5:15 No. 25294S Affidavit of Thomas M. Cooley II Jan. 6, 1947

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Frank J. Hennessy,
United States Attorney,
Attorney for Defendants.

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

TADAYASU ABO, et al., etc., Plaintiffs, vs. TOM CLARK, etc., et al., Defendants.	No. 25294-S (Consolidated No. 25294-S)

AFFIDAVIT OF THOMAS M. COOLEY, II,

DATED JANUARY 6, 1947.

DISTRICT OF COLUMBIA) ss.

Stricken no change to consideration

AFFIDAVIT

THOMAS M. COOLEY, II, being duly sworn, deposes and says:

That he is the Director of Alien Enemy Control in the Department of Justice. That in his said capacity he addressed an official request to the War Department forwarding a complete list of the renunciants now engaged in litigation testing the legality of their proposed removal from the United States under the Alien Enemy Act of 1798, and asked that the MacArthur Headquarters in Japan conduct an examination of the official records of the Japanese Government to determine whether any of the said individuals had in fact renounced their Japanese citizenship pursuant to Japanese law.

That in response to this request he received through official channels a letter dated 12 December 1946, from O. P. Echols, Major General, U. S. A., Chief, Civil Affairs Division, a copy of which is attached hereto, and the enclosure to that letter, a copy of which is also attached.

Thomas M. Cooley, II.
Thomas M. Cooley, II
Director
Alien Enemy Control
Department of Justice

Subscribed and sworn to
before me this 6th
day of January, 1947.

(Seal) Mary R. McLean
Notary Public

COPY

WAR DEPARTMENT
CIVIL AFFAIRS DIVISION
WASHINGTON 25, D. C.

12 December 1946

Mr. Thomas H. Cooley, II
Director, Alien Enemy Control Unit
Department of Justice
Washington, D. C.

Dear Mr. Cooley:

Inclosed you will find copy of letter dated 25 November 1946 from the Commander in Chief, United States Forces, Pacific, Subject: Names of American-born Japanese Who Are Testing the Legality of Their Proposed Removal from the United States.

You will note that the report contained in the letter was based upon a list of names which we forwarded at your request during the month of June. The subsequent and more detailed list which we also forwarded at your request under date of 25 November 1946 had not been received in Japan at the time the inclosed report was written. It appears, therefore, that a more complete report will be forthcoming and the same will be forwarded to you when received.

Sincerely,

s/O. P. Echols
O. P. ECHOLS
Major General, USA
Chief, Civil Affairs Division

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GENERAL HEADQUARTERS

UNITED STATES ARMY FORCES, PACIFIC

AG 014.3 (25 November 1946)DS

APO 500
25 November 1946

SUBJECT: Names of American-born Japanese who are testing the legality of their proposed removal from the United States

TO: Adjutant General, War Department, Washington, D. C.

1. Reference letter of 25 June 1946, File AGAO-C 014.311 (20 June 46), on the above subject inclosing a list of names of persons of Japanese ancestry and requesting that search be made of Japanese records to ascertain whether the persons named are Japanese subjects.

2. Reference is also made to Radio No. Z-20446 of 4 October 1946 to WDSCA GO stating that because of nature of Japanese records it would not be possible to obtain definitive statements of nationality unless the full legal domicile of each person in Japan is known.

3. The list of names inclosed with reference letter was transmitted to the Imperial Japanese Government on 12 July 1946 with the request that a report be made whether the persons listed are Japanese subjects. As stated in reference radio, a partial report was received on 2 October 46, but because of the nature of Japanese records it was determined that the report was not definitive and complete.

4. However, Japanese Government was directed to continue its efforts to obtain the desired statement and the following information has now been obtained:

a. Under Japanese law all persons born in the United States prior to 1 December 1924 of a father who was a Japanese subject at the time of birth were considered to be Japanese subjects at time of birth. Therefore, the persons named in the reference list born prior to 1 December 1924 may all be considered Japanese subjects unless by subsequent act they divested themselves of Japanese nationality. A search was made by the Japanese Government of the pertinent records and it has been determined that the following 25 persons born prior to 1 December 1924, subsequently renounced their Japanese nationality and are therefore not considered to be Japanese subjects by the Japanese Government:

