

CENTER FOR ORAL AND PUBLIC HISTORY  
CALIFORNIA STATE UNIVERSITY, FULLERTON

Japanese American Oral History Project

An Oral History with GARY RYAN

Interviewed

By

Robert Thomas

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CENTER FOR ORAL AND PUBLIC HISTORY  
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NARRATOR: GARY RYAN  
INTERVIEWER: Robert Thomas  
DATE: May 27, 1994  
LOCATION: Santa Ana, California  
PROJECT: Japanese American

RT: This is an interview with Gary P. Ryan, municipal court judge [and] soon to be superior court judge, by Robert Thomas for the Japanese American Project of the Oral History Program at California State University, Fullerton. This interview is being held at the Santa Ana Courthouse on Civic Center Drive in Santa Ana in Judge Ryan's chambers. The time of the interview is approximately five o'clock on May 27, 1994. I'd like to ask you first a little bit about your background and how you got interested in law and where you went to school.

GR: I've been interested in law for about as long as I can remember. I went to undergraduate at Loyola University of Los Angeles, now Loyola Marymount. Later went there to law school, graduated from law school in 1972. After I graduated from law school, I joined the district attorney's office here in Orange County as a prosecuting attorney for roughly six years and spent a good portion of that time involved in their \_\_\_\_\_ (inaudible) appeals section arguing cases involving criminal legal issues for courts of appeal, courts that heard law matters, the superior municipal courts, and, only one occasion, to do any briefing before the United States Supreme Court. Fortunately, for my cause, we won on the brief, but, unfortunately, I didn't get to go back to Washington and argue before the Supreme Court. That would have been a matter of personal enjoyment and not necessarily a benefit to my client.

RT: (laughs)

GR: The courts of appeal and the Supreme Courts of California filed a number of briefs before and did some appearances in some of the smaller federal courts at the trails on matters of trying to remove from state court jurisdiction into the federal court because of federal questions. And, since the mid-seventies, I've been an instructor at three community colleges, East Los Angeles, Santiago, and Saddleback, teaching primarily—

RT: Was that Western at—there's two branches of Western.

GR: You mean, Saddleback?

RT: At Saddleback.

GR: Saddleback—I taught at the campus down in Mission Viejo.

RT: Oh, okay.

GR: Administration of justice classes, primarily to people who are members of law enforcement, and who have aspirations of becoming members of the law enforcement—since about 1979, 1980, somewhere in that particular time frame, I started instructing at Western State School of Law. I've taught at the campus every year since then at Fullerton, and, for a number of occasions, I've also instructed at the campus at Irvine.

RT: What classes do you teach?

GR: Just about everything. Constitutional law, a wide variety of civil law classes from \_\_\_\_\_ (inaudible) to procedures, evidence, torts, family law matters, community property matters, a whole wide variety of things.

RT: I saw your tests over there for the torts. (laughs)

GR: (laughs)

RT: I hear you're a harsh grader.

GR: Well, my grading has remained constant, in most classes. I don't know if it's harsh or not. It's designed to equip the students with what's expected of them when they take the bar exam. So, if they can pass my particular exam, they should be able to take and pass the bar.

RT: Great. (laughs)

GR: I think it's the only fair approach to them for the time and money that they put into trying to go through law school. It's about \$40,000 to complete law school.

RT: I bet that caused a lot of headaches for some parents out there.

GR: Oh, yeah.

RT: (laughs)

GR: A lot of headaches.

RT: Well, that's good enough for the background. Let's jump into—

GR: All right.

RT: Okay. I would like to know a little bit about *coram nobis*.

GR: *Coram nobis*, in what respect?

RT: In the respect—I'd like to know is there a precedent for it? Has it been used? I know it's very seldom used.

GR: Historically, it was a means of going after judgment. It's a writ, a writ of *coram novos*, And it is a means of going after judgment, once the judgment is final, to correct it due to a defect, usually related to some type of fraud. The courts then have an opportunity to re-review and re-look at an issue provided the proper showing is made. The showing usually involves a lack of knowledge in the part of the party that has been harmed, a recent discovery of the correct facts, and that discovery leads to an indication that these people were precluded from having their day in court because of some type of fraud.

