WITHDRAWAL SHEET
Ronald Reagan Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
letter case			
1. memo	OGC to Linda Chavez, re Commissioner questions regarding S. 2116 (partial of page 3)	4/25/84	~~P-5~~ C03 10/4/00
2. memo	pages 4-9 of item #1	4/25/84	~~P-5~~

COLLECTION: ACLE, LUIS: Files	smf
FILE FOLDER: Japanese-American Reparations (1 of 2) Box 13752	10/20/94

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- **P-1** National security classified information [(a)(1) of the PRA].
- **P-2** Relating to appointment to Federal office [(a)(2) of the PRA].
- **P-3** Release would violate a Federal statute [(a)(3) of the PRA].
- **P-4** Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- **P-5** Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA.
- **P-6** Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

Freedom of Information Act - [5 U.S.C. 552(b)]

- **F-2** Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- **F-7** Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- **F-8** Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- **F-9** Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].
- **C.** Closed in accordance with restrictions contained in donor's deed of gift.

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99TH CONGRESS
1ST SESSION

S. 1053

To accept the findings and to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians.

IN THE SENATE OF THE UNITED STATES

MAY 2 (legislative day, APRIL 15), 1985

Mr. MATSUNAGA (for himself, Mr. INOUYE, Mr. STEVENS, Mr. MURKOWSKI, Mr. CRANSTON, Mr. GORTON, Mr. EVANS, Mr. RIEGLE, Mr. LEVIN, Mr. MELCHER, Mr. PROXMIRE, Mr. KENNEDY, Mr. KERRY, Mr. HATFIELD, Mr. METZENBAUM, Mr. BURDICK, Mr. HARKIN, Mr. DENTON, Mr. MOYNIHAN, Mr. D'AMATO, Mr. HART, Mr. SARBANES, Mr. EXON, Mr. SIMON, Mr. BRADLEY, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To accept the findings and to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND PURPOSE

SECTION 1. (a) FINDINGS.—The Congress finds that—

(1) the findings of the Commission on Wartime Relocation and Internment of Civilians, established by the Commission on Wartime Relocation and Intern-

ment of Civilians Act, accurately and completely describe the circumstances of the exclusion, relocation, and internment of in excess of one hundred and ten thousand United States citizens and permanent resident aliens of Japanese ancestry and the treatment of the individuals of Aleut ancestry who were removed from the Aleutian and the Pribilof Islands;

(2) the internment of individuals of Japanese ancestry was carried out without any documented acts of espionage or sabotage, or other acts of disloyalty by any citizens or permanent resident aliens of Japanese ancestry on the west coast;

(3) there was no military or security reason for the internment;

(4) the internment of the individuals of Japanese ancestry was caused by racial prejudice, war hysteria, and a failure of political leadership;

(5) the excluded individuals of Japanese ancestry suffered enormous damages and losses, both material and intangible, and there were incalculable losses in education and job training, all of which resulted in significant human suffering;

(6) the basic civil liberties and constitutional rights of those individuals of Japanese ancestry interned were

fundamentally violated by that evacuation and internment;

(7) as documented in the Commission's reports, the Aleut civilian residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island were relocated during World War II to temporary camps in isolated regions of southeast Alaska where they remained, under United States control and in the care of the United States, until long after any potential danger to their home villages had passed;

(8) the United States failed to provide reasonable care for the Aleuts, and this resulted in widespread illness, disease, and death among the residents of the camps; and the United States further failed to protect Aleut personal and community property while such property was in its possession or under its control;

(9) the United States has not compensated the Aleuts adequately for the conversion or destruction of personal property caused by the United States military occupation of Aleut villages during World War II;

(10) the United States has not removed certain abandoned military equipment and structures from inhabited Aleutian Islands following World War II, thus creating conditions which constitute potential hazards

to the health and welfare of the residents of the islands;

(11) the United States has not rehabilitated Attu village, thus precluding the development of Attu Island for the benefit of the Aleut people and impairing the preservation of traditional Aleut property on the island; and

(12) there is no remedy for injustices suffered by the Aleuts during World War II except an Act of Congress providing appropriate compensation for those losses which are attributable to the conduct of United States forces and other officials and employees of the United States.

(b) PURPOSES.—The purposes of this Act are to—

(1) acknowledge the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry;

(2) apologize on behalf of the people of the United States for the evacuation, relocation, and internment of the citizens and permanent resident aliens of Japanese ancestry;

(3) provide for a public education fund to finance efforts to inform the public about the internment of

such individuals so as to prevent the reoccurrence of any similar event;

(4) make restitution to those individuals of Japanese ancestry who were interned;

(5) make restitution to Aleut residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island, in settlement of United States obligations in equity and at law, for—

(A) injustices suffered and unreasonable hardships endured while under United States control during World War II;

(B) personal property taken or destroyed by United States forces during World War II;

(C) community property, including community church property, taken or destroyed by United States forces during World War II; and

(D) traditional village lands on Attu Island not rehabilitated after World War II for Aleut occupation or other productive use.

TITLE I—RECOGNITION OF INJUSTICE AND APOLOGY ON BEHALF OF THE NATION

SEC. 101. The Congress accepts the findings of the Commission on Wartime Relocation and Internment of Civilians and recognizes that a grave injustice was done to both citizens and resident aliens of Japanese ancestry by the evac-

uation, relocation, and internment of civilians during World War II. On behalf of the Nation, the Congress apologizes.

TITLE II—UNITED STATES CITIZENS OF JAPANESE ANCESTRY AND RESIDENT JAPANESE ALIENS

DEFINITIONS

SEC. 201. For the purposes of this title—

(1) the term "eligible individual" means any living individual of Japanese ancestry who—

(A) was enrolled on the records of the United States Government during the period beginning on December 7, 1941, and ending on June 30, 1946, as being in a prohibited military zone; or

(B) was confined, held in custody, or otherwise deprived of liberty or property during the period as a result of—

(i) Executive Order Numbered 9066 (February 19, 1942; 7 Fed. Reg. 1407);

(ii) the Act entitled "An Act to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones" and approved March 21, 1942 (56 Stat. 173); or

(iii) any other Executive order, Presidential proclamation, law of the United States, directive of the Armed Forces of the United States, or other action made by or on behalf of the United States or its agents, representatives, officers, or employees respecting the exclusion, relocation, or detention of individuals on the basis of race;

(2) the term "Fund" means the Civil Liberties Public Education Fund established in section 204;

(3) the term "Board" means the Civil Liberties Public Education Fund Board of Directors established in section 206;

(4) the term "evacuation, relocation, and internment period" means that period beginning on December 7, 1941, and ending on June 30, 1946; and

(5) the term "Commission" means the Commission on Wartime Relocation and Internment of Civilians, established by the Commission on Wartime Relocation and Internment of Civilians Act.

CRIMINAL CONVICTIONS

SEC. 202. (a) REVIEW.—The Attorney General shall review all cases in which United States citizens and permanent resident aliens of Japanese ancestry were convicted of violations of laws of the United States, including convictions for violations of military orders, where such convictions re-

sulted from charges filed against such individuals during the evacuation, relocation and internment period.

(b) RECOMMENDATIONS.—Based upon the review required by subsection (a), the Attorney General shall recommend to the President for pardon consideration those convictions which the Attorney General finds were based on a refusal by such individuals to accept treatment that discriminated against them on the basis of race or ethnicity.

(c) PARDONS.—In consideration of the findings contained in this Act, the President is requested to offer pardons to those individuals recommended by the Attorney General pursuant to subsection (b).

CONSIDERATION OF COMMISSION FINDINGS

SEC. 203. Departments and agencies of the United States Government to which eligible individuals may apply for the restitution of positions, status or entitlements lost in whole or in part because of discriminatory acts of the United States Government against such individuals based upon their race or ethnicity and which occurred during the evacuation, relocation, and internment period shall review such applications for restitution of positions, status or entitlements with liberality, giving full consideration to the historical findings of the Commission and the findings contained in this Act.

TRUST FUND

SEC. 204. (a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States the Civil Lib-

erties Public Education Fund, to be administered by the Secretary of the Treasury. Amounts in the Fund shall be invested in accordance with section 9702 of title 31, United States Code, and shall only be available for disbursement by the Attorney General under section 205, and by the Board of Directors of the Fund under section 206.

(b) AUTHORIZATION.—There are authorized to be appropriated to the Fund $1,500,000,000.

RESTITUTION

SEC. 205. (a) LOCATION OF ELIGIBLE INDIVIDUALS.—(1) The Attorney General, with the assistance of the Board, shall locate, using records already in the possession of the United States Government, each eligible individual and shall pay out of the Fund to each such individual the sum of $20,000. The Attorney General shall encourage each eligible individual to submit his or her current address to the Department of Justice through a public awareness campaign.

(2) If an eligible individual refuses to accept any payment under this section, such amount shall remain in the Fund and no payment shall be made under this section to such individual at any future date.

(b) PREFERENCE TO OLDEST.—The Attorney General shall endeavor to make payment to eligible individuals who are living in the order of date of birth (with the oldest receiving full payment first), until all eligible individuals who are living have received payment in full.

(c) NONRESIDENTS.—In attempting to locate any eligible individual who resides outside the United States, the Attorney General may use any available facility or resources of any public or nonprofit organization.

(d) NO SET OFF FOR ADMINISTRATIVE COSTS.—No costs incurred by the Attorney General in carrying out this section shall be paid from the Fund or set off against, or otherwise deducted from, any payment under this section to any eligible individual.

BOARD OF DIRECTORS

SEC. 206. (a) ESTABLISHMENT.—There is hereby established the Civil Liberties Public Education Fund Board of Directors which shall be responsible for making disbursements from the Fund in the manner provided in this section.

(b) DISBURSEMENTS FROM FUND.—The Board of Directors may make disbursements from the Fund only—

(1) to sponsor research and public educational activities so that the events surrounding the relocation and internment of United States citizens and permanent resident aliens of Japanese ancestry will be remembered, and so that the causes and circumstances of this and similar events may be illuminated and understood;

(2) to fund comparative studies of similar civil liberties abuses, or to fund comparative studies of the effect upon particular groups of racial prejudice em-

bodied by Government action in times of national stress;

(3) to prepare and distribute the hearings and findings of the Commission to textbook publishers, educators, and libraries;

(4) for the general welfare of the ethnic Japanese community in the United States, taking into consideration the effect of the exclusion and detention on the descendants of those individuals who were detained during the evacuation, relocation, and internment period (individual payments in compensation for loss or damages shall not be made under this paragraph); and

(5) for reasonable administrative expenses, including expenses incurred under subsections (c)(3), (d), and (e).

(c) MEMBERSHIP AND TERMS OF OFFICE.—(1) The Board shall be composed of nine members appointed by the President, by and with the advice and consent of the Senate, from persons who are not officers or employees of the United States Government. At least five of the individuals appointed shall be individuals who are of Japanese ancestry.

(2)(A) Except as provided in subparagraphs (B) and (C), members shall be appointed for terms of three years.

(B) Of the members first appointed—

(i) five shall be appointed for terms of three years; and

(ii) four shall be appointed for terms of two years; as designated by the President at the time of appointment.

(C) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office. No individual may be appointed to more than two consecutive terms.

(3) Members of the Board shall serve without pay, except members of the Board shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Board, in the same manner as persons employed intermittently in the United States Government are allowed expenses under section 5703 of title 5, United States Code.

(4) Five members of the Board shall constitute a quorum but a lesser number may hold hearings.

(5) The Chair of the Board shall be elected by the members of the Board.

(d)(1) The Board shall have a Director who shall be appointed by the Board and who shall be paid at a rate not to exceed the minimum rate of basic pay payable for GS–18 of

the General Schedule under section 5332(a) of title 5, United States Code.

(2) The Board may appoint and fix the pay of such additional staff personnel as it may require.

(3) The Director and the additional staff personnel of the Board may be appointed without regard to section 5311(B) of title 5, United States Code and may be appointed without regard to the provisions of such title governing appointments in the competitive service, and may be paid 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, except that the compensation of any employee of the Board may not exceed a rate equivalent to the rate payable under GS–18 of the General Schedule under section 5332(a) of such title.

(e) SUPPORT SERVICES.—The Administrator of General Services shall provide to the Board of Directors on a reimbursable basis such administrative support services as the Board may request.

(f) DONATIONS.—The Board may accept, use, and dispose of gifts or donations or services or property for purposes authorized under subsection (b).

(g) ANNUAL REPORT.—Not later than twelve months after the first meeting of the Board and every twelve months thereafter, the Board shall transmit a report describing the

activities of the Board to the President and to each House of the Congress.

(h) SUNSET FOR BOARD.—The Board shall terminate not later than the earlier of ninety days after the date on which an amount has been obligated to be expended from the Fund which is equal to the amount authorized to be appropriated to the Fund or ten years after the date of enactment of this Act. Investments shall be liquidated and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury.

TITLE III—ALEUTIAN AND PRIBILOF ISLANDS RESTITUTION

SHORT TITLE

SEC. 301. This title may be cited as the "Aleutian and Pribilof Islands Restitution Act".

DEFINITIONS

SEC. 302. As used in this title, the term—

(1) "Administrator" means the person designated under the terms of this title to administer certain expenditures made by the Secretary from the Aleutian and Pribilof Islands Restitution Fund;

(2) "affected Aleut villages" means those Aleut villages in Alaska whose residents were evacuated by United States forces during World War II, including Akutan, Atka, Nikolski, Saint George, Saint Paul, and

Unalaska; and the Aleut village of Attu, Alaska, which was not rehabilitated by the United States for Aleut residence or other use after World War II;

(3) "Aleutian Housing Authority" means the nonprofit regional native housing authority established for the Aleut region pursuant to AS 18.55.995 and the following of the laws of the State of Alaska;

(4) "Association" means the Aleutian/Pribilof Islands Association, a nonprofit regional corporation established for the benefit of the Aleut people and organized under the laws of the State of Alaska;

(5) "Corporation" means the Aleut Corporation, a for-profit regional corporation for the Aleut region organized under the laws of the State of Alaska and established pursuant to section 7 of the Alaska Native Claims Settlement Act (Public Law 92–203);

(6) "eligible Aleut" means any Aleut living on the date of enactment of this Act who was a resident of Attu Island on June 7, 1942, or any Aleut living on the date of enactment of this Act who, as a civilian, was relocated by authority of the United States from his home village on the Pribilof Islands or the Aleutian Islands west of Unimak Island to an internment camp, or other temporary facility or location, during World War II; and

(7) "Secretary" means the Secretary of the Treasury.

ALEUTIAN AND PRIBILOF ISLANDS RESTITUTION FUND

SEC. 303. (a) ESTABLISHMENT.—There is established in the Treasury of the United States a Fund to be known as the Aleutian and Pribilof Islands Restitution Fund (hereinafter referred to as the "Fund"). The Fund shall consist of amounts appropriated to it, as authorized by sections 306 and 307 of this title.

(b) REPORT.—It shall be the duty of the Secretary to hold the Fund, and to report to the Congress each year on the financial condition and the results of operations of such Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as a House document of the session of Congress to which the report is made.

(c) INVESTMENT.—It shall be the duty of the Secretary to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

(1) on original issue at the issue price, or

(2) by purchase of outstanding obligations at the market price.

(d) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary at the market price.

(e) INTEREST ON CERTAIN PROCEEDS.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(f) TERMINATION.—The Secretary shall terminate the Fund six years after the date of enactment of this Act, or one year after the completion of all restoration work pursuant to section 306(c) of this title, whichever occurs later. On the date the Fund is terminated, all investments shall be liquidated by the Secretary and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury.

EXPENDITURES AND AUDIT

SEC. 304. (a) EXPENDITURES.—As provided by appropriation Acts, the Secretary is authorized and directed to pay to the Administrator from the principal, interest, and earnings of the Fund, such sums as are necessary to carry out the duties of the Administrator under this title.

(b) AUDIT.—The activities of the Administrator under this title may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to

all books, accounts, records, reports, and files and all other papers, things, or property belonging to or in use by the Administrator, pertaining to such activities and necessary to facilitate the audit.

ADMINISTRATION OF CERTAIN FUND EXPENDITURES

SEC. 305. (a) DESIGNATION OF ADMINISTRATOR.—The Association is hereby designated as Administrator, subject to the terms and conditions of this title, of certain specified expenditures made by the Secretary from the Fund. As soon as practicable after the date of enactment of this Act the Secretary shall offer to undertake negotiations with the Association, leading to the execution of a binding agreement with the Association setting forth its duties as Administrator under the terms of this title. The Secretary shall make a good-faith effort to conclude such negotiations and execute such agreement within sixty days after the date of enactment of this Act. Such agreement shall be approved by a majority of the Board of Directors of the Association, and shall include, but need not be limited to—

(1) a detailed statement of the procedures to be employed by the Association in discharging each of its responsibilities as Administrator under this title;

(2) a requirement that the accounts of the Association, as they relate to its capacity as Administrator, shall be audited annually in accordance with generally

accepted auditing standards by independent certified public accountants or independent licensed public accountants; and a further requirement that each such audit report shall be transmitted to the Secretary and to the Committees on the Judiciary of the Senate and House of Representatives; and

(3) a provision establishing the conditions under which the Secretary, upon thirty days notice, may terminate the Association's designation as Administrator for breach of fiduciary duty, failure to comply with the provisions of this Act as they relate to the duties of the Administrator, or any other significant failure to meet its responsibilities as Administrator under this title.

(b) SUBMISSION TO CONGRESS.—The Secretary shall submit the agreement described in subsection (a) to Congress within fifteen days after approval by the parties thereto. If the Secretary and the Association fail to reach agreement within the period provided in subsection (a), the Secretary shall report such failure to Congress within seventy-five days after the date of enactment of this Act, together with the reasons therefor.

(c) LIMITATION ON EXPENDITURES.—No expenditure may be made by the Secretary to the Administrator from the Fund until sixty days after submission to Congress of the agreement described in subsection (a).

DUTIES OF THE ADMINISTRATOR

SEC. 306. (a) IN GENERAL.—Out of payments from the Fund made to the Administrator by the Secretary, the Administrator shall make restitution, as provided by this section, for certain Aleut losses sustained in World War II, and shall take such other action as may be required by this title.

(b) TRUST ESTABLISHED.—(1) The Administrator shall establish a trust of $5,000,000 for the benefit of affected Aleut communities, and for other purposes. Such trust shall be established pursuant to the laws of the State of Alaska, and shall be maintained and operated by not more than seven trustees, as designated by the Administrator. Each affected Aleut village, including the survivors of the Aleut village of Attu, may submit to the Administrator a list of three prospective trustees. In designating trustees pursuant to this subsection, the Administrator shall designate one trustee from each such list submitted.

(2) The trustees shall maintain and operate the trust as eight independent and separate accounts, including—

(A) one account for the independent benefit of the wartime Aleut residents of Attu and their descendants;

(B) six accounts, each one of which shall be for the independent benefit of one of the six surviving affected Aleut villages of Atka, Akutan, Nikolski, Saint George, Saint Paul, and Unalaska; and

(C) one account for the independent benefit of those Aleuts who, as determined by the trustees, are deserving but will not benefit directly from the accounts established pursuant to subparagraphs (A) and (B).

The trustees shall credit to the account described in subparagraph (C), an amount equal to five per centum of the principal amount credited by the Administrator to the trust. The remaining principal amount shall be divided among the accounts described in subparagraphs (A) and (B), in proportion to the June 1, 1942, Aleut civilian population of the village for which each such account is established, as compared to the total civilian Aleut population on such date of all affected Aleut villages.

(3) The trust established by this subsection shall be administered in a manner that is consistent with the laws of the State of Alaska, and as prescribed by the Administrator, after consultation with representative eligible Aleuts, the residents of affected Aleut villages, and the Secretary. The trustees may use the accrued interest, and other earnings of the trust for—

(A) the benefit of elderly, disabled, or seriously ill persons on the basis of special need;

(B) the benefit of students in need of scholarship assistance;

(C) the preservation of Aleut cultural heritage and historical records;

(D) the improvement of community centers in affected Aleut villages; and

(E) other purposes to improve the condition of Aleut life, as determined by the trustees.

(4) There are authorized to be appropriated $5,000,000 to the Fund to carry out the purposes of this subsection.

(c) RESTORATION OF CHURCH PROPERTY.—(1) The Administrator is authorized to rebuild, restore or replace churches and church property damaged or destroyed in affected Aleut villages during World War II. Within fifteen days after the date that expenditures from the Fund are authorized by this title, the Secretary shall pay $100,000 to the Administrator for the purpose of making an inventory and assessment, as complete as may be possible under the circumstances, of all churches and church property damaged or destroyed in affected Aleut villages during World War II. In making such inventory and assessment, the Administrator shall consult with the trustees of the trust established by section 306(b) of this title and shall take into consideration, among other things, the present replacement value of such damaged or destroyed structures, furnishings, and artifacts. Within one year after the date of enactment of this Act, the Administrator shall submit such inventory and assessment,

together with specific recommendations and detailed plans for reconstruction, restoration and replacement work to be performed, to a review panel composed of—

(A) the Secretary of Housing and Urban Development;

(B) the Chairman of the National Endowment for the Arts; and

(C) the Administrator of the General Services Administration.

(2) If the Administrator's plans and recommendations or any portion of them are not disapproved by the review panel within sixty days, such plans and recommendations as are not disapproved shall be implemented as soon as practicable by the Administrator. If any portion of the Administrator's plans and recommendations is disapproved, such portion shall be revised and resubmitted to the review panel as soon as practicable after notice of disapproval, and the reasons therefor, have been received by the Administrator. In any case of irreconcilable differences between the Administrator and the review panel with respect to any specific portion of the plans and recommendations for work to be performed under this subsection, the Secretary shall submit such specific portion of such plans and recommendations to the Congress for approval or disapproval by joint resolution.

(3) In contracting for any necessary construction work to be performed on churches or church property under this subsection, the Administrator shall give preference to the Aleutian Housing Authority as general contractor. For purposes of this subsection, "churches or church property" shall be deemed to be "public facilities" as described in AS 18.55.996(b) of the laws of the State of Alaska.

(4) There are authorized to be appropriated to the Fund $1,399,000 to carry out the purposes of this subsection.

(d) ADMINISTRATIVE AND LEGAL EXPENSES.—The Administrator is authorized to incur reasonable and necessary administrative and legal expenses in carrying out its responsibilities under this title. There are authorized to be appropriated to the Fund such sums as may be necessary for the Secretary to compensate the Administrator, not less often than quarterly, for all such reasonable and necessary administrative and legal expenses.

INDIVIDUAL COMPENSATION OF ELIGIBLE ALEUTS

SEC. 307. (a) PAYMENTS TO ELIGIBLE ALEUTS.—(1) In accordance with the provisions of this section, the Secretary shall make per capita payments out of the Fund to eligible Aleuts for uncompensated personal property losses, and for other purposes. The Secretary shall pay to each eligible Aleut the sum of $12,000. All payments to eligible Aleuts

shall be made within one year after the date of enactment of this Act.

(2) The Secretary may request, and upon such request, the Attorney General shall provide, reasonable assistance in locating eligible Aleuts residing outside the affected Aleut villages. In providing such assistance, the Attorney General may use available facilities and resources of the International Committee of the Red Cross and other organizations.

(3) The Administrator shall assist the Secretary in identifying and locating eligible Aleuts pursuant to this section.

(4) Any payment made under this subsection shall not be considered income or receipts for purposes of any Federal taxes or for purposes of determining the eligibility for or the amount of any benefits or assistance provided under any Federal program or under any State or local program financed in whole or part with Federal funds.

(b) AUTHORIZATION.—There are authorized to be appropriated to the Fund such sums as are necessary to carry out the purposes of this section.

SUPPLEMENTAL CLEANUP OF WARTIME DEBRIS

SEC. 308. (a) The Congress finds that the Department of Defense has implemented an ongoing program for the removal and disposal of live ammunition, obsolete buildings, abandoned machinery, and other hazardous debris remaining in populated areas of the lower Alaska Peninsula and the Aleutian Islands as a result of military activities during

World War II. Such program is being accomplished pursuant to Acts making Appropriations for the Department of Defense, in accordance with congressional statements of purpose in establishing and funding the Environmental Restoration Defense Account. The authority contained in this section shall be supplemental to the authority of the Secretary of Defense in administering the Environmental Restoration Defense Account, and shall be exercised only in the event that such account is inadequate to eliminate hazardous military debris from populated areas of the Lower Alaska Peninsula and the Aleutian Islands.

(b) CLEANUP PROGRAM.—Subject to the terms and conditions of subsection (a), the Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to plan and implement a program, as the Chief of Engineers may deem feasible and appropriate, for the removal and disposal of live ammunition, obsolete buildings, abandoned machinery, and other hazardous debris remaining in populated areas of the lower Alaska Peninsula and the Aleutian Islands as a result of military construction and other activities during World War II. The Congress finds that such a program is essential for the further development of safe, sanitary housing conditions, public facilities, and public utilities within the region.

