

# When You Can't Tell Your Friends from "the Japs": Reading the Body in the *Korematsu* Case

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"Parks. Brown. Plessy. To that distinguished list, we add today the name of Fred Korematsu," said President Bill Clinton gravely, as he awarded Korematsu the Presidential Medal of Freedom in 1998. As the plaintiff of *Korematsu v. United States of America*, one of the Supreme Court test cases of the legality of Japanese American incarceration, Korematsu's personal legacy has been chiefly one of civil rights activism based on his role in this case, the 1980s appeals, and his amicus briefs in *Rumsfeld v. Padilla* and other Guantánamo Bay detention cases in the 2000s.

The strange case of Fred Korematsu is most famous for the legal precedent it set for the incarceration of citizens without trial in time of war, a precedent that has been heavily discussed in recent years in the specter of post-9/11 racial profiling and the citizens and enemy aliens held at Guantánamo Bay prison. In this article, I look more broadly at the logic behind this decision, showing that the Korematsu case is a keystone both of legal decisions that sought to define Asia and America in terms of continually shifting readings of race on the American subject's body. Even more crucially, Korematsu's brief, a legally irrelevant attempt to pass as non-Japanese, is part of a larger social dilemma about the racialized Asian body in America during and after WWII, which formed an integral part of the logic that allowed the Supreme Court to claim that military necessity was the reason for mass incarceration.

Fred Toyosaburo Korematsu was born in Oakland, California to Issei parents and grew up in the area. On December 7, 1941, he was driving in his car with his white girlfriend when he heard the news on the car radio. On Monday, he reported to the shipyard where he worked as a welder and was fired. He tried to enlist in the Coast Guard or army (reports vary) but was turned down for stomach ulcers—this was

before the general change to 4-C (alien) Selective Service status for Japanese Americans. He was planning to go to Nevada or the Midwest with his girlfriend when his family was forcibly taken to the Tanforan Assembly Center. Soon afterwards, he had plastic surgery to look, in his own words, more “Caucasian,” and changed his name on his draft card to Clyde Sarah. Nevertheless, he was arrested on a street corner on May 30, 1942. When approached by Northern California American Civil Liberties Union (ACLU) official Ernest Besig, he accepted the offer of legal representation and eventually became the plaintiff of the landmark case *Korematsu v. United States of America*, in which the Supreme Court upheld the constitutionality of Executive Order 9066, which ordered Japanese Americans into incarceration camps during World War II, with a vote of six to three. Korematsu’s criminal conviction (though not the ruling on constitutionality) was overturned in 1983 in the Federal District Court that had originally convicted him on the grounds that the government had knowingly suppressed information about the “innocence” of Japanese Americans.<sup>1</sup>

Korematsu’s attempt to elude incarceration, though brief and unsuccessful, raised the question of racial visibility at a time when the bodily identification of Japanese Americans and the potential spies among them was directly linked to the actual state-mandated incarceration of 110,000 Japanese Americans living on the west coast of the United States. *Time* magazine, less than two weeks after the attack on Pearl Harbor, famously offered a few “rules of thumb” on “How to Tell Your Friends From the Japs,” a subject of real concern during wartime paranoia about spies. *Life* offered a similar spread, “How to Tell Japs from the Chinese,” both complete with photographs.<sup>2</sup> These popular examples are extremely well known, but less well known is the role of racial recognition on the legal side of the incarceration. While attempting to avoid charges of racism, government officials seriously cited the inability to tell Japanese apart from each other and from other Asians as a reason to incarcerate them. Korematsu’s experience offers a hard look at the ongoing difficulty of disentangling the social and physical constructs of race, particularly when used as grounds for discrimination and incarceration.

Peter Irons, one of Korematsu’s lawyers in 1983, notes that “[f]rom the time of his arrest to the present, accounts of his case have uniformly portrayed Korematsu as a young man impelled by romance alone, and whose effort to change his features was a bizarre response to DeWitt’s exclusion order.”<sup>3</sup> Such accounts are, for the most part, perfunctory; even Korematsu’s obituaries mention the facial surgery and his girlfriend without much discussion of their context or impact. Historians of the Japanese American and Asian American experience have often referred to his “plastic surgery,” but do not trace the trajectory of how these facts were narrated, mostly focusing instead on the case.<sup>4</sup> This study will focus on how Korematsu’s surgery was portrayed, providing a foundation for the intersection between the cultural studies that have been done on cosmetic surgery, particularly ethnic or racialized surgery, and the legal and historical studies of the importance of racialized

appearance in court cases about citizenship and civil rights.

Racialized cosmetic surgery is usually described as the alteration of specific features that have come to be classified with the negative characteristics of a race—most commonly, for an east Asian, the lack of an epicanthic fold around the eyes and the shape of the nose. Korematsu’s plastic surgery can be mentioned without the typically mixed reaction from the Asian American community or the macabre fascination of the mainstream media with Asian and Asian American plastic surgery in the late twentieth century because audiences interpret Korematsu as acting under what Sau-ling Cynthia Wong so aptly dubbed “necessity” while impelled by “extravagance.” While her exploration of these terms focuses on literature, her historical foundation allows me to expand her framework—in particular her consideration of Asian American mobility as necessity—“subjugation, coercion” or duress—rather than adventure or exploration. The incarceration of Japanese Americans living on the west coast certainly was coercion, and allows for the consideration of Korematsu’s actions without the judgment of political resistance.<sup>5</sup>

