



March 1987

National Council for Japanese American Redress

VOLUME IX, NUMBER 2

NEWSLETTER

Dear Friends,

THE BATTLE IS joined! In mid-January, the Solicitor General filed the government's brief in the Supreme Court of the United States. On February 15, we filed our response. We have been joined by an impressive list of organizations and their amicus briefs. The stage has been set for a historic judicial challenge.

The appeal to be heard is the government's. Ours, you will recall, remains pending, neither accepted nor rejected. The government's brief has two arguments:

- 1) That the appeals court should have been in the Federal Circuit rather than the District of Columbia Circuit.
- 2) That the statute of limitations is not tolled, as the appeals court ruled.

The first argument is highly technical and beyond my legal competency to discuss. But I have a thought. The government implies that we went "forum shopping" to find the court most favorable to our position in filing our lawsuit in the D.C. Circuit. But what is its attempt to switch from an appeals court that ruled against the government to one that might rule for the government if not forum shopping?

The second argument is, I believe more appropriate for the Court to consider: Was the appeals court correct in tolling (postponing) the statute of limitations from the 1940s to July 1980? The government admits that it "had in its possession materials about the evacuation that it did not present to this Court while litigating Hirabayashi and Korematsu," argues that "these materials did not contradict the government's factual assertions to this Court," and concludes, "the government did not mislead the Court."

It defends these assertions by a philosophical distinction between fact and opinion:

[Military necessity] of the evacuation was, of course, a conclusion to be drawn or rejected in light of the facts, not a "fact" whose "concealment" might toll the statute of limitations.

That's a nice distinction. But an opinion, a written opinion, can also be a fact. This brief cites John J. McCloy's testimony before the Commission on Wartime Relocation and Internment of Civilians as a footnote to support part of its reasoning. McCloy's testimony is both McCloy's opinion and a fact of the Commission's hearings. And so were the pre-war and wartime memoranda of the Office of Naval Intelligence (ONI), whose official role was to study and assess the potential military threat posed by the Japanese-American population on the West Coast. ONI was the authoritative voice on the question of the military necessity of mass exclusion and detention. Its opinion was based upon years of intensive surveillance of Japanese-Americans before Pearl Harbor. Its written opinion denied the existence of such military necessity. It was one of many facts concealed by the government from the Supreme Court in the Hirabayashi and Korematsu cases.

THE GOVERNMENT THEN has the temerity to argue that the Court's decision rested only on the government's factual claims of 'ancestral, cultural, and ethnic considerations, and drawing an inference about the likelihood of subversive activity." It resurrects this line from Hirabayashi:

... the fact, demonstrated by experience, that in time of war, residents having ethnic affiliations with an invading enemy may be a greater source of danger than those of a different ancestry.

Continued on next page

Continued from page 1 DEAR FRIENDS

As if caught in a compromising position, it attempts extrication:

Whether or not one agrees with the government's wartime position that ancestral, ethnic, and cultural background may give rise to a greater likelihood of subversive activity, or with the Court's view in Hirabayashi and Korematsu that a mass evacuation was constitutionally justifiable on the basis of such assertions, neither the government's positions nor the Court's decisions relied on intelligence reports or on parts of General DeWitt's Final Report that were contradicted by undisclosed evidence uniquely in the government's possession.

The government argues that the wartime decisions were based on "ancestral, ethnic, and cultural background," not on military intelligence or a commanding general's final report. Since only Japanese ancestry, ethnicity, and culture presented such a dire threat, while German and Italian ancestry, ethnicity, and culture did not, the basis was racial and racist. By excluding military intelligence and the Final Report, the basis was exclusively racist. What an extraordinary admission!

Of course the government is not about to admit to racism. It assiduously avoids "exclusion and detention" and uses "evacuation" to designate the exclusion of citizens and resident aliens from the West Coast and southern Arizona and their detention in prison camps. Similarly, it avoids "race" or the then commonly used "Jap" and uses instead "ancestral, ethnic, and cultural background." What it is attempting to do is minimize the significance of official statements by the Federal Communications Commission, the FBI, and the ONI that contradict factual assertions in the Final Report supporting the notion of the military threat posed by the presence of Japanese-Americans on the West Coast.

THEN MOVING FROM defense to defense, this brief argues that "Ielven if one assumes that the government committed improprieties that were somehow responsible for the results reached in Hirabayashi and Korematsu," neither decision affected the Takings Clause of the Fifth Amendment (nor shall private property be taken for public use, without just compensation). It argues that Hirabayashi only applied to the curfew and Korematsu only to "temporary exclusion." The charade continues.

