A D D E N D U M B

QUESTIONS AND ANSWERS

"Go For Broke, Inc." Statement

Endorsing H. R. 4110

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N.B. Briefed below, not necessarily in the order of their importance or logical sequence, are our ANSWERS to some of the many QUESTIONS that have been asked concerning this subject matter, which we believe are essential to an understanding and appreciation of this issue that is of real significance to all Americans.

1. Why We Nisei War Veterans Believe In Redress?

We, all honorably discharged American veterans of Japanese ancestry, are petitioning--in accordance with the First Amendment to the Bill of Rights --"the Government for a redress of grievances", which among other matters, involve the arbitrary deprivation and denial of our constitutional and human rights, including in most cases the absolute loss of freedom and property in World War II, without "due process of law", at a time when our civil courts were functioning normally, in the guise of "military necessity". In reality, that monstrous miscarriage of justice and equity officially was excused solely because of an alleged affinity" to the then Japanese enemy.

We today seek a good faith first step toward the vindication of our faith and undivided loyalty to our country, our system of democracy, and the redemptive capacity of the people in the favorable consideration of H. R. 4110 or similar legislation.

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Following the infamous attack of December 7, 1941, on American Territory, relying on the insistence of the War Department and other executive agencies, as well as that of several members of the Congress, that a grave "military necessity" presenting a "clear and present danger" to the "national security" existed on the West Coast, in a patriotic gesture unprecedented in history, we allowed ourselves to be removed from our homes and associations of a lifetime, excluded from that area, and in most instances incarcerated as were common criminals in American-style concentration camps for up to almost four years.

Even though the military decreed that "nonalien" Japanese were no longer to be inducted into its ranks, and Selective Service reclassified us as IV-C,

a designation reserved for "enemy aliens", many of us "nonalien" Japanese as the Commanding General of the Western Defense Command described us citizens, looked into the heavens above the barbed wire fences and watchtowers of our grim barrack prison camps. We dreamed of that kind of America that our immigrant parents had envisioned a half century earlier when they left their fatherland for their newly adopted country and knew within our souls that we had to have, if we, our families, and our posterity were to enjoy the same rights, equality, and opportunities that were the lot and life of most other Americans.

So, in spite of having been repudiated by the same Army that had imprisoned us and our families, we demanded--and finally received--the chance to volunteer for combat duty--or if we happened to be able to speak, read, and write rudimentary Japanese to combat intelligence--as the only sure means for us to demonstrate our dedication and devotion to the destruction and defeat of our nation's enemies on every battlefield of that farflung conflict. We felt that we had to earn with our blood, and if necessary our lives, the kind of unquestioned citizenship that was accorded to German, Italian, and other Americans in this same war.

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In what became the now famed 442nd Regimental Combat Team, we became known as the "Purple Heart Regiment" because we suffered more than 300% casualties relative to our original numbers, as we fought and bled as infantrymen in Italy and France to earn praise as "the most decorated unit in American military history for its size and length or service".

Our fellow Nisei GIs in the Pacific--facing at all times the double jeopardy of being as easily mistaken and shot by the enemy as by their own troops--won acclaim from the Intelligence Chief to General Douglas MacArthur for preventing possibly hundreds of thousands of casualties, and saving billions of dollars, by shortening the hostilities in the Pacific of at least two years.

Based on that record that we will match against that of any other ethnic or racial minority, we believe that we have earned this opportunity to speak out for "a redress of (our) grievances". We have never become bitter or lost faith, for slowly but surely the Congress and courts have provided us with corrective and remedial opportunities beyond that which we thought possible in prewar times.

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After some four long decades, Congress enacted long overdue legislation creating the Commission on Wartime Relocation and Internment of Civilians that has confirmed officially much of what we suspected before and after our evacuation and detention. There was no "military necessity" that required our leaving our homes and associations in the Pacific Coast States and no "national security" reasons for advocating such drastic actions.

