Over seventy-five years ago, on February 19, 1942, President Franklin D. Roosevelt issued Executive Order 9066, uprooting some 120,000 Japanese-Americans -- two-thirds of them American citizens -- from their homes on the West Coast and forcing them into concentration camps.

Although the rest of his family reported as ordered, Fred Korematsu refused to go. He was arrested, and convicted of violating the Executive Order and related military proclamations. He appealed his conviction first to the Ninth Circuit and then to the Supreme Court. The Supreme Court affirmed his conviction as well as the convictions of Minoru Yasui and Gordon Hirabayashi, upholding the Executive Order.

In 1983, some forty years later, the federal court in San Francisco vacated Korematsu's conviction after evidence was uncovered showing that the government had suppressed evidence that undermined its assertions in the cases before the Supreme Court that the relocation and incarceration of Japanese Americans during World War II without individualized consideration of loyalty was a matter of military necessity. Fred Korematsu spent the rest of his life teaching the lessons of his case. As he put it, "No one should ever be locked away simply because they share the same race, ethnicity, or religion as a spy or terrorist."

The reenactment performed during Friday’s plenary session tells the story of Fred Korematsu and his fight for justice through narration, reenactment of court proceedings, and historic documents and photographs. Included in the cast are several individuals who play themselves, as well as others who lived through the proceedings as coram nobis team members. After the plenary session our distinguished panel will discuss Korematsu v. United States and its legacy from their own perspectives. This program will build on the themes explored in the case reenactment and explore how the reversal came to be, how race and xenophobia and national security continue to impact our laws, and how we can use the lessons of the past to inform our actions today.

**Moderator:**
Judge Denny Chin, U.S. Court of Appeals for the Second Circuit

**Speakers:**
Karen Korematsu, Fred T. Korematsu Institute
Dale Minami, Minami Tamaki LLP
Don Tamaki, Minami Tamaki LLP
Peggy Nagae, White Men as Full Diversity Partners
Karen Narasaki, U.S. Commission on Civil Rights
Judge Marylin Hall Patel, U.S. District Court for the Northern District of California (ret.)
Judge Edward Chen, U.S. District Court for the Northern District of California
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Chronology

January 30, 1919    Fred Toyosaburo Korematsu is born in Oakland, California.

1940    The Selective Service Act of 1940 is passed, establishing America’s first peacetime draft. In the draft’s first year, 3,500 Nisei -- second-generation Japanese-Americans born in the United States -- are drafted.

December 7, 1941    Japan attacks Pearl Harbor. The United States is drawn into World War II. The FBI arrests 1,300 Issei -- first-generation Japanese immigrants -- leaders identified purportedly as potentially dangerous enemy aliens.

January 5, 1942    Nisei are reclassified as aliens ineligible for the draft.

February 19, 1942    President Roosevelt signs Executive Order 9066, authorizing the forced exclusion of all persons of Japanese ancestry from the West Coast.

March 21, 1942    Congress passes legislation making violation of military orders issued pursuant to E.O. 9066 a crime.

March to August, 1942    All persons of Japanese ancestry on the West Coast of the United States are forced to leave their homes and businesses and move to temporary detention centers -- and eventually to concentration camps. More than 110,000 Japanese-Americans are expelled from the West Coast; they lose approximately $6-10 billion in property and income.

May 3, 1942    Civilian Exclusion Order No. 34 is issued ordering exclusion of persons of Japanese ancestry from the area where the Korematsu family resided. Fred’s family reports as ordered five days later, without Fred.

May 30, 1942    Fred is arrested in San Leandro, California.

June 12, 1942    Formal charges are filed against Fred for remaining in the area in violation of Civilian Exclusion Order No. 34.

September 8, 1942    Fred is tried and found guilty as charged in the United States District Court for the Northern District of California.

January 28, 1943    Nisei are permitted to volunteer for military service.

February 19, 1943    Ninth Circuit hears oral argument from counsel for Fred (on the government's motion to dismiss the appeal), Minoru Yasui, and Gordon Hirabayashi.
June 1, 1943  Supreme Court determines that Fred’s conviction can be appealed.

June 21, 1943  Supreme Court decides Hirabayashi and Yasui.

December 2, 1943  Ninth Circuit affirms Fred’s conviction.

January 20, 1944  The draft is reinstated for all Nisei, including those imprisoned in camps.

February 2, 1944  Fred’s petition for certiorari is filed with the Supreme Court.

March 27, 1944  Certiorari is granted in Fred’s case.

June 6, 1944  D-Day -- The Allied Forces land at Normandy.

October 11-12, 1944  Oral argument is held before the Supreme Court in Fred’s case.

December 17, 1944  The War Department announces that Japanese Americans who have passed loyalty screening are free to leave camps after January 2, 1945.

December 18, 1944  The Supreme Court issues Korematsu, upholding Executive Order 9066 and the Army’s exclusion of Japanese-Americans.

May 28, 1945  Fred’s parents return to Oakland from Topaz.

August 11, 1945  V-J Day -- Japan surrenders.

September 2, 1945  World War II formally ends.

October 12, 1946  Fred marries Kathryn.

December 24, 1947  President Harry S. Truman pardons all wartime draft resisters, including the Nisei resisters from Heart Mountain and other camps.

1952  Congress enacts the McCarran-Walter Immigration Act, which includes allowances for Issei naturalization.

February 17, 1954  Fred’s father becomes a U.S. citizen.