RT: Okay.

GR: And then the court takes and re-litigates. Because, generally speaking, when the courts have heard a matter and have ruled on that matter, and it's gone through whatever appellate process it goes through, that judgment is final, and it is usually not subject to what is called a collateral attack.

RT: I bet it would be doubly so for anything that's gone to the Supreme Court.

GR: The higher it goes up in the judicial branches—particularly, when it reaches the level of state supreme court, even more especially when it reaches the level of the United States Supreme Court—and *the matter has been reviewed*, the issues that we are talking about have been reviewed, that pretty much terminates reasons or grounds or causes for any further litigation.

RT: I'd like to you a little bit about where you see the *Korematsu* [*v. United States*] case fitting in the legal world. Does it have much significance? I know it has a historical—

GR: I think the significance is generally historical because the test employed, the law applied is close, and not that far different from what we deal with at this time. Now, there can be arguments in terms of application, and that, perhaps, the court should not have applied and reached the conclusion that it reached. But, that doesn't change the approach, nor does it change the standard, nor does it change the test that was involved. It's just that there's different people looking at those standards, applying them to make them to different conclusions today than they did, perhaps, then.

RT: Definitely.

GR: But, you have to remember one of the most charged speeches given in the history of this country was delivered by President Roosevelt shortly after the bombing of Pearl Harbor. And he had a country that was, at that point in time, just prior to Pearl Harbor absolutely abhorrent of us entering into the conflict that became World War II. The majority of the people wanted us to remain out of the world in Europe, out of the war in Asia, out of the war with Japan, Germany, and Italy, and part of that was because of what happened during World War I, which was still very fresh in people's memory at the time of Pearl Harbor. And then, to have the bombing that occurred at Pearl Harbor that took and united the country, totally, in an effort to go to war. I mean, from being anti-war to being pro-war in that short of fashion, I think, historically, we may not conceive of that. The second thing I don't think we conceive of is—there's a movie, and it's a comedy, it's called *1941*. I don't know if you've seen it?

[01:10:46]

RT: Oh, yeah. I've seen it, with John Belushi.

GR: With John Belushi, Dan Aykroyd, and a couple of other individuals. But, the patrols they had, the shore patrols they had, the citizens watch groups that you saw portrayed in that movie, the fear that was demonstrated by planes you saw flying overhead, and the wild reactions that you saw of the citizenry sighting of a Japanese submarine. I think they had a shelling near the coast of Santa Barbra—

RT: Yeah.

GR: —another shelling along the coast. We didn't have a great deal. But each of those, particularly, when it came shortly after Pearl Harbor—and considering the almost total devastation of the Northern Pacific Fleet at Pearl Harbor—set the public in panic.

RT: Yes.

GR: And, if you look at it historically, this country after World War I, had disassembled a modern Army and reduced it by the mid-thirties to approximately 130,000 individuals. And there were countries many times smaller than this that had larger standing armies. Our Navy had not been maintained modernly. We still had the presence of a strong Navy, but that was primarily from World War I and the only addition had been some carriers. But, the battleships and the destroyers and the other big ships were of vintage nature. They were not particularly prepared for a war. Shortly, before World War II—before Pearl Harbor—we had begun to train people for the first time since World War I, and we trained about a million men, I think, in terms of being soldiers. But, trained them with only a year commitment so, by the

