National Council for Japanese American Redress

925 West Diversey Parkway
Chicago, Illinois 60614
March, 1984

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Dear Friends,

By all accounts, the February 19th program to commemorate E.O. 9066 with Peter Irons and to honor the contributions of Aiko and Jack Herzig was a great success. Peter Irons is the prime mover behind the three coram nobis appeals to vacate the convictions of Korematsu, Yasui, and Hirabayashi. He teaches at the University of California at San Diego. He effectively used his practice in the lecture hall.

His story of how he met Aiko Herzig in the National Archives was memorable. Aiko had checked out two of the boxes he was looking for; he was told he could use the boxes by asking the Japanese-American woman in the reading room, the first Japanese-American he had ever met. They met, decided to negotiate, and to exchange information; therein lies the larger story of co-operation and mutual support between the coram nobis appeals and the NCJAR lawsuit.

Irons made a fitting introduction to Aiko and Jack Herzig. The people about whom I had spoken came to life. The work involved in their research became more real. Their personalities were palpable: Jack's great heart and Aiko's winning smile.

I WAS DELIGHTED to present Aiko and Jack with a plaque on behalf of Michi Weglyn, thereby expressing Michi's public recognition of their outstanding contribution to Japanese-American history. Nelson Kitsuse presented a scroll, created by my brother Sohei Hohri, which was simply magnificent. It said:

The National Council for Japanese American Redress
is honored to recognize and to thank

Aiko and Jack Herzig

for their monumental achievements in archival research, which undergird the Report of the Commission on Wartime Relocation and Internment of Civilians as well as NCJAR's historic class action lawsuit; for their efforts in fundraising, enlisting support, and representing NCJAR in Washington; for their eminent good sense in prodding NCJAR when we faltered and in caring when we were bruised; and for their generous spirit, their love, intelligence, and wit, and their determined endurance.

In a surprise performance, Eddie Sato, revealing a heretofore hidden talent for acting, read parts of the Los Angeles CWRIC testimony given by Charles Hamasaki, formerly of Terminal Island. Hamasaki's testimony was by far the liveliest of all the CWRIC hearings.

After the program, the members of the NCJAR board and their guests retired to the home of Haru and Sam Ozaki to watch the segment on the coram nobis appeals of Korematsu, Yasui, and Hirabayashi aired on CBS' "60 Minutes." We enjoyed our guests and filled ourselves with wine, Chinese food, and Yaye Katayama's superb sushi.

ALTHOUGH it is tardy, we publish a report on the Supplemental Memoranda on the arguments of the Government's Motion to Dismiss. The two memoranda, including exhibits, exceeded 200 pages. The NCJAR memorandum was quite extensive and covered many important and difficult issues. It took some time for me to read and to understand our memorandum; it took even more time to summarize it into terms and expressions for a lay person.

We are reaching the end of the procedural phase of our court action; we must begin to consider the alternatives we face in the Court's impending decision on the Motion to Dismiss. If the Motion is granted, the lawsuit is finished unless NCJAR decides to appeal. If the Motion is denied, the Government normally would not be able to appeal but may be entitled to a special appeal because of the case's magnitude. A third alternative is an order by the Court for a hearing on jurisdictional issues. The appeals process will cost us more money. But I think it is safe to say that we have only begun to fight.

Peace,

William Hohri

redressing
EXECUTIVE
ORDER
9066
. . . the
search
for justice

February 26, 1984

Following is a message from Aiko and Jack Herzig:

THERE WAS SOME talk about NCJAR honoring us at a meeting held in Chicago in conjunction with the commemoration of that infamous date of February 19th. While it is true that we were so honored through the presentation of an absolutely classical scroll from NCJAR, created by Sohei Hohri, and a beautifully inscribed plaque from Michi and Walter Weglyn, we must state that the honor that we also felt so strongly was in meeting with the Chicago members of the NCJAR movement.

UP UNTIL then, you in Chicago and we in Washington could only know of each other, through what each of us was contributing to our common goal. Now, we in Washington have had the pleasure and the honor of seeing and hearing you. Hopefully, we were able to convey to you the admiration that we have for your establishing and maintaining the foundation of the program upon which we have all made progress.