Perhaps there has also been an unwillingness to besmirch Korematsu’s reputation as “civil rights hero” with too much talk about his surgery, which is predicated on its negative implications. The scholarship on cosmetic surgery, particularly racialized surgery, has sought at different moments to map subjects’ motivations and desires in condemnatory or redemptive fashion. Such studies have typically omitted Korematsu in tracing their historical trajectory, and often their focus on aesthetics and economics fails to consider the legalized discrimination that drives surgery, particularly in earlier periods (i.e., the first half of the twentieth century). This article may serve to break boundaries in both directions, contributing to the depolarization of “good and bad” and “resistant and accommodating” Asian subjects as Viet Nguyen suggests is necessary. Looking at perhaps the earliest passing of an ambiguous Asian subject, the half-Chinese half-white British author Winnifred Eaton/Onoto Watanna, Nguyen speculates that her passing for Japanese in the early twentieth century demonstrates neither rebellion nor accommodation, but constitutes a “viable and important political gesture.” This critical scrutiny of passing as strategy marks other recent Asian American studies of bodily presentation, such as Leslie Bow’s examination of supposed feminine betrayals as “acts of subversion.” Korematsu’s reputation as a heroic subject, brought to bear on this debate, furthers the revision of passing and plastic surgery as something other than accommodation.<sup>6</sup>

Korematsu’s spoken motivation was to be allowed to stay at home and marry his girlfriend. Sander Gilman places the stakes of plastic surgery very high, saying that the goal is nothing less than *happiness*, but that the location of happiness had at the end of the nineteenth century been transformed from the “political ‘unhappiness’ of class and poverty” to the “‘unhappiness’ found within the body.”<sup>7</sup> Early plastic surgeons and their patients specifically disclaimed the alteration of racialized features as an attempt to “pass.” The most discussed early example was Jewish American actress Fanny Brice, who said after altering her nose in 1923, “I wanted to

look prettier and my nose was a sight in any language, but I wasn't trying to hide my origin." The racialized or ethnicized body could be a construct separate from race and ethnicity, Brice and other patients claimed, yet simultaneously, the Supreme Court sought to define citizenship rights based on racial origin and racialized appearance.<sup>8</sup>

Studies of Asian American plastic surgery typically focus on the large numbers of facial surgeries in the last two to three decades, some reaching back to the postwar era. Gilman's rhetoric echoes the inalienable American right to the "pursuit of happiness," and the right to plastic surgery has been portrayed by Asian Americans as an exercise of their purchasing power and as an example of American freedom. David Palumbo-Liu complicates this with patients' strategems—a desire for economic improvement being chief among them—and further points out that Asian American plastic surgery has its roots in the state's post-WWII Americanization projects in Asia that strove to make the Asian subject easier to assimilate. Eugenia Kaw's oft-cited anthropological study attributes these surgeries to a stated desire to escape the socioeconomic inferiority associated with Asian racialized features—"passivity, dullness, and a lack of sociability"—rather than an overt desire to look prettier or whiter.<sup>9</sup>

A central debate of these surgery studies has been whether the choices of the patients capitulate to a centralized, white standard of beauty. Some modern scholars attribute a more resistant or diverse attitude toward appearance. Traise Yamamoto interprets modern cosmetic eye surgery on both Asians and Asian Americans as both "reappropriation" and "reinscription," noting that the patients themselves often disclaim a desire to look 'white' (as did Fanny Brice), even sometimes specifically warning the surgeon against such a result. She points out that the identification of the epicanthic fold with whiteness (as opposed to, say, blackness or those Asians who have the fold) essentializes these features.<sup>10</sup> As an Asian American figure who had cosmetic surgery, whatever his motivations, Korematsu links the uneasy consideration of modern surgery and the other trappings of racial passing with the legal history of civil rights and citizenship rights, forcing us to consider the role of the body's possible malleability in legal history. As Bow writes, "[T]heorists of racial passing . . . reveal [that] racial ambiguity can represent a site for exposing the stakes underlying the terms of social division."<sup>11</sup> Racial ambiguity, whether natural or surgically induced, enables passing and undermines the attempt to clearly delineate race.

Prominent African American magazines repudiated passing as unsavory and unnecessary while claiming participation in the postwar economic abundance of the 1950s. At the same time, many Japanese Americans were trying, if not to "pass," then to demonstrate Americanness through conformity to white middle-class standards. This was also the decade when ethnic Asians on both sides of the Pacific started to seek cosmetic surgery in substantial numbers. Kimono-clad beauty queens of the prewar era gave way in the 1950s to bouffant-haired pageant contestants clad

in western-style dresses. Others on the fringe of the community opted for a different disguise, as many “resettled” Nisei attempted to pass as other Asian ethnicities in order to escape prejudice. One such Nisei, Bill Katayama, did this during the war as well as afterward, at one point claiming a fictional half-Japanese, half-Korean identity.<sup>12</sup> What many of these Asian Americans sought was not to pass into a complete and total whiteness that could hide their otherness, but to escape into the realm of racial ambiguity.

