



National Council  
for Japanese American Redress  
925 West Diversey Parkway, Chicago, Illinois 60614

Dear Friends,

May 28, 1982

It was May 5th, Children's Day, in 1981, when we signed our letter retaining the law firm of Landis, Cohen, Singman and Rauh. It was an historic occasion. We had raised \$37,500 of our goal of \$75,000. We had a year to raise the remaining \$37,500.

During that year, we went through the experience of the Commission on Wartime Relocation and Internment of Civilians hearings. We also continued with our research. We made many new friends. More and more people became aware of our impending class action lawsuit. We began to develop islands of support in Los Angeles and San Francisco. Our Chicago board expanded.

Now we seem to be pressing towards a new phase. But we still remain \$15,000 short of our goal.

I think we were wise not to have concentrated our efforts exclusively on fund-raising. We've had to continue with our research, which is extremely time-consuming. I have trouble just keeping up with the reading, which is to say nothing of the labor of searching, finding, and indexing the papers.

We had to interact with the CWRIC, attend its hearings, present our statement, protest what we perceived as its unfairness, organize and help with testimonies, and do some of the reporting. We had to talk to people. Explain ourselves. Travel and organize.

While it is obvious that we lead, our leadership needs help, support, new talent, fresh ideas and ways; and that takes confidence and trust. And we still had to raise the money.

There have been several apologia made by the Japanese American Citizens League for its actions during the internment period. But most of it is curiously devoid of facts. The JACL, we are told, is to be excused of its inexperience and youth and because it was dealing with the might of the United States government.

There is no delineation of the JACL's standing "unalterably opposed" to the Constitutional test cases, for example. Its Portland chapter had begun raising a legal defense fund for Min Yasui. (Yes, the same as he who now chairs its National Committee for Redress.) This raising of funds was characterized by the JACL as a "stab in the back". It is too important to have such actions ignored and forgotten. They return and haunt us today.

Faced again with a legal initiative, what is JACL's position today? Is it still young and inexperienced? Is the government too formidable? There has been no contact made to NCJAR by the JACL on the lawsuit. Instead, there have been ad hominem attacks on us, characterizing us as that "hotshot" Chicago group.

Still, there are many of us who have no relationship to that organization. What is our response? At least, we should not repeat the mistakes of the past.



We are arriving at the moment of truth. The brief which is to be filed as our lawsuit is being prepared. With 500 supporters and 20 Ronin ( who contributed \$1,000 or more ), we still have not reached our goal of \$75,000.

Our problem is clearly not one of money. It's one of will. Those of us who have not made a contribution are simply allowing history to repeat itself. Yasui, Hirabayashi, Korematsu and Endo were allowed to stand up for us all alone.

One of the ironies today is that no one knows the whereabouts of Mitsuye Endo, the one person who did succeed at the Supreme Court. Her successful decision came within a day of the announcement that the camps were to be closed. I would guess that each of these persons faced an impossible task.

They had scant resources. The public was overwhelmingly against them.

But if they had to do it all over again, wouldn't we want to extend our support? This time? Even if we were once again earning only 16 bucks a month, wouldn't we peel off a few for this cause?

We are not a "hotshot" organization. Of all the groups involved, it is NCJAR which has done the necessary homework. It is NCJAR which had had a redress bill introduced in Congress and fought for it. It is NCJAR which has acquired a top law firm to file suit. It is NCJAR which has raised the funds to mount a legal challenge.

We are damned proud to have the support of writers, artists, the clergy, attorneys, professionals, businessfolk, working stiffis, the disabled and the retired, the whole spectrum of our society, both Nikkei, and non-Nikkei.

We need your support. We need your money. We need the names of your friends. Get it off today.

Peace,

*William Hohri*  
William Hohri

Continuation of Discussion of Lawsuit  
Excerpts from the Panel Discussion of NCJAR's Lawsuit  
with Ben Zelenko and Ellen Godbey Carson

February 19, 1982, Chicago, Illinois

**Question:** In San Francisco, during a national FM broadcast one of the questions raised was that even if you win a monetary award in the Courts, you must still go to Congress, hat in hand, to seek passage of an appropriation bill. Is this true?

**Zelenko:** I don't recall how many years ago — (until) very recently, in the last five years, I think, any judgment against the United States in excess of \$100,000 required the Congress to specifically appropriate money to pay that judgment.

It turned out that the United States was losing a lot of lawsuits and Congress, I guess, found its schedule so over-crowded passing bills to pay judgments, (that it) decided to amend the laws. Now the law is amended and does not require specific legislation to pay judgments. They are to be paid out of the general funds of the Treasury upon certification of the judgment by the Comptroller General.