Moreover, as more and more formerly classified and/or unknown information has come to the public attention, it seems that our vaunted judicial system--presumed to be the bulwark of individual and minority rights, especially in times of mass hysteria, prejudice, emergency, and controversy, and when the "tyranny of the majority" threatens reason and the "rule of law"--allowed itself to be maneuvered by willful men to disregard time-honored principles and precedents.

Now that the facts are in, confirmed unanimously by a presidential-congressional commission of distinguished public figures, our constitutional duty to seek the "redress of grievances" is reaffirmed as our responsibility and challenge to prove anew that America is still the land of the free and the home of those brave enough to seek their just due.

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In thinking about some congressional comment that would well recapitulate our sentiments regarding redress, I recalled the Report of the House Judiciary Committee in 1947, which was concurred in by the Senate Judiciary Committee a year later, which summarized its reasons for urging enactment of what later became known as the Japanese American Evacuation Claims Act of 1948 (about which we have some strong comments which will be expressed in a later section of this Addendum).

That Report stated the following:

> ...The (House Judiciary) Committee was impressed with the fact that, despite the hardships visited upon this unfortunate racial group brought about by the then prevailing military necessity, there was recorded during the war not one act of espionage or sabotage attributable to those who were the victims of forced relocation. Moreover, statistics were produced to indicate that the percentage of enlistments in the Armed Forces of this country by those of Japanese ancestry of eligible age exceeded the national average. The valiant exploits of the 442nd Regimental Combat Team, composed entirely of Japanese Americans and the most decorated combat team in the war, are well known. It was further adduced that the Japanese Americans who were relocated proved themselves to be, almost without exception, loyal to the traditions of this country, and exhibited a commendable discipline throughout the period of this exile...
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> The Committee considered the argument that the victims of the relocation were no more casualties of the war than were millions of other Americans who lost their lives or their homes or occupations during the war. However, this argument was not considered tenable, since in the instant case the loss was inflicted upon a special racial group by a voluntary act of the Government without precedent in the history of our country. Not to redress these loyal Americans in some measure for the wrongs inflicted upon them would provide ample material for attacks by the followers of foreign ideologies on the American way of life, and to redress them would be simple justice.

2. Why We Nisei War Veterans Endorse H. R. 4110?

H. R. 4110, "To accept the finding and to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians", does--in our opinion--what it purports to do in legislative language that we understand and wholeheartedly accept, though we do have a few amendments which we do now propose to the Subcommittee for its consideration.

In chronological order in terms of H. R. 4110, we propose the following amendments:

(a) to make "eligible individual" include those Americans of Japanese ancestry who were in the Army of the United States prior to December 7, 1941, and were not discharged "for the convenience of the government" thereafter;

(b) to require the Attorney General to provide payments to the most needy of the evacuees first, that is those in retirement or nursing homes or other medical facility and without adequate funds to adequately pay for those services, without limitation as to any maximum amount;

(c) to make certain that no federal, state, local, or other taxes can be levied against any compensatory payments made pursuant to this legislation; and

(d) to authorize and direct the Board of Directors of the Civil Liberties Public Education Fund to (1) establish a permanent museum exhibit honoring the 100th/442nd and MIS in the Smithsonian Institution, (2) erect an heroic monument in public tribute to the Japanese American war volunteers of World War II as a constant reminder that "Americanism is a matter of the mind and the heart, and not of race or ancestry" and that "eternal vigilance is the price of liberty"; and (3) create a special and permanent depository or archives for the records, documents, memorabilia, artifacts, etc., of the World War II military heroes of Japanese origin, to tape oral histories, to develop travelling exhibits, etc. We know of no greater educational objective than these that we have identified, to inspire all Americans of the saga and the faith of Japanese Americans under the most adverse of circumstances and that we need to make certain that a repetition of such unAmerican agonies shall never happen again, regardless of the times and conditions.

We are aware that there are a number of other bills for this same general purpose. But none is as comprehensive in its overall scope as H. R. 4110 is in remedies; none have more than the hundred members of this National House of Representatives who have agreed to co-sponsor this measure, and none takes into account the official findings, conclusions, and recommendations of a congressionally directed Commission except H.R. 4110, cited as the Civil Liberties Act of 1983, which it so true today save for the year which should be 1984.

