

(2). Judicial recognition of damages resulting from false imprisonment.

The closest precedent in our Anglo Saxon jurisprudential system which argues for compensating Japanese Americans is the tort of false imprisonment.

False imprisonment is intended to protect the interest of the person in freedom from restraint of movement. Japanese Americans had their freedom from restraint of movement violated when the federal government detained them in assembly centers and so-called relocation camps.

Under false imprisonment, a plaintiff is allowed compensation for loss of time, physical discomfort or inconvenience and for any resulting physical illness or injury to health.(43.) The plaintiff would also be entitled to damages for mental suffering, humiliation and the like. Also compensable are damages for interruption of business, harm to reputation or credit, and other losses directly related to the imprisonment.(44.)

Although the liability of the Federal Government is governed by the Federal Tort Claims Act,(45.) which specifically provides that the government shall not be liable for any claims arising out of false arrest or imprisonment,(46.) the false arrest and imprisonment cases still provide a significant guideline as to the amount of compensation or restitution provided for those, like Japanese Americans, who were unjustly imprisoned and arrested.

c) Examples of uncompensated non-property losses among Japanese Americans.

The following are some examples of non-property losses of Japanese Americans who were excluded and detained by the federal government during World War II.

While we were at Manzanar, my wife came to full term, but while she was still pregnant, she went up for an examination. I went with her, and I waited, and at that time the hospital wasn't even completed. In fact, again they had to use blankets for partitions. They had the outside wall but not the inside walls and rooms and things like that. The floor wasn't - no linoleum, no nothing. You know, it was just a shed. A big shed, and when she came out she had a bottle, and they told her that since it was hot she's got to take two pills a day. The doctor told us that there was no complication, but when she started taking these pills she started to bloat. They were salt tablets, and now, you know, after all these years I find out that you don't give salt tablets to pregnant women. She took that for a couple of months and she was bloating like anything, so we stopped it and then she had the childbirth.

I was doing judo then, so one of the drivers came down and he told me that the wife just had the baby. He was an ambulance driver so he took me up there. I got to see my wife and I talked to her, and she told me that she had twins. Wanted to know what to name them and we were talking like that and it was a real hot day so she better rest. I would go home and shower up and I'll come back. So I went back and showered up and I was talking to my mother and my sister and my brother-in-law and all of them and then my mother came up to me and said you better go back there something is wrong. See, Japanese people are very superstitious and she saw that one flower by the door. She was planting a garden and one flower bloomed and in Japanese myth or mythology or whatever you call it, one flower means death. So she said you better get up there you know. So I told her well, you know, I've been up there already. She said no, get back up there something is wrong.

So I started running uphill, and then I caught a truck and went, and then I went in. And the doctors were running around, and so I went up and I was talking to her and she was hemorrhaging. And so they worked on her and then all I can remember is telling, you know, help me, help me. Through junior high school in the rough neighborhood and everything like that, I could always protect her physically; but I just stood there holding her hand you know, holding on to her, and she just drained away.

And after that I don't remember too much, and I don't remember even to this day anyone telling me about the babies. I don't know what happened to the babies. I don't know. That's the part that haunts me. Whether it was carelessness. Or that it was something that was going to happen. I know for a fact that the twins were born and the camp did not have the facilities. I know that. And they say that they all passed away at childbirth and that's a lie. I talked to her. I talked to her, and she said she knew that, you know, I wanted a boy. So I remember her asking me, she said that they were girls and was I angry? So I knew, I talked to her, so it wasn't childbirth. So like even today I do not know what happened. All I know I saw, I saw at the funeral, I saw three caskets and in fact I don't even remember the funeral. I did not even see the daughters. I didn't see even the birth certificates. I don't know what they did with the bodies. Even today I don't. 'Cause like I say, I was in a state of shock and maybe a month or two later I decided I better get out.

Years later I found out one of the twins had lived twenty-four hours. The date of the time they left camp is the nineteenth. My wife died on the eighteenth. One of the girls died on the eighteenth and one of the kids, they said, left camp on the nineteenth so, therefore, she lived twenty-four hours

and I didn't know that. About four or five years ago my sister-in-law in Los Angeles told me that she talked to a friend of hers who said that they knew where the children are buried. But I couldn't find the grave. Been looking and looking. Whether the body was shipped from Manzanar I don't know. I don't know.(47.)

One woman recalls the anguish of her young son sent to an out-of-camp hospital.

