COMMISSION ON WARTIME RELOCATION
AND INTERNMENT OF CIVILIANS

STATEMENT OF JACK GREENBERG
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Chairperson Bernstein and members of the Commission, thank you for this opportunity to testify on behalf of the NAACP Legal Defense and Educational Fund, Inc. My name is Jack Greenberg, and I am Director-Counsel of the Fund.

For many years, the NAACP Legal Defense Fund has represented black persons subject to racial discrimination who seek vindication of their civil rights through the judicial process. One of the Fund's primary purposes is to assure that racial justice is enforced by the rule of law. That, I submit, is the great lesson of the Supreme Court's landmark decision in Brown v. Board of Education (1954), declaring racial segregation in public education violative of the Fourteenth Amendment. I appear before you today because I believe that the wartime evacuation and detention of Japanese Americans was unlawful racial discrimination, and a stain upon our nation's record which the government should acknowledge and remedy--even at this late date.

I first encountered this question as a law student in 1947 when I assisted in the preparation of briefs in the litigation that challenged the involuntary renunciation of citizenship by Japanese Americans incarcerated at the Tule Lake Relocation Center. Since then, the evidentiary record

has been considerably augmented. So much so there can no longer be serious debate that the treatment of Japanese Americans went "over 'the very brink of constitutional power and [fell] into the ugly abyss of racism.'" Time has proved the truth of Justice Murphy's dissent in Korematsu v. United States, 323 U.S. 214, 235-236 (1944), that the entire episode stemmed from "the erroneous assumption of racial guilt rather than bona fide military necessity."[1/] I leave it to others to assist the Commission in examining the historic record of the specific wartime events. I note only that the forcible removal of all Japanese Americans on the West Coast, citizens and aliens alike, from their homes and occupations and their internment in concentration camps constituted an explicit racial classification. As General DeWitt put it:

> "A Jap is a Jap." "It makes no difference whether he is an American citizen or not he is still a Japanese ... 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."[2/]

The acts of military, executive and judicial authorities were, in short, the "legalization of racism." Korematsu, supra, 323 U.S. at 242 (Murphy, J., dissenting).

The wartime events, however, did not spring forth unheralded. The relocation and internment were part and parcel

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1/ See, e.g., ten Broek, Barnhart & Matson, Prejudice, War and the Constitution (1954).

2/ Quoted in Acheson v. Murakami, 176 F.2d 953, 957 (9th Cir. 1949).

of the history of legally-imposed invidious racial discrimination and exclusion to which Japanese and other Asian Americans were subject. This history that "put the weight of government behind racial hatred and separatism" [3/] is evidence material to the Commission's inquiry. [4/] It is to this evidence that I will devote the remainder of my testimony. I understand that at a later time the Commission may call me back to discuss remedial issues.

Blacks were not the only minority subject to historic racial discrimination in our nation. The circumstances giving rise to the Supreme Court's decision in Yick Wo v. Hopkins, 118 U.S. 356 (1886)--discriminatory exclusion of Chinese from an entire occupation--were neither anomalous or unusual. The ordinance regulating laundry buildings which San Francisco municipal authorities administered "with an evil eye and an unequal hand" and for which "no reason for it exists except hostility to the race and nationality to which petitioners belong," 118 U.S. at 374, was but one instance of the official system of racial discrimination and and exclusion originally developed for the Chinese and to which the Japanese Americans fell heir in the Western states.

3/ University of California Regents v. Bakke, 438 U.S. 265, 357-358 (1978) (Brennan, J.).

4/ Compare Oyama v. California, 332 U.S. 633, 651-662 (1948) (Murphy, J., concurring) (discussion of "the great anti-Oriental virus" in context of alien land laws).

Substantial Chinese immigration began in 1947 with the arrival of male contract laborers.[5/] As they came into competition with whites in the labor market, Chinese were excluded from most occupations and forced by legal and extralegal means into ghettos in a few West Coast cities, notably San Francisco.

As early as 1850, California enacted the Foreign Miner's License Tax, which leveied a discriminatory tax on Chinese and Mexican miners. Chinese were prohibited from testifying for or against white persons in either civil or criminal proceedings. People v. Hall, 4 Cal. 399 (1854); Speer v. See Yup Co., 13 Cal. 73 (1859). Article XIX of the California State Constitution of 1879 was perhaps a highpoint of discriminatory law: it authorized the removal or segregation of Chinese in official ghettos and prohibited public employment of Chinese or their employment by California corporations. Article XIX was declared unconstitutional, but Article I of the same constitution denied Chinese the right to own or inherit real property, and the right to vote.

