

SPECIAL RELEASE ON JAPANESE EVACUATION TEST CASE.

A summary of arguments on the petition of Mitsuye Endo for a writ of habeas corpus, in the United States District Court for Northern District of California, Southern Division (#236888). Judge M.J. Roche; attorney for petitioner: James C. Purcell; appearing for U.S. Government: Mr. Zirpoli of U.S. Attorney's office. San Francisco, July 20, 1942

Mr. Purcell

Mr. Zirpoli

1. Mitsuye Endo, 22 years old, American Citizen, wishes release from WRA Camp. Was civil service employee, has brother in army. Civil liberties apply, even in wartime.
 2. Right to exclude citizens is granted; but Exec. Order #9066 gives no justification for continued detention. Covers only entering, leaving or remaining in certain areas. In addition Exec. Order 9066 not based on specific statute. Public Law 503 irrelevant; does not confer upon anyone the power to issue orders to regulate and control the activities of citizens.
 3. Equal protection of law denied. Discrimination against Japanese in application. (Exemptions for Germans, Italians, not Japanese, who were over 70, had sons, husbands in armed forces.)
 4. War powers of President and Congress restricted by constitutional limitations, esp. 5th amendment. No avenue of escape from paramount authority of Constitution. Exception: property taken in course of war.
 5. Court here has power to issue writ of habeas corpus; not under duress. Only Congress can take away habeas corpus; it hasn't. Majority, minority in ex parte Milligan deny right of President to suspend it. No martial law in U.S., and citizens can be affected only in emergency under martial law.
 6. Government makes no distinction between aliens, citizens. Right of Congress to exclude citizens from country denied. In ex parte Gilroy, only enemy aliens are subject to Presidential warrant, citizen is not so subject.
 7. Cases cited by government not valid. In prostitution cases there was a positive act by Congress defining the illegality, and in case of violation due process of law applied. Likewise specific law and due process in free speech cases. Here neither a specific act of Congress nor any provision for due process of law.
- This is war. West Coast is declared theater of war operations. In it Japanese are "unassimilated group of blood relatives of Japan." Form a source of internal disunity, may need protection in case of riots.
2. Exclusion of citizens authorized by President's Exec. Order 9066; General DeWitt's public Proclamation #2. Detention of citizens is authorized by Exec. Order #9106 (setting up the War Relocation Authority to "provide for the removal...of persons."); Civilian Restrictive Order #1; Public Law #503, by which Congress ratified all these other actions.
 3. No denial of equal protection. 14th Amendment does not apply to U.S. Gov't. Can't do everything at once; here urgent problem is Japanese; in case of threat from Germany, could do same thing in case of unassimilated citizens of German ancestry. Japanese selected due to war, not discrimination.
 4. War powers are paramount. Bill of Rights must bow to paramount necessity of preserving nation in time of war. War powers are not restricted by 5th and 6th Amendments.
 5. Qualified martial law exists on the Pacific Coast even if not proclaimed. "Martial law proclaims itself." If it is argued proclamation is needed, DeWitt's public Proc. #2 serves the purpose. As qualified martial law measures are constitutionally justified. Ex parte Milligan outdated as warfare no longer so restricted as in days of Civil War.
 6. Right to regulate citizens seen in power to seize railroads, to control freedom of speech, to prohibit prostitution near army camps.
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- NOTE: Weakest point in government's argument was #2 above, the right to detain citizens, for which no direct legislative authority was cited. Nor did government answer petitioner's point on distinction between treatment of citizens and aliens. Mr. Purcell failed to bring argument charging undo delegation of power by President to General DeWitt as had been expected.

SPACE PROHIBITS adequate discussion of points above. For more information see Tolan Committee, Fourth Interim Report, for information about:

Executive Order 9066 (p.314) to "prescribe military areas...from which any or all persons may be excluded." The proclamation is based upon "authority vested in me as Pres. of the U.S. and Commander in Chief" of army and navy. General DeWitt's Public Proclamation #2 (p. 321) addressed "to the Public Generally", together with Proc. #1 (p.317) establishes the military areas. Public Law 503 (p. 168-9) makes it a crime to disobey any restrictions imposed by military commanders under authority of Exec. Order 9066. Sen. Taft said it was "so indefinite and so uncertain that it could not be enforced under the Constitution.

Executive Order 9106 (p.315) sets up the War Relocation Authority, cites no statutes, and is to "effectuate a program for the removal of citizens,

Statement prepared by
Dr. Paul S. Taylor, Professor of Economics,
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Pacific Coast Committee on American Principles
and Fair Play,
Palace Hotel, January 11th

RELEASE PM'S THURSDAY, JANUARY 11, 1945:

Backed by the authority of the United States Supreme Court and the approval of the Western Defense Command of the United States Army, loyal persons of Japanese ancestry now are free to return to the Pacific Coast. Most of those who may return have sons, brothers, or husbands now serving in the United States Army. A few already bear discharges from honorable service in the armed forces. Their right to be here and to participate lawfully in the economic life of the West is as clear as our own. Right, and the common necessity of greater production for war, dictate alike that their efforts shall be employed quickly, fully and without friction.

