

National Council

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiff's Motion for Class Action Certification together with a Memorandum of Points and authorities in support thereof, and proposed order were served by first-class mail, postage prepaid, this 14th day of June, 1983, upon counsel for defendant, the United States.

Ellen Godbey Carson

Attorney for Plaintiffs

## NCJAR'S RESPONSE TO THE GOVERNMENT'S MOTION TO DISMISS

by William Hohri

On July 15, 1983, attorneys for the National Council for Japanese American Redress filed their response to the government's motion to dismiss NCJAR's historic class action lawsuit seeking 25 billion dollars in redress. Their response opens, "The United States Motion to Dismiss perpetuates the claim that these actions were permissible exercises of military power not subject to judicial review..." Relying heavily on recently issued reports of the Commission on Wartime Relocation and Internment of Civilians (CWRIC), it deals with the government's defenses of statutes of limitations, sovereign immunity, and the Evacuation Claims Act. It is part of the dialogue in the opening act of the lawsuit which must decide whether the second act, the main event of an actual trial, is to transpire. The government's best defenses are in the current, procedural argumentation.

The statute of limitations places a limit of a few years within which a lawsuit must be filed following an injury. This is a strong defense. NCJAR attorneys argue that where fraud and concealment have occurred to obscure the basis for an action, the years in which an action must initiate do not begin to accrue until the basis becomes known. The recentness of the CWRIC reports, which reveal new facts germane to the lawsuit, tends to require the tolling of the limitation: ("Tolling is a legalism. It means to vacate or annul. Thus the requirement for timely action is annulled because the facts disclosing the need for action were concealed.) Among the things concealed were the fabrication of military necessity and intelligence reports favorable to Japanese-Americans.

The government's defense of sovereign immunity is parried by the invocation of the Fifth Amendment, not as in "taking the Fifth" but the "Fifth Amendment Takings Clause." The response argues, "...the language of this constitutional provision mandates compensation for governmental takings of private property." It attempts to extend the mandate to the deprivation of constitutional rights. "Those [constitutional] deprivations are compensable under the Fifth Amendment, because they are analogous to property rights..."



A citation worth reciting from an argument containing well over 100 citations is Owen versus City of Independence:

"A damage remedy against the offending party is a vital component of any scheme for vindicating cherished constitutional guarantees, and the importance of assuring its efficacy is only accentuated when the wrongdoer is the institution that has been established to protect the very rights it has transgressed."

This is followed by a ringing argument by NCJAR's attorneys:

"The Bill of Rights and other sections of the Constitution were intended to be enforced against the federal government to protect the civil liberties enumerated therein ... Failure to hear and determine plaintiffs' claims for compensation in this case would totally compromise the important principles of Judicial review, the system of checks and balances, and deterrence, as well as the basic protection of constitutional rights."

The response vigorously attacks the Evacuation Claims Act as the remedy upon which the government's motion to dismiss heavily relies. NCJAR attorneys charge that the Act "... failed to comport with even minimal constitutional standards of due process, just compensation, and equal protection," that "... it imposed arbitrary exclusions, severe delays and administrative burdens..." and "...failed to compensate plaintiffs adequately for their losses." "... (The Act) unconstitutionally deprived plaintiffs of the due process of law because it relegated plaintiffs' claims to agency determination and settlement, without opportunity for judicial review." They point out, "... (it) denied redress for plaintiffs' egregious losses of constitutional rights and personal injuries (which exceeded their losses of property) ... (and) ratified summary seizures by the government."

And, as if to point out a weakness in the CWRIC recommendations and in redress proposals beginning to surface in Congress, the response argues, "The Claims Act ... plainly violated equal protection principles ... by excluding relief altogether for permanent residents ("aliens") of Japanese ancestry... who were wrongfully arrested by the FBI." (Emphasis added.)

NCJAR's response follows the government's motion to dismiss of May 16th, which followed NCJAR's initial filing of its lawsuit on March 16th, all at neatly 60-day intervals. The government may rebut NCJAR. NCJAR may rebut the rebuttal. Then there will probably be \* oral argumentation. Then the Court, Judge Oberdorfer, will have to render a decision for or against hearing the case.

