

II. The Redress Provided by H.R. 442 Remains
Necessary And Has Not Been Mooted By Pre-
vious Governmental Actions

Beyond providing compensation for actual losses, the significance of H.R. 442 lies in its recognition of the seriousness of our government's conduct which, as a matter of policy, deprived over 110,000 persons of their constitutional rights and freedoms. Passage of H.R. 442 will serve as a national acknowledgment of the wrong and as a pledge to prevent future actions of like character. Passage of H.R. 442 will constitute a commitment that through education and preservation of the historical record, we can prevent repetition of this national tragedy.

In particular, in view of the government's egregious misconduct, used to secure the convictions of Mr. Korematsu, Mr. Hirabayashi and Mr. Yasui, we believe that Congress should act affirmatively to provide relief to those persons convicted of violating the military orders implementing the internment, including those persons who pled guilty to other offenses to avoid such a conviction. We take no position as to whether a pardon is the correct or appropriate vehicle for vacation of any such convictions, but believe that Congress should afford some form of meaningful relief. Convictions for violation of a law wrongfully enacted and enforced should not be allowed to stand.

The Justice Department's position that redress is unnecessary because full compensation was made under the 1948 Japanese American Evacuation Claims Act is misleading and unsupportable. The Commission, whose findings the Department ignores, specifically found that:

" . . . as a result of exclusion and detention, in 1945 dollars the ethnic Japanese lost between \$108 and \$164 million in income and between \$41 and \$206 million in property for which no compensation was made . . . under the terms of the Japanese-American Evacuation Claims Act." 10/

As importantly, the Department also refuses to recognize that no compensation was made by the 1948 Act or otherwise for:

" . . . the stigma placed on people who fell under the evacuation and relocation orders; the deprivation of liberty suffered during

detention in the assembly and relocation centers; the psychological impact of evacuation and relocation; the loss of earnings or profits; physical injury or death during detention; and losses from resettlement outside the camps. 11/

The Department also disparages the educational provisions of the bill in wholly conclusory terms and without authority. It erroneously characterizes this effort to clear Japanese Americans of wrongdoing as an effort to force on the public an "official" and implicitly erroneous version of history. As stated before, all existing authority finds that Japanese Americans were unjustly interned. The Department's disingenuous attempts to justify the internment, therefore, only illuminate the need to preserve the historical evidence and to educate the public, not only of the actual events but also of their underlying causes. In the coram nobis proceedings, the Department first sought to circumvent examination of the suppression of evidence and other misconduct employed to sustain the validity of the internment in the courts. It ultimately chose to defend the internment on the merits in Hirabayashi. Clearly, the Department has no interest in preserving evidence of error and wrongdoing. If we are to prevent similar wrongs in the future, however, we cannot afford to choose to ignore this history.

III. This Committee Should Reject the Misrepresentation of the Department of Justice Perpetuating the myths of Japanese American Disloyalty

Before Congress and the federal courts, the Department of Justice has repeatedly attempted, through the so-called Magic Cables, to justify an inference of widespread Japanese American involvement in wartime espionage. That astonishing argument was rejected by the Hirabayashi court. Equally astonishing is the Department's contention that "persons residing outside the United States" and those driven by the conditions of internment to renounce their citizenship should be denied redress. The Department's contention, which perpetuates the myth of Japanese American disloyalty, is wholly improper and should be unambiguously rejected.

The Department's position is hardly "in keeping with our nation's best tradition of individual rather than collective response." (DOJ test. p. 8.) Although ostensibly intended to exclude disloyal persons from sharing in redress, it is so broadly framed as to impugn the integrity of large numbers of entirely loyal Japanese Americans and, as importantly, is based on the long rejected presumption labeling the voluntary repatriates as disloyal.

A citizen's residence outside of this country has no necessary bearing whatsoever on his attitude toward this country. A prime example of this is Gordon Hirabayashi. Mr. Hirabayashi, one of the three coram nobis petitioners, is a resident of Edmonton, Alberta, Canada where, until his recent retirement, he has been a professor at the University of Alberta. He, like many other Americans living outside this country, has never renounced his citizenship. As Judge Voorhees recognized, Mr. Hirabayashi's loyalty and commitment to this nation's principles is unquestionable. ^{12/} Neither Mr. Hirabayashi nor any other former internee should be subject to the presumption of wartime disloyalty based on present residence proposed by the Department.

