

# ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

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TESTIMONY OF STANLEY MARK, ESQ.,  
STAFF ATTORNEY, ASIAN AMERICAN LEGAL  
DEFENSE AND EDUCATION FUND

HEARINGS BEFORE THE COMMISSION ON WARTIME  
RELOCATION AND INTERNMENT OF CIVILIANS  
WASHINGTON, D.C.  
JULY 16, 1981



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My name is Stanley Mark, and I am a staff attorney with the Asian American Legal Defense and Education Fund (AALDEF).

AALDEF supports redress for the over 120,000 Japanese Americans who were incarcerated in concentration camps during World War II because of their race and national origin. This deprivation of fundamental constitutional rights by all branches of the United States government was blatantly racist and economically motivated. It must never be allowed to occur again.

AALDEF advocates affirmative measures both to redress the wrongs suffered by Japanese Americans in the 1940's and to deter such acts in the future. To accomplish these goals, AALDEF supports direct monetary payments to all Japanese Americans who were interned, despite the fact that their personal and property losses can never be fully compensated. Moreover, AALDEF supports other actions designed to educate Americans about this historic injustice and to prevent future government abridgements of individual rights.



AALDEF's position paper will focus upon some lesser known legal theories, such as the internment as a violation of the Thirteenth Amendment, and also explore possible legal bases for monetary reparations to individual Japanese Americans. In my testimony today, I will merely highlight some of the legal theories to support redress. A more complete statement and analysis of the legal issues will be submitted to the Commission at a later date.

In the spirit of cooperation and to avoid duplication of efforts, AALDEF supports and endorses the legal theories set forth by the Bay Area Attorneys for Redress. We urge the Commission to examine closely all of the legal theories presented to it and recommend that Congress enact legislation either to award direct monetary payments to persons damaged by the incarceration or, alternatively, to remove existing procedural legal barriers, thereby enabling individual Japanese Americans to pursue appropriate remedies in the federal courts.

#### Japanese Americans and Their Legal History

To place the incarceration of Japanese Americans in an historical perspective, a brief summary of the legal history of Japanese Americans will be presented at the outset.

Significant numbers of Japanese laborers began immigrating to the United States in the 1890's. With this influx, anti-Asian sentiment, formerly directed against Chinese coolies, mounted



against Japanese laborers who worked, as the Chinese before them, in agriculture, railroad and mining.<sup>1</sup> Over 40% of California's agricultural labor force was Japanese by 1909.<sup>2</sup> Immigration and naturalization restrictions were enacted against Japanese with the use of precedents directed specifically at limiting Chinese immigration. By 1907, the so-called Gentleman's Agreement between Japan and the United States significantly restricted immigration of Japanese,<sup>3</sup> and by 1924, all Japanese were totally excluded from entry into the United States as "aliens ineligible for citizenship."<sup>4</sup>

The Japanese Exclusion Act of 1924 remained in effect until 1952. Moreover, Japanese immigrants were found ineligible for naturalization because they were not "free white person(s)" under various naturalization acts dating back to 1790. Ozawa v. United States, 260 U.S. 178 (1922); see also Yamashita v. Hinkle, 260 U.S. 199 (1922); Toyota v. United States, 268 U.S. 402 (1925); Morrison v. California, 291 U.S. 82 (1934). It was not until 1952 that Japanese were permitted to become naturalized citizens,<sup>5</sup> and in 1965 Japanese, along with Chinese, were accorded the same immigration privileges as Caucasians.<sup>6</sup>

The restrictive and exclusionary immigration laws directed against first the Chinese and then the Japanese laid the groundwork for discriminatory state legislation that rivaled the Black Codes of the South. Thus, the Alien Land Acts of 1913 and 1920 prohibited foreign-born Japanese from owning or possessing any legal interest in real property.<sup>7</sup> The Supreme Court of the United



