Johnnie L. Cochran Jr.: Portrait of a Trial Attorney

BY TERRIE L. ROBINSON

Legendary trial attorney Johnnie L. Cochran Jr. died March 29, 2005, at the age of 67 after a battle with cancer. Although he was internationally known for representing celebrities such as Michael Jackson, O.J. Simpson, and Sean “P. Diddy” Combs, Cochran was a star in the African-American community long before he began representing celebrities. Cochran built a reputation as an outstanding trial lawyer and community leader by successfully representing clients who had been subjected to police brutality or other civil rights injustices. Long before he represented Simpson, many considered him a hero.

Some knew him only for the simple and catchy phrase, “If the glove doesn’t fit, you must acquit.” There, however, was far more to Cochran in terms of his ability as a trial attorney and his life in general than this phrase or the media ever conveyed to the public. To get a full picture of Cochran, Minority Trial Lawyer consulted attorneys who knew and worked with Cochran to find out what distinguished him from his trial attorney peers and what misconceptions and untold truths there were about him. The attorneys, distinguished in their own right, are:

Continued on page 10

Fred Korematsu: Portrait of an American Patriot, Painted by His Attorneys

BY TERRIE L. ROBINSON

Fred Korematsu died March 30, 2005, at the age of 86 of respiratory failure. Korematsu and three other Japanese Americans—Gordon Hirabayashi, Minoru Yasui, and Mitsuye Endo—had challenged the constitutionality of the military orders that authorized the Japanese American internment during World War II. Their contribution to American legal history and civil liberties is immense, and virtually no American law student in modern times has graduated or will graduate from law school without having read Korematsu v. United States and the now discredited proposition for which it stands, as well as the stinging dissents of Supreme Court Justices Roberts and Murphy rebuking the majority for its overt and unmitigated racism.

Korematsu was born in Oakland, California, in 1919 and was a graduate of Castlemont High School. He was among 120,000 Americans of Japanese ancestry living on the West Coast when Japan attacked Pearl Harbor on December 7, 1941. Korematsu defied Civilian Exclusion Order No. 34, which directed that, after May 19, 1942, all persons of Japanese ancestry should be excluded from the “military area” that included San

Continued on page 12
CHAIRS’ COLUMN

A Special Issue on Redress

BY MANOTTI L. JENKINS, EDWARD B. ADAMS JR., AND BURNADETTE NORRIS-WEEKS
COCHAIRS OF THE MINORITY TRIAL LAWYER COMMITTEE

Last June—forty-four years later, a jury in Philadelphia, Mississippi, tried Edgar Ray Killen for the murders of Chaney, Goodman, and Schwerner. The jury did not find Killen guilty of murder, but it did convict him of three counts of manslaughter. The eighty-year-old Killen was sentenced to sixty years in prison.

At the same time that Killen was being tried, another debate about past wrongs raged in our nation’s capital. For more than a century following emancipation, our country saw literally thousands of African-Americans hanged by mobs. The United States Senate, however, did nothing. Over the past decades, efforts to remedy this inaction through an apology by the Senate were undone by filibusters.

Recently, however, the Senate passed a long overdue resolution apologizing for its inaction. That resolution passed unanimously, but not without controversy. The vote on the resolution for the apology was conducted by voice so that some senators’ votes were not recorded. The resolution ended up being sponsored by seventy-eight of the 100 senators. Some, apparently, thought that this wrong was too remote in time to be a concern of the Senate’s.

This issue of Minority Trial Lawyer is a special issue focusing on the issue of “redress” for past wrongs perpetrated against minorities by their own political leaders—the government of the United States of America. We believe this issue is very timely, particularly during a time when Americans of African ancestry are becoming increasingly vocal in demanding an apology and reparations for centuries of slavery, segregation and Jim Crow. And while none of the articles in this issue focus on that particular aspect of the minority quest for “redress,” these articles are timely, relevant, and in complete harmony with the universal chorus for justice being sung by groups of minorities throughout the country.

Continued on page 9
Many Americans are unaware that the first African-American heavyweight boxer was not Joe Frazier or Muhammad Ali, but Jack Johnson. On Independence Day in 1910, Jack Johnson defied the odds and became the first African-American man to prove that the world of sports was not solely for white America. His triumph, and the racial riots that resulted, led directly to a racially and politically motivated criminal prosecution and, ironically, to his erasure from the history books.

In 2004, on behalf of a public interest committee led by documentary filmmaker Ken Burns, I was given the opportunity to take steps to rectify this injustice. The Committee to Pardon Jack Johnson has prepared and submitted to the president an application to posthumously pardon Jack Johnson. While such a pardon, if granted, will come too late for Johnson himself, it is an opportunity to recognize America’s progress in the area of race relations, and I am proud to have played a small role in that process.

Johnson was convicted for violating the Mann Act because of his intimate relationship with a white woman. In order to understand his prosecution, it must be placed in its historical context. John Arthur (“Jack”) Johnson was born March 31, 1878, in Galveston, Texas, to former slaves, Henry and Tiny Johnson. During this post-reconstruction era, segregation and disenfranchisement laws were widely supported and lynchings were frequent. Despite being born in the time period between the Black Codes and Jim Crow, Johnson from a young age demonstrated his independence, his ability to call attention to himself, and his desire to break all the rules.

Johnson began his boxing career in the late 19th century, a time when boxing was an extremely popular sport followed by men of every class and race. He served as a sparring partner for veteran boxers and often traveled to take on other black fighters. In 1903, Johnson won the Negro heavyweight championship at the age of 25. The “Negro heavyweight championship” epitomized the notion that African-American boxers were not permitted to compete against white fighters in championship matches.

Johnson made it no secret that he wanted to fight the then-reigning, undefeated world heavyweight champion, James Jeffries (the “Boilermaker”). Jeffries continuously responded that it was beneath him to defend his title against an African-American man. At the time, the common belief was that blacks had “yellow bellies,” smaller brains, and less physical endurance than whites. Thus, rather than face Johnson in the ring, Jeffries retired from boxing in May 1905. Martin Hart, a white boxer, was crowned by Jeffries as the new heavyweight champion of the world.