This bodily and social ambiguity existed alongside the complex historical negotiation of the citizenship rights of ethnic minorities in the United States. Judge William Denman of the Court of Appeals even incorporates the social and legal “passing” parallelism in his lengthy opinion about the *Korematsu* case: “[Korematsu] made an unsuccessful attempt to have his features altered by plastic surgery, hoping thereby to escape the discrimination against his minority group of citizens. This attempt is as pathetic as that of another of our minority groups—of those of one-sixteenth negro blood hoping to conceal the fact that they have not ‘passed over’ into general Caucasian social intercourse.” Denman sees pathos predicated on certain failure, though his awkward wording betrays some uncertainty. It seems patently obvious that some Americans of “one-sixteenth negro blood” have passed. Yet, Denman misstates the concept of passing as involving the eradication of that last one-sixteenth of racialized blood as necessary for true passing. His insistence reveals the fear that race is, essentially, “social intercourse,” so that someone like Korematsu could actually pass over and change his race by associating with all white Americans if only he could eradicate his features.<sup>13</sup> Using a new vocabulary about the racialized Asian appearance, Korematsu and his legal counsel sought in vain to find the grounds of racial definition, combating every possible “proof” of race and national loyalty they could think of from complexion to career choice. The issue of appearance, however, never lost its primacy in Korematsu’s mind. In 1983, he bluntly told the court, “According to the Supreme Court decision regarding my case, being an American citizen was not enough. They say you have to look like one, otherwise they say you can’t tell a difference between a loyal and a disloyal American.”

Other Asian Americans had historically identified and manipulated the public presentation of the body, as well as the body itself, in order to legally claim status as Americans. When Wong Kim Ark, plaintiff in the landmark 1898 Supreme Court case about native-born Chinese American citizenship, claimed that he was a citizen by birth, US district attorney Henry S. Foote contended that Wong had “been at all times, by reason of his race, language, color, and dress, a Chinese person.”<sup>14</sup> This bizarre list of qualities mixes the changeable with the supposedly unchangeable in a way that throws doubt on the definition of race (and color), which was certainly mutable at the time. Erika Lee’s examination of illegal Chinese immigration via Mexico and Canada includes anecdotes of Chinese disguising themselves as Native Americans, Mexicans, and even African Americans. This usually involved costume, color, and a bit of language. The *Buffalo Times* claimed that smugglers would put

Chinese in “Indian garb,” give them a basket of sassafras, and row them across the lakes from Canada into the US. Those who came from Mexico would put on “the most picturesque Mexican dress.” Those coming from Cuba, a US government report claimed, were painted black and blithely walked ashore. As Lee phrases it, the Chinese immigrants put on new “racial uniforms” to pass as the dominant “others” of particular regions, benefiting from racial stereotypes by avoiding new scrutiny.<sup>15</sup> With little history of long-term social passing, passing by Asians was thus documented in this era as a specifically illegal, border-crossing strategy.

Previous legal cases, particularly those about citizenship, insisted upon both the illegibility and legibility of racial appearance. Placed in this genealogy, the ambiguity suggested by the plastic surgery in *Korematsu* can be seen as a long-standing vexation that parallels the social history of racialized surgeries. The often paired landmark cases *Takao Ozawa v. United States* (1922) and *United States v. Bhagat Singh Thind* (1923) have been studied by innumerable scholars. However, it is particularly important to note that neither of these much-studied cases challenged the constitutionality of racial bias in citizenship requirements. Instead, the court was asked to rule on racial definitions based on history, culture, geography, and appearance. *Ozawa* had attempted to classify the Japanese as white on several grounds, including that of skin color. The court replied that skin color was a specious test to apply, since, as they asserted, the skin color test was “impracticable, [skin color] differs greatly among persons of the same race, even among Anglo-Saxons, ranging by imperceptible gradations from the fair blond to the swarthy brunette, the latter being darker than many of the lighter hued persons of the brown or yellow races.” They therefore restricted the white race to “what is popularly known as the Caucasian race,” eschewing racialized appearance in favor of a “popular” definition of race.<sup>16</sup>

In 1923, the same year as Brice’s surgery, Thind attempted to have himself, as a “high-caste Hindu, of full Indian blood, born at Amritsar, Punjab, India” declared Caucasian, rather than white. Once again the court declined to consider ethnology and took refuge in “popular” understanding of whiteness, but the footnotes to the argument are revealing. Quoting anthropologist Keane’s *Man: Past and Present*, the court referred to a passage on the Caucasian race: “[W]e recognize a common racial stamp in the facial expression, the structure of the hair, partly also the bodily proportions. . . . Even in the case of certain black or very dark races . . . we are reminded instinctively more of Europeans or Berbers . . . thanks to their more regular features and brighter expression.” Skin color, according to the court’s own ruling in *Ozawa*, was not legible as a test of whiteness. Here, they suggest via the footnote that “features” and “expression” were likewise illegible. Yet, the court also suggests that bodily racial difference is easily recognizable or distinguishable: “[T]he *physical* group characteristics of the Hindus render them *readily distinguishable* from the various groups of persons in this country commonly recognized as white.” (my emphases) Although the children of Hindu parents might well have a “common racial

stamp” in features, and Ozawa had recognized the illegibility of skin color, the court insisted on some “readily distinguishable” physical characteristics that they declined to specify. The argument about European Americans was also specious, considering the popular debate that raged at this time about inferior European races and their predetermined physical and intellectual characteristics. Whiteness became, as Ian Haney-López states, “a social product measurable” not by the anthropologist’s calipers but “only in terms of what people believe,” something “self-evident.”<sup>17</sup>