- time training was complete, they were gone. So, that's the basic kind of country that we were dealing with.
- RT: I guess I can see how the war hysteria played. It's easy to see that things got exaggerated and everything.
- GR: So, you had a country that was not particularly prepared for war.
- RT: Yeah.
- GR: You had a country that had tremendous resources. You had a country that had not been fully employed in almost ten years and not had been able to disgorge their resources to do a full-time job, whether it be in agriculture, manufacturing, or anything else because we had been living through the Depression. We were just starting to come out of the Depression slowly, and now we are being attacked by what the press has been playing to the public for about two years – superpowers. We had the little island of Japan wiping out China, taking over Indochina, taking over almost the whole of the Asian culture. Just one country in a period of just a few years.
- RT: Very imperialistic.
- GR: In just a period of a few years. Something that no one had ever done before. They had done more in a shorter period of time than Kublai and Genghis Khan had not accomplished and in countries that were enormous in population and size and difficulty in fighting. We can see our own efforts, and the efforts of France in Vietnam, the problems that we had in just trying to take over and maintain Vietnam. The problems we had in Korea, just fighting there against the Chinese.
- RT: As far as the hysteria goes—just with the Gulf Crisis I remember—
- GR: I think the problem we had just taking over little countries, and what Japan was able as one smaller country than us and taking them all in control. And that's not to speak of what Hitler and Mussolini were doing in Europe, and *they were joined*. These three people were joined. So, the hysteria and the fear coupled with—
- RT: Very real thing.
- GR: Very real thing.
- RT: I guess one of the things I was really interested in was—I thought it was strange that they didn't provide a vehicle for any of the incarcerated Japanese Americans—
- GR: What do you mean a vehicle?
- RT: —to present to the war commissioner that they were loyal citizens. There's no way to really—

GR: You mean no way to take and test their loyalty as an individual?

RT: Right. I think that one of the justices in the Supreme Court, I believe it was Douglas brought that out as one—even though there was a lot of dissent in the beginning of the Supreme Court case with *Korematsu*. And one of the points he brought up was that one of the things that troubled him was that there was no way for these people to prove that they were loyal citizens. They weren't really given that opportunity. I'm wondering how you feel about that.

GR: I understand that—

RT: Basically, their rights have been taken away. I guess, somewhat.

GR: —that when we are talking about *Korematsu*, we have a strange break-up of the court. Your dissent, and perhaps your strongest dissent, was written by Justice Murphy. And he took and tested actions of the government, the military, against a classification under equal protections of the law that is not strict scrutiny. Now, when we take and apply equal protections of the law from Fourteenth Amendment or we take and apply equal protection of laws under the Fifth Amendment—that's what you have to do to apply it to federal action—*Korematsu* is one of the first cases that was dealing with equal protections of law with respect to actions by the federal government. It's one of the first cases that ever hit. Because the Fourteenth—equal protection—Amendment only applies to state action, so we had a history of looking at Fourteenth Amendment classifications, different treatment of different classes historically in this country with respect to state action. And that state action, primarily, was state action and involving the former slaves, as they were referred to at that time, in dealing with the problems that the end of the Southern slavery system created in the country. And the equal protection for many of the Supreme Court, for a long period of time, was limited to that. Wasn't given any breath beyond dealing with that problem. It's only as you move into, really, the sixties, seventies, and on that the equal protection classes gained the bite and sting that it has. Now, we had another clause called due process, which, again, is part of the Fourteenth Amendment, and it applies to state action. But, we had, from the beginnings of our constitutional government, a due process clause and the Fifth Amendment, which served to regulate and control actions of the federal government. And, when we're talking about the internment of Japanese Americans, we are talking about federal actions, so we can't use the Fourteenth Amendment, except, for purposes of analogy, because it doesn't have any direct application of the federal government. So, the application was directly a state action, and this was not state action.

So, we had to go in and look at the Fifth Amendment. The Fifth Amendment set-up a number of tests, when we are talking about violations of due process law, and due process got further divided and sub-divided into what is called subsequent due process or procedural due process. Well here, we do have kind of an overlapping invention, some of it, by not giving these people sufficient review of things before actions were taken against them, not giving them a chance for hearing for actions that were taken against them. All those smack of procedural due process problems, okay?



[00:21:15]

RT: Okay.

GR: Or the manner of which you go about doing something. The mere fact that you are taking and putting people in camps because of their nationality, that goes into substantive due process, the very power of the government that they can do that. Substantive due process takes a look at the ability of government, the power of government, to even gage in their activity.

