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## Introduction

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**Introduction:**  
**The 25th Anniversary of the *United States v.*  
*Hirabayashi Coram Nobis* Case: Its Meaning Then  
and Its Relevance Now**

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Lorraine K. Bannai

On February 11, 2012, we gathered to remember an extraordinary man, Gordon Hirabayashi, and his successful, decades-long, fight for justice.<sup>1</sup> During World War II, Gordon, then a 22-year-old college student, chose to defy the curfew and exclusion orders that culminated in the mass incarceration of over 110,000 West Coast Japanese Americans.<sup>2</sup> In one of its most infamous decisions, the United States Supreme Court rejected his constitutional challenges to the orders, deferring to the government's claim of military necessity.<sup>3</sup> Despite his loss before the Court, Gordon never wavered in his belief that the wartime incarceration was wrong. In 1983, through the efforts of a talented team of pro bono lawyers, he reopened his case and won vacation of his wartime convictions on proof that the government had suppressed, altered, and destroyed material evidence while it was arguing its case to the Court.<sup>4</sup> We convened to mark the anniversary

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<sup>1</sup> The February 2012 conference, The 25th Anniversary of the *United States v. Hirabayashi Coram Nobis* Case: Its Meaning Then and Its Relevance Now, was hosted by Seattle University School of Law's Fred T. Korematsu Center for Law and Equality.

<sup>2</sup> Two-thirds of those incarcerated were American citizens by birth. The remaining were Japanese immigrants who were prohibited by law from naturalizing. It was not until 1952 that Issei (first generation Japanese Americans) could apply to become naturalized citizens. Immigration and Nationality Act, ch. 477, §311, 66 Stat. 163, 239 (1952) (current version at 8 U.S.C. § 1422 (1988)). While many of those interned were not American citizens, I refer to all who were interned collectively as Japanese Americans in recognition that the Issei had made America their home and were barred from full civic participation by discriminatory laws.

<sup>3</sup> *Hirabayashi v. United States*, 320 U.S. 81 (1943).

<sup>4</sup> *Hirabayashi v. United States*, 828 F.2d 591 (9th Cir. 1987).

of Judge Mary Schroeder's eloquent and landmark decision vacating his convictions; to reflect on Gordon's cases; and to use them as a springboard for a broader exploration of public interest lawyering that advances the cause of justice that Gordon exemplified.

A little over a month before the conference, we learned with great sadness of Gordon's passing on January 2, 2012, and the conference transformed. The conference became a tribute—a place where the broad spectrum of individuals who had been touched by Gordon's life, both those who had known him and those who never had, came together to celebrate his courage and dedication to principle; his humanity and his good humor; and to remember, as he would have wanted, the dangers of prejudice and fear.

While we gathered to remember, the conference was not just about remembrance. It was a vehicle for exploring the much broader themes that emerge from a deeper understanding of Gordon and his cases. Those themes include the power of standing up for one's convictions, even at personal risk; the need to speak out for justice in the struggles of others, both nationally and internationally; and the need for lawyers seeking social justice to work creatively, in a multi-modal fashion,<sup>5</sup> and side-by-side with affected communities. The articles that appear in this cluster are a sampling of the powerful presentations made at the conference, collectively examining the arc of Gordon's story and the lessons to be learned from it.<sup>6</sup>

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<sup>5</sup> See David R. Carlson, *Multimodal Advocacy for Social Justice*, 11 SEATTLE J. FOR SOC. JUST. 157 (2012).

<sup>6</sup> Other presentations included those from Tom Ikeda, Executive Director, Densho: The Japanese American Legacy Project; members of Gordon's *coram nobis* legal team who spoke about his case along with Kathryn Bannai and Karen Narasaki, including co-lead counsel Rod Kawakami, Michael Leong, Roger Shimizu, and Camden Hall; Jay Hirabayashi, Gordon's son; Don Tamaki of the *Korematsu* legal team and Peggy Nagae of the *Yasui* legal team; Seattle University School of Law Dean Mark Niles and Professors Robert Chang, Natasha Martin, and Anjana Malhotra; the Honorable Richard Jones; and news anchor Lori Matsukawa. I wish to express my deep gratitude to all who participated in and attended the conference.

