VOLUME VII, NUMBER 6

National Council for Japanese American Redress

NEWSLETTER

NCJAR is seeking monetary reparations from the U.S. government through a class action lawsuit for the mass exclusion and detention of 120,000 Japanese Americans during World War II.

Dear Friends,

September 1985

We will, at long last, have a hearing in the U.S. Court of Appeals for the District of Columbia Circuit. The place symbolically, is the floor above the U.S. District Court in which we lodged our complaint on March 16, 1983. Our complaint was dismissed in May 1984 and appealed in July 1984. A few of us plan to attend. It will be a short hearing, lasting an hour or so. A three-judge panel, still unnamed, will hear attoneys from Landis, Cohen, Rauh and Zelenko (Hohri et al) and from the U.S. Department of Justice (United States). The panel will render a decision in some imprecise time, perhaps by year's end or early 1986, in the turn of the year.

■ ATTENTION! For those planning on attending the hearing in Washington, D.C., on Tuesday, September 24, 1985, the proceedings will begin at 9:30 A.M. The site is Third and Constitution Avenue, N.W.

The stretch of time required for litigation—we began considering this lawsuit in 1980—teaches patience and endurance. It is ironic that while our major obstacle is in the statute of limitations, requiring that one be prompt, litigation and courts grind on with repeated delays. But time, this extra time, can be a friend, too. We have time to think about the future and its alternatives.

One such alternative is enabling legislation, that is an act of Congress that would in a single stroke grant jurisdiction to our lawsuit to proceed to trial, there to be argued on its merits. This stroke would cut through the net of procedural obstacles which entangle and threaten our lawsuit, such as statutes of limitations and sovereign immunity. It would also define the extent of the class seeking redress to include all victims: survivors, heirs, citizens or resident aliens, those excluded only, excluded and detained, interned, or otherwise deprived of rights or property based upon ancestry (Aleut or Japanese). I have written more about this elsewhere.

There is opinion from both supporters of the lawsuit and supporters of legislative redress that each approach be continued until it fails. One reason is to maintain a singular focus. Enabling legislation is seen as another program or as a threat to the legislative effort. But if we step back a little, we should realize that our true goal is redress, legislative or judicial or both.

Although I think it unlikely that both efforts will succeed, legislative and judicial redress, in one pairing, are not mutually exclusive. Were Congress to grant restitution, followed by a favorable court action, the court would take into consideration congressional restitution in its award. Moreover, the court could cover a larger class of victims than that covered by legislation. However, in the second pairing, where the courts act before Congress does, I think Congress would feel that the government had fulfilled its obligation for redress. But mine is an untutored opinion.

The hypothesis of both initiatives succeeding remains hypothetical. It is far more realistic to argue that both will fail. Legislative redress faces the Mount Williamson barrier of the two-trillion deficit.

(Mount Williamson rises two miles in the near-perpendicular from the former campsite of Manzanar.) I think we may have come upon Jimmy Carter's moral equivalent of war in our nation's struggle with the debt. It could do us in. I find it hard to see a tiny constituency mustering the necessary votes for a billion-

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Continued from page 1 DEAR FRIEND

dollar appropriation while the vastly larger, more powerful constituencies of the military-industrial complex, of retired and disabled Americans, and of state and local governments, to name just three, struggled mightily to preserve their share of tax revenues. All compete against the voracious consumer of revenue interest payments on the debt, around 200 billion and growing.

The lawsuit also faces serious obstacles: the procedural defenses of time limitations and sovereign immunity. These defenses by the government were anticipated from the lawsuit's beginning. They are why we have consistently characterized the lawsuit as a high-risk venture. We struggled valiantly in the district court. We won some important skirmishes but lost the battle. Of course, we don't know what will happen at the circuit level of appeal. We'd feel more confident if the government were appealing; it's more difficult to overrule than to confirm a lower court order. We're not talking Mount Williamson but maybe barbed wire and guard towers. If we lose at the ciruit level, we may request, not demand, a hearing by the Supreme Court. But this highest court only grants about five per cent of such requests.

Although it may be impossible for me to be one, I think an impartial observer would see enabling legislation as an appealing alternative. Why not? Redress has the support of Japanese-American members of Congress. They have been able to secure a significant number of co-sponsors. The concept of redress seems to have congressional support. Why not replace the budgetary obstacle of an appropriation with a referral to the courts? An enabling act would save and use both redress initiatives.

