LOREN MILLER: ADVOCATE FOR BLACKS

By WARNER SMITH

WARNER SMITH *is presently a first-year law student at the University of California at Los Angeles. He completed his undergraduate work in 1964 when he received his B.A. in English from UCLA. Between 1964 and the present, Mr. Smith worked on the "war" on poverty; he counseled juvenile delinquents for the Los Angeles County Probation Department, worked as a social worker in the Department of Public Social Services, and taught the 3 R's to adult illiterates. A lover of literature, Mr. Smith currently teaches black poetry at California State College at Dominguez Hills.*

LOREN MILLER was born on January 21, 1903, in Pender, Nebraska. From humble origins he became a journalist, lawyer, judge, scholar and orator. Bringing to it the cup of liberty, this man of many talents served the Afro-American world. The following briefly chronicle the man and his work[1]

To understand the public man, we must glance at the influences on the private life. His father, John Bird Miller, was born a slave two years after the infamous Dred Scott decision. He was raised in Kansas and reached maturity during the Black Reconstruction. Having briefly enjoyed liberty, he was unwilling to submit when the democratic experiment abruptly ended. Armed only with his pride and unyielding hatred of racism, he gathered his family and goods and moved north, and settled on a farm in Pender, Nebraska. To protect them from the white worlds' venom, he isolated his wife and seven children. But taut family ties recompensed the dearth of social contacts.

A fiercely independent man, the father inculcated into the son the values of frontier individualism: the son learned to struggle with circumstance rather than succumb to it. The father's voracious appetite for knowledge (he simultaneously subscribed to upwards of ten newspapers and devoured them) was inherited by the son. During family readings and discussions, the father nurtured the sons' thought. More importantly, the son learned to detect sophistry by piercing to the heart of things. Subsequently, the intellectual seeds planted by the father blossomed in the son's lucidity, eloquent speech, and vigorous prose.

Another value was passed from father to son; he taught him to believe in integration, not as preached but as practiced: Loren Miller's mother was white. A gentle woman, she was imbued with subtle strength. After leaving Kansas, where she had taught, she applied for a job in the Pender schools, but was denied employment because her husband was black. This affront actuated the family retreat to the farm outside Pender. But the family was not alone; both black and white relatives accepted and loved it. From the white Loren learned to separate racists from racism, some from all, the individual from the group; from the black to question, to forbear, to struggle courageously.

1. The following persons provided the biographical data: Attorneys Morris Johnson, Stan Malone, Halver Miller, Loren Miller, Jr., Fred Oakrand, Ann Pollack, Federal District Court Judge David Williams, Dr. Averill Berman and Mr. James R. Derry.
Loren Miller's life merits a comprehensive biography. To the author's amazement, no one has written the life story of this complex person.

In 1919, the year of his matriculation at Kansas University, the Ku Klux Klan's influence was on a meteoric rise. D. W. Griffith's notorious film, "Birth of a Nation," had recently apotheosized and drawn converts to it. Woodrow Wilson had placated racist power by resegregating public employment throughout the land, reneging on campaign promises to blacks, and creating the most racist executive policy since 1860. The doors of northern industry, opened to blacks by World War I, were slamming shut. Through peonage, sharecropping, and terror, the white feudal South systematically forced black GI's, recently returned from Europe, back into their "place." And, in law, the doctrine of "separate but equal" reigned supreme. Blacks were as "hogs hunted and penned in an inglorious spot . . . "[2]

After one year, Loren Millers' college career was abruptly interrupted by his fathers' death. He returned home to assist his mother, who had five more children to rear. She encouraged him to complete his education, and he returned to school, not in Kansas, but at Howard University in Washington, D. C.

He majored in journalism and won honors for his social criticism. The degraded life of most blacks in the nation's capital quickened his political impulse. Outraged by a structure so destructive of so many, he attacked it it ceaselessly. His criticism reached the attention of another writer, Langston Hughes. They corresponded, met, and their mutual interest in the written word marked the beginning of their lifelong friendship.