PLEASE let us assure each of you that we were truly honored in Chicago. We are proud to be part of a special band of rare people, whether from Chicago or wherever NCJAR supporters may be.

SUPPLEMENTAL MEMORANDUM

ON THE STATUTE OF LIMITATIONS

ON DECEMBER 12, 1983, Judge Louis Oberdorfer of the United States District Court for the District of Columbia ordered both the plaintiffs (named representatives of the 125,000 Japanese-American victims) and defendant (United States of America) to advise the court by January 20, 1984 when we (the plaintiffs), exercising "due diligence, should have discovered the facts" underlying our claims against the United States. Some of the facts to which the Judge refers are those which appear in published works such as Years of Infamy by Michi Weglyn and Prejudice, War and the Constitution by Jacobus tenBroek, Edward N. Barnhart, and Floyd W. Matson. What is at issue here is the Motion to Dismiss by the United States (the defendant) that the Judge is considering. The United States seeks in its Motion to Dismiss to bar the lawsuit on grounds that the lawsuit is not consented to by the U.S., and that the statute of limitations has expired. Our rebuttal on the statute of limitations issue is that our suit could not have been filed until we uncovered certain information and insights crucial to our complaint. The Judge has observed that some of this information was available in published works. The Judge, accordingly, would like to learn which items of evidence were required before we could file a reasonable complaint and when these items were obtained or, "by the exercise of due diligence," could have reasonably been obtained.

ON JANUARY 20, 1984, the United States and the National Council for Japanese American Redress—the organization filing the lawsuit on behalf of the victims--responded.

The United States' response was thin. The response began by summarizing the Government's Motion to Dismiss, its rebuttal to the NCJAR opposition to the Motion, and the Court's request for supplemental information. The Government's main argument, contained in a single paragraph, states that we (the plaintiffs) should have known and must have known the facts at the time of the events. The paragraph also attempted to undercut the aptness of Judge Oberdorfer's use of "due diligence" as a standard of "unlimited flexibility" in tolling (postponing the initiation of) the statute of limitations. The remainder of their response was padded with citations of and photocopies from seven published works: Yale Law Journal and Harper's magazine (both containing Eugene V. Rostow's essay on the topic), Prejudice, War and the Constitution, America's Concentration Camps, Years of Infamy, Americans Betrayed, and The Decision to Relocate the Japanese Americans.

In contrast, NCJAR attorneys presented a tour de force for us (the plaintiffs) in a compelling, point-by-point, well-reasoned, and thoroughly documented argument. We open our response by pointing out that although the government states that we (the plaintiffs) failed to file suit earlier, in fact over forty lawsuits were filed and were unsuccessful because of the government's "conspiracy, misrepresentations, fraud, and concealment of evidence." We note that these judicial decisions foreclosed monetary claims; we refer to the denial of monetary claims, made under the Japanese American Evacuation Claims Act, which went beyond the limited terms of the Act. These prior cases were denied because the courts said, the program of mass exclusion and detention—called "relocation" by the government—was not wrong, and that no error had been confessed by the United States.

WE ALSO point out that the conspiracy was only recently uncovered through the report of the Commission on Wartime Relocation and Internment of Civilians (CWRIC) and through archival research. Those documents revealed for the first time a government conspiracy to deprive us of our rights through the claim of "military necessity" which the government knew at the time to be factually untrue. Because the government's conspiracy and concealment were intended to delay and foreclose plaintiffs' claims, we say "The United States cannot now avoid plaintiffs' claims on the basis that they were not filed earlier." We cite the maxis, "No man may take advantage of his own wrong."

Our response then spells out four points:

I Plaitiffs have only recently been able to discover facts obviously different from those earlier raised to support the filing of this lawsuit.

II The Government's continuing acts of concealment toll (postpone the initiation of) the statute of limitations until plaintiffs' actual discovery of their claims.

III Even if the due diligence standard is applied in this case, plaintiffs have fully satisfied that standard in seeking to discover information pertinent to their claims.

IV Summary disposition of this matter without full discovery and and trial is inappropriate in light of plaintiffs' claims of recently uncovered fraud and concealment by the government.

