TESTIMONY OF THE

JAPANESE AMERICAN CITIZENS LEAGUE
LEGISLATIVE EDUCATION COMMITTEE

SUBMITTED TO THE

U.S. HOUSE OF REPRESENTATIVES
JUDICIARY SUBCOMMITTEE
ON
ADMINISTRATIVE LAW AND
GOVERNMENTAL RELATIONS

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Mr. Chairman and Members of the Subcommittee:

I am Grayce Uyehara of West Chester, Pennsylvania, Executive Director of the Japanese American Citizens League - Legislative Education Committee (JACL-LEC) in Washington, D.C. On behalf of JACL-LEC, I want to express our appreciation for this opportunity to speak before you in support of H.R. 442.

This testimony addresses the propriety of and the precedent for enacting a statute which would provide a payment of $20,000 to each surviving person who was excluded from his or her place of residence pursuant to Executive Order 9066 which President Roosevelt issued in February, 1942. We are aware that the individual payment remedy is a matter of concern to some members of Congress.

Six years ago, Congress established the Commission on Wartime Relocation and Internment of Civilians to review the facts and circumstances involved in the issuance of Executive Order 9066 and the impact and effects of that Order and to recommend appropriate remedies. The history of the Executive Order does not need repeating here: in a nutshell, approximately 120,000 persons -- Americans of Japanese ancestry and resident Japanese aliens -- were excluded from the West Coast of the United States from February, 1942 to December, 1944, and most were held in camps in the interior for the greater part of that period.

The Commission unanimously found that the exclusion and detention were not warranted by the military necessity of wartime, but were the result of the broad historical causes of race prejudice, war hysteria, and a failure of political leadership. As a consequence, there was no personal or individual review

or accounting available to the ethnic Japanese. Thousands of people loyal to this country and its government suffered the grave injustice of exclusion and detention as a result of ethnicity alone. The Commission's finding of injustice had been preceded by numerous academic and scholarly analysis which reached the same general conclusion. Of these, Morton Grodzins' Americans Betrayed of 1949 and Eugene Rostow's 1945 Yale Law Journal article, "The Japanese American Cases -- A Disaster," are simply two of the earliest, best argued and best known. Since the Commission issued its findings three years ago, a variety of contexts had indicated that the factual record supports these conclusions. The decision of the United States Court of Appeals for the District of Columbia Circuit in Hohri v. United States and Judge Voorhees' opinion in Hirabayashi v. United States supply two of the most recent and striking decisions to address this issue.

As a result, this testimony takes as its foundation the finding that the exclusion and detention were a grave injustice -- a deprivation of liberty without the individual review and accountability which are central to our most fundamental conception of fairness and due process. Secretary Stimson put it simply and powerfully in his autobiography: "It remained a fact that to loyal citizens this forced evacuation was a personal injustice."

The central issue to be addressed is what remedy is appropriate for these historical events, and what precedent would be set by the remedy of individual payments which the Commission recommended.

It should be beyond debate that in this century the American people and the federal government have made it part of the bedrock of our legal and political system that, where governments have caused substantial injury through the deprivation of liberty or other fundamental rights, remedies should be available to the damaged or injured parties. Two examples of this principle applied on a broad scale make the point in powerful terms. The first example is the Indian Claims Act of 1946, 25 U.S.C. §70, et seq. In that statute, Congress gave to the Indian tribes the widest possible right to make claims against the federal government and obtain compensation for past injuries. Five types of claims were permitted:

(i) claims in law or equity arising under the Constitution, laws, treaties of the United States and Executive Orders of the President;

(ii) all other claims in law or equity, including those sounding in tort, with respect to which claimant would have been entitled to sue in court if sovereign immunity did not apply;

(iii) Claims which would result if the treaties, contracts and agreements between the claimant and the United States were revised on any ground recognized in equity, such as fraud, duress, unconscionable consideration, mutual or unilateral mistake;

(iv) claims arising from the taking of lands by the United States without payment of compensation agreed to by the claimant; and

(v) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity.

The last provision set out here addressed to fair and honorable dealings not recognized in law or equity is particularly noteworthy. Not only were the tribes permitted to bring all legal and equitable claims they might have against the government, but they were also given the right to present moral claims as well.

The statute provided five years for the preservation of the claims and waived all defenses based on statutes of limitations or laches.

Simply put, the 1946 Act recognized that the history of the federal government's dealings with the Indian tribes had been checkered with unfairness and injustice and Congress acted on that recognition by providing a monetary remedy for all of those past failures.

