

MIDWEST REGIONAL OFFICE

Japanese American Citizens League

5415 NORTH CLARK STREET
CHICAGO, ILLINOIS 60640
(312) 728-7170

WILLIAM J. YOSHINO
REGIONAL DIRECTOR

MEMORANDUM

TO: MDC Chapter Presidents
MDC Redress Representatives
Interested Individuals

DATE: July 19, 1983

FROM: Bill Yoshino *Bin*

SUBJ: Redress

cc: John Tateishi, Ron Wakabayashi, MDC Cabinet

John Tani will be sending you his report of the July 8-10 National Board meeting which includes the redress position adopted by the board as well as related materials concerning redress actions.

On July 14, 15, I attended the Democratic National Committee meeting in Detroit and took this opportunity to share JACL's concerns on redress with various individuals representing the American Jewish Committee, the American Federation of Teachers, the Anti-Defamation League of B'nai B'rith, the Jewish Labor Committee, and the Jewish Welfare Council of Detroit.

As we begin the final step in the redress process it is important that we begin contacting organizations for their support on the issue. I will begin supplying you with materials that will be useful in this effort beginning with this mailing which includes various Midwest newspaper editorials and articles.

I am not aware as yet of the national JACL strategies to be employed in the redress effort, however, I am certain they will include an endorsement campaign. I would anticipate that much ground will be covered at the EDC/MDC meeting in New York.

In the meantime, it may be advisable at this time to set up the network in your chapters for future contacts with organizations and members of Congress.

Encls.

National Headquarters, San Francisco, California

Recognizing A World War II Wrong

While conceding that the U.S. government cannot fully compensate Japanese-Americans for the "grave injustice" done to them when they were forced from their homes and put in detention camps during World War II, a congressional commission has still done the right thing in recommending federal payments to the survivors. As Joan Bernstein, who chaired the nine-member commission, said, the "injustices" of being uprooted, caged behind barbed wire for 2½ years and branded disloyal on the basis of ethnicity alone "cannot neatly be turned into dollars and cents." But, as the commission report noted, the panel's message and an accompanying compensation program would represent an admonition against prejudice in the future.

Although some surviving officials of the World War II era still defend what was done to 120,000 Japanese-Americans, many Americans regard the affair as one of the

most serious lapses in the nation's historic commitment to civil liberties. The commission itself was unanimous in its finding that a serious injustice was done, although one member disagreed with its proposal that the government pay \$20,000 to each of the 60,000 surviving Japanese-Americans, at a total cost of about \$1.5 billion.

Ronald K. Ikejiri, Washington representative of the Japanese American Citizens League, said his group was "extremely pleased" with the commission's recommendations. The next task for other Americans who recognize the need for a measure of reparation is to persuade Congress to act on the recommendations of the commission that the lawmakers themselves appointed. After the passage of 40 years, Congress ought to be able to acknowledge that a wrong was done and to make amends.

ST. LOUIS POST DISPATCH - 6-24-83

ST. LOUIS POST DISPATCH

June 24, 1983

THE MILWAUKEE JOURNAL

LUCIUS W. NIEMAN, FOUNDER 1882

HARRY J. GRANT, 1916-1963

DONALD B. ABERT, *Chairman of the Board*

RICHARD H. LEONARD, *Editor* JOSEPH W. SHOQUIST, *Managing Editor* SIG GISSLER, *Editorial Page Editor*

Facing up to ugly injustice

Decency demands that the US government compensate survivors of the cruel internment of Japanese-Americans during World War II. Thus, the Commission on Wartime Relocation and Internment of Civilians has recommended payment of perhaps \$1.5 billion to the survivors of the disgraceful program in which 120,000 people of Japanese ancestry — many of them *American citizens* — were removed from the West Coast and sent to "relocation centers."

The late Supreme Court Justice Hugo Black, in a lamentable decision that upheld the conviction of an American citizen of Japanese ancestry for refusing to obey a relocation order, deemed it "unjustifiable" to call the centers concentration camps "with all the ugly connotations that term implies." Yet, the centers were concentration camps. Although internees were not shot or gassed, they were herded into these camps with shameful arbitrariness.

In the name of national security, a grave wrong was done when President Franklin Roosevelt ordered the removal of "all persons of Japanese ancestry, both alien and non-alien" from the West Coast. Yet the nature of the wrong eluded many distinguished Americans then. Walter Lippmann, the influential journalist, defended the relocation with the declaration, "Nobody's constitutional rights include the right to reside and do business on a battlefield."

Regrettably, the idea that military necessity justified the gross action still has adherents. John J. McCloy, who was an assistant secretary of war in World War II, insists that the attack on Pearl Harbor "constituted full justification" for Roosevelt's order. McCloy does not acknowledge that any compensable wrong, or any wrong at all, was done.

But, as dissenting Supreme Court Justice Frank Murphy once said, the exclusion fell into "the ugly abyss of racism." Based on what Murphy rightly called "an erroneous assumption of racial guilt," the US government penned up American citizens in camps. No attempt was made to winnow the loyal from the disloyal through individual review, as was done when allegations were made against persons of German and Italian ancestry. The internment policy utterly failed basic tests of due process.

The commission recognizes that the injustice against Japanese-Americans "cannot neatly be turned into dollars and cents." Still, paying monetary recompense is something the government can do — and should do.

Forty Years Later

Korematsu, Yasui and Hirabayashi sue to discredit wartime evacuation



Fred Korematsu, Minoru Yasui and Gordon Hirabayashi at a San Francisco news conference.

