WITHDRAWAL SHEET
Ronald Reagan Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
letter case			
1. memo	David C. Stephenson to Jay Stephens, re proposed memo to Attorney General concerning recommended approach of Civil and Criminal Divisions regarding wartime relcation and internment of Japanese-Americans (partial)	8/8/83	~~P-5~~
2. memo	D. Lowell Jensen to William French Smith, re approach to matters concerning the WWII relocation and internment of Japanese Americans (pages 2-4)	n.d.	~~P-5~~
3. memo	same as item #2 (pages 2-4)	n.d.	~~P-5~~
4. memo	David C. Stephenson to D. Lowell Jenson, re approach to matters concerning the WWII relocation and internment of Japanese-Americans (pages 1-2)	8/2/83	~~P-5~~
5. memo	page 3 of item #4 (partial)	8/2/83	~~P-5~~
6. memo	Mark Richard to D. Lowell Jensen, re approach to matters concerning the WWII relocation and internment of Japanese Americans (partial of page 1)	8/8/83	~~P-5~~
7. memo	page 2 of item #6	8/8/83	~~P-5~~ KB 1/3/01

COLLECTION:	WALLER, DAVID: Files	smf
FILE FOLDER:	Japanese-Americans - WWII Internment (2 of 3) ~~EO~~ 12686	10/20/94

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]
- **P-1** National security classified information [(a)(1) of the PRA].
- **P-2** Relating to appointment to Federal office [(a)(2) of the PRA].
- **P-3** Release would violate a Federal statute [(a)(3) of the PRA].
- **P-4** Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- **P-5** Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA.
- **P-6** Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

Freedom of Information Act - [5 U.S.C. 552(b)]
- **F-2** Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- **F-7** Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- **F-8** Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- **F-9** Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].
- **C.** Closed in accordance with restrictions contained in donor's deed of gift.

WITHDRAWAL SHEET
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COLLECTION:
WALLER, DAVID: Files — smf

FILE FOLDER:
Japanese-Americans - WWII Internment (2 of 3) Box 12686 — 10/20/94

RESTRICTION CODES

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August 8, 1983

MEMORANDUM TO: Jay Stephens
Deputy Associate Attorney General

FROM: David C. Stephenson
Acting Pardon Attorney

SUBJECT: Proposed memorandum to Attorney General Concerning Recommended Approach of Civil and Criminal Divisions regarding Wartime Relocation and Internment of Japanese-Americans.

This refers to Greg Walden's memorandum of August 4, 1983 transmitting a revised proposed memorandum to the Attorney General from the Associate Attorney General.

I would have preferred that the memorandum note the inconsistency which I discussed at our meeting on Thursday and which my memorandum of August 2 addressed in part and also that it be shown that a pardon is not prerequisite to motions to dismiss the indictments and vacate the judgments of conviction. However, I have no objection to the memorandum as redrafted.

U.S. Department of Justice

Civil Division

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

August 4, 1983

MEMORANDUM

TO: Jay Stephens

FROM: Greg Walden GW

SUBJECT: Memorandum to Attorney General Concerning the Recommended Approach of the Civil and Criminal Divisions Regarding the Wartime Relocation and Internment of Japanese-Americans

The attached redrafted memorandum contains the changes agreed upon at today's meeting. Changes were made in the third and fourth paragraphs of the second page, and the last paragraph of the fourth page.

Attachment

cc: ✓David Stephenson
Victor Stone
Jeffrey Axelrad
Tim Finn

U.S. Department of Justice

Washington, D.C. 20530

MEMORANDUM

TO: William French Smith
Attorney General

FROM: D. Lowell Jensen
Associate Attorney General

J. Paul McGrath
Assistant Attorney General
Civil Division

SUBJECT: Approach to Matters Concerning the World War II Relocation and Internment of Japanese Americans

Recently, the Commission on Wartime Relocation and Internment of Civilians issued a report, recommending that $1 billion plus in reparations be paid to Japanese-Americans because of their internment during World War II; that a Joint Resolution of apology be enacted; and that the President pardon persons convicted for violating internment restrictions. A Senate bill introduced by Senator Cranston, S. 1520, adopts in substantial part the recommendations of the Commission and would authorize a payment to the surviving individuals, in an amount to be decided by "committees of appropriate jurisdiction" upon review of the Commission's recommendations. Money destined for an internee now deceased or one who is unable to accept such payment would be placed in a trust fund whose purpose would be to distribute monies for the benefit of Japanese-American communities for educational, health and community services. There are also pending three coram nobis petitions in district courts on the West Coast seeking to collaterally attack the misdemeanor convictions of Messrs. Korematsu, Hirabayashi and Yasui which were ultimately upheld by the Supreme Court, by attacking the good faith of the government's actions and of the Solicitor General's submissions before the Supreme Court. Finally, there are pending in the District Court for the District of Columbia a class action, Hohri v. U.S., in which the plaintiffs seek billions of dollars in damages for the alleged wrongful acts taken by government officials against Japanese-Americans during World War II.

We cannot support most of the Commission's recommendations, because the principle of causing the American public to pay reparations or to admit wrongdoing is unacceptable and because it would serve no useful purpose to open wounds which have healed quite well. Nevertheless, we recommend that action be taken to underscore that the exclusions and detentions are a completely closed chapter, in order to help forestall undesirable legislative or judicial action and adverse public reaction. In addition, we believe the course suggested would gain broad public support.

Accordingly, we make the following recommendations:

1. The President should issue a blanket pardon to all those living Japanese-American citizens who were convicted of violating wartime restrictions. (According to our records, 39 citizens of Japanese ancestry were so convicted.) The pardon would not be one based on innocence, but would be similar to the blanket pardon of draft evaders proclaimed by President Carter in 1977. The pardon should come in the form of a Presidential proclamation which would acknowledge the hardships suffered by Japanese-Americans but which would stop short of confessing guilt or wrongdoing by government officials. Its language should certainly go no further than President Ford's 1976 proclamation formally rescinding Executive Order 9066, which described the whole episode as "a national mistake" and "a setback to American principles." The terms and wording of such a pardon must first be coordinated with the Office of Legal Counsel and the Pardon Attorney.

You would contemporaneously issue a statement of procedures to implement the pardon, similar to the procedures employed by the Justice Department in response to the selective service pardon. As a matter of convenience to those who were convicted of violating wartime restrictions, certificates of pardon could be issued by the Pardon Attorney upon request. However, because the blanket pardon would be self-executing, the pardon would take effect upon proclamation; no warrants or certificates would be necessary. The Justice Department would simultaneously move to vacate the convictions and dismiss the underlying indictments.

Although we anticipate that some Japanese-Americans will decline a pardon not expressly based on innocence (especially those who have brought suit against the United States), we still favor this course. For one thing, a pardon based on innocence entitles the recipient to an award of up to $5,000, and we think it unwise to trigger payment of such compensation. More importantly, a pardon based on innocence would necessarily entail recitals of wrongdoing that could undermine our defense on the merits in both the coram nobis and civil suits. In any event, the impact of a blanket pardon is largely symbolic and is consonant with the Commission's pardon recommendation. We do not believe that the general public will note the difference or deem it an important one for this purpose. And most Japanese-Americans, we suspect, will accept the Presidential pardon as a largely ceremonial but appropriate gesture of the United States government.

2. We oppose any scheme of war reparations or compensation as recommended by the Commission. The Commission's recommendation that a $20,000 lump sum payment be made to each of 60,000 individuals still living would require an expenditure of approximately $1.2 billion. The premise of this recommendation is that the method and amount of compensation Congress selected in the American-Japanese Claims Act of 1948 were inadequate. On the contrary, the Act's approach was tailored to individual hardship and injury and provided over $35 million in compensation to most of the 100,000 evacuees. Admittedly, the 1948 Act awarded compensation for property damage only. Significantly, however, Congress in the 1950s considered and specifically rejected an attempt to broaden the statute to encompass other types of claims. We see no good reason to question the settlement Congress deemed sufficient three and one half decades ago.

Furthermore, any payment of compensation at this late date, beyond that already made under the Claims Act, would properly be understood to constitute war reparations, implying an admission of guilt by the United States going well beyond what this government and its officials have previously conceded.

3. The President should recommend that the Congress establish a special foundation along the lines suggested by the Commission, funded by a one-time payment of $2 million. (The Commission targeted at least $300 million for this purpose.) The foundation would have two purposes, one oriented to the past and the other directed to the future. The foundation would maintain a permanent library housing papers relating to the wartime relocation and internment of Japanese-Americans (the original documents are housed in the Archives), for the benefit of the public and for the primary use of scholars.

The foundation would also encourage the study and research of outstanding interracial or interreligious problems in the United States and around the world, with an emphasis on practical solutions to resolve such intergroup conflicts. The foundation would focus on the highly successful assimilation of Japanese into American society and the virtually complete elimination of racial hostility between the Japanese and other elements of American society, perhaps by awarding scholarships to successful Japanese-Americans and by sponsoring activites involving the interrelationships of ethnic Japanese and Americans.

The trustees of this foundation would be appointed by the President. Its charter could specify that some of its trustees be familiar in some way (as victim, government official, historian) with the evacuation and internment events.

The pardons, establishment of a foundation, and accompanying public statements constitute our considered judgment of appropriate and equitable action in light of the Commission's recommendations. This course fairly takes into account not only the hardships suffered at the time but also recognizes the place of Japanese-Americans as full participants in the fabric of American life today.

4. We will seek dismissal of all litigation against the United States. On May 16, 1983, we moved to dismiss the civil suit, arguing that the action is barred by the statutes of limitation, that the American-Japanese Claims Act of 1948 is the exclusive remedy for claims arising out of facts alleged in the complaint, and that there is no adequate jurisdictional basis for suit.

We will similarly defend the three coram nobis petitions (our response to the Korematsu petition is due August 29, 1983). We will argue that the petition fails to state a sufficient reason to justify its filing over thirty years after all significant facts giving rise to the petitions were known, that in the absence of any remaining collateral legal consequences there is no live controversy, that the errors alleged in the petitions do not relate to the Supreme Court holdings, and we will defend the petitions on their merits. As previously noted, we would formally move to vacate the convictions and dismiss the underlying indictments of petitioners. We anticipate that the course we have recommended above may enhance our ability to defend these cases: we can focus the court's attention on the inappropriateness of judicial resolution of a controversy better left to the legislative and executive branches, and put the petitioners in the position of having to oppose the President's efforts to grant petitioners a critical portion of the relief they requested.

U.S. Department of Justice

Civil Division

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

29 JUL 1983

~~633-5361~~ 633-5713 (Walden)

MEMORANDUM

TO: Jay B. Stephens

FROM: Greg Walden GW

SUBJECT: Memorandum to Attorney General Concerning the Recommended Approach of the Civil and Criminal Divisions Regarding the Wartime Relocation and Internment of Japanese-Americans

The attached memorandum has been initialed by Paul McGrath. I would appreciate it if you would bring this to the Associate Attorney General's attention for his review and initials. Paul will be out of the office beginning Monday. Please call if there are any questions.