Whatever the Supreme Court may have said, its decisions provided constitutional sanction for the mass exclusion and detention of 125,000 persons. Its decision kept Japanese-Americans excluded from the West Coast and southern Arizona until January 1945 and detained in prison camps until 1946. As a result, most detainees were wiped out financially.

Adding insult to injury, the brief argues that the government offered to "provide services with respect to the management, leasing, sale, storage or other disposition of most kinds of property" and that detainees could continue to receive rents, profits, dividends, or royalties from business or property. This sounds to me like the offer of candy to a child by an adult intent sexual molestation.

Erecting the next line of defense, the government argues that "Iiif the statute of limitations was ever tolled," it must have commenced to run "no later than 1950," when "all relevant facts" were publicly available. This outlandish statement ignores volumes of works published since 1950 that continue to make new revelations and discoveries.

The *coram nobis* cases of Korematsu, Yasui, and Hirabayashi relied heavily on discoveries by Peter Irons in the 1980s. These discoveries were sufficiently relevant to compel U.S. district courts to vacate their wartime convictions.



Peter Irons

E-540

Continued on page 3

Continued from page 2 DEAR FRIENDS

Its final defense involves the need for an official statement to toll limitations. It argues that such a statement was contained in President Ford's 1976 proclamation revoking Executive Order 9066. The proclamation states, "We now know what we should have known..." In 1942, of course, the government knew only too well what it was up to. The proclamation only provides another example of how little the public, including postwar Presidents, know of what the wartime government knew. With all these defenses, the government seeks to have the Supreme Court overturn the victory we achieved in the appeals court and keep us from going to trial.

ON FEBRUARY 18, I received a copy of our brief responding to the government. What a relief! Our attorneys did a magnificent job. Our brief is far superior to the Solicitor General's. Ours is well-written, lucid, with a historical sweep and a legal insight appropriate to the issues and to a review by our highest court. Its rebuttal fleshes out with pertinent detail the few, meager-by-contrast points I've made. (I had to write the first part of this letter before reading our brief.) I have begun to understand even the jurisdictional issue of which appeals court we should have been in. The truth, I sense, is more accessible to our minds than concoctions. For example, as our brief rebuts, why has the government changed from its original acceptance of the D.C. appeals court to rejecting it? Again, instead of arguing from a semantical distinction between fact and opinion and a theory that only racial considerations determined the Court's wartime decisions, our brief refers to the transcript of the wartime Solicitor General's oral argument in Korematsu in which he states:

.... there is not a single line, a single word, or a single syllable in that report which in any way justifies the statement that General DeWitt did not believe he had, and did not have, a sufficient basis, in honesty and in good faith, to believe that the measures which he took were required as a military necessity in protection of the West Coast.

The government relied on the Final Report down to the "syllable." It seems obvious that our current Solicitor General, Charles Fried, failed to read what the wartime Solicitor General, Charles Fahy, said in the Supreme Court. Our brief is our *tour de force*. I urge its reading.

If I were a teacher grading papers, I'd have no difficulty grading the two briefs: a C- to the U.S. Solicitor General and an A+ to Landis, Cohen, Rauh and Zelenko, including of course, Ellen Carson. Supreme Court justices, I realize, do more than hand out grades. I feel they cannot help but conclude that the Court was snookered and will want to respond appropriately. This is their opportunity to reverse and overturn Korematsu. But what they will do with the government's appeal is another matter. Nor do I have any feeling of what they may do with our own appeal.

IT IS QUITE clear that this challenge is historic. Many other groups have come to our support by filing *amicus* briefs: the Japanese American Citizens League and the JAACL's Legislative and Education Committee, the American Civil Liberties Union, the ACLU of Southern California, and National Capital Area ACLU, the Anti-Defamation League of B'nai B'rith, the American Jewish Congress, the American Jewish Committee, the American Friends Service Committee, The Board of Church and Society of the United Methodist Church, the United Church Board for Homeland Ministries of the United Church of Christ, the Asian American Legal Defense and Education Fund, Fred Korematsu, Gordon Hirabayashi, and the estate of Minoru Yasui, and their attorneys, the State of Hawaii, and the State of California.

