National Council for Japanese American Redress

925 West Diversey Parkway, Chicago, Illinois 60614

September 15, 1982

Dear Friends,

August was the month to remember Hiroshima-Nagasaki and to be reminded how governments, like Japan's, want so much to clean up their self-image by revising their history. It was odd, on the one hand, to have Japanese Buddhist monks and nuns marching to remind Americans of the horror of nuclear war as their nation experienced it, while, on the other hand, to have officials in Japan's education department excising from their children's textbooks the horrors of Japanese military aggression and expansion of the thirties and forties. Certainly we need to be constantly reminded of the ghoulish brutality of our nuclear war against Japan. And South Korea, China, Taiwan, and other Asian countries are justifiably angered at the Japanese attempt at cosmetic revisionism. On a similar, albeit much lesser scale, we observed the same sort of revisionism within the Japanese American Citizens League.

Shortly after Pearl Harbor, according to records of the FBI, leaders of the JACL promoted the idea of identifying persons whom they considered dangerous to our national security. Some of this may have been justified. There may have been individuals who deserved special scrutiny by law enforcement agencies. In addition, the leaders were probably bowing to official pressure to prove their loyalty through informant activity. Though such activity was not confined to the JACL, their role was regretable. It oftentimes led to arbitrary seizure with a minimum of due process, if any. But even more regretable is the current effort by the JACL to expunge the record. At their National Convention held last month they said, in effect, that they didn't do it; that the activity was nothing more than unsubstantiated rumor; that the underdog JACL played no role in the whole, unhappy episode of exclusion and detention.

We really do need to learn from the lessons of the past. Japan's children need to know the dark side of their heritage, just as America's need to understand the trauma of slavery, of the Civil War and the Indian Wars, of the mass exclusion and internment of Japanese-Americans, and of the first nuclear war. As George Santayana wrote, "Those who cannot remember the past are condemned to fulfil it."

* * *

I am beginning to sense that our chances of getting into court may be improving. In our dialogue with our attorneys, we are beginning to see how the once formidable obstacles of the statute of limitations and sovereign immunity have cracks and chinks. The law is like the Great Barrier Reef. It seems immutable and rigid. But upon closer inspection, it is a living thing which gradually evolves within a lifetime.

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Just recently, there was a news story about the case of some Utah ranchers who lost a 1956 lawsuit against the Government in which they had charged that fallout from an atomic test had killed thousands of their sheep. On August 4, 1982, Judge A. Sherman Christensen ruled that the United States had pressured witnesses not to testify honestly and to make intentionally false or deceptive representations at the trial. If the ruling holds, another important change will have occurred in the law.

I also wonder if we do not need to realize that the courts are comprised of mortals such as we who must have a compelling self-image as dispensers of justice rather than mere umpires interpreting technical rules and who must therefore be placed in the soul-searching position of ruling on the appropriateness of a lawsuit with great judicial, social, political, and historical import. We, the plaintiffs, pray for redress of three years of false imprisonment -- which was clearly racial and supported by the demonstrably fictitious claim of military necessity. Could these mortals decide against hearing such a case on the grounds of procedural technicalities?

One reality that strikes home over and over again in my reading of the primary documents is the limitations the government suffered under and how necessary our own willingness to co-operate was to the speedy implementation of their program. Mitsuye Endo did not file for a writ of habeas corpus until July, 1942. As John J. McCloy said, "I'm surprised they haven't got one before." Both the WRA and the Dept. of Justice realized that their legal grounds for detention were shaky. When resistance began to form as a legal defense fund for Min Yasui, it was squelched by the leadership of the JACL, who characterized it as a "stab in the back."

Now in 1982 we are finally taking our case to court. At least some of us are. There are still nay-sayers and those who insist it is impossible or impractical. We even had people arguing against a lawsuit because we might lose. It has been up to a few of us to put up the money for legal preparation. We have now paid $60,000 of the $75,000 committed to our attorneys. (We still need your help. There is no one else to do it for us. It's up to us.) We have done our homework and become immensely enlightened. Our numbering of documents now reaches into the 20,000 level. We now see what the government did with such clarity -- the plots, tricks, frauds, and the blatant racism. Our court Complaint will state for the first time what our injuries are in detailed and documented allegations of fact and will specify 20 causes of action for the many violations by the Government of our constitutional and civil rights. Our demand is for $10,000 per cause of action, or $200,000 per victim in a class which numbers 120,000.

