

contributed to a policy conceived in haste and executed in an atmosphere of fear and hatred toward Japan.

Litigation

After Executive Order 9066 was issued on February 19, 1942, the Act of March 21, 1942 amending the Criminal Code (18 USC 97A) to make it a misdemeanor punishable by fine or imprisonment to violate restrictions (including curfew and expulsion orders) in military areas was enacted. The ACLU and its West Coast affiliates immediately became involved in myriad problems created by various military orders issued under the Executive Order. Defense was provided against the prosecutions brought to enforce the military curfew and exclusion orders in which convictions were obtained. Gordon Hirabayashi received a three-month jail sentence for violating an 8 P.M. to 6 A.M. curfew order. Fred Korematsu was given a suspended sentence and placed on probation for five years for failing to obey an order excluding all persons of Japanese ancestry from a military area. Both convictions were affirmed by the U.S. Supreme Court. Hirabayashi v. United States, 320 U.S.81 (1943) and Korematsu v. United States, 323 U.S.214 (1944).

The Department of Justice performed its duty to represent the government in all litigation, and successfully defended the constitutionality of the evacuation in the district courts, Courts of Appeal, and the Supreme Court. The War Department on its part, however, concealed from the Department of Justice that it had prepared a report on the evacuation, "Final Report Japanese Evacuation from the West Coast 1942", which asserted

factual support for the evacuation which was incorrect and untrue.

When the Department of Justice heard that such report was being prepared, which included statements of Department of Justice conferences and activities, it asked for an opportunity to review the document before publication, but was informed at first that such report was a private communication from General DeWitt not to be published. Later, it was said that it was too late for any reviews. It was published without review or corrections when the Korematsu case was in the Supreme Court. The only course then available to the Department of Justice was to advise the Court in a footnote to its brief that the Final Report was relied upon only for statistics and details concerning the actual conduct of the evacuation, and that the Government relied only on facts stated in the brief as justification for the evacuation.

The brief did not state that the Final Report was false and inaccurate on statements of facts of justification for the evacuation. The Final Report, however, was distributed by the War Department to the Attorney General of California, Oregon and Washington so that they had access in Supreme Court briefs to the erroneous statements of justification for the evacuation.

This conduct strikingly disclosed the War Department's own doubts about judicial acceptance of the justification for the evacuation which it had swallowed whole from DeWitt. This factual situation has finally come to public attention. A U.S. District Court has granted a writ of coram nobis setting aside

the convictions of Fred Korematsu for not obeying an exclusion order on the grounds that the factual justification for the evacuation had not been fairly presented to the courts, Korematsu v. United States, 584 F. Supp 1406 (N.D. CAL 1984).

Recently, the U.S. District Court in Los Angeles held a full hearing on Gordon Hirabayashi's petition, and on February 10, 1986, District Judge Voorhees vacated the failure-to-report conviction, but left untouched the conviction for curfew violation, Hirabayashi v. United States, 627 F. Supp. 1445 (W.D. Wash. 1986). He held that the government should have provided Hirabayashi a copy of General DeWitt's "Final Report" because it revealed the racial basis for "interning" and "relocating" Japanese Americans and the government's failure to attempt to identify any real security risks. The Washington Post of February 12, 1986, p. A3, quoted from Judge Voorhees' opinion:

In his decision, Voorhees said, "Nothing would have been more important to (Hirabayashi's) counsel than to know just why it was that Gen. DeWitt made the decision that he did...Disclosure...would have made it most difficult for the government to argue, as it did, that the lack of time made exclusion a military necessity."

The Commissions' Recommendation and H.R. 442

The victims of the internment suffered enormous damages and losses, both material and intangible. There was a disastrous loss of farms, businesses and homes. To this must be added the collateral disruption of careers and professional lives for many years following the evacuations.

An analysis of the economic losses suffered as a direct consequence of the exclusion and detention was performed for the Commission on Wartime Relocation and Internment of Civilians. It

is estimated that, as a result of the exclusion and detention, in 1945 dollars the ethnic Japanese lost between \$108 and \$164 million in income, and between \$41 and \$206 million in property for which no compensation was made after the war under the terms of the Japanese-American Evacuation Claims Act. Adjusting these figures to account for inflation alone, the total losses of income and property fall between \$810 million and \$2 billion in 1983 dollars.

The equation of just compensation must also include intangible factors of great significance. To these figures must be added the injury of unjustified stigma that hangs over the victims of the internment policy, and the irreparable loss of self-esteem to ethnic Japanese. No price can be placed on these fundamental deprivations.

The Commission wrestled with these factors. They present complex problems for which there are no easy solutions. It is difficult to price the enormity of the loss or to concretize just compensation, however, it is important to aggressively pursue a solution.

The Commission's recommendations were structured in several forms to acknowledge the wrongs inflicted during the war upon the ethnic Japanese and to serve as a national apology from our government to its citizens. These provisions have been fully incorporated into H.R. 442, "The Civil Liberties Act of 1985."

The question of financial compensation for the victims of the internment should be self-evident. The economic loss of ethnic Japanese as a result of the exclusion and detention is

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well documented. Simple justice demands financial compensation to the victims. Several years ago, for example demonstrators in Washington, D.C. against the Vietnam war were awarded damages in court for their temporary detention by the police. Congress appropriated millions of dollars to pay for this very temporary detention. Can we do less for the victims of so massive an injustice as the wartime internment? We believe not.

Angus Macbeth, former Special Counsel to the Commission on Wartime Relocation and Internment of Civilians has framed the
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issue with particular eloquence:

It is central to the Commission's aims that the old wounds of World War II be healed. The exclusion and detention will not be forgotten by those who lived through that time. it is important that a way be found to write the end of this history that closes it with a reaffirmation of the basic American principles of equal individual justice and a willingness to repair the errors of the past. The Commission believed that that could best be done not by dwelling on distinctions that are often illusory and minor in comparison to the central events of 1942 - 1945, but by an act of magnanimity that will make the healing act of closure manifest.

It takes the government of a great sovereign people, which cannot be coerced, to voluntarily and magnanimously admit a wrong and grant amends well within its means. The ACLU strongly believes that ours is such a government. We urge this Subcommittee to approve H.R. 442 in its present form.

ENDNOTES

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See, Personal Justice Denied, Report of the Commission on Relocation and Internment of Civilians. Washington, DC December 1982.

1

Ex parte Merryman, 17 Fed. Cas. 144 (No. 9487)
(C.C.D. Md. 1861)

2

Frohwerk v. U.S., 249 U.S. 204 (1919).

3

Ozawa v. United States, 260 U.S. 178 (1922).

4

Personal Justice Denied, pg. 6.

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"Economic Losses of Ethnic Japanese As a Result of Exclusion and Detention, 1942-1946", Prepared for the Commission on Wartime Relocation and Internment of Civilians, by Frank S. Arnold, Michael C. Barth, Gilah Langer, June 1983.

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Letter from Angus Macbeth to Honorable Charles E. Grassley
(August 3, 1983).