

SUMMARY OF STATEMENT OF JOAN Z. BERNSTEIN  
ON BEHALF OF THE COMMISSION ON WARTIME  
RELOCATION AND INTERNMENT OF CIVILIANS

From 1981 to 1983 I served as Chairman of the Commission on Wartime Relocation and Internment of Civilians. The Commission was directed by Congress to investigate the promulgation of Executive Order 9066 and the wartime events which followed from it. It was also asked to submit recommendations for appropriate remedies.

The rationale given as the basis for the exclusion and detention of Japanese Americans was military necessity. The Commission carefully reviewed the extensive record of events which led to Executive Order 9066. It found no persuasive evidence of a military or security threat from Japanese Americans which could remotely justify mass exclusion and detention.

The Commission found that the decision to exclude the Japanese Americans from the West Coast cannot be traced to any single, simple cause. There was a long and ugly history on the West Coast of discrimination and agitation against ethnic Japanese which gained new vigor after the start of the war. On the basis of thorough review of a massive historical record, the Commission concluded that the broad historical causes of the decisions to exclude and detain Japanese Americans were race prejudice, war hysteria, and a failure of political leadership.

The excluded people suffered enormous damage and losses, both material and intangible. A study performed for the Commission estimated that in 1983 dollars, the total losses of income and property fall between \$810 million and \$2 billion. Each individual excluded from the West Coast carries his own scars from that time.

To redress the injustice done to these citizens, the Commission recommended a formal national apology, presidential pardons for those convicted of violating exclusionary statutes, full consideration of the Commission's findings by agencies which review Japanese American claims arising from the acts or events between December 1941 and 1945, the establishment of a special educational fund, and the appropriation of \$1.5 billion to provide a per capita compensatory payment of \$20,000 to each of the surviving persons excluded from their places of residence.

No statute that Congress may enact can undo history. But one of our strengths as a nation is our willingness to acknowledge imperfection as well as to struggle for a more just society. It is in a spirit of continuing that struggle that the Commission submits its recommendations.

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BEHALF OF THE COMMISSION ON WARTIME  
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From 1981 to 1983 I served as Chairman of the Commission on Wartime Relocation and Internment of Civilians. It gives me great pleasure to appear before the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary this morning to provide a statement as to the findings of the Commission on Wartime Relocation and the recommendations for remedies which the Commission has made to Congress.

The Commission was established by Congress in 1980 and directed to

1. review the facts and circumstances surrounding Executive Order Number 9066, issued February 19, 1942, and the impact of such Executive Order on American citizens and permanent resident aliens.
2. review directives of United States military forces requiring the relocation and, in some cases, detention in internment camps of American citizens, including Aleut civilians, and permanent resident aliens of the Aleutian and Pribilof Islands; and
3. recommend appropriate remedies.

In fulfilling that mandate, the Commission issued an historical analysis of the promulgation of Executive Order 9066 and the events that flowed from the Order, Personal Justice Denied, which was released in February, 1983. I have appended to this testimony the summary chapter of Personal Justice Denied. In June of 1983 the Commission issued its recommendations for



remedies which I have also appended to this testimony. The recommendations followed not only the historical analysis but also an economic study and a conference on health perspectives; the reports on those activities have been prepared for distribution by the Government Printing Office.

The basic facts about the wartime treatment of Japanese Americans have long been known. On February 19, 1942, President Franklin D. Roosevelt signed Executive Order 9066. Under that Order 120,000 people -- American citizens of Japanese ancestry and resident aliens of the immigrant generation from Japan, who were barred by law from becoming American citizens -- were prohibited from living and working on the West Coast. Almost all were later sent to "relocation centers" -- bleak barrack camps ringed by barbed wire and military guards in isolated areas of the West. Most remained in the camps until the mass exclusion was ended in December, 1944, more than two and a half years after the policy of exclusion and detention began. These events are unique in our history.

No program of mass exclusion or detention was imposed on German or Italian aliens nor upon American citizens of German or Italian descent.

In simple terms 120,000 people lost the right to live where they chose and the large majority were held in detention for more than two years without charges being brought against them.

