Legal and Constitutional Phases of the WRA Program

UNITED STATES DEPARTMENT OF THE INTERIOR

WAR RELOCATION AUTHORITY

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United States Department of the Interior

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INTRODUCTION

Probably no Federal activity has provided a greater variety of legal content or more stimulus and challenge to its lawyers than has the program of the War Relocation Authority. The wartime involuntary evacuation from their homes of over 100,000 persons of a minority group, citizens as well as aliens, was without historical precedent. The decision to impose limited detention upon the evacuees in the relocation centers pending loyalty screening and assurance of acceptance in outside communities, based though it was on practical exigencies, raised additional constitutional issues that were only partially resolved by the United States Supreme Court before the end of the program. Wartime emotions, abetted by the activities of historically anti-Japanese forces on the West Coast, resulted in numerous expressions of legislative and administrative discrimination against the evacuees that raised other issues vitally important to the future of civil liberties in this country.

The creation of self-contained communities for the housing and maintenance of the evacuees, likewise without analogous precedent, necessitated the establishment of a pattern for government and the improvisation of community institutions, within defined concepts of State and Federal jurisdiction, that could function effectively and as democratically as circumstances would permit. The legal problems of the evacuees themselves ran the whole gamut of a general law practice; in a very real sense the WRA legal organization was also a law firm for 10 communities comprising over 100,000 persons.

Part I of this report analyzes the basic constitutional issues involved in the evacuation and in the Authority's subsequent leave program, and outlines the position taken with respect to litigation

Note: Part I of this report was prepared by Philip M. Glick, Assistant Director of WRA and former Solicitor; Parts II and III were prepared by Edwin E. Ferguson, Solicitor.

strategy. Part II is a discussion of the legal frame of reference within which the basic policies for center administration were formulated. Part III summarizes the organization of the Office of the Solicitor and the work performed in Washington and at each level of operations in the field. Attention is called particularly to the policies established for supervision over the work of field attorneys and for attorney training, and to the system developed for referral of cases to private attorneys where necessary.

PART I

THE CONSTITUTIONALITY OF EVACUATION AND DETENTION

The evacuation of 112,000 persons of Japanese ancestry, their continued exclusion from the West Coast from the summer of 1942 until January of 1945, and their detention for varying periods of time in assembly centers and relocation centers, inevitably raised extremely grave questions as to the consistency of such a program with the requirements and the prohibitions of the Federal Constitution. The fact that two-thirds of the evacuees were citizens of the United States by birth sharpened these very grave issues.

Did the Federal Government have constitutional power to evacuate all these people from their homes and their jobs, and compel them to leave the West Coast? Even the women and children? Even those who were citizens? Could it do so without charging any of them with having committed any crime, and without any trial or hearing? Could the Government follow the order to vacate the West Coast with enforced detention in an assembly center? Could the Government thereafter, without consulting the evacuees, transport these people from the assembly centers to relocation centers under military guard and thereafter incarcerate and forcibly detain the evacuees in the relocation centers? What about the constitutional rights, in particular, of those evacuees who were citizens of the United States and who insisted throughout these activities that they were patriotic, and loyal to the United States, and willing to fight in the armies of the United States to prove that loyalty?

Not all the officers and agents of the United States Government who played responsible parts in the evacuation and detention were seriously troubled by these questions of constitutional power and constitutional right. Many, however, were deeply concerned. It is the answers to these questions provided by those who were concerned--and, later, by the Supreme Court of the United States--that this report will discuss.

There were two important reasons why the administrators of the WRA program felt compelled to think through these searching questions of constitutional authority. In the first place, the evacuees were deeply shocked by the fact of evacuation, and unable to determine what implications the evacuation carried for their future residence in the United States as citizens or as lawfully resident aliens. WRA had to provide to the evacuees and to itself answers to these questions that would provide a rational and moral basis for its relocation program.

In the second place, WRA had to be prepared to answer these same questions when propounded by Congressional investigating committees, by groups attacking the relocation program, by citizens whose support it sought to mobilize, and by litigants in the courts.

The many constitutional issues can be reduced to three basic questions:

1. Was the evacuation valid under the Constitution?

2. Was detention in assembly centers and relocation centers valid under the Constitution?

3. If it were to be assumed that the original evacuation was constitutional, because it was compelled by an overriding military necessity, how long did the military necessity continue to be sufficiently grave to justify continued exclusion; did such continued exclusion remain valid all the way through until December 1944 when the exclusion orders were finally revoked?

Was Evacuation Constitutional?

It is radically important to make a distinction at the outset between the question whether a given governmental action was valid under the Constitution and the question whether that action was wise or proper. A governmental action--an increase in tariff schedules, the establishment of price control or consumer rationing, the prohibition of gambling, the evacuation of all persons of Japanese ancestry from the West Coast, or whatever--may be both a wise policy and a constitutional policy, or it may be a wise policy but not one permitted under our Constitution, or it may be an unwise policy but one that is permitted under our Constitution, or it may be a policy that is both unwise and prohibited by our Constitution. This would seem to be an elementary idea, hardly worth emphasizing, but for the fact that, again and again, persons convinced that the mass evacuation was unwise, unsound, and unfair, leaped unthinkingly to the conclusion that a policy of which they so strongly disapproved as <u>unwise</u> must necessarily, therefore, be also <u>unconstitutional</u>.

The reasoning which led the Department of Justice and the Office of the Solicitor of WRA to the conclusion that the evacuation was within the constitutional power of the Federal Government--and which was later adopted by a majority of the Supreme Court of the United

States[1]--may be summarized in the following numbered propositions:[2]

1. The question to be answered is: Was the mass evacuation within the power of the Federal Government in the spring of 1942, when it was decided upon and put in effect? It is the situation in existence at that time that is controlling. (A later change in the situation might require some new governmental act, but would not affect the validity of the earlier evacuation.)

2. The Federal Constitution confers upon the Federal Government the power to wage war. This is an extremely broad power. It is "the power to wage war successfully." It includes the power to interfere very greatly with the lives and free movement of citizens and alien residents where the interference is a necessary step in waging war.

3. In the present case the President authorized the evacuation by Executive order.[3] Subsequently the Congress "ratified and confirmed" that Executive order by enacting a statute which provided criminal penalties for violation of military orders issued pursuant to the Executive order.[4] The evacuation was authorized, therefore, by the President and the Congress acting together. It is not necessary for the Court to determine whether the evacuation would have been valid if ordered by the President, solely under his powers as President, without Congressional concurrence.

4. The crux of the issue is: Can the Government show that the mass evacuation was a military necessity--that is, that the evacuation was a necessary step in the program of waging the war against the enemy? That the evacuation was such a military necessity will be demonstrated immediately below--but first, we must introduce into the argument at this point an important consideration: in determining whether

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[1] Korematsu v. United States, 323 U.S. 214 (1944). See also Hirabayashi v. United States, 320 U.S. 81 (1943).

[2] The argument is elaborated in the "Brief for the United States" filed by the Government in the Supreme Court of the United States in Korematsu v. United States, October Term 1944, No. 22. See also the "Brief for the United States" filed by the Government in the Supreme Court of the United States in Hirabayashi v. United States, October Term 1942, No. 870.

[3] Executive Order No. 9102, March 18, 1942.

[4] 56 Stat. 173, 18 U.S.C.A. 97b.

the evacuation was in fact a military necessity, the Court will not substitute its own final judgment on the facts for the judgment made by the responsible military commander who carried authority and responsibility for making the decision at the particular time and in the particular circumstances. The Court will decide, not whether the judges would have ordered the evacuation if they had been the responsible military commanders at that time and had had available to them the facts that were available to the actual military commander, but only whether the facts available to the military commander were such that he could, in an honest and reasonable exercise of judgment, conclude that the evacuation was a military necessity.

5. The facts available to the responsible military commander in the spring and summer of 1942, which were sufficient to enable him to conclude, reasonably and honestly, that mass evacuation was a military necessity were the following:

A. The military situation on the West Coast in the spring and summer of 1942 was grave. The Japanese had successfully attacked the United States Naval Base at Pearl Harbor and had very seriously damaged the United States Fleet. Rapidly thereafter the Japanese army invaded Thailand, sank the British battleships Wales and Repulse, captured Guam, Wake Island, Hong Kong, Manila, Singapore, the Netherlands East Indies, Rangoon, Burma, and then the whole of the Philippines. On February 27 the Battle of the Java Sea resulted in a naval defeat to the United Nations. On June 3 Dutch Harbor, Alaska, was attacked by Japanese carrier-based aircraft, and on June 7 the Japanese gained a foothold on Attu and Kiska Islands. Once in February and once in June 1942 the coasts of California and Oregon, respectively, had been shelled. Following the Pearl Harbor attack the Japanese had a naval superiority of three or four to one in the Pacific Ocean. The Army and the Navy believed that it was of the utmost military importance to prepare against an invasion of the Pacific Coast by Japan.

B. The threat of invasion and attack of the Pacific Coast by Japan created fear that the enemy might use the so-called fifth column technique of warfare.

C. War facilities and installations were concentrated on the West Coast to such an extent as to make it an area of special military concern. Important Army and Navy bases and a large proportion of the Nation's vital war production facilities were located in that region.

D. Approximately 112,000 persons of Japanese descent resided in California, Washington, and Oregon at the time. There was considerable prejudice and hostility toward these resident persons of Japanese descent, both citizen and alien, on the part of the rest of the population, expressed in discriminatory State legislation, discrimination in

employment, severely limited social intercourse, and considerable physical segregation.

E. About one-third of the persons of Japanese ancestry were aliens, because barred by the Federal naturalization laws from becoming citizens.

F. It was widely believed that the resident persons of Japanese ancestry felt close ties of kinship and sympathy with Japan. This belief was in part based upon the maintenance of Japanese language schools, the existence of many Japanese cultural societies, the practice of Japanese parents of sending their American-born children in their early years to Japan for some years of residence and education, so that approximately 10,000 Kibei were then living on the West Coast, the belief in and practice of Shintoism by an unknown number of the group, and the fact that many of the parents had taken affirmative steps to secure or protect dual nationality in both the United States and Japan for their children.

G. It was widely believed that there existed among the persons of Japanese ancestry on the West Coast an unknown number of potential saboteurs, who could not be identified, but would rise to aid an invading Japanese Army, if such an invasion took place.

H. It was generally feared on the West Coast that the latent hostility toward persons of Japanese ancestry might produce civil disorder and local violence.

6. A responsible military commander must guard against probable dangers and possible dangers, and not alone against dangers certain to develop, to the extent that his available forces permit.

7. Mass evacuation of all persons of Japanese ancestry would eliminate the danger of their engaging in sabotage and espionage in aid of invasion by the Japanese Army and Navy, at the price of compelling 112,000 people to remain away from their homes during the period of invasion, without seriously disrupting war production in the evacuated area.

Considering these propositions cumulatively the Government took the position that the responsible military commander could reasonably and honestly have decided, in the spring and summer of 1942, that such mass evacuation was a military necessity. A majority of the Supreme Court agreed with this view and sustained the constitutionality of the

evacuation in its decision in the Korematsu case.[5]

A thoughtful person considering the argument thus far presented will still entertain some unanswered questions. In the first place, was this not an evacuation of an entire racial group because of their racial difference, and if so, how can it be constitutional for the Government to sanction race prejudice and race hate with a mass evacuation? The Government admitted in its briefs in the Supreme Court that unless the fact of racial difference could be shown to have a special effect on the military problem, the evacuation of a racial minority merely because of that racial difference would violate the constitutional rights of the evacuees. The argument summarized above, however, indicates that the persons of Japanese ancestry were involved in a total complex of circumstances that created a danger of sabotage and espionage in aid of an invading Japanese Army. It was, therefore, military necessity, and not the racial difference, that created the constitutional power to evacuate.

This leads to another question: Why was there no mass evacuation from Hawaii where persons of Japanese ancestry bulked so much larger in the total population, and does not the failure to evacuate from Hawaii cast doubt on the argument of military necessity? A sufficient answer may lie in the fact that the whole of Hawaii was placed under martial law. The Army had thus gone farther in Hawaii to guard against sabotage and espionage than it was prepared to go on the West Coast of the Mainland, and the declaration of martial law may well have made the expedient of evacuation of part of the population unnecessary. Further, a commanding general must consider the price he will have to pay for each protective measure he may wish to undertake. The price in reduced war production on the West Coast of the United States would be small; that price in Hawaii would be disproportionately large. The danger may therefore well have been considered sufficient to justify the decision

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5 Korematsu v. United States, 323 U.S. 214 (1944). See also the unanimous opinion of the Supreme Court in the case sustaining the constitutionality of the curfew regulations applicable to persons of Japanese ancestry, Hirabayashi v. United States, 320 U.S. 81 (1943). Mr. Justice Roberts dissented from the Court's decision in the Korematsu case on the ground that the detention in assembly centers and relocation centers, which is discussed below, was an inseparable part of the total evacuation program, that such detention was unconstitutional, and that therefore the evacuation itself was unconstitutional, the program as a whole being tainted with the invalidity of detention. Mr. Justice Murphy dissented on the ground that his independent re-examination of the facts satisfied him that there was no military necessity for the evacuation.

to evacuate on the West Coast while relying on the defenses of martial law in Hawaii.

Why, then, were not Germans and Italians evacuated from the Pacific Coast--or from the East Coast as well? Here, again, the commanding general needs always to consider the balance of forces and factors. It was the Japanese Army, and not the German or Italian, that threatened invasion of the West Coast. No army was considered at any time during the war seriously to threaten an invasion of the East Coast. The size of the population to be evacuated, if Germans and Italians were to be evacuated would, also, make the protective measure more costly and hazardous than the anticipated danger.

These are the considerations which the Government and the Court needed to weigh when considering the constitutionality of evacuation. Every citizen must likewise weigh them. Where unwise governmental action is advocated, it is important that it be challenged and defeated, or repudiated if already performed, on the ground that it is unwise, and through regular democratic processes. To condemn an unwise action by denying its constitutionality is to run the risk of weakening the National Government so that it may become incapable of taking similar action under circumstances where everyone may agree it has become wise.

