



# National Council for Japanese American Redress

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VOLUME X, NUMBER 9  
NOVEMBER 1988

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## certiorari denied

ON OCTOBER 31, the U.S. Supreme Court denied *certiorari* to plaintiffs in William Hohri et al. v. United States. This action rebuffed and terminated a near-ten-year effort by a group of Japanese-Americans to challenge the constitutionality of their World War II exile and internment.

Among the issues the Court declined to consider was the fact, established in the U.S. Court of Appeals for the Ninth Circuit, that our wartime government had knowingly suppressed evidence in its arguments before the Court in Hirabayashi, and Korematsu. This evidence contradicted the factual underpinnings of its allegation of military necessity and demonstrated that racial animus, not military judgment, had been its motive.

Unlike the legislative and executive branches of government which recently agreed to provide restitution and to apologize for their wartime behavior, the Supreme court has allowed its wartime decisions to stand—without even the courtesy of written opinion. The Court's silence sustains the principle that in times of national stress our government may ignore, by the mere allegation of military necessity, constitutional guarantees and protections.

- The (above)  
news release  
was issued  
by  
NCJAR.

**An Issue for All Americans**

- The letter (below) was sent to each of the named plaintiffs.

### Regrettable

It is with great disappointment that I must write to advise you that on October 31, 1988, the Supreme Court announced it had denied our Petition for Writ of Certiorari. This means that the Order of United States District Court Judge Oberdorfer dated May 17, 1984, dismissing the lawsuit, has been upheld.

As you know, we had appealed Judge Oberdorfer's decision to the Court of Appeals for the Federal Circuit following the Supreme Court's ruling in June 1987. The Federal Circuit divided two-to-one in affirming Judge Oberdorfer.

During the 5½ years that the redress suit has been before the federal courts, it has generated widespread public interest and support for the redress movement. As a plaintiff in this suit, you have participated in historic litigation and should take pride in the contribution the suit has made to public awareness and congressional passage of the redress statute. Through the lawsuit we attempted to set forth a complete compilation of the legal wrongs endured by Japanese Americans. We all had hoped that the Supreme Court would take the opportunity this case afforded to revisit its wartime decisions and the issues of concealment and deliberate withholding of information. Regrettably, that did not occur.

Speaking for my entire firm, you should know that it has been a great source of pride for us to have been associated in this endeavor. The issues and the people made this a rare and unforgettable experience. We wish you all the very best of life's blessings.

Sincerely,

Landis, Cohen, Rauh and Zelenko

*Benjamin L. Zelenko*

### CONTRIBUTORS

- CALIFORNIA: Phil and Yasuko Nakamura.
- CHICAGO: John K. Adachi.
- COLORADO: John Iwakiri.
- HAWAII: Elsa H. Kudo.
- WASHINGTON: Hisa Kurosaka.

NCJAR newsletter  
 editor: Eddie Sato  
 Doris Sato

Dear Friends,

On October 31, trick-or-treat day, the United States Supreme Court denied our petition to be heard, providing trick. Like a boy behind his rubbery mask, the face of its decision, its whos and whys, is undefined. Like the guillotines, it abruptly ends our near-ten-year pilgrimage to have our day in court and to repair the damage done to our Constitution. We have no next steps, no alternatives.



When I called Harry Ueno and told him the news, and he replied, "At least we put up a fight," I realized how proud I was to have been fighting with Harry—and others, such as George Yamada, Jim Akutsu, Jimmy Omura, and Frank Emi, who had fought against the government's obscene violation of the Constitution and were crushed with imprisonment. Their acts of resistance and conscience continued in our movement for redress as affirmation of the best in our duties as citizens.

Unlike the public obsession with political campaigns in which winning is everything, citizenship comes with no guarantee or even requirement of victory. To paraphrase Confucius, our duty is to do what we see as right. (Still, victory would have been undeniably sweet.)

Yet unlike death, we conduct our own post mortem. The National Council for Japanese American Redress leaves its mark on Japanese America and America. We broadened our political dialogue into many voices. Thanks largely to Aiko and Jack Herzig, we performed the monumental task of historical research and put it to good use, so that the world now has a more authentic and accurate understanding of what happened to us. Even though rebuffed, we considerably sharpened the debate in our ongoing constitutional tradition. We formed a community of supporters from our nation whose generous contributions enabled us to proceed. We raised over \$300,000. We participated in a national dialogue via hearings, conferences, radio, television, newspapers, and books. We learned to stand on our two feet by initiating legislation (the 1979 Lowry Redress Bill), hiring attorneys, raising money, doing research, writing and publishing our newsletter, making our presence felt in Washington and in the Courts. We matured.