February 19, 1976  President Gerald R. Ford issues Proclamation 4417 repealing Executive Order 9066.
President Jimmy Carter signs legislation establishing the Commission on Wartime Relocation and Internment of Civilians (the “Commission”) to investigate incarceration of Japanese Americans during World War II.

Fred meets Professor Peter Irons.

Fred’s legal team files his petition for a writ of error coram nobis.

The Commission publishes report entitled “Personal Justice Denied.”

The Commission issues formal recommendation.

Judge Marilyn Hall Patel conducts hearing on Fred's petition and rules from the bench.

Judge Patel issues her formal written opinion.

President Ronald Reagan signs the Civil Liberties Act, providing a formal apology from the government and redress of $20,000 to each survivor incarcerated under Executive Order 9066.

Fred receives the Presidential Medal of Freedom from President Bill Clinton.

Fred dies at the age of 86.

Governor Arnold Schwarzenegger signs legislation recognizing Fred’s birthday as “Fred Korematsu Day of Civil Liberties and the Constitution” in California. It is the first time in U.S. history that a day has been named for an Asian American.

Acting Solicitor General Neal Kumar Katyal posts “Confession of Error: The Solicitor General’s Mistakes During the Japanese-American Internment Cases” on Department of Justice website.

While upholding President Trump's travel ban, Supreme Court overrules Korematsu v. United States.
Franklin D. Roosevelt's Executive Order No. 9066

Executive Order No. 9066
The President
Executive Order
Authorizing the Secretary of War to Prescribe Military Areas

Whereas the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities as defined in Section 4, Act of April 20, 1918, 40 Stat. 533, as amended by the Act of November 30, 1940, 54 Stat. 1220, and the Act of August 21, 1941, 55 Stat. 655 (U.S.C., Title 50, Sec. 104);

Now, therefore, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commanders may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded there from, such transportation, food, shelter, and other accommodations as may be necessary, in the judgment of the Secretary of War or the said Military Commander, and until other arrangements are made, to accomplish the purpose of this order. The designation of military areas in any region or locality shall supersede designations of prohibited and restricted areas by the Attorney General under the Proclamations of December 7 and 8, 1941, and shall supersede the responsibility and authority of the Attorney General under the said Proclamations in respect of such prohibited and restricted areas.

I hereby further authorize and direct the Secretary of War and the said Military Commanders to take such other steps as he or the appropriate Military Commander may deem advisable to enforce compliance with the restrictions applicable to each Military area hereinabove authorized to be designated, including the use of Federal troops and other Federal Agencies, with authority to accept assistance of state and local agencies.

I hereby further authorize and direct all Executive Departments, independent establishments and other Federal Agencies, to assist the Secretary of War or the said Military Commanders in carrying out this Executive Order, including the furnishing of medical aid, hospitalization, food, clothing, transportation, use of land, shelter, and other supplies, equipment, utilities, facilities, and services.

This order shall not be construed as modifying or limiting in any way the authority heretofore granted under Executive Order No. 8972, dated December 12, 1941, nor shall it be construed as limiting or modifying the duty and responsibility of the Federal Bureau of Investigation, with respect to the investigation of alleged acts of sabotage or the duty and responsibility of the Attorney General and the Department of Justice under the Proclamations of December 7 and 8, 1941, prescribing regulations for the conduct and control of alien enemies, except as such duty and responsibility is superseded by the designation of military areas hereunder.

Franklin D. Roosevelt
The White House,
February 19, 1942
[F.R. Doc. 42–1563; Filed, February 21, 1942; 12:51 p.m.]
Source: Executive Order No. 9066, February 19, 1942.
HEADQUARTERS WESTERN DEFENSE COMMAND
AND FOURTH ARMY
OFFICE OF THE COMMANDING GENERAL
PRESIDIO OF SAN FRANCISCO, CALIFORNIA

June 5, 1943


TO: Chief of Staff, United States Army, War Department, Washington, D. C.

1. I transmit herewith my final report on the evacuation of Japanese from the Pacific Coast.

2. The evacuation was impelled by military necessity. The security of the Pacific Coast continues to require the exclusion of Japanese from the area now prohibited to them and will so continue as long as that military necessity exists. The surprise attack at Pearl Harbor by the enemy crippled a major portion of the Pacific Fleet and exposed the West Coast to an attack which could not have been substantially impeded by defensive fleet operations. More than 115,000 persons of Japanese ancestry resided along the coast and were significantly concentrated near many highly sensitive installations essential to the war effort. Intelligence services records reflected the existence of hundreds of Japanese organizations in California, Washington, Oregon and Arizona which, prior to December 7, 1941, were actively engaged in advancing Japanese war aims. These records also disclosed that thousands of American-born Japanese had gone to Japan to receive their education and indoctrination there and had become rabidly pro-Japanese and then had returned to the United States. Emperor worshipping ceremonies were commonly held and millions of dollars had flowed into the Japanese imperial war chest from the contributions freely made by Japanese here. The continued presence of a large, unassimilated, tightly knit racial group, bound to an enemy nation by strong ties of race, culture, custom and religion along a frontier vulnerable to attack constituted a menace which had to be dealt with. Their loyalties were unknown and time was of the essence. The evident aspirations of the enemy emboldened by his recent successes made it worse than folly to have left any stone unturned in the building up of our defenses. It is better to have had this protection and not to have needed it than to have needed it and not to have had it—as we have learned to our sorrow.