Hughes was in Harlem, then the center of the "Renaissance" in black culture. Rapidly rising to artistic prominence, Hughes wrote some poems for *Crisis,* the NAACP's educational cultural organ. The editor of the journal was William E. B. Du Bois. Hughes brought his friends' social essays to the attention of Du Bois, who recognized Miller's promise. Applying the talented tenth doctrine, the view that blacks would be freed by a highly educated, disciplined, and talented elite, Du Bois asked Miller to write for *"Crisis."*

Miller accepted the offer and began a lifelong fraternity with one who became his tutor and mentor. It was Du Bois, the perfectionist, who subjected his views to rigorous criticism. It was Du Bois, the aristocrat, who broadened his scope by exposing him to world events. While his father had infused mental vigor, DuBois, the sage, bade him drink from the cup of culture. His father imbued him with courage; Du Bois, the pragmatist, harnessed it to a people's struggle.

Du Bois, however, was not the only influence during the young man's formative years. He work with Roy Wilkins, who also wrote for *Crisis.* Sharing a common cause and lofty ideals, they became friends. Subsequently, after Du Bois broke with the NAACP, Miller remained a trusted friend of both.

Seeking practical expression of his ideas, Miller returned to school in quest of a law degree; he had crystallized his commitment to politics. He entered Washburn College of Law in Topeka, Kansas, completed his courses and passed the bar exam. In January, 1929, he was admitted to the Kansas Bar. He had also been selected as a member of the NAACP's National Board of Directors.

He practiced law in Kansas until 1930, when a sister died in Los Angeles, California. After attending her funeral, he surveyed the scene and made

2. Claude McKay, "If We Must Die" in Selected Poems of Claude McKay, p. 36, A Harvest Book by Harcourt, Brace and World, Inc., New York, 1953.

inquiries about opportunities for blacks. Impressed by California "liberty," he returned to Topeka, Kansas, and persuaded a cousin, Leon Washington, to accompany him to California. Both returned and obtained jobs working on a black weekly, the *California Eagle.*

Their new careers in the western locale began during the early depression, a time when the brightest and most articulate intellectuals were questioning American plutocracy.

Langston Hughes had asked Miller to tour Russia with him. Miller agreed. In later years, his tour of Russia became an albatross. In 1932, he was too visionary, too outraged by racism and too curious about an alternative social system to forego the journey. Little did he know that most Americans would equate knowledge about Communism with belief in it. Like other intellectuals, artists, and dissenters, his naivete about American political sentiments left him vulnerable for life. In Russia, he learned one important lesson: That the masses through political organization could change their "accursed lot."[3]

After touring Russia for six months, he returned to Los Angeles. His feet were firmly planted on radical soil. His radical beliefs were tempered by a profound respect for law and animated by rigorously disciplined thought. His feet remained on radical soil until his death. He never waivered. After his return, he and his cousin decided to publish their own newspaper.

After he and his cousin organized the Los Angeles *Sentinel,* another black weekly, they launched an attack on the racist merchants on Central Avenue, then the main business artery in the ghetto. Reaping profits from blacks, the merchants refused to hire them. Mr. Washington blasted these tactics with a "buy black" campaign. Having been admitted to the California bar on June 7, 1934, Mr. Miller protected his cousin's legal flank. The merchants gave ground grudgingly. These initial victories whetted Miller's appetite for sterner stuff.

HE MOVED into the jungle of urban housing law by assisting blacks in acquiring scarce homes. Using restrictive covenants to contain the packed ghetto, whites tenaciously resisted the black advance. Periodically, a white would unwittingly sell to a black. Using our characteristic ingenuity, the black would induce a white friend to survey the house, inform him, and buy it. The white buyer would then sign it over to the black, who had supplied the money, with a quit claim deed. Before the seller could sing "God Bless America," the transaction would emerge from escrow. The black would meet the white seller for the first time as the black moved his family into its new home. A few fair whites would knowingly sell to blacks. After the first black families moved onto a block, the remaining whites would stiffen, organize under the goading of racist realtors, and sue the white seller for the breach of the racial covenant restricting the owner's right to sell to a caucasian. Ironically, many important cases concerning restrictive covenants were between white racists and independent whites who had dared break the rigid ranks.[4]

Miller accepted some white sellers' cases. Although the rights of black buyers were at stake, persuading the court to rule on them was blocked by the way the cases were brought before the Bar. The cases had ben decided

