

1 IN THE DISTRICT COURT OF THE UNITED STATES
2 FOR THE WESTERN DISTRICT OF WASHINGTON
3 NORTHERN DIVISION

4
5 UNITED STATES OF AMERICA,

6 Plaintiff)

7 v.)

8 GORDON KIYOSHI HIRABAYASHI,

9 Defendant)

No. 4 5 7 3 8

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15 PROPOSED INSTRUCTIONS OF THE DEFENDANT
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18 FILED IN THE
19 UNITED STATES DISTRICT COURT
20 WESTERN DISTRICT OF WASHINGTON
21 NORTHERN DIVISION

OCT 20 1942 (92)

22 JUDSON W. SHORETT, Clerk
23 By *Em Rosser* Deputy
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INSTRUCTION NO. _____

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3 You are instructed that Executive Order No. 9066 of the Presi-
4 dent and Civilian Exclusion Order No. 57 and Public Proclamation No. 3
5 of the Military Commander were issued for the purpose of protecting
6 our national defense materials, national defense premises, and national
7 defense utilities against acts of espionage or sabotage.

8 You are further instructed that before any person could or can
9 be excluded from any military area prescribed by the Military Commander
10 or interned or compelled to obey any curfew regulations prescribed by
11 a military commander, such person must first have been charged with
12 engaging in or committing acts of espionage or sabotage of our national
13 defense materials, premises or utilities; that he must have been given
14 a hearing on such charges before an impartial tribunal where he could
15 defend himself against the charges, have legal counsel to assist him and
16 could produce witnesses on his own behalf; that after such hearing he
17 must have been found guilty of the charge or charges against him; and
18 that without such a hearing on such charges and his conviction thereof
19 he would be under no duty to report to the Civil Control Station de-
20 scribed in Count I of the indictment, nor to obey the curfew regula-
21 tions described in Count II of the indictment.

22 Therefore, unless you find from the evidence at this trial that
23 the defendant here was so charged with engaging in espionage or sabotage
24 of our national defense materials, premises or utilities and after a
25 hearing on such charges was convicted thereof, you can not find the
26 defendant guilty under either count of the indictment.
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3 You are instructed that under a statute enacted by the Congress
4 of the United States, alien enemies are defined as the "natives,
5 citizens, denizens or subjects of the hostile nation or government"
6 which has been declared by the President to be at war with the United
7 States.

8 You are further instructed that the law presumes that such an
9 alien enemy as above defined will commit acts of espionage or sabotage
10 against the United States, and on the basis of such presumption such
11 an alien enemy can be temporarily restricted in his liberty of move-
12 ment, or can be temporarily excluded from a military area, or can be
13 temporarily compelled to obey curfew or other regulations relative
14 to his movements and conduct; but that before such restriction of
15 liberty, exclusion from a military area or obedience to such regula-
16 tions could be made permanent, such alien enemy would first have to
17 be charged with the commission of some act or acts of espionage or
18 sabotage against the United States and have been granted a hearing
19 before an impartial tribunal where he could defend himself against
20 such charges, and must have been found guilty of the act or acts
21 charged.

22 But you are further instructed that as to citizens of the
23 United States of America no such presumption as above described exists
24 either in law or in fact, and that before any citizen of the United
25 States of America can be temporarily or permanently excluded from a
26 military area or compelled to obey curfew or other regulations or
27 have his liberty of movement restricted, he must first have been charged
28 with some act or acts of espionage or sabotage against the United
29 States, have been granted a hearing on such charges before an impartial
30 tribunal, and have been found guilty of the acts charged.
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3 You are instructed that the Congress of the United States of
4 America alone has the power to declare martial law in or over any
5 portion of the United States, and that this power can not be delegated
6 to the President or the Secretary of War or to any military commander
7 designated by him.

8 You are further instructed that in the present emergency
9 military law has not been declared by the Congress in or over any
10 portion of the United States.

11 You are further instructed that the existence of a state of
12 war between the United States and a foreign country does not suspend
13 the rights guaranteed by the Constitution that no person can be de-
14 prived of his life, liberty or property without due process of law.
15 Such due process of law includes the right of a person to have a public
16 hearing after he has been informed of the nature and cause of the
17 accusation against him and his right to defend against such accusation,
18 have counsel to assist in his defense, and to compel witnesses to
19 testify on his behalf.

20 You are further instructed that unless you find from the evi-
21 dence here that the defendant was accused of some unlawful act against
22 the United States, was granted a hearing on such accusation where he
23 was allowed to defend himself, and was found guilty of what he was
24 accused, then I instruct you that the defendant was under no duty to
25 obey Civilian Exclusion Order No. 57, nor Proclamation No. 3 of the
26 Military Commander, and you must find the defendant not guilty.
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1 You are further instructed that the above protection accorded
2 a United States citizen is guaranteed to him by the Constitution of the
3 United States of America, and no discrimination can be made against him
4 in that protection because of his race or color.

5 You are further instructed that the evidence at this trial
6 proves in this case that the defendant here is a native born citizen
7 of the United States of America, of Japanese ancestry, and that as such
8 he is entitled to the above described constitutional protection regard-
9 less of his race, color or ancestry.

10 Therefore, unless you further find from the evidence here that
11 the defendant was charged with an act or acts of espionage or sabotage
12 against the United States, was granted a hearing on such charges where
13 he was permitted to defend himself, and was found guilty of the act or
14 acts charged, then I instruct you that the defendant owed no duty to
15 obey Civilian Exclusion Order No. 57, nor Proclamation No. 3 of the
16 Military Commander, and you must find the defendant not guilty under
17 either count of the indictment.

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