What we must constantly hold in our consciousness is the reality that this is all happening because we are acting, because we are seizing the time (to paraphrase both Dick Nixon and Bobby Seale), and because we are realizing our belief in who and what we are as persons, citizens, and as a nation.

Peace,

William Hohri

REDRESS PHASE 4: by John Tateishi

A Misconception

I often hear the comment at public forums on Redress that the United States government has a legal obligation to provide redress to the victims of the Evacuation because what happened to us in 1942 was unconstitutional. It's a popular misconception that is incorrect and misleading.

This is not to say that what happened to us wasn't wrong and that it wasn't unjust. There's no question that it was wrong. And there's no question that our basic constitutional rights as citizens and legal alien residents were violated. What are considered to be some of the most inviolate principles of American democracy—enumerated in the Bill of Rights—were consciously abridged in the government's actions in the Evacuation.

But this fact is complicated by the United States Supreme Court decisions in Korematsu, Hirabayashi and Yasui, by which the military and federal government imposition on Japanese Americans (as an inclusive group) was declared justified and within the legal powers of the government, and therefore constitutional.

Since in essence the Evacuation—i.e., the curfew, the exclusion, and the incarceration—were declared constitutional, we don't technically have a "legal" basis for seeking redress. Or to put it another way, the United States government doesn't have a legal obligation to provide redress.

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Unless the Supreme Court reverses the decisions on the Nisei cases, which is unlikely to constitutional attorneys with whom we've conferred, we don't really have a legal basis for seeking redress. But we are supported by the fact that constitutional experts since 1944 have recognized the Supreme Court decisions as some of the worst handed down by the Court.

Our basic premise is that there is a "moral" obligation on the part of the government to rectify the injustice of the Evacuation, that we were singled out for discriminatory action and victimized in an unconscionable manner by a government and a nation that prides itself on equality and individual freedom.

While we may not technically have a legal basis for seeking redress, it's quite clear that there was a grave injustice committed against us and that we are wholly justified in our course of action. #

3.

Letterbox

● NCJAR's initiative

Editor:

John Tateishi's column entitled "A Misconception" is a decorous, indirect, "high road" attack on the legal initiative of the National Council for Japanese Americans. The blusterous, "low road" attacks are made by his appointed counterpart, counselor Minoru Yasui, who recently characterized us as "hot-shots out of Chicago, Illinois." While your readers may be assured that these characterizations will not deter us from seeking justice through the courts, they need to be disabused of Tateishi's misconceived misconception.

Tateishi and Yasui, who may count among these "constitutional experts," seem not to understand that it is up to the injured party to initiate the remedy by filing a complaint and it is up to the government to respond, first by a vigorous defense by government counsel, then by a fair deliberation and an impartial adjudication by the courts. It is NCJAR's will to initiate a remedy for the many violations of the law and Constitution, most of which were not addressed in the Korematsu, Hirabayashi, Yasui, *and* Endo decisions. We are footing the bill for this out of our pockets. True, there is no "obligation" on the government's part to provide redress through the courts. But we can be assured that once our suit is filed the government will mount a vigorous defense and that the courts will have to ponder, once again, all the arguments presented and will have to render a decision.

Tateishi rather skillfully misleads the reader into believing that he is supported in his argument by constitutional attorneys and experts. But, on careful reading, these attorneys do not see the likelihood of a reversal of these landmark decisions and these experts merely recognize the ineptitude of the decisions themselves. *Neither the constitutional attorneys nor the experts, by Tateishi's own words, state that to seek redress through the courts is misconceived.* Quite the contrary. Of the many attorneys and law professors who testified before the CWRIC, not one stated that a legal initiative such as ours would be misconceived. The NCJAR initiative has been discussed with Justice Goldberg, Father Robert Drinan, and Judge William Marutani of the CWRIC and each expressed positive support. In a recent article in the Pacific Citizen, attorney Joseph Rauh indicated his positive support for a legal initiative such as ours.

