



VOLUME VIII, NUMBER 1

# National Council for Japanese American Redress

NEWS LETTER

925 West Diversey Parkway  
Chicago, Illinois 60614

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

FEBRUARY 1986

- The named plaintiffs in the suit received the letter (below) dated January 28, 1986.

IT WAS ON JANUARY 21ST...

We are delighted to report, as you no doubt know, that on January 21st, a three-judge panel of the United States Court of Appeals for the District of Columbia Circuit issued a very favorable ruling in our appeal against the trial court's dismissal of our suit. Briefly, the Appeals Court ruled that the statute of limitations and sovereign immunity do not bar our claims for unjust takings of property under the Fifth Amendment.

While we are gratified the Court held the intentional concealment of information by the government could suspend the statute of limitations, we were very disappointed that the Court upheld the dismissal of all other claims in the suit. Also disappointing was that the ruling that those who had received compensation under the Evacuation Claims Act may not now assert even a Takings Clause claim for compensation.

Before any further trial proceedings occur, we expect further appellate review (including possible rehearing before the full Court of Appeals, or a petition to the Supreme Court) because of the historic importance of this case. NCJAR and our firm will keep you informed of these developments.

In closing, permit me to quote one passage from the Appeals Court's opinion which summarizes the vindication we have already achieved:

"...the Founders [of this Nation] provided that the right to obtain just compensation for the taking of one's property should remain inviolate. In so doing, they no doubt assumed that the normal statutes of limitations would apply. But they also most certainly assumed that the leaders of this Republic would act truthfully. In the main, history has proven the Founders correct. We have also learned, however, that extraordinary injustice can provoke extraordinary acts of concealment. Where such concealment is alleged it ill behooves the government of a free people to evade an honest accounting. Should such concealment be proven here, those individuals who have not received awards under the Claims Act should be free to press this cause to its conclusion."

With best wishes,

Sincerely,

Landis, Cohen, Rauh and Zelenko  
Benjamin L. Zelenko

## MANHATTAN'S BOROUGH PRESIDENT HAILS REINSTATEMENT OF SUIT

**I** APPLAUD THE January 21 decision of the United States Court of Appeals for the District of Columbia to reinstate a lawsuit brought on behalf of the 120,000 Japanese Americans who were unjustly incarcerated by the U.S. government during World War II.

An honest accounting is long overdue for the victims of President Roosevelt's 1942 Executive Order 9066, which authorized the mass evacuation and imprisonment of Japanese Americans. Two-thirds of those incarcerated were American citizens who had never set foot on Japanese soil. In fact, according to a report commissioned by the government and completed in 1941, the Japanese Americans were considered unquestionably loyal to the United States. Yet they were branded as traitors and herded into concentration camps. Income, homes, savings and businesses were lost. But property was not the only loss incurred. The mental, physical and spiritual anguish suffered by the Japanese American people can never be repaired. No price can be set on the pain and degradation inflicted on men, women and children who were never charged with a specific crime other than being Japanese.

What occurred during WWII was more than a travesty of justice. It was a racist act. Without evidence of any wrongdoing and without due process of law, citizens and permanent residents alike were rounded up and declared enemy aliens who represented a grave threat to the security of this nation.

EXECUTIVE ORDER 9066 will forever remain a moral blot on the conscience of this nation. It saddens me that our government has to this day refused to acknowledge and right this wrong. The U.S. Government must recognize its responsibility to the victims and families of those Japanese Americans interned in WWII. Monetary compensation for the losses suffered are long overdue. In addition, a formal admission of wrongdoing must be given. Only in this way can we guard against the recurrence of such a tragic injustice.

DAVID DINKINS  
BOROUGH PRESIDENT OF MANHATTAN

## RULING OF SUIT GRATIFYING TO KOREMATSU

**I**N THE SAN FRANCISCO Chronicle story of January 22, by Paul Liberatore titled "Internment Camp Victims Can Sue U.S."—the Appeals Court ruling was particularly gratifying for Fred Korematsu. He said:

"People don't realize how much suffering Japanese Americans went through. There is no way the government can pay for the physical and emotional damage, but if it can compensate for something, it should. The government was wrong."

