

NY Legal Group Hosts 10th Year Benefit Honoring Korematsu

UCLA Asian American Studies Center



Guests at the tenth anniversary benefit for the New York-based legal services group included (l-r) Phil Tateishi Nash, Donna Young, Fred and Katherine Korematsu, Margaret Fung and Stan Mark. (Photo by Bill J. Gee)

EAST/WEST November 28, 1984

By BILL J. GEE

NEW YORK CITY - The Asian American Legal Defense and Education Fund, or AALDEF, celebrated its 10th anniversary with a gala benefit on Friday evening, November 16, at Lincoln Center's Library and Museum of the Performing Arts.

AALDEF, a non-profit organization formed to address the specific legal needs of the Asian American community, cites as its three priorities, "impact litigation, community education, and law student recruitment and internship training."

The group specifically looks to litigate in cases which have a broad impact on the Asian American community, locally and nationally.

RECENT INVOLVEMENT

Among their most recent cases have been their involvement with the Chinese restaurant workers, in their effort to secure a minimum wage and better working conditions, and with Chinatown tenant organizations in their struggle for better housing conditions and

against the process of gentrification, on the conversion by large developers of low and middle income areas to high-rental housing.

On hand to help celebrate the occasion—which was intended to mark not only a decade of community service but also a move, early next year, to their new quarters at the Public Interest Law Center, where they will be joining such groups as the Puerto Rican Legal Defense Fund, and the NAACP Legal Defense Fund—were over 400 supporters, including lawyers working in the public interest areas, community activists, local politicians, a delegation from the People's Republic of China, and Ambassador Asao from Japan.

In acknowledging the show of support, Arthur Soong, president of AALDEF's board of directors, referred in his remarks to the gathering, how "these have not been easy times for an organization like AALDEF. It's perhaps not fashionable to be a public interest law group anymore."

He added, "This evening represents an opportunity for us to reach out to you and show what the issues are that are important to us, and of our commitment to our work."

THREE RESISTORS

The gala evening opened with a Japanese buffet, and was followed by the first East Coast screening of *Unfinished Business*, Steven Okazaki's film about the three resisters to the wartime relocation orders for Japanese Americans, whose cases have become legal history—Fred Korematsu, Gordon Hirabayashi and Min Yasui.

Dennis Hayashi, of the Asian

Law Caucus and a member of the Korematsu legal team, came out from the West Coast to introduce the film, in Okazaki's absence, and spoke about both the recent decision of the federal courts vacating the 1942 conviction of Fred Korematsu. He also spoke of the role the AALDEF staff attorneys had played in presentation of the case, which included filing an *amicus*, or friend of the court, brief.

For those present, the unquestionable highlight of the occasion came with the appearance, after the film, of Fred Korematsu. A standing ovation greeted his introduction.

In this, his first East Coast address, Korematsu spoke with a mixture of sadness and regret, over his experiences from his initial imprisonment in 1942, to the presentation of his case before the Supreme Court in 1944.

He spoke of the events which led to the re-opening of his case, and praised the work of the legal team which worked to overturn his conviction.

In speaking about his participation in *Unfinished Business*, Korematsu ended by saying, "This film is to let America know what happened, and that it should never happen again to any American citizen." □

The New York Times

Metropolitan Report

SATURDAY, NOVEMBER 24, 1984

Legal Legend Urges Victims To Speak Out

By DAVID MARGOLICK

A few years ago, Karen Korematsu came home from high school in San Leandro, Calif., flushed with excitement. In a discussion in her social studies class on the internment of 112,000 Japanese-Americans during World War II, she learned for the first time how one man had gone to court to challenge the entire program.

The name of the case, she learned, was *Korematsu v. United States*. It went all the way to the United States Supreme Court. And the man who brought it was her father.

Under normal circumstances, Fred T. Korematsu might have regaled his children with the story — how, in 1942, he defied orders to all those on the West Coast of Japanese ancestry, including American citizens like himself, to turn themselves in; how he was picked up and jailed; how he took on Franklin D. Roosevelt, Earl Warren and all the other civilian and military officials responsible for the internment program; how he lost his case, with one famed civil-libertarian Justice — Hugo Black — writing the opinion, and another — William O. Douglas — joining in.

