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Celebration of 40th Anniversary of Korematsu's Vindication

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On January 28, Berkeley Law School hosted a star-studded program featuring members of the original legal team who represented the 3 Japanese Americans – Fred Korematsu, Min Yasui, and Gordon Hirabayashi – and prominent social justice lawyers.

In the 1980s, successful petitions were filed to vacate their convictions for resisting the incarceration of over 120,000 people of Japanese ancestry. Specifically, these extraordinary coram nobis cases undercut the Supreme Court's 1943 and 1944 rulings upholding the convictions of the three resisters of the forced removal and mass racial incarceration. The opportunity to file coram nobis petitions to re-open the cases from World War II was made possible by the discovery of wartime documents showing that government attorneys withheld, altered, and destroyed evidence favorable to Japanese Americans and made false claims that Japanese Americans were security threats, misleading the Court and public.



Korematsu's conviction was vacated in 1984 by District Court Judge Marilyn Hall Patel. Patel explained that Executive Order 9066 and the forced removal orders were based on "unsubstantiated facts, distortions, and representations of at least one military commander, whose views were seriously infected by racism." In 1987, Ninth Circuit Judge Mary Schroeder wrote the opinion vacating Hirabayashi's conviction for violating the curfew order and forced removal order. Yasui's conviction was vacated too, though without judicial findings. He passed away in 1986 before the final appeal of this coram nobis case was completed.



- A speaker at the program, Judge Mary Schroeder, writing the opinion for the Ninth Circuit Court of Appeals agreed with the charges of governmental misconduct, noting that the Supreme Court's decisions "probably would have been materially affected." Schroeder wrote that "the information now in the public record constitutes objective and irrefutable proof of the racial bias that was the cornerstone of the internment orders."

University of Hawaii Law Professor, Eric K. Yamamoto, provided a moving story of why "coram nobis cases remain important for restorative justice to heal the persisting wounds of historic injustice." Yamamoto shared a story of the international reach and human rights dimensions of the *Korematsu*, *Yasui* and *Hirabayashi* cases that involve the use of the cases to support a successful 2019 Korean case for victims of the 1948 Jeju April Third 4.3 Incident. In 2021, after 20 years of Jeju grassroots advocacy, the South Korean National Assembly finally approved ground-breaking reparations payments of \$76,000 (90 million won) to each of the 10,101 designated victims of the 4.3 Tragedy for a collective sum of \$767,676,000 (909 billion won), the largest compensation award by the Korean government to victims of a singular past injustice.

Professor Yamamoto told the story of the euphemistically named April Third 4.3 "incident" that was a tragedy initiated by the U.S. Military Government governing South Korea during "peacetime" between WWII and the Korean War.. The "scorched earth violence" against South Korean citizens was falsely justified by the knowing mischaracterization of Jeju as an "island of reds." Initially directed and later overseen by U.S. Military leaders, South Korean forces killed 30,000 island villagers, sexually assaulted and tortured tens of thousands of others -- only a few of whom had been resisting police abuse and protesting extortion and starvation policies. Many villages were burned down. For decades the harsh truth was suppressed.



Amid the violence, South Korean military tribunals convicted 2,500 Jeju villagers en masse (100 at a time without charges or trial), leading to executions or imprisonment for up to 15 years on false claims of rebellion. Children and grandchildren of convicted survivors were later blocked from government jobs, universities and more. In 2017, 18 survivors petitioned a Jeju court to remove the stain of their mass convictions 70 years earlier.

Chapters from Yamamoto's book, "Race, Rights and Reparation: Law and Japanese American Internment," detailing the successful *Korematsu*, *Hirabayashi* and *Yasui* coram nobis petitions were translated and submitted to the Jeju court in 2018 as an analogous example of reopening wrongful convictions as part of restorative justice for past wrongs.

In 2019, over 70 years later, Judge Chang expunged the petitioners' criminal records in a landmark human rights ruling. The court also effectively cleared the names of all 2,500 villagers abusively convicted en masse. One survivor-petitioner spoke for all. For decades, we survivors and families lived ostracized as "second-class citizens" and "untouchables." "I endured life in prison without the kind of trial we saw today. That left me with bitterness in my heart, [but] now I have been acquitted." And "the [stigma] has been erased from our names." Like the coram nobis cases, the court's ruling was the first judicial recognition of the sweeping injustice, helping galvanize broadscale further apologies and individual reparations.

Of course, the final missing piece for Jeju communities remains the United States acknowledgment of its partial responsibility for the tragedy and participation in the final steps of the 4.3 reparative initiative. That's the subject of Professor Yamamoto's new book "Healing the Persisting Wounds of Historic Injustice: United States, South Korea and the Jeju 4.3 Tragedy."

Unfortunately, the impact of the Korematsu case lives on. Eighty-one (81) years after Executive Order 9066, we continue to witness parallels to the Korematsu case in government policies judging people based not on the content of individual character or actions, but on their membership in an allegedly dangerous group defined by nationality, descent or religion where the real danger is never proved.

In 2018, the Supreme Court upheld President Trump's Muslim travel ban in *Trump v. Hawaii*, applying the principles in the Korematsu case once again. The presidential proclamation in question banned entry of aliens from a number of Muslim-majority countries. In response to Justice Sotomayor's dissent that compared the travel ban decision to *Korematsu v. United States*, Chief Justice Roberts claimed that ". . . *Korematsu* has nothing to do with this case. The forcible relocation of U.S. citizens to concentration camps, solely and explicitly on the basis of race, is objectively unlawful and outside the scope of Presidential authority." But the language and reasoning in the two cases are similar. The real issue in both cases was the constitutionality of not sorting out the "wrongdoers" from the larger group. In *Korematsu*, the larger group was all persons of Japanese ancestry in the western United States, with the "wrongdoers" being those disloyal to the U.S. In *Trump*, the larger group was citizens of eight majority Muslim countries, with the "wrongdoers" being presumed terror threats within that population. In *Trump v. Hawaii*, the Supreme Court did not carefully review the alleged infringement of constitutional rights asserted by American citizens arising from the immigration screening procedures and repeated *Korematsu* all over again.

Photos

1. Legal team who spoke at the conference. Pictured: Leigh-Ann Miyasato (Korematsu), Lorraine Bannai (Korematsu), Eric Yamamoto (Korematsu), Dale

Minami (Korematsu), Peggie Nagai (Yasui), Judge Mary Schroeder (Hirabayashi), Rod Kawakami (Hirabayashi), and Karen Korematsu

2. Pictured: Gordon Hirabayashi, Min Yasui and Fred Korematsu

3. [S.Korean scholars, activists visit U.S. to call for shared responsibility for massacre on n Jeju Island](#) in 2015