RT: I guess that hasn't changed. I mean, the federal government does have the power to do that.

GR: Well, under this particular setting, yes. But, *Korematsu* has been criticized post. I don't remember seeing a lot of criticisms at the time.

RT: Yeah, I bet you didn't.

GR: From anybody. Okay?

RT: (laughs)

GR: From anybody that would be willing to listen. The president was aware of it, and he is considered one of the most liberal presidents we've ever had. Did not \_\_\_\_\_ (inaudible). Justices that he put in the Supreme Court approved it. Going back down the historical perspective.

RT: I understand, you would be going against the political—

GR: No, I don't think going so much as against what would be called politically right. I don't think that you could accuse the justices—Justice Black authored the opinion of that—because that's not the caliber person Justice Black was. Justice Black also had a sense of reality. For Justice Black, I think, the reality of it was this constitution is one great thing. Most times it protects us from all kinds of things. But, when it comes to our very survival as a country, then drastic times calls for drastic measures, and I think that's the bottom line. The whole country felt that our very existence questioned, our fleet was destroyed, we had no Army, we had very little in terms of air power, and we are now going to be called-upon to fight a war in two different areas of the world. And for the first time in our history, since our wars early on with England, the people again feared invasion of a foreign power. In other words, there was never a fear of an invasion of a foreign power after those wars. They thought we were protected by the oceans.

RT: Sure.

GR: We are not particularly concerned with the might of Mexico, and we were never concerned with Canada, because they've never shown any hostility. I mean, the closest thing after the wars we had with England—the Revolutionary War and the Spanish American War—and the only reason that was close was because of the events surrounding it occurred in Cuba. So, just the proximity there, but there was never, even in the Spanish American War, a fear of Spain marching into the States.

RT: Or really interference from other countries.

GR: Um-hm. And, in World War I, there was not this big fear of being invaded. You look at the leading song of the time, "Over There."

RT: Yeah.

GR: Okay? That *other* world. Now, we're going to participate for whatever reasons we chose to participate, but it's over there, not over here.

RT: Yeah, I can definitely see how hysteria is created and everything.

GR: Because this was the first time war was ever here.

RT: I guess what I'm—see, I saw so much of it when the Gulf War was going on. We were driving down to our favorite Lebanese restaurant in Newport, and the windows were all boarded up because someone had thrown a couple bricks in there or something. And they posted the American flag out there or something. I guess, I'm wondering what kinds of protections—

GR: Go back further. Go back a few more years to when Jimmy Carter was—

RT: Oh, yeah, the Iranian hostage situation. Geez, that was—

GR: You would not want to be from Persia during those days.

RT: No, and you got to figure that most people were coming from Persia were fleeing.

GR: They were fleeing and former supporters of the Shah.

RT: I think that was one of the things that really came out of this class—as far as the Japanese American were concerned—to really see how separate they were from Japan. There just weren't any ties. Many of them had been here since the 1880s. They just pretty much cut off all the ties, and there is no real support—it was a failure of General DeWitt to produce any evidence to show that there was anything to substantiate this fear. I mean, *not fear*. I'm sorry. He said that there were countless examples of espionage going on but there was never anything brought up on that. There was never a Japanese American convicted of any espionage or anything.

GR: If you go back to *Korematsu*, we go back to a time when the court played great deference to the determination of the military authorities. The court, in *Korematsu*, and Justice Black's opinion, assumed that the determination by military authorities that they were an unascertained number of disloyal Japanese Americans, and that this group had loyalty to another country and, therefore, posed a danger to us, at least in the early stages of the war, was unchallenged. That is the record that went to the Supreme Court. Okay?

RT: Okay.

GR: And that is the record that Justice Black built on, and that is what he accepted. Now, history has proven that to be wrong.

RT: Did he accept that because he felt it was the jurisdiction of the federal government? Because doesn't the judicial branch have an obligation to look out for rights of the—

[00:30:00]

GR: Right, but he treated the military authorities much as the Supreme Court treats the decision of the lower court. The lower court is supposed to look out for everybody's rights in the process of deciding. Okay?