So, why not? That is the question. And that question points not to Congress, not to the courts, but to us, the redress movement itself. Is the JACL willing to throw its support behind someone else's initiative without taking over? Is NCJAR born out of disputation with the JACL—"wedlock" I was tempted to say—willing to work with the JACL? Of course, there are other groups as well who have established their own programs. My hunch is that while gemutlichkeit may be unlikely, a technical modus operandi may work as modus vivendi.

The lawsuit has already emerged into a technical mode of operation. It is largely a matter deliberated by attorneys for both sides. Legislative lobbying can also become a largely professional activity. Although I am unable to speak for the other redress groups, I am sure that NCJAR can help in such lobbying effort. But the most difficult question to answer is who should direct this effort?

Quite frankly, I think it is as unwise as it is unlikely for any existing group to take over. Nor do I see any real possibility of coalescence. Nor do I see how an aggressive, active board of directors representing the groups could take over. But I do see how a strong executive, held accountable by a representative board, but free to act and to exercise his or her professional skills as administrator, organizer, lobbyist, etc. might succeed. We had something of an example in the staff of the Commission on Wartime Relocation and Internment of Civilians. The staff faltered at the beginning primarily because it became politicized. But once these issues were resolved, the staff was able to function with support from all the redress groups. The Commission attracted some outstanding Sansei and Nisei. The coram nobis groups are another example of organization around issues rather than groups. I hope we can begin to think about this before too much time passes. The wheels of justice grind slowly but they grind inexorably.

Peace,

William Hohri

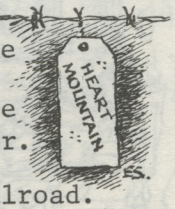
PS: Your response to our fund appeal was overwhelming. We can only take this to mean that we continue to enjoy your support.

PPS: After the disappointment of a rejection of my manuscript after 7 months of waiting on a very interested publisher, my wife, Yuriko, mailed out 61 more letters of inquiry. And the publisher's response has been overwhelming. So maybe Repairing America: An Account of the Movement for Japanese-American Redress will finally be published some day.

Meet Named Plaintiff Edward Tokeshi

By Nelson Kitsuse

Plaintiff Edward Tokeshi was born in Brawley, California, on November 3, 1920. His parents were farmers in Brawley as were most of the Japanese residents residing in that community. He married Yoneko Izumi, also from Brawley, shortly after the evacuation order was announced in early 1942. Edward and Yone have six children and seven grandchildren.



The Pomona, California, and the Heart Mountain, Wyoming camps were the temporary "homes" for the Tokeshis during periods of World War II. Heart Mountain is the birthplace of their first child. Edward worked for a while with Editor Bill Hosokawa on the Heart Mountain Sentinel, a camp newspaper. Edward was granted temporary leaves from camp on two occasions to repair railroad tracks in the Washington-Idaho area for the Northern Pacific railroad. While in Heart Mountain, Edward received word that his closest friend in the Poston, Arizona center had volunteered for Army duty. Edward decided to volunteer also, but Selective Service classified him as an "unacceptable alien." The Tokeshis were granted a permanent leave to relocate to Chicago in 1944.

Educationally, Edward Tokeshi graduated Brawley High School in 1938 delivering the valedictorian address for his class. He enrolled at the University of California at Brawley in the fall of 1938. With one semester remaining before graduation in 1942, Edward was forced to drop his studies at Brawley and enter an internment camp. In Chicago, Edward continued his education attending evening classes, time permitting.

A press release issued by the University of California at Brawley describes a highly memorable event in the life of our plaintiff. Parts from this communication stated:

