THE WHITE HOUSE

WASHINGTON

April 7, 1986

MEMORANDUM FOR: JAMES MILLER, III

FROM: MITCHELL E. DANIELS, JR. Mitch D.

SUBJECT: HR 442- ADMINISTRATION POSITION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS

After consultation with several sources familiar with the subject, I would recommend that the administration take no position on this particular issue.

(Spoke to Jeff G. earlier today on this subject.)

Internat file

OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

TO	John Svahn	Take necessary action ☐
	Mitchell Daniels	Approval or signature ☐
	Nancy Risque	Comment ☐
		Prepare reply ☐
		Discuss with me ☐
		For your information ☐
		See remarks below ☐
FROM	Branden Blum	DATE 4/23/86

REMARKS

Revised DOJ Draft Report on H.R. 442, a bill to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians

H.R. 442 in part provides for payments to individuals of Japanese and Aleut ancestry who were interned or relocated during World War II. Justice has revised its report on the bill to include a new paragraph to be inserted as noted on the first page.

As the House Judiciary Adminstrative Law and Governmental Relations Subcommittee has scheduled a hearing on H.R. 442 for April 28, I need any comments on the report ASAP.

Please review the insert (as well as the report in its entirety) and let me know whether any changes are necessary. Also, please advise as to whether the report, as amended, should be cleared at this time.

cc: Carol Crawford
Jim Murr

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General Washington, D.C. 20530

Honorable Peter W. Rodino
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter responds to your request for the views of the Department of Justice on H.R. 442, a bill "[t]o implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians." The Department of Justice recommends against enactment of this legislation.

Background

The wartime relocation and internment of Japanese-Americans were undertaken pursuant to decisions made at the highest level of our government during World War II as part of our nation's defense effort. These decisions were made at a time when the very survival of the Republic was threatened. With the passage of time, these decisions have been examined and questioned. In our view, the Commission's extensive effort to study the wartime relocation and internment program, despite its apparent thoroughness, proves the futility of endeavoring accurately and completely to comprehend the perception of our national leaders under the extreme wartime conditions of the period. These issues will continue to be a matter of historical and scholarly debate.

The United States government has officially recognized that much unjustified personal hardship came about as a result of the internment program. Previous Congresses, Presidents and the Attorney General have taken steps to acknowledge and compensate for the injuries suffered by Japanese-Americans during this period.

Insert (A)

INSERT A

Most of the internees were pro-American; they were among the millions of innocent victims of World War II, confined in the wake of the unprovoked attack on Pearl Harbor and the very real fear of a Japanese invasion of the West Coast. Regardless of one's opinion as to the bona fides of the government officials who approved and implemented the relocation and internment program, we all can agree that Japanese-Americans suffered much deprivation and hardship. They were expected to make personal, professional, and social sacrifices of a nature not expected of other United States citizens. As it is impossible to bring back to life the many Americans who died in the American war effort, including those heroic Americans of Japanese descent who fought in the U.S. Armed Forces, so it is impossible to restore to all those Americans the freedom that was taken from them as a result of war. However, [continue text]

After the conclusion of World War II, Congress acted to authorize a program of compensation for the financial losses entailed by evacuations from the West Coast. The American-Japanese Claims Act, enacted in 1948, authorized compensation for "any claim" for damages to or loss of real or personal property as "a reasonable natural consequence of the evacuation or exclusion of" persons of Japanese ancestry as a result of governmental action during World War II. 50 U.S.C. App. § 1981-1987. This Act was amended by subsequent Congresses to liberalize its provisions for compensation. Under the Act as amended, the Justice Department received claims seeking approximately $147 million. Ultimately, 26,568 settlements were achieved, many of which settled claims presented by family groups rather than individual claimants. Thus, it is safe to conclude that of the 120,000 evacuees, most submitted claims under the American-Japanese Claims Act and received compensation. A total of over $37 million was paid in compensation pursuant to this Act.

In 1975, President Ford formally revoked Executive Order 9066, issued by President Roosevelt in 1942 to permit exclusions from the West Coast. Also in 1975, Congress repealed Public Law 77-503, which was enacted in 1942 to ratify Executive Order 9066. In repealing the Executive Order, President Ford stated that with the benefit of what we now know, the wartime exclusions were a mistake. Most Japanese-Americans demonstrated exceptional fidelity to our nation's ideals and loyalty to the United States despite the hardships visited upon them. There can be no doubt that Executive Order 9066 visited injustice upon loyal Americans of Japanese ancestry.

Recent Litigation

This issue has been the subject of extensive litigation in recent years. In 1983, three separate coram nobis petitions were filed seeking to have wartime misdemeanor convictions set aside on the ground that the government knowingly suppressed evidence and misrepresented facts in submissions to the Supreme Court during the 1940's. In response to one of these coram nobis petitions filed by Fred Korematsu in the United States District Court for the Northern District of California, Attorney General Smith determined that "it is time to put behind us this controversy. . . and instead reaffirm the inherent right of each person to be treated as an individual." Accordingly, the Attorney General decided that "it is singularly appropriate to vacate [Korematsu's] conviction for nonviolent civil disobedience," as well as to do the same for other similarly situated individuals who request it. Thus, in each of these cases, the United States, while disputing petitioner's allegations, moved to vacate the conviction and dismiss the

underlying indictment or information, thus moving effectively to afford petitioners the very relief they sought.

In Yasui v. United States (D. Ore., Jan. 26, 1984), the court granted the government's motion, vacated the conviction, and dismissed the petition as moot. On petitioner's appeal, the Ninth Circuit remanded the case to the district court to determine the timeliness of the appeal. In Korematsu v. United States (N.D. Cal., April 19, 1984) the court denied the government's motion, granted the coram nobis petition but made no findings of fact. Consequently, the United States chose not to appeal.

Finally, in Hirabayashi v. United States, (W.D. Wash., Feb. 10, 1986), the court granted the petition to set aside the conviction for failure to report for internment, but refused to set aside the conviction for violating a curfew order. No decision has been made on whether to seek appellate review.

Hohri v. United States No. 84-5460, (D.C. Cir., Jan. 21, 1986), is a suit filed on behalf of 120,000 persons of Japanese ancestry and their heirs seeking personal injury and property loss damages claimed to arise out of the evacuation and internment program. The government had prevailed in the district court on limitations and other jurisdictional grounds. In a 2-1 decision, the court of appeals reversed and remanded for trial a portion of plaintiffs' claims.