States sanctioned the California statute in Webb v. O'Brien, 263 U.S. 313 (1923); see also Terrace v. Thompson, 263 U.S. 197 (1923) (Washington State alien land law); Porterfield v. Webb, 263 U.S. 225 (1923); Frick v. Webb, 263 U.S. 326 (1923); Cockrill v. California, 268 U.S. 258 (1925) (California Cases).<sup>8</sup> Japanese, as aliens ineligible for citizenship, were prohibited from owning or possessing firearms,<sup>9</sup> from obtaining jobs with "any department of state, county, or city government,"<sup>10</sup> and from obtaining commercial fishing licenses.<sup>11</sup> Such restrictions were not overturned until the Supreme Court decisions of Oyama v. California, 332 U.S. 633 (1948) and Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948).

This legacy of overt discrimination culminated in the incarceration of 120,000 Japanese Americans--an action that stigmatized them and deprived them of the constitutional rights guaranteed to all Americans.

### Thirteenth Amendment and Redress

The en masse incarceration of Japanese Americans is usually viewed and analyzed as a deprivation of constitutional rights based on due process violations. It can and should also be viewed as a violation of the Thirteenth Amendment, a post-Civil War amendment that is more popularly associated with the abolition of slavery in the South.<sup>12</sup> Justice Miller stated for the majority of the Supreme Court in the Slaughterhouse Cases:



We do not say that no one else but the Negro can share in this protection. Both the language and the spirit of these Articles are to have their fair and just weight in any question of construction. Undoubtedly, while Negro slavery alone was in the mind of the Congress that proposed the Thirteenth Amendment, it forbids any other kind of slavery, now or hereinafter. If Mexican peonage or the Chinese coolie labor system shall develop slavery of the Mexican or Chinese race within our territory, this Amendment may safely be trusted to make it void.

83 U.S. (16 Wall) 36, 72 (1873) (emphasis added).

The Thirteenth Amendment condemns the subjugation of all races and forbids not only the literal institution of slavery but also all "badges and incidents" associated with the system of slavery that stigmatizes a people as inferior. This stigma of inferiority persists even when the physical subjugation ceases.<sup>13</sup>

The United States Government forcibly removed over 120,000 Japanese Americans--70,000 of whom were U.S. citizens--from their homes and herded them into concentration camps. Although not convicted of any crimes, those incarcerated were not free to leave the camps or to conduct their lives as free people with the same rights and privileges accorded to all persons under our Constitution. Their incarceration and the unequal treatment afforded them constituted a form of slavery or involuntary servitude prohibited by the Thirteenth Amendment.

Although the physical confinement<sup>14</sup> and the involuntary servitude has ceased, the "badges and incidents" of slavery arising from the incarceration continue as a stigma of inferiority because they remain unremedied to this date.



In Jones v. Alfred H. Mayer Co., 329 U.S. 409 (1968), the seminal case interpreting the reach of the Thirteenth Amendment, the Supreme Court held that if the right to buy or sell property turned upon the color of a person's skin, this constituted a badge and incident of slavery prohibited by the Thirteenth Amendment. The Court went further to state:

Surely Congress has the power under the Thirteenth Amendment rationally to determine what are badges and the incidents of slavery, and the authority to translate that determination into effective legislation . . . . And when racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery.

329 U.S. at 440-43.

The holding of Jones v. Alfred H. Mayer Co. is of special relevance to an analysis of the incarceration, since the government interfered with the property and contract rights of Japanese Americans during World War II. Japanese Americans, who were detained without criminal convictions, were stigmatized as inferior in a variety of ways. They were denied temporary leave to manage their private property.<sup>15</sup> They were prohibited from establishing "evacuee-sponsored production enterprises,"<sup>16</sup> and, in effect, were barred from fully exercising their contract rights.<sup>17</sup> Furthermore, they were paid less than the prevailing wages for government and privately-sponsored employment.<sup>18</sup>

With respect to this latter point, it should be noted that the Geneva Convention governing the treatment of prisoners of war required that those incarcerated should be paid for their