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Sixty Years After the Internment: Civil Rights, Identity Politics, and Racial Profiling

Donald K. Tamaki†

On December 7, 1941, Japan attacked Pearl Harbor and fear gripped our nation.¹ Within hours, Secret Service and FBI agents swept through Japanese American communities, arresting its leaders.² Within weeks, these communities were subjected to race-based curfew orders.³ Within months, the wholesale rounding up of Americans was in full swing as they were herded into make-shift detention centers surrounded by barbed wire and machine gun towers while concentration camps were being constructed in the interior of the country.⁴ By the summer of 1942, 120,000 Americans of Japanese ancestry, 70,000 of whom were American citizens by birth, had been confined in ten concentration camps stretching from California to Arkansas.⁵ Still others were held in penitentiaries while their families wondered if they would ever see them again.⁶ These Americans had lost


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In 1983 to 1985, he served on the legal team that reopened the landmark U.S. Supreme Court case of Fred Korematsu, overturning his criminal convictions for refusing to be interned. The reopening was based on newly discovered evidence from the Justice Department, War Department, Navy, F.B.I., and F.C.C., which had been suppressed from the Court, admitting that Japanese Americans had committed no wrong and posed no threat.

3. Cf. id. at xviii (describing Military Proclamation No.3, which was issued on March 24, 1942 and imposed a nighttime curfew only on persons of Japanese ancestry).
5. See Peter Irons, Preface to JUSTICE DELAYED, at ix, ix (Peter Irons ed., 1989).
their property, their freedom, and for some, even their lives.\textsuperscript{7} The Internment was immensely popular, and with the full support of the news media, politicians built their careers by proclaiming, "The Japs must go!"\textsuperscript{8}

Fred Korematsu, a loyal American citizen, was arrested and jailed for refusing to obey the military orders.\textsuperscript{9} In 1944, the U.S. Supreme Court heard his case and ruled against him, denying that the Internment had been prompted by racism and instead calling the incarceration a military necessity.\textsuperscript{10}

Korematsu's case stood for almost 40 years until Professor Peter Irons, researching government archives, stumbled upon secret Justice Department documents.\textsuperscript{11} Among them were memos written in 1943 and 1944 by Edward Ennis, the Justice Department attorney responsible for supervising the drafting of the government's brief.\textsuperscript{12} As Ennis began searching for evidence to support the Army's claim that the Internment was necessary and justified, he found precisely the opposite—that J. Edgar Hoover of the FBI,\textsuperscript{13} the FCC,\textsuperscript{14} the Office of Naval Intelligence \textsuperscript{15} and

\begin{enumerate}
\item See TAKAKI, supra note 4, at 392-405.
\item Korematsu v. United States, 323 U.S. 214, 215-16 (1944).
\item Id. at 223-24.
\item See Peter Irons, Introduction to JUSTICE DELAYED 4, 7 (Peter Irons ed.,1989). Although Korematsu's conviction no longer stands, Korematsu v. United States has never been reversed.
\item See id. at 4-6.
\item See Petition for Writ of Error Coram Nobis, Korematsu v. United States, 584 F. Supp. 1406 (N.D. Cal. 1984), reprinted in JUSTICE DELAYED, supra note 1, at 144-60. For example, FBI Director Hoover submitted a detailed report to the Attorney General on February 7, 1944, "Reported Bombing and Shelling of the West Coast," in which he wrote:
\begin{quote}
Certain statements have been made in the report indicating that immediately after the attack on Pearl Harbor there was a possible connection between the sinking of United States ships by Japanese submarines and alleged Japanese espionage activity on the West Coast. It was also indicated that there have been shore-to-ship signaling, either by radio or lights, at this time.

As indicated by the attached memorandum, there is no information in the possession of this Bureau as the result of investigations conducted relative to submarine attacks and espionage activity on the West Coast which would indicate that attacks made on ships or shores in the area immediately after Pearl Harbor have been associated with any espionage activity ashore or that there has been any illicit shore-to-ship signaling, either by radio or lights . . . . Every complaint in this regard has been investigated, but in no case has any information been obtained which would substantiate the allegations that there has been illicit signaling from shore-to-ship since the beginning of the war.
\end{quote}
Memorandum, J. Edgar Hoover to the Attorney General (Feb. 7, 1944), reprinted in JUSTICE DELAYED, supra note 1, at 158.
\item See Petition for Writ of Error Coram Nobis, supra note 13, at 156-60. For example, in a report to Attorney General Francis Biddle dated April 4, 1944, FCC Commissioner James L. Fly wrote: "There were no radio signals reported to the Commission which could not be identified, or which were unlawful. Like the Department of Justice, the Commission knows of no evidence of any illicit radio signaling in this area during the period in question." Report from James L. Fly, FCC Commissioner, to Francis Biddle, Attorney General (Apr. 4, 1944), reprinted in JUSTICE DELAYED, supra note 1, at 159.
\item See Petition for Writ of Error Coram Nobis, supra note 13, at 148-49. For example, Lt. Commander Kenneth D. Ringle of the ONI concluded:
other authoritative intelligence agencies categorically denied that Japanese Americans had committed any wrong. Other memoranda characterized the government’s claims that Japanese Americans were spying as “intentional falsehoods.” These official reports were never presented to the Supreme Court, having been intentionally suppressed and, in one case, destroyed by setting the report afire. It was on this basis—governmental misconduct—that a legal team of pro bono attorneys successfully reopened Korematsu’s case in 1983, resulting in the erasure of his criminal conviction for defying the Internment. In a statement remarkable for its prescience, Judge Marilyn Hall Patel of the U.S. District Court of the Northern District of California wrote:

