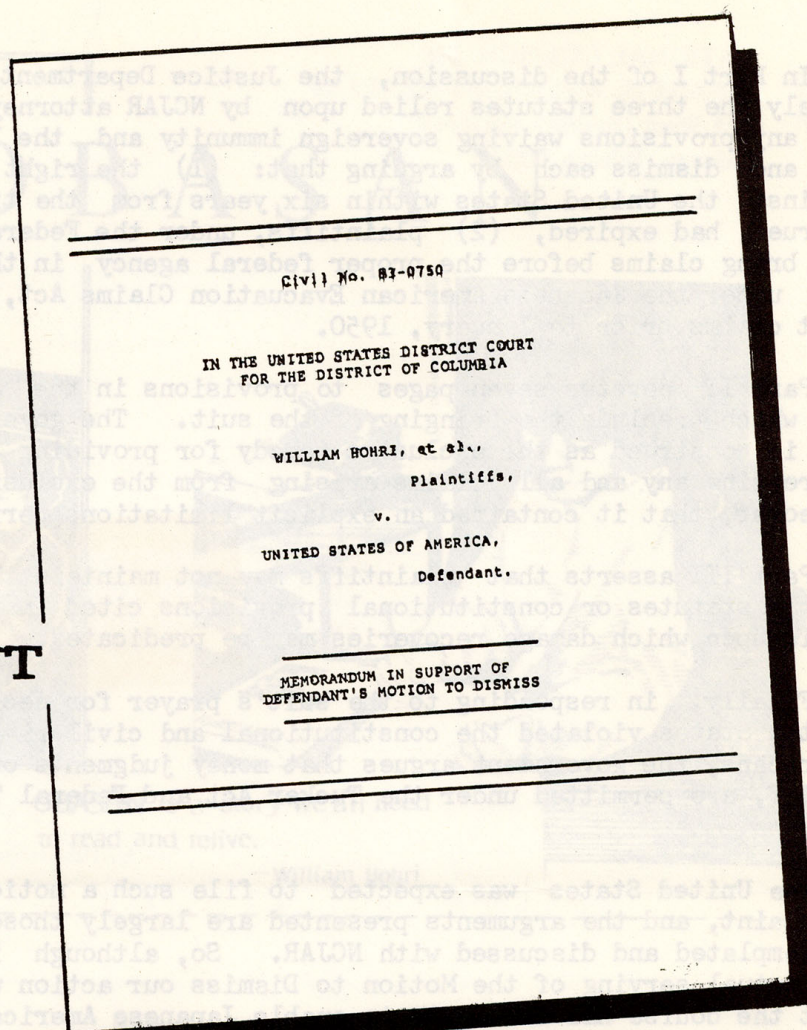


by
Merry Omori
Chairperson
NCJAR
Chicago Board

THE GOVERNMENT RESPONDS: MOTION DISMISS



On May 16, 1983, attorneys from the Department of Justice filed a 27 page memorandum to dismiss the complaint for redress filed on March 16, 1983 by the National Council for Japanese American Redress (NCJAR) on behalf of Japanese Americans excluded and detained during World War II.

The extensive, pithy, and serious filing asks for dismissal on the grounds that the United States has not consented to be sued or waived its immunity from such an action for money damages and that applicable statutes of limitations had expired thus barring suit.

The memorandum begins by citing five pages of precedent cases supporting the government's arguments for dismissal. Following the cited cases, there is a page of relevant U.S.C. (statutes), H.R. Reports and articles and amendments from the U. S. Constitution.

An introduction section describes the action being brought and reviews some of the allegations contained in the Complaint. This is followed by a preliminary statement section addressing the issue of whether the United States had waived its immunity from suit. The memorandum proceeds to the main discussion and exhortations presented by the government lawyers as to why the suit should be dismissed by the court.

In Part I of the discussion, the Justice Department lawyers discuss separately the three statutes relied upon by NCJAR attorneys in the Complaint having any provisions waiving sovereign immunity and the limitations on the waivers and dismiss each by arguing that: (1) the right to bring civil action against the United States within six years from the time injuries were first accrued, had expired, (2) plaintiffs, under the Federal Torts Claims Act, did not bring claims before the proper federal agency in the prescribed time, and (3) under the Japanese American Evacuation Claims Act, plaintiffs had to present claims prior to January, 1950.

