



May 1987

National Council for Japanese American Redress

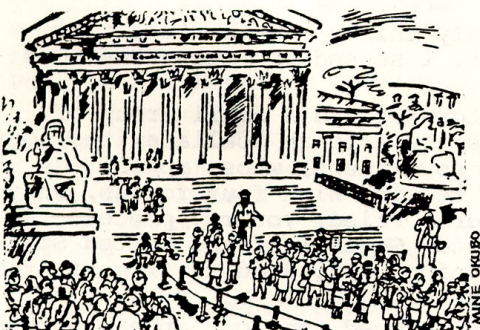
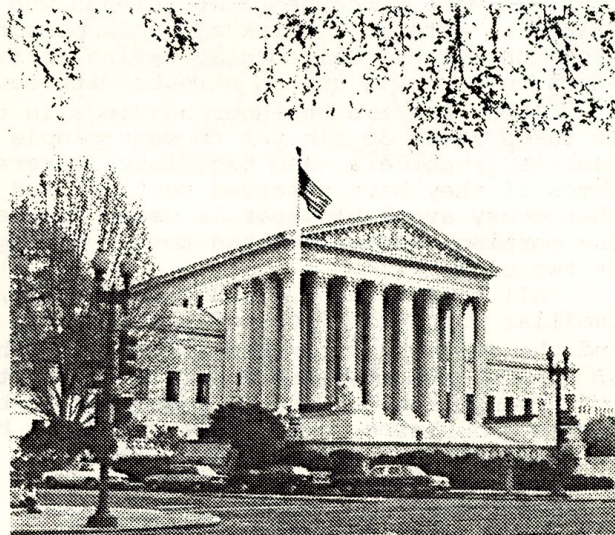
VOLUME IX, NUMBER 4

NEWSLETTER

DEAR FRIENDS,

WHAT A DAY IT WAS! Monday, April 20, 1987, was a historic day. Triumphant, exalting, a great day to be alive. Even the elements joined to produce perfect weather. At 8:45 in the morning, about fifty of us began walking from The Capitol Hill hotel to the Supreme Court.

Throughout the day, in ebb and flow, we became a memorable collection: great heroes from the past and present, Gordon Hirabayashi, Fred Korematsu, and Harry Ueno; Fred's wife, Kathryn; NCJAR attorneys, Benjamin Zelenko, Martin Shulman, Mike Rauh, and Wallace Cohen; spouses Barbara Zelenko, Carol Shulman, and Maggie Rauh, and the Zelenko's daughters' Laura and Carin; former NCJAR attorney and dear friend Ellen Carson, all the way from Hawaii; attorneys from the *coram nobis* teams, Roger Shimizu, Rod Kawakami, and Karen Kai; spouses Saki Shimizu and Kris Kawakami, and the Shimizus' daughter Michelle Kumata; authors Miné Okubo (also artist), Michi Weglyn, and Peter Irons; Michi's spouse, the courtly Walter Weglyn; named plaintiffs, many meeting each other for the first time, Chizu Omori, Harry Ueno, George Ikeda, Hannah Holmes, Ed Tokeshi, Merry Omori, Nelson Kitsuse, Sam Ozaki, Kaz Oshiki, Kumao Toda, Gladyce Sumida, and myself; two very old friends from Sawtelle Grammar School, Akira and Patrick Hirami; my wife's former Sunday School pupil and Hannah's expert interpreter, Janice Nishimura, who did a marvelous job; supporters, friends, and relatives from around the country, Joyce Okinaka, Wes Yamaka, Sid, Kathleen, and Lisa Yamazaki, K.T. Tanaka, Dorothy Takahama and her friends from Hawaii, my brother Tak and his sons Adrian and Elliott, Greg Cooper, cousin to Adrian and Elliott; our daughters Sasha and Sylvia and many friends of Sasha, Alice Basoms, Sally and Goji Tashiro, Mary K and Lydia Omori, Barbara Kato, Dr. Blanche Kimoto Baler, Doris Sato, Professor Shirley Castelnovo, Katherine Chen, Tomiko Miyake, Cynthia Cajka, Tamaki Ogata, Greg Gundlach, Joe, Frances, and Larry Wiley, Kimiko Yamada, Jean Coolidge, Arthur Wang and fellow students from Yale Law School, New York Nichibei editor Penny Willgerodt, writers Kai Bird and Max Holland, the Smithsonian's Tom Crouch, attorneys and law students from the New York area, Tom Obayashi, Tony Viero, Robert Yasui, Sam Sue, and Marc Iyeki; and others whose names I failed to retain—please excuse me.



Continued on next page

An Issue for All Americans

Continued from page 1 DEAR FRIENDS

OUR HEARING WAS scheduled for 2:00 p.m. We arrived at 9:00 to obtain numbered slips of paper, like customers in the deli, to secure positions for the afternoon session's line. Others joined us. These slips were provided to avoid long hours of waiting, the result of last minute negotiations by Aiko and Jack Herzig and Ellen Carson with the Marshal of the Supreme Court. Once receiving our numbers, we were free to leave. We had only to return before noon to form the afternoon line. We were concerned that friends who had traveled long distances would be unable to attend. I think all such persons were seated. Even my nephew Adrian Hohri from Long Beach, California, having arrived around noon with only minutes left in which to park his car on streets with severely limited space, made it in.

