October 1986

National Council for Japanese American Redress

NEWSLETTER

VOLUME III, NUMBER 7

Dear Friends,

IN SEPTEMBER, Lloyd Wake, serving as NCJAR's San Francisco representative, joined with the Japanese American Citizens League (JACL), the National Coalition for Redress/Reparations (NCR/R), and the Coram Nobis Team to put together a "Redress Update" public meeting in San Francisco's Japan Town.

Judge Ken Kawaichi did a fine job of moderating this Saturday afternoon gathering. But I felt the presentations rambled and extended without focus. California State Senator Milton Marks presented a plaque with a resolution pronouncing the State's blessing on the four organizations. Later, a photographer for the Asian Week newspaper recorded the participants holding the plaque in a obligatory unity.

The truly valiant efforts of the coram nobis petitions seem to be receding into history, despite the appeals by Yasui and Hirabayashi. The JACL continues to pitch for more lobbying for H.R. 442, even though with 142 co-sponsors, it remains 76 votes short of a majority, and the 99th Congress adjourns this month. NCR/R's activities are diverse, ranging from redress to the Navaho-Hopi dispute in Arizona. As the fourth presentation, the Lawsuit got lost as simply another activity among many. In the short question period that followed, no questions were asked about other legislative or judicial redress.

Fortunately, as is often the case, the informal period following the meeting proved productive and rewarding. I was quite pleased to greet Raymond Okamura. We hadn't seen each other since the 1970 JACL convention in Chicago. I met Joe Oyama, who knew my oldest brother, Sam from his pre-war years as a journalist in the Japanese-American press. Carole Hayashino of the JACL greeted me with her beautiful baby in arms. And I was pleased to meet Karl Matsushita and Richard Kenmotsu of the Japanese American Library. Their research library, a budding venture, was just down the street from the United Presbyterian Church in which we met; I paid a short visit and was impressed by the materials collected and crammed into its limited quarters. I think this library is worthy of our support. It's a path to the future.

LATER IN THE afternoon, Richard was kind enough to give me a lift to the airport for my flight to the Monterey Peninsula where I would be met by Violet and Wilfred de Cristoforo. I flew in a small plane. Sitting in the second row (each with two seats) behind the pilot and co-pilot, I examined two tachometers, an altimeter, and an instantaneous vertical velocity guage. I pondered these and other instruments at 200 knots air speed over hill and dale and Monterey Bay.

The de Cristoforos are marvelous hosts. I had to explain that in approaching my sixtieth birthday, my metabolism could not sustain their generous spread of freshly picked fruits and vegetables and delicious meals. It could sustain, however, a fine California wine in crystal glasses and their very own fruit liqueur. I enjoyed it all, but remained sober.

It was Violet's story. Violet was interned at Jerome, Arkansas, refused to answer most of the questions in the infamous "loyalty" questionnaire, segregated at Tule Lake, California, renounced her American citizenship, and expatriated to Hiroshima, Japan. I must admit that I was overwhelmed by her account. It was not simply the horror of her family's many wrenching experiences, but my inability to cope with renunciation. I must admit that there exists still today tremendous pressure to assert one's loyalty to the United States. I've moved beyond the obsequious loyalty of the model-minority-quiet-American-442-go-for-broke variety.

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Northeastern Illinois' seminar on the detention of Japanese Americans

CHICAGO--The community as well as history and political science students have been invited to attend a free seminar series "Rights and Obligations in Wartime: The Case of the Detention of Japanese Americans During World War II."

Presented by the Department of Political Science at Northeastern Illinois University, the 12-week series which began on September 17, is being held from 7:05 p.m. to 9:45 p.m. on Wednesday in Room 2044 (Northeastern's Classroom Building), 5500 North St. Louis Avenue. The coordinator and instructor of the series is Dr. Shirley Castelnuovo.