Attachment

cc: Mark M. Richard
James S. Reynolds
✓David C. Stephenson
Lawrence Lippe
Victor Stone
Jeffrey Axelrad
Timothy Finn

U.S. Department of Justice

Civil Division

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

Proposed Memo supersedes memo attached to memo dtd. 8/4/83 from Walden to Stephens

MEMORANDUM

TO: William French Smith
Attorney General

FROM: D. Lowell Jensen
Associate Attorney General

J. Paul McGrath
Assistant Attorney General
Civil Division

SUBJECT: Approach to Matters Concerning the World War II Relocation and Internment of Japanese Americans

Recently, the Commission on Wartime Relocation and Internment of Civilians issued a report, recommending that $1 billion plus in reparations be paid to Japanese-Americans because of their internment during World War II; that a Joint Resolution of apology be enacted; and that the President pardon persons convicted for violating internment restrictions. A Senate bill introduced by Senator Cranston, S. 1520, adopts in substantial part the recommendations of the Commission and would authorize a payment to the surviving individuals, in an amount to be decided by "committees of appropriate jurisdiction" upon review of the Commission's recommendations. Money destined for an internee now deceased or one who is unable to accept such payment would be placed in a trust fund whose purpose would be to distribute monies for the benefit of Japanese-American communities for educational, health and community services. There are also pending three coram nobis petitions in district courts on the West Coast seeking to collaterally attack the misdemeanor convictions of Messrs. Korematsu, Hirabayashi and Yasui which were ultimately upheld by the Supreme Court, by attacking the good faith of the government's actions and of the Solicitor General's submissions before the Supreme Court. Finally, there are pending in the District Court for the District of Columbia a class action, Hohri v. U.S., in which the plaintiffs seek billions of dollars in damages for the alleged wrongful acts taken by government officials against Japanese-Americans during World War II.

We cannot support most of the Commission's recommendations, because the principle of causing the American public to pay reparations or to admit wrongdoing is unacceptable and because it would serve no useful purpose to open wounds which have healed quite well. Nevertheless, we recommend that action be taken to underscore that the exclusions and detentions are a completely closed chapter, in order to help forestall undesirable legislative or judicial action and adverse public reaction. In addition, we believe the course suggested would gain broad public support.

Accordingly, we make the following recommendations:

1. The President should issue a blanket pardon to all those Japanese-American citizens who were convicted of violating wartime restrictions. The pardon would not be one based on innocence, but would be similar to the blanket amnesty of draft evaders proclaimed by President Carter in 1977. The pardon should come in the form of a Presidential proclamation which would acknowledge the hardships suffered by Japanese-Americans but which would stop short of confessing guilt or wrongdoing by government officials. Its language should certainly go no further than President Ford's 1976 proclamation, which described the whole episode as "a national mistake" and "a setback to American principles." The terms and wording of such a pardon must first be coordinated with the Office of Legal Counsel and the Pardon Attorney.

You would contemporaneously issue a statement of procedures to implement the pardon, similar to the procedures employed by the Justice Department in response to the selective service pardon. In order to receive a pardon document, the citizen would be required to write the Department and request it. The Justice Department would in turn agree to move to dismiss the convictions and underlying indictments for those who requested such actions.

Although we anticipate that some Japanese-Americans will decline a pardon not expressly based on innocence (especially those who have brought suit against the United States), we still favor this course. For one thing, a pardon based on innocence entitles the recipient to an award of up to $5,000, and we think it unwise to trigger payment of such compensation. More importantly, a pardon based on innocence would necessarily entail recitals of wrongdoing that could undermine our defense on the merits in both the coram nobis and civil suits. In any event, the impact of a blanket pardon is largely symbolic and is consonant with the Commission's pardon recommendation. We do not believe that the general public will note the difference or deem it an important one for this purpose. And most Japanese-Americans, we suspect, will accept the Presidential pardon as a largely ceremonial but appropriate gesture of the United States government.

2. We oppose any scheme of war reparations or compensation as recommended by the Commission. The Commission's recommendation that a $20,000 lump sum payment be made to each of 60,000 individuals still living would require an expenditure of approximately $1.2 billion. The premise of this recommendation is that the method and amount of compensation Congress selected in the American-Japanese Claims Act of 1948 were inadequate. On the contrary, the Act's approach was tailored to individual hardship and injury and provided over $35 million in compensation to most of the 100,000 evacuees. Admittedly, the 1948 Act awarded compensation for property damage only. Significantly, however, Congress in the 1950s considered and specifically rejected an attempt to broaden the statute to encompass other types of claims. We see no good reason to question the settlement Congress deemed sufficient three and one half decades ago.

Furthermore, any payment of compensation at this late date, beyond that already made under the Claims Act, would properly be understood to constitute war reparations, implying an admission of guilt by the United States going well beyond what this government and its officials have previously conceded.

3. The President should recommend that the Congress establish a special foundation along the lines suggested by the Commission, funded by a one-time payment of $2 million. The foundation would have two purposes, one oriented to the past and the other directed to the future. The foundation would maintain a permanent library housing papers relating to the wartime relocation and internment of Japanese-Americans (the original documents are housed in the Archives), for the benefit of the public and for the primary use of scholars.

The foundation would also encourage the study and research of outstanding interracial or interreligious problems in the United States and around the world, with an emphasis on practical solutions to resolve such intergroup conflicts. The foundation would focus on the highly successful assimilation of Japanese into American society and the virtually complete elimination of racial hostility between the Japanese and other elements of American society, perhaps by awarding scholarships to successful Japanese-Americans and by sponsoring activites involving the interrelationships of ethnic Japanese and Americans.

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4. We will seek dismissal of all litigation against the United States. On May 16, 1983, we moved to dismiss the civil suit, arguing that the action is barred by the statutes of limitation, that the American-Japanese Claims Act of 1948 is the exclusive remedy for claims arising out of facts alleged in the complaint, and that there is no adequate jurisdictional basis for suit.

We will similarly defend the three coram nobis petitions (our response to the Korematsu petition is due August 29, 1983). We will argue that the petition fails to state a sufficient reason to justify its filing over thirty years after all significant facts giving rise to the petitions were known, that in the absence of any remaining collateral legal consequences there is no live controversy, that the errors alleged in the petitions do not relate to the Supreme Court holdings, and we will defend the petitions on their merits. We anticipate that the course we have recommended above may enhance our ability to defend these cases: we can focus the court's attention on the inappropriateness of judicial resolution of a controversy better left to the legislative and executive branches, and put the petitioners in the position of having to reject a Presidential pardon.

Approach to Matters Concerning the World War II Relocation and Internment of Japanese Americans

August 2, 1983

D. Lowell Jensen
Associate Attorney General

David C. Stephenson
Acting Pardon Attorney

I have serious reservations concerning the recommendations relating to the issuance of a pardon proclamation as set forth in a proposed memorandum from you and Assistant Attorney General McGrath to the Attorney General on the above subject. In this connection, I would point out that my office was asked to furnish information concerning past pardon actions to the Criminal Division but was not asked to participate in the formulation of or to review the pardon recommendations. The proposed memorandum was sent to you on July 29, 1983 and was initialed by Mr. McGrath.

1. I am particularly concerned with the following statement on page 2 of the proposed memorandum:

> The Justice Department would in turn agree to move to dismiss the convictions and underlying indictments for those who requested such actions.

Quite apart from the question whether there exists a legal basis for such action, it appears to me that the proposed action is inconsistent with the granting of a pardon based upon forgiveness. By moving to wipe out or extinguish the conviction the Department in effect would be taking the position that there no longer is a conviction. If there is no longer a conviction, a pardon would not be necessary since the granting of a pardon based upon forgiveness assumes the existence of a valid conviction. On the other hand, the proposed action would be consistent with the granting of a pardon based upon innocence -- an action which the memorandum specifically recommends against.

Under the Carter pardon proclamation the Attorney General was ordered to cause all pending indictments to be dismissed. However, he was not ordered to "dismiss the convictions and underlying indictments" (as is proposed in the memorandum prepared for your signature) with respect to individuals who already had been convicted. Their sole relief was a pardon.

2. The proposed memorandum (page 2) recommends that the President "issue a blanket pardon to all those Japanese-American citizens who were convicted of violating wartime restrictions". The memorandum does not make clear that posthumous pardons are excluded. The pardon should be limited to convicted individuals who are alive at the time the proclamation is issued since posthumous pardons raise legal and policy questions. In practice they have not been granted. See attached memoranda of May 11 and May 13, 1976 from Deputy Pardon Attorney Stephenson to Giuliani, Associate Deputy Attorney General, memorandum of May 12, 1976 from Deputy Attorney General Tyler to Counsel to the President, and memorandum of August 1956 from Assistant Attorney General Rankin to the Attorney General.

3. I believe that clarification is needed with respect to the issuance of individual pardon warrants. The proposed memorandum states on page 2:

> In order to receive a pardon document, the citizen would be required to write the Department and request it.

If the pardon proclamation is intended to be self-executing, as the Carter proclamation of January 21, 1977, the individuals affected would be pardoned pursuant to the terms of the proclamation and no individual warrants would be necessary. Purely as a matter of convenience to persons who had been convicted of Selective Service violations and who had been pardoned by the proclamation, certificates of pardon have been issued by the Pardon Attorney upon request. However, these individuals were pardoned regardless of whether they requested a certificate.

4. The statement in the proposed memorandum (page 2) that the "language [of the proclamation] should certainly go no further than President Ford's 1976 proclamation which described the whole episode as 'a national mistake' and 'a setback to American principles'" is in error. First, the Ford

proclamation was issued in 1974, not 1976. Second, the proclamation contains no such language as the proposed memorandum attributes to it. Moreover, I believe that the language which the proposed memorandum erroneously attributes to President Ford is much too strong and unjustifiably suggests guilt or wrongdoing on the part of the Government. Language similar to that actually contained in the Ford proclamation, e.g., "...reconciliation calls for an act of mercy to bind the Nation's wounds and to heal the scars of divisiveness," would be more suitable. As a matter of further interest, the Carter proclamation contained no preamble. It constituted a simple grant of pardon without a recital of reasons.

Copies of the Carter and Ford proclamations and the Executive order implementing the Carter proclamation are attached.

cc: Kenneth W. Starr
Counselor to the Attorney General

J. Paul McGrath
Assistant Attorney General
Civil Division

Robert B. Bucknam
Special Assistant to the
Associate Attorney General

Greg Walden
Civil Division

presidential documents

Title 3—The President

PROCLAMATION 4313

Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters

By the President of the United States of America

A Proclamation

The United States withdrew the last of its forces from the Republic of Vietnam on March 28, 1973.

In the period of its involvement in armed hostilities in Southeast Asia, the United States suffered great losses. Millions served their country, thousands died in combat, thousands more were wounded, others are still listed as missing in action.

Over a year after the last American combatant had left Vietnam, the status of thousands of our countrymen—convicted, charged, investigated or still sought for violations of the Military Selective Service Act or of the Uniform Code of Military Justice—remains unresolved.

