

TO ESTABLISH A COMMISSION ON WAR
REPARATIONS FOR GUAM

~~FILE COPY~~
~~Return to~~
~~Judiciary Committee~~
~~House of Representatives~~

HEARING

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND
GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRETH CONGRESS

FIRST SESSION

ON

H.R. 3191

TO ESTABLISH A COMMISSION ON WAR REPARATIONS FOR GUAM

AUGUST 4, 1988

Serial No. 72



~~FILE COPY~~
~~Return to~~
~~Judiciary Committee~~
~~House of Representatives~~

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1988

CONTENTS

COMMITTEE ON THE JUDICIARY

<p>JACK BROOKS, Texas ROBERT W. KASTENMEIER, Wisconsin DON EDWARDS, California JOHN CONYERS, Jr., Michigan ROMANO L. MAZZOLI, Kentucky WILLIAM J. HUGHES, New Jersey MIKE SYNAR, Oklahoma PATRICIA SCHROEDER, Colorado DAN GLICKMAN, Kansas BARNEY FRANK, Massachusetts GEO. W. CROCKETT, Jr., Michigan CHARLES F. SCHUMER, New York BRUCE A. MORRISON, Connecticut EDWARD F. FEIGHAN, Ohio LAWRENCE J. SMITH, Florida HOWARD L. BERMAN, California RICK BOUCHER, Virginia HARLEY O. STAGGERS, Jr., West Virginia JOHN BRYANT, Texas BENJAMIN L. CARDIN, Maryland</p>	<p>Page 23 26 32 34 43 45 48 110 43 115</p>
<p>PETER W. RODINO, Jr., New Jersey, <i>Chairman</i> HAMILTON FISH, Jr., New York CARLOS J. MOORHEAD, California HENRY J. HYDE, Illinois DAN LUNGREN, California F. JAMES SENSENBRENNER, Jr., Wisconsin BILL McCOLLUM, Florida GEORGE W. GEKAS, Pennsylvania MICHAEL DRAWNE, Ohio WILLIAM E. DANNEMEYER, California PATRICK L. SWINDALL, Georgia HOWARD COBLE, North Carolina D. FRENCH SLAUGHTER, Jr., Virginia LAMAR S. SMITH, Texas</p>	<p>Page 32 34 43 45 48 110 43 115</p>
<p>M. ELAINE MIELKE, <i>General Counsel</i> ARTHUR P. ENDRES, Jr., <i>Staff Director</i> ALAN F. COFFEY, Jr., <i>Associate Counsel</i></p>	

WITNESSES

<p>Hon. Ben Blaz, Delegate from Guam Prepared statement Brent O. Hatch, Deputy Assistant Attorney General, Civil Division, Department of Justice Prepared statement Hon. George Bamba, Guam Legislature Prepared statement of George Bamba and Marilyn D.A. Manibusan, Guam Legislature Hon. Edward R. Duenas, Guam Legislature Prepared statement Hon. Ted S. Nelson, Guam Legislature Prepared statement</p>	<p>Page 2 14 18 130 136 139</p>
---	---

ADDITIONAL MATERIAL

<p>Text of bill H.R. 3191, To establish a Commission on War Reparations for Guam Statement of Clifton Wm. Roberts Senator Jerry M. Rivera, Guam Territorial Legislature Statement of Governor Joseph F. Ada of the Territory of Guam Statement of the Organization of People for Indigenous Rights Letter to Hon. Barney Frank dated August 2, 1988, and enclosed statement of Speaker Franklin J. Arceo Quitugua, Nineteenth Guam Legislature</p>	<p>Page 2 14 18 130 136 139</p>
--	---

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

<p>BARNEY FRANK, Massachusetts, <i>Chairman</i> E. CLAY SHAW, Florida PATRICK L. SWINDALL, Georgia HOWARD L. COBLE, North Carolina LAMAR S. SMITH, Texas</p>	
<p>JANET S. POTTS, <i>Counsel</i> JEN E. IHLO, <i>Assistant Counsel</i> BELLE CUMMINS, <i>Assistant Counsel</i> ROGER T. FLEMING, <i>Associate Counsel</i></p>	

**ESTABLISHING A COMMISSION ON WAR
REPARATIONS FOR GUAM**

THURSDAY, AUGUST 4, 1988

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND
GOVERNMENTAL RELATIONS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:20 p.m., in room 2226, Rayburn House Office Building, Hon. Barney Frank (chairman of the subcommittee) presiding.

Present: Representatives Barney, Coble and Smith.
Staff present: Janet S. Potts, counsel; Belle Cummins, assistant counsel; Roger T. Fleming, associate counsel; and Florence T. McGrady, legal assistant.

Mr. FRANK. We will now proceed with the hearing on H.R. 3191, the matter affecting Guam.
(A copy of H.R. 3191 follows:

(1)

100TH CONGRESS
1ST SESSION

H. R. 3191

To establish a Commission on War Reparations for Guam.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 7, 1987

Mr. BLAZ introduced the following bill, which was referred to the Committee on the Judiciary

A BILL

To establish a Commission on War Reparations for Guam.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Commission on War
5 Reparations for Guam Act".

SEC. 2. ESTABLISHMENT OF COMMISSION.

7 (a) There is established a Commission on War Repara-
8 tions for Guam (hereinafter referred to as the "Commis-
9 sion"). The Commission shall serve under the jurisdiction of
10 the Secretary of the Interior.

(b) The Commission shall be composed of five members,
who shall be appointed within ninety days after the date of
enactment of this Act as follows:

(1) Two members shall be appointed by the Secre-
tary of the Interior.

(2) Three members shall be appointed by the Gov-
ernor of Guam with the advise and consent of the
Guam Legislature.

(c) The term of office for members shall be for the life of
the Commission. A vacancy in the Commission shall not
affect its powers, and shall be filled in the same manner in
which the original appointment was made.

(d) The first meeting of the Commission shall be called
by the Secretary of the Interior within one hundred and
twenty days after the date of enactment of this Act, or within
thirty days after the date on which legislation is enacted
making appropriations to carry out this Act, whichever date
is later.

(e) Three members of the Commission shall constitute a
quorum, but a lesser number may hold hearings. An affirma-
tive vote of at least three members shall be required for the
promulgation of regulations and for the final adjudication of
any claim.

1 (f) The Commission shall elect a Chairman and Vice
 2 Chairman from among its members. The term of office of
 3 each shall be for the life of the Commission.

4 (g) Each member of the Commission who is not other-
 5 wise employed by the United States Government shall re-
 6 ceive compensation at a rate equal to the daily rate pre-
 7 scribed for GS-18 under the General Schedule, for each day,
 8 including travel time, during which the member is engaged in
 9 the actual performance of duties vested in the Commission. A
 10 member of the Commission who is an officer or employee of
 11 the United States Government shall serve without additional
 12 compensation. All members of the Commission shall be reim-
 13 bursed for travel, subsistence, and other necessary expenses
 14 incurred by them in the performance of their duties.

15 (h) No member of the Commission shall hold elected
 16 office during the period of the member's service on the
 17 Commission.

18 SEC. 3. FUNCTIONS OF COMMISSION.

19 (a) DETERMINATION OF CLAIMS.—The Commission
 20 shall have the authority to receive, examine, adjudicate, and
 21 render final decisions with respect to claims of Guamanians
 22 for damages arising from—

- 23 (1) loss of life or physical injury;
 24 (2) forced labor or internment in concentration
 25 camps;

HR 3191 IH

1 (3) loss of property for which no compensation has
 2 been paid; or
 3 (4) sexual abuse and assault,
 4 which resulted from the hostilities between the Governments
 5 of Japan and the United States between December 8, 1941,
 6 and August 10, 1944. The Commission shall require each
 7 claimant to establish his or her claim by a preponderance of
 8 the evidence. Acceptable evidence shall include affidavits or
 9 statements made under penalty of perjury.

10 (b) SUBPOENAS; ISSUANCE, CONTEMPT, WITNESS
 11 FEES; ADMINISTRATION OF OATHS.—(1) For the purpose of
 12 any hearing, examination, or investigation under this Act, the
 13 Commission and those employees designated by the Commis-
 14 sion shall have the power to issue subpoenas requiring per-
 15 sons to appear and testify or to appear and produce docu-
 16 ments, or both, at any designated place where such hearing,
 17 examination, or investigation is being held. The Commission
 18 or any employee so designated shall, upon application of a
 19 claimant, issue to such claimant subpoenas requiring the at-
 20 tendance and testimony of witnesses or the production of docu-
 21 ments, or both, required by such claimant in hearing upon
 22 his claim: *Provided*, That the claimant making such applica-
 23 tion pay the witness fees and mileage of any witness or wit-
 24 nesses subpoenaed upon his request. The production of a per-
 25 son's documents at any place other than his place of business

HR 3191 IH

1 shall not be required, however, in any case in which, prior to
 2 the return date specified in the subpoena with respect there-
 3 to, such person either has furnished the issuer of the sub-
 4 poena with a copy of such documents (certified by such
 5 person under oath to be a true and correct copy) or has en-
 6 tered into a stipulation with the issuer of the subpoena as to
 7 the information contained in such documents.

8 (2) The Commission may, in case of a failure or refusal
 9 on the part of any person to comply with any such subpoena,
 10 invoke the aid of any United States district court within the
 11 jurisdiction of which the hearing, examination, or investiga-
 12 tion is being conducted, or such person resides or transacts
 13 business. Such court may issue an order requiring such
 14 person to appear at designated place of hearing, examination,
 15 or investigation, there to give or produce testimony or docu-
 16 mentary evidence concerning the matter in question. Any
 17 failure to obey such order of the court shall be punishable by
 18 such court as a contempt thereof. All process in any such
 19 case may be served in the judicial district wherein such
 20 person resides or transacts business or wherever such person
 21 may be found.

22 (3) Witnesses subpoenaed under this subsection (c) shall
 23 be paid the same fees and mileage that are allowed and paid
 24 witnesses in United States district courts.

1 (4) Any member of the Commission, and any employee
 2 of the Commission authorized by the Commission to do so,
 3 may administer to, or take from, any person an oath, affirma-
 4 tion, or affidavit when such action is necessary or appropriate
 5 in the performance of the functions or activities of the
 6 Commission.

7 (c) NOTIFICATION OF DETERMINATION OF CLAIMS.—
 8 The Commission shall notify each claimant of the approval or
 9 denial of his or her claim and of any amount for which the
 10 claim is approved.

11 (d) HEARING ON CLAIMS.—Any claimant whose claim
 12 is denied or is approved for less than the full amount of such
 13 claim shall be entitled, under such rules and regulations as
 14 the Commission may adopt, to a hearing before the Commis-
 15 sion or its representatives with respect to such claim. Upon
 16 the conclusion of such hearing, the Commission may affirm,
 17 modify, or revise its former action with respect to such claim.

18 (e) SCHEDULE OF COMPENSATION.—The Commission
 19 shall adopt a schedule of maximum compensation for the
 20 types of damages incurred which are described in subsection
 21 (a).

22 (f) CERTIFICATION AND PAYMENT OF CLAIMS.—When
 23 all claims under this Act have been adjudicated, the Commis-
 24 sion shall certify the amounts approved on the claims to the
 25 Secretary of the Treasury for payment. The Secretary of the

1 Treasury shall pay such amounts from the Guam Claims
2 Fund established in section 9 (a).

3 SEC. 5. STAFF OF COMMISSION.

4 (a) APPOINTMENT BY COMMISSION.—(1) The Commis-
5 sion may, subject to the approval of the Secretary of the
6 Interior, appoint and fix the compensation and allowances of
7 such officers and employees of the Commission as are neces-
8 sary to carry out its proper functions.

9 (2) APPLICABILITY OF CERTAIN CIVIL SERVICE
10 LAWS.—The staff of the Commission may be appointed with-
11 out regard to the provisions of title 5, United States Code,
12 governing appointments in the competitive service, and may
13 be paid without regard to the provisions of chapter 51 and
14 subchapter III of chapter 53 of such title relating to classifi-
15 cation and General Schedule pay rates, except that no indi-
16 vidual so appointed may receive pay in excess of the annual
17 rate of basic pay payable for GS-18 of the General Schedule.

18 (b) ASSIGNMENT FROM UNITED STATES.—In addition
19 to officers and employees appointed under subsection (a), the
20 Secretary of the Interior may, upon request of the Commis-
21 sion, assign officers or employees of the United States to
22 assist the Commission in carrying out its functions.

23 (c) PERSONNEL AND FACILITIES OF OTHER FEDERAL
24 AGENCIES.—Officers and employees of any department or
25 agency of the United States may, with the consent of the

1 head of such department or agency, and with or without re-
2 imbursement, be assigned to assist the Commission in carry-
3 ing out its functions. The Commission may, with the consent
4 of the head of any department or agency of the United
5 States, use, with or without reimbursement, the facilities and
6 services of such department or agency in carrying out the
7 functions of the Commission.

8 SEC. 6. ADMINISTRATIVE PROVISIONS CONCERNING CLAIMS.

9 (a) NOTICE TO CLAIMANTS.—Not later than three
10 months after the appointment of the Commission, the Com-
11 mission shall give public notice in the Territory of Guam of
12 the time when, and the limit of time within which, claims
13 may be filed under this Act, except that the final date for the
14 filing of claims may not be more than one year after the
15 appointment of the Commission. The Commission shall
16 assure that the provisions of this Act are widely publicized in
17 the Territory of Guam, and the Commission shall make every
18 effort to advise promptly all persons who may be entitled to
19 file claims under the provisions of this Act and to assist them
20 in the preparation and filing of their claims.

21 (b) COMPLETION OF AFFAIRS.—The Commission shall
22 complete its affairs as expeditiously as possible, but in any
23 event not later than one year after the expiration of the time
24 for filing claims under this Act.

1 SEC. 6. REGULATORY AND ADMINISTRATIVE AUTHORITY.

2 (a) REGULATIONS.—The Commission shall issue such
3 regulations as are necessary to carry out its functions.

4 (b) EXPENDITURES.—The Commission may, with the
5 approval of the Secretary of the Interior, make such expendi-
6 tures as are necessary to carry out its functions.

7 SEC. 7. REPORTS TO CONGRESS.

8 (a) ANNUAL REPORTS.—At the end of each one-year
9 period after the appointment of the Commission, the Commis-
10 sion shall report to the Congress concerning its operations
11 under this Act.

12 (b) FINAL REPORT.—The Commission shall, upon
13 completing its affairs, submit a report to the Secretary of the
14 Interior and to the Congress of the United States cer-
15 tifying—

16 (1) a list of all claims approved under this Act, in
17 whole or in part, together with the amount of each
18 such claim, and the amount awarded on each such
19 claim;

20 (2) a list of all claims denied under this Act; and

21 (3) a copy of the decision rendered on each claim
22 under this Act.

23 SEC. 8. TERMINATION.

24 The Commission shall terminate one year after the date
25 on which the final report of the Commission is submitted to
26 the Congress under section 7(b).

HR 3191 IH

1 SEC. 9. GUAM CLAIMS FUND.

2 (a) ESTABLISHMENT.—There is hereby established in
3 the Treasury of the United States the Guam Claims Fund for
4 the payment of those claims of Guamanians which are ap-
5 proved by the Commission under this Act.

6 (b) AUTHORIZATION OF APPROPRIATIONS.—There are
7 authorized to be appropriated to the Guam Claims Fund such
8 sums as may be necessary to pay claims approved under this
9 Act.

10 SEC. 10. DEFINITION.

11 For purposes of this Act, the term "Guamanian"
12 means—

13 (1) a person who resided on the Territory of
14 Guam during the period beginning December 8, 1941,
15 and ending August 10, 1944, and who was not a Jap-
16 anese citizen or a Japanese national during that period;
17 and
18 (2) a person who is the successor, heir, or as-
19 signee of a person described in paragraph (1).

20 SEC. 11. FEES LIMITATION FOR REPRESENTING CLAIMANTS.

21 Any remuneration on account of services rendered on
22 behalf of any claimant, or any association of claimants in con-
23 nection with any claim or claims under this Act may not
24 exceed 5 per centum of the amount paid on such claim or
25 claims under this Act. Any agreement to the contrary shall
26 be unlawful and void. Whoever, in the United States or else-

HR 3191 IH

- 1 where, demands or receives, on account of services so ren-
- 2 dered, any remuneration in excess of the maximum permitted
- 3 by this section shall be guilty of a misdemeanor and upon
- 4 conviction thereof, shall be fined not more than \$5,000 or
- 5 imprisoned not more than twelve months, or both.

6 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

- 7 To carry out the provisions of this Act, there are au-
- 8 thorized to be appropriated \$500,000 for the operation of the
- 9 Commission.

Mr. FRANK. As Mr. Blaz comes forward, I want to pay tribute to him and apologize to him. He has been a very effective advocate for his constituency in pressing this. This hearing is being held because he asked for it, and made a very persuasive case that the hearing ought to be held.

He knows that there is some skepticism about the legislation, but he did ask for the chance to make the presentation, and it is because of the good job that he did in making that case that we have this hearing.

I apologize again for the delay. We also, as you see, had to limit the witnesses. That was not Mr. Blaz' doing. That was ours. We are in a period when there are a lot of conflicting demands for our time, but, of course, as everyone knows, anyone may submit statements in writing.

So those who already have or those who are here and may decide that some points need further discussion, this hearing record will be open for some time, and we will be glad to accept in writing so we make this a very complete request. We think we have got a good balance of people here to present this thing orally.

And we will begin with Mr. Blaz. What I suggest is we will hear Mr. Blaz. Then we will hear from Mr. Hatch from the Civil Division. And we then have a panel of people from the Guam Legislature, and we will ask Mr. Blaz to return and present that panel to us and be present with him so that if we have questions, we will ask them of Mr. Blaz and the panel at the same time. If that is acceptable, we will now proceed with Mr. Blaz' statement, and I would note that we have for the record statements which we will accept without objection as part of the record from Mr. Roberts from Guam and Mr. Rivera from Guam.

[The statements of Clifton Wm. Roberts and Senator Jerry M. Rivera follow.]

18 July 1988

Cliffon Wm. Roberts
Apt. #4, Guma Trankilidat
Tumon, Guam 96911
Ph: (671) 646-1902

Committee on the Judiciary
House of Representatives
2137 Rayburn House Office Building
Washington, D.C. 20515

Ref: H.R. 3191

A Bill to establish a Commission on War Reparations for Guam.

Dear Committee Members:

Tabled before you is bill H.R. 3191, a bill to establish a commission on war reparations for Guam. The bill was introduced by the Honorable Ben Blaz, congressional representative from Guam. Congressman Blaz submitted a similar bill in 1985.

It is not a good bill. It is another attempt to limit the U.S. Congress and extort monies from the U.S. taxpayers. Allegations in the bill put a hard shame on U.S. Servicemen who fought and died for the freedom of Guam. Island legislators are using this bill as a political tool for re-election.

Despite disgraceful money management, Guam has a terrific economy, a very low unemployment rate and a benevolent Uncle Sam; definitely not an impoverished island. Guamanians are a happy society. They want more, always more. They call us ugly Americans, have the red-white-and blue with one hand and pick Uncle Sam's pockets with the other hand.

In compliance with the Guam Meritless Act of 1945, the U.S. doled out over eight million dollars for war reparations. Commission operational expenses excluded. Eight million dollars may not seem like a helluva lot for those children; it would mean something to those N.Y. street people; it would mean something to those elderly without medical insurance. The larger portion of the eight million was divided amongst heirs, not victims. There was a one year grace period attached to the Act. Now, forty-three years later, greedy heirs were unaware that a commission was excited. That's hard to believe. This island is not a very large land mass, 217 square miles. Word of mouth alone, would cover this island in less than a month. Especially on such an important issue.

The new commission, itself, will be a stacked deck - a joke. The two members appointed by the Secretary of the Interior will be negated by the three for a quorum; three members are all that is needed. The three members appointed by the Governor of Guam are all that is needed. The three members appointed by the U.S. House of Representatives are all that is needed. It-to-uncle" time again. Graft is a way of life here on Guam. The locals call it "chenchule"; we call it bribery. To the Chamorros chenchule is legal; there's nothing wrong with it. This is part of our cultural difference. Not only

18 July 1988
Ref: H.R. 3191

Cliffon Wm. Roberts

will the Commission be well paid but, for some of them, there's an excellent opportunity to collect a little chenchule. The past Governor, Mr. Boudallo, was quite fond of chenchule. He is now appealing seventeen counts of bribery and fraud. Needless to say, he is not quite fond of the American justice system. In all honesty, I must point out, there are many Guamanians who don't approve of chenchule. Whether or not prospective Commission appointees are among them, remains to be seen.

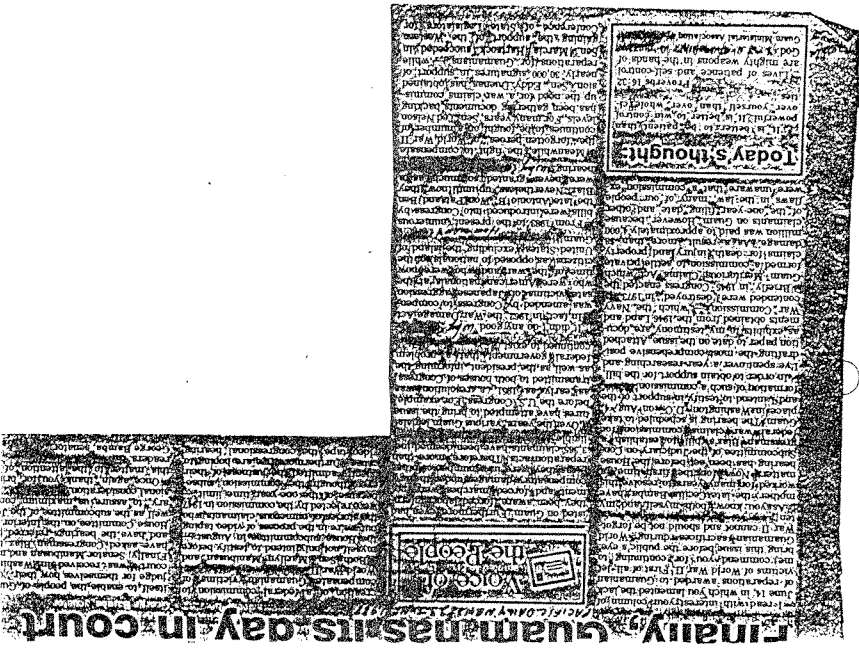
The bill alleges American as well as Japanese servicemen were responsible for atrocities. It states damages "...resulted from hostilities between the Governments of Japan and United States." (sect. 3a). Broken down, to me, this means Japan started hostilities; the United States started hostilities; from both hostilities came atrocities. Do you honestly believe that those sons of American mothers who fought for the freedom of Guam actually imposed forced labor, perpetrated forced marches, inflicted forced internment on the Guamanians? Did those brave American men first murder and rape the population before being slaughtered themselves? Passage of this bill concedes those allegations.

America paid its dues, and paid its dues, and paid its dues. What more can we do; wasn't our blood good enough? In 1941, we left 424 American troops on Guam to be killed or imprisoned. In the 1944 attack of this island, the U.S. suffered over seven thousand casualties of which nearly twenty-five hundred made the return trip home in body bags. Over the past forty-three years, the U.S. has sunk billions of assistance dollars in this island. I wonder how closely those funds were monitored. Guamanians pay personal income tax to the local government, not the U.S., yet they continue to make heavy demands on the U.S. treasury. Will we ever learn that we can not buy friendship and, most importantly, we can not buy patriotism.

Congressman Blaz's previous attempt at a war reparations bill obviously went belly-up. Now, two territory legislators, Senators George Bamba and Marilyn Manibusan plan to revive that dead load once more. They will appear before you and present you with thousands of signatures (with?) and testimonials from constituents and hopeful beneficiaries of victims who suffered in a long time past. These legislators plan to video tape the proceedings "...to enable the people of Guam to judge for themselves how their day in court" was received in Washington. A politician's gimmick. If the committee patronizes H.R. 3191 those legislators from Guam will be given full credit for a coup, thus ensuring their popularity at the polls in November. BUT! If this bill is another belly-up, then the U.S. has one more group of ugly Americans.

I am not against war reparations per-se; but I am vehemently opposed to the creation and grandfathering of those Americans who fought and died on Guam getting stuck with the check for atrocities committed by the same sons of the same that killed their fathers and grandfathers. Over forty years ago we fell for the war reparations con-game. Are we about to do it again?

KAMUHA Report



16 July 1988

Clifton Wm. Roberts

Re: H.R. 3191

In 1944 - I was one of the many who fought to free the Mariannas, including Guam, from its tormentors.

In 1944 - I was one of the many who felt the sting of sadness, sorrow, and trauma as I looked upon dead shipmates.

In 1988 - I am one of the many not wanting to pay additional interest on a long ago paid up account.

If the words that I have written here were informative and, in some small measure, beneficial in a positive way; then, regardless of your decision, I will feel that I have done my bit for the American taxpayer.

Would you please mail me a transcript on the hearing of H.R. 3191.

Respectfully,

Clifton Wm. Roberts

Clifton Wm. Roberts
American Patriot

HAR CLAIMS' TESTIMONY BY SENATOR JERRY M. RIVERA

I. INTRODUCTION

Good morning.

Let me first introduce myself. I am Sen. Jerry M. Rivera, a Guamanian and a five term member of the Guam Territorial Legislature. I am here to testify in favor of House Bill 3191, introduced by Congressman Ben Blas.

I am appearing here before you today, with highly mixed emotions. I am honored to have the opportunity to represent my people before this great citadel of democracy. I feel gratified that after such a long period of benevolent neglect you will attend to a great injustice which have been committed upon my people. But mostly, I feel sad.

I feel sad for those war victims, many of whom I have known personally, who died with a sense that injustice was perpetuated upon them by a great nation; a nation that was all too eager to rehabilitate a former enemy, yet oblivious to its own, who endured a cruel occupation by the same enemy.

A few weeks ago, on the 21st of July, we celebrated our 44th Liberation Day. It is probably our biggest annual celebration on Guam. Indeed it is so important to us, we use the 4th of July to "kick it off". Liberation Day is a day of crucial importance in our recent history; the kind of history that is still carried in the consciousness of the living. It is of such great importance, because it symbolizes our delivery from the yoke of the Japanese occupier.

Liberation, to those living at the time, meant an end to public beatings, to mass executions, to rapes, to beatings at random to subjugation, to humiliation, to a dread so deep it invaded every waking minute as well as every dream; transforming life into a long, ceaseless nightmare. That nightmare--as a present sensory experience--ended with the liberation by the American Army and Marines. It is their sacrifice and effort that we honor every year on the 21st of July.

It is also important to recognize that the United States has attempted, by way of the GUAM MERITORIOUS CLAIMS ACT of 1945 and related legislation, to compensate the people of Guam for losses they suffered during the Japanese occupation. However, as this and other testimony would show, far from making the victims feel whole, as applied, it perpetuated injustice and indignation.

II. THE DEVASTATION

As a child, I remember seeing the mounds of rubble everywhere. They and other remains of the war, scarred the face of an otherwise beautiful tropical island for almost two decades. As a matter of fact, over eighty percent of the improvements on the island led in rubble at the end of the hostilities. Agana, formerly home of over ten thousand people, was reduced to scrap--many of its residents buried thereunder, others horribly maimed. But these pains were easier to endure. They were caused by the U.S. Navy's bombardment, to enable the American forces to liberate Guam.

There were other pains, imparting the chronicles of the heroic patriotism of the Chamorro spirit. Thus, for instance, Jose Leon Guerrero Cruz, the grandfather of Senator George Bamba, was publicly beheaded because he rescued an American pilot, Lt. Hamilton, from the blazing wreckage of his downed aircraft. Other Guamanians were beheaded, tortured, or "just" incarcerated for crimes ranging from hiding fugitive American servicemen to singing forbidden (American) songs. These pains, like the ones inflicted by the U.S. Navy, had a measure of reward assimilated therewith--pride of resistance exhibited against a ruthless, well armed enemy.

But, no such spiritual compensation was available to the women who were gang-raped by Japanese soldiers, their husbands and children forced to watch; or to the dozens of Guamanians, men, women and children, who were fleeing Agana after the Japanese landed in Asan to the south, only to encounter another contingency of Japanese soldiers descending from the north, who proceeded to massacre them all. Nor was there a sense of pride among the sixty Guamanians who were forced into a cave outside the village of Merizo, to be torn to shreds by hand grenades lobbed by Japanese soldiers or, upon attempting to escape, bayoneted or beheaded.

Throughout the occupation, thousands of Guamanians, including women and children, were forced to toil for the Imperial Forces often subjected in the process to air raids by American planes; others, forcefully marched for many miles, beaten and tortured along the way, to end up in concentration camps, where death from starvation or malnutrition was not an uncommon phenomenon. It was sheer, thankless horror, compounded by humiliation and helplessness.

III. THE COMPENSATION

A. Relief Barred. By statute or treaty the United States excluded the Guamanian people, as a class, from most avenues of compensation for the wrongs, abuses and harm suffered during the Japanese occupation. These include:

- 1. Peace treaty with Japan (1951), which released Japan from any accountability for restitution for war crimes committed on Guam;
- 2. a) War Claims Act (1948) (P.L. 80-896), which provided compensation to various American groups and individuals, but excluded Guamanians, due to the fact that they were (then) Nationals--not Citizens--of the United States;

b) The 1962 Amendment (to the War Claims Act of 1948) which included "Nationals", but specifically excluded Guamanians from coverage;

Indeed, even the Guam Meritorious Claims Act (P.L. 79-224), contains numerous exclusions and restrictions which, as applied, fell far short of providing either fair or adequate compensation to those Guamanians who were the victims of the Japanese occupation and its attendant atrocities.

B. The Guam Meritorious Claims Act (P.L. 79-224). It should be noted at the outset that P.L. 79-224 is but one of several pieces of congressional enactments related to compensation of Guamanians for war damages, etc. Indeed, any compensation under that act which exceeded \$5,000, had to be approved by congress by way of auxiliary enactment. Nonetheless, the great bulk of compensation at issue here, was either bestowed or denied in direct relation to the Act. I would, therefore, focus the rest of my testimony on P.L. 79-224, its application, and the gaps it left in its wake.

As stated above, several categories of damages were specifically excluded from coverage of P.L. 79-224. These included: compensation for forced labor, forced marches, internment in camps and incarcerations. Based on affidavits obtained by the Guam Reparations Commission (as supplemented by the late Sen. Cecilia Bamba) 3,286 claims, by survivors and their descendants, for the excluded categories, are currently on record.