(c) ADMINISTRATION OF PROGRAM.—The debris removal program authorized under subsection (a) shall be carried out substantially in accordance with the recommendations for a minimum cleanup contained in the report prepared by the Alaska district, Corps of Engineers, entitled "Debris Removal and Cleanup Study: Aleutian Islands and Lower Alaska Peninsula, Alaska", dated October 1976. In carrying out the program required by this section, the Chief of Engineers shall consult with the trustees of the trust established by section 7(b) of this Act, and shall give preference to the Aleutian Housing Authority as general contractor.

(d) AUTHORIZATION.—There are authorized to be appropriated $15,000,000 to carry out the purposes of this section.

ATTU ISLAND RESTITUTION PROGRAM

SEC. 309. (a) In accordance with subsection (3) of the Wilderness Act (78 Stat. 892), the public lands on Attu Island, Alaska within the National Wildlife Refuge System are designated as wilderness by section 702(1) of the Alaska National Interest Lands Conservation Act (94 Stat. 2417). In order to make restitution for the loss of traditional Aleut lands and village properties on Attu Island, while preserving the present designation of Attu Island lands as part of the National Wilderness Preservation System, compensation to the Aleut people in lieu of Attu Island conveyance shall be provided in accordance with this section.

(b) The Secretary of the Treasury shall establish an account designated "The Aleut Corporation Property Account", which shall be available for the purpose of bidding on Federal surplus property. The initial balance of the account shall be $17,868,500, which reflects an entitlement of $500 for each of the thirty-five thousand seven hundred and thirty-seven acres within that part of eastern Attu Island traditionally occupied and used by the Aleut people for subsistence hunting and fishing. The balance of the account shall be adjusted as necessary to reflect successful bids under subsection (c) or other conveyances of property under subsections (f) and (g).

(c) The Corporation may, by using the account established in subsection (b) bid, as any other bidder for surplus property, wherever located, in accordance with the requirements of section 484 of title 40, United States Code. No preference right of any type will be offered to the Corporation for bidding for General Services Administration surplus property under this subsection and no additional advertising shall be required other than that prescribed in section 484(e)(2) of title 40, United States Code.

(d) The amount charged against the Treasury account established under subsection (b) shall be treated as proceeds of dispositions of surplus property for the purpose of determining the basis for calculating direct expenses pursuant to section 485(b) of title 40, United States Code.

(e) The basis for computing gain or loss on subsequent sale or other disposition of property conveyed to the Corporation under this section for purposes of any Federal, State or local tax imposed on or measured by income, shall be the fair value of such property at the time of receipt. The amount charged against the Treasury account established under subsection (b) shall be prima facie evidence of such fair value.

(f) The Administrator of General Services may, at the discretion of the Administrator, tender to the Secretary of the Treasury any surplus property otherwise to be disposed of pursuant to section 484(e)(3) of title 40, United States Code, to be offered to the Corporation for a period of ninety days so as to aid in the fulfillment of the Secretary of the Treasury's obligations for restitution to the Aleut people under this section: *Provided,* That prior to any disposition under this subsection or subsection (g), the Administrator shall notify the governing body of the locality where such property is located and any appropriate state agency, and no such disposition shall be made if such governing body or State agency within ninety days of such notification formally advises the Administrator that it objects to the proposed disposition.

(g)(1) Notwithstanding any provision of any other law or any implementing regulation inconsistent with this subsection, concurrently with the commencement of screening of any excess real property, wherever located, for utilization by

Federal agencies, the Administrator of General Services shall notify the Corporation that such property may be available for conveyance to the Corporation upon negotiated sale. Within fifteen days of the date of receipt of such notice, the Corporation may advise the Administrator that there is a tentative need for the property to fulfill the obligations established under this section. If the Administrator determines the property should be disposed of by transfer to the Corporation, the Administrator or other appropriate Federal official shall promptly transfer such property.

(2) No disposition or conveyance of property under this subsection to the Corporation shall be made until the Administrator of General Services, after notice to affected State and local governments, has provided to them such opportunity to obtain the property as is recognized in title 40, United States Code and the regulations thereunder for the disposition or conveyance of surplus property.

(3) As used in this subsection, "real property" means any land or interests in land owned or held by the United States or any Federal agency, any improvements on such land or rights to their use or exploitation, and any personal property related to the land.

(h) The Secretary of the Interior may convey to the Corporation the traditional Aleut village site on Attu Island, Alaska pursuant to the authority contained in section

1613(h)(1) of title 43, United States Code: *Provided,* That following the date of enactment of this section, no site on Attu Island, Alaska other than such traditional Aleut village site shall be conveyed to the Corporation pursuant to such section 1613(h)(1) of title 43, United States Code.

SEPARABILITY OF PROVISIONS

SEC. 310. If any provision of this title, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this title or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D. C. 20425

STAFF DIRECTOR

April 26, 1984

MEMORANDUM TO THE COMMISSIONERS

FROM: Linda Chavez

SUBJECT: Questions Regarding S. 2116 (Implementing the Recommendations of the Wartime Relocation Commission)

I am attaching a memorandum from the General Counsel concerning questions some of you raised about S. 2116 (implementing the recommendations of the Wartime Relocation Commission).

It appears that the $20,000 payment figure was derived by the Commission in an effort to provide symbolic yet meaningful restitution as well as a total cost figure that would not be deemed excessive.

There is apparently no precedent for the restitution proposal. There are a few statutes, mentioned in the memorandum, which have some elements in common with the proposal. They do not seem to be sufficient grounds to conclude, however, that Congress has ever adopted anything similar to the restitution proposal.

UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

DATE: April 25, 1984

REPLY TO ATTN OF: OGC

SUBJECT: Commissioner Questions Regarding S. 2116 (Implementing the Recommendations of the Wartime Relocation Commission)

TO: Linda Chavez
Staff Director

This memorandum answers two questions the Commissioners raised in their March 28, 1984 discussion of S. 2116, which seeks to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians. 1/ The bill provides that the United States pay $20,000 in restitution to each living individual of Japanese ancestry who, during World War II, was enrolled on United States' records as being in a prohibited military zone or who was confined or otherwise deprived of liberty or property by the wartime evacuation, relocation, and internment programs. 2/ The Commissioners have asked for information regarding the selection of the $20,000 compensation figure and for an analysis of any statutory precedent for this portion of S. 2116. 3/

Selection of $20,000 Compensation Figure

S. 2116 adopts the recommendation of the Commission on Wartime Relocation that Congress appropriate $1.5 billion for "a one-time per capita compensatory payment of $20,000 to each of

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1/ S. 2116, 98th Cong., 1st Sess., 129 Cong. Rec. S16,574-78 (1983) is summarized in my memorandum to you, "Review and Comment on S. 2116," Mar. 19, 1984.

2/ S. 2116, §§201(1), 205(a).

3/ S. 2116 provides a similar $12,000 payment in restitution to eligible Aleuts. §§302(6), 307(a). Statutes discussed in this memorandum as analogous to S. 2116's proposal for restitution to persons of Japanese ancestry are also analogues for that portion of S. 2116 providing restitution to Aleuts.

the approximately 60,000 surviving persons excluded from their places of residence by Executive Order 9066." 4/ The Commission's recommendations also briefly review the "enormous damages and losses, both material and intangible" 5/ suffered by excluded and interned persons of Japanese ancestry.

Based on a detailed report 6/ prepared for it, the Commission estimated that in 1945 dollars "the ethnic Japanese lost between $108 and $164 million in income and between $41 and $206 million in property for which no compensation was made...." 7/ Adjusting for inflation alone, the total loss of income and property in 1983 dollars was between $810 million and $2 billion. 8/

Concluding that it is impossible to "calculate the effects upon human capital of lost education, job training and the like," 9/ the Commission also took note of still less tangible injuries and losses: "the injury of unjustified stigma"; "deprivation of liberty"; "psychological pain"; and the "weakening of traditionally strong family structure." 10/ The recomendations observe:

4/ Commission on Wartime Relocation and Internment of Civilians Personal Justice Denied, Part 2: Recommendations at 9 (hereafter cited as Personal Justice Denied, Part 2). One of the nine Commissioners did not join in this recommendation, and another "formally renounced any monetary recompense either direct or indirect." Id.

5/ Id. at 5.

6/ F. Arnold, M. Barth, and G. Langner, Economic Losses of Ethnic Japanese as a Result of Exclusion and Detention, 1942-1946, (June 1983) (hereafter Economic Losses), compiled in Commission on Wartime Relocation and Internment of Civilians, Papers for the Commission, June 1983 (in U.S. Commission on Civil Rights files)(hereafter cited as Papers for the Commission).

7/ Personal Justice Denied, Part 2 at 5. Economic Losses at 67 places the total uncompensated economic (property and income) losses between $203 and $251 million in 1945 dollars.

8/ Personal Justice Denied, Part 2 at 5. Economic Losses at 67, adjusting for inflation and interest on principal, places the figures between $1.1 billion and $4.2 billion in 1983 dollars.

9/ Personal Justice Denied, Part 2 at 5.

10/ Id. at 6.

> Two and a half years behind the barbed-wire of a relocation camp, branded potentially disloyal because of one's ethnicity alone -- these injustices cannot neatly be translated into dollars and cents. Some find such an attempt in itself a means of minimizing the enormity of these events in a constitutional republic. History cannot be undone; anything we do now must inevitably be an expression of regret and an affirmation of our better values as a nation, not an accounting which balances or erases the events of the war. That is now beyond anyone's power. 11/

OGC staff contacted Angus Macbeth, Special Counsel to the Wartime Relocation Commission, at the suggestion of Joan Z. Bernstein, Commission Chair. Mr. Macbeth stated what the foregoing discussion confirms: the Commission selected the $20,000 figure from the desire to produce a practical amount that had a symbolic dimension even though it might provide less than a complete remedy of full compensation. 12/

Precedent for Restitution Under S. 2116

The Office of General Counsel is aware of no actions similar to the United States' mistreatment of persons of Japanese ancestry as described in the report of the Wartime Relocation Commission. 13/ Consequently, it is not surprising to find

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11/ Id. Papers for the Commission contain a lengthy discussion by scholars and researchers at a Commission-sponsored conference of the social and psychological effects of the exclusion and detention.

12/ Angus Macbeth, Special Counsel, Commission on Wartime Relocation and Internment of Civilians, telephone interview, Apr. 6, 1984.

13/ This behavior included the taking of liberty and property from citizens of the United States by the United States government itself, under authority of Federal law, on the ground that they had a common ancestry with a nation with which the U.S. was at war. The Commission on Wartime Relocation and Internment of Civilians found that "[s]uch events are extraordinary and unique in American history." Personal Justice Denied, Part 2 at 3 (1982). Congressional staff who helped develop S. 2116 reported that because there was no precedent for this action by the United States, drafters of S. 2116 had not conducted extensive research to find a precedent for the remedy. Elma Henderson, Legislative Assistant to Senator Matsunaga, telephone interview, April 5, 1984. It should be noted that the Supreme Court in Korematsu v. United States, 323 U.S. 214 (1944), upheld the legality of the evacuation and internment program.

no direct precedent for S. 2116's method of remedying such behavior. Neither the reports of the Commission on Wartime Relocation and Internment of Civilians nor its findings cite precedent for the proposed payments. 14/

Some Federal statutes, in varying degrees, are analogous to S. 2116's restitution scheme, but none directly support that proposal. In identifying these statutes, most of which are quite different from a restitution proposal for a large group whose members were injured by the government because of their national origin, we have attempted to present statutes which contain some elements in common with that proposal.

To assist the Commissioners in determining the extent to which these statutes are analogous to S. 2116's restitution proposal and how close they may resemble it, we have reduced that proposal into the following elements:

(1) providing monetary compensation
(2) in a flat, fixed amount
(3) to individual members of a class
(4) wronged by the United States government
(5) without proof of specific damages.

Of course, another key element in comparing S. 2116's restitution proposal to other statutory schemes is that the wrong S. 2116 seeks to redress was perpetrated because of the national origin of the victims. 15/ This element looms so

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14/ The recommendations of the Wartime Relocation Commission, however, note "a history of postwar actions by Federal, state, and local governments to recognize and partially redress the wrongs that were done." Personal Justice Denied, Part 2 at 7. The report cites the Japanese-American Evacuation Claims Act, discussed below, and two Federal and four state and local efforts to compensate Japanese Americans for time lost due to the evacuation with respect to Social Security contributions, Federal civil service retirement credit, and wages from certain state and local governments. Id.

15/ Thus, S. 2116's proposed compensation is also, necessarily, provided for persons based on their membership in national origin group. Such relief does not offend any principle enunciated in the Commission's statement on the Detroit Police Department case (Bratton v. City of Detroit) because each recipient of a restitution payment under S. 2116 is a victim of the conduct which the payment seeks to redress. That national origin is used in defining those who are to

FOOTNOTE CONTINUED ON NEXT PAGE.

large a factor in this case that its inclusion in the list would probably render virtually all Federal statutes so different from S. 2116 that no such statute could be presented to the Commissioners as even remotely analogous to S. 2116. Therefore, we have outlined five Federal statutes that contain some elements common to S. 2116's restitution provisions. It is for the Commissioners to determine the relevancy of these statutes to the proposed restitution scheme. 16/

The War Claims Act of 1948 17/ provides payments to American citizens who were detained by the Japanese government during World War II; went into hiding to avoid capture; or were taken prisoner of war and treated in a manner inconsistent with

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FOOTNOTE CONTINUED FROM PREVIOUS PAGE.

receive the remedy is merely a concomitant of the fact that the identifiable, direct victims of the government's conduct are defined by their national origin. This portion of S. 2116, then, seeks to provide relief for an identified number of victims of government conduct. A different portion of S. 2116, which creates a $5 million trust fund to be used for "certain Aleut losses sustained during World War II" (§§ 306(a) and (b)(1), however, is not entirely victim-specific. Section 306(b)(2) provides for dividing the trust fund into eight "accounts," one of which is for the "wartime Aleut residents of Attu (Island) and their descendants," six are for six other affected villages, and the remaining one is for Aleuts the trustees determine are "deserving" but not direct beneficiaries of the other accounts (§306(b)(2)).

16/ There may be other ways to describe the elements of S. 2116, e.g., the number of persons involved in the restitution proposal; the fact that the nation was at war with a country which was the national origin of the victims; and the intentional nature of the wrong inflicted by the government. In contrast to any detailed listing of the elements of S. 2116, one might reduce those elements of S. 2116 to: relief for large numbers of persons wronged by the United States. Moreover, the relative importance of these, or other, elements in evaluating whether any statute is similar to S. 2116 is a matter on which we express no opinion.

17/ 50 U.S.C. App. §§2001-17p (1976).

certain portions of the Geneva Convention, and also provides payments to certain other persons. The Act was later amended to include persons suffering these injuries in subsequent conflicts, including the Korean and Vietnam conflicts. The Act establishes a War Claims Commission, and establishes the Commission's jurisdiction to hear, determine, and provide payment for claims authorized by the Act. Compensation is provided at a flat rate for each day during which the claimant was held, in hiding or imprisoned and mistreated. 18/ This Act contains four of the five listed elements of S. 2116's restitution proposal in that it (1) provides monetary compensation; (2) in a flat, fixed amount; (3) to individual members of a class; (5) without proof of specific damages. Element four, wrongdoing on the part of the United States, is not present because this statute provides recovery for damages caused by hostile forces. Thus, a Japanese American interned by Japan was allowed a measure of recovery. S. 2116 would provide relief for individuals of Japanese ancestry interned by their own government.

Three statutes contain three of the five listed elements. In each, the Federal government: (1) provides monetary compensation, (3) to individual members of a class, (4) whom it has injured. None of these three statutes contain elements two or five of the proposed restitution, i.e. payment in a flat, fixed amount without proof of specific damages.

The Federal Tort Claims Act, 19/ passed in 1946, was the first general enactment to waive the sovereign immunity of the United States and make it liable to tort actions as if it were an individual. 20/ Prior to 1946, an individual had no judicial recourse for securing compensation from the United States. 21/ Only claims accruing on or after January 1,

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18/ For example, for conflicts through the Korean War, adult internees were to receive $60.00 per month of detention, 50 U.S.C. App. §2004 (1976), and prisoners of war were to receive $1.00 for each day they received inadequate food, and $1.50 for each day in which they suffered a "labor" or "inhumane treatment" violation of the Geneva Convention, to a maximum of $1.50 per day, Id. §2005.

19/ 28 U.S.C. §§2671-80 (1982)

20/ Recovery under this statute may be had for physical injury, property damage, pain and suffering, mental and emotional anguish, and all consequential damages which result from the injuries. Settlements and awards under this statute, therefore, can be quite large.

21/ See Feres v. United States, 340 U.S. 135 (1950).

1945, however, may be compensated under the Act. The Act for this and other reasons 22/ does not provide a remedy for individuals of Japanese ancestry interned during the War. Nonetheless, the Act is significant because it was the first general piece of Federal legislation waiving sovereign immunity and the trend has been in the years that followed to further restrict such immunity. 23/

Two statutes, the American Japanese Evacuation Claims Act of 1948, 24/ and the Micronesian War Claims Act of 1971, 25/ provide monetary compensation for citizens injured by governmental action which is not compensable under the Federal Tort Claims Act. 26/ The former was the first attempt on the part of the Congress to provide some restitution to Japanese Americans interned during the War. The Attorney General was given jurisdiction to compromise and settle, for up to $100,000, any claim by a person of Japanese ancestry arising on or after December 7, 1941, for damage to or loss of real or personal property which was a reasonable and natural consequence of the evacuations. 27/ Claims had to be

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22/ The Supreme Court has upheld various elements of the internment program. See, e.g., Korematsu v. United States, 323 U.S. 214 (1944). If the Act had been in existence prior to the institution of the internment program and if the Supreme Court had not upheld that program as justified by the war emergency, presumably the internees could have taken advantage of the Act to seek relief.

23/ For example, in 1974 the Act was amended to restrict one of its exemptions relating to claims based on certain torts, such as assault and battery.

24/ 50 U.S.C. App. §§1981-87 (1976)

25/ Pub. L. 92-39, 85 Stat. 92 (July 1, 1972)

26/ The claims of the Japanese Americans, as explained above, arose before the Act was passed, and the Federal action involved in Micronesia falls within an exception to the Tort Claims Act which maintains sovereign immunity for "[a]ny claim arising out of the combatant activities of the military...during a time of war." 28 U.S.C. §2680(j) (1982).

27/ 50 U.S.C. App. §1981 (1976).

submitted within eighteen months of enactment of the Act. 28/ The Act did not purport to provide restitution for losses other than property damage. In addition, the act provided only actual damages on a case by case basis, rather than in a flat, fixed amount.

The Micronesian War Claims Act established a fund to provide payment of claims for loss of life, physical injury, or property damage as a result of hostilities on the islands and the securing of the islands by the United States.

Under each of these three statutes, elements two and four of the restitution proposed in S. 2116 (a flat, fixed amount, without proof of specific damages) is missing. Instead, a judicial or administrative process was created for determining whether and in what amount a person would be entitled to compensation. Each person was required to prove the extent of his or her damages, and if successful, was compensated in that amount, unless it exceeded statutory limits. 29/

The Indian Claims Commission contains two of the five listed elements. 30/ Established in 1946, the Commission heard and determined, among other things, claims to revise contracts between tribes and the United States that the common law would

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28/ 50 Id. §1982 (1976).

29/ The drafters of S. 2116, according to Senator Stevens' office, thought use of this mechanism to compensate Japanese Americans would be quite costly to administer and would expose the government to far greater liability than under the system they chose. Mark Barnes, Chief Counsel, Senator Stevens, telephone interview, April 4, 1984. Angus Macbeth noted that the Commission on Wartime Relocation and Internment of Civilians also anticipated that recoveries under such a procedure could result in unpredictable and astronomical liability. Commissioners also noted that claimants would be at an unfair disadvantage in having to document and prove losses which occurred over forty years ago, and they thought it desirable to avoid repetition of an adversarial posture between Japanese Americans and the Federal government. Macbeth, telephone interview, April 16, 1984.

30/ 25 U.S.C. §§70-70w (1982).

find repugnant; 31/ claims arising from the United States' taking land owned or occupied by the claimant tribe without payment, and claims based upon "fair and honorable dealings that are not recognized by any existing rule of law or equity." 32/ Monetary compensation was provided only to tribes, not to individuals, and only for property damage. 33/ Thus only two elements, monetary compensation and wrongdoing by the United States, are present in the precedent.

MARK R. DISLER
General Counsel

31/ For example, contracts involving fraud, duress, unconscionable consideration, and mutual or unilateral mistake would be revised at common law.

32/ 25 U.S.C. §70a (1982).

33/ Although the language of the statute seems to allow for a broader recovery, according to I.S. Weissbrodt, a prominent local Indian land claims attorney, judicial interpretation was restrictive. I.S. Weissbrodt, Weissbrodt & Weissbrodt, telephone interview, April 3, 1984.

R E G I O N A L I S S U E S

WARTIME RELOCATION AND CIVILIAN INTERNMENT

INTRODUCTION

In February 1983, the Congressional Commission on Wartime Relocation and Civilian Internment issued a report on the evacuation, internment, and relocation of 120,000 people of Japanese heritage, and of 850 Aleuts. After an exhaustive study, including testimony from more than 750 witnesses during 20 days of hearings around the nation, the Commission on Wartime Relocation concluded that a formal apology and monetary compensation was owed to the internees and evacuees. The issue of redress directly effects citizens and governments who were actually a part of this tragic episode in each State of the Northwestern region. In 1983, this was a major issue in each State in the region.

HISTORICAL BACKGROUND

During World War II, Japanese Americans were removed from their homes and placed in relocation and internment camps because some of these citizens were thought to be security risks. This policy was carried out under Executive Order 9066, giving the Secretary of War and military commanders under the Secretary's delegation of authority the power to exclude any and all persons from designated areas in order to provide security against sabotage, espionage, and 5th column activity. Although the United States was at war against the Axis powers of Germany, Italy, and Japan, this Executive Order was carried out solely against people of Japanese heritage on the West Coast of the United States. No mass exclusion or detention, in any part of the country, was ordered against people of German or Italian heritage. Congress was aware of and supported these policies, placing criminal penalties on the violation of the Executive Order. The United States Supreme Court held that these activities were constitutionally permissible in the context of war in Hirabayashi v. United States, 320 U.S. 81 (1943), Yasui v. United States, 320 U.S. 114 (1943), and Korematsu v. United States, 323 U.S. 214 (1944).

In the Northwest, mass exclusion and detention primarily affected Japanese Americans in Oregon and Washington. A key assembly center existed in both States. A relocation camp was located in Idaho. In most instances, there was not only loss of liberty during the effective period of Executive Order 9066, but also of real and personal property. The States complied with and facilitated the implementation of the Executive Order. Persons of Japanese descent lost their jobs in State and local government and most were not reinstated upon the cessation of the Executive Order.

In Alaska the Aleuts also were removed from their homes and placed in relocation camps. While the basis for the evacuation of Aleuts from areas in the Aleutian and Pribiloff Islands was an arguably reasonable precaution, because these areas were under attack, the evacuation was a failure in terms of administration and planning. In the camps conditions were deplorable.

The Aleuts were relocated to abandoned facilities in Southeast Alaska and exposed to a bitter climate and epidemics of disease without adequate protection or medical care. There were delays in returning Aleuts to their homes, long after the threat of war had passed. When the Aleuts returned, they found that their homes had been pillaged and ransacked.

REDRESS

In its report, the Commission on Wartime Relocation recommended to Congress that internees of Japanese descent (or their heirs) receive compensation in the amount of $20,000 per internee as part of a formal redress by the Federal government. It also recommended that Aleut evacuees should each receive $5,000 in compensation, a $5 million trust fund as a group, and that the government should clean up war debris that remains scattered over the landscapes in some areas of the Aleutian Islands. In November 1983, Alaska Senators Ted Stevens (R) and Frank Murkowiski (R) introduced legislation providing for $12,000 in compensation and the creation of a $38 million fund to clean up war debris. Their bill authorizes $20,000 payments to Japanese Americans interned during the war, and creates a $5 million trust fund for the Aleuts. The trust funds are to be invested by the Department of Treasury, with the earnings administered by the Aleutian Pribiloff Island Association. Proceeds from the trust fund would be used for scholarships, the preservation of Aleut culture, and projects to improve the living condition of Aleuts. The bill is also co-sponsored by Hawaii Senators Daniel Inouye (D) and Spark Matsunaga (D).