	NAME	DATE OF RENUNCIATION
(1)	KUMAGAI, Kazuo	14 June 1924
(2)	NAKATA, Isamu	24 December 1924
(3)	ISERI, Fujio	12 January 1925
(4)	YAMAOKA, Minoru	5 March 1925

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(5)	TAKEUCHI, Takao	7 April 1925
(6)	NISHIMOTO, Isamu	26 October 1925
(7)	YAMAMOTO, Hei	21 August 1926
(8)	IKEDA, Chiharu	20 January 1927
(9)	ITO, Kiyoshi	13 July 1927
(10)	ITO, Yoshiharu	13 July 1927
(11)	TANAKA, Genichi	1 November 1927
(12)	MIYAMOTO, Toshio	5 July 1928
(13)	MORI, Joji	28 October 1929
(14)	NOGUCHI, Kiyoshi	25 January 1930
(15)	UEMURA, Tadao	19 May 1932
(16)	KATO, Keizo	18 September 1935
(17)	KOBAYASHI, Hideo	27 May 1936
(18)	ISHII, Takeo	22 October 1936
(19)	YOSHIOKA, Masayuki	23 December 1937
(20)	YOSHIOKA, Morihiro	23 December 1937
(21)	NAGAOKA, Hiroshi	8 June 1939
(22)	SHINZAKI, Yasuo	30 June 1939
(23)	NISHIMURA, Toru	9 April 1941
(24)	NAKASHIOYA, Kenichi	10 April 1941
(25)	ORIGUCHI, Norio	18 July 1941

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(b) The following three names also appear in the list of those who have renounced Japanese nationality but because of the destruction of records it is impossible to determine whether their identity is the same as those persons of the same name mentioned in the list received from the Department of Justice.

(1) KOBAYASHI, Osamu
(2) HIRATA, Mitsuo
(3) MATSUMURA, Isamu

However, if information can be received with regard to their legal domicile (Honseki) in Japan it may be possible to obtain definite information with regard to their Japanese nationality status.

(c) In the lack of evidence that they have actually renounced their Japanese nationality all other persons mentioned in the list born prior to 1 December 1924 may be assumed to be Japanese subjects.

(d) The following 26 persons are indicated on the list as having been born in the United States subsequent to 1 December 1924:

(1) ARAMAKI, Shigeo
(2) DOOKA, Akira
(3) ENDO, Hiroshi
(4) FUJII, Jiro
(5) FUKAWA, Yoshitaka
(6) FURUTANI, Jiichi

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(7) ICHINOSE, Toshio
(8) KAMIGAWACHI, Masashi Thomas
(9) KATO, Tetsuichi
(10) KAWAHARA, Yasunori (Twins)
(11) KAWAHARA, Yoshinori
(12) MATSUDA, Matsuo
(13) MATSUMOTO, Tsutomu Ben
(14) MIYAKAWA, Mitsugi
(15) NAKASHIMA, Izumi
(16) NAKASHIMA, Kaji
(17) NIIMOTO, Tatsuo Fred
(18) OTA, Teruo
(19) SAKUMA, Yoshiko Betty
(20) SHIJO, Yoshio
(21) TSUCHITANI, Yukio Allen
(22) UMEKUBO, Fumie
(23) TSUJITA, Takashi
(24) UYEDA, Isamu
(25) UYEMURA, Isamu
(26) WADA, Yoshikiyo

Under Japanese law these persons would not have acquired Japanese nationality unless their names were entered in accordance with applicable regulations in the family register (Koseki) of their parents. It is not possible to determine whether such registration was carried out unless complete information with regard to the persons or the father's legal domicile (name of ward, town, or village and prefecture) is known. Upon receipt of this information immediate steps will be taken to determine whether these persons have Japanese nationality.

For the Commander in Chief:

/S/ J. M. Ebbitt

J. M. EBBITT,
Captain, AGD
Asst Adj Gen.

Mr. Collins

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

ABO , et al vs. TOM C. CLARK, et al.	Four Cases consolidated as No. 25294-S. Cons.

MEMORANDUM BRIEF
IN SUPPORT OF MOTIONS TO STRIKE.

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

ABO, et al,	
vs.	Four Cases consolidated as
TOM C. CLARK, et al.	Cons. No. 25294-S.