The court of appeals affirmed dismissal of all personal injury claims and the contract and breach of fiduciary duty claims alleged in the complaint on jurisdictional grounds, but decided that plaintiffs' property damage claims under the Fifth Amendment Takings Clause could not be resolved on preliminary jurisdictional grounds and therefore reached the limitations issue. The majority opinion held that because the Supreme Court had established a presumption in favor of deferring to the military judgment on the necessity for the evacuation program, limitations did not commence to run until Congress created the Commission on Wartime Relocation and Internment of Civilians in 1980. According to the court, the statute creating the Commission thereby "finally removed the presumption of deference to the judgment of the political branches." The court also concluded that the American-Japanese Claims Act did not provide an exclusive remedy because the Act did not provide relief that encompassed all damages required to make whole persons who suffered a "taking."

Chief Judge Markey of the Federal Circuit, sitting by designation, dissented. In his view, the appeal should have been transferred to the Federal Circuit for disposition and, in any event, the statute of limitations barred this suit.

The Department is considering whether to seek further review of the court's decision.

Section-by-Section Review of H.R. 442

1. Section 2(a) provides congressional findings: (1) that the findings of the Commission on Wartime Relocation and Internment of Civilians describe the circumstances of the exclusion, relocation and internment of citizens and aliens of Japanese and Aleut ancestry; (2) that the internment of those persons of Japanese ancestry on the West Coast "was carried out without any documented acts of espionage or sabotage, or other acts of disloyalty" by them; (3 and 4) that there was no military or security reason for the internment and that it was caused instead, by racial prejudice, war hysteria, and a failure of political leadership; (5) that the excluded persons of Japanese ancestry suffered enormous material, intangible, educational and job training losses; and (6) that the "basic civil liberties and constitutional rights" of those persons of Japanese ancestry were fundamentally violated by that evacuation and internment. Section 2(b) similarly states the purpose of the legislation. Section 101 apologizes on behalf of the nation for the wartime relocation and internment program.

We have reviewed the Commission's report. It does call attention to the hardships suffered by Americans of Japanese ancestry. However, it must be recognized that conclusions and subjective determinations which necessarily are an integral part of the report are subject to debate. Indeed, in June 1983, the Commission released an addendum to its report discussing a multi-volume Department of Defense publication entitled "The 'Magic' Background of Pearl Harbor" because it had not discussed this important source of wartime intelligence in its report.

We question the wisdom and, indeed, the propriety, of accusing leaders of the United States government during World War II, both civilian and military, of dishonorable behavior. The wartime decisions which form the predicate for this legislation were taken against a backdrop of fears for the survival of our nation; we recently had been attacked by a totalitarian regime which had enjoyed a virtually unbroken string of military successes, both before and immediately after it commenced war upon us. The decisions made by our wartime leaders should be considered in that context.

It may be that the Commission is correct in concluding that the assumptions on which the exclusion and evacuation and detention programs were based were erroneous. It is a long and

unsubstantiated further step, however, to brand those actions as a product of "racial prejudice, or hysteria, and a failure of political leadership." In most instances, the persons so accused are not alive to defend themselves today. Moreover, some of the Commission's conclusions and its selection of evidence marshaled in support of its conclusions are suspect. These are matters best left to historical and scholarly analysis rather than debated by Congress.

We do not believe that this bill should be the vehicle for promulgation of an "official" version of these historical events. The Department opposes enactment of the findings in section 2.

2. The Department opposes sections 201(a) and 201(b), which require the Attorney General to review certain criminal convictions with a view toward pardon and to submit pardon recommendations to the President in certain cases.

The pardon provision of the bill is completely unnecessary. As noted above, the government has offered to move to vacate the conviction of all Japanese-Americans who were convicted of violating wartime restrictions imposed by Executive Order 9066 and has done so in the three coram nobis proceedings filed to date. It appears that about 39 Japanese-Americans were convicted of misdemeanor violations of Executive Order 9066, some of whom may no longer be living. Vacating the convictions and dismissing the underlying indictments or informations of Japanese-Americans affords these individuals the full and meaningful relief to which a pardon would entitle them, and completely obviates the pardon review process provided in § 201.

Moreover, § 201(b) provides that the Attorney General shall recommend to the President for pardon consideration convictions that the Attorney General finds to have been based on certain factors. In our view, this provision raises a substantial separation of powers issue. Article II, Section 2, Clause 1 of the Constitution grants to the President a virtually absolute pardon authority, which extends to all offenses against the United States. The granting of a pardon is an act of grace by the President, and the Constitution does not invest the legislature with any authority in the pardon process. The Supreme Court has confirmed that the President's authority to grant pardons may not be limited by legislative restriction. Shick v. Reed, 419 U.S. 256 (1974). Generally, the President exercises the power based upon formal application and the recommendation of the Attorney General, not the Associate Attorney General by assignment.

The Associate Attorney General's advisory function (28 CFR 0.36) in connection with the consideration of all forms of

Executive clemency, including pardon, commutation (reduction) of sentence, remission of fine and reprieve, and the President's ultimate decision to grant or deny Executive clemency, is wholly discretionary. Department of Justice officials involved in discharging this function act solely as confidential advisors to the President in the exercise of the pardon power, and not in fulfillment of any statutory mandate to conduct the kind of proceedings contemplated in the interdependent provisions of § 201.

Additionally, the language of § 201 is ambiguous in at least two respects. Section 201(a) directs the review of "all cases in which United States citizens and permanent aliens of Japanese ancestry were convicted of violations of laws of the United States, including convictions for violations of military orders, . . . during the evacuation, relocation and internment." First, the class of individuals whose cases are to be reviewed is vaguely defined. The present wording of § 201(a) could be interpreted to require the review of not only the cases of those living but also the cases of those who are deceased. It has been a long established practice not to grant posthumous pardons. The legal basis of the practice is in large part the concept that a pardon, like a deed, must be accepted by the person to whom it is directed. Acceptance, of course, is impossible when the recipient is deceased. See, United States v. Wilson, 7 Pet. 160 (1833); Burdick v. United States, 236 U.S. 79 (1915); Meldrim v. United States, 7 Ct. Cl. 595 (1871); Sierra v. United States, 9 Ct. Cl. 224 (1873); 11 Op. A.G. 35 (1864).

Second, provision for the review of "all cases" involving violations of "laws of the United States . . . [and] military orders" is too broad. This language may be interpreted to require the review of both felony and misdemeanor offenses, as well as require the review of any crime committed during the evacuation, relocation and internment period, such as murder, extortion, kidnapping, theft, counterfeiting and other offenses which may have been committed on a government reservation by members of the class.

3. Section 202 would require agencies to review with liberality applications for restitution of positions, status or entitlements, giving full consideration "to the historical findings" of the Commission and the findings in the Act. We see no need for this provision, are uncertain as to how it could fairly be applied in practice at this late date, and suggest that it could lead to extreme difficulties in administration with resultant litigation.

