

STATEMENT OF FATHER ROBERT F. DRINAN ON
BEHALF OF THE COMMISSION ON WARTIME
RELOCATION AND INTERNMENT OF CIVILIANS

From 1981 to 1983 I served as a member of the Commission on Wartime Relocation and Internment of Civilians. It gives me great pleasure to appear before the Subcommittee on Administrative Law and Government 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. I will particularly emphasize the remedies which the Commission recommended.

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.

In June of 1983, the Commission issued its recommendations for remedies.

The basic facts about the wartime treatment of Japanese Americans are undisputed. 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 up citizens or expel them from extensive areas

of the country without bringing 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 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 the ethnic Japanese, there were sustained and ever 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 the Secretary of War, Henry L. 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 position was substantially influenced by the governors and public officials of the West Coast states whose views he sought before developing 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.

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. For instance, a 26-page analysis of Japanese intelligence and propaganda in the United States, produced by the Office of Naval Intelligence three days before Pearl Harbor, the authors of which clearly had access to the "Magic" cables in some form, summed up the beliefs of those with wide knowledge of intelligence sources in its final two sentences: "Current U.S.-Japanese relations are not clearly defined. However, in anticipation of a possible crisis, the FBI is prepared to take into custody and detain all persons whose activities are inimical to the best interests of the United States." Such views 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.

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:

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 alinement 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.

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 what the Commission examined and took testimony about, pursuant to the direction from Congress, was how the United States dealt with American citizens and residents.

The other part of this history is the impact of these events on Americans of Japanese descent. The damage done by this country to its own citizens and residents is a mosaic made up of thousands of lives and thousands of personal histories. The Commission's hearing record is replete with searing and painful testimony. There was the economic loss of farms and homes sold in distress circumstances, of elderly people having to start from scratch a second time after the war, of families detained in camps without employment and unable to meet tax and mortgage and insurance payments, and of education and careers disrupted. An analysis of the economic losses suffered as a consequence of the exclusion and detention was performed for the Commission. 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.

Over time and with perseverance material losses may be repaired, but the hidden scars of lives damaged by the exclusion and detention remain. Each individual excluded from the West Coast to spend two and a half years behind barbed wire carries his own marks from that time. For people who knew their innocence and the injustice of their treatment the burden was not light. They bore the stigma of having been branded potentially disloyal, the deprivation of liberty and the loss of the common decencies of daily life. An essential foundation of our government -- the citizen's trust that the government will deal with him individually and fairly -- was deeply damaged. The injuries inflicted by the country on these citizens were different in kind from the suffering and loss which the Second World War brought to all Americans.

No recommendations which the Commission has made, no statute that Congress may enact, can undo this history. No redress to Japanese Americans can assure that we will not

repeat the errors of 1942. What happened after Pearl Harbor is particularly sobering because men of the greatest stature with careers of the most distinguished public service -- Democrat and Republican; conservative and liberal; judges, legislators and cabinet members; the President himself -- were personally involved in a course of action which today we can only find gravely unjust and deeply injurious. The bulwark of our Constitution did not withstand it.

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 which the Commission has recommended. 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.

With regard to American citizens and residents of Japanese descent, the Commission made five recommendations which I will discuss in turn:

1. The Commission recommended 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.

A free act of apology to those who were unjustly excluded and detained during the war is an important act of

national healing. If we are unwilling as a nation to apologize for these events, we will deliver a message to the thousands of loyal Americans who were held in the camps that will be bitter indeed. We will be affirming after forty years that the American values of due process and equality before the law without regard to ethnicity or race are only rhetorical values and that in times of stress small minorities should harbor no hope that those principles will protect them from the fear and anger of their neighbors or the heavy hand of their government. Such a result is a threat to the liberty of all Americans.

2. The Commission recommended 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 recommended 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 were made without prejudice to cases currently before the courts.

This recommendation was made because the Commissioners concluded that there was no sound basis for the exclusion and detention which had been carried out on the basis of race and ethnicity and, equally importantly,

imposing the severe deprivations of criminal convictions because of race or ethnicity is contrary to the most fundamental American values.

