

Right: Fred Korematsu with his redress check and letter of apology.
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Coram Nobis: The Error Before Us

By Kenji Murase, PhD

Coram Nobis is a Latin term meaning the “error before us.” A petition for a “writ of error *Coram Nobis*” is a legal procedure designed to protect criminal defendants against arbitrary and unlawful judicial action. Related to the better known writ of *habeas corpus* which protects against unlawful detention, *Coram Nobis* applies to persons who have been convicted and have served their sentence.

Coram Nobis is limited to cases in which a “fundamental error” or “manifest injustice” has been committed. A high burden of proof is required. It cannot be used to reopen and reargue points of law the courts have decided, but only to raise errors of fact that were knowingly withheld by the prosecutor from judges and defendants. Clearly, only defendants who can demonstrate the most outrageous and obvious governmental or prosecutorial misconduct would have any chance of winning in a *Coram Nobis* case.

In January 1983 a legal team led by Dale Minami and Peter Irons filed a *Coram Nobis* petition in the San Francisco federal district court on behalf of Fred Korematsu. Simultaneously, almost identical petitions were filed in Seattle on behalf of Gordon Hirabayashi, and in Portland on behalf of Minoru Yasui. The petitions argued that the 1943 and 1944

Supreme Court decisions in their cases, affirming the constitutionality of the World War II curfew and exclusion orders and upholding their convictions for violating the orders, were compromised by fundamental errors and manifest injustice on the part of the government. They charged that the government had withheld from the Supreme Court information about alteration, suppression and destruction of relevant evidence; e.g., knowledge of the falsity of General DeWitt’s allegations of espionage and sabotage by Japanese Americans, his racist view that inherent racial characteristics made it impossible to separate the disloyal from the loyal, and that military necessity justified the mass removal and incarceration of Japanese Americans.

The significance of the *Coram Nobis* petitions is that they coincided with a growing movement among Japanese Americans for some form of redress and reparations for the injustice of internment. By challenging the convictions of Hirabayashi, Korematsu and Yasui for violations of the curfew and exclusion orders, the petitions attacked the underlying legality of the exclusion and incarceration. By demonstrating that the Supreme Court’s convictions and the upholding

of the constitutionality of the exclusion and detention order were tainted by fraud and misconduct by the government, the petitions discredited the court’s rulings and legitimized the call for redress and reparations.

Given the overwhelming odds against them, the victory of the *Coram Nobis* legal teams was a remarkable achievement. Historically, never before in American legal history had a comparable effort been mounted to overturn convictions in cases that had been finally decided by the Supreme Court. The following account summarizes in a time-line the history and context of the *Coram Nobis* cases in which Sansei lawyers and their associates succeeded in exposing the government’s premeditated and calculated lies to the Supreme Court in order to manipulate the outcome of its ruling on the legality of the exclusion and internment orders. ■