4. Section 203 would establish a Civil Liberties Public Education Fund in the amount of $1.5 billion to be available for disbursement pursuant to §§ 204 and 205.

Section 204 provides for the award of $20,000 to every living person of Japanese ancestry who was deprived of liberty or property as the result of the wartime programs. Non-residents apparently would also be entitled to the benefits of this section. Since, according to the recommendations of the Commission, approximately 60,000 persons would benefit from those awards, about $1.2 billion would be expended on this program.

Section 205 would establish a Board of Directors of the Fund provided for in § 204. The Board would disburse the remaining $300 million or more of the Fund for the purposes enumerated in subsection (b) of § 205, including projects "for the general welfare of the ethnic Japanese community in the United States."

The Department opposes these provisions for paying additional reparations to individuals where Congress has already enacted a comprehensive statutory scheme which provided a reasonable and balanced contemporaneous remedy to affected individuals. By enacting the 1948 American-Japanese Claims Act, Congress recognized long ago that many loyal Americans of Japanese descent were injured by the wartime relocation and internment program. Although the Commission's report challenges the amount of compensation chosen by Congress as inadequate, Congress has spoken after considerable debate, and there is no good reason to question that settlement now three-and-one-half decades later.

The American-Japanese Claims Act did not include every item of damages that was or could have been suggested. It did, however, address the hardships visited upon persons of Japanese ancestry in a comprehensive, considered manner, taking into account individual needs and losses. This effort to correct injustice to individuals was in keeping with our nation's best tradition of individual rather than collective response and was more contemporaneous with the injuries to the claimants than would be any payments at this late date.

Moreover, in 1956, Congress considered legislation that directly called into question the adequacy of the claims settlements provided in the 1948 Act. The bill as introduced would have liberalized the relief provisions of the Act by granting expanded compensation for certain losses. Congress rejected this proposal because it "would substantially reopen the entire project." H.R. Rep. 1809, 84th Cong., 2d Sess., 9 (1956). Thus, with the hardships and deprivations of the

internees still relatively contemporaneous, a later Congress adjudged the American-Japanese Claims Act to be fundamentally sound. Nothing has occurred since Congress last considered the matter to warrant a supplemental payment to internees. The results of the settlement process under the Act, long since completed, deserve to be accepted as a fair resolution of the claims involved.

The bill's restitution provisions would also impose heavy administrative burdens on the Attorney General. The bill would confer on the Attorney General responsibility for investigating, finding and paying eligible recipients. The Attorney General is specifically prohibited even from requiring eligible persons to make application for these payments. This duty could require the Department to commit a considerable amount of manpower and resources to the search for eligible recipients. Yet, the bill would provide no funding for the location or identification of eligible recipients and would expressly prohibit the Attorney General from recovering expenses incurred in carrying out this responsibility from the Trust Fund set up to pay eligible recipients.

We also oppose the concept of a special fund incorporated in § 205. As noted earlier, we do not believe it is the proper function of our government to adopt an "official" version of these historical events. Similarly, we oppose spending hundreds of millions of dollars to "educate" the American people to accept this official interpretation of our history.

5. We also oppose the breadth of the definitions of eligible individuals set forth at § 206 of the bill.

a. The term "living" ~~[should be determined with more]~~ is not lacks precision. It ~~[should be made]~~ clear whether it is intended to refer to the time of the enactment of the legislation, the time when application for a benefit is made, or to the time when payment of a benefit is made.

b. The definition would cover "any living individual" who had been subject to the exclusion, relocation, or detention program, without any express exclusion of persons residing outside the United States. See § 206(2). The all-inclusiveness of the term "eligible individual" overlooks the important factor that at least several hundred of the detainees were fanatical pro-Japanese, had terrorized their fellow detainees loyal to the United States, and voluntarily sought repatriation to Japan after the end of the war. See, Acheson v. Murakami, 176 F.2d 953, 958 (9th Cir. 1949); McGrath v. Abo, 186 F.2d 766, 771-72 (9th Cir.), cert. denied, 342 U.S. 832 (1951); and in particular Findings of Fact 18, 20, 22, 25, 27, 29, 35, 39, 40, 44, 45, 46 of the United States District Court for the Southern

In addition to the highly objectionable result of this provision,

District of California in Murakami v. Acheson, attached to, and made a part of the court of appeals' decision in that case. It would be unfair to the United States and to the loyal persons of Japanese descent ~~if the benefits of this legislation were made available to~~ persons who were disloyal to the United States.

to reward

6. We turn now to Title III of H.R. 442, entitled "Aleutian and Pribilof Islands Restitution." In this connection the Commission observed that "[t]he Aleut evacuation and the removal of persons of Japanese ancestry from the West Coast during the same period were separate events -- neither caused nor influenced the other. . . . The evacuation of the Aleuts was a reasonable precaution taken to ensure their safety." Personal Justice Denied, at 318. The focus of the Commission's report was upon its conclusion that "the evacuation of the Aleuts was not planned in a timely or thoughtful manner," leading to hardships upon the persons exposed to the conditions flowing from their evacuation from the war zone.

We analyze below the specific provisions which H.R. 442 would enact to benefit Aleuts. Fundamentally, however, we do not believe that wartime hardships of persons properly removed from a war zone provide any factual predicate for consideration of especial, favorable treatment for this group as opposed to other individuals whose lives were disrupted and who suffered hardship or death during World War II. Many activities undertaken by our government during World War II could be criticized, with hindsight, as untimely or poorly planned. We do not believe that such criticism can appropriately form the basis for special compensation.

7. Turning to the specific provisions of Title III of the bill, we have these comments.

a. Section 309(1) would provide for an "Administrator" who would administer certain expenditures made by the Secretary of the Treasury from the Aleutian and Pribilof Islands Restitution Fund established by § 302(a). Section 304(a) would designate as "Administrator" the "Association," defined in § 302(4) as "the Aleutian/Pribilof Islands Association, a non-profit regional corporation for the benefit of the Aleut people organized under the laws of the State of Alaska. (We do not know whether the Aleutian/Pribilof Islands Association would have to be incorporated, or whether it is already in existence; we are likewise not informed whether it is or would be a not-for-profit regional organization under the laws of Alaska Native Claims Settlement Act of 1971, 85 Stat. 691, as amended, 43 U.S.C. § 1606(d).)

The designation in a statute of a person or corporation to perform statutory functions necessarily raises the question whether the designee is charged with functions which may be performed only by an officer of the United States. If that is the case, the person or the governing body of the corporation must be appointed in the manner provided for in the Appointments Clause of the Constitution, i.e., by the President by and with the advice and consent of the Senate, or, where authorized by the statute, by the President alone, or by the courts or the heads of departments. Art. II, § 2, cl. 2. Congress cannot appoint officers of the United States.