This, of course, is not to say that all those who advocated the mass evacuation were animated by considerations of military necessity. Many advocated it because they were blinded by race hate and many for petty, selfish reasons. Also, many were easier to convince of the military necessity because racial prejudice had prepared their minds to believe the worst. Part of the price of prejudice which a democracy must always pay is the power of prejudice to blind the democracy to what the facts of necessity may be and to the courses of action that may be open to it.

These, at any rate, were the arguments that led WRA, and the Federal Government as a whole, to assert the constitutionality of evacuation. This position makes irrelevant the fact that none of the evacuees were charged with crime or were given trials or hearings. The ground of evacuation was not individual guilt but the necessity for mass evacuation to guard against potential danger from a possible minority, the members of which could not be readily identified.

Was Detention Constitutional?

The leave regulations and the relocation program of WRA have been

described in detail in other final reports of the Authority and need not be restated here.[6]

In baldest outline, this was the procedure: All the evacuees were detained, first in assembly centers and then in relocation centers, until certain basic information could be secured concerning them, and checked against the files of the intelligence agencies of the Government, so that a judgment could be made as to each adult evacuee that he was or was not potentially dangerous to the internal security of the country if released during the war. (In practice, however, many were released for seasonal agricultural labor even before checking of their records was completed.) Those evacuees who were found, on the basis of this screening, to be "nondangerous" were then eligible to leave the centers as soon as WRA was satisfied that they had a job or other means of support, and that the community into which they wished to go could receive them without danger of violence. (In fact, WRA also required each departing evacuee to agree to keep it notified of each change of address, but no evacuee was ever detained for refusal to make this agreement and no action was ever taken against the many who ignored the agreement. This was understood tacitly to be a requirement born of administrative convenience and not of internal security, and was never intended to qualify the right to leave a center.) Those denied leave clearance were to remain in detention.

Whether this kind of detention was valid in the case of the alien evacuees is a question that can be answered easily and may therefore be disposed of first. It is quite clear that Congress has conferred upon the President [7] the power to restrain and detain alien enemies in time of war in such manner as he may think necessary. The constitutionality of that authorization is universally conceded.

In the case of the citizens, however, this detention program raises three distinct questions:

1. Did the Government have constitutional power to detain all the evacuees while they were being sorted to determine which might be dangerous to internal security if released?

2. Did the Government have constitutional power to detain admittedly nondangerous evacuees until the Authority was satisfied that they had a means of support and that the community into which they wished to go could receive them without danger of violence?

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[6] See "WRA - A Story of Human Conservation", "The Relocation Program", and "Wartime Exile".

[7] 50 U.S.C. 21 - 24.

3. Could the Government constitutionally detain those evacuees deemed potentially dangerous, and for how long?

Detention Pending the Sorting

If the evacuation were to be considered to be unconstitutional then, of course, any variety of postevacuation detention also falls as without constitutional support. Assume, however, that the evacuation itself be deemed constitutional, could not the Government have said to the evacuees as they stood on the eastern border of the evacuated area, "Go wherever you wish in the United States, but you may not return to the excluded area until further word"?

It is difficult, in the calm aftermath of a securely-won war, to recall the worried concern, the heightened sense of danger, the volatile emotional atmosphere that were the inescapable facts of life during the months when the enemy was in the ascendancy and the Nation was grimly getting ready to launch a hoped-for offensive. Detention was a policy which the responsible officers of WRA decided upon reluctantly, out of a conviction that no other course was administratively feasible or genuinely open to them. The agitation for mass evacuation had repeatedly asserted that West Coast residents of Japanese ancestry were of uncertain loyalty. The Government's later decision to evacuate was widely interpreted as proof of the truth of that assertion. Hence, a widespread demand sprang up immediately after the evacuation that the evacuees be kept under guard, or at the very least, that they be sorted and that the dangerous ones among them be watched and kept from doing harm. In these circumstances it was almost inescapable that the program administrators should come to the conclusion that if the right of free movement throughout the United States was to be purchased for any substantial number of the evacuees, the price for such purchase would have to be the detention of all the evacuees while they were sorted and classified, and then the continued detention of those found potentially dangerous to internal security. The detention policy of WRA was born out of a decision that this price would have to be paid, that it was better to pay this price than to keep all the evacuees in indefinite detention, and that to refuse to pay this price would almost certainly mean that the prevailing popular fear and distrust could not be reasoned with and could not be allayed.

The Supreme Court was never presented with an opportunity to pass upon the validity of the mass detention pending sorting. Had the question been presented to it for decision, the Court would undoubtedly have been disturbed by the length of time it took to complete the sorting. A detention of a few weeks, perhaps a detention of 4 or 5 months considering the size of the total group, it should not have been too difficult to sustain under the circumstances. Although the sorting, in fact, took the better part of 2 years, it is true that any ev-

who for any reason was particularly anxious to leave early, could arrange to secure priority consideration of his request and only a very few cases were detained for more than 8 to 10 weeks because of the processing of security clearance.

Before we state more fully the legal argument in defense of such detention, let us consider the next type of detention involved since many of the same considerations apply to both.

Detention for Employment and Community Acceptance

Before they could receive permission to leave the center, those who received leave clearance needed also a job or means of support, and needed to be headed for a community which WRA believed willing and capable of accepting evacuees without danger of violence. Was such detention valid?

These conditions to departure—that the evacuee shall have been found to be nondangerous to internal security, that he shall have a job or some other means of support, that there shall be "community acceptance" at his point of destination, and that he shall keep the Authority notified of his changes of address—represented, in fact, the heart of the relocation program. They were designed to make planned and orderly what must otherwise have been helter-skelter and spasmodic.

The very fact that 112,000 people had been evacuated—and evacuated under a cloud—created for the Government a special resettlement problem. Had the evacuees been merely innocent victims of a major flood, routed from their homes by sheriffs and deputies and brought out of the danger zone, the Government would inevitably have been compelled to take appropriate action to reestablish the flood evacuees without serious disruption of the social fabric. It might well have had to detain all the flood evacuees until they were inoculated against disease and until they were provided with the basic essentials, and until they satisfied the authorities that they had some place to go for immediate shelter. The Government might well have had to provide temporary shelter for thousands of such evacuees and, if so, would have had to regulate the entries and departures from such temporary refuge. The problem was much more acute in degree in the case of these wartime evacuees. If the constitutionality of the evacuation itself be assumed, the situation that was inevitably created by the evacuation does of itself give rise to new problems which Government must undertake to solve by appropriate means.

Thus, the conditions attached to departure from the centers enabled a sifting of a possibly questionable minority from the wholesome majority whose relocation it became the principal object of WRA to achieve. These restrictions enabled WRA to prepare public opinion

in the communities to which the evacuees wished to go for settlement, so as to avoid violent incidents, public furor, possible retaliation against Americans in Japanese hands, and other evil consequences. The leave regulations "stemmed the flow"; they converted what might otherwise be a dangerously disordered flood of unwanted people into unprepared communities into a steady, orderly, planned migration into communities that gave every promise of being able to amalgamate the newcomers without incidents, and to their mutual advantage. The detention, in other words, was regarded as a necessary incident to this vital social planning.

During the whole of 1943, WRA fought for the leave clearance and relocation program, not against those who charged that this was an unconstitutional interference with the rights of the evacuees, but against those who argued that only wartime internment of all the evacuees could adequately safeguard the national security. During 1944 the resettled evacuees were increasingly winning acceptance, and the military situation was steadily improving for the United Nations, and public fears were slowly being quieted, and the Nisei military exploits were gradually becoming known, and the voice of conscience was slowly growing louder in the land, and criticism then began to direct itself against continuation of the detention of those found eligible to leave. During this period, also, detention of those eligible to leave became more and more a matter of form rather than of substance. WRA had by now succeeded in laying the groundwork for relocation throughout all parts of the country other than the evacuated area, so that the requirement of community acceptance was satisfied in advance for all evacuees. Similarly, WRA was equipped to find a job for any evacuee who needed help in securing one, so that the requirement of employment or other means of support was satisfied in advance for practically all evacuees. It is literally true that for the large majority of the evacuees there was no detention of evacuees in relocation centers during most of 1944 and subsequently, except in form and in theory. Any one whose record was satisfactory not only could leave on request but was assisted, urged and persuaded to depart. Relocation of those eligible to leave had by then become the objective to which much of WRA's appropriation and most of WRA's energies were directed. The assistance consisted of transportation to the place of destination with a small resettlement grant to tide the evacuee over the adjustment period. Special dependency cases received special assistance.

It was not until 1944 that the Supreme Court had an opportunity to pass on the question of the constitutional validity of detention of those evacuees who had received leave clearance until the requirements of job and community acceptance were satisfied. In December

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the Supreme Court delivered its opinion in the case of Ex Parte Mitsuye Endo,[8] a petition for the writ of habeas corpus filed on behalf of a young woman who had received leave clearance but who refused to indicase a destination other than Sacramento, California, from where she had been evacuated. No community in the evacuated area could satisfy WRA's requirement of community acceptance since the Army continued to exclude evacuees from returning to that area. Mr. Justice Black, speaking for the majority of the Court, decided that it was not necessary for the Supreme Court to determine whether such detention was constitutional because, said Mr. Justice Black, such detention was not authorized by Executive Order No. 9102 or any other Executive order or any act of Congress. Since Miss Endo, said the Court, was admittedly loyal to the United States and not endangering its internal security, her detention could not be said to be authorized by Executive orders which sought to guard the West Coast against sabotage and espionage. Mr. Justice Roberts dissented on the ground that the Congress and the President had specifically been informed of the kind of detention that WRA was enforcing, and had ratified and confirmed WRA's interpretation of Executive Order No. 9102--the President in a message to the Congress, and the Congress in appropriations made to WRA with knowledge of the details of the program to be financed with those appropriations. And, said Mr. Justice Roberts, as thus ratified and confirmed by the Congress, the detention of nondangerous persons is unconstitutional. All the members of the Court thus found themselves in agreement, although for different reasons, that Miss Endo must be ordered at once released. WRA immediately lifted its requirements of means of support and community acceptance.

The decision of the Court in the Endo case came 48 hours subsequent to the announcement by the Army that the exclusion orders were being revoked. The revocation of the exclusion orders was coupled with termination of the leave regulations. Thereafter, with the exception of those detained by the War Department or the Department of Justice, nearly all of whom had by then been transferred to the Tule Lake Segregation Center, the evacuees were free to leave the centers at will. A short time later the military guards were removed and the Authority's program intensified its effort to persuade the remaining evacuees to relocate.

Detention of Those Deemed Ineligible to Leave

The only aspect of the detention program which the Supreme Court was asked to pass upon was detention of those who, like Miss Endo, had received leave clearance. The Court never ruled on the validity of detaining all evacuees while they were being sorted nor on the validity

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[8] 323 U.S. 283 (1944).

of detention of those deemed ineligible to leave.

WRA took the position that it sought to detain those deemed ineligible to leave until after all those deemed eligible had been relocated. Such detention, it maintained, was necessary to build public acceptance of those found eligible to relocate. The detention was thus regarded as an essential step in the accomplishment of the relocation objective. Since the war ended before relocation of the eligibles had been completed, the Government never had to face the question of whether it could or would attempt to detain those deemed ineligible after the relocation objective had been fully achieved. In the period from December 1944 to February 1945 many of the detainees renounced their citizenship. After revocation of the exclusion orders, and on termination of WRA's sorting processes, the War Department and the Department of Justice assumed responsibility for determining who should remain in detention. Those Departments detained for a time most of the renunciants but released from detention all citizens formerly detained who had not renounced their citizenship. The revocation of the exclusion orders was thus followed before very long by the termination of the detention of citizens.

How Long was Continued Exclusion Constitutional?

The argument for the constitutionality of evacuation summarized above laid great emphasis upon the military situation that obtained in the winter, spring, and early summer of 1942. Clearly, as the military situation improved, as the danger of invasion of the West Coast by the Japanese Army receded, and as the processes of sorting the evacuees into eligible and ineligible categories were completed, the arguments for the military necessity for the evacuation program became deeply affected. The exclusion orders were not revoked until December 1944. It seems clear to the point of certainty that the military situation had so far improved as to make continued exclusion no longer valid many months, and perhaps more than a year, before the exclusion orders themselves were finally revoked. It remains true, nevertheless, that the assignment of the precise hour when the military balance so far shifted that evacuation ceased to be a military necessity is a difficult task. The courts would understandably hesitate to substitute their judgment on such an issue for the judgment of the responsible military commanders. If the delay in revocation was longer than it need have been, it was not so much longer as it well might have been. The orders were revoked more than 6 months before the end of the war with Japan.

During the months prior to revocation of the exclusion orders, any relocated evacuee might have sought to return to the excluded area, and if physically interfered with by the Army might have sought to restrain such interference in the courts on the ground that continued

exclusion had ceased to be a military necessity and hence had ceased to be valid. It is a striking fact that not one such suit was filed although such return was a few times attempted and prevented. [9]

The Strategy for Litigation

In 1942 and early in 1943, while public feeling still ran strong and the military situation still looked dark, the Authority's lawyers believed that it was undesirable for cases testing the constitutionality of evacuation and of detention to be hurried to the Supreme Court. Decision on such complicated questions can be more soundly conceived when the atmosphere has been freed of the surcharged emotions generated by the dangers and tensions of war. The Authority, of course, could not and did not seek in any way to interfere with the freedom of evacuees to have recourse to the courts for redress of their grievances. But those evacuees or friends of the evacuees who sought the advice of the Authority were advised that the niceties of individual liberty would receive correspondingly fuller attention and protection as the Nation's crisis was passed, as the military situation improved, and as people generally were able to breathe more easily and think more soberly. This remained the advice of the Authority throughout the early period.

