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DONALD TAMAKI INTERVIEW
THE SOUL OF AMERICA
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Interviewed by KD Davison
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START TC: 01:00:00:00

DON TAMAKI:

I'm Don Tamaki I was one of the members of the legal team that reopened Fred Korematsu's case in the 1980s.

Pearl Harbor attack and Executive Order 9066

01:00:16:12

DON TAMAKI:

December 7th, 1941 Japan attacks Pearl Harbor, within a day or two the FBI sweeps into cities and urban areas from Seattle to Arizona arresting community leaders, martial arts instructors, Japanese school language teachers, Buddhist priests, anyone who held a leadership position, were literally the next day taken away, separated from their families. And their families not knowing whether they would ever see them again, or if they would ever return. It was the 9/11 of its day. By February 19th, 1942 president Roosevelt signs Executive Order 9066. This empowered the

military to take control of the 8 most-Western states. So on March 2nd, 1942, General DeWitt is placed in command of that whole Western region, and within a few days he declares the states of Washington, Oregon, California and the southern half of Arizona to be military zones. That was followed very swiftly within two weeks by congress passing Public Law 503. Public Law 503 said whoever shall enter, remain in, leave or commit any act in any military zone, bear in mind this is Washington, Oregon, California and the southern half of Arizona where almost 120,000 Japanese-Americans had always lived, would be guilty of a crime, and could be imprisoned. Literally a few weeks after that by the middle of march, General DeWitt issues an order saying Japanese-Americans could not leave military area one, and another month later he issued another order, which said Japanese-Americans could not remain. So, this was a predicament facing Japanese-Americans. They were subject to these contradictory military orders which simultaneously made them criminals if they left their home, or if they didn't leave.

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Obedience to one portion of Public Law 503 would necessarily violate the other, so the only way they could avoid criminal prosecution was to report to these temporary prison camps in the San Francisco bay area, where Fred Korematsu was put, this was a Tanforan Racetrack. It's a horse racing track surrounded by barbed wire and machine gun towers; my family was also incarcerated there. About 8,000 people were put into horse stalls, while ten were permanent, American style concentration camps were built from California to Arkansas. By the end of 1942, you had almost 120,000

Americans of Japanese ancestry, 2,000 American citizens who had lost their property, lost their freedom, some even lost their lives, all without trial without any charges, and for no offense.

Round-ups after Executive Order 9066

01:03:51:04

DON TAMAKI:

After executive order 9066 was issued by the President, authorizing general John L. Dewitt to issue orders governing members of a civilian population, he began issuing public proclamations signaling out Japanese-Americans for first, curfew, and within literally weeks, a few days in some cases, orders to report to these temporary prison camps under the auspices of Public Law 503, which said that “Whoever shall enter, remain in, leave, or commit any other act in a military zone could be imprisoned and taken away by the military.” So as a consequence of that, Japanese-Americans including Fred Korematsu, were subject to Public Law 503. And that rounded up almost 120,000 Americans and of those, 2,000 were born in this country—never been to Japan. The other 1/3 were Japanese immigrants who by law were forbidden to naturalize; they were ineligible to become citizens by statute. So even if they wanted to naturalize and become citizens they couldn’t be. But because of the concept, constitutional Concept of birthright citizenship, people like my mother and father who were born in California were citizens from birth. 2/3 of the 120,000 were American citizens like my parents and

they were mainly along the western coast, and they were then put into these camps. After the first one year or two years, some were allowed out if they could demonstrate they were employed and signed loyalty oaths, these needed to be young people who, in the second generation. But the older folks, that first generation, that 1/3, remained in those prison camps until they closed and for some it was months after the war ended. Then they were left to go back to their own communities from whence they were exiled and many were homeless. They were living on the streets or living in churches, so that was their predicament. They literally had to start all over.

Japanese-Americans being portrayed as an “enemy race”

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DON TAMAKI:

Early on, right after Pearl Harbor, General DeWitt said that Japanese-Americans are an enemy race, and even though there are second generation born on American soils, the racial lines are undiluted. Therefore, the Pacific coast, where almost 112,000 enemies of America at large today. One of the most astounding statements he made was “The very fact that there is no evidence of espionage occurring is confirming and disturbing evidence that it will occur,” in other words, the fact that you’ve never committed a crime is proof positive that you will commit a crime. This is the absurdity, the impossible situation that Japanese-Americans found themselves in. They’re criminals simply because they have not committed crimes. They are forced to

comply with impossible military orders where compliance with one part of the order would necessarily violate the other. All the forces of government and the public were bearing down on Japanese-Americans at that time.

