

11-1-2005

Taking the Stand: The Lessons of the Three men who Took the Japanese American Internment to Court

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/sjsj>

Lorraine K. Bannai



Part of the [Administrative Law Commons](#), [Agriculture Law Commons](#), [Arts and Humanities Commons](#), [Banking and Finance Law Commons](#), [Civil Rights and Discrimination Commons](#), [Commercial Law Commons](#), [Comparative and Foreign Law Commons](#), [Constitutional Law Commons](#), [Consumer Protection Law Commons](#), [Criminal Law Commons](#), [Criminal Procedure Commons](#), [Disability and Equity in Education Commons](#), [Disability Law Commons](#), [Educational Leadership Commons](#), [Educational Methods Commons](#), [Energy and Utilities Law Commons](#), [Family Law Commons](#), [Fourteenth Amendment Commons](#), [Health Law and Policy Commons](#), [Housing Law Commons](#), [Human Rights Law Commons](#), [Immigration Law Commons](#), [Indigenous, Indian, and Aboriginal Law Commons](#), [Insurance Law Commons](#), [Intellectual Property Law Commons](#), [International Trade Law Commons](#), [Juvenile Law Commons](#), [Labor and Employment Law Commons](#), [Land Use Law Commons](#), [Law and Gender Commons](#), [Law and Psychology Commons](#), [Legal Ethics and Professional Responsibility Commons](#), [Legal History Commons](#), [Legal Remedies Commons](#), [Legislation Commons](#), [Marketing Law Commons](#), [National Security Law Commons](#), [Natural Resources Law Commons](#), [Other Education Commons](#), [Other Law Commons](#), [Privacy Law Commons](#), [Property Law and Real Estate Commons](#), [Secured Transactions Commons](#), [Securities Law Commons](#), [Sexuality and the Law Commons](#), [Social and Behavioral Sciences Commons](#), [Social and Philosophical Foundations of Education Commons](#), [Social Welfare Law Commons](#), [Transnational Law Commons](#), and the [Water Law Commons](#)

Recommended Citation

Bannai, Lorraine K. (2005) "Taking the Stand: The Lessons of the Three men who Took the Japanese American Internment to Court," *Seattle Journal for Social Justice*: Vol. 4: Iss. 1, Article 29.

Available at: <https://digitalcommons.law.seattleu.edu/sjsj/vol4/iss1/29>

This Article is brought to you for free and open access by the Student Publications and Programs at Seattle University School of Law Digital Commons. It has been accepted for inclusion in Seattle Journal for Social Justice by an authorized editor of Seattle University School of Law Digital Commons.

Taking the Stand: The Lessons of Three Men Who Took the Japanese American Internment to Court*

Lorraine K. Bannai¹

The internment notice came out, and it burned me up, you know. Here I am, an American, and I have to go to internment camp. I was really upset. And I said "I'm not going to go. I'm an American and that's what I am and I'm going to stay that way."

- Fred Korematsu²

I. FINDING COURAGE

In the fall of 1941, Glenn Miller and the big bands were on the airwaves, Joe DiMaggio was dominating baseball, and Humphrey Bogart made a hit of *The Maltese Falcon*. And, while war was looming, three young men were studying, working, and otherwise going about their daily lives. Fred Korematsu was a twenty-two-year-old welder living in Oakland, California. Yosh Kuromiya was eighteen years old and taking art classes at Pasadena Junior College in California. Way to the north, Gene Akutsu was a sixteen-year-old teenager living in Seattle, Washington, with his family. While they were separated by hundreds of miles, they would soon be confronted with similar decisions and become entangled in a legal system that condemned them for their choices.

These are the stories of three men who fought the incarceration of Japanese Americans during World War II in court.³ Each in his own way made a decision to defy the government and faced criminal prosecution and jail as a result. Fred Korematsu refused to comply with a military order that required him to leave his home for internment.⁴ Yosh Kuromiya and Gene

Akutsu protested their induction into the armed forces while they and their families were still kept behind barbed wire fences.⁵

Their stories tell us something about courage and how acts of courage come in many forms. Acts of courage can be bold, loud, and momentous, born of a clear revelation in a stark moment in time; they can be acts of quiet resolve, arrived at after careful, considered deliberation and soul searching; or they can simply be the result of doing what is thought to be right, without the making of choice on any conscience level. What they share in common is a resolve to confront adversity rather than wither in the face of it. Many stories of courage came out of the World War II internment of Japanese Americans. Mothers and fathers had the courage to step onto trains with their small children in the face of both fear and uncertainty and, after internment, took on the daunting task of rebuilding their lives and communities. There is also the legendary courage of Japanese Americans who, while their families were interned, risked their lives in the American armed forces to prove their loyalty.⁶

The three men whose stories appear in this article exhibited another type of courage: the courage to defy an exercise of legal authority they believed to be unjust. What motivates acts of civil disobedience such as these is sometimes hard to know. It is difficult to find one common thread that ran through these men's lives, in their childhood or in their personalities, that could have predicted that they would go to jail for their convictions. These young men had ordinary backgrounds—they were not born of privilege; they did not have the wisdom that comes with age; they were not groomed for political leadership; and, prior to the internment, they lived their lives just as many other young people their age did. But, when caught up in extraordinary circumstances and confronted with momentous choices, they each came to their decisions to resist because they knew in their souls that what was happening to them was wrong. They found that line that they could not cross and still maintain their personal dignity. Their stories

remind us of how any one of us, like them, could be called upon to dig deep and find that place where we will not compromise.

In reading their stories in their own words, one might see where conviction is conceived and how it transforms into action. The first is the story of Fred Korematsu. The second is the story of two Japanese American draft resisters: Yosh Kuromiya and Gene Akutsu. Their stories remind us of the continuing need for courage to resist popular and/or governmental actions that defy justice. The last section of this article explores how we are called upon today to take a stand, as this country continues to scapegoat entire communities of color in the name of ensuring national security.

II. FRED KOREMATSU: CHOOSING TO STAY⁷

A. *A History of Exclusion*

My parents came from Fukuoka, Japan. My father came to America in 1906, at the time the earthquake happened in San Francisco. He lived in East Oakland, across the bay from San Francisco, where he started a nursery. I went to grammar school, junior high, and high school in East Oakland. During my free time, I helped my dad in the nursery. In school, I learned about the Constitution and the concept of equal rights. But Asian immigrants weren't treated "equally," they were recognized as foreigners and couldn't own land or apply for citizenship.⁸

Fred Korematsu was born on January 30, 1919, in Oakland, California. His parents had emigrated from Japan and found themselves in a society that did not want them. The public had been hostile to persons of Japanese ancestry when they first started to arrive in large numbers.⁹ They were excluded from society from early on and denied the privileges and rights afforded others. *Issei*, or first-generation immigrants from Japan, were denied the ability to become naturalized citizens;¹⁰ anti-miscegenation

statutes prohibited Japanese Americans from marrying Caucasians;¹¹ and some Japanese American children were placed into segregated schools.¹² By its Alien Land Law of 1913, California barred aliens ineligible for citizenship from purchasing land or acquiring leases longer than three years.¹³ It was in this atmosphere of racial antagonism that Fred grew up.

B. A Streak of Rebelliousness and an Early Sense of Unfairness

I was the third son, and, you know, the family tradition was that my dad always favored the oldest child. . . . He was the smartest, and everything he did was wonderful. . . . And then I had another brother that was younger and he was the cuter son. . . . And the third son, you know, that's me, everything I did was getting into mischief.¹⁴

Fred graduated from high school in 1937. He had dreams of leaving the nursery and going to college in Los Angeles to study business. However, because he had no money to go away to school, he stayed to help his father in the nursery.¹⁵ While he enjoyed the life of a typical teenager in most respects, he could not escape the racism of the time.

I had to be careful wherever I went. They refused to serve me whenever I went to a restaurant. I couldn't even get a haircut. In order to go to a place where I was welcome, I had to go to Chinatown.¹⁶

C. The War Comes

[In] 1939-'40, . . . [t]he war in Europe was getting very active. Hitler was marching through France, . . . and he was also sinking a lot of ships. [O]n the West Coast, . . . we've got lots of shipyards . . . [a]nd . . . you need a lot of welders. So I said to myself, "Gee, I want to help out, too." So, I . . . take a job as a welder. . . . I worked in Oakland for about six months, and the superintendent comes to me and says, "Fred, you've been doing a good job, so we're going to give you a foreman's job so you'll be working on the

outside of the ship.” [But then one day], I went to punch my time card in, but instead of a time card, there was a note there that said for me to report to the union. There, they said that I no longer had a job. Evidently, they found out I was Japanese.¹⁷

With the advent of World War II, Fred, like other young men his age, wanted the opportunity to serve his country. Fred, so distinguished today for his defiance of authority, was fiercely patriotic, like many Japanese Americans his age. He had been denied work as a welder and sought to enlist.

There’s four of us boys that used to play cards together on Friday nights. We decided, “Hey, let’s join the National Guard or the Coast Guard, and then we’ll be stationed here in the Bay Area [together].” So, . . . we all got together and went down to the post office . . . and the boys, they’re all Caucasian and I was the only Asian. The fellow with the uniform on, he was a sergeant or something, and passed out these applications to them, but when it came to me, he just ignored me. And I said, “Well, how about me? I’d like one, too. I want to join.” And he laughed at me and says, “I’m sorry. . . . I got orders I can’t give you one.” . . . So I said, “I’m an American, too, you know.” . . . So, I sort of felt left out, and I felt angry and disgusted about the whole thing. And I felt kind of ashamed that this happened in front of my friends.¹⁸

D. The Bombing of Pearl Harbor

The bombing of Pearl Harbor on December 7, 1941, shocked the country, but brought particular fear and anxiety to the Japanese American community, including Fred’s family.

At the nursery, my parents, they were all around the radio listening. . . . They weren’t saying very much. My mother was crying. My father was just

*disgusted. All that work that my parents did to that nursery; what was going to happen? A few days later, the police came down and confiscated all the flashlights and cameras. They didn't even have a search warrant or anything. They confiscated everything that they thought we might use for signaling.*¹⁹

The popular press was quick to blame Japanese Americans for Pearl Harbor.²⁰ According to one news report, some Californians plowed up a field of flowers on the property of a Japanese farmer because “it seems the Jap was a fifth columnist and had grown his flowers in a way that when viewed from a plane formed an arrow pointing the direction to the airport.”²¹

*Since we were right next to a foundry, within a few days after [Pearl Harbor], they put spotlights on the whole nursery at night. And they had a guard standing right near our home, right around the fence there and watching us. 'Cause . . . one night . . . I was standing on the porch and lit a cigarette and the guard or the person in the foundry yelled out that I was signaling somebody. Ridiculous, you know.*²²

Early in 1942, the public and the press began to call for the removal of Japanese Americans from the West Coast.²³ Both state and federal legislators joined the call.²⁴ Congressman Leland Ford of Los Angeles, for example, argued for the rounding up of Japanese Americans: “[A] patriotic native-born Japanese, if he wants to make his contribution, will submit himself to a concentration camp.”²⁵

E. Refusing Internment

When the exclusion order was posted on telephone poles in 1942, I felt angry and hurt and confused about my future. I could not understand how

*the United States government could do this to American citizens. . . . It was not right that Japanese Americans were interned.*²⁶

On February 19, 1942, in response to the calls for the internment of Japanese Americans, President Franklin Delano Roosevelt signed Executive Order 9066, granting sweeping power to military authorities. Pursuant to Executive Order 9066, the Secretary of War, or any military commander he named, was authorized to exclude any persons he might designate from military areas he would prescribe “in his discretion.”²⁷ Lieutenant General John L. DeWitt, the commanding officer responsible for the Western states, undertook the control of the Japanese population on the West Coast. Congress made violation of any military order issued pursuant to Executive Order 9066 a Federal crime.²⁸

Fred’s family, as well as over 110,000 other persons of Japanese ancestry on the West Coast, became subject to a series of orders issued by General DeWitt.²⁹ First, on March 24, 1942, a curfew was imposed, requiring all “enemy aliens” and any person of Japanese ancestry to remain in their homes between the hours of 8:00 p.m. and 6:00 a.m.³⁰

*During the curfew, people were watching [any Japanese home]; it was not only our house. . . . There was some person figuring he’s a good American citizen by doing their duty and they were watching every move each family [was] doing. Or if they went out, they followed them to see where they were going.*³¹

Soon thereafter, on March 27, 1942, a “freeze order” was issued, prohibiting persons of Japanese ancestry from leaving Military Area No. 1, the area Fred’s family lived in.³² At the same time that Fred was prohibited from leaving the area, General DeWitt issued Civilian Exclusion Order No. 34, excluding all persons of Japanese ancestry from the Oakland area and requiring them to report to an Assembly Center.³³ As Justice Roberts later

argued in his dissent to the *Korematsu* case, the combined effect of these orders was to prohibit Japanese Americans from going anywhere but into forced detention.³⁴ Fred's family prepared to leave, not knowing where they would be sent.

Fred chose to stay. His family in turmoil, he decided to move to a rooming house and stay behind with his Caucasian girlfriend.

There was so much sadness . . . and so much worry because [they had] lived most of their lives at the nursery and in this country. . . . [T]hey obeyed the law and did what should be right; they did everything they're supposed to do and whatever they can to help other people; they concentrate on raising their family, just the normal life. And to have this happen, it put them into shame. . . . When the evacuation notice came, they had to worry about what they were going take and what was going to happen to the nursery. . . . They would only give them a certain amount of time to do all that before they were pushed into camp. . . . Whatever my problems were, they just didn't have time for me. . . . I was 21 then and you know when you're at that age, you have a girlfriend and all just like everyone else. She was more important to me than anything else. In order to think clearly, . . . I decided to leave on my own.³⁵

Fred's decision to stay behind grew from his belief that he should be able to go about his life like any other citizen. He wanted to stay with his girlfriend; he felt that he should be able to work and go about his daily activities. While he knew that the internment was wrong, his decision to resist did not begin as an act of overt defiance; it started as a simple desire to live free.