Whether a person is an officer of the United States in the constitutional sense depends upon his statutory duties. A person who performs merely advisory functions, and who possesses no enforcement authority or power to bind the government, is generally not considered to be an officer within the meaning of the constitutional provisions cited above. 24 Op. A.G. 12 (1902); 26 Op. A.G. 247 (1907); H.R. Rep. No. 2205, 55th Cong. 3d Sess. 48-54 (1899). However, a person who performs significant governmental duties pursuant to the laws of the United States is an officer in the constitutional sense, and therefore must be appointed pursuant to Article II, § 2, cl. 2 of the Constitution. Buckley v. Valeo, 424 U.S. 1, 126, 141 (1976).

We have examined the statutory duties of the Administrator under section 305 of the bill in order to determine whether his functions will be merely advisory or whether he will be involved in the actual administration of the Act. According to § 305(a), the Administrator would make restitution as provided in that section for certain Aleutian losses sustained in World War II, and take such other action as required by Title III of the bill. These duties would include the establishment of a trust of $5 million for the benefit of the affected Aleutian communities and the appointment of not more than seven trustees to maintain and operate that trust (§ 305(b)(1)); the regulation of the manner in which the trust to be administered (§ 305(b)(3)); the rebuilding, restoration, or replacement of damaged or destroyed churches and church property (§ 305(c)); and assistance to the Secretary of the Treasury in identifying and locating Aleuts entitled to receive payments under § 306 (§ 306(a)(3)). The Administrator, thus, would not be a mere conduit of funds but would be charged with the performance of a significant amount of administrative responsibilities under a federal statute. The Constitution ~~[therefore]~~ requires either that ~~he~~ be appointed in accordance with Article II, § 2, cl. 2, or that ~~the bill be amended so as to~~ relieved ~~him~~ of any duties directly imposed ~~upon~~ by a federal statute.

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Thus, we believe that this provision raises a ~~[major]~~ significant constitutional concern.

b. Section 305(c), dealing with the restoration of church property, also raises some constitutional concern. This subsection would authorize the Administrator "to rebuild, restore or replace churches and church property damaged or destroyed in affected Aleut villages during World War II." The Administrator would receive $100,000 from the Secretary of the Treasury to make an inventory and assessment of all churches and church property damaged or destroyed in the affected Aleut villages during World War II. Within one year after the enactment of this legislation the Administrator would be required to submit the inventory and assessment "together with specific recommendations and detailed plans for reconstruction, restoration and replacement work to be performed" to a review panel comprised of the Secretary of Housing and Urban Development, the Chairman of the National Endowment for the Arts, and the Administrator of GSA. If the Administrator's plans and recommendations are not disapproved by the review panel within sixty days, the Administrator would implement them as soon as possible. If the differences between the Administrator and the review panel should be irreconcilable, the Secretary of the Treasury would submit the matter to Congress for approval or disapproval by joint resolution. Section 310(a)(2) would authorize the appropriation of $1,399,000 to carry out the purposes of the church restoration program.

As explained above, the compensation for the destroyed or damaged churches would not be turned over directly to the affected Aleut villages, but to the Administrator. The Administrator would be charged with the statutory duties of making an inventory and assessment "together with specific recommendations and detailed plans for reconstruction, restoration and replacement work to be performed"; of submitting the inventory, assessment, and recommendation to a review panel consisting of three federal officers; and of trying to reconcile any differences between himself and the review panel, irreconcilable differences between the Administrator and the review panel to be resolved by Congress. The effect of this procedure would be that the details of restoring or rebuilding the churches would be determined by the Administrator (who, as the result of his statutory functions would have to be an officer of the United States), and reviewed by the Secretary of Housing and Urban Development, the Chairman of the National Endowment for the Arts, the Administrator of GSA, and possibly Congress. This governmental involvement in the manner in which the funds allocated for church repair or reconstruction are to be spent would raise First Amendment concerns. Meek v. Pittenger, 421 U.S. 349, 370 (1975); Committee for Public Education v. Regan, 444 U.S. 646, 659-60 (1980).

For all of the foregoing reasons, the Department of Justice recommends against enactment of this legislation. The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

John R. Bolton
Assistant Attorney General

SC - hold with other material on this (*) subject

April 4, 1986

TO: William L. Ball, III
Assistant to the President
for Legislative Affairs

FROM: John R. Bolton
Assistant Attorney General
Office of Legislative and
Intergovernmental Affairs

SUBJECT: Weekly Legislative Report

I. ADMINISTRATION INITIATIVE

A. Executive Order 11246/Affirmative Action

On Friday, March 28, the Department of Justice sent to the Hill and released to the press a packet of conciliation agreements which are examples of government-imposed goals under Executive Order 11246 that have been used to accord preferential treatment on the basis of race and gender. Executive Order 11246 forbids federal contractors from discriminating in employment and requires them to undertake affirmative action to ensure such nondiscrimination.

The conciliation agreements demonstrated that an inordinate amount of weight is being placed on the failure of federal contractors to meet a racial or gender goal, with the result that contractors are expected, as a condition of doing business with the government, to meet the designated goals in hiring without regard to the relative qualifications of available persons.

There were over fifty such agreements in the packet, each of which treated "utilization goals" as a compliance tool calculated to induce race and gender-based preferential treatment in employment matters. Those fifty conciliation agreements represent only a fragment of those which have been entered by the Department of Labor since the 1970s.

II. CONGRESSIONAL INITIATIVES

A. Japanese-American Compensation

1. House: The House Judiciary Subcommittee on Administrative Law and Governmental Relations has scheduled an April 28 hearing on H.R. 442, a bill to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians and to provide some $1.2 billion in compensation. The Subcommittee Chairman, Representative Glickman, requested this Department's position on H.R. 442 several months ago.

The Department's position on this legislation has been the subject of extensive intra-departmental review over the past few years; but up to this time, we have never testified or submitted views. Several weeks ago we forwarded to OMB an extensive proposed "views letter" on H.R. 442, in which we recommend against enactment of the legislation. The Department opposes provisions in the bill for paying additional reparations to individuals where Congress has already enacted a comprehensive statutory scheme which provided a reasonable and balanced contemporaneous remedy to affected individuals. Our proposed position also questions the propriety of accusing leaders of the United States Government during World War II of dishonorable behavior.

In light of the Subcommittee's repeated request for our views on H.R. 442, we are requesting OMB clearance so that we may provide our views letter far enough in advance of the hearing to avoid an unnecessary row with the Chairman.

