

PRELIMINARY DRAFT

"REPARATIONS"

PROJECT "47"

Chairman: Mike Honda

A SUGGESTED LEGISLATION

In 1942, during World War II, 110,000 citizens and resident aliens of Japanese ancestry were banished from their homes and confined behind barbed wire for two and one-half years. The President with Executive Order 9066, using National Security and the War powers as a cover suspended the Fifth Amendment of the Constitution and the rights of due process. The Judicial System allowed the Executive branch to detain the people for two and one-half years until the cases were finally settled by the Supreme Court in 1944. (Endo case, Hirabayashi case, Korematsu case) The War ended in 1945.

The wartime episode of the Japanese Americans remains today, as it was yesterday, and as it will surely be tomorrow, one of the darkest chapters in the Nation's history.<sup>1</sup> There are many people who remember those dark days and believe that the law should be corrected some day. It is believed that with a little effort this can be done with President Carter's focus on "Human Rights", the many court cases that have been subsequently decided since 1944, and the Congressional investigation of the "Watergate" episode.

In 1944, when the Supreme Court decided the Korematsu case, the Military was in the midst of fighting World War II. They were a "Sacred Cow" so to speak, above criticism and above the law. However, there was a strong dissenting opinion by Justice Robert Jackson ... "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...the Court for all time has validated the principle of racial discrimination in criminal procedure and transplaning American Citizens. The principle then lies like a loaded weapon ready for the hand of any authority that can bring forward plausible claim of an urgent need."<sup>2</sup>

The government has used the cover of "National Security" many times and sanctioned use of illegal measures relatively free from any accountability until only recently. It is not argued here that the Government should not have such powers, but they should be exercised only in case of dire emergency with full accountability.

In the past, when "National Security" was used as a cover, the danger was more imagined than real, and lasted longer than the emergency, and caused many problems. In the case of the Japanese Americans, the Supreme Court failed to inquire into the gravity of the military situation. They failed to inquire whether the war crisis justified the evacuation at the time it was ordered. It did not require evidence that this was in fact the judgement of the military, nor did it inquire whether the evidence necessitating the evacuation was reasonably founded.<sup>3</sup>

PRELIMINARY DRAFT

REPARATIONS - PROJECT "47"

PAGE 2

In the General Yamashita case, (1945) the issue of whether the military was bound by the Fifth Amendment was touched upon. A dissenting opinion by Justice Murphy ... "But in this nation individual rights are recognized and protected, at least in regard to governmental action. They cannot be ignored by any branch of the Government, even the Military, except under the most extreme and urgent circumstances." 4

The failure of the Executive and the Military to obey the dictates of the Due Process Requirements of the Fifth Amendment in the wartime treatment of citizens and resident aliens of Japanese Ancestry on the west coast (not Hawaii) is apparent. Yet, the Korematsu case stands as a law making it legal for them to do the same thing again.

The legislation being suggested should be designed to correct this inequity in the law.

Suggestion #1 .... Congress should convene a Special Committee to review the actions of the Executive and Military when "National Security" is used to suspend the due process requirements of the Fifth Amendment. The investigation to start immediately with the emergency, and the Committee to assume jurisdiction as soon as the emergency is ended and civil authority restored, and need not wait until hostilities are ended. The Committee will conduct a fact finding inquiry into the gravity of the emergency to determine whether the evidence necessitating the suspension of the Fifth Amendment was reasonably founded.

Suggestion #2 .... A "deterrent clause" be included making any member of the Executive or military personally liable to either or both criminal prosecution and civil liability when using "National Security" as a cover, if the committee find that evidence did not exist in fact that there was any military necessity or emergency existing that required the suspension of the Fifth Amendment of the Constitution.

Suggestion #3 .... A "Rehabilitation and Compensation" clause. Included requiring the Government to assist any person who suffers any personal injury or property loss because of the emergency. If the emergency were of such concern, ....the government suspends the Fifth Amendment, it should take steps to assist the people to re-establish themselves when the emergency is over. The government should allow and outright grant, or at the minimum a low cost government loan as in the National disaster cases.

PRELIMINARY DRAFT

REPARATIONS - PROJECT "47"

PAGE 3

If the Congressional Fact Finding Committee find that the facts did not support the necessity of suspension of the protection of the due process clause, all persons who suffered any personal injury and property loss should be indemnified. (Note: JACL is in the midst of a study to seek "Reparation")

Submitted

M.M.S.

## SOURCES

- Footnote
1. Page V of Preface - Book "Prejudice, War and the Constitution" - Jacobus TenBroek, Edward N. Barnhart, and Floyd W. Matson.
  2. Korematsu v. U.S. 323 U.S. 214 - p. 245-246  
65 S. Ct. 193 - p.207.
  3. p.333 of footnote 1. above
  4. Trial of General Yamashita - p.273  
Mr. Justice Murphy dissenting

## FURTHER RESEARCH NECESSARY AND RECOMMENDED

Nuremburg War Crime Trials  
War Crimes Trials - Far East  
Indian Treaty Violation Cases  
My Lai Incident - Viet Nam War  
Kent State Incident  
Water Gate Episode  
Ellsberg Case - use of National Security - crime committed  
Halperin Case - suit against Nixon for Damages  
Washington D.C. - unlawful detainment of demonstrators  
Accountability of Intelligence Agencies - CIA and FBI  
Claims for war damages

TASK FORCES

REPARATIONS

PROJECT "47"

Sub-task number 200 (Legal)

STATEMENT: 600 Nikkei were killed in action (100th and 442nd)  
It is still legal for the government to banish people into concentration camps in a emergency involving National Security. Racial prejudice under the facade of National Security is concomitantly legalized. Did the 600 die in vain? This inequity in the law must be corrected (Korematsu) through the legislation process.