## I. GORDON'S LIFE AND CASES

In the first five articles in the cluster, Professors Peter Irons and Lane Hirabayashi, attorneys Kathryn Bannai and Karen Narasaki, and Judge Mary Schroeder give insight into Gordon's personal story and cases—what motivated him in defying the wartime curfew and exclusion orders, the government misconduct that led to the affirmance of those orders during World War II, and the effort that resulted in his ultimate vindication. While lawyers, law professors, and law students often read cases without understanding the backgrounds and perspectives of the litigants, lawyers, and judges involved, such an understanding gives us insight into the real-life drama behind the sterile court record, and, in many cases, a better understanding of the result itself. In Gordon's case, investigation into the government's actions behind the scenes led to the discovery of documents that proved that Gordon, and the entire Japanese American community, had been wronged. Indeed, contrary to the government's wartime statements to the public and to the courts, there had been no bona fide military necessity for the internment, and the highest officials in the War and Justice Departments had effectively lied about this to justify the racial curfew and incarceration.

Gordon's early life illuminates his later decision to resist the wartime incarceration.<sup>7</sup> Born in Seattle, Washington, to Japanese immigrant parents, Gordon was raised in a deeply religious, pacifist community and attended Quaker meetings after entering the University of Washington.<sup>8</sup> Gordon recalled his shock in hearing of the bombing of Pearl Harbor on December 7, 1942: "It was unreal. The impact did not sink in for some time. My immediate worry was what would happen to my parents and their generation. Since they were legally ineligible for American citizenship, war

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<sup>7</sup> Lane Ryo Hirabayashi, *Accused of the Crime, Doing the Time: Notes on Gordon Hirabayashi 1943–1945*, 11 SEATTLE J. FOR SOC. JUST. 27, 29–31 (2012).

<sup>8</sup> *Id.* at 31; Gordon Hirabayashi, *Am I an American?*, in PETER IRONS, THE COURAGE OF THEIR CONVICTIONS 50, 52 (1988).

with Japan instantly transformed them into ‘enemy aliens.’”<sup>9</sup> While understanding that his immigrant parents might be at risk in an anti-Japanese backlash, Gordon could not fathom that he, as an American citizen, would be targeted.

In the spring of 1942 and pursuant to authority vested in him by President Franklin Delano Roosevelt’s Executive Order 9066, Lt. General John L. DeWitt, Commander of the Western Defense Command, began to issue a series of orders to control the Japanese American population on the West Coast. He first issued curfew orders, requiring all persons of Japanese ancestry, including American citizens like Gordon, to remain in their homes during evening hours.<sup>10</sup> He then began issuing a series of Civilian Exclusion Orders, 99 in all, requiring Japanese Americans to leave their West Coast homes for incarceration.<sup>11</sup>

Professor Irons begins his piece, which provides an overview of Gordon’s story through an artfully drawn series of scenes, recounting Gordon’s decision to defy both the curfew and removal orders.<sup>12</sup> He describes the race-based reasoning underlying Judge Lloyd Black’s dismissal of Gordon’s constitutional challenge to the military orders and the summary manner in which Judge Black ordered the jury to find Gordon guilty.

Through Gordon’s wartime diaries, Professor Lane Hirabayashi explores Gordon’s time in the King County jail and then the McNeil Island Federal Penitentiary.<sup>13</sup> In doing so, he gives further insight into Gordon, showing us

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<sup>9</sup> Gordon Hirabayashi, *supra* note 8, at 52.

<sup>10</sup> Public Proclamation No. 3, Mar. 24, 1942, *reprinted in* ROGER DANIELS, THE DECISION TO RELOCATE THE JAPANESE AMERICANS 124-25 (1975).

<sup>11</sup> The order applicable to Gordon and his family was Civilian Exclusion Order No. 57 of May 10, 1942. 7 Fed. Reg. 3725 (1942); U.S. COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED 110 (1982).