On behalf of NCJAR, I express my deepest gratitude to our sixty-five *ronin*, who each contributed a thousand, often more, dollars; to our named plaintiffs, who served as representatives of the class in our class action lawsuit; and to our sponsors, who lent their good names to our letterhead and provided credibility and respectability. I also thank the hundreds of supporters who responded to our fund appeals, attended our gatherings, cheered and encouraged us. I thank, too, our hired help, the law firm of Landis, Cohen, Rauh and Zelenko for their vigorous and competent advocacy. I especially thank Ellen Godbey Carson and Benjamin Zelenko, two of our attorneys, whose relationship became special.

Continued on page 4

Continued DEAR FRIENDS

Finally, like a voice beyond the grave and not at all spooky, death is not so bad when you realize that you've left a legacy, shown the way, demonstrated what life can be, and now yield to future generations. The Supreme Court is only supreme in law, not in life. As Richard Drinnon said,

The nation state cannot abridge freedom of speech, religion, press, assembly, due process of law, and the rest, because these rights existed prior to the framing of the Constitution.

(1987 Manzanar Pilgrimage)

It was the Justices who erred.

Peace,

William Hohri

## Without Comment

WASHINGTON, Oct. 31—The Court shut the door on a five-year effort to re-open the legal issues posed by the wartime detention of 120,000 Japanese-Americans in prison camps. A lawsuit brought by survivors of the internment sought billions of dollars in compensation for violations of the detainees' constitutional rights as well as for the seizure and destruction of their property.

Without comment, the Justices let stand a decision by the United States Court of Appeals for the Federal Circuit that dismissed the lawsuit. That court, affirming a ruling by the Federal District Court here, said dismissal was required by the fact that the lawsuit had not been brought within the six-year statute of limitations that is part of the law governing suits of this type against the Federal Government.

Despite the failure of the lawsuit, the survivors of the internment won a substantial victory in congress this year. Two months ago, President Reagan signed into law a bill setting up a \$1.25 billion trust fund, from which the survivors will each receive \$20,000 in reparations.

- Simply titled "Japanese Internment," the (above) report by Linda Greenhouse appeared in the November 1, 1988 NEW YORK TIMES.

- The article (below), "Ruling Ends NCJAR Suit" by J.K. Yamamoto of the Hokubei Mainichi was in the November 1, 1988 edition.

## "It's the end of the road"

The effort to obtain redress for Japanese American internees through the judicial system came to an end Monday when the Supreme Court denied a petition for review by the National Council for Japanese American Redress. The Court did not give any explanation of its ruling, which upholds a decision made in 1984 by a federal judge to throw out the case because of the statute of limitations.

"It's the end of the road," said lead plaintiff William Hohri of Chicago. "I just think it's a serious failure on the part of the Supreme Court, that they place the Constitution in jeopardy."

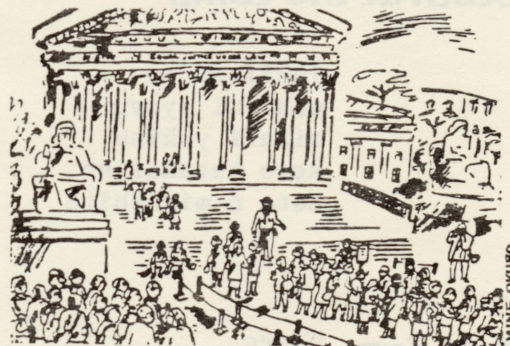
NCJAR was forced to pursue redress for Japanese Americans interned during World War II through the courts rather than legislation in Congress. The class action lawsuit was filed against the government in March 1983 in the U.S. District Court in Washington, D.C. Unlike the legislation signed into law by President Reagan this year, the suit sought reparations not only to former internees who were still alive, but also for those who had died, with the payments going to their heirs.

Hohri said that the suit would provide something that redress legislation could not: a judicial finding that the wartime internment was unconstitutional.

"The only thing I can say is that the Court had the opportunity to address a very serious issue and they declined to do that. It's an issue that only the Court can address," he said.

In May 1984, U.S. District Judge Louis Oberdorfer ruled that the suit had been filed too late because the six-year statute of limitations had long since run out. NCJAR appealed the decision. The U.S. Court of Appeals for the District of Columbia overturned that decision in January 1986, ruling that the six-year period did not start until the Commission on Wartime Relocation and Internment of Civilians was established in 1980. The government appealed.

When the case reached the Supreme Court last year, however, the justices did not rule on the merits of the suit. Instead, they said that the suit had been heard in the wrong court and sent it to the U.S. Court of Appeals for the Federal Circuit rather than the D.C. court. In May of this year, the appeals court upheld the dismissal of the suit, and NCJAR once again sought a review by the Supreme Court.