MEMORANDUM BRIEF

IN SUPPORT OF MOTIONS TO STRIKE.

PRELIMINARY STATEMENT

The purpose of Respondent's motions to strike is in no sense dilatory. On the contrary it is to expedite the determination of these cases. There is thus presented an issue of importance to all parties to the case as well as to the effective administration of the business of the court.

These actions challenge the validity of the renunciation of citizenship by some 1500 individuals and the validity of the detention of approximately 400 of them. It need not be emphasized that if these cases must be tried individually upon contested issues of fact, the determination of the rights of the parties will be delayed over a protracted period, and a serious burden will be thrown upon the courts and the governmental agencies concerned. This delay and this burden Respondent, and it is believed, Petitioners' counsel, is anxious to avoid by clarifying the substantial issues of law and fact in such a manner as to permit their determination insofar as possible by motion and stipulation respectively. This cannot be done in the present state of Petitioners' pleadings.

Respondent's position is that two major issues of law are clearly presented.[1]

a. Whether renunciation of United States citizenship can validly be authorized by statute in view of the provisions of the Fourteenth Amendment to the Constitution, and

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1. Other issues of law are, of course, raised. If the renunciations are valid, there arises a question whether petitioners' possess Japanese nationality. Further questions concern the power of the government to detain and remove Japanese Nationals, and the propriety of the Attorney General's exercise of that power pursuant to delegation by the President. There are numerous subsidiary questions as well, but none have a direct bearing on the basic problem presented by this motion to strike.

b. Whether, assuming the validity of the statute authorizing renunciation, the circumstances under which renunciations were effectuated were such as to vitiate the acts of renunciation.

The great bulk of the factual issues potentially raised by Petitioners relate to the latter issue of law - - i.e., what were the circumstances in which the renunciations took place. Many of these circumstances may be stipulated, while others, upon properly drawn issues, may, if necessary, be made the subject of pre-trial or other procedures aimed at establishing specific disputed facts. For example, it will be conceded by respondent that petitioners were held in custody at the time of renunciation, and the nature of the asserted legal basis for such custody will be the subject of little dispute. The issue whether such custody so supported is sufficient in law to vitiate the renunciations may, therefore, be determined without extended factual dispute.

On the other hand, the issue as to whether each petitioner renounced as a result of duress is plainly one which requires factual determinations as to the state of mind of every individual concerned, and as to the influences creating that state of mind. It is plain that respondent does not concede and will not stipulate that he and other representatives of the government utilized force and fraud and conspired to cause by duress the renunciations by petitioners. To the extent such allegations are seriously

put forward, they will be denied. And the pleadings should be so clarified as to permit these issues to be segregated and, if necessary, made the subject of specific fact-finding procedures which will not cut across and confuse the other issues of fact and of law which may be determined without elaborate and time-consuming litigation. These latter may, of course, dispose finally of all the cases without the necessity of dealing with more complex and difficult matters.

It is in the light of these considerations that Respondent's motion to strike is made. The motion has two major aspects, one specific and one general. First, it is moved specifically to strike exhibit #2 to Supplement and Amendment to Petitioners' Complaint. Second, it is moved generally to strike substantially the entire complaint, together with other exhibits, for the purpose of having it clarified so as to present in manageable and understandable form the issues set forth above.

I.

EXHIBIT #2.

This exhibit is a letter from the Under Secretary of The Interior to a private individual containing, inter alia, certain conclusions as to the causes of renunciation. If the construction put upon these conclusions by petitioners is correct, and if these conclusions are accepted as competent

evidence of the facts upon which the court is to presume they are based, and if the government is held to be bound by them, numerous complex and difficult factual issues will, it is true, be eliminated. The mere statement of these hypotheses is, however, sufficient to demonstate the impossibility of their acceptance.

A. The letter is plainly evidentiary in character and effect and therefore, has no place in a pleading.

" * * * The office of a pleading is to state ultimate facts and not evidence of such facts."

Southern Pac. Co. v. Conway, 115 Fed.(2d) 746, 750, (C.C.A.9, 1940).

