F

TREATY OF PARIS

Paris, December 10, 1898

Treaty of Peace between the United States of America and the Spanish Empire.

Protocol of Agreement Embodying the Terms of a Basis for the Establishment of Peace Between the United States and Spain.

(Signed August 12, 1898.)

PROTOCOL.

William R. Day, Secretary of State of the United States, and His Excellency Jules Cambon, Ambassador Extraordinary and Plenipotentiary of the Republic of France at Washington, respectively possessing for this purpose full authority from the Government of the United States and the Government of Spain, have concluded and signed the following articles, embodying the terms on which the two Governments have agreed in respect to the matters hereinafter set forth, having in view the establishment of peace between the two countries, that is to say:

ARTICLE I.

Spain will relinquish all claim of sovereignty over and title to Cuba.

ARTICLE II.

Spain will cede to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and also an island in the Ladrones to be selected by the United States.

ARTICLE III.

The United States will occupy and hold the city, bay and harbor of Manila, pending the conclusion of a treaty of peace which shall determine the control, disposition and government of the Philippines.

ARTICLE IV.

Spain will immediately evacuate Cuba, Porto Rico and other islands now under Spanish sovereignty in the West Indies; and to this end each Government will, within ten days after the signing of this protocol, appoint Commissioners, and the Commissioners so appointed shall, within thirty days after the signing of this protocol, meet at Havana for the purpose of arranging and carrying out the details of the aforesaid evacuation of Cuba and the adjacent Spanish islands; and each Government will, within ten days after the signing of this protocol, also appoint other Commissioners, who shall, within thirty days after the signing of this protocol, meet at San Juan, in Porto Rico, for the purpose of arranging and carrying out the details of the aforesaid evacuation of Porto-Rico and other islands now under Spanish sovereignty in the West Indies.

ARTICLE V.

The United States and Spain will each appoint not more than five commissioners to treat of peace, and the commissioners so appointed shall meet at Paris not later than October 1, 1898, and proceed to the negotiation and conclusion of a treaty of peace, which treaty shall be subject to ratification according to the respective constitutional forms of the two countries.

ARTICLE VI.

Upon the conclusion and signing of this protocol, hostilities between the two countries shall be suspended, and notice to that effect shall be given as soon as possible by each Government to the commanders of its military and naval forces.

Done at Washington in duplicate, in English and in French, by the Undersigned, who have hereunto set their hands and seals, the 12th day of August 1898.

[SEAL.] WILLIAM R. DAY.
[SEAL.] JULES CAMBON.

[TREATY]

The United States of America and Her Majesty the Queen Regent of Spain, in the name of her august son Don Alfonso XIII, desiring to end the state of war now existing between the two countries, have for that purpose appointed as plenipotentiaries:

The President of the United States,

William R. Day, Cushman K. Davis, William P. Frye, George Gray, and Whitelaw Reid, citizens of the United States;

And Her Majesty the Queen Regent of Spain,

Don Eugenio Montero Ríos, president of the senate, Don Buenaventura de Abarzuza, senator of the Kingdom and ex-minister of the Crown; Don José de Garnica, deputy to the Cortes and associate justice of the supreme court; Don Wenceslao Ramirez de Villa-Urrutia, envoy extraordinary and minister plenipotentiary at Brussels, and Don Rafael Cerero, general of division;

Who, having assembled in Paris, and having exchanged their full powers, which were found to be in due and proper form, have, after discussion of the matters before them, agreed upon the following articles:

ARTICLE I.

Spain relinquishes all claim of sovereignty over and title to Cuba.

And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

ARTICLE II.

Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones.

AMERICA'S PACIFIC DEPENDENCIES

A Survey of American Colonial Policies and of Administration and Progress toward Self-Rule in Alaska, Hawaii, Guam, Samoa and the Trust Territory

by

Rupert Emerson, Lawrence S. Finkelstein, E. L. Bartlett, George H. McLane and Roy E. James

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MARC

AMERICAN INSTITUTE OF PACIFIC RELATIONS
NOV 01 1949

was head of the Police Department and Marine Corps enlisted personnel served as the "backbone" of the native police force.

The duration of the tour of duty of naval officers on board ship or beyond the continental limits of the United States is eighteen months. Thus prewar Guam had a new Governor about every eighteen months. As a matter of actual fact, a few Governors did not serve the full eighteen months due to illness and needs of the service. A few served several months in excess of eighteen while awaiting the arrival of their successors. Not one Naval Governor of Guam was ever reappointed.

It is interesting to observe that in the 230 years of Spanish government there were some sixty Spanish governors and acting governors, serving an average term of about four years. The records show, however, that five actually served only one year or less; two served ten years; and two served eleven years. Compare this with the eighteen month terms of American Naval Governors as effected under the naval rotation system. Eighteen months, at times reduced by illness, by visits to the United States, the Philippine Islands, or other areas, or by cruises at sea, is scarcely long enough to permit a governor to become familiar with his job and the many and varied problems of civil government of thousands of native civilians on a tropical island. Several of the Naval Governors scarcely became known on the island before their terms expired.

Some of the naval governors thoroughly enjoyed their duty as civil administrators of a native population. Some took an active and personal interest in the people and their problems and worked hard and sympathetically on their behalf. Others found their duties as Governor utterly foreign to their background of training and experience as professional naval officers and developed a keen dislike for the job. Some regarded their assignments to this remote and unimportant naval station as punishment duty, which it probably was in a few cases. The post was not regarded as an asset to a naval career. A few of the Naval Governors went on to achieve flag rank, but the position was not one which served to enhance a record of naval service under review for promotion to flag rank in the promotion-poor prewar Navy.

Many of the Naval Governors were motivated by a sincere desire to improve the lot of the people they governed. It has been said, and probably with considerable truth, that others functioned as nothing more than Naval Commanders of the United States Naval Vessel The Island of Guam with some 20,000 civilian members of the crew. They "governed" the people of Guam much as they had commanded naval vessels or naval establishments on previous tours of duty. Law and order often became "discipline," legislation became "commands" or "orders," education became "training," and so on. This is somewhat borne out by the fact that the organization of the government resembled that of a navy yard or a naval vessel. The departments of government were organized and functioned like the departments of a navy yard or the divisions of a ship. Officers served as department heads and members of the staff of the Governor. Enlisted men of the Navy and the Marine Corps and certain selected American and Guamanian civilians were entrusted and relied upon to perform the routine everyday business of government. A few local civilians with many years of service were entrusted with comparatively important routine duties, but they never assumed command. The population as a whole, the people of Guam, were regarded as "wards of the Navy" to be treated kindly

MICRONESIAN AREA RESEARCH CENTER
University of Guam

U. S. NAVY

Report

on

GUAM

1899–1950

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This material is for reference only.

DEPARTMENT OF THE NAVY

WASHINGTON 25, D. C.