Korematsu, now 66, and a semi-retired draftsman living in San Leandro, California, challenged the government in 1942 with his arrest.

## LETTER

WITH A PROFOUND sense of gratification, I commend all of you for your endurance and dedication, culminating in the recent decision of the circuit court. It is my hope that AJA's will not relax but, instead, will forge forward with renewed vigor—on all fronts, including "redress"—until, somehow, vindication is realized.

BILL MARUTANI  
Philadelphia, PA

## EXECUTIVE ORDER 9066

WHEREAS THE SUCCESSFUL PROSECUTION OF THE WAR REQUIRES EVERY POSSIBLE PROTECTION AGAINST ESPIONAGE AND AGAINST SABOTAGE TO NATIONAL DEFENSE MATERIAL, NATIONAL DEFENSE PREMISES, AND NATIONAL DEFENSE UTILITIES....

NOW, THEREFORE, BY VIRTUE OF THE AUTHORITY VESTED IN ME AS PRESIDENT OF THE UNITED STATES, AND COMMANDER IN CHIEF OF THE ARMY AND NAVY, I HEREBY AUTHORIZE AND DIRECT THE SECRETARY OF WAR, AND THE MILITARY COMMANDERS WHO HE MAY FROM TIME TO TIME DESIGNATE, WHENEVER HE OR ANY DESIGNATED COMMANDER DEEMS SUCH ACTION NECESSARY OR DESIRABLE, TO PRESCRIBE MILITARY AREAS IN SUCH PLACES AND OF SUCH EXTENT AS HE OR THE APPROPRIATE MILITARY COMMANDER MAY DETERMINE, FROM WHICH ANY OR ALL PERSONS MAY BE EXCLUDED, AND WITH RESPECT TO WHICH, THE RIGHT OF ANY PERSON TO ENTER, REMAIN IN, OR LEAVE SHALL BE SUBJECT TO WHATEVER RESTRICTIONS THE SECRETARY OF WAR OR THE APPROPRIATE MILITARY COMMANDER MAY IMPOSE IN HIS DISCRETION. THE SECRETARY OF WAR IS HEREBY AUTHORIZED TO PROVIDE FOR RESIDENTS OF ANY SUCH AREA WHO ARE EXCLUDED THEREFROM, SUCH TRANSPORTATION, FOOD, SHELTER, AND OTHER ACCOMMODATIONS AS MAY BE NECESSARY, IN THE JUDGMENT OF THE SECRETARY OF WAR OR THE SAID MILITARY COMMANDER, AND UNTIL OTHER ARRANGEMENTS ARE MADE, TO ACCOMPLISH THE PURPOSE OF THIS ORDER.

### ■ D O N ' T F O R G E T !



FEBRUARY 19, 1986

Heiwa Terrace  
7:30 pm

Guest speaker: Ellen Carson

Ackerman Hall, UCLA  
12:00 noon to 2:00 pm

Aiko Herzig

FEBRUARY 22, 1986  
Hunter College, NY  
1:00 to 3:00 pm

William Hohri

Be sure to invite your friends.

NCJAR

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U.S. GOVERNMENT I

ON JANUARY 21, 1986, the U.S. Court of Appeals for the District of Columbia Circuit, in a two to one decision overturned a U.S. District Court dismissal of the class action lawsuit of 125,000 Japanese Americans against the United States. The decision permits the case to proceed to trial. The civil complaint filed in March 1983 consists of 22 causes of action delineating violations of the constitutional and civil rights of the entire West Coast Japanese American population when they were forcibly excluded and expelled from their homes and imprisoned in detention centers for one to five years.

In May 1984, Judge Louis Oberdorfer had dismissed the suit because statutes of limitations had expired. In their appeal, the victims argued that their causes of action had been actively concealed from them by governmental misconduct and become known through the investigation of the 1980-83 congressional Commission on Wartime Relocation and Internment of Civilians (CWRIC). Therefore, they reasoned, the limitations clock should begin with the issuance of the Commission's formal report in February 1983. The appeals court set the clock to July 1980 when President Carter signed into law H.R. 5499 and brought the CWRIC into being.

