

Fred Korematsu And His 40-Year Quest For Justice

by Stan Yogi

Forty years, by anyone's standards, is a long time to wait for justice. Time, however, did not hinder Fred Korematsu's efforts to vindicate his rights. On November 10, 1983, a federal judge vacated Korematsu's 40-year old conviction for violating World War II military instructions which ordered all Japanese Americans to evacuate the West Coast.

Korematsu is one of three Japanese Americans who challenged, in the Supreme Court, the constitutionality of restrictive orders imposed against Japanese Americans during World War II. Korematsu protested the evacuation orders, while Gordon Hirabayashi and Minoru Yasui challenged the legality of curfew orders applied only to Japanese Americans. All three lost their cases in the Supreme Court, which justified the Constitutionality of the government orders on the basis of "military necessity." By upholding the government's actions, the court not only justified the wholesale abrogation of individual rights but also raised the frightening specter that similar violations could be justified in the future.

Based on documents that prove government suppression, distortion, and destruction of evidence crucial to their cases, Korematsu, along with Hirabayashi and Yasui, applied, earlier this year, to have their convictions overturned.

Recently, Korematsu was a featured guest at a program held at the UCLA School of Law. He was joined by two of his attorneys, Dale Minami and Don Tamaki, who outlined the process by which Korematsu, Hirabayashi, and Yasui have sought to have their convictions vacated. The program also included Peter Irons, an attorney and Political Science professor at UC San Diego, who discovered the evidence of government misconduct in the three cases and documented that misconduct in his recently published book, *Justice at War*.

The movement to reopen the cases was initiated by Irons' academic interest. He originally planned to analyze the three cases as an examination of the conflict between wartime governmental powers and individual rights. During his research, Irons discovered, through the Freedom of Information Act, several Justice Department documents that astounded him. "The first document I came across left me speechless," Irons remembered. The memo outlined the complaints of Justice Department attorneys to the Attorney General, that the US government was lying to the Supreme Court in the cases involving Japanese Americans. Irons said the lies involved a War Department report, which delineated the government's rationale behind the mass Japanese evacuation. Irons explained that the report, submitted by General John L. DeWitt, the military commander of the West Coast who ordered the evacuation of Japanese Americans, was based on DeWitt's own bigoted viewpoint.

DeWitt's main justification for the evacuation, Irons asserted, was the blatantly racist belief that it would be impossible to determine the loyalty of Japanese

Americans because of "racial characteristics." "Japanese Americans were presumed, by General DeWitt, to be inherently disloyal—a genetic theory of loyalty," commented Irons.

Irons continued that Mark McCloy, the Assistant Secretary of War at that time, knowing that the Supreme Court would

Hirabayashi, and Yasui expressed a desire to reopen their cases, Irons contacted Dale Minami. Irons had heard of Minami's work in Bay Area Attorneys for Redress, an ad hoc committee formed by San Francisco area lawyers to organize briefs and testimony for the Commission on Wartime Relocation and Internment of Civilians.

were unconstitutional.

After vacating Korematsu's conviction, U.S. District Court Judge Marilyn Hall Patel, addressing a packed courtroom, stated that the government's "neck" response to the petitions "amounted to an admission of error." She added, "The court is not without power to correct its own record, and (it) should do so and wipe its own slate clean to the extent that it is now possible to do so where that record stands with a taint, both upon our legal and upon or social and political history."

Patel added that there was no basis for government claims of military necessity. While Patel could not overrule the Supreme Court's *Korematsu* decision, her decision will accompany the Supreme Court's decision in legal publications.

Tamaki noted several reasons for reintroducing the cases. Despite the tremendous human degradation and property loss suffered by Japanese Americans during World War II, Tamaki remarked that the government has characterized the *Korematsu*, *Hirabayashi*, and *Yasui* cases as "three miserable misdemeanors."

Tamaki added that even though the evacuation and internment of Japanese Americans resulted in blatant civil rights violations, significant civil liberties organizations abandoned Japanese Americans during the war. "The National ACLU did not take an unequivocal stand against the internment," observed Tamaki.