Johnson won many fights and insisted on the opportunity to become heavyweight champion. His reputation soon grew, and sportswriters began to acknowledge his talent. As quoted in the St. Louis Post-Dispatch: “Jack Johnson is a colored man, but we cannot get away from the fact that he is the greatest living exponent of the art of the hit-and-getaway and as such, he is the outstanding challenger for the title.”

Finally, after a promise of $30,000, Canadian Tommy Burns, the then-heavyweight titleholder, agreed to fight Johnson December 26, 1908, in Australia. Johnson effortlessly defeated his opponent. He carried the bout to the 14th round but dominated every single one. After 14 years of boxing, at the age of 30, Johnson became the first African-American man to be crowned heavyweight boxing champion of the world.

Johnson’s win became a threat to the myth surrounding white physical and
mental superiority. As a result, many whites questioned the legitimacy of Johnson’s title, arguing that the rightful titleholder remained with the undefeated Jeffries. Thus began the search for “The Great White Hope”—a white boxer who could replace Johnson as champion.

Johnson defeated each challenger, and many pleaded for Jeffries to come out of retirement, believing that he was the only one who could put Johnson in his place. Author Jack London wrote: “Jeffries must emerge from his alfalfa farm and remove that smile from Jack Johnson’s face. Jeff, it’s up to you.” At first, Jeffries resisted, but he finally gave in to both public pressure and the astounding prize in the amount of $100,000 in fight film rights. The bout was widely publicized as the “fight of the century” and took place in Reno, Nevada, on July 4, 1910.

After 15 rounds of a brutal beating by Johnson, Jeffries’s corner called for the fight to be ended. It was at that moment that Jack Johnson became the undisputed heavyweight champion of the world. Even Jeffries later admitted, “I could never have whipped Jack Johnson at my best. . . . I couldn’t have reached him in a thousand years.”

The impact of Johnson’s victory was felt across the country. A white man slashed the throat of a black man in Houston who was cheering Johnson’s triumph; two other blacks were killed in Little Rock as a result of an argument with a group of whites about the match.

The exact number of victims is unknown, but both races suffered injuries as a result of what whites viewed as the greatest upset in history.

Jack Johnson had successfully defended his title against every white challenger who came at him. He was a hero to African-Americans of all ages and a threat to most whites. Johnson did not seem to care and lived his life the way he sought fit, which included dating white women. It was this act, viewed as slap in white America’s face, that was the cause of his demise.

In the fall of 1912, the United States began investigating the relationship between Johnson and Lucille Cameron, a white woman. The government wished to pursue charging Johnson with violation of the Mann Act or conspiracy to do so.

To the government’s dismay, shortly after beginning its investigation, in a memorandum for the Attorney General, a Justice Department official, Acting Chief of the Bureau of Investigation Bielaski, acknowledged the impropriety of the Mann Act charge.

Despite the view that Johnson’s case was not the proper subject for prosecution under the Mann Act, the government pressed on. The submission of an anonymous letter by a “Chicagoan” caused the government to focus on another one of Johnson’s many white female traveling companions, Belle Schreiber. Making matters worse was a photo appearing in a Boston newspaper with the title, “Jack Johnson and his pretty white wife.”

Soon after, Johnson was indicted by a grand jury for various alleged criminal violations of the Mann Act.

The Mann Act was passed in June 1910. The Act states: “Any person who shall knowingly transport or cause to be transported, or aid, or assist, in obtaining transportation for, or in transporting, in interstate or foreign commerce . . . any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose . . . ” would be deemed a felony punishable by a fine of no more than $5,000, imprisonment not to exceed five years, or both.

The act was intended to put an end to interstate and international trafficking of women and girls. The act was to be known as the “White Slave Traffic Act,” and the author, James Robert Mann, declared that the purpose of the bill was not to interfere or usurp the police power of the states, nor was it intended to regulate prostitution, the practice of voluntary prostitution, or the places where prostitution or immorality was practiced. Rather, it was enacted to prevent “panderers and procurers” from compelling thousands of women and girls to enter and continue in the life of prostitution against their will. Although its stated purpose was to prevent the widespread “epidemic” of the commercial traffic of women, it was used against Johnson to criminalize consensual sexual activity.

The 11-count indictment amounted to the following allegations: (i) Johnson had paid Ms. Schreiber’s fare for a train ride from Pittsburgh to Chicago; (ii) that once in Chicago, Johnson provided funds, which Ms. Schreiber used to set up a house of prostitution; and (iii) that Johnson had a sexual relationship with Ms. Schreiber while in Chicago.

Despite the government’s scant and mostly hearsay evidence, the jury returned a guilty verdict after deliberating for less than two hours. Johnson’s motion for a new trial was denied, and the district court imposed a sentence of (i) imprisonment of a year and a day and (ii) a fine of $1,000.

Johnson filed an appeal and then fled the United States while his appeal was pending. On appeal, the Seventh Circuit threw out his conviction on the charge that he solicited, aided, or abetted Ms. Schreiber’s employment as a prostitute, finding insufficient evidence to support intent. However, the court affirmed the other portions of the conviction. Despite Johnson’s arguing that the Mann Act did not apply to consensual sexual behavior, the court rejected the argument, holding that the statute covered all sorts of “sexual immorality, and that fornication and adultery are species of that genus.” Johnson did not return to the country until seven years later to serve out his sentence.

In its 2004 petition, the Committee to Pardon Jack Johnson outlined five clear reasons why Johnson must be pardoned. First, Jack Johnson was prosecuted for the “crime” of fraternizing with white women. He should be pardoned as a symbolic recognition at the highest level that America no longer seeks to stanch the hopes and aspirations of black Americans, even those who are flamboyant, defiant, or controversial.
pardon is now sought occurred not despite Johnson’s athletic achievements, but because of those achievements and the actual and potential power and prowess of African-Americans that they demonstrated.36

Fifth, and finally, Jack Johnson should be granted a pardon in recognition of his historical and groundbreaking significance as the first African-American heavyweight champion of the world.37

On a personal note, I firmly believe that the interests of justice and public policy demand for the posthumous pardon of Jack Johnson. When you ask someone, “Who is Jack Johnson?”38 unfortunately, unless they have followed the sport of boxing, they likely will respond, “Jack who?” Admittedly, it was not until I was reminded of the 1970s film, “The Great White Hope” that I made the connection.