3. On February 14, 1942, I recommended to the War Department that the military security of the Pacific Coast required the establishment of broad civil control, anti-sabotage and counter-espionage measures, including the evacuation therefrom of all persons of Japanese ancestry. In recognition of this situa-
tion, the President issued Executive Order No. 9066 on February 19, 1942, authorizing the accomplishment of these and any other necessary security measures. By letter dated February 20, 1942, the Secretary of War authorized me to effectuate my recommendations and to exercise all of the powers which the Executive Order conferred upon him and upon any military commander designated by him. A number of separate and distinct security measures have been instituted under the broad authority thus delegated, and future events may demand the initiation of others. Among the steps taken was the evacuation of Japanese from western Washington and Oregon, California, and southern Arizona. Transmitted herewith is the final report of that evacuation.

4. The report comprises nine Parts and reference matter. Its twenty-eight chapters are supplemented by a pictorial summary. In Part I, I have traced the developments which led to the issuance by the President of Executive Order No. 9066, establishing military control over the Pacific Coast. The military necessity for the specific action reported is outlined in Chapter II. Part II, Chapters IV to VI, inclusive, presents a résumé of the evacuation method. In these chapters the means provided to protect the persons, the property and the health of evacuees are described. In succeeding Parts a more detailed account of each phase of the operation is found. Part III describes the military organization established to accomplish the evacuation. Part IV, Chapters VIII to XII cover evacuation operations. Part V comprises Chapters XIII to XIX. These offer a narrative of Assembly Center Operations—the selection, construction and administration by the Army of the temporary residences provided evacuees pending their transfer to Relocation Centers in the interior. Part VI includes Chapters XX to XXII. This section reports the Army’s participation in preparing semi-permanent facilities for the relocation of evacuees and the methods pursued in their transfer to these accommodations. In Part VII is found Chapters XXIII to XXVI, in which collateral aspects of the program are discussed, such as curfew and travel control, public relations, inspection and repatriation activities. Part VIII, consisting of Chapter XXVII and XXVIII, presents a fiscal and statistical summary. Part IX concludes the report with a series of photographs pictorializing the entire operation. Only those data essential to an understanding of the subject are included in the appendices.

5. There was neither pattern nor precedent for an undertaking of this magnitude and character; and yet over a period of less than ninety operating days, 110,442 persons of Japanese ancestry were evacuated from the West Coast. This compulsory organized mass migration was conducted under complete military supervision. It was effected without major incident in a time of extreme pressure and severe national stress, consummated at a time when the energies of the military were directed primarily toward the organization and training of an Army of sufficient size and equipment to fight a global war. The task was, nevertheless, completed without any appreciable divergence of military personnel. Comparatively few were used, and there was no interruption in a training program.

6. In the orderly accomplishment of the program, emphasis was placed upon
the making of due provision against social and economic dislocation. Agricultural production was not reduced by the evacuation. Over ninety-nine per cent of all agricultural acreage in the affected area owned or operated by evacuees was successfully kept in production. Purchasers, lessees, or substitute operators were found who took over the acreage subject to relinquishment. The Los Angeles Herald and Express and the San Diego Union, on February 23, 1943, and the Tacoma News-Tribune, on February 25, 1943, reported increases not only in the value but also in the quantity of farm production in their respective areas.

7. So far as could be foreseen, everything essential was provided to minimize the impact of evacuation upon evacuees, as well as upon economy. Notwithstanding, exclusive of the costs of construction of facilities, the purchase of evacuee motor vehicles, the aggregate of agricultural crop loans made and the purchase of office equipment now in use for other government purposes, the entire cost was $1.46 per evacuee day for the period of evacuation, Assembly Center residence and transfer operations. This cost includes financial assistance to evacuees who voluntarily migrated from the area before the controlled evacuation phase of the program. It also covers registration and processing costs; storage of evacuee property and all other aspects of the evacuee property protection program. It includes hospitalization and medical care of all evacuees from the date of evacuation; transportation of evacuees and their personal effects from their homes to Assembly Centers; complete care in Assembly Centers, including all subsistence, medical care and nominal compensation for work performed. It also reflects the cost of family allowances and clothing as well as transportation and meals during the transfer from Assembly to Relocation Centers.

8. Accomplishment of the program in the manner selected would have been impossible without the participation of the Federal civilian agencies so ably assisting throughout. Under my continuous direction, the associated agencies of the Federal Security Agency, the Federal Reserve Bank of San Francisco, the Farm Security Administration of the Department of Agriculture, and the Work Projects Administration of the Federal Works Agency accepted major responsibilities. The War Relocation Authority; the Departments of Treasury, Post Office, Justice, Commerce and Interior; the Division of Central Administrative Services of the Office for Emergency Management performed an important service from the beginning, and various state and local agencies effectively cooperated. The participating Army Agencies, particularly the Division Engineers of the United States Engineer Corps who supervised the construction of Assembly and Relocation Centers, discharged their responsibilities in a superior manner. The agencies of my command, military and civilian personnel alike, responded to the difficult assignment devolving upon them with unselfish devotion to duty. To the Japanese themselves great credit is due for the manner in which they, under Army supervision and direction, responded to and complied with the orders of exclusion.
9. A large quantity of primary source materials not found in the Appendix has been selected and bound together. These have been made available in triplicate. It is proposed that one set be retained at this Headquarters. Two sets are forwarded with this report. It is requested that one set be retained in the office of the Adjutant General, War Department, and the other forwarded to the Library of Congress for future reference. The great volume of secondary source materials will remain on file at this Headquarters. All of these data will be available for research purposes whenever the Secretary of War so directs.

