



THE CALIFORNIA SUPREME COURT

# Historical Society

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## *Court of Appeal Centennial Remarks*

BY HON. RONALD M. GEORGE

One hundred years ago, on April 10, 1905, the first nine justices were appointed to the newly created intermediate appellate court, which was divided into three districts. Before then, all appeals and writ petitions went directly to the California Supreme Court. The Supreme Court had started using commissioners to assist in coping with a caseload that rapidly was becoming overwhelming, but this was a stopgap measure that left much to be desired.

Today those courts hear nearly ninety-five percent of the direct appeals and writ petitions in California's court system. The Supreme Court therefore is able to exercise its discretion in determining which cases to review, and to dedicate its resources to those matters that are of statewide interest or require the resolution of conflicts among the Courts of Appeal. I, as well as my colleagues on the Supreme Court, rely on the thoughtful, careful, and incisive analysis rendered by the Courts of Appeal to assist us in reaching our decisions in those cases in which we grant review.

California's Courts of Appeal have grown in the first one hundred years from the original three districts to the current six, and from nine justices to one hundred and five. These courts occupy a crucial place in our judicial structure. The Courts of Appeal must entertain cases in which the parties have perfected their right to appeal; these courts are charged with the responsibility of hearing challenges to the trial courts' actions and correcting error if it has occurred.

This right of review in the Courts of Appeal plays a crucial role in enhancing public confidence in the courts and in the administration of justice, with three-judge panels providing additional assurance that litigants's claims will be heard and considered objectively and consistently with the rule of law.

Over the span of their one hundred-year history, the Courts of Appeal have seen significant changes. The enormous growth in California's population was followed by the creation of new districts and divisions.



*The boundaries of the original three districts*

The almost uniformly middle-aged white men sitting on the bench, appearing before the courts, and handling the duties of the clerk's offices have given way to diversity at every level, reflecting the tremendous variety among California's current population. The sheer number of cases, the expansion of causes of action, and the proliferation of relevant statutes and precedent pose challenges that the initial nine appellate pioneers could not have imagined. They were in the vanguard of those charged with interpreting the developing law of our state in a far simpler society. Today's justices have the more challenging duty of understanding, interpreting, and applying the ever-changing law of our state in the context of all the cases that have preceded the ones they are hearing today, and doing so in a far more complex world.

Those first justices had no computers, no internet research capabilities, no cellular phones or faxes. And sometimes I envy them for that. But what they did have was dedication, creativity, and determination – traits shared by a century's worth of the justices and staff who followed them. These qualities have enabled the Courts of Appeal to respond creatively to new challenges and to the needs of the public we all serve, while producing a body of jurisprudence that protects the rights of all Californians and advances the rule of law and the administration of justice.

## *A Brief History of the Court of Appeal for the Third Appellate District*

BY LEVIN

General Norton Parker Chipman, the first Presiding Justice of the Third District Court of Appeal, understood well the need for an intermediate appellate court in California. By the late nineteenth century, the California Supreme Court could no longer keep up with the increased litigation that accompanied California's growth, resulting in, according to Justice Chipman, "so grievous a burden to litigants."

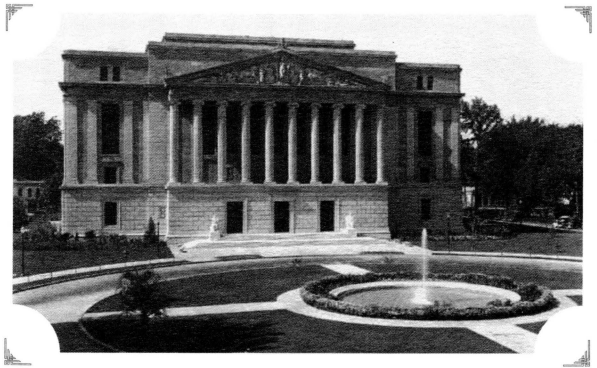
The state tried first to alleviate the burden without creating an additional court system, establishing the office of Supreme Court Commissioner in 1885. Those appointed operated as de facto justices; their decisions were published (in the "Cal.Unrep." series) and remain citable authority. Eventually, the Legislature chose to replace the commissioner system with the Court of Appeal, divided into three districts. To that end the California Constitution was amended by the People in 1904, the proposal receiving seventy-two percent of the vote.

### THE "WORKHORSE" DISTRICT

Originally, in 1905, the Third District comprised thirty-five of California's fifty-eight counties, and nearly forty-four percent of its land, an immense area covering over 68,000 square miles. Today, although it has lost nearly a third of its territory, the district still includes thirty percent of the state – nearly 46,400 square miles comprising twenty-three counties. It stretches from the Oregon border south to Mono County and west to the coastal range.

The Third District encompasses most of California's water, supplied by runoff from the Sierra Nevada; some of the richest farmland in the world; and portions of the nation's greatest forests and timberlands. But it also includes areas long urbanized (e.g., Sacramento County) and rapidly urbanizing (e.g., Placer and San Joaquin Counties). This varied geography and demography gives rise to complex zoning, water, and environmental cases, as well as more traditional grazing and mining cases. (Those jurists who hail from the less-developed regions still gather under the moniker "Cow Counties Judges Association.")

Despite the vast area it covers, the Third District has successfully resisted the creation of divisions, geographic or administrative. When the late former Presiding Justice Robert K. Puglia learned of one serious proposal that had been quietly introduced by a legislator, he spiked it with the help of retired Fifth District Presiding Justice George Zenovich, then a leader in the California Senate.



*The Library and Courts Building, circa 1930*

The lack of divisions in the Third District proved unexpectedly beneficial in 1992. When a case came before the Supreme Court involving that court's temporary landlord, all of those justices recused themselves. The fact the court did not have divisions made it administratively expedient for the Supreme Court to appoint seven justices from the Third District, chosen by lot, to sit as an acting Supreme Court. (See *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.*, 2 Cal.4th 342 (1992).)

However, the size of the district has often resulted in a relatively high caseload for its justices, leading the legal newspaper *The Daily Journal* to describe the Third District as a "workhorse." Proud of the court's high productivity as reflected in an annual statistic of opinions-per-judge, Justice Puglia one year took issue with the Administrative Office of the Court's conclusion about the Third District, that "high rates of disposition are not necessarily desirable" and a justice should "decide only a specific maximum number of cases." Puglia sent a letter explaining that he needed to know what that "specific maximum number" ought to be so the Third District justices and staff could schedule their extended vacations! Apparently chastened, the AOC clarified its next report to state that the Third District's "high rates of disposition indicate overload and a need for additional judgeships."

### A UNIQUE COURT

The Third District's location in the political heart of the state has made this court unique among California's intermediate appellate courts. With most state agencies headquartered in the capital and many statutes requiring or encouraging suits to originate in Sacramento County Superior Court, the court hears a disproportionate number of appeals involving governmental powers and administration. As a result, the Third District has been likened to the United States Court of Appeals for the District of Columbia Circuit.

The court has also developed an expertise in the

area of election law. In 1913, a piece of Progressive Era legislation designated the Third District justices to serve on a “board of title commissioners” to review ballot titles for accuracy. In 1938 the California Supreme Court invalidated the legislation as a violation of the separation of powers, and the justices returned to their traditional role as arbiters of pre-election disputes. Because election cases usually involve extreme time pressures, given the often narrow window between the time a challenge can be made and the deadline for printing ballots, the Third District’s experience in this area has proven particularly valuable.

#### PARTISAN POLITICS AND THE COURT

As a check on overt partisanship, the organic legislation creating the California Court of Appeal forbade the Governor from filling more than six of the nine new seats with members of his own party. And with most of the original appointees having served as Supreme Court Commissioners, thereby proving their probity and worth, fears of cronyism were allayed.