Of course, that is not the way in which the American government has historically behaved. The government is not free to lock

up citizens or expel them from extensive areas of the country without making and proving some charge against them.

It is not surprising that the exclusion and detention were opposed at the time by men like Attorney General Francis Biddle who had a strong sense of the fundamental importance of liberty and due process in the United States. The importance of these events has not been forgotten by those who continue to believe in America as a bulwark of freedom. Ronald Reagan, speaking in 1970 as Governor of California, pointedly and accurately underscored what each American should take from this history:

"A lesson was learned in California during World War II, which should be made a part of the record and the heritage of Americans everywhere who cherish liberty, freedom, and constitutional guarantees."

With the passage of years, these views were largely shared by those who directly participated in the wartime events. In memoirs and other statements after the war, many of those involved in the exclusion, removal and detention passed judgment on those events. While believing in the context of the time that evacuation was a legitimate exercise of the war powers, Henry L. Stimson, the Secretary of War, recognized that "to loyal citizens this forced evacuation was a personal injustice." Justice William O. Douglas, who joined the majority opinion in Korematsu which held the exclusion constitutionally permissible, found that the case "was ever on my conscience." Milton Eisenhower described the removal



of the Japanese Americans to the relocation camps as "an inhuman mistake." Chief Justice Earl Warren, who had urged the exclusion 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."

The exclusion of people of Japanese descent, both residents and citizens of the United States, from the West Coast took place at a time of high emotional tension and genuine popular fear of attack which followed the disaster at Pearl Harbor. The government justified the exclusion from the West Coast on the basis of military necessity. The first task of the Commission was therefore to look at the facts and consider whether military necessity justified this course of action.

The Commission found that the record does not permit the conclusion that there was military justification for the mass exclusion and detention of American citizens of Japanese ancestry and their resident alien parents.

There was a widespread -- but false -- belief that the attack on Pearl Harbor had been aided by sabotage and fifth column activities. The President and his cabinet officers did not forcefully dispel these stories and rumors. On the West Coast, where there had been a long history of prejudice and discrimination against

the ethnic Japanese, there were sustained and even louder demands for the exclusion of Japanese Americans. These demands were made by organized anti-Japanese interest groups, the press and the West Coast members of Congress -- they came from every segment of the political spectrum.

The civilian clamor for exclusion was reflected in the actions of the War Department. Lieutenant General John L. DeWitt, in command of Army forces on the West Coast, recommended to Secretary Stimson that authority be sought to remove the Japanese Americans from the West Coast. DeWitt made his recommendation on the ground that loyalty was determined by ethnicity. "In the war in which we are now engaged," DeWitt wrote Secretary Stimson, "racial affinities are not severed by migration. The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil possessed of United States citizenship, have become 'Americanized,' the racial strains are undiluted." The record shows that DeWitt's views were substantially influenced by the governors and public officials of the West Coast states whose views he sought before taking his own position.

Secretary Stimson and President Roosevelt did not subject this program to sufficiently close and critical scrutiny. The Attorney General, Francis Biddle, did not believe the program necessary, but acceded to it when it was advocated by the War Department as an essential military measure.



Few Americans were familiar with American citizens of Japanese descent. The opinions of those with intelligence responsibility, such as the FBI, who believed that there was no sound basis for mass exclusion, were ignored or drowned out in the frightened uproar of the time. Those working in intelligence assumed that Japan had made an effort to obtain intelligence from both ethnic Japanese and other Americans. That was not surprising and was undoubtedly the course followed by Germany and Italy as well. It did not provide a justification for mass exclusion and detention.

The Commission carefully reviewed the extensive record of events which led to Executive Order 9066. It found no persuasive evidence of a military or security threat from the Japanese Americans which could remotely justify mass exclusion and detention. As General DeWitt conceded at the time, no sabotage had taken place. The later justifications offered by DeWitt in his Final Report on the exclusion and by the Justice Department which defended the exclusion in court also fail to demonstrate any military or security threat. In fact the realistic estimates of the time suggested that there was as much or more danger from other segments of the population.

