Question 27 - "Are you willing to serve in the armed forces of the United States on combat duty, wherever ordered?"

No registrant who answers this question affirmatively can be called into military service as a volunteer because of his answer. He has not, by such answer, agreed to volunteer. A separate, specific voluntary offer to enlist at once would be necessary before the Army could induct any citizen as a volunteer. An affirmative answer to Question 27 in its ultimate analysis means only two things: 1) I am not a conscientious objector as defined by the draft laws; 2) I will, without reservation, obey the Selective Service Law of the United States and will not defy, violate or evade that law.

As a Draft Board official I have seen many completed questionnaires at this Center. I have not seen one which listed the registrant as a conscientious objector nor have I heard of such case. If there are any such objectors here, their number must be negligible. The draft questionnaires are signed under oath and must be accepted as true on that point.

Since Question 27 does not call for voluntary enlistment and since there are few, if any, conscientious objectors among the registrants, only one construction can logically and legally be placed upon substantially all negative answers to the question, viz. that such registrants are unwilling to obey the Selective Service laws and will refuse to serve in the military forces of the United States if called in the draft and will therefore accept a prison sentence in preference to military service. In my opinion, no other interpretation of a negative answer to this question is possible, except in the case of conscientious objectors who have registered as such.

Any registrant who has knowingly and intentionally given a negative answer to the question when his true and honest answer would be in the affirmative, has, of course, falsified and misrepresented a material fact in a matter of concern to the War Department, and in so doing has made himself liable to a heavy fine and ten (10) years imprisonment as the questionnaire specifically states. These penalties attach to a false answer to any of the questions.

B. Question 28 - "Will you swear unqualified allegiance to the United States of America and faithfully defend the United States from any or all attack by foreign or domestic forces, and forswear any form of allegiance or obedience to the Japanese emperor, or any other foreign government, power or organization?"

There should be no misunderstanding as to this question. It seeks merely an affirmation of loyalty on the part of the registrant. The effect of an affirmative answer is simply that a presumption is thereby created that the registrant is not a traitor but is asserting his right and desire to be classed as a true American citizen and to enjoy his rights and meet his obligations as such.

A negative answer coupled with a request for repatriation constitutes an election of citizenship and nationality between the United States and Japan. While certain legal formalities would doubtless be necessary in order formally to nullify the citizenship of such registrant, it is more than likely that pending such formal proceeding he would be prohibited and prevented from exercising or enjoying any rights of citizenship and treated for all intents and purposes as an enemy alien. A negative answer to Question 28 not coupled with a request for repatriation is, in my opinion, a clear admission that the registrant is a traitor to the United States and as such

is subject to the penalties provided for treasonous persons. It is difficult for me to believe, in spite of the indications, that there is any substantial number of traitorous citizens in this community and I feel therefore that there must have been misunderstanding of this question. A negative answer which does not constitute an election of citizenship in favor of Japan would invite the most serious penalties possible, and it is hard to believe that a number, if any, of the registrants desired to indicate that they prefer to accept such penalty rather than either elect to discard their United States citizenship or affirm their loyalty to the United States.

C. Inducing Registrants to give Negative Answers to Question 27 and 28.

Any person who by word, action or otherwise, directly or indirectly, intentionally causes a registrant to make negative answers to Questions 27 and 28 is thereby interfering with and obstructing a program of recruitment of the United States Army in time of war and is subject to the penalties provided by the Espionage Act of 1917 which imposes a heavy fine and up to 20 years' imprisonment for such activity. Physical interference or obstruction is, of course, not a necessary element of proof of this crime. A written or spoken threat, a question asked under circumstances which might constitute duress or coercion by fear, even a mere look or gesture inferring a threat, would be sufficient evidence to warrant a conviction. Furthermore, any person who, having knowledge that a violation of the Espionage Act has been or is being committed fails to bring that knowledge to the attention of officials of the United States Government, is chargeable with aiding and abetting the culprits and is subject to the same penalties as the principals in the crime.

The statements made in this opinion are merely statements and constructions of law rendered in accordance with my interpretation of the meaning and effect of the various laws applicable. The opinions are not in any sense intended as threats or prophecies of any nature, as you are well aware that it is merely my purpose and function to expound the legal significance of the issues upon which my opinion is given.

/s/James H. Terry
JAMES H. TERRY,
Project Attorney

JHT:MKR