3. Why Should Evacuees Be Treated Differently?

It is an accepted axiom that in modern warfare all of the belligerent populations suffer, though some, like soldiers in the front lines, may suffer more than others. Such being the case, why should Japanese Americans be granted a preferred status and be entitled to such unique and token benefits as those set forth in H. R. 4110?

As noted earlier, this House Judiciary Committee in 1947 rejected this issue, declaring that "The Committee considered the argument that the victims of the relocation were no more casualties of the war than were millions of other Americans who lost their lives or their homes or occupations during the war. However, this argument was not considered tenable, since in the instant case the loss was inflicted upon a special racial group by a voluntary act of the Government without precedent in the history of this country...and to redress them would be simple justice."

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In writing to the Senate Judiciary Committee in 1948, President Harry S. Truman noted the following in his letter:

> There is pending before your Committee a bill (S. 2127) to facilitate the adjudication and settlement of claims of Japanese Americans for losses incurred by reason of their forced removal from their homes during a period of extreme national peril. The fears which impelled the Government to adopt the harsh expedient of excluding Americans of Japanese ancestry from strategic military areas have, most happily, proved largely groundless. An overwhelming majority of our Japanese American population has proved itself to be loyal and patriotic in every sense. Those of them, and there were many, who entered the armed services acquitted themselves with great distinction. It would be, in my opinion, a tragic anomaly if the United States were, on the one hand, to acclaim and decorate with honors the brave Nisei troops who fought so valiantly and at such sacrifice, while, on the other hand, it ignored and left unredressed the very real and grievous losses which some of them, together with their immediate families, have suffered as a result of Government action in the midst of that same war.

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If further explanation is helpful, it must be emphasized that Japanese Americans shared with other Americans the general burdens, sacrifices, and sufferings, including inconveniences, of modern war; in fact, by their high visibility they were called upon to endure much more than the average citizen.

Prior to their forced evacuation, for example, they were subject to the military draft, though many volunteered for the armed services on their

own; they endured the rationing of food, clothing, gasoline, etc., using stamps and following carefully all regulations as to public and private conduct; they purchased more war bonds than any other minority, in many instances much more than they could afford; they volunteered and served in many capacities, such as air raid and safety wardens, special police, nurses' assistants, etc.

Though they deliberately tried to be the best possible of citizens, they were denied employment in the high-paying defense and defense-related industries; in many situations they were socially ostracized if not "ordered out" of public places; their stores and shops, their businesses and professions were often boycotted and vandalized, and their customers and clients intimidated; they harvested crops as directed for the "Food for Victory" campaigns, only to find that few--if any--would buy, even at reduced prices, their produce; no matter where they were, they felt under constant and continuous surveillance, not only by friends and neighbors but also by every government officer and agent. They were often treated worse than strangers in a strange land. At a time when workers were scarce, they could not secure even the most degrading and menial of jobs.

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Previously extolled as exemplary citizens because they would not accept charity or any public welfare, even in the depths of the economic depression; they were acclaimed as the most law-abiding of all peoples; the most generous of contributors to community drives and campaigns for the general wellbeing; the most responsive to civic appeals, etc. Their children won scholastic honors and various other competitions. Though the parents, the Issei generation, could not become naturalized citizens because of the prohibition in federal law, they indoctrinated their children in Americanism and good citizenship.

In spite of this unparalleled record, when their Government requested their "cooperation" as a matter of "military necessity", they reluctantly and without great protest sacrificed their homes and properties acquired in decades of hard work, privations, and savings, and allowed themselves to be evicted and falsely imprisoned in what euphemistically were described as relocation centers. None were charged with any misconduct, let alone with any crime. None were given the right to a trial or a hearing by a judge or jury. None were confronted by those who ordered their forced removal.

Nevertheless, though permitted to take with them to the camps only that which they could carry individually, they caused no trouble to the Army nor invited violence by their actions or words.

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What other minority would react as patriotically and with such fortitude as their contribution to the winning of the war against the land from whence their parents and ancestors came? Without provoking the police or the military, what other population segment of more than 110,000 individuals, more

than two-thirds of whom were native-born citizens, would react in such a non-violent manner to demonstrate their devotion and dedication to the United States of America? Against what other minority of American citizens has our Government ever acted so cruelly and arbitrarily, depriving them of not only homes and associations but also their dignity, liberty, and integrity as human beings?

Would you trade four years of your life for what we went through?

Surely, you can now understand why we Nisei war veterans feel as strongly as we do about this unique difference in what most Americans endured in World War II and what we had to suffer and overcome. And we believe that the Government should recognize this significant and substantial distinction, lest we forget and let it happen again.

4. Didn't Supreme Court Rule Evacuation Constitutional?

Although it is clear to us that today an overwhelming majority of constitutional authorities disagree with the Supreme Court's historic decisions in the so-called evacuation test cases, it is a matter of record that, on December 18, 1944, the nation's highest tribunal, by a six to three majority, held that the forced removal of those of Japanese ancestry from designated West Coast military zones was constitutional.

The defendant in this precedent-setting opinion was Nisei Fred Korematsu, then of Oakland, California, who refused to report to a WCCA Assembly Center to be exiled from his home on the orders of the Western Defense Command.

That same day, December 18, 1944, in an equally important case, by a unanimous vote, the nine Justices held that detaining a loyal citizen was unconstitutional. The successful petitioner in this case was Mitsuye Endo of Sacramento, California, a discharged state civil service employee.

Some 18 months earlier, on June 21, 1943, in the companion case of Minoru Yasui of Portland, Oregon, and Gordon Hirabayashi of Seattle, Washington, the Supreme Court ruled, also unanimously, that the curfew and travel restrictions imposed by the Western Defense Command as a preliminary to its subsequent evacuation orders, was constitutional.

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The latest, most definitive, and most revealing documentary relating to the handling of these four "test" cases was published last year by the Oxford University Press. Its author, Professor Peter Irons, now a Professor of Political Science at the University of California, San Diego, a graduate of the Harvard Law School and the recipient of a Ph.D. from Boston University, researched and wrote this devastating expose of the machinations of the attorneys for the War Department and the Justice Department, as well as of the Court Justices themselves, to achieve their respective objectives.

We respectfully commend this legal volume as "must-reading" to the members of this Committee, its staff, and all members of the Congress who are interested not only in the fair and just administration of the law but also in the ways Government attorneys deliberately manipulated evidence to mislead the country's Court of Last Resort.

Professor Irons contends that the Department of Justice knowingly submitted inaccurate records to the Court in these cases. Among these records was a key military document (General John DeWitt's "Final Report" on the 1942 Evacuation) which, as government lawyers admitted among themselves, contained "lies", "innnuendoes", and intentional falsehoods", thereby contributing to "a legal scandal without precedent in history".

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This book develops the facinating struggle that pits Justice Department attorney Edward Ennis against Assistant Secretary of War John McCloy.

Under the Freedom of Information Act, Professor Irons unearthed a set of Justice Department papers dealing with the "Final Report" of General DeWitt. The files also revealed that debates erupted in the Department over the factual accuracy of the DeWitt Report. Ennis and his assistant John Burling expressed doubts about the General's claims that Japanese Americans had committed acts of espionage. Both the FBI and the Federal Communications Commission found these claims to be baseless.

Frustrated in their effort to delete the document from the Government's brief to the Supreme Court to alert the Justices to the falsity of the DeWitt Report, they were able to insert a crucial footnote in the brief referring to the "contrariety of evidence" on the espionage allegations, hoping that it would cause the Justices to make their own inquiries. John McCloy, the author notes, intervened with Solicitor General Charles Fahy and persuaded him to remove the critical footnote so that this point would be missed by a Court not eager to find fault with the Army's position.

