Japanese Latin American Commission Bill: Commission on Wartime Relocation & Internment Hearings

COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS ACT

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 1647

MARCH 18, 1980

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE

63-293 O WASHINGTON : 1980

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CONTENTS

WITNESSES

MARCH 18, 1980

COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS ACT

TUESDAY, MARCH 18, 1980

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The committee met at 2:03 p.m., in room 3302, Dirksen Senate Office Building, Hon. Henry M. Jackson presiding.

Present: Senators Jackson, Levin, and Mathias.

Also present: Senator Matsunaga.

OPENING STATEMENT OF SENATOR JACKSON

Senator JACKSON. The committee will come to order.

Today the committee will receive testimony on S. 1647, a bill to establish a factfinding commission to determine whether any wrong was committed against Japanese Americans during World War II, pursuant to Executive Order 9066.

The commission would also be charged with recommending appropriate remedies, if any, for those interned. The legislation would not authorize any compensation for internees at the present time. It would establish, however, a mechanism for examining Executive Order 9066, the circumstances surrounding its implementation, and the appropriateness of compensation or other remedies for those whose lives were affected by the order.

Several of the witnesses who will testify today were residents of the relocation camps during World War II.

Many years have passed, but time has not dulled the memories of those who lived through and felt the effects of that experience. It is time to deal with the consequences of Executive Order 9066 and put this chapter in our history behind us, once and for all.

Senator Levin has a brief statement, and then I am going to call on the House Majority Leader, Jim Wright. Senator Matsunaga will be arriving later and will make a statement.

I might say that Senator Inouye is ill today and called me to advise that he is unable to be present. We will place in the record his statement in support of the pending legislation.

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT BY SENATOR DANIEL K. INOUYE

Mr. Chairman and members of the committee, I am pleased to be here this afternoon to testify on behalf of my bill, S. 1647, the Commission on Wartime Relocation and Internment of Civilians Act.

The subject—the relocation and internment of 120,000 American citizens and permanent resident aliens—has been considered by numerous scholars and addressed in many editorials and learned articles. It has been the subject of much debate.

Members of Congress are not strangers to what this issue involves.

I hope that this committee and this Congress will consider this measure with favor and thus serve to close this sad chapter in American history.

Senator JACKSON. Senator Levin?

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. First, let me commend you for the leadership role you are taking on our committee on this matter. It is a critical one, certainly, and one I think there is a great deal of support for in the U.S. Senate.

Surely one of the most depressing chapters of American history occurred when our Government decided to relocate and intern approximately 120,000 Japanese Americans in the aftershock of Pearl Harbor. The camps we created at that time were initiated by Executive order and ultimately sanctioned by the Court. That order and sanction, however, came in a time warped by fears and war hysteria, and in a place colored by ancient prejudices.

I would hope that in these times we can re-examine that episode in our history, try to understand it, and in the words of the legislation before us, determine whether a wrong was committed, and recommend appropriate remedies.

The legislation calls upon us to come to grips with what we did, to look at our behavior from the vantage point of 38 years, to evaluate the motive of our policy and the morality of our acts.

It may be that such an evaluation will not reveal any basic flaws in the course we pursued, although I rather suspect that in the light of an objective appraisal, we will find that American policy in that time was devoid of a compelling motive, and was without a valid, moral justification.

If the commission envisioned by this legislation so finds, it can recommend ways to try to make up for this not-so-ancient wrong. This is a chapter in our national life which we cannot afford to ignore any longer. We condemned 120,000 civilians to prisoner-of-war type camps, and we need to come to grips with that fact. We need to understand it in order to be worthy of our being designated seekers of justice. We need to understand it so that we can use our knowledge if we face similar situations again. And we may indeed face such situations. Events in Iran present a possible parallel which we ought to be aware of as we move into these hearings.

In response to the seizure of our Embassy and taking of hostages there, public pressure for some dramatic act against Iranian citizens living here mounted, such as placing them all under detention. The review of student visas which was undertaken was clearly and wisely a more restrained response than relocation centers. But there was a national feeling for retaliation by detention which had to be overcome.

We need to be aware of that feeling and that fear to fully understand its most dramatic manifestation.

The study proposed by this legislation, which I am proud to cosponsor, will help us do just that. As a matter of simple equity, I believe we owe it to those who we put into the camps to review our action. As a matter of simple education, I believe we owe it is their descendants to understand those acts. As a matter of simple justice, I believe we owe it to ourselves to understand what we did and why.

Justice cannot triumph if past injustices are bottled up. When injustice is held up to the light of day and acknowledged, even if it is too late to be totally corrected, the result can ennoble those who wrongly suffered and help cleanse the larger community of which they are a part.

This legislation, Mr. Chairman, is a mild and very reasonable step toward that goal. It cannot redress the wrong we have committed but it does help us recognize it and perhaps in some way to make up for it. That is the least we can do, and it is what we ought to do now.

Again I want to commend you, Senator Jackson, for your leadership role on this committee in chairing these hearings, which I think are such a critical step toward correcting this injustice.

Senator JACKSON. Thank you, Senator Levin, for a very fine statement.

Senator Matsunaga will be here in due course, and we will call on him when he gets here.

I would like now to call on the House majority leader, Congressman Jim Wright and Congressman Norman Mineta. I think they both can come up, if you don't mind, at the same time.

Representative WRIGHT. My colleague, Mr. Matsui.

Senator JACKSON. Mr. Matsui, will you join us. We will have all three at one time.

Congressman Wright, we are delighted to have you and your colleagues with us.

TESTIMONY OF HON. JIM WRIGHT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS; HON. NORMAN Y. MINETA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; AND HON. ROBERT T. MATSUI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Representative WRIGHT. Thank you very much indeed, Mr. Chairman.

Thirty-eight years have passed since the U.S. Government ordered the internment of thousands of American citizens on no other ground than their racial heritage. They were effectively incarcerated solely because their ancestry was Japanese.

Like the suspension of habeas corpus by Abraham Lincoln during the Civil War, this act was one of those grotesque aberrations of the American politican system—one of those outrageously wrong things that we do in moments of great national stress, and which we later regret.

There is no way in which we can ever repay those proud and loyal Americans for having questioned their patriotism. We cannot give them back the months of their lives nor redress the shame to which we subjected them by impugning their loyalty to this land.

The best we can do, therefore, is to take notice that what we did under the severe pressure of that wrenching emergency was completely out of character for us—to apologize to those on whom we afflicted the insulting assumption of their disloyalty, and to avow that never again will any group of American citizens be subjected to such humiliations on grounds no more valid than the blood that runs in their veins.

With still remembered pain, I recall reading from the Southwest Reporter in 1944 the digest of the Supreme Court's ruling in this case. I had just returned from a tour of military duty in the Pacific where I had participated in combat missions against the armed forces of Japan. But I could not agree with that ruling. Ingloriously and to our everlasting shame, the Court upheld as constitutional the act of our Government in rounding up the Japanese American citizens, almost as though they were cattle, and herding them into corrals. Barely more than 21 years of age at the time, I knew nevertheless that the ruling of the U.S. Supreme Court on that occasion was temporizing with eternal truth. I swore then that whenever I had a chance to do so, I would speak out against it. For it was an unconstitutional and unconscionable undertaking, totally inconsistent with our most fundamental precepts. It deserves to be condemned today, just as it deserved to be condemned even then.

During World War II, American citizens of Japanese ancestry established a record of patriotism unexcelled by Americans of any other racial strain. Hawaii's native son battalions endured the heaviest battlefield casualties of any American field unit. Theirs justly became the most highly decorated organization in the entire history of the U.S. Armed Services.

Many of my very good and close friends in Texas who served in the 36th Division during World War II owe their lives to the selfless, heroic and sacrificially patriotic devotion of the men of the 442d Infantry Regimental Combat Team. Those Americans of Japanese ancestry who comprised that unit broke through the enemy lines in Italy after other units had failed and, at great cost to themselves, they rescued that substantial part of the 36th Division which had found itself trapped and surrounded. No Texan and no American should ever forget that act of marvelous heroism.

In our unreasoning fear and misguided zeal at the outset of World War II, we did a great disservice to our fellow Americans of Japanese heritage those 30-odd years ago. At the very least, we now should say that we are sorry. We might recall in this connection the words of Abraham Lincoln who said:

> Those who would deny freedom to others do not deserve it themselves. And, under a just God, they will not long retain it.

Senator JACKSON. Thank you, Congressman Wright, for an excellent statement.

Congressman Mineta, we are delighted to have you here, as well as your colleague, Congressman Matsui. I call on you next.

Representative MINETA. Thank you very much, Mr. Chairman and members of the committee.

I want to thank you for allowing us the opportunity to appear before you today to discuss S. 1647, a bill to create a Commission on the Wartime Relocation and Internment of Civilians.

As one of the 110,000 persons of Japanese ancestry who were evacuated from our homes and placed in internment camps as a result of Executive Order 9066, I have given much thought to the implications of this experience. At the time of the internment, back in 1942, although I was too young to experience the frustration and confusion that my elders felt so strongly, I was old enough to know that Executive Order 9066 set into motion a puzzling and serious

chain of events that profoundly affected the lives of many loyal resident aliens and American citizens.

In the ensuing 38 years since the time we were sent to the camps, we have often discussed the meaning of this experience and have time and time again agreed that as citizens, we have a special responsibility to insure that no person—citizen or resident alien—is ever again subjected to such an order. We now feel that our best hope of conveying the true message of the internment experience is through the establishment of a Presidential Commission, with the primary goal of educating the American people. The questions we believe the Commission must ask are things like: What caused the evacuation and internment? Was it necessary for the security of our Nation in a time of war? What effects did the experience have on those who were interned? And, most importantly, how can we prevent its ever happening again?

We would all agree that the idea of setting up a commission to study a problem in our society is not new or radical. To name just a few during the past 20 years, we have had commissions to study urban riots, violence in our society, and campus unrest. For the most part, these commissions have been surprisingly successful.

For example, in 1968, the Kerner Commission on Urban Riots and Racism issued a report that contained a rather startling message: That white America was largely responsible for the urban riots which tore our cities apart in the 1960's.

This official document—which, by the way, sold over 2 million copies—gave an official legitimacy to the ideas of people who had been considered outside the mainstream of public opinion. The findings of the Kerner Commission forced us to realize the part our attitudes played in fueling racial tensions, and, most importantly, they contributed to changing America's attitudes.

In the late sixties, the Eisenhower Commission on Violence had a profound effect on the American people with its message that police brutality was responsible for a great deal of violence in our society. Again, this Commission's report lent legitimacy to the message of minorities and dissidents that police brutality had reached tremendous proportions. And, once again, America took note: The report found its way into the nightly news and onto drugstore racks. Scholars have even said that by uncovering the roots and causes of violence in our society, the Commission created a new field of study.

Then in 1970, the Scranton Commission on Campus Unrest examined the killings of students at Kent State and Jackson State. Its message was very simple, yet very memorable: The killings were unnecessary, unjustified, and inexcusable. Its recommendations were equally simple: We need a return to restraint and Presidential moral leadership.

Mr. Chairman, and members of the committee, the messages and benefits of these Commissions can easily be related to what we hope to accomplish through a Commission on the Relocation and Internment. It would provide an important framework for a factual discussion of this sad chapter in our not-so-distant past. Such a comprehensive study is long overdue. Instead of focusing on second-hand accounts, inaccuracies, and accepted myths, the Commission

will force us as a society to concentrate on the facts: What really happened, and what were the consequences?

In addition, the work of the Commission will educate or remind people about an event they may not remember or know much about. It came as a surprise to me to realize that only one Member of Congress currently serving was in office back at the time of the internment in 1942. There are hundreds of thousands more citizens and public officials who are too young to remember much about the internment. And the history books in our schools are notorious for their lack of mention of the evacuation and internment.

Mr. Chairman, I am convinced that the message we hope to publicize has meaning for every citizen in our country, regardless of race, ethnic background, or religion.

My message today is this: What happened in 1942 can happen again. Civil liberties cannot be taken for granted. Our greatest hope is that the knowledge gained from the proposed commission will guarantee that this tragic abuse of civil rights will never occur again.

Thank you very much.

Senator JACKSON. Thank you for an excellent statement.

Congressman Matsui, we are delighted to welcome you to the committee.

Representative MATSUI. Thank you, Mr. Chairman, Mr. Levin, Mr. Matsunaga.

I have a prepared statement. I would like to submit that statement for the record.

Senator JACKSON. It will be included as if read, at the conclusion of your testimony.

Representative MATSUI. I would only like to add a very few things to what the distinguished Majority Leader, Mr. Wright, and Mr. Mineta have just said. Those that will follow me this afternoon will undoubtedly have sociological, historical and legal reasons to have the Commission set up and for passage of this bill and the bill on the House side.

As a freshman Member of Congress, I am here not so much to speak as a Member, but as an individual who was born in 1941 and who, when I was 6 months old, was sent with my mother, my father, my grandmothers and their immediately family to the Heart Mountain Relocation Camp. I spent my next 4½ years in those camps, and I must admit, I don't have any firsthand or personal knowledge of what went on in those camps. I was of the age that my memory would not serve me right today.

At the same time, during my younger days, when I was in high school and in college, I detected in my own personality a sense that I did not want to discuss or talk about the experiences of 1941 to 1945. I noticed among other Japanese American colleagues my same age that they felt very similarly. I suppose the reason for it was very aptly stated by Edison Euno, who was a member of the Japanese American Citizens League, who died some 4 or 5 years ago, and who did historical research on the Japanese and what happened during the war to them. He aptly stated that the Japanese-Americans were a little like victims in a rape. They were the ones who were embarrassed. They were the ones who suffered the indignities, but left with very permanent scars. It was very difficult

for us to come out and discuss our experiences. And that really held true with my parents, also. My mother tells me she has nightmares once a week or more often when she thinks about those camp days, but she is reluctant to tell my sister and I about what happened.

When I tried to discuss with my father on occasions when I was younger, about what happened in the camps, he would just say it was terrible, "but I really don't want to talk about it because these scars are still with me."

The reason I bring this up, Mr. Chairman, Senators, is because I think one of the important aspects of this Commission and the study that will go on will not only overturn the *Korematsu* case, which held the relocation of the Japanese American descendants was legal, but it will also give a perspective to my children, the many of us who suffered those indignities and perhaps our grandchildren. I think it is very important for us today in the 1980's to recognize that what went on in the past will undoubtedly affect us in the future.

Senator Levin, in his opening remarks, aptly, correctly made the statement about what happened on November 4 of last year, and the public anxieties and sentiments now of the talk of rounding up Iranians and putting them in similar internment camps. I think a historical perspective done by the U.S. Government as an objective body will lay to rest those kinds of statements which I consider to be irrational and irresponsible.

So I think it is very important for this body and the body on the House side to not only adopt this Commission, but put a mandate on it that the study will be objective and fair so that all Americans, perhaps all people of the world, since our world is so small today, will have an opportunity to look at and to judge what went on and what went wrong, and at the same time make sure that it never happens again in the future.

Thank you very much.

[The prepared statement of Congressman Matsui follows:]

PREPARED STATEMENT OF CONGRESSMAN ROBERT T. MATSUI OF CALIFORNIA

Mr. Chairman, distinguished members of this committee, thank you for affording me the opportunity to testify before you today as you consider this important legislation, S. 1647.

Thirty-eight years have passed since President Roosevelt signed Executive Order 9066, which broadly authorized any military commander to exclude any person from any area. This delegation of Presidential power to the military led ultimately to the relocation and incarceration of more than 110,000 persons of Japenese ancestry during World War II.

Congress was also involved in this decision, validating the Presidential action by imposing criminal penalties for violation of the Executive Order. This role certainly should not be ignored as the United States reassesses its actions during this period.

Historians, academicians and constitutional law authorities, as well as those who suffered the injustices and indignities of being uprooted and forced to evacuate with only a few days notice to "internment centers," have attempted to explain the rationale and consequences for the government's action during the early months of America's involvement in World War II.

Thirty-eight years have passed, and the American people still do not know how the decision to evacuate and intern persons of Japanese ancestry was made at the highest levels of government.

As a Member of Congress, I believe it is the responsibility of the legislative branch to take the initiative and leadership to reexamine the past courses of government action which have impacted negatively on our democratic process. I

believe it is the inherent responsibility of our government to ensure the rights of those who are most vulnerable to violation of basic civil protections.

Mr. Chairman, passage of this legislation would allow for the first time Federal examination of the serious economic, social, and psychological implications of the incarceration of loyal Americans during the early stages of World War II. However, equally important, passage of this bill would signal the Federal government's willingness to constructively examine errors of the past, and to define clearly its role and responsibilities in the future.

Thank you.

Senator JACKSON. Thank you, too, for a very fine statement. Are there any questions? We appreciate your coming over, especially you, Mr. Majority Leader. We know you are all busy over on the other side. Thank you very much.

I am going to call on Senator Matsunaga. I have asked him to sit with us here today. He was to have made an opening statement and was detained. He also has so many guests for lunch. We read about you in the paper.

Senator MATSUNAGA. Thank you very much.

Senator JACKSON. That was a good story. Did you arrange it at one of those luncheons?

STATEMENT OF HON. SPARK MATSUNAGA, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator MATSUNAGA. Before I proceed, I wish to thank Majority Leader Wright for his statement and Congressmen Mineta and Matsui for having taken the time out to come over to this side of the Congress to testify. I think each of you made an excellent statement in appeal. I am sure the committee will be moved to action by your statements.

Senator JACKSON. Senator Matsunaga, you may testify up here.

Senator MATSUNAGA. Thank you, Mr. Chairman. With your permission I will testify from here. That is one of the advantages of being a Senator.

Representative WRIGHT. Thank you very much, Mr. Chairman. Thank you for your understanding.

Senator MATSUNAGA. Mr. Chairman, I welcome this opportunity to join such a distinguished panel of witnesses in urging that early and favorable consideration of S. 1647. S. 1647 provides for the establishment of a Federal Commission to study, in an impartial and unbiased manner, the detention of civilians under the provisions of Executive Order 9066 during World War II.

Some of those who are here today will recall with great clarity the atmosphere which prevailed in the United States following the attack on Pearl Harbor on December 7, 1941. Rumors were rampant that Japanese warplanes had been spotted off the west coast and erroneous reports of followup attacks on the U.S. mainland abounded. A great wave of fear and hysteria swept the United States, particularly the west coast.

Some 2 months after the attack on Pearl Harbor, in February 1942, President Franklin D. Roosevelt issued Executive Order 9066. The Executive order gave to the Secretary of War the authority to designate "military areas" and to exclude "any or all" persons from such areas. Penalties for the violation of such military restrictions were subsequently established by Congress in Public Law 77-503, enacted in March of that year.

Also in March, the military commander of the western district—General John L. DeWitt—issued four public proclamations, and it was under those proclamations that the first civilian order was issued by the general on March 24, 1942, which marked the beginning of the evacuation of some 120,000 Japanese Americans and their parents from the west coast.

It is significant to note that the military commander of the then-territory of Hawaii, which had actually suffered an enemy attack, did not feel it was necessary to evacuate all individuals of Japanese ancestry from Hawaii—although it is true that a number of leaders in the Japanese American community in Hawaii were sent to detention camps on the mainland.

Moreover, no military commander felt that it was necessary to evacuate from any area of the country all Americans of German or Italian ancestry, although the United States was also at war with Germany and Italy.

FBI Director J. Edgar Hoover, who could hardly be accused of being soft on suspected seditionists, opposed the evacuation of Japanese Americans from the west coast, pointing out that the FBI and other law enforcement agencies were capable of apprehending any suspected saboteurs or enemy agents.

I might point out that whenever I criticized the FBI, the late J. Edgar Hoover was quick on the telephone to remind me that he opposed the evacuation of Japanese Americans from the west coast.

Indeed, martial law was never declared in any of these western States and the Federal courts and civilian law enforcement agencies continued to function normally.

You will be interested to know, Mr. Chairman, as a Senator from the State of Washington, that one of the real strong defenders of the Japanese Americans during this distressing period in their lives was the mayor of Tacoma, Wash., the Honorable Harry Cain. One western Governor, the Honorable Ralph Carr of Colorado, was willing to accept Americans of Japanese ancestry as residents of his State and undertook to guarantee their constitutional rights.

Of the 120,000 Americans of Japanese ancestry and their parents who were evacuated from the west coast and placed in detention camps, about one-half were under the age of 21; about one-quarter were young children; many were elderly immigrants prohibited by law for becoming naturalized citizens, who had worked hard to raise their American-born children to be good American citizens. Not one, I repeat, not one, was convicted or tried for or even charged with the commission of a crime.

As a consequence of their evacuation, they lost their homes, jobs, businesses, and farms. More tragically the American dream was snuffed out of them and their faith in the American system was severely shaken. Reportedly, one of the evacuees, a combat veteran of World War I, who fervently believed that his own U.S. Government would never deprive him of his liberty without due process of law, killed himself when he discovered that he was wrong.

In retrospect, the evacuation of Japanese Americans from the west coast and their incarceration in what can only be properly described as concentration camps is considered by many historians as one of the blackest pages in American history. It remains the

single most traumatic and disturbing experience in the lives of many Nisei.

Some, now middle-aged and older, still weep when they think about it. Some become angry. And some still consider it such a degrading experience that they refuse to talk about it. More importantly, their children have started to ask questions about the internment of their parents and grandparents. Why didn't they "protest?" Did they commit any crimes that they are ashamed of? If the Government was wrong, why hasn't the wrong been admitted and laid to rest forever?

No branch of the Federal Government has ever undertaken a comprehensive examination of the actions taken under Executive Order 9066. In 1943 and 1944, the U.S. Supreme Court did hear three cases involving the violation of the Executive order. In *Hirabayashi* v. *United States* (1943) and *Korematsu* v. *United States* (1944), the Court ruled that an American citizen could be restrained by a curfew and could be excluded from a defined area. However, in *Ex parte Endo* (1944), the Court held that neither the Executive order nor act of Congress authorized the detention of an American citizen against her will in a relocation camp.

In 1972, the Congress repealed the Emergency Detention Act, a repugnant law enacted in 1950 which provided a procedural means of incarcerating Americans suspected of espionage or sabotage during an internal security emergency in camps similar to those established for Japanese Americans in World War II.

In 1975, President Ford revoked Executive Order 9066, and Congress repealed Public Law 77-503, and a host of other outmoded emergency war powers granted to the President on a temporary basis since the Civil War.

Despite these commendable actions, many unanswered questions remain about the detention of Japanese Americans during World War II, and there remains an unfinished chapter in our national history.

In recent years, the issue of how to write "The End" to this sad and unsavory episode has been widely discussed in the Japanese American community. From time to time, reports that the Japanese Americans might be preparing to request monetary reparations have been floated in the national press.

Some members of the Japanese American community do believe that the Federal Government should provide some form of monetary compensation to redress them for the injustice they suffered. However, members of this committee ought to know that an almost equal number maintain that no amount of money can ever compensate them for the loss of their inalienable right to life, liberty, and the pursuit of happiness, or the loss of the constitutional rights.

The proposed bill is not a redress bill. Should the Commission authorized to look into the matter decide that some form of compensation should be provided, the Congress would still be able to consider the question and make the final decision. Whether or not redress is provided, the study undertaken by the Commission will be valuable in and of itself, not only for Japanese Americans, but for all Americans.

Passage of S. 1647 will be just one more piece of evidence that ours is a Nation great enough to recognize and rectify its past mistakes.

Thank you.

Senator JACKSON. Thank you, Senator Matsunaga, for that moving and well-reasoned statement.

[The prepared statement of Senator Matsunaga follows:]

PREPARED STATEMENT BY SENATOR SPARK MATSUNAGA

Thank you, Mr. Chairman, I welcome this opportunity to join such a distinguished panel of witnesses in urging that early favorable consideration be given to S. 1647. S. 1647 provides for the establishment of a federal commission to study, in an impartial and unbiased manner, the detention of civilians under the provisions of Executive Order 9066 during World War II.

Mr. Chairman, some of those who are here today will recall with great clarity the atmosphere which prevailed in the United States following the attack on Pearl Harbor on December 7, 1941. Rumors were rampant that Japanese war planes had been spotted off the West Coast and erroneous reports of followup attacks on the U.S mainland abounded. A great wave of fear and hysteria swept the United States, particularly the West Coast.

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Also in March, the Military Commander of the Western District (General John L. DeWitt) issued four public proclamations as follows:

Proclamation No. 1 divided the States of Washington, Oregon, California and Arizona into two military areas and established "restricted zones" in those States.

Proclamation No. 2 established four additional military areas in the States of Idaho, Montana, Nevada and Utah.

Proclamation No. 3 instituted a curfew in military area number one for all enemy aliens and "persons of Japanese ancestry," and placed restrictions on their travel within the military area even during non-curfew hours.

Proclamation No. 4 forbade all aliens of Japanese ancestry and all American-born citizens of Japanese ancestry to leave military district number one.

The first "Civilian Exclusion Order" was issued by General DeWitt on March 24, 1942 and marked the beginning of the evacuation of 120,000 Japanese Americans and their parents from the West Coast.

It is significant to note that the Military Commander of the then Territory of Hawaii, which had actually suffered an enemy attack, did not feel that it was necessary to evacuate all individuals of Japanese ancestry from Hawaii—although it is true that a number of leaders in the Japanese American community in Hawaii were sent to detention camps on the mainland.

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hard to raise their American-born children to be good American citizens; not one was convicted or tried for, or even charged with the commission of any crime.

As a consequence of their evaucation, they lost their homes, jobs, businesses, and farms. More tragically the American dream was snuffed out of them and their faith in the American system was severely shaken. Reportedly, one of the evacuees, a combat veteran of World War I, who fervently believed that his own U.S. Government would never deprive him of his liberty without due process of law and, when he discovered that he was wrong, he killed himself.

In retrospect, the evacuation of Japanese Americans from the West Coast and their incarceration in what can only be properly described as concentration camps is considered by many historians as one of the blackest pages in American history. It remains the single most traumatic and disturbing experience in the lives of many Nisei. Some, now middle aged and older, still weep when they think about it. Some become angry. And some still consider it such a degrading experience that they refuse to talk about it. More importantly, their children have started to ask questions about the internment of their parents and grandparents. Why didn't they "protest?" Did they commit any crimes that they are ashamed of? If the government was wrong, why hasn't the wrong been admitted and laid to rest forever?

No branch of the federal government has ever undertaken a comprehensive examination of the actions taken under Executive Order 9066. In 1943 and 1944, the U.S. Supreme Court did hear three cases involving the violation of the Executive Order. In *Hirabayashi* v. *United States* (1943) and *Korematsu* v. *United States* (1944), the Court ruled that an American citizen could be restrained by a curfew and could be excluded from a defined area. However, in *Ex parte Endo* (1944), the Court held that neither the Executive Order nor Act of Congress authorized the detention of an American citizen against her will in a relocation camp.

In 1972, the Congress repealed the Emergency Detention Act, a repugnant law enacted in 1950 which provided a procedural means of incarcerating Americans suspected of espionage or sabotage during an internal security emergency in camps similar to those established for Japanese Americans in World War II. In 1975, President Ford revoked Executive Order 9066, and Congress repealed Public Law 77-503, and a host of other outmoded emergency war powers granted to the President on a "temporary" basis since the Civil War.

Despite these commendable actions, many unanswered questions remain about the detention of Japanese Americans during World War II, and there remains an "unfinished" chapter in our national history. In recent years, the issue of how to write "The End" to this sad and unsavory episode has been widely discussed in the Japanese American Community. From time to time, reports that the Japanese Americans might be preparing to request monetary reparations have been floated in the national press. Some members of the Japanese American community do believe that the federal government should provide some form of monetary compensation to "redress" them for the injustice they suffered. However, members of this committee ought to know that an almost equal number maintain that no amount of money can ever compensate them for the loss of their "inalienable" right to life, liberty and the pursuit of happiness, or the loss of their constitutional rights.

The proposed bill is not a "redress" bill. Should the Commission authorized to look into the matter decide that some form of compensation should be provided, the Congress would still be able to consider the question and make the final decision. Whether or not redress is provided, the study undertaken by the Commission will be valuable in and of itself, not only for Japanese Americans but for all Americans. Passage of S. 1647 will be just one more piece of evidence that ours is a Nation great enough to recognize and rectify its past mistakes.

Thank you very much.

Senator JACKSON. Our next witness is Clarence M. Mitchell, Jr., chairman, Leadership Conference on Civil Rights.

Mr. Mitchell, we are delighted to welcome you to the committee.

TESTIMONY OF CLARENCE M. MITCHELL, JR., CHAIRMAN, LEADERSHIP CONFERENCE ON CIVIL RIGHTS

Mr. MITCHELL. Thank you, Mr. Chairman. I am happy to be here. As the committee suggested, I would like to offer my statement for the record and summarize it orally.

Senator JACKSON. Your entire statement will appear in the record following your testimony.

Mr. MITCHELL. Thank you, Mr. Chairman. I would like to say I am sure Senator Matsunaga has many admirers here in the audience and the country indebted to him for his contribution in improving the House rules in his very widely circulated book which is in libraries and classrooms of many of our great universities of the country. So in addition to his other good works, he has done much to improve the Government of the United States.

Mr. Chairman, I, as has been said in my written testimony, am chairman of the Leadership Conference on Civil Rights, which is an organization of 150 national groups. We have been in business now for 30 years and we have been devoted to trying to improve civil rights for all Americans, without regard to race, religion, national origin, or sex. It has been my good fortune personally to work with many of the people of the Japanese American community, most especially with Mr. Mike Masaoka.

He has been a stalwart in efforts to improve civil rights in this country for everyone. The thing that is so distressing about this problem as it occurred in a time when the executive order was issued was that the people we had looked to as great proponents of human rights and human dignity, not the least of which was President Roosevelt himself, were the architects of this action, and it shows that in times of hysteria, unless there are very important safeguards built into the legal process and important restraints on executive action, the good people are the persons who come forward and do the harm.

I have been reading Congressman Paul Simon's book on Elijah Lovejoy. The thing that struck me about the contents of that book was that when Mr. Lovejoy was killed by citizens of Alton, Ill., he was not killed by the riffraff. He was killed by some leading citizens and had no protection from the leading citizens. That, on a larger scale, is really what happened here in the United States. I happen to have been at a mature age at that time and personally observed some of the hysteria that took place. I had the good fortune also to have a young woman working in my office who had been in one of the camps. I also knew about the problem of her cousin, who was a person who was a seaman of American Japanese ancestry, but he was not allowed to ship out on merchant vessels because there were problems associated with the hysteria of that time.

In my testimony, I mention a quote from the commanding general that Senator Matsunaga has referred to, in which he said, when somebody asked him about the way things are being done in rounding up of citizens as well as aliens, he said, "Well, a Jap is a Jap, whether he is a citizen or not."

I think as we probe into this we will find because the greatest harm descended on the west coast, it is because there was another motive for those who were trying to put the Americans of Japanese ancestry into detention camps. And I submit on the basis of what I was able to observe on the west coast, one of the prime motives was not patriotism but a desire to acquire the property of those who were of American Japanese ancestry and who had very desirable farmlands, very desirable real estate and things of that sort. It is my opinion that if we have the right kind of probe in this matter, all of that will be revealed and perhaps in another period when the

63-293 0 - 80 - 2

Nation is riding on a crest of its emotions, we will think back and there will be safeguards against such unjust treatment again.

Another aspect of this, which I had mentioned in my testimony, is the utterly amazing way in which humans were herded into living quarters which would be a disgrace in any period of human history. For example, some were put into narrow stalls at racetracks which had been the stalls for horses. And unfortunately, the horse manure had not been entirely cleaned out of some of those places, yet these people were put in them.

There was also a disregard for the family structure in that people who were not necessarily members of the same family were put together in narrow confines.

An equally amazing and shameful aspect of this was that when there were people who tried to escape from some of these places of internment, they were shot and in some cases killed, even though they really were not guilty of any crime other than trying to escape from camps which, as Senator Matsunaga pointed out, were not sanctioned by anything in the Constitution as the Supreme Court later found.

I share the views of those who will appear before this committee and which have also been expressed by those who have gone before, I don't see any way that we can compensate the moral indignity that has been heaped upon those who were interned and subjected to this kind of humiliation, but I do think the Commission will serve a purpose of trying to state for the record of history that the United States expresses great shame for this action, it wishes in some way to give redress to those who were injured and also produce evidence beyond dispute.

Finally, I would like to say, Mr. Chairman, members, including my beloved friend Senator Mathias, that I feel that at this stage in the history of the human race, the world is looking for moral leadership. The United States is in an excellent position to give that leadership and if we pass this legislation, if we have an appropriate exploration of what went on and indisputable findings of fact, I think it will be much easier for our representatives, in whatever forum they express themselves internationally, to argue that we are a nation that is just, we are a nation that is considerate of human rights, and that we are not ashamed to admit when we have done wrong, although we are ashamed by the magnitude of what have been our wrongful acts.

I thank you for hearing me, Mr. Chairman.

Senator JACKSON. Thank you, Mr. Mitchell. And your entire statement will appear in the record as if read.

[The prepared statement of Mr. Mitchell follows:]

PREPARED STATEMENT OF CLARENCE MITCHELL

Mr. Chairman and members of the committee I appear before you today on behalf of the Leadership Conference on Civil Rights and in support of S. 1647, which would establish a commission to determine whether any wrong was committed against those American Citizens and permanent resident aliens affected by Executive Order 9066 issued February 1942.

It is very interesting to read a publication of the Japanese American Citizens League which sets forth some of the incidents that followed the issuance of this order.

Executive Order 9066 authorized military commanders to exclude any and all persons from areas considered militarily sensitive. It also empowered commanders to house those evacuated. This seemingly generalized authorization during World

War II began the most incredible mistreatment of our citizens in modern times. Its chief targets were Americans of Japanese ancestry living in California.

It is ironic that the real objective for many in California was to grab lands, property and other assets of those affected by the Order. the JACL pamphlet states that General John L. DeWitt, military commander, issued over 100 orders stripping rights from American citizens as well as resident aliens. He is quoted as saying: "A Jap is a Jap, it makes no difference whether the Jap is a citizen or not."

This paragraph from the JACL booklet describes what many of us knew and observed in numbed shock at the time:

"There were 15 temporary detention camps scattered throughout Arizona, California, Oregon and Washington. They were mostly county fair grounds, race tracks and livestock exhibition hall hastily converted into detention camps with barbed wire fences. Each camp held about 5,000 detainees, except for Santa Anita race track near Los Angeles which held over 18,000 and Mayer, Arizona which held only 247. Living quarters consisted of horse stalls, some with manure still inside."

As evidence of the blundering associated with the displacement of Japanese-Americans from their mainland homes and possessions, plans to apply the executive order in Hawaii had to be scrapped because the commander in the islands decided that military necessity required the Japanese-Americans to be free to help maintain the island's economy. The JACL writers note that in contrast to California, "Hawaii was 3,000 miles closer to the enemy and in far greater danger of invasion and sabotage."

Japanese-American seamen were denied jobs on U.S. merchnt vessels even though they were experienced and we needed manpower. When I discussed this at the time with our former ambassador to Japan, he said the British had caused the problem because seamen of Japanese ancestry were arrested and put in jail when our ships entered British ports.

The climax of events associated with Japanese-American displacement came when permanent camps were established. These were set up in Arizona, California, Colorado, Idaho, Utah, and Wyoming. Those seeking to leave without permission ran the risk of being shot. JACL assets that "Dozens of detainees and internees were shot and wounded and eight were killed by guards."

"Living quarters were crowded," JACL states and "large extended families or groups or unrelated individuals were squeezed into tiny unpartitioned 16-by-20 feet units."

It may be difficult to establish accurate measurements of the harm done to those who were put in the detention centers because there is no real way to compensate for hurt to pride, destruction of dignity and unjust humiliation. Nevertheless, S. 1647 gives us a chance to try.

What should be easier and should leap from the records of land property transaction at the time are the farms, businesses and homes that were acquired by the types of persons who are always ready to capitalize on the misfortunes of others.

If the bill becomes law and those appointed to carry it out do a good job, our country will be able to speak with greater confidence and credibility when it rightly calls for respect for human rights in other parts of the world.

Senator MATHIAS. Mr. Chairman?

Senator JACKSON. Yes?

STATEMENT OF HON. CHARLES McC. MATHIAS, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MATHIAS. I am cosponsor of S. 1647, and I have cosponsored it because I am convinced of the equity of the proposition. I recall one of the most interesting afternoons of my life was the day when I walked across the street to the Supreme Court to consult with Earl Warren, who had retired as Chief Justice but still maintained his office in the Supreme Court Building. As we discussed matters, the question of the internment of American families of Japanese ancestry came up, and he described that as the most serious error of his life, one that he regretted the most.

As I say, I am determined to support and join with Senator Inouye, Senator Matsunaga, Senator Hayakawa and others in support of this bill on the merits of the bill, Mr. Chairman. It makes me very much more comfortable to know that Clarence Mitchell is

in full agreement and that he felt so strongly about it that he would come up here and describe his position and that of the leadership conference to the committee today.

Mr. MITCHELL. Thank you, Senator Mathias. I hope the record will show that you are a veteran of World War II, having served in the Navy, and you also are a man of deep personal convictions on human rights. You have come forward. In my oral presentation, I did not mention the involvement of Chief Justice Warren in this before he became a member of the Supreme Court, but when you mentioned it, it gives me reason to say, it emphasizes the point I was trying to make, members of the committee, that in that time of crisis, it was not just the riffraff and the hatemongers who caused this to happen, but the people of truly deep convictions and great Americans who unfortunately had that lapse of sensitivity. This is why it is so important, it seems to me, to have safeguards against it happening in the future.

Senator MATHIAS. Safeguards and a little sense of humility about the possibility the best among us can make mistakes.

Mr. MITCHELL. So true.

Senator JACKSON. Thank you very much, Mr. Mitchell. We really appreciate your statement.

Dr. Roger Daniels, head of the department of history, University of Cincinnati.

Dr. Daniels, you may proceed. You have a prepared statement.

TESTIMONY OF ROGER DANIELS, HEAD, DEPARTMENT OF HISTORY, UNIVERSITY OF CINCINNATI

Mr. DANIELS. Yes, sir. Thank you, Senator Jackson.

I have been studying and writing about Japanese Americans for more than 20 years. Among my books on the subject are "The Politics of Prejudice," "Concentration Camps, U.S.A.", and "The Decision To Relocate the Japanese Americans."

Although Japanese Americans suffered from a wide variety of discriminatory actions at every level of government, the climactic discrimination began on February 19, 1942, when Franklin D. Roosevelt signed Executive Order 9066. That order set off a chain of events which resulted in about 110,000 persons, more than two-thirds of them native-born American citizens, being incarcerated behind barbed wire simply because they belonged to an enemy ethnic group.

Since the publication of Eugene V. Rostow's 1945 article calling it "Our Worst Wartime Mistake," most scholarly opinion has condemned the relocation. We now know that the alleged "military necessity" did not exist. The professional heads of the armed services did not advocate the relocation; they reluctantly agreed to it. It was imposed on the Nation by political leaders against the advice of both professional soldiers and security experts in the Federal Bureau of Investigation and the Office of Naval Intelligence.

Not knowing this, the Supreme Court of the United States eventually ratified the evacuation. *Hirabayashi* v. *United States* (320 U.S. 81) in 1943 held that a citizen could be jailed for violating a military curfew order that applied to only one ethnic group. *Korematsu* v. *United States* (323 U.S. 214) in 1944 held that a citizen could be jailed for refusing to report to an assembly center that

was a prelude to sending him to a concentration camp that was strictly for ethnic Japanese.

At the same time, the Court ruled in *Ex Parte Endo* (323 U.S. 283) that any loyal citizen, as Ms. Endo admittedly was, could apply for a writ of habeas corpus and thus gain release.

Ms. Endo, who was incarcerated in mid-1942, spent nearly 2½ years behind barbed wire simply because we were at war with the nation from which her parents had emigrated. Neither she nor any other Japanese American was ever indicted, no less convicted, for any treasonous act in the continental United States.

Since the closing of the last of the relocation centers in spring, 1946, the social and legal position of Japanese Americans has gradually improved. The heroic and well-publicized performance of Japanese American troops in Italy and France, as well as the almost unknown exploits of some 5,000 who served in various military intelligence roles in the Pacific, were, to a degree, responsible for the change in the Japanese American image.

In 1948 Congress passed the Japanese American Claims Act under which some Japanese Americans received about 10 postwar cents on the pre-war dollar of assets that were lost or damaged because of their enforced relocation.

In 1952, Japanese and other aliens from Asia were made eligible for naturalization so that the last vestige of legal discrimination was erased from the statute books. And finally, just over 4 years ago, President Gerald R. Ford, on February 19, 1976, issued a proclamation revoking Executive Order 9066, saying, in part:

> We know now what we should have known then—not only was the evacuation wrong, but Japanese Americans were and are loyal Americans.

For more than a generation the Japanese American community was largely silent about the question of redress for what was an undoubted wrong. It is silent no more. The bill before you, which would set up a commission to investigate, take testimony, and make legislative recommendations, is an excellent way to begin to make some amends. Such a commission could also serve an educational purpose by reminding Americans about one of the wrongs of our past.

This bill does not just affect Japanese Americans. The late Morton Grodzins pointed out that although:

> Japanese Americans were the immediate victims of the evacuation . . . [its] larger consequences are carried by the American people as a whole. Their legacy is a lasting one of precedent and constitutional sanctity for a policy of mass incarceration under military auspices. This is the most important result of the process by which the evacuation decision was made. That decision betrayed all Americans.

Your committee has an opportunity to begin a significant mitigation of that process.

Thank you.

Senator JACKSON. Thank you very much, Dr. Daniels. We appreciate having your statement. It should be very helpful in the deliberations of the committee.

We call up the members of Panel III: Jerry Enomoto, Past President, Japanese American Citizens League; Diane Yen-Mei Wong, Executive Director, Commission on Asian American Affairs; William Hohri, Chair of the National Council for Japanese American Redress, also a member of Methodist Association for Social Action,

Chicago Chapter; and Mike Masaoka, who has been around this town longer than anyone else, President and Washington Advocate, Nisei Lobby.

We are delighted to have all of you with us this afternoon. There is no special order in the way you are seated. Mr. Enomoto, do you wish to proceed first?

Mr. ENOMOTO. That is fine.

Senator JACKSON. That is the way you are on the list. Why don't we go that way. Mike, you will wind up.

Mr. Enomoto, we are delighted to welcome you to the committee. You have quite a lengthy statement, I think. You may wish to put it all in the record and then summarize it. I am looking at the book and yours is half the book. Go right ahead.

TESTIMONY OF JERRY ENOMOTO, PAST PRESIDENT, JAPANESE AMERICAN CITIZENS LEAGUE; DIANE YEN-MEI WONG, EXECUTIVE DIRECTOR, WASHINGTON STATE COMMISSION ON ASIAN AMERICAN AFFAIRS; WILLIAM HOHRI, CHAIR, NATIONAL COUNCIL FOR JAPANESE AMERICAN REDRESS, ALSO, MEMBER, METHODIST ASSOCIATION FOR SOCIAL ACTION, CHICAGO CHAPTER; AND MIKE N. MASAOKA, PRESIDENT AND WASHINGTON ADVOCATE, NISEI LOBBY, A PANEL

Mr. ENOMOTO. Mr. Chairman, I would like to accept your invitation to have the entire statement on record, and I would like to take a few minutes to summarize.

Senator JACKSON. Right. The entire statement and the supporting documents and material will all go in the record following your testimony.

Mr. ENOMOTO. Thank you, Mr. Chairman and members of the committee. My name is Jerry Enomoto. I am the past president of the Japanese American Citizens League, which I will heretofore refer to as JACL, from 1966 to 1970. I spent the last 5 years since 1975 as Director of the California Department of Corrections, whose responsibility it is to manage the prisons and the parole population in the State of California.

I want to thank the committee for inviting me to speak on behalf of the JACL, advocating passage of S. 1647. It is a pleasure for me to come here from my home in Sacramento, Calif., to speak in favor of this legislation.

Joining me today on the JACL panel and resource people are the folks that are seated in the back that I would like to acknowledge: Dr. Clifford I. Uyeda, national president of the JACL, from San Francisco.

Senator JACKSON. Would you stand, please, as you call them.

Mr. ENOMOTO. Mrs. Lily Okura, vice president of operations for the national JACL, from Washington, D.C.; Mr. Karl K. Nobuyuki, executive director of the national JACL, from San Francisco; Miss Cherry Y. Tsutsumida, eastern district governor for the JACL, from Washington, D.C.; and Mr. Ronald K. Ikejiri, Washington representative for the national JACL.

Senator JACKSON. Thank you, ladies and gentlemen.

Mr. ENOMOTO. I would briefly state that all these, with some exceptions, all of these colleagues of mine have spent time in the relocation centers that have been referred to up to now by past

speakers. They have all relatively served with distinction in the armed services in the United States.

For the committee's information, I would like to state JACL is the oldest and largest national, educational, civil and human rights organization, representing Americans of Japanese ancestry in the United States. It was chartered over 50 years ago in Seattle in your home State of Washington. It has over 30,000 members in 109 chapters, in 38 States. Those chapters make up the heart of the national organization.

During 1942–1946, as a result of the issuance of Executive Order 9066, some 77,000 American citizens of Japanese ancestry and 43,000 Japanese nationals, most of whom were permanent U.S. residents, were summarily deprived of liberty and property without criminal charges, and without trial of any kind.

Several persons were also violently deprived of their lives. All persons of Japanese ancestry on the west coast were expelled from their homes and confined in inland detention camps. The JACL contends that the sole basis for these actions was ancestry: Citizenship, age, loyalty, or innocence of wrongdoing did not matter. Japanese Americans, incidentally, were the only ones singled out for mass incarceration. German and Italian nationals, and American citizens of German and Italian ancestries were not imprisoned en masse.

Many authorities can recount facts as to the consequences of Executive Order 9066. The historians can piece together the acts and events, which in hindsight, suggest a rationale for the Government's action.

Constitutional law authorities can explain the impact of the Supreme Court cases which upheld the military orders for curfew, relocation, and detention. Political scientists can suggest that the cause of the relocation and internment was the breakdown in the separation of powers.

Sociologists can reveal case studies which suggest increased familial conflicts as a result of the communal style of life in the concentration camps. The victims themselves can recount to you their personal fright, frustration, and feelings of hopelessness.

With your permission, very briefly, I would like to share some personal accounts: 28 years ago I found myself running through the streets of San Francisco in order to get home before the curfew time. I remember my mother bringing our few possessions to the street to wait for the bus to take us to the Tamforana Assembly Center, which was one of the racing tracks previously referred to, in which we were put in very narrow horse stalls in which we spent some months before we were then subsequently transferred to the Relocation Authority Camp.

Briefly, I feel in the past 28 years of my experience in the business of corrections where we deal with imprisoned human beings, convicted felons, that I can personally testify, as many of my fellow Japanese Americans can, there should be no doubt in the minds of any Americans, this was imprisonment, incarceration. Whether or not we were held in cells that represent prisons like San Quentin, like in my State, does not matter.

The fact the barbed wires, the tanks, the knowledge that if you stepped out beyond that limit they were going to shoot you makes

the experience one of very clearly locked up, incarceration, imprisonment. There has been a tendency in the late sixties and seventies for our country and courts to become sensitive, rightly so, to the due process rights of human beings, including those convicted of felonies and in the prisons of this country. A commendable degree of sensitivity.

I submit, we who suffered this experience didn't commit any crimes and we were deprived of liberty which is a punishment we extend to people who commit crimes in this country. I thought that was important to share with you.

Despite all this information and knowledge, to recount in detail the relocation experience—not one of these individuals can with reasonable certainty explain for the American Government—how the decision to relocate and intern persons of Japanese ancestry was made. Obviously, it seems to me, this is a responsibility of the Government and these things I think have something to do with the question that may now be asked, why the JACL, why did we come before this committee or the Congress with a request that redress be considered 38 years after the experience of the evacuation?

During the early part of the relocation program in March of 1942, the Army's justification of military necessity, was coupled with the Army's desire to secure the west coast of the United States from espionage, sabotage, and other fifth column activity which could be expected from persons of Japanese ancestry. Why was Executive Order 9066 issued when the Administration had in its possession a report from Curtis B. Munson, Special Representative of the State Department, a report which was completed in early November 1941, certified a remarkable, even extraordinary degree of loyalty among residents of Japanese descent on the west coast?

As was previously cited by other speakers, why was Executive Order 9066 issued when both the Federal Bureau of Investigation, and Naval Intelligence protested the need for the evacuation plan? Why, if military necessity, was the justification for the evacuation from the West Coast of persons of Japanese ancestry, were not the Japanese in Hawaii, who were some 24,000 miles closer to the enemy, evacuated?

Finally, if military necessity was the justification for the relocation and internment of persons of Japanese ancestry, why were German and Italian enemy aliens not included in the evacuation and exclusion orders?

I think Professor Daniels has written and commented on that particular matter. I might share briefly something that the JACL has in its files referring to a "Memorandum for the President" from then Attorney General Francis Biddle, dated April 17, 1943. Quoting from that memo, it says:

> You signed the original Executive Order permitting the exclusions so the Army can handle the Japs. It was never intended to apply to Italians and Germans. Your order was based on protection against espionage and against sabotage.

The question remains, why were not the German and Italian enemy aliens evacuated and interned in camps like the Japanese citizens and aliens alike?

The JACL believes that the Commission, with its independent investigatory powers, can answer these questions and others, which have never been answered.

We refer to remedies. I think one of the responsibilities of the commission is to recommend appropriate remedies, if they determine the wrongs which were committed against persons of Japanese ancestry can be remedied.

Those who were interned or otherwise affected, feel that the U.S. Government should redress them in some way for the wrongs which were inflicted upon them.

Some Americans today believe that the relocation and internment of persons of Japanese Americans was justified under the circumstances.

I have come across in the last years in California an amazing number of my fellow citizens, non-Japanese, who didn't even know the evacuation happened, unbelievable though that may be. I think further away from the West Coast, the less they know about this period of history. I think there is a shameful lack of recording in the textbooks as to actually what happened.

I don't mean these comments in any kind of vindictive way, but I think it is a clear answer to the questions after all these years we come before this committee and our country asking for some kind of redress.

I don't think we should get hung up and distracted on issues of monetary compensation or any other kind of compensation. I think there is much to be said for whatever conclusions this objective, fact-finding commission comes up with and recommends to the Congress, and it seems to me the organization believes and I believe that only such an approach can really address the issues that have been of our concern for these 38 years.

I think the federally-created Commission will undertake an objective, unbiased study to determine whether some form of redress is warranted under the circumstances, and report its findings and recommendations to the President and the Congress.

Mr. Chairman, I have several pages of remarks here prepared. I will not take the time of the committee to read that rather lengthy four pages, but I would like to, with your permission, submit these documents for the record which support many of the things that I have said and I also would like to in advance apologize to the committee.

I must catch a plane to go back to California before too long and I would not like you to believe that it was a lack of interest or rudeness when I take my leave when I have to.

I thank you very much for the opportunity to be here and to present this testimony on behalf of the Japanese Americans.

Senator JACKSON. Thank you for an excellent statement. May I ask you one question, and I will ask the others later because you are leaving. The Commission has set up very broad authority to make recommendations. Do you have any feeling at this time as to what the Commission should address itself to in terms of trying to rectify wrongs that I think all fair-minded people agree in retrospect were made?

Do you have any views at this time? The Commission, of course, is free to recommend anything. It is very broad gauged. I think that is what it should be.

Mr. ENOMOTO. Mr. Chairman, I am sure, my colleague, Mr. Masaoka, definitely has some opinions in that light.

My feeling is the Japanese American Citizens League has a committee. They have looked into this question. They, I believe, have some thoughts in that regard. I believe that a Commission of this kind representing a cross section of American citizens from all States and throughout the country, if they held hearings throughout the country in various places where everybody will then have an opportunity to tell their story and also share with the Commission their feelings as to what constitutes redress in their minds, the voluminous amount of material I know and JACL knows exist, I would think the Commission would want to examine and evaluate and assess for themselves what the story that that documentation tells.

Senator JACKSON. In other words, the Commission should be free, obviously, to make whatever recommendations they deem appropriate after they have heard from the various witnesses that would be called upon to testify in the field and here, wherever the Commission is sitting.

Mr. ENOMOTO. Yes, Mr. Chairman.

Senator JACKSON. I think that makes a lot of sense. What you are saying is, there is no point in prejudging at this time the kind of relief. Some may feel monetary compensation will never be adequate and that there has to be some other form or both in the redress of grievances.

Thank you, Mr. Enomoto. We appreciate your coming this great distance. I know you have to leave so you are excused, if you wish.

Mr. ENOMOTO. Thank you, Mr. Chairman. I will just take a seat in the back.

Senator JACKSON. You may stay where you are. If you wish.

[The prepared statement of Mr. Enomoto, with additional material follows:]

STATEMENT OF THE

JAPANESE AMERICAN CITIZENS LEAGUE

ADVOCATING PASSAGE OF S. 1647

to the

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

MARCH 18, 1980

Mr. Chairman, and members of the Committee:

My name is Jerry J. Enomoto. I am the past National Japanese American Citizens League (JACL) President, from 1966-70. I thank the Committee for inviting me to speak on behalf of the JACL, advocating the passage of S. 1647.

Joining me today on the JACL panel are: Dr. Clifford I. Uyeda, President of the JACL, from San Francisco; Lily Okura, Vice President of Operations for the National JACL, from Washington, D.C.; Karl K. Nobuyuki, Executive Director of the National JACL, from San Francisco; Cherry Y. Tsutsumida, Eastern District Governor for the JACL, from Washington, D.C.; and Ronald K. Ikejiri, Washington Representative for the National JACL.

Mr. Chairman, for the Committee's information, the JACL is the oldest and largest, national, educational, civil and human rights organization, representing Americans of Japanese ancestry in the United States. Founded in 1929, the JACL has been an advocate for justice and democracy for over 50 years, and have strived to attain our goal as set forth in our motto: "Better Americans in a Greater America."

INTRODUCTION

Mr. Chairman, as you well know the Constitution of the United States of America guarantees that:

"No person shall be deprived of life, liberty, or property without due process of law. The accused shall enjoy the right to a speedy and public trial by an impartial jury and to be informed of the nature and cause of the accusation."

However, during 1942-46, as a result of the issuance of Executive Order 9066, some 77,000 American citizens of Japanese ancestry and 43,000 Japanese nationals, most of whom were permanent U.S. residents, were summarily deprived of liberty and property without criminal charges, and without trial of any kind. Several persons were also violently deprived of life. All persons of Japanese ancestry on the West Coast were expelled from their homes and confined in inland detention camps. The Japanese American Citizens League (JACL) contends that the sole basis for these actions was ancestry--citizenship, age, loyalty, or innocence of wrongdoing did not matter. Japanese Americans were the only ones singled out for mass incarceration. German and Italian nationals, and American citizens of German and Italian ancestries were not imprisoned en masse.

This episode was one of the worst blows to constitutional liberties that the American people have ever sustained. Many Americans find it difficult to understand how such a massive injustice could have occurred in a democratic nation. Because these lingering questions remain, the JACL advocates the passage of S. 1647.

RATIONALE FOR THE COMMISSION

One of the strengths of our American democratic process is the ability to acknowledge past mistakes through critical self-appraisal, while at the same time setting forth precedence for future democratic action.

The Japanese American Citizens League believes the fact-finding commission proposed by this legislation will indeed reinforce that democratic process, and have tremendous implications for the future of our American way of life.

Without such a fact-finding commission, without such an examination, without such an opportunity to investigate past wrongs, the historical precedence which we inherit from that period of our Amerian history can have disturbing implications for the future.

INFERENCE OF WRONG

Over the years, Congressional and Presidential actions have inferred that the wholesale suspension of constitutional rights of persons of Japanese ancestry during World War II was not justified.

Over the years, Senate and House members have placed into the Congressional Record, remarks as to the tragic wrong which was committed against persons of Japanese ancestry during the war years.

Below is a listing of Congressional and Presidential actions taken in the past which infer that the wrong committed against persons of Japanese ancestry.

EVACUATION CLAIMS ACT OF 1948: Reviewed property losses suffered by the evacuation orders to the internees. Partial compensation was provided which amounted to less than ten cents on the dollar of the amount claimed.

IMMIGRATION AND NATIONALIZATION REVISIONS: Allowed for the naturalization of Japanese aliens-among other provisions. Enacted 1952.

REPEAL OF TITLE II OF THE INTERNAL SECURITY ACT OF 1950: Act originally established procedures whereby apprehension and detention, during internal security emergencies, of individuals likely to engage in acts of espionage or sabotage. Reviewed legal implications of the evacuation and detention of the persons of Japanese ancestry in World War II. Repealed in 1971.

AN AMERICAN PROMISE FEBRUARY 19, 1976: Termination of Executive Order 9066 by President Gerald R. Ford. Proclamation by the President which in part read, "I call upon the American people to affirm with me this American Promise-that we have learned from the tragedy of that long-ago experience forever to treasure liberty and justice for each individual American, and resolve that this kind of action shall never again be repeated."

ASIAN PACIFIC AMERICAN HERITAGE WEEK PROCLAMATION: Signed by President Carter, on March 28, 1979, proclaiming the observance of the contributions of Asian Pacific Americans to the American way of life, and reading in part, "Unfortunately, we have not always fully appreciated the talents and the contributions which Asian Americans have brought to the United States...and during World War II our Japanese American citizens were treated with suspicion and fear."

Yet, despite these aforementioned governmental acts, there has never been an official federal review or investigation of the events and facts which led to the United States government's decision to "relocate" persons of Japanese ancestry.

The legislation before the Governmental Affairs Committee will authorize for the first time in 38 years the official federal inquiry into this matter.

THE GOVERNMENT'S RESPONSIBILITY

Over the years, there has been much study and discussion surrounding the incarceration of Japanese Americans by historians, constitutional law authorities, political scientists, sociologists, as well as the victims themselves.

Each of the aforementioned authorities can recount facts as to the consequences of Executive Order 9066. The historians can piece together the acts and events, which in hindsight, suggest a rationale for the governments action. Constitutional law authorities can explain the impact of the Supreme Court cases which upholded the military orders for curfew, relocation, and detention. Political scientists can suggest that the cause of the relocation and internment was the breakdown in the separation of powers. Sociologists can reveal case studies which suggest increased familial conflicts as a result of the communal style of life in the concentration camps. The victims themselves can recount to you their personal fright, frustration, and feelings of hopelessness.

Yet, despite these sources of information, despite these efforts to detail and recount the relocation and internment experience--not one of these individuals can with reasonable certainty explain for the American government--how the decision to relocate and intern persons of Japanese ancestry was made. <u>This is the responsibility of the government</u>.

PART I

MAJOR AREAS OF INQUIRY FOR THE COMMISSION

A major area of inquiry for the commission is the review of the arguments in favor of the evacuation of the Japanese Americans from the West Coast, and how the government incorporated these arguments in its plans for evacuation.

Morton Grodzins, in his authoritative book on the politics and evacuation of the Japanese Americans, "Americans Betrayed," lists eleven classes of arguments justifying evacuation. They are as follows:

1. sabotage, espionage, fifth column: The Japanese were actual or potential saboteurs, fifth-columnists, or espionage agents.
2. public morale: Widespread distrust of the Japanese population lowered public morale on the West Coast; correspondingly, evacuation would lift public morale.
3. humanitarian: The Japanese (a) were themselves in danger from actual or potential vigilantes, and the evacuation (b) would be carried out with decency and without hardship.
4. approval of Japanese militarism: The Japanese in America had earlier favored Japanese aggression in Asia; had been informed of Pearl Harbor in advance but had not revealed the secret; and in no single instance gave adverse information about dangerous members of their own race to the intelligence

agencies.

5. influence of Japanese government: The Japanese military government exerted great influence over Japanese in America, and even American citizens of Japanese ancestry were citizens of Japan.
6. migration and distribution: The Japanese had invaded America by fraudulent immigration, and they located themselves in strategic areas.
7. race: Because of racial prejudices, Japanese Americans were not assimilable, their thought-processes were inscrutable, and the loyal could not be distinguished from the disloyal. Their high birth rate was a mark of special danger.
8. culture: cultural practices (language schools, vernacular press, sending shildren to Japan for education) enhanced the racial barrier to assimilation and were further evidences of disloyalty.
9. economics: Economic practices made Japanese undesirable competitors, and their productive constribution to the nation's economy was negligible. In any case, evacuees could be employed in productive work at points of concentration.
10. appeal to patriotism: Loyalty of the Japanese would be demonstrated by acceptance of evacuation; if they refused to co-operate, they thereby showed their disloyalty.
11. necessity for drastic measures: Constitutional rights had to give way, in total war, to drastic measures.

63-293 O - 80 - 3

Historians and political scientists have suggested that all of the arguments in favor of evacuation which Grodzins lists became the basis for the governments decision to evacuate the Japanese Americans and resident aliens alike.

The principle problem the government faced was that none of the arguments in favor of evacuation were constitutionally legal. Therefore, a way to legitimize the evacuation was needed.

MILITARY NECESSITY

At the time of the incarceration, the justification for the acts of relocation and internment of persons of Japanese ancestry was said to be "military necessity." Since it was apparent any civilian attempt to relocate and intern, otherwise loyal American and legal resident aliens, would be fraught with constitutional questions, the decision to give the Army the responsibility and authority to relocate and intern persons of Japanese ancestry became imperative. The Army was given the authority upon President Roosevelt's signing of Executive Order 9066. Thus, the government's action of relocation and internment under the guise of "military necessity," was legitimized.

MILITARY NECESSITY-QUESTIONED

During the early part of the relocation program in March of 1942, the Army's justification of "military necessity," was coupled with the Army's desire to secure the West Coast of the United States from espionage, sabotage, and other "fifth column" activity which could be expected from persons of Japanese ancestry. Why was Executive Order 9066 issued when the Administration had in its possession a report from Curtis B. Munson, Special Representative of the State Department, a report which was completed in early November, 1941, certified a remarkable, even extraordinary degree of loyalty among residents of Japanese descent on the West Coast?

Why was Executive Order 9066 issued when both the Federal Bureau of Investigation, and Naval Intelligence protested the need for the evacuation plan? If "military necessity," was the justification for the evacuation from the West Coast of persons of Japanese ancestry, why were not the Japanese in Hawaii, who were 2,400 miles closer to the enemy, evacuated?

Perhaps the most damaging evidence that "military necessity," was not the true justification for the relocation and internment of persons of Japanese ancestry, can be found in reading a document from the Secretary of State's office, dated December 17, 1943. The document indicates official sentiment to deport all persons of Japanese ancestry--citizens, aliens, as well as those Japanese Americans who fought for the United States in the European and Pacific theatre of operations. Quoting in part from said document:

> "I think the far larger part of official sentiment is to do something so we can get rid of these people when the war is over-obviously we cannot while the war continues. But sentiment is liable to wane if the authorization measures are not adopted before the war ends. We have 110,000 of them in confinement here now-and that is a lot of Japs to contend with in postwar days, particularly as the west coast localities where they once lived do not desire their return."

It would therefore appear that "military necessity," was not the true basis for the mass incarcerartion of persons of Japanese ancestry, but rather an initial step in a plan to legitimize racism, meet the needs of political expediency, and serve the needs of some governmental officials in exercising their private brand of discrimination and prejudice.

(Note: A detailed account of the Root Causes of anti-Japanese American racism is discussed under Root Causes-Historical Perspective of Pre-Evacuation of Japanese Americans, in sections which follow. In addition, a detailed discussion of "military necessity," can be found in subsequent sections.

Finally, if "military necessity," was the justification for the relocation and internment of persons of Japanese ancestry.....why were German and Italian enemy aliens not included in the evacuation and exclusion orders? As noted by Professor Roger Daniels, "there was never a mass movement of German and Italian enemy aliens. This policy was never formally enunciated; they simply were not affected by the 108 civilian exclusion orders which uniformly specified Japanese." In a Memorandum For the President, from Attorney General, Francis Biddle, dated April 17, 1943, it is explained that: "

> "You signed the original Executive Order permitting the exclusions so the Army could handle the Japs. It was never intended to apply to Italians and Germans. Your order was based on 'protection against espionage and against sabotage.' "

The question remains, why were not the Germans and Italian enemy aliens evacuated and interned in camps like the Japanese citizens and aliens alike?

The JACL believes that the commission, with its independent investigatory powers, can answer these questions and others, which have never been answered.

PART II

Who were the government officials who laid the "constitutionally legal" plans for the issuance of Executive Order 9066? Why didn't the Justice Department, through the Attorney General, handle the movement of civilians in the military zones? Why weren't individual charges, and trials given to suspected disloyal persons of Japanese ancestry? The courts were in operation...why weren't they used?

What was the role of Colonel Karl Bendetsen and General De Witt in persuading the President to sign Executive Order 9066?

