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Memorandum in Support of Motion for Leave to File Letter-Brief as Amicus Curiae by Eric Neisser, Esq.

United States District Court Western District of Washington

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DEC 05 1983

 AT SEATTLE
 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 DEPUTY
 BY

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON

GORDON K. HIRABAYASHI,)	
)	
Petitioner,)	NO. C83-122V
)	(Former Crim. No. 45738)
vs.)	
)	MEMORANDUM IN SUPPORT OF MOTION
UNITED STATES OF AMERICA,)	FOR LEAVE TO FILE LETTER-BRIEF
)	AS AMICUS CURIAE, BY ERIC
Respondent.)	NEISSER, ESQ.
)	

I.

NOW COMES the Amici Curiae, through one of its attorneys, Kenneth A. MacDonald, and requests this Honorable Court for leave to file a letter-brief of amicus curiae, Eric Neisser, in the above-entitled action. These organizations are not-for-profit organizations under State and Federal laws.

II.

QUESTIONS PRESENTED

1) Whether this Court has the supervisory power to vacate Mr. Hirabayashi's conviction;

2) Whether the government's suppression of favorable evidence and the presentation of misleading evidence violated Mr.

1 Hirabayashi's due process rights; and

2 3) Whether Petitioner's conviction should be vacated, the
3 underlying indictment be dismissed and the Petition of Error
4 Coram Nobis granted because of government misconduct.

5 III.

6 STATEMENT OF INTEREST OF AMICI CURIAE

7 The American Civil Liberties Union of Washington State (ACLU
8 WN) is the regional affiliate of the American Civil Liberties Union
9 (ACLU), a nationwide, nonprofit, nonpartisan membership organization
10 dedicated exclusively to the defense and promotion of the guarantees
11 of civil liberties secured by the State and Federal Constitutions
12 and cognate statutes. In recent years, the ACLU WN has focused in-
13 creasingly on the enforcement of the constitutional guarantee of
14 equal protection under law.

15 The ACLU WN is interested in this case because it represented
16 Mr. Hirabayashi in the U.S. Supreme Court appeal of the conviction
17 challenged in this proceeding. The ACLU WN has petitions to this
18 Court to be heard because of its desire in seeing that Mr. Hira-
19 bayashi's constitutional rights are now vindicated.

20 The Seattle Chapter of the Japanese American Citizens League
21 (JACL, Seattle) is the local affiliate of the Japanese American
22 Citizens League (JACL), a national organization which is committed
23 to protecting the rights of Japanese Americans and other minorities
24 and which advocates improving the quality of life for Japanese
25 Americans. The Seattle Chapter of the JACL firmly supports Peti-
tioner's writ of coram nobis as a positive attempt to "clear up"

1 what was a tragic moment in our nation's history and which created
2 extended hardships for Japanese Americans.

3 The Asian American Law Students Associations of Stanford and
4 Rutgers Law Schools (AALSA), and the National Black American Law
5 Student Association (BALSA), and the Association of Latin American
6 Students of Rutgers Law School (ALALS) are associations of minority
7 law students and lawyers.

8 The American Jewish Committee (AJC) is a national organization
9 founded in 1906 to protect the civil and religious rights of American
10 Jews, which believes that the best way to protect those rights is to
11 protect such constitutional rights of all Americans.

12 The National Lawyers Guild (NLG) is a nationwide organization of
13 progressive lawyers dedicated to the enforcement of constitutional
14 rights and the elimination of all forms of racial discrimination.

15 It is anticipated that the American Friends Service Committee
16 (AFSC) will in the very near future file a letter-brief as Amicus
17 Curiae. The AFSC is a national organization which was founded in
18 1917 as a means to implement Quaker testimonies on peace and social
19 justice. The AFSC strongly opposed the government's evacuation and
20 internment of persons of Japanese descent in 1942 and was one of the
21 few national organizations which did so at the time. During that
22 period of time, the AFSC assisted the internees with relocation,
23 employment, housing, medical care, and college admissions. The AFSC
24 service to the internees reflected a profound commitment to alleviate
25 the conditions of those victimized by racism and wartime hysteria.

1 The AFSC takes special interest in following the details of
2 this coram nobis petition because the Petitioner was a member of the
3 AFSC at the time of his arrest, trial, conviction, and subsequent
4 appeal to the United States Supreme Court, and because the AFSC was
5 intricately involved in his legal defense. The AFSC has continued
6 to support Mr. Hirabayashi in his efforts to present the true pic-
7 ture of what happened to Japanese Americans during World War II.

8 IV.
9 SPECIFIC ISSUES TO BE ADDRESSED

10 The issue to be addressed by the amicus curiae is: Whether the
11 Court should grant the Government's motion to dismiss without the
12 Court signing findings of fact and conclusions of law.

13 V.
14 ADDITIONAL BRIEFING OF THESE ISSUES NECESSARY

15 A Petition for Writ of Error Coram Nobis filed on behalf of Mr.
16 Hirabayashi has also been filed in the District of Oregon on behalf
17 of Minoru Yasui (Yasui vs. United States, Crim. No. C 16056, Civil
18 No. CV-83-151-BE) and the Northern District of California on behalf
19 of Fred Korematsu (Korematsu vs. United States, No. CR 27635W-MHP).

20 The Petitions allege that newly-discovered evidence shows that
21 there was no military necessity for the military orders regarding
22 the Japanese-American population, and that extensive governmental
23 misconduct in the form of alteration, suppression and destruction
24 of material evidence favorable to Petitioners' cases took place.

25 The Government's Responses to the Petitions do not meet the
allegations set forth by all three Petitioners.

1 The Hirabayashi, Korematsu, and Yasui cases are the first in
2 which the United States Supreme Court set the strict scrutiny stan-
3 dard for equal protection review of invidious racial classifications,
4 yet, after almost 40 years, the three cases are the only ones in
5 which the United States Supreme Court has upheld an invidious racial
6 or national origin classification. In the three cases, the Government
7 of the United States consciously misstated facts and withheld cru-
8 cial exculpatory evidence in proceedings before the United States
9 Supreme Court, although members of the Justice Department expressly
10 warned that the conduct was unethical. And it was this double
11 Government misconduct -- of acting discriminatorily without military
12 necessity and of suppressing the evidence contradicting the deed --
13 that led to the incarceration of 110,000 people, including United
14 States citizens.

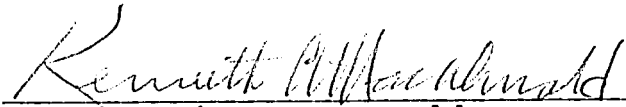
15 Members of Amici organizations have a profound citizen and
16 professional interest in insuring the integrity of our governmental
17 and judicial processes. Many members of Amici are representatives of
18 minority groups often subjected to racial and religious discrimina-
19 tion; they have a direct, personal interest in remedying past discri-
20 mination by the Government and preventing its recurrence. Members
21 of Amici organizations are committed to the protection of individual
22 civil liberties; they have a direct personal interest in insuring
23 that the rights of the individual in our Nation are protected.

24 Amici organizations urge that a legal determination of Peti-
25 tioner's allegations is important and necessary for the preservation

1 of fundamental rights guaranteed under the U.S. Constitution. As to
2 this issue, additional background information will contribute to an
3 informed decision in the granting or denial of Petitioners' plead-
4 ings.

5 CONCLUSION

6 These Amici organizations respectfully request this Honorable
7 Court to grant their motion to file a brief amicus curiae in the
8 above-titled case.

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13 Kenneth A. MacDonald
14 Of Counsel for Amici Curiae
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