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100TH CONGRESS
1ST SESSION

H. R. 1631

To accept the findings and implement the recommendations of the Commission on Wartime and Internment of Civilians with respect to the Aleut people.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 1987

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To accept the findings and implement the recommendations of the Commission on Wartime and Internment of Civilians with respect to the Aleut people.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Aleutian and
5 Pribilof Islands Restitution Act".

6 DECLARATION OF POLICY

7 SEC. 2. (a) FINDINGS.—The Congress finds and de-
8 clares that—

9 (1) In 1980 the Commission on Wartime Reloca-
10 tion and Internment of Civilians was established by

1 Act of Congress and was directed to review, among
2 other things, certain United States military directives
3 requiring the relocation and, in some cases, the deten-
4 tion in temporary camps of Aleut civilian residents of
5 the Aleutian and Pribilof Islands during World War II.
6 (2) The Commission submitted detailed reports to
7 Congress in February and June 1983, containing find-
8 ings of fact and recommendations for compensation of
9 Aleuts for certain wartime losses.
10 (3) As documented in the Commission's reports,
11 the Aleut civilian residents of the Pribilof Islands and
12 the Aleutian Islands west of Unimak Island were relo-
13 cated during World War II to temporary camps in iso-
14 lated regions of southeastern Alaska where they re-
15 mained, under United States control and in the care of
16 the United States, until long after any potential danger
17 to their home villages had passed.
18 (4) The United States failed to provide reasonable
19 care for the Aleuts, and this resulted in widespread ill-
20 ness, disease, and death among the residents of the
21 camps; and the United States further failed to protect
22 Aleut personal and community property while such
23 property was in its possession or under its control.
24 (5) The United States has not compensated the
25 Aleuts adequately for the conversion or destruction of

1 personal property and the conversion or destruction of
2 community property caused by the United States mili-
3 tary occupation of Aleut villages during World War II.
4 (6) The United States has not removed certain
5 abandoned military equipment and structures from in-
6 habited Aleutian Islands following World War II, thus
7 creating conditions which constitute potential hazards
8 to the health and welfare of the residents of the
9 islands.
10 (7) The United States has not rehabilitated Attu
11 village, thus precluding the development of Attu Island
12 for the benefit of the Aleut people and impairing the
13 preservation of traditional Aleut property on the island.
14 (8) There is no remedy for injustices suffered by
15 the Aleuts during World War II except an Act of Con-
16 gress providing appropriate compensation for those
17 losses which are attributable to the conduct of United
18 States forces and other officials and employees of the
19 United States.
20 (b) PURPOSE.—It is therefore declared to be the pur-
21 pose of this Act, having considered the Commission's report
22 and other factors, to make restitution to Aleut residents of
23 the Pribilof Islands and Aleutian Islands west of Unimak
24 Island, in settlement of United States obligations in equity
25 and at law, for—

1 (1) injustices suffered and unreasonable hardships
2 endured while under United States control during
3 World War II;
4 (2) personal property taken or destroyed by
5 United States forces during World War II;
6 (3) community property, including community
7 church property, looted, vandalized, or destroyed by
8 United States forces during World War II; and
9 (4) traditional village lands on Attu Island not re-
10 habilitated after World War II for Aleut occupation or
11 other productive use.

12 DEFINITIONS

13 SEC. 3. As used in this Act, the term—
14 (1) "Administrator" means the person designated
15 under the terms of this Act to administer certain ex-
16 penditures made by the Secretary from the Aleutian
17 and Pribilof Islands Restitution Fund;
18 (2) "affected Aleut villages" means those Aleut
19 villages in Alaska whose residents were evacuated by
20 United States forces during World War II, including
21 Akutan, Atka, Nikolski, Saint George, Saint Paul, and
22 Unalaska; and the Aleut village of Attu, Alaska, which
23 was not rehabilitated by the United States for Aleut
24 residence or other use after World War II;
25 (3) "Aleutian Housing Authority" means the non-
26 profit Regional Native Housing Authority established

1 for the Aleut region pursuant to AS 18.55.995 et seq.
2 of the laws of the State of Alaska;
3 (4) "Association" means the Aleutian/Pribilof Is-
4 lands Association, a nonprofit regional corporation es-
5 tablished for the benefit of the Aleut people and orga-
6 nized under the laws of the State of Alaska;
7 (5) "Corporation" means the Aleut Corporation, a
8 for-profit regional corporation for the Aleut region or-
9 ganized under the laws of the State of Alaska and es-
10 tablished pursuant to section 7 of the Alaska Native
11 Claims Settlement Act (Public Law 92–203);
12 (6) "eligible Aleut" means any Aleut living on the
13 date of enactment of this Act who was a resident of
14 Attu Island on June 7, 1942, or any Aleut living on
15 the date of enactment of this Act who, as a civilian,
16 was relocated by authority of the United States from
17 his home village on the Pribilof Islands or the Aleutian
18 Islands west of Unimak Island to an internment camp,
19 or other temporary facility or location, during World
20 War II; and
21 (7) "Secretary" means the Secretary of the
22 Treasury.
23 ALEUTIAN AND PRIBILOF ISLANDS RESTITUTION FUND
24 SEC. 4. (a) ESTABLISHMENT.—There is established in
25 the Treasury of the United States a Fund to be known as the
26 Aleutian and Pribilof Islands Restitution Fund (herein after

1 referred to as the "Fund"). The Fund shall consist of
2 amounts appropriated to it, as authorized by sections 7 and 8
3 of this Act.

4 (b) REPORT.—It shall be the duty of the Secretary to
5 hold the Fund, and to report to the Congress each year on
6 the financial condition and the results of operations of such
7 fund during the preceding fiscal year and on its expected con-
8 dition and operations during the next fiscal year. Such report
9 shall be printed as a House document of the session of Con-
10 gress to which the report is made.

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

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

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

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

23 (e) INTEREST ON CERTAIN PROCEEDS.—The interest
24 on, and the proceeds from the sale or redemption of, any

1 obligations held in the Fund shall be credited to and form a
2 part of the Fund.

3 (f) TERMINATION.—The Secretary shall terminate the
4 Fund six years after the date of enactment of this Act, or one
5 year after the completion of all restoration work pursuant to
6 section 7(c) of this Act, whichever occurs later. On the date
7 the Fund is terminated, all investments shall be liquidated by
8 the Secretary and receipts thereof deposited in the Fund and
9 all funds remaining in the Fund shall be deposited in the
10 miscellaneous receipts account in the Treasury.

11 EXPENDITURES AND AUDIT

12 SEC. 5. (a) EXPENDITURES.—As provided by appro-
13 priation Acts, the Secretary is authorized and directed to pay
14 to the Administrator from the principal, interest and earnings
15 of the Fund, such sums as are necessary to carry out the
16 duties of the Administrator under this Act.

17 (b) AUDIT.—The activities of the Administrator under
18 this Act may be audited by the General Accounting Office
19 under such rules and regulations as may be prescribed by the
20 Comptroller General of the United States. The representa-
21 tives of the General Accounting Office shall have access to
22 all books, accounts, records, reports, and files and all other
23 papers, things, or property belonging to or in use by the Ad-
24 ministrator, pertaining to such activities and necessary to fa-
25 cilitate the audit.

1 ADMINISTRATION OF CERTAIN FUND EXPENDITURES

2 SEC. 6. (a) DESIGNATION OF ADMINISTRATOR.—The
3 association is hereby designated as Administrator, subject to
4 the terms and conditions of this Act, of certain specified ex-
5 penditures made by the Secretary from the Fund. As soon as
6 practicable after the date of enactment of this Act, the Secre-
7 tary shall offer to undertake negotiations with the Associa-
8 tion, leading to the execution of a binding agreement with the
9 Association setting forth its duties as Administrator under the
10 terms of this Act. The Secretary shall make a good-faith
11 effort to conclude such negotiations and execute such agree-
12 ment within sixty days after the date of enactment of this
13 Act. Such agreement shall be approved by a majority of the
14 Board of Directors of the Association, and shall include, but
15 need not be limited to—

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

19 (2) a requirement that the accounts of the Asso-
20 ciation, as they relate to its capacity as Administrator,
21 shall be audited annually in accordance with generally
22 accepted auditing standards by independent certified
23 public accountants or independent licensed public ac-
24 countants; and a further requirement that each such
25 audit report shall be transmitted to the Secretary and

1 to the Committees on the Judiciary of the Senate and
2 House of Representatives; and
3 (3) a provision establishing the conditions under
4 which the Secretary, upon thirty-days notice, may ter-
5 minate the Association's designation as Administrator
6 for breach of fiduciary duty, failure to comply with the
7 provisions of this Act as they relate to the duties of the
8 Administrator, or any other significant failure to meet
9 its responsibilities as Administrator under this Act.
10 (b) SUBMISSION TO CONGRESS.—The Secretary shall
11 submit the agreement described in subsection (a) to Congress
12 within fifteen days after approval by the parties thereto. If
13 the Secretary and the Association fail to reach agreement
14 within the period provided in subsection (a), the Secretary
15 shall report such failure to Congress within seventy-five days
16 after the date of enactment of this Act, together with the
17 reasons therefor.
18 (c) LIMITATION ON EXPENDITURES.—No expenditure
19 may be made by the Secretary to the Administrator from the
20 Fund until sixty days after submission to Congress of the
21 agreement described in subsection (a).
22 DUTIES OF THE ADMINISTRATOR
23 SEC. 7. (a) IN GENERAL.—Out of payments from the
24 Fund made to the Administrator by the Secretary, the Ad-
25 ministrator shall make restitution, as provided by this section,