Reflecting California’s early divided views on the subject of slavery, in 1905 Governor George Pardee appointed two wounded Union veterans to the Third District (Chipman and Abraham Buckles), and one Confederate veteran (George Smith) to the Second District in Los Angeles. General Chipman had prosecuted a notorious Confederate prison commandant just after the Civil War, but the social and political wounds of that conflict proved so deep that, as late as 1911, he felt obliged to refute charges that it was he who had been the war criminal for railroading the defendant.

Political partisanship has nonetheless played a recurring role in the history of all California courts, including the Courts of Appeal. After the initial round of appointments, sitting appellate justices were required to face overtly partisan, and possibly contested, elections. This arrangement had the unfortunate potential to tempt the skewing of decisions to curry electoral favor.

Although there had been only a handful of contested Court of Appeal elections since the court’s creation, it was a heated Third District election in 1932 that spurred demand for statewide reform. When Presiding Justice William Finch died in office, Governor “Sunny Jim” Rolph appointed Hugh Preston of Ukiah (Mendocino County) in May, 1931, to fill the vacancy. Preston was the brother of California Supreme Court Justice John Preston. Even by then the Third District was viewed largely as a “Sacramento” court, which led a local trial judge, John Pullen, to mount an unusually vigorous campaign to unseat Preston the following year.

Adopting the theme “One Preston is Enough,”



*Courtroom in the Library and Courts Building*

Pullen boldly claimed that it was Hugh Preston’s family connections, and not any real ability, that had led to his appointment. Preston responded with tough-on-crime stump speeches, calling for legislation to allow less than unanimous guilty verdicts in homicide cases. This maverick idea attracted many voters, but Hugh Preston lost the election, 112,181 to 93,618. The larger Sacramento vote, which went 30,401 to 8,123 for Pullen, overwhelmed Preston’s strong support on the North Coast. (This defeat did not end John Preston’s influence; he later played a critical role in Annette Abbott Adams’ appointment to the Third District.) The unseemly nature of this contest turned the tide and in 1934 the present retention system was adopted, whereby justices do not face challengers, only their own records.

#### “THE HIGHLANDS OF THE MIND”

The justices and staff of the Third District work across the street from the State Capitol, in surroundings steeped with history and beauty. Originally the court shared the first floor of an apse in the Capitol with the State Library, but that space was eliminated when an addition was tacked on to the back of the building. Before then, however, the Third District had found a new home.

Etched into the granite pediment, the aphorism “Into the Highlands of the Mind Let Me Go” welcomes visitors to the newly renamed Stanley Mosk Library and Courts Building, which since 1929 has housed the State Library (including what is now the Bernard E. Witkin State Law Library) and the Third District Court of Appeal. The building and its twin, the Jesse Unruh Building, separated by a spectacular fountain, were designed in 1918 by the architectural firm Weeks & Day, which also designed several San Francisco landmarks. These neoclassical structures represented the pinnacle of California state government offices when they opened a decade later and today reflect the spaciousness and

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## Fred Korematsu's Legacy to the History of Civil Liberties During Wartime

BY CLAUDIA LUTHER

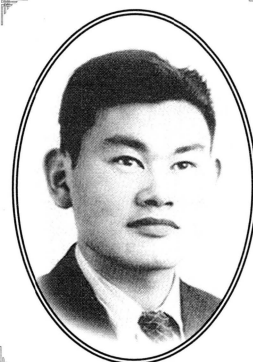
*Fred Korematsu, a Japanese American who refused to be interned during World War II, passed away on March 30, 2005, at the age of eighty-six. U.S. v. Korematsu, 323 U.S. 214 (1944), became synonymous with the nation's agonized debate over civil liberties during times of war. The CSCHS sponsored an educational panel at the 2004 State Bar Annual Meeting addressing the history of civil liberties during wartime, which included discussions of the 1944 case as well as contemporary cases, by Professors John S. Park, Erwin Chemerinsky, and Michal Belkap, and Judge Michael Linfield. In addition, Professor Peter Irons discussed the litigation of Korematsu's coram nobis case, 584 F.Supp. 1406 (N.D. Cal. 1984), at the CSCHS's educational panel on forensic history and the use of historians as expert witnesses at the 2001 State Bar Annual Meeting.*

In February, 1942, 120,000 U.S. residents of Japanese ancestry – both citizens and noncitizens – were ordered out of their homes and into camps following Japan's December 7, 1941, attack on Pearl Harbor. Fred Korematsu did not turn himself in and was arrested, jailed, and convicted of a felony for failing to report for evacuation.

Korematsu was one of several who challenged the constitutionality of President Franklin D. Roosevelt's Executive Order 9066 authorizing internment. His case eventually reached the United States Supreme Court and, in 1944, the Court upheld the order. But, as was discovered many years later, the Court – and the nation – had been gravely misled about the potential dangers from Japanese Americans.

Indeed, the Korematsu case was cited as recently as April, 2004. At issue before the Supreme Court was whether U.S. courts could review challenges to the incarceration of mostly Afghan prisoners held at Guantanamo Bay Naval Station in Cuba in the aftermath of the September 11, 2001, terrorist attacks. Korematsu, then eighty-four years old, filed a friend-of-the-court brief saying, "The extreme nature of the government's position is all too familiar." In June, 2004, the U.S. Supreme Court ruled that the Bush administration's policy of detaining foreign nationals without legal process at Guantanamo Bay was illegal.

The public stance taken by Korematsu in this and other civil liberties issues in the previous twenty years was in stark contrast to the four decades after the war when he hid many of the details of his ordeal from his own children. "He felt responsible for the internment



Fred Korematsu

in a sort of backhanded way, because his case had been lost in the Supreme Court," legal historian and author Peter H. Irons said in a PBS *P.O.V.* documentary on Korematsu by Eric Paul Fournier.

It was because of Irons, who in the 1980s was researching a book on wartime internment, that the Korematsu case was reopened. Irons discovered

that the government had lied to the high court, a lie that would provide the basis for a landmark 1983 federal court decision to vacate Korematsu's conviction.

Fred Toyosaburo Korematsu was born January 30, 1919, in Oakland, where his Japanese-born parents ran a plant nursery. After graduating from high school, he was working as a welder when Japan's attack on Pearl Harbor plunged the United States into war.

Official concerns that Japan would find sympathizers in the Japanese American community on the west coast surfaced immediately, including the idea that there might be an effort to get messages to Japanese submarines offshore. Like many other Japanese American homes, the Korematsus' was searched for flashlights and cameras, "everything that they thought we would use for signaling," Korematsu said.

The following February, Roosevelt granted broad powers to the War Department to carry out internment, acting upon the assertions of General John L. DeWitt, the Army general in charge of the west coast, who believed that Japanese Americans were more loyal to Japan than to the United States. Korematsu, then twenty-two years old, watched as his parents prepared to leave their home, but he decided to remain behind with his Italian American girlfriend.

"I didn't think that the government would go as far as to include American citizens," Korematsu said in Fournier's documentary, which won an Emmy in 2002. He soon discovered it would. He traveled about, changed his name, and even had plastic surgery on his eyes. But on May 30, 1942, he was arrested.

While in jail, Korematsu had a visit from Ernest Besig, executive director of the American Civil Liberties Union of Northern California, who was looking for cases to test the constitutionality of internment. The lawyer posted five thousand dollars in bail to free Korematsu, but the military police wouldn't release him. Korematsu was taken to Tanforan racetrack, an assembly center for Japanese Americans south of San Francisco, where he spent time in a horse stall.

"There's no floor, it's just dirt, so the wind was



blowing through that and it was cracks all around the walls, and there was a lightbulb up there, one lightbulb on the ceiling and that was it," Korematsu recounted. He ended up in a camp in Topaz, Utah, where he was shunned by his fellow inmates for having attempted to dodge internment. Meanwhile, his case had proceeded through the courts, but Korematsu lost at every turn, including in the United States Supreme Court in 1944. Justice Frank Murphy, one of three justices who dissented, called the internment order "legalization of racism." But the six-man majority concluded that, in the words of Justice Hugo L. Black, "We could not reject the finding of the military authorities that it was impossible to bring about an immediate segregation of the disloyal from the loyal."