There are two one-hour hearings in the morning and two in the afternoon. It takes about 30 minutes to seat people in the courtroom because they must check cameras, recorders, and bags into lockers, be carefully checked against a list of names if they have reserved seating, and be seated in numbered groups to insure that every available seat is used. So the courtroom is cleared for seating after the morning session. We had to sit through the one o'clock hearing to hear ours at two o'clock.

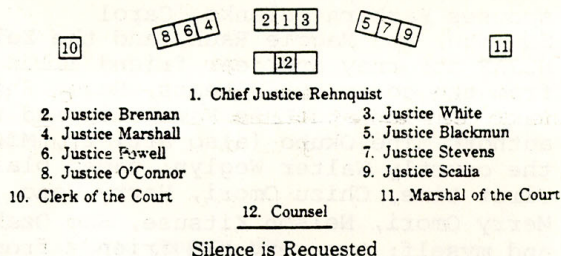
All this waiting, this anticipation, like courtship, allowed us to become familiar with ourselves and the setting: the difference between the plaza (yes) and the steps (no) for picture-taking; the birds nesting and chirping at the top of the Court's imposing double columns; the courtroom itself with marble columns; its arrangement for nine persons not to be diminished by the attorneys seated at tables and chairs, members of the Court behind them, members of the press in the wings, and about 120 visitors. The nine justices are located above the assembly in high-backed chairs behind a high and wide bench that traverses much of the room, allowing desks for the Court's Clerk and Marshal at either end. The nine chairs have backs that vary in height as if to emphasize the individuality of their occupants.

IT OPERATED LIKE clockwork. At one o'clock, we all rose as the Justices entered through their curtained backdrop. Chief Justice Rehnquist began the first hearing immediately. It was a case about probationers in Wisconsin and their Fourth Amendment rights against warrantless searches of their homes. The justices interrupted frequently to ask questions. The exchanges were direct, without the flourishes used in the legislature just a block away. No the honorable this or the distinguished that. With only thirty minutes to a side, time was of the essence. While some of us snoozed, I sensed who these Justices were in their unevenly backed chairs.

It was over just before two o'clock. The attorneys and a small group of witnesses for the first hearing exited. Also, Justice Antonin Scalia exited. Ours was to be heard by eight Justices, requiring the government, whose appeal was being heard, to extract a five-to-three majority to win. With four for us, they lose, we win. At 1:59 p.m., Rehnquist said, "General Fried, you may proceed whenever you're ready." Charles Fried, the Solicitor General of the United States, took the podium. Tall, he was striking in his morning coat. Reading from his text, he spoke with an eloquence befitting his high office.

Fried emphasized the jurisdictional issue. He argued that our appeal should have been heard in the Federal Circuit rather than the District of Columbia Circuit. The issue is technical and beyond my competence to discuss. But I did notice that he was no longer suggesting that we had gone "forum shopping." It seems plain to

THE SUPREME COURT OF THE UNITED STATES



■ NOTE: The (above) was given to all those in the courtroom.

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me that having lost in the D.C. Circuit, it is the government that shops for a new forum in the Federal Circuit. It also seems plain that the government has created an escape hatch for the Justices that is too obviously an escape hatch. The Justices can avoid the main issue by simply sending us back to a different appeals court. But with the growing national interest in this case—CBS, ABC, NBC, INN, New York Times, Washington Post, and many others—escape will not escape notice.

Fried spent less time on the tolling (postponing) of the statute of limitations. This, of course, is the heart of the government's appeal: to have the Supreme Court reverse the appeals court ruling that the statute of limitations is tolled to commence running July 1980. To avoid the very troublesome issue of the government's suppression of evidence in the wartime Supreme Court cases of Hirabayashi and Korematsu, he stated that race, not military necessity, was the basis for "evacuation." This is an incredible statement. The government consistently insisted the contrary during its wartime arguments in the courts. His wartime predecessor in the Solicitor General's Office, Charles Fahy, argued before the Court that military necessity and only military necessity was the proper basis for the "evacuation."

IN CONTRAST TO the first hearing of the afternoon, the Justices were subdued. Thus, it was like a bolt of light, maybe even lightning for the Solicitor General, when Justice Marshall asked Fried, "What is the difference between exclusion and killing?"

Fried's eloquence left him. The answer wasn't in his text. He hunted for words. "Killing is much, much worse," he replied.

"How much?"

"Well, —"

"When you pick up people and throw them out of their homes and where they live," Marshall pressed on, "what is anything between that and murder?"

"Well, murder suggests that life is taken contrary to law. Taking—"

"Well, is there any difference? What's the difference between that and taking the life?" asked Marshall.

Fried, having trouble finishing his responses, said, "Well, fortunately, large numbers—"

"What is the difference between banishment and hanging?"

Finally having time to finish, Fried replied, "Well, large numbers of those who were banished were able, after 1945, to return to their homes, and we should be grateful for that."