J. L. DeWitt,
Lieutenant General, U. S. Army,
Commanding.
Department of Justice
Alien Enemy Control Unit
Washington
April 30, 1943

MEMORANDUM FOR THE SOLICITOR GENERAL

Re: Japanese Brief

Last week with our draft of the Hirabayashi brief I transmitted to Mr. Haus an appendix which I thought he would find helpful in obtaining a background view of the context of this case. In particular, I sent him a copy of Harpers Magazine for October 1942, which contains an article entitled The Japanese in America. The Problem and Solution, which is said to be by "An Intelligence Officer". Without attempting to summarize this article, it stated among other things that:

1. The number of Japanese aliens and citizens who would act as saboteurs and enemy agents was less than 3,500 throughout the entire United States.

2. Of the Japanese aliens, "the large majority are at least passively loyal to the United States".


4. With the exception of a few identified persons who were prominent in pro-Japanese organizations the only important group of dangerous Japanese were the Kibei (American-born Japanese predominantly educated in Japan).

5. "The identity of Kibei can be readily ascertained from United States Government records."

6. "Had this war not come along at this time, in another ten or fifteen years there would have been no Japanese problem, for the Issei would have passed on, and the Nisei taken their place naturally in American communities and national life."

This article concludes: "To sum up: The Japanese Problem has been magnified out of its true proportions largely because of the physical characteristics of the Japanese people. It should be handled on the basis of the individual, regardless of citizenship and not on a racial basis." (Emphasis in original.)

I thought this article interesting even though it was substantially anonymous. I now attach much more significance to it because a memorandum prepared by Lt. Col. K. D. Ringle, who has until very recently been assist-
tant District Intelligence Officer, 11th Naval District, in charge of
naval intelligence in that district (which includes Los Angeles), and
who was formerly Assistant District Intelligence Officer in Hawaii,
had come to my attention. A comparison of this memorandum with the
article leaves no doubt that the author of the Harper's article is
Lt. Com. Ringle. There are many long passages in the first person
relating to personal experiences which are identical in the two writings.

In addition, I am informed entirely unofficially by persons
in the Office of Naval Intelligence that Lt. Com. Ringle in fact was lent
to War Relocation Authority to prepare a manual on the background of the
Japanese who were being evacuated from an Intelligence or security viewpoint
for the use of the WRA personnel. After this memorandum was prepared permission was obtained to abstract it and publish it anonymously
in Harper's. Thus the Harper's article, which clearly indicates that the
method of evacuation was wrong and that it would have been sufficient
to evacuate not more than 10,000 known Japanese and that it would now
be safe to release all but not more than 10,000 presently identified
Japanese, was written by a Naval Intelligence officer who was on duty
from 1940 until very recently in the Los Angeles area, from which approx-
imately one-third of the evacuation came.

I have furthermore been most informally, but altogether reliably,
advised that both the article and the WRA memorandum prepared by
Lt. Com. Ringle represent the views, if not of the Navy, at least of
those Naval Intelligence officers in charge of Japanese counter-intelligence
work. It has been suggested to me quite clearly that it is the view of
those officers that the whole evacuation scheme was carried on very badly
and that it would have been sufficient to evacuate the following three
groups:

1. The Kibei.
2. The parents of Kibei.
3. A known group of aliens and citizens who were active members of pro-Japanese societies such as the Japanese Navy League, the Military Virtue Society, etc.

Since the naval officers believe that it was necessary to evacuate only
about 10,000 people they could have identified by name, they did not
feel that it was necessary to evacuate all of the Japanese. Presumably,
they did not make this view known fourteen months ago for the reasons
that Secretary Knox was at that time greatly exercised about the Japa-
nese Fifth Column and that, since it was the Army's problem, it was safer
to keep quiet than to brave the political storm then raging.

In retrospect it appears that this Department made a mistake four-
ten months ago in not bringing the Office of Naval Intelligence into the
controversy. I suppose that the reason that it did not occur to any of us to do this was the extreme position then taken by the Secretary of the Navy.

To have done so would have been wholly reasonable, since by the terms of the so-called delimitation agreement it was agreed that Naval Intelligence should specialize on the Japanese, while Army Intelligence occupied other fields. I have not seen the document, but I have repeatedly been told that Army, before the war, agreed in writing to permit the Navy to conduct its Japanese intelligence work for it. I think it follows, therefore, that to a very considerable extent the Army, in acting upon the opinion of Intelligence officers, is bound by the opinion of the Naval officers in Japanese matters. Thus, had we known that the Navy thought that 90% of the evacuation was unnecessary, we could strongly have urged upon Gen. DeWitt that he could not base a military judgment to the contrary upon Intelligence reports, as he now claims to do.

Lt. Col. Ringle's full memorandum is somewhat more complete than the version published in Harpers and I think you will be interested in reading it. In the past year I have looked at great numbers of reports, memoranda, and articles on the Japanese, and it is my opinion that this is the most reasonable and objective discussion of the security problem presented by the presence of the Japanese minority. In view of the inherent reasonableness of this memorandum and in view of the fact that we now know that it represents the view of the Intelligence agency having the most direct responsibility for investigating the Japanese from the security viewpoint, I feel that we should be extremely careful in taking any position on the facts more hostile to the Japanese than the position of Lt. Col. Ringle. I attach the Department's only copy of this memorandum.