We were told that our son was going to be released [from the hospital outside of camp] that afternoon. So again, we drove over to Tacoma and this time they did let my husband and me in. And when we did, here's this little six-year old kid; he was lying on his side and just crying, but silently, you couldn't hear him. I asked him what was the matter and he just threw his arms around me and held on to me. And he said, "Oh, take me back to camp. They were going to let me die last night." I said, "What are you talking about?" And he said, "Well the nurse said, 'Let this little Jap die, don't even go near him.'" And to this day he remembers that. He's forty-five years old now, but he still remembers that.(48.)

The Commission report provides another account:

Life begins each day with a siren blast at 7:00 a.m., with breakfast served cafeteria style. Work begins at 8:00 for the adults, school at 8:30 or 9:00 for the children.

Camp life was highly regimented and it was rushing to the wash basin to beat the other groups, rushing to the mess hall for breakfast, lunch and dinner. When a human being is placed in captivity, survival is the key. We spent countless hours to defy or beat the system. Our minds started to function like any POW or convicted criminal.(49.)(citations omitted).

The Red Cross described the situation in general by saying "The high fences and the presence of the military police definitely signify the loss of freedom and independence."(50.)

These types of losses - losing an entire family because of inadequate medical facilities, the loss of dignity and freedom from being behind barbed wire - have never been addressed in legislation enacted by Congress. Monetary compensation for the loss of freedom has been enacted for those who were prisoners of war, either civilian or military, during World War II, the Korean War, the Vietnam War and for the U.S.S. Pueblo incident. It is not improper or unprecedented for Japanese Americans, excluded and detained by their own government, to similarly request compensation for their loss of freedom. Indeed, it is only fair.

2. Property Losses Sustained by Japanese Americans.

The losses suffered by Japanese Americans were many, both in terms of economic losses and personal losses. The economic losses are the easiest to express in monetary term. Many have attempted to quantify the amount of loss suffered by Japanese Americans during the War.

a. Studies on Property Losses of Japanese Americans.

Federal Reserve Bank - 1942

In a widely quoted estimate the Federal Reserve Bank of San Francisco estimated in 1942 that the evacuee property loss ran to \$400 million.(51.) However, in later research concerning the economic loss of Japanese Americans, the Commission determined that there was no way to verify the Federal Reserve's estimate.(52.)

War Relocation Authority - 1946

In 1946 the War Relocation Authority estimated that the losses of Japanese Americans in property, for which they include real, personal and commercial, was some \$200 million.(53.)

Broom & Riemer - 1949

In a study published in 1949, Leonard Broom and Ruth Riemer estimated that the total combined property and income losses for those excluded and detained amounted to some \$367,486,000, estimated in 1941-42 values.(54.) The authors termed the losses "an expression of the amount of damage to the war economy in the loss of productive labor, damage to and destruction of property, and reduction of efficiency in use."(55.)

Although the Commission felt that several aspects of the work were unclear,(56.) nonetheless the Commission felt that "it is certainly the most thorough analytical work that is even roughly contemporaneous with the evacuation."(57.)

Study by ICF Incorporated for the Commission on Wartime Relocation and Internment Of Civilians - 1982-83

An analysis of economic losses by ICF Incorporated, an economic consulting firm in Washington, D.C., for the Commission estimated that the losses for the ethnic Japanese as a result of the exclusion and detention amounted, in 1945 dollars, to between \$108 and \$164 million in income, and between \$11 and \$206 million in property, for which no compensation was made.(58.) In 1983 dollars, the total losses of income and property were between \$810 million and \$2 billion.(59.) If the losses were calculated not in 1983 dollars, but are adjusted for the corporate bond rate, the loss would measure from between \$1.2 to \$3.1 billion, and if adjusted for a 3% interest rate, the losses then would amount to

between \$2.5 to \$6.2 billion.(60.)

Some of the presumptions in the ICF study are that after detention losses are presumed to be zero,(61.) and that it does not include losses from illness, hardship, denial of civil rights, inconvenience, or disruption of family and community(62.) (i.e., the report does not analyze "pain and suffering" or "human capital losses")(63.).

b. Case Examinations

Although the losses suffered by 120,000 Japanese Americans are quite large, it may be difficult to understand the extremely personal and individual nature of the loss. The following should help illustrate the personal aspect of the losses.

One person recalls the devastating losses his father had to take on his farm.