In furtherance of our national commitment to justice and mercy these young Americans should have the chance to contribute a share to the rebuilding of peace among ourselves and with all nations. They should be allowed the opportunity to earn return to their country, their communities, and their families, upon their agreement to a period of alternate service in the national interest, together with an acknowledgment of their allegiance to the country and its Constitution.

Desertion in time of war is a major, serious offense; failure to respond to the country's call for duty is also a serious offense. Reconciliation among our people does not require that these acts be condoned. Yet, reconciliation calls for an act of mercy to bind the Nation's wounds and to heal the scars of divisiveness.

NOW, THEREFORE, I, Gerald R. Ford, President of the United States, pursuant to my powers under Article II, Sections 1, 2 and 3 of the Constitution, do hereby proclaim a program to commence immedi-

ately to afford reconciliation to Vietnam era draft evaders and military deserters upon the following terms and conditions:

1. *Draft Evaders*—An individual who allegedly unlawfully failed under the Military Selective Service Act or any rule or regulation promulgated thereunder, to register or register on time, to keep the local board informed of his current address, to report for or submit to preinduction or induction examination, to report for or submit to induction itself, or to report for or submit to, or complete service under section 6(j) of such Act during the period from August 4, 1964 to March 28, 1973, inclusive, and who has not been adjudged guilty in a trial for such offense, will be relieved of prosecution and punishment for such offense if he:

(i) presents himself to a United States Attorney before January 31, 1975,

(ii) executes an agreement acknowledging his allegiance to the United States and pledging to fulfill a period of alternate service under the auspices of the Director of Selective Service, and

(iii) satisfactorily completes such service.

The alternate service shall promote the national health, safety, or interest. No draft evader will be given the privilege of completing a period of alternate service by service in the Armed Forces.

However, this program will not apply to an individual who is precluded from re-entering the United States under 8 U.S.C. 1182(a)(22) or other law. Additionally, if individuals eligible for this program have other criminal charges outstanding, their participation in the program may be conditioned upon, or postponed until after, final disposition of the other charges has been reached in accordance with law.

The period of service shall be twenty-four months, which may be reduced by the Attorney General because of mitigating circumstances.

2. *Military Deserters*—A member of the armed forces who has been administratively classified as a deserter by reason of unauthorized absence and whose absence commenced during the period from August 4, 1964 to March 28, 1973, inclusive, will be relieved of prosecution and punishment under Articles 85, 86 and 87 of the Uniform Code of Military Justice for such absence and for offenses directly related thereto if before January 31, 1975 he takes an oath of allegiance to the United States and executes an agreement with the Secretary of the Military Department from which he absented himself or for members of the Coast Guard, with the Secretary of Transportation, pledging to fulfill a period of alternate service under the auspices of the Director of Selective Service. The alternate service shall promote the national health, safety, or interest.

The period of service shall be twenty-four months, which may be reduced by the Secretary of the appropriate Military Department, or Secretary of Transportation for members of the Coast Guard, because of mitigating circumstances.

However, if a member of the armed forces has additional outstanding charges pending against him under the Uniform Code of Military Jus-

tice, his eligibility to participate in this program may be conditioned upon, or postponed until after, final disposition of the additional charges has been reached in accordance with law.

Each member of the armed forces who elects to seek relief through this program will receive an undesirable discharge. Thereafter, upon satisfactory completion of a period of alternate service prescribed by the Military Department or Department of Transportation, such individual will be entitled to receive, in lieu of his undesirable discharge, a clemency discharge in recognition of his fulfillment of the requirements of the program. Such clemency discharge shall not bestow entitlement to benefits administered by the Veterans Administration.

Procedures of the Military Departments implementing this Proclamation will be in accordance with guidelines established by the Secretary of Defense, present Military Department regulations notwithstanding.

3. *Presidential Clemency Board*—By Executive Order I have this date established a Presidential Clemency Board which will review the records of individuals within the following categories: (i) those who have been convicted of draft evasion offenses as described above, (ii) those who have received a punitive or undesirable discharge from service in the armed forces for having violated Article 85, 86, or 87 of the Uniform Code of Military Justice between August 4, 1964 and March 28, 1973, or are serving sentences of confinement for such violations. Where appropriate, the Board may recommend that clemency be conditioned upon completion of a period of alternate service. However, if any clemency discharge is recommended, such discharge shall not bestow entitlement to benefits administered by the Veterans Administration.

4. *Alternate Service*—In prescribing the length of alternate service in individual cases, the Attorney General, the Secretary of the appropriate Department, or the Clemency Board shall take into account such honorable service as an individual may have rendered prior to his absence, penalties already paid under law, and such other mitigating factors as may be appropriate to seek equity among those who participate in this program.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September in the year of our Lord nineteen hundred seventy-four, and of the Independence of the United States of America the one hundred and ninety-ninth.

Gerald R. Ford

[FR Doc.74-21742 Filed 9-16-74;12:47 pm]

THE WHITE HOUSE

GRANTING PARDON FOR VIOLATIONS
OF THE SELECTIVE SERVICE ACT,
AUGUST 4, 1964 TO MARCH 28, 1973

- - - - - - - - - - - - -

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Acting pursuant to the grant of authority in Article II, Section 2, of the Constitution of the United States, I, Jimmy Carter, President of the United States, do hereby grant a full, complete and unconditional pardon to: (1) all persons who may have committed any offense between August 4, 1964 and March 28, 1973 in violation of the Military Selective Service Act or any rule or regulation promulgated thereunder; and (2) all persons heretofore convicted, irrespective of the date of conviction, of any offense committed between August 4, 1964 and March 28, 1973 in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, restoring to them full political, civil and other rights.

This pardon does not apply to the following who are specifically excluded therefrom:

(1) All persons convicted of or who may have committed any offense in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, involving force or violence; and

(2) All persons convicted of or who may have committed any offense in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, in connection with duties or responsibilities arising out of employment as agents, officers or employees of the Military Selective Service system.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of January, in the year of our Lord nineteen hundred and seventy-seven, and of the Independence of the United States of America the two hundred and first.

JIMMY CARTER

# # #

FOR IMMEDIATE RELEASE JANUARY 21, 1977

Office of the White House Press Secretary

THE WHITE HOUSE

EXECUTIVE ORDER

RELATING TO VIOLATIONS OF THE SELECTIVE SERVICE ACT, AUGUST 4, 1964 TO MARCH 28, 1973

The following actions shall be taken to facilitate Presidential Proclamation of Pardon of January 21, 1977:

1. The Attorney General shall cause to be dismissed with prejudice to the government all pending indictments for violations of the Military Selective Service Act alleged to have occurred between August 4, 1964 and March 28, 1973 with the exception of the following:

   (a) Those cases alleging acts of force or violence deemed to be so serious by the Attorney General as to warrant continued prosecution; and

   (b) Those cases alleging acts in violation of the Military Selective Service Act by agents, employees or officers of the Selective Service System arising out of such employment.

2. The Attorney General shall terminate all investigations now pending and shall not initiate further investigations alleging violations of the Military Selective Service Act between August 4, 1964 and March 28, 1973, with the exception of the following:

   (a) Those cases involving allegations of force or violence deemed to be so serious by the Attorney General as to warrant continued investigation, or possible prosecution; and

   (b) Those cases alleging acts in violation of the Military Selective Service Act by agents, employees or officers of the Selective Service System arising out of such employment.

3. Any person who is or may be precluded from reentering the United States under 8 U.S.C. 1182(a) (22) or under any other law, by reason of having committed or apparently committed any violation of the Military Selective Service Act shall be permitted to apply for reentry to the United States.

   The Attorney General is directed to exercise his discretion under 8 U.S.C. 1182 (d) (5) or other applicable law to permit the reentry of such persons under the same terms and conditions as any other alien.

   This shall not include anyone who falls into the exceptions of paragraphs 1 (a) and (b) and 2(a) and (b) above.

4. Any individual offered conditional clemency or granted a pardon or other clemency under Executive Order 11803 or Presidential Proclamation 4313, dated September 16, 1974, shall [illegible]

7510 167 Kerner, Otto
Posthumous Pardons
DS:mh

Rudolph W. Giuliani
Associate Deputy Attorney General

May 11, 1976

David C. Stephenson
Deputy Pardon Attorney

Posthumous Pardons

In accordance with your request I transmit herewith a copy of an August 1956 memorandum for the Attorney General from J. Lee Rankin, then Assistant Attorney General, Office of Legal Counsel, which expresses the opinion that the President does not possess the power to issue a posthumous pardon and points out that the Pardon Attorney had found no record of the President issuing a posthumous pardon.

I am not aware of any grant of posthumous pardon since Mr. Rankin's 1956 memorandum and I do not know of any court decision which would compel a different legal opinion as to the President's power. As a matter of policy we have not processed petitions for posthumous pardons. I have no doubt that this policy reflects the law relating to pardons as expressed in the Office of Legal Counsel memorandum and also the difficulties inherent in processing posthumous applications. The policy presumably also reflects the view that the processing of such applications would impose an additional burden upon the Government not justified in terms of the benefit conferred upon the deceased individual's family or friends.

The rules governing petitions for Executive clemency (28 CFR 1.1 - 1.9) require that the pardon application be filed by the convicted person and not by any other person on his behalf. (Sec. 1.1 & 1.2) (A copy of the rules is enclosed.) When an individual files an application but dies prior to final action being taken upon his petition, we close the case without further action. I recall at least one instance in which an applicant was granted a pardon by the President subsequent to his death but in this case we were not aware of the petitioner's death until a year after the pardon was granted.

cc: Dean St. Dennis
Office of Public Information

Bcc: ✓Posthumous Pardons Subject file

75 10 167 Otto Kerner

Rudolph W. Guiliani
Associate Deputy Attorney General

May 13, 1976

David C. Stephenson
Deputy Pardon Attorney

Posthumous Pardons

This supplements my memorandum to you of May 11, 1976 on the above subject.

I have located in our files a memorandum dated April 1, 1971 from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, to John W. Dean, III, Counsel to the President, concerning the restoration of full civil rights to General Robert E. Lee. The memorandum touches very briefly upon the President's right to grant a posthumous pardon. After stating that the applicable law is discussed in the 1956 Office of Legal Counsel memorandum (copy of which I sent you with my May 11 memorandum), Assistant Attorney General Rehnquist observed (pg. 6):

> ....Although Chief Justice Marshall has characterized the pardon as in the nature of a deed requiring acceptance to be effective, it may be that the President, if he so desired, could exercise the pardon power posthumously. While acceptance would, of course, be a prerequisite to invoking the benefits of a pardon in a court of law, it would not seem necessary to clear the good name of a deceased person. In effect, this would be a ceremonial pardon....

