

HEARING

FRANK EMI  
March 31, 1944  
10:30 a.m.

Project Director's Office

*2nd hearing*

PRESENT: Guy Robertson, Project Director  
M. O. Anderson, Assistant Project Director  
M. L. Campbell, Chief of Internal Security  
Donald T. Horn, Project Attorney  
Lt. John H. Kellogg, Heart Mountain Military Police  
Nobu Kawai, Sentinel Office  
E. C. Gorman, Internal Security Officer  
Frank EMI  
Minoru Tamesa  
Niro Abe

ROBERTSON: Which of you is Frank EMI?

EMI: I am.

ROBERTSON: Will you read the charge Mr. Horn?

HORN: (Addressing EMI) Do you have a copy of the complaint and of the warrant?

EMI: Yes.

HORN: It is alleged in this complaint that on the 29th day of March, 1944, you and Minoru Tamesa attempted to leave this Center, to pass through the gate, without a pass or permit, or without any authority from the Project Director. That is the substance of the charge filed against you in this case. Do you want someone to represent you?

EMI: Well.....Mr. Campbell said the ones here would be witnesses.....

HORN: You understand the charges of the complaint; is that correct?

EMI: Yes.

HORN: Do you want to enter a plea of guilty or not guilty?

EMI: When you ask me if I want someone to represent me do you mean someone here or some outside attorney?

HORN: Someone in here or if you wish you are entitled to some outside attorney.

EMI: Is this a hearing or a trial?

ROBERTSON: This will be a hearing for the violation of a WRA regulation. I will assess a penalty. If you are going to plead guilty you don't need a representative. If you are going to plead something else that is a different matter.

EMI: If this is going to be a, well, more or less of a trial, I would much rather have an outside attorney represent me. Just when he will come down I don't know.

ROBERTSON: You know we have to try these cases within forty-eight hours.

CAMPBELL: At the time I entered the guardhouse, I asked these gentlemen if they had passed through the gate without the proper authority and they said they had.

ROBERTSON: You understand Frank, I am only trying you on a Project charge. You have violated a Project regulation; you know that. There isn't anything complicated about what I am going to do. If you can prove you had some.....

EMI: Here is the reason I did that Mr. Robertson. As far as guilty or not guilty goes, I personally believe I am not guilty because I am an American citizen and I wanted to find out how far my rights went. I wanted to find out how long I could be detained here against my will.

ROBERTSON: I understand that. You are supposed to obtain a pass before you can go through the gate. Lt. Kellogg is supposed to apprehend anyone who goes through without a pass. As to your rights in the matter, that will be taken care of later. If I can prove that you violated a Project regulation, it is up to me to assess a penalty regardless of your rights in the matter.

EMI: In other words Mr. Robertson, you imply that you have more power than is set forth in the Constitutional Bill of Rights?

ROBERTSON: No Frank. I have power to do what I am doing.

EMI: Then I contend what you are doing is against the rights I have as a citizen of this country.

ROBERTSON: You have a perfect right to contest that any time you want to. I would like for Mr. Horn to outline to you the authority under which I am acting.

EMI: That is why I say I would like to have an outside attorney to represent me.

HORN: This agency was established through an executive order issued by the President of the United States and this executive order has delegated certain powers and authorities to the Director of the

*May he transmit equal authority to a subordinate?*

War Relocation Authority. The Director of WRA has delegated this power and authority to Mr. Robertson; the power to make and enforce the necessary rules and regulations that are necessary for the proper administration of the Project. In other words you can't administer a project like this without necessary rules and regulations. I would like to ask you this.....

*why so - even if in conflict with the Constitution?*

ROBERTSON: Just a minute. You haven't explained that quite right. I don't make the rules. This is not one of my orders he has violated. I want you to explain to him that he has violated 503, the Presidential Order; that he has violated the military order and I am merely enforcing it. He has not violated the rules and regulations set up by the Project Director. Would you go into that a little further?

