

Behind Barbed Wire

By Stan Yogi

In 1942, twenty-three year old Fred Korematsu was motivated by love, not constitutional principles, when he defied military exclusion orders that required all people of Japanese ancestry to leave their homes on the West Coast and enter government camps. The Oakland-born welder planned to marry his Italian-American fiancée and leave California. He underwent plastic surgery to alter his appearance. He assumed the name “Clyde Sarah” and created a fictional identity as a Spanish-Hawaiian orphan.

On the afternoon of May 30, 1942, three weeks after the military forced Japanese Americans to leave Fred Korematsu’s hometown of San Leandro, a police officer arrested the young welder as he waited on a street corner for his fiancée, Ida Boitano. Korematsu and Boitano intended to marry and move somewhere in the Midwest where they hoped, as Korematsu said, to live “as normal people.” But plastic surgery had done little to transform his appearance and the short window of opportunity closed before the couple could save enough money to leave California.

Ernest Besig, the Executive Director of the American Civil Liberties Union of Northern California, searching for a test case to challenge the exclusion orders, visited the thin, soft-spoken Korematsu in jail. Besig did not sugarcoat the legal and political road ahead: he explained that virulent and pervasive anti-Japanese sentiment, coupled with judicial deference to wartime military decisions, made their prospects grim. Nevertheless, Korematsu agreed to serve as a plaintiff.

Besig recruited Wayne Collins, a young lawyer, to represent Korematsu. On June 20, 1942, Collins and fellow attorney Clarence Rust filed a wide-ranging motion in federal court in San Francisco attacking the exclusion order as violating fundamental due process and equal protection rights.

A federal judge denied the attorneys’ motion, so the only legal issue in Korematsu’s September 1942 criminal trial was whether the young Nisei had violated military exclusion orders. Within that narrow legal framework, Collins

predicted Korematsu would be found guilty, and he set his sights on arguing in the appellate court the constitutional issues raised by the case.

The chain-smoking Collins had his client testify to prove to Judge Adolphus St. Sure the sincerity of the young man's beliefs and possibly secure a lighter sentence. The earnest, open-faced Korematsu explained that he had to drop out of Los Angeles City College for lack of funds and return to Oakland to work in his family's nursery. He described volunteering for military service but being rejected for medical reasons.

Judge St. Sure was clearly impressed with Korematsu's genuineness, but he felt obliged to rule that Korematsu was guilty of violating the military's exclusion orders and placed him on five years probation. St. Sure set bail at \$2,500, which Besig immediately posted. As Korematsu left the courtroom, a military police officer seized him and escorted him to the Tanforan Assembly Center in South San Francisco, where his family was incarcerated. From Tanforan, Korematsu was transferred to the camp at Topaz, Utah.

After a unanimous Ninth Circuit Court of Appeals upheld the constitutionality of the military's exclusion orders against Japanese Americans, Korematsu's only option was to bring his case to the U.S. Supreme Court.

The Court in 1944 unfortunately ruled 6-3 against Fred Korematsu. He lived with that decision for nearly 40 years until a political science professor researching Fred Korematsu's case in the National Archives in Washington, D.C. uncovered documents that showed that during World War II government attorneys had intentionally introduced false evidence implying that Japanese Americans were disloyal and intentionally suppressed positive evidence showing that there was no documentation of Japanese American disloyalty.

So with that documentation, Fred Korematsu re-opened his criminal case.

On November 10, 1983, federal judge Marilyn Hall Patel ruled from the bench before a packed federal courtroom in San Francisco and granted Fred Korematsu's petition vacating his conviction. In issuing her ruling, Judge Patel acknowledged that the military's exclusion orders were "based upon and relied

upon by the government in its arguments to the court and to the Supreme Court on unsubstantiated facts, distortions and representations of at least one military commander, whose views were seriously infected by racism.”

More than four decades after police arrested him on a San Leandro street, Fred Korematsu was vindicated. In 1942, it was love for a woman that had compelled him to stand up for his freedom. But 40 years later, it was love for the Constitution that inspired him to ask for justice. It was late in coming. But it was satisfying.

Stan Yogi is the co-author of *Wherever There's a Fight: How Runaway Slaves, Suffragists, Immigrants, Strikers, and Poets Shaped Civil Liberties in California*.