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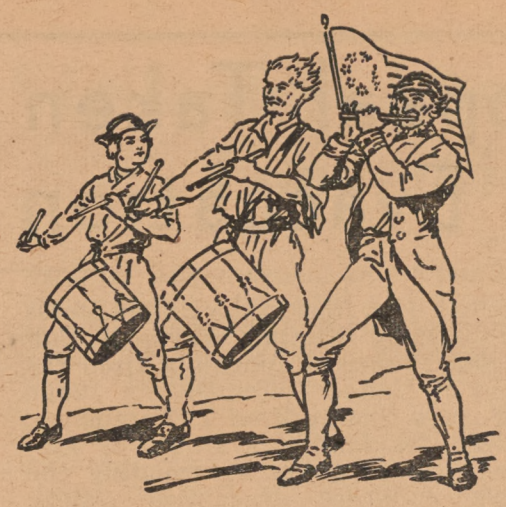
AMERICAN CIVIL LIBERTIES UNION-NEWS



FREE SPEECH
FREE PRESS
FREE ASSEMBLAGE

"Eternal vigilance is the price of liberty."

Vol. VII SAN FRANCISCO, CALIFORNIA, OCTOBER, 1942 No. 10

COAST CITIZENS BANISHED

Army's Civilian Exclusion Program Extended to Non-Japanese Citizens

The Army has embarked on a program of deporting United States citizens, other than Japanese, from the Pacific Coast. At least four cases have come to the attention of the Northern California branch of the A.C.L.U. in which citizens have been uprooted from their homes and businesses and compelled to move inland. It is reported that at least 250 citizens in all will be banished from their homes in this manner.

No Basis for Criminal Action

The Military admits that there is no basis for criminally prosecuting any of these unfortunate people. At the same time, it claims that their unrevealed records are such that they should be deemed "dangerous or potentially dangerous" to the military security of the Western Defense Command. It doesn't say what acts or evil thoughts make a citizen "dangerous or potentially dangerous." Will the victims be solely those who are charged with having shown sympathy to the Axis powers, or will they include others who incur the wrath of the military command?

Here is the way the banishment takes place: The accused suddenly receives a citation to appear before an Army officer. At a Star Chamber session, at which he is denied the right to counsel and an opportunity to present evidence in his own defense, he is questioned very briefly and subsequently ordered to leave the area within a given time, usually ten days. Thereafter, as a disloyal citizen, he must report periodically to the F.B.I. Forever after his record will bear the blot of disloyalty to his country, even though he has never had a fair opportunity to meet the charges. That sort of procedure is typical of the red-hunting Congressman Dies; it is the technique of the witch-hunter.

Such witch-hunting is the logical result of the country's almost unquestioned acceptance of the evacuation of citizens of Japanese extraction. The government was able then with impunity to trample on the civil rights of an unpopular minority. Today the badge of inferiority is being pinned on additional citizens. Where will it end? If the civil liberties of one class of citizens can be denied, the rights of the rest of us are thereby placed in jeopardy.

Case of Sam Fusco

An idea of the Military's concept of a citizen who is "potentially dangerous" is illustrated by the case of Sam Fusco. Fusco, now about forty years of age, was born in Los Angeles. He attended the San Francisco public schools graduating from Grammar and High School. For a number of years he has been engaged in the dried fruit business with his father.

In connection with that business, he made the acquaintance of numerous Japanese. He become interested in them as a people and practiced writing Japanese ideographs in a special class.

In 1937 he became choir director of the Japanese Episcopalian Mission in San Francisco, and has held that position until the evacuation. "His interest in Oriental things was so strong," says the pastor of the

(Continued on Page 4, Col. 1)

S.F. 'Rugg-Beating' Comes Before Special Advisory Committee

The Advisory Committee named by the San Francisco Board of Education to investigate the merits of the Rugg social studies textbooks, which have been attacked by patrioteers as "subversive", will seek to answer three questions:

1. Are these books subversive in nature?
2. Should controversial questions be presented to students of junior high school age?
3. Are the procedures by which these books were adopted, and by which their discontinuance is proposed, desirable procedures?

Monroe E. Deutsch of the University of California is chairman of the Committee. Other members are Glenn E. Hoover, John L. Horn, Lloyd Luckmann, Harold R. McKinnon and Edgar E. Robinson.

RABBI REICHERT AND MRS. HARRY KINGMAN JOIN THE UNION'S EXECUTIVE COMMITTEE

Dr. Irving F. Reichert, Rabbi of Temple Emanu-El, San Francisco, and Mrs. Harry Kingman, wife of the Y.M.C.A. director at the University of California, have just accepted invitations to membership on the Executive Committee of the Northern California branch of the Union.

THE "JAPANESE PROBLEM"

The October, 1942, issue of **Harper's Magazine** carries an article entitled, "The Japanese in America," written by "An Intelligence Officer." Says he, "The entire 'Japanese Problem' has been magnified out of its true proportion, largely because of the physical characteristics of the people. It should be handled on the basis of the **individual,** regardless of citizenship, and **not** on a racial basis.

THREE ARGUMENTS AGAINST THE "HOT CARGO" BILL

The "Hot Cargo" referendum appears as Proposition No. 1 on the November general election ballot in California. While there seems little excuse for passing this type of law as an emergency war-time measure when Labor is fulfilling its voluntarily given promise of no strikes in war industries, there are at least three good civil liberties reasons why you should VOTE "NO" on Proposition No. 1:

1. Because the act requires forced labor on a private employer's "hot cargo", it violates the constitutional guarantee against involuntary servitude.
2. Because the act outlaws peaceful picketing in support of a secondary boycott, it violates the right of freedom of speech.
3. Because it prohibits a person from saying or printing anything which "directly or indirectly" induces anyone not to handle "hot cargo" or to maintain a secondary boycott, the act violates freedom of speech and press.

McNutt Assures Protection For Fair Employment Committee

Freedom of investigation and a substantial increase in personnel for the Fair Employment Practice Committee, recently transferred to the War Manpower Commission, has been promised by Chairman Paul V. McNutt, in a letter to the American Civil Liberties Union.

The Union had urged complete independence for the Committee, with greater financial support and personnel.

Mr. McNutt stated: "Although the details of the organization have not as yet been worked out, the supervisory control exercised by my office will naturally be limited to the major questions of organization and procedure which have to do with the coordination of the work of the Committee with other units of the War Manpower Commission. There is no intention to exercise a detailed supervision or control over any particular investigations which the Committee may make into complaints submitted to it.

"With a more adequate staff and with the close cooperation of the War Manpower Commission it is believed that the Committee's highly important work can rapidly be made more effective than it has been during the first year of its activity."

CALIF. A. F. OF L. SUPPORTS CITIZENSHIP OF AMERICAN-BORN JAPANESE

The recent convention of the California State Federation of Labor overwhelmingly defeated a resolution asking Congress to revoke the citizenship of American-born Japanese. The proposal was denounced as "inhuman, vicious and undemocratic."

Hays Appearing For A.C.L.U. At Communist Ballot Hearings

Asserting that attempts made by members of the American Legion to secure the repudiation of signatures of nominating petitions of the Communist Party in New York State "would make it impossible for any minority party to get on the ballot", Arthur Garfield Hays last month appeared as a friend of the court on behalf of the American Civil Liberties Union to protect attempts to rule the Communists off the New York ballots.

Mr. Hays represented the Union's position of protecting minority parties at a hearing before Supreme Court Justice Francis Bergan at Schoharie, N. Y., September 14 where members of the Legion sought a permanent injunction restraining Secretary of State Michael L. Walsh from certifying Communist Party candidates on the ballot.

The Union stated, "The federal Constitution and the various state constitutions guarantee to every citizen the right to vote. A political party's right to a place on the ballot bears directly on the right to vote, for if a party is kept off the ballot, its adherents are compelled to vote for representatives other than those of their choice.

"The American Civil Liberties Union has rendered service in the past to minority parties in contesting illegal interference with the right to get on the ballot and intervened with election officials where discrimination was shown. The Union is participating in this case as it has in previous court contests on the ground that the denial of a place on the ballot constitutes a deprivation of the franchise."

BULLETIN

Los Angeles Superior Court Judge Emmet H. Wilson has just ruled that the Communist Party candidates cannot be removed from California's November 3 general election ballot. He held that the recently-enacted statute which attempts to proscribe political parties advocating the violent overthrow of the government deals only with the right of such parties to appear on the primary ballot and not at the final election.

MOVE TO BAR COMMUNISTS FROM CALIF. BALLOT FAILS

Superior Judge Franklin G. West of Orange county has ordered the removal from Orange county to Los Angeles county of proceedings directed at banning the Communist Party from the ballot in the forthcoming general elections. The order was made because all of the defendants but one, and he was made a defendant after the suit started, reside in Los Angeles county. The A.C.L.U., through its counsel, A. L. Wirin, appeared as a "friend of the court."

The Orange county suit, in behalf of three "citizens and voters," filed on the eve of the forthcoming elections, to keep the Communist Party off the ballot, represents the twelfth legal proceeding filed by them or their associates in the California courts, during the last three years.

At the time of the filing of the suit, without notice of hearing, Judge West issued a temporary restraining order against the Secretary of State restraining him from placing the name of the Communist Party on the ballot. Steps are being taken to vacate the restraining order.

The A.C.L.U. contends that the Communist Party ought to be permitted to have a place on the ballot on a par with the Republican and Democratic parties, irrespective of its political creed, and that in any event it should not be banned except upon a showing of a "clear and present danger" that such appearance would endanger the State of California or the government of the United States.

Appeal Taken In Korematsu Evacuation Test Case

Notice has been filed in the United States District Court by Attorney Wayne M. Collins of San Francisco appealing from the judgment of United States District Judge A. F. St. Sure finding Fred T. Korematsu, 23-year-old, Oakland-born citizen of Japanese extraction, guilty of violating the Military's Japanese evacuation orders. Korematsu was placed on five years probation and departed with other evacuees at the Tanforan Assembly Center for the Relocation Center at Abraham, Utah. Concurrent with the filing of the notice of appeal, an order, signed by Judge St. Sure, was also filed, allowing the appeal to be prosecuted **in forma pauperis,** that is, without the payment of filing fees and certain other costs of the appeal.

At the trial on September 8, Korematsu testified that he was born in Alameda county, where he resided, and graduated from high school, that he was a registered voter and taxpayer, and that he had never departed from the state. He also testified that he had never renounced his citizenship nor registered as a dual citizen. Following his rejection under the Selective Service Act because of stomach ulcers, he trained for a defense job and went to work in the shipyards as a welder, until his labor union expelled him because of his race. He does not read or write Japanese, and cannot converse fluently in that language. He testified that he was willing to bear arms against Japan. He had never before been convicted or charged with a felony or a misdemeanor.

The trial took place before Judge St. Sure because Judge Martin I. Welsh, who had been hearing the case, was on vacation. Previously, Judge Welsh had overruled a demurrer attacking the constitutionality of the evacuation orders. Judge Welsh promised to file a written opinion, but thus far has not done so. The record on appeal will be filed in the Circuit Court of Appeals by the middle of October. Briefs must then be prepared and filed, after which oral arguments will take place, possibly early next year.

President Urged To Clarify Policy Toward Japanese-Americans

Pointing to the uncertainty of the future of 70,000 American citizens of Japanese descent evacuated from the West Coast, the American Civil Liberties Union, in a letter to President Roosevelt, urged on him the value of a statement clarifying the administration's policy toward the evacuees. Military orders have moved all persons of Japanese blood from West Coast states to assembly centers and detention camps.

The Union declared that the "wholesale indiscriminate evacuations of all persons of Japanese blood" led to a general attribution of disloyalty to American citizens of Japanese ancestry, which, in turn, was held responsible for a bill favorably reported in the Senate that would intern all persons of Japanese blood in the country, and for a court attack on the citizenship of Japanese-Americans.

The letter, signed by John Haynes Holmes, chairman of the Board of Directors; Edward L. Parsons and Mary E. Woolley, vice-chairmen of the National Committee; Arthur Garfield Hays, general counsel, and Roger N. Baldwin, director, stated that a public declaration of administration policy recognizing the loyalty of the "vast majority of Americans of Japanese descent" would reassure loyal Japanese-Americans and would counter Axis propaganda capitalizing on "what is conceived to be racial discrimination."

Other suggestions recommended by the Union for government policy were an acknowledgment of the sacrifices of the evacuees, an offer of work and residence outside the military zone, a warning against restrictions on Japanese-Americans outside of military zones and attempts to deprive them of citizenship and a promise to lift all restrictions immediately after the war.

Concentration Camp Test Case Set for Argument On October 2

The applications of Ernest K. Wakayama and his wife, Toki Wakayama, for writs of habeas corpus, challenging the constitutionality of Lt. Gen. J. L. DeWitt's restrictive orders evacuating American citizens of Japanese ancestry, and interning them indefinitely in concentration camps, will be heard in the federal court in Los Angeles on October 2nd, after originally being set for September 8. The United States District Judges who will hear the oral arguments are Campbell E. Beaumont, Harry A. Hollzer and J. F. T. O'Connor.

Adverse Decision In Seattle Evacuation Test Case

U. S. District Judge Lloyd L. Black of Seattle last month ruled against Gordon K. Hirabayashi, citizen of Japanese extraction and University of Washington student, who is contesting the Japanese exclusion orders. Hirabayashi, a Quaker, is charged with failing to report for evacuation and with disobeying the curfew regulations.

The adverse ruling come on a demurrer to an indictment which, among other things, argued that the exacuation orders were discriminatory, deprived defendant of his liberty without due process of law, and questioned the President's authority to evacuate citizens from the area.

In a memorandum opinion, notable for its absence of legal arguments, the Court held that "Our Constitution does permit Congress and our President, as Commander in Chief in time of war, to make and enforce necessary regulations to protect critical military areas desperately essential for national defense. In these days of lightning war this country does not have to submit to destruction while it awaits the slow process of Constitutional amendment.

"There must, of course, be extraordinary reasons to justify curfew for or any removal, even from a military area, of American citizens residing therein. But with respect to those of Japanese ancestry in Military Area No. 1 certainly since Pearl Harbor most extraordinary reasons have obtained."

Following the trial and sentencing of Hirabayashi, which are next in order, an appeal will be taken to the Circuit Court of Appeals. The American Civil Liberties Union is backing the case which is being handled by a special defense committee.

RECREATION FOR JAPANESE

A Congressional committee eliminated an appropriation for "recreation" in the measure providing funds for the Japanese Relocation Centers, on the ground that it would be coddling the Japanese. As a result, the boys and girls and older folks in the various centers need all kinds of recreational material, particularly balls of all kinds, bats, books, subscriptions to magazines, victrola records, etc. We have no means of collecting such things, but if you can get them to us or want to send in a donation to buy such materials, we will see to it that the gifts reach a center where they are badly needed.

Union Asks Supreme Court Rehearing In Literature Case

Declaring that the "very constitutional guarantees of freedom of press and religion are at stake," the American Civil Liberties Union has filed a brief joining with the Jehovah's Witnesses in asking a rehearing of the recent Supreme Court decision upholding the right of cities to license the sale of religious literature. The court, by a 5 to 4 decision in June sustained licensing ordinances in Alabama, Arkansas and Arizona.

Signed by Osmond K. Fraenkel, counsel for the Union, who argued the case in the Supreme Court, the brief states:

"The seriousness of the restriction on freedom of the press and of religion which will result if that decision of the Court stands, the fact that the division within the Court was so close, justify, we believe, a further consideration of the problem here presented. It is evident that the decision of the majority has greatly curtailed the constitutional protection of freedom of speech, of the press and of religion. Indeed, these freedoms are given less protection from state interference than transactions in commerce have been given.

"Surely the views expressed in the opinions of the Chief Justice and of Mr. Justice Murphy are more consonant with the high standard which this Court has in recent years reached in the field of civil liberties than are the views of the majority. We respectfully urge that the Court reconsider this decision which, if not reconsidered, will some day be recognized as the most unfortunate recently rendered by the Court."

Briefs supporting the application for rehearing have already been filed by the Seventh Day Adventists through Homer Cummings, former U. S. Attorney General, and by the American Newspaper Publisher's Association through Elisha Hanson, counsel.

APPEAL WILL CHALLENGE MISSISSIPPI LAW

Filing a brief in the appeal of two Jehovah's Witnesses to the Mississippi Supreme Court, the American Civil Liberties Union has challenged a new Mississippi law making it a crime to advocate refusal to salute the flag for religious reasons.

In attempting to prevent sincere persons from following the dictates of their religion, the Union argues, the law violates the guarantees of freedom of religion contained in the Bill of Rights.

The two defendants, Mr. and Mrs. Otto Mills, charged with distributing a pamphlet "containing a statement therein that the reader should not salute the flag of the United States of America", were sentenced to serve until "the country shall declare peace but not more than ten years."

In defending the Witnesses, the brief points out: "In the past few years every form of abuse, calumny, official oppression, political persecution and outright brutal assault has been used to intimidate them and to deprive them of their fundamental rights of free speech and religious liberty. Most of these efforts have failed when the calm scrutiny of the courts has been brought to bear."

The brief was signed by Charles E. Evans and Ross Quitman, of Laurel, Mississippi, and Arthur Garfield Hays and Whitney North Seymour of New York City.

GEYER ANTI-POLL TAX BILL SCHEDULED FOR VOTE

A petition to force a vote on the Geyer anti-Poll Tax bill, which has been bottled up in the House Judiciary Committee, has now gotten sufficient signatures to bring the measure to a vote in the House in a couple of weeks.

Hearings on a similar bill before a Senate Judiciary subcommittee were recently concluded.

Vigilantes Attack "Witness" Convention in Klamath Falls

Led by Legionnaires and Veterans of Foreign Wars, and aided and abetted by the local Chief of Police, vigilantes on September 20 attacked the Klamath Falls, Oregon, regional convention of Jehovah's Witnesses attended by 1500 men, women and children from Oregon and Northern California. As a result of the attack, three persons required hospital treatment and many more suffered minor injuries, extensive damage, particularly to plate glass windows, was done to the convention hall, the leased wire, carrying the speech of N. H. Knorr, Witness leader, who was speaking in Cleveland, was cut, ammonia and stink bombs were thrown into the crowded building, scores of automobiles (estimates run as high as 200) belonging to Jehovah's Witnesses were overturned, large quantities of the group's literature, besides banners, was seized and burned, numerous phonographs were destroyed, the local headquarters of the society was ransacked, and literature and personal possessions seized and burned.

While the Flag Waved

The trouble started when the vigilantes set up a war bond booth near the entrance to the convention hall (a former automobile display building), and a sound truck blasted away exhorting the Witnesses to buy bonds. "Members of the American Legion in uniform," says James E. Davis of Brooklyn, chairman of the convention, in a letter to the Union, "then came over and planted a flag in front of our hall and one of them struck the front plate glass window several very heavy blows. A stink bomb was then thrown through an open window into the main hall where the speech was coming in. ("Witnesses claim the bomb was thrown by Police Chief Earl Heuvel.) Rocks were thrown through the windows that had been closed, and, indeed, the whole upper part of the building which was glassed in was completely wrecked."

Ammonia and Stench Bombs Thrown

About 1000 persons were in the mob outside the building. The vigilantes tried unsuccessfully to break down the large sliding doors in the rear of the building. "A prominent physician threw an ammonia bomb into the outer hall where the women with small babies were located, driving them into the larger hall, into which another stink bomb was then thrown. They used large crow bars to try to break into the hall directly behind the speakers' stand. A group of men then came around behind the building and put up a ladder, and, with a saw cut the large cable by which the speech was coming from Cleveland, Ohio. It was then necessary for the talk to be continued from manuscript in the hall.

"After the Witnesses were driven from the outer hall with the ammonia bomb, the mob took literature, banners and personal property out into the street and burned it. The fire department came and put out the fire but no attempt was made to quell the mob. The Chief of Police stood within a few feet of those breaking out the windows and didn't even caution them not to do it. . . . I wired Edgar Hoover in Washington, D. C., and also called Governor Sprague of Oregon and he finally got the State police on the job.

"As the Witnesses were leaving the hall after 5:000 P. M., when the mob was supposed to have been dispersed, mobsters took phonographs and other property from them and destroyed it. . . .

Another Hall Ransacked

"While all of this was going on at the Convention Hall, other mobsters broke into the Kingdom Hall at 201 E. Main, using crowbars, and took literature, 5 or 6 phonographs, and much personal property (one brother being left with nothing but what he had on his back) and burned it in the middle of the street. . . .

In this connection, there is not only evidence to show that the "Witnesses" requested and were denied protection, but that the Chief of Police told the vigilantes to "Go as far as you like", and then participated in the lawless acts.

"In addition to the above-mentioned damage, many of the Witnesses' cars were turned over, and others were rendered useless by putting sugar in the gasoline tanks, etc. In fact, thousands of dollars worth of cars were completely ruined and hardly worth towing home, which many of the brethren were compelled to do."

Many of the vigilantes have been identified, and thus far two of them have been arrested. Federal authorities are investigating to determine whether there was any violation of federal laws. Suits are being contemplated against the community for the property damage resulting from the failure to extend police protection.

Suppressive Ordinance Adopted

The vigilantism had been brewing in Klamath Falls for more than a month. The City Council had recently enacted what was frankly called an "anti-Jehovah's Witnesses ordinance," prohibiting the sale of literature without the payment of a $10 a day license fee. However, the ordinance, scheduled to go into effect on September 24, will not be enforced. Instead, a new ordinance has been adopted, which reduces the license fee to $5. The purpose behind this move is to meet the inevitable legal attack that the ordinance is prohibitive, and that the tax bears no relation to the "profits" (of which there are none) and the cost of policing.

City Attorney J. H. Carnahan, in discussing the proposed ordinance before the Council, commented that "he was not advocating the measures taken against the Witnesses Sunday, but that perhaps they were effective."

"Witness" Is Attacked, Then Gets 30 Days In Jail

George Gutman, 18-year-old Jehovah's Witness, was convicted in the San Francisco Municipal Court on September 24 on charges of disturbing the peace and sentenced to 30 days in jail or $100 fine. The case illustrates quite well the kind of justice the members of this group receive in our inferior courts.

Gutman was waiting in the reception room of a San Francisco draft board for a friend who was attending an oral hearing on his claim for classification as a minister. The board chairman, George W. Gillen, in the course of the hearing, stepped into the reception room and explained to those who were waiting, "We've got a fellow in here who is using the Bible to evade the draft." Gutman then asked, "What's wrong with the Bible?"

Gutman's question was not well received. Gillen wanted to know whether he was with that fellow in there, and when Gutman admitted he was, Gillen ordered him out of the building. He pulled Gutman out of his chair by the sleeve of his coat, tearing the sleeve very badly. As Gutman pulled the other way, Gillen went reeling into some chairs. Gillen called the police and charged Gutman with disturbing the peace. The U. S. Attorney's office lent its moral support to the prosecution by having Assistant United States Attorney Joseph Karesh, known to the judge, seated alongside the prosecuting witness.

It is hoped an appeal will be taken because the facts clearly show that Gillen's peace was not disturbed by Gutman. Instead, Gutman might well have charged Gillen with assault and battery.

The incident reminds us of the damage suit filed by the Santa Rosa vigilantes in 1936 against the persons they had tarred and feathered.

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ERNEST BESIG .....Editor

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Coast Citizens Banished

(Continued from Page 1, Col. 2)

Mission, "that he furnished his own apartment with some objects of oriental art."

Led Ranking Bugle Corps

"Beginning with his interest in our mission," says the pastor, "he became acquainted with the Boy Scout troop to which some of our boys belonged. He gave lessons to the boys of the Drum and Bugle Corps of that Scout troop . . . until it became the ranking drum and bugle corps of this area. Our corps won first prizes and honors at many of the parades. . . . It was a snappy outfit with about 80 drummers and buglers. This was a great accomplishment for Mr. Fusco."

Mr. Fusco also encouraged the Japanese of voting age to register and to vote. He was instrumental in having deputy registrars visit the Japanese section to register the eligible voters. He also arranged political meetings for the Japanese at which the community's political candidates spoke.

After the Japanese were moved to Tanforan, Fusco was appointed a sub-deacon of the St. Xavier Church and assisted with the regular Sunday services conducted at Tanforan. He drove the Fathers and Sisters to Tanforan every Sunday. The manager of Tanforan invited him to organize the Boy Scout Drum and Bugle Corps, which he did.

"Too Friendly With Japanese"

Apparently on the basis of such activities, Lt. Col. F. Meek, who conducted Fusco's "hearing", told him he would have to leave because he was "too friendly with the Japanese." It was a little too difficult for the military mind to understand how a person could be genuinely interested in his Japanese neighbors in the United States without being disloyal to the United States.

The Union has checked with various people who are acquainted with Mr. Fusco. Not one accused him of disloyalty. They all say that there is nothing dangerous or potentially dangerous about the man.

Mr. Fusco is already in Salt Lake City whence he was banished. It is to be hoped that he will be willing to resort to court action in order to regain his liberties, if other means fail.

Brief Filed In Last of Oklahoma Syndicalism Cases

The last of the cases brought against four Communists in Oklahoma City for possessing and selling Communist literature was argued on September 9 in the Oklahoma Criminal Court of Appeals in the case of Alan Shaw, sentenced, like his three associates, to ten years under the criminal syndicalism law. A brief in support of the defense has been filed with the court by the American Civil Liberties Union, signed by Arthur Garfield Hays, general counsel. The Union participated with briefs in support of the defense in the other three cases already heard.

The Oklahoma cases were brought during the election campaign of 1940 as part of a drive against Communist election activity. The four defendants were associated with a bookstore selling Communist literature. It is the only case brought under the state criminal syndicalism laws in recent years. With the conclusion of the Shaw case, the Criminal Court of Appeals will have before it all four convictions for decision.

Contra Costa County District Attorney Upholds Rights of Jehovah's Witnesses

District Attorney Francis P. Healey of Contra Costa county, as the result of violence and threats against Jehovah's Witnesses, issued a public statement on September 25 calling upon the citizens to uphold the rights of the "Witnesses" to carry on their activities. Said Mr. Healey:

"It has been brought to the attention of this office that threats against the members of the religious sect known as Jehovah's Witnesses, have been made in several communities in the county.

"The citizens of Contra Costa County should keep in mind that the Constitution of the United States and of California guarantee religious freedom. It is for the courts to decide whether or not a given organization is subversive, and in this connection the Supreme Court has held that Jehovah's Witnesses is an accepted and legal religion.

"Members of this sect have a right to call on the citizens of a community and to knock on their doors, or ring their doorbells. They can pass out literature or interview residents. They have a right to do this unmolested by any citizen or group of citizens. Any violation of their rights will require the peace officers of the county to intervene to afford them protection, for under our democratic form of government every citizen regardless of race, color or creed is entitled to the same protection as every other citizen.

"On the other hand no citizen is required to listen to their arguments or accept their literature, but can tell them to go away. If they refuse to leave the proper thing to do is call the police or constable and report the incident so that the matter may be dealt with in a lawful manner."

The statement grew directly out of an assault upon a "Witness" in Concord. Mr. D. D. Reusch of Berkeley, in the course of his activities as a Jehovah's Witness, called at the home of George MacDonald. The latter's daughter was in the driveway and Reusch proceeded to play a phonograph record for her. After listening for a minute, the girl left and called her father. Mr. MacDonald wanted to know whether Reusch would salute the flag. He finally ordered Reusch from his property, and emphasized his order by pulling Reusch by the arm and then knocking him unconscious with a blow to the jaw as he stooped to pick up his phonograph and literature. A doctor testified that Reusch suffered a contusion of the left jaw, abrasion of the scalp, and contusion of the right arm.

On Reusch's camplaint, MacDonald was arrested for assault and battery. At the trial, MacDonald contended that he had ordered Reusch from his property and had merely beaten him to the punch when he failed to leave. The force of these contentions was lost when MacDonald threatened from the witness stand, "If you ever or any of your organization ever come to my place under any circumstances you will get the same treatment except a woman."