ACCOUNTABILITY:

Chair of the LEGAL TASK FORCE with support from sub-group(s) of the task force.

- GOALS:
1. Prepare and submit a legal position paper as the basis to overturn the Korematsu decision focusing upon the potential abuse of National Security
    - 1.1 The paper will be utilized for corrective action through the legislative process
  2. Prepare paper on the impact of nation security decisions particularly on how they impact individual civil and human rights
    - 2.1 Paper should include the President of the United States directives towards human rights as a basis for a timely analysis
  3. Provide material for community education through the task forces on SPEAKERS and PUBLICITY

CRITERIA:

1. Legal briefs and Position papers at the rate of two (2) per month for five months  
Host three (3) full meetings of Task force (begin 8/20/77)
2. Provide monthly articles in the Pacific Citizen
3. Plan a strategy for implementation of legislative action.

REPORTING:

Monthly reports to national headquarters with quarterly summaries  
Monthly article in the Pacific Citizen

PERFORMANCE

STATUS:

REPARATIONS

PROJECT "47"

Sub-task number 300 (Speakers)

STATEMENT:

To develop community understanding of the issues involving REPARATION through personal contact and dialogue. A speakers bureau will be established to serve as a public information arm of the REPARATIONS committee effort to inform, educate and sensitize individuals and organizations of the need for legislative action in support of the concept of REPARATIONS

ACCOUNTABILITY:

Chair of the SPEAKERS TASK FORCE with support from each region for listing of speakers

GOALS:

1. Formulate a viable speakers bureau on a pilot basis
2. Provide personal community Education on the subject of REPARATIONS
3. Facilitate the development Regional speakers bureau's utilizing the talents of the local chapters

CRITERIA:

1. Pilot model implementation within \_\_\_ days of initiation
2. Plan a topical strategy for speakers with schedule for duration of six (6) months
3. Eight presentations per month at one (1) per each region

REPORTING:

Monthly to national headquarters with quarterly summaries  
Monthly article in the Pacific Citizen

PERFORMANCE  
STATUS:

REPARATIONS

PROJECT "47"

Sub-task number 400 (Publicity)

STATEMENT:

To create an environment of public knowledge for the atrocities of the incarceration experience of Japanese Americans and the responsibilities of indemnification

ACCOUNTABILITY:

Task force Chair

GOALS:

1. Provide educational material through the media on topic of incarceration of Japanese Americans
2. Create a forum for mass communication on the abuse and potential abuses of National Security decisions without oversight review
3. Develop an assessment tool for review of mass media coverage
4. Plan a strategy for organizational action to gain access to mass media exposure on the subject of reparations

CRITERIA:

1. Publish articles
2. Provide mass media exposure (e.g. Television, Radio) at the rate of one (1) each per month
3. Provide material for sub group 300 (Speakers)
4. Prepare monthly article for publication in Pacific Citizen

REPORTING:

Monthly with quarterly summary

PERFORMANCE  
STATUS:

REPARATIONS

PROJECT "47"

Sub-task number 500 (Liaison)

STATEMENT:

To develop internal and external organizational support for Project "47". Initial efforts will be directed to gaining broad-based internal organizational support for Project "47". Subsequently the emphasis will shift towards gathering intra organizational endorsement and support for the project.

ACCOUNTABILITY:

Vice President James Tsujimura

- GOALS:
1. Orderly organizational support of Project "47"
  2. Develop plans for intra organizational support systems for nation-wide effort
  3. Prepare plans for oversight functions in Project "47" efforts
  4. Reduce turn-over of REPARATIONS committee
  5. Develop strategy for increase involvement of Sansei in organizational efforts

CRITERIA:

1. Plan for 100% increase in informational flow to organizational membership of REPARATIONS efforts
2. Plan for regional review and clearance procedures for project efforts
3. Plan for local chapter involvement into regional operations for information and reciprocal action assignments (calls to local public officials etc.)

REPORTING:

Monthly status reports with quarterly summary  
Articles to the Pacific Citizen

PERFORMANCE  
STATUS:

REPARATIONS

Project "47"

Sub-task number 600 (Psycho/Socio)

STATEMENT:

The long term impact of the incarceration experience has not yet been determined. A actual and effective approach to gain indemnification for this violation of public trust must consider the long term impact of this experience on the Issei, Nisei, Sansei and future generations. Can the behavioral pattern of the Nisei be attributed to the relocation experience? Is there a consistant pattern of reluctance on the part of the Nikkei to be involved in the political process due to the oppressive nature of the camps?

ACCOUNTABILITY:

Task force Chair

- GOALS:
1. Prepare position on overview of the psycho-socio impact of the incarceration experience
  2. Identify and list various sub topic for research and analysis

CRITERIA:

1. Topics for research grants
2. Monthly articles in Pacific Citizen
3. Materials for sub group 300

REPORTING:

Monthly reports with quarterly summaries

PERFORMANCE

STATUS: