

# Defining moments

from the past with lessons for a post-9/11 world...



*Fred Korematsu*

Photo from *A More Perfect Union: Japanese Americans & the U.S. Constitution*.  
Smithsonian National Museum of American History.

<http://americanhistory.si.edu/perfectunion/experience/index.html>

## BACKGROUND

Born in Oakland, California in 1919 to Japanese immigrants, Fred Korematsu was working as a welder in the San Francisco shipyards when the Pearl Harbor attack occurred.

## ARRESTED

After President Roosevelt issued Executive Order 9066, which ordered the internment of all Japanese Americans, the Korematsu family was taken to Tanforan, a former racetrack south of San Francisco, for processing. Korematsu did not join his family, choosing instead to stay behind with his girlfriend. Korematsu tried to remain unnoticed, but on May 30, 1942, he was arrested.

## THE CASE

A few days later, while in the San Francisco County jail, Ernest Besig, then Executive Director of the American Civil Liberties Union (ACLU) of Northern California visited Korematsu and decided to use his arrest as a test case to challenge the internment. Besig held that Korematsu's constitutional rights had been violated and that he had suffered racial discrimination. However, the court ruled against Korematsu. He was sentenced to 5 years probation and sent to Tanforan where he rejoined his family. All the detainees at Tanforan were later transferred to the Topaz internment camp in Utah.

Determined to fight his case, Korematsu filed an appeal in 1943 with the Ninth Circuit Court of Appeals and, later to the U.S. Supreme Court. On December 18, 1944, the Supreme Court issued its opinion on the Korematsu case. By a 6 to 3 margin, the justices upheld Korematsu's conviction, stating that Korematsu "was not excluded from the military area because of hostility to him or his race."<sup>1</sup> Justice Frank Murphy, writing for the minority, dissented on the grounds that because the internment camps were "an obvious racial discrimination, the order deprives all those within its scope of equal protection of the laws guaranteed by the Fifth Amendment."<sup>2</sup>

In 1983, Fred Korematsu appealed his conviction. When asked why he decided to reopen his case forty years after his original conviction, Korematsu replied, "As long as my record stands in federal court, any American citizen can be held in prison or concentration camps without trial or hearing . . . I would like to see the government admit they were wrong and do something about it, so this will never happen again to any American citizen of any race, creed, or color."<sup>3</sup> Later that year, a federal court in San Francisco overturned the conviction, stating that the government's case at the time had been based on false, misleading, and racially biased information.

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<sup>1</sup> Justice Hugo Black, *Korematsu v. United States*. © 1999 Voices of Love and Freedom/Facing History and Ourselves. Reproducible 2.3.

<sup>2</sup> *ibid.* Justice Frank Murphy.

<sup>3</sup> Facing History and Ourselves website

<http://www.facinghistory.org/facing/fhao2.nsf/all/September+Lesson+Civil?opendocument>. . 11/28/01.

Fred Korematsu is a 1998 recipient of the Presidential Medal of Freedom, the nation's highest civilian honor. He lives with his wife in the San Francisco Bay area.

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## Frank Murphy

### BACKGROUND

Frank Murphy was born on April 13, 1890, in Harbor Beach, Michigan. He received his undergraduate and law degrees from the University of Michigan and worked as a law clerk in Detroit before joining the United States Army. During World War I, Murphy served in France and Germany. He remained overseas after the war to attend Lincoln's Inn in London and Trinity College in Dublin, after which he began his career as chief assistant attorney general for the eastern district of Michigan.



### POLITICAL CAREER

Murphy was later appointed judge for the Recorder's Court, the principal criminal court in Detroit. Murphy was the trial judge for the case of *Dr. Ossian Sweet*, an African-American whose move into an all-white neighborhood of Detroit in 1925 was the spark for a sensational trial and celebrated civil rights case. [Dr. Sweet and 10 others had been arrested and charged with murder after a member of an all-white mob was shot and killed while attacking his home. The NAACP contacted Clarence Darrow to represent Sweet and the other defendants. The trial resulted in a hung jury and Murphy declared a mistrial. Dr. Sweet's brother, Henry was tried and acquitted by an all-white jury in a subsequent trial. All charges against the other defendants were dismissed a year later]<sup>4</sup>

Murphy was elected mayor of Detroit in the early stages of the Great Depression, a position he held for three years. Murphy was a pro-Labor Democrat and advocate of federal relief for the poor. Murphy supported Franklin Roosevelt's bid for the presidency in 1932.