<sup>12</sup> Peter H. Irons, *Scenes from the Struggles of a Courageous American: Recollections of Peter Irons About the Life of Gordon Hirabayashi*, 11 SEATTLE J. FOR SOC. JUST. 19 (2012).

<sup>13</sup> Lane Ryo Hirabayashi, *supra* note 7, at 32–39.

how Gordon's spirit and principles, together with the support of others, sustained him, despite the difficult conditions of his confinement. Through Gordon's words, Professor Hirabayashi also gives us a unique glimpse into the humanity that exists behind jail walls. Gordon spoke of "education in jail that he wasn't getting in college," as well as his continued activism against injustice, even behind bars. Seeing Gordon's time in jail through his eyes, we can move beyond seeing jail prisoners as faceless convicts and instead see them as the individuals they are, each with a unique story, possessed of basic human needs, and deserving of freedom from arbitrary treatment.

While Gordon served his time hopeful that the Supreme Court would hold the military orders unconstitutional, the Court, in a unanimous opinion, affirmed his convictions on June 21, 1943. Although Gordon had been convicted of violating both the curfew and exclusion orders, the Court found it necessary to only address his curfew conviction. In its decision, the Court expressed extreme deference to the government in acting in the national defense,<sup>14</sup> essentially adopting the government's argument that the proximity of Japanese Americans to strategic installations and their "racial characteristics" justified the military's actions against them.<sup>15</sup> And in reasoning that would become significant when Gordon later reopened his case in 1983, the Court stated that time was of the essence; it could not reject the government's claim that speedy action was necessary.<sup>16</sup>

In the decades that followed, Gordon hoped that there would be some way to reopen his case. In 1981, that opportunity presented itself in the form of a phone call from Professor Irons.<sup>17</sup> In researching a book about the government lawyers who prosecuted Gordon, as well as Fred Korematsu and Minoru Yasui, Professor Irons discovered documents that revealed that

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<sup>14</sup> *Hirabayashi v. United States*, 320 U.S. 81, 93 (1943).

<sup>15</sup> *Id.* at 95–98.

<sup>16</sup> *Id.* at 99.

<sup>17</sup> *Gordon Hirabayashi*, *supra* note 8, at 61.

the government had lied to the Supreme Court.<sup>18</sup> These documents, together with documents discovered by archival researcher Aiko Herzig-Yoshinaga, provided a basis for reopening these men's cases and proving that there had, indeed, been no military necessity for the mass incarceration of Japanese Americans during World War II. Professor Irons' next vignette takes us into the offices of the wartime Department of Justice to describe one of the documents he discovered. In that scene, which took place while the government was preparing its brief in Gordon's case in April 1943, Department of Justice lawyer Edward Ennis advised Solicitor General Charles Fahy of a report by Lt. Commander Kenneth Ringle of the Office of Naval Intelligence, which urged against any mass removal of Japanese Americans. Ennis suggested that the government had a duty to advise the Court of the report and warned that "any other course of action might approximate the suppression of evidence."<sup>19</sup> As Professor Irons explains, Ennis's advice was ignored. The government suppressed other intelligence reports, as well. Reports from the Federal Communications Commission and Federal Bureau of Investigation directly refuted DeWitt's claims that Japanese Americans were engaged in illegal shore-to-ship signaling; the Court was not advised of these reports either.<sup>20</sup>

Further documents showed that the *Final Report* prepared by DeWitt had been altered to hide his true basis for the mass removal of Japanese Americans and then revised to better support the government's argument before the Supreme Court. While the government argued before the Supreme Court that the military orders were necessary because there was insufficient time to separate loyal Japanese Americans from those who

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<sup>18</sup> See PETER IRONS, *JUSTICE AT WAR* (1983) (the book Professor Irons was researching).

<sup>19</sup> Petition for Writ of Error Coram Nobis, *Hirabayashi v. United States*, 627 F. Supp. 1445 (W.D. Wash. 1986) (No. C83-122V) (citing Memorandum from Edward Ennis to Solicitor General Re: Japanese Brief (Apr. 30, 1943)).