Legislative restrictions were extended to the national level through the naturalization and immigration laws. In 1875, Congress for the first time made an entire immigrant group, the Chinese, "aliens ineligible for citizenship." In 1882, the Chinese Exclusion Act suspended immigration of Chinese laborers, and all Chinese immigration was totally and permanently prohibited by 1888. Indeed, in 1917, Congress specifically created an Asiatic Barred Zone for immigration purposes. It was not until 1943 that the naturalization and immigration prohibitions were repealed, but a yearly

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5/ See, M. Coolidge, Chinese Immigration (1909); E. Sandmeyer, The Anti-Chinese Movement in California (1939); S. Lyman, The Asian in the West 9-26 (1970); S. Lyman, Chinese Americans (1974).

immigration quota of 105 was set. The prohibitory quota continued until 1965.

Significant Japanese immigration began in the 1890's, and, as did the Chinese before them, the Japanese worked in agriculture, railroad, mining and other menial laborer work.[6/] By 1909, Japanese comprised over 40% of California's agricultural labor supply. However, they were effectively limited to working in truck farming, gardening, and self-employment serving Japanese communities on the West Coast, separate and apart, restrained by legally-imposed and extra-legal discrimination. With the Chinese precedent, immigration and naturalization restrictions were resorted to. As Justice Murphy recounts:

> [T]he arrival of the Japanese fanned anew the flames of anti-Oriental prejudice. History then began to repeat itself. White workers resented the new influx, a resentment which readily lent itself to political exploitation. Demands were made that Japanese immigration be limited or prohibited entirely. Numerous acts of violence were perpetrated against Japanese businessmen and workers, combined with private economic sanctions designed to drive them out of business. Charges of espionage, unassimilativeness, clannishness and corruption were made against these "Mongolian invaders." Campaigns were organized to secure segregated schools and to preserve "America for the Americans."

Oyama v. California, supra, 332 U.S. at 652-653.

Thus, in 1907, the so-called Gentlemen's Agreement between the United States and Japan restrained immigration, and the Japanese Exclusion Act of 1924 totally excluded all Japanese

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6/ See, Y. Ichihashi, Japanese in the United States (1932); R. Daniels, The Politics of Prejudice: The Anti-Japanese Movement in California and The Struggle for Japanese Exclusion (1968); F. Chuman, The Bamboo People: The Law and Japanese Americans (1976).

from entry into the United States as "aliens ineligible for citizenship." The Exclusion Act remained in effect until 1952, and it was not until 1965 that Japanese were accorded the same immigration privileges as all others. Moreover, Japanese were deemed aliens ineligible for naturalization because they were not "free white person[s]" under the 1790 Naturalization Act. Ozawa v. United States, 260 U.S. 178 (1922). It was not until 1952 that Japanese were permitted to become naturalized citizens.

The restriction of Japanese immigrants to permanent status as aliens set the stage for discriminatory state legislation. Thus, the California Alien Land Laws of 1913 and 1920 prohibited foreign-born Japanese from owning or posessing any legal interest in real property. See Oyama, supra, 332 U.S. at 653-662. The legislation

> was thus but a step in the long campaign to discourage the Japanese from entering California and to drive out those who were already there. The Supreme Court of California admitted as much in its statement that the Alien Land Law was framed so as "to discourage the coming of Japanese into this state." Re Tetsubumi Yano, 188 Cal 645, 658, 206 P 995, 1001. Even more candid was the declaration in 1913 by Ulysses S. Webb, one of the authors of the law and an Attorney General of California. He stated: "The fundamental basis of all legislation upon this subject, State and Federal, has been, and is, race undesirability. It is unimportant and foreign to the question under discussion whether a particular race is inferior. The simple and single question is, is the race desirable .... It [the Alien Land Law] seeks to limit their presence by curtailing their privileges which they may enjoy here; for they will not come in large numbers and long abide with us if they may not acquire land. And it seeks to limit the numbers who will come by

> limiting the opportunities for their activity here when they arrive."

Id. at 657. Although the alien laws on their face did not refer to the Japanese and other Asians, the category "aliens ineligible for naturalization" was overwhelmingly composed of Japanese Americans. Id. at 655 n. 20. The Supreme Court of the United States upheld the laws. Terrace v. Thompson, 263 U.S. 197 (1923); Webb v. O'Brian, 263 U.S. 313 (1923). Japanese and other Asian Americans also were prohibited as aliens ineligible for citizenship from owning or possessing firearms, commercial fishing licenses and employment with "any department of state, county or city government." Similar restrictions were put on the practice of law and other professions or occupations. E.g., In re Yamashita, 30 Wash. 234, 70 P. 482 (1902) (practice of law); Askura v. City of Seattle, 265 U.S. 332 (1924) (pawn brokers); Yamashita v. Hinkle, 260 U.S.. 199 (1922) (no right to incorporate a business). Such restrictions remained on the books until Oyama v. California (1948) and Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948).

