

Statement by Dillon S. Myer
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Constitutional Principles Involved in the Relocation Program

The evacuation and relocation program raise important questions of constitutionality. This is so because two-thirds of the persons of Japanese ancestry evacuated from West Coast military areas are citizens of the United States, and the great majority of the remainder are law-abiding aliens.

It is the position of the War Relocation Authority that its Leave Regulations are essential to the legal validity of the evacuation and relocation program. These Leave Regulations establish a procedure under which the loyal citizens and law-abiding aliens may leave a relocation center to become reestablished in normal life.

We believe, in the first place, that the evacuation was within the constitutional power of the National Government. The concentration of the Japanese-Americans along the West Coast, the danger of invasion of that Coast by Japan, the possibility that an unknown and unrecognizable minority of them might have greater allegiance to Japan than to the United States, the fact that the Japanese-Americans were not wholly assimilated in the general life of communities on the West Coast, and the danger of civil disturbance due to fear and misunderstanding--all these facts, and related facts, created a situation which the National Government could, we believe, deal with by extraordinary measures in the interest of military security. The need for speed created the unfortunate necessity for evacuating the whole group instead of attempting to determine who were dangerous among them, so that only those might be evacuated. That same need made it impossible to hold adequate investigations or to grant hearings to the evacuees before evacuation.

When the evacuation was originally determined upon, it was contemplated that the evacuees would be free immediately to go anywhere they wanted within the United States so long as they remained outside of the evacuated area. Approximately 8,000 evacuees left the evacuated area voluntarily at that time and 5,000 of these have never lived in relocation centers. The decision to provide relocation centers for the evacuees was not made until some six weeks after evacuation was decided upon, and was made largely because of a recognition of the danger that the hasty and unplanned resettlement of 112,000 people might create civil disorder.

Detention within a relocation center is not, therefore, a necessary part of the evacuation process. It is not intended to be more than a temporary stay in the process of relocating the evacuees into new homes and jobs.

The detention or internment of citizens of the United States against whom no charges of disloyalty or subversiveness have been made, or can be made, for longer than the minimum period necessary to screen the loyal from the disloyal, and to provide the necessary guidance for relocation, is beyond the power of the War Relocation Authority. In the first place, neither the Congress, in our Appropriation Acts or any other legislation, nor the President, in the basic Executive Order No. 9102 under which we are operating, has directed the War Relocation Authority to carry out such detention or internment. Secondly, lawyers will readily agree that an attempt to authorize such confinement would be very hard to reconcile with the constitutional rights of citizens.

The Leave Regulations of the War Relocation Authority, instead of providing for such internment of loyal citizens or law-abiding aliens, set up a procedure under which any evacuee may secure indefinite leave from a relocation center if he can meet the following four conditions --

1. WRA must be satisfied from its investigation --- that there is no reason to believe issuance of leave to the particular evacuee will interfere with the war program or endanger the public peace and security;
2. The individual must have a job or means of support;
3. The community to which the individual wishes to go must be one in which evacuees can relocate without public disturbance;
4. The evacuee must agree to keep WRA notified of any change of address.

The War Relocation Authority is denying indefinite leave to those evacuees who request repatriation or expatriation to Japan or who have answered in the negative, or refused to answer at all, a direct question as to their loyalty to the United States, or against whom the Intelligence agencies or WRA records supply direct evidence of disloyalty or subversiveness. The great majority of the evacuees fall into none of these classes, and are thus eligible to leave under the Authority's Regulations.

On June 21, 1943, the Supreme Court of the United States handed down its decision in the case of Gordon Hirabayashi v. United States. Hirabayashi had been convicted of violating both the curfew orders and the evacuation orders applicable to Japanese-Americans. The court held that the curfew was a valid exercise of the War Power. Although the question of the validity of the evacuation orders was directly presented to the Court in that case, the Court did not decide that question. There is evidence in the majority and concurring opinions of the Court in the Hirabayashi case that, although it found the curfew to be valid, it believed the evacuation orders present difficult questions of constitutional power, and detention within a relocation center even more difficult questions. Mr. Justice Murphy, in his concurring opinion said concerning the curfew orders: "In my opinion this goes to the very brink of constitutional power."

Mr. Justice Douglas, in his concurring opinion said: "Detention for reasonable cause is one thing. Detention on account of ancestry is another...Obedience to the military orders is one thing. Whether an individual member of a group must be afforded at some stage an opportunity to show that, being loyal, he should be reclassified is a wholly different question...But if it were plain that no machinery was available whereby the individual could demonstrate his loyalty as a citizen in order to be reclassified, questions of a more serious character would be presented. The United States, however, takes no such position." The Chief Justice, in the majority opinion, was careful to point out that the Court was limiting its decision to the curfew orders and was not considering the evacuation orders or confinement in a relocation center.

More than a year has passed since evacuation was begun. During this year we have, of course, had time to make necessary investigations and to begin the process of considering the evacuees on an individual basis. The Leave Regulations are intended to provide the due process and hearing which fair dealing, democratic procedures, and the American Constitution all require.

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