With racial appearance accepted as a universal metric, it was inevitable that individuals would try to elude the spirit of the law. In 1926, only three years after the *Thind* case and Brice’s surgery, the *New York Times* reported that a Japanese American man from Boston had plastic surgery to render himself acceptable to his white lowan girlfriend’s parents. Shima Kito “put himself in the hands of a surgeon. The latter cut the eye corners so that the slant-eye so characteristic of the Japanese race was gone. He lowered the skin and flesh of the nose so that the upturned trait disappeared, and he tightened the pendulous lower lip.” This was deemed an “example of the use of plastic surgery to *obliterate* racial characteristics” (my emphasis), which was finished by changing his name to William White.<sup>18</sup> Kito did not bother with Brice’s disclaimers that she was not trying to erase her Jewishness; it seemed his concern to obliterate his Japaneseness as thoroughly as possible, if only to satisfy his prospective in-laws.<sup>19</sup> Nevertheless, the timing of Kito’s surgery suggests that he may have been an earlier version of Korematsu in terms of attempting to escape the legalization of discrimination against Japanese Americans, thus making his choice imperative. The Cable Act of 1922 specified that female US citizens who married aliens *eligible* for citizenship would retain their US citizenship, implicitly barring (at the risk of losing one’s citizenship) marriage to Asian aliens, who were *ineligible*. Kito’s marriage would certainly have fallen into the latter category, so his surgery functioned as both a means to obtain parental approval as well as the ability to pass as a “white” American citizen (which also allowed his wife to retain her citizenship). At the time, the idea of using surgery to undergird passing for Asians raised few legal fears. Instead, it was presented as a human interest story, with a man willing to change his race for love. However, no such presentation was possible for Korematsu after Pearl Harbor.

Newspapers of the era mention Korematsu’s attempt to pass as a “Spaniard” or “Spanish-Hawaiian,” some even calling him a “Jap spy.” Looking at photographs of Korematsu before and after his surgery, it is hard to imagine him being identified as of anything but (at the very least) East Asian descent, but he did succeed in “passing” as a safe ethnicity for long enough to make the media and the FBI nervous.<sup>20</sup> FBI agents found the doctor and interrogated him about Korematsu’s surgery, which had cost \$125. Masten, who had not done anything actionable, claimed that he had told Korematsu “that he could build up his nose and remove the folds from the inner corner of his upper eyelids but that he could not make the subject look like an American” (i.e., white).<sup>21</sup> The phrasing may have been the

agents,' or it may have been Masten's own, but the government was reassured here that no Japanese could be made to look "American"—or for that matter that any Japanese American could look authentically American to begin with, a feeling that Korematsu still echoed in 1983.

Instead, Korematsu was left with the tell-tale scars that first raised questions of plastic surgery. The FBI's initial report included under "scars or marks": "Cut scar on the forehead, lump between eyebrows on nose." The mutilated flesh betrayed Korematsu's attempt. Korematsu's 1990 account of his original motivation for getting the surgery conflicts with his girlfriend's statements to the FBI. She claimed that she had tried to talk him out of it, worried that he would get in trouble. According to Korematsu, it was originally her idea. He told the doctor that he feared racism if he married his Caucasian girlfriend. Masten took some skin from around his eyes, and "that was it," Korematsu said. As Korematsu himself observed in federal court, evoking laughter, "I don't think he made any change in my appearance for when I went to the Tanforan Assembly Center everyone knew me and my folks didn't know the difference."<sup>22</sup> Thus, Korematsu's attempt at passing through racial performance was not effective. Moreover, his failed attempt also raises the specter of medical ethics—in this case, the possibility that white doctors may have exploited the fears (and wallets) of Asians by surgically promising at least another type of Asianness.

Korematsu, like the individuals involved in many other civil rights test cases, was chosen by the ACLU because he was a "safe" option: he did not perform the usual elements of "Japaneseness" (or Japanese immigrant identity) that might trouble a jury—he never lived in Japan, did not speak Japanese, did not work in a Japanese-owned business, and was an American patriot. It was Korematsu's last step of altering the Japanese body that exploded the concept of, as the ACLU's *Commonweal* magazine phrased it, "racial visibility."<sup>23</sup> After all, successful passing created paranoia in 1940s America, as coverage of Korematsu in the days after his arrest convey. As it happens, he was not a "Jap spy," but his motivation was indeed to pass as white for social reasons. Becoming American, his plastic surgeon confidently said, was impossible. If his goal was to pass merely as non-Japanese, clearly it would have been more easily achieved by passing as say, Chinese. However, even this was potentially risky. In 1942, *The New York Times* reported incidents of racial confusion, in which ethnic Chinese (their ethnic group/s were not specified) fishermen were arrested but "released on submitting proof that they were Chinese." However, a forty-two-year old Javanese sailor was shot and killed when he failed to respond to a sentry; his captain said afterward that the sailor and his companions, who were released after questioning, did not understand English. Consequently *Time* magazine, in an article on identification, praised a Chinese American reporter who wore a self-identifying label.<sup>24</sup>

Beyond these hazards, other Asian ethnicities were also circumscribed by the laws against miscegenation, which were part of Korematsu's concerns. Korematsu

had to claim at least as much whiteness as his Italian American girlfriend. With the odd choice of “Spanish-Hawaiian,” which he opted for on his draft card, Korematsu showed a keen understanding of racial status and hierarchy, picking a label claiming a dark-skinned whiteness (Spanish) and a definite American origin (Hawai’i). Moreover, by tacking on a hyphen and Hawai’i, he added an element of outsidership which would account for his phenotype yet render him, believably, an “exotic American.” It added a touch of racial ambiguity just in case he did not look “Spanish,” and provided him access to a land (Hawai’i) with different racial rules, where most Japanese Americans were not incarcerated and native Hawai’ians were entirely unimpeachable. “Spanish-Hawaiian,” an unusual combination, covered all the bodily differences and the social needs that Korematsu exhibited in wartime, appealing to a very modern ideal of racial diversity and hybridity.