Curtly, Marshall requested, "Another."

And Fried obliged, "Well, there was great devastation among their property, Justice Marshall. That's quite correct. Which is why Congress, in 1948, passed the Japanese-American Evacuation Claims Act, and why some 26,000 family claims were filed under that Act."

The exchange brought tears to some eyes. Marshall's anger was anger we victims still suppress. The Court became human.

BENJAMIN ZELENKO'S TURN came to speak on behalf of Japanese America and America. Zelenko is shorter and less angular than Fried, was dressed in a business suit, and has a voice that is quietly reasonable, not declamatory. He spoke from notes and maintained eye contact with the Justices. He had logic, history, and most of the audience on his side. He spent most of his time on the statute of limitations issue,



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only a few minutes on the jurisdictional one. He began, "Mr. Chief Justice, and may it please the Court. This is an historic case. The Executive Branch should find no repose when it systematically conceals the facts from this Court. The wartime imprisonment of plaintiffs imposed substantial losses on them. They seek their day in court and ask that the judgment of the Court of Appeals be affirmed."

He then divided the limitations issue into the question of concealment of evidence by the government as sufficient reason to toll the limitations clock and the question of when the clock should begin.

On the first, he pointed that there should at least have been an evidentiary hearing to determine whether concealment had occurred. He then divided concealment itself into two parts: concealment of facts contradicting military necessity and concealment of the absence of any evidence supporting military necessity. On the first, he cited the Office of Naval Intelligence report that contradicted the allegation of the government's inability to separate the loyal from disloyal. (In my judgment, this separation had occurred prior to the issuance of EO9066. By February 15, 1942, the FBI had rounded up over 3,000 Japanese-Americans, using very loose criteria for suspect loyalty.) He also cited reports of the Federal Communications Commission and the FBI contradicting allegations of illegal radio transmissions and shore-to-ship signalings. These allegations were contained in the General DeWitt's Final Report, which was embraced down to the syllable by the government in the Korematsu case and formed the basis for military necessity. Zelenko pointed out that copies of the Final Report were given to each Justice of the Court.

He relied heavily on the first sequel to the Final Report, Personal Justice Denied, the 1983 report of the Commission on Wartime Relocation and Internment of Civilians. Because of questions, he was only able to cite this report as showing the absence of any basis for military necessity.

ON THE QUESTION of when to start limitations, Zelenko responded to the various times argued by the government: the war years, Godzin's Americans Betrayed, and President Ford's 1976 Proclamation that rescinded EO9066. Obviously, with concealment during the war years, the Court's deference to military necessity precluded a lawsuit for losses. Grodzin's book revealed only "snippets" of key reports and, of course, contained nothing about concealment. Zelenko's main hurdle was the 1976 Proclamation. It was here that Chief Justice Rehnquist made his challenge.

Zelenko argued that the Proclamation lack legal significance because President Ford had said, "We now know what we should have known then," in rescinding Executive Order No. 9066, whereas the government did know then what it knew in 1976. Rehnquist tried to make the Proclamation into a denial of the wartime existence of military necessity. But Zelenko pointed out that Ford had said that only in hindsight, from the perspective of 1976, a mistake had been made.

Rehnquist then asked, "Isn't that the same thing as saying there was no military necessity?"

"No, your honor," Zelenko replied. "What we're saying is that in 1942, when this Court ruled, there was no military necessity then."

What Zelenko seemed to be driving at and Rehnquist avoiding was that the Korematsu decision may be directly challenged by the fact of fraudulent concealment occurring in 1944 but not by reason of a judgment made 32 years later.

Rehnquist attacked the July 1980 tolling date, "And you say that although the President's Proclamation revoking the order under which the Japanese Americans were interned had no legal effect, the report of a Commission created by Congress to study the matter and the report, which was never acted upon by Congress, does have a great deal of legal significance."

Zelenko parried by arguing that the facts disclosed in the Commission's report have legal significance.

Rehnquist then tried to dismiss the significance of the role of Congress in establishing the Commission, "... because it wasn't the imprimatur of the Commission; it was the facts ..."

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But Zelenko did not oblige. He used the argument made by the Court of Appeals for tolling, "that one of the war-making branches, namely the Congress, had stood up to the deference heretofore accorded to the military judgment, which this Court had ruled was due." He concluded his presentation by defending the jurisdictional decisions made by the lower courts and urged the Justices not to duck the main issue in judicially proper language, "No interests of justice will be served by not deciding the merits and transferring this case to the Federal Circuit."

Fried had several minutes for rebuttal, but most were consumed in an exchange with Justice Stevens, who had read the transcript of the oral argument of the Korematsu case and was not convinced by Fried's minimizing the Court's reliance on the Final Report. Stevens was rebutting the rebuttal. For Fried, this was not a happy note on which to end, but end he must, "If there are no further questions, thank you."