3. Id. p. 36.

4. *Cummings v. Hokr,* 31 Cal. 2nd. 844 (1948), *Cassell v. Hickerson,* 31 Cal. 2nd. 869 (1948), *Fairchild v. Raines,* 31 Cal. 2nd. 869 (1948).

on contract grounds: neighboring whites sought enforcement of the covenant on white sellers. The black buyer was not an immediate party to the dispute. This technical barrier hid the real issue:

> "It should be observed that the earliest cases were suits at law in which forfeiture was sought for breach of condition, a circumstance which tended to concentrate the attention of the judges on the contract rights of the litigants, particularly on those of parties plaintiff who had conveyed the land on the express condition that it not be 'sold or used' by Negroes."[5]

The white seller was charged with breaching the condition. The breach was obvious. The obverse question, could the white seller's rights of alienating himself from property be restricted for racial reasons, was not raised by the court. The white sellers lost. More importantly, black buyers were beaten back.

TO UNDERSTAND the court's myopia and to assess the immensity of Miller's task, we must glance at the law's evolved racist structure in the housing field. In 1890 in San Francisco, racial housing ordinances first reared their ugly heads. The city passed an ordinance locking Chinese into a ghetto. Holding that the ordinance was state action violating the equal protection clause of the 14th Amendment, the Federal District Court sruck it down.[6] In about 1910, aiming at control of blacks, southern cities began passing similar ordinances.[7] Throughout the South, state supreme courts upheld these ordinances on the grounds that they created racial harmony and were legitimate exercises of the state's police power. In 1917, the United States Supreme Court swept the ordinances aside on the grounds that state action proscribing the sale of property to blacks contradicted the "equal protection" clause.[8]

But racists were not deterred. They sought the same ends by the restrictive covenant device. They argued that property owners could restrict its sale, lease, and use to whomever they pleased and that the courts should enforce such private agreements. The first reported case, *Gondolfo vs. Hartman,* was tried in California and involved a Chinese-American.[9] The Court held that enforcement of the covenant by a court was state action; consequently, enforcement was prohibited by the "equal protection" clause. Subsequently, Louisiana and Missouri state supreme courts held to the contrary, saying state action was not at issue and only the rights of contracting individuals were involved.[10] Hence, the "equal protection" clause did not apply. In 1919, ignoring *Gondolfo vs. Hartman,* the California Supreme Court banned restrictions on ownership of property, but upheld restrictions on use. This sophistry overlooked the fact that few buy property they cannot use.[11] In 1922, Michigan's Supreme Court agreed with California's.[12] Such was the state of things when the issue of racial restrictive covenants was brought to the United States Supreme Court.

Arising from the United States Court of Appeals for the District of Columbia, *Corrigan vs. Buckley* buttressed segregated housing for over twenty

5. Loren Miller, Sr., *Race Restrictions on Ownership or Occupancy of Land,* 7 Lawyers Guild Rev. 101 (1947).
6. *In Re Lee Sing,* 43 Fed. 359 (1890).
7. *Hopkins v. City of Richmond,* 117 Va. 692 (1916); *Harden v. City of Atlanta,* 147 Ga. 248 (1917); *Harris v. City of Louisville,* 165 Ky. 559 (1915).
8. *Buchanon v. Warley,* 245 U. S. 60 (1917).
9. *Gondolfo v. Hartman,* 49 Fed. 181 (1892).
10. *Queensborough Land Co. v. Cazeau,* 136 La. 724, 67 So. 641 (1915); *Koehler v. Rowland,* 275 Mo. 573 (1918).
11. *Los Angeles Investment Co. v. Gary,* 181 Cal. 680 (1919).
12. *Parmalee v. Morris,* 218 Mich. 625 (1922).