1 for certain Aleut losses sustained in World War II, and shall
2 take such other action as may be required by this Act.
3 (b) TRUST ESTABLISHED.—(1) The Administrator shall
4 establish a trust of $5,000,000 for the benefit of affected
5 Aleut communities, and for other purposes. Such trust shall
6 be established pursuant to the laws of the State of Alaska,
7 and shall be maintained and operated by not more than seven
8 trustees, as designated by the Administrator. Each affected
9 Aleut village, including the survivors of the Aleut village of
10 Attu, may submit to the Administrator a list of three pro-
11 spective trustees. In designating trustees pursuant to this
12 subsection, the Administrator shall designate one trustee
13 from each such list submitted.
14 (2) The trustee shall maintain and operate the trust as
15 eight independent and separate accounts, including—
16 (A) one account for the independent benefit of the
17 wartime Aleut residents of Attu and their descendants;
18 (B) six accounts, each one of which shall be for
19 the independent benefit of one of the six surviving af-
20 fected Aleut villages of Atka, Akutan, Nikolski, Saint
21 George, Saint Paul, and Unalaska; and
22 (C) one account for the independent benefit of
23 those Aleuts who, as determined by the trustees, are
24 deserving but will not benefit directly from the ac-

1 counts established pursuant to subparagraphs (A) and
2 (B).
3 The trustees shall credit to the account described in subpara-
4 graph (C), an amount equal to 5 per centum of the principal
5 amount credited by the Administrator to the trust. The re-
6 maining principal amount shall be divided among the ac-
7 counts described in subparagraphs (A) and (B), in proportion
8 to the June 1, 1942 Aleut civilian population of the village
9 for which each such account is established, as compared to
10 the total civilian Aleut population on such date of all affected
11 Aleut villages.
12 (3) The trust established by this subsection shall be ad-
13 ministered in a manner that is consistent with the laws of the
14 State of Alaska, and as prescribed by the Administrator, after
15 consultation with representative eligible Aleuts, the residents
16 of affected Aleut villages, and the Secretary. The trustees
17 may use the accrued interest and other earnings of the trust
18 for—
19 (A) the benefit of elderly, disabled, or seriously ill
20 persons on the basis of special need;
21 (B) the benefit of students in need of scholarship
22 assistance;
23 (C) the preservation of Aleut cultural heritage and
24 historical records;

1 (D) the improvement of community centers in af-
2 fected Aleut villages; and
3 (E) other purposes to improve the condition of
4 Aleut life, as determined by the trustees.
5 (4) There are authorized to be appropriated $5,000,000
6 to the Fund to carry out the purposes of this subsection.
7 (c) RESTORATION OF CHURCH PROPERTY.—(1) The
8 Administrator is authorized to rebuild, restore or replace
9 churches and church property damaged or destroyed in af-
10 fected Aleut villages during World War II. Within fifteen
11 days after the date that expenditures from the Fund are au-
12 thorized by this Act, the Secretary shall pay $100,000 to the
13 Administrator for the purpose of making an inventory and
14 assessment, as complete as may be possible under the cir-
15 cumstances, of all churches and church property damaged or
16 destroyed in affected Aleut villages during World War II. In
17 making such inventory and assessment, the Administrator
18 shall consult with the trustees of the trust established by sec-
19 tion 7(b) of this Act and shall take into consideration, among
20 other things, the present replacement value of such damaged
21 or destroyed structures, furnishings, and artifacts. Within one
22 year after the date of enactment of this Act, the Administra-
23 tor shall submit such inventory and assessment, together
24 with specific recommendations and detailed plans for recon-

1 struction, restoration and replacement work to be performed,
2 to a review panel composed of—
3 (A) the Secretary of Housing and Urban Develop-
4 ment;
5 (B) the Chairman of the National Endowment for
6 the Arts; and
7 (C) the Administrator of the General Services Ad-
8 ministration.
9 (2) If the Administrator's plans and recommendations or
10 any portion of them are not disapproved by the review panel
11 within sixty days, such plans and recommendations as are not
12 disapproved shall be implemented as soon as practicable by
13 the Administrator. If any portion of the Administrator's plans
14 and recommendations is disapproved, such portion shall be
15 revised and resubmitted to the review panel as soon as prac-
16 ticable after notice of disapproval, and the reasons therefor,
17 have been received by the Administrator. In any case of
18 irreconcilable differences between the Administrator and the
19 review panel with respect to any specific portion of the plans
20 and recommendations for work to be performed under this
21 subsection, the Secretary shall submit such specific portion of
22 such plans and recommendations to the Congress for approv-
23 al or disapproval by joint resolution.
24 (3) In contracting for any necessary construction work
25 to be performed on churches or church property under this

1 subsection, the Administrator shall give preference to the
2 Aleutian Housing Authority as general contractor. For pur-
3 poses of this subsection, "churches or church property" shall
4 be deemed to be "public facilities" as described in AS
5 18.55.996(b) of the laws of the State of Alaska.

6 (4) There are authorized to be appropriated to the Fund
7 $1,399,000 to carry out the purposes of this subsection.

8 (d) ADMINISTRATIVE AND LEGAL EXPENSES.—The
9 Administrator is authorized to incur reasonable and necessary
10 administrative and legal expenses in carrying out its respon-
11 sibilities under this Act. There are authorized to be appropri-
12 ated to the Fund such sums as may be necessary for the
13 Secretary to compensate the Administrator, not less often
14 than quarterly, for all such reasonable and necessary admin-
15 strative and legal expenses.

16 INDIVIDUAL COMPENSATION OF ELIGIBLE ALEUTS

17 SEC. 8. (a) PAYMENTS TO ELIGIBLE ALEUTS.—(1) In
18 accordance with the provisions of this section, the Secretary
19 shall make per capita payments out of the Fund of eligible
20 Aleuts for uncompensated personal property losses, and for
21 other purposes. The Secretary shall pay to each eligible
22 Aleut the sum of $12,000. All payments to eligible Aleuts
23 shall be made within one year after the date of enactment of
24 this Act.

1 (2) The Secretary may request, and upon such request,
2 the Attorney General shall provide, reasonable assistance in
3 locating eligible Aleuts residing outside the affected Aleut
4 villages. In providing such assistance, the Attorney General
5 may use available facilities and resources of the International
6 Committee of the Red Cross and other organizations.
7 (3) The Administrator shall assist the Secretary in iden-
8 tifying and locating eligible Aleuts pursuant to this section.
9 (4) Any payment made under this subsection shall not
10 be considered income or receipts for purposes of any Federal
11 taxes or for purposes of determining the eligibility for or the
12 amount of any benefits or assistance provided under any Fed-
13 eral program or under any State or local program financed in
14 whole or part with Federal funds.
15 (b) AUTHORIZATION.—There are authorized to be ap-
16 propriated to the Fund such sums as are necessary to carry
17 out the purposes of this section.
18 SUPPLEMENTAL CLEANUP OF WARTIME DEBRIS
19 SEC. 9. (a) The Congress finds that the Department of
20 Defense has implemented an ongoing program for the remov-
21 al and disposal of live ammunition, obsolete buildings, aban-
22 doned machinery, and other hazardous debris remaining in
23 populated areas of the Lower Alaska Peninsula and the Aleu-
24 tian Islands as a result of military activities during World
25 War II. Such program is being accomplished pursuant to
26 Acts making Appropriations for the Department of Defense,

1 in accordance with congressional statements of purpose in
2 establishing and funding the Environmental Restoration De-
3 fense Account. The authority contained in this section shall
4 be supplemental to the authority of the Secretary of Defense
5 in administering the Environmental Restoration Defense Ac-
6 count, and shall be exercised only in the event that such ac-
7 count is inadequate to eliminate hazardous military debris
8 from populated areas of the Lower Alaska Peninsula and the
9 Aleutian Islands.

10 (b) CLEANUP PROGRAM.—Subject to the terms and
11 conditions of subsection (a), the Secretary of the Army,
12 acting through the Chief of Engineers, is authorized and di-
13 rected to plan and implement a program, as the Chief of En-
14 gineers may deem feasible and appropriate, for the removal
15 and disposal of live ammunition, obsolete buildings, aban-
16 doned machinery, and other hazardous debris remaining in
17 populated areas of the Lower Alaska Peninsula and the Aleu-
18 tian Islands as a result of military construction and other
19 activities during World War II. The Congress finds that such
20 a program is essential for the further development of safe,
21 sanitary housing conditions, public facilities, and public utili-
22 ties within the region.

23 (c) ADMINISTRATION OF PROGRAM.—The debris re-
24 moval program authorized under subsection (a) shall be car-
25 ried out substantially in accordance with the recommenda-

1 tions for a "minimum cleanup," contained entitled "Debris
2 Removal and Cleanup Study: Aleutian Islands and Lower
3 Alaska Peninsula, Alaska," dated October 1976. In carrying
4 out the program required by this section, the Chief of Engi-
5 neers shall consult with the trustees of the trust established
6 by section 7(b) of this Act, and shall give preference to the
7 Aleutian Housing Authority as general contractor.

