

SPECIAL FEATURE AT THE CLC

AND THEN THEY CAME FOR US: THE PERILS OF SILENCE

By Amy Lin Meyerson

*“Don’t be afraid to
speak up.”*

— Fred T. Korematsu

I HAD THE HONOR OF GETTING TO KNOW FRED T. KOREMATSU and his family, including his daughter Dr. Karen Korematsu, though our work with NAPABA and NLF. Join us as we celebrate Fred’s legacy and speak up!

On February 19, 1942, in response to the Imperial Japanese Navy’s attack on Pearl Harbor, President Franklin D. Roosevelt issued Executive Order 9066,¹ which authorized and directed the US Secretary of War to remove over 120,000 Americans of Japanese ancestry, including 70,000 American citizens by birth, living on the US West Coast, from their homes. Their assets were frozen and they were imprisoned in detention camps.² Approximately 17,000 of those incarcerated were under the age of 10. Anyone who was at least ¼th Japanese ancestry was incarcerated.

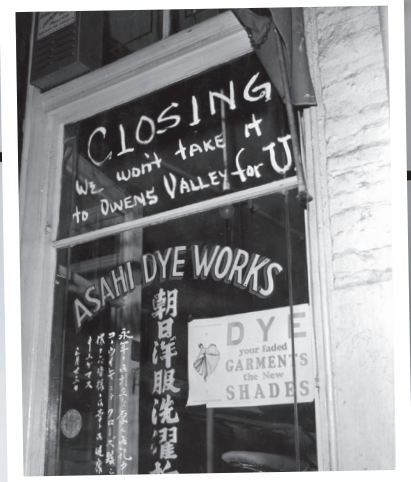
On March 27, 1942, General John L. DeWitt issued an order making it a crime for Japanese Americans to leave Military Area 1 (California, Oregon, Washington, and Arizona).³ DeWitt concluded that their race made Japanese Americans inherently disloyal:

The Japanese race is an enemy race and while many...born on United States soil, possessed of...citizenship, have become “Americanized,” the racial strains are undiluted....It, therefore, follows that along the vital Pacific Coast over 112,000 potential enemies, of Japanese extraction, are at large today....The very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken.⁴

At the age of 23, Fred T. Korematsu refused to go to the government’s incarceration camps for Japanese Americans. On May 30, 1942, while waiting to meet his girlfriend on a street, he was arrested and convicted of defying the government’s order.⁵ Fred appealed his case all the way to the United States Supreme Court asserting that Executive Order 9066 violated the Fifth Amendment of the US Constitution. In 1944, the US Supreme Court ruled against him, passively accepting without question the government’s claim that the incarceration was justified due to military necessity.



Photo credits: travelarium/123rf.com, National Archives



And Then They Came for Us

In his dissent, Justice Robert Jackson wrote: “the Court for all time has validated the principle of racial discrimination ... and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.”⁶

In 1945, the Supreme Court held in *Ex Parte Mitsuye Endo*, 323 U.S. 283 (1944) that the War Relocation Authority “has no authority to subject citizens who are concededly loyal to its leave procedure.”

The last Japanese American detention camp closed in March 1946. President Gerald Ford officially repealed Executive Order 9066 in 1976.

In 1983, Professor Peter Irons, a legal historian, together with researcher Aiko Herzig-Yoshinaga, discovered key documents that US intelligence agencies had hidden from the US Supreme Court in 1944. The documents consistently showed that Japanese Americans had committed no acts of treason to justify mass incarceration.

One such piece of hidden evidence was a report from the Federal Communications Commission’s radio intelligence chief, George Sterling, that stated:

The General launched into quite a discourse [about] radio transmitters operated by enemy agents...sending messages to ships at sea....Since General DeWitt...seemed to believe that the woods were full of Japs with transmitters, I proceeded to tell him and his staff...of the FCC monitoring program. I know it virtually astounded the General’s...officers....Frankly, I have never seen an organization that was so hopeless to cope with radio intelligence requirements....The personnel is unskilled and untrained. Most are privates who can read only ten words a minute. They know nothing

about...[the] technical subjects so essential to radio intelligence procedure. They take bearings...on Japanese stations in Tokyo...and report to their commanding officers that they have fixes on Jap agents operating transmitters on the West Coast. These officers, knowing no better, pass it on to the General, and he takes their word for it. It’s pathetic to say the least.⁷

With this new evidence, a pro bono legal team that included Don Tamaki, whose family was initially incarcerated in a horse stall at a Bay Area race track that had been converted into a temporary prison camp, Dale Minami and the Asian Law Caucus re-opened Korematsu’s 40-year-old case on the basis of government misconduct. On November 10, 1983, Fred’s conviction was overturned in a federal court in San Francisco. It was a pivotal moment in civil rights history.

Judge Marilyn Hall Patel of the Federal District Court wrote about the Supreme Court precedent:

It stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting our constitutional guarantees....[I]n times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability....[I]n times of international hostility...our institutions, legislative, executive and judicial, must be prepared to protect all citizens from the petty fears and prejudices that are so easily aroused.⁸

In 1988, Congress issued a formal apology and passed the Civil Liberties Act, awarding \$20,000 each to over 80,000 Japanese Americans as reparations for their treatment.

