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JAPANESE AMERICAN CITIZENS LEAGUE
OFFICE OF THE NATIONAL SECRETARY
2031 Bush Street
San Francisco, California

Bulletin 142 April 7, 1942

RE: TEST CASES

The Min Yasui case in Portland, Oregon, is gaining considerable attention. The facts seem to indicate that one Minoru Yasui, a Nisei attorney who worked for the Japanese consulate in Chicago as late as last December 7th, registered with the State Department as a propaganda agent for a foreign government, and a reserve lieutenant in the United States Army, deliberately violated the curfew regulations and surrendered to the police with the declared intentions of legally determining the right of the military authorities to impose such restrictions upon American citizens of Japanese extraction. Yasui contends that such actions are discriminatory and unconstitutional. At the present itme, he is "out" on bail and is said to be circulating a petition among the Portland chapter members demanding that the National Organization take some definite stand on the question of the constitutional rights of the Japanese Americans.

In regards to this particular case, as well as all other test cases of this nature, without any references being made to those individuals who are serving as the subjects for judicial review, this office releases the following statement:

National Headquarters is unalterably opposed to test cases to determine the constitutionality of military regulations at this time. We have reached this decision unanimously after examining all the facts in light of our national policy of: "the greatest good for the greatest number."

We recognize that self-styled martyrs who are willing to be jailed in order that they might fight for the rights of citizenship, as many of them allege, capture the headlines and the imaginations of many more persons than our seemingly indifferent stand. We realize that many Japanese and others who are interested in our welfare have condemned the JACL for its apparent lackadaisical attitude on the matter of defending the rights and privileges of American citizens with Japanese features.

But, we submit that a careful examination of all of the facts with the view of doing the greatest good for the greatest number will justify our position on such matters as these.

In the first place, our primary consideration as good Americans is the total war effort. Individuals and groups are not important when the life of the nation is at stake. We have been asked to evacuate from the Pacific coast as a military measure designed to strengthen national defense. We will cooperate in the war effort.

Secondly, as a national organization and as individuals, we have pledged our whole-hearted cooperation to the President,

without qualifications or reservations, in the winning of the war. We will not violate our pledge.

Thirdly, we have continually cooperated with the Federal Government on all regulations and orders in the hope that our cooperation would inspire a reciprocal cooperation on their part. Our hopes have been justified. We will continue our policy of cooperation.

Fourthly, the gracious acceptance of all army regulations and orders and cooperating with them to the fullest extent is our contribution to the national defense effort. It is the sacrifice which we have been called upon to make. Although our contribution may seem greater than most, it still remains that it must be our share in the program. We will make our contributions to our nation.

Fifthly, public opinion is opposed to any measure which seems to be directed against the Army and its authority. Should we challenge their right to pass such regulations as the five mile travel limit and the curfew restrictions, we might be damned as fifth columnists who are attempting to sabotage the military plans and to embarrass the government at a time when a united front is essential. We will not take any action which might be construed as an organized effort to sabotage Army measures which are designed for the public safety.

Sixthly, even assuming that we should win a test case, which we doubt, we may be in the same position as the nation which wins a war and loses the peace. It will take so long for a case of this nature to run the gamut of the courts from the lowest to the highest that we will, in all probability, be evacuated out of this area before it is finally passed upon by the Supreme Court. Even though we should win a legal victory, if the people at large resented our activities, it might have been better either to have lost or not to have attempted a contest. Too, if we should lose the case, which appears likely at this time, we have no further recourses: the law has been settled and cannot be reversed. It would appear more sensible if all legal actions of this nature were left until after the war when public sentiment may have changed and suits might be initiated to recover for damages suffered. Even this latter step is a moot questionat this time. We do not intend to attempt to win a case and lose goodwill.

Seventhly, attempts to slow up or to question military dictates may result in irritating those in charge so that they may retaliate by instituting more and stricter regulations. Whatever may be said against the procedure followed by the Army in conducting this evacuation is one thing but no one can gainsay the statement that they have been tolerant, fair, and as reasonable as possible in their treatment of this problem. We do not intend to force them to change their attitudes on this matter.