S C H E D U L E

October 8 Conditions in the Detention Camps

October 15 Psychological - Economic and Social Impact of Detention
Guest speaker: Daniel Kuzuhara, professor of psychology

October 29 Resitance to Detention - Legal Challenges

November 5 The Loyalty Oath - Leaving the Camps and Military Service

November 12 Resistance to Detention - Draft Resisters and Resistence in the Military
Guest speaker: Jack Tono

November 19 Resistance to Detention - Renunciants

November 26 Redress - Legislation, Legal Challenges
Guest speakers: William Yoshino, JACL midwest regional director
Paul Igasaki, JACL Chicago chapter president

December 3 Redress - Class Action Lawsuit
Guest speaker: William Hohri

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But I still see the redress movement as a legitimate, very American, affirmation of my rights as a citizen. Where does renunciation fit in this scheme? It's a serious question. I've begun thinking about it.

But despite these misgivings of mine, I have none about the legitimacy of including renunciants as members of the class. Their rights were greatly abused. I feel privileged to have met the de Cristoforos. Violet's life is a valuable legacy for Japanese America. Her story has been published in John Tateishi's And Justice for All, available through the JACL.

BACK TO THE court battle. The government requested and received a 30-day extension to their time to respond to our petition. Its response is now due on October 25, 1986. I see such requests as an indication of time pressure on the attorneys for the Solicitor's General's office. This extension also applies to the amicus briefs being filed on our behalf by the American Friends Service Committee, Asian American Legal Defense and Education Fund, United Methodist Church, United Church of Christ, Lutheran Church of America, Anti-defamation League of B'nai B'rith, and Japanese American Citizens League. At the same time, we shall be filing our response to the government's petition for certiorari. So, October will be an interesting month.

Peace,

William Hohri

NCJAR newsletter
editor: Eddie Sato
Winnifred McGill
Doris Sato

SATURDAY
OCTOBER 11, 1986
7:30 pm

HEIWA
TERRACE

An Issue for All Americans

86-298

The petition for Writ of Certiorari was filed on August 26, 1986 in the United States Supreme Court.

NCJAR
invites you
to an evening
with attorneys
Benjamin L. Zelenko, Esq.
and
Ellen Godbey Carson, Esq.

Rehnquist and Scalia

WITH THE RECENT filing of the petition for Writ of Certiorari, significant was September 25, 1986, when Associate Justice William H. Rehnquist was sworn in as chief justice of the United States Supreme Court.

Also sworn in taking Rehnquist' spot in the court was former appellate judge Antonin Scalia. He replaces Sandra Day O'Connor as the court's junior member and is the youngest at 50. Departing Chief Justice Warren E. Burger administered the oath in the White House and again in the chamber of the Supreme Court.

In a Los Angeles Times article which appeared in the August 10, 1986 Chicago Sun-Times, the lead paragraph stated: "President Reagan predicted that the 'superb legal qualifications' of his conservative Supreme Court nominees will assure their confirmation by the Senate (Rehnquist' margin was 65-33 and Scalia's, 98-0) He promised more judges like (Rehnquist and Scalia) to the federal bench."

In his White House speech on September 25th, President Reagan ended by saying in the words of Daniel Webster:

> "Miracles do not cluster. Hold onto the Constitution of the United States of America and to the republic for which it stands; what has happened once in 6,000 years may never happen again. Hold onto your Constitution, for if the American Constitution shall fail, there shall be anarchy throughout the world."

■ NOTE: When the government sought a re-hearing en banc in the U.S. Court of Appeals for the District of Columbia and was denied on May 30, 1986, the vote was six-six from the full court. A majority was needed. The dissenting judges were Bork, Buckley, Markey, Silberman, Starr and Scalia.

