

In Opposition to the Japanese Internment, the A.C.L.U. During World War II

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Abstract

This paper reviews the background of the Japanese in America and the U.S. Government's wartime decision to evacuate them from the West Coast. It then describes the American Civil Liberties Union's efforts outside of court to formulate its own policy and oppose that of the government. A future paper will deal with the ACLU's efforts in the courtroom to litigate against the injustice of evacuation and internment.

Following in the steps of my esteemed predecessor at Aichi Gakuin—Joseph Sheperd (1996)—this paper deals with an aspect of Japanese-American relations, in this case from a historical perspective. Numerous books and articles have been published which detail the personal experiences of West Coast Japanese interned during the Second World War. The shameful and racist wartime policy of the United States is well-known at home and abroad. Indeed, it has become such an embarrassment that the American government has recognized its mistake and awarded compensation to surviving victims. What is hardly ever recognized, however, is the exemplary work of some liberal groups outside of the Japanese communities who actively opposed this policy of evacuation and internment.

Several groups, including the American Civil Liberties Union, the American Friends Service Committee, and the Fair Play Committee, recognized that a grave injustice was being done in the name of national defense. The memberships of these groups were

largely Caucasian and, therefore, not directly affected by the evacuation. Yet each initiated programs to counter or mitigate the injustices involved. Except for two unpublished master's theses (Shidler, 1952 and Thomas McDaid, 1969), current literature has given them only passing mention. This paper seeks then to describe the evacuation from the perspective of the American Civil Liberties Union, highlight the silver lining in a very black cloud, and give credit to some people who tried to uphold the very finest traditions of American justice.

Background of the Japanese in America

In early 1942 fear of and prejudice against Japanese (this term will include all ethnic Japanese regardless of nationality) reached into the highest levels of American government. Fear was a rather recent emotion to be applied to the Japanese. It derived from the Pearl Harbor attack and the subsequent success of the Japanese armed forces throughout the Pacific. Prejudice, on the other hand, dated back to the 1860's when Japanese began coming to the United States.

Initially a few Japanese students came to America as part of a program of cultural and intellectual exchange. Later a fortune hunter named Edward Schnell established a colony of Japanese on Gold Hill, near Sacramento. His plans to grow tea, silk, and bamboo and to manufacture Japanese goods failed. Yet more and more Japanese laborers continued to cross the ocean to America. In the 1880's Emperor Meiji removed the prohibition against Japanese emigration, opening the way for larger migrations. Contract systems soon brought large numbers of agricultural laborers to Hawai'i and the West Coast of the United States. Some crossed the ocean in order to avoid Japan's newly instituted conscription laws. Most of these new arrivals, however, came for the opportunities available in agriculture. Unlike America, Japanese society had given a great amount of status and recognition to their farmers. These farmers,

in turn, developed a great deal of pride and skill in their work. Yet by the latter half of the nineteenth century, Japan had become crowded and land was scarce. Farm plots had decreased in size to the point where they could no longer be divided among sons, so younger sons had to look elsewhere for their occupations. Hawaii and, even more so, the U.S. mainland offered these people a chance to continue cultivating land of their own.

The first generation in America, the Issei, found themselves in a precarious position, the price of increased economic opportunity. Like all new immigrant groups, they had to start on the lowest rungs of the social and economic ladder. Unlike European immigrants, however, they found that life in the old country bore little resemblance to their new life in America. Their cultural heritage was Asian, not European, and thought by Americans to be uncivilized. Their religions, Buddhism and Shinto, were non-Christian. The new language, English, required them to learn new sounds, new sentence structures, and a new alphabet. These hurdles could be overcome, but the most obvious and permanent difference—race—could not.

In addition to this rather formidable array of problems, the Issei soon began to encounter legal barriers. In 1870 a naturalization act had extended the right of aliens to apply for American citizenship from free whites to include people of African descent. The other races were not mentioned. Most courts interpreted this to mean that only whites and blacks could be naturalized, yet a few issued certificates of naturalization to Japanese (*Yamashita v. Hinkle*, 1922, 69-70). This ambiguous state of affairs lingered on for many years. Then in 1911 the Bureau of Immigration and Naturalization decided to allow only blacks and whites to declare their intentions to file for citizenship. No other applications were accepted, and the U.S. Supreme Court upheld this decision (*Ozawa v. U.S.*, 1922, 65-69).

Japanese in America received treatment similar to that of the Chinese, who had come some thirty years earlier. When the

Chinese population began to reach a significant level in terms of number and economic competition, national opinion turned against them. In 1882 the Congress passed legislation that excluded Chinese from entering the United States and made those who had already entered ineligible for citizenship.