What were the roles of Henry L. Stimson, Secretary of War; Earl Warren, Calif. Attorney General, and running for Governor of California; and John J. Mc Cloy, assistant to the Secretary of War in the evacuation plans?

Some writers suggest that polarization of public sentiment against the Japanese Americans allowed key Administration officials and military officers to exercise their private brand of racism. Is this true? Who were those officials and officers?

The government by creating the commission, may in part, meet its responsibility for self-appraisal. At the same time, the commission will enjoy a position of review which all previous historical investigators did not have--specifically, the ability to obtain still classified documents which may be examined and reviewed, and thereby determine how the decision to relocate was made.

PART III

RECOMMENDATION OF APPROPRIATE REMEDIES

One of the responsibilities of the commission, is to recommend appropriate remedies, if they determine the wrongs which were committed against persons of Japanese ancestry can be remedied.

Those who were interned or otherwise affected, feel that the United States government should redress them in some way for the wrongs which were inflicted upon them.

Some Americans today, as during 1942, believe that the relocation and internment of persons of Japanese Americans was justified under the circumstances.

The federally created commission may undertake an objective, unbiased study to determine whether some form of redress is warranted under the circumstances, and report its findings and recommendations to the President and the Congress.

PART IV

IMPLICATIONS OF THE SUPREME COURT CASES

The JACL believes that the commission in its investigation will review the so-called Evacuation cases. The Hirabayashi v. United States Yasui v. United States, Korematsu v. United States, and Ex parte Mitsuye Endo cases held that the evacuation process was constitutional.

Despite the Supreme Court's unique opportunity during the war years, to undertake its Constitutionally mandated responsiblity to act as a final arbiter, the final check--of the Executive and Legislative branches of the government--the Court failed to seize the chance to over the judgments of the military orders.

The JACL wishes to direct attention to the fact that in the Endo decision, the Court ruled that admittedly loyal American citizens could not be imprisoned indefinitely. This decision was handed down on December 18, 1944. One day earlier, the Western Defense Command had rescinded the exclusion and detention orders...on December 17, 1944. One cannot help but wonder what circumstances and forces were at play between the highest judicial and Executive positions in our land to render a rescission of the exclusion and detention orders and Supreme Court decisions concerning those orders within a day of each other.

A full and complete discussion of the Supreme Court cases can be found in section H 17, which follows.

PART V

NATIONAL PUBLIC HEARINGS

Under the proposed legislation, the commission must hold public hearings in Los Angeles, San Francisco, and Fresno, California; Portland, Oregon; Seattle, Washington; Phoenix, Arizona; Salt Lake City, Utah; Denver, Colorado; Chicago, Illinois; New York, New York; Washington, D.C.; and any other city that the commission deems necessary and proper."

This mandate affords Americans across the United States to raise their concerns and express their views to the commission. This mandate allows "persons of Japanese ancestry," to come forth and share with the commission their experiences, detail their losses, and suggest possible remedies for the government's consideration.

During the evacuation process, persons of Japanese ancestry were denied the right to have a hearing, and confront those who wished to deny their constitutional rights. The national public hearings, to a small degree will be their "day in court."

PART VI

TIMELINESS OF THE ISSUE

Professor Eugene V. Rostow, of the Yale University Law School states in 1945, "Time is often needed for us to recognize the great miscarriages of justice.....As time passes, it becomes more and more plain that our wartime treatment of the Japanese and Japanese Americans on the West Coast was a tragic and dangerous mistake. That mistake is a threat to society, and to all men. Its motivation and its impact on our system of law deny every value of democracy....

"One hundred thousand persons were sent to concentration camps on a record which wouldn't support a conviction for stealing a dog."

In recent days, there has been an outcry in the halls of Congress and across the United States that some retaliatory action should be taken against Iranian nationals who are in the United States, as a possible response for the breakdown in the United States attempt to have the American hostages in Tehran returned.

The JACL shares with all Americans the concern for the safety and early return of our American hostages.

Some Members of Congress have suggested that the United States should be rational and constitutionally acceptable. The JACL believes that we should not allow our constitution to be dismantled for the sake of international and even domestic political expediency.

In view of these developments, the passage of S.1647 becomes substantially more important, not only for Japanese Americans, but for all Americans...because what happened to persons of Japanese ancestry may well happen to another group of our constitutionally protected citizens and residents.

PART VII

CONGRESSIONAL SUPPORT

On August 2, 1979, S. 1647, was introduced by Senators Daniel K. Inouye and Spark M. Matsunaga of Hawaii; Senators Alan Cranston and S.I. Hayakawa of California; and Senators Frank Church and James A. Mc Clure of Idaho.

Today, over 20 Senators have sponsored S. 1647. In the House, Majority Leader, Jim Wright introduced H.R. 5499, which is identical in language with S. 1647, on September 28, 1979. Congressman Norman Y. Mineta, Robert T. Matsui are co-sponsors, as well as 133 additional House members.

It would appear likely that the favorable action by the Governmental Affairs Committee would be met with strong support in both houses of Congress.

WHAT FOLLOWS IS A DEFINITIVE COMPILATION OF THE JAPANESE AMERICAN RELOCATION AND INTERNMENT EXPERIENCE

ROOT CAUSES

HISTORICAL PERSPECTIVE OF PRE-EVACUATION PREJUDICE OF JAPANESE AMERICANS

ROOT CAUSES

The seeds of prejudice which resulted in the incarceration of Japanese Americans during World War II were sown nearly a century earlier when the first immigrants from Asia arrived during the California Gold Rush. California was then a lawless frontier that harbored a climate of indiscriminate anti-foreignism. The Japanese, who were to arrive three decades later, inherited the hatred reaped upon their forerunners -- the Indians, the Mexican Californians, and the Chinese.

Approximately 25% of the miners in California during the Gold Rush came from China and almost from the moment of their arrival became the objects of hatred and violence. The Chinese miners were limited to working abandoned or inferior diggings, and frequently the white miners drove them bodily from towns and seized their claims. The Chinese became the victims of fraud and abuse in the absence of active public opinion which might have alerted the police and courts. Acts of terrorism, robbery and murder were regularly reported and utilized as the tools in driving the Chinese out of the mining areas.

In 1875, the Supreme Court of the United States held unconstitutional a California statute that assumed the right of California to exclude the Chinese from entering the United States via California. Thus, the attempt to transform attitudinal prejudice into legal discrimination was established, settting the tone for binding discriminatory rulings in the following years.

On May 7, 1879, the new California Constitution lumped into

one class all persons to be denied the right of sufferage -- all "natives of China, idiots, and insane persons." Article XIX of the same constitution authorized cities to totally expel or restrict Chinese persons to segregated areas, and prohibited the employment of Chinese persons by public agencies and corporations. Other federal, state, or local laws or court decisions at various times prohibited the Chinese from becoming citizens, testifying in court against a white person, engaging in licensed businesses and professions, attending school with whites, and marrying whites. Chinese persons alone were required to pay special taxes, and a major source of revenue for many cities, counties and the State of California came from these assessments against the Chinese. The political demand and public sentiment were persistent in their pursuit of exclusion legislation, and these efforts paved the way for a series of steps which culminated in the passage of the restrictive Immigration Act of 1882.

Thus, during a period of thirty years, lawmaking agencies at all levels of government, from miners' councils to the federal Congress, approved measures aimed directly at the Chinese. The movement which was begun in the gold mines of California went on to capture the public opinion of the Pacific Coast and reach fulfillment with the signature of the President on legislation for the total exclusion of the Chinese. The prejudice of the California miner and workingman had become the policy of the nation.

JAPANESE ARRIVE

The Chinese population rapidly declined due to the lack of women

and the return of men to China. As a result, an acute labor shortage developed in the Western states and the Territory of Hawaii in the 18880's. The agriculture industry wanted another group of laborers who would do the menial work at low wages, and looked to Japan as a new source.

At the time of the Chinese Exclusion Act, Japan prohibited laborers from leaving the country. In 1884, the Japanese government adopted a policy of allowing its laboring classes to emigrate to foreign countries to work. In this year, a convention was signed between the Japanese government and the Hawaiian sugar plantation owners, permitting the owners to import Japanese labor under contract. Thus, in January 1885, 994 Japanese labor contract emigrants sailed for the sugar plantations of Hawaii. The numbers of immigrants from Japan coming directly to the mainland slowly began to increase, adding to those who were coming via Hawaii. Between the years 1884 and 1890, 2,270 Japanese immigrants entered the United States. During the next decade, 27,440 arrived.

As long as the Japanese remained docile, their hard labor was welcomed. The Japanese immigrants served as laborers in various fields but mainly within the growing agricultural industry in California, Washington, and Oregon. The hop fields of Northern California and Oregon attracted many young Japanese immigrants, because the Japanese ability and willingness to work long hours on piece-work basis resulted in good pay. From the beet fields and the hop farms, the Japanese found their way into seasonal work in the fruit orchards, vineyards, and vegetable farms.

These young immigrants were in great demand as laborers, but they were ambitious and they wanted to better themselves. As they learned the language and ways of American, they began to lease or purchase land, or go into business so as to establish families and live a normal life. California and other West Coast farmers resented having their field laborers suddenly become competing farm operators. This resentment was economic, but racists saw in this transition from day laborer to operator another threat, like the Chinese before. As a result of the impassioned cry of "The Chinese Must Go!," the Chinese had finally been excluded. Now the slogan was "The Japs Must Go!"

During this period, newspapers took up the cry against the Japanese. The clearest early manifestation of the intensity of the anti-Japanese feeling was a campaign initiated by the San Francisco Chronicle in 1905. The frontpage headlines were reflective of the racist sentiment.

- CHINESE AND POVERTY GO HAND IN HAND WITH ASIATIC LABOR
-JAPANESE A MENACE TO AMERICAN WOMEN
-THE YELLOW PERIL--HOW JAPANESE CROWD OUT THE WHITE RACE

Myths regarding the Japanese were manufactured and propagandized by racists throughout the years after 1905. For example, the population myth involved greatly exaggerated claims regarding the total population of Japanese in this country. This was aided and abetted by official sources in California who issued badly juggled statistics. Further, there was the charge that the birth rate of the Japanese was very high and that they "bred like rabbits." The public was told that for these reasons it would only be a matter of time

before the Japanese population would be in the majority.

Like the Chinese before them, the Japanese became victims of legal discrimination due in no small part to the racist campaigns of groups such as the Japanese and Korean Exclusion League, The Native Sons of the Golden West, and The Oriental Exclusion League. The 1906 San Francisco School of Law order segregating oriental students from white students, was the first official discriminatory act of importance.

On October 11, 1906, the San Francisco Board of Education formally approved a resolution to segregate the grammar school children of Japanese ancestry into a separate institutuion. To the Japanese press and the public, anti-Japanese agitation in the United States had heretofore been based solely on a fear of competition and a loss of work if Japanese laborers were permitted into the United States. Now, when the news of the school segregation in SanFrancisco reached Japan, the Japanese public discovered that the discrimination against the Japanese in the United States was really based upon an alleged racial inferiority of the Japanese people.

Japan was a proud nation with a history and culture reaching into antiquity. Their religion and philosophy had beenc conceived of before the dawn of the Christian era of the Western world. For the Japanese as a race to be held in contempt as barbarians and to be abused and discriminated against was, at the very least, an insult. The San Francisco school board issue had become international in scope.

President Theodore Roosevelt, after hearing protests from the

Japanese Ambassador, had his Secretary of State look into the matter. It was found that treaties with Japan guaranteed Japanese citizens certain civil rights in America, and the Secretary of State felt that attendance at school was one of these rights. He had a federal suit prepared against San Francisco to protect the alien students from segregation. For the American-born citizens in an age when "separate but equal" was the law of the land, the suit could do nothing; however, something could be done for aliens protected by treaty.

President Roosevelt summoned the school board members to Washington and succeeded in having the school board rescind the offending order. At about the same time -- early 1907 -- the President managed to prevent the California legislature from passing anti-Japanese legislation. In return for this restraint, which was highly unpopular among most Californians, the President promised to do something about Japanese immigration which was the major concern. It was not so much the presence of the Japanese already in California, as it was the imagined threat of thousands more to come that was apparently frightening. However unrealistic and irrational these fears, they were deeply felt.

In January 1908, a series of correspondence was commenced between United States Ambassador O'Brien and Foreign Minister Hayashi for further discussions. The correspondence ultimately formed the basis of a series of understandings now known as the "Gentlemen's Agreement." Consummated in 1908, this series of notes committed the Japanese government itself to restrict the immigration of Japanese laborers and farmers to the United States. Both governments hoped

63-293 0 - 80 - 4

this would quiet the agitation on the Pacific Coast and make it unnecessary for the United States to pass restrictive legislation barring Japanese.

The growing resentment against the Japanese was responsible for the passage, in 1913, of the California Alien Land Act, which made it illegal for aliens ineligible for citizenship to buy agricultural land or to lease such land for a period exceeding three years. It is important to emphasize here that the Japanese and Chinese were not eligible for American citizenship because of American's first immigration law in 1790, allowing only "free whites" to become naturalized citizens. This gave a convenient "handle" to the racists, and most of the discriminatory legislation passed by the states was based upon ineligibility to citizenship.

During World War I (1914 - 1918), the campaign of the anti-Japanese group was muted somewhat because Japan was at least technically on the side of the United States in that conflict. Almost immediately after the close of the war, the anti-Japanese campaign was renewed with new vigor and new recruits. The American Legion in its first convention of 1919 passed a resolution recommending exclusion of Japanese.

In 1920, a massive petition campaign placed a stronger anti-Japanese land law on the state ballot. Under its terms, all further transfers of land to Japanese nationals were prohibited as were all further leases of land. A final provision, quickly struck down by the courts, barred noncitizen parents from serving as guardians for their minor children. The sovereign people of California

approved this measure by an overwhelming 3 to 1 vote. Whatever else the anti-Japanese movement was, it was certainly popular.

In the early 1920's, the Joint Immigration Committee was formed and comprised of individuals from influential organizations within California. This committee formed the basis of political support in behalf of the anti-Japanese campaign. In July, 1921, the executive director of the Joint Immigration Committee prepared and filed with the the United States Senate a brief stating the case of the racist groups for an exclusion act. The brief was presented to the Senate by Senator Hiram Johnson. Like the Chinese Exclusion movement before, the subsequent regional pressures resulted in the Asian Exclusion Act of 1924, denying admission to the United States of all immigrants ineligible for American citizenship, including "Mongolians, Polynesians, and races indigenous to the Western Hemisphere" -- which meant American Indians.

This exclusion law remained in effect for all mentioned groups until 1940, when it was revised in regard to American Indians. The law was subsequently revised in regard to Chinese in 1943, and for Filipinos and East Indians in 1946. The Exclusion Act provisions affecting other Asians, including the Japanese, were finally repealed in 1952.

To the dismay of the exclusionists, the Japanese population did no quickly decrease as the Chinese population did earlier. There were sufficient numbers of Japanese women pioneers who gave birth to an American-born generation, and families decided to make the United States their permanent home. As the exclusionists intensified

their efforts to get rid of the Japanese, their campaign was enhanced by the development of a powerful new weapon -- the mass media.

Newspapers, radios, and motion pictures stereotyped Japanese Americans an untrustworthy and unassimilable. The media did not recognize the fact that a large number of persons of Japanese ancestry living in the United States were American citizens. As Japan became a military power in the years preceding World War II, the media falsely depicted Japanese Americans as agents for Japan. Newspapers inflamed the "Yellow Peril" myths on the West Coast, and radio, movies, and comic strips spread the disease of prejudice throughout the United States.

Trapped in segregated neighborhoods and with no access to the media, Japanese Americans were unable to counteract the false stereotypes. Even though those born in the United States were culturally American, spoke English fluently, and were well educated, they faced almost insurmountable discrimination. Theirs was a legacy of a century of discrimination that would place in motion in the months following Pearl Harbor, events leading to the wholesale suspension of constitutional rights of an entire group of American citizens.

PEARL HARBOR -- THE AFTERMATH OF FEAR

Immediately following the attack on Pearl Harbor, December 7, 1941, surprisingly little agitation occurred against the Japanese Americans. There were rumors of poisoned vegetables, which the Los Angeles Times reported as untrue, and one small California newspaper proposed evacuation. In general, a quiet period continued until after the turn

of the year 1942, when the campaign of the racists picked up, reaching its peak about February 13.

During January and early February of 1942, various organizations urged action, ranging from surveillance by the army to complete evacuation or internment of all Japanese. These organizations included the California Department of the American Legion and many local posts, the Associated Farmers, the Grower-Shipper Vegetable Association, the Western Growers Protective Association, California Farm Bureau, Americanism Educational League, some labor unions, the Pacific League, and the Joint Immigration Committee.

In the meantime, the Hearst publications and the Los Angeles Times kept up a drumfire of editorials, columns, and slanted news stories that pressured officials and caused the public generally to become fearful and emotional regarding the alleged dangers in their midst.

Among the actions of various groups and of members of the press during this period, perhaps the most effective in stirring up fears and in bringing pressures on officials, were the resolutions adopted by local posts and state departments of the American Legion. These actions were reinforced by resolutions at the national level of the Legion on January 19, calling for evacuation and internment of "all enemy aliens and nationals." This resolution was later interpreted to include all persons of Japanese descent.

Morton Grodzins, in his book, Americans Betrayed, describes how in early January 1942, the campaign for evacuation really got underway. He tells how radio commentator John B. Hughes and others, along with West Coast newspaper editorials, local law enforcement officers, and

Pacific Coast congressmen directed a campaign of criticism against the departments of both War and Justice. Demands were made for the mass evacuation of all Japanese -- citizens and aliens alike.

The Los Angeles Chamber of Commerce through its Washington representative, Thomas B. Drake, presented a Chamber resolution of January 30th to the West Coast congressional delegation, along with a draft resolution sponsored by Congressman John Costello, that called for army control over aliens and dual citizens, and for mass evacuation of aliens and their families. The Joint Immigration Committee, which had been active and politically powerful for more than 20 years, met on February 1, 1942. The members urged evacuation and planned for further propaganda activity, which was their specialty. In early February, the California State Personnel Board issued an order barring from civil service positions, all citizens who were descendants of alien enemies. Although it covered all groups, this order was applied only against Japanese Americans.

In the meantime, the Los Angeles Times and the Hearst press in particular, were carrying on a day-by-day campaign. On January 29, and again on February 5, the San Francisco Examiner, a Hearst paper, published columns of a race-baiting and irresponsible nature.

On January 15, Congressman Martin Dies, chairman of the Un-American Activities Committee, addressed the House of Representatives on the "fifth column" in America. Then on January 28th, he declared that "a fear of displeasing foreign powers, and a maudlin attitude toward fifth columnists was largely responsible for the unparalleled tragedy

at Pearl Harbor." He said further that a report of his committee would "disclose that if our committee had been permitted to reveal the facts last September, the tragedy of Pearl Harbor might have been averted. " The report referred to was not actually released until after authority had been given to the military for the evacuation. However, a committee spokesman, in summarizing what the report would contain, said that it would describe the activities of Japanese nationalistic organizations engaged in espionage and similar details. This report, called the "Yellow Report," after February 5, supplied material for scare stories for the racist press. For example, the Los Angeles Times headlined the first disclosure of the Dies Committee findings as: "Dies Yellow Paper Reveals Jap Spying Attempts, Probably Sucessful, to Learn Los Angeles Aqueduct Secrets, Disclosed." This item was based on a request for information made by the Japanese consul twenty years before. Several days after the repoert was released, the Times devoted six full columns to its contents.

On February 11, Mayor Fletcher Bowron of Los Angeles, State Attorney General Warren, and Tom Clark of the U.S. Department of Justice, met with General DeWitt. After the meeting, Attorney General Warren announced that he felt that the problem was a "military one, not civil." Mayor Bowron said, "I feel that DeWitt is awake to the situation and doing all he can."

The Mayor returned to Los Angeles in time to make a Lincoln's Birthday radio address in which he posed the question, "If Lincoln were alive today, what would he do. . .to defend the nation against the Japanese horde. . .the people born on American soil who have

secret loyalty to the Japanese Emperor." Bowron answered the question as follows: "There isn't a shadow of a doubt but that Lincoln, the mild-mannered man whose memory we regard with almost saint-like reverence, would make short work of rounding up the Japanese and putting them where they could do no harm." He said further; "The removal of all those of Japanese parentage must be effected before it is too late."

On February 12, Walter Lippmann, a nationally known and highly respected columnist, wrote a syndicated column entitled "The Fifth Column on the Coast;" in it, he advocated setting aside the civil rights of citizens of Japanese ancestry. He put forth a specious argument that had been used by General DeWitt, Attorney General Warren, and others, which read like this:

> Since the outbreak of the Japanese war, there has been no important sabotage on the Pacific Coast. From what we know about Hawaii and the fifth column in Europe, this is not, as some have liked to think, a sign that there is nothing to be feared. It is a sign that the blow is well organized and that it is held back until it can be struck with maximum effect.

On February 13, the West Coast congressional delegation -- under the goading of Leland Ford, John Costello, A.J. Elliot, and Jack Z. Anderson, all congressmen from California -- passed a resolution demanding "immediate evacuation of all persons of Japanese lineage and all others, aliens and citizens alike, whose presence shall be deemed dangerous or inimical to the defense of the United States from all strategic areas."

On February 14, General DeWitt forwarded to the Secretary of War his recommendations on the subject of the "Evacuation of

Japanese and other Subversive Persons from the Pacific Coast." After pointing out the probability of attacks on shipping, coastal cities, and vital installations in the coastal area, of air raids, and of sabotage of vital installations, DeWitt set forth his convictions about the nature of Japanese Americans.

Following this statement, DeWitt set forth in detail his formal recommendations, including a request for presidential direction and authority to designate military areas from which all Japanese and all alien enemies or suspected saboteurs of fifth columnists could be excluded.

After five more tumultous days, on February 19, the president signed Executive Order 9066. On February 20, Secretary of War Stimson designated General DeWitt as military commander empowered to carry out an evacuation within his command under the terms of Executive Order No. 9066.

MILITARY NECESSITY AND THE DECISION TO EVACUATE

The decision to exclude all persons of Japanese ancestry from the West Coast following the bombing of Pearl Harbor was based on arguments of military necessity presented by the Commander of the Western Defense Command, Lieutenant General John DeWitt. The Government accepted with only a cursory examination General DeWitt's contention that the Japanese residing in the West Coast constituted a threat to the security of the nation. And in thereby establishing the policy for the evacuation, the government knowingly failed to protect the constitutional rights of American citizens.

Military justifications for the mass evacuation of over 120,000 persons, the majority of whom were American citizens, were to a large degree the product of regional pressures which reflected historical animosities towards the Japanese immigrants and their citizen children.[1] That the evacuation was racially motivated is evidences by the fact that what was originally intended as a selective plan for the exclusion of all enemy aliens (German, Italian and Japanese) by the Western Defense Command was developed by the Department of War into a plan which called for the total exclusion of only persons of Japanese ancestry.

In a broad historical perspective, it becomes quite clear that "military necessity" became a rationale rather than a reason for the evacuation.

During the days immediately following the attack on Pearl Harbor, there were a number of reports of enemy ships offshore along the Pacific Coast, and although these reports proved to be false, they nevertheless contributed greatly to a sense of alarm in the states of Washington, Oregon, and especially in California.

Despite the alarm at these reports, there surprisingly remained a general calm throughout the West Coast.[2] However, on December 15, 1941, upon his return to Washington from a hurried inspection of Pearl Harbor, Secretary of the Navy Frank Knox stated at a press conference that "the most effective fifth column work of the entire war was done in Hawaii, with the possible exception of Norway." Knox's statement resulted in a proliferation of rumors along the West Coast, implicating Japanese Americans as dangerous agents of the enemy.

In his Final Report, General DeWitt states:

> "The Pacific Coast had become exposed to attack by enemy successes in the Pacific. The situation in the Pacific theatre had gravely deteriorated. There were hundreds of reports nightly of signal lights visible from the coast, and of intercepts of unidentified radio transmissions. Signaling was often observed at premises which could not be entered without a warrant. . . .The problem required immediate solution. It called for the application of measures not then in being." / Italics added. /

In a note to the above statement, DeWitt adds the following:

> "It is interesting to note that following the evacuation, interceptions of suspicious or unindentified radio signals and shore-to-ship signal lights were virtually eliminated. . . ." 4

However, in a meeting with General DeWitt and his staff on January 9, 1942, the Chief of the Federal Communication Commission's Radio Intelligence Division reported that "there

had been no illegitimate radio transmission or signaling from Japanese or other coastal residents."[5] And more than two years later, the Chairman of the Federal Communications Commission wrote to Attorney General Francis Biddle regarding DeWitt's statements in his Final Report. In his letter of April 4, 1944, the Chairman stated that the "reports of. . . signaling by means of signal lights and unlawful radio transmitters" proved "without exception, to be baseless."[6] Furthermore, instead of the "hundreds of reports mightly" of unindentified radio signals, 760 reports had been reported and investigated, none of which were found to be "illicit."[7] Indicating that General DeWitt and his staff were "kept continuously informed. . .through day-to-day liaison," the Chairman concluded with a specific reference to the Final Report and to the Department of Justice's conclusion that:

> ". . .although no unlawful radio signaling or any unlawful shore-to-ship signaling with lights was discovered, a great number of reports of such activity were received, and that these did not diminish in number following the evacuation. It is likewise the Commission's experience that reports of unlawful radio signaling along the West Coast--which in each case were unfounded--were not affected by the evacuation." / Italics added /

The primary concern of General DeWitt was "the mission of defending this coast" (i.e., the Western Defense Command) predicated on the assumption that Japanese Americans could not be trusted to be loyal to the United States. Citing from the Final Report, General DeWitt gives the following assessment of the Japanese American in 1942:

"Because of the ties of race, the intense feeling of

> filial piety and the strong bonds of common tradition, culture and customs, this population presented a tightly-knit racial group. It included in excess of 115,000 persons deployed along the Pacific Coast. Whether by design or accident, virtually always their communities were adjacent to very vital shore installations, war plants, etc. While it was believed some were loyal, it was known that many were not. To complicated the situation no ready means existed for determining the loyal and the disloyal with any degree of safety. It was necessary to face the realities--a positive determination could not have been made." 9

And in testimony presented before the Subcommittee of the House Committee on Naval Affairs on April 13, 1943, DeWitt reiterated the point that "there is no way to determine their loyalty,"[10] and provided evidence that the evacuation was determined by other than objective considerations:

> "You needn't worry about the Italians at all except in certain cases. Also, the same for the Germans except in individual cases. But we must worry about the Japanese all the time until he is wiped off the map." 11

The major issue raised by General DeWitt, and indeed the justification of military necessity and for the evacuation, was the questionable loyalty of the West Coast Japanese population--the legal permanent residents and native born citizens alike. The arguments cited as the justification for the evacuation could, with equal cogency, have been applied to Italians and Germans. Like the Japanese, the Italians and Germans maintained dual citizens, had inadvertently located in areas considered to be strategic, had demonstrated regard for the country of their origin, maintained language schools, maintained fraternal organizations and continued their Old World cultural patterns. And yet, the authorities

did not impugn the loyalty of resident Italians and Germans for these reasons. These factors served to magnify the dangers of Japanese Americans and yet were minimized in viewing the Italians and Germans. The evacuation, then, would seem quite clearly to have been carried out surgically on racial lines.

If there was a questioning of the loyalty of Japanese Americans, this had been determined by investigations by Army and Naval Intelligence, the Federal Bureau of Investigation, and by a Special Representative of the State Department, Lt. Commander Curtis B. Munson (known as the Munson Report). While the G-2 operations of Army and Naval Intelligence had conducted their investigations for approximately ten years prior to the bombing of Pearl Harbor, and the F.B.I. for approximately five years, the Munson Report was compiled from investigations conducted, at the orders of the President, during the months of October and November of 1941.

In short, there was over a decade's worth of intelligence gathering on the Japanese communities on the West Coast by the finest intelligence agencies of this nation. The agencies and Munson had secretly investigated businesses, organizations, and individuals, and, in the view of Munson, "The opinion expressed with minor differences was uniform."[11] Describing the native born Japanese as demonstrating "a pathetic eagerness to be Americans,"[12] Munson addressed the key question of the investigation: "What will these people do in case of a war between the United States and Japan?"[13]

> "As interview after interview piled up...the story was all the same. There is no Japanese 'problem' on the Coast. There will be no armed uprising of Japanese....We do not believe that they would be at the least any more disloyal than any other racial group in the United States with whom we went to war."[14]

Expressing a similar view, F.B.I. Director J. Edgar Hoover felt that the demand for the evacuation was "based primarily upon public politcal

pressure rather than upon factual data."[15] He also felt that the F.B.I. was fully capable of handling those individuals who had been identified as potentially dangerous.

If the basis for the "military necessity" argument was lodged (as it was) in the questionable loyalty of the Japanese Americans, and if the intelligence services--including the military's own intelligence operations--dispelled the question of betrayal by Japanese Americans, the rationale for the evacuation becomes highly suspect.

And if, as DeWitt stated, "There is not way to determine their loyalty," it is even more curious that the Japanese Americans in Hawaii were not similarly subjected to wholesale and indiscriminate incarceration. Hawaii was 3,000 miles closer to the enemy and in far greater danger of invasion and sabotage. While only 1% of the Hawaiian Japanese population,identified as potentially dangerous, was incarcerated, it was the judgment of the military commander in Hawaii that "military necessity" there required the vast majority of Japanese Americans to remain free to help maintain the islands' economy.

The fear of invasion of the Pacific coast may have been maintained in the public mind throughout most of the war, but the military leadership was aware that such a threat did not exist after the early days of June 1942, when naval intelligence reports indicated that the Japanese naval fleet had been so badly crippled at the Battle of Midway there was no possibility of an invasion on the West Coast.

By June 1, 1942, a little more than 17,000 persons of Japanese ancestry, both citizens and aliens, had been placed in government concentration camps,[16] and that number would subsequently grow to over 112,000. In other words, the military, who argued that Japanese Americans could not

be trusted in the event of an invasion, demanded the further incarceration of an additional 95,000 persons after it was known that the threat of an invasion no longer existed. The question then remains, why did it happen? The answer is obvious: the evacuation was racially, politically and economically motivated. In short, "under the guise of national defense, evacuation became an end it itself, a fortuitous wartime opportunity to rid the western states"[17] of their Japanese populations.

But questions of greater import and profundity require closer examination: How did the evacuation come about? At what levels of government

were the decisions for the evacuation made? And why did the government fail so completely to protect the rights of American citizens?

The answers to these questions can be found in part by tracing the manner and events by which the decision for the mass evacuation took place.

The initial plans for evacuation specified the exclusion only of aliens of the three Axis nations. Under the provisions of Presidential proclamations issued by President Franklin D. Roosevelt on December 7 and 8, 1941, there was a round up of individual aliens who had been identified by the F.B.I. as potentially dangerous. The proclamations authorized the exclusion of aliens from locations which were considered strategic to the safety of the United States. Although the round up was largely centered along the West Coast, it was not restricted to aliens of Japanese ancestry alone; Italians and Germans were also arrested by the authorities.

In the early stages of the discussions about evacuation and the treatment of aliens, General DeWitt was opposed to the evacuation of citizens. During a telephone conversation on December 26, 1941 between General DeWitt and the War Department's Provost Marshal General, Major General Allen Gullion, DeWitt said:

> "If we go ahead and arrest the 93,000 Japanese, native born and foreign born, we are going to have an awful job on our hands and are very liable to alienate the loyal Japanese from disloyal....I'm very doubtful that it would be common sense procedure to try and intern or to intern 117,000 Japanese in this theater ....I told the governors of all the states that those people should be watched better if they were watched by the police and people of the community in which they live and have been living for years....and then inform the F.B.I. or the military authorities of any suspicious action so we could take necessary steps to handle it...rather than try to intern all those people, men, women and children, and hold then under military control and under guard. I don't think it's a sensible thing to do....I'd rather go along the way

> we are now...rather than attempt any such wholesale internment....An American citizen, after all, is an American citizen. And while they all may not be loyal, I think we can weed the disloyal out of the loyal and lock them up if necessary."[18] /Italics added/

At the same time, General DeWitt opposed the Provost Marshal General's proposal that the responsibility for the alien program be transferred from the Justice to the War Department. However, Gullion had arranged for DeWitt to deal directly with the Provost Marshal's office on the alien situation, and for the latter to keep General Headquarters informed of developments. This seemingly insignificant event had far-reaching effects, for Army Headquarters had little to do in the early months of 1942 with the plans for evacuation.

In a meeting with General DeWitt on January 4 and 5, 1942 in San Francisco, Colonel Karl Bendetsen, Chief of the Aliens Division of the Provost Marshal General's office, urged the determination of strategic areas in the Western Defense Command from which all aliens were to be excluded. This resulted in the definition of "Categories A and B" as restricted zones, and was later expanded into "Zones I and II" as the exclusion areas for the evacuation.

As the racial campaign increased on the West Coast, DeWitt's attitudes noticeably began to change vis-a-vis the evacuation. In a conversation with General Gullion on January 24, DeWitt expressed what was to become one of the principal arguments for the evacuation: "The fact that nothing has happened so far is more or less...ominous in that I feel that in view of the fact that we have had no sporadic attempts at sabotage there is control being exercised and when we have it it will be on a mass basis."[19]

One week later, Bendetsen reported to the Chief of Staff's office that DeWitt had recommended the evacuation of the entire Japanese population from

the coastal states, but that Attorney General Francis Biddle was opposed to the evacuation of citizens. In an earlier meeting, Biddle had stated that the Justice Department "would have nothing whatever to do with any interference with citizens or with a suspension of the writ of habeas corpus."[20] In a letter shortly thereafter to Secretary of War Henry Stimson, the Attorney General stated that if evacuation were to be carried out on any kind of a large scale plan, the Department of Justice did not have the physical capability to handle it. He added that "the Department of Justice was not authorized under any circumstances to evacuate American citizens; if the Army for reasons of military necessity wanted that done in particular areas, the Army itself would have to do it."[21]

In response, Stimson met with President Roosevelt on February 11 to discuss the mass evacuation proposal and to present the President with four questions of major impact which required his decision. The most significant question was, "Is the President willing to authorize us to move Japanese citizens as well as aliens from restricted areas?"[22] The result of the meeting was that the President specifically authorized the evacuation of citizens and, it was felt, "was prepared to sign an executive order giving the War Department the authority to carry out whatever action it decided upon."[23]

Consequently, General DeWitt, with the assistance of Colonel Bendetsen, began to draft his final recommendation for an evacuation plan. Dated February 13, 1942, it was addressed to the Secretary of War and forwarded to General Headquarters in Washington, D.C., where it was received on February 18th. On February 19th, "it was decided at a /General Headquarters/ staff conference <u>not</u> to concur in General DeWitt's recommendations, and instead to recommend...that only enemy aliens leaders be arrested and interned."[24]

However, the following day General Headquarters forwarded DeWitt's recommendations with an endorsement to the War Department "in view of the proposed action already decided upon by the War Department."[25] General DeWitt, on February 23, received directives from the War Department for the evacuation, but these directives differed significantly from DeWitt's own recommendations.

The major difference between the two plans was the proposed treatment of American citizens. The objective of DeWitt's plan was the removal of alien and American-born Japanese from restricted areas ("Category A"). and being "opposed to any prefential treatment to any alien irrespective of race"[26] (despite his distrust of the Japanese population), the plan called for a similar removal of German and Italian aliens. Citizen evacuees, under DeWitt's plan, would either accept internment voluntarily or would relocate themselves outside of the restricted areas.

Under the War Department plan, however, the entire Japanese population would be excluded from the restricted areas, but only German aliens identified for evacuation would be excluded from the "Category A" area, while there would be no evacuation of Italians without the specific permission of the Secretary of War. Additionally, the Japanese would not be allowed to relocate outside of the restricted areas--i.e., within the states of California, Oregon, and Washington.

In other words, it was the harsher War Department plan for evacuation, and not DeWitt's, which was implemented by the government. This plan had been largely designed by the Provost Marshal General's office under the guidance of Colonel Bendetsen.

The authorization for the evacuation was implemented by Presidential Executive Order Number 9066, signed by President Roosevelt on February 19, 1942. The Executive Order had been drafted by General Gullion and Colonel

Bendetsen, and accepted by Attorney General Biddle because "the President had already indicated to him that this was a matter for military decision."[27] One month later, Congress accepted a resolution to implement into law the Executive Order. It was signed by the President on March 21, 1942 as Public Law 77-503.

And so, in March of 1942, there began a process in which 120,313 persons of Japanese ancestry, 76,000 of whom were American citizens, were forcibly removed from their homes along the West Coast. Although the civil courts were fully operational, the Japanese American population was not given an opportunity to defend themselves by trial or hearing and consequently were denied their rights of protection guaranteed by the United States Constitution. In essence, through the suspension of the writ of habeas corpus, they became the victims of a governmental racial policy.

That the evacuation was necessary in the first place is questionable in light of the reports of the government's own intelligence agencies. But apart from these reports, the military leaders who became the chief architects of the evacuation plan cast some strong doubts on its necessity. Colonel Bendetsen, in a letter to General Gullion on February 4, 1942, "stated at the outset his conclusion that an enemy alien evacuation 'would accomplish little as a measure of safety,' since the alien Japanese were mostly elderly people who could do little harm if they would."[28] And in a letter to corps area commanders from the Provost Marshal General's office, it was explained that of the total numbers evacuated, "60,000... would be women and children."[29]

And at the highest levels of government, the President's Cabinet itself, there were some serious doubts raised. Labeling the incarceration of Japanese Americans as "clearly unconstitutional"[30] in light of a pending

U.S. Supreme Court decision, and "a blot upon the history of this country,"[31] Secretary of the Interior Harold Ickes voiced a strong questioning of the governmental policy of the evacuation. In an interview in 1946, Ickes stated:

> "As a member of President Roosevelt's administration, I saw the United States Army give way to mass hysteria over the Japanese...it lost its self-control and, egged on by public clamor, some of it from greedy Americans who sought an opportunity to possess themselves of Japanese rights and property, it began to round up indiscriminately the Japanese who had been born in Japan, as well as those born here. Crowded into cars like cattle, these hapless people were hurried away to hastily constructed and thoroughly inadequate concentration camps, with soldiers with nervous muskets on guard, in the great American desert. We gave the fancy name of 'relocation centers' to these dust bowls, but they were concentration camps nonethe less..."[32]

Similarly, War Relocation Authority Director Dillon Myer was highly critical of the evacuation, stating that there had been a total lack of justification and that once the eviction process began, the Army did an "all out job trying to justify the move." Myer added that "I found out very quickly after I became Director that most of the reasons were phony."[33] Myer later stated that "after the evacuation order was issued here on the mainland, he (Colonel Bendetsen) tried for weeks to get a large group of people evacuated from Hawaii with the idea, I am sure, of justifying their West Coast evacuation."[34]

James Rowe, Jr., aide to Attorney General Biddle, reported that "there was no good military reason for it...the whole story lies in the single fact that the Army folded under pressure."[35]

The extent to which the government "folded under pressure" is evidenced time and again. The collusion of the government regarding the evacuation seems to have been widespread at the highest levels and, in some cases, with ominous intent. In a memorandum, dated December 17, 1943,

to Secretary of State Cordell Hull, there is specific discussion of stripping American-born Japanese of their citizenship and deporting them and their alien parents from the United States:

> "I have appeared before two committees of the Senate where the subject has been discussed and I may say where an avid interest in the future of the Japanese in the United States has been manifested. Legislation will be needed if any large-scale operation is desired... The Attorney General is reported to have said recently to one of the Committees that he had a formula under one of our statutes by which a native-born Japanese... could be divested of his American citizenship--thus making his eligible for deportation."[36]

Attorney General Francis Biddle, the Administration's lone voice calling for tolerance and understanding of Japanese Americans in the days immediately following the attack on Pearl Harbor, fell prey to pressures of another kind. While Biddle was successful, on arguments based on the rights of citizens, in blocking the early moves to evacuate the American-born Japanese, by February 19, 1942, had conceded to the wishes of the President and the Army. It was he who wrote the government's justification for Executive Order No. 9066.[37]

From December 7, 1941 to February 19, 1942, a whole series of events had taken place that had prompted the government to act in an unprecedented and extraordinary manner. The decision for the evacuation had been made at the highest levels of government, and it was at this level that the decision had been made to suspend the constitutional rights of American citizens.

Executive Order 9066, the key instrument for the evacuation, did not specify any one particular racial group, but it is clear that the machinations of government were designing the fates of alien and American citizens of Japanese ancestry. Whatever doubts remained were expelled by the Attorney General in a memorandum to the President, dated April 17, 1943:

"You signed the original Executive Order permitting the exclusions so the Army could handle the Japs. It was never intended to apply to Italians and Germans. Your order was based on 'protection against espionage and against sabotage.'"[38]

The circle, then, was drawn to a close on Japanese Americans in 1942, and they unwittingly became the fateful victims of a breach in the traditions of American democracy. There was within the highest ranks of government, shared by the President and the members of his Cabinet, a conscious decision to abrogate the rights of citizens. But the manner by which this decision was reached by this nation's leadership remains unanswered.

The concluding words of historian Morton Grodzins[39] lend perspective here to an episode that can only be viewed as tragic for the cause of American democracy:

> "The immediate goal presumably served by the Japanese evacuation was clear cut: protection of the West Coast as a war measure. But the national government, in addition to winning the war abroad, had an equal responsibility for maintaining democracy at home. The evacuation violated fundamental liberties of Americans.
>
> Evacuation was a radical departure from traditional American ways and a disturbing model for the future.... Regional considerations, emotional half-truth and racial prejudice colored the public discussion and the original military decision in favor of evacuation. Neither at this point nor at any subsequent point in the entire history of evacuation policy-making did the necessity of evacuation receive full, impartial discussion.
>
> Japanese Americans were the immediate victims of the evacuation. But larger consequences are carried by the American people as a whole. Their legacy is the lasting one of precedent and constitutional sanctity for a policy of mass incarceration under military auspices. This is the most important result of the process by which the evacuation decision was made. That process betrayed all Americans."[40]

In examining the evacuation, our concern should not be with the past, but with the present and the future. It is we Americans who must discover answers for the questions raised by the tragedy of the evacuation in order to prevent a similar threat to the liberties of Americans in the future.

1. Morton Grodzines, Americans Betrayed: Politics and the Japanese Evacuation (Chicago: University of Chicago Pres, 1949), p. 362.

2. War Relocation Authority, Wartime Exile: The Exclusion of the Japanese Americans from the West Coast (U.S. Government Printing Office, Washington, D.C., 1946), p. 100. Hereinafter to be cited as WRA Report: Wartime Exile.

3. Lt. Gen. John DeWitt, Final Report: Japanese Evacuation from the West Coast (Government Printing Office, Washington D.C., 1943), p. 8.

4. loc. cit.

5. WRA Report: Wartime Exile, p. 167, n. 50.

6. Ibid., p. 155.

7. Ibid., pp. 156-57.

8. Ibid. pp. 157-68.

9. Final Report, p. 9.

10. WRA Report: Wartime Exile, p. 154.

11. Michi Weglyn, Years of Infamy (New York: William Morrow and Co., 1976) p. 40.

12. Ibid., p. 41.

13. Ibid., p. 45.

14. Ibid., p. 45, 47.

15. Ibid., p. 284, n. 5.

16. Americans Betrayed, p. 362.

17. War Relocation Authority, The Evacuated People: A Quantitative Description (U.S. Government Printing Office, Washington, D.C., 1946), Table 5, p. 17.

18. Stetson Conn, "The Decision to Evacuate the Japanese from the Pacific Coast," Command Decisions, ed. Kent Roberts Greenfield (Office of the Chief of Military History, Washington, D.C., 1960), p. 128, hereinafter cited as Command Decisions.

19. Ibid., p. 132.

20. Ibid., p. 135.

21. Ibid., p. 142.

22. loc. cit.

23. loc. cit.

24. loc. cit. Italics added.

25. Command Decisions, p. 124.

26. Ibid., p. 147.

27. Ibid., p. 146.

28. Ibid., p. 139.

29. Ibid., p. 145.

30. Letter from Secretary of the Interior Harold Ickes to the President, dated June 2, 1944. Cf. Appendix I.

31. Ibid.

32. Years of Infamy, p. 316, n. 21. Italics added.

33. Ibid., p. 314, n. 7.

34. Ibid., p. 86.

35. Ibid., p. 314, n.7.

36. Memorandum to Cordell Hull, dated December 17, 1943. Cf. Appendix II.

37. Letter from Attorney General Francis Biddle to the President, dated Fruary 20, 1942. Cf. Appendix III.

38. Memorandum for the President, from Attorney General Francis Biddle, dated April 17, 1943. See Appendix IV.

39. Americans Betrayed.

40. Ibid., pp. 374-75.

APPENDIX I

THE SECRETARY OF THE INTERIOR
WASHINGTON

JUN 2 1944

My dear Mr. President:

I again call your attention to the urgent necessity of arriving at a determination with respect to revocation of the orders excluding Japanese Americans from the West Coast. It is my understanding that Secretary Stimson believes that there is no longer any military necessity for excluding these persons from the State of California and portions of the States of Washington, Oregon and Arizona. Accordingly, there is no basis in law or in equity for the perpetuation of the ban.

The reasons for revoking the exclusion orders may be briefly stated as follows:

1. I have been informally advised by officials of the War Department who are in charge of this problem that there is no substantial justification for continuation of the ban from the standpoint of military security.

2. The continued exclusion of American citizens of Japanese ancestry from the affected areas is clearly unconstitutional in the present circumstances. I expect that a case squarely raising this issue will reach the Supreme Court at its next term. I understand that the Department of Justice agrees that there is little doubt as to the decision which the Supreme Court will reach in a case squarely presenting the issue.

3. The continuation of the exclusion orders in the West Coast areas is adversely affecting our efforts to relocate Japanese Americans elsewhere in the country. State and local officials are saying, with some justification, that if these people are too dangerous for the West Coast, they do not want them to resettle in their localities.

4. The psychology of the Japanese Americans in the relocation centers becomes progressively worse. The difficulty which will confront these people in readjusting to ordinary life becomes greater as they spend more time in the centers.

5. The children in the centers are exposed solely to the influence of persons of Japanese ancestry. They are becoming a hopelessly maladjusted generation, apprehensive of the outside world and divorced from the possibility of associating—or even seeing to any considerable extent—Americans of other races.

6. The retention of Japanese Americans in the relocation centers impairs the efforts which are being made to secure better treatment for American

prisoners-of-war and civilians who are held by the Japanese. In many localities American nationals were not interned by the Japanese government until after the West Coast evacuation; and the Japanese government has recently responded to the State Department complaints concerning treatment of American nationals by citing, among other things, the circumstances of the evacuation and detention of the West Coast Japanese Americans.

I will not comment at this time on the justification or lack thereof for the original evacuation order. But I do say that the continued retention of these innocent people in the relocation centers would be a blot upon the history of this country.

I hope that you will decide that the exclusion orders should be revoked. This, of course, would not apply to the Japanese Americans in Tule Lake. In any event, I urge that you make a decision one way or another so that we can arrange our program accordingly.

Sincerely yours,

Harold L. Ickes

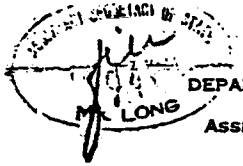
Secretary of the Interior.

The President,

The White House.

APPENDIX II

MEMORANDUM TO CORDELL HULL: POSTWAR DEPORTATION OF JAPANESE AMERICANS DISCUSSED IN RELATION TO POSSIBLE MEASURES TO BE PURSUED BY CANADA

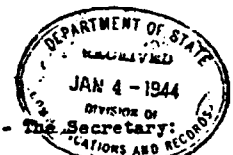


DEPARTMENT OF STATE

ASSISTANT SECRETARY

A-L

December 17, 1943



S - The Secretary:

This is more of a question of domestic policy than of foreign policy, though the repatriation phase of it, the foreign citizenship of many of the persons concerned and the similar situation of Canada bring to it a color of foreign affairs.

The Canadian problem is similar to ours but not identical for we have (a) quite a number of these Japanese (of American nationality) serving in our Army whom we could not in justice kick out of the United States after they had fought with us; and (b) laws of citizenship different from those of Canada. However, the Canadian analysis as prepared for the Prime Minister is considered well done.

SPW

I have recently gone into this problem in several of its phases. The Department has a responsibility - because of the reciprocal treatment provision in the Geneva Convention - in connection with internment camps, relocation centers and prisoners of war camps in this country where Japanese citizens and American citizens of Japanese race are confined. I have appeared before two committees of the Senate where the subject has been discussed and I may say where an avid interest in the future of the Japanese in the United States has been manifested. Legislation will be needed if any large-scale operation is desired - and a large-scale operation to get them out of the United States seems to be the hope of the members of those committees.

The problem has been complicated by our laws relating to citizenship and by the constitutional provision regarding the native born character of the citizenship of those born here. The Attorney General is reported to have said recently to one of the Committees that he had a formula under one of our statutes by which a native-born Japanese or one naturalized could be divested of his American citizenship - thus making him eligible for deportation. However, there has been no official ruling by the Attorney General on this point.

I think the far larger part of official sentiment is to do something so we can get rid of these people when the war is over -

obviously we cannot while the war continues.

But sentiment is liable to wane if the authorization measures are not adopted before the war ends.

We have 110,000 of them in confinement here now - and that is a lot of Japs to contend with in postwar days, particularly as the west coast localities where they once lived do not desire their return.

As the problem involves both foreign and domestic policy and as detention, immigration regulations, deportation proceedings, probably authorizing legislation and appropriation of funds to defray costs as well as allocation of tonnage for transport, and as constitutional questions are involved it seems you may want to suggest to the President that he may want the Attorney General to study the question and take steps to work it out, keeping you advised as regards those matters which have a bearing abroad.

The letter of Mr. Atherton might be answered to the effect that we are studying the matter here but find it very complicated and that we will let Canada know later what we propose to do.

B. L.

attached - 2 clipped Gay's Work: Post.

[B.L.: Breckinridge Long, Assistant Secretary of State and author of *Genesis of the Constitution of the United States*]

APPENDIX III

THE ATTORNEY GENERAL
WASHINGTON

February 20, 1942

PERSONAL

My dear Mr. President:

I am enclosing you a memorandum in connection with the Executive Order which you signed yesterday, authorizing the Secretary of War to prescribe military areas. I thought that you might have questions asked you with reference to the Order at a press conference and that this memorandum would, therefore, be convenient.

Respectfully yours,

Francis Biddle

The President

The White House

Office of the Attorney General
Washington, D.C.

February 20, 1942

MEMORANDUM RE EXECUTIVE ORDER OF FEBRUARY 19, 1942, authorizing the Secretary of War and Military Commanders to prescribe military areas.

This authority gives very broad powers to the Secretary of War and the Military Commanders. These powers are broad enough to permit them to exclude any particular individual from military areas. They could also evacuate groups of persons based on a reasonable classification. The order is not limited to aliens but includes citizens so that it can be exercised with respect to Japanese, irrespective of their citizenship.

The decision of safety of the nation in time of war is necessarily for the Military authorities. Authority over the movement of persons, whether citizens or non-citizens, may be exercised in time of war. For instance, during the last war President Wilson, by Executive Order, forbade any person to fly anywhere over the Continental United States without a license. By section 44 of the Criminal Code (18 U.S.C. 96) the Congress, even before the war, expressly authorized the President to establish such defensive areas as he might deem necessary for national defense. This authority is no more than declaratory of the power of the President, in time of war, with reference to all areas, sea or land.

The President is authorized in acting under his general war powers without further legislation. The exercise of the power can meet the specific situation and, of course, cannot be considered as any punitive measure against any particular nationalities. It is rather a precautionary measure to protect the nationalsafety. It is not based on any legal theory but on the facts that the unrestricted movement of certain racial classes, whether American citizens or aliens, in specified defense areas may lead to serious disturbances. These disturbances cannot be controlled by police protection and have the threat of injury to our war effort. A condition and not a theory confronts the nation.

63-293 O - 80 - 6

APPENDIX IV

OFFICE OF THE ATTORNEY GENERAL

WASHINGTON,D.C.

April 17, 1943.

MEMORANDUM FOR THE PRESIDENT

Re: Exclusion Orders - JULIA KRAUS and SYLVESTER ANDRIANO.

I have your memorandum of April 7th, suggesting that I talk to the Secretary of War about these cases. I shall, of course, be glad to do so, and so informed him sometime ago. Conferences have already been going on for several months; and I have talked personally to McCloy (and others) for several hours.

The Secretary's letter misses the points at issue, which are:

1. Whatever the military do, as Attorney General I should decide what criminal cases to bring and what not to bring. I shall not institute criminal proceedings on exclusion orders which seem to me unconstitutional.

2. You signed the original Executive Order permitting the exclusions so the Army could handle the Japs. It was never intended to apply to Italians and Germans. Your order was based on "protection against espionage and against sabotage." There is absolutely no evidence in the case of ANDRIANO, who has been a leading citizen of San Francisco for thirty years, that he ever had anything to do either with espionage or sabotage. He was merely pro-Mussolini before the war. He is harmless, and I understand is now living in the country outside of San Francisco.

3. KRAUS was connected before Pearl Harbor with German propaganda in this country. She turned state's evidence. The order of exclusion is so broad that I am of the opinion the courts would not sustain it. As I have said before to you, such a decision might well throw doubt on your powers as Commander in Chief.

Memorandum for the President April 17, 1943

4. We have not approved the Army procedure, which does not permit the persons excluded - American citizens - to confront witnesses before the Military Tribunal. This is against a fundamental conception of constitutional rights.

5. Prosecution would have little practical effect. Bail would be granted and the individuals would go on living where they chose until the cases were ultimately decided by the Supreme Court. If the Army believes that they are dangerous they have express power to exclude them under the Executive Order and do not need your approval as requested by the Secretary of War.

6. Obviously the exclusion procedure has nothing to do with black-out or any similar powers exercised by the Army.

7. A question involving power to exclude the Japanese has been certified to the Supreme Court and will be determined very soon by the Court. No action should be taken until this decision. The Andriano exclusion order was issued by General DeWitt, in charge of the Western Defense Command. The quality of his judgment may be gauged by his recent statement: "A Jap's a Jap. It makes no difference whether he is an American citizen or not . . ." I call your attention to the attached editorial in the Washington Post for April 15th, on the General's remarks. These are particularly unfortunate in view of the case pending in the Supreme Court.

8. Exclusion is based on <u>military</u> danger. This element is entirely lacking from these cases.

Respectfully yours,

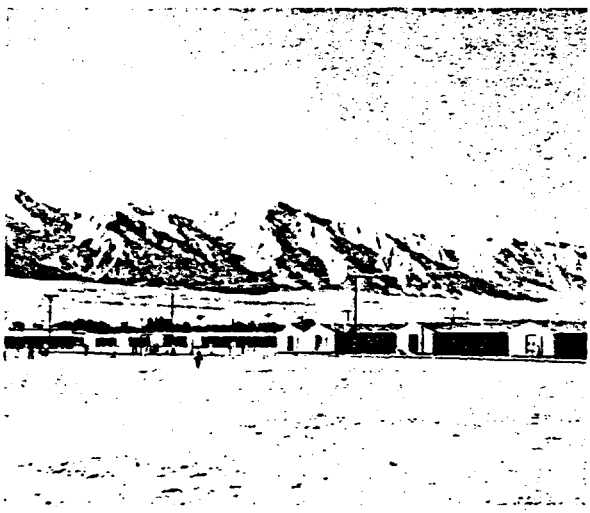
Sgd. Francis Biddle
Francis Biddle
Attorney General

Encl.

DESCRIPTION OF RELOCATION CENTERS

RELOCATION COMMUNITIES

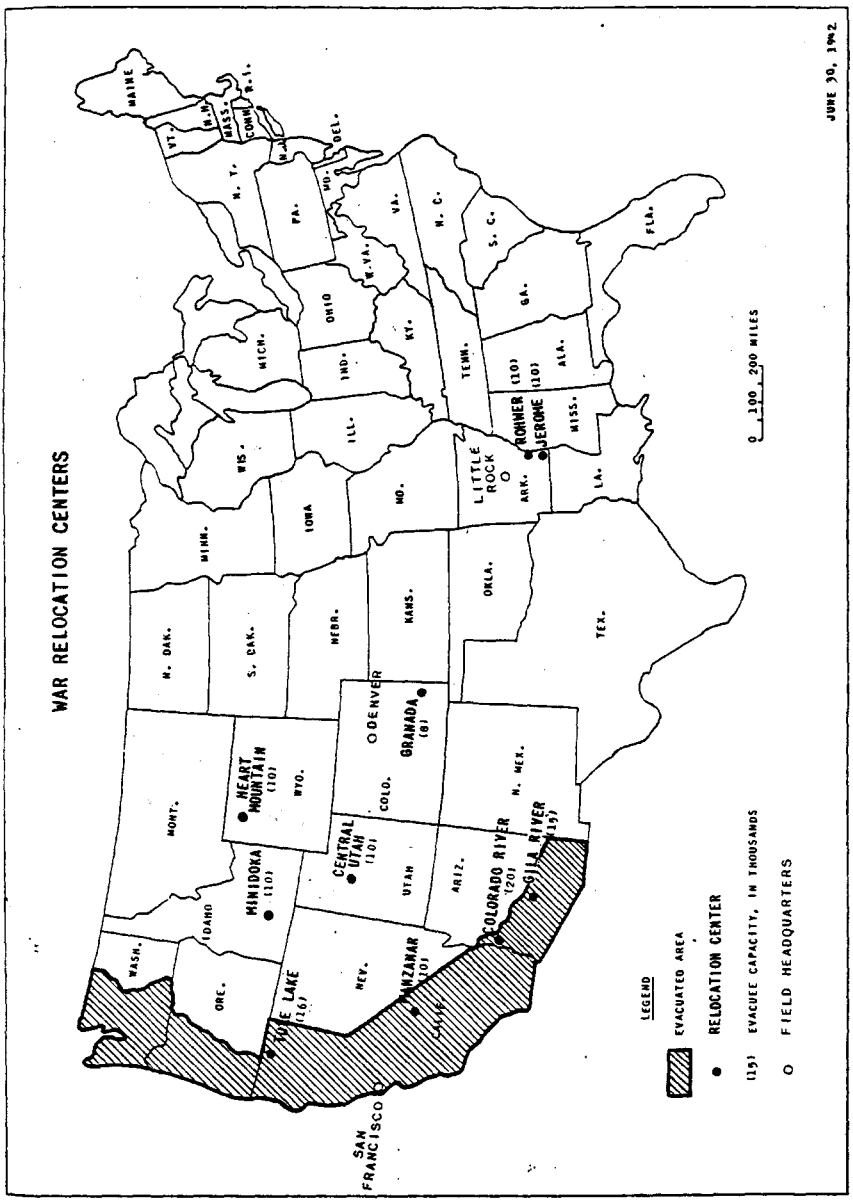
for Wartime Evacuees



A RELOCATION CENTER

War Relocation Authority
Washington, D. C.

September, 1942


WAR RELOCATION CENTERS
MAINE
VT.
N.H.
MASS.
CONN.
R.I.
N. Y.
PA.
DEL.
MD.
VA.
W. VA.
N. C.
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IDAHO
WYO.
COLO.
N. MEX.
ARIZ.
UTAH
NEV.
WASH.
ORE.
CALIF.
SAN FRANCISCO
TULE LAKE (16)
MINIDOKA (10)
HEART MOUNTAIN (10)
CENTRAL UTAH (10)
GRANADA (8)
DENVER
LITTLE ROCK
ROHWER (10)
JEROME (10)
COLORADO RIVER (20)
GILA RIVER (19)
MANZANAR (10)
LEGEND
EVACUATED AREA
RELOCATION CENTER
(15) EVACUEE CAPACITY, IN THOUSANDS
FIELD HEADQUARTERS
0 100 200 MILES
JUNE 30, 1942

Manzanar

Location:	Inyo County, California	Gross acreage:	6,000
Evacuee capacity:	10,000	Suitable for agricultural development	500

Virtually under the shadow of snow-capped Mt. Whitney, highest peak in continental United States, the Manzanar (pron: MANzanar) Relocation Area is situated in historic Owens Valley about five miles north of the town of Lone Pine and 220 miles north of Los Angeles.

To the southward, Owens Valley slopes slowly into the Mojave Desert, and beyond an 11,000 foot range to the east lies Death Valley. Notwithstanding this close association with deserts, Owens Valley is fairly fertile, the climate is temperate, and water is supplied from year-round glaciers in Whitney's deep canyons. The relocation area is owned by the City of Los Angeles and is being operated by the Authority under permit from the War Department.

Manzanar was built as an assembly center by the Wartime Civil Control Administration, later turned over to the War Relocation Authority as a relocation area. It is mostly undeveloped land, partly covered by sagebrush and mesquite. Under evacuee operations, a water system will be built and approximately 500 acres of land will be turned into a farm to produce subsistence crops for the center's population.

An orchard of apple trees ("Manzanar" means apple orchard in Spanish) has been reclaimed and irrigated and is expected to bear some usable fruit this season after having received neither care nor water for fifteen years. Here, too, camouflage nets for the United States Army are being garnished by evacuee workers, and guayule cuttings have been planted on one plot as part of the nationwide effort to develop a substitute source for rubber.

Tule Lake

Location: Modoc County, California

Gross acreage: 26,000

Evacuee capacity: 16,000

Suitable for agricultural development 24,000

In extreme northern California, only a few miles south of the Oregon line, the Tule (pron: TOO-lee) Lake Relocation Area lies chiefly in an old lake bed reclaimed for irrigation by the United States Bureau of Reclamation as part of the Klamath Reclamation Project. Irrigation structures have already been built for about half the acreage in the relocation area and some 2500 acres are already in cultivation. The evacuees will level the additional acreage and construct necessary irrigation and drainage facilities with the object of having about 6700 acres in production by 1943.

Twenty years ago, when the work of draining Tule Lake first was started, much of the surrounding region was little more than a desert-type wilderness. Since that time, and with about two thirds of the lake now drained, the region has been gradually settled by homesteaders, mostly ex-service men and their families, attracted by its agricultural opportunities. There were, however, no settlers on the lands taken over for the relocation area.

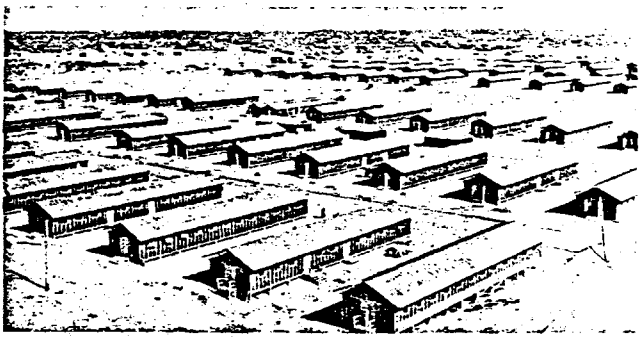
Nestled between scenic mountain ranges, the basin will be irrigated by water from a diversion dam on Lost River, a mountain stream. The project lies at an elevation of about 4,000 feet and has

a black loam soil capable of intensive cultivation. Although precipitation averages only about nine inches a year, the land is well adapted--under irrigation--to the raising of potatoes, small grains, berries, alfalfa and other forage crops as well as the hardier varieties of vegetables such as carrots, peas, lettuce, turnips, celery, beans and onions. Temperatures range from 99 degrees above zero to 27 below, and growing season averages about 130 days.

Colorado River

Location:	Yuma County, Arizona	Gross acreage:	72,000
Evacuee capacity:	20,000	Suitable for agricultural development:	41,000

Largest of all the relocation areas is the one located on the Arizona side of the Colorado River at Poston, about half way between Yuma and Needles. Here, out of the sagebrush and silt on the Colorado River Indian Reservation, evacuees from the Pacific Coast will develop a green irrigated valley for their own use during wartime and for postwar use by the Indian tribes. The relocation area is situated on a part of the Reservation not now occupied by the Indian people.



Double-roofed quarters at the Colorado River Relocation Area. The barrack type of construction is typical of the living quarters provided in the relocation communities. Desert in the background will be cleared, irrigated and brought into production.

Three relocation centers have been built on this desert area where the rainfall averages only three inches a year and much of the

annual supply sometimes pours down in a single cloudburst. Community Number One will house 10,000 persons, and Communities Two and Three 5,000 each. The communities have been dispersed for greater ease of administration and to make the evacuees more accessible to the various agricultural areas sprawled over the vast acreage.

Several miles away up the Colorado River is Head Gate Rock Dam from which the relocation area will derive the water supply for raising vegetables, fruits, berries, melons, and a wide variety of other agricultural products. Completion of the irrigation system will eventually bring 41,000 acres into production.