Toward the end of the war, Korematsu was allowed to work as a welder in Salt Lake City as long as he promised not to return to the west coast. He later went to Detroit.

The government ended internment in late 1944, and, like so many other Japanese Americans, Korematsu tried to put the ordeal behind him. He returned to the San Francisco Bay area, where he and his wife, Kathryn, raised a son and a daughter. Korematsu worked as a draftsman but could not get a job at a larger firm or government agency because of his felony conviction.

In 1981, Irons asked to see the original documents in the case, which were in the hands of the Justice Department. The documents had been mislabeled and misplaced but finally were located. "They were in two or three dusty cardboard boxes tied up with old string – obviously no one had ever looked at them since they were sent off to the warehouse back in the 1940s," Irons told the *Los Angeles Times* in 2004.

When Irons opened them, the first folder he saw contained a memo from a Justice Department lawyer to U.S. Solicitor General Charles Fahy, the person responsible for arguing the government's side in cases before the Supreme Court. In the memo, the Justice Department accused Fahy of lying to the Supreme Court.

In one example, the Justice Department strongly disputed the basis of the claim by DeWitt that people whose ancestry was Japanese, which DeWitt considered "an enemy race," were engaging in "extensive radio signaling and in shore-to-ship signaling" to Japanese ships. Such activity – which would be evidence of treason – had formed a primary basis for the internment.

But, the Justice Department memo asserted, DeWitt in fact had no evidence that overt acts of treason were being committed. There were some indications that the "signaling" was nothing more than kids going to outdoor toilets at night with flashlights. Even

FBI Director J. Edgar Hoover and officials at the Federal Communications Commission agreed there was nothing to the signaling reports. The 1944 Justice Department memo stated: "Since this is not so, it is highly unfair to this racial minority that these lies, put out in an official publication, go uncorrected."

In the final briefs filed with the high court, however, the Justice Department's views were diluted to such an extent that the Supreme Court could hardly have determined their meaning. The Supreme Court, Irons realized, had made its decision based on false information. "I was totally astounded," Irons said. "Then it struck me that this was evidence of a crime, to present lies to the Supreme Court."

He contacted Korematsu as well as Gordon Hirabayashi, who had gone to prison rather than obey curfew and evacuation orders, and Minoru Yasui, who had served time for violating the curfew. All three cases had reached the Supreme Court in the 1940s and all three men had lost. (See also *Hirabayashi v. U.S.*, 320 U.S. 81 (1943); *Yasui v. U.S.*, 320 U.S. 115 (1943).) Thus began a laborious two-and-a-half-year process to get the convictions of Korematsu, Hirabayashi, and Yasui overturned. They would be the fair trials that Japanese Americans never had.

The real significance of Korematsu's case, Irons said, was that it raised, for the first time, the central issue: Was the internment itself constitutional? The lead attorney was Dale Minami. He and the other lawyers petitioned the Ninth U.S. Circuit Court in San Francisco to correct the error that was made before the Supreme Court, which was that government prosecutors suppressed, altered, and destroyed material evidence during its wartime prosecution of Korematsu. Rarely is such a petition, called a writ of *coram nobis*, ever granted.

The petition put the Justice Department, which had the responsibility for responding to it, in a position of having to defend the government's action during internment, knowing that the department itself had failed to get accurate information to the Court in the original case.

In preliminary discussions with United States District Judge Marilyn Hall Patel, who was presiding over the case, Justice Department lawyers tried to evade the issue. They suggested a pardon for Korematsu instead of proceeding with the case in court, but Korematsu didn't want forgiveness for refusing to do something he believed was unlawful. The Justice Department also was unable to persuade Patel not to make formal findings of fact that would fix the blame on the government for the original misrepresentation. After studying the initial positions of Justice's attorneys, Patel said she viewed the department's position as "tantamount to confessing an error."

Judge Patel set a hearing for November 10, 1983, in a larger, ceremonial courtroom, anticipating the many internees and their families who would want to witness the historic hearing. Toward the end, in an unusual move, Patel invited Korematsu, then sixty-four years old, to speak. The courtroom stilled as Korematsu spoke for several minutes. "As long as my record stands in federal court, any American citizen can be held in prison or concentration camps without a trial or a hearing," he said.

Everyone expected Patel to take the case under submission for a later ruling, as would be normal. But, in another surprise, she ruled from the bench, saying she intended both to vacate the conviction and to make formal findings of fact – everything Korematsu's attorneys had asked for. "I don't think I was quite prepared for the response to it," Patel said in Fournier's documentary, "because it really didn't seem to me there was a dry eye in the courtroom."

Irons, who had been seated next to Korematsu, said, "The audience literally was stunned. They had just witnessed an unprecedented event that this whole internment issue had been resolved by a court forty years later in their favor." In her written ruling vacating Korematsu's conviction, Patel said in part: "[Korematsu] 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." Yasui's conviction was vacated in 1984, although no evidentiary hearing was held. Hirabayashi's conviction was vacated in 1987 by the Ninth Circuit, which found that the government had engaged in "suppression of evidence" in its presentation of his original case to the Supreme Court.

In 1971, Congress repealed the law under which all three men were convicted. Five years later, President Gerald Ford acknowledged that the internment had been a "national mistake," and, in 1983, a federal commission unanimously concluded that the factors that shaped the internment decision were "race prejudice, war hysteria, and a failure of political leadership" rather than military necessity. President Ronald Reagan in 1988 declared the internment a "grave injustice" and signed legislation authorizing reparations of twenty thousand dollars each to thousands of surviving internees, including Korematsu.

In 1999, President Clinton awarded Fred Korematsu the Presidential Medal of Freedom, the nation's highest civilian honor. "In the long history of our country's constant search for justice, some names of ordinary citizens stand for millions of souls – Plessy, Brown, Parks," Clinton said. "To that distinguished list today we add the name of Fred Korematsu."

The "*Fred T. Korematsu v. U.S.* Coram Nobis Litigation Collection" – thirty-six boxes of legal



Korematsu received the President-ial Medal of Freedom in 1999  
PHOTOGRAPH COURTESY OF SHIRLEY NAKAO

research, pleadings, memoranda, internal correspondence, and personal litigation papers – is now housed in the University of California, Los Angeles' Asian American Studies Center and the Young Research Library's Department of Special Collections.

"He had a very strong will," his attorney, Dale Minami, said, placing Fred Korematsu's actions in the context of Asian American history and the history of civil rights and civil liberties. "He was like our Rosa Parks. He took an unpopular stand at a critical point in our history. What Fred represents as a symbol is the significance of dissent in a free society. A courageous stance by individuals like Fred helps strengthen our Constitution and inspires us to be a stronger country."

*An earlier version of this article appeared in the Los Angeles Times on April 1, 2005. It is reprinted here with permission of Tribune Media Services.*

*For more information on Fred Korematsu, the Japanese internment cases, and Japanese internment during WWII more generally, see Justice at War: The Story of the Japanese American Internment Cases, by Peter Irons (Oxford University Press, 1983); By Order of the President: FDR and the Internment of Japanese Americans, by Greg Robinson (Harvard University Press, 2003); and Democratizing the Enemy: The Japanese American Internment, by Brian Masaru Hayashi (Princeton University Press, 2004). Of Civil Wrongs and Rights: The Fred Korematsu Story, produced by Eric Paul Fournier, can be purchased through the National Asian American Telecommunication Association at (800) 343-5540. More information about the film can be found at [www.pbs.org/pov/pov2001/ofcivilwrongsandrights/thefilm.html](http://www.pbs.org/pov/pov2001/ofcivilwrongsandrights/thefilm.html). Steven A. Chin has authored a young reader's biography of Fred Korematsu entitled When Justice Failed: The Fred Korematsu Story (Steck-Vaughn, 1992).*

## *A Special Case: Remembering a California Hero*

*In 1983, a team of volunteer lawyers, led by CSCHS member Dale Minami, won a writ of coram nobis that reversed Fred Korematsu's conviction for defying internment orders during World War II. In 2001, Eric Paul Fournier produced a PBS documentary, Of Civil Wrongs and Rights, highlighting Korematsu's long legal journey. Below, members of Korematsu's legal team, along with producer Fournier, recall their once-in-a-lifetime client and subject.*

When we first began meeting with Fred and Kathryn Korematsu, they were concerned about the attention and publicity his case would generate, so I promised we would protect them from the press. We recognized the enormous educational significance of his case, but we wanted to honor their request for privacy. At least until the first reporter asked for an interview. We told them it was just a local paper with a small circulation and a sympathetic reporter. Fred did the interview.