Now, I'm still concerned. Although it's a little premature to look at it, we are concerned. If a judgment for a potential class of . . . 120,000 individuals were to be rendered . . . it would be potentially (a) very substantial sum. Unless, it were simply a nominal recovery. As the law stands now, that judgment, once certified by the Comptroller General, would be paid out of the General Fund of the Treasury. No additional congressional action would be required. The only caveat I have is that if the funds available in the Treasury were inadequate to pay that judgment, who knows?

**Question:** Two other groups, the JACL and NCR/R, have proposed that, in addition to compensation to individuals, lump sum grants be made to organizations. Is there a basis in law for such grants?

**Carson:** Through my research, I have not found a basis for compensation for community wrong. It is not that persons have not tried to get that injury (remedied), (They) have tried to argue that there is something independent from individual rights and injuries, (that) there can be a damage to a community fabric, that there's a loss, community-wise, as well as individual injuries. That's what these groups are trying to address here.

The Courts are not equipped and, historically, have not attempted to address group wrongs. Individuals have rights. Groups only have rights insofar as they are made up of individuals. The Bill of Rights applies to individuals, not to a particular class. The law has not developed a sense of a whole group of individuals being able to claim injury.

I see that type of redress, community redress, being much more a political issue. The lawsuit is not political in that sense. It will follow the confines of law. We will claim that individuals have been hurt, that individuals have suffered wrongs. In totality, certainly, there is a community damage. But through our research, we have not found a successful claim for community damages.

**Zelenko:** The other aspect to that is that proposals to pay reparations other than a lawsuit that are being considered by the Commission, where the distribution of those funds would be something other than a Federal agency, are unprecedented. The only thing that comes close to it are the awards made to the Indian tribes. ( But ) the Indian tribes have legal standing. In many cases, they were nations themselves. They were not social organizations. They were not voluntary organizations. I think it's inconceivable that Congress, on an issue as sensitive as this, would delegate the authority to distribute redress funds to some private organization. We don't think it's a likely event.

The following exchange occurred the next day, February 20th, with the same attorneys in a more free-wheeling discussion:

**Question:** Remember at last night's meeting, Ron Yoshino said something about legislative action?

**Zelenko:** I heard that. They were seeking — lobbying to seek legislation for redress. Something like that. I don't know what he had in mind — why he would be trying to anticipate what the Commission is going to do. It would seem to me that you would wait for the Commission ( to act ). Then, if you like what the Commission recommended, lobby for ( it ). But . . . why would you try to put forward a bill at this point and take away any kind of maneuvering room from the Commission? That's why I was confused about that.

Now the only way I can come to it is this. Either he doesn't really know what he was saying or he misunderstood what his position is. Or they are, in fact, trying to head the Commission off at the pass. ( But ) that sounds pretty strange to me because the JACL wanted the Commission and has an investment in it.

We want the Commission, too. I said to William ( that ) I think the Commission can only help our cause. It can't hurt us. Whatever it does helps us. At best, it will recommend enabling legislation and get behind it. At worst, it issues a report without recommendation . . . But a report that documents for the first time, by the Federal government, which has the imprimatur of the Federal Government behind it, as to what happened.

One thing is clear at this stage, with one exception and that's Lungren from California, the Commission is pretty unified in writing a statement that documents what occurred in a way which lays blame ( on the ) government. That's never been done. Now that may be a very small reward for all this effort. But it's an important statement. It certainly can't hurt a lawsuit to have a statement by a Federal Commission acknowledging no military necessity acknowledging racism. That's never been done before by the Federal government.

**Question:** What about descendants?

**Carson:** We are planning to include estates of those people who are no longer alive. We have statistics that the Commission has put together that shows 110,000 persons . . . as having gone through the mandatory evacuation and detention. 66,000 are alive as an estimate based on insurance statistics on various age groups and what the probabilities are for that age group. So that leaves (around) 44,000 who are no longer living. For those persons, who are at stake, where there are beneficiaries, heirs under a will, or persons who would normally inherit from those persons who are no longer alive -- we can include in this suit. The fact they have died does not remove the nature of the grievances of the injury they suffered.

**Question:** Have there been any other meaningful attempts to get this into court, even 10, 20, or 30 years ago?

**Carson:** We have really researched this. You only get one chance at the apple. You have a day in court. If the issues are decided, you do not get to come back into court with the same issues. Therefore, we are very concerned about those persons who had been in court in the past. Korematsu, Hirabayashi, Yasui were in court. There are others as well. But the decisions were not as famous. They did not reach the Supreme Court.

The only class action I have found that had been carried on in behalf of any significant group at all ( was one ) in behalf of the renunciants in Tule Lake. The issues are not the major ones we would carry to court. The issue there was whether American citizenship could be forcefully withdrawn on the basis of answers to a loyalty questionnaire.