What becomes strikingly apparent when examining Korematsu’s court documents, however, is both how essential and how difficult it is for a court of law to deal with the appearance of the racialized body. Both the popular and the investigative coverage of Korematsu’s plastic surgery remained a technically irrelevant but enduringly fascinating detail in his legal battles, from his initial court case through to the Supreme Court documents. He was at perfect liberty to do whatever he liked to his face while Japanese Americans were still allowed on the coast. The ACLU was well aware of his plastic surgery, but in their focus on downplaying connections to Japan, perhaps failed to consider the deeper meaning of bodily inscriptions of race. Following the usual practice of trying to find the most acceptable test subjects for civil rights cases, famed ACLU director Roger Baldwin asked investigator Besig to emphasize Korematsu’s “attitude, background, connections and patriotism.” Besig, who had been aggressively recruiting test case subjects, replied carefully that there was “nothing in the facts to jeopardize our chances of success.” In the interpretation of the facts, however, there was abundant opportunity for speculation.<sup>25</sup>

The official wartime newspaper of the Japanese American Citizens League, the *Pacific Citizen*, usually referred to Korematsu as a shipyard worker and prominently mentioned that “he was discharged from Moore’s shipyard in Oakland in January [1942] because of his race.” An article on his federal court case also reported that “Korematsu, when asked, replied that he was ready and willing to bear arms for the United States. He said that he tried to enlist in the US army [other reports said the Coast Guard] but was turned down because of physical disability.” As a counterpoint to this narrative of unimpeachable patriotism, the article concludes, “The government had charged that Korematsu had undergone plastic surgery in an attempt to alter his features.”<sup>26</sup> Mentioning the most lurid feature of the case does not treat the plastic surgery as a proven but irrelevant fact, but instead adds it to the list of Korematsu’s supposed crimes. Given the generally supportive tone of the *Pacific Citizen* articles about the test cases, this line stands out as an implicit denial of the “charge;” the plastic surgery was mentioned in several of the local newspapers’

coverage of the case, though as a notable fact rather than a charge. Official channels were well aware that the questions of appearance and plastic surgery were central to the apparent guilt of the Japanese, regardless of any government claims to the contrary.

The debate over Korematsu's plastic surgery stemmed from the government's confused rhetoric about the forcible removal of the Japanese Americans, namely that it was not a racially motivated decision, yet predicated on appearance. Initial fears ostensibly rested on affiliation with an enemy country and culture. The Kibei, Japanese Americans born in the US but educated in Japan, were particularly suspect. Shintoism came under attack, as well as Japanese language schools, judo, and other vestiges of Japaneseness. General DeWitt famously said, "A Jap's a Jap," as Justice Robert H. Jackson quoted in his *Korematsu* dissent, but this certainty was refuted by the intense scrutiny of community and organization leaders who might be more guilty than others. Many members of the public, and certainly the courts, eventually adopted the more moderate view that many, if not all, Japanese Americans were unimpeachably loyal. Nevertheless, they all had to be incarcerated.

Inability to distinguish among Japanese led to fears that spies could easily hide among them if the "good" citizens were free to stay. The US Attorney General office's memorandum "The Japanese Situation on the West Coast," prepared by three lawyers, stated, "Since the Occidental eye cannot readily distinguish one Japanese resident from another, effective surveillance of the movements of particular Japanese residents suspected of disloyalty is extremely difficult if not practically impossible," whereas "the normal Caucasian countenances of [persons of German or Italian stock] enable the average American to recognize particular individuals by distinguishing minor facial characteristics." In other words, they were being incarcerated because the way they looked was deemed illegible (i.e., "they all looked the same").<sup>27</sup>

Denman's focus on appearance in his appellate opinion takes this racist turn. He cites appearance as justification for the military necessity of "discriminating cruelty" (his own term in the *Hirabayashi* case) against the Japanese: "Because of . . . limitations of social intercourse, people do not become familiar with the Mongolian physiognomy. The uniform yellow skin and, on first impression, a uniformity of facial structure, makes 'all Chinks and Japs look alike to me,' a common colloquialism. Hence arises a difficulty for General DeWitt's soldiers or the federal civil officers in picking out . . . suspected saboteurs or spies. . . . Also the difficulty of identification of Japanese of known or suspected enemy aid, by descriptions telegraphed or written to white enforcement offices." Denman admits the social construction of the concept that "all Chinks and Japs look alike," but treats it as a reality that must be dealt with. His logic implies that all Chinese Americans might as well have been incarcerated too, along with perhaps other Asian Americans and similar-looking ethnic minorities. All were equally visible and yet illegible, making it too difficult to "pick out" spies. This casts a different light on Denman's analysis of Korematsu's

surgery, which he calls “pathetic,” positioning the facial alteration as a strategy that impedes the identification of “saboteurs or spies.” In this sense, Korematsu’s surgery may have had a very real effect on the legal decisions and their grounds. However, the constitutionality of the law was difficult for some of the judges to divorce from “wartime necessity,” and Korematsu’s unfortunate attempt at “passing” highlighted the possibility of “spies among us” and exacerbated the necessity for incarceration.<sup>28</sup>

