No. 10,299.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

JOHN T. REGAN,

Appellant,

vs.

CAMERON KING, as Registrar of Voters in the City and County of San Francisco, State of California,

Appellee.

BRIEF FOR JAPANESE AMERICAN CITIZENS LEAGUE, AMICUS CURIAE.

WALTER T. TSUKOMOTO,
Tule Lake Relocation Center, Calif. (formerly Sacramento, Calif.);

SABURO KIDO,
Poston Relocation Center, Poston, Ariz. (formerly San Francisco, Calif.);

HUGH E. MACBETH,
THOS. L. GRIFFITH, JR.,
A. L. WIRIN,
257 South Spring Street, Los Angeles,
Attorneys for Japanese American Citizens League, Amicus Curiae.

Parker & Baird Company, Law Printers, Los Angeles

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BRIEF FOR JAPANESE AMERICAN CITIZENS LEAGUE, AMICUS CURIAE.

I.

The Interest of the Japanese American Citizens League.

The Japanese American Citizens League is a national organization representing approximately 20,000 American citizens of Japanese ancestry.

The appellant seeks to have cancelled the citizenship of American citizens of Japanese ancestry in the City and County of San Francisco. Approximately 90 per cent of such American citizens are members of the Japanese American Citizens League. Of those who are expressly named in the District Court's findings of fact [R. 22],

as appearing on the records of the appellee, Registrar of Voters, 75 per cent are members of the Japanese American Citizens League.[1]

None of those either expressly named in the trial court's findings or otherwise generally referred to in the complaint, were served with process or notice of any kind.

Prior to Pearl Harbor the Japanese American Citizens League comprised 62 chapters in some three hundred communities throughout the United States. Its beginnings go back to the early 1920s. Its first convention was held in 1930. It was officially incorporated in 1937. None but American citizens are included among its members; every person admitted to membership is required to furnish proof of citizenship. The spirit and purpose of the Citizens League are expressed in the Japanese American Creed, written by Mike Masaoka, the National Secretary of the League, many months before the outbreak of war.[2] It was fully endorsed by all members, read before the United States Senate, and printed in the Congressional Record, May 9, 1941.

This Japanese American Creed states:

> "I am proud that I am an American citizen of Japanese ancestry, for my very background makes me appreciate more fully the wonderful advantages of this Nation. I believe in her institutions, ideals, and traditions; I glory in her heritage; I boast of her history; I trust in her future. . . .
>
> "Although some individuals may discriminate against me, I shall never become bitter or lose faith,

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[1]A list of the persons so named is set forth in Appendix A herein. Those who are members of JACL are so designated.

[2]A portion of his statement is set forth in Appendix B.

for I know that such persons are not representative of the majority of the American people. True, I shall do all in my power to discourage such practices, but I shall do it in the American way—above board, in the open, through courts of law, by education, by proving myself to be worthy of equal treatment and consideration. I am firm in my belief that American sportsmanship and attitude of fair play will judge citizenship and patriotism on the basis of action and achievement, and not on the basis of physical characteristics.

"Because I believe in America, and I trust she believes in me, and because I have received innumerable benefits from her, I pledge myself to do honor to her at all times and in all places; to support her Constitution; to obey her laws; to respect her flag; to defend her against all enemies, foreign or domestic; to actively assume my duties and obligations as a citizen, cheerfully and without any reservations whatsoever, in the hope that I may become a better American in a greater America."

The undeviating policy of the Japanese American Citizens League in opposition to the Axis aggressors is a clear and open record.

Thus in an appeal for fair play toward loyal Japanese, a citizens committee consisting of General David P. Barrows, Monroe E. Deutsch, Robert Gordon Sproul, and Ray Lyman Wilbur, spoke thus of the Japanese American Citizens League:

"The Japanese-American Citizens League, consisting of some 8,000 citizens of Japanese ancestry, has made repeated pronouncements of loyalty to the United States and of opposition to the aggressive

policies of Japan. . . . Many such Japanese have encouraged their sons to enter the United States armed forces and have subscribed to Defense bonds.

"We appeal to all our members and to all citizens who see this statement to make its contents widely known, and to cooperate actively in ensuring fair play and security to all law-abiding Japanese residents."

The statement, dated December 29, 1941, is set forth at page 11200, part 29, San Francisco hearings of the Tolan Committee.

The character of the League has been recognized by Brig. Gen. Lewis B. Hershey, Director of Selective Service, who sent this message to the League shortly after the conflict began:

"I note that your organization, the Japanese American Citizens League, has banded together some fifteen thousand young American citizens of Japanese ancestry to promote that spirit of patriotic cooperation—that your motto is: 'Better Americans in a Greater America,' and your purpose is 'to stand behind your country, the United States of America, throughout any and every emergency.'

"Such concerted activity in the present emergency confronting our Nation is noble and needed; and it is highly gratifying to me, as Director of the Selective Service System which is recruiting the young manhood of America for National Defense, to have this opportunity to commend and encourage it."

The continuing efforts of the Japanese American Citizens League to support the Government in the present

struggle have received recurrent recognition from official sources. Thus on Feruary 6, 1942, Mr. Wayne Coy, Special Assistant to the President, wrote to Mr. Masaoka:

> "The President has asked me to express his appreciation of the action of the Japanese American Citizens League in pledging support and assistance during the present emergency. Such assurances of cooperation are most gratifying to him."

When the War Department prevented Americans of Japanese ancestry from participating in the armed forces, either under the Selective Service System or by way of enlistment, the Japanese American Citizens League in a formal resolution at an emergency conference on November 17, 1942, insisted upon a right "to contribute our share to the winning of the war,"[3] by offering their services and their lives.

As the result of these efforts, the War Department and the Selective Service System finally made provision for service in the armed forces. On January 29, 1942, General Lewis B. Hershey, Director, National Headquarters Selective Service System, advised said League:

> "We trust that the action taken will accomplish the purpose which prompted the resolution."[4]

On January 28, 1943, the War Department officially announced the organization of a special Japanese American battalion in the Army of the United States for com-

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[3]The text of the resolution directed to the War Department is set forth in Appendix C.

[4]The text of said letter is set forth in Appendix D.

bat service in an active theatre of war, the War Department announcement reading:

> "Loyal Americans of Japanese ancestry will compose a special unit in the United States Army. The War Department announced today that plans have been completed for admission of a substantial number of American citizens of Japanese ancestry to the Army of the United States. This action was taken following study by the War Department of many earnest requests by loyal American citizens of Japanese extraction for the organization of a special unit of the Army in which they could have their share in the fight against the nation's enemies."

Accompanying the War Department announcement was the following statement by Secretary of War Henry L. Stimson:

> "It is the inherent right of every faithful citizen, regardless of ancestry, to bear arms in the nation's battle. When obstacles to the free expression of that right are imposed by emergency considerations, those barriers should be removed as soon as humanly possible. Loyalty to country is a voice that must be heard, and I am glad that I am now able to give active proof that this basic American belief is not a casualty of war."

The War Department announcement concluded:

> "This combat team will include the customary elements of infantry, artillery, engineer and medical personnel. No effort will be spared in developing it into an efficient, well-rounded, hard-hitting outfit."

Following this announcement by the War Department the President of the United States recognized the desires

of "loyal American citizens of Japanese descent" to participate in the defense of American Democratic principles in the following statement directed to Secretary of War Stimson, under date of February 1, 1943:

"The proposal of the War Department to organize a combat team consisting of loyal American citizens of Japanese descent has my full approval. The new combat team will add to the nearly five thousand loyal Americans of Japanese ancestry who are already serving in the armed forces of our country.

"This is a natural and logical step toward the reinstitution of the Selective Service procedures which were temporarily disrupted by the evacuation from the West Coast.

"No loyal citizen of the United States should be denied the democratic right to exercise the responsibilities of his citizenship, regardless of his ancestry. The principle on which this country was founded and by which it has always been governed is that Americanism is a matter of the mind and heart; Americanism is not, and never was, a matter of race or ancestry. A good American is one who is loyal to this country and to our creed of liberty and democracy. Every loyal American citizen should be given the opportunity to serve this country wherever his skills will make the greatest contribution—whether it be in the ranks of our armed forces, war production, agriculture, government service, or other work essential to the war effort.

"I am glad to observe that the War Department, the Navy Department, the War Manpower Commission, the Department of Justice, and the War Relocation Authority are collaborating in a program which will assure the opportunity for all loyal Americans,

including Americans of Japanese ancestry, to serve their country at a time when the fullest and wisest use of our manpower is all-important to the war effort."

In a further proclamation on the subject, the War Department announced to prospective volunteers amongst American Japanese:

"Americans of Japanese blood are wanted to fight for the United States like any other citizens. They are wanted for combat duty where they are fitted for combat duty and for war work where they are best suited for war work. They are wanted because the government and the Army are convinced of their loyalty. And they are wanted not less because of their ability as soldiers and as citizens doing useful work for the American community. You have superior qualifications for the kind of service in which it is intended to use you."

The War Department program to permit loyal American citizens of Japanese descent to serve in the armed forces extends to the Hawaiian Islands. On January 28th, Lieutenant General Delos C. Emmons, Commanding General of the Hawaiian Department of the United States Army and Military Governor of Hawaii, in announcing that he had been directed by the War Department to induct 1500 Americans of Japanese descent residing in the Hawaiian Islands into the United States Army, declared:

"These volunteers will be formed into combat units on the mainland and will, when trained, be sent into an active theater of operation.

"A large percentage of the officers will be citizens of Japanese ancestry.

"Once in a great while, an opportunity presents itself to recognize an entire section of this country for its performance of duty. All people of the Hawaiian Islands have contributed generously to our war effort. Among these have been Americans of Japanese descent.

"Their role has not been an easy one. Open to distrust because of their racial origin and discriminated against in certain fields of defense effort, they, nevertheless, have borne their burdens without complaint and have added materially to the strength of the Hawaiian area.

"They have behaved themselves admirably under most trying conditions and have bought great quantities of war bonds and by the labor of their hands have added to the common defense.

"In view of these facts and by War Department authority I have been designated to offer Americans of Japanese ancestry an opportunity to serve their country.

"This opportunity is in the form of voluntary combat services in the armed forces. The manner or response and the record these men will establish as fighting soldiers will be one of the best answers to those who question the loyalty of American citizens of Japanese descent in Hawaii."

Thereafter and on February 3rd, said League, through the facilities of its official publication, The Pacific Citizen, and in a special bulletin directed to all its officers and national board members, urged immediate and wholesale volunteering on the part of American citizens of Japanese descent in such combat unit.[5]

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[5]A portion of said bulletin is set forth in Appendix E.

Pursuant to the voluntary enlistment, hundreds of American citizens of Japanese ancestry have applied for immediate military service. Walter T. Tsukamoto, one of counsel herein, and the immediate past president of said League, a Captain in the Judge Advocate General's Department, United States Army, renewed his request for assignment at once to active duty. Said request is pending.[6]

Many Americans of Japanese descent, some of whom are members of the Japanese American Citizens League, accordingly are demonstrating their belief in the principles of the Four Freedoms by voluntarily enlisting their lives in the fight for these principles. But freedom and justice are not divisible. You cannot attack the citizenship of those of Japanese ancestry without debasing citizenship as such; and without cheapening the birthright of those of Negro ancestry and White ancestry as well. The Japanese American Citizens League is speaking in this brief, far more than may appear on the surface, not merely for its members whose citizenship is jeopardized by the case at bar, but for an America composed of many peoples united by common ideals—ideals which ugly prejudices and ungrounded hysteria must not be allowed to destroy.

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[6]The text of Mr. Tsukamoto's request for active military duty is set forth in Appendix F.

II.

Naturalization and Immigration Not Involved.

In his brief contending that persons of Japanese ancestry have been illegally registered and that their names should be stricken from the rolls, the appellant asserts that Japanese "wherever born are not citizens of the United States." (Appellant's Brief, p. 18.) In support of this contention it is stated "that for more than one hundred years Congress in the exercise of its power to adopt uniform naturalization laws had steadfastly restricted the right of naturalization to white people" (Appellant's Brief, p. 21) and that the policy has been "to restrict immigration as well as naturalization to white persons." (Appellant's Brief, p. 31.)

Since the persons of Japanese ancestry who are named have exercised the rights of citizenship and franchise, *not* as a result of naturalization or as a result of immigration to this country from another, but by virtue of birth in this country and the rule of *jus soli* as embodied in the common law and the Fourteenth Amendment to the Constitution, the appeal to the history of naturalization and immigration laws is strained and irrelevant. The proposition which the appellant attempts to establish is that the words of the Fourteenth Amendment to the Constitution, "All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States . . ." which the majority opinion of the Supreme Court (*U. S. v. Wong Kim Ark,* 169 U. S. 649) specifically referred to as "broad and clear," should be interpreted,

or rather reinterpreted, to conform to the *appellant's view* of this country's naturalization policy. Thus it is suggested that authoritative judicial decisions, Congressional Acts, and State Department rulings be set aside, and the amendment "construed" to restrict citizenship "to all persons born in the United States and *eligible to citizenship* under the naturalization laws . . ." (Appellant's Brief, p. 34.) Appellant would amend an amendment to the Constitution by judicial fiat.