RT: Okay.

GR: Supposed to go through it and is supposed to go through it in a manner that searches for the truth, applies whatever laws come to an appropriate, proper result. Now Black treated *Korematsu*, treats the military decision making body as if it had gone through that type of process, that its fear of this unascertained number of Japanese who were involved in potential espionage justified reactions. Because the actions had to be taken quick, we couldn't go about it and investigate who the individual secret spies were. He was in the opinion that this necessity justified this classification based on national security. Now, to base something on nationality solely for nationality reasons is inappropriate and Justice Black sees that. But, to base it, according to him, on nationality where the public necessity and the public necessity survival requires this action, the military's response to that was, I think—what I commented upon earlier—was one we don't have the manpower. We are about to go into a major confrontation on two fronts, the Pacific and the Atlantic, and we are the only country really left to come fight. Europe has been devastated, Russia is getting beat-up, England is beat into a small hole, and we're it. Not only do we have to take on a Goliath in Europe, we now have to take on this country who has been able to beat all of the Far East. They've taken about every major player in the Far East except India, and the only reason they haven't taken India is they haven't tried to. So, you're looking around the world, there weren't any other players around. We were it. And so, they had an argument of manpower; they couldn't afford the manpower. They had an argument that it was difficult to identify quickly enough, and at the early stages of the war, we didn't have time. We've already been devastated. And then

you had the hysteria doing things like referring to the Japanese as being sneaky. And why? Because they stealthily bombed Pearl Harbor, a surprise attack. Anytime someone would say something to defend them, they would bring up Pearl Harbor, and the argument was lost. Remember Pearl Harbor? And when you remembered Pearl, it became a very strong argument. Now, Justice Black's majority opinion pointed out that these were the days of loyalty. This is before loyalty came under fire, and that's a First Amendment discussion. But, he pointed out that there was at least five thousand Japanese Americans who refused to swear loyalty to the United States, mainly Japanese American. At least a thousand. And he says, "That is just a sign of problems."

RT: Now, were those five thousand, those were American citizens, Japanese American citizens, or were they citizens of Japan? See, because the Issei, first generation, were forbidden citizenship. Second generation, Nisei, were automatically citizens because they were born in this country.

GR: Right.

RT: I'm wondering about the five thousand.

GR: These five thousand were American citizens of Japanese ancestry.

RT: Hm.

GR: So, they were all citizens.

RT: That's interesting.

GR: Now, note that you had Justice Black who was considered by many a liberal. You also had Justice Douglas who was considered one of the leading liberals in the court of all-time, and he said about *Korematsu* that it's easy in *retrospect* to denounce what was done as there actually was no attempted Japanese invasion of our country. But, after Pearl, nobody in the defense knew what was heck was going on to assure \_\_\_\_\_ (inaudible), and they were taking precautions for the worst. Not only espionage, but there were some fears. And granted, they probably are unfounded today—and unfounded at the time—but there was some fears that these people would join up in arms with Japanese invaders once they hit the coast. There was a big fear for at least several years. California was next. They were going to attack the West Coast, but that never came to fruition. But, remember what happen shortly after Pearl. What fell? The Philippines.

RT: Sure.

GR: You had Australia under constant fire and attack. Australia never fell, but they were scared to death. All of the islands that we had any dealing with in the Pacific fell one after another to the Japanese.

RT: What was the size of the Japanese Army?

GR: The Japanese Army was—

RT: The Japanese Navy, I'm sorry.

GR: The Japanese Army was large. It was strung out because of the other imperialistic endeavors they engaged in: China, Korea, Indochina. So yeah, it was stretched. And the nation is not as large as others, but it was stretched. But, they had a humongous Navy. Just a huge Navy, which meant they could move their people around. Now, Justice Black and Justice Douglas was in the majority—and they were both appointees of President Franklin Delano Roosevelt—were amongst the justices that upheld the actions of the military in *Korematsu*, and they applied the most stringent test the court uses, what's called strict scrutiny. And they found, basically, using this strict scrutiny test that the necessity of the military action was warranted.

