

STATEMENT OF
THE WASHINGTON COALITION ON REDRESS

HEARINGS ON H.R. 442 (99th Congress)

To Implement the Recommendations
of the Commission on Wartime Relocation
and Internment of Civilians

BEFORE THE SUBCOMMITTEE ON
ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS
OF THE HOUSE COMMITTEE ON THE JUDICIARY

April 28, 1986

The Honorable Dan Glickman, Chair

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* Section II, C, 2(a-c) was prepared by Rochelle Wandzura, Washington, D.C., staffperson for the Japanese American Citizens League. Her help on shaping the entire testimony is greatly appreciated.

EXECUTIVE SUMMARY

The following material is intended to demonstrate that the section 204 and 205 remedies contained within H.R. 442 are not new remedies, but, rather, have previously been enacted, in one form or another, by Congress in other legislation. It is also intended to partially illustrate the factual basis for providing the remedies.

There are many bases for providing monetary restitution to Japanese Americans excluded and detained by the Federal Government during World War II. The compensation provided under H.R. 442 falls into two categories; individual restitution under section 204; and group compensation under section 205.

1) Section 204 - Individual Restitution.

- o Includes both non-property and property losses.
- o Non-property losses for which there has been no compensation include:
 - Loss of freedom (The 1948 Evacuation Claims Act specifically excluded compensation for losses due to illness, hardship, denial of civil rights, inconvenience, or disruption of family and community.)(a.)
 - o The federal government has provided \$190 million in compensation to civilians and military personnel for loss of freedom during wartime under Title I of the War Claims Act of 1948.(b.)
 - Had Japanese Americans been eligible for detention benefits on the same basis as civilian internees, they would have been eligible for some \$171 million in compensation.(c.)
 - The 1948 Evacuation Claims Act provided inadequate compensation to Japanese Americans.(d.)
 - ** Only half of the possible number of claimants filed under the Act, and of those who did file, they received one-quarter of the total amount claimed.(e.)
 - ** The \$37 million actually paid by the federal government amounted to between 9% and 18% of the estimated property losses sustained by Japanese Americans.(f.)
 - While Japanese Americans received only \$37 million from the federal government under the Evacuation Claims Act, General Motors alone

received \$33 million in compensation from the federal government for the loss or damage to GM plants in Germany which were producing material for the German war machine.(g.)

2) Section 205 - Group Compensation.

o Congress has previously enacted legislation to provide compensation to groups.(h.)

o There needs to be greater public education concerning the role of Japanese Americans in U.S. society.

- Many Americans do not understand the role of Japanese Americans during the war - that Japanese Americans did not attack Pearl Harbor, and instead fought valiantly for this country in both Europe and the Pacific.(i.)

o The exclusion and detention of Japanese Americans lead to a breakdown in the structure of the family and the entire community.(j.)

o Providing monetary restitution to Japanese Americans does not create any sort of 'legislative precedent' to allow any other group who has been the subject of racial discrimination to receive compensation.

- H.R. 442 is narrowly drafted to allow only those who were actually discriminated against to receive monetary restitution.

- Other oft cited incidents of discrimination are distinguishable from the situation facing Japanese Americans on the basis of lack of constitutionally prohibited governmental action and or survival of the claimant.

- The 1948 Evacuation Claims Act provided inadequate compensation to Japanese Americans.(d.)
 ** Only half of the possible number of claimants filed under the Act, and of those who did file, they received one-quarter of the total amount claimed.(e.)
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- While Japanese Americans received only \$37 million from the federal government under the Evacuation Claims Act, General Motors alone