Second, in the context of deprivation of rights by state governments, the federal government long ago made any individual who, under color of state law, deprived another of any right or privilege secured by federal law, liable to suit, both for damages and for injunctive relief. 42 U.S.C. §1983. Employment is one of the limited areas in which the federal government itself is likely to be able to practice discrimination, and in that context, too, Congress has recognized the propriety of a monetary remedy for discrimination based on race, color, or religion, rather than individual merit and review. 42 U.S.C. §2000(e), et seq. The present debate over remedies in the civil rights field has not put in question the basic understanding that those who are injured not on the basis of individual qualities, but because of race or ethnicity should have an appropriate remedy available to them. For instance, in a 1981 speech to the American Fair Institute, Attorney General Smith, emphasizing the importance to American ideals of color-blind action by the government, said that in such a society "the injuries to individuals would be redressed by the government on the basis of the actual deprivations suffered by the affected individuals."

We thus arrive at two fundamental propositions. First, where the government has deprived people of liberty on the basis of race or ethnicity, rather than on the basis of individual and

personal review according to the norms of our legal system the injured party should received a remedy. Second, the ethnic Japanese were excluded from the West Coast and detained during World War II on the basis of race and ethnicity and deprived of liberty without individual and personal review.

Once these propositions are accepted, a number of questions need to be answered in proposing a monetary remedy, such as that recommended by the Commission:

* Wasn't the Japanese-American Evacuation Claims Act a sufficient remedy?
* Wouldn't a monetary remedy invite similar claims from other ethnic groups?
* How can a figure of $20,000 in payment be justified?

These questions will be addressed in order.

Japanese-American Evacuation Claims Act. After the war, the government did attempt to make some amends for the effects of the exclusion and detention. In 1948, Congress passed the Japanese-American Evacuation Claims Act, which provided the right to make claims against the government for damages to or loss of real or personal property, not compensated by insurance, which occurred as a reasonable and natural consequence of the evacuation or exclusion. More than 26,000 claims were made, for a total claimed amount of $148 million, and the government distributed approximately $37 million in awards under the Act. The Commission looked closely at the Act and its administration and a number of points emerged from that analysis: The Act did not attempt to provide compensation for lost income or lost opportunities in education or professional advancement. It provided no compensation for the deprivation of liberty or for the mental pain, suffering and stigma that added substantially to the injury suffered by those excluded and detained.

The structure of the Act, and procedures under it, added to the post-War need for cash that was undoubtedly felt by many of the claimants, and the difficulty of proving monetary losses by any method other than the testimony of the claimant inevitably led to settlements which were substantially lower than full and fair compensation.

A careful study of the materials presently availabe indicate that between $41 and $206 million was lost in property for which no compensation was obtained, as well as between $108 and $164 million in income for which no compensation was offered. These figures are in 1945 dollars. Adjusted for inflation to 1983, the losses for property and income fall between $810 million and $2 billion.

In short, the Japanese-American Evacuation Claims Act was not a fair settling of the accounts. It provided nothing for the deprivation of liberty which is a central concern today,

and, in more easily measurable economic terms, the amount of loss not compensated would fully justify the total sum which would be expended if each survivor of the exclusion were given a payment of $20,000.

Claims From Similarly Situated Groups. In addressing this issue, it is important to recognize the exact nature of the relief proposed by the Commission. The monetary payment is not to be made on an ethnic or race basis. The payments are to those individuals, and only those individuals, who fell under the terms of the exclusion orders. This is important. Precisely because the original mistake and injustice was to treat everyone of Japanese descent on the basis of race without individual review, it is important that the principal remedy reverse this and provide compensation to those particular individuals who were themselves injured by the federal government.

Recognizing this principle as the basis of the remedy, are there other substantial groups who could claim eligibility for relief from the federal government? Forty years ago, Congress provided a remedy to the Indians for any mistreatment suffered at the hands of the federal government. Congress has long recognized the right of anyone who believes himself improperly discriminated against by the officials of state governments to sue those officials for damages or injunctions. In a more mundane sphere, the federal government allows suits against itself for ordinary torts.

This is not to argue that the federal government has a blameless record in matters of race and discrimination, it does not; but when one looks for cases of people alive today who were themselves directly injured by the federal government because of their race or ethnicity, the Japanese Americans stand out as a special group of individuals. We can be thankful that it has not been the policy of the federal government to deprive people of their liberties and livelihood on the basis of race.

