



Drought refugee family from McAlester, Oklahoma that arrived in California, October 1936 to join the cotton harvest, near Tulare, California.

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Vagrants, Migrants and California's "Bum Blockade"

BY JUDGE BARRY GOODE*

HISTORY IS BEST told looking backward and applied forward, as CSCHS board member John Caragozian demonstrated in a presentation to the California Judges Association on March 13, 2016.

He focused attention on a case heard in the United States Supreme Court in 1940 (and re-argued in 1941), in which counsel first argued,

[I]mmigration . . . has developed . . . [to] a problem staggering in its proportions. . . . Their presence here upon public relief, with their habitual unbalanced diet . . . means a constant threat of epidemics. Venereal diseases . . . are common with them. . . . The increase of rape . . . are readily traceable to . . . these people Petty crime among them has featured the criminal calendars of every community into which they have moved [T]hey are readily led into riots by agitators Their coming here has alarmingly increased our taxes and the cost of welfare outlays . . . and the

care of the criminal, the indigent sick, the blind and the insane . . .

The case of *Edwards v. California*¹ illustrates just how hot a topic *domestic* migration was during the Depression, much as *international* immigration is today. And Caragozian told well the story of how the Court handled the domestic issue.

Fred Edwards was living in Marysville when his sister gave birth in the latter part of 1939. The father of the child, Frank Duncan, was working in Texas for the federal Works Progress Administration. He earned only about \$40 a month, but he was lucky to have a job because unemployment still dominated American society.

Edwards drove to Texas to fetch his brother-in-law so the family could be re-united. In Spur, Texas, Duncan got in the car with only \$20 in his pocket, all of which was spent by the time the two men returned to California.

Duncan could not find work in Yuba County and within a couple of weeks began receiving "financial assistance" from the federal Farm Security Administration. As a result, Edwards was charged with a violation of California Welfare and Institutions Code § 2615:

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Every person . . . that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be . . . Indigent . . . is guilty of a misdemeanor.

That was only one of California’s measures to keep poor immigrants from crossing its borders. As Caragozian observed, the state’s motives were not hard to fathom. The populace was suffering from the Great Depression, and nowhere more than in rural counties like Yuba. Crop and cattle prices were hard hit, financial credit was difficult to obtain, mechanization had begun to reduce the need for farm labor, and federal policy required farmers to fallow their land. Simultaneously, two “great migrations” were occurring in the United States: the Great Migration from the Deep South (chronicled in *The Warmth of Other Suns*²) which brought more than 1.6 million people, largely African Americans, out of the South; and the Dust Bowl Migration which drove more than 2.5 million people from the Southwest. Of course, Route 66 — which ended at the Santa Monica Pier — was a major artery for many of these migrants.

At times more than one in five Californians depended on public relief. But as the economy worsened and incomes dropped, so too did tax revenues. California was concerned about an influx of needy who would seek public assistance and add nothing to the tax base.



(LEFT) Sign at entrance to the Yuba City FSA (Farm Security Administration) farm workers’ camp. Yuba City, California.

PHOTO BY RUSSELL LEE.
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So California sought to stem the migration. In 1936 the Los Angeles Police Department sent 125 officers to the Arizona border, forming the so-called “bum blockade.” They had orders to turn back those who appeared to be poor.

District attorneys began to enforce Section 2615. Edwards was convicted in the Marysville Justice Court for having knowingly brought his indigent brother-in-law into California. His conviction was affirmed by the Yuba Superior Court. Under then-existing California procedure, he had no further appeal — save to the United States Supreme Court, which took the case in order to consider the constitutionality of Section 2615.

In defense of the statute, Yuba’s counsel cited the *Japanese Immigrant Case*,³ decided by the Supreme Court in 1903. He reasoned that if the federal government could exclude a penurious Japanese immigrant who was likely to become a public charge, then so too could California exclude Mr. Duncan. Counsel also made the argument quoted above.

