

# Japanese-American Redress

Dale Minami\*

## I.

### INTRODUCTION

Sixteen years ago at Wooster College in Ohio, I lectured about Japanese-American redress at a symposium examining African-American redress. I have been aware of the issues and connections between the Japanese-American and the African-American redress movements ever since.

My role in Japanese-American redress was primarily as an attorney for Fred Korematsu,<sup>1</sup> who challenged his sixty-year-old conviction, which was originally upheld by the United States Supreme Court in 1944,<sup>2</sup> and ultimately overturned in 1983.<sup>3</sup> I also actively supported the Japanese-American Redress Movement. President Clinton appointed me chair of the Civil Liberties Public Education Fund, an organization created as part of the redress legislation that committed five million dollars (it was supposed to be fifty million dollars, but got cut down) to do educational work about the internment of Japanese Americans.<sup>4</sup> In brief, I will talk about the struggle for Japanese-American redress that lasted about fifteen years. It was a campaign to educate America about the great injustice that was done to Japanese Americans in World War II, to extract monetary compensation, and to receive an apology.

In 1988, Ronald Reagan finally signed the Redress Bill that granted: twenty thousand dollars to each internee living at the time he signed the bill, an apology, and the five million dollar fund.<sup>5</sup> Of the 120,000 Japanese Americans incarcerated in World War II, 82,219 were still alive to claim their twenty thousand dollars. This number of survivors was far more than the United States

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\* Founding Partner, Minami, Lew & Tamaki LLP.; J.D., University of California, Berkeley, Boalt Hall School of Law, 1971.

1. The history of Korematsu's case is summarized in *Justice Delayed*. PETER IRONS, JUSTICE DELAYED 3-27 (1989).

2. *Korematsu v. United States*, 323 U.S. 214 (1944).

3. *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984).

4. MITCHELL T. MAKI ET AL., *ACHIEVING THE IMPOSSIBLE DREAM: HOW JAPANESE AMERICANS OBTAINED REDRESS* 225-26 (1999).

5. 50 U.S.C. app. 1989 (2004).

expected.<sup>6</sup> There was probably such a great number because many of these Japanese Americans were so damned stubborn; they were going to stick around just to see the light of redress. So, they survived.

Redress achieved more than money or an apology for Japanese Americans. More importantly, the movement lifted a cloud from Japanese Americans, a cloud of suspicion about their loyalty, a suspicion that they served as spies and saboteurs for a foreign nation.<sup>7</sup> It liberated Japanese Americans from the shame of their imprisonment and helped all of us to reclaim our political birthright. In so doing, we gave America a gift—a gift of education about civil rights, justice, persistence, and atonement. The Japanese American Redress movement became a precedent for others who were similarly wronged in the past.

## II.

### BACKGROUND

In 1942, the United States government imprisoned 120,000 persons of Japanese ancestry, two-thirds of whom were citizens.<sup>8</sup> Old persons, babies, and the infirm—it did not matter. My brother was one-year old when he and my parents were taken to live in the horse stalls at Santa Anita racetrack, and later confined in Arkansas. They were given no notice of any charges, the right to a trial, or the right to an attorney. Their due process rights were totally ignored. Japanese Americans were forced to live in the nether regions of America for as long as three or four years. From these camps, a group of Japanese Americans volunteered to fight in the war and enlisted in the United States Army.<sup>9</sup> Considering their small numbers, they became the most decorated unit in the history of the United States, fighting impossible battles for the freedom of our country while their families were imprisoned at home.<sup>10</sup> Their later role in demanding redress became a pivotal point for the redress movement, for their sacrifices for this country were unassailable.

In 1943 and 1944, Fred Korematsu, Gordon Hirabayashi and Minoru Yasui— all American citizens of Japanese ancestry— independently challenged

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6. MAKI ET AL., *supra* note 4, at 225.

7. *See, e.g., id.* at 162 (discussing phone calls received by Representative Norman Mineta's office asking "Why should we help our enemies?" and "Why do you care about redress?" when he supported the Redress Bill in 1986).

8. *E.g.,* COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED 3 (1982) (stating that 120,000 individuals were interned) [hereinafter PERSONAL JUSTICE DENIED]. *See also* JACOBUS TENBROEK ET AL., PREJUDICE, WAR AND THE CONSTITUTION: CAUSES AND CONSEQUENCES OF THE EVACUATION OF THE JAPANESE AMERICANS IN WORLD WAR II 99 (1970) (stating that of the 112,000 individuals interned on the west coast within one year of the onset of war, two-thirds were American citizens).

9. PERSONAL JUSTICE DENIED, *supra* note 8, at 253 (approximately 33,000 Japanese Americans served in the U.S. military during World War II).

