

SOME WARTIME INCONSISTENCIES AND CITIZEN RIGHTS:
A CALL FOR REDRESS

Statement submitted to
Commission on Wartime Relocation and Internment of Civilians

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The day following Pearl Harbor United States Congress declared war on Japan. By then most Japanese community leaders were picked up and interned; they were not technically "enemy aliens," and were subject to the normal wartime restrictions under that category. By February 19, 1942, in the wake of mounting public hysteria on the West Coast and military setbacks in the Pacific Southwest, President Roosevelt issued Executive Order 9066 subsequently enforced by the criminal penalties of a statute (Public Law 503) enacted March 21, 1942, resulting in the uprooting and removal of "all persons of Japanese ancestry, both alien and non-alien." An alien is someone who is not a citizen. What is a non-alien? He is a non non-citizen. Therefore, for persons of Japanese descent, ancestry was of higher priority than citizenship in the appraisal of his rights.

Eugene Rostow wrote in 1945: "Our wartime treatment of Japanese aliens and citizens of Japanese descent on the West Coast has been hasty, unnecessary and mistaken. The course of action which we undertook was in no way required or justified by the circumstances of the war. It was calculated to produce both individual injustice and deep-rooted social maladjustments of a cumulative and sinister

kind. All in all, the internment of the West Coast Japanese is the worst blow our liberties have sustained in many years." (Eugene Rostow, "The Japanese American Cases - A Disaster," The Yale Law Journal, Vol 54, No. 3, June 1945, pp. 489-90)

Thirty-one years later, on the 34th anniversary of the issuance of Executive Order 9066 during the Bicentennial Year (1976), President Gerald Ford rescinded it with a statement which said, in part: "We now know what we should have known then - not only was that evacuation wrong, but Japanese Americans were and are loyal Americans . . ." (Declaration by the President of the United States, February 19, 1976)

In the Supreme Court decisions (Hirabayashi v. U.S. in June 1943, Korematsu v. U.S. and Ex parte Endo, December 1944), the Court, in essence, left prominent loopholes. Their tautology can be summarized as follows:

1. Where there is a compelling social circumstance, individual rights must give way;
2. Exclusion from specified areas and detention in confined zones may be necessary for military security;

3. Therefore, all persons of Japanese ancestry must be uprooted and detained in camps.

In Ex Parte Endo the Court ruled in favor of Endo, stating that government did not have the right to detain a citizen without charge. Therefore, Endo must be released from camp. But it did not raise the question of why she was in camp in the first place. That question could have been raised in Hirabayashi and/or Korematsu. In doing so, the Court could have explained how the conclusion that all persons of Japanese ancestry must go emerges from the first two premises. Even if one granted the reasonableness of step 1 (practiced by all surviving groups, according to anthropologists) and the practical need for drastic security measures as in step 2, how is security mysteriously obtained by removing a particular group on the basis of ancestry? Yet, the highest U.S. tribunal defeated Hirabayashi 8-0 and Korematsu a year later 6-3.

Hirabayashi "Curfew" Case. When the issue of redress/reparations for Japanese American victims is raised, invariably responses such as the following emerge: How come this matter is raised now, 39 years after the event? Why wasn't this matter raised 39 years ago?

Before World War II the Nisei daily experienced racism: civil service jobs were closed; many professional openings, like public school teaching and engineering were unavailable;

restrictive covenants were legal, making most of the better residential areas open to "white Gentiles only." The good hotels and restaurants frequently were out-of-bounds to Nisei, and public facilities like swimming pools were either available at specified periods only or not at all. The Nisei were second-class and had to bend with the wind and quietly cope as their survival techniques. Confrontation was abhorred as suicide, regardless of rightness.

On the other hand the Nisei learned at school about the flag salute, the preamble and the constitution, including the Bill of Rights and related amendments guaranteeing them citizenship regardless of race, religion, creed or national origin. They subscribed to the principles of American democracy not only 100% but with tremendous enthusiasm (as though to counteract the racism).

How did the Nisei rationalize these two opposing realities? To the extent possible, they practiced compartmentalizing, that is, keeping the two realities apart, facting them wherever possible one at a time.

When the two realities converged, as with the Curfew and Exclusion Orders during World War II, at least two kinds of responses occurred. One, adopted by the young leaders of the Japanese American Citizens League, was to subscribe to the government orders without question as a demonstration of patriotism and loyalty, even if their own citizens rights were abrogated. (University of Washington Archives: Exchange of position statements by Mike Masaoka for the Japanese American Citizens League, and Minoru Yasui on behalf of his Curfew Case, April 17, 1942. Masaoka's position seemed to illustrate what Clifford Munson, cited later in Michi Weglyn, describes as the young Nisei and his "pathetic eagerness to be American.") However, there were voices of protest and resistance, and along with Minoru Yasui, I was one of those voices.