Then other local papers asked for interviews. We told Fred they would be short and the articles would be quite sympathetic. He did the interviews. Then the *New York Times* called. Again, he met with the reporter. Then "60 Minutes" contacted us. By then, Kathryn and Fred were getting a little suspicious about this "protection" we had offered and, when they learned there were about fifteen more interview requests pending, I did what the best criminals do not do when cornered: I confessed that I had lied.

They laughed because Fred understood this monumental role history had thrust on him, and despite his reticence, his health, the loss of time from work, and the loss of privacy, he knew he had to speak out against his own injustice and the injustices suffered by the Japanese American community.

And he continued to speak out for twenty more years, not just about the Japanese American incarceration, but against racial profiling and attacks on civil rights. Ironically, this quiet, humble, once private man became a powerful public spokesman for us all.

DALE MINAMI

Fred's case was remarkable in many ways. Constitutional law scholars have described the 1944 Supreme Court precedent as "a civil liberties disaster." Its reopening in 1983 was based upon the accidental discovery of secret wartime intelligence reports admitting that Japanese Americans had committed no wrong, upon letters between government lawyers cautioning that failure to disclose these authoritative reports to the court "might approximate the suppres-

sion of evidence," and upon Justice Department memoranda characterizing the army's claims that Japanese Americans were spying as "intentional falsehoods."

For the Japanese American attorneys on the legal team, this was no ordinary case. It was our own parents and grandparents who had been locked up with Fred and almost 120,000 other Americans, merely for looking like the enemy. Fred's case came to symbolize the trials that they never had. Fred thanked us for our pro bono work, but the truth was we would have paid to be a part of this legal team. We had the time of our lives.

During the litigation, Justice Department lawyers offered a pardon to Fred if he would agree to drop his lawsuit. In rejecting the offer, Kathryn Korematsu, his wife of fifty-eight years, said, "Fred was not interested in a pardon from the government; instead, he always felt that it was the government who should seek a pardon from him and from Japanese Americans for the wrong that was committed." She may not have realized it at the time, but Kathryn had articulated the sentiments that Americans of Japanese ancestry had kept inside for more than forty years.

DON TAMAKI



Fred was recovering from surgery the day the legal team announced the filing of the coram nobis suit. He seemed frail and his voice was soft – a marked contrast to the fiery Min Yasui and the professorial Gordon Hirabayashi, his fellow petitioners. Yet he spoke with quiet conviction of the wrong that had been done more than forty years before, and of his determination to fight for justice for all Japanese Americans. He appeared so ordinary, but his strength of character was extraordinary.

He was a modest man who never sought the spotlight, and that is why it was gratifying to see him receive the recognition and honor he so richly deserved. It transformed his life. That shy, retiring guy became a public speaker, a world traveler, a civil rights icon, a Presidential Medal of Freedom recipient. He even became a party animal, attending numerous fundraisers and community events in support of civil rights causes.

His family was transformed by the coram nobis case, too – their dedication to civil rights grew to match his, and they will ensure that his message will live on. I am honored to have known Fred Korematsu.

LEIGH-ANN MIYASATO

*Remembrances of Korematsu continued on page 14*

## For All the Children: Telling the Story of *Mendez v. Westminster* in Film

BY ALICIA RIVERA

The popularity of Ken Burns' sweeping documentaries (such as *The Civil War*, *The History of Baseball*, *Jazz*, and *The West*), along with the success of The History Channel, demonstrates the increasing interest of the public in history topics. Meanwhile, the longevity of television series such as *Law & Order* and *The West Wing* indicate that Americans remain fascinated by law and politics. It is no surprise, then, that documentary filmmakers are attracted to producing works that educate the public about cases that have changed American law and American lives in important ways.

Sandra Robbie, a producer for the Orange County PBS affiliate KOCE, has created an award-winning presentation based on the 1946 case *Mendez v. Westminster*, 161 F. 3d 774, which outlawed school segregation throughout the west for children of Mexican ancestry. (See "Foreshadowing *Brown v. Board*: The 1946 Case of *Mendez v. Westminster*," by Joy C. Shaw, in the Autumn/Winter 2004 issue of the CSCHS Newsletter.) Growing up in Orange County, Robbie was unaware that Mexican children had been denied equal access to educational facilities. Learning of the case via a more recent newspaper article, Robbie was inspired to bring an awareness of this forgotten aspect of California history to the public, by creating a documentary film for airing on PBS, a forum Robbie calls a "great equalizer."

As Robbie notes, "So many of us believe that the fight for civil rights is a black and white battle that was fought and won solely in the American South. *Mendez v. Westminster* is the story of people of many colors fighting for American equality right here in Orange County. Most of Orange County has no idea of the important contribution that was made here. In fact, most of the people I've spoken with [about the case], including teachers and lawyers, have no idea."

Dating back to 1890, the California Penal Code contained a statute that appeared to provide equal educational access to children in California. However, with Spanish being the first language of many children of Mexican ancestry, school officials segregated students on the basis of a claimed language barrier. But more blatantly racist assumptions and justifications were at work too: With their poor hygiene and lack of intellectual capacity, the argument went, these children were unsuited for anything more than the mechanical trades (for boys) or housekeeping (for girls), and thus, the argument continued, segregated, inferior schooling was not only adequate but preferable.



Mr. and Mrs. Gonzalo Mendez

Robbie's documentary captures the growing resistance to this Jim Crow ideology by focusing on the life of Gonzalo Mendez, a father who refused to settle for a segregated education for his children. By building the film around the recollections of Mendez' children, wife, friends, and neighbors, Robbie showcases the people who lived the experience of *Mendez v. Westminster*, and at the same time is able to develop the documentary around two themes, determined resistance and common (and sometimes, uncommon) solidarity.

The story of how the Mendez family came to fight for equal educational access begins with Gonzalo's daughter recounting a day when her aunt took her and her siblings, as well as her cousins, to school. The light-complected cousins were able to pass for Anglo and thus attended Westminster's nearby white school. With their darker skin, the Mendez children were taken to Westminster's more distant "Mexican" school. The daughters tell of their father's anger when he realized that his children, along with other Mexican children, were being forced to attend a segregated school.

But Gonzalo Mendez did not set out to fight this battle alone. Mendez' lawyers aimed for a class action lawsuit by involving the Mexican community across Orange County. Interviews reveal Gonzalo Mendez relying on his financial, intellectual, and emotional strengths to build the coalition, by reaching out to families in a number of different school districts. The documentary details how those in the Santa Ana school district turned Mendez away at first, sensing the possibility of repercussions from the powerful school board. Mendez' daughter explained the fear her own parents felt. Eventually, however, families in Westminster, El Modena, Garden Grove, and Santa Ana came to support Gonzalo Mendez' efforts.