During what might be called the "middle period" the Authority advised that the time had come for free testing of these issues in the courts. It indicated its willingness to cooperate in the submission to the courts of well chosen "test cases" that would fairly and adequately present the issues for decision. It quickly became clear that the evacuees generally shunned legal conflict with the Government. Most of the evacuees apparently took the position that their future in the United States might be imperiled by large-scale litigation challenging the evacuation and challenging the detention that was a part of the relocation program. It is this fact that accounts for the failure to bring to the Supreme Court cases that would adequately have tested the validity of the various kinds and classes of detention discussed in this report.

Also during this middle period the Authority faced the question of revising its leave regulations to eliminate the requirement that an evacuee who had received leave clearance be possessed of a job or other

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[9] There was one attempt in late 1944 to test the validity of continued exclusion by an action to restrain interference with anticipated return. The War Department exempted the petitioners from the mass exclusion orders, thus precluding a decision on those orders, and issued individual exclusion orders which the Court refused to invalidate. Ochikubo v. Bonesteel, District Court of the United States, Southern District of California, Central Division, No. 3834-PH (1945).

means of support and be headed for a community willing to receive him. Opponents of the relocation program were still continuing a heated attack on the Authority, charging that the leave regulations were too lax and permitted too many people to leave the centers. The Authority would have welcomed a Court decision testing the validity of continuing to impose these requirements. The Endo case, referred to above, fortunately met part of this need. When the Department of Justice considered rendering the case moot, the Authority protested. The pendency of this case in the Supreme Court thus postponed for several months the necessity for deciding whether to eliminate these requirements from the leave regulations. In December of 1944 the decision in the Endo case eliminated these requirements, and the revocation of the rest of the leave regulations soon followed.

In the final year of the operation of relocation centers detention by WRA was no longer the issue to be tested. Now the issue became whether the Department of Justice had the legal authority to detain and deport evacuees who had renounced their American citizenship and who now sought to remain in the United States. A large number of suits to test this question were filed during 1945 in the Federal district courts, were consolidated for purposes of trial, and as this is written still await trial.

The convictions of the Authority on these legal issues may be here briefly summarized. It believed, as indicated above, that the evacuation, however unwise in fact, however unnecessary subsequent events proved it to be, was within the constitutional power of the Federal Government when undertaken and executed. It doubted from the beginning and never ceased to doubt the validity of the detention procedures. The detention procedures were adopted out of a conviction that no other course was administratively open or feasible, and that the administration must follow its only available course when the unconstitutionality of that course is no more than a matter of speculation and uncertainty. The detention of all the evacuees for a preliminary period pending their sorting and classification did not seem either too great a hardship for the evacuees to be subjected to or a course too difficult to defend in the courts. The detention of those deemed eligible to leave until they found jobs and until communities were prepared to receive them was deemed much more doubtful as to constitutional validity but was also recognized to be a course pursued in the interest of the evacuees themselves and to be a course of action for which there was much to be said even on the issue of constitutional validity. The detention of those deemed ineligible to leave, the Authority felt, was an activity practically forced upon it and which it had no alternative but to pursue until the courts could pass on the issue.

PART II

LEGAL CONSIDERATIONS IN THE DEVELOPMENT OF CENTER MANAGEMENT POLICIES*

The Geneva Convention

One of the questions early confronting the Authority was the degree to which the administration of the centers should conform to the provisions of the Geneva Convention on Prisoners of War. Both the United States and Japan were signatory powers, and the Convention was ratified by the United States in 1932. [1] The Japanese Government did not, however, ratify the Convention and under the provisions of Article 92 of the Convention it was not effective with respect to Japan. Hence the United States Government was not bound to observe the terms of the Convention in its treatment of prisoners of war.

Concern over the treatment of American prisoners of war and civilians in Japanese hands, however, prompted a different policy. Early in the war the State Department obtained the Japanese Government's agreement to reciprocal application of the provisions of the Convention to prisoners of war, and insofar as the provisions of the Convention were adaptable, to "civilian internees." With respect to Japanese civilians in this country, the State Department construed the term "civilian internees" as referring to alien enemies interned pursuant to the Presidential proclamations issued under authority of the Alien Enemy Act, as amended, and not to Japanese nationals included in the population moved to relocation centers. [2] Nevertheless, as the program of the Authority developed, with its limited detention features, it was apparent that standards of treatment at least substantially equivalent to those guaranteed by the Convention should be observed, if only to avoid giving the Japanese Government any pretext for reprisal in the treatment of American civilians in the hands of the Japanese.

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* This section is largely adapted from "The Law of the War Relocation Centers," an article prepared by the Solicitor and a former Assistant Solicitor of WRA and published in the June 1946 issue of the George Washington Law Review.

1 47 Stat. 2021.

2 Hearings before Subcommittee of the Senate Committee on Military Affairs on S. 444, 78th Cong., 1st Sess. (1943) Part I, pp. 113, 119.

Thus, for example, with respect to sanitation, medical care, housing, religious freedom, and recreational opportunities, the Convention requirements were met (Arts. 9, 10, 13-17). The evacuees operated their own canteens and stores and received all profits (Art. 12). Under authority of the annual WRA appropriation items, relevant provisions of the United States Employees Compensation Act were applicable in case of accidental injury or death of evacuee workers (Art. 27). Because of the Convention provision that labor furnished by war prisoners shall have no direct relation with war operations (Art. 31), WRA refused to permit Japanese aliens to work on camouflage net garnishing projects or other directly war-connected activities in the centers.

In other respects, however, there were varying degrees of departure from the literal requirements of the Convention--departure made necessary or advisable by the character of the program itself. Thus, the per capita food ration, while adequate and nourishing, never equalled in cost that provided members of the armed forces (Art. 11). Larger quantities would have been wasted because of the number of women and children and the sedentary life of most of the evacuees. On the other hand, special diets for infants and the infirm were provided. At the same time OPA rationing regulations were observed. Clothing was not furnished directly (Art. 12), but cash clothing allowances were paid evacuee workers for themselves and families, and welfare grants, including money for accessory clothing, were paid needy unemployables. This stemmed from the policy to encourage evacuee employment and thus prevent deterioration of initiative and trade skills, provide maximum outlet for constructive activity, and decrease administrative problems.

Under the Convention, prisoners of war are subject to "the laws, regulations, and orders in force in the armies of the detaining power" (Art. 45). Insofar as this permitted trial and punishment under military law it was clearly unadaptable to evacuees in relocation centers. Instead, WRA handled its disciplinary problems through the State and Federal courts, in the more serious cases, and through administrative action where lesser offenses were involved. With respect to administrative disciplinary action, the Convention prohibited confinement exceeding 30 days at any one time and the transfer of prisoners of war to prisons or penitentiaries for disciplinary punishment (Arts. 54, 56). The Authority's administrative disciplinary procedure authorized confinement for not exceeding 90 days for each offense, and local jails outside the centers were generally utilized for that purpose. Nevertheless, the provisions of the Convention guaranteeing elements of due process (Arts. 46-48, 52, 59, 60-67) and protecting the welfare of persons confined as a disciplinary measure (Arts. 56-58) were observed

in all substantial respects.[3] Advance notification was given the State Department of all criminal proceedings instituted against aliens (Art. 60).

There were, in addition, certain practices permitted by the Convention which for legal as well as administrative reasons were not instituted. One was the utilization of involuntary labor (Arts. 27-30), which would clearly have been unconstitutional with respect to the American citizens and resident aliens who comprised the evacuee population. Another was the restriction on the amount of money that prisoners of war could keep in their possession (Cf. Art. 24). Still another was the censorship of mail.

Pursuant to Articles 42 and 43, the alien evacuees in relocation centers were permitted freely to communicate with the Spanish Embassy, and periodic visits of inspection were made by representatives of the Embassy with respect to which WRA cooperated fully. No significant modifications in policy were recommended by the Embassy as a result of these visits.

State and Federal Jurisdiction

Another problem facing the War Relocation Authority was the scope of State and Federal jurisdiction over the lands on which the relocation centers were situated. The first question that needed to be resolved was the extent to which the Federal Government had already acquired exclusive jurisdiction over the lands.

Exclusive jurisdiction could have been acquired in any of three ways: reservation of jurisdiction over the lands involved at the time the State was admitted into the Union; Federal purchase with State consent for the purposes enumerated in Article I, section 3, clause 17 of the Federal Constitution; or express cession of jurisdiction by the State legislature. Acquisition of land under a State consent or cession law does not, however, automatically vest exclusive jurisdiction in the Federal Government; there must be a Federal intent to accept such jurisdiction. As to lands acquired after 1940, there is a conclusive statutory presumption that exclusive jurisdiction is not accepted until the head of the Federal agency files a notice of acceptance with the Governor of the State.[4]

Five of the relocation centers were situated on lands made available to the Authority by other Federal agencies and it was at least

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[3] Infra, "Community Government".

[4] 54 Stat. 19; 40 U.S.C. 255.

possible that exclusive jurisdiction had already been obtained. An examination of the record revealed, however, that this was not the case. Three of the centers were located on Federal reclamation lands. Most of these lands at two of these centers (Minidoka and Heart Mountain) was public domain, which fell outside the scope of the State consent and cession statutes involved, and jurisdiction had not been reserved in the United States by the enabling acts under which the States were admitted to the Union. At the third center (Tule Lake), most of the land involved had been transferred to the United States by the State for reclamation purposes; it was exceedingly doubtful whether the general State consent and cession statutes were applicable to this type of Federal acquisition, and even if they were, exclusive jurisdiction had not been accepted. Two other centers were constructed on Indian reservation lands in Arizona. Despite a provision in the State enabling act reserving "absolute" Federal jurisdiction and control of Indian lands as against the State, this provision had been construed to be a retention of jurisdiction over Indian affairs rather than a reservation of territorial sovereignty.

The lands for the remaining centers had been acquired by purchase, lease, or use condemnation directly from non-Federal sources for utilization as relocation centers.[5] Since acquisition in these cases followed the enactment of the new law governing acceptance of jurisdiction, it was clear that exclusive jurisdiction had not been obtained and could not be obtained without the filing of notices of acceptance with the respective State authorities.

Exclusive jurisdiction not having been acquired in any case, the question arose of whether the Authority should seek exclusive jurisdiction. The policy decision was in the negative. In the first place it was doubtful in the case of several centers whether the Authority could have acquired exclusive jurisdiction by filing a notice of acceptance. This was true, for example, of the centers which consisted largely of public domain lands. It also seemed true of the centers on land over which possession was acquired by lease or by use condemnation. Unless advantages accrued from acquisition of exclusive jurisdiction at the remaining centers that offset the desirability of uniformity of administrative policy and procedure at all centers, it was obvious that exclusive jurisdiction should not be sought.

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[5] Purchase: Granada (Colorado); Central Utah (Utah); the center site proper at Rohwer (Arkansas). Lease: Jerome (Arkansas); remainder of lands at Rohwer. Use condemnation: Manzanar (California). Small tracts were also purchased at Tule Lake (California) and Heart Mountain (Wyoming).

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It became apparent that there were actually no advantages to be obtained from exclusive jurisdiction and that there were positive disadvantages. The supposed promise of a more integral system of jurisprudence, for example, was an illusion. Congress has never legislated a comprehensive code of law for areas under exclusive Federal jurisdiction. Instead, there is in effect a limited number of Federal statutes defining major crimes on exclusive jurisdiction lands, plus a general assimulation crime statute adopting the criminal law of the State in effect on February 1, 1940, with respect to all other criminal offenses. There is no parallel assimulation statute covering private rights, and those rights are determined by the State laws in effect at the time of accession of exclusive jurisdiction, without benefit of improvements made thereafter by the State legislature. In other respects the acquisition of exclusive jurisdiction would have complicated instead of simplifying administration. The States and counties would have been under no obligation to continue road maintenance or police protection, provide school facilities for children of administrative personnel, or furnish other services under available working institutions and procedures in the field of personal relations, probate, coroners, vital statistics, institutionalization of mental cases, and similar matters. This would have meant increased expense to the Government and improvisation of procedures which would have been unwieldy and only partially satisfactory at best. Furthermore, maintenance of an organic relationship with local institutions was valuable to dispel local suspicion and misunderstanding that grew out of the evacuation. By utilizing State and local services, normal contacts between the evacuees and the outside world could be multiplied and encouraged and the center itself could become to a greater extent part of the life of the local community.

Finally, the failure to acquire exclusive jurisdiction would not mean an impingement of State authority that would hinder WRA in its program, in view of the now settled rule that State law may not constitutionally operate so as to interfere substantially with the Federal Government's performance of its proper governmental functions. On the other hand, if a State law does not substantially interfere with the performance of the Federal governmental function, the decisions impose no barrier to the application of that law to Federal activities carried on at a place where exclusive Federal jurisdiction does not exist. The constitutional concept is one designed to allow each government a maximum of freedom. State law need not step aside unless its intrusion upon the Federal function would tend to bar the road to performance.

So, in the relocation centers, State criminal laws were enforced, State laws concerning marriage and divorce and the custody of children were observed and enforced, contracts were made and their validity was determined by the local law, and the validity of wills, distribution

of estates of intestates, and the form or probate proceedings were determined by the law of the local jurisdiction to the same extent as would have been the case for persons temporarily residing in any other parts of the same States.

State occupational licensing laws, on the other hand, were not enforced. To have enforced these would have rendered it practically impossible for the Government to administer the relocation centers in accordance with the program worked out by the War Relocation Authority. Most of the physicians and surgeons who cared for the health of the evacuees, for example, were themselves evacuees who were licensed to practice medicine in the West Coast States from which they came but were not licensed in the States where the centers were located. If they had been barred from the practice of medicine at the centers until they were able to comply with the licensing laws, reciprocal or otherwise, of the new State, the Government would have had to hire a considerable number of local doctors at a time when there was a serious shortage of medical practitioners in most communities, while competent evacuee physicians would have been forced to remain idle. The same thing would have been true of dentists, optometrists, nurses, and a dozen other licensed businesses and professions. In each of these lines of work evacuees were available and anxious to render needed services, and their competency and qualifications were deemed sufficient by the Authority. In these circumstances immunity from State control was clear. Similarly, in various other phases of center operations the Authority did not regard State laws to be applicable. This was true, for example, in the licensing of automobiles and drivers, the inspection of center-produced meat, the crating and shipment of vegetables, the development of health and sanitation standards, and the adoption of an evacuee employment policy.