<sup>20</sup> See IRONS, *JUSTICE AT WAR*, *supra* note 18, at 280-92, for a discussion of FCC and FBI reports and their suppression.

might have been disloyal, DeWitt's report had explained that shortness of time was not a factor in his decision to order the mass exclusion of Japanese Americans.<sup>21</sup> When it was discovered that DeWitt's report contradicted the government's argument, all copies of the original version of the report were recalled and destroyed, and a new, revised version of the report, consistent with the government's argument, was given to the Department of Justice and the Court.<sup>22</sup>

In his later argument before the Supreme Court in the *Korematsu* case, Solicitor General Fahy asserted the absolute reliability of DeWitt's report, despite the government's own intelligence reports to the contrary and the revision of the report: "We say that the report proves the basis for the exclusion order. There is not a line in it that can be taken any other way."<sup>23</sup>

Based on this evidence of prosecutorial misconduct, legal teams in Seattle, Portland, and San Francisco prepared to reopen the wartime *Hirabayashi*, *Yasui*, and *Korematsu* cases.<sup>24</sup> Kathryn Bannai was the initial lead counsel of the legal team that represented Gordon in Seattle. In her article, she recounts the work of the all-volunteer team, which consisted largely of young lawyers not long out of law school, many of whom were children of former internees.<sup>25</sup> Her description of the work of the lawyers

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<sup>21</sup> Interview by Densho Project with Aiko Herzig-Yoshinaga (Sept. 11, 1997); Petition for Writ of Error Coram Nobis, *Hirabayashi*, 627 F. Supp. 1445 (citing JOHN L. DEWITT, FINAL REPORT: JAPANESE EVACUATION FROM THE WEST COAST (1942)).

<sup>22</sup> Petition for Writ of Error Coram Nobis, *Hirabayashi*, 627 F. Supp. 1445 (citing Memorandum from Capt. Hall (1942)); Petition for Writ of Error Coram Nobis, *Hirabayashi*, 627 F. Supp. 1445 (citing Memorandum from Theodore E. Smith (June 29, 1943)).

<sup>23</sup> Transcript of Oral Argument at 9–10, *Korematsu v. United States*, 323 U.S. 214 (1944) (No. 22), Fred T. *Korematsu v. United States Coram Nobis Litigation Collection* Number 545, Box 25, Folder 5, Dept. of Special Collections, Charles E. Young Research Library, UCLA.

<sup>24</sup> See PETER IRONS, JUSTICE DELAYED: THE RECORD OF THE JAPANESE AMERICAN INTERNMENT CASES 3–46 (1989) for an excellent account of the *Hirabayashi*, *Korematsu*, and *Yasui* coram nobis litigations.

<sup>25</sup> Kathryn A. Bannai, *Gordon Hirabayashi v. United States: "This is an American case,"* 11 SEATTLE J. FOR SOC. JUST. 41 (2012).



and the arguments and strategies they employed provides a richly illustrated model of public interest lawyering—driven by a passion for justice; providing the legal vehicle to support their client in standing up to power; engaging the community whose incarceration had been validated by the wartime Supreme Court; knowing that their case involved broader issues beyond the internment itself; and deploying strategies beyond the courtroom, including working with the media and in coalition with other groups. These perspectives on public interest lawyering thread throughout the rest of the articles in this cluster.

Working with the *Korematsu* and *Yasui* legal teams, Gordon’s team filed a petition for writ of error coram nobis<sup>26</sup> on Gordon’s behalf, seeking the vacation of his convictions. Ms. Bannai describes the team’s work in successfully defeating the government’s motion to dismiss Gordon’s petition and securing a second chance in court for Gordon. In ordering that Gordon was entitled to a full evidentiary hearing on his claims against the government, Judge Donald Voorhees explained, “We can only admire his courage for standing up for his rights. . . . What he really is seeking now is vindication of his honor, and I feel he has that right.”<sup>27</sup>

The trial of Gordon’s case began on June 17, 1985, and lasted two weeks, with Rod Kawakami assuming the role of lead counsel for Gordon.<sup>28</sup> Edward Ennis, the Department of Justice attorney who had urged the disclosure of the government’s intelligence reports to the wartime Supreme Court, now 77 years old, testified on behalf of Gordon. The government, remarkably, sought to relitigate the military necessity for the Japanese

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<sup>26</sup> “Coram nobis” means “before us,” and a petition for a writ of error coram nobis is filed after a sentence has been served to correct “fundamental error[s]” in “‘extraordinary’ cases presenting circumstances compelling it use ‘to achieve justice.’” *United States v. Denedo*, 556 U.S. 904, 910–11 (2009) (citing *United States v. Morgan*, 346 U.S. 502, 511 (1954)); *BLACK’S LAW DICTIONARY* 388 (9th ed. 2009).