III.

Constitution the Supreme Law.

The danger and unwisdom of reviewing the supreme law of the land in the light of the shifting scene of legislative enactment is too obvious to require extended comment. The opposite course has always been the practice throughout our country's judicial history; congressional enactments, whether pertaining to nationality or any other subject, must agree with constitutional mandates on the same topic to be held valid.

IV.

Members of All Racial Groups Naturalized.

Nevertheless, the assertion by the appellant that the naturalization policy of the United States and the Fourteenth Amendment to the Constitution as it has been interpreted by the courts are at loggerheads, should not go unchallenged. The claim "that for more than one hundred years Congress in the exercise of its power to adopt uniform naturalization laws has steadfastly restricted the right of naturalization to white people" finds no support in fact. The first naturalization law was passed in 1790. It is possible to show that before the

end of the one hundred year period which the appellant himself arbitrarily names, by 1890, not white people alone, but *representatives of every major stock of mankind* had been admitted to naturalization. The appellant himself supplies one serious omission when he admits (Appellant's Brief, p. 27), "Congress in effecting the purposes of the Thirteenth, Fourteenth and Fifteenth Amendments, extended the privilege [of naturalization] to 'aliens of African nativity and to persons of African descent' . . ."

(a) American Indians Naturalized.

But the appellant does not mention representatives of another racial stock, many of whose members were naturalized before 1890. These are the American Indians of our land. By this date, treaties and agreements with certain Indian tribes permitted their members, if they complied with certain formalities, to become citizens. (Donald Young, *American Minority Peoples,* p. 196.) The act of February 8, 1887 (24 Stat. L., 388) granted citizenship to those Indians who were allotted under it and also (Sec. 6 of the Act) bestowed citizenship upon any Indian who had separated himself from his tribe and adopted habits of civilized life. Also by the act of August 9, 1888 (25 Stat. L., 392) Indian women who married citizens of the United States thereby became citizens of the United States. This process of naturalizing our Indians by means of treaty, allotment acts, marriage, in recognition of services in war (Congressional Act of November 6, 1919), and by special acts of Congress such as the one which extended citizenship to the Indians of the "Indian Territory" (24 Stat. L., 388), though it was begun before 1890, was broadened and

widened with the years. In 1923, the Honorable Edgar B. Meritt, Assistant Indian Commissioner, issued a statement in which he listed nine ways by which Indians could become citizens (G. E. E. E. Linquist, *The Red Man in the United States,* pp. 440-41.) The very next year, by the act of June 2, 1924 (43 Stat. L., 253) Congress conferred citizenship on all Indians within the territorial limits of the United States. (Lewis Meriam, *The Problem of Indian Administration,* p. 752.)

In view of the appellant's claim that Congress has consistently acted to withhold naturalization and citizenship from all except Caucasians or White persons, it is instructive to inquire into the racial affiliation of the American Indian, in behalf of whose naturalization and citizenship our legislators have acted so many times. It is the unanimous and unequivocal verdict of the leading authorities on the subject that the American Indian is of the Mongoloid or Yellow race, the same division of mankind, it may be observed, to which the Chinese, Japanese, and Filipinos belong.

Thus, A. L. Kroeber, Professor of Anthropology at the University of California, writes in his text, *Anthropology:*

> "The Mongoloid stock divides into the Mongolian proper of eastern Asia, the Malaysian of the East Indies, and the American Indian." (p. 44.)

Dr. Clark Wissler, Curator of Anthropology in the American Museum of Natural History, whose work, *The American Indian,* is standard in its field, has this to say:

> "As has often been stated, the affinities of New World man are with Monogolians and, to a less marked degree, with Polynesians." (p. 359.)

Dr. Ales Hrdlicka, noted physical anthropologist of the Smithsonian Institution, has pointed to the same conclusion in his article, "The Peopling of America" (*Journal of Heredity,* vol. 6, 1915, pp. 79-91) when he declares:

> "The conclusions, therefore, are: the American natives represent in the main a single stem or strain of people, one homotype; this stem is identical with that of the yellow-brown races of Asia and Polynesia . . ."

(For additional proof on the same subject see also Ralph Linton, *The Study of Man,* p. 43, and E. P. Stibbe, *An Introduction to Physical Anthropology,* p. 160.)

(b) Filipinos and Puerto Ricans Naturalized.

After asserting (p. 21) that Congress has "steadfastly restricted the right of naturalization to white people" and admitting (p. 27) that an exception was made in the case of "aliens of African nativity and to persons of African descent," appellant further confesses that provision has been made "by special acts extending the right [of naturalization] to Filipinos and Puerto Ricans who had served in the armed forces of the Union."

This last statement leaves much to be desired. The use of the past perfect tense in regard to the naturalization of Filipinos is misleading. Even at this moment hundreds of Filipinos are earning their right to naturalization by heroic participation in our common struggle. Section 324 of the Nationality Act of 1940, which became law January 12, 1941, provides that a "native-born Filipino, who has served honorably at any time in the United States Army, Navy, Marine Corps, or Coast Guard for a period or periods aggregating three years and who, if separated

from such service, was separated under honorable conditions, may be naturalized . . .” The usual requirement of residence in the United States is waived for those who meet these specifications.

And again, what are the Filipinos racially? Are they Whites or Negroes, the only two stocks admitted to naturalization according to appellant? Are they racially distinct from the Americans of Japanese ancestry whose citizenship is so “repellent” (Appellant’s Brief, p. 34)?

That the Filipinos are Mongoloids has long since been established. A. L. Kroeber, in his work, *The Peoples of the Philippines,* offers this description:

> “They are a brown-skinned, straight-haired race with scant beards and smooth skins . . . presenting nothing at all suggestive of Negroid traits and about as little of anything Caucasian. They have usually been reckoned, together with the other inhabitants of the East Indies, as a branch of the third great division of mankind, the yellow or Mongoloid race.” (p. 47.)

The racial similarity of Filipinos, American Indians, Japanese, and Chinese and the impossibility of making distinctions between them if these are to depend upon physical type or race, is demonstrated in an interview with the famous physical anthropologist, Dr. Ales Hrdlicka, printed in *Science News Letter* for December 20, 1941:

> “. . . perplexed Americans are asking: ‘How can I tell a Japanese from a Chinese or a Filipino? Is there some difference in the faces that science can point out?’
>
> “There isn’t. . . .

"The answer comes from one of America's best known anthropologists, Dr. Ales Hrdlicka of the Smithsonian Institution. . . .

"Guessing nationality of Orientals has led Dr. Hrdlicka himself into errors, he admits. In Northwest fish canneries Filipinos and Japanese work with Indians and all dress in the white man's work clothes. In these circumstances the Asiatics—including the Indians, who have Asiatic heredity—are often indististinguishable. More than once, says the anthropologist, he has walked up to a surprised Filipino and asked, 'What Indian tribe do you belong to?' "

The reference the appellant makes to Puerto Ricans, in which he brackets them with the Filipinos and states that only those are eligible for naturalization who have served in the armed forces of the United States, is far from accurate. The Nationality Law of 1917 made provision for the naturalization of almost the entire population of Puerto Rico. Professor Raymond L. Buell, famed student of political and international affairs, wrote of this act:

"In 1917 an act expressly conferred American citizenship upon the negro-Spanish inhabitants of Porto Rico which, according to the Supreme Court, 'enabled them to move into the continental United States and, becoming citizens of any State, there to enjoy every right of every other citizen of the United States, civil, social, and political.' " (*Forum,* Sept., 1924, p. 297.)

The Nationality Act now in effect, that of 1940, continues this generous treatment of the Puerto Ricans. Sec. 202 reads as follows:

"All persons born in Puerto Rico on or after April 11, 1899, subject to the jurisdiction of the United

States, residing on the effective date of this Act in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are hereby declared to be citizens of the United States."

See also Sec. 322 of 1940 Nationality Law.

Since Professor Buell has been quoted in connection with the provision for naturalization of Puerto Ricans, it might be well to call attention to his devastating examination, contained in the same article, of the claim that it has been the policy of this nation to admit only whites to naturalization. Says Professor Buell:

> "If the Fathers did intend to limit citizenship to 'whites' as we understand them, their policy has been violated more than it has been observed. In 1870 Congress expressly authorized the naturalization of persons of African ancestry. We call Chinese and Japanese 'Mongolian,' but some courts naturalize Lapps, Finns, Cossacks, Magyars, Syrians, Turks, Armenians, Parsees, and Bulgarians, all of whom are of Asiatic or Mongolian origin. . . . The twelve thousand Chamorros inhabiting our possession of Guam and Mexican half-breeds may likewise acquire American citizenship. Chinese inhabiting Hawaii before 1898 are citizens of the United States.
>
> "Whole Indian tribes have been collectively naturalized by treaty; since 1887 Congress has made provision for the individual naturalization of Indians, and on June 2, 1924, the President approved an act granting citizenship to all non-citizen Indians born within the United States."

(c) Descendants of New World Aborigines and Others Naturalized.

But the most conclusive blow to the thesis that it is the policy and intention of Congress to prevent the naturalization of all but Caucasians (Appellant's Brief, pp. 25-26) is a provision in Sec. 303 of the recently codified Nationality Law, not mentioned by appellant.

This section of the Nationality Law extends naturalization privileges not only to "white persons" and to "persons of African nativity or descent" but also to "descendants of races indigenous to the Western Hemisphere." These original inhabitants of the New World, or American Indians, are predominantly Mongoloid, as the quotations from eminent scientists have indicated. No matter what aboriginal New World group is chosen for investigation, the result is always the same. The Mayas, for instance, were one of the most populous and culturally advanced of pre-Columbian American Indian peoples. Their descendants are numbered among those living in southern Mexico and Central America today. Their Mongoloid and remote Asiatic affiliations are discussed by Thomas Gann and J. Eric Thompson in their scholarly and definitive contribution, *The History of the Maya.* They say:

> "It appears probable that these early American immigrants came in by way of the Behring Straits, from northeastern Asia, where the continents are separated by less than forty miles of water, bridged during the winter by a solid mass of ice. . . . These [the migrants to the New World] may be divided roughly into the long-headed and short-headed people, though many transitional forms are found. They correspond to the long-headed northern, and the short-headed southern mongoloid types of Asia.

"The long heads were probably the first to arrive, but were driven southward by the short heads, of whom the Maya were perhaps the most typical representatives." (p. 4.)

It is therefore the fact that citizenship, which now comes to Indians (Mongoloids) within the United States by birth, can be acquired through naturalization by Indians (Mongoloids) born anywhere else in the Western Hemisphere.

Thus Congress has opened the way to naturalization for millions of individuals of the Western Hemisphere who are not "white" or of "African descent." It has been done deliberately and advisedly as a part of this nation's good neighbor policy and as a standing refutation of charges of arrogance, discrimination, and Hitlerian race pride that our enemies so delight in leveling against us.

It is plain, accordingly, that the principal argument of appellant, namely, that Congress has "held steadfast to the original policy" of restricting naturalization "to free white persons" (Appellant's Brief, p. 27) scarcely agrees with historical fact. Appellant emphasizes the conditions and human relations of 1790 when it was necessary to insert the words "*free* white persons" into the naturalization law because human beings of the Caucasoid race were held in bondage. He entirely ignores the broadened congressional actions of 1887, 1917, and 1940 relating to naturalization. The appellant expresses only an antiquated and discredited creed of white supremacy.

V.

Trend in Naturalization Away From Race Criteria.

Fortunately the verified history of naturalization in our democracy does not support this dividing creed. To the argument that those of Japanese ancestry should be deprived of citizenship because the Founding Fathers were white men, the *San Francisco Chronicle* gave the appropriate answer editorially when this case was being heard in the United States District Court. The editorial read in part:

> "It is true, as Mr. Webb says, that the Declaration, and the Constitution for that matter, was written by white men. It is not true that it was exclusively 'for' white men. These charters are for human, not race principles, and to suggest otherwise now is to furnish excuse for unjustified accusation that America is not true to its principles."

In accordance with every other aspect of our democratic activity this nation's naturalization laws, like our Constitution, have remained flexible enough to reflect the changes of time, circumstance, population, and human aspiration. In this the naturalization laws have not been alone. Restrictions on the use of the ballot, for instance, are now much different from what they were in 1790. Actually not one shred remains of the original naturalization law. Then, in 1790, there were in this country, besides those of European descent, American Indians and Negroes. The American Indian tribes were dealt with as separate nations and the members of these tribes were considered to owe allegiance to their tribal governments. The Negroes were slaves, and bondsmen (both white and

colored) were excluded from citizenship. The first restriction of the 1790 naturalization law to be outgrown was the "free" of the "free white persons." Happily that adjective, with its odious implications, soon became meaningless and has at length been dropped. Next, by the Civil Rights Act of 1866, naturalization was opened to the Negro. Thus for the last seventy-seven years, a time-span which is approximately half of our total national life (a fact consistently minimized by appellant in his brief) the Negro has had the right of naturalization. It was not long before the tribal organizations of the Indian began to break down and the "red man" began inevitably to be absorbed into American life. Consequently provision was increasingly made for his naturalization, a process and growth ending in the blanket act of 1924 mentioned above. Not only has provision been made for the naturalization of the largest groups of non-whites within continental United States, but the naturalization of Negroes and Mongoloids in our territories and outlying possessions has been progressing. Thus the native Hawaiians and many Chinese residents of Hawaii were permitted to naturalize. The South Sea Island natives of Guam, the natives of Puerto Rico and many Filipinos have likewise been admitted to naturalization. Finally, by the Nationality Act of 1940, those of the Western Hemisphere of Indian blood, though they do not live in any of our territories or possessions, are admitted to naturalization as well. It is obvious that the historical trend has been away from race as a criterion of fitness for naturalization and that in the not too distant future, if this democracy survives the concentrated and synchronized assaults of its external and internal foes, personal worth and fitness, and not racial tags, will be the sole remaining basis for naturalization.