> "The realization of a lifelong dream to obtain a bachelor of science degree from the School of Business at the University of California at Berkeley became a reality. This degree will be conferred after a 38-year delay. The presentation of a special 'postponed degree' will take place on June 15, 1980, on the Berkeley campus. Tokeshi was forced to leave the Berkeley campus in February, 1942. He continued his education at the University of Chicago, Loyola University, and Northwestern University attending evening classes. Tokeshi first wrote to the University of California in 1945, and again in 1952, 1953, and 1956, asking that his credits earned in Illinois be applied toward a Berkeley degree.
>
> In September, 1979, Tokeshi visited the Berkeley campus to meet Frederic Morrisey, Associate Dean of the School of Business. Dean Earl F. Cheit ordered a full-scale review. Dean Cheit and his colleagues decided to grant Tokeshi his long-awaited degree with the distinction of having his diploma's effective date recorded as February 3, 1946. The graduation program will list Edward Tokeshi's name under 'conferral of postponed.' Tokeshi will sit on stage next to School faculty PhD candidates, and will receive his diploma ahead of the other 320 bachelor's degree graduates. Attending the June 15 ceremony with Tokeshi will be his wife, five of their children (including David, a 1971 U.C. Berkeley graduate), and two grandchildren."
>
> Plaintiff Edward Tokeshi was given a standing ovation by all of the people attending. The special graduation event received national and international coverage. Tokeshi received hundreds of letters and newspaper clippings from Americans and people in other countries, especially Japan. His scrapbooks bulge with photographs, letters, and articles describing the long struggle and finally the successful achievement of a long overdue degree.
>
> Our plaintiff lived in Chicago for over twenty years and worked for several firms as a bookkeeper and an accountant. Prior to the move to California, Edward was a market researcher for the Alden Mail Order Company for approximately six years.

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The original sketch (above) of NCJAR's August board meeting was penned by Toby Owens. Owens was a guest of Nelson Kitsuse. (8/5/85)

RETROSPECT

A letter filed in the National Archives appeared in the July newsletter. It was written in 1943 by Yone U. Stafford to Attorney General Francis Biddle. Yone Ushikubo Stafford (1902-1981) was a supporter of NCJAR and a ronin.

CONTRIBUTORS

CALIFORNIA: Roy Asato, Mrs. Henry Horiuchi, Sumi Iwakiri, George Konagamitsu, Don T. Kuwahara, Virginia M. Mackenzie, June Ota, Teiko Peterson, San Mateo Chapter JACL, Karen Seriguchi. CHICAGO: Charles Chakour, M/M Walter C. Moy. HAWAII: Grace/Ernest Uno. ILLINOIS: Fred Babbin, H.K. Kuramitsu. MARYLAND: Jean Coolidge, Yosh John Takata. MINNESOTA: Mona Aisawa. NEW YORK: Elinor Kajiwara, Amy Yoshinaga. WASHINGTON: Tommy T. Mukai, Chizuko Omori.

NOTE: If you do not wish to have your name listed as a contributor, please indicate when you remit.

LETTER

I am sending you my contribution to help with postage.
I appreciate your information.

VIRGINIA M. MACKENZIE
Duarte, California

NCJAR newsletter
editor: Eddie Sato
staff: Emi Fujii
Winifred McGill
Doris Sato

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MEET NAMED PLAINTIFF EDWARD TOKESHI

The Tokeshis moved to Los Angeles in 1966. In Los Angeles, Tokeshi became the Chief Operating Officer of the Automation Institute, a highly successful school in the field of computers. Edward sold this company in 1972. At the present time he is employed by the Quaker State Oil Refining Corporation, located in South Pasadena, as a senior accountant. With the children grown, his wife, Yone, entered the working world. She is employed as an Administrative Assistant for the Borg Warner company and thoroughly enjoys her job.

Why did you become a plaintiff? To this question Edward Tokeshi replied: "We are entitled to redress and it is the right thing to do. Also members of the Sage Memorial Church 'pushed me' into becoming a plaintiff."

NCJAR's attorney Ellen Carson visited the Los Angeles area two years ago to speak before several groups. Edward was greatly impressed and moved by attorney Carson's dedication to the redress movement and her ability to articulate our lawsuit so clearly.

Supporters of NCJAR can learn so much from the experiences of named plaintiff Tokeshi. His determination and courage never wavered in the many struggles he has faced. This interviewer found Edward Tokeshi to be the same modest, intelligent, caring, and happy individual since growing up together in Brawley. All of us need to celebrate this wonderful plaintiff and person. □

Enabling Legislation

By William Hohri

AMONG OTHER THINGS, the redress movement has educated me in government and law. I have had to learn many new, strange sounding terms, such as "toll," as a verb unrelated to bells, and "equitable estoppel," an archaic form of stopping or prevention in the interest of consistency rather than equity. More on these later. But even the contemporary English of "enabling legislation," while conveying meaning, raises the question enabling what? How does it fit with the current redress alternatives of legislation and a court action?

