

U. S. Supreme Court Grants Review of Evacuation Order

Korematsu Case Will Test Legality of Gen. DeWitt's Ban on Japanese Americans

WASHINGTON — The United States Supreme Court announced Monday that they had granted review of the constitutionality of the west coast evacuation order issued by Lieut. Gen. John L. DeWitt in the spring of 1942.

The case, which affects the evacuation of more than 70,000 American citizens of Japanese ancestry, revolves around the test brought by Fred Toyosaburo Korematsu regarding the legality of the military orders which took him from his San Leandro, Calif., home to the Tanforan assembly center at San Bruno, Calif.

The American Civil Liberties Union filed an appeal in the Supreme Court for Korematsu, following the decision of the Ninth District Federal court in San Francisco which upheld a lower court's decision convicting him of the charge of violating a civilian exclusion order affecting persons of Japanese ancestry in military areas.

The Ninth Circuit court had placed Korematsu, at present a resident of the Central Utah relocation center, on probation for five years.

In its petition for review ACLU attorneys declared that the army's order constituted a denial of due process because it made no provisions for any hearing, and noted that the classification of citizens based solely on ancestry is a denial also of due process and is forbidden by the Fifth Amendment.

Attorneys signing the "friend of court" brief of the ACLU included Morris M. Grupp, Clarence E. Rust of California, Edwin Borah of Connecticut, Osmond K. Fraenkel and Arthur Garfield Hays of New York, and Harold Evans, William Draper Lewis and Thomas Raeburn White of Pennsylvania.

In "Common Ground:"
PC Jack 4/1/44
Barron Beshoar Reports on Employment Situation Faced By Japanese American Group

The multi-faceted problems of racial discrimination in the Rocky Mountain states are discussed by Barron B. Beshoar, former minority representative for the War Manpower Commission in that area, in the spring issue of Common Ground Magazine.

After serving for sixteen months in that position, Beshoar reached the conclusion that "no issue, whether chronic or born of war, transcends in importance that of racial, religious or color discrimination."

Though racial antagonism in the mountain states has never reached riot proportions, says Beshoar, it is nevertheless widespread.

"In some instances it is bold and audacious; in others it is subtle and hidden, but the effects are always the same. It deprives the nation of needed manpower, denies jobs to workers who have contributions to make to the war effort, prevents upgrading of workers with skills and potential abilities, and destroys the morale of important segments of our population. Worse still, it fixes in the minds of many a belief that American democracy is an Anglo democracy, that it is not worthwhile to fight a war for democratic ideals in some distant and little known land if democracy is not to be given more than lip service in our own communities."

Particular minority problems of the Rocky Mountain area concern citizens of Spanish, Mexican, Japanese and Negro descent.

Discrimination against Mexican and Spanish Americans has at the present time been somewhat relieved by the in-migration of Japanese Americans, says Beshoar, for the nisei are now the chief targets of discrimination, but the pattern has not changed, and there is every prospect that the citizen of Spanish descent will be in no better position after the war than he was before, he says.

Difficulties facing these citizens have been due to several factors: the fact that they do not appreciate money for itself; the language disparity; and the fact that they have no strong, effective organizations, such as the NAACP or the Urban League, to fight discrimination.

The position of the Japanese American in the Rocky Mountain states is extremely difficult, says Beshoar, and employers who refuse to hire them often contend that if the military could not trust the Japanese Americans and evacuated them, they cannot be trusted to work in war plants.

During the last months of 1943, however, a good number of nisei girls have been placed, particularly in government agencies. The achievements of the Shelby Japanese American unit and the 100th Infantry have had a telling effect.

Political moves to hinder nisei from owning land and otherwise enjoying their full rights have had repercussions, however, in recent months. At the present time, proponents of such legislation are planning to place their proposals on the ballot in November.

The federal attitude toward Japanese Americans is one of "bewildering inconsistency," says Beshoar.

"Although the wording of Executive Order 9346 (or 8802) does not exclude persons of Japanese extraction, it is of little effect issued by Army authorities and other federal officials have been sufficient to keep Japanese Americans of known loyalty out of essential war work. When an employer has orders from the Army not to hire Japanese Americans, he isn't going to worry too much about Order 9346 or the President's Committee on Fair Employment Practice."

Additionally, this discrimination toward persons of Japanese ancestry has made way toward extended discrimination. "This flaunting of Order 9346 in regard to Japanese Americans, has, of course, weakened it all along the line and made its enforcement as regards Spanish Americans, Negroes, and other minorities extremely difficult."

An incident regarding the hiring of nisei is cited by Beshoar. Seven Japanese Americans, hired on an isolated war project in the mountain area, were immediately

100 miles distant when it was found they were of Japanese ancestry. The men had been grubbing willows from the floor of a wild, mountain valley preparatory to construction.

And yet, when the project was completed, Japanese Americans were employed in the operation. "This is a fair example of our consistency," says the writer.

Negroes in this area, too, have their many difficulties, a situation not aided by the fact that many Southerners with ingrained anti-Negro prejudice are moving into these states. Fortunately, Beshoar points out, these prejudices have made little impression on the established residents, and no new restrictions have been placed on the Negro population.

The task ahead is this, says Beshoar: "to break down artificial barriers, to insure justice through such agencies as the FEPC and the minority service of the War Manpower Commission, to brush away outmoded ideas of racial differences, to bring each American to the realization that his fellow American, regardless of his racial extraction, is 'just people.'"

200 Salt Lake Students Sign Petition for Fair Play to Nisei

PC Jack 4/1/44
 The Salt Lake Council, representing inter-racial and young people's organizations, this week petitioned the mayor and city commission to recognize the constitutional rights of Japanese Americans and declared that denial of business licenses to this group was inconsistent with the ideals for which the youth of America are fighting.

The petition carried over 200 names, while more were expected on another petition still circulating.

The petition stated: "We, a group of young citizens and/or voters of Salt Lake City petition the City Commission to consider the proposed possibility of denying citizens of Japanese ancestry the right to obtain business licenses in the following lights:

"1. That such action is inconsistent with the democratic ideals for which we, the youth, are fighting.

"2. That such limitations and discriminations would be a direct violation of constitutional rights. Specifically it violates the particular rights guaranteed by the constitution in the following instances: United States Constitution Art. 4, Sec. 2, and Amendment 14, Sec. 1; Enabling Act of the State of Utah, Art. 1, sections 1, 18, 21, and 27."

The constitutional sections referred to were added to the petition. The sections referred to in the Enabling Act declare that the Utah State constitution shall make no distinction in civil or political rights on account of race or color.

Circulation of the petition began on February 23 among high school, university and non-school youths of the city. It was presented on March 24.

Delegates bearing the petition conferred with the mayor on the rights of citizens of Japanese Americans.

12/21/43 LA EXAMINER
Many of Coast Japs Will Locate Elsewhere

Indication that many Japanese do not intend to return to their former Southern California homes was contained yesterday in disclosure by the War Relocation Authority here that for several months it has been shipping an average of 100,000 pounds per month of personal belongings to Japs who seek to locate elsewhere.

This was revealed by Earl W. Barton, area supervisor for the WRA, who yesterday opened one of two warehouses here to newspaper men for inspection of Japanese stored goods.

Approximately 40 per cent of the belongings of West Coast evacuated Japanese are housed in the two warehouses, Barton said, one of 100,000 square feet at 836 Santee street and the other of 32,000 square feet capacity at Olive street and Olympic boulevard.

GOODS RANSACKED

At the same time Barton disclosed that a number of warehouses throughout the city where Japs had privately stored their personal property had been broken into in recent months and goods ransacked.

One of these storage spots inspected yesterday was the old White Star Soda Works, 416 Jackson street, where notions and other store items had been piled by departing Japanese and which now have been completely ransacked. Entry had been gained through a side window and much of the stuff had been removed. The remainder had been scattered throughout the building and much of it destroyed.

In contrast, the storage space at 816 South Santee was piled high with household goods, all orderly listed and marked to compare with records in WRA area headquarters.

U. S. PAYS COSTS

Household items and business equipment requested by Japs in relocation centers is shipped at Government expense, Barton declared.

