AMERICAN CIVIL LIBERTIES UNION
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STATEMENT OF AMERICAN CIVIL LIBERTIES UNION
BEFORE U.S. COMMISSION ON WARTIME RELOCATION
AND INTERNMENT OF CIVILIANS

Presented by Edward J. Ennis
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I am Edward J. Ennis, member of the Board of Directors of the American Civil Liberties Union, 132 West 43rd Street, New York, New York 10036. I was formerly Chairperson of the Board (1969 - 1977), one of its General Counsel (1955 - 1969) and have served as a member from 1946. I present the facts concerning the ACLU's opposition to the 1942 exclusion of all of the over 100,000 persons of Japanese ancestry from their homes in the states of California, Oregon and Washington on the West Coast. I shall also state briefly facts observed by me at the time from my vantage point as Director of the then Enemy Control Unit of the U.S. Department of Justice from December 1941 to 1946. The Unit was concerned with internment, parole, release and travel control of all aliens of enemy nationality, including Japanese aliens.

The Commission has received much testimony, written and oral, about the forcible evacuation. Of course, from our current perspective, the utter folly of this military exercise seems clear. It used thousands of military personnel who should have been training to fight the enemy abroad to uproot this minority on the West Coast, many thousand of them engaged in raising food for the military as well as the civilian population; and transported them to interior relocation centers to be fed and maintained in comparative idleness and guarded by military police. I shall not dwell on the folly of this decision here other than to say that it is an example of the confusion and hysteria that can lead to serious errors of military judgment. I shall, instead, restrict my remarks to a brief account of the opposition of the ACLU to the expulsion program and some personal observations which may interest and be of help to the Commission.

As soon as it was known that an evacuation program was being considered, the ACLU, both the national organization with its headquarters in New York, and its West Coast affiliates, immediately, vigorously and continuously opposed the evacuation as unnecessary and unconstitutional. Before the evacuation and Executive Order, Roger Baldwin, then executive director of the ACLU, and Clifford Forster, Esq., staff counsel, came to Washington more than once and conferred with Attorney General Francis Biddle and me in the Department of Justice and with the Assistant Secretary of War and other War Department officials. The ACLU acknowledged that in wartime appropriate military areas might be established requiring military supervision, but urged that any mass evacuation not based on cause as established in individual hearings would be unconstitutional. Just as Attorney General Biddle's own objections to the evacuation as a factually unwarranted measure did not prevail with President Roosevelt who approved the War Department's request for the necessary Executive Order, the

ACLU's representations were fruitless. Given the atmosphere of panic which prevailed at that time because of Japanese military successes on land and sea in the Pacific in early 1942, such a high-level decision, while not excusable, was to be expected.

After Executive Order 9066 was issued on February 19, 1942, the Act of March 21, 1942 was enacted 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. 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. Cordon 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 ACLU or its affiliates were active in all stages of the cases, including briefs in the Supreme Court arguing the unconstitutionality of the convictions. The ACLU was also involved in Ex Parte Endo, 323 U.S. 283 (1944), in which the Court held that the War Relocation Authority had not been authorized by statute or Executive Order to detain a citizen of Japanese ancestry in a relocation center until acceptance in a community outside the camp was established under its administrative procedures. Thus, the decision of the question of whether such detention, if authorized, was constitutional was not reached by the Court. Mr. Justice Owen J. Roberts, in a concuring opinion, protested that the Court thus avoided the constitutional issue of factual detention by the WRA asserting and exercising the authority to do so.

After the war the ACLU continued to express its opposition to the detention by supporting the victims of the evacuation. We backed (1) enactment of the Japanese-American Evacuation Claims Act of 1948 (50 U.S.C. App. §1981 - 1987), under which claims for property losses of evacuees by abandonment or forced sale upon evacuation were heard and allowed by a government commission; (2) litigation resulting in rejection of alien land and fishing laws discriminating against persons of Japanese ancestry (Oyama v. California, 332 U.S. 633 [1948]) and Takahashi v. Fish and Game Commission 334 U.S.410(1949); and 3) successful litigation holding illegal the renunciation of U.S. citizenship in circumstances of detention, on the ground that such renunciation was involuntary.