In February of 1983, a proposed memorial to Japanese Americans in the Puyallup (Tacoma, Washington area) fairgrounds, the site of a key West Coast assembly center prior to internment, came under attack by the American Legion, the Puyallup Fair Board, and local merchants. About 4,000 Americans of Japanese ancestry were rounded up and interned at the Puyallup fairgrounds during World War II. Most were subsequently sent to detention camps in Idaho. The sculptor of the memorial, one of the internees, had planned a bronze, abstract sculpture about 10 feet high, depicting people of all ages and races in harmony. It was to have been erected directly inside the main entrance to the fairground. But the Fair Board voted to allow the memorial in a parking lot instead, and the artist and his supporters withdrew their plan. Board members were reportedly influenced by letters from citizens and an American Legion resolution. The Legion's local post and State convention passed the resolution in July. It claimed Japanese Americans went to the internment camps voluntarily after refusing to relocate in the Midwest, and it asserted the relocation was necessary under wartime conditions to protect the Japanese Americans. The resolution also questioned spending State funds for the memorial while veterans programs are being cut. In March, after a closed-door meeting to review the decision, the Fair Board unanimously reversed its

decision. In August, the memorial was unveiled. The memorial was financed with funding provided by the 1981 State legislature.

In May 1983, the State of Washington also decided to provide compensation to 38 Japanese Americans who lost their State jobs during World War II as a result of the internment. Under the terms of the legislation, the 38 former State employees will each receive $5,000.

In March 1984, the Seattle City Council unanimously authorized $5,000 in compensation to each of three former city employees who were fired in 1942 because of their Japanese ancestry. They lost their jobs after the order to intern all Japanese Americans on the West Coast.

In April 1984, the Seattle school board held hearings on a proposal to compensate 25 women of Japanese descent who were forced to leave their jobs in 1942. The school board is scheduled to take action on the proposal in late April or early May.

In August 1982, the Portland, Oregon City Council approved a resolution supporting monetary compensation for Japanese Americans who were interned during World War II. The resolution called for Congress to provide "just compensation" to the "uprooted people [who] suffered unmeasurable human damages ... for three and one-half years."

In August 1983, Washington Governor John Spellman unsuccessfully attempted to obtain a similar resolution at the National Governor's Conference. The governors did approve a resolution calling for an "apology and national recognition of the injustice".

In 1982, Gordon Hirabayashi, Fred Korematsu, and Minori Yasui, filed cases in the U.S. District Courts at Seattle, San Francisco, and Portland, respectively, to reopen the cases that were used to justify the wartime internment, evacuation, and restrictions placed on persons of Japanese descent. The petitioners are ultimately seeking a writ of error from the U.S. Supreme Court that would nullify their convictions for violations of restrictions, and constitute an apology by the Court. In November 1983, the U.S. District Court in San Francisco dismissed the indictment and vacated the misdemeanor conviction of Fred Korematsu that led to the 1944 U.S. Supreme Court decision in Korematsu v. United States. The District Court also accepted Mr. Korematsu's writ of error petition, charging the government with falsifying evidence to gain the Supreme Court ruling in 1943. The 1983 ruling was the first judicial finding that the internment of Japanese Americans was both unjust and illegal. The Department of Justice unsuccessfully urged the Court to vacate the recent petition. The government admitted no wrongdoing and opposed the Koramatsu petition. The government has appealed the Court's decision to accept the petition.

In January 1984, the U.S. District Court in Portland dismissed the indictment and vacated the conviction of Minori Yasui. Unlike the U.S. District Court in San Francisco, however, the District Court in Portland also dismissed the Yasui petition for a writ of error. As in the Korematsu petition (and in the Hirabayashi petition), Mr. Yasui charged the government with falsifying evidence to gain the Supreme Court ruling in 1943. Attorneys for Mr. Yasui have appealed the Court's decision to dismiss the petition. The Hirabayashi petition is pending in Washington, and a hearing on the government's motion to dismiss the petition has been set for May 1984.

MAJOR LEGAL DEVELOPMENTS

INTRODUCTION

In 1983, a single issue--comparable worth -- dominated legal developments in the Northwestern region. A multi-million dollar lawsuit in the State of Washington captured headlines across the nation. The suit is of such importance that the Department of Justice is considering intervention, and the case, American Federation of State, County & Municipal Employees (AFSCME) v. State of Washington, _____ F.Supp. _____, 33 FEP 808 (W.D.WA., 1983), will in all likelihood eventually be brought before Supreme Court of the United States for review. While this case is in the courts, States and municipalities throughout the region are studying their personnel systems, and private employers are concerned about the impact of the public sector comparable worth issue on the private sector. Because of the impact of the Washington litigation on neighboring States in the region, and the legal developments in the legislative and executive branches of State and local government, as well as in the judiciary, this section focuses upon the comparable worth issue in the Northwestern region.

COMPARABLE WORTH

In September 1981, charges of employment discrimination were filed with the Equal Employment Opportunity Commission by eight women and one man, all employees of the State of Washington. On July 20, 1982, after receiving a notice of the right to sue from the Department of Justice, the American Federation of State, County, and Municipal Employees (AFSCME) and the Washington Federation of State Employees (WFSE), filed a suit in the U.S. District Court for the Western District of Washington at Tacoma, against the State of Washington, on behalf of the nine State employees and 15,500 members of their class. The plaintiff's class consisted of all employees employed by the State of Washington under the jurisdiction of its Department of Personnel (DOP), and its Higher Education Personnel Board (HEPB). All of the plaintiffs held positions in job categories in which there were 70% or more women as of November 20, 1980 or anytime thereafter. The plaintiffs claimed that the State of Washington violated Title VII of the Civil Rights Act of 1964, as amended, and charged that:

> The State of Washington has and is discriminating on grounds of sex in compensation against women employed in State service by establishing and maintaining wage rates or salaries for predominately female job classifications that are less than wage rates or salaries for predominately male job classifications that require equal or less skill, effort, and responsibility.

Interest and concern about wage-based employment discrimination across job categories on the basis of sex did not begin in the 1980's. Plaintiffs in the case noted that in 1973, the Executive Director of the Washington Federation of State Employees

(WFSE) sent a letter to then Governor Daniel J. Evans (R) indicating that the State's personnel boards had perpetuated discrimination against women by setting salaries that permeate through the private sector and other governmental units. In response, Governor Evans directed the personnel boards to reverse inequities in the State's salary schedules that reflect a bias "in wages paid to women compared to those of men."

In January 1974, the directors of the personnel boards concluded (1) that there were indications of pay differences between the jobs predominately held by men and the jobs predominately held by women, (2) that the differences were not due solely to "job worth", and (3) that further study was necessary to determine the amount of salary differences and all classes to be corrected.

Based on these conclusions, in September 1974, Governor Evans contracted for an outside, independent comprehensive study of State government salaries to look into reports of discriminatory pay scales. The 1974 study was to "examine and identify salary differences that may pertain to job classes predominately filled by men compared to job classes predominately filled by women, based on job worth." Alternative suggestions to correct disparities were to be provided. The State determined that "predominately" was defined as jobs with at least 70% of one sex. The 1974 study examined 59 predominately male classifications and 62 predominately women classifications. The 1974 study concluded that of the jobs analyzed, "the tendency is for women's classes to be paid less than men's classes, for comparable job worth." The disparity was found to be approximately 20%. The 1974 study also found that the degree of discrimination increased as the overall job value increased.

The methodology used in the job evaluation study set a value for each employment classification on the basis of four factors: knowledge and skills, mental demands, accountability, and working conditions. This method is still utilized by the State of Washington.

Since 1974, five update studies have been completed. In 1975, the directors of the personnel boards computed the cost of eliminating discrimination. The update indicated that the cost of equalizing salaries would be approximately 10 times as much for jobs held predominantly by females as for jobs held predominantly by males. In 1976, the firm conducting the 1974 study conducted an update pursuant to a directive from Governor Evans to establish a program leading to implementation of the 1974 study. The 1976 update also evaluated 85 additional classifications. Similar job evaluation studies were conducted in 1979 and 1980.

In December 1976, outgoing Governor Evans included a $7 million budget appropriation to begin implementation of a program to correct the wage disparities. In 1977, Governor Dixy Lee Ray removed the $7 million appropriation, and the legislature

amended the State compensation statutes to require the personnel boards to furnish the Governor and the Director of Financial Management supplementary data indicating the differentiation in compensation for jobs of comparable worth. The personnel boards were to provide the data on a "separate salary schedule for the purposes of full disclosure and visibility", in conjunction with salary survey findings. This data has been submitted by the State's Department of Personnel (DOP) and the Higher Education Personnel Board (HEPB) annually since 1977. In January 1980, Governor Ray included the following in her message to the legislature:

> ...the inequality gap between men's and women's salaries for similar work has now increased. The dollar cost of the solution will be high; it probably cannot be achieved in one action. But, the cost of perpetuating unfairness, within State government itself, is too great to put off any longer...

The history of the State's efforts and the actions of the employee unions were important to the decision of the court in AFSCME v. State of Washington. In the opinion, the court discussed the history of the State's efforts, and found as follows:

> In 1983, subsequent to filing of the instant suit, the State legislature passed two comparable worth implementation bills: Substitute Senate Bill 3248 (SSB 3248) and Engrossed House Bill 1079 (EHB 1079). EHB 1079 appropriated $1.5 million to increase the salaries by $100.00 a year of occupants of job classifications for which the current salary range is more than 8 ranges (20%) below the comparable worth range, as shown by the 1982 supplementary salary schedule. The salary increase is not payable until July 1984. SSB 3248 calls for implementation of salary changes necessary to achieve comparable worth in compliance with the findings of the DOP and HEPB supplemental surveys, and provides that such implementation 'shall be fully achieved not later than June 30, 1993'.

Until the AFSCME lawsuit, the Washington legislature had not adopted a measure to correct the wage disparities. As late as 1982, in fact, legislation similar to SSB 3248 died in the Washington House of Representatives. In part, the State's general inaction to correct the situation over a period of years gave rise to the suit.

On December 14, 1983, the court entered a declaratory judgment against the State of Washington, finding the State in violation of Title VII as to the non-payment to plaintiffs of compensation in their employment. The court also ordered injunctive relief, back pay for individual members of the class (commencing from September 16, 1979), and appointed a Master to assist the court in the implementation of this decree.

Much of the evidence introduced at the trial pertained to the State's studies, a review of actions taken pursuant to those studies, and the testimony of past and present State officials and employees. The weight of that evidence and the history of the case are noted in the court's decision. The following passages are taken from the judge's opinion:

> In 1978, 1980, and again in 1982, the legislature had before it the comparable worth salary schedules. It was not until 1983, after the filing of the instant lawsuit, that the legislature took affirmative action to implement the comparable worth scheme, and even then, the implementation effort was nothing more than a token appropriation of $1.5 million (none of which has been paid at the present time) and a ten (10) year remedial plan.
>
> After careful review of the record herein, the Court cannot reach any conclusion other than the State of Washington has, and is continuing to maintain a compensation system which discriminates on the basis of sex. The State of Washington has failed to rectify an acknowledged discriminatory disparity in compensation. The State has, and is continuing to treat some employees less favorably than others because of their sex, and this treatment is intentional.
>
> * * * * *
>
> The evidence in the instant case is clear that the State knew that Title VII, as amended on March 24, 1972, prohibited States from engaging in sex discrimination in employment; that the State knew of disparity in pay between predominately male and predominately female job classification; and, that the State was on notice of the legal implications of conducting comparable worth studies without implementing a salary structure commensurate with the evaluated worth of jobs. It would seem obvious that when the State passed the 1977 legislation requiring submission in the legislature of comparable worth studies that the State knew its employees would be entitled to pay commensurate with their evaluated worth. Any other conclusion defies reason. It would then follow that the economic consequences of comparable worth were predictable and foreseeable by the State. The State cannot be heard at this late date to argue they were surprised, confused or misled as to the legality of its actions and subsequent failure to pay.

The State of Washington has been ordered to end wage discrimination against employees in predominately women's job classifications "forthwith". The cost of compliance with the judge's order has been estimated by the State Office of

Financial Management at $473 million through June 1985, including $233 million in back pay and $50 million for pension trust funds. That amount represents approximately 3.4% of the State's 1983-1985 budget of $13.9 billion. Additionally, it would cost the State $125 million a year to maintain the "comparable worth" salary structure starting in 1985. However, those figures assume a quick settlement, which appears unlikely.

Although a Master has been appointed, the court's decision has been appealed by the State to the U.S. Court of Appeals for the 9th Circuit. The unions are also appealing to the 9th Circuit, disagreeing with a part of the court's decision as to the remedy. In addition, the Civil Rights Division of the Department of Justice is considering joining with the State in its appeal. Some observers have indicated that AFSCME v. Washington will not be settled until the U.S. Supreme Court reviews the case -- a process which could keep the matter in the courts until 1988 or 1989. Because of the State's appeal, the Master has not begun work on the implementation of the court's decision. At last report, settlement talks between attorneys on both sides were discontinued in November 1983, two months after the court made its decision in favor of the plaintiffs, and had not resumed at the end of March 1984.

The impact of the AFSCME case is being felt across the nation. Within the State of Washington, the King County (Seattle area) Council has commissioned a study on whether women employed by King County in female-dominated jobs are being paid less than men employed in male-dominated jobs. The Council, by a unanimous vote, has asked the County Executive to conduct the research and report back his findings and recommendations in October 1984.

In the City of Seattle, the Office of Women's Rights conducted a study in November 1983, and found that most of the jobs traditionally held by women are the lowest paid, and the jobs held mostly by men are the highest paid. The Seattle Women's Rights Office pointed out that "a male maintenance laborer, who keeps equipment up, makes more than a public health nurse, who keeps people up." The Women's Rights Office concluded that the City could be in the same legal situation as the State unless it corrects unequal pay scales among male and female employees.

Washington is not the only State in the Northwest region that has demonstrated an interest and concern regarding the "Comparable Worth" issue. Prior to the Washington legislature's passage of comparable worth legislation, Alaska, Idaho, and Oregon all had enacted comparable worth laws.

In Alaska, the State Human Rights Law, last amended in 1982, includes among its unlawful employment practices a prohibition against:

> ...an employer to discriminate in the payment of wages as between the sexes, or to employ a male in an occupation in this State at a salary or wage rate less than that paid to a male employee for work of comparable character or work in the same operation, business or type of work in the same locality...

[Alaska Human Rights Law, Alaska Statute Section 18.80.220(5) (1982)]

In Idaho, the State Equal Pay Law, enacted in 1969, and last amended in 1982 includes the following prohibition:

> ...No employer shall discriminate between or among employees in the same establishment on the basis of sex, by paying wages to any employee in any occupation in this State at a rate less than the rate at which he pays any employee of the opposite sex for comparable work on jobs which have comparable requirements relating to skill, effort, and responsibility.

[Idaho Equal Pay Act, Idaho Code Section 44-1702 (1982)]

Since 1955, Oregon has prohibited discrimination on the basis of sex for work of comparable character. Related to comparable worth, the Oregon Equal Pay Law includes the following:

> ...No employer shall:
>
> a. In any manner discriminate between the sexes in the payment of wages for work of comparable character, the performance of which requires comparable skills.
>
> b. Pay wages to any employee at a rate less than that at which he pays wages to his employees of the opposite sex for work of comparable character, the performance of which requires comparable skills.

[Oregon Revised Statute 652.220(1) (1955)]

In addition to the Oregon Equal Pay Act, in 1983 the State of Oregon enacted a law (not yet codified), declaring that the State's policy is to "attempt to achieve an equitable relationship between the comparability of the value of work performed by persons in State service and the compensation and classification plans within the State system." The statute establishes a task force to evaluate compensation plans, apply a point factor evaluation system to determine if inequities exist, and to report its findings to the State legislature.

In 1983, legal developments pursuant to these statutes have been varied among these Northwestern States.

In 1978 and 1979, 11 Public Health nurses employed by the State filed charges with the Alaska State Commission for Human Rights and with the Equal Employment Opportunity Commission (EEOC), complaining of violations of Title VII, the Federal Equal Pay Act, and the Alaska Human Rights Law. EEOC deferred the charges to the Alaska Human Rights Commission, and the Human Rights Commission failed in its attempts to negotiate a settlement.

In 1983, the Alaska Human Rights Commission sought an administrative hearing to bring charges against the Alaska Department of Administration's Division of Personnel, and the Department of Health and Social Services' Division of Public Health. The nurses' original complaint became a class-action covering all public health nurses who worked for the State since the first complaint was filed in November 1978. At issue is whether the nurses' jobs are comparable to higher-paid physician assistants, who are paid over $8,000 a year more than an entry-level public health nurse.

Administrative hearings were held in September and October, and final briefs were filed by the plaintiffs last March. The State is expected to file its final brief in late April, and a recommendation by the hearing officer to the State's Human Rights commissioners is not expected until the Summer of 1984. This is the first suit filed under the equal pay for "work of comparable character" portion of the Alaska Human Rights Law.

The State of Alaska has also made efforts to study its pay classification system. In June 1982, a study was conducted under the administration of then-Governor Jay Hammond (R). Shortly after Governor Bill Sheffield (D) took office in January 1983, the 1982 study was discarded because of underfunding, problems with implementation, and a class-action grievance filed by the State Employee Union because its input was not included in the process of the study. Although discarded, the preliminary analysis of the study indicated that the State's job classification and pay system was "out of line". In April 1983, Alaska's Commissioner of Administration called for a study of Alaska's State worker classification system, and the commissioner proposed an appropriation to conduct a study similar to the 1974 Washington study. The Commissioner of Administration explained that the present system is not working, pointing out that the current standards were established 40 years ago and that the system now lists approximately 1,200 job classifications for the State's 13,000 workers. In August 1983, the Alaska legislature approved the request for the Department of Administration to conduct a two and one-half year study of the State's job classification system. The State Employee Union is included in the process.

The City of Anchorage is conducting a similar study of its employee job classification and pay systems. In the private sector, the Bartlett Memorial Hospital in Juneau also commissioned a comparable worth study. As a result of the interest in the nurses' class-action discrimination suit, and the State's

commencement of a comparable worth study, a group has been formed in Alaska to disseminate information about the State's "equal pay for comparable work" law. The "Pay Equity Coalition" also intends to file an amicus brief in support of the nurses. The Coalition seeks public support for a "broad interpretation of the State equal pay law". Spearheaded by the Alaska Nurses Association, the Coalition is seeking support from organized labor and from women's groups.

In the State of Idaho, there has not been an "equal pay for comparable work" issue before either the Department of Labor or the Idaho Human Rights Commission. There is a case addressing, in part, the comparable worth issue pending in U.S. District Court in Idaho, however. Garavaglia v. Idaho State University, No. ____, involves a suit brought by the former coach of women's volleyball and softball, against the University, its President, its Women's Athletic Director, and the State Board of Education. The plaintiff in that suit alleges sex discrimination and retaliation under Title VII, violation of the Federal Equal Pay Act, and breach of contract. One of the issues involves the "comparability" of the plaintiff's coaching positions and duties to coaches of male-oriented athletics. According to the Director of the Idaho Human Rights Commission, the State of Idaho is raising this issue as a defense, asserting that the position held by the plaintiff is "not comparable" to the male-dominated coaching positions. The trial is not scheduled to begin until the Summer of 1984.

In Oregon, a task force has begun a two-year study of the State's system of compensation. The Oregon legislature appropriated $355,000 for the study, and the task force's goal is to recommend "a single, bias-free, sex-neutral point factor job evaluation system", taking into account the needs of the employer and the knowledge, skill, effort, responsibility, and working conditions required in each job. To date, there has not been a threat of a lawsuit, but interested parties in Oregon are carefully watching developments in the AFSCME case in Washington. The Oregon legislation establishing the task force also declares comparable worth to be State policy. The policy declaration was unsuccessfully opposed by Associated Oregon Industries (AOI), a group of over 300 private sector employers in the State. The AOI believes that a comparable worth policy should only be adopted if a study showed that comparable worth adjustments were feasible.

In the fall of 1983, the City Council of Portland also commissioned a pay-equity study. A task force has been empaneled to serve as an advisory board to the council, and has the initial task of setting the ground rules for the study and hiring a consultant to evaluate the City's jobs. The Portland study is to be completed in the Spring of 1985.

UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

DATE: April 16, 1984

REPLY TO
ATTN OF: OGC

SUBJECT: Commission Action on S. 2116

TO: Jack Hartog
Assistant General Counsel

In order to provide the Commissioners with additional information on the derivation of the $20,000 compensation figure recommended by the Wartime Relocation Commission, I consulted with Mr. Angus Macbeth, the former Special Counsel to the now defunct Commission. Ms Joan Z. Bernstein, the Chair of the Commission, referred me to Mr. Macbeth who she believes is the most knowledgeable person on the subject.

In a telephone interview, Mr. Macbeth stated that the $20,000 figure was derived from an effort to find a symbolic and politically expendient amount that would be acceptable to both the victims of the relocation camps and the United States Congress. The Commission weighed the competing interests of finding an amount that the victims and the Japanese American community would not find offensive and Congress would not consider to be an outrageous sum. 1/ The Wartime Relocation Commission's rationale for the amount recommended is set forth in paragraphs 2 and 3 on page 6 of Part 2 - Recommendations of the report.

Mr. Macbeth provided me with a publish addendum to the Commission's report, Personal Justice Denied. The addendum contained (1) an analysis of the economic losses of Japanese Americans and permanent residents of Japanese ancestry, 2/ and (2) an account of the proceedings of a research conference on social and psychological effects of exclusion and detention on Japanese Americans. 3/ The analysis of the economic

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1/ Interview with Angus Macbeth, former Special Counsel of the Commission on Wartime Relocation and Internment of Civilians, in Washington, D.C. (Apr. 6, 1984).

2/ Report of the Commission on Wartime Relocation and Internment of Civilians, Personal Justice Denied comment on Economic Losses of Ethnic Japanese as a Result of Exclusion and Detention, 1942-1946 (1983).

3/ Personal Justice Denied comment on the Proceedings of Research Conference on Social and Psychological Effects of Exclusion and Detention.

losses prepared for the Wartime Relocation Commission by a consultant to the Commission, estimated the total uncompensated economic (property and income) losses to be between $203 to $251 million as expressed in 1945 dollars. 4/ When adjusted for inflation and interest on the principle, the sum grew to between $1.1 billion and $4.2 billion in 1983 dollars. 5/ The analysis focused only on the economic losses to individuals who were detained and did not attempt to estimate personal injury damages for pain and suffering and unlawful detention.

Although non-economic losses and injuries were discussed at great lenghth by participants at the research conference on the social and psychological effects of exclusion and detention, no attempt was made to place a dollar value on the mental suffering of survivors of the detention camps. A reason for this is attributable to the fact that this type of injury is difficult to measure after forty years without the requisite case history of each survivor. Also difficult to gauge are the intergenerational effects which the exclusion and detention may have caused in future generations.

DONALD L. INNISS
Attorney-Advisor

4/ Personal Justice Denied comment on Economic Losses of Ethnic Japanese as a Result of Exclusion and and Detention, 1942-1946 at 67.

5/ Id.

99TH CONGRESS
1ST SESSION

H. R. 442

To implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1985

Mr. WRIGHT (for himself, Mr. FOLEY, Mr. LONG, Mr. GEPHARDT, Mr. RODINO, Mr. FISH, Mr. MINETA, Mr. MATSUI, Mr. LOWRY of Washington, Mr. ACKERMAN, Mr. AKAKA, Mr. BARNES, Mr. BATES, Mr. BERMAN, Mr. BIAGGI, Mr. BONIOR of Michigan, Mr. BORSKI, Mr. BOSCO, Mrs. BOXER, Mrs. BURTON of California, Mr. CARR, Mr. COELHO, Mrs. COLLINS, Mr. CONYERS, Mr. CROCKETT, Mr. DASCHLE, Mr. DELLUMS, Mr. DIXON, Mr. DOWNEY of New York, Mr. DYMALLY, Mr. EDGAR, Mr. EDWARDS of California, Mr. FAUNTROY, Mr. FAZIO, Mr. FEIGHAN, Mr. FOGLIETTA, Mr. FORD of Tennessee, Mr. FRANK, Mr. GARCIA, Mr. GEJDENSON, Mr. GILMAN, Mr. GRAY of Pennsylvania, Mr. HALL of Ohio, Mr. HAWKINS, Mr. HAYES, Mr. HORTON, Mr. HOWARD, Mr. HUGHES, Mr. JEFFORDS, Mr. KASTENMEIER, Mr. KILDEE, Mr. KOLTER, Mr. KOSTMAYER, Mr. LANTOS, Mr. LEHMAN of California, Mr. LEHMAN of Florida, Mr. LELAND, Mr. LEVINE of California, Mr. LUKEN, Mr. MADIGAN, Mr. MARKEY, Mr. MARTINEZ, Mr. MAVROULES, Ms. MIKULSKI, Mr. MILLER of California, Mr. MILLER of Washington, Mr. MITCHELL, Mr. MOAKLEY, Mr. MOODY, Mr. MORRISON of Connecticut, Mr. MURPHY, Mr. ORTIZ, Mr. OWENS, Mr. PANETTA, Mr. RANGEL, Mr. REID, Mr. ROE, Mr. ROYBAL, Mr. SAVAGE, Mr. SCHEUER, Mr. SCHUMER, Mr. SILJANDER, Mr. SMITH of Florida, Mr. STARK, Mr. STOKES, Mr. STUDDS, Mr. SUNIA, Mr. TORRES, Mr. TORRICELLI, Mr. TOWNS, Mr. UDALL, Mr. VENTO, Mr. WAXMAN, Mr. WEISS, Mr. WHEAT, Mr. WILSON, Mr. WIRTH, Mr. WOLPE, Mr. YATES, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians.