RT: What is strict scrutiny?

GR: It basically requires that the government justify its actions by showing that this is the only course of action that is possible for this problem. The problem has to be a compelling choice of action to correct this compelling problem. It had to be very narrow, and they found that this was the narrowest course of action to solve what appeared to be this compelling problem, the takeover of the United States by Japan.

RT: There's a lot of arguments that say that the reason they incarcerated the Japanese was to protect a lot of people.

GR: I don't think so.

RT: I don't think so either but—

GR: I don't think so.

RT: There was a lot of violence.

GR: There was. There was a lot violence, a lot of hatred. You mentioned some of those things earlier when you mentioned the restaurant that you saw. There have been reactions that happened from time to time, but it wasn't done out of any gesture of protectionism for the Japanese American. It was done out of protectionism for the rest of the people in America, so I don't see that. Now, Justice Murphy was one of the leading dissenters. And I pointed out that Justice Black applied the most difficult test you have to face if you're trying to justify governmental action. Applied it and said this government actually met it. Murphy, in his dissent, applied a standard that's below strict scrutiny. It's called a reasonable standard.

[00:40:27]

RT: Reasonable?

GR: Reasonable, whether this action is reasonable, and he basically found it wasn't. He acknowledged that military authorities were entitled to a great deal of respect, especially in wartime. However, the deprivation of individual rights was not reasonably related to a public danger that was immediate, eminent, and impending, and he felt that ordinary constitutional processes should have been applied and each of the Japanese should have been handled individually, rather than a class or group.

RT: Right, that brings up the Fifth Amendment.

GR: Well, he has to bring up the Fifth Amendment because that's all that applies. Now, he acknowledges that in 1941 and '42, they feared invasion on the West Coast. The exclusion of the Japanese—he found difficult to understand why we didn't exclude Italians or didn't exclude Germans—

RT: It's pretty obvious why.

GR: Japanese, I think, are a little more identifiable. I think that's what happened. Justice Jackson, another dissenter, stated that the military orders may, or may not, have been expedient military precautions, acknowledging that what the military did may or may have not been appropriate for the military. But he says, "For a civil court, this type of infringement on liberty cannot stand up in front of a class determination such as this. It must be examined individually." And the necessity that the military was showing was just not grave enough, not specific enough, focused enough, not supportive enough to justify it. Murphy, the first dissenter, points out something in his—

RT: Now, what would you—I'm sorry for interrupting—what would be substantial enough to warrant it? You mentioned the five thousand—

GR: Today or then?

RT: Then. (laughs) I'm trying to judge it by its own standards. For example, the five thousand Japanese Americans that were ready to renounce their citizenship.

GR: They did justify it then.

RT: Well, I know that.

GR: So, what they did then was approved by the court.

RT: What I'm trying to say, what are they using to justify it, specifically? It's just race. It's just that they are identified by race with the Japanese government. There's no real proof of any other ties.

GR: Murphy also pointed out—I'm just giving you some of the dissent—Murphy also pointed out two things. No one of Japanese ancestry was accused or convicted of either espionage or sabotage after Pearl Harbor while they were still here. And then, he pointed out what occurred in England. England had something in excess—and I don't know remember the exact number—but one hundred thousand Austrian and German aliens in the country at the outbreak of World War II with Germany. Rather than interning all of them, England had engaged on individual hearings in each case to determine whether that particular person posts a risk, and these hearings, in excess of hundred thousand, took approximately six months. And at the end of the hearings, they interned something in the neighborhood of two thousand rather than over one hundred thousand. So, Murphy points that out and suggests that perhaps we should have done something along that nature.

