

TODAY YOU WILL BE SWORN IN AS LAWYERS---A MUCH MALIGNED AND MUCH MISUNDERSTOOD PROFESSION. YOU WILL NOW JOIN THE RANKS OF A GROUP THAT HAS JOKES MADE ABOUT IT, MOST OF WHICH INVOLVE THE DEMISE OF LAWYERS AS A SOCIATAL IMPROVEMENT. “WHAT DO YOU CALL FIFTY LAWYERS CHAINED TOGETHER AT THE BOTTOM OF THE OCEAN? A GOOD START.”

WHAT I WANT TO TALK TO YOU ABOUT TODAY IS WHAT THE PROFESSION OF THE LAW REALLY MEANS AND WHAT THE PROFESSION OF JUDGING REALLY MEANS. WHEN I STOOD WHERE YOU ARE TODAY, THIRTY-ONE YEARS AGO, I HAD VERY LITTLE CONCEPT OF WHAT EITHER OF THOSE ASPECTS OF THE LEGAL PROFESSION, LAWYERING AND JUDGING REALLY MEANT. I THOUGHT ABOUT WHAT TO SAY TO YOU AND I DECIDED THAT GIVEN THAT TODAY IS DECEMBER 7 IT WOULD PROVIDE ME WITH AN OPPORTUNITY TO GIVE A LEGAL HISTORY LESSON THAT WOULD MAKE A POINT WHICH HOPEFULLY YOU WILL REMEMBER.

SIXTY-FOUR YEARS AGO TODAY, THE UNITED STATES WAS ATTACKED BY THE IMPERIAL EMPIRE OF JAPAN. AS ALL OF YOU KNOW, THAT ATTACK WAS AT PEARL HARBOR, HAWAII. OF COURSE, THE ATTACK ON THIS COUNTRY WAS WITHOUT WARNING AND OVER TWO THOUSAND MEN AND WOMEN DIED. AS A RESULT, THE NEXT DAY THE PRESIDENT OF THE UNITED STATES, FRANKLIN ROOSEVELT, SPOKE TO THE CONGRESS AND ASKED FOR A DECLARATION OF WAR. WITHIN TWO DAYS THIS COUNTRY WAS AT WAR THAT RAGED FOR FOUR YEARS AND EMBROILED THE ENTIRE GLOBE IN COMBAT.

WHAT MANY OF YOU DO NOT KNOW IS THAT SHORTLY AFTER DECEMBER 7, THERE WERE CALLS BY MEMBERS OF CONGRESS AND THE PUBLIC TO INCARCARATE AND DETAIN PEOPLE OF JAPANESE DESCENT IN THIS

COUNTRY. ON FEBRUARY 19, 1942, SLIGHTLY OVER TWO MONTHS LATER, EXECUTIVE ORDER NO. 9066 WAS SIGNED BY THE PRESIDENT AUTHORIZING MILITARY AUTHORITIES TO TAKE SUCH ACTIONS AS NECESSARY INCLUDING DESIGNATING MILITARY AREAS FROM WHICH ANY OR ALL PERSONS MAY BE EXCLUDED AT THE DISCRETION OF THE MILITARY AUTHORITIES. THAT ORDER WAS PREPARED BY A LAWYER. HIS NAME WAS KARL BENDETSSEN. HE WAS EDUCATED AT STANFORD LAW SCHOOL. THE UNEXPRESSED INTENTION WAS TO PROVIDE A BASIS TO DETAIN JAPANESE AMERICANS.

HOW DID THIS HAPPEN? IT HAPPENED FOR SEVERAL REASONS--- HYSTERIA AND PREJUDICE. WHY DID IT HAPPEN? BECAUSE IT COULD. FOR EXAMPLE, EARL WARREN, A LAWYER EDUCATED AT THE UNIVERSITY OF CALIFORNIA, BOALT HALL, THE ATTORNEY GENERAL OF CALIFORNIA AT THE TIME AND LATER CHIEF JUSTICE OF THE UNITED STATES, RAN FOR THE GOVERNORSHIP AND PART OF HIS PLATFORM WAS THE LENIENT TREATMENT THAT THE THEN GOVERNOR, CULBERT OLSON, WAS GIVING THE JAPANESE. IN RESPONSE TO THE CONGRESSIONAL TOLBERT COMMISSION THAT WAS STUDYING THE ISSUE OF DETENTION OF GERMAN NON-CITIZENS AND ITALIAN NON-CITIZENS AND WHETHER TO INCLUDE JAPANESE CITIZENS AS WELL AS NON-CITIZENS, EARL WARREN, URGING DETENTION, TESTIFIED ON FEBRUARY 21, 1942, "WE BELIEVE THAT WHEN WE ARE DEALING WITH THE CAUCASIAN RACE WE HAVE METHODS THAT WILL TEST THE LOYALTY OF THEM, AND WE BELIEVE THAT WE CAN, IN DEALING WITH THE GERMANS AND THE ITALIANS, ARRIVE AT SOME FAIRLY SOUND CONCLUSIONS BECAUSE OF OUR KNOWLEDGE OF THE WAY THEY LIVE IN THE COMMUNITY AND HAVE LIVED FOR MANY YEARS. BUT WHEN WE DEAL WITH THE JAPANESE WE