The reality is that the fear of a flood of similar claims is not well founded. And even if one finds individuals or groups who can show direct injury from racial discrimination practiced by the federal government, wasn't William French Smith right when he said the injuries to individuals should be addressed by the government on the basis of the actual deprivations suffered by the affected individuals? That principle is sufficiently central to the American policy that it should be upheld even at some modest cost to the Treasury -- and particularly when no persuasive showing can be made that abiding by it will produce unbearable expense.

Why $20,000? In addressing the recommendation that individual payments of $20,000 be made, a word should be said at the outset about alternative remedies. The Commission rejected proposals to waive statutes of limitation and similar defenses or to set up a claims commission. I think this was wisely done. Any adjudicatory process would set up the federal government in

the posture of an adversary to the claimants. It is time for that relationship to end. It is time for scars to be healed. It is not appropriate to start now, forty years after the war, a new round of battles between the federal government and the Japanese Americans.

Moreover, there are two very practical considerations to weigh when one proposes to settle this matter through some form of adjudication. First, papers are long since lost or destroyed and the memories of forty years ago may well lack feasibility. Trying issues forty years old would be an agonizing experience and not a fruitful one. Second, the major aspect of this remedy -- the recognition of the unjust deprivation of liberty with the psychological pain, the stigma, the lost hopes and the missed opportunities that went with it -- cannot be readily or easily translated into dollars and cents. For these elements of injury and damage, and award will, at the end, remain speculative and arbitrary. No process of adjudication will change that. The recognition of these facts underlies the choice of a flat sum payment as a remedy. It is arbitrary, but any sum at the end of any process will be arbitrary. It is important that it be an amount that is not trivial, because the injury was not trivial. But it is also important to recognize that no sum of money can fully settle the account and an attempt to do so would be as quixotic as it would be politically unrealistic. Given these competing interests, the Commission recommended a payment of $20,000. The important thing is not the exact amount, but the principle behind it: The recognition of the injustice and the injury and the attempt to remedy by the only method now available -- compensatory payment -- by an amount that is meaningful, but which makes no pretense to making people fully whole again. This is beyond the power of the Congress or anyone else.

We believe that both the recognition of the injustice and the compensation payment must be inclusive. Otherwise, the grave injustice suffered by the survivors remains an unfinished business.

It has been established that the incarceration of 120,000 Japanese Americans was wrong and unjustified. In order to right a wrong committed by our government, compensation is in order. The loss of freedom through the action taken by the American government was tragic, extraordinary and precedent setting, and, therefore, requires remedies which are extraordinary. Only those who have lost their freedom will understand it is priceless.

It is fitting to close this testimony by quoting from the Commission's report and giving its reasons for the course it chose after three years of wrestling with this intractable and agonizing dilemma:

> These facts present the Commission with a complex problem of great magnitude to which there is no ready or satisfactory answer. No amount of money can fully compensate the excluded people for

> their losses and sufferings. Two and a half years behind the barbed-wire of a relocation camp, branded potentially disloyal because of one's ethnicity alone -- these injustices cannot neatly be translated into dollars and cents. Some find such an attempt in itself a means of minimizing the enormity of these events in a constitutional republic. History cannot be undone; anything we do now must inevitably be an expression of regret and an affirmation of our better values as a nation, not an accounting which balances or erases the events of the war. That is now beyond anyone's power.

We owe it to ourselves as a nation which cherishes liberty and our Constitutional values in peace and war alike to act to heal this historic wound by granting appropriate redress to those who suffered injustice at the hands of the government forty years ago.

President Reagan in October, 1985, spoke to the United Nations General Assembly and said:

> What kind of people will we be 40 years from today? May we answer: free people, worthy of freedom and firm in the conviction that freedom is not the sole perogative of a chosen few, but the universal right of all God's children.
>
> This is the Universal Declaration of Human Rights set forth in 1948. And this is the affirming flame the United States has held high to a watchful world. We champion freedom, not only because it is practical and beneficial, but because it is morally right and just.

In November of 1985, before his departure for the summit meeting in Geneva, the President said:

> The rights of the individual and the rule of law are as fundamental to peace as arms control. A government which does not respect its citizens' rights is not likely to respect its other international undertakings.

Today we call on Congress to send a strong message to the nation and to the rest of the world that, indeed, the United States keeps its promise and commitment to uphold the Constitution for all its people.

JACL-LEC will be happy to provide additional information to the committee if we are unable to answer any questions today.

Thank you again for this opportunity to testify in support of H.R. 442.