In the summer, temperatures sometimes rise as high as 120 degrees. But this warmth brings up the crops with remarkable speed. Alfalfa, for example, sometimes returns as many as seven or eight cuttings a year. Winter temperatures drop to nine degrees and the growing season is 258 days.

During the wartime period, the relocation project is being administered by the Indian Service under policies formulated by the War Relocation Authority.

Gila River

Location: Pinal County, Arizona

Gross acreage: 16,467

Evacuee capacity: 15,000

Suitable for agricultural development: 14,750

Also located on Indian lands, the Gila (pron: HEE-la) River Relocation Area in south-central Arizona lies on part of the Pima Reservation about 40 miles south of Phoenix and 80 miles north of Tucson.

Ready for immediate agricultural use are 6,977 acres of irrigated land now in alfalfa. Another tract of 8,850 acres now undeveloped is suitable for irrigation in line with the program of the Indian Service and may eventually be developed. The area, lying about 1500 feet above sea level, is fairly level, quite fertile, and has a growing season of about 247 days. Rainfall averages 10 inches a year. Summers are long and hot, winters short and mild. Temperatures have ranged from nine degrees above zero in winter up to 117 in the summer months.

The land already developed, which has been planted to alfalfa for five to six years, and the tract planned for irrigation are both well adapted to the growing of garden truck, such as melons, beans, tomatoes, carrots and lettuce, as well as feedstuffs. This area is also one of the few in the country where long-staple cotton, being developed by the Experiment Station on the Indian Reservation, can be grown, and 1943 production plans contemplate 3,000 acres of this crop.

The relocation project includes two communities, about three miles apart.

Minidoka

Location:	Jerome County, Idaho	Gross acreage:	68,000
Evacuee capacity:	10,000	Suitable for agricultural development:	17,000

Second in gross acreage only to Colorado River, the Minidoka Relocation Area in south-central Idaho on the Gooding Division of the Minidoka Reclamation Project presents a peculiar problem of land development. Because the area is broken up by huge outcroppings of lava, only 25 per cent of the broad acreage is even potentially suited to agriculture. Yet the soil between the outcroppings is fertile and needs only irrigation water to yield abundant crops.

Plans for development of this public land area were laid out by the Bureau of Reclamation and will be carried forward by the evacuees. By next year several thousand acres would be under cultivation and producing most of the food needed for the evacuee community and perhaps a surplus for other relocation centers. Major crops will be potatoes, beans, and onions. Hay crops such as alfalfa and clover will also be grown, along with barley, and oats. After the war the land will revert to the Bureau of Reclamation and will be available for settlement.

Lying at an elevation of 3800 feet, the Minidoka area has temperatures ranging from 30 degrees below zero to 104 above. The average annual rainfall is 10 inches and the growing season averages about 138 days.

Central Utah

Location: Millard County, Utah		Gross acreage:	19,900
Evacuee capacity:	10,000	Suitable for agricultural development:	10,000

Located some 4700 feet above sea level and about 140 miles south of Salt Lake City, the Central Utah Relocation Area includes land formerly in private ownership as well as State-owned land, and public domain. The War Relocation Authority has purchased the private acreage and is operating the public land under agreement.

More than 9,000 acres in the area have previously been cultivated and are capable of producing good yields of alfalfa, sugar beets, and grain. The evacuees will use irrigation water provided through the canals of the Abraham and Deseret Water Companies' systems and will repair and recondition laterals already extending over the project lands.

Characterized by a dry and a wet season, the area gets about half its annual rainfall of eight inches in the spring and little or none during the summer. Temperatures range from about 106 degrees in summer to about 30 degrees below zero in the winter months. The first killing frosts usually come in late September and the last ones occur during the latter part of May. This makes for a growing season of approximately 120 days.

Heart Mountain

Location: Park County, Wyoming		Gross acreage:	45,000
Evacuee capacity:	10,000	Suitable for agricultural development:	26,000

Situated in the Big Horn Basin, less than 50 miles east of Yellowstone National Park, the Heart Mountain Relocation Area is the northernmost of the sites so far selected for resettlement of West Coast evacuees.

Because of latitude plus its 4,600-foot elevation, the area is cold in winter and has a growing season that averages about 130 days between killing frosts. Over most of the area, however, the soil is fertile, light-textured, and easy to work. Alfalfa, small grains, beans, potatoes, and seed peas are typical crops.

Like Tule Lake and Minidoka, the Heart Mountain Relocation Area is on public land made available by the Bureau of Reclamation. It is on a division of the Shoshone Reclamation Project. Although most of the area is now used for grazing and precipitation averages only seven inches a year, nearly 10,000 acres are served with a complete system of canals and laterals, and ample water for further development is available from the Shoshone Reservoir. Temperatures range from 40 degrees below zero in winter to 100 above in summer.

Granada

Location: Prowers County, Colorado — Gross acreage: 10,000

Evacuee capacity: 8,000 — Suitable for agricultural development: 6,500

In the old X-Y Ranch country of southeastern Colorado, the War Relocation Authority is establishing its smallest relocation community, named Granada after a nearby town. The Authority has purchased the land outright especially for use as a relocation area.

About 5,500 acres in the area are already under cultivation and ready for immediate farming by the evacuees. Another 1,000 acres have been earmarked for crop production in 1943, after the irrigation system has been repaired and extended.

Crops best adapted to the area include sugar beets, alfalfa, small grains, and truck crops such as tomatoes, cucumbers, onions, peas, cabbages, and melons. Rainfall averages 15 inches a year and snowfall 14 inches. Temperatures over a period of years have ranged from a maximum of 110 degrees down to a minimum of 25 below zero. The growing season averages 156 days a year.

Rohwer

Location: Desha County, Arkansas — Gross acreage: 10,000

Evacuee capacity: 10,000 — Suitable for agricultural development: 9,000

Far to the east of most evacuee communities, on land leased from cooperative organizations sponsored by the Farm Security Administration in southeastern Arkansas, the Rohwer Relocation Area lies

in a region of abundant rainfall. Fifty-two inches a year is average for this section, and the chief agricultural problem will be to keep the land properly drained.

In addition to drainage, the most immediate task facing the evacuees, will be to clear the land of its present dense cover of brush, second-growth timber, and stumps left from earlier logging operations. As this work goes forward, the harvested timber will be processed on the project as railroad ties, staves, heading blocks, fence posts, and rough lumber. As the land is cleared and drained, it will be used to produce crops for relocation kitchens and for the war effort.

Like most Mississippi Delta areas, the Rohwer Relocation Area has a rich alluvial soil and a comparatively long frost-free growing season. Winters are mild, and plowing is possible all months of the year. Alfalfa, small grains, cotton, and a wide variety of fruits and truck crops are the principal agricultural possibilities. The area lies at an elevation of only 150 feet and has had temperatures ranging from six degrees below zero up to 112 above.

Jerome

Location: Chicot and Drew Counties, Arkansas

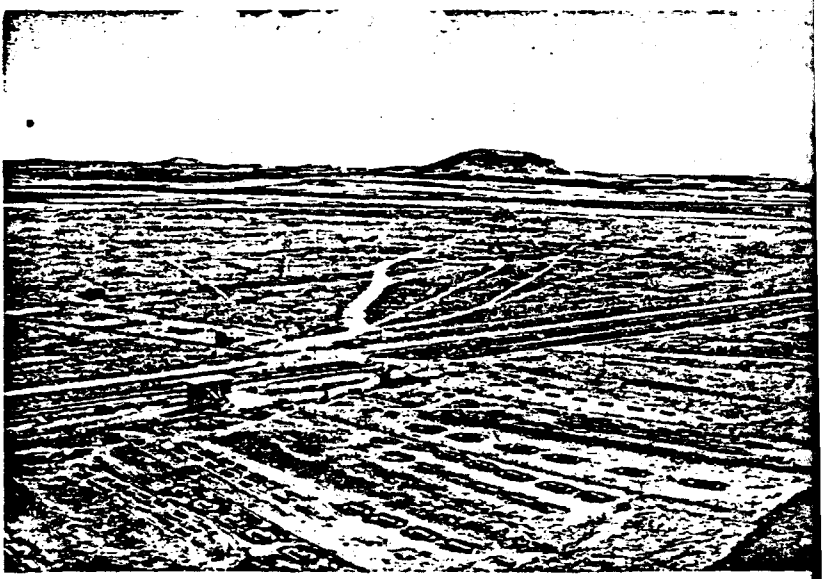
Gross acreage: 9,500

Evacuee capacity: 10,000

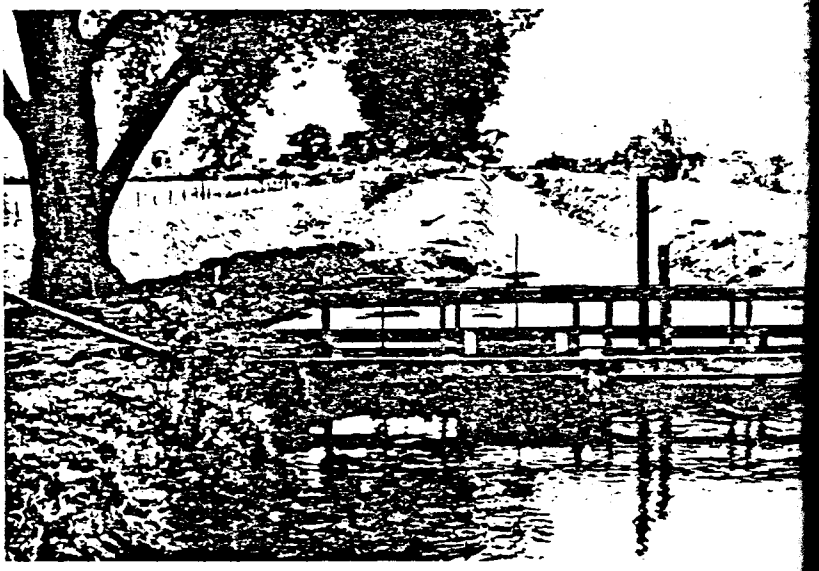
Suitable for agricultural development: 8,500

Also in the Mississippi Delta Section of Arkansas, only a few miles south of the Rohwer area, lies the twin relocation project near Jerome, an old logging town.

The Jerome Relocation Area is nearly the same size as Rohwer and is also on land leased from FSA-sponsored cooperatives. It will have the same population and roughly the same acreage in agriculture. Land development work and cropping possibilities at the two projects are virtually identical. In fact, the only noteworthy difference is that the Jerome area has somewhat less timber than Rohwer and will consequently yield a considerably lighter harvest of wood products.



(Above)
Tule Lake Relocation Area, in early stages of constru
tion. The site was the bed of a lake a few years ago



LIFE IN THE CAMPS

Faced with the evacuation orders, Japanese Americans had to leave their homes with only a few days notice and could take only what they could carry with them. Property had to be hurriedly sold, abandoned, given away, left in insecure or unpredictable trusts. Crops were left unharvested. Many lost titles to homes, businesses and farmlands because taxes and mortgage payments became impossible to pay. Bank accounts had already been frozen or confiscated as "enemy assets," and there was little source of income within the camps.

But what life awaited them in camp?

The camp life of the evacuees can be divided into two distinct periods. The first period began in March 1942 and ended later that year. It involved residence in 15 temporary detention camps scattered throughout Arizona, California, Oregon and Washington. They were mostly county fairgrounds, race tracks and livestock exhibition halls hastily converted into detention camps with barbed wire fences, searchlights and guard towers. Each camp held about 5,000 detainees, except for the Santa Anita Race Track near Los Angeles, California which held over 18,000 and Mayer, Arizona which held only 247. Living quarters for many consisted of horse stalls, some with manure still inside.

Quarters in the assembly centers were generally a bare room comprising a "family apartment," provided only with cots, blankets and mattresses (often straw-filled sacks). The apartment's only fixture was a hanging light bulb. Each family unit was separated from the adjoining one by a thin dividing partition which, "for ventilation purposes," only went part way up.

Evacuees ate communally, showered communally, defacated communally. Again with an eye toward economy, no partitions had been built between toilets--a situation which everywhere gave rise to camp-wide cases of constipation. Protests from Caucasian church groups led, in time, to the building of partial dividing walls, but doors were never installed. Equally abhorrent to the Issei, for whom scalding baths were a nightly fatigue-relieving ritual, were the Western-style showers, from which they usually walked away unsatisfied and shivering, for the hot water supply was never dependable.

In interior California camps, the hot summer sun beating down on paper-thin roofs turned living quarters into sizzling ovens, sometimes causing floors to melt.

Despite concerned efforts of humanitarian groups, the Public Health Service could not be moved to condemn the stables as unfit for human habitation though the stench became oppresive in the summer heat, especially in stables which had been merely scraped out and no floors put in. At the largest of the assembly centers, the Santa Anita Race Track, then housing over 18,000 evacuees, hospital records show that 75 percent of the illnesses came from the horse stalls.

In the early days of the Army-controlled assembly centers, camp fare consisted largely of canned goods: hash, pork and beans, canned w beans of an infinite variety. Conspicuous by their absence were the fresh fruits and vegetables which the Issei had once raised in succulen profusion.

In this caged-in government-made ghetto without privacy or permane the adolescent Nisei also experienced their first exhilarating sense of release--from the severe parental restraint placed upon them. Until th camp experience, such phenomena as youth gangs and social workers, for

example, were virtually unheard of in Japanese communities. In the free-and-easy contacts now available to the army of teenagers involved, the carefully inculcated discipline, the traditional solidarity of the Japanese family and its extremely rigorous moral code all underwent a steady weakening.

While order was gradually being established in the assembly centers, work crews under the supervision of Army engineers were toiling at a feverish pace to meet the near-impossible governmental deadline on relocation camps in the far interior. While most of these sprawling encampments were located on hot desert acres or on drought-parched flatlands, two of the relocation projects (Rohwer and Jerome) were taking shape on swampland areas in distant Arkansas. This marked the second period of camp life--"The Relocation Centers."

Again, with scant regard for the elderly in fragile health, rough-hewn wooden barracks--the flimsy "theater-of-operations" and meant for temporary housing of robust fighting men--had been speedily hammered together, providing only the minimum protection from the elements. Though lined on the inside with plaster board and almost totally wrapped with an overlay of black tarpaper, they afforded far from adequate protection against the icy wintry blast that swept through the warped floor boards in such northerly centers of relocation as Heart Mountain (Wyoming), Minadoka (Idaho), Topaz (Utah) and Tule Lake (California), where the mercury dipped, on occasion to a numbing minus 30 degrees in the winter.

A degree of uniformity existed in the physical makeup of all centers. A bare-room measuring 20 feet by 24 feet was again referred to as a "family apartment"; each accommodated a family of five to eight members; barrack end-rooms measuring 16 feet by 20 feet were set aside for

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smaller families. A barrack was made up of four to six such family units. Twelve to fourteen barracks, in turn, comprised a community grouping referred to as a "block." Each block housed 250-300 residents and had its own mess hall, laundry room, latrines and recreation hall.

The construction "is so very cheap, that, frankly if it stands up for the duration we are going to be lucky," testified Milton Eisenhower before a Senate appropriations committee, noting that "the Arizona camps were in areas which could be as high as 130 degrees in summertime." These destitute living conditions--the poor construction, the crowded and demeaning facilities--were referred to by Chief Judge William Denman of the Ninth Circuit Court of Appeals, in an opinion of August 26, 1949, in which he noted that in no federal penitentiary were conditions so poor.

Japanese Americans were known for their pride in rarely having been on welfare or locked up in prisons, but the camps relegated them into wards of the government guarded by armed soldiers. Fathers were no longer the family breadwinners, parents lost control of their children and families rarely ate meals together. Many were terrified because of the unpredictable future and the hopelessness of the situation. Many did not expect to come out alive.

Overwhelming despair caused some detainees to commit suicide. Many more died prematurely due to inadequate medical facilities and the harsh environment.

All incoming and outgoing communications were censored, including personal letters and newspapers. All internal communications were strictly controlled by the camp administration. The Japanese language was banned at public meetings, and the Buddhist and Shinto religions were suppressed.

The detainees tried to make the dreary camps halfway tolerable by foraging scrap materials to make furniture and room partitions. They used indigenous plants to make gardens and surplus materials or adobe to build schools and recreation facilities. Detainees also operated their own camp farms, and many camps became self-sufficient in food.

Milton S. Einsenhower, associate director of the Office of War Information, in a letter dated April 22, 1943, to the President said: "My friends in the War Relocation Authority, like Secretary Ickes, are deeply distressed over the effects of the entire evacuation and the relocation program upon the Japanese-Americans, particularly upon the young citizen group. Persons in this group find themselves living in an atmosphere for which their public school and democratic teachings have not prepared them. It is hard for them to escape a conviction that their plight is due more to racial discrimination, economic motivations and wartime prejudices than to any real necessity from the military point of view for evacuation from the West Coast.

In a letter dated June 2, 1944 to the President, Secretary of the Interior Harold L. Ickes called attention to "the urgent necessity of arriving at a determination with respect to revocation of the orders excluding Japanese Americans from the West Coast." In his letter Ickes states reasons for revoking the exclusion orders including: "the pyschology of the Japanese Americans in the relocation centers becomes progressively worse. The difficulty which will confront these people in readjusting to ordinary life become greater as they spend more time in the centers." Commenting further on camp life Ickes said: "The children in the centers are exposed solely to the influence of persons of Japanese ancestry. They are becoming a hopelessly maladjusted generation, apprenhensive of the outside world and divorced from the

possibility of associating--or even seeing to any considerable extent--Americans of other races."

In an article printed in the New York "New Leader," April 17, 1943 titled "Inside-Jap-Crow Camps--The Story of West Coast Evacuations" describes conditions in the camps. "Delinquency has become a grave problem in camps. Before the evacuation the Nisei had the lowest delinquency and crime rate of any racial group in the West. They had the lowest rate of relief cases even in the bottom of the depression. In short, they had excellent civic records which in pre-war days the politicians were glad to repeat to Nisei groups whose votes they sought. Now the government is sending social workers to try and check this delinquency. What irony! The blame does not rest with the delinquent children or their parents. It rests directly with the intolerable social conditions of the camps--no privacy, no home--one vast, demoralizing slum."

In conclusion the following is excerpted and adapted from WRA Community Analysis Report No. 1, October 1942:

> All evacuees in relocation centers have an uneasy feeling of insecurity that determines many of their actions. This insecurity is due to the war, and especially to the relocation program whereby families often had to move not once but twice or three times. All of this occurred in a few weeks or months. The newspapers carry stories of threats to deport Japanese after the war, threats to deprive Nisei of citizenship, threats to prevent the return of evacuees to California after the war. WRA policy in the relocation centers differs from the policies followed by the Army in the assembly centers, and WRA policy itself has often changed. Small wonder, then, that an evacuee wonders "what next?" He is worried and insecure in regard to what will happen after the war, what will become of his children's manners and morals as a result of life in center barracks, with the common mess halls and lavatories. He is worried about tomorrow's food, tomorrow's health, tomorrow's children. It is this basic insecurity and multitude of anxieties that cause so many alarmist rumors to fly through the centers and cause so many people to become apathetic.

FIG 1

THE EVACUATED PEOPLE

FROM

- **90,491** WCCA ASSEMBLY CENTERS
- **17,915** DIRECT EVACUATION
- **5,981** BIRTHS
- **1,735** DEPT. OF JUSTICE INTERNMENT AND DETENTION CAMPS
- **1,579** SEASONAL WORKERS (Released by WCCA)
- **1,275** INSTITUTIONS
- **1,118** HAWAIIAN ISLANDS
- **219** VOLUNTARY RESIDENTS

120,313
WRA CUSTODY
(Includes 787 institutionalized cases and 783 seasonal workers released by WCCA who were never assigned to nor inducted into a WRA center.)

TO

- **54,127** RELOCATED TO WEST COAST EVACUATED AREA
- **52,798** RELOCATED TO OTHER SECTIONS OF UNITED STATES AND HAWAII
- **4,724** TO JAPAN
- **3,121** DEPT. OF JUSTICE INTERNMENT INCLUDING FAMILY MEMBERS
- **2,355** U. S. ARMED FORCES
- **1,862** DECEASED (Excludes 4 unauthorized departures—refer to page 5, Section I)
- **1,322** INSTITUTIONS

ROLE THE JAPANESE AMERICAN SERVICEMEN IN WORLD WAR II

ROLE OF THE 442nd AND MIS

The Japanese Americans did not foster resentment or anger toward the American people and the government for their evacuation and mistreatment during World War II. Instead, these Americans of Japanese descent accepted their mistreatment as a challenge, and sought opportunities to show their loyalty to the United States.

During the first year of the war, Japanese Americans had very little chance to participate in the nation's war effort, except for those who had been drafted prior to December 1941. When the doors to our armed forces were finally re-opened to them, they took an active part in the war.[1] In Hawaii alone, more than 16,000 Americans of Japanese ancestry were drafted into the armed forces through the selective service system. It should be noted that the total number of drafted men of all races in Hawaii throughout the war totaled 32,000. This meant that the Americans of Japanese ancestry made up nearly 50 percent of all drafted men in the territory of Hawaii during World War II.

On January 28, 1943, the Secretary of War announced the formation of a special combat team of Japanese Americans and called for volunteers -- 1,500 from Hawaii and 3,500 from the mainland. Anticipating objections in principle to segregation, the War Department provided the following rationale: the important consideration for Nisei was that they be given the

right to fight for their country. If troops of Japanese ancestry were diffused throughout the armed forces, they would count only as additional manpower, and there would be no way of taking special account of what the group had contributed. But the performance of a separate unit would be noticed and could serve as conclusive refutation of charges of disloyalty.[2] In support of the proposal, President Franklin D. Roosevelt declared, "The principle on which this country was founded and by which it has always been governed is that Americanism is a matter of the mind and heart. Americanism is not, and never was, a matter of race or ancestry."[3]

This led to the birth of the most famous units of the Japanese Americans during World War II: the 100th Infantry Battalion and the 442nd Regimental Combat Team.

After the Pearl Harbor attack, the Japanese Americans who were members of the Hawaiian National Guard were formed into a separate group.[4] They were later sent to the United States and became the heart of the 100th Infantry Battalion. This group was first known as the Hawaiian Provisional Battalion, and it arrived at Camp McCoy in Wisconsin early in June 1942. The battalion later moved to Camp Shelby, Mississippi, where it continued its training until August 1943.[5]

The 100th arrived in Italy in September of 1943 and was assigned to part of the 34th Division. From September of

1943 until February 22, 1944, the 100th Infantry Battalion was in constant action. It participated in the landing at Salerno and the heavy fighting that took place there. After nearly six months of action in the Italian campaign, the Japanese Americans had suffered a loss of almost 600 men due to death, wounds, or exposure.

When the 442nd Regimental Combat Team arrived in Italy in June of 1944, it absorbed the 100th Infantry Battalion into its own ranks. This was a happy reunion for many members who were friends or relatives of the members of the 100th Battalion which was by now a veteran infantry outfit. The 100th Infantry Battalion had made the assault landing at Anzion Beach in Italy late in March of 1944, skirted past the capital of Italy, and was finally joined with the 442nd Regimental Combat Team.[6]

The battalion continued its operations as the American Army crossed the Arno River after having fought and marched through the city of Pisa in northern Italy. Following this, they were pulled back from the front lines for a month's rest and in September of 1944, they joined the 7th Army and its invasion of France through the south.[7]

During this time, the 442nd Regimental Combat Team probably performed its most heroic action. This was the rescue of the famous Lost Battalion of the 36th Texas Division of the United States Army. The Lost Battalion had been isolated

behind German lines one week and the German high command was determined that the battalion should not be rescued whatever the cost. Since the 3rd and 100th Battalions of the 442nd Regimental Combat Team were the freshest troops in the 7th Army, they were assigned the task of rescuing the Lost Battalion. During this engagement, the 442nd lost more men than in any of its other operaions during the entire war. Casualties ran as high as 60 percent, and in some rifle companies, the casualties ran even higher.[8] Ordinary infantry company strength in the 3rd and 100th Battalions was considered to be 200 men. The fighting was so heavy that many companies had from only 30 to 40 men left, and one company was down to less than 10. Some companies and platoons operated without their regular officers who had been killed or wounded, and the noncommissioned officers took over the responsibility and continued the battle. After nearly six days of terrific combat, the Lost Battalion was rescued.[9]

In March 1945, the Japanese Aemrican units departed from France and relanded in Italy. At this time, they were joined tothe 92nd Division, and here they fought for the rest of the war, spearheading the successful drive to Genoa, Milan and Turin.[10] During this campaign, Sadao S. Munemori earned the Medal of Honor. Munemori was born in Los Angeles, California and volunteered as a member of the 100th Infantry Battalion.

On April 5, 1945 near Seravezza, Italy, he gave his life in an heroic gesture when he smothered a grenade blast with his body in order to save two of his men.

The 442nd RCT returned to the United States on July 2, 1946.[11] On July 16, 1946, they were awarded a distinguished honor by the President of the United States, Harry S. Truman. Despite a heavy rainstorm, President Truman reviewed the proud members of the 442nd as they marched down Pennsylvania Avenue. At the conclusion of the review, he awarded the Regimental Combat Team the Presidential Distinguished Unit Citation. Then Mr. Truman stated:

> "You fought for the free nations of the world along with the rest of us. I congratulate you for that, and I can't tell you how much the United States of America thinks of what you have done. You are now on your way home. You fought not only the enemy, but you fought prejudice, and you have won. Keep up that fight, and we continue to win -- to make this great Republic stand for just what the Constitution says it stands for: the welfare of all the people all the time."

This was not the only unit citation that these two distinguished groups received during the war. In fact, they received a total of seven separate Presidential Unit Citations for outstanding operations and brilliant tactical operations during their months in combat in Italy and France. The 100th Infantry Battalion was correctly called, "the Purple Heart Battalion." A final tally of the honors earned by the 442nd RCT at the end of the war showed:

7 major campaigns in Europe
7 Presidential Unit Citations

9,486 casualties
18,143 individual decorations, including:

1 Congressional Medal of Honor
52 Distinguished Service Crosses
1 Distinguished Service Medal
560 Silver Stars, with 28 Oak Leaf Clusters in lieu of second Silver Star awards
22 Legion of Merit Medals and approximately 4,000 Bronze Star awards, with about 1,200 Oak Leaf Clusters representing second Bronze Stars
15 Soldiers Medals
12 French Croix de Guerre, with two Palms representing second awards
2 Italian Crosses for Military Merit12
2 Italian Medals for Military Valor.

According to Pentagon records, this was the most decorated unit for its size in the United States Army, in all its history.[13]

Back in the United States, the Army had been sending spit-and-polish teams to present posthumous awards to the families of these fallen heroes. Color guards turned out. Military ceremony was observed as the DSC's, Silver Stars, Bronze Stars and Purple Hearts were pinned on mothers' blouses.

The parents, wives, borhters and sisters of these dead heroes, however, could not go to Washington, D.C. or even to the nearest Army base to accept these honors. They were under machine-gun guard, behind barbed wires and searchlight watch towers; they were being detained in the tar-paper barracks of ten dreary camps caled "Wartime Relocation Centers."

Virtual prisoners of war, many of the mothers were in those camps for as long as four years, or many months after their sons had died for America. Neither the Gold Star mothers, nor any of the rest of a total of more than 110,000 people,

two-thirds of whom were American citizens, had been charged with any crime. None had any kind of hearing. None had had a day in court.[14]

One must not overlook the exploits of the thousands of Japanese Americans who fought in the Pacific theater of operations. Since the activities of the military intelligence service were cloaked in secrecy, the accomplishments of Nisei troops in the Pacific could not be disclosed until late in the war. In August 1944, the awarding of Bronze Stars to six Nisei who had participated in the conquest of Saipan was announced.[15] Later that year and during the spring of 1945, various newspapers in the areas where their families resided published articles on individual Nisei who had been killed or decorated in the Pacific theater. In April 1945, Joe Rosenthal, who took the memorable picture of marines raising the American flag on Mount Suribachi, revealed that many Nisei serving in the Pacific had volunteered for dangerous missions and that they had coaxed countless enemy soldiers to surrender -- thus saving American lives.

The exploits and accomplishments of the Nisei who served in the Military Intelligence Service Language School (MISLS) are acknowledge in the Congressional Record of the 88th Congress, first session. On February 28, 1946, President Truman declared in part:

"It is significant that of the 33,000 Americans of Japanese ancestry who served in the Armed Forces, there were a great number of casualties, including hundreds who died for the American way of life.

"The record is documented by episodes of the highest valor. Yet the noblest evidence of their devotion to America is that in fighting for their country, those assigne to the Pacific theater had to fight people of their own race. This they did, knowing that in victory for the American cause was victory for all mankind.

"Their service is a credit not only to their race and to America, but to the finest qualities in human nature."

These guinea pigs, as Japanese language specialists, were also instrumental in translating the imperial Japanese Navy battle plans, which proved to be the deciding factor in the U.S. Navy's dealing the Japanese fleet its worst defeat in naval history off the northeast coast of the Philippines later in the war.

Because of these Japanese American language specialists, who had to have at least two non-Nisei GI's assigned to them to prevent their being mistaken by their own American troops for the enemy when in the field, it is said that "never before in history did one army know so much concerning its enemy prior to actual enegagement as did the American Army during most of the Pacific campaigns."

Teams were also assigned to Merrill's Marauders, Mar's Task Force, Far Eastern Air Forces, and the China-Burma-India theater. During the Attu and Kiska campaigns off the Alaska department with headquarters in Adak.

Graduates of the MISLS translated the entire Japanese battle plans for the naval battle of the Philippines. These plans were captured from commander in chief of the combined Japanese fleets when the plane in which he was hurrying to join his fleet made a forced landing in the Philippines. Likewise, the complete Japanese plans for the defense of the Philippines were also made known long before the landing on Leyte.

Guadalcanal, Buna, New Georgia, Myitkyina, Attu, Munda, Peleliu, Tarawa, Saipan, Iwo Jima, Leyte, Okinawa -- these are to mention only a few of the places where American troops were aided by Nisei combat intelligence. And these non-Nisei soldiers will long remember the Japanese American combat intelligence men who lie where they fell -- not in a confined cemetery, but in the steaming jungles and sandy beaches far from home.

The Nisei, who were described as America's "Human Secret Weapon" against the Japanese, were so efficient that captured documents sometimes proved their worth within 20 minutes after siezure by American soldiers when U.S. troops were sent against the new enemy installations they disclosed. General Joseph W. Stilwell had this to say about the Japanese American soldier at the conclusion of World War II:

> "The Nisei bought an awfully big hunk of America with their blood. We cannot allow a single injury to be done them without defeating the purposes for which we fought."

In his autobiography, "I Was An American Spy," Colonel

Sidney F. Mashbir, who commanded the Allied Translator and Interpreter Service, in whcih thousands of Nisei served, devotes a whole chapter to "The Nisei." He begins his chapter with these paragraphs:

> "I want to make an unequivocal statement in regard to the Americans of Japanese ancestry who, being American citizens, fought by our side in the war. Had it not been for the loyalty, fidelity, patriotism, and ability of these American Nisei, that part of the war in the Pacific which was dependent upon intelligence gleaned from captured documents and prisoners of war would have been a far more hazardous long-drawn out affair."
>
> "The United States of America owes a debt to these men and to their families which it can never fully repay. At a highly conservative estimate, thousands of American lives were preserved and millions of dollars in material were saved as a result of their contribution to the war effort. It sould be realized, also, that this group of men had more to lose than any other participating in the war in the Pacific." 16

1. Noel L. Leathers, The Japanese in America, Lerner Publications Company (Minneapolis: 1967).

2. Tamotsu Shibutani, The Derelicts of Company K, University of California Press (Berkeley: 1978).

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4. Leathers.

5. Leathers.

6. Leathers.

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8. Leathers.

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10. "The Story of the 442nd Combat Team," Information-Education Section, Mtousa, Company K Club,(San Francisco: 1979).

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14. Allan R. Bosworth, American's Concentration Camps, W. W. Norton & Company, Inc., (New York: 1967).

15. Shibutani.

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CONSTITUTIONAL AND LEGAL IMPLICATIONS OF THE SUPREME COURT CASES

Hirabayashi v. United States,[1] Yasui v. United States,[2] Korematsu v. United States,[3] Ex parte Mitsuye Endo[4] -- these Supreme Court decisions concerning the evacuation of persons of Japanese ancestry, their exclusion from the West Coast from the summer of 1942 until January 1945, and their detention for varying periods of time in assembly and relocation centers, have profoundly changed the topography of American constitutional interpretation.[5] Indeed, several eminent legal scholars have examined the precedence established regarding the scope of national war powers, the method of judicial review over military decisions,[6] and interpretation of the equal protection clause of the Fourteenth Amendment.[7] These jurists have specifically focused on the effect which such precedence has had upon subsequent models of constitutional analysis.[8] However, for all the impact which these cases have had on theories of constitutional adjudication, several constitutional questions concerning the method of adjudication employed in the cases themselves have yet to be examined. A brief examination of the factual setting surrounding these four cases and of the Supreme Court's rationale in each decision may highlight but a few of the questions which could be posed regarding the Supreme Court's decisionmaking process in these cases.

The first two cases to reach the Supreme Court, Hirabayashi v. United States and Yasui v. United States,

nvolved violations of a curfew order imposed under executive power. The legal foundation for the prosecution in both cases rested on Executive Order 9066, Public Law 503, and Public Proclamation No. 3 of the Western Defense Command. In Executive Order 9066, the President, after declaring that "the successful prosecution of the war requires every possible protection against espionage and against sabotage to national defense material,. . .premises and. . .utilities" authorized and directed the Secretary of War or any military commander designated by him "to prescribe military areas. . .from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave, shall be subject to whatever restrictions the Secretary of War or appropriate military commander may impose in his discretion."[9]

Public Law 503, enacted by Congress on March 21, 1942, had ratified Executive Order 9066, and provided that the violation of any order of any military commander was deemed to be a misdemeanor punishable by fine, imprisonment, or both.[10]

Public Proclamation No. 3, issued by General DeWitt, Commander of the Western Defense Command, proclaimed that "military necessity" required "the establishment of certain regulations pertaining to all enemy aliens and all persons of Japanese ancestry" within Military Area No. 1, prescribed by earlier proclamations. Accordingly, Public Proclamation No. 3 ordered that "all alien Japanese, all alien Germans,

all alien Italians, and all persons of Japanese ancestry residing or being within the geographical limits of Military Area No. 1. . .shall be within their place of residence between the hours of 8 p.m. and 6 a.m., which period is hereafter referred to as the hours of curfew."[11]

Gordon K. Hirabayashi, presently a professor of sociology at the University of Alberta, was born, raised, and educated in public schools in Seattle, Washington. At the time of his arrest, he had never been to Japan, had had no connection or association with Japanese in Japan, and was then a senior at the University of Washington. Hirabayashi was criminally prosecuted for violation of the curfew order, tried by jury, convicted, and sentenced to three months' imprisonment.[12]

Minoru Yasui, now the director of the Denver Commission on Community Relations, was born, raised and educated in public schools in Oregon. He also went to a Japanese language school for about three years. He later attended the University of Oregon, where he received both his A.B. and L.L.B. degrees. He was a member of the Bar of Oregon and a second lieutenant in the United States Army Infantry Reserve. He had been employed by the Japanese Consulate's Office in Chicago before the war, but resigned his position with the consulate as of December 8, 1941, the day after Pearl Harbor.

Yasui decided to test the constitutionality of the curfew order then in effect, and discussed this intention with an FBI agent before voluntarily violating the order. After violating it, he requested that he be arrested so he

could then attempt to obtain a writ of habeas corpus for his release, and, in this manner, bring his case before the courts.

Subsequently, Judge Alger Fee of a federal district court in Oregon ruled that the congressional act of March 21, 1942, then in effect as Public Law 503, was unconstitutional as it applied to American citizens. However, he held that in the case of Yasui, Public Law 503 was constitutional as defendant Yasui had renounced his citizenship "by reason of his course of conduct"--that is, by his having been employed by the Japanese consul in Chicago, in spite of the fact that Yasui testified that at no time had he renounced his citizenship. Judge Fee sentenced Yasui to one year's imprisonment--the maximum permitted by law for the violation.[13]

Both of these cases, Hirabayashi v. United States and Yasui v. United States, were taken to the Court of Appeals for the Ninth Circuit and ultimately reviewed by the Supreme Court as companion cases involving the same constitutional issues.[14] Chief Justice Harlan Fiske Stone delivered the unanimous opinion of the Court, presenting the following issues:

1. Whether the particular restrictions violated, namely that all persons of Japanese ancestry residing in such an area be within their place of residence between the hours of 8 p.m. and 6 a.m., were adopted by the military commander in the exercise of an unconstitutional delegation by Congress of its legislative power,

2. Whether the restrictions unconstituionally discriminated between citizens of Japanese ancestry and those of other ancestries in violation of the Fifth Amendment.

With reference to the first issue, the Supreme Court denied that the curfew order of General DeWitt was an unconstitutional delegation by Congress of its legislative power. The logic of the Court was as follows:

1. Congress, by the act of March 21, 1942 (Public Law 503), provided criminal penalties for violation of orders of the military commander. Congress, by enacting Public Law 503, in effect ratified and confirmed the President's Executive Order 9066.

2. Congress, through Public Law 503, thus authorized the implementation of Executive Order 9066 on the part of the commanding officer in declaring the curfew order.

3. Since Congress and the President acted in cooperation with regard to any and all orders of the commanding officer, Congress and the executive both had constitutional authority to impose the curfew through military authorities.

4. Since it was within the constitutional power of the Congress and the executive to prescribe the curfew order, said curfew order of General DeWitt was not an unlawful delegation of legislative power.

As to the second issue, the Supreme Court reasoned as follows:

1. The imposition of the curfew order was an emergency war measure. The war power of the national government is "the power to wage war successfully." This war power extends to every matter and activity so related to war as to substantially affect its conduct and progress.

2. The Constitution placed the responsibility for war-making upon the executive branch of the government, and the executive could delegate this responsibility to the military commander.

3. The military authorities determined that because of "attachments" of persons of Japanese ancestry to the Japanese enemy, including United States citizens of Japanese ancestry, these persons, as a group, could be a greater source of danger than those of a different ancestry.

4. Distinctions between citizens because of their ancestry were by their very nature odious to a free

people whose institutions were founded upon the doctrine of equality. Legislative classifications or discrimination based on race alone has often been held to be a denial of equal protection.

5. However, danger of espionage and sabotage in time of war and of threatened invasion calls upon the military authorities to scrutinize every relevant fact bearing on the loyalty of populations in the danger areas.

6. For the successful prosecution of the war, citizens of one ancestry may be placed in a different category fro others.

7. The fact that attack on our shores was threatened by Japan rather than another enemy power set these citizens apart from others who had no particular associations with Japan.

8. The military commander, acting with the authorization of Congress and the executive, had constitutional power to appraise the danger in the light of the authorized standard and the inferences that he drew from these facts involved the exercise of his informed judgment.

9. These facts, and the inferences that could be rationally drawn from them, supported the judgment of the military commander that danger of espionage and sabotage to our military resources was imminent and that the curfew order was appropriate measure to meet it, based on "military necessity."

10. Since the findings of the military commander were adequately supported by basic facts in the light of knowledge then available, the curfew order was an appropriate means of minimizing the danger.

11. The Court therefore could not sit in review upon the wisdom of the military action or substitute the Court's judgment for the judgment of the military commander.

In this manner, the Supreme Court santified the findings of one man later described as "irrational"--General DeWitt.[15] Although the Court vacated the Yasui judgment, remanded the case for resentence, and also ordered the lower court to strike i findings as to Yasui's alleged loss of United States

citizenship,[16] the Court upheld Hirabayashi's conviction and sentence.[17]

Mention should be made that Yasui was just one of over one hundred loyal Americans of Japanese ancestry who sought to challenge the military orders in court by deliberately violating one or more of the orders and inviting arrest.[18]

Eighteen months after the Hirabayashi and Yasui cases, when commenting on the circumstances of the evacuation involved in Korematsu v. United States, a few of the justices of the Supreme Court were to have second thoughts regarding the "facts" upon which General DeWitt had based his judgment in issuing his curfew and exclusion orders. One justice then declared General DeWitt's findings to have been "an... accumulation. . . of misinformation, half-truths, and insinuations that had for years been directed against the Japanese Americans by people with racial and economic prejudice--the same people who have been among the foremost advocates of the evacuation."[19]

Most of the members of the bench before (and after) the Hirabayashi and Yasui cases had been vigorous champions of the human rights and civil liberties of Communists, common criminals, anarchists, and a host of other persons generally considered anathemas by the American people.[20] For these persons, these same justices had been meticulously careful in defining procedural and substantive due process and had upheld the doctrine of separation of powers between the legislative and executive branches of government.[21] One can only wonder what overriding considerations must have

people whose institutions were founded upon the doctrine of equality. Legislative classifications or discrimination based on race alone has often been held to be a denial of equal protection.

5. However, danger of espionage and sabotage in time of war and of threatened invasion calls upon the military authorities to scrutinize every relevant fact bearing on the loyalty of populations in the danger areas.

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prompted these justices to allow a breakdown in the separation of powers doctrine to establish that whether military intentions are justified or merely capricious, that the actions of the military, if based on "findings of 'military necessity,'" would be upheld by the United States Supreme Court.

In the next case to reach the Supreme Court, on December 18, 1944, the Supreme Court upheld the constitutionality of the mass evacuation of Japanese in Korematsu v. United States[22] by a vote of six to three.

The facts indicated that Fred T. Korematsu, "an American citizen of Japanese descent, was convicted in a Federal District Court for remaining in San Leandro, California, a 'military area' contrary to Civilian Exclusion Order No. 34, of the Commanding General of the Western Command, United States Army, which order directed that after May 9, 1942, all persons of Japanese ancestry should be excluded from that area."[23] The Court noted that there was never any question as to Korematsu's loyalty to the United States--he had been born in Oakland, California, and was educated in American schools. He could not read or write Japanese, had never been outside of the United States, and was not a dual citizen. The evacuation orders disrupted his plans to marry a Caucasian girl, prompting his decision to evade them and to remain within the forbidden territory. Although he was furnished with bail following his arrest, he was not allowed his freedom awaiting trial--his being free on bail

would have violated DeWitt's Order No. 34. The army seized him and confined his at first at the Tanforan Racetrack /Assembly Center/, then in the county jail until his trial. Korematsu was eventually convicted for violating the evacuation order and sentenced to five years' probation. Once again, Korematsu should have been able to walk out of the courthouse, but once again the army seized him, and then sent him to a detention camp. Just as his being at large on bail would have been a violation of Order No. 34, so would his being on probation have violated that same order. The exclusion order was, in the words of Justice Roberts, "nothing but a cleverly devised trap to accomplish the real purpose of the military authority, which was to lock him up in a concentration camp. The only course by which /Korematsu/ could avoid arrest and prosecution was to go to that camp according to instructions to be given him when he reported at a civil control center."[24]

In his majority opinion, Justice Hugo Black stated that the only issue presented by the Korematsu case was the constitutionality of the exclusion order.[25] In upholding the exclusion order, Justice Black reasoned that:

1. "/all/ legal restrictions which curtail the civil rights of a single racial group are immediately suspect," subject to the "most rigid scrutiny,"
2. "pressing public necessity may sometimes justify the existence of such restrictions,"
3. the Court here found the requisite "pressing public necessity" to sustain the exclusion order.[26]

The Court justified the exclusion order as a military imperative in the following way:

1. that "the power to protect must be commensurate with the threatened danger,"

2. that because "we are at war with the Japanese Empire,. . .the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measure, / and so / decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily,"

3. that the military authorities had found "that it was impossible to bring about an immediate segregation of the disloyal from the loyal,"

4. that the exclusion of all persons of Japanese ancestry from the West Coast was therefore justified.[27]

Ironically, Korematsu is one of the very rare cases in which a classification based on race or ancestry has survived this strict Court scrutiny.[28]

Three of the nine justices dissented in the Korematsu case: Justice Owen Roberts, Justice Robert H. Jackson, and Justice Frank Murphy. The one person on the Court who would have been expected to vote to uphold the validity of the evacuation of Korematsu was Justice Roberts.[29]

Justice Roberts had been the chairman of the commission to investigate the attack on Pearl Harbor. The release of his report to the public in January 1942 had contained unproven allegations of fifth column activities by Japanese-Americans in Hawaii--allegations that had caused hysterical reactions on the West Coast against the Japanese. The Roberts report of January 25, 1942 concluded that there

had been widespread espionage in Hawaii by persons of Japanese ancestry. The evacuation order had been, in part, based on the conclusions of Justice Roberts' report.

Therefore, it would seem to follow that Justice Roberts would have insisted that the evacuation order as it applied to Korematsu be upheld rather than to have him released. Otherwise, such a person as Korematsu would have been at large to commit such acts as the Roberts report had alleged had been committed by the Japanese in Hawaii. How, in contradiction of his own stated opinion in his report, Roberts voted with the minority of the Court to invalidate the exclusion order.

Justice Jackson, former Attorney General and Chief Prosecutor at the Nuremberg war trials, objected to the majority opinion on procedural grounds:

> "/ A / judicial construction of the due process clause that will sustain this order is a far more subtle blow to liberty than the promulgation of order itself. A military order, however unconstitutional, is not apt to last longer than the military emergency. . . .But once a judicial opinion rationalizes such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausibl claim of an urgent need." / Italics added / 30

Justice Murphy wrote the strongest dissent. He balanced the need for an exclusion order, which "necessarily must rely for its reasonableness upon the assumption that all

persons of Japanese ancestry may have a dangerous tendency to commit sabotage and espionage," an assumption which he felt could not be supported by "reason, logic, or experience," against appropriate respect due to military judgment in wartime,[31] and concluded that the public danger here motivating the exclusion order was not so great and imminent to allow a deprivation of individual rights without the intervention of such ordinary constitutional processes such as hearings.[32] Of significance is Justice Murphy's statement that "it seems incredible that under these circumstances it would have been impossible to hold loyalty hearings for the mere 112,000 persons involved--or at least for the 70,000 American citizens."[33] He added in a footnote that the British government had been able to determine through individualized hearings whether 74,000 German and Austrian aliens were genuine risks or only "friendly enemies." The British had accomplished that task in a six month period after the outbreak of war, and only 2,000 were ultimately interned.[34] Therefore, to exclude all persons of Japanese ancestry without individualized hearings to determine loyalty was obvious racial discrimination, and violated the equal protection clause of the Fourteenth Amendment.[35] He accordingly dissented from "this legalization of racism" with the following words:

> "Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting but it is utterly revolting among a free people who

> have embraced the principles set forth in the Constituion of the United States. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must accordingly be treated at all times as the heirs of the American experiment and as entitled to all the rights and freedoms guaranteed by the Constitution."[36]

Remember, though, that these are the words of dissents only--the ruling of the Korematsu case has established that the Supreme Court will not review the findings of the military when a state of "military necessity" has been declared. Korematsu has been so cited as the legal authority underpinning Title II of the Internal Security Act of 1950.[37]

Ex parte Mitsuye Endo,[38] decided the same day as Korematsu, squarely presented the issue of relocation-center detention which the Court avoided in Korematsu.

Mitsuye Endo was a United States citizen of Japanese ancestry, and was a California state employee at the time of the outbreak of World War II. Soon after the war, she was dismissed from state civil service under orders of the state personnel board. She had never attended a Japanese language school, could neither read nor write Japanese, and was not a dual citizen. She had a brother serving in the United States Army. Her family did not even subscribe to a Japanese language newspaper. In July, 1942, she filed a petition for writ of habeas corpus in the United States district court for the Northern District of California, asking that she be discharged from the Tule Lake camp and restored to liberty. That petition was denied in July,

1943. In the interim period, on February 19, 1943, she made application for leave clearance which was available to those found to be "loyal" to the United States to the satisfaction of camp authorities and could meet other requirements, such as having a definite job to which they could go, a home in which to live, and a friendly community to which they could be sent.[39] Leave clearance was granted to her on August 16, 1943, but she was not allowed to leave immediately. She had not made application for indefinite leave.

The federal government conceded that the United States Department of Justice and the War Relocation Authority [WRA] found her to be a loyal and law-abiding citizen. No claim was made that she was detained on any charge or that she was even suspected of disloyalty. The attorneys for the government further agreed that it was beyond the power of the WRA to detain citizens against whom no charges of disloyalty or subversiveness had been made. What the government attorneys did insist upon, however, was that detention for an additional period after leave clearance had been granted was an essential step in the total evacuation program. Without such WRA control, there would be uncoordinated migration of "unwanted people" to "unprepared communities," which would result in hardship and disorder. It was also argued that Executive Order 9102 authorized the WRA to make regulations to control situations created by the exercise of the powers conferred upon the WRA

for protection against espionage and sabotage.[40]

The Supreme Court, however, invalidated relocation-center detention for persons whose loyalty was granted and who therefore were clearly held in confinement or subjected to leave procedures and conditional release for social rather than military reasons.[41] The Court reasoned that the act of March 21, 1942, which created the WRA, provided a program to remove the Japanese from their homes, but not to detain them.[42] In the opinion for the Court, Justice William O. Douglas declared that "detention in Relocation Centers was no part of the original program of evacuation." He pointed out that the legislative history of the act establishing the WRA and the Executive Order 9066 authorizing the evacuation was silent on the power of the WRA to detain the evacuees. He delineated Executive Order 9066 and Executive 9102, and all the public proclamations including the 108 civilian exclusion orders issued by General DeWitt, as being war measures put into effect only to "remove from designated areas. . .persons whose removal is necessary in the interests of national security."

Justice Douglas went on to state that "the authority /of the WRA/ to detain a citizen or to grant him a conditional release as protection against espionage or sabotage is exhausted at least when his loyalty is conceded." Douglas thereby concluded that Endo was "entitled to an unconditional release by the War Relocation Authority."[44]

Justice Murphy, who had dissented in Korematsu,

concurred in the Endo case, stating:

> ". . .detention in Relocation Centers of persons of Japanese ancestry regardless of loyalty is not only unauthorized by Congress or the Executive but is another example of the unconstitutional resort to racism inherent in the entire evacuation program. Racial discrimination of this nature bears no reasonable relation to military necessity and is utterly foreign to the ideals and traditions of the American people."45

Justice Roberts added:

> ". . .the court is squarely faced with a serious constitutional question, whether the relator's detention violated the guarantees of the Bill of Rights of the Federal Constitution and especially the guarantee of due process of law. There can be but one answer to that question. An admittedly loyal citizen has been deprived of her liberty for a period of years. Under the Constitution, she should be free to come and go as she pleases. Instead, her liberty of motion and other innocent activities have been prohibited and conditioned. She should be discharged." 46

It is important to remember, however, that the Court in Endo, consistent with its holding in Korematsu, specifically stated that the original expulsion from the West Coast and the detention for three years without charges, trial, or determination of loyalty were legitimate exercises of presidential and military power during an emergency. The Court merely ruled that Endo and other admittedly loyal American citizens could not be imprisoned indefinitely.[47]

The Endo decision was announced on December 18, 1944. The Western Defense Command (then under General Henry C. Pratt) had rescinded the exclusion and detention orders a day earlier on December 17 to allow most of those incarcerated to return to the West Coast effective January

2, 1945. One cannot help but wonder what circumstances and forces were at play between the highest judicial and executive positions in our land to render a rescission of the exclusion and detention orders and Supreme Court decisions concerning those orders within a day of each other.

The Hirabayashi, Yasui, Korematsu, and Endo decisions constitute valid, viable law today. The Japanese American Citizens League proposes that the Commission referred to in S. 1647 undertake an unbiased report to determine what undue presidential and congressional influences, if any, affected the judicial process in the period spanning these four decisions, which would approximate a breakdown in the fundamental Constitutional doctrine of the separation of powers between the three branches of government. To establish that the executive, congressional, and judicial branches acted--or did not act--with independence and integrity in this significant chapter of American constitutional interpretation is to help ensure that our government will operate in the manner envisioned by the Framers of the Constitution.

1. 320 U.S. 81 (1943).
2. 320 U.S. 115 (1943).
3. 323 U.S. 214 (1944).
4. 323 U.S. 283 (1944).
5. See e.g., Gunther, Gerald, Constitutional Law; Cases and Materials, New York: The Foundation Press, Inc., 1976; Rostow, Eugene V., "The Japanese American Cases--A Disaster," The Yale Law Journal, Vol. 54, No. 3, pp. 489-533, June 1945; tenBroek, Jacobus, Barnhart, Edward N., Matson, Lloyd W., Prejudice, War and the Constitution, Berkeley: University of California Press, 1954; Tribe, Laurence H., American Constitutional Law, New York: The Foundation Press, Inc., 1978.
6. See e.g., Korematsu v. United States, 323 U.S. 214 (1944) (J. Jackson, dissenting).
7. Id. at 235 (J. Murphy, dissenting).
8. Korematsu, for example, established that a strict standard of judicial scrutiny should be applied when classes are defined along racial lines. See footnote 29 infra and accompanying text.
9. 7 Fed. Reg. 1407 (1942).
10. Pub. L. No. 77-503, 56 Stat. 176 (Act of March 21, 1942).
11. 7 Fed Reg. 2543 (1942).
12. He was also prosecuted on a count for failure to register for evacuation from a designated military area pursuant to Executive Order 9066. Upon conviction of this count, he was sentenced to three months' imprisonment,

which ran concurrently with the sentence imposed on the curfew count.

13. United States v. Yasui, 48 F. Supp. 40 (.D.C.N. Ore., 1942).

14. This analysis is found in The Bamboo People by Frank Chuman (Del Mar, California: Publishers, Inc., 1976). Mr. Chuman is a practicing attorney of the California bar and a former national president of the Japanese American Citizens League (1960-62).

15. Chuman at 189.

16. 320 U.S. at 116-17.

17. 320 U.S. at 105.

18. The Japanese American Incarceration: A Case for Redress, 2d ed., The National Committee for Redress, JACL, Feb. 1979, at 19.

19. Korematsu v. United States, 323 U.S. at 239 (J. Murphy, dissenting).

20. Chuman at 190.

21. Id.

22. Korematsu v. United States, 323 U.S. at 216.

23. Id. at 194 (majority opinion).

24. Id. at 232 (J. Roberts, dissenting).

25. Id. at 222 (majority opinion).

26. Id. at 216 (majority opinion).

27. Id. at 197 (majority opinion).

28. Gunther at 698.

29. Chuman at 193.

30. 323 U.S. at 246 (J. Jackson, dissenting).

31. Id. at 234 (J. Murphy, dissenting).

32. Id. at 235 (J. Murphy, dissenting).

33. Id.

34. Id.

35. Id.

36. Id. at 242 (J. Murphy, dissenting).

37. Chuman at 194.

38. 323 U.S. 233 (1944).

39. Id. at 285, 293.

40. Id. at 294-95.

41. Id. at 297-98.

42. Id. at 299-303.

43. Id. at 300.

44. Id. at 304.

45. Id. at 307-08.

46. Id. at 310.

47. Id. at 283.

CONCLUSION

The facts of the period of history under consideration speak for themselves and, in our view, are incontrovertible. The days and weeks following the attack on Pearl Harbor put this nation under great stress and self-doubt, and in the climate that existed, prompted a series of events that culminated in an extraordinary episode in the history of the United States: the evacuation and incarceration behind barbed wire and armed military guards of innocent victims of an identifiable group of American citizens and legal resident aliens.

The evacuation was initiated by regional pressure groups along the West Coast and was subsequently manifested through the highest levels of this nation's government. It was, oddly, a singular event in which a regional attitude, as it were, was implemented into a national policy which was sanctified by the very actions of the government. The fact of the evacuation is evidence of the consequent failure of the government to carry out the responsibility of maintaining the democratic principles of this nation. Through its participation in the evacuation, the government demonstrated the failure of the system of checks and balances which are intended to insure the protections and rights of American citizens.

The President failed when he signed Executive Order 9066, which provided the means ultimately for the evacuation. The Congress failed when it passed Public Law 77-503 and when it failed to question the intent of the Executive Order and the domestic policies being enacted by the military. And the United States Supreme Court, the

final arbiter of justice, failed when it refused to examine the argument of "military necessity" and therefore deemed the evacuation constitutional. The system of democracy was placed under stress and was tested by the times, and it failed miserably.

In short, the evacuation exemplifies the tragic failure of American democracy.

Japanese Americans, the hapless victims of the government's policies in 1942, maintained, however, their faith in the very system that denied them their rightful place in this society and remained loyal to the government which had inflicted an unconscionable injustice upon them. They were, after all, American citizens for whom the history, the customs, and the beliefs of the United States were inextricably a part of their existence. In 1942, they acquiesced to the government's demands because, as American citizens, they were given no other alternatives.

Although we delve into the past and make certain historical determinations as to how the evacuation came about, there are many profound questions which cannot be answered in light of the limited evidence available. It is important to understand not only the manner in which the evacuation decision was made, but it is also important to know why such a gross violation of constitutional rights was sanctioned at the highest level of government--by the President himself. It is, we feel, in the best interest of this country as the world's beacon of democratic principles to pursue a close examination of the evacuation in order to help insure that an injustice of the past is not repeated.

To this end, the Japanese American Citizens League (JACL) has endorsed passage of S.1647, the "Commission of the Wartime Relocation and Internment of Civilians Act", as a means of providing a vehicle for an

objective and thorough investigation of the evacuation.

In seeking a resolution for our past experience, the JACL and the Japanese American community throughout this country have been involved in discussions for approximately ten years. These discussions have not been without conflict and strong differences of opinion, for as with any organization, we are not all of a like mind on the issue. Whatever our differences, however, the Japanese American community maintains a unanimous view that the redress issue, so-called, is an injunction to review the moral and constitutional principles of this nation.

Our initial discussions focused on the attempt to seek monetary compensation for our experiences of 1942, but through months of consideration and in consultation with various Members of Congress and others, our position has evolved to supporting a Presidential factfinding commission whose task it will be to study the evacuation and to determine whether an injustice was committed against American citizens and legal resident aliens. The JACL, in concert with the concept of S.1647, places its faith in the commission to view the facts regarding the evacuation and to correct a grievous injustice of the past by recommending appropriate remedies.

It is the hope of the Japanese American Citizens League that, through the commission, there will be an official query into the past events that shaped a fateful policy, and in so doing, to insure the principles of democracy in the future.

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Probably the most complete and authoritative information regarding Japanese Americans is to be found in the Pacific Citizen, a weekly membership publication of the Japanese American Citizens League (JACL) which has been published since before World War II.

It may also be of interest that the University of California Los Angeles (UCLA), in cooperation with the JACL, is currently engaged in research involving the Japanese in America through the 1865-1965 century, with the view of publishing definitive historical and sociological tracts and volumes on three generations of Japanese in the United States--the Issei (immigrants), the Nisei (first generation, American-born), and the Sansei (second generation, American-born).

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Civilian Exclusion Order No. 5

WESTERN DEFENSE COMMAND AND FOURTH ARMY
WARTIME CIVIL CONTROL ADMINISTRATION

Presidio of San Francisco, California

April 1, 1942

INSTRUCTIONS

TO ALL PERSONS OF

JAPANESE

ANCESTRY

LIVING IN THE FOLLOWING AREA:

All that portion of the City and County of San Francisco, State of California, lying generally west of the north-south line established by Junipero Serra Boulevard, Worchester Avenue, and Nineteenth Avenue, and lying generally north of the east-west line established by California Street, to the intersection of Market Street, and thence on Market Street to San Francisco Bay.

All Japanese persons, both alien and non-alien, will be evacuated from the above designated area by 12:00 o'clock noon, Tuesday, April 7, 1942.

No Japanese person will be permitted to enter or leave the above described area after 8:00 a. m., Thursday, April 2, 1942, without obtaining special permission from the Provost Marshal at the Civil Control Station located at:

1701 Van Ness Avenue
San Francisco, California

The Civil Control Station is equipped to assist the Japanese population affected by this evacuation in the following ways:

1. Give advice and instructions on the evacuation.

2. Provide services with respect to the management, leasing, sale, storage or other disposition of most kinds of property including: real estate, business and professional equipment, buildings, household goods, boats, automobiles, livestock, etc.

3. Provide temporary residence elsewhere for all Japanese in family groups.

4. Transport persons and a limited amount of clothing and equipment to their new residence, as specified below.

THE FOLLOWING INSTRUCTIONS MUST BE OBSERVED:

1. A responsible member of each family, preferably the head of the family, or the person in whose name most of the property is held, and each individual living alone, will report to the Civil Control Station to receive further instructions. This must be done between 8:00 a. m. and 5:00 p. m., Thursday, April 2, 1942, or between 8:00 a. m. and 5:00 p. m., Friday, April 3, 1942.

2. Evacuees must carry with them on departure for the Reception Center, the following property:

(a) Bedding and linens (no mattress) for each member of the family;

(b) Toilet articles for each member of the family;

(c) Extra clothing for each member of the family;

(d) Sufficient knives, forks, spoons, plates, bowls and cups for each member of the family;

(e) Essential personal effects for each member of the family.

All items carried will be securely packaged, tied and plainly marked with the name of the owner and numbered in accordance with instructions received at the Civil Control Station.

The size and number of packages is limited to that which can be carried by the individual or family group.

No contraband items as described in paragraph 6, Public Proclamation No. 3, Headquarters Western Defense Command and Fourth Army, dated March 24, 1942, will be carried.

3. The United States Government through its agencies will provide for the storage at the sole risk of the owner of the more substantial household items, such as iceboxes, washing machines, pianos and other heavy furniture. Cooking utensils and other small items will be accepted if crated, packed and plainly marked with the name and address of the owner. Only one name and address will be used by a given family.

4. Each family, and individual living alone, will be furnished transportation to the Reception Center. Private means of transportation will not be utilized. All instructions pertaining to the movement will be obtained at the Civil Control Station.

Go to the Civil Control Station at 1701 Van Ness Avenue, San Francisco, California, between 8:00 a. m. and 5:00 p. m., Thursday, April 2, 1942, or between 8:00 a. m. and 5:00 p. m., Friday, April 3, 1942, to receive further instructions.

J. L. DeWITT
Lieutenant General, U. S. Army
Commanding

Senator JACKSON. Miss Wong, we are delighted to welcome you to the committee.

Ms. WONG. I am Diane Yen-Mei Wong. I am executive director of the Washington State Commission on Asian American Affairs. I ask that my entire statement be entered into the record.

Senator JACKSON. The entire statement will appear as if read following your testimony and you may summarize your remarks.

Ms. WONG. The Commission on Asian and American Affairs was established in 1973 by the State legislature. It is comprised of 24 members appointed by the Governor. One of the most difficult topics with which we have had to deal pertains to Japanese American redress.

After a year of study, the commission, at its November 1979 meeting, adopted a resolution which stated that (a) it believes a grievous wrong was committed against Japanese Americans when the United States incarcerated them during World War II;

(b) It supports legislation that would aim toward monetary remuneration to persons affected by the incarceration;

(c) It also supports with a few amendments S. 1647, which would establish a study commission.

In making its resolution, the commission considered many different points. For instance, it believes S. 1647 is a good educational tool, especially since it proposes to hold public hearings in various parts of the country, including Washington State.

It contains a time-specific deadline by which recommendations must be completed. It also establishes a relationship of cooperation and access between the study commission and government agencies that control necessary information.

The majority of the commissioners, however, also felt that there were serious problems with the bill. For instance, there has already been a great deal of study conducted on incarceration. At some point in time, we must decide enough studying has been done. The bill by itself does not go far enough because it does not ensure that recommendations will lead to remedies.

Further, even if remedies are recommended, there is no guarantee that they will be implemented.

The Commission on Asian American Affairs believes that any investigation will confirm that the evacuation was a grievous wrong against the Japanese Americans. The simple facts are very compelling: Japanese Americans were not the same as Japanese; those imprisoned included American citizens and those who, according ts Federal law, were ineligible for citizenship; they were all imprisoned with no prior findings of guilt.

Speaking as an individual attorney, I find these facts compelling enough to call for direct redress immediately.

As the director of the Commission on Asian American Affairs, I know that there are political realities that we must all face and with which we must all deal. As an appointed official, I try to take into consideration all the viewpoints of my statewide constituents and try to integrate them into a position which best represents their interests. With that in mind, permit me to share with you some of the realities for the commission, for myself, and the State of Washington:

In November 1978, over 2,000 Japanese Americans and friends attended a "Day of Remembrance" ceremony in Puyallup, Wash. It was the site of the former assembly center. The events included the reading of a resolution adopted by the entire city of Seattle, home of the largest concentration of Asian Pacific Americans in Washington. That resolution condemned constitutional and moral violations against the Japanese Americans during World War II.

In February 1979, Governor Ray, of Washington, proclaimed February 19 as a statewide "Day of Remembrance" in honor of those Washington Japanese Americans who were evacuated and interned without prior determination of any guilt.

