

PREPARED STATEMENT OF ASIAN LAW ASSOCIATION

Introduction

Good afternoon members of the Commission. My name is Brian Aburano, and I am here to testify on behalf of the Asian Law Association, a group of young attorneys of Asian descent who work and reside in the Seattle area.

In the past few months, the Commission has heard abundant testimony on how Japanese Americans suffered during World War II, why morally and legally Japanese Americans should receive redress, and why Congress has the legal power to grant redress to Japanese Americans. With this testimony firmly in mind, we would like to testify today on how Japanese Americans should receive redress.

Our testimony will focus on three topics. First, we will describe what the goals of redress should be. Second, we will examine the advantages and disadvantages of the two major types of redress proposals. Finally, we will make certain recommendations on how redress should be granted.

Goals

There are at least two primary and five auxiliary goals which any plan for redress should seek to meet.

The first primary goal is compensation. Any redress plan should directly or indirectly compensate Japanese Americans who were evacuated for violation of their constitutional rights and loss of their property. There is no

question that if the evacuation took place today, Japanese Americans would have a suit for damages based on the violation of their constitutional rights. (The recent successful suit brought by persons detained during anti-war demonstrations in Washington D.C. is evidence of this.) Further, the taking of property by unjustified government action has always been remedied by just compensation.

The second primary goal is the remedying of social problems which caused the evacuation of Japanese Americans. These social problems were discrimination on the basis of race, national origin and alienage, and government violation of human and constitutional rights. That racial discrimination exists in this country today is undeniable. That discrimination on the basis of national origin and alienage also exists in this country today is evidenced by the recent adverse and often violent reaction of Americans towards Iranian students, Mexican aliens, and Haitian, Cuban and Indochinese refugees. Finally, our newspapers are filled with tales of government violations of human and constitutional rights both here and abroad. Any plan for redress should in some way address and seek to remedy these social problems which were the basic causes of the evacuation.

The first auxiliary goal is effectiveness. Any redress plan should be effective in meeting the two primary goals of redress. Redress plans which do not provide compensation and which do not seek to resolve the social problems behind the evacuation should not be proposed to Congress by this Commission.

The second auxiliary goal is efficiency. Any redress plan should put as many resources as possible into meeting the two primary goals. Resources should not be wasted in excessive administration costs or lost through mismanagement and poor planning.

The third auxiliary goal is harmony. Any redress plan should, to the extent possible, preserve harmonious relations within the Japanese American community and between the Japanese American community and the country at large. Creation of envy, hate or divisiveness is not desired by Japanese Americans.

The fourth auxiliary goal is maximizing positive consequences. Any redress plan should maximize the positive economic and social consequences flowing from the nature of the plan while minimizing the plan's negative economic and social consequences.

The fifth auxiliary goal is consistency with national norms. Freedom, equality, the protection of private property and the democratic process are hallmarks of this country. To the extent possible, the process of redress should be consistent with our national norms.

Two Major Types of Redress Proposals

1. Individual Compensation

A) General Description of Proposals Covered

It has been proposed that Congress redress Japanese Americans by appropriating money for direct distribution to individuals who were evacuated or relocated. Under some

proposals, some of this money would be distributed to survivors of persons evacuated or relocated.

B) Government Funding of Individual Compensation Programs

Congress has funded many individual compensation programs. Some of these programs are: 1) the Alaska Native Claims Settlement Act; 2) the Rehabilitation of the Philippines Act; 3) the Micronesian Claims Act; 4) the War Claims Act; 5) the Foreign Claims Settlement Act; and 6) the Indian Claims Commission Act.^{1/}

The above-listed programs compensated individuals for: 1) wrongful acts committed by the United States against foreign citizens/nationals; 2) wrongful acts committed by foreign governments against United States citizens/nationals; and 3) wrongful acts committed by the United States against United States citizens/nationals. Under the programs, individuals were compensated for property taken without compensation, for detention in concentration camps, and for injury, death or disability.

