

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