In May 1979, 300 to 500 Washington residents signed a letter which was published in the Washington Post. All asked for direct redress; some for both direct redress and the study commission; none for the study commission alone.

In July 1979, the Conference of Western Attorneys General, led by Washington Attorney General Slade Gorton, passed a resolution which supported the campaign to obtain reasonable compensation for injuries and losses suffered by Japanese Americans during World War II.

In February 1980, one of the largest televisions in the Pacific Northwest, KING-TV, aired a commentary in support of monetary redress, saying that though redress was expensive, it was a necessary reminder "against the time when some racial or ethnic paranoia again threatens the Constitution."

Lastly, beginning in January 1980, under the joint sponsorship of the American Friends Service Committee and the Washington State Commission on the Humanities, a series of discussions were held in Washington. The first all-day session was held in Seattle and attracted over 400 people.

A similar conference was held in March in Spokane and over 250 persons attended that. At both sessions, concerns were raised about the unnecessary delay of redress through more study and the limited ability of the Japanese American Citizens League to advocate on behalf of the interests of the Japanese American community as a whole.

Next week there will be a third and final discussion in Tacoma, where many of the APA community groups have already expressed their support for direct redress rather than the study commission alone.

I might point out that Seattle, Spokane, and Tacoma house the three largest concentrations of Asian Pacific Americans in Washington.

Those are just some of the political factors which have entered into the development of our commission's following recommendations to you:

First, Congress should develop and advocate on behalf of legislation leading to direct monetary redress. The great majority of the persons who have expressed their opinions to us favor more than just a study commission. They have advocated direct monetary redress. The Commission on Asian American Affairs itself has also gone on record in support of direct redress.

Second, S. 1647 should be amended to include language that members of a study commission include persons who were incarcer-

ated in the camps. Preferably, they would be old enough to remember and understand the camp experience.

Third, S. 1647 should also include language directing its commissioners to work toward recommendations for specific remedies and specific timetables.

In conclusion, I would like to say, as many of the members of the Commission on Asian American Affairs envision it, S. 1647 and direct redress legislation would work hand in hand, with the latter providing a logical vehicle through which to implement the study commission's recommendations.

Our commission, it must be remembered, is confident that the facts will compel the study commission to conclude that direct redress is not only needed but also correct.

Thus, we logically support both the concept of a study and of direct redress concurrently. I don't think that direct redress is a diversion. I think we need to consider monetary redress and the study commission together.

The study commission bill alone is not enough. It is only a beginning.

Thank you very much for your consideration and time.

Senator JACKSON. Thank you, Ms. Wong.

[The prepared statement of Ms. Wong follows:]

PREPARED STATEMENT OF DIANE YEN-MEI WONG, EXECUTIVE DIRECTOR, WASHINGTON STATE COMMISSION ON ASIAN AMERICAN AFFAIRS

Good afternoon. My name is Diane Yen-Mei Wong, and I am the Executive Director of the Washington State Commission on Asian American Affairs (CAAA). The Commission was established in 1973 by the State Legislature and given the mandate to enhance the lives of Asian Pacific Americans (APAs) in the state. In order to carry out this responsibility, the Governor, with the confirmation of the State Senate, has appointed 24 Commissioners from throughout the state. The Commissioners are community leaders who represent at least all the major APA ethnic groups and who hail from all different walks of life, including education, business, social services, medicine and government.

One of the most difficult topics with which the CAAA has had to deal pertains to Japanese American Redress. In September 1978, the CAAA went on record in support of federal legislation which would bring about redress. At that time, there was not yet any specific federal legislation. Then, in November 1979, a little over a year later, the CAAA once again considered the issue. This time there was at least one bill (identical versions of which had been introduced in both the Senate and the House), and the expectation that another bill would soon be introduced in the House.

The Commission resolution which was adopted at that meeting states that the Commission believes a grievous wrong was committed against Japanese American when the U.S. incarcerated them during World War II; that the Commission supports legislation that would aim towards monetary remuneration to persons affected by the incarceration; and that the CAAA also supports with a few amendments, S. 1647/H. 5499 which would establish a study commission. (Attachment A: Commission Resolution; Attachment B: News Release) [1]

In making its resolution, the CAAA considered many different points. I would like to enumerate a few of those for your consideration. The CAAA feels that S. 1647 is a good educational tool, especially since it proposes to hold public hearings in various parts of the country, including Washington. It contains a time-specific deadline by which recommendations must be completed. It establishes a relationship of cooperation and access between the study commission and government agencies that control necessary information.

The majority of the Commissioners, however, also felt that there were serious defects with the bill. For instance, there has already been a great deal of study conducted on the incarceration. At some point in time, we must decide enough studying has been done. The bill itself does not go far enough because it does not

[1] The attachments referred to have been retained in the committee files.

ensure that the recommendations will lead to remedies. Further, even if remedies are recommended, there is no guarantee that they will be implemented. Unless there is aggressive action forthcoming, many of the Issei (first generation), who lost the most due to the incarceration, will have died.

The CAAA firmly believes that any investigation will confirm that the evacuation was a grievous wrong against the Japanese Americans. The simple facts are compelling: Japanese were not the same as Japanese Americans; those imprisoned included American citizens and those who, according to federal law, were ineligible for citizenship; Japanese Americans were imprisoned with no prior findings of guilt.

Speaking as an attorney, I find these facts compelling enough to call for direct redress immediately.

As the Director of the CAAA, however, I know that there are political realities that we must all face and with which we must all deal. Unlike you, I am not an elected official. Rather, I have been appointed by the Governor. However, I, like you, must try to take into consideration all the viewpoints of my constituents and try to integrate them into a position which best represents their interests. With that in mind, permit me to share with you some of the forces which have been in effect in Washington state this last year and a half.

(1) In November 1978, over 2,000 Japanese Americans and friends attended a "Day of Remembrance" ceremony in Puyallup, Washington, the site of a former assembly center. Mayor Charles Royer of Seattle, read a joint resolution issued by him and the Seattle City Council, in which the City of Seattle acknowledged and condemned "the constitutional and moral violations perpetuated against persons of Japanese descent during World War II." (Attachment C: Seattle Joint Resolution)

(2) In February 1979, Governor Dixy Lee Ray, of Washington, proclaimed February 19, 1979, as a statewide "Day of Remembrance" in honor of those Washington Japanese Americans who were evacuated from their homes and businesses and interned in camps throughout the United States. The proclamation also acknowledged that these governmental actions were done without any prior hearing or determination of guilt on the part of the Japanese Americans. (Attachment D: Washington Proclamation)

(3) In May 1979, the Washington Post published an "open letter" to Senator Hayakawa which was paid for by over 2,000 persons, almost all of whom are Japanese Americans. (Because of space limitations, only 1,000 of the names were printed in the Post.) At least 300 of the signators were from the state of Washington. All signators of the letter asked for direct redress; some supported both the direct redress and the study commission approach; none supported the study commission approach alone.

(4) In July 1979, the Conference of Western Attorneys General, led by Washington Attorney General Slade Gorton, passed a resolution which declared the evacuation as going against the nation's traditions, and which supported, in principle, the campaign to obtain reasonable compensation for injuries and losses suffered by Japanese American evacuees, detainees and internees. (Attachment E: Attorneys General Resolution)

(5) In February 1980, the NBC affiliate station in Seattle, KING-TV, aired a commentary in response to statements made by a citizen, Mr. Todd, at a meeting of the Washington State Advisory Committee to the U.S. Commission on Civil Rights. Mr. Todd who was upset about the Committee's support of redress efforts, made statements about Japanese Americans which the Commentator felt to reflect the same attitude that led to the suspension of the Constitution and imprisonment of Japanese Americans during World War II. The Commentator went on to say that though redress was expensive, this was a necessary reminder "against the time when some racial or ethnic paranoia again threatens the Constitution."

(6) Beginning in January 1980, under the joint sponsorship of the American Friends Service Committee and the Washington State Commission on the Humanities, a series of symposium discussions have been held in Washington. The first all-day session was held in Seattle and attracted over 400 people. A similar conference was recently held in Spokane in March. Over 250 persons attended. At both sessions, concerns were raised about the unnecessary delay of redress through more study and the limited ability of the Japanese American Citizens League to advocate on behalf of the interests of the Japanese American community as a whole. Next week the third and final symposium session will be held in Tacoma. Many of the groups within the APA community there, including the Asian American Alliance, have already expressed their support for direct redress rather than the study commission approach alone.

All of these preceding examples give you a brief idea of the factors which enter into the development of my comments and recommendations. My recommendations to your committee, then, are based on two factors: The decisions reached by the

CAAA itself as a body, and the feedback that I have received from the APA community in Washington state.

First, while there are some persons who do not support any type of redress, whether indirect or direct, the great majority of the persons who have expressed their opinions to the CAAA, to the Commissioners, or to me, have favored more than just a study commission. They have advocated direct monetary redress.

Second, after lengthy discussions, the CAAA itself has gone on record in support of direct redress in response to what it feels to be a grievous wrong perpetrated on the Japanese Americans.

Third, as to S. 1647, the CAAA feels that the bill should include language mandating that members of the study commission include persons who were incarcerated in the camps. (Preferably, they would be old enough to remember and understand the camp experience).

Fourth, another major concern of the CAAA is that S. 1647 should also include language directing its commissioners to work towards recommendations for specific remedies rather than just broad recommendations about policy and philosophy.

As many of the members of the CAAA envision it, the study commission bill and a direct redress bill would work hand in hand, with the latter providing a logical vehicle through which to implement the commission's recommendations. The CAAA, it must be remembered, is confident that the facts compel a conclusion that direct redress is not only needed, but also correct. Thus, the CAAA logically supports both the concept of a study and of direct redress. The primary concerns about the study commission approach pertain to the delay.

In conclusion, the CAAA urges you to do the following:

(1) Support S. 1647, with amendments requiring some members of commission to have been incarcerated and directing recommendations towards specific remedies.

(2) Develop and support legislation which works towards direct monetary redress for Japanese Americans affected by the incarceration.

Thank you for your consideration.

Senator JACKSON. Mr. Hohri.

Mr. HOHRI. Mr. Chairman, I deeply appreciate the opportunity to speak before this committee of the U.S. Senate. I speak in opposition to S. 1647. I appear as national chairperson of the National Council for Japanese American Redress and as a spokesperson for the Methodist Federation for Social Action of the United Methodist Church.

I have lived in Chicago since 1945. In the years preceding, in 1942, 1943, and 1944, my address was 10-4-2, Manzanar, Calif. Manzanar does not exist anymore. It was the first mass internment camp.

I graduated high school there. The school was so bad that I vowed never to go to school again. Fortunately, I had an older brother, whose wiser judgment prevailed on me to enroll at the University of Chicago. It was there that I first began to understand the broader implications of my internment.

I heard Morton Grodzins give a series of lectures on the Japanese American internment as part of our study of Supreme Court decisions. It was a revelation to realize that the Constitution may have been seriously breached.

I read his book, "Americans Betrayed," which became the first of many books I was to read on the subject. Dozens of books have been written. Decades of research expended. A history and an understanding have emerged and become part of our American consciousness.

Most recently, in Woodward and Armstrong's popular book, "The Brethren," reference is once again made to our internment with the clear understanding that it was wrong. Why then, I must ask, do we now need a study commission?

Why is this Congress, why is the Senate considering such a bill? Where did it come from? How did it arise?

Let me review for you, briefly, the history of the movement for Japanese American redress. In 1970, at its biennial National Convention of the Japanese American Citizens League, the JACL, first heard a proposal for redress.

In subsequent biennums the redress proposal resurfaced, until, in 1978, the league resolved to submit redress Legislation to the U.S. Congress. I applauded that decision and, with friends in Chicago, began to work toward creating support for its passage within the United Methodist Church.

Then, in March of 1979, about a year ago, the leadership of the JACL changed that resolve. It was changed from legislation for redress to legislation for the study commission. You have the result of that before you as S. 1647. As a member of the JACL, I protested. It seemed to me to be a clear case of contravention.

The leadership had contravened the legislation of its constituent assembly. But my protest and that of others fell on deaf ears. The switch was based on what this leadership perceived to be political reality. They feared that this deliberative body, this Senate of the U.S. and the House of Representatives would summarily dismiss a petition for redress.

As it turned out, what they deemed to be political reality was the reality of Washington, of lobbyists, and legislative aides. It became clear to us that if redress legislation were to be introduced, it would have to be introduced independently of the JACL. Hence, the National Council for Japanese American Redress. In November, Representative Mike Lowry introduced such legislation as H.R. 5977.

Now I am quite willing to grant that that kind of political reality may be normative when the people, the citizenry are apathetic and fail to exercise their democratic franchise. But this issue is not the stuff of apathy. The memory of the camps persist. The breach in the Constitution remains, as witnessed by the proposal just last week by a U.S. Senator to intern Iranian nationals.

The injustice still calls for redress—not repetition. And when there is not apathy, there is another kind of political reality in our great Nation. It is the reality of the people. We were not deterred by the usurpation of our representation by the JACL leadership. We were not dismayed by the solid bloc of Japanese American Members of Congress supporting this political ploy.

This same Senator, a primary cosponsor of this bill, said:

> The only condition I made the other four Members of Congress to agree to was no monetary reparations would ever be asked. If they had not agreed, I would not have endorsed that bill.

This is not a bill for redress. They are not our representatives in Illinois, New York, Ohio, Michigan, Washington, Oregon, and even for most of the State of California. We went to the people and they are beginning to respond.

Last month, in Seattle, Wash., some 400 persons attended a forum on redress and strongly supported H.R. 5977, the Lowry redress bill. In Los Angeles, a similar event was held with similar results.

Last Saturday, I was in New York for another such meeting. I have been to such meetings in Chicago. There just isn't any sup-

port for this study commission. And we are beginning to move that larger body of citizens.

Next month, the general conference of the United Methodist Church convenes for its quadrennial legislative session in Indianapolis. The Methodist Federation for Social Action is submitting a petition to that 9 million member body for its support for Japanese American redress. Already, three annual conferences have strongly supported such resolutions. We are taking the issue to the people and they have begun to respond.

The people are not asking for a study commission. We know it was wrong. We do not need Congress or anyone else, at this late date, to undertake a study to determine whether a wrong was committed. We understand the wrong. What we need now is the opportunity to redress the wrong.

We Americans of Japanese ancestry need to know that we are entitled to equal treatment under the law; that the writ of habeas corpus shall not be suspended because of our race; that the right to compensation for a miscarriage of justice involving years of internment shall apply to us as well as to all other human beings.

Justice has already been delayed too long for our parents, the first generation of Japanese Americans, for most are now gone. Justice delayed for them is now justice denied. I pray that you do not repeat the same error for those of us who still carry the memory of those camps. S. 1647 is beneath our dignity. Dismiss this sorry excuse for justice. Let us, instead, resolve to redress the victims and repair the Constitution.

Senator JACKSON. Thank you very much, Mr. Hohri.

[The prepared statement of Mr. Hohri, with attachments, follows:]

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

mlr

Testimony of William Hohri before the Governmental Affairs Committee of the United States Senate, convening on March 18, 1980.

A Study Commission Is Not Redress

I deeply appreciate this opportunity to speak before this committee of the United States Senate. I appear as national chairperson of the National Council for Japanese American Redress and as a spokesperson for the Methodist Federation for Social Action of the United Methodist Church.

I've lived in Chicago since 1945. In the years preceding, in 1942, 1943, and 1944, my address was 10-4-2, Manzanar, California. Manzanar does not exist anymore. It was the first mass internment camp. The 10-4-2 stands for block 10, barrack 4, cubicle 2. I graduated high school there. The school was so bad that I vowed never to go to school again. Fortunately, I had an older brother, whose wiser judgment prevailed on me to enroll at the University of Chicago. It was there that I first began to understand the broader implications of my internment. I heard Morton Grodzins give a series of lectures on the Japanese American internment as part of our study of Supreme Court decisions. It was a revelation to realize that the Constitution may have been seriously breached. I read his book, Americans Betrayed, which became the first of many books I was to read on the subject. Dozens of books have been written. Decades of research expended. A history and an understanding have emerged and become part of our American consciousness. Most recently, in Woodward and Armstrong's popular book, The Brethren, reference is once again made to our internment with the clear understanding that it was wrong. Why then, I must ask, do we now need a Study Commission?

Why is this Congress, why is the Senate considering such a bill? Where did it come from? How did it arise?

Let me review for you, briefly, the history of the movement for Japanese American redress. In 1970, I attended and participated in the biennial National Convention of the Japanese American Citizens League, the JACL. It was at that convention that the first proposal for redress was introduced. In subsequent biennums the redress proposal resurfaced, until, in 1978, the JACL Convention resolved to submit redress legislation to the United States Congress. I applauded that decision and, with friends in Chicago, began to work towards creating support for its passage within the United Methodist Church. Then, in March of 1979, about a year ago, the leadership of the JACL changed that resolve from legislation for redress to legislation for the Study Commission.[2] You have the result of that before you in S.1647. As a member of the JACL, I protested. It seemed to me to be a clear case of contravention. The leadership had contravened the legislation of its constituent assembly.[3] But my protest and that of others fell on deaf ears. The switch was based on what this leadership perceived to be political reality. They feared that this deliberative body, this Senate of the United States and the House of Representatives would summarily dismiss a petition for redress. As it turned out, what they deemed to be political reality was the reality of Washington, of lobbyists and legislative aides. It became clear to us that if redress legislation were to be introduced, it would have to be introduced independently of the JACL. Hence, the National Council for Japanese American Redress. In November, Representative Mike Lowry introduced such legislation as H.R.597

Now I am quite willing to grant that that kind of political reality may be normative when the people, the citizenry are apathetic and fail to exercise their democratic franchise. But this issue is not the stuff of apathy. The memory of the camps persist. The breach in the Constitution remains. The injustice still calls for redress.

And when there is not apathy, there is another kind of political reality in our great nation. It is the reality of the people. We were not deterred by the usurpation of our representation by the JACL leadership. We were not dismayed by the solid bloc of Japanese American members of Congress supporting this political ploy. They are not our representatives in Illinois, New York, Ohio, Michigan, Washington, Oregon, and even for most of the state of California. We went to the people and they are beginning to respond.

Last month, in Seattle, Washington, some 400 persons attended a forum on redress and strongly supported H.R.5977, the Lowry Redress Bill. In Los Angeles a similar event was held with similar results. In Chicago, we are scheduling hearings for our local representatives in Congress so that they may directly hear from the people on this topic. If I may observe, it doesn't take an act of Congress to hold hearings.

And we are beginning to move that larger body of citizens. Next month, the General Conference of the United Methodist Church convenes for its quadrennial legislative session in Indianapolis. The Methodist Federation for Social Action is submitting a petition to that 9-million member body for its support for Japanese American redress.[4] Already, three annual conferences have strongly supported such resolutions. We are taking the issue to the people and they have begun to respond.

The people are not asking for a Study Commission. We know it was wrong. We do not need Congress or anyone else, at this late date, to undertake a study to determine whether a wrong was committed. We understand the wrong. What we need now is the opportunity to redress the wrong.

We Americans of Japanese ancestry need to know that we are entitled to equal treatment under the law; that the Writ of Habeas Corpus shall not be suspended because of our race; that the right to compensation for a miscarriage of justice involving years of internment shall apply to us as well as to all other human beings. Justice has already been delayed too long for our parents, the first generation of Japanese Americans, for most are now gone. Justice delayed for them is now justice denied. I pray that you do not repeat the same error for those of us who still carry the memory of those camps. S.1647 is beneath our dignity. Dismiss this sorry excuse for justice. Let us, instead, put redress on the legislative agenda.

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Notes:

1. See appendix A. It is a detailed description of the action by the 1978 JACL National Convention.

2. See appendix B. It is from the Pacific Citizen, the JACL's newspaper, which was published on March 9, 1979.

3. See appendix C. This is a letter to the editor which was published in the May 14, 1979 edition of the Rafu Shimpo, a major Japanese American daily newspaper based in Los Angeles.

4. See appendix D. This petition is now in the legislative hopper of the General Conference.

Appendix A

Japanese american citizens League
NATIONAL HEADQUARTERS: 1765 Sutter Street • San Francisco, California 94115 • (415) 921-5225
REGIONAL OFFICES: Washington, D.C./Chicago/San Francisco/Los Angeles/Portland/Fresno
Karl K. Nobuyuki, National Executive Director

MEMORANDUM

From: Clifford I. Uyeda

Date: August 8, 1978

To: Committee members,
National Council members,
National Board members

Subject: Revised REDRESS Proposal

The JACL National Council, on July 19th, approved the following REDRESS guidelines:

1) Eligibility is limited to those actually detained or interned in camps, or were compelled to move from the "exclusion" areas.

2) Individual payments are limited to survivors and to heirs of deceased detainees.

3) Persons of Japanese ancestry brought over from Central and South American and interned in the United States are included.

4) Processing and paying individual claims will be the responsibility of the United States Government.

5) Trust foundation for the benefit of Japanese Americans will be administered by a presidential Commission, majority of which are Japanese Americans, and also including members of Congress.

The National Council approved the concept that the Bill which will be presented to Congress of the United States, based on the above guidelines, provide the broadest possible coverage.

Further details may be worked out during negotiations with the Government.

Attached is the revised proposal as promised to the National Council on July 19, 1978, at the Salt Lake City convention.

* * *

Appendix B

From the Pacific Citizen, March 9, 1979:

JACL drafting bill for redress commission

By HARRY HONDA
San Francisco

Two crucial votes were taken during the National JACL Redress Committee meeting here Mar. 3-4 at Headquarters. Both tallied 4-2 with no switches. The motions were:

1—To endorse the concept of a (legislative) commission as opposed to any other methodology for redress.

2—To endorse the "one-step" concept to examine the remedies for the wrongs of expulsion/incarceration of Japanese Americans during World War II.

A draft of the JACL redress bill is being prepared by Ronald Mamiya, a committee member and Seattle attorney. "We're still on schedule," noted Ron Ikejiri, Washington JACL Representative who will be conferring with the Nikkei and other members of Congress when JACL's legislative proposal is ready for introduction sometime in the midyear.

The committee, chaired by John Tateishi of Marin County, was toying with three concepts, which had been discussed a month ago in Washington with Senators Inouye and Matsunaga, Congressmen Mineta and Matsui. The concepts were:

(a) An IRS check-off plan, (b) a direct appropriations plan, and (c) a legislative commission to study the issue and recommend the method of solution.

Political reality of a Congress hit by the message of Calif. Prop. 13 to cut spending, of an accommodation that should be made with the junior senator from California, Dr. S.I. Hayakawa (R), and of the need to stay on JACL's redress schedule as mandated at the Salt Lake City convention, the committee did indeed "bite the bullet" — at 3 p.m., Mar. 3, to be exact.

The vote to endorse the legislative committee concept in preference to the other two methods was by roll call with the chair choosing to vote to break a tie. The first tally:

YES (4)

MINORU YASUI (Denver): A "reluctant" yes because there are unknown dangers involved with committees, but it does not ignore the (JACL) Convention mandate.

PHIL SHIGEKUNI (San Fernando Valley): A "yes" because the (commission) would be in line with the main thrust of the redress campaign—to educate the public, and because of political reality.

BILL MARUTANI (Philadelphia): "Yes" for two reasons — A direct-appropriations bill is a short-run, disastrous method; a commission method shows greater possibility.

RAYMOND OKAMURA (Berkeley): A "reluctant yes". Though opposed in principle to the commission concept, political reality dictates.

NO (2)

HENRY MIYATAKE (Seattle): Opposed because I believe intent of a commission is not within the mandates.

RONALD MAMIYA (Seattle): Opposed because of inadequate discussion of other alternatives; commission concept is too broad and not in the mandate.

The second vote was taken up on Sunday morning as some wanted to "sleep" on the discussion of whether JACL should go "one-step" or "two-step" with the commission concept. The same four voting "yes" the first time favored the more assertive "one-step" concept.

The "two step" pattern would have sought to es-

Continued on Page 4

Continued from Front Page

tablish the basis for redre
and none of the committe
was of the opinion that a bi
should hit a "rock botto
line" as one member de
cribed it.

Appendix C

LOS ANGELES JAPANESE DAILY NEWS
259 SO. LOS ANGELES ST., LOS ANGELES, CALIF. 90012
NO. 22,765 MONDAY, MAY 14, 1979 ESTABLISHED 1903

ONE PERSON'S OPINION

Chicago Nisei critical of Nat'l. 'CL Redress drive

☆ **The author of the following piece is Nisei William Hohri, a 52-year old Chicago computer programmer who has devoted much of his time recently to the study of the current move to gain redress from the federal government for time spent in "relocation" centers by Japanese Americans during World War II. He has been instrumental in efforts to get the United Methodist Church involved in the reparations issue.**

★

It's deja vu to '42.

The JACL has taken a turn on redress which reminds me of March, 1942. In that fateful month, the JACL, wishing to act as the representative of the total Japanese American community, negotiated with the U.S. government on the evacuation order. (The minutes of this special session are available but difficult to come by.) I received the impression that the JACL leaders were so eager to please, to be influential, to be patriotic, that they asked few hard questions. Although there was concern expressed over violations of law and order by unruly citizens, no one said a word about the violations of our Constitutional rights by the government. Here we are in 1979 and the JACL seems to be stumbling over its own footsteps of history. What started off as a well organized campaign for redress at the 1978 National Convention has suddenly switched into a Study Commission. The reason cited is political reality. In 1942 it was military necessity.

This time the problem seems to be the Nikkei legislators: Inouye, Matsunaga, Mineta and Matsui. They have turned the campaign around and they insist that their advice be kept off the record. What kind of monkey business is this? This is hardly the way to conduct the business of the entire Nikkei community in an open and democratic society.

The recent record of reporting by the JACL's newspaper, the **Pacific Citizen**, has created the impression of a manipulated press. It has failed to report the firing of one of the members of the National Committee for Redress. It has failed to report the official vote of dissent from the Study Commission approach by the Seattle Chapter's Board of Governors.

The president of the JACL has maintained an enigmatic silence through all this. The National Committee for Redress, in my judgement, clearly contravened the decision of its parent body, the 1978 National Council. The National Council voted for redress. The Committee, its creature, overrode that vote by moving for a Study Commission. Please read the proposed bill if you think it is anything more than a Study Commission. That is plainly unparliamentary. A committee may not act against the direction given to it by the main body. If the chairman of the Committee refuses to rule the contravention out of order, then the president must. Even if the president does not judge the action to be out of order, given the extreme gravity of the decision, he at least ought to explain his judgement. Silence is inappropriate.

I do not believe the actions of the JACL national leaders reflect the wishes of their rank-and-file member, especially those who have read the proposed bill. The vote of the Tri-District Conference in April was only an expression of opinion by the persons present and not an action of their chapter. The Nikkei press was led to believe that ". . . 78 out of 105 JACL chapters have now endorsed the national redress unit's proposal . . ." (Rafu Shimpo, 5-3-79). This is a distortion. Only half of the 70-member TDC chapters were represented. And those who were ". . . had no voting power." (Pacific Citizen 5-4-79) The chapter involved in this distortion should respond to this kind of manipulation by the national JACL. Further the Nikkei community at large must not let this kind of group determine their destiny in '79 as they did in '42.

But there is a difference between '79 and '42. We are here. We can raise our own voices. We can press for our own legislation through our own representatives and senators. The four Nikkei are not representatives of Los Angeles, San Francisco, Seattle, Denver, Chicago or New York. Nor is this issue primarily a Nikkei one. It is an issue for America. The Nikkei are the victims. It is the U.S. government that perpetrated the crime. It is the government that must be called upon to make the reparation. We are calling for an act of repentance. All Americans of conscience should join in the call.

If the JACL has stumbled irretrievably, if the JACL leadership will not turn themselves around, then it is time to think of alternatives. There are plenty of people who will not let '42 happen again. The Open Letter to Hayakawa movement is evidence. The vote of the Seattle chapter is evidence. The vote of the Chicago chapter is evidence. Local JACL chapters can run their own campaign. We can form coalitions which Black, Jewish, civil rights, peace, church and other groups in our communities. There are already persons in Congress who will co-sponsor a true redress bill. A movement has already begun in the United Methodist Church for reparations. It's only a beginning. We must not let '42 happen again!

—WILLIAM HOHRI

★

Individuals and organizations wishing to contact Hohri can do so by writing him at 4717 N. Albany, Chicago, IL 60625.

Appendix D

To the General Conference of the United Methodist Church, the Rev. Newell P. Knudson, Secretary, Postoffice Box 5098, Eureka, California 95501:

Whereas, during World War II, the United States of America did forcibly remove and incarcerate, without charges, trial, or any due process of law, 120,000 persons of Japanese ancestry, both citizens and resident aliens of America and citizens from Latin America; and

Whereas, this action was initiated by a presidential order, enabled by Congressional legislation, and supported by the Supreme Court, thereby implicating the total government; and

Whereas, despite the government's claim of military necessity, this action proved to be made solely on the basis of race and for racist moti there having been not a single case of sabotage or espionage committed by such persons and there having been no such sweeping act taken against Americans of German or Italian ancestry; and

Whereas, the American Convention on Human Rights, to which this country is signatory, states:

> "Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice."

and

Whereas, legislation has been submitted in the 96th Congress "to provide for payments to certain individuals of Japanese ancestry who were interned, detained, or forcibly relocated by the United States during World War II" (H.R.5977);

Therefore, Be It Resolved that this General Conference acknowledge the inj of this event, affirm the need for America to redress the victim and actively support the passage of redress legislation, such as H.R.5977, in Congress; and

Be It Further Resolved that the General Board of Church and Society be instructed to communicate this resolve to all members of Congress and to adopt support for redress as part of its program for this quadrennium.

Methodist Federation for Social Action
Rita Carter, Secretary
Rustin Avenue U.M.C.
2901 Leech Avenue
Sioux City, IA 51106

George McClain, Executive Secretary
76 Clinton Avenue
Staten Island, NY 10301

Senator JACKSON. We are delighted, once again, to welcome Mike Masaoka, who has been on this Hill for so many years. It is hard to count them except by decades.

We are delighted to welcome you back.

Mr. MASAOKA. Thank you, Mr. Chairman. I have a rather lengthy statement which I would like to submit for the record, together with two supplementary items.

Senator JACKSON. As done before, your entire statement or statements will go in the record at the conclusion of your testimony as if read. You may proceed.

Mr. MASAOKA. Thank you, Mr. Chairman.

The majority leader of the House came and talked about the 442d Regimental Combat Team. Without trying to take anything away from the Hawaiians, I would like to point out for the record an equal number of mainland Japanese Americans volunteered for the 442d too.

Those who came from the mainland came from barbed wire fences and concentration camps because they knew what they wanted and were fighting for. As a matter of fact, Senator Jackson, Minidoka Relocation Center, where many of the Japanese Americans from Washington were evacuated or resettled or detained, if you will, this particular camp contributed more on a percentage basis of Japanese Americans who volunteered to fight for our country than any other area in the entire United States except for Hawaii.

These were people, Mr. Chairman, who were suspect by their own government and by their own army.

I would like to make a comment, if I may, also, about the congressional leadership of Japanese ancestry who appeared before you today. Senator Matsunaga was a veteran of the 100 battalion of the 442d Regimental Combat Team.

Twice wounded, he was sent back to the States and reassigned to Fort Snelling Military Intelligence Service. Spark Matsunaga on spare time visited over 400 different areas speaking out for the resettling of Japanese Americans from the camp.

Senator Inouye lost his right hand in defense of his country, wears the Distinguished Service Cross, the second highest medal which our country gives. Incidentally, he was recommended for a Medal of Honor. He was refused service by a barber in California because he was a "Jap."

Congressman Mineta was a junior high school student and yet he tells us about all the trauma and the thoughts that haunt him because of the evacuation of his parents and family. Congressman Matsui, the youngest, is deaf in one ear because they did not have the medical facilities in camp to take care of such an illness.

These are the kinds of sponsors we have for this legislation, Mr. Chairman.

The question has been raised over and over again why have this commission? Why not direct payments? After all, we who were evacuated, we who were detained ought to know we were mistreated. We do.

Those involved in accidents may know what happened to them, they may have their feelings, they may have their thoughts.

Oftentimes when you try to seek some kind of settlement, you go to a court which determines all the facts, determines what the aftereffects were and makes a proper conclusion.

In this case, too, Mr. Chairman, the National Organization of the Japanese American Citizens League did at one time come out for a partial compensation program, but we faced many difficulties with this.

Should the people who stayed in camp the longest get paid more than those who left early to die for our country as soldier volunteers? Or the students who went on to continue education or those who wanted to help in the defense effort of our country and left camps to work in the factories and in the fields?

Should those who refused service in the military be granted the same amount as those who volunteered? How about the heirs today who were never in camp and knew nothing of the camps be paid the same as those who suffered through camp?

As a matter of fact, I am among those who feel very strongly that money cannot compensate me for the loss of a brother, for a mother. My family of five was segregated from Manzanar Detention Camp because they were too loyal to America and sent to another special camp in Death Valley on Christmas Day 1942.

I could go on and on and explain, sir, why the commission is needed. We need a commission to get at the facts—for example, I recall very vividly that on February 13, General DeWitt sent a program for evacuation to the Department of War. Seven days later, February 20, the War Department sent out a program different from that of General DeWitt's and far harsher.

Why and who made that decision? I think that is an important question to probe. Another question, who figured out this horrendous wage program: $12, $16, and $19 for everyone in camp, and often a professional with 30 or 40 years of practicing medicine or law was just given $19 when outsiders, none of them Japanese American evacuees came in and were paid salaries of thousands of dollars. How does one reconcile such differences as these?

Should all these people be compensated the same? Why, Mr. Chairman, were actual American enemy aliens, interned separately by the Department of Justice under their program, why were they treated better than were American citizens like us simply because they were protected by the Geneva Convention? And we were protected only by the Constitution.

There are many questions like these, Mr. Chairman, which I raise in my statement because I think it is something that the committee, the staff and the commission ultimately ought to look into. That is why I think we need a commission. After all, we need someone who can look at these matters. People like myself because we are so close to the forest, perhaps we forget what the trees look like.

We need to have a distinguished body of Americans look at this and if they decide on the basis of compensation, then Congress will more likely accept it because in these times of economic strain, inflation and all when we are worried about the budget, it is going to be very difficult to make direct appropriations from the National Treasury.

Yet if a distinguished body of Americans makes a decision that individual payments are the best way, I think that it would have a better chance of passage. But for myself, I am not sure whether monetary compensation is the best, and even if individual compensation would be better than a lump sum public fund, for example, it could be used to establish a fund which is used to protect the civil rights of all Americans, not just of Japanese Americans who in the future may be challenged in their civil rights.

Perhaps in these times of international tension, we ought to have a cultural center established which would promote relations between Japan and the United States and thereby influence our Pacific alliance. Or it might be better that we use this money to, for another example, help the boat people and other refugees from political persecution and from natural calamities.

Mr. Chairman, I could go on and on and tell you more and more about the evacuation because I feel very deeply about it.

As you know, I have worked with you and the senior Senator from Washington and other Senators from the West Coast States on corrections and remedial legislation and I want to say definitely for the record, since the end of World War II no group of Senators or Members of Congress from any region have worked harder, more conscientiously and more diligently to right the wrongs directed against us in World War II solely because of ancestry.

Some of the witnesses have testified to the fact there is considerable bitterness. Mr. Chairman, I am among those who are not bitter. I am among those who volunteered. I am among those who saw my brother killed and others disabled in the Army of the United States.

I have faith in America and this is why I ask this Congress and this commission to look into the wrongs inflicted upon us, to determine what the best remedy ought to be, not just in interest of the evacuees, but in the national interest of the United States.

I would like to have our faith in America vindicated just as we, 38 years ago, saw beyond the barbed wire fences of our concentration camps, saw the kind of America we had to have, the kind of America that we went out and fought for. Of all the soldiers, American soldiers who fought in World War II, our group did not fight in vain, for they received citizenship for their parents and repealed all the infamous immigration exclusion acts among many congressional enactments.

Now, before those of us who retain our great faith lose that faith, before we lose faith in the American way and in the cause of democracy, Mr. Chairman, I plead with you, the Congress of the United States and the people of the country, to vindicate our faith and in so doing vindicate the faith of all Americans that America is truly the last best hope of mankind.

Thank you.

Senator JACKSON. Thank you, Mike, for a very, shall we say, powerful statement. You have always been an effective advocate in the many, many years you served here on the hill. We are very proud of your great contribution.

I just want to, as we wind up here, ask a couple of questions. Each of you has expressed the sentiment that injustice has been done to thousands of loyal citizens simply because their racial

ancestry happens to be Japanese. Regardless of what views the commission might take on the issue of compensation, set that aside for a moment, would it serve a valid purpose if it educated the American people about this chapter in American history so as to prevent a recurrence and, finally and officially, acknowledge that a wrong was committed?

Would airing these questions help to heal the psychological scars of the victims and put the issue of Japanese American internment behind us? Do you want to start off?

Mr. MASAOKA. I will be very happy to. I think that the commission must, in all fairness to the evacuees, come up with some remedy, but I do agree with you, Mr. Chairman, that the concept of educating is very important because there is a new generation of Americans who don't know what happened to us, who don't know what can happen again if the present laws and court cases are not corrected.

So I think this educational process you allude to is good, not only for Americans and the people throughout the world but even for our own Japanese Americans because many of us still have a lot of questions unanswered about evacuation.

For example, I would like to bring this up. I think you are aware, Mr. Chairman, that the original intention of the Government was to use these camps simply as refugee centers, not as concentration camps guarded by military police, but someone changed that decision and a lot of us would like to know who and why.

I could go on, as I say, with lots of other questions, so many unanswered questions, that for the sake of history itself I think it is important the study commission take them up.

Senator JACKSON. Mr. Enomoto.

Mr. ENOMOTO. I endorse Mike's comments completely. I am kind of piggybacking on his remarks. I not only believe the future generation that is coming in new don't understand or don't know what happened. As I mentioned in my testimony, there are colleagues in my work, there are people I come across in the communities I have lived in today who are simply uninformed, did not know of this episode and look at me with amazement—that couldn't have happened, not in the United States.

I also believe there are a significant number of my fellow Nisei Japanese Americans who went through the experience who do not know the fact some of us may have learned as we delved into this thing in the interest of this legislation.

Mr. MASAOKA. Mr. Chairman, reading this law or this bill, I am not quite sure whether subpena powers are granted the commission or not.

Senator JACKSON. Yes.

Mr. MASAOKA. It doesn't use that word and I think clarification might be helpful because some of the documents are still classified that we are aware of, and we think that subpena powers on the Department of Defense, on the Executive Office of the President and a few other organizations like that, might prove very, very helpful in determining the truth.

Senator JACKSON. Mike, if you will look on page 4 of the bill starting with line 18:

The Commission or on authorization of the Commission, any subcommittee or member thereof, for the purpose of carrying out provisions of the Act hold such an Act . . . and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandum, papers, documents as the Commission or such subcommittee or member may deem advisable.

Mr. MASAOKA. Does this also compel compliance on the part——

Senator JACKSON. I am looking for the—in any event, obviously subpena, duces tecum to produce the record is necessary. We will see that that is covered.

Mr. MASAOKA. Thank you, sir.

Ms. WONG. I would like to respond to your question. The commission has already determined that, yes, the study commission bill is a good educational tool. I think there is no doubt about that. It is a good educational tool for the entire United States. It serves for a very good purpose in permitting Japanese Americans to deal with a lot of the psychological problems that come from the incarceration.

However, I don't think the bill itself goes enough toward preventing such an act from happening again. Unfortunately, the United States, one of the most powerful forces, is whether or not it costs anything. Unless we can show the U.S. Government that it costs too much to put people in prison without prior findings of guilt, I don't think we can really adequately prevent such an act from happening again.

Senator JACKSON. Thank you very much.

Mr. Hohri.

Mr. HOHRI. The analogy that I think of, and I think this committee should think of, is what if the Government of Germany, in response to America's demand for reparations to the Jews, had replied, "Well, just wait a minute, we want to study this matter and find out whether a wrong was committed." That seems awfully ludicrous, but I am afraid that has also an educational value because it has an impact on world opinion and it tells the world a little bit about how sincerely this country holds the civil rights of its own citizens and how sincerely this country recognizes conventions, such as the American convention on human rights, which propounds the thesis that all persons have a right to compensation when they have been subjected to a final judgment through a miscarriage of justice. I think we have to look at the other part of education, too.

Senator JACKSON. Finally, let me ask this question. Some have suggested we not set up a special commission, that instead we utilize an existing agency. For example, the U.S. Commission on Civil Rights. Do you wish to comment on that?

Mr. MASAOKA. I believe the situation on Japanese Americans is so unique that it calls for a special group. The U.S. Commission on Civil Rights, for example, looks into civil rights only, and this particular aspect of mistreatment of Japanese Americans in World War II include problems of mental results, moral obligations, sociological reactions, and all of these things that the normal commissions are not able to cover.

Besides, most important, most commissions are pretty well overburdened with their own commission work and their charter responsibilities. We think the situation of Japanese Americans is

such and so important to the history of America that it is entitled to a special commission on just this one subject.

I would like to make one other comment because Mr. Hohri alluded to the Germans. It is curious, but the U.S. Government, supposedly the most humane in the world, through Colonel Bendetsen, said if you had one-sixteenth Japanese blood, you were Japanese and had to go to camp. Hitler, in all his madness, didn't require that much.

He said if you had one-eighth Jewish blood, you had to go to the genocide camps. These are the kinds of things, I think, that are especially unique to our group. I think for the sake of history, for the sake of justice, for the sake of all of us, I think we need a special commission.

Senator JACKSON. I think it could be charged if you turn it over to, say, the Civil Rights Commission, you are interfering with the regular work of the commission. If you are going to go into this in some detail, obviously it ought to be done expeditiously and not dragged on forever and be delayed. Do any of you have any different comments about it? You are all pretty much in agreement, if you go the commission route it ought to be a separate one.

Mr. HOHRI. If we go.

Senator JACKSON. I understand your point of view. That is why I said if you go the commission route.

Mr. MASAOKA. I would hope we not only go the commission route but handle the legislation he proposes because we have nothing against that kind of legislation. We think there are other supplementary facts that need to be pointed out.

Senator JACKSON. I think we have made a good record today. I will ask the full committee to act expeditiously at the first meeting that we have so that there will not be any delay.

Thank you very much for your coming, especially to those who traveled a great distance. We appreciate your participation today and Senator Inouye especially wished to convey his regrets. He has the flu and couldn't be here. He called and asked me to convey to each of you his best wishes and that he will be working with you very closely.

Thank you very much.

[The prepared statement of the Nisei Lobby presented by Mr. Masaoka follows:]

STATEMENT OF THE NISEI LOBBY

ADVOCATING PASSAGE OF S. 1647

To The

COMMITTEE ON GOVERNMENT AFFAIRS

UNITED STATES SENATE

March 18, 1980

Mr. Chairman, and members of the Committee:

My name is Mike M. Masaoka.

From August 1941 until the summer of 1943 when I volunteered for service with the now famous 442nd Regimental Combat Team along with four of my brothers, I was the National Secretary and Field Executive of the Japanese American Citizens League (JACL), then and now the only major national organization of Americans of Japanese ancestry in this country. After my honorable discharge from the Army in late 1945, I became the Washington Representative for the JACL and served in a full-time or part-time capacity until 1972 when I retired voluntarily.

Because of my active participation in most of the major, historical events of those times of travail for those of Japanese ancestry on the continental mainland of the United States as a leader of the JACL, if I may be presumptuous I believe that I may be helpful to the Committee in its consideration of this--and comparable--legislation.

Being even more presumptuous, if I may, unless my knowledge and memory fail me, my biggest contribution to these hearings may be in answering specific questions and in commenting on other testimony, even though I do have a prepared statement of my own to submit for the record. Except for the actual living in the so-called relocation centers, which many now

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euphemistically describe as concentration camps American-style, I am probably the only living JACL leader left who participated in what are now thought to be the pivotal and crucial decisions of 1942.

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At these hearings, I am speaking on behalf of the Nisei Lobby, whose membership is composed of first-generation, native-born citizens of Japanese ancestry with like minds on most public issues involving Japanese Americans, all of whom are victims of Executive Order No. 9066 and similar wartime proclamations, statutes, and regulations. Most of us too served, and proudly, with the Armed Forces of the United States in World War II.

I requested the opportunity to be heard today because I feel that I owe it to my associates in JACL who were its wartime leaders and to many of my comrades in arms who served with honor in both the European and Pacific Theaters, many--if not most--of whom are no longer with us. It would be no exaggeration--in my opinion--to say that our lives are that much shorter, with much more suffering, because of our wartime experience.

Moreover, I believe that the judgment of history will vindicate that many-if not most--of our major policy decisions, which we made in what we sincerely believed then to be in the best interests of the Japanese American population of the West Coast, were most appropriate to the times and circumstances, and the only viable alternatives then available to us as then suspect Americans.

As for those of who volunteered, with many being "killed in action" on all the battlefields of Europe and the Pacific, including my brother Ben who was killed in the rescue of the Lost Texas Battalion in the Vosges, France, in late October 1944, we were among the few American GIs who really knew what we were fighting for. We have gained most of those objectives.

Indeed, it can be truly said of our Army volunteer: They did not die in vain.

Today, Americans of Japanese ancestry enjoy greater dignity and a larger measure of human and civil rights than we ever thought possible only four decades ago, with opportunities for ourselves and our posterity undreamed of in those concentration camp days.

Members of Congress and of the government, as well as most historians and social scientists, have attributed much of the current favorable status of Japanese Americans in this country to the courageous and visionary conduct of the people themselves and to the JACL policy decisions that guided them throughout our years of tragedy and travail.

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S. 1647, which was introduced on August 2, 1979, by--among others--Senators Daniel Inouye and Spark Matsunaga of Hawaii, with whom I had the honor to serve in the 442nd, has as its purpose "to establish a factfinding commission to determine whether a wrong was committed against those American citizens and permanent resident aliens relocated and/or interned as a result of Executive Order Numbered 9066 and other such associated acts of the Federal Government, and to recommend appropriate remedies".

Other major co-sponsors of S. 1647 include your western colleagues, California Senators Samuel I. Hayakawa, a naturalized Japanese Canadian, and Alan Cranston, the Majority Whip, Washington Senator Warren Magnuson, President pro tempore, Dean of the Congress, and Chairman of the Appropriations Committee, and Idaho Senator Frank Church, Chairman of the Foreign Relations Committee.

In the House, more than 125 Representatives already have joined in co-sponsoring identical legislation, H.R. 5499. Among the principal

co-sponsors are Majority Leader Jim Wright of Texas, Majority Whip John Brademas of Indiana, Chairman of the Judiciary Committee Peter Rodino of New Jersey, and California Japanese Americans Norman Mineta and Robert Matsui.

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At this point, by the way, I wish to state unequivocally that if such a Commission is established by the Congress, I am not a candidate for either the Commission or its staff.

Why Legislation Now?

Many may rightfully ask, why 38 years after the fact, should the Congress now act?

The bill itself provides two of the reasons.

One is that "Approximately 120,000 civilians were relocated and detained in internment camps pursuant to Executive Order Numbered 9066, dated February 19, 1942, and other associated acts of the Federal Government".

The other is that "no inquiry into this matter has been made".

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As we interpret the first congressional explanation, the "civilians" referred to were mostly, but not necessarily all, of Japanese ancestry.

And, "other associated acts of the Federal Government" mean statutory or regulatory restrictions on the lives of American citizens and permanent resident aliens that were arbitrarily "above and beyond" those imposed on the general citizenry as a whole.

We have in mind that German and Italian "enemy aliens" were also subject to certain restrictions as to military zones and areas, that the Department of Justice conducted an Enemy Alien operation, that the Alien Property Custodian sequestrated some but not all of the property of certain

citizens and aliens, that the martial law imposed on the then Territory of Hawaii applied to the total civilian population of the Islands and not just its Japanese American minority, that the Selective Service System temporarily decided as a matter of policy it would not call for induction otherwise qualified Japanese American youth, etc.

Perhaps this bill might be amended to include "the associated acts" of the various states and municipalities to that of the Federal Government in order that a greater measure of justice and equity might be done the aggrieved.

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While there is little dispute concerning the actuality of "relocation" and "detention", we have heard some question the finding that no official congressional or governmental investigation "into this (subject) matter has (ever) been made".

From our knowledge of what has transpired in this regard, we are in complete agreement with that legislative finding.

The so-called Japanese American Evacuation Claims Act of 1948, as amended twice subsequently, only reviewed the property losses suffered as a consequence of the so-called evacuation and exclusion programs authorized and carried out under Executive Order 9066. It provided partial compensation for certain property losses, actually less than ten cents on a dollar claimed, paid without interest on the basis of 1941 prices as late as 1965, for about a third of the evacuees.

The so-called "Japanese" changes in the immigration and naturalization codes, enacted in the main as part of the 1952 Act and the 1965 Amendments, involved only studies of the racial, economic, and social discriminations suffered by those of Japanese ancestry as consequences of the federal

prohibitions against the naturalization of Japanese aliens since the beginning of the Republic in 1789 and against the immigration of all except three categories of Japanese since the 1907 Gentlemen's Agreement and the 1924 Exclusion Act.

In the 1971 repeal of the so-called Emergency Detention Act, more specifically Title II of the Internal Act of 1950, the only discussion centered on the legal implications and experiences of the World War II evacuation and detention.

As far as I can recall, bolstered by a quick survey of my records, these three legislative inquiries were the only ones to touch substantially upon our wartime mistreatments during the past 35 years of my residence in the nation's capital.

The Supreme Court of the United States has passed on the constitutionality of the Japanese American experience, but it has never passed judgment on whether moral, economic, social, mental, or other "wrong" was committed against us. From time to time, courts have resorted to language referring to these Japanese American cases.

Members of Congress have, of course, extended remarks and made comments on these World War II deprivations suffered by Japanese Americans many times in the past almost four decades since they occurred. And several writers, novelists, academicians, historians, lawyers, sociologists, and others have tried to examine and explain the plight of Japanese Americans in World War II.

But, there has never been a formal, official, exhaustive, and definitive investigation into all of the facts--social, mental, health, economic, financial, psychological, sociological, etc.--the implications, and the "wrongs" committed against Japanese Americans and possible others

under authority of Executive Order 9066.

Therefore, the congressional conclusion that there never has been an official inquiry into this subject matter is not only correct but justified. And such a searching factfinding investigation is long past due.

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While the hearings and investigations leading to the 1948 Evacuation Claims Act did not look beyond the question of property losses, the 1947 Report of the House Judiciary Committee on that proposal includes several conclusions that we feel may be of special interest to this Committee, for the comparable report by the Senate Judiciary Committee repeated these findings:

> "...The Committee was impressed with the fact that, despite the hardships visited upon this unfortunate racial group brought about by the then prevailing military necessity, there was recorded during the war not one act of sabotage or espionage attributable to those who were the victims of the forced relocation. Moreover, statistics were produced to indicate that the percentage of enlistments in the Armed Forces of this country by those of Japanese ancestry of eligible age exceeded the nationwide percentage. The valiant exploits of the 442nd Regimental Combat Team, composed entirely of Japanese Americans and the most decorated combat team in the war, are well known. It was further adduced that the Japanese Americans who were relocated proved themselves to be, almost without exception, loyal to the traditions of this country, and exhibited a commendable discipline throughout the period of their exile...
>
> "...The Committee considered the argument that the victims of relocation were no more casualties of the war than were many millions of other Americans who lost their lives or their homes or occupations during the war. However, this argument cannot be considered tenable since in the instant case the loss was inflicted upon a special racial group by a voluntary act of the Government without precedent in the history of this country. Not to redress these loyal Americans in some measure for the wrongs inflicted upon them would provide ample material for attacks by the followers of foreign ideologies on the American way of life, and to redress them would be simple justice."

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In addition to the reasons identified in the bill itself, the Nisei Lobby believes that there are other urgent considerations that call for the early passage of this legislation.

When revolutionary terrorists in Tehran took some 50 Americans hostage early last November in our Embassy there, Washington decided that all Iranian students in this country should summarily be required to report and checked to determine whether they should be deported to their homeland. Many Americans also decided to boycott Iranian businesses and to slander all who looked like Iranians to them.

Such carryings-on were a melancholy and grim reminder of those days when too many Americans automatically assumed that anyone who looked like a Japanese to them should be subjected to epithets, denunciations, indignities, and insinuations as to loyalty, etc.

Then, after the Soviet troops invaded Afghanistan late in December and when it seemed for a while that the United States was on the verge of a possible confrontation with the Russians, those tensions reminded us Japanese Americans too of those dark and threatening times before December 7, 1941, when for the sake of preparedness there were plans for building up the armed forces and the intelligence agencies, with the latter to be granted privileges and immunities from public and even congressional scrutiny in order that they might more effectively implement clandestine and other such activities, etc.

Earlier, when the so-called boat people in Southeast Asia were seeking sanctuary and asylum, the racism and antipathy against Orientals and Asians that have characterised the thinking of many Americans again came to the fore. Words were used to discourage aid and support for their relief that belied our traditional understanding and sympathy for the refugees of wars and

political persecution, let alone the innocent victims of natural calamities and poverty.

At the same time in this country itself, while proclaiming as a national principle and policy the promotion of human rights in all the nations of earth, there seems to be a growing lack of sensitivity to the civil and human rights of many of our own citizens. To many of us who know the meaning of being disadvantaged and denied, it appears that we are retrogressing to those pre-1960 decades when the poor and the racial minorities were treated as second and third class citizens of our proud land, the richest and the most powerful in the world.

In such times as these, we should never forget that "Eternal vigilance is the price of liberty!"

For such vital and critical reasons as these, we believe that it is essential to the freedom of America that this legislation be enacted in order that we may investigate the "wrongs" committed against the Japanese Americans in World War II to assure that, never again, can they be repeated here in the United States.

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Not only is there the urgent need but there also seems to be the political will at this particular juncture in history.

For the first time, there are five outstanding Americans of Japanese ancestry in the National Legislature, all proven leaders and dedicated to the proposition that the lessons of the Japanese American experience in World War II shall not again be visited on any group, minority, or individual.

Added to their understandable special concerns are the statesmanlike and humanitarian interests of a substantial number of Senators and more than a fourth of the entire membership of the House, all of whom have already

joined in co-sponsoring this legislation.

We are of the opinion that an overwhelming majority of the Congress, in both chambers, will vote for the enactment of this proposal now if provided the opportunity. All signs indicate that S. 1647 and H.R. 5499 are a congressional idea whose time has come!

Why A Commission?

There are some Japanese Americans, including JACL members, who understandably urge direct payments for their World War II tragedies, alleging that only by the payments of certain substantial sums of money can their suffering and losses be partially compensated.

We in the Nisei Lobby, and the overwhelming majority of JACLers, prefer the so-called commission approach proposed by the five Japanese American members of the Congress.

To begin with, candor requires us to note that the political realities as we view them will hardly tolerate an economy-minded National Legislature to appropriate significant funds from the public treasury unless the request is supported by strong and convincing evidence justifying such payments.

If an impartial commission of distinguished Americans carries out an intensive factfinding investigation and finds that the wrongs suffered justify money awards, then there is a more reasonable chance that the Congress will accept such recommendations.

More importantly, however, we believe that only an independent commission is in a position to determine whether money payments to individuals is the most appropriate remedy under the present circumstances when many--if not possibly most--of those who were the older and more needy victims of Executive Order 9066 have, for one reason or another, passed on.

Perhaps, if money damages are suggested as a proper response, it would

be more reasonable to use such designated sums to establish a public trust fund that could be used for many needed public purposes, such as a civil rights defense fund for all Americans, and not just Japanese Americans; as an educational and cultural center to promote understanding and cooperation between Japan, the land of our ancestry, and the United States, the country of our citizenship; as a national resources pool to help disadvantaged and denied Americans; as an international operation to help the refugees of political persecutions and/or natural calamities; etc.

It may well be too that the commission may come up with a far more appropriate and less obvious remedy than financial reimbursements, as it were.

Indeed, there are many among us who feel that what we suffered cannot be measured in monetary terms, for the price of freedom, health, sanity, dignity, pride, opportunity, and the other intangibles that make like worthwhile in America cannot be counted in dollars and cents. Money could well cheapen our experiences and our present advocacy if granted on an individual basis.

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There is little doubt in our minds, Mr. Chairman, that the commission in its investigations will often come across the Supreme Court's decisions in the so-called evacuation test cases--Yasui, Hirabayashi, and Korematsu--that will inhibit its efforts and cause the commissioners difficulties in seeking answers to certain basic questions about this World War II experience.

In those cases, all decided in wartime when the armed forces enjoyed great credibility, our highest tribunal found the courts could not question judgments of the military. Our court of last resort found constitutional these "war powers" of the Chief Executive as the Commander-In-Chief.

The Nisei Lobby hopes that the commission will discover some procedure whereby the courts will have another opportunity to consider this wartime problem from the vantage of hindsight, if necessary, and reverse the judiciary's earlier findings.

In the alternative, the commission might find a means to properly request the Congress to invite our legal system to review their precedents in this matter and square them with the thinking of our times about individual rights and immunities.

We frankly concede the difficulties in such a request because of our doctrine of the separation of powers within our government. We remain hopeful, though, that the commission may yet learn of an appropriate procedure to allow the highest court in the land to reverse these very dangerous precedents to personal liberties.

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What besides a commission can determine what lump sum payments are equitable?

Should those who remained in the camps longest receive more than those who left early for volunteer service in the United States Army, for further education in college and universities, for normal employment outside the camps in defense industries and plants?

Should those who renounced their American citizenship for any reason or who refused induction when Selective Service was reopened to qualified Japanese Americans, or caused violence and "troubles" in the camps be paid identical compensation with the disciplined and orderly?

Should those who were injured through no fault of their own or became the victims of chronic illnesses and diseases or suffered mental disorders in camps be provided the same awards as the healthy?

Should those who were "voluntary" evacuees, or who were in a real sense evacuated twice, as several hundred families in eastern California were, or who were allowed into these detention centers after being cleared by the Department of Justice's civilian hearing boards in their enemy alien internment camps, or received token money awards under the Evacuation Claims Act of 1948 be compensated?

Should young children and the living heirs of evacuees, even if they spent little or no time in the camps, also be the automatic beneficiaries of this program? Should the professionals among the evacuees--the doctors, dentists, attorneys, engineers, teachers, etc.--who were paid much less than non-evacuee counterparts be awarded the same as the non-professional evacuees, the children, and the aged who received $12, $16, and $19 a month as wages or salaries?

We believe that only a commission, properly staffed, can look into such differentials, and many more, to determine equity to the various categories of evacuees.

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Furthermore, the Nisei Lobby believes that only a commission can seek out still classified government documents and information and other as yet undiscovered sources to learn at least some of the answers to questions that continue to haunt us, especially me who happened to be at the center of some of the controversies.

What was the real motivation for Executive Order 9066? Was it to allow the detention of Japanese Americans to subsequently exchange them for American prisoners of war of the Japanese militarists? Was it to hold Japanese Americans hostages to the "good conduct" of Japanese imperialists? Was it in preparation for the decitizenship of Japanese Americans and their

eventual deportation to Japan? Was it purely a surrender to political expediency? Or, was it a concession to the historic West Coast racism against the Yellow Peril? Was it a victory for the economic greed of the Pacific Coast states, especially the agricultural interests?

Why did President Franklin Roosevelt select the War Department's West Coast evacuation plans of February 20, 1942, over those proposed by General DeWitt one week earlier, on February 13? Who suppressed the information that no resident Japanese--alien or citizen--had committed any acts of espionage or sabotage before, during, and after December 7, 1941? Who created the fiction of protective custody as the rationale for the detention program and who first fictionalized the theory that, since there were no acts of disloyalty, it was proof of a disciplined fifth-column carefully waiting for an invasion by the enemy before unveiling their true character?

And who were the real triggermen who persuaded the President to sign the Executive Order? Was it Earl Warren, or Colonel Karl Bndetsen, or General John DeWitt, or John McCloy, or Francis Biddle, or Henry Stimson, or someone else whose name thus far has not surfaced generally? Why were only Mayor Harry Cain of Tacoma, Washington, and Governor Ralph Carr of Colorado the only major public officials who dared speak out against the military orders? Who orchestrated the shift in public opinion and in the media from one of understanding and sympathy for Japanese Americans to one demanding their immediate uprooting and removal from their life-long homes and associations in less than six weeks?

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If military necessity was the justification for implementing Executive Order 9066, why were not Japanese Americans in the then Territory of Hawaii, some 3,000 miles closer to the enemy than we on the West Coast on

Islands actually attacked by the Japanese air and naval forces, similarly treated? If military necessity condoned evacuation in the spring of 1942 from the western halves of Washington, Oregon, California, and Arizona, why was only the eastern half of California in early June also declared a military area from which Japanese, aliens and "nonaliens" alike, would be evacuated and excluded, and not the eastern halves of the other western states? Why was martial law imposed in Hawaii but not on the Pacific Coast?

Why was Executive Order 9066 issued when the Federal Bureau of Investigation, Navy Intelligence, and such Army generals as Mark Clark, then of the Provost Marshal General's Office, protested its need? What caused such Cabinet officers as Attorney General Biddle and Secretary of War Stimson to change their initial judgments and agree to its issuance?

Why were German and Italian enemy aliens not included in the evacuation and exclusion programs as initially intended? Who persuaded General DeWitt, who first opposed mass evacuation, to call for the evacuation of both Japanese nationals and Japanese American citizens? Who is responsible for shifting the program from one of treating the evacuees more or less as unfortunate refugees to that which was ultimately carried out?

Who authorized Colonel Bendetsen to decide that any person with as little as one-sixteenth (as I recall it) Japanese blood had to go to these concentration camps as being a Japanese person? This is double the standard used by Hitler in sending Jews to his genocide camps. Who allowed the Wartime Civil Control Administration to order the mass evacuation without providing in all cases for the necessary medical shots for the old, the very young, the women, etc.? Who closed down the Japanese language newspapers so the alien Japanese could not read in their native tongue concerning their immediate futures? Who refused to establish alien property custodians, as was

authorized in Canada and in the United States in World War I?

Who changed the original plans to order evacuation on the basis of crop harvests by Japanese farmers to an across-the-board, area-by-area one? Who determined the wage and salary scales: $12, $16, and $19 a month? Who decided that Prisoners of War and beneficiaries of the Geneva Convention would receive more generous treatment than that accorded to native-born United States citizens?

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Why did the Army reject a proposal before evacuation for a volunteer combat battalion of Japanese Americans but accepted a similar proposal made a year later in 1943? With at least half of the 442nd volunteers of the Buddhist faith, why wasn't at least one of the three chaplains a Buddhist? Why was the Army so insensitive as to assign the 442nd designation to the Army volunteers when the number four in Japanese signifies death? Why were the Japanese American G-2 interpreters-translators in the Pacific all non-commissioned officers while their non-Japanese American counterparts were mostly officers?

Why were only Minoru Yasui of Portland, who once worked for the Japanese Consulate in Chicago, Gordon Hirabayashi of Seattle, a consicentio objector to war as a Quaker, and Fred Korematsu of San Francisco who had facial surgery to avoid detection, indicted and convicted of violating curf and travel restrictions and the removal orders, when we know of several mor who deliberately violated the instructions and invited imprisonment to test the constitutionality of these military orders?

Who rejected the proposal that civilian hearings boards, such as th used by the Department of Justice to individually "examine" enemy alien int nees and those used by Britain to check into the background of German, Ital

and Japanese enemy aliens, screen the Japanese American population and determine those whose questionable individual loyalty might more justly permit their detention? If individuals applying for leave clearances from the camps could be screened on an individual basis, why wasn't this program followed before the mass evacuation and exclusion?

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If JACL's decision announced publicly to constructively cooperate in the evacuation process did not represent the majority view, why then did not hundreds and thousands who are alleged by some to have objected, by overt actions demonstrate against it? What reasonable alternatives did they, who now denounce the program, have in mind and why didn't they express and exercise them? If the JACL did not represent them then, did JACL represent them when it insisted that Buddhist, as well as Christian, students be allowed to leave the camps to continue their education in colleges and universities? Did JACL represent them when it advocated the reinstitution of Selective Service, which resulted in the formation of the 442nd? Did JACL represent them when it urged the War Relocation Authority to liberalize the "leave" procedures and to help the evacuees find suitable housing and employment outside the camps? And, finally, if JACL's major policy decisions were so patently wrong and unacceptable, why is the overall status today of Japanese Americans in the United States so favorable, and the future filled with such promise and previously undreamed or opportunities? What would they have done differently, and what would have been the consequences?

Only a commission, in our opinion, can check into these and many other questions, too numerous to mention and detail at this time, and come up with the honest and accurate answers.

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We are aware also that there are some few who claim that evacuation was "good" for Japanese Americans.