Discrimination against Japanese-Americans before Pearl Harbor

01:07:59:13

DON TAMAKI:

There was a 40-year run up to Pearl Harbor where Japanese-Americans, and Asian-Americans on the West Coast, were the targets of being vilified and demonized. And so, all along the western coast there were laws preventing Japanese-Americans from owning property, from inter-marrying, you know housing discrimination was not a law of the day, job discrimination laws did not exist. And so, Japanese-Americans were already a targeted community, so by the time December 7th, 1941 happened, the soil was tilled. It really paved the way. So the rounding up of Japanese-Americans was a very popular event. The newspapers, the media was all in favor of it. Political leaders built their careers on the rounding up of Japanese-Americans. Governor Earl Warren at that time was the Attorney-General of California, he ran for governor on the slogan "the Japs must go." Later, one of the greatest Chief Justices of the Supreme Court in the court's history, but when he was the politician Earl Warren, he was on the bandwagon to imprison Japanese-Americans. So, this was, by and large, a very popular thing. The Quakers, American friends service committee was probably one of the few organizations that opposed the rounding up. Even the national board of the ACLU had issued orders to its local chapters not to represent Japanese-Americans. They reversed that

decision by the time Fred Korematsu's case came up in 1944, but their initial reaction was to support the war effort even to the point of implementing these racist military orders without trial and for no offense.

The Constitution is tested when the country is under stress

01:10:09:00

DON TAMAKI:

When everything is going well, when the economy is going great, the country is at peace, the Constitution is not tested. The Constitution is tested when our country is under stress. That is when government institutions, each being a check and balance on the other, Congress, the Executive, the courts all play a role in a functioning democracy. The tragedy of the Korematsu case is that Congress basically targeted this segment of the population without any evidence of any wrongdoing except that they happened to look like the enemy. The challenges Korematsu, Gordon Hirabayashi and Minoru Yasui came before the Supreme Court, asking 'What is the basis for rounding up Americans, especially American citizens?' The court never asked any questions, it basically said, 'if the military tells us this mass imprisonment makes the country safer, than we believe the military.' And that's a frightening lesson going forward. At the time the court was badly divided 6-3. Justice Robert Jackson wrote in a very prescient dissent, he said, "The court for all time has validated the principle of racial discrimination. The principle lies around like a loaded weapon, ready for the hand of any authority who could

put forth a plausible claim of an urgent need.” What did he mean by that? It meant that if there is a public clamor without evidence without trial without any good reason, an entire racial group could be locked up, and the Constitution essentially rendered null and void, and that is a dangerous principle, and unfortunately the country is at risk of repeating that same mistake.

The importance of democratic institutions

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DON TAMAKI:

Democratic institutions are most important when the country is under stress. What the Korematsu case tells us, what the lesson of the Japanese-American incarceration tells us, is that at that time, these principles must be upheld, or democracy is lost. The gravity of the court’s passivity, indifference to the executive branch wasn’t really known until 37 years later when quite by accident researches Peter Irons and Aiko Yoshinaga Herzig found a justice department memorandum, intelligence reports from the FBI, the federal communications commission and the office of naval intelligence. In fact every intelligence agency having anything to do with Japanese Americans on the west coast had weighed in and said -- the navy said there was no reason to round these people up, it should be dealt with on an individual basis rather than on a mass racial basis. The federal communications commission said contrary to the armies claims that Japanese-Americans were engaging in

espionage, that it wasn't happening. J. Edgar Hoover wrote back saying 'We've investigated every single claim of shore to ship signaling, and none of it is true since the beginning of the war.' We found a memorandum between justice department lawyers saying, 'if the office of naval intelligence, the primary entity having jurisdiction over national security says there no reason for rounding these people up, it occurs to me that if we don't bring that evidence to the Supreme Court, we're engaging in the suppression of evidence.'

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He wrote that to Charles Fahey, the Solicitor General of the United States, the top legal officer that argues these cases before the US Supreme Court. The Attorney General was given these intelligence reports, but at the end of the day despite protest of justice department lawyers, that evidence was suppressed and in one case burned, another case fabricated. The concept of checks and balances is really critical. When no one is watching, when there is no check and balance on the executive, I think the temptation for political leaders to bend the facts, to fabricate evidence in order to achieve a political result, not the ends of justice but a political end, become, that temptation becomes overwhelming. I think the founders of this country understood that, the genius of the system is it was designed to thwart the rise of kings and tyrants. There's a check and balance going on. Even in times of national distress, that system should continue to operate. In the case of Japanese-American is failed utterly. When in fact there was a declared military necessity, national emergency, in fact it didn't exist, it was fake, fake

news. We risk that repeating itself all over again, and you don't have to convince Japanese-Americans of the danger of that. They are very well aware that with the attacks on vilification of Muslim, persons of Islamic backgrounds and beliefs, migrants, immigrants, that this is a replay of what happened to Japanese-Americans 77 years ago.

