

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

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

The Commission was established by Congress in 1980 and directed to

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

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

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

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

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

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

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

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

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

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

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

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of the Japanese Americans to the relocation camps as "an inhuman mistake." Chief Justice Earl Warren, who had urged the exclusion as Attorney General of California, stated, "I have since deeply regretted the removal order and my own testimony advocating it, because it was not in keeping with our American concept of freedom and the rights of citizens." Justice Tom C. Clark, who had been liaison between the Justice Department and the Western Defense Command, concluded, "Looking back on it today [the evacuation] was, of course, a mistake."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

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

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

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

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

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

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