The author further reports that military files "disclose the alteration and destruction by War Department officials of crucial evidence in these cases". Professor Irons charges that "rather than expose to the Court the contradictions between this evidence and claims made by Justice Department lawyers, military officials literally consigned the offending documents to a bonfire."

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In other chapters, the efforts of Chief Justice Harlan Stone to persuade his colleagues to agree on a unanimous opinion in the Hirabayashi (Yasui's case was consolidated with that of Hirabayashi because most of the issues were identical) matter are exposed, as well as the various pressures applied in the decisive Korematsu case to gain the six to three majority that it did.

There are several suggestions that that three margin majority could have been reversed under certain circumstances, with the Army's programs being determined as being unconstitutional by a five to four, six to three, or even seven to two counts. There are also suggestions that the Korematsu and Endo decisions, which could have been issued before the Court adjourned for the summer in 1944, were not made public until mid-December for political and legal politics.

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It can be speculated, from all that is revealed in this "shocking and surprising" Oxford University Press publication that if the Endo case had been "handled" in a more expeditious manner by government attorneys and the courts, and had been adjudicated by the highest tribunal before the other cases, rather than being deliberately delayed for one reason or another, the entire eviction and imprisonment provisions might well have been declared null and void, an unconstitutional exercise of the war powers.

While the Korematsu, Yasui, and Hirabayashi cases involved crimes, (refusal to honor Army's orders), Endo was an habeas corpus question. Had the Endo decision been rendered before Korematsu, for instance, it could have forced open the gates of the prison camps, at least forced drastic changes in the WRA's leave clearance regulations. Had it been rendered before Hirayabashi, the whole arbitrary mass movement may have been quashed before it could start.

Incidentally, for purposes of historical accuracy, JACL was not opposed to litigation as a means of determining the legality of the Army orders. It could not, however, because of its public stance for "cooperative collaboration" with the military in the evacuation, endorse such challenges. The truth is, as Professor Irons points out, that at about the time that Yasui and Hirabayashi were committing crimes by violating the curfew and travel restrictions, Saburo Kido, then National JACL President, was persuading his friend, San Francisco attorney James Purcell, to instigate a traditional habeas corpus proceeding. Irishman Purcell responded by instituting the so-called Endo challenge, the only one of the test cases to be successfully contested in the Supreme Court.

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Of addtional interest may be that the JACL submitted "amicus" (friend of the court) briefs in all of the cases before the Supreme Court. The late Roger Baldwin, legendary founder and long-time director of the American Civil Liberties Union, described them "as among the best I've ever read", especially that in the Korematsu issue, which appropriately enough was titled "The Case For The Nisei".

The JACL briefs were in the tradition of the "Brandeis" appeals, treating with anthropological studies and the most recent accounts of the cultural assimilation of Japanese Americans, demonstrating that in their efforts at assimilation they followed the historic paths taken by Greeks, Italians, Germans, Irishmen, and other immigrant groups.

It also took General DeWitt to task for his blatant racism, charging that the General had no "reasonable" basis for the military order, and, therefore, had no constitutional sanction.

It was also a point-by-point refutation of each of the major "arguments" made, first by then California Attorney General Earl Warren in his testimony to the so-called Tolan Committee (Select Committee Investigating National Defense Migration) in the spring of 1942, and secondly by DeWitt's "Final Report" of 1943, which, in actuality, according to Professor Irons in his book "Justice At War: The Story of the Japanese American Internment Cases", was a revised and delayed copy of the original that had first been forwarded to the War Department several months earlier and had been deliberately concealed from Justice Department attorneys.

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Regardless, ever since the end of hostilities in the summer of 1945, JACL has tried to find appropriate lawsuits in which to present the Supreme Court with another opportunity to reverse its Korematsu conclusions. It asked many of the outstanding constitutional authorities about the possibility, even requesting a Professor at Boalt School of Law at the University of California, Berkeley, to have his class study this question. All were unanimous in their judgments that no such opportunity existed. Even as late as 1972, Joe Rauh, Jr., counsel to the National Leadership Conference on Civil Rights, in addressing a biennial National Convention of the JACL here in Washington, D. C., concluded that the only recourse was remedial legislation.

