



AMERICAN BAR ASSOCIATION

GOVERNMENTAL AFFAIRS GROUP • 1800 M STREET, N.W. • WASHINGTON, D.C. 20036 • (202) 331-2200

STATEMENT
 OF
 WILLIAM L. ROBINSON
 on behalf of the
 AMERICAN BAR ASSOCIATION
 before the
 SUBCOMMITTEE ON ADMINISTRATIVE LAW
 AND GOVERNMENTAL RELATIONS
 of the
 COMMITTEE ON THE JUDICIARY
 U.S. HOUSE OF REPRESENTATIVES
 on
 THE WARTIME INTERNMENT OF CIVILIANS

April 28, 1986

Mr. Chairman and Members of the Committee:

The American Bar Association is pleased to appear before you today to express our views on the wartime internment of civilians. My name is William L. Robinson. As an officer of the ABA Section of Individual Rights and Responsibilities, I have been designated by ABA President William W. Falsgraf to represent the more than 320,000 members of the Association.

Mr. Chairman, the ABA supports legislation before you which would provide appropriate redress, including appropriate monetary compensation, to Americans of Japanese Ancestry who, during World War II, lost their freedom and their property simply and only because of their racial background. In 1984, the House of Delegates of the American Bar Association passed the following resolution:

BE IT RESOLVED, that the American Bar Association hereby urges the Congress of the United States to provide appropriate legislative recognition to those denied equal justice under law pursuant to Executive Order 9066 and subsequent laws subjecting Japanese Americans to detention during World War II.

As you know, on the basis of an alleged "military necessity", over 110,000 persons of Japanese American ancestry, more than 70,000 of whom were American citizens, were herded into detention camps surrounded by barbed wire and machine gun towers and located in remote and desolate areas of the country. They received this unjust treatment without charge or trial, or any evidence of wrongdoing.

Solely on the basis of their racial ancestry, individuals lost their homes, businesses and personal property, endured the harsh life in the camps and suffered the shame and anguish of accusations of disloyalty to the United States. Property losses alone have been calculated to be between \$1 and \$2 billion.

Three American citizens, Fred Korematsu, Gordon Hirabayashi, and Minoru Yasui challenged the constitutionality of the internment program, each believing that a grave injustice was being committed. In 1943 and in 1944, their cases came before the United States Supreme Court. In a series of landmark decisions, the United States Supreme Court upheld the legality of the internment, accepting the government representations that the internment camps were justified by "military necessity."

The Court's finding of "military necessity" was based on the representation of government lawyers that Japanese Americans were committing espionage and sabotage by signaling enemy ships from shore. The government also charged that it was impossible to separate the loyal from the disloyal due to the racial characteristics of Japanese Americans.¹

While this was certainly not the first or only time in American history that a minority group had lost its freedom simply by reason of race, these Supreme Court decisions are the only cases in this century upholding an instance of invidious racial discrimination. It has been said that the hallmark of a democracy is its ability to correct its

own mistakes. So it is appropriate that the Congressional Commission on Wartime Relocation and Internment of Civilians concluded that a "grave injustice was done to American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed and detained by the United States during World War II."

Further, Fred Korematsu, Gordon Hirabayashi, and Minoru Yasui filed petitions for writs of error coram nobis, a petition to correct "fundamental errors", alleging that a fraud had been committed upon the Court, and that high government officials and the Justice Department lawyers knew that there was no factual basis for the claim of "military necessity."

The claims of Korematsu, Hirabayashi and Yasui were based upon documents recently discovered under the Freedom of Information Act, revealing that government attorneys suppressed key evidence and authoritative reports from the Office of Naval Intelligence, the F.B.I., the Federal Communications Commission, and Army Intelligence which flatly contradicted the government claim that Japanese Americans were a threat to security.

The Office of Naval Intelligence report issued in February of 1942, before the internment began, was the culmination of a two-year study of the West Coast Japanese American population. Authored by the ONI authority on Japanese Americans, Lieutenant Commander K. D. Ringle, the report concluded that only a small and readily

identifiable portion of the Japanese American people were even potentially disloyal. "The entire Japanese problem has been magnified out of its true proportion largely due to the physical characteristics of the people."²

Edward Ennis, Director of the Alien Enemy Control Division of the Justice Department and the attorney responsible for supervising the drafting of the Justice Department brief in Korematsu v. United States, advised Solicitor General Charles Fahy in April of 1943 that, "We must consider most carefully what our obligation to the Court is in view of the fact that the responsible Intelligence Agency regarded selective evacuation as not only sufficient but preferable (to mass evacuation). I think we should consider very carefully whether we do not have a duty to advise the Court of the existence of the Ringle memorandum and of the fact that it represents a view of the Office of Naval Intelligence.... Any other course of conduct might approximate the suppression of evidence."³

In response to a request by Attorney General Francis Biddle to verify the accuracy of military claims of shore-to-ship signaling, J. Edgar Hoover wrote in February of 1944 before the Korematsu case was argued, "Every complaint (of shore-to-ship signaling and radio transmissions) has been investigated, but in no case has any information been obtained which would substantiate the allegation that there has been illicit signaling from shore to ship..."⁴

In response to a similar request, James Fly, the Chairman of the Federal Communications Commission, wrote in February of 1944:

"There were no radio signals...which could not be identified or which were unlawful."⁵

In a February 1944 memo to Attorney General Francis Biddle, Ennis criticized the Final Report of General J. L. DeWitt as being highly inaccurate in stating that Japanese Americans were committing acts of espionage and sabotage and were prone to disloyalty. He wrote, "(The Final Report) stands as practically the only record of causes for the evacuation and unless corrected will continue to do so. Its practical importance is indicated by the fact that it is being cited in the briefs in the Korematsu case in the Supreme Court...." ⁶

Justice Department Attorney, John Burling, also responsible for drafting portions of the Korematsu brief, wrote in a memo to Assistant Attorney General Herbert Wechsler in September of 1944, "You will recall that General DeWitt's report makes statements concerning radio transmission and ship-to-shore signaling which were categorically denied by the F.B.I. and the Federal Communications Commission. There is no doubt that these statements are intentional falsehoods...." ⁷

Burling attempted to alert the Supreme Court of the falsity of the military claims, particularly with respect to allegations of shore-to-ship radio transmissions, by inserting a footnote in the Korematsu brief stating that such allegations were in conflict with information in the possession of the Department of Justice. War