About the time that Chinese immigration was barred, the Japanese migration to the United States picked up. From an average of twenty immigrants a year in the first half of the 1880's, immigration jumped to 194 in 1886, then climbed steadily to almost two thousand in 1894 (U.S. Bureau of the Census, 1976; figures for years ending on June 30). Thousands, mostly from rural Japan, crossed the Pacific to take up jobs in agriculture, fishing, and flower growing. When this new migration began to reach an economically significant level, as with the Chinese, prejudice and discrimination appeared. The Japanese and Korean Exclusion League (later to be called the Asian Exclusion League) formed in 1905 chiefly as a propaganda organ. A number of other anti-Japanese organizations followed. In that same year the California legislature adopted a resolution which condemned the Japanese in that state as a "serious menace to [the] well-being and prosperity" of the white residents and requested that the federal government take steps to stem further immigration of Japanese laborers (California State Senate Joint Resolution # 10, 1905). Then for the next several years anti-Japanese legislation was routinely proposed.

Soon discriminatory treatment escalated beyond political rhetoric. On October 11, 1906 the San Francisco Board of Education removed Japanese-American children from the public schools they had been attending and ordered them to report to a special public school for Asian children. This incident raised not only the ire of the Japanese community in the Bay Area but created a stir in Japan as well. The crisis ended, after federal intervention, with the Gentlemen's Agreement between the United States and Japan. President Theodore Roosevelt promised that Japanese-American children would be allowed to attend the regular public schools. In

return, the Japanese government agreed to greatly curtail the issuance of passports for travel to America.

Racial friction continued, however. Anti-Japanese groups pointed to the "invasion" of picture brides as a violation of the Gentlemen's Agreement and worried about the increase in Japanese-American babies. The California legislature reacted to the "invasion" by enacting the Alien Land Act of 1913. This measure prohibited non-citizens from owning land in California. First generation Chinese and Japanese, ineligible for citizenship, were thus deprived of the right to own real estate. The immigrants, naturally and often successfully, looked for methods to evade these provisions. A flurry of land laws in the early 1920's strengthened the California law in an attempt to remove loopholes, while similar land laws spread to Arizona, Washington, and Oregon. Japanese immigrants with American-born children, however, continued to register land in their children's names, and the courts affirmed the parents' right to act as the guardian of their children's estates.

The Cable Act of 1922, which allowed American women to retain their citizenship after marrying foreign citizens, failed to protect the spouses of aliens ineligible for citizenship. Until 1930 a woman could lose her U.S. citizenship merely by marrying an Issei man, even if he were a permanent resident in America. Two years later the Immigration Act of 1924 superseded the provisions of the Gentlemen's Agreement by prohibiting any more aliens ineligible for citizenship, including both Chinese and Japanese, from entering the United States.

This exclusion of Japanese from the United States split up some families whose members happened to be visiting Japan at the time that the bill became law. Although the Nissei, second generation Japanese, were still free to travel back and forth between Japan and America, any such trip for the Issei could be only one-way to Japan. Thus the Issei were permanently separated from their families in Japan.

The Japanese in America, then, lived in a world half American

and half Japanese. The Issei would forever be Japanese aliens. They had suffered under discriminatory legislation, court decisions, and public opinion. Unwanted, they and their children had to be prepared to return to Japan if the situation became worse. For Japanese-American children this often meant studying Japanese at special language schools after the public schools let out. Some even received their education abroad in Japan. Nisei born before 1924 could return to Japan anytime with all the rights and privileges of other Japanese citizens. Yet, despite the unfair treatment they experienced in America, the Issei raised their children to be model citizens of their new country. Statistics indicate a large measure of success in this upbringing. Compared to the general population, Japanese-Americans maintained a high level of education, a high rate of employment, a low number of welfare cases, and a low rate of involvement in crime. Their strong code of honor made them good credit risks as well. In the wake of the Immigration Act anti-Japanese agitation faded into the background until the bombing of Pearl Harbor and the subsequent war with Japan disrupted this quiet state of affairs.

The Coming of War

War came to the United States as a surprise attack on Pearl Harbor. The American Civil Liberties Union, like the armed forces, was caught unprepared. Having emerged during the unpopular First World War, it concentrated its attention upon free speech and freedom of religion. Twenty-four years earlier the federal government had harassed and imprisoned pacifists, socialists, Wobblies (Industrial Workers of the World, a radical labor union seeking to unite all industrial workers into one big union), and other dissidents. Post office censors impounded radical publications including those of the National Civil Liberties Bureau, as the ACLU was then called; while the courts convicted radicals of espionage and sedition on the flimsiest evidence. With this kind of intolerance in mind, the Union

in December 1941 could express "confidence that the record of persecutions for mere opinion in the last war will not be repeated [though] reactionary forces may try 'to take advantage of the war'" (S. Cal. ACLU, 27 Dec 1941). One reason for such optimism, perhaps, was the nearly universal appeal of the Second World War. The bombing of Pearl Harbor and Germany's attack of Russia united America's entire political spectrum behind the war effort. With opinion solidly in favor of the declaration of war, the government could afford to be tolerant of the insignificant amount of dissent that remained.