A copy of the Rehnquist memorandum and a related White House memorandum of March 29, 1971 are attached.

bcc: Dean St. Dennis
Office of Public Information

THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

May 12, 1976

Full

MEMORANDUM FOR:

PHILIP BUCHEN, ESQ.
COUNSEL TO THE PRESIDENT

FROM:

HAROLD R. TYLER, JR.
DEPUTY ATTORNEY GENERAL

RE:

POSTHUMOUS PARDONS

Please be advised that my investigations in regard to posthumous pardons reveals the following:

1. In August, 1956, the then Assistant Attorney General, Office of Legal Counsel, Department of Justice, rendered an opinion to the Attorney General that the President, as a matter of law, does not possess the power to issue a posthumous pardon.

2. Until August, 1956, there were no records indicating that a President had issued a posthumous pardon.

3. Since 1956, there has been one case where a pardon was issued by the President, but in the curious situation of the grantee of the pardon being deceased without knowledge thereof by the President or the Justice Department. In other words, though the pardon was issued, it was issued on the mistaken understanding that the grantee thereof was alive.

4. It is interesting to note that the present rules governing petitions for Executive clemency

require that the pardon application be filed by the convicted person and not by any other person on his or her behalf. See 28 CFR 1.1 and 1.2. Moreover, the traditional practice in the Department has been that when an individual files a pardon application but dies prior to final action being taken on his petition, the file is closed without taking any further action.

5. I should note that I have not asked the Office of Legal Counsel to bring up to date its memorandum opinion of 1956. This could be done, of course, but all indications are that American case law on the point has been virtually non-existent since the summer of 1956.

copy

156

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: The President's power to issue a posthumous pardon

This is in response to your request for our advice on the above question. The Constitution, Article II, Section 2, vests in the President "Power to grant Reprieves and Pardons for Offenses against the United States." The authorities dealing with the question whether this power extends to the issuance of posthumous pardons are few and not of recent date.

At its December 1871 term, the Court of Claims held in Meldrim v. United States, 7 Ct. Cl. 595, that where an individual guilty of giving aid or comfort to the rebellion of the Southern States died without pardon and before the President's General Amnesty Proclamation of December 25, 1868 (15 Stat. 711), the proclamation did not obliterate the offense, and his administratrix therefore could not maintain an action for the proceeds of his captured property in the Treasury. It further appeared that the President had issued a special pardon but the intestate died shortly after its issuance and never accepted it. In a subsequent case, Sierra v. United States, 9 Ct. Cl. 224 (Dec. T., 1873), the court held on the authority of its decision in the Meldrim case that the Amnesty Proclamation of 1868 was "inoperative as to one who had died before its issue." See also Scott's Case, 8 Ct. Cl. 457 (Dec. T., 1873).

At an earlier date, in 1864, the President had before him the question whether he could remit a fine after the death of a man convicted of aiding and rescuing a deserter, the court having imposed a sentence of a $500 fine. Attorney General Bates advised the President that he had this power. 11 Ops. A.G. 35. He said that "it might be doubtful on technical principles whether the President could grant a deed of pardon to a man after his death, since as Chief Justice Marshall says, in United States vs. Wilson, (7 Pet., 161,) 'a pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance', and, of course, there can be no delivery to and acceptance by a dead man" (p. 36). However, he continued (pp. 36-37):

> * * * a distinction exists between the act of a pardon by which a man is relieved of corporal punishment for guilt and the act for remission of a fine which operates on his estate only. The technical reason which may (I do not say will) prevent a pardon from operating in favor of a dead man, does not apply to the remission of a fine, for that may be accepted by the heirs to the estate whose interests are affected by it. The distinction between pardon of corporal punishment and remission of a pecuniary fine is recognized by the act of February 20, 1863, chap. 46, which gives the President the full discretionary power to remit the one without disturbing the other.*
>
> In my opinion you have the power to remit the fine imposed on the late John Caldwell, notwithstanding his death, by an instrument reciting the circumstances of the case.**

The deed concept of a pardon as expressed by Chief Justice Marshall was approved in Burdick v. United States, 236 U.S. 79, and on that basis it was held that the President "cannot force a pardon upon a man." However, in Biddle v. Perovich, 274 U.S. 480, the Supreme Court held that the reasoning of the Burdick case was not to be extended to the commutation of a death sentence to life imprisonment. Without overruling Burdick, the Court did say (p. 486) that "A pardon in our days is not a private act of grace from an individual happening to possess power." However, it would seem that as the law now stands a pardon, except in the situation involved in Perovich, must be considered as in the nature of a deed so that to be effective it has to be accepted. Moreover, the law is well-settled that in the absence of statute a deed to a deceased party is ineffectual to pass title to real property. Davenport v. Lamb, 13 Wall. 418; Note, 148 A.L.R. 252.

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*See, 18 U.S.C. 3570, providing that when an individual is sentenced to two kinds of punishment "the one Pecuniary and the other corporal, the President's remission in whole or in part of either kind shall not impair the legal validity of the other kind or of any portion of either kind, not remitted."

**This opinion has never been subsequently cited.

The Pardon Attorney advises us that with the exception of the fine case above (11 Ops. A.G. 35), he has found no record of the President issuing a posthumous pardon. He further states that it has always been the view of his office that it would not be practical to issue pardons to deceased persons although personally he "would not object in hardship cases such as cases of widows of Government employees who are deprived of annuities to follow the precedent established in the Caldwell case /11 Ops. A.G. 35, supra/ * * * where an estate is involved rather than a person. I would counsel against, however, the practice of recommending pardons for deceased persons for the mere purpose of clearing the name, etc. There is no doubt that many widows and survivors would want that done."

Unless the deed theory of a pardon is to be rejected, which I do not believe is warranted under existing decisions, it is my opinion that the President does not possess the power to issue a posthumous pardon; he does have the power, as established by the opinion of Attorney General Bates, to remit a fine posthumously. Unless there is occasion to do so, I feel that we should leave open the question whether Attorney General Bates' reasoning as to remission of a fine may be extended to affording relief, by way of a posthumous pardon, with respect to a Government annuity, as suggested by the Pardon Attorney.

/s/ J. Lee Rankin
J. Lee Rankin
Assistant Attorney General
Office of Legal Counsel

Memorandum

Subject	Date
Approach to Matters Concerning the World War II Relocation and Internment of Japanese Americans	AUG 08 1983 MR:VStone:skb

To

D. Lowell Jensen
Associate Attorney
General

From

Mark Richard
Deputy Assistant Attorney
General
Criminal Division

The Criminal Division has contributed to the formulation of and agrees with the approach suggested in the August 4th draft memorandum of Paul McGrath prepared by Greg Walden of the Civil Division and David Stephenson, the Acting Pardon Attorney.

One provision of that draft (at p.2) recommends that in addition to a self-executing pardon declaration, "The Justice Department would simultaneously move to vacate the convictions and dismiss the underlying indictments." This provision was urged by the Criminal Division for several reasons.

First, it shows that although the Executive Branch is not predisposed to accept all of the Commission recommendations (as, for example, regarding financial compensation of survivors), at least in this one respect the Executive Branch is prepared to go farther than the Commission in removing any lingering adverse affects.

Second, such action, to remove any possible lingering legal consequences, is appropriate. Internal DOJ memoranda from 1942 show that our prosecutive policy at that time was to avoid convictions under this statute wherever compliance, even after a deliberate violation, could be effected. Our primary concern was with administering a wartime program, not with obtaining criminal misdemeanor convictions for non-violent civil disobedience. Having determined at this time that our wartime program was at least overbroad (irrespective of whether conceived in good or bad faith), it is a show of our good faith and good will that we see no need to maintain those old convictions obtained under a statute, 18 U.S.C. 1383, which Congress repealed in 1976. In sum, we had no prosecutive objective in 1942 of doing anything other than obtaining compliance with the regulatory scheme. Once

David Stephenson

that compliance was effected and the scheme ended -- indeed, once the war ended and the authority for both the regulatory scheme and the misdemeanor violations were repealed as unwise due to their very broad sweep, there is no compelling reason not to vacate these convictions. Certainly, no one would suggest retrying these cases at this late date (even though the facts were undisputed at trial) if the district court vacated the convictions.

Third, the existence of the underlying convictions and indictments is the only colorable ground for the various district court's coram nobis jurisdiction.

While our first memo outlined the jurisdictional position we would take in any event, this action will materially strengthen our jurisdictional position. We can argue that it grants the only relief to which these coram nobis petitioners are entitled and, at the same time, further divests the petitioners of any possible continuing adverse legal consequences. The district courts or the petitioners could try to reject a pardon but, as suggested in our July 19 memorandum at p.5, they should have no standing to thwart this kind of discretionary Executive action unless it is "motivated by considerations contrary to the public interest." United States v. Hamm, 659 F.2d 624, 631 (5th Cir. 1981) (en banc). Here, the public interest in airing the facts of the internment has been otherwise provided for by Congress. Courts were not designed to act and are not free to act as "roving commissions."

Should any district court deny our responsive prayer to dismiss the petition without a hearing after such Executive action by us, we believe that the strength of our arguments would lead that district court to certify the jurisdictional question for an interlocutory appeal. Such an appeal would be especially helpful if it provides us a further opportunity to prevail on our jurisdictional arguments before having to relitigate in court the merits of the internment decision. We expect that district court litigation on the merits of the controversy would be extremely lengthy, costly, and ultimately unproductive (since even if we win we will reopen rather than help heal old wounds stemming from this difficult period in American history).

Finally, the Civil Division has taken the position that vacating the convictions and dismissing the indictments will not adversely affect their case. Rather, they note that such action will help show that the Executive Branch is exercising its proper prerogatives to do equity, rather than seeming insensitive to the Commission's work.

For the above reasons, we concur with the Civil Division in recommending that Executive action include vacating the approximately 40 misdemeanor convictions and dismissing the underlying indictments or informations.

U.S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

RECEIVED

JUN 17 1983

Assistant Attorney General
Civil Division

MEMORANDUM

June 17, 1983

TO: D. Lowell Jensen
Associate Attorney General

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

Jonathan C. Rose
Assistant Attorney General
Office of Legal Policy

J. Paul McGrath
Assistant Attorney General
Civil Division

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

FROM: Timothy J. Finn TJF
Associate Deputy Attorney General

SUBJECT: Recommendations by Commission on Wartime Relocation and Internment of Civilians

Attached are recommendations released yesterday by the Commission on Wartime Relocation and Internment of Civilians, which is a commission established by Congress in 1980 to review and consider possible remedies for the internment of Japanese-Americans and Aleutians during World War II. In addition to various proposals for monetary compensation, the Commission recommends (at page 10) that the President pardon those Japanese-Americans convicted of violating curfew laws or internment requirements applied on the basis of ethnicity, and that the Department of Justice review "other wartime convictions" of ethnic Japanese and recommend pardons for "those whose offenses were grounded in a refusal to accept treatment that discriminated among citizens on the basis of race or ethnicity."