Eighthly, if our recollection serves correctly, Attorney General Biddle, one of the greatest defenders of civil rights in this country, declared that there was little chance that the courts would go beyond the military should any person desire to challenge the legality of the President's proclamation which gave the Secretary of War and his military commanders the power to designate

zones in which any and all persons might be excluded and to facilitate the removal of the undesirable persona by adopting whatever measures were deemed necessary and proper. We trust that the opinion of the Attorney General represents the majority of the jurists' opinions on this subject.

Ninthly, the American Civil Liberties Union, after polling its members as to whether they should make a test case of the Army orders for evacuation, decided against it. When the one group of all groups which has most vigorously and consistently battled against great odds for civil liberties in this nation concedes that a court test of legality should not be attempted, we are ready to accept their verdict. If the general orders should not be challenged, then it seems only logical that the supplementary orders necessary to effect the evacuation should also not be contested. We are not disposed to question the wisdom of the American Civil Liberties Union on questions of this kind.

Tenthly, unfavorable publicity often results from attempting such test cases. The Yasui case is one in point. Editorial comments as well as news reports did not concentrate their attention on the question of the constitutionality of the regulations involved but rather featured the fact that the subject for the test was a former paid propagandist for the Japanese government. Moreover, from letters sent to the various public opinion sections of the newspapers, we can gather that the majority of those who wrote in were very vicious in their condemnation not only of Yasui but also of all Japanese. This incident just gave them one more excuse for publically branding us as treacherous and dangerous. One letter, printed in the San Francisco Examiner, for example, declared that "All Japanese Americans Should be Discharged from the Army because Yasui, a reserve lieutenant, had deliberately violated regulations. The letter went on to say that "Yasui took advantage of an American education, going to the University of Oregon, and paid that back with the usual Japanese treachery." Because our motives are too often misunderstood and unfavorable publicity often results which is injurious not only to the person so involved but also to all the Japanese in America, we believe that test cases should not be made. We do not intend to create any unnecessary excuses for denouncing the Japanese as disloyal and dangerous.

Lastly, we are not giving up our rights as citizens by cooperating with the government in the evacuation program. We may be temporarily suspending or sacrificing some of our privileges and rights of citizenship in the greater aim of protecting them for all time to come and to defeat those powers which seek to destroy them. When the war is won, we are confident that all our rights and privileges will be returned to us a hundredfold because we cooperated in the winning of the war. We will consistently adhere to this announced principle of cooperation.

In times like these, let us remember that it is much easier to be a martyr than it is to be a quiet, self-suffering good citizen who is vitally interested in the winning of the war. To win this time will require sacrifices beyond those demanded in the First World War, and the sacrifices which we are called upon to make are even greater than those demanded of the majority. Because our sacfifice is greater, let us trust that our rewards in that greater America which is to come will be that much the greater.

Fraternally,
signed Mike Masaoka
National Secretary and Field Executive

ACLU

AMERICAN CIVIL LIBERTIES UNION
170 FIFTH AVENUE
NEW YORK CITY
490

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MEMORANDUM ON THE COURT CASES CONTESTING THE EVACUATION OF AMERICAN CITIZENS OF JAPANESE ANCESTRY

American Civil Liberties Union
January, 1943

When President Roosevelt on February 19 issued an executive order giving the military authorities power to establish military zones and to remove from them any persons held dangerous to military security the Civil Liberties Union expressed its fear that it involved grave constitutional questions. While the Union later agreed not to challenge in the courts the President's general constitutional power of removal from military zones, it opposed from the start the indiscriminate and wholesale evacuation of the entire Japanese population, aliens and citizens, without any examination of loyalty, and obviously with little reference to military necessity in view of the vast size of the area evacuated, covering nine states.

Since the evacuation has been completed it is clear that no court proceedings will undo it. But judicial review may modify some if its features. Whether it does nor not, the obligation of the Union is clear to raise the unprecedented constitutional issues in the courts. The following memorandum states the court cases pending on January 1, 1943.