Suppression of evidence to the U.S. Supreme Court regarding the loyalty of Japanese-Americans

01:16:19:12

DON TAMAKI:

When these cases floated up to the US Supreme Court in 1943, 1944, bear in mind that the rounding up of Americans was complete. By the end of 1942 it was done, 120,000 people had already lost their freedom and property and businesses and been displaced, so when these cases came up to the Supreme Court, in Fred's case it was 1944, in order to defend this challenge before the US Supreme Court, the Justice Department, a person by the name of Edward Ennis, head of the Enemy Alien Control Division, was responsible for supervising the drafting of the governments brief, began calling up intelligence reports to make the case. I think what he expected to find was corroborating evidence of the army's claims that Japanese-Americans were engaging in sabotage and espionage, but to his astonishment, he found exactly the opposite. When he examined the Office of Naval Intelligence report recommending against the mass roundup, bells and alarms went off in his head and he wrote to the Solicitor General Charles Fahey said, 'It occurs to me that we have a duty to disclose the contents of the navy's reports, any

other course of conduct would quote “approximate the suppression of evidence.” Charles Fahey ignored the memo, simply ignored it. Ennis, concerned about being in an ethical dilemma, not wanting to lie to the Supreme Court, wrote to the Federal Communications Commission Chair George Sterling and he asked George Sterling what about these reports from the army that Japanese-Americans are engaging in signaling. Sterling writes back to him and says, ‘We met with the general staff, these are privates that can only read ten words a minute, they are picking up signals emanating from Tokyo, and they’re calling them shore to ship transmissions.’ These enlisted men pass it on to the general and knowing no more, accepts their word for it—“It’s pathetic to say the least.”

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Now after Ennis reads this, he gets more concerned and writes to J. Edgar Hoover and says, “Do you have any evidence of wrongdoing?” And J. Edgar Hoover says, “We’ve investigated every single claim and there is nothing that we’ve found since the beginning of the war that would indicate that crimes are being committed.” So, at that point Ennis enlists the help of John Burling, another Justice Department lawyer, and getting no response from the Attorney General of the United States Francis Biddle, in getting no response from Herbert Wechsler the Assistant Attorney General, they embark on a plan to insert a footnote in the Korematsu brief. The footnote basically says, ‘We have in our possession intelligence reports from our own agencies which contradict the claims of the army.’ It doesn’t go into the details of what J. Edgar Hoover wrote to the Federal Communications Commission, but it was

meant to alert the Court that the information that the Justice Department was putting out that the army was stating was unreliable. And the War Department under Secretary John J. McCloy finds out about the footnote, he literally orders the printing press to stop. The briefs are printed in the booklets, the footnote is ordered removed and rewritten. It's rewritten and basically says we have in our possession reports which tend to corroborate the army's claims. And so, the last attempt to alert the court that something was not right, that these claims were resting on a foundation of fraud, simply failed. In that sense, it's really a scandal of enormous proportions that the government would manipulate the evidence in order to affect an outcome of a case even if it meant lying to the US Supreme Court. There was other evidence we found where the War Department ordered the burning of the evidence. General DeWitt had initiated a final report explaining to the Court the reason for this rounding up, and one of the statements in it was, 'There was not insufficient time to determine the loyal from the disloyal it was as a matter of these people are so different from Americans that it was "impossible to separate the sheep from the goats."' Well John. J. McCloy the Undersecretary of War found out about that statement, he concluded that the court would never buy that because it is a purely racist argument. He was angry, he found transcripts of the telephone conversations, he ordered the ten copies of the final report returned and that segment was rewritten to say the exact opposite—to the reason the mass roundup was necessary was because there wasn't enough time to individually determine loyalty and therefore a mass roundup was necessary.

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All ten copies were ordered returned but only nine copies made their way back. One was lost only to be found 37 years later by these researchers who just stumbled upon it. So historically we thought there was only one final report, there was actually two. The first one contradicted the position of the government before the courts, but the roundup was necessary because there was not enough time to determine the loyal from the disloyal. Those original reports were ordered burned. We found a memo from I, Sargent so and so whatever his name was witnessed the burning of the final report. And so this -- not only was evidence altered, but it was destroyed in order to manipulate the outcome of this case.