8 (d) AUTHORIZATION.—There are authorized to be ap-
9 propriated $15,000,000 to carry out the purposes of this
10 section.

11 ATTU ISLAND RESTITUTION PROGRAM

12 SEC. 10. (a) In accordance with subsection (3)(c) of the
13 Wilderness Act (78 Stat. 892), the public lands on Attu
14 Island, Alaska within the National Wildlife Refuge System
15 are designed as wilderness by section 702(1) of the Alaska
16 National Interest Lands Conservation Act (94 Stat. 2417).
17 In order to make restriction for the loss of traditional Aleut
18 lands and village properties on Attu Island, while preserving
19 the present designation of Attu Island lands as part of the
20 National Wilderness Preservation System, compensation to
21 the Aleut people in lieu of Attu Island conveyance shall be
22 provided in accordance with this section.

23 (b) The Secretary of the Treasury shall establish an ac-
24 count designed the "Aleut Corporation Property Account",
25 which shall be available for the purpose of bidding on Federal
26 surplus property. The initial balance of the account shall be

1 $17,868,500, which reflects an entitlement of $500 for each
2 of the 35,737 acres within that part of eastern Attu Island
3 traditionally occupied and used by the Aleut people for sub-
4 sistence hunting and fishing. The balance of the account shall
5 be adjusted as necessary to reflect successful bids under sub-
6 section (c) or other conveyances of property under subsec-
7 tions (f) and (g).

8 (c) The Corporation may, by using the account estab-
9 lished in subsection (b) bid, as any other bidder for surplus
10 property, wherever located, in accordance with the require-
11 ments of section 484 of title 40, United States Code. No
12 preference right of any type will be offered to the Corpora-
13 tion for bidding for General Services Administration surplus
14 property under this subsection and no additional advertising
15 shall be required other than that prescribed in section
16 484(e)(2) of title 40, United States Code.

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

22 (e) The basis for computing gain or loss on subsequent
23 sale or other disposition of property conveyed to the Corpora-
24 tion under this section for purposes of any Federal, State, or
25 local tax imposed on or measured by income, shall be the fair

1 value of such property at the time of receipt. The amount
2 charged against the Treasury account established under sub-
3 section (b) shall be prima facie evidence of such fair value.
4 (f) The Administrator of General Services may, at the
5 discretion of the Administrator, tender to the Secretary of the
6 Treasury any surplus property otherwise to be disposed of
7 pursuant to section 484(e)(3) of title 40, United States Code,
8 to be offered to the Corporation for a period of ninety days so
9 as to aid in the fulfillment of the Secretary of the Treasury's
10 obligations for restitution to the Aleut people under this sec-
11 tion: *Provided,* That prior to any disposition under this sub-
12 section or subsection (g), the Administrator shall notify the
13 governing body of the locality where such property is located
14 and any appropriate State agency, and no such disposition
15 shall be made if such governing body or State agency within
16 ninety days of such notification formally advises the Adminis-
17 trator that it objects to the proposed disposition.
18 (g)(1) Notwithstanding any provision of any other law or
19 any implementing regulation inconsistent with this subsec-
20 tion, concurrently with the commencement of screening of
21 any excess real property, wherever located, for utilization by
22 Federal agencies, the Administrator of General Services shall
23 notify the Corporation that such property may be available
24 for conveyance to the Corporation upon negotiated sale.
25 Within fifteen days of the date of receipt of such notice, the

1 Corporation may advise the Administrator that there is a ten-
2 tative need for the property to fulfill the obligations estab-
3 lished under this section. If the Administrator determines the
4 property should be disposed of by transfer to the Corporation,
5 the Administrator or other appropriate Federal official shall
6 promptly transfer such property.

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

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

19 (h) The Secretary of the Interior may convey to the
20 Corporation the traditional Aleut village site on Attu Island,
21 Alaska pursuant to the authority contained in section
22 1613(h)(1) of title 43, United States Code: *Provided*, That
23 following the date of enactment of this section, no site on
24 Attu Island, Alaska other than such traditional Aleut village

1 site shall be conveyed to the Corporation pursuant to such
2 section 1613(h)(1) of title 43, United States Code.

3 SEPARABILITY OF PROVISIONS

4 SEC. 11. If any provision of this Act, or the application
5 of such provision to any person or circumstances, shall be
6 held invalid, the remainder of this Act or the application of
7 such provision to persons or circumstances other than those
8 as to which it is held invalid, shall not be affected thereby.

O

100TH 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 6, 1987

Mr. FOLEY (for himself, Mr. COELHO, Mr. GEPHARDT, Mr. RODINO, Mr. FISH, Mr. CHENEY, Mr. MINETA, Mr. MATSUI, Mr. LOWRY of Washington, Mr. ACKERMAN, Mr. ASPIN, Mr. BEILENSON, Mr. BIAGGI, Mr. BONIOR of Michigan, Mr. BOSCO, Mrs. BOXER, Mr. BRUCE, Mr. BUSTAMANTE, Mr. AKAKA, Mr. BATES, Mr. BERMAN, Mr. BLAZ, Mr. BORSKI, Mr. BOUCHER, Mr. BROWN of California, Mr. CARR, Mr. CONYERS, Mr. CROCKETT, Mr. DIXON, Mr. DWYER of New Jersey, Mr. EDWARDS of California, Mr. FAUNTROY, Mr. FEIGHAN, Mr. CLAY, Mrs. COLLINS, Mr. COYNE, Mr. DELLUMS, Mr. DOWNEY of New York, Mr. DYMALLY, Mr. ESPY, Mr. FAZIO, Mr. FLORIO, Mr. FOGLIETTA, Mr. FORD of Tennessee, Mr. FUSTER, Mr. GARCIA, Mr. GEKAS, Mr. GILMAN, Mr. GRAY of Illinois, Mr. HAWKINS, Mr. HORTON, Mr. FRANK, Mr. GALLO, Mr. GEJDENSON, Mr. GRAY of Pennsylvania, Mr. HALL of Ohio, Mr. HAYES of Illinois, Mr. HOWARD, Mr. HOYER, Mr. HYDE, Mr. JEFFORDS, Mrs. KENNELLY, Mr. KLECZKA, Mr. KOSTMAYER, Mr. LEHMAN of California, Mr. LELAND, Mr. LEWIS of California, Mr. HUGHES, Mr. JACOBS, Mr. KASTENMEIER, Mr. KILDEE, Mr. KOLTER, Mr. LANTOS, Mr. LEHMAN of Florida, Mr. LEVINE of California, Mr. LEWIS of Georgia, Mr. MANTON, Mr. MARTINEZ, Mr. MAVROULES, Mr. MILLER of California, Mr. MOAKLEY, Mr. MORRISON of Connecticut, Mr. MURPHY, Mr. OWENS of New York, Mr. THOMAS A. LUKEN, Mr. MARKEY, Mr. MCHUGH, Mr. MOODY, Mr. MORRISON of Washington, Mr. ORTIZ, Mr. PANETTA, Mr. PASHAYAN, Mr. RANGEL, Mr. ROYBAL, Mr. SAVAGE, Mrs. SCHROEDER, Mr. SIKORSKI, Mr. SOLARZ, Mr. STARK, Mr. PORTER, Mr. RICHARDSON, Mr. ROE, Mr. SABO, Mr. SCHEUER, Mr. SCHUMER, Mr. SMITH of Florida, Mr. STAGGERS, Mr. STOKES, Mr. STUDDS, Mr. TORRES, Mr. TOWNS, Mr. VENTO, Mr. WAXMAN, Mr. WHEAT, Mr. WILSON, Mr. YATES, Mr. SUNIA, Mr. TORRICELLI, Mr. UDALL, Mr. WALGREN, Mr. WEISS, Mr. WILLIAMS, Mr. WOLPE, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on the Judiciary

★

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Civil Liberties Act of
5 1987".