SOUTHERN CALIFORNIA

Habeas corpus proceedings, brought by the Southern California branch of the Union, on behalf of Ernest K. Wakayama and wife, are pending. Argument on the writ was made on October 6. It is a test case involving the right of the military authorities to detain American citizens of Japanese ancestry. The main point of the suit is that the President's order authorizes the military to evacuate from a zone but not to detain American citizens in a camp.

The other main points urged in the petition for a writ are:

1. Imprisonment without hearing or trial abridges their constitutional right to due process of law.

2. The petitioners are being held solely because of their ancestry, and are thus being illegally discriminated against.

3. Petitioners deny the government's claim that Japanese-American citizens were responsible for acts of sabotage and that a large number of Japanese-Americans are disloyal.

Mr. Wakayama is an American citizen, born in Hawaii, a federal Post Office employee for many years, a World War veteran, and acting adjutant of a local post of the American Legion. Mr. Wakayama is a Republican in politics and secretary-treasurer of an A.F.of L. union. There appears to be nothing in his record to qualify his entire loyalty to the United States. Mrs. Wakayama is a native-born American citizen of Japanese ancestry.

NORTHERN CALIFORNIA

Fred T. Korematsu, California-born American citizen of Japanese ancestry, was arrested on May 30 for refusing to be evacuated from the military area, and prosecuted under an Act of Congress passed in March, 1942 making it a misdemeanor to disobey any military order. He was denied the right to bail and held by the Army in an assembly center while the prosecution was pending. He has been convicted and sentenced to five years' probation, and sent to an "assembly center". An appeal has been taken.

The government has filed a motion to dismiss the appeal, contending that there is no final judgment to appeal from because Korematsu was placed on probation. The Union has replied that it would be a travesty on justice if after conviction defendant is not given an opportunity to clear his record by appeal, especially where defendant did not apply for probation but insisted on a fine or jail sentence.

Korematsu, represented by ACLU counsel, raised at the trial, among other points, the following in his defense:

1. That the classification for evacuation based on national ancestry deprives American citizens of Japanese descent of due process and equal protection of the law under the Fifth Amendment.

2. That the executive order was not intended and does not provide for the compulsory exclusion, removal and internment of American citizens of Japanese ancestry.

3. That the military zones are so extensive that they are void because they bear no reasonable relation to the objectives set forth in the executive order under which they were drawn up.

His counsel, acting independently of the Union, have raised on appeal the constitutionality of the Presidential order itself.

Mr. Korematsu was born in Oakland, California, and was graduated from the local high school. He was rejected for military service on physical grounds. Desiring to support the war effort, he trained himself to be a welder, and was so employed when arrested. Mr.Korematsu's loyalty to the United States appears to be unquestionable. He cannot read or write Japanese and his associates are largely outside the Japanese community.

Lincoln S. Kanai, California-born American citizen of alleged Japanese parentage, left the military area on May 30, 1942 after an order had been issued that no Americans of Japanese ancestry should leave the zone in advance of the enforcement of the internment order. Kanai was apprehended in Milwaukee, Wisconsin and held in jail for return to California. Counsel for the Civil Liberties Union sued out a writ of habeas corpus on the ground that the imprisonment denied petitioner due process and equal protection of the law, and abridged his privileges and immunities as a citizen. It was alleged that the classification of the area which petitioner left as a military area was arbitrary. The court discharged the writ and remanded Kanai to the custody of the U.S. Marshal.

Kanai was returned to San Francisco, where he was charged under the Act of March, 1942 with violating a military order and was sentenced to six months in prison. He is now serving sentence in the local federal jail. No appeal was taken. He probably will be released on parole.

Miss Mitsuye Endo, held in an assembly center is seeking a writ of habeas corpus on the ground that she is unlawfully detained and that her detention involves her property rights in a Civil Service position from which she was taken for internment. Miss Endo was born in Sacramento, California, educated in the public schools, and worked in the California Motor Vehicles Department.

The points made in her petition are:

1. That imprisonment without hearing on trial deprived her of her constitutional right to due process of law.

2. That martial law has not been declared and the civil courts are still open in California, so that the military has no need to assume jurisdiction.

3. That confining petitioner will cause her to lose her Civil Service standing, a vested property right, without due process of law.