As the first African-American to hold the heavyweight title in boxing during a time where racial divide reigned supreme, Johnson merits a place as one of the most influential figures in American history. A man as courageous as he, who was willing to defy all odds and stand up against “white America” as an equal, says much about his character, strength, and determination. The horrible injustice that Johnson suffered at the hands of a racist society highlights the shameful past of our nation. Although America no longer supports racial discrimination and segregation, it has a long way to heal. Pardoning Jack Johnson would bring us one step closer.

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Fyi... The Mann Act Still in Existence

The Mann Act, 18 U.S.C. § 2421, has not been repealed. In fact, defendants have been found in violation of the Act as recently as the 1980s. See U.S. v. Hasting, 461 U.S. 499 (1983). To view the act as passed by the Sixty-First Congress on June 25, 1910, visit www.pbs.org/unforgivableblackness/knockout/mannact_text.html.

The Committee to Pardon Jack Johnson

Members of the Committee to Pardon Jack Johnson include Sen. Edward M. Kennedy, Sen. John McCain, Attorney General Eliot Spitzer, Jesse Jackson, Sugar Ray Leonard, as well as other prominent and influential figures who joined forces to support this effort.

Second, pardoning Jack Johnson is necessary to expunge from the annals of American criminal justice a racially motivated abuse of the federal government’s prosecutorial power.39

Third, Jack Johnson’s historical significance and the public interest are served by consideration of this pardon application notwithstanding Johnson’s death.40

Johnson not only is the first African-American heavyweight champion, but also the first American athlete to so prominently break through the color line.41

Fourth, pardoning Jack Johnson will demonstrate that this nation, at the highest level, can make amends for the problems of its past. The conviction for which a

Endnotes

3. Id.
5. Id.
6. Id. at 4.
8. See Documentary.
9. Id.
11. See Documentary; See also Papa Jack at 68.
12. See Documentary; See also Pardon Petition, at 8.
14. See Documentary.
16. Id. at 10.
17. Id. at 11.
18. Id.
19. Id. at 12.
20. Id. at 13.
23. Id. at 497–99.
24. Id. at 499; See also Committee on Interstate and Foreign Commerce, 61st Congress, 2d Session, House of Representatives Report No. 47, December 21, 1909.
26. Id.
27. Id. at 17; see Johnson v. United States, 215 F. 679, 681 (7th Cir. 1914).
29. Pardon Petition, at 17.
30. Under Article II, § 2 of the U. S. Constitution, the president as Chief Executive has the authority to grant pardons. See also 28 C.F.R. § 1 et seq.
31. Pardon Petition, at 23.
32. Id.
33. Id. at 23–24.
34. Pardon Petition, at 24; See also discussion, Id. at 24–25. (Under similarly compelling circumstances, a posthumous pardon was previously granted by the president in February 1999 in response to the application brought on behalf of Army Lieutenant Henry Flipper.)
35. Id. at 26.
36. Id.
37. Id. at 27.
The Plight of the African-American Sailors of Port Chicago: Discrimination Without Redress?

BY TERRIE L. ROBINSON

As the child of an African-American World War II Navy veteran, I heard little, if anything, from my father about his wartime service and sacrifice for his country. I guess I assumed that my father, like fellow members of “The Greatest Generation,” was just being modest about his service and sacrifice for this nation’s freedom.

It wasn’t until years later that, as a practicing attorney in San Francisco in 1997, I would find out that my father wasn’t being modest; he was angry. It wasn’t until then that I connected the dots between his silence about his military service, his refusal to even set foot on a sailing vessel, and his adamant refusal to set foot in the state of Hawaii, where he had been stationed on a Navy ship and, because of racial discrimination, assigned to the most demeaning tasks. It was then, while working on a National Bar Association program about the African-American sailors of Port Chicago, that I asked my father, “What do you know about the African-American sailors of Port Chicago?”

Despite the passage of more than 50 years since his service in the Navy, he was still angry.

My father recounted being stationed in Hawaii and following the accounts of events at the Port Chicago Naval Magazine in California via The Chicago Defender, one of the nation’s largest African-American-owned newspapers. He spoke of the munitions explosion at Port Chicago, and of how only African-American sailors had been assigned to load munitions at Port Chicago, of how “those guys never had a chance” when the explosion occurred. He spoke of the trial and conviction of many of the surviving African-American sailors of mutiny for refusing to load munitions after the explosion even though none of them had ever been properly trained to load munitions. He spoke with pride of Thurgood Marshall’s involvement in the case. His eyes narrowing to watery slits of anger, he summed up his feelings about the events: “What happened to those guys was a crime.”

**July 17, 1944, 10:18 p.m.: The Explosion at Port Chicago**

On July 17, 1944, at 10:18 p.m., there was an explosion at the Port Chicago Naval Magazine in California near what is now the Concord Naval Weapons Station. According to the Navy’s own historical website, African-American Navy personnel units were assigned to the dangerous work of loading munitions at Port Chicago under the supervision of white officers. The explosion involved 4,606 tons of munitions and 429 tons of munitions on the ship pier. All 320 cargo handlers, crewmen, and sailors on duty that night, two-thirds of whom were African-Americans from the ordnance battalion, were killed instantly. The seismic shock wave from the explosion was felt as far as Boulder City, Nevada. The Navy reported that a pillar of fire and smoke stretched more than two miles into the sky above Port Chicago, and someone on a plane flying at 9,000 feet reported seeing chunks of white hot metal “as big as a house” fly past. Damage even was caused 48 miles across the bay in San Francisco.