In addition, 1,881 claims for uncompensated injuries, 1,360 claims for uncompensated property damages and 175 claims for deaths which have not been compensated for may be ascertained from these records. A review of records of payments indicate that only one percent (1%) of these claims may have been compensated for under previous legislation.

And here, in these numbers you would find our complaint. So many incidents of cruelty, committed by one mighty nation, casually forgiven and then just as casually forgotten by another mighty

nation. But we, who had suffered the atrocities, are still haunted by that nightmare. Our hearts are still seething with anger for our mistreatment by the Japanese Imperial Army, and boil with greater anger for your conscious disregard thereof.

I have been told that you might ask why so many who were entitled to compensation under P.L. 79-224 were not compensated. The simple and short answer is that most of them did not apply. You have to realize that immediately upon its liberation, Guam was transformed into a gigantic staging area for the war effort. Thousands of residents were dislocated, moved about and placed on a low priority by busy Naval officers charged with conducting a war.

One can get a taste of what was taking place at the time from a report in the Feb. 20, 1946 issue of the New York Times:

[T]he callous way in which our Government is treating the 23,000 loyal natives whose homes and cities were destroyed in the process of driving the Japanese from the island, and whose land now is being taken by the Navy for military purposes without any provisions for the people who once lived on it, is a serious indictment of ... our system of colonial administration.

[S]ix months after the end of the war in the Pacific, the people of Guam are living in squalor. They are discouraged, even from raising temporary shelters on land they own because the Navy might need that area later for military installations (Emphasis added.)

By contrast, P.L. 79-224 provided only one year for applying for compensation. Most people living under the above-described conditions, did not even know that relief was available.

IV. PREVIOUS DEMANDS

Finally, I would like to deal with the misinformed notion that we, the elected representatives of Guam, have neglected the issue until now. Nothing is further from the truth. Already in the First Guam Legislature, in its first term, a resolution (No. 23) was introduced by B.J. Borrallo "relative to the payment of reparations to certain Guamanians and others forced into slave labor at the time of the occupation of Guam by a foreign power." It resolved to call upon the President and congress to [appoint] a commission to investigate ... and ... receive applications ... for compensation from the persons conscripted into slave labor.... A second provision requested that the Japanese government be made responsible for compensation in any peace treaty.

There have been since numerous other legislative actions undertaken either in Guam or in Washington in order to correct the injustice at issue here today.

V. CONCLUSION

It is time that correction of the injustice take place. Recently, another injustice was corrected by this venerable body, when it enacted legislation to recognize and compensate Americans of Japanese descent who were interned during the war.

That legislation serves not only to provide restitution in a material sense, it records the Nation's recognition of the suffering of some of its members. It allows those who suffered to feel accepted, I commend you for that bold step. It takes greatness to admit mistakes. Conversely, nothing is more detrimental to greatness, and the growth process necessary to achieve it, than the inability to recognize and rectify mistakes.

Recent events provide us with an even more pronounced example of the principles at issue here: The decision by the President to pay compensation to (the families of) the victims of the Iran Air we shot down in the Gulf. It is obvious that the President was motivated by humanitarian considerations--to alleviate at least a measure of the pain caused by the shooting of the ill fated flight. The fact that the plane was that of a nation engaged in open hostilities against us; the fact that blame for the tragedy falls squarely on the shoulders of the Iranians; as well as numerous other reasons to avoid compensation, were rejected in favor of a nobler, more humane approach. It clearly shows that the people of Guam are entitled to, at least, to the same consideration.

Indeed, we are neither enemies nor even strangers. Multitudes of young Guamanians fought in the ranks of our Armed Forces; some--even as we speak--are fighting in the Gulf right now. I, myself, spent a tour of duty in Vietnam, where many of my fellow Chamorro warriors lost life or limb.

Thus, if one can make a case for compensating enemy victims, logic would compel the conclusion that compensation should be extended to long forgotten--though loyal Americans, who suffered similar fate--because they were American.

VI. ACKNOWLEDGMENT

Pg. 5

Mr. FRANK. And the chair was remiss in not noting that unanimous consent is needed for this hearing to be covered by still or motion picture cameras. And I assume there is no objection. So we will allow these cameras to remain, and we will retroactively legitimize the cameras that have departed, and with that, we will begin with Mr. Blaz.

TESTIMONY OF HON. BEN BLAZ, DELEGATE FROM GUAM

Mr. BLAZ. Thank you very much, Mr. Chairman. First of all, let me ask your consent to submit for the record my full text of my prepared remarks.

Mr. FRANK. Let me state at this point, Mr. Blaz, we will take your statement and any other. We will ask you to work with us. And any other statements that you think are useful we will be glad to give you permission, and you can work with the staff and we will help with you to document the record as you see fit.

Mr. BLAZ. Thank you again, sir. Let me say at the outset that, Mr. Chairman, I must congratulate you again on the exquisite handling of H.R. 442. As you know, it was a momentous bill for the House, and I was so proud to have been there today when the vote was taken. It was thanks largely to your leadership.

You seem to have an uncanny ability at timing, Mr. Chairman. A year ago when our bill was introduced I had no idea that we would be having this hearing right at the heels of another bill that is not too dissimilar. Let me say to you that there is great similarity also between the bill that we just voted on earlier today and the bill that I am now presenting.

House Resolution 442 deals with abuses by Americans on Japanese-Americans. My bill deals with abuses by Japanese on Americans. Now here we are 43 years later. Why would we want to revisit it an issue that some claim, no doubt the Administration will claim, that it was finalized some 40 years ago?

I want to revisit this issue because when we look at the record we will find there is sufficient evidence to show that our Government didn't do enough. In 1945, one year after the war, when the United States decided to try to settle claims on Guam, it posted some notices telling the people to come and make their claim and you gave them a year to do it. So far so good.

However, let's put it into perspective. First, the war was just over, Mr. Chairman, we all know that after the war, a person's concern is not reparation. A person's concern is a can of Spam, a pair of shoes, the Red Cross ship. That is what he is thinking about.

Second, when you are an American national, and you have been in a concentration camp, and the Americans liberate you, in our culture you just do not go asking for reparation from your liberators. In our culture, you do not go around and say, hey, listen, you destroyed my home, and therefore, you should pay me for it.

So even though there was some effort made for people to come and make a claim, the record shows that only a few made such claims, that there was inadequate outreach to inform, to educate and to encourage the people that it was all right to file a claim. Thirdly, many of our people really did not speak English--I myself

certainly had a very limited command of the language and I was there. I was totally unaware that one could file a claim that first year. We want to make a case today that the people of Guam were not really fully apprised of their rights.

Next, I think you should know that in the ensuing years corrections were attempted. We were not eligible by some of the legislation because we were American nationals, and the reparations only applied to American citizens.

Then we became American citizens, and another legislation said it did not apply to us because we were not nationals. In other words, when we were nationals, it applied to citizens. When we were citizens, it only applied to nationals. We found our people always, always in limbo.

And furthermore, when the treaty was signed between the United States and Japan, it absolved forever and a day Japan's obligation for reparation, but guess what. Guam is in the middle of Micronesia. Guess what else. In the last few years, \$30 million have been awarded by the U.S. to the Micronesians all around us, all former part of the Japanese mandated islands. They have all been given all this reparation, and Guam sits law abidingly right dead center.

So we have a case to make that I think we should revisit. I think I should also mention that in order to appreciate the problems and the plight of Guam, it should be noted that at the turn of the century, Guam was the subject of the Spanish-American War. The Americans came in, and chased out the Spaniards.

Then in World War II, we were occupied as no other American community was occupied. I ought to know. I was there. In the Korean War, many of the activities of the United States were launched from Guam. We had the hospitals. We felt the war. In Vietnam, again many of the activities from America were launched from Guam. We felt the war. The hospitals were there, and a quarter of a million Vietnamese refugees were processed through Guam.

In other words, there is just no community like our community that has undergone this enormously fatiguing process of firsthand involvement in all the wars within the memory of any living American. We were always there, and we were always saluting, yes sir, yes sir, three bags full. In the meantime, Mr. Chairman, I hasten to add, that in both Korea and in Vietnam, the records will clearly show that on a per capita basis, Guam has had more members killed and wounded in action, than any other community our size in the entire American nation.

For these reasons, I would like to say, sir, that what Guam needs more than anything else, what it wants more than anything else is a day in court, its day in court. This then is our first day in court. I would like to quote a statement made in 1945, some many, many years ago, but nevertheless, the statement is quite apropos at this time.

This was a statement made by Congressman Walter Ploeser, who was the chairman of the House Subcommittee on Naval Affairs, when he testified on Guam rehabilitation legislation in 1945. He said, and I quote: "They are American nationals, and there is a strict moral, obligation on the part of the United States which

comes from the lack of our unsuccessful defense of Guam in the beginning, and then our later recapture of Guam at which time we destroyed these things that have been discussed today."

"Theirs will be a demonstration of loyalty, I think, probably the most remarkable in American history. I am hopeful that we get these measures through as quickly as we can, quickly enough, Mr. Chairman, so that there will never be a day when a Guamanian complains about the treatment the United States has given him."

In retrospect, Mr. Chairman, that there is no question that the Administration will say the Government has legal obligation, but as you heard the Speaker say earlier there are some obligations that are beyond strict legal interpretations. Toward this end, I think Guam can and will make a case this afternoon for a very strong moral obligation.

I would urge that you, I would hope that you would consider this piece of legislation that I introduced favorably. The legislation seeks the establishment of a commission to revisit this issue and to see, indeed, whether there are some wrongs that need to be righted so we can close this chapter of American history. Thank you, Mr. Chairman.

[The statement of Hon. Ben Blaz follows:]

STATEMENT OF

CONGRESSMAN BEN BLAZ

ON H.R. 3191

BEFORE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

AUGUST 4, 1988

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

TODAY I WANT TO TALK ABOUT JUSTICE. JUSTICE FOR THE MORE THAN 3,000 MEN, WOMEN AND CHILDREN OF GUAM -- ALTHOUGH THEY WERE NOT YET CITIZENS OF THIS GREAT NATION -- WERE, NEVERTHELESS, TORTURED, BEATEN AND KILLED SOLELY BECAUSE OF THEIR LOYALTY TO THESE UNITED STATES OF AMERICA.

I KNOW OF THESE THINGS FROM PERSONAL EXPERIENCE, FOR I WAS ONE OF THE THOUSANDS OF VICTIMIZED GUAMANIAN WHO WERE FORCIBLY INTERNED BY THE ENEMY DURING WORLD WAR II. THAT EXPERIENCE AND THE HORROR OF BEING OCCUPIED BY A HOSTILE FOREIGN POWER LITERALLY DETERMINED THE COURSE MY LIFE WOULD FOLLOW. WHEN THE UNITED STATES MARINES HIT THE BEACHES OF GUAM ON JULY 21, 1944, I FELT A PROFOUND, MORAL INDEBTEDNESS TO THOSE BRAVE MEN AND TO OUR NATION WHICH LIBERATED MY ISLAND AND MY PEOPLE.

IT IS THIS SAME SENSE OF A DEBT, THAT HAD TO BE REPAID, AND THE SURE CONVICTION THAT OUR GOVERNMENT WOULD LIKEWISE HONOR ITS MORAL OBLIGATION TO RIGHT THE WRONGS OF FOUR DECADES, THAT I INTRODUCED H.R. 3191 - AN ACT TO CREATE A WAR CLAIMS COMMISSION FOR GUAM.

MR. CHAIRMAN, AS MY GOOD FRIENDS GEORGE BAMBA, MARILYN MANIBUSAN, EDDIE DUENAS, TED NELSON, JERRY RIVERA ALL WHO WILL HAVE TRAVELLED 16,000 MILES TO COME HERE AND RETURN, WILL TESTIFY, THERE ARE MANY VALID ARGUMENTS IN SUPPORT OF THIS BILL: THE IMPRACTICALITY OF THE ONE YEAR DEADLINE IN WHICH TO FILE A CLAIM; THE WAIVER OF OUR RIGHTS TO REPARATIONS AGAINST JAPAN BY THE RATIFICATION OF THE 1951 TREATY, A TIME WHEN GUAM WASN'T EVEN

REPRESENTED IN CONGRESS; AND THE DOCUMENTED FACT THAT GUAMANIAN LEADERS, SUCH AS THE LATE CECILIA BAMBA, CONSISTENTLY RAISED THE ISSUE BEFORE CONGRESSIONAL LEADERS OVER THE YEARS. ALL THESE AND MORE ARE SUFFICIENT REASONS FOR THIS COMMITTEE TO SUPPORT H.R. 3191. HOWEVER, THE MOST COMPELLING REASON OF ALL IS THAT IT IS JUST AND RIGHT. THERE IS A MORAL OBLIGATION HERE THAT MUST BE HEARD.

THIS OBLIGATION WAS ELOQUENTLY PUT FORTH BY CONGRESSMAN WALTER FLOESER, CHAIRMAN OF THE HOUSE SUBCOMMITTEE ON NAVAL AFFAIRS, COMMITTEE ON APPROPRIATIONS, WHEN HE TESTIFIED ON GUAM REHABILITATION LEGISLATION ON OCTOBER 9, 1945. HE STARTED AND I QUOTE:

"THEY ARE AMERICAN NATIONALS AND THERE IS A STRICT MORAL OBLIGATION ON THE PART OF THE UNITED STATES WHICH COMES FROM THE LACK OF OUR UNSUCCESSFUL DEFENSE OF GUAM IN THE BEGINNING, AND, THEN, OUR LATER RECAPTURE OF GUAM, AT WHICH TIME WE DESTROYED THESE THINGS THAT HAVE BEEN DISCUSSED TODAY..."

"THEIRS WILL BE A DEMONSTRATION OF LOYALTY, I THINK, PROBABLY THE MOST REMARKABLE IN AMERICAN HISTORY..."

"...I AM HOPEFUL THAT WE GET THESE MEASURES THROUGH AS QUICKLY AS WE CAN, QUICKLY ENOUGH, MR. CHAIRMAN, SO THAT THERE WILL NEVER BE A DAY WHEN A GUAMIAN COMPLAINT ABOUT THE TREATMENT THE UNITED STATES HAS GIVEN HIM."

MR. CHAIRMAN, MORE THAN 40 YEARS HAVE ELAPSED SINCE CONGRESSMAN FLOESER DELIVERED THAT TESTIMONY, AND MORE THAN 3,000 GUAMANIAN STILL WAIT FOR THE UNITED STATES GOVERNMENT TO HONOR ITS MORAL OBLIGATION TO THEM.

NOTE, I SAID "MORAL" AND NOT "LEGAL" SINCE CONGRESS DID IN FACT PASS THE GUAM MERITORIOUS CLAIMS ACT IN 1945. NEVERTHELESS, BECAUSE OF A FEW LEGAL TECHNICALITIES, TECHNICALITIES, WHICH I MIGHT ADD, WERE WAIVED FOR OTHER AMERICAN NATIONALS IN SUBSEQUENT ACTS OF CONGRESS, THE PEOPLE OF GUAM REMAIN UNCOMPENSATED AND UNRECOGNIZED.

JOHN FOSTER DULLES, THE SECRETARY OF STATE WHO DRAFTED THE PEACE TREATY WITH JAPAN, CONTEMPLATED RELIEF FROM THE U.S.

CONGRESS FOR THOSE, SUCH AS THE GUAMANIAN, WHOSE CLAIMS FOR WAR REPARATIONS WERE COMPROMISED BY THAT TREATY. IN HIS MEMORANDUM ACCOMPANYING THE TREATY AND PROVIDED TO THE SENATE PRIOR TO THE TREATY RATIFICATION, DULLES STATED:

"ALLIED POWERS IN WHOSE TERRITORY UNITED STATES NATIONALS SUSTAINED PROPERTY LOSSES MAY MAKE SUCH UNITED STATES NATIONAL ELIGIBLE TO RECEIVE SUCH COMPENSATION AS THEY ARE ABLE TO PROVIDE FOR WAR LOSSES. IT DOES NOT APPEAR, HOWEVER, THAT AMERICAN NATIONALS WHO SUSTAINED LOSSES IN THE TERRITORIES OF ANY OF THE ALLIED POWERS CAN EXPECT TO RECEIVE COMPENSATION COMMENSURATE WITH THEIR LOSSES. ACCORDINGLY, UNITED STATES NATIONALS WHOSE CLAIMS ARE NOT COVERED BY THE TREATY PROVISIONS OR BY THE LEGISLATION OF OTHER ALLIED POWERS, MUST LOOK FOR RELIEF TO THE CONGRESS OF THE UNITED STATES." (EMPHASIS SUPPLIED).

NOT ONLY DID THE MEN WHO DRAFTED THE TREATY WITH JAPAN ACKNOWLEDGE A MORAL DEBT TO GUAM, THEY ALSO ENVISIONED A MEANS OF SATISFYING THIS DEBT. FORTY YEARS LATER THE EXECUTIVE BRANCH OF THE U.S. GOVERNMENT, SPEAKING THROUGH THE DEPARTMENT OF JUSTICE,

DENIES THAT CONGRESSIONAL RELIEF, THE MEANS WE ARE USING TO SEE JUSTICE DONE, WAS EVER CONTEMPLATED. THIS IS CLEARLY NOT THE CASE.

MR. CHAIRMAN, THE UNITED STATES GOVERNMENT IS BIGGER THAN THAT. AS I REMARKED JUST THE OTHER DAY TO THIS CONGRESS IN SUPPORT OF OUR BILL TO COMPENSATE JAPANESE AMERICANS INTERFERED DURING WORLD WAR II: JUSTICE DELAYED IS JUSTICE DENIED.

THE JUSTICE DEPARTMENT VAINLY ATTEMPTS TO JUSTIFY ITS REFUSAL TO RECOGNIZE A MORAL RESPONSIBILITY TO PAY FOR THE GUAMANIAN LOSSES BARGAINED AWAY BY THE FEDERAL GOVERNMENT IN THE TREATY BY CLAIMING THAT A PORTION OF H.R. 3191 IS UNCONSTITUTIONAL. SPECIFICALLY, THE DEPARTMENT CLAIMS THAT THE APPOINTMENT BY THE GOVERNOR OF GUAM OF SOME OF THE COMMISSIONERS TO DECIDE ON THE VALIDITY AND AMOUNT OF GUAMANIAN WAR CLAIMS VIOLATES THE APPOINTMENT CLAUSE OF THE U.S. CONSTITUTION. UNDER THE APPOINTMENT CLAUSE THE APPOINTMENT OF AN OFFICER OF THE UNITED STATES MUST BE MADE BY THE PRESIDENT ACTING WITH THE ADVICE AND CONSENT OF THE SENATE OR, WHEN AUTHORIZED, BY ANOTHER OFFICER OF THE UNITED STATES. THE DEPARTMENT FURTHER CLAIMS THAT SINCE THE GOVERNOR OF GUAM IS NOT A FEDERAL OFFICER HE CANNOT CONSTITUTIONALLY APPOINT ANYONE TO THE COMMISSION. THIS ARGUMENT IGNORES A STRONG AND RECENT LINE OF DECISIONS BY THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT WHICH HOLD THAT THE GOVERNMENT OF GUAM IS AN INSTRUMENTALITY OF THE FEDERAL GOVERNMENT. SAKAMOTO V. DUTY FREE SHOPPERS, LTD., 764 F.2D 1285 (NINTH CIR. 1985).

THIS DECISION CONCLUDED THAT THE GOVERNMENT OF GUAM IS AN INSTRUMENTALITY OF THE FEDERAL GOVERNMENT OVER WHICH IT EXERCISES PLENARY CONTROL. AS SUCH, THE COURT FOUND THAT THE GOVERNMENT OF GUAM, UNLIKE STATE GOVERNMENTS, ENJOYS THE SAME IMMUNITY FROM ANTI-TRUST LIABILITY AS THE FEDERAL GOVERNMENT. THIS PRINCIPLE WAS MOST RECENTLY REAFFIRMED IN ANOTHER CONTEXT IN NGIRANGAS V. SANCHEZ, SLIP OP. NO. 86-2840 (NINTH CIR, 1988). SINCE THE GOVERNMENT OF GUAM IS A CREATION OF THE UNITED STATES, THE OFFICE OF THE GOVERNOR OF GUAM WAS CREATED AND DERIVES ALL OF ITS POWERS FROM THE FEDERAL GOVERNMENT AND NOT FROM A LOCAL CONSTITUTION AS WITH ALL OF THE STATES. AS AN OFFICER OF THE UNITED STATES, GUAM'S GOVERNOR MAY BE AUTHORIZED TO APPOINT OTHER FEDERAL OFFICERS, INCLUDING THE MEMBERS OF THE COMMISSION TO BE ESTABLISHED BY H.R. 3191. THIS BILL WILL ACCOMPLISH JUST SUCH AN AUTHORIZATION. THE JUSTICE DEPARTMENT'S ARGUMENT IS TRANSPARENTLY INVALID AND SERVES ONLY AS A CLOAK TO HIDE THE ACTUAL REASON FOR ITS OPPOSITION TO THIS BILL -- ITS INABILITY TO GRASP THE SUBSTANCE OF THE MORAL OBLIGATION AT ISSUE HERE.

ON BEHALF OF THE PEOPLE OF GUAM, I THANK YOU FOR GIVING US THIS OPPORTUNITY TO BRING OUR CASE BEFORE YOUR COMMITTEE IN SUPPORT OF H.R. 3191.

Mr. FRANK. Thank you, Mr. Blaz, for a presentation that is going to be very helpful to us in assessing this. We will now ask you to step aside and we will take Mr. Hatch from the Justice Department, and then we will ask you to return and introduce the panel of Guamanian legislators.

Mr. BLAZ. All right, sir.
Mr. FRANK. Mr. Hatch.

TESTIMONY OF BRENT O. HATCH, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Mr. HATCH. Thank you, Chairman Frank and Congressman Coble. I have submitted a longer statement for the record.

Mr. FRANK. Without objection, it will be printed in the record.
Mr. HATCH. Thank you. The Department of Justice has absolutely no qualms with the factual scenarios that have been set out that Guam was indeed invaded by the Japanese and liberated by the U.S. after months of intensive fighting.

Our problem with this bill is—

Mr. FRANK. I think we can all stipulate to that.

Mr. HATCH. OK. Good. Thank you very much—is that we do not feel that a reparations issue is involved here. House Resolution 3191 is unlike the recently passed bill H.R. 442, the reparations for Japanese internment. The biggest difference, of course, is that there we are talking about people interned by the United States Government. Here we are talking about injuries and damages incurred as a result of Japanese atrocities during the war.

Therefore, we feel that reparations for those losses are inappropriate. No moral wrong was done by the U.S. as the term "reparations" implies. The act would have the U.S. paying compensation for wrongs done by Japanese soldiers.

We also have stated in the record that we feel the 1945 act providing compensation to Guamanians to alleviate the problems resultant from the war was an extraordinary act. It was an act passed to enable to immediate repair of some of the damage done by war, and get the Guamanian economy back on its feet.

Not only was compensation provided for the immediate settlement of all claims due to war losses to property, and losses resulting in death and personal injury but the Department of Navy and other governmental entities provided considerable resources to improving, as I understand from the Navy, roads, harbors, utilities, and other common areas of the island of Guam as well as the infrastructure and the economy of that island.

We also have problems, as we stated in our statement, with the constitutionality of the way the proposed bill is set up. I do not think I need to go over that here now. We also have problems with the types of damages, the fact that there is an extremely wide, broad discretion that is given to this commission, without speaking of whether compensation is for actual damages or should be based merely on equitable principles.

Therefore, the Department of Justice feels that this legislation is inappropriate at this late juncture; especially since the 1945 act was put in place to take care of these problems to immediately bring the island back to economic viability so that it can

move on. It is inappropriate at this point, 43 years later to then revisit the question.

Mr. FRANK. Thank you, Mr. Hatch. I appreciate that, and we will look at the statement.

[The statement of Brent O. Hatch follows:]



Department of Justice

STATEMENT

OF

BRENT O. HATCH
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION
DEPARTMENT OF JUSTICE

BEFORE

THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENT REGULATIONS
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 3191, THE "COMMISSION ON WAR REPARATIONS FOR GUAM ACT"
ON

AUGUST 4, 1988

I am pleased to appear before you today on behalf of the Department of Justice to address H.R. 3191, the "Commission on War Reparations For Guam Act." The bill would provide authority to decide and pay claims for injuries and losses which resulted from hostilities between the Governments of Japan and the United States between December 8, 1941 and August 10, 1944.

We oppose H.R. 3191 for several reasons. First, there is no reason for American taxpayers to pay compensation for World War II injuries caused by enemy action. Second, the Congress enacted contemporary legislation which authorized payments to alleviate suffering by the people of Guam. Third, provisions of the bill are constitutionally defective.

Guam was invaded by Japan on December 10, 1941 and rapidly occupied. It was liberated by American soldiers after landings on July 21, 1944 and heavy fighting for months thereafter.

American casualties in Guam amounted to 1,290 killed, 5,648 wounded, and 135 missing.¹ After World War II, Guam recovered from the devastation of war and has become a major American-Japanese tourist destination, as well as host to a significant U.S. military presence in the Pacific.

The Guamanians' losses and suffering were directly caused by enemy invasion, occupation, and hostilities accompanying liberation of the island--not by any wrongful conduct by

¹ Marcel Baudot, The Historical Encyclopedia Of World War II, at 209.

Americans. Congressman Blaz has made this very critical point:

There is a great similarity between the experience of [persons of Japanese ancestry who were interned during World War II]. We spent time in our youth in detention in concentration camps. There is one great distinction. My guards in the American Territory of Guam that was captured were enemy soldiers. Theirs were American soldiers in America.²

It bears repetition: There is no similarity at all between the cause of the suffering of residents of Guam during World War II and of the wrong done to persons of Japanese ancestry who were interned; residents of Guam suffered as a part of the aftermath of unprovoked enemy initiation of hostilities.

H.R. 3191 speaks in terms of "reparations." The concept of making reparation is associated with a moral obligation to right a wrong committed by the person making reparation. We can all agree that the American fight to liberate Guam was a glorious episode in our best tradition. Since there is no moral wrong, there is no justification for reparations. The assumption upon which the bill is founded--that reparations are justified despite an absence of fault--must be viewed as entirely misguided. For this reason, we must strongly oppose enactment of H.R. 3191.

² Cong. Rec.--House, September 17, 1987, at H. 7564.

THE 1945 ACT

There are other reasons which lead us to oppose enactment of H.R. 3191. In 1945, Congress enacted an Act "[f]or the relief of the residents of Guam through the settlement of meritorious claims."³ This Act reflects that the Congress acted promptly to provide timely assistance.

The House Report on this Act, recounts:

The Japanese invasion and occupation resulted in extensive damage to private property on the island. Further damage resulted from our reconquest. As a result of the two periods of combat and the actions of the Japanese occupying force during the interim, the people of Guam have suffered extensively, and it is believed that immediate steps should be taken to alleviate their suffering. The fairest, most equitable, and most immediate method of achieving this end would be through the early settlement of claims for damages arising in the period since December -6, 1941, and caused by the activities of the Japanese and American military forces.⁴

The Act permitted the Navy to pay claims not exceeding \$5,000 for destruction of real and personal property and authorized the Navy to certify personal property claims in excess of \$5,000 and claims for death or personal injury determined to be meritorious to the Congress for payment as legal claims for payment out of appropriations.⁵ Only residents who voluntarily aided the enemy

³ Public Law 224, 79th Cong., 1st Sess.; 59 Stat. 582 (1945).

⁴ H.R. 1135, 79th Cong., 1st Sess., at 2.

⁵ Public Law 79-224, Sec. 1.

were to be excluded as eligible claimants. Settlements under the Act were "final and conclusive for all purposes."

The administration of Public Law 79-224 was "founded on compensatory principles" which Courts later viewed as a model for guidance in rendering awards under subsequent claims statutes. Minniah Melong v. Micronesian Claims Commission, 569 F.2d 630, 635 (D.C. Cir. 1977). Also, apart from the 1945 Act, many millions were spent by the United States government to repair wartime damage to Guam's infrastructure and to improve living conditions.⁶

The 1945 Act was enacted "to alleviate their [Guamanians] suffering."⁷ There is no reason to revisit whether the Act achieved its purpose in every particular at this late date. Plainly, the Act provided a means whereby residents of Guam were able to seek and obtain funds to compensate for losses.

The 1945 Act explicitly stated that it was intended to finally settle claims for compensation; there is no reason to provide a new mechanism for additional payments by the United States more than four decades later. The 1945 Act was a reasonable and fair manner of assisting the residents in Guam. H.R. 3191 is largely repetitive and wholly unjustified.

⁶ See, Charles Beardley, Guam Past and Present, (Charles G. Tuttle Co. 1964); Paul Carano and Pedro C. Sanchez, A Complete History Of Guam, at 334-335 (Charles E. Tuttle Co. 1964).

⁷ S. Rep. No. 442, 79th Cong., 1st Sess., at 1.

ANALYSIS OF H.R. 3191

H.R. 3191 would establish a commission of five members empowered to adjudicate and render final decisions on claims. Two members of the Commission are to be appointed by the secretary of the Interior and three members are to be appointed by the Governor of Guam with the advice and consent of the Guam legislature. Appointment of three of the Commission's five members by the Governor of Guam with the advice and consent of the Guam legislature does not satisfy the Appointments Clause, Article II, § 2, Cl. 2 of the Constitution.

Under the Appointments Clause, appointments of an officer of the United States must be made by the President acting with the advice and consent of the Senate or, when authorized, by heads of Departments. Whether a person is an officer of the United States depends upon his statutory duties. A person who performs merely advisory functions, and who possesses no enforcement authority or power to bind the government is generally not considered to be an "officer" within the meaning of the Appointments Clause. 24 Op. A.G. 12 (1902); 26 Op. A.G. 247 (1907); H. Rep. 2205, 55th Cong., 3d Sess., 48-54 (1899). However, a person who performs significant governmental duties pursuant to the laws of the United States is an officer in the constitutional sense and therefore must be appointed pursuant to the Appointments Clause.

Plainly, the decisions of the Commission regarding eligibility for, and the extent of, compensation by the United States are not merely advisory functions but instead constitute

the performance of significant governmental duties.⁸ An Appointments Clause problem arises since the Governor of Guam is elected by a majority of the votes of the persons qualified to vote for the Legislature of Guam, 48 U.S.C. § 1422, and is not a person in whom the Appointment power may be vested according to Article II, § 2, Cl. 2 of the Constitution. Thus, while appointment of two members of the Commission by the Secretary of the Interior does not present any constitutional difficulty, the remaining members of the Commission would be appointed in violation of the Appointments Clause.