The Authority's claim of governmental immunity in such matters was never seriously questioned. The State agencies, by and large, consciously or unconsciously followed a hands-off policy. A greater possibility of friction existed in the additional burdens that were thrown upon the States and counties in such matters as law enforcement, utilization of courts for probate and other evacuee litigation, schooling for children of administrative personnel, institutionalization of evacuee insane, and like services. No appreciable difficulty arose anywhere. In part this was because the largest single item of expense—the handling of law enforcement problems—was largely eliminated through WRA administrative handling of minor offenses in the centers. In part the result can also be attributed to the fact that the remaining burden was more than offset by the financial benefits accruing to the States and communities arising out of operation of the centers.

Community Government

The Power to Establish Community Government

From the time that the establishment of relocation centers was determined upon, it was recognized that the War Relocation Authority would face a major problem in the governing of the centers. At the same time it was realized that the practical problems involved would be substantially lessened if a major share of the responsibility for orderly conduct of community life could be undertaken by the evacuees themselves. Incorporation of a municipality under State law was out of the question. Even if the evacuees had had the necessary local citizenship and residence requirements, a municipal government would inevitably have conflicted in numerous unpredictable ways with the paramount obligations of the Federal administration. Instead, the political structure evolved for the government of the centers was predicated upon the administrative power to establish and protect all forms of the Federal function, with partial delegation of that power to the evacuees.

Exercise of the administrative control necessary for the successful maintenance of the Federal operations involved is a normal corollary to the power to engage in them. A power to engage in a given activity does not, of course, carry with it incidental power to do anything whatever that one might deem useful or desirable, but it does carry with it the incidental power to do whatever is substantially necessary to the efficient conduct of the permitted activity. Furthermore, a reasonable discretion is allowed to those administering the activity to choose among various possibly practicable forms of regulation, and even to decide what degree of regulation is actually necessary. This is not an instance of "Federal jurisdiction" in the judicial sense, but rather "Federal administration" of constitutionally permissible Federal activities. The derivative regulatory power does not deny the existence of normal State jurisdiction, civil and criminal, over the persons and any lands involved, except insofar as may be necessary in the circumstances for the full and effective discharge of the Federal purpose.

The regulatory power so derived carries with it the power to impose sanctions. Every administrative agency has been faced with the necessity of laying down rules for the regulation of persons and things within its control, determining whether those rules have been observed, and prescribing and enforcing sanctions as means of inducing observance. It is perfectly true that this involves action of a quasi-legislative and quasi-judicial nature, but the constitutional doctrine of separation of powers has long since been expanded to permit this essential aspect of Government administration.

The Federal operation being undertaken here was the maintenance and supervision of 110,000 persons in 10 separate communities. Obviously a program of such magnitude imposed large responsibilities upon the Federal agency in charge to provide food and housing, create all necessary forms of communal services, prescribe and enforce standards of health, sanitation, and fire prevention, and take such other measures as might be necessary to insure the welfare of the inhabitants and protect the Federal property involved. These responsibilities, and the corresponding power to meet them, necessarily carried with them the authority to protect the functions involved by the issuance of appropriate police regulations and the enforcement of sanctions for noncompliance.

Administrative agencies having functions rather similar to those of the War Relocation Authority so far as legal considerations are concerned are not uncommon. Any instance in which a self-contained organization or group somewhat removed from the ordinary social controls is set up under authority of law presents a legal situation comparable to that of a relocation center. Public schools, colleges, and universities operated under State law are similar, in that administrative controls are normally given to a president or board of trustees with power in turn to delegate authority dealing with administrative matters and with disciplining of others within the organization. The same is true in many types of publicly operated hospitals, especially those in which admission and discharge are not wholly within the control of the patients. Various sorts of asylums and quarantine stations are of the same character, and the situation of seamen on ships at sea is similar.

The public school cases probably present the closest analogy. A typical case is that in which a teacher or school official is sued by a pupil for damages on account of punishment inflicted for violation of a disciplinary rule. The cases are unanimous in holding that such rules are valid and that their enforcement is valid, provided neither the rule nor its enforcement goes beyond the limits of "reasonableness." The power exists as a matter of common law; express statutes merely confirm it. It is a part of the power to maintain schools, because it is essential to the successful maintenance of schools. It is sometimes said that the power of school authorities to make and enforce disciplinary rules is based on the idea that the teacher stands in loco parentis, but this is misleading. Actually, the teacher's authority is not based merely on a delegation of parental power; it exists even though it is expressly denied by the parents. Rather it is derived from the state as parens patriae. It is an authority to enforce discipline within a State administrative agency, based in the last analysis upon the police power just as much as is a compulsory school attendance law, a compulsory vaccination law, or the operation of the public school system itself.

The legal bases for promulgation and enforcement of disciplinary rules in prisons are substantially the same as in public schools. A legislature, State or Federal, may lay down rules designed to achieve good order in prisons, or it may confer the power to lay down such rules and enforce them upon the warden or other administrative official in charge of the prison. If the legislature is silent in reference to such rules, the very fact of its creating a prison or prison system confers upon the persons who are lawfully placed in charge thereof the duty to make such rules and enforce them. The person in charge has the power to supplement rules expressly laid down by the legislature if these rules do not take care of all the disciplinary situations which arise. The only limitation upon the administrator's powers, whether in respect to rule making or enforcement, apart from express legislative negatives, is that unnecessary harshness is not permissible. This is like the requirement that disciplinary measures governing pupils in schools must not be unreasonable under the circumstances. The rule in both its applications constitutes an implied limitation on administrative powers and is derived from the common law rather than from the constitutional prohibition of the eighth amendment against cruel and unusual punishment, though the amendment also constitutes a limitation on administrative as well as on other types of legal power. Similar authority exists for the imposition and enforcement of disciplinary rules in hospitals maintained by the Veterans Administration, also for other types of hospitals maintained by the Federal Government.

In the case of the War Relocation Authority, the Director's power to make disciplinary rules was conferred by Executive Order No. 9102, buttressed by congressional recognition contained in subsequent appropriation acts. Even without any express grant of rule-making power to the Director or any other official in it, however, the inherent necessity for the promulgation and enforcement of rules to maintain order and protect property at relocation centers would have authorized the regulations just as completely as did the express language of the Executive order.

Police Regulations

Police regulations in effect at the centers were promulgated at one of three levels—by the national office, by the project director, or, where community government was operative, by the evacuee community council. The most important of the regulations prescribed for all centers by the national office were those relating to "internal security"—regulations defining certain acts deemed offenses against center law and order and authorizing each project director to define other offenses and provide for their punishment within certain limitations hereinafter discussed. In addition, the national office prescribed a comprehensive code of fire prevention regulations.

Supplemental center regulations varied somewhat from center to center, but in general they included a detailed traffic code and a prohibition against the manufacture or use of alcoholic beverages. After the Tule Lake center became a segregation center, demonstrations and pressure tactics of pro-Japanese organizations that sprang up prompted the issuance and enforcement of special regulations prohibiting overt Japanese nationalistic activities which these organizations sponsored.

The police force (known as internal security officers) at each center was directly responsible to the project director, whether or not a community government plan was in operation. The force consisted of a chief of internal security, several other Caucasian officers, and evacuees. These officers had the usual functions of police officers--the investigation of all reports of violations of law or regulations coming to their attention; the arrest of persons observed by them to be violating laws or regulations; prevention of violations whenever possible; and liaison with Federal intelligence agencies. Arrests without administrative warrant from the project director were permissible only where the offense was committed in the presence of the arresting officer or where the evacuee had confessed to commission of an offense. In all other cases, the project director was required to issue a warrant of arrest, after compliance with a procedure providing the safeguards required by usual concepts of due process, before an arrest could be made.

In the case of an offense that was a felony under State law, the project director was required to turn the offender over to the appropriate State law enforcement officer, unless it was agreed between them that the case could be better handled on the center, or it was improbable that prosecution of the felony would result in conviction, or the offense was a felony under State law but only a misdemeanor under Federal law. A similar regulation applied to felonies under Federal law. In the field of misdemeanors, the project director could elect to try them as a violation of the center regulations or refer them to the appropriate law enforcing agency, except that, where the offense was a violation of a community council regulation, the offender was to be tried before the evacuee judicial commission. Where the offense was purely one against WRA regulations and no violation of State or Federal criminal statutes was involved, the project director was directed to proceed under his disciplinary powers, or refer the case to the judicial commission if the regulation was one adopted by the community council.

Within 48 hours after an arrest, the case was required to be referred to State or Federal authorities, the project director, or the judicial commission. Hearings by the project director or judicial commission were required to be held promptly; pending trial, the

defendant was released on his own recognizance unless the project director believed that the internal security of the center would be adversely affected by such a release and stated his reasons in the record. The project director was required to hear personally the cases referred to him; he could issue administrative subpoenas for necessary witnesses and punish refusal to appear or to testify. He was responsible for seeing that a complete case was fairly presented, under a procedure insuring the defendant's right to counsel and an opportunity to present his case fully and cross-examine witnesses. Hearings were required to be public except where the nature of the testimony or similar circumstances made the procedure inappropriate.

The maximum penalty that could be imposed by the project director, in the exercise of his disciplinary powers, for commission of an offense was imprisonment for not more than 3 months. He could permit a defendant to pay a fine not to exceed $300 as an alternative to serving a sentence of imprisonment, or impose "other suitable punishments, except the performance without pay of work for which the defendant is regularly employed."[6]

Was the promulgation of these regulations reasonably necessary to the effectuation of the Federal program? With respect to the fire prevention regulations, the traffic codes, and certain other restrictions there simply were no applicable State or Federal statutes. Clearly there could be no question here of the need for the regulations. It is true, however, that most of the offenses defined by the internal security regulations were also misdemeanors under State law. The power to prescribe administrative regulations in the furtherance of a Federal function is not dependent, however, on the nonexistence of State statutes which provide sanctions against the conduct being proscribed. Criminal statutes with respect to breach of the peace or assault, for example, do not prevent school administrators or prison wardens from

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[6] The maximum sentence was seldom imposed, and then only in aggravated circumstances; in petty cases first offenders were generally given no more than suspended sentences. "Other suitable punishments" included special work projects or other restrictions in lieu of confinement for adult offenders, but were more generally utilized to cope with a "zoot-suit" juvenile delinquency problem that arose as a result of abnormal family living conditions and the gradual outward movement of family bread winners. A typical "suitable punishment" in such cases was a hair clipping, an injunction against further zoot-suit garb, and parole to a responsible evacuee or WRA staff member. It is a notable fact that, except in times of center-wide emotional stress, the incidence of crime in the centers was considerably lower than in the normal American community.

proceeding under their own disciplinary authority. The test is whether the auxiliary disciplinary authority is substantially necessary to the efficient conduct of the permitted activity.

Reliance on State and local authorities for law and order enforcement in the centers would have been unwieldy and fraught with administrative hazard. The centers were located in relatively poor and very sparsely settled counties; county and local officials were generally many miles from the centers, and prompt handling of disciplinary cases would have been difficult. Prejudice and suspicion against the evacuees was prevalent; there was a strong likelihood that local law enforcement officials would be influenced by this sentiment to deal more strictly with offenders among evacuees than the offenses warranted. Whether or not this became an actuality, the handling of all offenses by outside agencies would have seriously hampered establishment and maintenance of rapport between WRA and the evacuees. More than this, it would have resulted in publicity out of all proportion to the magnitude of the disciplinary problem involved, because of the focus of public attention upon the evacuees, and intensified the Authority's already difficult task of allaying public fear and gaining acceptance for the program of further resettlement. Further, experience soon bore out the validity of the assumption that because of the financial and administrative burden, coupled with the political risks involved, local officials would generally be unwilling to assume responsibility for minor disciplinary problems. In the light of these circumstances, invocation of administrative disciplinary authority in lieu of reliance upon State law enforcement for the bulk of the offenses likely to be committed was a practical necessity.

Evacuee Participation in Center Government

The obvious advantages in delegating administrative authority to the evacuee residents over considerable areas of community activity led to early formulation of procedures under which the evacuees could organize quasi-governmental institutions with rather broad powers. Following an interim instruction directing each project director to provide for the election of temporary block representatives to serve in an advisory capacity, there was issued in August 1942 a rather comprehensive instruction providing the framework for permanent evacuee governmental organization. This instruction, as later amended in minor details, required each project director to provide for the selection of an evacuee organization commission to prepare a "plan for community government," to become effective only after approval by the project director and by a majority of the qualified voters voting in a special referendum on the question of adopting the plan. The plan was required to provide for:

1. Election and organization of a "representative legislative body" to be known as the community council, with authority to:

   (a) Prescribe regulations and provide penalties for their violation on all matters, except felonies, affecting the internal peace and order and the welfare of the evacuee residents, insofar as not in conflict with Federal or State law, military proclamation, or WRA regulation, with maximum penalties not to exceed those imposable by the project director under his own disciplinary powers.

   (b) Present resolutions to WRA on questions affecting the welfare of residents.

   (c) Solicit, receive, and administer funds and property for community purposes.

   (d) License and require reasonable license fees from evacuee-operated enterprises, upon approval by the project director, but not to regulate their management.

   (e) Appoint committees to assist in the exercise of its functions.

   (f) Exercise such other functions as might be conferred from time to time by WRA.

2. Designation of a judicial commission of not less than three members to hear cases and fix penalties for violation of council regulations.

3. Orderly methods of arbitration for voluntary settlement of civil disputes between center residents.

All elections were to be by secret ballot, and all evacuees 18 years of age or over were eligible to vote. The right to hold elective or appointive office was first limited to American citizens, but was soon extended to all persons who had not been denied leave clearance under the leave regulations after loyalty screening.