2. Senate: The Senate counterpart to H.R. 442 is S. 1053, introduced by Senator Matsunaga and 25 bipartisan cosponsors and referred to the Committee on Governmental Affairs on May 2, 1985. No action has been scheduled on the Senate side.

B. Prison Overcrowding

Senator Specter of the District of Columbia Subcommittee of the Senate Appropriations Committee requested to have Attorney General Meese testify before his Subcommittee on April 9, concerning the role of the Department in the D.C. Prison issue. (Because of the sensitivity of the ongoing negotiations between the Department and the City concerning this matter, this office declined a similar invitation for March 26, on the basis of the fourteen-day rule).

This office has conveyed to Senator Specter, through his Subcommittee staff, that Attorney General Meese will be unavailable but that the Deputy Attorney General will be available on one or more mornings (April 8, 16 or 17). We are awaiting a reply.

We believe Senator Specter is intending to use the forum of his Subcommittee to pressure the Department to settle the issue in a manner that accords with his purposes and not necessarily in the best interests of the Department. He will also focus on getting a Department of Justice (DOJ) Commitment to resume Bureau of Prison (BOP) acceptance of D.C. inmates, selecting a federal site in the District of Columbia to house an additional 400 inmates on a temporary or permanent basis.

III. HEARINGS

COMPLETED HEARINGS

DATE	SUBJECT	COMM. & SUBCOMM.	WITNESS
April 3 (Miami)	Forfeiture of Vessels on the Miami River	Senate Appropriations/ Subcommittee on Transportation	Leon Kellner, United States Attorney, Southern District of Florida

Bill/Sanford

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

Keep with International subject

ROUTE SLIP

TO Mitchell Daniels	Take necessary action ☐
	Approval or signature ☐
	Comment ☐
	Prepare reply ☐
	Discuss with me ☐
	For your information ☐
	See remarks below ☐
FROM Branden Blum	**DATE** 4/3/86

REMARKS

Subject: H.R. 442 - a bill to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians

We have been requested to forward for your review a copy of H.R. 442 and the Department of Justice report opposing the bill. No objections to the position taken by Justice have been expressed by agencies reviewing the report.

Justice has advised informally that a House Judiciary subcommittee is likely to schedule hearings on H.R. 442 for April 28 and that it expects to receive an invitation to testify. We will wait for your guidance before clearing the report.

Attachments

OMB FORM 4
Rev Aug 70

SPECIAL

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

February 28, 1986

LEGISLATIVE REFERRAL MEMORANDUM

TO:

Department of Defense - Werner Windus (697-1305)
Department of Transportation - John Collins (426-4694)
Department of the Treasury - Carol Toth (566-8523)
Department of the Interior - Norma Perry (343-6797)
Department of Housing & Urban Development - Ed Murphy (755-7093)
Department of State - Lee Ann Berkenbile (647-4463)
Department of Commerce - Joyce Smith (377-4264)
General Services Administration
National Endowment for the Arts

SUBJECT: Draft Department of Justice report on H.R. 442, a bill to implement the recommendations of the Commission on the Wartime Relocation and Internment of Civilians.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than NOON -- March 5, 1986.
(This is a firm deadline. Unless we hear otherwise from you, we will assume that you have no objection to the Justice report.)

Direct your questions to Branden Blum (395-3454), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: Fred Fielding Karen Wilson Brad Leonard Roger Greene
John Cooney David Hunn

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General Washington, D.C. 20530

DRAFT

Honorable Peter W. Rodino
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter responds to your request for the views of the Department of Justice on H.R. 442, a bill "[t]o implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians." The Department of Justice recommends against enactment of this legislation.

Background

The wartime relocation and internment of Japanese-Americans were undertaken pursuant to decisions made at the highest level of our government during World War II as part of our nation's defense effort. These decisions were made at a time when the very survival of the Republic was threatened. With the passage of time, these decisions have been examined and questioned. In our view, the Commission's extensive effort to study the wartime relocation and internment program, despite its apparent thoroughness, proves the futility of endeavoring accurately and completely to comprehend the perception of our national leaders under the extreme wartime conditions of the period. These issues will continue to be a matter of historical and scholarly debate.

The United States government has officially recognized that much unjustified personal hardship came about as a result of the internment program. Previous Congresses, Presidents and the Attorney General have taken steps to acknowledge and compensate for the injuries suffered by Japanese-Americans during this period.

After the conclusion of World War II, Congress acted to authorize a program of compensation for the financial losses entailed by evacuations from the West Coast. The American-Japanese Claims Act, enacted in 1948, authorized compensation for "any claim" for damages to or loss of real or personal property as "a reasonable natural consequence of the evacuation or exclusion of" persons of Japanese ancestry as a result of governmental action during World War II. 50 U.S.C. App. § 1981-1987. This Act was amended by subsequent Congresses to liberalize its provisions for compensation. Under the Act as amended, the Justice Department received claims seeking approximately $147 million. Ultimately, 26,568 settlements were achieved, many of which settled claims presented by family groups rather than individual claimants. Thus, it is safe to conclude that of the 120,000 evacuees, most submitted claims under the American-Japanese Claims Act and received compensation. A total of over $37 million was paid in compensation pursuant to this Act.

In 1975, President Ford formally revoked Executive Order 9066, issued by President Roosevelt in 1942 to permit exclusions from the West Coast. Also in 1975, Congress repealed Public Law 77-503, which was enacted in 1942 to ratify Executive Order 9066. In repealing the Executive Order, President Ford stated that with the benefit of what we now know, the wartime exclusions were a mistake. Most Japanese-Americans demonstrated exceptional fidelity to our nation's ideals and loyalty to the United States despite the hardships visited upon them. There can be no doubt that Executive Order 9066 visited injustice upon loyal Americans of Japanese ancestry.

Recent Litigation

This issue has been the subject of extensive litigation in recent years. In 1983, three separate coram nobis petitions were filed seeking to have wartime misdemeanor convictions set aside on the ground that the government knowingly suppressed evidence and misrepresented facts in submissions to the Supreme Court during the 1940's. In response to one of these coram nobis petitions filed by Fred Korematsu in the United States District Court for the Northern District of California, Attorney General Smith determined that "it is time to put behind us this controversy. . . and instead reaffirm the inherent right of each person to be treated as an individual." Accordingly, the Attorney General decided that "it is singularly appropriate to vacate [Korematsu's] conviction for nonviolent civil disobedience," as well as to do the same for other similarly situated individuals who request it. Thus, in each of these cases, the United States, while disputing petitioner's allegations, moved to vacate the conviction and dismiss the

underlying indictment or information, thus moving effectively to afford petitioners the very relief they sought.