The loss, not only in property, but also potential harvest was considerable and all-important to our family. What I remember most was my father who had just purchased a Fordson Tractor for about \$750 a few months prior to the notice.

Imagine his delight, after a lifetime of farming with nothing but a horse, plow, shovel and his bare hands, to finally be able to use such a device. He finally had begun to achieve some success. A dream was really coming true.

He had much to look forward to. Then came the notice, and his prize tractor was sold for a measley \$75.(64.)

Another person recalls the loss of a small business.

My husband and I owned an ice cream parlor where we made our own ice cream. We'd had the store for two years, and a business got better and better, we put in sandwiches and soup. We had a soup kitchen, I made chili and, you know, we had a lot. Our business was good.

After Pearl Harbor some people started to stay away from our business. However, most of my neighbors stuck with us. They gave me a surprise party in April, just neighbors around the store. This was April of 1942. They gave me so many things that I could use in camp, like heavy pants and heavy nightgowns and things like that. By April, obviously the word was out officially that the evacuation was going to take place. But my husband and I hung on until the last, thinking that the government was going to say it couldn't handle all those people.

We sold the store for a thousand dollars the day before we left. We had done an inventory, and the contents of the store were worth ten thousand. Our machines alone were worth eight thousand - that's what we paid for them. And we sold the whole store for a

thousand dollars. By the time my husband went into the service, I think we had two hundred dollars left. Just enough to buy little odds and ends we needed.

Anyway, we had put an ad in the paper, and it ran for weeks and weeks. The way the paper wrote it up was: "Ice creamery, library, lunches, residential spot, sacrifice, evacuee." And then they had our address. Well, we had people coming in droves offering us a hundred dollars, two hundred dollars. And finally this man offered us a thousand dollars. We put him on hold for a couple of days, but we took it the day before we left. And my husband had to hurry to get it to the bank. The store continued to operate because I had my brothers check on it; it was open for about three months and then he went under and just closed the doors.

Evacuation took place on May 9, 1942. There was a beauty shop right next to our store, and in front of it, a young fellow bought our car for twenty-five dollars. It was a 1940 Oldsmobile, not very old. Well, he bought it for twenty-five dollars. He then drove us down to Dearborn and Seventh, where there was a big bunch of people and luggage all over. The Army had told us that all we could take was what we could carry. You can't expect a two-year-old and a six-year-old to carry very much, and we followed the rules to the letter. (65.)

A recent newspaper article relates the effect the exclusion and detention had on the parents of an evacuee.

Bob Sato was 17 in 1942 when his father was forced to give up the 30 acres of leased land he farmed in the Sumner area, north of Tacoma.

Sato, now a civil engineer with R.W. Beck & Associates, estimated the 1942 value of the farm equipment and crops - peas, lettuce, beans, celery, strawberries and rhubarb - at \$40,000.

"It would be \$280,000 today," Sato said. "But the real damage was to the folks like my parents who lost everything right during the prime of their lives."

Sato recalls that his father sold the farm for about \$5,000. "From a financial standpoint, the actual loss was much greater than my estimate of \$40,000 because of the prospective profits from farm operation were improving as the country was emerging from the depths of the great depression" he said.

After Sato's parents got out of an internment camp in Idaho, "my father tended a flock of turkeys." Eventually, the elder Satos returned to Western Washington and worked as farm laborers until retirement.

"I can only surmise that some of the hardships may have shortened their lives," Sato said. "I am bitter, but if honor means anything any more, we really need something - redress and an apology. It is not a question of whether the country can afford it or not.

It is simply a case of what is your (the country's) honor worth. Nothing can repay for the actual losses." (66.)

The personal economic losses even affected the children involved. A recent Washington Post article had this as to a child's view of the exclusion and detention. "Alice Okazaki, on getting ready: 'I still remember the agony over which doll I would take ... The agony of making that decision has stayed with me all these years.'" (67.)

c. Inadequacy of the Evacuation Claims Act

There have been large economic losses for which no compensation (restitution) has been provided by the federal government. Although there was partial compensation allowed to some of the excluded and detained Japanese Americans under the Evacuation Claims Act, (68.) less than half the possible number of claimants actually filed a claim under the Act. (69.)

The total amount distributed by the government under the Act was some \$37 million, which amounted to around one-quarter of the total amount claimed by those who did file. (70.)