VI.

United States Immigration Policy Misinterpreted by Appellant.

The discussion of this country's immigration policy in appellant's brief (pp. 31-33) is no more relevant than is his treatment of the subject of naturalization. It is contended that "not only in matters of naturalization has Congress persisted generally in the policy of admitting to citizenship white persons only but that purpose runs through legislation affecting the immigration of colored races. . . . Thus Congress has evidenced its intention . . . to restrict immigration as well as naturalization to white persons" (p. 31).

This is neither the case nor the policy. The immigration to this country of individuals who are not classified as "white" continues. Otherwise there would have been no need to provide, as was done in the 1940 Nationality Act, for the naturalization of "descendants of races indigenous to the Western Hemisphere." Other notable exceptions could be mentioned, as the movement to these shores of Puerto Ricans.

But the irrelevance of this type of reasoning is apparent. The fact that Asiatics are excluded by the present immigration law can have no possible effect upon the rights of the American-born children of those Orientals who entered lawfully and in good faith in times past. In 1917 and again in 1924 drastic and restrictive immigration quotas were applied to many European countries. While total exclusion was not invoked in these cases, the reduction was so great for some countries from which large numbers of immigrants had come in the past, that the law had almost the practical force of exclusion. It

is obvious that the large numbers of immigrant parents of American-born children who came in the past, could not gain entrance to this country today under present quota restrictions; the difference in the numbers who formerly came and the number which can legally be admitted now, is simply too great. Yet no one would dare to suggest that the children of immigrants from southeastern Europe, because the parents of many or most of them could not now come to these shores under the more recent immigration regulations, should be divested of their citizenship!

VII.

Fourteenth Amendment Analyzed.

Having provided a narrow picture of the history of the naturalization and immigration policy of this country the appellant proceeds to offer his interpretation of the Fourteenth Amendment. He speaks of "the improbability that Congress by the adoption of the Fourteenth Amendment intended any change in the policy which it has steadily pursued during the century and a half of the Republic's existence, except as to Negroes." (p. 29.) Appellant accordingly denies that the Fourteenth Amendment "was intended to establish the citizenship of all other peoples of color born in the United States" (p. 34) and he contends that the *Wong Kim Ark* decision "in so far as it holds that Japanese are made citizens by the Fourteenth Amendment, is out of harmony with this entire history." (p. 33.)

How shallow and dangerous a doctrine this is can be demonstrated by analyzing appellant's own argument. His claim is that the first sentence of the Fourteenth Amendment was drafted with the Negro in mind. Therefore, he asserts, it is applicable only to the Negro. But in his dis-

cussion of the Thirteenth, Fourteenth, and Fifteenth Amendments appellant states:

> "We have quoted under the three preceding headings the pertinent provisions of the Thirteenth, Fourteenth, and Fifteenth Amendments because they had a common object and should be considered together. This relationship of the three amendments would more clearly appear if their several provisions had been incorporated in one amendment and, having the same objective, they might well have been so incorporated."

The Thirteenth Amendment abolished slavery, decreeing, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Like the Fourteenth Amendment it mentions no race. As in the case of the Fourteenth Amendment the condition of the Negro was the immediate incentive in its formation. Appellant recognizes the parallels between the Thirteenth and Fourteenth Amendments. He would even "improve" on the Constitution and merge them. But, to follow appellant's reasoning, if the Fourteenth Amendment, because it was framed with the Negro in mind, is applicable only to him, is this not equally true of the Thirteenth Amendment? And is it then not permissible, under the Constitution, to enslave and to hold in involuntary servitude, any persons except Negroes? What court in the land would uphold such a monstrous conclusion? What court would not affirm, to use the language of the Supreme Court in the *Wong Kim Ark* case, that "the broad and clear words of the Constitution" forbid slavery and involuntary servitude imposed

anywhere, everywhere in the United States upon *any* person?

The fallacy involved here is one of parvanimity as well as of simple logic. It is assumed that, because specific historical conditions led to the framing of a principle, the principle is henceforth chained to the precise event that gave it birth. If this were true, neither law nor man could rise above the petty disputes of the moment. Because certain definite injustices caused our Founding Fathers to proclaim that "all men are created equal" it does not follow that only those men are created equal who face the identical discriminations and irritations suffered by the authors of the phrase. We recognze that the framers of the Declaration enunciated a *principle* that has rung through the years and has heartened liberty-loving men in many places and under many conditions. So it is with the Fourteenth Amendment. Its immediate consequence may have been to prevent the denial of citizenship to the Negro by the embittered southern States in which most of the Negroes lived. One can be sure that its framers did not wish to see the Negro reduced to a stateless and helpless minority, forced to stand apart from the national stream, doomed to be the butt of every political sadist. But the *principle* that was enunciated then—that we must not have born on our soil a group of persons who may not, because of a cruel barrier of race, participate in the rights and obligations of citizenship—is as sound today as it was in 1870. Then the people whom it happened to protect were Negroes. Today they are American-Chinese, Amer-

ican-Filipinos, American-Koreans, and Americans of Japanese ancestry. Tomorrow it may be another group. The true relation of the Thirteenth, Fourteenth, and Fifteenth Amendments of the Constitution to the Negroes is that they are a shield protecting human rights on which is emblazoned: "You shall not do again to others as you did it unto these."

VIII.

Appellant's Construction of Fourteenth Amendment Faulty.

The central claim of appellant is that the Fourteenth Amendment does not mean what it says. Despite language which the decision of the Supreme Court found "broad and clear" he deems it necessary to "construe" its grant of citizenship by birth to apply only to those "eligible to citizenship under the naturalization laws." (Appellant's Brief, p. 34.) If this construction were followed, the Amendment would have a new meaning every time the naturalization laws were altered. For instance, it would have had one meaning before the enactment of the recent provision which permits the naturalization of descendants of races native to the New World and another meaning afterward. The Constitution, to which the people of this country have looked as a stable bulwark of their rights and of national principles, would become so much legislative putty.

IX.

Fourteenth Amendment Expresses Common Law and Jus Soli.

The reason why the Fourteenth Amendment means precisely what it says and why its language is unmistakably "broad and clear," is that it was no makeshift expedient to solve the pressing Negro question only, no political reprisal, as appellant hints (Appellant's Brief, p. 34), but an explicit and definitive expression of a rule of citizenship recognized in the common law and usage of this republic from its very beginning. This is the rule of *jure soli* or citizenship by reason of birth in a particular place.

When Mr. Mason inquired of Mr. Marcy, Secretary of State, whether our government's policy was governed by the policy of *jure soli,* he received this reply from the Secretary of State, dated June 6, 1854:

> "I have to observe that it is presumed that, according to the common law, any person born in the United States, unless he be born in one of the foreign legations therein, may be considered a citizen thereof until he formally renounces his citizenship. . . ." (John Bassett Moore, *A Digest of International Law,* Vol. III, pp. 276-7.)

Proof that the Fourteenth Amendment is merely the articulation of a well-understood principle of our common law which long antedates it, is contained in the letter of Mr. Fish, Secretary of State, to Mr. Marsh, May 19, 1871. Wrote Mr. Fish:

> "The 14th amendment to the Constitution declares that 'all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citi-

zens of the United States.' This is simply an affirmance of the common law of England and of this country, so far as it asserts the status of citizenship to be fixed by the place of nativity, irrespective of parentage. . . ." (John Bassett Moore, *A Digest of International Law,* Vol. III, p. 278.)

The common law background of the Fourteenth Amendment, and the application of the Amendment to races other than the Negro, was reviewed many years ago by Max J. Kohler, formerly Assistant United States District Attorney, New York, in his scholarly article, "Un-American Character of Race Legislation." On this point he said:

> "As regards the negro, we built up a mass of discriminations running counter to our English common law of the most far-reaching and serious character which it required the sacrifice of blood and treasure of the Civil War to overcome. Many of these discriminations may be conveniently studied in Hurd's 'Law of Freedom and Bondage.' The fourteenth amendment to the federal constitution had the effect of making the most serious of these null and void, not merely in favor of the negro, but in favor of other races and classes also." (*The Annals of the American Academy of Political and Social Science,* Vol. 34, No. 2, 1909, p. 61.)

Our Secretaries of State have repeatedly taken particular pains to clarify the broad outline of the meaning of the common law and the Fourteenth Amendment on this subject of citizenship at birth. In 1889 Costa Rica tried to force a youth whose allegiance it claimed but who had been born in the United States, to perform military drill. With the details of the case we are not concerned here,

but of great significance is this sentence contained in the instructions to Mr. Merry, minister to Costa Rica, from Mr. Hay, Secretary of State:

> "He [Pinto] was born in the United States, and no principle is better settled than that birth in the United States, irrespective of the nationality of the parents, confers American citizenship." (John Bassett Moore, *A Digest of International Law,* Vol. III, p. 534.)

The whole question of citizenship by birth has been thoroughly examined by Richard W. Flournoy, for many years Assistant Solicitor to our Department of State and adviser to our government on matters of nationality, now Professor of International Law at the National University Law School and co-author with Professor M. O. Hudson of the standard volume in its field, *A Collection of Nationality Laws of Various Countries.* Wrote this authority on laws of nationality:

> "I have spoken in some detail of the British law of nationality because our own law of nationality was taken from it. While the Constitution of the United States did not in its original form state what persons were to be considered citizens of the United States, it did speak of 'natural born citizens,' (Article 2, section 4) and the courts, when called upon to decide who were natural born citizens, held that this term referred to the English common law and should be construed in accordance with it. As early as the year 1804 Chief Justice Marshall, in rendering the decision of the Supreme Court in the case of *The Charming Betsy* (1804, U. S. 2 Cranch, 64) had assumed that persons born in the United States were citizens of this country, and in the case of *Inglis v. Trustees of*

Stailor's Snug Harbor (1830, U. S. 3 Pet. 99, 164) Justice Story, in the course of his opinion said:

"'Nothing is better settled at the common law than the doctrine that the children even of aliens born in a country, while the parents are resident there under the protection of the government, and owing a temporary allegiance thereto, are subjects by birth.'

"The whole subject of native citizenship was thoroughly reviewed by Assistant Vice Chancellor Sandford in his admirable opinion in the case of Lynch v. Clarke (1844, N. Y. Ch. 1 Sandf. 583) decided in 1844. This opinion is notable for its common sense and originality as well as for its unusual thoroughness and evidence of wide learning. Up to this time citizenship in the United States had been regarded generally as pertaining primarily to the individual states which had separately adopted the English common law, but Judge Sandford treated citizenship as essentially national, and thereby anticipated by more than two decades the declaration concerning citizenship contained in the Fourteenth Amendment to the Constitution. In the course of his opinion he said:

"'The provisions of the Constitution of the United States demonstrate that the right of citizenship, as distinguished from alienage, is a natural right or condition, and does not pertain to the individual states. (p. 641.) . . . It is indispensable that there should be some fixed, certain and intelligible rules for determining the question of alienage or citizenship. The place of nativity furnishes one as plain and certain, and as readily to be proved, as any circumstance which can be mentioned.' (p. 658.)

"Judge Sandford goes on to observe that, because of the presence in this country of alien immigrants in such large numbers, if *jus sanguinis* should be rec-

ognized as the sole basis of nationality this might lead to 'the perpetuation of a race of aliens' (p. 673). This decision was followed by Attorney General Black in an opinion rendered July 18, 1859, (9 Op. Atty. Gen. 373).

"On April 9, 1866, Congress passed the Civil Rights Act, (14 Stat. at L. 27), which contained the following provisions:

"'All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States.'

"Two years later the Fourteenth Amendment to the Constitution was adopted, the first section of which provided that

"'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside.'

"As Mr. Van Dyne states, in his excellent and reliable book on *Citizenship of the United States,* (1904, p. 7) 'these two definitions, which are practically identical, are declaratory of the common law.' In support of this statement he quotes a number of decisions of the courts, and in particular the decision of the Circuit Court of the United States in the case of *Re Look Tin Sing* (1884, C. C. D. Calif. 10 Sawyer, 353, 21 Fed. 905) and the decision of the Supreme Court of the United States in the case of *United States v. Wong Kim Ark,* (1898, 169 U. S. 649, 18 Sup. Ct. 456) in both of which it was held that a person born in the United States of Chinese parents was a citizen of the United States. In these decisions much reliance was placed upon the decision in Lynch v. Clarke. The provisions of the Civil Rights Act and the Fourteenth Amendment added

nothing to the existing law, except, perhaps, to make it clear that persons born in the United States of African parents are citizens of this country." (*Yale Law Journal,* Vol. 30, No. 6, 1921, pp. 545-564.)

