

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

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| GORDON K. HIRABAYASHI, |) | |
| |) | |
| Petitioner, |) | NO. C83-122V |
| |) | |
| vs. |) | PETITIONER'S PROPOSED |
| |) | PRETRIAL ORDER ¹ |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Respondent. |) | |

JURISDICTION

Jurisdiction is vested in this Court by virtue of 28 U.S.C. §1651. Included in the powers conferred on federal district courts by this section of the United States Code, known as the All-Writs Act, is the authority to issue writs of error coram nobis and thus to vacate the criminal convictions of defendants who have completed the sentences imposed on them after conviction.

¹Petitioner submitted to Respondent a discovery request (Petitioner's Second Interrogatories, Requests for Production of Documents and Requests for Admission), dated June 29, 1984. Petitioner and Respondent agreed to an extension of time for Respondent to comply with the discovery request. For this reason, Petitioner reserves the right to conduct further discovery as needed after receipt of Respondent's answers to the discovery request and to modify the Pretrial Order accordingly.

ADMITTED FACTS

The following facts are admitted by the parties:

1. Petitioner was convicted in this Court on October 20, 1942 of two counts of violation of Public Law 503, 56 Stat. 173.
2. Petitioner was sentenced by Judge Lloyd Black to a term of ninety days on each count, sentences to run concurrently.
3. Petitioner completed service of his sentence and was subsequently discharged from custody.
4. Petitioner is and at all times has been a citizen of the United States.

FACTS NOT ADMITTED BUT NOT CONTESTED

Petitioner alleges the following facts, which Respondent is not prepared to admit but does not contest:

FACTUAL CONTENTIONS

1. The United States Government violated Petitioner's due process rights by engaging in misconduct as follows:
 - A. Suppression of exculpatory materials which contradicted the assertions of military necessity, the basis for the Government's case against the Petitioner. The exculpatory materials included, but were not limited to, the following:

(i) The reports of the Office of Naval Intelligence on its investigation of Japanese Americans, dated January 26, 1942 and June 15, 1942;

(ii) Reports of the Military Intelligence Division which were contrary to the position taken by the Government that Americans of Japanese ancestry posed a "fifth column" threat;

(iii) Material reports of the Federal Bureau of Investigation;

(iv) Material reports of the Federal Communications Commission; and

(v) General DeWitt's Final Report, dated April 15, 1943;

B. Alteration and destruction of General DeWitt's Final Report dated April 15, 1943, which had the effect of concealing the military justification for curfew, evacuation, and exclusion of Japanese Americans citizens and aliens of Japanese ancestry from the West Coast of the United States;

C. The improper use of the doctrine of judicial notice to prove allegations of the disloyalty of Japanese Americans and their consequent predisposition to commit acts of espionage and sabotage despite the Government's knowledge of and suppression of contrary evidence;

D. Improper assistance to amici in preparing an amici curiae brief to support allegations regarding the disloyalty

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of Japanese Americans and their consequent predisposition to commit acts of espionage and sabotage despite the Government's knowledge of and suppression of contrary evidence; and

E. Suppression of exculpatory evidence which came into the possession of the Government after the Petitioner's case was decided by the United States Supreme Court.

2. The Government's suppression, alteration and destruction of evidence constituted errors of a fundamental character.

3. Petitioner's claims of governmental misconduct have not been previously considered or resolved on appeal or in other post-conviction proceedings.

4. Petitioner has suffered and continues to suffer from adverse collateral consequences or legal disabilities which stem from his criminal convictions.

5. The Government's suppression, alteration and destruction of evidence prejudiced Petitioner's case.

ISSUES OF LAW

1. Whether the Government's failure to apprise the Petitioner and the courts of General DeWitt's Final Report, dated April 15, 1943, and the intelligence reports prepared by the Office of Naval Intelligence, Federal Bureau of Investigation, Federal Communications Commission and Military Intelligence Division constituted suppression of evidence which violated Petitioner's due process rights.

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2. Whether the Government's alteration and destruction of General DeWitt's Final Report, dated April 15, 1943, constituted governmental misconduct which violated Petitioner's due process rights.

3. Whether the Department of Justice had a duty to reopen Petitioner's case when material evidence came into its possession subsequent to the United States Supreme Court decision in Petitioner's case.

4. Whether the Department of Justice had a duty to inform Petitioner of material evidence which came into its possession subsequent to the United States Supreme Court decision in Petitioner's case.

5. Whether the Government's successful request that the Supreme Court take judicial notice of facts allegedly proving the disloyalty of Japanese Americans and their consequent predisposition to commit acts of espionage and sabotage despite the Government's knowledge of and suppression of contrary evidence constituted a denial of Petitioner's due process rights.

6. Whether the Government's assistance to amici in preparing an amici curiae brief to present certain contentions despite the Government's knowledge of and suppression of contrary evidence constituted a denial of Petitioner's due process rights.

7. Whether Petitioner is entitled to issuance of a writ of error coram nobis to correct fundamental errors which deprived him of due process rights under the United States Constitution.

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EXHIBITS

The exhibits listed below will be offered by Petitioner at trial.

1. Memorandum, Edward J. Ennis to Solicitor General Fahy, April 19, 1943. (Exhibit A to the Petition.)
2. Memorandum, Edward J. Ennis to Herbert Weschler, September 30, 1944. (Exhibit B to the Petition.)
3. Letter, General DeWitt to John McCloy, April 15, 1943. (Exhibit C to the Petition.)
4. Final Report, Japanese Evacuation from the West Coast, 1942. (Exhibit D to the Petition.)
5. Transcript of telephone conversation between Colonel Karl Bendetsen and John McCloy, April 19, 1943. (Exhibit E to the Petition)
6. Memorandum, Bendetsen to DeWitt, May 3, 1943. (Exhibit F to the Petition.)
7. Memorandum, "Suggested changes by Captain Hall 'Final Report: Japanese Evacuation From the West Coast, 1942.'" (Exhibit G to the Petition.)
8. Telegram, Bendetsen to General Barnett, May 9, 1943. (Exhibit H to the Petition.)
9. Telegram, DeWitt to Chief of Staff, United States Army, May 11, 1943. (Exhibit I to the Petition.)
10. Letter, Hall to Bendetsen, June 7, 1943. (Exhibit J to the Petition.)
11. Memorandum, Warrant Officer Junior Grade Theodore Smith, June 29, 1943. (Exhibit K to the Petition.)
12. Transcript of telephone conversation between DeWitt and Gullion, January 14, 1943. (Petitioner's Document 5148.)
13. Letter, DeWitt to George, June 15, 1943. (Petitioner's Document 5178.)
14. Telegram, DeWitt from Barnett, April 26, 1943. (Petitioner's Document 5182.)

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