THE HOUR WAS the consummation of a lifetime of hope, the achievement of years of organizing, learning, sustaining, encouraging, and enduring. The initial rush was relief that it was over. We had made it through the final uncertainties. We had been heard by the Supreme Court. I began to see friends who said they were attending, but I had not seen earlier. Others I saw, but did not recognize, until they introduced themselves. Blanche K. Baler, our *ronin* from Ann Arbor was one. I saw Benjamin. I congratulated him, and he wisecracked back. I asked Mike Rauh for his prediction. He had been right-on before. He said something about having four. As we retrieved our things from the lockers, my brother Tak rushed in from the outside and told me that Mr. Zelenko was asking for me to attend a press conference. I was a little puzzled because our press conference was planned to take place an hour later. But Tak insisted. I followed.

Once outside, I noticed a crowd gathered on a corner of the plaza and then saw Benjamin vigorously motioning me to come down. When I arrived, the crowd parted for me, and I went through to face a clump of microphones and several television cameras. It was the way press conferences are depicted by Hollywood, unlike any I had attended before. Someone asked about my life in camp, a standard question to which I gave a standard reply. Then someone asked if I would consider a victory the Solicitor General's statement that the government's wartime program was motivated by racism. I called the statement a fabrication and began to relieve much of the frustration and tension of this day. I said, "It would be a victory if the Solicitor General were on our side and fighting our case. He is supposed to be the one who upholds the Constitution of the United States."



LATER, WE HAD our press conference in the Rayburn House Office Building, but hardly any members of the press showed up. It was too late in the day—another lesson learned. Besides, the press had had their interviews on the plaza. So, we transformed it into a short press conference followed by a time for questions from our friends, supporters, and other interested persons. Benjamin answered most of the questions. I was able to ask Fred Korematsu and Gordon Hirabayashi for their reflections on the day. I invited everyone there to attend our reception at The Capitol Hill hotel.

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THE INFORMAL RECEPTION was a beautiful happening. The only program we had was the introduction of everyone who was there from Washington, D.C., New York, Chicago, Seattle, and Los Angeles, plus a few other places.

Hannah Holmes was the last to be introduced. She in turn had us sign "Happy Birthday, "H-A-R-R-Y" to celebrate Ueno's eightieth. Then, as one co-conspirator dimmed the lights, another brought in a two-layer cake with the Supreme Court iced on top and eight candles for the decades of Harry's life. We sang "Happy Birthday to you!" Hannah unfurled a birthday card that reached the floor and must have had hundreds of signatures of well-wishers. Michi Weglyn plugged Manzanar Martyr; it

sold out. Harry talked a little about his experience. In slow, halting words, he recalled for us the pain of wartime abuse. Later Gordon Hirabayashi thought that we developed our identity that day as a national movement. The exaltation had begun. Just talk to someone who was there.

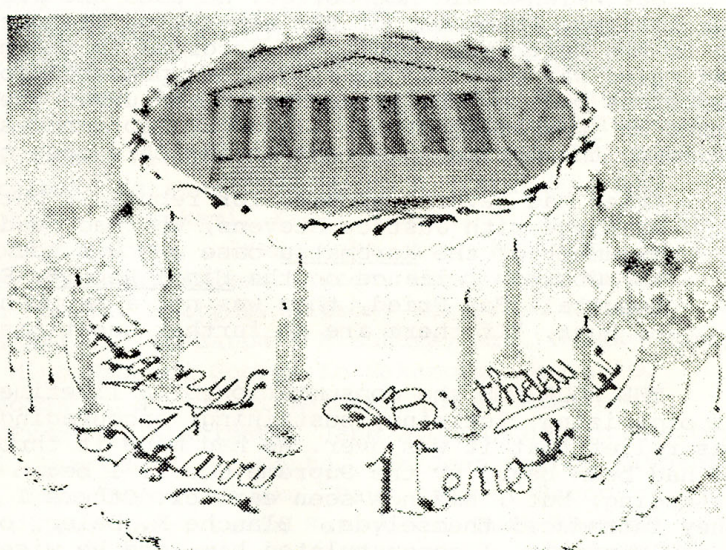
WE HAVE ORDERED a copy of the transcript of the oral argument. It will cost around \$200. If you are willing to share the expense, please send us \$10 for a copy. Speaking of sharing the expenses, we thank all of you who contributed to help us with this event. In particular, we appreciate the fund raiser held at the West Covina Community Center by the Sage United Methodist Church and others, as well as those who supported NCJAR's Omoide II Concert in Chicago. Both helped significantly. Your support was much appreciated by all who attended. You were part of the event.

In addition to bringing herself and her great spirit, Hannah Holmes also brought us a check for \$1000 from our 56th ronin, Betty K. Mitson, one of the editors of Harry Ueno's Manzanar Martyr. Betty has done a great service to Japanese America through her accomplishments in capturing our history through audio tapes and then editing these and transcribing them into writing. We are honored to have her as a ronin.

