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STATEMENT OF

EDWARD J. ENNIS
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AMERICAN CIVIL LIBERTIES UNION

AND

WADE J. HENDERSON
ASSOCIATE DIRECTOR
WASHINGTON OFFICE

ON BEHALF OF

THE AMERICAN CIVIL LIBERTIES UNION

ON

"THE CIVIL LIBERTIES ACT OF 1985"

H.R. 442

BEFORE

UNITED STATES HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

APRIL 28, 1986

Mr. Chairman and Members of the Subcommittee:

I am Edward J. Ennis, Esq., a member of the Board of Directors of the American Civil Liberties Union and former Director of the Alien Enemy Control Unit, U.S. Department of Justice. I am accompanied by Wade J. Henderson, Esq. of the ACLU Washington Office.

We appreciate the opportunity to appear before this Subcommittee to present the views of the American Civil Liberties Union concerning H.R.442, a bill to implement the recommendations of the Commission of Wartime Relocation and Internment of Civilians. The American Civil Liberties Union is a nationwide, non-partisan organization of more than 275,000 members devoted to protecting the Bill of Rights.

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Background

History has shown that war is seldom a congenial time for civil liberties; and that in time of war, truth is frequently the first casualty. During the Civil War, for example, President Lincoln summarily suspended the writ of habeas corpus in the name of national security and ignored Chief Justice Taney's ruling that the suspension was unconstitutional. /1/ During World War I, Justice Oliver Wendell Holmes ignored the First Amendment claims of several antidraft pamphleteers who had been labeled as criminals for expressing their views. /2/

But, by far, the ugliest product of wartime hysteria in this country has been the forced evacuation of 120,000 American citizens and resident aliens of Japanese origin from the west coast of the United States, and their prolonged confinement in internment camps. This mass evacuation and detention of American

citizens was the greatest deprivation of liberty since slavery.

On February 19, 1942, 10 weeks after the Pearl Harbor attack by Japan, 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 military areas.

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 because of race permitted to become American citizens.^{/3/} It did not apply to other groups, however. No mass exclusion or detention in any part of the country was ordered against American citizens of other "enemy" nationalities, either German or Italian.

Initially, this exclusion was to be carried out by "voluntary" relocation. This policy inevitably failed, however, and these American citizens and their parents were removed by the Army, first to "assembly centers", i.e. temporary quarters at racetracks and fairgrounds; and then to "relocation centers", i.e. bleak barrack camps, mostly in desolate areas of the West. The camps were surrounded by barbed wire and guarded by military police.

This policy of exclusion, removal, and detention was executed without individual review; and the exclusion was

continued virtually without regard for the demonstrated loyalty of suspected individuals to the United States. All this was done despite the fact that not a single, documented act of sabotage was committed by an American citizen of Japanese ancestry or by a resident Japanese alien on the West Coast.

The detention of Japanese Americans and lawful resident aliens was a grave injustice, unsupported by anything remotely resembling military necessity. All three branches of government have emerged from the experience with sullied reputations; and the national character of the United States remains badly stained.

The Commission and Its Findings

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

- o review the facts and circumstances surrounding Executive Order 9066... and the impact of such an Executive Order on American citizens and permanent resident aliens;
- o review directives of U.S. 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 Aleutians and Pribilof Islands; and
- o recommend appropriate remedies.

In fulfillment of its principle mandate, the Commission submitted to Congress in February 1983 a unanimous report, Personal Justice Denied, which reviewed the circumstances of the decision to evacuate and detain Japanese Americans, as well as the treatment of Aleuts during World War II.

In establishing its findings, the Commission carefully examined the central contention behind Executive Order 9066,

i.e., the government's decision to exclude ethnic Japanese from the West Coast was justified by the concept of "military necessity". It must be acknowledged that in wartime, appropriate military areas might be established requiring military supervision, but that any mass evacuation not based on cause as established in individual hearings would be unconstitutional.

However, this argument must be viewed against racial attitudes of the time. An appreciation of the turbulent history of anti-Japanese agitation in this country is an essential element in understanding the debates within the government that preceeded the signing of Executive Order 9066. A virulent wartime racial hysteria was pervasive.

I shall comment briefly on the Japanese American experience from my vantage point as Director of the Alien Enemy Control Unit of the Department of Justice from December 1941 to 1946. The Enemy Control Unit was concerned with the internment, parole, release, and travel control of aliens of enemy nationality during World War II. I shall restrict my remarks to the litigation of the Japanese American wartime cases and to some personal observations which may be of interest to this Subcommittee.

The decision to detain Americans who had committed no crime followed indirectly from the alleged military necessity for their exclusion from the West Coast. No one offered a direct military justification for detention; the War Relocation Authority (WRA) 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 camps. It follows, however, from the Commission's conclusion that no military necessity justified the exclusion and that there was no basis for the detention.

Lieutenant General John L. DeWitt, Commanding General of the Western Defense Command with responsibility for West Coast security, presented the following rationale in a February 1942
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recommendation to Secretary of War, Henry L. Stimson:

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 citizenships, have become "Americanized", the racial strains are undiluted.

There are indications that they are 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.

It was largely General Dewitt's recommendation which convinced civilian authorities to support the issuance of the Executive Order.

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