For a month or two after the Pearl Harbor attack, the situation on the West Coast was handled forcefully, but with restraint. No one, not even civil liberties groups, seemed to realize how hysterical the situation was to become. In December 1941 the American Civil Liberties Union expressed in its publications a sense of cautious optimism. Realizing that "the Bill of Rights will be subject to strains not experienced since the first World War", it predicted the internment of thousands of enemy aliens (*Civil Liberties Quarterly*, Dec 1941, 2). The Union expressed concern that these legal restraints "not go beyond military needs" (S. Cal. ACLU, 27 Dec 1941) and naively assumed that "the most scrupulous investigation to separate the harmless [alien] from the dangerous" (*Civil Liberties Quarterly*, Dec 1941, 2) would be carried out. The view that the Roosevelt administration was "committed to the principle that civil liberties must not be subordinated in a war for democracy" (S. Cal. ACLU, 20 Dec 1941) prevented the members of the ACLU from becoming more alarmed.

As the Union had predicted, the government's initial reactions to the declaration of war were forceful, yet restrained in light of what was to come. Months before Pearl Harbor, FBI agents in Los Angeles under the direction of Richard Hood had collected an index file of suspicious aliens—Japanese, German, and Italian. When the Department of Justice received Presidential proclamations giving them the go-ahead, the Federal Bureau of Investigation and the

armed forces burst into action, securing strategic locations and arresting several hundred of these enemy aliens.

The Japanese community fell under heavier suspicion than the German or Italian communities. Partially this was due to racial prejudice, but there were several other reasons as well. Unlike Germany or Italy, Japan violated U.S. territory in a surprise attack, plunging America into war. Moreover, the Japanese population was concentrated on the West Coast and in Hawaii, the very areas that were most prone to Japan's naval power. Having come to America quite late, the Japanese community was the least established or assimilated of the enemy alien groups, making them more susceptible to vague suspicions. When enemy aliens were rounded up right after the Pearl Harbor attack, the Japanese community was particularly hard hit because virtually all of its leaders were Issei, ineligible for citizenship.

Events at Terminal Island provided the most dramatic example of how the Japanese community was disrupted. This piece of land just off San Pedro, measuring five miles in length and about one mile in width, formed the east shore of the channel to Wilmington, the Port of Los Angeles. Furthermore, it lay close to Long Beach Naval Station, Fort MacArthur, and Reeves Field — three defense points. The island was home of the Los Angeles fishing industry. It housed a population which included 500 Japanese families—made up of 1,400 Japanese-Americans and about 800 aliens. Most of the men fished for tuna, while many of the women worked in the ten canneries on the island. These unsophisticated, hard-working people made little contact with the mainland except for the high school children who crossed by ferry each day to attend classes in San Pedro.

In what one local paper called a “grim setting of warlike preparation” (*LA Times*, 9 Dec 1941) truck loads of soldiers from Fort MacArthur rushed to the Sixth Street ferry landing, the Henry Ford Avenue Bridge, and the new Navy Bridge, thereby isolating the island (*LA Times*, 8 Dec 1941). Suddenly armed guards appeared

everywhere. They patrolled wharves and warehouses, Terminal Island shipyards, Wilmington oil refineries and storage facilities. Customs men and soldiers swooped down and seized Hishimoto Company's hardware and boat supply store on Tuna Street. They closed several other stores and detained the Japanese alien proprietors (*LA Times*, 9 Dec 1941). They halted all motorists, required identification, and later stopped all vehicular traffic to the island. They questioned all Orientals. No one was permitted to leave, and only bona-fide residents who had been away when the approaches were seized were permitted to return to their island homes. Meanwhile, the Navy placed under guard some fifty fishing boats from Fish Harbor. The boats had been about to put out to sea when Los Angeles Harbor was closed (*LA Times*, 8-9 Dec 1941). By Monday the government had taken more than 300 Japanese aliens to Terminal Island Federal Prison and the immigration station near the channel entrance to be held until special hearing boards heard the FBI's evidence against them. The American Civil Liberties Union, describing these vigorous precautions as a "hysterical situation" brought about by the sudden attack on Pearl Harbor and the subsequent war declaration, felt equally relieved that things had not turned out any worse. In so far as the general public was concerned:

the feeling[s] of many people were highly wrought up, but we are happy to report that little in the way of vigilante action occurred. There were threats, angry words and name-calling but very few genuine cases of assault on persons or property. (S. Cal. ACLU, 20 Dec 1941)

The goodwill of government officials surpassed even the public's tolerant disposition. Several members of Congress stood up to propose a policy of tolerance towards Japanese and other enemy aliens (see, for example, U.S. Congressional Record, 8 Dec 1941, A5554). And in mid-December a complaint from the Southern

California branch of the ACLU to the new Attorney General, Francis Biddle, concerning Japanese nationals being held incommunicado, brought a prompt relaxation of some stringent procedures (S. Cal. ACLU, 20 Dec 1941).