Furthermore, in view of the fact that the Department of Justice is now representing the Army in the Supreme Court of the United States and is arguing that a partial, selective evacuation was impracticable, we must consider most carefully what our obligation to the Court is in view of the fact that the responsible Intelligence agency regarded a selective evacuation as not only sufficient but preferable. It is my opinion that certainly one of the most difficult questions in the whole case is raised by the fact that the Army did not evacuate people after any hearing or on any individual determination of dangerousness, but evacuated the entire racial group. The briefs filed by appellants in the Ninth Circuit particularly pressed the point that no individual consideration was given, and I regard it as certain that this point will be stressed even more, assuming that competent counsel represent appellants, in the Supreme Court. Thus, in one of the crucial points of the case the Government is forced to argue that individual, selective evacuation would have been impractical and insufficient when we have positive knowledge that the only Intelligence agency responsible for advising Gen. DeWitt gave him advice directly to the contrary.
In view of this fact, I think we should consider very carefully whether we do not have a duty to advise the Court of the existence of the Ringle memorandum and of the fact that this represents the view of the Office of Naval Intelligence. It occurs to me that any other course of conduct might approximate the suppression of evidence.

As I have said, my information that the Ringle memorandum represents the view of the Office of Naval Intelligence has come to me informally. I feel, therefore, that we have an obligation to verify my informal information. I believe that we should address an inquiry to the Secretary of the Navy, making reference to the Ringle memorandum, and stating that we have been advised that this represents the Navy's view and asking the Secretary if in fact the views of ONI, at the time of the evacuation, coincided with Com. Ringle's.

The Ringle memorandum originally came into my possession from WHI and we noticed the parallel between the memorandum and the article in this office. Attorneys for WHI furthermore are among the persons who have advised us that the Ringle memorandum represents the official Navy view. In view of the fact that any other information which I have obtained is highly confidential, I would prefer to refer in a letter to Secretary Knox only to WHI.

I have prepared for your consideration a draft of a letter which you might wish to send to Mr. Knox.

Edward J. Evans
Director, Alien Enemy Control Unit

Attachment
Office Memorandum - UNITED STATES GOVERNMENT

TO : The Attorney General
FROM : J. Edgar Hoover - Director, Federal Bureau of Investigation
SUBJECT: Reported Bombing and Shelling of the West Coast

There is attached a memorandum relative to Lieutenant General DeWitt's final report on the Japanese evacuation of the West Coast.

Certain statements were made in the report indicating that immediately after the attack on Pearl Harbor there was a possible connection between the sinking of United States ships by Japanese submarines and alleged Japanese espionage activity on the West Coast. It was also indicated that there had been shore-to-ship signaling, either by radio or lights, at this time.

As indicated in the attached memorandum, there is no information in the possession of this Bureau as the result of investigations conducted relative to submarine activities and espionage activity on the West Coast which would indicate that the attacks made on ships or shores in the area immediately after Pearl Harbor have been associated with any espionage activity ashore or that there has been any illicit shore-to-ship signaling, either by radio or lights.

Attachment
When Lies Overruled Rights

By KAREN KOREMATSU
Feb. 17, 2017

When President Trump signed an executive order temporarily banning travel from seven majority Muslim countries, he hurled us back to one of the darkest and most shameful chapters of American history. Executive orders that go after specific groups under the guise of protecting the American people are not only unconstitutional, but morally wrong. My father, and so many other Americans of Japanese descent, were targets of just such an order during World War II.

Seventy-five years ago on Sunday, under President Franklin D. Roosevelt’s Executive Order 9066, all people of Japanese ancestry living on the West Coast were forced to leave their homes and report to incarceration camps. Two-thirds were American citizens. Fred Korematsu, my father, then 23, refused to go. A proud and loyal citizen, he had tried to enlist in the National Guard but was rejected and was wrongly fired from his job as a welder in an Oakland, Calif., shipyard. He was arrested and tried for defying the executive order. Upon conviction, he was held in a horse stall at a hastily converted racetrack until he and his family were moved to a desolate camp in Topaz, Utah. My father told me later that jail was better than the camp.

He appealed his conviction to the Supreme Court. In his case, and in cases brought by Minoru Yasui and Gordon Hirabayashi — among the most infamous cases in American legal history —
the court in 1944 upheld the executive order. Justice Frank Murphy vehemently opposed the majority decision, writing in a dissenting opinion, “Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life.” In the hysteria of war and racialized propaganda, my father’s citizenship did not protect him. For him and the 120,000 other Japanese-Americans incarcerated during World War II, there was no attempt to sort the loyal from the disloyal.

In 1982, almost 40 years after my father’s conviction, evidence was discovered proving that the wartime government suppressed, altered and destroyed material evidence while arguing my father’s, Yasui’s and Hirabayashi’s cases before the Supreme Court. The government’s claims that people of Japanese descent had engaged in espionage and that mass incarceration was necessary to protect the country were not only false, but had even been refuted by the government’s own agencies, including the Office of Naval Intelligence, the F.B.I. and the Federal Communications Commission.

With that evidence, my father reopened his case. In November 1983, he stood before a Federal District Court judge, Marilyn Hall Patel, and said, “As long as my record stands in federal court, any American citizen can be held in prison or concentration camps without a trial or a hearing.” Judge Patel overturned my father’s conviction, declaring that his case “stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and

Although his conviction was vacated, my father was keenly aware that his case was never formally overturned, even though it was widely discredited by scholars and even the courts. He was a quiet, soft-spoken man, but he spent the rest of his life speaking around the country about the government misconduct that led to incarceration, in hopes of preventing it from occurring again. In 1998, President Bill Clinton awarded him the Presidential Medal of Freedom for the brave stand he took against an unjust government action.