SEVERAL COURSES OF action are now available. The government may request a re-hearing before a larger panel of active judges in the appeals court or for a writ of certiorari, a request for a hearing by the Supreme Court. Or, the government may allow the case to proceed to trial.

The plaintiffs complaint has been narrowed to a single cause of action, the Takings Clause of the Fifth Amendment, because of other procedural obstacles. The Takings Clause, "nor shall private property be taken for public use, without just compensation." The other constitutional causes of action require consent by the government to be sued; they are protected by sovereign immunity. Such immunity may be waived by an act of Congress, which the plaintiffs may seek. The remaining causes of action are barred by immunity and other procedural reasons.

NCJAR PRESS RELEASE

- NOTE: The two judges for reinstating the suit were James Skelly Wright and Ruth Bader Ginsburg. The dissenting judge was Howard Thomas Markey. Judge Wright of New Orleans, the eldest of the three (Born: 1911) was appointed to the U.S. Circuit Court in the District of Columbia by President John F. Kennedy. Judge Ginsburg (Born: 1933) from Brooklyn, NY was appointed by President Jimmy Carter, and Judge Markey (Born: 1920) of Chicago was appointed by President Richard M. Nixon.

#### THE GOVERNMENT'S "JAPANESE PROBLEM"

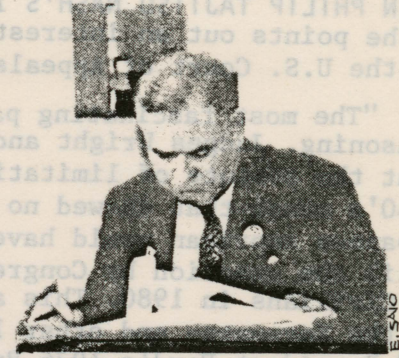
OF SPECIAL INTEREST to be found in the Appeals Court majority opinion [ See page 8 and 9 ] are the conclusions reached by Lt. Commander Kenneth D. Ringle, who was an expert on Japanese intelligence in the Office of Naval Intelligence (ONI). His views contradicted the government's argument that the Japanese Americans were not to be trusted. He argued that the "cultural characteristics of the Japanese Americans had not resulted in a high risk of disloyalty by members of that group."

Ringle noted that the whole matter dealing with the "Japanese Problem" should be based on the individual regardless of citizenship, and not based on race.

DEAR FRIENDS,

FEBRUARY 1986

I RECEIVED THE FIRST call around 2:30 in the afternoon from Ellen Carson. She was excited and said something about a call from the Associated Press: a decision's been made in the U.S. Court of Appeals, and it sounded favorable. I'd get a call later as they learned more. "Is it really possible?" I thought. Five minutes later, Benjamin Zelenko called. It had happened. Judge Oberdorfer's dismissal of our lawsuit had been overturned. Benjamin exercised his lawyerly care in describing the situation. He didn't have the opinion before him. He described the press report. It was clear enough. "We've won, William!" he finally exclaimed, finally answering my question.



TUESDAY, JANUARY 21, 1986, the day after the first national observance of Martin Luther King's birthday, obliterated May 17, 1984, the date of Oberdorfer's decision. But the decision has not been obliterated, only its limited tolling (postponement) of the statutes of limitations to the later forties; the appeals court moved the limitations to begin July 1980, when Congress enacted law creating the Commission on Wartime Relocation and Internment of Civilians. (No one, I'm sure, anticipated this result from the CWRIC's establishment.) Now our filing of our lawsuit in March 1983 easily falls within the six-years limitations period. But we are left with only a single cause of action or claim. Most of the other claims remain barred by the protection of sovereign immunity. Sovereign immunity, you will remember requires the government's consent to be sued before it can be sued. (If you're puzzled by this, remember that our law comes from English law and the time when sovereign had real power. Imagine this parable of yourself as the king or queen who allows the rule of law and the ability to sue. Wouldn't you be inclined to say, "Loyal subjects, you may sue each other but only me if I first consent to be sued?") With a single claim and the limitation of \$10,000 for the claim, the total sum sought has been reduced to around one million dollars.

