June 1987

National Council for Japanese American Redress NEWSLETTER

VOLUME IX, NUMBER 5

Dear Friends,

It was Bad Day at Black Rock. On Monday, June 1, 1987, the Supreme Court, confronted with our plea to repair a major breach in the Constitution, decided instead to clarify the ambiguous wording of a 1982 statute, the Federal Courts Improvement Act, that established a unified U.S. Court of Appeals for federal claims. In a unanimous opinion written by Powell, the Court vacated the decision of the D.C. Circuit appeals court and remanded our case to be heard by the U.S. Court of Appeals for the Federal Circuit.

We are back to square two. It's as though we'd just received Judge Oberdorfer's 1984 order dismissing our case in his U.S. District Court for the D.C. Circuit. But now instead of going upstairs to the D.C. appeals court, we move several blocks to the recently created appeals court on Lafayette Square.

The Justices took what, I called in my last letter, the escape hatch and avoided dealing with the merits of the appeal, the tolling of the statute of limitations and the related issues of the fraudulent concealment of evidence in the Court's wartime decisions of Hirabayashi and Korematsu. They ducked, copped out, took the coward's way in the Confucian sense: avoided doing what they knew was right. This is not to say that there is not logic and reason in their opinion. The 1982 law is ambiguous and needs clarification. They clarified it. But did they have to do this with our appeal?

Perhaps. Then was there no room for dissent? Justice Blackmun did write a separate concurring opinion and expressed his "less than full assurance and satisfaction" with the delay, the Congress's responsibility for the statute's ambiguity, and the troublesome "appearance" of the Chief Judge of the Federal Circuit appeals court sitting as one of three appellate judges on the D.C. Circuit and arguing that our appeal should have been heard in *his* appeals court. But not a word about the wartime government's fraudulent suppression of evidence or the Solicitor General's outlandish and distressing theory, "the worse we look then (during the war) ... the better our case is now." (Maybe he thinks we victims should have been exterminated?)

I found impenetrable the unanimity of the decision. After all, the Court is not a timorous group, fearful of breaching consensus. In his opinion, Justice Powell admits that the 1982 law is unclear: 1) "the language of the statute does not clearly address, 2) the ambiguity inherent in this statute," and 3) "the statute is ambiguous." Given this, a simple message should have been sufficient to have Congress clear it up. (Indeed, within a week, Congress did react to the Court's criticism.) Given this (and the instant reaction), the Court's consensus invites speculation.

Continued on next page

Continued from page 1 Dear Friends

Was a deal struck? Suppose there were a division between Justices wishing to receive this jurisdictional issue and Justices wishing to deal with the merits (tolling, etc.). Suppose further that those for jurisdiction indicated their willingness to deal with the merits after the jurisdictional issue was resolved. They have compromised to support jurisdiction *and* to grant certiorari *whatever* the outcome of the appeal in the Federal Circuit. This would tend to explain unanimity. It would also tend to explain the Blackmun's comment in his opinion: "The issue on the merits probably will be back in this Court once again months or years hence."

All this, of course is pure speculation. It's one of several speculations I've heard. My last prediction about the Court's not taking the escape hatch was, of course, exactly wrong. It's a little like our going off to camp on the bus. The young soldier guarding us predicted we'd all be back in two weeks. There were lots of theories. We called them rumors. No answers—not even 45 years later.

Still, we must face the future and decide. On the same Bad Day, the NCJAR board voted to continue with an appeal in the Federal Circuit. Now it will be up to each of us to decide whether we want to continue with our support. Ultimately, this lawsuit depends on our support. It's a simple proposition. If we can't pay our bills, we can't continue. All our bills have been paid to date, so we're not begging, We simply want to know whether you support us. So please respond.

On Bad Day, I called my good friend Hannah Tomiko Holmes on my keyboard terminal to inform her of the bad news. Hannah's response bears repeating: :FIGHT BACK FIGHT FIGHT FIGHT UNTIL U DIE." Another word, given earlier, was from Richard Drinnon in his speech at the Manzanar Pilgrimage (4-25-87):

> [T]he 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.

We FIGHT FIGHT FIGHT because these are our rights as human beings. Not even the Supreme Court can strip these from us.