For me it was a choice of accepting what I believed the constitution guaranteed for American citizenship regardless of race, religion, creed or national origin, or to resign myself to becoming a second-class citizen. To maintain a life of hope and incentive for the future, I had no choice but to defy the curfew and exclusion orders as a demonstration of my defense of American citizenship. At no time did I feel I was taking a negative stance, not even when the Supreme Court voted against me 8-0.

It is significant to note that I was never charged with being a threat in terms of espionage or sabotage. The

District Court judge specifically instructed the jury that they were only to determine whether I was of Japanese ancestry, and if so, whether I had complied with the curfew and exclusion orders as specified by the military. It is also of interest that the Circuit Court of Appeals did not have the opportunity to rule on my case. When it had sent a few basic questions to the Supreme Court to assist it in its deliberations, the Supreme Court, noting the fundamental nature of those questions, requested that the whole file, that is, the case, be sent up. Subsequently, my case was scheduled for Supreme Court hearing on May 10 and 11, 1943, and the decision was handed down on June 21, 1943.

Only seven months elapsed from the time of the District Court verdict to the Supreme Court hearing. Normally, I understand it takes a couple of years for that process. Harold Evans, our principal attorney for the Supreme Court hearings, requested postponement as there was only six weeks for preparation. The request was denied. Why the hurry? I believe it was because the government wished to hear this case before the anticipated turning point of the war, when anxieties would still be high and mystical phrases like "military necessity" would carry more impact. (The Battle of Midway, commonly regarded as the turning point of the Pacific War, occurred between our Supreme Court hearing in May and the handing down of the decision in June.)

Another peculiarity developed. The May hearing dealt almost entirely with the issue of the Exclusion Order violation. However, the Chief Justice, speaking for the Court, argued that since my sentences for the two violations were to run concurrently, it was unnecessary for the Court to consider the questions raised by my failure to report to a Civil Control Station, provided that my conviction for the violation of the curfew order was sustained. Thus emerged the Hirtabayashi "Curfew" Case. I have been denied a ruling on the Exclusion Order validity. (Hirabayashi v. United States, 320 U.S. 81, pp. 83-105)

I contend that the fallacy in the Curfew ruling is demonstrated in the tautology illustrated earlier. Unless ancestry is proven to be related to behavior, the Curfew and the Exclusion Orders do not logically follow.

When the issue of the constitutionality of the Exclusion Order was frontally presented to the Court in the Korematsu case, Justice Black, speaking for the majority, ignored the guarded language of Stone's Hirabayashi opinion and used as the basis for upholding the exclusion policy

the "principles we announced in the Hirabayashi case." (Korematsu v. U.S., 323 U.S. 214, 218. See also dissenting opinions of Jackson, Murphy and Roberts, 225-248. Illuminating Supreme Court justices as human beings subject to pressures and politics is the article by history professor Sidney Fine, "Mr. Justice Murphy and the Hirabayashi Case," Pacific Historical Review, May 1964, 195-209.)

Stranger Than Fiction. After declassification of wartime documents, papers, transcripts, scholars have investigated the factors underlying the decision to relocate the Japanese Americans, and concluded that it was not for military security. Rather, it was a political decision. (Among the scholars are Michi Weglyn, Years of Infamy: The Untold Story of America's Concentration Camps, New York: William Morrow, 1976; Roger Daniels, The Decision to Relocate the Japanese Americans, Philadelphia: J.B. Lippincott, 1975.)

High government and military officials have long claimed "military necessity" for taking the extreme action of mass exclusion of the Japanese Americans. If this claim is to be regarded seriously, some peculiar anomalies must be rationalized. For example:

1. The Munson Report. Wishing to verify independently the declaration by the FBI and Naval Intelligence that security was adequately under control, President Roosevelt commissioned a presidential investigation in the Fall of 1941 regarding the Japanese in America. A journalist, Clifford Munson, was given the assignment. The Munson Report was circulated by The White House to the Secretary of War, and then classified, so that all during the war the public, including Congress, was unaware of its contents. This 1941 report confirmed the conclusions of the FBI and Naval Intelligence that mass exclusion was not necessary, particularly since all leaders and potentially

"dangerous" aliens were already under surveillance. The remaining population were primarily children under 15, women, men over 50, plus the ordinary work force. (Michi Weglyn, Years of Infamy: The Untold Story of America's Concentration Camps, New York: William Morrow, 1976, Ch. 1)

2. Hawaii. Although suffering the Pearl Harbor attack the Japanese in Hawaii were never evacuated! (The economy would have collapsed with the departure of over one-third of the population, many holding key commercial and professional positions. Moreover, if they were to be removed, where would they be sent? West Coast mainlanders were trying to remove their own Japanese population; they didn't want more coming in.)