We Nisei war veterans, then, welcomed the so-called "class action" and "coram nobis" suits that were filed more than a year ago (1983), based upon the latest information and attitudes towards such legal actions that have become more popular since the Vietnam era of questioning establishment and government initiatives.

Both complaints were based upon the disclosure recently of much new information as discovered by the Commission on Wartime Relocation and Internment of Civilians and others, such as that revealed in Professor Irons' book, which indicate that the Government suppressed material evidence, provided misleading facts, and indulged in questionable acts in its relations particularly to the Supreme Court. Resort to the Freedom of Information Act was freely cited.

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William Hohri, and 12 other evacuees, on behalf of the National Council for Japanese American Redress and all 120,000 American citizens and resident alien Japanese, filed suit in the United States District Court for the District of Columbia, for a total of some $24 billion for "Monetary and Declaratory Relief for Violation of Plaintiffs' Constitutional Rights of Due Process, Equal Protection, Just Compensation, Petition, Privacy, Travel, Freedom from Unreasonable Search and Seizure, Freedom from Cruel and Unusual Punishment, and Civil, Statutory, and Common Law Rights".

They charge that, "solely because of their Japanese ancestry", they "were subjected to forcible segregation, arrest, exclusion, imprisonment, and other deprivations of their most fundamental constitutional rights during World War II by defendant, the United States of America".

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For the first time, instead of using Caucasian attorneys, Fred Korematsu, Minoru Yasui, and Gordon Hirabayashi were represented as lead attorneys by Sansei counsel. Their respective cases were filed more than a year ago in San Francisco, Portland, and Seattle. The attorneys for the Nisei evacuee petitioners were generally agreed that the facts and conclusions set forth in the lead Korematsu complaint would be applicable to their individual suits. Professor Irons is identified as of counsel in these cases, serving pro bono.

The table of contents in the Korematsu complaint sets forth six major arguments: "(I) Relief by writ of error coram nobis is available to correct fundamental errors which deprived petitioners of due process rights under the United States Constitution; (II) The Government's failure to adhere to established standards of professional conduct violated petitioners' due process rights; (III) The prosecution's use of false evidence and the suppression of evidence in the Hirabayashi, Yasui, and Korematsu cases constituted a denial of due process requiring vacating petitioners' convictions; (IV) the Prosecution's bad faith in intentionally destroying evidence material to the petitioners' defenses prejudiced petitioners' rights to fair proceedings in violation of the due process clause of the United States Constitution; (N) The pattern and practice of generalized misconduct by the Government constituted a fraud upon the Court, resulting in further deprivation of petitioners' due process rights; and (VI) The cumulative effect of all the acts of governmental misconduct operated to deny petitioners' due process rights to a fair trial and appeal."

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In the "class action" suit, on May 17, 1984, Federal District Court Judge Ben Oberdorfer dismissed the case, ruling that the six-year statute of limitations precluded the filing of the civil claim against the United States Government.

Fully aware that lower court judges seldom overturn the opinions of the Supreme Court and that there was a statute of limitations beyond which civil claims may not be filed, attorneys for the evacuees argued that the six-year statute did not bar their claims because it did not begin tolling until last year when the Commission on Wartime Relocation and Internment of Civilians issued its formal reports ("Personal Justice Denied"), revealing new evidence of Government duplicity essential to instituting the formal suit. Benjamin Zalenko, lead attorney for this case who is a former member of the legal staff of the House Judiciary Committee, explained that the Commission found documents that proved the Federal Government did not believe its own allegations that the mass evacuation of Japanese Americans was required to protect the West Coast from security threats.