They note that today Japanese Americans are not confined to Little Tokyos on the West Coast but are located in every state in the Union. They say that instead of working just as clerks in vegetable markets and as menials in other occupations, nowadays Japanese Americans are found in almost every field of human endeavor and that, according to the last Census, they are doing better financially than the average American who is not of Japanese ancestry.

The Nisei Lobby, of course, disputes that our wartime travails were "good" for us individually and/or as a group. Indeed, we estimate roughly that Japanese Americans lost the equivalent of three generations worth of economic growth, professional advancements, and social advantages as a consequence of our World War II experiences and that all of the other so-called benefits would have come to us sooner and more generously had it not been for evacuation and exclusion.

We are confident that the commission will not only refute such evident errors but also demonstrate how the loss of dignity, of freedom, of the understanding and goodwill of friends and neighbors, etc., deprived our generation of Japanese Americans of untold economic, social, professional, and other gains.

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There are those who charge that a commission is a clever parliamentary device to postpone and delay action.

The instant measure, and its companion bill in the House, clearly assures quick and expeditious action.

It provides that the first meeting of the commission will be called by the President within 60 days of enactment.

It provides that within 18 months of becoming law the commission transmits its final report to the President and to the Congress. And the commission itself ceases to exist six months after it submits its final report "unless extended by a subsequent act of Congress".

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To insure that practically every point of view among Japanese Americans and others is aired, the legislation requires the commission to hold public hearings in Los Angeles, San Francisco, and Fresno, California; Portland, Oregon; Seattle, Washington; Phoenix, Arizona; Salt Lake City, Utah; Denver, Colorado; Chicago, Illinois; New York, New York; Washington, D. C.; and "any other city that the commission deems necessary and proper".

This one paragraph guarantees Japanese Americans in every section of the nation the opportunity to express themselves on their World War II memories in an official forum. As far as many of us are concerned, no other ethnic group in this country's history has been afforded this kind of opportunity to "sound off".

They are free to tell the presidentially-appointed commissioners what they remember and think about their wartime sufferings, losses, and travails. They can suggest methods by which the government may redress their grievances.

Most of us are aware that congressional committees, and subcommittees, cannot hold such extensive hearings in so many "concerned" locations simply because its members cannot afford to spend so much time on a single subject that can hardly be described as a first priority national topic.

But a commission can. And this commission must.

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Thus, Mr. Chairman, when all of the criticisms are examined, it seems to the Nisei Lobby, as well as the JACL, that the commission proposed

by the knowledgeable and sympathetic members of the Congress, who also happen to be of Japanese ancestry, is the most expedient and reasonable means to investigate all of the facts in the recourse to Executive Order No. 9066 and "associated acts of the Federal Government" and to recommend the most appropriate remedy in terms of those who are the innocent victims of this wartime operation and the national interest of the nation as a whole.

Comments from Non-Japanese American Sources

The Nisei Lobby believes that, in spite of the several judgments of the Supreme Court of the United States that the implementation of Executive Order No. 9066 by the Western Defense Command was constitutional "as of that time and under those circumstances", there is a great body of opinion--legal, historical, and even military--which seriously refutes the high court's ruling in this regard.

Even the Office of the Chief of Military History of the Department of the Army, in its official documentary entitled "Command Decisions" issued in 1960, concludes its chapter on "The Decision To Evacuate the Japanese from the Pacific Coast", with these words:

> "Would the Court's conclusion have been the same in the light of present knowledge? Considering the evidence now available, the reasonable deductions seem to be that General DeWitt's recommendations of 13 February 1942 was not used in drafting the War Department directives of 20 February for a mass evacuation of the Japanese people, and that the only responsible commander who backed the War Department's plans as a measure required by military necessity was the President himself, as Commander in Chief."

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Earl Warren, then the Attorney General of the State of California, later one of the "liberal Chief Justices of the Supreme Court, is often identified as one of the officials most responsible for persuading General DeWitt and the Pentagon to order the mass evacuation of all Japanese--aliens

and citizens alike--from the West Coast.

In his autobiography "The Memoirs of Chief Justice Earl Warren", released in 1977, Warren himself summarizes his latest feelings in these words:

> "...I have since deeply regretted the removal order and my own testimony advocating it, because it was not in keeping with our American concept of freedom and the rights of citizens...It was wrong to react so impulsively, without positive evidence of disloyalty, even though we thought we had a good motive in the security of our state. It demonstrates the cruelty of war when fear, get-tough military psychology, propaganda, and racial antagosim combine with one's responsibility for public security to produce such acts..."

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When in 1947 President Harry Truman's Committee on Civil Rights issued its historic report, it declared that "The most striking mass interference since slavery with the right to physical freedom was the evacuation and exclusion of persons of Japanese descent from the West Coast during the past war...

> "...we are disturbed by the implications of this episode so far as the future of American civil rights is concerned. Fundamental to our whole system of law is the belief that guilt is personal and not a matter of heredity or association. Yet in this instance no specific evacuees were charged with disloyalty, espionage, or sedition. The evacuation, in short, was not a criminal proceeding involving individuals, but a sort of mass quarantine measure. This Committee believes that further study should be given to this problem. Admittedly in time of modern total warfare much discretion must be given to the military to act in situations where civilian rights are concerned. Yet the Committee believes that ways and means can be found of safeguarding people against mass accusations and discriminatory treatment."

This Committee also discovered "the issuance by military authority during the recent war of individual orders of exclusion against citizens scattered widely throughout the 'defense zones' established by the Army. These orders rested on the same Executive Order as did the mass evacuation

of Japanese Americans. In the case of these individual orders a citizen living perhaps in Philadelphia, Boston, or San Francisco was ordered by the Army to move. He was not imprisoned, for he could go to any inland area. He was not accused of criminal or subversive conduct. He was merely held to be an 'unsafe' person to have around. Fortunately these violations of civil rights were not very numerous. Moreover, the Army lost confidence in the exclusion orders as effective security measures and abandoned them--but not until more than 200 citizens had moved under military compulsion."

We added this particular paragraph to emphasize an earlier statement, that more than Japanese Americans are involved as possible beneficiaries of this proposed commission.

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Sociologist Morton Grodzins in his 1949 University of Chicago Press documentary "Americans Betrayed: Politics and the Japanese Evacuation", concluded the first detailed analysis after World War II of this tragic experience in these pungent paragraphs:

> "Americans in the past decade have held up to scorn the crudities of the Fascist regimes. Yet the history of the evacuation policy could be an episode from the totalitarian handbook. The resident Japanese minority became the scapegoat of military defeat at Hawaii. Racial prejudices, economic cupidity, and political fortune-hunting became intertwined with patriotic endeavor. In the fact of exact knowledge to the contrary, military officials proposed the theory that race determined allegiegence. Civil administrators and the national legislature were content to rubberstamp the military fiat.
>
> "Americans in concentration camps at home provided a bitter irony at a time that Americans were fighting for the Four Freedoms. Ideological issues were presented with bleak clarity in World War II. On the one hand, the nation's principal European enemy found energy in a doctrine of racial superiority, and the nation's Asiatic enemy propagandized its cause in terms of the colored races struggling against their white oppressors. On the other hand, the United States took leadership from a President

who affirmed 'Americanism is not, and never was, a matter of race or ancestry'; the strength of the country was conditioned by the unity of its diverse nationalities; millions of Chinese stood foremost among the nation's allies. The lines were clear cut, and the Japanese minority on the West Coast presented the United States with a magnificent opportunity to confound her enemies on both sides, to lend encouragement to her allies, and to build strength out of the diversity of her minority groups. No opportunity was more completely thwarted. The policy adopted was an affirmation of enemy principles...

"Japanese Americans were the immediate victims of the evacuation. But larger consequences are carried by the American people as a whole. Their legacy is the lasting one of precedent and constitutional sanctity for a policy of mass incarceration under military auspices. This is the most important result of the process by which the evacuation decision was made. That process betrayed all Americans."

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We conclude this section by quoting from the three Associate Justices of the Supreme Court who dissented in the so-called Korematsu case--Owen Roberts, Frank Murphy, and Robert Jackson.

Roberts flatly stated that "an assembly center was a euphemism for prison". He also alleged that the evacuation and exclusion orders were "but a part of an overall plan for forceable detention".

Korematsu's predicament was described thusly by Roberts:

"He was forbidden by Military Orders to leave the zone in which he lived; he was forbidden by Military Orders, after a date fixed (which in this case was May 9, 1942) to be found within that zone unless he were in an assembly center located in that Zone.

"The two conflicting orders, one which commanded him to stay, and the other which commanded him to go, were nothing but a cleverly devised trap to accomplish the real purpose of the military authority, which was to lock him up in a concentration camp. The only course by which the petitioner could avoid arrest and prosecution was to go to that camp according to instructions to be given him when he reported at a civil control center. We know that in a fact Why should we set up a figmentary and artificial situation

instead of addressing ourselves to the actualities of the case?

> "It is a case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based on his ancestry, and solely because of his ancestry, withou evidence or inquiry concerning his loyalty and good disposition toward the United States ...I need hardly labor the conclusion that constitutional rights have been violated..."

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Murphy claimed that the exclusion order, made in the absence of martial law, went over "the very brink of constitutional power" and fell into "the ugly abyss of racism".

> "Being an obvious racial discrimination, the order deprives all those within its scope the equal protection of the laws as guaranteed by the Fifth Amendment. It further deprives these individuals of their constitutional rights to live and work where they will, to establish a home where they choose and to move about freely. In excommunicating them without benefit of hearing, this order also deprives them of all their constitutional rights to procedural due process. Yet no reasonable relation to an 'immediate, imminent, and impending' public danger is evident to support this racial restriction which is one of the most sweeping and complete deprivations of constitutional rights in the history of this nation in the absence of martial law...
>
> "The main reasons relied upon by those responsible for the forced evacuation, therefore, do not prove a reasonable relation between the group characteristic of Japanese Americans and the dangers of invasion, sabotage, and espionage. The reasons appear, instead, to be largely an accumulation of much of the misinformation, half-truths, and insinuations that for years have been directed against Japanese Americans by people with racial and economic prejudices--the same people who have been among the foremost advocates of the evacuation...
>
> "A military judgment based upon such racial and sociological considerations is not entitled to the great weight ordinarily given to judgments based strictly upon military considerations. Especially is this so when every charge relative to race, religion, culture, geographical location, and legal and economic status has been substantially discredited by independent studies made by experts in these matters...

> "I dissent, therefore, from this legalization of racism...All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must accordingly be treated at all times as the heirs of the American experiment and as entitled to all the rights and freedom guaranteed by the Constitution."

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Jackson, who was nominated to the highest tribunal in the land from his post as the Solicitor General of the United States, charged that, from the evidence before him, he could not say whether General DeWitt's orders were or were not permissable military precautions. "But even if they were permissable military procedures, I deny that it follows that they were constitutional. If, as the Court holds, it does follow, then we may as well say that any military order will be constitutional and have done with it."

As Jackson viewed it, courts cannot appraise military decisions; they must accept the declaration of the military authority that the decisions were reasonably necessary "from a military viewpoint". But the courts "cannot be made to enforce an order which violates constitutional limitations even if it is a reasonable exercise of military authority". The judiciary cannot become mere "instruments of military policy". In other words, a military order may be necessary and reasonable from a military standpoint and yet be unconstitutional.

> "A military order, however constitutional, is not apt to last longer than the military emergency. Even during that period a succeeding commander may revoke it all, but once a judicial opinion rationalizes such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes...A

> military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution. There it has a generative power of its own..."

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These comments are but a few of the many that could have been reprinted for the information of this Committee and the commission.

They tend to suggest some of the lines of inquiry that should be followed, as well as part of the scope and diversity of a factfinding investigation.

They are also supporting evidence that a commission inquiry is not only justified but urgently necessary.

Concluding Remarks

As we were preparing this statement for the Committee last week, we heard ominous words to the effect that a number of Senators and Representati understandably frustrated and angered by the continuing captivity of some 50 Americans in Tehran since early last November and by the recent rebuff to a United Nations Commission by these terroristic captors, were considering so "retaliatory" legislation as a means to try to force the safe and early release of the so-called hostages.

What we heard in the halls of Congress and elsewhere in Washington shocked and frightened us, for it all had a melancholy resemblance to what took place in that period of hate and hysteria that followed the outbreak o the Pacific War and led ultimately for us Japanese Americans to America's only experience with concentration camps, with barbed wire fences and guar towers encircling tar-paper barracks of hurried construction.

Substitute Iranians for the wartime epithet "Jap" and the language heard today could almost be vintage 1942.

A Jap's a Jap, and citizenship is only a scrap of paper to 'em. Round up all the Japs, regardless of whom they are, what they are doing, and where; herd 'em into desert camps and keep 'em until we're good and ready to let them go. The camps, after all, aren't so bad, with the government keeping and feeding 'em.

The "softness" of the civilian government was charged, with the need expressed for arbitrary, harsh action, possibly by the military, as was the case in World War II. Little was heard of the civil rights or the humanitarian consequences to those who would be interned.

While once again a tough, belligerent, and aggressive spirit seemed to be in the land, this time--today--there seems to be many more who are willing to stand up and be counted for the constitutional rights of all, for individual merit and not wholesale group guilt, for the recognition of the worth of ethnic diversity in this nation of many nationalities, etc.

Much of what we hear nowadays in reference to Iranians, we do not like. In fact, we abhor much of what is being said against them. However, because we believe in the constitutional assurance of free speech, we need to defend the right of those who may not speak as we may wish them to do. It is not too difficult for us to remember years ago when Japanese Americans were most unpopular and many individuals and places refused us the right and the opportunity to explain our position. So we understand the necessity now to tolerate free speech in order that we ourselves will never again be denied a public forum for the expression of our views.

Nevertheless, what is happening today makes even more urgent and necessary this legislation, in order that more of the people, and their lawmakers, may understand and appreciate that what happened in 1942 because so many were silent then, could happen again here in these United States.

The "past" does not have to be the "prologue" for human rights in the U.S.A.

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After the President on February 19, 1942, issued Executive Order No. 9066, he had to secure congressional sanction for his action in order that it would be effective as law. The Legislature accommodated him, enacting in a sense ex post facto Public Law 503, 77th Congress, making it a federal crime to violate any order issued by a designated military commander under authority of 9066. Had Congress refused to rubber stamp this particular presidential request, the history of civil rights in this nation would have been significantly and substantially different--and most possibly for the better.

When the House Judiciary Subcommittee on Courts, Civil Liberties, an the Administration of Justice was discussing legislation to repeal Title II of the Internal Security Act of 1950, the so-called emergency detention provisions, early in 1971, its members--recalling the World War II chronicle of Executive Order 9066--decided that a similar executive order could not b issued by another chief executive in a period of democratic abuses to arbi- trarily and summarily arrest and then imprison any group of citizens, witho regard to race, color, creed, national origin, sex, or age.

They implemented their decision by stipulating that only Congress would have the authority in the future to enact bills of this dangerous character. They believed that the Legislative Branch was more sensitive and responsive of, the public will be to maintain the constitutional guara tees than was the Executive Branch in times of great crises and confronta

In repealing Title II of the Internal Security Act of 1950, Public Law 92-128, First Session of the 92nd Congress, September 25, 1971, speci

ally declared in its First Section that "(a) No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress".

Significantly, and symbolically, Congress placed the repeal of the Internal Security Act in Section 2, following the prohibition of the detention of citizens except under congressional approval.

The now repealed Title II, the Emergency Detention Act, authorized the Attorney General, or his representative, in times of internal security emergencies, to issue "a warrant for the apprehension of each person as to whom there is reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage or sabotage".

Curiously enough, in his 1977 "Memoirs", the late Chief Justice Earl Warren mentions this repeal effort in the following paragrph:

> "Recently I had an opportunity to help prevent the recurrence of such an emotional experience (as evacuation). Some years ago Congress gave the United States Attorney General the authority even in peacetime to impound persons believed by him to be subversive. This was a broader and far more dangerous power than that used by President Franklin Roosevelt in removing the Japanese from coastal areas during the War. At the request of (the Japanese American Citizens League), I wrote a letter for use before the congressional committee which was studying a bill to revoke the Attorney General's authority. The letter was used, and happily the nullifying bill was passed by the Congress and signed by President Richard Nixon."

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When the concerned Senators and Representatives dropped S. 1647 and H.R. 5499 into their respective legislative hoppers, Iranian revolutionaries had not taken hostage some 50 Americans and Soviet armed forces had not invaded and occupied Afghanistan.

While it was important that this legislation be passed without these

international events taking place, it is even more imperative now that they have taken place. Every segment of the American population must be made secure in their lives and their livelihoods by a reassurance of the constitutional guarantees that this bill may well bring.

But, even more crucial in the judgment of the Nisei Lobby is that neither this, nor any other, Congress will ever enact legislation against any group, race, or ethnic minority; or creed or religion; or national origin or racial ancestry; depriving them of their constitutional safeguards and authorizing their temporary arrest and detention, regardless of internal and/or external circumstances and challenges.

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As the only Americans in recent times to be suspect by our own fellow citizens and government and arbitrarily imprisoned in American concentration camps in World War II solely on account of our accident of birth as being of the then enemy ancestry, we know the meaning of liberty, freedom, dignity, and opportunity from bitter personal experience.

And yet, we also know that American democracy can--and did--correct its "worst wartime mistake", as Yale Law School Dean Eugene Rostow wrote more than 35 years ago.

We Japanese Americans are living testament to American democracy in action. Almost four decades ago, in a time of war and hysteria, we were abu and deprived of our basic constitutional rights. We were herded like cattle into concentration camps--American style--behind barbed wire fences guarded by American GIs wearing the identical uniforms that were then being worn by our brothers, fathers, and friends overseas in Europe and in the Pacific. Today, 38 years after our trial by incarceration, we enjoy an enviable stat that we never thought possible in prewar times and the opportunities for us and our posterity, are boundless.

As the beneficiaries of a working democracy, we do not want any other individual or group to suffer ignominious detention because of authoritative and capricious action on the part of either the Legislative or the Executive Branches.

Therefore, in order that a factfinding commission may be established and, after a full and complete investigation, recommend an appropriate remedy for our World War II travails, we urge a favorable and immediate vote on S. 1647.

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Before terminating this statement, may we submit for the record a copy of the statement of the JACL to the so-called Tolan Committee in the spring of 1942 in San Francisco and a copy of a chapter from the book "The Japanese American Story" entitled "Why the Japanese Americans Cooperated".

Thank you for your kindness, courtesy, and cooperation.

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REPRINTED FROM:

Hearings before the Select Committee Investigating National Defense Migration, House of Representatives, 77th Congress, 2nd Session, Part 29, San Francisco hearings, February 21 and 23, 1942: Problems of Evacuation of Enemy Aliens and Others from Prohibited Military Zones, pages 11137-8:

STATEMENT BY MIKE M. MASAOKA, NATIONAL SECRETARY AND FIELD EXECUTIVE OF THE JAPANESE AMERICAN CITIZENS LEAGUE, SAN FRANCISCO, CALIF.

On behalf of the 20,000 American citizen members of the 62 chapters of the Japanese American Citizens League in some 300 communities throughout the United States, I wish to thank the Tolan committee for the opportunity given me to appear at this hearing. The fair and impartial presentation of all aspects of a problem is a democratic procedure which we keeply appreciate. That this procedure is being followed in the present matter, which is of particularly vital significance to us, we look upon as a heartening demonstration of the American tradition of fair play.

We have been invited by you to make clear our stand regarding the proposed evacuation of all Japanese from the West coast. When the President's recent Executive order was issued, we welcomed it as definitely centralizing and coordinating defense efforts relative to the evacuatioi problem. Later interpretations of the order, however, seem to indicate that it is aimed primarily at the Japanese, American citizens as well as alien nationals. As your committee continues its investigations in this and subsequent hearings, we hope and trust that you will recommend to the proper authorities that no undue discrimination be shown to American citizens of Japanese descent.

Our frank and reasoned opinion on the matter of evacuation revolves around certain considerations of which we feel both your committee and the general public should be apprised. With any policy of evacuation definitely arising from reasons of military necessity and national safety, we are in complete agreement. As American citizens, we cannot and should not take any other stand. But, also, as American citizens believing in the integrity of our citizenship, we feel that any evacuatioi enforced on grounds violating that integrity shold be opposed.

If, in the judgment of military and Federal authorities, evacuation of Japanese residents from the West coast is a primary step toward assuring the safety of this Nation, we will have no hesitation in complying with the necessities implicit in that judgment. But, if, on the other hand, such evacuation is primarily a measure whose surface urgency cloaks the desires of political or other pressure groups who want us to leave merely from motives of self-interest, we feel that we have every right to protest and to demand equitable judgment on our merits as American citizens.

In any case, we feel that the whole problem of evacuation, once its necessity is militarily established, should be met strictly according to that need. Only these areas, in which strategic and military considerations make the removal of Japanese residents necessary, should be evacuated. Regarding policy and procedure in such areas, we submit the following recommendations:

1. That the actual evacuation from designated areas be conducted by military authorities in a manner which is consistent with the requirements of national defense, human welfare, and constructive community relations in the future;

2. That, in view of the alarming developments in Tulare County and other communities against incoming Japanese evacuees all plans for voluntary evacuations be discouraged;

3. That transportation, food, and shelter be provided for all evacuees from prohibited areas, as provided in the Presidential order;

4. That thoroughly competent, responsible, and bonded property custodians be appointed and their services made available immediately to all Japanese whose business and property interests are affected by orders and regulations;

5. That all problems incidental to resettlement be administered by a special board created for this purpose under the direction of the Federal Security Agencies;

6. That the resettlement of evacuees from prohibited areas should be within the State in which they now reside;

7. That ample protection against mob violence be given to the evacuees both in transit and in the new communities to which they are assigned;

8. That effort be made to provide suitable and productive work for all evacuees;

9. That resettlement aims be directed toward the restoration, as far as possible, of normal community life in the future when we have won the war;

10. That competent tribunals be created to deal with the so-called hardship cases and that flexible policies be applicable to such cases.

Although these suggestions seem to include only the Japanese, may I urge that these same recommendations be adapted to the needs of other nationals and citizens who may be similarly affected.

I now make an earnest plea that you seriously consider and recognize our American citizenship status which we have been taught to cherish as our most priceless heritage.

At this hearing, we Americans of Japanese descent have been accused of being disloyal to these United States. As an American citizen, I resent these accusations and deny their validity.

We American-born Japanese are fighting militarist Japan today with our total energies. Four thousand of us are with the armed forces of the United States, the remainder on the home front in the battle of production. We ask a chance to prove to the rest of the American people what we ourselves already know: That we are loyal to the country of our birth and that we will fight to the death to defend it against any and all aggressors.

We think, feel, act like Americans. We, too, remember Pearl Harbor and know that our right to live as free men in a free Nation is in peril as long as the brutal forces of enslavement walk the earth. We know that the Axis aggressors must be crushed and we are anxious to participate fully in that struggle.

The history of our group speaks for itself. It stands favorable comparison with that of any other group of second generation Americans. There is reliable authority to show that the proportion of delinquency and crime within our ranks is negligible. Throughout the long years of the depression, we have been able to stay off the relief rolls better, by far, than any other group. These are but two of the many examples which might be cited as proof of our civic responsibility and pride.

In this emergency, as in the past, we are not asking for special privileges or concessions. We ask only for the opportunity and the right of sharing the common lot of all Americans, whether it be in peace or in war.

This is the American way for which our boys are fighting.

Exhibit A.—The Japanese American Creed

(Courtesy, Japanese American Citizens League)

I am proud that I am an American citizen of Japanese ancestry, for my very background makes me appreciate more fully the wonderful advantages of this Nation. I believe in her institutions, ideals, and traditions; I glory in her heritage; I boast of her history; I trust in her future. She has granted me liberties and opportunities such as no individual enjoys in this world today. She has given me an education befitting kings. She has entrusted me with the responsibilities of the franchise. She has permitted me to build a home, to earn a livelihood, to worship, think, speak, and act as I please—as a free man equal to every other man.

Although some individuals may discriminate against me, I shall never become bitter or lose faith, for I know that such presons are not representative of the majority of the American people. True, I shall do all in my power to discourage such practices, but I shall do it in the American way—above board, in the open, through courts of law, by education, by proving myself to be worthy of equal

treatment and consideration. I am firm in my belief that American sportsmanship and attitude of fair play will judge citizenship and patriotism on the basis of action and achievement, and not on the basis of physical characteristics.

Because I believe in America, and I trust she believes in me, and because I have received innumerable benefits from her, I pledge myself to do honor to her at all times and in all places; to support her constitution; to obey her laws; to respect her flag; to defend her against all enemies, froeign or domestic; to actively assume my duties and obligations as a citizen, cheerfully and without any reservations whatsoever, in the hope that I may become a better American in a greater America. —*Mike Masaoka.* (as read before the United States Senate and printed in the Congressional Record, May 9, 1941).

EXHIBIT B.—A DECLARATION OF POLICY BY THE JAPANESE AMERICAN CITIZENS LEAGUE

In these critical days when the policies of many organizations representing various nationality groups may be viewed with suspicion and even alarm by certain individuals who are not intimately acquainted with the aims, ideals, and leadership of such associations, it becomes necessary and proper, in the public interest, that such fraternal and educational orders as the Japanese American Citizens League to unequivocally and sincerely announce their policies and objectives:

Now, therefore, in order to clear up any misconceptions, misunderstandings and misapprehensions concerning the functions and activities of this body, the National Board of the Japanese American Citizens League issues the following statement and declaration of policy:

We, the members of the National Board of the Japanese American Citizens League of the United States of America, believe that the policies which govern this organization and our activities as their official representatives are fourfold in nature and are best illustrated by an explanation of the alphabetical sequence of the letters J-A-C-L.

"J" stands for justice. We believe that all peoples, regardless of race, color, or creed, are entitled to enjoy those principles of "life, liberty, and the pursuit of happiness" which are presumed to be the birthright of every individual; to the fair and equal treatment of all, socially, legislatively, judicially, and economically to the rights, privileges, and obligations of citizenship. To this end, this organization is dedicated.

"A" stands for Americanism. We believe that in order to prove ourselves worthy of the justice which we seek, we must prove ourselves to be, first of all, good Americans—in thought, in words, in deeds. We believe that we must personify the Japanese American creed; that we must acquaint ourselves with those traditions, ideals, and institutions which made and kept this Nation the foremost in the world. We believe that we must live for America—and, if necessary, to die for America. To this end, this organization is consecrated.

"C" stands for citizenship. We believe that we must be exemplary citizens in addition to being good Americans, for, as in the case of our parents, one may be a good American and yet be denied the privilege of citizenship. We believe that we must accept and even seek out opportunities in which to serve our country and to assume the obligations and duties as well as the rights and privileges of citizenship. To this end, this organization is committed.

"L" stands for leadership. We believe that the Japanese American Citizens League, as the only national organization established to serve the American citizens of Japanese ancestry, is in a position to actively lead the Japanese people residing in the United States. We believe that we have the inspired leadership and membership necessary to carry into living effect the principles of justice, Americanism, and citizenship for which our league was founded. We offer cooperation and support to all groups and individuals sincerely and legitimately interested in these same aims, but we propose to retain our independent and separate status as the Japanese American Citizens League. To this end, this organization is pledged.

Summed up briefly, the Japanese American Citizens League is devoted to those tasks which are calculated to win for ourselves and our posterity the status outlined by our two national slogans: "For better Americans in a greater America" and "Security through unity."

REPRINTED FROM:

"THE JAPANESE AMERICAN STORY", by Budd Fukei, Dillon Press, Inc., Minneapolis, Minnesota, 1976:

Why the Japanese Americans Cooperated

In 1941, Mike Masaru Masaoka was an instructor in the speech department at the University of Utah. During that year, he was approached by the JACL to become its first full-time, paid staff member. After much deliberation with friends, he resigned his job at the university and accepted the JACL offer. Right away, Masaoka sensed the seriousness of the problems faced by Japanese Americans in case of war between Japan and America.

Shortly after Japan's attack on Pearl Harbor, talk of evacuation and detention surfaced in the United States. Masaoka and other JACL leaders knew then that the Japanese Americans were in deep trouble for no other reason than the fact that they were born Japanese. When the decision was finally made to evacuate and confine Japanese Americans, Masaoka was among those who saw the futility of resistance. He knew that the nation's wartime mood made it in the best interests of the Japanese to go along with the evacuation and eventually detention. Masaoka and the JACL worked hard to help the government carry out an orderly mass movement while keeping faith in American justice and fair play. Masaoka's recollections of that period are given in the remainder of this chapter.

THE EVACUATION DECISION

More than thirty years after the fact, it is difficult to remember all of the circumstances that caused some of us, then leaders of the Japanese American Citizens League, to decide that we of Japanese ancestry should cooperate with the government in our

own evacuation and detention in the spring of 1942. But there are many aspects that contributed to the temper of those times that I can still recall as having forced me, among others, to conclude that cooperation at that time was the best, and only, course of action for our people to follow.

In this connection, it should be kept in mind that we young Nisei in the JACL leadership, then averaging about thirty years of age, had to make the fateful decision that would affect the lives and the fortunes of more than 110,000 men, women, and children, of all ages and in all conditions of health, not only for the immediate future but for years and possibly generations to come.

If we could have acted as individuals and had not been responsible for the destiny of a whole minority group in its most critical period, some of us might—and probably would have —reacted differently. But we did assume the responsibility for the total Japanese population on the Pacific Coast, and often suffered, as a result, severe criticism and even bodily injury. It would have been easier on us as individuals to have avoided that awesome responsibility, but we could not think and act as individuals, accountable only to ourselves and our own self-interest. We were answerable to, and for, the Japanese on the West Coast, so we had to think and act on behalf of all of the people concerned.

We in the JACL did not want to assume the leadership of those of Japanese ancestry since we all had personal and family problems of our own to take care of, but we had no choice if there was to be any leadership at that critical time. Practically every Japanese American organization, except the Christian churches, became defunct after December 7, 1941, and almost every Issei leader was arrested for one reason or another by the FBI and interned soon after the attack on Pearl Harbor. If the JACL had not stepped in to provide the leadership, there would have been panic and chaos in the various Japanese American communities in the western states.

Some Japanese language newspapers were shut down im-

mediately following the Japanese attack, so the JACL had to provide news and information concerning the intentions and programs of the government—national, state, and local. Personal bank accounts were frozen, so the JACL had to persuade Washington to allow the withdrawal of small amounts in order to purchase the bare necessities of life. Many Japanese American businesses were closed down, and many Japanese Americans were summarily fired from their jobs. Other workers would not plant or harvest crops on farms operated by Japanese Americans. In some cases the families of those who were interned had to be taken care of. So many people were out of work that the JACL had to go into the welfare business. Some stores would not sell goods, including medical supplies, to Japanese Americans, so that special arrangements had to be made for necessary purchases. Plans had to be readied to protect as much as possible the lives and property of Japanese Americans from vandalism, arson, and even mob violence.

For understandable reasons, most public officials were reluctant to cooperate with the JACL even in such simple matters as welfare and home protection.

As soon as the demands for the wholesale removal of those of Japanese ancestry surfaced in late December 1941, the JACL tried to frustrate the outcries. Among those clamoring for evacuation were governors and mayors on the Pacific Slope; the entire West Coast congressional delegation to Washington, D.C.; practically every newspaper, magazine, and radio station in the western states; most—if not all—farm and agricultural organizations; the various chambers of commerce and businessmen's associations; the American Legion and the Veterans of Foreign Wars; all labor unions except a few affiliated with the Congress of Industrial Organizations (CIO), and such special groups as the Native Sons and Daughters of the Golden West.

The JACL was far too weak in terms of membership, finances, staff, and public and political influence to be effective against the combination of events and individuals and organiza-

tions arrayed against it. Too few non-Japanese along the West Coast, including the overwhelming majority of Christian ministers and members of their congregations, protested at all. The rest of the country ignored what was happening to the civil, property, and human rights of Japanese Americans in the four westernmost states (Washington, Oregon, California, and Arizona).

On February 19, 1942, President Franklin D. Roosevelt signed Executive Order No. 9066, authorizing the secretary of war, or any military commander designated by him, to establish "military areas" and to exclude therefrom "any and all persons." On March 2, 1942, General John L. DeWitt, Commanding General of the Western Defense Command, by authority of the secretary of war, issued Public Proclamation No. 1. This designated the western half of California, Oregon, and Washington, and the southern third of Arizona as a military area, and it stipulated that all Japanese, both alien and non-alien, would eventually be removed from that military area.

"Military necessity" was the excuse used to justify this unprecedented action against native-born citizens and their resident alien parents who could not become naturalized citizens by law. It was done without trial or hearing in court, or even the formality of specific charges citing crimes or misconduct on the part of the prospective evacuees.

Thus, in the days after the presidential order authorizing evacuation, the JACL not only had to take care of almost all of the needs of every Japanese-American community, but it also had to decide just what realistic alternatives there were for those of Japanese ancestry and which of these alternatives should be taken for the good of the minority as a whole. At the time the JACL was nothing more than a voluntary civic and educational association. It had been in existence nationally for less than twelve years. It had no paid staff except one untried national executive and a few local helpers working mostly on a part-time basis in the larger metropolitan areas, and it had absolutely no credentials or background for social services.

The decision to evacuate was not reached at a single meeting or a series of meetings of JACL officials when all of the facts, arguments, and options could have been carefully examined and discussed. Rather, because of the unique circumstances of those weeks, decision making was a kind of piecemeal operation, with most of those in responsible positions reaching their own conclusions, based upon the facts, rumors, and pressures that came to their attention. When one JACL official chanced across another, there was an exchange of ideas.

In spite of the seemingly haphazard method used, the fateful decision was not reached arbitrarily or capriciously, for all recognized their responsibilities. There was much too much at stake for the individuals concerned, not to mention the other 110,000 innocent people whose lives would be affected by whatever course might be taken. The consensus was developed by sober reflection, serious projections, and selfless disregard for personal consequences.

The awesome duty to recommend the basic course of action to be followed probably fell to one man more than any of the others. He was Saburo Kido, the national JACL president, who was then a practicing attorney in his late thirties. The decision also fell on me. I was the national JACL secretary and field executive and the first and only paid staff member in the history of the JACL. I was in my mid-twenties at the time: an untried, untrained youngster from Salt Lake City where there were few Japanese Americans and where the problems of the minority, if any, were quite different from those on the West Coast.

Nevertheless, since there were no others to assume the responsibilities, we did the best we could. Whenever there was an opportunity, Kido and I would discuss what course JACL should take in connection with the evacuation orders. Our discussions, of course, were based upon the facts as we knew them at that time, on the rumors that were called to our attention, and on the seemingly never-ending meetings which we held with government officials and army officers of all ranks.

Even after all these years, I still remember how wise and

statesmanlike Kido was. He had compassion for all the evacuees and a special sensitivity for the future of the young.

What, then, were some of the considerations that led us to conclude that cooperation with the army in our own removal and eventual detention was our only sane and safe course?

To begin with, both of us were very much aware of the racist, anti-Japanese history of the Pacific Coast, particularly California. Anti-Japanese sentiment, often wrapped in the cloak of patriotism, became so powerful that in 1924 it was able to persuade the Congress, against the wishes of President Calvin Coolidge and the State Department, to enact the infamous Japanese Exclusion Act together with the now thoroughly discredited National Origins Quota System. For a few short years, this racist "victory" against the so-called Yellow Peril softened anti-Japanese bigotry. But, with the great economic depression of the 1930s, when unemployment reached unprecedented numbers, the fact that Japanese Americans managed to stay off relief rolls infuriated many Caucasians. Toward the close of that decade, as the Japanese imperialists launched their military adventure against China, jingoists and warmongers joined the racists in a persecution of the Japanese Americans in their midst.

Then came the war, ignited by the attack of the Japanese militarists on Pearl Harbor. Navy wives and others, repatriated from Hawaii immediately after December 7, 1941, returned to the mainland with stories of espionage and sabotage committed by the Japanese American population before, during, and after the attack. They told of arrow-like marks cut in the sugar cane fields pointing to military installations, of Honolulu high school rings worn by the attacking Japanese airmen, and of Japanese Americans driving their trucks across highways to delay military personnel from reporting for duty during the attack.

Although these tales were rumors that were later proved unfounded, we were not informed of the truth until we were already in the War Relocation Authority (WRA) Centers, bitterly called concentration camps, American-style. Indeed,

when members of the so-called Tolan Committee interrogated us in San Francisco in late February 1942, they repeated these rumors and demanded an explanation of such activities.

We were also aware that the governors of all twelve western states, with the sole exception of Ralph Carr of Colorado, had warned the army that they could not be responsible for the safety of the evacuees. They said that if the Japanese Americans were dangerous to the security of the Pacific Coast, they were equally dangerous to their respective jurisdictions. Mayors and public officials, except for Mayor Harry Cain of Tacoma, Washington, insisted upon the immediate removal of all the Japanese in their communities. Mayor Fletcher Bowron of Los Angeles was particularly vehement on this score although he apologized years later for his un-American and unconstitutional demands in 1942. All of the major newspapers except the *San Francisco Chronicle* editorially called upon the government to immediately evacuate and incarcerate the Japanese "for at least the duration" of the war.

Several caravans of trucks and automobiles, filled with Japanese Americans who were acting upon General DeWitt's suggestion that they "voluntarily" leave their homes and possessions in the military area in California, were stopped at gunpoint. Many of the trucks and cars were overturned, and everyone was forced to return to the homes from which they had departed only a few hours earlier.

There were rumors of vigilantism and arson, brutal attacks on individuals, and mob violence against Japanese American communities in some of the rural agricultural regions. The violence was no doubt aggravated by newspaper reports of unidentified planes flying over Los Angeles, lights seen near Santa Barbara on the California coast signaling enemy submarines offshore, and arsenals of weapons and ammunition found by the FBI in many Japanese American homes.

To my mind, however, the most damaging testimony was advanced by Earl Warren, then California's state attorney general. He had maps prepared showing that Japanese Americans

owned land near many military and naval installations. He furnished evidence that many Japanese Americans attended Japanese language schools, and he said that perhaps half of the Japanese population were members of the Buddhist faith. Warren charged also that the American-born citizen was more dangerous than his alien parents. Since even then Warren was thought to be a moderate in his attitudes toward other groups and in his outlook on legal issues, his official position was devastating in its influence on people who otherwise might have come to the defense of the constitutional rights of those of Japanese ancestry.

All these incidents, and considerably more, added up to the climate of public opinion against the Japanese in the spring of 1942.

Kido and I, along with a number of other invited Nisei leaders met with California Governor Culbert Olson in Sacramento. The governor warned us that evacuation and detention were imminent. He called upon us to volunteer to go to state-controlled labor camps from which some of us would return each day to harvest our own fields or other farmlands. The money we earned would go into the state treasury! We were informed from time to time of other schemes under which racists would supervise our incarceration and control our activities as laborers—regardless of our experience, education, and excellence in the professions.

As a last effort to prevent the evacuation, some members of the JACL volunteered to serve in combat against the Japanese enemy in the Pacific. But we were turned down summarily and without thanks.

Kido and I often discussed whether one or both of us should not violate the curfew or travel restrictions imposed by the Western Defense Command and test the constitutionality of the military orders. But we eventually rejected such an alternative since we would not have been able to be with the people during their evacuation and detention and would not share their sufferings and privations and indignities. Moreover, as an attorney

Kido realized that it would take months and perhaps years before such constitutional challenges could be settled by the highest courts. In the meantime, the evacuees would be removed and jailed. Therefore, the two of us agreed that it would be our fate to remain among the prospective evacuees and to try to provide the necessary leadership as best we could. At the same time, we knew of several others who were willing to deliberately violate the curfew and travel restrictions, so we were confident that in time there would be a constitutional test of the issues at hand. We wondered, though, whether in time of war the courts would contradict the commander in chief and his military commanders in their efforts to "protect" the nation from possible invasion, as General DeWitt once claimed in the weeks following the attack on Pearl Harbor.

Both Kido and I were aware from word given us by the military and others that the army at one time was considering the removal and detention of only the enemy alien Japanese. These would be the Issei, who had been lawfully admitted into the United States but denied by federal statute the opportunity to become citizens through naturalization. By definition of law and through no fault of their own, they were enemy aliens. These were our parents, and their removal would not only separate family units but might also leave the aged and the infirm at the mercy of whatever fate awaited them in the camps. For these reasons, the JACL decided to object to the arbitrary separation of families, even though we knew that some of the more independent Nisei would denounce us for that decision. I now doubt that the JACL's beliefs concerning the integrity of the family unit had any bearing on the final military decision, for more and more people were demanding the complete removal of aliens and citizens alike.

About this time, we were beginning to wonder about the justification for evacuation on the grounds of military necessity. At first, General DeWitt had designated only the western half of the three Pacific Coast states and the southern third of Arizona as the military area from which military necessity required our

removal. He had invited those of Japanese background to voluntarily leave this area and to relocate anywhere outside the designated zone. Many, including Kido's family, left their homes and relocated in the eastern half of California. Then, without any advance warning, General DeWitt arbitrarily added the eastern half of California to the military area from which all Japanese Americans were to be excluded. Thus, these evacuees were forced to undergo two evacuation programs: one voluntary and the other involuntary.

About this time, we were also told that the Japanese Americans in Hawaii would not be relocated on the mainland. In 1942 they constituted about a third of the total population of the islands, while we made up less than 1 percent of the total West Coast populace. Hawaii was some three thousand miles nearer to Japan than were the three westernmost states and had actually been under direct military attack. If military necessity dictated our evacuation and detention, what about the Japanese Americans in the Territory of Hawaii?

In the beginning, our wholesale removal and exclusion was demanded because of the fear of espionage or sabotage. Late in February 1942, federal intelligence agencies officially disclosed that before, during, and after December 7, 1941, no person of Japanese origin on the continental mainland had been convicted of either of these crimes. At this point, however, the army and such influential persons as Earl Warren and Walter Lippmann developed the curious doctrine that the actual absence of any espionage or sabotage was even more ominous than widespread treasonable activity. The Japanese Americans, it was alleged, were so well organized and disciplined that they were only waiting for an invasion by the enemy. Then they would rise up to support the Japanese invader.

Finally, it was argued that Japanese Americans had to be evacuated and placed in concentration camps in order to protect them from possible mob action by angry non-Japanese. In other words, the army resorted to the "protective custody" concept to justify our ultimate removal and incarceration.

Where was the "military necessity" in all this?

These actions clearly revealed the racism behind our wartime mistreatment. But what could the JACL have done to overcome racism, when the government, the army, and practically the total population of the West Coast were all united in the demand for evacuation and exclusion?

Even now I remember well the government's presentation of the basic problem to the JACL. We met in early March 1942, with a group of special emissaries from Washington, D. C. They informed us bluntly that the decision had been made to evacuate all persons of Japanese descent, aliens and citizens alike, from the western half of California, Oregon, and Washington, and the southern third of Arizona. We would first be detained in Wartime Civilian Control Administration (WCCA) assembly camps in racetracks and fairgrounds. Later, we would be taken to the War Relocation Authority (WRA) camps then being constructed by the army in interior wastelands in California, Arizona, Idaho, Utah, Colorado, Wyoming, and Arkansas.

We were urged to cooperate with the army in that removal and detention program, even though it would mean personal sacrifices and suffering and considerable loss of property. If we failed to cooperate, the army would put its contingency plan into operation, and we would be forcibly ejected and incarcerated.

Having been forewarned that the decision had been made to order a mass evacuation, we were not surprised by the announcements. And, since we had discussed the JACL's leadership position on the issue of cooperation with the army, the ultimate decision itself was not difficult to make. We did, however, refuse to commit ourselves at that meeting and requested time to confer with our fellow JACL leaders. But we all felt that we had no alternative to cooperation. Resistance was suicidal.

Our only friend in Washington who might have been able to convince the president and the secretary of war that the evacuation was both unconstitutional and unnecessary was Attorney

General Francis Biddle, a noted civil libertarian. He had already capitulated to the military and political demand for total evacuation, however, even though Navy Intelligence and the FBI, as we learned later, opposed the mass evacuation as unnecessary and undesirable. Given the situation, how could we — with little or no influence — continue to "fight" and hope against evacuation?

Furthermore, we were led to believe that if we cooperated with the army in this mass movement, the army, the WRA, and the government would try to be as helpful and as humane as possible to the evacuees. Moreover, we feared the consequences if Japanese Americans refused to cooperate, and the army moved in with armed troops and even tanks to eject the people forcibly from their homes and properties. At a time when Japan was still on the offensive and apparently winning the war, we were afraid that the American people would consider us traitors and enemies of the war effort if we forced the army to take drastic action against us. This might forever place in jeopardy our future as United States citizens. As the involuntary trustees of the destiny of the Japanese Americans in this country, we felt that we could do no less than whatever was necessary to protect and preserve that future.

We were quite aware of the personal attitudes of some of the military personnel involved. General DeWitt, who would be in direct charge of any military action against the Japanese, had testified to a Senate Naval Affairs Subcommittee in words to this effect: "A Jap's a Jap. Blood is thicker than citizenship. And giving them a piece of paper to show their citizenship won't change that fact." Colonel Bendetsen, the director of the WCCA, who would supervise the initial movement out of the homes of the evacuees, was determined that any person who was as much as one-sixteenth Japanese, which was double the formula devised by Hitler for the Jews, should be evacuated as a Japanese alien or non-alien.

Probably even more pertinent to our decision to cooperate was the official war policy of the United States government at

that time. The policy was to depict the Japanese as an enemy to be defeated at all costs. Therefore, official propaganda promoted the belief that the Japanese were barbarians who could not be trusted and who should be annihilated. Should the JACL give a doubting nation further excuse to confuse the identity of the Japanese enemy with the American of Japanese origin?

Suppose there might be blood shed on the streets of many Pacific Coast communities? We leaders of the JACL could not opt for such a grim and possibly genocidal alternative. With reluctant and heavy hearts, Kido and I joined in calling upon the JACL delegates to the National Emergency Council in San Francisco in mid-March 1942 to urge their members and others of Japanese ancestry in the prohibited zones to cooperate as best they could with the army. We said that they had to move from their homes to temporary assembly centers and then to what might become permanent relocation camps. There were some heated debates and some bitter comments. But, in the end, there was close to unanimity. With sad farewells, not knowing whether they would ever see each other again and weighed down by the decision to cooperate in what amounted to their own banishment and imprisonment, the delegates returned to their home districts to report on the JACL position.

Frankly, at that time, both Kido and I were quite surprised and pleased that there was practically no public outcry or challenge against the decision to cooperate with the army. We believed that such near total compliance indicated the general agreement of the evacuees that cooperation was indeed the proper arrangement under those tumultuous and threatening conditions.

Despite all that we had to suffer as suspect citizens of our own government, many besides myself must have hoped that if we demonstrated our belief in American ideals and objectives, the people of the United States would somehow more than make up for what we had sacrificed after the hate and hysteria of the war was over.

After more than twenty-five years in Washington, D. C., I

am convinced that our decision was the correct and proper one, and the only one that could have been reached at that time by responsible and reasonable people.

I still cannot adequately describe those emotions we felt —fear and fright, anger and helplessness, and hope and faith in spite of frustrations and tears. But I am hopeful that the facts and events as I recall them now will provide an insight into why we in the JACL leadership came to the decision that we did in relation to the 1942 mass evacuation and detention of 110,000 human beings of Japanese ancestry.

In checking testimony to congressional committees and to presidential commissions, I have observed how many Americans have called for corrective, remedial, and even beneficial legislation for those of Japanese ancestry because of the unprecedented wartime cooperation shown by the Japanese Americans. I cannot even count the many times over the last twenty-five years that members of the Congress and officials of the various administrations, especially those from the Pacific Coast, have introduced and voted for legislation and regulations that have been most helpful and beneficial to Japanese Americans. I am often reminded that the Japanese experience of 1942 involving wholesale evacuation and detention remains to prick the American conscience. The cooperative spirit and actions of the evacuees themselves shamed many Americans in later years when they learned of that travesty on American justice and constitutional guarantees.

In any event, because of the Japanese American wartim cooperation, the WRA was administered by able and sympathe tic officials in a most humane manner under the circumstances especially considering the continuing racism of many We Coasters who demanded the deportation of all Japanese after th war. Due to this cooperation, the president and the army agree to the formation of what became the 442nd Regimental Comb Team and the use of Nisei combat intelligence troops in th Pacific. The WRA policy and program encouraged stude evacuees to leave the centers to continue their higher educati

and qualified evacuees to seek housing and employment outside the centers. Many worked in jobs and professions that had been closed to them prior to World War II on the West Coast.

Since World War II, Congress has enacted laws that provide naturalization and immigration opportunities not only for the Japanese but also for all who lawfully enter this country for permanent residence. It has authorized partial compensation for economic losses suffered in the evacuation and exclusion era and has granted statehood to Hawaii, where a large percentage of the population is of Japanese descent. It has extended civil and human rights to all Americans, without regard to race, color, creed, or national origin.

The courts, in turn, have handed down decision after decision defining the rights and opportunities for those of Japanese background and others previously denied justice under the law. Over the years, Japanese Americans have gained assurances of "equality and opportunity under law."

Altogether, it is estimated that some five hundred pre-war laws and ordinances that restricted the lives of those of Japanese ancestry in this country, aliens and citizens alike, are no longer valid and effective. Indeed, it is often said that never before have those of Japanese origin been more respected and able to enjoy the rights, privileges, and opportunities of American citizenship than today. In these and many other ways, the fateful JACL decision, more than thirty years ago, to urge cooperation in the wartime evacuation and detention of the Japanese on the Pacific Coast is vindicated time and time again.

To all of those people who may, in other times, challenge that decision, it can only be said that any review of that determination must be made in the context of 1942. It must be made with the knowledge that because of that cooperative demonstration, those of Japanese ancestry are now in a position to inquire about the rightness and the consequences of that course of action decided more than three decades ago in what was a very different and difficult period in U.S. history.

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Additional Material Submitted for the Record

96TH CONGRESS
1ST SESSION

S. 1647

To establish a Commission to gather facts to determine whether any wrong was committed against those American citizens and permanent resident aliens affected by Executive Order Numbered 9066, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2 (legislative day, JUNE 21), 1979

Mr. INOUYE (for himself, Mr. MATSUNAGA, Mr. HAYAKAWA, Mr. CRANSTON, Mr. MCCLURE, and Mr. CHURCH) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To establish a Commission to gather facts to determine whether any wrong was committed against those American citizens and permanent resident aliens affected by Executive Order Numbered 9066, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Commission on Wartime Relocation and Internment of Civilians Act".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) Approximately one hundred and twenty thousand civilians were relocated and detained in internment camps pursuant to Executive Order Numbered 9066, dated February 19, 1942, and other associated acts of the Federal Government; and

(2) no inquiry into this matter has been made.

(b) It is the purpose of this Act to establish a factfinding commission to determine whether a wrong was committed against those American citizens and permanent resident aliens relocated and/or interned as a result of Executive Order Numbered 9066 and other associated acts of the Federal Government, and to recommend appropriate remedies.

ESTABLISHMENT OF COMMISSION

SEC. 3. (a) There is established the Commission on Wartime Relocation and Internment of Civilians (hereinafter referred to as the "Commission").

(b) The Commission shall be composed of fifteen members, who shall be appointed as follows:

(1) Eleven members shall be appointed by the President.

(2) Two members of the House of Representatives shall be appointed by the Speaker of the House of Representatives.

(3) Two Members of the Senate shall be appointed by the President pro tempore of the Senate.

(c) The term of office for members shall be for the life of the Commission. A vacancy in the Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(d) The first meeting of the Commision shall be called by the President within sixty days following the date of enactment of this Act.

(e) Eight members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(f) The Commission shall elect a Chairman and Vice Chairman from among its members. The term of office of each shall be for the life of the Commission.

(g) Each member of the Commission who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate prescribed for GS–18 under the General Schedule contained in section 5332 of title 5, United States Code, including travel-time, for each day he or she is engaged in the actual performance of his or her duties as a member of the Commission. A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

DUTIES OF THE COMMISSION

SEC. 4. (a) It shall be the duty of the Commission to gather facts to determine whether a wrong was committed against those American citizens and permanent resident aliens who were subjected to relocation and/or internment by the issuance of Executive Order Numbered 9066 and other associated acts of the Federal Government.

(b) The Commission shall hold public hearings in Los Angeles, San Francisco, and Fresno, California; Portland, Oregon; Seattle, Washington; Phoenix, Arizona; Salt Lake City, Utah; Denver, Colorado; Chicago, Illinois; New York, New York; Washington, D.C.; and any other city that the Commission deems necessary and proper.

(c) The Commission shall submit a written report of its findings and recommendations to Congress not later than eighteen months after the date of the enactment of this Act.

POWERS OF THE COMMISSION

SEC. 5. (a) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this Act, hold such hearings and sit and act at such times and places, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandum, papers, and documents as the Commission or such subcommittee or member may deem advisable.

(b) The Commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information which the Commission considers useful in the discharge of its duties. All departments, agencies, and independent instrumentalities, or other authorities of the executive branch of the Government shall cooperate with the Commission and furnish all information requested by the Commission to the extent permitted by law.

ADMINISTRATIVE PROVISIONS

SEC. 6. The Commission is authorized to—

(1) appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;

(3) enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the

Commission in such amounts as may be agreed upon by the Chairman and the Administrator of General Services;

(4) procure supplies, services, and property, and make contracts, without regard to the laws and procedures applicable to Federal agencies; and

(5) enter into contracts with Federal or State agencies, private firms, institutions, and agencies for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

REPORT AND TERMINATION

SEC. 7. (a) The Commission shall, within eighteen months from the date of enactment of this Act, transmit a final report to the President and the Congress concerning its actions and its findings and recommendations.

(b) The Commission shall cease to exist on the date six months from the date it transmits the final report unless extended by a subsequent Act of Congress.

AUTHORIZATION OF APPROPRIATIONS

SEC. 8. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 14 1980

Honorable Abraham Ribicoff
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in reply to the Committee's request for our vie on S. 1647, the "Commission on Wartime Relocation and Internment of Civilians Act."

S. 1647 would establish a 15-member Commission to determine whether the actions taken by the Federal government during World War II to relocate and detain many American citizens and permanent resident aliens of Japanese ancestry were wrong. The Commission would be required to report to the President and the Congress o its activities, findings, and recommendations within eighteen months of enactment. It would terminate six months after submission of the report.

We are concerned about two of the administrative provisions as presently drafted.

First, section 6(1) authorizes the Commission to emplo and compensate staff without regard to Federal personn laws governing appointments in competitive service and those relating to classification and General Schedule rates. The proposed exemption from the General Sched pay rates, however, does not establish a ceiling on t rate of pay. To avoid the anomalous situation of sta being paid at rates greater than members of the Commission who are not employed by the Government, we recommend that section 6(1) be amended as follows:

> "(1) appoint and fix the compensation of such personnel as may be necessary, without regard to provisions of title 5, United States Code, gover appointments in the competitive service, and wi regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title rela to classification and General Schedule pay rate but at a rate not to exceed the maximum rate authorized by the General Schedule."

Second, section 6(3) authorizes the Commission to enter into agreements with the General Services Administration for procurement of necessary financial and administrative services while subsection (4) authorizes the Commission to "procure supplies, services, and property, and make contracts without regard to the laws and procedures applicable to Federal agencies." We are aware of no reason why the proposed Commission's procurement actions should be exempt from the laws and procedures governing procurements by Federal agencies generally; the procurement services conducted by the General Services Administration in support of the Commission will be conducted in accordance with applicable laws and regulations. Accordingly, we recommend that section 6(4) be amended to read as follows:

> "(4) contract for supplies, services, and property, in accordance with applicable procurement laws and regulations."

Subject to the foregoing, the Office of Management and Budget has no objection to enactment of S. 1647.

Sincerely,

(Signed) James M. Frey

James M. Frey
Assistant Director for
Legislative Reference

714

United States Department of Justice

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

WASHINGTON, D.C. 20530

MAR 24 1980

Honorable Abraham Ribicoff
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice on S. 1647, the "Commission on Wartime Relocation and Internment of Civilians Act." The Department supports the goal of review of Executive Order 9066 and its impact on American citizens and permanent resident aliens. However, we have two comments about the legislation as drafted.

Section 2(a)(2) states that "no inquiry into this matter has been made." However, there was at least some review of Executive Order 9066 by the Congress in connection with the passage of the Act of March 21, 1942, 56 Stat. 173, which gave congressional sanction to the Executive Order. It was also scrutinized in Hirabayashi v. United States, 320 U.S. 81 (1943), Ex parte Endo, 323 U.S. 283 (1944) and Acheson v. Murakami, 176 F.2d 953 (9th Cir. 1949).

The Japanese-American Evacuation Claims Act, 50 U.S.C. App. 1981-1987, was enacted on July 2, 1948. That statute authorized the Attorney General for a period of 18 months or until January 3, 1950, to receive, adjudicate and compromise claims submitted by persons of Japanese ancestry for damages or losses of real or personal property which occurred as the result of their evacuation. Under the program which officially commenced on July 1, 1949 and was concluded with the last award on November 18, 1958, the Department received 26,568 claims and awarded $36,974,240 in settlements to the claimants. The Evacuation Claims Program was administered by the Japanese Claims Section of this Department's Civil Division.

We believe Section 2(a)(2) would be more accurately expressed as a congressional determination that previous inquiries have been insufficient.

We note also that Section 3(c) provides that terms of office "shall be for the life of the Commission." This raises the question whether the members of Congress appointed to the Commission are supposed to retain their membership if they cease to be members of the House from which they were appointed. It would be desirable to clarify this point.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

(Signed) Alan A. Parker

Alan A. Parker
Assistant Attorney General

PREPARED STATEMENT OF SENATOR ALAN CRANSTON

Mr. Chairman,

I appreciate the opportunity to testify on behalf of S.1647, a bill creating a Commission on Wartime Relocation and Internment of Civilians. This fact-finding commission will investigate the relocation and internment of Americans of Japanese ancestry during World War II.

Three decades have passed since the time when 120,000 Japanese Americans were taken to relocation camps. Our government has yet to consider the long-lasting effects this action had on many of the interned and their families. As a result of their detention, many of the internees lost productive years of remunerative work -- time which might have been applied to federal retirement. Thousands lost homes, farms, and property, and many were forced from businesses and schools.

S.1647 provides for an objective, unbiased study to be conducted by the 15-member commission which will review such questions as whether or not the government should redress the wrongs caused as a result of Executive Order 9066 and other federal government act during this tragic chapter of World War II. The commission will review the available materials on this subject and report its findings to the President and Congress with recommendations for appropriate remedies to be pursued.

Mr. Chairman, as an original co-sponsor of this bill and a long-time supporter of the need to rectify a wrong afflicted on thous of Americans whose only crime was their Japanese ancestry, I strongly urge favorable consideration of this legislation.

Material Submitted for the Record by Senator Stevens, received
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May 6, 1980

The Honorable Ted Stevens
The United States Senate
Washington, D. C. 20510

Dear Ted:

Thank you for the opportunity to provide comments on S. 1647, a bill before your Governmental Affairs Committee which would establish a Commission to investigate wrongs committed against Japanese aliens and U.S. Citizens of Japanese ancestry during World War II.

The tragedy of the internment of U.S. citizens of Japanese ancestry under Executive Order 9066 during World War II is well known, and is a dark chapter in the history of American civil liberties. It is not well known that a large number of your constituents, the Aleut people, were also interned during World War II by U.S. military forces and civilian agencies of the U.S. government.

The Aleut citizens of Unalaska, St. George, St. Paul, Nikolski, and other villages were evacuated, in some cases with less than 24 hours notice, from their homes to temporary camps in Southeastern Alaska. The record will show the Aleuts were treated worse, at the hands of their government, than were the people in the Japanese-American camps. The Aleuts suffered almost unimaginable neglect. Their medical supplies were diverted for the use of others without replacement. They were confined to camps without access to medical doctors, adequate shelter or clothing.

In the camps from mid-1942 until mid-1944, the Aleut people suffered ravages of disease and deprivation. Most young children and older citizens died from exposure, the ravages of tuberculosis, pneumonia and measles. The able-bodied men from St. George and St. Paul, in the largest camps at Funter Bay, were transported in 1943 back to the Pribilofs to harvest fur seals. The old people, women and children who were left behind could not care for themselves; they died from epidemic disease and from deprivation and neglect.

When the sealers on the Pribilofs in the fall of 1943 learned of the distress of their loved ones at Funter Bay, they went on strike and demanded to be returned to their families. They were told by officials of the U.S. Fish and Wildlife Service, then in charge of the Pribilofs, that if they did not work, they would not eat. They were, in effect, threatened with starvation if they did not complete the harvest of fur seals and associated duties before returning to Funter Bay.

The attached report by Berneta Block, M.D., of the Alaska Public Health Service, on her visit to the Funter Bay Camp in October 1943 is most revealing. Even more revealing is the attached letter from the Alaska Supervisor, in charge of the Aleut Camps, to his Chief in the U.S. Fish and Wildlife Service. It should be apparent, from these representative documents, that conditions for the Aleuts, virtual prisoners of their government during World War II, were unconscionable.

On behalf of the Aleut people, we urge you to offer the attached amendments to S. 1647, a bill to establish a commission to investigate the suffering of the Japanese-Americans during World War II. The amendments would expand the bill and charge the commission to investigate, and make recommendations, with respect to the suffering of the Aleuts during the same period, and under the same conditions.

Thank you for your consideration of this request.

With kindest personal regards, I remain

Very truly yours,

John C. Kirtland

JCK:oe

The Aleut Experience in World War II

The Aleut people number about 3,200. The large majority live today, as they have since earliest times, in villages located on the lower Alaskan peninsula, the Aleutian Island chain, and the Pribilof Islands in the Bering Sea.

Along with other Native Americans in Alaska, their aboriginal land claims have been satisfactorily settled under the Alaska Native Claims Settlement Act. Other claims, based upon the Aleuts' participation in the North Pacific Fur Seal harvest, have been settled. In the 1970's, for the first time, the U.S. government began to recognize the legitimate rights of the Aleut people, and to provide some restitution for losses sustained by the Aleut communities.

Although progress has been made in recent years, the most tragic chapter in the history of the U.S.-Aleut relations has never been reviewed either in Congress or in the courts. That chapter is the Aleut experience during World War II.

After the Japanese attack on Dutch Harbor and the fall of Attu and Kiska, the Aleut communities of St. George, St. Paul, Unalaska, Atka, Akutan, Nikolski and some smaller villages were evacuated by order of

U.S. military authorities, after some consultation with officials of the U.S. Department of the Interior. Temporary camps were established for the Aleuts in Southeastern Alaska, in such places as abandoned gold mines and canneries.

Although the Fish and Wildlife Service in some cases, and the Bureau of Indian Affairs in other cases, had direct responsibility for the administration and support of the camps, about 800 Aleut people suffered almost unimaginable neglect, hardship and deprivation from June 1942 until mid-1944 when they were repatriated, after a fashion, to their homes. During the internment of the Aleut people, in camps located at Funter Bay, Killisn Ward Cove and Burnett Inlet, literally scores of people died from lack of adequate shelter, poor sanitary conditions and inadequate medical care. Epidemics of diseases ravaged the camps, including influenza and measles. Because of poor shelter in the damp climate of Southeastern, dozens of people, of all ages, succumbed to tuberculosis and died. Able bodied men were removed from the camps to participate in the 1943 fur seal harvest, leaving the women and children in the camps to be attended by elderly men and young boys who were incapable of performing the work to be done.

After the Aleuts were returned to their homes, they found in many cases that their personal property, including religious icons of great importance to them, had been looted from their homes, apparently by military personnel. Others were refused permission to resettle their historic villages, and for administrative convenience were merged into other, larger villages.

The Aleutian/Pribilof Islands Association, the legally recognized representative of the Aleut people, has over the past year researched the Aleut experience in World War II. APIA has obtained extensive documentation of the injustices, losses of property and wrongful deaths suffered by the Aleuts during the war. Much of this documentation has been obtained from the U. S. archives in recently declassified materials. Other primary materials have also been obtained.

In the view of APIA, there is no existing remedy for relief in this unique case. After a full review of the documentation of the injustices suffered by the Aleuts during World War II, APIA is confident that Congress will conclude there is a moral obligation on the part of the U. S. government to provide some measure of appropriate relief.

The provisions of S. 1647, if expanded to include the Aleut experience, could provide the basis upon which appropriate restitution could be based.

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REPORT OF TRIP TO HUNTER BAY
The Pribilof Evacuation Camp

October 2 - 6, 1943

On Saturday A.M., October 2nd, Dr. Lindquist asked if I would like to accompany him to Hunter Bay to see what needed to be done for the many cases of measles recently reported by Mr. Hall, Sanitarian of this Department, and Mr. Hynes of the Fish and Wildlife Department.

We arrived toward evening at what seemed from the boat to be a group of fairly well painted cannery buildings located on a pleasant hillside. No one expected us because there are no radio communication facilities and the mail boat comes in once a week. Just as we stepped off the boat the nurse in charge arrived from making rounds at the other camp site, located across the bay. She had been hoping desperately that someone would send help, but had no way of calling for it.