The pressure and the worries, like [what] was happening at home, wasn't there on the outside. It was just like a normal day. People going to work or they're going someplace for entertainment or going out to eat, and the

*chatter they talk about is like everyday living. I felt right at home. I says, "I'm an American citizen, too, you know." I'm used to all this, so I felt right at home. . . . It was just normal living outside, and so I just fell right into it. I didn't feel guilty 'cause I don't think I did anything wrong. You know, I'm not like a criminal. . . . That's what soldiers die for . . . for freedom.*³⁶

Fred's family reported to the Tanforan racetrack, which had been converted into a makeshift detention center for almost 8,000 persons of Japanese ancestry. They took only what they could carry.³⁷ They would spend the next five months at Tanforan, one of sixteen "assembly centers" in California, Washington, Oregon, and Nevada³⁸ designed to hold internees until the more permanent internment camps could be built. These centers were surrounded by armed guards, and living conditions were bleak, cramped, and dirty.³⁹

*I happened to overhear at work that the Japanese were all evacuated into camp, so I did buy a paper on the way back from work. I saw the pictures where the Japanese Americans were being marched into camp, and it sort of made me sick to my stomach. . . . I felt kind of lonely, like, what am I going to do now? I could see my parents going in and my brothers going into camp, and I'm not there. And I felt, sort of, all alone.*⁴⁰

F. "Jap . . . Captured"

*I had a date with my girlfriend that day I got caught. It was a weekend, Saturday. I guess we were planning on going shopping or something like that, and I was supposed to meet her at a corner in San Leandro. Evidently, she was delayed or something like that, so I went into the drugstore to get some cigarettes. I believe someone recognized me either at the drugstore or when I came back. I lived there, and I had been in town all my life, practically, so someone recognized me and reported me.*⁴¹

Fred was arrested on May 30, 1942, three weeks after his parents had been sent to Tanforan.⁴² He had changed his name on his draft card and had undergone minor plastic surgery in an attempt to conceal his identity, but was recognized as Japanese American.⁴³ “TWO BAY JAPS EVADE EVACUATION; CAPTURED,” the headline read, referring to Fred and another man who had been apprehended. According to the article, Fred had simply explained: “I didn’t want to go.”⁴⁴ After his arrest, Fred was taken to the Alameda County Jail in Oakland and later transferred to the federal jail in San Francisco.⁴⁵

G. *Choosing to Fight*

*One week, the guard came and said, “Fred, you have a visitor. And I thought, “Who could be visiting me now?” But . . . I went, and here was this young man in a gray suit. He said, “Hey Fred, how they treating you?” “Well, OK.” “Do you need any cigarettes or candy?” I said, “Oh, yeah, I could use some.” And he said he’d get some for me. Then he introduced himself as Ernest Besig, an ACLU attorney. “Oh, my God, an attorney. I could not afford an attorney.” “Oh, no, it’s on me,” he said. “At the first court hearing, I’m going to be with you.” “Fine, fine. I need one.”*⁴⁶

*[T]hat was really a lifesaver because no one wanted to stick their neck out to help me. I was classified as an enemy alien. Even when Mr. Besig decided to help me, the National ACLU wanted him to drop the case because the Executive Director was friendly with President Roosevelt.*⁴⁷

Ernest Besig was the Executive Director of the San Francisco office of the ACLU.⁴⁸ He had read of Fred’s arrest in the papers and was looking for someone willing to bring a test case to challenge the internment orders.⁴⁹ Fred readily agreed, assuring Mr. Besig that he was willing to take his case to the Supreme Court, if necessary.⁵⁰ At that point, Fred was transformed

from someone who simply wanted to live free to someone committed to fighting the internment in court.

H. A Lonely Road

Fred was transferred to Tanforan to await his trial.⁵¹ While he could have gone to stay with the rest of his family, he chose to have his own room out of concern for what his family thought of his arrest. He found the conditions worse than they had been in jail.

As I was going to camp, Tanforan Racetrack, I can see from the freeway the Japanese people in there and the kids and everything. . . . I told them that I prefer to have my own stall for the time being before I meet my folks. . . . I opened the door; it had a gap of about six to eight inches from the ground, the dirt floor. And inside they just had a cot and a straw mattress in there. And there's gaping holes on all the walls; the wind just blew in there, and the dust blew in there and everything. As I sat there, as I lied there to think it over, I guess I was there for about forty-five minutes and I said, boy, this is really a miserable place, no heat or anything. I mean, this was made for horses, not for human beings. I just wondered how in the world people lived in this for this long.⁵²

Fred found himself alone. And worse, he, like others who chose to resist the internment, was ostracized by his own community. Leaders within the Japanese American community had urged compliance with the program of exclusion and internment to show their patriotism.⁵³ And many Japanese Americans, understandably, worried what would happen to them if they resisted. Although rejected by his own community, Fred maintained his resolve.

[W]hen I was at Tanforan, my brother said, "why don't you get some opinion about whether you should fight your case or not?" . . . So one night,

. . . there was a big area where everyone was meeting. So I went there and I could see them talking in groups of about five or six, and all of a sudden, they disappeared. And then I caught my brother and said, "What happened?" "Oh, they think that you're going to make it worse for them. They don't know what's going to happen to them yet, and all you're going to do is make it worse for them. They don't want you to do it." And so that's the way it went. And so nobody talked to me or wanted to be associated with me. Anyway, that didn't bug me because I'm an American and I wanted to fight it if I can. . . . I didn't like what was going on.⁵⁴

I. Free on Bail . . . to be Interned

Fred's case proceeded to trial on September 8, 1942, before Judge Adolphus St. Sure of the Federal District Court for the Northern District of California.⁵⁵ Fred took the stand in his own defense, testifying as to his own loyalty and his willingness to take up arms in defense of the country, if so required.⁵⁶ Nevertheless, Judge St. Sure found him guilty of violating the exclusion order.⁵⁷ He set bail pending appeal, which Mr. Besig offered to pay.⁵⁸

The judge said, since you violated the military orders, the bail will be \$5,000. And to my surprise, Mr. Besig took out his checkbook and wrote it out, without hesitation, and gave it to the court. And he says, "Come on, Fred," he grabbed ahold of me, and we started walking out. You could hear our footsteps, clunk, clunk, clunk, towards the door. We finally got to the door, and I said, "Wow!" You know the sun was shining right in our face, and what a wonderful feeling to be free again, I thought. But then when I looked, there's four MPs standing in front on Mission Street, and they said, "I'm sorry, but he cannot leave the courtroom." Mr. Besig said, "Well, he's a civilian. And we just paid bail. And he has a right to go." We were just about to shove them aside, then all of a sudden, they start pulling out their guns and said, "I'm sorry, we have orders. He cannot go

out in the street.” So we went right back in, and . . . then they raised the bail again, higher . . . \$10,000 or something. Mr. Besig laughed and said, “Fred, you go ahead and go with them. I’ll be in touch with you.”⁵⁹

As I was sitting in the back seat of this military car with these MPs, I felt how un-American I could be to be treated like this. I felt, “Hey, actually I should be in a military uniform, too. And here I am, a prisoner of war instead.” And I felt really awful about that.⁶⁰

Soon after his trial and his return to Tanforan, Fred was moved with the other internees to an internment camp at Topaz in central Utah, one of the ten so-called “relocation centers” built for their more long-term confinement.⁶¹ Like the other camps, Topaz was surrounded by barbed wire and armed guards.⁶² The six adults in the Korematsu family shared two small rooms. Fred became part of a work crew that built the camp hospital and performed other work necessary for the maintenance of the camp.⁶³ The circumstances were miserable. After a year and a half in Topaz, Fred obtained permission to leave camp to work for an ironworks company in Salt Lake City.⁶⁴ He then moved to Detroit, where he became a draftsman. There, he waited through the long process of appeals.

J. “The Ugly Abyss of Racism”

In 1944, in Detroit, I received a letter from Mr. Besig and he told me that we lost in the Supreme Court. And I just couldn’t believe it. . . . I thought [for] sure that we won because it was unconstitutional what they did to the Japanese Americans, putting them in concentration camps. . . . It just seemed like the bottom dropped out. I just felt like, “Am I an American or not?” And how about all those other Japanese Americans; are they Japanese American? . . . When I found out that I lost my decision, I thought I lost my country.⁶⁵

It took almost two years for Fred's case to reach the Supreme Court. Fred had been convicted in September of 1942, but it was not until March 27, 1944, after his case had bounced back and forth between the appellate courts,⁶⁶ that the Supreme Court agreed to hear his case.⁶⁷

Fred's case was argued before the Supreme Court on October 11, 1944, and he had great hope that he would be vindicated. He did not know, however, that a year earlier, the Supreme Court had decided *United States v. Hirabayashi*,⁶⁸ a case that would provide the blueprint for the decision in his case. On the surface, the *Hirabayashi* case seemed very different from Fred's. In *Hirabayashi*, the Supreme Court upheld the constitutionality of the military's curfew order as based on imminent military necessity.⁶⁹ Surely, it would seem that a strong argument existed that the exclusion order involved in Fred's case was much more of a deprivation of rights than a curfew.

The Supreme Court's opinion, issued December 18, 1944, started out with promise: "It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. . . . Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can."⁷⁰

However, the Court affirmed Fred's conviction, deciding that the same reasons that supported the curfew orders in *Hirabayashi* supported the claim of military necessity for the exclusion orders.⁷¹

The Court concluded that Fred's case was not about race: "Korematsu was not excluded from the Military Area because of hostility to him or his race."⁷² Instead, the Court explained, he was excluded because this country was at war with Japan, because of the fear of invasion, and because of the military judgment that it was necessary to "temporarily" segregate Japanese Americans from the West Coast.⁷³

Fred could find little comfort in the fact that three justices dissented, but at least they had recognized the magnitude of the wrong. Justice Murphy, in dissent, condemned the Court's action. "This exclusion of 'all persons of

Japanese ancestry, both alien and non-alien,' from the Pacific Coast area . . . goes over 'the very brink of constitutional power' and falls into the ugly abyss of racism."⁷⁴ He called the exclusion "one of the most sweeping and complete deprivations of constitutional rights in the history of this nation in the absence of martial law."⁷⁵

K. Waiting for Another Chance in Court

So that's the way it went. And for forty years, I was wondering, I'd like to fight it because I said, am I an American or not? Can they do this again, send them away? So it bothered me. I got married to Kathryn, and we had two children. We were active and joined the Boy Scouts and Girl Scouts, and I've been in the Lion's Club for a long time. And also there is the church group we were active in. [But] I still had in my mind, "Are we Americans or not? Are they kidding us?"⁷⁶

On December 17, 1944, the military formally reopened the West Coast to "loyal" Japanese Americans, and the camps began to close.⁷⁷ When Fred's family returned to their nursery in the fall of 1945, they found it in shambles and started the task of rebuilding their lives.⁷⁸

Disheartened, but not defeated, Fred hoped that an opportunity would arise that would allow him to clear his name. In Detroit, he got married, and he and his wife eventually moved back to the San Francisco Bay Area.⁷⁹ The years passed, and they raised a family, worked, and blended into the rhythm of a hard-working, suburban lifestyle. Fred did not know that he would wait for forty years before again being compelled to take a stand.

III. THE DRAFT RESISTERS

The United States has always been my country. I will serve in the armed forces if the forty-eight states were attacked. If the government wants me to serve and possibly sacrifice my life, they should return my citizenship, my

rights, and liberty. It is wrong to rob me of my rights and then to use me to fight to defend those rights for others.

- Gene Akutsu⁸⁰

A second chapter in the story of the Japanese American internment in the courts began in January 1944 while Fred's case was making its way up to the Supreme Court. Yosh Kuromiya and Gene Akutsu had gone with their families to camp—Yosh to Heart Mountain in northwestern Wyoming and Gene to Minidoka in south-central Idaho. They complied with the government orders until they received notices ordering them to report for service in the armed forces; at that point, they knew they could comply no more.

Most *Nisei* had complied with the draft, and many others had earlier volunteered to serve to prove their loyalty. These *Nisei* servicemen went on to serve in the armed forces with exceptional distinction.⁸¹ Yosh, Gene, and others took a different course. They refused induction as a way of challenging their incarceration, saying that they would serve when their status as citizens was clarified and their families were freed.⁸² Yosh was part of a group that has come to be known as the Heart Mountain Resisters, a group that embarked on the largest organized draft resistance movement in the internment camps. Gene, at Minidoka, acted in a more solitary fashion.

A. The Heart Mountain Resisters

1. Their First Incarceration

Heart Mountain was a grim and inhospitable strip of prairie. It was located between two movie-set like western towns, Cody and Powell. Both seemed to turn their backs on the prison camp hastily constructed on land nobody wanted. This orphan-like cluster of tar-papered barracks in the middle of nowhere seemed to express its own self-hate through its guard

towers armed with weapons pointed inward, and placed at intervals along a barbed wire fence. . . . It took a few weeks to orient myself to my new home, but as the everyday survival needs became more commonplace, the full import of the betrayal by our government began to sink in. . . . Because of the trust we had placed in our government and the cowardly, misguided leadership of our JACL,⁸³ we had become war-prisoners in our very own country.

- Yosh Kuromiya⁸⁴

Yosh was sent to Heart Mountain from his home in the Los Angeles area. Heart Mountain was very much like Topaz, where Fred was, and, for that matter, like every other camp in its desolate setting and rows of barracks. The one distinguishing feature of the camp was the mountain, Heart Mountain, the namesake for the camp. It dominated the landscape and provided some comfort to Yosh.

I was interested in sketching. I mean, that was my way of communicating with my environment, to be in touch with my environment. . . . I sketched the different landscape elements. The mountain itself, of course, which had a kind of symbolic meaning, a sense of place. . . . I thought it was a thing of beauty and that maybe it was the only sanity that I was experiencing at the time. There was something permanent about it and something . . . all-knowing. Like it had been there a long time, and we were just passing through, and in time it would all blow over.

- Yosh Kuromiya⁸⁵

2. The Loyalty Questionnaire and the Institution of the Draft

Question 27. Are you willing to serve in the armed forces of the United States on combat duty, wherever ordered?

Question 28. Will you swear unqualified allegiance to the United States of America and faithfully defend the United States from any or all attack by foreign or domestic forces, and forswear any form of allegiance or obedience to the Japanese emperor, or any other foreign government, power, or organization?⁸⁶

Early in 1943, the infamous “loyalty questionnaire” was circulated, causing much confusion, disbelief, and outrage. The Fair Play Committee,⁸⁷ which I was only vaguely aware of at the time, warned that the “questionnaire” could be a precursor to imposing military draft onto those in the camps. If answered carelessly, it would be interpreted as a willingness to be inducted into an already formed, racially segregated army unit.

I naively reasoned that perhaps this was . . . [an] attempt by the government to determine our trustworthiness, a prelude to our clearance on release. Besides, if I answered “No” out of anger or spite, I might jeopardize what was left of my citizenship [and] it might tend to justify the government’s wholesale detention program as a reasonable wartime contingency.

I . . . answered with a conditional “Yes” on question 27, as to my willingness to serve in the armed forces, and “Yes” to 28, forswearing allegiance to the Emperor of Japan, even though I had never sworn allegiance to him in the first place.

- Yosh Kuromiya⁸⁸

In early 1943, Japanese Americans, now interned, were dealt further uncertainty, and, for some, insult, in the form of a “loyalty questionnaire.”⁸⁹ It caught eighteen-year-old Yosh and the other internees by surprise. They did not know the government’s motivations in asking these questions or the consequences for failing to answer “properly.” What was the government asking of them? Could they be deported if they did not give the right

answer? Would a young man be drafted if he answered “yes?” In addition, for many internees who had complied with the government’s orders thus far, including Yosh, the questionnaire was the final indignation, and it sowed seeds of dissent.⁹⁰

The questionnaire had been conceived in a haphazard fashion. Months after the Japanese American community had been incarcerated, government officials began to discuss the possibility of allowing Japanese Americans to volunteer for military service.⁹¹ This was a change in policy because, soon after Pearl Harbor, the government had barred Nisei men from service.⁹² Since then, leadership within the Japanese American community, most notably the leadership of the Japanese American Citizens’ League (JACL), sought the opportunity for Nisei to serve,⁹³ and they found some government officials receptive to the idea.⁹⁴ On February 1, 1943, President Roosevelt announced that the War Department would organize a segregated combat team for those who wished to volunteer.⁹⁵

While the loyalty questionnaire was devised in order to screen volunteers for the armed forces, the War Relocation Authority, which oversaw the internment camps, saw the questionnaire as an opportunity to screen all internees for possible clearance to leave camp for work in the interior of the country.⁹⁶ The questionnaire then became entitled “Application for Leave Clearance,” which itself caused confusion over its purpose.⁹⁷

After the government’s decision to allow Japanese Americans to enlist, a number of Nisei volunteered, but not in the numbers that the government had wanted or expected.⁹⁸ On January 20, 1944, the army announced that it was going to start drafting young men from the camps.⁹⁹ The Nisei were not, however, going to be admitted into the service as equals. The War Department would continue to segregate Nisei into the 442nd Regimental Combat Team.¹⁰⁰

3. Cast as a Coward for Deciding to Resist

Several things made me decide to resist, no one thing. Studying the Constitution in high school had a lot to do with my decision. In fact, I wrote a speech in high school, I think my senior year, which was a co-winner of an award. It was a speech about the Constitution and civil rights, ironically, sponsored by the Daughters of the American Revolution. I was naive enough to believe it all. Not that I don't believe it now; I believe it now in a different light. . . .