Protests continued yesterday against the Jap return at this time. Dr. John R. Lechner, executive director, Americanism Educational League, wrote Major General Henry C. Pratt, acting chief, Western Defense Command, asking if the Army intended to designate Japs who would be released from reloca-

tion camps or if this matter would be left to the WRA or the Department of Interior.

Lechner said the return order was ill-timed, expressing belief that the danger of espionage and sabotage still exists.

LA EXAMINER 12/23/43
Dr. Lechner Says:

Loyal Jap Evacuees Should Shun Coast

Japanese permitted to return to the West Coast on January 2 can best demonstrate their loyalty and a desire for America to win the war by remaining away from the coast.

This expression came yesterday from Dr. John R. Lechner, head of the Americanism Educational League, with the announcement that additional steps have been taken to prevent return of the evacuees.

"We are going to make a direct appeal to the Japanese to make additional sacrifices by not coming back to the coastal area," Dr. Lechner stated. "We hope they will not exercise the prerogative granted them by the Army."

"We hope the Japanese will cooperate by remaining away until the whole issue is better clarified, and so that the welcome given them will be stripped of racial antagonism."

MEETING PLANNED

Dr. Lechner said his group was mailing invitations to 200 Southland officials—Mayors, law enforcement agencies and organizations—to a meeting next week to determine once and for all the policy of dealing with the situation.

Meanwhile, an effort will be made, he said, to have appointed a committee of Congress to "study the various phases, objectively, and without prejudice, with a view of enacting legislation to cover the ramifications involved."

Issue was taken with those who prophesy trouble with the return of the Japs, in a resolution adopted by Los Angeles Post No. 8, American Legion, which specified:

"1. There must be no discrimination whatever against any American citizen based solely on his Japanese ancestry. We are deeply concerned over the widely disseminated expressions of certain groups and individuals which seek to deny these Americans their rights as such and attempt to establish a distinction between them and other citizens solely by reason of their race in disregard of the constitutional provision that there be no distinction between any person because of his race or color.

"2. We particularly deplore any expression emanating from an American Legion source which refuses to accord any American ex-service man or service man the same rights, privileges and honors as any other citizen, solely because of his ancestry.

"3. We urge our comrades in the American Legion to see to it that the persons and property of the Japanese returning to our community are safeguarded and protected and that they be accorded their full rights and privileges under the Constitution, without reservation."

LA EXAMINER 12/13/44

Families of Soldiers First Japs to Return Task Will Be to Establish Friendship With Citizenry

Federal agencies, aware of the dangerous potentialities involved, will encourage Japanese in relocation centers to establish themselves in midwestern states, rather than return immediately to the West Coast, the Examiner learned yesterday.

On the other hand, it was stated, Japanese entitled to resume residence in the West Coast military zone, from which they were banned in 1942, will not be "discouraged" from so doing.

Unofficially, it was indicated that the first returnees will be women and children—families of Japanese-American service men.

TASK REVEALED

It will be their task to establish amicable relations with the citizenry, thus paving the way for the eventual return of the menfolk.

"If everyone will just keep his shirt on for a few months, we are certain that the returned Japanese will have demonstrated beyond all doubt that they are loyal, as determined by the Army's screening out process," a War Relocation Authority spokesman commented.

While leading Federal, State and other officials of political subdivisions issued pleas for public cooperation in the return of the Japanese, effective at midnight, January 2, the Los Angeles police commission yesterday adopted an official protest.

INTRODUCED BY FILES

Introduced by J. Ray Files, and seconded by Pegram Whitworth, former Corrigador Army officer, the resolution carried, three to two, with Commissioner E. N. Martin voting "aye" and Commissioners Al Cohn and Van M. Griffith opposing. It read:

"Resolved, that the police commission protests the return of Japanese evacuees, regardless of their legal status. If the Army should return the evacuated Japanese to this city, incalculable difficulties are likely to present themselves:

"1. Already overtaxed housing facilities cannot accommodate an influx of Japanese.

"2. War workers will find increasing difficulty in remaining on their jobs.

RIOT PROBLEM

"3. An undermanned police force is likely to find it impossible to cope with the problem of riots during the heat and tension of a great war with a ruthless Japanese nation.

"4. The West Coast is likely to be the center of war activity long after such activity has subsided in other parts of the country. Massed movement of population is reasonably certain to continue toward Los Angeles so long as the war lasts. The return of the Japanese will only aggravate a congestion for which we are unprepared.

"5. We doubt the ability of any governmental authority to screen loyalty. Certainly a police force cannot do so, no matter how adequately it were equipped.

"However, if the Army persists in its order, the Los Angeles Police Department will under all circumstances attempt to maintain order."

POPULATION FIGURE

In figures released yesterday Los Angeles was shown to have been the "largest Japanese city in America"—with a Nip population of 23,321 of the county's 36,866.

Not more than 50 per cent of this number plan to reestablish themselves here and only a small ratio is expected to return within the next 18 months, a WRA spokesman estimated.

"It may be that hundreds of them will come back to dispose of their holdings and to get their household goods out of storage, then move to the Middle West or East," he declared.

Pre-Pearl Harbor Japanese population of other Southland counties was given as Imperial, 1583; Kern, 756; Orange, 1855; Riverside, 552; San Bernardino, 346; San Diego, 2076; San Luis Obispo, 925; Santa Barbara, 2187, and Ventura, 672.

COMPARISON GIVEN

This totaled 47,818 at the outbreak of the war, as compared to a nationwide Japanese population of 126,947 in 1940, which was a decrease of 11,887 from the 138,834 figure in 1930.

In all, 119,000 were in relocation centers, at the peak, with approximately 26,300 released subsequently, drifting, for the most part, to the Middle West and the East.

Some 13,000 Japanese-Americans now are in the armed forces, serving in Burma, India, the South Pacific, and with distinction in Italy and on the Western Front in Europe.

Of 1300 in a single combat unit facing the Nazis, the WRA reported yesterday that 1000 won the Purple Heart, awarded only

Riots Against Japs Feared

Congressman Says Nips' Return Unsafe

FRESNO, Dec. 19.—Congressman B. W. Gearhart of Fresno said the Federal Government should use its influence "to convince any and all Japanese not to return here, for their own protection."

"I regret the announcement," Gearhart said.

"We have a duty to protect the loyal Japs from the riots which are bound to occur as a result of the return of the disloyal and any sabotage which may occur.

"I believe, and have maintained the position all along, that the Government should use its influence to convince any and all of them not to return to the Pacific Coast for the duration of the war, and if the Administration would take that position it would work.

"As it is, it is inviting disaster upon some who will be innocent."

ICKES ASSAILS COAST STAND ON JAPANESE

Pacific States Told It's Their Problem to Rehabilitate, Not Hold Grudge Against Internees

SAN FRANCISCO, April 13.—(INS)—Secretary of Interior Harold L. Ickes today called upon West Coast residents to quiet "the clamor of those few among you who are screaming" for vengeance against former Pacific Coast area Japanese.

Ickes bluntly told the citizens of California, Washington and Oregon that "to a large extent" it is their problem to see that Japanese evacuees are restored to normal living soon after the war ends.

Ickes issued the statement in San Francisco on behalf of the War Relocation Authority, declaring that the WRA "under my jurisdiction will not be stampeded into undemocratic, bestial, inhuman action. It will not be converted into an instrument of revenge or racial warfare."

Ickes contended that there can be no doubt that the WRA program has, in general, been handled with discretion, humanity and wisdom. The WRA did not persecute the evacuated Japanese-Americans, he continued, and made no attempt to punish those of a different race who were not responsible for what has been happening in the Pacific.

WRA ROLE DEFENDED

"The War Relocation Authority—make no mistake about it," said Ickes, "has been criticized for not engaging in this sort of a lynching party."

Ickes asserted that it is intolerable to think that these people will be excluded from a normal life in this country for long.

"It is intolerable to think that merely because they resided on the West Coast, in California, or Washington, or Oregon, they must be wards of the Government for one moment longer than the necessities of war require.

"I know of no virus in these three states which has infected them so they must be treated differently than the Japanese Americans who reside in other states. And it is intolerable to think that decent people would suggest that this nation would for a moment consider sending loyal Americans of Japanese descent to a land which most of them have never seen, and in which most of them have no interest."