The instruction further provided that the project director could set aside any council regulation found to be in excess of its defined functions. Decisions of the judicial commission, to be rendered after notice and hearing, were required to be communicated directly to the project director for review. The decision became final if the project

director did not act within 24 hours; within that period the project director could affirm the decision or remand it for reconsideration with his recommendations. Upon remand the commission was required to reconsider and render a decision anew, which was subject to similar review.

The only feature of this community government framework which raised any legal question was the delegation of authority to the community council to prescribe regulations and the similar delegation of authority to the judicial commission to enforce them against the evacuees. The Supreme Court has held that the due process clause invalidates provisions enabling private persons to impose limitations having the force of law upon other persons. [7] On the other hand, the Court has sustained statutes involving delegation of administrative authority to private persons where final authority was retained by public officials administering the program to approve or veto the rules or orders privately formulated. [8] The rules or orders must in the last analysis be those of the official body.

All the acts which the Director empowered the community council to do were acts which the Director under the controlling Executive order was himself empowered to do. While the policy called for no express approval by the project director or other official of each regulation promulgated by the council, the project director could set aside any regulation found to be in excess of the council's powers. Even if failure to set aside did not amount to approval, review and approval were not necessary at this particular stage of the administrative process. Review and approval of regulations by responsible public officials must occur before the rules are made finally operative as against anybody, but the system set up by the instruction was such that no regulation could be finally enforced against any person except through the judicial commission, and its decisions were reviewed by the project director.

Finally, as to the propriety of the judicial commission's exercise of the functions assigned to it, little doubt can be raised. The hearing procedure provided for under each community government plan paralleled that required where the project director exercised his disciplinary authority, and was sufficiently elaborate to satisfy requirements of procedural due process. No decision of the judicial commission could take effect until it was submitted to the project director for review, and no such decision could go into effect if he disapproved it. If he

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[7] Carter v. Carter Coal Co., 298 U.S. 238 (1936).

[8] Currin v. Wallace, 306 U.S. 1 (1938); United States v. Royal Rock Cooperative, 307 U.S. 533 (1939).

did not disapprove the decision, it became his decision. If he did disapprove it, the case was remanded for new determination by the judicial commission. While it is true that the project director was not authorized to substitute his own determination for that of the commission, the important fact was that in no event could any decision of the commission become binding without his approval.

Plans of government following the pattern prescribed by the WRA instruction were adopted at all but two of the centers. No plan whatever was adopted at Manzanar; the evacuee block managers performed the function of liaison between the project director and the center residents. At Minidoka a plan of government adopted rather late in the life of the center provided only for election and organization of a community council, with purely advisory powers. The evacuee community government organized at Tule Lake under the WRA instruction was short-lived; upon designation of Tule Lake as a segregation center the instruction was revoked as to that center and provision was made only for a "representative committee" of segregants to act in a liaison and advisory capacity.

On the whole, the functioning of the evacuee governmental organizations proved reasonably satisfactory to all concerned, though at first they sometimes operated crudely and inefficiently, which was to be expected from a group unused to responsible political action. Community councils adopted regulations covering numerous topics, the most important paralleling the law and order regulations prescribed by WRA for all centers. None of the councils took steps toward licensing evacuee enterprises and exacting license fees; this function stemmed solely from the Federal regulatory power, and the probable corollary that all fees collected should be deposited in the miscellaneous receipts account of the Federal Treasury deprived the councils of the primary incentive for initiating licensing action. Throughout the life of the centers, as a matter of fact, the bulk of council activity lay outside the regulatory sphere. Primarily the councils served as media of communication between the administration and the evacuees, and as representatives of the residents in making recommendations for changes in policy and pressing complaints of all kinds.

The judicial commissions initially were inclined to evade responsibility and avoid the determination of difficult cases or the imposition of more than suspended sentences. Occasionally it was necessary for the project directors to take action under their residuary powers. With the gradual growth of civic awareness and sense of responsibility among the evacuees and the accretion of political and judicial experience, however, most of the commissions developed into effective enforcement organs.

In compliance with the WRA instruction, the plans of government generally provided for an arbitration commission that could be utilized by the residents in settling private controversies. In all of the States in which the centers were located, there was an arbitration statute under which summary enforcement of an arbitration award was possible, and arbitration procedures could easily have been devised that met the varying statutory requirements. As it developed, however, the arbitration commissions never functioned. The evacuees simply preferred to handle privately any disputes they may have had. In part this was undoubtedly attributable to the typical reluctance of the evacuees to air disputes. It is also true, however, that the chief source of controversies in which arbitration is customarily invoked--disputes arising out of commercial transactions--was largely nonexistent in the centers because of the general prohibition against evacuee private enterprises other than the cooperatives.

Extra-ordinary Law and Order Measures

For the usual offenses against the peace and security of the centers, the framework for enforcement of discipline, as discussed above, worked out quite satisfactorily. Administrative handling of minor offenses was welcomed by local law enforcement officers and there can be no doubt that this contributed greatly to harmonious relationships with them. The pattern for handling offenses internally corresponded closely to the general pattern that obtained in the average American community and gradually gained acceptance and approval among the evacuees. But acceptance did not come immediately, and WRA's internal security regulations proved to be ineffective to cope with some major crises that occurred early in the program. The evacuees had been torn abruptly from their homes, businesses and professions, to be confined under military guard first in assembly and later in relocation centers. Center living facilities were crude at best. Initial community disorganization and mistrust of administrative policies heightened an already acute sense of insecurity. Undoubtedly all evacuees were disaffected in some degree; many, particularly in the young citizen group, were embittered. In this abnormal and pathological situation, grievances real and fancied were nurtured and magnified, preevacuation feuds flared, and ugly rumors about camp administration spread like wildfire. Hotheads and opportunists found fertile ground for agitation.

Center-wide disturbances occurred at Colorado River and Manzanar late in 1942. Common to both were work stoppages and mob demonstrations; a complete breakdown of the still embryonic evacuee governmental organizations, and outbreaks of violence and terrorism against evacuees who were cooperating with the administration. At Manzanar it was necessary to call in the military contingent, and blood was shed. Neither WRA nor local authorities were in a position to cope with the problem

through ordinary measures, and some drastic surgery was deemed necessary. The ringleaders at Manzanar were removed to an abandoned CCC camp at Moab, Utah, and soon thereafter to a former Indian school at Leupp, Arizona, which was designated as the "isolation center." During this period the Authority issued an instruction authorizing the removal of "aggravated troublemakers" to the isolation center, after thorough documentation of the cases and approval by the National Director. This procedure was not a substitute for disciplinary action under the already established regulations, but was designed to apply to persons who were responsible agents in "fomenting disorder or threatening the security of center residents, addicted to troublemaking, and beyond the capacity of regular processes within the relocation center to keep under control."

The primary purpose of the isolation procedure was preventive rather than punitive--to skim off the known sources of aggravated agitation and community disruption, and allow the healing processes of time, adjustment to center life, crystallizing community organization, and improved methods of liaison between WRA and the evacuees to operate. The isolation center functioned as a rehabilitation center, and its inhabitants were gradually retransferred to other centers. It closed late in 1943 with the transfer of its remaining residents to Tule Lake, which had just become the segregation center, and the isolation procedure was soon after revoked.

There was only one subsequent major center incident, occurring at Tule Lake in November 1943 shortly after the segregation movements had been completed. Here a well-knit pro-Japanese faction bidding for power was responsible for work stoppage, demonstrations, and a campaign of goon squad violence and terrorism directed against both evacuees and administrative personnel. Breakdown of community institutions and deterioration of WRA services during the segregation movements, and the concentration in the center of disloyal or more disaffected evacuees underlay the success of the faction. The military assumed control of the center, at WRA request, and rounded up several hundred known or suspected agitators and active participants in the outbreak. One block of the center was fenced off and used as an isolation ward. After return of center control to the Authority, intensive investigations were conducted as a result of which a number of the aliens isolated were interned by the Department of Justice. The rest of the group were gradually released back into the main residential area as investigations progressed and as center conditions stabilized.

Private Business at the Centers

It was realized that one of the first needs of the evacuees in the centers would be some system of stores and shops at which they could

procure goods and services over and above the basic essentials of subsistence otherwise furnished by the War Relocation Authority. The possibility of operating Government stores, like Army canteens, was considered and rejected. Instead, regulations were issued authorizing the evacuees to own and operate their own business enterprises, on a cooperative basis, in Government buildings for which they would pay a fair rental. These regulations limited to some extent the type of goods and services to be sold, required employment of personnel at WRA wage scales, laid down general rules covering organization, management practices, and accounting procedures, provided for periodic WRA audit, and forbade the operation of any other types of private business enterprises.

The form of organization contemplated for the business enterprises at the centers was that of the consumers cooperative association, organized on Rochdale principles and incorporated under appropriate existent laws. This form of organization would assure to all the evacuees an opportunity to have a participating interest in the enterprises, avoid unfair profit to some at the expense of others, and provide limited liability. Since the need for stores was immediate when the centers were opened, and could not await the legal processes of incorporation and authorization to do business, trusteeships were established and began operations on credit or small amounts of borrowed money. In a typical trust instrument, the trustees declared that the property and business were held by them in trust for the cooperative corporation thereafter to be formed at the center, to which full conveyance would be promptly made as soon as organization of the corporation should be completed. The instrument further provided for management and control by persons approved by the project director in accordance with the regulations of the Authority, with periodic audit.

While the business enterprises at three of the centers were incorporated under the law of the States in which they were doing business, the laws of some of the States were not suitable for organization of consumers cooperatives. With one exception corporations to operate in these States were organized under the District of Columbia Cooperative Association Act, with subsequent qualification to do business as foreign corporations in the States where the centers were located. Since authorization to a foreign corporation to do business in a State is normally little more than a formality, assuring compliance with laws concerning appointment of an agent for service of process, payment of specified fees and fulfillment of similar technical requirements, no difficulty was anticipated, and none occurred except in the State of Arizona. There a license issued to the Gila River Cooperative Enterprises, Inc., which was incorporated in the District of Columbia, was cancelled by the Arizona Corporation Commission. The principal reason advanced for the cancellation at a subsequent public hearing was the possibility that the corporation, which under its charter could engage

in agricultural and commercial enterprises, might be able to dominate Arizona agriculture and commerce. Though it was pointed out that this was not under the Arizona law a ground for excluding the corporation, and that there was actually no more danger of this happening than with any other corporation whose articles did not narrowly limit its activities, the matter was eventually compromised by amending the articles to restrict the corporation's business activities to the Gila River Relocation Center.

Approximately one-third of the evacuees were Japanese nationals subject to foreign funds control regulations of the Treasury Department. The term "national" was defined to include an organization controlled by or a substantial part of whose securities was owned or controlled by nationals, and the determination of what constitutes control lay within the discretion of the Treasury Department. General License No. 68-A granted a general license to (1) Japanese nationals residing in the continental United States continually since June 17, 1940, and (2) organizations within the continental United States that were Japanese nationals solely by reason of the interests therein of persons generally licensed under (1). [9] It was quite improbable that any business enterprises could fail to qualify under the general license. The vast majority of the center residents were either unblocked citizens or aliens who had been in this country continually since June 17, 1940, and whose funds were not specially blocked. Nevertheless, the mere possibility of effective control of management of the enterprises by blocked nationals who were not generally licensed, plus the fact that the enterprises would necessarily sell, and pay patronage dividends, to unlicensed blocked nationals as well as to the remainder of the center populations, prompted applications for special licenses. A special license was issued by the Foreign Funds Control Unit to each of the enterprises. Each license authorized the cooperative or trust to engage in business within the center as a generally licensed national and permitted transactions with and payments to blocked nationals in the center. The principal conditions imposed were that (1) no blocked national should be an officer or director of the organization, and (2) records of the periodic WRA audits should be furnished to the appropriate Federal Reserve Bank.

All the business enterprises undertook to comply with relevant State and Federal laws, to the same extent as would other business concerns similarly situated, thus paying sales taxes and admissions taxes and obeying all other laws in so far as they were relevant. A ruling of exemption from Federal income tax was issued by the Bureau of Internal Revenue late in the program.

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[9] See Treasury Department, Documents Relating to Foreign Funds Control (1945).

PART III

STRUCTURE AND FUNCTIONS OF THE WRA LEGAL ORGANIZATION

Organization

During most of 1942 the legal work of the Authority was performed at three different levels—Washington, the regional offices, and the relocation centers. The Office of the Solicitor in Washington was, of course, responsible for all legal services throughout the Authority. A regional attorney (P-6) at each of the regional offices (Denver, Little Rock, and San Francisco) was directly in charge of all legal work arising at the regional office and was responsible for all such work arising at the relocation centers within the region. A project attorney (P-5) was immediately responsible, under the supervision of the regional attorney, for the performance of all legal work arising at the center. The reorganization of the Authority in December 1942 abolished the regional offices and thereafter the work of the project attorneys was directly under the supervision of the Solicitor. The reorganization left in San Francisco an evacuee property division and an Assistant Director, both serving in a staff capacity. These were serviced by a legal office headed by a principal attorney (P-6, later assistant solicitor, P-7) and operating as a branch of the Solicitor's Washington office.

The legal organization—the Washington office, the staff office in San Francisco, and the project attorney offices—remained unaltered during the remainder of the program. No attorney was assigned to the Emergency Refugee Shelter, which became the responsibility of the Authority in July 1944; instead the Washington office furnished directly all legal services required by the Shelter staff and its residents. Two area attorney positions (P-5) were, however, created in the summer of 1945 at Seattle and Los Angeles, the headquarters of two of the three West Coast area offices established following the lifting of the military exclusion orders to assist returning evacuees. The area attorneys, under the supervision of the Solicitor, handled all the legal work arising at these area offices. The Solicitor's staff office in San Francisco, which previously had been responsible for the legal work of all three area offices, continued to perform those services for the San Francisco area.

