

April 23, 1973

MEMO RE: REPARATIONS LEGISLATION

To: Chapter Presidents and District Governors

From: Barry D. Matsumoto, Washington Representative

I. BACKGROUND:

In 1970, the National Council of JACL adopted "in principle" a resolution calling for federal legislation which would provide individual monetary compensation for those who were evacuated and interned during World War II. (See "Official Minutes of the National Council Meetings, 1970" pages 8 & 24). The 1972 National Convention reaffirmed the 1970 resolution and added that the rate of individual compensation should be based upon the daily base pay paid to American prisoners of war for the time they spend in imprisonment. (See "Official Minutes of the National Council Meetings, 1972" page 59).

The purpose of this memorandum is to reexamine the concept of the Reparations Legislation together with the basic alternatives which must be considered in drafting the legislation so that we can fashion legislation which is consonant with the Community's expectations.

II. THE BASIC CONCEPT:

The basic purpose of the proposed Reparations Legislation will be to provide monetary compensation for some specifically defined injustice suffered by Japanese Americans during World War II. It is imperative that we clearly define the injustice for which we seek compensation for that definition will provide the rationale upon which we will have to defend the legislation. In addition, the definition of the injustice will serve to focus our attention upon some of the basic questions which we will have to answer in drafting the legislation. For example, if we conclude that the injustice for which we are seeking compensation is to be defined in terms of the evacuation and the detention, then quite obviously, those who will be entitled to compensation under the proposed legislation will be limited to the individuals (or heirs and devisees) who were evacuated and detained. On the other hand, if the injustice is defined in broader terms such as the pain and suffering which all Japanese Americans underwent during WWII, then the class of individuals entitled to compensation will be expanded. At this juncture, one should note that since we are seeking compensation from the federal government, we should focus upon injustices directly attributable to the acts of the federal government. In other words, it would not make a great deal of sense for us to ask the federal government to pay for injuries which were caused by some other entities.

As a final comment, we should note what kinds of injuries or injustices we are not seeking compensation for together with the reasons why we have excluded these injuries or injustices. First, the proposed Reparations Legislation will not be seeking compensation for any real and personal property losses sustained by Japanese

Americans as a result of the evacuation and internment. In 1948 Congress passed the Evacuation Claims Act (50 USCA App. 1981). The purpose of that Act was to compensate the Japanese for their property losses. While we all realize that the payments received under the Act did not fully compensate for the losses actually sustained by individuals, the difficulties in proving or substantiating uncompensated property losses at this time makes a reparations program based upon property losses impractical. Second, the proposed Reparations Legislation will not be seeking compensation for any other kinds of economic losses (e.g., lost wages, lost profits or other kinds of financial losses) sustained by individuals as a result of the evacuation and internment. Again, while we all know and recognize that individuals sustained uncompensated economic losses as a result of the evacuation and internment, those losses cannot be proved or substantiated so that we have no rational basis upon which to compensate individuals for such losses. Since it is not the purpose of the proposed Reparations Legislation to provide individuals with financial windfall, any attempt to justify payments for unsubstantiated economic losses would be extremely tenuous.

III. ALTERNATIVE NO. 1--REPARATIONS BASED UPON EVACUATION AND DETENTION:

A reading of the text of the resolution which was adopted "in principle" by the National Council at the 1970 JAACL National Convention, indicates that the reparations payment would be compensation for the time spent in confinement during WWII. Thus, it appears to be the intent of the resolution to define the injustice and injury in terms of what we believe to have been the unjust deprivation of liberty which the WWII confinement represents. If we use deprivation of liberty or confinement as the basis for the reparation claim, then the class of individuals who will be entitled to payment must be limited to only those individuals whose liberty was deprived. If this represents the basis upon which we wish to proceed, then we must consider the following alternatives:

- A. Who should be entitled to payment? At the outset, we should note that our definition of the injustice has already limited the class of possible payees to those who actually were detained. However, even within this possible class of people, we should consider whether the following further refinement or definition should be made:
 1. Age limitations: should any minimum age limitation be placed in the legislation? Should those who were born in the camps be entitled to compensation?
 2. Should payments be restricted to only those who were detained or should heirs or devisees of deceased internees also be entitled to payment? In this regard, one might argue that since the deprivation of liberty was a personal injustice, it would not be rational to extend payments to heirs and devisees

because they did not suffer or sustain any injury or injustice.

3. Should payments be restricted to individuals who were U. S. citizens at the time of detention or should payments be made to both citizens and aliens?

b. How should the payment be calculated?

1. The 1972 minutes to the National Council meeting indicate that the rate of payment is to be the same as the rate of payment received by American prisoners of war. If we adopt this method of compensation, it would mean that those who stayed in the camps the longest will receive the greatest amount of payment. This would, of course, be consistent with the basic rationale for the legislation. Since we are proposing the legislation to repay individuals for the deprivation of their liberty, it is proper for those who were deprived of their liberty for the longest period to receive the most in reparations payments. The only real difficulty I can foresee with this method of payment is that there may be some difficulty in substantiating how much time each individual spent in camp.
2. An alternative method for calculating individual compensation is to pay everyone who was evacuated and detained the same amount without regard to the individual length of stay in the camps. This method would eliminate the administrative difficulties which may arise from having to establish how long each individual was detained.

IV. ALTERNATIVE NO. 2--REPARATION PAYMENTS TO INCLUDE ALL NIKKEI RESIDENTS OF WESTERN DEFENSE COMMAND:

The Columbia Basin Chapter of JACL has proposed that legislation be drafted which would extend reparation payments to all Nikkei residents of the Western Defense Command. This proposal would, in effect, set up two classes of potential payees:

1. Those who were evacuated and detained, and
2. All other Nikkei residents who were residents in the Western Defense Command but who were not evacuated and detained.