No masons, no carpenters, no physicians and no trained school teachers, the few schools medieval in their scanty, religion-dominated curricula;

A population so abused and oppressed over the centuries, so disease-infested, so isolated from the world, so haunted by superstition, that it was a listless, ambitionless, unorganized mass of humanity stirred only by the hope for individual survival.

That was what was handed to the Navy Department 50 years ago to rehabilitate, to organize, to administer, and to make productive. It was a task new to the Navy; it would have been as new to any Department in the Government. The assignment was handed to the Navy because Guam was accepted to be, primarily, of strategic value to the nascent Pacific empire, keystone of the maritime arch stretching from the newly acquired Territory of Hawaii to the just-purchased Philippine domain.

When the time came for Guam to fulfill its strategic function, 42 years later, its military worth had been almost completely devalued. However, the subject of this report is not Guam as a military bastion but rather the achievements of the Navy Department in its secondary responsibility; the physical and social restoration and recreation of Guam. The challenge was not only to better the material circumstances of the Guamanians but to achieve a transformation in the bodies and minds of the people. The responsibility to the Guamanians was to guide them from disease-ridden medieval peonage to the dignity and demeanor of a healthy, self-reliant citizenry in the modern world.

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Washington, D. C., Dateline - December 19th - (UP)

The Navy Department has released its ban against outside business interests entering Guam, in an effort to provide the Islanders with a more diversified economy, Capt. Jennings, Officer in Charge of Island Government, disclosed.

Jennings said applications for enterprises on Guam would be screened carefully by Rear Admiral Charles Pownall, Military Governor of Guam. Only businesses which Guamanians cannot establish themselves will be permitted to start on the Island. The policy of the Navy Department is to prevent the entrance of these enterprises until such time as the Guamanian Economy has been rehabilitated by payment of Guamanian settlements, land allocations, and restoration of civilian facilities to the point where the people have their government on an equitable basis.

During the interim, there is no objection to admission of firms which in the opinion of the Governor will provide services which Guamanians cannot undertake and which are essential to the Island's economy, Jennings said.

Jennings said the policy had been drafted last September by Pownall and Admiral Towers, CinCPac.

At a conference here with the Navy Department Officials, Admiral C. W. Nimitz, Chief of Naval Operations, approved the plan. Jennings said he knew of no new outside businesses, but admitted that such enterprises would probably be welcomed by the Navy, as plumbing, electrical appliances, and automobile repairing.

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OP22/ff
Serial: 51P22

29 JAN 1948

VIA AIR MAIL

From: Secretary of the Navy.
To: High Commissioner of the Trust Territory of the Pacific Islands.
Deputy High Commissioner of the Trust Territory of the Pacific Islands.
Governor of Guam.
Governor of American Samoa.

Subject: Policy governing the right of entry into and the licensing of private enterprises within certain areas under naval jurisdiction.

References: (a) Commander Marianas and Governor of Guam Conf Speedltr Serial 0568 of 10 December 1947 and CinCPacFlt 1st End. Serial C1209 of 22 December thereon.
(b) CNO ltr Serial 1422P22 of 15 January 1948.

1. Reference (a) transmitted a recommendation as to the policy to be pursued with reference to the grant of authority to former and retired personnel of the Armed Forces to engage in private business in certain areas under naval jurisdition.

2. The policy of the Navy Department with respect to the protection of the economic interests of the local inhabitants of the areas under its jurisdiction is set forth in reference (b).

3. The application of the Department's policy to the grant of industrial and commercial licenses or concessions to other than local inhabitants demands more than ordinary care and circumspection in the case of grantees who are former or retired members of the Armed Forces, particularly those who have occupied governmental positions and who have enjoyed opportunities of acquiring special information or of forming associations advantageous to the conduct of private enterprise within the area under naval jurisdiction.

4. Under the authority of the Executive Orders which charge the Secretary of the Navy with responsibility for the government of Guam, American Samoa and the Trust Territory of the Pacific Islands, the Secretary is empowered to deny or to revoke the right of entry into the territory concerned to any person whose presence therein is detrimental to the public interest.

Op22/flf
Serial 51P22

He is also empowered to grant, withhold or cancel permission to engage in commercial or industrial enterprises where such enterprises are detrimental to the public interest or inimical to the interests of the local inhabitants. These powers are hereby delegated to the following officials subject to the stipulations herein set forth:

a. In Guam - To the Governor of Guam, to be exercised in consonance with the legislative power vested in the Guam Congress.

b. In American Samoa - To the Governor of American Samoa.

c. In the Trust Territory of the Pacific Islands- The power to grant, deny or revoke right of entry and similar powers over commercial concessions to local inhabitants, to the High Commissioner who may, at his descretion, delegate all or any part thereof to his Deputy. Paragraph 9 of reference (b) required approval of the Secretary of the Navy as a condition prerequisite to the grant to non-residents of rights in lands or commercial concessions.

5. The officials to whom powers are delegated in the foregoing paragraph shall keep the Secretary informed of all instances of denial or revocation of right of entry and of all grants, denials or revocations of commercial and industrial licenses and concessions. The circumstances surrounding and reasons connected with denials and revocations shall be reported in detail.