The Work of the Washington Office

Constitutional Issues and the Leave Program

A discussion of the constitutional issues inherent in the evacuation and exclusion orders and in the subsequent relocation program of the Authority is set forth in Part I. The Solicitor's office worked closely with the Department of Justice in the preparation of the Government's briefs in the test cases that arose, from their institution in the Federal District Courts to their final disposition by the United States Supreme Court. In connection with the Endo case, the office prepared an exhaustive memorandum on the validity of detention under the leave regulations, copies of which were made available to the Department of Justice and others affected by or interested in the relocation program.

The Solicitor's office played a large part in the actual drafting of the leave regulations, the detailed handbook provisions and forms that implemented them, and the many modifications in the leave program that were made from time to time. In that phase of the leave program which involved screening of the evacuees, the office assisted in developing the criteria to be applied and the procedures for conducting hearings in doubtful cases, and in training Washington reviewers of the dockets. Every docket which raised doubt about the individual's eligibility for clearance was further reviewed in the Solicitor's office prior to consideration by the Director; this required the examination of some 1,500 dockets and constituted a large portion of the office's work load during 1943 and the early months of 1944. After the establishment of an appeal procedure for segregants at the Tule Lake center who had been denied clearance, the office was made primarily responsible for setting up a panel of prominent civilians willing to serve on the appeal board, for establishing procedures to facilitate the board's work, and for calling its meetings. [1]

Field Operations

The problems of center administration that required legal research ranged wide in content and complexity. One basic cluster revolved around the extent to which exclusive Federal jurisdiction had been obtained over the various center sites, and the degree to which center operations were subject to State regulatory laws. Another concerned

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[1] The board met once at Tule Lake in August 1944, disposing of all appeals then pending; repeal of the leave regulations at the end of the year obviated the need for further sessions.

the agency's authority to establish its own disciplinary procedures for the handling of center law and order problems, and to delegate certain quasi-governmental functions to the evacuee residents. A series of opinions analyzed the arbitration laws of the States in which centers were located, preliminary to the drafting of procedures to facilitate arbitration of private disputes between center residents.[2]

State laws governing registration of births and deaths, and the disposition of deceased remains, were summarized for the information of center officials; WRA's authority to establish cemeteries at the various centers was determined; a procedure was evolved for the disposal of the effects of evacuees dying in the centers without known heirs. WRA's basic authority to provide for the needs of the evacuees was construed in opinions concluding that WRA could admit for center residence the nonevacuee or Caucasian family members of evacuees, issue clothing to evacuees, provide financial assistance to evacuee college students, and pay malpractice insurance premiums for center-employed evacuee physicians. The applicability of Federal Indian liquor laws at the Arizona centers and of the Federal meat inspection act to intercenter shipments of center-produced meat was determined. A substantial saving to WRA appropriations resulted from a conclusion that land grant rates were applicable to WRA shipment to centers of Government equipment and supplies required for basic needs of the evacuees.[3] The propriety of WRA disposition of unclaimed evacuee property in its custody at the close of the program was a question resolved affirmatively, and alternative procedures covering sale at public auction or transfer of the property to evacuee organizations for continued custody were drafted. Among miscellaneous questions treated by formal opinion were WRA's authority to lease surplus center land to private persons, the appointment of center internal security officers as deputy marshals and deputy sheriffs, the bonding of employees handling evacuee property matters, the liability of WRA and its employees for center fire losses, the use of center fire equipment on adjacent private lands, applicability of dual compensation laws in the employment of WRA personnel to teach vocational training classes subsidized by State-Federal funds, and the determination of charges to be made against center administrative personnel for WRA-furnished subsistence.

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[2] For discussion of Federal-State jurisdiction, center government, and arbitration see Part II.

[3] This conclusion, in which the Comptroller General concurred, is now the subject of litigation in the Court of Claims.

Assistance to Center Cooperatives

Following the decision to permit establishment of evacuee-operated cooperative organizations in the centers to supply goods and services beyond the subsistence directly furnished by WRA, the office prepared the necessary organization papers, issued instructions and opinions to guide the project attorneys in completing organization and resolving initial questions of tax liability and compliance with State law, drafted rental agreements for the enterprises' use of WRA buildings and equipment, and negotiated the issuance of a Treasury Department license to each organization. Late in 1943 an agreement was drafted, in collaboration with evacuees representing the cooperatives, under which the cooperatives established a central purchasing office in New York City to meet the growing consumer goods shortage. In the spring of 1945, anticipating the early liquidation of the cooperatives, the office prepared a comprehensive summary of the steps necessary for dissolution and distribution of assets, and sent an attorney to an all-center conference of cooperative representatives to discuss dissolution problems.

Problems of the Evacuees

A great deal of the work of the Washington office consisted in the preparation of opinions, memoranda, or informational manual releases primarily for the guidance of the project attorneys and other field personnel in assisting evacuees with their personal problems. Among the subjects covered were the voting rights of the evacuees in the evacuated States; their income tax liability with respect to wages and subsistence received from WRA; their eligibility for unemployment compensation, old age and survivors insurance, and railroad retirement benefits; the filing of claims with the United States Employees Compensation Commission for injury to evacuees employed in the centers by WRA; applicable State laws governing adoption of evacuee orphans; validity of common law marriages in the evacuated States; the probate of estates of evacuees dying in relocation centers; State jurisdiction over evacuees for divorce purposes; Selective Service requirements, and reemployment benefits under the Selective Service Act; alien enemy control regulations with respect to travel and contraband; foreign funds control restrictions and procedures for licensing blocked nationals; the acquisition and termination of Japanese citizenship by American-born evacuees (the so-called "dual citizenship" problem); and the provisions of our nationality laws governing naturalization and expatriation. The reactivation of alien land law enforcement on the West Coast against evacuees resulted in a series of opinions analyzing these laws and court decisions interpreting them. Memoranda were also issued discussing the constitutionality of discriminatory legislation proposed or enacted after the evacuation in the various States in which the relocation centers were located, including the Arizona law prohibiting

business transactions with evacuees prior to public notice (later held unconstitutional by the Arizona Supreme Court), the Arkansas law prohibiting land ownership by persons of Japanese ancestry (declared unconstitutional by the State attorney general), the Wyoming and Utah laws prohibiting land ownership by ineligible aliens, and the California and Wyoming laws aimed at denying fishing licenses to evacuees. For the benefit of evacuees thinking of resettling outside the evacuated area, the office prepared summaries of the laws of the various States with respect to alien land ownership and the licensing of aliens to enter certain occupations and professions. The outcropping of violence, intimidation, and economic discrimination on the West Coast against returning evacuees in the spring of 1945 prompted the issuance of opinions discussing the protection afforded the evacuees by Federal and State civil rights statutes, the legality of various types of boycotts, and the use of the mails to discourage the return of evacuees. Two common problems of returning evacuees in dispossessing their tenants were treated in an opinion on the legal effect of leases "for the duration of the war" and a summary of OPA requirements governing eviction.

Despite the scope and volume of legal material prepared for field use in assisting evacuees, a wide variety of individual problems were referred to Washington from the field and found their way to the Solicitor's office for handling. Some of them came from relocated evacuees who needed legal assistance, and included many of the types of problems handled by the project attorneys for center residents (see below). A small number came from refugees at the Emergency Refugee Shelter, at which there was no regularly assigned attorney. Others were matters in which initial assistance had been given by field attorneys, but which required either further research or expedition at the Washington level. The latter included questions of immigration status, tax liability, foreign funds control licensing, permits for travel into restricted areas, parole of interned aliens, and similar matters which required contact with various Federal agencies.

Participation in Program Development

A large part of the time of the Solicitor, and to a lesser extent of the assistant solicitors, was spent in consultation with the Director and with other division chiefs on the development and modification of major policies. (Often this took the form of service on special committees designated by the Director to formulate proposed policy statements and procedures, and the Solicitor was often called upon initially to draft committee recommendations.) One such major policy, already discussed above, was the Authority's program to encourage and facilitate the resettlement of evacuees throughout the country, which had as its concomitant the leave regulations. After the Manzanar and Poston incidents late in 1942, the Solicitor submitted a comprehensive

memorandum analyzing the center law and order problem; this formed the basis for policy discussions and administrative decisions resulting in the preparation by the Solicitor's office of the detailed internal security regulations defining the project directors' disciplinary authority, punishable offenses, and the procedure for arrest and trial. At this time the procedure governing isolation of persistent troublemakers was also drafted.[4] The Solicitor was a member of the committee established by this procedure to review center recommendations for internment of aliens by the Department of Justice and the isolation of citizen troublemakers. In connection with his participation in the work of various special committees appointed by the Director to recommend or implement policy decisions, the Solicitor was responsible for the initial drafting of other major policy documents, including the regulations governing the segregation of presumptively disloyal evacuees at Tule Lake, the special policies governing the administration of the segregation center, the general procedures governing center closure, recommendations to the War Department with respect to the lifting of the West Coast exclusion orders, and the comprehensive statement of the program for accelerated resettlement of the evacuees and liquidation of the agency that was issued at the time of the lifting of the exclusion orders.

Many aspects of WRA program development required negotiation with other Federal agencies, in which the Solicitor's office was called upon to participate. The following are merely illustrative. The early days of the program saw negotiations with the Department of Agriculture and the Department of the Interior for the use of lands under their jurisdiction as center sites; with the War Department on respective responsibilities in the physical aspects of evacuation, the construction of the centers, and the exterior guarding of the centers; and with the Department of Justice to adapt enemy alien travel regulations to the WRA relocation program. The seasonal agricultural leave policy was worked out with the Department of Agriculture. Proposals to counteract discrimination against evacuees and violation of their civil rights were taken up with the Department of Justice. The establishment of the Emergency Refugee Shelter required negotiations with the War Department covering security precautions and WRA's use of Fort Ontario and Army equipment; with the Treasury Department for the unblocking of refugee funds; and with Immigration and Selective Service authorities concerning alien and Selective Service registration of the refugees. Proposals for permitting the refugees to leave the Shelter under sponsorship were discussed with representatives of the Justice and State Departments, as was a later alternative to process them for admission under the immigration laws. Extended preliminary meetings were held with the War and Justice Departments regarding the lifting of the

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[4] See Part II.

West Coast military exclusion orders and the respective postexclusion responsibilities of the agencies. To meet problems arising during the last year of center operations, arrangements were made with the Treasury Department for a simplified licensing procedure applicable to alien evacuees in the centers, and with the Federal Public Housing Administration for the operation of temporary WRA housing projects on the West Coast. Often the correspondence and draft agreements emanating from these various discussions were prepared initially in the Solicitor's office.

The Director early established a rule that all proposed policy statements, regulations, procedures, and forms (in addition to memoranda of understanding, contracts and other legal instruments, informational documents concerning WRA's basic authority, and correspondence involving legal problems) should be cleared in advance with the Solicitor. The review of these documents was a service rather than a control function, and responsibility for obtaining legal review rested with the initiating or issuing official. By and large, however, all such documents were cleared with the Solicitor's office. This meant that the office was kept currently informed on all administrative problems and recommended policies and procedures. In practice it also meant that the services of the office were generally sought, in advance of preparation of program documents in final form, for assistance in actual drafting, as well as in the resolution of legal problems and in undertaking any necessary preliminary negotiations with other agencies. With the constant flow of administrative instructions to the field, this drafting assistance bulked large in the work load of the office.

Miscellaneous

Throughout the program numerous fiscal and personnal problems were referred to the Solicitor's office for opinion or for preparation of submissions to the Comptroller General. Some of these have already been discussed above. Various types of contracts, lease agreements, use permits, and other legal instruments were prepared. Claims filed against the Authority were reviewed for sufficiency, and the office participated in negotiations to settle controversies arising out of various contracts and memoranda of understanding. A member of the office served on the agency property survey board. The office was responsible for analyzing and keeping the Director currently informed about all litigation, court decisions, and proposed State and Federal legislation affecting the agency or the evacuees, and was generally assigned the task of writing reports requested by congressional committees on pending bills. In the field of legislative drafting the office collaborated in the preparation of the annual appropriation items, and late in the program drafted an evacuation claims bill that was introduced in Congress at the request of the Department of the Interior (S. 2127, 79th Congress).

Supervision over Field Attorneys

Obviously the tempo of the program and the range and novelty of its legal problems pointed to the need for coordination and uniformity of approach at all levels. The chief supervisory control was a system of weekly communications between the Solicitor and each field attorney. Each field attorney transmitted to the Solicitor a weekly report in the form of a personal narrative letter, together with copies of all written material prepared in the field attorney's office during the week. A copy of the report itself was at the same time sent to each other field attorney. This report gave a résumé of the attorney's activities during the week. New problems arising and the attorney's approach to them were outlined; the Solicitor's assistance was requested where the problem was one required to be handled at the Washington level (see below), where research beyond the attorney's time or library facilities was necessary, or where expedition at the Washington level was advisable. Significant news items of general interest were mentioned. Comments on problems raised by other field attorneys and observations on the effectiveness of administrative policies were often included. In the case of the project attorneys, major developments in those phases of center administration in which the attorney played a particularly important role--disciplinary action, community government, operation of the business enterprises, leave clearance investigations, liaison with local public and private agencies--were discussed and analyzed. The Solicitor replied to each weekly report, answering questions raised, supplying relevant information, indicating any disagreement in legal judgment or with action taken, and making any other appropriate comments.[5] A copy of this reply likewise went to each other field attorney. Responsibility for preparing these replies was divided between two of the Solicitor's chief assistants.

The weekly report system provided a broad, frequent, two way channel of communication that insured adequate supervision, a high degree of coordination, and a basis for judging the attorneys' understanding of program objectives and their effectiveness in working with their respective administrative organizations. There were other desirable end results. Field-wide distribution of the report correspondence acquainted every field attorney with the nature and disposition of the problems of all the others, increasing operating efficiency. The reports often gave a perspective of field problems and developments that was of considerable benefit to key administrative personnel in the Washington office, to whom significant excerpts from the reports were regularly made available. Not the least value of the

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[5] During the existence of the regional offices the regional attorneys received the weekly reports of the project attorneys and prepared the replies.

system was the spirit of camaraderie that it helped develop and maintain throughout the entire legal organization.