So to what purpose, we must speculate, is the misconception put forth? There is a strong sense of *deja vu* to '42 when the JACL took the position of being "unalterably opposed to the test cases to determine the constitutionality of military regulations at this time." It also characterized the organization of a legal defense fund for Minoru Yasui—yes, the same—as a stab in the back. (Was it Santayana who wrote about repeating our mistakes when we ignore our history?) Partisanship may be the purpose. But why tromp on us? We have around 600 supporters. The JACL is some 25,000 members. We have deliberately remained a non-membership organization to avoid threatening the JACL and others. Certainly, there is no intent to threaten.

NCJAR has already tried the legislative route in 1980 and found great difficulty with it. Things have become much worse. Even the CWRIC may fall short of its mandated time through a shortfall of a few hundred thousand dollars. We moved towards the legal initiative at the urging of friends, some of whom are prominent in the JACL. The initiative is high-risk. We are fully aware of the legal obstacles that must be overcome, even though Tateishi seems not to be.

It is quite possible that we will fail. None of the constitutional test cases succeeded. (The Endo case succeeded in a sense, but 2½ years on a writ of habeas corpus appeal stretches the spirit of that constitutional requirement to the extreme.) If most of us would not resist the exclusion order, why could we not at least have supported the brave few who did resist? I suppose we could give the usual excuses. You know, we were too young and inexperienced. But what's our excuse today?

MERRY OMORI
WILLIAM HOHRI
Chicago, Ill.

Pacific Citizen
Aug. 6, 1982

THE NEW YORK NICHIBEI

Thursday, August 19, 1982

Disputes Tateishi on Right to Redress

In an article in the July 9 issue of the Japanese American Citizens League organ, Pacific Citizen, the JACL's redress program coordinator John Tateishi wrote, "...we don't technically have a 'legal' basis for seeking redress. Or to put it another way, the United States government doesn't have a legal obligation to provide redress."

He went on, "Unless the Supreme Court reverses the decisions on the [Korematsu, Hirabayashi and Yasui] cases, which is unlikely to constitutional attorneys with whom we've conferred, we don't really have a legal basis for seeking redress."

Already criticized by National Council for Japanese American Redress (NCJAR), which has launched a legal initiative to gain redress for former internees, Mr. Tateishi's comments are also now being disputed by a teacher and practitioner of constitutional law in the person of Daniel H. Pollitt, Graham Kenan Professor of Law at the University of North Carolina at Chapel Hill.

Professor Pollitt on August 6 sent the following letter to the editor of the Pacific Citizen:

"Dear Mr. Honda:

"I would like to comment on the article by Mr. John Tateishi in the Pacific Citizen of July 9 entitled "A Misconception." This article concludes that the United States has a moral, but not a legal obligation to provide redress for those incarcerated in the detention camps of World War II.

"This issue has weighed on me now for 40 years. In the early 1940's I was a Marine infantry officer in the Pacific; my mother was employed as an attorney for the War Relocation Authority. I sent my letters to her at such unlikely places as Topaz, Utah; Lamar, Colorado; and Gila, Arizona, where she was providing legal assistance to the detainees. Her replies to me in the Pacific were cheerful and supportive, but inevitably included a horror story of physical privation, of destruction of family integrity; sometimes of battlefield death in the 442nd Regimental Combat Team.

"I fully agree with Mr. Tateishi that what our government then did to those of Japanese ancestry was 'wrong,' was 'unjust.' However, I disagree with his premise that 'the Evacuation—i.e., the curfew, the exclusion and the incarceration — were declared constitutional,' and I disagree with his conclusion therefrom that there is no 'legal basis for seeking redress.' Here I speak as a student, a teacher, and a practitioner of Constitutional Law for most of my adult life: since I started law school in 1946 on the G.I. Bill (a law, incidentally, enacted by Congress to compensate veterans for their wartime privations).

"Mr. Tateishi is only partially correct in his legal summation of the *Hirabayashi* and *Korematsu* cases. Hirabayashi appealed from a three-month sentence for violating the curfew order. The Supreme Court affirmed his conviction because it refused to second-guess the opinion of the military authorities that the 'presence of an unascertainable number of disloyal members of the group' made it necessary to impose a curfew on all persons of Japanese ancestry even though most of them 'undoubtedly were loyal to this country.'

"In addition to the curfew, President Roosevelt had authorized General DeWitt to protect against 'espionage and sabotage' by designating 'military areas' from which persons might be excluded. Korematsu was convicted for failure to leave 'a military sensitive area,' i.e., the West Coast. The Supreme Court, again refusing to second-guess the presumed competence of the military, affirmed the conviction.

