National Council for Japanese American Redress

925 West Diversey Parkway, Chicago, Illinois 60614

April 7, 1982

Dear Friends,

UNITY is the name of a newspaper of the U. S. League for Revolutionary Struggle (M-L). The (M-L) stands for Marxist-Leninist. On the topic of redress, UNITY makes the appeal for "uniting for a common goal." A nice sounding phrase. There are many well-intentioned folk at the opposite end of the political spectrum who make the same appeal. And, of course, there are white liberals who warn us against the tactic of divide and conquer. We ethnics seem to need unity.

But at its center, the movement for Japanese-American redress has many diverse elements, each with its adherents. There is the National Coalition for Redress/Reparations (NCR/R), which, UNITY states, "is composed of community organizations, students, workers, church groups and professionals." (It also contains a healthy component of M-Ls.) One of its goals is to become a membership organization which would compete with the Japanese American Citizens League (JACL). Not quite two years old, NCR/R is pressing for a several billion dollar appropriations bill, which to date has the support of a single congressman, maybe.

Then there is, of course, the JACL, the largest and oldest group. The JACL is responsible for the Commission on Wartime Relocation and Internment of Civilians (CWRIC), which created lots of hoopla and media attention. It also stimulated serious proposals. The idea was to have the CWRIC conduct hearings and then propose recommendations to Congress. Curiously enough, on February 12, 1982, the JACL, through John Tateishi, announced its legislative proposal months in advance of the yet to be published recommendations. JACL's proposal is to have Congress make an appropriation for a trust fund from which individuals could claim compensation.

The CWRIC itself is an important element in the movement. Its hearings attracted wide attention on national network television, Asahi television in Japan, the New York Times and Washington Post, to name a few. The testimonies were historic. (However, there remains the question of whether those testimonies will ever be published in full.) The CWRIC served as a catalyst for other groups.

A recent addition to the movement is a proposal by Professor Peter Irons which seeks to vacate the convictions of Hirabayashi, Korematsu, and Yasui through the writ of coram nobis. The basis for this is the well-documented effort by agencies of the government to suppress evidence in their representation of the concept of military necessity to the Supreme Court. Coram Nobis, as I understand it, is like an appeal to re-open a case based upon new evidence. But it is an appeal made not during but after the sentence has been served. (Military necessity was supported by reports of shore-to-ship signallings and of radio transmissions from inland California to Japan. Both were found baseless, without substance, by the FBI and FCC, respectively. The reports remained unchallenged in the briefs filed with the high court.)

Finally, there is we, the National Council for Japanese American Redress (NCJAR). We have already made a substantial effort at redress legislation in Congress. This was the Lowry Redress Bill, with some 20 co-sponsors. It was defeated by the Commission proposal. We then turned our attention to the courts.

We have been seeking to initiate a class action lawsuit against the United States. It's been expensive and demanding. We have reached 75% of our goal of $75,000 for legal preparation. The preparation has proceeded with 1) a substantial search and collection of primary source, governmental documents, perhaps the largest undertaken on this topic; 2) the acquisition of the services of a topnotch law firm to perform the legal research and preparation; and 3) the co-operation with other elements, including the CWRIC and key individuals.

But are we unified? Have we the right to be Marxist-Leninists, Republicans, Democrats, Christians, atheists, Buddhists, or just plain laid back? Must we agree? The brunt of the burden, financial burden, of our lawsuit is being carried by a bare 500 persons, 20 of whom are <u>Ronin</u> contributors of $1,000 or more. We can make it with another 500 and another 27 <u>Ronin</u>. At 1,000 and 47 <u>Ronin</u>, we'd be about one percent of the class we represent. But that's all it takes to pull it off. There is no requirement that the class be unified. Those who wish not to be part of our class action may opt out, when and if we achieve our day in court.

One serious misconception is that disunity implies dissension and internecine warfare. We are not at war. NCJAR would welcome the support from all factions. We do, in fact, enjoy substantial support from many JACLers. And we do wish to co-operate with the Peter Irons proposal for <u>coram nobis</u> appeals. We will also continue to disagree and to criticize when such is indicated. We will continue to hear criticism directed towards us. And we will continue with the program which we think has the best chance of success, fully realizing that all efforts at redress are high risk ventures.

But while we do not concern ourselves excessively with unity, our Chicago board recently expanded and re-organized itself. At a special meeting convened on March 15th, Merry Omori was elected chairperson, Al Doyle, treasurer, and Yae Imon, secretary. We formed four committees: Administrative (finance, budget, legal, and mailing list), Promotion (fund appeals, public relations, and by-products), Newsletter (editing, artwork, printing, and mailing), and Research and Education (books, tapes, and archival materials). I remain national chairperson until we can convene a national organizational meeting and elect national officers.