Also, we anticipate a historic gathering of individuals in Washington, D.C. to witness the hearing. Gordon Hirabayashi and Fred Korematsu will be present at a reprise of their wartime hearings with, we hope, an important variation. Many of

Continued on page 4

Continued from page 3 DEAR FRIENDS

our named plaintiffs from around the country are planning to attend. And we expect many other interested parties to join us. Why not come yourself? "You only go around once," y'know. If you decide to come, please let us know by mail or telephone ((312) 588-8483).

Finally, we've been so pressed for time that we have not been able to prepare a follow-up fund appeal. If you haven't contributed towards our Supreme Court appeal, please do. We've been truly blessed by the generosity of those who have contributed. We take strength from your spirit.

Peace,
William Hohri

Unqualified Americans?

I READ WITH INTEREST your story about the internment of American citizens who were of Japanese descent ("A Legacy of Success," December 7). True, in this case, an injustice was done. There were, however, thousands of other American citizens who suffered great losses as a result of the war. A whole generation of young men lost several productive years while defending this country for the sake of all its citizens, including those of Japanese descent.

If we are going to compensate those who suffered losses because of the war, I believe we should include all military personnel who fought on foreign soils. Many of them made a greater sacrifice.

A better plan would be for citizens to drop the prefix (Mexican-Americans, Japanese-Americans) and become unqualified Americans. Accept the losses and let the war become history.

Mary Ann Mitchell
Portland, Oregon

NOTE: The letter (above) appeared in the Portland Oregonian's Sunday magazine supplement, NORTHWEST of January 25, 1987.

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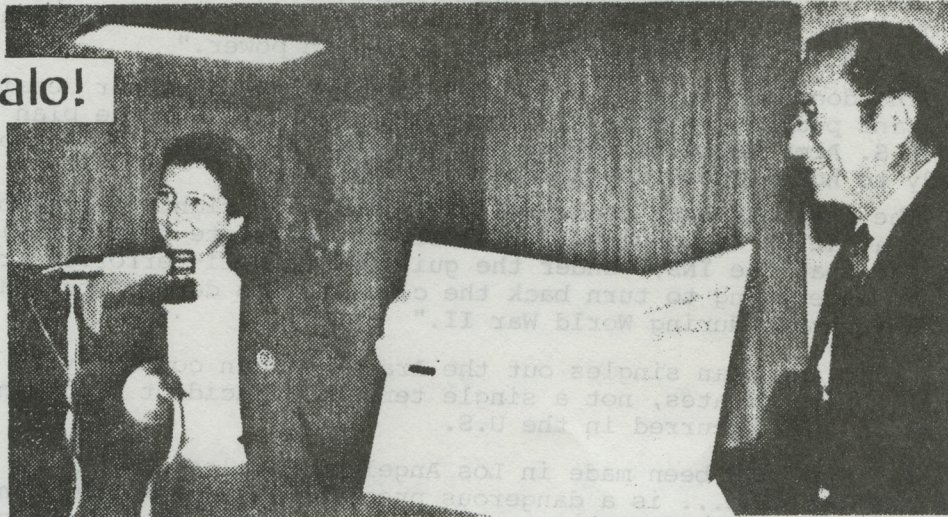
for her learned compassionate, and vigorous advocacy of its class action lawsuit of Hohri, et al. v. the United States of America.

She applied her luminous intellect to researching the lawsuit's legal and historical foundations, constructing its Complaint on behalf of 125,000 Japanese-Americans, and writing many memoranda and briefs during its long journey from its March 1983 filing to its August 1986 appeal in the Supreme Court of the United States. She provided counsel and encouragement to the National Council in its struggles to understand intricate legal issues and to sustain the redress movement. She traveled around America to explain this lawsuit to members of the class and to seek their support for its cost, eliciting praise for her clarity of thought, depth of commitment, and grand spirit.

We now declare that Japanese America and America owe her a place in their history and, most especially, in their hearts.

■ The words (above) were inscribed on the scroll that was lettered by Sohei Hohri.

Mahalo!



E.SATO

Ellen Carson with Nelson Kitsuse at February 19th EXECUTIVE ORDER 9066 REMEMBERED commemorative at Heiwa Terrace, Chicago IL. Sharing the evening's spotlight with Ellen was Peter Irons, author of Justice at War and his forthcoming book, Justice Delayed.

WHERE HAVE WE HEARD THIS BEFORE?

A recent Reagan administration plan, reminiscent of the plan to incarcerate Japanese Americans during WWII was revealed. The plan, an 8-point Immigration and Naturalization Service (INS) proposal calling for the rounding up and deportation of as many as 10,000 "aliens" during a "terrorism crisis" was made public by Arab American groups.

