
COMMITTEE TO REVERSE THE JAPANESE AMERICAN WARTIME CASES
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Press Conference:
9:30 AM, Monday, January 31, 1983
Seattle Public Library
Auditorium

JAPANESE AMERICANS TO REOPEN WARTIME EVACUATION CASES --

BACKGROUND INFORMATION

Three Japanese Americans who refused to obey wartime curfew and evacuation orders are filing Federal Court petitions to set aside their convictions. The petition on behalf of Fred Korematsu was filed in San Francisco on January 19. The petition on behalf of Gordon Hirabayashi was filed this morning in Seattle in Federal Court and the petition on behalf of Min Yasui will be filed in Federal Court in Portland on February 1.

Minoru Yasui, Gordon Hirabayashi and Fred Korematsu were defendants in the landmark U.S. Supreme Court cases which upheld the legality of the evacuation and internment of more than 110,000 Japanese Americans. Approximately 70,000 of the internees were American citizens.

These petitions accuse top government officials and attorneys of suppressing, altering and destroying key evidence in order to influence the outcome of these important cases.

"The importance of this petition is that the evidence for reversing these convictions comes from the government's own files," said Peter Irons, lead counsel. Records show that the efforts of government lawyers who objected to the suppression of evidence were rejected by high-ranking officials."

Yasui, Hirabayashi and Korematsu charge that the government knowingly misled the Court by presenting false evidence so that the constitutionality of the evacuation would be upheld.

Minoru Yasui was convicted in 1942 for violating military curfew orders aimed at Japanese Americans. In addition to his internment, Yasui spent nine months in solitary confinement in county jail. A young attorney in Portland at the time of his arrest, Yasui said, "I violated the curfew order on purpose because I thought it was wrong."

Gordon Hirabayashi was convicted both for violating the curfew, and for refusing to report to a civil control station for evacuation. He served a total of two years in county jails and federal prisons. "My only charge was my ancestry. Why not accuse me of espionage or something, I told them. Then I would have grounds to defend myself." Hirabayashi was a senior at the University of Washington when he was ordered to an internment camp.

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Fred Korematsu was similarly convicted for violating evacuation orders and was sentenced to five years probation in addition to his internment. "It wasn't right to evacuate everyone without a hearing. Being an American citizen didn't mean a thing," he said. Korematsu worked as a welder in the San Francisco Bay Area at the time of his arrest.

In 1943 and 1944, their cases were appealed to the U.S. Supreme Court and in a series of unprecedented decisions, the high Court held that the en masse racial evacuation and internment was justified by "military necessity."

The finding of "military necessity" by the Court was based upon government representations that Japanese Americans were committing espionage and sabotage by signalling enemy ships from shore.

The Court also accepted government arguments that the loyalty of Japanese Americans was suspect because of the racial characteristics of the population. "[W]e cannot reject as unfounded the judgment of the military authorities and that of Congress that there were disloyal members of [the Japanese American] population whose number and strength could not be precisely and quickly ascertained," wrote the Court in the Hirabayashi decision.

The allegations of espionage, sabotage and disloyalty were contained in an official document entitled the Final Report, issued by Lt. General John DeWitt, who ordered the evacuation and internment. These allegations were "repeated often verbatim" in the Court briefs of the Justice Department and the Attorneys General of the states of California, Oregon and Washington, according to Dale Minami, lead attorney for Fred Korematsu.

Yasui, Hirabayashi and Korematsu now charge that the Justice Department and the War Department were aware of high level reports from the Office of Naval Intelligence, the FBI, the FCC, and the Army's own military Intelligence Division (G-2), which directly refuted the espionage, sabotage and disloyalty allegations. These reports, which undermined the "military necessity" claims, were withheld from the Court.

ORIGINAL "FINAL REPORT"
CONTRADICTED GOVERNMENT'S POSITION

They also have discovered evidence of a heretofore unknown original version of the Final Report which contradicted and undermined the government's position before the Court.

The first version stated that mass evacuation was necessary not because there was insufficient time to make individual loyalty determinations, but because it was "impossible" to separate the loyal from the disloyal no matter how much time was taken in the process.

The Justice Department had consistently argued to the Court that mass evacuation was necessary precisely because there was insufficient time to hold individual hearings. War Department officials were also concerned that the Supreme Court might view DeWitt's position that it was "impossible" to determine the loyalty of Japanese Americans as racist.

The Report was altered, the original Final Report was burned, and records indicating the issuance of the first Final Report were destroyed to conceal its existence.

The Office of Naval Intelligence conducted a two-year study of the West Coast Japanese American population. Authored by the ONI authority on Japanese Americans, Lt. Commander Ringle, the report concluded that only a small and readily identifiable portion of the Japanese American people were even potentially disloyal. "The entire Japanese problem has been magnified out of its true proportion largely due to the physical characteristics of the people," wrote Ringle in February of 1942.

Edward Ennis, director of the Enemy Alien Control Division of the Justice Department and the attorney responsible for supervising the drafting of the Justice Department briefs, advised Solicitor General Charles Fahy in April of 1943 that "we must consider most carefully what our obligation to the Court is in view of the fact that the responsible Intelligence Agency regarded selective evacuation as not only sufficient but preferable [to mass evacuation]. "I think we should consider very carefully whether we do not have a duty to advise the Court of the existence of the Ringle memorandum and of the fact that it represents the view of the Office of Naval Intelligence... Any other course of conduct might approximate the suppression of evidence."

FBI, FCC: NO ILLICIT SIGNALLING

In response to a request by Attorney General Francis Biddle to verify the accuracy of the Final Report, J. Edgar Hoover wrote in February 1944: "Every complaint [of shore to ship signalling and radio transmissions] has been investigated, but in no case has any information been obtained which would substantiate the allegation that there has been illicit signalling from shore to ship..."

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In response to a similar request, James Fly, the Chairman of the FCC, wrote in February 1944: "There were no radio signals...which could not be identified, or which were unlawful."

In a February 1944 memo to Attorney General Biddle, Ennis wrote: "[The Final Report] stands as practically the only record of causes for the evacuation and unless corrected will continue to do so. Its practical importance is indicated by the fact that it is being cited in the briefs in the Korematsu case in the Supreme Court..."

Another Justice Department attorney, John Burling, wrote in a memo to Assistant Attorney General Herbert Wechsler: "You will recall that General DeWitt's report makes statements concerning radio transmitters and ship to shore signaling which are categorically denied by the FBI and the Federal Communications Commission. There is no doubt that these statements are intentional falsehoods..."

Ennis also wrote to Wechsler: "The general tenor of the [Final] Report is not only that there was a reason to be apprehensive, but also to the effect that overt acts of treason were being committed. Since this is not so it is highly unfair to this racial minority that these lies, put in an official publication, go uncorrected. This is the only opportunity which this Department has to correct them."

The three petitioners charge that the government's own records prove that officials fabricated the facts underlying the Supreme Court's finding of military necessity.

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