

# A Legal Legend Urges Oppressed to Fight for Rights

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ment had knowingly exaggerated the threat of sabotage and espionage posed by ethnic Japanese on the West Coast.

Although the principle underlying the Supreme Court's decision in the case remains on the books, she said, her opinion now serves as a precedent of a different sort: how courts should not behave in times of stress.

"Korematsu stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees," she wrote.

"It stands as a caution that the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused."

Both Mr. Yasui and Mr. Hirabayashi deliberately chose to contest Executive Order 9066, signed by President Roosevelt in February 1942, which authorized civilian and military officials to "prescribe military areas from which any persons may be excluded as protection against espionage and sabotage."

## Stumbling Into History

Mr. Yasui, a lawyer in Portland, Ore., walked the streets of his home town for three hours until he was arrested.

By contrast, Mr. Korematsu, born in Oakland to Japanese parents but speaking little Japanese himself, stumbled into legal history.

In May 1942, Gen. J. L. DeWitt, the commander of the Western Defense Command, ordered that all people of Japanese ancestry be moved from the West Coast, which had been declared a "military theater of operation."

Mr. Korematsu's parents and three brothers had complied with the order, but he remained behind — not to provoke a test case, but to remain with his

girlfriend, who was an Italian-American.

To avoid deportation, he changed to name — to Clyde Sarah — and had his eyelids altered to hide his Oriental origins.

He was arrested in San Leandro, Calif., on May 30, 1942. Soon after, while in a San Francisco jail, he was approached by Ernest Besig, director of the American Civil Liberties Union in northern California, and agreed to become the plaintiff the A.C.L.U. had sought to challenge the relocation program in court.

## 'I Didn't Do Anything Wrong'

"I didn't feel guilty because I didn't do anything wrong," Mr. Korematsu explained. "Every day in school we said the pledge to the flag, 'with liberty and justice for all,' and I believed all that. I was an American citizen and I had as many rights as anyone else."

Mr. Korematsu lost his trial and appeal, and did little better in the Supreme Court, which handed down its decision in December 1944, shortly after the Wartime Relocation Administration had decided to close the camps.

"All legal restrictions which curtail the civil rights of a single racial group are immediately suspect," Justice Black wrote, using language often cited later to invalidate many racially discriminatory laws.

But Mr. Korematsu, the Justice continued, "was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authority feared an invasion of our West Coast."

## The Dissenting Justices

Three Justices — Owen Roberts, Robert Jackson and Frank Murphy — filed dissents. The exclusion order, Justice Murphy wrote, "goes over the very brink of constitutional power and falls into the ugly abyss of racism."

Such racism, he continued, "is unattractive in any setting, but it is utterly revolting among a free people



The New York Times/Neal Boenzi

Fred T. Korematsu during an interview last week in Manhattan.

who have embraced the principles set forth in the Constitution of the United States."

Mr. Korematsu spent two years with his family at the Topaz camp, then worked in Salt Lake City and Detroit before returning to California. He was a draftsman for many years and is now

semiretired.

"All these years I thought that the Supreme Court decision was wrong," he said. "To have the opportunity after 40 years to reopen my case and have a District Court judge rule that I was not a criminal proves that justice in this country is still possible."



Macy's Santaland opened at 9 A.M., and 2-year-old Craig Thomas, in New York from Boston to visit his grandmother, was first in line.

A very tall elf (a high school student, Allison Pizzani, actually) met him at the entrance and escorted him through a maze of shorter mechanical elves who were chopping wood, stringing cranberries and stuffing stockings. Then she brought him to meet Santa Claus.

It seemed not to matter to Craig that the Santa

cuckoo clock that really worked, the green velvet sack filled with presents, the glittering cabin that would take so long to tear down that Macy's keeps it intact all year, even when it is unused.

"I want a choo-choo," he whispered shyly. His parents, watching from the doorway, said he would get one, and a red wagon, too.

The 7-foot artificial tree at the Daiwa Bank

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by wartime exigencies, and a year after his conviction was overturned by a judge in Federal District Court in San Francisco, Mr. Korematsu came to New York. He spoke of his ordeal, his patriotism and the fragility of democracy in times of turmoil.

### 'Prejudice Is Still Here'

His experience, he said, is more relevant than ever as new immigrants, particularly from Asian and Latin America, arrive in the United States.

"I'm trying to say, 'Don't be afraid to speak up, because the prejudice is still here,'" he said. "If they don't, they'll be harassed just like we were before. This is a country where you have to fight for what is right."

Mr. Korematsu's appearance in New York, his first ever on the East Coast, was the highlight of a celebration marking the 10th anniversary of the Asian-American Legal Defense and Education Fund.

The occasion also featured the New York premiere of "Unfinished Business: Three Men Who Fought the Japanese American Internment," a documentary on Mr. Korematsu and two others, Minoru Yasui and Gordon K. Hirabayashi, who challenged the wartime relocation program.

Many Japanese-Americans, seeking to prove their patriotism, disapproved of Mr. Korematsu's court challenge, and headed quietly for the relocation camps instead. But before and after his brief remarks here, Mr. Korematsu received standing ovations.

Last year, Judge Marilyn Hall Patel threw out his conviction. Her decision was based on newly obtained information revealing that the Govern-

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President Reagan named 11 people to the Legal Services Corporation's board of directors, using his authority to make recess appointments while Congress is not in session. Such appointments enable him to avoid the Senate nomination and confirmation procedures. The 11 appointees were the same people who had previously failed to gain Senate confirmation, and one of them did not get a Senate committee's approval. [9:6.]

Former Philadelphia police officers were convicted of taking bribes in a racketeering conspiracy that extorted \$350,000 to protect illegal gambling in the city. Two other former officers were acquitted. [24:1.]

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### Quotation of the Day

"I'm not saying that I anticipated it happening, but I'm saying that we had a chance and that's all I can ask for." — Doug Flutie, Boston College quarterback, after desperation touchdown pass. [19:4.]

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