Point One

Each of these points is thoroughly argued. The first is perhaps the most compelling. What our case is based upon is not only on new information, but also on new insights gained from this information. The Judge was correct in observing that some facts pertinent to our claims are mentioned in earlier publications. But these facts as published do not reveal "fraud, misrepresentation, and concealment of evidence."

We amplify with the example of the Ringle Report. The Ringle Report was the official intelligence assessment of the potential military threat posed by the presence of Japanese-American communities on the West Coast. The Report concluded that there should not be a program of mass exclusion and detention but rather one of selective apprehension, screening, and detention. We state:

FOR EXAMPLE, while the Ringle Report ... had been mentioned in earlier publications, the limited information about the Report seemed only to support the same arguments that the Supreme Court had earlier rejected--that the plaintiff class could be expected to be loyal as any other ethnic group in the event of war.

It was only as a result of the CWRIC work that it was learned that this Report was provided to Attorney General Biddle, Assistant Secretary of War McCloy, and probably even the President before the signing of Executive Order 9066; that these officials knew this document represented the official view of the agency responsible for counterintelligence work; that the Report was consistent with then current

government attorneys finally discovered the Report as a result of their own efforts, the War Department prohibited them from bringing it to the Supreme Court's attention.

Point Two

NEXT WE ARGUE that when concealment is continued, the statute of limitations should be tolled (postponed in its initiation) until we (the plaintiffs) actually discover our cause of action—as distinct from our having to discover it through due diligence when it became available.

We point to the way government officials misled the Congress in regard to the Japanese American Evacuation Claims Act: representing the Act as "bounty" (gratuity); that its remedies were exclusive and no other right or remedies existed; that the government's actions were based upon "military necessity"; and that there was "no reason to question the good faith of the people who issued the order ..."

We cite other failures by the government to disclose what the government, in fact, did know through interviews of government officials by authors, through the government's official pronouncements, such as President Ford's recission of E.O. 9066, and through testimony given by former government officials in 1981 before the Commission on Wartime Relocation and Internment of Civilians.

Point Three

WE THEN ARGUE that even if the "due diligence" standard is applied, we have fulfilled that requirement as well. We state, "The statute of limitations is tolled (its initiation postponed) where plaintiffs' diligent efforts to discover government wrong-doing are impeded by 'aggravating factors' such as government secrecy, intentional efforts to conceal an illegal government program, actions based on confidential investigations or unidentified informants, and denial of access to documents or testimonial evidence ..." We add several supporting arguments.

We add that where a fiduciary relationship exists, in our case, where the government took complete control and supervision of our lives, that duty requires that the government act in our best interests—including their informing us of the legal actions available to us against the government. We've heard the government's position repeated to us through the years: the government was only acting in our best interest. If that is the case, then the government should also have advised us of the recourses available to us under the law. Since the government obviously failed to do this, our requirement to uncover these recourses by ourselves is substantially diminished.

We also add that we can only apply due diligence after we have reason to suspect our causes of action--not simply because of the existence of documents.

WE ALSO cite the extraordinary research burdens that limited our ability to discover our claims:

> Plaintiffs here have nevertheless exercised the utmost reasonable diligence, persistence, and care in attempting to discover the true facts underlying the wartime actions against them. Plaintiffs have undertaken to research pertinent files in each of the many libraries and depositories ... across the nation in order to try to determine why the wartime actions were taken.
>
> This research has required months and years of repeated trips, repeated requests for documents, and follow-up research based on cross-references and information gleaned from documents originally obtained. As the tens of thousands of pages have been amassed, complex indexing, recording, and cross-referencing (have) offered the only hope for determining the relative importance of each isolated document.
>
> THE SUBJECT AREAS researched are so specialized and inadequately indexed that librarians and federal officials have simply pointed plaintiffs' archivists to massive boxes or even rooms of documents, which have required days or weeks of research, sometimes without (producing) any information relevant to their queries.
>
> Archivists who had combed through masses of War Department files for years were surprised in the past year to discover evidence that two versions of the "Final Report" had been printed; the first one destroyed and substantive changes ordered due to the potential adverse (effect) of the military commander's frank statements on pending litigation regarding the legality of the wartime actions.