In the 1949 study conducted by Broom & Riemer, they considered three different assumptions in determining the possible amount of claims which could be filed under the Evacuation Claims Act. (71.) These assumptions were whether only each family submitted one claim, or whether there would be two claims per family, or whether each adult would file a claim. They estimated that total claims would amount to between \$52 million and \$90 million, using the \$2,500.00 limit of the original Act. (72.) The authors cautioned that the Act was unlikely to provide anything approximating complete compensation for property losses.

If narrowly interpreted, the law will be wholly unsatisfactory. It will then provide an additional and fatal obstacle to the presentation of most claims, instead of facilitating their presentation and processing. A large proportion of the population can do no more than assert that they owned property that was lost, and are in no position to provide legally rigorous documentation. If all family holdings are classified as the property of the nominal head, the number of claims will be sharply reduced, and less than half can be settled under the \$2,500 limitation. Community property laws may ameliorate this difficulty somewhat. Even if many claims are automatically rejected, administrative costs will loom very large indeed.

In order to cover adequately any large proportion of real damages, the law would have to be much more broadly interpreted than is at all likely. (73.) (emphasis in the original)

Broom & Riemer provide further that "[t]he principal defect of the law is that it makes no provision for losses of earned income and earning power"(74.) They state that since income losses exceeded property losses for more than three-quarters of the families involved, failure to provide such compensation was a serious defect.(75.) Their estimate of the combined property and income losses for the excluded and detained Japanese Americans was some \$367 million in 1942 dollars.(76.)

The predictions of Broom & Riemer, made prior to the Act being fully implemented, proved amazingly accurate. Administrative costs proved very large, as prior to amendment it was costing the government about \$1,400.00 per case in salaries and overhead to decide that payments averaging \$450.00 were proper.(77.) Because of government obstructions, in all of 1950, the Department of Justice heard only 211 of the 23,689 claims that were filed, and agreed to pay only 137 of those which they heard.(78.)

The Evacuation Claims Act has been criticized for providing inadequate compensation to the excluded and detained Japanese Americans. The Commission concluded that the Claims Act provided compensation that was "far below what would have been full and fair compensation for actual economic losses."(79.)

A recent comment further detailed the inadequacies of the Evacuation Claims Act.

The Act was inadequate to address losses suffered during the internment. First, the Attorney General interpreted the Act to require an adjudication of each claim, thus slowing down the claims process and requiring the production of documentary or corroborative evidence often lost or destroyed during the evacuation. As a result many meritorious claims were dismissed. Second, because the \$2,500 settlement limitation did not cover most property claims, forty percent of the lawful claimants had to wait for congressional appropriation to receive payments. Third, the Act did not allow claims for death, personal injury, physical hardship, mental suffering, or loss of anticipated profits or earnings. Finally, the Act imposed burdensome time restrictions requiring the claimants to file their claims within eighteen months after passage of the Act.

Congress rectified some of these problems by two amendments to the Act. The first amendment, passed in 1951, eliminated the adjudication requirement. The amendment allowed the Attorney General to settle claims for the lesser of three-fourths of the total amount or \$2,500. This facilitated rapid settlement of most pending claims. The second amendment, passed in 1956, increased the amount the Attorney General could offer for settlement of claims to \$100,000. Congress passed this amendment because the remaining unsettled claims exceeded the \$2,500 limit.

Regardless of the amendments, the Evacuation Claims Act still proved inadequate. Procedural barriers such as proof of ownership and settlement restrictions prevented sufficient compensation to claimants. Also the amended Act did not compensate for lost income, death, and physical injury. While the Federal Reserve Bank estimated property loss to be \$4000,000,000, the government paid only \$38,000,000 in damages not accounting for accumulated interest or post war inflation. Moreover, of the eligible 110,000 claimants, only approximately 24,000 of those claimants filed within the eighteen month period. Thus the government compensated roughly one-fifth of the persons injured for less than ten percent of their property losses.(80.)(Citations omitted)

Another author compares the efforts of the West German Republic in compensating the victims of Nazi atrocities, and finds the U.S. effort for Japanese American excludées and detainees lacking.

On its face, the 1948 Claims Act was not an acceptable or adequate compensation scheme. Many claims were precluded which could in fact be said to be quite reasonable and entirely justified....