STILL, THE VICTORY is a great victory. Our law firm has received the well-deserved congratulations of their colleagues. It was Mike Rauh who agreed to represent us and asked the question now answered in the opinion: why has no one ever filed a class action before? Benjamin Zelenko, with his wisdom, experience, and mensch, served well as counsel and spoke for us in oral arguments. And Ellen Godbey (with you) Carson gave us her dedication to principle, hard work, and brilliant mind. The U.S. Courthouse quickly exhausted its supply of the written opinion and reordered more. [Copies of the appeals court opinion are available through NCJAR at \$3.00 per book. See page 9.]

Press interviews were held coast-to-coast. A network television news program featured two of our named plaintiffs Harry Ueno and George Ikeda, along with attorney Ellen Carson. They were great! I think it is safe to say that we have begun to challenge the Supreme Court decisions of Hirabayashi and Korematsu. They are discussed extensively in the majority opinion of the appeals court. Also the work of Peter Irons and the coram nobis legal initiatives are evident in the majority's argument. The monumental research of Aiko and Jack Herzig paid off, especially Aiko's persistence in having the CWRIC include historical research in its official report. The opinion cites from this research. Of course, there would have been no lawsuit and no opinion had we not had our forty ronin supporters—there's room for seven more—whose generosity, commitment, and faith underwrote our expenses and led a thousand more to place our movement on solid footing.

Continued on page 6

## THE REASONING BEHIND APPEALS COURT DECISION

IN PHILIP TAJITSU NASH'S Inter-Change column of January 30 in the New York Nichibei, he points out an interesting aspect regarding the recent decision handed down by the U.S. Court of Appeals where he says:

"The most fascinating part of the Court of Appeals decision last week was its reasoning. Judges Wright and Ginsburg allowed the case to proceed because they felt that the statute of limitations had not run out. Despite the FCC, FBI, QNI and other 1940's memos that showed no 'military necessity,' they said no 'reasonably diligent' Japanese American would have been expected to file a claim against the government until the creation by Congress of the Commission on Wartime Relocation and Internment of Civilians in 1980. This action, they said, reversed the 'presumption of deference' to the Korematsu and other 1940's Supreme Court decisions. Both the 1948 Claims Act and President Ford's 1976 Proclamation on the other hand, were mere admissions of moral mistakes, not of legal error.

"The legal effect is the key here, not any notions of equity morality or camp-related disabilities that prevented the Japanese Americans from filing the case earlier. It's as if David could not have been expected to put a rock in his sling until he knew that Goliath was vulnerable.

"Even Chief Judge Markey, in dissent agreed that a wrong was done to the Japanese Americans. However he, like District Court Judge Oberdorfer, saw a remedy coming from Congress, not the courts."

Continued from page 5 DEAR FRIENDS

WHILE WE HAVE been blessed with an abundance of logic and reason, we have also been through acts of faith. It is hard to believe that this all began in the tiny congregation of the Parish of the Holy Covenant, who decided in April 1979 to launch a national campaign to seek redress independently of the Japanese American Citizens League. All we knew then was that we could not do it alone. It's also hard to believe that in 1980 we could consider launching a lawsuit when we knew so little about the law and even less about law firms. Nor can anyone explain with sweet reason how we happen to have such exceptional persons as the Herzigs, Ellen Carson, our forty ronin, and our named plaintiffs. I call it faith because I am a Christian. A Confucianist might call it the Mandate of Heaven. Whatever it is, it has been vindicated.

But faith, the Mandate, or whatever still pushes us. We still want to do something about sovereign immunity. We want to go to trial with our other constitutional claims restored. Congress as government may grant the consent to be sued. This seems like the next step for us.