M. E. ANDREWS

Copies to:
CinCPacFlt (Air Mail)
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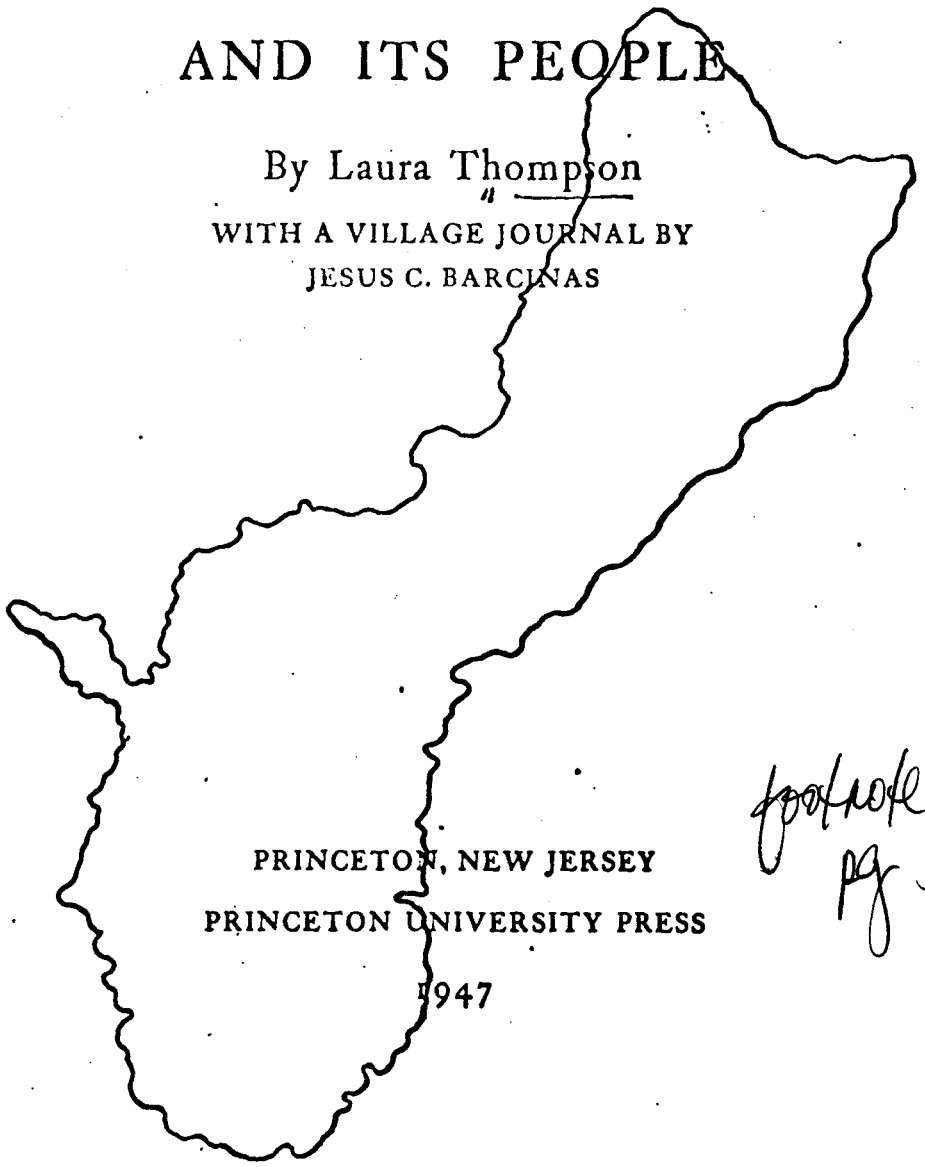
GUAM

AND ITS PEOPLE

By Laura Thompson

WITH A VILLAGE JOURNAL BY
JESUS C. BARCINAS



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PRINCETON, NEW JERSEY
PRINCETON UNIVERSITY PRESS
1947

the campaign against Japan, with the result that practically the whole northern half of the island was taken over by the military, many of its resources being destroyed in the process of developing a major Pacific base. Thus the main immediate economic problems have been: (1) the development of the naval base; and (2) the rehabilitation of facilities and native economy.

Some idea of the economic revolution taking place on the island may be gained from the realization that from being a remote naval colony with less than 1,000 transient service personnel in 1940, Guam has become a major United States naval base with an estimated 30,000 to 40,000 non-native population in 1946. Although this number will probably decrease somewhat in the near future, nevertheless according to present plans the island will continue to have a large non-native population, both of Navy personnel and of civilian employees of the naval and federal governments.

Under these circumstances the native unemployment problem which was developing before the war has ceased to exist but certain native employment problems have become acute. For example, there is plenty of work for every Guamanian but the types of employment open to him, conditions of work, wage rates, number of hours, distribution of wholesale and retail businesses, wholesale and retail prices, etc., are completely controlled by the government. At present even the housing and to a considerable extent the movements and transportation of over half the native population, namely those who were bombed out of their homes and those whose homes were condemned, are so controlled.

No Guamanian is forced to take a job but since much privately owned land has been condemned, for most natives there is no alternative. On January 1, 1946, 4,791 Guamanians were employed full time by military units and in industry, and 1,382 school children and others were employed in part-time jobs.[27] Once a native takes a job he cannot quit of his own

[27] *Ibid.*

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P U B L I C H E A R I N G S

CONDUCTED BEFORE A SUB-COMMITTEE OF
THE PUBLIC LANDS COMMITTEE
HOUSE OF REPRESENTATIVES

U N I T E D S T A T E S C O N G R E S S

NOVEMBER 21, 22, 23, 1949

AT

A G A N A, G U A M
MARIANAS ISLANDS

IN

THE HALL OF CONGRESS

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M E M B E R S

OF

SUB-COMMITTEE OF THE PUBLIC LANDS COMMITTEE

HOUSE OF REPRESENTATIVES

UNITED STATES CONGRESS

MILES, John Esten	D, New Mexico
CRAWFORD, Fred L.	R, Michigan
MILLER, Dr. Arthur L.	R. Nebraska
MILLER, George P.	D. California
FARRINGTON, Joseph R.	R, Hawaii
LEMKE, William	R, North Dakota
JENISON, Edward Halsey	R, Illinois
LeFEVRE, Jay	R, New York
ASTIN, Mills	Chief Clerk, Com. on Interior & Insular Affairs, United States Senate
CARGO, William J.	Representative, United States State Dept.
HALE, Capt. E. J.	U. S. Navy Department
SILVERMAN, Irwin W.	Chief Counsel, Div. of Territories & Insular Possessions, Also, Counsel, The Virgin Islands Company

==========

Recorded in Shorthand by:

Isabel W. Jordan,
former Executive Secretary
Ninth Guam Congress

Sound Recordings by:

L. L. Glenn,
Agana Radio Shop,
Agana, Guam, M.I.

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Transcribed by:

Mrs. Ernest P. Blake
Executive Secretary, Ninth Guam Congress
(from the shorthand notes of
Mrs. Jordan, and the sound
Recordings of L. L. Glenn)
(Pages 55 to 185, Inc)

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NINTH GUAM CONGRESS MEMBERS

AGANA, GUAM, M. I.

HOUSE OF COUNCIL

BARCINAS, Jose C.	Merizo
BORDALLO, B. J. (PRESIDENT)	Tamuning
CHARFAUROS, Joaquin T.	Piti
DIEGO, Enemecio S. N.	Inarajan
DUENAS, Antonio S. N.	Sinajana
GUERRERO, Joaquin	Barrigada
LEON GUERRERO, Frank B.	Agana
LUJAN, Manuel U.	Yona
PANGELINAN, Felix T.	Santa Rita
PEREZ, Jose D.	Yigo
SANCHEZ, Francisco Q.	Umatac
SANCHEZ, Simon A. (Secretary)	Dededo
SAN NICOLAS, Enrique S.	Talofofo
SANTOS, Joaquin S.	Asan
TOVES, Jose T.	Agat

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NINTH GUAM CONGRESS MEMBERS

AGANA, GUAM, M. I.