HORN: I think you are aware of the fact that this project area is also a military area and has been established as such by the War Department and leaving the Project without the proper authority is in violation of regulations. *(the regulations proper when in conflict with the Rights of Man?)*

EMI: Just how far does the military have jurisdiction around this center? That is, the jurisdiction over the outer boundaries of this project? All around the area? I would like to have Lt. Kellogg explain that if possible.

HORN: We will take that up later.

ROBERTSON: We are trying to decide how to conduct this hearing.

HORN: The military police are in charge of the Center gates and they are in charge of supervising the outer boundaries of this area. I would like to ask you this. Did you understand that you weren't to leave the Project without a pass or permit?

EMI: No. I thought that as long as I am an American citizen I had the right to go where I pleased.

HORN: Have you ever been out of the center?

EMI: No.

HORN: Haven't you ever been out on short-term, indefinite, seasonal or anything like that?

EMI: I was out on seasonal leave the first fall we were here.

HORN: Didn't you have to have a pass then?

EMI: I don't know. They fixed that all up for me. A farmer requested my services outside.

HORN: You have known as a matter of fact that you cannot leave this camp without a permit or pass though?

EMI: No, I don't.

HORN: How long have you been in the center?

EMI: About two years.

HORN: How old are you?

EMI: Twenty eight

HORN: You have a high school education?

EMI: Yes.

HORN: College education?

EMI: ONE YEAR.

HORN: I would like to ask you one other question. You attempted to leave the area without a Project pass the 29th. Where were you going?

EMI: I had no particular place in mind.

HORN: Where were you going when you started out the gate?

EMI: Just outside.

HORN: And where were you going after you got to the outside?

EMI: No particular place.

HORN: You weren't intending to leave the area though?

EMI: No, I had no such intention. I just thought I would take a stroll.

HORN: Have you been in the habit of doing that?

EMI: No.

HORN: This is the first time?

EMI: Yes.

HORN: You have never left the project at any time without a pass?

EMI: No, that was the first time.

EMI: Another thing that may have motivated me to stroll out there is the fact that Selective Service is not in.....it is in effect here and now as American citizens we are being pulled into the army just as any other American citizen so I didn't think there was any restriction.

HORN: Have you had a leave clearance hearing?

EMI: I had one from Mr. Carroll and he told me verbally that he had recommended me.

HORN: As far as you know, you don't have leave clearance?

EMI: I don't know.

HORN: You say you did have a leave clearance hearing?

EMI: Yes. I don't know just how it stands now.

ROBERTSON: For your information Frank, you haven't been cleared by the Joint Board in Washington yet.

EMI: I think at that hearing there was some question about my question 2B and I said that I was loyal and it was an unqualified "yes" and at that time I also said that until my citizen status and rights were clarified and restored I don't believe that legally or Constitutionally I had any obligation to enter the armed forces because of that present suppressed and unqualified citizenship status

ROBERTSON: That is going into something else. Did you know that Lt. Kellogg stops everyone regardless of whether they are evacuee or not; me, any one of my force. We all have passes that we have to show. It isn't merely the evacuees, it is everyone. The evacuees are no different if they have leave clearance; that means they have a pass and present it at the gate, both Caucasian and evacuee.

EMI: I have seen Caucasians come in with cars and just wave at the guard and pass right through without stopping.

ROBERTSON: That is all true but I think in each instance the military police know that that person has a pass and they have examined it before. You will find that they all carry the same card that you carry when you go outside. That applies for everyone that goes outside the center. They all carry some kind of pass.

EMI: I don't know about those things because I never received one.

ROBERTSON: Did you intend to make a test case out of this?

EMI: I had no intentions of any kind. If..... That depended on the outcome.

ROBERTSON: If you are thoroughly convinced in your mind that it is an order that you can't go in and out without a pass are you willing to obey that order.

EMI: If that order is declared legal by the Supreme Court and if it is Constitutional, I will obey. I will abide by anything the Supreme Court says or by what the Supreme Court says because that is the law of the land.

ROBERTSON: But until that time you will not abide by the regulation?

EMI: Which regulation do you mean?