Similarities between Japanese-American incarceration and Muslim travel ban

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DON TAMAKI:

The travel ban case: When these cases, the decision was ruled on in June of 2018 but prior to the Supreme Court ruling in a 5-4 decision to hold the case it was being litigated in the lower courts. In the Maryland federal district court, Judge Theodore Chuang asked the Solicitor General, 'What is the basis for shutting down borders, separating American families from these Muslim majority countries? What's the basis for it?' The solicitor general cited a global homeland security report, essentially stating that the country would be safer if we just shut the borders, indiscriminately shut them down for an

indefinite period of time. The judge said, “May I see the report?” and the government answered, “No its confidential.” The Judge in that case said, “How do I know this is not like the Korematsu case, where years from now I’m going to find out that this report actually undermined your position?” And so the parallels between the Korematsu case and the travel ban are disturbing and eerie. Both arose out of war. Both involve the government invoking national security in order to shield its decisions and actions from judicial scrutiny with the court being passive and standing down. Both involve intelligence reports that the government has refused to disclose. Both have involved blatantly over racist or bigoted statements against a targeted minority. And both ended with the courts passively standing down, deferring, abdicating their duty to ask questions. In both cases the court basically said, ‘If the government tells us this is good for the country, we believe the government.’ The problem with that reasoning is in 1942 and 1943 and 1944 when the court did that and they stood down, they didn’t play their role as a check and balance—it was a civil liberties disaster. It caused enormous suffering to Americans for no good reason.

Becoming involved with Fred Korematsu’s case

01:26:04:06

DON TAMAKI:

I was the executive director of a public interest law firm called Asian Law Caucus here in San Francisco, and Dale Minami my current law partner, he

was lead council in this reopening effort, gives me a call and says he's been called by this professor, Peter Irons, claiming to have found secret government documents that may be the basis for reopening the case. We were quite skeptical, but as we met with Peter and actually saw the evidence it was mind blowing because it -- Japanese-Americans in the government generally, the public and the most educated people who studied this period sort of regard what happened as a "mistake" prompted by war time hysteria. What may have begun as a mistake really culminated at the highest echelons of government as a calculated plan by government to manipulate the outcomes of a case, conspiracy style, in order to achieve a political end. That's quite different than a mistake. So, we were quite shocked and surprised to see this evidence.

Reopening Fred Korematsu's case

01:27:32:05

DON TAMAKI:

Fred's battle was a lonely one. So Public Law 503 is issued, Japanese-Americans for the most part dutifully comply, they get rounded up and get put in these temporary holding pens, makeshift prison camps until the ten permanent camps have been constructed, and so Fred decides to evade the law. So, he ultimately is arrested, and as I said, the heading is "Jap spy arrested," and he's basically friendless. The national board of the ACLU had issued a directive ordering chapters not to represent

Japanese-Americans. The Northern California chapter of the ACLU defied that order, Ernest Besig the Executive Director, and he went to see Fred here at the Presidio here in San Francisco, which was, by the way, the headquarters of Lieutenant John L. DeWitt, so Fred was in the stockade literally in the same premises of the architect of this rounding up process.

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He couldn't believe it that anybody would be interested in representing him. And Japanese-Americans were in the situation where they were scared. In any situation you put a community of people in enough pressure and they're going to turn on each other. And I think that was part of the situation. There were some who felt that if Fred challenged the rounding up, it would only make them seem more disloyal to the country, and would make life -- they would be punished for it, it would make life worse for them. Then, to his regret, not his fault, certainly his regret, he lost that case. 1944 the Court ruled against him. So Japanese-Americans probably were thinking, well, "We told you, we told you." Little did they know that the government, every intelligent agency had exonerated Japanese-Americans, had admitted they had committed no wrong, there was no reason to lock these people up. Of course, the Japanese-Americans, the community didn't know that. So, Fred got blamed for a lot of things that he wasn't responsible for, and remember that after the closing of the camps, it was still a lot of prejudice against Japanese-Americans.

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I hated December 7th, every day because I knew I was going to get in a fight that day because somebody is going to blame me for Pearl Harbor. That was the kind of thing that, you know, in the shadow of these camps, what people went through, and so everybody kept a low profile. So, did they want to associate with Fred? No. However, in the spirit of American redemption, 37, 38 years later we found this evidence conclusively, definitively admissions by government authorities at the highest levels saying, 'What are we going to do? We are about to lie to the US Supreme court, Japanese-Americans did nothing wrong, we have a duty to tell the Court this,' and Fred was responsible for outing that information, and then suddenly he is a hero in the Japanese-American community. And they, they knew that here's the guy that was responsible for vindicating them and providing them their day in Court. So, it has a happy ending, but it does require the courage of your convictions to basically stay the course when no one is supporting you, and a willingness to go through that, and the country is fortunate and for the better that they did it.

Japanese-American families felt ashamed about the incarceration

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DON TAMAKI:

It was, because I think this is not uncommon for any group that has gone through some trauma. Bear in mind that after the camps close at the end of the war and the last inmate was released, people had to go back to the very

communities that exiled them in the first place. This had been tested by the Supreme Court and had been reviewed, I think the public thought there must have been a good reason for locking you up; therefore, in a backhanded kind of way, Japanese-Americans had felt ashamed of what had happened to them when in fact it was really the opposite, the government was the one that should have been ashamed of what had happened. I know when Fred Korematsu was approached by Peter Irons, he had no idea the scale of what had happened to him. Of course, he knew he wasn't a spy, he knew he was a loyal American citizen, but he had no idea the lengths the government went to uphold his criminal conviction in this landmark case. His response after reading the documents according to Peter was, he said, 'They've done me a great wrong.' With that statement he spoke for an entire racial population.