Every field attorney was authorized to issue legal opinions and memoranda on problems arising at his level, subject to the qualification that problems which affected basic over-all policy formulation, or which equally concerned all centers or regions, were required to be referred to the Solicitor. Further to preclude duplication of effort, all requests for legal opinions involving extensive research were required to be reported currently to the Solicitor. As will be noted later, the regional attorneys and the staff office in San Francisco issued a wide variety of opinions and legal memoranda. Due to inadequate research facilities and the volume of other work, however, the project attorneys generally referred to the supervising office all assignments that involved research of any consequence, whether local in scope or otherwise.

Recruitment

Like all other Federal agencies during the war, WRA confronted a problem in attorney turn-over. Of 23 attorneys originally recruited to fill Washington and field positions, 7 had (by the spring of 1945) entered the armed forces and 11 had transferred to more lucrative or more permanent employment in Government, law teaching, or private practice. Six replacements also failed to remain with WRA until their services were no longer needed. At only one center did the original project attorney remain throughout. At the other centers the legal positions were occupied by from 2 to 7 attorneys during the respective periods of center operation. This turn-over often left centers without regularly assigned attorneys for several months at a time, and it was necessary to detail attorneys from the Washington or San Francisco office, or divide one project attorney's time between two centers, in order to provide minimum service.

Recruitment, particularly for field positions, was no easy task. The demand for capable attorneys throughout the Government far exceeded the supply. Many men interviewed were subject to early Selective Service call. Others were reluctant to accept work of limited duration, or to move with their families to the isolation and comparatively primitive surroundings of relocation centers. Then, too, many interested applicants did not have suitable legal experience or personal qualifications. It was highly important, especially in the project attorney positions where the bulk of the replacement problem lay, that the attorneys should have not only wide legal experience and mature judgment but emotional stability, impartial attitudes toward the minority race involved, and ability to work closely and effectively with other people in an administrative organization. Personality was as important as legal ability.

Although the recommendations of administrative personnel were welcomed, the burden of attorney recruitment for all positions fell upon the Solicitor. Board of Legal Examiner lists were combed; other Federal agencies were contacted; WRA attorneys were urged to make recommendations; advertisements were placed in State bar journals; local leaders of bench and bar were consulted; veterans placement agencies were utilized. Fortunately it was possible, through strenuous recruitment activities and interoffice shifts, to provide adequate legal services at all levels until the very end of the program.

Training

Each new attorney, no matter where assigned, was detailed initially to the Washington office for a 2-week period of orientation and training. During this period he was given reading material which included organization charts, the administrative manual, the handbooks, certain administrative notices, all WRA Solicitor's opinions, briefs, and important legal memoranda, instructions to field attorneys, relevant regulations of other Federal agencies, and selected documents enabling a newcomer to see the program in historical perspective. As a second step he was assigned to various lawyers in the office for a general discussion of the major clusters of problems with which the Solicitor's office had to deal. These included such topics as the leave regulations and the constitutional issues raised, the community government framework, business enterprise problems, center internal security policy and procedures, State-Federal jurisdiction, the evacuee property program, and Government fiscal law. In connection with this part of the training, the Solicitor talked to the new appointee about the role of the lawyer in Government administration and gave him specific suggestions on establishment and maintenance of relationships with administrative personnel with whom he was to work.

The third step in the initial training program consisted of interviews arranged for the trainee with the principal administrative staff members of the Washington office, who were asked to discuss their own work and problems in some detail, with special reference to the center or field office to which the attorney had been assigned. With this introduction to the work of the agency the lawyer was able to step into his job with a "feel" for the program and a knowledge of its legal specialties that made for quick adjustment and maximum efficiency in operation.

The rapid development and reorientation of major policies, and the volume and variety of legal questions constantly arising, made continuous on-the-job training essential. A number of devices were utilized to this end. The weekly report system, described elsewhere in this report, naturally functioned as a training tool as well as a supervisory control. A series of special memoranda to field attorneys kept

them abreast of organizational changes; explained the background for major policy documents; discussed proposed and newly enacted State and Federal legislation and the progress of litigation of interest to WRA or the evacuees; called attention to and analyzed current rulings, orders, and changes in regulations of the Treasury, War, and Justice Departments, the Comptroller General, State attorneys general, and other Federal and State agencies, that concerned WRA administration or affected some or all of the evacuees; and interpreted WRA regulations, elaborated upon legal rationales, and summarized regulations or procedures of other Federal agencies where the weekly reports or special inquiries indicated some confusion or misunderstanding in the field. The Washington office also saw to it that the field attorneys received copies of briefs and court decisions, law review articles, special agency reports and tentative program documents, and legal memoranda not issued as formal opinions---in addition to the mimeographed opinions, manual and handbook releases, and administrative notices that received wide distribution within the agency.

Supplementing the flow of written material to the field was a policy calling for periodic personal contact with the Washington office or its chief staff members. A budget was established for the detail to Washington of each field attorney, in rotation, for a 2-week period each year. Sufficient advance notice was given so that he could collect special problems and formulate questions for discussion in Washington. During his detail Washington staff members discussed with him the details of his work and provided any necessary criticism or advice. During the course of the year, too, plans called for a swing around the field offices by the Solicitor or his staff members immediately responsible for field supervision, to observe operational efficiency and staff relationships, discuss current work, and answer any questions that might be bothering the attorneys. A third and exceedingly valuable means of supplementing written communication was the field conference, attended by all field attorneys, the Solicitor, and the assistant solicitors. Agenda were prepared in advance for these conferences on the basis of suggestions solicited from all attorneys.

The plans for field attorney details to Washington and frequent field inspection tours were quite effectively realized during the first 2 years of the program, but thereafter attorney turn-over in Washington and the field prevented continuance of the Washington details and severely curtailed the number of field inspection trips. One field conference was held at Denver in mid 1943 and another at San Francisco in early 1944. A third, planned for 1945 in Washington, was not called because of the increased load upon field attorneys resulting from WRA's decision to close the centers by the end of the year. Although it is to be regretted that these training tools could not be utilized to full advantage during the later stages of the

program, it is also true that the need for their use declined as the major administrative and legal problems arising out of the program were brought to light and dealt with and as field office work became better understood.

The Work of the Regional Attorneys

The first regional office was established in San Francisco shortly after the creation of the War Relocation Authority. The region comprised the West Coast States and the western tier of the Inter-Mountain States—the sites of 6 of the 10 relocation centers that were ultimately established. Later, after it was determined to establish centers in Arkansas, Colorado, and Wyoming, a regional office was set up in Denver (central region) and another in Little Rock (southern region).

The Pacific Coast region was the hub of WRA operations during the early months, and assumed much of the burden of working out the division of responsibility with the Western Defense Command, the location of center sites, the beginning of construction, and the formulation of tentative policies for center administration and evacuee property management assistance. The first centers to be occupied by evacuees were also in the Pacific Coast region. As a result the work load of the San Francisco regional attorney was considerably greater than that of the other regional attorneys.[6] Fifty-one formal opinions were issued by the San Francisco regional attorney between April and November 1942; these covered a wide range of operational problems. The regional attorney was also given the responsibility of preparing a number of opinions for the Solicitor's signature and conducted considerable preliminary research into more pressing matters of State-Federal jurisdiction. In matters involving liaison with the Western Defense Command, the regional attorney participated in negotiations covering military orders restricting the movement of evacuees, the transfer of the Manzanar center to WRA, the functions of military police guarding the centers, WRA custody of Army-seized evacuee contraband, and WRA assistance to non-Japanese persons individually excluded from the West Coast by the War Department. Memoranda of understanding with State boards of education with respect to the educational standards to be adopted in the operation of center schools were prepared, and forms of agreements covering the use of reclamation and Indian lands for center sites were developed. The office prepared or reviewed the various regional office instructions, procedures, and forms that were issued, and prepared numerous contracts, lease agreements and other legal instruments that were found to be needed.

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[6] During most of his tenure the San Francisco regional attorney had a small staff of attorneys to assist him.

Beginning in the summer of 1942, with the transfer of responsibility for evacuee property assistance from the Western Defense Command to WRA, legal work in connection with evacuee property matters assumed increasingly larger proportions. The regional attorney in San Francisco worked closely with the evacuee property division in establishing tentative policies and procedures, handled much of the correspondence with evacuees, their creditors or debtors, insurance companies, substitute operators and prospective purchasers, and treated numerous legal problems, including questions of authority under powers of attorney, interpretation of lease agreements, attachment of evacuee funds, applicability of Treasury regulations, and the drafting of bills of sale and other legal instruments. Negotiations with the California State Bar for the establishment of an attorney referral system (discussed later in this report) were begun during this period.

Prior to the abolition of the Pacific Coast region 4 of the 6 project attorney positions within the region had been filled. The regional attorney was responsible for supervising the work of these project attorneys and for answering the many questions that they raised.

Late in the summer of 1942 the two other regional attorney positions were filled. The activities of the central and southern regions revolved primarily about the establishment, staffing and initial operation of the 2 centers that were within each region. The regional attorneys worked closely with the regional directors on all operational problems and participated in negotiations with various State and local agencies. After the movement of the evacuees to the centers in these regions, the respective regional attorneys divided their time between the centers pending appointment of project attorneys. The organization and staffing of the center legal offices, establishment of liaison with local public agencies, the organization of the evacuee business enterprises, the formation of evacuee community government within the centers under WRA policies, and the handling of individual problems of evacuees occupied most of their time.

The Work of the San Francisco Office

Assistance to Evacuee Property Division

The San Francisco office was established at a time (December 1942) when WRA policies governing evacuee property assistance were crystallizing. One of the first major tasks undertaken in collaboration with the Evacuee Property Division was the drafting of policy statements, together with detailed procedures and forms, to govern WRA assistance to evacuees in property management assistance and WRA storage and transportation of their personal effects. Assistance in drafting operational instructions and various modifications in the procedures and forms

continued throughout the program. After the evacuee property organization was set up, with offices in principal West Coast cities and in all centers, a considerable volume of work developed from field referrals of legal questions to the Evacuee Property Division, and in consultation work with the division on complex management cases. An attorney from the San Francisco office also made a number of trips to the property offices up and down the coast to discuss general legal aspects of the various problems being handled and to assist in closing particular troublesome cases.

Assistance to Project Attorneys

Most of the legal questions confronting the project attorneys in assisting evacuees with their property matters involved interpretation and application of the law of the West Coast, and many of them required contact or negotiation with public officials or attorneys in those States. The project attorneys were directed to communicate directly with the San Francisco office concerning these problems, and the San Francisco office was primarily responsible for supplying the necessary information or taking the appropriate action. The volume of these referrals was very large, and constituted the largest single segment of the office's workload. Where the problems raised were likely to be of general interest to all project attorneys, the San Francisco office prepared memoranda or opinions for general distribution throughout the entire legal organization. Supplementing this service, the attorney in charge of the San Francisco office made several field trips to the various relocation centers for the purpose of observing the evacuee property aspects of the project attorneys' work, making suggestions to improve coordination and efficiency, clarifying legal and policy issues, and assisting in the handling of more difficult individual cases.

The Attorney Referral System

As the volume of property and personal problems of evacuees in the centers mounted it became increasingly apparent that many matters, particularly those involving suits by or against evacuees, would require the services of lawyers in private practice. Most of the evacuees had had no preevacuation contact with lawyers. Those who did could not be sure their former counsel would agree to represent them. To alleviate this situation the San Francisco office, in collaboration with the State Bar of California, devised an attorney referral system.

California attorneys who had previously expressed a desire to engage in State bar war work activities were polled to determine how many would agree to handle evacuee business. Some 800 favorable responses were received. The names of these attorneys were placed on referral lists classified on the basis of locality and specialty, if any.

Whenever an evacuee wished to make use of the referral system, the project attorney notified the San Francisco office, designating the locality in which the legal services were necessary and the field of law involved. The San Francisco office then furnished the project attorney with the names, in alphabetical sequence, of three attorneys in the designated locality and legal specialty. From these the evacuee made his selection. Further information concerning the qualifications of the attorneys involved was furnished on request. Upon selection of an attorney the evacuee executed a "client's statement," designating the selected attorney, stating the nature of the services required, and requesting the attorney to keep the Authority advised as to progress. This request relieved the attorney from any obligation to keep the affairs of his client confidential so far as the Authority was concerned, and was designed to provide a basis for liaison between the attorney selected and the appropriate WRA field attorney who was assisting the evacuee, as well as for determining the adequacy of the legal services being rendered.

The client's statement was sent to the attorney and upon acceptance established the lawyer-client relationship. The San Francisco office then placed the name of the selected attorney at the end of the particular referral list, to insure complete rotation. When the designated attorney declined to represent the evacuee or his services were terminated, the next three names in sequence on the list were submitted to the evacuee. The San Francisco office was authorized to remove individual attorneys from the lists for good cause.

Each attorney on the referral lists agreed to represent evacuees on the basis of a schedule of fees covering common types of legal services rendered—foreclosures, probate, divorces, leases, collections, contracts, consultation and preparation, trial work, and appellate work. The fee schedules were scaled on the basis of county population, and were uniformly lower than the average fees charged for similar work in the locality. Each evacuee was apprised of the appropriate fee schedule before he executed the client's statement.

The attorney referral system was extensively used by California evacuees, and proved to be generally effective. Attempts by the San Francisco office to work out similar arrangements in Arizona, Oregon, and Washington were, however, unsuccessful. Where the services of a lawyer in any State other than California was needed and the evacuee wished assistance in obtaining those services, the project attorney submitted to him for selection names of attorneys taken from standard law lists or from names recommended by the appropriate bar association. Where an evacuee was unable to pay for the services of an attorney and it appeared that the fees could not be collected out of the probable proceeds of the case, the project attorney on request referred the

matter to the legal aid society in or nearest to the locality in which the services were required.