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds that—
8 (1) the findings of the Commission on Wartime
9 Relocation and Internment of Civilians, established by
10 the Commission on Wartime Relocation and Intern-
11 ment of Civilians Act, describe the circumstances of
12 the evacuation, relocation, and internment of in excess
13 of 110,000 United States citizens and permanent resi-
14 dent aliens of Japanese ancestry and the treatment of
15 individuals of Aleut ancestry who were removed from
16 the Aleutian and the Pribilof Islands;
17 (2) the evacuation, relocation, and internment of
18 individuals of Japanese ancestry was carried out with-
19 out any documented acts of espionage or sabotage, or
20 other acts of disloyalty by any citizens or permanent
21 resident aliens of Japanese ancestry on the west coast;

1 (3) there was no adequate military or security
2 reason for the evacuation, relocation, and internment;
3 (4) the evacuation, relocation, and internment of
4 the individuals of Japanese ancestry was caused by
5 racial prejudice, war hysteria, and a failure of political
6 leadership;
7 (5) the excluded individuals of Japanese ancestry
8 suffered enormous damages and losses, both material
9 and intangible, and there were incalculable losses in
10 education and job training, all of which resulted in sig-
11 nificant human suffering for which full and appropriate
12 compensation has not been made;
13 (6) the basic civil liberties and constitutional rights
14 of those individuals of Japanese ancestry interned were
15 fundamentally violated by that evacuation, relocation,
16 and internment;
17 (7) as a result of wartime necessity, approximately
18 900 individuals of Aleut ancestry were evacuated from
19 their homes in the Pribilofs and from many islands of
20 the Aleutian chain;
21 (8) the housing, sanitation, and food for those
22 Aleuts evacuated were deplorable, medical care was
23 inadequate, and diseases were widespread;
24 (9) many houses and churches of the Aleuts were
25 vandalized by the members of the Armed Forces of the

1 United States, and religious icons and family treasures
2 were destroyed;
3 (10) the island of Attu was taken by the United
4 States for military purposes but was never returned to
5 its former residents;
6 (11) significant amounts of hazardous wartime
7 debris remain in the Aleutian Islands; and
8 (12) full and appropriate compensation has not
9 been made in the case of the Aleuts.
10 (b) PURPOSES.—The purposes of this Act are to—
11 (1) acknowledge the fundamental injustice of the
12 evacuation, relocation, and internment of United States
13 citizens and permanent resident aliens of Japanese
14 ancestry;
15 (2) apologize on behalf of the people of the United
16 States for the evacuation, relocation, and internment of
17 such citizens and permanent resident aliens;
18 (3) provide for a public education fund to finance
19 efforts to inform the public about the internment of
20 such individuals so as to prevent the reoccurrence of
21 any similar event;
22 (4) make restitution to those individuals of Japa-
23 nese ancestry who were interned;
24 (5) acknowledge the poor conditions in which the
25 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. STATEMENT OF THE CONGRESS.

The Congress recognizes that a grave injustice was done to both citizens and permanent 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 PERMANENT RESIDENT JAPANESE ALIENS

SEC. 201. CRIMINAL CONVICTIONS.

(a) REVIEW OF CONVICTIONS.—The Attorney General is requested to review any case in which an individual who, while a United States citizen or permanent resident alien of Japanese ancestry, was convicted of a violation of—

(1) Executive Order Numbered 9066, dated February 19, 1942,

(2) 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

(3) 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,

on account of the refusal by such individual, during the evacuation, relocation, and internment period, to accept treatment

1 which discriminated against the individual on the basis of the
2 individual's Japanese ancestry.

3 (b) RECOMMENDATIONS FOR PARDONS.—Based upon
4 any review under subsection (a), the Attorney General is re-
5 quested to recommend to the President for pardon consider-
6 ation those convictions which the Attorney General considers
7 appropriate.

8 (c) ACTION BY THE PRESIDENT.—In consideration of
9 the findings contained in this Act, the President is requested
10 to offer pardons to any individuals recommended by the At-
11 torney General under subsection (b).

12 **SEC. 202. CONSIDERATION OF COMMISSION FINDINGS.**

13 (a) REVIEW OF APPLICATIONS BY ELIGIBLE INDIVID-
14 UALS.—Each department and agency of the United States
15 Government shall review with liberality, giving full consider-
16 ation to the historical findings of the Commission and the
17 findings contained in this Act, any application by an eligible
18 individual for the restitution of any position, status, or entitle-
19 ment lost in whole or in part because of any discriminatory
20 act of the United States Government against such individual
21 which was based upon the individual's Japanese ancestry and
22 which occurred during the evacuation, relocation, and intern-
23 ment period.

24 (b) NO NEW AUTHORITY CREATED.—Subsection (a)
25 does not create new authority to grant restitution described

1 in that subsection, or establish new eligibility to apply for
2 such restitution.

3 **SEC. 203. TRUST FUND.**

4 (a) ESTABLISHMENT.—There is hereby established in
5 the Treasury of the United States the Civil Liberties Public
6 Education Fund, to be administered by the Secretary of the
7 Treasury.

8 (b) RESPONSIBILITIES OF THE SECRETARY OF THE
9 TREASURY.—

10 (1) INVESTMENT.—The Secretary of the Treasury
11 shall invest such portion of the Fund as is not, in the
12 judgment of the Secretary, required to meet current
13 withdrawals. Such investments may be made only in
14 interest-bearing obligations of the United States. For
15 such purpose, such obligations may be acquired—

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

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

19 (2) SALE OF OBLIGATIONS.—Any obligation ac-
20 quired by the Fund may be sold by the Secretary of
21 the Treasury at the market price.

22 (3) CREDITS TO FUND.—The interest on, and the
23 proceeds from the sale or redemption of, any obliga-
24 tions held in the Fund shall be credited to and form a
25 part of the Fund.

1 (c) USES OF THE FUND.—Amounts in the Fund shall be
2 available only for disbursement by the Attorney General
3 under section 204 and by the Board under section 205.
4 (d) TERMINATION.—The Fund shall terminate not later
5 than the earlier of the date on which an amount has been
6 expended from the Fund which is equal to the amount au-
7 thorized to be appropriated to the Fund by subsection (e), and
8 any income earned on such amount, or 10 years after the
9 date of the enactment of this Act. If all of the amounts in the
10 Fund have not been expended by the end of that 10-year
11 period, investments shall be liquidated and receipts thereof
12 deposited in the Fund and all funds remaining in the Fund
13 shall be deposited in the miscellaneous receipts account in the
14 Treasury.
15 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
16 authorized to be appropriated to the Fund $1,500,000,000.
17 Any amounts appropriated pursuant to this section are au-
18 thorized to remain available until expended, except that any
19 funds appropriated for payments by the Attorney General
20 under section 204 shall be used for such payments during the
21 fiscal year in which the funds are first made available.
22 **SEC. 204. RESTITUTION.**
23 (a) LOCATION AND PAYMENT OF ELIGIBLE INDIVID-
24 UALS.—

1 (1) IN GENERAL.—The Attorney General shall,
2 within 9 months after the date of the enactment of this
3 Act, identify and locate, without requiring any applica-
4 tion for payment and using records already in the pos-
5 session of the United States Government, each eligible
6 individual and shall pay out of the Fund to each eligi-
7 ble individual the sum of $20,000.

8 (2) REFUSAL TO ACCEPT PAYMENT.—If, after a
9 period of not more than 90 days beginning on the day
10 that an eligible individual receives written notification
11 that such individual is eligible for a payment under
12 paragraph (1), such individual refuses to accept any
13 payment under this section, such amount shall remain
14 in the Fund and no payment shall be made under this
15 section to such individual at any future date.

16 (b) ORDER OF PAYMENTS.—The Attorney General
17 shall endeavor to make payment to eligible individuals in the
18 order of date of birth (with the oldest receiving full payment
19 first), until all eligible individuals have received payment in
20 full.

21 (c) RESOURCES FOR LOCATING ELIGIBLE INDIVID-
22 UALS.—In attempting to locate any eligible individual, the
23 Attorney General may use any facility or resource of any
24 public or nonprofit organization or any other record, docu-

1 ment, or information that may be made available to the At-
2 torney General.

3 (d) ADMINISTRATIVE COSTS NOT PAID FROM THE
4 FUND.—No costs incurred by the Attorney General in carry-
5 ing out this section shall be paid from the Fund or set off
6 against, or otherwise deducted from, any payment under this
7 section to any eligible individual.

8 (e) TERMINATION OF DUTIES OF ATTORNEY GENER-
9 AL.—The duties of the Attorney General under this section
10 shall cease with the termination of the Fund.

11 (f) PAYMENT NOT TO AFFECT INCOME OR ELIGIBIL-
12 ITY FOR BENEFITS.—Amounts paid to an eligible individual
13 under this section shall not be included as income for pur-
14 poses of the internal revenue laws of the United States or for
15 purposes of determining eligibility to receive benefits de-
16 scribed in section 3803(c)(2)(C) of title 31, United States
17 Code.

18 **SEC. 205. BOARD OF DIRECTORS.**

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

23 (b) USES OF FUND.—The Board may make disburse-
24 ments from the Fund only—

1 (1) to sponsor research and public educational ac-
2 tivities so that the events surrounding the evacuation,
3 relocation, and internment of United States citizens
4 and permanent resident aliens of Japanese ancestry
5 will be remembered, and so that the causes and cir-
6 cumstances of this and similar events may be illuminat-
7 ed and understood;
8 (2) to fund research on the role of the Constitu-
9 tion in times of national stress;
10 (3) to prepare and distribute the hearings and
11 findings of the Commission to textbook publishers, edu-
12 cators, and libraries;
13 (4) for the general welfare of the ethnic Japanese
14 community in the United States, taking into consider-
15 ation the effect of the exclusion and detention on the
16 descendants of those individuals who were detained
17 during the evacuation, relocation, and internment
18 period (except that direct individual payments in com-
19 pensation shall not be made under this paragraph); and
20 (5) for reasonable administrative expenses of the
21 Board, including expenses incurred under subsections
22 (c)(3), (d), and (e).
23 (c) MEMBERSHIP.—
24 (1) APPOINTMENT.—The Board shall be com-
25 posed of 9 members appointed by the President, by and

1 with the advice and consent of the Senate, from indi-
2 viduals who are not officers or employees of the United
3 States Government.

4 (2) TERMS.—(A) Except as provided in subpara-
5 graphs (B) and (C), members shall be appointed for
6 terms of 3 years.