I had been informed that the people residing in these two localities were the Aleuts evacuated from the Pribilofs in 1942. The group from St. Paul Island, about 200, were housed on one side of the bay and those from St. George Island on the other. I expected to find a group of people interested in their own health and welfare, thrifty and adept in managing their own affairs. I am sorry to say I was a bit disappointed. I am sure that much effort has been expended in order to provide adequate quarters for these people but it goes without saying that there is still room for much improvement.

The nurse, Miss Porter, took us to the hospital, which is confined to one room about 20 feet square and at that time housed one obstetrical patient with measles; one child with a broken leg; 6 children with measles -- 3 of whom were in extremis -- one newborn baby and 3 infants under one year of age who had been exposed to measles but had not come down with them as yet and were in the hospital because all other members of their families were ill. Before the night was over we had added 3 more very sick children to the list, making it necessary to put two children in each of three army cots.

The room was heated by a small stove with a top surface of no more than four square feet. This stove was the only means of providing hot water and the sterilization of any instruments needed. The only helpers which the nurse had for the night care of these patients were a young woman who had had very little experience with nursing care of the acutely ill, but who was doing her best and the night man "Peter" who had been helping the physician on the Pribilofs before they were evacuated. He had a good understanding of the routine for taking temperatures, forcing fluids and the general care of patients. After making our rounds in the hospital and suggesting certain remedial procedures, we were escorted to the bunkhouses. Miss Porter accompanied me and Peter accompanied Dr. Lindquist. I was impressed by the fact that there were no lights along the slippery, wooden, rickety passage ways between the houses, cottages and the hospital. It was not until the next morning that I discovered that these walks were, in many places, several feet above ground and that one misstep might have led to a serious accident. Since it was raining very hard we were equipped with slickers and rainhats at the request of Miss Porter, for which I was very grateful.

As we entered the first bunkhouse the odor of human excreta and waste was so pungent that I could hardly make the grade. After a time we did not notice it so much. The buildings were in total darkness except for a few candles here and there which I

considered distinct fire hazards since the partitions between rooms were made mostly by hangings of woolen blankets. The overcrowded housing condition is really beyond description since a mother and as many as three or four children were found in several beds and two or three children in one bunk. In the darkness it was difficult to see the details of the state of uncleanliness, but even so we gathered it was deplorable. There were very few beds that were properly covered with sheets and pillow cases were seldom used. Children were found naked and actually covered with excreta. There were only a few rooms into which one could walk with any sense of comfort in the olfactory sense -- and I was very careful to commend the women on their neatness and cleanliness.

We did not finish making rounds in that locality until it was much too late to cross the bay and see those from the St. George group. In fact, we were only able to see the patients in the St. Paul group who were desperately ill on that first tour.

The next morning we made rounds again in daylight and I was impressed with the fact that very little or no civic pride was taken in the way of disposal of garbage, waste disposal or care of the privies. The garbage cans were overflowing, human excreta was found next to the doors of the cabins and the drainage boxes into which dishwater and kitchen waste was to be placed were filthy beyond description. There were numerous flies in many of the rooms. The kitchen and the screened building in which food was kept were not as clean as they should have been and a dish of fermenting material of some kind gave off a very obnoxious odor.

Many of the 118 or so patients had shown a little improvement during the past twenty-four hours, according to Miss Porter, but many were still very ill and complications such as otitis media and pneumonia were showing up. It took us the entire morning and well into the afternoon to make rounds and write orders. It was difficult to get anyone to carry out simple nursing care since many families were entirely stricken, and at first the people who were well seemed not too willing to help others.

In the afternoon we crossed over to the St. George group. Mr. Merriott accompanied Dr. Lindquist and Miss Porter continued on with me. The situation there was less obnoxious because crowding was not so obvious and the general state of cleanliness in the rooms was better. However, several of the families were in a state of filth. The washrooms and dining rooms were in a better state than on the opposite side, but there still could be much improvement in the methods of garbage and excreta disposal. We returned to the St. Paul side in the late afternoon. Dr. Lindquist returned to Juneau and I stayed there three more days. During that time two expectant mothers with measles delivered babies. Both were somewhat premature in their arrival. Rounds were made each day on both sides of the bay and bits of advice as to the care of children and cleanliness in the home were given if the patients were well enough to take it. It was a bit difficult to obtain the use of lights for the delivery. It is hoped that such a handicap can be removed. When oxygen was needed, Mr. Roverson was able to improvize by fixing up a tank of welder's oxygen which worked very well.

Miss Porter found it very difficult to get helpers to carry out the necessary laundry work and to help with the care of individuals in the homes. I feel that such a responsibility should not have been placed on her entirely, but should have been arranged through the person responsible for the camp, possibly in conjunction with a representative from the natives who should be interested in the welfare

of the community as a whole. There was something lacking in the way or organization in order to meet this real emergency. I realize that during the first two days we saw the community at its worst. I know that there were very few adults who were well, but even so there was no concerted effort being made to carry out the simple procedures for getting drinking water and other liquid nourishment to the bedsides of these people and for seeing that the laundry was done to the best advantage in spite of lack of facilities for drying and getting hot water.

To begin with, conditions such as these should not have existed at the beginning of this epidemic. I was surprised to find such a low morale on the part of the group which I thought was capable of greater thrift. I have been told that attempts have been made throughout the year to get building materials, adequate facilities for sewage disposal and water supply, but that for several reasons they were not obtained and put into use. Even if elaborate equipment is lacking, it seems that the burial of garbage and the use of chloride of lime in the privies and policing, if necessary, to assure the use of privy localities rather than the door stoop for the emptying of human excreta containers could be put into practice.

The water supply is discolored, contaminated and unattractive. It has a bad taste, hence it was hard to get people to force fluids. Facilities for boiling and cooling the water are not readily available.

In addition to these visible physical degrading conditions, I noticed some lack of the teaching of basic public health fundamentals. Work with such a small group of people who have been wards of the government for a long period of time should have brought better results. It seems that if there had been adequate public health instructions in the schools and the community this could not have happened. It is strange that they could have reverted from a state of thrift and cleanliness on the islands to the present state of filth, despair, and complete lack of civic pride. I realize, too, that at the time I saw them the community was largely made up of women and children whose husbands were not with them. With proper facilities for leadership, guidance and stimulation of mutual regard for simple public health laws by a trained public health worker the situation could have been quite different, and I hope that the services of a public health nurse for health education services, if only on an itinerant basis, will be considered.

Miss Porter has had the hardship of going through two epidemics with these people and should not have to face more cases under the same circumstances. I feel that the men who have just come back from the Pribilofs will be exposed to measles and there is a possibility that many of them will become ill. In order to avoid the hardships suffered by the patients who have just gotten over the disease and provide adequate home care, it would seem that a group of willing workers with specific duties assigned to each should immediately be recruited.

I was very glad to be able to enter into the problems presented by this epidemic and I would certainly like to be able to continue to be of help if it is desired. I have seen poverty and filth go hand in hand in other localities in the world. Here I did not see signs of dire poverty, though there was much waste of food, misuse of materials such as mattresses and blankets, but the thing that impressed me most was the fact that filth did exist and there seemed to be very little excuse for it.

I have every reason to believe that if these people are to remain at Hunter Bay during this winter every effort will be used to help them improve their home situation. If it is impossible to get a doctor to give full-time service to these people it would be well to have a two-way radio system so that help could be obtained when necessary. It has been stated that Dr. Gabrielson, Mr. McMillin and those responsible locally for these people wish for permission and materials to make the necessary changes to better the health and welfare of the wards under their jurisdiction. I sincerely hope that all who are responsible will immediately work together to change the picture.

N. Berneta Block, M.D., Director
Division of Maternal and Child Health
and Crippled Children's Services

AIR MAIL

Box 1091, Juneau, Alaska

October 28, 1943.

Mr. Ward T. Bower, Chief,
Division of Alaska Fisheries,
Fish and Wildlife Service,
Merchandise Mart,
Chicago, Ill.

The Funter Bay situation is growing more and more tense and Mr. Olson, Miss O'Neill and myself have concluded that you should have a comprehensive picture of the entire problem, as we view it, in the hope that it will aid you in taking the necessary steps to rectify it and put the evacuation camps on a workable basis before another winter sets in. Since Mr. Olson is now on an extended inspection tour of the Southeastern Alaska districts and will not return to the Juneau office for several days he has instructed me to present our observations and suggestions for your consideration.

We had hoped until recently that repatriation of the Pribilof natives would be accomplished after the close of sealing operations, but it now seems most unlikely that they will return to their homes this year and possibly not until after the war is over, so there is no longer any point in waiting and hoping for the end of a bad situation; the facts must be faced and every effort made to correct conditions before it is too late.

It is not our desire to criticize either Mr. Johnston or Mr. Morton as we realize that they have been confronted by many difficult and unusual problems since the evacuation of the Pribilofs and establishment of the Funter Bay camps. In fact we have shared the responsibility and worked along with them, making every effort to aid in the maintenance of the project.

It has long been apparent that the camps were not operating successfully, even as temporary refuges, and we are convinced that unless adequate measures are taken to improve conditions before the arduous winter months begin there is more than a possibility that the death toll from tuberculosis, pneumonia, influenza and other diseases will so decimate the ranks of the natives that few will survive to return to the islands. Only through the whole-hearted efforts of the Public Health Service in the persons of Drs. Linquist and Block, were wholesale deaths averted during the recent measles epidemic when nearly all of those remaining at the camps were stricken. Crises such as this are almost routine at Funter and will continue until facilities are vastly improved. However, it is not necessary to dwell here upon health conditions as you have had the reports of Health Engineers Hall and Green, Dr. Block and others and have no doubt discussed the matter with Dr. Gabrielson and Mr. Crouch, who have both made personal investigations at Funter.

being closest to the scene, this office naturally bears the brunt of criticism and it is becoming more and more difficult to defend our position. Scarcely a day passes that some well-meaning person does not decend upon us with recriminations for our heartless methods. Censorship has kept the press off our necks thus far but this line of defense is weakening rapidly. A few days ago we were advised by one of the physicians who had inspected the camps and aided in emergency work there, that he was preparing a report to the Surgeon General of the United States and also to Secretary Ickes and had no intention of "pulling any punches". He warned that it was only a question of time until some publication, such as Life Magazine, would get hold of the story and play it up, much to the disadvantage of the Service and the Department of the Interior as a whole. He pointed out that the value of this year's fur seal take from the Pribilofs would nearly equal the original purchase price of Alaska, yet the people who had made it possible are being herded into quarters unfit for pigs; denied adequate medical attention; lack a healthful diet and even facilities to keep warm and are virtually prisoners of the Government, though theoretically possessing the status of citizenship. He paints a dark picture, but there is plenty of food for thought in his observations and one can easily visualize what a story a sensational publication could make out of the situation.

We feel that steps must be taken at once to secure the services of a competent physician and one more nurse to assist Miss Porter; construction of a small hospital; combination school and recreational buildings, one for each camp, and at least twenty additional one family cottages. Two-way radio communication should be installed and adequate sewage and garbage disposal established and there should be further development of the water system to insure sufficient flow to meet demands under all weather conditions. These are the essentials. Repairing walks, drainage ditches etc. can be accomplished as time and labor supply permits.

Much of the work involved in making the camps habitable can be done by the natives themselves when materials are made available, but it will probably be necessary to supplement their labor by hiring outside help. This may seem to be an ambitious program but nothing should stand in the way of its accomplishment if the situation is to be met in anything like an adequate manner. You state in your letter of September 16th that nothing will be left undone to rectify conditions at the camps, provided the natives will remain there this winter. Since there seems to be little doubt that this will be the case, we feel assured that you will approve an aggresive attack on the problem and issue the necessary orders for carrying it out.

The matter of returning to the Islands in September was enthusiastically welcomed at the camps and if this had been accomplished it would have been the ideal solution. I understand that the native families are now strongly opposed to making the trip because of the lateness of the season. They are fearful of prolonged bad weather conditions and have also had adverse reports from the returned sealers concerning the condition of their homes, scarcity of supplies and similar factors. It therefore appears that both of the Hunter camps must necessarily continue in operation. In considering the entire situation we believe it would be a great advantage to concentrate on and improve the Hunter problems rather than to create new ones which would arise in attempting to rehabilitate St. George Island at this time.

Some phases of management of the camps require adjustment. We feel that it would be most desirable to have either Mr. Johnston or Mr. Norton manage the Alaska end of affairs out of the Juneau office. There is an enormous amount of detailed work involved in the purchase of supplies, handling contracts, pay rolls etc. and taking care of countless small jobs involving the natives. We do not have adequate clerical help here to keep our own work anywhere near current, as you know, and are therefore not in a position to give the camps the attention they require.

During the absence of Mr. McMillin and Mr. Benson on sealing work from early June until October, Mr. Noverson has had supervision of the camps, aided by Mr. Marriott and Miss Porter. These people have worked hard and faithfully, under severe handicaps of limited supplies, inadequate labor (since nearly all of the able-bodied natives were sealing and those remaining were sick most of the time) and, worse of all, they were in a constant state of uncertainty as to what would transpire in regard to repatriating the natives. When consideration is given to the fact that Mr. Noverson was never before in the capacity of supervisor we feel that he has rendered a very good account of himself indeed and that certain criticism directed against his management of the camps is not justified. Mr. Marriott, though new to the work, has taken hold in a most creditable manner and has accomplished a great deal of work on improvements on the St. George side. Miss Porter has performed excellent service and many of the natives owe their lives to her ability and hard work. However, there has been great need for the services of Mr. McMillin and Mr. Benson, both of whom have had many years of experience in dealing with the natives and know how to get the most out of them in the way of labor, as well as how to settle the many difficulties constantly arising in their everyday life.

For the best results we feel that at least one, and preferably both of the Agents should be at the camps; either Mr. Johnston or Mr. Norton and an assistant in the Juneau office. The Bluebing should be temporarily transferred to the Seal Division for service between Juneau and Funter, with transfer of funds to cover cost of operation from November until the end of April.

At this time there are approximately thirty children at Funter who are eligible to enter Wrangell Institute and they should be taken there as soon as possible, either on the Penguin or Brant. Upon completion of the St. George detail the Penguin should resume regular supply trips between Funter and Seattle. The vessel can make two trips a month, under ordinary conditions, and this will be required to transport sufficient materials to bring the camps up to requirements.

It may be that you will question our right to recommend policies of management since this is in the province of Mr. Johnston and Mr. Norton, but we are just as desirous as they are to have the camps operating on an efficient basis and we believe that this can be accomplished. If desirable to you we will submit a detailed account of the work performed by the Juneau office force and Alaska Division vessels personnel pertaining to the management and servicing of the Funter Camps.

Enclosure.

Assistant Supervisor

Hynes

STATEMENT BY HIROKO KAMIKAWA OMATA
Before the Senate Government Affairs Committee
March 18, 1980

Re: S. 1647, The Commission on Wartime Relocation and Internment of Civilians Act.

Mr. Chairman and Members of the Committee:

My name is Hiroko Kamikawa Omata. I live in Kensington, Maryland and have lived in the State of Maryland for the past 31 years. I come before you today to present to you my story about the experiences my family and I had with respect to the mass evacuation and why we are affected by Executive Order 9066.

My father, Masuiichi Kamikawa, was 15 years old when he came to the United States from Hiroshima, Japan. He and his three brothers landed in San Francisco, California in the late 1800's. They established general merchandise stores and banks in San Francisco, Fresno and Selma, California. They were the early Asian pioneers in developing the State of California by feeding, clothing, boarding and giving credit to the laborers who worked on the Santa Fe Railway and the Great Southern Pacific Railway System. They also helped indirectly in the development of the agricultural systems of the San Joaquin Valley by extending credit to the farmers who needed the essentials to raise their families and their crops. Because of the then prevailing mood of the United States Government, my father and other Asians were unable to become American citizens. My mother immigrated from Hiroshima when she was 19 years old in

Some phases of management of the camps require adjustment. We feel that it would be most desirable to have either Mr. Johnston or Mr. Norton manage the Alaska end of affairs out of the Juneau office. There is an enormous amount of detailed work involved in the purchase of supplies, handling contracts, pay rolls etc. and taking care of countless small jobs involving the natives. We do not have adequate clerical help here to keep our own work anywhere near current, as you know, and are therefore not in a position to give the camps the attention they require.

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March 18, 1980

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My name is Hiroko Kamikawa Omata. I live in Kensington, Maryland and have lived in the State of Maryland for the past 31 years. I come before you today to present to you my story about the experiences my family and I had with respect to the mass evacuation and why we are affected by Executive Order 9066.

My father, Masuiichi Kamikawa, was 15 years old when he came to the United States from Hiroshima, Japan. He and his three brothers landed in San Francisco, California in the late 1800's. They established general merchandise stores and banks in San Francisco, Fresno and Selma, California. They were the early Asian pioneers in developing the State of California by feeding, clothing, boarding and giving credit to the laborers who worked on the Santa Fe Railway and the Great Southern Pacific Railway System. They also helped indirectly in the development of the agricultural systems of the San Joaquin Valley by extending credit to the farmers who needed the essentials to raise their families and their crops. Because of the then prevailing mood of the United States Government, my father and other Asians were unable to become American citizens. My mother immigrated from Hiroshima when she was 19 years old in

1910. Both my father and mother were, therefore, aliens not by choice but by the denial of the United States Government to allow them citizenship.

I was born in Fresno, California on July 11, 1920, which makes me a citizen of the United States. I was a student at Fresno State College finishing my third year when Pearl Harbor shattered my future aspirations for a college degree. When many restrictions were imposed on our lives because of our ancestry, I questioned the validity of being a citizen of the United States. My family and I committed no crime nor did we commit any treasonable acts. I withdrew from college and waited for the formal order to evacuate. During the interim period, my mother, younger brother and I started to weed out the articles that were being confiscated by the United States Government. We broke all of the Japanese records, burned the Japanese books, smashed the cameras and any other item that was on the wanted list of the government. There was panic and fear. All kinds of rumors were spreading fast and with fury. We had to get rid of our car and see to it that our furniture and personal belongings were stored in a safe place.

With very short notice we were ordered to enter the Fresno Assembly Center (better known as the Fresno Race Tracks). We were never given an opportunity to have a hearing or to question the legality of the mass evacuation.

We were told to take only one suit case for each person entering the center. Thus, we went like meek sheep obediently thinking that our government knew the best.

Life was primitive in the Assembly Center. For instance, the latrine was a community toilet. It had one tank that filled with water and it flushed six toilets at one simultaneous flushing. It is humiliating for me to tell you this story but it must told in order for all Americans to know what went on in this country.

My mother, father, brother and I shared one room--there were no partitions, just four army cots with mattresses filled with straw. The first few days were uncomfortable to sleep since we had to mat down the hay to suit the contour of our bodies. The food was fattening because the emphasis was on carbohydrates. Dust particles were ever present in our lives.

After six months we were herded into a train. Coaches were for the majority and the pullman cars were for the sick, the aged and the little infants. The train was guarded by M.P.'s with their guns ready to shoot anyone who tried to escape. Our destination was Jerome Relocation center, Jerome, Arkansas. I was the last person to board the train and officially leave the State of California. The trip was long, tiring and also humiliating since we could not take care of ourselves in the way of personal hygiene.

There was a small sink to wash and clean ourselves but it was inadequate for a trip that took more than four days.

Upon arriving in Jerome, we all lined up to go to the toilet since we all had diarrhea. The toilet facilities had not been completed and there was general misery. The barracks and roads were still being constructed and mud impeded our trips to the community toilet, which was a separate building from our living quarters.

Each family received a room furnished with a coal stove and the number of cots required to meet the needs of the family. That was all--no chairs, no tables, or other ordinary essentials to make life livable.

I made the best of the situation. A friend worked in the carpenter shop so he brought me some lumber. I made a small room for myself by putting up a partition. I learned to become a good carpenter. I graduated to the point where I made a chair and a bookcase. Life became a little bit more pleasant when my brother painted murals on the walls of our room.

I stayed in Jerome Relocation Center for five months and left to work at the War Relocation Authority in Washington, D.C. The thrill of leaving the barbed-wire enclosure and the gun-toting sentries was the most exhilarating experience in my life. I shall never forget the feeling of walking around free on the streets of

Washington, D.C.

In the meantime, my father and mother continued to stay in the camp. My two brothers joined the army: one went to the Pacific with the Military Intelligence Service and the other went to Europe with the famed 442nd Infantry Division. In 1945, after three years of incarceration, my parents moved to Seabrook, New Jersey where they started life anew. In the early 1950's, my parents became citizens of the United States since a new law had been passed permitting them to become citizens. In 1967, just prior to my father's death, the Japanese Government awarded him an Imperial Award, Fifth Order of the Sacred Treasure. Among the achievements cited was his work in merchandising and banking in Fresno.

From 1946 to 1948, I went to Japan with the Department of the Army and found out to my great disappointment that the Japanese people considered me a foreigner. I realized then that I was truly an American, in spite of the treatment I had received by the United States Government. It fortified my belief that the United States Government had to make a formal statement, admitting its error in incarcerating its citizens and aliens.

America still talks about human rights. We Japanese-Americans were hostages of our own government. Unless a wrong is corrected, America can never preach to anyone or

to any other country about hostages or prisoners of war in concentration camps. In all these situations, life behind barbed wire is the same--where men with guns are prepared to shoot to kill if anyone attempts to escape. It is recorded history that eight Japanese-Americans were shot and killed trying to escape from the internment camps.

The leaders of America who made the decision to relocate us committed a rape of the soul of the United States Constitution. They violated the single most precious document of the United States of America. We were all deprived of our rights to due process and equal protection of the laws. No legal scholar can successfully argue that a particular race should be incarcerated purely because of race alone.

I want to tell you that the Office of Historical Preservation of the State of California has recently selected the former Kamikawa Brothers business operations as a historical site. It is now standing there as a shell without a soul. I believe that if you should consider correcting a wrong that has been perpetrated against 120,000 Japanese-Americans, both citizens and aliens, I am sure my 89-year old mother, all of her children, grandchildren and great grandchildren will rejoice in knowing that Grandpa's soul will live eternally in that building.

In conclusion, it will be 38 years since I was incarcerated in an internment camp. My experiences are not

equal to the holocaust of the Hitler regime but there will always be a shadow over the history pages of the United States of American unless immediate steps are taken to remedy this great injustice. I will be 60 years old in July but I hope to continue my night classes at the University of Maryland, where I am taking Para Legal Studies. One of these days I hope to get a B.S. degree in Business Administration. In the meantime, I shall continue to challenge the United States Government regarding the unconstitutionality of my wartime incarceration. In order for me to leave my children and their children an enduring legacy and a great faith in this country, I must appeal to you to pass Senator Inouye's bill.

My husband, Robert Omata, who spent a year at the Gila River, Arizona camp agrees with me that time is of the essence, and only the legislative branch of the government is capable of helping us and the others so affected.

RESOLUTION

WHEREAS, on February 19, 1942, President Roosevelt signed Executive Order 9066 which resulted in the mass evacuation and incarceration of Japanese Americans in Concentration camps; and

WHEREAS, 1942 marked the beginning of a period of American history in which the ideals of democracy and individual freedom guaranteed under the Constitution of this Nation were denied to these citizens solely on the basis of ancestry; and

WHEREAS, apart from its economic and psychological impact on the victims, the Evacuation placed a stigma of guilt upon all Japanese Americans and, in the minds of most Americans, has led to the erroneous belief that the government's actions were completely justified in the name of national security; and

WHEREAS, after many, many years of continued effort by the Japanese American community and their legion of friends to bring before the United States Congress and the American public the events of this "sad episode in our history"; the unprecedented abridgement of the rights of American citizens; and

WHEREAS, with the courageous leadership of our esteemed comrades in arms, The Honorable Daniel Inouye and Spark Matsunaga, together with the co-sponsorship of Senators S. I. Hayakawa and Alan Cranston of California, and Frank Church and James McClure of Idaho, Senate Bill 1647 was introduced in the United States Senate on August 2, 1979; and

WHEREAS, on September 28, 1979, HR 5499 was introduced in the House of Representatives with 114 co-sponsors; and

WHEREAS, both measures seek to establish a Presidential study commission whose purpose will be to inquire into the events of 1942 through a series of public hearings and to determine whether the government's actions were justified, and if not, to recommend appropriate remedies; and

WHEREAS, the members of the 442nd Veterans Club of Honolulu, Hawaii, comprised of the original members of the 442nd Regimental Combat Team, and widely recognized as one of the most highly decorated combat units during World War II, firmly believe in the principle of "Redress" as proposed in HR 5499 and SB1647; now therefore,

BE IT RESOLVED by the 442nd Veterans Club of Honolulu, Hawaii, that its entire membership wholeheartedly endorse the immediate passage of the bill to establish the Commission on Wartime Relocation and Internment of Civilians Act and

BE IT FURTHER RESOLVED that copies of this resolution be transmitted to: The Honorable Abraham Ribicoff, Chairman of the Senate Governmental Affairs Committee, The Honorable Daniel Inouye, United States Senator; The Honorable Spark Matsunaga, United States Senator, The Honorable S. I. Hayakawa, United States Senator; The Honorable Alan Cranston, United States Senator; The Honorable Frank Church, United States Senator; and The Honorable James McClure, United States Senator.

Respectfully submitted,

THE 442ND VETERANS CLUB

Edward M. Tamanaha, President

Robert M. Sasaki
Executive Secretary

442 VETERANS CLUB

Congressional Black Caucus
306 House Annex
Washington, D.C. 20515
202 — 225-1691

APR 17 1980

March 17, 1980

Senator Abraham A. Ribicoff
Chairman
Governmental Affairs Committee
3308 Dirksen Senate Office Bldg.
Washington, D.C. 20515

Dear Mr. Chairman:

The Congressional Black Caucus strongly supports establishment of a national commission to study the internment of Japanese-Americans during World War II.

This Commission is needed to find answers and recommendations regarding a fundamental violation of civil rights which remains unresolved.

We are encouraged that the Senate Governmental Affairs committee is holding hearings on S. 1647 and H.R. 5499, and hope that similar action will soon be initiated by the House Judiciary committee. Executive Order 9066 allowed for the evacuation and internment of 120,000 persons of Japanese ancestry, two-thirds of whom were United States citizens.

It is important that we not ignore this gross abridgement of civil rights, and that this necessary mechanism be established to study the origins, ramifications, and remedies related to Executive Order 9066.

In bringing this tragic chapter of our nation's history into clear focus, we believe important lessons can be learned. Never again should such a governmental-initiated violation of civil and human rights happen.

We hope that your committee will act promptly on this legislation.

Sincerely,

CARDISS COLLINS
Chair

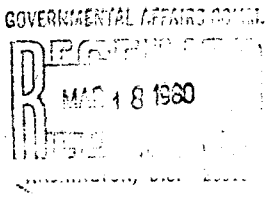
RONALD V. DELLUMS
Vice-Chair

JULIAN C. DIXON
Treasurer

WILLIAM H. GRAY, III
Secretary

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425



17 MAR 1980

Honorable Abraham Ribicoff
United States Senate
337 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Ribicoff:

This is in response to your letter of March 10, 1980, inviting our testimony before your committee on March 18. The Commission on Civil Rights is regrettably unable to testify before your committee tomorrow on Senate bill 1647 concerning the proposed Japanese-American Wartime Relocation Commission. Due to a conflict in scheduling with the Commission's annual program planning meeting we are unable to participate in this hearing.

The Commission is very interested in the issues surrounding Japanese-American internment during World War II. Several of the issues involved were called to our attention during our Summer, 1979 Consultation on Asian and Pacific Island Americans. In October of 1979, the Commission unanimously adopted a resolution proposed by its 51 state advisory committee chairpersons recognizing the denial of the civil rights of Japanese-Americans during this period of American history and giving support to the two Congressional bills S. 1647 and H.R. 5499. These bills call for the establishment of a commission to study the issues involved and possible alternatives available to Congress in redressing any violations. In addition, this Commission on December 16, 1979, sent letters to several Members of Congress informing them of the Commission's support of S. 1647 and H.R. 5499. (Enclosed, please find a copy of the resolution and letter to your committee.) The Commission is deeply sensitive to these issues and will continue to monitor developments in this area.

While this Commission is not able to testify before you at this time, we will be more than pleased to do so in the future on this issue. Please do not hesitate to contact me or congressional liaison staff (254-6626) should you need additional information from us or if additional hearings are scheduled.

Sincerely,

ARTHUR S. FLEMMING
Chairman

Enclosure

UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

STAFF DIRECTOR

29 DEC 1979

Honorable Abraham Ribicoff
Chairman
Senate Committee on Governmental
Affairs
3308 Dirksen Senate Office Bldg.
Washington, D.C. 20515

Dear Chairman Ribicoff:

In response to a letter from Senator Inouye concerning S. 1647, the U.S. Commission on Civil Rights and its advisory committees have recently considered the proposed 'Commission on Wartime Relocation and Internment of Civilians Act'.

I have enclosed for your information a resolution, adopted by the Chairs of the Commission's 51 State Advisory Committees, concerning S. 1647 and H.R. 5499, the House companion bill. Subsequently, the Commissioners, at a regularly scheduled meeting of the Commission, formally adopted the resolution.

As you are aware, the U.S. Commission on Civil Rights is an agency established by Congress to study and collect information on discrimination and equal protection of the laws, to appraise the laws and policies of the Federal government, to serve as a national clearinghouse for information on civil rights, and to report to the President and Congress. The Commission's jurisdiction covers race, color, religion, sex, age, handicap, national origin and the administration of justice.

If you have any questions concerning these developments with respect to S. 1647 and H.R. 5499, do not hesitate to contact me or Lucy Edwards, Director of our Congressional Liaision Division at 254-6626.

Sincerely,

/s/

LOUIS NUNEZ

cc: Governmental Affairs Committee Members

Enclosure

WHEREAS, the Congress of the United States is now considering S. 1647 and H.R. 5499, which would establish a Commission to study the evacuation of 120,000 persons of Japanese ancestry from the West Coast in 1942, two-thirds of whom were United States citizens, against whom no charges were ever filed, and concerning whom no imputation of disloyalty was ever lodged; and

WHEREAS, such Commission would be charged with the responsibility of studying the legal and constitutional aspects of such unprecedented action by the United States Government against its own citizens, to determine whether wrong was committed and if so, to recommend redress in such manner as to be determined by the Congress of the United States, to the end that such an aberration of justice will never again occur; and

WHEREAS, the United States Commission on Civil Rights is concerned with such complete denial of civil rights, and with the possibilities of recurrence of such governmental action based upon the precedent of the Japanese American evacuations of 1942, and therefore, believes that the present bills in Congress should be supported,

NOW, THEREFORE, BE IT RESOLVED by the Chairs of the 51 State Advisory Committees of the U. S. Commission on Civil Rights, that they not only support passage of S. 1647 and H.R. 5499, but also urge that the U. S. Commission on Civil Rights similarly support such legislation, and that copies of this resolution be transmitted to members of the United States Congress.

UNANIMOUSLY ADOPTED this 22nd day of October, 1979, in the City of Washington, D. C.

TELEPHONE
575-2621

RESIDENCE TELEPHONE
722-9255

MINORU YASUI
ATTORNEY AT LAW
1150 So. Williams St.,
DENVER, COLO. 80210.

March 18, 1980

TO: The Honorable Abraham Ribicoff, Chairman
U.S. Senate Governmental Affairs Committee
Rm #3308, Dirksen Senate Office Building
Washington, D.C. 20510.

In re: Hearings on U.S. Senate Bill #1647

I, MINORU YASUI of Denver, Colorado, respectfully request leave to file written testimony concerning Senate Bill #1647, as follows:

1. IDENTIFICATION:

I am Minoru Yasui, an attorney at law, admitted to practice in the State of Oregon in 1939, and further admitted to practice in the State of Colorado in 1946. I was engaged in the active practice of law for 25 years until 1967, continuously except during 1943-1946.

Since 1967, I have served, and am continuing to serve as the executive director of the Commission on Community Relations for the City and County of Denver, in the State of Colorado.

At the present time, my active participation and membership on a number of boards, commissions and committees, include, among others: the National JACL Redress committee; chairman of the Colorado State Advisory Committee to the U.S. Civil Rights Commission; the International Consultation of Human Rights; acting chairman of the Denver Anti-Crime Council (formerly chairman for five years); member of the national advisory board of Joint Action in Community Services (JACS); regional board of the Institute for International Education; and local boards of the YMCA, Boy Scouts of America, Mile-High chapter of American Red Cross, the South Denver Chamber of Commerce, the Superintendent's Executive Advisory Council for Denver Public Schools, and numerous other local boards and commissions.

During the past 36 years in Denver, after having had a normal life completely disrupted by the evacuation of persons of Japanese ancestry from the West Coast in 1942, I believe I have attained some degree of acceptance in the Denver community, by dint of extensive community service over a long period of time.

2. EVACUATION EXPERIENCES:

Commencing on March 28, 1942, I initiated a test case involving the United States government, testing whether or not military orders *(curfew)* could be selectively enforced against United States citizens of Japanese ancestry and no other U.S. citizens, in the absence of martial law.

> On Nov. 16, 1942, the U.S. District Court for Oregon held that such military orders, in absence of martial law, could not be enforced against United States citizens, but ruled that I was not a citizen of the United States. *(United States vs. Minoru Yasui, 48 Feb. Supp. 40, Cas. #18056)* I was found guilty of violating Public Law 503, and sentenced to one year in jail and $5,000 fine.

The case was appealed to the U.S. Supreme Court, and in June, 1943, the U.S. Supreme Court ruled that military orders against persons of Japanese ancestry, regardless of United States citizenship, were valid. *(Gordon Kiyoshi Hirabayashi vs. United States, 1943, 320 U.S. 81, 63 S. Ct. 1375)* My case is noted as a companion case to the *Hirabayashi* case, and was remanded noting that the government did not claim that I was not a citizen of the United States.

> I served sentence in solitary confinement in the Multnomah County Jail, in Portland, Oregon, for slightly more than 9 months, from Nov. 16, 1942 until Aug. 19, 1943.

Although I was engaged in the private practice of law from January, 1942 until May, 1942, in Portland, Oregon, I was forced to leave my home in Hood River, Oregon, by a squad of armed military police led by a 2nd Lt. of the United States Army, during May, 1942, and taken to the Wartime Civilian Control Center in the livestock pavilion of North Portland, Oregon, and there confined with some 4,000 other persons of Japanese ancestry.

After four months in the WCCA center in North Portland, Oregon, during September, 1942, we were transported by outmoded troop trains to a yet uncompleted desert camp at the Minidoka WRA, just north of Twin Falls, Idaho, to join a total of about 9,500 other evacuees, primarily from the Seattle, Washington, and Portland, Oregon, areas.

I was an inmate of the Minidoka WRA camp from Sept. 1942 until June, 1944, except for the period of from Nov. 1942 until Aug. 1943, and except for a month's furlough during October, 1943, at which time I joined Joe Grant Masaoka of the Rocky Mountain JACL office, in touring the WRA camps at Granada, Colorado, and the Gila River and Poston, Arizona, urging Japanese American males over the age of 18 to volunteer for the 442nd Infantry Combat team to demonstrate unquestionably our loyalty to the United States.

> I had held a commission as a 2nd Lieutenant in the U.S. Officers Reserve Corps, as of Jan. 19, 1942, but was rejected for active service. Thereafter, I did volunteer as a buck private both for the infantry as well as for military intelligence at Camp Savage in Minnesota, but despite some 8 efforts to volunteer, was rejected each time.

In June, 1944, I relocated from the Minidoka WRA camp in Idaho, to Chicago, Illinois. After a summer in Chicago, working in an ice plant, I took up permanent residence in Denver, Colo., during Sept. 1944. I have been a resident of Denver, Colorado, during the past 36 years, or since Sept. 1944.

In sum, I was an inmate of either the WCCA center in North Portland, Oregon, or the WRA camp in Minidoka, Idaho, for a total period of 16 months. In addition thereto, I spent nine months in jail -- in solitary confinement -- during the evacuation period.

During the evacuation period, when the camps were still populated by persons of Japanese ancestry, during about October, 1943, I did visit and spend some time in three WRA camps, viz., Granada, Colo., Gila River and Poston, Ariz.

Subsequent to the closing of the camps in 1946, over the years, I have visited the sites of all WRA camps in the United States, to get a visceral feel for the localities where Americans of Japanese ancestry were incarcerated during World War II.

During the period of from Jan. 1942 until May 1942, as a private attorney, I handled many legal cases for persons of Japanese ancestry in Portland, Oregon, relative to the then up-coming evacuation process. During the period I was confined in the WCCA/WRA camps, I further handled innumerable legal matters for and on behalf of evacuees. Subsequent to the enactment of the Evacuation Claims Act of 1949, I handled several hundred evacuation claims, as a private attorney both in Portland, Oregon, and Denver, Colorado, as well as many other matters related to evacuation, for a period extending well over 5 years. I am thus familiar on a first hand basis with many of the problems and losses incurred by evacuees from the Portland, Oregon, area, as well as relocatees to Denver, Colorado.

3. SUPPORT FOR S. 1647:

Based upon all of the experiences hereinabove set forth, it is my considered judgment that the Congress of the United States should enact S. 1647 and HR 5499, which would authorize and mandate an in-depth and definitive investigation of all the events which took place after Dec. 7, 1941, through the entire evacuation period, until the final closing of the camps in 1946.

We can note the enormous financial losses incurred by persons of Japanese ancestry on the West Coast in 1942. The Federal Reserve Bank of San Francisco, through its TFR-300 and TFBE-1 reports, tabulated assets in excess of $400,-000,000 during the spring of 1942. We know that the eventual recovery under the Evacuation Claims Act of 1949 amounted to about $38,000,000 or about 8½¢ on the dollar.

But, more than the financial losses incurred, were the shattering disruptions of homes and lives of individuals. Entire social and family structures were shattered. Individuals were subjected to bitterness, frustrations, incarceration, disruption of careers, and personal ruination on the basis of ancestry only. We know that tens of thousands of individuals, out of the total 120,000 who were evacuated, were completely innocent individuals -- but who were made to suffer without any charges initiated against them and without any conviction for any crime committed.

We know the rulings of the U.S. Supreme Court in the *Hirabayashi* case, and in the *Korematsu* case. We do not believe that judicial review of those cases are possible now, 38 years after the event. However, this matter too should be investigated and studied by the Congress, for possible legislative relief or nullifcation.

Hon. Abraham Ribicoff March 18, 1980

I believe that those decisions of the United States Supreme Court were wrong; I do not suggest that it is feasible or possible to over-turn such decisions at this late date.

My concern is that our nation, the United States of America, should never again perpetrate such an outrageous violation of human rights against any individual in the future, and that we restroe our nation to its rightful place as the leader in the world in defending human rights, dignity and freedom.

I believe we owe this obligation, as true Americans, to ourselves and our posterity, to make a permanent record of what transpired so that those errors will never again be repeated in the future -- war or no war.

I am a firm believer in the saying of George Santayana who said *"Those who forget the mistakes of the past are doomed to repeat them."*

I strongly urge that the Congress of the United States enact Senate bill #1647 and HR #5499, so that the melancholy years of 1942-1946 now besmirched by a racist and official violation of the human rights of a tiny minority of Americans of Japanese ancestry -- from which group came men who gave of their lives, their blood, and their dedication and loyalty in the armed forces of United States, some 40,000 strong -- can be properly documented in history to the end that it shall not be repeated against any group or individuals in America henceforth.

Respectfully submitted,

Minoru Yasui (303) 575-2621
1150 So. Williams St.,
Denver, Colorado 80210.

MY:m

University of Rhode Island, Kingston, Rhode Island 02881
Intergovernmental Policy Analysis Project
Phone 792-2357/2026

March 14, 1980

The Honorable Abraham Ribicoff
United States Senate
Washington, D.C. 20001

Dear Senator Ribicoff:

I write to you in support of S. 1647, "Commission on Wartime Relocation and Internment of Civilians Act" and introduced by Senators Inauyo, Matsunaga, Hayakawa, Cranston and McLure.

It is my understanding that the Senate Governmental Affairs Committee which you chair will hold a hearing on this bill on March 18, 1980.

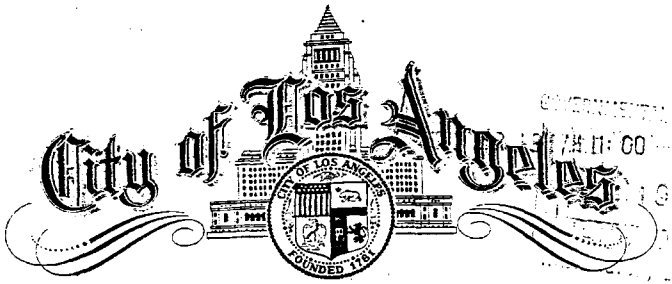
As one of the "internees" of the evacuation process from 1942 to 1945, I believe it is important and necessary for a federal review of the process and the impact of evacuation, not only for those of us who were so "interned" but also because our American society has not yet had an opportunity to come to grips with the fact of evacuation. We have yet to draw the lessons learned from that experience nor have we addressed the evacuation as part of our national agenda. I believe that the passage of the bill and the establishment of the commission will assure that it will be on the national agenda.

I have been a resident of Rhode Island now for some 30 years and have served as Executive Assistant to Governor Philip W. Noel from 1973 to 1977 and have served as Executive Director for the Coalition of Northeast Governors' Policy Research Center and have followed your distinguished career as Governor, Secretary of HEW and as a U.S. Senator.

Your experience, wisdom and above all, your sense of justice and integrity will be missed in the next session of the Senate. I express my deep appreciation to you for your long and distinguished public service to the State of Connecticut and to our nation.

Sincerely,

Glenn Kumekawa
Associate Professor of
Community Planning
Special Assistant to the
Vice President for Academic Affairs



CITY HALL
LOS ANGELES, CALIFORNIA 90012
(213) 485-3311

OFFICE OF THE MAYOR

TOM BRADLEY
MAYOR

March 12, 1980

Honorable Abraham A. Ribicoff, Chairman
Senate Governmental Affairs Committee
Dirksen Senate Building
Washington, D. C. 20510

Dear Senator Ribicoff:

I understand that the Governmental Affairs Committee will hold a hearing on S.1647 on March 18.

Enclosed is information I would like to share with you and members of your committee on the action taken by the City of Los Angeles in support of S.1647 and House of Representative Bill H.R. 5499.

Sincerely,

Tom Bradley

TOM BRADLEY
Mayor

TB:jct

Enclosure

REX E. LAYTON
CITY CLERK

WHEN MAKING INQUIRIES RELATIVE TO THIS MATTER, REFER TO FILE NO.

CALIFORNIA

TOM BRADLEY
MAYOR

OFFICE OF
CITY CLERK
ROOM 395 CITY HALL
LOS ANGELES, CALIF. 90012
485-5705

79-4100 S-13

1980 MAR 18 AM 11:00

January 4, 1980

JAN 10 1980
PLACE IN FILES
DEPUTY

Honorable Tom Bradley, Mayor
Chief Legislative Analyst
Human Relations Commission

H.R. 5499 - INTERNMENT OF AMERICAN CITIZENS OF JAPANESE DESCENT DURING WORLD WAR II

I HEREBY CERTIFY that the attached report of the INTERGOVERNMENTAI RELATIONS COMMITTEE was adopted by the Los Angeles City Council at its meeting held January 4, 1980.

REX E. LAYTON, CITY CLERK

By Charlotte A. Krank
Deputy

am

Attachment
8 certified copies for Washington Representatives

4/4

File No. 79-4100 S-13

TO THE COUNCIL OF THE
CITY OF LOS ANGELES

Your INTERGOVERNMENTAL RELATIONS Committee reports as follows:

Your Committee RECOMMENDS that the City SUPPORT S-1647 and H.R. 5499, relating to the internment of American Citizens of Japanese descent during World War II, pursuant to a communication from the Mayor relative to a resolution of the Board of Human Relations Commissioners of the City of Los Angeles.

This proposed legislation would establish a fact-finding commission to determine whether any wrong was committed against the 120,000 American citizens and permanent residents of Japanese descent who were interned pursuant to Executive Order Number 9066 issued February 19, 1942, and other associated acts of the Federal Government, and to recommend appropriate remedies.

This resolution was adopted unanimously by the Human Relations Commission at its meeting on November 9, 1979, upon request of the Japanese American Citizens League.

Respectfully submitted,

INTERGOVERNMENTAL RELATIONS COMMITTEE

NEWS

MAYOR TOM BRADLEY

Contact: Tom Sullivan 485-5182
Brenda Banks

Date: Wednesday, November 21, 1979

Release: Immediately

Mayor Urges Council to Support Fact-Finding Committee on Japanese World War II Internment

Mayor Tom Bradley today sent a letter to the Los Angeles City Council urging its support of federal legislation to establish a fact-finding committee on the internment of Japanese-Americans during World War II.

Bradley said the proposed legislation would establish a fact-finding commission to determine whether any wrong was committed against the 120,000 American citizens and permanent residents of Japanese descent who were interned during World War II. The legislation also would instruct the commission to recommend appropriate remedies.

"The relocation and internment of these people constituted an unprecedented violation of rights granted to every human being under the United States Constitution," Bradley said. "The uprooting and punishment of an entire community, against whom no criminal charges were ever lodged, is a shameful chapter in our national history which must not be forgotten lest it be repeated."

Bradley forwarded to Councilmembers copies of a resolution (see attached) drafted by the city's Board of Human Relations Commissioners, urging that the Council support U.S. Senate Bill S. 1647 and House of Representatives Bill H.R. 5499, both of which relate to the internment question.

##########

CITY HALL
LOS ANGELES, CALIFORNIA 90012
(213) 485-3311

OFFICE OF THE MAYOR

November 21, 1979

TOM BRADLEY
MAYOR

Council of the City of Los Angeles

Honorable Members:

I hereby transmit for your consideration a resolution of the Board of Human Relations Commissioners of the City of Los Angeles, urging that the City, by formal Council action, support U.S. Senate Bill S. 1647 and Housing of Representative Bill H.R. 5499, both relating to the internment of American citizens of Japanese descent during World War II.

This proposed legislation would establish a fact-finding commission to determine whether any wrong was committed against the 120,000 American citizens and permanent residents of Japanese descent who were interned pursuant to Executive Order Numbered 9066 issued February 19, 1942, and other associated acts of the Federal Government, and to recommend appropriate remedies.

The relocation and internment of these people constituted an unprecedented violation of rights granted to every human being under the United States Constitution. The uprooting and punishment of an entire community, against whom no criminal charges were ever lodged, is a shameful chapter in our national history which must not be forgotten lest it be repeated.

Thank you for your prompt favorable action on this matter.

Yours truly,

Tom Bradley

TOM BRADLEY
Mayor

TB:llg
cc: Board of Human Relations Commissioners
Enclosures

CITY OF LOS ANGELES
CALIFORNIA

BOARD OF HUMAN RELATIONS COMMISSIONERS
TOSHIKO S. YOSHIDA
PRESIDENT
MAUDIE D. CUMMINGS
VICE PRESIDENT
RICHARD A. ANNOTICO
FRED M. BALL
JESSIE MAE BEAVERS
JESS Z. BOJORQUEZ
ALFRED MENDOZA, JR.
WARREN L. STEINBERG
SONIA S. SUK

TOM BRADLEY
MAYOR

ADMINISTRATIVE OFFICE
ROOM 111, CITY HALL
LOS ANGELES, CA 90012
485-4495
DORIS N. COLLY
SECRETARY

November 9, 1979

Honorable Tom Bradley
Mayor
Room 305, City Hall

JAPANESE AMERICAN REDRESS BILLS

Dear Mayor Bradley:

Upon request of the Japanese American Citizens League, and deliberation by the Commission at its regular meeting on November 9, the Commission unanimously went on record in support of Senate Bill 1647 and House of Representatives Bill H.R. 5499; introduced in Congress to investigate the internment of Japanese American Citizens during World War II.

We urge that you and the Los Angeles City Council support these two bills; and that copies of the attached Resolution be transmitted to members of the United States Congress and the President of the United States.

Sincerely,

HUMAN RELATIONS COMMISSION
OF THE CITY OF LOS ANGELES

Toshiko S. Yoshida

Commissioner Toshiko S. Yoshida
President

TSY:dc

Encl - Resolution

63-293 0 - 80 - 18

CITY OF LOS ANGELES

CALIFORNIA

ADMINISTRATIVE OFFICE
ROOM 111, CITY HALL
LOS ANGELES, CA 90012
485-4495

DORIS N. COLLY
SECRETARY

TOM BRADLEY
MAYOR

RESOLUTION

WHEREAS, the Congress of the United States is now considering S. 1647 and H.R. 5499, which would establish a Commission to study the evacuation of 120,000 persons of Japanese ancestry from the West Coast in 1942, two-thirds of whom were United States citizens, against whom no charges were ever filed and concerning whom no imputation of disloyalty was ever lodged; and

WHEREAS, such Commission would be charged with the responsibility of studying the legal and constitutional aspects of such unprecedented action by the United States government against its own citizens, to determine whether wrong was committed and if so, to recommend redress in such manner as to be determined by the Congress of the United States, to the end that such an aberration of justice will never again occur; and

WHEREAS, the Human Relations Commission of the City of Los Angeles is concerned with such complete denial of civil rights, and with the possibilities of recurrence of such governmental action based upon the precedent of the Japanese American evacuation of 1942, and therefore believes that the present bills in Congress should be supported,

NOW, THEREFORE, BE IT RESOLVED that the Human Relations Commission of the City of Los Angeles supports passage of S. 1647 and H.R. 5499, and urge that the Mayor and City Council support such legislation, and that copies of this resolution be transmitted to members of the United States Congress, and the President of the United States.

Resolution adopted this 1st of November, 1979.

Toshiko S. Yoshida

Toshiko S. Yoshida, President

Maudie D. Cummings

Maudie D. Cummings, Vice President

Anti-Defamation League of B'nai B'rith

March 26, 1980

Hon. Abraham A. Ribicoff
Committee on Governmental Affairs
3308 Dirksen Building
Washington, D. C. 20510

Dear Mr. Chairman:

The Anti-Defamation League of B'nai B'rith welcomes this opportunity to give you its comments in support of S. 1647, a bill introduced by Senators Inouye, Matsunaga, Hayakawa, Cranston, McClure and Church, to establish a commission to look into the events surrounding the relocation and internment of over a hundred thousand civilians of Japanese ancestry during World War II. More specifically, the bill would "establish a factfinding commission to determine whether a wrong was committed against those American citizens and permanent resident aliens relocated and/or interned as a result of Executive Order 9066 and other associated acts of the Federal government, and to recommend appropriate remedies."

B'nai B'rith, founded in 1843, is the oldest and largest Jewish service organization in the United States. Its educational arm, the Anti-Defamation League (ADL), was organized in 1913 to advance good will and mutual understanding among all Americans and to combat discrimination against Jews and other religious, racial and ethnic groups. It has had a long history of working together with the Japanese American Citizens League and other civil rights groups to assure that every individual receives equal treatment under the law, regardless of race, creed, color, sex or national origin.

On February 19, 1942, shortly after America's entry into World War II, President Franklin D. Roosevelt signed Executive Order 9066 which empowered military commanders to prescribe certain "military areas" from which they could exclude any and all persons. The order did not mention any specific group of persons. Yet, during the following four years, this authority was used by officials of the United States government to remove and incarcerate some 77,000 American citizens of Japanese ancestry, and 43,000 Japanese nationals, most of whom were permanent U.S. residents.

Many people believe the attack on Pearl Harbor was the justification for this relocation of Japanese Americans. In fact, military necessity was the reason given by the government for this action. But, if national security was the rationale, why were Japanese Americans in Hawaii not similarly interned, and why were German and Italian aliens not subjected to similar restrictions? Why were Japanese Americans subjected to wholesale internment when no person of Japanese ancestry living in the United States, or the then-territories of Alaska and Hawaii, had ever been charged with any act of espionage or sabotage prior to the issuance of the Executive Order nor, indeed, at any time thereafter? Why, therefore, was this group of civilians singled out and deprived of liberty and property without criminal charges or a trial of any kind?

What motivated this removal and internment of unprecedented numbers of Japanese Americans and permanent resident aliens of Japanese ancestry? Was it necessary to insulate Japanese Americans from the possible effects of a wartime hysteria? Was it the consequence of prejudice and discrimination against persons of Japanese ancestry which was built up over a long period of time? These are some of the questions which still remain unanswered some forty years after these events took place.

As President Ford said when he rescinded Executive Order 9066, exactly 34 years after its issuance, "An honest reckoning, however, must include a recognition of our national mistakes as well as our national achievements. Learning from our mistakes is not pleasant, but as a great philosopher once admonished, we must do so if we want to avoid repeating them."

Committed as we are by our charter adopted in 1913, "to secure justice and fair treatment for all citizens alike," the Anti-Defamation League believes it is time for our government to look into and focus its attention on the events surrounding this mass incarceration. Therefore, the Anti-Defamation League urges early passage of S.1647.

Sincerely,

Nathan Perlmutter

Nathan Perlmutter
National Director

NP:dlc

hand S-6

Board of Church and Society
The United Methodist Church

1980 MAY -6 PM 4:52

GOVERNMENTAL AFFAIRS CO

MAY 8 1980

May 6, 1980

The Honorable Abraham Ribicoff
Chairperson
Senate Governmental Affairs Committee
United States Senate
Washington, D. C. 20510

Dear Senator Ribicoff:

We have just been informed that your Governmental Affairs Committee will mark up Senate Bill 1647 (Wartime Relocation and Internment of Civilians Act) on Wednesday, May 7th. We would like to register our concern regarding this legislation and share with you and with each member of your Committee a copy of a resolution which was overwhelmingly adopted by the General Conference of The United Methodist Church, at its meeting in Indianapolis, Indiana on April 15-25, 1980.

The General Conference is the highest authoritative and legislative body of The United Methodist Church. It is the only body that can speak for the whole denomination. It consists of 1000 delegates with equal number of clergy and laypersons, coming from United Methodist Churches from across the United States and around the world.

"The General Conference acknowleges the flagrant violations of human rights" of the nearly 120,000 Americans of Japanese ancestry who were evacuated and incarcerated without trial or due process of law during World War II; it calls upon the United States Congress to enact appropriate legislation to recognize and rectify this past mistake of our country.

We trust that this resolution will be a part of your record and of your deliberations as you develop this particular legislation.

Yours sincerely,

George H. Outen
George H. Outen
General Secretary

Enclosure:

GHO:aa

63-293 343

RESOLUTION ON WORLD WAR II REDRESS FOR JAPANESE AMERICANS

Adopted by the General Conference of The United Methodist Church

Indianapolis, Indiana Meeting
April 15-25, 1980

Whereas, during World War II, the United States of America did forcibly remove and incarcerate, without charges, trial, or any due process of law, 120,000 persons of Japanese ancestry, both citizens and residents aliens of American and citizens from Latin America; and

Whereas, this action was initiated by a presidential order, enabled by Congressional legislation, and supported by the Supreme Court, thereby implicating the total government; and

Whereas, despite the government's claim of military necessity, this action proved to be made solely on the basis of race, there having been not a single case of sabotage or espionage committed by such persons and there having been no such sweeping action taken against Americans of German or Italian ancestry; and

Whereas, the American Convention on Human Rights, to which this country is signatory, states;

> "Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgement through a miscarriage of justice,"

Therefore, Be It Resolved:

(1) that we urge a study of the facts surrounding the evacuation and incarceration without trial or due process of law of nearly 120,000 Americans of Japanese ancestry;

(2) that this General Conference acknowledges the flagrant violations of human rights, and affirms the need for the United States of America for redress legislation;

(3) that we call upon Congress to support legislation that would determine appropriate remedies and;

(4) that the General Board of Church and Society be instructed to communicate this resolve to all members of Congress, and to adopt support for redress as part of its program for this quadrennium.

YALE UNIVERSITY
LAW SCHOOL
401-A YALE STATION
NEW HAVEN, CONNECTICUT 06520

EUGENE V. ROSTOW

(203) 436-2534

March 13, 1980

Honorable Abraham A. Ribicoff
Chairman
Senate Committee on Governmental Affairs
Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

I strongly support the passage of S. 1647, and should be grateful if this letter and its enclosure could be included in the record of the Hearings on the Bill.

A fresh and thorough review of what we did during World War II to our fellow citizens of Japanese descent who lived on the West Coast could make many contributions to the health of our public life. It should help to obtain the ultimate reversal of three dangerous precedents in our constitutional law, those of Hirabayashi v. United States, 320 U.S., 81 (1943), Korematsu v. United States, 323 U.S., 214 (1944), and Exparte Endo, 323 U.S., 283 (1944), which Justice Jackson rightly characterized as "a loaded gun". Recalling this bleak chapter of our affairs should help also to keep our government from acting so irrationally on cognate issues during future emergencies. And above all, a strong Report from a distinguished commission should serve the highest cause of all, that of doing full justice to many who have suffered injustice, and have not yet received what is due them.

I enclose for the record a copy of my article, "The Japanese-American Cases: A Disaster", which appeared first in 54 Yale L.J. 485 (1945). This paper has been published in a variety of forms. The version enclosed is reproduced from my book, The Sovereign Prerogative (1962), and includes an afterword on the ceremony organized and sponsored by Attorney General William P. Rogers in 1959.

Looking back at the Japanese-American internment and relocation program after so many years is a chastening experience. In a time of fear and panic, some of the finest people our civilization has produced -- Franklin D. Roosevelt, Henry L. Stimson, Earl Warren, Hugo L. Black, Francis Biddle, and many others -- supported and accepted the program as a reasonable way to deal with the problem of security after Pearl Harbor. And the Supreme Court failed in this instance to meet its responsibilities.

The conclusion I draw from these events is that while every human being, including the best we know, is capable of doing wrong, it is meet -- and indeed it is our responsibility -- to do what we can in our turn to correct such errors and injustices, even a generation later.

I hope the Congress and the President will approve S. 1647. I believe it could strengthen the quality of American life, and reaffirm, in this important instance our commitment to the ideal of justice. It is never too late to do the right thing.

Yours sincerely,

EVR/kr
Enclosure
cc: Senator Daniel K. Inouye
Dictated but not signed

7
The Japanese American Cases—A Disaster

He [the King of Great Britain] *has affected to render the Military independent of and superior to the Civil Power.*

—THE DECLARATION OF INDEPENDENCE

War is too serious a business to be left to generals.

—CLEMENCEAU

OUR WARTIME treatment of Japanese aliens and citizens of Japanese descent on the West Coast was hasty, unnecessary, and mistaken. The course of action which we undertook was in no way required or justified by the circumstances of the war. It was calculated to produce both indi-

The following short-form citations will be used: *Tolan Committee Hearings: Hearings before House Select Committee Investigating National Defense Migration pursuant to H. Res. 113*, 77th Cong., 2d Sess. (1942); *Tolan Committee Reports (Preliminary)* and *(Fourth Interim):* H. R. Rep. No. 1911 *(Preliminary Report and Recommendations)* and H. R. Rep. No. 2124 *(Fourth Interim Report)*, 77th Cong., 2d Sess. (1942); *DeWitt Final Report:* U. S. Army, Western Defense Command, *Final Report, Japanese Evacuation from the West Coast*, 1942 (1943, released 1944).

First published in 54 *Yale Law Journal* 489 (1945); a shortened version appeared in *Harper's Magazine* in 1945 under the title, "Our Worst Wartime Mistake."

vidual injustice and deep-seated social maladjustments of a cumulative and sinister kind.[1]

All in all, the internment of the West Coast Japanese is the worst blow our liberties have sustained in many years. Over 100,000 men, women, and children were imprisoned, some 70,000 of them citizens of the United States, without indictment or the proffer of charges, pending inquiry into their "loyalty." They were taken into custody as a military measure on the ground that espionage and sabotage were especially to be feared from persons of Japanese blood. They were removed from the West Coast area because the military thought it would take too long to conduct individual loyalty investigations on the ground. They were arrested in an area where the courts were open and freely functioning. They were held under prison conditions in uncomfortable camps, far from their homes, and for lengthy periods—several

1. See Message from the President of the United States, Segregation of Loyal and Disloyal Japanese in Relocation Centers, Report on S. Res. 166, 78th Cong., 1st Sess., S. Doc. No. 69 (1943); *Tolan Committee Reports (Preliminary* and *Fourth Interim)*; McWilliams, *Prejudice* (1944); McWilliams, *What About Our Japanese Americans* (1944); Leighton, *The Governing of Men* (1945); An Intelligence Officer, "The Japanese in America: The Problem and the Solution," 185 *Harper's Mag.* 489 (1942); Miyamoto, "Immigrants and Citizens of Japanese Origin," 223 *Annals* 107 (1942); Fisher, "What Race Baiting Costs America," 60 *Christian Century* 1009 (1943); Heath, "What About Hugh Kiino?" 187 *Harper's Mag.* 450 (1943); "Issei, Nisei, Kibei," 29 *Fortune* 8 (April 1944); Bellquist, "Report on the Question of Transferring the Japanese from the Pacific Coast," 29 *Tolan Committee Hearings* 11240 (1942); La Violette, "The American-Born Japanese and the World Crisis," 7 *Can. J. Econ. & Pol. Sci.* 517 (1941); Redfield, "The Japanese-Americans," in *American Society in Wartime* 143 (Ogburn ed. 1943); Stonequist, "The Restricted Citizen," 223 *Annals* 149 (1942).

The War Relocation Authority compiled an admirable bibliography on Japanese and Japanese Americans in the United States; Parts I and II were published Nov. 7, 1942, and Part III Aug. 14, 1943. *The Pacific Citizen*, a newspaper published in Salt Lake City by the Japanese American Citizens League is an indispensable source of material on events and attitudes with respect to the process of evacuation, internment, and relocation.

years in many cases. If found "disloyal" in administrative proceedings they were confined indefinitely, although no statute makes "disloyalty" a crime; it would be difficult indeed for a statute to do so under a Constitution which has been interpreted to minimize imprisonment for political opinions, both by defining the crime of treason in extremely rigid and explicit terms, and by limiting convictions for sedition and like offenses.[2] In the course of relocation citizens suffered severe property losses, despite some custodial assistance by the government.[3] Perhaps seventy thousand persons were still in camps, "loyal" and "disloyal" citizens and aliens alike, more than three years after the programs were instituted.[4]

By the time the question reached the Supreme Court, the crisis which was supposed to justify the action had passed. The Court faced two issues: should it automatically accept the judgment of the military as to the need for the relocation program, or should it require a judicial investigation of the question? Was there factual support for the military

2. See Cramer v. United States, 325 U.S. 1 (1945) (treason). For the evidence required to justify imprisonment for attacking the loyalty of the armed forces, see Hartzel v. United States, 322 U.S. 680 (1944). It is notable that persons—citizens or aliens—who actively propagandized in favor of the Axis cause could not be convicted of sedition nor placed into protective custody, although loyal citizens of Japanese descent could be arrested and held in preventive custody for periods of more than three years. See also Keegan v. United States, 325 U.S. 478 (1945), which reversed the conviction of active members of the German-American Bund, a Nazi organization, for conspiracy to obstruct the draft. Apparently the defendants included persons of German nationality as well as of German descent, id. at 1212. As for the difficulty of obtaining individual exclusion orders against persons—usually naturalized citizens—with strong German political affiliations, see cases cited infra note 13.

3. On the handling of evacuees' property see War Relocation Authority, *A Statement on Handling of Evacuee Property* (May 1943); *DeWitt Final Report*, c. xi; *Tolan Committee Reports (Fourth Interim)* 173–97.

4. See Myer, "The WRA Says 'Thirty,'" 112 *New Republic* 867 (1945).

judgment that the course of the war required the exclusion and confinement of the Japanese American population of the West Coast? Clearly, if such steps were not necessary to the prosecution of the war, they invaded rights protected by the third article of the Constitution, and the Fifth and Sixth Amendments.