ROBERTSON: That you must have a pass to go through the gate and the pass must be signed by the Project Director.

EMI: Mr. Robertson, I don't intend to go out of that gate any more anyhow.

ROBERTSON: But I would like to know your attitude, whether you expect to abide by the regulation or if you will have to be picked up everyday for disobeying it.

EMI: I will give you my assurance that I will not be going out of that gate any more.

ROBERTSON: I don't want to deprive you of your Constitutional rights to test the law. You have a perfect right to do that, but, as long as that regulation is in force it is my duty to enforce it. That is my job. They would fire me tomorrow if I didn't do it. I just want to know where you and I stand in the matter.

EMI: As far as from now on goes, it is not my intention to go out of that gate or anything like that.

ROBERTSON: Or off the area without going through the gate.

EMI: That is natural because I think if I actually wanted to get out of this center there are more ways than one of getting out.

HORN: Are you willing to agree that you will not leave the Project area without the proper pass or permit.

EMI: I don't intend to, no.

ROBERTSON: I think I will decide this matter now then before it goes to trial. I think you have been held long enough, as a punishment for the violation that has happened. I am perfectly willing to turn Frank loose into the area. You understand of course, Frank, that if you want to go out you will have to come to my office for a pass?

EMI: Will you give me that pass?

ROBERTSON: Not until you get leave clearance. I can't give you a pass without leave clearance.

EMI: Why have I been denied that leave clearance?

ROBERTSON: You haven't been denied that. The Joint Board hasn't decided your case yet.

EMI: Under whose authority is the leave clearance board?

ROBERTSON: The WRA.

EMI: In other words if the legality of the leave clearance..

ROBERTSON: Just for your own information you can test the legality from the Project just as easily as you can from the jail. I believe you are on the Stop List.

EMI: That's right.

ROBERTSON: We don't blame anyone for using the means at their command to rectify what they want but there are certain rules we have to abide by.

EMI: I would like to understand.....Am I guilty in this case as far as you are concerned?

ROBERTSON: I think you are guilty.

EMI: I want you to remember, Mr. Robertson, that I haven't pleaded guilty.

ROBERTSON: We are not going to trial over this matter because of your attitude. I thought a trial would be made out of this but as long as you have promised me to abide by the regulations there will be no need to make a trial out of it. You go out of the gate without proper authorization again and we will have to pick you up again.

EMI: I would like to know.....As far as my plea is concerned I am not guilty and if chance it that way that is up to you as far as the rest of it is concerned. In my opinion I think I am "not guilty".

KELLOGG: As a matter of regulations I don't think there is any question about it. I was down at the gate before they went out and I explained the rules we had to enforce and they said the reason they were going out was to get arrested and make a test case out of this. They knew they were breaking a rule and knew they were not supposed to go through.

ABE: Isn't the Constitution a little higher than the WRA law? If you were given orders to kill someone out here wouldn't you.....wouldn't your conscience bother you? Would you obey that order just because it was an order?

ROBERTSON: I would enforce the law.

ABE: Any order you get from Washington, you would follow it?

ROBERTSON: Let me tell you son thing. I am an American citizen and I will obey the law and if I catch anyone not obeying the law, I will punish them. The laws are enacted within the Constitution. Those laws must be obeyed until they are declared unconstitutional. If I don't pick you up someone else will. A law is a law and you know that. You have been in this country long enough to know that. If you want to disobey the law you must take the consequences. If you want to appeal that the law is unconstitutional you must do that but you must obey the law while it is in effect until it is proven unconstitutional.

ABE: Do't you think it is unconstitutional?

ROBERTSON: I don't have a right to say.

ABE: If my citizenship is for the United States I think I should have a right to speak when it is right and when it is wrong. Doesn't your conscience ever hurt you? I am not for anyone like the War of JACL. I was brought up to respect the Constitution of the United States and the Bill of Rights and I was taught that if the United States calls for me to protect the Constitution of the United States I think I should go. I am not kicking or anything. I am not fighting for the United States President or Secretary but I am fighting for the Constitutional rights. We are not bargaining with anyone. We are just fighting for our rights. You know just as well as I do. Doesn't your conscience ever bother you?