3. No Martial Law. While the general conditions on the West Coast did not require the military security measure of Martial Law (as in Hawaii), the drastic step of removing "all persons of Japanese ancestry, both alien and non-alien" was enacted while enemy aliens of German and Italian ancestry were untouched on a mass basis.

4. Three Months. Following Pearl Harbor and the subsequent anxieties, three months had elapsed without incident. Therefore, uprooting and mass removal appeared unnecessary. Nonetheless, the military commander indicated in a report issued in 1943 on the evacuation process: The fact that there was no known case of espionage or sabotage constituted for General DeWitt "a disturbing and confirming indication that such action would be taken." (Final Report: Japanese Evacuation from the West Coast, 1942, Washington: General Printing Office, 1943, p. 34)

5. Civilian Pressure. Politicians and special interest groups were beginning to exercise pressure on the military and the federal government for immediate and drastic action in the name of security. (Daniels, op. cit., pp. 40-41) Using another dimension, pressure was increased on the grounds

of protection for the Japanese from mob action. It didn't seem to occur to these super-patriots that in a democracy, one usually detains aggressors and disturbers of the peace, not their intended victims.

6. Power Struggle. As war moved on from December 7, there emerged a power struggle between the more restrained, legally-conscious Department of Justice, responsible for aliens, espionage, and matters of this nature, and the Department of War, responsible for actual operations of the war, military security, and matters of this nature. Obviously, there were gray-line areas, and a battle for control and authority ensued, with the military winning. (Ibid., pp. 44-45)

7. Hostage. A seldom-mentioned factor in the decision to evacuate was the anticipation for exchange of prisoners of war, and the need to have ready hostages. This is forward-looking, to be sure, but how American citizens (albeit categorized "non-aliens") would fit into this exchange category is not made clear. (Weglyn, op. cit., Appendix 7c; also, Ch. 2)

Can It Happen Again? For those who believe that it can't happen again, it is sobering to recall the urgings, all the way up to the U.S. Senate, that Iranians be uprooted and incarcerated. In fact, with memories fading (collective amnesia is comfortable) and many Americans uninformed since mass uprooting is covered hardly at all in school textbooks, a strange new logic is emerging:

1. No government would take an action as drastic as mass removal of an entire ethnic group unless there is clear justification.
2. The Japanese Americans were uprooted en mass.
3. Therefore, there must have been clear justification.

This kind of circular reasoning is resurrected to rationalize what increasingly appear to be an improbable situation. Scholarly presentation of

empirical evidence is inadequate to overturn the public opinion, as faulty as the logical conclusion is.

President Ford's "An American Promise" is a welcome document. What is required is a clear official statement from the Commission on Wartime Relocation and Internment of Civilians. And this to be followed by Congressional action.

REMEDY

1. A clear, unequivocal statement that an injustice was done.
2. Underline the seriousness of this injustice to innocent victims and to repudiate the legitimation of racism by awarding monetary compensation.
3. If justice be the aim, the first objective for compensation would be the individual victims.
4. A second, concurrent, objective would be the compensation for the destruction of communities. For the latter a fund should be established which would review applications for social development projects. The fund could automatically receive all unclaimed awards to individual victims.
5. Monetary compensation, no matter how much, can never adequately compensate for the losses suffered. Any amount would be but a token. In our system of justice, however, that token should be relative to the seriousness of the offense. Therefore, it must be substantial.
6. Whatever monetary remedy is awarded, the specifications of eligibility and the process of distribution of the award must be simple and feasible to the ordinary applicant. It should not require an attorney. (Perhaps the social security awards could be an example.)*

*In order to facilitate this principle, I would encourage dropping complicated, somewhat red-tapish detail such as specifying number of days of incarceration, in favor of an average lump sum figure for all eligible victims.

It is difficult to translate losses into figures. One estimate on the material side uses the conservative Federal Reserve Bank estimate of the value of Japanese American properties in 1942 at \$400 million. If that figure is compounded annually by normal bank interest rates for 39 years, we would reach a sum in excess of \$3 billion. By dividing this sum by 120,000, who were uprooted and/or born in captivity, we would have a figure in excess of \$25,000 per person. This would be a figure for material losses. To this estimate, we should consider damages for forced removal, indignity of being treated as an enemy and incarcerated behind barbed wires, cheapening the meaning of our citizenship, various social psychological scars of a token figure of another \$25,000. This amount of \$50,000 is not suggested as being adequate compensation, but under the circumstances, it is forwarded as being relatively substantial in our attempt to reach for justice.