A week later the ACLU could announce (a) that the 435 enemy aliens arrested in the Los Angeles area were being examined to determine which ones should be held as dangerous aliens and (b) that

Attorney-General Biddle has ordered that the utmost care be exercised in examining these aliens to see that their rights shall be respected and none shall be held in detention camps who are not proven to be actual enemies of the U.S.A. (S. Cal. ACLU, 27 Dec 1941)

The ACLU's war-time program, announced in late January, reflected this optimism. The program's focus indicated a concern for "maintaining freedom of speech, press, and communication; and the rights of Negroes and conscientious objectors" (S. Cal. ACLU, 3 Jan 1942). The ACLU skimmed over the entire Japanese question without realizing its vast significance. Only two of the program's twenty-three points even touched upon the possibility of racial discrimination against Japanese. Point eighteen, opposing racial discrimination "especially in the armed forces and the defense industries" (S. Cal. ACLU, 31 Jan 1942), included no specific mention of the Japanese and more likely referred to the larger minority group of black Americans (for further discussion see Polenberg, 1972). Point nineteen vowed to protect aliens from any "unreasonable treatment ... because of opinion or nationality" (S. Cal. ACLU, 31 Jan 1942). At this time the Union thought Nisei safe from abuse while even Issei seemed in pretty good hands. It noted "as a practical matter only those suspected of hostile activities are taken into custody"; adding, "[t]he government has set up special boards to sift cases rapidly and to detain only those whose activities are objectionable or suspicious" (S. Cal. ACLU, 3 Jan 1942).

Unable to conceive the extent to which civil liberties were to be violated, the Union was worried about (a) job discrimination against blacks, (b) the persecution of radicals, and (c) the kind of mob violence that had occurred during the First World War. But times had changed. This war was to give xenophobia and racial intolerance in America a scope and force surpassed only by the treatment of Native Americans and black slaves. A whole race, native-born citizens and aliens alike, would face imprisonment and exile from their homes. Their persecutor would be neither one of the few hate groups that had almost faded from the scene nor an ad hoc gathering of hysterical townspeople, but the U.S. government. This policy was planned in advance, executed by order of the President, and subsequently upheld by the Supreme Court.

If the ACLU could feel optimistic from observing the public and their congressional representatives, listening to the man in charge of alien control would greatly intensify this feeling. Attorney General Biddle not only defended Japanese-Americans against persecution, he urged the fair treatment of aliens as well, "[t]he great majority of [whom] will continue to be loyal to our democratic principles" (S. Cal. ACLU, 3 Jan 1942). He maintained, "Most revere and respect the freedom which America is able to offer them. If we create the feeling ... that they are not wanted here, we shall endanger our national unity" (S. Cal. ACLU, 3 Jan 1942).

On December 27, after vague suspicions of disloyalty motivated lay-offs among alien workers and even those with foreign sounding names, Biddle stepped in to remind employers that:

No more short-sighted, wasteful, or unAmerican policy could possibly be adopted at this time than of barring non-citizens from legitimate employment. ... [O]f our total non-citizen population of almost 5 million, fewer than 6 out of 10 thousand have been regarded as dangerous. These have been taken into custody. (S. Cal. ACLU, 10 Jan 1942 and NY Times, 28-29 Dec 1941)

From this point of view, the worst had already passed. The dangerous aliens had been taken into custody. And so it might have ended had the Attorney General remained in charge of the nation's internal security. Prodded by racial animosity on the West Coast, the U.S. Army, however, developed a growing dissatisfaction with the restraints which the Justice Department imposed upon its investigations of a possible Japanese threat.

The Decision to Evacuate

Pearl Harbor to the contrary, war with Japan had been foreseen. As early as the summer of 1940 the federal government had begun to take steps to thwart possible attempts at sabotage. The Immigration and Naturalization Service was transferred from the Labor Department to the Department of Justice. In order to keep a close watch on foreigners, all aliens were required to register annually (Daniels, 1975, 5). The Federal Bureau of Investigation and the various military intelligence agencies began to compile extensive lists of suspect Japanese aliens. In the summer of 1940, Judge Advocate General Allen Gullion, the top law enforcement officer in the War Department, was already receiving questions about the Army's role in preventing Fifth Columnist activities in case of war (Daniels, 1975, 7). General Gullion and his assistant in charge of aliens, Major Karl Bendetsen, soon became primary figures in the decision to evacuate the Japanese.

As diplomatic tension between Washington and Tokyo increased, Japanese in America were put under increased restrictions. One day after the Pearl Harbor attack Issei bank accounts were frozen and all Japanese were prohibited from crossing U.S. borders in either direction (Daniels, 1972, 10-11 and 1975, 35). Within a few days 1,500 suspect Japanese aliens were placed under arrest. For a period of three or four weeks after these initial protective measures, calm and tolerance generally characterized the nation's attitude towards Japanese residents. But even in this period there were

individuals and groups in the public, press, and government who were thinking in terms of evacuation and internment.