An additional problem is raised by Section 3 which specifies the kinds of damages recoverable but does not specify the measure of damages or place any limit on the amount of awards. The only provisions of the bill relating to the amount of awards are Section 3(c) requiring notification "of any amount approved" and Section 3(e) requiring the Commission to "adopt a schedule of maximum compensation." The bill contains no guidance as to the amount of maximum compensation or even whether compensation is to be based on losses or on equitable principles not directly related to losses. This unconfined delegation of authority is imprudent.⁹

⁸ H.R. 3191 provides that the Commission shall certify amounts approved on the Claims to the Secretary of Treasury for payment out of the Guam Claims Fund established under Section 9(a). Section 3(f).

⁹ A claimant may include a person who is an heir or assignee of a person who was a resident during the wartime period. Section 10(2). The fact that an assignee may obtain (continued...)

* * * * *
 H.R. 3191 may be a well motivated attempt to remind Americans that Guamanians suffered losses and hardship during World War II. But, H.R. 3191 is not an appropriate measure for recognizing the hardship and suffering of residents of Guam during World War II. For the reasons outlined above, we must, therefore, strongly oppose this bill.

⁹ (...continued)

"heir" of an individual who may have lived a long and productive life after liberation. There is no apparent reason why the bill is not limited to living persons who are asserting claims in their own right.

Mr. FRANK. There is one question, and as I said Mr. Blaz knows he is going to have a hard time convincing a number of us, and there are some differences, and we do not think we have precedent for this.

There is one issue which he raised with me when we talked about this privately that had some impact on me. I appreciate as a general principle we should not be paying reparations for the bad acts of other governments. But it is a point that we signed a treaty relieving the Japanese of any liability to pay reparations.

That is one, if you are not ready to deal with it now, I would be interested if you would respond at some point on this. That is in the moral sense. We are not talking here about any legally enforceable obligation, but in the moral sense, when we signed a treaty which relieved the Japanese of a liability that they might otherwise have, the Japanese empire, have we to some extent incurred, I mean have we subrogated to that liability is, I guess, the question? And that is the one point that Mr. Blaz made that troubles me, to be honest, as someone who is not generally supportive of the legislation. I would be interested in your response either now or later.

Mr. HATCH. Yes. I would prefer to provide a written response to that.

Mr. FRANK. OK.

Mr. HATCH. Because that would be a rather technical legal question.

Mr. FRANK. If you could, I think Mr. Blaz might want to further tell the Justice Department about it. That is, I think, a point that the committee is going to want to hear about, to what extent do we have some moral obligation because in the absence of that clause in the treaty. And after all, this was a treaty after all that was, as I remember, unconditional surrender is what we were told.

So presumably it was not a clause that we had to put in to achieve our objective of ending the war. And I say that because if we had to do that to end the war, that would be a different story. But given that it appeared to have been a waiver fairly freely given by the United States, do we have something? And I would appreciate that.

Mr. HATCH. Yes. That would be a rather complex legal question because we would have to look into the reasons for the treaty and everything else. So—

Mr. FRANK. Put the State Department to work and let Abe lay off the ABM treaty and work on this one for awhile. It might make everybody happy.

Mr. HATCH. OK. Fair enough.

Mr. FRANK. Mr. Coble.

Mr. COBLE. Well, very briefly, Mr. Hatch, I was thinking along the same line of the chairman that having absolved Japan, does that in any way admit that we are exposed to liability?

Mr. HATCH. I do not think so. I would prefer providing a more detailed answer. But obviously Congress at the time felt the 1945 act was an extraordinary act. It was directed specifically to Guam and compensation for the residents of that island. So Congress was well aware that they were making efforts. They were infusing money through the Navy and providing for infrastructure.

So Congress was well aware that they were taking care of Guam. The question obviously has been raised whether that was adequate or not. Congress at that time felt that it was.

Mr. FRANK. Thank you, Mr. Hatch. Anything further?

Mr. COBLE. Thank you.

Mr. FRANK. No further questions. We appreciate that.

Mr. HATCH. Thank you very much.

Mr. FRANK. Mr. Blaz, would you like to come back now and bring with you the panel of witnesses, Mr. Bamba, Mr. Duenas and Mr. Nelson, and present them?

Mr. Blaz. Mr. Chairman, we have five members of the legislature. Three are invited to speak, and they will be accompanied at the table. And I think we are going to start by answering that very question which is the whole piece of the whole issue.

Mr. FRANK. Let me begin by asking each of you as you begin to speak to give your name for the recorder so the recorder will know who is speaking when. When we get to questions, we may ask any of you to join in although I must say I do not expect there to be a lot of questions because there has been a very complete presentation both before and we expect during the hearing. So whoever wants to start may start and just give your name as you begin for the recorder.

TESTIMONY OF HON. GEORGE BAMBA, GUAM LEGISLATURE; HON. EDWARD R. DUENAS, GUAM LEGISLATURE; HON. TED S. NELSON, GUAM LEGISLATURE; ACCOMPANIED BY MARILYN D.A. MANIBUSAN, GUAM LEGISLATURE; MARK SHAPIRO, STAFF FOR SENATOR BAMBA; AND SENATOR JERRY M. RIVERA, GUAM TERRITORIAL LEGISLATURE

Mr. BAMBA. Thank you, Mr. Chairman. My name is George Bamba, minority leader of the 19th Guam legislature. With me is Senator Marilyn Manibusan, who is the minority whip of the legislature, and my staff assistant, Mr. Mark Shapiro.

Mr. FRANK. I think you might want to give spellings, Senator, of your name to the recorder.

Mr. BAMBA. Shall I begin?

Mr. FRANK. Please.

Mr. BAMBA. Thank you, Mr. Chairman. First of all, I want to thank you for the opportunity to provide testimony in support of H.R. 3191 before your committee. And Mr. Chairman, I have a very special interest in this case.

My grandmother, the late Rosa Cruz, was severely beaten by Japanese soldiers because they mistook her for an American. She was pregnant at the time, and both she and her unborn child died as a result of that beating. Her husband, my grandfather, the late Jose Leon Guerrero Cruz, was himself beheaded by the enemy in 1944 after rescuing an American pilot, a Lieutenant Hamilton, whose plane crashed near where he was performing forced labor for the Japanese.

In recognition for giving his life the United States Government compensated his family and his daughter, my mother, the late Cecilia Bamba, received \$33 for her father's life.

Small though the award was, it at least acknowledged the ultimate sacrifice my grandfather made on behalf of the United States of America. I am here today to plead the cause of the more than 3,365 men, women and children who have yet to receive even token recognition.

Mr. Chairman, it is not my intention to appeal to this committee based on emotion. We have put forth objective arguments based on documented facts. With the assistance of Congressman Blaz, we were able to obtain for the first time in 40 years documents which were believed destroyed by the U.S. Navy. I have prepared a position paper with 11 attachments which I ask to submit for the record at this time.

Mr. FRANK. We will be glad to accept it.
[The report of George Bamba follows.]

REPORT SUPPORTING FORMATION OF A FEDERAL COMMISSION ON WAR REPARATIONS FOR GUAM

SUBMITTED BY SENATORS GEORGE BAMBA
AND MARILYN D.A. MANIBUSAN

AUGUST 2, 1988

SUMMARY OF POSITIONS

The following is a summary of positions supporting formation of a federal commission on war reparations for Guam. A detailed analysis of each position is provided after Source and Background sections.

(1) THE 1945 GUAM MERITORIOUS CLAIMS ACT DID NOT FULLY RESOLVE THE REPARATION ISSUE BECAUSE OF FLAWS CONTAINED THEREIN. These included the fact that:

- (a) Property damage - as opposed to death or injury claims - was emphasized;
- (b) Failure to specify postwar values as a basis for computing awards contradicted Congressional intent "to make Guam whole";
- (c) Certification by Congress of death and injury claims, as well as all property damage awards in excess of \$5,000 was unreasonable and resulted in discrepancies, "discounting" of awards below the \$5,000 limit, and unnecessary delays in payment;
- (d) Limiting claims to death, injury and property damage failed to take into consideration other major damages (which have yet to be compensated). These included: forced labor, forced marches and internment;
- (e) The Guam Meritorious Claims Act made residents of Guam ineligible for other claims relief enacted by Congress with respect to agencies of the Federal Government (other than the Navy);

(2) THE REPARATION PROGRAM WAS INADEQUATE BECAUSE IT WAS SECONDARY TO OVERALL RECONSTRUCTION AND THE BUILDING OF PERMANENT MILITARY BASES.

(3) THE ONE-YEAR DEADLINE IN WHICH TO FILE CLAIMS WAS INSUFFICIENT. This requirement failed to take into consideration the fact that:

- (a) English was a second language;
- (b) The massive disruption caused by the war;
- (c) The reluctance of Guamanians to come forward to register claims in the year after the war;
- (d) Administration of the reparation program by the Navy's Land and War Claims Commission was burdensome and confusing - conducive to delay and misrepresentation;

(e) The United States Congress has extended the deadline for filing claims to other American nationals/citizens. Guam is one of the few jurisdictions where this did not occur.

(4) THE UNITED STATES CONGRESS HAS BEEN MISINFORMED THAT A REPARATION PROBLEM NO LONGER EXISTS ON GUAM.

(5) THE UNITED STATES HAS A "MORAL" OBLIGATION TO CREATE A WAR CLAIMS COMMISSION FOR GUAM. This is so because:

- (a) Guam was the only U. S. territory occupied by the enemy during the war and many uncompensated claimants received injuries inflicted on them solely because of their loyalty to the United States of America;
 - (b) The United States Congress fully intended to "make Guam whole" with respect to reparations;
 - (c) Guam has no legal recourse against Japan since its claims were waived by the United States when it entered into a peace treaty with Japan in 1951;
 - (d) Both the United States Congress and Navy have conceded a moral obligation to compensate Guamanian victims of Japanese aggression; and
 - (e) Reparations for Guam is not a "new" issue. It has been consistently raised by local enactments and resolutions, as well as through discussions with Congressional leaders over the years.
- (6) HOUSE BILL 3191 SHOULD BE SUPPORTED WITH CERTAIN MODIFICATIONS.

SOURCES

This report is supported by extensive documentation. Congressman Ben Blaz and officials of the United States Department of Justice are to be highly commended for their assistance in locating many heretofore "lost" papers. In 1982, the Department of Interior was informed by the Navy that the 1946 Land and War Claims Commission records "were destroyed in 1973" and that the Navy "was unable to tell us how many claims were filed or how much money was paid out."¹ Thanks to Congressman Blaz and officials of the Justice Department, these papers have been utilized extensively in this report. They include: 78 "denial" records, 4,420 listings of claims; accounting records, including but not limited to, more than 4,250 payment vouchers, check numbers, certifications, and numerous receipts by claimants themselves for death, injury and property damage awards amounting to more than \$6.4 million between February, 1947 and March 1950.

In addition, twelve U. S. Appropriation Acts were examined, along with supporting documents, including but not limited to, Congressional hearings, floor debates, committee reports, House and Senate Documents, Federal Budget Acts, as well as internal correspondence between Congressional leaders and ranking Naval officials. These laws appropriated more than \$4.3 million to 1,243 recipients of death, injury and property damage awards under authority of the Guam Meritorious Claims Act. They include: 80-46, 80-271, 80-519, 80-785, 81-119, 81-343, 81-583, 82-45, 83-11, 83-663, 84-24 and 85-58.

Moreover, five other U. S. Appropriation Acts (and their supporting documents) were examined. These laws appropriated money to either the Judge Advocate General or the Secretary of the Navy/Defense for the payment of awards identified in various laws under authority of the Guam Meritorious Claims Act. It is believed that 3,113 property damage awards (below \$5,000) amounting to approximately \$3.7 million were paid out of these funds under "pay and subsistence of naval personnel". The five laws include: 81-434, 81-759, 82-179, 82-488 and 83-179.

¹Exhibit "A": Memorandum from Associate Solicitor, Division of General Law to Assistant Secretary, Territorial and International Affairs, November 17, 1982, page 5.

In drafting this report, heavy emphasis was placed on various U. S. Public Laws concerned with Guam, including but not limited to, the Guam Rehabilitation Act (79-593), the Guam Meritorious Claims Act (79-224), and the Guam Land Transfer Act (79-225). Analysis included examination of Congressional hearings, floor debates, committee reports, internal Naval justifications and correspondence from Congressional leaders and ranking Naval officials. Moreover, various U. S. Public Laws relating to war claims (and their supporting documents) were closely scrutinized, including but not limited to, the Foreign Claims Act (78-39), the War Claims Act of 1948 (80-896) and amendments to same (87-846), the Philippine Rehabilitation Act of 1946 (79-370), the Micronesian Claims Act (92-39) and amendments to same (95-134).

Various studies, reports and testimony on war claims were also relied on, including but not limited to, House Document 580 (81st Congress, 1st Session); House Document 67 (83rd Congress, 1st Session); 1947 hearings before the House Committee on Public Lands relative to Organic Act legislation, as well as the "Hopkins Report" of 1947, and the 1951 Treaty with Japan.

Of particular importance were 3,365 affidavits of Guamanian survivors and their descendants, compiled by the Guam Reparations Commission under authority of Guam Public Law 15-146, and supplemented by the late Senator Cecilia Bamba. By comparing these affidavits to existing 1946 Land and War Claims Commission records, it was possible to determine whether specific survivors or their descendants had in fact been compensated. Questionnaires to 259 out of 2,129 survivors were also utilized to determine whether and/or why specific claimants had not filed prior to the December 1946 deadline.²

Finally, examination of local resolutions and enactments (including relevant supporting documents) on the subject of reparations was made. A number of these are referenced as exhibits to this report.

BACKGROUND

The island of Guam was ceded to the United States by Spain under terms of the 1898 Treaty of Paris. From 1899 until 1950, the island was administered by the United States Navy under authority of a two-sentence Presidential Executive Order. In 1950, the United States Congress enacted the

²Exhibit "B".

Guam Organic Act (81-630), granting Guamanians American citizenship and a measure of self-government.

From December 10, 1941 until July 21, 1944, Guam was the only United States possession occupied by the Japanese during World War II - the Philippines having been promised independence by the United States prior to the outbreak of hostilities. Although the island was not attacked until December 8, 1941, dependents of American personnel were evacuated until December 17, 1941. 22,000 Guamanians were given no such option. On December 8th, Japanese Saipan-based planes began bombing the island. At approximately 3:00 a.m., on December 10th, an estimated 5,000 enemy troops began their assault. After brief but heroic resistance by 125 Marines and Guamanian members of the Insular Guard, USN Captain George J. McMillan, surrendered the island at 5:45 a.m.

Following the surrender, a number of American personnel were stripped naked and forced to parade before the victorious Japanese. They were then placed in a holding camp and transported to prisons in Japan on January 10, 1942. Eight American servicemen who went into hiding were eventually hunted down and summarily executed. Only one, USN Radioman First Class George Tweed, succeeded - with the help of loyal Guamanians - in evading capture.

Atrocities against Guamanians began with the Japanese assault. On December 8th, as enemy troops advanced towards the capitol from lower Tamuning, they encountered Guamanians fleeing from Agana. Without warning, the Japanese opened fire. Later, the bodies of some twenty men, women and children were found piled on the road beside their overturned vehicles. In Agana itself, a truck loaded with Guamanian civilians was attacked and all its passengers killed. Among the more than 320 Guamanians executed during a two-year reign of terror, was Francisco Borja Won Pat, younger brother of Antonio Borja Won Pat, later to serve as a member in the United States House of Representatives; Edward Camacho Duenas and Father Jesus Baza Duenas - brother and uncle of the Honorable Cristobal Duenas, presently Judge of the U. S. District Court in Guam; as well as Jose Leon Guerrero Cruz, grandfather of Senator George Bamba.³

³Francisco R. Won Pat was beheaded publicly after being beaten with fists and tortured with a water hose. Father Duenas and Edward C. Duenas were tortured and beheaded only nineteen days before the island was liberated. They were executed because the Japanese believed they knew of American Lt. Hamilton from his burning aircraft a few days before liberation.

During the occupation, hundreds of loyal Guamanians were executed, tortured, beaten, raped and had their property seized by the enemy - either because the Japanese believed they were aiding Tweed or were "guilty" of some other offense such as failing to bow low enough or singing anti-Japanese songs (the most popular of which was "Uncle Sam, Please Come Back To Guam"). Many Guamanian women were raped - their husbands and children forced to watch. Six days before American troops liberated the island, sixty Guamanian residents of the village of Merizo were randomly selected, forced into foxholes and had live grenades lobbed at them. Those attempting to escape were bayoneted or beheaded. Only fourteen out of sixty escaped death by pretending to be dead.

As Japan began to lose the war, thousands of Guamanian men, women and children were forced to pave roads, dig air-raid shelters, construct pillboxes and gun shelters, as well as pave airstrips for the Japanese. When American aerial attacks intensified, thousands of Guamanians were forced to march to hastily constructed concentration camps. Those who moved too slowly were beaten with clubs. Within the camps, infants died of malnutrition and the aged perished from starvation or being subjected to the inclement weather.

Meanwhile, beginning on February 23, 1944, American carrier-based planes began bombing the island. On July 8th, the U. S. Navy began what was to become a thirteen-day "softening" of enemy positions. This included continual bombardment from battleships. This activity had two results: it unquestionably saved the lives of thousands of Marines who hit the beaches of Guam on July 21st (nevertheless, over 1,283 valiant men were killed in action); and secondly, it leveled the city of Agana (home to approximately 11,000 Guamanians), as well as numerous other villages. According to author Tony Palomo in his 1984 book entitled *Island In Agony*, 2,631 - or 80% - of the 3,286 buildings and homes on the island were destroyed, leaving some 19,000 people homeless. During this time too, scores of Guamanians were killed or permanently maimed by flying debris and bombs from American airplanes.

On July 21, 1944, the Marines landed on Guam. Twenty-one days later, the island was securely in American hands once more - although an estimated 7,000 enemy soldiers remained at large. In rounding up these often hostile stragglers, Guamanian members of the Guam Combat Patrol and others - sometimes at the cost of their own lives - assisted American military patrols. In fact, during the actual liberation of the island, Pierizo inmates

of the Atate Concentration Camp overpowered their guards and succeeded in revolting against their captors.

American relief efforts were begun almost immediately. Unfortunately, they were hampered by military expeditions, as Guam was transformed into the major staging area for the campaign in the Philippines. Nevertheless, in 1945, members of what was to become the Guam Land and War Claims Commission arrived on island, along with members of Congress to assess the damage.

On November 15, 1945, U. S. Public Law 79-224 (the Guam Meritorious Claims Act) became law. Two others, 79-225 (the Guam Land Transfer Act) and 79-583 (the Guam Rehabilitation Act) became law in 1946. Together, they were intended to rehabilitate the island while 79-224 was enacted for the purpose of "granting immediate relief to the residents of Guam by the prompt settlement of meritorious claims", 79-225 was to provide the means of exchanging excess federal land for resettlement purposes, and 79-583 appropriated \$6 million to "construct such permanent facilities and the civil populace of the island ... for their economic rehabilitation."

Nevertheless, rehabilitation efforts proceeded slowly. Four years after passage of 79-583, the 1950 Report of The War Claims Commission With Respect To War Claims Arising Out of World War II informed Congress: "Since the war, the Department of the Navy has provided an additional measure of relief for the inhabitants of Guam through the construction of Navy projects. However, no organized program for reconstruction of damaged or destroyed civilian facilities has been undertaken."⁴

As for reparations, although 79-224 was enacted on November 15, 1945, claimants for death, injury and property damage awards did not begin receiving compensation until February 1947, more than two and a half years after the island was liberated. In fact, it was not until 1957 - more than ten years later - that the last of the Guam claims (filed by December 1946), were appropriated by the United States Congress.

A review of twelve Appropriation Acts reveal that between 1947 and 1957, the United States Congress appropriated \$4,308,483.20 to 795 claimants - or 1,243 recipients of death, injury and property damage awards in excess of \$5,000. Overall, death accounted for approximately 40% of the number of claims certified, and 17% of the monetary value awarded. Injury accounted

⁴House Doc. No. 580, 81st Cong., 2nd Sess., p. 44.

for approximately 32% of the number of claims certified, and 48% of the monetary value awarded. Property damage in excess of \$5,000 accounted for approximately 27% of the number of claims certified, and 79% of the monetary value awarded.⁵

An examination of the existing files of the 1946 Guam Land and Claims Commission reveals that out of 4,420 people who registered claims, more than 4,250 were paid \$6,485,911.27 between February 6, 1947 and March 17, 1950. This figure does not include untotaled payment vouchers. Nor does it include \$1,576,553.45 appropriated after March 17, 1950 (the last date of existing payment vouchers) for two deaths, one injury and 93 property damage claims representing 106 recipients.

In short, at least \$8,062,464.72 was paid to 4,356 recipients - \$4,308,483.20 to 1,243 people for death, injury and property damage in excess of \$5,000 - and \$3,753,981.52 to 3,113 recipients for property damage below \$5,000.⁶ In addition, 73 business concerns and clubs (which did not fit into the definition of "resident" of Guam) received \$267,482.26 from the War Damage Corporation.

Nevertheless, claimants for forced labor, internment and forced marches were never compensated, because 79-224 did not include these as awardable injuries. Nor were many claimants for death, injury and property damage in excess of \$5,000 compensated because they missed the December 1, 1946 deadline.

Concern for uncompensated victims of Japanese atrocities began to be expressed by the elected leaders of Guam as early as 1951. Hopes of instituting action against Japan were dashed however, when the United States entered into a treaty of peace, absolving Japan of any obligation to pay reparations. In 1948, the United States Congress passed the War Claims Act of 1948 (80-896), providing reparation relief to American prisoners of war, internees, religious organizations and employees of defense contractors.

⁵For more details, see Exhibit C.

⁶All death and injury, as well as property damage claims in excess of \$5,000 had to be approved by Congress prior to awards being made. Property damage claims below \$5,000 did not have to go to Congress and were paid out of the "pay and subsistence of naval personnel." While all death, injury, and property damage claims in excess of \$5,000 were identified in payment vouchers - property damage claims below \$5,000 were not so specified. In fact, payment vouchers did not list damage categories or the village of the recipient. However, it can be stated with relative certainty that 3,113 awards amounting to \$3,753,981.52 were made to the latter by subtracting \$4,308,483.20 from \$8,062,462.72, and 1,243 from 4,356.

Residents of Guam were deemed ineligible under this Act since they were "nationals" and not American "citizens."⁷ In 1962, Congress amended this Act to provide for claimants who were nationals at the time of the war and who were now citizens. Unfortunately, residents of Guam were specifically excluded from this Act - Congress apparently being under the impression that the residents of Guam were provided for under the Guam Meritorious Claims Act. Although Guamanian contract employees captured on Wake Island were eventually compensated, no further action was taken by Congress on the Guam reparation issue.

Meanwhile, Guam Public Law 14-101 was enacted on February 1, 1978, appropriating funding for "reviewing World War II death, injury and damage claims". Two years later, Guam Public Law 15-146 was enacted on December 30, 1980, creating a Guam Reparations Commission. Among other things, the Commission was charged with investigating "the feasibility of obtaining reparations from those government for injuries and damages as a result of the occupation of Guam".

As a result of the Commission's work (supplemented by the late Senator Cecilia Bamba), 3,365 affidavits were compiled from surviving victims and their descendants who claim not to have been paid. An analysis of same reveals the following: survivors represent 63% - or 2,129 claimants - while descendants account for 37% - or 1,236 claimants.

Overall, 5% - or 175 - list death as their uncompensated claim; 56% - or 1,861 - claim injury; 40% - or 1,360 list property damage; and 97% - or 3,280 - claim for forced labor, internment or forced marches⁸

This is further broken down as follows: out of the 2,129 survivors, less than 1% - or 7 - claim for death; 59% - or 1,254 - list injury; 40% - or 863 - claim for property damage; and 99% - or 2,101 - claim for forced labor, internment or forced marches.

The 1,236 descendants break down as follows: 14% - or 168 - claim for death; 51% - or 627 - claim for injury; 40% - or 497 - claim for property damage; and 95% - or 1,179 - claim for forced labor, internment or forced marches.

⁷It was under authority of this Act however, that the 73 "non-resident" claimants mentioned above, received compensation from the War Damage Corporation.
⁸Figures do not add up since most claim for more than one injury.

In reviewing these affidavits, all 3,365 were tested by comparing them to the 795 certified "paid" claimants (as well as to the names of their 1,243 recipients) in order to determine any duplicate payments. Out of 3,365 people, only 1% - or 45 - were compensated for death, injury or property damage in excess of \$5,000.⁹ Moreover, out of those 45, only three had been compensated for all their injuries - a testament to Guamanian honesty!¹⁰

On September 21, 1983, Congressman Antonio B. Won Pat introduced House Bill 3954 "To establish a commission to review the facts and circumstances surrounding Guamanian losses caused by the occupation of Guam by Japanese Imperial Forces during World War II". Again, on November 14, 1985, Congressman Ben Blaz introduced House Bill 3758 "To direct the Comptroller General of the United States to review the report and findings of the Guam Reparations Commission", and House Bill 5187 "To establish a Commission on war claims for Guam", on July 17, 1986.

None of these bills ever received a hearing.

Finally, on August 7, 1987, Congressman Blaz introduced House Bill 3191 "To establish a commission on war reparations for Guam". Referred to the House Committee on the Judiciary, it is expected to be heard by the Committee sometime this year.

POSITION ONE

THE 1945 GUAM MERITORIOUS CLAIMS ACT DID NOT FULLY RESOLVE THE REPARATION ISSUE BECAUSE OF FLAWS CONTAINED THEREIN.

A federal commission should be created because the Guam Meritorious Claims Act did not fully resolve the reparation issue. It did not do so because of flaws contained within the Act, including: (a) emphasizing property damage - as opposed to death or injury claims; (b) failing to specify post-war values as a basis for computing awards; (c) requiring certification by Congress of death and injury claims, as well as all property damage awards in excess of \$5,000; (d) restricting claims to death, injury

⁹Unfortunately, it was not possible to test claimants for property damage below \$5,000 because payment vouchers did not include full names in many cases. Nor did they include village or damage category.

¹⁰42 out of 45 of these claimants filed for more than one injury (which have yet to be compensated). Only 3 descendants claimed for one injury (death) which was in fact been paid to their parents or guardians.

and property damage, and (e) including language making residents of Guam ineligible for other claims relief enacted by Congress with respect to agencies of the Federal Government (other than the Navy).

By way of background, 79-224 was enacted on November 15, 1945 "for the purpose of granting immediate relief to residents of Guam by the prompt settlement of meritorious claims arising in Guam" after December 6, 1941. The Act created a Commission composed of U. S. Naval/Marine officers to settle property claims up to \$5,000. Real or personal property claims between \$2,500 and \$5,000 had to be approved by the commanding officer in the field in addition to the Commission. Property claims in excess of \$5,000, as well as all death and injury claims were to be certified by the Secretary of the Navy to Congress. All property claims so certified (in excess of \$5,000) were deemed a legal obligation of the U. S. However, death and injury claims were to be considered only "as a basis for property damage."

Secondly, 79-224 specified a one year time limit for the filing of claims. Source of payment was to be at the discretion of the Secretary of the Navy from either an appropriation under "Pay and subsistence of naval personnel" or from "in kind" reimbursement of Government property stores and services. Furthermore, the Act supplemented any claims relief by the Navy but was in lieu of reimbursement from other agencies of the U. S. Moreover, the Act waived any claims brought against the War Damage Corporation "where accepted" - and such payment was considered in full satisfaction of damages.

Significantly, 79-224 empowered the Secretary of the Navy to come up with regulations to determine compensation except for claims brought against the Coast Guard when operating as a part of the Navy. In that case, compensation would be fixed in the manner already prescribed. Finally, the Act applied only to permanent residents of Guam on Guam at the time of damage. Any claimant who voluntarily aided the enemy was not considered eligible.

Property damage - as opposed to death or injury claims - was emphasized.

79-224 was modeled after 78-39, also known as the Foreign Claims Act, enacted April 22, 1943.¹¹ The purpose of this law was to increase the

¹¹ See June 9, 1945 letter from Acting Secretary of the Navy to the Speaker of the House, contained in House Report 1135, 79th Congress, 1st Session, p. 3.

limits of claims paid by foreign commissions under existing statutes. Of primary concern to officials of the War and Navy Departments (who drafted the Act) was payment "to claimants in needy situations, particularly those involving serious personal injury or death."¹² Emphasis on death and injury was further stressed by Senator Barkley during floor debate on April 12, 1943, when he stated "it is necessary to do this in order to avoid injustices in many cases, especially in cases of personal injury and death."

In fact, the original version of what was to become 79-224, (S. Bill 11139), initially empowered its proposed Commission to adjudicate all claims including death and injury. Nor was there any language mandating that such claims be considered merely as "a basis for property damage."

This was to change.

On October 4, 1945, amendments proposed by Senator Robert Taft were referred to the Senate Naval Affairs Committee. These amendments, among other things, deleted the Commission's power to settle death and injury claims, and required their certification to Congress "as a basis for property damage." Four days later, the Bill came before the full Senate for its consideration.¹³ According to Taft, he discussed the matter with the Judge Advocate General of the Navy and "in my opinion all it [the amendment] does is to authorize the Navy to settle certain claims. There is no legal obligation on the Department to do so. We have excluded claims for personal injury and death." (emphasis added)

He then went on to tell the Senate that passage of the Bill without his amendments might set a precedent and "so far as I know, we have never recognized the responsibility of the United States Government for claims for personal injury or death resulting from war. We do not even recognize the claims of our own soldiers. I do not believe we should recognize the claims of people killed in the Philippine Islands. So at my suggestion that feature was eliminated so far as the discretionary power of the Navy is concerned."

Pointing out that death or injury claims would need to be certified to Congress, he explained, "Such claims cannot be settled, but if they are considered meritorious, they may be recommended to Congress for settlement." However, "I do not believe that we have in any way tied our hands. We may

¹² See letter from the Secretary of War to the Chairman, Senate Committee on Military Affairs, contained in Senate Report 145, 78th Congress, 1st Session, pp. 2-3.

¹³ See Congressional Record, 79th Congress, 1st Session, pp. 9493-9499.

decide not to recognize claims for personal injury or death if we wish to do so." (emphasis added)

Noting that "Personally I would prefer a clear statement of what legal liability we are assuming," he conceded that Guam was in a "special and peculiar" situation ("Residents of Guam are largely almost wards of the United States. They have no self-government. The Navy governs Guam practically as an arbitrary ruler"). Therefore, Taft concluded, "I think the method proposed by which we give the Navy Department discretion to settle claims up to a certain amount, and recommend to Congress the settlement of certain other claims, is perhaps the best method of dealing with that problem."