Continued **"It's the end of the road"**

Although Monday's decision follows the enactment of the redress bill in August, Hohri said there is no way of knowing whether the actions by Congress and the President were a factor. "There aren't any details ... "it's like getting a divorce without a reason, without even a note."

The bill contained a clause stating that anyone who accepted payments would give up any further claims against the government; those who wanted to continue with the suit would have had to turn down payments under the bill. "That issue has become moot," said Hohri.

But there are some groups not covered by the bill, such as Japanese Peruvians who were forcibly sent from Peru to the U.S. for internment. Since the bill was intended for U.S. citizens and permanent resident aliens, the lawsuit may have been the only recourse for the Latin American Nikkei. Hohri said that his group is now "trying very hard" to get the Japanese Peruvians included in the bill's categories of eligible individuals.

With NCJAR's five-year legal battle now over, Hohri reflected, "I think that the effort was a very rewarding one and was very good for all of us who were involved in it. I certainly made some of the best friends I've ever had in my life.

"The people that supported us were outstanding members of their respective communities. They certainly have nothing to be ashamed of. But I think there's some very serious questions raised by the Supreme Court's actions about whether they are truly serious about addressing the mistakes and errors of the past that only they can address.

"I think the price of vigilance for the protection of our individual rights has become much higher now. It's going to be up to the people ..." ■

J.K. Yamamoto

**Death at the camp**

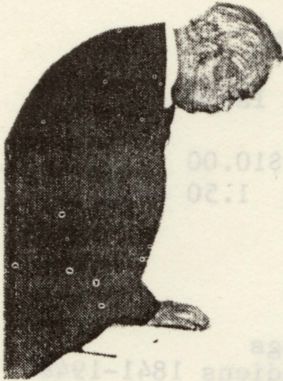
junjitsu no  
uchi ni ryoyu  
mitari yukinu  
kono tatakai no  
hate o mizushite

Within just ten days  
Three fellow internees  
Depart from this world  
Never to see  
The end of this war.

Keiho Soga

Tanka from POETS  
BEHIND  
BARBED  
WIRE

- The following press release of the American Biographical Institute (ABI) was in the September 23, 1988 *ASIAN WEEK* of San Francisco.



F. S. S. S. S.

## Omura honored

Jimmie Omura, a researcher of the internment of Japanese Americans during World War II, has recently been inducted into the International Directory of the Distinguished Leadership Hall of Fame.

Omura, who is from Denver, Colorado, was chosen to receive the honor for his devotion to constitutional principles under wartime stress.

The Hall of Fame consists of a limited number of individuals whose biographies have appeared in any edition of the biographical reference series, International Directory of Distinguished Leadership.

### Other honors and awards:

- a) Who's Who in U.S. Writers, Editors and Poets.
- b) ABI International Directory of Distinguished Leadership.
- c) IBC International Who's Who of Intellectuals of Cambridge, England.
- d) Commemorative Edition, Personalities of America.
- e) International Leaders in Achievements of Cambridge, England.

## These were not "draft dodgers"

As English editor of the *Rocky Shimpo*, Jimmie Omura voiced his opposition to the imprisonment of the resisters. His support led to his arrest. The resisters of the Heart Mountain Fair Play Committee (Wyoming) and those from the other camps were tried, convicted and served three years in the federal penitentiary.

In Omura's letter to Tom Crouch, curator of the Smithsonian Institution's National Museum of American History regarding their exhibit, "A More Perfect Union; Japanese Americans and the United States Constitution," he wrote:

"It is essential that the basis of their resistance be noted. These were not 'draft dodgers'. They acted from a matter of conscience. They demonstrated their dedication to the fundamental principles enunciated in our sacred Constitution. Their act mirrored the spirit bequeathed to humanity by those who have struggled against oppression since the dawn of history. It was the same spirit that sparked the American Revolution and led to the founding of our Republic.

"Also completely ignored is the story of the twenty-one court-martialed soldiers of Japanese descent who likewise questioned confinement of their family members in concentration camps while requiring them to submit to their supreme sacrifice on the field of battle. Their story, is relevant to the constitutional theme. In the early Eighties, all rights and privileges were restored to these soldiers by the United States Government. A total of 282 Nisei draft resisters received pardons among 1,523 Selective Service violators. The Amnesty Board reviewed 15,805 violations."

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**Death  
at the  
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suna kuruu  
areno ni toha ni  
nemuritaru  
tomo no sabishisa  
omoi namidasu

The barren wasteland  
Raged by sand storm,  
I weep for my friend  
Who sleeps there alone  
Eternally.

Keiho Soga