<sup>27</sup> Peter Irons, *Introduction: Righting a Great Wrong*, in *JUSTICE DELAYED*, *supra* note 24, at 33.

<sup>28</sup> *Id.* at 36, 41.

American incarceration, forty years after it had occurred and after the incarceration had been soundly condemned.<sup>29</sup> In his opinion, issued on February 10, 1986, Judge Voorhees concluded that the government had, indeed, wronged Gordon and the Japanese American community. However, while concluding that the government had lied to the Court and that Gordon's conviction for violating the exclusion orders should be vacated, Judge Voorhees declined to vacate Gordon's curfew conviction, reasoning that the curfew order was a minimal intrusion and thus required a lower level of government justification.<sup>30</sup>

Both Gordon and the government appealed, and the case went before the United States Court of Appeals for the Ninth Circuit. Attorney Karen Narasaki, in her article, addresses both the substantive and strategic work of the team during the appeal of the case.<sup>31</sup> In addition, in discussing the team's focus on the makeup of the panel of Ninth Circuit judges assigned to hear Gordon's case, Ms. Narasaki gives insight into the importance of the perspectives that judges bring to their work and the consequent need to ensure a diverse judiciary. After her work with the Hirabayashi legal team,

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<sup>29</sup> *Id.* at 36–41. In 1976, President Gerald Ford formally rescinded Executive Order 9066, pronouncing,

We now know what we should have then—not only was [the] evacuation wrong but Japanese-Americans were and are loyal Americans . . . I call upon the American people to affirm with me this 'American Promise'—that we have learned from the tragedy of that long-ago experience forever to treasure liberty and justice for each individual American, and resolve that this kind of action shall never again be repeated.

Presidential Proclamation No. 4417, 41 Fed. Reg. 7741 (Feb. 19, 1976). Legal commentators have been unanimous in condemning the Supreme Court's decisions in the Japanese American internment cases. *See, e.g.*, JACOBUS TENBROEK ET AL., PREJUDICE, WAR, AND THE CONSTITUTION 220 (1954); Eugene V. Rostow, *The Japanese American Cases—A Disaster*, 54 YALE L.J. 489, 490–91, 503–04 (1945); Nanette Dembitz, *Racial Discrimination and the Military Judgment: The Supreme Court's Korematsu and Endo Decisions*, 45 COLUM. L. REV. 175, 183 (1945).

<sup>30</sup> *Hirabayashi v. United States*, 627 F. Supp. 1445, 1457–58 (W.D. Wash. 1986).

<sup>31</sup> Karen K. Narasaki, *The Reopening of United States v. Hirabayashi: Reflections from the Legal Team*, 11 SEATTLE J. FOR SOC. JUST. 53 (2012).

Ms. Narasaki herself went on to become a key advocate in the fight to ensure a judiciary that is more reflective of the society it serves through her leadership with the Asian American Justice Center.

Judge Mary Schroeder authored the Ninth Circuit decision in Gordon's case, which was issued on September 24, 1987.<sup>32</sup> In that opinion, the court affirmed Judge Voorhees' findings of prosecutorial fraud and vacated both Gordon's curfew conviction and his exclusion conviction. Forty-five years after he was first convicted, Gordon's record and name were cleared. In her article, Judge Schroeder recalls her role in hearing and deciding Gordon's case—which she describes as “the opinion of [her] career”—as well as the indelible impact that Gordon has had on her, personally.<sup>33</sup> Because courts are, more often than not, quite removed from the public they serve, it was a singular moment at the conference when Judge Schroeder shared, with clear affection and in moving words, the ways in which she has been touched by Gordon and his example of courage.