It is the view of the ACLU that the mass evacuation and subsequent detention of the entire Japanese-American population from the West Coast in 1942 was the greatest deprivation of civil liberties by government in this country since slavery. The fact that it occured during a war, being fought principally abroad, is not sufficient reason to deny some compensation for the thousands of Americans so harshly treated. The Courts of our country have readily decreed monetary redress by the Government for such less intrusive acts as temporary false arrest and

illegal searches, and also denials of civil rights. The ACLU is not asserting how much in present dollars each evacuated or detained person should receive, or whether each individual shall have to make an individual claim for payment, or whether heirs of any deceased evacuee should have a claim. What is appropriate, however, is that any sum recommended by the Commission should be substantial in view of the serious and sustained violation of civil liberties suffered by the evacuees. This action would, at least, demonstrate in a significant way the nation's recognition of the grievous harm done.

Turning to my personal observations of the evacuation as Director of the Alien Enemy Control Unit, this brief statement does not permit extended comment. And the Commission would not be aided particularly by yet another opinion about the circumstances of this deplorable episode in the conduct of World War II based on a recollection of events some forty years ago. The Commission would be better helped by the written record of research, such as Professor Morton Grodzin's "Americans Betrayed: Politics of the Japanese Evacuation" (University Chicago Press, 1949) and ten Broek et.al. "Prejudice, War and the Constitution" (University of California Press, 1954); and the analysis of the legal issues in such articles as Dembitz, Racial Discrimination and the Military Judgment: The Supreme Court's Korematsu and Endo Decisions (\$45 Col. L.R. 175 [1943]), and Rostow The Japanese American Cases - a Disaster (54 Yale L.J. 496 [1945]).

One personal comment, however, may aid the Commission in considering both the responsibility for the decision to expel all Japanese-Americans from the West Coast and any compensation to be recommended. This military action taken in World War II was not the emergency decision of a field commander on the battlefield, required to act at once for better or worse on the information available without benefit of seasoned judgment of his superiors. Nor was this like the actions of police or other government agents in hot pursuit of suspected criminals, when such officials violate rights against unlawful search and seizure without sanction of their superiors. The action taken was not solely on the authority of Lt. Gen. J.L. De Witt of the Western Defense Command, who demanded increased authority over ever larger zones and citizens as well as aliens as he perceived that frightened public opinion, aroused by the press, and farm organizations greedy for the farm lands of the evacuated Japanese-Americans, would approve military action far beyond what he first contemplated.

The sweeping authorization for establishment of military zones and consequent evacuation was by the President of the United States on the recommendation of the Chief of Staff, George C. Marshall, and three distinguished civilian attorneys, Assistant Secretary of War John McCloy, Under Secretary of War Robert Patterson and Secretary of War Henry Stimson. The decision was ratified by Congress by enactment of a criminal law to enforce the evacuation orders. Attorney General Francis Biddle, to his eternal credit, opposed the evacuation as completely unwarranted but against this array failed to carry the day with President Roosevelt.

In my personal view, the result exhibited a complete failure of the theory that even in wartime military authorities are subordinates

to their formally civilian superiors. Actually, Secretaries Stimson, Patterson and McCloy acted more like lawyers for their client, the Army, and gave the Army what it requested without exercise of the independent judgment their high offices required. But this view, even if accepted, cannot change what happened, or even hold out any hope that in another such military emergency affecting the civilian population, the civilian authorities will not accept and enforce the military judgment passed up to them. Instead of the adage that war is too important to leave to the generals, there seems to be prevalent, even in a democracy at war, that any novel situation with military aspects should be left to the military as the agency ultimately responsible for national security and survival.

But even if it be true that the military will prevail on all aspects of conduct of war, the Government should accept responsibility for compensating any segment of the population required to accept an unusual and discriminatory burden of the war approved by Congress and the President. The shameful evacuation and detention of Japanese-Americans in World War II is such a case.