

# Government suffers setback as Hirabayashi trial starts

by Stan Shikuma

SEATTLE—In what has been called “the civil liberties case of the century,” attorneys for Gordon Hirabayashi have charged that the government suppressed, altered and destroyed evidence in its case against him before the Supreme Court in 1943. Such government misconduct, Hirabayashi claims, deprived him—and by extension, 120,000 other Japanese Americans—of a fair trial.

Judge Donald Voorhees opened the trial June 17 in the U.S. District Court. Hirabayashi had been tried in the same court in 1942, when he challenged the WW2 exclusion and internment orders leading to the mass incarceration of Japanese Americans.

The Supreme Court upheld Hirabayashi's conviction in 1943 on grounds of military necessity. Based on new evidence recently uncovered under the Freedom of Information Act, Hirabayashi filed a *writ of error coram nobis* in 1983, petitioning the court to overturn his conviction, dismiss charges against him and hold a full evidentiary hearing on the issue of government misconduct in his case.

## Opening Statements

In opening statements on June 19, Rod Kawakami, a member of Hirabayashi's volunteer legal team, said, “This is not just Gordon Hirabayashi's case. It is not just a Japanese American case. It

is truly an American case.”

Hirabayashi has never wavered in his belief in the constitutional principles protecting the civil rights of all Americans, Kawakami said, and now, 43 years later, he is hoping to see his belief vindicated.

While Hirabayashi and his lawyers will argue there was no military necessity, Kawakami stated that Hirabayashi's petition would focus only on questions of government misconduct and denial of due process. Questions regarding the wisdom of the evacuation decision, he said, would be left for another forum to decide at the judge's direction.

U.S. attorney Victor Stone stressed in his opening statement that prosecutorial misconduct was the only issue. “Whether this is an American case or a Japanese American case is not relevant,” he stated. “Tragic mistakes were made due to the tremendous pressure of the times.” He said it would be absurd to suggest that government officials “would intentionally make efforts to deprive Japanese Americans of their rights.”

Stone said that any prosecutorial misconduct on the U.S. government's part had “nothing to do with the judicial branch of government” but with the executive branch, implying that judicial remedies are thus inappropriate. He also alleged that it was difficult to separate loyal Japanese Amer-

icans from disloyal ones, particularly given the time constraints involved.

Stone then declared his intent to use the so-called “Magic Cables” in presenting the case. The “Magic Cables” were a series of transmissions between Tokyo and the Japanese embassy in the U.S. which were intercepted and decoded by U.S. military intelligence prior to WW2. They have been used in recent years to support theories of potential sabotage or espionage among Japanese Americans during WW2.

## Preliminary Motions

Both sides have introduced a mountain of documents as evidence. Hirabayashi's lawyers submitted over 165 separate pieces of evidence, most of which were accepted by the court over government objections. During preliminary motions on June 17, however, the government received a setback when Judge Voorhees ruled to exclude a large block of government evidence. Stone had apparently failed to provide the court or the opposing attorneys with a list of documents prior to trial, as had been ordered.

Voorhees also excluded an *amicus curiae* (friend of the court) brief submitted jointly by JACL and the American Jewish Committee. Kawakami said that it may have imposed undue hardship on government counsel, who would have to review and respond

to it. It also addressed issues which the judge decided were outside the scope of the trial, such as federal war powers and the argument of military necessity.

## Testimony Begins

Edward Ennis, former director of the Alien Enemy Control Unit within the Justice Dept. during WW2, was the first witness called to the stand. Under questioning by Camden Hall, another of Hirabayashi's attorneys, Ennis testified that the Justice Dept. possessed copies of numerous intelligence reports attesting to the loyalty of Japanese Americans.

None of these reports, Ennis stated, was ever transmitted to the Supreme Court or to Hirabayashi's lawyers. Two of these reports, one by the FBI and the other by the Office of Naval Intelligence, specifically advised against a mass evacuation of Japanese Americans on the West Coast.

When asked why the Justice Dept. originally opposed the Army's request for mass evacuation, Ennis said, “There was no factual basis for it.”

Hall elicited further testimony regarding Lt. Gen. John DeWitt's final report on the removal and detention of Japanese Americans. Two versions were printed, one prior to Hirabayashi's Supreme Court hearing and one after. The

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# HIRABAYASHI

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first version contained arguments that contradicted government arguments in Hirabayashi's case. The second had been revised to conform with it.

During cross-examination by Stone, Ennis said that if one accepts the proposition that the Japanese American population posed a serious danger to national security, then one must also agree that there was no time or mechanisms available to hold individual hearings. But he then restated his personal belief that the facts did not justify mass evacuation.

Attorneys for Hirabayashi plan to call three more witnesses: attorney, author and law professor Peter Irons, archival researcher Aiko Herzig and Hirabayashi himself. The government plans to call as many as seven witnesses, most of whom will testify on military intelligence and "Magic."

Roger Shimizu, co-chair of the Committee to Reverse the Japanese American Wartime Cases, feels confident of the outcome. "The internment should never have happened," he said. "This is the case that will prove it."



# People

## Education

Mark Nishikawa, son of  
hi and June Nishi-  
of Dixon, Calif., re-  
d his degree in Doctor

## Community

**Jean Ariyoshi**, first lady  
of Hawaii, was honored at  
a gala event held at Hono-  
lulu's Blaisdell Exhibition

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## Politics



**Lance Izumi** of Gardena  
and **Ruth Watanabe** of  
West Los Angeles have  
been appointed to the State  
Central Committee of the  
Calif. Republican Party by  
state party chair and L.A.  
County supervisor **Mike  
Antonovich**. The central  
committee is the party's  
governing body whose du-

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