In the end, none of the Supreme Court justices referred to Korematsu’s surgery or girlfriend in their opinions, mentioning only that he, “according to the uncontradicted evidence, is a loyal citizen of the nation.” Frank Murphy’s dissent does not even mention Korematsu by name or situation, addressing the racism of the incarceration as a whole. Nevertheless, the justices were demonstrably aware of the language around Japanese appearance as well as Korematsu’s attempt to pass. The petition for *certiorari* (to be heard by a higher court) read, “The violation was intentional. Petitioner had changed his name, undergone an operation to conceal his facial characteristics, and wanted to remain in Calif. long enough to earn sufficient money to take his girl to the Middle West.” A similar *certiorari* document in Justice Robert H. Jackson’s papers bears his hand underscoring: “The violation was committed knowingly, and P. had *changed his name and undergone a facial operation* in an effort to *conceal his racial characteristics.*” This document also bears Jackson’s notes about the justices’ initial conference votes on the case, which confirms that they all were well aware of the surgery—and perhaps as intrigued as Jackson was, judging from his underscoring.<sup>29</sup>

The Stone Court, which decided all three incarceration cases and practically coincided with the American participation in WWII, is remembered as a liberal yet bitterly divided court—divided in spite of the fact that Franklin D. Roosevelt had nominated seven of the nine justices on the bench at the time of *Korematsu*. Hugo L. Black, the *Korematsu* opinion author, is remembered otherwise as a defender of legislative authority, racial equality, and individual rights who had to overcome a storm of publicity about his brief membership in the Ku Klux Klan to be confirmed. Black often voted with William O. Douglas, Wiley Rutledge, and the Court’s most famous liberal, Frank Murphy. However, Murphy had foreseen that the disagreements in the court would come to a head over the three test cases, writing to his clerk, “Read this and perish! The Court has blown up on the Jap case—just [as] I expected it would.”<sup>30</sup>

*Korematsu* indeed blew up the court, which had voted unanimously but with some separate opinions on the constitutionality of targeted curfews in the earlier *Hirabayashi* and *Yasui* test cases. In successive drafts, Black’s opinion for the court moves progressively further away from addressing the charge of racism so incisively laid out in Murphy’s and Jackson’s dissents. In an early draft, Black wrote:

It would be idle to deny that the course of American life  
and thought has been increasingly polluted by the warped

psychology of race hatred. This has been but a reflection of the witch's brew that has lately been served up abroad. But the instant case poses no problem of "concentration camps." Regardless of the true nature of the assembly and relocation centers—and we deem it unjustifiable to call them "concentration camps" with all the ugly connotations that term implies. . . . In any event, it helps but little to clarify matters to succumb to the luxury of the imagery of words like "concentration camps." It helps even less to invoke the term "racial prejudice." It would be a superfluous gloss on the history of this Court to condemn the bigotry that springs from an exalted sense of race. To cast this case into the outlines of racial prejudice merely confuses the issue.<sup>31</sup>

Here, Black charged into the issue of racism head-on, being most exercised about the term "concentration camp." His anxiety about its "ugly connotations" reveals that he has a sense of its reality, yet he admits to ignoring the "true nature" of the camps. Nevertheless, he found little satisfaction, apparently, in his admission that racism existed, since his only move was to deny its applicability. The final version of his opinion omitted his discussion of the "witch's brew" of racism and much of the discussion of "racial prejudice," pausing chiefly to disparage the term "concentration camp."

Though Jackson's dissent carefully addresses his respect for military necessity, he refuses to uphold an order he finds unconstitutional: "A citizen's presence in the locality, however, was made a crime only if his parents were of Japanese birth. Had Korematsu been one of four—the others being, say, a German alien enemy, an Italian alien enemy, and a citizen of American-born ancestors, convicted of treason but out on parole—only Korematsu's presence would have violated the order. The difference . . . only in that he was born of different racial stock." Jackson emphasized that Japanese Americans were indeed singled out by race. Moreover, a possible reference to Korematsu's surgery appears when Jackson notes that "this prisoner is the son of parents as to whom he had no choice, and belongs to a race from which there is no way to resign." Indeed, Korematsu would seem to have exhausted the logical options for such a resignation.

In drafts, Black had written that Korematsu had "moved from his home to another place in Oakland" and had had "an operation on his face to change his facial expression"—later revised to "change his facial appearance"—"[to] conceal his identity as a person of Japanese ancestry."<sup>32</sup> This language disappeared, along with his references to Korematsu's Italian girlfriend and desire to move to the "Middle West." However, the opinion still quietly makes reference to the problems of illegibility: "There was evidence of disloyalty on the part of some, the military

authorities considered that the need for action was great, and time was short.” A shortness of time implies an inability to sort out the disloyal from the loyal, and according to the military’s own logic, much of this was due to appearance.<sup>33</sup>

Owen Roberts’ and Frank Murphy’s dissents maintain that the sorting had to happen, regardless of time: “No *adequate* reason [my emphasis] is given for the failure to treat these Japanese Americans on an individual basis. . . . It is asserted merely that the loyalties of this group ‘were unknown and time was of the essence.’” Once again, we see a reference to the difficulty of sorting out the innocent from the guilty, when it was so much faster and easier to assume, as General DeWitt’s report does, that they all belonged to an “enemy race.” When Roberts refers to the lack of an “adequate” reason, he refers to this assumption, inclusive of the logic that sorting them out would take too long, which in itself was at least partly predicated on the illegibility of appearance. A 1967 interview with Black reveals how important this issue remained in his memory. “They all look alike to a person not a Jap,” he said, adding, “A lot of innocent Japanese Americans would have been shot” if Japan had attacked. These debates show the primacy of racialized appearance, though its acknowledgment at the federal level would inevitably have, in Black’s words, cast the case into the outlines of racial prejudice. Despite its excision from the opinion, neither the justices’ nor Korematsu’s experiences were free of the frenzy concerning appearance.<sup>34</sup>