HOUSE OF ASSEMBLY

AGUON, Joaquin T.
Mongmong

AGUON, Jose C.
Talofofo

BAMBA, Vicente B.
Agana Heights

BARRETT, Concepcion
Chalan Pago

BENAVENTE, Vicente S.A.
Dededo

CALVO, Ismael T.
Sinajana

CAMACHO, Felix M.
Tamuning

CARBULLIDO, B. P.
Barrigada

CARBULLIDO, Felix T.
Agat

CRUZ, Antonio C.
Barrigada

FLORES, Leon, Jr.
Barrigada

GUERRERO, Manuel F. L.
Asan

GUERRERO, Jose D. Leon
Mongmong

LUJAN, Mariana L. G. (Secretary)
Yona

MOKIYAMA, Jesus C.
Yona

PEREZ, Antonio C.
Santa Rita

PEREZ, Francisco D.
Mongmong

PEREZ, Gregorio D.
Inarajan

PEREZ, Joaquin A.
Tamuning

PEREZ, Joaquin C. (Vice-Speaker)
Chalan Pago

QUINATA, Cayetano A.
Inarajan

QUINATA, Jose Santiago,
Umatac

QUINENE, Jesus R.
Merizo

REYES, Jesus G.
Sinajana

SABLAN, James T.
Agana Heights

SABLAN, Marcial A.
Agat

SANTOS, Jesus C.
Piti

SANTOS, Juan M.
Yigo

SANTOS, Mariana B.
Santa Rita

SANTOS, Pedro C.
Piti

TAITANO, Carlos P.
Barrigada

TORRES, Asuncion P.
Sinajana

TOVES, Juan T. M.
Asan

UNTALAN, Enrique L. G.
Dededo

UNTALAN, Jose L. G.
Agana

WON PAT, Antonio B. (SPEAKER)
Sinajana

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to that effect.

CHAIRMAN MILES May we hear from the next witness?

A. B. WON PAT The next person who will speak before you, Honorable gentlemen, will be Honorable Frank Perez, Assemblyman from Barrigada.

FRANK D. PEREZ Honorable Chairman, members of the National Committee, Governor, ladies and gentlemen. The Speaker of the House of Assembly just gave my name and I need not introduce myself.

With reference to the Redden Bill, HR 4499, I am pretty familiar with the contents of said Bill. It is understood, regardless of the source, that there is no bill under the moon which can be perfect in its entirety. In its present form, I wholeheartedly support this Bill one hundred percent and my wish would be for the Congress of the United States to give it a favorable and a speedy passage on this Bill. There is no need to elaborate on it for we all want action in order that the status of the people of Guam may be determined once and for all by the Congress of the United States in accordance with the Treaty of Versailles, of 1898.

The topic now that I will speak on will be on the land question. It is realized by everyone, the authorities as well as the people at large, that it is a problem that cannot be tackled over-night, or weeks, months and maybe years. We all realize the problems confronting the land situation on the Island, but at the same time, we feel that the war is over and that a final settlement of the land question on the Island is ripe. A question may be propounded by you Honorable gentlemen, upon the Guamanian people for not having any of the farms developed on the Island of Guam. The answer I can give you. It is a known fact that about half or more of the area of the most arable land on the Island of Guam, suitable for agriculture and the raising of livestock, is in the hands of the military which is essential for the establishment of such installations to finally defeat the common enemy. The Guamanian people are aware of that and are very cooperative in giving up their lands and giving up their lives to defeat that common enemy. The time has come for the responsible agency to draw the line, that this area be permanently acquired for defense purposes and that other areas that are not needed, be returned to the Guamanians for their farming us and otherwise.

As far back as 1945, the Guamanian farmers who have had large stocks --

chickens, hogs, cattle -- have requested time and ~~g~~ again the responsible officials of the government for government land in exchange for their land being used by the military. I will ~~xit~~ site a case which is a personal case and I am pretty familiar with that case. In 1945, or the early part of 1946, I submitted a letter to the Government of Guam requesting specific government land not in use either by the military or by any Guamanian or Guamanians, in exchange or for purchase, with my land - one of the pieces of my land - now occupied by the government, which is the hospital area. I have approximately 160 acres of land in that particular area wherein I raised better than 3,000 layers pre-war, producing eggs, supplying the local people, cold storage, Pan American, and even shipped eggs to Honolulu. The stock I got was flown out by air from J. A. Hanson at Corvallis, Oregon. After not hearing any reply from the government for the exchange of that land, I sent in a tracer to find out whether any action was to be taken with reference to that. It is my firm belief that no civilized community or country can prosper in this world without balanced economy and that economy can only be balanced by agriculture. There has been no action taken on the letter up to this time. However, being a farmer and a livestock ~~xxixx~~ breeder and a commercial raiser, I continued with that work and up to the present time am still raising hogs and chickens on that particular area at the hospital. I told the Commanding Officer of the Hospital that I am only too cooperative - ~~axxx~~ after moving me two or three different times back of the area - pulling up my fences - and establi myself along the cliff - to give up my land and give up my stock provided t give me a place to put my stock and raise it there so I can make a living. is only right and proper that no person should raise any livestock in the vicinity of any hospital, regardless, in any part of the world, but it is a problem that wasn't solved and I am forced to do it because it is impossible for me to raise the pigs elsewhere. I pointed out the land which, up to this time, is not in use, but no action has been taken.

You could have seen, gentlemen, by this time, flourishing livestock farms on the Island all over, had any action been taken to protect the farmers and deed them the land or assign them the land until such time as everything is set. The only thing we can get will be a temporary permit to install facilities, that is, buildings, fencing, etc. to care for your stock, with the condition that in the event that piece of land is finally condemned for

ment use, that you will not be compensated for all improvements made on the land and, gentlemen, I do not blame the Guam farmers for not having a big chicken farm, a big hog farm and big fields. It is only natural for any individual who has the ~~xxxxxx~~ heart, the sole interest in the soil, to divert temporarily or otherwise, from that profession to find another profession in order that he may live with his family. There are many of us farmers who have forced ourselves to accept positions, work for somebody, for that reason only.

I can cite another person who was a big poultry man - a hog man - a cattle man - by the name of Manuel Castro, who has a big area in the Northwest Field. He tried hard to get government land to use but to no avail. He is forced to go into Guamanian privately-owned land and ask the owner, "Please, would you allow me to rent your land until such time as I get my land back or that I may get government land back for the exchange of my property instead, to raise my eleven children?" The man is sickly. No consideration is given at all to that poor person. He went up to Yigo and finally got a piece of land whereon he started from ~~xxxxxxxx~~ scratch. He is now in a better position having stock - chickens, hogs, etc. and that, gentlemen, is one reason when you ask the question, "Why?" It is because of that reason. No individual with sound mind - anything between his ears - will go out and make an investment of ~~x~~ three to five or ten thousand dollars with no security upon the condemnation of such land that he will be reimbursed for any improvements made thereon. Thank you.

CHAIRMAN MILES Just a minute. Did you say the hospital area is on your property?

FRANK D. PEREZ About 160 acres of that land where the hospital is, is my property.

CHAIRMAN MILES Do they pay you rent?

FRANK D. PEREZ Rend paid - since 30 June 1946 - $200, that was the last payment made.