In Satink v. Holland Twp. 28 Fed.Supp.67 (D.C.D.N.J.1939),a motion to strike a letter incorporated by reference in a pleading was sustained on the ground that the allegation incorporating it did not comprise the simple, concise and direct statement required by 8 (e) (1) of the Rules of Civil Procedure. The action was one against a county for improper construction and maintenance of a highway, and the letter was one from the county engineer advising the county of the condition of the highway and suggesting repair. (id.at p.70). None of the cases cited in petitioners' points and authorities in opposition to Respondents' motion to strike are relevant here. They concern the practice, admittedly valid, of annexing to a pleading the instrument on which a contractual or similar action is based.

B. The vice in the incorporation attempted here, moreover, goes deeper. Not only is the letter evidentiary in character, but, as evidence, it is plainly incompetent.

> "If the(document incorporated by reference) would not be admissible in evidence at the trial of this action, then it should not be pleaded. A motion to strike is a proper method of raising this question."
>
> Barnsdall Refining Corp.v. Birnamwood Oil Co., 32 Fed. Supp. 308, 310 (D.C. E.D. Wisc. 1940).

That this letter would not be admissible in evidence upon trial is apparent.

1. It is hearsay, and hearsay which is, in all probability, more than one degree removed. That part of it which is relied upon by petitioners, moreover, is opinion based on hearsay. The character of the letter is indicated by the statement in the opening paragraph:

> "We have completed our investigation and in this letter I shall report rather fully our findings and conclusions."

Extensive citation of authority to show the incompetence of this type of evidence would be superfluous. See 6 Wigmore on Evidence (3rd ed.) Sec. 1962.

2. If it is argued that the letter falls within the exception to the hearsay rule which permits the introduction of official reports, the short answer is that this letter to a private individual has none of the characteristics of the official reports embraced by that exception.

See 5 Wigmore on Evidence (3d Ed.) 511 et seq.; 20 American Jurisprudence Sec.1023 et seq.,

United States v. International Harvester Co.
274 U.S. 693.

In the latter case, it was said of a document which had many more attributes of probative value than the one here discussed:

> "* * * The Government relies in large measure upon various statements and tabulations contained in a report of the Federal Trade Commission.* * * But it is plain that to treat the statements in this report -- based on an ex parte investigation and formulated in the manner hereinabove set forth - - as constituting in themselves substantive evidence of the questions of fact here involved, violates the fundamental rules of evidence entitling the parties to a trial of issues of fact, not upon hearsay, but upon the testimony of persons having first-hand knowledge of the facts, who are produced as witnesses and are subject to the test of cross-examination."
>
> (id. at p. 703)

In United States v. Indian Creek Marble Co.,
40 Fed. Supp. 811 (D.C.E.D.Tenn. 1941)

there were excluded from evidence a letter written by a government official and a report of a congressional committee. The letter contained statements of the government official as to the quality of marble on certain property; the report of the Committee contained statements concerning leases affecting the property. These were held not to be reports within the exception because they were relied on for the opinions expressed. See, to the same effect,

U.S. ex rel T.V.A. v. Neal, 45 Fed.Supp.382, (D.C.E.D. Tenn.1942).

Moore v. Langdon, 13 D.C. 127 was an action for private nuisance. An official letter from a Municipal Health Officer to defendant advising him of the existence of a nuisance on his land was excluded on the ground that, even though an official proceeding, it was, as between the parties, incompetent, as res inter alios acta and, as a declaration, hearsay. Steel v. Johnson, 115 P.(2d) 145 related to a budget prepared pursuant to statutory requirement. It was excluded as containing opinions and the results of personal computations by officials. The Court cited with approval, Steiner v. McMillan, 195 P.836, which excluded from evidence documents from the file of the U.S. Forestry Service. The opinion draws a sharp distinction between correspondence and memoranda by a public official relating to public records and public records themselves.