Robert Allen is the author of one of the definitive works on the Port Chicago African-American sailors, *The Port Chicago Mutiny: The Story of the Largest Mass Mutiny Trial in U.S. Naval History*, which was based on military documents declassified after 1972. Both the Navy and Allen concluded that neither the white officers of Port Chicago nor the African-American Port Chicago sailors given the task of loading munitions had been properly trained for this task. One of the African-American sailors convicted of mutiny, Joe Small, is quoted by Allen as saying that the officers encouraged competition in loading munitions tonnage, and Allen states that the sailors loading munitions were goaded into competition by...
threats of being punished or losing privileges. The Navy, states, in the passive voice, that “[a] sense of competition developed for the most tonnage loaded in an eight-hour shift. As it helped to speed loading, competition was often encouraged.”

**August 9, 1944: The Work Stoppage**

On August 9, 1944, 258 African-American Port Chicago sailors refused to return to the work of loading munitions. Whether they actually disobeyed an order to return to work is a matter of contention. As stated in Allen’s book, Small’s account of the events surrounding the work stoppage was that, after chow on the evening of August 9, the Fourth Division men of Port Chicago were ordered to fall in to work. When ordered to march “column left” to a ferry that would take them to the ammunition dock, the division stopped in its tracks.

According to Small’s account, the base chaplain was called, and the men said they did not want to load or handle ammunition. Ultimately, of 328 men in three divisions, 258 refused to return to work, although, according to Allen, it is uncertain whether they were given a direct order to return to work or were simply asked if they were willing to work. When given a second opportunity to reconsider their decisions, 208 of the 258 expressed a willingness to return to work; instead, they were interrogated, subjected to summary courts-martial, and given bad conduct discharges and three months’ forfeiture of pay. The remaining 50 were charged with mutiny, and many of the 208 who were subjected to summary courts-martial were called to testify against them.

**Trial and Conviction for Mutiny**

The mutiny trial for the 50 sailors began on September 14, 1944, at the naval installation at Yerba Buena Island in the San Francisco Bay more popularly known as Treasure Island. On the 22nd day of trial, while the defense was putting on its case, Thurgood Marshall sat in on the proceedings and remained for 12 days, planning his appeal strategy. Marshall called for a formal investigation by the government of the circumstances leading to the work stoppage. However, on October 24, 1944, after 32 days of hearing and a mere 80 minutes of deliberation that may have included a lunch break, all 50 men were convicted of mutiny. Although they were initially sentenced to 15 years in prison and were dishonorably discharged, at least one was recommended for clemency due to his youth. Marshall filed an appeal on behalf of the men and personally argued their case before the Navy’s Judge Advocate General’s Office in Washington on April 3, 1945. The convictions were upheld.

In January 1946, 47 of the Port Chicago men convicted of mutiny received clemency, were released from prison, and eventually left the Navy. Two remained in a prison hospital and a third was not released because of a bad-conduct record. They were all eventually discharged from the Navy “under honorable conditions,” but their mutiny convictions still stand.

**Efforts at Redress**

At least one of the Port Chicago sailors convicted of mutiny sought to get all of their cases reopened in 1977, without success. However, Rep. George Miller (D-California), who represents the congressional district that is home to what was Port Chicago, sought to have the convictions of the 50 reversed. He initiated legislation that in 1992 required the Board for Correction of Naval Records to review the convictions. In 1994, the Board concluded that although prejudice may have resulted in the assignment of African-American sailors to the dangerous task of loading munitions, race was not a factor in the trial outcome. This conclusion was upheld by then-Secretary of Defense William Perry. Rep. Miller worked with Brian Busey, a partner in the Washington, D.C., office of Morrison and Foerster, and, in 1999, Busey and a team of attorneys successfully secured a pardon from President Clinton for Freddie Meeks, one of the 50 convicted of mutiny. What about the other Port Chicago sailors convicted of mutiny?

There are numerous obstacles to redress—the passage of time and the deaths of most of the sailors, the difficulty of achieving redress as a group, the refusal of some of them to seek a pardon because they believed they had done nothing wrong, and the desire of many of them while they were alive to leave the matter in the past.

Passage of time is one of the biggest hurdles to redress for the Port Chicago sailors convicted of mutiny. It is estimated by John Lawrence, the democratic staff director of the House Committee on Education and the Workforce and a member of Rep. Miller’s staff, that only two of the 50 Port Chicago sailors convicted of mutiny are even alive today. Lawrence noted that there was little, if any, precedent for a posthumous presidential pardon and could recall only one such pardon. Noting the efforts to secure a posthumous pardon for Jack Johnson (see page 3), he said that a posthumous presidential pardon for Johnson might pave the way for posthumous pardons for those of the 50 Port Chicago sailors who have since died.

However, Lawrence cautioned about the difficulty of obtaining a group pardon, posthumously or otherwise. He noted that securing a pardon is “difficult when dealing with a large group of individuals” because a pardon is predicated on the post-conviction good behavior of the individual in question. Two Port Chicago sailors who were contacted about the possibility of securing pardons at the same time that the effort to secure Freddie Meeks’s pardon was being initiated declined the opportunity. A presidential pardon “does not exonerate [someone] from [his] conviction,” stated Lawrence. Some of the former surviving 50 Port Chicago sailors convicted of mutiny were approached by others about the possibility of securing a presidential pardon, but, as a group, they were not interested in receiving a pardon.

The avenues of judicial redress available to the Port Chicago sailors show even less promise. According to Eugene R. Fidell, considered one of the nation’s experts in military law, although the 1992 decision of the Board for Correction of Naval Records finding no error in the trial proceedings would have been subject to judicial review, the six-year period in which to seek such review pursuant to the Administrative Procedure Act has long
passed. Judicial review of the decision was not sought because, as Busey put it, “We thought there was no hope.” Rep. Miller’s staff had worked closely with private attorneys such as Busey, attorneys from the Clinton administration, and Department of Justice attorneys to find the best avenue for redress after the Navy’s decision, and it was decided that seeking presidential pardons would be the best way.