DeWitt's contention that ethnicity determined loyalty was answered as early as May 1942, by a congressional committee which examined the impact of the Executive Order in extensive hearings on the West Coast:

"This testimony has impressed upon us in convincing fashion the fundamental fact that place of birth and technical non-citizenship alone provide no decisive criteria for assessing the alignment of loyalties in this worldwide conflict."

True of aliens, that statement can only be more powerful with regard to American citizens. Our legal system is founded on determining guilt or fault on an individual basis, and citizens must be given the presumption of loyalty. Moreover, the conclusion that ethnicity determined loyalty was not a military judgment deserving of any deference. Generals are not experts on race; their views on the political loyalties of civilians are only as good as the facts they can marshal in their support. As John J. McCloy, who was Assistant Secretary of War in 1942, testified to the Commission, the decision to issue the Executive Order was not based on any actual events of sabotage or espionage known to the War Department. The lack of evidence of disloyalty on the part of Americans of Japanese ancestry in 1942 speaks for itself.

Secretary Stimson and Assistant Secretary McCloy approved the original order of exclusion, but they were men who were open to an understanding of the facts and they did not accept General DeWitt's views on race or believe that the Japanese Americans should be excluded from the West Coast for the duration of the war.



Mr. McCloy and Secretary Stimson opposed professional military opinion in deciding that the Army would seek volunteers among the Japanese Americans, thus opening the door to persuading even the most prejudiced of the loyalty of Japanese Americans who returned from European battlefields loaded with honors won in the service of the United States.

Most importantly, by the spring of 1943, the civilians at the head of the War Department had reached the position that no justification existed any longer for excluding loyal Japanese American citizens from the West Coast. In April 1943, McCloy laid out the basic points very forcefully to General DeWitt, who was on the West Coast. I quote the letter at length because it states succinctly the situation in the spring of 1943 and lays bare the differences of opinion with General DeWitt and those who supported exclusion:

"The threat of Japanese attack is far from what it was. We are better organized to meet such an attack if it occurred. And we know a great deal more about our Japanese population. Furthermore, the War Department has established a combat team for volunteer American citizens of Japanese ancestry ... [T]he War Department has initiated a process for loyalty investigations of all Japanese Americans to determine their eligibility for work in the plants and facilities vital to the war effort. In other words, . . . the policy of the nation's Government, as well as that of the War Department, is presently looking toward restoration to all loyal persons of Japanese ancestry of all their normal rights and privileges, to the end that they may be able to make their maximum

contribution to the war effort. The very "entering wedge" which you appear to dread is precisely what must be accomplished.

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That there is serious animosity on the West Coast against all evacuated Japanese I do not doubt, but that does not necessarily mean that we should trim our sails accordingly. The longer California luxuriates in the total absence of the Japanese the more difficult it will be to restore them to the economy of California. They have a place in California as well as in any other state as long as military considerations do not intervene. I cannot help but feel that social considerations rather than military ones determine the total exclusion policy. The army, as I see it, is not responsible for the general public peace of the Western Defense Command. That responsibility still rests with the civil authorities. There may, as you suggest, be incidents, but these can be effectively discouraged by prompt action by law enforcement agencies, with the cooperation of the military if they ever assume really threatening proportions." (Emphasis supplied)

McCloy was entirely correct in his view that the military situation no longer justified exclusion (if indeed it ever could). A program for returning the Japanese Americans to the West Coast needed to be started and McCloy urged the gradual return of Japanese Americans beginning at once.

Unfortunately, it did not happen as McCloy told General DeWitt it should. The exclusion was not ended for another eighteen months. General DeWitt continued to support the exclusion with every tactic available until he left the Western



Defense Command in the fall of 1943. Throughout 1943 and 1944 there continued to be virulent and widespread opposition in the West Coast press, among West Coast politicians and interest groups to the return of Japanese Americans to the West Coast. These views prevailed. For at least the last six months of that period, immediately before the presidential election of 1944, the decision to continue the exclusion was that of President Roosevelt.