The court, nevertheless, let the threat pass without comment and found MacDonald "Not Guilty." "A person ordered to leave the premises of a man's estate," said he, "must suffer the consequences if he fails to obey." It is hoped that the District Attorney's statement will not only correct the Justice's erroneous idea, but also put an end to the invasion of "Witnesses'" rights in Contra Costa County.

UNION WARNS AGAINST "UNREASONABLE APPLICATION" OF COAST ORDER

Legal contest of any "unreasonable application" of Lieut. Gen. Hugh Drum's order for evacuation of "dangerous" individuals from the Eastern Military Area were indicated in instructions sent by the American Civil Liberties Union to state representatives and local committees in the 15 Atlantic Coast states comprising the area.

The Union declared that "it does not challenge the inherent power of the government to remove persons from military zones, but it will challenge any unreasonable application of that power; it is obvious that such unprecedented powers are open to abuse unless carefully guarded."

CALIFORNIA COURT SANCTIONS PROPERTY RESTRICTIONS AGAINST NEGROES

The first round in what may be a Supreme Court test case on the constitutionality of property restrictions against Negroes was lost recently in the Los Angeles courts in a suit supported by the Southern California branch of the American Civil Liberties Union. Judge Roy Rhodes of the Los Angeles Superior Court issued an injunction restraining Negroes from living in homes purchased by them in a residential district restricted to "Caucasians."

L. A. FEDERAL COURT ISSUES HABEAS CORPUS WRIT IN CASE OF J. W. MINISTER

Federal Judge Leon R. Yankwich last month established a new precedent in the application of the Writ of Habeas Corpus when he overruled a government motion to dismiss the petition for a writ of habeas corpus filed by Kenneth Stewart, Jehovah's Witness.

Stewart claims to have been arbitrarily classified by his local draft board, when the board refused to accord him status as a minister of the Gospel.

The government asserted the contention that classification by a local draft board is final, and not subject to review by the federal courts unless the draftee submitted for induction in the United States Army.

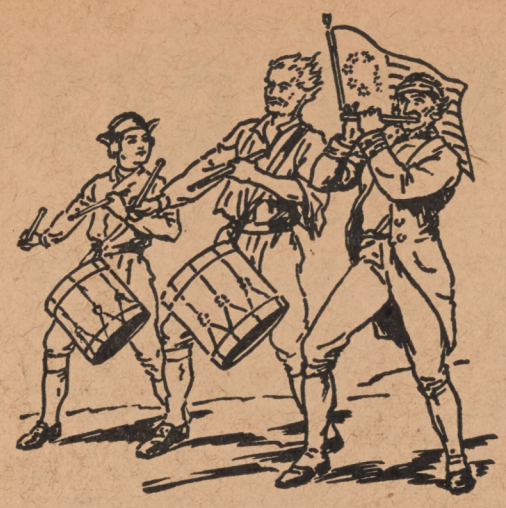
This claim Judge Yankwich overruled. In doing so, he announced that the lack of precedents upon the subject was not binding upon him; that the writ of habeas corpus issues to ascertain the legality of detention at any point after final action by the draft boards. He ruled that a draftee who claims to be unfairly and arbitrarily classified need not risk the danger inherent in surrender to the military forces; and that a federal court, after a registrant has been prosecuted for a violation of the Selective Training and Service Act, while in the custody of the United States marshal, may have the benefit of the writ to secure his release if the draft board has acted arbitrarily.

Upon overruling the government's motion, the case was set for trial October 5.—Open Forum.

COURT UPHOLDS DISCHARGE OF EMPLOYEE FOR CRITICIZING HIS UNION

Union contracts with industries requiring disciplinary action against members acting to undermine the union as a bargaining agency were upheld recently by Vice Chancellor Wilfred Jayne of the New Jersey Chancery Court. The complainant, Samuel Keller, of Old Bridge, N. J., was supported by counsel for the American Civil Liberties Union, in seeking the annulment of the disciplinary measure on the ground that his right to free speech had been abridged. Keller was discharged from the American Cyanamid Company, upon the request of the Union, accused of making derogatory remarks about the Union's attitude in the settlement of a strike. The opinion was contained in a holding by the court that for technical reasons it had no jurisdiction.

AMERICAN CIVIL LIBERTIES UNION-NEWS



FREE SPEECH
FREE PRESS
FREE ASSEMBLAGE

"Eternal vigilance is the price of liberty."

Vol. VII SAN FRANCISCO, CALIFORNIA, DECEMBER, 1942 No. 12

ANTI-SEMITISM CHARGES FILED

Removal of Colonel Serving on Exclusion Hearing Board Sought

Charging one of the three Army officers hearing individual exclusion cases with anti-Semitism and red-baiting, the Northern California branch of the A. C. L. U. has written to the Secretary of War requesting his removal as unfit for service on the board. The officers were appointed by General J. L. DeWitt last August to act as a "hearing board for the removal of citizens deemed to be dangerous or potentially dangerous to military security." At least seventy citizens alleged to have pro-Axis sympathies have thus far been excluded from the Pacific Coast.

Seek Removal Of Col. McLean

The Union's letter, signed by Ernest Besig, was directed particularly to the continued service on the Board of Col. McLean, who was engaged in the active practice of the law in Pennsylvania before the war. "In the opinion of my Committee," said the letter, "he has shown himself to be temperamentally unsuited to the judicial position he is now holding."

The contentions were based principally on the experiences of the Union's director at the hearing for Lorenz C. Carlsen on October 23. "The Board objected very strenuously to publicity about the Fusco case which appeared in the October issue of our A.C.L.U.—NEWS. The Board sought to impress upon me," wrote Mr. Besig, "that if I appeared for Mr. Carlsen it would be highly 'unethical' to publicize any part of the proceedings. Col. McLean, for some strange reason assumed that I was a Communist 'sent by Bridges,' as he put it, and declared, "in my part of the country you'd be skinned alive.'"

But the Union objected particularly to Col. McLean's obvious anti-Semitism rather than his expressed hostility toward the Union's director. During questioning about the Bund, "Col. McLean volunteered the statement, apropos of nothing, that such an organization as the Bund made things bad for all Germans in the United States, 'the same as some of the better class Jews have to suffer for some of the rabble.'"

Indulges In Anti-Semtic Tirades

"An informant," the letter went on to say, "whose case is now pending before the Board and who knew nothing about my own experiences before it, confirmed my feelings about Col. McLean. He stated to me that 'Col. McLean indulges in anti-Semitic tirades. He foresees world domination by the Jews after the war is over.' This same informant told me that Col. McLean had expressed the hope that the Germans and Russians would annihilate each other, and that he also expressed himself against Negroes."

"We hope," concluded the letter, "that an appropriate investigation will be conducted, and that a less prejudiced officer will supplant Col. McLean, if our charges are sustained."

The national office of the A.C.L.U., while opposed to any exclusions by military officers, has suggested to the Secretary of War the establishment of a board of review composed essentially of civilians, to pass upon the decisions of the Military Board. It has also recommended that charges be made specific, that counsel for the suspect be allowed the right of cross-examination, and that the reasons for each expulsion be publicly stated.

THAT EXTRA DOLLAR!

The Union is grateful to its many supporters who added a dollar to their usual donations in order to help us return an important item of $840 to the budget for a part-time office secretary. We hope that those who have not yet contributed to our annual budget drive will not forget the extra dollar.

Over 200 supporters (a record number) have thus far answered our regular appeal for funds. Naturally, we'll have to hear from many more before we can hope to raise the following budget, and return the missing item of $840:

Salary—Director	$2,100.00
Printing & Stationery	630.00
Rent	330.00
Postage	220.00
Telephone & Telegraph	100.00
Transportation	75.00
Taxes	60.00
Miscellaneous	40.00
Publication	35.00
Furniture & Equipment	15.00
TOTAL	$3,605.00

An average donation of $7.25 is required from our members to meet our needs, but in order to attain that figure, we must receive many $50, $25, $15 and $10 contributions. We hope that many who have been content to contribute the annual dues of $2.00 will now join the group that makes a monthly contribution. In any event, give what you can, and give it NOW!

At the same time, you can interest some friend in the work of the Union by entering for him a year's subscription to the "News" at 75 cents.

GIVE IT NOW!

APPEAL ARGUED IN CASE TESTING HAWAII'S MARTIAL LAW

The United States Circuit Court of Appeals in San Francisco last month heard arguments in the important case of Hans Zimmerman, United States citizen, seized by the Military in Hawaii. The United States District Judge in Hawaii refused to consider an application for a writ of habeas corpus on the ground that he was under duress, because martial law had been declared and he had been forbidden to act. The important issues before the court are 1, whether the Army was not required to make a return to the application for the writ explaining by what right it holds Zimmerman; and 2, whether continued martial law in Hawaii is proper. The A.C.L.U. filed an amicus curiae brief contending that while the privilege of the writ of habeas corpus may be suspended, there may be no suspension of the writ itself.

EXCESSIVE BAIL SET TO DISCOURAGE ACCUSED FROM SEEKING APPOINTMENT OF COUNSEL

A. E. Hoffman, Jehovah's Witness, was recently convicted in the U. S. District Court in San Francisco and sentenced to a term of four years in the federal prison for failure to report for induction in the armed forces. Hoffman's claim that he was a Minister of the Gospel and therefore entitled to deferment was rejected.

Bail in the case was originally fixed at $1,000. It was provided by another "Witness." When the defendant requested the appointment of counsel because he was without money to hire an attorney, Judge Michael J. Roche raised the bail to $2,500, after Assistant U. S. Attorney Joseph Karesh stated, "If they can put up bail they can get an attorney." Later, the court did appoint an attorney for Hoffman, and when Mr. Karesh indicated that the "Witnesses" were going to provide the $2,500 bail, Judge Roche immediately raised the bail, this time to $5,000, declaring that no one was going to make a mockery of his court.

"Excessive bail shall not be required," says the Constitution of the United States, and the accused is entitled "to have the assistance of counsel," if he has no money to employ an attorney. No man's friends are required to hire an attorney for him, even if they are kind enough to provide bail. And the court and the U. S. Attorney's office should not set excessive bail because a defendant exercises his constitutional right to have the court appoint counsel. The only legitiate purpose of bail is to assure the appearance of the defendant.

Appropriate protests have been entered with the Department of Justice against the part played in the matter by the U. S. Attorney's office.

JAPANESE TEST CASE OPINION

We are printing herewith the significant opinion of United States District Judge James Alger Fee in the case of United States against Minoru Yasui, in which it was held that the Military has no jurisdiction over citizens in the absence of martial law. The decision was handed down on November 16, 1942. Limitations of space require some omissions from the body of the 30-page opinion, as well as the 56 footnotes.

. . . The President of the United States, by Executive Order Number 9066, after reciting that "the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities as defined" by . . . statute, authorized and directed the Secretary of War and military commanders designated by him to prescribe military areas in such locations and of such boundaries as might be desired, from which all persons might be excluded and subject to whatever restrictions might be imposed upon the right of persons to enter, remain in or leave, such areas. Lieutenant General John L. DeWitt was designated by the Secretary of War to exercise the authority granted by the Executive Order for the Western Defense Command.

GENERAL DeWITT'S ORDER

Thereafter, claiming to act pursuant to the Executive Order and the authority vested in him by the Secretary of War, General DeWitt, by Public Proclamation No. 1, on March 2, 1942, declared certain portions of the Western Defense Command, because of its liability to attack or to attempted invasion and because it was subject to espionage and acts of sabotage, a military area "requiring the adoption of military measures necessary to establish safeguards against such enemy operations."

Certain areas were thereby designated as "Military Areas" and "Military Zones." It was thereby announced that "such persons or classes of persons as the situation may require" would, by subsequent proclamation, be excluded from certain of these areas, and further declared that with regard to other of said areas "certain persons or classes of persons" would be permitted to enter or remain therein under certain regulations and restrictions to be subsequently prescribed. Further "Military Areas" and "Military Zones" are designated by the Proclamation No. 2, of March 16, 1942.

Public Act 503, passed by Congress and approved by the President March 21, 1942, made it a criminal act for any person "to enter, remain in, leave or commit any act in any Military Area or Military Zone established pursuant to the Executive Order of the President by any military commander designated by the Secretary of War," contrary to the restrictions applicable to any such area if such person knew of the existence, application, and extent, of the restriction.

. . . On March 24, 1942, Public Proclamation No. 3 was issued by General DeWitt, reciting "as a matter of military necessity the establishment of certain regulations pertaining to all enemy aliens and all persons of Japanese ancestry within said Military Areas and Zones * * *." This regulation established a curfew law for such enemy aliens and such persons of Japanese ancestry within certain of the zones above indicated.

YASUI BORN IN OREGON

Minoru Yasui, the defendant, is the son of an alien Japanese father and mother. He was indicted April 22, 1942, on the ground that he had violated the curfew provisions of this proclamation. He pleaded "Not Guilty", waived a jury and was tried by the court. The evidence showed that Yasui was born at Hood River, Oregon, on October 19, 1916. On March 28, 1942, at 11:20 P. M., Yasui walked into the police station in Portland, Oregon, within one of the designated areas. He admits this fact and that he knew it was a violation of the regulations. His contention was and is, however, that he could not be convicted therefor because he was a citizen of the United States and that the regulation is, as to him, unconstitutional and void. . . .

As a premise, then, the existence of a war in which victory is a vital necessity to assure survival of the freedom of the individual guaranteed by the Federal Constitution, must be predicated. The conditions and necessities of preparation for modern war had previously been recognized by this court. The areas and zones outlined in the proclamations became a theatre of operations, subjected in localities to attack and all threatened during this period with a full scale invasion. The danger at the time this prosecution was instituted was imminent and immediate. The difficulty of controlling members of an alien race, many of whom, although citizens, were disloyal with opportunities of sabotage and espionage, with invasion imminent, presented a problem requiring for solution ability and devotion of the highest order.

PERILS TODAY COMPARE WITH OTHER TIMES

It must be remembered, however, when dealing with the claims made by writers who are not charged with the responsibility of maintaining the structure of the fundamental law and the guarantees of the liberty of the individual, that the perils which now encompass the nation, however imminent and immediate, are not more dreadful than those which surrounded the people who fought the Revolution and at whose demand shortly thereafter, the ten amendments containing the very guarantees now in issue were written into the Federal Constitution; nor those perils which threatened the country in the War of 1812, when its soil was in the hands of the invader and the Capitol itself was violated; nor those perils which enguifed the belligerents in the war between the states, when each was faced with disaffection and disloyalty in the territory in its control. Yet each maintained the liberty of the individual.

In Ex Parte Milligan, supra, a citizen of the United States who had been tried, convicted and sentenced to death by military commission for conspiracy and subversive measures against the federal government, applied for habeas corpus. He had at all times been a resident of the loyal state of Indiana, which was not at the time under occupation by any hostile troops, although it had been previously invaded and was then threatened with invasion.

When this case came before the Supreme Court of the United States, the whole field of the interrelation of the civil and military power was covered in the arguments of able counsel. The court in the opinion of necessity considered thoroughly and intentionally the foundations of military power over civilians. It was necessary there, as here, to determine whether a citizen, who is not a soldier, a prisoner of war, nor a spy in a loyal state not presently invaded, is subject to military jurisdiction, or whether as a non-belligerent he must be tried by civil courts solely for offenses designated by Congress. The direct question in this case was not there involved, because trial by a military commission is not here attempted. But the opinion in all its phases is binding upon this court. It cannot be disregarded. The expressions cannot be brushed aside as dicta, except by a process of wishful rationalization.

CIVIL POWER SUPREME OVER MILITARY

The rationale of both the main and concurring opinions is that the civil power in this country is supreme. Neither directly nor indirectly can the military power become dominant. The Constitution, laws and treaties of the United States control. Nor is the situation changed by the incidence of war. This doctrine has been re-affirmed many times by the Supreme Court of the United States, citing the Milligan case.

But it is urged without making a distinction between power based upon military necessity and power based upon Congressional action that in time of war the constitutional guarantees must be reinterpreted. If this be a plea for the exercise of arbitrary power, it is not conceived that it has the support of the military authorities, and, certainly, has not the support of the decided cases. The argument proceeds upon the basis that the disposition of the Supreme Court now is to overlook the constitutional limitations when confronted with an emergency. . . .

NO SUSPENSION OF LIBERTY IN WAR-TIME

The court speaks distinctly in the Milligan case regarding the re-interpretation of the guarantees because of the perils of war.

> "It is claimed that martial law covers with its broad mantle the proceedings of this military commission. The proposition is this: that in time of war the commander of an armed force (if in his opinion the exigencies of the country demand it, and of which he is to judge), has the power, within the lines of his military district, to suspend all civil rights and their remedies, and subject citizens as well as soldiers to the rule of HIS WILL; and in the exercise of his lawful authority cannot be restrained, except by his superior officer or the President of the United States."
>
> "If this position is sound to the extent claimed, then when war exists, foreign or domestic, and the country is subdivided into military departments for more convenience, the commander of one of them can, if he chooses, within his limits, on the plea of necessity, with the approval of the Executive, substitute military force for and to the exclusion of the laws, and punish all persons, as he thinks right and proper, without fixed or certain rules."
>
> "The statement of this proposition shows its importance; for, if true, republican government is a failure, and there is an end of liberty regulated by law. Martial law, established on such a basis, destroys every guarantee of the Constitution, and effectually renders the "military independent of and superior to the civil power"—the attempt to do which by the King of Great Britain was deemed by our fathers such an offense, that they assigned it to the world as one of the causes which impelled them to declare their independence. Civil liberty and this kind of martial law cannot endure together; the antagonism is irreconcilable; and, in the conflict, one or the other must perish."

The question now before this court is whether a military commander has the right to legislate and pass statutes defining crimes which will be enforced by the civil courts. A power to so legislate validly and to execute such laws makes the possessor thereof supreme. The Constitution vests the legislative power in Congress. It is axiomatic that so long as no form of military jurisdiction is in force over the particular locality or person, the civil law will prevail.

THREE KINDS OF MILITARY JURISDICTION

The classical definitions of various situations where ordinary civil law does not apply is given in the concurring opinion in Ex parte Milligan, as follows:

> "There are under the Constitution three kinds of military jurisdiction; one to be exercised both in peace and war; another to be exercised in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within states or districts occupied by rebels treated as belligerents; and a third to be exercised in time of invasion or insurrection within the limits of the United States, or during rebellion within the limits of states maintaining adhesion to the National Government, when the public danger requires its exercise. The first of these may be called jurisdiction under MILITARY LAW, and is found in acts of Congress prescribing rules and articles of war, or otherwise providing for the government of the national forces; the second may be distinguished as MILITARY GOVERNMENT, superseding, as far as may be deemed expedient, the local law, and exercised by the military commander under the direction of the President, with the express or implied sanction of Congress; while the third may be denominated MARTIAL LAW PROPER, and is called into action by Congress, or temporarily, when the action of Congress cannot be invited, and in the case of justifying or excusing peril, by the President, in times of insurrection or invasion, or of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety and private rights." . . .

The present case does not then arise under "military law," nor can it be justified by doctrines relating to trial of military personnel by court martial, nor to trial of spies by military commission nor the seizure and holding of persons by military authority. The instant case relates to the power of the military commander to issue regulations binding indiscriminately upon citizens and alien, reserve officer, spy and civilian. Such power only is tolerated in the first instance if a state of "martial law" has been proclaimed by the proper authority and in the ultimate only if the facts prove the existence of the military necessity therefor. . . .

COMMANDER POWERLESS TO LEGISLATE

A military commander under the Constitution is given no power of legislation. It follows, therefore, in this case, that the regulations issued by his sole authority, even though it be established that the territory on the Pacific Coast of the United States has been invaded and is in imminent danger of invasion, confer upon the military commander no power to regulate the life and conduct of the ordinary citizen, nor make that a crime which was not made a crime by any act of Congress. The Congress of the United States is in session and consists of the elective representatives of the people. To this body, therefore, alone is committed its ordinary power of passing laws which govern the conduct of citizens, even in time of war.

It is true that martial law, when instituted, is complete and represents the arbitrary will of the commander, controlled only by consideration of strategy, tactics and policy and subject only to the orders of the President. Under martial law the commander can seize men and hold them in confinement without trial. He can try them before a military commission for a violation of the laws of war or his own regulations. Finally, he can legislate and bind citizens and others by rules established by him and governing their conduct in the future.

Whether declared by the Prèsident or by Congress or by the military commander or existing on account of conditions, the only basis for martial law is military necessity.

DOCTRINE OF "PARTIAL MARTIAL LAW"

There is a pernicious doctrine known as "partial martial law," which was developed by an ambitious governor as a method of dictating regulations to the people of a state uncontrolled by the Constitution or laws thereof. It constituted an expression of his arbitrary will. The long history within recent years of the use of arbitrary power in the guise of martial law by the executives of the states, sometimes upon the flimsiest pretext, and occasionally, with the unjustifiable support of the judiciary, state and federal, in subversion of the rights and personal liberty of the citizen, indicates that a fear that the state officials might in some future time attempt further violations is at least justifiable.

These perversions of martial rule used by governors of the states in industrial and social conflict to satisfy a personal need for uncontrolled power in given situations, wherein the civil rights of individuals were swept away by legislation or fiat dictated by an individual, indicate that in these trying days of war, limits must be set to military authority exercised in the name of necessity, lest we lose the liberties for which we fight.

> "But it is insisted that the safety of the country in time of war demands that this broad claim for martial law shall be sustained. If this were true, it could be well said that a country, preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation." Ex parte Milligan, supra, 126.

COMPLETE SURRENDER OF LIBERTIES

The doctrine that there can be a partial martial law, unproclaimed and unregulated except by the rule of the military commander, expressed in orders or regulations proclaimed by him and enforced in the civil courts in a territory within the continental limits of the United States and at the time not occupied by any foreign foe, belongs in the category of such perversions, and cannot be justified by any sound theory of civil, constitutional or military law. Its only justification lies in the doctrines of "state of siege" proclaimed by military commanders, generally speaking, in the governments of Europe. For a state of the United States or any portion thereof to be placed, in any essential function, or for citizens of the United States to be placed with regard to their fundamental rights, subject to the will of the commander alone, however well designed for their protection, without any of the preliminaries above suggested, up to the time when utter necessity requires

(Continued on Page 4, Col. 2)

Let Freedom Ring

Writer's Project "Radicalism"

Dismissed from the San Francisco Writer's Project last June on charges of "radicalism," a woman has just received an informal hearing that will lead to dismissal of the charges and reinstatement in the near future. The Union demanded the hearing after the woman denied the charges. We also appeared for her at the hearing.

Japanese Excluded From the Army

The A.C.L.U. has received a formal reply to its protest against excluding citizens of Japanese extraction from the army. "The War Department," says the letter signed by Major General J. A. Ulio, "does not consider it practicable to accept for service with the Armed Forces, Japanese or persons of Japanese extraction, regardless of citizenship, status, or other factors."

Photographic Evidence

A couple of years ago the Immigration Service sought to deport various Indians on charges of illegal entry from Mexico. To establish the charges, the Government called certain Mexicans to testify in Calexico, hundreds of miles from where the Hindoos resided. At such hearings, recent photographs of the aliens were identified by the witnesses as persons they had seen in Mexico about fifteen years before that. On such evidence, Ram Singh of Loomis, California, was ordered deported, but, last month, after intervention by the A.C.L.U., the proceedings were dismissed.

Evacuation Tests Cases

The Union's brief in the Fred T. Korematsu Japanese evacuation test case will be filed in the Circuit Court of Appeals in San Francisco during the first week of December. The government will then have thirty days in which to file its reply brief, after which the Union will have another ten days in which to answer. Oral arguments in the case should take place early in February. Attorney Wayne M. Collins is preparing the Union's voluminous briefs.

The record in the Gordon Hirabayashi evacuation test case from Seattle was filed in the Circuit Court of Appeals in San Francisco on November 16. Seventy days are allowed for the filing of briefs, so the oral argument in this case may also be heard sometime next February.

Attack On Japanese Citizenship

An appeal was filed in the United States Circuit Court of Appeals in San Francisco on October 31, in the case of John T. Regan vs. Cameron King. The appeal marks another step in the effort of the Native Sons, the American Legion, and the California Joint Immigration Committee to deprive American-born Japanese of citizenship. On July 2nd, District Judge A. F. St. Sure held that the law was settled by the case of U. S. v. Wong Kim Ark, 169 U. S. 649, that "A person of the Japanese race is a citizen of the United States if he was born in the United States." Attorney Wayne M. Collins filed an amicus curiae brief for the Union in the District Court. He will prepare a similar brief for filing in the Circuit Court.

Ministers Urge Release of Japanese

A dozen Methodist, Congregational and Presbyterian clergymen of San Francisco recently issued a statement advocating the speedy release of Japanese from relocation centers and compensation for the losses incurred by them. Among those signing the statement were Dr. Edgar A. Lowther, Dr. Alfred Fisk, Rev. Donald F. Gaylord, Rev. Otis L. Linn, Rev. Philip A. Solbjor and Rev. Herrick J. Lane.

No Exclusion in Carlsen Case

The Military Board which is hearing individual exclusion cases, last month informed Lorenz C. Carlsen, head of San Francisco's United German Societies, that no action to exclude him will be taken at the present time. Carlsen's "hearing" failed to show any pro-Axis action or sympathy on his part. Mr. Carlsen had stated publicly that he had nothing to hide and that he was just as good an American as the next person.

No ACLU Help For Defendants Cooperating With The Enemy

The local branch of the A.C.L.U. has received a news release from the national office of the Union informing it of the adoption of a resolution by the Board of Directors establishing a new policy with reference to certain war-time cases. There was no consultation with the various branches before adoption of the resolution. The resolution is as follows:

> "Recognizing that our military enemies are now using techniques of propaganda which may involve an attempt to pervert the Bill of Rights to serve the enemy rather than the people of the United States, the American Civil Liberties Union will not participate,—except where the fundamentals of due process are denied,—in cases where, after investigation, there are grounds for a belief that the defendant is cooperating with or acting on behalf of the enemy, even though the particular charge against the defendant might otherwise be appropriate for intervention by the Union.
>
> "To reach a conclusion on the question whether a particular defendant is cooperating with or acting on behalf of the enemy, the Union will consider such matters as past activities and associations, sources of financial support, relations with enemy agents, the particular words and conduct involved, and all other relevant factors for informed judgement. The Union will continue to defend the rights of all others protected by the Bill of Rights."

Roger N. Baldwin, director of the Union, stated that the policy would be applied to all war-time cases, adding that "it is not always an easy matter to distinguish who are persons co-operating with or acting on behalf of the enemy. It is often difficult to separate native fascists operating on their own from those inspired by Axis sources.

"Even in cases involving Axis sympathizers the Union will challenge a prosecution, a Post Office prohibition, a denaturalization case, or a military removal if the fundamentals of due process are not observed. Those fundamentals are set forth in the Bill of Rights, which the Union will maintain in war-time as in peace for everybody without distinction. Even the German saboteurs were accorded due process by decision of the Supreme Court, and certainly all lesser enemy agents are entitled to our democratic guarantees. The Union's intervention in such cases, however, is confined to points of law. It will not represent the defendants.

"It is merely a common-sense position to restrict in war-time within the United States the freedom of speech and publication of enemy agents or sympathizers. So long as the government confines its proceedings to them, respecting the fundamentals of due process, the Union will not intervene."

West Va. Appeals Flag-Salute Decision To U. S. Supreme Court

The State of West Virginia has decided to appeal to the U. S. Supreme Court the recent decision of a three-judge federal district court voiding the state's compulsory flag-salute law for children having conscientious scruples.

The Supreme Court will therefore be faced with reconsidering its decision in the Gobitis case upholding the flag-salute 8 to 1, since the lower court's action was based on a refusal to follow that decision. Of the seven judges now members of the Supreme Court who participated in that decision, three have since reversed their stand. Including Chief Justice Stone who dissented in the Gobitis decision, four of the eight judges now sitting are on record in opposition to the compulsory flag-salute.

