

DALE MINAMI INTERVIEW  
*THE SOUL OF AMERICA*  
KUNHARDT FILM FOUNDATION

**Dale Minami**  
**Civil Rights Attorney**  
**June 7, 2019**  
**Interviewed by Katie Davison**  
**Total Running Time: 1 hour, 3 minutes**

START TC: 01:00:00:00

**Background and connection to Fred Korematsu's case**

01:00:08:16

DALE MINAMI:

My name is Dale Minami, I was involved in the case that overturned his conviction, I had also read about these cases, the Korematsu case, landmark case that all law students read in law school. My parents were victims of the government incarceration of Japanese-Americans so I knew this from a person point of view and a legal point of view.

**Pearl Harbor and the racism that led to the Japanese-American incarceration**

01:00:36:09

DALE MINAMI:

December 7<sup>th</sup>, 1941 the imperial forces of Japan attacked the United States at Pearl Harbor, and that day of infamy, as President Roosevelt calls it, lead to years of infamy with the imprisonment of Japanese-Americans suspected of

being spies and saboteurs. Under 20,000 Americans of Japanese ancestry were banished from their homes, taken to the nether regions of this country, imprisoned for indefinite periods of time, without any due process rights to an attorney, right to a hearing, right to a notice of charges. They lived in abysmal conditions for years. The story begins before Pearl Harbor because the years of racism that was visited upon Chinese-Americans and then Japanese-Americans was begun years before, 100 years before. So the whole setting of the incarceration was pre staged by the racism that afflicted Asian Americans, so the time was ripe for that racism and the rivers of racism to overflow. And the country was predisposed to be hostile and antagonistic to Japanese-Americans so it wasn't a difficult move for them to claim that Japanese-Americans were spies and dangerous.

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The incarceration of Japanese-Americans was not an aberration. It had begun years and years ago with the advent of Chinese to this country who were welcome initially as cheap labor and eventually became the subject of hostility and antagonism. They were separated in schools, they were denied certain occupations, there were actual lynching's, killings, burning of their communities, and finally in 1882 the first Immigration Act against any ethnic group was passed against Chinese from coming into this country. Into that void, because Chinese could not come, Japanese were recruited from Japan, and they both inherited the goodwill of the Chinese at the start and inherited the antagonism later on as they developed their own farms, because competitive to non-Asian farmers, so the second Immigration Act was passed to ban Japanese in 1924. So that whole setting of racism or discrimination

against these Asians was a stage for the incarceration of Japanese-Americans. There were, whole communities were burned down. They were denied occupations with the state, segregated, they were not allowed to own land as immigrants, and that wasn't changed until the 60's. They couldn't marry outside their race, that was illegal, miscegenation. They also suffered a number of other legal, they also suffered legal discrimination in other areas.

### **Minami's family background**

01:04:04:05

DALE MINAMI:

My grandparents came here in the early 1900s from the south of Japan where many Japanese came because they were farmers, a whole host of historical, societal and cultural conditions. They thought like the Chinese they would stay for a little while, pick up the gold bricks that the streets were made of, return home and live like kings, and essentially were sold a bill of goods because they were then relegated to the railroads, mining, the most menial conditions in order to survive. They spoke Japanese, so I couldn't communicate with them, and part of that reason is growing up as a third-generation, my parents were born in Southern California. They discouraged us from knowing much about Japan, being too "Japanese," because that would be a sign that we were too vulnerable. So, we never talked about those, the imprisonment, we didn't talk about the injustice, we didn't talk about the hardships they went through. They didn't like to talk about those issues. In order to assimilate and become part of this great American cell, however you

want to call it, they felt they had too much trappings of being Japanese was a deficit, was something that you did not want to do to call attention to yourself. While we occasionally ate Japanese food, we were pretty much encouraged to be as Caucasian as we could as quote “American” as we could. And I think as one commentator mentioned, they were like rape victims. This was not something pleasant to talk about, this was a horrible situation, a terrible injustice. To a country, by a country they loved. For them it was, they would rather leave that in the past, the dark recesses of their minds and try, in a sense to protect us psychologically and in terms of our future careers as well.

### **Executive Order 9066**

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DALE MINAMI:

President Roosevelt on February 19, 1942 signed executive order 9066 which delegated to the military commander of the west United States, General John L. DeWitt to make such orders appropriate. Congress, within a day or two, passed Public Law 503 which made it a crime to disobey a military order. It's a military order that was yet to be issued so it was all very staged and coordinated. Then the military commander, John L. DeWitt orders a curfew of all alien Germans, Italians and all Japanese, whether citizens or not. That led to an exclusion act that was aimed at Japanese, whether you are American citizen or not, where they had to leave their homes, they had to report to what they called “temporary assembly centers” which for my

parents was the Santa Anita race tracks where they lived in horse stalls, with horse manure on the wall and hay on the ground. And then they were moved and transported across the country to rural Arkansas or one of the ten other designated camps for Japanese-Americans. So, that was the years of infamy I mentioned. Years of infamy for Japanese to have nothing to do with Pearl Harbor and yet be taken away without their rights to these God forsaken places in this country for indefinite confinement.