"If I were to register and cooperate . . . I would be giving helpless consent to the denial of practically all of the things which give me incentive to live. I must maintain the democratic standards for which this nation lives. Therefore, I must refuse this order for evacuation. . . . I am objecting to the principle of this order which denies the rights of human beings, including citizens."

—Gordon Hirabayashi, resisting evacuation, 1942.

"A military order, however unconstitutional, is not apt to last longer than the military emergency. . . . But once a judicial opinion rationalizes such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure, and of transplanting American citizens. The principle then lies about like a loaded weapon

ready for the hand of any authority that can bring forward a plausible claim of an urgent need."

—Associate Justice Robert H. Jackson, dissenting in *Korematsu*, the 1944 case in which the Supreme Court upheld the evacuation.

In 1942, some 120,000 Japanese Americans, two-thirds of whom were citizens, were placed under a curfew, evacuated from their West Coast homes, and relocated in a series of inland U.S. concentration camps.

Fred Korematsu, Gordon Hirabayashi and Minoru Yasui challenged this extraordinary violation of their constitutional rights, but the Supreme Court, accepting the government's claim of military necessity, upheld the evacuation order.

Forty years later, on January 19, 1983, Korematsu, Hirabayashi and Yasui went back into court seeking to overturn their wartime convictions. The government lied, they charged in petitions filed in San Francisco, Washington and Oregon. There was no military necessity.

Representing the three men is the Committee to Reverse the Japanese American Wartime Cases. Many of the attorneys donating their time to the committee are third generation Japanese Americans whose parents were interned. Peter Irons, a political science professor at U.C. San Diego, and Dale Minami, founder of the Asian Law Caucus, are lead counsel in *Korematsu*. The ACLU office in northern California, which represented Korematsu in the original case, will file an amicus brief.

In a separate lawsuit filed in the

District of Columbia, the National Council for Japanese American Redress is asking for damages for the entire class of 120,000 Japanese Americans who were evacuated, and for a judicial declaration of U.S. wrongdoing. This suit also charges that the government fabricated claims of "military necessity" to justify the evacuation.

Government Misconduct

The petitions of Korematsu, Hirabayashi and Yasui for writs of *error coram nobis* are based on evidence of flagrant government misconduct during the original trials. *Coram nobis* is a rarely used legal procedure to obtain reversal of a conviction. It is used to correct fundamental errors that affect the validity of legal proceedings.

The petition accuses top government officials and attorneys of suppressing, altering and destroying key evidence in order to influence the outcome of these important cases.

"The importance of this petition is that the evidence for reversing these convictions comes from the government's own files," said Irons. "Records show that the efforts of government lawyers who objected to the suppression of evidence were rejected by high-ranking officials."

Irons has recently uncovered documents through the Freedom of Information Act and other research which disprove the grounds of "military necessity" on which the wartime convictions were based.

"The finding of 'military necessity' by the Supreme Court was based on government representations that Japanese Americans were committing espionage and sabotage by signaling enemy ships. The Court also accepted government arguments that the loyalty of Japanese Americans was suspect," explained Minami.

The allegations of espionage, sabotage and disloyalty were contained in an official document called the *Final Report*, issued by Lt. General John DeWitt, who supervised the evacuation and internment. "These same allegations were repeated, often verbatim, in the government briefs in the three cases," Minami said.

But the documents unearthed by Irons indicate that the Justice Department and the War Department were aware of high level reports from the Office of Naval Intelligence, the FBI, the FCC and the Army's own Military Intelligence Division which directly refuted espionage, sabotage and disloyalty allegations. These reports, which undermined the "military necessity" claims, were inten-

tionally withheld from the Supreme Court, the petition argues.

Intentional falsehoods

One memo which has come to light is from Justice Department attorney John Burling in which he stated, "You will recall that General DeWitt's *Final Report* makes statements concerning radio transmitters and ship-to-shore signaling which are categorically denied by the FBI and the Federal Communications Commission. There is no doubt that these are intentional falsehoods. . . ."

Some of the key documents originate from Edward Ennis, then director of the Enemy Alien Control Division of the Justice Department and the attorney responsible for drafting the Justice Department briefs in the original *Korematsu*, *Yasui* and *Hirabayashi* cases. In one memo Ennis wrote, "The general tenor of the [*Final*] Report is not only that there was reason to be apprehensive but also to the effect that overt acts of treason were being committed. Since this is not so, it is highly unfair to this racial minority that these lies, put in an official publication, go uncorrected."

These previously suppressed documents are being used in the petition of *error coram nobis* to prove that government officials fabricated the facts underlying the Supreme Court's finding of "military necessity."

"Many in our community might believe that their internment was the knee-jerk response caused by wartime hysteria," said Minami. "But this case reveals that the internment was also a product of calculated and cynical decisions on the part of high officials to uphold the evacuation at any cost—even if it meant lying to the Supreme Court."

Korematsu, after spending several years in county jail, federal prison and the Tanforan and Topaz relocation centers, returned to the San Francisco area where he now works as a draftsman. Yasui, who spent 9 months in solitary confinement in Multnomah County Jail as well as several months in the Mindoka Relocation Camp, is now the executive director of the Denver Commission on Community Relations.

Hirabayashi spent 3½ years in county jails and federal prisons and then returned to Seattle where he completed his Doctorate in Sociology. He is currently teaching at the University of Alberta in Canada.

"The Constitution does not mean anything unless it can stand up in a time of crisis," Hirabayashi said at a San Francisco press conference announcing the new lawsuit. "In 1942 the whole system of government failed us. We want to make sure that what happened to us then doesn't happen again, to anyone."

This article first appeared, in a slightly different form, in the *ACLU News*, the newsletter of the ACLU of Northern California.