Judge Oberdorfer found, however, that the key documents disclosing those Government doubts had been published years ago. He commented that as early as 1946 there were reports that the internment program was not a "military necessity". While conceding that the 1983 Commission reports had discovered several unpublished papers, including Justice Department memoranda in which officials wrote of deciding to delete evidence supporting evacuation from submissions to the Supreme Court, the Washington jurist concluded that "due diligence" could have uncovered the helpful documents.

"It may be that timely claims on their (evacuees) behalf would have prevailed. But it is now close to 40 years after the camps were closed, and almost that long after facts essential to those claims were published. Much time has passed, and memories have dimmed, and many of the actors have died," the Judge said. In his 50-page opinion, the jurist observed that the statutes of limitation were enacted by Congress to take into account those concerns "and it is those statutes which present an ultimate bar to plaintiffs' claims."

The Judge suggested that the plaintiffs should seek compensation from the Congress, stressing that "The careful spadework which plaintiffs have done in the prosecution of their claims in court should contribute to making their argument to Congress more persuasive. And it may be that Congress will focus more closely on these claims once plaintiffs have exhausted their possible judicial remedies."

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In our view, Judge Oberdorfer, however, made two substantial contributions to the cause of redress. One is that he did not dispute the arguments against the internment itself, saying "the rationale of military necessity now appears questionable". The other is that he rejected the claim by the Government that the 1942 Evacuation Claims Act was the exclusive means by which the evacuaees could seek monetary compensation. "The Act does not bar this court from jurisdiction over all plaintiffs' claims," is the way this issue was answered.

We are hopeful that the NCJAR will appeal the initial decision and that the appellate courts will be more understanding. To our way of thinking, any statute of limitations should begin to toll after Congress authorized establishment of the CWRIC and directed it to look into subjects of concern in this matter.

To us laymen who are not lawyers, it would seem that in this instant case, there should be no statute of limitations at all, just as we understand that there are none to protect murders or those who defraud the government from prosecuting simply by hiding from the law, etc., for a short period. By tolerating all government action to delay by legal and other means and to be protected by a statute of limitations, we fear will encourage official wrongdoing, suppressing of errors and crimes, and gross violation of constitutional rights as was done to us of Japanese extraction in the guise of "military security".

There should be no statute of limitations on recourses for the deprivation or violation of the constitutional rights of citizens. There should be no incentive for the Government to conceal its own wrongdoing or abuses of power by "covering up" for a short period of years and then being forever protected from prosecution. Should another Watergate be condoned if a "cover-up" can be sustained for six years?

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In the trio of "coram nobis" cases, three different results developed out of the Government's requests that the convictions in these suits be vacated.

In the Korematsu situation, Judge Marilyn Patel approved the Government's motion and vacated the conviction. However, in spite of the opposition of Government attorneys, Judge Patel declared that the World War II evacuation of 110,000 Issei and Nisei was unjustified and unconstitutional. She accepted the findings and conclusions of the Commission on Wartime Relocation and Internment of Civilians that there was no military necessity for the curfew, exclusion, and internment, all being based on racism. She called the Government's response "meek" and a "tantamount to a confession of error". United States Attorney Victor Stone urged the court to "put behind us" the controversy over the conviction and internment because the "courts of history had already vindicated the Japanese Americans."

In rejecting the request to simply vacate the conviction without addressing the illegality of Government actions at that time, Judge Patel emphasized that the Supreme Court ruling is a warning to all that "our institutions must be all the more vigilant to protect constitutional guarantees" in times of war, military necessity, or national security.

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In a 28-page written opinion, dated April 19, 1984, Judge Patel expands on her oral statement from the bench of last fall. Noting that the court could not rectify the Supreme Court record concerning the suppression and distortion of evidence, she declared nevertheless that "the court is not powerless to correct its own record where a fraud has been worked upon it or where manifest injustice has been done."

Even if the Government were in a position to move to dismiss, the "court would not automatically grant dismissal. A limited review by the Court is necessary even where the defendant consents. The purpose of this limited review is to protect against prosecutorial impropriety or harassment of the defendant and to assure that the public interest is not disserved."