A Place in the Law Books

Since that time, *Korematsu*, like *Miranda* and *Gideon*, has become a familiar citation in the law books. With the *Dred Scott* case, it represents what is by consensus the low-water mark in the history of the Supreme Court's treatment of civil liberties. But the case was never mentioned in the *Korematsu* home.

That silence stemmed in part from humiliation. Like many ethnic Japanese who spent the war years in the tar paper shacks of Manzanar, Tule Lake and other "resettlement camps" scattered through the West, he wanted little more than to forget the experience.

It was born, too, of the reticence that makes Mr. Korematsu, a soft-spoken man of 65, an uncomfortable, unlikely legend in American legal history.

Last week, 40 years after the Supreme Court ruled that the internment program was justified 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-

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 camp.

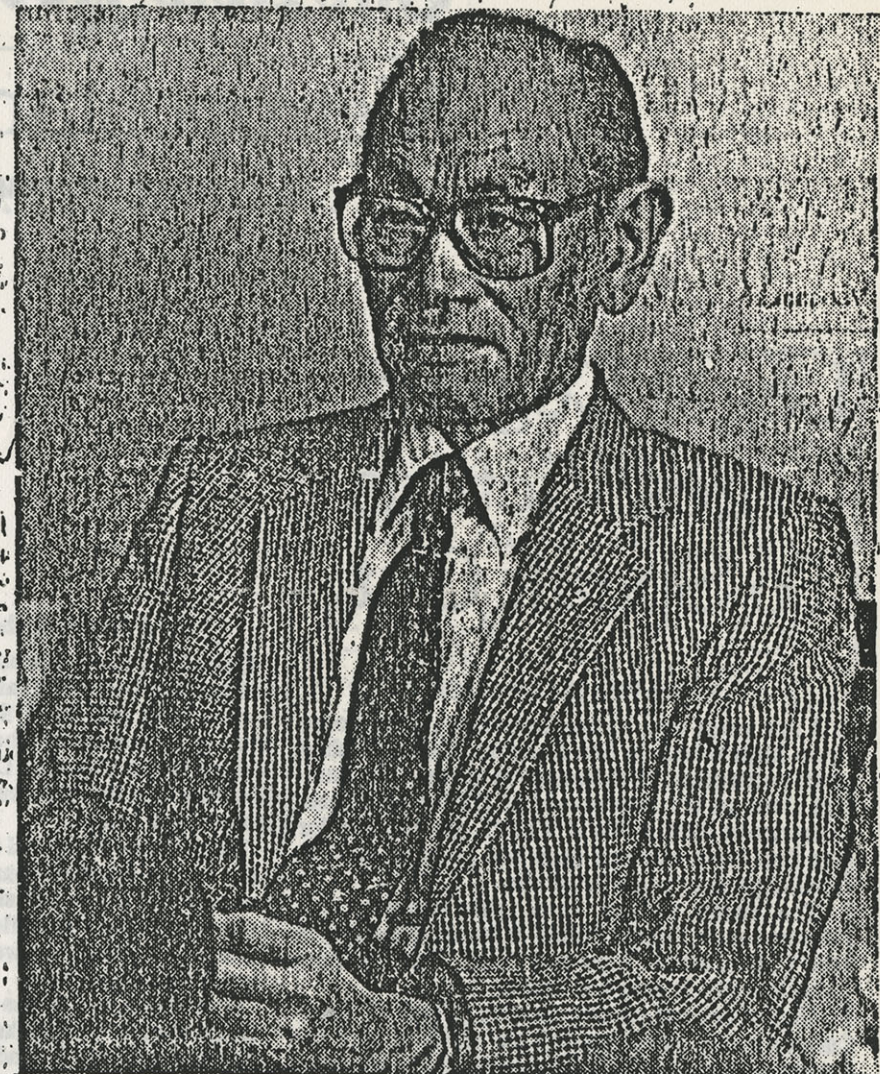
"All legal restrictions which curtail the civil rights of a single racial group are immediately suspect," Justice Black wrote, using language often cited later to invalidate many racially discriminatory laws.