REPRESENTATIVE LEMKE I would like to ask a few questions. This land question has been a burning one in Congress too and we were assured by in 1947 that it would be promptly adjusted. What has been done since 1947?

FRANK D. PEREZ Nothing has been done since 1947. The situation is worse. I don't blame any private contractor for running his own pipe lines for water

and sewer, etc. through privately-owned land, but maybe the owner of that property has been displaced - moved five or six times. He may have banana plantings, etc. Machinery is run through his property without his being notified as to the status of that land and no compensation is given that poor owner. That is the present situation. It is worse.

REPRESENTATIVE LEMKE I understand there is going to be surrendered to your own people of Guam some 26,000 acres - we were told in 1947 - have you any idea why all this delay?

FRANK D. PEREZ I have no idea because there is no necessity for any delay. There is still a big piece of land between Dededo Village and North and Northwest Field - most of it is government land - and our people are requesting for that land to start raising, but no definite action is given.

REPRESENTATIVE LEMKE I think you are absolutely correct when you say we must provide adequately for ~~defense~~ national defense, but that doesn't mean to destroy under the name of national defense. We would like to get to the bottom of this land question before we leave here and hear both sides and find out where the trouble is so that we can at least act intelligently when this Bill comes up again.

FRANK D. PEREZ You can see for yourself, Mr. Congressman, that nobody is using that land there but nobody is given full authority to make good use of the land. It is just like having that land idle when it should be giving potential value to the Guamanian people in order to better their economic situation.

REPRESENTATIVE LEMKE Do you believe that the Guamanian people are reasonable when the question of condemnation comes up in making reasonable exchanges - value for value - or a reasonable amount of just compensation? I emphasize the word "just" compensation.

FRANK D. PEREZ Our people, if in any way possible, they would rather have another piece of land commensurate with the value of their land either in size or value, for an exchange of government land.

REPRESENTATIVE LEMKE I am confused as to the amount of rent that is being paid. I understood - we were told - that it amounted to $50 an acre. Yet, I know one Guamanian who says he is getting only $14.10 ~~xxx~~ per year for 13 acres of the most valuable land that I have seen on this Island. I can't

CHAIRMAN MILLS Was it bought for some special purpose?

FRANK LEON GUERRERO For an abattoir.

REPRESENTATIVE LEMKE Were there other business places surrounding it that would give it additional value?

FRANK LEON GUERRERO No, sir, unless it was for the purpose of raising fish - brackish water fish - because that is a swampy area around there.

GOVERNOR SKINNERKK. Mr. Chairman, I am certainly not well versed in the land problem. I think I have discussed it for an average of an hour a day since I have been here and I still have a great deal to learn about it. I think I have learned this much though, that the land which we are discussing was largely taken after the reoccupation. It was taken by the Naval Government of Guam. That is why these gentlemen refer to the Governor as the taking authority. However, it was taken by the Naval Government of Guam, acting on behalf of a number of Federal Departments. Since there was no United States Attorney here and no United States court, the Naval Government of Guam took the place of the Department of Justice in a normal land taking and all takings are in the name of the Governor. I know recently I have had come before me several takings of land which had no value to the Naval Government of Guam, but were for the Department of the Air Force, the Department of the Army, or the Department of the Navy. All of the land work that was done by the Naval Government of Guam was done through the Land and Claims Commission. It is my understanding that they handled all of this land work. There were, I think, five Land and Claims Commissions. They were created and then, for various reasons, they were liquidated and a new one created with the same personnel but with different authority or different appropriations. As of October 1, the Land and KK Claims Commission was dissolved and transferred to the Commander Naval Forces Marianas. A few of the personnel was retained in the Naval Government of Guam for purposes of record keeping, but the majority of the personnel became part of the Base Development Section of Commander Naval Forces Marianas.

Following the session yesterday afternoon, and after the Committee had expressed an interest in the land problem, I asked the Commander Naval Forces Marianas if he would ask the area Legal Officer and other members of the presend Lands Commission, which is part of the Base Development agency, if they would come down and testify and I am advised by Admiral Ewen that they will be

available to testify tomorrow afternoon. I am sure that they can give a complete story of the basis of valuation for land takings. I think they can give a comprehensive picture of where we stand at present and what the future plans of the Federal Government are for land takings. That is the current procedural situation as I know it. However, if there is any problem of land involved, for here which the present Naval Government of Guam is responsible, I wish any person present would rise and state the case because I would like very much to know about it and take immediate remedial action.

A. B. WON PAT The next witness to testify is the Honorable Joaquin Guerrero, Councilman from Barrigada.

JOAQUIN GUERRERO Mr. Chairman, members of the Land Committee, Governor Skinner, ladies and gentlemen. It is my firm conviction that the cherished aspirations of the people of Guam to acquire American citizenship together with the passage of the Organic Act is one that should be considered immediately by the National Congress. Some will say the people of Guam are not ready. There might be some people who are not ready, but if we keep on procrastinating such an important problem in giving us an opportunity to progress, when are we expected to learn such procedure when we are not given such an opportunity. Such a question, gentlemen, is of paramount importance, not because of the fact that we have been promised that our political status should be determined, but we feel that after assimilating American principles and ways of living, we feel part of the National government, and as such, we want such cherished aspirations as we have expressed to become a reality.

There are other points that I would like to divulge on, and that is our local problem in regard to such a ticklish one, and that is the land problem. I am connected with such a development and I am intently interested in finding a solution to such a problem. The recommendations as agreed upon by some of the members of the Guam Congress, together with some citizens of Guam who are interested in developing the land are such -- first, it is time that the government should determine what lands are to be taken for post-war development. We have been talking quite a lot about agriculture as the backbone of the country but we have done very little toward making the people feel secure in their land. Under such circumstance, nobody will ever attempt to make some kind of permanent improvement to such land if such insecurity still persists. Therefore, I feel that, as a representative of the people of Guam,

agreement. On that which has been completed, in many cases there has been acceptance an/~~exception~~ and stipulations signed and agreed to and I think we can presume, in those cases that they were satisfactory or they would not have signed the ~~stipu~~ stipulations and accepted money. In some cases, I understand, money has been returned or refused and in those cases we can assume it was not satisfactory. Also, in the rental - I understand in many cases the rental has not been accepted for a ~~h~~ number of years, that the owners of the land have contended that the rental is unsatisfactory and therefore, they mail the checks back to the Land and Claims Commission.

(At this point, at the request of the Chairman, Governor Skinner asked Lieutenant Rathbone to locate Chief Justice John C. Fischer, and request him to appear before the Committee.)

GOVERNOR SKINNER Judge Fischer is the Judge of the Superior Court, created by Executive action of the Governor and approved by the House of Council and the House of Assembly, which handles all matters to which the United States is a party. Those matters have been primarily land matters. He is also the Presiding Justice of the Court of Appeals. He serves in a dual capacity.