A second chance in court

■ The following speech by William Hohri was presented at the "Redress Update" held in San Francisco on Saturday, September 20, 1986

LIKE GAUL, THE redress movement is quartered into three halves. The National Council for Japanese American Redress is one of the three. The Council has actively supported the other two actions. We have shared court documents with the coram nobis teams, and worked closely with Peter Irons. Aiko and Jack Herzig, two of our staunchest supporters, testified at the Hirabayashi evidentiary hearings in Seattle. If my reading of Judge Vorhees's decision is correct, Aiko's testimony was crucial.

We have cooperated closely with the Japanese American Citizens League's Washington office and its Legislative and Education Committee. Just this week, the JACL requested and received permission to file an amicus brief in support of our petition to be heard by the Supreme Court. I am very grateful for this support. It tells the Court that we are together. So, I do not believe I need to make the obligatory statement of support for all initiatives. I will begin by defining some differences then move on to discuss the status of our lawsuit. Please be forewarned that I speak not as an expert in these matters but as one who is learning.

THE CHIEF DIFFERENCE between a political action and one in the courts is that politics gives power to the majority, while the courts provide the force of law to protect the rights of minorities and individuals. This is not to say that politicians, like Ronald Reagan, don't do their damnedest to extend their influence to the courts or that judges, especially in Chicago, are not immune to payola and other unseemly influences. You can see the differences in causes of action.

In 1979, Shosuke Sasaki of Seattle wrote a stirring proposal for redress legislation that was given to Representative Mike Lowry and transformed into the first redress bill. His proposal included ten whereas clauses summarizing our reasons for seeking redress. Like causes of action, they spelled out the injuries we had suffered and explained why we were seeking redress. None of these survived in the congressional bill. Congress, I learned from the experience, deals only with the bottom line.

In the courts, the reverse is true. You are required to spell out and support your grievances, state what laws and constitutional principles were violated, and be prepared to support your allegations with evidence. In Congress votes count, not why votes are made. In the courts, the why is all. Having stated this difference, I'd like to describe what I believe is required for a legal action: 1) An understanding of the law; 2) evidence to support your claims; and 3) enough public support to raise the funds necessary to pursue your claims.

AS CITIZENS IN a democratic society, we need to understand the law because we hear the ultimate responsibility for its content and administration. This is not to say that all citizens—God forbid!—should become attorneys. But we need to understand what our rights are under the law and make the effort to see that they are protected and, when violated, redressed. The first principle I learned about the law some years ago is that it is the injured party who must file the grievance. We can't expect someone else to do it for us.

But before we can file a grievance, we must recognize the injury. Most of us who went through the experience of mass exclusion and detention believe we recognize the injury. Certainly, we know our experiences. But we most probably do not understand the injury in its full and stark extent.

For example, most of us recognize racism as a primary cause. But whose racism? Well, we might attribute racism to General DeWitt, or to politicians, radio commentators and comedians, newspaper editorialists and cartoonists, and various nativist groups. But what of the men at the top? Do we think of Franklin Roosevelt as a racist? I have only recently been disabused of my high regard for this great liberal President. I was stunned when I read British historian Christopher Thorne's book Allies of a Kind in which he documents the racial theories of Roosevelt. Our great wartime leader of the free world believed that the skull size of the

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Japanese might account for their nefariousness. He believed that you could improve Asians by cross breeding them with Europeans.

Nor do many of us understand the legal basis for our confinement in the ten detention camps. Of course there were armed guards, and we were a law-abiding people. But under what law could we have been prosecuted if we had tried to leave? This was not a question that was ignored by the government.

On June 27, 1942, General DeWitt declared each of the six camps within the Western Defense Command to be military areas, thereby zones of exclusion. Two months later, on August 13, 1942, Secretary of War Henry Stimson declared the remaining four camps in Wyoming, Colorado, and Arkansas to be military areas and exclusion zones. Any of us who left a camp's perimeter would trespass into a ring of exclusion. One could then be charged with violating Public Law 503.