Enabling legislation involves both the courts and Congress. Congress may enact a special law granting jurisdiction to the courts to hear and decide a lawsuit. The need for this granting of jurisdiction becomes clear when one examines a lawsuit. While the task of enacting such a law requires a look at Congress.

EXAMINING A LAWSUIT

THE CLASS ACTION lawsuit initiated by the National Council for Japanese American Redress (NCJAR) contains 22 causes of action or reasons for suing which cover events of WWII, 40 years ago, and violations of constitutional and civil rights. The lawsuit seeks monetary compensation for these violations. Thanks to NCJAR's extensive research in the National Archives, these 22 counts have well-documented arguments. In my opinion, the government would have difficulty defending itself against such a lawsuit but for the existence of legal rules of procedure. Principle among these are statutes of limitations (time limitations) and sovereign immunity.

TIME LIMITS—statutes of limitations—are established so that issues can be heard while memories and evidence are still fresh. This is a reasonable rule. Limits are variously set, ranging from two to six years. The government argues that the events occurred 40 years ago, well beyond normal time limits. Among several arguments, we contend the doctrine of equitable estoppel. During the war years, exclusion and detention were called evacuation and relocation. (During the war, one government attorney went so far as to argue that relocation could include relocation to a relocation center!) But now the government says it was exclusion and detention. Well, equitable estoppel says you can't have it both ways. During the war, we were told it was all legal and proper. Now, in order to invoke time limitations, we are now told—truthfully for a change—that it was exclusion and detention and we should have filed suit then. We contend that the government deliberately misled us by concealment and fraud, that we could not file suit until this concealment and fraud had been revealed to us through research, and that therefore the statutes should be tolled, i.e., have their commencement postponed from the early forties to the early fifties. This ruling dismissed the lawsuit in the district court, so it has been appealed to the U.S. Court of Appeals for the District of Columbia Circuit.

SOVEREIGN IMMUNITY protects the sovereign from being sued. Although the notion of a sovereign is somewhat foreign to us as Americans—except for the Nixonian period—we need to remember that our system of laws comes from England where there is a sovereign. I imagine that before the English sovereign ever allowed the courts to conduct civil suits, he or she made certain that such suits could not be filed against him or her. Thus, the doctrine of sovereign immunity allows the sovereign to be sued only with the sovereign's consent. Lacking of sovereign, the government argues that in its sovereign-like role, it cannot be sued without its consent. We won a partial victory here by citing the Takings Clause of the Fifth Amendment which requires that compensation be made for unjust taking of property. But our attempt to expand the concept of property to civil and constitutional rights failed.

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Ordeal of an Issei Father

The chronology and epilogue were provided by an NCJAR supporter (name withheld). Permission has been given to print this data.

The following represents data from copies of documents made available in response to my request made in 1975, under the Freedom of Information Act.

Otosan (father) was apprehended by FBI agents on February 29, 1942, at our home in Los Angeles; that he was detained at a facility for internees at Griffith Park under emergency authorization as a suspected Japanese propaganda agent. Altho his release from custody as a parolee took place on September 26, 1947, five years and seven months after his arrest, the final order vacating and setting aside his removal order did not come until August 25, 1948.

February 18, 1942
Warrant for arrest issued by Attorney General Francis Biddle.

May 6, 1942
Notice of hearing, Fort Lincoln, Bismarck, North Dakota.

May 8, 1942
Report and recommendation for internment by Hearing Board.

June 3, 1942
Memorandum to Chief, Review Section: recommend internment as suspected propaganda agent.

June 5, 1942
Order of internment issued by Attorney General Francis Biddle.

November 9, 1942
Department of Justice memorandum to FBI Director refers to detention on basis of suspected espionage.

November 30, 1942
Assistant Attorney General Wendell Berge memorandum to FBI Director advise delay in prosecuting pending more comprehensive investigation, request subject not to be included on repatriation list "at this time."

July 29, 1943
Immigration and Naturalization Service (INS) memorandum refers to transfer to internment facility at Santa Fe, New Mexico, on June 17, 1943.

October 8, 1943
Department of Justice memorandum to FBI Director on continued efforts for espionage conviction to place subject in "more important category for exchange purposes."
Signed by Assistant Attorney Tom C. Clark.

December 4, 1943
Memorandum on statement by confidential informant at Lordsburg internment camp regarding pro-Japan statements alleged to have been made by subject.