In addition, Robbie showcases a more unusual solidarity that lay behind the *Mendez* case, between the Mendezes and their Japanese American neighbors. Like others of Japanese ancestry living in California during World War II, the Minumitsu family was forced to leave its home and report for internment for the duration of the war. Many of these families lost everything, including their homes, either because they had

no choice but to abandon their property or their property was taken via unscrupulous “safekeeping.” The Minumitsus leased their small farm to the Mendez family during their internment.

The trust was well-placed, and the Minumitsus were able to reclaim their home and livelihood after the war. Interviewed in the documentary, a Minumitsu daughter tells of this important cooperation between a Japanese family and a Mexican family during World War II. This theme of interracial solidarity in racially diverse California appears repeatedly in the film, and it is refreshing that Robbie chose to emphasize that aspect of the Mendez’ fight against segregation.

In addition to relying on interviews with those involved in the litigation of *Mendez v. Westminster*, Robbie incorporates analytical observations from scholars such as the University of California, Irvine’s Professor Gilbert Gonzalez. Professor Gonzalez is the author of *Labor and Community: Mexican Citrus Worker Villages in a Southern California County, 1900 - 1950*, and the seminal study of the history of school segregation of Chicanos in America, *Chicano Education in the Era of Segregation*, and he devotes considerable attention to the Mendez case in his writings. Through Gonzalez, Robbie introduces and develops the background history of segregation, and Gonzalez provides a sense of the historiography of the subject.

Robbie also showcases Christopher Arriola, president of the Mexican American political organization La Raza. Arriola, presently the district attorney of Santa Clara County and a well-known Latino community leader, provides in-depth analysis of the Mendez case that contributes to the high quality of this documentary.

Robbie’s use of traditional Mexican music, along with historical photographs of the Mendez family, their friends, and the barrio in which they lived, allows viewers to gain a feel for the cultural environment of the times, making *Mendez v. Westminster* a visually and aurally rich documentary. Californians are indebted to Robbie for bringing to light an aspect of the history of the fight for equality and civil rights that has often been overlooked, even by historians of California. *Mendez v. Westminster: For All the Children/Para Todos Los Niños* is well-deserving of its Emmy and Golden Mike awards.

*Mendez vs. Westminster: For All the Children/Para Todos Los Niños. Written and produced by Sandra Robbie. KOCE Productions, 2002. 27 minutes. (PBS, Orange County, KOCE, 15751 Gothard St., Huntington Beach, CA 92647)*

*The DVD version of this documentary is a 2005 benefit of Society membership at the Judicial level and above. If you did not receive this benefit, please contact the CSCHS at [director@cschs.org](mailto:director@cschs.org) or (818) 781-6008. Additional copies may be purchased at \$15 each. Members at the Associate level may upgrade their memberships to receive the Mendez v. Westminster DVD.*

*Alicia Rivera holds a B.S.N. from the University of Costa Rica and a B.A. and M.A. in history from California State University, Fresno. Ms. Rivera was awarded the 2005 California State University, Fresno Social Science Dean’s Medal for her work. She continues to work in nursing while pursuing a Ph.D. in history at the University of California, Santa Barbara. Her areas of interest are labor history and segregation history in California.*

#### SPREADING THE WORD:

*Mendez v. Westminster*

Sandra Robbie has recently been named “Community Outreach Producer” for KOCE, Orange County’s PBS affiliate. Her responsibilities include developing programming for KOCE that reflects the rich diversity and addresses the needs of the Orange County area, and working to promote the history of the *Mendez v. Westminster* case in California classrooms. Robbie has co-authored a children’s book on the Mendez case with Anaheim teacher Michael Matsuda that will be published in May, 2006.

Explaining her new position, Robbie notes, “It makes sense for California students to know the history that happened here that helped to change our nation. The American civil rights struggle continues to this day and involves all of us. Our students need to know how history really happens. They need to see the invisible connections between us all. It is time for our history books to reflect the contributions of many people in achieving the freedoms we have today.”

Robbie acknowledges the biggest challenge ahead will be to secure funding to bring the Mendez history to all California schools.

*For more information on the book, Mendez vs. Westminster: For All the Children, An American Civil Rights Story; Mendez presentations for schools or groups; or the Emmy Award-winning documentary, contact Sandra Robbie at (714) 895-0869 or [srobbie@koce.org](mailto:srobbie@koce.org).*



## Brief History of Third Appellate District

*Continued from page 3*

style of another era. Apart from a seismic retrofit and the closure of five-story-tall natural light shafts, the Library and Courts Building, named to the National Register of Historic Places in 1984, has changed little from its original design. Images of the building, and the stunning artwork on display throughout, can be viewed at the California State Library Foundation's website at [www.csfdn.org/exhibits.html](http://www.csfdn.org/exhibits.html).

The Memorial Vestibule, lined by sixteen towering black columns topped by urns, is a tribute to veterans of the First World War and features murals by Frank Van Sloun, comprising his *War Through the Ages*. Through the foyer is the courtroom used by the Third District for oral arguments, generally during the third week of each month; by the California Supreme Court twice a year for a few days; and occasionally for other proceedings, such as confirmation hearings by the Commission on Judicial Appointments and trials conducted by the Commission on Judicial Performance. The two-story courtroom has been called the most beautiful in the state and is a popular destination for school and tour groups.

Originally, it was planned that the Supreme Court would move its headquarters from San Francisco to Sacramento and occupy this building along with the Third District. But these plans also included locating the courtroom on the fifth floor. Chief Justice William Waste refused to move the Court into an "attic," and, given Sacramento summers in the days before modern air conditioning, he may have been justified. The architects hastily added a near-duplicate first-floor courtroom (the current courtroom) to the building plans to try to satisfy the Chief Justice, without success. The fifth-floor courtroom, outfitted nearly identically to the one on the first floor, was built nonetheless and today is used as a public meeting room.

Across from the fifth-floor room is a solarium, at one point "remuddled" into a dingy display room for the State Library's Special Collections. Recently, it was transformed into the bright and elegant Robert K. Puglia Library, used by the justices, staff, and law student externs of the Third District.

Near the door to the RKP Library is an intriguing Civil War painting by Emanuel Leutze, best known for his 1851 masterpiece *Washington Crossing the Delaware*, on display at the Metropolitan Museum of Art in New York, and his later work commonly known as *Westward Ho*, commissioned for the U.S. Capitol. In *Fort Sumter After the Bombardment*, Leutze depicts the aftermath of a failed 1863 effort to recapture the fort, which Leutze witnessed from a Union ship.

The real significance of the painting is in its provenance: After Justice Chipman left it to the state in a testamentary letter, the painting was loaned to South Carolina in the 1950s and then forgotten. Justice Puglia happened to see the painting at the Charleston Museum while on vacation in 1987 and quizzed a flustered curator about it. Not satisfied with her answer – he later told the *Sacramento Bee* that "she was in an utter snit" – Puglia began a long campaign to recapture the artwork, which resulted in another unconditional surrender by the South.

The third floor features the Witkin Law Library, open to the public, and the Circulation and Reading Rooms of the State Library, including a massive Maynard Dixon mural dedicated to California's progress, not to be missed even on a short visit. Huge windows fronted by roomy Arts & Crafts library tables overlook either the fountain or the State Capitol Park, making both libraries ideal places for spreading out one's work and taking pen in hand. The second floor, too, features a stunning work by Dixon, his *Anoakia* murals, which depict striking, though fanciful, Native American scenes.

The Library and Courts Building is connected to the Capitol and the Jesse Unruh Building by historic tunnels, no longer in common use. These passages mirror, but do not connect to, the network of tunnels which underlies much of downtown Sacramento. (Those tunnels were formed from the original street level and first floors of buildings, before the entire area was raised for flood protection. Many downtown restaurants and shops have basement access to this network and occasional tours are conducted.) A separate passage connects the historic courthouse to an annex building, blandly named "Library & Courts II," that houses the court's clerk staff and records and is also shared by the State Library.