A major step consistent with this recommendation was taken many years ago. In 1947 President Truman pardoned the 263 Japanese-Americans who were convicted of resisting the draft in 1944 and who contended that their refusal to be inducted was an attempt to clarify their citizenship status. In the coram nobis cases that have gone forward since the Commission issued its recommendations, the courts have shown their willingness to review the wartime convictions on the basis of the full record as it is now known.

There remains a small group of federal wartime convictions of Japanese Americans, probably no more than 25, to whom this recommendation would apply. The cases of Lincoln Kanai and Richard Doi, described in Personal Justice Denied (pp. 115, 390), probably fall within this group. Since the Commission was studying federal actions, the recommendation applies to federal convictions.

The recommendation is supported by both fundamental justice and the interests of equal treatment between those already pardoned or successful on coram nobis petitions and the small remaining group, which is similarly situated as to the ethnic and racial elements which led to and supported their convictions.

3. The Commission recommended 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 between December, 1941 and 1945, to review such applications with liberality, giving full consideration to the historical findings of the 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.

In the course of its life, the Commission received a number of reports from individuals who contended, particularly with regard to the failure to obtain honorable discharges and reinstatement of social security entitlements, that they had received less from the government than was their due and that the reason for this was directly linked to the exclusion and detention with its underlying bias against Japanese Americans. The Commission was not equipped to review such claims and did not have the power to grant relief if it had undertaken such review. As a result, the Commission made this third recommendation. This is not a recommendation for a wholly new remedy but, rather, that in reviewing such claims, the Executive Branch weigh the evidence in light of the Commission's findings, so that no status or entitle-

ment is denied a person because of the actions which the government took under Executive Order 9066.

I will address the Commission's final two recommendations together. Fourth, the Commission recommended 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 believed a fund for educational and humanitarian purposes related to the wartime events is appropriate, and all agreed that no fund would be sufficient to make whole again the lives damaged by the exclusion and detention. The Commissioners agreed that such a fund appropriately addresses an injustice 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 illustrated and understood. A nation which wishes to remain just to its citizens must not forget its lapses. The recommended foundation might appropriately fund comparative 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 pre-

paring and distributing the Commission's findings about these events to textbook publishers, educators and libraries.

Fifth, the Commissioners, with the exception of Congressman Lungren, recommended that Congress establish a fund which will provide personal redress to those who were excluded, as well as serve the purposes set out in the fourth recommendation. 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 the fourth recommendation, 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 of the exclusion and detention on the descendants of those who were detained. Individual payments in compensation for loss or damage should not be made.

The fund should 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.

A few basic points deserve emphasis in addressing these monetary recommendations. Congress directed the Commission to review the treatment of American citizens and residents by the American government. The Commissioners agreed that the methods and the record of Japan's armed forces during World War II were deplorable; but it must be kept clearly in mind that the American citizens who were sent to Manzanar or Poston were no more responsible for Pearl Harbor and the Bataan Death March than German Americans were for the invasion of France or the bombing of Britain. The American principle that a person is judged as an individual and not by the native country of his grandparents must not be allowed to become a casualty of war.

In addressing monetary payments, two points must be borne in mind. First, the Commission was asked to recommend appropriate remedies, not simply ordinary and usual remedies. For events as unusual and extraordinary as these, one can only expect an extraordinary response. Nevertheless, it must be clearly remembered that measures of this sort have been enacted in the past. The Indian Claims Act of 1946, which allowed the Indian tribes to present their historical claims of illegal or inequitable treatment by the government, is the most obvious precedent; very substantial monetary payments have been made to the Indians under that statute. In another

parallel, the Congress has established causes of action with the award of monetary damages against private parties and state officials where injury due to racial discrimination can be shown. This Administration has agreed that where an individual can show injury due to discrimination on the basis of race, a remedy should be available to him. Each of the Japanese Americans who came under the terms of the exclusion orders, including those who "voluntarily" resettled off the West Coast, can show such injury and should have a remedy.