In 1991, President George H. W. Bush declared, “The internment of Americans of Japanese ancestry was a great injustice, and it will never be repeated.” But it can happen again. Since my father’s death in 2005, I have taken on his work to remind Americans what happens when our Constitution is ignored in the name of national security. We need to scrutinize Mr. Trump’s executive orders and any other attempts to single out groups for repression. Let us come together to reject discrimination based on religion, race or national origin, and to oppose the mass deportation of people who look or pray differently from the majority of Americans.

“Stand up for what is right,” my father said. “Protest, but not with violence. Don’t be afraid to speak up. One person can make a difference, even if it takes 40 years.”

Karen Korematsu is the founder and executive director of the Fred T. Korematsu Institute.
How the Supreme Court Replaced One Injustice With Another

By Karen Korematsu
Ms. Korematsu is the founder and executive director of the Fred T. Korematsu Institute.

June 27, 2018

During World War II, about 120,000 men, women and children of Japanese descent, including almost 40,000 foreign nationals living on the West Coast, were removed from their homes, forced to forfeit their possessions and then incarcerated on the basis of military orders authorized by the president.

My father, Fred, and others who defied the military orders were criminally charged and imprisoned. Defending themselves against the charges, my father, along with Gordon Hirabayashi and Minoru Yasui, all United States citizens, challenged the constitutionality of the orders. In a series of decisions, the Supreme Court upheld his and the others’ convictions in 1943 and 1944. In those now infamous decisions, which constitutional scholars on both sides of the political aisle have criticized, the Supreme Court deferred to the government’s assertions that its racially discriminatory policies were justified by military necessity. But history proved otherwise.

In extraordinary legal proceedings that vacated my father’s conviction nearly 40 years later in 1983, evidence of government misconduct showed that the “military necessity” on which the court predicated its decision was apparently nothing more than a smoke screen. The real reason for the government’s deplorable treatment of Japanese Americans was not acts of espionage but rather a baseless perception of disloyalty grounded in racial stereotypes. His victory in a Federal District Court meant that the Supreme Court would not hear his case, leaving the 1944 decision intact, though almost universally discredited.

When President Trump used questionable evidence to issue executive orders last year banning immigration from predominantly Muslim countries, I heard the same kind of stereotypes that targeted the Japanese-Americans in World War II being used against Muslims. So I, along with the children of Mr. Hirabayashi and Mr. Yasui, asked the Supreme Court to reject President Trump’s orders. We pointed to our fathers’ cases as an urgent warning against executive power run amok.

And we implored the court to repudiate its decisions in those cases while affirming their greater legacy: Blind deference to the executive branch, even in areas in which the president must wield wide discretion, is incompatible with the protection of fundamental freedoms. Meaningful judicial
review is an essential element of a healthy democracy.

On Tuesday, the Supreme Court got it partly right. After nearly 75 years, the court officially overruled Korematsu v. United States. In the majority decision, Chief Justice John G. Roberts Jr., citing language used in a dissent to the 1944 ruling, wrote that the court was taking “the opportunity to make express what is already obvious: Korematsu was 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.’”

But the court’s repudiation of the Korematsu decision tells only half the story. Although it correctly rejected the abhorrent race-based relocation and incarceration of Japanese Americans, it failed to recognize — and reject — the rationale that led to that infamous decision. In fact, the Supreme Court indicated that the reason it addressed Korematsu was because the dissenting justices noted the “stark parallels between the reasoning of” the two cases.

The court majority disagreed with the dissenters, claiming that Mr. Trump’s executive order had “nothing to do with” Korematsu and finding it “wholly inapt to liken that morally repugnant order to a facially neutral policy denying certain foreign nationals the privilege of admission.”

Pointing to the government’s stated purpose of “preventing entry of nationals who cannot be adequately vetted and inducing other nations to improve their practices,” the court saw “persuasive evidence that the entry suspension has a legitimate grounding in national security concerns, quite apart from any religious hostility.”

In rejecting a racist decision, then, the Supreme Court seemed to repeat the same bad logic of the 1940s decision by rubber stamping the Trump administration’s bald assertions that the “immigration travel ban” is justified by national security.

As Justice Sonia Sotomayor explained in her dissent, “This formal repudiation of a shameful precedent is laudable and long overdue. But it does not make the majority’s decision here acceptable or right. By blindly accepting the government’s misguided invitation to sanction a discriminatory policy motivated by animosity toward a disfavored group, all in the name of a superficial claim of national security, the court redeployes the same dangerous logic underlying Korematsu and merely replaces one ‘gravely wrong’ decision with another.”

My father spent his life fighting for justice and educating people about the inhumanity of the Japanese-American incarceration, so that we would learn from our mistakes. Although he would be somewhat glad his case was finally overruled, he would be upset that it was cited while upholding discrimination against another marginalized group. The court’s decision replaced one injustice with another nearly 75 years later.

My father would still say, “Stand up for what is right.”

Karen Korematsu is the founder and executive director of the Fred T. Korematsu Institute.
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**Miscellaneous**


Fred T. Korematsu Institute, http://www.korematsuinstitute.org/homepage/


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Minami Tamaki LLP

David Weinberg, Esq.
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**Speaker Bios**