This conference has been called to consider problems natural to the readjustment of these people. At today's session we are concerned with agriculture. But first a glimpse at the over-all perspective is in order, for the stresses of war-time have made it easy to produce in men's minds impressions that are grossly exaggerated. Facts are available and these should be known. Facts, not impressions, fancies and rumors, are the proper guides to action. Many facts, based upon the United States Census of 1940, have been published by the Army in its report on the evacuation. Here are some:

1. In 1940 the total numbers of persons of Japanese ancestry in the entire United States was 127,000, or less than one-tenth of one percent of the nation's population.
2. Although most of these persons of Japanese ancestry lived on the Pacific Coast, they comprised less than 1.2 percent of the total population even here.
3. Between 1930 and 1940 the number of persons of Japanese in the United States declined by nearly nine percent.
4. In the decade of the 1930's the number of persons of Japanese ancestry declined in nine of ten west coast cities which had more than 1,000 such persons in 1930. In San Francisco, Oakland, Sacramento, Fresno, Stockton, Berkeley, Portland, Seattle and Tacoma -- the number of persons of Japanese ancestry was less in 1940 than it was in 1930. Only in Los Angeles was there any increase at all, a meager average of 224 persons per year for the decade.

Now let us examine the situation in agriculture.

Some people have been honestly alarmed over the return of persons of Japanese ancestry to agriculture on the Pacific Coast. Their fears have been played upon by spreading beliefs that impend grave dangers from a great return movement of people. Upon examination, these beliefs prove generally to have little foundation. Some have no foundation at all. Others prove to be the exact reverse of the truth.

Among the erroneous beliefs are the following:

Error No. 1: That the population of Japanese ancestry on the Pacific Coast "breeds like rabbits" and is destined in a few generations to overwhelm the descendants of the rest of us.

The fact is: There were less persons of Japanese ancestry on the coast in 1940 than in 1930, less by 8,145 or by nearly seven percent. There will be still less in 1950 than in 1940, and this would be true even had there been no evacuation, for the population of Japanese ancestry is decreasing, not increasing. As a Congressional committee declared in 1942: "Contrary to alarmist predictions about the reproductive tendencies of the American Japanese, their birth rate during the past decade has been insufficient to balance mortality and emigration...The births of third-generation Japanese will fail for some time to offset the high mortality rates consequent upon the abnormal age composition of the alien Japanese. The total Japanese population, therefore, may be expected to drop substantially during the coming years."

Error No. 2: Japanese laborers offer a serious threat to American laborers in agriculture.

The fact is: The entire number of wage workers of Japanese ancestry in Pacific Coast agriculture in 1940 was 8,307, or less than five percent of the total. As the present time, this small number -- one in 20 -- will be available largely to substitute for an equal number of Mexican nationals whom we now import

at the taxpayers' expense. Since most of these agricultural laborers of Japanese ancestry are in the higher age groups, they cannot under any circumstances remain active for very many years in the agricultural labor market. Therefore, the prompt employment of loyal Japanese workers holds no threat at all to other western agricultural workers; their employment now will afford some relief to the taxpayer.

Error No. 3: Farmers of Japanese-American ancestry are a serious competitive threat to other farmers.

The fact is: Farms operated by persons of Japanese ancestry in the three Pacific Coast states were a smaller percentage of the total number of farms in 1940 than 1920. The total number of their farms increased by the slight figure of 43 farms in twenty years, while the proportion of farms which were operated by persons of Japanese ancestry declined from 2.6 to 2.2 percent, or by more than one-seventh.

The fact is: During the same twenty-year period the acreage of land in farms operated by persons of Japanese ancestry declined from seven-tenths of one percent of the total acreage in farms, to four-tenths of one percent.

The fact is: The average ^{acreage} in farms operated by persons of Japanese ancestry declined from 65 acres to only 42.2 acres.

The fact is: The total value of farms, land and buildings, operated by persons of Japanese ancestry fell from 148 million dollars to 72 million dollars, or to less than half, during the same period. The average value per farm operated by persons of Japanese ancestry also fell by more than one-half.

Fears that farmers of Japanese ancestry are in process of driving out farmers of other ancestries find no support from these facts.

Error No. 4: Farm operators of Japanese ancestry are a competitive threat to American farm operators because they employ members of their own families to work without wages.

The fact is: The number of unpaid family laborers of Japanese ancestry in the Pacific Coast states in 1940 was only 4,832. The fact that there is less than one unpaid family laborer per Japanese-operated farm, or about one for every 57 farms in the region certainly is no ground for arousing a general fear of competition among family farmers of other ancestries.

A generation or so ago, while the tide of immigration from Japan was still flowing, the number of Japanese farmers on the Pacific Coast naturally grew. But that influx was ended finally in 1924. There is no proposal to revive it. The participation of Japanese in agriculture ~~is now below~~ what it was in 1920.

Old fears revive easily, but the history of two decades has cut away the ground upon which they once rested.

There is, to be sure, one segment of agriculture in which farmers of Japanese ancestry recently have been fairly important. As truck farmers and as produce merchants, they have competed with the most highly-industrialized agricultural operators in the west. People are acutely conscious of this competition in areas where industrialized grower-shippers predominate.

But to those of us whose interest lies in the welfare of western agriculture, the warning of Hood River is clear. There heedless citizens took measures to oppose persons of Japanese ancestry whose loyalty to this country is beyond question. All the money and effort of years to advertise apples never carried the name of Hood River over the nation and across the seas like those measures.

We do not want our lettuce and melons and fruits advertised to the housewives of the nation and to our soldiers overseas as the apples of Hood River were advertised. We do not believe they will be, for we are confident that within these industries and areas, wiser counsels will prevail.

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