Korematsu’s transformation into hero has hidden not only the turbulent history of his surgery but the enduring legacy of his Supreme Court loss. Black wrote in his opinion that “all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny.” More recently, in his memoirs former Chief Justice William Rehnquist controversially upheld the *Korematsu* case as an illustration of deferring to military authority in time of war. Thus, regardless of the success of the 1983 appeal and Korematsu’s Presidential Medal, the *Korematsu* decision still stands, technically available to be used as legal precedent for racism in times of “necessity. What cannot be overlooked, however, is that Korematsu’s attempt at passing cut to one of the central legal and racial issues of the incarceration. Trying to pass as not-Japanese and perhaps as white, he exposed the tenuous definition of racialized appearance that the military insisted was part of the necessity for incarceration. Theoretically, his plastic surgery was the ultimate attempt to pass, but it provoked controversy because of the fear that it could succeed. Korematsu had gone too far.

The binary framing of race and nationality on the body was a gross oversimplification of identity formation for Japanese American individuals and the international framework within which incarceration functioned, then and now, making Korematsu rightly a figurehead not just for civil rights, but also for international affairs. Wong’s work pushes us, among other things, to understand Asian American studies in its global circulation,<sup>35</sup> and the study of incarceration has

increasingly moved in this direction—with the diversity and international scope of the Japanese American incarceration, and its comparison to other incarcerations such as Guantánamo, and the post-9/11 US discussion of illegal immigration, citizenship, and airport security.<sup>36</sup> It is likewise important for modern considerations of cosmetic surgery and other contested sites of identity construction to include the geopolitical events and legalized discrimination that pushes individuals toward their supposedly “aesthetic” or “strategic” economic choices. Across all these complex issues is the constant of the “questionably identifiable racial other.” The racialized body’s appearance in the courts and the media, gradually filtered out as the stakes of constitutional review and racial profiling grew more intense, remains an important part of the logic of the *Korematsu* decision as well as the legal history behind it. The intervening time has done little to further develop this logic. For all the modern discussion of how race is a difference scarcely worth mentioning in our genetics, the body of the other is still a point of contention within the American legal system.

## Notes

<sup>1</sup> The mention of Korematsu’s specific disability is found in Ernest Besig, Letter from Ernest Besig to Roger Baldwin, *American Civil Liberties Union Archives*, Princeton, NJ. Most of the other biographical information is available in a variety of sources, including *Of Civil Wrongs & Rights: The Fred Korematsu Story*, dir. Eric Paul Fournier, National Asian American Telecommunications Association, 2000.

<sup>2</sup> “How to Tell Your Friends from the Japs,” *Time*, December 22, 1941. “How to Tell Japs from the Chinese,” *Life*, December 22, 1944.

<sup>3</sup> On May 3, 1942, General DeWitt issued Civilian Exclusion Order No. 34, ordering all people of Japanese ancestry (whether citizens or non-citizens) still living in California’s Military Area No. 1, to report to assembly centers where they would live until moved to “Relocation Centers” (i.e., incarceration camps).

<sup>4</sup> Peter Irons, *Justice at War* (New York: Oxford University Press, 1983), 97. For more information on Korematsu, see, for example, Franklin Odo, ed., *The Columbia Documentary History of the Asian American Experience* (New York: Columbia University Press, 2002) 306; Howard Ball, “Judicial Parsimony and Military Necessity,” in *Japanese Americans, from Relocation to Redress*, eds. Roger Daniels, Sandra C. Taylor and Harry H.L. Kitano (Salt Lake City, UT: University of Utah Press, 1986), 179; “*Korematsu v. United States*,” *Japanese American History: An A-to-Z Reference from 1868 to the Present*, ed. Brian Niiya (New York: Facts on File, 1993) 209; Sucheng Chan, *Asian Americans: An Interpretive History* (New York: Twayne, 1991), 136.

<sup>5</sup> Sau-ling Cynthia Wong, *Reading Asian American Literature: From Necessity to Extravagance* (Princeton, NJ: Princeton University Press, 1993), 13, 121.

<sup>6</sup> Viet Thanh Nguyen, *Race & Resistance: Literature & Politics in Asian America* (Oxford, UK: Oxford University Press, 2002), 35. Leslie Bow, *Betrayal and Other Acts of Subversion: Feminism, Sexual Politics, Asian American Women's Literature* (Princeton, NJ: Princeton University Press, 2001).

<sup>7</sup> Sander L. Gilman, *Making the Body Beautiful: A Cultural History of Aesthetic Surgery* (Princeton, NJ: Princeton University Press, 1999), 136.

<sup>8</sup> Elizabeth Haiken, *Venus Envy: A History of Cosmetic Surgery* (Baltimore, MD: Johns Hopkins University Press, 1997), 186, 82, 77.

<sup>9</sup> See Chapter Three, "Written on the Face," in David Palumbo-Liu, *Asian/American: Historical Crossings of a Racial Frontier* (Stanford, CA: Stanford University Press, 1999) and Eugenia Kaw, "Medicalization of Racial Features: Asian American Women and Cosmetic Surgery." *Medical Anthropology Quarterly* 7.1 (1993): 75.

<sup>10</sup> Traise Yamamoto, *Masking Selves, Making Subjects: Japanese American Women, Identity, and the Body* (Berkeley, CA: University of California Press, 1999) 95-99.

<sup>11</sup> Leslie Bow, *Partly Colored: Asian American and Racial Anomaly in the Segregated South* (New York: New York University Press, 2010), 207.