FOOTNOTE: The above was written for the New York Nichibei [July 17th]

\* The oral arguments that were to have been heard by Judge Louis Oberdorfer on Friday, September 9, 1983, has been re-scheduled.





# National Council for Japanese American Redress

925 West Diversey Parkway  
Chicago, Illinois 60614  
July, 1983

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contributors of \$1,000 or more.  
Some remain anonymous.

Dear Friends,

The Commission on Wartime Relocation and Internment of Civilians was forced to issue its recommendations via a press conference a week earlier, with only a few hours' notice on Thursday, June 16th. ( It's been a string of 16ths. We filed on March 16th. The government responded on May 16th. )

Someone had leaked a copy to the McClatchy Newspapers ( Sacramento Bee is the only one I can think of ) which hit the streets at 6:00 AM, Pacific time, 9:00 AM, Eastern time. The conference was held 5½ hours later, in time to make the evening news and, most impressive, public television's MacNeil/Lehrer Report, aired at 6:00 PM, Chicago time.



The MacNeil/Lehrer Report featured Joan Bernstein, Dan Lungren, John J. McCloy, and Tom Kometani, New York's JACL chapter president. I hardly remember what Bernstein, Lungren, or Kometani said. It was McCloy who jabbed the dagger and twisted it. What an accomplished expletive incarnate. McCloy, it is important to note, is the most outstanding member of the American establishment. He has been a valued adviser to every president from Roosevelt through Reagan, president of the Ford Foundation, president of the World Bank, High Commissioner to Germany, chairman of Chase Manhattan Bank. During World War II, he was Assistant Secretary of War and the chief decision-maker of the exclusion and detention of Japanese-Americans. He easily over-rode General DeWitt. He forced the General to re-write the General's Final Report after it had been typeset, printed, bound and distributed.

The first thing McCloy said was that he had nothing to do with the program; it all came from the President and higher leaders. Then, with no little skill, he insists that President Roosevelt and Secretary of War Stimson were honorable men and not racists. He was outraged at the notion of an apology. It would besmirch the memory of these fine men. Reparations are unthinkable. War affects all persons. Are there reparations to be made, he asks rhetorically, to the men who died in the war? And what about preventing this kind of thing from happening again, the reporters innocently ask; surely, we want to prevent its recurrence. Don't be too quick to close the door, McCloy responds. Remember those Cubans who were dumped on our shores? If we are attacked by Cuba, we might have to move them. ( There are no quotes where there should be because I lack a verbatim transcript. Grammati-



cally, imagine they are there. An accomplished logician, Willard Van Orman Quine devised the method of the quasi quote marks. But that's another story. The transcript is available from the MacNeil/Lehrer Report, Box 345, New York, NY 10101 for \$2.00. )

McCloy's performance will, I hope, disabuse us of our assumptions about those distinguished men of the American establishment. It makes me feel much better about our lawsuit which is under our control and remains the singularly clear, comprehensive, and uncompromised statement of our injury and our demand for its redress.

There are several ways of looking at the Commission's recommendations. It does contain things recommended by other redress groups such as the community fund with a board of directors who are predominantly Japanese-American. It also contains a provision for the payment of \$20,000 to survivors. That's less than anyone had been asking. \$25,000 was a sort of consensus figure. It had grown to \$50,000. Of course, we're asking \$210,000. It is important to realize that the Commission is a creature of Congress and not an advocate of the victims. By contrast, our lawsuit is clearly adversarial; our complaint speaks on behalf of the victims. The solicitude in the JACL's press release responding to the recommendations is worrisome. Will they ever understand the role of the loyal opposition of dissent, of advocacy in a democratic society? "The Japanese American Citizens League ...wishes to express its appreciation to the members of the Commission on Wartime Relocation and Internment of Civilians ... We are extremely pleased that the Commission has seen fit to recommend individual monetary payment... We commend the distinguished members of the Commission ..."

Chizuko Omori, one of the 25 named plaintiffs, was asked her opinion on television. She characterized the \$20,000 as a "slap on the wrist." I couldn't agree more. Joan Bernstein and the recommendations speak of "no amount of money can fully compensate these people." That's rapidly becoming an official pronouncement. But the fact is that both the injury and the remedy have been defined in our lawsuit. Our estimate of the remedy based on statutes is \$210,000. \$20,000 is less than 10%. It is just a slap on the government's wrist.

