

June 6, 1942

EXHIBIT

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AIR MAIL

Hon. Carl C. Bonaugh ✓
United States Attorney
District of Oregon
Department of Justice
Portland, Oregon

Dear Mr. Bonaugh:

Your letter of May 29, reference C-16056-1-A, raises the crucial question of the kind of a record that can be made on the facts justifying the exclusion of American citizens of Japanese descent from the declared military zones.

In my judgment, we have got to recognize that the facts relied on to vindicate the legality of this differential treatment are not susceptible of proof by the ordinary types of evidence. We shall probably, therefore, be compelled to rely greatly on the doctrine of judicial notice.

The new method of warfare, popularly known as the fifth column, depending as it does upon secret organization, gives no evidence of its existence until the time appointed by the enemy for striking a paralyzing blow. The usefulness and effectiveness of the fifth column as a weapon in the hands of our enemies depend precisely upon the fact that it gives no inkling of its plans or of its membership. To require evidence of that which, by definition, exists only by virtue of its ability to conceal all evidence of its existence would place upon the State an intolerable burden of proof at a time when it is struggling for survival. It would justify the fascist thesis that a democratic government of law is incapable of protecting itself effectively against the attack organized by the enemy from within. These, in brief, are the considerations which, it seems to me, would justify the Court in taking judicial notice of the following propositions, which are matters of public knowledge and general notoriety:

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- (1) The art and tempo of war has undergone a complete transformation. Armies can strike with lightning speed and power, without previous notice, from long distances and with paralyzing force.
- (2) There is a Japanese fifth column in this country of undisclosed and undetermined dimensions. It is composed of American citizens of Japanese descent, and will be used as an instrument of espionage and of sabotage. A fifth column exists by virtue of successfully pretending loyalty to the country of citizenship and successfully concealing all evidence of its activities from the constituted authorities.
- (3) A great majority of American citizens of Japanese descent are loyal to this country; but it is impossible during this period of emergency to make a particular investigation of the loyalty of each person in the Japanese community. Such an investigation would be hampered in any case by the difficulties which the Caucasian experiences with Oriental psychology. Moreover, no investigation of past record of any person in a suspected group can give adequate assurance of his future conduct because a member of the fifth column can accomplish his function only to the extent that he has successfully pretended loyalty and has escaped the vigilance of the State.
- (4) A considerable number of American citizens of Japanese descent have been sent to Japan during the tender years of youth and adolescence and have been indoctrinated with Japanese nationalism and imperialism.
- (5) A considerable but indeterminable number of American citizens of Japanese descent are devotees of the cult of Shinto, in which the Emperor of Japan and his ancestors are worshipped as deities, thereby creating a conflict between religious loyalty to the Japanese Emperor and political loyalty to the United States. It is impossible to predict how such persons would act if an army of the Emperor of Japan were landed upon our shores.
- (6) The Japanese laws and consular practice recognize and encourage the retention of Japanese citizenship by persons of Japanese descent born in the United States. A considerable but indeterminable number of American citizens of Japanese descent have been registered at Japanese consulates for this purpose.

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danger of disturbance to the civil peace and order of such areas, as well as a hazard to the safety of such persons.

(10) In case of invasion of the United States by Japanese armed forces or in case of military reverses suffered by the United States, the sentiments and susceptibilities of the general public are such as to create a hazard of widespread violence to all persons of Japanese descent, with consequent civil disorder, interference with production, and deterioration of civilian morals.

(11) Incidents of violence against Americans of Japanese descent play into the hands of our enemies. They can use such incidents in their propaganda as "proof" that this is a "race war", and appeal effectively to such countries as Turkey and India, whom we are seeking to make our allies and who are racially different from us. To prevent such incidents, therefore, has special value as a step in winning the war, quite aside from all other reasons for such prevention.

It is of great importance to us, in planning the strategy of a case which will necessarily involve the validity of the detention of Japanese-Americans as well as their exclusion from military areas, to know just how far we are likely to get with the doctrine of judicial notice. For this reason, and because I feel that no other effective approach to the problem is feasible in the time available, I hope that you will find it possible to urge the foregoing considerations upon the Court in the approaching trial of Minoru Yasui.

Sincerely yours,

Assistant Solicitor

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