3. Another manner of stating the same result is often employed. Numerous cases hold that reports which do meet the formal requirements of the official reports exception are excludable where they are introduced to show the truth of statements and conclusions of the official rendering them. In Franklyn v. Skelly Oil Co., 141 F.(2d) 568, (C.C.A.10, 1944) the plaintiff in a negligence action sought to introduce a letter written by a gas inspector to a Fire Marshal[1] stating that defendant had improperly installed a gas system. The court held the letter was not

inadmissible because it was not a public document but was excludable because it contained the opinion of the official who made it. To the same effect are:

Birmingham v. Pettit, 21 D.C. 209, (official report of boiler inspector excluded);

N.Y.Life Ins. v. Miller, 81 F.(2d) 263 , (Coroner's death certificate drawing conclusion of suicide excluded);

Home Owner's Loan Co. v. Grundy, 4 A. (2d) 784, (Appraiser's report excluded where relied on to show value;

Hadley v. Ross, 154 F(2d) 939 (a report of highway patrolman, made pursuant to law, containing results of investigations based in part on hearsay, excluded in negligence case). See also

U.S. v. Aluminum Corp. of America, 1 F.R.D. 71.

It is, therefore, plain that, whether on the ground that it is not an official report or on the ground that as such report it is objectionable because it contains the opinions and conclusions of an official, the letter in the instant case would be wholly inadmissible as evidence if offered at trial. It was written to a private individual by a government official. It

expresses the official's opinion of the results of an investigation based in part or in whole on hearsay. And it is wholly devoid of any indication that its author had any first-hand knowledge of the facts.

C. A final, and equally fatal, defect in the proferred exhibit is that, if believed, it says nothing germane to the issues herein and is therefore irrelevant. In brief, the Under Secretary states in his letter that certain pro-Japanese nationalistic organizations coerced residents of the Tule Lake Center into pro-Japanese demonstrations, and that "it was primarily due to the pressures of these organizations that over 80 percent of the citizens eligible to do so applied for renunciation * *". If this conclusion be accepted without reservation, it cannot be taken as showing that any individual petitioner herein renounced under duress or as a result of pressure. There is nothing to show whether any given petitioner was the recipient or the dispenser of such pressure. Nor does it purport to say that there is in the particular group of renunciants who are petitioners here, a single individual or even an undifferentiated percentage group who were so influenced. And if it did purport to make such a statement, the letter affords no guide to the question whether the "pressure" involved was such as to vitiate the act of renunciation.

II.

THE PETITIONS AND EXHIBITS GENERALLY.

In addition to the objections relating specifically to exhibit #2 to the "Supplement and Amendment to Complaint", the entire pleading is subject to a motion to strike as containing redundant, immaterial and impertinent matters and therefore failing to meet the requirement that its allegations be simple, concise and direct. (Rules 8 (e) and 12 (f), Federal Rules of Procedure.) The body of the Complaint and the Supplement and Amendment thereto comprise an inextricable congeries of assertions of ultimate fact, evidentiary matter, legal conclusions and irrelevant material. One paragraph, among many, illustrating the intermingling of ultimate fact, evidentiary matter and legal conclusions is that marked (a), starting on p. 13 and continuing to the bottom of p. 15 in the Declaratory Judgment and Injunction action brought on behalf of ~~Furuya~~ Furuya et al. It is impossible, even for purposes of illustration, to segregate these three elements in this paragraph. It must suffice to say here that to answer it and the inferences and conclusions from it would require, among other things, a complete historical treatise on W. R. A.

Certain of the more striking instances of irrelevancy are more easily isolated. The first paragraph beginning on p. 7 and paragraph (g) on p. 8, of the Supplement and Amendment to Complaint in the ~~Furuya~~ Furuya case admittedly relate to matters which occurred some time after the effective date

of the renunciations of all of Petitioners herein. See also exhibit 3, a letter from Petitioner's counsel discussing one of these episodes.

