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Page 1 of 3

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HEADQUARTERS WESTERN DEFENSE COMMAND
PRESIDIO OF SAN FRANCISCO, CALIFORNIA
OFFICE OF THE COMMANDING GENERAL

24 January 1945

Honorable John J. McCloy,
The Assistant Secretary of War,
War Department,
Washington, D. C.

Dear Mr. McCloy:

1. In a letter dated 9 January 1945, you requested my views as to the authority for the future detention by the Department of Justice of certain persons who have been individually excluded from sensitive military areas. Specifically, the question under consideration was whether the authority for such detention, under Executive Order 9066, should be delegated by the Secretary of War to the Attorney General or by me to some official of the Department of Justice. Previously you advised by letter dated 23 December 1944, that decision had been made to proceed under existing authority under an arrangement whereby the Department of Justice would assume the responsibility for the administration of the detention centers at which the segregees are detained.

2. Power to detain under Executive Order No. 9066.

In view of the decision which has been made to rely upon Executive Order 9066 for the detention of persons who are deemed to be potentially disloyal, it will be assumed here that such power and authority under Executive Order 9066 exists, except when the question concerns the immediate matter as to whether the Commanding General or the Secretary of War should delegate the authority.

3. Power to delegate authority granted by Executive Order No. 9066.

In the case of Ex parte Endo the court stated that the Commanding General, Western Defense Command had delegated fully to War Relocation Authority the authority and responsibility under Executive Order 9066 to determine entry to and departure from Relocation Centers located within the Western Defense Command. No objection was voiced to the legality of such a delegation. The court said:

"Such power of detention as the Authority (War Relocation Authority) has stems from Executive Order No. 9066. That order is the source of the authority delegated by General DeWitt in his letter of August 11, 1942, and Executive Order No. 9102, which created the War Relocation Authority, purported to do no more than to implement the program authorized by Executive Order No. 9066."

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24 Jan 45

Page Two
Hon. John J. McCloy
24 January 1945

Under the described plan, the Department of Justice will have the responsibility for determining which individuals may be released from detention.

As a general rule, a public officer may not delegate that part of his authority which calls for the use of discretion and judgment. However, the Supreme Court did not express any objection to a similar delegation to a civil agency in the Endo case, and the courts are liberal in upholding the delegation of war powers. It is therefore questionable whether the courts would invalidate the proposed delegation of the authority to detain and release disloyal persons, assuming that such authority exists under Executive Order 9066.

4. Delegation by the Secretary of War.

The reasons supporting a delegation by the Secretary of War to the Attorney General are:

a. The authority vested in the Commanding General, Western Defense Command under Executive Order 9066 comes by delegation from the Secretary of War. Delegation by him direct to the Attorney General eliminates one link in the chain of delegation and thereby strengthens it from a legal viewpoint.

b. It would appear more proper for the Secretary of War to delegate authority to the Attorney General, since each is on the same "Washington level."

c. The detention of disloyal persons is to prevent them from committing acts of sabotage or espionage anywhere in the United States. Since the problem is national in scope, it is preferable to have the authority for detention, vested in the Justice Department, stem from the Secretary of War. This will avoid the Commanding General of the Western Defense Command, whose command is of a limited geographical jurisdiction, undertaking a task of nation-wide significance.

5. Delegation by the Commanding General, Western Defense Command.

The reasons supporting the delegation by the Commanding General, Western Defense Command to some official or sub-agency of the Justice Department, are:

a. The detention of most of the persons to be detained is based upon the determination made by the Commanding General, Western Defense Command that the records of such persons made this detention necessary. The detention of such majority would appear as a natural and orderly incident of the original evacuation of West Coast Japanese by the Commanding General, Western Defense Command. As the Supreme Court said in the Endo case: "We do not mean to imply that detention in connection with no phase of the evacuation program would be lawful."

Page Three
Hon. John J. McCloy
24 January 1945

b. Such action would be in accord with the precedent established by General DeWitt (i.e., letter of 11 August 1942 to War Relocation Authority).

One consideration against such a delogation is that persons who are not under the jurisdiction of Western Defense Command will be detained by the Justice Department; for example, persons of Japanese ancestry who have been found disloyal and excluded by the Military Commander, Territory of Hawaii Military Area.

6. After careful study of this matter, I am of the opinion that a delegation of authority, to the Department of Justice, for detention of potentially dangerous persons, should stem from the Secretary of War rather than from the Commanding General, Western Defense Command. Since the detention of individual excludées and their release is national in scope, and will be the responsibility of a civilian agency, the authority for such action should flow from the source having the broader jurisdiction, i.e., the Secretary of War.

Very sincerely,



H. C. PRATT
Major General, U. S. Army