CHAIRMAN MILES Judge Fischer, we would like to hear from you regarding matters you would like to speak on to the Committee.

JUDGE FISCHER I have a prepared statement, gentlemen of the Committee. I would like to read this statement and I will make it as clear as possible.

CHAIRMAN MILES You may proceed.

JUDGE FISCHER The proposed Organic Act for Guam poses some problems to the Judiciary Branch. The proposed act provides in general: (a) the judicial district of Hawaii is hereby extended to include Guam, and the original jurisdiction of the United States District Court for the District of Hawaii shall be concurrent with the Courts of Guam; (b) the said United States District Court shall also have jurisdiction to review, affirm, modify, or reverse final judgment of the Supreme Court of Guam in a large section of the case load of the Courts of Guam. The procedure governing review of such final judgments shall be as prescribed by the district court. Under the proposed Organic Act for Guam it is not clear whether it is intended that the land takings by the federal government shall be handled by the Courts of Guam or the United States District Court for the District of Hawaii. If the usual practice in the United States is followed, the takings would be handled by the United States District Court, and there would be no appeal on the Island,

hence the act would be subject to the same criticism that is now prevailing here. If, on the other hand, it is intended that the takings by the United States Armed Forces are to be instituted in the Courts of Guam, then the jurisdiction of the District Court of Hawaii could serve as an appellate medium, but the same problem would be presented by the fact that there would be no appeal locally, except at the special terms held in Guam at such times as the judges of that court deemed expedient.

My solution is the one I have recommended for nearly two years, namely: Extend to the Courts of Guam a right of appeal in capital cases and in certain civil cases from its highest court to the Ninth Circuit Court of Appeals in San Francisco, and thence to the United States Supreme Court. The jurisdiction of the Courts of Guam should be as prescribed in the laws of Guam, modified by such laws of the United States as are made applicable by the Congress of the United States.

Presently, justice in Guam is administered by a system of courts consisting of municipal, trial and appellate courts under the administration of the Judiciary Branch. The administrative responsibilities for the courts ~~had~~ head up in a Chief Justice and are shared by him with one of the Senior Judges of the Island Court and with the Chief Clerk of Courts. The jurisdiction of the Courts of Guam are established by the applicable code provisions ~~contained~~ contained principally in the Code of Civil Procedure of Guam. The most important objective of the Judiciary Branch of Guam is to fairly and impartially dispense and administer justice under the laws applicable to the civilian population and certain military personnel. More specifically, the courts' objectives are: (1) to enforce the criminal laws applicable to Guam, including traffic cases, police court cases, and the various misdemeanor and felony cases; (2) to decide disputes in civil cases; (3) to determine probate and land registration cases as they arise - which work contributed to the furtherance of the rehabilitation program of Guam by settling the question of land ownership - (4) to adjudicate land condemnation and eminent domain cases in the furtherance of the land acquisition program of the armed forces of the United States; and (5) to provide a system of appellate machinery insuring compliance with accepted legal precepts and practices. The Courts of Guam are the instruments set up to accomplish the foregoing purposes and are comprised of the Court of Appeals, the Island Court, the Justice Court, the Police Court, the Traffic Court, and the

Superior Court. Perhaps in no other jurisdiction does a judge sit in so many capacities and try such a wide variety of criminal and civil cases. The same judges each sit in the Police Court, the Justice Court, and the Island Court. Another unusual feature about the trial of cases in Guam is that there is no jury, the trial judge being both a trier of the facts as well as of the law. Only one judge sits and hears any particular case at a time. The court of last resort in Guam to which nearly all cases of a civil and criminal nature may be appealed is the Court of Appeals of Guam. It is composed of a Presiding Justice, and four Associate Justices. Three of the Associate Justices are Guamanians. The Presiding Justice is a stateside-trained lawyer and judge who decides all questions of law before the court. By virtue of his office, he is also the Administrative Head of the Judiciary System. Questions of fact in cases under appeal are determined by the Justices of the Court of Appeals sitting on the case. However, the prime defect in the Judiciary set-up is that the justices and judges have no term certain in that they are appointed and serve at the pleasure of the Governor of Guam.

The Superior Court is a special court instituted by the Navy Department consisting of one trained, stateside judge, principally to try land condemnation cases in accordance with the recommendations of the Hopkins Committee. It was constituted by Executive Order No. 24-47 of the Governor of Guam on 3 October 1947 and approved by the Guam Congress. The Presiding Justice of the Court of Appeals is by law also made the judge of the Superior Court. The court has original and exclusive jurisdiction over all civil actions and proceedings in which the government of Guam, the Navy Department, or the United States of America is a party in interest, and it also has concurrent jurisdiction with the Island Court in all felony cases. The Superior Court has no appellate jurisdiction. Appeals from all decisions of this court are made directly to the Secretary of Navy, as provided for by law. In each case, so the Land and Claims officials state, the land owner is talked to in the presence of the Village Commissioner who often acts as interpreter for the Chamorro-speaking land owner and the government land negotiater. In most cases a Guamanian official of the government also accompanies the appraiser and negotiater. The procedure for notifying the owners that their lands have been taken is to send out an appraiser and negotiater who advises the owner of the value of his land insofar as the government is concerned and offers to settle on that basis.

The result of this procedure has been that to date over 3,000 cases involving individual claims on tracts of land have been negotiated and stipulations of settlement voluntarily entered into by land owners and the United States Government representatives. Of these 3,000 cases there have been only about a dozen contested, and in all these 3,000 cases, judgments have been signed by the Justice of the Superior Court and checks payable to the property owners promptly issued. Except in three cases, all were settled satisfactorily to the owners. In the event that there was not an agreement between the land owner and the government, the land owners are given the opportunity to present, with or without counsel, their evidence to the court. In each one of these cases, I associated one or more of the Guamanian Island Court judges with me as amici curiae, and all of the formalities were observed in these cases. As stated, there have been only about a dozen cases which have come before this court in which the land owners and the government appraisers have not come to an agreement, and some of these were contested on the basis of the desire by land owners for an exchange of lands under Public Laws 224 and 225 of the 79th Congress. Further, at each of my appearances with the Guam Congress Committee Chairmen at the Governor's monthly staff meetings, I have urged the Guam Congressmen to tell their constituents that if they were not satisfied with the offers made by the government to bring their cases to the court. I have also given the same advice to the village commissioners at every opportunity. I have been advised in the past month that there is now a backlog of about 100 fee cases in which the government and the people are not in agreement as to the value of their property or because an exchange of land is desired, or because a clear title cannot be given to the government by the Guamanians. There are about an equal number of leasehold cases in dispute, and these will be tried as rapidly as they can be presented to the Superior Court.

It has appeared advisable for some time to consolidate the leasehold cases for the various fiscal years, but the Government acquiring officials state that such action would result in slowing down their program to the detriment of the government and the land owners. To date twenty-five fundamental condemnation suits have been instituted, and I might state at this time that there may be nine or ten more - I am so informed.