Korematsu remains on the pages of our legal and political history. As a legal precedent it is now recognized as having limited application. As a historical precedent it stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting our constitutional guarantees. It stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions, legislative, executive and judicial, must be prepared to protect all citizens from the petty fears and prejudices that are so easily aroused.

On September 11, 2001, terrorists attacked the World Trade Center, and fear once again gripped our nation. As noted by the historian Roger Daniels, in the months following this tragedy, we were told that more than 1,000 aliens, largely of Middle Eastern nationalities, have been locked.

That, in short, the entire ‘Japanese Problem’ has been magnified out of its true proportion, largely because of the physical characteristics of the people; that it is no more serious than the problems of the German, Italian, and Communist portions of the United States population, and, finally, that it should be handled on the basis of the individual, regardless of citizenship, and not on racial basis.

17. Id. at 161. For example, Justice Department attorney John Burling wrote to Assistant Attorney General Herbert Wechsler, who directed the War Division of the Department: “You will recall that General DeWitt’s report makes flat statements concerning radio transmitters and ship-to-shore signaling which are categorically denied by the FBI and the Federal Communications Commission. There is no doubt that these statements are intentional falsehoods . . . .” Memorandum from John L. Burling, Justice Department Attorney, to Herbert Wechsler, Assistant Attorney General (Sept. 11, 1984), reprinted in JUSTICE DELAYED, supra note 1, at 161.
18. See Petition for Writ of Error Coram Nobis, supra note 13, at 137-160. Of the burning of the original version of the Final Report, Warrant Officer Theodore E. Smith wrote on June 29, 1943: “I certify that this date I witnessed the destruction by burning of the galley proofs, galley pages, drafts and memorandums of the original report of the Japanese Evacuation.” Memorandum from Theodore E. Smith, Warrant Officer Junior Grade (June 29, 1943), reprinted in JUSTICE DELAYED, supra note 1, at 143.
up, and thousands more have been deported for overstaying their visas.\textsuperscript{22} We also read about the detention of others for questioning; about plans to bypass normal legal procedures and create military tribunals to try “any individual who is not a United States citizen;”\textsuperscript{23} about federal requests to colleges and universities for the names of all foreign students;\textsuperscript{24} about requiring public librarians to disclose identities of library patrons and the titles of books that they borrow;\textsuperscript{25} about citizens and aliens being forced to leave flights for which they had tickets merely because they “look like the enemy;”\textsuperscript{26} about loyal Filipino airport screeners losing their jobs because they are not citizens;\textsuperscript{27} and about Americans being taken away in the middle of the night without charges, without access to lawyers, and without their families knowing where they are being held or if and when they will be released.\textsuperscript{28} These actions have been taken in the name of “national security,” which sounds eerily like “military necessity.” This should give us pause to ask ourselves: where is this going to lead, particularly if more acts of terrorism occur, which in turn will generate an even greater public clamor to “do something.”

It bears remembering that when 120,000 Americans were taken away during World War II,\textsuperscript{29} their captors came with patriotic fervor, urged on by political leaders who launched their careers by demonizing Japanese Americans, upheld by a judiciary that had lost the courage to ask probing questions, and supported by a public whose fears and hatreds had been whipped up by a news media that had devolved into a \textit{de facto} information arm of the government. All of these things came to us wrapped in an American flag.

The words contained in the following pages remind us that our responsibilities are great, that there is much work to be done, and that there is much at stake if we remain silent.


\textsuperscript{26} See Stephen Power, American Air Hit By Federal Claim of Discrimination, WALL ST. J., Apr. 28, 2003, at B2 (Department of Transportation accused American Airlines of discriminating against 10 passengers perceived to be of Middle Eastern or South Asian descent).

\textsuperscript{27} See Ethan Lieser, Immigration Conference Focuses on Airport Screeners, ASIANWEEK, Mar. 20, 2002, at 14.

\textsuperscript{28} See generally AMNESTY INTERNATIONAL, supra note 22.

\textsuperscript{29} See Irons, supra note 5, at ix.