The history of public education for Asian Americans in California, like other racial minorities, is a "classic case of [the] de jure segregation involved in Brown v. Board of Education." Guey Heung Lee v. Johnson, 404 U.S. 1215, 1215-1216 (1971) (Douglas, J., as Circuit Justice).[7/] California's

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7/ See, C. Wollenberg, All Deliberate Speed, Segregation and Exclusion in California Schools, 1855-1975; J. Hendrick, The Education of Non-Whites in California, 1849-1970 (1977).

public education law was initially amended in 1860 to permit separate schools for the education of "Negroes, Mongolians and Indians." Its constitutionality was upheld, but the statute repealed for economic reasons. Following unsuccessful efforts to exclude Chinese and Japanese children from public schools altogether, specific statutory authority was created for the establishment of separate schools for Chinese and Japanese children. The constitutionality of the provision was upheld in Wong Him v. Callahan, 119 Fed. 381 (C.C. N.D. Cal. 1902). The separate school provisions were not repealed until 1947, see Guey Heung Lee v. Johnson, supra, 404 U.S. at 1215.

The wartime evacuation and internment of Japanese Americans, therefore, was not an isolated event. It was part of a consistent pattern of governmentally-imposed discrimination and exclusion based on race and ancestry that operated across the board to keep Japanese Americans separate and apart from the rest of our society. Indeed, during the war enforcement of the California Alien Land Laws was stepped up, see Oyama v. California, supra, 332 U.S. at 661-662, and the prohibition of commercial fishing licenses struck down in Takahashi was a wartime measure designed to prevent the return of interned Japanese fishermen to the fishing grounds. Takahashi, supra, 334 U.S. at 422-427.

Only Japanese Americans were evacuated and interned as a racial group whose race and ancestry itself made them an "enemy race." German and Italian American citizens and aliens

were not, although, obviously, this country was at war with Germany and Italy as well as Japan. Racial guilt was imputed to no other group. The difference cannot be that Japan posed a greater threat of invasion on the West Coast than either Germany and Italy because Hawaii where the Japanese American population was far greater and which by location was in far greater danger of invasion, was never the scene of evacuation and detention. At least part of the reason for the difference in treatment, I submit, is the heritage of racial discrimination and exclusion of Japanese Americans in the western states sanctioned by government authority and given the force of law. Japanese Americans were singled out on the basis of their race and ancestry, and made to wear a badge of invidious discrimination long before the wartime relocation and internment. That was only a single chapter in a longer saga.

Until 1948, the courts generally upheld legislation that discriminated against Japanese and other Asian Americans. Oyama, for instance, marked a decisive turning away from prior United States Supreme Court decisions affirming the validity of the western states' alien land laws. The Hirabayashi decision validating the initial curfew and Korematsu which legitimized the evacuation of Japanese Americans, and which together rationalize the abhorrent concept of wartime racial group disloyalty, can be seen as capping this prior line of cases in which the constitutional and civil rights of Japanese Americans were repeatedly denied. The structure of invidious state-imposed racial discrimination and exclusion most resemble and, indeed,

approaches the Black Codes, the system of segregation and discrimination imposed on black Americans after Reconstruction in the southern states. Both discriminatory structures are notable for their severity and reliance on the force of law for enforcement and legitimacy. In both cases, a powerless racial minority was subjected to officially enforced and sanctioned racial stigmatization.

The legal structure of anti-Japanese American discrimination has now faded. Nevertheless, no governmental authority has yet repudiated the relocation and internment measures, nor has any adequate remedy been provided those relocated and interned or their families. I recommend that a national disgrace should be so characterized and condemned and, as is usual in our law, the victims made whole. Unlike its other manifestations, this form of racial discrimination was focused and specific federal agencies took specified actions which fell upon an identifiable group and inflicted injuries (which while not fully recompensable) can in some measure be identified.

While I understand the Commission will consider remedial issues at a later date, I wish to bring to the Commission's attention the example of the Freedmen's Bureau Act which was enacted by Congress after the Civil War and provided many of its benefits solely to formerly enslaved black freedmen. See University of California Regents v. Bakke, 438 U.S. 265, 397-398 (1978) (Marshall, J., concurring and dissenting). Indeed, unlike slaves who were held by private individuals, the victims of relocation and internment suffered from direct federal

government action. The injuries inflicted by direct federal authority should be remedied by federal authority.

I make these recommendations because the wartime evacuation and detention of Japanese Americans violate the principle that "[d]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." Ironically, these words came from the Hirabayashi opinion, supra, 320 U.S. at 100. It is time we did something to remove the sting of that irony for those who suffered from the relocation and internment.

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SUMMARY STATEMENT OF

ASIAN PACIFIC AMERICAN BAR ASSOCIATION (APABA)

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TO THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, WASHINGTON, D.C.

1. Background and description of APABA.

2. Overview of the Commission's duty to "Recommend appropriate remedies," P.L. 96-317, Section 4(a)(3).

3. Examination of the expansion of civil liberties, 1937-1947, and the treatment of persons of Japanese ancestry.

4. Commission's review and recommendation of appropriate remedies for injuries suffered:

    a. By the Nation as a whole

    b. By the affected communities

    c. By the individuals

5. Current legal analysis of remedies

6. Desirability of Commission sponsored hearing and conference on the Legal and Constitutional Implications of the relocation, detainment, internment pursuant to E.O. 9066, and other associated governmental acts.

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