Resiliency and faith in America persisted despite the undermining of values and institutions

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DON TAMAKI:

My parents really didn't speak about the camps, but during the course of the preparation I brought the sheaf of documents home and said you got to take a look at this, as they sifted through the FBI reports and the navy reports and the Federal Communication Commission reports, the Justice Department memorandum where lawyers are ringing their hands about ethical violations and their duty not to lie to the court, then they began talking about it. I mean,

the dam broke at that point and my parents really talked a lot about it and I understood at that point it was the defining event for that generation. My father had was about to graduate from the University of California at Berkeley with a pharmacy degree when he General Dewitt's order to report to these prison camps, in this case a race track, Tanforan, was issued. Entire families were put into horse stalls. So you can imagine if you live in a house with a bed and furniture and the comforts of home and then you're living in a horse stall, with no heat no hot water, maybe one electrical naked light bulb, where horses are—manure, straw the whole bit—and that's where they were housed. The University of California Berkeley sent him his diploma wrapped in a mailing tube. I keep that tube because it, metaphorically, shows me how far we've come as a people.

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The tube is addressed to Tanforan Assembly Center, really that was a euphemism for this temporary prison camp, barrack 29, apartment 5, well apartment 5 is a horse stall. So, to me it symbolizes the diploma being the promise of the future and what American stands for all immigrants and Americans of all stripes, and the mailing tube is the reality they were living with, because their only crime was, they happened to look like the enemy. This constraining mailing tube in which this diploma was wrapped up in, is really what their future was at the time, that was their reality. So the velocity of events from being removed from their homes to being put in these

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facilities to ultimately ended up in these camps was pretty speedy, very fast. So people only could take that which we could carry. If you had children, that's not very much. That means cars appliances, business all of that had to be left behind and was either lost or sold for pennies on the dollar.

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So, at the same time, I would say that it's a good American story in that it is the spirit of resilience of this community and not harboring bitterness. And they didn't talk about it, it was a good reason for not talking about it at the time because their job was surviving and moving on, but I think for Fred Korematsu and this entire population including my family they always wanted vindication. Fred's case was really the day in court they never had. So when the case was reopened and the judicial declaration that there was no good reason to do this and the government knew it at the time. That's the part that's most important—the government knew it at the time. So that's the lesson going forward. And the ironies are incredible, like you had at the same time, people locked up in camp, you had 18, 19, 20, year old boys volunteering to serve in an all Japanese-American 442nd regimental combat team fighting in fierce battles in an all segregated unit fighting for freedom while their families are imprisoned at home -- fighting for democracy in Europe while their families are imprisoned in America, that's quite a statement. And in one of the more remarkable incidents is the 100th artillery division attached to the 442nd regimental combat team was the first to arrive at a dock house sub camp. The Germans by then had been fleeing and they abandoned the camp, the 100th artillery division is first to arrive to basically

liberate and free Jews who had been imprisoned in a Nazi concentration camp by Japanese-American soldiers who had volunteered out of an American-style concentration camp. So the ironies and the lessons are quite unbelievable. So on the one hand, yes, it's a great wrong but it also indicates faith in this country and an unbinding loyalty to the country. That's a good lesson going forward because I think we are living in a time when the definition of what it is to be an American is being redefined and not in a good way. America has always been a nation of immigrants and beside for Native Americans and African-Americans who were brought here as slaves, everybody else is an immigrant. They all can trace their roots back to very modest humble beginnings and each has been targeted along the way, maybe not to the degree, some more than others, but American institutions, their historical reach and memory should remember that. And regrettably in 1943 and '44 those lessons were completely lost and we fear that in the current day they are being lost again.

Immigrant communities in the U.S. today

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DON TAMAKI:

I think the ironic thing is, if you look at recent refugees in America and people of new immigrants, they're the most loyal faithful people in this country. They are so grateful to be here. It's a rough road for them and they are targeted all

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the time, in certain cases within their own communities because the challenge is whether they are real American or not, and yet they go about their business. I think that's part of the American spirit of acceptance. The difficult thing now is that's all being challenged at a time when Mexican immigrants are being labeled as drug dealers and rapist, Haitian immigrants as having Aids, in a congressional briefing the President was noted as saying, "Why won't Nigerians go back to their huts in Africa?" "Why don't we have more people from Norway?" It used to be the inscription on the Statue of Liberty was "Give me your poor, your tired, your yearning to be free," doesn't mention anything about Norway. That's the real spirit of the country, and I think most of the newest immigrants are the first to grasp that—they are so proud when they get their citizenship status. I fear they are getting scapegoated, and as Japanese-Americans we have seen that. You don't have to convince Japanese-Americans that what's happening today is a problem because our community has witnessed this. To their credit, they have not harbored any bitterness, and I think that's part of why they are able to progress and build a community and be an integral part of the American fabric. But we ought not to forget that. We should remember, no bitterness, be forgiving but remember going forward so this doesn't happen to anyone else.