This summary of evidence affords no comfort whatever to appellant's assertion that race distinctions are implied in the Fourteenth Amendment, and that the *Wong Kim Ark* decision misinterpreted the Fourteenth Amendment and interrupted a policy that had been followed from 1790 to 1866. (p. 33.) Instead it is abundantly demonstrated that the Fourteenth Amendment is the unequivocal and eloquent reaffirmation of an historic principle which admitted of no invidious distinctions of race.

The courts, government spokesmen, and eminent students of nationality and international law have all considered the question raised by appellant and uniformly express an opinion diametrically opposed to his. For example, Flournoy, in the article just cited, imagines the most extreme of cases in order to drive his point home:

> "'But,' one may ask, 'if a Chinese merchant and his wife are returning from Europe to China via the United States, and a child is born to the woman in San Francisco the day before they sail, is such child, by the mere accident of having first seen the light in this country, a citizen of the United States?' Absurd as it may seem, the child is indeed a citizen of the United States under the law of this country, although it is also a Chinese citizen under the law of China. Although it is unfortunate that such cases are possible, there is, on the other hand, much practical advantage in a system in which mere proof of birth in the United States is sufficient proof of citizenship.

This is remarked upon by Judge Sandford in the opinion to which I have called attention.

"So much for citizenship through birth in the United States, under *jus soli,* which is the basic principle of our law of nationality. . . ."

Professor M. Borchard, distinguished student of nationality problems, who has served as an expert on International Law at the Hague and who has been Assistant Solicitor in our Department of State, takes up this same topic in a number of places in his book, *The Diplomatic Protection of Citizens Abroad.* Dr. Borchard, unlike the appellant, sees no conflict between the true meaning of the Fourteenth Amendment and the *Wong Kim Ark* decision. On page 577 of his book he points out that the United States is not alone in granting citizenship to all those born on its soil, regardless of race, listing Great Britain, Argentina, Venezuela, Chile, Bolivia, Brazil, Peru, Ecuador, Uruguay, Paraguay, Portugal, Mexico, Haiti and San Domingo as nations following the system of *jus soli* also.

On page 458 he writes,

> "Prior to the Fourteenth Amendment, the Constitution of the United States did not declare who were and who were not citizens, nor did it define the constituent elements of citizenship. The Fourteenth Amendment, while intended primarily for the negro race, has in fact conferred citizenship upon persons of all other races, 'born or naturalized in the United States and subject to the jurisdiction thereof'!"

On page 580 he states his opinion and interpretation in the plainest language:

> "According to the Fourteenth Amendment to the Constitution and under Art. 1992 of the Revised Statutes, a child born in the United States of alien parents—whether permanently or temporarily here resident, and whether themselves capable of acquiring citizenship or not—is a citizen of the United States."

Another learned figure who has treated the subject, is Professor John Bassett Moore. On page 280 of Volume III of his *Digest of International Law,* in the section dealing with citizenship by birth, he gives his expert and concise opinion and lists the decisions and authorities which have led him to it:

> "A child born in the United States, whose parents, though of Chinese descent and subjects of the Emperor of China, are domiciled in the United States, is a citizen of the United States by birth, within the meaning of the Fourteenth Amendment.
>
> ". . . In the case of In re Look Tin Sing, 21 Fed. Rep. 905, however, it was held that a child born in the United States to alien Chinese parents, who could not themselves become naturalized, was nevertheless a citizen by birth; and, if this were so, the child born of parents who were subject to no disability would *a fortiori* be a citizen. The decision of the Supreme Court in the case of Wong Kim Ark, affirming the principle laid down in the case of Look Tin Sing, authoritatively settles the question as to the children of domiciled aliens.
>
> "See, also, Gee Fonk Sing v. United States, 49 Fed. Rep. 146; Benny v. O'Brien (N. J.), 32 Atl. 696;

Ex parte Ching King, 35 Fed. Rep. 354; Mr. Wharton, Act. Sec. of State, to Mr. Johnson, July 24, 1891, 182 MS Dom. Let. 583; Mr. Gresham, Sec. of State, to Mr. Runyon, amb. to Germany, April 19, 1895, For. Rel. 1895, I. 536; Mr. Day, Sec. of State, to Mr. Denby, min. to China, May 26, 1898, For. Rel. 1898, 203."

X.

Racial Basis for Citizenship by Birth Rejected in Nationality Law.

Congress, as well as the courts and distinguished students of the law, has clearly recognized that under the Constitution every child born on the soil of the United States, regardless of race or the eligibility of its parents to naturalization, is a citizen of the United States. For convincing proof of this it is only necessary to consider Chapter II of the Nationality Code now in force which deals with "Nationality at Birth," and to compare it with the contents of Chapter III, "Nationality Through Naturalization." Following the common law and the Fourteenth Amendment the first and most important subsection of Sec. 201 of Chapter II simply invokes our traditional *jus soli* in these forthright words:

> "The following shall be nationals and citizens of the United States at birth:
>
> "(a) A person born in the United States, and subject to the jurisdiction thereof;"

There is no mention of "white persons" or "persons of African nativity or descent." There is no employment

of the restrictive term "only." There is no mention of race, creed or color at all.

In fact, the only mention of race in Sec. 201, is to protect doubly the rights of some members of the Mongoloid stock, the American Indians. Because in the past the United States has entered into negotiations and has consummated treaties with various Indian tribes, subsection (b) specifically mentions the citizenship rights of "A person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: *Provided,* That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;"

Of considerable interest is subsection (f) which declares that "a child of unknown parentage found in the United States, until shown not to have been born in the United States" is a national and citizen. Again there is a complete absence of restrictions based on race. Since there are in this country mature persons of Caucasoid, Mongoloid and Negroid stocks, adults who are eligible for naturalization and some who are not, the mother and father of a child of unknown parentage might conceivably belong to any one of these categories. By avoiding mention of any disqualification based on race, Congress obviously is in principle admitting to citizenship the offspring of those who may not themselves be eligible for naturalization under present law.

XI.

Naturalization Regulated by Congress; Citizenship by Birth Regulated by the Constitution.

Turn now to Chapter III, which deals with nationality through naturalization. Sec. 303 reads:

> "The right to become a naturalized citizen under the provisions of this Act shall extend only to white persons, persons of African nativity or descent, and descendants of races indigenous to the Western Hemisphere: *Provided,* That nothing in this section shall prevent the naturalization of native-born Filipinos having the honorable service in the United States Army, Navy, Marine Corps, or Coast Guard as specified in section 324, nor of former citizens of the United States who are otherwise eligible to naturalization under the provisions of section 317."

In this law those races and sub-races which shall be admitted to naturalization are explicitly named. The restrictive "only" is invoked to bar those not specifically mentioned. It is obvious that Congress does not hesitate to delimit and prescribe in the field of naturalization.

The meaning of this difference in the spirit and wording of Chapters II and III of our Nationality Law of 1940 is obvious. Congress is authorized by the Constitution to pass legislation controlling naturalization. It has done so and the results are embodied in Chapter III of our Nationality Law. In the naturalization laws now in effect Congress still maintains some restriction based on race, though, as has been pointed out, not of the kind and degree appellant would have us believe exists. Whether any such restrictions are wise or foolish, good or bad, is not the point at issue now.

On the other hand, nationality at birth is broadly governed, not by congress, but by our time-honored system of *jus soli* as proclaimed in the Fourteenth Amendment. In recognition of this the laws which Congress has framed relating to nationality at birth and which appear in Chapter II of the Nationality Law are in complete harmony with the Fourteenth Amendment as construed in the *Wong Kim Ark* case. They embody no restrictions based on race. In Chapter II of the Nationality Law, therefore, congress has accepted the same interpretation of the Fourteenth Amendment that the Supreme Court voiced in the *Wong Kim Ark* case when it decided:

> "The fact, therefore, that acts of Congress or treaties have not permitted Chinese persons born out of this country to become citizens by naturalization, cannot exclude Chinese persons born in this country from the operation of the broad and clear words of the Constitution, 'All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States. . . .'"

XII.

United States Protests Discriminations Based on Race.

Since the appellant's action to deprive persons of Japanese ancestry of citizenship is based on charges involving race and religion (Appellant's Brief, p. 42) it is pertinent to observe that in its dealings with other nations, our government has not tolerated discriminations based on race and creed. Professor Raymond Leslie Buell has summed up this aspect of our policy in these words:

> "The United States has also stood for the principle of nondiscrimination, as far as its own interests are concerned, not only in commerce as evidenced by

its insistence on the open door policy, but also in matters of race and nationality.

"In 1882 Spain passed a law prohibiting the landing of foreign negroes in Cuba, unless on condition of depositing $1,000. Mr. Frelinghuysen stated that if any such requirement would be enacted against an American citizen in Cuba, the State Department would remonstrate against it 'as imposing a race discrimination not foreseen by treaty, or recognizable under the amended Constitution.' When Russia withheld a certain license from an American Jew in 1873, Mr. Fish, Secretary of State, declared that this action 'on account, as is understood, of his being a Hebrew of foreign birth,' seemed to be in direct violation of the treaty, the purpose of which was to place all citizens of the United States in Russia 'on the same footing as native Russians.'

"When the expulsion of two American Jews from Palestine was reported in 1885, Mr. Bayard, Secretary of State, declared that friendship and comity entitled the United States 'to ask and expect that no race or class distinction shall be made as regards American citizens abroad, and this Government cannot acquiesce in any such proscriptive measures which compel its citizens to abandon Turkey solely on account of their religious proclivities.'

"A more vigorous protest still was made by John Hay, Secretary of State of the United States, in 1902, against discriminatory treatment of Jews in Rumania. In a note of August 11, he declared 'The political disabilities of the Jews in Rumania, their exclusion from the public service and the learned professions, the limitations of their civil rights, involving as they do wrongs repugnant to the moral sense of

liberal modern peoples, are not so directly in point for my present purpose as the public acts which attack the inherent right of man as a bread winner in the ways of agriculture and trade. The Jews are prohibited from owning land or even from cultivating it as common laborers. . . .'

"As a result of the agitation over the discriminatory treatment of Jews by Russia, the House of Representatives adopted the following resolution on December 13, 1911, by a vote of 301-1 (87 not voting):

"House Joint Resolution 166, providing for the termination of the treaty of 1832 between the United States and Russia.

"*Resolved, etc.*, that the people of the United States assert as a fundamental principle that the rights of its citizens shall not be impaired at home or abroad because of race or religion; that the Government of the United States concludes its treaties for the equal protection of all classes of its citizens, without regard to race or religion; that the Government of the United States will not be a party to any treaty which discriminates, or which by one of the parties thereto is so construed as to discriminate, between American citizens on the ground of race or religion; that the Government of Russia has violated the treaty between the United States and Russia, concluded at Saint Petersburg, December 18, 1832, refusing to honor American passports duly issued to American citizens, on account of race and religion; that in the judgment of the Congress said treaty for the reasons aforesaid, ought to be terminated at the earliest possible time; that for the aforesaid reasons the said treaty is hereby declared to be terminated and of no further

force and effect from the expiration of one year after the date of notification to the Government of Russia of the terms of this resolution, and that to this end the President is hereby charged with the duty of communicating such notice to the Government of Russia." (*World Peace Foundation Pamphlets,* Vol. VII, Nos. 5-6, 1924, pp. 302-04.)

Is it possible that we shall practice at home what we have so vigorously rejected abroad?

XIII.

Other Groups Besides Japanese Involved.

It is not without interest that appellant throughout his briefs seeks to give the impression that his action involves persons of Japanese ancestry alone. Thus his original complaint for injunction named only persons of Japanese ancestry whom he claimed were being unlawfully registered. (Appellant's Brief, pp. 5, 6, 7, 16.) In decrying the *Wong Kim Ark* decision he argues, "That decision in so far as it holds that *Japanese* [italics inserted] are made citizens by the Fourteenth Amendment, is out of harmony with this entire history." (Appellant's Brief, p. 33.) Pages 40-47 of the brief are an unrestrained attack on what appellant pleases to call "the Japanese race." This section is not improved by the insertion of some of the worst and most bombastic efforts of poets of another era.

But this Court must know that, in spite of the appellant's exploitation of war-time hysteria and current racial prejudices against those of Japanese ancestry, this action is in reality aimed at persons of many diverse ethnic backgrounds. Why did appellant not complain about the registration and exercise of the franchise of Americans of Chinese ancestry, who will be just as surely deprived of

citizenship and the rights of citizenship if this appeal to the courts succeeds? After all, the *Wong Kim Ark* decision which the appellant seeks to have reversed had as its central figure a person of Chinese ancestry. The verdict in that case was based to a considerable degree on a prior decision which likewise involved an individual of Chinese ancestry.