It's amazing to me to see how events keep coming. We had the CWRIC's recommendations, the filing of the congressional bills implementing the recommendations ( Mike Lowry's H.R. 3387 and Cranston's S. 1520 ). Next comes our response to the motion to dismiss ( July 15 ), Senate and House hearings on the bills, the court's decision on whether we get in, our attempt to have legislation enacted to enable our access to the courts, just in case. On July 21st, I will be in Washington to participate in a radio talk show on American University's WAMU-FM. The program will be held in the evening at 8:00 PM.

I would recommend for timely coverage of redress events a subscription to the New York Nichibei weekly newspaper. Phil Nash is writing a good series of articles on redress. He covers Washington pretty well. The paper is located at 27 Park Place, New York, NY 10007 and costs \$20 for a year's subscription.

We really do appreciate your contributions. I think we're a little like the early Christians who believed the end was near. We keep thinking it'll all be over soon. The Lowry Redress Bill (the first) will go down and we'll be through. We'll try to raise money for a lawsuit and won't make it. The court will rule against us. That's the latest ending. But now, it's enabling legislation. It keeps on a comin'. So do the expenses.

Peace,

Willie Hobbs



A RESPONSE FROM OUR READER

PHOENIX, Arizona — Received your excellent newsletter and I have lately been bursting with an idea that seems to have been overlooked in Nikkei thought about redress. Or perhaps enryo is involved?

There is no question ( except, perhaps a legal one ) that the evacuation was illegal and not justifiable as a military necessity, but was an event in which a racist minority, taking advantage of war hysteria, seized and enlarged an opportunity to vent their hypocrisy upon another minority.

I worked in the post office at Poston. I became so angry at the motivators of the evacuation that I tried to do anything I could, upon returning to my home in Phoenix, to help the released evacuees — which really wasn't much. I have been a JACL member since and so remain.

The "bursting" idea. In pursuing redress through the courts, you can rebuke government for allowing the hypocrisy to become government policy — AND THEREBY OFFENDING MY RIGHT TO A GOVERNMENT UNDER LAW, and the security of my home, the homes of my family, and of their children.

"Oh, God, NO — WE CAN'T do that! Look what happened when we evacuated the Japanese Americans from the West Coast in WWII we got a 'X'-billion dollar shel-lacking" would be the response to a future minority attempting a coup!

Even if the redress effort fails ( perish the thought ) notice will have been served "Don't ---- with me!" I'm all in favor of legally serving such notice.

I'm putting a small check where my big mouth is. Hope you can use 'em BOTH!

David C. Moore

JUDGE





PAPER CLIPS n' STAPLES

POET, TEACHER and feminist Mitsuye Yamada was the special guest in a program which zeroed in on racism and the Asian American women. The proceedings took place on Saturday, July 9th, at the Christian Fellowship United Methodist Church.

The evening began with the showing of the film "Mitsuye and Nellie: Asian American Poets." Discussions were held later to critique what was seen. An interesting point that was brought up had to do with the Issei and arranged marriages. Their expectations were minimal since they had no part in the selection of their spouses. They accepted their picks reluctantly. Few were pleased.

A considerable amount of film footage on the internment is included in the made-for-television movie. Nellie Wong tells how it was for the Chinese community after those of Japanese ancestry were evacuated and placed in America's concentration camps.

Mitsuye Yamada has been teaching at the University of Illinois Circle Campus in the Multicultural Womens' Summer Institute held for twenty teachers from colleges and universities around the country. The course began on the 10th of July, and ended on the 30th.

An Invitation ...

A ONE-WEEK program on Japanese American Studies was scheduled at the University of Minnesota as a summer course during the month of July. Merry Omori was invited to give a lecture on matters pertaining to redress and reparations, and NCJAR's class action lawsuit. She was warmly welcomed and given the VIP treatment by her host, Professor Nobuya Tsuchida and others of the Twin Cities during her brief stay. Her speech was given on Friday, July 15th.