ARE IN AN ENTIRELY DIFFERENT FIELD AND WE CANNOT FORM ANY OPINION THAT WE BELIEVE TO BE SOUND. THEIR METHOD OF LIVING, THEIR LANGUAGE MAKE FOR THIS DIFFICULTY.”

WITHIN MONTHS OF EXECUTIVE ORDER 9066, GENERAL JOHN DeWITT, THE COMMANDER OF THE WEST COAST, AND KARL BENDETSSEN DESIGNED ZONES OF EXCLUSION WITH THE DIVIDING LINE RUNNING STRAIGHT DOWN HIGHWAY 99 WHICH LIES ABOUT A HALF MILE FROM HERE. ULTIMATELY, CIVILIAN EXCLUSION ORDERS WERE DRAFTED BY BENDETSSEN THAT EXCLUDED PEOPLE FROM THE COASTAL REGIONS, SLOWLY MOVING INLAND UNTIL IT INCLUDED THE PEOPLE OF JAPANESE DESCENT ON THE EAST SIDE OF HIGHWAY 99 AND THEN FINALLY THE PEOPLE OF JAPANESE DESCENT ON THE WEST SIDE OF HIGHWAY 99.

WHERE YOU ARE NOW SEATED WAS PART OF CIVILIAN EXCLUSION ORDER No. 64, DATED MAY 11, 1942, AND IT ORDERED THE HEADS OF FAMILY OF ALL OF THE JAPANESE PEOPLE, INCLUDING CITIZENS OF THE UNITED STATES, TO REPORT BY MAY 12 TO 2107 INYO STREET FOR INSTRUCTIONS, JUST A FEW BLOCKS FROM HERE. ALL FAMILIES WERE ORDERED TO REPORT TO DESIGNATED ASSEMBLY CENTERS BY MAY 17.

AT THAT TIME, IF YOU WERE OF JAPANESE DESCENT AND HAD NOT BEEN BORN IN THIS COUNTRY YOU COULD NOT BECOME A CITIZEN. IF YOU WERE BORN IN THIS COUNTRY YOU COULD BE A CITIZEN BUT PURSUANT TO THE DECISION OF THE GOVERNMENT, CITIZENS OF JAPANESE DESCENT WERE ALSO SUBJECT TO DETENTION. THIS WAS ALL DONE BASED ON AN ARGUMENT OF “MILITARY NECESSITY.” CONSIDER FOR A MOMENT WHAT YOU WOULD DO TODAY IF YOU WERE TOLD THAT YOU HAD SIX DAYS TO PACK UP TWO SUITCASES AND REPORT FOR DETENTION WITH NO OTHER

EXPLANATION OR WORD ABOUT WHAT WOULD HAPPEN TO YOU AND NO PROVISION MADE FOR YOUR PROPERTY.

AT THE SAME TIME THE ATTORNEY GENERAL OF THE UNITED STATES, FRANCIS BIDDLE, A LAWYER WHO HAD BEEN A LAW CLERK OF JUSTICE OLIVER WENDELL HOLMES OF THE UNITED STATES SUPREME COURT, PROTESTED THE ORDERS OF DETENTION TO THE PRESIDENT. HE ARGUED THROUGHOUT THE WAR THAT THE ORDERS WERE WRONG BUT HIS JUSTICE DEPARTMENT DEFENDED THEM IN COURT AND FRANCIS BIDDLE REMAINED THE ATTORNEY GENERAL.

THE ISSUE OF THE VALIDITY OF THE DETENTION ORDERS CAME UP IN UNITED STATES VS. KOREMATSU. MR. JUSTICE BLACK OF THE UNITED STATES SUPREME COURT HELD, "EXCLUSION OF THOSE OF JAPANESE ORIGIN WAS DEEMED NECESSARY BECAUSE OF THE PRESENCE OF AN UNASCERTAINED NUMBER OF DISLOYAL MEMBERS OF THE GROUP, MOST OF WHOM WE HAVE NO DOUBT WERE LOYAL TO THIS COUNTRY. IT WAS BECAUSE WE COULD NOT REJECT THE FINDINGS OF THE MILITARY AUTHORITIES THAT IT WAS IMPOSSIBLE TO BRING ABOUT AN IMMEDIATE SEGREGATION OF THE DISLOYAL FROM THE LOYAL..." HE WAS JOINED IN THAT MAJORITY DECISION BY MR. JUSTICE WILLIAM O. DOUGLAS. IN ONE SWEEPING PHRASE THE MAJORITY OF THE UNITED STATES SUPREME COURT SAID IN EFFECT THAT BECAUSE WE CAN'T TELL WHO IS LOYAL AND WHO IS DISLOYAL WE WILL APPROVE ROUNDING EVERYBODY UP AND DETAINING THEM.