In Yasui v. United States (D. Ore., Jan. 26, 1984), the court granted the government's motion, vacated the conviction, and dismissed the petition as moot. On petitioner's appeal, the Ninth Circuit remanded the case to the district court to determine the timeliness of the appeal. In Korematsu v. United States (N.D. Cal., April 19, 1984) the court denied the government's motion, granted the coram nobis petition, but made no findings of fact. Consequently, the United States chose not to appeal.

Finally, in Hirabayashi v. United States, (W.D. Wash., Feb. 10, 1986), the court granted the petition to set aside the conviction for failure to report for internment, but refused to set aside the conviction for violating a curfew order. No decision has been made on whether to seek appellate review.

Hohri v. United States No. 84-5460, (D.C. Cir., Jan. 21, 1986), is a suit filed on behalf of 120,000 persons of Japanese ancestry and their heirs seeking personal injury and property loss damages claimed to arise out of the evacuation and internment program. The government had prevailed in the district court on limitations and other jurisdictional grounds. In a 2-1 decision, the court of appeals reversed and remanded for trial a portion of plaintiffs' claims.

The court of appeals affirmed dismissal of all personal injury claims and the contract and breach of fiduciary duty claims alleged in the complaint on jurisdictional grounds, but decided that plaintiffs' property damage claims under the Fifth Amendment Takings Clause could not be resolved on preliminary jurisdictional grounds and therefore reached the limitations issue. The majority opinion held that because the Supreme Court had established a presumption in favor of deferring to the military judgment on the necessity for the evacuation program, limitations did not commence to run until Congress created the Commission on Wartime Relocation and Internment of Civilians in 1980. According to the court, the statute creating the Commission thereby "finally removed the presumption of deference to the judgment of the political branches." The court also concluded that the American-Japanese Claims Act did not provide an exclusive remedy because the Act did not provide relief that encompassed all damages required to make whole persons who suffered a "taking."

Chief Judge Markey of the Federal Circuit, sitting by designation, dissented. In his view, the appeal should have been transferred to the Federal Circuit for disposition and, in any event, the statute of limitations barred this suit.

The Department is considering whether to seek further review of the court's decision.

Section-by-Section Review of H.R. 442

1. Section 2(a) provides congressional findings: (1) that the findings of the Commission on Wartime Relocation and Internment of Civilians describe the circumstances of the exclusion, relocation and internment of citizens and aliens of Japanese and Aleut ancestry; (2) that the internment of those persons of Japanese ancestry on the West Coast "was carried out without any documented acts of espionage or sabotage, or other acts of disloyalty" by them; (3 and 4) that there was no military or security reason for the internment and that it was caused instead, by racial prejudice, war hysteria, and a failure of political leadership; (5) that the excluded persons of Japanese ancestry suffered enormous material, intangible, educational and job training losses; and (6) that the "basic civil liberties and constitutional rights" of those persons of Japanese ancestry were fundamentally violated by that evacuation and internment. Section 2(b) similarly states the purpose of the legislation. Section 101 apologizes on behalf of the nation for the wartime relocation and internment program.

We have reviewed the Commission's report. It does call attention to the hardships suffered by Americans of Japanese ancestry. However, it must be recognized that conclusions and subjective determinations which necessarily are an integral part of the report are subject to debate. Indeed, in June 1983, the Commission released an addendum to its report discussing a multi-volume Department of Defense publication entitled "The 'Magic' Background of Pearl Harbor" because it had not discussed this important source of wartime intelligence in its report.

We question the wisdom and, indeed, the propriety, of accusing leaders of the United States government during World War II, both civilian and military, of dishonorable behavior. The wartime decisions which form the predicate for this legislation were taken against a backdrop of fears for the survival of our nation; we recently had been attacked by a totalitarian regime which had enjoyed a virtually unbroken string of military successes, both before and immediately after it commenced war upon us. The decisions made by our wartime leaders should be considered in that context.

It may be that the Commission is correct in concluding that the assumptions on which the exclusion and evacuation and detention programs were based were erroneous. It is a long and

unsubstantiated further step, however, to brand those actions as a product of "racial prejudice, or hysteria, and a failure of political leadership." In most instances, the persons so accused are not alive to defend themselves today. Moreover, some of the Commission's conclusions and its selection of evidence marshaled in support of its conclusions are suspect. These are matters best left to historical and scholarly analysis rather than debated by Congress.

We do not believe that this bill should be the vehicle for promulgation of an "official" version of these historical events. The Department opposes enactment of the findings in section 2.

2. The Department opposes sections 201(a) and 201(b), which require the Attorney General to review certain criminal convictions with a view toward pardon and to submit pardon recommendations to the President in certain cases.

The pardon provision of the bill is completely unnecessary. As noted above, the government has offered to move to vacate the conviction of all Japanese-Americans who were convicted of violating wartime restrictions imposed by Executive Order 9066 and has done so in the three coram nobis proceedings filed to date. It appears that about 39 Japanese-Americans were convicted of misdemeanor violations of Executive Order 9066, some of whom may no longer be living. Vacating the convictions and dismissing the underlying indictments or informations of Japanese-Americans affords these individuals the full and meaningful relief to which a pardon would entitle them, and completely obviates the pardon review process provided in § 201.

Moreover, § 201(b) provides that the Attorney General shall recommend to the President for pardon consideration convictions that the Attorney General finds to have been based on certain factors. In our view, this provision raises a substantial separation of powers issue. Article II, Section 2, Clause 1 of the Constitution grants to the President a virtually absolute pardon authority, which extends to all offenses against the United States. The granting of a pardon is an act of grace by the President, and the Constitution does not invest the legislature with any authority in the pardon process. The Supreme Court has confirmed that the President's authority to grant pardons may not be limited by legislative restriction. Shick v. Reed, 419 U.S. 256 (1974). Generally, the President exercises the power based upon formal application and the recommendation of the Attorney General, now the Associate Attorney General by assignment.

The Associate Attorney General's advisory function (28 CFR 0.36) in connection with the consideration of all forms of

Executive clemency, including pardon, commutation (reduction) of sentence, remission of fine and reprieve, and the President's ultimate decision to grant or deny Executive clemency, is wholly discretionary. Department of Justice officials involved in discharging this function act solely as confidential advisors to the President in the exercise of the pardon power, and not in fulfillment of any statutory mandate to conduct the kind of proceedings contemplated in the interdependent provisions of § 201.