The compensation provided under the 1948 Claims Act was also inadequate in practical application. In contrast to the payments made by the FRG, which were at least a good faith effort to compensate the Jews, the amounts paid out under the 1948 Claims Act were grossly inadequate. In 1942, the Federal Reserve Bank of San Francisco estimated the total loss as a result of Evacuation to be \$400 million. By the deadline date of 1951, claims totalling approximately \$132 million had been submitted. Of this amount, the average return realized was only ten cents to the dollar. This low rate of return effectively turned the Act into nothing more than a token effort at compensation that barred future suits as well.(81.)(Citations omitted)

Frank Chuman summarized his thoughts as to the inadequacy of the Evacuation Claims Act.

Although the evacuation claims program was conceived as a worthy measure, there were many serious shortcomings in the program that had become glaringly apparent when it came to a close in 1965.

1. The basis of valuation for property losses sustained by the evacuees was set at 1942 prices. ...
2. This was further aggravated by the Attorney General's office, which refused to recognize a substantial number of the claims on the basis that ownership of many of the properties were not reflected in government records. Thus, such necessary items as furniture, stoves, household equipment, business supplies, and inventories, which the evacuees were forced to dispose of at distress prices or abandon,

were not included.

3. A substantial number of claimants whose actual property losses were very substantial compromised and settled for \$2,500. To request more than the statutory limit would have meant that the evacuees would have to wait for further appropriations from Congress. Sorely in need of immediate funds, these claimants decided to accept the \$2,500.

4. Many of the claimants died while their claims were being processed....

5. The evacuees were never compensated for the money they might have earned during wartime through employment in shipyards or other defense industries, activities into which millions of their fellow Americans flocked to serve their country in the war effort. The loss of such wages, therefore, compounded their total losses.(82.)

Chuman continues by quoting economist Kenneth Hanson who says:

We haven't paid for these losses at all. In fact, the bill gets bigger every day. It's not a question of their temporary loss of rights, but has to be thought of in terms of their whole lives. They are still being denied the fruits of their earnings. The Nisei are paying the price today in the loss of opportunity and gains which they would have made had we not taken this outrageous action. Losses are still being compounded because of constantly increasing evaluation of often valuable lands they were forced to let go.(83.)

The Commission found the Claims Act to be inadequate. They stated that

"There were many kinds of injury the Evacuation Claims Act made no attempt to compensate: the stigma placed on people who fell under the exclusion and relocation orders; the deprivation of liberty suffered during detention; the psychological impact of exclusion and relocation; the breakdown of family structure; the loss of earnings or profits; physical injury or illness during detention.(84.)

The Evacuation Claims Act did not properly compensate Japanese Americans for their losses. It was an inadequate response by a government which, in enacting the legislation, admitted no wrongdoing. The Claims Act only inadequately compensated property loss, which was a part of the total loss sustained by Japanese Americans because of the exclusion and detention.

d. Precedent for Compensation.

(1) Title II War Claims Act

U.S. citizens, including corporations, were allowed compensation from the U.S. Government for damages or losses suffered to tangible property located in certain Eastern European countries, including Germany, as well as for property located in territory held by Japanese military forces.(85.)

Compensation was allowed for "loss or destruction of, or physical damage to, property" where such loss, destruction or damage "occurred as a direct consequence of (1) military operations of war or (2) special measures directed against property in such countries or territories during the respective periods specified, because of the enemy or alleged enemy character of the owner, which property was owned, directly or indirectly, by a national of the United States at the time of such loss, damage or destruction;"(86.)

Under the provisions of Title II of the War Claims Act(87.), nearly \$335 million in compensation was awarded to claimants who lost such property.(88.) The total compensation would be far higher if federal tax benefits were included.

Title II of the War Claims Act was enacted in 1962, some sixteen years following the end of World War II.(89.)

(2) Case Examination-General Motors War Claims.

Under the 1962 Amendments to the War Claims Act, the General Motors Corporation received over \$33 million in both monetary compensation and tax write-offs under the tax laws for losses to facilities which produced armament for the German war effort. GM was allowed \$16,831,806.21 in federal tax benefits, as well as a cash award of \$16,386,500.96 for damages and losses to industrial facilities owned by Adam Opel AG, a wholly owned subsidiary of the General Motors Corporation.(90.)

The Adam Opel AG/GM plants which were included in the GM claims were the plants in Brandenburg, Aachen, Berlin and Russelheim, Germany, and Vienna Austria.(91.)

The Adam Opel AG/GM plants were not placed under the control of a German enemy alien property custodian until November 25, 1942, some 11 months following the declaration of war between the United States and Germany.(92.)