^{1/} The Alaska Native Claims Settlement Act, 86 Stat. 688, 43 U.S.C. § 1601, et seq. (December 18, 1971); the Rehabilitation of the Philippines Act, 60 Stat. 130, 50 U.S.C. App. § 1751, et seq. (April 30, 1946); the Micronesian Claims Settlement Act, Pub. L. No. 92-39, 85 Stat. 94, 50 U.S.C. App. § 2018, et seq. (July 1, 1971); the War Claims Act, Pub. L. No. 89-6, 62 Stat. 1240, 50 U.S.C. App. § 2001, et seq. (July 3, 1948); the Foreign Claims Settlement Act, 68 Stat. 1279, 22 U.S.C. § 1621 et seq. (July 1, 1954); the Indian Claims Commission Act, 60 Stat. 1046, 25 U.S.C. § 70, et seq. (August 13, 1946).

The following section will highlight some common characteristics of government-funded individual compensation programs and will briefly describe certain specific programs.

1) General Considerations

Most government-funded individual compensation programs are administered by a commission of from three to five members. The members are usually appointed by the President or other high government officials. In programs intended to compensate a particular group of people, such as Filipinos or Micronesians, one or more of the commissioners is typically a member of the affected group. Commissions are usually authorized to hire staff to help them carry out their duties.

Under most commission run programs, the commissions set up and administer all claims processing procedures. (However, claims filing deadlines are set by Congress.) Typically, commissions design claims forms and designate what evidence must be attached to those forms. Commissions along with their staff make the initial determinations on each claim, usually without a hearing.

After initial determinations are made, some individual compensation programs provide an appeal process for denied claims. Under these processes, appeals must usually be made within a specified time period. Representation by counsel is sometimes provided for claimants. Under most appeal processes, pre-hearing conferences to frame issues are allowed. Where full evidentiary hearings are held on appeal, the particular commission usually hears claimants' evidence and renders final determinations.

2) The War Claims Act and Foreign
Claims Settlement Act

The War Claims Act and the Foreign Claims Settlement Act have some attributes which an individual compensation program to redress Japanese Americans would probably have. Thus, a brief examination of these acts and their problems are in order.

The War Claims Act provided individual compensation to United States citizens who were either captured by the Japanese in World War II or went into hiding to avoid such capture. The purpose of the Act was to compensate United States civilians and soldiers for ill treatment suffered while interned in Japanese detention camps or while in hiding to avoid capture. Claims were paid to civilians at the rate of \$60 a month for each month of detention.^{2/}

The War Claims Act was administered by a commission. The commission promulgated a claims processing procedure similar to that described in the prior section (i.e., application, initial determination and full hearing on appeal).

There were three problems with the War Claims Act's procedures. First, the amount of money given to soldiers and internees was insufficient to compensate them for their sufferings. Second, civilian internees often had problems proving their claims. Records showing their internment were

^{2/} A smaller amount was paid to soldiers and internees under the age of 18 years.

often non-existent. Finally, the proof problems faced by civilian internees caused slow claims processing.

The Foreign Claims Settlement Act amended the War Claims Act. The Foreign Claims Act added a provision allowing non-dependent survivors of internees to collect detention benefits of deceased internees. It also provided compensation for property damaged in World War II by the Japanese.

Over time, the Foreign Claims Act was expanded to cover claims of United States citizens and nationals against Bulgaria, Hungary and other countries. It was expanded to cover claims by internees in the Korean War and Vietnam conflict. Amounts collected by internees in these later wars was escalated. Internees in the Vietnam conflict were entitled to receive \$150 a month.

As with the War Claims Act, problems with the Foreign Claims Act included not enough money, proof problems, and slow processing of claims. Since the Foreign Claims Act dealt with property loss, it had the additional problem of valuing lost property. The Micronesian Claims Act suffered the same problem.

3) The Alaska Native Claims Settlement Act

The Alaska Native Claims Settlement Act ("ANCSA") is, in part, an unusual individual compensation program. No hearing mechanism was involved in its distribution of property or funds. Thus, it too merits a brief discussion.

ANCSA was passed as a recognition that the United States may have violated the rights of Alaska natives. The Act was passed to compensate those natives for violations to their aboriginal rights (in land and other natural resources), treaty rights, and international, statutory and collective rights.