While I do hope that the new board will relieve me of many tasks, I think its main value is the incorporation of new ideas and styles. More people will also give us better roots in the community. We went from a board of 6 or 7 people to 18 or 20. This development was a natural outcome of our active co-operation with the Chicago Ad Hoc Committee. The Committee became established in the backwash of the Chicago CWRIC hearings. It conducted several activities, the most ambitious being the commemoration of the 40th anniversary of the issuance of Executive Order 9066 on February 19th. It was an excellent program.

Merry Omori, our new Chicago chairperson, conceived and developed the program. Unfortunately, she could not be in attendance, so it was led by <u>Mary</u> Omori (no relation). The program was preceded by an exhibition of camp artifacts and by a showing of selected video tapes of the Chicago CWRIC hearings. The exhibition included a P-coat, some fine drawings and paintings, photos, yearbooks, poetry, woodwork, and other remembrances of the camp experience. The program itself was divided into the themes of remembering the event, the resistance, and the redress movement.

Professor Fred MacDonald of Northeastern Illinois University prepared an audio-visual montage of radio commentary, newspaper headlines, popular songs, funny paper clippings, plus his own comments, which helped to re-create the hysteria and hatred of the times. This was followed by opening remarks by Merry through Mary and a homily by Prof. Dan Kuzuhara of NEIU. Then William Hohri read the main portion of E.O. 9066. Yae Imon read poems from Mitsuye Yamada's excellent collection called Camp Notes.

The resistance, an all but overlooked and forgotten part of the internment experience, was brought to our consciousness by a forceful demonstration of the art of kendo (Japanese fencing) by Art Ogawa and Tom Okawara, while at the same time Mitsuye Hayashi prepared a flower arrangement of chrysanthemums. Then former Heart Mountain draft resister, Jack Tono, gave us a speech which many lauded as the highlight of the program. We were then led in a community sing of the Ballad of Joe Kurihara by Lydia Omori and friends.

Eddie Sato, who executed the design and construction of the posters and flyers, introduced the issue of redress by reading a statement by Edison Uno, founder of the current redress movement. This was followed by a panel discussion with two attorneys, Ben Zelenko and Ellen Godbey Carson, from the firm of Landis, Cohen, Singman and Rauh, who represent NCJAR in its class action lawsuit. Excerpts from the panel appear elsewhere in this issue. The panel was followed by statements from Prof. Shirley Castelnuovo of NEIU, Ron Yoshino of the JACL, Sam Ozaki and Sam Sato, both of the Chicago Ad Hoc Committee.

Without a doubt, the meeting was a huge success. The dining hall at Heiwa Terrace was packed with over 200 people. The panel discussion was continued in a more informal atmosphere on the next day at Parish of the Holy Covenant, our mailing address, with 40 to 50 people in attendance.

I think the people in Chicago have begun to realize that the NCJAR lawsuit is something that is going to happen. Now if we can only get the rest of the world to see the light. Spread the news, friends. Tell your friends what we're up to. There are still too many people who haven't the vaguest idea what's going on. Give us their names and addresses. And if you, dear friend, have not yet sent in your contribution, do it today. About half of the 1,000 or so who receive this newsletter have contributed. To paraphrase the great emancipator, we can't survive half free and half paid.

Peace,

William Hohri

William Hohri

Excerpts from the Panel Discussion of NCJAR's Lawsuit

with Ben Zelenko and Ellen Godbey Carson,

February 19, 1982, Chicago, Illinois

Question: Many of us are concerned about the viability of a lawsuit at this late date. Would you mind discussing some of the legal obstacles and how you plan to overcome them?

Zelenko: The issues of sovereign immunity and statute of limitations obviously are critical questions in mounting a successful lawsuit. One of the first questions we asked William Hohri when he first came to us was "Why wasn't a suit like this filed 40 years ago?" We're still searching for an answer to that question. Perhaps some of the answers to that question will help us get around the two main obstacles to the suit. We think that if we get into Court and stay in Court, we're very confident we can prevail on the substantive claims of constitutional deprivation.

The issue we're going to meet initially after filing the lawsuit will be a motion to dismiss because of sovereign immunity and because of statute of limitations. And we have been devoting a good deal of our time planning the ways and means of getting around the government's motion to dismiss. We made it clear at the very beginning that there are theories, perhaps theories that will be successful. We will do our utmost to make them successful. But there are no guarantees, because this is a very difficult lawsuit.