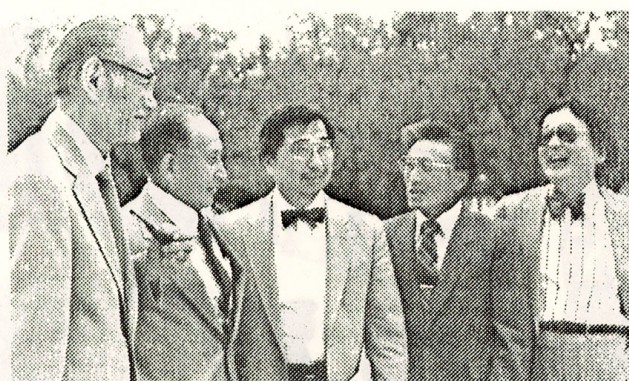
THERE MAY BE as many interpretations of the outcome of this hearing as there are attorneys and law professors. What will the Court do with its wartime Korematsu decision? Will the Justices duck the issues? Will they repair the Constitution? Or will they simply mouth the right words, in the manner of the Solicitor General, then deny us our day in court, and permit the government to erode our precious freedoms? The government must get five Justices to win, while we need only four. The odds seem to favor us. But deliberations of the Supreme Court are hardly random occurrences. We need to learn from the quiet courage of Hirabayashi, Korematsu, Ueno, and the others who have gone before us and wait the Court's decision. It may come this summer.

Peace,

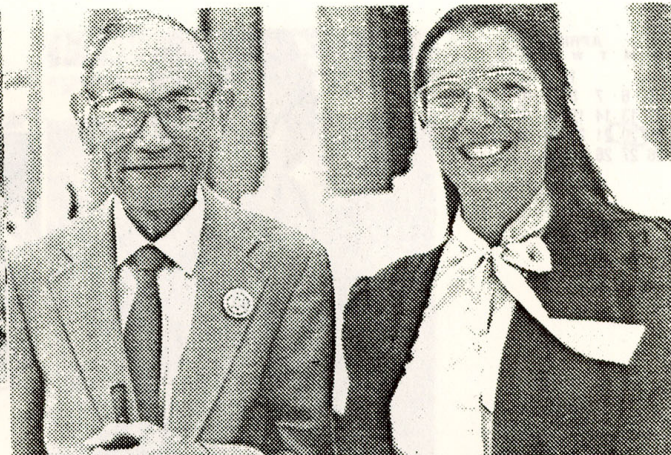
William Hohri



WHAT A DAY IT WAS!