**Edward M. Chen** is a United States District Judge for the Northern District of California. Judge Chen is a 1979 graduate of the University of California, Berkeley School of Law. He served on the California Law Review and graduated Order of the Coif. After clerking for U.S. District Judge Charles B. Renfrew and U.S. Court of Appeals Chief Judge James R. Browning, he practiced as a litigation associate with the law firm of Coblenz, Cahen, McCabe & Breyer. He joined the legal staff of the ACLU Foundation of Northern California in 1985. At the ACLU, Judge Chen co-founded the Language Rights Project of the ACLU and Employment Law Center. He worked on the legal team representing Fred Korematsu in successfully overturning his WWII conviction for failing to comply with the Japanese internment order. From 2001 to 2011 Judge Chen served as a federal Magistrate Judge for the Northern District of California. He is the first Asian American to serve on that Court’s bench in its 150-year history. Judge Chen was first nominated by President Obama to the U.S. District Court on August 6, 2009 after being recommended by Senator Dianne Feinstein. After a lengthy confirmation process, Judge Chen was confirmed by the U.S. Senate in May 2011. He handles a wide variety of civil and criminal cases. In addition to his judicial duties, Judge Chen has participated and led judicial seminars on mediation, employment, intellectual property, civil rights, access to justice, and case management. He currently co-chairs the Circuit’s Fairness Committee, and serves on the FJC’s District Judges Education Advisory Committee, and the Judicial Conference Committee on the Administration of the Magistrate Judges System.

**Denny Chin** is a United States Circuit Judge for the Second Circuit. Judge Chin graduated from Princeton University magna cum laude and received his law degree from Fordham Law School, where he was managing editor of the Law Review. After clerking for the Honorable Henry F. Werker, United States District Judge for the Southern District of New York, he was associated with the law firm Davis Polk & Wardwell. He served as an Assistant United States Attorney in the Southern District of New York from 1982 until 1986, when he and two of his colleagues from the U.S. Attorney’s Office started a law firm, Campbell, Patrick & Chin. In 1990, he joined Vladeck, Waldman, Elias & Engelhard, P.C. (now Vladeck, Raskin & Clark, P.C.), where he specialized in labor and employment law. From September 1994 through April 2010, Judge Chin served as a United States District Judge for the Southern District of New York. Judge Chin has taught legal writing at Fordham Law School since 1986. He has taught "Asian Americans and the Law" at Fordham Law School and at Harvard Law School. While in private practice, he provided extensive pro bono representation to the Asian American Legal Defense and Education Fund. He served as President of AABANY from January 1992 through January 1994. He has served on the boards of numerous non-profit organizations. Judge Chin was born in Hong Kong. He was the first Asian American appointed a United States District Judge outside the Ninth Circuit.

**Karen Korematsu** is the Founder and Executive Director of the Fred T. Korematsu Institute and the daughter of the late Fred T. Korematsu. In 2009, on the 25th anniversary of the reversal of Fred's WWII conviction, Karen established the Fred T. Korematsu Institute. Since her father's passing in 2005, Karen has carried on Fred's legacy as a civil rights advocate, public speaker and public educator. She shares her passion for social justice and education at K-12 public and private schools, colleges and universities, law schools, teachers' conferences, and organizations across the country. One of Karen's most significant accomplishments was working with Assembly Member Warren Furutani to successfully establish in 2011 a perpetual "Fred Korematsu Day of Civil Liberties and the Constitution" for the State of California on January 30. Fred Korematsu is the first Asian American in U.S. history who has been honored with a statewide day. Karen is a lead member of the National Advisory Boards of both the Fred T. Korematsu Center for Law and Equality at Seattle University School of Law and the Fred T. Korematsu Chair in Law and Social Justice at the William S. Richardson School of Law, University of Hawai’i at Manoa. In 2013, she was appointed as an Advisory Member to the California Task Force on K-12 Civic Learning by the Honorable Tani G. Cantil-Sakauye, California Supreme Court Chief Justice and Chair of the Judicial
Peggy Ann Nagae is the COO and senior consultant of White Men As Full Diversity Partners, a diversity and inclusion consultancy. She has over 30 years expertise in the fields of leadership development, executive coaching, organizational change and strategic planning. Her work is collaborative, values-based and spirit-driven. Peggy leads the engagement of a portfolio of clients including MassMutual, Alaska Airlines, Rockwell Automation, Applied Materials, and Cargill, among others. Her work with executive teams ensures that clients realize the highest impact from their investment in creating inclusive organizations. She earned an A.B. degree from Vassar College in East Asian Studies, a J.D. from Lewis and Clark Law School and a master’s degree in Spiritual Psychology from the University of Santa Monica. She is also a graduate of Harvard’s Educational Management Program. She served as the third president of NAPABA and the Asian Bar of Washington, is a former board member of both the Asian American Justice Center and the Center for Asian Pacific American Women, as well as the co-chair of NAPABA’s Leadership Advisory Council. She currently serves on the Advisory Council for the NAPABA Law Foundation. Peggy represented Minoru Yasui in reopening his World War II Japanese
American curfew case and ensuring his conviction was vacated in 1984. In 2013, as co-founder of the Yasui Tribute Project, Nagae spearheaded Yasui’s successful nomination for a Presidential Medal of Freedom, which President Obama awarded posthumously in November 2015. In 2016, Nagae led the legislative/community effort to create a permanent Minoru Yasui Day in Oregon. In 2017 she was awarded the American Bar Association’s Spirit of Excellence Award.

