I love New York. You are one of the sources of the redress movement. In 1979, before he gave up on New York, Playwright Frank Chin hustled me to lead the redress movement. A year or so ago I finally learned from Frank that it wasn't his idea. He had been given the task of finding someone by people in Seattle. Michi Weglyn gave him my name. Frank has characterized Michi as the Madonna of the movement. Being neither Roman Catholic nor an aficianado of rock, I can't say which. But I can say that Michi has been my mentor, a source of strength, and a healer of wounds. The movement has received excellent reporting from the New York Nichibei, thanks to its editor Teru Kanazawa and its former editor Takako Kusunoki. Phil Nash has been an articulate and fair-minded explainer of the issues. The National Council for Japanese American Redress has received solid financial support from New Yorkers, especially our ronin: Amy Yoshinaga, George Matsuda, Sohei Hohri, Walter Weglyn, Tamaki Ogata, Elinor Kajiwara, Jeremy Mott in New Jersey, Gordon Sato in Lake Placid, as well as New Englanders Yosh and Nobu Hibino and Yone Stafford. Attorney Nicholas Chen has given us counsel and performed the much needed grunt work of copying and distributing documents. I am grateful to them and many others and now to you for this time to speak to you.

Actually, I am substituting for attorney Ellen Godbey Carson, a member of our law firm of Landis, Cohen, Rauh and Zelenko. Ellen is the expert in not only the legal and historical intricacies and ramifications of our lawsuit but also in translating

these clearly and precisely in unencumbered English. Next week she takes a bar examination for another state, I believe Maryland. I convey her regrets. But I have brought some materials with me. There are free copies of a question-and-answer sheet on the appeals decision. There are also a limited number of copies of the printed opinion of the appeals court. The printed opinion costs three dollars. Although there will not be time for questions during this program, I will be happy to address your questions after the program.

A great victory was won on January 21, 1986. For over five years we have had to characterize our class action lawsuit as high-risk. We assured our contributors that they would probably never enjoy a return on investment. We knew from the very beginning that a legal challenge faced the formidable obstacles of time limitations and sovereign immunity, that is, the consent of the government to be sued. As procedural obstacles, they barred our access to trial. We knew that once in the courtroom, we could present a strong case. But getting there was a major hurdle.

The victory was a turning point, like the Battle of Midway, not the signing of the terms of surrender. Our lawsuit has been remanded or ordered to trial. The statute of limitations was tolled or moved to July 1980. With a six-year limit, our filing in March 1983 falls well within its range. But our lawsuit, begun with 22 causes of action or claims, has been reduced to a single claim: the Takings Clause of the Fifth Amendment, "nor

shall private property be taken for public use, without just compensation." Moreover, the appeals court upheld the waiver signed by about 26,000 who received compensation under the 1948 Claims Act. They waived their right to sue for additional damages. They are removed from our class.

By the way, the class has yet to be determined by the courts. But it is certainly larger than the 25 named plaintiffs. Our intention, obviously adversarial, is to make the class as inclusive as possible. We intend to include those excluded as well as those excluded and detained under EO9066 and those, mainly Issei, interned under other statutes and powers from both coasts, from Hawaii, and from Peru. We intend to include the estates of those deceased as well as survivors. Accordingly, I use the figure of 125,000. Maybe it should be larger. Of course, however, the figure finally reached by the trial court will probably be smaller. Whatever the number, we will be litigating on behalf of all its members. Contrary to some reports, you will not have to hire an attorney and file your own lawsuit. The class action is on behalf of all members of the class, you and me.

But we are not yet going to trial. The decision of the appeals court may, in turn, be appealed. Defendant United States may request a re-hearing by a full panel of judges of the U. S. Court of Appeals. It's called a re-hearing en banc. Or the defendant may appeal to the Supreme Court. Neither is automatic. Though it is impossible to predict this future, it is also

impossible not to think about it. The decision on the statute of limitations is a conditional one. It says, in effect, that we, the plaintiffs, have alleged governmental misconduct in concealing evidence that seriously affected the 1943 and 1944 Supreme Court decisions on Hirabayashi and Korematsu and their deference to military judgment. In remanding our suit to trial, we are required to prove our allegations. If we fail to prove our allegations, the statute of limitations is not tolled, not moved to 1980, and we are once again without a case. Given such a condition, I am inclined to believe that the en banc panel and the Supreme Court would prefer that the evidence be presented and argued in trial and a decision rendered before considering an appeal. Of course, I believe we shall prove our allegations.

As I explain this purely personal opinion, I hope you sense as I do that last month's decision does contain the seeds of a real challenge to the Hirabayashi and Korematsu decisions. The challenge is what makes our lawsuit so exciting. Decisions of the court may only be overturned through the courts. I think you may also sense the connection between the coram nobis cases on the West Coast and our lawsuit.

We, the plaintiffs, have two alternatives to consider. Most of our dismissed claims are barred by sovereign immunity. Sovereign immunity protects the government from being sued unless the government consents to be sued. The Takings Clause is the exception; it mandates compensation: "nor shall private property be

taken for public use, without just compensation." For our other constitutional claims, we require an act of consent. Such consent may be enacted by the United States Congress. We have already begun the process of educating members of Congress on this point.

Thanks to Phil Nash's writing in the New York Nichibei newspaper, a newspaper we should all be reading regularly, many of you are aware of the interesting dynamic between the redress legislation waiting in the House Judiciary Committee, Gramm-Rudman-Hollings, and enablement of our lawsuit. With the tolling of the statute of limitations to July 1980, this dynamic becomes compelling. Gramm-Rudman mandates cuts in the budget. Cuts, like those slices by Lady Kaede in Kurosawa's epic Ran, frighten Congress. New appropriations only press the blade deeper.

On the other hand, with the lawsuit remanded to trial, many legislators who favor redress will surely find the lawsuit their deus ex machina, their escape from an untenable situation. But before letting them off the hook completely, we ought to request that they enact the government's consent to be sued so the suit may proceed to trial with its other constitutional claims restored.

The second alternative is to file an appeal. Having extracted the best we could reasonably expect from the Court of Appeals, a rehearing en banc seems inappropriate. So, we will most probably request an appeal to the Supreme Court to have restored

most of our dismissed claims and to challenge the validity of the Claims Act waiver. Fortunately, for my time is expiring, though one wants to speculate on this, the legal thicket is too much for my untutored mind to penetrate.

To the extent our resources permit, these are the courses NCJAR will pursue. They could cost another 75 thousand dollars. We do need your continued support, and we would welcome the support of those who understandably balked at the earlier risk. The lawsuit is ours. Let's buy into it!

# # # #