Four days after the Pearl Harbor attack the West Coast of the United States was officially declared a "Theatre of Operations". The designation immediately expanded the authority of the area's commander, Lieutenant General John DeWitt. He and his staff assumed these responsibilities with what one historian describes as an attitude of "infectious panic" (Daniels, 1975, 14-15). Numerous false alarms emanated from the West Coast Defense Headquarters, including sightings of Japanese planes and fleets accompanied by warnings of imminent attack. On December 10 General DeWitt's staff, convinced that 20,000 Japanese residents of the San Francisco Bay area were about to stage an armed uprising, hatched a scheme to take all these people into military custody. Luckily, the local FBI office talked them out of it. This kind of paranoid panic contributed greatly to the push for a desperate solution to a non-existent problem.

The wide circulation of Japanese scare stories in the press and in the public mind led editorial and public opinion to oppose the presence of Japanese on the West Coast. By mid-January these concerns had been transmitted to the West Coast congressional delegation. Even congressmen who had earlier cautioned restraint began to propose evacuation and internment.

In the midst of this acute apprehension a jurisdictional dispute soon arose between the War Department and the Department of Justice. From the very outset the Department of Justice had been arresting suspect aliens, then giving them individual hearings. It accorded the American-born Japanese all the rights due citizens. Meanwhile Gullion, DeWitt, and Bendetsen were pushing for military jurisdiction over both aliens and Japanese-Americans. They continually complained about the laxity of the Attorney General's program for alien control.

The Department of Justice, sensitive to this criticism from the War Department, apologized for its manner of handling enemy

aliens (Daniels, 1975, 66). In its own defense the Department of Justice insisted that it had no right to disturb Nisei without proof of individual guilt and that, even if it had such power, it did not have the manpower to carry out such a broad program. Instead, the Attorney General suggested that the Army might declare various military areas from which it would evacuate everyone, except those to whom it issued passes (Daniels, 1975, 43-44). Not until February 17, 1942 did he attack General DeWitt's military judgment. In a letter to President Roosevelt he pointed out that the Army Chief of Staff did not expect an attack on the West Coast and that the Federal Bureau of Investigation had no evidence of planned sabotage (Daniels, 1975, 48). But by then it was too late, the decision had already been made. Two days later President Roosevelt signed Executive Order 9066, empowering the Army to designate military areas from which it could exclude anyone.

Once the government decided in favor of evacuation, many details remained to be worked out. The evacuation process evolved over a period of months and even during the evacuation itself. The first problem was to determine who should be included in the evacuation. Executive Order 9066, after all, authorized the War Department to exclude anyone and everyone from a military area. In delegating his authority to General DeWitt, Secretary of War Henry L. Stimson established six categories of people: (1) Japanese aliens, (2) Japanese-Americans, (3) German aliens, (4) Italian aliens, (5) suspected fifth-columnists or subversives, and (6) all others. Stimson ordered DeWitt to exempt categories 4 and 6 from the evacuation (Daniels, 1975, 117-121). In time all restrictions on both German and Italian aliens were relaxed, then abolished. The sixty or so people evacuated in category 5 as being dangerous were expelled from the prohibited area, but not otherwise restricted (Girdner and Loftis, 1969, 124).

While the group of people to be evacuated was being reduced, the territory from which they were to be excluded was increased. Attorney General Biddle, at the prompting of the War Depart-

ment, had already designated numerous specific areas to be restricted, which subsequently became the first locations evacuated. Next General DeWitt designated two very broad areas. Military Area No. 1 covered roughly all land within 150 miles of the Pacific Coastline. Military Area No. 2 covered the rest of the states of California, Washington, and Oregon, as well as the western part of Arizona. Japanese were initially warned that they would be moved out of Military Area No. 1 only, but it was later decided to exclude them from both areas. Those who had voluntarily moved from Area No. 1 to No. 2 had to move once again.

The general character of the evacuation also changed. At first the War Department envisioned a mass migration of which a large part would be "voluntary" (under the threat of involuntary removal), then decided upon a forced evacuation. General DeWitt issued a freezing order which forbade Japanese in prohibited areas from leaving without case-by-case approval. From March 30 to mid-August the Japanese were moved en masse to hastily constructed assembly centers, where they waited for several months to be transported east of the Military Areas. But again the plan was revised. April 7, at a conference in Salt Lake City with federal officials, governors of the states to which the evacuees would be relocated indicated that the Japanese were most unwelcome (War Department, 1943, 215). These states did not wish to receive by the thousands an oriental minority whose loyalty to America had come under intense suspicion. And so, the War Department moved the people to more permanent Relocation Camps for internment. The War Relocation Authority was then established to administer the camps. Under its direction evacuees were later screened and some resettled outside of the camps. As the evacuation policy solidified, the American Civil Liberties Union tried to ease the restrictions that would be imposed upon the Japanese evacuees.

Formulating an Opposing Policy

Roosevelt's Executive Order 9066 provided the ACLU with its most direct challenge to the principle that civil liberties must not be suspended in wartime. Not having a prepared policy for this contingency, the national organization had to quickly consult its branch offices and formulate one. Meanwhile the federal government raced ahead with its plans. The week after Secretary Stimson delegated his powers of exclusion to General DeWitt, the Japanese living on Terminal Island were completed evacuated. In the first two weeks of March DeWitt designated two extensive military zones with numerous subdivisions, established the Civil Affairs Division to plan the evacuation, and created the Wartime Civil Control Administration (WCCA) to execute it.

