



Rebel Lawyer: Wayne Collins and the Defense of Japanese American Rights

By Charles Wollenberg

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Reviewed by Richard Dean

Rebel Lawyer: Wayne Collins and the Defense of Japanese American Rights is an elegantly written volume that describes three cases handled by Wayne Collins; it is not a full biography. Collins is not an iconic lawyer, but he was without question the leading advocate on behalf of the legal rights of Japanese-Americans during World War II and in the years immediately thereafter. The book details Collins's defenses of Fred Korematsu, Tokyo Rose, and Japanese-Americans who renounced their citizenship while in detention camps and became subject to deportation proceedings. The publication of *Rebel Lawyer* coincides with the current immigration debates, which address some of the same legal issues confronted by Japanese-Americans. The past is, as they say,

prologue—and *Rebel Lawyer* establishes that point.

Collins graduated from San Francisco Law School in 1927. He developed a wide-ranging solo practice, which was successful enough to not only allow him to raise a family, but also permitted him to handle many constitutional rights cases for Japanese-Americans without a fee.

Collins began his representation of Japanese-Americans when he was retained as counsel to Fred Korematsu in *Korematsu v. United States*, 323 U.S. 214 (1944). Korematsu was an American citizen who refused government orders to “report and assemble” after the outbreak of World War II. Collins and the Northern California Chapter of the ACLU represented Korematsu. However, the National ACLU instructed the Northern California Chapter to withdraw from representing Korematsu. The ACLU feared not only a backlash against the organization, but it also drew a distinction between the assembly and removal aspects of the executive orders, which it thought were constitutional, and the incarceration provisions, which it thought were not. *Rebel Lawyer* aptly details the clash within the ACLU and the constitutional issues raised by the executive orders.

Collins represented Korematsu individually; therefore, he was not directly impacted by this internal split. Collins challenged the constitutionality of the “assembly” provisions, arguing they were racially motivated and violated the principles of Equal Protection. That challenge was summarily denied by the U.S. District Court for the Northern District of California. Korematsu was undeniably guilty of not “assembling,” as required by the orders, but at trial Collins called Korematsu to testify in order to demonstrate that Korematsu presented no risk to the United States of America. Indeed, Korematsu had twice sought to enlist in the U.S. Army but had been rejected as physically unqualified. Korematsu received a very light prison sentence. However, Collins appealed the district court's decision to the Court of Appeals for the Ninth Circuit, which affirmed the lower court's findings. Subsequently, the U.S. Supreme Court agreed to hear the case.

Collins's oral argument to the Supreme Court was rhetorical flame throwing; Collins was a street fighter and not the usual understated appellate advocate. He also advanced many accusations of unethical conduct by government counsel. Years later, these allegations were proven to be true in

Korematsu v. United States, 584 F. Supp 1406 (N.D. Cal. 1984). While Collins lost Korematsu's case in a 6-3 decision, that ruling is now viewed as a dark chapter in American jurisprudence. The three separate dissents are well worth reading, particularly Justice Robert H. Jackson's dissent. On the same day that *Korematsu* was decided, another Japanese-American, Mitsuye Endo, received a favorable 9-0 decision from the Supreme Court on the incarceration portion of the order, where Collins also filed a brief. The Supreme Court accepted the distinction drawn earlier by the ACLU. *Korematsu* started in 1942 and ended in late 1944. Collins received no fee and paid many of the out-of-pocket expenses himself.

Collins' lengthiest and most stunningly successful cases were known as the "renunciation" cases, where Japanese-Americans who were detained renounced their American citizenship. There were a variety of reasons for the renunciations: some were outraged at their confinement, some assumed they were going to be sent back to Japan regardless of the outcome of the war and families needed to rescind citizenship in order to stay together, and some alleged that they were tricked or coerced. After the renunciations, the government made aggressive efforts to deport the "renunciants." The ACLU and the Japanese American Citizens League refused to help the renunciants. Collins did not think he could handle the thousands of cases involved, given the large time commitment. However, when no other legal group would assist the renunciants, Collins agreed to provide representation. Impressively, Collins was able to obtain an injunction barring mass deportation of the renunciants. He also filed a separate suit seeking the restoration of their citizenship. His basic argument was that citizens could not simply give up their constitutional rights and that government duress in the intern-

ment camps had led to the "renunciation."

The broad injunction originally granted by the district court was subsequently vacated by the Court of Appeals for the Ninth Circuit, finding that the decision was overbroad, which necessitated 20 additional years of individual hearings and a complex affidavit process. Thousands of Japanese-Americans regained their citizenship and hundreds of others avoided deportation. Collins did receive some fees for these cases, but it certainly was not a reasonable fee for 20 years of work.

Collins became better known by the general public when he litigated the "Tokyo Rose" case. Ironically, there was never an actual "Tokyo Rose." Rather, the name represented an amalgam moniker for female radio broadcasters used by the Japanese in support of its war effort. One of those women was an American citizen, Iva Toguri D'Aquino. She was born in California to Japanese immigrant parents. She graduated from the University of California-Los Angeles. In the summer of 1941, prior to the attack on Pearl Harbor, she went to Japan to help care for an aunt. After the war broke out, she was unable to evacuate Japan and return home. She was forced by the Japanese government to serve as a disc jockey for a program called "Zero Hour." Only a few of her recordings were recovered after the war and none contained any political content. She was arrested by the U.S. military in Japan and investigated by the Justice Department, which concluded that she had not violated any laws. She applied for a passport in 1947, desiring that the child she was carrying would be born in the United States. Egged on by the broadcaster Walter Winchell and the American Legion, the Justice Department investigated her once again and for a second time concluded no prosecution was warranted. However, Attorney General Tom Clark overruled that decision; political

pressure dictated that there would be a trial. D'Aquino was deported to San Francisco and charged with eight counts of treason. Collins spent two decades defending her, without any real fee paid for his services.

In trying to prove treason, the government had major problems. There were no overt acts; only her words could be used to substantiate the government's case. However, there was no tangible evidence of those words. Some servicemen testified that they had heard Tokyo Rose on the radio, but it was not clear whether they had heard D'Aquino speaking, as opposed to one of many other female broadcasters. Despite extremely thin evidence and due to the continuing hysteria, in 1949 she was convicted of one count of treason and was sentenced to 10 years in prison. She was released in 1956, due to good behavior. On her release from prison, she was met by an immigration official and told she was being deported; however, Collins prevented her deportation. After Collins's death, D'Aquino was pardoned by President Gerald Ford on the last day of his presidency. By that time, Collins' son had become one of D'Aquino's lawyers.

It is well known that civil liberties are an early casualty of war. As Justice Jackson himself once noted, "the rights of our clients, like the liberties of our people, are only what some lawyer can make good in a courtroom." *Rebel Lawyer* makes clear that one lawyer can make a significant impact in that regard. ☉

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