ROBERTSON: My conscience doesn't hurt me a bit when I enforce a law that is in effect. I am not the judge. We have nine judges, nine men that are supposed to be the highest tribunal in the land. They do not allow me to say whether it is constitutional or you to say so. It is up to that tribunal. They may nullify that law out until such time that they say it is not a law, it is a law and every officer of the United States is to enforce it.

ABE: If you got a letter from Washington giving you an order would you enforce that rule and perform your duty regardless of whether you thought it right or wrong?



HOHN: Here's where you miss the point on that. You have a perfect right to test any case.

EMI: As far as the test case is concerned you know we don't have the right to leave. The writ of "habeas corpus"...

ROBERTSON: You don't have to go outside and you don't have to go to jail. You get your attorney to get a writ of "habeas corpus" to let you go out.

EMI: Many people, especially on the outside, they think we can go out any time we want to but you definitely said that we have to have a permit to go outside.

ROBERTSON: That is, you must have a pass to leave or enter this military area. In case of an evacuee you must have an okay from the hearing board and you are forced to stay here indefinitely against your will if you do not have that okay. If you do not like that you should apply for the writ.

EMI: That is the point I think everybody should understand thoroughly. Many people think that you can just get a pass and go out. In your opinion that is not so?

ROBERTSON: That absolutely is not so and it isn't true of anyone. That is, that is the point I am trying to get. Before you can go out, as an evacuee you must have leave clearance. After you get that I can issue a pass.

EMI: We can't go back to California and we American citizens. In your opinion what do you think about that? Evacuees not being able to go to California? What is your personal opinion?

ROBERTSON: You are putting me on the spot and I tell you why. I pay taxes to help pay the salaries of nine men who compose the Supreme Court, a body established to determine whether laws are constitutional or unconstitutional. Regardless of what I think about it, I have to enforce the law as it is. Every enforcement officer has to do that.

EMI: Then you wouldn't be able to say what your opinion is?

ROBERTSON: I would be foolish to give you an opinion.

EMI: Off the record then?

ROBERTSON: No, not either of or on. In your case you have violated a regulation and if you think it is unconstitutional I don't see why you don't contest it. Every citizen of the United States has that right but you can be assured that until the law is repealed it will be enforced. There isn't any use to have laws otherwise. There will

ahead and doing what you want to do. The only thing I want to impress on you is that you do it peacefully.

KAWAI: May I say a word Mr. Robertson?

ROBERTSON: Yes, Hobu?

KAWAI: I am here simply as a friend and have no interest other than as a friend of the party in this particular case and I am interested in it insofar as the civil liberties of the evacuees and concerned. I have discussed the implications of enforced detention in a relocation center as it applies to American citizens whether they have leave clearance or not. I believe evacuation has brought about a lot of questions which we feel should have a clarification by the Supreme Court. However, in contesting the legality of these particular rights which we feel are restricted, there are definite procedures to follow and I will support any sincere suit which is brought legally and in an American way, to contest the legality of our various restrictions. You, Frank, mention that we have a right, in your opinion, to return to the Pacific Coast area. I believe that right should be contested and I feel confident that in the near future a suit will be instituted but when it is instituted, it will be after the facts and legality are studied and I know that until we have a legal stand to ask for a decision on a particular case, we won't take action. It is true how regulations are not being enforced against the evacuees. I believe it is the constitutional right, I believe it is the American thing to do, to contest what, in our opinion, restricts the rights of an American citizen. So what I say or what ever opinion I express I don't want the idea to get out or to go around camp that my opinion constitutes a stand on the policy of the Fair Play Committee because Frank is a member of that committee.

ROBERTSON: I think that statement is all right. I am not taking a stand against anyone.

EMI: The right of the WRA to detain us has been studied by organizations on American civil liberties and church groups and even the Attorney-General Biddle himself has stated that the WRA has no authority to detain any person within the center regardless of whether they have leave clearance or not. I have a newspaper....