Though only those of Japanese ancestry are named, it is plain that the appellant has other groups in mind also when he says, "The construction that it grants citizenship to the Negro and to all whites born in this Country accomplishes every purpose which can fairly be attributed to Congress and excludes the repellant thought that it was intended to achieve the citizenship of all other peoples of color born in the United States and, in this connection, it might be remembered that the other people of color embrace from three-fifths to two-thirds of all the peoples of the world." (Appellant's Brief, pp. 34-35.) The appellant evidently finds the citizenship of the Americans of Chinese ancestry "repellent." He finds the citizenship of Americans of Filipino, Korean, British Indian, and American Indian ancestry equally "repellant."

XIV.

Interests of Negroes and This Case.

The appellant ends his brief with this statement, "The status of the Negro is in no way involved in this case. Neither the citizenship of the Negro nor his eligibility to naturalization is questioned." It is significant that the appellant cannot say this of the Americans of Chinese and Filipino ancestry or of the many others who could be named. They would certainly and instantly be affected.

It is doubtful whether the Negro will be greatly relieved by the reassurance offered, however. The very fact that the appellant found it necessary to make this reference attests to the deep uneasiness with which the Negro is watching actions of this kind. The Negro recognizes this assault as a move against that little corner of security possessed by any American minority group of color. He realizes that, except for the absence of war hysteria or other externalized emotionalism directed against *him* at the moment, he stands in precisely the same position as those of Japanese ancestry.

That is why Harry Paxton Howard, a well-known Negro journalist, wrote in *The Crisis,* the official organ of the National Association for the Advancement of Colored People, in September, 1942:

"The hapless citizens [of Japanese ancestry] who have been deprived of their constitutional protection have the misfortune to include among their ancestors persons of a non-white country with which the United States is now at war. It is the 'non-white' which must be emphasized. American citizens of German, Italian, Hungarian, Bulgarian, or Roumanian ancestry have not been legally discriminated against. It is only our citizens of Japanese ancestry who have been put into concentration camps. They are not 'white'—they are 'not to be trusted.' . . .

"Negroes have been told again and again: 'Work quietly, be industrious, mind your own business, and you will get justice even in America.' That is what these yellow-skinned Americans believed. They worked cheerfully and grew vegetables and fruits for themselves and for others. They distinguished themselves at school, abstained from politics, had the lowest crime-rate of any group in the entire country. They

earned the respect of all decent white persons who came in contact with them, overcoming racial prejudice among tens of thousands; . . .

"This is an integral part of the struggle for human and racial equality. It concerns every Negro."*

If this case were an only and isolated instance of activity of its kind the Negro might be inclined to accept the appellant's estimate of its consequence for him. But the Negro knows that this is but a skirmish in a campaign that will overwhelm and dispossess him if it reaches its ultimate goal. The Negro will note that in the appellant's brief, or wherever they occur, the attacks upon those of Japanese ancestry are always linked with the concept of a "white" America. He will not fail to comprehend the implications of the appellant's argument that the Founding Fathers "designed that those who thereafter became citizens should be Europeans" (Appellant's Brief, p. 26), that the "ourselves" of the Constitution "included white people only," and that "We, the People of the United States," are "the white people—the American people. . . ." (Appellant's Brief, p. 47.) The Negro is aware that those who are using the war as an excuse for raising the race issue are not depending upon this case exclusively. Bills to penalize citizens of the Yellow Race in a variety of ways are being introduced into the legislatures of western states. The legislatures of certain states have passed resolutions asking Congress to frame a Constitutional Amendment which shall strip those of Oriental ancestry of their citizenship.

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*Two of counsel herein, Hugh E. Macbeth and Thomas L. Griffith, are members of the Negro race; the latter is Southern California Chairman for the National Association for the Advancement of Colored People.

The Negro is not comforted to learn that the prime movers in this many-sided effort to rescind the citizenship of those of Mongoloid ancestry are the very persons and organizations who have made unpleasant allusions to his own rights. Representative Rankin of Mississippi is an enthusiastic champion of all possible judicial and legislative reprisals against those of Japanese ancestry. On February 19, 1942, this congressman announced in a speech in the House: "This is a race war. . . ." On February 28, 1942, he made a speech on the floor of the House in which he linked the "negro problem" and the Japanese problem. (*Congressional Record,* Vol. 88, No. 42, pp. A839-41.) The Negro is anxiously wondering whether the southern congressmen who have claimed to "understand" the "race problem" of the Pacific Coast, will not one day expect a *quid pro quo.*

The lineal descendant of the old Asiatic Exclusion League and the Japanese-Korean Exclusion League is the California Joint Committee on Immigration. The anti-Oriental activities of these organizations and the exaggerations and distortions they sowed widespread are revealed in the Second Tolan Committee Report. (House Report No. 2124, 77th Congress, 2nd Session, pp. 72-90.) The appellant is an officer of a group affiliated with the Joint Committee on Immigration. The Native Sons of the Golden West, one of the affiliated groups of the Joint Committee, have made no secret of the fact that they have raised the funds for the purpose of presenting and appealing this case.

But the Joint Committee does not devote all of its attention to those of Japanese ancestry. According to a state-

ment presented to the Tolan Committee (San Francisco Hearings, Feb. 21, 1942, pp. 11085-11087) "it is maintained primarily to protect the [Asiatic] exclusion measure against repeal or modification. . . . The basic principle of exclusion of those ineligible to citizenship must not be destroyed or weakened, either by grant of quota or by grant of naturalization to the colored races of Asia." The interests of the Joint Committee go beyond this, even, for Mr. Robert Fouke, representing the Committee, admitted under questioning, "Our committee is concerned . . . with the Mexican problem" (p. 11074).

But the Negro has been particularly concerned with certain sections of the statement left with the Tolan Committee by Mr. Fouke. These speak "of the determination of the Caucasians to keep their country and their blood white" and of the "grave mistake" that was made "when citizenship was granted to all born here. . . ." The most startling and provocative sentence is the one that flatly declares: "Another grave mistake was the granting of citizenship to the Negroes after the Civil War."

If the appellant, a prominent member of the all-too-powerful organization which framed this sentiment, wins this case and thus vindicates his claim that the Fourteenth Amendment had for its soles purpose the establishment of citizenship of Negroes, the first step in the "white America" program will be won. The next step, as surely as night follows day, will be to propose a constitutional amendment to "rectify" the "grave mistake" of "the granting of citizenship to the Negroes after the Civil War" and to surrender the final victory to Hitlerism, no matter how the tide of actual battle has gone.

XV.

Questions of Assimilation, Religion, and Loyalty Considered.

Perhaps the most amazing part of the appellant's brief is a series of totally unsubstantiated charges hurled without discrimination at all "Japanese," whether they be Japanese in Japan, long-time residents in America who are Japanese nationals, or American citizens of Japanese ancestry. The American citizens of Japanese ancestry, the great majority of whom have never seen Japan, are saddled by the appellant with responsibility for Japanese foreign policy and the war! All this is based on the theory that those who belong to the same general physical type must be identical in behavior, attitudes, and allegiance, no matter what their training or background has been. Thus, appellant says, "Because of racial characteristics of the Japanese, assimilation with Caucasians is as impossible as it is undesirable. . . . Dishonesty, deceit, and hypocrisy are racial characteristics. . . ." This thesis, that mental and moral traits are determined by physical type or race and that a total way of life (or what sociologists and anthropologists call *culture*) is the reflection of undeviating qualities inherent in a group of physically similar persons, is borrowed from Hitler and his kind. It is their excuse for race persecution and the basis of their claim to race superiority, for, of course, they credit their own biological type with all the virtues they can enumerate and leave the less desirable traits for others.

In his speech of September 3, 1933, at Nuremberg, Hitler declared:

> "Almost all the peoples of the world are composed today of different racial primary elements. These

original elements are each characterized by different capacities. Only in the primitive functions of life can men be considered as precisely like each other. Beyond these primitive functions they immediately begin to be differentiated in their characters, their dispositions and capacities. The differences between the individual races, both in part externally and, of course, also in their inner natures, can be quite enormous and in fact are so. . . ."

In 1932, in his address to the Dusseldorf Industry Club, Hitler emphasized the same theme, saying:

"It is beyond question that certain traits of character, certain virtues, and certain vices always recur in peoples so long as their inner nature—their blood-conditioned composition—has not essentially altered."

This pernicious doctrine, which has led man to ruin and war, is unanimously opposed by anthropologists, phychologists, biologists, sociologists, and all who have made the study of man their task. It is the consensus of informed opinion that the most important and unique fact about man is that his habits of thought and action are *not* an expression of biology or race, but a result of his training and social surroundings. As professor Ruth Benedict of Columbia University has said in her *Patterns of Culture:*

"An Oriental child adopted by an Occidental family learns English, shows toward its foster parents the attitudes current among the children he plays with, and grows up to the same professions that they elect. . . . All over the world, since the beginning of human history, it can be shown that peoples have been able to adopt the culture of peoples of another blood. There is nothing in the biological structure of man that makes it even difficult. Man is not committed in

> detail by his biological constitution to any particular variety of behaviour. . . . Culture is not a biographically transmitted complex."

Professor M. F. Ashley Montagu, speaking for the biologists, has written:

> "As a biologist it seems to me that the principal fact which all students of human behavior must continually hold before their minds is that man, alone among the members of the animal kingdom, is more dominantly and preeminently a creature influenced by his cultural history than by his ancestral or individual biological history. And in this fact lies the uniqueness of man." (*Annals of the American Academy of Political and Social Science,* September, 1941.)

According to these authorities, and to dozens of others who could be cited, the "ancestry" of those Americans born of Japanese parents is no barrier to their appreciation of and participation in American life. Moreover, it is absurd to claim that any *race* is innately incapable of assimilation into American life, for modern American culture is a pattern of elements which have originated with many peoples and in all quarters of the globe. Professor Ralph Linton of Columbia University has, in his *Study of Man,* wittily deflated this indefensible and undemocratic notion, the child of ignorance and provincialism:

> "Our solid American citizen awakens in a bed built on a pattern which originated in the Near East but which was modified in Northern Europe before it was transmitted to America. He throws back covers made from cotton, domesticated in India, or linen, domesticated in the Near East, or wool from sheep, also domesticated in the Near East, or silk, the use of which was discovered in China. . . . He takes off

his pajamas, a garment invented in India, and washes with soap invented by the ancient Gauls. He then shaves, a masochistic rite which seems to have been derived from either Sumer or ancient Egypt. . . .

> "When our friend has finished eating he settles back to smoke, an American Indian habit, consuming a plant domesticated in Brazil. . . . While smoking he reads the news of the day, imprinted in characters invented by the ancient Semites upon a material invented in China by a process invented in Germany. As he absorbs the accounts of foreign troubles he will, if he is a good conservative citizen, thank a Hebrew deity in an Indo-European language that he is 100 per cent American."

Unscientific too, is appellant's blanket condemnation of a whole group of people. If individual differences are not to be recognized in this country, if the individual personality is not to be respected, if Nazi notions of mass or race guilt are fit evidence to place before an American court, what quarrel can there be with the totalitarians?

In his book, *Prometheus,* Professor H. S. Jennings has enunciated the scientific basis for individuality, and, incidentally, for democracy:

> "Every pair of human parents contains thousands of pairs of the packets of chemicals on which development depends. From these a set is drawn almost at random . . .; this constitutes the heritage of the child. Any pair of parents may thus produce, not merely thousands, but millions, of different combinations, each yielding a child of different characteristics."

And Professor Franz Boas, the leading anthropologist of our time, has eloquently struck out in his *The Mind of*

Primitive Man, at the shabby habit of thought which underlies appellant's argument:

> "Our tendency to evaluate an individual according to the picture that we form of the class to which we assign him, although he may not feel any inner connection with that class, is a survival of primitive forms of thought. The characteristics of the members of the class are highly variable and the type that we construct from the most frequent characteristics supposed to belong to the class is never more than an abstraction hardly ever realized in a single individual, often not even a result of observation, but an often heard tradition that determines our judgment.
>
> "Freedom of judgment can be attained only when we learn to estimate an individual according to his own ability and character. Then we shall find, if we were to select the best of mankind, that all races and all nationalities would be represented."

Science therefore disposes effectively of the idea that individuals of a group are all alike in personality or that racial characteristics either of an individual or a group necessarily prevent assimilation. The question, then, is whether Americans whose parents or more remote ancestors happened to be born in Japan have taken advantage of American institutions and have made a conscientious effort to identify themselves with American ideals and American standards?

