

contact: Mayumi Tsutakawa

DEFINITION: CORAM NOBIS is a means of obtaining a vacation or setting aside of a conviction. It is used to prevent injustice and to correct fundamental errors that affect the validity of legal proceedings.

The petitions of Gordon Hirabayashi, Fred Korematsu and Minoru Yasui for writs of error coram nobis are based on evidence of flagrant government misconduct. The following chronology of events shows that the government suppressed, altered and destroyed evidence and committed fraud upon the United States Supreme Court.

CHRONOLOGY

<u>Date</u>	<u>Event</u>
March 1941- end of WWII	FBI investigations reveal no sabotage or espionage by Japanese Americans.
<u>1942</u> January 9	Lt. Gen. John L. DeWitt of the Army meets with George E. Sterling, chief of FCC's Radio Intelligence Division. <u>Sterling states that round-the-clock surveillance of radio communications has shown no espionage by Japanese Americans.</u>
January 26	Office of Naval Intelligence issues two-year study of West Coast Japanese Americans by Lt. Commander Kenneth Ringle. The Ringle Report concludes that the vast majority of Japanese Americans are loyal to the U.S. The Report also recommends that any detention be handled on an individual rather than a racial basis.
February-May	Army's Military Intelligence Division submits numerous reports to DeWitt that accusations of Japanese American espionage cannot be substantiated.
February 19	President Franklin D. Roosevelt signs Executive Order 9066, authorizing exclusion of persons from designated "military areas." The purpose of the Executive Order is to protect against espionage and sabotage.
February 20	Secretary of War Henry L. Stimson appoints DeWitt military commander of the Western Defense Command.

<u>Date</u>	<u>Event</u>
<u>1942</u> March 2 cont'd	DeWitt issues Public Proclamation No. 1. This proclamation finds that the entire West Coast is subject to espionage and sabotage by Japanese Americans. Military measures are needed to protect against this "danger." Thus, DeWitt announces the planned evacuation of all Japanese Americans from the West Coast.
March 21	President Roosevelt signs Public Law 503, making it a crime to violate a military order or restriction in a military area.
March 27- June 12	98 Civilian Exclusion Orders are issued. West Coast Japanese Americans are required to report to Civilian Control Centers for processing and transfer to Assembly Centers.
March 28	Minoru Yasui is arrested in Portland, Oregon for violating the curfew order.
March-October	110,000 Japanese Americans are evacuated to 10 internment camps in California, Arizona, Colorado, Wyoming, Idaho, and Arkansas. (Most remained for the duration of the war, and the last were not released until March 20, 1946.)
May	Preparation of DeWitt's "Final Report: Japanese Evacuation from the West Coast 1942" begins.
May 12	Gordon Hirabayashi is arrested in Seattle, Washington for violating the curfew and exclusion orders.
May 30	Fred Korematsu is arrested in the Bay Area, California for violating the exclusion order.
September 8	Korematsu is convicted in federal court in San Francisco of violating the exclusion order.
October 20	Hirabayashi is convicted in federal court in Seattle of violating the curfew and exclusion orders.
November 16	Yasui is convicted in federal court in Portland of violating the curfew order.
<u>1943</u> April 5	After the Hirabayashi and Yasui cases reach the U.S. Supreme Court, the Court sets oral argument for the week of May 10.