She is being represented by counsel independent of the Union, but with the Union's support of her contentions. The government has urged dismissal of her petition on the ground that she had not exhausted her administrative remedies, contending that she could apply for a furlough. Her counsel shows, however, that regulations permitting furloughs were not in effect when the petition was filed, and also that these regulations restrict her freedom of movement. Decision has been reserved by Judge Roche of the Federal District Court.

OREGON

Minoru Yasui, American-born citizen of Japanese descent, living

at Hood River, and an attorney by profession, decided to test the military order requiring all enemy aliens and citizens of Japanese descent to remain off the streets after 8 p.m. He walked into the police station after the curfew hour in the spring of 1942 and offered himself as a test. He was arrested and charged with violation of Public Proclamation No. 3 of the Western Defense Command and of Public Law No. 503, 77th Congress, which makes disobedience of a military order a crime.

Mr. Yasui contended in his defense that his constitutional rights are inviolate even in wartime, that the classification of Japanese citizens apart from other citizens was arbitrary and unreasonable and denied him equal protection of the law. He was represented by a Portland attorney. The A.C.L.U. filed a memorandum with the court.

Judge Fee of the Federal District Court at Portland in a decision in November 1942 held that Yasui had sacrificed his American citizenship by working for the Japanese government. The judge said, however, that General DeWitt had no power to issue regulations affecting the conduct of citizens.

The judge held that military necessity, the basic prerequisite for replacement of civil authority by military rule was not present at the time this order was issued, as indicated by the fact that neither the civilian nor military authorities had deemed the situation urgent enough to declare martial law, suspend the writ of habeas corpus, or close the civil courts.

Though directed only to the curfew order, this holding challenges the validity also of other military orders concerning the removal of citizens from the western military area. These orders have been upheld by several federal district courts in test suits brought by Japanese-Americans, aided by the A.C.L.U. Judge Fee is the first to declare the military without power to issue them, and to deny the existence of military necessity.

Regarding the power of the military to regulate the conduct of aliens, the court said: "While in ordinary times such persons are entitled to equal protection of the law, when their country is at war with the United States, Congress or the President may intern, take into custody, restrain and control all enemy aliens. While the orders of General DeWitt are void as respects citizens--the regulations by adoption thereof by Act of Congress are thus valid with respect to aliens."

WASHINGTON

Gordon Hirabayashi, American-born senior at the University of Washington, refused to comply with the evacuation order and was arrested, charged under the Congressional Act of 1942 with refusing to obey a lawful military order. His defense rested on the following chief grounds:

1. Public Law 503, 77th Congress, making it criminal to violate an order of a military commander, is too vague to be constitutional.

2. The classification of Japanese into a separate group is unreasonable and arbitrary and deprives Hirabayashi of due process of law and of equal protection of the laws.

He is being represented by counsel for an independent committee of citizens formed to defend him, with the aid of the American Civil Liberties Union.

Federal District Court Judge Black at Seattle overruled a demurrer to the indictment, saying: "And this court will not question in this time of war the wisdom or necessity of the curfew or evacuation orders with respect to those of Japanese ancestry which are involved in this proceeding. The situation is too grave - the menace too great. Nor can defendant substitute his judgment for the judgment of the Commander in Chief and the general acting under the President's direction, pursuant to constitutional powers and the Congressional ratification and authority of Public Law 503."

The jury found Hirabayashi guilty. The case has been appealed to the Circuit Court of Appeals at San Francisco.

Hirabayashi is the son of Protestant Japanese immigrant parents who came to the United States for religious freedom. He is a religious conscientious objector to military service and was so classified by his draft board. His refusal to register under the evacuation order was based on religious grounds. He said: "I must maintain my Christian principles. I consider it my duty to maintain the democratic ideals for which this nation stands. Therefore, I must refuse this order for evacuation."

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Wealthy Jap Sentenced to San Quentin

Special to The Chronicle

SACRAMENTO, Feb. 18—Henry S. Murimoto, wealthy Japanese produce dealer, was today sentenced to San Quentin prison for an indeterminate period and fined $500 after pleading guilty to illegal possession of firearms.