In the meanwhile, we will be traveling around to explain the decision and to do a little celebrating. Ellen Carson will be in Chicago on February 19th at Heiwa Terrace, 7:30 p.m. On the same day, Aiko Herzig will be at UCLA's Ackerman Hall from 12:00 noon to 2:00 p.m. And I will be in New York on February 22nd at Hunter College from 1:00 to 3:00 p.m. Make it if you can. Write if you're interested in having us. We look forward to seeing you.

Peace, P.S. My thanks to those who wrote kind words about my last letter. I also deeply appreciate the support I've received in my struggle with rules for writing. I am taking advice received and writing as if ignorant of such rules. W.H.

William Hohri

## Canada, Too

While those of Japanese ancestry were being uprooted from the West Coast in the United States due to the implementation of Executive Order 9066 in 1942, the Government of Canada likewise was removing all Canadians of Japanese ethnic origin from the West Coast of British Columbia.

### HIDEO KOKUBO

Hideo Kokubo was born in Steveston, British Columbia, in 1912. The son of a fisherman, he began fishing at the age of 18. By the time he was 29, he owned three fishing vessels: a gillnetter, a troller and a boat for cod fishing. He would likely be a wealthy man today if it were not for the losses he suffered in 1941.

On December 8, 1941, his boats were impounded in Nanaimo and ordered back to Steveston.

"When we came back to Steveston, all the boats came back together in a long line--they were tied together, we couldn't run them--escorted by police boats. When we got here, we took our belongings ashore, and the next day the boats were gone; and we'd had three boats too. It was like being cut off at the root. All those years of work, just gone."

Mr. Kokubo was part of a Nisei or Canadian-born group who insisted that their families be allowed to stay together through the uprooting and who opposed the separate removal of men to road camps:

"We said, 'After we know that our families are safe and well-looked-after then we will go anywhere.' But when we insisted the police came and took us one by one from home; there were maybe a hundred of us."

Mr. Kokubo was shipped to a prisoner of war camp in Angler, Ontario, where he was imprisoned behind barbed wire and under armed guard for four years. The prisoners lived in tar-paper shacks, the walls of which were coated with 5 to 6 inches of ice when the temperature dropped to minus 60 degrees Fahrenheit. Mr. Kokubo remembers, "At one time there were 720 people there, all men, and a lot of them were old people."

Mrs. Kokubo and their infant daughter, Etsuko, were sent to a detention camp at Lemon Creek. Mrs. Kokubo was allowed to send one card and one letter a week to Angler, but all mail was censored by the Army.

"I someone made some comment about the war, that part was cut out with scissors. I used to wonder how my family was getting along."

When the war ended, Mr. Kokubo wanted to return to British Columbia, but permission was refused. In order to find their eldest daughter, Tsuneko, who had been trapped in Japan by the war while visiting relatives, the Kokubos accepted "repatriation" in the summer of 1946.

Mr. Kokubo returned to Canada in 1952 and endured 5 years of poverty and debt in order to re-establish his livelihood as a fisherman. Apart from the confiscation of his boats during the war, the thing he regrets most is the loss of 10 of the most valuable years of his life, between the ages of 30 and 40. These years were spent in prison camp and exile and can never be returned to him.

### DEMOCRACY BETRAYED THE FAILURE OF GOVERNMENT

"Who would have thought that one day I would be unable to stand up for my country's government, out of sheer shame and disillusion, against the slurs of the scornful? The bitterness, the anguish is complete. You, who deal in lifeless figures, files, and statistics could never measure the depth of hurt and outrage dealt out to those of us who love this land. It is because we are Canadians, that we protest the violation of our birthright."

MURIEL KITAGAWA  
Letter to the Custodian  
of Enemy Property  
July 8, 1943

there will be days ...

BY  
YUKIO  
OZAKI

**T**HERE WILL BE DAYS—when winds will sob  
through dead and shell-like Hunt, and rob  
the virgin sapling of its mob  
of Autumn-splattered leaves.