Would a petition for a writ of coram nobis—as used to overturn the conviction of Japanese internment protestor Fred Korematsu—hold any potential for judicial redress for the living Port Chicago sailors? The petition, which is used to correct errors in criminal convictions when other remedies are not available, holds little promise of success. Fidell noted that although the U.S. Court of Appeals for the Armed Forces clearly has the authority to issue writs of coram nobis under the All Writs Act, he was aware of no instance in which it had done so with respect to a court-martial tried before the Uniform Code of Military Justice took effect in 1951. Fidell stated, “I am skeptical that [this] route would prove productive in the case of the surviving Port Chicago sailors.”

What about pardons for the living Port Chicago sailors? According to Lawrence, President George W. Bush has been asked to initiate review of the Port Chicago matter but has not been heard from on the subject.

Rep. Miller, with the support of the Equal Justice Society in San Francisco (EJS), Allen, San Francisco attorneys Eva Paterson and Dale Minami, and the Rev. Diana McDaniel of the Unity Church of San Leandro, has initiated efforts to have a commemorative stamp created in honor of the Port Chicago sailors and expand the Port Chicago National Memorial, which Rep. Miller created at the site of the explosion in 1994. The EJS is also committed to keeping the story of the sailors’ sacrifice alive through an organization called the Port Chicago Committee (www.portchicago.org). When asked the question that often surfaces—“Were the Port Chicago sailors in fact mutineers?”—Rev. McDaniel responds in the negative: “[I]t seems to me that they were not trying to take over any ship or base. They were not attacking anyone. They simply refused to go to work. This is not mutiny.

[There is such a thing as an illegal order written in military statute. They were working under unsafe conditions, everyone died, and they were asked to go back to work. It appears to be an illegal order.”

When asked what citizens can do to support the cause of the sailors of Port Chicago, McDaniel suggested that they contact legislators and the U.S. Postal Service to support creation of the commemorative stamp and “do all they can to make sure certain basic human rights are respected as they conduct their lives.”

In all likelihood, the convictions of the Port Chicago sailors may never be objectively reviewed or overturned, which makes African-American WWII veterans like my father angry. Very, very angry.

Terrie L. Robinson is an attorney and writer living in Sacramento, California, and an editorial board member of Minority Trial Lawyer. This article was completed with the assistance of Keith Kamisugi and Timothy Naccarato.

Endnotes
4. Id.
5. Id.
6. Id.

8. www.history.navy.mil/faq/faq80-1.htm; Allen, The Port Chicago Mutiny at 41–42 (“The black enlisted men, who were the bulk of the labor force at Port Chicago, were also untrained for the work they were expected to perform. Their training at Great Lakes had not included any instruction in ammunition loading. As new men arrived at the base, the common practice was to assign a few experienced men to work with them until they had learned their jobs.”)
11. Allen, The Port Chicago Mutiny at 119 (“Elmer Boyer, Lieutenant Delucchi’s chief petty officer in the Fourth Division, called by the defense to testify, said that Delucchi told him nothing about loading ammunition before August 9. At the muster that day Boyer, who never refused to work and was not one of the defendants, said he heard no derogatory remarks by any of the men. He said it came as a surprise to everybody’ when the men broke ranks after the ‘Column left’ order. Boyer then asked the men, ‘What men are going to work?’ The majority of the men fell out, and he began writing names in his notebook. Boyer said that at no time did he ever hear Lieutenant Delucchi give any of the men a direct order to load ammunition.”).
12. Id. at 81.
13. Id.
14. Id. at 82.
15. Id. at 87, 127.
16. Id. at 93.
17. Id. at 116–18, 130.
18. Id. at 126–27.
19. Id. at 133.
20. Id. at 127, 135.
21. Id. at 139.
22. Id.
24. Id.
Government upheld those convictions.

Ms. Robinson also authors an article entitled, “Fred Korematsu: Portrait of An American Patriot, Painted by His Attorneys.” The case of Fred Korematsu, an American of Japanese ancestry, precipitated a famous U.S. Supreme Court decision discussed in law school Constitutional law courses throughout the country. Mr. Korematsu challenged the constitutionality of the now infamous internments of Japanese Americans during WWII, which resulted from the Japanese attack on Pearl Harbor on December 7, 1941. As revealed in a poignant interview of two attorneys who represented Mr. Korematsu during a later proceeding to redress the patently racist 1944 conviction, Mr. Korematsu’s conviction was overturned in 1984 when evidence was presented of the U.S. government’s suppression of critical evidence during the original trial. As further vindication for Mr. Korematsu, in 1998, President Bill Clinton presented him with the Presidential Medal of Freedom, the nation’s highest civilian award.

Also appearing in this issue is a particularly timely article by Ms. Robinson entitled, “Johnnie L. Cochran Jr.: Portrait of a Trial Attorney.” In this article, Ms. Robinson, through the accounts of four attorneys who knew and worked closely with the recently deceased and legendary attorney, vividly portrays the depth and breadth of one of the most famous and skilled trial attorneys this country has ever witnessed. These attorneys discuss important subjects such as Attorney Cochran’s legacy, what made him superior to his peers, untold truths about him, and the biggest misconceptions about him.

Finally, Attorney Cynara Hermes of the law firm Proskauer Rose LLP in New York, contributes a highly informative article entitled, “Restoring the Legacy of Jack Johnson,” which is a detailed account of the wrongful conviction of famed heavyweight boxing champion, Jack Johnson. As Ms. Hermes reveals, Mr. Johnson, who was the first African American heavyweight champion, was the victim of a racially motivated conviction in 1913 under the Mann Act, which was intended to counter the interstate and international trafficking of women and girls for the purpose of prostitution against their will. As history has made unassailably clear, the U.S. government brought charges against Mr. Johnson under this federal statute simply because of his boldness, physical prowess, and audacity to intimately consort with Caucasian women. In 2004, the Committee to Pardon Jack Johnson filed a petition to the president seeking a posthumous pardon of Mr. Johnson.

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Johnnie L. Cochran Jr.