Tamaki added that the historical record must be set straight. He stated that many uninformed individuals continue to harbor the fallacious belief that merely because the Supreme Court upheld the convictions, Japanese Americans were all guilty. "What began, perhaps as wartime hysteria," Tamaki explained, "really ended up as a fairly calculated policy to uphold the internment program, almost at any cost, even if it meant lying to the U.S. Supreme Court. As a matter of public record, that has to be made straight." Tamaki continued that for Japanese Americans, the effort holds special significance.

But Tamaki added that the cases have broader significance beyond Japanese Americans. "The issue is not just a Japanese American issue, it's an American issue—it's an American tragedy," Tamaki stated.

He explained that the *Korematsu* case, which is considered a "civil liberties disaster" by Constitutional scholars, is dangerous for unpopular political and racial minorities, because the decision allows for the evacuation of American citizens even in the absence of trials, hearings or evidence. Minami added that political leaders had considered evacuation and internment during the civil rights movement and the Iranian hostage crisis.

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Fred Korematsu, with from left, Don Tamaki, Peter Irons, Lori Banai, and Dale Minami at UCLA last month

photo by Keith Lee

react negatively to such racist sentiments, removed DeWitt's statements from the report and burned original copies of the report. "The Supreme Court," explained Irons, "was prevented from learning, from the Justice Department, that, in fact, General DeWitt's rationale for internment was admittedly based on a racist assumption."

In 1944, a year and a half after the *Hirabayashi* and *Yasui* decisions, the Supreme Court was faced with Korematsu's challenge. Irons stated that the Justice Department again looked to the War Department report to prepare its legal briefs. The revised report, however, also contained claims that Japanese Americans had engaged in illegal radio transmission and signaling to Japanese submarines.

Irons stated that the Justice Department was suspicious of these claims and had both the FCC and the FBI investigate the accusations. Both agencies reported back to the Attorney General, before the *Korematsu* decision, that the accusations were groundless. After learning this, Justice Department lawyers felt compelled to report the errors. They prepared a footnote to the government's legal brief which explained the FCC and FBI findings.

Before the brief was sent to the Supreme Court, though, it was sent to the War Department. War Department officials, Irons explained, strenuously objected to the inclusion of the footnote, and despite the Justice Department findings, the War Department successfully removed the footnote.

In the fall of 1981, after completing his research, Irons contacted Korematsu, Hirabayashi, and Yasui and asked them if they would be interested in reopening their cases, based on the evidence he discovered. On February 3, 1982, after Korematsu,

Irons asked Minami if he would be interested in reopening the cases. "My first reaction was, 'Are they (Korematsu, Hirabayashi, Yasui) still alive?'" Minami remembered. After receiving assurance from Irons that all three men were still alive and interested in reopening the cases, Minami contacted Tamaki of the San Francisco based Asian Law Caucus, and work began on reopening the cases.

The legal team of approximately 50 individuals working on the project decided to reintroduce the cases through a Writ of Error Coram Nobis, a process which allows for the reintroduction of a case, without a statute of limitations, on the basis of specific grounds, one of them being governmental misconduct. The Coram Nobis process requires that cases be refiled in the original court of convictions.

Because of this requirement, Korematsu, Hirabayashi, and Yasui filed individual petitions in the district courts they were originally convicted in, rather than the Supreme Court. In addition to the requests for vacating their convictions, Korematsu, Hirabayashi, and Yasui sought to receive a declaration that the government's actions during the war were unconstitutional.

After the petitions were filed, Minami said that the government offered pardons to Korematsu, Hirabayashi, and Yasui in exchange for dropping the suits. Minami added that when broached with the offer of a pardon, Korematsu commented, "We should pardon the government."

On October 4, 1983 the Justice Department recommended that the three convictions be vacated but admitted no governmental wrongdoing and refused to admit that the government's wartime actions

P.S

Japanese Fashions: The Significance Of A Fad

by Cynthia Gouw & Audrey Tanaka

Way back at the Dawn of Time, clothes developed as a necessary protection against the natural elements. However, in the ages since, clothes have grown to symbolize more than just the veritable fig leaf. Fashion today has become instead a statement, whether it be bold, brilliant or subdued, of one's social class, tastes, and individuality.

