



November 1986

# National Council for Japanese American Redress

VOLUME III, NUMBER 8

NEWSLETTER

Dear Friends,

THE SEASON OF waiting is upon us. We wait for Christmas. We wait for the first year of tax reform. And we wait for the Supreme Court's decisions on the writs of certiorari. They are all in now: our writ, the Government's response to ours, ours to theirs, and the *Amici Curiae* brief of the American Friends Service Committee, joined by the Board of Church and Society of the United Methodist Church and the United Church Board for Homeland Ministries of the United Church of Christ, and that of the Asian American Legal Defense and Education Fund, joined by the Asian Law Caucus, the Anti-Defamation League of B'nai B'rith, the Japanese American Citizens League, and the Japanese American Citizens League Legislative Education Committee. This impressive list of *Amici* gives depth and breadth, as well as logic, to our request for a hearing.



As in the Christian story of waiting, they are like women touching ripened bellies, wise men journeying, and shepherds gathering. The angel voice came to us from the precariously perched Chief Justice of California's Supreme Court, Rose Bird:

[The Japanese Americans suffered violations] of fundamental, basic civil rights during World War II in this country, and they are going in and taking on the most powerful government on this earth, and saying, "You have wronged me. I want you to confess that you wronged me, and I want reparations for it." What a beautiful, beautiful concept that is .... But you cannot have a judiciary that will do the right thing if you have a judiciary that basically is beholden to the governor, or to a political party, or to the legislature, or to special interests.

from Pacific Citizen, October 24, 1986

This month, Chief Justice Bird was voted out by a majority of California's voters. Her words serve as a warning to those of us who fail to understand that a democratic and egalitarian society requires more than the free expression of the will of the majority. Democracy also requires the protection of individual and minority rights as provided by the Constitution and the courts.

IN WAITING, WE wonder: what will be the outcome? There are several possible outcomes, from worst to best, in simplified form: 1) the government's petition is granted and ours denied, and we lose it all; 2) both petitions are denied, and we are remanded to trial in the U.S. District Court, and 3) our petition is granted, and we win some and lose some, and we return to trial with some of our causes of action reinstated.

It's hard for me to believe that the first would occur. The Government has already lost twice at the appeals court level: first, in the three-judge ruling that placed our filing within the statute of limitations; and second, in its request for a hearing *en banc*. The Government's pleadings have begun to sound like an extension of its wartime program; it argues that no basis in law exists for hearing our complaint. During our incarceration, *habeas corpus* was ignored, making the courts unavailable to us. There is no constitutional provision for ignoring *habeas corpus*, only for an explicit act of Congress for suspending it. Mitsuye Endo's petition for *habeas corpus* took, you will recall, two-and-one half years to be decided in her favor, virtually covering the entire period of

Continued on page 3

On October 24, 1986,  
the brief of Case No. 86-510  
in opposition to the  
Government's Petition  
for Certiorari

UNITED STATES OF AMERICA, Petitioner  
v.  
WILLIAM HOHRI, ET AL., Respondents

was hand delivered  
to the Office of the Clerk  
of the U.S. Supreme Court.

The closing statement in the CONCLUSION OF THE brief  
reads as follows:

**I**T IS NOW time to accord relief  
to the more than 120,000 other Americans  
who were confined in the prison camps  
and deprived of virtually every constitutional  
and common law right guaranteed to them,  
solely on the basis of their racial ancestry  
and the force of this Court's wartime decisions.  
These innocent Americans  
have lived an existence of unfair shame,  
trauma, and economic privation.  
Many have already died as a result  
of the hardships inflicted on them.  
The Government should not be permitted  
further to shield its  
unprecedented wrongdoing  
under the rubric  
of the statute of limitations,  
or belatedly raised  
jurisdictional  
question.

Respectfully submitted,

Benjamin L. Zelenko, Esq.  
( Counsel of Record )  
B. Michael Rauh, Esq.  
Ellen Godbey Carson, Esq.

LANDIS, COHEN RAUH AND ZELENKO  
Counsel for Respondents

## Ellen Carson in person!

Attorney Ellen Godbey Carson was in Hawaii before coming to Chicago for the October 11th public meeting. She was a guest of the YWCA and is a longtime friend of YW Executive Jane Shimokawa. Ellen flew directly from the Islands to Chicago's O'Hare. The following letter was sent to the editor. e.s.