Additionally, the language of § 201 is ambiguous in at least two respects. Section 201(a) directs the review of "all cases in which United States citizens and permanent aliens of Japanese ancestry were convicted of violations of laws of the United States, including convictions for violations of military orders, . . . during the evacuation, relocation and internment." First, the class of individuals whose cases are to be reviewed is vaguely defined. The present wording of § 201(a) could be interpreted to require the review of not only the cases of those living but also the cases of those who are deceased. It has been a long established practice not to grant posthumous pardons. The legal basis of the practice is in large part the concept that a pardon, like a deed, must be accepted by the person to whom it is directed. Acceptance, of course, is impossible when the recipient is deceased. See, United States v. Wilson, 7 Pet. 160 (1833); Burdick v. United States, 236 U.S. 79 (1915); Meldrim v. United States, 7 Ct. Cl. 595 (1871); Sierra v. United States, 9 Ct. Cl. 224 (1873); 11 Op. A.G. 35 (1864).

Second, provision for the review of "all cases" involving violations of "laws of the United States . . . [and] military orders" is too broad. This language may be interpreted to require the review of both felony and misdemeanor offenses, as well as require the review of any crime committed during the evacuation, relocation and internment period, such as murder, extortion, kidnapping, theft, counterfeiting and other offenses which may have been committed on a government reservation by members of the class.

3. Section 202 would require agencies to review with liberality applications for restitution of positions, status or entitlements, giving full consideration "to the historical findings" of the Commission and the findings in the Act. We see no need for this provision, are uncertain as to how it could fairly be applied in practice at this late date, and suggest that it could lead to extreme difficulties in administration with resultant litigation.

4. Section 203 would establish a Civil Liberties Public Education Fund in the amount of $1.5 billion to be available for disbursement pursuant to §§ 204 and 205.

Section 204 provides for the award of $20,000 to every living person of Japanese ancestry who was deprived of liberty or property as the result of the wartime programs. Non-residents apparently would also be entitled to the benefits of this section. Since, according to the recommendations of the Commission, approximately 60,000 persons would benefit from those awards, about $1.2 billion would be expended on this program.

Section 205 would establish a Board of Directors of the Fund provided for in § 204. The Board would disburse the remaining $300 million or more of the Fund for the purposes enumerated in subsection (b) of § 205, including projects "for the general welfare of the ethnic Japanese community in the United States."

The Department opposes these provisions for paying additional reparations to individuals where Congress has already enacted a comprehensive statutory scheme which provided a reasonable and balanced contemporaneous remedy to affected individuals. By enacting the 1948 American-Japanese Claims Act, Congress recognized long ago that many loyal Americans of Japanese descent were injured by the wartime relocation and internment program. Although the Commission's report challenges the amount of compensation chosen by Congress as inadequate, Congress has spoken after considerable debate, and there is no good reason to question that settlement now three-and-one-half decades later.

The American-Japanese Claims Act did not include every item of damages that was or could have been suggested. It did, however, address the hardships visited upon persons of Japanese ancestry in a comprehensive, considered manner, taking into account individual needs and losses. This effort to correct injustice to individuals was in keeping with our nation's best tradition of individual rather than collective response and was more contemporaneous with the injuries to the claimants than would be any payments at this late date.

Moreover, in 1956, Congress considered legislation that directly called into question the adequacy of the claims settlements provided in the 1948 Act. The bill as introduced would have liberalized the relief provisions of the Act by granting expanded compensation for certain losses. Congress rejected this proposal because it "would substantially reopen the entire project." H.R. Rep. 1809, 84th Cong., 2d Sess., 9 (1956). Thus, with the hardships and deprivations of the

internees still relatively contemporaneous, a later Congress adjudged the American-Japanese Claims Act to be fundamentally sound. Nothing has occurred since Congress last considered the matter to warrant a supplemental payment to internees. The results of the settlement process under the Act, long since completed, deserve to be accepted as a fair resolution of the claims involved.

The bill's restitution provisions would also impose heavy administrative burdens on the Attorney General. The bill would confer on the Attorney General responsibility for investigating, finding and paying eligible recipients. The Attorney General is specifically prohibited even from requiring eligible persons to make application for these payments. This duty could require the Department to commit a considerable amount of manpower and resources to the search for eligible recipients. Yet, the bill would provide no funding for the location or identification of eligible recipients and would expressly prohibit the Attorney General from recovering expenses incurred in carrying out this responsibility from the Trust Fund set up to pay eligible recipients.

We also oppose the concept of a special fund incorporated in § 205. As noted earlier, we do not believe it is the proper function of our government to adopt an "official" version of these historical events. Similarly, we oppose spending hundreds of millions of dollars to "educate" the American people to accept this official interpretation of our history.

5. We also oppose the breadth of the definitions of eligible individuals set forth at § 206 of the bill.

a. The term "living" ~~should be determined with more~~ lacks precision. It ~~should be made~~ is not clear whether it is intended to refer to the time of the enactment of the legislation, the time when application for a benefit is made, or to the time when payment of a benefit is made.

b. The definition would cover "any living individual" who had been subject to the exclusion, relocation, or detention program, without any express exclusion of persons residing outside the United States. See § 206(2). The all-inclusiveness of the term "eligible individual" overlooks the important factor that at least several hundred of the detainees were fanatical pro-Japanese, had terrorized their fellow detainees loyal to the United States, and voluntarily sought repatriation to Japan after the end of the war. See, Acheson v. Murakami, 176 F.2d 953, 958 (9th Cir. 1949); McGrath v. Abo, 186 F.2d 766, 771-72 (9th Cir.), cert. denied, 342 U.S. 832 (1951); and in particular Findings of Fact 18, 20, 22, 25, 27, 29, 35, 39, 40, 44, 45, 46 of the United States District Court for the Southern

In addition to the highly objectionable result of this provision,

District of California in Murakami v. Acheson, attached to, and made a part of the court of appeals' decision in that case. It would be unfair to the United States and to the loyal persons of Japanese descent ~~if the benefits of this legislation were made available to~~ persons who were disloyal to the United States.

to reward

6. We turn now to Title III of H.R. 442, entitled "Aleutian and Pribilof Islands Restitution." In this connection the Commission observed that "[t]he Aleut evacuation and the removal of persons of Japanese ancestry from the West Coast during the same period were separate events -- neither caused nor influenced the other. . . . The evacuation of the Aleuts was a reasonable precaution taken to ensure their safety." Personal Justice Denied, at 318. The focus of the Commission's report was upon its conclusion that "the evacuation of the Aleuts was not planned in a timely or thoughtful manner," leading to hardships upon the persons exposed to the conditions flowing from their evacuation from the war zone.