The ACLU's national office, recognizing instantly the dire significance of the government's new direction, declared:

Unquestionably the most serious violation of civil rights since the war began will arise with the enforcement of the President's order permitting military authorities to establish zones from which all aliens and citizens alike may be evacuated. (*Civil Liberties Quarterly*, March 1942, 1)

It further labeled Public Proclamation No. 1, which established Military Areas No. 1 and No. 2, an unprecedented and unnecessary action (*Civil Liberties Quarterly*, March 1942, 1). Having thus set the tempo, they instructed the California branches in San Francisco and Los Angeles to meet in conference to develop a policy.

The resulting statement, issued March 1st, displayed the branches' hesitation to confront the constitutionality of Executive Order 9066 directly. It plead only that "in the administration of that order, local racial prejudices and selfish interests shall not be allowed to influence action" (Statement, 1 March 1942). The conference noted the "general fairness and impartiality" the Justice

Department had employed and wishfully expressed confidence that the Army would continue the tradition. Yet, the branches let it be known that they would be keeping a watchful eye on the Army's performance, offering assistance to those people whose constitutional rights might be disregarded (Baldwin, 1942). The very next day the national office issued a similar policy statement with a bold call to immediate action. It characterized Executive Order 9066 as "far too sweeping to meet any proved need" (Baldwin, 1942), then suggested two alternate proposals. Either hearings should be provided for all people excluded from military areas or all residents should be placed under martial law. The board further urged "immediate court test" (Baldwin, 1942) by injunction or *habeas corpus* in order to challenge these sweeping powers.

Upon receipt of Roger Baldwin's telegram, the Northern California ACLU proceeded cautiously, voting to "withhold publicity and action ... until we secure a detailed explanation and clarification of the board's position" (Baldwin, 1942). That detail came by way of the national office's proposal for a letter to President Roosevelt. This draft of the letter conceded that military necessities would have to take priority over civil rights and Executive Order 9066 would have to be accepted in principle. Yet, it followed this brief concession with a lengthy indictment of the potential abuses of unchecked power in the hands of military authorities. The letter warned of "cruel and unnecessary hardships", of undermining the loyalty of the Nisei, and of giving substance to charges of racial prejudice and discrimination (National ACLU, 1942). The national office then proposed three restrictions to be placed upon the Presidential order: (1) narrow definition of restricted areas, (2) case-by-case hearings for enemy aliens prior to evacuation, and (3) similar hearings for U.S. citizens coupled with reliance upon voluntary compliance with the decision.

At first the Northern California ACLU recommended significant changes which would transform the national office's rather bold challenge into mild supplication. The executive committee voted to

strike the entire section which dealt with the potential abuses of power. Their version also withdrew the suggestion for a narrow definition of restricted areas and acquiesced in a postponement of individual hearings until after the evacuation. The committee's weak stance stemmed from the fact that they had "hopelessly divided" in their views of the evacuation orders. They agreed only upon the need for hearing boards to review each case individually. With a 6-3 vote they elected to confine their action, temporarily, to matters of administration (N. Cal. ACLU ExComm, 19 March 1942). Then at their next meeting the balance shifted and the members rescinded this restriction 8-3 (N. Cal. ACLU ExComm, 19 March 1942). Thus they cleared the way for a broad attack on Executive Order 9066 itself.

The San Francisco group authorized their director, Ernest Besig, to proceed on the behalf of citizens fired from state jobs or whose business licenses the state had revoked, where the cause for such actions derived from the person's race. Furthermore, they agreed in principle to test the application of General DeWitt's curfew regulations, contraband regulations, and "freezing" order. Rather than a blanket authorization, however, they required Besig to present any such cases to the full committee for approval before proceeding (N. Cal. ACLU ExComm, 2 April 1942). Besig located two cases for court tests: the curfew violation of John Ura and the evacuation violation of Fred Korematsu.

Meanwhile, the national office also reviewed its policy with regard to the Japanese evacuation. It presented two resolutions to the National Committee and the Board of Directors. Resolution One would challenge the constitutionality of Roosevelt's action in issuing Executive Order 9066 and oppose all removals from areas not under martial law. It claimed a "fundamental violation" of constitutional rights which no system of hearing boards could cure (McDaid, 1969, 10-11). Resolutions Two, on the other hand, would accede to the order itself, while challenging its necessity and the legality of its administrative procedures. It conceded the govern-

ment's right to establish military zones, but placed upon the government the burden of establishing the necessity for and propriety of evacuation. It also insisted upon appeal board hearings for those who wished to contest their expulsion and the full liberty of those who had left the military areas (McDaid, 1969, 10-11).

The vote favored Resolution Two by a margin of two to one. The new policy was adopted on June 22, 1942. In accordance with this policy, the Union explained, it would challenge not the "underlying constitutional power of removal," but the "unreasonable application of that power" (*Civil Liberties Quarterly*, Sep 1942, 2-3).