Traditionally, the French have dominated the fashion scene, ever since the word *couture* was coined. But along came the Italians, at first considered the "dark horses" of fashion, who with their innovative designs and creative use of fabrics such as leather, created a whole different look and attitude. The absolute authority wielded by the two styles remains today, as the French and Italian *couture* houses are still considered the ultimate "fashion machines." With this European influence, our way of dressing has been strongly shaped.

But in the year of the "sushi bar" and the "little China Girl," a new voice in fashion is growing louder and more persistent. And by the overwhelming response to it, it is definitely being heard. The Japanese are coming! With an innovative and wholly unique perspective, the Japanese are changing the way we think about fashion. Talented designers such as Issey Miyake, Kenzo, and Moga have incorporated their skills, talents, and cultural heritage to emerge as top fashion authorities. Amongst the myriad of new styles, one aspect clearly emerges as the dominant theme—layer upon layer of separates which wrap around the body and head in a rainbow of colors, giving this look an unconventional, whimsical touch. The most recent issue of *Mademoiselle* contends that "Japanese designers have been inspiring designers in America and Europe for several seasons now, (with) an unabashed heeding of the dramatic—greater shape, greater geometric or more asymmetric lines, and the unconventional. Japanese fashion is all about individuality." This sense of fun has captured the imagination of the American

public.

Still, some people find the look aesthetically unappealing, which is not surprising for those who were raised on the premise that European fashion reigns supreme. The Japanese emphasis on loose clothing that flows harmoniously with the natural contours of the body contrasts sharply with the more popular form-fitting garments of the Europeans. However, people enjoy wearing something that is flattering and comfortable. While Western fashion is usually more tight-fitting, literally shaping the body into the "desirable" hour-glass form, Japanese design is generally boxy, and flattens the body, challenging all conventional norms. With its carefree style and comfortable fit, it is clear why Japanese designs have caught on in the fashion world.



graphics by Diane Lam

But is there something to these new fashions that is more than skin-deep? Fashion is often seen as flighty, with styles seeming to change at the slightest whim of a designer's fancy. Given these perpetual changes that permeate the fashion world, perhaps one can dismiss the Japanese creations as simply a fad. With fashion as fickle and ever-changing as it is, the interest in Japanese designs might be the temporary answer in the search for something new and marketable, like the African prints of the 60's (although there seems to be an interesting upsurge of these prints in designs by Yves Saint Laurent). Design too, is an important factor. As one UCLA design student asserts, "Good design is international in appeal." We have Japanese cars, computers, architecture—why not Japanese fashion?

But is it international or commercial appeal that results in Oriental motifs emblazoned on T-shirts that are produced in the tens of thousands? And doesn't it seem interesting that even the less "fashionable" department stores carry Oriental inspired designs that the layman can wear? With the growing numbers of Third World people in the United States, the American public's receptiveness has grown too. Thus, optimistically, many people might attribute these recent developments to a changing, more open attitude toward different ideas and cultures.

Yet, there seems to be many things that challenge this contention. Wearing some "ethnic" fashion does not necessarily constitute understanding the culture which inspired its creation. Perhaps this new receptiveness of things Japanese is not really a trend at all. Perhaps it is just "surface acceptance" by the public. Wear their clothes but send all Japanese-built cars back to where they came from! Do people really understand the rich cultural history behind these Asian fashions? Do you know what your T-shirt says?

Obviously, fashion's fickle finger points to the new and interesting things that tickles her fancy, which ranges anywhere from

dictating merely a fashionable style all the way to inspiring an entirely new movement and feeling. For this fall season, The Broadway department store has literally packed its walls with a vast array of Oriental products, ranging from ceramics to bathroom accessories. This push could perhaps be seen as a sensible effort to



acquaint Angelinos with the proud heritage of the Orient and all its rich qualities.

Additionally, and perhaps more importantly, this endeavor is more likely to be quite a profitable enterprise.