And my dad was a very strong influence in terms of his own personal integrity. He spoke about truth and personal integrity and taking on unpopular causes. . . . He would take an honest route rather than what he could have gotten away with, simply because of his conscience. He was not public about his views, but he quietly took actions that he believed to be right. . . .

I was immediately outraged when I realized what was happening. I felt it only fair that the government level with us and tell us exactly what our status was as citizens. If we're subject to the draft, then how come we are still held behind barbed wires? Why are my parents there? Why is my sister there?

- Yosh Kuromiya¹⁰¹

Yosh knew that the draft was wrong as soon as he heard of it, and he contemplated how he would respond. He attended a meeting of the Fair Play Committee, a group in camp that had taken up the issue of the draft¹⁰² and that had resolved to defy the draft until the civil rights of those interned were restored.¹⁰³ What Yosh heard made his course of action clear. When he received his notice to report for his preinduction physical examination, he refused to report.

My initial purpose in attending the [Fair Play Committee] meeting was to elicit information about the moral and legal justification for our

continued detention without hearings nor trial. I was also seeking what recourse we might have when, while still under such duress, we are ordered to fulfill the same military obligations as citizens enjoying the freedoms denied us. It was after our keepers, the War Relocation Authority, would provide no answers and would only remind us of the dire consequences of disobeying government orders that we, as a group, voted to individually ignore the notices to report for preinduction exams in order to contest the issue in a court of law.

Sixty-three including myself did resist, . . . and we had our test case—one which would be the largest such case in Wyoming history. The trial would not take place, however, until mid-June, about two and a half months away. The camp director, fearing our presence in the camp during this period might disrupt the ongoing induction effort, requested that we not be returned there. It didn't matter though, as we couldn't afford the \$2,000 per head bail, anyway. Also, paying bail for the privilege of awaiting trial in a concentration camp seemed rather absurd. Thus, we sixty-three were scattered in small local jails all over Wyoming since the Cheyenne County Jail couldn't accommodate us all.

- Yosh Kuromiya¹⁰⁴

Like Fred, Yosh and others who chose to resist the draft were made pariahs by members of the Japanese American community who believed that compliance was the best course for proving their loyalty. Despite his willingness to serve in the armed forces if his rights as a citizen were restored, Yosh was called a coward by his own community.

The pro-administration and pro-JACL newspaper, the Heart Mt. Sentinel was especially vicious in its editorial attacks, accusing the Fair Play Committee leaders of treason against our country and betraying our people. It characterized the members (me) as deluded, dimwitted cowards, allowing ourselves to be manipulated by the trouble-making leaders . . . to fulfill

their sinister agenda to obstruct the war effort and detract from the heroic sacrifices of our fighting men.

- Yosh Kuromiya¹⁰⁵

4. Guilty as Charged

When the trial date approached, all those held in outlying jails were transported to the Cheyenne County Jail. I had been there for most of the two and a half months so, luckily, had my own bunk. The newcomers had to throw their sleeping mats on the floor in whatever space they could find and risked getting stepped on during the night. It was very crowded.

The stage was pretty well set on the very first day of our trial, when Judge T. Blake Kennedy addressed the sixty-three of us as “You Jap boys---.” We all looked at each other and didn’t know whether to laugh or cry. We knew then that things would not go well for us. Earlier, we had waived our right to a jury trial, reasoning that although we were entitled to a jury by our peers, our peers and potential jurors were behind barbed wire and in their stead we would most likely be stuck with twelve locals who would view us as the enemy. . . . Much wiser, we thought, to plead our case to a professional, someone experienced in the art of jurisprudence and familiar with the intricacies of constitutional law. To our dismay, we got the honorable Judge T. Blake Kennedy, a self-professed racist, who would be more than happy to use his noble bench to rid his great State of Wyoming of this scourge—by catapulting us into the prisons of some other state—preferably somewhere back to the West Coast.

- Yosh Kuromiya¹⁰⁶

The trial of the Heart Mountain resisters began June 12, 1944.¹⁰⁷ All of the resisters were tried as a group and represented by the same lawyer, Samuel Menin, a Denver civil rights lawyer retained by the Fair Play Committee.¹⁰⁸

There is . . . Mits Koshiyama's favorite story. Mits is a fellow resister and codefendant. Toward the end of the trial, Prosecutor Sackett, apparently feeling quite smug in successfully countering defense counsel's attempts to introduce the loss of civil liberties as reasonable grounds for civil disobedience—was rocking back in his chair with his hands confidently clasped behind his head. Suddenly, with a loud bang, he disappeared behind the heavy table he was sitting at. Startled, but thankful for the break in the tensions that had pervaded the now stuffy courtroom, we all laughed. That is, all but Judge Kennedy who was madly pounding his gavel like a lion tamer who had lost control of his performers. Mr. Sackett reappeared, red-faced over the indignity he had brought upon himself, brushed off his coat, and angrily righted his recalcitrant chair. He then pointed a shaky finger at us and declared, "You guys won't be laughing when you hear the verdict!"—as if he and Judge Kennedy had already conferred on the matter.

He was right, of course. We didn't laugh.

- Yosh Kuromiya¹⁰⁹

Judge Kennedy found Yosh and his fellow resisters guilty for failure to comply with the draft.¹¹⁰ While he acknowledged that the resisters had been interned at Heart Mountain at the time of their preinduction physicals, he had no concept of the indignities that Yosh had suffered and was protesting: "[T]he defendants . . . were housed and fed in a satisfactory manner and were permitted to live in families and enjoy the ordinary family relations."¹¹¹ He responded to the resisters' request that their rights as citizens be clarified by saying that the decision to draft them "cleared them of suspicion of disloyalty" and that they were "classified for military service the same as had been all other eligible classes of American citizens."¹¹²

The Heart Mountain resisters appealed,¹¹³ and on May 28, 1945, the Tenth Circuit Court of Appeals affirmed the convictions, reasoning that the

resisters' confinement in internment camps did not excuse them from the obligation to defend their country.¹¹⁴

Yosh would spend the next two years at the Federal Penitentiary at McNeil Island in Washington. To Yosh, his sentence was no different than the one he had been serving at Heart Mountain.

I didn't think much about the risk of going to prison. We were already in prison anyway.

- Yosh Kuromiya¹¹⁵

B. The Minidoka Trials

1. The Last Straw

Miles away from Heart Mountain, Wyoming, in the Minidoka internment camp in Idaho, Gene Akutsu also refused the draft.

My parents told me whether I report or refuse induction will affect my future. Think it over carefully. The decision is yours, whatever you choose, you have our blessings. Be proud, go with your head held high, and never turn back. With that said, my mother asked for a lock of my hair and fingernail clippings. She placed them in an envelope, wrote my name and the date on the outside, then sealed the envelope so in the event of my death they would be able to have a funeral service. These were the last words exchanged before the federal marshal came to arrest me. Thus began the long, lonely journey to the Boise County Jail. Arriving late in the evening, I was fingerprinted and placed in a cell. Once behind barbed wire fence and armed guards, now behind solid iron bars for the next five months.

- Gene Akutsu¹¹⁶

Gene had viewed his induction notice as the last straw in a series of indignities, which had begun the day after Pearl Harbor. Gene's father had

been picked up by the FBI and sent to an internment camp for enemy aliens in Missoula, Montana.¹¹⁷

On December 8th, my dad went to work as usual down there at his shoe repair shop. And about noontime, my mother got a phone call telling her to close up the shop because they're going to take my father in to talk to him . . . They'll be detaining him over at the immigration office for a few days. . . . [M]y dad called my mother up and said, "Would you bring in some personal belongings for me?" . . . So we brought [a] toothbrush, toothpaste, and so forth, and went to see him and bid him good-bye. We didn't know when we'll see him again, but that was the last to see of him until another, close to two years down the line.

- Gene Akutsu¹¹⁸

In early 1942, Gene's mother received orders requiring the family to report for internment, taking only what they could carry. She disposed of whatever she could and prepared to move.¹¹⁹ The business Gene's parents worked hard to establish was lost, and they were forced to sell their home for pennies on the dollar.¹²⁰ On Mother's Day, 1942, the Akutsus were sent to the "assembly center" at the Puyallup Fairgrounds in Washington;¹²¹ after four months, they were moved to the more permanent camp at Minidoka in Idaho.¹²² Finding himself in an internment camp under armed guard, Gene could take no more.

In April 1943, at the age of seventeen, Gene was asked to report to the Minidoka internment camp's legal office to answer the same loyalty questions that had been posed to every internee. His answers changed the course of his life.¹²³

I really answered the questions as "no-yes." [When they asked me question twenty-seven, whether I would serve in the armed forces, I said], "I'm through going wherever you tell me. You sent me to Puyallup

[Assembly Center], you sent me to [Minidoka,] Idaho, and I'm through going wherever you're going to tell me to go." So I answered "no" to that. And for number twenty-eight, the question about foreswear[ing] allegiance to Japan, I never did and never will swear allegiance to Japan, and my allegiance has always been to the United States. . . .

Without due process of law, they had taken all our rights away. . . . I thought that was very unfair. And so when they started to draft, . . . I was the first one to be called in from Minidoka, I think. And I, of course, refused to go.

- Gene Akutsu¹²⁴

Gene's father was released from detention in Crystal City, Texas, in December 1943, and returned to his family at Minidoka. After a short four-month reunion, however, Gene was arrested and sent to the county jail for refusing the draft.¹²⁵

2. Assembly-line Justice

On an August morning, I was escorted to the federal courthouse to enter my plea for not reporting for induction. The judge asked, "How do I plea?" I replied, "Not guilty, your honor." The judge asked, "Do you have an attorney to represent you?" I replied, "No, your honor." The court appointed an attorney to assist me with the preparation of my defense. No sooner [had] the attorney and I entered the consultation room he told me that I'm a damn fool. "I'm not going to help you. You're on your own. I have nothing else to say to you."

- Gene Akutsu¹²⁶

While Yosh had been tried with the rest of the Heart Mountain resisters and was represented by counsel who believed in his cause, Gene was left to his own devices. Because the Minidoka defendants did not have counsel of

their own, Judge Clark had called every available attorney in Boise to court and told them that they were each being appointed to represent the Nisei resisters for no fee.¹²⁷ Gene's case was set to be heard in September 1944 by Judge Chase A. Clark.¹²⁸ With a lawyer who refused to help him, Gene had little idea of how to defend himself.

In eleven days, the judge conducted thirty-three separate jury trials, with as many as four trials in one day.¹²⁹ The jury pool was made up of thirty-four persons who were reshuffled for each new jury of twelve.¹³⁰ In the midst of this assembly-line justice, Gene pled his case to his jury. His court-appointed attorney sat silent in the back of the courtroom.

In early September 1944, once again I was escorted to the federal courthouse. The court was called to session and I was requested to present my case. Apologizing for my limited legal knowledge, I made my way to the witness stand to present my defense. Before the jury was adjourned to their chambers, the judge instructed them not to be concerned about [how the internees had been treated, only] to determine whether the defendant did or did not report for induction as ordered. "Now, go to your chambers and return when you've reached your verdict."

No sooner than the jury left the courtroom, they returned. I guess the jury walked around the conference table and quickly returned. The judge asked the courtroom if the attorney for the defendant was present. From somewhere in the back of the courtroom came a reply, "Yes, Your Honor." "Thank you," replied the judge. The guilty verdict resulted in the sentence of three years, three months in the federal penitentiary.

The entire duration of my trial passed quickly. The jury must have thought very little of my life. Within a short thirty minutes, my future was drastically altered. I was first sent to the Minidoka internment camp, then to the Boise County Jail, and my final destination for the next three years, three months was to the federal penitentiary on McNeil Island, located no more than fifty miles from my hometown of Seattle.

- Gene Akutsu¹³¹

Gene's brother, Jim, had also resisted the draft. For acting on their convictions, both brothers spent the next three years at the federal penitentiary at McNeil Island. They were sent back to the Puget Sound area they had been raised in, only this time to prison.

[A]s we approached the [McNeil Island] dock, . . . I could look back and see up into the Northwest, I could see that was Seattle. A year and a half, two years ago, because I looked and I was a Japanese, they sent me out to an internment camp. Here it is, a year and a half later, they bring us back to a place only fifty miles away, put us into a federal penitentiary. Well, I felt bad then. I thought, boy, this could never happen.

- Gene Akutsu¹³²

3. Coming Home

Gene and his brother returned from prison in April 1947 to find their parents in miserable circumstances. Their parents had moved back to Seattle after Minidoka had closed.¹³³ Their father was setting up a new shoe repair shop. Their mother was despondent.¹³⁴

Before the war, we lived comfortably. When I was released from prison, my parents were living behind my father's shoe repair store in a small room with two cots. I was depressed when I saw it. They didn't even have room for us to stay, so we wound up renting a room in a hotel.

- Gene Akutsu¹³⁵

While they attempted to resume a normal life, their lives would never again be as they were before the internment. About five months after Gene and his brother returned home, their mother committed suicide.

She lost, literally, everything. The wartime pressure really worked on her until gradually it reached a point where she couldn't take it anymore. During the incarceration, people had shunned, isolated, and shied away from her because Father had been taken away. There were few people for her to turn to in camp. She was worried about her husband, and she saw her boys pulled away. She saw her world fall apart. She held up until we were released from prison and was pretty weak, physically and mentally. She had headaches and couldn't sleep. The pressure had been too much.

- Gene Akutsu¹³⁶

Gene and Yosh pulled their lives together as best they could after they were released from prison. Both were concerned about whether they would be able to find work after their criminal convictions. Gene got a job from a neighbor working in a junkyard, cutting apart junk metal.¹³⁷ Yosh supported his family by working as a gardener.¹³⁸

IV. ATTEMPTS TO MAKE THINGS RIGHT

A. A Presidential Pardon

I got a note from the parole officer and it said that the President of the United States decided to give me clemency that would give us our full citizenship back and everything pertaining to. Previously, . . . the President set up an amnesty board to review [our] cases . . . and I guess mostly all the Niseis got it. But it took a whole year later. . . . And the thing is, boy this government, any government, sure moves likes a turtle. . . . [A]nd you think, "Well, that's good." But it was all after we had served our time and then some when they gave it to us. But it's good that they did. And the only thing I feel bad about is my mother wasn't there to see that. . . . They gave us our citizenship back and you could take it as, "Well, I guess we made a mistake. We apologize, we'll give your citizenship back," is about what it amounted

to. So, that would have been real nice if my mother was alive to see that, but she wasn't.

- Gene Akutsu¹³⁹

Not all acts of courage are recognized or rewarded. And some wrongs can never be fully righted. Nevertheless, in early 1947, the government attempted to address the wrongs committed against the Nisei draft resisters. A.L. Wirin, who had represented some of the resisters during their trials,¹⁴⁰ submitted a petition for amnesty on their behalf.¹⁴¹ President Truman convened a board to review their cases, along with the cases of other World War II draft resisters.¹⁴² Upon the Board's advice, President Truman gave the draft resisters a Presidential Pardon with the restoration of all civil and political rights on December 24, 1947.¹⁴³ The pardon, however, while an official recognition of the resisters' wartime position,¹⁴⁴ did little to give back the years Yosh and Gene had spent in prison.