ROBERTSON: I don't believe you will find that he says that the WRA doesn't have the authority. I believe he thinks it is wrong.....

EMI: I can show you the newspaper....

ANDERSON: Didn't he say he questioned it but the case wasn't before the Supreme Court yet?

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ROBERTSON: I think the essence of this is that it isn't the right of anyone to break the law that is now in force but one should follow the proper legal channels to contest that law. When we break laws we are not considered good American citizens.

EMI: Any law must be broken first to contest the legality of it.

CAMPBELL: I am no authority on that.

HORN: Your attorney can go to court and ask for a writ of "habeas corpus".

ROBERTSON: You don't have to break the law. Bring a writ of "habeas corpus" giving you the privilege.....

EMI: As far as the military at the gate is concerned, is Lt. Kellogg under the WRA?

ROBERTSON: No, he is under the Army. The Army order is to see that the regulations and laws are enforced. Lt. Kellogg and I are friends; he tends to his business down at the gate and I tend to mine up here and otherwise we have no connection except that of friends.

KELLOGG: I think that as long as the point was brought up I will explain it. Caucasians or anybody else has to have a pass to go through there. Anyone who goes through the gate and the guard knows who they are they don't have to stop there. If they have a stranger in the car they are compelled to stop and produce their pass.

EMI: Just how far around does the Army control this relocation center?

KELLOGG: All around the camp.

ROBERTSON: There are signs posted around. You have seen them.....

EMI: If someone wanted to go over the fence could he be.... does the Army have the right to stop them?

ROBERTSON: If he is caught by them, yes.

KELLOGG: Whether we have enough men to watch and control the boundaries is another question.

ROBERTSON: If you got out the boundaries, the authorities outside might catch you.

EMI: Who is the authority outside?

ROBERTSON: The authority outside is the United States Marshall. As long as the law is in effect it must be obeyed.

EMI: How was it in Mr. Horino's case? How come they couldn't hold him?

*He went to Cody without Pass.. Was caught. They found his car with (11) hold him because of a P.D. regulation.*

ROBERTSON: They didn't have a warrant. They did have a perfectly good right. They could have arrested him if we wanted him but I didn't think it was necessary. *Wrong. He tried his best but the Civil Authorities there refused on contention he was a citizen & free to go anywhere.*

HORN: A state officer has a perfect legal right to arrest anyone committing an offense against the government or violation of the law. *Is violating a R. D. ruling a government violation?*

ROBERTSON: Is your case about the same Tamesa?

TAMESA: As far as I am concerned, I am from Tule Lake and I didn't have any friends I can call on. All my friends are old people and at that they can't speak English.

ROBERTSON: You should know if you could go out without a pass.

TAMESA: That I don't know. I understood that those were the regulations as far as..... There is a doubt in my mind whether my personal feelings of your orders--I think they don't coincide with yours. We tried and were stopped and I respect Lt. Kellogg, I think he is doing his duty. He treated us very fairly and if he didn't do his duty I wouldn't respect him. I think it is the same in your case Mr. Robertson, you are following orders. What my beliefs are it is beside the point.

ROBERTSON: What mine are is beside the point too. Do you understand our attitude about the future.

TAMESA: I think there is not any future in going out and getting picked up every time.

ROBERTSON: As far as I am concerned and if it is alright with Lt. Kellogg, I will dismiss this case. You boys understand the case as well as I do. If you want to get the law repealed that is now in force, it is your right to contest it. If I didn't think the law was constitutional I would find out through the court and if they didn't think it was unconstitutional that is the final order. Until such time as they decide a law must be enforce.

EMI: What do you think about the evacuees being in here and as you know not having the right to travel freely and the fact that the Selective Service is applied to them now? Just what is your feeling about this? They don't have the right but must perform their duty or obligation.

ROBERTSON: That's the law Frank.

EMI: That sort of goes back to the thing that started the American Revolution doesn't it?

ROBERTSON: Something like that.