The West Virginia court had declared that "the salute of the flag is an expression of the homage of the soul. To force it on one who has conscientious scruples against giving it is petty tyranny unworthy of the spirit of the Republic and forbidden, we think, by fundamental law. We are clearly of the opinion that the regulation of the Board requiring that school children salute the flag is void in so far as it applies to children having conscientious scruples against giving the salute."

The West Virginia case was brought by counsel for Jehovah's Witnesses on behalf of three children expelled from school. The Union expects to file a brief and participate in argument in the Supreme Court.

JUSTICE DEP'T. OPENS WAY FOR SETTLING FLAG-SALUTE ISSUE

Possible settlement of the flag-saluting issue involving children of Jehovah's Witnesses in public schools is foreseen as a result of a memorandum issued recently by the Civil Rights Section of the Justice Department nullifying local ordinances which compel the gesture of salute and recitation of the pledge of allegiance.

Addressed to U. S. Attorneys, the memorandum calls attention to a law passed by Congress last June dealing with respect due to the flag, providing that "civilians will always show respect to the flag when the pledge is given by merely standing at attention, men removing their headdress." Since Jehovah's Witnesses have indicated their willingness to comply with this requirement, cause for controversy will be eliminated provided local authorities also abide by this law.

The Justice Department's statement of policy says that the Congressional Act "lays down a federal standard with regard to a matter which is primarily a concern of the national government, and there is therefore a very real question whether any local regulations, ordinances, or statutes prescribing a different measure of respect due to the flag can be enforced; for example, regulations of local school boards such as the Supreme Court upheld in Minersville v. Gobitis."

FLAG-SALUTE DISCRETIONARY, LOS ANGELES COUNSEL SAYS

Application of the flag-salute law is discretionary, not compulsory, Beach Vesey, counsel for Los Angeles County, California, last month told the Montebello School Board, then considering expulsion of six children of Jehovan's Witnesses for refusal to salute the flag.

This opinion, written after discussion with A. L. Wirin, counsel for the Southern California Branch of the A.C.L.U., said that "under the present decisions, it is within the discretion of the board to excuse certain pupils from the salute or to omit any pledge or salute at all."

Vesey pointed to the dissent of Chief Justice Stone in the Gobitis case, and the more recent admission of error by three Supreme Court justices who had upheld the compulsory flag salute in the Gobitis decision. He also referred to the decision of a three-judge federal court in West Virginia last October voiding the compulsory flag-salute for children with religious scruples.

Education Between Two Worlds

Dr. Alexander Meiklejohn, Vice-Chairman of the northern California branch of the A.C.L.U., has just written a book, **Education Between Two Worlds,** published by Harper and Brothers. 303 pages. $3.00. The book is given an enthusiastic review in the November 9th issue of the **New Republic.**

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ERNEST BESIG .....Editor

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UNION SCORES $25,000 BAIL FOR C. O.

The action of Judge Matthew T. Abruzzo last month in the federal district court at Brooklyn, N. Y. in setting "prohibitive bail" at $25,000 for Julius Eichel, forty-six-year old conscientious objector, was scored by the American Civil Liberties Union as a "plain violation of the constitutional provision." Arthur Garfield Hays, general counsel of the Union said that "bail is intended to get a man out of jail not put him in," and announced that efforts were being made to secure a reduction of bail.

Eichel, the only man in the 45 to 64 age group to be brought to trial for refusal to register for military service has been out on bond of $2,500 since shortly after his arrest last April. Bail was originally set at $25,000 by Judge Abruzzo and later reduced. Inability to meet the present demand for $25,000 makes Eichel a prisoner pending trial on December 2.

Cases of all other objectors in the 45 to 64 bracket refusing to register have been dismissed by order of the Justice Department. The Selective Service boards have accepted registration of these men by U. S. marshals as adequate. Eichel served two years in military prison as an objector in the first war.

SUPREME COURT DENIES REVIEW ON "WITNESS" LITERATURE SALES

The U. S. Supreme Court refused last month to review convictions of three members of Jehovah's Witnesses for violation of local ordinances in Comanche, Floresville, and Paris, Texas, either licensing, taxing or prohibiting the sale of religious literature on the streets or house to house. Review was sought on the ground that the ordinances violated freedom of speech, press and religion.

In permitting absolute prohibition of sales, the court went a step beyond its 5 to 4 decision of last June, also involving Jehovah's Witnesses, approving license taxes for sale of religious literature. Petition for a rehearing on the earlier decision is still pending, with the ACLU represented as friend of the court. In its brief, the Union said that "the seriousness of the restriction on freedom of the press and of religion which will result if the decision stands, the fact that the decision within the court was so close, justify, we believe, a further consideration of the problem."

Also awaiting the Supreme Court's decision is an action testing whether a District of Columbia law requiring a license for distribution of literature on the streets should be applied to Jehovah's Witnesses.

UNION SUPPORTS APPEAL IN MINNEAPOLIS SEDITION CASE

The American Civil Liberties Union last month joined in the appeal of eighteen members of the Socialist Workers Party, followers of Leon Trotzky, before the U. S. Circuit Court of Appeals in St. Louis from their conviction on charges of advocating violent overthrow of the government and inciting military disaffection.

The case on the facts for the defense was presented by Albert Goldman, one of those convicted. Osmond K. Fraenkel, counsel for the Union, challenged the constitutionality of the Smith Law of 1940 under which the defendants were convicted charging it violated freedom of speech. He argued that even if this statute were upheld, it could not be applied to utterances or publications in the absence of overt acts, or of a "clear and present danger."

Japanese Test Case Ruling Limits Gen. Dewitt's Power

(Continued from Page 2, Col. 3)

the abolition of all civil rule for the preservation of the government, would seem to be a complete surrender of the guarantees of individual liberties confirmed in the Constitution of the United States.

The confusion in the authorities seems to arise in a failure to differentiate between a case where martial law is properly declared in CIVIL DISTURBANCES and a case where the military is called upon to aid the civil power. In the latter case no special attributes should be ascribed either to the soldier or the commander. Ordinary civil law is enforced by a greater power.

> "Thus the war power of the Federal Government is not created by the emergency of war, but it is a power given to meet that emergency. It is the power to wage war successfully and thus it permits the harnessing of the entire energies of the people in a supreme co-operative effort to preserve the nation. But even the war power does not remove constitutional limitations safeguarding essential liberties." Home Building and Loan Assn. vs. Blaisdell, supra, 426.

OCCASIONS FOR MARTIAL RULE

The replacement of the statutes of Congress, the courts and civil authority in this area can then be effected only by "martial law proper," under the definitions given. What then is the test? The court in the Milligan case says:

> "It follows, from what has been said on this subject, that there are occasions when martial rule can be properly applied. If, in foreign invasion or civil war, the courts are actually closed, and it is impossible to administer criminal justice according to law, THEN, on the theatre of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority, thus overthrown, to preserve the safety of the army and society; and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course. As necessity creates the rule, so it limits its duration; * * *. And so in the case of a foreign invasion, martial rule may become a necessity in one state, when, in another, it would be 'mere lawless violence'." Ex parte Milligan, supra, 127.

The concurring opinion did not controvert this holding. The concurring judges gave support to this doctrine, but held that Congress if the necessity were legislatively found, could declare martial law, as could the President under given circumstances. It was vital to find whether "MARTIAL LAW PROPER" prevailed in Indiana for the determination of the case. If it prevailed, whether declared by Congress or the President, or in existence because of military necessity, a citizen could have been tried by military commission, although he was neither prisoner of war, spy, a resident of enemy country nor attached to the military forces. Otherwise, he could not. The recital by the court of the facts shows that the peril was extreme, but held that martial law was not in effect. . . .

NO MARTIAL LAW WITHOUT MILITARY NECESSITY

But it is too clear for debate that martial law does not come into existence under constitutional government until utter necessity compels the investment of one man with the power of life and death over citizen and soldier alike in a given area. It is the law of self-defense among nations. Like self-defense, it is a use of elemental force sanctioned by common law, initiated solely by stark necessity and vanishing when the necessity no longer exists. If military necessity does not exist, neither the declaration of war nor the proclamation of martial law can justify acts contrary to ordinary law. On the other hand, where there is no declaration of martial law by Congress or the President or by the General in this area, and when there has not even been a suspension of the writ of habeas corpus, there is a strong implication that in the judgment of the political authorities no necessity justifying such action exists.

While a war is in progress, the question of whether military necessity requires the closing of the courts and the abrogation of civil authority for the time being and in a certain area, is one for the political or executive departments of the government. There should be a clear line of demarcation drawn by the political agencies between government by fiat, and by law.

NO NECESSITY WHERE COURTS ARE OPEN

The existence of military necessity is justiciable under a particular set of circumstances. In the event the military commander has taken measures under the guise of martial law when the military necessities did not actually require, he has been held civilly liable after the war is finished. But it is obvious during the clash of arms the evidence of the military necessities cannot be adduced in a civil court. Therefore, such a tribunal should not be called at that time to declare whether the necessity exists. When the Congress in session has not declared martial law and the President has not recognized the existence of martial law by executive order closing the courts and even the military commander has not proclaimed martial law is in effect, a court cannot take the responsibility in view of the clear declaration of the Supreme Court of the United States that a martial law is not in effect unless the courts are closed. While it is true that neither a declaration of the President, nor of Congress, nor of the military commander would be binding upon a court eventually, if the necessity did not exist, until some political or military authority has faith enough in the position to proclaim a state of martial law, a court which is in fact open, should not find the existence of necessity as a fact.

ORDER NOT ENFORCEABLE BY COURT

All this points to the vital inconsistency here developed between the action taken by the civil authorities in a federal court bound by and acting under the guarantees of the Constitution of the United States and its amendments, and the claim that a military necessity has arisen so vital that its exigencies demand that citizens of the United States be confined to their places of lodging at hours dictated by a military commander. If such an emergency exist, and it may well be that it does, the Congress of the United States or the Executive, in the months since Pearl Harbor, could have declared martial law or at least suspended the writ of habeas corpus in view of the situation. If the emergency exist, the military commander may be justified in seizing the body of Yasui and removing him from the military areas or zones. Of a certainty, if the military commander can allow a civil court to remain open to try violations of his orders, without support by force, military necessity cannot be so imperative that the fundamental safeguards must be abandoned. So long as the courts of the United States are open, these tribunals are bound by Constitution and treaties of the United States and legislation of Congress. The proclamations or regulations of a military commander cannot be enforced by such tribunals.

But it is contended that there was an adoption of the proclamations of the military commander because the act of Congress passed three days earlier prescribed penalties for acts done in violation of the regulations issued with reference to certain areas or zones. Congress itself could not in loyal territory uninvaded make acts of citizens criminal simply because such acts were in violation of orders to be issued in the future by a military commander. Congress could have declared martial law and thereupon the courts might have become adjuncts or agencies of the General commanding. Under these circumstances he might have had the power to legislate by regulation and create classes of citizens.

BLANKET TREATMENT UNJUSTIFIED

There are valid reasons for control of citizens of Japanese ancestry, but the test is color and race. An equally valid foundation can be found for control of persons of Italian, German and Irish ancestry. A real basis in necessity might be found in the imposition of such regulations upon the eastern frontier after the landing of persons of German ancestry who were harbored in this country. But the history of this country contains too many examples of loyalty of persons of foreign extraction to justify any blanket treatment. The precedent, if valid, can be made to justify exile or detention of any citizen when a military commander desires in a loyal state not under threat. If the military necessity existed and martial law was actually in effect, justification might be pleaded. . . .

CLASSIFICATION BASED ON RACE IS INVALID

This court, while not operating as an adjunct of a military commander, must apply ordinary law and protect the rights of a citizen in a criminal case. If Congress attempted to classify citizens based upon color or race and to apply criminal penalties for a violation of regulations, founded upon that distinction, the action is insofar void.

The power of Congress, however, during time of war over aliens of a country which is hostile to the United States is almost plenary, as is that of the President by a series of acts dating to the foundation of the Union. While in ordinary times such persons are entitled to the "equal protection of the laws," when their country is at war with the United States, Congress or the President may intern, take into custody, restrain and control all enemy aliens within the territorial limits of the United States, and neither are restrained by any constitutional guarantees from such action. While the orders of General DeWitt, therefore, were void as respects citizens, unquestionably from the history of the proclamations, Congress would be well on notice that the General might intend to establish regulations relating to enemy aliens within the areas designated by the previous proclamations. The regulations, which make these acts crimes, by adoption thereof by act of Congress are thus valid with respect to aliens.

YASUI AN ENEMY ALIEN

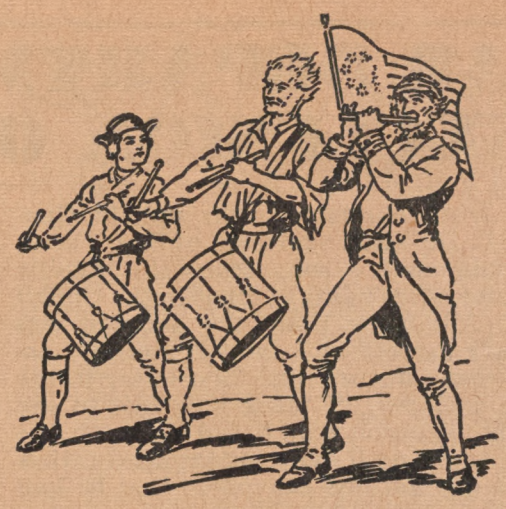
The only question now for the court to determine is as to whether Yasui, the defendant, is a citizen or an enemy alien.

(The court then proceeded to find that Yasui, upon attaining his majority, had elected to become a citizen of Japan, as evidenced by his registration with the State Department as a propaganda agent for Japan. Being an enemy alien, he was lawfully subject to curfew regulations.)

COMPULSORY CHAPEL

General Stephen H. Sherrill of Camp Kohler, Sacramento, recently informed a representative of the A.C.L.U. that, contrary to press reports, there is no compulsory chapel at the camp. General Sherrill explained that trainees attend an assembly the first Sunday at camp. After the general speaks, the meeting is turned over to the Senior Chaplain, who tells about the various devotional services, following which there is a chapel service, attendance at which is optional.

AMERICAN CIVIL LIBERTIES UNION-NEWS



FREE SPEECH
FREE PRESS
FREE ASSEMBLAGE

"Eternal vigilance is the price of liberty."

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GOV'T STALLS IN TEST CASES

Technical Objections Raised In Korematsu and Endo Cases

The United States Attorney for Northern California, pursuant to instructions received from the Attorney General, has filed a motion to dismiss the appeal in the Fred T. Korematsu Japanese-American evacuation test case now pending before the United States Circuit Court of Appeals. The Government contends there is no final judgment to appeal from, because the trial court placed Korematsu on probation for five years and thereby suspended any right of appeal. The motion will be argued before the Circuit Court on January 19.

Travesty On Justice

The American Civil Liberties Union, which represents Korematsu, has replied that it would be a travesty on justice if after being found guilty of committing an offense a defendant were not given an opportunity of clearing his record by appeal. "This is particularly true in the Korematsu case," asserted the Union, "because the defendant did not apply for the probation that was given to him, but, instead, in order to insure the right of appeal, his counsel unsuccessfully urged the fixing of a fine or the imposition of a jail sentence."

Stalling Tactics

"It occurs to the Union that perhaps the Government is afraid to allow the Military's evacuation of civilians, who are citizens of the United States, to be tested on its merits; otherwise why should the U. S. Attorney resort to a technicality in an effort to defeat the appeal." The Union said it was inclined to the view that the Government is stalling for time in the hope of preventing a final determination of the case until after the war, in order that there may be no present interference with what the Union contends is an unconstitutional exercise of power. The court, however, declined to be a party to the stalling tactics when Presiding Judge Curtis Wilbur refused to sign an order presented by the U. S. Attorney extending the time to answer the brief filed in Korematsu's behalf. It will, therefore, be necessary for the Government to file its brief on the merits by January 8, while Korematsu's final brief will be filed by January 18, the day before the motion to dismiss is argued.

Gov't Also Stalls In Endo Case

As further evidence of the Government's "stalling tactics" the Union pointed to the Mitsuye Endo case pending before U. S. District Judge Michael J. Roche, testing the right of the Government to detain citizens of Japanese extraction once they are removed from military areas. In that case, the U. S. Attorney is likewise seeking to have the case dismissed on a technicality. There, an affidavit has been handed to Judge Roche, without being filed with the clerk of the court, alleging that Miss Endo's petition should be dismissed because she has not exhausted her administrative remedy before coming into court. They allege that Miss Endo can secure her release by applying for a furlough, but fail to point out that such regulations were not in effect when the petition was filed, or that the furlough regulations restrict her freedom

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HALF WAY

Exactly 310 members have contributed in the Union's annual financial drive, and many, we are happy to say, have added an extra dollar or more in order that we may hire needed secretarial help.

Now that the Xmas rush is over, we hope we'll hear from many whose memberships expired during November and December.

And, if you haven't made your annual contribution to the Union, won't you please send in a pledge now in order that we may have some idea what income to expect during the current fiscal year.

Urge Loyal Germans Freed of Enemy-Alien Restrictions

An appeal to Attorney General Francis Biddle for extension to other "friendly enemy alien groups" of the policy which exempted Italian nationals from war-time restrictions, was made last month by eighteen prominent Americans, through the American Civil Liberties Union.

In a letter to Mr. Biddle, the signers said that "it is obvious that the several hundred-thousand refugees from Germany are loyal to the democratic cause" and suggested that war-time restrictions be lifted on four classes of them, those: (1) who are expatriated by Germany; (2) who are employed in war work under approval by the military authorities; (3) who have been examined by Alien Enemy Boards and released; and (4) who have immediate relatives in U. S. armed forces. For those not covered by these categories, individual examinations were suggested.

Christmas Pardons For Six C. S. Victims

Governor Culbert L. Olson granted full and unconditional Christmas pardons to six more victims of the California Criminal Syndicalism Act, thereby raising to 22 the number pardoned during his term in office. All six filed their applications with the assistance of the local branch of the A.C.L.U. In all but one case, the Governor acted on a favorable recommendation of the Advisory Pardon Board.

Five of the six pardoned were members of the I.W.W. They are Charles Andrews, William Baker, Peter Beazley, Richard Bendig and Thomas Connors. These men were all convicted in the early '20s, and have long since served their prison terms. Beazley never did go to prison. Says the Governor's pardon: "Information submitted in support of his application states that he did present himself to the Sacramento County sheriff's office subsequent to his release on bail but that he was not detained nor requested to again report to that office."

Most noteworthy of the five "Wobbly" pardons, however, is that granted to Thomas Connors, who was convicted of attempting to influence a juror sitting in an I.W.W. criminal syndicalism trial. Connors was then Secretary of the California Branch of the I.W.W. General Defense Committee.

"At the time," says Connors, in a letter to the Governor, "I had prepared many leaflets and circulars with a dual purpose in mind. First: To aid in raising funds with which to carry on our work. Second: To create a public opinion that would assist us in our enedavors.

"Much of the distribution of these circulars was accomplished with the aid of local labor union committees in several California cities. Some of these committees used mailing lists derived from phone books, voting lists or other easily acquired address records. I had no control over this phase of circulation.

"However, one potential juror in Sacramento, where cases under the Criminal Syndicalism Act were pending, did receive a leaflet via mail. It mentioned a case on trial in Sacramento. That leaflet may have been mailed from any of a score of sources, I have never been able to ascertain where. I did serve two years in San Quentin because it was received by the juror."

Also pardoned was Oscar Adolph Erickson, a Communist, convicted on syndicalism charges in the Imperial Valley in 1930. The Advisory Pardon Board turned down Erickson's application in January, 1940. Now, after three more years, the Governor has acted without the Board's approval.

Facing the Army's Inquisition

Suppose you, a citizen of the United States, received a notice from the Army requesting your presence at a hearing before a Star Chamber session of the Army's Individual Exclusion Hearing Board, to determine whether or not in the interest of "military security" you should be excluded from the Pacific Coast, and many other states in the Union, as one who is "dangerous or potentially dangerous." What sort of questions should you be prepared to answer?

If because of your connections with the trade union movement you have ever done any picketing, be prepared to answer for it to the Board. "Don't you know," they'll ask, "that you were rabble-rousing?" Of course, you didn't know. But you can't get away with it that easily. "Don't you realize your picketing infringed the employer's property rights?" they insist. Your answer is still a vehement "No" as you realize that trade union activities make a person dangerous to the Army brass hats. But they haven't done with their labor-baiting. The final question is "Did you ever say you wouldn't work on Saturdays if it meant the loss of a day's pay?" It so happens you didn't say it, but what if you did?

Maybe you have discussed public issues, like any good voter, denounced the administration and advocated that the rascals be turned out. Apparently that is suspicious conduct to the Military Board, for mark this question, "Have you been critical of our Federal Government?" We venture to suggest that you ought to be roundly denounced if you **have not** criticized your government.

Then the Board becomes more specific. "Have you at any time criticized the Selective Service Act?", they want to know. If the answer is "Yes," we suppose that makes the person "potentially dangerous," otherwise why would they ask the question.

Of course, if the Inquisitors could show you hold pro-Axis sympathies, you would readily agree that that would form some basis for charging you with being "potentially dangerous." Still, when you have vehemently denied such sympathies and expressed your hatred for Adolph, Benito, Tojo and their understudies, the Board will blandly ask, "Are **other** members of your family pro-German?" The next question should be, "When did you last beat your wife?", but they never quite get to it.

Instead, the Board asks you whether you have ever heard **your wife** say divers and sundry unpatriotic and scurrilous things. To all of which you answer an exasperated "No," and wonder what relation that has to your own possible exclusion as a potentially dangerous citizen. Then, to top it off, they ask another one of those "When did you last beat your wife" questions, to-wit, "Has your wife been outspoken in her pro-German attitudes?"

After such questioning and a wait of three or four weeks, or more, you'll discover whether you are a "dangerous or potentially dangerous" citizen, forced to pull up stakes, with all that means, and move to the hinterlands.

PROSECUTION AGAINST EICHEL, CONSCIENTIOUS OBJECTOR DROPPED

The proceedings against Julius Eichel, 46-year-old conscientious objector, first in the 45 to 64 age group to be indicted for refusal to register for military service, was dropped in the Brooklyn, N. Y., Federal Court last month on the recommendation of Lewis B. Hershey, selective service director. Eichel like others in his age group refusing to register, was registered by prison authorities after he persisted in refusing to register voluntarily. He had been held on bail of $25,000, unprecedented in draft cases, imposed by Judge Matthew T. Abruzzo, who had expressed his hostility to conscientious objectors.

WAR DEPARTMENT UPHOLDS EXCLUSION OF SAM FUSCO

The War Department has upheld General J. L. DeWitt's exclusion of Sam Fusco, California native son, from the Pacific Coast and other military areas in the United States. Admitting that "the decision was not easily arrived at," John J. McCloy, Assistant Secretary of War, in a letter to the Union, declared, "I think it is fair to say that his exclusion was based more on the evil he might do if evilly intentioned rather than on any definite conviction that he had displayed disloyal tendencies."

The Test Is Indefinite

"However," added Secretary McCloy, "the success of subversive activity depends to a large extent upon the individual's remaining free from suspicion until the time comes to strike. The gauge of potential dangerousness is consequently indefinite, which increases the possibility of occasional mistakes. However, in Mr. Fusco's case I am unable to say that I would not have reached the same conclusion."

Fusco directed a Japanese Episcopalian choir in San Francisco, led a Japanese Boy Scout Drum and Bugle Corps that received numerous honors, stimulated the registration of American-born Japanese as voters, arranged political meetings for the Japanese voters addressed by conservative candidates, studied Japanese calligraphy, which resulted in a prize for one of his exhibits shown in Japan, visited his friends at the Tanforan Assembly Center, and maintained a personal friendship with a Japanese lady. In the words of the military, he was "too friendly with the Japanese."

The War Department's declaration places no limit on the exercise of the extraordinary and unprecedented power of the military in excluding from extensive areas United States citizens whom it regards as dangerous or potentially dangerous. We had supposed that citizens would not be driven from their homes, families separated and businesses destroyed without some reasonable showing of disloyal acts and statements. Instead, if for good reasons or bad the military wants to exclude someone, that is sufficient, and that, too, is the sort of stuff that dictatorships are made of.

Civilian Review Board Proposed

The Union had suggested to the War Department that some safeguards ought to be established against an arbitrary exercise of power by the military, and a civilian review board was proposed, to function before or after exclusion. That proposal was "discussed at length" but rejected.

"There would certainly be some advantages to such a procedure," said Mr. McCloy. "On the other hand, the decision whether to exclude or not is a military decision based on military considerations, and it seems inappropriate, somehow, to have civilians pass upon the advisability of a military decision. The time involved in review would be a factor which would tend to defeat the purpose of exclusion."

It seems clear, therefore, that the only remedy against an arbitrary exercise of the military's power of excluding citizens, is court action. Whether such action will be taken in the Fusco case remains to be determined by Mr. Fusco himself. The national office of the A.C.L.U. has already approved appropriate court action in this case.

Gov't Stalls In Japanese Evacuation Test Cases

(Continued from Page 1, Col. 2)

of movement by not allowing her to return to her former home in Sacramento.

Wayne Collins Files Brief

Wayne M. Collins filed his brief in the Korematsu case on December 9. The argument covers more than 113 printed pages. The brief contends that legislative power was usurped and executive power abused in ordering the exclusion of any and all persons from military areas in the United States. It is pointed out that martial law does not prevail on the Pacific Coast, and that in its absence the Military has no power over civilians. "For the Army to intern any citizen is an usurpation of judicial power and an interference with judicial administration." The exclusion program was also attacked as a denial of the equal protection of the laws forbidden by the Fifth Amendment, as well as a violation of "unreasonable search and seizure" clause of the Fourth Amendment. It was argued that there was also a taking of private property without just compensation, a deprival of a judicial trial, the infliction of a "cruel and unusual punishment" and the imposition of involuntary servitude forbidden by the provisions of the Thirteenth Amendment.

WISCONSIN SUPREME COURT REINSTATES UNIONIST SCHOOL BOARD MEMBERS

Edward Weston and Edward Rice, dismissed after a jury trial from their elective posts on the Kenosha, Wisconsin, school board because they had pledged to support the principles of the Union Voters' League, a trade union body, were ordered reinstated last month by the state Supreme Court. The charge leading to their dismissal was that by pledging to uphold, while in office, the principles of the organization which helped elect them, they had foresworn exercise of independent judgment and were therefore unfit to serve as public officers.

COLONEL McCLAIN TRANSFERRED TO OTHER DUTIES

Col. C. C. McClain, member of the Army's Individual Exclusion Hearing Board, has been transferred to other duties, but charges of anti-semitism, red-baiting, etc., have been whitewashed. John J. McCloy, Assistant Secretary of War, notified the Union "that in accordance with a policy providing for rotation of personnel, Colonel McClain has recently been assigned to other duties. There is, however, no connection between his relief and the charges which you make, which I have been unable to substantiate."

The Union, in a letter signed by Ernest Besig, local director, had requested Col. McClain's removal, calling attention particularly to his conduct at a hearing in which Mr. Besig represented Lorenz C. Carlsen. At that hearing Col. McClain assumed Mr. Besig was a Communist "sent by Bridges," and declared that "in my part of the country you'd be skinned alive." He also compared the Bund and certain Jews, and, on other occasions, according to reports, indulged in anti-Semitic tirades, expressed the hope that the Germans and Russians would annihilate each other, and also showed himself to be against Negroes.

The San Francisco Chapter of the National Lawyers Guild appointed a special Committee to investigate the Union's charges against Col. McClain. Over the telephone the Colonel refused to meet with this Committee and referred them to General J. L. DeWitt, his commanding officer.