years.[13] Corrigan, the plaintiff, and Buckley, a co-defendant, were both white. Plaintiff argued on contractual grounds. The defendants asked the Court to dismiss the bill on the grounds that the contract deprived co-defendant Curtis, a black, of property without due process of law; hence the contract was void. Since the 14th Amendment did not apply to Washington, D. C., and the 13th Amendment was inapplicable because there was no slavery at issue, the Court focused exclusively on the contractual issue. Overlooking the fact that a white man was forced not to sell to a black, it held that a black could not force whites to sell. It did not perceive that court enforcement of restrictive covenants delimited a white's right to alienate property from himself and family, that the law protected whites who did not want to sell or buy at the expense of selling whites and buying blacks. The Court added that public policy was served by the covenants in adhering to the doctrine of separate but equal announced in *Plessy vs. Ferguson.*[14]

The case is explicable only in the light of the four earlier state supreme court holdings on restrictive covenants, the only precedents in the field. The inversion of who was forcing whom was a concomitant of the narrow focus on the immediate parties in dispute rather than the party one step removed, the black buyers.

Stung by this setback, the NAACP immediately appealed the case to the United States Supreme Court.[15] It repeated the defense that the contract was void and added that court enforcement of the covenant was state action because judge-made law had the same effect as statutory law. Since judge-made law was controlled by the "due process" clause, the Court could not enforce the covenant. The Court dismissed the appeal because it said it lacked jurisdiction, it did not recognize state action. It chided the defense for not raising the constitutional question before "the appeal or by an assignment of error, within the court of appeals or in this court."

For blacks, the dismissal of the appeal was catastrophic. Within the next two decades, using the precedent of *Corrigan vs. Buckley,* higher courts in fifteen states and Washington, D. C., upheld racial covenants molding segregated neighborhoods.[16]

MEANWHILE, Loren Miller's reputation as an expert on restrictive covenants was growing. He had argued many cases in lower California courts, and lost most,[17] but he had won one on appeal to a state appellate court presided over by a liberal judge who ruled on the constitutional issue.[18] Three cases which he had lost on contractual grounds and the one won on constitutional grounds were appealed to the California Supreme Court. But the Court held them in abeyance to await the outcome of the issue before the United States Supreme Court in a case of historical proportions, *Shelley vs. Kraemer.*[19] Miller had also helped bring this case before the national court.

13. *Corrigan v. Buckley,* 271 U. S. 323 (1926).
14. More precisely, the public policy was the state legislatures' right to segregate the races. *Buchanon v. Warley,* note 8 supra, had outlawed statutory housing segregation on constitutional grounds, but the court had not held against racist public policy.
15. Footnote 13 supra.
16. Some of the important cases are: *Chandler v. Ziegler,* 88 Cal. 5 (1930); *Clark v. Vaughn,* 131 Kan. 438 (1930); *Lyons v. Wallen,* 191 Okla. 567 (1942); *Dooley v. Savannah Bank and Trust Co.,* 34 S. E. 2d 522 (1945); *United Cooperative Realty v. Hawkins,* 169 Ky. 563 (1937); *Lion's Head Lake v. Brzezinski,* 23 N. J. Misc. 9, 290 (1945); *Perkins v. Trustees of Monroe Avenue Church,* 70 N. E. 2d 487 (1946); *Williams v. Commercial Land Co.,* 34 Ohio Law Rep. 559 (1931); *Meade v. Dennistone,* 173 Md. 295 (1937); *Doherty v. Rice,* 240 Wis. 389 (1942); *Burke v. Kleiman,* 277 Ill. App. 519 (1934); *White v. White,* 108 West Va. 128 (1929) *Eason v. Buffaloe,* 198 N. C. 520 (1930).
17. He lost the three cases cited in note 4 supra.
18. *Davis v. Carter,* 31 Cal. 2nd 870 (1948).
19. *Shelley v. Kraemer,* 334 U. S. 1 (1948).

He had been appointed the director of the NAACP's western legal arm. His intellectual power and quick grasp of bedrock legal issues marked him as an outstanding theoretician. Traveling throughout the country and consulting with other NAACP lawyers, he had shared and received knowledge on how to break the vice-like housing trap maintained by restrictive covenants. The major figures hammering out the legal theory were William Hastie, now a Federal Circuit Court Judge; Robert Ming, a professor of law at the University of Chicago; James Nabritt, Dean of Howard Law School; Thurgood Marshall, Charles Houston, and Miller.