FOOTNOTES TO EXECUTIVE SUMMARY

- a. Comment, Wartime Internment of Japanese-Americans: An Examination of Wartime Reparations Proposals, 6 Univ. of Puget Sound L.R. 97, 107-8 (1982)
- b. 1983 Foreign Claims Settlement Commission Annual Report 42-43, Washington, D.C. (1983).
- c. See note 41 to the attached materials.
- d. See section II (B)(2)(c) of the attached materials.
- e. See Leonard Broom and Ruth Riemer, Removal and Return: The Socio-Economic Effects of the War on Japanese Americans at 203, University of California Press, Berkeley, CA (1949) and Report of the Commission on Wartime Relocation and Internment of Civilians, Personal Justice Denied at 118.
- f. Compare the amount actually paid for property losses under the Evacuation Claims Act of 1948 (\$37 million) with the estimated actual property losses of \$400 million (Federal Reserve Bank, 1942), \$200 million (War Relocation Authority, 1946), \$367 million (Broom & Reimer, 1947), and an estimated \$244 million (ICF Incorporated, 1982-3). See generally section II (B)(2)(a) of the attached materials.
- g. In Re General Motors Corporation, Final Decision, Claim No. W-10619, Decision No. W21487, Foreign claims Settlement Commission of the United States, May 10, 1967. See also The Industrial Reorganization Act: Hearings before the Subcomm. on Antitrust and Monopoly of the Comm. on the Judiciary United States Senate, Ninety-Third Congress, Second Session, on S 1167 at A-22, Part 4A-Appendix to Part 4 [Contains "American Ground Transport" and "The Truth about 'American Ground Transport' - A Reply by General Motors."]
- h. Rehabilitation of the Philippines Act of 1946, formerly codified in 50 U.S.C. app. secs. 1751-1806; Alaskan Native Claims Settlement Act of 1976, 43 U.S.C. sections 1601 et.seq.
- i. Comment, Wartime Internment of Japanese-Americans: An Examination of Wartime Reparations Proposals, 6 Univ. of Puget Sound L.R. 97, 112-13 (1982).
- j. Report of the Commission on Wartime Relocation and Internment of Civilians, Personal Justice Denied at 177.

A. Scope of Discussion.

The following discussion focuses only on the justification for the educational and humanitarian trust fund (recommendation four), which is section 202 of H.R. 442, and the justification for individual restitution (recommendation five), which is section 204 of the bill. The discussion assumes recognition that the policy

I. Background

In 1980 Congress enacted legislation which created a federal commission to investigate the exclusion and detention of Japanese Americans during World War II.(1.) The Commission on Wartime Relocation and Internment of Civilians (Commission) held 20 days of hearings, took testimony from more than 750 witnesses, and collected and reviewed material from archival sources and historical writings.(2.)

The Commission concluded that the exclusion and detention of Japanese Americans during World War II was a "grave injustice".(3.) The Commission found that "race prejudice, war hysteria and a failure of political leadership", not military necessity, shaped the decisions to exclude and detain Japanese Americans during World War II.(4.)

The Commission made several recommendations to "acknowledge to some degree the wrongs inflicted during the War upon the ethnic Japanese."(5.) The recommendations were made "as an act of national apology."(6.)

The three major provisions of the Commission recommendations are:

- 1) There should be a formal apology by Congress and the President recognizing the grave injustice committed by the Federal Government against Japanese Americans (recommendation one);
- 2) Congress should establish an educational and humanitarian trust fund to educate the American people about the dangers of racial intolerance, particularly in view of the actions taken by the Federal Government against Japanese Americans (recommendation four);
- 3) Individual restitution of \$20,000 should be paid to each surviving internee, in partial recognition of individual losses and damages (recommendation five).(7.)

In 1983, bills implementing the recommendations of the Commission were introduced in both houses of Congress. Hearings on the House bill, H.R. 4110, were held in this Subcommittee.(8.)

Bills implementing the recommendations of the Commission were also introduced in both houses during 1985, with the convening of the 99th Congress.(9.)

A. Scope of Discussion.

The following discussion focuses only on the justification for the educational and humanitarian trust fund (recommendation four), which is section 205 of H.R. 442, and the justification for individual restitution (recommendation five), which is section 204 of the bill. The discussion assumes recognition that the policy

to exclude and detain Japanese Americans during the war was improper. That is, it takes as a given the findings of the Commission that the decisions to exclude and detain Japanese Americans were driven not by an assessment of the military conditions facing this nation at the start of World War II, but were shaped by race prejudice, war hysteria and the failure of political leadership.

This material will show that these provisions of H.R. 442 are not unprecedented. Rather, Congress has previously enacted legislation which provides individual compensation for U.S. citizens who have lost property and freedom in wartime. Similarly, group compensation has previously been enacted by Congress.

II. Basis for Title II Remedies

A. Basis for including both individual restitution under section 204 and public educational and charitable expenditures (group expenditures) under section 205.