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The executive order did not refer to Japanese at all, and it was a somewhat common experience for Japanese-Americans. If you look at the Alien Land Act, which prohibited essentially Japanese and Chinese immigrants from owning land, it was written neutrally. Just like the Muslim ban, which does not specifically talk about Muslims or Arabs, the executive order was written neutral on its face. It was so obvious that these applied to a specific group, and it's so obvious that it was the result, to my mind at least, of some kind of discrimination. And yet to name a targeted group would undoubtedly affect the effectiveness of that particular order. If you couple that with contextual circumstances, the racism exhibited by General John L. DeWitt, the public opinion at the time against Japanese for example, you could figure out if you're not an idiot that this applies to Japanese-Americans.

**Germans and Italians not being massively incarcerated like Japanese-Americans**

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DALE MINAMI:

We were at war with Germany and Italy, so it was obvious there were people in those communities that would be suspect as well. The FBI had files on pretty much all of the folks they determined dangerous, so some of those folks were rounded up, but they weren't taken in mass like Japanese were, which included citizens. I think if you look back, that's why that history of racism comes into play because you didn't have history of racism for that many years against Germans or Italians, and secondly if you look at how America or this country has treated Asians, as exotic, as inscrutable, unknowable, as unassimilable—and that's kind of a code word used in many contexts to justify discriminatory treatment—you can understand that Japanese-Americans were singled out. They were not well known; they didn't have quote "European customs" that were a pass for Germans and Italians not to be taken in mass.

**J. Edgar Hoover opposing Executive Order 9066**

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DALE MINAMI:

The military had direct authority to issue these orders of banishment and exclusion, but there were opponents within the government. Members of the Justice Department did not feel that this was right or fair or necessary. Even J.

Edgar Hoover, who is no friend of civil rights, was against the exclusion. He declared, "I have files on everybody in this country so we don't have to take away these people as an entire racial or ethnic group, we can identify the dangerous ones." There was resistance within the government, but their voices were drowned out.

### **Earl Warren and politics behind Executive Order 9066**

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DALE MINAMI:

Part of it is pure politics, and that's where Earl Warren cut his teeth and got his power base, by declaring that Japanese-Americans were dangerous, and one of his famous comments was, "The fact that no sabotage has occurred is a disturbing, that means that it is probably going to occur by Japanese-Americans" which is of course illogical. But there were elections during that period of time, Earl Warren was very ambitious, as were a lot of politicians. There was also war hysteria, there was racism, and if you combine all those elements, all those different factors, you're pointing towards a civil rights disaster.

**The politics of fear**

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DALE MINAMI:

I think the politics of fear have been a staple of pretty much every country, I wouldn't just single out the United States. Fear drives people to do things and gets other people elected, and that's happening in Europe today, for example. So, I think it's a very common principle that we should not be surprised at, but we should be very careful when fear is used as a motivating force for elected officials as part of their platform. That's divisive, that's dangerous and that leads to these terrible conclusions and actions by the government.

**FDR and white supremacy during the Japanese-American incarceration**

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DALE MINAMI:

If you read "By Order Of The President," it's a book by a guy name Greg Robinson, FDR was essentially a white supremacist. He was a eugenics devotee. He felt Japanese-Americans were unassimilable, and yet he suppressed a lot of those opinions, and to be fair he did have some very complimentary views of Japanese, but I think he was very isolated. He's in Washington D.C., all this stuff is happening in California where the growers, the farmers are demanding the ouster of Japanese because they were competition, politicians are screaming for their incarceration, so I think he was pretty isolated. If his wife Eleanor were President this would never



happen, because she was very much more sympathetic and understanding of the human tragedy that was about to unfold.

### **Conditions of the incarceration camps**

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DALE MINAMI:

The camps were not camps, they were prisons. They were barbed wire on the outside, guns and guard stations with guns pointed in. Common latrines without doors, the food was terrible, inadequate medical care. They were placed in some of the worst locations you never want to visit because it was very hot and humid in the summer, cold in the winter. I was in Manzanar a month ago, and while it was fairly benign, it was still 90 degrees, and it was fortunate because the wind wasn't howling and throwing sand everywhere. They lived in dusty barracks, two to three families at a time, there were cracks in the walls, so they had to stuff newspaper in to stop the wind from blowing in. They had no personal freedom. So I think some of the worst damage was not just the physical difficulty of living in these conditions, it was the abject humiliation, the shame that was imposed upon these people. The loss of dignity, is a subjective notion, the loss of dignity is one of the most devastating things you can experience as an individual, especially in a country that claims to value individual freedom.