Part II devotes seven pages to provisions in the Japanese American Claims Act which preclude the bringing of the suit. The government argues that this Act is construed as the exclusive remedy for providing comprehensive means for redressing any and all claims arising from the exclusion and detention and moreover, that it contained an explicit limitations period.

Part III asserts that plaintiffs may not maintain this action because none of the statutes or constitutional provisions cited in the Complaint provides a basis upon which damage recoveries may be predicated.

Finally, in responding to the suit's prayer for declaratory relief that the United States violated the constitutional and civil rights of 120,000 Japanese Americans, the government argues that money judgments only, and not declaratory relief, are permitted under the Tucker Act and Federal Torts Claims Act.

The United States was expected to file such a motion in response to our Complaint, and the arguments presented are largely those that NCJAR lawyers had contemplated and discussed with NCJAR. So, although it comes as no surprise, the actual serving of the Motion to Dismiss our action was further confirmation that the course has been set to enable Japanese Americans who suffered the injuries, to seek redress and a determination of the government's wrongdoing through judicial reckoning.

Ben Zelenko, chief legal counsel for the plaintiffs, and his able assistant, Ellen Carson, are now in the process of refining the arguments they had previously prepared in anticipation of the Motion to Dismiss. An Opposition to the Motion to Dismiss is expected to be filed around the middle of July.

In a related aspect of the case (class certification) we are told that attorneys for both parties agreed to and was so ordered by Judge Oberdorfer that the defendant United States be granted an extension of 20 days — following the court's disposition of a Motion to Dismiss — in which to respond to the proposed filing of the plaintiffs' motion for class certification. In accordance with the Rules of Civil Procedure, lawyers for the plaintiffs were expected to file for class certification on June 16, 1983.



National Council for Japanese American Redress

925 West Diversey Parkway
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June, 1983

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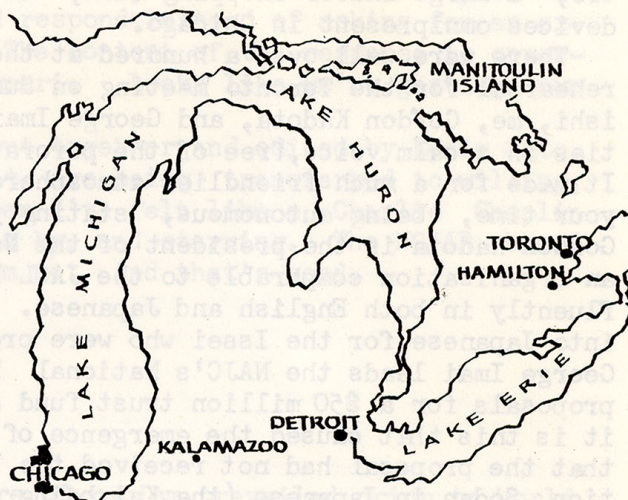
* designates *ronin*, contributors of \$1,000 or more. Some remain anonymous.

Dear Friends,

Little Current, Ontario
May 17, 1983

THIS LETTER is written from the wild, still civilized country of Manitoulin Island, Canada. George and Katie Yamada have kindly invited Yuriko and me to visit their home overlooking the North Channel of Lake Huron with a splendid vista, clear crisp air, sparkling, deep blue waters, birds, forests and with, thank God, indoor plumbing and electricity.

We came here after a busy weekend in Toronto and Hamilton, meeting with Sodan Kai, a recently formed group of Japanese Canadians who wish to develop a broad, community-wide discussion and dialogue on the "most important issue in their history," Japanese Canadian redress. John Tateishi, director of the JACL's National Committee for Redress, and I were invited to share our experiences in the movement for Japanese-American redress.