**I** CAN HARDLY CONTAIN my excitement over having finally had the pleasure of meeting Ellen Carson in person! She came across to me as a beautiful, articulate and sincere woman for whom we should be proud to have representing us (NCJAR).

She spoke to a full-house of detainees who, for the most part, were living on the mainland at the outbreak of the war. Not one of them had ever heard of NCJAR, therefore, I felt it necessary to do a selling job, primarily to solicit contributions. I didn't have to say anything about the work NCJAR has been doing. Ellen gave clear evidence of that. Hang in there. Gambare!

ERNEST UNO  
Aiea, Hawaii

*Continued from page 1* Dear Friends

ordered exclusion and detention. We were subjected to a bill of attainder, as the *amici* ably argue. The American Friends Service Committee brief states:

A bill of attainder is a legislative act that inflicts punishment on .... individuals without judicial trial and regardless of individual conduct or guilt.

Exclusion, ordered by Executive Order 9066 and sanctioned by the congressional enactment of Public Law 503, was the basis of both Exclusion and detention. Exclusion removed us from our homes, communities, farms, jobs, schools, and the fruits of our labor. It forced us either into camps or into the interior states. Exclusion orders were issued for each camp site in order to secure detention legally. If internees left a camp's perimeter, they trespassed into an exclusion zone and became subject to a fine of \$5,000 and a year in jail. Both the protection of *habeas corpus* and prohibition of bills of attainder are embedded in our Constitution's first article of legislative power.

After the war, we could not seek the redress of our grievances because the Court had ruled military necessity as proper justification for racially-based mass exclusion and detention, then known as evacuation and relocation. (The 1948 Claims Act was a gratuity, not redress for wrongs.) And now, after we have uncovered and presented evidence that thoroughly discredits this wartime doctrine of military necessity, the Government argues that we should not be permitted to seek redress because the statute of limitations has expired and the Government, the sovereign and culprit, has not given its consent to be sued.

THE SECOND OUTCOME also seems improbable. How could the Court ignore one of the most controversial issues in U.S. jurisprudence: its wartime decisions? Our petition seems particularly difficult to ignore because we have alleged that the Government committed fraud on the Court, fraud that clearly affected those decisions. Moreover, this allegation of fraud has been sustained by U.S. District Courts in the *coram nobis* petitions of Fred Korematsu and Gordon Hirabayashi. As the Asian American Legal Defense and Education Fund's brief argues:

... recently discovered evidence reveals that the government had intentionally misled this Court on the critical issue of whether Japanese Americans imminently threatened national security.

It is a golden opportunity for the Court to reconsider its Hirabayashi and Korematsu decisions. The January 21, 1986 opinion of the U.S. Court of Appeals on Hohri, *et al*, tolling the statute of limitations, depended heavily on such reconsideration. Then, too, vigorous controversy erupted in the wake of our victory in the appeals court, so the need for a higher ruling seems evident.

*Continued on page 4*

Continued from page 3 Dear Friends

THE THIRD OUTCOME seems the most likely. We shall be heard. But I find it difficult to go much farther, except to say that we will probably win some and lose some. But getting into the Supreme Court, now that will be something. Rather than the entanglement of a variety of potential outcomes. Maybe we should consider a pilgrimage to Washington, to the very steps of the Supreme Court, to celebrate our presentation of this opportunity for America to repair itself. As Hannah Holmes would say, "What do you think?"

It would be an occasion for Hannah and many others who have been involved in our movement to meet each other, to listen and speak, to reflect and be thankful, in short, to celebrate. The time might be mid-1987.