To make this ploy stark, in April 1943, Colonel Karl Bendetsen explained to Assistant of War John J. McCloy that there was never any military necessity for making these campsites into military areas. By the way, it was in this discussion that McCloy announced to Bendetsen that military necessity had ceased to exist in the Western Defense Command, 21 months before mass exclusion was rescinded in January 1945. Bendetsen was complaining not about the obvious illegality; he was petulant about the cessation of military necessity and fearful the camps would be closed. McCloy assured him he would only tell Congress or the President if asked and never tell WRA.

THESE ARE BUT two of many examples of the full nature and extent of our injuries. We have learned a lot since we began our legal initiative in 1980. One of our most important activities has been our research into the National Archives to uncover evidence of the government's nefarious activities to deprive us of our constitutional rights, make certain we were not released from the camps, and insure that the Supreme Court would support the War Department's claim of military necessity. The Japanese-American community owes a profound debt to Aiko and Jack Herzig for conducting this research largely on their own time and expense. Currently, their substantial Japanese-American "branch" of the National Archives has displaced them from their master bedroom. Our lawsuit's causes of action lean heavily on their research.

But no matter how thoroughly we could prove our causes of action, we also had to prepare for the government's defenses against our challenge. At first one might wonder how there could be any defense. We anticipated and have struggled with three: one, the 1948 Claims Act as the exclusive remedy for all monetary claims arising from the so-called evacuation; two, the expiration of statutes of limitations; and three, the cloak of sovereign immunity. We have overcome two of them almost completely and the third only partially.

ANOTHER THING I'VE learned about the courts is not to reduce everything to the bottom line decision. I think you all know that the government won the first round in the U.S. District Court for the District of Columbia. We filed our suit in March 1983. In May 1984, it was dismissed by Judge Oberdorfer. But in his written decision, he agreed with us that the 1948 Claims Act was constitutionally deficient and thus could not serve as the exclusive remedy and bar us from trial. With that, the first defense fell.

He also agreed that the Takings Clause of the Fifth Amendment--"nor shall private property be taken for public use, without just compensation"--does mandate compensation. A partial victory of the third defense. His dismissal was based on the second defense, the expiration of time limits. But even here, he agreed partially. He agreed that we could not know our causes of action until secret government documents had become public. But he ruled that since these had become public in the late forties and early fifties, and since by even moving the commencement of the limitations clock to this period, their six-year limit had still been exceeded. Hence, his dismissal. But Oberdorfer had opened a crack.

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IN THE SECOND round, the U.S. Court of Appeals for the District of Columbia Circuit, in January 1986, widened the crack to an open door. It pushed the commencement of time limitations to the end of July 1980 when the Commission on Wartime Relocation and Internment of Civilians was signed into law. The Appeals Court ruled that the Supreme Court decisions in Hirabayashi and Korematsu had such influence on the courts that much more than the discovery of documents would be required to enable a lawsuit to be filed; it would take a statement by a branch of government. This statement was made in the creation of the Commission. So with that, the second defense fell. This was a tremendous victory. Having filed in March 1983, we were well within the six-year time limitations. The district court's dismissal was accordingly reversed and our case remanded to trial.

But we must deal with the third defense as well as other technical issues. I will skip the technical issues. The defense of sovereign immunity may also seem technical to many of us. Certainly, the notion of a sovereign is foreign to us. One may sue the sovereign only with the sovereign's consent to be sued. In the United States, the sovereign is the government. Even this is a questionable proposition. What elected official, besides Richard Nixon, would dare declare himself or herself to be the sovereign? Nevertheless, the government must consent to be sued before the government can be sued.

In the Takings Clause, the Constitution is interpreted to give such consent. But what of the other causes of action in our lawsuit? Fifteen of them are for violation of constitutional rights. I think the issue is clear. What good are these constitutional rights if the government can violate them and then escape accountability by hiding behind sovereign immunity? We are making our appeal to the Supreme Court to present this and other issues.