Anticipating that the Union would pursue a broad challenge of the constitutionality of evacuation, Roger Baldwin had put considerable pressure upon the West Coast chapters—L.A., San Francisco, and Seattle—to find suitable test cases. During the months of May and June they had found their cases. Seattle had accepted the Hirabayashi case, while San Francisco had taken up the defense of Fred Korematsu. When the National Board of Directors voted to embrace the more narrow challenge, Baldwin must have been as surprised as anyone. The Board then ordered the West Coast locals to alter their arguments accordingly. Either they must conform to Resolution Two or drop the cases entirely. Baldwin notified the three chapters of this and expressed hope that harmony could be maintained, if not through real agreement, then through the "generous application of lip service" (McDaid, 1969, 29).

The Seattle branch, a small operation, did not oppose these orders. Although Southern California's director, Clinton Taft, had wanted to test the evacuation on the broadest constitutional grounds, the branch's chief counsel, A.L. Wirin, wrote that the referendum did not change his court strategy at all since he had not wanted to test "the abstract right of evacuation anyway" (quoted in McDaid, 1969, 29-30). These two chapters yielded without struggle to the national office's new line, submitting case outlines which the National Board approved July 6.

The Northern California branch, on the other hand, did not

accede so readily. Going into its ninth year of operations, this well-established office could afford a larger measure of independence than the other two. Furthermore, its location in San Francisco provided it with the most direct and abrasive contact with the WCCA. On June 4, the Executive Committee meeting which authorized Wayne Collins to proceed with the Korematsu case also polled itself on the New York resolutions. Six to four they voted in favor of Resolution One (N. Cal. ACLU ExComm, 4 June 1942). As one historian has noted:

Perhaps the most important factor in creating opposition to the referendum's outcome in Northern California was the director of the local board, Ernest Besig. A fanatic for civil liberties, Besig wanted no part of the half-way measures and compromises. His contact with the government infuriated him; once he had bailed out a Japanese-American "criminal", only to have the military police, alerted by the local sheriff, seize the man on the step of the courthouse and cart him off to military prison, leaving the outraged Besig in danger of losing his bond. Most exasperating of all, Besig's Japanese-American secretary had been forced to flee to the east coast, since she had "decided she wasn't going to any concentration camp"; the overworked Besig was now left with all the office paperwork to do, a state of affairs not likely to develop his diplomacy, his patience, or his acquiescence towards the Army. (McDaid, 1969, 31)

At its July meeting, after modification of the national policy, the San Francisco Executive Committee prevailed over two dissenting votes to carry a motion that recognized the new national policy as binding in all future cases while continuing the Korematsu case as originally planned (N. Cal. ACLU ExComm, 2 July 1942). Since one test case on a given issue is all a local chapter can usually handle, the decision amounted to a repudiation of the national

board's referendum (McDaid, 1969, 32). A "period of exhaustive correspondence" (N. Cal. ACLU, 1943) between New York and San Francisco ensued.

Baldwin suggested that a separate defense committee be set up to fight the Japanese-American cases. Besig replied, "We don't intend to trim our sails to follow the board's vacillating policy." The national board ordered the Northern California chapter to withdraw from its case on the points outside the scope of Resolution # 2. Besig snorted, "We've got a number of Irishmen on our committee who love a good fight. So heave away with the monkey wrenches. We'll toss them back." (McDaid, 1969, 33)

Eventually San Francisco and New York worked out a compromise under which the local branch handled the case through the Circuit Court of Appeals under Wayne Collins' name without mention of the ACLU affiliation. Meanwhile the national office set up an independent defense committee to make its arguments before the Supreme Court.

Lobbying Against Injustice

While engaged in internal disputes, the ACLU managed also to carry out an energetic lobbying program in defense of Japanese-American rights. As early as January 1942 the Union had begun to agitate against repressive measures coming before Congress. In a letter signed by Arthur Garfield Hays, a member of the National Board, it urged a hearing on an amendment to a bill, originating in the Justice Department, which would allow naturalized citizenship to be revoked whenever the holder's "utterances, writings, actions, or course of conduct establishes that his political allegiance is to a foreign state" (S. Cal. ACLU, 31 Jan 1942). Hays complained that such a provision "opens the doors wide to prejudicial interpreta-

tions, private informers, and in the time of excitement, gross injustices”.

With the appearance of Executive Order 9066 the American Civil Liberties Union received its primary challenge. Though the Union split in its appraisal of the constitutionality of the order itself, it consistently and solidly pushed for reform in its administration. In March it wrote President Roosevelt asking for a procedure that would include individual hearings for all the evacuees. And in early May the Northern California Civil Liberties Union protested the War Department's sudden reversal of its policy of exempting from evacuation families of mixed race and individuals of mixed blood (N. Cal. ACLU ExComm, 7 May 1942).

In June the San Francisco office went to court on behalf of Japanese-American voters. A member of the Native Sons and Daughters of the Golden West had filed suit in U.S. District Court to prevent San Francisco and Alameda Counties' evacuees from voting in upcoming elections. The American Civil Liberties Union promptly responded with an *amicus curiae* brief, and the suit was dismissed.