Continued from page 1

Nelson L. Atkins. Atkins is a senior partner in the firm of Atkins and Evans in Los Angeles. He attended elementary school with Cochran’s sister, Pearl, and, influenced by Cochran, followed in Cochran’s footsteps by attending Loyola Law School, Los Angeles, and working for the Los Angeles City Attorney’s Office. Atkins later became one of Cochran’s first partners in private practice.

Shawn Chapman Holley. Chapman Holley is the managing attorney of the Los Angeles office of The Cochran Firm. She first met Cochran when he came to speak at Southwestern University School of Law when she was a law student there. Chapman Holley thought then that he was one of the greatest lawyers who ever lived, and her opinion has not changed.

Willie Gary. Gary is one of the nation’s most successful trial attorneys and is affectionately known by his peers as “The Giant Killer.” A senior partner in the firm of Gary, Williams, Parenti, Finney, Lewis, McManus, Watson & Sperando, PL, in Stuart, Florida, Gary was friends with Cochran and served with him as co-counsel in litigation against the Disney corporation.

John Van de Kamp. Van de Kamp currently serves as president of the State Bar of California. He served as the Attorney General of California from 1983 to 1991 and served as the Los Angeles District Attorney from 1975 to 1983. During his tenure as the Los Angeles District Attorney, Van de Kamp appointed Cochran to the third-highest post in the office. He is currently a partner with the law firm of Dewey Ballantine in Los Angeles.

What Made Cochran Better Than His Peers?

Attorneys who worked with Cochran were uniform in noting that what separated Cochran from his peers was “preparation, preparation, preparation.” According to Chapman Holley, Atkins, Gary, and the many attorneys who spoke of Cochran at the numerous tributes that followed his death, this was Cochran’s motto. Cochran believed and demonstrated that, as Gary states, “The best prepared attorney, more often than not, is going to win.”

Equally key to Cochran’s success as a trial attorney was his personality. According to Gary, Cochran’s “humility, his down-to-earth personality, and his ability to make people feel like ‘we’re all in this together’” endeared Cochran to clients and juries alike. “[Johnnie’s] ability to make friends with jurors was a big plus,” Atkins notes. “He had an excellent memory, and during voir dire he would memorize the names of all the jurors and their respective backgrounds. In examining jurors, he would make his examination very personal and very individualized,” which endeared him to jurors because they saw that he had taken the time to know them individually. The rapport he established with jurors made it difficult for them to vote against his clients because, as Atkins observes, “They would be voting against Cochran himself, someone they had come to see as a friend.”

According to Van de Kamp, Cochran had a fresh and vibrant personality, got along with everyone, never made any long-term enemies, and never burned any bridges. He even got along well with the deputy district attorneys he had battled prior to joining the Los Angeles District Attorney’s Office. Van de Kamp recalls that Cochran “came across as likable and very articulate. . . . He had the ability to communicate like Ronald Reagan. . . . This, combined with his intelligence, was powerful.” Van de Kamp notes that Cochran was “the most likable attorney in the courtroom during the O.J. [Simpson] trial.”

One of Cochran’s habits still influences how Atkins practices today. “Johnnie would acknowledge everyone in the courtroom—the clerk, the court reporter, and the bailiff. He would ask all of the courtroom personnel what he could do to accommodate their needs. And then, by the time the trial was under way, when he walked into court, others would think, ‘This is the guy who makes my job easier,’ and this attitude [toward the courtroom personnel] was observed by the jurors.” To this day, Atkins says he makes it a habit to acknowledge everyone in the courtroom, in particular the court clerk, the court reporter, and the bailiff.

Cochran’s clients loved him because he didn’t treat them as just clients. “Johnnie cared a lot about his clients, no matter how uneducated or unsophisticated they were,” Atkins notes. “He let his clients know that he was interested in them personally as well as in their cases.”

Cochran would often ask his clients their opinions regarding strategy in their own cases and, long after he had ceased representing them, he would call them from time to time and send them Christmas cards. “That’s why there were over 5,000 people at his funeral,” Atkins says. Although he clearly knew the law and how to try cases, it was this side of him that, in Atkins’s view, made Cochran special.

“He was the most decent, kind, and thoughtful human being I’ve ever been associated with,” Gary says.

As Chapman Holley states, “It sounds cliché, but ‘to know him was to love him.’”

Van de Kamp: He had the ability to communicate like Ronald Reagan. . . . This, combined with his intelligence, was powerful.

The Biggest Misconceptions About Cochran

The biggest misconceptions about Cochran, both Atkins and Gary point out, came from Cochran’s work in the O.J. Simpson trial. Atkins says the biggest misconception about Cochran is that he “played the race card” during the Simpson trial. Cochran’s use of Mark Fuhrman’s prior statements that included the “n word” “was not a race card; it was the way it was,” according to Atkins. “Having a police officer calling people ‘n*****’ was wrong—that wasn’t a race card.”

In a similar vein, Gary notes that the Simpson trial divided America and divided the races. “A lot of people didn’t understand that Johnnie was doing his job. When you . . . represent a client, you take on the burden of upholding the law. . . . Your pledge to uphold the U.S. Constitution requires you to do what is right.” Gary adds that the public...
did not understand that Cochran’s duty to zealously defend Simpson was defined and required by the law and the Constitution itself. “People gave him a bad rap for representing O.J.,” he says.

The Untold Truths About Cochran

The truths about Cochran that seldom made it to press were his kindness, humility, sense of humor, and deep faith. Gary lauds Cochran’s ability to demonstrate that, although we all have to make a living, “money was secondary to him.” Van de Kamp notes that Cochran “represented a whole lot of working people” and “[took] cases without much in the way of fees.”

“He would help you any way he could,” Gary says. “He was committed to the proposition, ‘Place people above profit.’” This made him a lawyer’s lawyer; it put him on another level.”