According to the material on file with the Foreign Claims Settlement Commission in Washington, D.C., the Brandenburg plant was responsible for producing more than twenty-five percent of Germany's 3-ton trucks, nicknamed the "Blitz truck". The German custodian described the importance of the trucks to the German war effort by saying that "no airplane flies and no tank is driven without motor trucks being available to supply these valuable

weapons with everything needed for their operation."(93.)

The Opel Adam AG/GM plant in Russelheim, Germany, produced the Junker 88 bomber. Production on the Junker bomber started in February 1940, more than a year and a half prior to the declaration of war between the United States and Germany(94.), and during a period when the General Motors Corporation still was in charge of the facility.(95.)

During the war, the plants used Prisoners of War as labor, in violation of the Geneva convention. In Russelheim, 1,512 Prisoners of War, identified in the custodian reports as French, were working in 1943.(96.) At the Russelheim plant there were also 585 Civilian Alien workers, identified as French, Belgium, Dutch and Lithuanian.(97.) Also, some 1,174 workers identified as "East Workers" were also part of the workforce.(98.)

Despite the plants having been used to produce arms for the German war effort, many of which may have been used against Allied personnel during the war, and despite the plants having used Prisoners of War in violation of the Geneva convention, Congress still authorized payment of compensation to General Motors for the war damage inflicted upon such facilities.

It should be noted that General Motors was not alone in receiving such compensation. Other Detroit automakers received similar compensation. The amount received by General Motors, however, was by far the largest.

The actions taken by the Federal Government in enacting monetary compensation to U.S. citizens for their loss of property during war is similar to the provisions in H.R. 442. Like Title II of the War Claims Act, H.R. 442 would be enacted following the time the normal judicial statute of limitation has elapsed. And like Title II of the War Claims Act, the claims arose out of World War II. But unlike the War Claims Act, the cause of the damage was the Federal Government itself, and not a belligerent nation.

General Motors alone received nearly as much compensation for losses to their facilities in Germany which were producing German war material as was received by Japanese Americans for their Evacuation losses. It is the height of bad policy to allow GM to receive \$33 million for damage to factories which produced bombers which killed Allied soldiers, while providing only \$37 million to Japanese Americans for losses inflicted by their own government.

C. Basis for Section 205 Remedies (Educational and Humanitarian Expenditures).

Section 205 provides that the Board of Directors in charge of the trust fund may make disbursements for certain purposes as enumerated in section 205(b)(1-5).(99.) The purposes listed fall into two basic categories (excepting the administrative provisions under section 205(b)(5), which is not considered here). The first

is for public educational activities (section 205(b)(1-3)), including research and other activities "so that the causes and circumstances of this and similar events may be illuminated and understood" (section 205(b)(1)), funding of comparative studies (section 205(b)(2)), and the preparation and distribution of the Commission hearings and findings (section 205(b)(3)).

The second broad purpose is listed in section 205(b)(4) which provides that expenditures may be made "for the general welfare of the ethnic Japanese community in the United States, taking into consideration the effect of the exclusion and detention on the descendants of those individuals who were detained during the evacuation, relocation and internment period...."(100.) This would constitute expenditures to the group as a whole for the welfare of the entire community.

1. Basis for Public Educational Expenditures under section 205(b)(1-3).

The Spanish American philosopher George Santayana (1863-1952) said that "those who cannot remember the past are doomed to repeat it". An American public which is well informed and educated as to the history of this republic, will be best able to make informed decisions concerning the nature and scope of the policies of this nation.

Thomas Jefferson recognized the importance of education for the preservation of freedom and happiness in society. "I think by far the most important bill in our whole code is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom and happiness."(101.)

There is a need to inform the people of this nation about not only the facts of the exclusion and detention of Japanese Americans during World War II, but also about the circumstances which led to the decisions to remove 120,000 people from their homes along the West Coast. There is still much ignorance and misperception on the part of the American public concerning Japanese Americans, and their role in American society. Few understand that the government knew that nearly all of the Japanese Americans posed no threat to the security of this nation. Some, but not many, know that Japanese Americans fought heroically and bravely not only in the European theater with the 100th/442nd Regimental Combat Team, but also in the Pacific theater as interpreters and translators with Allied military intelligence in the Pacific. A recent book on the exploits of the Japanese American interpreters provides "...across the world from Europe, nearly 5000 other Nisei served their country as translators, interpreters, interrogators and cave-flushers. Plus, when the occasion arose, combat infantrymen. To this date, hardly any Americans even know they were there."(102.)