All amendments were then read for the record and agreed to without further discussion. The Bill then passed the Senate. ¹⁴

The Navy was quick to recognize the change in emphasis - from death and injury - to property damage. For example, on October 18, 1945, USN Captain Frank B. Gary, Office of the Chief of Naval Operations, testified before the House Committee on Naval Affairs concerning the now-amended Meritorious Claims bill. Asked about death and injury ("you mean for all the people injured and killed, it will be \$12,000,000?"), Gary explained, "We do not believe that will be so tremendous because we do not think we are going to pay so much for the death claims." And: "we are not going to pay them, but we have the right under this bill to certify those claims to Congress, and Congress would pass on each specific instance."

Again, in a memorandum from the Navy's legal counsel to the Secretary of the Navy, dated October 4, 1945, USN Captain D. J. Ramsey informed the Secretary that Senator Taft was withdrawing his objections to S. Bill 1139 if "minor changes in language are made." And: "The changes would eliminate the possibility of double recovery of claims under both our bill and the War Damage Act, and would require the certification of death and personal injury claims to the Congress in the same manner as now provided in the bill for claims over \$5,000." Noting that "we acceded to Senator Taft's sugges-

¹⁴Ironically, Taft himself refuted his "precedent" argument that very day. In floor debate over Senate Bill 1362 (79-225), he was to state "It seems to me, as a matter of fact, that under the present law the Navy could perhaps acquire the whole island. I think the Senator should remember that the island of Guam has a special and peculiar status. I do not think that anything doing there can be considered as a precedent for doing anything elsewhere." (emphasis added)

tions," the memorandum concludes, "His suggestions do not interfere with what the Navy hopes to accomplish under the bill if it is enacted."¹⁵

Finally, in hearings held before the House Committee on Public Lands relative to Organic Act legislation, on June 5, 1947, Under Secretary of the Navy John L. Sullivan sought to allay Congressional criticism of the repatriation program by pointing out that the Navy's hands had been tied by provisions of the law. He stated:

"The Navy has a very deep interest in the welfare of those people. As a matter of fact, the original effort the Navy made was to pay these claims out of the Navy's own money and handle the whole matter administratively. That effort was blocked by a member of the Senate who insisted that Congress should retain supervision over this matter."¹⁶

The end result: Guam may have been the only jurisdiction where death and injury claims were considered merely as "a basis for property damage" while it is true that awards were made on 578 claims representing 1,101 death and injury recipients. It must be pointed out that the emphasis was no longer on these claims. Amendments to the law had changed its primary intent. Furthermore, while property damage awards certified to Congress accounted for 79% of the monetary value, death and injury combined accounted for only 21% - despite the fact that they represented 72% of the total number of such claims.¹⁷

Failure to specify postwar values as a basis for computing awards contradicted Congressional intent to make Guam whole.

Ironically, this change in emphasis did not extend to making equitable awards. That Congress intended to "make Guam whole" with respect to reparations needs little elaboration. According to both House and Senate committee reports on Senate Bill 1139:

"The Japanese invasion and occupation resulted in extensive damage to private property on the island. Further damage resulted from our reconquest. As a result of the two periods of combat and the actions of the Japanese occupying force during

¹⁵See Exhibit "D" 16 page 312.

¹⁷For does this take into consideration the estimated \$3.7 million paid to 3,113 recipients of property damage below \$5,000.

the interim, the people of Guam have suffered extensively, and it is believed that immediate steps should be taken to alleviate their suffering. The fairest, most equitable, and most immediate method of achieving this end would be through the early settlement of claims for damages arising in the period since December 6, 1941, and caused by the activities of the Japanese and American military forces.¹⁸

Nevertheless, by failing to specify postwar values as a basis for computing awards, the Navy was obliged to compute settlements at their prewar (1941) values. This was inequitable since it did not take into consideration either the massive construction boom - or the extended families of claimants. This argument is borne out by a committee formed by many of the Navy James Forrestal in 1947 to assess the Naval administration of Guam and American Samoa. The "Hopkins" Committee included Ernest M. Hopkins (retired President of Dartmouth College), Maurice J. Tobin (former Governor of Massachusetts) and Knowles A. Ryerson (dean of the College of Agriculture, University of California). The report which they authored helped pave the way for organic act legislation as well as continued Naval rule in the interim.¹⁹

For example, in the report's discussion on Claims, it is noted with respect to property damage awards:

"The regulations provide in Rules 4a and 5b that the market value of damaged or destroyed real or personal property shall be determined as of December 6, 1941. . . Replacement costs are far in excess of the 1941 value and so called relief is apt to be only a hollow gesture when the amount received is apt to be a fraction of what will be needed to acquire a new home, or furniture or tools or of what is required for present-day family support."²⁰

Likewise, reliance on the December 6, 1941 date resulted in awards for death and injury which Hopkins described as "often a mere pittance":

"... under the regulations, injury and death claims require an involved computation based on the procedure for the computation of future installments of compensation under the regula-

¹⁸Senate Report 442, 79th Congress 1st Session, page 1; House Report 1135, 79th Congress, 1st Session, page 2.

¹⁹Relevant sections are included as Exhibit "E".

²⁰Page 13 - "Discussion".

tions governing the administration of the U. S. Employees Compensation Act of September 7, 1916, and an over-all ceiling on the amount of lump sum settlement is fixed at \$4,000. The Commission must first ascertain the date of death and the birthdays of each child and the fact that their guardian is duly appointed. Then they must ascertain the average monthly income of the deceased father during the year 1941. The computation is divided into two parts, that which accrued on the date of settlement and that which would accrue until each child reaches the age of 18 years, this latter sum then being computed (sic) into a lump sum by deducting 4% compounded annually. . . when the calculation is finally computed, the amount awarded is often a mere pittance. Some simpler procedure should be devised and more latitude should be given to the Commission to arrive at just and equitable figures in view of all circumstances."²¹

Moreover, in its Conclusions, the Committee recommended:

"d. The regulations should be amended to eliminate values or standards as of December, 1941, as the measure of damage and more liberality should be practiced in passing upon claims."²²

Nevertheless, this was not done

Certification by Congress of all death, injury and property claims in excess of \$5,000 was unreasonable and resulted in discrepancies, discounting of awards below the \$5,000 limit, and unnecessary delays in payment.

In its Conclusions, the Hopkins noted the following:

"1. Due to a combination of circumstances most of which were beyond the control of the local Island Government, the settlement and payment of war damage claims and claims incident to the military occupation of the Island has been proceeding much too slowly. Immediate steps should be taken to hasten this process and to remove unsound and unfair distinctions in the allowance of claims."²³ (emphasis added)

²¹Pages 13-14 - "Discussion".

²²Page 6.

²³Page 5.

To accomplish this, Hopkins recommended that 79-224 be amended to provide "on the spot" settlement and payment of all claims, including death and injury, up to \$10,000.²⁴ According to the report:

"Officials of the Claims Commission have testified to the basic honesty and fairness of the Guamanians in presenting their claims. Review in Washington of claims between \$5,000 and \$10,000 does not seem to serve any useful purpose. Sufficient reliance and trust should be placed on the authorities on the spot to safe guard the national interest."²⁵

Moreover, Hopkins recommended that an amendment be passed affording relief to any person who voluntarily reduced a claim to \$5,000 or below "in order to obtain prompt payment."²⁶ According to Hopkins:

"When many claimants are advised that the local Claims Commission has power to settle and make immediate payment of claims not in excess of \$5,000, but that claims above that amount must go to Washington for further action with an indefinite time required for payment, they offer or agree to reduce their claims to below \$5,000 and accept the loss above that amount, so as to get some cash for much-needed personal rehabilitation." (emphasis added)²⁷

Three months later, Hopkins Committee member Tobin was equally emphatic before the House Committee on Public Lands during its May 28, 1947 hearing relative to Organic Act legislation. Noting the magnitude of the war damage on Guam, he added:

"At the present time, not one settlement has been made to the people for personal injuries or death. That is because of the fact that the way Congress passed the measure, settlements can be made on property damage up to \$5,000. Settlements could not be made on any personal claims whatsoever, without the approval of the Congress of the United States."²⁸
(emphasis added)

²⁴Ibid.

²⁵p. 12 - "Discussion"

²⁶p. 5 - "Conclusions"

²⁷Pages 12-13 "Discussion"

²⁸p. 169

Concerned over the small size of individual awards, Tobin was asked for clarification. He noted:

"Many of the claims will be trivial. We found that the people have extremely honest characters and the tendency to undervalue rather than overvalue. That is why we felt that a less cumbersome system should be set up. Many of these personal claims for personal injuries are trivial, but none of these can be settled without reference to the Congress of the United States."²⁹ (emphasis added)

Finally, the following exchange is reflected in part on pages 188-189:

"Mr. POWLISON: Has the Navy been restricted in any way in the type of system which they had?

"Mr. Tobin: I would say very much so. There is no appropriation by the Congress for any claim in excess of \$5,000 for property damage. It has to be referred to the Congress for appropriation and payment. Any personal claims or death claims cannot be settled without reference to the Congress, and it has to be approved by the Congress."

"Mr. POWLISON: But they make the recommendation?

"Mr. Tobin: Yes, sir.

"Mr. POWLISON: Those recommendations are what I am referring to that you state were mere pittance."

"Mr. Tobin: You run into complications on property situations [sic] ... it is our belief that the changes could be made, and to permit each, if necessary, to have each of the heirs bring suits themselves ... Consequently, it will be a great many years before they can settle these claims."

Nevertheless, no one acted on these recommendations. As a result, an unknown number of claimants either settled their claims for a fraction of their worth - or may not have filed at all, perhaps believing the effort to be futile.

²⁹page 188.

Limiting claims to death, injury and property damage failed to take into consideration other major damages (which have yet to be compensated). These included forced labor, forced marches and internment.

In affidavits compiled by the Guam Reparations Commission (15-146) and supplemented by the late Senator Cecilia Bamba, 97% - or 3,280 survivors or their descendants listed forced labor, internment or forced marches as their uncompensated injury.

Moreover, there are precedents for making such awards. To name but three examples: (1) Under an executive agreement between the United States and Germany dated August 10, 1922, modifying the Treaty of Versailles - Administrative Decision No. 1 cataloged numerous grounds of German liability (Article 232, annex 1, part VIII). These included the following damages to American nationals:

"(2)(a) damage, wherever arising, to civilian victims of acts of cruelty, violence, or maltreatment (including injuries to life or health as a consequence of imprisonment, deportation, internment, or evacuation, of exposure at sea, or of being forced to labor), and to surviving dependents of such victims ... (emphasis added)

(2) the War Claims Act of 1948 (80-896) allowed compensation for internment/detention of various classes of claimants, as well as benefits for forced labor of military personnel; and (3) most recently, S. Bill 1009 (Commission on Wartime Relocation and Internment of Civilians) was enacted into law. This Act provides benefits for internment of Americans of Japanese ancestry who were placed in camps during World War II.

The Guam Meritorious Claims Act made residents of Guam ineligible for other claims relief enacted by Congress with respect to agencies of the Federal Government (other than the Navy).

Section 3 of 79-224 provides: "Insofar as the claims of residents of Guam arising in Guam are concerned, this Act is in lieu of all other provisions of law authorizing settlement of war-damage claims by the agencies of the United States Government, but shall otherwise be supplementary to, and not in lieu of, all other provisions of law authorizing consideration, ascertainment, adjustment, determination, or payment of claims by the Secretary of the Navy."

During hearings on S. 1139 (79-224) before the House Naval Affairs Committee on October 18, 1945, USN Captain Frank B. Gary, Office of the Chief of Naval Operations, was asked the purpose of this section:

"The Chairman: Now, have you any other act on the statute books with regard to settlement of claims, except in the matter of war-damage claims?"

"Captain Gary: No sir. There was some talk about an amendment that would include Guam, and this was put in so these people could not be paid twice."

What about compensation for injuries which were not authorized under 79-224 - but provided for under other relief legislation passed by Congress?

It must be pointed out that the War Claims Act of 1948 (80-896) allowed benefits for detention or internment, as well as awards for forced labor of military personnel. Likewise, 87-846, enacted as late as October 22, 1962, waived previous deadlines for filing claims under various Acts.

Nevertheless, Guamanian claimants were ineligible for these - and possibly other - benefits because of 79-224.

POSITION TWO

THE REPARATION PROGRAM WAS INADEQUATE BECAUSE IT WAS SECONDARY TO OVERALL RECONSTRUCTION AND THE BUILDING OF PERMANENT MILITARY BASES.

Before pointing out these various deficiencies, it should be noted that the United States Navy certified more than \$43 million to 1,243 recipients of death, injury and property damage awards in excess of \$5,000. Secondly, an additional \$3.7 million was expended out of the pay and subsistence of Naval personnel - to more than 3,113 recipients of property damage awards below \$5,000. In fact, the Guam Meritorious Claims Act was introduced at the request of the United States Navy.

Nevertheless - and in spite of these good intentions - the reparation program proved to be inadequate. This was so for two reasons: (1) the actual administration by the Navy's Land and War Claims Commission was poorly managed (see Position Three (d) below), and (2) it was secondary to overall reconstruction and the building of permanent military bases. Because of these deficiencies, those who filed within the one-year deadline received

"too little too late" - while hundreds of others may not have filed at all because of the existing confusion.

With respect to (2), as stated previously, 79-224 (Guam Meritorious Claims Act), 79-225 (Guam Land Transfer Act) and 79-583 (Guam Rehabilitation Act) - were all passed into law as the means in which to effectuate rehabilitation after World War II. Nevertheless, there was often a blurring of purpose, intent and (certainly) implementation - although each dealt with different aspects of the program.

For example, the Guam Land Transfer Act was intended as supplementary legislation to the Guam Meritorious Claims Act (they both became law the same day) - while the issue of "public" versus "privately owned" facilities flip-flopped between the Meritorious Claims Act and the Guam Rehabilitation Act. This was amply demonstrated during October 18, 1945 hearings before the House Committee on Naval Affairs. A discussion ensued as to the type of property claim covered by S. 1139 (79-224). Captain Gary noted that the Guam Rehabilitation Act was proposing to spend \$15 million on public buildings. Therefore, only private property claims would fall under S. 1139. However, it is unclear from the testimony on page 1648 what the Navy actually meant by "private" property.

The Chairman: Now this [S. 1139] has relation exclusively to private ownership?

Captain Gary: No, sir. This names both public and private.

The Chairman: It deals with both?

Captain Gary: Yes sir, but it is not contemplated that in the administration of it, or the implementation of it, that it will overlap the other.

The Chairman: But your statement, as I understand, had only relation to private claims.

Captain Gary: That is right.

The Chairman: You would not call a private claim one for damage to a public building, because you see, Guam is in this kind of situation - Guam has nothing in the world but a naval government - it has no civil government, it is under the government of the Navy?

Captain Gary: Yes, sir.

The Chairman: Then this bill relates to settlement of claims for public buildings, as well as private claims?

Captain Gary: It is primarily for the settlement of private damage claims, Mr. Chairman.

This lack of clarity was not limited to one hearing. On May 11, 1945, the Navy (with the help of Committee Chairman Carl Vinson) appeared to waffle on its initial policy supporting restoration of privately owned facilities under the then-proposed Guam Rehabilitation Act. Page 590 reflects the following:

Mr. Fogarty: "I had a talk with General Larson the day I left there [Guam], and he had plans for a new model city to replace the capital which was wiped out. There was not a house left standing there. He hoped to get authority to rebuild that property." (emphasis added)

The Chairman: That is private property construction, and it has no relation to this."

And (on page 592)

Mr. Johnson: Captain Ramsey, why does the Navy insist on the insertion of the word "public"?

Captain Ramsey: The Navy does not insist on it.

Mr. Johnson: Who does?

Captain Ramsey: Nobody. In checking over the situation in the Navy Department, we found that there are many claims now in the process of being gone over, and we expect to take care of the civilian population in another manner. If we cannot do it, we can always come here for legislation. The only thing we were worried about was just what would be meant by "permanent facilities."

Mr. Johnson: If the Navy did not ask for the word "public," who did? The chairman?

Captain Ramsey: The chairman."

And:

Captain Ramsey: As a matter of fact, in redrafting the bill for the \$15,000,000 limit, I said, "To restore or replace for the civil populace publicly and privately owned facilities."

Mr. Bradley: Your amendment as stated now did not read that way.

Captain Ramsey: No. That was the one I had intended to recommend for substitution.

The significance of whether privately owned facilities would be covered by the Guam Rehabilitation Act (79-583) is important with respect to reparations for two reasons: (1) 79-583 included an actual dollar appropriation, while the Guam Meritorious Claims Act did not; and (2) Had the Bill's language been restricted - as proposed by the Chairman via Captain Ramsey - the Navy would be prohibited from restoring privately owned facilities.

On the other hand, if they were specifically mentioned, the question of precedent would be brought up (as it was on the Meritorious Claims Act) and the issue of the extent of Naval authority in Guam might be raised. This was something no one was anxious to bring up - particularly since many believed the Navy, by virtue of Guam's status as a military reservation, already had the necessary power to accomplish what it wished to without further permission from Congress. This was borne out by no less an expert than Congressman Bradley, a former Naval Governor of Guam, who stated during this hearing:

"I do not think you are establishing a new precedent ... I do not think it is a new precedent, because the claims, as cited by you, Mr. Drewry, in connection with the War Between the States was an entirely different situation. Here we have the Navy administering the island. There is a different situation existing there than would arise in a State or Territory of the United States where private property was destroyed. This island, under act of Congress, is under the control of and administered by a military or naval governor. It is an entirely different situation."

Therefore, a compromise was reached. Amendments adding "publicly owned" or "privately owned" were scrapped, leaving the interpretation of "permanent facilities" up to the Navy.

Nevertheless, members of the Committee were clearly under the impression that the Navy intended to restore privately owned facilities since the \$15 million figure was based on restoration of all the buildings on Guam - and was voted on with that intent in mind! Proof of this is reflected on page 593, by the following statements:

Mr. Mott: This is quite an undertaking. This amendment [publicly owned] would change what seems to me to be the or-

iginal purpose of the bill. Why not have Mr. Ploeser and the Judge Advocate before us to explain the whole thing. If they are going to rebuild the entire city, that is a different thing." (emphasis added)

And

Mr. Izac: A limitation of \$15,000,000 will provide about 5,000 temporary construction homes. How far will \$15,000,000 go when you consider hospitals, churches, schools, and so on?"

And:

Mrs. Smith: Those who are interested in starting reconstruction out there feel that the natives were very loyal. They lost everything they had, so if they can just get something started toward reconstruction, they can make it go a long way toward keeping their good will."

And:

Mr. Bradley: Apropos the placing of a limitation of \$15,000,000, I have no idea of the extent of the damage to the city, so I have nothing on which to base an estimate of cost. But I should like to point out to the committee that every day since this war started, even today, and for many days to come, we have been, are, and will be handing out \$15,000,000 a day to people in Europe, many of whom have done nothing for the United States Government. We will be paying it out to our enemies. But here is a population that was loyal and steadfast in its devotion to the United States, and we propose to limit them. Still, through the UNRRA and all the other agencies of the Government, we pour out hundreds of millions of dollars for people who have no claim on the United States Government."

(emphasis added)

And:

Mr. Heffernan: Fifteen million dollars will put all the buildings back." (emphasis added)

Nevertheless, this did not occur. Despite the fact that the amendment restricting 79-583 was not adopted, the Navy would subsequently contend that the sole purpose of the Act was to restore publicly owned buildings (i.e. Naval Government of Guam facilities). Meanwhile, Committee Chairman Carl Vinson (who unsuccessfully "suggested" the amendment via the Navy), back-

ed them up. For example, during a hearing on the Meritorious Claims Act five months later on October 18, 1945, Congressman Fogarty noted: "That bill for \$15,000,000 was not just for public buildings." Vinson replied: "Yes, that was just for public buildings." When Fogarty continued to object by saying "We had a disagreement in the committee, to cut out the public property" - Vinson informed him "We have an amendment to it. The amendment is for the rehabilitation at a cost, in aggregate amount not to exceed \$15,000,000. That does not apply to public buildings. That is pending before the Rules Committee. Mr. Ploeser introduced that bill. He called me about it today."

But nothing became of this "amendment." Instead - and possibly in response to concerns that private restoration might occur when funding was based on reconstruction of all permanent facilities - the House tabled HR, 2913, and agreed to pass the Senate version of the same bill (S. 1466) which reduced the appropriation to \$6 million.

To add to the confusion, settlement of war claims became a second priority to the overall reconstruction of the island and the building of permanent military bases. For example, on October 11, 1945, Senator Robert Taft wrote Secretary of the Navy James Forrestal, recommending that settlement of claims in Agana be delayed until permanent reconstruction plans were completed. In this letter, he noted in part:

"General Larson [USMC Commandant of Guam] came to see me about the Claims Bill and while he expressed an interest in the rebuilding of the City of Agana, I did not understand that he had such definite plans as he later revealed to the House Committee. It occurred to me that it might be unwise to settle with persons whose houses have been destroyed until this permanent plan is completed."³⁰

One week later, during hearings before the House Committee on Naval Affairs on S. 1139 (79-224), the Navy was unable to answer whether war claim awards had actually been budgeted. Asked, "How will you be able to take money from that fund [pay and subsistence of naval personnel], if you have it properly budgeted, and settle these enormous claims growing out of the loss of property in Guam?" - USN Captain Gary replied, "I cannot answer that question."³¹

³⁰Exhibit "F".

³¹House Naval Affairs Committee hearing, October 18, 1945, p. 1651.

Still more revealing is an October 23, 1945 memorandum to the Secretary of the Navy, written by Admiral King, Office of the Chief of Naval Operations - subject: "Plans for Guam."³² This document noted in part:

"1. Guam is being developed as the main naval base in the Western Pacific. This will result in the necessary construction or reconstruction of civil and military facilities ...

"3. Three bills are being considered by Congress and their passage in the near future is anticipated:

"(b) The Guam Claims Bill which will provide for payment to the residents of Guam of claims for damage to real or personal property, or for injury and death."³³

"4. Plans for the development of a permanent naval base are now being prepared ... It is expected that the over-all development plan will be crystallized within the next few weeks ... This will require legislation. The Navy can then make available to the War Department such terrain as may be approved for permanent Army post-war activities.

"5. When the area required for military purposes has been fixed, acquisition thereof should proceed promptly. It will then be known what federal lands are available for transfer to the Naval Government for resettlement purposes, and definite plans for the rebuilding and relocating of cities and towns can be completed ...

"7. The Land and Claims Commission convened by the Chief of Naval Operations pursuant to your letter of 1 March 1945, directing him to plan for the rehabilitation of Guam, has accumulated the facts regarding all known claims in Guam, and settlement thereof may proceed as soon as the Guam Claims Bill has been passed and you have approved regulations for its administration. It is planned that settlements for property shall be coordinated with plans for the rehabilitation of Guam, and, as far as possible, with the availability of building materials, to the end that when the inhabitants receive their money, construction on their own land may begin immediately.

³²Exhibit "G".

³³This description of S. 1139 is more than a little misleading. Senator Taft's amendment, deleting the Commission's power to settle death and injury claims, passed the Senate on October 9, 1945.

"8. Assuming the early reestablishment of the Naval Government, the enactment of pending legislation and the availability of required technical and professional personnel, it is estimated that actual work on the rehabilitation of Guam can start within ninety days ... It is considered that plans now developed and currently under consideration will accomplish the early rehabilitation of Guam and provide for making it a model of naval civil administration as well as a strong naval base."

Nevertheless, on May 6, 1947 - over a year and a half later, a transcript of a Bureau Chiefs Meeting convened by the Secretary of the Navy, reveals that these plans had still not "crystallized". For example, the following is reflected (in part) on page 9-10:³⁴

"Captain Jennings: ... The biggest problem that the naval governments are confronted by in the area now is on Guam. You all know the extent of the devastation on Guam during the war. Lack of labor, shortage of materials, and other considerations have prevented us from making the progress toward rehabilitation of the islands we would like to see."

"Our principal difficulty at the present time is the allocation of land. As yet, we have never had a firm decision as to what portions of the island of Guam are to be required for the permanent, postwar installations ..."

"Assistant Secretary Kenney: When is that on-site board going to finish?"

"Captain Jennings: I heard that the report was due on the 15th of May, sir, but that is just rumor."

(emphasis added)

And (on page 11):

"Captain Jennings: The second problem in conjunction with that is to determine the site, or rather to determine what land we can allocate to the civilians on Guam. Two villages are now in doubt. One or both of them may have to be moved. Until we can resolve those questions, we are stymied in our final program for Guamanian rehabilitation."

"Assistant Secretary Kenney: Is that one of the decisions the on-site board is going to make?"

³⁴Quoted portions of this transcript are included as Exhibit "H".

"Captain Jennings: That is a decision of the on-site board. When that comes out, it will give us a firm decision as to what land is required for military purposes."

(emphasis added)

Finally (on pages 12-13):

"Assistant Secretary Kenney: Who's got the responsibility for that? Is that Admiral McCrea's? What I'm trying to find out is who make the decision and who makes the recommendation that we do it? The question has been made a number of times."

"Captain Jennings: I have made a recommendation and the Fiscal Director's Office is now overhauling the fiscal arrangement for it to see what can be done legally. Then we will put it up to BuDocks for the implementation of it."

"Assistant Secretary Kenney: O. K."

In fact, the lack of meaningful action on civilian rehabilitation programs became the subject of a scathing article and editorial in the *New York Times* on February 19 and 20, 1946:³⁵

Writing from Guam, *Times* reporter Robert Trumbull noted that no money had been appropriated to rehabilitate Guam despite a bill authorizing same ("As in the Philippines, there are rehabilitation problems too, and again as in the Philippines an act by Congress is holding back payment of the debt the United States owes to a loyal people"). As a result, the article explained, people "live in squalor" and "This land belongs to the natives and a law authorizes the Government to buy the tracts some day. Meanwhile the military government has the problem of persuading the natives not to build sorely needed homes on their land because the Government may condemn it for military purposes. The natives have no place to go, however."

The editorial "Forgotten Guam," summarizing the article, concluded:

"Our record in Guam was bad enough before the war. We left the islanders to the whim of Navy commanders, who were periodically changed, and many of whom did little about their charges' welfare. Now we repay their loyalty during the war with unconscionable inaction. What must they think as they see millions of dollars being poured into military installations while

³⁵Exhibit "I".

nothing is being done to restore the homes that we pounded into rubble?"

The Navy was quick to respond. Deciding not to refute these charges in an open letter to the editor, Secretary Forrestal dispatched USMC General and Commandant of Guam Henry Larson to the newspaper's office. According to a March 5, 1946 memorandum from Larson to Forrestal,³⁶ the General explained that he attempted to see the Publisher and Managing Editor (Sulzberger and Catledge respectively) but settled for the City Editor and writer of the editorial.

Larson explained, "It appears that the editorial was written primarily in line with a policy of the Times to promote self-determination and greater autonomy of peoples, Guamanians in particular. They would like to see some kind of citizenship given the natives of Guam."

He then went on to inform the Secretary that he justified the Navy's handling of Guam in part on the basis of passage of the Guam Meritorious Claims Act and the Guam Land Transfer Act.

"Mr. Hailey [the writer of the editorial] did not know of the enactment of the Meritorious Claims Act and the Land Transfer Act, both of which will accomplish what the editorial indicated was a failure of the Department of Congress to accomplish native rehabilitation."

And:

"Both the City Editor and Mr. Hailey seemed very receptive and it is believed that Mr. Hailey will prepare some helpful article based on notes he made during our discussion."

(emphasis added)

Nevertheless:

"I will call on Mr. Sulzberger when he returns from Florida."

The Memorandum included a postscript by Forrestal: "Good. Thank you for a constructive job."

³⁶Exhibit "J".

Meanwhile, the Navy wanted to make sure it got its point across. Enclosed in a February 1946 packet to the Secretary of the Navy (suggesting a rebuttal to the *Times* story), is a memorandum from USN Captain L. S. Sabin which concludes with a plan to discredit the *New York Times* story.³⁷

"I am informed that the editorial was brought to the attention of the group of correspondents who left yesterday under Navy sponsorship for a trip through the Pacific Areas to report on surplus property and that the inaccuracies of the *Times* reports will be refuted in subsequent despatches from these correspondents to their newspapers." (emphasis added)

Interestingly, during June 3, 1947 hearings before the House Committee on Public Lands relative to Organic Act legislation, former Secretary of the Interior Harold Ickes testified on page 242:

"Exactly a year ago this week, I stated these and other facts in a speech before the Institute of Ethnic Affairs and the Institute of Pacific Relations here in Washington.

"The Secretary of the Navy lost no time in charging me with irresponsible criticism in a long communication to the *New York Times* over his own signature, a communication that refuted no single fact.

"When Secretary Forrestal's charge of irresponsible criticism proved to be a dud that it was, he hastily arranged a dress parade tour of the Pacific Islands for a carefully selected group of newspaper correspondents who were given the hospitality for which the Navy is famous.

"However, the hoped for white wash by the correspondents failed to materialize."³⁸

Continuing his testimony, Ickes noted with respect to reparations:³⁹

"I hope that the secretary and the members of this committee, have read carefully the report of the Special Civilian Committee appointed by Mr. Forrestal. That report fully supports the most important allegations which I made of wage discrimination against the Guamanians; extreme dilatoriness in the disposal of war damage claims; laxity in performing the work of

³⁷Exhibit "K".

³⁸It is not clear whether this was on the same trip by correspondents referred to by Sabin.
³⁹page 243.

rehabilitation, failure to pay Guamanian owners for lands seized, seizure by the Navy of the Guamanian bus system, that Guam and American Samoa are governed by men, and not by law, and that civil rights exist, if as and when the Navy graciously permits them to exist.

"I hope, for their sakes, that Messrs. Hopkins, Ryerson and Tobin will not be charged with 'irresponsible criticism' by the Secretary of the Navy, for having made the same allegations which I made twelve months ago." (emphasis added)

Blasting Hopkins' contradictory recommendation for continued Naval rule and what Ickes termed "the inefficient and even brutal handling, by the Navy, of the rehabilitation and compensation and war damage tasks," he added, "Here we have another admirable instance of the three wise monkeys being able to 'hear no evil, see no evil, speak no evil' so far as the Navy is concerned."⁴⁰

Pointing out that only 5.8% of the "estimated value" of Claims on file had been processed, Ickes added, "At this rate, the settlement of the claims will not be completed for more than twenty years."⁴¹ On the issue of the procedures followed by the Navy to adjudicate claims, Ickes continued on pages 250-251:

"Such a pittance may be observed by referring to Claim No. 21 transmitted to Congress on April 5 last; the life of the man who was beaten to death by the Japanese because of his loyalty to the United States was capitalized at precisely \$665, with .10 thrown in for good measure.