IN DISSENT, MR. JUSTICE JACKSON SAID, "KOREMATSU WAS BORN ON OUR SOIL, OF PARENTS BORN IN JAPAN. THE CONSTITUTION MAKES HIM A CITIZEN OF THE UNITED STATES BY NATIVITY AND A CITIZEN OF CALIFORNIA BY RESIDENCE... NOW IF ANY FUNDAMENTAL ASSUMPTION

UNDERLIES OUR SYSTEM, IT IS THAT GUILT IS PERSONAL AND NOT INHERITABLE. EVEN IF ALL ONES ANTECEDENTS HAD BEEN CONVICTED OF TREASON THE CONSTITUTION FORBIDS ITS PENALTIES TO BE VISITED UPON HIM..." AND THEN JUSTICE JACKSON EXPRESSED WHAT IT MEANS FOR A JUDGE TO CROSS OVER THE LINE HOWEVER SLIGHTLY. "ONCE A JUDICIAL OPINION RATIONALIZES SUCH AN ORDER TO SHOW THAT IT CONFORMS TO THE CONSTITUTION, OR RATHER RATIONALIZES THE CONSTITUTION TO SHOW THAT THE CONSTITUTION SANCTIONS SUCH AN ORDER, THE COURT FOR ALL TIME HAS VALIDATED THE PRINCIPLE OF RACIAL DISCRIMINATION IN CRIMINAL PROCEDURE AND OF TRANSPLANTING AMERICAN CITIZENS. THE PRINCIPLE THEN LIES ABOUT LIKE A LOADED WEAPON READY FOR THE HAND OF ANY AUTHORITY THAT CAN BRING FORWARD A PLAUSIBLE CLAIM OF AN URGENT NEED. EVERY REPETITION IMBEDS THAT PRINCIPLE MORE DEEPLY IN OUR LAW AND THINKING AND EXPANDS IT TO NEW PURPOSES. ALL WHO OBSERVE THE WORK OF COURTS ARE FAMILIAR WITH WHAT JUDGE CARDOZA DESCRIBED AS 'THE TENDENCY OF A PRINCIPLE TO EXPAND ITSELF TO THE LIMIT OF ITS LOGIC.'

MR. JUSTICE JACKSON WAS JOINED IN DISSENT BY MR. JUSTICE MURPHY AND MR. JUSTICE ROBERTS. BY A VOTE OF SIX TO THREE THE UNITED STATES SUPREME COURT UPHELD THE LAW THAT AN AMERICAN CITIZEN, FRED KOREMATSU, COULD BE ORDERED HELD IN A DETENTION CENTER SOLELY BECAUSE OF HIS RACE.

AND NOW THE QUESTION. WAS JUSTICE JACKSON RIGHT OR WAS HE WRONG? HIS WORDS WERE IN DISSENT AND THEREFORE THE MAJORITY OPINION HAD THE FORCE OF LAW. WAS THE MAJORITY RIGHT OR WERE THEY WRONG? WHEN JUDGES DECIDE, IS RIGHT AND WRONG SO CLEARLY

DEFINED? IT IS THE FUNCTION OF JUDGES TO MAKE A DECISION. IT IS THE PROCESS OF THE LAW THAT PROVIDES FOR A DECISION TO BE MADE. IT IS THE INTENDMENT OF THE LAW THAT THE JUDGMENT SHALL RESOLVE THE DISPUTE. IT IS THE FUNCTION OF THE APPELLATE PROCESS THAT LOWER COURT JUDGES SHALL BE REVIEWED TO DETERMINE IF THEY HAVE ERRED IN THEIR APPLICATION OF THE LAW. HOW DO WE DEFINE RIGHT AND HOW DO WE DEFINE WRONG? IF YOU ARE A JUDGE IT DOES NOT MEAN THAT YOU DEFINE IT BY YOUR CONSCIENCE OR YOUR PERSONAL SENSE OF RIGHT AND WRONG. THESE BLACK ROBES ARE NOT THE ROBES OF A PRIEST----THEY ARE THE ROBES OF A JUDGE.