In the same manner a substantial amount should be established for the community fund. From factors of the type considered above, a figure of \$500 million is suggested as an award to establish the fund. A special committee should be appointed to define the terms of reference for the fund.

7. Explore procedures by which the wartime Supreme Court cases (Hirabayashi, Yasui, Korematsu) may be reopened/reviewed so that there may be opportunity to remove from the record the implication that the highest court continues to endorse racial discrimination as the law of the land.

II

Without belaboring the point the period before World War II, during which I grew up, America was straddled with racism (immigration and naturalization laws, anti-alien land laws, occupational restrictions, accommodation restrictions, various admission restrictions to public and private facilities and services, restrictive covenants, to mention a few). Many of my friends still

bear the scars of racism (inability to assume the stance and perspective of first-class citizenship - confronting injustice - their own or some other minority, even to participate in this Commission hearings because they don't want to ruffle the waters and stir up a backlash).

The conditions today represent a major step forward in the rights of racial minorities (the passage of human rights and civil rights laws, and the 1954 desegregation decision defining segregation per se as illegal discrimination, to cite a few examples). But apparently racism is very deeply entrenched in our social patterns, if not with overt racism, with institutional racism (how else can we regard the existence of Affirmative Action programs, Civil Rights Commission, to name but two).

While the terms of reference of this Commission is clearly confined to the actions and the resultant impact of Executive Order 9066, it is impossible to deal realistically with the full impact of this issue (including questions like "Can it happen again?" without a serious regard for racism in the United States.

It is in the context of racism that we can understand how an order like E.O. 9066 can be promulgated, and how it can even survive the careful scrutiny of the Supreme Court. World War II was not the reason for the drastic decision to mass uproot an entire ethnic group purely on the grounds of ancestry; war was the excuse to do it.

The tentacles of racism are subtle and permeating. It operates with innocent statements like "Columbus discovered America in 1492," even when more detailed accounts describe the presence of curious, brown-skinned "non-humans" who gathered around to observe these strange visitors. It operates today in various legitimate-sounding regulations that aim to maintain the status-quo.

If recognition is not given to the relationship of the wartime treatment of Japanese Americans to racism, and to current problems of race relations, the Commission could fail to contribute to the security of American citizenship in times of crises. The wartime Japanese American case was not an unique, bizarre event. As horrible as that was to them and to American principles, the greater tragedy would be if we ignored the antecedents and thereby contributed to similar events that could follow.

REMEDY

1. Establish an independent foundation with its own board of directors to explore and advance "human enhancement" (e.g., overcoming racism in its varied forms)*; put another way, a foundation to secure the meaning and practice of American citizenship as guaranteed in the constitution, especially during periods of crises when they are most needed.

*such as, rewriting of history books to clean out racist and sexist passages and perspectives; monitoring and seeking ways to overcome institutional racism; supporting film and related media that would foster "human enhancement" education; support research and exploratory intergroup experimental programs and evaluations; human rights advance and defense.

2. Support the Japanese American and Aleut redress as current issues upon which to combat racism and injustice.
3. While the fund described in Part I (4 and 6) deal with activities associated with the victims and heirs and related community programs, this foundation is broader in scope and deals with the shoring up of American citizenship in all its ramifications.

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Born April 23, 1918, Seattle, Washington. Parents from Japan. Grew up in the agricultural valley between Seattle and Tacoma. High school graduation in 1935; University of Washington followed, BA 1946 (first degree delayed by work and study program, plus 3 1/2 year World War II interruption), MA 1949, Ph.D. 1952 (Sociology with minor in Anthropology).

Professional experiences at University of Washington, American University of Beirut, American University in Cairo, University of Hawaii, University of Sri Lanka, University of Victoria, University of Alberta, plus visiting stints at other institutions in various parts of the world. For the past 20 years, Professor of Sociology at University of Alberta. This year, visiting Scholar at University of Washington. Most publications in areas of Social Psychology, Health, Minorities, Third World Development.

During World War II, in prison for approximately two years over a three and a half year period for refusing to conform to the curfew and exclusion orders as they applied to persons of Japanese ancestry (Hirabayashi v. United States, 320 U.S. 81, 83-105, The Supreme Court). Had requested, unsuccessfully, more reason than ancestry for complying; conforming to the orders was regarded by me as endorsing a policy of racism.