FRIDAY, THE 13th, Yuriko and I drove up from Chicago, testing the durability of our 10-year old Datsun. We stopped in Kalamazoo to do a noon-time television interview at WKZO with Della DiPietro. It was a good 8-minute interview, live, based upon a set of photos of the exclusion-detention which I had purchased some years ago from the Japanese American Curriculum Project in San Mateo. We talked about both the experience and the lawsuit. We were given WKZO coffee mugs and continued on our way to Toronto via Detroit.

The drive into Canada was a quick lesson in metric notation. I found my computer background useful in converting kilometers to miles by converting decimal notation (kilometer) to hexadecimal (base 16) notation (miles). Thus 80 kilometers becomes 50 miles. It is unnecessarily complicated but it keeps the mind going.

Yuriko and I also tried to name all the Watergate characters. We had the most trouble with Maurice Stans. His name didn't hit us until we had been in Toronto for a day. Gordon Liddy, Jeb Stuart Magruder, Richard Kleindienst, Donald Segretti, Haldeman, what was his first name?—all made the miles—uh, kilometers, pass by and the adrenalin up.

Joy Kogawa let us use her house which we had no trouble finding, thanks to the excellent instructions from Connie Sugiyama. Maryka Omatsu picked us up on Saturday morning to meet for breakfast with a trio from Vancouver: Randy Enomoto, Martin Kobayakawa, and Fumiko Greenaway. They had arrived on the "Red Eye Special" and were pretty tired, so we left them so they could rest before the meeting in Hamilton that afternoon and walked around downtown Toronto. Toronto is a healthy city. It seems to be able to support small as well as large shops in the same locale and to enable attractive residential areas to exist next to the commercial strip. Of course, I had to show Yuriko the impressive Eaton Centre, a large indoor shopping mall, notably missing the shop-lifting detection devices omnipresent in Chicago.

There were well over a hundred at the Hamilton meeting. It was, in a way, a rehearsal for the Toronto meeting on Sunday. The panel was the same; John Tateishi, me, Gordon Kadota, and George Imai. John talked about the JACL's activities in a calm voice, free of the peroration I had come to expect from Min Yasui. It made for a much friendlier atmosphere. I tried to offer the advice of taking your time, being autonomous, stating your demands clearly, and doing research. Gordon Kadota is the president of the National Association of Japanese Canadians, an organization comparable to the JACL but unique in its own way. He speaks fluently in both English and Japanese. While others had our talks translated into Japanese for the Issei who were present, Gordon did his own translation. George Imai leads the NAJC's National Redress Committee. It is he who had made proposals for a \$50 million trust fund as redress for Japanese Canadians. And it is this that caused the emergence of Sodan Kai. There was an obvious concern that the proposal had not received the benefit of much discussion and deliberation, Sodan in Japanese (the Kai being "group").

ON SUNDAY MORNING, Yuriko and I went to church with Joy Kogawa and Abe Kobayama at Holy Trinity, Joy's Anglican Church, located right next to Eaton Centre. I preached a sermon, after which the congregation applauded. I was a little startled. The service is informal, not at all "high church." I was told afterwards that applause is unusual. After a dim sum brunch, we went to Toronto's Japanese Canadian Cultural Center for the big Sodan Kai meeting.

The place was filled with around 300. The meeting was similar to Hamilton's. But I had decided on an entirely different statement, after receiving some criticism from a couple of my new friends. I described NCJAR and our lawsuit; stressed its benefits of having a clear, comprehensive, and adversarial statement of the injury and the remedy; and discussed whether we would win and the need to repair the damage done to "the sanctity and therefore essential strength and meaning of the U. S. Constitution and our governance through a system of laws."

George Yamada, my host on this island, the world's largest fresh water island, challenged George Imai directly, though not hostilely, and opposed Imai's role as the representative of the Japanese Canadian community on the issue of redress to Canada's government. That caused a defensive move which resulted in a motion, which, in turn, resulted in parliamentary confusion and a substantial consumption of time trying to figure out what to do. Fortunately, the meeting was able to return to questions and answers. It turned out to be a long meeting. It lasted four hours and without a break.

I was truly impressed with the level of interest and the quality of the people who are involved in Sodan Kai. Joy Kogawa is a writer. Connie Sugiyama and Maryka Omatsu are attorneys. There were others representing a cross-section of the community. There seems to be a true spirit of cooperation between NAJC and Sodan Kai and the Vancouver redress group.