If the Court had stepped forward in bold heart to vindicate the law and declare the entire program illegal, the episode would have been passed over as a national scandal, but a temporary one altogether capable of reparation. But the Court, after timid and evasive delays, upheld the main features of the program.[5] That step converted a piece of wartime folly into political doctrine and a permanent part of the law. Moreover, it affected a peculiarly important and sensitive part of the law. The relationship of civil to military authority is not often litigated. It is nonetheless one of the two or three most essential elements in the legal structure of a democratic society. The Court's few declarations on the subject govern the handling of vast affairs. They determine the essential organization of the military establishment, state and federal, in time of emergency or of war, as well as of peace. What the Supreme Court did in these cases, and especially in *Korematsu v. United States,* was to in-

5. Hirabayashi v. United States, 320 U.S. 81 (1943); Korematsu v. United States, 323 U.S. 214 (1944); *Ex parte* Mitsuye Endo, 323 U.S. 283 (1944). See Fairman, *The Law of Martial Rule* 255–61 (2d ed. 1943); Dembitz, "Racial Discrimination and the Military Judgment," 45 *Colum. L. Rev.* 175 (1945); Fairman, "The Law of Martial Rule and the National Emergency," 55 *Harv. L. Rev.* 1253 (1942); Freeman, "Genesis, Exodus and Leviticus: Genealogy, Evacuation and the Law," 28 *Cornell L. Q.* 414 (1943); Graham, "Martial Law in California," 31 *Calif. L. Rev.* 6 (1942); Lerner, "Freedom: Image and Reality," in *Safeguarding Civil Liberty Today* (1945); Watson, "The Japanese Evacuation and Litigation Arising Therefrom," 22 *Ore. L. Rev.* 46 (1942); Wolfson, "Legal Doctrine, War Power and Japanese Evacuation," 32 *Ky. L. J.* 328 (1944); Comment, 51 *Yale L. J.* 1316 (1942); Note, 11 *Geo. Wash. L. Rev.* 482 (1943).

crease the strength of the military in relation to civil government. It upheld an act of military power without a factual record in which the justification for the act was analyzed. Thus it created doubt as to the standards of responsibility to which the military power will be held. For the first time in American legal history, the Court seriously weakened the protection of our basic civil right, the writ of habeas corpus. It established a precedent which may well be used to encourage attacks on the civil rights of citizens and aliens, and may make it possible for some of those attacks to succeed. It will give aid to reactionary political programs which use social division and racial prejudice as tools for conquering power. As Mr. Justice Jackson pointed out, the principle of these cases "lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."[6]

The opinions of the Supreme Court in the Japanese American cases do not belong in the same political or intellectual universe with *Ex parte Milligan*,[7] *DeJonge v. Oregon*,[8] *Hague v. CIO*,[9] or Mr. Justice Brandeis' opinion in the *Whitney* case.[10] They threaten even more than the trial tradition of the common law and the status of individuals in relation to the state. By their acceptance of ethnic differences as a criterion for discrimination, these cases will make it more difficult to resolve one of the central problems in

6. Korematsu v. United States, 323 U.S. 214, 246 (1944).

7. 4 Wall. 2 (U.S. 1867).

8. 299 U.S. 353 (1937).

9. 307 U.S. 496 (1939).

10. Whitney v. California, 274 U.S. 357, 372–80 (1927). See Prof. Riesman's thoughtful essay, "Civil Liberties in a Period of Transition," in 3 *Public Policy* 33 (1942); Chafee, *Free Speech in the United States* (1941) passim, especially pp. 440–90; Lusky, "Minority Rights and the Public Interest," 52 *Yale L. J.* 1 (1942).

American life—the problem of minorities. They are a breach, potentially a major breach, in the principle of equality. Unless repudiated, they may encourage devastating and unforeseen social and political conflicts.

II

What General DeWitt did in the name of military precaution within his Western Defense Command was quite different from the security measures taken in Hawaii or on the East Coast—although both places were more active theaters of war in 1942 than the states of Washington, Oregon, California, and Arizona, which comprised the Western Defense Command.

On the East Coast, and in the United States generally, enemy aliens were controlled without mass arrests or evacuations, despite a considerable public agitation in favor of violent action. A registration of aliens had been accomplished under the Alien Registration Act of 1940, and the police authorities had compiled information about fascist sympathizers among the alien population, as well as about those who were citizens. "On the night of December 7, 1941," the Attorney General reported, "the most dangerous of the persons in this group were taken into custody; in the following weeks a number of others were apprehended. Each arrest was made on the basis of information concerning the specific alien taken into custody. We have used no dragnet techniques and have conducted no indiscriminate, large-scale raids."[11] Immediately after Pearl Harbor restric-

11. *Annual Report of the Attorney General for Fiscal Year Ended June 30, 1942* at 14 (1943). In the first few weeks of war, 2,971 enemy aliens were taken into custody, 1,484 Japanese, 1,256 Germans and 231 Italians. See *N.Y. Times*, Jan. 4, 1942, § IV, p. 8, col. 3. The basic Presidential proclamations on the treatment of enemy aliens appear in 6 *Fed. Reg.* 6321, 6323, 6324 (1941). Regulations under them were issued from time to time by the

tions were imposed upon the conduct of all enemy aliens over fourteen years of age. They were forbidden the Canal Zone and certain restricted military areas thereafter to be specified. They were not to leave the country, travel in a plane, change their place of abode, or travel about outside their own communities without special permission. They were forbidden to own or use firearms, cameras, short-wave radio sets, codes, ciphers, or invisible ink. The district attorneys were given broad discretion to allow aliens of enemy nationality to carry on their usual occupations, under scrutiny, but without other restriction. A new registration of aliens of enemy nationality was conducted. The basic object of the control plan was to keep security officers informed, but otherwise to allow the aliens almost their normal share in the work and life of the community.

Aliens under suspicion, and those who violated the regulations, were subject to summary arrest on Presidential warrant. "The law," the Attorney General said, "does not require any hearing before the internment of an enemy alien. I believed that nevertheless, we should give each enemy alien who had been taken into custody an opportunity for a hearing on the question whether he should be interned."[12] Those arrested were therefore promptly examined by voluntary Alien Enemy Hearing Boards, consisting of citizens appointed for the task by the Attorney General. These Boards could recommend that individuals be interned,

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Attorney General. See, e.g., 7 *Fed. Reg.* 844 (1942). See *Tolan Committee Reports (Fourth Interim)* 25; Biddle, "Taking No Chances," *Collier's*, March 21, 1942, p. 21; Lasker, "Friends or Enemies?" 31 *Survey Graphic* 277 (1942); Rowe, "The Alien Enemy Program—So Far," 2 *Common Ground* 19 (Summer 1942); Bentwich, "Alien Enemies in the United States," 163 *Contemp. Rev.* 225 (1943); Comment, 51 *Yale L. J.* 1316 (1942).

12. *Annual Report of the Attorney General for Fiscal Year Ended June 30, 1942* at 14 (1943).

paroled, or released unconditionally. This operation was smoothly conducted, with a minimal interference with the standards of justice in the community. Of the 1,100,000 enemy aliens in the United States, 9,080 had been examined by the end of the fiscal year 1943; 4,119 were then interned, 3,705 paroled, 1,256 released, and 9,341 were still in custody. On June 30, 1944, the number in custody had been reduced to 6,238. The number of those interned was then 2,525, those paroled, 4,840, and those released, 1,926.[13]

In Hawaii a somewhat different procedure was followed, but one less drastic than the evacuation program pursued on the West Coast. Immediately after Pearl Harbor martial law was declared in Hawaii, and the commanding general assumed the role of military governor. Courts were reopened for some purposes shortly after the bombing raid, but the return of civil law to Hawaii was a slow, controversial process. During the period of three and a half years after Pearl Harbor, military power was installed in Hawaii, con-

13. The number in custody was greater than the number interned by reason of the inclusion of members of internees' families who requested internment, as well as certain alien enemy seamen and alien enemies held for Central and South American countries. See *Annual Report of the Attorney General for Fiscal Year Ended June 30, 1944* at 8 (1945).

A small number of citizens and enemy aliens suspected of a propensity for espionage or sabotage by reason of their political opinions were ordered removed from designated security areas both on the East and West Coasts under the statute of March 21, 1942, cited infra note 27. This process met with notable judicial resistance. Schueller v. Drum, 51 F. Supp. 383 (E. D. Pa. 1943); Ebel v. Drum, 52 F. Supp. 189 (D. Mass. 1943); Scherzberg v. Maderia, 57 F. Supp. 42 (E. D. Pa. 1944). Cf. Labedz v. Kramer, 55 F. Supp. 25 (D. Ore. 1944); Ochikubo v. Bonesteel, 57 F. Supp. 513 (S. D. Calif. 1944). See also United States v. Meyer, 140 F. 2d 652 (2nd Cir., 1944); Alexander v. DeWitt, 141 F. 2d 573 (9th Cir., 1944). The standards developed in these cases to justify the exclusion of persons from military areas as dangerous now closely correspond to those applied in sedition cases. Exclusion will be sustained, that is, only on a showing of "clear and present danger," of aid to the enemy, something more than opinions alone.

stitutionally or not, and the normal controls against arrest on suspicion were not available.[14] The population of Hawaii was then 500,000, of whom some 160,000, or 32 per cent, were of Japanese descent. Despite the confusions of the moment in Hawaii, only 700 to 800 Japanese aliens were arrested and sent to the mainland for internment. In addition, fewer than 1,100 persons of Japanese ancestry were transferred to the mainland to relocation centers. These Japanese were arrested on the basis of individual suspicion, resting on previous examination or observed behavior, or they were families of interned aliens, transferred voluntarily. Of those transferred from Hawaii to the mainland, 912 were citizens, the rest aliens.[15] Even under a regime of martial law, men were arrested as individuals, and safety was assured without mass arrests.

These procedures compare favorably in their essential character with the precautions taken in Britain and France. The British procedure was the model for our general practice in dealing with enemy aliens. The British government began in 1939 by interning only those enemy aliens who were on a "security list." Others were subjected to minor police restrictions, pending their individual examination by especially established tribunals. One hundred and twelve

14. See Fairman, *The Law of Martial Rule* 239–55 (2d ed. 1943); Lind, *The Japanese in Hawaii under War Conditions* (1942); Anthony, "Martial Law in Hawaii," 30 *Calif. L. Rev.* 371 (1942), 31 *Calif. L. Rev.* 477 (1943); Frank, "Ex parte Milligan v. The Five Companies: Martial Law in Hawaii," 44 *Colum. L. Rev.* 639 (1944); Coggins, "The Japanese-Americans in Hawaii," 187 *Harper's Mag.* 75 (1943); Fisher, "Our Two Japanese American Policies," 60 *Christian Century* 961 (1943); Henderson, "Japan in Hawaii," 31 *Survey Graphic* 328 (1942); Horne, "Are the Japs Hopeless?" *Sat. Eve. Post* 16 (Sept. 9, 1944); Lind, *Economic Succession and Racial Invasion in Hawaii* (1936); Lind, *An Island Community* (1938); Smith, "Minority Groups in Hawaii," 223 *Annals* 36 (1942).

15. Communication from the Hon. Abe Fortas, Under Secretary of the Interior, June 28, 1945.

such tribunals were set up, under citizens with legal experience, to examine all enemy aliens in Britain. There was an appeals advisory committee to advise the Home Secretary in disputed cases. Aliens were divided into three classes: those judged dangerous were interned; if judged doubtful in their loyalty, they were subjected to certain continuing restrictions, especially as to travel, and the ownership of guns, cameras, and radios; those deemed entirely loyal to the Allied cause were freed without further restraint. At first 2,000 enemy aliens on a blacklist were interned. But the entire group was then examined individually, and by March 1940 only 569 of approximately 75,000 aliens were ordered interned. During the panic period of 1940, a new screening was undertaken, to intern all those of doubtful loyalty, and other measures of mass internment were undertaken. Beginning as early as July 1940, however, the policy of wholesale internment was modified, and releases were granted, either generally or on certain conditions—the proved politics of the internee, his joining the Auxiliary Pioneer Corps, his emigration, and so on.[16] The maximum number interned during July 1940 was about 27,000 of a total enemy alien population (German, Austrian, and Italian) of about 93,000. By September 1941, the number of internees dropped to about 8,500. At the same time, the British undertook to arrest certain British subjects on suspicion alone, under the Emergency Powers Act of 1939. A constitutional storm was aroused by this procedure, which

16. "Report, The Position of Aliens in Great Britain During the War," 31 *Tolan Committee Hearings* 11861 (1942); Koessler, "Enemy Alien Internment: With Special Reference to Great Britain and France," 57 *Pol. Sci. Q* 98 (1942); Kempner, "The Enemy Alien Problem in the Present War," 34 *Am. J. Int'l L.* 443 (1940); Cohn, "Legal Aspects of Internment," 4 *Modern L. Rev.* 200 (1941); Feist, "The Status of Refugees," 5 *Modern L. Rev.* 31 (1941).

was finally resolved in favor of the government.[17] The general pattern of British security practice was thus to treat enemy aliens on an individual basis and to arrest British subjects of Fascist tendencies in a limited number, and then only on strong personal suspicion.

In France all men enemy aliens between the ages of 17 and 65 were interned in 1939. After a good deal of confusion and complaint, and a vigorous parliamentary protest, many were screened out, either upon joining the Foreign Legion or, for older men, upon examination and sponsorship by French citizens. Further parliamentary criticism in December 1939 led to relief for the internees, but the crisis of May and June 1940 produced mass internment. In France, though less effectively than in Britain, the principle of internment on an individual basis was the objective of policy, if not always its norm.[18]

But on the West Coast the security program was something else again. A policy emerged piecemeal, apparently without sponsors or forethought. By May 1, 1942, it had become a policy of evacuating all persons of Japanese ancestry from the West Coast and confining them indefinitely in camps located away from the coastal area. After some hesitation, General DeWitt proposed evacuation. Quite clearly, a conflict took place between the military authorities on the West Coast and some of the representatives of the Department of Justice over the justification for such

17. Liversidge v. Anderson [1942] A. C. 206; Greene v. Secretary of State [1942] A. C. 284; Keeton, "Liversidge v. Anderson," 5 *Modern L. Rev.* 162 (1942); Allen, "Regulation 18B and Reasonable Cause," 58 *L. Q. Rev.* 232 (1942); Goodhart, Notes, 58 *L. Q. Rev.* 3, 9 (1942), and "A Short Replication," 58 *L. Q. Rev.* 243 (1942); Holdsworth, Note, 58 *L. Q. Rev.* 1 (1942); Carr, "A Regulated Liberty," 42 *Colum. L. Rev.* 339 (1942), and "Crisis Legislation in Britain," 40 *Colum. L. Rev.* 1309 (1940).

18. See Koessler, *supra* note 16, at 114 *et seq.*

action.[19] But no one in the government would take the responsibility for overruling General DeWitt and the War Department, which backed him up.

The dominant factor in the development of this policy was not a military estimate of a military problem, but familiar West Coast attitudes of race prejudice. The program of excluding all persons of Japanese ancestry from the coastal area was conceived and put through by the organized minority whose business it has been for forty-five years to increase and exploit racial tensions on the West Coast. The Native Sons and Daughters of the Golden West and their sympathizers were lucky in their general, for General DeWitt amply proved himself to be one of them in opinion and values. As events happened, he became the chief policymaker in the situation, and he caused more damage even than General Burnside, whose blunderings with Vallandigham, the Ohio Copperhead, in 1863, were the previous high in American military officiousness.[20]

In the period immediately after Pearl Harbor there was no special security program on the West Coast for persons of Japanese extraction, and no general conviction that a special program was needed.[21] Known enemy sympathizers

19. See *DeWitt Final Report* at 3, 7, 19. Mr. Justice Clark (then in the Justice Department) stated that mass evacuation was not contemplated as necessary on Feb. 23, 1942. 29 *Tolan Committee Hearings* 11164.

20. See 2 Sandburg, *Abraham Lincoln, The War Years* 160–65 (1939). President Lincoln wrote to General Burnside, "All the Cabinet regretted the necessity of arresting for instance Vallandigham—some perhaps doubting that there was a real necessity for it, but being done all were for seeing you through with it." Lincoln arranged to have Vallandigham passed through the Confederate lines and banished. Randall, *Constitutional Problems under Lincoln* 176–79 (1926). The text of Lincoln's remarks is given somewhat differently by Sandburg and Randall. See also Klaus, *The Milligan Case*, 12–16 (1929).

21. See Rowell, "Clash of Two Worlds," 31 *Survey Graphic* 9, 12 (1942); McWilliams, *Prejudice* 108–14 (1944); *Tolan Committee Reports (Fourth Interim)* 154–56; An Intelligence Officer, "The Japanese in America: The Problem and the Solution," 185 *Harper's Mag.* 489 (1942).

among the Japanese, like white traitors and enemy agents, were arrested. There was no sabotage on the part of persons of Japanese ancestry, either in Hawaii or on the West Coast. There was no reason to suppose that the 112,000 persons of Japanese descent on the West Coast, 1.2 per cent of the population, constituted a greater menace to safety than such persons in Hawaii, 32 per cent of the Territory's population. Their access to military installations was not substantially different in the two areas; their status in society was quite similar; their proved record of loyalty in the war was the same. Although many white persons were arrested and convicted as Japanese agents, no resident Japanese American was convicted of sabotage or espionage as an agent of Japan.[22]

After a month's silence, the professional anti-Oriental agitators of the West Coast began a comprehensive campaign. There had been no sabotage in the area, although there was evidence of radio signaling from unknown persons within the area to enemy ships at sea. The West Coast Congressional delegation, led by Senator Hiram Johnson, memorialized the Administration in favor of excluding all persons of Japanese lineage from the coastal area. Anti-Oriental spokesmen appeared as witnesses before the Tolan Committee,[23] and later the Dies Committee,[24] and they explained the situation as they conceived of it to General DeWitt.[25] Some of the coast newspapers, and particularly those owned by William Randolph Hearst, took up the cry. Politicians, fearful of an unknown public opinion, spoke out for white supremacy. Tension was intensified, and doubters,

22. See McWilliams, *Prejudice* 111 (1944).

23. 29 *Tolan Committee Hearings* 10973, 11061, 11068, 11087, 11111; 30 id. at 11303–06, 11314–21, 11325; 31 id. at 11642.

24. *Hearings before Special Committee on Un-American Activities on H. Res. 282*, 78th Cong., 1st Sess. (1943), vols. 15, 16.

25. 31 *Tolan Committee Hearings* 11643; *Hearings before Special Committee on Un-American Activities*, supra note 24, vol. 15, p. 9207.

worried about the risks of another Pearl Harbor, remained silent, preferring too much caution to too little. An opinion crystallized in favor of evacuating the Japanese. Such action was at least action, promising greater relief from tension than the slow, patient work of military preparation for the defense and counterattack. German and Italian aliens were too numerous to be arrested or severely confined, and they were closely connected with powerful blocs of voters. There were too many Japanese Americans in Hawaii to be moved. The 100,000 persons of Japanese descent on the West Coast thus became the chief available target for the release of frustration and aggression.

Despite the nature of the emergency, the military refused to act without fuller legal authority. Executive Order No. 9066 was issued on February 19, 1942, authorizing the Secretary of War, and military commanders he might designate, to prescribe "military areas" in their discretion, and either to exclude any or all persons from such areas or to establish the conditions on which any or all such persons might enter, remain in, or leave such areas.[26] Lieutenant General J. L. DeWitt, head of the Western Defense Command, was ordered on February 20, 1942, to carry out the policy of the Executive Order. During the first two weeks of March, more than three months after Pearl Harbor, General DeWitt issued orders in which he announced that he would subsequently exclude "such persons or classes of persons as the situation may require" from the area.

But the Army's lawyers wanted more authority than the Executive Order. With inevitable further delays, a statute was therefore obtained prescribing that

> whoever shall enter, remain in, leave, or commit any act in any military area or military zone prescribed,

26. 7 *Fed. Reg.* 1407 (1942).

> under the authority of an Executive order of the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be guilty of a misdemeanor and upon conviction shall be liable to a fine of not to exceed $5,000 or to imprisonment for not more than one year, or both, for each offense.[27]

The statute thus authorized the exclusion of people from the military areas. It said nothing about their subsequent confinement in camps. This omission was seized upon in *Ex parte Endo* as a crucial fact limiting the power of the government to hold persons shifted under military orders to relocation centers.[28]

Starting on March 27, 1942, almost four months after Pearl Harbor, the first actual restrictions were imposed. A policy of encouraging the Japanese to move away on a voluntary and individual basis had shown signs of producing confusion and irritation.[29] It was decided to have a uniform and comprehensive program of governmentally controlled migration. At first Japanese aliens and citizens of Japanese ancestry were subjected to the same controls applied to German and Italian aliens. Citizens of German and Italian descent were left free. Early in April, the first of a series of civilian exclusion orders were issued. They applied only to Japanese aliens and citizens of Japanese descent, who were

27. 56 Stat. 173 (1942), 18 U.S.C. § 97a (Supp. 1943).

28. *Ex parte* Mitsuye Endo, 323 U.S. 283, 300–01 (1944).

29. See *DeWitt Final Report*, c. ix. But see Fisher, "Japanese Colony: Success Story," 32 *Survey Graphic* 41 (1943).

to be excluded altogether from West Coast areas, ordered to report to control stations, and then confined in camps conducted by the newly organized War Relocation Authority, which became an agency of the Department of the Interior on February 16, 1944.[30]

The rules and policies of these camps were perhaps the most striking part of the entire program. Despite the humanitarian character of the WRA, which was from the beginning intrusted to high-minded and well-meaning men, a policy for discharging Japanese was developed which encouraged lawlessness and refused support to the simplest constitutional rights of citizens and aliens. It was originally thought that the camps would give temporary haven to some Japanese refugees from the West Coast who could not easily arrange new homes, jobs, and lives for themselves. Then it was decided to make a stay in the camps compulsory, so as to facilitate the loyalty examinations which were supposed to have been too difficult and prolonged to conduct on the West Coast. Further, it was wisely decided that a loyalty "screening" would facilitate relocation and combat anti-Japanese agitation. The fact that all released evacuees had been approved, as far as loyalty was concerned, gave practical support to their position in new communities. Japanese aliens and citizens of Japanese origin found by this administrative process to be disloyal were confined indefinitely in a special camp. Persons of Japanese descent found to be loyal were to be released from the camps upon the satisfac-

30. Public Proclamations No. 1, 7 *Fed. Reg.* 2320 (1942), No. 2, 7 *Fed Reg.* 2405 (1942), No. 3, 7 *Fed. Reg.* 2543 (1942), and other public proclamations established restrictions on travel, residence, and activities for enemy aliens and citizens of Japanese extraction. Civilian Exclusion Order No. 1, March 24, 1942, 7 *Fed. Reg.* 2581 (1942), and subsequent exclusion orders established the basis of evacuation. Civilian Exclusion Order No. 34, 7 *Fed. Reg.* 3967 (1942), was the basis of Korematsu's case. The War Relocation Authority was established by Executive Order 9102, 7 *Fed. Reg.* 2165 (1942).

tion of certain conditions. As applied to citizens especially, those conditions upon the right to live and travel in the United States are so extraordinary as to require full statement:

> In the case of each application for indefinite leave, the Director, upon receipt of such file from the Project Director, will secure from the Federal Bureau of Investigation such information as may be obtainable, and will take such steps as may be necessary to satisfy himself concerning the applicant's means of support, his willingness to make the reports required of him under the provisions of this part, the conditions and factors affecting the applicant's opportunity for employment and residence at the proposed destination, the probable effect of the issuance of the leave upon the war program and upon the public peace and security, and such other conditions and factors as may be relevant. The Director will thereupon send instructions to the Project Director to issue or deny such leave in each case, and will inform the Regional Director of the instructions so issued. The Project Director shall issue indefinite leaves pursuant to such instructions.
>
> (f) A leave shall issue to an applicant in accordance with his application in each case, subject to the provisions of this Part and under the procedures herein provided, as a matter of right, where the applicant has made arrangements for employment or other means of support, where he agrees to make the reports required of him under the provisions of this Part and to comply with all other applicable provisions hereof, and where there is no reasonable cause to believe that applicant cannot successfully maintain employment and residence at the proposed destination, and no reasonable

ground to believe that the issuance of a leave in the particular case will interfere with the war program or otherwise endanger the public peace and security.

(g) The Director, the Regional Director, and the Project Director may attach such special conditions to the leave to be issued in a particular case as may be necessary in the public interest.[31]

In other words, loyal citizens were required to have official approval of their homes, jobs, and friends before they were allowed to move. They had to report subsequent changes of address and remain under scrutiny almost amounting to parole. Officials were required to ascertain that community sentiment was not unfavorable to the presence of such citizens before they were permitted to enter the community. The briefs in behalf of the United States

31. War Relocation Authority, "Issuance of Leave for Departure from a Relocation Area," 7 *Fed Reg.* 7656, 7657 (1942). These regulations were revised in detail from time to time, but their basic policy was not substantially altered. See War Relocation Authority, Administrative Notice No. 54 (Summary of Leave Clearance Procedures), March 28, 1944. The basic security data on an evacuee was provided by the FBI and other intelligence agencies, not by independent investigation. This data was supplemented by his answers to questionnaires, particularly as to his loyalty to the United States, and by field investigations in doubtful cases. These field investigations included interviews with the evacuee. An appeal was provided to a Board of Appeals for leave clearance, consisting of citizens not employed by the War Relocation Authority. This Board had the power to advise the Director. Actually, leave was granted *pending inquiry* in cases where the applicant did not have an adverse FBI record; had answered the loyalty questions affirmatively; was not a Shinto priest; and had not spent the larger part of his life in Japan. Thus in fact Japanese Americans were given permission to leave the camps and, after the decision in the *Endo* case, to return to their homes, on the basis of very little information beyond their answers to questionnaires, which was not available on the West Coast in 1942. Administrative Notice No. 54, supra. See discussion of issues in the report of the House Special Committee on Un-American Activities, H. R. Rep. No. 717, 78th Cong., 1st Sess. 13–16, 25 (1943).

before the Supreme Court in the *Korematsu* and *Endo* cases explain the kind of evidence regarded as sufficient to uphold a finding of unfavorable community sentiment and a suspension of the relocation process: the introduction of anti-Japanese bills in the local legislature, the occurrence of riots or other lawless episodes, and similar expressions of minority opinion.[32]

This policy played a part in encouraging the growth and violent expression of race antagonisms in American society. The forces of the national government were not devoted to protecting and vindicating what *Edwards v. California* had recently upheld as the privilege of a United States citizen, or indeed of any resident, to move freely from state to state without interference.[33] Local lynch spirit was not controlled and punished by the agencies of law enforcement. On the contrary, it was encouraged to manifest itself in words and unpunished deeds. The threat of lawlessness was allowed to frustrate the legal rights of colored minorities unpopular with small and articulate minorities of white citizens. In March 1943, a small number of Japanese returned to their homes in Arizona, which had been removed from the military zone, without substantial incident.[34] In the spring of 1945, however, the Ku Klux Klan spirit in California had been manifested in at least twenty major episodes of arson

32. Brief for United States, pp. 35–36, *Ex parte* Mitsuye Endo, 323 U.S. 283 (1944); Brief for United States, p. 15, Korematsu v. United States, 323 U.S. 214 (1944).

33. Edwards v. California, 314 U.S. 160 (1941). Justices Douglas, Black, Murphy, and Jackson concurred specially on the ground that California's ban on indigent migrants from the Southwest was not only an unconstitutional interference with commerce, but a violation of privileges and immunities of national citizenship. See Myers, "Federal Privileges and Immunities: Application to Ingress and Egress," 29 *Cornell L. Q.* 489 (1944).

34. See *Encyclopaedia Britannica Book of the Year:* 1944 at 47.

or intimidation.[35] The War Relocation Authority was consistently and effectively on the side of facilitating resettlement and combatting race prejudice. Yet the terms of its leave regulations constituted an extraordinary invasion of citizens' rights, as the Supreme Court later held. They were

35. "Are Japs Wanted?" *Newsweek*, May 28, 1945, p. 33. Including minor episodes, there were 59 such incidents by the end of April 1945. See *N.Y. Times*, May 6, 1945, § IV, p. 7, col. 4. Some of the episodes were terroristic shooting by night riders; others were arson, the desecration of cemeteries, posting of opprobious handbills, etc.; still others were commercial boycotts, like the refusal of Portland, Ore., vegetable merchants (largely of Italian descent) to buy farm produce from a Japanese American farmer. See *Pacific Citizen*, May 5, 1945, p. 5, col. 4. See also *N.Y. Times*, Jan. 11, 1945, p. 4, col. 7; id., Jan. 21, 1945, p. 4, col. 3; id., Feb. 17, 1945, p. 2, col. 5; id., Feb. 25, 1945, p. 26, col. 4; id., March 18, 1945, p. 17, col. 1. Both West Coast judges and juries tended to acquit persons charged with violence directed against the Japanese, often after confessions by defendants and inflammatory appeals by defense counsel. See *Pacific Citizen*, April 28, 1945, p. 1, col. 4; p. 4, col. 1 ("This is a white man's country"); 160 *The Nation* 531, 598 (1945). Labor leaders, historically one of the strongest anti-Japanese groups in West Coast life, were in the forefront of resistance to the return of the Japanese to their homes. See, e.g., the position of Dave Beck, reported in the *Pacific Citizen*, April 21, 1945, p. 4, col. 2; p. 5, col. 4.

Strong reactions of opinion and of citizens groups in favor of protecting the rights of Japanese Americans were manifested, led by Secretary of War Stimson, Secretary of the Interior Ickes, and the staff of the War Relocation Authority. See *Pacific Citizen*, April 7, 1945, p. 1, col. 1, quoting Secretary Ickes' forceful statement of April 4, 1945; *Pacific Citizen*, April 14, 1945, p. 2, col. 1 (Secretary Stimson's remarks at press conference of April 5). Many West Coast groups were organized to oppose the Klan movement in the Far West. See *Pacific Citizen*, April 28, 1945, p. 7, col. 1; id., April 21, 1945, p. 3, col. 1. See excellent speech of Attorney General Robert W. Kenny of California, delivered to a convention of California sheriffs, calling on law enforcement officers to protect the legal rights of returning Japanese Americans. *N.Y. Times*, March 18, 1945, p. 17, col. 1; *Pacific Citizen*, March 24, 1945, p. 1, col. 4; id., March 31, 1945, p. 5, col. 1 (partial text of Mr. Kenny's speech); Beshoar, "When Good Will Is Organized," 5 *Common Ground* 19 (Spring 1945); *Pacific Citizen*, March 3, 1945, p. 6, col. 1 (speech by Joe E. Brown before Commonwealth Club of San Francisco in behalf of fair play for Japanese Americans); *Time*, May 28, 1945, p. 13 (Quakers aid returned evacuees in Oregon).

a practical compromise, under the circumstances, but a compromise nonetheless, with social forces which might better have been opposed head-on.

Studies have appeared about conditions within the camps. They make it plain that the camps were in fact concentration camps, where the humiliation of evacuation was compounded by a regime which ignored citizens' rights and the amenities which might have made the relocation process more palatable.[36]

Thus there developed a system for the indefinite confinement and detention of Japanese aliens and citizens of Japanese descent, without charges or trial, without term, and without visible promise of relief. By May 1942, it was compulsory and self-contained. On pain of punishment under the Act of March 21, 1942, all had to leave the West Coast through Assembly Centers and the Relocation Centers. Counsel in the *Hirabayashi* case called it slavery; Mr. Justice Jackson said it was attainder of blood.[37] The Japanese radio discussed it at length, finding in the system ample propaganda material for its thesis that American society was incapable of dealing justly with colored peoples.

III

Attempts were made at once to test the legality of the program. The district courts and the circuit courts of appeals had a good deal of difficulty with the issues. Although troubled, they generally upheld both the exclusion of Japanese aliens and citizens from the West Coast, and at least their temporary confinement in WRA camps.[38]

36. See Leighton, op. cit. supra note 1.

37. Brief for Northern California Branch of the American Civil Liberties Union, p. 93; Korematsu v. United States, 323 U.S. 214, 243 (1944).

38. See, e.g., United States v. Yasui, 48 F. Supp. 40 (D. Ore. 1942); Korematsu v. United States, 140 F. 2d 289 (9th Cir., 1943).

The question of how and on what grounds the Supreme Court should dispose of the cases was one of broad political policy. Would a repudiation of the Congress, the President, and the military in one aspect of their conduct of the war affect the people's will to fight? Would it create a campaign issue for 1944? Would it affect the power, status, and prestige of the Supreme Court as a political institution? How would a decision upholding the government influence civil liberties and the condition of minorities? A bench of sedentary civilians was reluctant to overrule the military decision of those charged with carrying on the war. Conflicting loyalties, ambitions, and conceptions of the Court's duty undoubtedly had their part in the positions the Justices took.

The issue first came before the Supreme Court in May 1943, and the first cases, *Hirabayashi v. United States* and *Yasui v. United States,* were decided on June 21, 1943.[39] No Japanese submarines had been detected off the West Coast for many months. Midway was won; Libya, Tripolitania, and Tunisia had been conquered. Guadalcanal and a good deal of New Guinea were in Allied hands. The posture of the war had changed profoundly in a year. We had suffered no defeats since the fall of Tobruk in July 1942, and we had won a long series of preliminary victories. Our forces were poised for the offensive. The phase of aggressive deployment was over.

The problem presented to the Supreme Court was thus completely different from that which confronted worried legislators and officials in the bleak winter and spring of 1942. Invalidation of the exclusion and confinement programs would do no possible harm to the prosecution of the war. The Court could afford to view the issues in full perspective. The war powers of the legislature and executive

39. 320 U.S. 81 and 115 (1943).

must of course be amply protected. But the special concerns of the Supreme Court for the development of constitutional law as a whole could be given proper weight, free of the pressure of the Pearl Harbor emergency.

It was only half the truth to say that the cases had to be decided as if the date of decision were February 1942. It was not in fact the date of decision and could not be made so. The issue was not only whether the military should have excluded the Japanese in the spring of 1942, but whether the Court should now validate what had been done. As many episodes in the history of the United States eloquently attest, these are different issues. The problem of the Court in the *Hirabayashi* case was not that of General DeWitt in 1942, but an infinitely more complex one. Whether it faced the issues or tried to ignore them, whether it decided the cases frankly or obliquely, by decision or evasion, the Court could not escape the fact that it was the Supreme Court, arbiter of a vast system of rules, habits, customs, and relationships. No matter how inarticulate, its decision could not be confined in its effect to the United States Reports. It would necessarily alter the balance of forces determining the condition of every social interest within range of the problems of the cases—the power of the military and the police; our developing law of emergencies, which is beginning to resemble the French and German law of the state of siege; the status of minorities and of groups which live by attacking minorities; the future decision of cases in police stations and lower courts, involving the writ of habeas corpus, the equal rights of citizens, the protection of aliens, the segregation of racial groups, and like questions.

In a bewildering and unimpressive series of opinions, relieved only by the dissents of Mr. Justice Roberts and of Mr. Justice Murphy in *Korematsu v. United States*,[40] the Court

40. 323 U.S. 214, 225, 233 (1944).

chose to assume that the main issue of the cases—the scope and method of judicial review of military decisions—did not exist. In the political process of American life, these decisions were a negative and reactionary act. The Court avoided the risks of overruling the government on an issue of war policy. But it weakened society's control over military authority—one of the polarizing forces on which the organization of our society depends. And it solemnly accepted and gave the prestige of its support to dangerous racial myths about a minority group, in arguments which can be applied easily to any other minority in our society.

The cases are worth separate statement, for they are by no means alike. In *Hirabayashi v. United States* the Court considered a conviction based on the Act of March 21, 1942, for violating two orders issued by General DeWitt under authority of the Executive Order of February 19, 1942. Gordon Hirabayashi, a citizen of the United States and a senior in the University of Washington, was sentenced to three months in prison on each of two counts, the sentences running concurrently. The first count was that Hirabayashi failed to report to a control station on May 11 or May 12, 1942, for exclusion from the duly designated military area including Seattle, his home. The first count thus raised the legality of the compulsory transportation of an American citizen from one of the military areas to a WRA camp, and of his indefinite incarceration there. The second count was that on May 9, 1942, he had violated a curfew order by failing to remain at home after 8 P.M., within a designated military area, in contravention of a regulation promulgated by the military authority. The Court considered the violation of the second count first, upheld the curfew order and the sentence imposed for violating it. Since the two sentences were concurrent, it said, there was no need to consider the conviction on the first count.

63-293 0 - 80 - 20

In fact, of course, the Court was entirely free to consider the first count if it wanted to. It would have been normal practice to do so. Its refusal to pass on the more serious controversy cannot be put down to wise and forbearing judicial statesmanship. This was not the occasion for prudent withdrawal on the part of the Supreme Court, but for affirmative leadership in causes peculiarly within its sphere of primary responsibility. The social problems created by the exclusion and confinement of the Japanese Americans of the West Coast states increased in seriousness with every day of their continued exclusion. The rabble-rousers of California now were demanding the permanent exclusion of all persons of Japanese ancestry from the West Coast area. They were living at peace, altogether free of the threat of Japanese invasion. Yet they were still successful in their efforts to keep the Japanese out. The business and professional capital of the Japanese was being profitably used by others. Intelligent and resourceful competitors had been removed from many markets. At the expense of the Japanese, vested interests were being created, entrenched, and endowed with political power. All these interests would resist the return of the Japanese by law if possible, if not, by terror. The refusal of the Supreme Court to face the problem was itself a positive decision on the merits. It gave strength to the anti-Oriental forces on the West Coast and made a difficult social situation more tense. A full assertion of the ordinary rights of citizenship would have shamed and weakened the lynch spirit. It would have fortified the party of law and order. Instead, that party was confused and weakened by the vacillation of the Court.[41]

The reasoning of the Court itself contributed to the intensification of social pressure.

41. See materials cited supra note 34.

In the *Hirabayashi* case the Court held that its problem was the scope of the war power of the national government. The extent of Presidential discretion was not presented as a separate issue, because the statute of March 21, 1942, and appropriation acts under it, were passed with full knowledge of the action taken and proposed by General DeWitt, and thus fully authorized the curfew. Both Congress and the executive were held to have approved the curfew as a war measure, required in their judgment because espionage and sabotage were especially to be feared from persons of Japanese origin or descent on the West Coast during the spring of 1942.

The premise from which the Court's argument proceeded was the incontestable proposition that the war power is the power to wage war successfully. The state must have every facility and the widest latitude in defending itself against destruction. The issue for the Court, the Chief Justice said, was whether at the time "there was any substantial basis for the conclusion" that the curfew as applied to a citizen of Japanese ancestry was "a protective measure necessary to meet the threat of sabotage and espionage which would substantially affect the war effort and which might reasonably be expected to aid a threatened enemy invasion."[42] The formulation of the test followed the lines of the Court's familiar doctrine in passing on the action of administrative bodies: was there "reasonable ground" for those charged with the responsibility of national defense to believe that the threat was real and the remedy useful? The orders of the commander, the Court held, were based on findings of fact which supported action within the contemplation of the statute. The findings were based on an informed appraisal of the relevant facts in the light of the statutory

42. 320 U.S. 81, 95 (1943).

standard, and published as proclamations. The circumstances, the Court said, afforded a sufficiently rational basis for the decision made.

The "facts" which were thus held to "afford a rational basis for decision" were that in time of war "residents having ethnic affiliations with an invading enemy may be a greater source of danger than those of different ancestry," and that in time of war such persons could not readily be isolated and dealt with individually.[43] This is the basic factual hypothesis on which all three cases rest.

The first part of this double-headed proposition of fact is contrary to the experience of American society, in war and peace.[44] Imagine applying an ethnic presumption of disloyalty in the circumstances of the Revolution or the Civil War! In World War I and in World War II, soldiers who had ethnic affiliations with the enemy—German, Austrian, Hungarian, Finnish, Romanian, Bulgarian, Japanese, and Italian—fought uniformly as Americans in our armed forces, without any suggestion of group disloyalty. As a generalization about the consequences of inheritance, as compared with experience, in determining political opinions, the Supreme Court's doctrine of ethnic disloyalty belongs with folk proverbs—"blood is thicker than water"—and the pseudo-genetics of the Nazis. It is flatly contradicted by the evidence of the biological sciences, of cultural anthropology, sociology, and every other branch of systematic social study, both in general and with specific reference to the position of Japanese groups on the West Coast. The most important driving urge of such minority groups is to conform, not to rebel. This is true even for the American minorities which are partially isolated from the rest of so-

43. Id. at 101–02.

44. Compare the opinion of Mr. Justice Black, for a unanimous Court, in *Ex parte* Kumezo Kawato, 317 U.S. 69, 73 (1942).

ciety by the bar of color.[15] The desire to conform is stronger than resentments and counter-reactions to prejudice and discrimination. Insecure and conscious of the environment as a threat, such minorities seek to establish their status by proving themselves to be good Americans. The younger generation rejects the language, customs, and attitudes of the older. The exemplary combat records of the Japanese American regiments in Italy and in France are a normal symbol of their quest for security within the environment. It is an expected part of the process of social adjustment, repeated again and again in our experience with minorities within American society. By and large, men and women who grow up in the American cultural community are Americans in outlook, values, and basic social attitudes. This is the conclusion of the scientific literature on the subject. It has been the first tenet of American law, the ideal if not always the practice of American life.

To support its contrary opinion, the Supreme Court undertook a review of its own intuitions, without a judicial record before it and without serious recourse to available scientific studies of the problem. Kiplingesque folklore about East and West is close to the heart of the opinions.

15. Cf. infra, pp. 244–46 and materials cited supra notes 1 and 14; Wirth, "The Problem of Minority Groups," in *The Science of Man in the World Crisis* 347 (Linton ed. 1945); Myrdal, *An American Dilemma* cc. 3, 33–39, app. 10 (1944); Sherman, *Basic Problems of Behavior* 289–91 (1941); Mead, *And Keep Your Powder Dry* cc. 3, 46 (1942); Warner and Srole, *The Social Systems of American Ethnic Groups* 283–84 (1945); Benedict, *Patterns of Culture* especially cc. 1–3, 7, 8 (1934); Benedict, *Race: Science and Politics* (1940); *When Peoples Meet* cc. 7–12 (Locke and Stern ed. 1942); Miyamoto, *Social Solidarity among the Japanese in Seattle* (1939); Dollard, *Caste and Class in a Southern Town* cc. 12–16 (1937); *Race Relations and the Race Problem* (Thompson ed. 1939); Stonequist, *The Marginal Man, a Study in Personality and Culture Conflict* cc. 3–4, particularly pp. 101–06 (1937); Cox, "Race and Caste: A Distinction," 50 *Am. J. Soc.* 360, 365–66 (1945); *Group Relations and Group Antagonisms* pt. 1 (MacIver ed. 1944).

The Japanese, the Court said, had been imperfectly assimilated; they constituted an isolated group in the community; their Japanese language schools might be sources of Japanese propaganda. Moreover, the discriminatory way in which the Japanese on the West Coast were treated may have been regarded as contributing to Japanese solidarity, preventing their assimilation and increasing in many instances their attachments to Japan and its institutions.[46]

There was no testimony or other evidence in the record as to the facts which governed the judgment of the military in entering the orders in question. They were not required to support the action they had taken by producing evidence as to the need for it. Nor were they exposed to cross-examination. By way of judicial research and notice the Court wrote four short paragraphs to explain "some of the many considerations" which in its view might have been considered by the military in making their decision to institute a discriminatory curfew.[47]

The second part of the Court's basic premise of fact was that it was impossible to investigate the question of loyalty individually. As to the validity of this proposition there was neither evidence in the record nor even discussion by the Court to indicate a basis for the conclusion which might appeal to a reasonable man or even to a choleric and harassed general faced with the danger of invasion and the specter of his own court-martial. The issue was dismissed in a sentence. "We cannot say that the war-making branches of the Government did not have ground for believing that in a critical hour such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety, which demanded that prompt and ade-

46. 320 U.S. 81, 98 (1943). See infra, pp. 242–44. Such fears arising from sentiments of guilt are of special interest to the student of social psychology.

47. Id. at 99.

quate measures be taken to guard against it."[48] In view of the history of security measures during the war, it would not have been easy to establish strong grounds for such a belief. There were about 110,000 persons subject to the exclusion orders, 43 per cent of them being over 50 or under 15.[49] At the time of the exclusion orders, they had lived in California without committing sabotage for five months after Pearl Harbor. The number of persons to be examined was not beyond the capacities of individual examination processes, in the light of experience with such security measures both in the United States and abroad.[50] The fact was that the loyalty examinations finally undertaken in the Relocation Authority camps consisted in large part of filling out a questionnaire, and little more, except in cases of serious doubt as to loyalty. Most of those released from the camps were given their freedom on the basis of little information which was not available on the West Coast in 1942.[51]

Actually, the exclusion program was undertaken not because the Japanese were too numerous to be examined individually, but because they were a small enough group to be punished by confinement. It would have been physically impossible to confine the Japanese and Japanese Americans in Hawaii, and it would have been both physically and politically impossible to undertake comparable measures against the 690,000 Italians or the 314,000 Germans living in the United States. The Japanese were being attacked because for some they provided the only possible outlet and expression for sentiments of group hostility. Others were unable or unwilling to accept the burden of urging the re-

48. Ibid.
49. *DeWitt Final Report*, at 403–04.
50. See supra, pp. 202–04.
51. See note 31 supra.

pudiation of a general's judgment which he placed on grounds of military need.

The *Hirabayashi* case states a rule which permits some judicial control over action purporting to be taken under military authority. It proposes that such action be treated in the courts like that of administrative agencies generally, and upheld if supported by "facts" which afford "a rational basis" for the decision. For all practical purposes, it is true, the *Hirabayashi* case ignores the rule; but the Court did go to great lengths to assert the principle of protecting society against unwarranted and dictatorial military action. *Korematsu v. United States* seems sharply to relax even the formal requirement of judicial review over military conduct. Korematsu, an American citizen of Japanese descent, was convicted under the Act of March 21, 1942, for violating an order requiring his exclusion from the coastal area. The Court held the problem of exclusion to be identical with the issue of discriminatory curfew presented in the *Hirabayashi* case. There, it said, the Court had decided that it was not unreasonable for the military to impose a curfew in order to guard against the special dangers of sabotage and espionage anticipated from the Japanese group. The military had found, and the Court refused to reject the finding, that it was impossible to bring about an immediate segregation of the disloyal from the loyal. According to Mr. Justice Black, the exclusion orders merely applied these two findings—that the Japanese were a dangerous lot and that there was no time to screen them individually. Actually, there was a new "finding" of fact in this case, going far beyond the situation considered in the *Hirabayashi* case. The military had "found" that the curfew provided inadequate protection against the danger of sabotage and espionage. Therefore the exclusion of all Japanese, citizens and aliens alike, was thought to be a reasonable way to protect the

coast against sabotage and espionage. Mr. Justice Black does not pretend to review even the possible foundations of such a judgment. There is no attempt in the *Korematsu* case to show a reasonable connection between the factual situation and the program adopted to deal with it.

The Court refused to regard the validity of the detention features of the relocation policy as raised by the case. Korematsu had not yet been taken to a camp, and the Court would not pass on the issues presented by such imprisonment. Those issues, the Court said, are "momentous questions not contained within the framework of the pleadings or the evidence in this case. It will be time enough to decide the serious constitutional issues which petitioner seeks to raise when an assembly or relocation order is applied or is certain to be applied to him, and we have its terms before us."[52] This is a good deal like saying in an ordinary criminal case that the appeal raises the validity of the trial and verdict, but not the sentence, since the defendant may be out on probation or bail. It is difficult to understand in any event why this consideration did not apply equally to the evidence before the Court on the issue which the Court conceded was raised by the pleadings, i.e., the decision of the General to exclude all Japanese from the Defense Area. On this problem there was literally no trial record or other form of evidence in the case.

There were four other opinions in *Korematsu v. United States*. Mr. Justice Roberts and Mr. Justice Murphy dissented on the merits, in separate opinions. Mr. Justice Roberts said that while he might agree that a temporary or emergency exclusion of the Japanese was a legitimate exercise of military power, this case presented a plan for imprisoning the Japanese in concentration camps solely be-

52. 323 U.S. 214, 222 (1944).

cause of their ancestry and "without evidence or inquiry" as to their "loyalty and good disposition towards the United States."[53] Such action, he said, was clearly unconstitutional.

Mr. Justice Murphy's substantial opinion did not join issue with the opinion of the Court on the central problem of how to review military decisions, but it did contend that the military decisions involved in this case were unjustified in fact. The military power, he agreed, must have wide and appropriate discretion in carrying out military duties. But,

> like other claims conflicting with the asserted constitutional rights of the individual, the military claim must subject itself to the judicial process of having its reasonableness determined and its conflicts with other interests reconciled. . . .
>
> The judicial test of whether the Government, on a plea of military necessity, can validly deprive an individual of any of his constitutional rights is whether the deprivation is reasonably related to a public danger that is so "immediate, imminent, and impending" as not to admit of delay and not to permit the intervention of ordinary constitutional processes to alleviate the danger. . . . Civilian Exclusion Order No. 34, banishing from a prescribed area of the Pacific Coast "all persons of Japanese ancestry, both alien and non-alien," clearly does not meet that test. Being an obvious racial discrimination, the order deprives all those within its scope of the equal protection of the laws as guaranteed by the Fifth Amendment. It further deprives these individuals of their constitutional rights to live and work where they will, to establish a home where they choose and to move about freely. In excommunicating them without

53. Id. at 226.

> benefit of hearings, this order also deprives them of all their constitutional rights to procedural due process. Yet no reasonable relation to an "immediate, imminent, and impending" public danger is evident to support this racial restriction which is one of the most sweeping and complete deprivations of constitutional rights in the history of this nation in the absence of martial law.[54]

The action taken did not meet such a test, Justice Murphy argued, because there was no reasonable ground for supposing that all persons of Japanese blood have a tendency to commit sabotage or espionage, nor was there any ground for supposing that their loyalty could not have been tested individually where they lived. A review of statements made by General DeWitt before Congressional committees and in his Final Report to the Secretary of War clearly reveals that the basis of his action was "an accumulation of much of the misinformation, half-truths and insinuations that for years have been directed against Japanese Americans by people with racial and economic prejudices."[55] These are compared with the independent studies of experts and shown to be nonsensical. The supposed basis for the exercise of military discretion disappears, and the case for the order falls.

Mr. Justice Jackson wrote a fascinating and fantastic essay in nihilism. Nothing in the record of the case, he said very properly, permitted the Court to judge the military reasonableness of the order. But even if the orders were permissible and reasonable as military measures, he said, "I deny that it follows that they are constitutional."[56]

54. Id. at 234–35.
55. Id. at 239. See discussion infra, pp. 242–47.
56. Id. at 245.

I should hold that a civil court cannot be made to enforce an order which violates constitutional limitations even if it is a reasonable exercise of military authority. The courts can exercise only the judicial power, can apply only law, and must abide by the Constitution, or they cease to be civil courts and become instruments of military policy.

Of course the existence of a military power resting on force, so vagrant, so centralized, so necessarily heedless of the individual, is an inherent threat to liberty. But I would not lead people to rely on this Court for a review that seems to me wholly delusive. The military reasonableness of these orders can only be determined by military superiors. If the people ever let command of the war power fall into irresponsible and unscrupulous hands, the courts wield no power equal to its restraint. The chief restraint upon those who command the physical forces of the country, in the future as in the past, must be their responsibility to the political judgments of their contemporaries and to the moral judgments of history.

My duties as a justice as I see them do not require me to make a military judgment as to whether General DeWitt's evacuation and detention program was a reasonable military necessity. I do not suggest that the courts should have attempted to interfere with the Army in carrying out its task. But I do not think that they may be asked to execute a military expedient that has no place in law under the Constitution. I would reverse the judgment and discharge the prisoner.[57]

Thus the Justice proposes to refuse enforcement of the statute of March 21, 1942. Apparently, in this regard at

57. Id. at 247–48.

least, the statute would be treated as unconstitutional. The prisoner would then be taken to the camp and kept there by the military, and all judicial relief would be denied him.

It is hard to imagine what courts are for if not to protect people against unconstitutional arrest. If the Supreme Court washed its hands of such problems, for what purposes would it sit? The idea that military officers whose only authority rests on that of the President and the Congress, both creatures of the Constitution, can be considered to be acting "unconstitutionally" when they carry out concededly legitimate military policies is Pickwickian, to say the least. For judges to pass by on the other side, when men are imprisoned without charge or trial, suggests a less appealing analogy. The action of Chief Justice Taney in *Ex parte Merryman* is in a more heroic tradition of the judge's responsibility.[58]

What Justice Jackson is saying seems to be this: Courts should refuse to decide hard cases, for in the hands of foolish judges they make bad law. The ark of the law must be protected against contamination. Therefore law should not be allowed to grow through its application to the serious and intensely difficult problems of modern life, such as the punishment of war criminals or the imprisonment of Japanese Americans. It should be kept in orderly seclusion and confined to problems like the logical adumbration of the full faith and credit clause and other lawyers' issues.[59] The problems which deeply concern us should be decided out-

58. *Ex parte* Merryman, 17 Fed. Cas. 144, No. 9487 (D. Md. 1861). See Swisher, *Roger B. Taney*, c. 26 (1935).

59. See Jackson, "Full Faith and Credit—The Lawyer's Clause of The Constitution," 45 *Colum. L. Rev.* 1 (1945). See also Northwestern Bands of Shoshone Indians v. United States, 65 Sup. Ct. 690, 700–02 (U.S. 1945); Jackson, "The Rule of Law among Nations," 31 *A. B. A. J.* 290, 292–93 (1945). Compare his report to the President on trials for war criminals, *N.Y. Times*, June 8, 1945, p. 4.

side the courts, even when they arise as the principal and inescapable issues of law suits. Judges are thus to be relieved of the political responsibilities of their citizenship and their office. They will be allowed to pretend that the judicial function is to "interpret" the law, and that law itself is a technical and antiquarian hobby, not the central institution of a changing society.

Mr. Justice Frankfurter concurred specially, answering Mr. Justice Jackson's dissent. "To talk about a military order that expresses an allowable judgment of war needs by those entrusted with the duty of conducting war as 'an unconstitutional order' is to suffuse a part of the Constitution with an atmosphere of unconstitutionality," he said.[60] But one of the first issues of the case was whether or not the military order in question did express an "allowable judgment of war needs." That was the question which the Court was compelled to decide and did decide, without benefit of the testimony of witnesses or a factual record and without substantial independent study on its own motion.

Ex parte Endo was the next stage in the judicial elucidation of the problem.[61] In *Ex parte Endo,* decided on December 18, 1944, an adjudication was finally obtained on about one half the question of the validity of confining Japanese aliens and citizens in camps. The case was a habeas corpus proceeding in which an American citizen of Japanese ancestry sought freedom from a War Relocation Center where she was detained, after having been found loyal, until the Authority could place her in an area of the country where local disorder would not be anticipated as a result of her arrival. The Court held that the statute, as rather strenuously construed, did not authorize the detention of persons in the petitioner's situation, although temporary

60. 323 U.S. 214, 224–25 (1944).
61. 323 U.S. 283 (1944).

detention for the purpose of investigating loyalty was assumed to be valid as an incident to the program of "orderly" evacuation approved in the *Korematsu* case.

The purpose of the statute under which exclusion and detention were accomplished, the Court said, was to help prevent sabotage and espionage. The act talked only of excluding persons from defense areas. It did not mention the possibility of their detention. While the Court assumed that an implied power of temporary detention could be accepted as an incident in the program of exclusion, for the purpose of facilitating loyalty examinations, such an implied power should have been narrowly confined to the precise purpose of the statute in order to minimize the impact of the statute on the liberties of the individual citizen. The authority to detain a citizen as a measure of protection against sabotage and espionage was exhausted when his loyalty was established. The persistence of community hostility to citizens of Japanese descent was not, under the statute, a ground for holding them in camp. The disclosure of the full scope of the detention program to various committees of the Congress, including appropriation committees, was held not to support a ratification by the Congress of what was done. The basis of this conclusion was the extraordinarily technical proposition that the appropriation acts which might have been considered to ratify the entire program were lump-sum appropriations, and were not broken down by items to earmark a specific sum for the specific cost of detaining citizens found to be loyal pending their relocation in friendly communities. In this respect the reasoning of the Court was contrary to that in the *Hirabayashi* case, where congressional ratification of the plans of the executive branch was established in a broad and common-sense way. Justices Roberts and Murphy concurred specially, urging that the decision be based on the constitutional grounds

stated in their opinions in the *Korematsu* case, rather than on the statutory interpretation underlying Justice Douglas' opinion.

IV

The many opinions of the three Japanese cases did not consider the primary constitutional issues raised by the West Coast anti-Japanese program as a whole. This was a program which included (a) a discriminatory curfew against Japanese persons; (b) their exclusion from the West Coast; (c) their confinement pending investigations of loyalty; and (d) the indefinite confinement of those persons found to be disloyal. These measures were proposed and accepted as military necessities. Their validity as military measures was an issue in litigation. By what standards are courts to pass on the justification for such military action? Were those standards satisfied here?

The conception of the war power under the American Constitution rests on the experience of the Revolution and the Civil War. It rests on basic political principles which men who endured those times of trouble fully discussed and carefully articulated. The chief architects of the conception were men of affairs who participated in war and had definite and sophisticated ideas about the role of the professional military mind in the conduct of war.

The first and dominating proposition about the war power under the Constitution is that the Commander in Chief of the armed forces is a civilian and must be a civilian, elected and not promoted to his office. The subordination of the military to the civil power is thus primarily assured. In every democracy the relationship between civil and military power is the crucial social and political issue on which

its capacity to survive a crisis ultimately depends. Inadequate analysis of this problem, and inadequate measures to deal with it, led to the downfall of the Spanish Republic and gravely weakened the Third French Republic. British experience, especially during the First World War, puts the problem in dramatic perspective.[62] In its own proper sphere of tactics, the professional military judgment is decisive. In waging war the larger decisions—the choice of generals, the organization of command, the allocation of forces, the political, economic, and often strategic aspects of war—these have to be made by responsible civilian ministers.[63] Clemenceau's famous remark, quoted at the head of this article, is not a witticism, but the first principle of organizing democracy for war. It reflects a balanced view of the proper relation in policy-making between the expert and the practical man. It expresses a keen sense of the supremacy of civil power in a republic. The image of Napoleon is never far from the surface of French political consciousness. France's experience with Pétain has once more underscored the danger. In our own national life recurring waste and incompetence in the handling of war problems—in the Mexican War, the Civil War, and the Spanish-American War—led to important reforms in the organization of the War

62. See *War Memoirs of David Lloyd George* (1933–37), c. 10 ("Some Reflections on the Functions of Governments and Soldiers Respectively in a War"); vol. 1, cc. 5, 6, 9, 10, 14, 15; vol. 2, cc. 8–10, 17–19; vol. 3, cc. 3–6, 9–11; vol. 4, cc. 9–11, 13; vol. 5, cc. 6, 8; Churchill, *The World Crisis* cc. 4, 19, 38, pp. 733–45 (1931); Wilkinson, *War and Policy* 259–300 (1910); Wright, *At the Supreme War Council* (1921); Rogers, "Civilian Control of Military Policy," 18 *Foreign Affairs* 280 (1940).

63. See Palmer, *Washington, Lincoln, Wilson, Three War Statesmen* 224–27, 282–83 (1930); Palmer, *America in Arms* 145–46 (1941); De Weerd, "Civilian and Military Elements in Modern War," in Clarkson and Cochran, *War as a Social Institution* 95 (1941). See also McKinley, *Democracy and Military Power* (2d ed. 1941); Vagts, *A History of Militarism* (1937).

63-293 O - 80 - 21

Department under Elihu Root, and further developments under later Secretaries of War.[64] The process of achieving adequate organization and control is by no means complete.

The second political principle governing the exercise of the war power in a democracy is that of responsibility. Like every other officer of government, soldiers must answer for their decisions to the system of law, and not to the Chief of Staff alone. Where, as in the Japanese exclusion program, military decisions lead to conflicts between individuals and authority, the courts must adjudicate them. Even if Mr. Justice Jackson's doctrine of the judicial function is accepted, the courts will adjudicate nonetheless, by refusing relief, and thus decide cases in favor of the military power. The problem is the scope of the military power and means for assuring its responsible exercise. It is not a problem which can be avoided by any verbal formula.

Most occasions for the exercise of authority in the name of military need will not present justiciable controversy. When a general attacks or retreats in the field, sends his troops to the right or to the left, he may have to justify his decision to a court-martial, but not often to a court. On the other hand some steps deemed to be required in war do raise the kind of conflict over property or personal rights which can be presented to the courts. A factory or business may be taken into custody, prices and wages may be established, whole classes of activity, like horse-racing, temporarily forbidden. Without stopping for an over-nice definition of the terms, these are justiciable occasions—situations in which courts have customarily decided controversies and determined the legality of official action when such prob-

64. See 1 Jessup, *Elihu Root* 240–64 (1938); Root, *The Military and Colonial Policy of the United States* (1916); Rogers, op. cit. supra note 62, at 288–91.

lems were implicit in the conflicts presented to them.[65] It is essential to every democratic value in society that official action taken in the name of the war power be held to standards of responsibility under such circumstances. The courts have not in the past, and should not now, declare the whole category of problems to be political questions beyond the reach of judicial review. The present Supreme Court is dominated by the conviction that in the past judicial review has unduly limited the freedom of administrative action. But surely the permissible response to bad law is good law, not no law at all. The Court must review the exercise of military power in a way which permits ample freedom to the executive, yet assures society as a whole that appropriate standards of responsibility have been met.

The issue for judicial decision in these cases is not lessened or changed by saying that the war power includes any steps required to win the war. The problem is still one of judgment as to what helps win a war. Who is to decide whether there was a sensible reason for doing what was done? Is it enough for the General to say that at the time he acted he honestly thought it was a good idea to do what he did? Is this an example of "expertise," to which the courts must give blind deference?[66] Or must there be "objective" evidence, beyond the General's state of mind, to show "the reasonable ground for belief" which the *Hirabayashi* case says is necessary?[67] Should such evidence be avail-

65. See, e.g., Block v. Hirsh, 256 U.S. 135 (1921); Bowles v. Willingham, 321 U.S. 503 (1944); Home Building & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934); Yakus v. United States, 321 U.S. 414 (1944); Montgomery Ward & Co. v. United States, 150 F. 2d 369, vacated for mootness, 326 U.S. 690 (1945).

66. Railroad Commission of Texas v. Rowan & Nichols Oil Co., 310 U.S. 573 (1940), *mod.*, 311 U.S. 614 (1941); Railroad Commission v. Rowan & Nichols Oil Co., 311 U.S. 570 (1941). *Cf.* Thompson v. Consolidated Gas Corp., 300 U.S. 55 (1937); Note, 51 *Yale L. J.* 680 (1942).

67. See note 17 supra. For recent treatments of administrative and executive findings by various Justices of the Supreme Court in cognate, if not

able before the action is taken? Should the rule be a procedural one that a general has to consider evidence and then come to a decision, or should it be only that at the subsequent trial suitable evidence must be available to justify the result? As the Chief Justice remarked, the Constitution "does not demand the impossible or the impractical."[68] The inquiry should be addressed to the rationality of the general's exercise of his judgment as a general, not as a master in chancery. It should give full and sympathetic weight to the confusion and danger which are inevitable elements in any problem presented for military decision.

Unless the courts require a showing, in cases like these, of an intelligible relationship between means and ends, society has lost its basic protection against the abuse of military power. The general's good intentions must be irrelevant. There should be evidence in court that his military judgment had a suitable basis in fact. As Colonel Fairman, a strong proponent of widened military discretion, points out: "When the executive fails or is unable to satisfy the court of the evident necessity for the extraordinary measures it has taken, it can hardly expect the court to assume it on faith."[69]

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directly comparable situations, see Schneiderman v. United States, 320 U.S. 118 (1943); ICC v. Inland Waterways, 319 U.S. 671 (1943); FPC v. Hope Natural Gas Co., 320 U.S. 591 (1944); Connecticut Light & Power Co. v. FPC, 324 U.S. 515 (1945); Bridges v. Wixon, 326 U.S. 135 (1945).

68. Hirabayashi v. United States, 320 U.S. 81, 104 (1943).

69. Fairman, *The Law of Martial Rule* 217–18 (2d ed. 1943). See also id. at 47–49, 103–07; Fairman, "The Law of Martial Rule and the National Emergency," 55 *Harv. L. Rev.* 1253, 1259–61, 1272 (1942). The test is put by Wiener, *A Practical Manual of Martial Law* 26–27 (1940), for "the hapless Guardsman who commands the troops," as "What can you justify afterwards?". See Comment, 45 *Yale L. J.* 879 (1936). The statute of March 21, 1942, should be interpreted to pose the same issue, despite its broad language.

The *Hirabayashi* case proposes one test for the validity of an exercise of military power. Even though that test is not applied in the *Hirabayashi* case, and is roughly handled in the *Korematsu* case, it is not hopelessly lost. As the Court said in *Sterling v. Constantin*, the necessity under all the circumstances for a use of martial power "is necessarily one for judicial inquiry in an appropriate proceeding directed against the individuals charged with the transgression."[70]

Perhaps the closest judicial precedent and analogy for the Japanese American cases is *Mitchell v. Harmony*, which arose out of the Doniphan raid during the Mexican War. The plaintiff was a trader, whose wagons, mules, and goods were seized by the defendant, a lieutenant colonel of the United States Army, during the course of the expedition. The plaintiff, who wanted to leave the Army column and trade with the Mexicans, was forced to accompany the troops. All his property was lost on the march and in battle. The action was of trespass, for the value of the property taken, and for damages. The defenses were that the control of the trader and the destruction of his property were a military necessity, justified by the circumstances of the situation. After a full trial, featured by depositions of the commanding officers, the jury found for the plaintiff.