The General informed the Committee that "the duties devolving upon exclusion board members are onerous and trying. In justice to those assigned to such duties, concurrently with the establishment of the procedure I adopted a policy providing for the rotation of personnel. In the normal application of this policy, Lieutenant Colonel McClain and another member of the board have both been recently assigned to other duties which require their services." The General therefore felt that the Committee would agree that the subject for investigation was closed.

UNION TO AID MICHIGAN SENATOR FIGHT FEDERAL CHARGE

State Senator Stanley Nowak of Detroit last month accepted the A.C.L.U.'s offer of legal assistance to contest a recent federal indictment charging him with falsely swearing at the time of his naturalization in 1937 that he did not belong to any organization "opposed to organized government." He is alleged by the government to have been a Communist Party member when naturalized.

In a statement deploring the proceeding Arthur Garfield Hays, general counsel said, "It is amazing that the federal government should proceed against Senator Nowak on such a ground when the United States Supreme Court has before it the same question for decision in the case of William Schneiderman, secretary of the Communist Party of California, recently argued in his behalf by Wendell Willkie. In that case the Supreme Court is called upon to determine for the first time whether membership in the Communist Party constitutes advocacy of the overthrow of government by force and violence or opposition to organized government. Those beliefs disqualify an alien for citizenship. It is our contention that Communist party doctrine has for years repudiated any advocacy by force and violence; and obviously as a political party it could not oppose organized government.

"Such extraordinary proceedings would appear to be due to local political controversy and personal animus rather than an attempt fairly to enforce the law."

Offering to assist Nowak, the statement said that "it is hardly necessary to add that the Union has no connection, direct or indirect, with the Communist Party, and is interested solely in protecting the application of the Bill of Rights to everybody without distinction."

GOVERNMENT DROPS CASE AGAINST OKOMOTO, EVACUEE

The case against Tito U. Okomoto, American-born Japanese evacuee, charged with leaving Phillips County, Montana, against the orders of General J. L. DeWitt, Western Defense Commander, was dismissed last month on request of the U. S. Attorney. No explanation for the government's move was given. It is reported that the prosecutor was impressed by the arguments presented by Defense Attorney John Dwyer as to the unconstitutionality of the General's order.

RESOLUTION OF OCTOBER 19

"Recognizing that our military enemies are now using techniques of propaganda which may involve an attempt to pervert the Bill of Rights to serve the enemy rather than the people of the United States, the American Civil Liberties Union will not participate,—except where the fundamentals of due process are denied,—in cases where, after investigation, there are grounds for a belief that the defendant is cooperating with or acting on behalf of the enemy, even though the particular charge against the defendant might otherwise be appropriate for intervention by the Union.

"To reach a conclusion on the question whether a particular defendant is cooperating with or acting on behalf of the enemy, the Union will consider such matters as past activities and associations, sources of financial support, relations with enemy agents, the particular words and conduct involved, and all other relevant factors for informed judgment. The Union will continue to defend the rights of all others protected by the Bill of Rights."

DR. MEIKLEJOHN PROTESTS ADOPTION OF "RESOLUTION OF OCTOBER 19TH"

Recently, Dr. Alexander Meiklejohn, vice-chairman of the local branch of the Union and member of the national committee, addressed the following letter to the Board of Directors of the A.C.L.U. in New York City protesting against the adoption of the "Resolution of October 19," which appears in an adjoining column. We would appreciate hearing from our members on this issue as soon as possible. The matter will be discussed at the next meeting of the local Executive Committee.

In the face of the unanimity of your action, I hesitate to criticize the resolution of October 19. Since, however, you ask for comment I must put on record my disagreement with the adoption of that resolution. On two grounds your action seems to me unwise.

First, the Board has, I think, exceeded its authority. A decision to refrain from defending certain rights which are,as you say, "protected by the Bill of Rights," is so radical a departure from the established policy of the Union that it should not have been taken without consultation with the affiliated local groups and with the National Committee.

Reasons for Decision Inadequate

Second, the reasons which you give for your decision seem to me inadequate. You offer two of these. In the resolution itself you ground your action in the fear that freedom may be used "to pervert the Bill of Rights to serve the enemy rather than the people of the United States." That ancient argument has been hurled at the Union throughout its career. But always, up to the time of the passing of your resolution, the Union has rejected it. To speak of "perverting the Bill of Rights" is, we have said, nonsense. Freedom of speech and of the press are essential to the welfare of "the people of the United States." They are our way of dealing both with enemies and with ourselves. That belief the Board has now apparently in part rejected. I deeply regret that change of attitude.

Your second reason is given in the covering letter to the National Committee. You describe your action as "a matter of policy." What the phrase means is unexplained. As it stands, it certainly adds nothing to the persuasiveness of your case.

Familiar Issue

The general issue with which the resolution deals is a familiar one. You are attempting to define the policy of the Union with respect to the freedom of minority groups and individuals in time of war. When a democracy goes to war it does so, normally, by a majority vote. But that means that a minority disapproves, at some point, the policy which is followed. Such a minority is, obviously, placed in a difficult and dangerous position. Under the Bill of Rights, we do not ask the members of a minority to change their minds, nor even to cease from expressing their minds, when the decision goes against them. What we do require is that, so far as action is concerned, they conform to the general decision. They must obey a law in which they do not believe. That is always the duty of a minority in a free community. But the freedom of the community is seen in the fact that, so long as they are not charged and convicted of criminal breaking of the law, the members of a minority are free to criticize, to challenge, to question, the prevailing policy. The Bill of Rights is an expression of the belief that such criticism "serves the people of the United States."

Involves Union In "Witch-Hunting"

Now, in this situation, your resolution would be defensible if its cases were defined as those in which "the defendant" has been tried and convicted of active cooperation with the enemy. But, instead of that, you speak of cases in which "after investigation, there are grounds for a belief that the defendant is co-operating with or acting on behalf of the enemy." In other words, the Union which is, as you say, "a private organization," assumes responsibility for criminal investigation and condemnation. That the Union is not equipped for the making of such investigations or judgments is obvious. It is equally true that the government has urged that "private" organizations and individuals shall refrain from such investigating. But, in spite of the clear impropriety of such action, you now announce that the Union will "consider such matters as past activities and associations, sources of financial support, relations with enemy agents, the particular words and conduct involved, and all other relevant factors for informed judgment." And, further, you say that if, in your judgment, there are grounds for belief that any given person is co-operating with the enemy you will not object to his being deprived of a protection under law which the Bill of Rights has guaranteed to all of us. It would be hard to imagine any decision by a private organization more directly hostile to the basic principles of the Union.

Union Not Fitted For Task

That the Union is not fitted for the new task which the resolution assigns it was clearly shown in the recent conference, which I attended, between Roger Baldwin and officials of the Department of Justice and Post Office, at which the limitation of the mailing privileges of Lawrence Dennis was discussed. It was at once apparent that the Union—as contrasted with the government—did not know the facts. Our information was both scanty and inaccurate. Clearly our part in that meeting was not to supply information but to make sure that the information which the government had collected was properly used. And we did not do so. Acting under your instructions we sat passively by while the officials told us that they were dealing with a citizen as if he were guilty of criminal acts against the government, even though no such charge had been made or tried against him. Without trial he was denied a privilege which is granted to Adolph Hitler. But, worse than that, we submitted, without protest from Roger Baldwin as your representative, to a clear and unequivocal abridgement of the freedom of public discussion of the public policy of our government. On that side of the issue, it was not the rights of Dennis which were denied but the rights of all Americans who are concerned to consider and to decide upon the wisdom of our policy as a nation.

This statement is, of course, very inadequate. It only touches upon the edges of a problem with which your resolution seems to me to deal in too hasty and summary a fashion. In view of your unanimity it is, I presume, useless to argue the matter further. I do wish, however, that you would reconsider your action. In making that suggestion I do not challenge your intention. But I am convinced that, as interpreters of the function of the Union, you have made a serious mistake.

COURT REINSTATES DISMISSED CIVIL SERVICE EMPLOYEE

Zera H. LaPrade, dismissed employee of the Los Angeles Water and Power Department, was ordered reinstated with full back pay last month by Superior Court Judge Henry M. Willis in a mandamus proceeding. LaPrade was discharged last summer because statements critical of the department's wage policy were published in the Civil Service Sentry, organ of the independent Municipal Civil Service Employees' Association of which he is president.

The contention of the A.C.L.U.'s Southern California Committee in a brief and oral argument that this employee's dismissal abridged his constitutional rights were supported by the opinion of the judge.

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A.C.L.U. SUPPORTS PARDON APPLICATIONS FOR MODESTO "FRAME-UP" VICTIMS

FLASH!

Sacramento, Dec. 28.—Gov. Culbert L. Olson today granted full and unconditional pardons to five victims of the "Modesto frame-up." Robert J. Fitzgerald returned from a sea voyage just in time to sign the necessary application form and consequently was included among the frame-up victims who were pardoned.

The local branch of the A.C.L.U. is supporting the pardon applications filed with Governor Culbert L. Olson in behalf of John Burrows, Victor Johnson, John Souza and Reuel Stanfield, convicted in Modesto in July, 1935, on charges of reckless and malicious possession of dynamite on a public highway. The men have all served their prison sentences.

In December, 1936, statements were secured from James Scrudder, recorded on eighteen dictaphone records, showing he had perjured himself at the trial, and that he and James Marchant, the prosecution's chief witnesses, were nothing less than labor spies ,who engineered the arrests and convictions, and thereby broke the tanker strike called by the Seamen's Union in March, 1935.

At the 1937 session of the State Legislature a resolution, drafted by the A.C.L.U.'s representative, was adopted calling for an Assembly Committee to investigate the charges. Following extensive hearings, a majority of the Committee recommended the granting of pardons.

In its letter to Governor Olson, the Union declared that "the convictions are so clouded with the suspicion of a 'frame-up,' that coupled with the fact that the men have served their terms and conducted themselves as law-abiding citizens since their release from prison, the case is properly one for the exercise of executive clemency."

FEDERAL FLAG SALUTE LAW BRINGS RESULTS

The salutary effects are already evident of a memorandum issued recently by the Justice Department calling attention to a national flag-salute law passed by Congress last June, providing that civilians may show full respect to the flag by merely standing at attention when the pledge of allegiance is given.

Judge J. Flannery of Pennsylvania, sitting in the Court of Quarter Sessions of Luzerne County, last month reversed the conviction in a lower court of Mrs. Mary Nemchick, Jehovah's Witness, charged with violating the state school code because her five children were absent from school after being expelled for refusal to salute the flag.

In explaining his decision, Judge Flannery referred to the Congressional law, stating that "the Department of Justice through its Civil Rights Section calls attention to this provision in questions such as the one before us and indeed there is doubt whether any local regulation, ordinance or statute prescribing a different salute as a measure of respect for the flag can be enforced."

At Avondale, Arizona, the children of Millard Holly, expelled from school several months ago, were reinstated last month by the town school board on condition that they "stand at attention and face the flag when the pledge is given."

MORE GAINS FOR "WITNESSES"

ATTACKER INDICTED: An indictment against a police sergeant for assaulting a Jehovah's Witness "with a deadly weapon and with intent to do great bodily harm" was handed down last month by the Los Angeles County Grand Jury on evidence submitted through A. L. Wirin, A.C.L.U. counsel in Southern California. The prosecution is the first in Los Angeles for an attack on members of the sect and one of the few in the entire country.

COMPLAINT DISMISSED: Faced with threatened injunction proceedings in the federal courts, the Riverside, California, city attorney last month dismissed criminal complaints against ten members of Jehovah's Witnesses charged with violation of the city's newly adopted ordinance prohibiting distribution of literature without payment of a license tax.

A.C.L.U. attorneys A. L. Wirin and Fred Okrand defending the Witnesses, contended that the ordinance is unconstitutional because it violates freedom of religion, press, and speech, and deprives the defendants of equal protection of the law since it was directed and enforced only against members of the sect. An investigation by the A.C.L.U. had disclosed that many charitable and religious organizations conducted sales on the streets without licenses and without arrests.

SCHOOL CHILD REINSTATED: The school board of Branford, Connecticut, voted last month to reinstate Betty Stark, expelled from school several months ago for refusal to salute the flag. A condition of her return was that she stand at attention when the salute is given by other children.

At Wahoo, Nebraska, the school board adopted a resolution last month "that those children who by reason of religious beliefs are unable to comply with this requirement (salute), may be deemed to show full respect to the flag when the pledge of allegiance is being recited by facing the flag and standing respectfully at attention."

Both boards acted after receiving communications from the A.C.L.U. calling attention to the law passed by Congress last June providing that standing at attention is a full measure of respect for the flag.

BAIL REDUCED: Federal Judge Harry A. Hollzer of Los Angeles ordered a reduction of bail from the sum of $3500, originally set by Commissioner David B. Head, to the sum of $1,000, in the case of Horace Hurd, prosecuted for failing to report for induction in the Army. A.C.L.U. Attorney A. L. Wirin had pointed out to the court that "no Jehovah's Witness, either in Los Angeles, or anywhere in the United States, had ever failed to appear for trial or hearing in any court, no matter what the charge."

U.S. Circuit Court Upholds Texas "White Primaries"

Texas "white primaries" were upheld last month by the U. S. Circuit Court of Appeals at Houston in a ruling on the appeal of Lonnie Smith from the decision of a federal district court approving the exclusion of Negroes from Democratic primaries.

The court upheld the contention that the case was governed by the decision of the U. S. Supreme Court several years ago in Grovey v. Townsend that the Texas Democratic primary is a private affair of the party and that exclusion of Negroes is not in violation of their constitutional right to vote.

The court denied the contention of the appellant that the Supreme Court in the recently decided Classic case superseded the Grovey decision when it held that the right to cast a vote in the Louisiana primary is one bestowed by the constitution. Interference with this right was considered an "interference with the effective choice of the voters at the only stage of the election process where their choice is of any significance."

In refusing to follow the Classic decision, the court held that it was handed down in a criminal case differing on many points from the present case and did not overrule the Grovey decision. The N.A.A.C.P., which argued the appeal, is seeking a rehearing before the circuit court. If refused, a petition for review will be filed with the U. S. Supreme Court. A brief as friend of the court will be filed by the A.C.L.U. as in the court of appeals.

MARTIAL LAW IN HAWAII UPHELD IN 2 TO 1 DECISION

Last month, practically unnoticed by the press, the United States Circuit Court of Appeals in San Francisco handed down one of the most momentous decisions in its history. The Court held, 2 to 1, that the privilege of the writ of habeas corpus had been legally suspended in the Territory of Hawaii, and that the continued detention of Hans Zimmerman, a naturalized citizen, by the Military was proper.

Zimmerman was picked up by the Army weeks after the Japanese attack upon Pearl Harbor. Martial law had been proclaimed on December 7, 1941, and has operated ever since with most of the civil functions even now being operated by the Military.

Circuit Judges Francis Garrecht and William Healy held that the declaration of martial law was valid, and that the imminent threat of a resumption of the invasion persisted at the time Zimmerman applied for a writ of habeas corpus. "The averments of the petition plus facts of which the court has judicial knowledge" were sufficient to warrant the denial of the writ, said the court, without a return by the Military explaining the reason for the detention.

Circuit Court Judge Bert Emery Haney filed a strong dissent. Said he, ". . . military government is not established by merely proclaiming it. It comes into being and exists solely by reason of the fact that strife prevents operation of the civil government. 'As necessity creates the rule, so it limits its duration.' In other words, whether military government prevails is a question of fact depending on the existence of facts in the territory where it is supposed to be controlling, and a proclamation of the military that it exists is superfluous and ineffective."

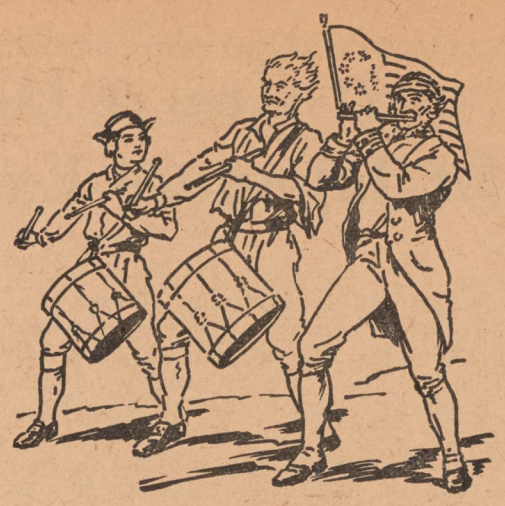
Judge Haney insisted that the Army should have been required to explain the reasons for the detention of Zimmerman. Moreover, if the court found that military rule was not reasonably necessary "to execute the Laws of the Union, suppress Insurrection and repel Invasions" and to protect each of the states against invasion, then Zimmerman should have been ordered released.

It is interesting to note that the people of Hawaii have grown increasingly restless against the continued operation of martial law in Hawaii. In recent weeks, Gov. Ingram M. Stainback has been in Washington urging the restoration of civil government. Secretary of the Interior Ickes has supported Gov. Stainback. The press has reported that according to "an authoritative official," Ickes, Stimson and Biddle are about to confer on the proposed restoration of civil government. Possibly the Army is fearful that the United States Supreme Court will adopt the reasoning of Judge Haney and would prefer not to have its extraordinary exercise of power examined by the high court.

CONSCIENTIOUS OBJECTORS

A total of 4493 men are in C.O. camps at the present time. More than a third of the objectors are Mennonites. Two hundred and fifty-nine have no affiliation with a religious group.

AMERICAN CIVIL LIBERTIES UNION-NEWS



FREE SPEECH
FREE PRESS
FREE ASSEMBLAGE

"Eternal vigilance is the price of liberty."

Vol. VIII SAN FRANCISCO, CALIFORNIA, MARCH, 1943 No. 3

CITIZENSHIP OF NISEI UPHELD

Circuit Court Bebuffs Native Sons; Japanese Exclusion Cases Argued

The United States Circuit Court of Appeals in San Francisco on February 20 dismissed the contention of the Native Sons of the Golden West that the Nisei or American-born Japanese and other American-born orientals are not citizens of the United States under the Fourteenth Amendment to the Constitution, which reads, "All persons born . . . in the United States, and subject to the jurisdiction thereof, are citizens of the United States . . ." The court wasted no time in reaching its decision. After listening 35 minutes to the ponderous argument of former California Attorney General U. S. Webb (who is responsible for drafting California's Alien Land Law), the seven judges momentarily held a whispered consultation without leaving the bench, after which it was announced by Presiding Judge Curtis Wilbur that "The judgment of the lower court will be affirmed without further argument." It was just about the worst rebuff that could be given Mr. Webb and the Native Sons.

Evacuation Test Cases Submitted

At the same time, the court took under submission the Korematsu, Hirabayashi and Yasui cases testing the military's right to evacuate citizens of Japanese extraction from the Pacific Coast, and to place them under curfew restrictions. Written opinions in these cases are not expected for at least one month, and possibly two or three months. While we can only speculate as to the results, it is felt that at least four of the seven judges will be willing to uphold the military's power. Whatever the decision, however, the cases will be appealed to the United States Supreme Court for a final ruling.

Webb Sought to Overrule Sup. Ct.

The citizenship issue arose in a suit for an injunction directed against the Registrar of Voters of San Francisco county. The suit sought to restrain the Registrar from permitting citizens of Japanese ancestry from voting, on the ground that they are not eligible to vote because they lack citizenship. In arguing the case, Mr. Webb conceded that the Supreme Court, in the Wong Kim Ark case in 1898, had decided the issue against him. "Are you asking this court to overrule the Supreme Court of the United States," asked Judge Wilbur. Said Mr. Webb, fencing not too adroitly, "I am asking this court, as God gives it light and power, to give a correct judgment according to the law." He then went on to indicate that he thought the court should follow the **minority** opinion in the Wong Kim Ark case.

Union Filed Brief

A. L. Wirin of Los Angeles, appearing as counsel for the Japanese-American Citizenss' League, which had filed a brief as "friend of the court," had been granted 30 minutes for oral argument, but because of the court's speedy ruling was not given an opportunity to be heard. Amici curiae briefs were also filed on behalf of the A.C.L.U. and the Lawyers' Guild. The former brief was prepared by Attorney Wayne M. Collins of San Francisco.

Evacuation Test Cases

The principal issues before the court, however, were 1, the constitutionality of

(Continued on Page 2, Col. 2)

600 COPIES SOLD

Our original supply of the excellent pamphlet, "Jehovah's Witnesses and the War" was exhausted shortly after its sale was announced in the February issue of the "News." More than 600 copies have been distributed by this office alone. A couple of hundred copies are now on hand at a price of 10c each. Send your orders to the A.C.L.U., 216 Pine St., San Francisco.

MORE AVAILABLE

Schneiderman Appeal To Be Reargued

A long-awaited opinion from the U. S. Supreme Court as to whether membership in the Communist Party constitutes advocacy of the overthrow of government by force and violence was postponed last month when the court ordered reargument of the appeal of William Schneiderman, party functionary, from the decision of a lower court upholding revocation of his citizenship.

In the argument on the appeal last November, the government held that since Schneiderman was a member of the Workers' Party, predecessor to the Communist Party, when he was naturalized in 1927, he advocated violent overthrow, an alleged principle of the party, and is thereby disqualified from citizenship. Wendell Willkie, counsel for Schneiderman, challenged as imputation, based on the government attorney's own interpretation of Communist theory, the charge that his client advocated violence, a tenet which "would not necessarily be binding on the member" even if advocated by the party.

WRIT OF HABEAS CORPUS GRANTED MISS WHITNEY

The California District Court of Appeals, Third District, Sacramento, has granted a writ of habeas corpus to Anita Whitney, Communist candidate for controller at the last State election, and in so doing has invalidated a Sacramento ordinance providing "No person shall, in or upon any of the public grounds make any public address . . . except in accordance with a permit from the City Manager." Miss Whitney had been arrested on October 4, 1942, after attempting to speak in support of her candidacy in one of Sacramento's city parks.

The ordinance recited that it had been adopted as an emergency measure because the parks had been made the location of speeches "to the annoyance of the citizens" which might lead to public disturbances. The Court held that the ordinance was one "imposing censorship on the freedom of speech, and the motive inducing its adoption thereby becomes unimportant. . . . Freedom of speech is one of those rights which is vital to the maintenance of a democratic form of government, and an ordinance which prohibits the rights of public speech upon public grounds, except by special permit, simply because of the stated reason that citizens have been annoyed, is therefore insufficient and unconstitutional."

The opinion goes on to say that "The ordinance by its terms is not regulatory but on the contrary it is prohibitory. The provisions thereof fail to indicate that comfort or convenience in the use of the city parks and grounds is a consideration for the enactment of the ordinance. Contrary to the contention of respondent, the provision requiring the procuring of a permit from the City Manager confers upon him the discretion of absolutely denying such a permit. The ordinance, also, by its terms applies generally to all Sacramento public parks and grounds."

The A.C.L.U. field a brief in the case as a "friend of the court," which was prepared by attorney A. L. Wirin of Los Angeles and countersigned by attorney Wayne M. Collins of San Francisco.

RECENT BOOKS ON CIVIL LIBERTIES

ABOVE ALL LIBERTIES: By Alec Craig, Published by George Allen and Unwin Ltd. in England, and in the United States by W. W. Norton, 70 Fifth Ave., N. Y. C. A 200 page survey of censorship of so-called obscenity, presented from an advanced viewpoint, with chapters on the handling of such issues in French and American courts, but with the body of reference to English cases and background.

Bridges Loses Plea For Habeas Corpus; Will Appeal

Harry Bridges, west coast labor leader, lost another round in his fight against deportation as an "undesirable alien" when the federal district court at San Francisco last month denied his plea for a writ of habeas corpus through which he sought to block Attorney General Biddle's deportation order of last May.

The court held that the order was issued "after a fair hearing on substantial evidence and no error of law occurred which operated to deprive petitioner of due process of law or any other constitutional rights." The court also sustained the Congressional amendment of the Deportation Act in 1940 which makes deportable those with past as well as present membership in organizations advocating violent overthrow of the government. Bridges was held to come within the amendment through evidence given at a hearing conducted in 1941 by trial examiner Charles B. Sears that he was formerly a member of the Communist Party and of the Marine Workers Industrial Union.

Bridges' contention that he was placed in "double jeopardy" by being subjected to trial before Examiner Sears after having been cleared of identical charges in a hearing before Dean James M. Landis in 1939 were rejected by presiding Judge Martin I. Welsh who held that the constitutional protection against double jeopardy "applies only to proceedings essentially criminal" and that a deportation proceeding is "aimed at the revocation of a privilege and not as a punishment for crime."

Bridges will appeal to the federal Circuit Court of Appeals and the case will undoubtedly reach the U. S. Supreme Court. The A.C.L.U. has opposed the proceedings against Bridges as involving prosecution for alleged political opinions and connections, and hostility to his trade union activities.

URGE JAPANESE-AMERICANS BE DRAFTED WITHOUT SEGREGATION

Commending the War Department for its recent decision to reopen the ranks of the army to Japanese-Americans by accepting volunteers for special "combat-teams," the American Civil Liberties Union in a letter to Secretary of War Stimson has urged that those not confined in the centers "be dealt with by Selective Service the same as all other American citizens and taken into the armed forces without segregation." Since last May all Japanese-Americans have been deferred.

The Union said that acceptance of its proposal would be in keeping with the sentiments recently expressed by President Roosevelt in a letter to the Secretary of War commenting favorably on the move to accept Japanese-Americans once more in the army. The President wrote:

"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. 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 the armed forces, war production, agriculture, government service, or other work essential to the war effort."

DON'T RING—KNOCK!

The United States Supreme Court has agreed to examine the constitutionality of an ordinance which makes it a crime to ring a door bell for the purpose of distributing literature.

Circuit Court Hears Arguments In Japanese Exclusion Test Cases

(Continued from Page 1, Col. 2)

the mass evacuation of citizens of Japanese ancestry; 2, the validity of curfew imposed on alien enemies and citizens of Japanese extraction; and, 3, the holding by Judge Fee of Portland, Oregon, that an American-born citizen who, under International Law, holds dual citizenship, may lose his American citizenship when he attains the age of 21 by acts and speech indicating an election. Seven judges instead of the usual three were assigned to hear the cases.

Involved were Fred T. Korematsu, Alameda county boy, who had been convicted for failing to evacuate, and Gordon Hirabayashi, Quaker and University of Washington student, who had been tried and convicted on the same charges and also for violating the curfew regulation. The third case involved Minoru Yasui, born in Hood River, Oregon, who was convicted as an **alien** for violating the curfew regulation. The lower court, while holding the military had no authority over citizens, had held that Yasui had lost his citizenship by reason of being employed at the Japanese consulate in Chicago, and because his father had received some kind of recognition from the Japanese government because of bringing about friendly relations between Japanese and Americans in Hood River.

Wayne M. Collins, A.C.L.U. attorney of San Francisco; Frank L. Walter of Seattle, and E. L. Bernard of Portland appeared as counsel for the Japanese. Three attorneys likewise appeared for the government, including E. J. Ennis, the very able Assistant Attorney General who came to San Francisco particularly for the purpose of arguing the cases.

Government's Contentions

The government's attorneys contended that the evacuation was taken under the **war powers** of the President and Congress, and that if any act of the government has any reasonable relation to that power, it must be upheld. They claimed it was not necessary for the government to **prove** there was any military necessity, but that the court could take **judicial notice** of the military dangers to the Pacific Coast and the menacing character of the Japanese residing here. "Their loyalty," according to Asst. U. S. Attorney A. J. Zirpoli, "was beyond the discernment of the military authorities."

Asst. Attorney General E. J. Ennis argued that the removal was not based on racial prejudice but on the alleged allegiance of the Japanese to the Emperor, of which the court likewise could take judicial notice. Of course, if the evacuation resulted from racial prejudice, then it was admitted that it would be arbitrary and could be set aside.

