

1 The amicus brief essentially repeats those words at page 14:

2 "Over 124 separate Japanese organizations along
3 the Pacific Coast were engaged, in varying
4 degrees, in common pro-Japanese purposes, with
5 local branches of these parent organizations
6 numbering more than 310. There were 100
7 fascistic or militaristic organizations in
8 Japan having some relation, either direct or
9 indirect, with Japanese organizations or
10 individuals in the United States. Many had
11 branch organizations in the United States and
12 directed the activities of these branches. A
13 line of control existed from the Japanese
14 Government."

9 The initial version of the Final Report stated at page 11:

10 "The Hokubei Butoku Kai or Military Virtue
11 Society of North America was organized in 1931
12 with headquarters in Alvarado, Alameda County,
13 California, and a branch office in Tokyo. One
14 of the purposes of the organization was to
15 instill the Japanese military code of Bushido
16 among the Japanese throughout North America."

14 The amicus brief repeats that statement at page 15:

15 "The Hokubei Butoku Kai or Military Virtue
16 Society of North America had headquarters in the
17 town of Alvarado, California, and a branch
18 office in Tokyo. Its purpose was to instill the
19 Japanese code of Bushido among the Japanese
20 throughout North America."

18 These and other instances compel the conclusion that the
19 initial version of the Final Report was disclosed by the Western
20 Defense Command to the Attorneys-General of California, Oregon and
21 Washington at the time their amicus brief was being prepared.

22 The Department of Justice came to that same conclusion. In a
23 memorandum (Ex. 89) to Edward J. Ennis on April 25, 1944, prior to
24 the Korematsu argument before the Supreme Court, John L. Burling of
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1 the Justice Department complained of the role of the Western Defense
2 Command. That memorandum read in relevant part as follows:

3 "It is entirely clear ... that the brief of the
4 attorneys general of California, Oregon and
5 Washington, in the Hirabayashi case, contained
6 much material taken from General DeWitt's final
7 report, which at that time was classified as
8 confidential and which we were not given (with
9 the exception of a few pages cut out with a
10 knife)."

11 The denial of the Final Report to petitioner's counsel and to
12 the Justice Department at the same time it was being disclosed to
13 counsel for amici in the same action is a further reason for the
14 granting of petitioner's writ of error coram nobis.

15 The argument by the government that General DeWitt was not the
16 sole decision maker is hardly worthy of consideration. It is true,
17 of course, that Executive Order 9066 was issued by President
18 Franklin D. Roosevelt and that it authorized Secretary of War Henry
19 L. Stimson to prescribe military areas from which any or all persons
20 might be excluded. The Secretary of War, however, delegated his
21 authority under Executive Order 9066 to General DeWitt, the
22 Commanding General of the Western Defense Command. After that
23 delegation it is beyond question that it was General DeWitt who made
24 the decision to designate the geographical boundaries of Military
25 Area No. 1. It is equally beyond question that it was he who issued
26 the series of exclusion orders which compelled the evacuation of the
Japanese-Americans from Military Area No. 1.

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1 The argument by the government that General DeWitt was not
2 ordered to change his report may be treated no less summarily. This
3 Court's memorandum decision stated that "changes in (General
4 DeWitt's) report ... were insisted upon by the War Department..."
5 The government argues that changes in General DeWitt's report were
6 not "insisted upon" by the War Department but were rather
7 "suggested" by the War Department.

8 In the Court's opinion it matters not whether the War
9 Department "insisted" that certain changes be made or only
10 "suggested" that they be made. A fair reading of the exhibits in
11 this case reveals that General DeWitt must have felt himself under
12 considerable pressure to change the wording of his report. On April
13 27, 1943, (Exhibit 68) he is stating:

14 "My report as signed and submitted to Chief of
15 Staff will not be changed in any respect
16 whatsoever either in substance or form and I
17 will not repeat not consent to any repeat any
18 revision made over my signature."

19 But by May 9, 1943, he is acquiescing in the changes which the War
20 Department thought should be made. Between those two dates one can
21 fairly infer an element of insistence by the War Department.

22 Finally, the government again makes the argument that
23 petitioner is barred by laches. As pointed out above, the critical
24 suppression of evidence in this case was the suppression of the

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1 initial version of General DeWitt's Final Report. That version gave
2 his unvarnished, unedited, unrevised, considered reason for
3 concluding that there was a military necessity for excluding
4 Japanese-Americans from the Pacific Coast. That reason was not'
5 disclosed to petitioner's counsel nor to the Supreme Court in 1943.
6 It did not become known to petitioner until a relatively short
7 period of time before he filed his petition for a writ of error
8 coram nobis. Petitioner is not barred by laches.

9 Petitioner has moved the Court to reconsider its refusal to
10 vacate petitioner's conviction of the curfew violation. The Court
11 has carefully considered the arguments made by petitioner in support
12 of his motion. Nevertheless, for the reasons set forth in its
13 Memorandum Decision the Court finds that it is unable to grant the
14 petition for writ of error coram nobis with respect to petitioner's
15 conviction on the curfew count.

16 Petitioner should not, however, consider that conviction to be
17 a stigma. His refusal to obey the curfew order and, even more so,
18 his refusal to obey the order to report for his imprisonment were
19 in the tradition of those who have forged the freedoms which we now
20 enjoy.

21 Despite petitioner's belief in his own loyalty and despite his
22 conviction that he could not be imprisoned without offense and
23 without trial, it took rare courage for one of his relatively young
24 age to stand up to all the powers of government and all the forces

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1 of public opinion bearing down upon him.

2 His courage was comparable to the courage of those who stood
3 up to the Crown during the reign of the Stuarts. Three of those
4 were John Eliot, William Strode, and Benjamin Valentine. At a time
5 when Charles I was asserting his absolute power to imprison anyone
6 at his pleasure, those three were imprisoned in 1629. They could
7 have secured their release at any time by conceding the power of
8 the king to imprison them, but they, like petitioner, refused to
9 yield. Eliot died in prison. The other two persisted in their
10 refusal to submit and remained in prison until 1640. They accepted
11 years of imprisonment rather than conceding that the king had the
12 power to imprison them at all. Their steadfastness, however,
13 helped establish the principle that the king was under and not
14 above the law.

15 Like Eliot, Strode and Valentine, petitioner accepted
16 imprisonment rather than concede the government's power to imprison
17 one who had committed no offense. His steadfastness, like theirs,
18 has earned him a place in the pantheon of those who have sacrificed
19 themselves in order to further the common good.

20 It is now conceded by almost everyone that the internment of
21 Japanese-Americans during World War II was simply a tragic mistake
22 for which American society as a whole must accept responsibility.
23 If, in the future, this country should find itself in a comparable
24 national emergency, the sacrifices made by Gordon Hirabayashi, Fred

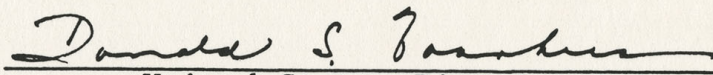
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1 Korematsu and Minoru Yasui may, it is hoped, stay the hand of a
2 government again tempted to imprison a defenseless minority without
3 trial and for no offense.

4 Accordingly, the motions of petitioner and of the government
5 for reconsideration are DENIED.

6 The Clerk of this Court is instructed to send uncertified
7 copies of this order to all counsel of record.

8 DATED this 28 day of April, 1986.

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11 _____
12 United States District Judge
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