Like Judge Schroeder, Professors Irons and Hirabayashi, and Ms. Bannai and Ms. Narasaki, reflected on Gordon's legacy. Professor Hirabayashi observes that Gordon not only “spoke truth to power,” but also, and most importantly, acted on his beliefs. And Professor Irons, Ms. Bannai, and Ms. Narasaki all echo the extraordinary privilege of having had the opportunity to know Gordon and work on his case. More broadly speaking, however, all recognize the enduring significance of Gordon's quest for justice. Ms. Narasaki notes the impact that Gordon's victory had on the winning of redress for Japanese Americans who had been interned.<sup>34</sup> She observes that

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<sup>32</sup> Hirabayashi v. United States, 828 F.2d 591 (9th Cir. 1987).

<sup>33</sup> Judge Mary M. Schroeder, *What Gordon Hirabayashi Taught Me About Courage*, 11 SEATTLE J. FOR SOC. JUST. 65, 65 (2012).

<sup>34</sup> On August 10, 1988, one year after Judge Schroeder's decision in Gordon's case and after years of effort on the part of the Japanese American community, President Ronald Reagan signed into law the Civil Liberties Act of 1988, which provided a formal apology and redress of \$20,000 to each surviving internee as token acknowledgement of the wrong that had been inflicted on them during World War II. Civil Liberties Act of 1988,

the continued importance of Gordon's case was underscored when, in May 2011, former Acting Solicitor General Neal Katyal issued a formal confession of error, admitting the wartime misconduct of the Office of the Solicitor General.<sup>35</sup> And for many of the speakers at the conference, Gordon's case has chilling new relevance as this country continues to grapple with the extent to which civil rights must be sacrificed in the name of the war on terror.<sup>36</sup>

## II. CARRYING THE LEGACY FORWARD: PERSPECTIVES ON SOCIAL JUSTICE MOVEMENTS AND MODELS OF PUBLIC INTEREST LAWYERING

Gordon's case, the work of his legal team, and his example of personal courage, indeed, still resonate. Drawing on the lessons of Gordon's case, the articles by the legal academics and public interest lawyers in this cluster explore present-day injustices suffered by others, as well as models for advocacy on their behalf.

### A. *A View from the Academy on Rights and Redressing Wrongs*

Four distinguished professors presented their perspectives on what can be learned from Gordon and his cases. Professor Lane Hirabayashi's exploration of Gordon's wartime diaries has already been discussed. Professors Eric Yamamoto, Natsu Taylor Saito, and Michael McCann

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Pub. L. No. 100-383, 102 Stat 903 (codified as amended at 50 U.S.C § 1989b (1988)). Gordon had been an early advocate for Japanese American redress.

<sup>35</sup> David G. Savage, *U.S. Official Cites Misconduct in Japanese American Internment Cases*, L.A. TIMES, May 24, 2011, <http://articles.latimes.com/2011/may/24/nation/la-na-japanese-americans-20110525>.

<sup>36</sup> Concerns that the nation not repeat what it did during the Japanese American internment were central in a Senate Judiciary Committee hearing on a bill to prohibit the indefinite detention of individuals suspected of supporting terrorist activity on US soil. See *The Due Process Guarantee Act: Banning Indefinite Detention of Americans*, U.S. SENATE COMMITTEE ON THE JUDICIARY (Feb. 29, 2012) (webcast), <http://www.judiciary.senate.gov/hearings/hearing.cfm?id=8b30fa475a5089d793576cd9470701bd>.

provide their own views on the impact and present-day relevance of Gordon's historic stand for justice. While each has a unique lens through which he or she views the enduring significance and meaning of the Japanese American incarceration and Gordon's cases, they all assert the same main theme—that we honor and remember Gordon and advance his legacy only when we are vigilant with regard to the continuing struggles of others seeking justice.