Judge Ray T. Coughlin pronounced sentence after denying an appeal for probation.

Murimoto, who plead guilty to a violation of the dangerous weapon control law, had asked for leniency, but his request was opposed by C. E. Wilson, county probation officer.

TAX EVASION

Wilson in a report to the court cited a preliminary examination by Federal authorities which he said indicated Murimoto had banked $96,525 from his produce business in a five-and-a-half-year period, but had evaded payment of $40,000 to $50,000 in Federal income taxes.

"It would appear," said the report, "that this defendant, while enjoying the liberties and laws of the United States, has made a very excellent living and undoubtedly accumulated some wealth.

"All his children were born in the United States, but the two sons were sent to Japan to be educated, and the defendant now advises, undoubtedly, they are in the Japanese army.

BROKE THE LAW

"The defendant's banking operations show that he made every effort to hide his assets, thus breaking the laws of this country, where he enjoyed liberties, opportunities, and made his livelihood. Now that he has been arrested for a violation of the dangerous weapon control act, he immediately requested the leniency provided by the laws of this State. The Probation Department does not believe this alien is entitled to this leniency."

Murimoto distributes produce throughout the Sacramento valley under the name of the Henry Produce Company. He came to the United States in 1905 and first worked as a laborer in Alameda county.

S.F. Chronicle
2/19/42

Japanese Youths Jailed in Los Angeles

LOS ANGELES, Jan. 2 (U.P.)—Two Japanese youths said to have hissed newsreel pictures of President Roosevelt, laughed at the attack on Pearl Harbor and cheered Japanese officials, were jailed today on complaint of a woman who said they spat upon her when she protested.

Tomio Ambo, 19, and Shigeki Kayama, 21, were booked on suspicion of battery on the complaint of Miss Winifred J. Stephens, who called a policeman after the disturbance in the theater.

She said they turned their derision on her after she asked, "What's the matter, don't you like it?" during showing of the newsreel.

Berkeley Gazette 1/2/42

In Oakland yesterday, Superior Judge Lincoln S. Church found Yukio Kita, Irvington trucking operator, guilty of violating the California alien gun law, and will pass sentence on April 2.

Kita's case, one of the most peculiar in court annals, included an arrest on December 10 for having a revolver, a shotgun and a rifle in his possession; a mysterious stabbing which put him in a doctor's care, and his attorney's request for a "no jury, no testimony" trial.

Judge Church based his decision on a record of Kita's first hearing before a Justice of the Peace.

S. F. Chronicle
4/3/42

$2,600,000 of reptile, fish, deer, and elk skins and furs, most of which are produced in negligible quantities in the United States. Cattle and sheep skins, bones and tankage, and wool are by-products of our domestic livestock industry, the volume of output of which is governed by the principle of joint costs and joint returns. If imports of these products from Latin America were limited either by a further increase of import duties (already heavy) or by some form of quota restriction, the domestic level of prices for these products would undoubtedly be raised temporarily. An increase in United States output of hides and skins and wool can be accomplished only by increasing domestic production of cattle and sheep, which would tend to lower the price level of meat and dairy products. The ultimate result may be a joint return for all animal products little higher than before. Furthermore, sight must not be lost of the fact that an enhancement in prices of leather and woolen goods to consumers may tend to cause a greater use of substitutes. The possibility of using "ersatz" products in place of agricultural products has increased tremendously within recent years.

Under group 3, commodities produced in the United States in quantities more or less adequate to meet domestic consumption requirements, imports of animal and animal products (including fish √) accounted for $13,600,000; vegetable products

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√ Imports of fish accounted for $1,400,000.

Legal Prob.
The Endo Case

Japanese Case

Girl Charges U. S. Holds Her Illegally

A 22-year-old Japanese girl yesterday petitioned for her release from a Modoc county relocation camp and at the same time attacked General John L. DeWitt for ordering her evacuation.

She is Mitsuye Endo, 22, born in the United States. Until April 7 she was a probationary State employe in Sacramento.

Her brother, Kunio Endo, is now undergoing army training at Camp Crowder, Missouri, she said.