ALTHOUGH I DON'T believe we need to apologize for seeking compensatory redress for our injuries, our lawsuit is not limited to compensatory redress. It also seeks to repair and restore our Constitution. One of our primary arguments in seeking review by the Court is to explain the fraud committed by the government against the Court in its wartime, landmark decisions. Our arguments will be similar to those developed by Peter Irons and the coram nobis teams. If we are heard, the Supreme Court could reconsider and reverse itself on these decisions. Our appeal could become the vehicle for constitutional repair.

Finally, our lawsuit has a dimension that is vitally important to us, the plaintiffs. This is a class action. It is an action being brought on behalf of all 125,000 victims of mass exclusion and detention. It contains our cause of action. It is *our* complaint, *our* lawsuit. It is a lawsuit we have paid for. I have been asked--usually indirectly--why we can't get our attorneys to work pro bono, without fee. There are two parts to the answer. First, our attorneys have done a good percentage of their work without fee. Second, we have felt from the beginning that we the victims had to pay our way in order to take ownership of this action.

I AM IMPRESSED with the quality of our contributors. Most are quite ordinary folks. Most, of course, are potential members of the class. Many are not. Among our now 50 *ronin*, we number a cab driver, a person on disability income, several retirees, a few business folk, a few professionals, and the rest ordinary, working people.

None of us knows the future. We've always described our legal challenge as a high-risk venture, though the odds have improved dramatically in our being remanded to trial, I believe we support this challenge either because it resides in our gut or touches our hearts.

Our next step is the Supreme Court. Very few people are blessed in their lives with such a second chance as this. I believe we will be heard. I believe you will want to be with us when we are.

William Hohri

MANZANAR MARTYR: An Interview with Harry Y. Ueno *By Sue Kunitomi Embrey, Arthur A. Hansen, Betty Kulberg Mitson*

■ So many articles have been written (about the Manzanar Revolt), but hardly any from the people's side of the story. You know, the camp administration's side of the story is published too much. And I sure would like to have the truth truth known about what was going on in those days in camp.

-Harry Ueno

BY RAYMOND OKAMURA

Right on, Harry Ueno! Ueno finally got to tell his—and the people's—side of the Manzanar story in this limited edition book. He did not want or intend to be a martyr but he certainly ended up as one. More importantly, Ueno was the veritable folk hero of Manzanar: he was that legendary indigenous leader who emerged from the masses to inspire an uprising against tyranny.

Ultimately, he became the symbol around whom the dispossessed inmates of Manzanar rallied to vent their anger at intolerable camp conditions. The climactic mass demonstration in support of Ueno, and the subsequent melee which erupted when military police fired tear gas and bullets into the unarmed crowd, left two demonstrators dead, at least nine wounded, and the camp in chaos.

As Ueno tells it, no one could have predicted that he would become the central figure in one of the most important acts of protest/resistance to occur in the concentration camps. Before the war, he led a quiet, unassuming life, devoid of any political activity. In fact, he was a totally obscure person who lived largely isolated from the Japanese American community.

But when he was forced into the pressure cooker of Manzanar, he rose to the occasion and became an activist/organizer—something which he had never done before, or after, Manzanar. He was just the right person to come along to assume the mantle of leadership for a group of very unhappy people confined against their will. There were many big-name political organizers and would-be pretenders to community leadership at Manzanar, but the very fact that Ueno was unknown and had no previous axe to grind helped to establish his credibility. He was seen as a sincere fellow sufferer, who could be trusted to work for the benefit of the group as a whole, instead of feathering his own nest as some of the others were suspected of doing.

Ueno was a Kibei, and like most Kibei in the camp, he was relgated to a low-level, low-prestige job working in the kitchen, or mess hall as it was known in camp jargon. What the camp administration initially failed to recognize was that the mess halls were the natural springboard from which protest actions could be launched. There was precious little to do in a concentration camp except to line up for the next meal. Stripped of nearly everything else, food became the most important thing in an inmate's daily life. Moreover, as Ueno points out, nearly half of all inmates had a direct connection to the mess halls through a family member working there.