By any analysis with the least sensitivity to American constitutional values there was no justification for holding loyal American citizens of Japanese descent in detention or prohibiting them from traveling, living and working where they chose.

In his memoirs, Secretary Stimson cogently called the evacuation a "personal injustice" to loyal Japanese Americans. It was a personal injustice precisely because the country failed to apply justice in a personal or individual manner. Men, women and children were uprooted from their homes and their lives shattered because the United States failed to provide personal justice in time of war. It is important to emphasize that we are dealing here with American behavior. The Japanese and Nazi treatment of Americans and other prisoners is one of the darkest chapters of modern history. But those incidences did not influence the Commission's investigation and subsequent recommendations. What the Commission has examined and taken testimony about, pursuant to the direction from Congress, is how the United States dealt with American citizens and residents.

The other part of this history is the impact of these events on Americans of Japanese descent. The damage done by this country to its own citizens and residents is a mosaic made up of thousands of lives and thousands of personal histories. The Commission's hearing record is replete with searing and painful testimony. There was the economic loss of farms and homes sold in distress circumstances, of elderly people having to start from scratch a second time after the war, of families detained in camps without employment and unable to meet tax and mortgage and insurance payments; of education and careers disrupted. An analysis of the economic losses suffered as a consequence of the exclusion and detention was performed for the Commission. 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 \$41 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. It has not been possible to calculate the effects upon human capital of lost education, job training and the like.

Over time and with perseverance material losses may be repaired, but the hidden scars of lives damaged by the exclusion and detention remain. Each individual excluded from the West Coast to spend two and a half years behind barbed wire carries his own marks from that time. For people who knew their innocence



and the injustice of their treatment the burden was not light. They bore the stigma of having been branded potentially disloyal, the deprivation of liberty and the loss of the common decencies of daily life. An essential foundation of our government -- the citizen's trust that the government will deal with him individually and fairly -- was deeply damaged. The injuries inflicted by the country on these citizens were different in kind from the suffering and loss which the Second World War brought to all Americans.

In Hawaii, we did things differently. Despite the Pearl Harbor attack, there was no exclusion or detention of any significant number of Japanese Americans. Calmer minds with a better sense of justice prevailed and today neither the material nor the intangible injuries of the Japanese Americans on the mainland remain to haunt us in Hawaii. We also showed more restrained behavior with respect to people of German descent. Despite six months of intense submarine warfare along the Atlantic Coast which destroyed massive amounts of American shipping, we escaped the violent reaction against all things German which had marked World War I. In both these circumstances, we showed confidence in the principles of our government and they met the test of wartime conditions.

No recommendations which this Commission has made, no statute that Congress may enact, can undo this history. No redress to Japanese Americans can assure that we will not repeat the errors of 1942. What happened after Pearl Harbor is particularly

sobering because men of the greatest stature with careers of the most distinguished public service -- Democrat and Republican; conservative and liberal; judges, legislators and cabinet members; the President himself -- were personally involved in a course of action which today we can only find gravely unjust and deeply injurious. The bulwark of our Constitution did not withstand it.

It is well within our power, however, to provide remedies for violations of our own laws and principles. This is one important reason for the several forms of redress which the Commission has recommended. Another is that our nation's ability to honor democratic values even in times of stress depends largely upon our collective memory of lapses from our constitutional commitment to liberty and due process. Nations that forget or ignore injustices are more likely to repeat them.

With regard to American citizens and residents of Japanese descent, the Commission has made five recommendations:

1. The Commission recommends 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.

2. The Commission recommends that the President pardon those who were convicted of violating the statutes imposing a curfew on American citizens on the basis of their ethnicity and requiring the ethnic Japanese to leave designated areas of the West Coast or to report to assembly centers. 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. Both recommendations are made without prejudice to cases currently before the courts.

3. The Commission recommends that 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 to review such applications with liberality, giving full consideration to the historical findings of this Commission. For example, the responsible divisions of the Department of Defense should be instructed to review cases of less than honorable discharge of Japanese Americans from the armed services during World War II over which disputes remain, and the Secretary of Health and Human Services should be directed to instruct the Commissioner of Social Security to review any remaining complaints of inequity in entitlements due to the wartime detention.