The Department is currently litigating several actions relating to the Japanese internment. A class action has been filed in the D.C. District Court for uncompensated damages

incurred by those interned. Petitions for writs of error coram nobis have also been filed in the federal district courts in California, Oregon, and Washington by the defendants in the famous Supreme Court cases which upheld the Japanese internment regulations, Hirabayashi v. United States, 320 U.S. 81 (1943), Yasui v. United States, 320 U.S. 115 (1943), and Korematsu v. United States, 323 U.S. 212 (1944). These petitions ask that the convictions in those cases be vacated and the indictments dismissed because of government misconduct in the prosecution of these suits. The Department has not yet filed its answer to these petitions.

The Deputy would like to meet next week -- at a time to be arranged -- to discuss our response to the recommendations of the Commission and the coram nobis petitions.

Attachment

RECOMMENDATIONS

In 1980 Congress established a bipartisan Commission on Wartime Relocation and Internment of Civilians, and directed it to:

(1) review the facts and circumstances surrounding Executive Order Numbered 9066, issued February 19, 1942, and the impact of such Executive Order on American citizens and permanent resident aliens.

(2) review directives of United States military forces requiring the relocation and, in some cases, detention in internment camps of American citizens, including Aleut civilians, and permanent resident aliens of the Aleutian and Pribilof Islands; and

(3) recommend appropriate remedies.

The Commission fulfilled the first two mandates by submitting to Congress in February 1983 a unanimous report, Personal Justice Denied, which extensively reviews the history and circumstances of the fateful decisions to exclude, remove and then to detain Japanese Americans and Japanese resident aliens from the West Coast, as well as the treatment of Aleuts during World War II.* The remedies which the Commission recommends in this second and final part of its report are based upon the conclusions of that report as well as upon further studies done for the Commission, particularly an analysis of the economic impact of exclusion and detention.

*Personal Justice Denied (467 pp., $8.50) is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; Stock Number 052-003-00897-1. Telephone orders may be placed by calling (202) 783-3238. The report also discusses the removal from Hawaii of 1,875 residents of Japanese ancestry; the internment of Germans and Italians from various parts of the country as well as the exclusion of a small number of German American and Italian American citizens from particular areas pursuant to Executive Order 9066. Japanese Americans were also excluded from Alaska.

In considering recommendations, the Congress and the nation therefore must bear in mind the Commission's basic factual findings about the wartime treatment of American citizens of Japanese ancestry and resident Japanese aliens, as well as of the people of the Aleutian Islands. A brief review of the major findings of Personal Justice Denied is followed by the Commission's recommendations.

I. American citizens of Japanese ancestry and resident Japanese aliens

On February 19, 1942, ten weeks after the Pearl Harbor attack, President Franklin D. Roosevelt signed Executive Order 9066, empowering the Secretary of War and the military commanders to whom he delegated authority to exclude any and all persons, citizens and aliens, from designated areas in order to secure national defense objectives against sabotage, espionage and fifth column activity. Shortly thereafter, on the alleged basis of military necessity, all American citizens of Japanese descent and all Japanese resident aliens were excluded from the West Coast. A small number -- 5,000 to 10,000 -- were impelled to leave the West Coast on their own. Another 110,000 people were removed from the West Coast and placed in "relocation centers" -- bleak barrack camps in desolate areas of the Western states, guarded by military police.

People sent to relocation centers were permitted to leave only after a loyalty review on terms set, in consultation with the military, by the War Relocation Authority, the civilian agency that ran the camps. During the course of the war, approximately 35,000 evacuees were allowed to leave the camps to join the Army, attend college outside the West Coast or take whatever

private employment might be available to them. When the exclusion of Japanese Americans and resident aliens from the West Coast was ended in December 1944, about 85,000 people remained in government custody.

This policy of exclusion, removal and detention was carried out without individual review, and prolonged exclusion continued without adequate regard to evacuees' demonstrated loyalty to the United States. Congress, fully aware of the policy of removal and detention, supported it by enacting a federal statute which made criminal the violation of orders issued pursuant to Executive Order 9066. The United States Supreme Court also upheld exclusion in the context of war, but struck down the detention of loyal American citizens on the ground that this did not rest on statutory authority. All this was done despite the fact that no documented acts of espionage, sabotage or fifth column activity were shown to have been committed by any identifiable American citizen of Japanese ancestry or resident Japanese alien on the West Coast.

Officials took far more individualized, selective action against enemy aliens of other nationalities. No mass exclusion or detention, in any part of the country, was ordered against American citizens of German or Italian descent. The ethnic Japanese suffered a unique injustice during these years.

The Commission has examined the central events which created this history, especially the decisions that proved to be turning points in the flow of events.

The federal government contended that its decision to exclude ethnic Japanese from the West Coast was justified by "military necessity." Careful review of the facts by the Commission has not revealed any security or military threat from the West Coast ethnic Japanese in 1942. The record does not support the claim that military necessity justified the exclusion of the ethnic Japanese from the West Coast, with the consequent loss of property and personal liberty.

The decision to detain followed indirectly from the alleged military necessity for exclusion. No one offered a direct military justification for detention; the War Relocation Authority adopted detention primarily in reaction to the vocal popular feeling that people whom the government considered too great a threat to remain at liberty on the West Coast should not live freely elsewhere. The WRA contended that the initial detention in relocation centers was necessary for the evacuees' safety, and that controls on departure would assure that the ethnic Japanese escaped mistreatment by other Americans when they left the camps. It follows, however, from the Commission's conclusion that no military necessity justified the exclusion that there was no basis for this detention.

In early 1943, the government proposed to end detention, but not exclusion, through a loyalty review program designed to open the gates of the camps for the loyal, particularly those who volunteered to join the Army. This program represented a compromise between those who believed exclusion was no longer necessary and those who would prolong it. It gave some ethnic Japanese an opportunity to demonstrate loyalty to the United States most graphically -- on the battlefield. Particularly after detention, such means of proving loyalty should not have been necessary. Yet distinguished service of Japanese Americans

both in Europe and the Pacific had a profound impact in fostering postwar acceptance of the ethnic Japanese in America. It opened the gates of the camps and began to reestablish normal life for some people. But it did not grant the presumption of loyalty to all American citizens of Japanese descent. With no apparent rationale or justification, the loyalty review program failed to end exclusion from the West Coast of those who were found loyal.

By the spring of 1943, the highest civilian and military officials of the War Department had concluded that, after the loyalty review, military requirements no longer justified excluding American citizens of Japanese descent or resident aliens from the West Coast. The exclusion was imposed through orders based on the Secretary of War's authority; nevertheless, the War Department did not act to lift the ban. The extent to which these views were communicated to the White House is unclear, but twelve months later, in May 1944, a recommendation to end exclusion was put before the President at a Cabinet meeting. Nevertheless, exclusion ended only after the Presidential election in November, 1944. No plausible reason connected to wartime security supports this delay in allowing the ethnic Japanese to return to their homes, jobs and businesses -- although the delay meant, as a practical matter, that most evacuees continued to be confined in relocation camps for an additional eighteen months.

In sum, Executive Order 9066 was not justified by military necessity, and the decisions that followed from it -- exclusion, detention, the ending of detention and the ending of exclusion -- were not founded upon military considerations. The broad historical causes that shaped these decisions were race prejudice, war hysteria and a failure of political leadership.

Widespread ignorance about Americans of Japanese descent contributed to a policy conceived in haste and executed in an atmosphere of fear and anger at Japan. A grave personal injustice was done to the American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed and detained by the United States during World War II.

The excluded people suffered enormous damages and losses, both material and intangible. To the disastrous loss of farms, businesses and homes must be added the disruption for many years of careers and professional lives, as well as the long-term loss of income, earnings and opportunity. Japanese American participation in the postwar boom was delayed and damaged by the losses of valuable land and growing enterprises on the West Coast which they sustained in 1942. An analysis of the economic losses suffered as a consequence of the exclusion and detention was performed for the Commission, Congress having extended the Commission's life in large measure to permit such a study. It is estimated that, as a result of the exclusion and detention, in 1945 dollars the ethnic Japanese lost between $108 and $164 million in income and between $41 and $206 million in property for which no compensation was made after the war under the terms of the Japanese-American Evacuation Claims Act. Adjusting these figures to account for inflation alone, the total losses of income and property fall between $810 million and $2 billion in 1983 dollars. It has not been possible to calculate the effects upon human capital of lost education, job training and the like.

Less tangibly, the ethnic Japanese suffered the injury of unjustified stigma that marked the excluded. There were physical illnesses and injuries directly related to detention, but the deprivation of liberty is no less injurious because it wounds the spirit rather than the body. Evacuation and relocation brought psychological pain, and the weakening of a traditionally strong family structure under pressure of separation and camp conditions. No price can be placed on these deprivations.

These facts present the Commission with a complex problem of great magnitude to which there is no ready or satisfactory answer. No amount of money can fully compensate the excluded people for their losses and sufferings. Two and a half years behind the barbed-wire of a relocation camp, branded potentially disloyal because of one's ethnicity alone -- these injustices cannot neatly be translated into dollars and cents. Some find such an attempt in itself a means of minimizing the enormity of these events in a constitutional republic. History cannot be undone; anything we do now must inevitably be an expression of regret and an affirmation of our better values as a nation, not an accounting which balances or erases the events of the war. That is now beyond anyone's power.

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

The governmental decisions of 1942 were not the work of a few men driven by animus, but decisions supported or accepted by public servants from nearly every part of the political spectrum. Nor did sustained or vocal opposition come from the American public. The wartime events produced an unjust result that visited great suffering upon an entire group of citizens, and upon resident aliens whom the Constitution also protects. While we do not analogize these events to the Holocaust -- for the detention camps were not death camps -- this is hardly cause for comfort in a democracy, even forty years later.

The belief that we Americans are exceptional often threatens our freedom by allowing us to look complacently at evil-doing elsewhere and to insist that "It can't happen here." Recalling the events of exclusion and detention, ensuring that later generations of Americans know this history, is critical immunization against infection by the virus of prejudice and the emotion of wartime struggle. "It did happen here" is a message that must be transmitted, not as an exercise in self-laceration but as an admonition for the future. Among our strengths as a nation is our willingness to acknowledge imperfection as well as to struggle for a more just society. It is in a spirit of continuing that struggle that the Commission recommends several forms of redress.

In proposing remedial measures, the Commission makes its recommendations in light of a history of postwar actions by federal, state and local governments to recognize and partially to redress the wrongs that were done:

o In 1948, Congress passed the Japanese-American Evacuation Claims Act; this gave persons of Japanese ancestry the right to claim from the government

real and personal property losses that occurred as a consequence of the exclusion and evacuation. The Act did not allow claims for lost income or for pain and suffering. Approximately $37 million was paid in claims, an amount far below what would have been full and fair compensation for actual economic losses. Awards were low because elaborate proof of loss was required, and incentives for settling claims below their full value were built into the Act.

o In 1972, the Social Security Act was amended so that Japanese Americans over the age of eighteen would be deemed to have earned and contributed to the Social Security system during their detention.

o In 1978, the federal civil service retirement provisions were amended to allow the Japanese Americans civil service retirement credit for time spent in detention after the age of eighteen.

o In four instances, former government employees have received a measure of compensation. In 1982, the State of California enacted a statute permitting the few thousand Japanese Americans in the civil service, who were dismissed or who resigned during the war because of their Japanese ethnicity, to claim $5,000 as reparation. In late 1982, the Los Angeles County Board of Supervisors enacted a similar program for the Japanese Americans it employed in 1942. San Francisco and the State of Washington recently passed statutes providing similar relief to former employees who were excluded.