Nor was the sign of friendliness between me and John Tateishi without significance for the American movement. This was the first time I had met John. We got along well in our public discussions. We were able to disagree without being disagreeable. And we were cordial at the two dinners hosted by Hamilton and Toronto people.

Such are the dynamics of a movement.

CHICAGO, May 18—The sixty days for the government's response to our lawsuit expired on May 16th, while we were in the Canadian wilds. So upon our return, the only telephone call I made was to Ellen Carson, one of the attorneys. She informed me that the government did indeed respond instead of asking for an extension of time as I thought they would. The content of the response is covered elsewhere in the newsletter by Merry Omori. Looks like we're getting down to it.

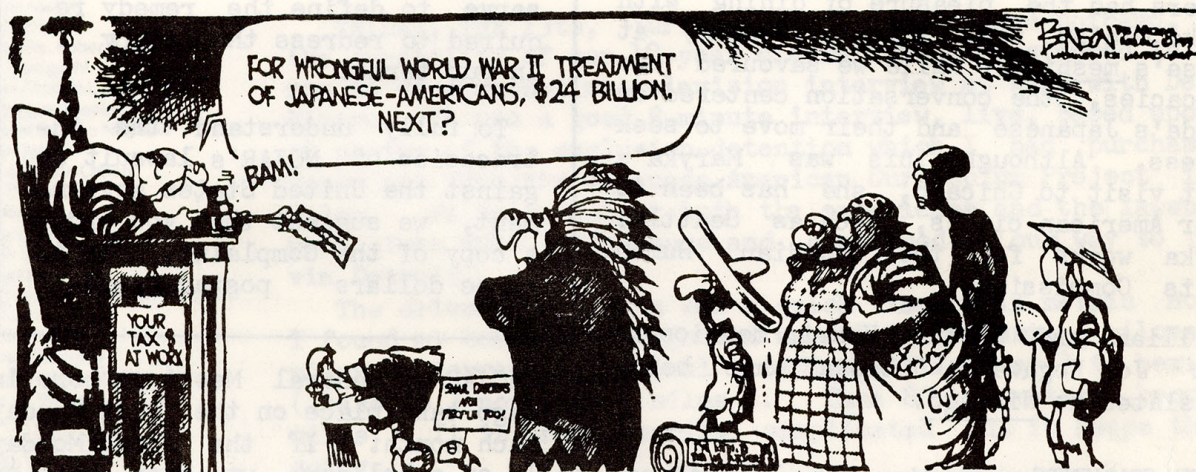
The newsletter, by the way, is being put together and edited by Eddie Sato. Gradually, the tasks of running a movement are being transferred to willing, capable hands. There have been times when I've felt like a Charlie Chaplin movie—produced, directed, written, music by, and starring. The NCJAR board has lifted more and more of the burden from me. And that's good.

Peace,

William Hohri

William Hohri

The spectre of racism prevailed prior to World War II. Once again there is that feeling of uneasiness. Oftentimes one sees a word in print where there is uncertainty in its meaning because it is not a household word. Such a word is XENOPHOBIA. Its definition being the fear or hatred of strangers or foreigners.



RACIST CARTOON—This editorial cartoon by Steve Benson of the Arizona Republic drew much criticism after it appeared

in The (Hayward, Ca.) Daily Review on March 22. The cartoon is a parody of NCJAR's lawsuit.

Subcommittee Reportsby Tom Okawara
Subcommittee Chairperson**RESEARCH and EDUCATION**

IT HAS BEEN the effort of the Research and Education subcommittee thus far to label, file and organize the countless documents which NCJAR has amassed in preparing their lawsuit. The documents range from letters and telegrams of private citizens to intelligence reports and inter and intra-office memoranda from various federal agencies. Most of the documents are dated during the war years of 1941 through 1946. Some are dated as early as 1936 and some have current dates.

Thanks to the tireless efforts of Merry Omori, Emi Fujii, Bob Imon, Doris and Eddie Sato, who have taken the time to read and label each document, nearly half of the documents in NCJAR's files have now been classified according to subject, origin, destination and date.