The INS plan, which is called "Alien Terrorists and Undesirables: A Contingency Plan," was apparently written last spring (1986) and calls for targeting people from Libya, Algeria, Iran, Tunisia, Morocco, and Lebanon, with the purpose of immediate location, apprehension, detention and removal."

The plan proposes to use the Oakdale INS detention center in Louisiana as a holding area for up to 1,000 aliens. In case of arrests of up to 5,000 people, a "Southern Florida Plan" would go into effect whereby people would be housed in tents on an unnamed military base. A makeshift facility which could house 5,000 is being developed at Oakdale, where 100 acres of land have been cleared, and water, sewer, gas and electricity are already on site for hookup, and fence materials are stored nearby.

The document calls for the INS to "routinely hold an alien so charged without bond, as a danger to the national security." Evidence to be used by the government in its accusations are to be submitted during secret judicial hearings where neither the accused nor the defense lawyer will have the right to see, refute or even know the nature of the evidence.

According to the document, an "Alien Border-Control Committee" was created June 27, 1986 and held its first meeting September 17. The meeting was attended by representatives of U.S. Customs, the State Department, the Justice Department, the FBI and the CIA.

The INS contingency plan is to go into effect when "a Presidential Directive is made to place restriction on certain aliens or nationalities or by decision of the Secretary of State or the Attorney General." The role of the INS is to concentrate "its counter-terrorism efforts against particular nationalities or groups known to be composed of certain nationalities... INS should distinguish and isolate those members of the nationality groups whose presence is inimical to national security interests, from those who have fled to this country seeking asylum or are dissidents from the regime in power."

The document details steps and contingency plans for detaining up to several thousand people. In case of arrests exceeding 5,000, the plan indicates that the U.S. Army would be called in, and that the Bureau of Prisons is to stand ready to house those considered security risks.

The plan has been condemned by immigration rights and Arab Americans, that it is "an obvious racist effort to incite fear and violence." And that the INS, "under the guise of an anti-terrorist program... is attempting to turn back the clock to the days of the Japanese internment during World War II."

While the plan singles out the Arab American community as a terrorist threat to the United States, not a single terrorist incident involving the Arab American community has occurred in the U.S.

Arrests have been made in Los Angeles; 8 Palestinians and a Kenyan. "The Los Angeles case... is a dangerous precedent to allow the rounding up, detention and expulsion of immigrants based solely on their ethnic and political beliefs, and without evidence of intent to commit a crime," said James Zogby of the Arab American Institute.

■ NOTE: Portions of the (above) Guardian report was printed in the February 19, 1987 edition of the New York NICHIBEI.

Documents,
letters,
memorabilia?

IN THE 1960s, a San Leandro, California teen-ager named Karen Korematsu heard a classmate give a report on the Korematsu Supreme Court case. That night, she asked her father if they were related to the Korematsu her classmate spoke about.

There was a pause, then her father said: "Well, that was me." Fred Korematsu's admission to his daughter revealed that even after 45 years, there are many who are reluctant to discuss what happened.

Roger Shimizu, a Seattle attorney said: "What you run into a lot are families where the Sansei are interested in the whole issue, but the Nisei (their folks) don't want to talk about it. And then there are cases where the parents may be heavily involved, but the kids aren't."

Although the story of the incarceration of Japanese Americans is now out in the open, researchers worry that thousands of documents, letters and memorabilia pertaining to the internment are being lost or discarded simply because there are those who would still rather forget or leave buried that tragic episode of America's history.

As Louis Fiset, a Seattle philatelist relates: "Grandma dies and the kids go in and clean out the house. They find old letters written in a language they don't even understand, and they toss them out. Yet those letters may contain correspondence with vital information about the internment that would be a tragedy to lose. It's world history."

Fiset, who has researched the movement of interned families through postmarks, stated how he traced one family through nine different addresses during the war using postmarked envelopes. He feels that there are "hordes of documents out there in people's attics. There are 60,000 camp survivors left, and if only 1 per cent have memorabilia, that's still 600 collections. We need to study this material."

Says Karyl Winn, head of the manuscripts and archives division of the University of Washington libraries: "We know a lot of material is still out there, because it keeps coming in all the time." Next to UCLA, the UW division has the second largest collection of internment documents in the country.