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

group whole again.

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

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

2. The Commission recommends that the President pardon those who were convicted of violating the statutes imposing a curfew on American citizens on the basis of their ethnicity and requiring the ethnic Japanese to leave designated areas of the West Coast or to report to assembly centers. The Commission further recommends that the Department of Justice review other wartime convictions of the ethnic Japanese and recommend to the President that he pardon those whose offenses were grounded in a refusal to accept treatment that discriminated among citizens on the basis of race or ethnicity. Both recommendations are made without prejudice to cases currently before the courts.

3. The Commission recommends that Congress direct the Executive agencies to which Japanese Americans* may apply for the restitution of positions, status or entitlements lost in whole or in part because of acts or events betweeen December 1941 and 1945 to review such applications with liberality, giving

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* This recommendation and those which follow apply to all ethnic Japanese excluded or detained during World War II without regard to the explicit legal authority under which the government acted.

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

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

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

Such a fund should sponsor research and public educational activities so that the events which were the subject of this inquiry will be remembered, and so that the causes and circumstances of this and similar events may be illuminated and understood. A nation which wishes to remain just to its citizens must not forget its lapses. The recommended foundation might appropriately fund compara-

tive studies of similar civil liberties abuses or of the effect upon particular groups of racial prejudice embodied by government action in times of national stress; for example, the fund's public educational activity might include preparing and distributing the Commission's findings about these events to textbook publishers, educators and libraries.

5. The Commissioners, with the exception of Congressman Lungren, recommend that Congress establish a fund which will provide personal redress to those who were excluded, as well as serve the purposes set out in Recommendation 4. Appropriations of $1.5 billion should be made to the fund over a reasonable period to be determined by Congress. This fund should be used, first, to provide a one-time per capita compensatory payment of $20,000 to each of the approximately 60,000 surviving persons excluded from their places of residence pursuant to Executive Order 9066.* The burden should be on the government to locate survivors, without requiring any application for payment, and payments should be made to the oldest survivors first. After per capita payments, the remainder of the fund should be used for the public educational purposes discussed in Recommendation 4 as well as for the general welfare of the Japanese American community. This should be accomplished by grants for purposes such as aid to the elderly and scholarships for education, weighing, where appropriate, the effect on the exclusion and detention on the descendants of those who were detained. Individual payments in compensation for loss or damage should not be made.

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* Commissioner William M. Marutani formally renounces any monetary recompense either direct or indirect.

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The fund be administered by a board, the majority of whose members are Americans of Japanese descent appointed by the President and confirmed by the Senate. The compensation of members of the Board should be limited to their expenses and per diem payments at accepted governmental rates.

II. The Aleuts*

When the Japanese attacked and captured the two westernmost Aleutian Islands, Kiska and Attu, the military evacuated the Aleuts from the Pribilofs and from many islands in the Aleutian chain. This action was justified as a measure to protect civilians in an active theatre of war. The Commission found no persuasive showing that evacuation of the Aleuts was motivated by racism or that it was undertaken for any reason but their safety. The evacuation of the Aleuts was a rational wartime measure taken to safeguard them.

Following the evacuation, however, the approximately 900 evacuated Aleuts suffered at the hands of the government in two distinct ways. First, no plan had been developed to care for them by the civilian agencies in the Department of the Interior which had responsibility for Aleut interests. As a result, they were transported to southeastern Alaska and housed in camps set up typically at abandoned gold mines or canneries. Conditions varied among

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*Commissioner Joan Z. Bernstein recuses herself from participation in recommending remedies for the Aleuts because of a potential conflict of interest involving representation by the law firm of which she is a member.

camps, but housing, sanitation and eating conditions in most were deplorable. Medical care was inadequate; illness and disease were widespread. While exact numbers are not available, it appears that approximately ten percent of the Aleut evacuees died during the two to three years they spent in the camps.

This treatment clearly failed to meet the government's responsibility to those under its care.

Second, on returning to their villages, the Aleuts found that many houses and churches had been vandalized by the U.S. military. Houses, churches, furniture, boats and fishing gear were missing, damaged or destroyed. Devout followers of the Russian Orthodox faith, the Aleuts had treasured religious icons from czarist Russia and other family heirlooms; now gone, they were a significant loss spiritually as well as materially. Insofar as the government attempted to make good some of these losses, it typically replaced Aleut possessions with inferior goods, and the losses were never remedied adequately.

The Fifth Amendment commits the government to compensating for property it takes. Appropriate, full compensation clearly has not been made in the case of the Aleuts.

In addition, the island of Attu, now used at least in part by the Coast Guard, was never returned to the Aleuts after the Second World War. There also remain in the Aleutians large quantities of wartime debris, much of it hazardous. A great deal, but not all, of this material rests on federally-owned land.

No effective system of records exists by which to estimate Aleut property losses exactly; certainly there is no readily available means of putting a dollar value upon the suffering and death brought to Aleuts in the camps. The Commissioners agree that a claims procedure would not be an effective method of compensation. Therefore, the sums included in the Commission's recommendations were chosen to recognize fundamental justice as the Commissioners perceive it on the basis of the testimony and evidence before them. The recommended amounts do not reflect a precise balancing of actual losses; this is now, after many years, a practical impossibility.

1. The Commissioners, with Congressman Lungren dissenting, recommend that Congress establish a fund for the beneficial use of the Aleuts in the amount of $5 million. The principal and interest of the fund should be spent for community and individual purposes which would be compensatory for the losses and injuries Aleuts suffered as a result of the evacuation. These injuries, as Personal Justice Denied describes, include lasting disruption of traditional Aleut means of subsistence and, with it, the weakening of their cultural tradition. The Commissioners therefore foresee entirely appropriate expenditures from the proposed fund for community educational, cultural or historical rebuilding in addition to medical or social services.

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

3. The Commission recommends that Congress appropriate funds and direct the relevant government agency to rebuild and restore the churches damaged or destroyed in the Aleutian Islands in the course of World War II; preference in employment should be given to Aleuts in performing the work of rebuilding and restoring these buildings, which were community centers as well as houses of worship.

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

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

* * * *

Finally, the Commission recommends that a permanent collection be established and funded in the National Archives to house and make available for research the collection of government and private documents, personal testimony and other materials which the Commission amassed during its inquiry.

* * *

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

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

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

Personal Justice Denied

REPORT OF THE
COMMISSION ON WARTIME RELOCATION
AND INTERNMENT OF CIVILIANS

WASHINGTON, D.C.
DECEMBER 1982

Summary

The Commission on Wartime Relocation and Internment of Civilians was established by act of Congress in 1980 and directed to

1. review the facts and circumstances surrounding Executive Order Numbered 9066, issued February 19, 1942, and the impact of such Executive Order on American citizens and permanent resident aliens;

2. review directives of United States military forces requiring the relocation and, in some cases, detention in internment camps of American citizens, including Aleut civilians, and permanent resident aliens of the Aleutian and Pribilof Islands; and

3. recommend appropriate remedies.

In fulfilling this mandate, the Commission held 20 days of hearings in cities across the country, particularly on the West Coast, hearing testimony from more than 750 witnesses: evacuees, former government officials, public figures, interested citizens, and historians and other professionals who have studied the subjects of Commission inquiry. An extensive effort was made to locate and to review the records of government action and to analyze other sources of information including contemporary writings, personal accounts and historical analyses.

By presenting this report to Congress, the Commission fulfills the instruction to submit a written report of its findings. Like the body of the report, this summary is divided into two parts. The first describes

actions taken pursuant to Executive Order 9066, particularly the treatment of American citizens of Japanese descent and resident aliens of Japanese nationality. The second covers the treatment of Aleuts from the Aleutian and Pribilof Islands.

PART I: NISEI AND ISSEI*

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

This policy of exclusion, removal and detention was executed against

*The first generation of ethnic Japanese born in the United States are *Nisei;* the *Issei* are the immigrant generation from Japan; and those who returned to Japan as children for education are *Kibei*.

120,000 people without individual review, and exclusion was continued virtually without regard for their demonstrated loyalty to the United States. Congress was fully aware of and supported the policy of removal and detention; it sanctioned the exclusion by enacting a statute which made criminal the violation of orders issued pursuant to Executive Order 9066. The United States Supreme Court held the exclusion constitutionally permissible in the context of war, but struck down the incarceration of admittedly loyal American citizens on the ground that it was not based on statutory authority.

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

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

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

The personal injustice of excluding, removing and detaining loyal American citizens is manifest. Such events are extraordinary and unique in American history. For every citizen and for American public life, they pose haunting questions about our country and its past. It has been the Commission's task to examine the central decisions of this history—the decision to exclude, the decision to detain, the decision to release from detention and the decision to end exclusion. The Commission has analyzed both how and why those decisions were made, and what their consequences were. And in order to illuminate those

events, the mainland experience was compared to the treatment of Japanese Americans in Hawaii and to the experience of other Americans of enemy alien descent, particularly German Americans.

The Decision to Exclude

The Context of the Decision. First, the exclusion and removal were attacks on the ethnic Japanese which followed a long and ugly history of West Coast anti-Japanese agitation and legislation. Antipathy and hostility toward the ethnic Japanese was a major factor of the public life of the West Coast states for more than forty years before Pearl Harbor. Under pressure from California, immigration from Japan had been severely restricted in 1908 and entirely prohibited in 1924. Japanese immigrants were barred from American citizenship, although their children born here were citizens by birth. California and the other western states prohibited Japanese immigrants from owning land. In part the hostility was economic, emerging in various white American groups who began to feel competition, particularly in agriculture, the principal occupation of the immigrants. The anti-Japanese agitation also fed on racial stereotypes and fears: the "yellow peril" of an unknown Asian culture achieving substantial influence on the Pacific Coast or of a Japanese population alleged to be growing far faster than the white population. This agitation and hostility persisted, even though the ethnic Japanese never exceeded three percent of the population of California, the state of greatest concentration.

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

This agitation attacked a number of ethnic Japanese cultural traits or patterns which were woven into a bogus theory that the ethnic Japanese could not or would not assimilate or become "American." Dual citizenship, Shinto, Japanese language schools, and the education of many ethnic Japanese children in Japan were all used as evidence. But as a matter of fact, Japan's laws on dual citizenship went no further than those of many European countries in claiming the allegiance of the children of its nationals born abroad. Only a small number of ethnic

Japanese subscribed to Shinto, which in some forms included veneration of the Emperor. The language schools were not unlike those of other first-generation immigrants, and the return of some children to Japan for education was as much a reaction to hostile discrimination and an uncertain future as it was a commitment to the mores, much less the political doctrines, of Japan. Nevertheless, in 1942 these popular misconceptions infected the views of a great many West Coast people who viewed the ethnic Japanese as alien and unassimilated.