In deciding on an appropriate amount for compensation, the Commission faced, on one side, the pressure to reach a truly just result, and on the other side the pressure to find a workable and efficient remedy that did not trivialize the wartime events. The Commission rejected suggestions for an individualized adjudicatory claims procedure for two fundamental reasons: first, claims adjudication would once more place the government in an adversarial posture toward the Japanese Americans; this is a time for healing, not for the antagonisms and misunderstandings which lawsuits breed. Second, forty years after the event, memories and documents will not be fresh or easily testable, so that there is little basis to believe that a claims procedure would ultimately be fair and equitable.

Consequently, the Commission chose a primary form of compensation which provides a set payment of \$20,000 to each individual directly affected by the exclusion order. This amount is designed to provide in one action a tangible

form of redress for the variety of damages and injury which the Japanese Americans suffered as a result of Executive Order 9066 and the events which followed from it. One measure of the fairness of that payment is provided by looking at the overall losses which were suffered by the Japanese Americans. The Commission had a study made by ICF, Inc., an outside consulting firm, which looked at all the available data and analyzed the range of income and property losses which the Japanese Americans suffered. I have Michael C. Barth, the chief author of that report, with me today. Looking only to those losses of income and property which were not compensated for under the Japanese-American Evacuation Claims Act after the war and adjusting the number only for inflation, the losses are in the range of \$810 million to \$2 billion in 1983 dollars. These numbers do not include any amount for loss of education or professional advancement -- what is called human capital -- and they include nothing for the injury to the spirit that was suffered through the years in camps. Viewed in these terms, the monetary remedy urged by the Commission may be adequate but it cannot be claimed to be excessively generous.

Ultimately, it is the principle of individual payment in an amount that is meaningful and not trivial that is important. There is no esoteric magic to the exact number chosen by the Commission but there is no doubt about the basic foundation for the recommendation: those people who were excluded and detained suffered a grave and personal

injustice at the hands of the federal government. They have not been fully compensated for those losses. While those who suffered through the wartime events cannot be made whole again, monetary compensation serves as a tangible expression of the nation's regret and is a traditional and appropriate remedy.

At the time the Commission issued its recommendations, it was estimated from the actuarial tables that approximately 60,000 people survived who directly came under the terms of the exclusion orders. That figure is somewhat smaller today. Thus, the Commission recommended that approximately \$1.2 billion be devoted to individual compensatory payments and the remainder be devoted to educational and humanitarian purposes. This last sum was designed to serve two functions. First, the history of the exclusion and detention is significant for all Americans and it is not a simple history. There are many lessons to be drawn from these wartime events, dealing with subjects as varied as the improper use of military power, to the influence of local ethnic prejudices on national policy, to the difficulties that even a democratic government faces in admitting and rectifying its most tragic mistakes. The Commission believed that this history should have a living memorial in the form of providing funds for the study of these and similar events and for the teaching and discussion of this history in schools and colleges. This is truly a case in which the best

hope for our future lies in true and faithful knowledge of our past.

Finally, the Commission recommended that some part of the fund be devoted to humanitarian purposes, particularly in the Japanese American community. This is a modest part of the total fund recommended but an important part. Reading the documents of the time and listening to the personal testimony in the Commission's hearings, there can be no doubt that before Pearl Harbor the Japanese Americans on the West Coast were a closely knit community. This community was shattered by the exclusion and as a practical matter could not be wholly rebuilt after the war. Some of this change was natural and inevitable in the generational succession of an immigrant group, but, particularly for many of the older Tssei, the changes were harsh and dramatic. Humanitarian support should search out those parts of the community and those individuals who have not shared in the achievements and advances which so many Japanese Americans had made in the past forty years.

Let me close, Mr. Chairman, by thanking you for the opportunity to appear this morning. It has been a particular honor for me to serve on this Commission. I know that all the Commissioners were deeply moved by the powerful and tragic testimony which we heard and all felt strongly that Congress should act to heal the wounds left by the wartime

events. The Commission's recommendations propose the most appropriate remedies we could find to carry out that act of healing.

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