"Such procedures (sic), and such shameful results as above, have not been forced upon the Navy by Congress or the President or the Budget or by anyone. They are exclusively the Navy's own and throw a strong light on the Navy's high regard for human life."

In the end, the most objective analysis of the Navy's administration of the reparations/rehabilitation program - and the confusing policy decisions which greatly contributed to its deficiencies, can be found on pages 5 and 6 of Hopkins' letter of transmittal to the Secretary of the Navy dated March 25, 1947. It states in part:

⁴⁰pp.247-248

⁴¹p.249

"In the case of Guam, the war brought wide-spread destruction to homes, public buildings and utilities. But over and beyond this it brought deaths to many, brutalities to more, and ruthless oppression to all over a long period. Now months after cessation of hostilities they find themselves, because of the strategic position of their native island, outnumbered in population by military forces ... In considerable number they are dispossessed of home and lands which have been destroyed or taken from them and they are without adequate understanding of the processes by which to secure replacement or compensation for these. This statement is not in disparagement of government officials stationed there who are bending every effort to bring order out of chaos, or of any government department, bureau or agency. All of these are working within the limitations of legal restrictions and prescribed technical routines which seemingly it has proved over-difficult to modify or speed up. There is no lack of knowledge on the part of Navy officials as to what ought to be done or how to do it if appropriations could be secured and made promptly available for an adequate reappointment of lands and reconstruction of homes. Only so can justice be done to a valiant group of Americans who at great cost to themselves remained steadfastly loyal during the war but many of whom still lack housing to replace that destroyed by our bombs and shells or who still lack land for subsistence to replace that taken from them for military uses. It would seem to your committee that in so special a case as this our government could well be very generous in method of distributing its relief as well as generous in amount awarded. It has been neither." (emphasis added)⁴²

POSITION THREE

THE ONE-YEAR DEADLINE IN WHICH TO FILE CLAIMS WAS INSUFFICIENT.

This is so because it failed to take into consideration the fact that: (a) English was a second language; (b) the massive disruption caused by the war; (c) the reluctance of Guamanians to come forward to register claims in the year after the war; (d) Administration of the reparations program by the Navy's Land and Claims Commission was burdensome and confusing -

⁴²See Exhibit "E."

conductive to delay and misrepresentation; and (e) The United States Congress has extended the deadline for filing claims to other American nationals/citizens. Guam is one of the few jurisdictions where this did not occur.

English was a second language.

Although Guam had been an American possession since 1898, English was then a second language to a great many Guamanians. Moreover, while a large number of the people ~~spoke~~ English, less could read it. This is particularly important considering the fact that the Land and War Claims Commission required written statements - and in fact - often communicated with claimants in writing.

The massive destruction caused by the war.

As previously noted, Guam was shelled for thirteen consecutive days prior to its liberation. As a result, 80% of all structures existing on the island were leveled. The capitol of Agaña - which prior to the war housed between 50%-70% of the population - was in rubble, along with numerous other villages. To complicate matters, the island was soon transformed into the major staging area of the Philippine campaign. Over 200,000 servicemen and contract employees were brought to Guam to run the war machine - while vacant land was converted into airstrips, bases, storage facilities and roadways.

Meanwhile, an estimated 19,000 Guamanians remained homeless: in the days after the war, temporary camps were hastily constructed in Anigua, Agat, Yona, Talofofo, and Deddedo - and people were shuttled back and forth to accommodate military operations. When the war ended in 1945, the very map of the island was completely changed, and, where previously people lived in one village, they were now resettled in twenty-one

All this confusion and movement made it virtually impossible for the Land and War Claims Commission to communicate - or keep in contact with - large segments of the population. As a result, many people were either unaware that a Claims Commission was even on Guam - or that they had only one year in which to file a claim.

This is borne out by responses to a recent survey conducted on surviving claimants.⁴³ Of the 259 answers representing 12% of 2,129 survivors - and 30.5% of the 850 people questioned - 192 - or 74% of those who answered said they did not file their claims by November 1946.

Out of that number, 52% listed "I didn't know there was such a Commission on Guam at the time" as one of the reasons for not having filed on a timely basis - while 27% listed "I didn't understand that I had to file a claim by November 1946" - and 11.5% noted "I was more concerned about making a life for myself and my family after the war than filing a claim by November 1946."⁴⁴

The reluctance of Guamanians to come forward to register claims in the year after the war.

Another reason the one-year deadline was unreasonable was that it did not take into consideration the reluctance of Guamanians to come forward to register claims in the year after the war. Hearings before Congress in 1945 contain testimony that the Commission was having difficulty convincing claimants to file because Guamanians considered it disloyal to presume on the United States, or to claim any obligation on the part of the Federal Government. For example, on March 14, 1945, Congressman Walter Ploeser, Chairman of the House Subcommittee on Naval Affairs, Committee on Appropriations, testified on the Navy's Appropriation Bill For 1946:

"At the time we were there [Guam] no one of the civilian group or the inhabitants of the island had ever made a complaint to our Government, or to our naval forces occupying the island, about their claims for the destruction of their property.

"The story goes that these people stood on the hill and as the ships bombarded Agaña they cheered every time we knocked a building down and did everything in their power to help us in our fight against the Japanese. That is quite unusual for an American national. Certainly it would be most unusual for an American citizen not to make a claim after the Government had destroyed his property, but these people have not done so. There has been no complaint whatsoever. They were waiting

⁴³See Exhibit "B".

⁴⁴See Exhibit "L" for a breakdown of the survey results.

patiently, feeling confident that the Americans would do something about it." ⁴⁵ (emphasis added)

Again, on October 18, 1945, in hearings before the House Naval Affairs Committee on the Guam Meritorious Claims Act, USMC General and Commandant of Guam Henry Larson stated:

"I can say that not one native to this date has approached me about claims or damages. The Claims Commission went out and started ferreting out claims, and asking them to present information on which the commission could judge the proper amounts to be paid eventually. The people have not come forward with their claims, because they have absolute confidence in the United States Government and the naval administration of the island, that they will be eventually taken care of." ⁴⁶ (emphasis added)

Moreover, on October 9, 1945, in testimony before the Senate Committee on Naval Affairs on the Guam Rehabilitation Act, both Larson (p. 8) and Ploeser (pp. 15-16) made the following comments concerning the need for immediate rehabilitation action:

"Larson: The people of Guam are intensely patriotic; they have shown their loyalty to the United States throughout the war.

"They have permitted us to go ahead and take whatever we wanted, without even one question. Not even one of them has come to me and spoken to me about claims or anything of that sort.

"We hope that the claims bill will be passed soon and that the claims commission can go ahead and start making settlements soon.

"The people have been very patient throughout the war. Naturally, now that the war is over, they are beginning to look for some action. I would like to have the means of carrying through that action before very long.

"Senator Byrd: They don't claim that we have any obligations to them of that nature, do they?"

⁴⁵Page 67. Interestingly, a participant in that hearing 43 years ago, was the Honorable Jaime Whitten, present Chairman of the House Appropriations Committee.
⁴⁶Page 1653.

"General Larson: No, sir, they do not. But, take the streets, for example. We are going to replace them. Their homes, for example, in Agaña are going to be rebuilt through the claims bill; we want to build the streets and the sewers and that sort of thing."

And:

"Mr. Ploeser: I think that speed is an element in this legislation, because I cannot recall any place in the annals of American history where any of our people have been wiped out, such as these people were and all their physical property, without a single person attempting to file a claim.

"That was the condition when I was there last December, several months after we had occupied Guam. At that time, apparently, up until the time the Claims Commission went to Guam to ask for claims, not a single national came in and said, 'Here, the Government owes me this. They knocked down my house, and I want it replaced'."

"Instead, they labored arduously to support the war effort wherever they could." (emphasis added)

Administration of the reparation program by the Navy's Land and Claims Commission was burdensome and confusing - conducive to delay and misrepresentation.

Inadequacies with respect to changing policies and the overall rehabilitation of Guam has already been covered in this report. The following deals with deficiencies in the actual administration of the reparations program by the Navy's 1946 Land and War Claims Commission.

As noted previously, members of the Commission arrived on Guam in 1945. In November of that year, the Guam Meritorious Claims Act became law. Under provisions of that Act, all claims had to be filed by December 1, 1946. This meant that in one year's time - not only did the Commission have to make its presence known and explain all its rules, regulations and procedures to people numb from the war, frightened by the future, dispossessed of their homes and confused by the massive changes in their island - but all claims had to be filed within that one year's deadline

Procedures for filing and processing claims were prescribed in "Regulations for the Administration of Public Law 224-79th". Commission representatives would meet claimants either at their village Commissioners' office or home - or at the Commission office. In addition to filing a claim under oath and providing evidence of injury, each claim had to be substantiated by sworn statements from at least two disinterested witnesses. Thereafter, each claim was investigated, and, in cases involving destruction of real or personal property, appraised to the best of the Commission's ability.

In commenting on the effectiveness of these procedures, the Hopkins Committee was to note:

"The regulations issued by the Navy Department to implement the Act seem unduly complicated and restrictive. The Commission should be allowed to make its own rules of procedure rather than having prescribed the procedure of courts of inquiry and boards of investigation as a guide (Rule 3a), for although it is only stated to be a guide the tendency is to adhere to it rather strictly. The paper requirements for each claim (Rule 30) are exceedingly burdensome and serve no useful purpose. They should be eliminated. The requirements of proof with respect to title to real property (Rule 4c) could be simplified. All these requirements of the regulations increase the difficulty and burden of the work of the Commission, cause considerable delay in effecting payments and hinder unduly the speedy completion of the task of giving redress to the unfortunate victims of the holocaust of war." ⁴⁷ (emphasis added)

Nevertheless, these procedures were not modified. Instead, in January 1950, the Judge Advocate General began requiring the Commission to inform claimants whose awards had been certified, to personally write the General Accounting Office in Washington, D. C., making reference to specific Appropriation Acts - rather than continuing to disburse payments on Island ⁴⁸

But by far the biggest problem encountered by the Commission was its inability to adequately inform claimants of (a) its presence on Island; (b) what injuries were allowed under 79-224; and (c) the one-year deadline. This is borne out by the fact that out of 2,129 survivors, 97% filled out affidavits with the 1980 Guam Reparations Commission listing injuries

⁴⁷Page 13 - "Discussion" (See Exhibit "E").

⁴⁸Exhibit "H".

disallowed by 79-224, i.e., forced labor, internment and forced marches. Secondly, in a recent survey of 259 survivors, 74% admitted to not having filed on a timely basis. Again, of that number, the majority indicated they were either not aware a Commission was on Island in 1946 - or that a one year deadline existed.

Perhaps the best proof of the Commission's shortcomings in this regard is found within its own records. One of the major reasons for its denial of claims was the failure to file on a timely basis. This was so - more often than not - because of misrepresentation or misunderstanding of the claims process by various officials (including local village Commissioners).

To give but four (out of many) typical examples:

(1) On September 8, 1947 - just nine months after the deadline passed - Antonio T. Taison appeared before the Commission to register a claim. According to a memorandum by USN Lt. Commander D. H. Dickey:

"Basically, it appears that Mr. Taison was working at forced labor for the Japanese at the Anigua Soap Factory, and was badly burned when one of the soap vats either burst or spilled over. He was advised (apparently) by the Commissioner of his Village that he had no claim against the Government during the period when all claims were being filed before the Commission in 1945-1946.

"... Mr. Taison was advised by me that in spite of the fact that he appeared to be a most worthy case, and that if his claim had been filed in time, it could have been considered by the Commission, the fact that the Act states so specifically the final date on which any claim could be filed with the Commission in order for them to be considered under the terms of Public Law 224, that the Commission at this time had no alternative but to refuse to consider any claim by him." (emphasis added)

Moreover, according to an affidavit signed by Rosa T. Cruz (Taison's daughter) and compiled by the 1980 Guam Reparations Commission under authority of Guam Public Law 15-146, Taison's wife, Ignacia, was also made to do forced labor for the Japanese while she was four months pregnant. As a result of this work and beatings she received, a miscarriage resulted and she

lost the child. To date, no compensation has been awarded to the family through no fault of their own - but because they were misinformed.⁴⁹

(2) On October 7, 1947, Juan Santos Tenorio appeared before the Commission. According to a memorandum by Dickey:

"From Mr. Tentorio's [sic] story it would appear that he was beaten by the Japanese in September, 1942, about the back and head, so that he was bed-ridden for one month and two days, and later hospitalized for four months...."

"... Mr. Tentorio [sic] also advised us that he had never been injured by the Commissioner at Dededo that he had a proper injury claim which should be filed before the Land and Claims Commission prior to 1 December 1946 (Washington, D. C. time). He had been interviewed by two 'intelligence officers' (one of whom apparently was a policeman), and he had supposed that this interview constituted the filing of a claim for his injuries. He was also under the further misapprehension that the 'Perit-orous Claims Act applied only to those who had been injured by machine gunne [sic] fire, bombing, or shrapnel [sic]."

"... A check of our files does not reveal that any claim for injury or death was filed by Mr. Tentorio [sic], nor did the claim for personal property loss during the war contain any references to those injuries. In view of this, Mr. Tentorio [sic] was advised that it was impossible for the Land and Claims [sic] Commission to entertain his claim ... since the claim had not been filed with Commission prior to the deadline set by the law ..."

"... This would appear to be another incident out of Dededo which shows lack of proper dissemination of information by the Commissioner at that place during the time when every effort was being made on Guam to apprise all of the people of the necessity of filing their claim with the Commission for any injury, death, or losses received incident to the war."⁵⁰
(emphasis added)

⁴⁹The memorandum and copy of the affidavit filed with the Guam Reparations Commission are included as Exhibit "N".
⁵⁰Exhibit "O".

(3) A particularly grisly example of a living survivor who was denied compensation is that of Magdalena Tenorio Barcinas. Affidavits filed with the 1980 Guam Reparations Commission reflect that her husband, Martin C. Barcinas, died after forced labor on the Japanese Air Base. Her daughter, Antonia A. Dimpan, was raped and beaten by a Japanese soldier. Her son, Arthur, was killed on May 13, 1944.

On November 7, 1947, Magdalena appeared before the Commission to file a claim on behalf of her dead husband. According to a memorandum by USN Lt. Commander W. H. McConnell:

"She was informed by the undersigned that the deadline for filing such claims had expired on the first of December 1946, and that no action could be taken by the Commission at this time in her behalf. She was told that, if at some future date a policy change were initiated wherein her claim would be acceptable, the Commission would at that time consider her claim."⁵¹

Magdalena T. Barcinas is still waiting for this policy change to be "initiated."

(4) Another case of a living survivor who was denied compensation because of late filing was that of Francisco Flores Crisostomo. On or about August 1944, his young son, Jesus Duenas Crisostomo, discovered a group of Japanese soldiers hiding in a concealed area, while pointing out their location to American troops, young Crisostomo was killed by a Japanese bullet which pierced his forehead. According to a memorandum dated September 26, 1947, USN Lt. Commander Dickey noted:

"An Army doctor and Chaplain were called. The doctor pronounced the boy dead and the Chaplain administered last rites. Mr. Crisostomo [Francisco, the father] was advised to report the unfortunate incident to the Department of Records and Accounts at Naval Government. According to Mr. Duenas' [Crisostomo's interpreter] story, the doctor and the Chaplain promised Mr. Crisostomo that they would do whatever was necessary to see that he was given whatever benefits could be had for the death of his son.

⁵¹The memorandum and copies of affidavits filed with the Guam Reparations Commission are included as Exhibit "P".

... Mr. Crisostomo has no claim filed with the Land and Claims Commission, either for death or injury of any member of his family, or for any personal or real property.

... In view of the above, Mr. Crisostomo was advised that the Commission could not enter a claim at this time for the death of his son - that we were prevented by the terms of Public Law 224, 79th Congress.

Francisco's son was not his only casualty. In affidavits filed with the 1980 Guam Reparations Commission, he also lost his wife, Maria Flores Crisostomo, after she was beaten - and a brother, Vicente Flores Crisostomo, as a result of forced labor.⁵²

The United States Congress has extended the deadline for filing claims to other American nationals/citizens.

Guam is one of the few jurisdictions where this did not occur. In 1962, Congress enacted 87-846, amending the War Claims Act of 1948 (80-896). The purpose of this legislation was: "to provide, more than 16 years after the close of World War II, for determination of the amount and validity, and for the payment, of claims of American nationals who suffered injury or death under circumstances specified in the legislation, or who suffered property losses as a result of military operations during World War II in certain European countries and in areas attacked by Japan."⁵³ Moreover, a review of the Act's legislative history reveals that 87-846 was enacted to provide some measure of relief to American nationals whose claims had been waived by the 1951 treaty with Japan.

Significantly, 87-846 - in effect - waived the previous one-year deadline for American nationals to file claims under the Philippine Reparation Act of 1946 (79-370).⁵⁴

⁵²The memorandum and copies of affidavits filed with the Guam Reparations Commission are included as Exhibit "D".

⁵³House Report No. 2035, 87th Congress, 2nd Session, p. 7.
⁵⁴79-370 resulted in private claims awards amounting to an estimated \$390 million to more than 1.2 million recipients as of 1953, according to House Document No. 67, 83rd Congress, 1st Session, p. 26. Interestingly, according to House Document 580, 81st Congress, 2nd Session, page 45: "Claims for loss or damage to property consisted chiefly in reports of seizure or destruction of domestic animals and for destruction of dwellings by the Japanese or American forces during the period of hostilities. Many of the claims with regard to property had previously been submitted to the Philippine War Damage Commission and were disallowed. Many of these claims were disallowed for untimely filing." (emphasis added)

Sixteen years later, Sec. 202 of 87-846 stated in part:

... That claims for loss, destruction, or damage occurring in the Commonwealth of the Philippines shall not be allowed except on behalf of nationals of the United States who have received no payment, and certify under oath or affirmation that they have received no payment on account of the same loss, destruction, or damage under the Philippine Rehabilitation Act of 1946, whether or not claims was filed thereunder. ... (emphasis added)

87-846 also provided:

"Sec. 202. The Commission is directed to receive and determine according to the provisions of this title the validity and amount of claims of nationals of the United States for-

"(a) loss or destruction of, or physical damage to, property located in ... or which occurred in the period beginning July 1, 1937, and ending September 2, 1945, to property in territory occupied or attacked by the Imperial Japanese military forces (including territory to which Japan has renounced all right, title, and claim under article 2 of the Treaty of Peace Between the Allied Powers and Japan) except the island of Guam. ... (emphasis added)

POSITION FOUR

THE UNITED STATES CONGRESS HAS BEEN MISINFORMED THAT A REPARATION PROBLEM NO LONGER EXISTS ON GUAM

Why was Guam specifically excluded from 87-846? Perhaps the best answer can be found in a November 17, 1982 memorandum from the Associate Solicitor, Division of General Law, Department of Interior, commenting on Guam's request for a war claims commission.⁵⁵

⁵⁵See Exhibit "A", pp. 8-9.

"There is no explanation in the congressional reports or in the floor debates in Congress as to why the exception was made for Guam. However, in reviewing congressional action in previous years, it is apparent that Congress meant to compensate United States citizens for World War II losses who had not previously been compensated and that Congress believed that the claims of Guamanians had been satisfied under the Guam Relief Act." (emphasis added)

To demonstrate his theory, the Solicitor proceeded to quote from the March 1, 1960 House Congressional Record (p. 4051) on H. R. 2485 - a bill almost identical to H. R. 7283, which eventually became 87-846:

"Mr. Black: Mr. Chairman, the simple purpose of the bill H. R. 2485, is to provide some measure of compensation to nationals of the United States who sustained damage, death or disability as a result of World War II, and for whom no provision has yet been made. Fourteen years have elapsed [sic] since the cessation of hostilities. During that time Congress has provided extensively for war damage rehabilitation in Guam and the Philippines under the Guam Relief Act and the Philippine Rehabilitation Act."

But a reparation problem still existed in Guam. Unfortunately, the island did not have anyone to speak for it.

In retrospect, it is not surprising that Guam was "lost in the shuffle". As early as February 26, 1946 - slightly more than three months after the Guam Meritorious Claims Act was enacted - House Insular Affairs Committee Chairman Cole had to remind the High Commissioner of the Philippines that Guam too had suffered during the war. Testifying in favor of the 1946 Philippine Rehabilitation Act, Paul V. McNutt stated (on page 13):

"Remember that the Philippines are the only American territory - and they were, and are, and will be American territory until July 4, 1946 - the only American territory that suffered large-scale physical damage during the war."

To which Cole replied (on page 15):

"Mr. Cole: Mr. Commissioner, while it is not very important, I noticed that you emphasized that the Philippine Islands was the only American territory which suffered damage as the result of the war, as evidence or justification supporting this authorization. That is not quite correct."

"Mr. McNutt: Well, you are talking about Pearl Harbor.

"Mr. Cole: I am thinking principally of Guam, where there was considerable damage."

"Mr. McNutt: Those were military installations only.

"Mr. Cole: Well, whatever they were, there was other damage, too. But that is not important.

Two months later, Cole again had to make this reminder - this time on the floor of Congress:

"Mr. LeCompte: The Philippine Islands, I believe, is the only place under the American flag that suffered devastation by reason of enemy invasion. Of course, there was the one treacherous attack on Pearl Harbor on December 7, 1941, but the enemy actually came into the Philippine Islands, occupied the islands, devastated the country, and destroyed property and lives."

"Mr. Cole of New York: Mr. Speaker, will the gentlemen yield?"

"Mr. LeCompte: I yield.

"Mr. Cole of New York: It is not important, but I should like the gentleman not to overlook the damage that was done to Guam.

"Mr. LeCompte: That is true, but I think the gentlemen will agree that the damage there was not comparable in amount to that suffered in the Philippine Islands. Probably the same could be said of Wake and Midway."⁵⁶

A much more serious oversight occurred in the implementation of the 1951 peace treaty with Japan. Although there is no doubt that the United States meant to waive its claim and the claims of its citizens for war reparations when it agreed to the treaty⁵⁷ - Chapter V, Article 14 (a)(1) of that treaty stated in part:

"Japan will promptly enter into negotiations with Allied Powers so desiring, whose present territories were occupied by Japanese forces and damaged by Japan, with a view to assisting to compensate those countries for the cost of repairing the

⁵⁶House Congressional Record debate on the Philippine Rehabilitation Act, 79th Congress, 2nd Session, April 10, 1946, p. 3442.

⁵⁷See Exhibit "A" - Memorandum from Associate Solicitor, Division of General Law to Assistant Secretary, Territorial and International Affairs, November 17, 1982, page 6.

damage done, by making available the services of the Japanese people in production, salvaging and other work for the Allied Powers in question." (emphasis added)

As a result, approximately \$9 million worth of Japanese assets were turned over to the Philippine Government.⁵⁸ Guam - which was likewise occupied and damaged by the Japanese - received nothing since the United States chose not to file a claim under the Treaty.

This was particularly ironic since Japanese labor was utilized in the reconstruction of Guam after the war. In fact, it was initially intended that Japan would bear the cost of the rehabilitation/reparation program. This is substantiated by testimony in hearings on the Guam Meritorious Claims Act - six years before the treaty was signed.⁵⁹

"Mr. DeLacy: Yes. I would like to ask why we do not collect these damages from Japan.

"Captain Gary: Well, that comes under reparations. Mr. Congressman, and we felt that we ought to do something about Guam quickly, and if we want to do something about Guam until we collect from Japan, it would probably be too late.

"Mr. DeLacy: Why do we not start moving textile machinery and other stuff like that out of Japan and claim our reparations? We are in control of Japan.

"Captain Gary: That comes under the handling of reparations rather than the Navy.

"The Chairman: I imagine when the settlement with Japan takes place, that we will charge all we pay out against Japan. And in the long run, while we will pay it out in the first instance, Japan will eventually pay."

Nevertheless, this did not occur.

Instead, Congress enacted the War Claims Act of 1948 (80-896), providing war damage relief to various classes of American internees, prisoners of war, religious organizations and defense contract employees. Because Congress recognized this was but a "stop gap" measure, 80-896 mandated its War Claims Commission to draft a detailed report advising lawmakers as to other claims not covered in the Act. In 1951, the Commission submitted its

⁵⁸House Report No. 67, 83rd Congress, 1st Session, p. 41.

⁵⁹House Committee on Naval Affairs' hearings on October 18, 1945, p. 1652.

report.⁶⁰ This was followed by a more detailed analysis in 1953.⁶¹ Meanwhile - and particularly after ratification of the 1951 treaty with Japan - Congress was under increasing pressure to enact remedial legislation providing relief to American nationals whose rights had been waived by the treaty and/or who were not covered by the War Claims Act of 1948.

Guam began its own lobbying effort. Beginning in the mid 1950s, delegations headed by the Speaker of the Guam Legislature, Antonio Borja Won Pat - arrived in Washington D. C. to discuss various matters with federal officials. Among those issues were reparations - specifically, amendments to the War Claims Act of 1948 and inclusion of Guam in same. In 1954, Won Pat submitted a report of his progress to the Second Guam Legislature. On page 22, the following is noted:⁶²

"The Committee learned that there had been some effort made in the past by the Department of the Interior to amend the War Claims Act so as to make adequate provision to cover Guamanians falling with the above categories but to no avail because of objections by the Defense Department." (emphasis added)

Noting "the essence of the problem" was a General Counsel opinion to the effect that the people of Guam prior to passage of the Organic Act were not citizens of the United States, Won Pat added (on page 23):

"Still a further problem arises in connection with Guamanians interned by the imperial Japanese Government during the occupation. This is by far the largest group involved and it is expected that any proposed amendment might be resisted on the grounds that other islands with similar claims might also request relief. A special amendment would, therefore, have to be proposed to include Guam but exclude other areas." (emphasis added)

The end result: because of opposition to Guamanian inclusion in amendments to the War Claims Act of 1948, Guam was specifically excluded from 87-846 - although Guamanians captured on Wake Island eventually received compensation.⁶³

⁶⁰House Document No. 580, 81st Congress, 2nd Session.

⁶¹House Document No. 67, 83rd Congress, 1st Session.

⁶²Quoted sections of this report are included as Exhibit "R."

⁶³For reasons for opposition and rebuttals by Guam, see House Interstate and Foreign Commerce Committee hearings on Bills to amend the War Claims Act of 1948, May 19, 1959, pp. 93-95.

POSITION FIVE

THE UNITED STATES HAS A "MORAL" OBLIGATION TO CREATE A WAR CLAIMS COMMISSION FOR GUAM.

The United States has a "moral" obligation to create a war claims commission for Guam because: (a) Guam was the only U. S. territory occupied by the enemy during the war and many uncompensated claimants received injuries inflicted on them solely because of their loyalty to the United States of America; (b) the United States Congress fully intended to "make Guam whole"; (c) Guam has no legal recourse against Japan since its claims were waived by the United States when it entered into a peace treaty with Japan; (d) both the United States Congress and Navy have conceded a moral obligation to compensate Guamanian victims of Japanese aggression; and (e) reparations for Guam is not a "new" issue. It has been consistently raised by local enactments and resolutions, as well as through discussions with Congressional leaders over the years.

Guam was the only U. S. territory occupied by the enemy during the war and many uncompensated claimants received injuries inflicted on them solely because of their loyalty to the United States of America.

Her people suffered atrocities including death, personal injury, forced labor without compensation, forced marches, internment in concentration camps and the loss of real and personal property. Many of the 175 uncompensated claims for death and 1,881 uncompensated personal injuries (compiled by the 1980 Guam Reparations Commission, and supplemented by the late Senator Cecilia Bamba) - were inflicted solely because of Guamanian loyalty to the United States of America.

As one example out of many, the case of Jose Toves Santos is typical. According to his affidavit, signed July 16, 1984⁶⁴ Santos was beaten by the Japanese because he was suspected of helping two American servicemen (Tyson and Myers) escape.⁶⁵ As a result of being tortured, he lost his right eye. He was also threatened with execution and actually hanged by his tormentors. During the occupation, Santos was imprisoned and deprived of medical attention after surgery for an appendectomy. His sister, Julitta,

⁶⁴Exhibit "S".

⁶⁵They were later caught and executed.

was raped by the Japanese. For a total of 30 months he was "employed" without pay by the Japanese in heavy construction work at an air base.

The United States Congress fully intended to "make Guam whole."

The best proof of this is the fact that the Guam Meritorious Claims Act was passed. In addition, Congress enacted numerous appropriations to pay off awards authorized under this law. Nevertheless, the Guam Meritorious Claims Act was flawed. Even had all claimants filed by December 1946, the problem would have continued to exist, i.e. no provisions for forced labor, forced marches or internment.

Guam has no legal recourse against Japan since its claims were waived by the United States when it entered into a peace treaty with Japan.

Because of this, the United States Congress has a moral obligation to settle such claims. This is substantiated by no less an authority than former Secretary of State - and drafter of the treaty - John Foster Dulles. According to his memorandum - provided to the Senate prior to ratification of the treaty - entitled "Compensation For Claims Of United States Nationals For Losses Incurred Outside Japan As A Result Of Japanese Military Operations And Occupation," dated January 31, 1952:

"Allied Powers in whose territory United States nationals sustained property losses may make such United States nationals eligible to receive such compensation as they are able to provide for war losses. It does not appear, however, that American nationals who sustained losses in the territories of any of the Allied Powers can expect to receive compensation commensurate with their losses. Accordingly, United States nationals whose claims are not covered by the treaty provisions or by the legislation of other Allied Powers, must look for relief to the Congress of the United States."⁶⁶ (emphasis added)

Therefore, in its supplemental report to Congress recommending remedial legislation, the Commission created under the War Claims Act of 1948 (80-896) would note⁶⁷

⁶⁶Contained in hearings before the Senate Committee on Foreign Affairs on the Japanese Peace Treaty, January 25, 1952, pp. 145-147.

⁶⁷House Document 67, 83rd Congress, 1st Session, p. 64.