Peace,

William Hohri

P.S. While writing this, I received an invitation from Senator David Pryor to testify on June 17, 1987 before his sub-committee of the Senate Committee on Governmental Affairs. I will be speaking on Senator Matsunaga's redress bill, S.1009. It's good that NCJAR is now recognized as a leader in the redress movement. I also received a call from my publisher's editor, Jill Whelchel. We discussed finishing the final chapter of my manuscript and adding some photographs of the Supreme Court hearing. This, too, is good news. But it all makes for some intensive writing.

■ NOTE: Text of Senate testimony is on page 5 and 6.

The rights of all Americans

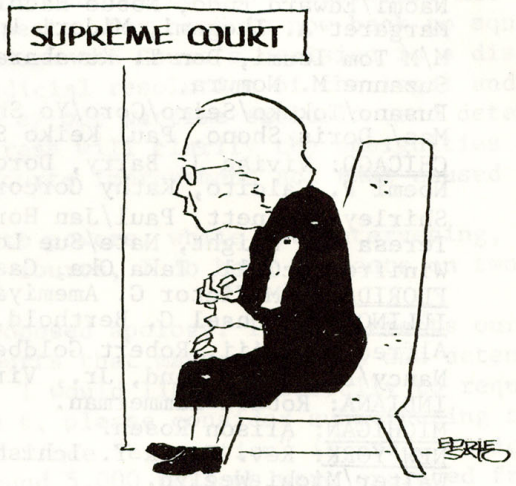
In a special article that appeared in the SCHOLAR'S COLUMN of the Hawaii Herald (May 15, 1987), Ellen Godbey Carson concluded with these words:

In the Supreme Court's hands are not just the rights of AJAs (Americans of Japanese ancestry), but the rights of all Americans. What happened to this group of Americans is an injury to the Constitution and to each of us.

The government violated almost every fundamental constitutional right of these Americans, and committed a fraud upon the Supreme Court. That wrongdoing has never been redressed. Instead, this massive racial injustice still survives as a legal precedent for injustice to be visited on the next unpopular minority group.

The issue is broader than monetary reparations for the survivors of this injustice. It is imperative for the safety and freedom of future generations that the Supreme Court permit the historical record to be corrected, and that justice be accorded these Americans.

■ NOTE: Ellen Carson was a member of NCJAR's law firm in Washington, D.C. She now resides and practices in Honolulu.



OVER FORTY DECADES LATER... AND STILL WAITING

L E T T E R

THE HIGH COURT'S recent ruling was certainly not a defeat. Just a setback. So hold your heads up high. The Court could have said that Hohri v. U.S. is devoid of merit, that extending the Statute of Limitation is an absurdity. And it could have ended it all. But it didn't.

It seems to me, the Justices acquiesced 8-0 to "clear the deck." For in all probability, they anticipate the return of Hohri v. U.S., considering the compelling nature of the case. Had they not done so, the Court would have split wildly on the Statute of Limitation and "wrong court" (jurisdictional) disputes. Any expressed opinions from the justices on the substance or merit of the class action at this juncture could have unfairly prejudiced the case for the judges of the Federal Circuit Court, to which the lawsuit was remanded.

Your achievements to date are now being viewed with awe by legal scholars and historians and all who cherish the sanctity of constitutional rights in a democracy. I cannot help feeling that, now that the procedural roadblocks are cleared, Hohri v. U.S.'s successful denouement is fairly assured.

MICHI NISHIURA WEGLYN
New York, NY

C O N T R I B U T O R S

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NEW YORK: Rev. Frank Y. Ichishita, Walter/Michi Weglyn.

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

NCJAR newsletter
editor: Eddie Sato
Doris Sato

T E S T I M O N Y

June 17, 1987

Mr. Chairman and members of the subcommittee, thank you. I appreciate your invitation to me to speak on behalf of the National Council for Japanese American Redress and as the lead named plaintiff in the court case of Hohri et al versus the United States. I have read S.1009. I am pleased to recommend its enactment. Even though our organization's focus is on the courts, I believe I speak for most of our supporters in urging Congress to redress the grievances of the victims of our wartime program of mass exclusion and detention. The responsibility for this grave injustice rests with all three branches of government.

Despite the separation of powers, we have seen the Congress and the courts interact on the issue of Japanese-American redress. After almost two years of preparation, we filed our lawsuit in March 1983 in the U.S. District Court for the District of Columbia. Our arguments relied on findings of the Commission on Wartime Relocation and Internment of Civilians, as well as on our own legal and historical research. In May 1984, while we prevailed on several issues, our case was dismissed due to the statute of limitations. We, of course, appealed. In January 1986, the U.S. Court of Appeals for the District of Columbia Circuit tolled the statute of limitations to July 31, 1980, the date of the establishment of this same Commission. Our case was remanded to trial.