At this point, I would like to introduce a memorandum, dated 15 April 1949, from the Officer-in-Charge of the Land Division, to the Senior Member

of the Land and Claims Commission, on the function in land matters of the Superior Court of the Judiciary Department of the Naval Government of Guam. That is in the original and perhaps not necessary to read at this time - their comments. (This Memorandum is Item #1 of the Appendix.)

In conclusion, the acquisition in fee of 26,000 acres of land for the armed forces to be paid for from the appropriation of $1,600,000. made available by the United States Congress in July, 1948, averages $62.50 an acre. Fee values allowed in Agana run as high as $4.00 per square meter - that is about a square yard. The distinguished members of the Public Lands Committee should be good judges as to how these allowances compare with similar stateside values.

Thank you, and I will be delighted to answer any questions that I can.

REPRESENTATIVE LEHRE In regard to this establishing of the Judiciary under HR 4499, wouldn't you feel that ~~the~~ we should re-write this provision so as to give the people of the Island of Guam the same rights and the same courts that we have in the average State in the Union - that is, a Supreme Court with inferior courts created by the ~~X~~ Congress of Guam, and that all questions affecting the Island or the people of the Island, should be final when the Supreme Court decides and that, as to the Federal issues - cases arising under the laws of the United States and the Constitution - that the jurisdiction of some District Court of California, or Hawaii, if that be desirable, be extended to this Island, and that they come here once a year and hear those cases, because I understand there aren't so very many of them? Wouldn't that be a simple solution, and we have plenty of precedent that it works in the States, and why not try it out here?

JUDGE FISCHER Well, Congressman Lehre, I will concur that that is a solution and perhaps a good solution. The District Court of northern California - San Francisco - would perhaps be more applicable and better for the purposes of Guam than would the District of Hawaii because our Codes, to a great extent - are built on California law.

REPRESENTATIVE LEHRE And, then, if the question in the state court involves a Federal question, there could be a direct appeal to the Supreme Court by certiorari, and that would satisfy - it seems to me - all necessary needs here on this Island.

JUDGE FISCHER I think that is a good solution. I am somewhat impressed with my own solution that I have worked on for over two years now, but I think that is a very, very acceptable compromise, or perhaps, a better one.

REPRESENTATIVE LEMKE Now, in regard to the number of cases that have been settled, and those that are still pending - I do not feel that it is improper for this Committee to ask you what do you take into consideration in arriving at the value of a certain piece of property? I am not talking of any particular case - but generally.

JUDGE FISCHER The value of the property at the time of the taking.

REPRESENTATIVE LEMKE How would you arrive at that, then?

JUDGE FISCHER I would take into consideration the use of the property that is given. I would take into consideration all of the evidence.

REPRESENTATIVE LEMKE Would you take into consideration the location, the desirability for residence, its desirability for business or agriculture?

JUDGE FISCHER Yes, or any other reasonable use.

REPRESENTATIVE LEMKE And would you arrive at what you think is a fair and reasonable income from such property, and would you arrive at the actual value?

JUDGE FISCHER Yes, sir, and that average, on Guam, as I said, on the final acquisition of 26,000 ~~ac~~ acres, runs about $62.50. I think my figures - I can't be certain they are right - are $62.69.

CHAIRMAN MILES How did you say you arrived at that?

JUDGE FISCHER Well, the Congress of the United States, in July, 1948, appropriated $1,600,000. under Public Law 594 - as I recall it was Public law 594 - ~~xxxx~~ divided among the 26,000 acres which are to be taken in fee by the armed forces - the Army, Navy and Air Force - averages $62.69, I think.

GEORGE O'BRIEN Isn't it true that a lot of that land would yield a far greater return than the $62.69?

JUDGE FISCHER I am not prepared to answer that. In Agana, we have paid, as I stated, as high as $4.00 per square meter for business property and that scales down, depending on its location. That, to my recollection, out of 27 years of experience in land acquisition and the law, corresponds to about the same situation as we would have it perhaps in Yakima, Washington. I don't know Fargo very well, but -

REPRESENTATIVE LEMKE I think the amount you say per meter would do pretty well for Fargo, too, but we have a great deal of level land. We can ~~xxxxx~~ expend

without hurting our landscape very much. Another question that has come up and there have been various statements made to us, and we will hear some more here this afternoon - one person said he got $200. for virtually two years' rental for 100 acres where the hospital is. That was way back from 1945 to 1946, and I think he has not heard anything since as to what he is to be paid. Do many of ~~thax~~ those cases come before you?

JUDGE FISCHER I presume they will eventually. That case hasn't been heard yet.

REPRESENTATIVE LEWIS Some claim they get $14.10 for one of the finest locations on the Island as far as I know - for 13 acres, per year. Would you say that that has been brought to your attention?

JUDGE FISCHER Those particular cases have not come before the court, but having tried 2,400 cases, or actually had the trial work of 2,400 cases with the Columbia River Authority - Oregon, Washington, western Montana, western Wyoming and Idaho - it has been my experience as a trial lawyer, that you never did satisfy everybody, either the Government or the land owner, in every case. In this instance, I happened to be the Judge. In other instances, I was the Government counsel

REPRESENTATIVE LEWIS I realize that it is almost impossible to satisfy everybody. Personally, I do feel - and I think you will agree with me - that in the States, we mean what we say as a rule, "just compensation." Sometimes we have a hard time ~~xxxxxxxx~~ getting it from courts. I have had experience in many cases. Yet, society isn't perfect and we have got to accept the best we know how.

JUDGE FISCHER In a dozen cases, or so, I recall only the that case where three of the land owners were dissatisfied with the final allotment made to them. In all of the - say 9 - other cases that have come in contest before the court, I think that ~~xxxxxxx~~ every one of those persons left entirely satisfied. The main thing the people want is to exchange their land. They don't object to giving up their lands to the Government if they are paid just compensation, but they want some place to go and I can understand their unrest and unhappiness.

CHAIRMAN MILLS Are you talking about rentals, or settlement on land taken by the government?

JUDGE FISCHER Freeholds, because there have been no contested cases on rentals at all - not a single one.

REPRESENTATIVE LEIKE From what I know of, there ought to be some, if we have the correct information.

JUDGE FISCHER If they are not satisfied with those rentals, don't sign these stipulations because if the government is agreed and the land owners agree, it would ill behoove any judge to take issue when the parties are in agreement.

REPRESENTATIVE LEIKE I am in full accord with you, but may I ask this question and you may answer it if you feel it doesn't interfere with your duties as Judge - there has been intimation here on the floor and a lot of information privately given to us, that these Gumenions are afraid to oppose the Government - that they are afraid even to speak up here and give their honest convictions. On what is that founded if it is not founded by the Government they had before we got here?