Atkins recounts a story about an attorney friend of Cochran’s who told Cochran that his mother would be attending the Simpson trial and asked if Cochran would introduce himself to her. Despite all that was going on during the Simpson trial, on the day the attorney’s mother attended the trial, Cochran spoke to the trial spectators prior to the jury’s being called in and asked to speak to the woman by name. He then introduced himself and courteously gushed about how her son was an excellent attorney. Raised as a Baptist by parents who were senior to Cochran and oversaw the consumer law and youth programs of the office, Van de Kamp says he had a sense that “Johnnie thought he could make some real changes from the inside.”

As a role model for other minority trial attorneys, Cochran “was very accepting of this role and considered it a blessing,” according to Chapman Holley. “He relished combating injustice” and “didn’t like the games that are played as part of the adversarial process.” What Cochran liked most about trial work was evident in the skills for which he was admired by other trial attorneys: matching wits with other trial attorneys, developing evidence, and, most of all, presenting arguments. “He had a silver tongue,” Atkins says. “He could argue.”

The trial attorneys Cochran admired included Barry Scheck, Peter Neufeld—“because of the important work they do,” Chapman Holley notes—as well as some Los Angeles African-American trial attorneys who were senior to Cochran and influenced him: Charles “Charlie” Lloyd, Leo Branton, and Earl Broady. Cochran also admired Larry Feldman, whom he hired to represent him, as well as Tom Girardi, a classmate of Atkins’ s. His main idol? “Thurgood Marshall,” Atkins notes.

Cochran’s greatest legacy may not be the many clients he represented but the spirit of excellence he brought to representing them. Gary describes Cochran’s legacy as knowing that “your best is always good enough.” His legacy to trial attorneys? “Preparation, preparation, preparation.”

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Fred Korematsu

Continued from page 1

Leandro, where Korematsu had remained. He was arrested, convicted in federal district court, and ultimately took his battle all the way to the U.S. Supreme Court, where he lost. The Supreme Court upheld Korematsu’s conviction based in part on precedent upholding the conviction of Gordon Hirabayashi for violating a curfew order. The curfew order, like Civilian Exclusion Order No. 34, was issued pursuant to Executive Order 9066 and a 1942 act of Congress that made it illegal to violate any restrictions of a military area prescribed by an executive order of the president or an order of the secretary of war.

Although he lost his civil rights battle before the U.S. Supreme Court back in 1944, he eventually won the war for America’s conscience by forcing the U.S. judicial system to expose not once, but twice, America’s unjust treatment of Japanese Americans during World War II. While seeking to have his conviction overturned some 40 years later, Korematsu and his legal team exposed the government’s deception regarding the alleged security threat posed by Japanese Americans.

Peter Irons, a former professor of political science at the University of California, San Diego, along with the help of Aiko Herzig-Yoshinaga, found secret documents in the government’s archives showing that the Federal Bureau of Investigation, the Office of Naval Intelligence, and other intelligence agencies had actually concluded that Japanese Americans on the West Coast had committed no wrongs and had not been spying as the government had claimed. This evidence had been suppressed in an effort to support convictions of Japanese Americans at all costs. These newly discovered documents fueled Korematsu’s second climactic legal battle against the government—this time to overturn his conviction by seeking a writ of coram nobis.

In 1984, Judge Marilyn Hall Patel of the U.S. District Court for the Northern District of California granted the writ and vacated Korematsu’s conviction. Korematsu’s success in getting his conviction overturned and exposing the wrongful conduct of the government during World War II helped pave the way for federal legislation authorizing payments and an apology to Japanese Americans interned during World War II.

In 1998, President Clinton presented Korematsu with the Presidential Medal of Freedom, the nation’s highest civilian award, while likening Korematsu to Linda Brown and Rosa Parks.

Despite his advanced age and diminishing health, Korematsu remained steadfast in his commitment to teaching the lessons of the internment by filing an amicus curiae brief in support of the petitioners in the Guantanamo Bay detention cases, Rasul v. Bush, which the U.S. Supreme Court most recently decided in favor of the detainees and recognized their right to challenge the conditions of their confinement in U.S. courts.

Dale Minami and Donald K. Tamaki of the law firm of Minami, Lew and Tamaki, LLP, were two of the attorneys who represented Korematsu in his coram nobis proceeding. Minority Trial Lawyer asked them about Fred Korematsu and his contribution to history.

MTL: Describe Mr. Korematsu. Was he an unwilling hero? It has been reported that the reason he disobeyed the military order to turn himself in for internment was because he didn’t want to be separated from his girlfriend. Is this true?

Donald K. Tamaki (DKT): It is true that Fred wanted to remain with his girlfriend, and that one could say that he was acting in his self-interest in evading the internment until arrest. However, as Professor Peter Irons has remarked, often the most courageous acts for civil rights occur not because individuals intend to take selfless heroic stands, but because they were merely pursuing their own self-interests at the time. Rosa Parks was tired after working a long day and was not in the mood to suffer the indignity of giving her seat to a white man. Anne Frank and her family simply wanted to live and be left alone. The important thing to bear in mind in these and other cases is what individuals “do” in the face of injustice. In this
case, Fred was willing to fight against all of the weight and power of government, the Army, the courts, and public opinion, and to suffer the consequences of that fight.

In 1983, while leading a fairly comfortable anonymous life, he was again willing to put his reputation on the line and reopen his case, not knowing whether he would again lose and be the subject of ridicule and scorn. A couple of days prior to our filing of Fred’s petition, we advised him that he might want to warn his employer that the Korematsu name might again be splashed across the front pages of the newspapers. Fred told his boss that he would be filing a petition to reopen his case and that he might be in the public spotlight. Fred’s boss took a very dim view of this, asking, “Why do this now?” Despite his boss’s negative feelings, Fred was determined to proceed. On the day of the filing of Fred’s petition, every national and local news agency covered the story—ABC, CBS, NBC, CNN, The Washington Post, The New York Times, et al. Subsequently, Fred lost his job.

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MTL: To your knowledge, how did the Japanese American community view Mr. Korematsu after he stood up to the government during World War II?