Seventy-four years later, in the so-called

“Travel Ban” case, Chief Justice Roberts described the *Korematsu* ruling as “... gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—“has no place in law under the Constitution.”⁹ However, Roberts then summarily declared: “*Korematsu* has nothing to do with this case,”¹⁰ and passively accepted the government’s argument that the Travel Ban was within the president’s expansive powers over matters of immigration and national security.¹¹ The Court did not ask whether the ban was necessary for the nation’s safety, or if it was instead, merely the fulfillment of a campaign promise for “a complete shutdown of Muslims entering the US.”¹² Critics pointed out that the Court’s unquestioning, passive deference to the government when it invokes “national security” was essentially what the Court did in *Korematsu*—to its everlasting shame,¹³ raising the question of whether one injustice was exchanged with another.¹⁴

For his civil rights activism, in 1998, Fred T. Korematsu received the Presidential Medal of Freedom, the nation’s highest civilian honor, from President Bill Clinton. In 2010, the State of California passed the Fred Korematsu Day bill, making January 30 the first day in the United States named after an Asian American. Fred’s growing legacy continues to inspire people of all backgrounds and demonstrates the importance of speaking up to fight injustice.

CLC The Presidential Track Session PT04 will feature a film screening of *And Then They Came for Us: The Perils of Silence*, the ABA Silver Gavel award-winning documentary that tells the story of the Japanese Americans who were sent to concentration camps in the western interior of the United States during World War II.

Following the film, join in a discussion of the role of lawyers and rule of law with panelists, including Dr. Karen Korematsu,



Learn more about this topic at the 2020 Connecticut Legal Conference in **PT04 And Then They Came for Us: The Perils of Silence**. Register online at ctlegalconference.com.

founder and executive director of the Fred T. Korematsu Foundation; Donald K. Tamaki of Minami Tamaki LLP; and Alicia R. Kinsman of the Connecticut Institute for Refugees and Immigrants. ■

Amy Lin Meyerson is the solo practitioner of The Law Office of Amy Lin Meyerson in Weston and the 2020-2021 CBA president. She is a past president of the National Asian Pacific American Bar Association (NAPABA) and the NAPABA Law Foundation (NLF), and is a member of the American Bar Association's Representative and Observers to the United Nations.

NOTES

1. Exec. Order No. 9066, 7 Fed. Reg. 1407 (1942); see also "A Brief History of Japanese American Relocation."
2. Peter H. Irons, *Justice Delayed: The Record of the Japanese American Internment Cases* (Middleton, CN: Wesleyan University Press, 1989), ix, x. Many German Americans and Italian Americans were incarcerated as "enemy aliens" at separate U.S. designated military areas.
3. Public Proclam. No. 4, 7 Fed. Reg. 2543 (1942).
4. John L. DeWitt, *Final Report: Japanese Evacuation from the West Coast, 1942* (Washington, D.C.: Government Printing Office, 1943), 34.
5. *Korematsu*, 323 U.S. at 215-16 (1944)
6. *Korematsu*, 323 U.S. at 246 (1944).
7. "Conference with General DeWitt at San Francisco, Friday, January 9, [1942]," memorandum, Records of the Radio Intelligence Division, 173.11, Records of the Federal Communications Commission, RG 173, National Archives and Records Service, Washington, DC
8. *Korematsu v. United States*, 584 F. Supp. 1406, 1420 (N.D. Cal. 1984).
9. *Trump v. Hawaii*, 138 S. Ct. at 2423 (2018)
10. *Trump v. Hawaii*, 138 S. Ct. at 2423
11. *Trump v. Hawaii*, 138 S. Ct. at 2420
12. "Trump Calls For 'Total And Complete Shutdown Of Muslims Entering' U.S.," NPR, December 7, 2015.
13. "A Decision That Will Live in Infamy," Noah Feldman, June 26, 2018, Bloomberg News.
14. "How the Supreme Court Replaced One Injustice With Another," Karen Korematsu, June 27, 2018, *New York Times*

Additional Sources:

Background Information of *Korematsu v. the United States* (1944) Excerpted from July 8, 2017 Keynote Speech by Donald K. Tamaki Commemorating the Opening of the Topaz Internment Camp Museum in Delta Utah.

"A Decision That Will Live in Infamy," Noah Feldman, June 26, 2018, Bloomberg News.

"Fred T. Korematsu." Fred T. Korematsu Institute. <http://www.korematsuinstitute.org/fred-t-korematsu-lifetime>.

Irons, Peter. *Justice at War: The Story of the Japanese American Internment Cases*. New York: Oxford University Press, 1983. Berkeley: University of California Press, 1993.

"Japanese Internment Camps." History.com, September 13, 2019, <https://www.history.com/topics/world-war-ii/japanese-american-relocation>.

Serving the Needs of the Connecticut Legal Community



Lawyers Concerned for Lawyers – Connecticut, Inc. ("LCL-CT") is a Connecticut non-profit corporation created to provide assistance to Connecticut lawyers, judges and law students who experience substance use disorders, mental health issues, stress, age-related problems or other distress that impacts the individual's ability to function personally and professionally.

LCL services are available at no cost to all attorneys, judges and law students in the State of Connecticut.

All LCL services are strictly confidential and protected under C.G.S. §51-81d(a), as amended.

Visit our website: www.lclct.org
Contact LCL today for FREE, CONFIDENTIAL support
HOTLINE: 1-800-497-1422