"While as a matter of strict legal theory, the United States has not been under obligation to compensate war victims for the war damages they sustained ... as a matter of practice, this country has not only provided the means and machinery for the compensation of war damages but has progressively broadened the base on which war-damage legislation rests. As will be observed, this legislation ranges from the rejection of any responsibility for the losses sustained by citizens, though occurring on American soil, following the Revolutionary War, to the assumption of responsibility for losses, but only as to those resulting from violation of the laws of war, following the war with Spain, to the imposition of absolute liability upon a defeated belligerent for all war losses, irrespective of the place of loss, following World War I." (emphasis added)

Moreover, in its chapter discussing use of General Funds for satisfaction of property claims, the Commission summarized arguments for and against such an action - concluding⁶⁶

"Perhaps the weakest of the arguments in opposition to the payment of war claims out of general funds is that there is no legal obligation to compensate for war damages. The principle, though true, is, of course, applicable to all war damage compensation. Yet, the United States and virtually all the countries whose laws have been examined make general revenues available to compensate claimants for war damages. The Philippine Rehabilitation Act is a conspicuous example of such legislation. Obviously, the moral obligation to equalize the burdens of war is felt so strongly that nations no longer question the duty to provide relief to those who have suffered extraordinary losses as a result of war." (emphasis added)

And (on page 110):

"The Commission has concluded that the equities are in favor of making some funds available by appropriation for the partial payment of outstanding property claims arising of World War II." In reaching this conclusion the Commission was persuaded by the force of the arguments outlined above as well as by the following additional considerations:

"4 ... In the final analysis, compensation for war damages rests upon a moral obligation to see that the individual citizen does

66 pages 108-109.

not bear more than a just part of the over-all burden of war ... Had United States citizens suffered losses on American soil, no question would be raised as to their moral right to compensation ... The good fortune which the United States as a whole enjoyed in having its own cities spared destruction by war should not, in the opinion of the Commission, be converted into a misfortune to the citizen who has borne more than his burden of the cost of war."⁶⁹ (emphasis added)

And (on page 182):

"The Commission believes that first priority should be given to these claims as well as to the claims for disability or death resulting from injuries sustained in the war ...

"... The Commission is of the view that the priority claims should be paid in full, even if an appropriation from general revenue is required to compensate these claims. The basis for this recommendation is the clear moral obligation which the Government owes these claimants." (emphasis added)

Finally (on page 184):

"In recommending the payment of property claims arising out of the War of 1812, the House committee to which the question was referred commended a principle to the Congress which the War Claims Commission believes is applicable to claims arising out of World War II. In its report, the House committee stated: 'No nation was ever injured by its justice nor impoverished by its benevolence.'"

Nine years later, Congress accepted these findings by enacting 87-846.

Both the United States Congress and Navy have conceded a moral obligation to compensate Guamanian victims of Japanese aggression.

The legislative history of the Guam Meritorious Claims Act, the Guam Land Transfer Act and the Guam Rehabilitation Act is replete with such statements. To quote just a few examples: Senate Report 1135, 79th Congress, 1st Session, contains a letter from the Secretary of the Navy to the Speaker

69 page 111.

of the House dated June 9, 1945, concerning the soon-to-be-enacted Guam Meritorious Claims Act. This letter states in part:

"The affairs of Guam have been administered in the interests of the naval station and the native inhabitants have been considered wards of the Navy. Thus, the United States has a definite responsibility to protect the inhabitants of the island." (emphasis added)

While Congressman Walter Ploeser, was to tell members of the Senate Naval Affairs Committee on October 9, 1945, with respect to the soon-to-be-enacted Guam Rehabilitation Act:

"... with the exception of the Hawaiian Islands, there is no other comparable situation in the Pacific than our moral obligation to rehabilitate Guam ...

"... They are American nationals and there is a strict moral obligation on the part of the United States which comes from the lack of our unsuccessful defense of Guam in the beginning; and, then, our later recapture of Guam, at which time we destroyed these things that have been discussed today."⁷⁰ (emphasis added)

And (on page 16):

"Theirs will be a demonstration of loyalty, I think, probably the most remarkable in American history.

"It is certainly deserving of quick action on the part of the Congress. I am hopeful that we get these measures through as quickly as we can, quickly enough, Mr. Chairman, so that there will never be a day when a Guamanian complains about the treatment the United States has given him." (emphasis added)

Finally, the elected leaders of Guam are not the only ones who have recognized the moral obligation on the part of Congress with respect to uncompensated claims of Guamanian victims of World War II.

As late as September 23, 1987, the Western Legislative Conference, Council of State Governments, adopted Resolution 87-24. This resolution provides in part:

⁷⁰Page 14.

"WHEREAS, the United States has assumed all responsibilities from the Japanese government to compensate the people of Guam for land, loss of life, and personal property during World War II; and

"WHEREAS, there is before the U. S. Congress, proposed legislation specifically addressing land compensation and war reparations for the people of Guam;

... BE IT FURTHER RESOLVED that the Conference supports the speedy passage of legislation to compensate the people of Guam for their losses during World War II."⁷¹

Reparations for Guam is not a "new" issue. It has been consistently raised by local enactments and resolutions, as well as through discussions with Congressional leaders over the years.

War reparations have been and continue to be a major issue in Guam. Nor can it be said the United States Government has been unaware that a problem continues to exist.

As early as 1951, Guam Senator Baltazar J. Bordallo (the "Father of the Organic Act") introduced Resolution 23 "Relative to the payment of reparations to certain Guamanians and other forced into slave labor at the time of the occupation of Guam by a foreign power." This Resolution was duly adopted on August 10, 1951. Copies of same were transmitted to the President of the United States, the Speaker of the House and President of the Senate on August 29, 1951.⁷²

From the mid 1950s through the early 1960s, delegations headed by the then Speaker of the Guam Legislature, Antonio Borja Won Pat, made yearly trips to Washington, D. C., to confer with Congressional leaders and the Department of Interior. Among the issues discussed, was Guam's continuing effort to obtain reparation relief.

In 1967 and again in 1972, Resolutions were introduced into the Ninth and Eleventh Guam Legislatures requesting Japan to make reparations to the people of Guam. Although these Resolutions were not adopted because of

⁷¹Exhibit "T".

⁷²Resolution 23 and copies of letters of transmittal are included as Exhibit "U".

procedural and/or technical rules of the Legislature, they represent continuing recognition of the claims issue by the elected leaders of Guam.⁷³

In 1976, Guam Public Law 14-101 was enacted. The law provided, among other things, an appropriation to review "World War II death, injury and damages claims". Four years later, Guam Public Law 15-146 was enacted. This legislation created a Guam Reparations Commission - to - among other things, gather evidence of uncompensated claimants, and study the feasibility of obtaining reparations from Japan. Moreover, throughout the 1980s, Senators Ted Nelson and Edward Duenas have consistently introduced resolutions and bills in an attempt to resolve the issue of reparations. In fact, Senator Duenas has gone so far as to circulate a petition on the subject. This petition has garnered approximately 30,000 signatures.

On September 21, 1983, Congressman Antonio B. Won Pat introduced House Bill 3954 "To establish a commission to review the facts and circumstances surrounding Guamanian losses caused by the occupation of Guam by Japanese Imperial Forces during World War II". Again, on November 14, 1985, Congressman Ben Blaz introduced House Bill 3758 "To direct the Comptroller General of the United States to review the report and findings of the Guam Reparations Commission", and House Bill 5187 "To establish a Commission on war claims for Guam" on July 17, 1986.

Finally, on August 7, 1987, Congressman Ben Blaz introduced H. R. 3191 "To establish a Commission on war claims for Guam". Referred to the House Committee on the Judiciary, it is expected to be heard this year.

POSITION SIX

HOUSE BILL 3191 SHOULD BE SUPPORTED WITH CERTAIN MODIFICATIONS.

Congressman Blaz should be highly commended for introducing this measure into the House of Representatives. Although it has been - and will continue to be - hoped that a more immediate means can be found to compensate Guamanian victims of World War II, the Bill should be strongly supported with the following modifications:

⁷³Resolution 96 was introduced by Senator George Bomba - father of the present Senator George Bomba. Resolution 617 was introduced by Senator Frank R. Santos and Paul J. Bordallo. Senator Santos is currently Chairperson of the Committee on Federal and Foreign Affairs of the 19th Guam Legislature - while Paul Bordallo is the son of the late Baltazar J. Bordallo, also a senator.

Section 2 (a): "... The Commission shall serve under the jurisdiction of the Secretary of the Interior."

Comment

Why must the Commission be under the Department of Interior? Perhaps it could report directly to the House Committee on Interior and Insular Affairs. It must be pointed out that the Department of Interior has indicated it is (or was) against formation of such a Commission.⁷⁴

Section 2 (d): "... or within thirty days after the date on which legislation is enacted making appropriations to carry out this Act, whichever date is later."

Comment

It is felt that an appropriation should be included within the Act - not merely an authorization. As presently written, there is no guarantee that money will ~~ever~~ be appropriated - and so the Commission would never meet. Therefore, it is recommended that "or within thirty days after the date on which legislation making appropriations to carry out this Act, whichever date is later" be deleted, and the Commission shall first meet within one hundred and twenty days after enactment.

Section 2 (g): "Each member of the Commission who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate prescribed for GS-18."

Comment

This sentence should be deleted. A GS-18 makes somewhere in the neighborhood of \$75,000 a year. Since the subsection also states that "A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation" and "All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties" - there does not appear to be any justification for additional payment. At the very most, Commission members might receive a stipend of \$50 a meeting, but compensation at the rate of a GS-18 seems to be excessive.

⁷⁴See Exhibit "A."

Secondly, another section should be included in the Bill providing that all meetings and business of the Commission shall take place on Island. This will not only prove less expensive, but it will give the people of Guam better access to the Commission.

Section 3 (a) (3): "loss of property for which no compensation has been paid."

Comment

It is recommended that after the word "no", the following be inserted: "form of mutually agreed and certified". The subsection would then read: "loss of property for which no form of mutually agreed and certified compensation has been paid."

This will hopefully take care of those claimants who may have been compensated by land exchanges, etc. In fact, it is suggested this language be reflected in (1) through (4). It should be clearly understood that those claimants who have already received reparations be ineligible for this relief. Possibly a direct appropriation - as opposed to a commission - might be in order to adjust earlier, inequitable awards upwards.

Secondly, there is concern about the vagueness of the word "property". A definition of real and personal property should be included. Finally, it is unclear what impact Section 3 (a) (3) would have on land claims currently in litigation.

Section 3 (b): "Subpoenas, Issuance, Contempt, Witness Fees, Administration of Oaths."

Comments

This is a very good section. However, the language refers only to "persons". It is therefore recommended that the words "agencies of the United States Government" be added. Considering the Navy's claim that its records were "destroyed" in 1973 - which was not true - the Commission should have the power to subpoena representatives from the Department of the Navy, etc., to produce relevant existing records.

It is also suggested that when the Commission issues a subpoena on its own behalf, that the payment of witness fees, etc., come out of the Commission - as opposed to out of the proceeds of a claimant (who might not be able to

afford same). This is another reason why a section should be added mandating all meetings and business of the Commission be held on Guam.

Section 5 (a): "The Commission may, subject to the approval of the Secretary of the Interior, appoint and fix the compensation and allowances of such other officers and employees of the Commission..."

Comments

It is recommended that "subject to the approval of the Secretary of the Interior" be deleted. If the Commission is to operate independently, it must have the power to hire its own staff. A situation could conceivably occur where the Secretary arbitrarily disapproves of a particular staff member. Employment could then be blocked by restricting funding.

It is strongly felt that if an appropriation is made available to the Commission, its members must be trusted to account for its expenditure.

Section 5 (2) (c): "Officers and employees of any department or agency of the United States may, with the consent of the head of such department or agency, and with or without reimbursement, be assigned to assist the Commission in carrying out its functions."

Comments

This is redundant. Subsection (b) already provides for the assignment of federal personnel at the request of the Commission and with the approval of the Secretary of the Interior. If, on the other hand, Subsection (b) refers only to interior employees, then it is recommended that subsection (c) be amended - for consistency's sake - to include "at the request of the Commission" after the word "may". It would then read: "Officers and employees of any department or agency of the United States may, at the request of the Commission, with the consent of the head of such department or agency, and with or without reimbursement, be assigned to assist the Commission in carrying out its functions."

Section 675 (b) Expenditures: "The Commission may, with the approval of the Secretary of the Interior, make such expenditures as are necessary to carry out its functions."

Comments

It is recommended that "with the approval of the Secretary of Interior" be deleted for reasons stated previously. The Commission should be trusted to carry out its functions and account for any expenditure of funds. Alternately, if an oversight agency such as Interior is deemed a necessity, then the following should be inserted: "Such approval shall not be unreasonably denied."

Section 11.76 "To carry out the provisions of this Act, there are authorized to be appropriated \$500,000"

Comments

As previously noted, it is recommended that an actual appropriation - and not merely an authorization - be included in the Act. Claimants are passing away and their children are becoming old. Considering the fact that Congress will be asked to enact additional appropriations for awards once the Commission has completed its work, it may be years before compensation finds its way to those who are in need of it. Therefore, it is respectfully urged that an appropriation be included so that this Commission may begin its work immediately.

⁷⁵Should be "Section 7" since the previous Section - "Administrative Provisions - is also numbered "6".

⁷⁶Should be Section "13" since there are two Section 11's.

Mr. Bamba. Since this paper is lengthy, I will briefly summarize these positions. First, by way of background, during the occupation more than 500 Guamanians were executed by the Japanese. Hundreds of others were tortured, beaten, raped or had their property seized by the enemy, either because the Japanese believed that they were hiding Americans or because they were guilty of some other offenses such as bowing too low, or singing anti-Japanese songs, the most popular of which was "Uncle Sam, Please Come back To Guam."

On July 8, 1944, American planes began bombarding the island. This unquestionably saved the lives of thousands of marines. It also leveled the city of Agaña as well as four other villages. Statistics reveal that 80 percent of Guam's 3,286 buildings were destroyed, leaving some 19,000 people homeless. Since their land was needed for military purposes, Guamanians were housed in resettlement camps. Just compensation is only now, 40 years later, being distributed to the original heirs.

On November 15, 1945, U.S. Public Law 79-224, also known as the Guam Meritorious Claims Act, was enacted. Research into existing records reflect that approximately \$8 million was paid to 4,350 people between 1947 and 1957.

This brings us to the first question which the committee must ask. Since Congress has already enacted claims relief, why is it now necessary to repeat the process? The answer is simple. The act did not fully resolve the issue.

First, there were flaws contained in the act. Property damage, as opposed to death or injury, was emphasized in this act. A review of other claims legislation reveals that Guam may have been the only jurisdiction where claims for death or injury became legal obligations as a basis for property damage. In other words, personal injuries and death were secondary to property damage claims.

Other flaws included the failure to specify postwar values in computing awards, and all death and injury claims required certification by Congress. These flaws not only contradicted congressional intent to make victims whole, but resulted in burdensome regulations which may in part explain why so many claimants failed to file on time.

This is substantiated by the Hopkins Committee appointed by the Secretary of the Navy in 1947 to assess the administration of Guam. Their report was endorsed by the Navy. Nevertheless, although the committee strongly recommended amending the Guam Meritorious Claims Act, no action was ever taken.

Finally, the act only addressed death, injury and property damage. It did not, as in some other claims relief, provide compensation for forced labor, internment or forced marches. This was perhaps its major deficiency, and one which House Bill 3191 seeks to correct.

To illustrate this point, I did an analysis of all 3,365 claimants registered with me. Out of 2,129 survivors, 99 percent of them listed forced labor, internment or forced marches as their uncompensated injuries. Out of 1,179 descendants, 95 percent of them

A second reason the Guam Meritorious Claims Act did not resolve the issue was that the reparation program was inadequate because it was secondary to the building of permanent military bases. This is verified not only in numerous hearings before congressional committees but in naval documents and internal correspondence between Members of Congress and the Secretary of the Navy. These documents are attached as exhibits to my position paper.

Because the Navy was unsure of its military land requirements, civilian rehabilitation programs were neglected. In 1946, this was exposed by the New York Times in an editorial entitled "Forgotten Guam." The Navy responded by attempting to conduct a misinformation campaign against the Times which backfired.

A third reason Public Law 79-224 failed to solve the reparation issue was that the one year deadline in which to file a claim was insufficient. For one thing, it failed to take into consideration that English was a second language and the massive disruption caused by the war. Equally important, the deadline failed to recognize the reluctance of Guamanians to come forward to register claims in the year after the war.

In a hearing on the Navy's 1946 appropriation bill and which present Member of Congress Jaime Whitten was present, Chairman Walter Ploeser was to testify: "Certainly it would be most unusual for an American citizen not to make a claim after the Government had destroyed his property, but these people have not done so. There has been no complaint whatsoever. They were waiting patiently, feeling confident that the Americans would do something about it."

Again on October 18, 1945, in hearings before the House Naval Affairs Committee, Commandant of Guam, Henry Larson, was to testify: "I can say that not one native to this date has approached me about claims or damages. The Claims Commission went out and started ferreting out claims and asking them to present information in which the commission could judge the proper amounts to be paid eventually. The people have not come forward with their claims because they have absolute confidence in the United States Government and the naval administration of the island that they will eventually be taken care of."

The one year time limit also failed to take into account the poor administration of the program by the Navy. This is noted by the former Secretary of Interior Harold Ickes and by the Hopkins Committee, which was to find, "It would seem to your committee that in so special a case as this our Government could well be very generous in method of distributing its relief as well as generous amount awarded. It has been neither."

Finally, the one year limit was unreasonable considering the fact that Congress extended the deadline in other jurisdictions. In 1962, Public Law 87-846 was enacted, amending the War Claims Act of 1948, and extending the deadline for claims of American nationals who suffered death, injury, or property losses in certain European countries and in areas attacked by Japan excluding the island of Guam.

The effect of this policy is vividly illustrated by the responses to a survey I conducted which is attached as Exhibit L to my position paper. A majority of those surveyed either did not know the

a Commission on Guam, or that they had only one year in which to file a claim.

Another question the committee must ask is why have the people of Guam waited 40 years to bring this issue to the attention of Congress. We did not know. The record reflects that the elected leaders of Guam consistently raised it over the years. Unfortunately, however, remedial claims relief was opposed by the Department of Defense on the grounds that it would set a precedent. Because of this, more than 3,865 people remained uncompensated.

Resolution No. 23 adopted by the First Guam Legislature was in fact transmitted to the Speaker of the House, the President of the Senate and the President of the United States on August 29, 1951. The resolution called on the Federal Government to create a commission to compensate Guamanians who were made to do forced labor.

In 1983, then Congressman Won Pat introduced House Bill 3954 to establish a commission. Again, in 1985, Congressman Blaz introduced House Bill 3758 and House Bill 5187 in 1986. None of these bills ever received a hearing by Congress.

Finally, Congress has a moral obligation to settle Guam's claims. As stated previously, many of the uncompensated claims for death or injury were the result of Guamanian loyalty to the United States of America. However, Guam had no legal recourse against Japan since its claims were waived by the United States when it entered into its peace treaty.

Because of this, Congress has a moral obligation to settle such claims. This is substantiated by Secretary of State and drafter of the treaty John Foster Dulles. According to his memorandum provided to the Senate prior to the ratification of the treaty, and I quote, "United States nationals whose claims are not covered by the treaty provisions or by legislation of other allied powers must look for relief to the Congress of the United States."

As a result, the commission created by Congress in 1948 to study war claims worldwide recommended claims relief to American nationals as well as citizens. In its report to Congress, the commission stated: "Perhaps the weakest of the argument in opposition to the payment of war claims out of general funds is that there is no legal obligation to compensate for war damages. Obviously, the moral obligation to equalize the burdens of war is felt so strongly that nations no longer question the duty to provide relief to those who have suffered extraordinary losses as a result of war."

In conclusion, Mr. Chairman, perhaps the best argument for establishing a Federal war claims commission for Guam is the fact that Congress enacted the Guam Meritorious Claims Act. It showed that the United States Government recognized its moral obligation to the people of Guam. All that needs to be done is to finish what was started.

Today we read about reparations for Iranians. I believe that before the United States pays damages to the families of those who belong to an enemy of our country that justice be done to those who sacrificed their lives out of loyalty to America. On behalf of more than 3,865 men, women and children, I ask for that justice, and request this committee report out House Bill 3191 with recom-

Mr. FRANK. Thank you, Senator. You may have heard those bells. We are going to go vote on the tax bill. Mr. Coble went earlier. He will be right back. He will start the hearing as soon as he comes back. I will be back shortly. So we will have to ask you for one last delay because this is the only vote of today, and we will be able to come back and finish. And I appreciate your further forbearance. We are in brief recess.

[Recess.]

Mr. FRANK. The hearing will reconvene, and I believe we are up to Mr. Duenas.

Mr. BAMBA. Pardon.

Mr. FRANK. Mr. Duenas, I believe, is next. Or whatever order you wish. If you are ready to go the other way. Mr. Nelson wants to go first. Go ahead.

Mr. BAMBA. I just wanted to ask Senator Manibusan to say a few words.

Mr. FRANK. No. You know that I asked for three witnesses. Well, let me say she can if somebody else does not want to. But I am surprised that you would—having been told that given our time constraints that we would take three witnesses that you would make the request. Now we will take three witnesses. You may decide among yourselves who they will be. Whoever wants to go next can go next.

Mr. NELSON. I yield to Mr. Duenas. His name is on the list.

Mr. DUENAS. Thank you, Mr. Chairman, and good afternoon.

Mr. FRANK. Good afternoon.

Mr. DUENAS. On behalf of the people of Guam and more especially on behalf of the thousands of victims of enemy atrocities on Guam during World War II, I would like to thank you and your committee members for giving us the opportunity to testify on a most important bill that if enacted into law will resolve the situation that has lingered for over four decades. H.R. 3191 introduced by our own delegate Ben Blaz will, in my opinion, provide for the complete settlement of war reparation compensation to Guamanians who suffered the worst which the enemy forces could inflict during their two and a half years of occupation.

Understandably, it is not easy to appear before a committee of the Congress to seek a remedy for something that transpired almost half a century ago, a time when most Members of Congress were yet to be born or were still in growing up years. Believe me, Mr. Chairman, I would not be here today if I felt that the issue of war reparation for Guam is not a legitimate one and a just cause. To the contrary, the issue is one that continues to burn within those who suffered, not so much for the monetary benefits to be derived but more so for the principle of justice and fair treatment.

Please let me make the following points for this committee to consider. When the winds of war were already blowing, there was hardly any effort made by the U.S. to fortify Guam and provide adequate defense against potential invaders. Rather than build up the island's defense posture, the military evacuated their dependents two months prior to the outbreak of World War II in the Pacific. When Japan finally went to war against the U.S., the Imperial Army forces literally waded ashore unimpeded, and met only token opposition from a handful of native Insular Guardsmen

Thus, the people of Guam fell captive to a ruthless enemy whose atrocities against the inhabitants who they looked upon as American nationals were too painful to describe. Rather than betray their loyalty to the U.S., the Guamanians suffered execution, torture, physical assaults and abuses, forced labor, confinement in concentration camps in preparation for their final annihilation.

Throughout the ordeal, however, they remained fiercely patriotic. Realizing the massive destruction caused by American bombardment and shelling of the island in liberating Guam, the U.S. Government assumed the obligation of rebuilding the island and initially paying war reparations to about 560 people for loss of life and personal injuries resulting from enemy atrocities. Thousand other victims, however, were not compensated for one reason or another to include the following:

While attempts were being made by the naval government to inform the local people of the need to file claims under the Guam Meritorious Claims Act which Congress enacted in late 1945, the types of notices given and the time frame within which to file such claims were totally inadequate under the time and circumstances. From late 1945 to December 1, 1946, the deadline for filing claims, the Navy News printed brief notices something like a want ad about a dozen times for an average of once a month.

The irony, however, is that the Navy News was the only local publication distributed to armed forces personnel and was rarely made available to the civilian population. The only radio station at the time was also operated by the military primarily for its own purpose and not too many civilians either owned or had access to radios at the time.

Although the island was declared militarily secured in August 1944, there were still hundreds of Japanese snipers hiding in the jungles of Guam as late as the spring of 1946. There were scattered skirmishes between them and the Guam Combat Patrol which the Navy organized comprising of local young men to hunt and destroy snipers throughout the island. Under the circumstances, Mr. Chairman, the people limited their movements for fear of being shot by the snipers.

In addition to being eternally grateful for their liberation, the people were too preoccupied rebuilding their shattered lives and homes that not much attention was given to filing their claims, even if they knew about them.

The naval government, which administered the initial payment for war reparation was phased out in 1950 when Congress enacted the Organic Act of Guam establishing limited self-government and conferring U.S. citizenship upon the inhabitants.

To further complicate the situation, the U.S. in a 1951 peace treaty with Japan exonerated Japan from any obligation of paying war reparation to Guam before consulting the people of Guam. Thus, this effectively removed any possibility for Guam to ever file war claims against its former enemies.

In the meantime, the people of the neighboring islands in the Northern Marianas and the rest of Micronesia were made entitled to receive war claims. As late as this current fiscal year, the U.S. Congress appropriated \$12.5 million as part of the U.S. contribution to the Micronesian War Claims Act

This amount is to be matched by the Government of Japan either in monetary or in-kind assistance. Total compensation to the people of Micronesia which include those in the Northern Marianas, the Republic of Palau, the Federated States of Micronesia and the Republic of the Marshalls, will exceed \$30 million.

It has been very difficult for the people of Guam to accept the fact that the Government of Japan has been exonerated from providing compensation to the Guamanians for deaths and injuries suffered, for damages sustained and for forced labor, while their fellow islanders in Micronesia were deemed entitled to such compensation.

The puzzling aspect of this, at least to the Guamanians, is the implied negative attitude to proven loyalty to the United States of America. Guam was the only U.S. soil in Micronesia to be occupied by the enemy during World War II since all other islands were administered by the Japanese since 1918.

It is most ironic, Mr. Chairman, that Guam has yet to be fully compensated for war reparation while the other islands have either been paid or are in the process of being paid their war claims.

America has always been known to be a fair and generous nation. Massive post-war assistance rendered to war-torn countries, including former enemies, is a clear proof of the humanitarian character of this country. And the U.S. has been magnanimous and compassionate in correcting injustices of the past.

Congress recently passed a \$1.2 billion measure to compensate Japanese-Americans who were unjustly detained in concentration camps during World War II in the U.S. and has appropriated an additional \$12.5 million to the Micronesian War Claims Act.

Just last month, Mr. Chairman, President Reagan announced an intention to compensate the families of victims who were passengers of an Iranian airliner which the U.S. forces in the Persian Gulf shot down by mistake.

Mr. Chairman and members of this committee, it is also time that the U.S. Government settles the Guam war reparation issue completely once and for all. To demonstrate our strong concern for full settlement, I have with me a petition signed by over 30,000 adult Guam residents asking Congress and the President to do just that. This number reflects over half of the adult civilian population, and about 80 percent of the island's registered voters.

At this time, Mr. President, with your permission, I would like to ask my special assistant, Rick Cogle, to be allowed to present the petition to you.

Mr. FRANK. Well, we will accept the petition the same way that we accept every other. Just continue.

Mr. DUENAS. All right.

Mr. FRANK. Please continue.

Mr. DUENAS. Mr. Chairman, in summary, the question today is not whether the U.S. is obligated to pay war reparation to Guam since it has already begun making payments when Congress enacted the Guam Meritorious Claims Act in 1945. The only question now is for the U.S. to settle the issue completely, and enacting H.R. 3191 is a step in that direction. Mr. Chairman, the people of Guam have waited patiently for over four decades to completely settle it.

war reparation issue. And we hope that Congress will hear our plea without any further delay. Thank you very much.

Mr. FRANK. Thank you, sir.
[The statement of Edward R. Duenas follows:]

SUMMARY OF SENATOR EDDIE DUENAS TESTIMONY ON HR 3191

The full settlement of war reparation for the people of Guam is a burning issue that has lingered for over 40 years. History is full of documents indicating that the U.S. failed miserably to fortify and defend Guam at the outbreak of World War II. The lack of adequate defense enabled the Japanese to invade Guam literally waded ashore in 1941 and subjugated the Chamorros, who were American nationals, to a reign of terror until U.S. forces liberated Guam in July 1944.

Realizing the massive destruction resulting from U.S. forces and the gross atrocities inflicted upon the people of Guam, the U.S. government assumed the obligation of paying war reparation. Shortly after the war, Congress enacted the Guam Settlement of Claims Act in 1945 which authorized the payment of \$100 million for reparation to personal and personal property destroyed. About 560 deaths and injury proper-ties were paid totalling \$97,000.

Thousands of others were not paid for some reasons. Among them were the lack of adequate information given to eligible claimants, the people were too occupied in rebuilding their shattered homes and lives, and the claims went unfinished when the naval government was replaced by the civil government in 1950 upon the enactment of the Organic Act of Guam by Congress.

To complicate matters, the U.S. Act of 1951 Peace Treaty with Japan absolved Japan from any obligation of paying any war reparation to the people of Guam. Hence, whatever Guam had hoped to receive from Japan was effectively removed by this treaty. In the meantime, all other islands in Micronesia have either received or are authorized to receive war reparation compensation from the U.S. and Japan. This is most ironic because Guam was the only U.S. territory in the Western Pacific to be occupied during World War II, since the other islands were being administered by Japan since 1918.

As I see it, the question today is not whether the U.S. is obligated to pay war reparation to Guam since it already had begun making payments to Guam since it already had enacted the Guam Settlement of Claims Act in 1945. The only question now is for the U.S. to settle the issue completely, and enacting HR3191 is a step in that direction.

The U.S. has been magnanimous and compassionate in correcting injustices or even helping out former enemies in economic reparation. Congress has passed a \$1 billion measure to economic reparation to Japanese-Americans who were unjustly placed in concentration camps in World War II. Recently Congress approved a \$12.5 million appropriation as part of its contribution to the Micronesian War Claims Act. And just last month, the U.S. President announced his intention to contribute \$10 million to the U.S. forces in the Persian Gulf mistakenly shot down recently. It is time that the U.S. settles the Guam War Reparation issue completely once and for all.

To demonstrate our strong desire for full settlement, I have with me a petition signed by over 30,000 adult Guamanians asking Congress and the President to do just that. This number reflects more than half the adult civilian population and about 80% of the island's registered voters. The People of Guam have waited patiently for over four decades to completely settle their reparation issue, and we hope that Congress will bear our plea without any further delay.

Thank you and Si Yuus Maase.

EDWARD R. DUENAS

SENATOR EDWARD R. DUENAS

Testimony on

HR 3191: War Reparation Compensation for Guam
Subcommittee on Administrative Law and Governmental Relations
Committee on the Judiciary
Washington D.C. - Aug. 4, 1988

Mr. Chairman and members of this committee:

On behalf of the people of Guam, and more especially on behalf of the thousands of victims of enemy atrocities on Guam during World War II, I thank you and your committee members for giving us the opportunity to testify on a most important bill that, if enacted into law, would resolve a situation that has lingered for over four decades. HR 3191, introduced by our own Delegate Ben Blaz, will -- in my opinion -- provide for the complete settlement of war reparation compensation to Guamanians who suffered the worst which the enemy forces could inflict during two and a half years.