Fortunately it is not necessary to guess or to resort to empty verbalism about the matter. The question has been thoroughly investigated a number of times. In 1937 W. C. Smith, Professor of Sociology at Linfield College, published his *Americans in Process: A Study of Our Citizens of Oriental Ancestry.* This book is

not devoted to the study of those of Japanese ancestry alone, but it is eloquent with evidence relating to the assimilation, adjustment, effort, and patriotism of this group. A much more ambitious investigation, and one of the most thorough ever made of any group, was that made possible by a substantial grant from the Carnegie Corporation in 1929 to Stanford University. The work was carried out under the direction of Professor E. K. Strong and resulted, beginning in 1933, in the publication of four volumes. It is a sad commentary on the degree to which perspective is lost when war hysteria grips a nation to realize that questions of loyalty and evacuation were settled on the basis of false Pearl Harbor rumors and panicky harangues of politicians, while factual reports of this nature were forgotten or ignored. Professor Strong and his large staff of co-workers used every possible source and device in gathering the data,—school records, crime records, business records, intelligence tests, aptitude tests, interviews, questionnaires, life histories, etc. The massive body of evidence cannot be given in full, but a few summary statements from Professor Strong's *The Second-Generation Japanese Problem* will indicate its nature:

> "The word 'assimilation' has two meanings—interbreeding and comprehension of political and social conditions. In the latter sense, the young Japanese are more readily assimilated than people of several European races; . . ." (p. 26).
>
> . . . . . .
>
> "Evidently the Japanese immigrants have had far better education than that with which they have been credited, and their children are taking full advantage of the public schools of California. Such data as we

have suggest that in this respect they average as well as whites" (p. 189).

. . . . . .

"Mentally and morally the Japanese-Americans are similar to whites. The whites score slightly higher on tests of intelligence. This may be due to poorer acquaintanceship of Japanese-Americans with the English language in which the tests are given. . . . Morally the Japanese-Americans are possibly superior to the whites; at least their record in delinquency and crime is better. . . .

"Considering their opportunities, the second generation have so far made an excellent record. They are eager for education; and they obtain higher marks, at least in junior and senior high school, than the average pupil. Records based on half of those who have graduated from Stanford University and the University of California during 1920-30 indicate that they are progressing satisfactorily.

"Physically there are differences between the two groups. The Japanese-American is shorter and scores lower in strength tests, but on the other hand his reactions are quicker. These differences are probably of little practical significance" (p. 252).

In another of this series of books, *Vocational Aptitudes of Second-Generation Japanese,* these representative statements occur. Particularly significant, in view of the appellant's sweeping comments on "dishonesty, deceit, and hypocrisy" are a number of the excerpts:

"The vocational interests of Japanese and whites are very similar. Their interests correlate between .71 and .94, depending upon the educational status

of the groups compared and upon the method of measuring the similarity" (p. 112).

. . . . . .

"There is little or nothing in the data in this section to warrant the statement that Japanese as a class are tricky, deceitful, and dishonest. Their credit ratings are so nearly equal to those of the whites as to warrant the belief that they behave in practically the same way as their white competitors" (p. 147).

. . . . . .

"On the basis of an adaptation of Voelker's honesty test, 12-year-old Japanese children obtained an almost perfect score (99.9), with Chinese second (87), in comparison with the score of 50 for Anglo-Saxons; . . ." (p. 154).

. . . . . .

"We must conclude that the Japanese have made a fine record in this state as far as crime is concerned. As regards both juvenile delinquency and convictions for serious offenses, the records reveal less than their proportionate share of cases" (p. 173).

. . . . . .

"Adaptability is an important trait, possibly one of the most important, in earning a living. The two rough measures of it, in terms of delinquency-crime and honesty, indicate that the Japanese are superior in this respect to many immigrant groups who have come to this country.

The most important single measure of an individual is his general intelligence score. This is the best standardized of all phychological tests, and its significance is best established. Review of the literature makes clear that the two racial groups are about equal in this respect" (p. 177).

Another volume of the series is *The Japanese in California.* In view of unsupported charges of the appellant about the regard for Japan which Americans of Japanese ancestry are alleged to have, a quotation or two from this volume may be apposite, if only to show the difference between prejudice and the results of investigation:

> "Practically none of the second generation born and raised in the United States expressed any desire to go to Japan. Some feel that they may be forced to go in order to find positions, but few really want to do so if they can find an opening in this country. There is some question whether they will find that there really is any better chance for them in Japan, for competition is very keen there. Also, there seems to be actual antagonism there to American-born-and-raised Japanese, who are looked upon as Americans and not as Japanese" (pp. 122-23).
>
> . . . . . .
>
> "On the whole, Japanese and whites differ very little regarding school subject best liked, school subjects they are planning to specialize in, and occupational aspirations" (p. 166).
>
> . . . . . .
>
> "The United States-born second generation are predominantly Christian (47 per cent of the males and 56 per cent of the females) in contrast to 39 per cent of these young people who are Buddhists" (p. 169).

The Japanese were one of the latest immigrant groups to come to this country. The strides that the American-born children have made, in one generation, toward complete Americanization in outlook and ideals has won the attention and praise of all unbiased observers, and conse-

quently there is a voluminous literature on the assimilation and the assimilability of Americans of Japanese ancestry.

John H. Whittaker, who had much contact with these young Americans, had this to say many years ago:

> "It is absurd to contend that the Japanese cannot be assimilated when an educated and Christianized Japanese, born and reared on this soil, is almost invariably thoroughly American in his ideas and out of touch entirely with things Japanese. Instead of being incapable of Americanization, the writer has found the innocent belief of the young Asiatic born on this soil in the principles of democracy as taught in American schools and repudiated by American practice so embarrassing as to be pitiable. The young Asiatic considers himself an American. He is proud that he is an American and has no desire to be anything else than an American. Anyone who speaks and writes to the contrary has not mingled with the young Asiatic product of our American schools." (*Japan Review,* April, 1921, pp. 94-95.)

Chester H. Rowell has asserted that nothing but race prejudice prevents the recognition of the degree to which assimilation has taken place:

> "There is nothing else against these children. They as just as bright as American children, speak as good English, and have the same manners and impulses; they are American ctizens; and of course there is nothing economic in which to compete. It is sheer racial caste. . . ." (*Survey,* May 1, 1926, p. 173.)

Not long before the war began a young American of Japanese ancestry spoke for herself and her group to the

Los Angeles District California Federation of Club Women. Her words were a plea that the degree to which the citizen group had identified itself without reservation with this country be realized. She said:

> "We cannot go to Japan, for over there we are foreigners and feel foreign. Our problems in the United States are the difficult ones of fitting ourselves in socially and vocationally, but this country we look upon as our home and our future. We are trying to do our part as American citizens. We ask you to do yours and give us that understanding we must have if we are to become part of the national picture. We have turned our backs on Japan because we were born in America. We are thankful to live in a democracy and are trying to earn the recognition and respect of fellow Americans. We are proud to know that we have one of the lowest delinquency records of any race in the United States. We are trying to keep off relief rolls, to do our part in supporting the Community Chest and other social efforts.
>
> "In return we ask you to give us understanding, to see that we are treated with equality and justice and to tell those who may be skeptical that we are really good citizens." (*Los Angeles Times,* Nov. 20, 1941.)

Those who have come to know the Americans of Japanese ancestry do not doubt their assimilation and Americanization. A typical reaction of the informed American is the letter of Dr. Walter Alvarez published in *Harpers* for December, 1942:

> "During the past ten years, as I have watched the approach of war between this country and Japan, I have dreaded the day when we would treat perfectly

loyal Americans, born and educated in this country, as if they were enemy aliens bound to commit acts of sabotage. I was almost certain that we would be that foolish and unfair.

> "I feel as I do because I was brought up in Hawaii where I went to school with children of Japanese ancestry there and found them to be fine boys and girls, usually hard workers and good students. . . . As I grew older, I learned that if there was one thing that would anger them it was for me to forget and speak of them as Japanese. Often I forgot and was then ashamed to have hurt my friends. They would say, 'Why call me Japanese when you never think of yourself as a Spaniard? You do not care any more about Spain than I care about Japan. You and I are both Americans and nothing but Americans.' And these boys were perfectly right."

The appellant's attempt to excite antagonism against Americans of Japanese ancestry on the grounds that they "deny the existence of the God whom the Christians worship" is certainly out of place in this case. This country recognizes no state religion. Nothing is more clearly unconstitutional than any attempt to make religious conviction a test of citizenship. However, if the appellant is really interested in defending the rights of Christians, his action is hard to understand. The amount of affiliation with Christian churches on the part of the citizen group has already been indicated in Dr. Strong's statements. When Reverend Suzuki of the Japanese Methodist Church testified before the Tolan Committee, March 7, 1942, he was able to say:

> "I represent the Southern California Japanese Church Federation, with 29 member churches and 11 other affiliated churches, 5000 members.

> "I also represent the Pacific Japanese Methodist Conference. . . . We have a membership of about 5000, church school membership of 5,000, plus a family constituency of 5,000, making a total of 15,000 people we directly touch."

Even while the complaint of the appellant is being considered, thousands of Christians, Americans of Japanese ancestry, are continuing their services and religious observations in relocation centers or wherever they are.

If Christianity is to be heard in this matter, let us listen to those who have the right to speak for it. Its spokesmen have not been reluctant to voice their sentiments. The Tolan Committee, in its final report, summed up the testimony heard on the West Coast as follows:

> "Every spokesman for religious organizations who testified on the west coast advocated individual treatment of the Japanese. A panel of church leaders presented this viewpoint in San Francisco." (House Report No. 2124, 77th Congress, 2nd Session, May, 1942, p. 148.)

Religious journals such as *The Christian Century, Christendom,* and *Religious Education,* have carried many articles which seriously question an evacuation policy based on ancestry alone and have unhesitatingly condemned attempts to abrogate the citizenship rights of the American-born. After the issuance of the final Tolan Report, with its deflation of Pearl Harbor sabotage rumors, the leading editorial of the *Christian Century* for June 10, 1942, began with these words:

> "If there is any passion for justice and fair play in this country, the publication of the Tolan report

> on the treatment of American citizens of Japanese descent should produce a national demand for an immediate reconsideration of the policy so far pursued."

During the last week of June, 1942, at Stockton, California, the California Methodist Church, at the close of its annual conference, passed a resolution protesting the mass evacuation of Japanese. The Council for Social Action of the Congregational Christian Churches has issued a pamphlet entitled: *A Touchstone of Democracy: The Japanese in America.* The nationally prominent churchmen who write therein are very outspoken. One bluntly says:

> ". . . there are some painful resemblances between the American way of dealing with a racial minority and the hated policies against which we believe that we are fighting" (p. 7).

It can be assumed that the voice of Christianity will increasingly be heard in regard to the treatment of persons of Japanese ancestry in this country, but its language will not be that of the appellant.

It is interesting to note that the appellant refers to the relocation centers as "concentration camps," and to the retention of persons of Japanese ancestry in them as a proof of disloyalty. The organization to which the appellant belongs was one of the most vociferous in demanding evacuation. Evacuation was scarcely begun when the appellant and his friends were calling for the rescinding of citizenship on the basis of disloyalty implied by the removal. This will raise the ugly suspicion in some minds that the evacuation was not so necessary

as the clamor at the time would have indicated, but was encouraged so that it could be used as an argument in cases such as these.

The Court will doubtless note, also, that the forces aligned against Americans of Japanese ancestry intend to have things two incompatible ways at once. When it is convenient to blacken the character of the American-born, so that they may be shorn of citizenship rights, the places to which they have been sent are "concentration camps." But when an American of Japanese ancestry protests his detention, these places become havens of rest and comfort. (Government Brief, No. 10308, of Appellee, p. 31.)

It seems incredible that the completely false and disproved rumors of sabotage and fifth column activities among persons of Japanese ancestry at Hawaii and on the west coast can still be asserted at this late date in a judicial proceeding. Yet the appellant unblushingly talks of "fifth column activities of the Japanese on the mainland and Hawaii." It would seem that some people were so eager to have persons of Japanese ancestry commit hostile acts that they *will not* believe that such acts did not take place. There is absolutey no justification for keeping these rumors alive, for they were discredited from the very beginning.

On the night of December 7 Governor Poindexter of the Territory of Hawaii spoke with Hawaii's delegate to Congress by transpacific telephone. The next day United Press dispatches carried Governor Poindexter's assurance to Delegate King that the population of the Territory, including those of Japanese ancestry "is quiet and in complete order." On December 10, Attorney General

Biddle, speaking for the Department of Justice and the F.B.I. said in Washington, "There has been absolutely no evidence of fifth column or sabotage activities."

Just before Christmas, Delegate King flew to Hawaii and spent eight days there. After his return, on Sunday, January 18, 1942, he made a radio address over station WWDC, Washington, D. C. In it he explicitly declared:

> "Despite statements to the contrary, I am assured by those charged with the responsibility for policing the civilian population that no fifth-column activities have taken place. . . ."

Many other pieces of evidence refuting the fifth column gossip could be cited, but what should have been the death blow to the rumors came on May 13, 1942, when the final Tolan report was printed (House Report No. 2124). Pages 48 through 58 consist entirely of letters and affidavits from the Secretaries of Army and Navy, high officials of the Department of Justice, and those who were on duty in Hawaii on December 7, 1941, as intelligence officers, police officers, or officials of the citizen's council. The theme of all these documents is the same and can be represented by this succinct message from James Rowe, Jr., Assistant to Attorney General Biddle, dated April 20, 1942:

> "Mr. John Edgar Hoover, Director of the Federal Bureau of Investigation, has advised me there was no sabotage committed there [at Hawaii] prior to December 7, on December 7, or subsequent to that time."