Fear of Possible Disloyalty

At this point Judge Denman stated, "You ask us to take judicial notice of the menace of the Japanese. Is there any case of a native born Japanese being proceeded against?" When Mr. Ennis answered, "No," Judge Denman then wanted to know, "Is there a single case of arrest?" Mr. Ennis admitted there was not, and that as a matter of fact the most prominent prosecutions for espionage and sabotage thus far were against citizens who are **not** Japanese. Nevertheless, said Mr. Ennis, if there were an invasion of the Pacific Coast and only a few thousand of the Japanese were friendly to the invaders, they could do incalcuable damage to our cause.

Mr. Ennis admitted that the evacuation is an extreme exercise of the war power, but that such exercise is called martial law only when it is exercised to replace the judicial function of the courts. Consequently, in this instance, there was no martial law.

The government's attorneys argued, too, that the military's action had been **ratified** by the Congress in enacting Public Law No. 503, under which the men had been convicted, and by the subsequent appropriation of monies to pay for the evacuation. The former statute, it was asserted, was not too indefinite for a penal law.

The Case for the Nisei

The attorneys for the Japanese contended that the military has no power over civilians in the absence of martial law, and if it is claimed that a kind of martial law exists, then it is necessary for the government to prove facts which alone can justify the exercise of such power. The court, they asserted, may not take "judicial notice" of any military necessity; that is a matter of proof.

The evacuation, too, was denounced as a denial of the equal protection of the laws since it was based on racial prejudice and not directed against all citizens on a like basis. Moreover, due process of law requires that a person be granted a fair hearing before his liberty is taken from him.

Finally, a penal statute must be definite in order to put people on notice against the particular thing that is prohibited, whereas this particular statute made no attempt to define the offense.

Does the War Make Any Difference?

It was generally acknowledged that if the exclusion had occurred in peace time there would be no question about its invalidity. The issue before the court is whether the war makes any difference; whether there is a war-time power to exclude citizens from areas within the United States, and, if so, whether that power was properly exercised.

Tennessee Repeals The Poll-Tax

Last month the Tennessee legislature passed a bill sponsored by Governor Prentice Cooper repealing the state's fifty-year-old poll-tax law. This reduces to seven the number of southern states still requiring payment of a poll-tax as a prerequisite to voting. These are Virginia, South Carolina, Georgia, Alabama, Mississippi, Arkansas and Texas.

It is anticipated that the opponents of the measure will seek to upset it on grounds of constitutionality since the state constitution provides that "each voter shall give satisfactory evidence that he has payed the poll taxes assessed against him without which his vote cannot be received."

GOVERNMENT DROPS PROSECUTION AGAINST MICHIGAN SENATOR

The federal prosecution against Stanley Nowak, Michigan state senator, for alleged falsification of his naturalization oath in 1937 was dropped last month at the instance of Attorney General Francis Biddle who admitted an "error in judgment."

Nowak was indicted last December for "swearing falsely" that he was not a member of an organization "opposed to organized government." It was charged that he was a member of the Communist Party at the time of his naturalization and that the party falls within the definition.

Henry A. Schweinhaut, representing the Attorney General, issued a statement in Detroit saying that "the facts are not such as to warrant a criminal prosecution and the attorney general takes the entire responsibility for the error in judgment." He indicated that the Justice Department does not intend to bring denaturalization proceedings.

Nowak's indictment provoked a nation-wide protest from liberal and labor organizations, among them the American Civil Liberties Union, which said that "such extraordinary proceedings would appear to be due to local political controversy rather than an attempt to fairly enforce the law."

State Legislation Aimed At Racial Discrimination

More liberties for colored people are sought by a series of bills introduced in the State Legislature by Assemblyman Augustus Hawkins. It is a program that will make progress, however, only with **YOUR** support. Send letters to your legislators urging them to vote for the following bills:

A. B. 41 and **A. B. 50** prohibit discrimination because of race, color, creed or sex in war industries and labor organizations. **A. B. 390** does the same thing in public utilities, such as street railways.

A couple of the bills would make it easier for the colored people to secure decent housing. **A. B. 1598** makes unlawful residential segregation, while **A. B. 1599** prohibits racial discrimination in public housing projects.

A. B. 18 and **A. B. 838** would make it unlawful for insurance companies to discriminate against anyone because of race, color, creed or national origin in writing insurance policies.

Many State forms and blanks inquire into a person's race or religion. **A. B. 1732** would prohibit that practice.

Finally, **Assembly Joint Resolution No. 18** memorializes Congress to eliminate poll taxes.

Besides the above-mentioned anti-discrimination bills by Assemblyman Hawkins, many other bills are on file. For example, identical bills have been introduced in the Assembly and Senate **(A. B. 27** and **S. B. 40)** penalizing discrimination because of race, creed or color in places of public accommodation, resort or amusement.

Senator Tenney has introduced **S. B. 41** which prohibits such discrimination in industries serving the government, and **A. B. 1117** by Assemblyman Rosenthal goes so far as to provide "Any employer, or agent, employee, superintendent or manager thereof, who refuses employment to any person solely because of such person's race, color, or religious beliefs is guilty of a misdemeanor." At the same time, Mr. Rosenthal would make it a misdemeanor for an employer (except motion picture producers) to express racial and religious preferences in advertisements for workers. **A.B. 77** would accomplish the same purpose.

Senator Swan has introduced **S. B. 871** to limit to 20 per cent the value of the interview in any examination for a civil service job.

A Further Review of Suppressive Bills In The State Legislature

Last month we were unable to review all of the suppressive bills introduced at the present session of the California Legislature because at the time the story was written the Legislature had not yet recessed and bills were still pouring into the hopper. We now present a summary of the suppressive bills that were introduced after our previous article was written. Incidentally, the Legislature reconvenes on March 8.

The subjects covered by the latest batch of bills include aliens, Japanese, race and religious hatred, compulsory drill in our schools, labor, espionage, and our disloyal aged people (believe it or not).

Page Dr. Townsend

Senators Rich, Tickle, DeLap, Breed (of Alameda county) and Seawell have suddenly become agitated about the radicals who are receiving public assistance "including aid to the aged under the Old Age Security Law." Any "person who comes within" the criminal syndicalism act, or who is a member of or contributor to an organization advocating the violent overthrow of the government, is defined by **S.B. 848** as a "disloyal person" and would henceforth be disqualified from receiving public assistance.

Assemblymen Dilworth and Clarke have joined the parade in making political capital at the expense of the Nisei by introducing **Assembly Joint Resolution 29** memorializing Congress to prepare an amendment to the Constitution "so as to provide that native-born descendants of alien Japanese parents be not citizens of the United States by reason of their birth within the territorial limits of the United States."

Alien Motorists Restricted

The aliens come in for their usual blow from Senator Swan of Sacramento who has reintroduced a bill **(S.B. 870)** originally introduced in 1941, prohibiting the registration or operation of motor vehicles owned by **aliens** unless they file proof of ability to respond in damages. The implication of the measure would seem to be that aliens are worse drivers than citizens.

Another of Senator Swan's pet measures is compulsory military drill in all junior colleges and state colleges, **S.B. 872.** Of course, no provision is made for conscientious objectors.

Assemblyman Rosenthal (by request) has introduced an espionage act **(A.B. 1101)** that is almost word for word the same as the federal law enacted in 1917. During the World War that law was enforced with great vigor and unfairness. Today, under Attorney General Biddle, discretion is being used in its enforcement. We venture to say that a State law would open the way to considerable witch-hunting and would result in prosecutions the federal government would never choose to undertake.

Legislating Tolerance

Senators Tenney and Burns have collaborated in a couple of bills aimed at legislating racial and religious tolerance, but which may well result in a fantastic restriction of free speech. The first bill, **S.B. 606,** is an extensive proposal revived from the time Mr. Tenney was in the Assembly. It provides that any person who publishes, distributes or intends to distribute or exhibit any book, speech, or writing, any record of an organization, or any picture, photograph, etc., "which is intended in any way to incite, counsel, promote or advocate hatred, violence or hostility against any group or groups of persons residing or being in this State, by reason of race, color, religion or manner of worship;" is punishable by a maximum fine of $500 or by imprisonment for no more than three years. Owners knowingly leasing premises to groups for the above purpose, or who knowingly allow the use of broadcast facilities for such purposes are also punishable to the same extent.

Interestingly enough, "the provisions of this act shall not apply to citizens or subjects or the **descendants** of any citizen or subject of any country or state now at war with the United States."

New Jersey had a law of this kind which was first enforced against Jehovah's Witnesses. Later the law was declared invalid when applied against members of the Bund.

Group Libel

The same senators have also introduced **S.B. 607** which expands the definitions of libel and slander to permit any member of a race or religious organization to sue in behalf of such group any person who allegedly libels or slanders the group. This and the foregoing measure would seem to narrow in a senseless way the field of free speech. The discussion of racial and religious matters, if these laws were enacted, would become extremely hazardous.

A couple of anti-labor bills have been introduced by Assemblyman Hastain. **A.B. 1022** would make it unlawful for a Union to discipline a member who refuses to strike not only in a war industry, but in an activity "required in the maintenance of the public peace, safety, health or welfare," or in any occupation requiring six months' training, or where the number of workers available is insufficient for "existing or anticipated requirements." Mr. Hastain would have found it difficult to be more inclusive. The other bill, **A.B. 1852,** does away with all closed shop contracts.

Union Undertakes Legal Service For Conscientious Objectors

A bureau for Legal Service to Conscientious Objectors recently established in Washington on an experimental basis has been taken over by the National Committee on Conscientious Objectors, organized by the A.C.L.U. The Legal Service, organized by R. Boland Brooks, New York attorney, and George B. Reeves of Philadelphia, formerly associated with the National Service Board, is endeavoring to deal with critical problems which have arisen both in the classification and treatment of objectors. It has been generally agreed among all those interested in conscientious objectors that bringing pressure to bear for the solution of these problems should be separated from the administration of the Civilian Public Service camps under the National Service Board. In addition to the services of Mr. Brooks and Mr. Reeves, Dorothy Detzer, secretary of the Women's International League, is giving part time to a solution of the problems.

According to Ernest Angell, chairman of the National Committee, the principal issues concern the removal of military men from control over classifications and paroles, the assignment of objectors to "detached service" in agriculture and hospitals direct from draft boards and from prison, the retention of wages in detached service equivalent to a soldier's, and the speeding up of paroles and detached service outside the camps.

The results aimed at, Mr. Angell said, are to reduce the prison population and further commitments, and to get as many men as possible into useful work at wages outside the camps instead of the "C.C.C. type of work they now perform." Over 1,000 objectors are in prison, twice the number in World War I, and some 6,000 in Civilian Public Service Camps administered by the National Service Board for Religious Objectors.

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ERNEST BESIG .....Editor

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Mississippi Supreme Court Upholds War Gag Law

A sweeping Mississippi statute making it unlawful in wartime to advocate "doctrines and teachings detrimental to the public safety" and "to encourage by speech or print disloyalty to the government or to create an attitude of refusal to salute the flag" was sustained last month by the State Supreme Court in a 3 to 3 decision.

The court denied in three separate cases the appeals of Jehovah's Witnesses from convictions in the lower courts for violating the statute by imparting to others their religious beliefs opposing man-made laws and flag saluting. The conviction in the case of another appellant, Otto Mills, was dismissed for lack of evidence.

Answering the contention of the appellants that their free speech is violated, the controlling opinion written by Judge W. G. Roberds said: "If this were peacetime legislation, the writer would not hesitate to hold it unconstitutional as to appellant—but this is one of several statutes passed by the Mississippi legislature in 1942 to aid in the prosecution of the war. It is an emergency war act and by its terms it will expire upon termination of the war."

Precedents were cited to show that in wartime constitutional liberties may be curtailed to meet the emergency, with the conclusion that "the rights of citizens must give way temporarily as this may be reasonably necessary for the nation's self preservation."

To the appellants' contention that the statute violates their freedom of religion the opinion answered that the flag-salute and the pledge of allegiance have "nothing to do with religion," despite the claim of the appellants that their attitude is based on Biblical injunction. The dissenting opinion held that "we may differ with the appellant on his interpretation of these Commandments—nevertheless that is a matter for his own determination and not for the determination of the judges of this or any other court."

The dissent added that "to assume that the refusal to salute is stubborn and to argue therefrom that such a course is a sympton of a deep-seated disloyalty is to punish one not for the charge against him but for the evidence adduced to prove it." The dissent did not question the validity of the statute, but held that it did not apply to the customary acts, principles, and teachings of Jehovah's Witnesses.

The Jehovah's Witnesses plan an appeal to the U. S. Supreme Court. The A.C.L.U. which filed a brief as a friend of the court will file a brief on the appeal.

Federal Conviction Upheld For Attack On "Witnesses"

The federal Circuit Court of Appeals at Richmond, Va., last month sustained the conviction of a deputy sheriff in Nicholas County, W. Va., for violating in 1941 the federal civil rights statute by an attack on Jehovah's Witnesses. The conviction was the **first** secured by the Department of justice against a public official under that statute.

The lower court had found the official guilty not only of failing to protect a group of Witnesses in Richmond, W. Va., but of assaulting them and **administering a dose of castor oil.**

Circuit Court Judge Dobie in the opinion said: "We are here concerned only with protecting the rights of these victims no matter how locally unpalatable the victims may be as a result of their seeming fanaticism. These rights include those of free speech, freedom of religion, immunity from illegal restraint and equal protection, all of which are guaranteed by the Fourteenth Amendment."

Other recent decisions upholding the rights of Jehovah's Witnesses are a reversal by the Oklahoma Criminal Court of Appeals of a conviction under a state law punishing **"use of language calculated to incite anger or cause breach of peace"** for expressing religious views in public, and an injunction by a Minnesota district court restraining a local school board from expelling children for refusal to salute the flag.

U. S. Supreme Court Grants Rehearing In Literature Sales Case

The U. S. Supreme Court last month granted a rehearing in the famous "free-press" case in which the court in a 5 to 4 decision last June sustained local ordinances taxing the sale of literature in public places, denying the appeal of Jehovah's Witnesses from convictions under such ordinances in Alabama, Arkansas and Arizona.

Though this litigation involves only Jehovah's Witnesses, far-reaching consequences are involved for freedom of press and religion, evidenced by the fact that the petition for rehearing was supported in briefs by the American Newspaper Publishers' Association, the Seventh Day Adventists, and the American Civil Liberties Union.

The decision to rehear was announced shortly after Wiley Blount Rutledge, Jr., was sworn in to fill the vacancy left by Justice James F. Byrnes last fall. Apparently this broke a deadlock between the dissenters in the original case—Chief Justice Stone with Justices Black, Murphy and Douglas — and Justices Reed, Roberts, Frankfurter and Jackson.

This month, the court is scheduled to hear the appeal of the State of West Virginia from the decision of a federal court last October voiding the state flag-salute law as applied to children with religious scruples. It seems likely that the Supreme Court's own decision of 1940 in the Gobitis case sustaining such statutes will be reversed, in view of the expressed dissent of four justices and Justice Rutledge's liberal views. A brief will be filed by the Union.

JEHOVAH'S WITNESSES NOT "UNFIT" PARENTS

A rarely used form of attack against Jehovah's Witnesses, denying parents the custody of their minor children on the ground of "fitness," was dealt a sound rebuke last month by the Washington Supreme Court in reversing a lower court ruling that the sect is a "fanatical organization with teachings entirely inimical to the rearing of children as American Citizens."

The Supreme Court said: "We do not doubt the right of the state to suppress religious practices dangerous to morals, and presumably those also which are inimical to public safety, health and good order, but so far as appears from the testimony in this case, the teachings of Jehovah's Witnesses cannot be classed in any of these categories.

"We cannot find in the record any testimony which would justify the court in finding that this mother is unfit to have the care and custody of her children because of her religious beliefs, or that the children if left with her will be reared in an atmosphere of disloyalty to their country."

NO A. C. L. U. ACTION IN LAWRENCE DENNIS CASE

To correct the impression in recent newspaper reports that the A.C.L.U. is participating in the case of Lawrence Dennis of New York, a statement was sent last month by Dr. John Haynes Holmes, board chairman to newspapers, reading:

"A story carried in several newspapers last month gives the impression that the A.C.L.U. is interested in the case of Lawrence Dennis, which arose from recent questioning of him by army officials in New York with a view to his possible removal from the Eastern Military Area. The Union has not intervened in any way in the proceeding and there is as yet no case. The reported hearings were **informal interrogations.** Arthur Garfield Hays and Roger N. Baldwin, present at the request of Dennis, were merely observers in a personal capacity.

"The Union follows all cases of military exclusion on the Pacific and Atlantic Coasts brought to its attention to determine in each instance whether the order is unreasonable. If an order is issued against Dennis, his case, like others, will be considered in the light of the Union's war-time policy for the selection of test cases."

Supreme Court Hears Radio Monopoly Case

Signed by Homer Cummings, former U. S. Attorney General, and William Draper Lewis, director of the American Law Institute, a brief in support of the Federal Communications Commission was filed last month by the A.C.L.U. in the suit brought by the National Broadcasting Co. and the Columbia Broadcasting System in the U. S. Supreme Court to restrain the F.C.C. from enforcing its anti-monopoly regulations against radio networks.

The Union's brief centers around the principle that "the right to listen which is for most people today the significant sector of the right of free speech, shall not be curtailed," and contends that restrictive contracts between network and affiliated stations which the F.C.C. rules seek to abolish, "effectively curtail the freedom to listen by restricting the freedom of the stations to choose their program material."

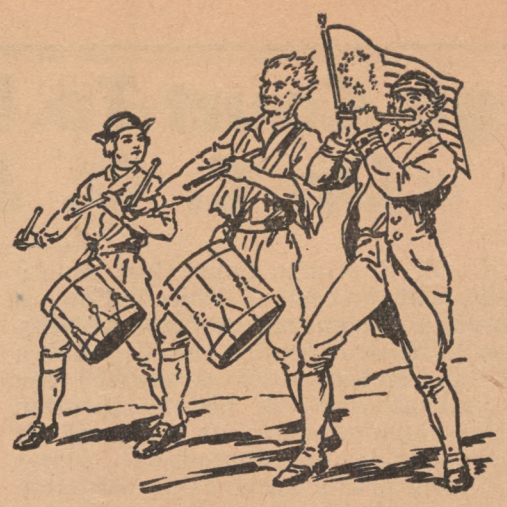
The brief points out that this position was sustained by Judge Learned Hand in the opinion in the lower court when he wrote that "the interests which the regulations seek to protect are the very interests which the Amendment (1st Amendment to the U. S. Constitution) itself protects, i.e., the interests first of the listeners, next of any licensee who may seek to be freer of the networks."

TRUSTEES DEFY BOARD'S ORDER REINSTATING NON-SALUTING CHILD

Last December the Lake County Board of Education, on an appeal from a decision of the Burns Valley School District Trustees, ordered the reinstatement of Robert Drey, who had been expelled from school because of his refusal on religious grounds to salute the flag. The trustees then complained they had received no notice of the hearing on appeal. At a rehearing on February 6, the county board again ordered Robert Drey's reinstatement, on condition that he stand at attention during the flag-salute ceremony.

Defying the county board's order, the trustees have once again expelled Robert Drey from school, together with June Whitney, another pupil at the school. Appeals have been taken in both cases to the county board. If the appeals are successful and the trustees once again defy the county board's order, the cases will be taken to the courts.

AMERICAN CIVIL LIBERTIES UNION-NEWS



FREE SPEECH
FREE PRESS
FREE ASSEMBLAGE

"Eternal vigilance is the price of liberty."

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NISEI CASES GO TO SUP. COURT

Three Questions Certified To High Court; Denman Dissents

The Ninth Circuit Court of Appeals in San Francisco on March 27 certified various questions to the United States Supreme Court for its answers before deciding the Hirabayashi and Yasui Japanese exclusion and curfew test cases. Five Justices joined in certifying the questions. Justice Stephens was absent. In a vigorous dissent, Justice Denman objected to the certification of the questions on five grounds which he elaborated upon in opinions filed subsequently. No decision was announced in the third Japanese exclusion test case involving Fred T. Korematsu.

The Questions

Three questions were certified by a majority of the justices in the Hirabayashi case. They are as follows:

"1. Was Lt. Gen. DeWitt's Civilian Exclusion order No. 57 of May 10, 1942, excluding all persons of Japanese ancestry, including American citizens of Japanese ancestry . . . a constitutional exercise of the war powers of the President derived from the Constitution and statutes of the United States.

"2. Was Lt. Gen. DeWitt's Public Proclamation No. 3 of March 24, 1942, requiring all alien Japanese, Germans and Italians and all persons of Japanese ancestry, including American citizens of Japanese ancestry, residing within the geographical limits of Military Area No. 1 of March 2, 1942, to be within their place of residence between the curfew hours of 8:00 p. m. and 6:00 a. m. daily, a constitutional exercise of the said war powers.

"3. If the answer to question One or the answer to question Two is in the affirmative, did the Act of March 21, 1942 (18 U.S.C.A. 97), constitutionally make it a criminal offense for the appellant wilfully and knowingly to fail to report to the Civil Control Station as ordered or to remain outside of his place of residence during the curfew hours."

Two questions were certified in the Yasui case. Those questions were practically the same as questions 2 and 3 in the Hirabayashi case. The question concerning the validity of the exclusion orders was not present in the Yasui case.

Denman's Dissent

Justice Denman's memorandum dissent in the Hirabayashi case follows:

"I dissent from the certification on the grounds,

"(1) Because the questions simply transfer to the Supreme Court the final decision of the matters pending here, namely, as to the guilt or innocence of the appellant referred to.

"(2) Because assuming the questions are proper for certification, they take from this court, with its peculiarly clearly defined judicial cognizance of facts of the relationship of Japanese descended citizens to the white citizens in the social fabric of the Pacific coastal areas involved, the valuable contribution which such a court of appeals as this may give to the consideration of the issues of such major importance. If the case were to be certified, the facts should have been stated in the certificate.

"(3) Because certain important admissions were made by both the Government and the appellant at the hearing before this court, pertinent to the final decisions of the case involved in the questions, of which the certificate makes no mention.

"(4) Because, although the certificate

(Continued on Page 4, Col. 2)

ANTI-DISCRIMINATION BILL SENT TO ASSEMBLY FLOOR

Last month the Assembly Labor and Capitol Committee gave a favorable recommendation to **A.B. 50,** by Assemblyman Augustus Hawkins, providing "Any person, who, directly or indirectly excludes a citizen because of race, color, or creed from any public employment, or employment in any capacity in industries engaged on defense contracts, shall be guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars ($100).

NEW MEMBERS ADDED TO A.C.L.U. BOARD AND NATIONAL COMMITTEE

The annual election of members of the Board of Directors and the National Committee of the American Civil Liberties Union on February 15 added to the Board Ernest Angell, lawyer, president of the Council for Democracy; Prof. Karl N. Llewellyn of the Columbia Law School, and Prof. Robert N. MacIver of the Sociology Department, Columbia University.

New members of the National Committee elected are William Henry Chamberlin, author; Rep. John M. Coffee of Washington; Prof. William F. Ogburn of the University of Chicago; James G. Patton, president of the Farmers Union, Denver; Jennings Perry, editor of the Nashville Tennessean; Prof. Odell Shepard, former Lt. Governor of Connecticut, and Raymond Gram Swing, radio news commentator.

Two Individual Exclusion Test Cases Filed

Two test cases were filed last month challenging the power of the Military to exclude alleged "dangerous or potentially dangerous" United States citizens from the Pacific Coast.

One suit was filed in the United States District Court at Los Angeles on behalf of Homer Glen Wilcox by Attorney A. L. Wirin of Los Angeles. It is directed against Lieut. General John L. DeWitt, heading the Western Defense Command, certain other Army officers and several F.B.I. agents. Besides asking $55,000 in damages, the complaint seeks to restrain the defendants from exluding Wilcox from the Pacific Coast.

Wilcox is a member of "Mankind United" and was San Diego bureau manager of the organization. The Army ordered him to leave the area as a "dangerous or potentially dangerous" citizen, but subsequently permitted him to return until after the forthcoming sedition trial of "Mankind United" leaders in Los Angeles, in which Wilcox is one of the defendants.

The second test case is also in the nature of an injunction proceeding. It was commenced by Attorney Albert Asbahr of Portland, Oregon, on behalf of one Henry L. Beach. The Union has no further details on the case.

Scores of United States citizens, besides the tens of thousands of persons of Japanese ancestry, have been excluded from the Pacific Coast by the Military. None of the exclusions are based on alleged criminal offenses. In each case, the exclusion resulted after a hearing board composed of three Army officers in star chamber session considered the evidence of alleged unfriendliness to the United States and friendliness to the Axis powers.

UNION ASKS REPEAL OF LAW ON NEW YORK CITY ELECTIONS

Declaring that a bill signed recently by Governor Dewey of New York authorizing him to appoint successors to the Mayor and President of the City Council should they enter the armed services, "reflects a fascistic attitude arising out of a lack of faith in the common people," the American Civil Liberties Union last month called upon the Governor to ask the legislature to repeal this measure.

The Union charged that the bill had "virtually disfranchised the people of the City of New York, taking from them the right to fill these offices by election in 1943 and 1944. Any doubt as to the filling of the vacancies should in true democratic fashion have been remedied by an amendment to the City Charter which could have been voted on by all the people, under the democratic principles of the Home Rule Amendment."

APPEALS COURT LIBERALIZES BASIS FOR C.O.'S

A liberal interpretation of the draft act provision for recognizing conscientious objectors was written by the U. S. Circuit Court of Appeals at New York in a recent decision on the appeal of Mathias Kauten, 30-year-old magazine artist from conviction in a district court for refusing to be inducted. Kauten's conviction was sustained, but the Court in so doing distinguished his alleged "political" objections from religious scruples.

The opinion held that "religious training and belief" as used in the draft act "must be a general scruple against participation in war in any form and not merely an objection to this particular war.

"There is a distinction between a course of reasoning resulting in a conviction that a particular war is inexpedient or disastrous and a conscientious objection to a participation in any war under any circumstances. The latter, and not the former, may be the basis for exemption under the act. The former is usually a political objection, while the latter, we think, may justly be regarded as a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse."

Kauten was represented by Julien Cornell, New York attorney.

20-YEAR SENTENCE FOR REFUSING MILITARY DUTIES ON SABBATH DAY

Twenty years at hard labor faces a Seventh-day Adventist who refused to perform any duties on the Sabbath Day (which is Saturday for Adventists). The sentence was arrived at by a court martial which tried Private George C. Vance at Camp Roberts on February 25, for refusing to obey orders. The case is now before the War Department for review.

Vance has been in the service only since December 23, 1942. While he claims to be entitled to a non-combatant status, his claim has not been clearly recognized by the Army. Nevertheless, he was requested to carry a rifle on only one occasion during his five weeks on active duty, although he had been denied the right to attend church on Saturdays.

On Saturday, January 30, Vance was ordered to attend the "Regimental Gymkhana." He failed to obey the order and his court martial followed. The Seventh-day Adventist War Service Commission has intervened in Vance's behalf.

PROPOSE AMENDMENT OF WARTIME WIRE-TAPPING BILL

The American Civil Liberties Union last month proposed the amendment of a pending Congressional bill permitting wire-tapping in wartime by the F.B.I. and the Intelligence Divisions of the War and Navy Departments, "to guard against possible abuses of this power."

Sponsored by Rep. Emanuel Celler, the measure permits wire-tapping in connection with "attempts or plans for interference with the national security and defense" by such acts as treason and sabotage, "or in any other manner." In a memorandum to Rep. Celler, the Union charged that this section was "so vague and uncertain of application as to permit widespread abuse of this power to interfere with the privacy of citizens."

Authority to order wire-tapping is given by the bill to the executives of the three departments and to other officials designated by them. The Union objected to this provision on the ground that "it gives great power to the three department heads and possibly to hundreds of additional minor officials without judicial supervision." The Union suggested instead that as in the case of seizures and searches, "the authority to invade the privacy of the citizens should emanate from judicial officers in such a manner as to permit subsequent judicial review."