For those unfamiliar with "Asian and Pacific American Experiences: Women's Perspectives", Tsuchida's book as the title implies, touches on what the Asian immigrant confronted—the prejudices incurred when they settled in America. In the book are testimonies given at the Commission on Wartime Relocation and Internment of Civilians hearings (1981).

They include the poignant stories of Merry Omori, Chiye Tomihiro, Gladys Ishida Stone, Mabel T. Ota and Helen Mukoyama.

On Behalf.....

IN ORDER for the newsletter to take shape—first, it has to be printed. To Monte Matsuda, our sincere gratitude for printing much of NCJAR's literature. Besides the newsletters, there have been posters, fliers and cover letters. He has come through oftentimes, on short notice. As they would say in Hawaii — MAHALO!

More Kudos...

BEFORE the newsletter is mailed, it must be collated, folded and stapled. Address labels and postage stamps have to be applied. Sometimes they have to be sorted before they're plopped into the various mail boxes. After that, it is up to Uncle Sam's hired hands, the U.S. Postal Service to get the newsletters delivered to you.

Lending a hand with the above-stated chores have been Nelson Kitsuse, Bob n' Yae Imon, Sam n' Harue Ozaki, William n' Yuriko Hohri, Mary K. Omori, Winifred McGill, Sam Outlaw, Doris n' Eddie Sato. Many, many thanks to ALL of you.

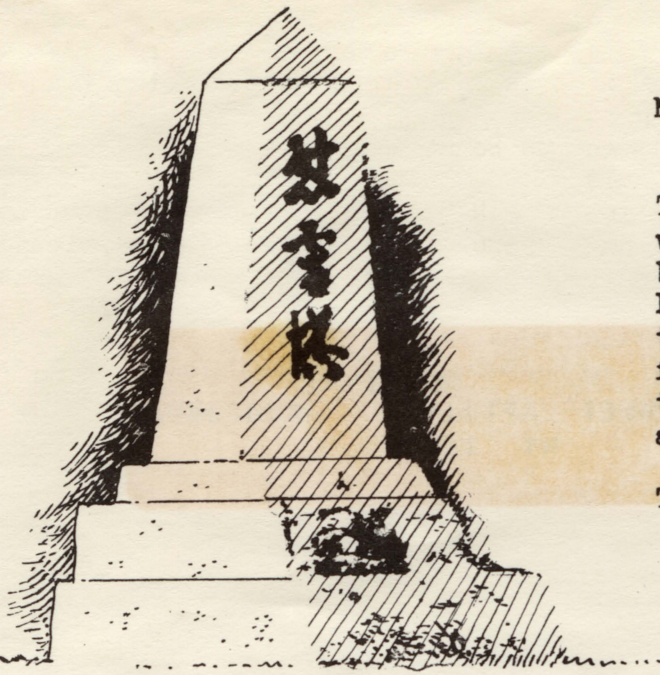
JUST AS a reminder — if you haven't taken the time to place your order for NCJAR's Complaint, we urge that you do so while they are still available.

In the complaint, our injury is clearly defined by we, the victims. Dozens of allegations of fact that support twenty-one causes of action are cited. One of the causes of action serves to define the remedy required to redress the injury in our terms.

To get a clearer picture of the lawsuit against the U. S. government, order your copy of the Complaint now!



NATIONAL COUNCIL for  
JAPANESE AMERICAN REDRESS  
925 West Diversey Parkway  
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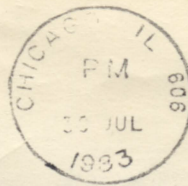
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**NATIONAL COUNCIL for  
JAPANESE AMERICAN REDRESS**  
925 West Diversey Parkway  
Chicago, Illinois 60614



MS SASHA

HOHRI

TOGETHER, with your support, we've come a long, long ways. We still need all the help we can garner in our suit against the government.

- You can help by:
- 1) Rallying others who are interested in NCJAR's efforts, by sending us their names and addresses.
  - 2) Making a contribution.

- \$1,000 as one of our ronin.
- \$500 as a measure of my committment.
- \$100 and my hope that hundreds more will do the same.
- \$\_\_\_\_\_ and my very best wishes for success.

( All contributors will receive our newsletter. )

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7/83