According to A. J. Zirpoli, Assistant U. S. Attorney here, her petition is one of the first in the country which attacks the right of military authorities to order removal and relocation of American citizens.

She charged General DeWitt and his aid, Colonel Karl Bendetsen, had illegally caused her to be incarcerated, violated her civil rights, affected her property rights and made it impossible for her to perform her rightful duties.

Zirpoli indicated her petition may be followed by others filed by 67 other Japanese civil service "suspendees" now in the Tule lake camp. All were taken there from Sacramento.

S. F. Chronicle
7-14-42

THE LOS ANGELES DAILY JOURNAL

April 18, 1942

SAYS U. S. BORN JAPANESE ARE CITIZENS

Attorney W. G. Randall Takes Issue With Villamin Views

Editor—Daily Journal
Dear Sir;-

Referring to a brief article appearing in your issue of April 14th, in which the "new theory" is advanced "purely as a legal proposition" that since, presumably, many Japanese aliens resident in this country during the last few years have been living in the United States in violation of the Root-Takahira Agreement or the Exclusion Act of 1924, therefore their children, though born in continental United States, were not legally present at the place of their birth; hence, that such children have not acquired American citizenship by right of birth. This novel theory of constitutional interpretation is attributed to one Vicente Villamin of Los Angeles, but the story seems to have reached you via news service from Cincinnati. It is interesting to note that the gentleman does not offer any authority in support of his contentions. It is even more interesting to note that the name of Vicente Villamin does not appear in Parker & Baird's Legal Directory, in the Los Angeles Telephone Directory, or in the Los Angeles City Directory.

One would be disposed to dismiss the whole matter as a misplaced attempt at humor, save for a collateral implication which is wholly unwarranted. Our fellow citizens of Japanese descent have trouble enough on their hands at the present time, without being worried by vague insinuations that their status as American citizens is open to attack. They may set their

SAYS U. S. BORN JAPANESE ARE CITIZENS

(CONTINUED FROM PAGE ONE)

minds at rest on that point. It is long settled law, under the decision of the Supreme Court of the United States in the case of **United States vs Wong Kim Ark,** 169 U.S. 649, that (with certain rare exceptions, not relevant to the present discussion) the children of resident aliens, when such children are born in continental United States, are citizens of the United States and of the state in which they reside. (Constitution of the United States, XIV Amendment, Clause 1.)

The doctrine of the **Wong Kim Ark Case** has been fully confirmed in the very recent case of **Elg vs Perkins: Perkins vs Elg,** (Cross Appeals—authorities are cited. The orders entered by the Circuit Court of Appeal for the District of Columbia in the **Elg Cases** were taken to the Supreme Court of the United States on Writ of Certiorari, and were there modified and affirmed as modified—307 U.S. 325.

There is no warrant in law for any distinction as to rights of citizenship accruing to persons born in continental United States, predicated on questions as to how their alien parents came to be resident in this country at the time of their birth. Hence, there is nothing in the "new theory" presented by "Mr. Villamin". His contention is a marked instance of what a wise, old darky described as "dem layers a-provin' dat things what is, ain't".

Very truly yours,
William G. Randall.

See also - other articles in L. A. Daily Journal of this date

Jap Agent Pleads 'Nolo Contendere'

Tsutomu Obana, secretary of the San Francisco Japanese Chamber of Commerce, yesterday withdrew his original plea of innocence to charges of conspiracy to violate the Foreign Agents Registration act, and entered a plea of nolo contendere (no contest).

Obana has been in Federal custoday since the outbreak of war. Justice Alan Goldsbourgh of the Federal District Court, Washington, D. C., accepted the nolo contendere plea in view of Obana's plea of guilty to four counts of an indictment charging ommission of material fact in registration statements filed with the State Department.

Obana registered with the State Department on behalf of the Japanese Committee on Trade and Information, now disbanded. He was indicted January 28 along with Ralph Townsend of Lake Geneva, Wis., David Warren Ryder and Frederick Vincent "Wiggy" Williams of San Francisco. Townsend already has pleaded guilty. Williams and Ryder will be tried May 11, after which, it is understood, Townsend and Obana will be sentenced.