It was the long lines at these mess halls which prompted Ueno to take his first step into collective action. He mobilized the construction of a pond so that people would have something pleasant to look at while waiting in line. With that maiden project, he gained the confidence to aggressively negotiate with camp administrators to improve living conditions. He then initiated an investigation into the shortage of sugar and beef. Somewhere between the rail station and the mess hall, food supplies were disappearing, and camp administrators were suspected of stealing food intended for the internees. Ueno arranged for a meeting with the administration to air these grievances and got a few representatives from each mess hall to attend. That's how the Mess Hall Workers Union got started. With each success in resolving a food complaint, they grew to be a powerful and influential factor in Manzanar politics.

The union was a thorn in the side for the administration: a combative, grass-roots organization led by a Kibei was not what administrators had in mind for "democratic self-government." Regulations were soon issued restricting participation in such groups to citizens (which left out the Issei) and required English to be used as the official language at all meetings (which handicapped the Kibei).

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Continued from page 7 BOOK REVIEW: MANZANAR MARTYR

Most internees were outraged by the restrictions and certain Nisei well-known for their accommodationist views were accused of being collaborators and stool pigeons. In this charged atmosphere, Fred Tayama, who had just returned from a JACL meeting in Salt Lake City, was beaten up by a group of masked assailants. Freedom to travel outside the camp was a privilege granted to only a few favored individuals, so resentment against Tayama was at fever pitch.

UENO WAS PROMPTLY arrested, interrogated and jailed, but was never formally charged with the crime of assaulting Tayama. Since he was not charged, he never received a hearing or trial to determine his guilt or innocence.

In this interview, Ueno flatly denies taking part in the beating and denies any direct knowledge of who did. Furthermore, he refuses to say whether or not he knows through rumor or hearsay as to who was involved. He prudently declined to implicate anyone without proof. Some readers may be disappointed in not learning who the real culprits were, but in the larger context, it is unimportant who did the actual beating. The antagonisms against Tayama,the accommodationists and the administration had built to a flash point, and the beating was perceived as a necessary act of the community trying to regain control over its own affairs. Thus, it didn't matter who perpetrated the deed--the vast majority in the camp wanted it done.

After the mass uprising and the shooting deaths, Ueno was permanently removed from Manzanar and he spent the rest of the war years locked up in various isolation segregation camps. Although Ueno's personal political role was ended, his goals were largely achieved. For one thing, the pro-administration Nisei were also removed for their own protection, and community leadership reverted into the hands of the Issei.

MANZANAR MARTYR IS more than just an account of the happenings at Manzanar from Ueno's perspective. It contains revealing insights into what it meant to be a Kibei, not only in America, but in Japan as well, and what it felt like to be branded a "troublemaker" and "undesirable" and kicked around from one prison camp to another.

The book is also exciting to read because the interviewers adopted a probing, adversarial approach, very reminiscent of 60 Minutes' Mike Wallace or a courtroom lawyer. Ueno is grilled as if he were on trial, and the interviewers sometimes try to trick him into revealing a long-held secret. This tough approach is in marked contrast to the passive interview techniques employed in previous works by the Cal State Fullerton group.

A dynamic interaction among Ueno, the three interviewers, and Ueno's detractors takes place in the book. The editors did not mindlessly accept Ueno's version of an event; conflicting opinions and observations are dutifully presented in the footnotes, and this is one book where the footnotes are just as interesting as the main text. In sum, Manzanar Martyr is well balanced, absorbing and epitomizes the best of what an oral history can be.