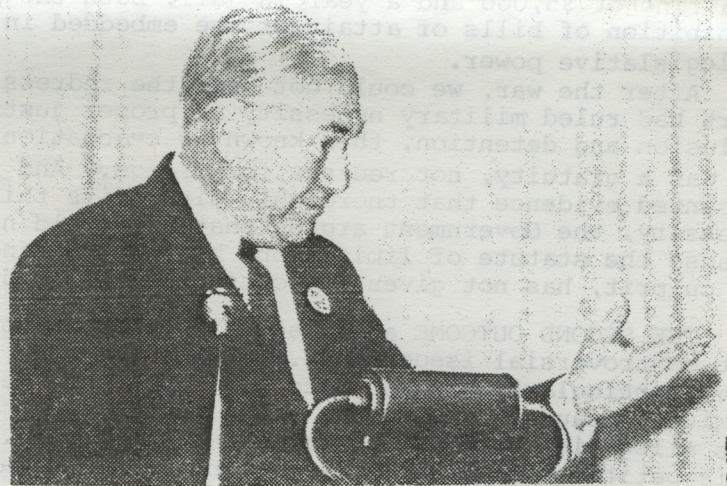
LAST MONTH WE Chicagoans were blessed by the presence of Benjamin Zelenko and Ellen Godbey Carson, the "Dynamic Duo" from our law firm of Landis, Cohen, Rauh and Zelenko. They did a fine job of meeting with members of the class, explaining our situation as we approach the Supreme Court, and answering questions. I continue to be impressed with their undertaking and their commitment to our cause.

The meeting also featured beautiful songs about our wartime experiences movingly sung by tenor Edward Ozaki. Edward composed the music to the words of poems written by Mitsuye Yamada in her Camp Notes and by Sojin Takei, Muin Ozaki, and Keiho Soga in Poets Behind Barbed Wire. When I was in high school in Manzanar, Helen Ely introduced our civics class to the songs of the Spanish Civil War sung by Paul Robeson. She raised the question, "Will we write our songs about the camps?" Forty-three years later, Edward Ozaki has. Bravo!

In the meanwhile, we are extremely grateful for the generous financial support you've given our efforts to reach the Supreme Court. We've met all our costs thus far. We now prepare for our ascent to the highest court in the land. If you haven't contributed, why not now?

Peace,

William Hohri



P.S. For those in the Chicago area, on December 3, 1986 at 7:00 p.m., I'll be presenting a paper, "How Does the Institution of Democracy Repair Itself?" in room 2044, Classroom Building, Northeastern Illinois University, 5400 N. St. Louis, Chicago. The occasion is the last session of a 12-session course conducted by Professor Shirley Castelnuovo on "Rights and Obligations in Wartime: The Case of the Detention of Japanese Americans During World War II." Members of the community are invited to attend.

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## \* LITERATURE

## DOCUMENTS

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- THE COMPLAINT, Civil Action No. 83-0750  
Filed: March 16, 1983  
U.S. District Court for the District of Columbia Circuit

The NCJAR COMPLAINT is history in the making. Japanese-Americans have defined the nature and extent of the injuries they suffered in their mass exclusion and detention during World War II. This COMPLAINT cites numerous allegations of fact supporting violations of constitutional and civil rights. It is a readable and powerful document.

- THE OPINION, No. 84-5460  
Decided: January 21, 1986  
U.S. Court of Appeals for the District of Columbia Circuit

This is the breakthrough OPINION on Hohri, et al that tolled the statute of limitations to July 1980, and remanded the lawsuit to trial. It includes a critical analysis of the wartime Supreme Court decisions in Hirabayashi and Korematsu in the light of recently uncovered documents. Quantities are limited.



- PETITION FOR A WRIT OF CERTIORARI  
No. 86-298  
Supreme Court of the United States  
October Term, 1986

This PETITION is a powerfully written summary of NCJAR's class action lawsuit against the United States and seeks review by the Supreme Court.

\$5.00 plus \$1.50

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<p>No. <b>86-298</b></p> <hr/> <p>IN THE Supreme Court of the United States OCTOBER TERM, 1986</p> <hr/> <p>WILLIAM HOHRI, et al., <i>Petitioners,</i></p> <p>v.</p> <p>THE UNITED STATES OF AMERICA, <i>Respondent.</i></p> <hr/> <p>PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT</p> <hr/> <p>BENJAMIN L. ZELENKO, Esq. <i>(Counsel of Record)</i> B. MICHAEL RAUH, Esq. ELLEN GODBEY CARSON, Esq. LANDIS, COHEN, RAUH AND ZELENKO 1019 Nineteenth Street, N.W. Suite 500 Washington, D.C. 20036 (202) 785-2020 <i>Counsel for Petitioners</i></p> <hr/> <p>PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-4288</p>
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## \* B O O K S