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The government tried to sell this as model cities where people have enough to eat, they play baseball. So, they're just showing a very small slice of how

bad these conditions were. And as part of the proof of that, Dorothy Lang the famous photographer, was commissioned to take photographs of the prisons, and her pictures were not flattering—they showed terrible conditions, people in misery. So those photographs were suppressed until this last year, 2018, when they were opened up and you could see that there is another side to the stories the government was trying to sell to the American public. The stories that they were selling was that we're doing this for their protection, they're living in great conditions, they get three meals a day. And that really did sell to the American public. To this day, they say, "Well they were lucky to be in these camps," when they were really prisons. "They didn't have to work, three meals, great medical care," and yet how much do you pay for the loss of liberty? How much is that worth to you? Is it worth three meals a day? I don't think so. Truthfully the conditions were abysmal and dismal. It was an awful place to be, not only in the geographic locations, but in the type of lifestyle, services, amenities you could have when you lived at home in Los Angeles or Seattle, Washington or San Francisco, and now you've got to live in these barracks in terrible conditions. I think those conditions were not well known to the American public partly because of the propaganda, so folks thought these folks were lucky. What they didn't show very much, they didn't show barbed wire in any of those, or the guns pointing in, so they look like, quote "camps."

**Japanese-Americans suppressing what happened to them**

01:17:16:02

DALE MINAMI:

Japanese-American when they left the prisons in the mid 40s did not want to talk about this, so there was very little literature, very little commentary about what happened to them. There were legal issues that were publicized, but they really wanted to go back to their homes to rebuild their lives. They felt that they didn't have time to dwell on these terrible injustices. They had to make a living, had to raise their families. So, all of that was suppressed for year by the Japanese-American community until the civil rights movement. The civil rights movement sparked an interest, ignited the imagination of Japanese-Americans to discover what really happened. That led Japanese-Americans down that path to self-discovery, to finding their voices, to talking about what happened, to writing about what happened, to the point that many in that community who were terribly outraged because they had suppressed all that anger and bitterness for years, and now people were writing about it and talking about it, when African-Americans who blazed the path for Japanese-Americans to begin talking about civil rights and wrongs, that Japanese-Americans began to open up, and more information became available to the public at that time.

### **How Minami learned about the Japanese-American Incarceration**

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DALE MINAMI:

I've read about the cases and the incarceration, one paragraph in high school, a little bit, five paragraphs in college, and when I read the Korematsu case in high school, it sparked an interest to understanding what really happened, because it was at the same time the third world strikes were exploding in the country, and those strikes part of the goal was to discover your true history. As I learned more about what happened to Japanese-Americans, the more I realized that this was a terrible civil rights tragedy. At that point my interest was sparked and then I taught at Berkeley and learned more and more because I had to learn the materials to be able to teach the classes. That probably put me on the road to not just self-discovery, but discovery in relationship to this country's history.

### **Case background for Fred Korematsu, Min Yasui and Gordon Hirabayashi**

01:20:00:04

DALE MINAMI:

The original cases begin in 1942 and '43 and a lawyer named Ernest Bessig from the Northern California chapter of the American Civil Liberties Union approached Fred and asked him if he would be a test case, and Fred who was really upset about being imprisoned and about to be excluded agreed to do this. So ACLU prepared a test case for Fred. Fred challenged the exclusion

and detention of Japanese-Americans. His case went to appeal with two other Japanese-Americans who challenged the military orders, Gordon Hirabayashi and Min Yasui in Seattle and Portland, respectively. Fred's case was heard in San Francisco, and eventually all three cases found their way to the Supreme Court in 1943. Fred's case was sent back down to the 9<sup>th</sup> Circuit and this whole record, this whole journey of those three cases was manipulated by the Supreme Court. It was a controversial set of cases, so Gordon and Min's cases were heard first on the issue of curfew and exclusion in 1943. The court ruled, in Gordon Hirabayashi's case, only on the issue of curfew. It skipped the exclusion which was essentially a stratagem by both the government and the Supreme Court to avoid dealing with the larger deprivation, exclusion vs. curfew. So the court in Hirabayashi laid out the rationale of holding the curfew, and later the exclusion. The problem for the court's opinion was they had no evidence to prove that Japanese-Americans were disloyal or committed any acts of sabotage or espionage because no Japanese-American had ever done so. So, they were left with a barren record on Gordon's case, so they essentially had to manufacture a rationale.

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And they created this rationale called the "racial characteristics," or "ethnic characteristics" using peripheral facts, facts that had little bearing on whether you're going to commit sabotage or espionage, like Japanese-American's worshipped Shinto, they sent their children to Japan for education, that they lived near sensitive military facilities, even though the facilities were actually built after the Japanese had settled there. And that Japanese-Americans spoke a different language, they sent their kids to

Japanese language schools. They went on with these sociological-cultural facts, facts that did not say they commit espionage or sabotage, and they had to do this because they had no other option to justify what they were doing without the evidence of any actual overt acts of espionage or disloyalty. Based on that, essentially, they concluded that these ethnic characteristics determine a predisposition to disloyalty. And on that basis, they upheld the military judgement. One of the interesting things I've always found was, one of the holdings they made in Hirabayashi and later in Korematsu, was extremely weak. They would use the dreaded double negative which English teacher's cringe at: "We cannot say that the military judgement was unfounded. We cannot say that the authorities did not have reason to believe blah blah blah." It's like going home on Valentine's Day and telling your significant other - "Honey I cannot say I do not love you." It's not a strong way of making a conclusion or saying a declaratory statement, or a declaration, and yet that's what the Supreme Court did because you could smell the weakness in that decision because they had no evidence. Yet they had to bow, they felt, to the military. They were in a time of war, they had some of the most esteemed leaders in the country who had produced this travesty, you know, Franklin Delano Roosevelt, so they upheld the decision in Hirabayashi.