Fred Korematsu

01:43:13:05

DON TAMAKI:

Very extremely humble person, man of very few words. We had three litigants who we work with. Minoru Yasui was a lawyer, believer in civil rights. When the curfew orders, the first of General Dewitt's orders saying Japanese-Americans cannot leave their homes before 8 pm at night, had to remain there before six. His curfew orders were the precursor to the rounding up process. So, Min was bold and brash and voluntarily thought he would recruit a Japanese-American to fight the law and he would represent them. People said, "Min you're crazy smell the coffee." So Min began voluntarily walking the streets of Portland basically asking the police to arrest him. Ultimately, he had to walk into a Portland police station to do it because the police weren't anxious to arrest him knowing he was not dangerous. For that act of defiance, he spent almost nine months in solitary confinement before being imprisoned in Wyoming, in a Wyoming camp. Gordon Hirabayashi was a student in the University in Washington and a Quaker, and at first dutifully followed the curfew orders, but then it struck him that he had to leave the library while his college friends could still study or have fun and running back to the dorm room. And the more he complied with the law, the more he gave it credence, so he defied the orders. Fred Korematsu was just an ordinary guy, he just wanted to live his life. He felt that what was happening was wrong and he just made an individual stand, not meaning to make a point or intending to be the subject of a major Supreme Court landmark case, but American history is full of these folks, ordinary people who make very courageous stances.

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So a man of very few words, he took a stand; he went up to the US Supreme Court and Japanese-Americans didn't support him the thought he was only going to make the situation worse. The headline when he was arrested was "Jap Spy Arrested," and so the pressure on the Japanese-American community to separate themselves from Fred was really strong. And then, he lost, so in a back handed kind of way he thought he was responsible for this. So, he didn't talk about it and he was the subject of a lot of people that wanted to interview and write books about him and he really wasn't interested. What he really wanted was to find a way to reopen his case and he was given that opportunity and he took it.

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He grew into it because I think he realized how important the ruling was going forward. Bear in mind, when you have already served your time and already got a conviction on your record and it's 40 years later, what do you gain by going public and making statements? Nothing, personally. His point was this was not the way American democracy should work, where an entire racial population can be uprooted, removed for no good reason, and the courts don't ask any questions and 37, 38 years later it is found out to be a complete fraud on the Court, evidence being fabricated, burned in order to secure a conviction that's not the way our democratic system works, that's how dictatorship works. He thought that was really important to educate the public on, so he did become an activist in a way.

Fred Korematsu's conviction

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DON TAMAKI:

It was a misdemeanor conviction because that's the way Public Law 503 read, that "Whoever shall enter, leave, remain in or commit any act in any military zone shall receive a misdemeanor and be subject to a fine, time in prison or both." The fact of the matter was it didn't matter whether it was a felony or misdemeanor. Why? Because they all ended up in detention camps whether they were convicted or charged or not. He did have a criminal record, and there were plenty of jobs where the application said, "Have you ever been convicted of a crime?" and I'm sure that when he looked at that he probably put the application down and left, because in order for him to answer that truthfully, he would have to say that. It wasn't any crime, it wasn't like some small matter, it just happened to be one of the worst decisions ever rendered by the United States Supreme Court, so it wasn't something that Fred was proud of. And so, the opportunity to reopen his case was remarkable to him and frightening as well. Because he had already integrated himself into the community, but he was brave enough to go forward with it.

Fred Korematsu receiving the Medal of Freedom and the attention from society and the press

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DON TAMAKI:

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Fred didn't seek this attention, and it's not like he saw himself as being a Constitutional law hero and an icon—he's become that—both at the time of reopening, both at the time Clinton awarded him the Congressional Medal of Freedom, but more so now after he has passed due to current events, because sadly the Korematsu case is probably more relevant today than it was in the 1980s. And as I look at him being awarded that medal in the footage, I am also reminded of Judge Marilyn Hall Patel's ruling, when she said that, "Especially during times of national distress, we have to remember that our institutions must function in a way they are supposed to under a democratic institution and not be swayed by petty fears and prejudices." And she wrote that in 1983 before 9/11, and before this travel ban issue, before the war on terrorism—but how prescient are those words. And so, for Fred to basically be willing to get out there and be that person to symbolize those words, to me was courageous on his part. The reason I said that, is because when he got arrested, the headline was "Jap Spy Arrested," and he was vilified. He was before the court in shackles, and he, to reopen his case, he suddenly was -- the press day on the reopening, every news agency, not only nationally but worldwide was at that press event, CBS, NBC, CNN, ABC News, foreign journalists. Cameras were camped out in front of his lawn and he had been vilified and tried and labeled the enemy of the people the first time around he had great trepidation as to whether it was going to be a redo of that.