Understandably, it is not easy to appear before a committee of the Congress to seek a remedy for something that transpired almost a half century ago, a time when most members of Congress were yet to be born or were still in adolescence. Believe me, I would not be here today if I felt that the issue of war reparation for the people of Guam is not legitimate or not relevant. To the contrary, the issue is one that continues to burn within those who suffered, not so much for the monetary benefits to be derived but most of all for the principle of fair treatment.

Please let me make the following points for this committee to seriously consider:

oo When the winds of war were already blowing, there was hardly any effort made by the U.S. to fortify Guam and provide adequate defense against potential invaders. Rather than build up the island's defense posture, the military evacuated their dependents two months prior to the outbreak of WWII in the Pacific. When Japan finally went to war against the U.S., its Imperial Army forces literally waded ashore unimpeded and met only token opposition from a handful of native Insular Guardsmen. Thus, the people of Guam fell captive to a ruthless enemy whose atrocities against the inhabitants who they looked upon as American nationals were too painful to describe. Rather than betray their loyalty to the U.S., the Guamanians suffered executions, tortures, physical assaults and abuses, forced labor, confinement in concentration camps in preparation for their final annihila-

oo Realizing the massive destruction caused by American bombardment and shelling of the island in liberating Guam, the U.S. government assumed the obligation of rebuilding the island and initially paying war reparations to about 550 people for loss of life and personal injuries resulting from enemy atrocities. Thousand other victims, however, were not compensated for some reasons, including the following:

(1) While attempts were made by the naval government to inform the local people of the need to file claims under the Meritorious Claims Act enacted by the Congress late in 1945, file such claims were totally inadequate under the time and circumstances. From late 1945 through Dec. 1, 1946, the deadline for filing claims, the Navy News printed brief notices about a dozen times, or an average of once a month. However, the Navy News was the only local publication and distributed to armed forces personnel and was rarely available to the civilian population. The only radio station at the time was also operated by the military primarily for its own purpose, and not too many civilians owned radios.

(2) Although the island was declared militarily secured in August 1944, there were still hundreds of Japanese snipers hiding in the jungles of Guam as late as the spring of 1946. There were scattered skirmishes between them and the Guam Combat Patrol which the Navy organized comprising of local young men to hunt and destroy snipers throughout the island. Under the circumstances, the people limited their movements for fear of being shot by the snipers.

(3) In addition to being eternally grateful for their liberation, the people were too preoccupied rebuilding their shattered lives and homes that not much attention was be given to filing their claims, even if they knew about them.

The naval government, which administered the initial payment for war reparation, was phased out in 1950 when Congress enacted the Organic Act of Guam establishing limited self-government and conferring U.S. citizenship upon the inhabitants. To further complicate the situation, the U.S. in a 1951 peace treaty with Japan absolved Japan from any obligation of paying war reparation to Guam, without consulting with the people of Guam. Thus, this effectively removed any possibility for Guam to ever file war claims against its former enemy.

In the meantime, the people of the neighboring islands in the Northern Marianas and the rest of Micronesia were made entitled to receive war claims. As far as...

Act. This amount is to be matched by the government of Japan either in monetary form or in-kind assistance. Total compensation to the people of Micronesia, which include those of the Northern Marianas, the Republic of Palau, the Federated States of Micronesia and the Republic of Marshalls, will exceed \$30 million.

It has been very difficult for the people of Guam to accept the fact that the government of Japan has been exonerated from providing compensation to the Guamanians for deaths and injuries suffered, damages sustained and forced labor while their fellow islanders in Micronesia were deemed entitled to such compensation. The puzzling aspect of this, at least to the Guamanians, is the implied negative attitude proven loyalty to the United States of America. Guam was the only U.S. soil in Micronesia to be occupied by the enemy during WWII since all the other islands were administered by the Japanese since 1918. It is most ironic that Guam has yet to be fully compensated for war reparation while the other islands have either been paid or are in the process of being paid their war claims.

America has always been known to be a fair and generous nation. Massive post-war assistance rendered to war-torn countries, including former enemies, is a clear proof of the humanitarian character of this country. And the U.S. has been magnanimous and compassionate in correcting injustices of the past. Congress recently passed a \$1.2 billion measure to compensate Japanese-Americans who were unjustly detained in concentration camps during WWII, and has appropriated an additional \$12.5 million to the Micronesian War Claims Act. Just last month, President Reagan announced his intention to compensate the families of victims who were passengers of an Iranian airliner which the U.S. forces in the Persian Gulf shot down by mistake.

Mr. chairman and members of this committee, it is also time that the U.S. government settles the Guam war reparation issue completely once and for all. To demonstrate our strong concern for full settlement, I have with me a petition signed by over 30,000 adult Guam residents asking Congress and the President to do just that. This number reflects over half of the adult civilian population, and about 80 percent of the island's registered voters.

Mr. chairman and members of this committee, the people of Guam support HR 3191 and respectfully request speedy and favorable action on the measure.

Hafa Adai and Si Yuus Maase.

Mr. FRANK. Thank you, sir. We will take our final witness, and then we will have our questions. Please.

Mr. NELSON. Thank you, Mr. Chairman. The Honorable Barney Frank, Chairman, Subcommittee on Administrative Law and Governmental Operations.

Dear Mr. Chairman: My name is Ted S. Nelson, representing the majority, Democrats, 19th Guam Legislature, Chairman of the Committee on General Governmental Operations, 19th Guam Legislature.

I want to first thank you for the opportunity to testify today and for arranging this very important and timely hearing. I know that you have a busy schedule, and I am sure the people of Guam appreciate your effort. This committee has an outstanding record of leadership in territorial affairs. Mr. Chairman, we on Guam are especially appreciative of all your help and hard work. As we say in Chamorro, "Si Yuus Ma'ase," thank you.

I also want to take this opportunity to thank our leader from Guam, Congressman Blaz, for his help and his willingness to pursue this important issue for the people of Guam.

On December 8, following the bombardment and struggle for Guam, the Japanese military forces came ashore and took possession of our island. This began a two and a half year occupation and made Guam the only territory under the United States administration to be subjected to an actual invasion by an enemy (Japanese) during World War II. Of course, Pearl Harbor was bombed, but it was not invaded and captured.

As I will discuss, during this period of Japanese occupation, the people of Guam suffered death, sickness, starvation, rape, forced labor, loss of property and continuous insult and indignities from their conquerors, including frequent torture and sometimes executions for alleged pro-American activities.

Mr. Chairman, I have submitted a set of documents, treaties and other related information for your disposal. I am pretty sure that the committee and the legal counsel would avail themselves of the facts in these documents prior to the final deliberation of this major legislation.

Mr. FRANK. They will be a part of the record.

Mr. NELSON. Sir?

Mr. FRANK. We will make the appropriate documents part of the record.

[The information of Ted S. Nelson follows:]



Senator Ted S. Nelson

August 4, 1988

The Honorable Barney Frank
Chairman, Committee on Administrative Law
and Governmental Relations
B351-A Rayburn House Office Building
Washington, D.C. 20515

Re: Testimony on H.R. 3191

Dear Mr. Chairman:

My name is Ted S. Nelson, Chairman of the Committee on General Governmental Operations, Nineteenth Guam Legislature.

I want to first thank you for the opportunity to testify today and for arranging this very important and timely hearing. This committee has an outstanding record of leadership in territorial affairs and Mr. Chairman, we on Guam are especially appreciative of all your help and hard work. As we say in Chamorro, "Si Yuus Ma'ase", Thank you.

I also want to take this opportunity to thank Congressman Blaz for his help and his willingness to introduce and pursue this important issue for the people of Guam.

On December 8, 1941, following the bombardment and struggle, Japanese military forces came ashore and took possession of the island. This began a two and one-half year occupation and made Guam the only territory under United States administration to be subjected to an actual invasion by an enemy during World War II. As I will discuss, during this period of occupation, the people of Guam suffered death, sickness, starvation, rape, forced labor, loss of property and continuous insults and indignities from their conquerors, including frequent torture and execution for alleged pro-American activities.

From the outset, the Japanese were intent upon destroying all vestiges of American power, culture, language, and converting the people of Guam to their way of thinking, as they had endeavored in every country which they had overrun in previous years.

After the initial invasion, the Japanese disembarked at Ajana and dispersed to all places killing at random without consideration women, children and old people, slaughtering a great number of persons who were trying to escape.

On the day of the invasion, Guamanians were captured by the Japanese troops and taken to Agaña where they were given identification passes. The pass was a piece of cloth, two inches wide and from four to six inches long. It bore Japanese inscriptions indicating that the bearer was a native. For several days Guamanians came by the thousands and stood in lines for hours waiting for passes.

The plaza areas were crowded with frightened islanders.

CHAIRMAN
Committee on General
Governmental Operations

Nineteenth
Guam Legislature

Vice Chairman
Committee on
Ways & Means

Committee
Membership

- Public, Foreign & Legal Affairs
- Housing & Community Development
- Health, Welfare & Ecology
- Ways & Means
- Youth, Public Utilities, Human Resources
- Justice, Judiciary and Criminal Justice

P. O. Box 681

Honorable Barney Frank
 Re: Testimony on H.R. 3191
 August 4, 1988
 Page 2

something no Guamanian ever thought possible. Now that the war was really upon them, they did not know what to do. They were confused and they were frightened. Getting the Pags and the first encounter with the Japanese was, for Guam, a terrifying ordeal." [Carano & Sanchez, "History of Guam", 1964, p. 273]

"The enemy evacuated American members of the garrison to prison camps in Japan on 10 January 1942. Soon afterwards Japanese Army troops departed for Rapaal and the units that had been present at the surrender of the garrison remained to garrison and govern. At first, the yoke was light, with the Japanese making every effort to gain the good will of the natives. However, those regulations and changes put into effect seemed harsh to people accustomed to American administration.

Of the greatest injury to the pride of the Guamanians was the changing of the name of their homeland to 'Omiyajima' (East Shrine Island) and that of their capital city to 'Akashi' (Red of Bright Stone). In the same vein of keeping the American always aware of the fact they no longer lived under Japanese supervision, the military ordered schools to teach Japanese, substituting English." [Major O.R. Lodge, USMC, "The Recapture of Guam", 1934, p. 8]

"During the first few days of Japanese occupation, the Guamanians learned, by force of arms, stick, and fist, the Japanese custom of bowing. There were three degrees of bowing... Bowing was not practiced on Guam before the war, so the custom was entirely foreign and new to the people.

When the Japanese armies occupied Guam, signs were placed all over the island - Agana especially was flooded with them reading 'You Must Stop Here and Bow to Us.' Every sentry box office, and important military area bore such signs.

Many Guamanians, not knowing what the signs meant, went about their business without paying much attention. As a result, many people, young and old, men and women, were slapped, kicked, or hit with sticks and the butts of rifles for failing to bow.

Many were punished for not bowing properly. The custom required that a person make a full stop, turn to the side, bow to individual, and make the appropriate bow. If one bowed too low, he was punished. If he bowed too slightly he was punished. The bow was required to be appropriate to the person and the occasion." [Carano & Sanchez, p. 274]

"From the beginning, the Japanese gave orders to remove the bells from the front of the Cathedral and from the churches, fountains, and clocks. Then, little by little, the Japanese forbade the native priests from saying mass. Only one cathedral parish was allowed to say mass in private. The Japanese gave orders that the bells were used as garrisons, places for storage, or for whatever they wish." [Artero Autobiography, p. 11]

"Troops were stationed as far south as the Talofofo River and in Sumay, Piti, Aean, Sinajana Barricada, Dededo, Tumon, and Agana Heights... Curfew hours were set from sunset to sunrise, and curfew hours were set from

Honorable Barney Frank
 Re: Testimony on H.R. 3191
 August 4, 1988
 Page 3

called the minseisho... which ordered all American currency turned into Japanese currency, at the ridiculously low rate of four and five to one... The minseisho ordered all Guamanian store owners to open their stores to the general public and sell their goods for Japanese currency. People flocked into Agana each day to obtain rice, sugar, and canned goods. Since no replacements were available, however, the stores only had a few days' supply. One by one they closed. The only store the Japanese Kobatsu Company, located at the Arkline-Kroll store in Agana, remained open." [Carano & Sanchez, SUPRA, pp. 276-277]

"Guamanian merchants were completely forced out of business by representatives of Japanese firms who undersold natives through control of import duties, freight, and cargo rates, as well as import themselves. Anything held by the natives was also taken, usually with no payment whatsoever. Most native men, women and older children were compelled to labor on the airfields and on the farms with no payment other than exceedingly meager rations." (Military Government Office CincPac, U.S. Navy; quoted in Thompson, SUPRA, p. 166)

"During the first days of occupation the Japanese seized all the businesses on the island. Among these were the iceplant of Pedro Martinez; the cattle ranch of Bordallo in Agat and many others. Without paying for anything they forced the cattle out of the ranches, and gathered many hundreds which they put on great cattle farms, which they made between Agat, Patofofo, and Jumuyong Manglo... The largest part of the population went hungry due to the fact that the Japanese expelled the Chamorros to work for them and did not give them a chance to raise the products which the Chamorros needed to survive. It was pitiful to see so many without clothes and so hungry." (Artero, SUPRA, pp. 60, 62)

Physical Suffering under Japanese Military Rule

In March 1942, the last units of the Japanese army departed from Guam. Control of the island was turned over to a navy unit called the Keibitai.

"Searching for the Americans was the navy's biggest job. Every day squads of men scoured the woods. In about a year's time, again man George R. Tweed, who survived the war in Guam, in their quest for the Americans, the Keibitai searching parties were overzealous. Scores of Guamanians were punished until they were near the point of death. Many more suffered permanent injury. Innocent men, women and children were questioned. In the process they were slapped hit with fists, and clubbed. Many were taken to Agana for more questioning and grilling. The more vigorous the denial, the more brutal the punishment. For many people there was simply no way to escape punishment." (Carano & Sanchez, SUPRA, p. 277)

Not satisfied with making physical demands upon the native population, the Japanese maintained constant psychological pressure through propaganda.

"Japan's number one propagandist on the island, Lieutenant Commander Homura, ordered mass meetings to be held in the

Honorable Barney Frank
 Re: Testimony on H.R. 3191
 August 4, 1988
 Page 4

"Progress of the war. On every occasion he was sure to extol the virtues of Japan and the might of its military forces. When Singapore fell to the Japanese, he forced thousands of people to assemble with Japanese flags in front of the Palace. These people were compelled to march through the main streets of Agaña shouting 'Banzai! Banzai! Banzai!' every few hundred feet or so. . . . Homura told the people that 'never in a hundred years would the Americans return to Guam. He told them that California was a Japanese colony and that the fall of Washington, D.C. was just a matter of time.'" (Carano & Sanchez, SUREA, pp. 279-280)

The most dreaded and feared of all Japanese, however, were members of the Keibitai police force. "The police force was quartered in the old Agaña Police Station across the Plaza from the Governor's Palace. . . . The Japanese policemen were assisted by a crew of Saipanese interpreters. Some of them were as much dreaded as the Japanese themselves. They had a general procedure. When a person was accused of a crime, English notes were a thousand and one crimes, from speaking for questioning under and spring - the police would seize him and prove himself innocent. This was in conflict with the concept of justice which the Guamanians had learned through experience with the American court system. Questioning was always accompanied by physical punishment such as kicking, punching with the closed fist, clubbing, suffocating with a cold wet towel on the nose and mouth, and throwing with a water hose. There was no way of escaping punishment. If a person admitted his guilt, he was punished accordingly. If he denied the charges, he was accused of lying and punished accordingly. If he elected to remain silent, he was punished for 'hiding something.'" (Carano & Sanchez, SUREA, P. 282)

Forced Labor and the Final Months of Occupation

The readiness of the Japanese troops to beat, plunder and induce suffering as well known to the population; however, it was not until 1944 that this generally harsh treatment was dramatically heightened through forced labor as the Japanese began to realize that they were losing the war.

"The third and final period of Japanese rule, the last six or seven months of the occupation, was the period of Maikontai. The Maikontai came to Guam early in 1944, and its purpose was to provide food for thousands of returning American troops sent to defend the island against American forces who were island-hopping campaign was bringing them ever nearer to Guam. . . . Because the prosecution of the war was more important than civil administration, almost every Japanese civilian employed by the Maikontai was drafted into agricultural projects in the field. Schools were closed, and children under twelve years of age were sent home. If they were over twelve, they were made to work with the adults.'" (Carano & Sanchez, SUREA, p. 287)

On February 23, 1944, twelve American bombers attacked the Ortoe point airstrip. Although this brought joy to the natives, it ushered in the worst period of the occupation.

"After the first raid, the Japanese worked feverishly to strengthen the defenses on the island."

Honorable Barney Frank
 Re: Testimony on H.R. 3191
 August 4, 1988
 Page 5

battalions. These battalions completed the airstrip at Ortoe and built one at Jalaguag, the present location of the Agaña Naval Air Station, and started a third one at Agaña. They paved roads dug air-raid shelters in the hillsides and built pillboxes and gun emplacements on the beaches and in other areas. Such work was done without heavy equipment. Only wheelbarrows, packs, and shovels were available. Men worked through mud, rocks, and under the worst conditions. They were often kicked, slapped, punched, and clubbed by their Japanese and Korean supervisors." (Carano & Sanchez, SUREA, P. 290)

"When Japanese army units began returning to the island as reinforcements in the spring of 1944, the enemy dropped all pretense of getting along with the natives. The military closed schools, forbade church attendance, and took over all government functions. As the garrison grew larger, an acute shortage of food developed and the Japanese seized all available stockpiles. In addition, they decreased the increased forced labor demands and further increased the already small pittance of food supplies. The native bare subsistence ration was issued to the worker, and those too sick or weak to produce had even this withheld." (Lodge, SUREA, P. 9)

"In 1944, they started the air strip which is NAS now. They took every man, woman, and even children. I was one of them, including my father and two brothers and a sister. We worked seven days a week from sun rise to sun set. There were guards all over the place and if you slowed down, they would hit you with a stick which they always carried around." (Narrative of Jose Benavente, obtained in August, 1968, and compiled in Micronesian Archive, edited by Hector H. Lee, 1968, P. 318)

On July 10, 1944, an order was issued to remove the people from their homes to concentration camps in Maimai, Tasi, Talsifo, Inarajan and several other locations.

"Finally, the Japanese ordered all people living in the military areas to evacuate their homes, and herded them into concentration camps in the interior. Medical supplies were limited, sanitation non-existent, and food inadequate. Hundreds died, and small children who did survive became stunted and deformed from disease and malnutrition. Human bodies were beaten and broken, but within them the spirit remained alive. Every bow to a Japanese officer, every blow received for some real or fancied offense, every violation of native customs and traditions only served to heighten the resentment against Japanese rule." (Lodge, SUREA, P. 9)

"The people took with them as much food as they could carry on bullocks, on the backs of cows and carabao, and on their own shoulders some back. At about 7:30 p.m. the long walk began. Men, women, and children, the well and the sick, staggered throughout the night. . . . The wretched column consisted of exhausted men, women, and children, the sick who were hardly able to carry themselves, and invalids on stretchers borne on the shoulders of tired men. The Japanese civilian guards were relentless, permitting no one to stop by the wayside. Now and then the spine-tingling sound of clubs against the flesh and the painful cries of men and women resounded through the line of march as the

Honorable Barney Frank
 Re: Testimony on H.R. 3191
 August 4, 1988
 Page 6

friends and dragged along the way. The people of Yigo marched along the Frico-Tai road to Manengon, behind Yona. The people of Dededo, Barigada, and Mangilao followed behind them. The latter group proceeded all the way to Talofofo, where they stayed until their liberation. Residents of Agat then moved into the Yona region. Those who lived in Inaraja, Merizo, and Umatac were grouped in Malojloj and other locations. Almost no one was spared the march." (Carano & Sanchez, SUPRA, p. 291)

"During the bombardment of July 1944, they made us all work, all those from seven to sixty years old, men and women. After about two weeks the Japanese knew they were on the defensive... We were escorted by Japanese soldiers and they followed them. They were about 500 people at first. We marched through Yona till we got to the Ilig River. The Japanese long and slow because of the old people and the little children and the pitch-dark night... We marched along the trail far into the valley about two miles. And there at Manengon, we were told to build our own camp. The place was muddy. It was raining. Many people did not have food, but we picked corn, papayas, coconuts, and breadfruit. If anyone was caught building a fire, he was punished." (Narrative of Luis Untalan, "The Long Trek to Manengon," Pacific Profile, July, 1965, p. 20)

"Once the people reached the camp sites, they hurriedly gathered coconut fronds for building shelters. At most every camp was sea of mud... For about a year, Guam had received little rain. Fields were dry and crops were dying. As the steady drone of American planes sounded in the skies, dark clouds gathered above the island, and rain began to fall. The rain fell steadily throughout most of the American invasion period and during the mopping-up operations that followed. As a result, the concentration camps, which were spared attacks by American planes, were constantly wet, and the people in them lived in utter misery. The Guamanians stay in the concentration camps lasted only a few weeks. It was, however, perhaps one of their worst experiences during the war. No one except the Japanese knew why the people has been confined in the camps... They realized that the Japanese intended to slaughter the island's entire population." (Carano & Sanchez, p. 292)

The days of final dislocation to the camps also brought on final acts of desperation by the Japanese, frequently culminating in tragedy and terror.

"The Japanese knew what was happening, and they called those whom they suspected had helped the Americans. What the Japanese did to these people cannot be described, because it is horrifying. They imprisoned them and they tortured them severely with every kind of torture." (Artero, supra, p. 69)

"After two years of harsh treatment at the hands of the Japanese in which all his possessions were transferred to the enemy, Pedro Martinez, a business man, and respected citizen of the community, had only of Guam, and respected show for his sufferings... When the Japanese expression to their occupation would be coming to an end, they decided to give him a bitter lesson... They killed a dog and hung it carcass up and forced [him and his wife] to pray to it... On another occasion, they were taken and..."

Honorable Barney Frank
 Re: Testimony on H.R. 3191
 August 4, 1988
 Page 7

regular intervals, a Japanese officer would fire a pistol by their ears... (Msr. M.A. Olano, "Diary of a Bishop", 1949, pp. 136-137)

"Jose Garrido Salas was hung on a tree and lashed 18 times. When he was later taken before the tribunal, he was punished with 150 lashes. For six weeks he was subjected to continuous slapping at intervals of half an hour. He was finally released, but was later charged with making signs to the American planes. He was tied to a tree and was about to be executed, but the Japanese fled when they saw the American planes." (Olano, supra, p. 141)

"Joaquin Limitaco of Piti was beaten on forty different occasions and was on the verge of death several times because he refused to divulge the whereabouts of George Tweed, the American fugitive... Manuel Chateaus was among the survivors of the massacre in Merizo before the American invasion, when thirty men and women were packed into a truck and taken to a camp at Stabsheimen. (Pacific Profile, July, 1966, p. 47)

"Just before the liberation of the island, the Japanese collected Guamanian women from ages 12 to 35 and assembled them in an area near Fena. There were three caves where the women were kept. My oldest sister was one of them. She managed to escape the night after she was taken and made it back to our camp which was about a mile away. The other women were executed after soldiers were finished with them. I don't remember any survivors." (Anonymous Narrative, SUPRA, from Micronesian Archive, pp. 311-312)

"I was with my mother and other members of my family in a concentration camp. My father would be brought over to our camp and subjected to many brutal punishments which was witnessed by the whole family. The Japanese father would be whipped or suffered some other type of punishment. Everyone had to maintain their personal restraint during this in order to stay alive." (Narrative of Anonymous Guamanian, obtained by Harriet Spencer, July 1968; included in Micronesian Archive, edited by Hector H. Lee, August 1968, p. 311)

Fortunately for the Guamanians, the Japanese would soon have to turn their attention to the approach of United States forces in July 1944.

"As the bombing of the American planes increased, the last I remember of the Japanese in the camp was when they called all the men out and marched us to the jungle behind Sinajana village. They made us carry bombs up and down the hill until we got to where Umatac is across the river. We saw American planes overhead and they were dropping bombs carrying bombs. They stepped on the bombs and they were carrying bombs. When we got back, some people who had stayed behind told us that they had seen Americans. We did not believe them until we saw the candy, chewing gum and American cigarettes, and then we believed them." ("Long Trek to Manengon," supra, p. 21)

The Japanese knew what was happening, and they called those whom they suspected had helped the Americans. What the Japanese did to these people cannot be described, because it is horrifying. They imprisoned them and they tortured them severely with every kind of torture." (Artero, supra, p. 69)

Honorable Barney Frank
 Re: Testimony on H.R. 3191
 August 4, 1988
 Page 8

people of Guam were subjected to various forms of atrocities, including forced labor, physical and psychological torture, death by execution, rape and forced prostitution, forced marches, and internment in concentration camps. The people of Guam suffered because of their intense loyalty to this Nation. They were a difficult psychological force to subjugate.

The Guam Reparations Commission, which was established by the Guam Legislature, estimated that more than 10,000 native Guamanians were subjected to such treatment, no sufficient plan for reparation for these people has ever been formulated.

In closing, I would like to emphasize that our island was caught for the second time in its history between two great power struggle. Because of our patriotic alignment with this country, we were victimized savagely over several years time.

Sincerely,



TED S. NELSON

Mr. NELSON. Also I have a video tape entitled "The Occupation and Liberation of Guam." This was produced for a recent Liberation Day program by Annette Donner. Mr. Chairman, this contains beneficial substantiating information taken from official Department of Defense files. This is the package.

Mr. Chairman, rather than read through my testimonies, let me just try to summarize it as brief as possible. I join my colleagues here today, and Congressman Blaz, not only to represent the 3,500 of our Chamorros who were tortured and killed. I would like to go even further, Mr. Chairman, to also represent the entire Chamorro population who underwent the ordeal of the Japanese occupation and their documentation to that effect.

I just want to also start out that I, too, have witnessed the Japanese occupation. It was not easy, Mr. Chairman, members of this committee, to be a white-skinned blond boy bearing the name Nelson, running in the jungles of Guam. Let me tell you that the fear we, the entire family, my parents, my father experienced, because we never knew when we were going to be tortured next or executed. But thank God, we survived.

My grandfather, Marcellus Sgambelluri, retired U.S. Navy, was taken as a prisoner. This issue, Mr. Chairman, has all sorts of documents and supporting materials that have been submitted, and I am pretty sure with the assistance of Congressman Blaz we will be submitting at a later date. It is a very important issue. I want to represent the entire Chamorro population who survived, as well as those who were killed. These people were unable to appear before the Guam Reparations Commission, as well as those who were too sick or too old. It is for this reason that they were unable to file their rightful claims.

I, for one, my wife and my parents did not register with the Commission any complaint or any atrocities or suffering that we had endured. It was for these reasons that we have to do something along the line of Public Bill 442 to include the entire Chamorro. That the entire population, who survived the occupation composed of Chamorros. They were dedicated and loyal Chamorros who underwent all kinds of torture humiliation and suffering at the concentration camps. We on Guam certainly were not having a picnic during World War II. This has been explained by my colleagues and by my previous testimony.

I would like to point out to this committee that we do not want to get into legal battle concerning terminology as used by the Justice Department or the Administration. I think that our goal and the purpose of this hearing is to do justice to the people of Guam. This problem has existed for 44 years. The time to correct it is now and the time is perfect.

As Congressman Blaz has indicated, you just voted on H.R. 442, and that, to me, has great significance. I think it opens up the way, I think the people of Guam can feel comfortable that Congress will certainly act favorably for them also. It took this long. Many of our people are confused, and it is very difficult to explain why we have not resolved this issue for so many, many years.

Now I do not want to go through the history of Guam from the Spaniards all the way up to the present time. Certainly, I think records will show that the people have been exploited in many

ways. Our civil rights were violated. Our constitutional rights were violated and it was for this reason that we are here today.

There has been a comparison—as a matter of fact, there is some opposition to this bill. And I just want to say that with the internment, which is very related, Mr. Chairman, that I want to emphasize this. There are some differences. There are many differences. In Guam it wasn't internment, it was a concentration camp. It was torture. It was forced labor. It was all kinds of suffering.

Japanese did not respect us. We had to bow to every one of them. We were slapped. We were kicked. Our women raped. Our men and other Chammaros were beheaded. The suffering was quite different. I know.

I think Congress has indicated that the internment of the Japanese-Americans was the biggest mistake that this nation has undergone. Perhaps that may be true. And I have feelings for them. As a matter of fact, I supported that legislation. I submitted my testimony in support of that bill so the Japanese-Americans would be compensated for the suffering.

But what we went through, Mr. Chairman, I certainly feel and I believe that we should be compensated also for the atrocities we had to live with. Another important matter that I would like to bring out also is the Micronesian Claim Act of 1971.

Now, Mr. Chairman, Japan was forced to contribute \$12 million for the Micronesians, but yet it was absolved on the obligation of Chamorros because we are U.S. nationals. Micronesians, Mr. Chairman, were given close to \$64 million by the Americans as well as contributions made by the Japanese.

The Micronesians are our brothers. The Saipanese are fellow Chamorros. But I certainly feel that the conditions that they underwent were entirely different than the Chamorros. The American nationals on Guam, I certainly feel that we suffered more, and yet what have we received for being loyal Americans compared to what our Micronesian brothers have received for Title I, \$34 million? For Title II, another \$34 million, whereby \$12 million was contributed by the Japanese Government. The Japanese Government was required to pay \$12 million.

Now here again may be another inequity. Why spend \$64 million for Micronesians, our Micronesian brothers? I believe they had it better. I believe they had it better. They were Japanese subjects for many cases for 35 years. And somehow here is where the injustice comes in. When it comes to the Chamorros of Guam, we seem to be ignored. The U.S. gave us a token. They came in with the Red Cross aid for the Chamorro people. This is what you we got for all the sufferings you underwent.

I understand, and this is what I am afraid of. I think it is pretty obvious with the position of the Justice Department and the Administration. These cited the 1947 Act and also they told me that this issue is domestic rather than international scope. Jane Blank is the Director of Intergovernmental Affairs Office of Legislative Intergovernmental U.S. Department of State.

I do not agree with this assessment that this matter is domestic at this particular time. Now, again, from Richard Montoya, Montoya has taken the same position that the Relief Act of 1945 is over. That was it Chamorro people. Secretary Montoya, July 9,

1986, said that was the settlement, and therefore the Chamorros should be satisfied.

The position of the State Department, Mr. Chairman, is most disturbing. Let me just try to spend a little time on this one, Mr. Chairman.

Mr. FRANK. Not too much, I hope, Mr. Nelson. We are getting towards the end of our allotted time.

Mr. NELSON. Yes, sir. All right. Just briefly, then, let me concentrate on the position.

I certainly feel that the position of the Justice Department is very nauseating and disgusting, Mr. Chairman. It is rather ironic that here we are, we traveled 8,000 miles and to address this issue of 44 years of injustice. We traveled for justice, and all of a sudden the Justice Department is trying to tell us this is no issue.