Karen K. Narasaki is a national authority on civil rights, census, media diversity, immigrant rights, and race relations. She is a consultant to the Bauman Foundation on the census and to the Redistricting Project of the New Venture Fund. In 2014, President Obama appointed her to the U.S. Commission on Civil Rights. As a member of the Civil Rights Commission, Karen has helped to produce reports on Native Americans, minority students with disabilities, voting rights, police use of force, environmental justice, detention of immigrants and the inequitable distribution of school funding. Named several times by Washingtonian Magazine as one of the 100 most powerful women in the nation’s capital, she was president/executive director of Asian Americans Advancing Justice/AAJC where she helped to lead the successful effort to reauthorize the Voting Rights Act; defend federal affirmative action programs; expand federal hate crimes law to cover people with disabilities, LGBTQ individuals, and women; reduce the under count of minorities in the decennial census; and defend family immigration. Karen also negotiated diversity agreements with ABC, NBC, FOX and CBS and chaired the Asian Pacific American Media Coalition for over a decade, leading to an increase in Asian Americans and other minorities on prime time television. Karen also served as Chair of Comcast NBCU’s Asian American Diversity Advisory Council; co-chair of Nielsen Corporation’s Asian American Diversity Advisory Council; and as a member of Walmart’s Advisory Council. She was vice chair of the Leadership Conference on Civil Rights, chair of the National Council of Asian Pacific Americans, chair of the Rights Working Group and a board member for Common Cause, Independent Sector, National Immigration Law Center and the Lawyers’ Committee for Civil Rights Under the Law. She also served on the U.S. Census Decennial Advisory Committee and the FCC’s Advisory Committee for Diversity in the Digital Age. Ms. Narasaki’s work has garnered many recognitions, including the American Bar Association’s Spirit of Excellence Award, NAPABA’s Trailblazer Award, National Immigration Forum’s Heroes of the American Dream Award, and the Leadership Conference on Civil and Human Rights Hubert H. Humphrey Award. Ms. Narasaki is a graduate, magna cum laude, of Yale University and Order of the Coif of the UCLA School of Law. She was a law clerk for the late Ninth Circuit Judge Harry Pregerson and served pro bono as a member of Gordon Hirabayashi’s coram nobis appellate legal team.

Marilyn Hall Patel stepped down at the end of her seven-year tenure as Chief Judge of the Northern District of California in August 2004 and continued to serve as an active judge of the court until her retirement in September 2012. She was the first woman to hold the position of Chief Judge in the Northern District. Renowned as a judge of great independence, Judge Patel has proven this time and again, taking the U.S. government to task in the case of a Japanese-American who had been interned during World War II. (Korematsu v. United States). She also took the unprecedented step of finding the use of the gas chamber to be cruel and unusual punishment in violation of the United States Constitution. (Fierro v. Gomez). In a noted habeas case, Judge Patel granted the petition finding that the petitioner, who had already served eighteen years, had been denied a fair trial as a result of police misconduct, manipulation of evidence and failure to disclose exculpatory materials and ordered the petitioner released from prison. (Nickerson v. Roe). Judge Patel has presided over the integration of the San Francisco Fire Department, United States v. City, County of San Francisco, and decided several other large race and gender bias cases. She also issued the first decision to define the obligation of retailers to provide access under the ADA, Lieber v. Macy’s, and to find that retailers’ websites must comply with ADA requirements for the legally blind in National Federation of the Blind v. Target Corp. Judge Patel has been very active in judicial education programs on gender bias and equity, having been instrumental in introducing the first such program while she was on the state court bench. Started under the aegis of the California Judicial Education and Research Project, the program was the first of its kind in the nation.
These programs are now a staple in judicial education in state and national curricula thanks to the efforts of two organizations of which Judge Patel was a founding member, the NOW Legal Defense and Education Fund and the National Association of Women Judges. She also initiated the first such program in the federal system at a seminar in the Ninth Circuit. The issue is now part of the regular curriculum of federal courts through its Federal Judicial Center. The program led to the first gender bias study in the federal courts, where she served on the Ninth Circuit Gender Bias Committee and pushed for the adoption of the Circuit’s current gender bias rules and Employment Dispute Resolution Plan. During her tenure on the bench and since that time Judge Patel has continued to serve on the National Academy of Sciences Committee on Copyright Policy, the Board of Advisors of Fordham Law School’s Center on Law and Policy Information and the Historical Society of the Northern District of California. She also continues to lecture, serve as a consultant and remain active in bench and bar activities.

Donald K. Tamaki is a Partner at Minami Tamaki LLP. For over 40 years, he has specialized in providing value-driven legal counsel to entrepreneurs, privately-held companies, and nonprofit organizations, with special focus on commercial leasing, personnel and employment law, corporate governance and other internal practices, licensing, acquisition, and other business transactions. In addition, Mr. Tamaki has extensive experience negotiating talent agreements and endorsement deals, representing Olympic ice skating gold medalist Kristi Yamaguchi, and various television news anchors, reporters and weather persons including Carolyn Johnson, Kristen Sze, Mike Nicco, Carolyn Tyler, Lyanne Melendez, David Louis, Matt Keller and Jonathan Bloom. For 16 years straight (2004-2019), Mr. Tamaki has been selected to Northern California Super Lawyers, and has received the highest rating for competency and ethics, AV® Preeminent™, from the Martindale-Hubble attorney directory. Representative clients include, the Straits Restaurant and Sino Restaurant chain, Konica Minolta, East Bay Pediatrics Group, the California HealthCare Foundation, the State Bar of California, the Consulate General of Japan in San Francisco, the Kristi Yamaguchi Always Dream Foundation, the Asian Pacific Fund, the Chinatown Community Development Center, the Asian and Pacific Islander American Health Forum, and Baker Places, Inc. In keeping with the firm’s tradition of community service, Mr. Tamaki served on the pro bono team that reopened the landmark Supreme Court case of Korematsu v. the United States, overturning Fred Korematsu’s conviction for refusing as an American citizen to be incarcerated on account of his racial ancestry. Mr. Tamaki is past member of the board of Glide Foundation and is the board president of the San Francisco Japantown Foundation.