PURELY LOCAL PROGRAM

Ickes declared that "to a problem. It is a problem of you people in California, in Washington and in Oregon. I hope that the clamor of those few among you who are screaming that this situation should be resolved on the basis of prejudice and hate will soon be overwhelmed by the stern remonstrances of those

We Don't Want Japs Back, Say L.A. Leaders

Strong exception to Secretary of Interior Harold L. Ickes' demand that West Coast states take back evacuated Japanese, was voiced yesterday by Los Angeles leaders.

Pent-up feeling burst loose when Ickes' statement, made in San Francisco, was published. Here are the expressions of typical Southern Californians:

L. F. (OLE) OLSON, Commander, American Legion County Council:

Hundreds of thousands of good California citizens are wrong in their opinion that Japanese are not wanted in this state, or on this Coast—if Mr. Ickes is right.

However, his beliefs are exactly contrary to the beliefs of the California people. And today I note in press dispatches that the people of New Jersey don't want Japs there either.

I certainly believe that the Department of California, American Legion, should answer Mr. Ickes in no uncertain words, and should take official cognizance of his views. When the department executive committee meets here Sunday, we will ask that this be made a first order of business."

KATHERINE C. DAVIS, president, Sponsors of the Philippine Heroes:

As a mother of a boy in a Japanese prison camp, I cannot tolerate the thought of the Japanese coming back to the Coast, now or any other time.

It is unthinkable that our boys should have to go through what they have and endure such treatment from the Jap-

among you—an overwhelming majority—who believe in fair play and decency, Christianity, in the principles of America, in the Constitution of the United States."

The major emphasis at present of WRA operations, Ickes said, is on restoring the people of all WRA centers except Tule Lake as rapidly as possible to private life.

20,000 IN NEW HOMES

More than 20,000 of Japanese Americans, he revealed, already have left the various centers to make new homes and engage in new jobs in hundreds of communities all the way from Spokane, Wash., to Boston, Mass.

"These relocated evacuees are establishing themselves in cities and on farms and many have indicated they plan to remain in their new locations during the postwar period," Ickes declared. "Thus the relocation program is contributing to a more widespread dispersal of Japanese Americans throughout the country."

Ickes said he was "particularly grateful to those groups and individuals on the West Coast who have been brave enough and Christian enough to speak out against the vindictive, blood-thirsty onslaughts of professional race mongers."

anese for the sake of our freedom, and then have us bring back the Japanese into our midst. It would be cowardly and un-American on our part if our boys had to come home to this.

BERNARD HISS, trustee, Native Sons of the Golden West: If Mr. Ickes wants us to feel that way about it, we might as well call back the Army and Navy. It is self-evident that if we are intolerant for opposing return of Jap evacuees to California, then our troops are intolerant for fighting the Japs in the Pacific.

We feel that Japanese in this country are just as much our enemies as those in Japan proper and this feeling is based on past knowledge and experience.

If we want the Japs to raid California from the East we might just as well let them come on in from the West.

(Just a few days ago the Los Angeles District, California Federation of Women's Clubs, adopted a board resolution condemning return of the Japs, and asked the responsibility of their custody transferred from civilian authority to the Army. This, said lead yesterday, shows how the wool of California stand.)

Half of Japs May Not Come Back to Coast

SAN FRANCISCO, Dec. 18. (AP) Best estimates tonight were that only 60,000 of the 119,000 Japanese excluded from the Pacific Coast beginning March 23, 1942, will return now that the Western Defense Command has revoked its mass exclusion order. It was indicated that even this number will be slow about coming back, taking a year and a half to complete the move.

Japanese from Southern California at the Manzanar center actually were represented as being more in favor of relocating in the East or Middle West than returning to their homes. Director Ralph Merritt said that a few property owners among the 3600 American-born and 1800 aliens at the camp might go to their former homes, but the majority was loathe to return to Southern California.

LA EXAMINER 12/13/44

ENGLE FIGHTS JAPS' RETURN

Might Result in Wholesale Bloodshed, Violence, He Says

WASHINGTON, Dec. 12.—(AP)—Return of Japanese Americans to the west coast is apt to result in "wholesale bloodshed and violence," Representative Engle (Democrat), California, said today.

Secretary of a subcommittee of the California congressional delegation instructed to watch for developments in the west coast Japanese-American situation, Engle told a reporter he would also call to the attention of governmental agencies these other possibilities:

Returning Japanese-Americans might resort to sabotage which would impair the war effort.

HOUSING STATUS CITED

Their return would accentuate a critical housing situation on the west coast.

Representative Sheppard (Democrat), California, chairman of the subcommittee, said he would ask the War Department and the War Relocation Authority to give Congress information on each Japanese-American released from relocation centers. He said he would ask specifically which people are being released and where they are being settled.

The Californians' comments stemmed from a letter to the state's congressional delegation by Under Secretary of War John J. McCloy, which stated any removal of the exclusion order which cleared the Japanese-Americans from the Pacific Coast after the outbreak of the war would be accompanied by an "individual" exclusion program.

LA TIMES 12/28/44

Japanese-Americans Have Chance to Show Loyalty

The Japanese-Americans now about to be released from war relocation centers, by order of the War Department and decree of the Supreme Court, have an excellent opportunity to demonstrate their loyalty to the United States by seeking homes elsewhere than on the Pacific Coast until the war is over.

Entirely aside from the fact that their presence here will be resented, the fact that they will create a housing problem of considerable magnitude should be decisive. The diversion

of men and materials to the job of providing them shelter, in a region with an acute manpower shortage, will hurt war production inevitably and considerably.

Every American has had to make sacrifices because the nation is at war and most have done so gladly. Very few are insisting on rights and constitutional privileges necessarily infringed because of the nation's danger. The citizens of Japanese ancestry who refrain from insisting on returning now may earn some gratitude for their forbearance.

to those wounded in battle.

At present there are 18,700 Japs at Tule Lake, where outspoken disloyalists are interned, but the WRA claims at least 40 per cent of them are minors, many of whom ask for immediate transfer to relocation centers upon reaching the age of 21.

QUEST FOR MEN—CASUAL JACKETS.

Handling Jap Evacuees Chiefly Coast Problem

Many to Be Given Freedom After Jan. 2
Look Longingly West as Their Only Home

WASHINGTON, Dec. 24. (AP)—It is not finished: the problem of handling the evacuated West Coast Japanese and Japanese-Americans.

Within the next year they will go back to the Coast or find new places to live. For many it will mean starting life over again:

New homes, new land, new communities which will accept them, or make them feel unwanted, or try to force them to leave.

The Supreme Court has ruled that the mass evacuation was not unjustified. Some of those Japanese and Japanese-Americans were disloyal.

Loyals' Detention Illegal

But the court has also ruled that after those people had been evacuated the government had no right to retain anyone found to be loyal.

But 110,000 were evacuated and held in relocation camps. The majority still are there.

So the Army has ruled that, after Jan. 2, those evacuees considered loyal may return to the West Coast.

In March, 1942, the government forced the 110,000 to leave California, the western half of Oregon and Washington, and the southern third of Arizona.

This was after the West Coast had been declared a war theater, after wide fears of espionage and sabotage, and after West Coasters had demanded removal of the Japanese.

Under W.R.A. Control

The evacuees were placed in relocation centers under control of the War Relocation Authority (W.R.A.) What that meant may be understood from this:

Until 1924 Japanese could enter this country. They could not become citizens. After 1924 no more Japanese could enter. Thus those who were here remained aliens.

The citizenship which was denied this first generation of Japanese (Issei) was granted their children (Nisei) and their children's children (Sansei.)

They did agricultural work mostly. Some owned West Coast homes and land. Some leased property.

Upon evacuation they had to sell their lands and homes—probably at a real loss in many cases—or lease them.

This is what has happened to the 110,000:

1—About 2500 Nisei have gone into the armed forces, made a good record. This has not been enough to wipe out all distrust and dislike of them. And an American Legion post in Oregon has scratched from its honor rolls the names of 16 Nisei servicemen.

2—About 25,000 have found new homes or new employment with the help of the W.R.A.—outside the West Coast—but not always without unpleasant experiences.

3—About 18,700—aliens and American citizens alike—are considered disloyal and want to go to Japan. They're in a segregation camp at Tule Lake, Cal.