As we envision the suit now, it would be against the U. S. and possibly against named individuals who are still living and who were instrumental in effecting the evacuation and detention. Karl Bendetsen and John McCloy, for example. With respect to suits against individuals, there is case law that allows a constitutional tort to be litigated against an individual who was responsible for that and who served the U. S. as a federal official. The only issue again is that of statute of limitations. But there wouldn't be a question of sovereign immunity in respect to individuals.

In respect to the sovereign immunity of the U. S., the government courts have taken the position that -- a very strict instruction -- with respect to recovering money damages against the sovereign, unless the sovereign expressly consented to the suit. Our claims are going to be based on constitutional deprivation -- of mainly denial of equal protection and denial of due process. We're going to try, among other things, . . . for attainment of estoppel against the U. S.

. . . it has come to our attention, through research, that the Court on Korematsu may well have been misled by the Department of Justice, intentionally, as to the basis of military necessity -- for the claim of military necessity. One theory we would advance is that after Korematsu, no claim was asserted against the government because to Japanese Americans at large it would appear that the Supreme Court has validated evacuation and held it legal and it was thought there was no likelihood of success on Americans asserting a claim. That's a theory. So there's a theory of estoppel against the government on that ground.

Another ground would be -- and that would also apply to the statute of limitations -- the information we refer to has come to light very recently. For your information, (some of) the archival materials are still classified. Ellen Carson was at the Archives a few weeks ago and it seems that some materials could not be given to her because they're still subject to classification -- forty years later.

Lastly, the NCJAR has recommended to the Commission a statute, an enabling statute. This enabling statute would wipe out all of these obstacles. It would expressly grant jurisdiction to hear the claim on constitutional deprivation. It would waive sovereign immunity. It would waive statute of limitations. It would waive laches. It would waive all objections, procedural objections, to hearing the claim of constitutional deprivation.

Now it may be speculative -- it would be too remote -- to expect that Congress would ever enact such a bill. We have reason to believe that there is some support for that approach in the Commission. It's too early to know whether the Commission would recommend it. It has the advantage, because of the political nature of this issue. I use "political" in terms of the controversial nature of this issue. It would allow both the Commission and the Congress to turn this matter to the Courts to be adjudicated.

Question: What will be the elements of the court proceedings? Who will be the adversaries? Will there be a jury? How will the decision be argued and resolved?

Carson: I'm delighted to be here. The elements of court proceedings, as we see them, are -- first of all, when a lawsuit is filed by a complaint, a legal document, that arrives in court by hand, sets up positive action. Constitutional deprivation simply sets forth two of our major ones: Due Process, which is not adequate hearing or process determination, . . . (and) Equal Protection, which is the notion that a class of persons should not be treated differently because of characteristics (over) which they have no control.

Another portion of the complaint will set out who have been harmed. In this case, potentially 120,000 persons. The action is anticipated to be in the nature of a class action. The way this works is that some individuals will lend their actual names to the suit. They will be called representatives for the class action. The class action will be titled in their name(s). They will act on behalf of themselves and other persons similarly situated, so that we don't have thousands of persons in Court at one time.

(The) issue itself is something the Court will have to deal with at some point -- along with the motion to dismiss. These are the two things we see coming . . . after we file suit. One will be explaining why we think the whole issue of evacuation and detention should be heard. After all, it has been forty years. And one should not sue the government unless the government wants to be sued. As we try to explain away the legal bars, we also need to show that (the) class of persons that will join in the class action is an appropriate class; that the representatives can fairly and adequately represent the interests of the whole class; and that it will be a manageable type of lawsuit to take through a court system. One of the options will be that persons who don't care to participate . . . may exclude themselves.

If we can successfully argue that we should be able to have our case heard . . . what comes next is a hearing on the actual merits. The evidence that exists out here, the evidence that's in the documents, thousands of documents . . . collected for the U. S. government, that goes through what happened in . . . early 1942, when people were making decisions about what to do with the Japanese-American community -- that will form the whole substance of the claim there. If one is successful -- if the class is successful in that endeavor . . . to get a determination by the Court that there had been a constitutional deprivation, then, and only then, does the Court reach the issue of damages.

What's the nature of the injury? How great was it? Who had been hurt? What are the different manners and ways people were hurt? At that point different types of evidence would come in. What is the wrong? What were the conditions in the camps? What is it like to have three years of your life missing and unaccounted for in terms of normal American life?

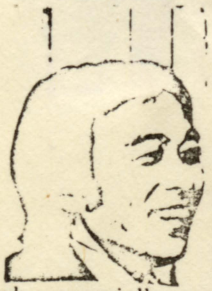
So . . . the trial . . . has some very concrete steps to it. One must (get to) the first state, in order to get to the second. (Then) to the third. And to the final determination on the merits. And then to the actual contemplation of reparation by the Courts . . .