We analyze below the specific provisions which H.R. 442 would enact to benefit Aleuts. Fundamentally, however, we do not believe that wartime hardships of persons properly removed from a war zone provide any factual predicate for consideration of especial, favorable treatment for this group as opposed to other individuals whose lives were disrupted and who suffered hardship or death during World War II. Many activities undertaken by our government during World War II could be criticized, with hindsight, as untimely or poorly planned. We do not believe that such criticism can appropriately form the basis for special compensation.

7. Turning to the specific provisions of Title III of the bill, we have these comments.

a. Section 309(1) would provide for an "Administrator" who would administer certain expenditures made by the Secretary of the Treasury from the Aleutian and Pribilof Islands Restitution Fund established by § 302(a). Section 304(a) would designate as "Administrator" the "Association," defined in § 302(4) as "the Aleutian/Pribilof Islands Association, a non-profit regional corporation for the benefit of the Aleut people organized under the laws of the State of Alaska. (We do not know whether the Aleutian/Pribilof Islands Association would have to be incorporated, or whether it is already in existence; we are likewise not informed whether it is or would be a not-for-profit regional organization under the laws of Alaska Native Claims Settlement Act of 1971, 85 Stat. 691, as amended, 43 U.S.C. § 1606(d).)

The designation in a statute of a person or corporation to perform statutory functions necessarily raises the question whether the designee is charged with functions which may be performed only by an officer of the United States. If that is the case, the person or the governing body of the corporation must be appointed in the manner provided for in the Appointments Clause of the Constitution, i.e., by the President by and with the advice and consent of the Senate, or, where authorized by the statute, by the President alone, or by the courts or the heads of departments. Art. II, § 2, cl. 2. Congress cannot appoint officers of the United States.

Whether a person is an officer of the United States in the constitutional sense depends upon his statutory duties. A person who performs merely advisory functions, and who possesses no enforcement authority or power to bind the government, is generally not considered to be an officer within the meaning of the constitutional provisions cited above. 24 Op. A.G. 12 (1902); 26 Op. A.G. 247 (1907); H.R. Rep. No. 2205, 55th Cong. 3d Sess. 48-54 (1899). However, a person who performs significant governmental duties pursuant to the laws of the United States is an officer in the constitutional sense, and therefore must be appointed pursuant to Article II, § 2, cl. 2 of the Constitution. Buckley v. Valeo, 424 U.S. 1, 126, 141 (1976).

We have examined the statutory duties of the Administrator under section 305 of the bill in order to determine whether his functions will be merely advisory or whether he will be involved in the actual administration of the Act. According to § 305(a), the Administrator would make restitution as provided in that section for certain Aleutian losses sustained in World War II, and take such other action as required by Title III of the bill. These duties would include the establishment of a trust of $5 million for the benefit of the affected Aleutian communities and the appointment of not more than seven trustees to maintain and operate that trust (§ 305(b)(1)); the regulation of the manner in which the trust to be administered (§ 305(b)(3)); the rebuilding, restoration, or replacement of damaged or destroyed churches and church property (§ 305(c)); and assistance to the Secretary of the Treasury in identifying and locating Aleuts entitled to receive payments under § 306 (§ 306(a)(3)). The Administrator, thus, would not be a mere conduit of funds but would be charged with the performance of a significant amount of administrative responsibilities under a federal statute. The Constitution ~~[therefore]~~ requires either that ~~he~~ the Administrator be appointed in accordance with Article II, § 2, cl. 2, or that ~~the bill be amended so as to~~ relieve ~~him~~ of any duties directly imposed ~~upon~~ by a federal statute.

the Administrator be

Thus, we believe that this provision raises a major constitutional concern.

b. Section 305(c), dealing with the restoration of church property, also raises some constitutional concern. This subsection would authorize the Administrator "to rebuild, restore or replace churches and church property damaged or destroyed in affected Aleut villages during World War II." The Administrator would receive $100,000 from the Secretary of the Treasury to make an inventory and assessment of all churches and church property damaged or destroyed in the affected Aleut villages during World War II. Within one year after the enactment of this legislation the Administrator would be required to submit the inventory and assessment "together with specific recommendations and detailed plans for reconstruction, restoration and replacement work to be performed" to a review panel comprised of the Secretary of Housing and Urban Development, the Chairman of the National Endowment for the Arts, and the Administrator of GSA. If the Administrator's plans and recommendations are not disapproved by the review panel within sixty days, the Administrator would implement them as soon as possible. If the differences between the Administrator and the review panel should be irreconcilable, the Secretary of the Treasury would submit the matter to Congress for approval or disapproval by joint resolution. Section 310(a)(2) would authorize the appropriation of $1,399,000 to carry out the purposes of the church restoration program.

As explained above, the compensation for the destroyed or damaged churches would not be turned over directly to the affected Aleut villages, but to the Administrator. The Administrator would be charged with the statutory duties of making an inventory and assessment "together with specific recommendations and detailed plans for reconstruction, restoration and replacement work to be performed"; of submitting the inventory, assessment, and recommendation to a review panel consisting of three federal officers; and of trying to reconcile any differences between himself and the review panel, irreconcilable differences between the Administrator and the review panel to be resolved by Congress. The effect of this procedure would be that the details of restoring or rebuilding the churches would be determined by the Administrator (who, as the result of his statutory functions would have to be an officer of the United States), and reviewed by the Secretary of Housing and Urban Development, the Chairman of the National Endowment for the Arts, the Administrator of GSA, and possibly Congress. This governmental involvement in the manner in which the funds allocated for church repair or reconstruction are to be spent would raise First Amendment concerns. Meek v. Pittenger, 421 U.S. 349, 370 (1975); Committee for Public Education v. Regan, 444 U.S. 646, 659-60 (1980).

For all of the foregoing reasons, the Department of Justice recommends against enactment of this legislation. The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

John R. Bolton
Assistant Attorney General

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.

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THE WHITE HOUSE

WASHINGTON

April 3, 1986

Dear Mrs. Yamamoto:

I enjoyed meeting you in California and was glad we had an opportunity to talk. Thank you very much for your continued support of Majority '86. As you mentioned, it is critical for our party and our country that President Reagan is given the working majority he needs in the Senate.

I appreciate the information you gave me on H.R. 442. I have spoken with Jim Miller, Director, Office of Management and Budget about this subject and made him aware of your concerns.

We will be researching the situation further in the days ahead and I will monitor any developments with your viewpoint in mind.

Thanks again for bringing this matter to my attention. Please keep in touch and let me know whenever I can be of further assistance.

Best Wishes,

Mitch Daniels

Mitchell E. Daniels, Jr.
Assistant to the President
for Political and Intergovernmental Affairs

Mrs. Toshi Yamamoto
253 South Gerhart Avenue
Los Angeles, California 90022