On July 1, 2000, the Japanese American Citizens League voted to apologize for its wartime condemnation of the resisters, but not without great controversy.¹⁴⁵ Yosh was philosophical about the JAACL's wartime opposition to his stance.

[While] I found much of the accusations and innuendos against the resisters greatly distorted and personally insulting, I realized the importance of getting it all out in the open. After all, no matter how misinformed and illogical they appeared, they were the real gut-level frustrations, fears, and contradictions voluntarily suppressed for over forty years in exchange for the deceptive image of the "model minority" in our collective quest for social acceptance. . . . Such was the desperation of a proud people in their attempt to preserve their dignity after losing all else.

- Yosh Kuromiya¹⁴⁶

Both Yosh and Gene went on to raise their families and live their lives. Yosh later obtained his state license as a landscape architect.¹⁴⁷ Gene worked for a clothing firm.¹⁴⁸ Both have devoted themselves to speaking out about their wartime resistance to remind others to oppose injustice.

B. The Reopening of Korematsu

In 1981, I finally got a call from Peter Irons. I said to myself, here's another guy who just wants a story out of me because he's writing a book. . . Then he said he was writing a book. . . I said, "Oh, that figures."

But, he was more interesting. He said maybe it's possible to open this case up and take it to court again.

- Fred Korematsu¹⁴⁹

In the years after it was decided, the Supreme Court *Korematsu* case was widely condemned.¹⁵⁰ But Fred waited for the opportunity to reopen his case and clear his name.

That opportunity came in 1982 when he was visited by Professor Peter Irons, who was then researching a book about the lawyers who were involved in the wartime Japanese American internment cases.¹⁵¹ During his research, Professor Irons had discovered evidence in the Justice Department's files that the government had, during the pendency of Fred's World War II case, suppressed, altered, and destroyed material evidence undermining the government's claim of military necessity.¹⁵² He contacted Fred and suggested the possibility of reopening the case.

On January 19, 1983, a petition for writ of error *coram nobis* was filed on Fred's behalf in the Federal District Court for the Northern District of California, the same court that had convicted him forty-one years earlier.¹⁵³ In that petition, Fred presented proof that, prior to the internment, the government's own intelligence agencies had concluded that Japanese Americans were loyal and advised against mass internment; that the

government attorneys who prosecuted Fred failed to disclose these reports to the Supreme Court; and that an early version of DeWitt's Final Report that undermined the government's argument before the Supreme Court was ordered revised and original copies ordered burned.¹⁵⁴

On November 10, 1983, Fred stood before Judge Marilyn Hall Patel. Behind him, the courtroom was packed with Japanese Americans who had, like him, been incarcerated by their own country. Judge Patel granted the petition and vacated Fred's conviction.¹⁵⁵ She concluded that the evidence showed that "the government knowingly withheld information from the courts when they were considering the critical question of military necessity in this case."¹⁵⁶

Fred's conviction had been cleared, but he had taken his stance against the internment not solely because he felt personally wronged. He sought more than personal vindication; he had taken his stance on the principle that the internment of a group solely based on race was wrong.¹⁵⁷ In 1983, he seemed to have a premonition that, even with the clearing of his name, that principle had not yet been settled. Fred's work for justice had only just begun.

It's quite a victory for me, but it's a victory for the 120,000 Japanese Americans that had to be evacuated and put in concentration camps. It took me forty years, but I still remember when I was shackled and put in prison for being a Japanese. Being an American citizen did not mean a thing. We didn't have a hearing or trial; I was just put right in prison. I can't express the feeling that I had at that time. That's been in me all these years, to try to correct it. . . .

Having this conviction cleared, I am very happy. But there is a lot more to be done yet, and I would like to have it completely cleared from the record and that this will never happen again to any American citizen just because he looks a little different from others. If we go to war with some other country, and a person looks like [someone from that country] and [is]

put in prison for that, I know that's wrong. So therefore I will still fight, and my attorneys will fight until it's completely cleared.

- Fred Korematsu¹⁵⁸

C. Redress

Before I won my case, the Japanese American community didn't recognize me or avoided me, and now that I won, they give me all kinds of recognition and the opportunity to speak to various Japanese [American] groups. And now I feel like I'm one of 'em, and it's quite rewarding for me. . . . They wanted me to participate in the redress movement. . . . When I completed my case, I jumped in. Kathryn [my wife] and I jumped in and joined NCCR [the National Coalition for Redress and Reparations], and we went to Washington and lobbied with them. It was a great thrill for me because I met various congressmen and senators, and a majority of them knew [who I was].

- Fred Korematsu¹⁵⁹

In the 1970s, Japanese Americans had begun to seek official recognition that the internment was wrong.¹⁶⁰ In 1976, President Ford formally rescinded Executive Order 9066, affirming an “American Promise” that “this kind of action shall never again be repeated.”¹⁶¹ In 1980, Congress created the Commission on Wartime Relocation and Internment of Civilians to investigate the internment and make recommendations. In 1983, after exhaustive research, the Commission unanimously concluded that “Executive Order 9066 was not justified by military necessity, and the decisions that followed it—detention, ending detention, and ending exclusion—were not driven by analysis of military conditions. The broad historical causes which shaped these decisions were race prejudice, war hysteria and a failure of political leadership.”¹⁶² As a result, “[a] grave injustice was done to American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against

them, were excluded, removed and detained by the United States during World War II.”¹⁶³

After the conclusion of his case and the issuance of the Commission report, Fred became a tireless advocate for redress for Japanese Americans, walking the halls of Congress and sharing his story. On August 10, 1988, President Reagan declared the internment a “grave injustice” and signed into law the Civil Liberties Act of 1988, which provided a formal apology and redress of \$20,000 to each surviving internee.¹⁶⁴ By that time, however, many of those who had been interned had died.¹⁶⁵ In 1998, Fred was awarded the Presidential Medal of Freedom, the nation’s highest civilian honor, for his role in challenging the internment. President Clinton praised him for pressing his case: “In the long history of our country’s constant search for justice, some names of ordinary citizens stand for millions of souls—Plessy, Brown, Parks. To that distinguished list today we add the name of Fred Korematsu.”¹⁶⁶

On March 30, 2005, at the age of eighty-six, after traveling a long road that took him from being a prisoner in a solitary jail cell in San Francisco to being one of the most recognized names in the law, Fred Korematsu passed away. His words, however, continue to both haunt and inspire us.

V. THEIR LEGACY: TAKING A STAND FOR OTHERS

There are Arab Americans today who are going through what Japanese Americans experienced years ago, and we can’t let that happen again. I met someone years ago who had never heard of the roundup of Japanese Americans. It’s been sixty years since this [arrest] happened, and it’s happening again, and that’s why I continue to talk about what happened to me.

*- Fred Korematsu*¹⁶⁷

Fred Korematsu’s conviction has been vacated; the draft resisters have received pardons; and Japanese Americans who were interned have

received token compensation and a formal apology for their years of incarceration. They have, in some measure, been vindicated. However, they have not received what many in the Japanese American community really sought: assurance that a similar injustice will never occur again.

Despite all of the words of apology that attended the granting of redress and all of the hopes expressed that this chapter in history will never again be repeated, no one can yet really give that assurance.¹⁶⁸ That assurance, however, will not come through the passing of laws or the making of grand pronouncements; it will only be realized by the individual acts of legislators, judges, and ordinary citizens who find the courage to speak out for others whose rights may be trampled upon in the quest for national security.¹⁶⁹ During World War II, Fred, Yosh, Gene, and other Japanese Americans stood virtually alone because others were so blinded by fear or prejudice or ignorance that they looked the other way. The stories of those interned are worth remembering so that those who might be unfairly cast as the enemy today will not stand alone.¹⁷⁰

Like everyone, Fred, Yosh, and Gene listened to the news of the terrorist attacks on September 11, 2001, with horror. But it was the news immediately following 9/11 that brought an eerie sense of *déjà vu*. Hate crimes against Arab Americans and Muslims increased dramatically.¹⁷¹ A majority of the public thought Arab Americans should be watched more closely,¹⁷² and a sizeable number even felt that the government ought to intern legal immigrants from countries believed to have terrorist ties.¹⁷³

Law enforcement began targeting Arab Americans and Muslims.¹⁷⁴ FBI agents sought to enter mosques to conduct interviews and recorded the license plate numbers of cars parked there.¹⁷⁵ Hundreds of individuals were either arrested or detained, and thousands of resident aliens, almost all of them of Middle Eastern descent, were asked to submit to “random questioning.”¹⁷⁶ As of November 2001, more than 1,100 people had been detained in the nationwide hunt for terrorists, most of them young men of Middle Eastern descent.¹⁷⁷ Some who were detained had to wait several

months before they learned why they were arrested or were allowed to speak to an attorney.¹⁷⁸

The Japanese American internment was in the news again, this time as precedent for greatly expanded government power during times of national crisis. The *Korematsu* case was resurrected by at least one conservative group as legal authority for the government's actions.¹⁷⁹ In February 2003, Congressman Howard Coble, chairman of the Judiciary Subcommittee on Crime, Terrorism and Homeland Security, stated that he agreed with Roosevelt's decision to intern Japanese Americans during WWII. "Some were probably intent on doing harm to us, just as some of these Arab Americans are probably intent on doing harm to us."¹⁸⁰ Furthermore, despite an enormous body of research to the contrary, some conservative commentators have even attempted to rewrite the historical record, arguing both that the internment was justified and that we cannot protect civil rights to the sacrifice of national security.¹⁸¹

Again, sixty years after the internment of Japanese Americans, the country was vilifying, and the government was detaining, groups of individuals based on their ethnic affiliations. Again, suspicion was cast on individuals who "looked like" the enemy.¹⁸²

There are new voices now that seem to echo those of Fred, Yosh, and Gene. They are the voices of Arab Americans and Muslims who, targeted in the national cause of rooting out the enemy, have become entangled in an unforgiving legal system. They call on us to take a stand for them.

Nadin Hamoui is one of those voices that need to be answered. Her family came to the United States from Syria in 1992, and her father, a former Syrian Air Force Pilot, later escaped and joined them. They applied for political asylum, but were rejected. When they received a deportation order, they were assured by their lawyer that the INS would not act while the order was being contested. On February 22, 2002, at 5:00 a.m., as part of a nationwide sweep of immigrants thought to be avoiding deportation, a dozen federal agents dragged Nadin and her family out of bed. They said

her father would be deported. They stood frightened nineteen-year-old Nadin against a wall for her mugshot and then whisked her, her father, and mother away. The two youngest children, Nadin's fourteen-year-old sister and twelve-year-old brother, were left behind. Nadin was placed in solitary confinement with her mother, whose health deteriorated quickly.¹⁸³

He popped out at me out of the hallway. And he scared me and I scared him, and he just pulled his gun and put it right in the middle of my forehead. And I just like freaked out and put my hands up. . . . And I was like, my fourteen-year-old sister, please don't hurt her.

For the nine months that . . . my mom and I were put in solitary confinement, it was just me and her. It was eight by eight, and they closed off the window with a cardboard so we can't see out.

My mom has a disease in her stomach. She ended up going to the hospital eleven times. . . . This was my mom. And I had written so many letters [and made] so many phone calls and just begged them to please let my mom out. I will stay here until the end of time. Just let her go. And nobody listens.

It shouldn't take us like it took the Japanese. I mean we need to all stand together, Japanese, . . . Chinese, African, Arabs, everybody. Because it keeps happening. History keeps repeating itself. And it's not history that repeats itself; it's people that repeat history. And if we just keep letting that history repeat, we'll never get anywhere.

- Nadin Hamoui¹⁸⁴

After her mother suffered a seizure and after members of the Arab American community, as well as other civil liberties organizations, came to the defense of the Hamoui family,¹⁸⁵ Nadin and her mother were released. Her father was released a month later. On November 8, 2004, the Ninth Circuit Court of Appeals held that the Board of Immigration Appeals had

acted improperly in denying the Hamoui family's request for political asylum.¹⁸⁶

Many answered Nadin's pleas¹⁸⁷ and the pleas of others like her. And, in answering those pleas, perhaps they have prevented a greater harm than the harm that has already been done. But the need for vigilance persists as long as friends and neighbors in our own communities who might look like a perceived enemy are threatened. If we practice such vigilance, we will have learned from the experiences of Fred, Yosh, and Gene to demonstrate the courage of our convictions.

[I]f you get out there and speak out loud, I think you will be able to combat those type of things. [T]he Jewish people, they stress the Holocaust year after year after year . . . what they're doing is telling the people, "Don't forget. Don't forget that this could happen to you . . ." And in the same manner, we should go out there and tell the people and make them remember that this should never happen again. Because you as a minority could be the next one.

- Gene Akutsu¹⁸⁸

* This article was inspired by presentations made by Fred Korematsu, Yosh Kuromiya, Frank Emi, and Gene Akutsu at the conference "Judgments Judged and Wrongs Remembered," held at the Japanese American National Museum (JANM) in Los Angeles, California, on November 5-6, 2004. I wish to thank the organizers of that conference, especially Eric Muller, for their work in keeping the stories of the internment alive. I am also grateful to Professors Lily Kahng, Margaret Chon, and Anne Enquist for their support and feedback during the writing of this piece; Hozaifa Cassubhai for his research assistance and valued perspective; the editorial staff of the *Seattle Journal for Social Justice* for their helpful suggestions; Dean Kellye Testy and Associate Dean Annette Clark for funding the work on this article through a summer research grant; Reference Librarian Bob Menanteaux for helping to track down sources cited herein; Eric Fournier, Steven Okazaki, Tom Ikeda of The Densho Project, Frank Emi, and Kathryn and Karen Korematsu for providing valuable resources from which the stories told here are drawn; and, of special note, my parents, who have instilled in me, through their own internment experiences and the examples they set with their own lives, both the need to ensure that others remember the internment and the importance of public service for the

greater good. Of course, I am most indebted to Messrs. Korematsu, Kuromiya, and Akutsu for allowing me to share their stories and for the stand they took over sixty years ago.

¹ Lorraine K. Bannai teaches at Seattle University School of Law. She received her B.A. from the University of California at Santa Barbara in 1976 and her J.D. from the University of San Francisco School of Law in 1979.

² JANM Conference: Judgments Judged and Wrongs Remembered: Examining the Japanese American Civil Liberties Cases of World War II on Their 60th Anniversary, L.A., Cal. (Nov. 5–6, 2004) (transcript on file with author) [hereinafter, JANM Conference] (remarks of Fred Korematsu). Selected speeches and remarks from the conference will be available for viewing at www.law.seattleu.edu/sjsj.

³ While others challenged the internment in court, *see infra* notes 4 and 5, this article was inspired by presentations made by these three men at the JANM Conference, *supra* note 2, and so focuses on them. Frank Emi also shared his story of challenging the draft at the conference. JANM Conference, *supra* note 2 (remarks of Frank Emi).

⁴ Others, like Fred, resisted the military orders issued against persons of Japanese ancestry after Pearl Harbor. For example, Gordon Hirabayashi, a twenty-four-year-old senior at the University of Washington, defied an order imposing a curfew on persons of Japanese ancestry, as well as an order excluding persons of Japanese ancestry from the West Coast. *Hirabayashi v. United States*, 320 U.S. 81 (1943). Minoru Yasui, a twenty-five-year-old attorney, defied the curfew restrictions. *Yasui v. United States*, 320 U.S. 115 (1943).