S.F. Chronicle
4/23/42

Legal
Ex Endo Case

T-1, 34

Evacuation: Court Asked to Question De Witt's Right to Intern Japanese-Americans

A demand that Lieutenant General John L. DeWitt be summoned into court to show cause why Japanese should be interned yesterday startled the courtroom of Federal Judge Roche.

The demand was made by James C. Purcell, attorney for Mitsuye Endo, Japanese-American girl, now in the Tule Lake reception center, who recently filed an action contesting the removal of Japanese from Pacific Coast States and their resettlement in guarded camps as ordered as a military necessity by General DeWitt.

Attorney Purcell called for a decision which would not merely release Miss Endo from the center, but which would also turn loose nearly 75,000 American-born Japanese now in assembly and relocation stations throughout the West.

The action to test their constitutional rights is being heard by Judge Roche without a jury.

Purcell's arguments were opposed by Assistant U. S Attorney A. J. Zirpoli, who battled any attempt to call General DeWitt from his duties as head of the Western Defense Command to testify in the hearing.

"The President's proclamation," he said, "was putting the public on notice that we face a dangerous situation.

"The Japanese have already set foot on Alaska and shelled this Coast. That makes it an invasion.

"If Japanese parachutists should land here," he claimed, "the average citizen would not know which was an alien and which a citizen."

The theater of war, he added, "runs from San Francisco to Indianapolis."

He quoted from a Supreme Court decision in the case of Moyer versus Peabody, which said: "When it comes to a decision by the head of the State upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment. Public danger warrants the substitution of executive process for judicial process."

Purcell denied the release of Japanese citizens from custody would result in any danger to the country. He quoted from a letter to the Tolan congressional committee written April 20 by James Rowe Jr., Assistant Attorney General.

"John Edgar Hoover (FBI head) has advised me there was no sabotage there (in Hawaii) prior to December 7, on December 7, or subsequent to that time."

He likewise quoted Secretary of War Stimson as saying, "There have been no reports of sabotage in Honolulu."

Purcell declared that, so far as he knew, "there never has been a decision of the Supreme Court of the United States upholding the right of a military commander to hold a citizen of the United States without a hearing."

He asserted Miss Endo's rights as an American citizen were violated, for she was being held under armed guard without any charge of a violation.

He said there appeared to be no doubt that under the President's proclamation General DeWitt has the authority to force anyone, citizen or alien, to leave any specific zone.

"But the power to exclude certainly doesn't contain in it the power to detain after exclusion," Purcell contended.

In the President's executive order, under which areas were set up for exclusion of Japanese aliens or citizens, there was no authorization for detention after exclusion, he said. The Army may provide transportation, food and shelter or other necessary accommodations until other arrangements are made, he said, but there is no legal basis of compulsory detention of the evacuees.

"There is no state of martial law here," he said. "No presidential warrant has been issued for Miss Endo's arrest."

A large number of Japanese among the population was not inherently dangerous in Hawaii, he concluded, and it need not be dangerous here.

Members of the staff of the Army's Judge Advocate department, representatives of the State Attorney General's office, and attorneys of the American Civil Liberties Union sat in on the hearing.

Judge Roche gave both sides 15 days for submission of their case.

S. F. Chronicle
7-21-42

Paragraph Parade:

This is the tale of a distinguished Japanese-American, known to many high-ranking San Franciscans. When war broke, he was arrested in a small town not far from here and thrown into jail. For want of something better, the Sheriff charged him with "vagrancy." The Japanese-American quietly displayed a wallet filled with money, smiling: "But I have money, I am no vagrant." The Sheriff grabbed his dough, stuffed it in his pocket and snapped: "Now you are!" For two weeks they kept this man in jail, taunting him, trying to get him to read Jap papers (he reads no Japanese) and keeping him practically incommunicado. Finally, word of his plight got to worried pals, and in a jiffy the FBI got him out of jail. His name is Michael Masaoka, Prof. of Journalism at University of Utah—and author of the Japanese-American oath of allegiance!

T 1.34

Jap Internment: The U.S. Is Upheld in the First Test Case On Enemy Alien Directive

The Government was upheld in its right to intern alien and native-born Japanese in the first test case decision, handed down yesterday by Federal Judge Welsh of Sacramento.