Supreme once more will reign the light  
Of hoary stars within the night—  
As lonely shutter creaks its plight  
And saddened story weaves ...

ONCE LONG AGO, where sagebrush foamed,  
Where naught but Nature's minions roamed—  
The sound of saw and hammer homed  
The desert-foam to sever.

And soon they came, with rope-choked bags.  
They came as dully-numbered tags.  
A people lost on warfare's crags—  
And wandering eastward ever ...

They saw the flatness, dryness, heat.  
They cowered 'neath the lava sheet,  
And mother wept on baggage seat  
Within the barren room.

For these were born of ocean spray,  
And towering pines, and fertile way,  
And hills with dancing echoes gay—  
The flow'rs in festive bloom.

THERE, NOW, within the city's murk,  
The whisp'ring ghosts of yester lurk  
Of days of tears, of play, of work,  
Of love's defiant stand.  
The dinner gong droops sad in rust—  
No more its voice to distance thrust  
For meal and meet, with ringing gust—  
It lacks the human hand.

In sad decay, the gardens lie—  
Their prisoner, dust, too soon to fly.  
The saplings' tremblings soft decry  
The ravage, of the skies.

By shadowed school, coyotes pad—  
Here once a book ruled o'er a lad  
And lass in brightly-colored plaid.  
And joy was on the rise.

The whack of bat, the swish of net,  
The splash of swimming bodies wet,  
The clatter of production set.  
All these are muted now.

And, once, on love beamed moon of old—  
The glee that clung to ashes cold.  
And hearts were met to sweet unfold  
Youth's all eternal vow.  
And there was dust and muddy snow—  
And gently sighing rain to know—  
And nights when insects brought their woe.  
And died against the flame.

And there were those who asked for gun.  
And, clad in khaki, joined the run,  
Thrust out to fight till right was won—  
Till freedom shone in name ...

There will be days—when winds will sob  
Through dead and shell-like Hunt, and rob  
The virgin sapling of its mob  
Of Autumn-splattered leaves.

Supreme, once more, will reign the light  
Of hoary stars within the night—  
As lonely shutter creaks its plight  
And saddened story weaves ...

LOOK, STARS, upon the battleplace  
Of mind 'gainst self, of will and face!  
Where now remains no vis'ble trace,  
And all is still and steep!

Look long upon the birthplace, then,  
Of life from life, of newborn men!  
Look long on Scene within your ken!  
You sent'nels of the deep!

'Twas here a people rose as one!  
'Twas here that, stunned by crashing sun  
And groping through the jagged dun,  
They rose 'gainst Destiny's jeers!

A people rose, their faith unlame  
In decency and Right's proclaim!  
Their blood with Freedom's Stars aflame  
And bright with courage's tears!

An excerpt of Yukio Ozaki's poem was printed  
in the February 1985 newsletter.  
The original "there will be days" appeared  
in the September 25, 1943 issue of the  
Minidoka IRRIGATOR (Hunt, Idaho). Ozaki  
lived in Seattle prior to his internment.



**ATTENTION!**

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COURT  
OPINION  
is available  
at \$3.00  
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NCJAR  
has only a  
limited supply.

<p><b>United States Court of Appeals</b> FOR THE DISTRICT OF COLUMBIA CIRCUIT</p> <p>—</p> <p>No. 84-5460</p> <p>WILLIAM HOHRI, et al., APPELLANTS</p> <p>▼</p> <p>UNITED STATES OF AMERICA</p> <p>—</p> <p>Appeal from the United States District Court for the District of Columbia (D.C. Civil Action No. 83-750)</p> <p>—</p> <p>Argued September 24, 1985 Decided January 21, 1986</p> <p><i>Benjamin L. Zelenko, with whom B. Michael Rauh and Ellen Godbey Carson were on the brief, for appellants.</i></p> <p><i>Jeffrey Axelrad, Attorney, Department of Justice, with whom Richard K. Willard, Acting Assistant Attorney Gen- eral, and Joseph E. diGenova, United States Attorney, were on the brief, for appellee.</i></p>
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