⁵ Many others, like Yosh and Gene, resisted the draft. In all, 315 young men refused to be inducted; of these, 263 were convicted. U.S. COMM'N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, CONGRESS OF 1980, REPORT: PERSONAL JUSTICE DENIED, at 246–47 (The Civil Liberties Public Education Fund & University of Washington Press, 1997) (1982) [hereinafter, PERSONAL JUSTICE DENIED].

⁶ The all-Japanese American 442nd Regimental Combat Team was one of the war's more decorated units. Several thousand Nisei, second-generation Japanese Americans who are American citizens by birth, also served as translators in the Pacific theater with the Military Intelligence Service. *See id.* at 253–60 (noting that the all-Japanese American 442nd Regimental Combat Team was one of the war's more decorated units). *See generally* LYN CROST, HONOR BY FIRE (1994); JOSEPH D. HARRINGTON, YANKEE SAMURAI (1979); CHESTER TANAKA, GO FOR BROKE: A PICTORIAL HISTORY OF THE JAPANESE AMERICAN 100TH INFANTRY BATTALION AND THE 442ND REGIMENTAL COMBAT TEAM (1982).

⁷ For other accounts of Fred's life and legacy, see *Of Civil Wrongs and Rights: The Fred Korematsu Story* (PBS television broadcast Jul. 10, 2001), *discussed at* <http://www.pbs.org/pov/pov2001/ofcivilwrongsandrights/storyline.html>; PETER IRONS, JUSTICE AT WAR 93–99 (1983); UNFINISHED BUSINESS: THE JAPANESE AMERICAN INTERNMENT CASES (National Asian American Telecommunications Association; Mouchette Films 1984); Thomas Y. Fujita-Rony, *Korematsu's Civil Rights Challenges: Plaintiffs' Personal Understandings of Constitutionally Guaranteed Freedoms, the Defense of Civil Liberties, and Historical Context*, 13 TEMP. POL. & CIV. RTS. L. REV. 51 (2003).

⁸ *Japanese American Internment: An Interview with Fred Korematsu*, 3 B.U. PUB. INT. L.J. 99, 99 (1993).

⁹ Numerous sources discuss the history of racist attitudes towards persons of Japanese ancestry. See, e.g., ROGER DANIELS, *THE POLITICS OF PREJUDICE* (2d ed. 1962) [hereinafter DANIELS, PREJUDICE]; JACOBUS TENBROEK ET AL., *PREJUDICE, WAR, AND THE CONSTITUTION* 11–67 (1954); ERIC YAMAMOTO ET AL., *RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT* 32–40 (2001) [hereinafter YAMAMOTO, RACE, RIGHTS, AND REPARATION]; PERSONAL JUSTICE DENIED, *supra* note 5, at 27–46. In 1900, Mayor James Duval Phelan of San Francisco expressed the prevailing view: “The Japanese are starting the same tide of immigration which we thought we had checked twenty years ago. . . . The Chinese and Japanese are not bona fide citizens. They are not the stuff of which American citizens can be made. . . . Personally we have nothing against Japanese, but as they will not assimilate with us and their social life is so different from ours, let them keep at a respectful distance.” DANIELS, PREJUDICE, *supra*, at 21 (quoting S.F. EXAMINER, May 8, 1900; S.F. CHRONICLE, May 8, 1900).

¹⁰ The Naturalization Act of 1790 provided for naturalization of “any alien being a free white person.” See *Ozawa v. United States*, 260 U.S. 178, 192 (1922).

¹¹ See Cal. Civ. Code § 60 (West 1905) (amended 1933; repealed 1959). See also Hrishikar Karthikey & Gabriel J. Chin, *Preserving Racial Identity: Population Patterns and the Application of Anti-Miscegenation Statutes to Asian Americans, 1910-1950*, 9 ASIAN L.J. 1, 14–16 (2002).

¹² In May 1905, the San Francisco School Board announced that it would order Japanese American children into a segregated school so that “our children should not be placed in any position where their youthful impressions may be affected by association with pupils of the Mongolian race.” DANIELS, PREJUDICE, *supra* note 9, at 32.

¹³ *Id.* at 63.

¹⁴ Interview by Jane Kaihatsu with Fred Korematsu, in S.F., Cal. (Nov. 15, 1983).

¹⁵ *Id.*

¹⁶ *Japanese American Internment: An Interview with Fred Korematsu*, *supra* note 8, at 99.

¹⁷ JANM Conference, *supra* note 2 (remarks by Fred Korematsu).

¹⁸ Interview by Eric Fournier with Fred Korematsu, San Leandro, Cal.

¹⁹ *Id.*

²⁰ ROGER DANIELS, *CONCENTRATION CAMPS USA: JAPANESE AMERICANS AND WORLD WAR II* 32-34 (1972) [hereinafter DANIELS, CONCENTRATION CAMPS]; see also TENBROEK, *supra* note 9, at 70–72. Numerous organizations, including the American Legion, fanned the flames of anti-Japanese sentiment. See PERSONAL JUSTICE DENIED, *supra* note 5, at 67–69. Justice Murphy, in his dissent in the later *Korematsu* case, recounted some of the fervor that fueled the call for internment. He quoted Austin E. Anson, managing secretary of the Salinas Vegetable Grower-Shipper Association: “We’re charged with wanting to get rid of the Japs for selfish reasons. We do. It’s a question of whether the white man lives on the Pacific Coast or the brown men. They came into this valley to work, and they stayed to take over. . . . They undersell the white man in the markets. . . . They work their women and children while the white farmer has

to pay wages for his help. If all the Japs were removed tomorrow, we'd never miss them in two weeks, because the white farmers can take over and produce everything the Jap grows. And we don't want them back when the war ends, either." *Korematsu v. United States*, 323 U.S. 214, 240 n.12 (1944) (Murphy J., dissenting).

²¹ TENBROEK, *supra* note 9, at 70 (quoting S.F. EXAMINER, Dec. 29, 1941). "Fifth column" describes a "clandestine subversive organization working within a country to further an invading enemy's military and political aims." AMERICAN HERITAGE DICTIONARY 657 (4th ed. 2000).

²² Kaihatsu, *supra* note 14; UNFINISHED BUSINESS, *supra* note 7.

²³ TENBROEK, *supra* note 9, at 73–76; PERSONAL JUSTICE DENIED, *supra* note 5, at 71–72.

²⁴ *Id.* at 76–78; PERSONAL JUSTICE DENIED, *supra* note 5, at 69–71.

²⁵ TENBROEK, *supra* note 9, at 77.

²⁶ Kaihatsu, *supra* note 14.

²⁷ Exec. Order No. 9066, 7 Fed. Reg. 1407 (1942). For a discussion of the decision to remove and intern the Japanese Americans, *see, e.g.*, TENBROEK, *supra* note 9, at 99–112; ROGER DANIELS, THE DECISION TO RELOCATE THE JAPANESE AMERICANS (Harold M. Hyman ed., 1975); MICHIE WEGLYN, YEARS OF INFAMY 67–75 (1976); PERSONAL JUSTICE DENIED, *supra* note 5, at 72–86; IRONS, *supra* note 7, at 29–64; YAMAMOTO, RACE, RIGHTS AND REPARATION, *supra* note 9, at 38–40, 96–101.

²⁸ Pub. L. No. 77-503, 56 Stat. 173 (1942).

²⁹ DeWitt complained that "along the vital Pacific Coast[,] over 112,000 potential enemies, of Japanese extraction, are at large today." PERSONAL JUSTICE DENIED, *supra* note 5, at 66 (quoting J. L. DEWITT, FINAL REPORT: JAPANESE EVACUATION FROM THE WEST COAST, 1942, at 34 (1943)). Government records indicate that, ultimately, approximately 120,000 persons of Japanese ancestry came under the authority of the War Relocation Authority, the agency charged with their custody. *Id.* at 107, 150.

³⁰ *Id.* at 101.

³¹ Kaihatsu, *supra* note 14; UNFINISHED BUSINESS, *supra* note 7.

³² *Korematsu v. United States*, 323 U.S. 214, 228–29 (1944). The orders mentioned herein were issued for persons living in Military Area No. 1, an area that encompassed the western halves of Washington, Oregon, and California and the southern half of Arizona. PERSONAL JUSTICE DENIED, *supra* note 5, at 100.

³³ *Korematsu v. United States*, 323 U.S. 214, 229 (1944) (Roberts, J., dissenting).

³⁴ The conflicting military orders that Fred was subject to were recounted by Justice Roberts in his dissent to the later *Korematsu* decision. *Korematsu v. United States*, 323 U.S. 214, 226 (1944) (Roberts, J., dissenting).

³⁵ Kaihatsu, *supra* note 14; UNFINISHED BUSINESS, *supra* note 7.

³⁶ Kaihatsu, *supra* note 14; UNFINISHED BUSINESS, *supra* note 7.

³⁷ PERSONAL JUSTICE DENIED, *supra* note 5, at 135–36.

³⁸ *Id.* at 137.

³⁹ Many sources describe conditions in both the assembly centers and internment camps. *See, e.g.*, PERSONAL JUSTICE DENIED, *supra* note 5, at 135–80; YAMAMOTO, RACE, RIGHTS AND REPARATION, *supra* note 9, at 199–211; JOHN TATEISHI, AND JUSTICE FOR ALL (1984) (oral histories of former internees); WEGLYN, *supra* note 27, at 89–91;

Densho Japanese American Legacy Project, <http://www.densho.org> (visual histories of former internees) (last visited Nov. 10, 2005).

⁴⁰ Kaihatsu, *supra* note 14; UNFINISHED BUSINESS, *supra* note 7.

⁴¹ Kaihatsu, *supra* note 14; UNFINISHED BUSINESS, *supra* note 7; *see also Japanese American Internment: An Interview with Fred Korematsu*, *supra* note 8, at 101.

⁴² IRONS, *supra* note 7, at 93.

⁴³ *Id.* at 93–96. Fred had undergone plastic surgery to alter the appearance of his eyes and nose to change his appearance. At the time of his arrest, he stated that he did so in order that he and his girlfriend could “go to Arizona and get married without anyone suspecting that [he] was Japanese” and because “he feared violence should anyone discover that he, a Japanese, was married to an American girl.” *Id.* at 95 (quoting Memorandum by Special Agent G.E. Goodwin, S.F., Cal. (July 11, 1942)).

⁴⁴ *Two Bay Japs Evade Evacuation; Captured*, OAKLAND TRIB., June 1, 1942, at 1.

⁴⁵ JANM Conference, *supra* note 2 (remarks of Fred Korematsu).

⁴⁶ *Id.*

⁴⁷ *Japanese American Internment: An Interview with Fred Korematsu*, *supra* note 8, at 100. Ernest Besig spoke of his disagreements with the National ACLU over Fred’s case: “If we intervened at all, they said it should be on an amicus basis, a friend of the court, but we refused to take that position. The head of the ACLU in New York, Roger Baldwin, even threatened us with ouster. . . . We didn’t give in to the national office. And I said, ‘Look, go ahead. We believe we took the right position, and we’re going to stand by Fred.’” *Of Civil Wrongs and Rights: The Fred Korematsu Story*, *supra* note 7. For an account of the division within the National ACLU over whether and to what extent it should fight the internment in court, see IRONS, *supra* note 7, at 105–18, 128–34, 168–75.

⁴⁸ Mr. Besig later solicited a volunteer attorney, Wayne Collins, to handle Fred’s case. IRONS, *supra* note 7, at 117.

⁴⁹ “We tried to find a legal challenge to the internment, but, of course, in order to do that, you have to have a test case. You have to find somebody who is willing to have his case carried through the courts way up to the U.S. Supreme Court. So we were on the lookout to find a case of that kind. It wasn’t easy, until I heard of Fred Korematsu’s case in the newspapers. And I at once undertook to visit him in the county jail where he was, shall we say, being detained. . . . I was there to persuade Fred, and I was hopeful that he would support a test case, that he would be willing to be *the* test case—the person who would challenge the government’s discrimination against him. And, ultimately, he did.” *Of Civil Wrongs and Rights: The Fred Korematsu Story*, *supra* note 7; *see also*, IRONS, *supra* note 7, at 97.

⁵⁰ IRONS, *supra* note 7, at 97.

⁵¹ *Id.* at 98.

⁵² Kaihatsu, *supra* note 14; UNFINISHED BUSINESS, *supra* note 7.

⁵³ Numerous sources recount the role of the National Japanese American Citizens League in cooperating with the internment. *See, e.g.*, DANIELS, CONCENTRATION CAMPS, *supra* note 20; IRONS, *supra* note 7, at 78–81; ERIC L. MULLER, FREE TO DIE FOR THEIR COUNTRY: THE STORY OF THE JAPANESE AMERICAN DRAFT RESISTERS IN WORLD WAR II, 26–27 (William M. O’Barr & John M. Conley eds., 2001).

⁵⁴ JANM Conference, *supra* note 2 (remarks of Fred Korematsu).

⁵⁵ While Fred awaited his trial, other cases like his were being heard, and the results were disappointing. A federal court in Wisconsin had denied a petition for habeas corpus filed by Lincoln Kanai. *Ex Parte Kanai*, 46 F. Supp. 286 (E.D. Wis. 1942). Mr. Kanai, who had lived in San Francisco, had been charged with leaving Military Area No. 1 without permission. The court rejected his argument that the military areas were defined broader than necessary. “The [field] of military operation is not confined to the scene of actual physical combat. . . . Rights of the individual, under our federal Constitution . . . are not absolute. When such rights come into conflict with other rights granted for the protection and safety and general welfare of the public, they must at times give way.” *Id.* at 287. In addition, on April 15, 1942, a federal court in Washington rejected the habeas corpus petition of Mary Asaba Ventura, who had challenged the curfew order. *Ex Parte Ventura*, 44 F. Supp. 520 (W.D. Wash. 1942).

⁵⁶ IRONS, *supra* note 7, at 153.

⁵⁷ *Korematsu v. United States*, 323 U.S. 214, 215–16 (1944).

⁵⁸ IRONS, *supra* note 7, at 153–54.

⁵⁹ *Of Civil Wrongs and Rights: The Fred Korematsu Story*, *supra* note 7; see also IRONS, *supra* note 7, at 153–54.

⁶⁰ Fournier, *supra* note 18 (interview with Fred Korematsu).

⁶¹ See *supra* note 39 for sources discussing the conditions in these camps.

⁶² In Topaz, an elderly man thought to be escaping was shot and killed, in broad daylight, by a guard in one of the watchtowers. DANIELS, CONCENTRATION CAMPS, *supra* note 20, at 108–9; Mine Okubo notes that the man was, however, inside the fence when shot. MINE OKUBO, CITIZEN 13660 180 (1946); see also PERSONAL JUSTICE DENIED, *supra* note 5, at 175–76.

⁶³ Fujita-Rony, *supra* note 7, at 61.

⁶⁴ *Japanese American Internment: An Interview with Fred Korematsu*, *supra* note 8, at 103. In October 1942, the War Relocation Authority (WRA) moved on a larger scale to allow some internees to leave camp for the interior of the United States to work. These individuals, however, had to show that they had a means of support; that they were not a threat to national security; that their presence was likely to be acceptable where they planned to live; and that they agreed to inform the WRA of any change in address. PERSONAL JUSTICE DENIED, *supra* note 5, at 183. Many younger, more employable internees left camp for cities in the interior United States under these leave policies, leaving the older Issei and younger children in camp. *Id.* at 242.