4—Another 63,800 are in eight relocation camps. This is the group which makes the big problem.

Only Home They Knew

Some of those who have left the camps will surely turn longingly eyes toward the Coast because, for many of them, it is the only home they ever knew.

Some, disheartened by what has happened to them already and remembering the attitude toward them on the Coast, probably will want to settle anywhere but there.

But wherever they go American communities will face the problem of accepting these people who have been found loyal—for only such will be released—or treating them as suspects or outcasts.

We Shan't Pretend to Like It

As good Americans, the great majority of Pacific Coast residents will accept, with the best grace possible to muster, the Army decree permitting the return to this seaboard of the evacuated Japanese. But there will not be many cheers.

In other words, we shall take it but we shall not pretend to like it.

On all counts, it seems to The Times that the order is a grave mistake, due to snap judgment under political pressure from some nonmilitary source.

However "gradual and well-screened" the process, the return of some 100,000 Japanese to communities where their presence will be bitterly if not actively resented will not be good for the communities, for the Japs or for anybody or anything else. The war effort least of all.

The order is officially predicated on the fact that an enemy invasion of the Pacific Coast on a large scale is no longer a substantial possibility.

This is the same as saying that, if there were still such a possibility, the Japs would NOT be returned.

Why not? Obviously because of the likelihood that such an invasion would get support from onshore Japanese, or from enough of them to make a serious difference to the American defense.

This amounts to admitting that, under those circumstances, the presence of a large number of Japs, even supposedly "loyal" ones only, on this coast would be dangerous.

But if Japs in large numbers on the Pacific Coast are dangerous under one set of wartime circumstances, they are dangerous under all sets of wartime circumstances.

Isn't it rather absurd to assume that Japs in America who are disposed to help their country against us will do so only if and when a Nip army lands on our shores? Does actual invasion create the only conditions under which saboteurs and fifth-columnists can operate to the detriment of our war effort? As a matter of fact, they would be less dangerous if we were about to be invaded than othertimes, because we would then be acutely on guard against them. If they, or any of them, constitute a potential peril, as the Army by implication concedes, why give them an opportunity under the more favorable (for them) conditions created by supposed safety and lack of alertness on our part?

The Army says that no Jap known to be disloyal will be returned. Has some magic method suddenly been discovered whereby all the disloyal can infallibly be segregated from such a mass? Traditionally the most dangerous spies and wreckers are loudest in their protestations of fealty to their "adopted" country.

In the test Endo case, the Supreme Court yesterday held unanimously that an American citizen of Japanese descent, "concededly loyal," may not longer be held in a War Relocation Authority center. This, of course, is on the same point. But in practically the same breath, the high court held justified

the 1942 order excluding Japanese of all kinds from the West Coast—the Army order which the Army itself has just revoked after repeatedly stating that no such move was in immediate contemplation.

The two court opinions are not necessarily in conflict. If the order was justified in 1942, its continued operation is, for the reasons given, still justified, at least in all cases where any possible doubt as to loyalty exists. The implication would seem to be that Japs who are American citizens of good record should be released from the W.R.A. centers but not returned to critical Coast war areas.

Where, then, could they go? Well, there are quite a number of eastern and middle western farming communities which have been vociferous on behalf of the evacuated California-Oregon-Washington Japs and condemnatory of our attitude toward them. If they like Japs, why not let these communities have them?

The objections to dumping them back where they are unwelcome are by no means confined to the possibility of violence, serious as that is. The combination of order-abiding American civilians and capable peace officers may be counted on to hold overt acts to a minimum. But what about the returned Japs themselves? Even if unmolested, they cannot live by taking in one another's washing. They must have jobs, land, housing and white patronage for their commercial and agricultural enterprises—or become public charges.

Without undue pessimism over the outlook, it is hard to imagine Californians with near relatives in the armed services—as Gov. Warren says, there is hardly a family without one or more—welcoming back these tens of thousands of Japs with jobs and patronage and the spirit of equality. Human nature simply isn't built that way. Shall we, for example, provide from our meager housing facilities shelter for them that is needed for American warworkers and service families? Or will the government build homes for them with critical materials denied to Americans? Will a householder whose son was on Bataan, say, or Guadalcanal or Tarawa, give a Jap a job or buy his vegetables? Will the Fair Employment Practices Committee require employers to put Japs on their pay rolls, regardless of the opposition of other workers? If so, what will be the effect on our vital war production? If, for such reasons, the Japs are unable to support themselves, shall we be taxed to keep them on relief?

These are practical questions, posed with no intent to make the situation more difficult than it is. Maybe satisfactory answers to them can be worked out. For the immediate present, the problem will be one largely for our peace officers. Their position is made doubly difficult by the fact that they had nothing to do with the evacuation order in the first place, but now have emptied in their laps a responsibility of which the Army has suddenly washed its hands.

In their efforts to prevent trouble, our civil authorities should receive all the support good citizens can afford them.

The WRA Moves

IN ACCORDANCE with his frequently announced belief that the number of independent federal agencies should be reduced whenever practicable, the President some days ago ordered the transfer to the Department of the Interior of the War Relocation Authority. This agency was created to take care of the consequences of the evacuation of all persons of Japanese origin from the Pacific Coast area. The public has somewhat misunderstood its function, believing that it was primarily instituted as a sort of supplement to the federal prison service; in fact the intention was altogether different. Such Japanese as proved disloyal were to be segregated and kept in detention for the duration; the rest were to be resettled in parts of the country where they would not encounter local opposition or prejudice and could function in "normal, productive American life." All things considered, the WRA has done a good job. It has already succeeded in resettling 20,000 evacuees. There remain 92,000 under its guardianship in 10 relocation centers. The disloyal have by now been segregated and are all held at one center—Tule Lake.

It is logical that the Department of the Interior should absorb this agency since five of its relocation centers are situated on Interior Department land and one center was directly administered by the Department until January 1 of this year. The personnel of WRA remains the same, with Dillon S. Myer as its chief. He writes: "In the short time that has elapsed since the transfer was announced, we have found the Department of the Interior personnel most helpful, and we have every reason to believe that the transfer will expedite the WRA program." Some months ago we called the attention of our readers to the fact that there were many skilled workers among the loyal Japanese and that arrangements might be made for employing such workers through Mr. Myer's office. This is still the case.

Japanese American Number

THE "inscrutable orientals" are inscrutable for most of us when they are in the Orient because we do not even see them, they are too far away. But when they are citizens or residents in this country it should not prove impossible to look at them. Even to listen to them talk. Curiously enough, when we listen to them we find that we can understand what they say. Some of them who are not American citizens, because they were born abroad, say they have made their lives in America and would feel that they were foreigners if they lived anywhere else. Some of them who are American citizens say only that they were taught in American schools certain things about American citizenship, they ask only if what they were taught is

true. They believed what they were taught about the duties and the rights inherent in citizenship. But now things are happening to them—some things which go with citizenship, some things which generally do not. They are confused about it all. American citizens of Japanese descent want to know whether the teachers who taught them about the American constitution knew their business. They have compared notes with American citizens of immediate German parentage and of immediate Italian parentage. They think something is wrong.

Some of them are in the American Army in Italy, for instance, where they are fighting and being killed. This, they think, proceeds from the duties and rights of the citizen. Some of them go about their business in New York and elsewhere unmolested—and this, they think, is the natural condition of a citizen who has committed no crime. And some of them—many of them—are in concentration camps. They are not in these camps for the purpose of undergoing punishment for any offense charged against them. They are not there because they have broken a law. They are in the camps because their parents are Japanese. Not because their parents are enemy aliens. Just because their parents are Japanese enemy aliens.

Thus something is happening to a certain number of American citizens which does not happen to any other American citizens. So that one has to decide whether there are various kinds of American citizens (among citizens born in this country) or just one kind of American citizen. Because if there is just one kind of citizen, as we have been brought up to think, then at the present moment some Americans are being treated in an exceptional manner.

It is for the highest court in the nation to decide whether there are several kinds of citizens or not. It is an interesting question. It is interesting to know if a child born in this country who thinks that he can have the Fourth of July and grow up to be the President had better look first in the mirror to see what color is his skin. We thought that question was settled by the Civil War. Apparently it is still under debate. That is why we also publish a Brief, which is being presented to the Supreme Court. It is pertinent to this debate.