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DALE MINAMI:

And a year and half later, Korematsu's case comes up, but it's a more serious claim by Fred Korematsu. It's not only the exclusion, the leaving and banishing from my home, but to be detained in a prison without due process

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rights based on racial discrimination. So, Fred's case raised some more difficult issues for the court. So for example the court in Hirabayashi ruled 8-0 in favor of the government. In Fred's case it was now 6-3. There were some vehement dissents that are classic statements of a dissenting Justice at the time. Whether they used the same rationale as Hirabayashi, the decision itself, if you break it apart, if you deconstruct it, it's ludicrous. It says "Korematsu was not excluded from the military area because of hostility to him or his race." Well what other reason was he excluded? No other group in mass was excluded other than the Japanese. It also starts with an incredible magniloquence about how important our rights are. That we "can't take away our rights in the emergency unless there is a great imminent danger" and go on to say other statements that of course they ignore. Then finally one of the most, I think problematic parts of that decision was the indifference to the judgement of the executive without judging the facts. They said, "Well you say they're in danger? We're going to accept your rationale." And that totally abdicates the role of a court, who is supposed to declare that nobody is above the law, and we have a right to examine your rationale for why you say this is important enough to imprison that many people for that long. So, Fred lost his case in the Supreme court in 1944 based on the rationale that Japanese have these characteristics that predispose them to disloyalty and possibly espionage and sabotage, and also because we are going to defer to the military judgement, or executive judgement.

**Korematsu, Hirabayashi and Yasui denying Executive Order 9066**

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DALE MINAMI:

All of them physically denied in some level the orders, and it's really extraordinarily complex, but Fred challenged both the exclusion and the detention of the Supreme Court. And the manipulation that occurred in Gordon's case—Gordon was sentenced, he was convicted of refusal to obey the curfew and the exclusion orders, the orders to leave. He was given 30 days for each count, so a total of 60. Gordon objected, and he objected in a strange way, he said, "Judge can I have 90 days?" Maybe the first time in history a defendant had asked for more time. And the judge said, "why?" and he said, "because I researched this, and if I get 90 days concurrently, then I can go on a road crew. I'd rather be on a road crew outside than indoors." Judge says, "I'll indulge you the sentences are concurrent" meaning 45 days each, 90 days are merged for both convictions as opposed to stacking a 30-day on a 30-day to make it 60. Well the court fastened on that in his case to not have to deal with the exclusion. So, the court said, the curfew, which is not a huge deprivation of rights, but we're not going to decide the exclusion, because the exclusion -- the sentence was merged, so even if we rule on one versus the other he's still going to have 90 days. It was kind of an artifice, a manufactured way of avoiding the exclusion issue which is a more difficult issue to decide. So when Fred brought his up, he had both the exclusion and the imprisonment, and those two were very serious. And so the court had given itself a year and a half to try to get itself together from the 8-0 decision where they were intensive dissents even in Gordon's case to get to Fred's



case to the point where they had enough to hopefully hold a majority together. And what the court did there was only rule on the exclusion and later on say, because Fred didn't raise detention as an issue earlier on, we're not going to even decide that.

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And so they avoided even the more serious of all charges—the imprisonment—as a way of manipulating the decision to come to a conclusion. And part of the hypocrisy of that is even in the Korematsu decision, it says that 'We don't have to deal with the detention there is plenty of time to deal with that later,' and later is two cases later, and two cases later is a case called *Ex parte Endo*, and she raised detention as a constitutional issue, and the court said in Korematsu that we'll deal with the constitution issue later. In *Endo*, they finally rule in favor of her, but they fail to address the constitutional grounds. So, while they say two cases earlier, they're going to deal with the constitutional case, they fail to do so in *Endo* two cases later. So, it's so clearly manipulation of a whole judicial, jurisprudence of these cases that to me is just one of the irritating, kind word to say, really pissed off, way this court system has treated Japanese-Americans.

**Dissenting opinions in Korematsu v. United States**

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DALE MINAMI:

Three Justices dissented. Justice Roberts fastened on the contradictory orders, one order requiring people to stay in one place, and another order requiring them to leave? Well what do you choose? Either one you're violating the law. His dissent was not as strong as Justice, two other Justices. Justice Murphy's dissent was scathing, it said, "I dissent from this legalization of racism. This puts us in the abyss of racism, this decision." And then Justice Jackson, who was later a prosecutor at Nuremberg, parenthetically I guess. Justice Jackson composed one of the most quoted dissents, calling "This legalization of racism lies around like a loaded weapon, laying around for any authority who could put forward a plausible claim of an urgent need." What he says is, "By institutionalizing this decision, this gives a precedent on any kind of discrimination you could declare on the basis of, without facts." So, it's called the loaded gun dissent and used over and over because it's so powerful.