Second, Japanese armies in the Pacific won a rapid, startling string of victories against the United States and its allies in the first months of World War II. On the same day as the attack on Pearl Harbor, the Japanese struck the Malay Peninsula, Hong Kong, Wake and Midway Islands and attacked the Philippines. The next day the Japanese Army invaded Thailand. On December 13 Guam fell; on December 24 and 25 the Japanese captured Wake Island and occupied Hong Kong. Manila was evacuated on December 27, and the American army retreated to the Bataan Peninsula. After three months the troops isolated in the Philippines were forced to surrender unconditionally—the worst American defeat since the Civil War. In January and February 1942, the military position of the United States in the Pacific was perilous. There was fear of Japanese attacks on the West Coast.

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

Fourth, as anti-Japanese organizations began to speak out and rumors from Hawaii spread, West Coast politicians quickly took up the familiar anti-Japanese cry. The Congressional delegations in Washington organized themselves and pressed the War and Justice Departments and the President for stern measures to control the ethnic Japanese—moving quickly from control of aliens to evacuation and removal of citizens. In California, Governor Olson, Attorney General Warren, Mayor Bowron of Los Angeles and many local authorities joined the clamor. These opinions were not informed by any knowledge of actual military risks, rather they were stoked by virulent agitation which encountered little opposition. Only a few churchmen and aca-

demicians were prepared to defend the ethnic Japanese. There was little or no political risk in claiming that it was "better to be safe than sorry" and, as many did, that the best way for ethnic Japanese to prove their loyalty was to volunteer to enter detention. The press amplified the unreflective emotional excitement of the hour. Through late January and early February 1942, the rising clamor from the West Coast was heard within the federal government as its demands became more draconian.

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

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

> In the war in which we are now engaged racial affinities are not severed by migration. The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become "Americanized," the racial strains are undiluted. To conclude otherwise is to expect that children born of white parents on Japanese soil sever all racial affinity and become loyal Japanese subjects, ready to fight and, if necessary, to die for Japan in a war against the nation of their parents. That Japan is allied with Germany and Italy in this struggle is no ground for assuming that any Japanese, barred from assimilation by convention as he is, though born and raised in the United States, will not turn against this nation when the final test of loyalty comes. It, therefore, follows that along the vital Pacific Coast over 112,000 potential enemies, of Japanese extraction, are at large today. There are indications that these were organized and ready for concerted action at a favorable opportunity. The very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken.

There are two unfounded justifications for exclusion expressed here: first, that ethnicity ultimately determines loyalty; second, that

"indications" suggest that ethnic Japanese "are organized and ready for concerted action"—the best argument for this being the fact that it hadn't happened.

The first evaluation is not a military one but one for sociologists or historians. It runs counter to a basic premise on which the American nation of immigrants is built—that loyalty to the United States is a matter of individual choice and not determined by ties to an ancestral country. In the case of German Americans, the First World War demonstrated that race did not determine loyalty, and no negative assumption was made with regard to citizens of German or Italian descent during the Second World War. The second judgment was, by the General's own admission, unsupported by any evidence. General DeWitt's recommendation clearly does not provide a credible rationale, based on military expertise, for the necessity of exclusion.

In his 1943 *Final Report*, General DeWitt cited a number of factors in support of the exclusion decision: signaling from shore to enemy submarines; arms and contraband found by the FBI during raids on ethnic Japanese homes and businesses; dangers to the ethnic Japanese from vigilantes; concentration of ethnic Japanese around or near militarily sensitive areas; the number of Japanese ethnic organizations on the coast which might shelter pro-Japanese attitudes or activities such as Emperor-worshipping Shinto; and the presence of the Kibei, who had spent some time in Japan.

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

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

General DeWitt's remaining points are repeated in the *Hirabayashi* brief, which also emphasizes dual nationality, Japanese language

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

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

The Conditions Which Permitted the Decision. Having concluded that no military necessity supported the exclusion, the Commission has attempted to determine how the decision came to be made.

First, General DeWitt apparently believed what he told Secretary Stimson: ethnicity determined loyalty. Moreover, he believed that the ethnic Japanese were so alien to the thought processes of white Americans that it was impossible to distinguish the loyal from the disloyal. On this basis he believed them to be potential enemies among whom loyalty could not be determined.

Second, the FBI and members of Naval Intelligence who had relevant intelligence responsibility were ignored when they stated that nothing more than careful watching of suspicious individuals or individual reviews of loyalty were called for by existing circumstances. In addition, the opinions of the Army General Staff that no sustained Japanese attack on the West Coast was possible were ignored.

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

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

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

Sixth, Secretary Stimson and John J. McCloy, Assistant Secretary of War, both of whose views on race differed from those of General

DeWitt, failed to insist on a clear military justification for the measures General DeWitt wished to undertake.

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

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

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

The Decision to Detain

With the signing of Executive Order 9066, the course of the President and the War Department was set: American citizens and alien residents of Japanese ancestry would be compelled to leave the West Coast on the basis of wartime military necessity. For the War Department and the Western Defense Command, the problem became primarily one of method and operation, not basic policy. General DeWitt first tried "voluntary" resettlement: the ethnic Japanese were to move outside restricted military zones of the West Coast but otherwise were free to go wherever they chose. From a military standpoint this policy was bizarre, and it was utterly impractical. If the ethnic Japanese had been excluded because they were potential saboteurs and spies, any such danger was not extinguished by leaving them at large in the interior where there were, of course, innumerable dams, power lines, bridges and war industries to be disrupted or spied upon. Conceivably sabotage in the interior could be synchronized with a Japanese raid or invasion for a powerful fifth column effect. This raises serious doubts as to how grave the War Department believed the supposed threat to be. Indeed, the implications were not lost on the citizens and politicians of the interior western states, who objected in the belief that people who threatened wartime security in California were equally dangerous in Wyoming and Idaho.

The War Relocation Authority (WRA), the civilian agency created by the President to supervise the relocation and initially directed by Milton Eisenhower, proceeded on the premise that the vast majority of evacuees were law-abiding and loyal, and that, once off the West Coast, they should be returned quickly to conditions approximating normal life. This view was strenuously opposed by the people and politicians of the mountain states. In April 1942, Milton Eisenhower met with the governors and officials of the mountain states. They objected to California using the interior states as a "dumping ground" for a California "problem." They argued that people in their states were so bitter over the voluntary evacuation that unguarded evacuees would face physical danger. They wanted guarantees that the government would forbid evacuees to acquire land and that it would remove them at the end of the war. Again and again, detention camps for evacuees were urged. The consensus was that a plan for reception centers was acceptable so long as the evacuees remained under guard within the centers.

In the circumstances, Milton Eisenhower decided that the plan to move the evacuees into private employment would be abandoned, at least temporarily. The War Relocation Authority dropped resettlement and adopted confinement. Notwithstanding WRA's belief that evacuees should be returned to normal productive life, it had, in effect, become their jailer. The politicians of the interior states had achieved the program of detention.

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

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

The Effect of the Exclusion and Detention

The history of the relocation camps and the assembly centers that preceded them is one of suffering and deprivation visited on people against whom no charges were, or could have been, brought. The Commission hearing record is full of poignant, searing testimony that recounts the economic and personal losses and injury caused by the

exclusion and the deprivations of detention. No summary can do this testimony justice.

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

The normal functions of community life continued but almost always under a handicap—doctors were in short supply; schools which taught typing had no typewriters and worked from hand-me-down school books; there were not enough jobs.

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

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

* * *

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

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

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

* * *

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

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

The Decision to End Detention

By October 1942, the government held over 100,000 evacuees in relocation camps. After the tide of war turned with the American victory at Midway in June 1942, the possibility of serious Japanese attack was no longer credible; detention and exclusion became increasingly difficult to defend. Nevertheless, other than an ineffective leave program run by the War Relocation Authority, the government had no plans to remedy the situation and no means of distinguishing the loyal from the disloyal. Total control of these civilians in the presumed interest of state security was rapidly becoming the accepted norm.

Determining the basis on which detention would be ended required the government to focus on the justification for controlling the ethnic Japanese. If the government took the position that race determined loyalty or that it was impossible to distinguish the loyal from the disloyal because "Japanese" patterns of thought and behavior were too alien to white Americans, there would be little incentive to end detention. If the government maintained the position that distinguishing the loyal from the disloyal was possible and that exclusion and detention were required only by the necessity of acting quickly under

the threat of Japanese attack in early 1942, then a program to release those considered loyal should have been instituted in the spring of 1942 when people were confined in the assembly centers.

Neither position totally prevailed. General DeWitt and the Western Defense Command took the first position and opposed any review that would determine loyalty or threaten continued exclusion from the West Coast. Thus, there was no loyalty review during the assembly center period. Secretary Stimson and Assistant Secretary McCloy took the second view, but did not act on it until the end of 1942 and then only in a limited manner. At the end of 1942, over General DeWitt's opposition, Secretary Stimson, Assistant Secretary McCloy and General George C. Marshall, Chief of Staff, decided to establish a volunteer combat team of Nisei soldiers. The volunteers were to come from those who had passed a loyalty review. To avoid the obvious unfairness of allowing only those joining the military to establish their loyalty and leave the camps, the War Department joined WRA in expanding the loyalty review program to all adult evacuees.

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

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

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

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

> I answered both questions number 27 and 28 [the loyalty questions] in the negative, not because of disloyalty but due to the disgusting and shabby treatment given us. A few months after completing the questionnaire, U.S. Army officers appeared at our camp and gave us an interview to confirm our answers to the questions 27 and 28, and followed up with a question that in essence asked: "Are you going to give up or renounce your U.S. citizenship?" to which I promptly replied in the affirmative as a rebellious move. Sometime after the interview, a form letter from the Immigration and Naturalization Service arrived saying if I wanted to renounce my U.S. citizenship, sign the form letter and return. Well, I kept the Immigration and Naturalization Service waiting.

* * *

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

Personal responses to the questionnaire inescapably became public acts open to community debate and scrutiny within the closed world of the camps. This made difficult choices excruciating:

> After I volunteered for the [military] service, some people that I knew refused to speak to me. Some older people later questioned my father for letting me volunteer, but he told them that I was old enough to make up my own mind.

* * *

> The resulting infighting, beatings, and verbal abuses left families torn apart, parents against children, brothers against sisters, rel-

> atives against relatives, and friends against friends. So bitter was all this that even to this day, there are many amongst us who do not speak about that period for fear that the same harsh feelings might arise up again to the surface.

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

The Decision to End Exclusion

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

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

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

By the participants' own accounts, there is no rational explanation for maintaining the exclusion of loyal ethnic Japanese from the West

Coast for the eighteen months after May 1943—except political pressure and fear. Certainly there was no justification arising out of military necessity.