Now, *Korematsu* was decided in 1944. The war was still going strong, still waging on both fronts, both the Atlantic and the Pacific. We started to see the military, at that point, by 1944, do some amazing things. The country had re-built into a war machine. We were starting to attack on both fronts and attack with success. The military was planning out strategies that started to give the people and the government a feeling that we would win, and they were congratulating the military on \_\_\_\_\_ (inaudible). Now, we have a situation where the military looks like it is doing the job, and they've been right in everything they've said, because the military had forewarned the country for four or five years prior to the outbreak that we were in deep trouble if something happened. We should expect something to happen. So, you had that going up against the court. The military has been right on everything it said. So, if they said to get all Japanese Americans off the streets, you know, you have to pay them a little respect. Basically, the reason military is doing this is so that we wouldn't have to hassle with six months of interviews and everything else, and make it easier to deal with.

RT: I wonder what the cost was.

GR: Cost in terms of what?

RT: As compared to the incarceration of the Japanese.

GR: Well, the cost are \_\_\_\_\_ (inaudible). You have the direct cost of clothing, feeding, housing, guarding those large numbers of people. Much a direct cost. Indirect cost, you lost them as a resource and also alienated many as a resource for their rest of their lives. So, those costs, I don't think are capable to measure. But, the loss of that group as a resource, we'll never know. I think that the direct cost \_\_\_\_\_ (inaudible). Now, they took many from these concentration camps who the military later allowed to demonstrate their loyalty and formed into various military groups, and they were sent to Europe—

RT: Yup, 442—

GR: —to fight, and they fought very admirably.

RT: Yeah, the most decorated.

GR: Um-hm. And they sustained some very high casualties, too.

RT: Yeah.

GR: Okay, next question.

RT: (laughs) Great. Let's see. So, what I'm wondering, do we interpret the Constitution differently now, do you think because of what happened to the Japanese Americans? Are we more cautious about that now? If we were to get into another similar situation, how do you think we would handle it?

GR: Let us say in the future we develop relationships with other worlds, and we have settlers here from other worlds here living here. And the whole world is run like the United States is today, and we were to get into a global conflict with one of these other worlds, I think we can see something like this again. The fear, the hysteria—

[00:50:43]

RT: Sure.

GR: —the fact that you're facing total annihilation and self-destruction basically means you do things that you normally wouldn't do. Soldiers out there facing annihilation and killing people they normally wouldn't kill, running into situations that they normally wouldn't run into, and doing all kinds of acts that are normally above anything they thought they could do in their lives. And when you get a whole country marching to that tune, which is what this country marched to, something seems to be in the way of that march. So, there are times when I think our Constitution, because of historical strain at the moment—

RT: Has to bend.

GR: Not has to, does.

RT: Does. (laughs)

GR: Just does. Because it's still interpreted by people, dealt with by people, ran by people. Now, we've come thirty years since then. We've seen what occurred in England. We all realized what occurred to the Japanese American was an injustice. And we realized that we did that wrong and also lost a valuable ally in terms of fight to preserve freedom. So, something of that nature we may be hesitant to do again because of the historical perspective we have. But, put us into the right setting at the right time, and we are not necessarily pretty. *Korematsu* was one of only of a handful of cases—I'm talking about a handful—who has applied the strict scrutiny test and upheld governmental action. Generally, when strict scrutiny is applied,



governmental action is usually found to be wanting, in other words, something government should have not done, a law that should not have passed, an executive rule or executive practice that should not be allowed.

RT: What are some of the other cases?

GR: Only case that I can think of similar import, but it was only on an individual level, is that during and shortly after the Civil War, they suspended the writ of *habeas corpus* that had most claims run through military tribunals where there were accusations—

RT: Was that Taney? Is he chief justice?

GR: I don't think so. I don't think so. But, that's the only other setting I can think of in a war arena where something we have traditionally have looked upon as a guaranteed freedom has just totally disappeared and been approved of by the court.

RT: Great.

GR: It's about the only thing I can think of in the arena.

RT: Great.

GR: Anything else you'd like to know?

RT: I think that's about it. I think we'll stop with that.

GR: My pleasure.

RT: Thanks a lot on behalf of Cal State Fullerton Oral History Department.

END OF INTERVIEW