

Testimony of the
Japanese American Citizens League

Submitted to
U.S. House of Representatives
Judiciary Subcommittee
on
Administrative Law and
Governmental Relations

June 27, 1984

The national JAPANESE AMERICAN CITIZENS LEAGUE (JACL) officially endorsed the findings and recommendations¹ of the Commission on Wartime Relocation and Internment of Civilians (CWRIC), by unanimous formal action of the national board of JACL, convened in San Francisco, California, on July 8-9-10, 1983.

The findings and recommendations of CWRIC were drafted into legislative language and incorporated into a proposed House bill, H.R. 4110. Hon. James Wright (D-Tex.), with 74 co-sponsors, introduced H.R. 4110 in the House of Representatives on October 6, 1983, "(T)o accept the findings and to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians." H.R. 4110 is to be cited as the "Civil Liberties Act of 1983."

^{1/} The findings of the Commission on Wartime Relocation and Internment of Civilians were issued in Washington, D.C., on February 22, 1983. Subsequently, the recommendations of CWRIC were issued on June 16, 1983.

H.R. 4110, the bill which the Committee is considering today, is an extraordinary bill. It offers the apology of the nation to the 120,000 individuals who were forced to leave their homes and businesses on the West Coast in 1942, not on the basis of any charges against them, but solely on the basis of their Japanese ethnicity. It would compensate the 60,000 survivors of that exclusion with \$20,000 each. A bill of this nature will be enacted only if there is a thorough understanding and recognition of the importance and magnitude of the events of the Second World War and -- most importantly -- of the nature of the American government.

It is worthwhile to reiterate the basic precepts of the Bill of Rights, because the Japanese American exclusion and detention is first and foremost a living demonstration of the supreme importance of the founding document of this nation. While the Constitution sets out the powers of the federal government, the Bill of Rights provides protection for the individual citizens against the power of the government and the democratic majority to whom the government is ultimately responsible. As a result, the Bill of Rights encompasses two basic kinds of measures -- first, restrictions on the power which the federal government can wield over citizens, and, second, guarantees to the people of the United States

of limited but very important liberties and freedoms.² Thus, Congress is forbidden from passing any law abridging the freedom of speech or of the press and no person may be deprived of life, liberty or property without due process of law.³

The concepts of the Bill of Rights are the central compact between the federal government and the American people. That compact rests on very fundamental presumptions about the American people and their government. There is the root assumption that the people of this country are law-abiding and loyal to the institutions of the country. This is most clearly expressed by placing on the government the burden of proof in criminal cases. An American may not be forced to give up his liberty or be faced with criminal fines unless the government persuades a jury of his peers that he has committed a crime.⁴ That basic requirement cannot be set aside in the interests of the security of society or of the state. The corollary to this presumption

2/ First Amendment, United States Constitution
Dombrowski v. Pfister, 380 U.S. 479 (1965).

3/ Fifth Amendment, United States Constitution
Procedural due process: Rogers v. Peck, Mathews v. Eldridge,
424 U.S. 319 (1976). Lem Moon Sing v. United States,
158 U.S. 538 (1984). Substantial due process: Mugler v.
Kansas, 123 U.S. 623 (1887). Meyer v. Nebraska, 262 U.S.
390 (1923).

4/ Sixth Amendment, United States Constitution
Duncan v. Louisiana, 391 U.S. 145 (1968).

of innocence and loyalty is the requirement that innocence or guilt be established on a personal basis.⁵ The fundamental liberties may be denied to an American only if he himself transgressed against the law, not because people like him have or may have transgressed.

It goes without saying that among the basic freedoms that we all possess are the right to live and work wherever we chose in the United States and to follow lawful pursuits without interference from the government.

In 1940, people of Japanese descent in the United States were only partially admitted to this basic compact. First, no immigrant from Japan could become a citizen of the United States. No demonstration of loyalty to the United States could overcome this bar. Despite the fact that no immigrants from Japan were allowed to enter the United States after 1924,⁶ those residents who had lived for 15 years or more in this country were absolutely prohibited from becoming full-fledged members of the community and society in which they had made their lives.⁷ Further, the western states had erected laws

5/ Keyishian v. Board of Regents, 385 U.S. 589 (1967).
 United States v. Robel, 389 U.S. 258 (1967).

6/ 8 U.S.C. 703, Immigration Act of 1924; 43 Stat. 161.