Finally, we add that the government's intimidation, racism, and threats against us affected the diligence with which we could reasonably act. We speak here of the vast psychological impact of exclusion and detention coupled with racial hostility and hatred. We speak of the sense of finality in the Supreme Court decisions. We speak of the struggle for survival in the period following our release and our effort to overcome racial discrimination in housing, jobs, education, and so forth.

Point Four

FINALLY, we argue that it is inappropriate to dismiss our case by the invocation of the statute of limitations when allegations of fraud and concealment exist. We cite a legal precedent: "If the entitlement to equitable relief under the doctrine of fraudulent or deliberate concealment depends on questions of fact, those issues of fact must be resolved in a damages action by the jury." In other words, the questions we've raised involve factual issues of fraud and concealment and must therefore be allowed to proceed to trial so that they may be resolved by trial.

It now remains for Judge Oberdorfer to weigh the merits of these two responses to his order for supplemental information. No date has been given for his determination.

b e n e f i t . . .

THE HALL COMMITTEE, a Sansei social group, is holding a benefit dance for the National Council for Japanese American Redress on Saturday, March 24, at the Midwest Buddhist Temple, 435 West Menomonee, from 7 p.m. to midnight.

The evening's entertainment will feature live music by the original five-piece KNU-BASIC band, the band which played at the weekend dances held at the Viking Hall during the late 60's.

Sam Ozaki will speak at the dance to explain NCJAR's position on redress.

Tickets may be obtained from NCJAR, or any member of the committee. Tickets will also be available at the door. The donation for the benefit dance per person is $6.00.

At a meeting with NCJAR, the committee's co-chairpersons, Suzanne Ozawa and Don Teshima told of the beginnings of their group. It evolved from the "Viking Hall Days."

Plans for Reunion Dance II began in the spring of 1983, when it was decided that the dance would be a benefit for NCJAR. Instrumental in calling attention to NCJAR were Tom Okawara and Merry Omori. They impressed the ten-member committee on NCJAR's efforts in research and education and the organization's goal of achieving redress through the courts.

The first reunion dance was held in 1982, to help raise funds for the social and workshop programs of the Japanese American Service Committee.

IN ADDITION to the reunion dances, the committee has sponsored picnics and a race track outing benefit for the Buddhist Temple of Chicago. They have also helped out at the Midwest Buddhist Temple's annual Ginza Holiday.

The Hall Committee invites everyone to their benefit dance and welcomes any Sansei interested in joining them.

Emi Fujii
Suzanne Ozawa

e x i t . . .

IN STRUGGLING to gain redress, it is becoming apparent to all of us who were interned, that since the implementation of E.O. 9066 in 1942, many of our elders and fellow contemporaries have departed. Even as I put this in writing, they are leaving us without fanfare. Like a leaking faucet, each drop of water represents a loss. E.S.

GOOD NEWS!

Publisher William Morrow and Company responded to our urgings and decided to continue publishing YEARS OF INFAMY.

We just received our new shipment. It's still the best history around.

A v a i l a b l e   t h r o u g h   N C J A R

Quantity

All prices include postage

—JUSTICE AT WAR: The Story of the Japanese American Internment Cases by Peter Irons $20.00

—YEARS OF INFAMY: The Untold Story of America's Concentration Camps by Michi Weglyn $10.00

—OBASAN by Joy Kogawa $14.00
Evacuation of Japanese Canadians

—CAMP NOTES and Other Poems by Mitsuye Yamada $4.50

—THE LOST YEARS 1942-46 $5.00
Edited by Sue Kunitomi Embrey

—CITIZEN 13660 by Miné Okubo $10.00

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blue yellow tan
(small medium large extra large)
with NCJAR logo $8.00

—Buttons: 1-7/16" round and yellow with NCJAR logo .50

—Briefcase:
11½" x 14½"
in taupe vinyl $7.00

—NCJAR COMPLAINT:
This 43 page copy clearly defines our injury and is written in layman's language. $3.00

To order, please send check payable to:

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925 West Diversey Parkway
Chicago, Illinois 60614

NATIONAL COUNCIL for
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MS SASHA HOHRI

Yes, I support your bold movement!

- ☐ $1,000 as one of our ronin.
- ☐ $500 as a measure of my commitment.
- ☐ $100 and my hope that hundreds more will do the same.
- ☐ $___ and my very best wishes for success.

(All contributors will receive our newsletter.)

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