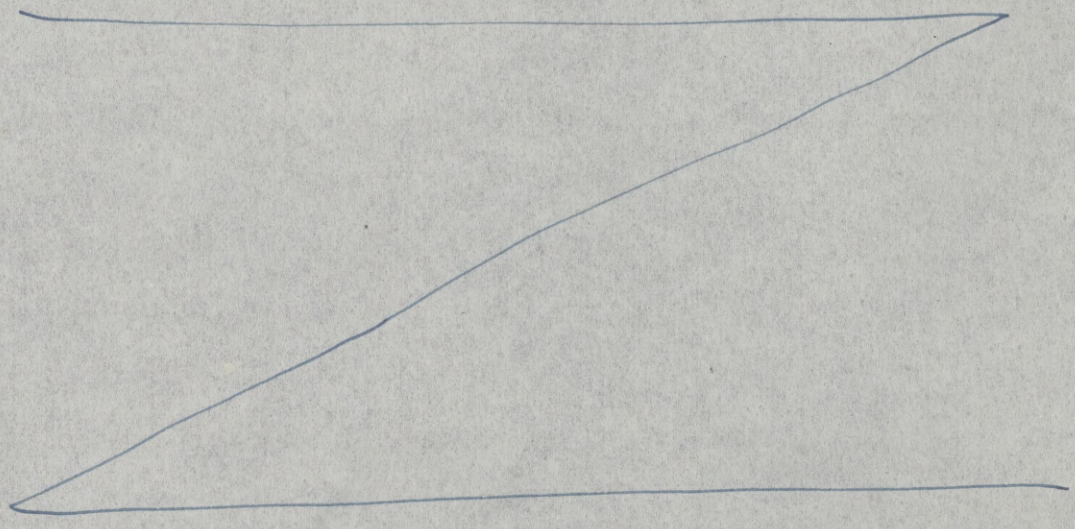
The relevance of paragraph (i) beginning on p. 9 of the same document to any matter properly raised in this litigation is also difficult to trace -- the question whether an arrangement whereby the recreation club of Caucasian employees of W. R. A. hired certain evacuees constituted slave labor is plainly a matter to be determined, if at all, in some other proceeding than this.

Exhibit 1. to the original complaint is similarly objectionable. In the first place, it is clearly evidentiary. The ultimate fact sought to be asserted by its inclusion is seemingly that, after the renunciations were complete, Petitioner's counsel wrote a letter to the Attorney General signifying Petitioner's desire to be reinstated in their citizenship status, and asserting that their renunciations were invalid. But it is equally clear that, were this ultimate fact alleged concisely in the pleadings, any attempt to introduce the letter in evidence to support the allegation would fail for the reason that the fact sought to be proved is irrelevant to any issue in the case.

These pleadings comprise over thirty-five pages of text, not counting preliminary matter, points and authorities,

orders and lists of petitioners' names. The exhibits comprise twenty five pages. Attorneys for the government have estimated that responsive pleadings admitting, denying or challenging the relevance of this mass of allegations and conclusions would require at least twice as much written material. And it is clear that, if this were done, the issues in the case would not yet be drawn in such a manner as to inform the court or permit segregation of issues for comprehensible argument.

From this state of the pleadings it is, it is submitted, clear that the requirements of the Federal rules have not been met. Authorities establishing this general proposition abound, although none have been found in which there was involved so confused a situation as is here presented.



Matter evidentiary in character, as opposed to statements of the ultimate facts essential to raising a litigable issue, may be stricken on Motion under Federal Rules 8(e) and 12(f).

Southern Pacific Ry. v. Conway, 115 F. (2d) 746, (C.C.A. 9,1940).

Satink v. Holland Township, 28 F. Supp. 67 (D.C. N.J.1939)

Barnsdall Refining Corp. v. Birnamwood Oil Co., 32 F. Supp. 308 (D.C. E.D. Wisc. 1940).

Anchor Hocking Glass Co. v. White Con. Co., 47 F. Supp. 451 (D.C. Del. 1942)

CF. Pliner v. Nesvig, 42 F. Supp. 297 (citing

McAllister v. Kuhn, 96 U.S. 87) (D.C. W.D. Wisc. 1942)

Dellefield v. Blockdel Realty Co., 1 F.R.D. 42 (D.C. S.D. (N.Y. 1939)

Booth Fisheries Corp. v. General Foods Corp., 27 F. Supp. 268 (D.C. Del. 1939)

Bulkley v. Altheimer, 2 F.R.D. 285 (D.C. N.D. Ill. 1942)

In Contazaritti v. Bianco, #1332, June Term, 1938, the Federal District Court for the Middle District of Pennsylvania, after stating the requirements of Rule 8(e), said:

> "Plaintiff's pleading in the present case is neither simple, concise, nor direct, and for that reason it must be stricken off. It contains many allegations which are merely evidence of essential facts; * * *."

And in Curacao Trading Co. v. Federal Insurance Co., Civil #18-73, Southern District of New York, September 25, 1942, the Court said:

"Legal conclusions and evidentiary facts should not be set out in a complaint which should be simple, concise, and direct."