Though the combat records of Japanese Americans are known by a few Americans, even less comprehend the situation of Japanese

Americans during the war. There remains many myths and misperceptions about the exclusion and detention.

A recent law review comment discussed several common misperceptions about Japanese Americans.

A number of common misperceptions remain prevalent: That Japanese-Americans supported Japan in the war effort; that they engaged in sabotage and espionage; that the evacuation and subsequent internment were justified because individual loyalty could not be determined at the time; that the United States government is not responsible for the serious injuries it caused its own citizens through the internment. (Citations omitted)(103.)

This, however, may be tempered by the publicity surrounding the recent Court cases involving Gordon Hirabayashi, Fred Korematsu, Minoru Yasui and William Hohri.(104.) Additionally, publicity generated by the passage of local and state redress legislation has informed the current generation about the events of some four decades ago, and its still lingering affect on Japanese Americans.(105.)

The basic problem which underlay the entire evacuation and detention program was that Japanese Americans were and often still are perceived as not being American. That is, somehow "they" are different, not to be trusted, being part of a yellow peril to the United States.

At great cost, Japanese Americans proved their loyalty by heroically, and, one would think, unexpectedly fighting for this country. The 100th/442nd Regimental Combat Team, composed of Japanese Americans from Hawaii and the mainland, became the most highly decorated American fighting unit during World War II. They, along with the Japanese Americans serving in the Military Intelligence Service, proved their loyalty, and the loyalty of all Japanese Americans, with their efforts and lives. Yet, even despite this, Japanese Americans are still perceived as foreigners, newcomers to this country.

In recent testimony before the House subcommittee holding hearings on the bill which would enact the recommendations of the Commission, such misperceptions arose during the questioning of Mike Masaoka, a representative of a national veterans group composed of Japanese Americans who fought during the war.

Chair: Let me ask you about your own background. When did you come to the United States - without divulging too much information that you might not want to divulge.

Mr. Masaoka: Well, I'm not a "wetback." Sir, I was born in the United States of America. I have attended all of our American schools. I have served in our Army and I think I served our country well. I never went to Japan until after the war. I never learned to speak Japanese, so I was made fun of by many of my comrades. And when I was being accused by one of the

Congressional committees for being a "dangerous Jap", the committee counsel asked "well, Mr. Masaoka, are you a Buddhist?" I said, "No." "Are you a Shintoist?" I said "No." He then asked "Well, are you Christian?" I said "Yes." The counsel looked up and said "what kind?" I said "I happen to be a Mormon, a member of the Church of Latter Day Saints." I have never been in Japan, Sir.(106.)

This misperception about Japanese Americans as being foreigners in this country has manifested itself in evil ways even in the years since World War II. In 1982, a third generation Asian American named Vincent Chin, while out celebrating his upcoming wedding, was killed by several out of work auto workers in the Detroit area. The killers mistook Chin for being of Japanese ancestry, and pervertedly blamed Chin for their unemployment, somehow thinking Chin was connected with the importation of Japanese automobiles. Despite the racial motivation behind the killings, Chin's killers were only given a suspended sentence by the state judge. The federal government intervened, and Ronald Ebens was convicted of violating Chin's civil rights, and was sentenced to time in a federal prison.(107.)

The attitude that Japanese Americans are still foreigners in their own land persists. This exists even at the highest level of government.

He was new to Congress and wanted an antitrust subcommittee seat, but a colleague took one look at Rep. Robert T. Matsui (D-Calif) and said, in the friendliest way, "I'd think you'd want something dealing with immigration so you can bring in all your friends from over there."(108.)

Perhaps it was summed up best in a comment by John Saito, a Regional Director for the JACL "We have never been accepted as Americans."(109.)

2. Basis for Group Compensation Expenditures - Community Damages.

a. Some definitions.

In its series of recommendations, the Commission states that all Commissioners believe a fund for educational and humanitarian purposes related to the wartime events is appropriate, and "...that such a fund appropriately addresses an injustice suffered by an entire ethnic group, as distinguished from individual deprivations."(110.) It is legitimate to ask at this point just what this group injustice was, and how such a fund would act as a remedy. To do this, we need to first define some terms. We note that for purposes of this discussion, we will treat the Japanese American community as a unified, coherent entity, which, while reflecting the attitudes of the decision makers of the 1940's, is a distorting simplification of reality.