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 "Civil Liberties Act of 1985".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

(1) the findings of the Commission on Wartime Relocation and Internment of Civilians, established by the Commission on Wartime Relocation and Internment of Civilians Act, describe the circumstances of the evacuation, relocation, and internment of in excess of one hundred and ten thousand United States citizens and permanent resident aliens of Japanese ancestry and the treatment of individuals of Aleut ancestry who were removed from the Aleutian and the Pribilof Islands;

(2) the evacuation, relocation, and internment of individuals of Japanese ancestry was carried out without any documented acts of espionage or sabotage, or other acts of disloyalty by any citizens or permanent resident aliens of Japanese ancestry on the west coast;

(3) there was no military or security reason for the evacuation, relocation, and internment;

(4) the evacuation, relocation, and internment of the individuals of Japanese ancestry was caused by

racial prejudice, war hysteria, and a failure of political leadership;

(5) the excluded individuals of Japanese ancestry suffered enormous damages and losses, both material and intangible, and there were incalculable losses in education and job training, all of which resulted in significant human suffering for which full and appropriate compensation has not been made;

(6) the basic civil liberties and constitutional rights of those individuals of Japanese ancestry interned were fundamentally violated by that evacuation and internment;

(7) as a result of wartime necessity, approximately nine hundred individuals of Aleut ancestry were evacuated from their homes in the Pribilofs and from many islands of the Aleutian chain;

(8) the housing, sanitation, and food for those Aleuts evacuated were deplorable, medical care was inadequate, and diseases were widespread;

(9) many houses and churches of the Aleuts were vandalized by the members of the Armed Forces of the United States, and religious icons and family treasures were destroyed;

(10) the island of Attu was taken by the United States for military purposes but was never returned to its former residents;

(11) significant amounts of hazardous wartime debris remain in the Aleutian Islands; and

(12) full and appropriate compensation has not been made in the case of the Aleuts.

(b) The purposes of this Act are to—

(1) acknowledge the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry;

(2) apologize on behalf of the people of the United States for the evacuation, relocation, and internment of such citizens and permanent resident aliens;

(3) provide for a public education fund to finance efforts to inform the public about the internment of such individuals so as to prevent the reoccurrence of any similar event;

(4) make restitution to those individuals of Japanese ancestry who were interned;

(5) acknowledge the poor conditions in which the individuals of Aleut ancestry who were relocated and interned were forced to live, acknowledge the physical damage to their property as a result of the relocation,

and apologize to such individuals on behalf of the people of the United States for such conditions and damage;

(6) preserve, protect, rebuild, and restore, to the maximum extent possible, the land, buildings and environment damaged in the Aleutian Islands;

(7) make restitution to those individuals of Aleut ancestry who were relocated and interned;

(8) discourage the occurrence of similar injustices and violations of civil liberties in the future; and

(9) make more credible and sincere any declaration of concern by the United States over violations of human rights committed by other nations.

TITLE I—RECOGNITION OF INJUSTICE AND AN APOLOGY ON BEHALF OF THE NATION

SEC. 101. The Congress recognizes that a grave injustice was done to both citizens and resident aliens of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II. On behalf of the Nation, the Congress apologizes.

TITLE II—UNITED STATES CITIZENS OF JAPANESE ANCESTRY AND RESIDENT JAPANESE ALIENS

CRIMINAL CONVICTIONS

SEC. 201. (a) The Attorney General shall review all cases in which United States citizens and permanent resident aliens of Japanese ancestry were convicted of violations of laws of the United States, including convictions for violations of military orders, where such convictions resulted from charges filed against such individuals who refused to accept treatment which discriminated against them on the basis of their Japanese ancestry during the evacuation, relocation, and internment period.

(b) Based upon the review required by subsection (a), the Attorney General shall recommend to the President for pardon consideration those convictions which the Attorney General deems appropriate.

(c) In consideration of the findings contained in this Act, the President is requested to offer pardons to those individuals recommended by the Attorney General pursuant to subsection (b).

CONSIDERATION OF COMMISSION FINDINGS

SEC. 202. Departments and agencies of the United States Government to which eligible individuals may apply for the restitution of positions, status, or entitlements lost in whole or in part because of discriminatory acts of the United

States Government against such individuals based upon their Japanese ancestry and which occurred during the evacuation, relocation, and internment period shall review such applications with liberality, giving full consideration to the historical findings of the Commission and the findings contained in this Act.

TRUST FUND

SEC. 203. (a) There is hereby established in the Treasury of the United States the Civil Liberties Public Education Fund, to be administered by the Secretary of the Treasury.

(b)(1) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

(A) on original issue at the issue price, or

(B) by purchase of outstanding obligations at the market price.

(2) Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(3) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(c) Amounts in the Fund shall only be available for disbursement by the Attorney General under section 204 and by the Board under section 205.

(d) The Fund shall expire not later than the earlier of the date on which an amount has been expended from the Fund which is equal to the amount authorized to be appropriated to the Fund by subsection (e), and any income earned on such amount, or ten years after the date of enactment of this Act. If all of the amounts in the Fund have not been expended by the end of the ten-year period, investments shall be liquidated and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury.

(e) There are authorized to be appropriated to the Fund $1,500,000,000. Any amounts appropriated pursuant to this section shall remain available until expended.

RESTITUTION

SEC. 204. (a)(1) The Attorney General shall identify and locate, without requiring any application for payment and using records already in the possession of the United States Government, each eligible individual and shall pay out of the Fund to each eligible individual the sum of $20,000.

(2) If, after a period of time not to exceed ninety days beginning on the day that an eligible individual receives proper notification that such individual is eligible for a payment under paragraph (1), such individual refuses to accept

any payment under this section, such amount shall remain in the Fund and no payment shall be made under this section to such individual at any future date.

(b) The Attorney General shall endeavor to make payment to eligible individuals in the order of date of birth (with the oldest receiving full payment first), until all eligible individuals have received payment in full.

(c) In attempting to locate any eligible individual, the Attorney General may use any facility or resource of any public or nonprofit organization or any other record, document, or information that may be made available to him.

(d) No costs incurred by the Attorney General in carrying out this section shall be paid from the Fund or set off against, or otherwise deducted from, any payment under this section to any eligible individual.

(e) The duties of the Attorney General under this section shall cease with the expiration of the Fund.

BOARD OF DIRECTORS

SEC. 205. (a) There is hereby established the Civil Liberties Public Education Fund Board of Directors which shall be responsible for making disbursements from the Fund in the manner provided in this section.

(b) The Board of Directors may make disbursements from the Fund only—

(1) to sponsor research and public educational activities so that the events surrounding the evacuation,

relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry will be remembered, and so that the causes and circumstances of this and similar events may be illuminated and understood;

(2) to fund comparative studies of similar civil liberties abuses, or to fund comparative studies of the effect upon particular groups of racial prejudice embodied by government action in times of national stress;

(3) to prepare and distribute the hearings and findings of the Commission to textbook publishers, educators, and libraries;

(4) for the general welfare of the ethnic Japanese community in the United States, taking into consideration the effect of the exclusion and detention on the descendants of those individuals who were detained during the evacuation, relocation, and internment period (except that direct individual payments in compensation shall not be made under this paragraph); and

(5) for reasonable administrative expenses of the Board, including expenses incurred under subsections (c)(3), (d), and (e).

(c)(1) The Board shall be composed of nine members appointed by the President, by and with the advice and con-

sent of the Senate, from individuals who are not officers or employees of the United States Government.

(2)(A) Except as provided in subparagraphs (B) and (C), members shall be appointed for terms of three years.

(B) Of the members first appointed—

(i) five shall be appointed for terms of three years; and

(ii) four shall be appointed for terms of two years; as designated by the President at the time of appointment.

(C) Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of such member's term until such member's successor has taken office. No individual may be appointed to more than two consecutive terms.

(3) Members of the Board shall serve without pay, except members of the Board shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Board, in the same manner as persons employed intermittently in the United States Government are allowed expenses under section 5703 of title 5, United States Code.

(4) Five members of the Board shall constitute a quorum but a lesser number may hold hearings.

(5) The Chair of the Board shall be elected by the members of the Board.

(d)(1) The Board shall have a Director who shall be appointed by the Board.

(2) The Board may appoint and fix the pay of such additional staff personnel as it may require.

(3) The Director and the additional staff personnel of the Board may be appointed without regard to section 5311(b) of title 5, United States Code, and without regard to the provisions of such title governing appointments in the competitive service, and may be paid 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, except that the compensation of any employee of the Board may not exceed a rate equivalent to the minimum rate of basic pay payable under GS–18 of the General Schedule under section 5332(a) of such title.

(e) The Administrator of General Services is authorized to provide to the Board on a reimbursable basis such administrative support services as the Board may reasonably request.

(f) The Board may accept, use, and dispose of gifts or donations or services or property for purposes authorized under subsection (b).

(g) Not later than twelve months after the first meeting of the Board and every twelve months thereafter, the Board shall transmit a report describing the activities of the Board to the President and to each House of the Congress.

(h) The Board shall terminate not later than ninety days after the expiration of the Fund and all obligations of the Board under this section shall cease.

DEFINITIONS

SEC. 206. For the purposes of this title—

(1) the term "evacuation, relocation, and internment period" means that period beginning on December 7, 1941, and ending on June 30, 1946;

(2) the term "eligible individual" means any living individual of Japanese ancestry who was confined, held in custody, relocated, or otherwise deprived of liberty or property during that period as a result of—

(A) Executive Order Numbered 9066, dated February 19, 1942;

(B) the Act entitled "An Act to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones", approved March 21, 1942 (56 Stat. 173); or

(C) any other Executive order, Presidential proclamation, law of the United States, directive of the Armed Forces of the United States, or

other action made by or on behalf of the United States or its agents, representatives, officers, or employees respecting the exclusion, relocation, or detention of individuals solely on the basis of Japanese ancestry;

(3) the term "fund" means the Civil Liberties Public Education Fund established in section 203;

(4) the term "Board" means the Civil Liberties Public Education Fund Board of Directors established in section 205; and

(5) the term "Commission" means the Commission on Wartime Relocation and Internment of Civilians, established by the Commission on Wartime Relocation and Internment of Civilians Act.

TITLE III—ALEUTIAN AND PRIBILOF ISLANDS RESTITUTION

SHORT TITLE

SEC. 301. This title may be cited as the "Aleutian and Pribilof Islands Restitution Act".

ALEUTIAN AND PRIBILOF ISLANDS RESTITUTION FUND

SEC. 302. (a) There is established in the Treasury of the United States the Aleutian and Pribilof Islands Restitution Fund, to be administered by the Secretary.

(b) The Secretary shall report to the Congress each year on the financial condition and the results of operations of such Fund during the preceding fiscal year and on its expect-

ed condition and operations during the next fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(c) It shall be the duty of the Secretary to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

(1) on original issue at the issue price, or

(2) by purchase of outstanding obligations at the market price.

(d) Any obligation acquired by the Fund may be sold by the Secretary at the market price.

(e) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(f) The Secretary shall terminate the Fund ten years after the date of enactment of this Act, or one year after the completion of all restoration work pursuant to section 305(c) of this title, whichever occurs later. On the date the Fund is terminated, all investments shall be liquidated by the Secretary and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury.

EXPENDITURES AND AUDIT

SEC. 303. (a) As provided by appropriation Acts, the Secretary is authorized and directed to pay to the Administrator from the principal, interest, and earnings of the Fund, such sums as are necessary to carry out the duties of the Administrator under this title.

(b) The activities of the Administrator under this title may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, and files and all other papers, things, or property belonging to or in use by the Administrator, pertaining to such activities and necessary to facilitate the audit.

ADMINISTRATION OF CERTAIN FUND EXPENDITURES

SEC. 304. (a) The Association is hereby designated as Administrator, subject to the terms and conditions of this title, of certain specified expenditures made by the Secretary from the Fund. As soon as practicable after the date of enactment of this Act the Secretary shall offer to undertake negotiations with the Association, leading to the execution of a binding agreement with the Association setting forth its duties as Administrator under the terms of this title. The Secretary shall make a good-faith effort to conclude such negotiations and execute such agreement within sixty days after

the date of enactment of this Act. Such agreement shall be approved by a majority of the Board of Directors of the Association, and shall include—

(1) a detailed statement of the procedures to be employed by the Association in discharging each of its responsibilities as Administrator under this title;

(2) a requirement that the accounts of the Association, as they relate to its capacity as Administrator, shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants; and a further requirement that each such audit report shall be transmitted to the Secretary and to the Committees on the Judiciary of the Senate and the House of Representatives; and

(3) a provision establishing the conditions under which the Secretary, upon thirty days notice, may terminate the Association's designation as Administrator for breach of fiduciary duty, failure to comply with the provisions of this Act as they relate to the duties of the Administrator, or any other significant failure to meet its responsibilities as Administrator under this title.

(b) The Secretary shall submit the agreement described in subsection (a) to the Congress within fifteen days after approval by the parties thereto. If the Secretary and the As-

sociation fail to reach agreement within the period provided in subsection (a), the Secretary shall report such failure to the Congress within seventy-five days after the date of enactment of this Act, together with the reasons therefor.

(c) No expenditure may be made by the Secretary to the Administrator from the Fund until sixty days after submission to the Congress of the agreement described in subsection (a).

DUTIES OF THE ADMINISTRATOR

SEC. 305. (a) Out of payments from the Fund made to the Administrator by the Secretary, the Administrator shall make restitution, as provided by this section, for certain Aleut losses sustained in World War II, and shall take such other action as may be required by this title.

(b)(1) The Administrator shall establish a trust of $5,000,000 for the benefit of affected Aleut communities, and for other purposes. Such trust shall be established pursuant to the laws of the State of Alaska, and shall be maintained and operated by not more than seven trustees, as designated by the Administrator. Each affected Aleut village, including the survivors of the Aleut village of Attu, may submit to the Administrator a list of three prospective trustees. In designating trustees pursuant to this subsection, the Administrator shall designate one trustee from each such list submitted.

(2) The trustees shall maintain and operate the trust as eight independent and separate accounts, including—

(A) one account for the independent benefit of the wartime Aleut residents of Attu and their descendants;

(B) six accounts, each one of which shall be for the independent benefit of one of the six surviving affected Aleut villages of Atka, Akutan, Nikolski, Saint George, Saint Paul, and Unalaska; and

(C) one account for the independent benefit of those Aleuts who, as determined by the trustees, are deserving but will not benefit directly from the accounts established pursuant to subparagraphs (A) and (B).

The trustees shall credit to the account described in subparagraph (C), an amount equal to five per centum of the principal amount credited by the Administrator to the trust. The remaining principal amount shall be divided among the accounts described in subparagraphs (A) and (B), in proportion to the June 1, 1942, Aleut civilian population of the village for which each such account is established, as compared to the total civilian Aleut population on such date of all affected Aleut villages.

(3) The Trust established by this subsection shall be administered in a manner that is consistent with the laws of the State of Alaska, and as prescribed by the Administrator, after consultation with representative eligible Aleuts, the residents of affected Aleut villages, and the Secretary. The trustees

may use the accrued interest, and other earnings of the trust for—

(A) the benefit of elderly, disabled, or seriously ill persons on the basis of special need;

(B) the benefit of students in need of scholarship assistance;

(C) the preservation of Aleut cultural heritage and historical records;

(D) the improvement of community centers in affected Aleut villages; and

(E) other purposes to improve the condition of Aleut life, as determined by the trustees.

(c)(1) The Administrator is authorized to rebuild, restore or replace churches and church property damaged or destroyed in affected Aleut villages during World War II. Within fifteen days after the date that expenditures from the Fund are authorized by this title, the Secretary shall pay $100,000 to the Administrator for the purpose of making an inventory and assessment, as complete as may be possible under the circumstances, of all churches and church property damaged or destroyed in affected Aleut villages during World War II. In making such inventory and assessment, the Administrator shall consult with the trustees of the trust established by section 305(b) of this title and shall take into consideration, among other things, the present replacement

value of such damaged or destroyed structures, furnishings, and artifacts. Within one year after the date of enactment of this Act, the Administrator shall submit such inventory and assessment, together with specific recommendations and detailed plans for reconstruction, restoration and replacement work to be performed, to a review panel composed of—

(A) the Secretary of Housing and Urban Development;

(B) the Chairman of the National Endowment for the Arts; and

(C) the Administrator of the General Services Administration.

(2) If the Administrator's plans and recommendations or any portion of them are not disapproved by the review panel within sixty days, such plans and recommendations as are not disapproved shall be implemented as soon as practicable by the Administrator. If any portion of the Administrator's plans and recommendations is disapproved, such portion shall be revised and resubmitted to the review panel as soon as practicable after notice of disapproval, and the reasons therefor, have been received by the Administrator. In any case of irreconcilable differences between the Administrator and the review panel with respect to any specific portion of the plans and recommendations for work to be performed under this subsection, the Secretary shall submit such specific portion of

such plans and recommendations to the Congress for approval or disapproval by joint resolution.

(3) In contracting for any necessary construction work to be performed on churches or church property under this subsection, the Administrator shall give preference to the Aleutian Housing Authority as general contractor.

(d) The Administrator is authorized to incur reasonable and necessary administrative and legal expenses in carrying out its responsibilities under this title. The Secretary shall compensate the Administrator, not less often than quarterly, for all reasonable and necessary administrative and legal expenses.

INDIVIDUAL COMPENSATION OF ELIGIBLE ALEUTS

SEC. 306. (a)(1) In accordance with the provisions of this section, the Secretary shall make per capita payments out of the Fund to eligible Aleuts for uncompensated personal property losses, and for other purposes. The Secretary shall pay to each eligible Aleut the sum of $12,000. All payments to eligible Aleuts shall be made within one year after the date of enactment of this Act.

(2) The Secretary may request, and upon such request, the Attorney General shall provide, reasonable assistance in locating eligible Aleuts residing outside the affected Aleut villages. In providing such assistance, the Attorney General may use available facilities and resources of the International Committee of the Red Cross and other organizations.

(3) The Administrator shall assist the Secretary in identifying and locating eligible Aleuts pursuant to this section.

MINIMUM CLEANUP OF WARTIME DEBRIS

SEC. 307. (a) The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to plan and implement a program, as the Chief of Engineers may deem feasible and appropriate, for the removal and disposal of live ammunition, obsolete buildings, abandoned machinery, and other hazardous debris remaining in populated areas of the lower Alaska peninsula and the Aleutian Islands as a result of military construction and other activities during World War II. The Congress finds that such a program is essential for the future development of safe, sanitary housing conditions, public facilities, and public utilities within the region.

(b) The debris removal program authorized under subsection (a) shall be carried out substantially in accordance with the recommendations for a "minimum cleanup", at an estimated cost of $22,473,180 based on 1976 prices, contained in the report prepared by the Alaska District, Corps of Engineers, entitled "Debris Removal and Cleanup Study: Aleutian Islands and lower Alaska Peninsula, Alaska", dated October 1976. In carrying out the program required by this section, the Chief of Engineers shall consult with the trustees of the trust established by section 305(b) of this title, and

shall give preference to the Aleutian Housing Authority as general contractor.

ATTU ISLAND REHABILITATION PROGRAM

SEC. 308. (a) Notwithstanding any other provision of law, the Secretary of the Interior is authorized to convey to the Corporation, subject to the requirements of this section and without cost to the Corporation, all right, title and interest of the United States in and to the lands and waters comprising Attu Island, Alaska, including fee simple title to the surface and subsurface estates of such island.

(b) The Secretary of the Interior shall make the conveyance described in subsection (a) within one year after—

(1) the Corporation has entered into a cooperative management agreement with the Secretary of the Interior, as provided in section 304(f) of the Alaska National Interest Lands Conservation Act (94 Stat. 2394), concerning the management of Attu Island; and

(2) the Secretary of Transportation and the Corporation have certified to the Secretary of the Interior that the Department of Transportation and the Corporation have reached an agreement which will allow the United States Coast Guard to continue essential functions on Attu Island. The patent conveying the lands under this section shall reflect the right of the Coast Guard to continue such essential functions on such island, with reversion to the Corporation of all inter-

ests held by the Coast Guard when and if the Coast Guard terminates its activities on the island.

(c) The Secretary of the Interior is authorized to promulgate such rules and regulations as may be necessary to carry out the purposes of this section.

DEFINITIONS

SEC. 309. For the purposes of this title—

(1) the term "Administrator" means the person designated under the terms of this title to administer certain expenditures made by the Secretary from the Aleutian and Pribilof Islands Restitution Fund;

(2) the term "affected Aleut villages" means those Aleut villages in Alaska whose residents were evacuated by United States forces during World War II, including Akutan, Atka, Nikolski, Saint George, Saint Paul, and Unalaska; and the Aleut village of Attu, Alaska, which was not rehabilitated by the United States for Aleut residence or other use after World War II;

(3) the term "Aleutian Housing Authority" means the nonprofit regional native housing authority established for the Aleut region pursuant to the laws of the State of Alaska;

(4) the term "Association" means the Aleutian/Pribilof Islands Association, a nonprofit regional corpo-

ration established for the benefit of the Aleut people and organized under the laws of the State of Alaska;

(5) the term "Corporation" means the Aleut Corporation, a for-profit regional corporation for the Aleut region organized under the laws of the State of Alaska and established pursuant to section 7 of the Alaska Native Claims Settlement Act (85 Stat. 691; 43 U.S.C. 1606);

(6) the term "eligible Aleut" means any Aleut living on the date of enactment of this Act who was a resident of Attu Island on June 7, 1942, or any Aleut living on the date of enactment of this Act who, as a civilian, was relocated by authority of the United States from his home village on the Pribilof Islands or the Aleutian Islands west of Unimak Island to an internment camp, or other temporary facility or location, during World War II;

(7) the term "Fund" means the Aleutian and Pribilof Islands Restitution Fund established in section 302;

(8) the term "Secretary" means the Secretary of the Treasury; and

(9) the term "World War II" means that period beginning on December 7, 1941, and ending on September 2, 1945.

AUTHORIZATION OF APPROPRIATIONS

SEC. 310. (a) There are authorized to be appropriated—

(1) $5,000,000, for purposes of carrying out the provisions of subsection (b) of section 305;

(2) $1,399,000, for purposes of carrying out the provisions of subsection (c) of section 305;

(3) such sums as are necessary to carry out the provisions of section 305(d) and section 306; and

(4) $38,601,000, for purposes of carrying out the provisions of section 307.

(b) Any amounts appropriated pursuant to this section shall remain available until expended.

TITLE IV—MISCELLANEOUS PROVISIONS

DOCUMENTS RELATING TO THE INTERNMENT

SEC. 401. (a) All documents, personal testimony, and other material collected by the Commission on Wartime Relocation and Internment of Civilians during its inquiry shall be delivered by the custodian of such material to the Administrator of General Services who shall deposit such material in the National Archives of the United States. The Administrator of General Services, through the National Archives of the United States, shall make such material available to the public for research purposes.

(b) The Clerk of the House of Representatives and the Secretary of the Senate shall, without regard to time limits

otherwise applicable to the release of congressional documents, direct the Administrator of General Services to make available to the public for research purposes, all congressional documents not classified for national security purposes transferred to the Clerk of the House and the Secretary of the Senate relating to the evacuation, relocation, and internment of individuals of Japanese or Aleut ancestry during World War II.

COMPLIANCE WITH BUDGET ACT

SEC. 402. No authority under this Act to enter into contracts or to make payments shall be effective except to the extent or in such amounts as are provided in advance in appropriations Acts. Any provision of this Act which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only after September 30, 1985.