In 2002, the main building was renamed the Stanley Mosk Library and Courts Building in honor of the late Supreme Court Justice Mosk's service to the law. A life-sized bronze statue of Mosk, holding a lawbook, stands outside the entrance, with the words "Guardian of the Law and Defender of Civil Rights and Civil Liberties" etched on the pedestal below. An account of the dedication ceremony, with an image of the statue, may found at [www.cschs.org/02\\_history/02\\_f07.html](http://www.cschs.org/02_history/02_f07.html).

Across from the Mosk statue is a tribute to the fallen peace officers of California, from statehood to the present. Each year the Governor, Attorney General, judicial and legislative leaders, and other officials lead a somber procession of the families and colleagues of the newly-fallen, accompanied by officers from virtually every police and sheriff's department in the state. Justice Puglia led the effort to locate this law enforce-

ment memorial here, to recognize the contribution of the fallen line officers to the administration of justice. Images of the memorial may be found at [www.camemorial.org](http://www.camemorial.org).

#### A BYGONE ERA

The Third District's sense of the past is reflected not only in its physical surroundings, but also in its unique preservation of a fascinating slice of California legal history. While today would-be attorneys in the Golden State must pass a three-day written bar examination, initially admittance to the bar was gained via oral examination by local judges. With the creation of the Courts of Appeal, the administration of bar exams, still oral, was centralized in each district.

So far as is known, only the Third District has preserved its records of this historic practice. The archives show the ad hoc nature of these exams, and how the character of the applicant and the person moving the application for admission often played a significant role – perhaps even a greater role – than the quality of the answers supplied by the applicant.

Until 1915, many applicants paid the ten dollar fee in gold, and records show a recurring court expense for the summer examinations: "Kane & Trainer Co., ice, \$1.60." No doubt this amenity eased the process in the Sacramento heat, but perhaps the heat also served to shorten the exam. Roy Whitfield Blair, an August 1915 applicant, recounted that he was asked only one question: "Recite the Rule in Shelley's case." He did, perfectly, and was told to sit down. He passed!

Lilburn Gibson (1892-1979), later a Mendocino County Superior Court judge, took the examination some months afterwards and faced a more rigorous grilling. According to Gibson, two groups of fifteen applicants were questioned:

*We were seated in a semi-circle before the three members of the court: Justices Chipman, Hart, and Burnett. The grapevine (not too reliable) had told us the practice of the court was to examine the class on the second book of Blackstone (Rights of Property) and if one could pass that, he was in. So I had boned up on that book and had it down pretty pat. Imagine my surprise when Mr. Justice Chipman opened up on the first book of Blackstone (Rights of Persons). I was the first one in the semi-circle, and when I saw what was up, I was about to throw up my hands, thinking it was the end. But the first question asked was easy and I had no trouble with it. Then he really went to town on me for about fifteen minutes. . . . Everyone did well, and I felt we had all passed. . . . However, to my consternation, . . .*

14			
Continued			
Applications for August 1915			
Aug 20	George L. Lerose	38	1. Note 10.00
Aug 20	Raymond J. Coughlin	39	Gold 10.00
" 20	Edw. A. Shaffer	40	P.O. 10.00
" 20	C.R. Ogg	41	G. Note 10.00
Applications for February 1916			
Oct 25	Maxwell F. Buffum	1	10
Jan 8	Carroll Searle	2	10
Sept 1-1915	C. L. De Young	3	10
Jan 8 1916	Ben C. Jones	4	10
" 26	Emil Humphert	5	10
Feb 23	J. E. Light	6	10
" 27	Je P. Carey	7	10
Feb 1	R. E. Rung	8	10
" 14	Lilburn Gibson	9	10
" 14	E. H. Furman	10	10
" 14	G. W. Bedson	11	10
Feb 7	R. J. Irving	12	10
" 16	J. H. Langenauer	13	10
" 16	Frederick H. Busby	14	10
" 17	Grace M. Collins	15	10
" 17	Burton J. Dickson	16	10
" 19	William H. Abrams	17	10
" 20	Timothy J. Sheeran	18	10
" 21	Thomas C. Hale	19	10
" 22	Albert R. Boudini	20	10
" 22	Robert L. Johnson	21	10
" 22	Harold M. Ball	22	10
" 23	Edw. Pearl Tomler	23	10
" 24	B. W. Hughes	24	10
" 26	H. L. McAllister	25	10

A page from the bar application ledger, 1915-1916. Note the fee paid in gold and the high passage rate for Gibson's group.

*[t]he justices had a whispered conference and I heard Mr. Justice Hart say, "This is really a good class. I wonder what they know about the codes?" Then he went through us[!] . . . As we were leaving the room, to my great surprise, the Clerk of the Court came over to me and said, "I want to congratulate you. You answered the court's questions clearly and showed you knew what you were talking about, and this gave confidence to the whole class.*

By the end of this era, either the exam became more difficult or the quality of the applicant pool declined: Only fifteen of thirty-seven passed the Third District's 1927 test. That year, the State Bar of California was created and this agency assumed responsibility for administering the bar examination.

#### NOTABLE JUSTICES

The Third District's many able jurists have comprised a diverse and talented group, including a former

California Secretary of State (Paul Peek); four later California Supreme Court justices (Peek, Frank Richardson, Cruz Reynoso, and Janice Rogers Brown); two later federal appeals court judges (Brown and Connie Callahan); a number of legislators (Elijah Hart, Andrew Schottky, Peek, Ed Regan, and Fred Marler); and many veterans from the Civil War through Vietnam, including a Congressional Medal of Honor recipient (Abraham Buckles) and two brigadier generals (Chipman and Fred K. Morrison).

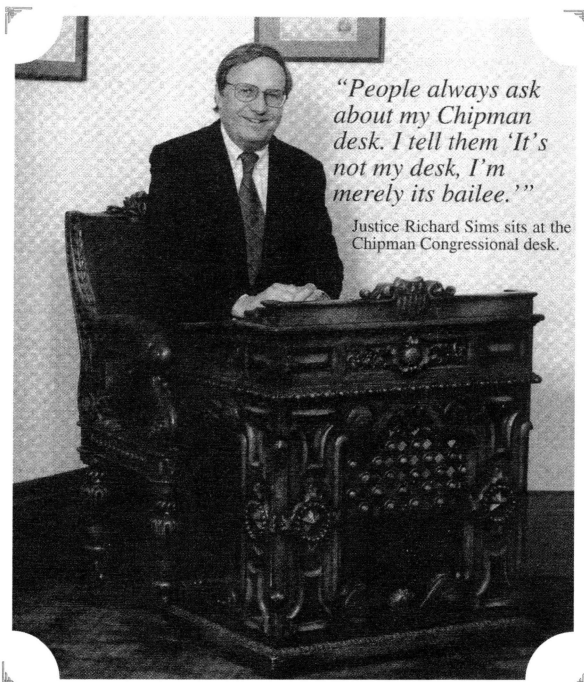
Two former justices merit special mention here, General Norton Parker Chipman, the first Presiding Justice, and Presiding Justice Annette Abbott Adams, the first woman to serve as an appellate justice in California. An account of the late Presiding Justice Puglia's influence and contributions to California law and the judiciary must await another day. (An introduction to his life will be published in McGeorge School of Law's journal, 36 *McGeorge Law Review*, (no. 4) (forthcoming, 2006), and a sketch can be found at [www.courtinfo.ca.gov/courts/courtsofappeal/3rdDistrict/justices](http://www.courtinfo.ca.gov/courts/courtsofappeal/3rdDistrict/justices).)

A fuller account of General Chipman's life will be found in a forthcoming book by Jeff Hogge, a chambers attorney for Third District Court of Appeal Justice George Nicholson. (See Hogge's website at [www.nortonparkerchipman.com](http://www.nortonparkerchipman.com).) For now it is enough to sketch his achievements. Chipman served on President Abraham Lincoln's staff and accompanied Lincoln when he delivered the Gettysburg Address. He prosecuted Henry Wirtz, the Confederate commander of the Andersonville Prison, where about thirteen thousand Union prisoners died from disease and ill treatment. This trial was portrayed in a film featuring William Shatner as Chipman, and the prison site is now a national park, an official tribute to all American prisoners of war.