Gordon Hirabayashi George Ikeda William Hohri



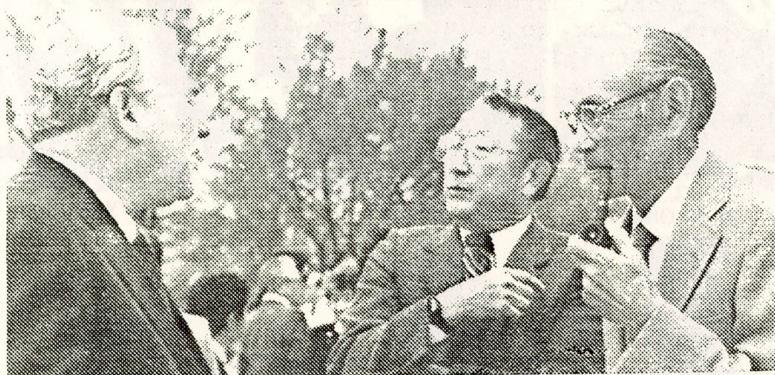
Fred Korematsu Ellen Carson



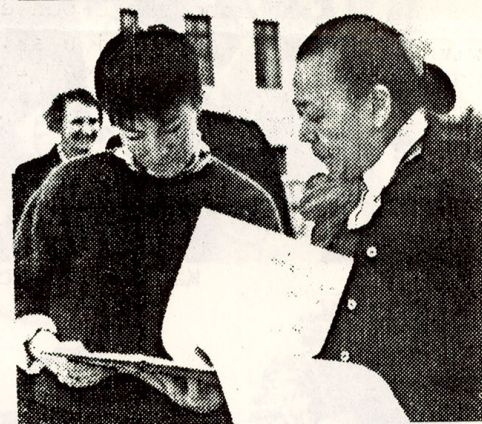
Peter Irons Karen Kai



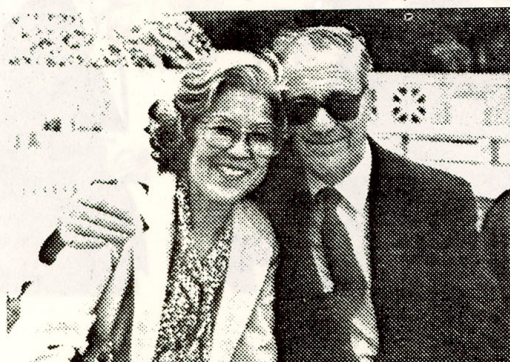
Ben Zelenko



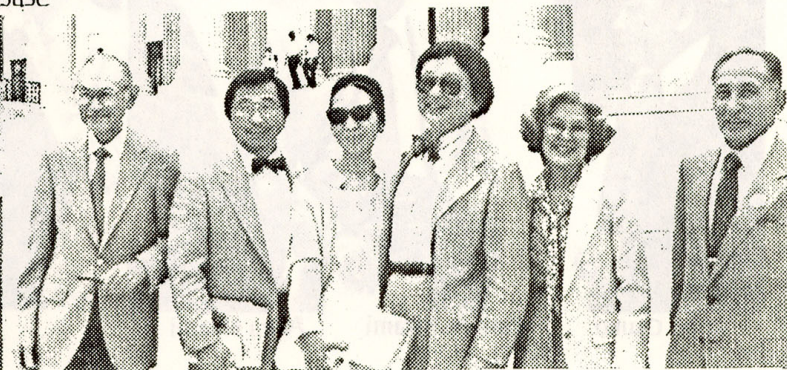
Nelson Kitsuse



Minē Okubo



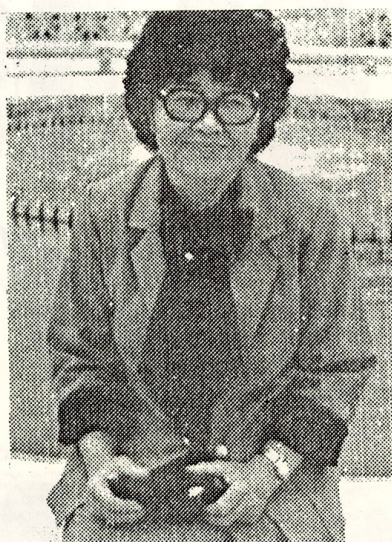
Aiko Herzig Walter Weglyn



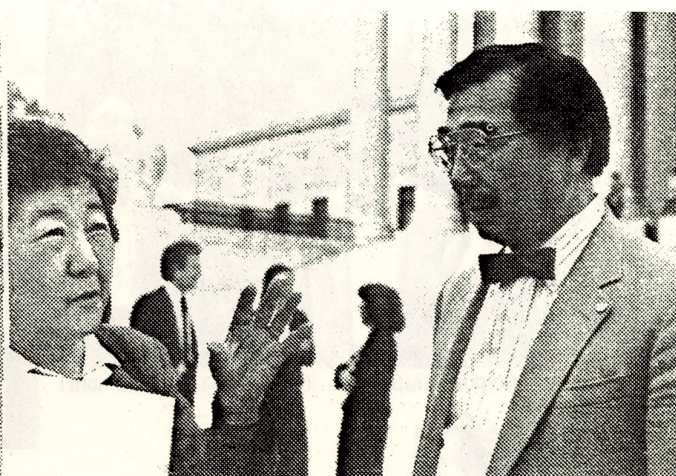
Michi Weglyn

ICAW photos by doris sato

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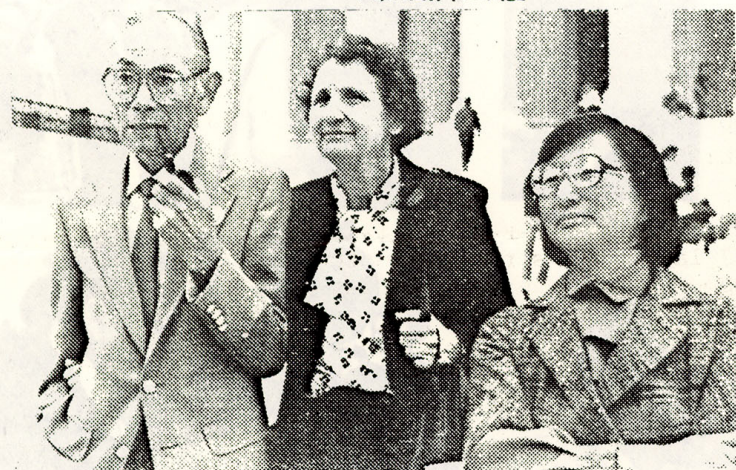