O

BRIEF TITLE..... Civil Liberties Act of 1985 Aleutian and Pribilof Islands Restitution Act
SPONSOR..... Wright
DATE INTRODUCED... January 3, 1985
HOUSE COMMITTEE... The Judiciary
OFFICIAL TITLE.... A bill to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians.
CO-SPONSORS..... 109 CURRENT COSPONSORS --

Jan 3, 85 Referred to House Committee on The Judiciary.
Mar 6, 85 Referred to Subcommittee on Administrative Law and Governmental Relations.
Mar 20, 85 Executive Comment Requested from DOD, Interior, Justice.
CO-SPONSORS..... 109 CURRENT COSPONSORS --

AS INTRODUCED... Foley, Long, Gephardt, Rodino, Fish, Mineta, Matsui, Lowry (WA), Ackerman, Akaka, Barnes, Bates, Berman, Biaggi, Bonior, Borski, Bosco, Boxer, Burton (CA), Carr, Coelho, Collins, Conyers, Crockett, Daschle, Dellums, Dixon, Downey (NY), Dymally, Edgar, Edwards (CA), Fauntroy, Fazio, Feighan, Foglietta, Ford (TN), Frank, Garcia, Gejdenson, Gilman, Gray (PA), Hall (OH), Hawkins, Hayes, Horton, Howard, Hughes, Jeffords, Kastenmeier, Kildee, Kolter, Kostmayer, Lantos, Lehman (CA), Lehman (FL), Leland, Levine (CA), Luken, Madigan, Markey, Martinez, Mavroules, Mikulski, Miller (CA), Miller (WA), Mitchell, Moakley, Moody, Morrison (CT), Murphy, Ortiz, Owens, Panetta, Rangel, Reid, Roe, Roybal, Savage, Scheuer, Schumer, Siljander, Smith (FL), Stark, Stokes, Studds, Sunia, Torres, Torricelli, Towns, Udall, Vento, Waxman, Weiss, Wheat, Wilson, Wirth, Wolpe, Yates, Young (AK).
Feb 27, 85 Heftel (HI), Clay, Sikorski.
Mar 26, 85 Bustamante.
Apr 2, 85 Addabbo, Beilenson, Brown (CA).
Apr 30, 85 Morrison (WA), Manton, Biaz.

THE CIVIL LIBERTIES ACT OF 1985

COMPARISON OF H.R. 442 (99th Congress) AND H.R. 4110 (98th Congress)

H.R. 442 seeks to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians. H.R. 442 was introduced by House Majority Leader Jim Wright on January 3, 1985, with 99 co-sponsors.

The number honors the 442nd Regimental Combat Team, one of the most highly decorated American fighting units during World War II. The 442nd RCT honorably served this nation in the European theater and was made up of Americans of Japanese ancestry, many of whom volunteered for service from the internment camps that are the subject of H.R. 442.

H.R. 442 is substantially the same as H.R. 4110 (98th Congress), with the following differences:

1. H.R. 442 has dropped the provision in H.R. 4110 (Sec. 205) which required that five of the nine individuals serving as members of the Board of Directors of the educational and humanitarian trust fund be of Japanese ancestry.

2. H.R. 442 has adopted the Aleut section of a companion Senate bill to provide a consistent individual compensation figure of $12,000 in both the House and Senate versions of the legislation.

The major provisions of H.R. 442 are as follows:

1. There should be a formal apology by Congress and the President recognizing the grave injustices committed by the Federal Government against Japanese Americans.

2. Congress should establish an educational and humanitarian trust fund to educate the American people about the dangers of racial intolerance.

3. Individual compensation of $20,000 should be paid to each surviving internee, in partial recognition of individual losses and damages.

FOR FURTHER INFORMATION CONTACT:

Japanese American Citizens League
1730 Rhode Island Avenue, N.W. Suite 204
Washington, D.C. 20036
(202) 223-1240

(2/85)

pacific citizen

National Publication of the Japanese American Citizens League

00 No. 18 | 244 S. San Pedro St., Rm. 506, Los Angeles, CA 90012-3981 (213)626-6936 | May 10, 1985

Photo by George Thow

n a plaque designating Man- is unveiled. On hand for the prey, Manzanar Committee cilman David Cunnningham; e; and Rep. Mervyn Dymally.

Brief

rabayashi hearing

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Matsunaga introduces redress bill with 25 co-sponsors

WASHINGTON—A Senate bill calling for redress to Japanese Americans interned by the federal government during WW2 was introduced on May 2 by Sen. Spark Matsunaga (D-Hawaii) with 25 other senators as co-sponsors (see list below).

The bill, S 1053, is virtually identical to S 2116, the redress bill which was introduced by Matsunaga in 1983 and which had 20 sponsors by the end of the 98th Congress in 1984. Like its predecessor, S 1053 embodies recommendations made by the Commission on Wartime Relocation and Internment of Civilians in 1983.

Redress supporters had hoped to have the bill named S 100 in honor of the all-Nisei 100th Infantry Battalion, but that number had already been taken. The House redress bill has been designated HR 442 in honor of the 442nd Regimental Combat Team.

In introducing the Senate bill, Matsunaga termed the 1942 removal of 120,000 JAs from their West Coast homes and their incarceration in detention camps "one of America's worst wartime mistakes."

Urging Congress to acknowledge "the grave injustice" of the internment, Matsunaga said that passage of the bill "would remove a blot on the pages of our nation's history" and "remove a cloud which has hung over the heads of Japanese Americans since the end of WW2."

The bill would provide the estimated 55,000 to 60,000 surviving internees a one-time per capita compensation of $20,000 in partial compensation for individual losses and damages; establish a trust fund for humanitarian and public educational purposes; and require that Congress and the President apologize to Japanese Americans for the internment.

It also calls for similar restitution for Alaskan Aleuts who were removed from their villages and held in abandoned canneries or mines for the duration of the war.

Co-sponsors of S 1053

Jeremiah Denton	R-Alabama
Ted Stevens	R-Alaska
Frank Murkowski	R-Alaska
Alan Cranston	D-California
Gary Hart	D-Colorado
Spark Matsunaga	D-Hawaii
Daniel Inouye	D-Hawaii
Paul Simon	D-Illinois
Tom Harkin	D-Iowa
Paul Sarbanes	D-Maryland
Edward Kennedy	D-Massachusetts
John Kerry	D-Massachusetts
Carl Levin	D-Michigan
Donald Riegle	D-Michigan
John Melcher	D-Montana
James Exon	D-Nebraska
Bill Bradley	D-New Jersey
Frank Lautenberg	D-New Jersey
Daniel Moynihan	D-New York
Alfonse D'Amato	R-New York
Quentin Burdick	D-North Dakota
Howard Metzenbaum	D-Ohio
Mark Hatfield	R-Oregon
Slade Gorton	R-Washington
Daniel Evans	R-Washington
William Proxmire	D-Wisconsin

WW2 camp now national landmark

by J.K. Yamamoto

MANZANAR, Calif.—The site of an internment camp where 10,000 Japanese Americans lived during WW2 was formally declared a National Historic Landmark in an April 27 ceremony held during the 16th annual Manzanar Pilgrimage.

As approximately 300 people looked on, Jerry Rogers, associate director for cultural resources for the National Park Service, unveiled a bronze plaque designating Manzanar as a site which "possesses national significance commemorating the history of the United States of America."

The gathering, which included a number of former Manzanar internees, was joined by Los Angeles city councilman David Cunningham, Rep. Mervyn Dymally (D-Calif.) and representatives from Inyo County, the nearby town of Lone Pine and the Ft. Independence Shoshone-Paiute tribe. The ceremony took place near the monument marking the location of the camp cemetery.

"Manzanar," Rogers said before the unveiling, "is representative of the atmosphere of racial prejudice, mistrust and fear that resulted in American citizens being uprooted from their homes, denied their constitutional rights, and—with neither accusation, indictment, nor conviction—moved to remote relocation camps...

"Manzanar cannot be celebrated, for it was not a triumph...not

Continued on Page 7

Pearl Harbor cited in contract dispute

DENVER—State Senator Ray Powers (R-Colorado Springs) angered local Asian Americans when he declared that a Japanese American firm should not have been awarded a state contract because "the Japanese bombed Pearl Harbor."

Powers has introduced a bill, SB 252, which would reduce highway construction contract set-asides for minority businesses from 15% to 11%. At a Senate Transportation Committee hearing two weeks ago, he gave one of his reasons for sponsoring the bill:

"Another thing that really got me on this was when I heard of a bid being let to a Hawaii bidder, a Japanese, that we were bombing not 30 years ago."

However, Koga Engineering & Construction Inc. of Honolulu, to which Powers was referring, was founded by Malcom Koga, a third-generation Hawaiian who served with the Army Corps of Engineers for two years in Vietnam.

Paul Iwata, vice president of Koga and manager of KECI Colorado Inc., a Littleton-based sister

442nd Regimental Combat Team during WW2 and were killed in Germany.

Tom Masamori and Minoru Yasui of Mile-Hi JACL were joined by Willis Yap of the Organization of Chinese Americans in protesting Powers' remarks at a senate hearing.

Representatives of Hispanic and Black organizations, including League of United Latin American Citizens (LULAC), NAACP, and Urban League, strongly objected to Powers' comments alleging "slipshod workmanship of minority contractors" and "unreliability of minority workers."

Powers has indicated that he would like to run as the Republican candidate for governor in the next general election.

Washington legislature endorses redress

OLYMPIA, Wash. — The Washington State Legislature has asked Congress to pay $20,000 to each American of Japanese ancestry who was interned by the U.S. dur- WW2.

Associated Press reported.

"We should do something to say we're sorry we reacted irrationally," said Rep. Katie Allen (R-Edmonds). "We can't make up for what we've done [illegible]

exclusion order. The Government filed cross motion to dismiss the prosecution against petitioner. The District Court, Patel, J., held that petitioner was entitled to writ of coram nobis to vacate his conviction where there was substantial support in the record for proposition that Government deliberately omitted relevant information and provided misleading information in the papers before court concerning whether the actions taken were reasonably related to the security and defense of the nation and the prosecution of the war, where Government failed to rebut petitioner's certificate setting forth collateral consequences he believed he suffered and would continue to suffer as result of the 1942 conviction and where Government failed to rebut petitioner's showing of timeliness.

Petition granted and countermotion denied.

1. Criminal Law ⇐302(1)

Motion under rule governing dismissals by attorney for government could not be made after prosecution had come to rest, the judgment was final, appeals had been exhausted and judgment imposed and sentence served. Fed.Rules Cr.Proc.Rule 48(a), 18 U.S.C.A.

2. Criminal Law ⇐997.1

Writ of coram nobis, which still obtains in criminal proceedings, is an appropriate remedy by which court can correct errors in criminal convictions where other remedies are not available. 28 U.S.C.A. § 1651(a).

3. Criminal Law ⇐997.2

Where sentence had been served thereby rendering habeas corpus an inadequate remedy, writ of coram nobis was appropriate vehicle for petitioner, an American citizen of Japanese ancestry, to seek to correct errors in his 1942 conviction for being in a place from which all persons of Japanese ancestry were excluded pursuant to a civilian exclusion order. 28 U.S.C.A. § 1651(a).

4. Criminal Law ⇐997.1

Source of court's power to grant coram nobis relief lies in All Writs Act. 28 U.S.C.A. § 1651(a).

5. Criminal Law ⇐997.13

Petition for writ of coram nobis is appropriately heard by district court in which conviction was obtained even though judgment has been appealed and affirmed by Supreme Court; furthermore, appellate leave is not required for a trial court to correct errors occurring before it. 28 U.S.C.A. § 1651(a).

6. Criminal Law ⇐302(2)

Court will not automatically grant dismissal upon motion of government's attorney; a limited review by court is necessary even where the defendant consents in order to protect against prosecutorial impropriety or harassment of defendant and to assure that the public interest is not disserved. Fed.Rules Cr.Proc.Rule 48(a), 18 U.S.C.A.

7. Criminal Law ⇐997.11

Petitions for writ of coram nobis should be treated in a manner similar to federal habeas corpus petitions. 28 U.S.C.A. §§ 1651(a), 2255.

8. Habeas Corpus ⇐59

Care must be taken in a hearing afforded when a palpable claim is raised by petitioner and there is an inadequate record or disputed factual issues; however, parties may choose to rely upon the record or an expanded record and forgo an evidentiary hearing; furthermore, where on the facts admitted, it may appear that, as matter of law, petitioner is entitled to the writ, no hearing need be held. 28 U.S.C.A. §§ 2254, 2255.

9. Criminal Law ⇐997.15(2)

On a motion to vacate sentence, government must establish that there is no genuine issue of material fact; petitioner is entitled to benefit of favorable inferences. 28 U.S.C.A. § 2255.

10. Habeas Corpus ⇐90

Where government offers no opposition and, in effect, joins in a similar request for relief on motion for habeas corpus, an expansive inquiry is not necessary; however, even where government has acknowledged that the conviction should be set aside, albeit on different grounds, court

must conduct some review to determine whether there is support for government's position. 28 U.S.C.A. § 2255.

11. Criminal Law ⇐1186.6

A confession of error is generally given great deference and where that confession of error is made by the official having full authority for prosecution on behalf of the government it is entitled to even greater deference.

12. Criminal Law ⇐304(1)

When the parties are in agreement that court may take a judicial notice of certain matters or that records may be admitted as public records, court need not make as searching an inquiry as when notice or admissibility is disputed; however, despite such acquiescence, care should be taken to consider only trustworthy and reliable evidence.

13. Criminal Law ⇐304(1)

Judicial notice may be taken of adjudicative facts as well as of legislative facts. Fed.Rules Evid.Rule 201, 28 U.S.C.A.

14. Criminal Law ⇐304(1)

Adjudicative facts are usually those facts which are in issue in particular case and judicial notice of adjudicated facts dispenses with need to present other evidence or for the fact finder to make findings as to those particular facts. Fed.Rules Evid.Rule 201, 28 U.S.C.A.

15. Constitutional Law ⇐70.1(4)

Legislative facts are established truth, facts or pronouncements that do not change from case to case but are applied universally while adjudicative facts are those developed in a particular case.

16. Criminal Law ⇐304(1)

Where function of court is to act as a fact finder or exercise discretion, more leeway to take judicial notice is justified. Fed.Rules Evid.Rule 201, 28 U.S.C.A.

17. Criminal Law ⇐304(2)

In proceeding in which American citizen of Japanese ancestry petitioned for writ of coram nobis to vacate his 1942 conviction of being in a place from which all persons of Japanese ancestry were excluded pursuant to civilian exclusion order, district court would take judicial notice of purpose of Commission on Wartime Relocation and Internment of Civilians, manner in which it was established and, subject to a finding of truthworthiness, general nature and substance of its conclusions; however, it was not proper or necessary to take judicial notice of specific Commission findings and conclusions as adjudicative facts despite Government's failure to adequately object. Fed.Rules Evid.Rule 201, 28 U.S.C.A.

18. Criminal Law ⇐304(1), 363, 419(2), 432

Internal government memoranda and letters were not the kind of documents that were proper subject of judicial notice but could be considered by the court as evidence on issue of governmental misconduct in connection with petitioner's conviction for being in a place from which all persons of Japanese ancestry were excluded pursuant to civilian exclusion order under hearsay exceptions for present sense impression and statements in ancient documents; alternatively, since they were not actually offered for truth of the statements contained therein but rather as evidence that the statements were made, they could be admitted as nonhearsay. Fed.Rules Evid. Rules 801(c), 803(1, 16), 28 U.S.C.A.

19. Criminal Law ⇐997.15(4)

American citizen of Japanese ancestry was entitled to writ of coram nobis to vacate his conviction for being in a place from which all persons of Japanese ancestry were excluded pursuant to a civilian exclusion order where there was substantial support in the record for proposition that Government deliberately omitted relevant information and provided misleading information in the papers before court concerning whether the actions taken were reasonably related to the security and defense of the nation and the prosecution of the war, where Government failed to rebut petitioner's certificate setting forth collateral consequences he believed he suffered and would continue to suffer as result of the 1942 conviction and where Government

failed to rebut petitioner's showing of timeliness.

20. Criminal Law ⇐997.1

Coram nobis should be used only under certain circumstances compelling such action to achieve justice and to correct errors of the most fundamental character; it is available to correct errors that result in a complete miscarriage of justice and where there are exceptional circumstances.

21. Criminal Law ⇐997.4

Coram nobis lies for a claim of prosecutorial impropriety.

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OPINION

PATEL, District Judge.

Fred Korematsu is a native born citizen of the United States. He is of Japanese ancestry. On September 8, 1942 he was convicted in this court of being in a place from which all persons of Japanese ancestry were excluded pursuant to Civilian Exclusion Order No. 34 issued by Commanding General J.L. DeWitt. His conviction was affirmed. *Korematsu v. United States*, 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944).

Mr. Korematsu now brings this petition for a writ of *coram nobis* to vacate his conviction on the grounds of governmental misconduct. His allegations of misconduct are best understood against the background of events leading up to his conviction.

On December 8, 1941 the United States declared war on Japan.

Executive Order No. 9066 was issued on February 19, 1942 authorizing the Secretary of War and certain military commanders "to prescribe military areas from which any persons may be excluded as protection against espionage and sabotage."

Congress enacted § 97a of Title 18 of the United States Code, enforcing the exclusions promulgated under the Executive Order. Section 97a made it a misdemeanor for anyone to enter or remain in any restricted military zone contrary to the order of a military commander.

In the meantime, General DeWitt was designated Military Commander of the Western Defense Command which consisted of several western states including California.

On March 2, 1942 General DeWitt issued Public Proclamation No. 1 pursuant to Executive Order 9066. The proclamation stated that "the entire Pacific Coast ... is subject to espionage and acts of sabotage, thereby requiring the adoption of military measures necessary to establish safeguards against such enemy operations."

Thereafter, several other proclamations based upon the same justification were issued placing restrictions and requirements upon certain persons, including all persons of Japanese ancestry. As a result of these proclamations and Exclusion Order No. 34, providing that all persons of Japanese ancestry be excluded from an area specified as Military Area No. 1, petitioner, who lived in Area No. 1, could not leave the zone in which he resided and could not remain in the zone unless he were in an established "Assembly Center." Petitioner remained in the zone and did not go to the Center. He was charged and convicted of knowingly remaining in a proscribed area in violation of § 97a.

It was uncontroverted at the time of conviction that petitioner was loyal to the United States and had no dual allegiance to Japan. He had never left the United States. He was registered for the draft and willing to bear arms for the United States.

In his papers petitioner maintains that evidence was suppressed or destroyed in the proceedings that led to his conviction and its affirmance. He also makes substantial allegations of suppression and distortion of evidence which informed Executive Order No. 9066 and the Public Proclamations issued under it. While the latter may be compelling, it is not for this court to rectify. However, the court is not powerless to correct its own records where a fraud has been worked upon it or where manifest injustice has been done.

The question before the court is not so much whether the conviction should be vacated as what is the appropriate ground for relief. A description of the procedural history of these proceedings explains this posture.

PROCEDURAL HISTORY OF THESE PROCEEDINGS

Petitioner filed his petition for a writ of *coram nobis* on January 19, 1983. The first scheduled status conference was conducted on March 14, 1983, when all parties appeared before the court. At that time the petition was deemed a motion and the government was ordered to respond by August 29, 1983. Petitioner's reply to the government's response was set for September 26, 1983, and a hearing on the petition was scheduled for October 3, 1983. Informal discovery was conducted in accordance with the agreement arrived at during the conference. Thereafter, the government moved for an extension based upon the forthcoming report of the Commission on Wartime Relocation and Internment of Civilians ("Commission"), which it anticipated would have a substantial bearing on these proceedings. The motion for a continuance was opposed. The court granted the motion, giving the government until September 27, 1983 to respond, and setting October 25, 1983 for petitioner's reply and November 4 for a hearing on the petition. Thereafter, the government was given a further extension, to October 4, for the filing of its response. On October 4, 1983, a document entitled "Government's Response and Motion Under L.R. 220–6" ("Response") was filed. The substance of the Response consists of less than four pages. In fact, it is not an opposition to the petition, but a counter-motion to vacate the conviction and dismiss the underlying indictment.[1] It is denominated a motion under Local Rule 220–6, pertaining to the hearing of related motions.

On October 31, petitioner filed his reply and Request for Judicial Notice. The government filed its Preliminary Response to the Request for Judicial Notice on November 7, 1983. A hearing on the petition and counter-motion was conducted on November 10, 1983.

Because the government maintains that the court should grant its motion and not reach the merits of the petition, the counter-motion is considered first.

THE GOVERNMENT'S COUNTER-MOTION

[1] The government does not specifically designate in its memorandum the grounds for its motion. It relies upon *Rinaldi v. United States*, 434 U.S. 22, 98 S.Ct. 81, 54 L.Ed.2d 207 (1977) and *United States v. Hamm*, 659 F.2d 624, 631 (5th Cir.1981) (en banc), in which motions were made pursuant to Fed.R.Crim.P. 48(a). At the hearing the government acknowledged Rule 48(a) as the premise for its motion.

Rule 48(a) has its antecedents in the common law doctrine of *nolle prosequi*. An understanding of that doctrine is necessary to a discussion of the Rule's application here. As the literal translation of *nolle prosequi*—"I am unwilling to prosecute"—makes clear, the primary purpose of the doctrine was to allow the government to cease active prosecution. At common law, and before Rule 48(a) was enacted, prosecution was within the exclusive jurisdiction of the prosecuting attorney at the early stages of the proceedings and a *nolle prosequi* could be entered at any time before the jury was empaneled. *Confiscation*

1. Although the government referred in its papers to dismissal of the indictment, the defendant was in fact convicted upon an information.

Cases, 74 U.S. (7 Wall.) 454, 457, 19 L.Ed. 196 (1868).

However, as the case progressed, the prosecuting attorney lost the unilateral right to enter a *nolle prosequi*. After the jury was sworn and evidence heard, the defendant had the right to object to the entry of a *nolle prosequi* and the effect of the entry at that stage was a verdict of acquittal. *United States v. Shoemaker*, 27 F.Cas. 1066 (C.C.D.Ill.1840) (No. 16,279). While the prosecutor's unilateral power to enter a *nolle prosequi* apparently revived just after the verdict was returned, once a sentence had been handed down or final judgment entered, that unilateral right of the prosecutor was again extinguished. *United States v. Brokaw*, 60 F.Supp. 100 (S.D.Ill.1945).

With the adoption of Rule 48(a), the absolute authority of the prosecutor was tempered and leave of court was required for dismissal of an indictment, information or complaint at *any* stage of the proceedings. Although there is a substantial body of case law dealing with the scope of the court's authority to grant or deny leave to dismiss, little has been written about the time within which a Rule 48(a) dismissal may be brought.

There is nothing to suggest that the Rule was intended to extend the *nolle prosequi* privilege beyond that allowed at common law. In fact, the purpose of the Rule was to place some fetters on prosecutorial discretion. Fed.R.Crim.P. 48(a) advisory committee note 1. The plain language of the section is also instructive. The Rule allows for dismissal, with leave, of an indictment, information or complaint, whereupon "the prosecution shall ... terminate." As the Rule provides that upon the court's approval of a *nolle prosequi*, the prosecution will terminate, it clearly contemplates action by the prosecuting agency only while control of the prosecution still lies, at least in part, with it. By contrast, the prosecutor has no authority to exercise his *nolle prosequi* prerogatives at common law or to invoke Rule 48(a) after a person has been subject to conviction, final judgment, imposition of sentence and exhaustion of all appeals and, indeed, after a lapse of many years. At that stage, there is no longer any prosecution to be terminated.

United States v. Weber, 721 F.2d 266 (9th Cir.1983) does not compel a different interpretation. In *Weber*, as in the cases upon which it relies, the Rule 48(a) motion was made during the pendency of the proceedings. Applying the same rationale, that dismissal is a possibility while the case is still being actively prosecuted, the Supreme Court, even after it has granted a petition for a writ of certiorari, has remanded to allow the government to dismiss charges against the petitioner. *E.g., Watts v. United States*, 422 U.S. 1032, 95 S.Ct. 2648, 45 L.Ed.2d 688 (1975). This is because Rule 48(a) and the right of *nolle prosequi* emanate from the Executive's power to initiate a criminal prosecution and to terminate a pending prosecution. *See United States v. Cowan*, 524 F.2d 504, 507 (5th Cir.1975), *cert. denied sub nom. Woodruff v. United States*, 425 U.S. 971, 96 S.Ct. 2168, 48 L.Ed.2d 795 (1976) (citing *United States v. Cox*, 342 F.2d 167 (5th Cir.1965), *cert. denied sub nom. Cox v. Hauberg*, 381 U.S. 935, 85 S.Ct. 1767, 14 L.Ed.2d 700 (1965)).

The court finds no authority for the proposition that a Rule 48(a) motion may be made long after the prosecution has come to rest, the judgment is final, appeals have been exhausted, judgment imposed and the sentence served.

