MOVIE REVIEW

Of Civil Wrongs and Rights: The Fred Korematsu Story

Written and Directed by: Eric Paul Fournier (Pushtan Productions 2000)

*Reviewed by Jenny Myers**

December 7, 1941, "a date which [lives] in infamy"[1] is also a day that challenged the notions of American freedom and civil liberties. This day caused Japanese-Americans to question what it means to be an American. Shortly after the attack on Pearl Harbor, President Franklin Roosevelt signed Executive Order 9066, ordering the internment of all Japanese-Americans, as a "military necessity." *Of Civil Wrongs and Rights: The Fred Korematsu Story* is a documentary about the "tragedy of a democratic institution that failed its people," and Fred Korematsu, one of only a handful of Japanese-Americans to challenge the internment.

Fred Korematsu was born in Oakland, California. He was a welder who lived in San Francisco during World War II. Japanese-Americans were acutely aware of their race and unequal status during the war. Fred lost his job working in a shipyard because of his race. Before December 7, 1941, Fred remembers his family speaking with pride about their Japanese ancestry. After the attack on Pearl Harbor, Fred remembers the disgust of his father and the fear of his family. Many families burned everything in their homes that connected them to Japan. Fred recalls, "We expected the worst to happen. And it did."

Fred refused to comply with the Executive Order because he knew it was wrong. When his family left for Tanforan, a "staging area" that would temporarily house the Japanese-Americans until they were sent to internment camps, Fred stayed behind and took steps to avoid being discovered. He changed his name and had plastic surgery to change the shape of his eyes. Before he could flee to Nevada, Fred was discovered and arrested for failing to report for relocation. After a brief stay in jail, Fred was sent to Tanforan, a converted horse track where the internees were housed in horse stalls with dirt floors, and plank walls with gaping holes.

Fred was largely alone in his resistance. The legislative branch supported the Executive Order; it held no hearings on the matter. The agriculture industry in California supported the Order as a way of eliminating competition and because of racism. Even groups charged with protecting civil liberties refused to fight. Many of the leaders of the American Civil Liberties Union ("ACLU") were close friends of President Roosevelt and did not want to challenge him during a time of war. ACLU attorneys were only permitted to offer *amicus* briefs in cases challenging the internment and were prohibited from directly representing parties. Under threat of ouster, Ernest Besig, the Executive Director of the ACLU of Northern California, persuaded Fred to challenge the internment as a violation of his constitutional right to due process and as racial discrimination. While a few other individuals challenged the Executive Order, the Japanese American Citizens League, the largest group representing Japanese-Americans, stood by silently. The group issued a policy directive opposed to challenging the constitutionality of the internment, and the Japanese-American community as a whole did not speak of resistance.

Fred and his attorney brought suit for the violations of civil liberties. They lost in the lower courts and appealed the decision all the way to the Supreme Court, only to lose again. The Supreme Court failed in its duties to ask probative questions. The government blatantly argued that Fred was a member of an "enemy race" and that the internment was justified as a military necessity. The Justices took the word of Lieutenant General DeWitt and required no further evidence of the "threat." In the time of war, the Justices were reluctant to question a General about military necessity and seemed to feel it was their patriotic duty to support the Executive Order.

Fred was eventually sent to Topaz, an internment camp in Utah, and was soon recognized by the community for his challenge of the Executive Order. His contradiction of the policy directive of the Japanese American Citizens League earned him a cold reception. He was stigmatized by the community and lived a very lonely life in the camp. Fred chose not to talk about the case even after being released in 1944. He later met his wife Katherine and the couple started a family. Fred was very aware of his criminal record and lost job opportunities because of it. The stigma from the country and his community followed him, and it was so great that Fred's teenage daughter learned of his Supreme Court case in school before she heard about it from him.

The country interned all of the citizens of an entire race with one Executive Order. 101,000 people lost their liberty, many lost everything they owned, and some even lost their lives because of the internment. Upon release, the government offered no apology and acknowledged no mistake.

Almost forty years later, while researching a book, law professor Peter Irons came across the government's records of the Korematsu case, as well as two others that challenged the internment. Irons discovered astonishing internal memos. The memos uncovered evidence that the reports of Lieutenant General

DeWitt to President Roosevelt, the same reports the government relied on in the Korematsu case, were directly contradicted by reports of J. Edgar Hoover from the Federal Bureau of Investigations, Naval Intelligence, Army Intelligence, and the Federal Communications Commission. There was no military necessity for internment because there had been no instances of any Japanese-American giving aid to Japanese forces. Further, the memos revealed that the Department of Justice was aware of this contradiction at the time of Fred's challenge. The government attorneys knowingly made misrepresentations to the Supreme Court and failed to disclose relevant evidence.

In 1983, armed with this new evidence, Peter Irons tracked Fred down and asked him to reopen his case. Fred was happy to do it. This time the Japanese-American community was behind him. His legal team was comprised mostly of young Japanese-Americans who joined the fight to vindicate their families and their community, and to expose the complete failure of the United States government and Executive Order 9066. There was immense pressure not to lose this case again.

The team brought suit in a California district court under *coram nobis*. The challenge alleged that an error had been committed before the court and needed to be reversed. *Coram nobis* challenges are reserved for criminal cases in which the sentence has already been served. The government attorneys were conflicted about how to respond. Fred was offered a pardon and the government continued to delay. Instead of arguing the merits, the government attorney asked the court not to reopen old wounds. Ultimately the judge determined that the government was confessing error and reversed Fred's conviction. In a powerful but simple statement before the judge and a very crowded courtroom, Fred spoke about the indignity and humiliation of the internment. He stated, "Horse stalls are for horses, not for people." He continued saying this could happen to any American citizen that looks different or comes from another country. He asked the judge to protect the Constitution not just for him, but for the benefit of the whole country.

Almost forty years after the infamous decision, Fred's conviction was vacated on October 4, 1983. Unfortunately, the lower court's decision in Fred's case is not binding on the Supreme Court and the 1942 decision is still legal precedent. In 1998, President Bill Clinton presented Fred with the Presidential Medal of Freedom, and Fred took his rightful place as a hero of the civil rights movement.

Fred and his wife Katherine were very active in community events and regularly spoke at showings of the film to warn audiences about the dangers of history repeating. In the film, Fred speaks briefly about Desert Storm and alluded to a very real possibility of Arab-Americans facing the same fate as Japanese-Americans. President Abraham Lincoln recognized the struggle for the unfinished work of equality at the time of the Civil War. It is clear that work is still unfinished.

Of Civil Wrongs and Rights premiered in 2000, the year before the attacks on September 11, 2001. The film is increasingly relevant as the country struggles with the same issues faced during World War II. What are the powers of the President in a time of war? What is the role of the legislative branch with regard to war time policies? Will the Judiciary continue to ask probative questions in this very trying time? Undertones of past events warning about a detrimental future are unmistakable in the film. Fred closes the movie with sound advice, as he states, "Don't be afraid to speak up."

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[*] Jennifer L. Myers is currently completing her third year of law school at American University Washington College of Law.

[1] President Franklin Roosevelt, Address before the Congress of the United States of America (Dec. 8, 1941)