Even these and other exonerating statements did not completely satisfy some. The doubters argued that if

those of Japanese ancestry did not directly aid the enemy or commit sabotage, they might have given the foe useful information before the attack.

This last strained reason for suspecting residents of Japanese ancestry of contact with the enemy has now been demolished. In the September 14, 1942 issue of *The New Republic,* Professor Blake Clark of the University of Hawaii, now in this country, reveals that the attackers not only had to do their own fighting, but had to gather their own information:

> "Corroborating evidence that the Japanese did not approach with the help and direction of fifth columnists has just come to light. The Japanese submarine which was sunk outside Pearl Harbor an hour or more before the attack has now been raised, and the ship's log has been translated. It tells how the submarine entered Pearl Harbor trailing a garbage scow, and cruised about, noting the types and numbers of warships inside. It then left and sent a radio message to the Japanese carriers, relaying the information."

The appellant speaks of "mass disloyalty" but he offers no proof of it. Moreover, he does not, and cannot, offer an authenticated instance of individual disloyalty among Americans of Japanese ancestry. Even those who have sought to justify the evacuation or who, for official reasons, have had to accept the situation, testified that the vast majority of the American-born are devoted to the United States alone. On June 15, 1942, Milton E. Eisenhower, Director of the War Relocation Authority,

testified before the House sub-committee on appropriations in Washington. In reply to a question he stated:

> "I would say that from 80 to 85 per cent of the Nisei, who are American-born citizens of Japanese descent and who have never been out of the United States, are loyal to the United States. They have attended only American schools with other American children. They know no other way. Many of them are in the American Army and Navy. Most of them can speak no other language but ours. They are thoroughly Americanized."

Perhaps the appellant has merely made a mistake in wording. This sounds like *mass loyalty* and not like mass disloyalty.

Devotion to the United States and to her cause was strong among Americans of Japanese ancestry long before Pearl Harbor. Robert W. O'Brien, of the University of Washington, sent this statement to the Tolan Committee:

> "As the official in charge of recommending draft deferment in the college of arts and science, I have had the opportunity to interview hundreds of men regarding Selective Service. Last spring (before Pearl Harbor) I had noticed that practically none of the Americans of Japanese ancestry asked either for deferment or 'special' jobs. After the treacherous attack on Hawaii, over a dozen Nisei called in my office to find out how to volunteer for the United States. In checking over the recent numbers of the Japanese Students Club, I find 83 who have either volunteered or are serving under Selective Service in the American Army." (Figures to March 1, 1942.)

What the residents of Hawaii who were of Japanese ancestry *did do* on December 7, 1941, is vividly described by Professor Blake Clark of the University of Hawaii in an article in *The New Republic*, for Sept. 14, 1942:

"Just the day before I left Honolulu, the chief agent of the Federal Bureau of Investigation in Hawaii told me, 'You can say without fear of contradiction that there has not been a single act of sabotage—either before December 7, during the day of the attack, or at any time since.' Chief Gabrielson of the Honolulu police, which works in close collaboration with the army, told me the same thing. 'If the Japanese here had wanted to do damage, December 7 offered them a golden opportunity,' he added.

" 'Where were the Japanese on that Sunday if they were not out sabotaging?' you ask the chief of police.

" 'Hundreds of them were actively defending the territory,' he will tell you. "Members of the Oahu Citizen's Defense Committee, most of them Japanese, rushed to their posts as volunteer truck drivers. They stripped a hundred delivery trucks of their contents, inserted into them frames prepared to hold four litters, and went tearing out to Pearl Harbor to aid the wounded. Some of these Japanese got there so promptly that their trucks were hit by flying shrapnel. They proudly display these pieces of steel now as souvenirs.'

"When the call came over the radio for blood donors, again the Japanese were among the first to respond, and by the hundreds. They stood in line at Queen's Hospital for hours, waiting to give their blood to save the lives of American soldiers.

"At Pearl Harbor, two Japanese boys saw a machine-gunner having some difficulty setting up his gun. They ran to him, helped him steady it for action, and fed him ammunition. Both worked so fast that they had to have emergency treatment for burns at the hospital.

"Soon after the litter-bearers arrived at Tripler Hospital with the first wounded, Surgeon King sent out an emergency call for surgical teams. At that moment Japanese surgeons were sitting with other Honolulu doctors, listening to a lecture on war surgery. They leaped to their feet with the rest and were at Tripler within fifteen minutes. There they stayed, working swiftly and accurately for long hours, saving the lives of their fellow Americans. Many an American mother today owes the life of her son to their skill."

The Americans of Japanese ancestry have endeavored in every way to maintain their record of service to the cause of the United States and the United Nations. An Associated Press dispatch of June 27 from U. S. Army Headquarters in Hawaii said that American soldiers of Japanese ancestry "had established an enviable record for efficiency and devotion to duty and that their conduct before, during and since the attack on Pearl Harbor had been exemplary." In addition, the dispatch emphasized what some too often forget, that American soldiers of Japanese ancestry gave their lives with Americans of other racial strains in the defense of Hawaii. Later, in August, 1942, came the news that Americans of Japanese descent had fought as American soldiers at Bataan; Sergeant Arthur Komori of the Army Air Corps escaped and joined General MacArthur's forces in Australia.

The loyalty of American's of Japanese ancestry received signal recognition when, in a speech delivered in New York on December 6, 1942, Bradford Smith of the Office of War Information said of the Pearl Harbor attack:

> "Japanese Americans responded more quickly to the call for blood donors than any other group. American soldiers of Japanese ancestry were on the spot fighting for their country—for America."

The patriotic efforts of the citizen group in other directions were recognized by Mr. Smith, too. "Contrary to public opinion and contrary to some public statements," he said, "Japanese Americans on the West Coast were of invaluable aid to the authorities in exposing Japanese espionage."

By the end of 1942, with the announcement that Staff Sergeant Paul Sakai, formerly of Seattle, Washington, was fighting somewhere in North Africa, it was confirmed that Americans of Japanese ancestry had already seen service on all major battle fronts.

A cheering compliment to the loyalty of Americans of Japanese ancestry was contained in this United Press dispatch of February 1, 1942:

> "The war department today released a statement by Lieut. Col. Farrant L. Turner praising the 100th infantry battalion, which is composed of men of Japanese ancestry.
>
> " 'I have never had more whole-hearted, serious minded cooperation from any troops than I receive from my present command,' Turner reported to head-

quarters. The war department said the statement was considered worthy of official release 'not because it differs from the feeling that most commanding officers have about their present outfits, but because it doesn't.'

"All soldiers in Turner's outfit are American citizens, born in the Hawaiian islands, and are members of the Hawaiian national guard."

As this summary has shown, it is unreliable rumor that brands the American of Japanese ancestry disloyal; it is solid fact that proves him loyal. We submit that this record shows, not simply a lack of disloyalty, but a positive loyalty, an affirmative dedication to America and its ideals.

XVI.

War Effort Endangered by Appellant's Claim.

But to go no further than the application of this case to the Mongoloids, let us imagine what would happen if the prejudices of the appellant could be satisfied by judicial decision. The young Americans of Chinese, Japanese, Filipino, and Indian ancestry, who today provide a warm link of understanding between us and our allies in the Far East, would be dispossessed and outraged. The countries of origin of their parents would be stung and alienated. The Japanese militarist would capitalize enormously on the anti-American feeling generated. At home every minority group would react to the impact to these discriminations and would wonder where organized intolerance would strike next.

Nor would these be all who would be affected. If the Fourteenth Amendment, in keeping with the appellant's desires, were to be construed in such a restrictive manner as to deny citizenship to all except White and Negroes, any legislation which flaunts this rectriction could be declared unconstitutional. The grant of citizenship to our American Indians, thousands of whom are serving in the armed forces today, would have to be cancelled. Gone, too, would be the American citizenship of the native Hawaiians, and discord and dissention would flare in our bastion of the Pacific at this critical time. Once again only the gods of hate and the Japanese militarists would profit. Moreover, it would no longer be possible to proffer citizenship privileges to "descendants of races indigenous to the Western Hemisphere" and consequently a "bad neighbor policy" could be expected to undo the work of years devoted to promoting better understanding between our country and the nations to the south.

There is a great deal in the appellant's brief about this war. But to what war is he referring? The United Nations are trying desperately to gain the good will and support of India. Is is helpful, then, to quote from Kipling, the arch-imperialist and author of the phrase "the white man's burden," whose very name is a provocation to the public of India? Is our General Stilwell, who speaks so warmly of the courage, dignity, and hospitality of his Chinese comrades in arms, aware that "East is East, and West is West"? Is this the slogan for patriotic Americans to encourage when we may have an American army on Chinese soil moving on Japan and dependent for their security and well-being on the good will and co-operation of the Chinese people?

XVII.

Nazi and Appellant's Race Theories Compared.

This particular assault upon a racial group shows some curious similarities to a battle which another man began to wage some years ago. This man wrote a book about it, and named it, logically enough, *"My Struggle."* He, too, lauded the Caucasoids, particularly those of the North European physical type, whom he calls "Aryans," the very breed the appellant praises. (Appellant's Brief, p. 39.)

In *Mein Kampf,* this man, Hitler, wrote in a hundred places of the "race-nationalist state" which he determined to found. His argument, which, with the substitution of proper names, is used by reactionaries the world over, is that white Aryans founded Germany and made it great. Other peoples, the argument runs, must be excluded and divested of citizenship and rights. On page 391 of his book Hitler declares ". . . the race-Nationalist state must make good what is being left undone in all directions. It must make race the central point of public life. It must take care that it is kept pure." In a speech of September 6, 1938, at Nuremberg he explained: "National Socialism . . . is exclusively a 'folkish' political doctrine based upon racial principles."

Herr Hitler anticipated appellant in the conception of "a government of, for and by white people." (Appellant's Brief, p. 25.) On page 381 of "the bible of the Third Reich" we find:

> "The state is the means to an end. This end is the preservation and advancement of a community of physically and spiritually similar living creatures.

> . . . Thus the highest purpose of the populist [National Socialist] state is to care for the preservation of those racial elements which, as creators of culture, produce the beauty and dignity of a higher humanity. We as Aryans, that is, can imagine as a state only the living organism of a nationality [race] but leading it to the highest freedom by continuing to develop its spiritual and intellectual capacities."

And what did Hitler propose to do to protect his beloved white "Aryans" from those of slightly different appearance who were peacefully living and working among them? First of all he resolved to deprive these unfortunates of the rights of citizenship, for potential victims must always first be rendered politically impotent. The appellant's attack on the interpretation of the Fourteenth Amendment contained in the *Wong Kim Ark* decision resembles this closely On page 376 of *Mein Kampf* we find:

> "But it is almost inconceivable error to believe that, let us say, a negro or a Chinese becomes a Teuton because he learns German and is ready to speak the German language in the future, and perhaps to give his vote to a German political party."

On pages 424-25 Hitler returns to an even more forthright attack on the principle of *jus soli* as embodied in our Fourteenth Amendment to the Constitution:

> "Today the right of citizenship is acquired, as above mentioned, primarily by birth within the boundaries of a state. Race or membership in a nation plays no part whatever. A negro who used to live in the German protectorates, and now has a residence in Germany, thus brings a 'German citizen' into the world

if he has a child. In the same way any Jewish or Polish, African or Asiatic child can be declared a German citizen without more ado. . . . This conjuring trick is accomplished by a State President. What Heaven could not attempt, one of these Theophrastus Paracelsuses does in the turn of a hand. One scratch of the pen, and a Mongolian ragamuffin is suddenly turned into a real 'German.' "

XVIII.

Nazi and Appellant's Legal Concepts Compared.

This garrulous rejection of *jus soli* and the appeal to a racial basis for the determination of citizenship cannot be dismissed as the ravings of a madman, put down two decades ago. This policy has become a grim reality. It has stripped hundreds of thousands of protection, livelihood and hope. It fanned German nationalism to the burning point. It made inevitable a war which has cost millions in lives and billions in treasure. The legalization of the German racist program and the implications of this have not escaped the notice of Professor Flournoy. Writing in the *American Journal of International Law* in January, 1940, he observed:

". . . the nationality laws of any state necessarily reflect its political history and character.

"An outstanding example of the fact last mentioned may be found in the nationality laws adopted in Germany in recent years. . . . Without attempting to enter into an extensive discussion of these laws, special mention may be made of the Baden Decree of August 4, 1933, in which it was provided that every petitioner for naturalization must show that both of his grandparents were of Aryan descent, and 'if the petitioner descends from an alien and a German par-

ent, the competent district physician has to examine which line of descent is predominant in the descendant.' Under this provision naturalization would not be granted unless the German line should be found to be predominant. Mention may also be made of the German law of February 5, 1934, under which State citizenship was abolished, and it was declared that 'there shall exist only one citizenship in Germany, direct central government citizenship—Reichsangehoerigkeit'; the Reich citizenship law of September 15, 1935, Section 2 of which provided that 'only a national of German or related blood who proves by his conduct that he is willing and fit to serve the German people and Reich faithfully is a Reich citizen'; . . ."