**Minami learning about the Korematsu case and recognizing fallacies**

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DALE MINAMI:

They teach these cases in almost every constitutional law class for law students and they are abstract discussions about the conflicting rights, the

discrimination vs the power of the military, things like that. I'm reading these cases and of course this is very personal because I'm reading about my parents being imprisoned...And so, I'm reading the justifications thinking, oh that's B.S., this does not seem to apply. And as I learn more about history, I realized the fallacies that were put forward in these cases. And I can even recognize some of the internal and external contradictions, the lack of logic on some of the decisions. In fact in law school there was a project that was led by a professor, a Japanese-American professor, who got a grant if he could overturn one of these cases, and I volunteered for that project and yet they had enough people so I was rebuffed I didn't get to participate. Nobody at that time thought these cases could be reopened, these specific cases of these three men could be reopened.

### **Legal critics reviewing Japanese-American incarceration cases**

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DALE MINAMI:

Legal critics have looked at these decisions from the start. Six months after Korematsu, a famous article came out by the dean of the Yale law school scathingly denouncing this decision, the Korematsu decision. Similar comments had come out over the years throughout the 60s and 70s about these decisions. It wasn't until the context, the historical context was discovered and promulgated about Japanese-American history that folks started getting the idea that this was really wrong. And now we understand at that time, we would say, now we understand those justifications were very

weak. And so that's when people started taking notice even more and as I read some of those commentaries—there were a number of them by the way that criticized these decisions, it just made you more and more upset that we could have a judicial system—I'm studying to become a lawyer to promote justice, and to see this sort of thing happen in the Supreme Court by these supposedly wise Justices, and it's personal to my family.

**Becoming one of Fred Korematsu's lawyers to overturn his conviction**

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DALE MINAMI:

You know I received a call from a man named Peter Irons, he was a professor and a lawyer, and he discovered evidence that there were lies presented to the Supreme Court, that the record was fraudulently manipulated and manufactured to justify the polling of the Hirabayashi, Yasui and Korematsu convictions. And he asked if I could help with the cases and I told him, that I'd like to see the evidence first, because this sounded miraculous to me. And sure enough, he had all these memos from the departments own attorneys and from other sources which proved exactly what he was saying, that the entire record was manufactured to win these cases at all costs, even though they were false claims that were being made in the Supreme Court. So, I helped put together a legal team, and we gave him an audience, we saw the documents. They were exactly like they said he were... and essentially smoking guns. We thought, yeah, we could do this, but are these men still alive? And Peter assured me "Yes they are," and sure enough they were all

willing to stand up and challenge their convictions. So that's how we started on that set of cases.

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He had received my name from a couple sources, lawyers that I didn't really know very well partly because I had done a lot of impact cases which was suing the government and suing in class actions for example. I have had cases in Washington, Spokane I had cases against the San Francisco police, against California Blue Shield, and in my public interest life when I was doing so much more of that. Peter got my name from one of Minoru Yasui's attorney's in Los Angeles. And so that's, he wanted to find somebody on the West Coast. And the interesting thing about Peter was he wanted to make sure this whole effort was led by Japanese-Americans, but of course there were not a lot of Japanese-Americans doing public interest work. In fact, there were not a lot of lawyers of Asian descent at that time when I started practicing in the dark ages, so that's why I got the call.

### **The need for emotional distance from a case like Korematsu's**

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DALE MINAMI:

As a lawyer if you get emotional and too emotional it clouds your judgement, so we had to distance ourselves. We understood the mission was significant historically, possibly important, but at the same time we had to make sure that we were objectively evaluating the case itself, the facts, the chances of winning, the legal arguments. As time went on of course we got more

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emotionally invested and deep down we were very much so invested because most of the attorneys on our team were sansei, they're third generation Japanese-Americans. And so they had been invested in general, but I think we pretty much suppressed a lot of that in order to keep our eye on the prize, which was to win these cases.

### **The argument made in overturning Korematsu's conviction**

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DALE MINAMI:

The core of the argument was that misconduct tainted the entire process in the Supreme Court and because of that it caused a manifest injustice, and if a manifest injustice can be proved with newly discovered evidence, which was Peter Irons discoveries and Aiko Yoshinaga Herzig's discoveries, then you could reopen your case and get your conviction thrown out. So our whole argument was this was a fraud on the Supreme Court, and it was a deliberate, intentional misrepresentation by court officers like the Solicitor General that led to a monumental injustice. That was the basis of our argument.

### **Fred Korematsu's attitude towards reopening his case**

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DALE MINAMI:

Fred was very quiet and reserved when we first met him, of course he changed over time. He was very enthusiastic, which surprised us. We knew

Gordon and Min were, one was a professor, one was a lawyer. Fred was a draftsman and a welder when he got arrested. We felt that we didn't know Fred very well, but as we progressed, we could see Fred was really one of the strongest advocates for his own right, not just for himself, but for others. I think it has to be mentioned that Fred and his wife Catherine, Catherine was a part of that team. She was a Caucasian woman from South Carolina, and just a brilliant woman who helped us both legally and politically, she understood things and was very helpful to us. Fred had a strong sense of right and wrong. Things in some ways were very simple to him. He was an American citizen. Why should he be treated differently than any others? And you compare him to Gordon and Min. Gordon had a rationale that, to see to the military would be like waving his citizenship rights. Min had a legal argument: this is discrimination I should not be a part of this tainted process. Fred was very simple he said, "This is just wrong." And that simple strength was as powerful as any other rationale you could ever discover.