Hannah Holmes



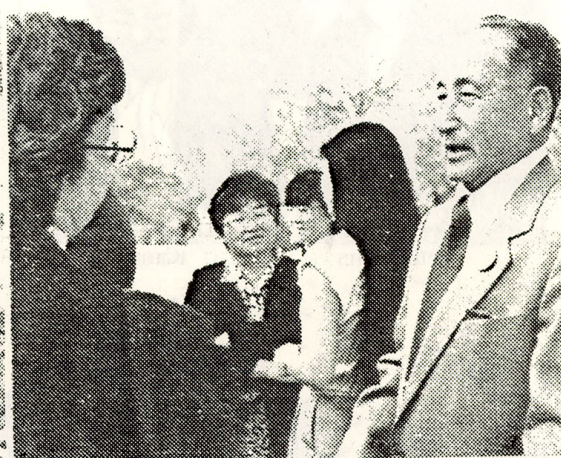
Grayce Uyehara

Gordon Hirabayashi



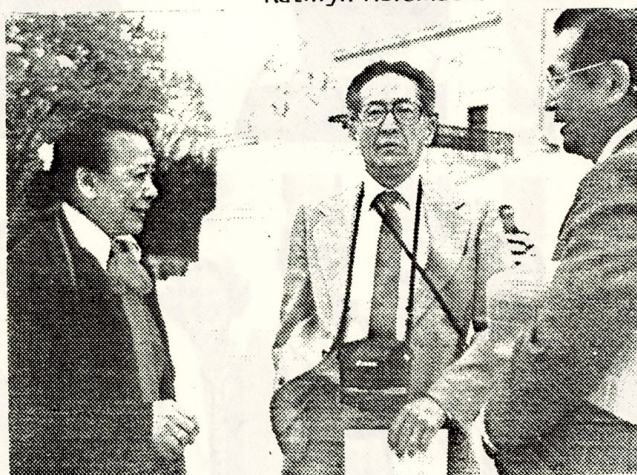
Kathryn Korematsu

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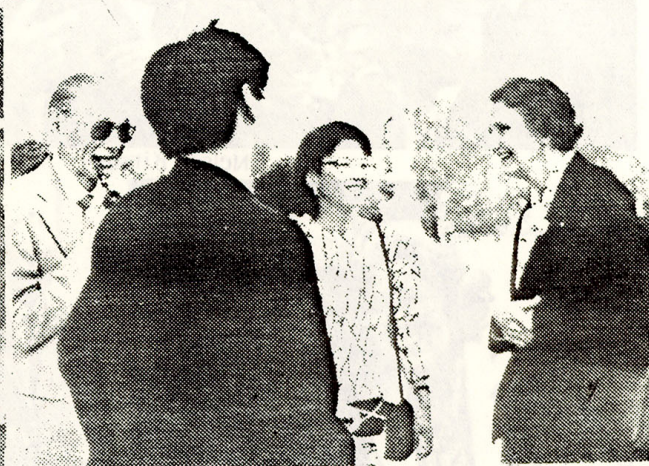
Harry Ueno

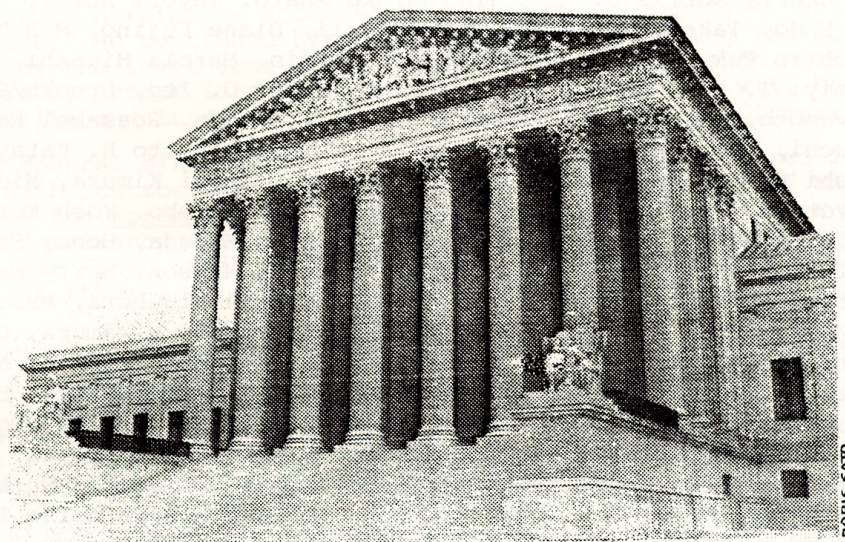


Mine Okubo

Patrick Hiram

Akira Hiram





AN OPPORTUNITY TO DESREDIT THE 1944 HIGH COURT RULING

IN URGING THE justices to uphold the appeals court ruling that the 1983 lawsuit was not filed too late, some organizations emphasized the opportunity to descredit the 1944 high court ruling.

"The disturbing presence of this court's most disreputable and dangerous precedents in modern times—if not re-examined in this case—cannot be dismissed or ignored as from another era," argued a group of religious organizations led by the American Friends and the United Methodist Church.

The American Civil Liberties Union, the American Jewish Congress and others joined in stating,

"This court now has an opportunity—perhaps the only opportunity it will ever have—to correct this monumental injustice."

- The (above) excerpt appeared in an (AP) dispatch released on Monday, April 20, 1987.

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LETTERS

THIS CONTRIBUTION is dedicated to my grandmother who died never understanding why she had to go to Manzanar, and to my grandfather who died in camp.

*Karen C. Uchima
Chicago IL*

Lots of luck!

*George H. Nakao
Santa Monica CA*

Enclosed is my contribution with positive thinking for victory on April 20th!

*Chiyo Horiuchi
Denver CO*

■ If you do not wish to have your name listed, please indicate when you remit.

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Continued from page 10 CONTRIBUTORS

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NORTH CAROLINA: Lois Carl Hudson.

OREGON: Rose N. Niguma, Ken/Mei-Ling Shiroishi.

WASHINGTON: Chizuko Omori, K. Sagami, Howard S. Sakura.

LETTERS

WE HAVE COME a long way—because you people in Chicago have worked so hard and have been steadfast in your efforts. Without all of you, nothing would have happened. As it is, the case has reached the Supreme Court, and who knows what will happen? God knows—we might even win!

Chizu Omori
Seattle WA

Sorry this can't be more—
I'll be praying for you and your witness on 4/20.