⁶⁵ Fournier, *supra* note 18 (interview with Fred Korematsu); JANM Conference, *supra* note 2 (remarks of Fred Korematsu).

⁶⁶ See *Korematsu v. United States*, 319 U.S. 432 (1943); *Korematsu v. United States*, 140 F.2d 289 (9th Cir. 1943).

⁶⁷ *Korematsu v. United States*, 321 U.S. 760 (1944). For an account of Fred’s case before the courts, see IRONS, *supra* note 7; Daniel F. Tritter, *In the Defense of Fred Korematsu: Vox Clamantis In Deserto Curiarum*, 27 T. JEFFERSON L. REV. 255, 267–98 (2005).

⁶⁸ Gordon Hirabayashi, a student at the University of Washington, had been arrested for violating the curfew orders and for refusing to report for internment. While he had been

charged and convicted for both crimes, the Supreme Court opinion affirming his conviction addressed the validity of only the curfew conviction. *Hirabayashi v. United States*, 320 U.S. 81, 85 (1943). On the same day the Court decided *Hirabayashi*, the Court decided *Yasui v. United States*, 320 U.S. 115 (1943). In that case, the Court, relying on *Hirabayashi*, upheld the conviction of Minoru Yasui, a twenty-six-year-old attorney found guilty of violating the curfew order in Portland, Oregon. *Yasui v. United States*, 320 U.S. 115, 117 (1943). For a discussion of the *Korematsu*, *Hirabayashi*, and *Yasui* cases, see IRONS, *supra* note 7; Lorraine K. Bannai & Dale Minami, *Internment During World War II and Litigations*, in *ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY* 755–88 (H. Kim ed., 1992); YAMAMOTO, RACE, RIGHTS AND REPARATION, *supra* note 9, at 104–76; Eugene Rostow, *The Japanese American Cases—A Disaster*, 54 *YALE L.J.* 489 (1945); Nanette Dembitz, *Racial Discrimination and the Military Judgment: The Supreme Court's Korematsu and Endo Decisions*, 45 *COLUM. L. REV.* 175 (1945); Eric Yamamoto, *Korematsu Revisited—Correcting the Injustice of Extraordinary Government Excess and Lax Judicial Review: Time for a Better Accommodation of National Security Concerns and Civil Liberties*, 26 *SANTA CLARA L. REV.* 1, 8–19 (1986) [hereinafter Yamamoto, *Korematsu Revisited*]; Jerry Kang, *Denying Prejudice: Internment, Redress, and Denial*, 51 *UCLA L. REV.* 933 (2004); Dean Masaru Hashimoto, *The Legacy of Korematsu v. United States: A Dangerous Narrative Retold*, 4 *ASIAN PAC. AM. L.J.* 72 (1996); Sandra Takahata, *The Case of Korematsu v. United States: Could It Be Justified Today?*, 6 *U. HAW. L. REV.* 109 (1984); JoAnne Hirase, *Comment, The Internment of Japanese Americans: The Constitutional Threat Fifty Years Later*, 19 *J. CONTEMP. L.* 143, 165–74 (1993).

⁶⁹ The Court explained that a curfew “is an obvious protection against the perpetuation of sabotage most readily committed during the hours of darkness.” *Hirabayashi*, 320 U.S. at 100. In the *Hirabayashi* case, a unanimous Court deferred to the judgment of the President, Congress, and the military that persons of Japanese ancestry on the West Coast posed an threat of imminent espionage and sabotage: “Where, as they did here, the conditions call for the exercise of judgment and discretion and for the choice of means by those branches of the Government on which the Constitution has placed the responsibility of war-making, it is not for any court to sit in review of the wisdom of their action or substitute its judgment for theirs.” *Id.* at 93 (emphasis added). Without proof that Japanese Americans had committed any acts of espionage or sabotage, the court accepted the government’s argument that racial characteristics of the Japanese American community supported the belief that they posed a danger. “There is support for the view that social, economic and political conditions which have prevailed since . . . Japanese began to come to this country in substantial numbers, have intensified their solidarity and have in large measure prevented their assimilation as an integral part of the white population.” *Id.* at 96.

⁷⁰ *Korematsu v. United States*, 323 U.S. 214, 216 (1944).

⁷¹ “True, exclusion from the area in which one’s home is located is a far greater deprivation than constant confinement to the home from 8 p.m. to 6 a.m. . . . But exclusion from a threatened area, no less than curfew, has a definite and close relationship to the prevention of espionage and sabotage.” *Id.* at 218. Justice Roberts’s dissent pointed out that the exclusion order involved a much more onerous deprivation of

rights than the curfew order: “I dissent, because I think the indisputable facts exhibit a clear violation of Constitutional rights. This is not a case of keeping people off the streets at night as was [Hirabayashi]. . . . On the contrary, it is the case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based on his ancestry, and solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States.” *Id.* at 225–26 (Roberts, J., dissenting).

⁷² *Id.* at 223.

⁷³ *Id.*

⁷⁴ *Id.* at 233 (Murphy, J., dissenting).

⁷⁵ *Id.* at 235. Justice Jackson, also in dissent, captured well that all Fred had done was to choose to remain where he had always lived: “Korematsu was born on our soil, of parents born in Japan. The Constitution makes him a citizen of the United States by nativity and a citizen of California by residence. No claim is made that he is not loyal to this country. There is no suggestion that apart from the matter involved here he is not law-abiding and well disposed. Korematsu, however, has been convicted of an act not commonly a crime. It consists merely of being present in the state whereof he is a citizen, near the place where he was born, and where all his life he has lived. . . . [H]ere is an attempt to make an otherwise innocent act a crime merely because this prisoner is the son of parents as to whom he had no choice, and belongs to a race from which there is no way to resign.” *Id.* at 242–43 (Jackson, J., dissenting).

⁷⁶ JANM Conference, *supra* note 2 (remarks of Fred Korematsu).

⁷⁷ PERSONAL JUSTICE DENIED, *supra* note 5, at 235. There is evidence suggesting that the decision to allow Japanese Americans to return to the West Coast was deferred until after the presidential election. *Id.* at 227–32. The government could not defer that decision any longer, however, after the Supreme Court’s opinion in *Ex Parte Endo*. *Ex Parte Endo*, 323 U.S. 283 (1944). That case, decided the same day as Fred’s case, December 18, 1944, held that the government could no longer incarcerate individuals whose loyalty was unquestioned. *Id.* at 297. Despite the court’s ruling that Mitsuye Endo was entitled to “*unconditional* release by the War Relocation Authority,” *id.* at 304, Justice Murphy pointed out in his concurring opinion that military orders still prohibited her from returning to her home in Sacramento, *id.* at 308 (Murphy, J., concurring). Thus, the government was compelled to release Japanese Americans from camp. Although allowed to leave starting early in 1945, some internees remained longer out of fear of what they would return to back home, out of shame, or because of a myriad of other reasons. PERSONAL JUSTICE DENIED, *supra* note 5, at 240–41.

⁷⁸ Densho Japanese American Legacy Project, *supra* note 39 (interview with Fred Korematsu).

⁷⁹ Fujita-Rony, *supra* note 7, at 62; Fournier, *supra* note 18 (interview with Kathryn Korematsu); JANM Conference, *supra* note 2 (remarks of Fred Korematsu).

⁸⁰ JANM Conference, *supra* note 2 (remarks of Gene Akutsu).

⁸¹ See *supra* note 7.

⁸² For an excellent discussion about the Japanese American men who defied the draft and their cases, see MULLER, *supra* note 53. For other background on the resisters and their cases, see A MATTER OF CONSCIENCE: ESSAYS ON THE WORLD WAR II HEART

MOUNTAIN DRAFT RESISTANCE MOVEMENT (Mike Mackey ed., 2002); WILLIAM HOHRI ET AL., RESISTANCE: CHALLENGING AMERICA'S WARTIME INTERNMENT OF JAPANESE AMERICANS (2001); *Conscience and the Constitution* (PBS Documentary 2000), described at <http://www.pbs.org/itvs/conscience/> (last visited Dec. 15, 2005).

⁸³ The Japanese American Citizens League was the national organization that purported to speak for the Japanese American community. For sources discussing the role of JACL leadership in cooperating with the Federal government during the internment, see *supra* note 53.

⁸⁴ Yosh Kuromiya, *The Fourth Option, in A MATTER OF CONSCIENCE*, *supra* note 82, at 77–78.

⁸⁵ Densho Japanese American Legacy Project, *supra* note 39 (Interview by Frank Abe and Frank Chin with Yosh Kuromiya).

⁸⁶ “Statement of United States Citizen of Japanese Ancestry,” Selective Service Form 304A (Jan. 23, 1943) (copy on file with author) (excerpted in part in WEGLYN, *supra* note 27, at 36).

⁸⁷ The Fair Play Committee formed in the camp to discuss camp conditions and opposition to the internment. MULLER, *supra* note 53, at 76–78. After the loyalty questionnaire was released, Frank Emi, who became one of the leaders of the Fair Play Committee, posted his “suggested answers” to both questions. He had written: “Under the present conditions and circumstances, I am unable to answer these questions.” Densho Japanese American Legacy Project, *supra* note 39 (Interview by Emiko Omori & Chizu Omori with Frank Emi (Mar. 20, 1994)).

⁸⁸ Yosh Kuromiya, *The Fourth Option, in A MATTER OF CONSCIENCE*, *supra* note 82, at 78. Yosh answered Question 27 of the loyalty questionnaire as follows: “Yes, [I am willing to serve in the armed forces] if treated with equal rights as other Caucasian American citizens.” He recently stated, “It sounds rather naive now, but I was only twenty years old then.” Email from Yosh Kuromiya to Lorraine Bannai (Oct. 3, 2005) (on file with author).

⁸⁹ WEGLYN, *supra* note 27, at 134–36.

⁹⁰ *Id.* at 134–43; PERSONAL JUSTICE DENIED, *supra* note 5, at 189–97; DANIELS, CONCENTRATION CAMPS, *supra* note 20, at 113–14; YAMAMOTO, RACE, RIGHTS AND REPARATION, *supra* note 9, at 222–24; MULLER, *supra* note 53, at 50–58.

⁹¹ PERSONAL JUSTICE DENIED, *supra* note 5, at 186–91; see also MULLER, *supra* note 53, at 41–49.

⁹² Their classification had been changed to 4-C, the category for “aliens not acceptable to the armed forces.” MULLER, *supra* note 53, at 41.

⁹³ “[B]eing deprived of right to serve’ . . . meant ‘being deprived of our biggest chance to prove to those who are skeptical that our loyalty is as great as that of any other group.’” *Id.* at 43 (quoting Minutes of the Special Emergency National Conference, Japanese American Citizens League, 36-17-24, Nov. 1942, Salt Lake City (on file with the UCLA Library, Department of Special Collections, Collection 2010, Box 296)).

⁹⁴ *Id.* at 43–49.

⁹⁵ See MULLER, *supra* note 53, at 41; YAMAMOTO, RACE, RIGHTS AND REPARATION, *supra* note 9, at 215. In a letter to Secretary of War Henry L. Stimson, President Roosevelt stated: “No loyal citizen of the United States should be denied the democratic

right to exercise the responsibilities of his citizenship, regardless of ancestry. The principle upon which this country was founded and by which it has always been governed is that Americanism is a matter of the mind and heart; Americanism is not, and never was, a matter of race or ancestry.” Franklin Delano Roosevelt to Henry Stimson (Feb. 1, 1943) (on file with the National Archives, RG 107, Entry 180, Box 47, ASW 342.18, General—Enlistment) (quoted in part in MULLER, *supra* note 53, at 41); *see also* DANIELS, CONCENTRATION CAMPS, *supra* note 20, at 112–13; PERSONAL JUSTICE DENIED, *supra* note 5, at 191.

⁹⁶ *See* DANIELS, CONCENTRATION CAMPS, *supra* note 20, at 112; YAMAMOTO, RACE, RIGHTS AND REPARATION, *supra* note 9, at 216; MULLER, *supra* note 53, at 50.

⁹⁷ WEGLYN, *supra* note 27, at 139 (commenting that the title of the questionnaire raised the specter of a mass eviction, expelling internees regardless of their ability to fend for themselves).

⁹⁸ *See* PERSONAL JUSTICE DENIED, *supra* note 5, at 246; MULLER, *supra* note 53, at 49–58.

⁹⁹ MULLER, *supra* note 53, at 64. For a discussion of the decision to institute the draft and of the decision to assign draftees to segregated combat units, *see id.* at 60–62; PERSONAL JUSTICE DENIED, *supra* note 5, at 246. “Citing ‘the excellent showing which the [442nd Regimental] Combat Team has made in training, and the outstanding record achieved by the 100th Battalion . . . now fighting in Italy,’ the War Department announced that ‘Japanese-Americans considered acceptable for military service w[ould] be reclassified by their Selective Service Boards on the same basis as other citizens, and called for induction if physically qualified and not deferred.’” MULLER, *supra* note 53, at 64 (quoting War Department Bureau of Public Relations Press Branch, Selective Service to be Reinstated for Americans of Japanese Descent (Jan. 19, 1944) (on file with the National Archives, RG 107, Entry 183, Box 48, ASW 342.18, JA INDUCTION, Feb. 1, 1943–Dec. 31, 1943)).

¹⁰⁰ MULLER, *supra* note 53, at 60–62.

¹⁰¹ Telephone interview with Yosh Kuromiya (Aug. 2, 2005).

¹⁰² MULLER, *supra* note 53, at 77–79; *see also* DANIELS, CONCENTRATION CAMPS, *supra* note 20, at 123–29. After the Heart Mountain resisters were tried and convicted, the leaders of the Fair Play Committee were arrested on charges of conspiracy for counseling others to resist the draft. After being convicted at trial and spending over one year in a federal prison, the leaders of the Fair Play Committee received news that the Tenth Circuit Court of Appeals had reversed their convictions. MULLER, *supra* note 53, at 114–24. The court held that the trial court had failed to properly instruct the jury that one may counsel resistance to a law honestly believed to be unconstitutional. *Okamoto v. United States*, 152 F.2d 905, 907–8 (10th Cir. 1945) (citing *Keegan v. United States*, 325 U.S. 478 (1945)).

¹⁰³ The Fair Play Committee wrote: “[U]ntil we are restored all our rights, all discriminatory features of the Selective Service abolished, and measures are taken to remedy the past injustices thru [sic] Judicial pronouncement or Congressional act, we feel that the present program of drafting us from this concentration camp is unjust, unconstitutional, and against all principles of civilized usage. Therefore, WE MEMBERS OF THE FAIR PLAY COMMITTEE *HEREBY REFUSE TO GO TO THE*

PHYSICAL EXAMINATION OR TO THE INDUCTION IF OR WHEN WE ARE CALLED IN ORDER TO CONTEST THE ISSUE.” Fair Play Committee, Third Bulletin of the Fair Play Committee (Mar. 4, 1944), available at http://www.resisters.com/documents/FPC_Bulletin_3.htm (last visited Aug. 9, 2005).

¹⁰⁴ JANM Conference, *supra* note 2 (remarks of Yosh Kuromiya). Yosh refused to report for his preinduction physical on March 23, 1944. MULLER, *supra* note 53, at 84–85.