THE PETITION FOR A WRIT OF CORAM NOBIS

[2] A writ of *coram nobis* is an appropriate remedy by which the court can correct errors in criminal convictions where other remedies are not available. Although Rule 60(b), Fed.R.Civ.P., abolishes various common law writs, including the writ of *coram nobis* in civil cases, the writ still obtains in criminal proceedings where other relief is wanting. *United States v. Morgan*, 346 U.S. 502, 74 S.Ct. 247, 98 L.Ed. 248 (1954). *See also James v. United States*, 459 U.S. 1044, 103 S.Ct. 465, 74 L.Ed.2d 615 (1982) (dissenting opinion in denial of petition for writ of certiorari explaining purpose of *coram nobis*); *Chres-*

field v. United States, 381 F.Supp. 301, 302 (E.D.Pa.1974).

[3] While the *habeas corpus* provisions of 28 U.S.C. § 2255 supplant most of the functions of *coram nobis*, particularly in light of the federal courts' expanded view of custody, *habeas corpus* is not an adequate remedy here. Petitioner's sentence has been served. He cannot meet the "in custody" requirements of § 2255 under any interpretation of that section. *See Hensley v. Municipal Court*, 411 U.S. 345, 93 S.Ct. 1571, 36 L.Ed.2d 294 (1973) (discussing meaning of custody in context of 28 U.S.C. § 2254 requirements); *Jones v. Cunningham*, 371 U.S. 236, 83 S.Ct. 373, 9 L.Ed.2d 285 (1963) (finding the restraints of parole sufficient to constitute custody for the purposes of *habeas* proceedings under § 2254); *Azzone v. United States*, 341 F.2d 417 (8th Cir.1965), *cert. denied sub. nom. Azzone v. Tahash*, 390 U.S. 970, 88 S.Ct. 1090, 19 L.Ed.2d 1180 (1968) (applying the custody requirement in § 2255 proceedings). It is in these unusual circumstances that an extraordinary writ such as the writ of *coram nobis* is appropriate to correct fundamental errors and prevent injustice. *United States v. Correa-De Jesus*, 708 F.2d 1283 (7th Cir.1983).

[4, 5] The source of the court's power to grant *coram nobis* relief lies in the All Writs Act, 28 U.S.C. § 1651(a). The petition is appropriately heard by the district court in which the conviction was obtained. *Morgan*, 346 U.S. at 512, 74 S.Ct. at 253. This is so even though the judgment has been appealed and affirmed by the Supreme Court. Appellate leave is not required for a trial court to correct errors occurring before it. *Standard Oil of California v. United States*, 429 U.S. 17, 97 S.Ct. 31, 50 L.Ed.2d 21 (1976).

Coram nobis being the appropriate vehicle for petitioner to seek relief, I turn to the question of how the court shall proceed in this unusual case.

While the government would have this court grant its motion and look no further, petitioner asks this court to look behind the conviction, view the "evidence" that has now come to light and make findings of fact. The court concludes that the first alternative, although easy, is not available; the second alternative is unnecessary.

[6] Even were the government in a position to move under Rule 48(a) of the Fed.R.Crim.P., the court would not automatically grant dismissal. A limited review by the court is necessary, even where the defendant consents. The purpose of this limited review is to protect against prosecutorial impropriety or harassment of the defendant and to assure that the public interest is not disserved. *United States v. Cowan*, 524 F.2d at 512–13.[2]

[7] This Circuit has resolved that petitions for a writ of *coram nobis* should be treated in a manner similar to § 2255 *habeas corpus* petitions. *United States v. Taylor*, 648 F.2d 565 (9th Cir.), *cert. denied*, 454 U.S. 866, 102 S.Ct. 329, 70 L.Ed.2d 168 (1981). Thus, the nature of the court's inquiry is substantially more expansive than under Rule 48(a). For example, § 2255 considerations apply in determining whether an evidentiary hearing is required. 648 F.2d at 573 n. 25.

[8] In *Townsend v. Sain*, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963), the Supreme Court provided instructions to the district courts as to when evidentiary hearings should be held in state *habeas* cases under 28 U.S.C. § 2254. It is clear that care must be taken and a hearing afforded when a palpable claim is raised by the petitioner and there is an inadequate record or disputed factual issues. However, the Court acknowledged that district courts have substantial discretion and should not be put to conducting unnecessary evidentiary hearings. The parties may choose to rely upon the record or an expanded record and forego an evidentiary hearing. The same standards apply in *habeas* proceedings under § 2255. *See Sosa v. United States*, 550 F.2d 244, 250–56 (5th Cir.1977) (separate opinion of Judge Tuttle and col-

2. Indeed, it has been suggested that Rule 48(a), Fed.R.Crim.P., "contemplates public exposure of the reasons for abandonment of an indictment, information or complaint ...." *United States v. Greater Blouse, Skirt & Neckwear Contractors Ass'n*, 228 F.Supp. 483, 486 (S.D.N.Y.1964).

lected citations therein). And where "on the facts admitted, it may appear that, as matter of law, the prisoner is entitled to the writ" no hearing need be held. *Walker v. Johnston*, 312 U.S. 275, 284, 61 S.Ct. 574, 578, 85 L.Ed. 830 (1941).

[9, 10] On a motion under § 2255, the government must establish that there is no genuine issue of material fact; the petitioner is entitled to the benefit of favorable inferences. *Honneus v. United States*, 509 F.Supp. 1135, 1138 (D.Mass.1981). Where, as here, the government offers no opposition and, in effect, joins in a similar request for relief, an expansive inquiry is not necessary. In fact, the government agrees petitioner is entitled to relief and concedes: "There is, therefore, no continuing reason in this setting for the court to convene hearings or make findings about petitioner's allegations of governmental wrongdoing in the 1940's." Response at 3. However, even where the government has acknowledged that the conviction should be set aside, albeit on different grounds, the court must conduct some review to determine whether there is support for the government's position.

[11] Ordinarily, in cases in which the government agrees that a conviction should be set aside, the government's position is made clear because it confesses error, calling to the court's attention the particular errors upon which the conviction was obtained. A confession of error is generally given great deference. Where that confession of error is made by the official having full authority for prosecution on behalf of the government it is entitled to even greater deference. *See Sibron v. State of New York*, 392 U.S. 40, 58–59, 88 S.Ct. 1889, 1900–1901, 20 L.Ed.2d 917 (1968). Even so, the court must conduct its own review. *Young v. United States*, 315 U.S. 257, 62 S.Ct. 510, 86 L.Ed. 832 (1942).

In this case, the government, joining in on a different procedural footing, is not prepared to confess error. Yet it has not submitted any opposition to the petition, although given ample opportunity to do so. Apparently the government would like this court to set aside the conviction without looking at the record in an effort to put this unfortunate episode in our country's history behind us.

The government has, however, while not confessing error, taken a position tantamount to a confession of error. It has eagerly moved to dismiss without acknowledging any specific reasons for dismissal other than that "there is no further usefulness to be served by conviction under a statute which has been soundly repudiated." (R.T. 13:20–22, November 10, 1983). In support of this statement, the government points out that in 1971, legislation was adopted requiring congressional action before an Executive Order such as Executive Order 9066 can ever be issued again; that in 1976, the statute under which petitioner was convicted was repealed; and that in 1976, all authority conferred by Executive Order 9066 was formally proclaimed terminated as of December 31, 1946. While these are compelling reasons for concluding that vacating the conviction is in the best interests of this petitioner, respondent and the public, the court declines the invitation of the government to treat this matter in the perfunctory and procedurally improper manner it has suggested.

On the other hand, this court agrees that it is not necessary to reopen the partially healed wounds of an earlier period in order to perform its role of conducting independent judicial review. Fortunately, there are few instances in our judicial history when courts have been called upon to undo such profound and publicly acknowledged injustice. Such extraordinary instances require extraordinary relief, and the court is not without power to redress its own errors.[3]

3. As discussed above, a full evidentiary hearing is not always required. Petitioner's submissions in this case would ordinarily justify a hearing and the court could not, in light of those submissions, deny the petition without affording a hearing. *See Lujan v. United States*, 424 F.2d 1053 (5th Cir.1970). However, it is clear from the results reached herein, that petitioner is not prejudiced by the failure to conduct an evidentiary hearing. The government is deemed to have waived its right to a hearing.

Because the government has not acknowledged specific errors, the court will look to the original record and the evidence now before it to determine whether there is support for the petition and whether manifest injustice would be done in letting the conviction stand.

EVIDENTIARY ISSUES

The "evidence" before this court consists of certain documents and reports of which petitioner asks the court to take judicial notice. The posture of this request is curious. In response to the request, the government filed a "Preliminary Response." This was filed three days before the hearing on the petition. In its "Preliminary Response," the government did not take issue with the merits of petitioner's request for judicial notice. Its response was merely "designed to convey our general objections" and the government offered to file a full response if requested by the court. It then went on to make further arguments in favor of its own motion. Again, this was on the eve of a hearing which had been postponed and for which the government had had ample opportunity to formulate a response. At the first hearing, as noted below, the question of judicial notice had been raised and discussed.

The matters which petitioner asks the court to judicially notice are the Report of the Commission on Wartime Relocation and Internment of Civilians, entitled "*Personal Justice Denied*" (Washington, D.C., 1982) ("Report") and certain government documents, the authenticity of which is not in dispute.

[12] When the parties are in agreement that the court may take judicial notice of certain matters, or that records may be admitted as public records, the court need not make as searching an inquiry as when notice or admissibility is disputed. Similar considerations apply here, as the government, rather than actually opposing the request and supplying reasons for such opposition, has merely suggested it may oppose the request. In fact, at the hearing on March 14, 1983, in answer to the court's question whether it "would agree that it is appropriate for the court to take judicial notice of the Report," the attorney for the government responded, "absolutely." Despite this acquiescence, care should be taken to consider only trustworthy and reliable evidence. Thus, I look first to whether the documents proffered may be judicially noticed or otherwise admitted.

[13, 14] Judicial notice may be taken of adjudicative facts in accordance with Fed. R.Evid. 201, as well as of legislative facts. The distinction between the two is not always readily apparent. *See* 1 Weinstein's Evidence ¶ 200[04], at 200–19. Adjudicative facts are usually those facts that are in issue in a particular case. Judicial notice of adjudicative facts dispenses with the need to present other evidence or for the factfinder to make findings as to those particular facts. Rule 201 provides that only those adjudicative facts which are not subject to reasonable dispute because they are generally known or "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned" may be judicially noticed.

[15] Legislative facts are "established truths, facts or pronouncements that do not change from case to case but [are applied] universally, while adjudicative facts are those developed in a particular case." *United States v. Gould*, 536 F.2d 216, 220 (8th Cir.1976). Legislative facts are facts of which courts take particular notice when interpreting a statute or considering whether Congress has acted within its constitutional authority. For example, courts frequently take judicial notice of legislative history, including committee reports. *See Territory of Alaska v. American Can Co.*, 358 U.S. 224, 227, 79 S.Ct. 274, 276, 3 L.Ed.2d 257 (1959). So, too, historical facts, commercial practices and social standards are frequently noticed in the form of legislative facts. *See Leo Sheep Co. v. United States*, 440 U.S. 668, 99 S.Ct. 1403, 59 L.Ed.2d 677 (1979); *Jay Burns Baking Co. v. Bryan*, 264 U.S. 504, 517–33, 44 S.Ct. 412, 415–420, 68 L.Ed. 813 (1923) (Justice Brandeis' dissent takes an expansive view of when scientific and commercial practices may be judicially noticed);

and *United States v. Various Articles of Obscene Merchandise, Schedule No. 1303*, 562 F.2d 185, 187 n. 4 (2d Cir.1977).

However, petitioner seeks to have this court take judicial notice of the actual findings of the Commission and matters stated in documents contained in government files. To the extent these matters are offered on the issue of governmental misconduct they are offered on the ultimate issue. Taking judicial notice of them would be inappropriate, as it would render them conclusive according to Rule 201(g).

Care must be taken that Rule 201 not be used as a substitute for more rigorous evidentiary requirements and careful factfinding. For example, if the Commission's findings were proffered as public records under Rule 803(8), Fed.R.Evid., the foundational requirements of subparagraph (8) would need to be met and the findings, if admitted, would be weighed along with other evidence. Judicial notice cannot be used to shortcut the evidentiary hearing process. Nevertheless, courts have found it appropriate to take judicial notice of current economic conditions, *Mainline Investment Corp. v. Gaines*, 407 F.Supp. 423, 427 (N.D.Tex.1976) and historical evidence, *Oneida Indian Nation of New York v. New York*, 691 F.2d 1070, 1086 (2d Cir. 1982), as adjudicative facts under Rule 201. In these instances the facts judicially noticed went to the matter in issue, such as the defense of extraordinary economic cause asserted in a breach of contract claim in *Mainline Investment*. In *Oneida Indian Nation* the Second Circuit generally approved taking judicial notice of individual records, notes, correspondence, histories and other articles of the late eighteenth century as "historical evidence," but concluded that it was error for the lower court to do so where the data was in dispute. Indeed, this Circuit has urged a cautious approach, observing that "the taking of evidence, subject to established safeguards, is the best way to resolve controversies involving disputes of adjudicative facts." *Banks v. Schweiker*, 654 F.2d 637, 640 (9th Cir.1981).

[16] Two factors make the particular stance of this case unusual. The government has neither interposed any specific objection nor put any facts in controversy.[4] Furthermore, this is not a matter which will ultimately be decided by a jury. Where the function of the court is to act as a factfinder or exercise its discretion, more leeway to take judicial notice is justified. *See* C. McCormick, Evidence § 332 (2d ed. 1972). Still, the court should be careful in deciding whether to take judicial notice of the records proffered.

[17] In light of these concerns, the court finds it proper to take judicial notice of the purpose of the Commission, the manner in which it was established and, subject to a finding of trustworthiness, the general nature and substance of its conclusions. Judicial notice of these facts may be used to inform the court's determination of whether denial of the motion would result in manifest injustice, of the public interest to be served by the granting of the motion, and of whether there is support for the government's acquiescence. *See Southern Louisiana Area Rate Cases v. Federal Power Commission*, 428 F.2d 407, 438 n. 98 (5th Cir.1970) (court may take judicial notice of concerns of the Federal Power Commission as expressed in speeches given by Commissioners even though specific facts stated may not be judicially noticed); *Overfield v. Pennroad Corp.*, 146 F.2d 889, 898 (3d Cir.1944) (court may take judicial notice of "Congressional proceedings and the *existence* of facts disclosed by them") (emphasis supplied).

The court concludes it is not proper or necessary to take judicial notice of the specific Commission findings and conclusions as adjudicative facts under § 201, despite

4. *Cf. United States v. Wilson*, 690 F.2d 1267, 1273–74 (9th Cir.1982) (explaining the need to state with specificity the grounds for objections

the government's failure to adequately object.[5]

THE COMMISSION REPORT

The Commission on Wartime Relocation and Internment of Civilians was established in 1980 by an act of Congress. It was directed to review the facts and circumstances surrounding Executive Order 9066 and its impact on American citizens and permanent resident aliens; to review directives of the United States military forces requiring the relocation and, in some cases, detention in internment camps of American citizens, including those of Japanese ancestry; and to recommend appropriate remedies. Commission on Wartime Relocation and Internment of Civilians Act, Pub.L. No. 96–317, § 2, 94 Stat. 964 (1980).

The Commission was mandated to submit a written report of its findings and recommendations to Congress. It was given authority to conduct hearings, and to compel attendance of witnesses and production of documents, including documents in the possession of governmental agencies and departments.

The Commission was composed of former members of Congress, the Supreme Court and the Cabinet as well as distinguished private citizens. It held approximately twenty days of hearings in cities across the United States, taking the testimony of over 720 witnesses, including key government personnel responsible for decisions involved in the issuance of Executive Order 9066 and the military orders implementing it. The Commission reviewed substantial numbers of government documents, including documents not previously available to the public.

In light of all these factors, the Report carries substantial indicia of trustworthiness.[6] Indeed, as noted above, the government conceded at the March 1983 status conference that the Report was an appropriate subject of judicial notice. It acknowledged it was awaiting the final Report before formulating any policy with respect to this petition and related Japanese internment matters. After issuance of the Report, the government announced its decision to move to dismiss the charges. It appears it is relying on the Report in substantial measure for its own recommendations.[7]

The findings and conclusions of the Commission were unanimous. In general, the Commission concluded that at the time of the issuance of Executive Order 9066 and implementing military orders, there was substantial credible evidence from a number of federal civilian and military agencies contradicting the report of General DeWitt that military necessity justified exclusion and internment of all persons of Japanese ancestry without regard to individual identification of those who may have been potentially disloyal.

The Commission found that military necessity did not warrant the exclusion and detention of ethnic Japanese. It concluded that "broad historical causes which shaped these decisions [exclusion and detention]

and the consequences on appeal of the failure to do so).

5. It should be noted that the report appears to meet the requirements of Rule 803(8) of the Federal Rules of Evidence as findings resulting from an investigation made pursuant to authority granted by law. Under the Rule, it would be deemed admissible absent a showing of lack of trustworthiness. Advisory Committee Notes to Exceptions 803(8). *See also Letelier v. Republic of Chile*, 567 F.Supp. 1490, 13 Fed.R.Evid.Serv. 1731 (S.D.N.Y.1983). There is nothing to suggest the report lacks trustworthiness. Admission of the report under 803(8) would allow it to be weighed along with other evidence, if any, and permit the court to make its own findings. Were the court to take judicial notice of the findings under Rule 201, by contrast, the findings would become conclusive.

6. *See Nebbia v. New York*, 291 U.S. 502, 516–18, 54 S.Ct. 505, 507–508, 78 L.Ed. 940 (1934) (joint legislative committee's report on the milk industry given substantial weight where over one year period the committee conducted thirteen public hearings, heard testimony of 254 witnesses, conducted extensive research and collected numerous exhibits).

7. *Personal Justice Denied* (Washington, D.C., 1982) presents the findings of the Commission on Wartime Relocation and Internment of Civilians. The final report, which is not before the court, apparently contains the Commission's recommendations.

were race prejudice, war hysteria and a failure of political leadership." As a result, "a grave injustice was done to American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed and detained by the United States during World War II." *Personal Justice Denied* at 18.

The Commission's Report provides ample support for the conclusion that denial of the motion would result in manifest injustice and that the public interest is served by granting the relief sought.

GOVERNMENT MEMORANDA

[18] Petitioner offers another set of documents showing that there was critical contradictory evidence known to the government and knowingly concealed from the courts. These records present another question regarding the propriety of judicial notice. They consist of internal government memoranda and letters. Their authenticity is not disputed. Yet they are not the kind of documents that are the proper subject of judicial notice, and they are offered on the ultimate issue of governmental misconduct.

The internal memoranda and letters may, however, be considered by the court as evidence under Rule 803(1) or 803(16). Alternatively, because they are not actually offered for the truth of the statements contained in them, but rather as evidence that the statements were made (*i.e.*, verbal conduct), they may be admitted as non-hearsay within the purview of 801(c).[8]

[19] The substance of the statements contained in the documents and the fact the statements were made demonstrate that the government knowingly withheld information from the courts when they were considering the critical question of military necessity in this case. A series of correspondence regarding what information should be included in the government's brief before the Supreme Court culminated in two different versions of a footnote that was to be used to specify the factual data upon which the government relied for its military necessity justification. The first version read as follows:

> The Final Report of General DeWitt (which is dated June 5, 1943, but which was not made public until January 1944) is relied on in this brief for statistics and other details concerning the actual evacuation and the events that took place subsequent thereto. *The recital of the circumstances justifying the evacuation as a matter of military necessity, however, is in several respects,* particularly with reference to the use of illegal radio transmitters and to shore-to-ship signalling by persons of Japanese ancestsry, *in conflict with information in the possession of the Department of Justice. In view of the contrariety of the reports on this matter we do not asks the Court to take judicial notice of the recital of those facts contained in the Report.*

Petitioner's Exhibit AA, Memorandum of John L. Burling to Assistant Attorney General Herbert Wechsler, September 11, 1944 (emphasis added).

After revision, it read:

The Final Report of General DeWitt (which is dated June 5, 1943, but which was not made public until January 1944) hereinafter cited as Final Report, is relied on in this brief for statistics and other details concerning the actual evacuation and the events that took place subsequent thereto. *The recital in the Final Report of circumstances justifying the evacuation as a matter of military necessity, however, is in several respects,* particularly with reference to the use of illegal radio transmitters and shore-to-ship signalling by persons of Japanese ancestry, *in conflict with the views of this Department. We, therefore, do not ask the Court to take judi-*

8. For all intents and purposes, there may be little difference between admitting them on a non-hearsay basis and taking judicial notice of their existence, as opposed to taking notice of the facts contained in them.

cial notice of the recital of those facts contained in the Report.

Id. (emphasis added).

The footnote that appeared in the final version of the brief merely read as follows:

> The Final Report of General DeWitt (which is dated June 5, 1943, but which was not made public until January 1944), hereinafter cited as Final Report, is relied on in this brief 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 to such facts.*

Brief for the United States, *Korematsu v. United States*, October Term, 1944, No. 22, at 11. The final version made no mention of the contradictory reports. The record is replete with protestations of various Justice Department officials that the government had the obligation to advise the courts of the contrary facts and opinions. Petitioner's Exhibits A–FF. In fact, several Department of Justice officials pointed out to their superiors and others the "wilful historical inaccuracies and intentional falsehoods" contained in the DeWitt Report. *E.g.*, Exhibit B and Exhibit AA, Appendices A and B hereto.

These omissions are critical. In the original proceedings, before the district court and on appeal, the government argued that the actions taken were within the war-making powers of the Executive and Legislative branches and, even where the actions were directed at a particular class of persons, they were beyond judicial scrutiny so long as they were reasonably related to the security and defense of the nation and the prosecution of the war. Plaintiff's Brief in Opposition to Demurrer before the District Court, at 11–13; Brief for the United States in *Korematsu v. United States*, in the Supreme Court of the United States, at 11–18.

Indeed, this emphasis on national security was reflected in the standard of review laid down in *Hirabayashi v. United States*, 320 U.S. 81, 95, 63 S.Ct. 1375, 1383, 87 L.Ed. 1774 (1943): "We think that constitutional government in time of war, is not so powerless and does not compel so hard a choice if those charged with the responsibility of our national defense have reasonable ground for believing that the threat is real." The Court acknowledged that it could not second guess the decisions of the Executive and Congress but was limited to determining whether all of the relevant circumstances "within the knowledge of those charged with the responsibility for maintaining the national defense afforded a rational basis for the decisions which they made." *Id.* at 102, 63 S.Ct. at 1386.

The government relied on the rationale of *Hirabayashi* in its memoranda in *Korematsu*. That rationale was adopted in *Korematsu*. 323 U.S. at 218–24, 65 S.Ct. at 195–197.

In *Hirabayashi* and *Korematsu*, the courts at each level engaged in an extensive examination of the facts known to the Executive and Legislative Branches. The facts which the government represented it relied upon and provided to the courts were those contained in a report entitled "Final Report, Japanese Evacuation from the West Coast" (1942), prepared by General DeWitt. His evaluation and version of the facts informed the courts' opinions. Yet, omitted from the government's representations was any reference to contrary reports which were considered reliable by the Justice Department and military officials other than General DeWitt.

A close reading of the briefs filed in the District Court by the government and amicus curiae State of California shows they relied heavily on the DeWitt Report for the facts justifying their military necessity arguments.[9]

9. The upper echelons of the Justice Department were well aware of the unjustified reliance being placed on the DeWitt Report by the amici curiae. "It is also to be noted that parts of the

There is no question that the Executive and Congress were entitled to reasonably rely upon certain facts and to discount others. The question is not whether they were justified in relying upon some reports and not others, but whether the court had before it all the facts known by the government. Was the court misled by any omissions or distortions in concluding that the other branches' decisions had a reasonable basis in fact? Omitted from the reports presented to the courts was information possessed by the Federal Communications Commission, the Department of the Navy, and the Justice Department which directly contradicted General DeWitt's statements. Thus, the court had before it a selective record.

Whether a fuller, more accurate record would have prompted a different decision cannot be determined. Nor need it be determined. Where relevant evidence has been withheld, it is ample justification for the government's concurrence that the conviction should be set aside. It is sufficient to satisfy the court's independent inquiry and justify the relief sought by petitioner.

OTHER REQUIREMENTS FOR CORAM NOBIS RELIEF

Petitioner has met the other requirements necessary to have his petition for a writ of *coram nobis* granted. One of the factors traditionally considered relevant is generally described as "mootness", but is more specifically stated in terms of whether a petitioner who has already fully served his sentence suffers any collateral consequences such that he should be permitted to apply for a writ of *coram nobis*. At one time it was presumed that the burden was upon the petitioner to show the existence of collateral consequences. More recent cases have moved toward the view that collateral consequences are to be presumed from the fact of a criminal conviction. The Supreme Court has, in fact, stated that a "criminal case is moot only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction." *Lane v. Williams*, 455 U.S. 624, 632, 102 S.Ct. 1322, 1327, 71 L.Ed.2d 508 (1982) (quoting approvingly *Sibron v. New York*, 392 U.S. at 57, 88 S.Ct. at 1899). This articulation places the burden on the government to show that petitioner suffers no collateral consequences. Petitioner has filed a certificate setting forth the collateral consequences he believes he suffers and will continue to suffer as a result of the conviction. The government, by its "Response" has failed to come forward with evidence to overcome the presumption.