Under the Act, Congress gave land, mineral rights and \$462 million to Alaska natives. The money and property were not given directly to the natives. Instead, it was allocated among 13 regional corporations and numerous constituent village corporations. Eligible Alaska natives were given a certain number of shares in the regional and/or village corporations. A 20 year restriction on sales of the stock was imposed. While title to all property was passed to the regional and village corporations, some of the money given by Congress was passed directly to Alaska natives.

There have been several problems with ANCSA. First, there were some problems defining and registering eligible Alaska natives.^{3/} Second, there were disputes between tribes over who should receive what real property. Third, without the oversight of Federal security laws, there have been problems in the management of the corporations. Finally, there have been some questions concerning the taxation of money and property given to Alaska natives.

^{3/} In order to be eligible, persons had to be at least 25% Alaska native (Aleut, Eskimo, etc.) or be recognized by their tribe as being an Alaska native and be enrolled as such by the Department of Interior's Office of Enrollment.

2. Charitable Organization

A) General Description of Proposals Covered

In addition to individual compensation plans, it has been proposed that Congress fund and/or authorize and fund a charitable organization. This organization in turn would fund social, civil rights and educational programs that primarily benefit Japanese Americans. In its purest form, this "charitable organization plan" would not provide any direct compensation payments to Japanese Americans evacuated during World War II.

B) Government Funding of Charitable Organizations

Congress has established numerous organizations to accomplish educational, scientific, cultural, historical and other "charitable" purposes. Some of these organizations are: 1) the Corporation for Public Broadcasting; 2) Legal Services Corporation; 3) National Endowment for the Arts; 4) National Endowment for the Humanities; 5) Inter-American Social Foundation; 6) National Science Foundation; 7) National Park Foundation; 8) Smithsonian Institution; and 9) Harry S. Truman Memorial Scholarship Program.^{4/}

^{4/} The Corporation for Public Broadcasting, 37 U.S.C. § 395, et seq.; Legal Services Corporation, 88 Stat. 378, 42 U.S.C. § 2996, et seq.; National Endowment for the Arts, 79 Stat. 845, 20 U.S.C. § 954, et seq.; National Endowment for the Humanities, 79 Stat. 845, 20 U.S.C. § 956, et seq.; Inter-American Social Foundation, 83 Stat. 821, 22 U.S.C. § 290; National Science Foundation, 64 Stat. 149, 6 U.S.C. § 1861, et seq.; National Park Foundation, 81 Stat. 56, 16 U.S.C. § 19e, et seq.; Smithsonian Institution, 9 Stat. 102, 20 U.S.C. § 41, et seq.; Harry S. Truman Memorial Scholarship Program, 20 U.S.C. § 2001, et seq. (45 CFR 1801).

The following sections will highlight some common characteristics of the above-listed organizations and will discuss in more detail one of the organizations, the Corporation for Public Broadcasting.

1) General Considerations

Government-funded charitable organizations include private non-profit corporations, trusts, non-incorporated foundations and governmental corporations. Typically, these charitable organizations are managed by a Board of Directors or Regents appointed by the President or other high government officials. The day-to-day operations of the organizations are carried out by officers and other employees.

To carry out their stated purposes, Congress generally provides charitable organizations with authorities and powers common to corporations and trusts created under State law. They may make and perform contracts, acquire property, initiate legal actions, and hire and set compensation for employees and consultants.

It is not uncommon for certain limitations to be imposed on the powers of government-funded charitable organizations. This is to restrain the organizations from straying too far from their legislated purposes and to help ensure that they retain the general characteristics of a "charitable" organization. For example, the Legal Services Corporation is forbidden from contributing funds, personnel or equipment for any political election or lobbying, or

from interfering with the carrying out of its staff attorneys' professional responsibilities to their clients. In addition, the Corporation for Public Broadcasting is prohibited from itself owning or operating a television or radio broadcast station, system or network. In some instances, the legislation creating the organization affirmatively states that no part of its revenue, earnings, or property shall inure to the benefit of its directors, officers or employees.