7 (B) Of the members first appointed—

8 (i) 5 shall be appointed for terms of 3 years;
9 and

10 (ii) 4 shall be appointed for terms of 2 years,
11 as designated by the President at the time of appoint-
12 ment.

13 (C) Any member appointed to fill a vacancy oc-
14 curring before the expiration of the term for which
15 such member's predecessor was appointed shall be ap-
16 pointed only for the remainder of such term. A member
17 may serve after the expiration of such member's term
18 until such member's successor has taken office. No in-
19 dividual may be appointed to more than 2 consecutive
20 terms.

21 (3) COMPENSATION.—Members of the Board shall
22 serve without pay, except members of the Board shall
23 be entitled to reimbursement for travel, subsistence,
24 and other necessary expenses incurred by them in car-
25 rying out the functions of the Board, in the same

1 manner as persons employed intermittently in the
2 United States Government are allowed expenses under
3 section 5703 of title 5, United States Code.

4 (4) QUORUM.—5 members of the Board shall con-
5 stitute a quorum but a lesser number may hold hear-
6 ings.

7 (5) CHAIR.—The Chair of the Board shall be
8 elected by the members of the Board.

9 (d) DIRECTOR AND STAFF PERSONNEL.—

10 (1) DIRECTOR.—The Board shall have a Director
11 who shall be appointed by the Board.

12 (2) ADDITIONAL STAFF.—The Board may appoint
13 and fix the pay of such additional staff as it may re-
14 quire.

15 (3) APPLICABILITY OF CIVIL SERVICE LAWS.—
16 The Director and the additional staff of the Board may
17 be appointed without regard to section 5311(b) of title
18 5, United States Code, and without regard to the pro-
19 visions of such title governing appointments in the
20 competitive service, and may be paid without regard to
21 the provisions of chapter 51 and subchapter III of
22 chapter 53 of such title relating to classification and
23 General Schedule pay rates, except that the compensa-
24 tion of any employee of the Board may not exceed a
25 rate equivalent to the minimum rate of basic pay pay-

able under GS–18 of the General Schedule under section 5332(a) of such title.

(e) ADMINISTRATIVE SUPPORT SERVICES.—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) GIFTS AND DONATIONS.—The Board may accept, use, and dispose of gifts or donations of services or property for purposes authorized under subsection (b).

(g) ANNUAL REPORTS.—Not later than 12 months after the first meeting of the Board and every 12 months thereafter, the Board shall transmit to the President and to each House of the Congress a report describing the activities of the Board.

(h) TERMINATION.—90 days after the termination of the Fund, the Board shall terminate and all obligations of the Board under this section shall cease.

SEC. 206. DEFINITIONS.

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, during the evacuation, relocation, and internment period—

1 (A) was a United States citizen or a perma-
2 nent resident alien; and
3 (B) was confined, held in custody, relocated,
4 or otherwise deprived of liberty or property as a
5 result of—
6 (i) Executive Order Numbered 9066,
7 dated February 19, 1942;
8 (ii) the Act entitled "An Act to provide
9 a penalty for violation of restrictions or
10 orders with respect to persons entering, re-
11 maining in, leaving, or committing any act in
12 military areas or zones", approved March
13 21, 1942 (56 Stat. 173); or
14 (iii) any other Executive order, Presi-
15 dential proclamation, law of the United
16 States, directive of the Armed Forces of the
17 United States, or other action made by or on
18 behalf of the United States or its agents,
19 representatives, officers, or employees re-
20 specting the exclusion, relocation, or deten-
21 tion of individuals solely on the basis of Jap-
22 anese ancestry;
23 (3) the term "permanent resident alien" means an
24 alien lawfully admitted into the United States for per-
25 manent residence;

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

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

(6) 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

SEC. 301. SHORT TITLE.

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

SEC. 302. ESTABLISHMENT.

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

(b) REPORTS TO CONGRESS.—The Secretary shall report to the Congress each year on the financial condition and the results of operations of the Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year.

(c) RESPONSIBILITIES OF THE SECRETARY.—

1 (1) INVESTMENT.—The Secretary shall invest
2 such portion of the Fund as is not, in the judgment of
3 the Secretary, required to meet current withdrawals.
4 Such investments may be made only in interest-bearing
5 obligations of the United States. For such purpose,
6 such obligations may be acquired—
7 (A) on original issue at the issue price, or
8 (B) by purchase of outstanding obligations at
9 the market price.
10 (2) SALE OF OBLIGATIONS.—Any obligation ac-
11 quired by the Fund may be sold by the Secretary at
12 the market price.
13 (3) CREDITS TO FUND.—The interest on, and the
14 proceeds from the sale or redemption of, any obliga-
15 tions held in the Fund shall be credited to and form a
16 part of the Fund.
17 (d) TERMINATION OF THE FUND.—The Fund shall ter-
18 minate 10 years after the date of the enactment of this Act,
19 or 1 year after the completion of all restoration work pursu-
20 ant to section 305(c), whichever occurs later. On the date the
21 Fund is terminated, all investments shall be liquidated by the
22 Secretary and receipts thereof deposited in the Fund and all
23 funds remaining in the Fund shall be deposited in the miscel-
24 laneous receipts account in the Treasury.

1 **SEC. 303. EXPENDITURES AND AUDIT.**

2 (a) IN GENERAL.—To the extent provided in appropria-
3 tion Acts, the Secretary shall pay to the Administrator from
4 the principal, interest, and earnings of the Fund, such sums
5 as are necessary to carry out the duties of the Administrator
6 under this title.

7 (b) AUDITS.—The activities of the Administrator under
8 this title may be audited by the General Accounting Office
9 under such regulations as the Comptroller General of the
10 United States may prescribe. The representatives of the Gen-
11 eral Accounting Office shall have access to all books, ac-
12 counts, records, reports, and files and all other papers,
13 things, or property belonging to or in use by the Administra-
14 tor, which pertain to such activities and are necessary to fa-
15 cilitate the audit.

16 **SEC. 304. ADMINISTRATION OF CERTAIN FUND EXPENDI-**
17 **TURES.**

18 (a) ASSOCIATION AS ADMINISTRATOR.—The Associa-
19 tion is hereby designated as Administrator, subject to this
20 title, of certain specified expenditures made by the Secretary
21 from the Fund. As soon as practicable after the date of the
22 enactment of this Act, the Secretary shall offer to undertake
23 negotiations with the Association, leading to the execution of
24 a binding agreement with the Association setting forth its
25 duties as Administrator under this title. The Secretary shall
26 make a good-faith effort to conclude such negotiations and

1 execute such agreement within 60 days after the date of the
2 enactment of this Act. Such agreement shall be approved by
3 a majority of the Board of Directors of the Association and
4 shall include—

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

8 (2) a requirement that—

9 (A) the accounts of the Association, as they
10 relate to its capacity as Administrator, be audited
11 annually in accordance with generally accepted
12 auditing standards by independent certified public
13 accountants or independent licensed public ac-
14 countants; and

15 (B) the report of each audit under subpara-
16 graph (A) be transmitted to the Secretary and to
17 the Committees on the Judiciary of the Senate
18 and the House of Representatives; and

19 (3) a provision establishing the conditions under
20 which the Secretary, upon 30 days notice, may termi-
21 nate the Association's designation as Administrator for
22 breach of fiduciary duty, failure to comply with the
23 provisions of this Act as they relate to the duties of the
24 Administrator, or any other significant failure to meet
25 its responsibilities as Administrator under this title.

1 (b) SUBMISSION OF AGREEMENT TO CONGRESS; FAIL-
2 URE TO REACH AGREEMENT.—The Secretary shall submit
3 the agreement described in subsection (a) to the Congress
4 within 15 days after approval of the agreement by the parties
5 thereto. If the Secretary and the Association fail to reach an
6 agreement within the period provided in subsection (a), the
7 Secretary shall report such failure to the Congress within 75
8 days after the date of the enactment of this Act, together
9 with the reasons therefor.

10 (c) EXPENDITURES CONTINGENT UPON SUBMISSION
11 OF AGREEMENT.—The Secretary may not make any ex-
12 penditure to the Administrator from the Fund until 60 days
13 after the agreement described in subsection (a) is submitted to
14 the Congress.

15 **SEC. 305. DUTIES OF THE ADMINISTRATOR.**

16 (a) RESTITUTION FOR ALEUT LOSSES.—Out of pay-
17 ments from the Fund made to the Administrator by the Sec-
18 retary, the Administrator shall make restitution, as provided
19 by this section, for certain Aleut losses sustained in World
20 War II, and shall take such other action as may be required
21 by this title.

22 (b) ESTABLISHMENT OF TRUST.—

23 (1) FOR BENEFIT OF AFFECTED ALEUTS.—The
24 Administrator shall establish a trust of $5,000,000 for
25 the benefit of affected Aleut communities, and for other

1 purposes. Such trust shall be established pursuant to
2 the laws of the State of Alaska, and shall be main-
3 tained and operated by not more than 7 trustees, as
4 designated by the Administrator. Each affected Aleut
5 village, including the survivors of the Aleut village of
6 Attu, may submit to the Administrator a list of 3 pro-
7 spective trustees. In designating trustees pursuant to
8 this subsection, the Administrator shall designate 1
9 trustee from each such list submitted.