The government has also failed to rebut petitioner's showing of timeliness. It appears from the record that much of the evidence upon which petitioner bases his motion was not discovered until recently. In fact, until the discovery of the documents relating to the government's brief before the Supreme Court, there was no specific evidence of governmental misconduct available.

There is thus no barrier to granting petitioner's motion for *coram nobis* relief.

CONCLUSION

[20] The Supreme Court has cautioned that *coram nobis* should be used "only under certain circumstances compelling such action to achieve justice" and to correct "errors of the most fundamental character." *United States v. Morgan*, 346 U.S. 502, 511–12, 74 S.Ct. 247, 252–253, 90 L.Ed. 248 (1954). It is available to correct errors that result in a complete miscarriage of justice and where there are exceptional circumstances. *See United States v. Hedman*, 655 F.2d 813, 815 (7th Cir.1981).

[DeWitt] report which, in April 1942 could not be shown to the Department of Justice in connection with the Hirabayashi case in the Supreme Court, were printed in the brief amici curiae of the States of California, Oregon and Washington. In fact the Western Defense Command evaded the statutory requirement that this Department represent the Government in this litigation by preparing the erroneous and intemperate brief which the States filed." Exhibit B, p. 3, Memorandum from Edward J. Ennis, Director of the Alien Enemy Control Unit, Department of Justice to Assistant Attorney General Herbert Wechsler, September 30, 1944.

[21] *Coram nobis* also lies for a claim of prosecutorial impropriety. This Circuit noted in *United States v. Taylor*, 648 F.2d at 573, that the writ "strikes at the veracity *vel non* of the government's representations to the court" and is appropriate where the procedure by which guilt is ascertained is under attack. The *Taylor* court observed that due process principles, raised by *coram nobis* charging prosecutorial misconduct, are not "strictly limited to those situations in which the defendant has suffered arguable prejudice; ... [but also designed] to maintain public confidence in the administration of justice." *Id.* at 571.

At oral argument the government acknowledged the exceptional circumstances involved and the injustice suffered by petitioner and other Japanese-Americans. See also Response at 2–3. Moreover, there is substantial support in the record that the government deliberately omitted relevant information and provided misleading information in papers before the court. The information was critical to the court's determination, although it cannot now be said what result would have obtained had the information been disclosed. Because the information was of the kind peculiarly within the government's knowledge, the court was dependent upon the government to provide a full and accurate account. Failure to do so presents the "compelling circumstance" contemplated by *Morgan*. The judicial process is seriously impaired when the government's law enforcement officers violate their ethical obligations to the court.[10]

This court's decision today does not reach any errors of law suggested by petitioner. At common law, the writ of *coram nobis* was used to correct errors of fact. *United States v. Morgan*, 346 U.S. 502, 507–13, 74 S.Ct. 247, 250–253, 90 L.Ed. 248 (1954). It was not used to correct legal errors and this court has no power, nor does it attempt, to correct any such errors.

Thus, the Supreme Court's decision stands as the law of this case and for whatever precedential value it may still have. Justices of that Court and legal scholars have commented that the decision is an anachronism in upholding overt racial discrimination as "compellingly justified." "Only two of this Court's modern cases have held the use of racial classifications to be constitutional." *Fullilove v. Klutznick*, 448 U.S. 448, 507, 100 S.Ct. 2758, 2789, 65 L.Ed.2d 902 (1980) (Powell, J., concurring and referring to *Korematsu* and *Hirabayashi v. United States*, 320 U.S. 81, 63 S.Ct. 1375, 87 L.Ed. 1774 (1943)). *See also* L.H. Tribe, *American Constitutional Law* §§ 16–6, 16–14 (1978). The government acknowledged its concurrence with the Commission's observation that "today the decision in *Korematsu* lies overruled in the court of history."

Korematsu remains on the pages of our legal and political history. As a legal precedent it is now recognized as having very limited application. As historical precedent it stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees. It stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability. It stands as a caution that in times of international hostility and antagonisms our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused.

ORDER

In accordance with the foregoing, the petition for a writ of *coram nobis* is granted and the counter-motion of the respondent is denied.

IT IS SO ORDERED.

10. Recognizing the ethical responsibility to make full disclosure to the courts, Director Ennis pointed out to the Assistant Attorney General that "[t]he Attorney General should not be deprived of the present, and perhaps only, chance to set the record straight." Exhibit B, p. 4, Appendix A hereto.

APPENDIX A

EXHIBIT B

1958

EDWARD J. ENNIS
DIRECTOR

REPLY TO:

Department of Justice
Alien Enemy Control Unit
Washington

Ruled C.7-

September 30, 1944

MEMORANDUM FOR MR. HERBERT WECHSLER

Re: Korematsu v. United States

I understand that the War Department is currently discussing with the Solicitor General the possibility of changing the footnote in the Korematsu brief in which it is stated that this Department is in possession of information in conflict with the statements made by General DeWitt relating to the causes of the evacuation. Mr. Burling and I feel most strongly that three purposes are to be served by keeping the footnote in its present form. (1) This Department has an ethical obligation to the Court to refrain from citing it as a source of which the Court may properly take judicial notice if the Department knows that important statements in the source are untrue and if it knows as to other statements that there is such contrariety of information that judicial notice is improper. (2) Since the War Department has published a history of the evacuation containing important misstatements of fact, including imputations and inferences that the inaction and timidity of this Department made the drastic action of evacuation necessary, this Department has an obligation, within its own competence, to set the record straight so that the true history may ultimately become known. (3) Although the report deals extensively with the activities of this Department and with the relationship of the War Department to this Department, the report was published without its being shown to us. In addition, when we learned of its existence, we were on one occasion advised that the report would never be published and, on another occasion when we asked that release be held up so that we could consider it, we were told that the report had already been released although in fact the report was not released until two weeks thereafter. In view of the War Department's course of conduct with respect to the report, we are not required to deal with the report very respectfully.

I

As to the propriety of taking judicial notice of the contents of the report, it will be sufficient to point out that (1) the report makes an important misstatement concerning our published alien enemy procedures; (2) the report makes statements concerning radio transmissions directly contradicted by a letter from the Federal Communications Commission, and (3) the report makes assertions concerning radio transmissions and ship-to-shore signaling directly contradicted by a memorandum from the Federal Bureau of Investigation.

II

The wilful historical inaccuracies of the report are objectionable for two different reasons. (1) The chief argument in the report as to the necessity for the evacuation is that the Department of Justice was slow in enforcing alien enemy control measures and that it would not take the necessary steps to prevent signaling whether by radio or by lights. It asserts that radio transmitters were located within

APPENDIX A—Continued

general areas but this Department would not permit mass searches to find them. It asserts that signaling was observed in mixed occupancy dwellings which this Department would not permit to be entered. Thus, because this Department would not allow the reasonable and less drastic measures which General DeWitt wished, he was forced to evacuate the entire population. The argument is untrue both with respect to what this Department did and with respect to the radio transmissions and signaling, none of which existed, as General DeWitt at the time well knew. (2) The report asserts that the Japanese-Americans were engaged in extensive radio signaling and in shore-to-ship signaling. The general tenor of the report is not only to the effect that there was a reason to be apprehensive, but also to the effect that overt acts of treason were being committed. Since this is not so it is highly unfair to this racial minority that these lies, put out in an official publication, go uncorrected. This is the only opportunity which this Department has to correct them.

III.

As to the relations of this Department to the report, the first that we knew of its existence was in April, 1942, when we requested Judge Advocate General Cramer to supply any published material in the War Department's possession on the military situation on the West Coast at the time of the evacuation to be used in the Hirabayashi brief in the Supreme Court. Colonel Watson, General DeWitt's Judge Advocate, stated, that General DeWitt's report was being rushed off the press and would be available for consideration. I was then advised, however, that the printed report was confidential and I could not see it but I was given 40 pages torn out of the report on the understanding that I return them which, unfortunately, I have done. Because these excerpts misstated the facts as I knew them and misstated the relations between the Department of Justice and the War Department, I suggested to the Solicitor General that he might wish to discuss with the Attorney General the matter of the Attorney General taking up with the Secretary of War the question of showing us this report before it was released. Colonel Watson then advised me that Mr. McCloy was treating the report as a draft and my personal recollection is that Mr. McCloy stated in Mr. Biddle's presence that it was not intended to print this report. We did not hear about this report again until over six months later when I learned accidentally from Mr. Myer of WRA that he had a copy of the report which the War Department was going to publish. I borrowed his copy and then Mr. Burling called Captain Hall, Mr. McCloy's Assistant Executive Officer, and pointed out to him that the report undertook to discuss relations between the War and Justice Departments without giving us a chance to examine it and it was my understanding that Mr. McCloy did not intend to have the report released. Captain Hall admitted that Mr. McCloy had stated that the report was not to be issued but stated that he was sorry but the report had already been released and there was nothing that could be done. We accepted his statement as true and did not check on it until two weeks had passed without any publicity and then when the report was discussed in the newspapers we checked with the public relations office of the War Department and they advised that the report had just been released and had not been released at the time Captain Hall said it had.

It is also to be noted that parts of the report which, in April 1942 could not be shown to the Department of Justice in connection with the Hirabayashi case in the Supreme Court, were printed in the brief amici curiae of the States of California, Oregon and Washington. In fact the Western Defense Command evaded the statutory requirement that this Department represent the Government in this litigation by preparing the erroneous and intemperate brief which the States filed.

It is entirely clear that the War Department entered into an arrangement with the Western Defense Command to rewrite demonstrably erroneous items in the report

APPENDIX A—Continued

by reducing to implication and inference what had been expressed less expertly by the Western Defense Command and then contrived to publish this report without the knowledge of this Department by the use of falsehood and evasion.

For your information I annex copies of (a) my memorandum of April 20, 1943 to the Solicitor General, (b) my memorandum of January 21, 1944 to the Solicitor General, (c) my memorandum of February 26, 1944 to the Attorney General, and (d) a transcript of Mr. Burling's conversation of January 7, 1944 with Captain Hall which clearly brings out the evasion and falsehood used in connection with the publication of the report.

I also annex copies of memoranda from the FBI and of an exchange of correspondence between the Attorney General and the Chairman of the Federal Communications Commission which establish clearly that the facts are not as General DeWitt states them in his report and also that General DeWitt knew them to be contrary to his report.

RECOMMENDATION: In view of the Attorney General's personal participation in, and final responsibility for, this Department's part in the broad administrative problem of treatment of the Japanese minority, I urge that he be consulted personally on this problem. Much more is involved than the wording of the footnote. The failure to deal adequately now with this Report cited to the Supreme Court either by the Government or other parties, will hopelessly undermine our administrative position in relation to this Japanese problem. We have proved unable to cope with the military authorities on their own ground in these matters. If we fail to act forthrightly on our own ground in the courts, the whole historical record of this matter will be as the military choose to state it. The Attorney General should not be deprived of the present, and perhaps only, chance to set the record straight.

/s/ Edward J. Ennis
Edward J. Ennis

APPENDIX B

EXHIBIT A

MR. HERBERT WECHSLER SEP 11 1944

J. L. BURLING

SUBJECT: *Korematsu* v. *U.S.*

Assistant Attorney General
War Division

The Solicitor General has gone over the revised page proof of the brief and has made certain additional changes. I desire to invite your attention particularly to the footnote which appears on page 11 of the revised page proof. As set out in the first page proof at page 26, the footnote read:

"The Final Report of General DeWitt (which is dated June 5, 1943, but which was not made public until January 1944) is relied on in this brief for statistics and other details concerning the actual evacuation and the events that took place subsequent thereto. The recital of the circumstances justifying the evacuation as a matter of military necessity, however, is in several respects, particularly with reference to the use of illegal radio transmitters and to shore-to-ship signalling by persons of Japanese ancestry, in conflict with information in the possession of the Department of Justice. In view of the contrariety of the reports on this matter we do not ask the Court to take judicial notice of the recital of those facts contained in the Report."

As Mr. Fahy has revised it, it reads: "The Final Report of General DeWitt (which is dated June 5, 1943, but which was not made public until January 1944) hereinafter cited as Final Report, is relied on in this brief for statistics and

APPENDIX B—Continued

other details concerning the actual evacuation and the events that took place subsequent thereto. The recital in the Final Report of circumstances justifying the evacuation as a matter of military necessity, however, is in several respects, particularly with reference to the use of illegal radio transmitters and shore-to-ship signalling by persons of Japanese ancestry, in conflict with the views of this Department. We, therefore, do not ask the Court to take judicial notice of the recital of those facts contained in the Report."

You will recall that General DeWitt's report makes flat statements concerning radio transmitters and ship-to-shore signalling which are categorically denied by the FBI and by the Federal Communications Commission. There is no doubt that these statements were intentional falsehoods, inasmuch as the Federal Communications Commission reported in detail to General DeWitt on the absence of any illegal radio transmission.

In addition, there are other misstatements of fact which seek to blame this Department with the evacuation by suggesting that we were derelict in our duties. These are somewhat more complicated but they are nevertheless demonstrably false.

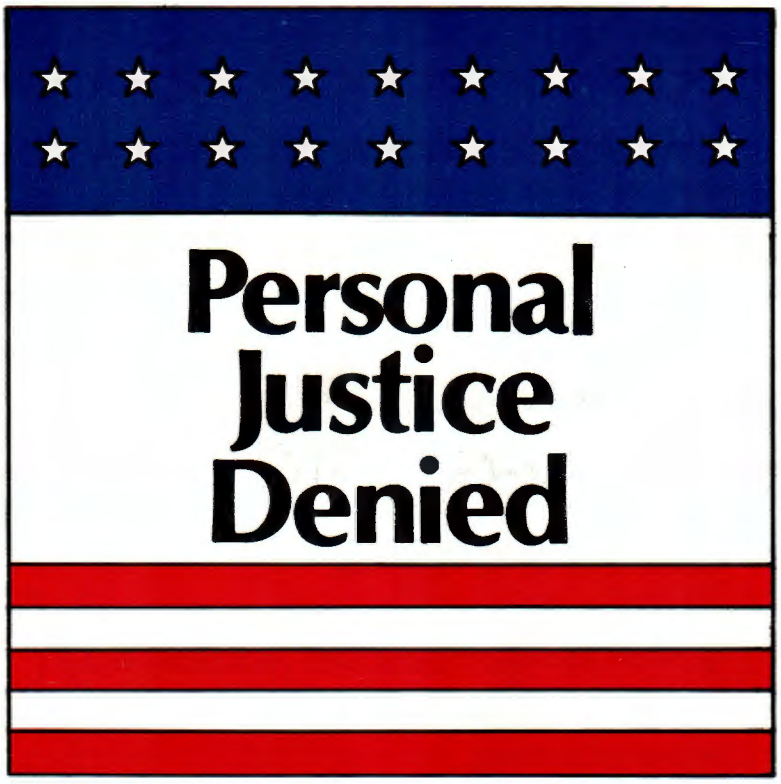
In view of the fact that General DeWitt in his official report on the evacuation has sought to justify it by making important misstatements of fact, I think it important that this Department correct the record insofar as possible and certainly we should not ask the Court to take judicial notice of those facts.

The War Department has no proper complaint as to our disavowal of the recital of the facts. When we were preparing the Hirabayashi brief we heard that the report had been made and asked for a copy of it for our use. We were told that it was secret but that the Army would temporarily lend us certain pages torn out of the report. We did examine these pages in May 1943 and then returned them to the War Department. (Some of these pages then turned up in a brief filed in the *Hirabayashi* case, without our knowledge, by the States of California, Oregon and Washington as amici curiae) Mr. McCloy advised Mr. Ennis at this time that DeWitt's Final Report would not be made public.

We next heard of the report in January 1944. At Mr. Ennis' direction, I called Captain Hall, who was Captain Fisher's predecessor, and asked that the publication of the report be withheld until this Department might examine the full report and make comments concerning the report's discussion of the role played by this Department. Captain Hall stated that the report had already been published and it was too late to do anything about it. The report, however, was not published until two weeks later when it was released to the press. I verified this through the Army's Publications and Public Relations officers and there was no question but that Captain Hall's statement on this subject was untrue and that there would have been time to permit this Department to make representations with respect to the publication of a report placing the responsibility on it in part for the necessity of the evacuation, had the War Department seen fit to permit this Department to inspect the report prior to publication.

In view of all these circumstances, it seems to me that the present bowdlerization of the footnote is unfortunate. There is in fact a contrariety of information and we ought to say so. The statements made by General DeWitt are not only contrary to our views but they are contrary to detailed information in our possession and we ought to say so.

I press the point not only because I would like to see the footnote restored to its earlier form, if possible, but because it is now contemplated that the revised brief be submitted again to the War Department. I assume that the War Department will object to the footnote and I think we should resist any further tampering with it with all our force.



Personal Justice Denied

SUMMARY AND RECOMMENDATIONS
OF THE
COMMISSION ON WARTIME RELOCATION
AND INTERNMENT OF CIVILIANS

THE COMMISSION ON WARTIME RELOCATION
AND INTERNMENT OF CIVILIANS

Joan Z. Bernstein, *Chair*
Daniel E. Lungren, *Vice-Chair*
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Arthur S. Flemming
Arthur J. Goldberg
Ishmael V. Gromoff
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Personal Justice Denied

REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS

Edited and printed by
JAPANESE AMERICAN CITIZENS LEAGUE
San Francisco, California
1983

Summary

PART 1: NISEI AND ISSEI

On February 19, 1942, ten weeks after the Pearl Harbor attack, President Franklin D. Roosevelt signed Executive Order 9066, which gave to the Secretary of War and the military commanders the power to exclude any and all persons, citizens and aliens, from designated areas in order to provide security against sabotage, espionage and fifth column activity. Shortly thereafter, all American citizens of Japanese descent were prohibited from living, working or traveling on the West Coast of the United States. The same prohibition applied to the generation of Japanese immigrants who, pursuant to federal law and despite long residence in the United States, were not permitted to become American citizens. American citizens and their alien parents were removed by the Army, first to "assembly centers" — temporary quarters at racetracks and fairgrounds — and then to "relocation centers" — bleak barrack camps in desolate areas of the West. The camps were surrounded by barbed wire and guarded by military police. Departure was permitted only after a loyalty review in consultation with the military, by the War Relocation Authority, the civilian agency that ran the camps. Many of those removed from the West Coast were eventually allowed to leave the camps to join the Army, go to college outside the West Coast or to whatever private employment was available. For a larger number, however, the war years were spent behind barbed wire; and for those who were released, the prohibition against returning to their homes and occupations on the West Coast was not lifted until December 1944.

This policy of exclusion, removal, and detention was executed against 120,000 people without individual review, and exclusion

was continued virtually without regard for their demonstrated loyalty to the United States. Congress was fully aware of and supported the policy of removal and detention; it sanctioned the exclusion by enacting a statute which made criminal the violation of orders issued pursuant to Executive Order 9066. The United States Supreme Court held the exclusion constitutionally permissible in the context of war, but struck down the incarceration of admittedly loyal American citizens on the ground that it was not based on statutory authority.

All this was done despite the fact that not a single documented act of espionage, sabotage or fifth column activity was committed by an American citizen of Japanese ancestry or by a resident Japanese alien on the West Coast.

No mass exclusion or detention, in any part of the country, was ordered against American citizens of German or Italian descent. Official actions against enemy aliens of other nationalities were much more individualized and selective than those imposed on the ethnic Japanese.

The exclusion, removal and detention inflicted tremendous human cost. There was the obvious cost of homes and businesses sold or abandoned under circumstances of great distress, as well as injury to careers and professional advancement. But most important, there was the loss of liberty and the personal stigma of suspected disloyalty for thousands of people who knew themselves to be devoted to their country's cause and to its ideals but whose repeated protestations of loyalty were discounted — only to be demonstrated beyond any doubt by the record of Nisei soldiers, who returned from the battlefields of Europe as the most decorated and distinguished combat units of World War II and by the thousands of other Nisei who served against the enemy in the Pacific, mostly in military intelligence. The wounds of the exclusion and detention have healed in some respects, but the scars of that experience remain, painfully real in the minds of those who lived through the suffering and deprivation of the camps.

The personal injustice of excluding, removing and detaining loyal American citizens is manifest. Such events are extraordinary and unique in American history. For every citizen and for American public life, they pose haunting questions about our country and its past.

The Decision to Exclude

The Context of the Decision. First, the exclusion and removal were attacks on the ethnic Japanese which followed a long and ugly history of West Coast anti-Japanese agitation and legislation. Antipathy and hostility toward the ethnic Japanese was a major factor of the public life of the West Coast states for more than forty years before Pearl Harbor. Under pressure from California, immigration from Japan had been severely restricted in 1908 and entirely prohibited in 1924. Japanese immigrants were barred from American citizenship, although their children born here were citizens by birth. California and the other western states prohibited Japanese immigrants from owning land. In part the hostility was economic, emerging in various white American groups who began to feel competition, particularly in agriculture, the principal occupation of the immigrants. The anti-Japanese agitation also fed on racial stereotypes and fears: the "yellow peril" of an unknown Asian culture achieving substantial influence on the Pacific Coast.

The ethnic Japanese, small in number and with no political voice — the citizen generation was just reaching voting age in 1940 — had become a convenient target for political demogogues. Political bullying was supported by organized interest groups who adopted anti-Japanese agitation as a consistent part of their program: the Native Sons and Daughters of the Golden West, the Joint Immigration Committee, the American Legion,the California State Federation of Labor and the California State Grange.

Second, Japanese armies in the Pacific won a rapid, startling string of victories against the United States and its allies in the first months of World War II. In January and February 1942, the military position of the United States in the Pacific was perilous. There was fear of Japanese attacks on the West Coast.

Next, contrary to the facts, there was a widespread belief, supported by a statement by Frank Knox, Secretary of the Navy, that the Pearl Harbor attack had been aided by sabotage and fifth column activity by ethnic Japanese in Hawaii. The government knew that this was not true, but took no effective measures to disabuse public belief that disloyalty had contributed to massive American losses on December 7, 1941. **Thus the country was unfairly led to believe that both American citizens of Japanese descent and resident Japanese aliens threatened American security.**

Fourth, as anti-Japanese organizations began to speak out and rumors from Hawaii spread, West Coast politicians quickly took up the familiar anti-Japanese cry. The Congressional delegations in Washington organized themselves and pressed the War and Justice Departments and the President for stern measures to control the ethnic Japanese — moving quickly from control of aliens to evacuation and removal of citizens. In California, Governor Olson, Attorney General Warren and Mayor Bowron of Los Angeles, and many local authorities joined the clamor. These opinions were not informed by any knowledge of actual military risks, rather they were stroked by virulent agitation which encountered little opposition. Only a few churchmen and academicians were prepared to defend the Japanese. There was little or no political risk in claiming that it was "better to be safe than sorry" and, as many did, that the best way for ethnic Japanese to prove their loyalty was to volunteer to enter detention. The press amplified

the unreflective emotional excitement of the hour. Through late January and early February 1942, the rising clamor from the West Coast was heard within the federal government as its demands became more draconian.

Making and Justifying the Decision. The exclusion of the ethnic Japanese from the West Coast was recommended to the Secretary of War, Henry L. Stimson, by Lieutenant General John L. DeWitt, Commanding General of the Western Defense Command with responsibility for West Coast security. President Roosevelt relied on Secretary Stimson's recommendations in issuing Executive Order 9066.

The justification given for the measure was military necessity. The claim of military necessity is most clearly set out in three places: General DeWitt's February 14, 1942, recommendation to Secretary Stimson for exclusion; General DeWitt's *Final Report: Japanese Evacuation from the West Coast, 1942;* and the government's brief in the Supreme Court defending the Executive Order in *Hirabayashi v. United States.* General DeWitt's February 1942

recommendation presented the following rationale for the exclusion:

> 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 concede 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 were 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.

There are two unfounded justifications for exclusion expressed here: first, that ethnicity ultimately determines loyalty; second, that "indications" suggest that ethnic Japanese "are organized and ready for concerted action" — the best argument for this being the fact that it hadn't happened.

The first evaluation is not a military one but one for sociologists or historians. It runs counter to a basic premise on which the American nation of immigrants is built — that loyalty to the United States is a matter of individual choice and not determined by ties to an ancestral country. The second judgment was, by the General's own admission, unsupported by any evidence. General DeWitt's recommendation clearly does not provide a credible rationale, based on military expertise, for the necessity of exclusion.