TAMESA: Could I express an opinion? Sometime ago I received a letter from the draft board that I was cleared by Naval Intelligence so I was okay for the Army. A few days ago I asked for a pass to Cody but was denied. That is one reason that I want to say....

HORN: Do you have a leave clearance?

TAMESA: No, I don't think so.

HORN: Did you have a leave clearance when you came here from Tule?

TAMESA: I was supposed to have been cleared. That's the way I understand it. I was denied a pass.

HORN: Who did you ask about getting a pass?

EMI: Whoever is in charge of that thing said you are on the stop list. Naval Intelligence can clear him but WRA has more power.

ROBERTSON: WRA can put anyone on the stop list. If you are on the stop list the case will come to review. That is why we have the joint board.

KAWAI: For the information of both Frank and Minoru will you outline to them what you outlined to me about the procedure of the joint board that they are doing this as fast as they can; that they will be through by the first of June and those who are segregated will be sent to Tule Lake and everyone remaining in the nine relocation centers will be eligible for leave?

TAMESA: I appreciate Mr. Kawai speaking in Frank's and my behalf but I don't know Mr. Kawai so... I just received this letter from my draft board that Naval Intelligence has cleared me. I believe I only received it a week or so ago. In the meantime I don't believe I have broken any laws in the Center.

ROBERTSON: You did when you went through that gate without a pass.

TAMESA: Yes, I did that but I am curious why I was put on the stop list.

ROBERTSON: I don't know that myself. In most every case the stop list is compiled by someone in Washington. You are put on the stop list for investigation and you have a hearing. It goes back to the board and they may put you on the stop list. The stop list means that you are not eligible for leave clearance and eventually they will be transferred to Tule Lake. They expect to finish this group of leave clearances by June 1st.

ABE: What is this Tule Lake? What does it represent?

ROBERTSON: That is where you are sent when you'd rather be loyal to Japan than to the United States, and are eventually sent back to Japan.

TAMESA: The point I was curious about was that this was a draft communication from the draft board and if at any time they said I was perfectly eligible for the Army and here I would be considered a very bad citizen and don't have the privilege of getting a pass and other matters.....

ROBERTSON: Here is the idea on that. If you are on the stop list and if the Army calls you the Army is more powerful. Until the army calls you we have to enforce the stop list. When the Army calls you you must go or suffer the consequences. You can't get away from that. Until the Joint Board releases you from the stop list we have to supply the rule.

EMI: In my opinion I think that type of procedure is not very American. It does not conform to the democratic principals of this nation.

ROBERTSON: If you are on the stop list there is some reason for it. Are you sure that was Naval Intelligence? Wasn't it Army Intelligence?

TAMESA: Now maybe it was. Yes, I think it was.

ROBERTSON: If they clear you and put you on the list for induction then I may clear you on the stop list. -

TAMESA: I was sure curious about the thing. We have to follow the law.

EMI: One thing I would like to have clear in your mind Mr. Robertson. Any action that I have taken, it is not with intent to dis-loyalty, it is purely from the standpoint that I consider myself a loyal American citizen.

ROBERTSON: I understand your loyalty. The only thing I think is that you proceeded in the wrong way. I think that if you want to clarify it there is a legal channel open. An attorney would do you more good. You can't buck the law. If you want to test the legality of the law you should keep out of jail and have an attorney. If you follow the proper channel you will get farther.

TAMESA: I don't know about Frank but in my mind I was not sure if I was breaking the law until I was stopped. That was for my own satisfaction. I am sorry to have caused you trouble. They treated us very fairly down there so we have no kick coming on that.

ROBERTSON: I think we understand each other better now.

EMI: There is one last request I would like to make. Could I have a copy of this hearing.

ROBERTSON: I wasn't even going to have it transcribed but you may have a copy if you want it. *Quite a come down. when I asked for mine*

*on Dec 12<sup>th</sup> he refused categorically. Had to write to Myers. The letter wrote to Robertson. He was not challenged before. All Frank for granted Robertson assertion (14) that it was not the WR it policy to give copies. My make it a point of refusing receipts even.*