10 (2) ACCOUNTS.—The trustees shall maintain and
11 operate the trust as 8 independent and separate ac-
12 counts, including—

13 (A) 1 account for the independent benefit of
14 the wartime Aleut residents of Attu and their
15 descendants;

16 (B) 6 accounts, each one of which shall be
17 for the independent benefit of one of the 6 surviv-
18 ing affected Aleut villages of Atka, Akutan, Ni-
19 kolski, Saint George, Saint Paul, and Unalaska;
20 and

21 (C) 1 account for the independent benefit of
22 those Aleuts who, as determined by the trustees,
23 are deserving but will not benefit directly from
24 the accounts established pursuant to subpara-
25 graphs (A) and (B).

1 The trustees shall credit to the account described in
2 subparagraph (C) an amount equal to 5 percent of the
3 principal amount credited by the Administrator to the
4 trust. The remaining principal amount shall be divided
5 among the accounts described in subparagraphs (A)
6 and (B), in proportion to the June 1, 1942, Aleut civil-
7 ian population of the village for which each such ac-
8 count is established, as compared to the total civilian
9 Aleut population on such date of all affected Aleut
10 villages.

11 (3) ADMINISTRATION AND USES OF TRUST.—
12 The trust established by this subsection shall be admin-
13 istered in a manner that is consistent with the laws of
14 the State of Alaska, and as prescribed by the Adminis-
15 trator, after consultation with representative eligible
16 Aleuts, the residents of affected Aleut villages, and the
17 Secretary. The trustees may use the accrued interest
18 and other earnings of the trust for—

19 (A) the benefit of elderly, disabled, or seri-
20 ously ill persons on the basis of special need;

21 (B) the benefit of students in need of scholar-
22 ship assistance;

23 (C) the preservation of Aleut cultural herit-
24 age and historical records;

1 (D) the improvement of community centers in
2 affected Aleut villages; and
3 (E) other purposes to improve the condition
4 of Aleut life, as determined by the trustees.
5 (c) RECONSTRUCTION, RESTORATION, AND REPLACE-
6 MENT OF CHURCH PROPERTY.—
7 (1) AUTHORITY OF ADMINISTRATOR.—The Ad-
8 ministrator is authorized to rebuild, restore, or replace
9 churches and church property damaged or destroyed in
10 affected Aleut villages during World War II.
11 (2) INVENTORY OF LOST PROPERTY.—Within 15
12 days after the date that expenditures from the Fund
13 are authorized by this title, the Secretary shall pay
14 $100,000 to the Administrator for the purpose of
15 making an inventory and assessment, as complete as
16 possible under the circumstances, of all churches and
17 church property damaged or destroyed in affected
18 Aleut villages during World War II. In making such
19 inventory and assessment, the Administrator shall con-
20 sult with the trustees of the trust established under
21 section 305(b) and shall take into consideration, among
22 other things, the present replacement value of such
23 damaged or destroyed structures, furnishings, and arti-
24 facts.

1 (3) REVIEW PANEL.—Within 1 year after the
2 date of the enactment of this Act, the Administrator
3 shall submit the inventory and assessment made under
4 paragraph (2), together with specific recommendations
5 and detailed plans for reconstruction, restoration, and
6 replacement work to be performed, to a review panel
7 composed of—
8 (A) the Secretary of Housing and Urban De-
9 velopment;
10 (B) the Chairman of the National Endow-
11 ment for the Arts; and
12 (C) the Administrator of the General Serv-
13 ices Administration.
14 (4) IMPLEMENTATION OF PLANS; RESOLUTION
15 OF DISAPPROVED PLANS.—If the Administrator's
16 plans and recommendations or any portion of them are
17 not disapproved by the review panel within 60 days
18 after their submission to the review panel, such plans
19 and recommendations as are not disapproved shall be
20 implemented as soon as practicable by the Administra-
21 tor. If any portion of the Administrator's plans and
22 recommendations is disapproved, the Administrator
23 shall revise and resubmit such portion to the review
24 panel as soon as practicable after the Administrator re-
25 ceives notice of the disapproval, and the reasons there-

1 for. In any case in which the Administrator and the
2 review panel cannot agree with respect to any portion
3 of the plans and recommendations for work to be per-
4 formed under this subsection, the Secretary shall
5 submit such portion of such plans and recommendations
6 to the Congress for approval or disapproval by joint
7 resolution.

8 (5) PREFERENCE IN CONTRACTING.—In entering
9 into any contracts for any necessary construction work
10 to be performed on churches or church property under
11 this subsection, the Administrator shall give preference
12 to the Aleutian Housing Authority as general
13 contractor.

14 (d) AUTHORIZED EXPENSES.—The Administrator is
15 authorized to incur reasonable and necessary administrative
16 and legal expenses in carrying out its responsibilities under
17 this title. The Secretary shall compensate the Administrator,
18 not less often than quarterly, for all such reasonable and nec-
19 essary administrative and legal expenses.

20 **SEC. 306. INDIVIDUAL COMPENSATION OF ELIGIBLE ALEUTS.**

21 (a) PAYMENT FOR UNCOMPENSATED LOSSES.—In ac-
22 cordance with the provisions of this section, the Secretary
23 shall make per capita payments out of the Fund to eligible
24 Aleuts for uncompensated personal property losses, and for
25 other purposes. The Secretary shall pay to each eligible

1 Aleut the sum of $12,000. All payments to eligible Aleuts
2 shall be made within 1 year after the date of the enactment
3 of this Act.

4 (b) LOCATING ELIGIBLE ALEUTS.—

5 (1) ASSISTANCE OF ATTORNEY GENERAL.—The
6 Secretary may request, and upon such request, the At-
7 torney General shall provide, reasonable assistance in
8 locating eligible Aleuts residing outside the affected
9 Aleut villages. In providing such assistance, the Attor-
10 ney General may use available facilities and resources
11 of the International Committee of the Red Cross and
12 other organizations.

13 (2) ASSISTANCE OF ADMINISTRATOR.—The Ad-
14 ministrator shall assist the Secretary in identifying and
15 locating eligible Aleuts pursuant to this section.

16 **SEC. 307. MINIMUM CLEANUP OF WARTIME DEBRIS.**

17 (a) DEBRIS REMOVAL PROGRAM.—The Secretary of
18 the Army, acting through the Chief of Engineers, shall plan
19 and implement a program, as the Chief of Engineers consid-
20 ers feasible and appropriate, for the removal and disposal of
21 live ammunition, obsolete buildings, abandoned machinery,
22 and other hazardous debris remaining in populated areas of
23 the lower Alaska peninsula and the Aleutian Islands as a
24 result of military construction and other activities during
25 World War II. The Congress finds that such a program is

1 essential for the future development of safe, sanitary housing
2 conditions, public facilities, and public utilities within the
3 region.

4 (b) GUIDELINES FOR DEBRIS REMOVAL PROGRAM.—
5 The debris removal program authorized under subsection (a)
6 shall be carried out substantially in accordance with the rec-
7 ommendations for a "minimum cleanup", at an estimated
8 cost of $22,473,180 based on 1976 prices, contained in the
9 report prepared by the Alaska District, Corps of Engineers,
10 entitled "Debris Removal and Cleanup Study: Aleutian Is-
11 lands and lower Alaska Peninsula, Alaska", dated October
12 1976. In carrying out the program required by this section,
13 the Chief of Engineers shall consult with the trustees of the
14 trust established under section 305(b) of this Act, and shall
15 give preference to the Aleutian Housing Authority as general
16 contractor.

17 **SEC. 308. ATTU ISLAND REHABILITATION PROGRAM.**

18 (a) CONVEYANCE TO CORPORATION OF ALEUT
19 ISLAND.—Notwithstanding any other provision of law, the
20 Secretary of the Interior is authorized to convey to the Cor-
21 poration, subject to the requirements of this section and with-
22 out cost to the Corporation, all right, title, and interest of the
23 United States in and to the lands and waters comprising Attu
24 Island, Alaska, including fee simple title to the surface and
25 subsurface estates of such island.