Murphy served as the Governor-General (1933-35) and the first U.S. High Commissioner (1935-36) for the Philippines. Returning to Michigan in 1936, Murphy was elected Governor and immediately faced a sit-down strike of 135,000 automotive workers. His refusal to call out the state troopers earned him the animosity of Michigan's powerful industrialists and cost him reelection in 1938.

Murphy won a position in the Roosevelt Administration, where he served as U.S. Attorney General. During his one-year tenure, he established the first civil liberties unit in the Justice Department. (His brief term can be explained: According to then Solicitor General and later Supreme Court justice Robert H. Jackson, Frank Murphy had aspired to be the Secretary of War in Roosevelt's cabinet, while Jackson himself was a candidate for attorney general. Explaining Murphy's appointment, Roosevelt wrote to Jackson, "I want you for my attorney general, Bob, but I want to name Murphy immediately to something and since I can't name him to what he himself wants, it is desirable to use the attorney generalship temporarily for that purpose."<sup>5</sup>)

### SUPREME COURT

In 1940, Roosevelt appointed Murphy to the United States Supreme Court. In 1944, Murphy issued his famous dissent in *Korematsu v. United States*, attacking as racist the government's wartime internment of Japanese Americans. An excerpt follows:

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<sup>4</sup> <http://www.law.umkc.edu/faculty/projects/ftrials/sweet/sweet.html>

<sup>5</sup> <http://lawbooksusa.com/supremecourt/murphy.htm>

Photo of Frank Murphy from The Sweet Trials website: <http://www.law.umkc.edu/faculty/projects/ftrials/sweet/MURPHY.jpg>.

I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must accordingly be treated at all times as the heirs of the American experiment and as entitled to all the rights and freedoms guaranteed by the Constitution.<sup>6</sup>

Murphy served as Associate Justice of the Supreme Court until his death on July 19, 1949. He died in Detroit, Michigan, at the age of fifty-nine.



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## Hugo L. Black

### BACKGROUND

Hugo L. Black was born in Alabama in 1886. After a false start in medical school, Black found his passion in studying law. He graduated from the University of Alabama's Law School in 1906 and entered private legal practice. In 1910, he was appointed police court magistrate of Birmingham, and later Black was elected Jefferson County (AL) prosecutor.

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### POLITICAL CAREER

Black was elected to the Senate by Alabama in 1926, and re-elected in 1932. After Franklin Roosevelt's election to the presidency, Black, a Democrat, emerged as a strong supporter of New Deal policies. In 1937, Black became Roosevelt's first appointment to the Supreme Court. His appointment was controversial, as he had clearly supported a dramatic expansion of the role of the federal government into economic and social life.

### SUPREME COURT

As a justice, Black was associated with the liberal wing of the court, which included Frank Murphy. Black, who was briefly a member of the Ku Klux Klan, became an outspoken supporter of the civil rights of all Americans, consistently affirming himself to be a constitutional literalist. Because of his liberal reputation, his opinion in *Korematsu v US* seemed to many, now and at the time, a contradiction of his constitutional values. Black's remarks to the New York Times in 1967, however, indicate that he never regretted his opinion:

I would do precisely the same thing today, in any part of the country. I would probably issue the same order were I President. We had a situation where we were at war. People were rightly fearful of the Japanese in Los Angeles, many loyal to the United States, many undoubtedly not, having dual citizenship--lots of them.<sup>8</sup>

Black served on the Supreme Court until complications from a stroke forced his retirement in 1971. He died on September 25, 1971, at the age of 85.

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<sup>6</sup> *Korematsu v. United States*, 323 U.S. 214 (1944). <http://lawbooksusa.com/cconlaw/korematsuvus.htm>

<sup>7</sup> Photo from Library of Congress: available at [http://lcweb.loc.gov/rr/print/235\\_pob.html](http://lcweb.loc.gov/rr/print/235_pob.html)

<sup>8</sup> Quoted in: "Justice Black Dies at 85: Served on Court 34 Years," UPI September 25, 1971. Available online at New York Times Learning Network, <http://www.nytimes.com/learning/general/onthisday/bday/0227.html>