The Comparisons

To either side of the Commission's account of the exclusion, removal and detention, there is a version argued by various witnesses that makes a radically different analysis of the events. Some contend that, forty years later, we cannot recreate the atmosphere and events of 1942 and that the extreme measures taken then were solely to protect the nation's safety when there was no reasonable alternative. Others see in these events only the animus of racial hatred directed toward people whose skin was not white. Events in Hawaii in World War II and the historical treatment of Germans and German Americans shows that neither analysis is satisfactory.

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

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

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

In large social terms, the Army had much greater control of day-to-day events in Hawaii. Martial law was declared in December 1941, suspending the writ of habeas corpus, so that through the critical first

months of the war, the military's recognized power to deal with any emergency was far greater than on the West Coast.

Individuals were also significant in the Hawaiian equation. The War Department gave great discretion to the commanding general of each defense area and this brought to bear very different attitudes toward persons of Japanese ancestry in Hawaii and on the West Coast. The commanding general in Hawaii, Delos Emmons, restrained plans to take radical measures, raising practical problems of labor shortages and transportation until the pressure to evacuate the Hawaiian Islands subsided. General Emmons does not appear to have been a man of dogmatic racial views; he appears to have argued quietly but consistently for treating the ethnic Japanese as loyal to the United States, absent evidence to the contrary.

This policy was clearly much more congruent with basic American law and values. It was also a much sounder policy in practice. The remarkably high rate of enlistment in the Army in Hawaii is in sharp contrast to the doubt and alienation that marred the recruitment of Army volunteers in the relocation camps. The wartime experience in Hawaii left behind neither the extensive economic losses and injury suffered on the mainland nor the psychological burden of the direct experience of unjust exclusion and detention.

The German Americans. The German American experience in the First World War was far less traumatic and damaging than that of the ethnic Japanese in the Second World War, but it underscores the power of war fears and war hysteria to produce irrational but emotionally powerful reactions to people whose ethnicity links them to the enemy.

There were obvious differences between the position of people of German descent in the United States in 1917 and the ethnic Japanese at the start of the Second World War. In 1917, more than 8,000,000 people in the United States had been born in Germany or had one or both parents born there. Although German Americans were not massively represented politically, their numbers gave them notable political strength and support from political spokesmen outside the ethnic group.

The history of the First World War bears a suggestive resemblance to the events of 1942: rumors in the press of sabotage and espionage, use of a stereotype of the German as an unassimilable and rapacious Hun, followed by an effort to suppress those institutions—the language, the press and the churches—that were most palpably foreign and perceived as the seedbed of Kaiserism. There were numerous examples of official and quasi-governmental harassment and fruitless investiga-

tion of German Americans and resident German aliens. This history is made even more disturbing by the absence of an extensive history of anti-German agitation before the war.

* * *

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

In memoirs and other statements after the war, many of those involved in the exclusion, removal and detention passed judgment on those events. While believing in the context of the time that evacuation was a legitimate exercise of the war powers, Henry L. Stimson recognized that "to loyal citizens this forced evacuation was a personal injustice." In his autobiography, Francis Biddle reiterated his beliefs at the time: "the program was ill-advised, unnecessary and unnecessarily cruel." Justice William O. Douglas, who joined the majority opinion in *Korematsu* which held the evacuation constitutionally permissible, found that the evacuation case "was ever on my conscience." Milton Eisenhower described the evacuation to the relocation camps as "an inhuman mistake." Chief Justice Earl Warren, who had urged evacuation as Attorney General of California, stated, "I have since deeply regretted the removal order and my own testimony advocating it, because it was not in keeping with our American concept of freedom and the rights of citizens." Justice Tom C. Clark, who had been liaison between the Justice Department and the Western Defense Command, concluded, "Looking back on it today [the evacuation] was, of course, a mistake."

PART II: THE ALEUTS

During the struggle for naval supremacy in the Pacific in World War II, the Aleutian Islands were strategically valuable to both the United

States and Japan. Beginning in March 1942, United States military intelligence repeatedly warned Alaska defense commanders that Japanese aggression into the Aleutian Islands was imminent. In June 1942, the Japanese attacked and held the two westernmost Aleutians, Kiska and Attu. These islands remained in Japanese hands until July and August 1943. During the Japanese offensive in June 1942, American military commanders in Alaska ordered the evacuation of the Aleuts from many islands to places of relative safety. The government placed the evacuees in camps in southeast Alaska where they remained in deplorable conditions until being allowed to return to their islands in 1944 and 1945.

The Evacuation

The military had anticipated a possible Japanese attack for some time before June 1942. The question of what should be done to provide security for the Aleuts lay primarily with the civilians who reported to the Secretary of the Interior: the Office of Indian Affairs, the Fish and Wildlife Service and the territorial governor. They were unable to agree upon a course of action—evacuation and relocation to avoid the risks of war, or leaving the Aleuts on their islands on the ground that subsistence on the islands would disrupt Aleut life less than relocation. The civilian authorities were engaged in consulting with the military and the Aleuts when the Japanese attacked.

At this point the military hurriedly stepped in and commenced evacuation in the midst of a rapidly developing military situation. On June 3, 1942, the Japanese bombed the strategic American base at Dutch Harbor in the Aleutians; as part of the response a U.S. ship evacuated most of the island of Atka, burning the Aleut village to prevent its use by Japanese troops, and Navy planes picked up the rest of the islanders a few days later.

In anticipation of a possible attack, the Pribilof Islands were also evacuated by the Navy in early June. In early July, the Aleut villages of Nikolski on Umnak Island, and Makushin, Biorka, Chernofski, Kashega and Unalaska on Unalaska Island, and Akutan on Akutan Island were evacuated in a sweep eastward from Atka to Akutan.

At that point, the Navy decided that no further evacuation of Aleut villages east of Akutan Island was needed. Eight hundred seventy-six Aleuts had been evacuated from Aleut villages west of Unimak Island, including the Pribilofs. Except in Unalaska the entire population of each village was evacuated, including at least 30 non-Aleuts. All of the Aleuts were relocated to southeastern Alaska except 50 persons who

were either evacuated to the Seattle area or hospitalized in the Indian Hospital at Tacoma, Washington.

The evacuation of the Aleuts had a rational basis as a precaution to ensure their safety. The Aleuts were evacuated from an active theatre of war; indeed, 42 were taken prisoner on Attu by the Japanese. It was clearly the military's belief that evacuation of non-military personnel was advisable. The families of military personnel were evacuated first, and when Aleut communities were evacuated the white teachers and government employees on the islands were evacuated with them. Exceptions to total evacuation appear to have been made only for people directly employed in war-related work.

The Aleuts' Camps

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

Conditions at the Funter Bay cannery in southeastern Alaska, where 300 Aleuts were placed, provide a graphic impression of one of the worst camps. Many buildings had not been occupied for a dozen years and were used only for storage. They were inadequate, particularly for winter use. The majority of evacuees were forced to live in two dormitory-style buildings in groups of six to thirteen people in areas nine to ten feet square. Until fall, many Aleuts were forced to sleep in relays because of lack of space. The quarters were as rundown as they were cramped. As one contemporary account reported:

> The only buildings that are capable of fixing is the two large places where the natives are sleeping. All other houses are absolutely gone from rot. It will be almost impossible to put toilet and bath into any of them except this one we are using as a mess hall and it leaks in thirty places. . . . No brooms, soap or mops or brushes to keep the place suitable for pigs to stay in.

People fell through rotten wooden floors. One toilet on the beach just above the low water mark served ninety percent of the evacuees. Clothes were laundered on the ground or sidewalks.

Health conditions at Funter Bay were described in 1943 by a doctor from the Territorial Department of Health who inspected the camp:

> As we entered the first bunkhouse the odor of human excreta and waste was so pungent that I could hardly make the grade. . . . The buildings were in total darkness except for a few candles here

> and there [which] I considered distinct fire hazards. . . . [A] mother and as many as three or four children were found in several beds and two or three children in one bunk. . . . The garbage cans were overflowing, human excreta was found next to the doors of the cabins and the drainage boxes into which dishwater and kitchen waste was to be placed were filthy beyond description. . . . I realize that during the first two days we saw the community at its worst. I know that there were very few adults who were well. . . . The water supply is discolored, contaminated and unattractive. . . . [F]acilities for boiling and cooling the water are not readily available. . . . I noticed some lack of the teaching of basic public health fundamentals. Work with such a small group of people who had been wards of the government for a long period of time should have brought better results. It is strange that they could have reverted from a state of thrift and cleanliness on the Islands to the present state of filth, despair, and complete lack of civic pride. I realize, too, that at the time I saw them the community was largely made up of women and children whose husbands were not with them. With proper facilities for leadership, guidance and stimulation . . . the situation could have been quite different.

In the fall of 1942, the only fulltime medical care at Funter Bay was provided by two nurses who served both the cannery camp and a camp at a mine across Funter Bay. Doctors were only temporarily assigned to the camp, often remaining for only a few days or weeks. The infirmary at the mining camp was a three-room bungalow; at the cannery, it was a room twenty feet square. Medical supplies were scarce.

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

To these inadequate conditions was added the isolation of the camp sites, where climatic and geographic conditions were very unlike the Aleutians. No employment meant debilitating idleness. It was prompted in part by government efforts to keep the Pribilovians, at least, together so that they might be returned to harvest the fur seals, an enterprise economically valuable to the government. Indeed a group of Pribilovians were taken back to their islands in the middle of the evacuation period for the purpose of seal harvesting.

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

Return to the Islands

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

The Aleuts returned to communities which had been vandalized and looted by the military forces. Rehabilitation assessments were made for each village; the reports on Unalaska are typical:

> All buildings were damaged due to lack of normal care and upkeep. . . . The furnishings, clothing and personal effects, remaining in the homes showed, with few exceptions, evidence of weather damage and damage by rats. Inspection of contents revealed extensive evidence of widespread wanton destruction of property and vandalism. Contents of closed packing boxes, trunks and cupboards had been ransacked. Clothing had been scattered over floors, trampled and fouled. Dishes, furniture, stoves, radios, phonographs, books, and other items had been broken or damaged. Many items listed on inventories furnished by the occupants of the houses were entirely missing. . . . It appears that armed forces personnel and civilians alike have been responsible for this vandalism and that it occurred over a period of many months.
>
> Perhaps the greatest loss to personal property occurred at the time the Army conducted its clean up of the village in June of 1943. Large numbers of soldiers were in the area at that time removing rubbish and outbuildings and many houses were entered unofficially and souvenirs and other articles were taken.

When they first returned to the islands, many Aleuts were forced to camp because their former homes (those that still stood) had not yet been repaired and many were now uninhabitable. The Aleuts rebuilt their homes themselves. They were "paid" with free groceries until their homes were repaired; food, building and repair supplies were procured locally, mostly from military surplus.

The Aleuts suffered material losses from the government's occupation of the islands for which they were never fully recompensed, in cash or in kind. Devout followers of the Russian Orthodox faith, Aleuts treasured the religious icons from czarist Russia and other family heir-

looms that were their most significant spiritual as well as material losses. They cannot be replaced. In addition, possessions such as houses, furniture, boats, and fishing gear were either never replaced or replaced by markedly inferior goods.

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