TESTIMONY OF WILLIAM M. HOHRI

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Presented before the
Subcommittee on Administrative Law & Governmental Relations
of the
Committee on the Judiciary
House of Representatives
on H.R. 442
Monday, April 28, 1986

Mr. Chairman and Members of the Subcommittee, thank you. I wish to address remedies that may seem to lie beyond the reach of Congress -- in the courts. If you will bear with me, I will attempt to demonstrate that these are as germane as they are important to your deliberations.

Six years ago, in June 1980, I testified before this Committee on the-then pending legislation to establish the Commission on Wartime Internment and Relocation of Civilians. At that time I supported Congressman Mike Lowry's redress bill and opposed the Commission as a fact-finding body. I recommended that Congress accept the commitment of granting redress as embodied in Mr. Lowry's bill and establish the Commission to determine the means of payment, recognizing even then that Mr. Lowry's proposed three-billion dollars would have difficulty with budgetary constraints. [As an aside, I am glad that today we are addressing another bill, H.R. 442, since the National Council for Japanese American Redress sees as constructive all measures that would lead to a formal recognition of the injustice done and that would redress our grievances.] After I had testified in 1980, Mr. Mike Masaoka spoke and expressed this potential role for the Commission:

> *"One thing the Commission can do is to ask Congress to invite and direct, if necessary -- although I know the question of separation of powers -- the Supreme Court of the United States to review the Korematsu case."*

Mr. Masaoka pointed to a much-needed remedy -- a review by the Supreme Court of its wartime decision -- and the obstacle, the separation of powers.

Shortly after the Commission bill was enacted and signed into law in July 1980, the National Council for Japanese American Redress began to look to possible legal rights for a court remedy. We also began our research in the National Archives. To make a long story short, we embarked upon a two-and-one-half-year effort of historical and legal research, drafted and prepared our court complaint, and filed our historic class action lawsuit in March 1983. A year later, in May 1984, our lawsuit was dismissed by the United States District Court for the District of Columbia on procedural grounds of statutes of limitations and sovereign immunity. We appealed, and in January 1986 the dismissal was reversed and our cases remanded to trial. This case is now in the process of further judicial review.

I will not go into details but will speak in general terms. Our lawsuit addresses major constitutional violations and other illegalities that befell us as a result of the Government's program of mass exclusion and detention. As a victim, I think the most serious of these was the court's failure to observe the constitutional requirement of *habeas corpus*. Article I Section 9 provides for suspending *habeas corpus* but there is no constitutional provision for ignoring it. Without an opportunity to be charged and tried before imprisonment, all other rights are unavailable. In July 1942, from the temporary detention camp at Tanforan, California, Ms. Mitsuye Endo petitioned for her freedom and the freedom of her interned compatriots under the *writ of habeas corpus*. She was not released until December 1944, two-and-one-half-years later. It should have taken hours, or at most, days. We mock the constitutional requirement by applying it after years of imprisonment. I personally spent two-and-one-half-years in the Manzanar camp. Not only was this constitutional violation a serious deprivation of freedom for us victims, but it set a dangerous precedent, a breach in our Constitution for all Americans. Our lawsuit attempts not only to provide relief to the victims of this unhappy episode but to repair such breaches.

I know there are sound and good reasons for the separation of powers. Indeed, we have found beneficial the leverage of the law in a situation where we clearly lack a political majority. But I believe a bridge exists between the two branches of government, and interdependency between the Congress and the Courts.

Most of the constitutional issues we have brought before the courts have been dismissed because of the cloak of sovereign immunity. Clearly, the United States Congress, acting as sovereign, may yield this protection and consent to be sued through Congressional enactment. Such enablement only allows the presentation of these issues; it does not direct how they are to be resolved. Enablement is judicially neutral. The facts and principles must still be argued, deliberated, and adjudicated solely in the courts. Thus, if Congress confers jurisdiction and waives procedural obstacles, the courts will then be free to apply remedies according to their dictates.

I recognize that a bill for such enablement is not before this Committee. But if, in the range of remedies you seek, you should consider repair of constitutional breaches, I respectfully recommend enablement of our court action as an important and available remedy. If the Committee requires further details, we stand ready to provide them.

Thank you.

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