Certainly, that is part of the injury and part of the problem that occurred, but that's not a class action and day in court that affects in a negative manner the carrying out of a class action. We haven't found anything since then. During the time, there was not simply many people going into court.

**Question:** There have been other failures in court. What makes your particular law firm think that we have a possibility of winning in court?

**Zelenko:** We were approached. We didn't go out looking.

**Question:** In order for you to accept, I assume you think that there's a possibility.

**Zelenko:** We believe that the violations of law, the internment and evacuation, clearly were racist and deprivation of the statutes. We see no cases that have decided the legality of internment. It has never been decided by a court.

**Question:** So, you are assuming that the constitutional approach —

**Zelenko:** I'm not quite finished.

Zelenko:

so we start backwards. We say, if we can get the Court to hear our case, we think that the claims are clear. We think we have a good lawsuit. The Court, even Korematsu, did not decide ( the issue of ) detention. Now, . . . getting into Court has obstacles. But cases are filed. New theories are advanced. Some theories are accepted. Some are not. This is a very unusual case.

The first question ( we asked ) William was, "Why wasn't a suit even tried 40 years ago? Why has it taken so long to file a suit? If we knew the answer to that, maybe, we would have a better argument today.

We are coming up with some arguments for the sovereign immunity and statute of limitations issues. These are monumental questions. The easy answer would be enabling legislation. That doesn't require a legal argument in Court. That's Congress telling the Court: hear the case.

As our research progresses, we find new things that we didn't know when William ( first ) came to see us. Whether they'll be persuasive or not, we don't know. But we have found that the Supreme Court was ( misled ) by the Justice Department. There were misrepresentations made to the Supreme Court by the Justice Department. Now, if you ask me, "Are these sufficient to toll the statute of limitations?" I don't know. I know we'll argue that.

In an analogous situation of Indian claims, the Courts decided adversely the claim on procedural grounds: statute of limitations. Claims had been asserted too late. The attorneys . . . then turned to Congress and got enabling legislation to allow the suit to be heard. You have to understand: they did go to Court and lost. ( Then ) enabling legislation was passed.

One argument advanced to the Court was, now, you can't hear the case even with enabling legislation because of the separation of the Courts ( from ) Congress. Congress can't tell a Court how to decide a case. It can tell a Court ( that ) you have a case; you decide it. But by passing legislation after you've decided a case, the Congress is interfering with your right to decide. The Court refused. The Court said "No. The Congress passes an enabling legislation. We will decide the case.

To answer your question, we think there are claims that, if they can be adjudicated, we'll win out. We are less confident about overcoming the obstacles of the suit initially.

But no one has ever tried. If we lose on that motion to dismiss, that will not adversely affect your right to enabling legislation.

What is clear is that IF you do **nothing**, **nothing** is going to happen.

## Second Thoughts: In Case You Missed It

by Takako Kusunoki

**O**ne day last week I received a telephone call from a student who wanted some help with a school assignment. She was preparing a term paper on the wartime incarceration of Japanese Americans, and she needed some sources of information beyond those she had found on her own.

She went on to say how shocked she had been to learn of the 1942 roundup as there had been no mention of it in her school books. One of her teachers, she explained, knew about and discussed it in class, whereupon the student decided to use it as the subject of her term paper. Could I suggest some books or articles? I could and did, and suggested as well that she watch the program "Channel 2: The People" on May 8 for whatever help it might be, with the caveat that very careful attention must be paid to any statements made by John J. McCloy, the wartime Assistant Secretary of War, whose pronouncements on what he insists on calling the "relocation" of Japanese Americans never fail to outrage his Nikkei listeners.

**I HAD REASON** to recall the student's words about the gap in her history books this Sunday while skimming the main article in the Times' magazine section which was entitled "The New Asian Immigrants." The heavily illustrated article by Robert Lindsey contained this curt reference (barely a footnote) to the wartime internment of more than 110,000 persons.

"After Pearl Harbor pushed the United States into World War 2, sentiment against the Orientals intensified once again, and thousands of Japanese who lived on the West Coast were interned in prison camps.

But back to Mr. McCloy.

Whatever misgivings I had had about his appearance on the CBS program were somewhat dissipated about mid-way through the half-hour, by which time — without benefit of a written statement before him or an aide alongside — he had not only failed to justify what he blithely referred to as "the Japanese affair," he in fact had succeeded in leaving the viewer with the impression of a man who doth indeed protest too much.

