

JAP-EVACUATION VERDICT WAITS

After hearing arguments that the United States Constitution should have been amended before American-born Japanese were evacuated, United States District Judge Lloyd L. Black commented yesterday in a test case involving legality of the evacuation that he does not believe the Constitution "is so unsuited for survival in these days of lightning war that we have to protect ourselves by the slow process of constitutional amendment."

The case involves Gordon Kiyoshi Hirabayashi, 24-year-old University of Washington student, who was arrested for violating the curfew and evacuation orders of the military. Shortly after his arrest, Mrs. Mary Farquharson, Seattle representative of the Civil Liberties Union, announced that Hirabayashi's case would be made a test case.

'Amendment Violated'

In arguing for dismissal of the case, Frank L. Walters, Seattle attorney representing the American-born Japanese, declared that the military evacuation order violated the Fifth Amendment to the Constitution, which provides that no citizen may be deprived of his liberty without due process of law.

Conceding that the American-born Japanese could be evacuated legally if Congress amended the Constitution to deny citizenship to all members of the Japanese race, Walters declared:

"If we are going to do it, let's do it in the constitutional way, rather than through an arbitrary military commander. More than one of us in this room have been in the service and know how arbitrary a military commander is."

Judge Black did not announce a decision, although his comments made it clear that he was inclined to rule against Walters. He added that if, after further study, he found his present inclinations mistaken, he would not hesitate to rule for Walters.

"It has been frequently declared by representatives of Japan, Germany and Italy," Judge Black commented, "that a constitutional democracy, such as the United States, is completely outmoded by reason of scientific advancement. They have shouted to the world that the Constitution of the United States is absolutely bound and imprisoned so that by self-imprisonment it (the nation) would stand as an immobilized victim while the speedy attack of dictator countries destroyed it."

'Long Wait Suggested'

It has been suggested here that, regardless of how necessary it is that a military area be protected, we in the United States must wait until a constitutional amendment is proposed, worded, passed by both houses and then submitted to and passed by three-fourths of the states.

Therefore, I concede to counsel that I don't believe the Constitution of the United States is so unsuited for survival in days of lightning war that we have to protect ourselves by the slow process of constitutional amendment . . ."

In arguing that the military authorities did have power to evacuate Americans citizens, Gerald D. Hise, assistant United States attorney, said:

"Suppose they had not been evacuated and that Japanese parachutists landed here in civilian clothing. Who could tell who's who? That one fact alone shows that, from a military standpoint, it was necessary they be excluded."

Hise declared that military authorities did not act "arbitrarily," but rather "faithfully."

H.
ar
dr