Margaret Wilkins
Hazelcrest IL

Thanks for asking. Gambare!

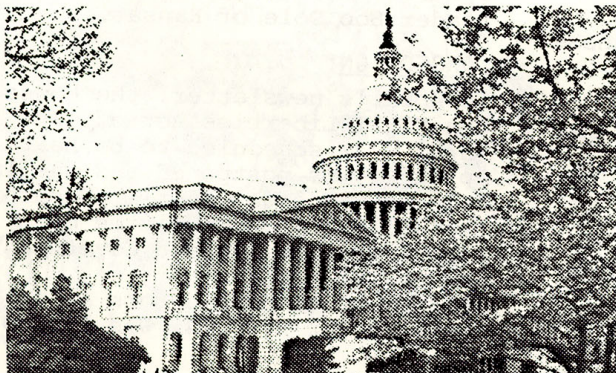
Ernest Uno
Aiea HI

I am sorry that work/job needs prevent being in D.C., but reckon we are ably represented, and send wholehearted support.

Lani Sanjek
New York NY

Good wishes and thank you.

T.J. Narita
Lincroft NJ



NCJAR newsletter
editor: Eddie Sato
Doris Sato

High court report presented in Hawaii by Ellen Carson

THURSDAY, APRIL 23, 1987 was a day set aside by the YWCA of Oahu, to have as their guest speaker, attorney Ellen Godbey Carson. Those who came were eager to hear first-hand her report of the Supreme Court proceedings of April 20.

As a resident of Hawaii, she is doing her share in bringing—to the public's attention on the Island—the injustice suffered by those interned during World War II. [There were those of Japanese descent living in Hawaii who were put in concentration camps.]

In a recent article of the Honolulu Star-Bulletin, the story began by stating, "Ellen Godbey Carson grew up during the 1960s Civil Rights movement in a Tennessee town that chose to ignore it.

'This didn't make me feel good. But it did make me believe that if there is one person not given equal rights for justice, I should fight for him,' she said."

Ellen was a member of the law firm of Landis, Cohen, Rauh and Zelenko, which filed NCJAR's class action lawsuit. e.s.

A full house at West Covina fund raiser

East San Gabriel Valley Japanese Community Center in West Covina, California was the scene of an NCJAR fund raiser held on Saturday, April 4, 1987.

One of the speakers was Aiko Herzig. She gave an account of NCJAR's lawsuit. She explained to the audience that the Supreme Court would only be hearing the government's appeal of the appellate court's decision, which ruled that the statute of limitations began in 1980, when Congress created the Commission on Wartime Relocation and Internment of Civilians to examine the issue regarding the internment of Japanese Americans.

She also explained the difficulties incurred in searching for the documents in the archives, especially those which showed that the government concealed important evidence from the Supreme Court in 1944.

Said Aiko, "Searching in the archives was tedious, but very gratifying."

Speaking on the same program were Joyce Okinaka, Hannah Holmes, and Mary Tamura.

BRAVO,
BRAVO,
BRAVO!

CHICAGO—For those who were at the West Ridge United Methodist Church on Saturday, May 2, "omoide II" was an evening to be remembered.

There was power in Phyllis Unosawa's vocal rendition of Richard Rodger's "You'll Never Walk Alone." Edward Ozaki's interpretation of songs sung to poems by Mitsuye Yamada such as "Evacuation," "Watchtower," and "The Question of Loyalty" were memorable.

And who can forget Hinae Nakazawa singing "Hamabe no Uta" (Song of the Seashore) by Kiyoshi Hayashi. As she sang, there was a soft smile on her face.

Ke Kali Nei Au (Waiting for Thee) sung by Ms. Nakazawa and Edward Ozaki swept us off to Hawaii—if but for a brief moment.

All of the numbers were beautifully tied together with the deft fingers of Marina Ozaki in her accomplished role as piano accompanist.

When the benefit concert ended, there was a sigh of pleasure within all of us. It was worth the time spent. The artists deserved the applause. And, it left everyone "feeling good!"

e.s.

Senate redress bill S. 1009 introduced

On April 10, the Senate's bill S. 1009 with 71 sponsors (44 Democrats and 27 Republicans) from 46 states was introduced by Sen. Spark Matsunaga (D-Hawaii).

S. 1009 doubles the number of co-sponsors over the bill introduced in 1985. Of special note is the addition of Majority Leader Robert Byrd of West Virginia and Minority Leader Bob Dole of Kansas.

■ CORRECTION:

In April's newsletter. the House bill, the Civil Liberties Act of 1987 (H.R. 442) scheduled to be heard on April 2, was postponed and was later held on Wednesday, April 29 before the Judiciary Subcommittee of Administrative Law and Governmental Relations.

The number of co-sponsors as of April 29 for H.R. 442 was 139.

Sketched in camp

NCJAR is privileged to have available to our supporters, Miné Okubo's book, Citizen 13660.

Her memoir of life in a concentration camp was first published in 1946. The drawings and prose is simple, but vivid.

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Three girls whom we knew offered to take us to 7 11-F. The wind was playing havoc with the fine dust particles.

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