¹⁰⁵ JANM Conference, *supra* note 2 (remarks of Yosh Kuromiya). For example, in a column in the *Pacific Citizen*, the newsletter of the JACL, Larry Tajiri wrote: “This act of defiance by forty-one young men is the result of a combination of circumstances, misguided leadership and information, and strong pressures and influences. Its effect may be that of negating the victory of loyal Japanese Americans in winning the reinstatement of selective service, and may retard the eventual full restoration to Japanese Americans of the privileges of freedom which are the birthright of every American. By their action these young men, and those who prompted their action, have injured the cause of loyal Japanese Americans everywhere.” Larry Tajiri, *The Bitter Harvest*, PAC. CITIZEN, Apr. 8, 1944, at 4; *see also* HOHRI, *supra* note 82, at 64–65 (Yosh Kuromiya’s account of how JACL leadership attempted to persuade him to cooperate with prosecutors and volunteer for service). However, one Nisei journalist, James Omura, was sympathetic to the resisters’ cause. “The re-institution of selective service among the Nisei is not wholly what we had been led to believe. . . . No other group of individuals are required to fill out special questionnaires. No other group of individuals are required to sign declarations of loyalty Not until restrictions are wholly lifted can the Nisei feel that he has been accepted as an American citizen. He is not asking for special treatment; he merely asks that he be included on the normal basis. When a Nisei goes to the army, he is ostensibly prepared to give his life to the nation. The nation owes him his every rights and consideration.” James Omura, *Not Complete*, ROCKY SHIMPO, Feb. 11, 1944, available at <http://www.densho.org/learning/spice/lesson5/5reading5.asp>.

¹⁰⁶ JANM Conference, *supra* note 2 (remarks of Yosh Kuromiya). Judge Kennedy was not unbiased in his attitudes; his racist views are discussed in MULLER, *supra* note 53, at 104–7.

¹⁰⁷ MULLER, *supra* note 53, at 108.

¹⁰⁸ *Id.* at 103.

¹⁰⁹ JANM Conference, *supra* note 2 (remarks of Yosh Kuromiya).

¹¹⁰ *United States v. Fujii*, 55 F. Supp. 928, 932 (D. Wyo. 1944).

¹¹¹ *Id.* at 929.

¹¹² *Id.* at 931. Judge Kennedy concluded by admonishing the resisters with his own view their actions: “Personally, this Court feels that the defendants have made a serious mistake in arriving at their conclusions. . . . If they are truly loyal American citizens they should . . . embrace the opportunity to discharge the duties of citizens by offering themselves in the cause of our National defense.” *Id.* at 932.

¹¹³ During the pendency of the appeal of the Heart Mountain Resisters’ case, another judge in Northern California reached a very different conclusion. *United States v. Kuwabara*, 56 F. Supp. 716 (N.D. Cal. 1944). On July 17, 1944, Judge Louis Goodman heard the prosecutions of twenty-seven resisters from the Tule Lake internment camp. Judge Goodman wrote: “It is shocking to the conscience that an American citizen be

confined on the ground of disloyalty, and then, while so under duress and restraint, be compelled to serve in the armed forces, or be prosecuted for not yielding to such compulsion.” *Id.* at 719. For a discussion of the *Kuwabara* case, Judge Goodman, and a critique of his reliance on a violation of due process as the basis for his decision, see MULLER, *supra* note 53, at 131–60; Eric Muller, *All the Themes But One*, 66 U. CHI. L. REV. 1395, 1425–1432 (1999) (book review); Eric Muller, *Constitutional Conscience*, 83 B.U. L. Rev. 1017 (2003).

¹¹⁴ *Fujii v. United States*, 148 F.2d 298 (10th Cir. 1945). The court held that: “One may not refuse to heed a lawful call of his government merely because in another way it may have injured him. Appellant . . . owed the same military service to his country that any other citizen did. Neither the fact that he was of Japanese ancestry nor the fact that his constitutional rights may have been invaded by sending him to a relocation center cancel this debt.” *Id.* at 299. A year later, the Ninth Circuit Court of Appeals reached a similar result in another case. Citing *Fujii*, the court affirmed the conviction of Hideichi Takeguma for his refusal to report for induction. “There is nothing whatever to any claim that the mere removal from the Pacific area (or confinement to any location), harsh as it was, should act to relieve anyone from the necessity of serving in the military forces.” *Takeguma v. United States*, 156 F.2d 437, 440 (9th Cir. 1946).

¹¹⁵ Telephone interview with Yosh Kuromiya (Aug. 2, 2005).

¹¹⁶ JANM Conference, *supra* note 2 (remarks of Gene Akutsu).

¹¹⁷ Gene explained: “We didn’t know why he was being taken in . . . all he was was a cobbler and that was all he did. True, he participated in the Japanese community like what they referred to as *Nihonjinkai*, which is a Japanese club, kind of a liaison between the whites and the Japanese community to keep the community abreast of what was going on and also . . . to let [white people] know the doings of the Japanese community. But at the onset of the war, somehow or another they had gotten names of a lot of the people who had participated in the community service and they informed the FBI that these are the people who are active, so right away the FBI just converged into the community and picked up all the people who were involved.” Densho Japanese American Legacy Project, *supra* note 39 (interview with Gene Akutsu, Seattle, Wash. (July 25, 1997)).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ JANM Conference, *supra* note 2 (remarks of Gene Akutsu).

¹²¹ Gene recalls seeing the fairground, surrounded by barbed wire, with MPs manning machine guns pointed inward, towards the camp. “And that’s when it hit me that this is really real, that they’re referring to us as ‘enemy alien.’” Densho Japanese American Legacy Project, *supra* note 39 (interview with Gene Akutsu).

¹²² *Id.*

¹²³ JANM Conference, *supra* note 2 (remarks of Gene Akutsu).

¹²⁴ Densho Japanese American Legacy Project, *supra* note 39 (interview with Gene Akutsu).

¹²⁵ *Id.* Gene’s brother, Jim, was also arrested for refusing to comply with the draft.

¹²⁶ JANM Conference, *supra* note 2 (remarks of Gene Akutsu).

¹²⁷ MULLER, *supra* note 53, at 125.

¹²⁸ Judge Clark was the former governor of Idaho who, in 1942, had spoken out against the plan to move the West Coast Japanese Americans into Idaho and the other mountain states. “I want to admit right on the start that I am so prejudiced that my reasoning might be a little off, because I don’t trust any of them. I don’t know which ones to trust and so therefore I don’t trust any of them.” *Id.* at 33, 124–25 (quoting Chase Clark, Speech at the Conference on Evacuation of Enemy Aliens, 26, Salt Lake City, Utah (Apr. 7, 1942) (on file with the University of California at Berkeley, Bancroft Library, Japanese Evacuation and Resettlement Study, C1.03,67/14C, File 1 of 3)).

¹²⁹ *Id.* at 127. Professor Muller terms these trials “a production line of federal criminal justice.” *Id.*

¹³⁰ *Id.* at 128.

¹³¹ JANM Conference, *supra* note 2 (remarks of Gene Akutsu).

¹³² Densho Japanese American Legacy Project, *supra* note 39 (interview with Gene Akutsu).

¹³³ *Id.*

¹³⁴ MULLER, *supra* note 53, at 177.

¹³⁵ Telephone Interview with Gene Akutsu (July 29, 2005).

¹³⁶ *Id.*

¹³⁷ Densho Japanese American Legacy Project, *supra* note 39 (interview with Gene Akutsu).

¹³⁸ Conscience and the Constitution, *supra* note 82, at http://www.pbs.org/itvs/conscience/the_story/characters/kuromiya_yosh.html (the story of Yosh Kuromiya) (last visited Aug. 3, 2005).

¹³⁹ Densho Japanese American Legacy Project, *supra* note 39 (interview with Gene Akutsu).

¹⁴⁰ Wirin had represented a group of Tule Lake internees who successfully set aside the renunciation of their United States citizenship, MULLER, *supra* note 53, at 179, as well as the leaders of the Heart Mountain Fair Play Committee in their conspiracy trial, *see supra* note 102.

¹⁴¹ MULLER, *supra* note 53, at 181.

¹⁴² *Id.*

¹⁴³ *Id.* at 182.

¹⁴⁴ With regard to the Nisei draft resisters, the Amnesty Board said that it “fully appreciate[d] the nature of their feelings and their reactions to orders from local Selective [Service] Boards. . . . [P]rior to their removal from their homes they had been law-abiding and loyal citizens. . . . [M]ost of them remained loyal to the United States and indicated a desire to remain loyal to this country and to fight in its defense, provided their rights of citizenship were recognized.” *Id.* at 181. The board, therefore, “recommended pardons, in the belief that they will justify our confidence in their loyalty.” *Id.*

¹⁴⁵ *Id.* at 185–86. Even after the resisters were pardoned, an editorial in the *Pacific Citizen*, the JACL newspaper, admonished that, while the resisters did “establish a principle, . . . in doing so, they endangered the future security and welfare of thousands of their fellow citizens.” *Id.* at 183 (quoting *Christmas Amnesty*, PAC. CITIZEN, Jan. 3, 1948). Such feelings persisted into the 1990s, *id.* at 185 (quoting statements by Fred Hirasuna, in Martha Nakagawa, *CCDC Rejects National JACL’s Reconciliation*

Resolution with Resisters of Conscience, PAC. CITIZEN, Sept. 3–9, 1999), and no doubt still exist today in the minds of many Japanese Americans. By the 1980s, however, a sea change began to occur within the Japanese American community. The country had witnessed resistance to the draft during the Vietnam War. Third generation Japanese Americans, or *Sansei*, had become politically active in the wake of the civil rights movement. Many began to call for the government to redress the wrongs of the internment. All of these factors enabled the resisters, and those who supported them, to tell their stories and seek reconciliation. See *id.* at 183–85. The efforts ultimately resulted in the issuance of an apology by the JACL to the resisters. The JACL resolution provided: “Whereas, history is a great teacher and has shown the JACL that there is no easy and ‘correct’ response, emotionally or politically, to a civil rights violation as massive and destructive as the evacuation and internment; [and] that the various forms of protest by innocent and loyal Japanese Americans to overwhelming injustice are deserving of respect today; . . . NOW, THEREFORE BE IT RESOLVED, that . . . the Japanese American Citizens League recognizes the Japanese American Resisters of Conscience as a group of principled Americans [and] offers an apology for not acknowledging the resisters’ stand of protesting the denial of constitutional rights and for the pain and bitterness this caused.” JACL, *A Resolution of the National Council of the Japanese American Citizens League Relating to the Recognition of and Apology to the Nisei Resisters of Conscience of World War II*, 36th Biennial National Convention, National Council Meeting, Monterey, Cal. (Apr. 4, 2000), available at http://www.pbs.org/itvs/conscience/who_writes_history/apology/01_resolution.html.

¹⁴⁶ Letter from Yosh Kuromiya to author (Aug. 31, 2005) (on file with author).

¹⁴⁷ Conscience and the Constitution, *supra* note 82.

¹⁴⁸ Telephone interview with Gene Akutsu (July 29, 2005).

¹⁴⁹ JANM Conference, *supra* note 2 (remarks of Fred Korematsu).

¹⁵⁰ See, e.g., authorities cited, *supra*, note 68. Many commentators have criticized the *Korematsu* decision as validating lax judicial review during times of national crisis. See, e.g., Yamamoto, *Korematsu Revisited*, *supra* note 68. Others have criticized the flaws in the Court’s analysis. See, e.g., Bannai, *supra* note 68.

¹⁵¹ JUSTICE DELAYED 5 (Peter Irons ed., 1989). The book was JUSTICE AT WAR. IRONS, *supra* note 7.

¹⁵² Significant documents supporting the *coram nobis* cases were also located by Aiko Yoshinaga Herzig. For a discussion of the *coram nobis* cases and the evidence upon which they were based, see JUSTICE DELAYED, *supra* note 151. See also IRONS, *supra* note 7, at 202–17; YAMAMOTO, RACE, RIGHTS AND REPARATION, *supra* note 9, at 277–387; Bannai, *supra* note 68, at 755–88; Yamamoto, *Korematsu Revisited*, *supra* note 68, at 8–19; Kang, *supra* note 68, at 976–84; Susan Kiyomi Serrano & Dale Minami, *Korematsu v. United States: A “Constant Caution” in a Time of Crisis*, 10 ASIAN L. J. 37 (2003).

¹⁵³ *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984). Similar petitions were filed on behalf of Gordon Hirabayashi in Seattle, Washington, and Minoru Yasui in Portland, Oregon. *Yasui v. United States*, 772 F.2d 1496, 1498 (9th Cir. 1985); *Hirabayashi v. United States*, 627 F. Supp. 1445 (W.D. Wash. 1986).

¹⁵⁴ See *Petition for Writ of Error Coram Nobis*, reprinted in JUSTICE DELAYED, *supra* note 151, at 125–88.

¹⁵⁵ *Korematsu v. United States*, 584 F. Supp. 1406, 1420 (N.D. Cal. 1984). Minoru Yasui’s conviction for violating the curfew order was vacated on January 26, 1984, although without findings as to Yasui’s claim of prosecutorial misconduct. Yasui, 772 F.2d at 1498. Gordon Hirabayashi’s conviction for violating the exclusion order was vacated by the Federal District Court for the Western District of Washington in 1986, Hirabayashi, 627 F. Supp. 1445, and the Ninth Circuit Court of Appeals held that his conviction for violating the curfew order should also be vacated, *Hirabayashi v. United States*, 828 F.2d 591 (9th Cir. 1987).

¹⁵⁶ *Korematsu v. United States*, 584 F. Supp. 1406, 1417 (N.D. Cal. 1984). Professor Jerry Kang argues that the *coram nobis* cases allowed the courts to avoid confronting their own failure to condemn the internment during World War II by blaming that failure on prosecutorial misconduct. He asks whether, in the end, the courts have taken any institutional responsibility for the internment. Kang, *supra* note 68, at 985–1004.

¹⁵⁷ Fred, in fact, rejected any possibility of accepting of a government pardon during the pendency of his *coram nobis* case. He said, instead, “We should be the ones pardoning the government.” JUSTICE DELAYED, *supra* note 151, at 19–21.

¹⁵⁸ Press Conference, San Francisco Press Club, S.F., Cal. (Oct. 4, 1983), recorded in UNFINISHED BUSINESS, *supra* note 7; UNFINISHED BUSINESS, *supra* note 7 (interview with Fred Korematsu).

¹⁵⁹ Fournier, *supra* note 18 (interview with Fred Korematsu).

¹⁶⁰ For a discussion of the movement for Japanese American redress, see MITCHELL MAKI ET AL., ACHIEVING THE IMPOSSIBLE DREAM: HOW JAPANESE AMERICANS OBTAINED REDRESS (1999); ROGER DANIELS, PRISONERS WITHOUT TRIALS 88–106 (1993); Hirase, *supra* note 68, at 179–82.

¹⁶¹ Proclamation No. 4417, 41 Fed. Reg. 7741 (Feb. 19, 1976); see also YAMAMOTO, RACE, RIGHTS AND REPARATION, *supra* note 9, at 399–400.

¹⁶² PERSONAL JUSTICE DENIED, *supra* note 5, at 18.