<u>Date</u>	<u>Event</u>
<p>1943 April cont'd</p>	<p>Edward J. Ennis, Director of the Alien Enemy Control Unit of the U.S. Dept. of Justice, is responsible for preparing the government briefs in the Supreme Court in the Hirabayashi and Yasui cases. He asks the War Dept. to send him DeWitt's Final Report for use in the Supreme Court briefs. The War Dept. withholds the Final Report from the Dept. of Justice until January 1944 under the guise of military classification.</p>
<p>April 15</p>	<p>DeWitt sends the first version of his Final Report to the War Dept.</p>
<p>April 30</p>	<p>Ennis states in a memorandum to Solicitor General Charles Fahy that the Dept. of Justice may have a duty to inform the Supreme Court of the Ringle Report: "in one of the crucial points of the case the Government is forced to argue that individual, selective evacuation would have been impractical and insufficient when we have positive knowledge that the only Intelligence agency responsible for advising DeWitt gave him advice directly to the contrary." He remarks that not to tell the Court about the Ringle Report "might <u>approximate the suppression of evidence.</u>" (Fahy ignores Ennis' memo. the government's brief does not mention the Ringle Report.)</p>
<p>May 3</p>	<p>Assistant Secretary of War John J. McCloy objects to the statement in the first version of the Final Report that "It was impossible to establish the identity of the loyal and the disloyal with any degree of safety. It was not that there was insufficient time in which to make such a determination; it was simply a matter of facing the realities that a positive determination could not be made, that an exact separation of the 'sheep from the goats' was unfeasible." The statement undermines the government's argument that there was insufficient time in which to make loyalty determinations, and reveals that the evacuation orders were based solely on racial factors.</p> <p>McCloy orders the Final Report changed to state that "no ready means" existed to separate the disloyal from the loyal.</p> <p>McCloy also objects to DeWitt's statement in his letter of transmittal that Japanese Americans would be excluded from the West Coast for the duration of the war. McCloy is concerned that the Supreme Court will react negatively to this policy. He orders the statement dropped.</p>

	<u>Date</u>	<u>Event</u>
1943 cont'd	May 9, 11	DeWitt calls in copies of the first version of the Final Report. He requests the War Dept. to destroy all records of receipt of the Report.
	May 10, 11	Supreme Court hears oral argument in the Hirabayashi and Yasui cases.
	June 5	DeWitt submits the altered Final Report to the War Dept. The new Report eliminates the statements that it was impossible to separate the disloyal from the loyal, and that Japanese Americans would be excluded from the West Coast for the duration of the war.
	June 21	Supreme Court upholds convictions of Hirabayashi and Yasui and cites "military necessity" for the curfew order.
	June 29	DeWitt's office destroys the first version of the Final Report.
1944	February 7	At the request of Attorney General Francis Biddle, J. Edgar Hoover of the FBI reports that the Final Report was inaccurate in accusing Japanese Americans of espionage.
	March 27	Supreme Court agrees to review Korematsu's case.
	April 4	In response to Biddle's request, FCC Chairman James L. Fly reports that there was no evidence supporting the Final Report's citations of illegal radio transmission and shore-to-ship signalling by Japanese Americans.
	September	Government's brief in the Korematsu case circulates to War Dept. and Justice Dept. officials for approval. John L. Burling, Asst. Director of the Alien Enemy Control Unit of the Justice Dept., writes a footnote in the brief. The footnote states that the Final Report's justifications for the evacuation as a matter of military necessity are in conflict with information received by the Justice Dept. In particular, claims that Japanese Americans used illegal radio transmitters and sent shore-to-ship signals had not been substantiated. The footnote asks the Supreme Court not to take judicial notice of those facts.
	September 11	Burling writes a memo to Asst. Attorney General Herbert Wechsler. He refers to the Final Report's

<u>Date</u>	<u>Event</u>
1944 cont'd	allegations concerning radio transmissions and shore-to-ship signalling by Japanese Americans. He states, "[t]here is no doubt that these statements are intentional falsehoods."
September 30	McCloy objects to Burling's footnote and asks Fahy to stop the printing of the brief. Ennis writes a memo to Wechsler, strongly recommending that the footnote remain in the government's brief. Ennis notes that the Justice Dept. knew of the "wilful historical inaccuracies of the [Final] Report." He argues that to cite the Report to the Supreme Court without correcting it would be a breach of the government's ethical obligations and an abuse of the doctrine of judicial notice. Captain Fisher of McCloy's staff tells Burling that he will "not defend the accuracy of the report." However, "the Government would deal with sufficient honesty with the [Supreme] [C]ourt" by refraining from criticizing the report.
October	War Dept. persuades the Justice Dept. to omit the Burling footnote from the government's <u>Korematsu</u> brief.
December 18	Kept unaware of the existence of the Ringle Report and FBI and FCC reports, and misled by the Final Report's false evidence of espionage and sabotage among Japanese Americans, the Supreme Court affirms Korematsu's conviction.