There are not a great number of American citizens of Japanese extraction in this country. We have rounded most of them up and after the war we can send them back to Japan. We can do that, but if we do it we had better change the idea we have of America; change it because what it created will have been destroyed.

It seems simpler to keep the America to which we are devoted and simpler, consequently, to retain unaltered and inviolable the idea of citizenship by which the nation lives.



Manzanar Relocation Center: Winter, 1943

A pencil drawing by Henry Fukuhara. The artist was born in Los Angeles in 1913 and lived there all his life until the evacuation order forced him to leave in 1942. By profession he was a nurseryman and landscape architect and had for ten years conducted a successful business of his own in partnership with his brother. He had studied briefly at an art school and had made renderings to show clients what proposed plantings would look like, but had never done any other artistic work until he arrived at the Manzanar camp. Here lack of employment led him, in the fall of 1942, to try his hand at water colors and pencil sketches. He produced several hundred of these. He has now come to New York and is preparing a book with Rackham Holt which will be published late this year. The theme of the book is to express his gratitude that, despite such difficult circumstances, he should have been free to find a new vehicle of artistic expression under the American system. He is married and has two children and has been president respectively of the Santa Monica and Bay District Chapters of the Japanese American Citizens League.

Four Interviews

YASUO KUNIYOSHI

OF COURSE if you paint the graceful ladies, the duchesses—or those who look like duchesses because they have been carefully fed and most carefully washed—you have to have a studio in which they will feel at home. Probably you have to have a manner with them too. A manner to suit their manner which quite often will be a rude manner. A loftiness, anyway. It is a special kind of world. Even the names of the portrait painters are elegant: Boldini, Helleu, Sargent, Lazlo, de la Gandara.

So that when I went to see Yasuo Kuniyoshi at an address on Fourteenth Street, in New York, I knew that I would not find the place cluttered up with duchesses. I went through Union Square. It was a nice clear day, the kind of day the armies thought they would find, and did not find, in Italy. The citizens in Union Square were arguing as usual; they were all men citizens; they stood in groups and argued about the Russians, the fascists and the Vatican; the women citizens were trying on dresses in Klein's with a guard on top of a step ladder to see that they did not make a mistake about what dress they went out with. The women were looking in the window of a five and ten at red, white and blue frames in which soldiers and sailors now replaced the Hollywood boys. I went into the entrance of the five and ten and there was a door with a sign on it saying studios. I opened it and then there were no more women citizens pushing their way into the store; there was a long, steep, wooden stairway. I climbed five flights of stairs. At each landing there was a bucket with which to put out fires. On the third floor an artist had painted a fresco on the rough plastered wall. On the top floor I saw Kuniyoshi's name on a door and I knocked on the door.

It was a big room and the noise from Fourteenth Street did not come into it. Kuniyoshi sat at a typewriter working on his income tax. There were no drapes; there was an easel but there was no canvas on it and the room, with a wall lined with bottles, looked like a laboratory. It did not look like a studio unless one had seen a great many studios where painters really worked. It looked like that kind of a studio.

"If you have come to see my painting," Kuniyoshi said, "this is not the place. You can go up to the Museum of Modern Art. You can go to Baltimore, Portland, Chicago, Detroit. You can

go to my dealer. I'm a working painter and this is where I work."

I said: "I do not want to see your painting, I do not want to write about your painting. There are enough people writing about painting and they have a jargon all their own. You have to belong to the club. You are a respected professional painter and a respected teacher of painting at the Art Students League. You are also a Japanese. I want to know why you came here."

"Why does anyone go anywhere?" Kuniyoshi said. "A Pole who became an Englishman answered as well as anyone else when he kept talking all his life about the romantic notions of 'Youth.' I left Japan when I was thirteen. I wanted to see the world. I wanted to learn English. I came to the West Coast and I worked all day and went to school at night. After a while I found that I did not only want to learn English, I wanted to learn to be an artist. I wanted to draw and to paint. That is what I have done. That is what I have thought about. I grew up in America, I got all my education in America, I was recognized as an artist by America; I thought about America as if I were an American, I thought about Japan as all Americans think about some distant land from which they have come. The one thing I never thought about is race. If you think about race you cannot think about form, color and line, and the way to mix paints. You cannot even think about politics. You cannot even think about what is right and what is wrong. You cannot even hear the sounds of speech or of music. The simplest words, the word yes, the word no, become meaningless, the simplest color is muddied."

Kuniyoshi has all the dignity of the dukes he does not paint. His voice is quiet. He sat there quietly.

It is a wonderful thing to be aware that when a conscience is clear, when a man's dedication to a peaceful idea is certain, all the wars in the world cannot disturb the harmony in which that man lives among his fellows. Kuniyoshi, a man born in Japan, is here in America with nothing between him and his friends, between him and his students, with nothing between him and his work. There has been no interference. And that is because he can conceive of no interference, because he is almost unaware that there could be any interference, because in his mind no question of race could interfere with his mind's loyalty to his art and to the country in which he lives and works.

I tried to keep the conversation on the Japanese in America. I tried to see if he would not admit some worry. For others, yes, of course. But for himself, no. For himself the problem was an artificial problem. And so we got back to talking about painting and there is no use reporting what we said. I might have been listening to Mr. John Singleton Copley; I was listening to an artist talking about his work. In New York, in America. I kept saying to myself this man was born in Yokohama; the fact did not seem relevant.

C. G. PAULDING.

MINORU YAMASAKI

MR. MINORU YAMASAKI is an architect, duly licensed to practice under the laws of the State of New York. He was born and raised in Seattle, Washington, where he studied his profession at the University of Washington, receiving his degree in 1934. While going through the university, he worked summers in an Alaskan salmon-canning factory, where he at least learned the value of trade unions. He worked for \$50 a month for a twelve-hour day with 25 cents an hour overtime; once he and his companions put in between 19 and 20 hours daily for a forty-day stretch. . . . They would go to sleep at their jobs . . .

Of course such labor is "found," but the finding was none too good. Breakfast consisted of rice and salmon; lunch consisted of salmon and rice; dinner consisted of rice and salmon. About every third day there was a vegetable. Once in a while breakfast consisted of soup. . . . Mr. Yamasaki says that during the last ten years he has only once ordered salmon in a restaurant, and when it came, he couldn't look it in the eye. . . .

The year 1934 was, as we are now somewhat likely to forget, a bad year, and it was a particularly bad year for architects. This young architect came East with his sheepskin because there was absolutely nothing to do on the West Coast. As far as he was concerned, the East Coast was equally uninterested in building, and so he had to take a job for a year with an importing firm which specialized in porcelain and pottery . . . meanwhile keeping abreast of things by taking courses at NYU. And then a competition was announced for the Oregon state capitol. Many more architects entered this competition than would normally have done so, for at least it gave them a feeling of having something to work at. Among these was Francis Keally, now of the firm of Githens and Keally. Mr. Yamasaki got a job designing the elevations for Keally. And then Keally won the competition. As is usually the case in the profession, Yamasaki's connection with such an achievement became known, and jobs became available. He went as a designer to Shreve, Lamb and Harmon (Chief Claim to Fame: the Empire

State Building) where he worked on a number of projects including the Parkchester housing development. And then, last year, he moved again, this time to Harrison, Foulhoux and Abramovitz (Claim to Fame: Rockefeller Center). On the side, like many another talented young fellow earning his daily bread in big offices, Yamasaki planned the remodeling of one of New York's old brownstone residences and dreamed up an interior for a liquor store in Parkchester.

Out of these ten years of active practice and experience in topnotch architectural firms, what has Yamasaki decided is the most important branch of his profession for the future? With complete conviction he will tell you that it is large-scale public housing. With this conviction I heartily concur, for surely here is a field where the problems are far from solved and where the social benefit to be derived from solving them is magnificently beyond argument. Our nation is still fully one third ill-housed, and if you raise your standards only as much as you can raise an eyebrow, it is much more than one third ill-housed.