After the war, Chipman became the first congressional representative for the District of Columbia, fought to ensure completion of the Washington Monument, was a founder of the Grand Army of the Republic, and authored the order creating Decoration Day, now celebrated as Memorial Day.

In 1876, Chipman moved to California, and in 1897 he was appointed Commissioner of the Supreme Court, a position he held until he became the first presiding justice of the Third District in 1905, at age seventy. Chipman was nearly defeated when he stood for election as required the next year. Winning only a plurality of votes, he was reelected when his Democratic and Socialist challengers split the majority. He held the position of Presiding Justice for sixteen years until he retired in 1921. He died three years later at age eighty-nine.

Presiding Justice Annette Abbott Adams was a



Justice Richard Sims sits at the Chipman Congressional desk.

woman of many firsts. She was one of the first two women to receive a law degree from Boalt Hall, the first woman to serve as a U.S. Attorney, the first woman appointed Assistant U.S. Attorney General, and the first woman to serve as an appellate court justice in California.

After a brief stint in private practice, where she caught the attention of then U.S. Attorney and later California Supreme Court Justice John Preston, Adams became an Assistant U.S. Attorney in 1914 and succeeded Preston as U.S. Attorney for the Northern District of California in 1918. She tried her hand at politics soon after ratification of the Nineteenth Amendment, receiving a token vote as a Vice Presidential nominee at the Democratic National Convention in San Francisco in 1920 and running an unsuccessful campaign for County Supervisor three years later.

Adams returned to private practice in 1921 and joined up with Preston, now retired from the bench, in 1935. In March, 1942, she became California's first female appellate justice when Governor Culbert Olson appointed her Presiding Justice of the Third District. In 1950, as part of the state's Centennial celebration, Adams sat on one case as a pro tem justice of the California Supreme Court. She retired from the Court of Appeal in 1952 and died four years later.

#### WATER LAW AND THE THIRD DISTRICT

Many of California's legal and political debates revolve around one commodity: water. The Third District has been at the forefront of resolving environmental and other issues arising from the state's relationship with

this precious resource.

In 1913, William Mulholland famously said, "There it is. Take it," as he opened the taps designed to deliver Owens Valley water to Los Angeles. This act ultimately triggered the water wars of the 1920s, fictionalized in the popular movie *Chinatown*. Still thirsty, the Los Angeles County Department of Water and Power sought to undertake additional works that could have drained Mono Lake. These diversions were contested in a suit that resulted in Presiding Justice Frank Richardson issuing a writ of mandate giving the Third District original jurisdiction over the case. (See *County of Inyo v. Yorty*, 32 Cal.App.3d 795 (1973).) It took twenty-five years and numerous reported decisions before the competing stakeholders settled their differences in 1997 and the court discharged the writ.

More recently, the Third District dealt with a case that took on added importance in the aftermath of the New Orleans levee failures caused by Hurricane Katrina. *Paterno v. State of California*, 113 Cal.App.4th. 998 (2003), held that the state was liable for incorporating defective levees into its flood control system. The decision has led the Governor, the state legislature, and Congress to rethink the plan for ensuring adequate flood-control measures for California.

#### A LOYAL AND ACCOMPLISHED STAFF

The early practice of the court was to have new law graduates assist justices with their work. The older term "law secretary" gave way to "research attorney" or "legal research aid" in the 1940s. A number of these law clerks went on to their own successful careers on the bench, including the late U.S. District Court Judge Milton Schwartz (who worked under Justice Adams in 1948), Court of Appeal Justices Hugh A. Evans and Joseph DeCristoforo, Sacramento Superior Court Judge Lawrence Marvin, and Orange County Superior Court Commissioner Barry Michaelson. One law clerk, Peggy Flynn, became Clerk of the Court and later Sacramento's first female Municipal Court Judge. Another former research attorney, Tom Gede, currently serves as Executive Director of the Conference of Western Attorneys General. Increasingly since the 1960s, legal research has become a permanent career choice for attorneys working for the justices.

Other support staff, too, have demonstrated longevity of commitment. The current most senior employee, Judicial Assistant Claire Cooper, was hired in 1972 by Presiding Justice Frank Richardson. She recalls receiving advice from Gladys Morgan, who began her career with the court as a stenographer over fifty years earlier and later assumed secretarial and personnel responsibilities, retiring in 1975. Presiding Justice Arthur Scotland routinely hands out ten-, fif-

teen-, and twenty-year service recognition pins, reflecting the overall stability of the workforce.

#### CONCLUSION

As one of the original Courts of Appeal, located at the seat of state government, the Third District has a rich heritage and traditions that have served to carry it through the first one hundred years in exemplary form. Now expanded to eleven justices, who hold appointments from five governors, the court faces the next hundred years well-equipped to ensure justice for all the people within its vast borders.

*The prime source for early California legal history is Oscar Shuck's Bench and Bar of California. Although published prior to the creation of the Court of Appeal, nonetheless it contains useful biographies of some of the early court figures. It was followed by a derivative but useful work by J.C. Bates, History of the Bench and Bar of California, in 1912. The California Blue Books provide much data about California's changing court systems and judicial and political personalities.*

*The Secretary of State's Office maintains the government archives, including records of the court system, although the collection is incomplete and often categorized poorly. The staff is eager to help researchers navigate around the quirks in the collection. Many documents that could be in the Archives are in private hands (so-called astray documents) and can be found at book and ephemera shows. (Some of the author's collection of legal ephemera is on permanent display at the Orange County Superior Court.)*

*The California State Library has many valuable resources, including old newspaper archives (such as the Sacramento Bee and Union), and extensive collections of photographs, legal books, and other material. Gary Kurutz, head of the Special Collections Branch, is always of invaluable assistance.*

*The author has relied on personal communication with judges and staff members, including Stanley Mosk, Robert K. Puglia, Frances Newell Carr, Milton L. Schwartz, Hugh Evans, Hugh Preston, Jr., and many others, regarding specific issues mentioned in this article and more general legal and judicial points.*

*The Third District's own records include the above-described Bar records (1905-1926). Linda Wallihan, the Third District librarian, maintains files on the building and its renovations and displays interesting documents and photographs in the Robert K. Puglia Library. Her help to the author over the years on researching court history and other topics has been vital.*

*Levin has worked for the Third District for over eighteen years and is Lead Chambers Attorney for Justice Fred K. Morrison. Many people helped with this article but all errors and omissions are his alone.*

## Remembrances of Korematsu

*Continued from page 7*

Fred loved Hawaii. And Hawaii loved Fred back, with aloha. Leigh-Ann Miyasato and I were the legal team's two members from Hawaii. Fred would call us his "Hawaii people." It was indeed the people of Hawaii that touched Fred – the warmth and welcoming extended to him and Kathryn on their many visits, the enthusiastic and awed students, the many diverse Asian faces. And in his special, humble, strong, quiet, forthright way, remarkably, he kindled in the hearts of people here the feeling that "Fred is us, he fought for all of us."

During his visits, he always spoke at the law school where I teach. Just a year ago, the law students organized a commemoration for the late Congresswoman Patsy Mink, also an exemplary justice advocate, and invited Fred. When Fred rose to speak, the overflowing room of former internees, students, teachers, and dignitaries quieted.

In that voice of his, he started, "I love coming to Hawaii to be with you ...." And when he finished with "and so we can never let this kind of injustice happen to anyone, ever again," the eyes teared and the spirits soared. Hawaii's people returned Fred's love, with aloha.