The exclusion and detention of 120,000 Japanese Americans during World War II was premised on an inability of the government to perceive that they were dealing with 120,000 individuals who happened to be of Japanese descent, who for the vast majority, were loyal, law abiding members of society. The government choose to perceive all Japanese Americans living along the West Coast as a collective or group threat, thus having to be dealt with collectively. This was recognized by the Commission which stated "[A] grave injustice was done to American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed and detained by the United States during World War II." (10.)

The excluded and detained Japanese Americans suffered both individual and group harm. The individual suffered harm for being labeled as disloyal, as well as immense losses in economic terms (property and income losses, careers disrupted, etc.). Japanese Americans as a group also suffered. Communities were torn apart and subjected to the scrutiny of government officials. Freedom of religion was interfered with. The functioning of the community was intentionally disrupted, as governmental officials replaced or removed older resident alien leaders with younger, citizen leaders. All community meetings were conducted in English, despite a community tradition of bilingual meetings. Even family life was affected, as authority was taken away from parents, traditional roles disrupted, and privacy within a family's living quarters became non-existent.

A Congressional enactment of restitution for Japanese Americans which includes both individual restitution and group compensation has been specifically affirmed, in a recent law review comment, as the best plan "to compensate all injuries

fully" (emphasis in the original).(11.) The comment provides that the goals of compensation, education and administrative efficiency are best met through individualized and group compensation. (12.) Although the comment favors individualized compensation over direct compensation to individuals (flat rate amount)(13.), it does clearly provide that a mixed plan (individual if not individualized compensation and group compensation) is "the most effective plan."(14.) Such a plan would compensate for injuries under the individual restitution section, and would also provide the deterrant and educational aspects of the group compensation section.(15.) The comment provides that "the group compensation aspect of the mixed plan also meets the preventative goals by funding projects that educate the American public about the internment and that facilitate the elimination of discrimination."(16.)

The comment concludes:

The plan that most effectively provides redress for the harms done relies on both individual compensation by assessing individual injury and group compensation through educational and other community projects. Most importantly, the plan allows Congress to finally address in full the equitable obligation owed to the Japanese-American people. The claims are meritorious; the obligation exists; Congress should act.(17.)

Another writer also provides that individual remedies are needed for Japanese Americans.

One can only hope that, with those voices ringing in our ears, we as a nation will move swiftly to correct the injustices recognized forty years ago and vindicate those rights through the classic legal remedy, money damages. And, with the individual hardship better understood, the necessity of an individualized rather than a class-based remedy will become even clearer. To provide otherwise would be to replicate the class-based nature of the original injustice.(18.)

The Comments do not break any new ground, and, indeed, are well founded upon not only the history of compensation for wartime deprivations based upon racial discrimination (the citation to the compensation enacted by West Germany for victims of Nazi Germany, for example)(19.), but also has a historical analytical precedent in the writings of John Locke, one of the writers who greatly influenced the framers of the constitution:

Locke discusses how, within the eighteenth century notion of the "state of nature," the lawbreaker can be punished for violating the law of nature, and further how the person who has received damages from such transgression has a particular right to "seek reparation from him that hath done it."(20.) Locke continues:

From these two distinct rights (the one of punishing the crime, for restraint and preventing the like offence, which right of punishing is in everybody, the

other of taking reparation, which belongs only to the injured party) comes it to pass that the magistrate, who by being magistrate hath the common right of punishing put into his hands, can often, where the public good demands not the execution of the law, remit the punishment of criminal offences by his own authority, but yet cannot remit the satisfaction due to any private man for the damage he has received. That he who hath suffered the damage has a right to demand in his own name, and he alone can remit. The damnified person has this power of appropriating to himself the goods or service of the offender by right of self-preservation, as every man has a power to punish the crime to prevent its being committed again, by the right he has of preserving all mankind, and doing all reasonable things he can to that end.(21.)

As such, Locke views the remedies to be imposed against a lawbreaker as both community oriented and individual. This is logically applicable not only to individuals who violate the law, but to a government which violates the law.

Locke is clear in arguing that when the law is broken, certain damages are sustained by the community (as such, the "right of punishing is in everybody")(22.), while others are sustained only by the individual party harmed ("taking reparation, which belongs only to the injured party")(23.)