Yamasaki believes that the only solution lies in direct Federal aid, preferably with a man in charge of housing who shall be so highly placed in the governmental hierarchy that he will be listened to with respect and his function will be taken for granted. The happiest solution would be the creation of a Department of Housing, of equal importance with the Departments of Agriculture or Commerce or Labor, with its head a regular Cabinet member.

Of course the great ideal remains family ownership of the home with a sufficient plot of land around it to give you some privacy and a chance at a garden if you are so minded. But obviously that ideal is a long way off and may never be within the reach of our society, except for a relatively small proportion of our people. The rest are now at the mercy of real estate interests—a form of private enterprise principally concerned with destroying genuine private ownership. So Mr. Yamasaki hopes that his future will be dedicated to rebuilding the homes of America, to giving the American family living conditions of which we may all be proud. And by both training and conviction, he is certainly superbly fitted to do the job he has set his heart on.

HARRY LORIN BINSSE.

MARIAN MOTO AND PATTI IWANAGA

ON A lickity-split assignment, the sort of alarming excursion the editors of this paper delight in devising for their underlings, I hurled this morning up Manhattanville's noted hill in order to talk with two young Japanese American students at the College of the Sacred Heart. And I think I should like to say at once that I had a wonderful time. Beginning at the

beginning, at the top, the campus here slides agreeably down-dale and is scattered, of course, with the usual graveled walks and appropriate trees. On the east side, the sheer side, the grounds are bound by an iron fence and here the view—a long one—looks sadly over a valley of square roofs with just the towers of the Triborough in the distance to remind you that you are still on the island. I expect it was this lack of water—of river—which started Marian Moto and me talking again of the Hudson, a mutually fascinating subject we had only just discovered in the college parlor. Marian lives at Dobbs Ferry, exactly where she was born, and confesses that she loves it inside out, and up and down its own especial hill. Enchantingly gentle and grave, with warm dark eyes perhaps a little less narrow than one is accustomed to meeting in a purely Oriental face, she is the daughter of a Japanese father and an Hungarian Catholic mother and says she feels she is that most typical of Americans—a determined small-town girl; and yet, now in her junior year at school, she has definitely switched her major from straight sociology to the Japanese language, taking what is called a regional-major at the college and traveling daily to Columbia for the language course. A scholarship student, a proficient typist and stenographer since high school, her idea is a possible secretarial job in Japan after the war, when she feels that her bi-lingual capacity might find some use in the hum and drum and business of post-war settlement. I got the feeling that this choice of career was a serious and not entirely easy one for her to make; and while walking down towards the Father Young Memorial High School where we were to intercept Patti Iwanaga, a recently arrived freshman, I asked her if she felt that her dislike for large cities and her affection for her own east-shore Hudson village could be mainly prompted by the sense of security one naturally feels *at home*—where everyone, including the milkman, "knows one's story." Almost immediately she answered that perhaps that was true, but went on to tell me that together with a number of other girls at the college, she had taken a clerical war job last summer at the Federal Building in Greenwich Village, at the other end of the city. "I had the queerest notions about applying," she admitted, "and I hated the long subway ride. But in the end, it was fun; all of us made quite a lot of money, and that was all right."

Arrived, by this time, at the school, we leaned back against the railings and switched off into talk of basketball which Marian loves—of opera which she adores—and were just beginning on poetry which she remarkably declared she thought she could learn to "appreciate"—when Patti appeared, coolly four minutes late for a make-up algebra class. At this point, I experienced the grateful admiration of a diffident reporter for a genuine

one, and after a hurried three-way consultation over my watch, cleverly commanded in the tone of The Duchess—TALK CHILD—which Patti did—all the way back up the hill, back through the long hall, and again into the farthest corner of the parlor. At seventeen, this attractive and intelligent infant is a traveled citizen. Born in Boston, of Japanese parents, she left there with her family some ten years ago on a trip to the West Coast which was to have been the start of a visit to Japan. Once in California, however, the trip indefinitely delayed because of her father's business, Patti and her sister were placed in a Catholic mission school and eventually, after Pearl Harbor, were evacuated with their parents and other members of their race to the California Assembly Center at Tanforan. Here, in abandoned race-track buildings, crowded enough, as she says, for the residents to get to know each other very well, she continued high school studies for a year; later moving on to the Relocation Camp at Topaz, Utah, where she was able to finish the remaining two years of her course, and to spend every extra minute working on the staff of the camp paper. Now living with a relative here in town, she is wholly entranced with her first month in the city, delighted with her first three days' work at the college, and determined to become a professional journalist by the quickest road possible. She seemed amazed when I commented on her provocative accent, and both she and Marian agreed that it wasn't a Japanese way of speech—she has only been speaking Japanese since she was eleven. But whatever the accent, her talk was wholly articulate and concise; and her fervor and eagerness to discuss the especial problems of her people were, I thought, stirring and fine. The young Nisei at the camp are completely American she says. Double-talking, jitter-bugging, athletic young school kids they cannot imagine any other country, any other home, and are extremely reluctant to try. Their parents, on the other hand, seem to feel that "whatever happens, they will miss out." If eventually deported, they feel justifiably uncertain of their welcome in Japan; and at the same time, are bitterly unsure of their position among us. The entire camp, Patti reiterated again and again—students, artists, farmers, white-collar workers—is afraid to come out; in spite of the assurance and assistance the authorities are capable of giving. It is for this reason Patti is determined to retain her connection with the camp paper. As her first assignment, "as roving reporter," she says, she is writing her public long, detailed and excited letters. The world, she wants to tell them, is all right; it is big and filled with everysize corners there is work to do; and most of all, particularly here in the East, the people are kind—or at least they are too busy to notice. . . .

KAPPO PHELAN.

In the Supreme Court

On petition for writ of
certiorari; brief *amicus curiae*

Fred Toyosaburo Korematsu, *Appellant*
against
United States of America, *Appellee*

EDITORS' NOTE: Fred Toyosaburo Korematsu was born in Oakland, California, in 1919. He was graduated from the Oakland High School and became a nurseryman. He fell in love with a Caucasian girl, and when the relocation order threatened his being able to see her, he changed his name and underwent a facial operation so as to diminish his "racial visibility." But the authorities were too alert for him, and he was arrested for refusal to comply with the order. After being seized by the military while on bail awaiting trial, he was sentenced to five years probation and sent to a relocation center. The appeal against this sentence has been gradually working its way through the courts. The following brief has recently been filed with the Supreme Court of the United States by the American Civil Liberties Union as a "Friend of the Court." It admirably states the Constitutional issues involved in the whole business of the detention and evacuation of citizens.

THE American Civil Liberties Union joins with petitioner in asking this Court to review the judgment of the Circuit Court of Appeals for the Ninth Circuit, affirming petitioner's conviction, because the American Civil Liberties Union believes that it is important that this Court mark out precisely the boundaries of military power over civilians. The American Civil Liberties Union is particularly interested in this case because it presents problems of detention of citizens without judicial process, of discrimination on account of race and of summary action without hearing. By reason of its concern with these issues the Union had filed a brief *amicus curiae* with this Court in the cases of *Hirabayashi v. United States* (320 U. S. 81) and *Yasui v. United States* (320 U. S. 115) when these were argued at the end of the October 1942 Term. However, this Court, in upholding the *Hirabayashi* conviction, did not pass upon the issue which to the Union seemed of the greatest importance in that case, namely, the validity of the order requiring all persons of Japanese ancestry, citizens and aliens alike, to depart from their homes on the west coast and be confined to camps. That issue is now clearly presented in the case at bar.

The Circuit Court concluded that the reasons which formed the basis of the Court's decision in the *Hirabayashi* case sustained the validity of the evacuation order as well as the curfew restrictions. Judge Denman, while concur-

ring that the question order was valid, disagreed from the conclusion of his colleagues that the issues had already been in effect disposed of by this Court. Sharing that view, we respectfully request the Court to grant a review in this case, so that it can expressly pass upon the important issues left open for determination in the *Hirabayashi* case.

There are three primary questions which concern the American Civil Liberties Union in its desire to protect all persons in their constitutional rights. Can citizens be detained by administrative order? Can evacuation and detention of citizens be justified simply on the ground that they are descended from persons whose fellow nationals are enemy aliens? Can evacuation and detention of citizens be carried out by military authority without any provision for inquiry whereby a particular individual can establish that he does not come within the general ground for the contemplated action?