DKT: By the end of 1942, Japanese Americans were getting hammered, having lost their freedom, property, businesses, etc. Many probably felt that Fred’s appeal to the Supreme Court might make things worse for them. Immediately after Pearl Harbor was attacked, many of the leaders of the Japanese American community were arrested. This left the “second generation” American-born Nisei in charge, the median age of whom was only 17. These young leaders—kids really—thought it was their patriotic duty to comply with the internment orders to demonstrate their loyalty to their country. In these stressful times, the Japanese American community was not supportive of Fred.

Minami: I was amazed to learn that these men were still alive and willing to reopen these cases, which validated the incarceration of my family, relatives, and a whole race of people.

However, some 40 years later, Fred’s reopening [of his case] personified the trials that Japanese Americans never had but had longed for. Moreover, the evidence to reopen his case revealed that the government had lied to the high court in order to uphold the legality of the internment. Japanese Americans knew in their hearts that the internment had no basis in fact because they had done nothing wrong. What they didn’t know, and what Fred’s case brought out, was that the government also knew that Japanese Americans had done nothing wrong and [the government] had chosen to suppress this evidence. Thus, within a span of 40 years, Fred went from goat to hero in the Japanese American community.

MTL: When did you first meet Mr. Korematsu? How did you become involved in his coram nobis proceedings? Why did he want to have his conviction overturned when it appeared that history had already deemed the internment a disgraceful part of American history—hadn’t he in fact already won?

Dale Minami (DM): Professor Peter Irons, a complete stranger, called me out of the blue to enlist my services to reopen the wartime internment cases of Fred Korematsu, Gordon Hirabayashi, and Minoru Yasui. He explained that, in the process of researching a book on the lawyers in the original Supreme Court cases of these three men, he and Aiko Herzig-Yoshinaga had discovered evidence that the U.S. government attorneys had altered, suppressed, and destroyed evidence in order to win the cases at all cost.

[Irons] had tracked down and contacted these men and presented the evidence he had found, and all three had expressed interest in reopening their cases to get their convictions overturned. Peter had heard of me through several high-visibility civil rights cases I handled and through my work helping to organize a legal team to present a brief to the Commission on Wartime Relocation and Internment of Civilians, which was hearing testimony in Washington, D.C., about the incarceration of Japanese Americans during World War II. [Irons] had also received my name as a recommendation from Minoru Yasui, one of the coram nobis petitioners and an attorney.
I was amazed to learn about the evidence and that these men were still alive and willing to reopen these famous landmark cases, which validated the incarceration of my family, relatives, and a whole race of people. Understanding the monumental task of retrying history, I called Don Tamaki, then—Executive Director of the Asian Law Caucus, and described the conversation with Peter. He asked me if those men were still alive. I assured him that they were indeed alive and willing to reopen their cases.

Because Fred seemed a bit shy, only Peter and I first visited Fred. He and his wife Kathryn were concerned about the legal fees, had questions about the process, and wanted to know the chances of winning. We assured him that services would be free and that we had a damn good chance of winning. We next brought the entire legal team of about eight people, no one of whom looked over the age of 30. In fact, I was one of the older members of the team at 35 years of age. He thought we looked like high school kids, but Peter stuck up for us and told Fred directly, “These are the best lawyers you can get.”

At the time we brought the coram nobis cases, Fred had suffered a conviction on the books, a validation by the Supreme Court that what was done to Japanese Americans was justified, and had his name attached to one of the greatest civil rights disasters in American history. He wanted to return to court not only to overturn his conviction, but also to correct the distorted historical record about Japanese Americans. As his lawyers, we also wanted to undercut the precedent in the original Korematsu case that the mass banishment of a racial group without due process was acceptable by demonstrating the despicable governmental misconduct at our highest court. The educational goal was as important as overturning Fred’s conviction.

MTL: Was Mr. Korematsu fully aware of the effect he had on American history and law? Before the Guantanamo Bay detention cases, did he ever think that an injustice such as the internment could again happen at the hands of the U.S. government?

DM: Fred knew intuitively that his case was a landmark decision that had significance far beyond Japanese Americans. He did believe that another internment was possible, especially after the Gulf War. He knew that the United States had not changed enough to guarantee no further mass internments.

MTL: Mr. Korematsu continued to be an advocate and even filed an amicus curiae brief in Rasul v. Bush. Given that he could have easily rested on his “civil rights laurels,” so to speak, why did he continue to care about civil rights matters that, at least in the case of the Guantanamo Bay detainees, did not affect him?

DM: Fred had a very strong moral compass that was not always expressed in abstract, intellectual terms but in commonsense analysis. His wife Kathryn, a Caucasian who married a Japanese American in 1946 when it was illegal in many states, was a strong supporter of civil rights and a great influence on Fred. I believe his sense of justice and outrage at what happened to him and Japanese Americans fueled his passion to speak out for others.

MTL: After the U.S. Supreme Court decision [in Korematsu], was Mr. Korematsu ashamed of his country? Was he ashamed of being an American? Was he angry or bitter, and, if not, why?

DKT: Fred was never ashamed of this country and, despite all of the hardship he endured, was proud to be an American and was never bitter. Fred loved America with his whole being. He had never even visited Japan until the 1980s, and he had known no other home but the U.S. He was as American as apple pie. When [World War II] broke out, he tried to enlist in the Navy but was turned down because of his Japanese descent.

He loved this country to the point that he was willing to risk his freedom, his career, and his social standing in order to hold America to its democratic ideals, and he continued to speak out until his passing this year. That’s one definition of a patriot in my view. At his funeral, his coffin bore the American flag that he received when he was awarded the Presidential Medal of Freedom. He was proud of this flag because it flew over the Capitol the day that President Clinton gave him this most prestigious award.

Terrie L. Robinson is an attorney and writer living in Sacramento, California, and an editorial board member of Minority Trial Lawyer. This article was completed with the assistance of Keith Kamisugi.

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In This Issue

Johnnie L. Cochran Jr.:
Portrait of a Trial Attorney .................. 1

Fred Korematsu:
Portrait of an American Patriot ........ 1

Restoring the Legacy
of Jack Johnson .................................. 3

The Plight of the African-American
Sailors of Port Chicago: Discrimination
Without Redress? .............................. 6