This is the heart of the policy of the National Socialist State. This is the policy of the regime whose crimes and excesses are beyond recounting, the policy of the nation with which we are at war. The most important provision of the program is that "only a national of German (white-Aryan) or related blood . . . is a Reich citizen." Here is the realization of the race-nationalist state, the "we the white people nation" which is the ideal of the California Joint Committee on Immigration.

In his magnificent history of Nazism, *The House that Hitler Built,* written in 1938 before the outbreak of war, Stephen H. Roberts said with true understanding and vision, "National Socialism without a racial basis is unthinkable; National Socialism on a racial basis means war; the dilemma is fairly posed" (p. 314). If, as Professor Flournoy has said, "the nationality laws of any state necessarily reflect its political history and character," can we fight racism and intolerance abroad and at the same time

graft it, by judicial decision or otherwise, upon our domestic and political life? Are we to ask American soldiers to crush race legislation in Germany so that, in their absence and under cover of the excitement stirred by their very battles, an American edition of the same doctrine may be firmly implanted at home?

The Nazis not only have had a program of their own in regard to exclusion and citizenship, but have been generous with plans and advice for the United States as well. Alfred Rosenberg, intimate of Hitler and philosopher of his movement, has written in his leading contribution to Nazi "literature," *Myth of the Twentieth Century:*

> "A United States purified of Niggers, Japs, and Jews, and raised in the consciousness of its Nordic European heritage, is a thousand times stronger than a United States which, with all its colonial possessions and fleet bases, is racially corrupt.
>
> "The United States, which according to all reports is a marvelous country, is confronted with the great historic task of creating with youthful vigor a new state on the lines of race-political thought. That this can be done—once the United States has rid itself of the shabby ideas of the Founders and the parvenue spirit of New York—has been envisioned by a few awakened Americans such as Grant and Lothrop Stoddard.
>
> "Yet the United States must, before it becomes worthy of these visions, gain supremacy over Pan-America, expel its Niggers and Yellow men, cede its East Asiatic possessions to Japan, settle its Negroes in Central Africa and its Jews where this *Volk* will find space (perhaps Madagascar) and thus harmonize its racial policies with the trends of future European policies."

Our soldiers are battling today to prevent any part of this vicious program from being imposed upon us from without. It is not too much to ask the courts, by jealously guarding our constitutional guarantees, to prevent this hateful concept from breaching our home defenses. Distinguished Americans are not unmindful of the danger. The President of the United States on January 2, 1942, issued a statement containing these words:

> "Remember the Nazi technique: 'Pit race against race, religion against religion, prejudice against prejudice. Divide and conquer.' We must not let that happen here. We must not forget what we are defending: Liberty, decency, justice. . . ."

It is within the power of this court to decide whether the democratic ideal or the Nazi-Hitler-Rosenberg conception will rule our minds and our lives in the challenging days which lie ahead.

Respectfully submitted,

WALTER T. TSUKOMOTO,
Tule Lake Relocation Center, Calif. (formerly Sacramento, Calif.);

SABURO KIDO,
Poston Relocation Center, Poston, Ariz. (formerly San Francisco, Calif.);

HUGH E. MACBETH,
THOS. L. GRIFFITH, JR.,
A. L. WIRIN,
257 South Spring Street, Los Angeles,
*Attorneys for Japanese American Citizens League, Amicus Curiae.**

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*Counsel for the J. A. C. L. are indebted to Dr. Morris Edward Opler of Claremont, California, for the preparation of historical and ethnological material used in this brief.

APPENDIX A.

List of American citizens of Japanese ancestry set forth in the District Court's findings. [R. 22.] Members of the Japanese American Citizens League are indicated by *.

Abe Kazuo
Abiko Yasuo*
Bou Shoji
Ekusa Ryosuke*
Eugenia Fujita*
Helen S. Fujita*
Kiyoshi Fujita*
Mae Koko Fujita*
Tadashi Fujita*
Yoshie Fujita
Carl T. Hirota*
Aklira Horikoshi*
Ayame Ichiyasu*
Hanaye L. Ichiyasu*
Torao Ichiyasu*
Tameyo Imada*
Viola Imai
Joseph Inafuku*
Alexander Iseri
Fred Ken Ishigaki*
Kiyomi Itatani*
Masayoshi Itatani*
Sunao John Iwatsu*
Elbert E. Izumi
Kinji Kanehara
Toshiko G. Kanzaki
Masae Morioka*
May F. Morioka*
Yoshiko Morioka*
Kiyoko M. Morita
Frances Moriwaki
Lily Muramatsu
Kimi Nakahara*
William T. Nakahara*
Satsuye Nakao*
Shinichi Nishimoto*
Masataro Nichimura
Kimi H. Ogawa
Toshimi Ogawa
Kaoru Okubo*
Chizuko Sakaguchi
Asako Sakai
Ayako Sakai*
Eiji Sakai*
Shizu Sakai*
Tamiki Sakai*
Joseph Y. Sano*
Miya L. Sano*
Kikuko Shimazaki*
Cherry Suzuki*
George Suzuki*
Hideo Suyetsuga*

Yiyoshi Kawaguchi
Toki Kawaguchi*
Charles Kikuchi
Chaicki Kokimoto*
Yone Komatsu
Benjamin Kondo
Mitsue Kono*
Motoki Kudo*
Kazuo Kuruma
Tokuichi Kuruma*
Jennie K. Muraki
Ken Matsuda
Elizabeth K. Matsuki
Paul Matsuki*
Ruth H. Miho*
Shuichi Miho*
Sumie Miho*
Toki Miho*
Fred Morioka*

Geo. M. Suzuki
Henry H. Suzuki*
Toshio T. Suzuki*
Toy Takagi*
Tomiye Takagi*
Kiyoko Takahashi*
Tomiko Takahashi*
Yuki Mabel Takakuwa*
Esther Tani*
Lily Tani*
Newton H. Tani*
Rose S. Tani*
Dave Tatsuno*
Shozo F. Twuchida
Roy G. Watanabe*
Ryosuke Yamamoto
Frank Yamasaki*
Toshiko Yamasaki*
William Toshi Yamazaki

APPENDIX B.

Portion of Statement by Mike Masaoka, Secretary, Japanese American Citizens League, Explaining Why He Volunteered. From The Pacific Citizen, Official Publication of the Japanese American Citizens League, February 4, 1943:

I have volunteered for service in the Army of the United States, and specifically for the special combat team composed of loyal Japanese Americans which is now being organized by the War Department.

As an American citizen, and particularly an American citizen of Japanese ancestry, I could do no less.

I volunteered because I had to keep faith.

I had to keep faith with "my" America, an America which has granted me innumerable benefits far beyond those meted out to other peoples in other parts of the world and an America which still holds greater promise for justice, equality and opportunity in the years to come for our people and for me than any other country. I know that we, as a minority group, have been called upon to bear—what seems to us—far more than our share of hardships because of the circumstance of war. I know that this America of ours will win the war and that this nation, under God, will be greater than ever. I know that the injustices and sacrifices which we have been forced to undergo will be compensated for in some way, provided that we prove now our right to that compensation. It has often been my personal opinion that too many of us summarily expect and demand every conceivable right and privilege of citizenship without being willing to accept and discharge the accompanying obligations and responsibili-

ties. I believe that the obligation to bear arms in the defense of home and country is one way of assuming that responsibility.

I had to keep faith with myself. I have to live with myself, and so I always want to be in a position to be proud of what I have done. I have made, and will make, many mistakes. But I want to be able to say that those mistakes were made not because I was afraid of death, but because I knew that I was right and honest with myself. I want to be able, in the years to come, to know that my children and their children after them will not be forced to suffer, as we have suffered, because I was not visionary enough, or courageous enough, to be baptized under the fire of enemy guns and to prove beyond all doubt that we who are Americans in spite of our Japanese faces are loyal to the land of our birth, even unto death.

I volunteered because I have confidence in this government and the majority of the American people. The very fact that the army itself, when it is pressed with the serious problems of fighting a global war, has come forth with this plan which constitutes an affirmation of their trust and faith in us is more than indicative of their desire to aid us regain our rightful status. This action on the part of the most important department of our government in wartime, when ordinary volunteering for the average citizen has ceased, is the greatest endorsement which our group could receive.

I have a stake in America. I believe that it is worth fighting for. As an American, as the national secretary and field executive of the JACL, I volunteered because I sincerely feel that I could do no less.

APPENDIX C.

Resolution of Japanese American Citizens League, Addressed to War Department.

A RESOLUTION

To the War Department, Selective Service Division:

Whereas, we Americans of Japanese ancestry believe that our welfare and our destiny are inextricably bound up in the welfare and destiny of these United States of America; and

Whereas, we desire to contribute our share to the winning of the war and the peace to follow; and

Whereas, many of us now have brothers, sons, and husbands who are serving with distinction and valor in the armed forces of our country; and

Whereas, it has been called to our attention that Americans of Japanese ancestry have been and are being classified in the Selective Service rolls in those classifications originally assigned to "enemy aliens" and "friendly aliens" but now designated as classifications for those "unfit" or "undesirable" for military services; and

Whereas, as American citizens entitled to participate in the common lot and life of all Americans, we do resent and decry this unwarranted and unjust discrimination which questions our loyalty and allegiance to our country;

Now, Therefore, Be It Resolved by the Special Emergency Meeting of the Japanese American Citizens League, convened in Salt Lake City, Utah, that we do hereby request the Selective Service Division of the War Department to reclassify Americans of Japanese ancestry on the same basis as all other Americans.

APPENDIX D.

NATIONAL HEADQUARTERS SELECTIVE SERVICE SYSTEM
21st Street and C Street N. W.
Washington, D. C.

Jan. 29, 1943

In Replying Address
The Director of Selective Service
and Refer to No. 11-1.29-106

Mr. Mike Masaoka, Nat'l Secretary
Japanese American Citizens League
25 East Second South Street
Salt Lake City, Utah

Subject: Resolution Concerning Japanese

Dear Mr. Masaoka:

We are glad to advise that the Selective Service System has been cooperating for a long time in the consideration of plans which were announced yesterday by the Secretary of War.

The Selective Training and Service Act of 1940, as amended, provides:

> ". . . no man shall be inducted for training and service under this Act unless and until he is acceptable to the land or naval forces for such training and service . . ."

Regulations and procedures will be established for the induction of all such citizens of the United States of Japanese ancestry as may be acceptable to the armed forces.

We trust that the action taken will accomplish the purpose which prompted your resolution.

Sincerely yours,
(Signed) LEWIS B. HERSHEY
Director

APPENDIX E.

JAPANESE AMERICAN CITIZENS LEAGUE
National Headquarters
413-415 Beason Building
Salt Lake City, Utah

February 3, 1943

Portion of Bulletin No. 3.

To: All JACL Officers and National Board Members

Subject: Special Japanese American Combat Team of the Army of the United States.

Last Thursday afternoon, Secretary of War Henry L. Stimson announced that a special combat team composed entirely of Japanese American volunteers will be formed as an integral part of the American Army.

The special combat team of Japanese American volunteers will be a complete fighting unit in itself, being made up of infantry, artillery, engineers, and medical detachment.

The purpose of this bulletin is to urge all officers and chapters to encourage loyal Americans of Japanese ancestry to volunteer.

While we protest this seeming discrimination and segregation in principle, nevertheless, from the propaganda value viewpoint both now and after the war, this was the best possible procedure for the Army and for us.

It seems to use that there is no need here to enlarge upon the necessity for volunteers, because the response will determine, more than any other factor, the future for all of us in this country. This entire movement is an aggressive, overt way in which we may prove beyond all doubt that the loyalty of American Japanese is to this country alone.

APPENDIX F.

War Relocation Authority

In reply, please refer to:

Telegram 2/8/43

Nite letter

THE HONORABLE HENRY L STIMSON

SECRETARY OF WAR

WASHINGTON D. C.

I HAVE REQUESTED IMMEDIATE ACTIVE DUTY ASSIGNMENT TO MY COMMANDING GENERAL FIVE TIMES SINCE THE WAR BUT WAS ADVISED MY JAPANESE ANCESTRY PRECLUDED SUCH ASSIGNMENT. I HAVE BEEN A RESERVE OFFICER CONTINUOUSLY SINCE 1927, AND MY SOLE REASON FOR BECOMING AN OFFICER WAS OF COURSE TO SERVE MY COUNTRY IN TIME OF NEED. MAY I BEG OF YOU TO BRING ABOUT MY IMMEDIATE ASSIGNMENT. MY WIFE AND 5 CHILDREN, ALL LOYAL AMERICANS, JOIN WITH ME IN THIS REQUEST. RESPECTFULLY YOURS,

WALTER T. TSUKAMOTO
CAPTAIN JUDGE ADVOCATE GENERAL'S
SERIAL NUMBER O-236614
DEPARTMENT USA

Service of the within and receipt of a copy thereof is hereby admitted this.....day of February, A. D. 1943.

2-22-43—500