

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 45738

- vs -

GORDON KIYOSHI HIRABAYASHI,

Defendant.

GOVERNMENT'S REQUESTED INSTRUCTIONS

Comes now the United States of America, plaintiff herein, and respectfully requests this Honorable Court to make the following instructions in the above entitled cause.

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

OCT 20 1942

JUDSON W. STODOLSKY, CLERK

Em Rosser

1 The indictment involved in this action in Count I
2 charges the defendant, who is alleged to be a person of
3 Japanese ancestry, with violating Civilian Exclusion Order
4 No. 57, by failing to report to the Civilian Control Station.

5 In Count II the indictment charges said defendant
6 with violating the curfew provisions of Public Proclamation
7 No. 3 issued by the Military Commander of the Western De-
8 fense Command.

9 On December 8, 1941, Congress, in joint resolution,
10 declared a state of war to be existing between Japan and the
11 Government and people of the United States.

12 On February 19, 1942, the President signed an
13 Executive Order in which the Secretary of War and military
14 commanders designated by him, were authorized and directed,
15 whenever such action was necessary

16 " * * * to prescribe military areas in
17 such places and of such extent as he or
18 the appropriate Military Commander may
19 determine, from which any or all persons
20 may be excluded, and with respect to which,
21 the right of any person to enter, remain in,
or leave shall be subject to whatever re-
strictions the Secretary of War or the ap-
propriate Military Commander may impose in
his discretion * * *."

22 On February 20, 1942 the Secretary of War desig-
23 nated Lieutenant General DeWitt to carry out the duties
24 and responsibilities imposed by the said Executive Order
25 for the particular district involved in this action.

26 On March 2, 1942 Lieutenant General DeWitt declared
27 the Pacific Coast of the United States to be, because of its
28 geographical location

29 " * * * particularly subject to attack,
30 to attempted invasion by the armed forces
31 of nations with which the United States is
32 now at war, and, in connection therewith,
is subject to espionage and acts of sabotage,
thereby requiring the adoption of military
measures necessary to establish safeguards
against such enemy operations."

1 On March 21, 1942 Public Law No. 503, enacted by
2 Congress, became effective. The portion material to this
3 action reads as follows:

4 " * * * whoever shall * * * leave, or
5 commit any act in any military area or
6 military zone prescribed, under the author-
7 ity of an Executive Order of the President,
8 by the Secretary of War, or by any military
9 commander designated by the Secretary of
10 War, contrary to the restrictions applicable
11 to any such area or zone or contrary to the
order of the Secretary of War or any such
military commander, shall, if it appears
that he knew or should have known of the
existence and extent of the restrictions or
order and that his act was in violation
thereof, be guilty of a misdemeanor * * *."

12 I instruct you as a matter of law that the fore-
13 going regulations were valid regulations, and the laws
14 under which they were promulgated are valid and enforceable
15 laws.

1 As far as Count I of the indictment is concerned,
2 you are concerned with the following:

3 (1) Was the defendant Gordon Kiyoshi Hirabayashi
4 of Japanese ancestry.

5 (2) Did he on May 11, 1942 fail and neglect to
6 report to the Civil Control Station located at the
7 Christian Youth Center, 2203 East Madison Street, Seattle,
8 Washington, between the hours of eight o'clock A.M. and
9 five o'clock P.M., or at all.

10 (3) Did he on May 12, 1942, between the hours
11 of eight o'clock A.M. and five o'clock P.M., or at all,
12 fail to report to the Civil Control Station located at the
13 Christian Youth Center, 2203 East Madison Street, Seattle,
14 Washington.

15 (4) Did he know of the existence of the orders
16 to report.

17 If you find from the evidence, beyond a reason-
18 able doubt, that the defendant herein was a person of
19 Japanese ancestry, that he either knew or should have
20 known of the existence and extent of the orders requiring
21 him to report on either May 11, 1942, or May 12, 1942,
22 and you further find from the evidence, beyond a reasonable
23 doubt, that he failed to so report, then, in that event,
24 you are instructed to return a verdict of guilty as to
25 Count I of the indictment.
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1 As to Count II, the indictment charges that the
2 defendant Gordon Kiyoshi Hirabayashi failed to obey
3 Paragraph No. 1 of Public Proclamation No. 3, which pro-
4 vides as follows:

5 "1. From and after 6:00 A.M., March 27,
6 1942, * * * * all persons of Japanese an-
7 cestry residing or being within the geo-
8 graphical limits of Military Area No. 1,
9 * * * * shall be within their place of
residence between the hours of 8:00 P.M.
and 6:00 A.M., which period is hereinafter
referred to as the hours of curfew."

10 I hereby instruct you that the City of Seattle
11 on May 4, 1942, and at all times since said date, was
12 within the geographical limits of Military Area No. 1.

13 I further instruct you that if you find from the
14 evidence, beyond a reasonable doubt, the following facts:
15 (1) that the defendant herein, Gordon Kiyoshi Hirabayashi,
16 was of Japanese ancestry; (2) that he either knew or should
17 have known of the curfew regulations; (3) that on or about
18 May 4, 1942 the said defendant failed to obey said curfew
19 regulations in the manner following, that is to say: he
20 was not within his place of residence at Seattle, Wash-
21 ington, between the hours of eight o'clock P.M. and six
22 o'clock A.M., then your verdict should be guilty as to
23 Count II.
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INSTRUCTION NO.

1 I further instruct you that it is not necessary
2 that the Government prove that the offense herein was
3 committed on the exact date set forth in the indictment.
4 If you find from the evidence, beyond a reasonable doubt,
5 that the defendant herein committed the offense charged
6 at any time between May 4, 1942 and May 28, 1942,
7 then, in that event, you should bring in a verdict of
8 guilty.