Justice Department is doing an injustice. We are not asking the American Government, taxpayers, to pay us for the compensation of World War II atrocities. I think the fact is that there was a deal between Japan and the U.S. And I think it is this deal that we are concerned with, Mr. Chairman, and certainly feel that somebody is responsible. I think there was a deal that whatever asset, gold, or whatever precious things that were confiscated or captured after the war would go to the U.S.

I think that particular deal, might be that the Japanese Government was absolved. And I certainly feel that the U.S. have assumed all responsibilities when they signed that treaty. Now, even our land, Mr. Chairman, they have occupied one-third of our land. We have bases, airport, military bases. We have ports and so forth. And as of this date, the landowners, and I certainly feel that this land was taken illegally.

The Justice Department certainly, I believe, that they are coming in again just like the other day with the Department of Interior when they say they are providing a monkeywrench to block this injustice. I certainly feel that not much weight should be given in considering their testimony before this committee. They said it was constitutionally defective. Land was stolen from the Chamorro. We suffered; our civil and human rights were violated. Is it constitutional for superpowers to exploit the Chamorros, private lands occupied without due process of law? Is it constitutional for someone else to sign away our rights? Do we have any recourse to claim damages made by the Japanese, by the enemy?

Is it constitutional to take all our most precious lands, cliff line properties, beaches, and other valuable properties, farming areas from the Chamorros, and deprive the Chamorros of their livelihood? These are some of the constitutional questions.

Now, Mr. Chairman, I just want to point out that after the war, we the Chamorros could not even leave or enter Guam after military clearance. This mandate that was in effect up until 1962 when President Kennedy ordered that the military clearance be dropped. We have been suppressed economically, socially and we have been deprived even though we are American citizens. We had no constitutional rights during this time.

I think this is where justice ends up being injustice in respect to this issue. Was Guam recaptured for the sake of military bases or

Why not the Chamorros? Why were we neglected? Why, why were we neglected? Why is the Government saying now that 2,000 soldiers were killed?

How many soldiers were killed in Japan? How many in Iwo Jima? How many soldiers were killed in Normandy? In the European campaign? In Vietnam and so forth? Why is Justice now trying to single out Guam? Are they trying to say that these many soldiers were killed, and that perhaps the Guamanians should be glad and they should not be compensated? The compensation, Mr. Chairman, is the reason we are here today.

Mr. FRANK. We will take one more minute, Mr. Nelson.

Mr. NELSON. Yes, sir. I have submitted copies of some death certificates. These are Naval death certificates, Mr. Chairman. They have been submitted and in the hands of the committee for your review. And last of all, Mr. Chairman, I have pictures here of the people that we are representing, of their dying, we shall call it the "last of the Mohicans." These are the Chamorros who underwent all the atrocities, all the injustices.

Now I want you to look at their faces. These are 90 years old Chamorros. These are the people who underwent the atrocities. Some of these people are dying. They were never compensated for anything, and yet they suffered. Mr. Chairman, I appeal to this committee that this legislation be expedited, and I am pretty sure that the people of Guam are looking forward for your favorable consideration. Thank you, Mr. Chairman.

Mr. FRANK. Thank you, Mr. Nelson.

Mr. FRANK. I have one question because this has been very well documented. Mr. Bamba and others have used the figure 3,600, approximately 36, 39, whatever, that is the best estimate we have of individuals who themselves suffered specific harm who were not compensated because of the shortcomings of the post-war compensation. Is that accurate? How did we get that number?

Mr. BAMBA. That was compiled when the Guam Legislature passed—in the 15th Guam Legislature they established a Guam Reparations Commission to investigate this, and these are people who actually registered.

Mr. FRANK. And these people who would have—

Mr. BAMBA. But those are the only ones that registered on island. There are also a substantial number of Chamorros, Guamanians, who have since moved to the mainland, but who would also, who have suffered.

Mr. FRANK. OK. As I get it 2,000 are claimants and 1,200 are survivors? Is that basically the thing?

Mr. BAMBA. That is right.

Mr. FRANK. All right. Now those have not been thoroughly investigated, but that is at least a first cut of what people think.

Mr. BAMBA. Yes. Those are the ones—

Mr. NELSON. Those are registered, Mr. Chairman. But there are still many thousands more who were not able to do so.

Mr. FRANK. Right. Then the next question I have there is no dollar figure. What are the estimates? If this bill were to pass, what are your estimates of what it would cost?

Mr. BAMBA. Well, based on the payments in other reparations acts provided for a certain amount for forced labor, for instance,

that was computed in 1941 values. At that time the salary of an individual was \$37 a month. Now in order to appreciate that, Mr. Chairman, right after, shortly after the war when all this rehabilitation was taking place, there was a three tier wage scale that was being paid on Guam.

The highest wage went to U.S. citizens. The second highest ironically went to Japanese nationals who were used in rehabilitating Guam. These were from Japan. And then the lowest wage was paid to the Guamanians.

Mr. FRANK. How much would the total be if the bill were to pass? What is the best estimate? We have a bill which has a \$500,000 authorization for the commission, but it does not give a dollar figure as to what the total compensation would be for all the compensable claims, assault, property damage, et cetera? Is there any estimate of what that would be?

Mr. BAMBA. Well, this is why we opted to support the commission concept because the commission's job would actually be to ferret to determine those amounts.

Mr. FRANK. So no one has an estimate at this point?

Mr. BAMBA. Because for one thing there is only 3,300 registered with me, but then there are substantially more that are not, but who would be covered under this provision.

Mr. NELSON. I would like to interject, Mr. Chairman, that under the Micronesian Claim Fund Act, they were anticipating almost less than one-third. But yet when the commission was established, I think there were 200 percent that registered and were compensated. And I think since they got 64 million, I certainly feel, if anything, the Chamorros deserve almost the same.

Mr. FRANK. Mr. Coble. Yes, you made that point. Please do not, try not to repeat all the points all the time.

Mr. NELSON. Yes, sir.

Mr. FRANK. Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. I just want to say to the Guamanians in the room that there is no member of the United States Congress who represents his or her constituencies any better than your Congressman. You are lucky to have him here, and he does an excellent job, and Ben, it is good to have you at our committee today.

Ben, you mentioned, and perhaps others did, and I apologize for having gone back to the floor to vote, but you referred to the treaty that absolved Japan. Mr. Chairman, I would like to find, and I am sure that we can get a copy of that treaty. I think the committee needs it.

Mr. FRANK. We have that, and I think we have the memorandum from John Foster Dulles that was referred to. And that is, as you know, it was the one point we asked the Justice Department specifically to address. And we might, I think, I am just going to amend that. I am going to ask counsel of the committee to ask the State Department also.

Mr. Nelson mentioned that the State Department had stuck its, had been involved in this. So we will ask the State Department also to comment on that particular treaty and its implications.

Mr. COBLE. And with that in mind, Mr. Chairman, I would like to put a question—I think it is a rhetorical question. The answer is

probably no, but I would like to know, folks, if any claim or claims have been directed against Japan? Now you may say legally that would be an exercise in futility, but nonetheless it might be worth pursuing.

Mr. RIVERA. Mr. Chairman, if I may interject.

Mr. FRANK. Identify yourself for the recorder, please.

Mr. RIVERA. I am Senator Jerry Rivera. I am one of the members here though I was not allowed to testify. But you mentioned earlier about subrogation, and I agree wholeheartedly with you that when the United States waived any claims for the Guamanians against Japan that the United States legally subrogated itself to take over those claims, any claims, any valid claims that may arise at that time.

So not only is there a moral obligation, but I feel up to this time a legal obligation on the part of the United States.

Mr. FRANK. I appreciate that, Senator. Does somebody want to address Mr. Coble's question.

Mr. RIVERA. I forgot. What was your question again, sir?

Mr. COBLE. The question was has any claim or claims been directed to Japan?

Mr. RIVERA. Oh, yes. We have attempted. The legislature has passed resolutions asking Japan since they are very wealthy now and quite able to do so to pay for it.

Mr. COBLE. Thank you.

Mr. RIVERA. But I think we have been also told that the State Department would be opposed to this since we are talking—

Mr. FRANK. Why do you not submit for the record the resolutions and any responses you have gotten either from the Japanese Government or from the American Government or both? That would be very helpful.

Mr. RIVERA. Yes. I hope we can do that. Because I think the problem here was that we are dealing with—a territory dealing with a foreign government. And I think that the State Department, if I remember correctly, had objections to us doing it that way.

Mr. FRANK. Well, if I were you, I would ignore them.

[Laughter.]

Mr. FRANK. I mean that is not going to make the Japanese do anything, but it is a free country, and that includes the territories. And if you want to write a letter to the Japanese Government, you do not need the State Department's permission, as far as I am concerned.

Mr. RIVERA. Thank you. But I really feel they should pay for it myself.

Mr. FRANK. Mr. Bamba and then Mr. Nelson.

Mr. BAMBA. Mr. Chairman, it is kind of ironic because when we have made the request from the Japanese Government on this issue, they cited the peace treaty.

Mr. FRANK. Right. We realize that. Mr. Nelson.

Mr. NELSON. Along the same line, but also we wrote to Nakasone, and of course, their response has not been given to us, but we are certainly pursuing it. But they will cite the treaty that they have no—

Mr. FRANK. I appreciate that. I think Mr. Coble asked that in a cooperative way to make the point about that was made at the

trine—the lawyers will be familiar with it—exhaustion of remedies, that you try elsewhere. And having asked the Japanese and having had them cite the treaty would, I think, strengthen that argument. I have no further questions. Mr. Coble?

Mr. COBLE. Well, as the chairman said, my question was a cooperative one. I was not trying to put a barrier in front of you, but I think we do need to have as many facts and details as we can have at our fingertips. Thank you, Mr. Chairman.

Mr. FRANK. We have no further questions. We appreciate the great distance that you had to travel. As I said, we have the documents, and we will also include in the record two additional statements, one from the Governor of the Territory of Guam, Joseph F. Ada, and another from the Organization of People for Indigenous Rights. These will be included in the record without objection.

[The statements of Governor Joseph F. Ada and the Organization of People for Indigenous Rights follow:]

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE ON THE JUDICIARY:

I AM VERY PLEASED TO BE ABLE TO TESTIFY IN FAVOR OF THE WAR REPARATIONS ACT AS INTRODUCED BY THE DISTINGUISHED CONGRESSMAN FROM GUAM, BEN BLAZ.

THE PEOPLE OF GUAM HAVE LONG PAID THE PRICE OF FREEDOM. THE TERRITORY OF GUAM HAS ONE OF THE HIGHEST PER CAPITA RATES OF ENLISTMENT IN THE UNITED STATES ARMED FORCES. MANY OF OUR SONS AND DAUGHTERS HAVE SERVED WITH DISTINCTION AND VALOR IN THE DEFENSE OF OUR GREAT NATION AND THE NOBLE PRINCIPLES WHICH ARE THE BEDROCK OF OUR WAY OF LIFE - HUMAN DIGNITY AND LIBERTY FOR EVERY MAN, WOMAN AND CHILD.

IN THE VIETNAM WAR, MORE SONS OF GUAM PAID THE ULTIMATE SACRIFICE ON A PER CAPITA BASIS THAN AMERICANS FROM ANY COMPARABLE AMERICAN COMMUNITY. BUT BEYOND THE SHADOW OF A DOUBT, THE GREATEST SACRIFICE BORNE BY THE PEOPLE OF GUAM AS

TESTIMONY OF GOVERNOR JOSEPH P. ADA
OF THE TERRITORY OF GUAM

ON H.R. 3191

"THE GUAM WAR REPARATIONS ACT"

BEFORE THE HOUSE SUBCOMMITTEE ON JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

AUGUST 4, 1988

A RESULT OF THEIR DEVOTION TO THE UNITED STATES OF AMERICA AND TO THE CAUSE OF FREEDOM WAS THE SUFFERING INFLICTED UPON OUR PEACEFUL POPULATION BY THE TRIBULATIONS OF THE SECOND WORLD WAR.

DURING WORLD WAR TWO, MANY CHAMORROS WERE KILLED - IF NOT AT THE HANDS OF THE AGGRESSORS WHO FOR MORE THAN TWO YEARS OCCUPIED OUR SHORES, IF NOT LITERALLY BY AN EXECUTIONER'S HAND FOR BRAVELY REFUSING TO DIVULGE INFORMATION CONCERNING THE WHEREABOUTS OF FUGITIVE AMERICAN MILITARY PERSONNEL WHO WERE SEQUESTERED AT GREAT PERSONAL RISK BY CHAMORROS WHO REMAINED LOYAL TO AMERICA, THEN BY THE HAIL OF BOMBS AND BULLETS WHICH MARKED NOT ONLY THE CAPTURE OF THE ISLAND OF GUAM BY ENEMY FORCES BUT ITS RECAPTURE AND LIBERATION BY THE UNITED STATES ARMED FORCES.

IN VIRTUALLY EVERY CHAMORRO FAMILY, THERE IS A TALE TO BE TOLD OF A RELATION WHO LOST HIS OR HER LIFE DURING WORLD WAR TWO. IN VIRTUALLY CHAMORRO FAMILY, THERE ARE MEMBERS WHO SUFFERED PHYSICAL, MENTAL, AND EMOTIONAL SCARS AS A RESULT OF

THE SECOND WORLD WAR. IN VIRTUALLY EVERY CHAMORRO FAMILY, THERE WAS GRAVE ECONOMIC LOSS AS FAMILY PROPERTIES - HANDED DOWN FROM GENERATION TO GENERATION - AS BUSINESSES, HOMES AND FARMS WERE CRUELLY AND IRREVOCABLY DESTROYED.

THE TIME HAS COME AT LONG LAST FOR JUSTICE TO PREVAIL. NOTHING WILL EVER REPLACE THAT WHICH HAS BEEN LOST. NOTHING CAN EVER FILL THE VOID, THE EMPTINESS LEFT IN THE TRAGIC AFTERMATH OF A FAMILY'S LOSS OF A LOVED ONE. NO AMOUNT OF COMPENSATION CAN EVEN BEGIN TO ADDRESS THE GRIEVOUS LOSS OF A LIFE CUT DOWN IN ITS FIRST FLOWERING - INCOMPLETE AND UNFULFILLED.

WE HAVE SEEN THE GREATNESS OF OUR NATION EXPRESSED ONLY RECENTLY IN THE REDRESS OFFERED TO ASIAN-AMERICANS UNJUSTLY INCARCERATED AND DISPLACED DURING THE SECOND WORLD WAR. IT IS THAT CONCERN FOR ITS CITIZENS - NO MATTER HOW LOWLY THEIR STATION - THAT MARKS THE UNITED STATES OF AMERICA AS A GREAT SOCIETY. AND WE ARE PLEASED, AND GLAD IN OUR HEARTS, TO SEE

THE JUST AND EQUITABLE CAZE OF OUR NATION TURNED TOWARDS THE CHAMORRO PEOPLE - THE SOMETIMES-FORGOTTEN AMERICAN CITIZENS OF THE WESTERN PACIFIC.

WE ARE VERY PLEASED TO SEE AND ARE EAGER TO WORK WITH THE COMMISSION ON WAR REPARATIONS WHICH IS GOING TO BE ESTABLISHED BY H.R. 3191. WE FEEL THAT THE COMMISSION WILL BE AN EQUITABLE WAY OF DOCUMENTING THE JUST CLAIMS OF THE PEOPLE OF GUAM AND I AM PLEASED TO REPORT THAT MUCH OF THE WORK OF DOCUMENTATION HAS ALREADY BEEN BEGUN BY MANY OF OUR LOCAL POLITICAL LEADERS WHO HAVE BEEN SO CONCERNED ABOUT THIS ISSUE - AMONG THEM, THE LATE SENATOR CECILIA BAMBA, HER SON AND THE MINORITY LEADER OF OUR GUAM LEGISLATURE, SENATOR GEORGE BAMBA, SENATOR EDDIE DUENAS, SENATOR MARILYN MANIBUSAN, AND OTHERS. I BELIEVE THAT THE PEOPLE OF GUAM OWE A DEBT OF GRATITUDE TO THESE INDIVIDUALS AS WELL AS TO CONGRESSMAN BLAZ FOR THEIR SPONSORSHIP AND DEVOTION TO THIS CAUSE. I AM WONDERING, HOWEVER, IF IT MAY NOT BE POSSIBLE TO EXPAND THE SCOPE OF THE ACTIVITIES COVERED UNDER THIS BILL TO

INCLUDE SUCH GROUPS AS THE GUAMANIAN WHO FOUGHT IN DEFENSE OF WAKE ISLAND, AMONG OTHERS.

ON BEHALF OF THE PEOPLE OF GUAM, I WANT TO EXPRESS DEEP GRATITUDE FOR THIS OPPORTUNITY THAT HAS BEEN EXTENDED TO US TO SPEAK OF OUR PLIGHT AND TO URGE THE EXPEDITIOUS REALIZATION OF JUSTICE THROUGH THE SWIFT PASSAGE OF THIS BILL. THANK YOU.

Organization of People for Indigenous Rights, OPI-R
P.O. Box 12063
Tamuning, Guam 96916

Statement With Regard to H.R. 3191
Relative to War Reparations for Guam

This statement is provided in order to lend a perspective to a much discussed and emotion laded issue, namely, war reparations for Guam. Traditional thinking, which has been previously applied to this issue, typically revolves around such variables as prescribed compensation for physical injury, loss of life and property, forced labor, confinement and varying forms of abuse. Additionally, the process entails individual claims requiring evidentiary support. In light of these parameters, the end result is that a segment of a population is identified as deserving of such compensation and the remaining segments are viewed as not requiring similar consideration. While individuals who meet prescribed requirements may be deserving of compensation such an approach fails to address the issue of war reparations in a complete sense. There can be no question that all people in Guam were profoundly affected by their experiences during World War II and any distinction that can be reasonably drawn is with respect to the type of experience endured.

It is our position that in order to properly address war reparations for Guam, that consideration be given to all the people irrespective of the extent of their individual cases. The best characterization is that of a "Collective Hurt" requiring "Collective Reparation."

Our recommendations, we believe lend themselves to appropriately addressing the primary concern for compensation without creating the type of divisiveness and ill feelings which were evident in cases that

involved the commonwealth of the Northern Mariana Islands and the various entities throughout Micronesia.

Our recommendations are as follows:

- 1) The type of claims which can be filed expand to include compensation for emotional/psychological trauma experienced by all of the people of Guam.
- 2) The time limitation for filing claims extend beyond the one year term specified in H.R. 3191 to allow for complete processing of all claims.
- 3) Witness costs which may be incurred should be funded by the United States government.
- 4) Provide the payment of approved claims be made no later than six (6) months from the time of approval.
- 5) Establish funding for education programs for affected individuals and or their descendants.
- 6) Fund and develop economic self-help programs for affected individuals and or their descendants.

As a final thought, anyone who is even remotely aware of the various discussions and attempts towards effectuating war reparations for Guam realizes the extent to which this issue has dragged on and the attendant frustrations that the people of Guam have had to endure. It is time to face this long delayed concern squarely and provide the necessary solutions not only with equity, but with compassion, justice and in collective terms.

We sincerely hope that serious consideration is given to the thoughts and recommendations that we have delineated and request that our statement be formally entered as a part of the congressional record.

Mr. FRANK. I did have one question. Calvin Graham did not send that kid to take the pictures, did he? I thought maybe Calvin Graham sent that kid to take the pictures to remind us about it.

Mr. RIVERA. That was my son.

Mr. FRANK. Oh. This hearing is adjourned. These witnesses are dismissed. Thank you.

Mr. NELSON. Thank you, Mr. Chairman.

[Whereupon, at 2:45 p.m., the hearing was adjourned.]

ADDITIONAL MATERIAL

OFFICE OF THE SPEAKER

Nineteenth Guam Legislature
POST OFFICE BOX 081
TERRACE, GUAM
U.S.A. 96910



FRANKLIN J. ARCEO QUITUGUA
Speaker

August 2, 1966

The Honorable Barney Frank
Chairman, Judiciary
Subcommittee on Administrative Law
and Governmental Affairs
U.S. House of Representatives
Washington D.C. 20515

Dear Mr. Chairman:

I would like to submit for the record my comments on H.R. 3191, and Act to establish a War Reparations Commission for Guam. Although I was not the recipient of an invitation to appear before your subcommittee, as a survivor of the Second World War, and a policy maker in Guam, I feel compelled to contribute these remarks for the record.

The issue of "war reparations" is an emotional one in Guam, just the mention of those words is enough to stir the feelings of many Guamanians. No doubt, this proposal has stirred many people on the basis of these two words alone. But "war reparations" is a matter of frustration as well. Many years have passed since the war, and many of those who most suffered have taken their secret horrors with them.

Beyond the emotion and frustration there is the matter of justice. Justice will not erase the sentiments and memory of the tragedies which occurred nearly fifty years ago. But justice would provide a measure of recognition which acknowledges the tribulations of an innocent people subjected to the violence perpetrated by others.

I thank you for your time in reviewing my comments on this proposed measure.

Sincerely,

Franklin J. Arceo Quitugua

cc: Members, Subcommittee on
Administrative Law and Governmental Affairs
Legal Counsel, Commission on
Self-Determination

OFFICE OF THE SPEAKER

Nineteenth Guam Legislature
POST OFFICE BOX CH-1
TERRITORY OF GUAM
U.S.A. 96919



FRANKLIN J. ARCEO QUITUGUA
SPEAKER

TEL: 472-3401/3

Page 2 of 5

born out of Japan's war effort.

Prior to the war, the Chamorro people of Guam were already a part of the American family. Although our frequent requests for citizenship were turned down, we had in our hearts an understanding that "Uncle Sam" was really a blood relative who would look after us. Even after Guam was demilitarized beginning in the early 1930's, even after military dependents were evacuated from the island six months prior to the occupation, and, even after we suffered an enhanced brutality at the hands of the Japanese because of our "American" sentiments, we steadfastly kept our American flags hidden from the Japanese, and kept the hope of freedom and democracy in our hearts.

In retrospect, the Chamorro people of Guam were simply abandoned by Uncle Sam. And for our adoption of "Americanism", we suffered untold deaths, rapes, hunger, and coercion at the hands of an occupier who desperately sought to make us "Japanese". We were a peaceful people, caught between a hegemonic struggle that exploded in our island. We suffered not only because we were spoils of war, but more so because we represented everything which the Japanese were fighting against: we had "Uncle Sam" in our hearts.

And now, in retrospect, we examine the injustice of our situation. Not only were we Chamorros of Guam left to be sacrificial lambs of a brutal war, but for all of our patriotism, and pride, Uncle Sam forgave the responsibility of Imperial Japan to compensate us for the extreme hardship that was forced on us, an innocent people.

I know first hand the difficult times of the war, and how it impacted the Chamorros in Guam. As a forced laborer for the Japanese, between the ages of 8 and 11 years old, I toiled in the fields of Talofofo to provide food for Japanese Imperial forces in the Pacific. Being forced to work for the Japanese not only brought rigorous work and harsh physical treatment, but it also meant that I did not have time to assist in raising food for my own family.

I was also on the road to Menanngennon (one of the three large, and most well known

Statement of
Speaker Franklin J. Arceo Quitugas
Nineteenth Guam Legislature
to the
House Judiciary Subcommittee
on Administrative Law and Governmental Operations

H. R. 3191

August 4, 1988

Mr. Chairman, and members of the House Judiciary Subcommittee on Administrative Law and Governmental Relations, Si Yuos Masee (thank you) for the opportunity to appear before you today to speak on behalf of H.R. 3191, "To establish a Commission on War Reparations for Guam."

The subject of this proposal takes me, the Chamorro people of Guam, the American government, and our past foe -- the government of Imperial Japan -- back into a time where blood and ink were spilled in battle and in triumph. It is a jolting experience because of the tragedy and loss, but more importantly because we can see the mistakes of our pasts much more clearly than we can our future.

After the tragedy of Guam's occupation by Japanese forces, and the reoccupation of Guam by the U.S., our country went on to win the war with Japan. Occupying a country which had surrendered itself, the U.S. government was faced with difficult choices and responsibilities in bringing Japan back to its feet. The issue of war reparations by Japan figured prominently in the approach the U.S. was to take in securing an allied friendship with a former foe. The U.S. was faced with the prospect of paying Japan's bills, and it was believed that a reparations program would undermine the return of Japan's industry to even self-sufficient levels. In the end, the U.S. and other allies, forgave Japan of its responsibility to provide reparations for the death, destruction, forced labor, internment, and psychological scars that were

Japanese internment camps) from Talofofo. For about three months we lived in a muddy area, stripped of vegetation, with little or no food provided us by our Japanese guards. Those were the hardest times that any person could expect to survive. And yet by some measure of fate that internment saved thousands of Chamorro lives. If we had been living in our traditional villages we would have fallen to the devastation of the bombardments which U.S. ships and planes heaped on the up-scale communities of Agaña and Sumay. Most of us survived, only to find our residences had been destroyed by the returning Americans. But to be sure, we were glad to be alive, and to have been released from the grasp of an occupier who saw their own end rapidly approaching.

Almost every family in Guam was in the same situation. The Japanese demands for food production -- to feed the far flung Imperial forces -- meant little time, and less land for our people to cultivate their basic (and traditional) food needs. The Japanese occupation period was perhaps the only time in the history of Guam's Chamorro people, that we were wanting for food. Many people starved, and many infants perished.

Many people did not survive the occupation. We have many famous martyrs such as the young Father Duenas, whose life was taken for not revealing the location of the sole remaining American fugitive, a radioman who was protected by the Chamorros throughout the war. But there are many more untold stories, and many people just disappeared. A recent population study of Guam (E. Kogera, *Demography of Guam*, from data in information, University of Guam, 1986), noting the underregistration of births during the Japanese occupation, and using gross census numbers collected before and after the occupation, established that approximately 1,500 Chamorros perished during the period December 1941 - July 1944. Although the numbers may seem small to you, 1,500 people represented about 8% of our pre-war population -- an incredible tolerance for suffering borne by few other communities during World War II. The population study further notes that approximately 1,100 of these fatalities occurred in June and July of 1944 as the American forces began their "softening" of the island with weeks of incessant bombardment.

The hard physical labor by men, women, and children, compounded by the relentless bombings and strafings from United States warships and planes, reduced us in number as well as in our physical and mental stature. Two and a half of years of captive treatment, capped off by explosive and unpredictable violence is enough to make any people humble - humble enough to accept any treatment anyone imposes on them during the remaining years of their lives.

Mr. Chairman, the proposal for war reparations on H.R. 3191 is long overdue. Many long years have passed since the war, and justice to the Chamorro people remains to be served. Unfortunately many of the potential claimants have passed away, and with them the secret horrors of war that were seldom mentioned. And now Mr. Chairman, our former military occupier is an "economic occupier"; controlling the majority of Guam's tourism industry, and literally buying our island parcel by parcel. Ironically, it is U.S. Treaties of Friendship, Commerce and Navigation -- again designed to help Japan recover from their war time losses -- which have become a scourge to our ability to participate fully in our island's economic development.

We are a patient people in Guam. But enough is enough. I urge this subcommittee to examine the injustice of our people's plight, and respond with a measure of justice which is warranted. I understand that the Federal government is in a financial bind, and thus urge you to examine -- perhaps with the assistance of the State Department -- the possibilities of having Japan now help foot the bill for war reparations to the people of Guam. Either through direct remuneration, or through Japan's foreign economic development grants, there must be some way that the now prosperous government of Japan can begin to demonstrate its sincere apology for the brutality which the people of Guam experienced during WWII.

RECOMMENDATIONS

While I am disappointed that this measure is so long in coming to this stage, I urge your immediate response to the matter of war reparations for the people of Guam.

The establishment of the Commission on War Reparations for Guam.

would be more appropriate under the Justice Department, the State Department, or even under the Office of the President. The work involved with this issue crosses national boundaries and would more appropriately be handled by federal agencies who have the resources, access, and experience in such international matters.

Additionally, I recommend that the Bill incorporate some mechanism by which claims are going to be determined. The various acts that have passed Congress after the war with respect to remuneration for some types of property damage, and resettlement, were very loosely administered, with great variances in claims disbursement. A mechanism to clearly establish claims amounts, and disbursement oversight should be included in the measure.

On a technical matter, I would suggest that the term "Guamanian" be changed to "Chamorro" (Section 10). Prior to the war, census data correctly noted that the island inhabitants were Chamorro. These not numbered amongst the Chamorros were few, either Japanese or Americans. This is a small point Mr. Chairman, but accuracy in identifying those to be recipients of war reparations is important to those of us who bonded together, and survived the travesty of a horrific war. A separate definition of claimants should be established for Americans and other nationals who were in Guam and are deserving of the justice this proposal brings to their suffering.

One final recommendation which I would like to offer for your consideration is a recognition of the collective suffering which the Chamorro people experienced during WWII, through the establishment of a trust from a percentage of the claims paid. A trust to be administered by those who were affected by the events of the War, to benefit this and following generations of their heirs, would be an fitting reminder to our people of the sanctity of peace and the futility of war.

Si Youn Maese for your time in reviewing H.R. 3191. The people of Guam await your expeditious treatment of this important matter.



United States Department of State
Washington, D.C. 20520

5/14/51

Dear Mr. Chairman:

The Secretary has asked me to reply to your letter of September 8 regarding H.R. 3191, to establish a Commission on War Reparations for Guam.

All US claims, including those of Guam and Guamanians, against Japan for its conduct during World War II were settled by the Treaty of Peace with Japan of September 8, 1951. Japan gave each of the Allied powers, including the United States, the right to seize and dispose of Japanese assets located in each ally's territory in order to satisfy its war claims as well as those of its citizens and nationals. In return, the Allied powers waived any right to reparation or to further claims. Therefore, the State Department is not in a position to assert claims against the Government of Japan on behalf of Guam.

Although the Treaty waived all further claims against Japan, United States nationals, including Guamanians, were able to turn to the US Government for compensation. Congress passed several measures to provide compensation, such as the Guam Relief Act of 1945 and the War Claims Act of 1948 as amended. Now as then, Congress must decide whether to provide further compensation. We would note, however, that as a matter of long-established U.S. law, most recently reaffirmed by the U.S. Court of Appeals for the Federal Circuit in *Beik v. United States*, the U.S. Government is not required to provide further compensation to those persons whose claims were terminated by the 1951 Peace Treaty.

I hope this will be helpful to you and the members of the Subcommittee.

Sincerely,

J. Edward Fox
Assistant Secretary
Legislative Affairs

The Honorable
Barney Frank, Chairman,
Subcommittee on Administrative Law
and Governmental Relations,
Committee on the Judiciary,
House of Representatives.