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



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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."

MEETING A FAMOUS CASE: FRED KOREMATSU

By Holly English*

On May 30, 1942, a bright, sunny day, Fred T. Korematsu stood on a street corner in San Leandro, California, waiting for his girlfriend. He went into a drug store and bought some cigarettes. While there, someone recognized him and called the military authorities. When Korematsu walked back out to the street, he was approached by two officials and arrested, for violating a military order that prohibited persons of Japanese ancestry from being in designated areas of California. This order eventually led to the mass incarceration of over 120,000 Japanese-Americans in internment camps during World War II. On September 8, 1942, Korematsu was convicted of violating the military order.

From there, he became the subject of one of the most infamous Supreme Court cases of the century. In 1944, a divided Court affirmed Korematsu's conviction, citing "military necessity" as the basis for its ruling. Nearly 40 years later, Korematsu reopened his case with newly found evidence. His conviction was overturned in November 1983, in Federal District Court in the Northern District of California.

Korematsu, 65, was in New York City recently for the tenth

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anniversary program of the Asian American Legal Defense and Education Fund, which included the premiere of "Unfinished Business: Three Men Who Fought the Internment of Japanese Americans," a movie featuring Korematsu and two others also convicted of violating the military orders during World War II.

Because the Justice Department has not pursued an appeal in Korematsu's case, the judgment is final. Thus his first goal—overturning his conviction—has been realized. But Korematsu continues to speak out in order to educate those unaware of the internment camps, with the hope that other racial groups are never similarly victimized.

Tried to Evade Detection

At an interview in a New York apartment, Korematsu sat amidst plump cushions on a soft beige sofa, looking professorial in horn-rimmed glasses, tweed jacket, and with a pipe held in mid-air. In this comfortable setting, his account of the internment camps seemed remote and contradictory. He proved modest

and laconic in answering questions, prompting his wife, Kathryn, to embroider his spare remarks with revealing details.

In late March 1942, Korematsu related, the evacuation of Japanese-Americans to the internment camps began. While the rest of his family went to a camp in Topaz, Utah, Korematsu, then 22 years old, decided to remain in the Bay Area. He evaded detection for two months, changing his name to Clyde Sarah, and undergoing minor, mostly unsuccessful plastic surgery ("My folks recognized me anyway," he said, chuckling). Despite his efforts, he was arrested, and spent some time in jail until he was convicted of a misdemeanor and sentenced to five years probation.

Thereafter, Korematsu was sent to join his parents and three brothers in Utah, where they lived in a two room portable tar paper shack with no running water, a place he called "miserable" and "fit for horses, not for human beings." He described the mood of the camp as one of "resignation," recalling the constant efforts to keep busy—helping to build a hospital, patrolling, taking care of children, doing odd jobs, card playing, and so forth.

Meanwhile, his case dragged on in the Federal courts. The Ninth Circuit affirmed the District Court's ruling and the Supreme Court issued its opinion in December 1944. Writing for the majority was Justice Black, who was joined by Chief Justice Stone and Justices Reed, Douglas and Rutledge. Justice Frankfurter concurred, and three separate dissents—by Justices Roberts, Murphy and Jackson—were filed.

Anti-Heroes

The majority focused only on the narrow question of whether Korematsu violated an order prohibiting him from remaining in the Bay Area, not the validity of the entire detention program. Justice Black wrote that a discussion of a possible constitutional violation due to race "merely confuses the issue. Korematsu 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 . . ." Justice Frankfurter's concurrence emphasized the extraordinary wartime powers of the Federal government.

Three vehement dissents followed. Justice Murphy protested that "such exclusion goes over 'the very brink of constitutional power' and falls into the ugly abyss of racism." He argued further that there was no reasonable relation between the detention orders and Japanese-Americans as a group, but rather that the link consisted of "misinforma-

(OVER)



Pictured (l-r) are: Mrs. Kathryn Korematsu, Fred T. Korematsu and their daughter, Karen.

tion, half-truths and insinuations" spawned by racial prejudice. While some individuals may be disloyal, he wrote, to extrapolate from that "group disloyalty and justify discriminatory action against the entire group is to deny that under our system of law individual guilt is the sole basis for deprivation of rights."