Almost all of the previously listed charitable organizations are funded by Congressional appropriation. For 1981, the Corporation for Public Broadcasting was appropriated a maximum of \$180,000,000, the National Endowment for the Arts \$115,500,000 and the National Endowment for the Humanities \$114,500,000. To monitor the fiscal responsibility of organizations, Congress requires the filing of an annual report. Several of the organizations are specifically exempted from taxation by any Federal, State or local taxing authority.

Chief criticisms of charitable organizations are:

- 1) they sometimes fund destructive and controversial organizations or causes;
- 2) they sometimes fund groups which cannot survive without continued charitable funding;
- 3) they sometimes are mismanaged and waste money on excessive administration costs; and
- 4) they are undemocratic institutions not responsive to the communities they serve.

2) Corporation for Public Broadcasting

The Corporation for Public Broadcasting has many attributes which appear appropriate to include in a charitable organization if this form of entity is created to administer redress to Japanese Americans. A brief examination of its organizational structure would be helpful to the Commission.

a) Establishment-Purpose

Congress established the Corporation for Public Broadcasting ("Corporation") as a private, non-profit corporation to assist in the development of public television and radio broadcasting. In creating the Corporation, Congress found that the expansion and development of public television communications and the delivery of its programming requires freedom, imagination and initiative on both local and national levels and that the establishment of a private corporation is the appropriate form of organization to carry out this national policy while affording maximum protection against extraneous interference and control. Accordingly, the Corporation was formed as neither an agency nor establishment of the U. S. government.

b) Administration

In terms of its structure and administration, the Corporation is subject to the District of Columbia Non-Profit Corporation Act. A 15-member Board of Directors is appointed

by the President with the advice and consent of the Senate. No more than eight Board members may be from the same political party. Each must be a citizen of the United States and eminent in such appropriate fields as education, cultural and civic affairs, or the arts. Moreover, the directors must be chosen to provide broad regional and occupational representation. In general, the meetings of the Board of Directors are open to the public.

The day-to-day activities of the Corporation are carried out by a president and other officers who are appointed by the Board of Directors. The officers must be U. S. citizens and cannot receive compensation from any other source than the Corporation during their tenure. No political tests or qualifications can be used to select, appoint or promote officers, agents or employees of the Corporation.

c) Non-Profit and Non-Political
Nature of Corporation

The Corporation may not issue any shares of stock or declare or pay any dividends. None of the assets or income of the Corporation is to inure to the benefit of any director, officer, employee or any other individual except as salary or reasonable compensation for services. The Corporation is prohibited against contributing to or otherwise supporting any political party or candidate for elective political office.

d) Functions and Powers

To carry out its purposes, the Corporation is authorized to develop public telecommunications so that programs of high

quality, diversity, creativity, excellence can be obtained from diverse sources and made available to the public. In general, the Corporation has all of the powers of non-profit corporations organized under the District of Columbia Non-Profit Corporation Act and may take all necessary action to accomplish its purposes. However, the Corporation cannot own or operate its own television or radio broadcast station, system or network.

e) Reporting Requirements

The Corporation must create and annually update a five-year plan for development of noncommercial radio and TV programs. An annual budget must be established. The accounts of the Corporation are audited annually by independent accountants. An annual report is required to be submitted to Congress regarding the Corporation's operation, activities, financial condition and accomplishments.

f) Funding

To assist in the financing of the Corporation, Congress established a fund to be administered by the Secretary of the Treasury. Congress has authorized annual appropriations to the fund in an amount equal to 50 percent of the total non-Federal financial support received by the Corporation and other non-profit organizations primarily engaged in the production and distribution of educational, cultural TV and radio programs. For 1981, the maximum appropriation is not to exceed \$180,000,000. The Corporation is required

to expend a proportion of its funds for certain purposes and is restricted in the amount of funds it may expend for other purposes.

3) Non-Governmental Entities

In addition to creating charitable organizations, Congress also funds hundreds of non-government created charitable organizations and institutions. A complete listing of the programs under which this funding occurs is found in the Catalog of Federal Domestic Assistance.

