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Hirabayashi, Gordon

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May 21, 1943

Dear Friend:

Since thee was a helpful contributor to the expenses of the Hirabayashi case, we feel that thee might like to have a brief, though informal, report of the hearing before the Supreme Court which we attended on Fifth Month 10th and 11th.

Each one of the Justices was in his chair when this case was called, and their interest was marked from beginning to end.

The case was introduced by Frank Walters, Attorney from Seattle, who had charge of the case in both the District and Circuit Courts. He gave briefly the historical background of the case, and then asked Harold Evans to present the arguments before the Court.

Harold was promptly and repeatedly plied with penetrating questions by almost all of the Justices. He seemed to us remarkably able in his answers, as well as showing much tact and courtesy when he differed or entirely disagreed with his questioner.

The case took the closing three quarters of an hour of the first day, and the next morning Harold offered to give the short time remaining for him to another attorney, but the Court continued to question him for about half an hour, and granted twenty minutes extra to the allotted time. This was followed by the argument by Mr. Wirin, an attorney from Los Angeles representing the Civil Liberties Union and the Japanese American Citizens League in two other similar cases, one of which was heard with the Hirabayashi case. He was a very rapid and emphatic speaker, who dealt largely with what he considered the discrimination and race prejudice involved in the evacuation of American citizens.

The Government's case was quietly and ably presented by Solicitor General Fahy. Following this, Harold Evans made a short rebuttal.

The Judges of the Court were obviously aware of the importance of the issues which they were called upon to decide, and were evidently concerned with trying to reconcile civil rights in war times and the necessity of preserving the war power of the President in time of war. The atmosphere of the Court was friendly and informal, and one that was conducive to both sides having a fair hearing, and the opportunity to present their side of the case. Regardless of what the decision is, it was reassuring to know that a problem of this sort in time of war could have a fair hearing in an atmosphere that was devoid of war hysteria. Because of the seriousness of the issues involved it may be some time before the Court makes a decision.

We are convinced that raising these constitutional questions has been a real service, irrespective of the decision of the Court. Arthur Barnett and Mary Farquharson of the Western Hirabayashi Committee were present and were well satisfied with the way in which the case was presented to the Court.

Sincerely,

C. Walter Borton
Homer L. Morris

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4. The loss of vegetable and fruit products on the Pacific Coast has been almost disastrous. Both army and civilians need more of these things.

5. Many thousands of good Americans will have their loyalty and respect for their country weakened if not entirely alienated. We should have strengthened their loyalty and not weakened it.

The answer to this vital question is to carry the case to the supreme court and trust that these fair minded judges will restore the rights of true American citizens.

The Case of Gordon Hirabayashi

The Case of the American People

Gordon Hirabayashi Defense Committee

4033 UNIVERSITY WAY

SEATTLE



The Case of Gordon Hirabayashi

During the First World War Mitsu and Shingo Hirabayashi sought the shores of a free land and settled near Seattle believing that at last they had found a Christian country where their children might grow up under the influence of a democratic society. Gordon Hirabayashi, their oldest son was born in this country and raised a Christian American citizen. He entered the University of Washington and by his senior year (the time of the evacuation) was majoring in the social sciences with a minor in mathematics. Although he was a quiet, thoughtful type of person, well-read and with strong convictions, he was also active in student activities, and was personally popular with his classmates. In his junior year he was vice-president of the campus Y.M.C.A. and was of great assistance to the general secretary. He became a member of the Society of Friends in November, 1941.

At the time of the Japanese evacuation he refused to register and surrendered to the U. S. district attorney. He submitted at that time a written statement. In part it said: "The violation of human personality is the violation of the most sacred thing which man owns. This order for the mass evacuation of all persons of Japanese descent denies them the right to live. It forces thousands of energetic, law abiding individuals to exist in miserable psychological conditions and a horrible physical atmosphere. This order limits to almost full extent the creative expressions of those subjected. It kills the desire for a higher life. Hope for the future is exterminated. Human personalities are poisoned. . . . If I were to register and cooperate under these circumstances, I would be giving helpless consent to the denial of practically all of the things which give me incentive to live. I must maintain my Christian principles. I consider it my duty to maintain the democratic standards for which this nation lives. Therefore, I must refuse this order of evacuation."

The legal aspects of the case are thus stated by the defense lawyer, Mr. Frank Walters:

(1) The Executive order and military orders of evacuation are void because of no authority from the Congress, being usurpation of legislative power.

(2) the evacuation orders are unconstitutional and void as against American citizens who cannot be interned without a hearing under the due process clause and equal protection of the laws clause,

(3) Public Law No 503, under which the appellant was prosecuted, is void as being too indefinite and uncertain to constitute a criminal statute, and it defines no crime,

(4) the military orders and their application to American citizens of Japanese ancestry are discriminatory on the basis of race or color,

5) the military orders are void as no martial law has been declared and the military commander cannot apprehend or intern persons, even in military zones, if martial law has not been declared.

Briefly, in the language of a layman, the issues are that Gordon has not had his day in court where he can prove his loyalty to the country of his birth; the military commander imputes disloyalty, which is treason, purely on the grounds that his parents were born in Japan. The military commander seeks to impose his will upon American citizens without establishing any military necessity for doing so; under our Constitution when Congress is in session it has the sole power to define claims against the United States, and to declare martial law but even Congress cannot validly deny the American citizen his right to prove his loyalty to the country of his birth."

Social and Moral Aspects

The evacuation was not necessary.

1. The dangers from and to the Japanese-American citizens could have been handled by the authorities. It was so stated by reliable members of the intelligence departments of both army and navy.

2. In Hawaii where military necessity and dangers were many times that of the mainland there was no evacuation and only partial martial law. Absolutely no incident has occurred.

3. It has cost the American people \$10,000 per family to evacuate these people, or a total of about \$300,000,000.00 to date. This does not count the losses to the people themselves.