High Court To Hear Cases On C. O. Judicial Review

The U. S. Supreme Court last month agreed to hear the case of Whitney Bowles, 23-year-old conscientious objector of Newfoundland, N. J., opening the way for a test of the decisions that a draftee can obtain judicial review of his classification only after he is inducted into the army. If the court sustains his contentions, scores of men facing prison for refusing induction would get court review of their claims as conscientious objectors.

Bowles refused to report for induction last year, claiming that his local draft and appeals boards had erred in denying him classification as a conscientious objector because he had not been "born into a religious sect one of whose cardinal principles was resistance to armed force." This requirement is not made by the Selective Service Act, Bowles pointed out.

He was tried by the federal district court at Newark, N. J., and sentenced to three years. The conviction was sustained by the U. S. Circuit Court of Appeals at Philadelphia. Both courts declined to review evidence as to the erroneous action of draft boards. The Circuit Court held that the local boards had erred but ruled that an erroneous classification could not be reviewed in a criminal trial for draft violation.

Bowles' appeal to the Supreme Court points out that a sincere conscientious objector cannot submit to induction because this requires his taking an oath to defend the country by force of arms. He asked the court to rule that where the claim is made that a classification is based on a wrong interpretation of the law, review may be had in the prosecution for refusal to be inducted. He is represented by Osmond K. Fraenkel, A.C.L.U. counsel.

His case in the lower courts was handled by Irving Piltch of Newark. Bowles, whose father was killed in World War I, has run a New Jersey farm since his undergraduate years at Princeton and Rutgers. He is a Presbyterian.

MILITANT TO FIGHT POST OFFICE BAN IN COURT

An appeal to the courts will be taken to contest the action of the Post Office Department last month in revoking the second-class mailing privileges of the Militant, New York Trotskyist weekly, described by the American Civil Liberties Union as "the only clearly anti-fascist publication" cited under the Espionage Act.

The Department acted on the basis of a hearing before postal authorities in Washington last January at which the publication was charged with printing material "deemed diversionary in character and appearing to be calculated to engender opposition to the war effort as well as to interfere with the morale of the armed forces."

The revocation will be challenged in the District of Columbia courts. The American Civil Liberties Union, which supported the defense at the Post Office hearing, will appear in the proceedings as friend of the court. According to Osmond K. Fraenkel, A.C.L.U. counsel who represented the Union, "the evidence against the Militant consists of quotations whose truth the Post Office Department does not challenge, but whose tendency is alleged to obstruct the conduct of the war by condemning its alleged imperialist character, and criticising discrimination against labor and Negroes."

The Union contends that the action of the Post Office Department taken on complaint of the Department of Justice is unwarranted under the Espionage Act and constitutes "interference with legitimate comment on the war not essentially different from that appearing in other publications."

SEATTLE CONSCIENTIOUS OBJECTOR WINS RELEASE FROM THE ARMY

Morris C. Graves, Seattle artist and conscientious objector, on March 2nd received an honorable discharge from the Army.

Graves was inducted into the Army in Seattle as a non-combatant on April 21, 1942, all the time thinking he was about to receive a physical examination in advance of a hearing on his claims as a conscientious objector opposed to any activities under military direction. Graves deserted several times and finally came to the A.C.L.U. for advice the early part of June, 1942.

The Union recommended that he surrender himself to the Military and pursue administrative measures to secure his release. The evidence indicated that while his local draft board had promised him a hearing on his conscientious objections, the matter had been "overlooked." The Army finally decided that Mr. Graves would not make a good soldier anyway, and the honorable discharge followed.

FORCED CONFESSION CONVICTIONS REVERSED BY SUPREME COURT

After a two-year battle in the courts, eight Tennessee copper miners, members of the CIO Mine, Mill and Smelter Workers Union, found guilty in 1941 of conspiracy to dynamite government power lines at Ducktown, Tenn., went free last week when the United States Supreme Court reversed their convictions and wiped out jail sentences of 15 years each and fines totaling $88,000.

The men were indicted with thirteen other union leaders after the Tennessee Copper Co. had broken a year-old strike of 400 miners. The case against the others was dropped and the eight were tried in the federal district court at Knoxville in January, 1941. They were convicted on the basis of "confessions" which were later proved to have been extracted under intimidation by local police authorities and federal agents, working hand in hand with company guards.

Threatened with 35 year sentences if they didn't "talk," and enticed with paroles if they did, they finally confessed after days of third-degree examination during which they were held incommunicado, denied drink and proper food and prevented from sleeping.

The contention of the CIO attorneys, Abraham J. Isserman and Nathan Witt, that the men had been "framed" was sustained by the Supreme Court which said in the opinion written by Justice Frankfurter that the "confessions" were obtained involuntarily and that "it was error to admit them" in evidence. Justice Reed dissented.

The A.C.L.U. was represented in the litigation by a brief filed as friend of the court signed by Arthur Garfield Hays.

SUPREME COURT TO HEAR TEST OF "SELF-INCRIMINATION" PRIVILEGE

The U. S. Supreme Court last month granted a review of the five-month sentence of Rosario St. Pierre of New York for refusal to answer a question put to him by a federal grand jury, thus clearing the way for a test of the extent of the constitutional privilege against self-incrimination. Osmond K. Fraenkel, A.C.L.U. attorney, filed a brief as friend of the court.

St. Pierre's conviction was upheld recently by the U. S. Circuit Court of Appeals for the Second Circuit which held that he had waived the privilege by "telling too much" up to the point where he refused to answer. The A.C.L.U. brief contended that a defendant in a criminal prosecution, either before the grand jury or at the trial, should be able to claim the privilege at any point before he has admitted facts sufficient to bring about his conviction.

Urge Oklahoma Drop Syndicalism Cases

The American Civil Liberties Union recently urged Attorney General Mac Q. Williamson of Oklahoma to drop the cases against three Communists whose convictions for criminal syndicalism based on membership in the Communist Party were reversed recently by the state Criminal Court of Appeals on grounds of inadequate evidence. The defendants are Ina Wood, Alan Shaw and Eli Jaffe.

The prosecution plans to file a petition for reargument of the appeals and will likely move for retrial in the county district court where the cases originated, if the petition is denied.

The Union, in a letter to Mr. Williamson, also urged that indictments pending against the three for sale of literature be withdrawn. Nine others against whom indictments are pending for membership in the Communist Party, have not yet been brought to trial. The appeal of another defendant, Robert Wood, for selling books is awaiting decision.

The letter, signed by Arthur Garfield Hays, general counsel, said that "making criminal the mere possession or sale of literature which goes freely through the United States mails is contrary to public policy. No danger to the state in the attitude and activities of these defendants or of the Communist Party justifies further proceedings." It was also pointed out that these are the only cases brought under state syndicalism laws in many years.

"We recognize that there are indictments pending against others and that there is one case in the Criminal Court of Appeals not yet decided and for that reason it may appear to you premature to make any move at the moment," Mr. Hays' letter said. "But we would like to present for your consideration the desirability of dismissing the indictments in the cases reversed as an indication that the state does not intend to proceed to a new trial. Such action would be in conformity with the spirit of the appellate court's decision."

WAVES OF ANTI-LABOR BILLS IN STATE LEGISLATURES

After the enactment in Kansas last month of a sweeping bill limiting the freedom of labor to organize, strike and picket, the American Civil Liberties Union called upon its members in other states to oppose similar bills pending in their legislatures.

The Union reported a "virtual epidemic of measures designed to curtail the legitimate activities of trade unions." The restrictions imposed in these bills, the A.C.L.U. said, range from the compulsory registration of unions and the regulation of their internal affairs, to the extreme of direct prohibition of picketing and striking. Severe penalties including jail sentences and excessive fines are provided in many of them.

RIGHT OF NISEI TO CITIZENSHIP WILL BE DETERMINED BY SUPREME COURT

Former California Attorney General U. S. Webb is carrying the Regan Japanese citizenship test case to the U. S. Supreme Court. Under date of March 24 the Clerk of the Circuit Court of Appeals in San Francisco, at Mr. Webb's request, transmitted the record in the case to the Supreme Court. In the near future, then, Webb will ask the court to review the Circuit Court's decision holding that under the Fourteenth Amendment and the Wong Kim Ark case, persons of Japanese ancestry born in the United States are citizens.

ANTI-LABOR BILLS RECEIVE SETBACK IN STATE LEGISLATURE

Efforts to amend the "Hot Cargo" law and a bill to impose all manner of restrictions on labor unions were decisively defeated in the Senate Labor Committee last month. In the interest of war-time unity, all proposed anti-labor laws are expected to be defeated.

Zimmerman's Release Balks Test Of Hawaii Martial Law

On March 12, Dr. Hans Zimmerman of Honolulu, who had been detained as "dangerous to military security," was released from military custody in San Francisco. The day before attorneys for Zimmerman had filed a petition for a writ of certiorari in the United States Supreme Court, seeking to review a 2-1 decision by the Ninth Circuit Court of Appeals upholding the refusal of the District Court in Honolulu to issue a writ of habeas corpus. The Army's action prevents a test before the Supreme Court of the constitutionality of the suspension of the Writ of habeas corpus in the Hawaiian Islands.

Refused to Sign Release

En route to San Francisco, Zimmerman claims the military sought by threats and intimidation to get him to sign a release absolving them from any liability for his 15-month detention. He refused, and upon reaching San Francisco he was handed over to the Immigration authorities, but since he was a duly naturalized citizen, he was promptly released. At the time, the only money he had in his possession was two dollars.

Zimmerman's Statement

In Los Angeles last month, Zimmerman made the following statement concerning his detention:

"On December 8, 1941, along with many others, I was arrested by the military authorities at Honolulu.

"Before that, as a graduate physician, specializing in naturopathy, after approximately ten years of such medical practice, I had built up a substantial practice, had erected a clinic in Honolulu, and was earning approximately $1500 a month. As a naturopathic physician, however, I had incurred the active enmity of Honolulu's 'medical trust.'

Asked Three Questions

"Twelve days after my arrest I was given a hearing before a board at which I was asked just three questions. They were, first, whether I had said that Hitler would win the war. This I denied. The second question was why I had fired my American nurse. To this I stated that I had not. To the third question, 'What did you do on your trip to Germany?' I explained that I had taken the trip to visit my sick father who died two months after my leaving Germany.

"Permitted to call witnesses in my behalf the following testified to my being a loyal American:

"Congressional delegate from the Hawaiian Islands, Joe R. Farrington; John E. Fleming, Vice-President of the Bishop Trust Company, Honolulu; Alvah Scott, President of the Mutual Telephone Company, Honolulu; and Nolle R. Smith, Director of the Territorial Budget and Legislative Advisor to the Governor.

No Reason Given for Detention

"At no time during my detention or transfer from the Islands to the mainland was I ever given any reason for my detention other than the three questions that I have indicated, throughout the fifteen months period from December 8, 1941, to March 15, 1943.

"At no time was I allowed to see any one except my attorneys; at the 'hearing' I was unrepresented by any counsel.

"For many years prior to my detention I had expressed myself openly as opposed to Hitler and the Hitler regime, particularly to racial persecution by Nazi Germany."

Dr. Zimmerman announced that he will seek an injunction in the Federal Court at Honolulu to enjoin General Emmons from interfering with his right to return to the Islands.

A.C.L.U. Intervened

Along with the filing of the petition for a writ of certiorari in the United States Supreme Court there was submitted to the court a brief as a "friend of the court" by the American Civil Liberties Union, prepared by Attorney A. L. Wirin and countersigned by Arthur Garfield Hays and Osmond K. Fraenkel, national counsel for the A.C.L.U.

When the case was before the Circuit Court of Appeals at San Francisco, a similar brief was submitted by the A.C.L.U.

WAKAYAMAS DROP SUIT CHALLENGING DETENTION BY MILITARY

At the request of Ernest and Toki Wakayama, Japanese evacuees interned at the Manzanar, California relocation center, a petition for writ of habeas corpus, due to be argued shortly in the federal district court at Los Angeles, was withdrawn last month.

A. L. Wirin, counsel for the A.C.L.U., representing the Wakayamas, explained that the petitioners had expressed a desire to be transferred to another relocation center in Arkansas where several of their relatives are located.

The suit brought by the A.C.L.U. in behalf of the Wakayamas challenged the constitutionality of the military orders for detention of American citizens of Japanese extraction in internment centers. Mr. Wirin said the Southern California Branch of the A.C.L.U. is contemplating resuming the test soon in the case of another Japanese-American.

DISCHARGE PETITION CIRCULATED IN ANTI-POLL TAX FIGHT

As we go to press, more than seventy-five congressmen have already signed Discharge Petition No. 3 which would bring **H.R. 7,** the anti-poll tax bill to the floor of the House for a vote. At the present time the bill is bottled up in committee. All persons favoring this legislation should write or wire their congressman urging him to sign the Discharge Petition and to support the resolution.

FAIR PLAY COMMITTEE OPPOSES ANTI-JAPANESE LEGISLATION

The newly-formed Pacific Coast Committee on American Principles and Fair Play is conducting an organized fight to defeat discriminatory legislation aimed at Americans of Japanese ancestry. The committee, in a letter to every member of the California Legislature, called upon the legislature to decide measures proposing race discrimination, especially those directed against Americans of Japanese ancestry, in a spirit of high statesmanship, avoiding haste, and with a clear look at our future relations with all Oriental peoples.

Honorary Chairman of the Committee is President Robert Gordon Sproul of the University of California. Other officers and members include Maurice E. Harrison, Dr. Mary Lyman, Mrs. Harry S. Scott, Galen M. Fisher, Alfred J. Lundberg and General David Prescott Barrows.

Mrs. Ruth W. Kingman is serving as Executive Secretary of the Committee. Headquarters of the group are at 465 California Street, San Francisco.

MORE THAN 1000 JAPANESE VOLUNTEER FOR THE ARMY

More than one thousand citizens of Japanese ancestry held in ten relocation centers in various parts of the country, recently volunteered for the Army combat team to be made up wholly of Japanese. There are already more than 5000 Japanese in the Army.

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Sup. Court Acts On Jehovah's Witness Literature Cases

The constitutionality of local license-taxes on the street sale of literature was argued for the second time before the U. S. Supreme Court last month. The occasion was a rehearing of the cases in which the court last June, in a 5 to 4 decision, affirmed convictions of Jehovah's Witnesses for selling tracts without paying a tax required by local ordinances in Alabama, Arizona, and Arkansas. The review was granted on petition of the Jehovah's Witnesses, supported by the American Newspaper Publishers Association, the Seventh Day Adventists and the A.C.L.U. The Union's petition was signed by Osmond K. Fraenkel.

Three other cases involving restrictive measures aimed at the distribution of literature by Jehovah's Witnesses were also heard by the court. They involved an ordinance of Struthers, Ohio, prohibiting the ringing of door-bells for the purpose of house-to-house distribution of literature, a ban on the sale of newspapers by persons under 18 years of age in Portland, Ore., and a prohibition on peddling without a license in Jeanette, Pa. The Jeanette case, though similar to the license-tax cases, involves an injunction against an ordinance, introducing a new question. The A.C.L.U. filed a brief as friend of the court in the Ohio case, prepared by former Judge Dorothy Kenyon of New York.

The court in the same week handed down two decisions dealing with other aspects of restrictions on the distribution of literature by Jehovah's Witnesses. Unanimously, but with Justice Rutledge not participating, the tribunal reversed the convictions of sect members who violated a Paris, Texas, ordinance prohibiting the sale of literature in public places except by permission of the mayor. The opinion, written by Justice Reed, said: "The Mayor issues a permit only if after thorough investigation he 'deems it proper and advisable'. Dissemination of ideas depends upon the approval of the distributor by the official. This is administrative censorship in an extreme form. It abridges the freedom of religion, of the press, and of speech guaranteed by the Fourteenth Amendment."

Convictions were also reversed of sect members in Dallas, Texas, charged with violating an ordinance against the distribution of commercial handbills. The lower courts held the defendants came within the statute because a religious circular they distributed also advertised a book. Affirming the right of a state to prohibit the use of the streets for the distribution of "purely commercial literature," the Supreme Court said that "they may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion, or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes."

Supreme Court Urged To Reverse Flag Salute Case

The Supreme Court was urged last month to reverse its own decision of 1940 in the Gobitis case upholding compulsory flag-saluting regulations in the public schools. Hayden Covington, counsel for three children of Jehovah's Witnesses, made this plea as he urged the tribunal to sustain a three-judge district court decision voiding a West Virginia flag saluting rule as applied to children with religious scruples.

The contentions of Jehovah's Witnesses were supported in briefs by the Bill of Rights Committee of the American Bar Association and by the American Civil Liberties Union, both of which had filed briefs in the original Gobitis case. The American Legion filed an opposing brief denying that compulsory flag saluting violates freedom of worship.

The A.C.L.U. brief, signed by William G. Fennell, Osmond K. Fraenkel and Arthur Garfield Hays of the New York Bar, and Gen. Howard B. Lee of the West Virginia Bar, urged two points on the Court: first, that the previous case was "wrongly decided" and should be reversed, and second, that Congress since that case was decided has prescribed the manner in which the flag shall be saluted and any local regulations in conflict "must be invalid."

Four of the justices now sitting have expressed disapproval of the Gobitis decision. Justice Rutledge is expected to side with them.

JEHOVAH'S WITNESS DEFEATS DRAFT PROSECUTION

United States District Court Judge Martin I. Welsh of Sacramento last month granted a writ of habeas corpus in the draft case of John Alexander Seminoff, and at the hearing on the writ Seminoff was ordered discharged from custody. He had been arrested last fall on a charge of failing to report for induction.

The government conceded that the local draft board had erred in not considering Seminoff's expressed claims as a conscientious objector. Upon appeal, his file was not referred to the Department of Justice for investigation, and he was never accorded a hearing before a "Hearing Officer," as provided by Selective Service Regulations.

Seminoff also contended that the Board had acted arbitrarily in not classifying him as a minister. The Board ignored evidence before it that Seminoff is a "Pioneer" or full time worker for Jehovah's Witnesses, and also serves in the capacity of "Company Servant" for that organization.

Attorney Clarence E. Rust of Oakland represented Seminoff.

JEHOVAH'S WITNESS CHILDREN NOT DELINQUENTS, WASHINGTON COURT RULES

The Washington Supreme Court last month joined the several state high courts which have ruled that children may not be judged delinquents and taken from their parents because they have been expelled from school for refusing to salute the flag out of religious conviction.

An order of the lower court making the children wards was reversed and the school board instructed to reinstate them, excusing them in the future from the flag-salute ceremony. The parents are members of Jehovah's Witnesses.

1,000 COPIES SOLD

One thousand copies of the excellent A.C.L.U. pamphlet, "Jehovah's Witnesses and the War" have been sold by the local branch of the Union during the past couple of months. A supply is still available. The price is 10c per copy. Send your orders to the A.C.L.U., 216 Pine Street, San Francisco.

The national office of the Union reports that the demand has been so great that a fourth printing was exhausted last month. Over twenty thousand copies have gone out from the Union's offices in New York City since the pamphlet was released.

MORE AVAILABLE

Exclusion Questions Go To Supreme Court

(Continued from Page 1, Col. 2)

asks the questions, in effect, a final decision of the guilt or innocence of the appellant, the certificate purports to state but one of the many contentions made by appellant concerning the invalidity of the orders of General DeWitt, matters upon which we ask no advice, though they must be determined by the Supreme Court in its answers to the questions.

"(5) I dissent from the war-haste with which the question involving the deportation of 70,000 of our citizens, without hearing, is hurried out of this court, with its peculiar qualifications for the consideration of the racial questions involved, on the plea of the Attorney General, one of the litigants, which, as I understand it, is that it will discommode the Supreme Court to reassemble to consider the case in the time in which it would mature for hearing before the Court upon the petition for certiorari. In this connection, I note that the Supreme Court did reconvene in its vacation period in a case of lesser importance. Ex parte Richard Quirin, argued on July 29 and July 30, 1942.

"This dissent will be more fully stated in an opinion which is now in preparation and should be before the court by airmail by Tuesday morning next."

LIFE IMPRISONMENT PENALTY FOR REFUSAL TO SALUTE FLAG

The charge: refusal to obey the order of a military officer to salute the flag.

The defendant: Herbert L. Weatherbee, one of Santa Barbara's Jehovah's Witnesses, asserting his inability to salute the flag because of his sincere religious beliefs.

The sentence: life imprisonment. **A bleak page in the history of military law in the United States was written on the 10th day of March, 1943, when a military court-martial imposed the life imprisonment sentence on Herbert L. Weatherbee.**

Ordered inducted into the United States Army despite his claim of religious objection to war, Weatherbee reported for induction at Santa Barbara only after full explanation that he was unable to wear a military uniform or otherwise participate in war; he refused to take the oath of induction, and no oath was administered to him; he refused to wear the uniform until Ernie Strobel, another of Jehovah's Witnesses, was severely beaten for such refusal at Ft. MacArthur. Then Weatherbee put on the uniform. He has refused to receive any army pay.

Under military law the court-martial proceedings are subject to review by higher military authorities; the reviewing authority may reduce the sentence or take such other action as justice demands.

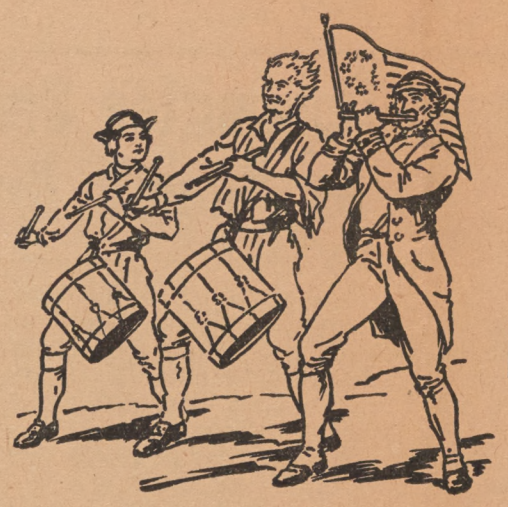
Friends of freedom whose sense of justice is outraged by so shockingly excessive a sentence, will write directly both to the President of the United States, and to the Judge Advocate General, United States Army, Washington, D. C., saying so.

—Open Forum.

COMPULSORY MILITARY TRAINING BILL TABLED IN STATE SENATE

At the request of Senator Swan, author of the measure, **S.B. 872,** establishing "compulsory courses in military training in all junior colleges and state colleges in the state," was tabled in the Senate Education Committee on March 25. Senator Swan explained he took the action because "there would be no students to take the course. All those eligible . . . are being called into the armed forces."

AMERICAN CIVIL LIBERTIES UNION-NEWS



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"Eternal vigilance is the price of liberty."

Vol. VIII SAN FRANCISCO, CALIFORNIA, MAY, 1943 No. 5

KOREMATSU CASE CERTIFIED

Three Test Suits Will Be Argued Before High Court on May 10

The Ninth Circuit Court of Appeals in San Francisco on April 8 certified one question to the United States Supreme Court in the case of Fred T. Korematsu, testing the government's right to exclude citizens of Japanese extraction from the Pacific Coast. The case was certified on a technical procedural question, namely, whether the unrequested five-year probation sentence imposed on Korematsu is a final judgment from which an appeal may be taken.

Following the certification, a motion was filed in the United States Supreme Court to bring up the entire record in the case for a determination of all issues raised by the case, but this motion was denied by the court without comment.

The Question

The question that has been certified reads as follows: "After a finding of guilt in such a criminal proceeding as the instant case, in which neither imprisonment in a jail or penitentiary nor a fine is imposed, is an order by the district court, that the convicted man 'be placed on probation for the period of five (5) years,' a final decision reviewable on appeal by this circuit court of appeals?" The A.C.L.U. has contended that a defendant should be allowed the privilege of an appeal, even though he is granted probation and not fined or imprisoned, in order to enable him to clear his record of the blot of a criminal conviction.

The court certified the question because it claimed that the Second and Fifth Circuit Courts have reached conflicting results. In order to prevent further confusion, the court wants to know the proper answer to its question. The Korematsu case, consequently remains before the Ninth Circuit Court. When the court receives its answer to the certified question it will proceed to make a final decision in the case.

Argument May 10

The case has been set for argument before the Supreme Court on Monday, May 10. The argument in the Korematsu case follows immediately after the arguments in the Hirabayashi and Yasui cases. While in the latter cases the Ninth Circuit Court certified questions as to the constitutionality of the exclusion and curfew orders, as well as the Congressional statute under which violations of the order were punished, the Supreme Court has, in effect, taken any further consideration of the cases out of the hands of the Circuit Court. Instead of undertaking to answer the certified questions, the Supreme Court "ordered that the entire record in each of these cases be sent up to this Court for its consideration of the whole matter in controversy."

Collins Prepares Briefs

Attorney Wayne M. Collins of San Francisco is preparing **amicus curiae** briefs to be filed on behalf of the A.C.L.U. in the Hirabayashi and Korematsu cases. He is also preparing the brief in the Korematsu case.

SCHOOL TRUSTEES DEFY REINSTATEMENT ORDER IN FLAG CASES; COURT ACTION PENDS

Robert Drey and June Whitney have been expelled from the Burns Valley School, Lake County, by the Board of Trustees following their refusal to salute the flag. The action was taken in defiance of the following decision of the Lake County Board of Education; handed down on April 10: "It was moved, seconded and passed that Robert Drey and June Whitney both be reinstated in the Burns Valley School and that they be required to stand at attention while the flag ceremony is being performed."

The California School Code provides that cases of expulsion or suspension may be appealed to the county board, and its decision is final. Attorney Clarence E. Rust of Oakland is about to file an application for a writ of mandate in the Superior Court to compel the Trustees to abide by the County Board's decision.

Robert Drey and June Whitney are both Jehovah's Witnesses. Robert was originally expelled on October 19. On three separate occasions the County Board has now ordered his reinstatement, but the Trustees have on each occasion refused to abide by the Board's decision.

June Whitney was not expelled until February 12. Her father is not only a World War veteran but served over half of his life in the armed forces of the United States. He holds an honorable discharge from the Navy.

VALIDITY OF INDIVIDUAL EXCLUSION ORDER ARGUED IN FEDERAL COURT

United States District Judge Ben Harrison on April 26 heard arguments in Los Angeles on a petition for a temporary injunction restraining Gen'l J. L. DeWitt from enforcing his orders directing Homer C. Wilcox's removal from the Pacific Coast as a "potentially dangerous" citizen. The injunction proceeding is part of Wilcox's suit for damages against Gen'l DeWitt, and certain Army officers and F.B.I. agents.

Gen'l DeWitt Shows His Race Prejudice

A year ago all persons of Japanese ancestry, including United States citizens, were excluded from the Pacific Coast by General J. L. DeWitt, on the ground of military necessity. Now, however, it appears that the wholesale abridgment of constitutional rights was not dictated by military necessity but by blind race prejudice.

Testifying before a House naval affairs subcommittee in San Francisco last month, General DeWitt opposed return of any of the Japanese to the Pacific Coast. 'A Jap's a Jap," said he, "and it makes no difference whether he is an American citizen or not . . . You can't change him by giving him a piece of paper."

On April 19, however, General DeWitt suspended his exclusion orders "as to persons of Japanese ancestry who are members of the Army of the United States on active duty or who have been inducted and are in uniform while on furlough or leave." By this order, the thousands of Japanese who are members of the Army will be permitted to visit their relatives and friends in the Tule Lake and Manzanar relocation centers in California.

SENATOR PROPOSES RELOCATION CENTERS BE DISBANDED

After completing a tour of several western relocation centers housing the west coast Japanese population, Sen. A. B. Chandler last month said he would propose to a subcommittee of the Senate Military Affairs Committee that all loyal Japanese should be freed as quickly as possible and that the army should draft all men of military age in the centers. Japanese who are avowedly disloyal to this country, he said, should be sent to concentration camps.

The Senator was sent on the fact-finding tour several months ago when the Senate received a bill, sponsored by Sen. Mon C. Wallgren, providing that the army replace the War Relocation Authority in supervising the relocation camps. The bill was opposed by the A.C.L.U.