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- JAPANESE AMERICANS:  
From Relocation to Redress  
Edited by Roger Daniels, Sandra C. Taylor and Harry H.L. Kitano;  
University of Utah Press, 1986

A collection of papers selected and edited from a March 1983 conference held at the University of Utah. Among the excellent papers: Geoffrey S. Smith's explanation of racism at the highest levels of government, Floyd Schmoe's account of the relative lack of support from churches, C. Harvey Gardiner's summary of the ordeal of Peruvian Japanese, and Amy Iwasaki Mass's insights into our psychological reactions.

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- MANZANAR MARTYR: An Interview  
with Harry Y. Ueno  
By Sue Kunitomi Embrey, Arthur A. Hansen, Betty Kulberg Mitson;  
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An oral history by Harry Ueno of his ordinary life as a Kibei Nisei, transformed by his wartime incarceration at the Manzanar prison camp, and made extraordinary by the 1942 "Manzanar Riot." Ueno's place in Japanese-American history is secured though this volume.

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- The letter (below) was submitted to the editor of the Hokubei Mainichi and printed in its October 21, 1986 issue.

This letter is written in regard to your recent articles on Frank Emi and Kiyoshi Okamoto of the Fair Play Committee of Heart Mountain and of James Omura, the English editor at the time for the Rocky Mountain Shimpo of Denver.

The above leaders and members of the Fair Play Committee, as well as Omura were chastised, ostracized, stigmatized and even tried and convicted by the Heart Mountain Sentinel as well as by the editorial staff of the Pacific Citizen.

In direct contrast it is interesting to note the following editorial which appeared in The Wyoming Eagle (June 13, 1944).

George Nozawa  
Mountain View, CA

## Civil Rights

"THIS NEWSPAPER NEVER has commented editorially, on the merits of any legal action during the time it was being heard or before it was adjudicated by any court. That is and will continue to be the policy of The Wyoming Eagle.

"Nevertheless, we feel free to call attention to the case involving 63 Japanese Americans now on trial before Judge T. Blake Kennedy in the federal court for the district of Wyoming. This is a case which is of national importance and which probably will attract more attention in Washington and other metropolitan areas than it will in Cheyenne or anywhere else in the state outside of Heart Mountain and Park County.

"THE 63 JAPANESE Americans (citizens of the U.S.A.) are charged with violation of the Selective Service Act, said violation alleged to consist of failure to submit to a pre-induction physical examination. Conviction on such a charge could make them liable to very severe penalties in the forms of fines and imprisonment. So it is reasonable to assume that they or their advisers thought they had a legal argument to sustain their action.

"At issue in the case is the civil liberties of citizens as guaranteed by the federal Constitution and the degree to which those civil liberties may temporarily be abrogated by a government at war which under the Constitution and by act of Congress is presumed to have been granted emergency war-time powers.

"PROBABLY NO FEDERAL court has been called upon to hear a more 'vital' case or one in which the issues are more momentous than the case now being heard by Judge Kennedy. Able counsel are representing both the government and the 63 defendants. Despite the importance of the case, however, it will not excite the average man or attract the number of spectators as would a murder trial or a spicy divorce case. But the legal fraternity throughout the nation and statesmen will have their ears attuned to the proceedings in the federal court in Cheyenne this week. Until the court has weighed the evidence and arguments and has handed down his decision, editorial comment is strictly out of order."

NCJAR newsletter  
editor: Eddie Sato  
Doris Sato

- The article (below) by Morse Saito is from his column titled BATTLING WINDMILLS which is printed in the Mainichi Daily News. We wish to thank Berry Suzukida and his sister for providing the column. e.s.