Merits of "Charitable Organization" vs. "Individual Compensation" Redress Plans

Charitable organization and individual compensation plans each have their own advantages and disadvantages. In our discussion, we would like to address the relative merits of charitable organization and individual compensation plans in terms of the goals we have set for redress.

1. Compensation

If properly designed, individual compensation plans are better in meeting the goal of compensation than charitable organization plans. Individual compensation plans will provide some money to each person evacuated in World War II. No matter how well designed, it is unlikely that any charitable organization plan can provide a benefit to all persons evacuated. In fact, it is likely that under charitable organization plans, some evacuated persons will receive no benefits while persons who were not evacuated will.

2. Remedying Social Problems

If properly designed, charitable organization plans

may be better in remedying the social problems that caused the evacuation than individual compensation plans. Under charitable organization plans, money can be pooled and directed at specific problems. Unless some type of pooling arrangement is built into an individual compensation plan, individual compensation plans remedy discrimination and human rights violations primarily by providing a monetary punishment precedent which hopefully will deter government adoption of evacuation-like actions.

3. Effectiveness

Since individual compensation plans are more effective than charitable organization plans in compensating Japanese Americans who were evacuated, and charitable organization plans are more effective than individual compensation plans in remedying the social problems which caused the evacuation, it is not possible to state that individual compensation plans are more effective than charitable organization plans or vice versa. They are both effective in their own way. However, the effectiveness of plans of each type may vary. For example, an individual compensation plan which requires Japanese Americans to prove their property losses is less effective than one which does not condition recovery on proof of loss because under the former plan Japanese Americans who were evacuated are likely not to receive compensation because they have lost papers and other evidence of their losses.

4. Efficiency

In the short run, administration costs may make individual compensation plans seem less efficient than charitable organization plans. However, over the long term, we believe charitable organization plans involve more administration costs (i.e., investments, elections, examining spending proposals, etc.) and potential for mismanagement (i.e., bad investments and misspent funds) than individual compensation plans. Thus, we believe charitable organization plans are less efficient than individual compensation plans.

Again, the Commission should consider the goal of efficiency when examining different types of individual compensation and charitable organization plans. Some plans may call for excessive administration costs or may leave too much room for mismanagement and loss of funds. These plans should be avoided.

5. Harmony

Charitable organization plans have a stronger potential for creating divisiveness within the Japanese American community than individual compensation plans. Charitable organization plans by creating a large spending fund and an organization to oversee that fund will engender differences of opinion as to how the fund should be spent, by whom, and for what purposes. In addition, charitable organization plans may create more hostility toward the Japanese American community by creating a long-term highly visible focal point for anti-redress feelings.

6. Maximizing Positive Consequences

Charitable organization plans because they pool money and create spending programs potentially create more positive consequences than individual compensation plans. For example, charitable organization plans may fund senior centers serving Japanese Americans and others and provide scholarship money to Japanese Americans freeing up scholarship and loan money for others. On the other hand, charitable organization plans may have negative consequences by funding destructive causes or creating an artificial demand for social programs which will not survive without charitable organization plan funds. Positive consequences from individual compensation plans include a slight lift to businesses which Japanese Americans frequent and, perhaps, increased donations to charitable organizations that Japanese Americans favor.

7. Consistency with National Norms

In meeting national norms, individual compensation plans would appear superior. Individual compensation plans give individuals a free choice as to what to do with their compensation. By compensating Japanese Americans' loss of property, these plans also uphold this country's belief in private property rights.

Charitable organization plans cannot give individuals the freedom to choose how to spend their compensation. This choice will be made by government direction, a trustee or a non-profit corporation board of directors. Furthermore,

by compensating a loss of property with an intangible benefit, charitable organization plans denigrate Japanese Americans' property rights.

Recommendations

1. Individual Compensation Plans

If the Commission chooses to recommend a redress plan that calls for individual compensation, we make the following recommendations.

First, to meet the primary goal of compensation, the redress plan should compensate Japanese Americans who were evacuated for their property losses and violation of constitutional rights. To the extent possible, compensation should be based on the amount of property lost and the time spent in internment or relocation.