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Fortunately, this time around, you'd never -- it was a lawyer's dream. You would never dream you would find evidence where government officials, at

the highest levels, we're not talking about low level folks. These are Harvard, Yale educated lawyers defending the government's program who should have known something about the Constitution coming from those hallowed educational institutions, and yet, when it came down to having the courage to tell the truth, they folded. They couldn't take the political pressure, and ironically in comparison, you have persons like Fred Korematsu like those in the 442nd Regimental Combat Team who have everything to lose who are laying it all out there. Why are they doing that? For a belief in the country. So, I think that's an important lesson.

Korematsu vs. United States hasn't been overturned by the U.S. Supreme Court

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DON TAMAKI:

In 1944 when Fred challenged this program, the legal issue was is the rounding up of American's constitutional? Can you do this without evidence and without trial and for no offense? In 1983, when we reopened this case, it's very difficult to find the right legal tool to reopen because most are barred by the statute of limitations and there are devices that basically say that if you want to challenge something you only have a limited time to do it. Almost 40 years had passed, so the only device we could find was this writ, kind of like Habeus Corpus it's called Corum Nobis, and basically it's Latin for 'a procedure which allows you to challenge an unlawful, unfair conviction even though you served your time and it's been many years,' there's no statute of

limitations, there's no money attached to it. It's purely to clear your reputation, to erase the criminal conviction from your record. That was the only way to reopen the case. So therefore in 1983 it was a different question, not was the rounding up of American's constitutional? It was: was Fred denied a fair trial?

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Now that's a different question, but it's based on the same facts. If you can reverse someone's criminal conviction because the facts turned out to be fake and fraudulent, then the precedent allowing the rounding up of so many Americans on the basis of fake and fraudulent evidence could also be discredited. So, we found that to be the only way to reopen. So we won at the lower court level, the government appealed and withdrew their appeal. So that was a very strategic thing on the governments part—the winner's in our system cannot appeal, only the losers. So, they tactically decided not to appeal not to take it up any higher.

Korematsu case used as a reference in Trump vs. Hawaii

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In *Trump vs. Hawaii*, the travel ban decision that was decided in June of 2018 by 5-4, Justice Sonya Sotomayor writes a scathing dissent essentially saying, 'We've seen this movie before in the *Korematsu* case.' And what was done wrong against Japanese-Americans is being repeated today. And Justice Roberts writes in a retort in the majority decision, that *Korematsu* was wrong the day it was decided, and to be clear has no place under the law or under the Constitution, and has been "overruled in the court of history," but then he pivots and says *Korematsu* has nothing to do with this case. So he proceeds basically to make the same grievous error that the 1944 Supreme Court did, which was despite the overt anti-Islamic bigoted statements expressed by the President and the administration, a campaign promise to shut down the borders to all Muslims entering the country, and despite the government's refusal to disclose the intelligence report they claimed to be the factual basis and reason for this drastic sweeping deprivation of civil liberties, the Court basically said, well we're not going to look into that, we're not going to question his motives or intentions. The only issue is, is the president authorized to do this under the Immigration and Nationality Act, and that says, in the interest of the country, the president has significant power over the borders. And so, Justice Sotomayor said, well 'You've just imported an exchanged one grievance for another, and you've imported the most dangerous element of the *Korematsu* case into a new vessel, which is *Trump v. Hawaii*,' and what is that principle? That principle is, that when the government invokes national security, a national emergency, the court is not going to bother to question it, despite the obviousness of presidential bias and the prejudice and no matter the underlying reality. The problem there is,

this is how autocrats get started, in other words there's not check and balance on the unbridled exercise of power. And that's not just a theoretical conclusion, this happened in 1942. So Japanese-Americans are now saying this is a cautionary tale, and so it's very important to tell the story over and over again so it not be repeated.

Japanese-American community supporting Muslim community during 9/11

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DON TAMAKI:

The country was riveted, the country was scared. Remember, all airplanes were grounded, the FBI and Secret Service was sweeping into various Muslim neighborhoods and immediately arrested certain people, and their families did not know why they were being taken or what the reason was. People having validly bought airline tickets were prevented from flying because they looked too much like middle eastern people. The country was in tremendous fear, it was not unlike after the bombing of Pearl Harbor, I'm sure. But the Japanese-American community immediately, the leadership immediately sent out communications to mosques and Islamic leaders saying, 'We stand with you. We know what you're going through.' And one community leader in Fresno, California who said they had planned a big event for their mosque literally the next day and they were contemplating cancelling it, and Japanese-American leaders said no you should have it, because you're just as American as anybody. So of course, immediately after 9/11, they were under

severe attack. By that I mean graffiti on their buildings and people being looked at suspiciously and since then, candidates have said we ought to be surveilling Muslim communities in a faith in America, and this sort of thing. And so this targeting of certain people, whether they are persons of Islamic faith or recent immigrants or migrants is not a new thing, unfortunately, and Japanese-Americans who have fresh memories of this are very well aware, and to their credit are speaking out.