Some of what he said:

"It was unpleasant, I'm sure... an inconvenience in many cases. But you must bear in mind, we were getting reports and threats. There were some barn burnings... local reprisals... there was such emotion over this whole affair, that we felt we'd relieve it by taking this step. I don't like to say we interned the Japanese. We attempted to relocate a certain segment of them which we thought were in strategically dangerous positions... along airplane

plants, big munition plants. People who made these decisions were humanitarians. They were some of the greatest patriots the country ever produced." [!]

**AT THAT INCREDIBLE** point, the program cut to Suki Port saying, "I suppose Japanese Americans... put in horse stalls, I suppose you call that humane. But I don't consider a family getting put into an empty horse stall that smells of horse dung and has large flies that bite people. I don't think that's terribly humane. And I think anybody who can glamorize living behind barbed wire..."

Cut to McCloy: "Maybe then barbed wire was more available than unbarbed wire. [!] But at any rate, it was a relocation effort and not an incarceration effort. You had to contain them because you had to register them. You had to keep a record of the thing.

Ports: "If (they) picked up all the Germans and all the Italians and also put them in camps, that would be something else; but no Germans and Italians were ever put into camps, so one has to believe that the whole policy which was very racist at the time, which was against the Japanese..."

McCloy: "... there were a whole lot more German Americans than there were Japanese Americans, and the German Americans were not concentrated in one spot in the first place... uh... and the Germans didn't attack us as a matter of fact."

Interviewer Marie Torre: "We were at war with them."

McCloy: "Uh... well, we weren't at war with them until the Japanese war started."

**LATER, MCCLOY REITERATED** his often-quoted "Everybody suffers in war," adding, "Are the men who are at the bottom of Pearl Harbor today in those battleships, are they adequately compensated for?"

Earlier in the program, he had said, "Those people who were subjected to the tortures and atrocities on the Philippine Islands, went through Okinawa... Iwo Jima... can you say they were adequately compensated for it? Of course you can't. You can't adequately compensate for all the sacrifices of war."

Even after all these years, he insists on comparing the treatment of prisoners of war overseas with the United States' handling of the "Japanese affair,"



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when the issue to which he displays such an infuriating blindness is the incarceration without cause by a government of its own citizens.

**THE CBS PROGRAM** began with Edward Ennis, the wartime Director of Enemy Alien Control for the Justice Department, saying, "The evacuation of the Japanese population on the West Coast was the greatest deprivation of liberty by this country since slavery. It was a colossal mistake."

Later, however, Mr. Ennis seemed to justify the internment of some Japanese on the East Coast on Ellis Island with the rather lame, "Any enemy alien who is a healthy man of military age in time of war was considered a risk." (Ah, but, again, why Japanese men specifically?)

Fred Noriega, the program's other interviewer, said pointedly, "This history of racism was at the root of their wartime treatment."

Mr. Noriega and Isaku Kida were shown looking for the room in a building on Ellis Island in which some of New York's alien Japanese were temporarily detained. Mr. Kida described the monotony of life inside the compound where virtually their sole occupation was working on crossword puzzles sent to them by Japanese church groups. He had been arrested a year after Pearl Harbor.

"I was not known as hostile to the United States... didn't belong to any nationalistic organizations," so that "even now," he said, he "cannot think why" he was arrested.

He recalled that after the start of hostilities, there was a huge loyalty parade organized by the city. German American and Italian groups were allowed to participate, but Japanese Americans were not allowed to participate."

**ANGUS MACBETH**, who asserted that "there's

no question" but that an injustice was done to the Japanese Americans, said, "I don't think, until you go back to chattel slavery, 120 years ago, that you find 100,000 people held like this without legal charges being brought against them.

The special counsel to the Commission on Wartime Relocation and Internment of Civilians added, "People are more shocked today... than they were at the time. (The Japanese Americans) clearly wanted to put it behind them and start their lives again. Now their children... want to go back and understand their own history and make the country understand that history so that as far as possible events like this wouldn't happen to them again, wouldn't happen to other Americans again."

**ON THE SUBJECT** of the formation of the all-Japanese 442nd Combat Team, Suki Ports declared, "The fact that there was a unit set aside for the Japanese Americans... you're immediately saying that these are a different class of citizens."

Asked Torre, "Would you have Japanese Americans fight Japanese? Would you've wanted that?"

Ports: "It was Americans fighting Japanese."

In his concluding remarks, Fred Noriega suggested that possibly there should be "a compromise"... consisting of "an apology, reparations or both." In any case, he said, "If the United States government did indeed make a mistake, it should be strong enough to stand up and admit it."

Said Marie Torre in her wrapup. "It is not within the province of this program to say whether there was a breach of Constitutional rights in the case of the Japanese Americans, but it is only fitting and proper for this program to focus on the joyous freedom of Americans to seek amends even 40 years after the fact."