Furthermore, the Department's sweeping characterization of the renunciants and the voluntary repatriates as disloyal is unfair and unsupportable. Indeed, in Acheson v. Murakami, 176 F. 2d 953 (9th Cir. 1949), which the government misleadingly cites in support of its position, the court permitted these persons to withdraw their renunciations of citizenship on the ground that their "imprisonment" at Tule Lake, and by implication the other camps as well, prevented any free, intelligent and voluntary choice. In reaching its decision, the court explicitly found that the initial renunciation of citizenship stemmed from:

"the unnecessarily cruel and inhuman treatment of these citizens (a) in the manner of their deportation for imprisonment and (b) in their incarceration for over two and a half years under conditions in major respects as degrading as those of a penitentiary and in important respects worse than in any federal penitentiary, and (c) in applying to them the Nazi-like doctrine of inherited racial enmity, stated by the Commanding General ordering the deportations as the major reason for that action."
Id. at 954.

As the court recognized, the presumption that renunciation was solely the result of disloyalty is overbroad and unfair. Japanese Americans were subjected to an unprecedented deprivation of their rights and freedoms at the hands of their government, separated from family and friends, imprisoned, vilified and deprived of a normal life. It is more than presumptuous to judge the motivations of people who had been treated so shamefully. To judge their actions as products of disloyalty is beyond the capability of the Department of Justice.

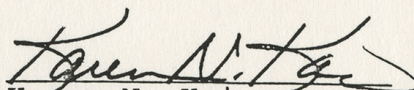
CONCLUSION


The federal District Courts in Korematsu and Hirabayashi both found that the government knowingly and intentionally suppressed evidence and presented false evidence to the courts in an attempt to justify the internment of Japanese Americans during World War II. The testimony submitted by the Department of Justice to this Committee revives the government's 40-year-old attempt to justify racial discrimination and abuse of executive and military authority as legitimate exercises of governmental authority under the Constitution. The Department's position only portends the possibility of future abuse of such power and authority. It is our belief, and we hope the belief of the American people and this Committee, that this is not and cannot be so. The imprisonment of Japanese Americans was more than an "unfortunate episode" or "tragic mistake." It was a breach of our nation's most basic principles that visited untold suffering on three generations of Americans. This Committee has an opportunity to help rectify that wrong and ensure that it never happens again. We urge the Committee to seize that opportunity and recommend the passage of H.R. 442.

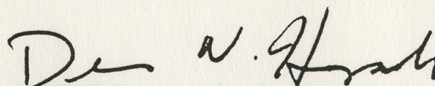
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ENDNOTES

- 1/ In 1942, Fred Korematsu was convicted of violating exclusion and internment orders promulgated against persons of Japanese ancestry during World War II. Minoru Yasui and Gordon Hirabayashi were also convicted of violating curfew orders issued against Japanese Americans during this period. All three cases were heard by the United States Supreme Court which upheld the validity of the orders based on the government's argument that imminent military necessity existed to justify the curfew, exclusion and detention of the entire population of Japanese ancestry. These cases have stood for 40 years as constitutional authority for the internment of Japanese Americans.

Messrs. Korematsu, Hirabayashi and Yasui filed their petitions for writ of error coram nobis in the federal District Courts in San Francisco, Seattle and Portland in 1983. Their petitions were based upon new evidence showing that their convictions were obtained as the result of the government's misconduct in knowingly suppressing evidence from the courts showing that no military necessity existed for the blanket curfew, exclusion and internment orders.

We respectfully refer the Committee to the Testimony of William L. Robinson on behalf of the American Bar Association, which provides an excellent description of the factual bases of the coram nobis petitions and of the court's opinion in Korematsu v. United States, 584 F. Supp. 1406 (N.D. Cal. 1984).

- 2/ Korematsu v. United States, 584 F.Supp. 1406, 1415 (N.D. Cal. 1984).
- 3/ Id. at 1416-1417.
- 4/ Id. at 1414.
- 5/ Addendum to Personal Justice Denied, typed draft, p. 6.
- 6/ The government presented the testimony of David Lowman to substantiate its Magic Cables theory. Mr. Lowman has testified before the Subcommittee on Administrative Law and Governmental Relations of the House Committee on the Judiciary 98th Congress, 2nd Session, on H.R. 3387,

H.R. 4110 and H.R. 4322 at pp. 430-548. His testimony before the Committee was refuted by Mr. John A. Herzig whose testimony appears at pp. 801-936. Mr. Herzig also testified at the Hirabayashi hearing.

- 7/ Hirabayashi v. United States, 627 F. Supp. 1445, 1457 (W.D. Wash. 1986).
- 8/ Yasui v. United States, Brief as Amicus Curiae filed February 19, 1985.
- 9/ Korematsu v. United States, supra at 1419; Amicus Brief at 8-11.
- 10/ Personal Justice Denied, Part 2: Recommendations, p. 5.
- 11/ Personal Justice Denied, Part 1, p. 118.
- 12/ See Order dated April 29, 1986, at 12-14, Hirabayashi v. United States, No. C83-122V.