General redundancy and immateriality, likewise, when they are so intermingled with allegations of essential fact as to impair the clarity of the pleading and make answer difficult, form proper grounds for motion to strike:

Blake v. De Vilbiss Co., 118 F. (2d) 346 (C.C.A. 6, 1941)

Buckley v. Musical Corp. of America, 1 F.R.D. 602 (D.C.D. Del 1941)

Dellefield v. Blockdel Realty Co., Supra, and other cases cited (supra).

III.

APPLICABILITY OF THIS MOTION TO THE HABEAS CORPUS CASES HEREIN.

Petitioners make the point that motions to strike are not ordinarily entertained in habeas corpus actions. This is conceded. Habeas corpus is a summary remedy; and the rules governing its procedure are based on the assumption that hearing will follow closely upon the filing of the petition. In consequence, the niceties of accurate pleading are normally sacrificed to the overriding necessity for speed in determining the propriety of the challenged custody of the individual.

Where, however, the issues are complex, and immediate summary hearing is not contemplated, this looseness of pleading rules casts an unwarranted burden on the trial judge. If the parties do not, by simple, concise and direct pleadings, present clear and sharp justiciable issues, the court must do so for them in order to reach a satisfactory judgment. In the instant proceeding, this would be no less difficult in the habeas corpus cases than in those brought in equity or on declaratory judgment. Indeed, these habeas corpus actions involve more, and more complex, issues than do the equity cases, since the power of removal and all its subsidiary questions are involved in the former. And the actions have been treated by both parties as meriting full and deliberate consideration, not summary disposal.

It is submitted, therefore, that the discretion of this court may and should be exercised to compel the parties to sharpen and simplify the substantial questions requiring decision, since the importance and difficulty of the cases demand the utilization of every available device to reach a satisfactory and expeditious determination.

There is believed to be no obstacle in law to such an exercise of discretion by the trial court.

The Federal Rules of Civil Procedure apply to Habeas Corpus proceedings only to the extent that they do not conflict with statutory provisions and do conform to the previous practice in such proceedings. Rule 81(a)(2).

There is no statutory provision precluding a motion to strike in such cases. Compare cases in which demurrer to petition has been permitted: Backus v. Owe Sam Goon, 235 F. 847 (C.C.A. 9, 1916).

The practice in Habeas Corpus is generally stated to be that petitions should conform to the rules of good pleading. 39 C.J.S. 627. And there is ample authority that to plead conclusions, evidentiary matter and redundant or irrelevant material violates such rules. McAllister v. Kuhn, 96 U. S. 87; Schultz v. Stack-Gibbs Lumber Co., 229 F. 920 (C.C.A. Idaho, 1916); Tabor v. Indianapolis Journal Nwp. Co., 66 F. 423 (C.C. Ind., 1895);

Sovereign Bank of Canada v. Stanley, 176 F. 743 (C.C.N.Y. 1910); Wagenhurst v. Wineland, 22 App. D. C. 356 (1903).

Another rule in Habeas Corpus in the Federal courts is that respondent must deny all substantial allegations of the petition or have them accepted as true, even though such allegations tax the credulity of the court and are seemingly inconsistent or confusing.

Walker v. Johnson, 316 U. S. 101

The allegations of the Petition and Amendment and Supplement thereto filed herein comprise an inextricable confusion of ultimate facts, evidentiary matter, conclusions and irrelevant or redundant assertions which render the drafting of a return which meets the requirements of Walker v. Johnson, supra, substantially impossible. Moreover, in the instant case, by reason of its consolidation with other cases and because of the identity of issues with cases being brought in equity, the necessity for the usual summary treatment of pleadings in Habeas Corpus is obviated; and ample time for the rectification of pleadings is afforded.

CONCLUSION

It is therefore respectfully submitted that

this Court has power to and should order the Petitions and Amendments and Supplements thereto stricken in all four cases now before it in order that pleadings may be drafted which will clarify and make certain the true issues to be presented, and that the proper determination of these matters may be thus expedited.

United States Attorney
Attorney for Respondent

THOMAS M. COOLEY II
Department of Justice,
of counsel.

R. B. McMillan
Asst. U.S. Attorney
of Counsel