Professor Yamamoto urges such “watchful care.”<sup>37</sup> He calls on the courts to reject the position of deference adopted by the wartime Supreme Court in Gordon's case and to, instead, be watchful—to carefully scrutinize government claims of national security that are used to justify intrusions on civil liberties. He further calls on all of us to stand with other groups still seeking to address past injustices, both nationally and internationally, learning, from our own national struggle to acknowledge the wrongfulness of the Japanese American incarceration, the power of apology, redress, and reparation in achieving social healing. In his compelling and deeply personal article, he shares the voices of some of those still seeking that healing—from Native Hawaiians and African Americans to Korean comfort women forced into sexual slavery by the Japanese military during World War II—and calls us to action.

Professor Saito asks us to be cautious in assessing whether true justice can be achieved through our existing legal system.<sup>38</sup> Echoing Professor Yamamoto, Professor Saito notes the significance of the *coram nobis* cases in revising the traditional narrative that the wartime Japanese American incarceration was justified and in paving the way for redress. However, she warns that, despite the salutary work of the *coram nobis* legal teams and redress activists, this country has still not learned the lessons of the wartime

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<sup>37</sup> Eric K. Yamamoto, *The Evolving Legacy of Japanese American Internment Redress: Next Steps We Can (and Should) Take*, 11 SEATTLE J. FOR SOC. JUST. 77, 78–79 (2012).

<sup>38</sup> Natsu Taylor Saito, *Rebellious Lawyering in the Courts of the Conqueror: The Legacy of the Hirabayashi Coram Nobis Case*, 11 SEATTLE J. FOR SOC. JUST. 89 (2012).

incarceration. After exploring why true and meaningful change has not resulted from Japanese American redress, she argues that we might come closer to such change if we push the envelope and rethink the traditional role of the lawyer, as well think beyond our legal system's traditional remedies and look instead to the more expansive view of rights recognition and reparation of social wrongs that is embodied in the law of international human rights.

Professor McCann's article takes another view on the issue of rights that delves into the very concept of when rights exist and when they do not.<sup>39</sup> Rights, of course, do not exist in the abstract; instead, Professor McCann explains that rights exist only to the extent that those possessed of power choose to confer them, or when individuals, like Gordon Hirabayashi, and groups mobilize effectively to assert their rights. Professor McCann draws parallels between the experiences of the Japanese American and Filipino American communities, both of which have been viewed by dominant society as, at certain times in recent history, deserving of rights protection, and at other times, as undeserving of such protection. He similarly compares rights mobilization efforts in both communities, asserting that such mobilization can be effective only if supported by an organized coalition of groups from both within and outside the community. Further, he asserts, rights mobilization can only be effective if advanced in fora outside of traditional litigation, including through the media, legislative efforts, the business community, and the academy.

*B. A View from the Front Lines in the Fight for Social Justice: Lawyering in the Public Interest*

The final set of articles is by public interest lawyers who address both strategies and challenges in seeking justice for vulnerable populations. In

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<sup>39</sup> Michael W. McCann, *Inclusion, Exclusion, and the Politics of Rights Mobilization: Reflections on the Asian American Experience*, 11 SEATTLE J. FOR SOC. JUST. 115 (2012).

their daily work, these individuals put into action the themes of courage and commitment; a broad, inclusive view of rights; coalition-building; and multi-faceted approaches to advocacy that were raised by other speakers before them.

Angélica Cházaro, an attorney with the Northwest Immigrant Rights Project who advocates on behalf of immigrants and refugees, reminds us that the Japanese American incarceration can be viewed as but one episode in a long continuum of government practices that target communities viewed as foreign for expulsion and incarceration.<sup>40</sup> She draws parallels, for example, between wartime images of Japanese Americans as treacherous spies and current-day images of immigrants as criminals. That false view of immigrants as criminals, she posits, is given validity in the eyes of the public by the increasing ways in which immigration enforcement becomes the work of local law enforcement and penal or penal-like institutions. In drawing our attention to a broader view of the biases and prejudices that underlie unjust government practices, Professor Cházaro also raises a challenge faced by many public interest lawyers—whether to focus efforts on seeking long-term systemic change or on meeting the immediate and pressing needs of current clients within the very system that needs changing. Northwest Immigrant Rights Project, and other organizations similarly committed to seeking social justice, must do both.