In his 1943 *Final Report,* General DeWitt cited a number of factors in support of the exclusion decision: signaling from shore to enemy submarines; arms and contraband found by the FBI during raids on ethnic Japanese homes and businesses; dangers to the ethnic Japanese from vigilantes; concentration of ethnic Japanese around or near militarily sensitive areas; the number of Japanese ethnic organizations on the coast which might shelter

pro-Japanese attitudes or activities such as Emperor worshipping Shinto; and the presence of the Kibei, who had spent some time in Japan.

The first two items point to demonstrable military danger. But the reports of shore-to-ship signaling were investigated by the Federal Communications Commission, the agency with relevant expertise, and no identifiable cases of such signaling were substantiated. The FBi did confiscate arms and contraband from some ethnic Japanese, but most were items normally in the possession of any law-abiding civilian, and the FBI concluded that these searches had uncovered no dangerous persons that "we could not otherwise know about." Thus neither of these "facts" militarily justified exclusion.

There had been some acts of violence against ethnic Japanese on the West Coast and feeling against them ran high, but "protective custody" is not an acceptable rationale for exclusion. Protection against vigilantes is a civilian matter that would involve the military only in extreme cases. But there is no evidence that such extremity had been reached on the West Coast in early 1942. Moreover, "protective custody" could never justify exclusion and detention for months and years.

General DeWitt's remaining points are repeated in the Hirabayashi brief, which also emphasizes dual nationality, Japanese language schools and the high percentage of aliens (who, by law, had been barred from acquiring American citizenship) in the ethnic population. These facts represent broad social judgments of little or no military significance in themselves. None supports the claim of disloyalty to the United States and all were entirely legal. If the same standards were applied to other ethnic groups, as Morton Grodzins, an early analyst of the exclusion decision, applied it to ethnic Italians on the West Coast, an equally compelling and meaningless case for "disloyalty" could be made. In short, these social and cultural patterns were not evidence of any threat to West Coast military security.

In sum, the record does not permit the conclusion that military necessity warranted the exclusion of ethnic Japanese from the West Coast.

The Conditions Which Permitted the Decision. Having concluded that no military necessity supported the exclusion, the

Commission has attempted to determine how the decision came to be made.

First, General DeWitt apparently believed what he told Secretary Stimson: ethnicity determined loyalty — that it was impossible to distinguish the loyal from the disloyal. On this basis he believed them to be potential enemies among whom loyalty could not be determined.

Second, the FBI and members of Naval Intelligence who had relevant intelligence responsibility were ignored when they stated that nothing more than careful watching of suspicious individuals or individual reviews of loyalty were called for by existing circumstances.

Third, General DeWitt relied heavily on civilian politicians rather than informed military judgments in reaching his conclusions. The civilian politicians largely repeated the prejudiced, unfounded themes of anti-Japanese factions and interest groups on the West Coast.

Fourth, no effective measures were taken by President Roosevelt to calm the West Coast public and refute the rumors of sabotage and fifth column activity at Pearl Harbor.

Fifth, General DeWitt was temperamentally disposed to exaggerate the measures necessary to maintain security and placed security far ahead of any concern for the liberty of citizens.

Sixth, Secretary Stimson and John J. McCloy, Assistant Secretary of War, both of whose views on race differed from those of General DeWitt, failed to insist on a clear military justification for the measures General DeWitt wished to undertake.

Seventh, Attorney General Francis Biddle, while contending that exclusion was unnecessary, did not argue to the President that failure to make out a case of military necessity on the facts would render the exclusion constitutionally impermissible or that the Constitution prohibited exclusion on the basis of ethnicity given the facts on the West Coast.

Eighth, those representing the interests of civil rights and civil liberties in Congress, the press and other public forums were silent or indeed supported exclusion. Thus there was no effective opposition to the measures vociferously sought by numerous West Coast interest groups, politicians and journalists.

Finally, President Roosevelt, without raising the question to the level of Cabinet discussion or requiring any careful or thorough review of the situation, and despite the Attorney General's arguments and other information before him, agreed with Secretary Stimson that the exclusion should be carried out.

The Decision to Detain

With the signing of Executive Order 9066, the course of the President and War Department was set: American citizens and alien residents of Japanese ancestry would be compelled to leave the West Coast on the basis of wartime military necessity. For the War Department and the Western Defense Command, the problem became primarily one of method and operation, not basic policy. General DeWitt first tried "voluntary" resettlement: the ethnic Japanese were to move outside restricted military zones of the

West Coast but otherwise were free to go wherever they chose. From a military standpoint this policy was bizarre, and it was utterly impractical. If the ethnic Japanese had been excluded because they were potential saboteurs and spies, any such danger was not extinguished by leaving them at large in the interior where there were, of course, innumerable dams, power lines, bridges and war industries to be disrupted or spied upon. Conceivably sabotage in the interior could be synchronized with a Japanese raid or invasion for a powerful fifth column effect. This raises serious doubts as to how grave the War Department believed the supposed threat to be.

The War Relocation Authority (WRA), the civilian agency created by the President to supervise the relocation and initially directed by Milton Eisenhower, proceeded on the premise that the vast majority of evacuees were law-abiding and loyal, and that, once off the West Coast, they should be returned quickly to conditions approximating normal life. Governors and officials of the mountain states objected to California using the interior states as a "dumping ground" for a California "problem." They argued that people in their states were so bitter over the voluntary evacuation that unguarded evacuees would face physical danger. Again and again, detention camps for evacuees were urged. The consensus was that a plan for reception centers was acceptable so long as the evacuees remained under guard within the centers.

The War Relocation Authority dropped resettlement and adopted confinement. Notwithstanding WRA's belief that evacuees should be returned to normal productive life, it had, in effect, become their jailer. The politicians of the interior states had achieved the program of detention.

The evacuees were to be held in camps behind barbed wire and released only with government approval. For this course of action no military justification was proferred. The WRA contended that these steps were necessary for the benefit of evacuees and that controls on their departure were designed to assure they would not be mistreated by other Americans on leaving the camps.

It follows from the conclusion that there was no justification in military necessity for the exclusion, that there was no basis for the detention.

The Effect of the Exclusion and Detention

The history of the relocation camps and the assembly centers that preceded them is one of suffering and deprivation visited on people against whom no charges were, or could have been, brought.

Families could take to the assembly centers and the camps only what they could carry. Camp living conditions were spartan. People were housed in tar-papered barracks rooms of no more than 20 by 24 feet. Each room housed a family, regardless of family size. Construction was often shoddy. Privacy was practically impossible and furnishings were minimal. Eating and bathing were in mass facilities. Under continuing pressure from those who blindly held to the belief that evacuees harbored disloyal intentions, the wages paid for work at the camps were kept to the minimal level of $12 a month for unskilled labor, rising to $19 a month for professional employees. Mass living prevented normal family communication and activities. Heads of families, no longer providing food and shelter, found their authority to lead and to discipline diminished.

The camp experience carried a stigma that no other Americans suffered. The evacuees themselves expressed the indignity of their conditions with particular power:

> On May 16, 1942, my mother, two sisters, niece, nephew, and I left ... by train. Father joined us later. Brother left earlier by bus. We took whatever we could carry. So much we left behind, but the most valuable thing I lost was my freedom.

• • •

> Henry went to the Control Station to register the family. He came home with twenty tags, all numbered 10710, tags to be attached to each piece of baggage, and one to hang from our coat lapels. From then on, we were known as Family #10710.

The government's efforts to "Americanize" the children in the camps were bitterly ironic:

> An oft-repeated ritual in relocation camp schools... was the salute to the flag followed by the singing of "My country, 'tis of thee, sweet land of liberty" — a ceremony Caucasian teachers found embarrassingly awkward if not cruelly poignant in the austere prison setting.

• • •

In some ways, I suppose, my life was not too different from a lot of kids in America between the years 1942 and 1945. I spent a good part of my time playing with my brothers and friends, learned to shoot marbles, watched sandlot baseball and envied the older kids who wore Boy Scout uniforms. We shared with the rest of America the same movies, screen heroes and listened to the same heart-rending songs of the forties. We imported much of America into camps because, after all, we were Americans. Through imitation of my brothers, who attended grade school within the camp, I learned to salute the flag by the time I was five years old. I was learning as best one could learn in Manzanar, what it meant to live in America. But, I was also learning the sometimes bitter price one has to pay for it.

After the war, through the Japanese American Evacuation Claims Act, the government attempted to compensate for the losses of real and personal property; inevitably that effort did not secure full or fair compensation. There were many kinds of injury the Evacuation Claims Act made no attempt to compensate: the stigma placed on people who fell under the exclusion and relocation orders; the deprivation of liberty suffered during detention; the psychological impact of exclusion and relocation; the breakdown of family structure; the loss of earnings or profits; physical injury or illness during detention.

The Decision to End Detention

By October 1942, the government held over 100,000 evacuees in relocation camps. **After the tide of war turned with the American victory at Midway in June, 1942, the possibility of serious Japanese attack was no longer credible; detention and exclusion became increasingly difficult to defend.**

Determining the basis on which detention would be ended required the government to focus on the justification for controlling the ethnic Japanese. If the government maintained the position that distinguishing the loyal from the disloyal was possible and that exclusion and detention were required only by the necessity of acting quickly under the threat of Japanese attack in early 1942, then a program to release those considered loyal

should have been instituted in the spring of 1942 when people were confined in the assembly centers.

At the end of 1942, over General DeWitt's opposition, Secretary Stimson, Assistant Secretary McCloy and General George C. Marshall, Chief of Staff, decided to establish a volunteer combat team of Nisei soldiers.[1] The volunteers were to come from those who had passed a loyalty review. To avoid the obvious unfairness of allowing only those joining the military to establish their loyalty and leave the camps, the War Department joined WRA in expanding the loyalty review program to all adult evacuees.

This program was significant, but remained a compromise. It provided an opportunity to demonstrate loyalty to the United States on the battlefields; despite the human sacrifice involved, this was of immense practical importance in obtaining postwar acceptance for the ethnic Japanese. It opened the gates of the camps for some and began some reestablishment of normal life. But with no apparent rationale or justification, it did not end exclusion of the loyal from the West Coast. The review program

442nd Citation, France Sig C 235-5

[1]For a further review of the military contributions of the 442nd Regimental Combat Team, 100th Battalion and MIS, see the CWRIC Report, Chapter 10, "Military Service," pages 253-260.

did not extend the presumption of loyalty to American citizens of Japanese descent, who were subjected to an investigation and review not applied to other ethnic groups.

Equally important, although the loyalty review program was the first major government decision in which the interests of evacuees prevailed, the program was conducted so insensitively, with such lack of understanding of the evacuees' circumstances, that it became one of the most divisive and wrenching episodes of the camp detention.

After almost a year of what the evacuees considered utterly unjust treatment at the hands of the government, the loyalty review program began with filling out a questionnaire which posed two questions requiring declarations of complete loyalty to the United States. Thus, the questionnaire demanded a personal expression of position from each evacuee — a choice between faith in one's future in America and an outrage at present injustice. Understandably most evacuees probably had deeply ambiguous

feelings about a government whose rhetorical values of liberty and equality they wished to believe, but who found their present treatment in painful contradiction to those values. The loyalty questionnaire left little room to express that ambiguity. Indeed, it provided an effective point of protest and organization against the government, from which more and more evacuees felt alienated. The questionnaire finally addressed the central question of loyalty that underlay the exclusion policy, a question which had been the predominant political and personal issue for the ethnic Japanese over the past year; answering it required confronting the conflicting emotions aroused by the relation to the government.

> Well, I am one of those that said "no, no" on it, one of the "no, no" boys, and it is not that I was proud about it, it was just that our legal rights were violated and I wanted to fight back. However, I didn't want to take this sitting down. I was really angry. It just got me so damn mad. Whatever I do, there was no help from outside, and it seems to me that we are a race that doesn't count. So therefore, this was one of the reasons for the "no, no" answer.

The loyalty review program was a point of decision and division for those in the camps. The avowedly loyal were eligible for release; those who were unwilling to profess loyalty or whom the government distrusted were segregated from the main body of evacuees into the Tule Lake camp, which rapidly became a center of disaffection and protest against the government and its policies — the unhappy refuge of evacuees consumed by anger and despair.

The Decision to End Exclusion

The loyalty review should logically have led to the conclusion that no justification existed for excluding loyal American citizens from the West Coast. Secretary Stimson, Assistant Secretary McCloy and General Marshall reached this position in the spring of 1943. Nevertheless, the exclusion was not ended until December 1944. No plausible reason connected to any wartime security has been offered for this eighteen to twenty month delay in allowing the ethnic Japanese to return to their homes, jobs and businesses on the West Coast.

Between May 1943 and May 1944, War Department officials did not make public their opinion that exclusion of loyal ethnic Japanese from the West Coast no longer had any military justification. If the President was unaware of this view, the plausible explanation is that Secretary Stimson and Assistant Secretary McCloy were unwilling, or believed themselves unable, to face down political opposition on the West Coast. General DeWitt repeatedly expressed his opposition until he left the Western Defense Command in the fall of 1943, as did West Coast anti-Japanese factions and politicians.

In May 1944 Secretary Stimson put before President Roosevelt and the Cabinet his position that the exclusion no longer had a military justification. But the President was unwilling to act to end the exclusion until the first Cabinet meeting following the Presidential election of November 1944. The inescapable conclusion from this factual pattern is that the delay was motivated by political considerations.

By the participants own accounts, there is no rational explanation for maintaining the exclusion of loyal ethnic Japanese from the West Coast for eighteen months after May 1943 — except political pressure and fear. Certainly there was no justification arising out of military necessity.

The Comparisons

HAWAII: When Japan attacked Pearl Harbor, nearly 158,000 persons of Japanese ancestry lived in Hawaii — more than 35 percent of the population. **Surely, if there were dangers of espionage, sabotage and fifth column activity by American citizens and resident aliens of Japanese ancestry, danger would be greatest in Hawaii, and one would anticipate that the most swift and severe measures would be taken there. But nothing of the sort happened.** Less than 2,000 ethnic Japanese in Hawaii were taken into custody during the war — barely one percent of the population of Japanese descent. Many factors contributed to this reaction.

Hawaii was more ethnically mixed and racially tolerant than the West Coast. Race relations in Hawaii before the war were not infected with the same virulent antagonism of 75 years agitation. While anti-Asian feeling existed in the territory, it did not represent the longtime views of well-organized groups as it did on the West Coast and, without statehood, xenophobia had no effective voice in the Congress.

The larger population of ethnic Japanese in Hawaii was also a factor. It is one thing to vent frustration and historical prejudice on a scant two percent of the population; it is very different to disrupt a local economy and tear a social fabric by locking up more than one-third of a territory's people. And in Hawaii the half-measure of exclusion from military areas would have been meaningless.

In large social terms, the Army had much greater control of day-to-day events in Hawaii. Martial law was declared in December 1941, suspending the writ of habeas corpus, so that through the critical first months of the war, the military's recognized power to deal with any emergency was far greater than on the West Coast.

This policy was clearly much more congruent with basic American laws and values. It was also a much sounder policy in practice. The remarkably high rate of enlistment in the Army in Hawaii is in sharp contrast to the doubt and alienation that marred the recruitment of Army volunteers in the relocation camps. The wartime experience in Hawaii left behind neither the extensive economic losses and injury suffered on the mainland

nor the psychological burden of the direct experience of unjust exclusion and detention.

The promulgation of Executive Order 9066 was not justified by military necessity, and the decisions which followed from it — detention, ending detention and ending exclusion — were not driven by analysis of military conditions. The broad historical causes which shaped these decisions were race prejudice, war hysteria and a failure of political leadership. Widespread ignorance of Japanese Americans contributed to a policy conceived in haste and executed in an atmosphere of fear and anger at Japan. A grave injustice was done to American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed and detained by the United States during World War II.

Many of those involved in the exclusion, removal and detention passed judgment on those events in memoirs and other statements after the war. **Henry Stimson** recognized that *"to loyal citizens this forced evacuation was a personal injustice."* In his autobiography, **Francis Biddle** reiterated his beliefs at the time: *"The program was ill-advised, unnecessary and unnecessarily cruel."* **Justice William O. Douglas,** who joined the majority opinion in *Korematsu* which held the evacuation constitutionally permissible, found that the evacuation case *"was ever on my conscience."* **Milton Eisenhower** described the evacuation to the relocation camps as *"an inhuman mistake."* **Chief Justice Earl Warren,** who had urged evacuation as Attorney General of California, stated, *"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."* **Justice Tom C. Clark,** who had been liaison between the Justice Department and the Western Defense Command, concluded, *"Looking back on it today [the evacuation] was, of course, a mistake."*

PART II: THE ALEUTS

During the struggle for naval supremacy in the Pacific during WW II, the Aleutian Islands were strategically valuable to both the United States and Japan. Beginning in March 1942, U.S. military intelligence repeatedly warned Alaska defense commanders that Japanese aggression into the Aleutian Islands was imminent. In June 1942, the Japanese attacked and held the two westernmost Aleutians, Kiska and Attu. American military commanders ordered the evacuation of the Aleuts from many of the islands to places of relative safety.

Eight hundred seventy-six Aleuts had been evacuated from Aleut villages west of Unimak Island, including the Pribilofs. Except in Unalaska the entire population of each village was evacuated, including at least 30 non-Aleuts. All of the Aleuts were relocated to southeastern Alaska except 50 persons who were either evacuated to the Seattle area or hospitalized in the Indian Hospital at Tacoma, Washington.

The evacuation of the Aleuts had a rational basis as a precaution to ensure their safety. The Aleuts were evacuated from an active theatre of war; 42 were taken prisoner on Attu by the Japanese. It was clearly the military's belief that evacuation of non-military personnel was advisable.

The Aleuts' Camps

Aleuts were subjected to deplorable conditions following the evacuation. Typical housing was an abandoned gold mine or fish cannery buildings which were inadequate in both accommodation and sanitation. Lack of medical care contributed to extensive disease and death.

The Funter Bay cannery in southeastern Alaska where 300 Aleuts were placed was one of the worst camps. The majority of evacuees were forced to live in two dormitory-style buildings in groups of six to thirteen people in areas of nine to ten feet square. Until fall, many Aleuts were forced to sleep in relays because of lack of space.

In the fall of 1942, the only fulltime medical care was provided by two nurses who served both the cannery camp and a camp at

a mine across Funter Bay. Doctors were only temporarily assigned to the camp. Medical supplies were scarce.

Epidemics raged throughout the Aleuts' stay in southeastern Alaska; they suffered from influenza, measles, and pneumonia along with tuberculosis. Twenty-five died at Funter Bay in 1943 alone. It is estimated that probably 10% of the evacuated Aleuts died during their two or three year stay.

The standard of care which the government owes to those within its care was clearly violated by this treatment, which brought great suffering and loss of life to the Aleuts.

Return to the Islands

The Pribilovians were able to get back to the Pribilofs by the late spring of 1944, nine months after the Japanese had been driven out of the Aleutian chain. The return to the Aleutians did not take place for another year. The delay may be attributed to transport shortage and problems of supplying the islands in order to resume a normal life. But the government's record, especially in the Aleutians, reflects an indifference and lack of urgency. Some Aleuts were not permitted to return to their homes; to this day, Attuans continue to be excluded from their ancestral lands.

When they first returned, many Aleuts were forced to camp because their former homes (those that had still stood) had not yet been repaired and were now uninhabitable. The Aleuts rebuilt their homes themselves. They were "paid" with free groceries.

The Aleuts suffered material losses from the government's occupation of the islands for which they were never fully recompensated, in cash or in kind. Devout followers of the Russian Orthodox faith, Aleuts treasured the religious icons and other family heirlooms that were their most significant spiritual as well as material losses. They cannot be replaced.

In sum, despite the fact that the Aleutians were a theatre of war from which evacuation was a sound policy, there was no justification for the manner in which the Aleuts were treated in the camps, nor for failing to compensate them fully for their material losses.

Economic Losses

The excluded people suffered enormous damages and losses, both material and intangible. To the disastrous loss of farms businesses and homes must be added the disruption for many years of careers and professional lives, as well as the long-term loss of income, earnings and opportunity. It is estimated that, as a result of the exclusion and detention, in 1945 dollars the ethnic Japanese lost between $108 and $164 million in income and between $11 and $206 million in property for which no compensation was made after the war under the terms of the Japanese American Evacuation Claims Act. Adjusting these figures to account for inflation alone, the total losses of income and property fall between $810 million and $2 billion in 1983 dollars.[1]

Recommendations

Japanese Americans

[The remedies, which the Commission on Wartime Relocation and Internment of Civilians issued on June 16, 1983, are based upon their fact-finding report and economic impact study.]

Each measure acknowledges to some degree the wrongs inflicted during the war upon the ethnic Japanese. None can fully compensate or, indeed, make the group whole again.

The Commission makes the following recommendations for remedies as an act of national apology.

1. That Congress pass a joint resolution, to be signed by the President, which recognizes that a grave injustice was done and offers the apologies of the nation for the acts of exclusion, removal and detention.

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[1] An analysis of economic losses was performed for the Commission by ICF Incorporated. According to their study titled, "Economic Losses of Ethnic Japanese as a Result of Exclusion and Detention, 1942-46, total uncompensated economic losses of the ethnic Japanese adjusted for the corporate bond rate range from $1.2 billion to $3.1 billion, and at a 3% interest rate and inflation, from $2.5 billion to $6.2 billion.

2. That the President pardon those who were convicted of violating the statutes imposing a curfew on American citizens. The Commission further recommends that the Department of Justice review other wartime convictions of the ethnic Japanese and recommend to the President that he pardon those whose offenses were grounded in a refusal to accept treatment that discriminated among citizens on the basis of race or ethnicity.

3. That the Congress direct the Executive agencies to which Japanese Americans may apply for the restitution of positions, status or entitlements lost in whole or in part because of acts or events between December 1941 and 1945.

4. That the Congress demonstrate official recognition of the injustice done to American citizens of Japanese ancestry and Japanese resident aliens during the Second World War, and that it recognize the nation's need to make redress for these events, by appropriating monies to establish a special foundation.

The Commission believes a fund for educational and humanitarian purposes related to the wartime events is appropriate and addresses an injustice suffered by an entire ethnic group.

5. The Commissioners, with the exception of Congressman Lungren, recommended that Congress establish a fund which will provide personal redress to those who were excluded, as well as serve the purposes set out in Recommendation #4.

Appropriations of $1.5 billion should be made to the fund over a reasonable period to be determined by Congress. This fund should be used, first, to provide a one-time per capita compesatory payment of $20,000 to each of the approximately 60,000 surviving persons excluded from their places of residence pursuant to Executive Order 9066.[1] The burden should be on the government to locate survivors, without requiring any application for payment, and payments should be made to the oldest survivors first. After per

[1] Commissioner William M. Marutani formally renounces any monetary recompense either direct or indirect.

capita payments, the remainder of the fund should be used for the public educational purposes as discussed in Recommendation #4.

The fund should be administered by a Board, the majority of whose members are Americans of Japanese descent appointed by the President and confirmed by the Senate.

Aleuts

The Commissioners agree that a claims procedure would not be an effective method of compensation. Therefore, the sums included the Commission's recommendations were chosen to recognize fundamental justice.

1. The Commissioners, with Congressman Lungren dissenting, recommend that Congress establish a fund for the beneficial use of the Aleuts in the amount of $5 million. The principal and interest of the fund should be spent for community and individual purposes that would be compensatory for the losses and injuries Aleuts suffered as a result of the evacuation.

2. The Commissioners, with Congressman Lungren dissenting, recommend that Congress appropriate funds and direct a payment of $5,000 per capita to each of the few hundred surviving Aleuts who were evacuated from the Aleutian or Pribilof Islands by the federal government during World War II.

3. That Congress appropriate funds and direct the relevant government agency to rebuild and restore the churches damaged or destroyed in the Aleutian Islands in the course of World War II.

4. That Congress appropriate adequate funds through the public works budget for the Army Corps of Engineers to clear away the debris that remains from World War II in and around populated areas of the Aleutian Islands.

5. That Congress declare Attu to be native land and that Attu be conveyed to the Aleuts through their native corporation upon condition that the native corporation is able to negotiate an agreement with the Coast Guard which will allow that service to continue essential functions on the island.

The Commission believes that, for reasons of redressing the personal justice done to thousands of Americans and resident alien Japanese, and to the Aleuts—and for compelling reasons of preserving a truthful sense of our own history and the lessons we can learn from it—these recommendations should be enacted by the Congress. In the late 1930's W.H. Auden wrote lines that express our present need to acknowledge and to make amends:

We are left alone with our day, and the time is short
and History to the defeated
May say Alas but cannot help or pardon.

It is our belief that, though history cannot be unmade, it is well within our power to offer help, and to acknowledge error.