POINT I

The military authorities have no power to order the detention of citizens.

We believe that this case presents the question of the power of the military to detain citizens against whom no charges have been preferred. We contend that no such power has been granted by Congress, or could constitutionally be granted.

The issue is presented because the evacuation orders, taken as a whole, made it quite plain that not evacuation only was required, but indefinite detention as well. That was conceded in the opinion of Judge Denman in the Circuit Court. And the facts permit of no other conclusion. On March 18, 1942, the President (Order 9102) established the War Relocation Authority to take charge of the "relocation, maintenance and supervision" of those about to be removed by the military authorities. On March 27, 1942, General deWitt issued Proclamation No. 4 (7 F. R. 2601), which forbade persons of Japanese ancestry from leaving the previously designated Military Area without express permission. This was followed by a series of exclusion orders, and the establishment of "Assembly Centers" and "Relocation Centers," to which all evacuees were sent. By the time the exclusion order here in question (No. 34) was promulgated (May 3, 1942), this practice had become uniform. Indeed the instructions which accompanied the order made it evident that the evacuees were to be transported to such centers. Moreover, no one was permitted to leave a center without express permission, and the only permission then contemplated was for limited periods of time (see Civilian Restrictive Order No. 1, May 19, 1942, 8 F. R. 982). That the evacuation and detention were part of a single

integrated program is made clear in the recently published report by the War Department. This report, entitled "Japanese Evacuation from the West Coast, 1942," deals at length with the entire subject. Particularly pertinent in this connection are pages 44 ff., 78, 94, 237 ff. and the typical form of instructions printed at page 99.

We submit that Congress gave neither to the President nor to military authorities any power so far reaching, and that in the absence of legislation the President has no such power even in time of war. Public law No. 503 certainly is not capable of being construed as authority to detain citizens. And this Court's decision in the *Hirabayashi* case does not so hold; for it dealt only with curfew orders which were explicitly referred to at the time the law was under consideration. It is not enough to conclude that evacuation, which was also under contemplation, and was expressly referred to in the law, was authorized. For here there was not merely evacuation, but evacuation as a step toward detention.

Some attempt was made by the government, in the *Hirabayashi* case, to argue that the action taken was ratified by Congressional appropriation for the War Relocation Authority. But this appropriation was not voted until July 25, 1942 (56 Stat. 704). It could not ratify administrative orders made in May so as to make their violation then a crime. Petitioner was prosecuted by information filed June 12, 1942, for an offense alleged to have been committed in May. If the regulation he was charged with then violating was then not authorized by Congress no later ratification could make his disobedience in May a crime. That would be a violation of the prohibition against ex post facto laws (Art. I § 9). See *United States v. Stafoff*, 260 U. S. 477; *Viereck v. United States*, 318 U. S. 236.

We submit also that the war power of the President alone would not support such an order. This Court in effect so ruled in *Brown v. United States*, 8 Cranch. 110. That case dealt with a Presidential attempt to seize British owned property during the war of 1812. Chief Justice Marshall ruled that since Congress had given the President the right to detain enemy aliens but not the right to seize their property, his act was without support in the law. It follows by like reasoning that since Congress has given the President power to detain enemy aliens (50 U. S. C. A. 21) but has not given the President similar power to detain citizens the order here under review cannot be sustained on the President's war power alone.

Writers on the subject have reached the same conclusion. Thus in Berdahl, *War Powers of the Executive in the United States*, it is nowhere suggested that these powers extend to the removal of citizens from one part of the United States to the other. It is only when martial law has been declared that executive authority may be exercised over citizens. Of course, there was no martial law in California. In Chapter 11, pages 183 and following, Mr. Berdahl discusses the President's power of police control and recognizes that such power over persons is derived only from Congressional authorization. The most that he concedes is that when Congress is not in session, the President may have power to act in an emergency (p. 192). Here Congress was continuously in session.

Finally, we submit that even the President and Congress, acting together, may not detain citizens of the United States against whom no charges have been preferred. The framers of the Constitution recognized the propensity of governments in times of crisis to take executive action

rather than to pursue the ordinary course of the criminal law. The framers realized that in certain situations such conduct was necessary to the maintenance of government. For that reason the framers permitted the suspension of the writ of habeas corpus by which unlawful executive detention was normally challenged, but permitted such suspension only in time of invasion or insurrection. They did not permit the suspension merely because of the existence of a state of war, or even because of a fear of invasion. It was evidently contemplated that the detention permissible as the result of the suspension of the writ of habeas corpus should be possible only at a time of the direst immediate emergency, not at all as a precautionary measure. If, as we think must be conceded, the situation in California in May 1942 would not have warranted the suspension of the writ of habeas corpus, then it must follow that any legislation seeking to circumvent the prohibition against the suspension of habeas corpus would be void. And any legislation directly authorizing the detention of citizens, except as the result of charges preferred under the criminal laws, would be an attempt to evade the prohibition against the suspension of the writ.

We do not believe that Congress intended to evade such suspension. That is one of the reasons why we do not think that the Act of March 21, 1942, can be construed as authorizing the detention of American citizens.

The questions raised are clearly important and far reaching. They have never heretofore been passed upon by this Court. Surely, review should be granted.

POINT II

The classification of citizens based solely on ancestry is a denial of due process and is forbidden by the Fifth Amendment.

We recognize, of course, that the Federal Government, unlike the states, is not subject to any express limitation in the selection of subjects or persons to be dealt with by government action; in other words, that the Constitution contains no equal protection clause affecting the Federal Government. Nevertheless, the due process clause of the Fifth Amendment does limit the power of the Federal Government in respect to classification. (See *Detroit Bank v. United States*, 317 U. S. 329, 337, and cases cited.) In the *Hirabayashi* case this Court recognized that classification on racial grounds is ordinarily arbitrary. But the Chief Justice concluded that the fact of racial ancestry was relevant so as to justify the imposition of a curfew order on citizens of Japanese origin only. But he was careful to point out that the Court did no more than determine that the circumstances afforded a reasonable basis for the action taken in imposing a curfew:

We decide only that the curfew order, as applied, at the time it was applied, was within the boundaries of the war power.

And Mr. Justice Murphy, specially concurring, said that the decision then being rendered went "to the very brink of constitutional power."

We do not believe that the considerations which led this Court to uphold discrimination in the application of a curfew order are applicable to the order that is here in question. There are important differences in the character of the action taken and in the time when it was taken. The curfew order was imposed on March 24, 1942, to be effective within three days. It covered not only citizens of Japanese ancestry, but all enemy aliens, Japanese, German and Italian alike. It had an obvious

immediate relation to the prevention of sabotage, and perhaps also to the possibility of invasion. It operated only as a minor restraint of liberty during the hours of darkness, when it was reasonable to suppose that attempts at sabotage would be most likely and assistance to a possible invader could most easily be given.

Altogether different are the various evacuation orders, one of which is here involved. These were issued over a considerable period of time, thus indicating the absence of any acute emergency calling for instant action. Indeed, the particular order here in question, Exclusion Order No. 34, was not issued until May 3, 1942, to become effective May 9, 1942. Consider, moreover, the character of this and similar orders. In the first place, they were directed only against persons of Japanese ancestry, not against enemy aliens of different origin. They were not limited to preventing the persons affected from entering military establishments, or even places which the military might consider necessary for defense purposes. Instead, they directed removal of all persons of Japanese ancestry from their homes and places of business throughout the entire Pacific Coast area, for a depth in places of two hundred miles. (See opinion of Denman, J.) Moreover, these orders prevented persons affected from voluntarily leaving the areas and required them to submit to forced assembly in camps and to ultimate detention, at the pleasure of the military authorities.

We do not believe that the same circumstances of "ethnic affiliations with an invading enemy"—to quote a portion of the Chief Justice's opinion, which we cannot but feel was unfortunately phrased—can form the basis for the discrimination here practiced.

Whereas the curfew order was imposed on all enemy aliens, this order was restricted only to the Japanese. Whatever the justification for including citizens of Japanese ancestry as well as aliens within the scope of the curfew order, there can be no justification for providing for the wholesale evacuation from their homes and places of business of citizens of Japanese ancestry, while leaving even enemy aliens of German and Italian origin completely unaffected.