The group's strategy was complex, its attack oblique. Flying in the teeth of a cast-iron precedent, *Corrigan vs. Buckley,* knowing that it clawed at the white worlds' jugular, white property rights, laboring to bring the constitutional issue to the foreground, the group triumphed and presented a lesson in legal realism. Since the law was blind, it used social science, excellent timing, and effective white allies to give it sight.

It recognized that blacks, beckoning to the call of northern and western industry, were streaming into urban ghettos. Consequently, pressures for expanding the ghetto boundaries were rapidly building. Since racist white realtors were a major national power blocking the black path, the group launched a national saturation campaign. By raising the same issue in cases throughout the nation, the group increased the chances of the United States Supreme court's reviewing the issue. The saturation effect also underscored the urgency of the issue and could readily direct the Court's attention to the public policy aspects of the case. (In deference to racist white property owners, jurists had not articulated a public policy encouraging desegregation of housing. Excepting a few judges like Thurmond Clark, then of Los Angeles Superior Court,[20] Roger Traynor of the California Supreme Court,[21] and Henry White Edgerton, Associate Justice of the United States Court of Appeals for Washington, D. C.,[22] few had foreseen and forewarned of urban Americas' changing ethnic texture.) By inducing the Court to face the public policy aspect, the group hoped the Court would face its state agency role, and see its passive interpretation as active law-making. After perceiving its "judge-made" law as state action, it would understand that the "equal protection" clause precluded its enforcement of racial covenants just as it proscribed statutory law. But the plan required expert guidance up the ladder of national law.

NOT ONLY had Miller argued the California cases, he prepared the brief and argued a similar case, *Sipes vs. McGee,*[23] in Detroit, Michigan. Consulting with Thurgood Marshall in a similar case in St. Louis, Missouri, *Shelley vs. Kraemer,* he helped prepare the brief. Thurgood Marshall argued *Shelley.* Both *Sipes* and *Shelley* lost at the State Supreme Court level. The two cases differed in that the Missouri court had forfeited Shelley's, the black buyer's, title, whereas the McGee's in Michigan had "only" been enjoined from living in their "home." Both cases were appealed to the United States Supreme Court, which agreed to review them. They were consolidated because both raised the same constitutional issue. Miller argued *Sipes,*

20. Judge Clarke is now a Federal Court Judge. He was the independent liberal who defied precedent in deciding *Davis v. Carter,* cited in note 18 supra.
21. Justice Traynor discussed the public policy aspect in *Fairchild v. Raines,* 24 Cal. 2d 818 (1944).
22. In his dissenting opinion in *Hurd v. Hodge,* 334 U. S. 24 (1948), he noted the black advance to the cities. He argued similarly in dissenting to *Mays v. Burgess,* 147 Fed. 2 869.
23. *Sipes v. McGhee,* 334 U. S. 1 (1948).

Marshall *Shelley*. Twenty-one organizations filed briefs as friends of the court on behalf of the blacks. Even the United States Solicitor General argued for blacks and, paying heed to the rising power of the non-white world, mentioned the fact that segregation was hurting Americas' international relations.[24] Persuaded by the cogency of black counsel's argument, their mass of irrefutable sociological data, the broad support from liberal organizations, but most of all, the manifest urgency of the situation, the court reversed its prior dictum. It said:

> "We hold that in granting judicial enforcement of the restrictive agreements in these cases, the states have denied [blacks] the equal protection of the laws and that, therefore, the action of the state courts cannot stand."[25]

The Court had not declared the covenants void, it had withdrawn its buttress from them. If racists chose to abide by the covenants, they could as private parties; they could not ask the Court to abet heir nefarious scheme. Stare decisis notwithstanding, the Court had bowed to socio-economic forces embodied in the burgeoning numbers of urban blacks. A few dedicated people, Miller among them, had reshaped the law's landscape.

NORTHERN and western state appellate courts quickly adhered to *Shelley vs. Kraemer*. Deciding the four cases Miller had brought before it, the California Supreme Court held the covenants unenforceable.[26] But the racists were not done. They had been dealt a crippling blow, but attempted, as always, to circumvent the ruling. They sued those whites who had sold to blacks. If they could not prevent fair whites from selling to blacks, they could exact damages from them. Such suits would serve a twofold purpose: punish the white sellers and, by example, forestall others of like mind.