7/ The Act of 1790, 1 Stat 103 (1790); and subsequent amendments. In re Saito, 62 F. 126 (C.C.D. MASS), (1894)
 Ozawa v. United States, 260 U.S. 178 (1922)

against land ownership by Japanese nationals⁸ and practices of segregation and discrimination against all ethnic Japanese were routinely followed by many people in the Pacific states.⁹

This was a vicious and ugly history in California and elsewhere, but it was not entirely successful in depriving people of Japanese descent of the benefits of American life. The children of immigrants born in this country were citizens at birth and disabilities visited on their parents did not apply to them. Both the immigrant generation and the Nisei, or second generation, believed that they could rely on the personal guarantees of liberty and due process embodied in the compact of the Bill of Rights.

The very core of the bill before the Committee today is the recognition that the fundamental compact between the federal government and the American people which is expressed in the Bill of Rights, and that the assumptions and presumptions which are the foundation of that charter, were broken in the wartime treatment of the Japanese Americans. Because

8/ California Alien Land Law of 1913, Cal. Stat, 1913, Ch. 113, (1913); Cal Stat, 1921, Initiative Act of 1920, Similar land laws were enacted in the states of Arizona, Washington, Oregon, Idaho, Nebraska, Texas, Kansas, Louisiana, Montana, New Mexico, Minnesota and Missouri.

9/ Resolution of the San Francisco Board of Education, October 11, 1906.

of the very magnitude of what happened -- 120,000 people forced to leave their homes and livelihoods on the West Coast and most of them held for periods of months or years in barrack-like detention camps in the interior -- it is hard to remember that we are dealing here with individuals. It was Mitsuye Endo and Jack Fujimoto and May Ichida who were sent to camp. The exclusion and detention are made up of the life stories of thousands of families -- farmers in the Salinas Valley, clerks in the California state government, small businessmen and shop keepers in the West Coast communities. Against the sting of discrimination and, often the hostility of the organized anti-Japanese faction on the West Coast, these individuals held on to the hope of a better life in America with reliance on the basic compact that they, like all Americans, believed they had with the government.

What happened to the Japanese Americans in 1942 is well known. They were not treated as individuals. They were not given the presumption of loyalty or innocence. There was no burden on the government to show that Mitsuye Endo or Jack Fujimoto or May Ichida had themselves done anything to raise suspicion about them, much less to warrant the loss of the most basic American freedoms. Without discussion, without a place to appeal or an opportunity to be heard or to prove their innocence and loyalty to the government -- without a chance to be judged by the content of their character rather than by their blood and facial features -- lettuce farmers from Salinas and clerks from the Motor Vehicle Department in

Sacramento and modest merchants in Seattle were sent off to the desert of Manzanar or Poston or the cold and dust of Heart Mountain.

These basic facts have been well known for 40 years. What has been much less obvious until the publication of Personal Justice Denied by the Commission on Wartime Relocation and Internment of Civilians is the failure of the federal government to recognize that even a claim of military emergency could not excuse it from its obligation to deal with Mitsuye Endo and Jack Fujimoto and May Ichida as individuals. If, as the military claimed in 1942, the policies of exclusion and detention were exercised against an entire class of United States citizens because, in the urgency of the months following the attack at Pearl Harbor, there was no way to distinguish the loyal from the disloyal among that particular class, that determination could and should have been made during the early days of exclusion and detention. However, there was no attempt in the assembly centers to determine if there were facts justifying the incarceration of particular individuals. There was no recognition of the right of those released from camp to return to the West Coast. In fact, by the middle of 1943 even the War Department recognized that its own view of "military necessity" could no longer justify the exclusion of loyal Americans from the West Coast (see Exhibit A). Nevertheless, the exclusion continued for another eighteen months.

This history illustrates the fact that the damage of the exclusion and detention cannot be overcome without the concrete recognition of the breaking of the trust between the federal government and the Japanese Americans. The exclusion was not ended in 1943 because the War Department would not stand up and fight for the rights of individual loyal Japanese Americans to return to the West Coast. That recognition is still of supreme importance today. It is personally important for each of the people who were sent to camp. This is not ethnic legislation or special group legislation. It is legislation directed to those individuals to whom the federal government denied the presumptions of innocence and loyalty and the right to be judged as individuals. It recognizes the individuality of the lettuce farmer in Salinas and the clerk in Sacramento.