In addition to its attempts to influence the administrative decisions of the executive departments of government, the ACLU devoted some attention to legislative proposals in Sacramento and Washington, D.C. Upon the national office's recommendation, the Northern California branch protested to U.S. Senators Downey and Johnson of California against Japanese internment Bill S2293 (N. Cal. ACLU ExComm, 1 Oct 1942). This bill, introduced on the day Roosevelt signed Executive Order 9066, would have authorized the Secretary of War to arrest and hold: (1) anyone owing allegiance to a foreign country, (2) members of any race ineligible for naturalization, and (3) anyone acting as subjects of a foreign nation (U.S. Congress, 1943, 8). In February 1943, the office directed its efforts to influence the deliberations of the California Legislature. The Executive Committee decided to oppose a resolution which advocated the denial of citizenship and landholding to all Japanese and

another which would expatriate dual citizens (N. Cal. ACLU ExComm, 4 February 1943). It also voted to authorize the office "to intervene, if necessary, [on] behalf of the Japanese-American Citizen League, which desires to send its representatives to Sacramento to oppose pending anti-Japanese legislation" (N. Cal. ACLU ExComm, 4 February 1943).

Though the Union's lobbying in legislatures against anti-Japanese legislation proved generally successful, it could not prevent the executive branch of the federal government from evacuating and interning the Japanese. Nor could it get them to establish any procedural safeguards to protect the rights of those affected. Eventually the ACLU had to carry on its battle in the judiciary. In a future paper I will discuss the six resulting cases—Hirabayashi, Korematsu, Yasui, Asaba, Wakayama, and Endo—and their disposition.

Conclusions

World War II was a particularly trying time for West Coast Japanese. It became quite popular to scorn and denounce these people as members of an enemy race. At a time when even many liberals—such as California Attorney General Earl Warren and columnist Walter Lippmann—denounced the Japanese menace, the American Civil Liberties Union and a few other groups spoke out against the evacuation and interment. It not only decried this injustice, it went even further in openly contesting the government's policy in and out of the courts.

The Union was defeated in its attempt to prevent the evacuation of over 100,000 Japanese from the West Coast. One wonders if there was anything more that the Union could have done to make its voice heard and heeded. In retrospect two weaknesses seem to have hampered the program. First, the Union was slow to recognize the federal government's susceptibility to West Coast prejudice. If it had anticipated the power of anti-Japanese sentiment, the Union might have been able to mobilize its resources against

these anti-Japanese proposals while they were still in the planning stage. Even if such an early start would not have prevented Executive Order 9066, it could have made such an order more difficult to rationalize. An early start might also have allowed the Union to defeat the harshest aspects of the evacuation program, such as lack of hearings and the internment. The ACLU wasted much valuable time in establishing its policy. It began formulating national policy shortly after the evacuation order was issued and did not finalize that policy until June 22, almost three months after evacuation had begun. The old saying—an ounce of prevention, a pound of cure—would be an appropriate comment in this regard.

A second weakness in the Union's strategy comes from the very nature of the organization. The American Civil Liberties Union's concern for civil liberties and its frequent use of the courts in seeking redress naturally led it to frame its arguments in legal terms. Yet, military officers, civil servants, and politicians fall prey to all the same emotions as other people. No amount of talk about individual rights, justice, and fair play was going to allay the very real fear these people had of the Japanese. Attorney General Biddle had the right idea when he pointed out to Roosevelt how little danger the West Coast Japanese actually presented. Contrary to General DeWitt's visions of invasion and sabotage, the War Department expected no invasion of the West Coast and the Federal Bureau of Investigation had gathered no evidence of Japanese subversion or sabotage. These very pertinent, but generally ignored, facts deserved more emphasis.

The problems raised by the wartime situation proved to be difficult for the American Civil Liberties Union and other liberal groups. On one hand, they fully supported the war efforts of the Roosevelt administration. A number of the members in these local and national organizations were close friends with Roosevelt or members of his administration. This, naturally, brought an extra measure of pressure upon these liberal groups to cooperate with Roosevelt's policies.

It must be remembered also that the Roosevelt administration maintained a liberal image with respect to the Japanese situation. Executive Order 9066 was not in and of itself a racist document. It allowed the Army to prohibit any person from remaining in areas that might be important to the war effort. The Army, not the Roosevelt administration, had made the decision to label Japanese as a group whose loyalty should be called into question and had designated all of the West Coast states in their entirety as areas that must be protected from sabotage and espionage. Though the administration had accepted the Army's policies, it had not initiated them. Consequently liberals shied away from any direct challenge to Roosevelt. Despite the development of an overwhelming sentiment against the Japanese, the ACLU managed to score several victories. A large part of this success was reflected in bills that never passed, ideas that never became policy. Such specters are nearly impossible to evaluate. In addition, one must also credit legislators, the majority of whom examined the proposals critically and exercised their discretion in the interests of justice.

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