In Pasadena, California, an old white woman, Mrs. Jackson, sold realty to a black family.[27] Some neighboring landowners headed by Mrs. Barrows, sued for her breaching the restrictive covenant. Knowing about Miller, her attorney referred Mrs. Jackson to him. He accepted the case and argued that Barrows could not do indirectly what the Court had outlawed directly; that the Court could not enforce a suit for breach of the covenant any more than it could enforce the covenant. He won the case.

The decision was appealed all the way to the Supreme Court, which affirmed the lower courts' ruling. After the climax of *Shelley vs. Kraemer, Barrows vs. Jackson* was only epilogue, but it illustrates Miller's tenacity in tracking down the racist demon wherever it appeared.

After sending racial covenants to the grave, he next attacked racial discrimination in the rental of property. Appearing white, Mr. Hutchinson, a fair Negro, rented an apartment in Monrovia, California.[28] Some darker friends visited him and were noticed by the apartment manager. Subsequently, the landlord attempted to evict Mr. Hutchinson because he was black. Having been an otherwise model tenant, Mr. Hutchinson refused to vacate the premises. The landlord initiated an unlawful detainer action, one brought to repossess property from one who lawfully acquired it, but whose right of possession has ceased and who refused to return possession to

24. Loren Miller, Sr. The Petitioners: *The Story of the Supreme Court of the United States and the Negro*, p. 324. This book is the definitive chronicle of the United States Supreme Court's codification of blacks' civil and constitutional rights. It narrates our legal victories and losses, the Court's enforcement and evasion of our elementary rights.

25. *Shelley v. Kraemer*, note 19 supra.

26. Notes 4 and 18 supra.

27. *Barrows v. Jackson*, 346 U. S. 249 (1953).

28. *Abstract Investment Co. v. Hutchinson*, 204 Cal App. 2nd 242 (1962).

plaintiff. Mr. Hutchinson, the defendant, asked Mr. Miller to defend him. Miller did and argued that state courts could not be used to evict a person for racial reasons because court action was state action proscribed by the "equal protection" cause as per *Shelley* and *Barrows*. The court disargeed and enforced the detainer action. The defendant appealed and the appellate court reversed the lower courts' decision. The defense was one of the first against an unlawful detainer action and became the foundation for subsequent California court holdings against retaliatory evictions by landlords.

ALTHOUGH an expert on racial covenants, Miller also helped attack the legal rationale for segregated education. He was not the attorney of record on the major modern school segregation decisions, but the NAACP brain trust, mentioned previously, heeded his legal theory and applied his knowledge of judicial psychology. He assisted in the preparation of many briefs and helped chart the course begun in 1936 in *Missouri ex rel. Gaines vs. Canada*,[29] wherein the United States Supreme Court ruled that a state offering legal education for whites must provide one for blacks within the state, rather than subsidize their education at out-of-state schools. The erosion of *Plessy* had begun: step by step, stone by stone, the brain trust vitiated "separate but equal." It was finally repudiated in *Brown vs. Board of Education*, wherein the court said "separate" was "inherently unequal." This monumental victory culminated years of preparation and honing of constitutional theory. Millers' advice and counsel had helped usher in a new historical epoch.

While working on the national scene, Miller had continued his attack on every vestige of racist institutions in California. As an NAACP regional director, he had lobbied for a ban on racial discrimination in businesses. The California State Legislature passed a bill, the Unruh Civil Rights Act,[30] outlawing racial discrimination in public accommodations. Miller had an early opportunity to test the laws' scope. A Mr. Washington made an appointment with a white physician, Dr. Blampin.[31] Upon arrival at his office, the child was denied treatment because she was black. Mr. Washington sought Millers' services and he filed an action for damages on the grounds that a physician's services were not so personal in nature as to justify racial discrimination. Hence, medical practice fell within the scope of businesses serving the public; as such, they were bound by the proscriptions of the public accommodations statute. The court ruled for the defendant, Miller appealed, and the decision was reversed. Miller had hewn another of the ubiquitous racist tentacles.