As to the jury, juries are available in District Courts, where we would plan to file. They are not available in the Court of Claims, which is another optional place to be filing.

(to be continued)

2—PACIFIC CITIZEN / Friday, February 12, 1982

Redress Reports



REDRESS PHASE 3: by John Tateishi

Twin Goals

San Francisco

At the risk of treading over an oft-trod path, I think it would do us well to get clear in our minds what the JACL's position is on the compensation issue, and to clarify certain aspects of what we are seeking and why, especially now that we're looking ahead to a legislative campaign and future legislation on Redress.

To fully understand the JACL position on the Redress issue, you have to consider the guidelines adopted by National Council at both the Salt Lake City (1978) and Millbrae (1980) conventions. Although the Millbrae guidelines pre-empted the SLC document, the two should be read in conjunction with each other, for the intent of the Redress Committee at Millbrae was to broaden the language of the guidelines but still to adhere to the basic parameters established in 1978.

As stated by National Committee chair Min Yasui on numerous public occasions, the JACL advocates individual monetary compensation for those who were the victims of Evacuation. As willed by the National Council, we have not digressed from advocating individual compensation as one of our major goals for Redress.

We do not, however, intend to seek direct individual payment from the government but will advocate legislation which will place appropriated funds from Congress into a chartered trust or foundation from which individuals can be compensated.

Some will throw up their arms, I'm sure, with suspicious alarm at the suggestion of such a concept, but remember, this was part of the SLC guidelines. This concept has been part of the official JACL position for almost four years now. The basis for it is really quite simple.

Ever since SLC, the JACL's position has been to advocate both individual payments AND a community trust, for it was not only individuals who were adversely affected by the Evacuation, but our communities as well. If, however, we were to push for individual compensation by direct payment from the government, all funds not claimed (and I suspect there would be quite a few) by eligible individuals would revert back to the U.S. Treasury. It is our view that any such unclaimed amounts should stay with the community rather than be absorbed back into the Treasury.

An initial appropriation to a trust or foundation would insure this. Based on various formulae, which presumably would have to be determined by a representative board, individuals could submit claims for compensation. I would assume that priorities would be based on age, starting with the Issei and older Nisei, and as funds allow, others who were victimized by the Evacuation.

Initially, a proportion of those funds could be allocated for various community projects, such as retirement homes, community and cultural centers, scholarships, etc., and as requirements for individual payments become less over a period of time, larger proportions of the funds could be marked for the community on expanded programs.

At this time, we do not specify an amount which we feel to be appropriate as total compensation. If you recall, it was the JACL that first advocated the $25,000 figure, but our careful examination of the facts over the past four years has led us to conclude $25,000 may not be nearly adequate.

Yet, we face the same dilemma that anyone who seriously considers the issue must reach as a conclusion: an aggregate $3.2 billion is too large a figure to hope for from the Congress, however justified it may be. But $25,000 does not even begin to compensate us for the magnitude of the injustice.

And until we are able to examine the facts further—partly through the CWRIC report—we are unwilling to tie ourselves to a specific amount. It is my personal feeling that to do so may put too paltry a price on our loss of freedom. My knowledge of what happened behind the closed doors of government in 1942 convinces me that $25,000 is far too little.

The problem, of course, is what the Congress might be willing to provide in compensation for the Evacuation, and we won't know the answer to this until we seek legislation. We don't expect an easy or a quick solution, but we will continue to maintain the position of the organization as enumerated in the guidelines. #

THE NEW YORK NICHIBEI

3-11-82

NCRR Wants Bill to Grant Compensation And Community Funds

LOS ANGELES — The National Coalition for Redress/Reparations (NCRR) last month disclosed its recommendations for components of a reparations appropriations bill whose introduction in Congress next year it is urging the community to support.

What the NCRR is suggesting is legislation which would provide "direct, individual monetary compensation of a minimum of $25,000 per WWII internee, payable in one lump sum, free of administrative costs and exempt from taxes," as well as the establishment of a $3 billion community fund which would be administered by a Community Trust Fund Board to be elected by the Nikkei community on a regional basis. The costs of administering the fund would be borne by the government.

Conceding the difficulty of getting such a bill introduced and passed, NCRR member Steven Tatsukawa said,

"We believe that the American people can be educated about the massive miscarriage of justice to the Japanese American people and can understand that we are entitled to compensation and damages."

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JAPANESE AMERICAN REDRESS
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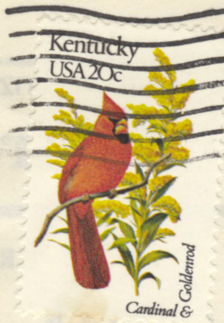

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4/82