1 (b) CONDITIONS FOR CONVEYANCE.—The Secretary of
2 the Interior shall make the conveyance described in subsec-
3 tion (a) within 1 year after—
4 (1) the Corporation has entered into a cooperative
5 management agreement with the Secretary of the Inte-
6 rior, as provided in section 304(f) of the Alaska Na-
7 tional Interest Lands Conservation Act (94 Stat.
8 2394), concerning the management of Attu Island; and
9 (2) the Secretary of Transportation and the Cor-
10 poration have certified to the Secretary of the Interior
11 that the Department of Transportation and the Corpo-
12 ration have reached an agreement which will allow the
13 United States Coast Guard to continue essential func-
14 tions on Attu Island. The patent conveying the lands
15 under this section shall reflect the right of the Coast
16 Guard to continue such essential functions on such
17 island, with reversion to the Corporation of all inter-
18 ests held by the Coast Guard if and when the Coast
19 Guard terminates its activities on the island.
20 (c) REGULATIONS.—The Secretary of the Interior may
21 promulgate such regulations as may be necessary to carry
22 out the purposes of this section.
23 **SEC. 309. DEFINITIONS.**
24 For the purposes of this title—

1 (1) the term "Administrator" means the person
2 designated under this title to administer certain ex-
3 penditures made by the Secretary from the Aleutian
4 and Pribilof Islands Restitution Fund;
5 (2) the term "affected Aleut villages" means those
6 Aleut villages in Alaska whose residents were evacuat-
7 ed by United States forces during World War II, in-
8 cluding Akutan, Atka, Nikolski, Saint George, Saint
9 Paul, and Unalaska; and the Aleut village of Attu,
10 Alaska, which was not rehabilitated by the United
11 States for Aleut residence or other use after World
12 War II;
13 (3) the term "Aleutian Housing Authority" means
14 the nonprofit regional native housing authority estab-
15 lished for the Aleut region pursuant to the laws of the
16 State of Alaska;
17 (4) the term "Association" means the Aleutian/
18 Pribilof Islands Association, a nonprofit regional corpo-
19 ration established for the benefit of the Aleut people
20 and organized under the laws of the State of Alaska;
21 (5) the term "Corporation" means the Aleut Cor-
22 poration, a for-profit regional corporation for the Aleut
23 region organized under the laws of the State of Alaska
24 and established pursuant to section 7 of the Alaska

1 Native Claims Settlement Act (85 Stat. 691; 43
2 U.S.C. 1606);
3 (6) the term "eligible Aleut" means any Aleut
4 living on the date of the enactment of this Act who
5 was a resident of Attu Island on June 7, 1942, or any
6 Aleut living on the date of the enactment of this Act
7 who, as a civilian, was relocated by authority of the
8 United States from his or her home village on the Pri-
9 bilof Islands or the Aleutian Islands west of Unimak
10 Island to an internment camp, or other temporary fa-
11 cility or location, during World War II;
12 (7) the term "Fund" means the Aleutian and Pri-
13 bilof Islands Restitution Fund established in section
14 302;
15 (8) the term "Secretary" means the Secretary of
16 the Treasury; and
17 (9) the term "World War II" means that period
18 beginning on December 7, 1941, and ending on Sep-
19 tember 2, 1945.
20 **SEC. 310. AUTHORIZATION OF APPROPRIATIONS.**
21 There are authorized to be appropriated—
22 (1) $5,000,000, for purposes of carrying out the
23 provisions of subsection (b) of section 305;
24 (2) $1,399,000, for purposes of carrying out the
25 provisions of subsection (c) of section 305;

1 (3) such sums as are necessary to carry out the
2 provisions of section 305(d) and section 306; and
3 (4) $38,601,000, for purposes of carrying out the
4 provisions of section 307.
5 Any amounts appropriated pursuant to this section are au-
6 thorized to remain available until expended.

7 TITLE IV—MISCELLANEOUS PROVISIONS

8 **SEC. 401. DOCUMENTS RELATING TO THE INTERNMENT.**

9 (a) DEPOSIT OF DOCUMENTS IN NATIONAL AR-
10 CHIVES.—All documents, personal testimony, and other ma-
11 terial collected by the Commission on Wartime Relocation
12 and Internment of Civilians during its inquiry shall be deliv-
13 ered by the custodian of such material to the Archivist of the
14 United States who shall deposit such material in the National
15 Archives of the United States. The Archivist shall make such
16 material available to the public for research purposes.
17 (b) AVAILABILITY TO THE PUBLIC.—The Clerk of the
18 House of Representatives and the Secretary of the Senate
19 shall, without regard to time limits otherwise applicable to
20 the release of congressional documents, direct the Archivist
21 of the United States to make available to the public for re-
22 search purposes, all congressional documents not classified
23 for national security purposes which are transferred to the
24 Clerk of the House and the Secretary of the Senate relating
25 to the evacuation, relocation, and internment of individuals of

1 Japanese or Aleut ancestry during the period beginning on
2 December 7, 1941, and ending on June 30, 1946.

3 **SEC. 402. COMPLIANCE WITH BUDGET ACT.**

4 No authority under this Act to enter into contracts or to
5 make payments shall be effective except to the extent or in
6 such amounts as are provided in advance in appropriations
7 Acts. Any provision of this Act which, directly or indirectly,
8 authorizes the enactment of new budget authority shall be
9 effective only after September 30, 1987.

○

first required to be kept in safety packaging, the number of deaths among children under five from aspirin poisoning declined 48 percent.

While these developments are encouraging, they provide no excuse for a relaxation of concern or vigilance. During 1974, over 200,000 accidental ingestions of household substances were reported by poison control centers through out the country. Approximately 130,000 involved children under five years of age. But these reports may represent only a fraction of the actual number of toxic episodes. Medical authorities estimate that each year 600,000 to one million children accidentally swallow substances which may be harmful—or even deadly.

Recognizing the need to encourage all Americans to take preventive measures to eliminate accidental poisonings and their tragic toll, the Congress, by joint resolution of September 26, 1961 (36 U.S.C. 165), has requested the President to issue annually a proclamation designating the third week in March as National Poison Prevention Week.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, do hereby designate the week beginning March 21, 1976, as National Poison Prevention Week. I urge all Americans to provide safety for our Nation's youngsters by storing, using, and handling household substances with care. I invite all organizations concerned with preventing accidental poisoning among children to join in activities that will assist in protecting all our children from these dangers.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of February, in the year of our Lord nineteen hundred seventy-six, and of the Independence of the United States of America the two hundredth.

GERALD R. FORD

Proclamation 4417 • **February 19, 1976**

An American Promise

By the President of the United States of America

A Proclamation

In this Bicentennial Year, we are commemorating the anniversary dates of many of the great events in American history. An honest reckoning, however, must include a recognition of our national mistakes as well as our national achievements. Learning from our mistakes is not pleasant, but as a great philosopher once admonished, we must do so if we want to avoid repeating them.

February 19th is the anniversary of a sad day in American history. It was on that date in 1942, in the midst of the response to the hostilities that began on December 7, 1941, that Executive Order No. 9066 was issued, subsequently enforced by the criminal penalties of a statute enacted March 21, 1942, resulting in the uprooting of loyal Americans. Over one hundred thousand persons of Japanese ancestry were removed from their homes, detained in special camps, and eventually relocated.

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control centers through out the country.
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GERALD R. FORD

February 19, 1976

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The tremendous effort by the War Relocation Authority and concerned Americans for the welfare of these Japanese-Americans may add perspective to that story, but it does not erase the setback to fundamental American principles. Fortunately, the Japanese-American community in Hawaii was spared the indignities suffered by those on our mainland.

We now know what we should have known then—not only was that evacuation wrong, but Japanese-Americans were and are loyal Americans. On the battlefield and at home, Japanese-Americans—names like Hamada, Mitsumori, Marimoto, Noguchi, Yamasaki, Kido, Munemori and Miyamura—have been and continue to be written in our history for the sacrifices and the contributions they have made to the well-being and security of this, our common Nation.

The Executive order that was issued on February 19, 1942, was for the sole purpose of prosecuting the war with the Axis Powers, and ceased to be effective with the end of those hostilities. Because there was no formal statement of its termination, however, there is concern among many Japanese-Americans that there may yet be some life in that obsolete document. I think it appropriate, in this our Bicentennial Year, to remove all doubt on that matter, and to make clear our commitment in the future.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, do hereby proclaim that all the authority conferred by Executive Order No. 9066 terminated upon the issuance of Proclamation No. 2714, which formally proclaimed the cessation of the hostilities of World War II on December 31, 1946.

I call upon the American people to affirm with me this American Promise—that we have learned from the tragedy of that long-ago experience forever to treasure liberty and justice for each individual American, and resolve that this kind of action shall never again be repeated.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of February in the year of our Lord nineteen hundred seventy-six, and of the Independence of the United States of America the two hundredth.

GERALD R. FORD

Proclamation 4418 • **February 25, 1976**

Red Cross Month, 1976

By the President of the United States of America

A Proclamation

For nearly half of our Nation's two hundred years, the American Red Cross has reflected the concerns of the American people by dedicating itself to the ease and prevention of human suffering. In war and in peace, this Good Neighbor has ministered to the anguish of those who are tragically affected by circumstances beyond their control. It has undertaken to prevent distress and has striven to preserve health and safety.

intelligence service in the world, but also the most unique—one which operates in a manner fully consistent with the Constitutional rights of our citizens.

GERALD R. FORD

The White House,
February 18, 1976.

111

Remarks Upon Signing a Proclamation Concerning Japanese-American Internment During World War II. *February 19, 1976*

FEBRUARY 19 is the anniversary of a very, very sad day in American history. It was on that date in 1942 that Executive Order 9066 was issued resulting in the uprooting of many, many loyal Americans. Over 100,000 persons of Japanese ancestry were removed from their homes, detained in special camps, and eventually relocated.

We now know what we should have known then—not only was that evacuation wrong but Japanese-Americans were and are loyal Americans. On the battlefield and at home the names of Japanese-Americans have been and continue to be written in America's history for the sacrifices and the contributions they have made to the well-being and to the security of this, our common Nation.

Executive Order 9066 ceased to be effective at the end of World War II. Because there was no formal statement of its termination, there remains some concern among Japanese-Americans that there yet may be some life in that obsolete document. The proclamation [4417] that I am signing here today should remove all doubt on that matter.

