

EXHIBIT

A

April 19, 1943

MEMORANDUM FOR MR. CHARLES FAHY

Re: United States v. Hirabayashi - No. 870
United States v. Yasui - No. 871
United States v. Korematsu - No. 912

I annex a draft brief in No. 870. I have sent Mr. Kama a copy.

On April 5 the Supreme Court ordered that the entire record be brought up in Nos. 870 and 871. The Clerk advises that these cases will be argued during the week of May 10 which allows a period of five weeks for preparation, review and printing of the briefs. I understand that you wish a draft brief for review as quickly as possible in view of the constitutional issues and therefore I have prepared the annexed draft as quickly as possible within the past two weeks in order to leave as much time as possible for review.

In my opinion minor differences of presentation of the Court's own authorities on the legal questions of the war power, due process and martial law will have little influence on their decision in view of their own familiarity with this material and their scrutiny of the applicable law. The effective area for assisting the Court is in the presentation of the factual material. In this connection the War Department has today received a printed report from General DeWitt about the Japanese evacuation and is now determining whether it is to be released so that it may be used in connection with these cases. The War Department has been requested to furnish any published materials which may be helpful. I will continue farther and so far as possible to document the facts which are not in the record but which may be judicially noticed on the constitutional question.

In No. 912, on April 12 the Court refused an application to take up the whole case and there is presented only the certified technical question whether the probation is a final judgment.

There are certain problems of organization of the argument in these cases which you should consider.

1. I have made the main argument in No. 870 which involves both of the general questions, evacuation and curfew. In No. 871, which involves only curfew, a short brief might be filed referring the Court to the brief in No. 870 for the main argument and discussing the special question of the defendant's citizenship in No. 871 which is not presented in No. 870. The

main brief, however, can be entitled in both of these cases with the citizenship point applicable to only one of them. I do not think it makes much difference which method is adopted. I think No. 912 clearly should be a separate brief.

2. Since the Government will argue that the legality of subsequent detention of the Japanese is not presented, it is not altogether consistent to include as an appendix in the brief a statement by the Director of the War Relocation Authority, prepared post and propter litem motem, concerning the humane nature of the detention and relocation on the legal theory that it remotely supports the reasonableness of the evacuation. A difficulty is that there is strong difference of opinion about the conduct of the camps and the Japanese certainly would not accept the WRA's views of its administration. I am inclined not to include such an appendix on the ground that treatment subsequent to evacuation is not involved.

3. Should we include an appendix of West Coast and general press clippings to show the public concern at the time of evacuation?

4. May we in any respect go beyond published materials and ask the Court to consider confidential investigative reports existing at the time of the evacuation?

These matters fall largely within the field of your personal judgment. A secondary reason for including material which could not be judicially noticed would be to persuade the Court that if the cases could not be decided on matters of public knowledge they are to be sent back for trial and not ruled against us.

Edward J. Ennis

Copy to Mr. Baum

P.S. No. 870 was in forma pauperis in the courts below and the record has not been printed and I have no typewritten copy of it. I annex typewritten copies of the defendants' briefs below.