4. The Commission recommends that 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 recognizes the nation's need to make redress for these events, by appropriating monies to establish a special foundation.

The Commissioners all believe a fund for educational and humanitarian purposes related to the wartime events is appropriate, and all agree that no fund would be sufficient to make whole again the lives damaged by the exclusion and detention. The Commissioners agree that such a fund appropriately addresses an injustice suffered by an entire ethnic group, as distinguished from individual deprivations.

Such a fund should sponsor research and public educational activities so that the events which were the subject of this inquiry will be remembered, and so that the causes and circumstances of this and similar events may be illustrated and understood. A nation which wishes to remain just to its citizens must not forget its lapses. The recommended foundation might appropriately fund comparative studies of similar civil liberties abuses or of the effect upon particular groups of racial prejudice embodied by government action in times of national stress; for example, the fund's public educational activity might include preparing and distributing the Commission's findings about these events to textbook publishers, educators and libraries.

5. The Commissioners, with the exception of Congressman Lungren, recommend 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 compensatory payment of \$20,000 to



each of the approximately 60,000 surviving persons excluded from their places of residence pursuant to Executive Order 9066. 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 capita payments, the remainder of the fund should be used for the public educational purposes discussed in Recommendation 4 as well as for the general welfare of the Japanese American community. This should be accomplished by grants for purposes such as aid to the elderly and scholarships for education, weighing, where appropriate, the effect on the exclusion and detention on the descendants of those who were detained. Individual payments in compensation for loss or damage should not be made.

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. The compensation of members of the board should be limited to their expenses and per diem payments at accepted governmental rates.

The fundamental justification for these recommendations can be found in the history which the Commission reported in Personal Justice Denied. A few basic points deserve emphasis in summation. Congress directed the Commission to review the treatment of American citizens and residents by the American government. The Commissioners deplore the methods and the record of Japan's armed forces during World War II; but it must be kept clearly in mind that the American citizens who were sent to

Manzanar or Poston were no more responsible for Pearl Harbor and the Bataan Death March than German Americans were for the invasion of France or the bombing of Britain. The American principle that a person is judged as an individual and not by the native country of his grandparents must not be allowed to become a casualty of war.

A free act of apology to those who were unjustly excluded and detained during the war is an important act of national healing. If we are unwilling as a nation to apologize for these events, we will deliver a message to the thousands of loyal Americans who were held in the camps that will be bitter indeed. We will be affirming after forty years that the American values of due process and equality before the law without regard to ethnicity or race are only rhetorical values and that in times of stress stress small minorities should harbor no hope that those principles will protect them from the fear and anger of their neighbors or the heavy hand of their government. Such a result is a threat to the liberty of all Americans.

In addressing monetary payments, two points must be borne in mind. First, the Commission was asked to recommend appropriate remedies; not simply ordinary and usual remedies. For events as unusual and extraordinary as these one can only expect an extraordinary response. Nevertheless, it must be clearly remembered that measures of this sort have been enacted in the past. The Indian Claims Act of 1946 which allowed the Indian tribes to



present their historical claims of illegal or inequitable treatment by the government is the most obvious precedent; very substantial monetary payments have been made to the Indians under that statute.

Second, the justification for monetary payments need not rest solely on an argument as to whether the initial acts of 1942 were totally unjustified. One need only look at the last eighteen months of exclusion and detention. By the middle of 1943 there was no conceivable threat of attack on the West Coast from Japan. Fifteen months of incarceration had provided ample time to identify spies and saboteurs if there were any of significance. Secretary Stimson and Mr. McCloy had concluded that there were no military reasons justifying the exclusion of the loyal from the West Coast. Nevertheless, the Japanese Americans were not allowed to go home until the end of 1944 and most of them spent those eighteen months behind barbed wire. It's hard to imagine circumstances more clearly justifying compensation from the government.

Mr. Chairman, on behalf of all the Commissioners I want to thank you for inviting me here this morning and I assure you that we will seek to help you in any way that we can with regard to future hearings and legislation that the committee may take up.