Second, to meet the primary goal of remedying the social problems that caused the evacuation, the redress plan should provide an easy mechanism through which Japanese Americans may donate all or part of their recovery to a charitable entity. For example, an acceptable plan would allow Japanese Americans to have a set amount deducted from their recovery for donation to a charitable entity. This would be similar to the Presidential Campaign check off on IRS forms.

Third, to meet the auxiliary goal of effectiveness, redress plans should not require Japanese Americans to prove the extent of their loss as a condition of recovery. As noted

before, this will prevent many Japanese Americans who were evacuated from receiving compensation. We would recommend a plan which would award a set amount for property loss and a set amount for internment or relocation upon proof of internment or relocation only.^{5/} Finally, these awards should be tax exempt.

Fourth, to meet the auxiliary goal of efficiency, the redress plan should require as little administrative costs as possible. We recommend that the plan provide a simple application process along with a truncated hearing for denied claims. Furthermore, we recommend that qualification requirements be limited to those easily verifiable from military and other government records.

We have no recommendations to make for individual compensation plans in terms of the auxiliary goals of harmony, maximizing positive consequences and consistency with national norms.

2. Charitable Organization Plans

If the Commission chooses to recommend a redress plan that calls for the creation of a charitable organization, we make the following recommendations.

First, to meet the primary goal of compensation, the

^{5/} Besides the individual compensation programs we have listed in this statement, we refer the Commission to acts such as 18 U.S.C. § 2520, which allows persons whose telephones are illegally wiretapped to recover for violation of their rights, \$100 per day of violation or \$1,000, whichever is higher.

redress plan should direct the greater portion of organization expenditures towards those programs that benefit Japanese Americans who were evacuated. These programs would include senior centers that serve primarily Japanese Americans, health centers that work primarily with Japanese Americans and scholarships to Japanese Americans. (This last expenditure is based on the theory that if Japanese Americans had not lost their property, they would have passed on their wealth to their children and grandchildren, primarily in the form of educational aid.)

Second, to meet the primary goal of remedying social problems which caused the evacuation, the redress plan should direct a portion of organization expenditures towards programs that seek to eliminate discrimination against minorities and aliens and towards programs that seek to protect constitutional and human rights, both here and abroad.

Third, to meet the auxiliary goal of effectiveness, the redress plan should make organization expenditures somewhat responsive to the desires of the Japanese American community. In order to provide a check on the discretion of the charitable organization administrators, the Japanese American community must be able to participate in the organization's decision making process. We recommend that the organization's administrators be elected by Japanese Americans, that the administrators publish an annual report on the organization's activities and expenditures, and that

the administrators hold an annual public meeting to discuss the report.

Fourth, to meet the auxiliary goal of efficiency, the redress plan should put the organization under the direction of a public charity as defined by IRS Code § 501(c)(3). This will allow the organization to lose as little money as possible to future Federal taxation and allow the trust to build up its funds through non-government donations. (These non-government donations may be in the form of membership dues in the organization. See discussion below.) Alternatively, the organization should receive a special tax exemption. In addition, the organization should be administered as a non-profit corporation. While clever drafting has eliminated much of the differences between trusts and non-profit corporations, the corporate form still allows more flexibility in decision making and replacement of administrators.

Fifth, to meet the auxiliary goals of harmony and maximizing positive consequences, the redress plan should direct a portion of the organization's expenditures to programs that benefit others as well as Japanese Americans. Examples of these programs include multi-racial senior centers, multi-racial health programs, medical research and legal aid.

Finally, to meet the goal of consistency with national norms, the redress plan should democratize organization decision making as far as possible. We recommend that the organization

be set up as a non-profit corporation, that the board of directors be elected by a dues paying membership and that the charter of the corporation be drafted to require member participation in all major decisions. (Of course, this last suggestion must be tempered by the administration costs involved.)

Conclusion

Japanese Americans have waited a long time to receive redress for the wrongs that were done to them during World War II. This Commission has the opportunity to recommend that Japanese Americans receive redress and to recommend how they should receive redress. If the Commission decides to recommend monetary redress, we ask that the Commission remember our testimony today, because redress which fails to meet the goals we have discussed today may mean that Japanese Americans have waited for redress in vain.

Respectfully submitted,

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