April 11, 1944
Assistant Attorney General memorandum to FBI Director on recommendation that prosecution be instituted for espionage. Exchange is mentioned.

July 8, 1944
U.S. Attorney Charles H. Carr letter to Assistant Attorney General Tom C. Clark, stating facts in case do not warrant prosecution for espionage.

August 25, 1944
Tom C. Clark memorandum to FBI Director states that indictment suggested to "improve bargaining status for exchange purposes."

August 3, 1945
Application for non-repatriation filed; denial of petition.

October 18, 1945
Memorandum on reconsideration of order to deport (8 pages), no change in internment order.

December 18, 1945
Hearing Board excerpts—deny application for non-repatriation.

March 11, 1946
Order signed by Attorney General Tom C. Clark, for removal of subject from the U.S. because he is deemed "dangerous to public peace and safety."

April 12, 1946
Personal record submitted by subject, which also includes dismay and reaction to removal order.

May 1, 1946
Five-page letter of appeal for release to Attorney General Tom C. Clark from subject internee.

May 16, 1946
Letters appealing for reconsideration of removal order by family members and friends.

May 21, 1946
Ditto

Continued to page 8

Continued from page 7 ORDEAL OF AN ISSEI FATHER

June 7, 1946
Ditto

May 21, 1946
Letter to subject from Director of Enemy Alien Control Unit, Thomas M. Cooley, II, stating denial of request for release; reaffirms Attorney General's removal order.

March 17, 1947
Memorandum to T.M. Cooley, KK, from Assistant Commissioner W.F. Kelly of Enemy Alien Control Unit, stating request for parole; also notes subject was served on March 10, 1947, with removal order dated March 11, 1946.

April 4, 1947
Letter to subject from Cooley, responding to Kelly letter of March 12, 1947, reaffirming denial of parole request.

May 21, 1947
Memorandum from C.M. Rothstein to W.F. Kelly, suggesting subject internee not to be removed.

June 5, 1947
Memorandum to Officer-In-Charge, Crystal City, Texas, states "no change" in outstanding removal order.

September 26, 1947
Immigration and Naturalization Service (INS) Report of Enemy Alien: subject internee paroled in custody of (ACLU) American Civil Liberties Union, Attorney, Wayne M. Collins, Esq.

August 25, 1948
Memorandum signed by Attorney General Tom C. Clark, which orders the removal order of March 11, 1946, be vacated and "said alien enemy be released."

October 4, 1948
Letter from INS, signed by District Director, W.A. Carmichael, to subject, informing him of the August 25, 1948 order to vacate and set aside removal orders; directs that he be released and that he is no longer subject to any restraints as an alien enemy.

EPILOGUE:

IT WOULD BE A gross understatement to say that the wheels of justice grind slow, for one could surmise that in subject internee's case, justice came to a halt and he languished in the *gulag* to serve out an indeterminate prison sentence without "due process."

ONE OF THE GLARING ironies that surfaced in sifting through these documents was the material which came from the Immigration and Naturalization Service. Dutifully, in response to my Freedom of Information Act request, they sent me copies of what appears to be its complete file on subject internee—including his application for, and granting of, a passport in 1952; and also his application and clearance for employment by INS in 1961, as an interpreter and translator! In both instances, there was no mention that he'd been subject to deportation, and the fact that he'd been incarcerated by the U.S. Government as an alien enemy. The omission is inexplicable. It seems that in the end, subject alien did have the last laugh on those agencies responsible for his imprisonment.

WE, HIS CHILDREN also suffered from his prolonged imprisonment, for there was the indignities and shame for having a father who was branded to be an undesirable enemy alien suspect of espionage. That he "be released and no longer subject to any restraints as an alien enemy..." Is that all there is to it? No apologies for what he was made to suffer? No compensation for the prolonged imprisonment and denial of freedom in order to work and support his wife and children? Imprisoned, but not charged? There is reason for redress and reparations! □

SANTA FE INTERNMENT CAMP

kuchizukeru
hito shi araneba
anion no
nama o sono mama
musaborite hamu

Since there is no one
To kiss here,
I devour
One raw onion after another.

Keiho Soga

from
POETS BEHIND
BARBED WIRE

NATIONAL COUNCIL for
JAPANESE AMERICAN REDRESS
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Chicago, Illinois 60614

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