<sup>12</sup> Gayle Wald, *Crossing the Line: Racial Passing in Twentieth-Century US Literature and Culture* (Durham, NC: Duke University Press, 2000), 118; Rebecca Chiyoko King-O'Riain, *Pure Beauty: Judging Race in Japanese American Beauty Pageants* (Minneapolis, MN: University of Minnesota Press, 2006); David Yoo, *Growing Up Nisei: Race, Generation, and Culture among Japanese Americans of California, 1924-1949* (Urbana, IL: University of Illinois Press, 2000), 164-166.

<sup>13</sup> *Toyosaburo Korematsu v. United States*. 140 F.2d 289. United States Court of Appeals for the Ninth Circuit, 1943.

<sup>14</sup> Erika Lee, *At America's Gates: The Exclusion Era, 1882-1943* (Chapel Hill, NC: The University of North Carolina Press, 2003), 105.

<sup>15</sup> *Ibid.*, 161.

<sup>16</sup> *Takao Ozawa v. United States*. 260 U.S. 178. Supreme Court of the United States, 1922.

<sup>17</sup> *United States v. Bhagat Singh Thind*. 261 U.S. 204. Supreme Court of the United States, 1923. Ian Haney-López, *White by Law: The Legal Construction of Race* (New York: New York University Press, 2006), 79-80.

<sup>18</sup> "Changes Racial Features: Young Japanese Wins American Bride by Resort to Plastic Surgery," *The New York Times*, March 8, 1926.

<sup>19</sup> Haiken, *Venus Envy*, 130, 201.

<sup>20</sup> “Internment Upheld,” *News*, September 2, 1942. “Jap Shifted to Jail Here,” *Examiner*, June 23, 1942. Other newspaper clippings are shown briefly in *Of Civil Wrongs & Rights*, dir. Fournier. Besig, Letter from Ernest Besig to Roger Baldwin.

<sup>21</sup> Irons, *Justice at War*, 96.

<sup>22</sup> *Ibid.*, 153. *Of Civil Wrongs & Rights*, dir. Fournier.

<sup>23</sup> “In the Supreme Court,” *The Commonwealth*, March 10, 1944.

<sup>24</sup> Lawrence E. Davies, “California to Keep Japanese Farming,” *The New York Times*, January 9, 1942.

<sup>25</sup> Irons, *Justice at War*, 118. Besig, Letter from Ernest Besig to Roger Baldwin, June 10, 1942.

<sup>26</sup> “Evacuation Legality Will Be Tested in San Francisco Case,” *Pacific Citizen*, June 11, 1942. “Federal Court Convicts Nisei in Test Case,” *Pacific Citizen*, September 17, 1942.

<sup>27</sup> Irons, *Justice at War*, 54.

<sup>28</sup> *Toyosaburo Korematsu v. United States*.

<sup>29</sup> O.T., 1932 No. 22, *Korematsu v. US*, William O. Douglas Papers, Library of Congress, Washington, DC. No. 679 *Korematsu v. United States* Cert. To Cca 9, Robert Houghwout Jackson Papers, Library of Congress, Washington, DC.

<sup>30</sup> The *Korematsu* justices were, in order of appointment: Chief Justice Harlan Stone, Owen Roberts, Hugo Black, Stanley Reed, Felix Frankfurter, William Douglas, Frank Murphy, Robert Jackson, and Wiley Rutledge. Many books have been written about the court, the most recent of which is Noah Feldman’s *Scorpions: The Battles and Triumphs of FDR’s Great Supreme Court Justices* (New York: Twelve, 2010). Other useful references include William Domnarski, *The Great Justices, 1941-1954: Black, Douglas, Frankfurter & Jackson in Chambers* (Ann Arbor, MI: The University of Michigan Press, 2006) and Howard Ball, *Hugo L. Black: Cold Steel Warrior* (New York: Oxford University Press, 1996). Murphy’s note is in his papers (Frank Murphy, “Gene—Read This...,” Frank Murphy Papers, Ann Arbor, MI.)

<sup>31</sup> Hugo LaFayette Black, “It Would Be Idle to Deny...,” Hugo LaFayette Black Papers, Library of Congress, Washington, DC. For ease of reading, I have reproduced this incorporating his handwritten corrections on a typed draft fragment.

<sup>32</sup> Black, “The Petitioner, Born June 30, 1919...,” 2. Black, Untitled Draft of *Korematsu* Opinion, 5. Both in Hugo LaFayette Black Papers, Library of Congress, Washington, DC.

<sup>33</sup> *Korematsu v. United States*. 323 U.S. 214. Supreme Court of the United States, 1944.

<sup>34</sup> *Korematsu v. United States*. Feldman points out in *Scorpions* that the Court may have expected *Korematsu* and *Endo* to form a dual legacy, but the violation of rights in

Korematsu has been the lasting impression. For Black's comments, see "Justice Black, Champion of Civil Liberties for 34 Years on Court, Dies at 85," *The New York Times*, September 26, 1971.

<sup>35</sup> Sau-ling Cynthia Wong, "Keynote Lecture: Maxine Hong Kingston in a Global Frame: Reception, Institutional Mediation, and 'World Literature.'" *ALA Journal* 11 (2005).

<sup>36</sup> Elbert Lin, "Korematsu Continued..." *Yale Law Journal* 112.7 (2003) and Roger Daniels, "The Japanese American Cases, 1942-2004: A Social History." *Law and Contemporary Problems* 68.2 (2005).