Both sides appealed to the Supreme Court. The government's appeal was accepted while ours was left pending. On the first day of this month, the Supreme Court vacated the appeals court decision and remanded the case with instructions to transfer our appeal to the U.S. Court of Appeals for the Federal Circuit. In 1982, while we were preparing our court complaint, Congress enacted the Federal Courts Improvement Act and created this new forum for certain appeals. Our case is now back to square two, the first level of appeal. Though the Court's decision is a disappointment, we will continue to seek a judicial resolution of the legal and constitutional issues created by our wartime exclusion and detention. As an aside, I hope that Congress will clarify the ambiguities of that portion of the 1982 Federal Courts Improvement Act that caused this unfortunate delay.

Clearly, then, the separate powers, while not intervening, do interact. And while our focus is on the courts, I do have comments on two parts of S.1009.

I strongly support the proposed apology. It complements our request for a declaration from the courts that mass exclusion and detention were illegal and unconstitutional. I would like respectfully to request one alteration. On line 7 of page 6, please consider substituting the word "exclusion" for "relocation." Since "evacuation" is used, "relocation" seems redudant. Moreover, around 5,000 persons were excluded from their homes and communities in the coastal region and forced to move inland, even though they were never interned. Also, exclusion orders were issued for each campsite to provide a legal basis for confinement within each camp's perimeter. If an inmate crossed the perimeter, he or she would trespass into an exclusion zone and be subject to arrest. By the government's

Continued on page 6

■ The following excerpt in an article by Stan Shikuma titled: "Supreme Court hears oral arguments in redress suit" was printed in the May 6, 1987 INTERNATIONAL EXAMINER (Seattle WN).

> The victims of internment need to stand up
> for their rights or it will happen again.
> We have an obligation to fight for our rights,
> because we will continue to be
> second-class citizens
> as long as we experience that oppression
> and do not protest.
>
> *CHIZU OMORI*
> *Seattle, WN*
> *(Named plaintiff)*

Continued from page 5 SENATE TESTIMONY

own admission, military necessity did not apply. Perhaps the meanest use of exclusion occurred in May 1942, when General DeWitt initiated an order that excluded Japanese-American soldiers on furlough from the western states. Fortunately, this insult lasted only eleven months rather than three years. Surely, such excesses require an apology.

Also, I strongly support the widest distribution of the hearings and findings of the Commission. I would respectfully suggest that you consider modifying paragraph (3) of page 11 of the bill to read:

> to have published the hearings and findings of the Commission and to promote their distribution to schools, booksellers, and libraries.

The transcripts of the Commission's hearings were never published. The Commission's staff, plus some dedicated volunteers, did manage to edit their entire several thousand pages. These p[illegible]es were waiting to be printed at the U.S. Government Printing Office when [illegible]ommission's term expired. Throughout its 1981 hearings, the Commission r[illegible]atedly [illegible]ed the witnesses who appeared that their testimonies would go into [illegible]rscord. This record has yet to be published. I think we should make c[illegible]rtain it does through this bill.

I conclude by noting that we have read press clippings on our Supreme Court case. They reflect widespread and growing public interest in, and, I believe, support for, Japanese-American redress. We even made the pages of The Daily Mining Gazette of Houghton, Michigan. Perhaps the most unintentionally humorous and telling comment I heard was on a San Antonio, Texas radio call-in show from a rather hostile elderly man who explained, "You Japanese have changed since World War II." Well, I don't think I've suffered any noticeable genetic changes in my life, but I think we as a nation have grown up. □

William Hohri

BOOKS

NCJAR is pleased to announce the addition of "No-No Boy" by John Okada to their growing list of books. Originally published in 1957, Okada's only novel reveals the frustration and strained relationship that prevailed within the family structure after the internment. Born in Seattle, the author died in 1970 at the age of 47.

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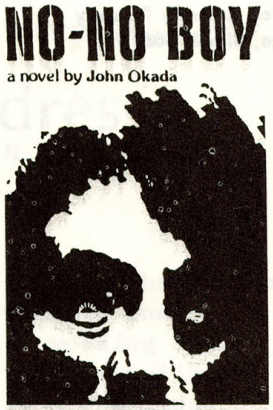

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