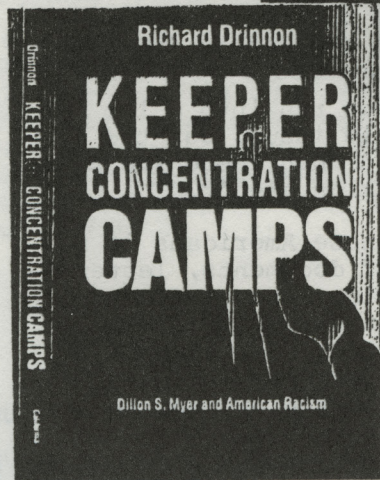
Fiset continued: "When you hear a number like 120,000 people involved, it's difficult to relate to meaningfully. What really hit home is when you read a letter, or follow five different postmarks as a family is shifted from one location to another. Those are human terms we all can relate to."

"It's hard to believe the internment even happened," Fiset said.

"But the stories within the internment camps make your skin crawl. It was an incredible breakdown of democracy."

- **NOTE:** The (above) was excerpted and edited from Paul Andrew's SEATTLE TIMES' story of February 19, 1987, Breaking the silence: After four decades, Japanese families are beginning to discuss internment.

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Drinnon book "required reading"
for all patriotic Americans

My family and I have been privileged to read Prof. Richard Drinnon's recently published book "KEEPER OF CONCENTRATION CAMPS: Dillon S. Myer and American Racism," and I would like to recommend this penetrating insight into the Japanese American internment as "required reading" for all patriotic Americans.

It is my sincere hope that more people will read this enlightening publication because it is a well documented, fair and compassionate portrayal of the "captive" citizens and a shattering expose of the Japanese American Citizens League and the War Relocation Authority in the internment of the Japanese American citizens in World War II—a truly dismal chapter in American history.

As "keeper of concentration camps," Dillon S. Myer ignored the constitutional and civil rights of over 120,000 Japanese American internees, but the JAACL 'claiming to represent not only its own members, 'but also the vast majority of all persons of Japanese ancestry in the United States,' at a banquet in his honor on May 22, 1946, celebrated him, as a 'champion of human rights and common decency,' and presented him with a testimonial scroll for his 'courageous and inspired leadership.'"

Little did the former internees realize that they would see the vindication of their unjustified bondage in their lifetime. And more is the pity that so many have gone to their reward never imagining that exoneration would ever take place by means of such a scholarly book.

This excellent treatise should be translated into Japanese so that former internees who are more fluent in Japanese than in English can also share this penetrating exposition of the behind-the-scenes activities of the JAACL—factions which helped to bring about the betrayal of the Constitution and the irreparable disruption of the lives of the Japanese American internees.

Wilfred H. de Cristoforo
Salinas, California

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■ NOTE: The (above) letter was printed
in the January 24, 1987 edition
of the Hokubei Mainichi.

Manzanar All-Camp Reunion

LOS ANGELES—The second Manzanar All-Camp Reunion scheduled for the Labor Day weekend.

Saturday, September 5 is the date of the dinner to be held at the Bonaventure Hotel in downtown Los Angeles.

An informal get-together will take place on Sunday, September 6, from 1:00 pm to 4:00 pm.

Arrangements have been made to display artifacts and photographs that participants may bring to the gathering. Those who wish to do so may arrange to donate their property to the Japanese American National Museum.

The first all-camp reunion held on September 1, 1984 attracted a sell-out 800 persons from all over the United States and Hawaii. The 1987 event is expected to bring together close to 1,000 former Manzanar internees, their families and friends.

The theme of the reunion is the celebration of the 200th birthday of the U.S. Constitution—the original document having been signed on September 17, 1877.

Special recognition will be given to Walter and Mildred Woodward of Bainbridge Island, Washington. Both publicly and courageously stood up and protested the removal and imprisonment of their neighbors. Bainbridge Islanders were among the first to be sent to Manzanar.

Chairperson for the reunion is Sue Kunitomi Embrey. Co-chairperson is Bruce T. Kaji.

For further information, write to:

MANZANAR REUNION COMMITTEE
c/o Merit Savings Bank
324 East 1st Street
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They happened to real people

Another book on the incarceration of Japanese Americans during WWII is "The Harvest of Hate" by Georgia Day Robertson.

The novel centers around the post-Pearl Harbor uprooting of the Sato family from their southern California farm and their subsequent internment at Poston, Arizona.

"The story, the characters, the detailed incidents all are far beyond merely plausible—they happened to real people."

Hiroshi Kamei
a former internee

THE HARVEST OF HATE

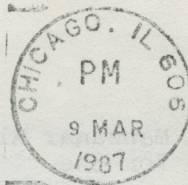
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