### **The outcome of reopening Fred Korematsu's case**

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DALE MINAMI:

We went through a series of hearings and went through what were called discovery, obtaining information. And at the final hearing that we were supposed to have, we argued that Fred's conviction had to be overturned, and not only that we had to have findings of facts, we had to have conclusions of law. We needed an opinion from the judge that what was done to

Japanese-Americans was wrong. And it was necessary on many levels not just for Fred's satisfaction, the Japanese-American community, but it was for the battle of redress in Congress that was waged at the time, and we needed a legal opinion that would counter the 1943 and 44 decisions by the Supreme Court that opponents of the redress movement, redress for Japanese-Americans were using to try to defeat that redress \$20,000 apology for Japanese-Americans.

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At that day in court they had to change the courtroom because so many people wanted to go, and they moved it to a ceremonial courtroom. And the work teams from Hirabayashi and Yasui cases came down and the audience was filled with—it was absolutely packed—people were in the jury box, we had reporters there, council. A number of the folks, perhaps a majority were Japanese-Americans, there to witness the trial they never had. They were a majority in the courtroom. I opened with my argument which was “We are here today to seek a major of justice denied to the Japanese-American community some 40 years ago.” And I went on to argue why findings of fact were absolutely necessary. We had to publish an opinion. Not only overturn his conviction but have a written opinion. At one point the other attorney for the United States government gave his rebuttal, which was essentially, “Let bygones be bygones.” And it was a very weak argument, which of course nobody bought at the time including the judge. And then we asked the judge to indulge us and let Fred speak. And unusual for your client to speak in court, but Fred gave a very powerful plea to talk about how he had come to this courtroom years ago in handcuffs, and he has come here today to make



sure that this does not happen to any other American again. With that the court closed the argument. And, in courts, in argument, when you argue in court the judges usually take it in submission which means they don't make a ruling and they walk off the bench. Well she didn't do that; she gave us her oral opinion directly from the bench. And it confirmed and validated almost everything we said, that there was misconduct, the government attorneys knew it, that some of the decision to incarcerate Japanese was propelled by racism, and had the court known of this contrary evidence that contradicted their own arguments in the Supreme Court in 1943 and 1944, the decision might be different. And with that she threw out Fred's 40 year old conviction.

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In that courtroom as I was arguing you could hear people sniffing and crying and Japanese tend not to show their emotions, but you can sense the intensity of what was going on in that day for the trial they never had. After we left and went outside in the hall, folks were crying, hugging, they were really ecstatic about having their day in court through Fred Korematsu. And after that the Japanese-American community, with findings especially which were very powerful, really embraced Fred Korematsu and what he had done, and the legal case we had brought that was doubted by a lot of people, that we'd win these.

**Trump vs. Hawaii provided an opportunity to overturn Korematsu vs. United States**

01:45:25:11

DALE MINAMI:

In order to get back into the Supreme Court you need a factual situation that is exactly like or similar. The Corum Nobus is a special kind of procedure that only gets rid of the conviction of the defendant, it doesn't overturn the Supreme Court ruling because the Supreme Court ruling is, it doesn't overturn the Supreme Court ruling. So you need another factual situation that is fairly similar. Enter Trump vs. Hawaii, and that is as close as you can get to one of those situations where a court could overturn Korematsu.

**Similarities between Korematsu vs. United States and Trump vs. Hawaii**

01:46:10:18

DALE MINAMI:

Trump vs. Hawaii was a challenge to the quote "travel ban" against predominantly Muslim countries. It was really a Muslim ban, and if you review the statements made by Donald Trump that were anti-Muslim, that wanted them to cease immigration here, to erect blockages to their immigration, that led to eventually an executive order to block immigration from Muslim countries. The order was amended a few times, but it was really predominantly Muslim countries. So, it was religious profiling, unlike the racial profiling Japanese-Americans endured. And so, to cast a group with such broad strokes not on the basis of individual danger, which was done to

Japanese-Americans made this case quite similar to the Korematsu, Hirabayashi and Yasui cases. It found its way to the Supreme Court. Trump had lost in every circuit court and almost every, he lost on, Trump's executive order lost on every district court and circuit court, before it got to the Supreme Court. And when it got to the Supreme Court, Justice Roberts upheld the Muslim ban, and he refused to look at the report, upon which the Muslim ban was based, because the government refused to produce it. It was not dissimilar to the suppression of evidence which led to the Korematsu decision in '44. He also, Justice Roberts failed to do any active interrogation using rigid scrutiny, which is the standard, to look at this as a case where you have to look very closely, test the evidence, determine whether there was a justifiable rationale. Instead, he almost said, "because the President said it, we're going to believe it."