ANOTHER of his major concerns should be noted because it displays his rare courage. Having been a member of the American Civil Liberties Union since the early forties, he assisted in amassing data, writing briefs and arguments in the Alien Land Law cases, that series of cases in which the ACLU fought for the return of property to those stateless people, Japanese aliens.[32] They had been born in Japan, but lived, many for most of their lives, in America. During the racist hysteria of World War II—Japanese aliens and

29. *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337 (1938).
30. Cal. Civ Code S 51 (West 1954)
31. *Washington v. Blampin*, 266 Cal. App. 2nd604 (1964).
32. *Oyama v. California*, 68 Supreme Court 269, 332 U. S. 633 (1948); *Haruye Masaoka et. al., Respondents v. The People*, 39 C. 2d 883, 245 P. 2d 1062 (1952); *Sei Fuji v. State of California* 38 C. 2d 718, 242 P. 2d 617 (1952).

Japanese-Americans were imprisoned;[33] being white, neither Germans nor Italians, aliens nor American citizens, were imprisoned—California passed laws forbidding Japanese aliens to acquire, own, occupy, lease, or transfer agricultural land. The laws' purposes were elimination of Japanese competition from farming.[34] The ACLU argued before the United States and California Supreme Courts that the laws were unconstitutional in depriving the victims of property without "due process of law" and that the aliens had been denied "equal protection" of the law. The courts agreed.

Miller, almost alone among Los Angeles attorneys, understood the ACLU's position. He took up arms with them. Having long been tempered by struggling for the underdog, he was not deterred by the aliens' unpopularity. Most revealing was his choice to aid a group, all too many of whom were indifferent or hostile toward the black struggle. His defense of them during their moment of great peril speaks volumes about his commitment to man. He knew justice for one was the necessary condition of justice for all, that freedom is indivisible, that the oppressed must hang together or separately. Mediocre men mouth such platitudes; great men live them in the crucible of struggle. He was such a man.

His mettle was to be tested again; his name and honor were trampled on. His brilliance had been seen and noted by political authority, but his unyielding loyalty to leftist politics, his outspoken attacks on racism, his audacious trip to Russia, his disdain for mediocrity and the shabby values of the marketplace—all marked him as an independent man. During a time of reaction, these traits were "dangerous." Under the aegis of McCarthyism, the radical right smeared him. The California Senate's Fact Finding Committee on Un-American Activities cited him as one of its fiercest foes.[35] It interpreted his writing for the National Lawyers Guild as proof that he was a Communist.[36] With the classic technique of assuming guilt until innocence was proved and using guilt by association, the Committee put the mark of Cain on him and "liberals" in power withdrew as if he were a pariah. None proved him a Communist.

After the worst excesses of McCarthyism had passed and a muzzle had been placed on rightist demonology, Governor Edmund G. "Pat" Brown appointed Miller to the Municipal Court Bench. The appointment was almost insulting, but Miller accepted it. After living America's finest ideals and battling their most racist foes, after mastering the law, after learning from Du Bois and applying Douglass, this man of intellect ended his days judging traffic tickets.

During his twilight years, the old warrior used his spare time to chronicle the legal history of his people,[37] to write articles on welfare law,[38] and to speak in stentorian tones about the work to be done. On July 14, 1967, three years after his appointment to the bench, he died.

Encomiums do not awaken the dead, but this cursory glance at his lifes' work may quicken the living.

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33. Jacobus tenBroek, Edward N. Barnhart, Floyd W. Matson, *Prejudice War and the Constitution.* University of California Press, Berkeley and Los Angeles, 1954.
34. The United States Supreme Court clearly stated the real reason for the Alien Land Laws in *Oyama v. California,* 68 Supreme Court 269, 332 U. S. 633 (1948).
35. The California State Senate's *Fifth Report of the Senate Fact-Finding Committee on Un-American Activities,* p. 689 (1949).
36. Id. pp. 540-542.
37. Footnote 24 supra.
38. Loren Miller, "Race, Poverty and the Law," in *The Law of the Poor,* edited by Jacobus tenBroek and the Editors of California Law Review, p. 62 (1966). His cogent analysis of the law's impact on the black urban poor is rewarding reading. Also see his "Government's Responsibility for Residential Segregation" in *Race and Poverty* (1964), edited by John H. Denton, p. 58.

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