Justice Jackson, in his dissent, warned the Court that this case would validate the principle of racial prejudice, and "(t)he principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."

The glaring presence in the majority of Justices Black and Douglas—usually revered as civil libertarians—is not unmarked by Japanese-Americans. "They are not heroes to us," said Mrs. Korematsu firmly.

Silent Hero

Korematsu was released from the camp in 1944, determined not to return to California. He worked as a welder, first in Salt Lake City and then in Detroit,

where he met his wife and was married in 1946. His mother's illness in 1949 caused him to return to California. He has lived in San Leandro, the site of his arrest, since that time, working as a draftsman, and is now semi-retired. The Korematsus have a daughter, Karen, and a son, Ken.

For nearly four decades Korematsu did not speak out, despite countless invitations to lecture about his experiences. Friends who have known the family for 30 years only recently learned of his background. His daughter only learned of her father's past from a high school social studies report.

This reaction was typical of many of the *nisei*, the second generation Japanese-Americans, who endured the internment camps; they often preferred to bury the past and get on with their lives. It is instead their children—the *sansei*, or third generation Japanese-Americans—who have become angry enough about the past to start a broad-based redress movement.

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FRED KOREMATSU

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Korematsu was persuaded to reopen his case when a California professor, Peter Irons, informed him of significant new evidence. Government memoranda obtained through the Freedom of Information Act (FOIA) showed that prosecutors had knowingly withheld reports tending to clear Japanese-Americans from suspicion. Korematsu's conviction was vacated due to governmental misconduct, as outlined in Judge Marilyn Hall Patel's decision.

While Judge Patel acknowledged that her opinion did not reach any legal errors in the earlier decision, thus leaving the case "for whatever precedential value it may still have," she noted that the case has "very limited application." Moreover, in dicta, she characterized the 1944 decisions as a grim reminder that "in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability."

An Uneasy Hero

Despite persistent questioning, Korematsu did not reveal any manifest bitterness towards the American government; indeed, he spoke of his loyalty and patriotism, pointing to his involvement in such community organizations as the Lions Club and the Boy Scouts. Some of his remarks, however, that as "this is a country where you really have to fight for what's right," and "things like this happen in a free country like this," reflected some discontent.

In the course of the interview, Korematsu waved away words of admiration as if physically shielding his face from the lime-

light. He is clearly uneasy with the "hero" label, and not merely because of modesty. First of all, Korematsu was no crusader; he had no avowed intention in breaking the law, other than to go about his life and to spend time with his girlfriend. To be sure, he was a stubborn, independent man—"the different one in his family," as his wife put it—who learned little Japanese, had many Caucasian friends, and even a Caucasian girlfriend, which was unusual at the time. However, he seems to resist glorification because, in his view, he never should have been a hero merely for conducting his life as did every other American citizen. His larger point, which he repeated quietly over and over, is that he is "just like anybody else," and should have been treated that way.

The lesson he learned from his experience is clear. "People look at me, at all Orientals, as not Americans, as not equal," he said. "They are. You are born in this country and you should belong in this country."

"I am not a criminal," Korematsu says simply, and indeed his record has been cleared. Still, the doctrine of "military necessity" laid out in the 1944 decision, remains today, perhaps in the guise of "national security." Korematsu's vindication, though sweet, is but a small victory for the Japanese-Americans who continue the redress movement in Congress and in the courts. Several bills are pending in Congress to give compensation to Japanese-Americans who were in the internment camps. In addition, two other Japanese-Americans—Gordon K. Hirabayashi and Minoru Yasui—who, like Korematsu, were convicted of violating the internment laws, have reopened their cases, which are now pending in the Federal courts. These cases may result in a further clarification of the constitutional issues.

Not Bitter

The interview at a close, a visitor stood up and asked, in mild frustration, "You're not bitter?"

"No," said Korematsu. "He's not a bitter man," said his wife. ■