It is important to acknowledge and rectify this today because it forcefully reaffirms that if the federal government breaks the compact that promises to members of even the smallest and most despised minority the right to be treated as individuals as impartially and fairly as the most powerful, then it assures all citizens that in the fullness of time the federal government will make amends and reaffirm the sanctity of that central trust between the government and the individual. There is a famous case from the civil war, Ex Parte Milligan,¹⁰ that made the point

^{10/} Ex parte Milligan, 71 U.S. (4 Wall.) 2 (1866).

eloquently that in times of national crisis the burden and responsibility for maintaining the compact between the individual and the federal government is great indeed:

When peace prevails, and the authority of the government is undisputed, there is no difficulty in preserving the safeguards of liberty; . . . but if society is disturbed by civil commotion -- if the passions of men are aroused and the restraints of law weakened, if not disregarded -- these safeguards need, and should receive, the watchful care of those intrusted with the guardianship of the Constitution and laws. In no other way can we transmit to posterity unimpaired the blessings of liberty.

In the Second World War the United States failed this test. In some ways that can be understood. After Pearl Harbor, Japan and all its works stirred deep animosity in the United States. Japanese Americans were a tiny minority even on the West Coast; they had no political voice or power. They had few friends -- and they had the long-standing animosity of the anti-Japanese demagogues on the West Coast. It wasn't difficult to ignore the loyalty of Mitsuye Endo or the pacifism of Gordon Hirabayashi -- to forget their individuality and to treat them as alien outcasts.

But it is a terrible price which the member of a helpless minority pays for the failure of our central political institutions. His life of loyalty to the United States and his confidence in the moral and political values of the country can find no useful expression. He has been judged before his case is heard. His protest would only bring more repression. In fact only the undeniable loyalty of the unquestion-

ing bravery and fortitude in battle which the Nisei soldiers showed seemed capable of persuading other Americans of the Americanness of those who for years had dedicated themselves in the words of the JACL, to becoming better Americans in a greater America.

The breach of trust between the government and the Japanese Americans also denied to the generation of American citizens recognition of their rightful place in the American community. Quite simply they were treated as if they were Japanese nationals. It is a particularly searing injury in wartime to be thrown out of the political and social community of which you are a part and treated as if you are in all likelihood an enemy. The stigma of that treatment is painful indeed and runs counter to our central understanding of what it means to be an American. It is a personal and collective stigma which Japanese Americans have had to endure for over forty years.

There are many who will recognize the breach of trust between the Japanese Americans and the federal government and who will regret it, but will still ask why anything should be done about it at this late date. First, there must be a clear recognition that the government has in the past recognized breaches of trust and undertaken to correct them. The remedies proposed by the Commission are not unique. Most obviously, the federal government has allowed the Indian tribes to bring claims against the United States for the

violation of the fiduciary and moral obligations which the government owed the Indians.¹¹ In the nineteenth century the federal government thought better of the injury to civil liberty wrought by the Alien and Sedition Act and pardoned those convicted under that statute and repaid the fines that had been imposed. On a more mundane level the government has generally abandoned its historic right to immunity to suit to allow its citizens to bring claims against it. The recent opinion of Judge Oberdorfer in Hohri v. United States makes it clear that that route is not open to Japanese Americans. This Administration has clearly taken the position -- on which we should be able to agree -- that those who are directly the victims of discrimination should be able to obtain compensation (see Exhibit B). This bill appropriately addresses 60,000 individuals who are such victims.

The Congress should enact this statute with its apology and compensation because on the most fundamental level its guardianship of American democracy is based on the notion that the federal government is not free, with impunity, to break its compact with the American people. Equally importantly this bill allows Congress to reassert the principle of individual and personal justice which became a casualty of war: the bill provides for compensation not on the basis

11/ 1946 Indian Claims Commission.

of race or blood but on the applicability of the government's exclusion orders to the individual claimants. It is the 60,000 individuals who personally suffered the stigma and humiliation of the exclusion and detention who will in a modest and virtually symbolic way be made whole. The modesty of the amount can be seen by the verdicts which plaintiffs in false imprisonment cases have received (see Exhibit C).¹²

It is perhaps ironic to close this testimony by quoting Henry Stimson, the Secretary of War, who presided over the exclusion and detention, but a line from his autobiography focuses clearly the basis for the passage of H.R. 4110. "It remained a fact that to loyal citizens this forced evacuation was a personal injustice." Forty years later, that fact remains. Congress has the power to remedy that personal injustice; it has the power to recognize the breach of the central compact between the federal government and its citizens from which 120,000 individuals of Japanese descent suffered from 1942 to 1945, and it has the opportunity to reaffirm the core values of our Bill of Rights which should be the birthright and the protection of every American.

^{12/} Also it should not be forgotten that the Supreme Court unanimously found in 1944, that the government had no authority to detain loyal American citizens in the camps; surely from that time there has been a persuasive claim for compensation to those who were improperly detained.