Senator Wallgren has proposed a "sponsorship plan" under which loyal evacuees would be placed under the direction of trustworthy citizens in communities "where they should have freedom to work."

NEW TRIAL ORDERED IN JAPANESE PROPERTY CASES

The Second District Court of Appeals of California, acting on the appeal of O. Oshiro from a decision of the Los Angeles Superior Court that property obligations of Japanese were not dissolved by the west coast evacuation, last month ordered a retrial on the ground the record in the lower court was not complete.

Union Files Brief In Supreme Court Test of Mississippi Gag Law

A brief challenging the constitutionality of a Mississippi law aimed at the teachings of Jehovah's Witnesses was filed last month in the United States Supreme Court by the American Civil Liberties Union. The case before the court is an appeal of three sect members, in separate actions, from convictions under the statute which makes it unlawful in wartime **"to encourage by speech or print disloyalty to the governmen or to create an attitude of stubborn refusal to salute the flag."** The penalty is imprisonment for the duration of the war up to ten years.

The evidence on which the Witnesses were convicted consisted of statements to civilians in alleged depreciation of the war effort, and pamphlets explaining the religious basis for their refusal to support the war or salute the flag.

The Union's brief, signed by Charles C. Evans of the Mississippi Bar and Zarah Williamson of the New York Bar, contends that the statute is "so vague and indefinite as to render it an unconstitutional dragnet violative of the due process clause of the 14th Amendment."

The brief charges also that the "evidence in support of these convictions is so far from showing any 'clear and present danger' to the security of the state that the convictions here obtained are violative of the freedom of speech guaranteed by the 1st Amendment."

The defendants are Ralph E. Taylor, Clem Cummings, and Betty Benoit.

N. C. C. O. PROTESTS LIFE SENTENCE FOR NON-SALUTER

The National Committee on Conscientious Objectors, A.C.L.U. affiliate, has protested to Gen. Myron C. Cramer the unprecedented life sentence imposed recently by a Fort MacArthur, Cal., court-martial on Herbert Weatherbee, a Jehovah's Witness for refusal to salute the flag.

Ernest Angell, chairman of the committee requested in the letter to Gen. Cramer that the sentence be set aside and that Weatherbee be released from the army and turned over to the civil authorities. "We make this request," Mr. Angell said "in view of the fact that he is, like the other members of his religious sect, opposed to participation in war and should have been classified as a conscientious objector. Presumably he would have refused to accept that status, demanding exemption as a minister like most of his brethren. In that event he would be prosecuted and imprisoned.

"That procedure, which has been followed with the great majority of the Jehovah's Witnesses refusing to serve in the army or to go to a conscientious objectors' camp, is vastly preferable to his treatment as a disobedient and disloyal soldier. The whole intent of that section of the Selective Service Act dealing with religious conscienc is to keep such men out of the army and to leave their treatment solely to civilian officials."

POLICEMAN FINED $100 FOR ASSAULT ON JEHOVAH'S WITNESS

Charles Ellis, Redondo Beach, California, police sergeant, was convicted on a charge of simple assault last month and fined $100. He had been indicted on two charges, assault with a deadly weapon and assault with intent to do great bodily harm.

The indictment followed an atttack upon August Schmidt, a Jehovah's Witness. Ellis resented Schmidt's distribution of religious literature, arrested him at his home, where he menaced Schmidt and his wife with a gun, beat Schmidt over the head with his blackjack and continued the beating at the police headquarters. When he was through beating Schmidt he threw down his badge and gun before the desk sergeant and said, "Tell the Chief he can get another man."

Ellis was defended by high-priced Jerry Giesler.

Tenney Committee Smears A.C.L.U. As "Red"; Director Denies Charges

The 445-page printed report of the Joint Fact-Finding Committee on un-American Activities in California (The Little Dies Committee), headed by Senator Jack B. Tenney of Los Angeles, mentions the A.C.L.U. exactly seven times at pages 92, 96 and 98. The principal reference is the following:

"The American Civil Liberties Union may be definitely classed as a Communist front or "transmission belt" organization. At least 90 per cent of its efforts are expended on behalf of Communists who come into conflict with the law. While it professes to stand for free speech, a free press and free assembly, it is quite obvious that its main function is to protect Communists in their activities of force and violence in their program to overthrow the government."

No Opportunity To Be Heard

Absolutely no evidence is presented by the Committee in support of its conclusions. Indeed, at no time did the Committee seek the testimony of any A.C.L.U. official, nor was the Union aware that it was under investigation. Before condemning the A.C.L.U. as a "Communist front or 'transmission belt,'" it would seem only just and fair that the Union would be given an opportunity to be heard in its own defense.

Certainly, the most casual kind of investigation would have disclosed the error of the Committee's conclusions. If Senator Tenney had merely turned to the Reports of the Dies Committee he would have found at page 6309 of Volume 10, the following statement by Chairman Dies: "This committee found last year, in its reports, there was not any evidence that the American Civil Liberties Union was a Communist organization. That being true, I do not see why we would be justified in going into it. I mean, after all, they have been dismissed by unanimous report of the committee as not a Communist organization."

Resolution of Feb. 5, 1940

Apparently, too, the Committee was uninformed about the Resolution of February 5, 1940, adopted by the national board of the A.C.L.U. It reads, in part, as follows:

"The Board of Directors and the National Committee of the American Civil Liberties Union therefore hold it inappropriate for any person to serve on the governing committees of the Union or on its staff, who is a member of any political organization which supports totalitarian dictatorship in any country, or who by his public declarations indicates his support of such a principle.

"Within this category we include organizations in the United States supporting the totalitarian governments of the Soviet Union and of the Fascist and Nazi countries (such as the Communist Party, the German-American Bund and others); as well as native organizations with obvious anti-democratic objectives or practices."

It was in consequence of the foregoing resolution that Elizabeth Gurley Flynn was dropped from membership on the national board.

Communists Involved In Few Cases

Not only is the A.C.L.U. not a "Communist front" but it certainly does not spend "at least 90 per cent of its efforts" on behalf of Communists who come into conflict with the law. That is clearly shown by the last annual report of the local branch of the Union, dated June 1, 1942, where it is stated that, "Since the change in the Party line in support of all-out prosecution of the war, very little has been heard in this area concerning any violation of the civil rights of Communists." And, at another point, the report declares, "Jehovah's Witnesses, because of the persistent advocacy of their doctrines, their refusal to salute the flag, and their pacifism, have supplanted labor and the Communists as the main source of civil liberties violations in Northern California."

The report that is due June 1 of this year will show the same dearth of cases where civil liberties of Communists are affected. We have not tried to arrive at an exact figure, but our guess is that during the past couple of years the Northern Californit branch of the Union has not spent ONE PER CENT of its efforts on behalf of Communists whose civil liberties have been violated.

Defend Civil Liberties of All

The A.C.L.U. does not refuse to defend the civil liberties of Communists or any other group. Indeed, we defend the civil liberties of all without distinction, and we handle such cases as come along.

Extensive information concerning activities of the Northern and Southern California branches of the A.C.L.U. is not only chronicled in their annual reports but also in the two regularly printed papers of the branches. This information was available to the Tenney Committee even without approaching the A.C.L.U. But the Union has no secrets, and it is ready at all times to tell the world, and the Tenney Committee, what it is doing.

These matters have already been called to the attention of Senator Tenney by the local director of the A.C.L.U., although the issue has not yet been considered by the Executive Committee. If the Tenney Committee is interested in doing more than smear persons and groups, it will hasten to investigate its unsupported charges against the A.C.L.U. and publicly confess its error.

"Witnesses" Back On Jobs After F.E.P.C. Acts

Action of the Fair Employment Practice Committee on its first case involving religious discrimination resulted last month in the reinstatement of several Jehovah's Witnesses to their jobs with the Pittsburgh Plate Glass Co. in Clarksburg, W. Va.

Seven of the sect members were fired shortly after Pearl Harbor on the insistence of other employees who were incensed at the refusal of the Witnesses to participate in a flag-saluting ceremony at the plant. The company explained it took this action to avert disruption of war work.

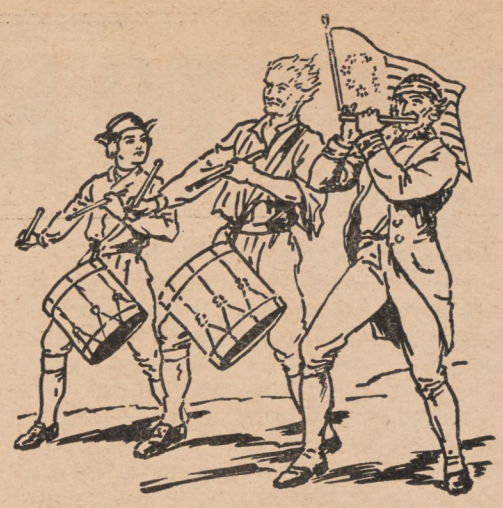
The F.E.P.C. investigated last December at the request of the American Civil Liberties Union and finding that the men had been discriminated against because of their religious beliefs, directed the company to reemploy them. When the management refused to comply, contending that a disruptive situation would again be precipitated, the F.E.P.C. held further hearings with the result that all the Witnesses who wished to return were permitted to do so last week.

The finding of the Committee was that "the refusal of the complainants to salute the flag or stand during the playing of the national anthem was because of their religious convictions" and that "the company dismissed and discriminated against complainants because of their creed in violation of the Executive Order 8802."

In New Jersey, preliminary court action was started in the Supreme Court to effect the appointment in a civil service position of Daniel Morgan, a Jehovah's Witness of Englewood. The court will decide after argument on May 4th whether it should take jurisdiction.

The State Civil Service Commission denied Morgan a job as bridge-tender in January even though he received first ranking in an examination. The reason given at first was the Witness' unwillingness to salute the flag, but this was later changed to a criticism of his personal qualifications. Morgan charges his religious freedom is being violated. The A.C.L.U. is cooperating with James A. Major, New Jersey attorney, in bringing the suit.

AMERICAN CIVIL LIBERTIES UNION-NEWS



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"Eternal vigilance is the price of liberty."

Vol. IX SAN FRANCISCO, CALIFORNIA, MAY, 1944 No. 5

ENDO CASE SENT TO HIGH COURT

Wayne Collins Will Argue Korematsu Case Before Supreme Court On May 1

The Ninth Circuit Court of Appeals in San Francisco on April 22 requested the advice of the Supreme Court of the United States with reference to the habeas corpus proceeding filed by Mitsuye Endo, a citizen of Japanese ancestry, detained by the War Relocation Authority in a concentration camp for almost two years. Five of the Court's seven judges (Presiding Judge Curtis Wilbur is absent, and Sen. Homer Bone has not yet taken his place on the bench) signed the "certificate" addressed to the high court.

Hearing In Korematsu Case, May 1

In the meantime, the case of Fred T. Korematsu, testing the power of the Military to exclude and imprison citizens of Japanese ancestry from the Pacific Coast, has been scheduled for argument before the Supreme Court on May 1. A.C.L.U. counsel Wayne M. Collins left San Francisco for Washington on April 19 to argue the case. It is quite possible, however, that argument in the Korematsu case may be postponed to allow it and the Endo case to be heard together.

The Endo case is being handled by attorney James C. Purcell of Ferriter and Purcell in San Francisco. The Northern California branch of the A.C.L.U. has heretofore appeared in the case as "friend of the court." However, since Mr. Collins is already in Washington and is familiar with the Endo case, he has been authorized by Mr. Purcell to appear as counsel in that case, especially if it is set for argument on May 10, which has been mentioned as a likely date. If, however, the Endo case is not heard until the next term of court, beginning in October, Mr. Collins may request postponement of the hearing in the Korematsu case until that time.

High Court's Choices In Endo Case

Of course, all of this assumes that the Supreme Court will undertake to instruct the Circuit Court of Appeals as requested or bring the entire case before it. Three courses are open to the Supreme Court. 1. It may answer the questions certified. 2. It may decline to answer the questions, in which case the Circuit Court would decide the case without the advice of the Supreme Court. 3. It may decline to answer the questions and order the entire case to be brought before it for final determination. Our guess is that the Court will choose the third course.

The four questions that have been certified to the Supreme Court are substantially as follows: 1. May an American citizen be held in a concentration camp, without the right to a hearing which has all the elements of due process (right to counsel, opportunity to call witnesses in her behalf, etc.) merely because such citizen is of Japanese ancestry? 2. May a loyal citizen be so confined until she satisfies the War Relocation Authority that she can support herself and receive acceptance in the community where she desires to live? 3. May such issues of self-support and community acceptance be decided by the W.R.A. without a hearing at which the citizen enjoys all the elements of due process? 4. May the W.R.A. in addition require that she report after she has left the camp?

Purcell Had Sought Certification

These questions were certified to the Supreme Court after attorney James Purcell filed a motion in the Circuit Court requesting the certification of nine questions to the Supreme Court. That motion was set for argument before the Court on May 17, but by that time the Court had already decided to certify certain questions to the Supreme Court, so the motion was removed from the calendar. Incidentally, the Endo case was scheduled to be heard by the Circuit Court on its merit on May 16.

Of course, other important questions than

(Continued on Page 2, Col. 1)

DR. MAX RADIN TALKS TO 300 AT BERKELEY MEMBERSHIP MEETING

About 300 persons attended the Berkeley meeting of the Northern California branch of the A.C.L.U. on April 14 at which Dr. Max Radin spoke on "Civil Liberties in War-Time". In the absence of Bishop Parsons, who found himself unable to attend, Joseph S. Thompson, Secretary-Treasurer of the local branch, presided in brilliant style. Attorneys Clarence E. Rust and Philip Adams served as a special panel to ask questions and to answer those from the floor.

Ernest Besig, local director of the Union, gave a brief report on the Union's activities during the past year and its present status. The Rev. Oscar Green, Committee member, made an appeal for new memberships that resulted in 13 persons joining the Union. While no appeal was made for funds, several members gave special contributions, and one person sent in a check for $250.

Accompanying one contribution was the following note: "I attended the A.C.L.U. meeting in Berkeley last night and believe that seldom have so many been indebted to so few for so much good sense and good humor."

The next membership meeting will be held in San Francisco sometime next October to mark the tenth anniversary of the branch.

No Action Yet By General Kenny in Turner Case

Last month the A.C.L.U.-NEWS carried the story of the Homer Turner case in which three Richmond, California, Negroes on February 14, were set upon by three white men from Oklahoma, armed with pieces of iron, and one of them, Turner, beaten to death. Murder charges were at first filed against the three Provence brothers, but dropped after the surviving Negroes and three whites were all charged with riot in an indictment returned by the Contra Costa County Grand Jury. Early last month, after a week's trial, a jury returned "Not Guilty" verdicts in the cases of all five men."

Attorney General Robert W. Kenny, after being urged to intervene in the case under the Constitutional provision allowing him to do so where "any law of the State is not being adequately enforced in any county," under date of March 29 advised the A.C.L.U. that "I have instructed Mr. Hession and Mr. Ohnimus of my office to sit in throughout the entire (riot) trial, which begins I understand on March 30th, and at the conclusion of the trial I will communicate with you further as to what the future plans of this office will be relative to the case."

Over the telephone, General Kenny expressed the opinion to this writer that the record disclosed a case of manslaughter if not of murder.

One week after the jury returned its verdict in the riot trial the Union wrote to General Kenny that "A Superior Court jury in Martinez, on April 6, returned a 'Not Guilty' verdict against all five defendants charged with riot in the Homer Turner case. We would appreciate knowing at this time what the plans of your office are with respect to this case." No answer was received to the letter. On April 20, two weeks after the verdict in the riot trial a further inquiry was addressed to General Kenny, likewise without response.

General Kenny has a State-wide reputation as a believer in civil liberties and particularly in fair play for racial and political minorities. It would be helpful if interested groups and individuals would write to General Kenny to find out what he plans to do about the Homer Turner case.

D. C. COURT HEARS POST OFFICE BAN ON SEX PAMPHLET

The contest of the Post Office ban of Dr. Paul Popenoe's pamphlet, "Preparing for Marriage," was argued last month before the federal court in the District of Columbia by Civil Liberties Union counsel Charles Horsky. The pamphlet, endorsed by the American Social Hygiene Assn. and other agencies, has been excluded from the mails for almost two years as "obscene."

ENDO CASE SENT TO HIGH COURT

(Continued from Page 1, Col. 2)

those certified by the Circuit Court are raised in the Endo case and would have to be determined in any decision on the case. That fact may impel the Supreme Court to bring the entire case before it for final decision.

Circuit Court's Statement

Following is the Circuit Court's statment requesting the Supreme Court's advice on the four questions of law:

Mitsuye Endo, an American woman citizen of Japanese descent, of twenty-two years of age, has appealed from an order of the district court denying her petition for writ of habeas corpus and for a hearing upon her claimed right to release from further restraint by the War Relocation Authority. Because of the importance of the case, the requirement for its summary disposition which may lead to a certification of the entire case, and the brevity of the record of the proceedings in the court below, that record is hereunto annexed and hereby made a part hereof.

This court recognizes that the facts upon which this certificate submits questions of law are those existing during the pendency of the cause in this appellate court, though differing from those at the time of the decision below, and that we are required to ascertain those facts and dispose of appellant's claim of freedom from the custody of the War Relocation Authority in the same summary manner as in the district court.

The case is before us over twenty months after the regulations and administrative orders establishing the War Relocation Centers and the confining therein of American citizens of Japanese descent evacuated from the Military Areas of the Pacific Coast. The regulations of January 1, 1944, (9 F.R. 154) controlling the continuance of such confinement of such American citizens are not of a temporary character.

Authority's Leave Regulations

These regulations may be summarized as providing for such citizens no release from the control of the War Relocation Authority. They provide only for a revocable "indefinite leave" from the confinement in the Relocation Center, conditioned upon the agreement of the citizen to make report to the Director of any change of residence or employment. Such revocable leave is obtainable and is revocable by an administrative procedure in which none of the elements of due process is present.

Such conditional and revocable leave may be had only after the citizen has procured the approval of her application for a "leave clearance" by the Director, who instructs the Project Director, who is restraining the citizen at the Center, of the approval or disapproval of the citizen's application for such clearance. In the administrative proceeding for the procuring of the approval for leave clearance from the distant Director, the Director holds no hearing. The citizen remains imprisoned at the center while the Director considers the secret reports of the Federal Bureau of Investigation and determines the granting or denial of the citizen's petition for leave clearance on such and other reports of which the citizen has no knowledge, much less the right to cross-examine persons stating facts likely to lead to the denial of the clearance.

The granted leave clearance states that its granting does not give the right to leave the Center. The restrained citizen must then apply for one of three types of leave, of which the most favorable is the revocable "indefinite leave" from the confinement of the Center. This will be granted only after the Director has determined that the citizen has the means of his self-support or employment for such support and that the community in which he intends to reside will accept him. Here, as with the application for "leave clearance", the citizen has provided for him no hearing nor any of the essential elements of due process.

Miss Endo Found To Be Loyal

The parties are agreed that on February 19, 1943, appellant applied to the War Relocation Authority for a leave clearance and that over six months later, on August 23, 1943, her application was granted. The Authority's brief here admits that the leave clearance so granted was a "determination that her release would not impede the war effort or be contrary to public peace and safety, which means in effect that she is found to be not disloyal." It is also agreed that appellant has not availed herself of any other of the provisions of the regulations.

On behalf of the War Relocation Authority is the contention that the rights conferred by Part 5, Chap. 1, Title 32 Code of Federal Regulations, as amended January 1, 1944, upon such citizens confined in such centers, constitute a sufficient provision for the freedom of such citizens and that such citizens have no right to seek freedom through habeas corpus proceedings until they have complied with the requirements of the regulations.

Miss Endo's Contentions

On behalf of appellant are the contentions that she is entitled to an unconditional release from such confinement in the present habeas corpus proceeding (a) because in the absence of any of the rights of due process in such regulations they afford her no such remedy as due an American citizen and that she may ignore their requirements, and that any proceeding commenced thereunder has no relation to the right of release on habeas corpus; (b) because, if the finding of loyalty to the United States in proceedings under such regulations be relevant, she may ignore all the further requirements regarding means of self-support or supporting employment and community acceptance, since they cannot be imposed upon a loyal American citizen whether or not of Japanese ancestry; (c) because, assuming such latter requirements may be imposed upon such a loyal American citizen, no hearing or any of the rights of due process are accorded her for the establishment of such requirements, and (d) because in no event can she be kept in such confinement until she accept such a revocable indefinite leave from such confinement with the agreement to report to the Authority.

Because of the summary nature of appellant's claim for relief from her alleged wrongful restraint and of the great public need for the decision of the question of the right to restrain many thousands of such citizens in Relocation Centers, now almost two years since their evacuation from the Pacific Coast areas, this court certifies to the Supreme Court of the United States the following questions of law concerning which instruction is desired for the proper decision of the cause pending before us:

Questions Certified

(1) Has the War Relocation Authority the power to hold in its custody in a War Relocation Center an American citizen, now more than twenty months after such citizen has been evacuated from her residence in California, without any right in such citizen to seek release from such custody in a hearing by the Authority with the substantial elements of due process for the determination of facts warranting her further detention, because such citizen is of Japanese ancestry?

(2) If under the regulations as amended January 1, 1944, the War Relocation Authority has determined that an United States citizen of Japanese descent is loyal to the United States, and such determination be relevant, may the Authority continue to confine such citizen in a Relocation Center until such citizen establishes to the satisfaction of the Director that there is no reasonable cause to believe that she will not have employment or other means of support or that she cannot otherwise successfully maintain residence at the proposed destination of the citizen when she is released from such confinement?

(3) If under the regulations an amended January 1, 1944, the War Relocation Authority has determined the loyalty to the United States of a citizen in a War Relocation Center and such a determination be relevant, may such Authority continue such confinement until the Authority determine whether or not there is no reasonable cause to believe that she will not have employment or other means of support or that she cannot otherwise successfully maintain residence at the proposed destination, without any hearing in which such issues may be tendered by the citizen or at which the citizen may be present in person, or by counsel, to offer evidence thereon or at which must be presented the evidence adverse to her contention or at which she is confronted with the witnesses adverse to her contentions?

(4) If such requirements of self-support and community acceptance may be imposed upon a loyal American citizen, may such a citizen be confined in such a Center until she satisfy the Authority, when despite such satisfaction she must further agree she will report to the Authority as required by such regulations?

HAWAII MARTIAL LAW RULED ILLEGAL BUT VICTIM IN CUSTODY

Ruling that Hawaii's martial law is illegal, courageous federal judge Delbert E. Metzger last month, after a full hearing, ordered the release of Lloyd Duncan, civilian, who was tried by an Army court, and sentenced to six months in jail. Judge Metzger ruled that martial law was not justified since Hawaii is not in "imminent danger of invasion by hostile forces or . . . in rebellion."

Since the ruling was handed down reports have appeared that the issue may be compromised by declaring Hawaii a "military area" and revoking martial law. In the meantime, however, it is said that Duncan will remain in the military's custody while an appeal is filed. "This will doubtless mean," Roger Baldwin recently declared, "that his sentence will be completed before the higher courts can decide, and the issue will thus become moot. To avoid that the Union's counsel are contemplating seeking a writ in the Supreme Court of the United States to review the issue. It seems to us indefensible for the military authorities to claim jurisdiction over civilians when the civil courts are open and functioning."

The Union's attention has also been called to another case in which Federal Judge J. Frank McLaughlin of Hawaii recently granted a writ of habeas corpus to a former broker tried in a military court and convicted on a charge of embezzlement in August, 1942. In ordering the man's release Judge McLaughlin declared the martial law to be "absolutely and wholly invalid."

"FREE THE 18" SUBJECT FOR MEETING IN SAN FRANCISCO MAY 3

The Civil Rights Defense Committee has scheduled a public meeting at Red Mens Hall in San Francisco, Wednesday evening, May 3, at eight o'clock, in support of the 18 Trotskyites convicted under the peacetime sedition law enacted in 1940. The Committee was established to aid in the defense of the 18, who went to jail last New Year's eve, and is now engaged in a campaign to "Free The 18".

Warren K. Billings, Ernest Besig, Clarence Rust, Joseph James of the N.A.A.C.P. and George Novack, national sercetary of the Committee, are scheduled to speak. George Olshausen will serve as chairman.

The A.C.L.U. participated in this case during its progress through the courts and is now urging clemency for the 18. "This is a case", said Roger Baldwin recently, "which should never have been brought to court under a law which should never have been passed."

Negroes May Not Be Barred from Primaries

The United States Supreme Court last month upset a nine-year-old ruling when it handed down an 8 to 1 decision holding that Negroes cannot be excluded hereafter from voting in the Democratic "white" primaries in Texas. The test case, brought to resolve conflicting decisions of the court in Texas and Louisiana, was organized by the National Association for the Advancement of Colored People and backed by the American Civil Liberties Union which filed a brief signed by George Clifton Edwards, of Dallas, Texas, and Whitney North Seymour of New York.

Noting the conflict with previous decisions, the court held that "when convinced of error, this court has never felt constrained to follow precedent." Justice Owen Roberts filed a dissent critical of the court's changes of view, which he classed with railroad tickets "good for this day and train only."

The defendants in the suit contended "that the Democratic party of Texas is a voluntary organization with members banded together for the purpose of selecting individuals of the group representing the common political beliefs as candidates in the general election. As such a voluntary organization, it was claimed, the Democratic party is free to select its own membership and limit to whites participation in the party primary. . . . Primaries, it is said, are political party affairs, handled by party not governmental officers."

In the majority opinion, written by Justice Stanley F. Reed, the court ruled that "when primaries become part of the machinery of choosing officials, the same tests should be applied to the primary as are applied to the general election." Otherwise, the opinion declared, "constitutional rights would be of little value" if the state is permitted to cast its electoral process in a form which allows a private organization to practice racial discrimination. "It may now be taken as a postulate," said the court, "that the right to vote in such a primary for the nomination of candidates without discrimination by the state, like the right to vote in a general election, is a right secured by the Constitution. . . . Under our Constitution, the great privilege of choosing his rulers may not be denied a man by the state because of his color."

Roger N. Baldwin, A.C.L.U. director, warned that, while the decision removes one obstacle to the Negro and Mexican-American vote in the south, the formidable barriers of the poll tax and discriminatory educational tests remain for these minorities. Reaction from angry southern political leaders threatened that "methods would be found" to circumvent the high court's ruling.

Ban On "Strange Fruit" Brings Court Test In Cambridge

The banning in Boston and Cambridge of Lillian Smith's race relations novel "Strange Fruit" moved toward a climax last month when Bernard DeVoto, noted author and educator, bought a copy of the work at a Cambridge book store in the presence of four policemen. The Massachusetts Civil Liberties Union pledged support in the defense of the bookseller and the purchaser. DeVoto and the bookseller, Abraham Isenstadt, who had notified the police of the sale, were served with summonses for appearance in court.

The Union announced it was prepared to carry the case to the State Supreme Court in the fight against "Puritanical standards." No test has yet been made in Boston, where the ban originated, because the action was not official, being by the booksellers' association.

To correct earlier reports to the contrary, a representative of the publishers, Reynal & Hitchcock, announced that a revised edition of the book with the "objectionable passages" deleted is not in prospect. The publisher "has no intention whatsoever of tampering with a fine and important book," he added.

Ickes Calls For Fair Play Towards Japanese Americans

Secretary of the Interior Harold L. Ickes issued the following statement in San Francisco last month regarding the program of the War Relocation Authority:

"Immediately after the President, on his own motion, transferred the War Relocation Authority to the Department of the Interior, we began to study its policies and administration. I have recognized from the beginning the difficulty and complexity of the problems, and I realize that the manner of their treatment is of vital importance, not only to the thousands of Japanese Americans who are immediately involved, but to the American civilians who are interned by the Japanese and the families of these Americans. The character and reputation of our own democracy are also involved.