Alien Land Laws

The postevacuation period saw a surge of activity by California and Washington law enforcement officers in the investigation of possible violations of the alien land laws of those States by evacuees and in the institution of escheat proceedings against them. When it appeared that some evacuee defendants were doing nothing because of lack of actual notice, the San Francisco office arranged with the respective State attorneys general for delivery to it of copies of the summons and complaint in each case filed. The office then located the defendants and made certain that they were advised of the institution of escheat proceedings and of the availability of attorneys through the attorney referral lists. Some 50 escheat actions are now pending in California and investigations, aided by a State appropriation of $200,000, are still in progress.

The office was assigned the task of preliminary research into the West Coast alien land laws that resulted in a series of Solicitor's opinions discussing them. With the filing of escheat actions numerous questions on technical aspects of the laws and possible collateral defenses, raised by the project attorneys, were the subject of additional formal opinions issued by the San Francisco office.

Other Problems

Legal research at the request of project attorneys ranged the whole field of property law, with emphasis on the law of foreclosures, community property, probate, taxation, and tenancy. Matters referred to the San Francisco office by the project attorneys or the Evacuee Property Division for negotiation or expedition were numerous. Many involved participation in extended negotiations for the settlement of controversies arising in the course of private management of evacuee property. There were also negotiations with the State attorneys general on alien land law problems, taxation of personalty, and various other problems of State law interpretation; with agencies liquidating the Japanese-controlled banks on the West Coast, to simplify procedures for the filing of claims by evacuee depositors; with the appropriate Federal agencies on the requisitioning of evacuee farm machinery; with the Farm Security Administration on the interpretation of its loan agreements with substitute operators of evacuee farms; with the Federal Reserve Bank and the regional Alien Property Custodian's office with respect to property and funds of individual evacuees; with title insurance companies to obtain a relaxation in restrictions upon title insurance upon real property offered for sale by evacuees; and with

fire and casualty insurance companies to persuade them to reverse their general policy, adopted early in the war, of refusing insurance to evacuees.

Special Assignments

In addition to research into the alien land laws, the San Francisco office at the Solicitor's request made studies of a number of legal problems, including the effect of leases for the "duration" of the war and the constitutionality of State laws banning aliens ineligible for naturalization from commercial fishing. The attorney in charge of the office was responsible for keeping the Solicitor informed of the institution and progress of all West Coast litigation involving evacuees, particularly land escheat actions and suits involving violation of military orders or Selective Service regulations. He handled negotiations which resulted in the dismissal of habeas corpus actions brought to test the validity of the special disciplinary regulations at the Tule Lake center that were designed to prohibit overt pro-Japanese activities. He was appointed WRA representative in the hearings before the board of appeals for leave clearance which met at Tule Lake. He was active in recruiting attorneys for WRA positions, and a member of his staff was on several occasions detailed to a relocation center to serve as or work with the project attorney.

With the lifting of the exclusion orders and the establishment of three West Coast area offices and numerous district offices to assist returning evacuees, the San Francisco office was responsible for servicing those offices until the appointment of area attorneys at Los Angeles and Seattle in the summer of 1945. Thereafter the office serviced only the San Francisco area. The types of problems arising and the services rendered are covered in the later discussion of the work of the area attorneys.

The Work of the Project Attorneys

The work of the project attorney included three types of services. He was responsible of course for all legal advice and assistance to the project director and the center staff. Secondly, he rendered all necessary legal services to the various evacuee organizations, including the community council, the judicial commission, and various general or special committees, and the private organizations, such as the business enterprises, the recreational associations, and special trusts set up for the operation of war industries in several centers by outside contractors. Thirdly, he was available to all evacuees for assistance in their individual legal problems. Broadly speaking, his was the combined role of Government lawyer, city attorney, and private attorney to an evacuee population of from 5,000 to 17,000 persons.

Staff Services

The first major segment of the project attorney's work--that of advice and assistance to the center administrative officials on all legal aspects of center administration--included interpretation of Federal fiscal laws and other relevant Federal statutes; interpretation and implementation of WRA regulations; review of procurement and other contracts; preparation of use permits, leases, and other legal instruments in connection with temporary private use of center lands; advice to the welfare division on such matters as divorce, adoption, guardianship, and child support; negotiations and liaison with State and local officials on the handling of crimes committed by evacuees, institutionalization of the insane, probate of estates of decedents without known heirs, and the furnishing of other types of State and local governmental services.[7] The project attorney necessarily worked closely with the project director and the internal security staff on all law and order problems, drafting supplemental procedures governing disciplinary action taken by the project director, advising on the nature of charges to be filed and the sufficiency of the evidence, and participating in the conduct of disciplinary hearings.[8] As a key member of the center staff, the project attorney participated in staff conferences on all the various and complex administrative matters that arose from time to time and assisted the project director and staff members in resolving the difficulties, as in the case of adjustment of evacuee complaints and protests against WRA policies, juvenile delinquency problems, negotiations with hostile State or local officials, and revisions in procedures required by changes in over-all policy.

In addition, various types of purely administrative functions were often assigned to the project attorney. While generally these assignments were only temporary expedients, as in the handling of all evacuee property assistance prior to establishment of center evacuee property offices, occasionally they became permanent. At a few centers, for example, all Selective Service matters affecting evacuees were handled in the project attorney's office as a service to the respective local Selective Service boards. Under WRA screening procedures, a leave clearance hearing board, consisting of key members of the staff, was established at each center for the purpose of conducting hearings and further investigations requested by the Director in so-called doubtful cases. The project attorney served on this board, generally as chairman.

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[7] See also the discussion of field operations problems considered by the Washington office.

[8] See Part II.

There were a large number of hearings, and much of the project attorneys' time in 1943 and 1944 was devoted to this work.

Community Government

Upon adoption of the WRA policy for delegation of certain governmental functions to the evacuees, [9] the project attorneys played an important role in assisting the evacuee organization commissions to draft charters and formulate procedures to govern the conduct of referenda and elections. After adoption of the charters and election of members of the community councils, the project attorneys participated at the request of the councils in the drafting of proposed regulations, in the preparation of procedures to govern disciplinary hearings by the judicial commissions, and in the more general task of acquainting the commissions with the nature of their judicial function and the proper conduct of hearings. The project attorney often participated as observer or prosecutor in these hearings, and was consulted by the project director, on his review of the commission's findings, with respect to the propriety of sentences imposed.

Private Enterprises

Although the draft organization papers for the evacuee-operated cooperative enterprises were prepared in the Washington office, the project attorneys were primarily responsible for all initial assistance to the enterprises in adapting the organization documents to local needs, completing organization, drafting forms and procedures to govern membership meetings, election of officers, and the like, and obtaining licenses to do business and otherwise complying with State and Federal regulatory and tax laws. Thereafter the project attorneys were consulted on numerous management and operational problems, and assisted in negotiations with tax authorities and regulatory agencies on various matters. The attorneys were responsible for seeing that all necessary formal legal steps were taken in the dissolution of the enterprises upon center closure and in the transfer of assets to liquidating trustees for final distribution.

At a number of the centers the business enterprises were unwilling to conduct and finance evacuee recreational activities, and the project attorneys helped organize evacuee-controlled trusts for this purpose. A Federal credit union was organized at one center, and several cooperative associations of WRA personnel were formed to provide recreational facilities. The operation of camouflage net garnishing projects early in the program at several centers involved the use of evacuee

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[9] See Part II.

labor by the Army contractor, and required rather complex arrangements for the assignment of wages received above the standard WRA wage scale to evacuee trustees for equitable distribution among all evacuees employed in any capacity in center operations.

Assistance to Evacuees

By far the greatest volume of work in the project attorneys' offices lay in assistance to evacuees on their personal problems. The general range of these problems has already been indicated in the discussions of legal research on evacuee problems at the Washington level, and of alien land law and other problems dealt with by the San Francisco office. Much of the routine work consisted of advice and correspondence on insurance matters and in the preparation of income tax returns, reports of assets and applications for special licenses under foreign funds control regulations, claims of evacuee depositors against Japanese-controlled banks being liquidated by the Government, applications by citizens for the return of property surrendered under alien enemy control proclamations, and various types of legal instruments, including powers of attorney, leases, bills of sale, deeds, mortgages, wills, affidavits, and depositions. Domestic relations problems of the evacuees were handled in collaboration with the center welfare division, and, where court action was required, the project attorney made the necessary arrangements for private legal representation, court appearances, and depositions. Deaths at the centers raised numerous probate problems involving referrals to private attorneys, preparation of documents for transfer of decedents' assets without probate, and negotiating with public administrators in the case of evacuees dying without known heirs.

In problems involving property management or disposition, the center evacuee property officer was primarily responsible for assistance to the evacuees. Requests for storage and transportation of property or assistance in selling, leasing, or managing property, which constituted the bulk of his work, generally presented no legal problems. However, there were many types of cases that did involve legal issues, and the establishment of close working relationships between the property officer and the project attorney was essential. This was accomplished through frequent conferences on current problems, interchange of copies of outgoing correspondence, and agreement on a practical division of labor.

One of the most difficult and time consuming problems presented to the project attorneys and the evacuee property officers arose out of the hurried and loose arrangements made by the evacuees for the custody or management of their West Coast property. Personal property unaccountably disappeared; managers failed to account, or mulcted the

owners in various ways; tenants failed to pay rent, converted property to their own use, and committed waste. Much correspondence with the legal office in San Francisco and with West Coast property offices was required, and occasionally direct negotiations were undertaken, with varying degrees of success. While in general the evacuees were reluctant to institute legal action, there were a number of suits brought, involving substantial income properties. In these cases, as in cases involving divorces, probate, collections, escheat under alien land laws, and claims against evacuees, the project attorneys assisted the evacuees in obtaining private counsel and thereafter often acted in a liaison capacity between the evacuees and their attorneys.

The sheer volume of legal work for evacuees was generally so great that the project attorney could not have handled it alone, and at almost all centers there was a staff of evacuee assistants in the project attorney's office. Most of these assistants were themselves lawyers or young men whose law studies had been interrupted by the evacuation. As the relocation program accelerated, many of these persons left the centers, and were replaced by evacuees with insurance, taxation, or extensive business experience, who with training and supervision were able to carry much of the routine work load.

The Work of the Area Attorneys

The decision to establish area attorney positions in the area offices at Los Angeles and Seattle stemmed from the large number of evacuees returning to the West Coast, the problems of housing, discrimination, and relocation adjustment that were arising, and the inadequacy of temporary details of attorneys from the San Francisco office to service the Pacific northwest and southern California areas. Practically all of the work of the area attorneys involved legal assistance, directly or indirectly, in solving the initial adjustment problems of the returning evacuees.

Housing

The severe housing shortage in principal cities on the West Coast created a difficult problem for the many evacuees who no longer had homes to which to return, and much of WRA activity in its West Coast areas consisted of locating private housing. To supplement this WRA assisted cooperating organizations in the establishment of hostels, and the area attorneys participated in the drafting of agreements for the loan of WRA equipment and in obtaining waivers of strict compliance with city zoning regulations. When it became apparent that additional provision needed to be made, WRA acquired Army and other installations that could be used for temporary housing, and the Federal Public Housing Administration agreed to make necessary building

alterations and operate the projects as agent for WRA. The area attorneys collaborated in renegotiation of leases where the installations were on privately owned land, working out the details of FPHA operation, negotiating with city authorities for necessary services, and completing arrangements under which FPHA assumed responsibility for operation of several trailer camps after WRA liquidation.

Many evacuees, however, had homes to which to return. The area attorneys obtained clarification of OPA policies and procedures governing eviction of tenants, and assisted the project attorneys in satisfactory settlement of numerous eviction cases. Considerable advice was given evacuees seeking to lease or purchase real property, particularly with respect to applicability of alien land laws, interpretation and enforceability of restrictive covenants, and title insurance requirements. Negotiations for reoccupancy or removal of evacuee-owned buildings on leased land were undertaken. A number of cases involving evacuee defaults on instalment purchases of real property were settled on terms favorable to the evacuees.

Discrimination

While on the whole evacuees returning to the West Coast met with a favorable reception, there were isolated instances of intimidation and discrimination. The wave of shootings at evacuee dwellings in California rural areas in the spring of 1945 received nation-wide publicity. Other forms of discrimination, isolated in character, were also in evidence. Thus, until confronted with a mandamus action, one State agency refused to issue sales tax permits to evacuees without special Army and Navy clearance. Former real estate and insurance brokers found obstacles in obtaining renewal of their licenses. Several cities refused to issue business licenses to the aliens. In other occupations it was difficult or impossible for evacuees to obtain licenses. There were instances where employers or unions objected to rehiring evacuees. Even more serious were active or threatened boycotts against evacuee farmers and businessmen. The area attorneys were active in negotiations with licensing authorities, employers, and unions to alleviate these conditions, and met with partial success. Acts of discrimination involving possible violation of Federal or State law were taken up with the appropriate Federal or State officials, and evacuees with possible civil causes of action arising out of discriminatory measures were advised of their rights and given assistance where requested in retaining private attorneys.

Miscellaneous

By and large most of the time of the area attorneys was spent in handling individual problems of evacuees similar to those formerly

handled by the project attorneys. Assistance in application for Treasury Department licenses, return of contraband, cancellation or reinstatement of insurance policies, preparation of eviction notices, the filing of claims against the liquidators of Japanese-controlled banks, and similar matters bulked large in office routine. Advice was given in cases involving violation of leases or management contracts, sale or purchase of property, settlement of tort claims, and theft of privately stored personal property. Area attorneys also made numerous trips to district relocation offices to assist in handling relocation adjustment problems and to explain to WRA personnel OPA and other Federal regulations, the alien land laws, and the legal aspects of other types of factual situations that were constantly confronting those offices.

Most of the personal problems of evacuees that came to the area attorneys' attention were of such a nature that private attorneys would not be interested in handling them. In matters involving considerable sums of money, possible litigation, or complex legal issues, however, the area attorneys assisted the evacuees in obtaining local legal representation. The area attorneys were instructed to take such steps as might be necessary to insure the availability of adequate legal services for the evacuees after WRA liquidation. The aid of local cooperating committees, representatives of the American Civil Liberties Union, and other civic organizations and leaders was solicited to this end.

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