Attachment

ATTACHMENT

Examples of damages allowed for false imprisonment might be illuminating, in considering the cases of Japanese Americans confined in detention centers for periods of up to four years, as follows:

AWARD:	DETAINED:	CASE:
$900 - 3,200	False imprisonment for 1-3 days for the 1971 May Day antiwar protest. Total appropriation: $3,150,000	Dellums v. Powell 566 F.2d 167 C.A., D.C. Circuit
$50,000 -	Arrest after scuffle and detained for less than 1 day.	Bucher v. Krause, 200 F.2d 576, 7th Cir. 1952.
$112,000 -	Wrongfully convicted of murder, and served 12 years in prison.	Hoffner v. State, 207 Misc, 1070 142 N.Y.S. 2d 630 Ct. Cl. 1955
$10,000 - +10,000	Assaulted and detained by employer who charged shoplifting	Skillern vs. Stewart 379 S.W. 2d 687, Tex. Civ. App. 1964
$10,000 - + 500	Roughly handled and briefly detained	Quinn v. Rosenberg, 399 S.W.2d 433 Mo. App. 1966
$20,000 -	Wrongfully imprisoned for murder and on death row for 2 months; total time in prison, 4 years.	State v. Vargas, 419 S.W.2d 926, Tex. Civ. App. 1967
$100,000 -	Store owner jailed for disturbance in evicting competitors who were checking prices	S.S. Kresge Co. v. Prescott, 435 S.W.2d 203, Tex. Civ. App. 1968
$400,000 - reduced to 75,000	Woman jailed for 3 days for refusal to pay hotel bill until moving out.	Rothschild v. Drake Hotel 197 F. 2d 419, 7th Cir. 1968
$100,000 -	Arrest for failure to pay articles taken from store, but actually had been paid.	Thomas v. E.J. Korvette, 320 F. Supp 1163, E.D. PA 1971.

$35,000 -	False imprisonment for 5-6 hours.	Globe Shopping v. Williams, 535 S.W. 2d 53, Tex. Civ. App. 1976
$10,000 -	Compensatory damages for 3-hr detention, on basis of loss of earnings and mental suffering.	Guion v. Ass. Dry Goods, 56 App. Div. 2d 798 393 N.Y.S. 2d 8, 1977
$5,000 - 10,000	Actual damages, plus punitive damages for 2½ hrs. detention on accusation of shoplifting.	Joseph v. Jefferson Stores 228 So. 2d 103, Fla, Dist. Ct. App. 1969
$1,500 -	Jailed for refusal to handed over driver's license on arrest for violating dog leash ordinance.	Enright v. Groves, 560 P. 2d 851, Colo, App. 1977
$40,000 -	23 Day commitment to mental institution by psychiatrist; award for pain and suffering.	Stowers v. Wolodzko 386 Mich. 119, 191 N.W. 2d. 355, 1971

BIOGRAPHICAL SKETCH

Grayce Ritsu Kaneda Uyehara
1535 Marlboro Road
West Chester, Pennsylvania 19382

Birth: July 4, 1919 - Stockton, California
Married: Hiroshi Uyehara
4 children

Education

Stockton High School - 1937
College of the Pacific, Stockton, CA. - Bachelor of Music, 1942 (in absentia)
University of Pennsylvania, Graduate School of Social Work Philadelphia, MSW 1947

Work Experience

Group and Community Worker	International Institute, 1945-48 Philadelphia, PA.
Director	Chester County Day Care Center 1962 West Chester, PA.
Child Welfare Worker, Intake	Chester County Children's Services 1963-64, West Chester, PA.
Director of Prof. Serv.	Baptist Children's Home, 1965-69 Philadelphia, PA.
School Social Worker Supervisor	Title I Program, Rose Tree Media School District, 1969-75 Media, PA.
School Social Worker Placement Coordinator	Special Education Lower Merion School District, 1975-85 Ardmore, PA.
Executive Director	Japanese American Citizens League- Legislative Education Committee October 1985-

Personal Statement

My given name, Ritsu, translates in Japanese to "law". My immigrant parents recognized that I was born on the day when this nation celebrates its founding as free people.

When the Civilian Exclusion Order was posted in Stockton, I was teaching the Japanese language at the Army Quartermaster base and was scheduled to teach at the Air Force Training base. Though I was inadequately prepared for this appointment I was asked to teach in the program prepared by the Army.

In May, 1942, we were sent to the Stockton Assembly Center at the San Joaquin County Fair Grounds. In October, 1942, we were relocated to the Rohwer Relocation Center in Arkansas.

One brother was drafted from camp and went to serve in Italy and another brother was drafted from Philadelphia for replacement with the 442nd Infantry. Our family resettled in Philadelphia in 1944.