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And that's the danger of that decision, because it is really Korematsu revisited, it's an echo of history. Justice Sotomayor dissented, and in her dissent, even though Justice Roberts claims that Korematsu was overturned, she says that this is essentially a hollow victory because it redeploys one bad decision for another. If you read the Roberts quote "overturning" of Korematsu, it's not really overturning, symbolically it's very important, but it's a very hollow victory in the sense that he parses his words. "Korematsu was overturned in the court of history. It was wrong the day it was decided." In saying that he overturns Korematsu, in the next breath he upholds the travel ban by deferring to the President. So that deferral to the President, or deferral to the military or the executive, is the most dangerous type of

precedent you could have. It's the same one that was used in Korematsu, it's the same one that was used in Trump v Hawaii.

### **National security as a justification for ignoring civil rights**

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DALE MINAMI:

I've always felt that history has shown that there is always going to be a tension between civil rights and national security. There's going to be a balance somewhere along, but also in my mind, and the Korematsu case proves this as well as Trump v Hawaii. There's got to be some transparency, you got to have some public rationale, and of course in times of war you can't tell military secrets, but somebody's got to be able to offer enough evidence to justify, which is essentially a grave violation of civil rights, or racial profiling for that example, religious profiling. In order to do that somebody has to be able to test the evidence, and that somebody is usually the courts. When the courts step down, when the courts abdicate, when they give up their role, you only have two branches of government, because the President is going to get to do whatever he wants. That whole checks and balances system falls of the failure of the courts to exercise their proper role. I feel that when you have these national security justifications for doing anything, given our lens of history as Japanese-Americans or what happened to Korematsu or Hirabayashi or Yasui, we are skeptical. And we feel that the courts need to do more to ensure there is some transparency, or the executive government

needs to do more to provide an honest justification that is rational and leads to the particular executive order that is announced.

### **Learning the lesson from the past**

01:51:21:20

DALE MINAMI:

You know the adage, “Those who fail to learn the lessons of history are doomed to repeat it.” That’s a very simplistic way of explaining a very difficult concept. History is very complex, because what I’ve realized is that a lot of people understand history, but for other reasons fail to apply it. Think Vietnam, think Afghanistan, think the Japanese-American incarceration, think of what’s happened to the Muslim registration. They’re repeating history all the time, and at large part because of political expediency. History can be distorted, too, history can be changed, and there are revisionists who say the Holocaust never happened, so that history is a dynamic process that needs to be reaffirmed in its correctness all the time.

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Every generation has to relearn this and know this again because there are people who deliberately distort what happened. There are people who fail to learn or apply history because of political expediency. It’s a dynamic concept and I use the example of avocados, because years ago they told us avocados are bad for you. You know I love avocados, and later on of course they find out, oh no it contains really good fat, it’s really good for you, there’s a guacamole relief act. And I was delighted to be able to eat avocados

without guilt. But that's an example of how things change and you have to understand that history is dynamic concept and just because history as declared in one point in time doesn't mean that history is the same history that you will learn today. The biggest point though is that history is manipulated, subject to political expediency. Decisions you should make based on past history are not always made just because people feel that out of expediency, they want to make their decisions a different way or in a different direction.

**Ignorance as the cause of fear**

01:53:34:04

DALE MINAMI:

I do have some empathy for people living on the West Coast at that time. They were ignorant, they did not know who the Japanese were, they were scared because of the politician rants, so they were not always the most informed people. But there are times when history is very clear. There are times when history is very clear. When you massacre 6 million Jews, how are you going to justify that by, 'Oh it was the times.' I don't think so. How about segregation or slavery? There are times you can understand why people do things or how they behave that way, but it certainly doesn't justify these kinds of injustices.

**The importance of speaking out against injustice**

01:54:20:12

DALE MINAMI:

I think it's incumbent upon citizens to speak out against injustice. It's not an easy thing to do, it's very difficult and I think we rely so much on our political leadership, so it's up to us to elect good leaders. But on an individual level, I think speaking out against ignorance, speaking out against bigotry are important things to do, because on a maybe a macro level it may not seem to make any difference, but on a day to day citizen to citizen level, or person to person level, as you change the culture of the country by either example or by speaking out or by joining with other people to make a difference, changing the culture is a long, long process but is something we need to be committed to do as everyday citizens.

**Ordinary people can effect change**

01:55:23:22

DALE MINAMI:

When I was in college, we studied the great man, they called it the great man, they didn't say great woman. The great man theory of history, they had all kinds of different theories of history. And I really believed, I still believe that masses of people create history, and in some cases, a great man will stand up. Martin Luther King Jr., Malcolm X, changed the direction of this country to fight against racism. But I think people like Fred is one of the best examples

of someone who was an ordinary citizen, and I hate to use the word ordinary, because he was an extraordinary citizen, or he was an ordinary citizen put in extraordinary context, and so many times those people stand up and do something heroic, and it doesn't have to be heroic it just has to be something that moves us forward a little bit. So, I believe that everyday people all of us as Americans can contribute to the movement of social justice forward, that arch of history, that arch of justice that Martin Luther King Jr. talks about. And if you see yourself in isolation of course you can say, "Well I can't make any difference I'm just one person," but if everyone saw themselves that way then nothing would happen. But if you see yourself as a larger growing, evolving community of people, like a part of a river that is flowing forward, then you understand that you're part of a larger flow of events, of culture, society, that eventually can achieve some social justice down the line, upstream.