"It is important to note that neither the *Hirabayashi* nor the *Korematsu* decision concerned the legality of the continued detention once the move had been made inland to the detention centers. That issue came in a case called *Ex parte Endo*. Endo contested the right of the Government to keep her in confinement, and the Supreme Court ordered her released because there was no statutory authority by either the President or by Congress for her continued detention. The Supreme Court did not find it necessary to reach or decide any issue of constitutional dimension.

"But even if the decision in Endo had gone the other way; even if the Supreme Court had sustained the detention camps as constitutional, the matter of the legality of these wartime actions would not be ended. Law, like life itself, is always subject to growth and change. And much has happened since the 1944 decisions in the way of constitutional change. Then, children could be assigned to school on the basis of race; now they cannot. Then, men and women could be denied the choice to marry because of race; now they cannot. Then, Mexican Americans could be denied the privilege of jury service; now they cannot; Then, aliens could be denied public service jobs and benefits; now they cannot. Then, illegitimate children could be denied the right to seek compensation for the wrongful death of their mother; now they cannot. Then, women could be denied federal privileges because of their sex; now they cannot. Then, children could be forced to salute the flag over religious objection, or be required to join in a prayer not of their own choice; now they cannot. Illustration can be multiplied to demonstrate that even if the constitutional issue had been decided in the *Hirabayashi* and *Korematsu* cases (which it was not), it nonetheless could be reexamined today, free from the heavy racial prejudices of World War II.

"But why bother? Is this not all ancient history, a legal oddity standing alone in the tides of time? Unfortunately, not so. Mr. Justice Jackson warned in his *Korematsu* dissent that the decision 'lies about like a loaded weapon,' ready for the hand of any authority that can bring forward 'a plausible claim of an urgend need.' Moreover, as citizens, we should be concerned with cleansing the blot of the detention camps from our national honor.

"How might this be done?

"Congress and the President could admit the nation erred when it authorized the evacuation of all persons of Japanese ancestry from the West Coast; and could demonstrate sincerity by creating a commission or special court to determine individual claims for the denial of personal liberties. This is not without precedent. The Alien and Sedition Law was enacted in 1798 to assist the reelection of John Adams (the law made it unlawful to criticize the President). When Jefferson won the election, he pardoned those convicted under the law, and Congress reimbursed their fines. In the Civil War, President Lincoln issued blanket amnesty to those in the Confederate states who swore allegiance to the Government; and Congress authorized the recovery of their seized property by suit in the Court of Claims. In more recent years, Congress established the Indian Claims Commission to recompense Indian Tribes for losses resulting from long ago Treaty violation. Our history is replete with similar illustrations.

"Alternatively, survivors of the detention camps whose wounds, be they physical or psychic, have not yet healed, might file suit in court and seek damages for violation of their personal and civil rights.

"Is there a legal basis for seeking such redress? Mr. Tateishi thinks not; but no one can predict with certainty the outcome of future litigation. But we do know the issue is open, and we do know that there are worse things than pushing the 'moral' obligation of the government in all forums possible: one of these is to sit in comfort on the sidelines and leave it to others to fight the hard fight, the fight of the just."

DANIEL H. POLLITT

Address by Merry Omori, Chicago Chairperson, NCJAR, August 24, 1982

Good evening and welcome!

Good wine, good food, good friends and an excellent speech by William Hohri. You ask, "What more can I ask for?" Well, there is one thing more I can ask for, not just ask for, but demand, and that is reparation.

Long before I understood that there was a viable redress forum and movement, months before the formation of the Commission on Wartime Relocation and Internment of Civilians and the hearings, John's sister in Long Beach sent us a copy of a form -- a simple form, not very official looking -- consisting of a few lines, a couple of blanks to fill in. It was form requesting verification of the dates of internment during World War II. It asked for a birthdate, the name of the assembly center and the relocation center. John and I filled them out and mailed them in. In due course, about two or three weeks later, I went to the mailbox and there was an envelope with the return address: National Archives and Records Service, Washington, DC.