WRA Has Unenviable Job

"The War Relocation Authority was given an unenviable job. It was not responsible for the evacuation of the Japanese Americans from the West Coast. That was a military decision. The War Relocation Authority was given the job of providing for the care and welfare of the people who were uprooted and transferred and of arranging for the restoration to normal life of those among them who are the blameless victims of a war-time program. I think that there can be no doubt that the program has, in general, been handled with discretion, humanity and wisdom. WRA did not persecute these people, and it made no attempt to punish those of a different race who were not responsible for what has been happening in the far Pacific. The War Relocation Authority—make no mistake about it—has been criticized for not engaging in this sort of a lynching party. Under my jurisdiction, it will not be stampeded into undemocratic, bestial, inhuman action. It will not be converted into an instrument of revenge or racial warfare.

Don't Injure the Innocent

"There is a place in this war for deserved anger and for punishment. I have on many occasions called for the punishment of the war criminals whether they have committed their outrages under Tojo and the fiendish military caste of Japan, or under Hitler. Let us see that the guilty are made to feel the heavy hand of justice; but let us not degrade ourselves by injuring innocent, defenseless people. To do this would be to lower ourselves to the level of the fanatical Nazis and Japanese war lords. Civilization expects more from us than from them.

"In resisting the onslaughts of those who would have the War Relocation Authority imitate the savageries of the ruling factions in the nations with which we are at war, I am sure that we have the support of virtually all Americans. I am particularly grateful to those groups and individuals on the West Coast who have been brave enough and Christian enough to speak out against the vindictive, bloodthirsty onslaughts of professional race mongers.

Disloyal Have Been Segregated

"All of the Japanese Americans who were evacuated from the West Coast have undergone and are undergoing a most intensive investigation. Those concerning whom there is any basis whatever for a suspicion of disloyalty have been sent to interment camps or are being segregated at Tule Lake. This segregation process is virtually complete, and the thousands of Japanese Americans who remain at the other centers are, by all reasonable tests, loyal American citizens or law-abiding aliens. They are entitled to be treated as such. Those who do not believe in according these people the rights and privileges to which they are entitled under our laws do not believe in the Constitution of the United States.

"All of us recognize that, in time of war, we are subject to orders and restraints which would be intolerable in time of peace. All of us—regardless of race or religion—are subject to the overriding demands of military necessity in time of war. No one who is loyal to the United States objects to this. But when military necessity does not require it, no one of us who is an American citizen or a loyal alien can be deprived of his rights under the law. I believe that the only justifiable reason for confinement of a citizen in a democratic nation is the evidence that the individual might endanger the wartime security of the nation.

20,000 Released From Centers

"The major emphasis in War Relocation Authority operations is now on restoring the people of all WRA centers except Tule Lake as rapidly as possible to private life. Over 20,000 people have already left the centers to make new homes and engage in new jobs in hundreds of cummunities stretched all of the way from Spokane, Washington, to Boston, Massachusetts. These relocated evacuees are establishing themselves in cities and on farms and many have indicated that they plan to remain in their new locations during the post-war period. Thus the relocation program is contributing to a more widespread dispersal of Japanese Americans throughout the country.

"We must all face the problem of the eventual status and treatment of those Americans of Japanese descent who were taken from their homes and transported to evacuation camps. Most of them, after a thorough investigation, the doubts being resolved in favor of segregating them, have been proved to be loyal and devoted to this Nation. It is intolerable to think that these people will be excluded from a normal life in this country for long. It is intolerable to think that merely because they resided on the West Coast — in California, or Washington, or Oregon—they must be wards of the Government for one moment longer than the necessities of war require. I know of no virus in those three States which has infected them so that they must be treated differently than the Japanese Americans who reside in other States. And it is intolerable to think that decent people would suggest that this Nation would for a moment consider sending loyal Americans of Japanese descent to a land which most of them have never seen and in which most of them have no interest.

A Local Problem

"To a large extent this is a local problem. It is a problem of you people in California, in Washington and in Oregon. I hope that the clamor of those few among you who are screaming that this situation should be resolved on the basis of prejudice and hate will soon be overwhelmed by the stern remonstrances of those among you—an overwhelming majority—who believe in fair play and decency, Christianity, in the principles of America, in the Constitution of the United States."

Couchois Sedition Case Backed On Appeal

A national Martime Union seaman convicted last August under the espionage act, at Mobile, Alabama, of seditious utterances on a merchant ship was backed last month by the American Civil Liberties Union which filed a brief as a friend of the court in the appeal of James O. Couchois to the U. S. Circuit Court of Appeals at New Orleans.

Charging the lower court abridged the defendant's right to counsel by forcing trial within a few hours of the appointment of a lawyer, the Union intervened after the N.M.U. had refused to defend the seaman on the ground the indictment did not involve his union activities.

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FLORIDA PEONAGE LAW INVALIDATED

The U. S. Supreme Court on April 10 voided as unconstitutional a Florida "peonage" law enacted in 1919 under which a Negro laborer was sent to jail for sixty days for lack of $100 to pay a fine imposed by a state court as penalty for not working off a five dollar debt to an employer.

With two justices dissenting, the decision assailed the presumption of fraud which arises under the law merely because of the nonperformance of a contract for labor service, which led to the Negro's conviction in this case. It declared the "peonage" law in violation of the guarantees of the Thirteenth Amendment, which provides that "Neither slavery nor involuntary servitude . . . shall exist within the United States . . ."

Justice Robert H. Jackson who wrote the opinion declared that the law "is the latest of a lineage," all of which have been associated with peonage. Said he, "Deceit is not beyond the power of the state because the cheat is a laborer nor because the device for swindling is an agreement of labor. But when the state undertakes to deal with this specialized form of fraud, it must respect the constitutional and statutory command that it may not make failure to labor in discharge of a debt any part of a crime. It may not directly or indirectly command involuntary servitude, even if it was voluntarily contracted for."

RIGHT OF ANONYMITY IN POLITICS UPHELD

Upholding the right of anonymity to protect the interests of minorities in political campaigns, Arthur Garfield Hays, Civil Liberties Union general counsel, last month urged the Senate Judiciary Committee to report adversely a bill passed by the House. The bill is designed to force disclosure of the publishers and distributors of campaign literature,

In a letter to Hon. Frederick Van Nuys, chairman of the Senate Committee, Mr. Hays warned that "anonymity in political campaigns is often a valuable phase of the exercise of citizens' rights," and sometimes "the only possible protection for the expression of minority views opposed by powerful interests." He added that "the whole history of political agitation has shown how necessary it is, in the interest of progress, to protect weak and unpopular groups from the penalties of exposure.

"We would cite, for instance, the need for anonymity on the part of opponents of Mayor Hague of Jersey City, who dominates so powerful a local political machine that he is able to penalize those who challenge his power."

SUPREME COURT TO REVIEW TEXAS LABOR RIGHTS CASE

Arguments on the fight of R. J. Thomas, president of the United Automobile Workers, against a section of the Texas labor law requiring the licensing of union organizers will be heard by the United States Supreme Court, possibly next October. Thomas went especially to Texas to test the law, contending that a paid union organizer does not have to obtain a license before soliciting union memberships. The Texas Supreme Court, holding that "regulation of labor unions is a proper exercise of the state's inherent police power," found the requirements to be a "reasonable regulation for the protection of both the laborers and the unions, to prevent their deception by imposters."

Military Has No Authority Over Draftee Who Refuses Oath

Holding that only by taking the oath of induction are men legally drafted into the army, the U. S. Supreme Court recently sustained in an eight to one decision the contentions of Arthur G. Billings, conscientious objector, who had refused to take an oath when called to military service and was forcibly inducted after the oath was read to him. He has conducted the litigation personally from the guard house at Leavenworth, Kansas, to which he was committed by an army court-martial for disobeying military orders. The decision will result in freeing him from the army and turning him over to the civil authorities. He has been denied recognition as a conscientious objector. Billings, a Harvard graduate, was a former economics teacher at the University of Texas.

The decision should also aid other objectors denied recognition and ordered to military service by enabling men similarly inducted to obtain release from army prisons. The Supreme Court opinion, delivered by Justice Douglas, held that "a selectee becomes inducted when after the army has found him acceptable for service he undergoes whatever ceremony or requirements of admission the War Department has prescribed." A dissent was noted by Justice Roberts.

Los Angeles Judge Holds F. B. I. Agents Liable

In two sweeping decisions upholding constitutional guarantees of freedom from unlawful search and seizure, Judge Ralph Jenney of the federal district court in Los Angeles, rejected claims of agents of the Federal Bureau of Investigation that they are immune from liability in civil suits on the ground that federal agents are not accountable for damages committed in line of duty. Plaintiffs were represented by Lorrin Andrews and A. L. Wirin, American Civil Liberties Union counsel.

The cases, claiming damages for unlawful search, were brought by members of the Mankind United Associates whose homes were invaded by the agents in search of seditious literature. In one case, that of Arthur L. Bell, no search warrant had been issued.

Although compelled to dismiss Bell's suit as outside federal jurisdiction, Judge Jenney in an oral opinion cited the broad protections afforded by the Fourth Amendment against unreasonable search and seizure. As to the responsibility of law enforcement officers for damages, he said that "when a public officer acts outside the scope of his authority or . . . in a wanton, malicious and unlawful manner . . . and injures a private citizen he is liable in action for damages." Subsequently, a damage suit was filed in the state courts.

New Jersey Court Reverses Refusal of State Agency to Employ "Witnesses"

Ruling that "coerced acceptance of a patriotic creed is beyond official authority," the New Jersey Supreme Court last month overruled the refusal of the Bergen County Board of Freeholders to employ Daniel E. Morgan, a Jehovah's Witness, as a bridge attendant because he would not salute the flag out of religious convictions. The case was conducted by James L. Major of Hackensack, N. J., retained by the American Civil Liberties Union, which appealed to the court after the State Civil Service Commission had sustained the action of the Board of Freeholders, although Morgan, by virtue of being a war veteran, was entitled to the appointment.

The Union contended "that a requirement that public employees must salute the flag is a violation of the freedom of religion guaranteed by the federal and state constitutions when it is forced against a member of Jehovah's Witnesses. To justify the overriding of religious scruples there must be a clear justification therefor in the necessities of national or community life. There seems to be no reasonable purpose for this requirement other than to discriminate against members of this sect."

Billings' Decision Opens Way To Judicial Review Without Induction

Counsel for the American Civil Liberties Union who have examined the Supreme Court decision in the case of Arthur G. Billings, conscientious objector, held that it opens the way for judicial review of draft board errors without an objector's submitting to induction at the risk of court martial. Although a man classified 1-A and seeking review must complete the selective service process by reporting to the induction center, he may refuse to place himself under military jurisdiction. He will then be subject to prosecution by the civil authorities, and may after arrest test by habeas corpus his classification.

Julian Cornell, counsel for the National Committee on Conscientious Objectors pointed out that the Billings decision supercedes the recent ruling in the Falbo case which required a registrant seeking judicial review to accept induction and only then to swear out a writ. He cited the high court's view that "Congress intended that those who refuse induction should be tried in the civil courts only" and that "forcible induction would thwart the intention of Congress."

"The court realizes that the Falbo decision, if carried out to its logical extremes, would require a registrant who desires judicial review to submit to induction against his will and risk being subjected to military law," Mr. Cornell said, adding that, from the Billings decision "it is clear that a conscientious objector who is denied exemption may fulfill the requirements of the Supreme Court for obtaining judicial review by obeying the draft board's order to report for induction, although he refuses to take the oath."

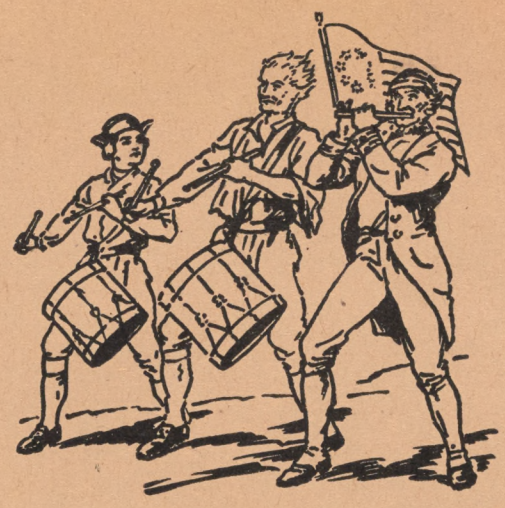
Asserting that the safest course "would be to sue out a writ" upon arrest, Osmond K. Fraenkel, A.C.L.U. counsel, declared the Billing's decision "opens a loophole for judicial review of draft board orders without the registrant having to submit to induction at the risk of court martial. It must be borne in mind that while the Billings case has probably simplified the procedural question, it has no bearing at all on the extent to which courts will review draft board decisions." Judicial review is commonly confined to gross errors and does not invoke the exercise of reasonable distinction.

LICENSE TAX ON EVANGELIST HELD TO BE INVALID

The judgment of the South Carolina Supreme Court affirming the conviction of a Jehovah's Witness as an itinerant peddler for selling religious literature without paying a license of $1 per day or $15 per year in the town of McCormick was recently reversed by the Supreme Court in a six to three decision. The opinion was written by Justice Douglas with a reluctant concurrence by Justice Reed and comment by Justice Murphy on the dissenting opinion.

Justice Douglas declared the question in the case was a narrow one. "It is whether a flat license tax as applied to one who earns his livelihood as an evangelist or preacher in his home town is constitutional." In previous cases the Court had ruled that an "itinerant evangelist" did not become "a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him." But, "Freedom of religion is not merely reserved for those with a long purse. Preachers of the more orthodox faiths are not engaged in commercial undertakings because they are dependent on their calling for a living. A preacher has no less a claim to that privilege when he is not an itinerant." At the same time, a license tax is equally invalid when applied to "those who spread their religious beliefs from door to door or on the street. The protection of the First Amendment is not restricted to orthodox religious practices any more than it is to the expression of orthodox economic views."

AMERICAN CIVIL LIBERTIES UNION-NEWS



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"Eternal vigilance is the price of liberty."

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TYRANNY REIGNS AT TULE LAKE

18 Citizens Imprisoned Without Charges For Over Eight Months

The American Civil Liberties Union charged last month that citizens of Japanese ancestry at the Tule Lake Segregation Center are being denied the constitutional right to counsel. Ernest Besig, local director of the Union, declared that he and his secretary were ordered to leave Tule Lake by the project director, Mr. R. R. Best, after spending two days there, but without being allowed to interview most of the citizens who had re-quested counsel. Two armed members of the Internal Security (Caucasian) police escorted the Union's representatives from the Center after the camp director declared that their presence was interfering with an investigation of a recent murder.

Gestapo-like conditions at the Center can be judged by the fact that someone there poured a sack of sugar into the gas tank of Mr. Besig's car. While the ancient car misbehaved on the more than 400-mile return trip to San Francisco, the cause of the difficulty was not discovered until two weeks later when the car finally broke down. The gas tank will have to be removed and thoroughly cleaned.

Held Incommunicado

Mr. Besig not only charged a violation of the right of counsel but also pointed out that eighteen citizens have been imprisoned in a stockade for over eight months without the filing of charges or the granting of a hearing or trial of any kind. "During these eight months." said Mr. Besig, "these citizens have not been allowed visits from their wives and children (some born since their incarceration) and the War Relocation Authority only during the past month erected a beaver board wall around the Stockade to prevent the relatives of the men from occasionally waving to them from behind a wire fence about a hunderd yards away."

Following his ejection from the center Mr. Besig sent a lengthy complaint to Harold Ickes, Secretary of Interior, under whose jurisdiction the War Relocation Authority was placed earlier this year, requesting a complete investigation of the administration of Tule Lake. The complaint, however, does not go into charges of brutality and third-degree methods that have been leveled against Caucasion Internal Security police. There is evidence that on the night of November 4, 1943, the police dragged certain Japanese into the administration building and beat them with baseball bats. It is general knowledge among the Caucasian personnel, that the people who came to work in the administration building the next morning of Nov. 5 found a broken baseball bat, and had to clean up a mess of blood and black hair. The persons who are alleged to have participated in the brutality are still employed on the police force and have since been accused of other brutalities. This aspect of camp administration had not been fully investigated when Director R. R. Best ordered the Union's representatives to leave.

Censorship Conmplaint

The Union has also filed a complaint with the Post Office Department against the censorship of mail of persons detained in the Tule Lake stockade, claiming it is in violation of Sec. 2347 of the Postal Laws and Regulations. The W.R.A. denies that the stockade inmates are imprisoned, and, in fact, has filed no charges against them. Under such circumstances, the Union asserts that the W.R.A. has no authority or right to censor the mail of the persons involved.

The Union also filed an appeal with Mr.

(Concluded on Page 2)

Local Southern Censors Cut Negro Movie Footage

Municipal censors in Memphis, Tenn., Atlanta, Ga., and other southern towns have been censoring scenes from Hollywood productions and regular news-reels showing Negroes in any degree of equality with whites, according to reports reaching New York last month. Memphis, on July 6, for instance, cut scenes involving Cab Calloway and his Negro band from the United Artists release "Sensations of 1945" on the ground that such scenes were "inimical to the public interest." Lena Horne, Negro artist, was similarly cut out of "Broadway Rhythm." These cuts were made without regard for the artistic integrity or the intelligent continuity of the films involved."

Using the results of these municipal censors, Southern exhibitors, who hold complete control of releases in their hands, have sent word on to Hollywood advising as a practical solution that if such scenes must be included they be so treated that cutting would not disturb continuity. Hollywood companies have long been jittery about the prejudices of Southern exhibitors and have produced pictures under restrictions to meet Southern reactions. Since the war, however, the motion picture industry has somewhat relaxed its restrictions, with the resultant censorship.

Draft Charges Against 26 Tule Lake Nisei Dismissed

U. S. District Judge Louis Goodman on July 22 dismissed indictments against 26 citizens of Japanese ancestry residing at the Tule Lake Segregation Center who were charged with violating the Selective Service Act by failing to report for induction. Judge Goodman held that because of their detention, the defendants were not "free agents" and consequently they were in no position to take voluntary action.

Judge Goodman is quoted as having made the following strong statement: "It is shocking to consider that an American citizen must be confined on grounds of disloyalty and then, while so under duress and restraint, be compelled to serve in the armed forces or prosecuted for not yielding to such compulsion.

"It is clear to me that the defendants are under the circumstances not free agents nor are any pleas they may make free or voluntary, since they are not accorded the due process of law."

U. S. District Attorney Emmett Seawell noted an exception to the Judge's favorable action on a "motion to quash," and it will be interesting to see whether the government takes an appeal to the Ninth Circuit Court of Appeals.

Judge Goodman's decision is unprecedented. Indeed, on June 26, 63 Nisei residents of the Heart Mountain Concentration Camp were convicted in the Federal District Court in Cheyenne, Wyo., on charges of failure to report for induction, and were each sentenced to three years' imprisonment. An appeal has been taken. Growing out of that situation, six Nisei were recently indicted for conspiring to violate the Selective Service Act, and two of the men were recently returned to Wyoming from Tule Lake.

In another case, eleven Nisei residents of the Granada concentration camp at Amache, Colorado, were convicted of draft evasion and sentenced on June 30 to prisons terms ranging from 10 to 18 months.

ARMY LIFTS BAN ON NEGRO NURSES

Necessity and a war-time shortage of personnel has forced the U. S. Army to abandon its traditional policy of limiting Negro nurse enlistments. Negro nurses will now be accepted, if qualified, "without restriction." A telegram from Truman K. Gibson, Jr., civilian aide to the Secretary of War, to the National Association of Colored Graduate Nurses, which has campaigned against the restrictions, said: "Negro nurses will be accepted without regard to any quota. They will be used both in this country and abroad. They should apply for commissions in the regular manner." Negro nurses had been previously limited to the personnel of four Negro Army station hospitals, a total of 220 nurses in the entire country.

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Military's Ban On Coast Japanese Challenged In New Test Suit

Challenging the constitutionality of further enforcement of military orders excluding citizens of Japanese ancestry from the Pacific Coast, a suit was filed in the Los Angeles Superior Court last month in behalf of three American born Japanese against Major General Charles Hartwell Bonesteel, Western Defense Commander.

One plaintiff is Shizuko Shiramisu, wife of an American born soldier wounded while on combat duty with the U. S. Army in Italy, who was awarded the "Purple Heart," and who later died of his wounds. Another is Masaru Baba, honorably discharged from the United States Army in March, 1942. The third is a dentist, George Ochikubo, who offered his services to the Army immediately after "Pearl Harbor," but is still being kept at a relocation center at Topaz, Utah. All three are California born.

The plaintiffs seek an injunction restraining Maj. Gen. Bonesteel and other officers from interfering with their return to California, on the ground that the military authorities have no legal power to enforce exclusion orders without resort to the courts, and that there is no military necessity justifying the further exclusion from California of loyal American born Japanese from California. With respect to military necessity, the complaint alleges that any military danger which may have existed on the Pacific Coast in the spring of 1942, when the original exclusion orders were issued by Gen. J. L. DeWitt, no longer exists; that the removal of all enemy forces from Alaska and the Aleutian Islands and the change from a defensive war on the part of the United States in the Pacific make any further exclusion of loyal American citizens of Japanese ancestry unnecessary and therefore unconstitutional.

The test cases are being sponsored by the American Civil Liberties Union and its California branches. A. L. Wirin and J. B. Tietz of Los Angeles are acting as counsel. Eight other attorneys joined in filing the suit, including Wayne M. Collins, counsel for the Northern California branch of the A.C.L.U.

The test cases were filed in the state courts because of some doubt as to the jurisdiction of the federal courts. It is likely that the government will remove them to the federal courts.

Arguing against the right of the military to continue their exclusion, the plaintiffs allege that, "In the State of California and in the County of Los Angeles the courts of the United States as well as the courts of California . . . have been and are now transacting all judicial business and are open for the prosecution of all offenses against the United States and of the State of California by all persons, including persons of Japanese or other ancestry. No martial law has been declared or is now in force in the State of California, or in the County of Los Angeles."

Pending before the United States Supreme Court is the case of Fred T. Korematsu which challenges the constitutionality of the military's exclusion of citizens of Japanese ancestry from the Pacific Coast as of the time of the exclusion. The case has been placed on the calendar for the October term of court. Also pending is the case of Mitsuye Endo, who challenges the government's right to imprison her in a concentration camp. That case will also be argued at the October, 1944, term of the Supreme Court. Wayne M. Collins of San Francisco is handling the Korematsu case and will also appear in the Endo case.

Esquire Magazine Denied Mailing Rights As Court Upholds Postmaster

The Federal District Court in Washington, D. C. upheld on July 15 the order of Postmaster General Walker revoking Esquire magazine's second-class mailing privileges with the statement that "free speech and whether or not the magazine was obscene do not enter the case." The court held that the Postmaster General was fully authorized by law to take the action against "Esquire" and that the rulings of a government executive cannot be set aside unless they are clearly illegal, arbitrary or capricious.

The law, according to Judge T. Whitfield Davidson, requires that second-class mail must be educational, and the duty of the Postmaster General in this respect is not censorship but classification. In this instance the Postmaster General had termed "Esquire" "smoking room literature" not contributing to either the "arts, sciences, or literature." The question of censorship by the Post Office Department is amply guarded," Judge Davidson held, saying that since the Postmaster General had indicated that many other magazines would lose their second-class mailing privileges for the same reasons that "Esquire's" were revoked the action could hardly be termed "capricious." The Postmaster's interpretation of the law has been sustained by the courts through the years, the judge said.

Attorneys for the magazine have estimated that the loss of second-class mailing privileges to a magazine with 700,000 circulation would cost $500,000 a year. They will appeal the decision at once. The ACLU which filed a brief as friend of the court will doubtless file one on appeal.

According to ACLU lawyers the lower court decision follows the precedents, and only the higher courts can establish new law. The case is unprecedented in basing revocation not on alleged obscenity but on the broader ground of not contributing to the "arts, sciences or literature." Meanwhile, "Esquire" continues to enjoy second-class rates, the order being suspended pending the outcome of court proceedings.

PHILADELPHIA CO. ACCEPTS FEPC RULING ON NEGRO DRIVERS

Philadelphia's first Negro street car operators and bus drivers will go to work some time in September as a result of acceptance of a FEPC directive by the Philadelphia Transportation Companyy. The FEPC had directed hiring and up-grading of Negroes as operators with the posting of notices in car garages stating that all qualified applicants for jobs will be accepted "without regard to the applicant's race, creed, color or national origin."

BOOK NOTE

"Organized Labor and the Negro," by Herbert R. Northrup, Harper & Bros., with a foreword by Prof. Sumner Slichter of Harvard University.

Dr. Northrup's study of Negroes in unions in the United States is an outgrowth of his Harvard doctorate thesis, and presents up-to-date the long struggle of Negroes for admission to unions and the manifold forms of discrimination against them. The book is indispensable for all persons dealing with race relations in the industrial field, and constitues a needed complement to the book on the "Black Worker" by Spero and Harris, published a few years ago.

RAILWAY MAIL ASS'N GUILTY OF VIOLATING N. Y. RACE BIAS LAW

The New York State Court of Appeals, highest state court, on July 19 ruled that the Railway Mail Association, national organization of postal clerks, is guilty of violating the New York law forbidding discrimination by unions "by reason of race, color or creed." The Association's constitution limits membership to the "Caucasian and Indian races." In 1943 it applied to the Albany special term of the Supreme Court for a declaratory judgment that it was not a "labor organization" within the meaning of the statute. A decision was rendered in its favor.

The Industrial Commissioner and the Attorney General, however, with the NAACP as friend of the court, appealed to the Appellate Division, and in January, 1944 the decision was reversed on the ground that the Association had always acted as a labor organization, securing many benefits for its membership, and was a member of the A. F. of L. The court ruled that the statute is "an effort to prevent racial and religious discrimination in all labor organizations operating within the state." The Association then appealed. The recent decision is the first test of the N.Y., law applying to unions. Criminal actions to back up the decisions appear likely, particularly against the national railway unions, most of which refuse admission to Negroes.

Union Paints Rosy Civil Liberties Picture for Past Year

(Continued from Page 3, Col. 3)

Issues still pending in the courts and Congress for decision affecting civil liberty cited by the report number forty-one, "a larger list than in any recent year." Chief among them are suits affecting the evacuation and detention of Japanese Americans, four test cases involving discrimination against Negroes, five cases involving federal war-time prosecutions for speech and publication, seven cases challenging state statutes of 1943 regulating trade union activities, five cases involving Post Office censorship of alleged obscenity, and one in Massachusetts involving the novel "Strange Fruit," and seven other test cases in the courts involving such varied issues as martial law in Hawaii, the deportation of Harry Bridges, the constitutionality of the poll tax, the conviction of John Longo, opponent of Mayor Frank Hague in Jersey City, and the use of public school buses to transport children to parochial schools.

Twelve bills pending in Congress are noted as involving civil liberty, ranging from measures aimed at Japanese Americans to liberalizing the Post Office censorship and creating a permanant Fair Employment Practice Committee.

Conclusions

The report concludes that the "survey may be regarded as overly optimistic in view of the enormous war-time powers exercised by the government, the wholesale charges of bureaucratic domination, the impending threat of civilian and post-war military conscription and the uncertainties both of a presidential election year and the upset conditions consequent upon the not unlikely conclusion of the war within the next year." But the Union cites the "plain factual record" to justify its conclusions, stating that "it is evident that three years of war have not essentially impaired the guarantees of the Bill of Rights and that stronger foundations have been put under the extension of those rights." The conclusions were verified, according to the review, by returns from correspondents in twenty-nine states in May who "almost uniformly reported unlimited freedom of debate and dissent on issues of the war and peace," but cited as "alarming" the increase in race tensions affecting Negroes, Jews and Japanese Americans.

Reliance for the future can be placed, according to the review, on the "spirit and power of the pro-democratic forces in the United States, the quick resistance to every threat of our liberties, and the expanding international concept of civil liberties."