### **Minami's father becoming a republican after the incarceration**

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DALE MINAMI:

My father was a Democrat until he was put into the prisons by FDR. After that point he became an almost lifelong Republican, and his explanation for that, which I discussed with him when I was of voting age and wanted to be a Democrat, was they put us in the prisons. So, he was embittered, and that was his way of at least showing us displeasure, I guess you should say, at being treated that way by Democrats. But he was also a small businessman,



owner so I'm sure that led into it, and yet he never voted Republican until my mother who was pretty much always a Democrat committed him he had to vote Democrat when the Vietnam war was raging, so he voted for Eugene McCarthy for the first time. And so after that he stayed a Democrat which was interesting to me, because maybe he was retired. He harbored a lot of bitterness which we never saw, and we didn't see it until the redress movement started and loosened the tongues of Japanese-Americans to help them reclaim their political birthright, their legacy of being Americans citizen. And at that point he started talking more and more and we learned more and more. This was in my mid 30s, so a long time after my youthful years, but I think once his voice was loosened, he was able to tell us so much more about how upset he was, showed us documents which I still have, and was quite animated.

### **What overturning Korematsu's conviction meant for Minami's parents**

01:59:15:02

DALE MINAMI:

Yeah, my parents were alive when we argued the Korematsu case. My father passed away about four years later after the case. He was extremely proud, not just of me, but that he had some sort of vindication for all the lies that were told about Japanese-Americans, all the racism he endured in his lifetime. So, I think he felt good about the idea of redress. He never lived to get his 20,000 dollars apology, but he was certainly quite elated that he knew he never did anything wrong and now it was proven in court.

**Reason vs. emotion in the decision-making process**

01:59:59:19

DALE MINAMI:

Reason is a difficult counterweight to emotional decisions. Over the years I've done enough trials to know that juries pretty much respond emotionally to the evidence so to speak, and then anchor or justify their decision in some intellectual basis or reason. We've seen that in the most recent elections. People will vote against their self-interest because they have an emotional connection and so their self-interest, which is rational, does not come into play as much. It's a very difficult proposition to change people's emotional justification. I think you have to engage in dialogue I do believe that you can change people by talking to them, but you have to talk to people in a manner in which you can communicate. So, it has to be in experiences they know about or can relate to. It can't be overwhelming them with facts necessarily. And it has to be appealing in some ways to their own self-knowledge or it has to appeal to them through their own experience or commonality of experiences. In that sense I think you can reach people, because you've got to get to their heart as much as you get to their minds, because if you don't get to them emotionally, I don't believe you can create intellectual justifications that are so purely correct that you're going to change somebody's mind. But I do believe if you can do it in a way that relates to their commonality in experience or their experiences, you can actually create a dialogue that then allows people to either think about what you might have said or at least have some change of heart based on what you've agreed upon.

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**Explaining the Japanese-American incarceration to others**

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DALE MINAMI:

You have to describe what the prisons were like, because just saying there was terrible water, if you just say there was terrible conditions, you have to be a little more specific. You have to talk about loss of dignity, because people need to feel what it's like to be really humiliated. People might not understand sleeping in cots or having to go to open latrines or getting inadequate medical care—those are pretty abstract concepts, but if you talk about the humiliation that people suffer when they are treated as animals or less than human or less than citizens, people can all relate to the idea of humiliation more so. So I think that's one way of doing it. The other way is to connect to their own experience of racial discrimination. If you're talking to a, especially a group of people of color, and or women, too, they tend to get things a lot easier. So, to that extent you talk to them in terms of racial discrimination. Others, especially in law school, there is a sense of justice that people have, and it may be different kinds of justice, but if you explain the Korematsu case, or cases that we worked on in terms of the kind of manipulation, the fraud, the misconduct, people have a sense of fairness where they say, oh that wasn't fair. They can relate to that. They might not agree with you in terms of other proposals you have or other ideas, but a sense of justice, I do believe that so many people have that and I think appealing to that with concrete examples is helpful.

**The possibility of the Korematsu decision being overturned in the Supreme Court**

02:04:06:10

DALE MINAMI:

You know, there are different parts of the Korematsu decisions. The part that says you can incarcerate an entire group of people without due process, I think that's not only overturned in the court of history but I do believe that legal commentators have damaged that precedent to such a degree that it won't be used again. The precedent that you can defer to the President or the executive without an examination of the evidence is really a dangerous one that is even now more strongly embedded in our jurisprudence through the Trump vs. Hawaii case. That's the more dangerous of the precedents and the one we're going to have to live with. At some point you're going to have to hope for another branch of the government, other than the judiciary, to step up and make a difference in terms of the decisions that are not going to be overturned by the judiciary.