The United States Supreme Court unanimously declared the statute unconstitutional. The principal opinion garnered only five votes; one concurrence represented the views of three other justices, and Justice Jackson’s concurrence was joined by no other.

The majority grounded its decision on the Commerce Clause. Justice Byrnes wrote,

The State asserts that the huge influx of migrants into California in recent years has resulted in problems of health, morals, and especially finance, the proportions of which are staggering. It is not for us to say that this is not true . . .

But, in the words of Mr. Justice Cardozo: “The Constitution was framed . . . upon the theory that the peoples of the several States must sink or swim together, and that in the long run prosperity and salvation are in union and not division.”



Squatter camp on county road near Calipatria. Forty families from the dust bowl camped here for months on the edge of the pea fields. There was no work because the crop was frozen.

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It is difficult to conceive of a statute more squarely in conflict with this theory than the Section challenged here. Its express purpose and inevitable effect is to prohibit the transportation of indigent persons across the California border. The burden upon interstate commerce is intended and immediate; it is the plain and sole function of the statute . . . We think this statute must fail under any known test of the validity of State interference with interstate commerce.

Justices Douglas, Black and Murphy did not accept the Commerce Clause rationale. (“[T]he right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines.”) Instead, they grounded their decision on the Privileges and Immunities Clause, holding the right to move from state to state a right of national citizenship.

Justice Jackson also turned to the Privileges and Immunities Clause. But he deepened Justice Douglas’ analysis, writing,

It is here that we meet the real crux of this case. Does “indigence” as defined by the application of the California statute constitute a basis for restricting the freedom of a citizen, as crime or contagion warrants its restriction? We should say now, and in no uncertain terms, that a man’s mere property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States. “Indigence” in itself is neither a source of rights nor a basis for denying them. The mere state of being without funds is a neutral fact — constitutionally an irrelevance, like race, creed, or color . . .

Any measure which would divide our citizenry on the basis of property into one class free to move from state to state and another class that is poverty-bound to the place where it has suffered misfortune is not only at war with the habit and custom by which our country has expanded, but is also a short-sighted blow at the security of property itself.

Edwards’ conviction was reversed. But the views of the four “privileges and immunities” justices lived on.

Their analysis was revived in the mid-1960s when some of the great civil rights cases came before the Court. *Edwards* was cited to sustain a federal conviction for interfering with a right to interstate travel (*United States v. Guest*⁴). Justice Jackson’s ringing endorsement of the irrelevance of poverty was used to strike down Virginia’s poll tax in *Harper v. Virginia Board of Elections*.⁵ *Edwards* underlies the decisions that struck down a state’s one-year residency require-



Dust bowl refugees camp along the highway near Bakersfield, California.

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ment for welfare eligibility (*Shapiro v. Thompson*⁶) and state and local anti-vagrancy laws (*Papachristu v. City of Jacksonville*⁷).

Space precludes describing many of the other lessons and ironies which Mr. Caragozian presented to the members of the California Judges Association who attended. But those who heard the presentation were reminded that history surely is the third dimension of our profession and merits our attention. ★

ENDNOTES

1. *Edwards v. California*, 314 U.S. 160 (1941).
2. Isabel Wilkerson, *The Warmth of Other Suns* (Vintage Books, 2011).
3. *Japanese Immigrant Case* [*Yamataya v. Fisher*], 189 U.S. 86 (1903).
4. *United States v. Guest*, 383 U.S. 745 (1966).
5. *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966).
6. *Shapiro v. Thompson*, 394 U.S. 618 (1969).
7. *Papachristu v. City of Jacksonville*, 405 U.S. 156 (1972).

EDITOR’S NOTE: *The photographs on pages 17, 18 (lower) and 19 were taken in the 1930s by photographer Dorothea Lange, working for the U.S. Government. The Farm Security Administration – Office of War Information Photograph Collection forms an extensive pictorial record of American life between 1935 and 1944. Photo captions are modified from those on the FSA website. For more information visit <http://www.loc.gov/pictures/collection/fsa/>.*