I call upon the American people to affirm with me the unhyphenated American promise that we have learned from the tragedy of that long ago experience—forever to treasure liberty and justice for each individual American and resolve that this kind of error shall never be made again.

NOTE: The President spoke at 11:54 a.m. at a ceremony in the Cabinet Room at the White House.

NOTE:
TECHNICALLY,
OFFICE OF FED. REG.
SAYS PROC. 2714
TERMINATED
E.O. 9066
PROC. 4417 REAFFIRMED THIS

er 27, 1945,[1] and are now being performed by that department; and

WHEREAS such certification is no longer necessary and serves no useful purpose:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, under and by virtue of the authority vested in me by section 318 of the Tariff Act of 1930, as amended (46 Stat. 696; 19 U. S. C. 1318), do hereby amend the aforesaid Proclamation No. 2599 of November 4, 1943, by eliminating therefrom all provisions and requirements relating to the certification above described.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington, this 3rd day of December in the year of our Lord nineteen hundred and forty-six, and of the Independence of the United States of America the one hundred and seventy-first.

[SEAL]

HARRY S. TRUMAN

By the President:

DEAN ACHESON,
Acting Secretary of State.

PROCLAMATION 2713

BILL OF RIGHTS DAY, 1946

WHEREAS December 15, 1946, marks the one hundred and fifty-fifth anniversary of the adoption of the Bill of Rights; and

WHEREAS that covenant, which was written into our Constitution by the first ten amendments, guarantees to the American people freedom of religion, freedom of speech and assembly, and freedom to petition for the redress of grievances; and

WHEREAS the preservation of these inestimable privileges can be guaranteed only by courage, determination, and unremitting vigilance; and

WHEREAS it is fitting that we should set aside a day for solemn contemplation of our liberties and of the recent world-wide battle to protect them from annihilation:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, pursuant to a joint resolution of the Congress approved May 29, 1946, do hereby designate December 15, 1946, as Bill of Rights Day. And I call upon the officials of the Government to display the flag of the United States on all Government buildings on that day; and urge the people of the United States to observe the day with appropriate ceremonies and prayer at their homes, in schools, and in places of congregation and of worship.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 9th of December in the year of our Lord nineteen hundred and forty-six, and of the Independence of the United States of America the one hundred and seventy-first.

[SEAL]

HARRY S. TRUMAN

By the President:

DEAN ACHESON,
Acting Secretary of State.

PROCLAMATION 2714

CESSATION OF HOSTILITIES OF WORLD WAR II

With God's help this nation and our allies, through sacrifice and devotion, courage and perseverance, wrung final and unconditional surrender from our enemies. Thereafter, we, together with the other United Nations, set about building a world in which justice shall replace force. With spirit, through faith, with a determination that there shall be no more wars of aggression calculated to enslave the peoples of the world and destroy their civilization, and with the guidance of Almighty Providence great gains have been made in translating military victory into permanent peace. Although a state of war still exists, it is at this time possible to declare, and I find it to be in the public interest to declare, that hostilities have terminated.

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the cessation of hostilities of World War

[1] 3 CFR 1945 Supp.

II, effective twelve o'clock noon, December 31, 1946.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 31st day of December in the year of our Lord nineteen hundred and forty-six, and of the Independence of the United States of America the one hundred and seventy-first.

[SEAL]

HARRY S. TRUMAN

By the President:

JAMES F. BYRNES,
The Secretary of State.

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

April 21, 1987

LEGISLATIVE REFERRAL MEMORANDUM SPECIAL

TO: SEE ATTACHED DISTRIBUTION LIST

SUBJECT: Department of Justice draft testimony concerning H.R. 442 and H.R. 1631, bills 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 4/23/87
(NOTE -- A Justice report transmitted to the Hill on H.R. 442 (99th Congress) was circulated for review 2/28/86. If comments are not received by this deadline, we will assume no objection to Justice's testimony.)

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: A.B. Culvahouse, Jr. Brad Leonard Bruce Johnson
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General Services Administration		
National Endowment for the Arts		

4/17/87

DRAFT

STATEMENT

OF

RICHARD K. WILLARD
ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION
U.S. DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENT RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY

CONCERNING

H.R. 442 AND H.R. 1631

ON

APRIL 29, 1987

I appreciate this opportunity to appear and present the views of the Department of Justice on H.R. 442, a bill "[T]o implement the recommendations of the Commission on the Wartime Relocation and Internment of Civilians" and H.R. 1631, a bill that would implement those recommendations with respect to the Aleut people. For the reasons set out in this testimony, the Administration 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. The internees were among the millions of innocent victims of World War II, confined in the wake of the unprovoked attack on Pearl Harbor and 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 as a result of war. However, 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

1976

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 know now, 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 Norther 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. Petitioner nonetheless appealed to the Ninth Circuit. Because of Mr. Yasui's recent death, however, the Ninth Circuit, on March 23, 1987, dismissed the appeal as moot, and the district court's decision vacating petitioner's conviction stands.

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.

Petitioner appealed from this denial of his coram nobis petition as to his curfew violation conviction and the government cross-appealed from the grant of coram nobis as to the evacuation conviction. The appeals were argued on March 2, 1987 and are under submission before the Ninth Circuit.

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 compliant 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 United States filed a petition for rehearing and suggestion for rehearing en banc; the suggestion was denied by a split en banc court (6-5). Thereafter, both plaintiffs and the United States filed petition for writs of certiorari with the Supreme Court which granted the petition of the United States and has not taken action on plaintiffs' petition. Oral argument is set for April 20, 1987.

H.R. 442

I would like to now address some of the Department's concerns with the specific provisions of H.R. 442.

Findings

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 adequate 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 that 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 in 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 decision 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 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 matters are 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.

Pardon Recommendations

The Department opposes sections 202(a) and 201(b), which request the Attorney General to review certain criminal convictions with a view toward pardon and to submit pardon recommendations to the President in certain cases.

633-4218

The pardon provision of the bill is completely unnecessary. As noted above, the government has offered 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 only about 39 Japanese Americans were convicted of misdemeanor violations of Executive Order 9066, many 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, while we note that section 201(b) of this bill attempts to correct the constitutional flaws presented by the pardon provision of this legislation in the 99th Congress, we remain dubious of the constitutional validity of this provision when Article II, Section 2, Clause 1 of the Constitution grants virtually absolute pardon authority in the President. As we noted in our bill report on the 99th Congress, 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 grant pardons may not be limited by legislative restriction. Schick v. Reed, 419 U.S. 256 (1974).

The Attorney General's advisory function (now the Associate Attorney General by assignment, 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 Section 201.

Additionally, the language of § 201 is ambiguous in at least two respects. Section 201(a) directs the review of "any case in which an individual who, while a United States citizen or permanent resident alien of Japanese ancestry, was convicted of a violation of... any law of the United States," including convictions for violations of military directives respecting the exclusion, relocation or detention of individuals solely on the basis of Japanese ancestry. First, the class of individuals whose cases are to be reviewed is vaguely defined. The present wording of Section 201(a) could be interpreted to request 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 "any cases" involving violations of "any law of the United States . . . or other action made by or on behalf of the United States" 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.

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Section 202 would require agencies to review with liberality applications for restitution of positions, status or entitlement, 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.

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

Section 204 provides for the tax free 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 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.

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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 decent 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-in-half decades later.

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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.

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We also oppose the concept of a special fund incorporated in section 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.

Definition of Eligible Individuals

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

First, the term "living" should be determined with more 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 the benefit is made, or to the time when payment of a benefit is made.

Second, the definition would cover "any living individual" who had been subject to the exclusion, relocation, or detention, 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 the Fact 18, 20, 22, 25, 27, 29, 35, 39, 40, 45, 46 of the United States District Court for the Southern District of California in Murakami v. Acheson, attached to and made 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.

Title III of H.R. 442

The Department is also opposed 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.

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

The Administrator as an Officer of the United States

Section 309(1) would provide for an "Administrator" who would administrate certain expenditures made by the Secretary of the Treasury from the Aleutian and Pribilof Islands Restitution Fund established by section 309(a). Section 304(a) would designate as "Administrator" the "Association," defined in

section 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 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 a 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, 85th 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 the Administrator 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 benefit 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 the Administrator be appointed in accordance with Article II, §

2, cl. 2, or that the bill be amended so as to relieve the position of any duties directly imposed upon by a federal statute.

Restoration of Church Property

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.

Under this approach, 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 government 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 the foregoing reasons, the Department of Justice recommends against enactment of H.R. 442.

H.R. 1631

Mr. Chairman, with regard to H.R. 1631, a bill "[T]o accept the findings and implement the recommendations of the Commission on Wartime Relocation of Civilians with respect to the Aleut people," the Department is similarly opposed to its enactment.

While H.R. 1631 differs in some of minor respects from Title III of H.R. 442, it essentially tracks the substantive provisions of the Title. Accordingly, the bill suffers from the same defects as those discussed with respect to that Title. As I stated previously, the Department does 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.

That concludes my statement, Mr. Chairman, I will be happy to answer any questions.

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 25 1986

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. The internees 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 deacent 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, 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).

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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 relieve him of any duties directly imposed upon by a federal statute.

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

John R. Bolton
Assistant Attorney General

Peter -
Technically, this was not cleared by OMB.
Brandon