10. *Id.* at 257-59.

parts of the curfew, exclusion, and detention programs.<sup>11</sup> In each case, the United States Supreme Court rebuffed their challenges.<sup>12</sup> The decisions were some of the worst civil rights decisions ever penned by the United States Supreme Court. Through these decisions, the Supreme Court accepted the naked assertions of the military, without supporting facts, that there was “military necessity” to intern Japanese Americans. No evidence of espionage or sabotage by Japanese Americans was ever proven.

Some leaders in the Justice Department, the War Department, and the FBI opposed mass incarceration because they believed Japanese Americans, as a group, were not a danger to this country’s security and that suspicious individuals could be identified.<sup>13</sup> This advice, however, was disregarded and the Supreme Court accepted a program of racial profiling of Japanese Americans. The military concluded that ethnic affiliations of Japanese Americans during a time of war could determine loyalty. It was disturbingly similar to what happened after September 11<sup>th</sup> to Arab Americans and Muslim Americans. It was also racially motivated: German Americans and Italian Americans (who also had ethnic affiliations with the enemy during this time of war) were not taken away.

### III.

#### THE GENESIS OF THE JAPANESE-AMERICAN REDRESS MOVEMENT

After the war, Japanese Americans tried to rebuild their shattered lives in America. They resettled in different places from where they were originally taken but mostly on the west coast. They did not talk about what happened to them. If you talk to any Sansei—third-generation like myself—you will discover that we rarely heard our parents talk about the camp experience. I think they were profoundly ashamed by their experience, as if they must have done something wrong. They created a culture for their children to become 100% American and avoided questioning what the American government did to them. But in the mid-sixties, the cataclysms of that decade shook us out of our complacency as Malcolm X, Muhammad Ali, the riots and fires that rocked South Central, Detroit, Newark, sit-ins, lynchings, the Vietnam War, and the Civil Rights Movement made us question our own history.

African Americans, Native Americans and Latinos began demanding relevant education and the teaching of a true history. The Third World Strikes and the emergence of ethnic studies all had an effect on Japanese Americans. These developments ejected us from our “Ozzie and Harriet,” “Leave it to

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11. See generally PETER IRONS, *JUSTICE AT WAR* (1983) (providing a comprehensive history of Japanese Americans’ challenges to internment) [hereinafter IRONS, *JUSTICE AT WAR*].

12. *Korematsu*, 323 U.S. at 214; *Yasui v. United States*, 320 U.S. 115 (1943); *Hirabayashi v. United States* 320 U.S. 81 (1943).

13. IRONS, *JUSTICE AT WAR*, *supra* note 11, at 44.

Beaver” dream world as we came face-to-face with the Civil Rights Movement. Once that box opened and we began an exploration of our history, the idea of redress was born. There was no doubt, after reviewing all the evidence, the historical records, and the justifications offered for the incarceration of Japanese Americans, that the decision to intern Japanese Americans was unequivocally racist.<sup>14</sup> Clearly the Japanese-American Redress Movement is a direct descendent of the African American led Civil Rights Movement. There is a direct tie-in and it would never have happened if African Americans had not stood up and demanded equality. That was the genesis of our redress.

Chronologically, the concept began circulating in the early seventies when a man named Edison Uno—a wonderful man, a Japanese-American professor at San Francisco State, a gadfly who died too young—proposed redress to the Japanese-American Citizens’ League (“JACL”) at their a national convention.<sup>15</sup> JACL is a national organization that describes itself as a civil rights organization.<sup>16</sup> They passed resolutions in 1972, 1974, and 1976, but at that time did not actually push the redress agenda because it was controversial within our community.<sup>17</sup> The idea brought back bad memories. Some people were conflicted, and said, “No, let’s let bygones be bygones. Let’s forget this.” But finally, enough of a critical mass was created so that people started studying this history and started calling for redress and reparations.

Some people in our community, like S.I. Hayakawa, a conservative senator from California and former President at San Francisco State University, became an adamant opponent of redress, arguing that racism did not exist for Japanese Americans anymore.<sup>18</sup> This was a man, born in Canada, who never went to the camps. He was reviled by most members of the Japanese-American community, but quite a few Japanese Americans, while not accepting Hayakawa’s extremism, were skeptical, scared or conflicted about a push for redress. Some people in our community did not trust JACL, so they formed different grassroots organizations to demand redress. The National Coalition of Redress/Reparations and the National Council for Japanese-American Redress started their own kind of campaigns parallel with JACL.<sup>19</sup> They all had slightly different strategies, but the primary goal was the same—to educate the country and obtain some kind of redress for Japanese Americans.