The Columbia Basin Chapter believes that payments should be extended to the latter class of Nisei for the following reasons:

1. The Nikkei within that class suffered personal humiliation and legal restrictions upon their liberty.

2. The Nikkei within that class suffered financial loss.

Since we have already discussed the alternatives with regard to the first class of Japanese Americans (i.e., the evacuees and detainees), this portion of the memo will be restricted to the second class.

- A. Payments for Economic Loss: As we noted earlier, it would be extremely difficult to draft legislation which would provide compensation for economic losses since most individuals probably will be unable to substantiate their claims. In addition, any legislation designed to provide for recovery of economic loss will also require the establishment or utilization of some kind of claims procedure which would add a further complication to the legislation.
- B. Payment for Humiliation and Loss of Liberty: As with the previously outlined Alternative No. 1, it is important that we clearly define the injustice(s) for which we seek reparations. Again, since we are seeking reparations from the federal government, we should focus upon injustices which are attributable to acts of the federal government.

1. Humiliation--humiliation or mental anguish is a cognizable legal claim in most jurisdictions. In our case, however, it would be an extremely difficult concept around which to fashion legislation. For example, how would we define the class of persons who would be entitled to payment for humiliation? Should we assume on a prima facie basis that everyone suffered mental anguish? What about young children who were perhaps too young to understand what was happening? How would the amount of payment for humiliation be determined? Should those who are more sensitive and thus ostensibly subject to greater mental anguish be given a greater amount than less sensitive individuals? Finally, we would have to differentiate between the humiliation which resulted from the acts of the federal government and the humiliation which resulted from acts by other parties.

In general, the use of humiliation or mental anguish opens up a number of difficult areas and would appear to require some very complex and carefully drafted legislation.

2. Deprivation of Liberty--As with alternative No. 1, the strongest rationale for the reparations legislation is the deprivation of liberty suffered by the Nikkei residents of the Western Defense Command. Legislation designed to pay for this injustice

would have to answer the following:

- a. What kinds of deprivations were involved?
- b. How would the payees be identified--e.g.--
 - 1) What kinds of documentation are available to establish that particular claimants actually sustained any loss of liberty?
 - 2) Should there be a citizenship limitation?
 - 3) Should there be any age limitations?
3. How would payments to this class of payees be calculated? Should the deprivation of liberty sustained by this class be equated with those who were evacuated and detained so that a similar pay schedule could be used?

C. Some General Considerations with Regard to Alternative No. 2

It should be evident that extension of reparation payments to Nikkei residents of the Western Defense Command who were not evacuated and detained raises a number of difficult issues not present in a bill designed only to pay those who were evacuated and detained. This is not to suggest that the claim of the former group is any less valid or important than the claims of the latter. However, it is imperative that we consider and answer the questions outlined above if we are to develop the strongest legislation possible. It is also imperative that we recognize that the most just or equitable legislation may not necessarily be the easiest to obtain.

V. ALTERNATIVE NO. 3--REPARATIONS PAYMENTS TO A GENERAL FUND RATHER THAN TO INDIVIDUAL CLAIMANTS:

One final alternative should be considered. Rather than seek payments to individuals, it is possible to draft legislation which would create a fund from which various types or kinds of projects could be financed.

Some of the questions which we would have to consider in drafting this kind of legislation are:

1. How much money to request?
2. What kinds of projects would be financed from the fund?
3. How would the fund be administered?

- A. One possible alternative: Creation of a Scholarship Fund. While it seems rather prosaic in these times to suggest the use of money for scholarships, a reparations bill designed to establish a permanent scholarship fund would have several advantages:
1. If the initial appropriation could establish a large enough amount, then the costs of administering the program and the actual amounts for the scholarships could be taken exclusively from the interest on the fund. Thus, the initial appropriation could serve as the basis for a continuing fund or program from which the community could benefit annually. The advantage of a continuing fund of this nature over a "one shot" individual payment program is that once the one shot payment is over, the public's attention or awareness of the injustice is likely to be over. However, with a continuing, annual program, there will be a constant reminder of the injustices suffered by the Japanese Americans.
 2. A scholarship fund would be easy and inexpensive to administer. For example, the legislation could provide that the President or Congress would be periodically responsible for naming a board of trustees. The trustees could then determine the kinds of criteria on which the scholarships would be awarded and a small, probably part-time administrative staff would be responsible for the actual paper work involved in applying for and awarding the scholarships. The costs of administering the program would be minimal and could be taken from the interest earned on the fund principal.
 3. While the fund would not directly benefit the individuals who actually suffered during WWII, it would provide widest possible recognition of the travails of that generation of Japanese Americans. Since the fund would be established in the name of Japanese Americans, it would stand as a recognition of the injustices which they all suffered.

VI. CONCLUSION:

The purpose of this memo is to outline the various alternatives available in drafting a Reparations Bill on behalf of the Japanese American community. The Chapter Presidents should discuss the considerations outlined in this memo (and any others which have not been raised) and send me a short note on what they believe to be the consensus of opinion with their members. We are asking the advice and counsel of the local chapters in order to ensure that the legislation which we draft will have the widest possible support and that the members will know and understand why certain alternatives

were selected and others neglected.

We also ask that you solicit the opinions of any other interested groups or individuals in the community.

Thank you for your assistance.

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