However, a notable dimension to this effort was a recent gala benefit celebrating the culmination of The Broadway's Oriental program. Attending this affair, in honor of the Japanese culture which inspired these unique and special designs, were numerous influential persons. Among them were Mayor Bradley and important officials from Japan. They applauded the effort to recognize and explore the Japanese culture through such a visible entity as The Broadway. Further, they toasted to the continued cultural understanding between Asia and America. Quite an example of fashion's influence!

Fashion—merely a fad to follow or something more substantial? One hopes that it is the latter.



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privately owned Hong Kong & Shanghai Banking Corporation controls 60% of all deposits, prints currency, and acts as a de facto central bank. The free port, with no customs or excise duties, attracts shippers, importers, and exporters. No company tax is higher than 16.5%—the lowest tax rate on earnings of any industrial state. With a maximum personal income tax of 15% and no tax on dividends, Hoy claims, "Hong Kong is the best place in the world to make money."

But Hong Kong wasn't always this way; since its beginning, Hong Kong has been a boom and bust town. Between 1950-1964, the economy grew at a staggering rate. One analyst estimates that industrial growth was at least 30% per year, but then Hoy asserts, "In 1967 and 1968, Hong Kong was in political strife because of the Cultural Revolution. Left wing people in Hong Kong were stirring up trouble. There were demonstrations, riots, and fears of China taking back Hong Kong back then." During this period, land prices plummeted and emigration rose sharply, but Hong Kong quickly recovered. Says Lee, "Five or ten years after this, Hong Kong became steady and economically very good. In fact, the economy was at its peak."

The recovery was quick, and continued until recently. Office prices have quadrupled in the last four years to become the world's most expensive. In February, land in the business district sold for \$5,657 a square foot. Today, it ranks as one of the world's top twenty industrial nations, the world's seventeenth largest trader, the third largest cargo port, and the world's second largest shipping fleet. It is also a major gold trading center. The list goes on: first in exports of garments, radios, toys, and watches. Boasts Hoy, "The last 10-15 years...testifies to the Hong Kong phenomenon. We are so small, yet so famous."

The chain of events leading to the present dilemma stems from public concern in Hong Kong over progressively shortening mortgage terms, which were usually set at 20 years. Lenders worried about recovering loans after 1997. The British, in response, indicated to Peking that they wanted to begin discussing Hong Kong's future. Britain has a major stake in the area, for Hong Kong is a major trading partner, and Britain has poured huge amounts of capital into it. Peking, since it receives 1/3 of all its foreign transactions through the colony, cannot ignore its importance. British Prime Minister Margaret Thatcher's initial visit to China in September, 1982, did little to resolve the lease issue. The details of the talks were varied, but the fact remains that Peking indicated its intention to restore sovereignty over the New Territories. The disclosure of this information ran contrary to British desire for secrecy regarding the talks.

Given Hong Kong's volatile economy, the situation with Britain and China severely affects currency and prices on all goods. The Hang Seng Index, the local stock exchange, dropped 40% in the wake of Thatcher's '82 visit. Visa inquiries to emigrate have increased 50% since then as well. At an international press conference in September, Richard Luce, minister of state at the British Foreign and Commonwealth Office remarked that "public comments by the Chinese government...are not helpful to the common aim of finding a solution."

A second round of talks between Peking and London concluded in October, 1983, the full results of which will not be made public until September, 1984. Both China and Britain, however, have indicated that the solution to the lease must be satisfactory to China, Britain, and the people of Hong Kong.

One improbable solution divides Hong Kong into separate British and Chinese rule. Although Britain will retain sovereignty over Hong Kong Island and Kowloon after 1997, the border will cut through the heart of Kowloon, on Boundary Street, which over a million people cross each day. If this solution comes to pass, Hong Kong will have no airport, no container port, only parts of its subway, and fractions of its housing. In addition, 60% of its food and 30% of its water, which comes from China, will be cut off.

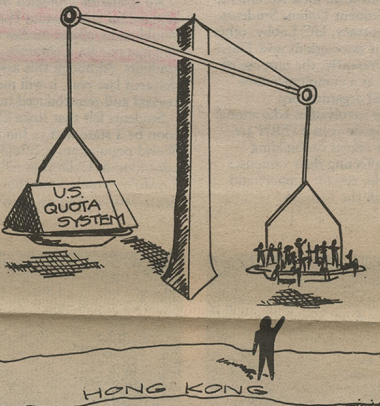
One possible solution lies in the development in the Shumchun area in China, next to the Hong Kong border. Hong Kong and foreign investors teamed up with the Peking government to develop a 131 square mile area populated by 2 million people. The community is complete with a Ford assembly plant and a Pepsi bottling plant. Shumchun authorities even let one Hong Kong investment company sell plots to overseas Chinese who want to return to their homeland for burial. Some rumored solutions to the problems of transition include a model similar to Shumchun, transforming the colony into a "special administrative region." Under this plan Hong Kong will still remain a part of China but will enjoy a degree of autonomy from Peking.

Should Peking decide to run the colony, however, she could worsen the emigration flow which is already beginning to deprive Hong Kong of experienced businessmen. These investors and professionals tend to become impatient and proceed to apply for immigration to Canada, U.S.,

Australia, and Britain. Explains Lee, "I am young and I have to think about my future. If I have a chance, I will move. It's more than just political. I don't like Communist rule because there's no opportunity to make fast money." She adds, "I want something more meaningful in my life. Maybe I won't be wealthy in the U.S., but at least I'll have a more stable job and life. It's protection for myself."

However, this solution may too become insufficient. Britain has made it clear to the increasing number of individuals inquiring about immigration visas that a mass exodus will not be welcomed there, even for those who hold British passports. Furthermore, the Canadian commission at Hong Kong has recently had to expand its immigration applications staff.

States Hoy, "I'm trying to resettle in the U.S., but the problem is that they give quotas. For countries like the Philippines, Taiwan, and China the quota is up to 20,000, but for Hong Kong, it is only 600 people per year. It's because they base quotas on population calculations." Adds Lee, "I don't understand why the U.S. doesn't let in more Hong Kong people. We aren't lazy, and we don't come here to live off the welfare system. We try to live reasonably well. We wouldn't think of leaving Hong Kong if not for China."



At first glance, this relatively small outflow of investors and professionals seems unlikely to seriously affect Hong Kong's prosperity, since there has been a steady emigration over the past few decades. But Byron Weng, Chairman of the Government Department at the Chinese University of Hong Kong, recently told the *Los Angeles Times* that the danger "is not yet immediate, but if things deteriorate further, it (the situation) could get ugly."

In addition to the immigration confusion, the economic situation is in turmoil. The Hong Kong and Shanghai Banking Corporation has been increasingly moving its dealings away from the colony and China and concentrating on operations in the Middle East. It also now owns a controlling share in the largest foreign bank in the U.S. Real estate prices have also plunged; one office flat could not be sold for 40% of its original price. Investors have lost confidence in the Hong Kong dollar, formerly one of the stronger currencies on the international exchange. The U.S. dollar, which four years ago bought 5 Hong Kong dollars, bought 9.6 Hong Kong dollars this past September. Stock prices on the Hang Seng Index dropped 200 points since July. Bank loan interest rates topped 16%. Once again Hong Kong faces possible collapse.

Much of today's anxiety over the situation stems from past disappointments. In 1979, then-Vice-Chairman Deng Xiaoping indicated that China would leave Hong Kong's capitalist economy basically intact. But many see things differently now. This is especially true of older generation Hong Kong residents who remember the 1949 Communist seizure of the mainland and the Communist promise to leave capitalist entrepreneurs alone in Shanghai. Once in power, the Communists promptly nationalized holdings. Claims Hoy, "China is always saying they will let Hong Kong continue as it is today. They say there will be no change in the way of living or in the way of doing business, but no one believes what they say."

This sentiment reflects the hope of most Hong Kong residents that the Peking government will not alter their way of life for, to them, Hong Kong still represents the land of opportunity. Two-fifths of Hong Kong's labor force was drawn from the mainland by the promise of a better life. Even today, up to 40 illegal aliens daily enter Hong Kong from China, even though refugees are no longer accepted and all are sent back when caught. This flow of refugees makes Hong Kong the capital of low-cost manufacturing; the labor is cheap, plentiful, and hardworking. Thus, most Hong Kong residents either moved from or are children of those who moved from mainland and there is little desire to return.

However, many make barely enough to support a family, and there is no chance of emigration for the majority of those in service jobs and factories. Hoy speculates that "at most, only one-third can run."

Another popular solution is a lengthy transition period following 1997. States Hoy, "I hope the British government can govern Hong Kong for another 20-30 years. China is thirty years behind Hong Kong. It would be going backwards in living standards." Lee also would like to see British rule continue. "In the last few years, the British governors did a good job developing Hong Kong. They built many things for us in terms of major projects, including low cost housing, the subway, and public parks. The Hong Kong people appreciate this very much."

Hong Kong residents are not fearful of moderate leaders such as current head of China Deng Xiaoping, but of new leaders who may view things differently. They fear that a new oligarchy will change everything that has made Hong Kong prosperous. Industrialists and shopkeepers expect heavy government regulation, if not outright takeover, while intellectuals and professionals fear an end to free expression and broad political liberties.

Yet, some hope remains. The Hong Kong and Shanghai Banking Corporation is still proceeding with a 41-story headquarters, which costs over 1 billion dollars, possibly the most expensive building in the world. Some feel that a clear sign of trouble would be the cessation of this project. However, it continues to proceed as planned.

China, too, is attempting to ease the changeover by becoming more familiar with Hong Kong ways. However, the social contrasts between China and Hong Kong would seem a major obstacle to a smooth transition of power. Hong Kong culture has followed a more Western path, patterned after European industrial nations, while China still is a primarily agricultural society and consequently less liberal in its ways. Asserts Hoy, "Peking leaders dislike the prostitution, gambling, and fast-paced night life prevalent in Hong Kong. It cannot go on being the Victorian colony it has been if Peking takes control."

But although China may be more provincial in its mores, economically it has been making gradual advances into the Hong Kong arena. In preparation for the takeover, China has been expanding its commercial interests in Hong Kong, as the colony is important to China's attempt to catch up economically. Peking has instituted on the island an increasing number of insurance companies, financial syndicates, restaurants, and department stores carrying Chinese-made goods. Peking-controlled companies have invested in projects ranging from private housing developments and office blocks to cement factories.

In these endeavors, China is attempting to adapt itself to suit the laissez-faire lifestyle that Hong Kong has perpetually enjoyed, perhaps trying to lessen the strain of a transition that will be difficult for all concerned. Hopefully the changeover will not be a traumatic

one, and the majority, at least, will be content. Says Elizabeth Cheung, a Hong Kong Economics student at UCLA, "I'm sure the majority of the Hong Kong people would like to stay if the Communists don't drastically change our lifestyle. We are very attached to Hong Kong. It's our home. We can't find another place that is comparable." Cheung faces the prospect of returning to Hong Kong when her student visa expires. But Michelle Chang, a twenty-four-year old Hong Kong tourist visiting the United States, offers a different perspective. "I want to find a husband in the United States. But if it wasn't for the expiration of the lease, I would stay." Adds Cheung, "I'm indifferent as to whether I go back or stay. If I can find a job here, I will stay. But I like Hong Kong because my family and friends are there. It's hard to leave a place where there's 18 years of attachment."

So despite the pessimistic attitude of many Hong Kong residents, the future may not be so dim. Perhaps with a little wisdom and sensitivity, the entire situation will be resolved without any more upheaval and disruption. Sir Edward Youde, the London-appointed Governor of the Colony, exhorted in his State of the Colony speech, "Patience, calm, and resolution are the qualities that will be required of us." Perhaps the immediate task for everyone is to direct all efforts to maintain Hong Kong's prosperity and stability. For the sake of the people of Hong Kong, it must be so.