The Japanese American redress bills currently before Congress(24.) essentially follow the system of compensation which both Locke and the current legal writer discuss. They all argue for two distinct, yet compatible goals. The first is that of deterrance, or the right of "preventing the like offence" through some sort of restraint.(25.) The bills provide for an apology on behalf of the nation as well as what amounts to a partial restoration or restitution of property and rights taken by the government.(26.) Both provisions of the bill serve to deter, restrain, or otherwise prevent the "like offence" from occurring again by not allowing the government to profit from the episode, and, further, to require the government to admit to the "grave injustice" which it committed. The apology and restitution also serve to counter the notion that the federal government has a privilege to engage in such discriminatory actions.(27.)

Secondly, the redress bills serve to restore to the Japanese American who were excluded and detained some of the property and rights which were taken from them by the federal government during World War II. This is essentially the harmed person's right of reparation, or the right of receiving "satisfaction for the harm he hath suffered," about which Locke spoke.(28.) The bills provide for such restoration ("satisfaction for the harm...suffered") mainly in Title II of both bills. Section 204 provides that each eligible individual will be paid restitution of \$20,000.00. Sec. 205 provides that Trust fund monies are to be disbursed for certain public education and humanitarian purposes, or as Locke would provide, "for restraint and preventing the like

offence"(29.)

B. Basis for Section 204 Restitution.

1. Non-Property Losses Sustained by Japanese Americans.

a. There has been no compensation to Japanese Americans who were excluded and detained for their loss of freedom of movement.

Japanese Americans excluded and detained by the federal government during World War II have never been compensated for their loss of freedom of movement. Because of the policies of the federal government during the War, 120,000 Japanese Americans were forcibly removed from their homes along the West Coast and placed in detention camps. Many were held and prohibited from returning to their homes for up to three and one half years.

These excluded and detained people were held in Army-style camps, were surrounded by barbed wires, and guarded by military M.P.s.

Claims for damages or loss due to personal injury, personal inconvenience, physical hardship, or mental suffering were specifically excluded from being compensable under the Evacuation Claims Act of 1948.(30.) As such, claims for loss of freedom, and many other tortious claims related to the detention and exclusion, have never been addressed by the federal government.

b. Precedent for Compensation.

(1) War Claims Act.

Congress has allowed United States civilian and military personnel, or their immediate surviving spouse, child or parent in case of death of such personnel, to file claims for monetary compensation for detention during wartime under the War Claims Act of 1948, as amended.(31.)

The compensation for U.S. Civilian internees covers those who were captured by the Imperial Japanese Government on or after December 7, 1941, at Midway, Guam, Wake Island, the Philippine Islands, or any Territory or possession of the United States attacked or invaded by such government, or who went into hiding at any such place in order to avoid capture or internment by such government.(32.) Such person, so long as the person was not collaborating or aiding the enemy, or a member of the U.S. military or naval forces, could receive compensation of \$60.00 per calendar month for each month of detention, or \$25.00 per calendar month for those less than 18 years of age.(33.) In the event of the death of the person entitled to such benefit, the surviving spouse, child or parents, as appropriate, would receive the detention benefit.(34.)

Guamanians interned in the Pacific area, and Merchant Seamen world wide, were allowed compensation for their detention under various amendments to the War Claims Act.(35.) Subsequent amendments to the War Claims Act also allowed civilian internees from the Korean War(36.), the Vietnam War(37.), and the U.S.S. Pueblo incident(38.) to receive compensation.

It should be noted that, except for the provision relating to U.S. citizens, the compensation for Guamanians, World War II Merchant seamen and U.S. citizen employees of contractors were enacted between eight to sixteen years following the cessation of hostilities in World War II.

Payment for such war claims came from funds deposited into the treasury under the Trading with the Enemy Act of October 6, 1917.(39.)

Under Title I of the War Claims Act of 1948, more than \$190 million in compensation was paid out to some 383,000 U.S. citizens.(40.)

Had Japanese Americans been in a U.S. territory or possession in the Pacific and been captured by the Japanese Government, they would have been eligible for detention compensation under Title I of the War Claims Act. However, since they were excluded and detained by their own government, they were ineligible for compensation under the Act.

If Japanese American were compensated at the same rates as civilian internees under the War Claims Act, they would have been eligible for some \$171 million in compensation.(41.) As it was, however, they only were eligible for property losses under the Evacuation Claims Act,(42.) and were paid then only some \$37 million.