Anne Lee, Executive Director of TeamChild, a youth advocacy agency in Seattle, explains how TeamChild attorneys work in a multi-faceted way, across agencies and disciplines, to achieve the systemic change for which Professor Cházaro calls.<sup>41</sup> Through the stories of two youth, Ms. Lee illustrates not only how failures in our educational and juvenile justice

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<sup>40</sup> Angélica Cházaro, *Rolling Back the Tide: Challenging the Criminalization of Immigrants in Washington State*, 11 SEATTLE J. FOR SOC. JUST. 127 (2012).

<sup>41</sup> Anne Lee, *The Role of Public Interest Lawyers in Social Justice Movements: Seeking Justice Where Educational Inequality, School Discipline, and Juvenile Justice Converge*, 11 SEATTLE J. FOR SOC. JUST. 149 (2012).

systems can lead youth into downward cycles, but also how attorneys can work creatively across those systems to intervene and help break those cycles. TeamChild attorneys go beyond the traditional litigation model to “straddle[] the lines” between the juvenile justice system, schools, and community-based systems of care for youth in order to find solutions that will serve their clients far beyond their immediate crises and to effect long-term systemic reform. TeamChild has further prioritized “bringing youth to the table” in effecting reform, consistent with the views expressed by others at the conference that true change can only occur when those affected are part of fashioning solutions.

Like Ms. Lee, David Carlson, Associate Director of Legal Advocacy for Disability Rights Washington, underscores the necessity and value of “multi-modal” approaches to affecting true systemic change.<sup>42</sup> Lawyers, he asserts, must go “beyond just pointing out legal violations.”<sup>43</sup> In order to achieve lasting, meaningful solutions, they must be able to pursue multiple avenues beyond court, including using the media; advocating for policy change before legislatures; and engaging in community outreach, education, and organizing. He illustrates these points through two examples from his work on behalf of persons with disabilities in which traditional litigation failed, but alternative approaches succeeded. His caution is that such multi-modal efforts require public interest lawyers to exercise a broad range of skills beyond those that are traditionally part of legal training, as well as patience and perseverance of the kind that was required of Gordon.

José Padilla, Executive Director of California Rural Legal Assistance, which seeks to secure economic justice and human rights for California’s rural poor, finishes this cluster in a powerful piece that pulls together the many threads woven throughout the remarks of others.<sup>44</sup> He calls on

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<sup>42</sup> Carlson, *supra* note 5.

<sup>43</sup> *Id.* at 160.

<sup>44</sup> José R. Padilla, *Lawyering Against Power: The Risks of Representing Vulnerable and Unpopular Communities*, 11 SEATTLE J. FOR SOC. JUST. 173 (2012).



lawyers working to achieve social change to integrate both lawyering and community, and not only to engage in individual client advocacy, but also to seek systemic change. He urges social justice lawyers to defend the rights of the most vulnerable among the vulnerable. And, through his discussion of California Rural Legal Assistance's decades-long struggle against Congressional investigations challenging its work, he shows us both the potential risks and costs of advocacy on behalf of disenfranchised communities and the deeply personal and tenacious commitment required when one is "lawyering against power."<sup>45</sup>

In closing this cluster, Mr. Padilla returns to Gordon and, in doing so, he perhaps articulates the most important of Gordon's legacies—the manner in which Gordon's wartime act of civil disobedience and his persistence in the pursuit of justice continue to inspire.

I was humbled when asked to participate and speak at this this conference celebrating the twenty-fifth anniversary of the *US v. Hirabayashi coram nobis* case. I wanted to participate because many of us who do this work (and I have been doing this work for thirty-three years) need the inspiration. We need to be reminded. We all need to remember that there were others before us who took on these same powerful government forces because of racism and anti-immigrant sentiment.<sup>46</sup>

Mr. Padilla, I believe, states well the collective impact of the conference's speakers on those present. The work of Gordon and his legal team, as well as the work of the academics and front-line public interest lawyers who spoke at the conference, inspired us, and, with remembering and retelling, will continue to inspire others to recognize, stand against, and repair injustice.

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<sup>45</sup> *Id.* at 173.

<sup>46</sup> *Id.* at 183.