In her Conclusion, Judge Patel wrote (with court citations eliminated by this layman writer to conserve space):

> ...At oral argument the Government acknowledged the exceptional circumstances involved and the injustices suffered by petitioner and other Japanese Americans...Moreover, there is substantial support in the record that the Government

deliberately omitted relevant information and provided misleading information in papers before the (Supreme) Court. The information was critical to the Court's determination, although it cannot now be said what result would have been obtained had the information been disclosed. Because the information was of the kind peculiarly within the Government's knowledge, the Court was dependent upon the Government to provide a full and accurate account. Failure to do so presents the "compelling circumstances" contemplated by Morgan (a previously cited case). The judicial process is seriously impaired when the Government's law enforcement officers violate their ethical obligations to the Court.

This court's decision today does not reach any errors of law suggested by petitioner. At common law, the writ of coram nobis was used to correct errors of fact. It was not used to correct legal errors and this court has no power, nor does it attempt, to correct any such errors.

Thus, the Supreme Court's decision stands as the law of this case and for whatever precedential value it may still have. Justices of that Court and legal scholars have commented that the decision is an anachronism in upholding racial discrimination as "compellingly justified". "Only two of this Court's modern cases have held the use of racial classification to be constitutional." The Government acknowledged its concurrence with the Commission's observation that "today the decision in Korematsu lies overruled in the court of history." Korematsu remains on the pages of our legal and political history. As a legal precedent it is now recognized as having very limited application. As historical precedent it stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees. It stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions, legislative, executive, and judicial, must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused.

It is our current understanding that the Government is preparing to appeal Judge Patel's opinion.

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In Minoru Yasui's case, heard on January 26, 1984, Judge Richard Belloni, who reviewed Yasui's petition for coram nobis, granted the Government's motion to vacate the conviction. That was all he allowed as he presumably approved the Government's contentions that no findings of fact were relevant or necessary.

In other words, he did not follow Judge Patel's lead and find the Government guilty of gross misconduct.

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In Gordon Hirabayashi's case, heard May 18, 1984, Judge Donald Voorhees took a position somewhat between that taken in the Korematsu and Yasui petitions. He ordered an evidentiary hearing on Hirabayashi's petition for a writ of error coram nobis, which may be heard about in June 1985.

Similar to a trial, such a hearing will bring the Government's evacuation "team" into the courtroom to explain and defend their World War II actions. Speculation is that individuals like John McCloy, Karl Bendetsen, Edward Ennis, respectively, then the Assistant Secretary of War in charge of civilian affairs, the Colonel who was General DeWitt's principal assistant in civilian matters and the Administrator of the Wartime Civilian Control Administration, and the Justice Department's Chief of the Enemy Alien Control Unit and its principal lawyer in the evacuation test cases, will be called.

After the hearings, the Judge is expected to decide whether to grant Hirabayashi's petition or not.

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United States Attorney Victor Stone, who argued all three of the coram nobis cases, repeated the Government's concession that the evacuation program "was an unfortunate episode". After noting that Executive Order 9066 had been rescinded by President Gerald Ford and Public Law 503, which provided criminal penalties for violating the Executive Order, had been repealed by the Congress, Stone declared that the Government had no interest in reprosecuting the case. He explained that the Government wished to see Hirabayashi's conviction vacated, but wanted Hirabayashi's petition dismissed as well.

Stone introduced several new arguments to those he first raised with Judge Patel in San Francisco last year. Among those were that there are no legal consequences from the original conviction that a ruling can redress; that the judiciary may undertake only a "live case or controversy"; that Congress was the appropriate branch of Government to consider "redressing" past grievances; that no new critical documents had been produced; and that too much time had passed to reargue the case.

The Seattle jurist ruled that Hirabayashi should be given a chance "to vindicate his honor". In his final remarks, though, the Judge cautioned that Japanese Americans may still lose the case, even though knowledgeable persons recognize that a great wrong was done, simply because of the nature of the legal system and the manner in which such issues are adjudicated.

The United States Attorney announced that the Government would appeal the ruling.