Challenge of the Government authority came in a suit brought by the Civil Liberties Union on behalf of Fred Toyosaburo Kormatsu, 23, 10800 Edes avenue, Oakland, now being held at the Tanforan assembly center.

Judge Welsh overruled the demurrer brought by the Civil Liberties Union, which claimed that the President had no right to issue a directive order against the Japs and that Lieutenant General DeWitt had no authority to execute such a directive.

Assistant U. S. Attorney Zirpoli answered that the President was within his rights by delegation of authority from Congress and that General DeWitt was within his rights, acting as a subordinate of the Nation's Commander-in-Chief.

Judge Welsh's decision was delivered orally. A written opinion is expected later.

Kormatsu had been arrested in San Leandro on May 30, four weeks after orders had been issued for Japanese to report at assembly centers. He had attempted to escape internment by having his face lifted and posing as a Spaniard, named Clyde Sarah, and had so represented himself when registering for the draft, it was charged.

A somewhat similar case is pending before Federal Judge Roche wherein Mitsuye Endo, 22-year-old Japanese girl and a former employe of the State Highway Commission, is seeking release from a reception center in Modoc county on the grounds General DeWitt had right to exclude her, but not detain her after exclusion.

Judge Welsh's decision is expected to affect this case.

San Francisco Chronicle
9/2/42

XXIII
XXIV

TABLE

Location of Mining Concerns in South Africa, 1938*

* Includes only mines actually producing in 1938.

Source of data:

Union of South Africa, Department of Mines. Annual report of the Government Mining Engineer, 1938. Table 28.

4 JAPS JAILED FOR TAMPERING

Four Japanese landed in the Oakland jail today for tampering with alien property seized and sealed by Uncle Sam.

James Matsushima, 1631 14th-st, and Jiro Yoshizawa, 1527 Seventh-st, were arrested by Patrolman George Burke as they were loading cases of canned food into a truck parked in the rear of a Japanese store at 12th and Center-sts.

The store, owned by Frank Lino, a Japanese national, was under a Federal order to stay closed. Matsushima and Yoshizawa said they intended taking the canned goods to another market in Richmond, operated by a Japanese citizen.

Police said they had the name and address of another truck that left the store, loaded with canned goods earlier.

Moses Oshima, 18, and Oshisa Masao, 20, of 1028 22nd-st, were arrested while trying to pry open the lock of a laundry truck which had been sealed when the owner of the laundry was ordered to suspend business. The youths were so sorry, said all they wanted was to get some laundry for a customer.

All four Japanese were held for questioning by the FBI.

ESE ARRAIGNED

Niles, arraignment of Kukio K..., 40, alien Japanese truck operator of Bay Street, Irvington, on felony charges of violating the State concealed weapon act was continued to December 19.

Four Japanese arrested in Oakland yesterday in connection with alleged tampering with goods in stores ordered closed by the Government, were released after questioning. A report that one of the stores was at 12th and Center Streets proved erroneous. It was at 1480 14th Street.

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SR
Court Cases

Japanese Aliens

Bay Evacuation Test Cases Appear in Court

Three Japanese youths who failed to leave restricted areas in the Bay Region appeared in Federal Court yesterday.

Fred Toyosaburo Korematsu, 23, Hayward, whose case will be used by the American Civil Liberties Union to test the constitutionality of the Japanese evacuation orders, was granted a one-week continuance by Federal Judge Welsh.

Korematsu, who had his nose altered by plastic surgery and attempted to claim Spanish-American descent, had taken the name of "Clyde Sarah" and remained in the restricted zone in order to be near an unidentified Italian girl.

Another Japanese, Koji Kurokawa, 23, who hid in the basement of a San Francisco employer's home for 23 days without food because he dreaded evacuation, pleaded guilty yesterday to violation of the Army orders and was sentenced by Judge Welsh to six months in the county jail.

The case of a third Japanese, John Ura, 19, of Centerville, was turned over to a Federal probation officer for an investigation after Ura pleaded guilty to returning to the Bay Region "to get his typewriter."

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