KARL BENDETESEN ROSE TO BECOME THE YOUNGEST COLONEL IN THE ARMY, ASSISTANT SECRETARY OF DEFENSE AND HEAD A MAJOR CORPORATION. EARL WARREN BECAME GOVERNOR AND THEN CHIEF JUSTICE OF THE UNITED STATES. FRANCIS BIDDLE ARGUED IN CLOSED HALLS AGAINST THE INCARCERATION OF THE JAPANESE AND FINALLY WAS ABLE AFTER TWO AND A HALF YEARS TO END THE EXISTENCE OF THE DETERNTION CENTERS. WILLIAM O. DOUGLAS' NAME BECAME SYNONAMOUS WITH CIVIL LIBERTIES. AND MR. JUSTICE JACKSON, MR. JUSTICE MURPHY AND MR. JUSTICE ROBERTS?----HOW MANY OF YOU OUT THERE TODAY REMEMBER THEIR NAMES?

FROM THIS COMMUNITY, OVER FIVE THOUSAND PEOPLE OF JAPANESE DESCENT REPORTED TO THE FRESNO FAIRGROUND WHERE SOME LIVED IN THE STABLES. MOST OF THOSE PEOPLE EVENTUALLY WERE SENT TO CAMPS IN ARKANSAS. OVER FIVE THOUSAND PEOPLE REPORTED TO THE PINEDALE ASSEMBLY CENTER. THEY WERE EVENTUALLY SENT TO TULE LAKE AND MANZANAR, CALIFORNIA. AMONG THE LOCAL PEOPLE SENT WERE THE LATE HOWARD RENGE, A BOALT HALL EDUCATED LAWYER,

WHO LATER ROSE TO LEGAL PROMINENCE IN THIS COMMUNITY AND EDITED THE NEWSPAPER IN THE FRESNO DETENTION CENTER. THE LATE SHIM HIRAOKA, A LAWYER, WHO FOUGHT WITH THE 442ND REGIMENTAL COMBAT TEAM IN FRANCE AND PARTICIPATED IN THE BATTLE TO FREE THE "LOST TEXAS BATTALION" AT THE SAME TIME THAT HIS FAMILY AND THAT OF HOWARD RENGE, LIVED IN DETENTION CENTERS. SHIM GRADUATED IN 1941 FROM THE UNIVERSITY OF SAN FRANCISCO LAW SCHOOL WITH THE HIGHEST GRADE IN CONSTITUTIONAL LAW.

ALL THE PEOPLE WHO'S NAMES I HAVE MENTIONED WERE LAWYERS. ALL AT SOME POINT IN THEIR CAREER WERE CALLED TO MAKE A DECISION AND STAND FOR WHAT THEY BELIEVED IN. SOME DID RIGHT IN THE HINDSIGHT OF HISTORY AND SOME DID WRONG. SOME JUDGES ROSE TO THE OCCASION AND SOME FAILED. NOT ALL OF YOU OR MAYBE ANY OF YOU WILL HAVE A CHANCE TO AFFECT HISTORY AS THESE MEN DID. THE POINT IS THAT YOU ARE ABOUT TO ENTER A PROFESSION THAT EXISTS LARGELY IN SHADES OF GRAY UNTIL THE LIGHT OF HISTORY AND HINDSIGHT SHINES ON YOU. MAKE SURE WHEN THAT HAPPENS THAT YOU REMEMBER MR. JUSTICE JACKSON, MR. JUSTICE ROBERTS, AND MR. JUSTICE MURPHY. REMEMBER THAT WHEN JUDGES MAKE A DECISION IT DOES NOT ALWAYS MEAN IT IS RIGHT AND IT IS NOT ALWAYS CLEARLY WRONG. IT IS NOT NECESSARILY RIGHT BECAUSE IT IS THE DECISION OF THE MAJORITY AND IT IS NOT ALWAYS WRONG BECAUSE IT IS THE DECISION OF THE MINORITY. BUT IT IS FINAL BECAUSE THE LAW MUST HAVE FINALITY. AND REMEMBER FRANCIS BIDDLE WHO ARGUED AGAINST HIS CLIENT, THE PRESIDENT OF THE UNITED STATES, BUT DID WHAT HE WAS ASKED TO DO. SHOULD HE HAVE RESIGNED OR STAYED? AND REMEMBER SHIM HIRAOKA WHO FOUGHT FOR HIS COUNTRY EVEN

WHEN HIS COUNTRY DIDN'T FIGHT FOR HIM. ALL OF THEM WERE
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WITH THE MEMORIES OF HOW THEY CONDUCTED THEMSELVES WHEN
THEY WERE CALLED UPON. MAKE SURE YOU CAN LIVE WITH THE
MEMORIES YOU ARE ABOUT TO CREATE.