PAPER CLIPS n' STAPLES

DURING a weekend trip to California on April 23/24, plaintiff Nelson Kitsuse of Chicago had a friendly chat with named plaintiffs Rev. Kiyoshiro Tokunaga and Harry Ueno. Both gentlemen reside in San Jose.

The author of "Camp Notes", Mitsuye Yamada will be in Chicago during July.

T'WAS on a soggy Friday evening — April 29th to be exact — that several board members had the pleasure of dining with Maryka Omatsu (from Toronto, Canada) at Yanase's meshiya. While we savoured our delicacies, the conversation centered on Canada's Japanese and their move to seek redress. Although this was Maryka's first visit to Chicago, she has been to other American cities, such as Seattle. Maryka works for the Canadian Human Rights Commission.

William and Yuriko Hohri mentioned that Joy Kogawa's "Obasan" has been translated to Nihongo.

YOUR COMMENTS regarding the lawsuit or any other topic of interest are welcomed by the editor. Letters may be addressed to: The Editor, NCJAR Newsletter
925 West Diversey Parkway
Chicago, Illinois 60614

RECOMMENDATIONS for Congressional action on redress and reparations will be forthcoming this month from the Commission on Wartime Relocation and Internment of Civilians. The wait for some tangible compensation has been a long one. Meanwhile as time goes by, our numbers diminish.

TO FULFILL the orders which are being received, additional copies of the NCJAR Complaint have been printed.

For the first time in history, our injury has been defined in clear, comprehensive, and concrete terms by we, the victims. It cites dozens of allegations of fact that support twenty-one causes of action.

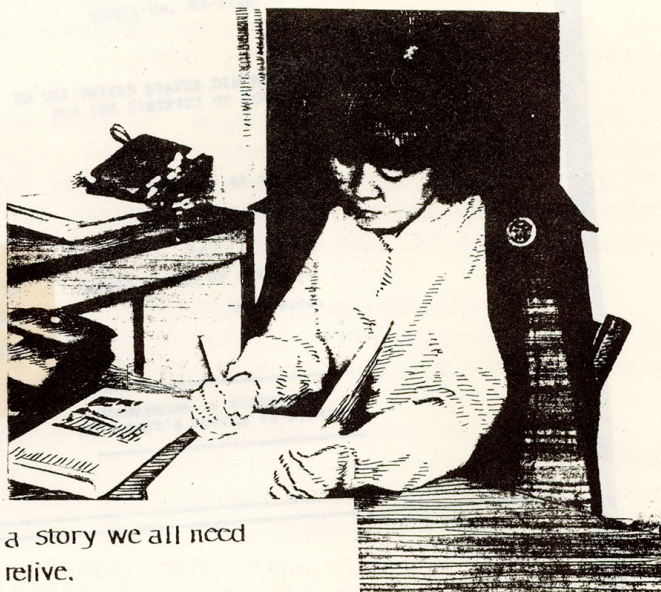
The causes of action serve to summarize and relate the allegations to points of law, such as the due process clause of the Fifth Amendment to the United States Constitution. They also serve to define the remedy required to redress the injury in our terms.

To fully understand the intricacies of NCJAR's lawsuit against the United States government, we suggest that you order a copy of the Complaint. It is three dollars postage paid.

NCJAR's General Meetings here in Chicago take place on the first Monday of each month. If the first Monday falls on a holiday, we then meet on the second Monday of the month. For further information regarding the meetings, please call (area code 312) 764-5300.

Eddie Sato / Editor

Kogawa OBASAN



OBASAN is a story we all need to read and relive.

—William Hohri

Available Through NCJAR

Quantity

All prices include postage

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| <p>— OBASAN by Joy Kogawa
The evacuation of Canadian Japanese
PUBLISHER — DAVID R. GODINE 1982 \$14.50</p> | <p>— NCJAR COMPLAINT: A copy of the historic 43 page complaint filed on March 16, 1983 on behalf of 120,000 victims of America's World War II Concentration Camps. \$3.00</p> |
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- ☐ \$1,000 as one of our ronin.
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