¹⁶³ *Id.*

¹⁶⁴ Civil Liberties Act, Pub. L. No. 100-383, 102 Stat. 903 (codified as amended at 50 U.S.C. App. §§ 1989-1989(d)) (1988). See also YAMAMOTO, RACE, RIGHTS AND REPARATION, *supra* note 9, at 401, 406–9. In his letter of apology, President George Bush stated: “In enacting a law calling for restitution and offering a sincere apology, your fellow Americans have, in a very real sense, renewed their traditional commitment to the ideals of freedom, equality, and justice.” *Id.* at 401. Many have cautioned that the payment of reparations should be viewed critically. See, e.g., YAMAMOTO, RACE, RIGHTS AND REPARATION, *supra* note 9, at 425–27 (citing Chris Iijima, *Reparations and the “Model Minority” Ideology of Acquiescence: The Necessity to Refuse the Return to Original Humiliation*, 40 B.C. L. REV. 385, 394–95 (1998) (cautioning that redress was awarded to Japanese Americans only because of the super-patriotism they displayed in perpetuation of the “model minority” myth, with no recognition of those who protested their incarceration); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 395 (1987) (warning against the interpretation of reparations as payment in full satisfaction of wrongs committed)).

¹⁶⁵ Ultimately, payments were made to 82,219 individuals who had been interned or forced to move because of the internment orders. MAKI, *supra* note 160, at 225. Congressman Robert Matsui testified that over half of the individuals who had been interned had died prior to his introduction of redress bill H.R. 442. Congressman Robert Matsui, Remarks to the 99th Congress, 1st Session (Jan. 3, 1985) (131 Congr. Record, E 54), available at <http://bss.sfsu.edu/internment/Congressional%20Records/19850103a.html>.

¹⁶⁶ William J. Clinton, President of U.S., Remarks on Presenting the Presidential Medal of Freedom, (Jan. 15, 1998), in PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: WILLIAM J. CLINTON, Book I - January 1 to June 30, 1998, at 58 (1999).

¹⁶⁷ *Of Civil Wrongs and Rights: The Fred Korematsu Story*, *supra* note 7.

¹⁶⁸ “While optimists claim that American concentration camps are a thing of the past . . . many Japanese Americans . . . would argue that what has happened in the past could happen again. . . . This student of Japanese American history can only agree with them.” Roger Daniels, *Incarceration of the Japanese Americans: A Sixty-Year Perspective*, *The History Teacher* (May 2002), <http://www.history.cooperative.org/journals/ht/35.3/daniels.html> (last visited Oct. 17, 2005); see also Natsu Taylor Saito, *Symbolism Under Siege: Japanese American Redress and the “Racing” of Arab Americans as “Terrorists”*, 8 *ASIAN L. J.* 1, 11–12 (2001).

¹⁶⁹ See Eric K. Yamamoto, *Beyond Redress: Japanese Americans’ Unfinished Business*, 7 *ASIAN L. J.* 131 (2000) (asserting that the legacy of Japanese American redress must be the fight against the oppression of others).

¹⁷⁰ “During World War II internment, at the front end, no one spoke out against it. Not the ACLU, not the NAACP. Not even the Japanese American Citizens League. All were silent, feeling vulnerable and fearing repercussion of appearing to be unpatriotic. And the internment proceeded apace, and the high court legitimated it. . . . In today’s climate of fear and anger, our first task in protecting both people and key democratic values is to be pro-active at the front end—to prevent post-modern forms of internment. . . . Our second task is to be assertive at the back end—to call out injustice when it occurs, to spell out the damage it does to real people in our midst and to our constitutional democracy, and to demand accountability to principles of equality and due process.” Eric K. Yamamoto & Susan Kiyomi Serrano, *The Loaded Weapon*, 28 *AMERASIA J.* 51, 60 (2001) [hereinafter Yamamoto, *The Loaded Weapon*]; see also Mari J. Matsuda, *McCarthyism, the Internment, and the Contradictions of Power*, 40 *B.C. L. REV.* 9, 15–16 (1998) (discussing the use of the internment as a starting point to understanding the bigger picture of repression in America).

¹⁷¹ The FBI reported 481 hate crimes against Muslims and persons of Middle Eastern descent in 2001, an increase of 1600 percent over the previous year. Federal Bureau of Investigation Uniform Crime Reporting Program, “Hate Crimes Statistics, 2001,” available at <http://www.fbi.gov/ucr/01hate.pdf> (last visited November 1, 2005). The Arab-American Anti-Discrimination Committee reported 700 violent incidents targeting Arab Americans, or those perceived to be Arab Americans, Arabs, and Muslims, in the first nine weeks following the attacks of September 11th, including several murders. Arab-American Anti-Discrimination Committee, Report on Hate Crimes and Discrimination Against Arab Americans: The Post-September 11 Backlash, September

11, 2001-October 11, 2002, at 7, *available at*

www.adc.org/hatecrimes/pdf/2003_report_web.pdf (last visited November 1, 2005).

¹⁷² According to a CNN/USA Today/Gallup poll taken a few days after the September 11th attacks, 58 percent of persons polled favored requiring all Arabs, including U.S. citizens, to undergo special and more intense security screening before boarding planes to help prevent terrorist attacks; 49 percent felt that Arabs and Arab Americans should carry some form of special identification; and 32 percent backed “special surveillance” of Arabs and Arab Americans. See Mark Memmott et al., *Poll Finds a United Nation*, USA TODAY, Sept. 17, 2001, at 4A; Sam Howe Verhovek, *A Nation Challenged: Civil Liberties; Americans Give in to Racial Profiling*, N.Y. TIMES, Sept. 23, 2001, at 1A. A study conducted in 2004 suggests that almost half of U.S. citizens favor some restriction on civil liberties of Muslim Americans. William Kates, *OK to Restrict Muslims, Almost 50% in U.S. Say*, SEATTLE TIMES, Dec. 18, 2004, at A6, *available at*

http://seattletimes.nwsourc.com/html/nationworld/2002123545_muslims18.html.

¹⁷³ In another survey conducted immediately after September 11, 1200 adults nationwide were asked, “Would you favor or oppose the following measures to curb terrorism Allowing the U.S. government to take legal immigrants from unfriendly countries to internment camps during times of tension or crisis?” Twenty-nine percent of respondents were in favor, and 57 percent were not. The rest responded that they did not know how to answer or refused to answer. Chisun Lee, *Rounding Up the “Enemy”: Sixty Years After It Jailed Japanese Americans, Would the U.S. Consider Another Ethnic Internment?* (2002), <http://www.villagevoice.com/news/0231,lee,37003,1.html> (last visited July 12, 2005).

¹⁷⁴ “Many in Seattle’s Muslim and Arab American communities said their fear arises not so much from their neighbors or employers, but from the government’s war on terrorism, with its secretive dragnets and surveillance of religious institutions.” Vanessa Ho & Daikha Dridi, *For Some, The Fear Persists: American Arabs and Muslims Still Feel Threatened a Year After the Attacks*, SEATTLE POST-INTELLIGENCER, Sept. 11, 2002, at A12. Numerous scholars have criticized the manner in which the government’s actions in the war on terrorism have infringed on civil liberties and drawn parallels between the treatment of Japanese Americans during World War II and the treatment of Arab Americans and Muslims post September 11. See, e.g., Saito, *supra* note 168, at 12; Eric Yamamoto and Margaret Chon, *Race, Rights and Reparations, Chapter 8*, *available at* http://www.law.ucla.edu/kang/racerrightsreparation/Update_Ch_8/chon_yamamoto_race_rights_ch8.pdf [hereinafter Yamamoto & Chon, Chapter 8]; Frank H. Wu, *Profiling in the Wake of September 11: The Precedent of the Japanese American Internment*, 17 CRIM. JUST. 52 (2002); Liam Braber, *Korematsu’s Ghost: A Post-September 11th Analysis of Race and National Security*, 47 VILL. L. REV. 451 (2002); Yamamoto, *The Loaded Weapon*, *supra* note 170; Farah Brelvi, *Racial Profiling and the Backlash after Sept. 11*, 48-DEC FED. LAW 69 (2001); Thomas W. Joo, *Presumed Disloyal: Executive Power, Judicial Deference, and the Construction of Race Before and After September 11*, 34 COLUM. HUM. RTS. L. REV. 1 (2002); Huong Vu, *Us Against Them: The Path to National Security is Paved by Racism*, 50 DRAKE L. REV. 639, 663 (2002); Serrano, *supra* note 152; Jerry Kang, *Thinking Through Internment: 12/7 and 9/11*, 27 AMERASIA J. 43 (2002). For another perspective, see Eric Muller, *12/7 and 9/11: War, Liberties,*

and the Lessons of History, 104 W. VA. L. REV. 571, 581, 584 (2002) (while recognizing the “very real indignities, . . . terror and violence” suffered by Arab and Muslim Americans post September 11, noting, five months after 9/11, “the restraint in the Bush Administration’s policies touching on civil liberties, race and ethnicity” and positing that “we may be witnessing . . . the long overdue death of the Supreme Court’s 1944 decision in *Korematsu v. United States*.”).

¹⁷⁵ Jackie Koszcek & Sumama Chatterjee, *Muslims, Arabs Assert FBI Abuse*, PITTSBURGH POST-GAZETTE, Sept. 24, 2001, at A8; Yamamoto, *The Loaded Weapon*, *supra* note 170, at 58.

¹⁷⁶ Braber, *supra* note 174, at 452–53; Arab-American Anti-Discrimination Committee, *supra* note 171, at 36.

¹⁷⁷ Amy Goldstein, *A Deliberate Strategy of Disruption; Massive, Secretive Detention Effort Aimed Mainly at Preventing More Terror*, WASH. POST, Nov. 4, 2001, at A1; *see also* Adam Liptak et al., *After Sept. 11, a Legal Battle on the Limits of Civil Liberty*, N.Y. TIMES, Aug. 4, 2002, at 1 (more than twelve hundred persons detained). “Some . . . were apprehended because they were in the same places or engaged in the same activities as the hijackers: learning to fly airplanes, traveling or—as in [Mohammed] Mubeen’s case—getting a driver’s license [at the same time and place as [one of the suspected terrorist leaders] . . . Others appear to have been detained more randomly, because they come from a set of Middle Eastern countries and had immigration violations.” Goldstein, *supra*.

¹⁷⁸ Arab-American Anti-Discrimination Committee, *supra* note 171, at 32.

¹⁷⁹ “After nearly two months of criticism by civil liberties groups about the Bush Administration’s antiterrorism crackdown, supporters of the measures have begun to outline a legal defense of the actions, saying that the president has broad powers to protect national security in wartime and that accusations of rights violations have been overblown. . . . Lawyers supporting the administration say the critics have ignored Supreme Court precedents that approved such extreme wartime actions as the internment of Japanese-Americans in World War II. ‘The precedents are overwhelmingly in favor of what the president is doing,’ says Richard A. Samp, chief counsel of the conservative Washington Legal Foundation.” William Glaberson, *A Nation Challenged: The Government’s Case; Support for Bush’s Antiterror Plan*, N.Y. TIMES, Dec. 5, 2001, at B6.

¹⁸⁰ Associated Press, *Republican Defends WWII Internments*, Feb. 6, 2003, available at <http://www.cbsnews.com/stories/2003/02/07/politics/main539755.shtml>. *See also* Yamamoto & Chon, Chapter 8, *supra* note 174 at 72–74; Eric K. Yamamoto et al., *American Racial Justice on Trial—Again: African American Reparations, Human Rights, and the War on Terror*, 101 MICH. L. REV. 1269, 1278 (2003). In July 2002, a Commissioner of the U.S. Civil Rights Commission, Peter Kirsanow, was criticized for suggesting that another terrorist attack could lead to a groundswell of support for ethnicity-based internments like the one during WWII. He clarified later that he himself did not support such an internment. Niraj Warikoo, *Arabs in U.S. Could Be Held, U.S. Official Warns*, DETROIT FREE PRESS, July 20, 2002, at 1A, available at http://www.freep.com/news/metro/civil20_20020720.htm; Lee, *supra* note 173.

¹⁸¹ See, e.g., Daniel Pipes, *Japanese Internment: Why It was a Good Idea—And the Lessons it Offers Today*, <http://hnn.us/articles/9289.html> (last visited June 9, 2005) (arguing that characterizing the Japanese American internment as the result of racism “pre-empt[s] efforts to build an effective defense against today’s Islamic enemy”); MICHELLE MALKIN, IN DEFENSE OF INTERNMENT: THE CASE FOR “RACIAL PROFILING” IN WORLD WAR II AND THE WAR ON TERROR (2004) (arguing that “it should be obvious to a fair-minded person that the decisions made [during the Japanese American internment] were not based primarily on racism and wartime hysteria” and that using the internment to criticize today’s counterterrorism measures, including racial profiling, jeopardizes homeland security).

¹⁸² Professor Natsu Taylor Saito speaks of the “racing” of Arab Americans: “Just as Asian Americans have been ‘raced’ as foreign, and from there as presumptively disloyal, Arab Americans . . . have been ‘raced’ as ‘terrorists’: foreign, disloyal, and imminently threatening.” Saito, *supra* note 168, at 12 (2001). See also Joo, *supra* note 174; Leti Volpp, *Critical Race Studies: The Citizen and the Terrorist*, 49 UCLA L. Rev. 1575 (2002); Susan Akram and Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295 (2002); Margaret Chon and Donna E. Arzt, *Walking While Muslim*, 68 LAW & CONTEMP. PROB. 215, 222–23, 238 (2005) (advocating that U.S. constitutional law and international human rights law must develop adequate remedies to profiling based on religious, and not merely skin-color-based, group identity); Daniels, *Incarceration of the Japanese Americans*, *supra* note 168 (discussing the “ongoing American propensity to react against ‘foreigners’ in the United States in times of crisis, especially when those foreigners have dark skins.”).

¹⁸³ Daikha Dridi, *In Their Words: Family in Detention Points to Religion*, SEATTLE POST-INTELLIGENCER, Sept. 10, 2002; Testimony of Samer Hamoui, *reprinted in Hate Free Zone, Justice For All: The Aftermath of September 11th*, Report from Public Hearing, at 21 (Sept. 21, 2002), <http://www.hatefreezone.org/doc/JusticeForAllReport.doc> (last visited Nov. 10, 2005); Bill Sheets, *Local Syrian Family is Grateful for Justice*, THE ENTERPRISE, Nov. 6, 2004, available at <http://enterprisewspapers.com/index.cfm?action=story&storyid=2004112410341565> (last visited August 9, 2005); Florangela Davila, *2 in Family from Syria Freed from INS Custody*, SEATTLE TIMES, Nov. 19, 2002, at B1; Gina Kim, *Stay is Revoked; Lynnwood Family Faces Deportation*, SEATTLE TIMES, May 25, 2002, at B1.

¹⁸⁴ See Video Address of Nadin Hamoui, in A DAY OF REMEMBRANCE (MediaRights, 2003), available at <http://mediathatmattersfest.org/mtm04/index.php?id=9>.

¹⁸⁵ Florangela Davila, *Released Syrians Thank Supporters*, SEATTLE TIMES, Nov. 20, 2002, at B1.

¹⁸⁶ *Hamoui v. Ashcroft*, 389 F.3d 821 (9th Cir. 2004). The court ordered the Board of Immigration Appeals to reconsider the Hamouis’ application for asylum because of errors committed by the Hamouis’ prior counsel and because the Board had applied the wrong standards to the case. *Id.* at 823–24.

¹⁸⁷ Nadin Hamoui has exemplified uncommon courage in speaking of her family’s experience in several public venues, often side-by-side with Japanese Americans sharing their internment experiences so that the mistakes of World War II will not be repeated.

As traumatic and emotional as her experience was, and as difficult as it may be for a young Muslim woman of color to speak out, she has recognized the need for others to know what has happened to the Arab American and Muslim communities post-9/11. I am grateful to Professor Margaret Chon for sharing her knowledge of Ms. Hamoui's efforts with me.

¹⁸⁸ Densho Japanese American Legacy Project, *supra* note 39 (interview with Gene Akutsu).