No considerations of relevancy can justify that result. Certainly, the action cannot be justified as a measure of protection against sabotage, for the danger of sabotage was a country-wide danger. It was in no way restricted to the Pacific Coast. And it was a danger even more to be feared from persons of German or Italian extraction, because of the greater likelihood of access on their part to places where sabotage might be fruitful. The very strangeness of appearance of persons of Japanese ancestry rendered the possibility of sabotage on their part less likely. Nor can fear of invasion be asserted as justification. It is true that at the time that the exclusion orders were first promulgated, the Japanese were proceeding without check in their conquest of the Philippines and the Dutch East Indies. Nevertheless, it must have been evident by the time the order in question was promulgated that no immediate invasion was possible. The Japanese had not then invaded Australia; they had not even attacked Hawaii a second time. That the military authorities might have required all persons of Japanese ancestry to register and perhaps to report their continued whereabouts, so that appropriate action might be taken in case of possible invasion, is one thing. To assert that the mere possibility of invasion justifies what was done here is another. We do not believe that the necessity for a suc-

cessful prosecution of the war, even the necessity for giving wide discretion to military authority, should permit such cruel and arbitrary interference with the freedom and livelihood of American citizens, as was here accomplished. Surely, the question is of such fundamental and far-reaching importance as to justify review by this Court.

POINT III

The exclusion order constituted a denial of due process because it made no provision for any hearing.

This point was also urged upon the Court in the *Hirabayashi* case. It was there rejected, in so far as the curfew order was concerned. The majority opinion contained no explicit discussion of this phase of the case. However, Mr. Justice Douglas, concurring, expressed the view that:

Where the peril is great and the time is short, temporary treatment on a group basis may be the only practicable expedient.

Again there is a difference between the scope and circumstances of the curfew order and those of the exclusion orders. The basis of the curfew order was obviously to minimize the possibility of harm which might result during the hours of darkness. It had but a limited effect on the liberties of the individuals restricted. It could be lifted when the emergency passed without the imposition of any serious harm on anyone. One's concept of fairness is not shocked by the requirement that all persons in a certain group obey such an order, even though no opportunity is afforded to individuals to establish that because of their loyalty and devotion to this country, there was no reason for the government to fear harm should they be allowed to move about at night.

Quite different is the situation which resulted from the evacuation order. Under this and similar orders nearly one hundred thousand American-born men, women and children were torn from their accustomed ways of life and forced into concentration camps. Here is no temporary partial restraint of liberty, which, when lifted, has done no substantial harm. The harm done to these people is not only substantial, but in many cases irrevocable. Property rights have been lost, business connections destroyed. The intangible things which go to make a decent way of life have been broken. And all this without the establishment of any method whereby individuals whose lives always had been without blame or suspicion could establish their right to remain where they had always lived.

It is no answer to say that hearings would have taken time. There is no reason to suppose that hearings would have been more difficult to arrange for persons of Japanese ancestry than proved to be the case for enemy aliens, both German and Italian. It would not have been necessary for the military authorities to have provided for some form of hearing prior to the time when they believed it necessary to evacuate the affected persons. Surely, no consideration of military necessity could have stood in the way of arrangements for providing hearings to those affected immediately upon their reporting to the assembly centers designated in the various evacuation orders. Ultimately this was, of course, done, so that large numbers of those detained have been released. Our contention, however, is that no deprivation of liberty such as was here undertaken can be justified, unless some provision is at the time made for hearings. The absence of such provision renders the original order wholly void. It cannot be saved by the creation of hearings machinery long afterward. Particularly is that so, since at the time when it is charged that

petitioner violated the military order, namely, between May 9th and May 30th, 1942, no machinery of any kind existed under which hearings could be held. It was not until September 26, 1942, that regulations were issued with regard to granting leaves from the camps (7 F. R. 7656).

We urge this Court, therefore, to grant certiorari so that this important question of constitutional right can be adjudicated.

POINT IV

The constitutional issues can be raised in defense to a prosecution for refusing to obey the questioned order.

This Court has recently held, in *Falbo v. United States*, 221 U. S. , that a draftee could not set up the invalidity of a draft order in defense to a prosecution for refusing to appear for induction. We do not believe the case applies to the situation here presented. In the *Falbo* case there was no attack on the constitutionality of the draft law. Here the defense is predicated mainly on the unconstitutionality of all the actions which resulted in the challenged order. In the *Falbo* case this Court rested its decision largely on the fact that the administrative process was not complete with the induction order, since the army might reject a registrant after induction. Here no machinery existed for the relief of those ordered evacuated at the time the challenged order was issued. This circumstance makes inapplicable the comments of Mr. Justice Douglas in the *Hirabayashi* case (320 U. S. 81, 108) to the effect that a person affected by military order should submit to it and then take advantage of administrative regulations to be relieved of the duty of compliance. But in May, 1942, when petitioner was charged with violation of the order, there were no administrative regulations either for hearings or for release on any terms.

We call the Court's attention to *Arver v. United States*, 245 U. S. 365. There this Court considered at length various constitutional objections to the 1917 draft law which had been urged as defenses to a prosecution for refusing to appear for induction. It occurred to no one to suggest that these defenses could be raised only by submitting to induction. Surely it can make no difference that the attack there was on an Act of Congress, while here it is on a military order.

We submit, therefore, that petitioner's challenge to the constitutionality of the questioned order was proper in this case. Any other conclusion would be destructive of liberty.

CONCLUSION

Since important questions of constitutional right are presented in this case, questions not heretofore decided by this Court, certiorari should be granted.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae.

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Japanese Americans Speak

*Excerpts, largely from
the "Pacific Citizen"*

A FEW months ago a young Japanese American woman of 24 was asked to describe her girlhood in the Rocky Mountain states and in California. She wrote a touching autobiographical document from which it is possible only to quote a few paragraphs. But what she says seems so representative of her fellows that it deserves particular notice. So far the entire autobiography remains in manuscript form. Ina Sugihara concludes her life story with these days when Japanese Americans on the Pacific coast knew that evacuation was coming, but did not know when or how.

For a full month I ran around like a chicken with its head cut off. I asked all my friends, "What shall I do? What shall I do?" I had known the pangs of hunger and want; I had felt like a homeless child for years after leaving my childhood home in Colorado; I had met discrimination from those who did not know any better; but nothing in my whole life had aggravated me as much as the evacuation movement. It was utterly senseless and it was being given official sanction. I couldn't study. I couldn't sleep. All I could do was talk with people and try to see if they knew what was happening. . . .

When official word did come and it became certain that we would have to leave, I went across the campus to Jim's co-op. He wasn't in, so I left a note saying, "I'm trying to go East—Madison, Chicago, New York—I don't know just where."

I figured that \$50 would replace my material possessions then, but decided that \$50 would not buy anyone's freedom at any time once it was lost. And it looked as if I were going to lose many of my liberties by sticking around. I would be sent to an isolated desert camp to live in an army barrack and be guarded by sentries. There would be others around, but we would be mutual outcasts and not free citizens.

I was lucky. I left for New York three hours before the freezing of travel for "enemy aliens and citizens of Japanese ancestry" in the coastal area. Freda Reinitz and Eleanor FaIntee took me to the station and we agreed to meet in Timbuctoo 20 years hence.

I slept 18 hours a day on the train to make up for the days lost during the previous month, worrying and planning, though military orders and newspaper headlines rang in my head during my waking hours.

Since then I have become a New Yorker. Union Square, Rockefeller Plaza, Greenwich Village and the subways are now as familiar to me as were the Berkeley hills over a year ago. Every once in a while I ponder over those crucial days when we were frantically trying to decide what to do. Each time, my decision is the same. "I would do it again—leave the coast—for I had nothing to lose and everything to gain." My life may not be a striking one, but it does not contain a negative chapter in a "relocation center."

Jim was in an evacuation center only a few months. But before he had been there one month, he wrote: "This thing can never work for young people. They are deteriorating mentally and psychologically. There's a great wave of a 'don't give a damn' attitude. . . ." He himself is now teaching chemistry at the University of Utah.

Tom took the whole thing as a lark at first, but that only lasted until he had rested up from his year's study