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14. See generally TENBROEK ET AL., *supra* note 8 (providing an overview of the historical racism and political situation that led to the internment of Japanese Americans during World War II). See also PERSONAL JUSTICE DENIED, *supra* note 8, at 4-10 (providing a summary of the context in which the government decided to intern Japanese Americans during World War II).

15. MAKI ET AL., *supra* note 4, at 64.

16. *Id.* at 58-59.

17. *Id.*

18. *Id.* at 76-77.

19. *Id.* at 89-91.

## IV.

## STRATEGIES FOR ACHIEVING JAPANESE-AMERICAN REDRESS

In 1978, JACL decided on a legislative route and proposed the idea of presenting a redress bill to Congress.<sup>20</sup> At a critical juncture, they solicited the advice of Daniel Inouye, the senior Japanese-American senator and he told them, "Look, you are not going to get redress right now. The timing is not right. What we have to do is set up a commission to mold public opinion before any bill is introduced."<sup>21</sup> The brilliance of that move is reflected in the fact that his strategy was successful.

The Commission on the Wartime Relocation and Internment of Civilians was created by Congress in July of 1980.<sup>22</sup> It held hearings in California and around the country in 1981.<sup>23</sup> More than 750 people testified.<sup>24</sup> There were old Nisei (second generation) Japanese-American women and men, historians, sociologists, Nisei soldiers, and everyday people who suffered from the incarceration. They told poignant stories about broken homes, shattered dreams, and lost hope and spoke of poor food, bad sanitation, the lack of privacy, the utter humiliation, and of the death of parents and children. I heard stories that were quite difficult for people to tell, but that created sympathy within the media and helped educate our own community. The hearings put a human face on redress so that the American public could focus on the real deprivations and injustice, rather than saying, "Oh, you know these people are asking for money. What is the basis for it?" That Commission ultimately composed a report concluding that the broad historical causes, which shaped the decision to intern Japanese Americans, were race prejudice, war hysteria, and a lack of political leadership.<sup>25</sup> It recommended monetary redress, a trust fund, and an apology.<sup>26</sup> These official recommendations became the foundation of the redress bill that was introduced into Congress.<sup>27</sup>

At the same time that the Commission was doing its work, we began litigation on the very issues the Commission was contemplating. It was not a conscious coordination. It was by happenstance that we were able to use heretofore undiscovered, unseen documents proving that government attorneys committed a fraud on the United States Supreme Court in 1943 and 1944, when Korematsu, Hirabayashi and Yasui were decided.<sup>28</sup> The documents, written by the government's own attorneys and agents, demonstrated a pattern of

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20. *Id.* at 80-81.

21. *Id.* at 85-87.

22. *Id.* at 96.

23. *Id.* at 99.

24. *Id.*

25. PERSONAL JUSTICE DENIED, *supra* note 8.

26. MAKI ET AL., *supra* note 4, at 112.

27. *Id.* at 115.

28. See *Korematsu*, 323 U.S. at 214; *Yasui*, 320 U.S. at 115; *Hirabayashi*, 320 U.S. at 81.

alteration, suppression, and destruction of evidence. We used these documents to overturn the convictions of the three men who stood up and resisted the military orders aimed at Japanese Americans.

Obviously, we wanted to overturn the convictions. Even more, we wanted to try the cases in the court of public opinion. We wanted to influence how people saw the internment of Japanese Americans, and thus, how they viewed the whole redress campaign. In that sense, litigation was a political act, a political tool to educate, create political pressure, and win the cases. In the first case decided, the court overturned Fred Korematsu's forty-year-old conviction, declaring that there was no military necessity to intern Japanese Americans and that racism played a role in the internment.<sup>29</sup> In 1983, a group of Japanese Americans led by William Hohri brought *Hohri v. United States*,<sup>30</sup> a class action lawsuit for damages. The private action for deprivation of the constitutional rights of those interned against the government asked for \$27.5 billion in damages.<sup>31</sup> Their case traveled up and down the federal court system but ultimately the case was lost on procedural grounds.<sup>32</sup> The message brought forth by the litigation to the American public about the injustice done to Japanese Americans, however, was clear. The threat of a multi-billion dollar verdict pressured Congress to think about bills brought before them. In the end, we achieved our goals of influencing public opinion and educating the American people.

In the early eighties, legislation took center stage. The bills in 1983 and 1985 died in committee, but they led to more and more co-sponsors. It was interesting to witness the lobbying of Congress. Japanese-American veterans—old guys, some of whom were disabled—walked through the halls of Congress wearing their uniforms, hats, and medals, talking to members of Congress, explaining why redress was important, why it was an American issue, and why it was the right thing to do. By 1987, in the heart of Congress, Japanese Americans and their allies of all colors enlisted 119 co-sponsors for the Redress Bill in the house, and seventy co-sponsors in the Senate.<sup>33</sup> This made the Bill veto proof. The role of the Japanese-American members of Congress was crucial. Robert Matsui,<sup>34</sup> Norm Mineta,<sup>35</sup> Spark Matsunaga,<sup>36</sup> and Daniel Inouye<sup>37</sup> talked to every one of their peers in Congress. They put their careers

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29. Korematsu, 584 F. Supp. at 1406.