I sat there looking at it for a moment, somewhat hesitant about opening it. However, mustering up my courage, I opened it and read: Mary Fujihara entered Sacramento Assembly Center on May 15, 1942, transferred to Tule Lake Relocation Center on June 15, 1942, and left Tule Lake Relocation Center on August 15, 1945. As I held this innocuous paper in my hands, the significance of it overwhelmed me. It struck me. This is me. This actually happened to me. There is a record in the Government files attesting to the fact that I had actually been interned in a concentration camp!

Now, this is not to say that I had not realized it before. Of course, I knew I had been; it's not an episode in my life that I am likely ever to forget. But this unofficial looking paper, with dates and names written in by some bureaucrat's own hand, not even typed, was to me proof that I had been incarcerated and that someone had taken note of it.

What happened, of course, in those few minutes it took to digest the import of what was contained on that piece of paper was that my mind was mentally filling in all the details that spanned the years from December 7, 1941 to August 15, 1945 and beyond. The feeling of dread, the shame, the fear, my mother's death, the uncertainty of the times, the evacuation, camp life, the aftermath of all of it, the vivid images made tears well up and I cried. Was all this to be reduced to two or three lines?

For me, then, the mailing in of that form was the first step in getting actively involved in the redress movement. That first step led to many more steps.

I contacted the Commission and testified at the Chicago hearings. I participated in the pre- and post-hearing conferences held at Northeastern Illinois University. I went to Washington to listen to Government officials lie about their respective roles in the evacuation process. I joined the ill-fated and short-lived Chicago Ad Hoc Redress Committee. And I even appeared on some TV and radio talk shows and was interviewed for magazine articles. And since March of this year, I have been a member of NCJAR.

I first heard about NCJAR at a workshop organized by the Chicago JACL to prepare the testifiers for the Chicago Commission hearings. I was dissatisfied with the JACL's position, or, more accurately, lack of position and direction regarding redress. At the same meeting, I heard that a group, under the leadership of a William Hohri, was launching a lawsuit. The idea of a lawsuit appealed to me a great deal, scrapper that I am. So, I called William Hohri -- had a hard time finding him in the phone book because of the spelling -- to ask him what his group was doing. I was excited by what I heard. Their singleness of purpose seemed to me to be the most direct and straightforward approach for appropriate redress, at least the one I was looking for. Over the ensuing months, I learned a great deal from William about the real issues involved and the whole evolution of the redress movement. In his inimitable, persuasive manner he convinced me that the lawsuit was the choice for me -- the path for me to pursue redress.

Most of us here have taken that first step and many more. Commitment to the cause will find a way. The committed are willing to take the risk, knowing that the momentum of that first effort will carry us to the next step. But what of the others? Indifference and apathy will always find excuses, indifference and apathy will allow them to remain in the comfort zone. Do we have a right to remain in that comfort zone? Do we not have the responsibility, moral and legal, to seek justice for the excessive injustices we suffered at the hands of our government?

For the first time, the Nikkei community is being asked to speak. The silence is, unfortunately, resounding!

From the Administrative Committee:

Since May, 1982, the Chicago Board of NCJAR has grown in number with the recruitment of many new, concerned individuals. The Board elected Marian Fujii as treasurer. Harry Nagaoka, who had the dual role as treasurer of NCJAR and the Redress Legal Fund, continues as treasurer of the Fund, as well as maintainer of our precious mailing list.

One of the main purposes of NCJAR is to raise funds for the Redress Legal Fund. This absorbs a considerable amount of time, energy, and expense. The two entities are closely related. But the Redress Legal Fund, as a program of the United Methodist Church, may receive its contribution as tax deductible, while NCJAR has yet to achieve this status. The Fund's monies are deposited with the United Methodist Foundation, where they earn money market interest rates. NCJAR's monies are held in a NOW account so that interest may be earned.

Recently, the Committee obtained its corporate seal and its Federal identification number. In addition, thanks to Bob Imon, NCJAR now has third class mailing privileges, which will reduce postage on mass mailings by about one half. Your newsletter will take a little longer to reach you, but at less cost.

NATIONAL COUNCIL
FOR JAPANESE AMERICAN REDRESS

BENEFIT CONCERT

omoide

(A CONTAINMENT OF MEMORIES)

Saturday
October 23, 1982
8:00 P.M.

Marina Bales Ozaki - pianist

Edward Ozaki - tenor

Hinae Nakazawa - soprano

June Oda - pianist

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