The importance of maintaining checks and balances

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DON TAMAKI:

I think we live in perilous times now that I have not seen, and I'm a fairly old guy. I've not seen this. I was born immediately after the camps closed in the years following the closing of the camps, so I've not seen this. If the congress doesn't have the will to be a check and balance on the president and if the courts stand down and defer, and if the free press is being called the enemy of the people and if we no longer have a common understanding of facts and alternative facts have as much credence and significance as real ones, then democracy is threatened. We tend to believe that oh we live in a world in which it will go on and on forever, but if you look at other societies that have experience the rise of autocrats, this is how it starts—when alternative facts hold sway over real ones, that's a problem. Nazi Germany was like that and if people weren't able to speak out or didn't speak out, by the time it really gets

going, it's too late, they got shouted down. Then you see your democratic institutions really begin to fall apart, and strong men take over. Every American ought to be worried about this, and I'm particularly concerned about the free press. I think that's one of the most important things, because of people's perception and understanding and reliance upon facts as we know them. When demonstrably provable, empirically provable facts are now seen as fake news, and people believe that, and one statement is just as worthy of belief as another, that is just, democracy cannot function in that environment. So that's a worry.

Getting involved in the current situation at the U.S. – Mexico border

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DON TAMAKI

In January of 2017, Trump issued the first of thrice revised executive orders shutting down the borders to travelers from Muslim majority countries, and so we, the Coram Nobis team, Fred Korematsu's legal team reconvened and worked with the national law firm Egan Gump, to represent the children of Fred Korematsu, Gordon Hirabayashi and Min Yasui, the original litigates that had passed away. But Karen Korematsu, Jay Hirabayashi and Holly Yasui were willing to step forward and be represented by our team to file an Amicus Brief to remind the public and remind the court that when the institutions don't play their role, their constitutional role in the scheme of checks and balances, things can go awry, and you can have a civil liberties disaster. So we

filed the brief, the brief was cited by Justice Sonya Sotomayor, we're proud of that out of maybe 100 briefs that were filed, but the ban was still upheld to our enormous disappointment, and Justice Roberts' comment about Korematsu saying, "Well it's been overruled in the court of history," but basically making the same ruling as had happened in the 1944 Supreme Court Case bothered us tremendously, and we decided to also launch a public awareness campaign, aptly named "Stop Repeating History" to basically have conversations about this. That irrespective of what the courts do or don't do, what does the public think about what's going on. And so, we've been speaking all over the country about this and this period of history is something we know something about, and therefore, I think we have something to say about this, about the targeting of immigrants, migrants, persons of Islamic faith today, and so we've been speaking a lot.

The need for civil engagement

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DON TAMAKI

I think our role as citizens is to become civically engaged and that means, I think people have to be more active than ever before. In the 2016 elections, what was it barely over 50 percent--a little over 50 percent--voted? And the election turned on about 70,000 votes in three electorally significant states. And elections are consequential, I believe in elections, and people have the opportunity to participate, but the lesson going forward is that we need to

pay attention to what's going on, and whether we are Republicans or Democrats, it's important to be civically engaged at all levels. And I'm talking right down to the local school board, in terms of what is going on. That's really the only way democracy is preserved. It's hard to do most people have very busy lives, and they don't see this as being part of their life, and we kind of take our democracy for granted, but if Japanese-Americans have anything to say to the public about this is, "Don't take your liberties for granted. They can be taken away from you." I grew up with my father saying to me, "Get an education, they can never take that away from you." And as I kid I kept saying, "Why would anyone take anything away from me, and who are they?" And he didn't say it but it just reflected his experience, which was you could lose your freedom like that if people don't pay attention to preserving democratic institutions. It's something that has to be worked on. Other societies come and go, and you have people rising to power and then be thrown out and different systems coming in. We're witnessing a shift in the culture that is very disturbing. When you have 600 tiki torch carrying folks screaming "Jews will not replace us" and "blood and soil," the country should be alarmed over that. Really. So again, referring to my own family and community experience, we're trying to sound the alarm. That is something to worry about, when immigrants are suddenly being targeted as perpetual foreigners, they don't really belong here, they're not real Americans. That's exactly what we went through, so I think that's a lesson that should be remembered.