30. 586 F. Supp. 769 (D.D.C. 1984).

31. *See id.*

32. *Hohri v. United States*, 847 F.2d 779 (1988) (affirming the trial court's holding that the suit was barred by the statute of limitations).

33. MAKI ET AL., *supra* note 4, at 167, 170.

34. Robert Matsui is a democratic congressman from the fifth district of California.

35. Norm Mineta was appointed Secretary of Transportation by the Bush Administration in 2001, and was the U.S. Secretary of Commerce under Clinton.

36. Spark Matsunaga served as a congressman in Hawaii from 1977 to 1990.

37. Daniel Inouye is a democratic senator from Hawaii.

on the line because this was not a particularly popular cause. In the cases of Mineta and Matsui, their constituencies were predominantly non-Japanese. They made redress a personal campaign, won approval of their bill in Congress, and saw it signed by President Ronald Reagan in August of 1988.<sup>38</sup> Of course, the bill limited redress to those Americans of Japanese ancestry who were alive on the date of the signing, a requirement inserted for a reason—to avoid a “precedent” for African Americans.

## V.

### CONCLUSION

There are many lessons to draw from this episode. So many stars lined up for Japanese Americans on this journey that it is difficult to say that there was a single compelling factor. It was important that significant solidarity was formed within the Japanese-American community, especially after S.I. Hayakawa passed away. There were critics, but the critics became fairly quiet as the quest became real. Eventually, many of them were won over because, as a result of lobbying and education, the evidence for the moral justification for redress was overwhelming. The leaders were able to use the infrastructure of the community, bringing local chapters of JACL, individuals and other organizations to conduct a massive lobbying effort in Congress.

The framing of the issue was also important—not just as a Japanese-American issue, but as an American issue. It was an issue about the Constitution, about protecting the civil rights of future generations. And it was not just an issue about one minority group because Japanese Americans brought other groups to the table to support their struggle. Other Asian Americans, Jewish Americans, African Americans, other people of color, and white Americans all came together and lobbied on behalf of Japanese Americans. In 1942, Japanese Americans had no allies. Nobody stood up for them except the Quakers and the ACLU of Northern California and we endured a civil rights disaster.<sup>39</sup> In the 1980s, when redress hit stride, Japanese Americans enlisted allies of all colors and achieved a civil rights victory.

Many interesting factors aided Japanese-American redress. One interesting factor was the conservative support for redress. Japanese-American veterans lobbied the Veterans of Foreign Wars (“VFW”)<sup>40</sup> and the American Legion.<sup>41</sup> When they came forward with the passing of a resolution favoring redress by the VFW and the American Legion, it was quite dramatic.

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38. *Id.* at 195-96; 50 U.S.C. app. 1989.

39. *See generally* IRONS, *JUSTICE AT WAR* (chapters 4 and 5 provide a history of the early stages of the cases, including support and fundraising by the American Friends Service Committee and advocacy by the ACLU).

40. *See* MAKI ET AL., *supra* note 4, at 76.

41. *Id.* at 145.

Conservative legislators such as Allen Simpson and Newt Gingrich also vigorously subscribed to redress. A second factor was the effective utilization of the media. Japanese Americans had poignant stories published in the media. They established a rapid response team to write op-ed articles, to respond to critics and make sure that the American consciousness became or remained sympathetic. Third, the litigation that we brought helped defuse the critics in Congress, by eliminating one of the legal arguments they wielded against redress: “If the Korematsu decision was upheld by the Supreme Court, and so the internment was legal, why should we grant redress?” We discredited those original decisions with the litigation and thereby defused the strength of the opponents’ argument. Finally, we saw solidarity among members of Congress. The Japanese-American contingent, and all of the Latino and Black caucuses supported Japanese-American redress, giving the issue weight and moral authority.

Many in our community never thought this Redress Bill would ever pass. Many of us were skeptical, but thought we should take this journey anyway because the journey was as important as the destination. We needed to attempt to make America live up to its own rhetoric of equal liberty, equal rights, and stand the test of truth and time. We felt that it was important, whether we won redress or not, to take the journey. Whether we won redress or not, we believed our efforts would educate the American public. And for that victory alone, it is incumbent on all of us to continue these efforts to educate—for all of us to take this journey for African-American redress.