> The defence has been placed . . . on rumors which reached the commanding officer and suspicions which he appears to have entertained of a secret design in the plaintiff to leave the American forces and carry on an illicit trade with the enemy, injurious to the interests

70. 287 U.S. 378, 398 (1932). Id. at 401: "What are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions." Certain cases, though technically distinguishable, seem to proceed from different hypotheses. Martin v. Mott, 12 Wheat. 19 (U.S. 1827); The Prize Cases, 2 Black 635 (U.S. 1862); Moyer v. Peabody, 212 U.S. 78 (1909).

of the United States. And if such a design had been shown, and that he was preparing to leave the American troops for that purpose, the seizure and detention of his property, to prevent its execution, would have been fully justified. But there is no evidence in the record tending to show that these rumors and suspicions had any foundation. And certainly mere suspicions of an illegal intention will not authorize a military officer to seize and detain the property of an American citizen. The fact that such an intention existed must be shown; and of that there is no evidence.

The 2d and 3d objections will be considered together, as they depend on the same principles. Upon these two grounds of defence the Circuit Court instructed the jury, that the defendant might lawfully take possession of the goods of the plaintiff, to prevent them from falling into the hands of the public enemy; but in order to justify the seizure the danger must be immediate and impending, and not remote or contingent. And that he might also take them for public use and impress them into the public service, in case of an immediate and pressing danger or urgent necessity existing at the time, but not otherwise.

In the argument of these two points, the circumstances under which the goods of the plaintiff were taken have been much discussed, and the evidence examined for the purpose of showing the nature and character of the danger which actually existed at the time or was apprehended by the commander of the American forces. But this question is not before us. It is a question of fact upon which the jury have passed, and their verdict has decided that a danger or necessity, such as the court described, did not exist when the property of the plaintiff was taken by the defendant.

And the only subject for inquiry in this court is whether the law was correctly stated in the instruction of the court; and whether any thing short of an immediate and impending danger from the public enemy, or an urgent necessity for the public service, can justify the taking of private property by a military commander to prevent it from falling into the hands of the enemy or for the purpose of converting it to the use of the public.

The instruction is objected to on the ground, that it restricts the power of the officer within narrower limits than the law will justify. And that when the troops are employed in an expedition into the enemy's country, where the dangers that meet them cannot always be foreseen, and where they are cut off from aid from their own government, the commanding officer must necessarily be intrusted with some discretionary power as to the measures he should adopt; and if he acts honestly, and to the best of his judgment, the law will protect him. But it must be remembered that the question here, is not as to the discretion he may exercise in his military operations or in relation to those who are under his command. His distance from home, and the duties in which he is engaged, cannot enlarge his power over the property of a citizen, nor give to him, in that respect, any authority which he would not, under similar circumstances, possess at home. And where the owner has done nothing to forfeit his rights, every public officer is bound to respect them, whether he finds the property in a foreign or hostile country, or in his own.

There are, without doubt, occasions in which private property may lawfully be taken possession of or destroyed to prevent it from falling into the hands of the public enemy; and also where a military officer,

charged with a particular duty, may impress private property into the public service or take it for public use. Unquestionably, in such cases, the government is bound to make full compensation to the owner; but the officer is not a trespasser.

But we are clearly of opinion, that in all of these cases the danger must be immediate and impending; or the necessity urgent for the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the occasion calls for. It is impossible to define the particular circumstances of danger or necessity in which this power may be lawfully exercised. Every case must depend on its own circumstances. It is the emergency that gives the right, and the emergency must be shown to exist before the taking can be justified.

In deciding upon this necessity, however, the state of the facts, as they appeared to the officer at the time he acted, must govern the decision; for he must necessarily act upon the information of others as well as his own observation. And if, with such information as he had a right to rely upon, there is reasonable ground for believing that the peril is immediate and menacing, or the necessity urgent, he is justified in acting upon it; and the discovery afterwards that it was false or erroneous, will not make him a trespasser. But it is not sufficient to show that he exercised an honest judgment, and took the property to promote the public service; he must show by proof the nature and character of the emergency, such as he had reasonable grounds to believe it to be, and it is then for a jury to say, whether it was so pressing as not to admit of delay; and the occasion such, according to the information upon which he

acted, that private rights must for the time give way to the common and public good.

But it is not alleged that Colonel Doniphan was deceived by false intelligence as to the movements or strength of the enemy at the time the property was taken. His camp at San Elisario was not threatened. He was well informed upon the state of affairs in his rear, as well as of the dangers before him. And the property was seized, not to defend his position, nor to place his troops in a safer one, nor to anticipate the attack of an approaching enemy, but to insure the success of a distant and hazardous expedition, upon which he was about to march.

The movement upon Chihuahua was undoubtedly undertaken from high and patriotic motives. It was boldly planned and gallantly executed, and contributed to the successful issue of the war. But it is not for the court to say what protection or indemnity is due from the public to an officer who, in his zeal for the honor and interest of his country, and in the excitement of military operations, has trespassed on private rights. That question belongs to the political department of the government. Our duty is to determine under what circumstances private property may be taken from the owner by a military officer in a time of war. And the question here is, whether the law permits it to be taken to insure the success of any enterprise against a public enemy which the commanding officer may deem it advisable to undertake. And we think it very clear that the law does not permit it.[71]

Applied to the circumstances of the Japanese exclusion cases, these precedents require that there be a showing to

71. Mitchell v. Harmony, 13 How. 115, 133–35 (U.S. 1851).

the trial court of the evidence upon which General DeWitt acted, or evidence which justifies his action under the statute and the Constitution. Nor will it do to say that there need be only enough evidence to prove his good faith or to provide a possible basis for the decision. This was the contention expressly overruled in *Mitchell v. Harmony*.[72] The varying formulas about presumptions, and the quantum of proof required in different classes of cases, merely conceal the court's problem. There must be evidence enough to satisfy the court as to the need for the grave and disagreeable action taken—arrest on vague suspicion, denial of trial, and permanent incarceration for opinions alone. The standard of reasonableness, here as elsewhere, is one requiring a full evaluation of all circumstances. But the law is not neutral. It has a positive preference for protecting civil rights where possible, and a long-standing suspicion of the military mind when acting outside its own sphere. In protecting important social values against frivolous or unnecessary interference by generals, the court's obligations cannot be satisfied by a scintilla of evidence or any other mechanical rule supposed to explain the process of proof. There must be a convincing and substantial factual case, in Colonel Fairman's phrase, to satisfy the court of "the evident necessity" for the measures taken.

No matter how narrowly the rule of proof is formulated, it could not have been satisfied in either the *Hirabayashi* or the *Korematsu* cases. Not only was there insufficient evidence in those cases to satisfy a reasonably prudent judge or a reasonably prudent general: there was no evidence whatever by which a court might test the responsibility of General DeWitt's action, either under the statute of March 21, 1942, or on more general considerations. True, in the

72. Id. at 119–20.

Hirabayashi case the Court carefully identified certain of General DeWitt's proclamations as "findings," which established the conformity of his actions to the standard of the statute—the protection of military resources against the risk of sabotage and espionage. But the military proclamations record conclusions, not evidence. And in both cases the record is bare of testimony on either side about the policy of the curfew or the exclusion orders. There was every reason to have regarded this omission as a fatal defect, and to have remanded in each case for a trial on the justification of the discriminatory curfew and of the exclusion orders.

Such an inquiry would have been illuminating. General DeWitt's Final Report and his testimony before committees of the Congress clearly indicated that his motivation was ignorant race prejudice, not facts to support the hypothesis that there was a greater risk of sabotage among the Japanese than among residents of German, Italian, or any other ethnic affiliation. The most significant comment on the quality of the General's report is contained in the government's brief in *Korematsu v. United States*. There the Solicitor General said that the report was relied upon "for statistics and other details concerning the actual evacuation and the events that took place subsequent thereto. We have specifically recited in this brief the facts relating to the justification for the evacuation, of which we ask the Court to take judicial notice, and we rely upon the Final Report only to the extent that it relates such facts."[73] Yet the Final Report

73. Brief for United States, p. 11, n. 2, Korematsu v. United States, 323 U.S. 214 (1944). See Brief for United States, p. 23, *Ex parte* Mitsuye Endo, 322 U.S. 283 (1944). It was peculiarly inappropriate to decide these cases on the basis of judicial notice alone. Borden's Farm Products Co., Inc. v. Baldwin, 293 U.S. 194 (1934); United States v. Carolene Products Co., 304 U.S. 144 (1938); Polk Co. v. Glover, 305 U.S. 5 (1938). See Comment, 49 *Harv. L. Rev.* 631 (1936).

embodied the basic decision under review and stated the reasons why it was actually undertaken. General DeWitt's Final Recommendation to the Secretary of War, dated February 14, 1942, included in the Final Report, was the closest approximation we have in these cases to an authoritative determination of fact. In that Recommendation, General DeWitt said:

> In the war in which we are now engaged racial affinities are not severed by migration. The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become "Americanized," the racial strains are undiluted. To conclude otherwise is to expect that children born of white parents on Japanese soil sever all racial affinity and become loyal Japanese subjects, ready to fight and, if necessary, to die for Japan in a war against the nation of their parents. That Japan is allied with Germany and Italy in this struggle is no ground for assuming that any Japanese, barred from assimilation by convention as he is, though born and raised in the United States, will not turn against this nation when the final test of loyalty comes. It, therefore, follows that along the vital Pacific Coast over 112,000 potential enemies, of Japanese extraction, are at large today. There are indications that these are organized and ready for concerted action at a favorable opportunity. The very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken.[74]

74. *DeWitt Final Report* at 34. See also id. at vii, 7–24. Some of the reasoning used to justify the discriminatory treatment of the Japanese Americans can only be described as astounding in its terms and in its refusal to consider or to evaluate available sociological data. See, e.g., Fairman, *The*

In his Final Report to the Secretary of War General DeWitt adduced somewhat more evidence than the absence of sabotage to prove its special danger. His report, and the briefs for the United States in *Hirabayashi v. United States* and *Korematsu v. United States* emphasized these points as well: The Japanese lived together, often concentrated around harbors and other strategic areas. They had been discriminated against, and it was suggested that their resentment at such treatment might give rise to disloyalty. Japanese clubs and religious institutions played an important part in their social life. Japanese language schools were maintained to preserve for the American-born children something of the cultural heritage of Japan. The Japanese government, like that of Italy, France, and many other countries, asserted a doctrine of nationality which was thought to result in claims of dual citizenship, and thus to cast doubt on the loyalty of American citizens of Japanese descent. There were some 10,000 Kibei among the population of the West Coast—Japanese Americans who had returned to Japan for an important part of their education and who were thought to be more strongly affiliated with Japan in their political outlook than the others.[75]

Much of the suspicion inferentially based on these statements disappears when they are more closely examined. In many instances the concentration of Japanese homes around strategic areas had come about years before and for entirely innocent reasons. Japanese fishing and cannery workers,

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Law of Martial Rule 260 (2d ed. 1943) ("Fundamental differences in mores have made them inscrutable to us"); Watson, "The Japanese Evacuation and Litigation Arising Therefrom," 22 *Ore. L. Rev.* 46, 47 (1942) ("Their mental and emotional responses are understood by but few of our people and in general the Japanese presents an inscrutable personality").

75. See *Tolan Committee Reports (Preliminary)* 16. Such persons were of course individually known, through travel records and otherwise.

for example, were compelled by the canneries to live on the waterfront, in order to be near the plants in which they worked. Japanese truck gardeners rented land in the industrial outskirts of large cities in order to be as close as possible to their markets. They rented land for agricultural purposes under high tension lines—regarded as a very suspicious circumstance—because the company could not use the land for other purposes. The initiative in starting the practice came from the utility companies, not from the Japanese.[76] Despite discrimination against the Japanese, many had done well in America. They were substantial property owners. Their children participated normally and actively in the schools and universities of the West Coast. Their unions and social organizations had passed resolutions of loyalty in great number, before and after the Pearl Harbor disaster.[77] It is difficult to find real evidence that either religious or social institutions among the Japanese had successfully fostered Japanese militarism, or other dangerous sentiments, among the Japanese American population. The Japanese language schools, which the Japanese Americans themselves had long sought to put under state control, seem to have represented little more than the familiar desire of many immigrant groups to keep alive the language and tradition of the "old country"; in the case of Japanese Americans, knowledge of the Japanese language was of particular economic importance, since so much of their working life was spent with other Japanese on the West Coast.[78]

76. See McWilliams, *Prejudice* 119–21 (1944); 29 *Tolan Committee Hearings* 11225.

77. See *Tolan Committee Reports (Preliminary)* 15 ("We cannot doubt, and everyone is agreed, that the majority of Japanese citizens and aliens are loyal to this country"); An Intelligence Officer, "The Japanese in America: The Problem and the Solution," 185 *Harper's Mag.* 489 (1942).

78. See McWilliams, *Prejudice* 121–22 (1944).

There were of course suspicious elements among the Japanese. They were known to the authorities, which had for several years been checking the security of the Japanese American population. Many had been individually arrested immediately after Pearl Harbor, and the others were under constant surveillance. We had many intelligence officers who knew both the language and the people well. As far as the police were concerned, there was no substance to the man-in-the-street's belief that all Orientals "look alike."[79] On the contrary, the Japanese were a small and conspicuous minority on the West Coast, both individually and as a group. They would have been an unlikely source of sabotage agents for an intelligent enemy in any case.

Apart from the members of the group known to be under suspicion, there was no evidence beyond the vaguest fear to connect the Japanese on the West Coast with the unfavorable military events of 1941 and 1942. Both at Pearl Harbor and in sporadic attacks on the West Coast the enemy had shown that he had knowledge of our dispositions. There was some signaling to enemy ships at sea, both by

79. See, e.g., 31 *Tolan Committee Hearings* 11631; Denman, J., dissenting, Korematsu v. United States, 140 F. 2d 289, 302–03 (9th Cir., 1943). As for the knowledge of the situation possessed by security officers, see 31 *Tolan Committee Hearings* 11697–702; An Intelligence Officer, loc. cit. supra note 77. A considerable percentage—perhaps 19%—of the evacuees gave negative answers to the loyalty questions in their questionnaires. Many of those answers expressly referred to the treatment the Japanese had received in being uprooted and imprisoned. It is estimated that many more of the answers were directly or indirectly referable to the shock of evacuation and confinement. See *Hearings before Committee on Immigration and Naturalization on H. R. 2701, 3012, 3489, 3446, and 4103*, 78th Cong., 1st Sess. 36–43 (1944). Basically, of course, the issue is to a considerable extent irrelevant. Disloyalty is not a crime, even in the aggravated form of enthusiastic propaganda for the Axis cause. See note 2 supra. At most, it is a possible ground for interning enemy aliens, see *N.Y. Times*, June 27, 1945, p. 15, col. 7, but hardly a sufficient ground for excluding individuals from strategic areas. See note 13 supra.

radio and by lights, along the West Coast. It was said to be difficult to trace such signals because of limitations on the power of search without warrant. There had been several episodes of shelling the coast by submarine, although two of the three such episodes mentioned by General DeWitt as tending to create suspicion of the Japanese Americans had taken place after their removal from the Coast. These were the only such items in the Final Report which were not identified by date.[80] And it was positively known that no suspicions attached to the Japanese residents for sabotage at Pearl Harbor before, during, or after the raid.[81] Those subsequently arrested as Japanese agents were all white men. "To focus attention on local residents of Japanese descent, actually diverted attention from those who were busily engaged in espionage activity."[82]

It is possible that the absence of a trial on the facts may permit the Court in the future to distinguish or to extinguish the Japanese American cases; for in these cases the defendants did not bring forth evidence, nor require the government to produce evidence, on the factual justification of the military action. Whoever had the burden of going forward, or of proof, government or defendant, the burden was not met.[83] Not even the *Korematsu* case would justify

80. *DeWitt Final Report* at 18; *N.Y. Times*, June 23, 1942, p. 1, col. 4; p. 9, col. 4; id., Sept. 15, 1942, p. 1, col. 3; p. 10, col. 5.

81. See McWilliams, *Prejudice* 144 (1944).

82. Id. at 111.

83. In applying the doctrine of *Mitchell v. Harmony*, the burden of proof in fact falls on the government, claiming the privileges of the emergency. Whatever is said about the presumption of constitutionality of statutes, or the interest of the court in not substituting its judgment on the facts for that of the qualified executive or legislative authority, where the justification for extraordinary behavior rests on a showing of extraordinary circumstances, it will finally be the government's burden to bring in the evidence of emergency or take the risk of not persuading the court. See, e.g., cases cited supra notes 13, 72, and 73.

the exclusion of such evidence, nor the denial of a defendant's request to call the General as a witness. A future case may therefore create a better record for establishing appropriate criteria of judicial control over military conduct, and for applying such criteria to better purpose.

A trial on the factual justification of the curfew and exclusion orders would require the Court to confront *Ex parte Milligan*,[84] which it sought to avoid in all three of the Japanese cases. *Ex parte Milligan* represents an application to a large and common class of semi-military situations of what Chief Justice Stone articulated in the *Hirabayashi* case as a "rule of reason" governing the scope of military power. The military power, the Chief Justice said, included any steps needed to wage war successfully. The Justices in the majority in *Ex parte Milligan* declared in effect that it would be difficult, if not impossible, to convince them that there was or could be a military necessity for allowing the military to hold, try, or punish civilians while the civil courts were open and functioning. And they held further that it is for the judges, not the generals, to say when it is proper under the Constitution to shut the courts or to deny access to them.

Ex parte Milligan is a monument in the democratic tradition and should be the animating force of this branch of our law. At a time when national emergency, mobilization, and war are more frequent occurrences than at any previous period of our history, it would be difficult to name a single decision of more fundamental importance to society. Yet there is a tendency to treat *Ex parte Milligan* as outmoded, as if new methods of "total" warfare made the case an anach-

84. 4 Wall. 2 (U.S. 1867). See Frank, "Ex parte Milligan v. The Five Companies: Martial Law in Hawaii," 44 *Colum. L. Rev.* 639 (1944); Klaus, *The Milligan Case* (1929); Fairman, *Mr. Justice Miller and the Supreme Court* c. 4 (1939).

ronism.[85] Those who take this view have forgotten the circumstances of the Civil War. Fifth columns, propaganda, sabotage, and espionage were more generally used than in any war since the siege of Troy, and certainly more widely used than in the Second World War.

Ex parte Milligan illustrates the point. Milligan was convincingly charged with active participation in a fifth column plot worthy of Hitler or Alfred Hitchcock. A group of armed and determined men were to seize federal arsenals at Columbus, Indianapolis, and at three points in Illinois, and then to release Confederate prisoners of war held in those states. Thus they would create a Confederate army behind the Union lines in Tennessee. Milligan and his alleged co-conspirators acted in Indiana, Missouri, Illinois, and in other border states. Their strategy had a political arm. The Union was to be split politically, and a Northwest Confederation was to be declared, friendly to the South, and embracing Illinois, Wisconsin, Iowa, Kansas, Indiana, and Minnesota. This plan was not an idle dream. It was sponsored by a well-financed society, the Sons of Liberty, thought to have 300,000 members, many of them rich and respectable; the planned uprising would coincide with the Chicago Convention of the Democratic Party, which was sympathetic to abandoning the war and recognizing the Confederacy.[86]

The unanimous Court which freed Milligan for civil trial was a court of fire-eating Unionists. Mr. Justice Davis, who wrote for the majority, was one of President Lincoln's closest friends, supporters, and admirers. The Chief Justice,

85. Brief for Respondent, pp. 45–48, *Ex parte* Quirin, 317 U.S. 1 (1942); *Ex parte* Ventura, 44 F. Supp. 520, 522–23 (W. D. Wash. 1942). For a moderate view see Schueller v. Drum, 51 F. Supp. 383, 387 (E. D. Pa. 1943). Cf. Frank, *supra* note 84, at 639.

86. See Klaus, *The Milligan Case* 27–33 (1929).

who wrote the opinion for the concurring minority, was a valiant and resolute supporter of the war, whatever his shortcomings in other respects. The Court had no difficulty in freeing Milligan and facing down the outcry of radical Republicans which was provoked by the decision. The issue dividing the Court in the *Milligan* case was parallel in some ways to the problem presented by the Japanese exclusion program under the statute of March 21, 1942. Congress had passed a statute in 1863 permitting the President to suspend the privilege of habeas corpus in a limited way whenever, in his judgment, the public safety required it, holding prisoners without trial for a short period. If the next sitting of the grand jury did not indict those held in its district, they were entitled to release under the statute.

The statute was in fact a dead letter, although the Court did not consider that aspect of the situation in deciding Milligan's case.[87] Milligan had been arrested by the military. The grand jury had not returned an indictment against him at its next sitting. He had nonetheless been tried by a military commission, and sentenced to death. The minority of the Court urged his release according to the terms of the statute, because no indictment had been presented against him. The Court, however, freed him for normal criminal trial on broader grounds. The controlling question of the case, the Court said, was whether the military commission had jurisdiction to try Milligan. This question was considered without express reference to the statute of 1863, as such, but on the evidence which might justify the exercise of martial law powers either under the statute or otherwise. The only constitutional reason, the Court said, for denying Milligan the trial provided for in the third article of the Constitution, and in the Fifth and Sixth Amendments, is

87. See Randall, *Constitutional Problems under Lincoln* 167 (1926).

that such a trial could not physically be conducted. As long as the courts are open, persons accused of crime and not subject to the laws of war as members of the armed forces or enemy belligerents must be brought before the courts or discharged. *Ex parte Milligan* therefore holds Milligan's trial before a military commission to be unconstitutional, despite the President's action under the first section of the Act of 1863. The factual situation was not such as to justify the exercise of martial law powers, even for temporary detention, and certainly not for trial. Ordinary civilians could be held for military trial only when the civil power was incapable of acting—during an invasion, for example, or during a period of severe riot or insurrection.

> It is difficult to see how the *safety* of the country required martial law in Indiana. If any of her citizens were plotting treason, the power of arrest could secure them, until the government was prepared for their trial, when the courts were open and ready to try them. It was as easy to protect witnesses before a civil as a military tribunal; and as there could be no wish to convict, except on sufficient legal evidence, surely an ordained and established court was better able to judge of this than a military tribunal composed of gentlemen not trained to the profession of the law.
>
> It is claimed that martial law covers with its broad mantle the proceedings of this military commission. The proposition is this: that in a time of war the commander of an armed force (if in his opinion the exigencies of the country demand it, and of which he is to judge) has the power, within the lines of his military district, to suspend all civil rights and their remedies, and subject citizens as well as soldiers to the rule of *his will;* and in the exercise of his lawful authority cannot

restrained, except by his superior officer or the President of the United States.

If this position is sound to the extent claimed, then when war exists, foreign or domestic, and the country is subdivided into military departments for mere convenience, the commander of one of them can, if he chooses, within his limits, on the plea of necessity, with the approval of the Executive, substitute military force for and to the exclusion of the laws, and punish all persons, as he thinks right and proper, without fixed or certain rules.

The statement of this proposition shows its importance; for, if true, republican government is a failure, and there is an end of liberty regulated by law. Martial law, established on such a basis, destroys every guarantee of the Constitution, and effectually renders the "military independent of and superior to the civil power"—the attempt to do which by the King of Great Britain was deemed by our fathers such an offence, that they assigned it to the world as one of the causes which impelled them to declare their independence. Civil liberty and this kind of martial law cannot endure together; the antagonism is irreconcilable; and, in the conflict, one or the other must perish.[88]

The Court's dismissal of *Ex parte Milligan* in *Ex parte Endo* requires some analysis. The Court said, "It should be noted at the outset that we do not have here a question such as was presented in Ex parte *Milligan*, 4 Wall. 2, or in Ex parte *Quirin*, 317 U.S. 1, where the jurisdiction of military tribunals to try persons according to the law of war was challenged in *habeas corpus* proceedings. Mitsuye Endo

88. 4 Wall. 2, 127, 124–25 (U.S. 1867).

is detained by a civilian agency, the War Relocation Authority, not by the military. Moreover, the evacuation program was not left exclusively to the military; the Authority was given a large measure of responsibility for its execution and Congress made its enforcement subject to civil penalties by the Act of March 21, 1942. Accordingly, no questions of military law are involved."[89]

The proposition is extraordinary. Under penalty of imprisonment, the orders before the Court in *Ex parte Endo* required that enemy aliens and citizens of Japanese blood be removed from their homes and confined in camps. If found to be "disloyal," they were kept in the camps indefinitely. If found to be "loyal," they were kept in the camps as long as was necessary for the Authority to place them in friendly communities.

The problems of *Ex parte Milligan* are avoided by the simplest of expedients. In *Ex parte Milligan* the Court said that the military could not constitutionally arrest, nor could a military tribunal constitutionally try, civilians charged with treason and conspiracy to destroy the state by force, at a time when the civil courts were open and functioning. Under the plan considered in the Japanese American cases, people not charged with crime are imprisoned for several years without even a military trial, on the ground that they have the taint of Japanese blood. Why does the *Milligan* case not apply *a fortiori*? If it is illegal to arrest and confine people after an unwarranted military trial, it is surely even more illegal to arrest and confine them without any trial at all. The Supreme Court said that the issues of the *Milligan* case were not involved because the evacuees were committed to camps by military orders, not by military tribunals, and because their jailers did not wear uniforms. It is

89. 323 U.S. 283, 297–98 (1944).

hard to see any sequence in the sentences. The Japanese Americans were ordered detained by a general, purporting to action military grounds. The military order was enforceable on pain of imprisonment. While a United States marshal, rather than a military policeman, assured obedience to the order, the ultimate sanction behind the marshal's writ is the same as that of the military police: the bayonets of United States troops. It is hardly a ground for distinction that the general's command was backed by the penalty of civil imprisonment, or that he obtained civilian aid in running the relocation camps. The starting point for the program was a military order, which had to be obeyed. It required enemy aliens and citizens of Japanese blood to be removed from their homes and confined in camps. As events developed, the general's command imposed confinement for three years on most of the people who were evacuated under it.

There are then two basic constitutional problems concealed in the Court's easy dismissal of *Ex parte Milligan:* the arrest, removal, and confinement of persons without trial, pending examination of their loyalty; and the indefinite confinement of persons found to be disloyal. On both counts, at least as to citizens, the moral of *Ex parte Milligan* is plain. The *Milligan* case says little about the propriety of a curfew, or perhaps even of the exclusion orders as such. The military necessity of such steps is to be tested independently in the light of all the relevant circumstances. The *Milligan* case does say, however, that arrest and confinement are forms of action which cannot be taken as military necessities while courts are open. For such punitive measures it proposes a clear and forceful rule of thumb: the protection of the individual by normal trial does not under such circumstances interfere with the conduct of war.

Much was made in the Japanese American cases of the

analogy of temporary preventive arrest or other restriction approved for material witnesses, the protection of the public at fires, the detention of typhoid carriers, mentally ill persons, and so on.[90] The analogy has little or no application to the problems presented in these cases, except perhaps for the curfew or conceivably the abstract issue of exclusion, as distinguished from detention. The restrictions involved here were not temporary emergency measures, justified by the breakdown of more orderly facilities for protecting society against espionage and sabotage. As interferences with the liberty of the individual, they went well beyond the minimal forms of precautionary arrest without warrant which were permitted by the statute of 1863, discussed in the *Milligan* case; they were closely comparable to the forms of arbitrary action which were actually presented by the facts of the *Milligan* case and strongly disapproved by the Court.

As for Japanese aliens, it is orthodox, though not very accurate, to say that as persons of enemy nationality they are subject only to the government's will in time of war.[91]

90. For temporary restrictions on access to localities see Warner, "The Model Sabotage Prevention Act," 54 *Harv. L. Rev.* 602, 611–18 (1941); Fressman, Leider, and Cammer, "Sabotage and National Defense," 54 *Harv. L. Rev.* 632, 641 (1941). The confinement of alcoholics, psychotic persons, and the like raises different problems. The issue in such cases is not whether persons can be confined in the social interest without trial, but without trial by jury. Ample individual investigation, hearings, and other safeguards are required by way of "due" process of law. Minnesota *ex rel.* Pearson v. Probate Court, 309 U.S. 270 (1940); see Hall, "Drunkenness as a Criminal Offense," 32 *J. Crim. L. & Crim.* 297 (1942); Rostow, "The Commitment of Alcoholics to Medical Institutions," 1 *Q. J. of Studies on Alcohol* 372 (1940). Moreover, the limits to such interferences with individual freedom in the name of protecting society are jealously guarded. Skinner v. Oklahoma, 316 U.S. 535 (1942); see Note, 3 *Q. J. of Studies on Alcohol* 668 (1943).

91. See Comment, 51 *Yale L. J.* 1316, 1317 (1942). Cf. 3 Hyde, *International Law Chiefly as Interpreted and Applied in the United States* §§ 616–17 (2d ed. 1945); De Lacey v. United States, 249 Fed. 625 (9th Cir. 1918).

But the protection of the Fifth and Sixth Amendments extends generally to aliens.[92] Should arbitrary distinctions be permitted in our policy for enemy aliens, distinctions without reasonable basis? Is it permissible to intern all the Japanese who live on the West Coast, but to allow German and Italian aliens, and Japanese who live elsewhere, general freedom? Lower courts have said they would refuse to review executive action directed at the control of enemy aliens.[93] Such a view is far from necessary. The courts go to great lengths to assure reasonable protection to the property rights of enemy aliens, their privilege of pursuing litigation, and the like. It requires no extension of doctrine to propose that their control and custody in time of war be reasonably equal and even-handed. As far as accepted notions of international law are concerned, the "single aim" of specialized enemy alien controls is to prevent enemy aliens from aiding the enemy.[94] The present pattern of discriminatory controls bears no relation to the end of safety.

V

These cases represent deep-seated and largely inarticulate responses to the problems they raise. In part they express the

92. *See* Alexander, *Rights of Aliens under the Federal Constitution* 127–29 (1931); Gibson, *Aliens and the Law* 151–52, c. 7 (1919); Oppenheimer, "The Constitutional Rights of Aliens," 1 *Bill of Rights Rev.* 100, 106 (1941).

93. *Ex parte* Graber, 247 Fed. 832 (N. D. Ala. 1918); *Ex parte* Gilroy, 257 Fed. 110 (S. D. N. Y. 1919). However, the premise of these cases is hardly *compatible with that of Sterling v. Constantin*, but rather depends on the proposition that the exercise of executive discretion in military and quasi-military matters is not reviewable, except for fraud, mistaken identity, etc. See also cases cited supra note 13. The statute and regulation involved in those cases applies to any persons, not only to citizens or friendly aliens.

94. *See* Hyde, *loc. cit. supra note* 91. As for the status of enemy aliens in court, see *Ex parte* Kawato, 317 U.S. 69 (1942); as to the property of enemy aliens see Symposium, "Enemy Property," 11 *Law & Contemp. Prob.* 1–201 (1945).

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Justices' reluctance to interfere in any way with the prosecution of the war. In part they stem from widely shared fears and uncertainties about the technical possibilities of new means of warfare. Such fears were strongly felt everywhere on the Allied side after the German victories of 1940 and 1941. It was common then, and still is common, to believe in a vague but positive way that the restoration of mobility in warfare, and the appearance of new weapons, have somehow made all older thought on the subject of war obsolete. We expected fifth columns and paratroops to drop near San Francisco at any moment. In the panic of the time, it seemed almost rational to lock up Japanese Americans as potential enemy agents.

But the airplane, the tank, and the rocket have not made it necessary to abandon the principles of *Ex parte Milligan*. Whatever the effect of such developments may be on Infantry Field Regulations and the Manual of Arms, they do not compel us to deny suspects the right of trial, to hold people for years in preventive custody, or to substitute military commissions for the civil courts. The need for democratic control of the management of war has not been reduced by advances in the technique of fighting. The accelerated rate of technical advance emphasizes anew the importance of civil control to guard against resistance to novelty and the other occupational diseases of the higher staffs of all armies. And as warfare becomes more dangerous, and as it embraces more and more of the life of the community, the problem of assuring a sensible choice of war policies, and of preserving democratic social values under conditions of general mobilization, becomes steadily more urgent.

What lies behind *Ex parte Milligan*, *Mitchell v. Harmony*, and *Sterling v. Constantin* is the principle of responsibility. The war power is the power to wage war successfully, as Chief Justice Hughes once remarked. But it is the power

to wage war, not a license to do unnecessary and dictatorial things in the name of the war power. The decision as to where the boundaries of military discretion lie in particular cases has to be made differently in different circumstances. Sometimes the issue will arise in law suits, more often in courts-martial, congressional investigations, reports of the Inspector General, or other law enforcement procedures. When a court confronts the problem of determining the permissible limit of military discretion, it must test the question by the same methods of judicial inquiry it uses in other cases. There is no special reason why witnesses, depositions, cross-examination and other familiar techniques of investigation are less available in these cases than in others. As *Mitchell v. Harmony* and many other cases indicate, Mr. Justice Jackson is plainly wrong in asserting that judicial control of military discretion is impossible. Mr. Justice Jackson said:

> The limitation under which courts always will labor in examining the necessity for a military order are illustrated by this case. How does the Court know that these orders have a reasonable basis in necessity? No evidence whatever on that subject has been taken by this or any other court. There is sharp controversy as to the credibility of the DeWitt report. So the Court, having no real evidence before it, has no choice but to accept General DeWitt's own unsworn, self-serving statement, untested by any cross-examination, that what he did was reasonable. And thus it will always be when courts try to look into the reasonableness of a military order.[95]

95. Korematsu v. United States, 323 U.S. 214, 245 (1944). See procedure in *Ex parte* Duncan as described in Frank, supra note 84, at 649; General Wilbur was a witness in the individual exclusion proceedings against one Ochikubo. See *Pacific Citizen*, March 17, 1945, p. 2, col. 1.

The Supreme Court had a real alternative in the *Korematsu* case: it could have remanded for trial on the necessity of the orders. The courts have found no special difficulty in investigating such questions, and there is no reason why they should.

The first and greatest anomaly of the *Hirabayashi, Korematsu,* and *Endo* cases is that they seem to abandon the requirement of a judicial inquiry into the factual justification for General DeWitt's decisions. Despite the careful language of the Chief Justice, these cases treat the decisions of military officials, unlike those of other government officers, as almost immune from ordinary rules of public responsibility. The judges were convinced by the *ipse dixit* of a general, not the factual record of a court proceeding. On this ground alone, the Japanese American cases should be most strenuously reconsidered.

An appropriate procedure for reviewing decisions taken in the name of the war power is an indispensable step toward assuring a sensible result. But the ultimate problem left by these cases is not one of procedure. In these cases the Supreme Court of the United States upheld a decision to incarcerate 100,000 people for a term of several years. The reason for this action was the extraordinary proposition that all persons of Japanese ancestry were enemies, that the war was not directed at the Japanese state, but at the Japanese "race." General DeWitt's views on this subject were formally presented in his Final Recommendations and his Final Report to the War Department.[96] They were reiterated in his later testimony to a subcommittee of the Naval Affairs Committee. After testifying about soldier delinquency and other problems involving the welfare of his troops, General DeWitt was asked whether he had any

96. See supra, pp. 242–44.

suggestions he wanted to leave with the Congressmen. He responded:

I haven't any except one—that is the development of a false sentiment on the part of certain individuals and some organizations to get the Japanese back on the west coast. I don't want any of them here. They are a dangerous element. There is no way to determine their loyalty. The west coast contains too many vital installations essential to the defense of the country to allow any Japanese on this coast. There is a feeling developing, I think, in certain sections of the country that the Japanese should be allowed to return. I am opposing it with every proper means at my disposal.

MR. BATES: I was going to ask—would you base your determined stand on experience as a result of sabotage or racial history or what is it?

GENERAL DEWITT: I first of all base it on my responsibility. I have the mission of defending this coast and securing vital installations. The danger of the Japanese was, and is now—if they are permitted to come back—espionage and sabotage. It makes no difference whether he is an American citizen, he is still a Japanese. American citizenship does not necessarily determine loyalty.

MR. BATES: You draw a distinction then between Japanese and Italians and Germans? We have a great number of Italians and Germans and we think they are fine citizens. There may be exceptions.

GENERAL DEWITT: You needn't worry about the Italians at all except in certain cases. Also, the same for the Germans except in individual cases. But we must worry about the Japanese all the time until he is wiped off the map. Sabotage and espionage will make prob-

> lems as long as he is allowed in this area—problems which I don't want to have to worry about.[97]

The Japanese exclusion program thus rested on five propositions of the utmost potential menace: (1) protective custody, extending over three or four years, is a permitted form of imprisonment in the United States; (2) political opinions, not criminal acts, may contain enough clear and present danger to justify such imprisonment; (3) men, women, and children of a given ethnic group, both Americans and resident aliens, can be presumed to possess the kinds of dangerous ideas which require their imprisonment; (4) in time of war or emergency the military, perhaps without even the concurrence of the legislature, can decide what political opinions require imprisonment and which ethnic groups are infected with them; and (5) the decision of the military can be carried out without indictment, trial, examination, jury, the confrontation of witnesses, counsel for the defense, the privilege against self-incrimination, or any of the other safeguards of the Bill of Rights.

The idea of punishment only for individual behavior is basic to all systems of civilized law. A great principle was never lost so casually. Mr. Justice Black's comment was weak to the point of impotence: "Hardships are a part of war, and war is an aggregation of hardships."[98] It was an answer in the spirit of cliché: "Don't you know there's a war going on?" It is hard to reconcile with the purposes of his dissent in *Williams v. North Carolina*, where he said that a conviction for bigamy in North Carolina of two people who had been validly divorced and remarried in Nevada "makes of

97. *Hearings before Subcommittee of House Committee on Naval Affairs on H. R. 30*, 78th Cong., 1st Sess. 739–40 (1943). The text of the testimony is given somewhat differently from contemporary newspaper reports in McWilliams, *Prejudice* 116 (1944).

98. Korematsu v. United States, 323 U.S. 214, 219 (1944).

human liberty a very cheap thing—too cheap to be consistent with the principles of free government."[99]

That the Supreme Court has upheld imprisonment on such a basis constitutes an expansion of military discretion beyond the limit of tolerance in democratic society. It ignores the rights of citizenship and the safeguards of trial practice which have been the historical attributes of liberty. Beyond that, it is an injustice, and therefore, like the trials of Sacco, Vanzetti, and Dreyfus, a threat to society and to all men. We believe that the German people bear a common political responsibility for outrages secretly committed by the Gestapo and the SS. What are we to think of our own part in a program which violated every democratic social value, yet was approved by the Congress, the President, and the Supreme Court?

Three forms of reparation are available, and should be pursued. The first is the inescapable obligation of the federal government to protect the civil rights of Japanese Americans against organized and unorganized hooliganism. If local law enforcement fails, prosecutions under the Civil Rights Act should be undertaken.[100] Secondly, generous financial indemnity should be sought, for the Japanese Americans have suffered and will suffer heavy property losses as a consequence of their evacuation. Finally, the basic issues should be presented to the Supreme Court again, in an effort to obtain a reversal of these wartime cases. In the history of the Supreme Court there have been important occasions when the Court itself corrected a decision occasioned by the excitement of a tense and patriotic mo-

99. Williams v. North Carolina, 325 U.S. 226, 276 (1945).

100. 18 U.S.C. §§ 51, 52 (Criminal Code §§ 19, 20) (1940); Hague v. CIO, 307 U.S. 496 (1939); United States v. Classic, 313 U.S. 299 (1941). Cf. Screws v. United States, 325 U.S. 91 (1945).

ment. After the end of the Civil War, *Ex parte Vallandigham*[101] was followed by *Ex parte Milligan*. The *Gobitis* case was overruled by *West Virginia v. Barnette*.[102] Similar public expiation in the case of the internment of Japanese Americans from the West Coast would be good for the Court and for the country.

ADDENDUM

In the intervening years since this article was written, steps have been taken to atone for the wrongs done to the Japanese Americans in the name of national security.[103]

On May 20, 1959, the Attorney General of the United States, the Honorable William P. Rogers, convened a ceremony at the Department of Justice to take note of the successful end of the program of restoring citizenship to all but a few of the 5,700 persons of Japanese descent who renounced their citizenship during World War II. The speakers on that occasion were the Attorney General; the Honorable George Cochran Doub, the Assistant Attorney General who had vigorously speeded up both the settlement of property claims[104] and the restoration of citizenship; Edward J. Ennis, Esq., of New York, who had helped to institute the program as an official of the Department of Justice in 1942; and myself, as representative of those who

101. 1 Wall. 243 (U.S. 1863).

102. Minersville School District v. Gobitis, 310 U.S. 586 (1940); West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).

103. The history of the episode is reviewed in Morton Grodzins, *Americans Betrayed: Politics and the Japanese Evacuation* (1949), and Dorothy Swaine Thomas, *The Salvage* (1952).

104. Congress passed the American-Japanese Evacuation Claims Act of 1948, P.L. 886, July 2, 1948, 62 Stat. 1231, c. 814, 50 U.S.C. App. 1981–87, under which almost $37,000,000 was paid to over 26,000 claimants for property losses sustained as a result of their evacuation.

had written about the constitutional problems of evacuation."

My remarks were as follows:

> This is a day of pride for American law. We are met to celebrate the correction of an injustice. The law has no higher duty than to acknowledge its own errors. It is one of the vital ways in which law draws strength from the conscience of the community, and helps by its example to further the moral development of our people.
>
> The long, difficult, and devoted labors which we honor here express the finest qualities in American life. The government's programs of restitution toward Americans of Japanese ancestry who were removed from the West Coast during the war rest on a premise bluntly put in a committee report of the House of Representatives in 1947: "to redress these loyal Americans in some measure for the wrongs inflicted upon them . . . would be simple justice." Today we confront the fact that as a nation we are capable of wrong, but capable also of confessing our wrongs and seeking to expiate them.
>
> It is not hard to understand the program which was undertaken to remove persons of Japanese blood from the West Coast during the bleak winter of 1942. Pearl Harbor, Corregidor, the Battle of the Coral Seas, and Malaya were heavy on our hearts. Submarines prowled off Norfolk. Tobruk was still to fall. Midway, Stalingrad, and Tunis were far ahead. It was a time of defeat and of fear. Sometimes men act irrationally when they are afraid. While we did not succumb to panic in Hawaii or on the East Coast, we did so in California, Oregon, and Washington. Our sense of panic was institu-

tionalized. Over 100,000 men, women, and children, some 70,000 of them citizens of the United States, were removed from their homes and taken into preventive custody, without indictment or the proffer of charges, on the theory that sabotage and espionage were especially to be feared from those of Japanese blood.

From the beginning, however, the conscience of the nation was engaged. Men were troubled by a persistent sense that the relocation policy was wrong. Our moral concern was soon translated into characteristic programs of action. The famous Nisei regiments which fought so well in Europe symbolized one aspect of that effort. Proposals for change in the relocation program itself soon followed. Despite the weakness, and as I should say, the error of the Supreme Court's disposition of the problem, the people were not satisfied. They realized that acts can be wrong even though they are constitutionally permissible. No great voting groups or blocs entered the fight. No great political leaders made this cause their own. Nonetheless earnest men and women from all parts of the nation, in Congress and in the executive branch, continued their quiet efforts. The problem has been treated, throughout these sixteen years, without reference to party politics, as a matter of decency, and of decency alone.

I know I speak today for all who respect and revere the law, in congratulating the Attorneys General who have carried the programs of financial restitution through to success, and, even more important, have speeded up and completed the program for restoring citizenship to those who renounced it in the heat of a troubled moment. I especially congratulate the Assistant Attorney General, George Cochran Doub, and his excellent staff. They have made this battle their

own, with a fervor which bespeaks their dedication to the highest value of our culture—the conviction that the most exalted office of the state is to do justice to the individual, however small his cause.

I hope that those who have suffered from the actions we took against them during the war have the charity to forgive their government, and the generosity, indeed the grace to find that what has been done to right these wrongs deepens their faith in our common citizenship and in our common democracy.

VETERANS OF FOREIGN WARS
OF THE UNITED STATES
FOUNDED 1899

OFFICE OF
DIRECTOR, NATIONAL LEGISLATIVE SERVICE

V. F. W. MEMORIAL BUILDING
200 MARYLAND AVENUE, N. E.
WASHINGTON, D. C. 20002

March 14, 1980

The Honorable Abraham Ribicoff
Chairman, Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Thank you for your invitation to appear before your Committee to testify on S. 1647, the "Commission on Wartime Relocation and Internment of Civilians Act," which would establish a commission to determine whether a wrong was committed against American citizens and permanent resident aliens who were subjected to relocation and internment as a result of Executive Order No. 9066, dated February 9, 1942 and recommend appropriate remedies.

Unfortunately, Mr. Chairman, we have no official position with respect to the legislation in question and, therefore, would interpose no objection to passage thereof.

As background, our 79th National Convention held in Dallas, Texas August 18-25, 1978, passed Resolution No. 697 supporting legislation which became Public Law 95-382, an act to amend Title 5, USC to provide that Japanese-Americans shall be allowed civil service retirement credit for time spend in World War II internment camps.

Again, thank you for your courtesy and with best wishes and kind regards, I am

Sincerely,

Donald H. Schwab

DONALD H. SCHWAB, Director
National Legislative Service

DHS/ket

American Friends Service Committee Inc.
1501 Cherry Street, Philadelphia, Pennsylvania 19102 • Phone (215) 241-7000

WALLACE T. COLLETT
Chairman
LOUIS W. SCHNEIDER
Executive Secretary
COLIN W. BELL
Executive Secretary Emeritus

March 27, 1980

Marilyn Harris
Senate Governmental Affairs Committee
3308 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Marilyn Harris:

Enclosed are 25 copies of the comments from the American Friends Service Committee (AFSC), a organization based on the principles of the Society of Friends and founded in 1917. AFSC's national office functions with 10 regional offices and a national office here in Philadelphia. We would ask that the testimony be part of the written record and would appreciate receiving a copy of the full record of the hearings when it is printed.

I appreciate your helpfulness in all of this.

Sincerely,

Ed Nakawatase

Ed Nakawatase
Community Relations Division

EN:bph

Enclosures

COMMENTS OF AFSC ON S.1647

March 28, 1980

We of the American Friends Service Committee (AFSC) welcome this opportunity to make some comments on S.1647, the "Commission on Wartime Relocation and Internment of Civilians Act." We make these comments based on our experience during and after the forced evacuation of Japanese in the United States in 1942. AFSC was involved during the evacuation and internment period in ministering to the emergency needs of people of Japanese ancestry and, in cooperation with other agencies, AFSC assisted students of Japanese ancestry who were enrolled in college. In so doing, however, AFSC felt compelled to say in 1942 that, "we do not accept this evacuation as a matter of course, nor approve it in principle. The events of the past few months have cause us deep humiliation and profound concern." The ensuing years have not changed our position about the evacuation and internment. They have confirmed it. The action of the United States Government was wrong in all respects. It violated due process of law, it was an act of officially sanactioned racism and it did serious violence ot the notion that the United States of America was a nation based on democratic precepts.

Recently our Seattle Regional Office cosponsored a series of forums on the internment with the purpose of highlighting that experience as an important public issue for all Americans. AFSC has not yet taken a formal position on S.1647 or any other related legislation.

We commend the potential of S.1647 in beginning a Congressionally mandated and long overdue examination of the Internment, with particular emphasis on the effects upon those who were interned.

We support the broad purpose of this legislation. We do not see S.1647 as preemptive of or in opposition to remedial legislation currently proposed or that may develop for financial and other redress to the victims of the Evacuation and internment.

We make the following recommendations about the implementation of the bill to insure the most searching and far reaching examination of this particular experience and its implications for this nation. The recommendations would include the following:

1) The membership of the proposed Commission must be as broad sensitive and prominent as possible. We would hope that Commission be broadly representative by race, sex and geography. We see the need for informed analyses from a broad spectrum of disciplines, including law, economic, political science, race relations, medicine, sociology, and history with the understanding that the Internment touched on all these aspects of American life and a good deal more;

2) We believe it important that the Commission, as part of its mandate, examine critically the potential uses of current law that continue to pose the threat of forced evacuation and incarceration of American residents and citizens. The recent furor over Iranian

students has raised the specter once again of internment of an unpopular people in a climate of fear and hysteria. One of the best results of a broad examination of the Internment experience would be safeguards to prevent such an outrage from ever happening again under the color of law and with official sanction. We see the internment as representing future possibilities not only as a historic problem;

3) The lessons of the Internment are so basic that it is important the hearings of the Commission be widely publicized with the broadest participation by victims of the Internment. There should be an adequate level of resources to do this task. We are aware that the Internment is a subject of searching discussion within the Japanese community in this country. We believe that the Commission can assist in making that discussion broader to include others in this country.

Senate Chamber
State of Colorado
Denver

State Capitol
Denver, Colorado 80203
839-2315

MAY 14 1980
ACTING PRESIDENT PRO TEMPORE

Governmental Affairs

Print Record

May 8, 1980

The Honorable Walter F. Mondale
Vice-President of the United States
Executive Office Building
Washington, D.C. 20501

Dear Vice-President Mondale;

The Senate of the Fifty-second General Assembly, meeting in Second Regular Session, has adopted the enclosed Senate Resolution No. 15, and requested that a copy be forwarded to you for your information.

Sincerely yours,

Marjorie L. Rutenbeck
Marjorie L. Rutenbeck

MLR:mcw

Enclosure

SENATE RESOLUTION NO. 15.

BY SENATORS P. SANDOVAL, ALLSHOUSE, ANDERSON, BACA-BARRAGAN, BENO, L. FOWLER, GROFF, HARDING, HATCHER, MEIKLEJOHN, PHELPS, POWERS, D. SANDOVAL, STOCKTON, STRICKLAND, WHAM, YOST, AND ZAKHEM.

WHEREAS, The Congress of the United States is considering Senate Bill No. 1647 and House Bill No. 5499, which are cosponsored by some sixteen United States Senators and more than one hundred twenty-five United States Representatives, and which would create and establish "A Commission to gather facts to determine whether any wrong was committed against those American citizens and permanent resident aliens affected by Executive Order 9066, and for other purposes"; and

WHEREAS, During World War II, from about 1942 until 1946, there were some one hundred twenty thousand persons of Japanese ancestry uprooted from the West Coast of the United States and incarcerated in desert camps, behind barbed wire fences patrolled by armed guards of the United States Army, replete with watchtowers, machine gun post, and searchlights, and more than four hundred million dollars in property losses, according to the United States Federal Reserve Bank of San Francisco, were incurred by such individuals, of which only approximately thirty-eight million dollars were recovered by such evacuees under the "Evacuation Claims Act of 1949", et seq., (at the rate of about eight and one-half cents on the dollar); and

WHEREAS, Some ten thousand persons of Japanese ancestry, three-fourths of whom were American citizens, were evacuated to and incarcerated and subsequently relocated in the State of Colorado, during 1942-1946, and have since reestablished their lives, and have contributed significantly to the economy and welfare of the State of Colorado; and

WHEREAS, During the period of hostilities by the United States against the Axis powers of Germany, Italy, and Japan, and during subsequent periods of armed warfare, more than two thousand Americans of Japanese ancestry, both men and women, have served loyally and heroically in the defense of our country, with eighty-seven Nisei from Colorado having given their lives while in the service of the armed forces of the United States, as

commemorated and listed on the monument maintained in the Fairmount Cemetery of Denver, Colorado; and

WHEREAS, In recognition of the unquestioned loyalty of Americans of Japanese ancestry in the State of Colorado, and in recognition of the forced migration by the military from the West Coast to the State of Colorado of this group of present-day Colorado residents, who were subjected to unconscionable disruption of their lives and fortunes, the members of the Senate of this Fifty-second General Assembly of the State of Colorado support the proposed study of all facts and circumstances involved in such evacuation and incarceration during 1942-1946 of loyal American citizens and of peaceful, law-abiding permanent residents of the United States, to the end that such grievous injustices shall never again recur against any other group in the United States; now, therefore,

Be It Resolved by the Senate of the Fifty-second General Assembly of the State of Colorado:

That we, the members of the Senate of this Fifty-second General Assembly of the State of Colorado do support and endorse Senate Bill No. 1647 and House Bill No. 5499, now pending before the Congress of the United States, and that we, the members of the Senate of this Fifty-second General Assembly of the State of Colorado do urge the Congress of the United States to enact such legislation as speedily as possible to prevent the recurrence of such events again in the United States.

Be It Further Resolved, That copies of this Resolution be transmitted to the President of the United States, the Vice president of the United States, the Speaker of the House of Representatives of the Congress of the United States, and each member of the Congress of the United States from the State of Colorado.

Fred E. Anderson
PRESIDENT OF
THE SENATE

Marjorie L. Rutenbeck
SECRETARY OF
THE SENATE

The American Legion
Department of Illinois
P. O. Box 2910 - Bloomington, Illinois 61701

Past

February 27,1980

Art:

The attached resolution was presented at the meeting of Armour Post #56 last night, February 26,1980. Before reading the resolution I gave a brief background so they would better understand the purpose of the resolution. Unfortunately, one just can't put everything in a resolution and hope to get it passed. Getting down to the basics can have a better chance to get it accepted.

I can honestly say it passed Armour Post by a unanamous vote. Hope it does as well as it moves along.

Ascher Miller will present it at the 3rd District meeting tonight as I will be unable to attend. I don't think it will have any problems there. However, I think it might be good for someone from your post to attend the Cook County meeting next Wednesday, March 5th in case any questions arise there. I will be in Florida and will not be able to speak on it. All resolutions are discussed in the Executive meeting which starts at 7:15 in a room off the Council Chambers. Be sure that Jim Hensley gets there since he knows what it's all about.

Best wishes for success.

Al Swideski

Al Swideski

We, the undersigned members of the Chicago Chapter of the 34th Infantry Division, support and endorse Senate Bill S 1647 and House Bill HR 5499. These Bills will establish a Presidential Redress Commission to investigate and conduct nationwide hearings on the wartime incarceration of American citizens of Japanese ancestry and their parents into relocation centers/concentration camps without due process of law. These people incarcerated without trial or hearing included Nisei who served with the 34th Infantry Division in the European campaigns as well as with American forces in the Pacific campaigns.

Name	Address	Unit
James Craig	11310 S. Homan	133 INF. - 34TH DIV.
Helen Craig	11310 S. Homan	
Harold Finch	702 N Doyle Ave Arlington Hts	34th Div. HQ
Ollie Sisk	702 N. Doyle - Grd NG Ill 6 years	
Sue Finch	6041 S Prairie Ave	7th Inf Div
Mildred Fenel	6040 E. So. Prairie Dr. Morris, Ill.	
Edward E Kelly	574 Babcock, ELMHurst, ILL	60450
Richard J. Cymbler Sr.	C O 133 INF.	
Phyllis Cymbler	Box 286 RR#1 LOCKPORT, IL. 60441	Co "G" 135th INF 34 DIV.
Dorothy M Kelly	Box 286 RR I Lockport Ill. 60441	
Irene F. Wolf	574 Babcock Elmhurst Ill 60126	
Edward D. Burke	360 Dunlay Ave. Calumet City, Ill. 60409	
Jean S. Burke	6033 S Sheridan Rd Chicago Ill 60660	
Warren E. Fenel	6040 E. So. Prairie Dr. Morris, Ill. 60450	Co C 165th

FEB 2 8 1980

RESOLUTION NO. 6

WHEREAS: In the spring of 1942,,over 120,000 individuals,,the vast majority of whom were American Citizens were abruptly evicted from their homes in the west coast states and relocated into inland detention Camps, and,

WHEREAS: This action was taken solely on the basis of Race, Constituting a Violation of the Bill of Rights of the United States Constitution,, and

WHEREAS: The Sons of these Citizens, Volknteered to serve in the Armed Forces of the United Sates, and did so with honor, in the military Intelligence and the 442 nd. Combat Regiment, 34th Division, and

WHEREAS: Americans of Japanese ancestry seek remedial Legislation, as a means of promoting Human Rights, thus upholding the Constitution of the United States.

THERFORE BE IT RESOLVED : That the American Legion endorse passage of Senate Bill 1647 and House Bill 5499 , and encourage Congress to establish a Commission on Wartime Relocation and Internment of Civilians Act. and Therefore Be It Further
RESOLVED That this Resolution be properly presented before the Delegates of the First Division Cook County Council for favorable action and if so approved ,be sent to the Department of Illinois for consideration at the 1980 Annual Department Convention.

The above Resolution was unanimousley adopted by the 6th District Council the American Legion, Department of Illinois, in Regular meeting held this 27th day of February , 1980, at the Wayne-Wright post Headquarters..

S/ Roger Rollins ADJUTANT

James E. Hendley COMMANDER

RESOLUTION

WHEREAS; IN 1942, FIVE DENIAL ORDER #9066 CAUSED APPROXIMATELY 120,000 PERSONS OF JAPANESE ANCESTRY, THE MAJORITY OF WHOM WERE UNITED STATES CITIZENS, WERE FORCIBLY EVICTED FROM THE WEST COAST STATES, AND

WHEREAS; WITHOUT TRIALS OR HEARINGS IN TOTAL VIOLATION OF THE PROTECTION GUARANTEED BY THE BILL OF RIGHTS AND THE CONSTITUTION OF THE UNITED STATES, WERE INCARCERATED IN CONCENTRATION CAMPS WITH ARMED GUARDS, AND

WHEREAS; WHEN THESE JAPANESE AMERICANS WERE EVICTED FROM THEIR HOMES AND PLACED IN CONCENTRATION CAMPS, SEVEN OF THE TEN ARTICLES OF THE BILL OF RIGHTS WERE ARBITRARILY SUSPENDED AND AS A CONSEQUENCE, AN ENTIRE GROUP OF LOYAL AMERICANS WERE DEPRIVED OF THEIR CONSTITUTIONAL RIGHTS, AND

WHEREAS; IN ADDITION TO THE $400 MILLION IN PROPERTY LOSSES ESTIMATED BY THE FEDERAL RESERVE BANK OF SAN FRANCISCO IN 1942, THERE WERE OTHER IMMEASURABLE DAMAGES TO BE CONSIDERED SUCH AS THE LOSS OF INDIVIDUAL FREEDOM, LOSS OF INCOME AND INTERRUPTION OF CAREERS, THE DESTRUCTION OF HUMAN DIGNITY AND THE PSYCHOLOGICAL TRAUMA OF HAVING BEEN INNOCENT VICTIMS IMPRISONED FOR THREE AND ONE HALF YEARS, AND

WHEREAS; WHILE THE ISSEI (PARENTS OR 1st GENERATION) WERE INCARCERATED IN THESE CONCENTRATION CAMPS, THE NISEI (2nd GENERATION) VOLUNTEERED TO SERVE IN THE ARMED FORCES IN OUR WAR WITH JAPAN, AND

WHEREAS; IT HAS BEEN ACKNOWLEDGED BY THE TOP MILITARY OFFICIALS THAT THE NISEI SERVING IN THE MILITARY INTELLIGENCE SERVICE HELPED TO SHORTEN THE WAR BETWEEN THE UNITED STATES AND JAPAN AND THUS SAVED THOUSANDS OF LIVES OF AMERICAN COMBAT TROOPS, AND

WHEREAS; THE NISEI, SERVING IN THE 100th BATTALION AND THE 442nd RECON TROOPS, CONTRIBUTED TO THE SUCCESS OF GEN. MARK CLARKS LANDINGS ON THE EUROPEAN FRONT AND IN SO DOING, BECAME THE HIGHEST DECORATED UNITS IN THE HISTORY OF THE UNITED STATES ARMED FORCES, AND

WHEREAS; TODAY, AMERICANS OF JAPANESE ANCESTRY SEEK REMEDIAL LEGISLATION AS MEANS OF PROMOTING HUMAN RIGHTS AND UPHOLDING THE CONSTITUTION OF THE UNITED STATES, THEREFORE

BE IT RESOLVED; THAT THE AMERICAN LEGION SUPPORT THE SENATORS AND MEMBERS OF CONGRESS SEEKING THE ENACTMENT OF S1647 AND HR 5499 WHICH SEEKS THE ESTABLISHMENT OF A CONGRESSIONAL FACT FINDING COMMISSION TO INVESTIGATE THE EVENTS THAT BROUGHT ABOUT THE EVENTS OF 1942, AND TO DETERMINE WHETHER REMEDIES SHOULD BE MADE, AND

BE IT FURTHER RESOLVED; THAT THIS RESOLUTION BE CONSIDERED BY ALL ECHELONS OF THE AMERICAN LEGION INCLUDING THE NATIONAL CONVENTION OF THE AMERICAN LEGION, BEING HELD IN THE CITY OF BOSTON, AUGUST 24-28, 1980, AND IF FAVORABLY CONSIDERED, THAT COPIES OF THIS RESOLUTION BE FORWARDED TO ALL MEMBERS OF THE UNITED STATES SENATE AND HOUSE OF REPRESENTATIVES.

SHEET #2 R E S O L U T I O N

THE FOREGOING RESOLUTION WAS CONSIDERED AND ADOPTED BY THE MEMBERS OF ARMOUR POST #266, THE AMERICAN LEGION AT ITS' REGULAR MEETING HELD ON FEBRUARY 26,1980 AT RAINBOW GARDENS, 1425 W. 51st. STREET, CHICAGO, ILLINOIS.

DATE: 2/27/80

ATTESTED TO BY:

COMMANDER
Hormel

ADJUTANT
Al Swiderski

3rd DISTRICT COMMANDER

3rd DISTRICT ADJUTANT

Passed

COOK COUNTY COUNCIL, THE AMERICAN LEGION, INC.

DEPARTMENT OF ILLINOIS

MARCH 5TH, 1980

RESOLUTIONS

RESOLUTION NO. 7:

WHEREAS: Membership is vital to the growth and well being of the American Legion, and

WHEREAS: The membership in the First Division and in the Department of Illinois has been eroding for a number of years, and

WHEREAS: The membership problem, in part, is directly related to the fact that many posts have lost their post homes for one reason or another, and

WHEREAS: The lack of a post home makes it extremely difficult to recruit new members to such posts, and

WHEREAS: A possible solution to this problem has been reported in the "Prairie Stater" article by the First Division Commander as being the establishment of American Legion Community Centers, and

WHEREAS: The concept of American Legion Community Centers would offer posts without post homes an opportunity to have a home in the Center and thus help the posts in their membership problem,

NOW THEREFORE BE IT RESOLVED: That the Department of Illinois establish a study committee to study the feasibility of the establishment of American Legion Community Centers in the First Division and in any other area of the Department of Illinois where the Centers would prove useful, and

BE IT FURTHER RESOLVED: That this committee be instructed to prepare all necessary resolutions to implement the concept of American Legion Community Center if its findings so indicate, and

BE IT FURTHER RESOLVED: That this resolution passed at the regular meeting of the Darius-Girenas Post No. 271, The American Legion, Department of Illinois, on Monday, February 11th, 1980, be forwarded to the Fourth District Council for its approval and then to the First Division, Cook County Council for its approval; then to the Department of Illinois Convention, Palmer House, Chicago, July 9th - 12th, 1980, for its favorable action and implementation.

ATTESTED:

/S/ HARRY GEMBARA, COMMANDER /S/ STANLEY WALTERS, ADJUTANT

RESOLUTION NO. 8:

WHEREAS: In the spring of 1942, over 120,000 individuals, the vast majority of whom were American Citizens were abruptly evicted from their homes in the west coast states and relocated into inland detention Camps, and

WHEREAS: This action was taken solely on the basis of Race, Constituting a Violation of the Bill of Rights of the United States Constitution, and

WHEREAS: The Sons of these Citizens, volunteered to serve in the Armed Forces of the United States, and did so with honor, in the military Intelligence and the 442nd Combat Regiment, 34th Division, and

WHEREAS: Americans of Japanese ancestry seek remedial Legislation, as a means of promoting Human Rights, thus upholding the Constitution of the United States.

THEREFORE BE IT RESOLVED: That The American Legion endorse passage of Senate Bill 1647 and House Bill 5499, and encourage Congress to establish a Commission on Wartime Relocation and Internment of Civilians Act.

NOW THEREFORE BE IT FURTHER RESOLVED: That this resolution be properly presented before the Delegates of the First Division Cook County Council for favorable action and if so approved, be sent to the Department of Illinois for consideration at the 1980 Annual Department Convention.

The above Resolution was unanimously adopted by the 6th District Council the American Legion, Department of Illinois, in regular meeting held this 27th day of February, 1980, at the Wayne-Wright Post headquarters.

/S/ ROGER BODIN, ADJUTANT /S/ JAMES E. HENSLEY, COMMANDER

[Whereupon, at 3:50 p.m., the committee recessed, to reconvene subject to the call of the chair.]

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