ERIC YAMAMOTO



I was two years out of law school when Dale Minami came into my office and said that we might have the opportunity to reopen the *Korematsu* case. The night we first met Fred and his wife, Kathryn, they welcomed us into their home – perhaps a bit skeptical about our youth, but they welcomed us warmly. He

was, as always, soft spoken and gracious. The chance to work on his case was tremendous, but the ability to get to know him and to see what impact he had on the people who met him was even greater.

As we worked together on his case, we came to know the quiet strength, the big smile, and the generosity, warmth, and humor of the man behind the case. I remember most the time he spent with law students – Asian American law students, in particular – many of whom were inspired to go to law school because of his case. I will miss him; he was a good, kind, and brave man. He has left a tremendous mark that will not soon be forgotten.

LORRAINE BANNAI

My memory of Fred is not as an important historic figure, nor as a legal symbol. What I will always remember was that he cared about his *coram nobis* legal team members as people.

I once talked to him about how privileged I felt being a part of this effort and what a great opportunity it was. He acknowledged my feelings, but then pointedly asked, "But how do your parents feel?" Because he knew that my parents had been interned during the war, he knew that my work on his case meant more to them than it would to me.

DENNIS HAYASHI



Fred Korematsu was gracious, thoughtful, generous, and tenacious. He had the most beautiful smile. You could see it begin as a small, wry smile that blossomed into a wide grin that celebrated and embraced the pure joy of the moment. His love for his family – his wife, Kathryn,

and his children, Karen and Ken – and their dedication to him, was a wellspring of strength and inspiration that he shared freely with the legal team.

I remember Fred's day in court as a blur of emotions and snapshot images. U.S. District Judge Marilyn Hall Patel had indicated the petition would be granted, but she had given permission for Fred to make a statement. When Fred stood to address the court, he spoke with an eloquence that reflected the clarity, directness, and heartfelt dedication to the principles of justice that had shaped his life and actions.

The joyous release of emotion in the courtroom after Judge Patel gave her ruling swept all of us up in its current. I remember seeing the judge pause and smile at the scene before leaving the courtroom, and people pressing to reach Fred to thank and congratulate him. He was smiling, of course, and people were crying, laughing, pressing to shake his hand and kiss his cheek. But through all those people, I remember seeing Fred, sharing that extraordinary event with modesty and grace. It was a day on which he completed a journey that had spanned forty years. But far from being an ending, it marked a new beginning from which Fred continued as an eloquent and inspiring advocate for civil rights issues for the next two decades.

KAREN KAI

Following the 1984 overturning of his conviction, Fred embarked on a seemingly tireless twenty-year speaking



tour, appearing at law schools, college campuses, high schools, and symposia all across the country so that the injustice that happened to him and his community would never happen again.

I came to know Fred while making the film *Of Civil Wrongs & Rights – The Fred Korematsu Story*. I was very fortunate, blessed even, to get to spend a lot of time with Fred and his wife Kathryn during the making of the film and then afterwards, while we traveled from city to city showing the film to various groups.

Fred was never bitter about what life presented him. Upon returning to California in 1948-49, when being Japanese American was probably the most unpopular thing you could be, Fred had a criminal record. He then faced further discrimination, in both employment and housing, because of his interracial marriage to Kathryn, something that was illegal in the State of California until the year after their return. And he was also estranged from his own community, which at that time viewed him as a “troublemaker” for

his resistance. But Fred was never bitter. He stood up to all this with dignity, hard work, and grace.

At the time I made the film, it was meant to be a cautionary tale. But obviously I had no idea how prescient, timely, and extremely relevant the film and these issues would become by virtue of the attacks of September eleventh, and the subsequent round-up of people of Arab, Muslim, and Middle Eastern descent.

Fred Korematsu was a very powerful, albeit softspoken, voice for civil liberties. Besides his humor, his courage, and his rightful standing as a civil rights hero, Fred was also a wonderfully humane, caring, and kind man. He will be missed.

ERIC PAUL FOURNIER

*The remembrances of the members of Fred Korematsu’s legal team appeared in an earlier article published by The San Francisco Recorder on April 8, 2005, and are reprinted here with permission of The Recorder.*

MEMBER NEWS MEMBER NEWS



MEMBER NEWS MEMBER NEWS MEMBER NEWS

On March 9, 2005, the Friends of the Los Angeles County Law Library honored JUSTICE NORMAN L. EPSTEIN with the inaugural Beacon of Justice Award, recognizing his exemplary contributions to the legal community, especially in the fields of legal scholarship, writing, and education. Justice Epstein, recently appointed as Presiding Justice of Division Four of the California Court of Appeal, Second District, has had a long and distinguished career as a government attorney, Municipal Court Judge, Superior Court Judge, and Justice of the Court of Appeal. He has also served as a member of the Board of Law Library Trustees of Los Angeles County. The Beacon of Justice Award is given to those whose character and outstanding service to the legal community, especially in the areas of access to justice and legal information, education, scholarship, writing and/or journalism, and public service and/or advocacy, have inspired others and brought them the respect and admiration of the legal community.

Not entirely tongue-in-cheek, ROBERT J. CHANDLER, Chair of His Majesty’s Bridge Committee, reports that the San Francisco Board of Supervisors passed a resolution on December 14, 2004, supporting the Committee’s goal to have the new San Francisco-Oakland Bay Bridge named in honor of Joshua Abraham Norton, better known as Emperor Norton I. Additionally, the Committee seeks to foster

an interest in local history. Members of the Grand Council of the Committee include CSCHS Board of Directors member JOHN BURNS and CSCHS Director DONNA SCHUELE. The Committee’s efforts have been highlighted on The History Channel and more information can be found at [www.emperornorton-bridge.org](http://www.emperornorton-bridge.org).

STEPHEN ROHDE, constitutional lawyer and lecturer, is the author of a new book entitled *Freedom of Assembly*, which explores the pivotal role that the rights of assembly, association, and petition have played in American history. The book is part of the American Rights series published by Facts on File for young adults. Mr. Rohde is a past president of the ACLU of Southern California and Immediate Past President of the Beverly Hills Bar Association, and received the 2004 First Amendment Award from the ACLU Foundation of Southern California. He is a senior partner at Rohde & Victoroff in Century City, specializing in civil litigation and appeals, communications, media, intellectual property, and constitutional law.

Advisory Board member BARBARA BABCOCK, Judge John Crown Professor of Law at Stanford Law School, reached two milestones in 2004. Professor Babcock took emerita status, but before doing so she became the law school’s first four-time winner of the John Bingham Hurlbut Award for Excellence in Teaching, having also received the award in 1981, 1986, and 1998.

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*Executive Director*  
*of Programs & Publications*  
 Jim Yoppolo  
*Executive Director of Operations,*  
*Finance & Administration*



THE CALIFORNIA SUPREME COURT

# Historical Society

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FINANCIAL REPORT 2005 FISCAL YEAR ENDING JUNE 30, 2005

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*Income*

MEMBERSHIP DUES	206,262.46
BEQUESTS	9,762.83
INTEREST INCOME	378.40
OTHER INCOME	100.00

*Expenses*

PERSONNEL	66,633.93
OUTSIDE SERVICES	40,376.25
PROFESSIONAL FEES	12,167.73
DONATIONS / GRANTS	17,500.00
STAFF & VOLUNTEER TRAVEL	9,352.82
PUBLICATIONS	14,680.16
EVENTS & MEETINGS	6,442.67
POSTAGE & DELIVERY	6,070.50
RENT	7,757.00
SUPPLIES & EQUIPMENT	3,708.25
DATABASE MANAGEMENT	3,112.80
PROMOTIONS	2,249.16
INSURANCE	2,780.00
TELEPHONE & CONFERENCING	3,944.96
TAXES	5,259.14
STAFF EDUCATION	1,290.62
BANK CHARGES	104.43
DEPRECIATION	806.00

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TOTAL 216,503.69

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TOTAL 204,236.42