## Family Number 19742

by MORSE SAITO

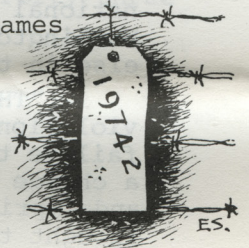
**M**AY 1942 was wet in Aberdeen, Washington. That winter we had 113 inches of rain. Mom was back from the detention center in Seattle after the FBI had cleared our family. After a month we were ordered to Olympia, Washington, for evacuation to Tule Lake Relocation Center in northern California. We found Tule Lake on one map as a lake and another as a dry bed. After my father died in 1936, I spent a summer in beautiful and lush southern Oregon. Tule Lake was just an inch south of Klamath Falls. Hey, this was going to be great! Sunny California and surely we would be back by fall since the FBI had cleared us! Should I take my fishing gear?

WE CLOSED OUR store; the only remaining business we had after once owing timberland, a wholesale business and being a ship chandler. So my children always assumed we grew up middle class. Not true. The depression forced us to live in the back of the store in quarters with no windows. However, we were happy. We assumed we would return. We could not. With the evacuation, we were branded with "they must have done SOMETHING or else the government wouldn't send them away."

We took only what we could carry. We wore lots and toted what we could. Still, it was not easy to leave so much of my life to age 15.

We had to buy bus tickets for the 50-mile trip to Olympia. Years later I wondered why. A man in Olympia asked if we had seen any of the 80 posters he had placed about Aberdeen to notify us, the only family of Japanese ancestry. I remember nothing of that bus trip other than having looked away to hide the tears.

WE WERE QUICKLY rounded up and tagged with "family numbers." Names no longer mattered. Next came the armed soldiers to guard us as we boarded an ancient train. I had never seen one with a wood-burning stove in the middle of the coach. Frightened children began to cry. I tried to tell some new friends about beautiful southern Oregon, but soon the soldiers were shouting at us to lower all shades and don't signal any other Jap spies. Years later I laughed and reminisced to myself upon hearing similar orders shouted by armed Russian troops.



The next day our train finally creaked to a halt at Tule Lake War Relocation Center. The soldiers there cursed us and were not, shall we say, gentle. To them, we were the enemy. Tule Lake was a dry lake bed with scorpions, rattlesnakes, dust storms and plenty of sunshine. The camp had been rushed and was not completed. In the mid-day heat, 250 of us were trucked off to block 18, ward one.

Somewhere between the armed gate and the barbed wire fence, I lost my citizenship.

### ON THE BUS

Who goes?

Not the leaders of the people  
combed out and left  
with the FBI.

Our father  
stayed behind  
triple ocks.

What was the charge?  
Possible espionage or  
Impossible espionage.  
I forgot which.

Only those who remained  
free in prisons  
stayed behind.

The rest of us went to  
Camp Harmony  
Where the first baby  
Was christened

Melody.

MITSUYE YAMADA



CONTRIBUTORS

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WASHINGTON, DC: Kumao Toda.

■ If you do not wish to have your name printed, please indicate when you remit.

LETTERS

MANY THANKS FOR your note and remembering to send Ernest Uno's note. I wanted to share it with Ellen's parents and my partners.

It was wonderful seeing so many friends again. I hope our visit to Chicago provided some useful information and the course of the litigation.

We will be filing our opposition to the Government's petition by next Monday (October 27, 1986).

BENJAMIN L. ZELENKO  
 Washington, D.C.

WISH WE COULD do more, but we're both retirees. Please keep up your good work.

FRED & KIYOKO AOKI  
 Salt Lake City, UT

THE CONTRIBUTION IS in memory of Mary Anna Takagi, wife of Dr. Paul Takagi of Berleley, CA. She suddenly passed away on October 15, 1986.

HANNAH T. HOLMES  
 Los Angeles, CA

I AM 90 years old, probably will not see the joyous outcome of this event. Good luck.

YONE AKITA  
 Los Angeles, CA

EVACUATION

As we boarded the bus  
 bags on both sides  
 (I had never packed  
 two bags before  
 on a vacation  
 lasting forever)

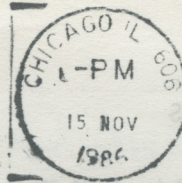
the Seattle Times  
 photographer said  
 Smile!  
 so obediently I smiled  
 and the caption the next day  
 read:  
 Note smiling faces  
 a lesson to Tokyo.

Mitsuye Yamada

■ NOTE: Mitsuye's poem was sung by Edward Ozaki at the October 11th public meeting.



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