

Testimony

of

ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH

on

H.R. 442

CIVIL LIBERTIES ACT OF 1985

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS

HOUSE OF REPRESENTATIVES

April 28, 1986

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Mr. Chairman and Members of the Committee: My name is Ruth Lansner. I am the Vice-Chair of the National Committee on Discrimination of the Anti-Defamation League of B'nai B'rith. I am accompanied by Ms. Ruti Teitel, Assistant Director of ADL's National Legal Affairs Department. We are here this morning at the invitation of the subcommittee to give our views on H.R. 442, the Civil Liberties Act of 1985. The ADL was organized in 1913 to advance goodwill and mutual understanding among Americans of all creeds and races, and to combat racial and religious prejudice in the United States. The Anti-Defamation League is vitally interested in protecting the civil rights of all persons, and in assuring that every individual receives equal treatment under the law regardless of his or her race, religion, sex or ethnic origin.

Since its inception in 1913, the ADL has espoused a principle against discrimination: "to secure justice and fair treatment to all citizens alike." In keeping with this principle, ADL has intervened in numerous landmark cases urging the unconstitutionality or illegality of racial practices in such cases as, e.g., Brown v. Board of Education, 374 U.S. 483 (1954) and San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973).

Due to ADL's concern with combatting racial discrimination, the League is committed to eliminating all effects, both retrospective and prospective, of the Japanese American internment. In this regard, for years ADL has consistently supported legislative remedies concerning the internment of Japanese Americans during World War II, including legislation supporting a full Commission investigation; statutory provision of just compensation, and legislation seeking to eliminate the precedential effect of the wartime convictions by barring all possible future internment actions based on race, religion, sex or

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national origin. Because of ADL's commitment to eradicating the ongoing stigma and other emotional effects of the Japanese American internment, the League intervened as friend-of-the-court, together with the Asian American Legal Defense and Education Fund, in support of Fred Korematsu and Gordon Hirabayashi in their successful challenges of criminal convictions pursuant to Executive Order 9066.

The Korematsu and Hirabayashi decisions recognize the injustice of the Japanese-American internment. In overturning the wartime convictions, these decisions expressly rejected the so-called "military necessity" claim. This claim, these decisions held, used to imprison citizens of Japanese-American descent without a hearing, was very simply a cloak for government wrongdoing.

The ADL's longstanding commitment reflected in our amicus and other work brings us before Congress today in support of H.R. 442. The ADL believes this legislative redress proposal responds to the recommendations of the Congressionally-established Commission on Wartime Relocation and Internment of Civilians and is the proper remedy for the World War II deprivations of our Japanese American citizenry. Monetary compensation accorded to the surviving victims of the internment camps is a minimum redress. History and justice demand no less.

The redress proposal considered today is a Congressional response to the findings and recommendations of the Commission on Wartime Relocation. That Commission found that the United States Government's policy of exclusion, removal and detention of Japanese Americans for two and a half years in isolated barrack camps guarded by military police was a great personal injustice. It was not justified by any military considerations. Instead, it was

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the product of racism and prejudice. The Korematsu and Hirabayashi cases took the findings one step farther, holding there was widespread government misconduct.

The ADL's support for the establishment of the Commission is well known. We feel particularly proud that when the Senate Committee on Governmental Affairs reported out the legislation to establish the Commission, the Committee singled out the statement ADL submitted to the Committee in support of the legislation as setting forth "succinctly the rationale for a Commission." While the Senate report quotes substantial portions of this statement, I will read only one paragraph which is especially relevant to today's hearing.

Many people believe the attack on Pearl Harbor was the justification for this relocation of Japanese Americans. In fact, military necessity was the reason given by the government for this action. But, if national security was the rationale, why were Japanese Americans in Hawaii not similarly interned, and why were German and Italian aliens not subjected to similar restrictions? Why were Japanese-Americans subjected to wholesale internment when no person of Japanese ancestry living in the United States, or the then-territories of Alaska and Hawaii, had ever been charged with any act of espionage or sabotage prior to the issuance of the Executive Order, nor, indeed, at any time thereafter? Why, therefore, was this group of civilians singled out and deprived of liberty and property without criminal charges or a trial of any kind?

Answering this question was the mandate of the Commission. And its findings supported the League's belief both then and now: the internment resulted from the consequences of prejudice and discrimination directed against persons of Japanese ancestry.

The internees suffered enormous losses, as found by the Commission. There was first and foremost the loss of personal liberty -- as well as income

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and property losses. Added to these losses are the effects of lost educational and career opportunities.

Most important are those less tangible losses such as the emotional injury resulting from separation from loved ones, and the ongoing stigma of exclusion and the accompanying feelings of second-class citizenship.

These losses would appear to be incalculable. As the Commission noted, no amount of money can fully compensate the victims for their losses and sufferings. Still we must try. To date, only a minimal amount has been provided for some property losses. No compensation has been given for the massive deprivations of liberty — though our legal system contemplates compensation to acknowledge such harms. Accordingly, to fail to provide redress is to fail to recognize those harms that we as a nation inflicted on our citizens. And, this we may not morally or legally do. At least one court of appeals has ruled in the Hohri case that this wartime injustice is actionable today. The statutes of limitations are tolled in light of government concealment of unlawful conduct.

What then may stop our path? Redress for these injustices has been challenged -- on the grounds that other injustices also lie in our American history. To be sure, there have been other injustices. But it is this injustice which is before us today with numerous express Congressional and judicial findings of governmental wrongdoing. And it is this injustice which was suffered by an identifiable class of persons now surviving. And it is this injustice which would be cured by redress for injured living citizens and residents of Japanese descent. As Attorney General Edwin Meese has noted, injustices suffered by an identifiable class of victims of direct

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discrimination may demand a government remedy. And this is the case of those Japanese Americans today, who have suffered a fundamental deprivation of freedom, not repeated in our country since the tragic days of slavery. The injury continues until we provide redress.

In pursuit of redress we now look to Congress, in the words of Judge Patel, vacating the Korematsu conviction, to "take the leadership" so as to "protect all citizens" from those "fears and prejudices. . . so easily stirred up" during the time of war which in retrospect divided our great Nation.

Obtaining redress in the pursuit of justice cannot merely be the victims' problem. It is our national problem because we may no longer ignore our history. The ADL, a longstanding opponent of racial and ethnic prejudice, and advocate for the protection of civil liberties for all minorities in our country, is committed to securing this redress. We believe it is essential not only to provide some redress to victims of an acknowledged injustice, but also to ensure that a similar injustice may never happen again.

Thank you for the opportunity to express our views on this much needed and meritorious legislation.