HOKUBEI MAINICHI
September 20, 1986

The ugliest product of wartime hysteria

HISTORY HAS SHOWN that war is seldom a congenital time for civil liberties; and that in time of war, truth is frequently the first casualty. During the Civil War, for example, President Lincoln summarily suspended the writ of habeas corpus in the name of national security and ignored Chief Justice Taney's ruling that the suspension was unconstitutional. During World War I, Justice Oliver Wendell Holmes ignored the First Amendment claims of several anti-draft pamphleteers who had been labeled as criminals for expressing their views.

BUT, BY FAR, the ugliest product of wartime hysteria in this country has been the forced evacuation of 120,000 American citizens and resident aliens of Japanese origin from the West Coast of the United States, and their prolonged confinement in internment camps. This mass evacuation and detention of American citizens was the greatest deprivation of liberty since slavery.

EDWARD J. ENNIS (ACLU)

CONTRIBUTORS

CALIFORNIA: Kay Boyle, Mark J. Bregante, Nancy Chan, Wilfred H. de Cristoforo, Kayo Endo, Janice G. Jang, Walter Imai, Tamotsu Isozaki, Margaret Kato, K. Kasai, Tokie Ann Kawakami, Yosh Kuromiya, Nori (Ikeda) Lafferty, Bob Matoi, Roy/Eileen Mayeda, George H. Nakao, M/M Tom Nomura, Brian Ogawa, George/Mary T. Ogawa, S. Okinaga, Pete/Mike Ota, H.R. Sakamoto, M/M Thomas S. Tokuhisa, Samuel/Mary Uyeda, Mitsuye Yamada. CANADA: Akira Kubota.
CHICAGO: M/M Jack Kabumoto, Joe/Sueno Migaki, George Morikawa, Yo Nishida, Eddie/Doris Sato, Hisako Tashiro, Jane Yakushiji.
COLORADO: Harry/June Iwakiri.
HAWAII: Walter T. Matsumoto, Hannah/Wes Ogawa.
ILLINOIS: M/M Paul Arakawa, M/M John Izumi, T. Kasai, Robert/Rosemary Keller, Dr./Mrs. Bright Onoda. KANSAS: Glenn S. Hara.
LOUISIANA: M/M Hajime Yenari.
MARYLAND: Donna Rise Omata, Yoshihiro Takata.
MASSACHUSETTS: Horace W. Furumoto, Arthur A. Sasahara. MICHIGAN: Alison Rosen.
MINNESOTA: Mona Aisawa.
NEW JERSEY: Stanley T. Pawlak.
NEW YORK: Anna K. Hohri, Kazu Iijima, Kenneth Inada, Elinor Kajiwara, Charles Kikuchi, Takako Kusunoki, George K. Matsuda, Shizu Matsuda, Toshi Seeger, Kimi Shimizu, Chiyeko Watanabe.
OHIO: Matthew/Evangeline (Kamitsuka) Foster.
OKLAHOMA: Stephen I. Thompson.
PENNSYLVANIA: Ann/Richard Drinnon.
WASHINGTON: K. Sagami, Robert S. Sato. Y. Takahashi.
WASHINGTON, DC: Franklin Chow, Jeff Howard.

■ If you do not wish to have your name printed please indicate when you remit.

TERADA 1928-1986

CHICAGO--Terry Noble Terada, a former board member of NCJAR and chairperson of the Japanese American Redress Committee (JARC), died on September 14, 1986. His hometown was Loomis, California. During WWII, he was interned in Tule Lake. Terry attended the 1985 Tule Lake Pilgrimage.

He is survived by his wife, Mary (Ota) of Hanford, California, their son James, and daughter, Helen. e.s.

LETTERS

Thanks for your kind letter and the enclosures (newsletters).

Joseph M. Kitagawa
Chicago, IL

Enclosed is a donation in memory of the Rev. George Fujio Hayashi, who died on August 30, 1986. The contribution is in appreciation for his 15 years of devoted services to the Japanese Language Congregation of the Episcopal Church in Chicago.

We offer this for the work of the National Council for Japanese American Redress with our prayers.

S. MICHAEL YASUTAKE
Evanston, IL

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