(Applause)

JUDGE FISCHER Well, that's a difficult one, in fact, an impossible one for me to answer because I have only been here two and a third years. If there was any such a feeling, there is not a man in this room or a Gumenion on this Island that I wouldn't want and urge to bring his case before our tribunal and he would certainly be free to tell his side of the story, and in each instance, it has been done.

REPRESENTATIVE LEIKE And if there is such a feeling, they ought to get rid of it.

JUDGE FISCHER They ought to get rid of it and they ought to bring it out in the open.

CHAIRMAN HILLS In the discussion on rentals - possibly you are not qualified to testify - but there have been some statements here regarding rentals, that they were very low. I understood that land was rented on the basis of a lease for $50. per acre. Do you know whether that is the rental paid per year - whether or not there are leases as high as $50 per acre for land leased by the Government?

JUDGE FISCHER Yes, sir, I think that is a proper statement, but there has been no single rental case brought before the court and contested in over two years. If you divide the 52,000 acres that have been held under leasehold for the past four years, by the amount deposited to cover them, I think that average - and I can't give you those figures exactly, but I believe that it will average six percent - they pay on the basis of 6% - will average about

fifty dollars per acre. I can't give any discrepancy as to why there is an apparent discrepancy between a fee purchase of $62.50 and a rental basis of $50.00. The explanation would probably be that what has been taken in rentals was perhaps not as good as that which will ultimately be taken in fee and perhaps the other point might be made that the Guamanians were allowed to stay on some of the property. I am not an authority on that and I do not know and cannot give you an answer because we have had none of those cases.

GEORGE O'KEEFE I helped my Grandfather make out a rental request from the Government for a period of three years involving 1200 hectares of land - about 2700 acres and 6 lots in Agana. The aggregate rental requested for a period of two and a half years for 2700 acres of land and 6 lots in Agana, occupied by the Naval Government of Guam, was $76,000. The Government - that was two and one-half years - the Government turned around and offered ~~mk~~ my Grandfather, Antonio Calvo, the sum of two thousand, one hundred and some-odd dollars. Unfortunately, the gentleman was not in a position to not take the money because it was badly needed. Consequently, he accepted. He accepted under protest - that is internally - however, externally, he ~~dx~~ did not protest because he thought it would be futile under the circumstance. In view of that, it can readily be seen that Antonio Calvo, with 1200 hectares of land and six lots in Agana, did not get the equivalent of $50. per acre. Had he gotten $50. an acre for the use of this land ~~fx~~ by the Government, for a two-and-a-half-year period, the aggregate would run well over $200,000. I just wanted to bring that point to the attention of you gentlemen.

GOVERNOR SKINNER Mr. O'Keefe, you are thinking that this would be a $50 per annum rental, is that correct, per acre?

MR. O'KEEFE Yes, sir.

GOVERNOR SKINNER The Committee is speaking of a six percent ~~rent~~ return on the value of an acre at $50. which means $3.50 per ~~xxx~~ annum. In other words, in your case, if you have 2700 acres that works out at $8,150. on the basis of six percent of the value at $50. per acre.

GEORGE O'KEEFE Well, Governor, I know that there were 1200 hectares involved and six city lots , and the sum total was $2,000.

(At this time, Mr. O'Keefe asked if Mr. [illegible] Velarde would speak in support of his previous statements on this matter.)

VELARDI Honorable gentlemen, Governor Skinner, ladies and gentlemen. The suggestions of Mr. O'Keefe I sincerely believe are true, but he mentions only 1200 acres - it is 1,950, as I am holding the paper of the old men.

The old man (referring to Mr. Calvo) being too old, he did not want to make arbitrations against the Naval Government just to avoid the feeling of each and every one here on the Island of Guam. Of course he accepted the rental. Now that we have the new government - I mean to say as to my own feeling only - let us forget those things that have passed and throw it to the moon. I don't mean to say I hate the Navy or I like the civilian government, but regardless - he has done something also for us since the inception of his government here. At least he has shown us a little bit of education and perhaps taught us to speak English and as of today we are now under the Organic Act proving this Organic Act in the Congress of the United States of America - that some day we will be a duly territorial government. Here, on the Island of Guam, with the help of Governor Skinner and the cooperation of all, let us avoid sentiments and I hope all the Congressmen here will report the true evidence - and also we would like to cooperate. Furthermore, about this land question which I am going to talk about the prices involved and other things - the valuations of land. It is true that some land which is not totally very useful to the people of Guam has a less value, but here in Agana today, it is a very useful location. Of course, the owner has to enhance the value of such land in order that he may build a home. Since the inception of the military government here - the most important thing that we are going to discuss right now - I am citing the agricultural proposition which Mr. Guerrero is citing for the benefit of the Guamanian people and that is true. We have plans and yet the land is still in question, but if this land is reverted back to the owners I am very sure that we can help - that we are going to produce. I have been here for the last twenty-nine years and there is no production in the Island of Guam. There are only two kinds of produce, cattle and copra. This cattle product, with the help of the Governor and the Congressmen and the people of Guam today, I am very sure that within forty years from now we are going to have a production exporting cattle, providing we have the cooperation of the Guamanian people together with - like the people of Australia. Thank you, honorable gentlemen. That is all I am going to say.

A. B. WON PAT Honorable Judge Manibusan (applause) would like to throw more light on the subject of the land question.

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TREATY OF PARIS

Paris, December 10, 1898

Treaty of Peace between the United States of America and the Spanish Empire.

Protocol of Agreement Embodying the Terms of a Basis for the Establishment of Peace Between the United States and Spain.

(Signed August 12, 1898.)

PROTOCOL.

William R. Day, Secretary of State of the United States, and His Excellency Jules Cambon, Ambassador Extraordinary and Plenipotentiary of the Republic of France at Washington, respectively possessing for this purpose full authority from the Government of the United States and the Government of Spain, have concluded and signed the following articles, embodying the terms on which the two Governments have agreed in respect to the matters hereinafter set forth, having in view the establishment of peace between the two countries, that is to say:

ARTICLE I.

Spain will relinquish all claim of sovereignty over and title to Cuba.

ARTICLE II.

Spain will cede to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and also an island in the Ladrones to be selected by the United States.

ARTICLE III.

The United States will occupy and hold the city, bay and harbor of Manila, pending the conclusion of a treaty of peace which shall determine the control, disposition and government of the Philippines.

ARTICLE IV.

Spain will immediately evacuate Cuba, Porto Rico and other islands now under Spanish sovereignty in the West Indies; and to this end each Government will, within ten days after the signing of this protocol, appoint Commissioners, and the Commissioners so appointed shall, within thirty days after the signing of this protocol, meet at Havana for the purpose of arranging and carrying out the details of the aforesaid evacuation of Cuba and the adjacent Spanish islands; and each Government will, within ten days after the signing of this protocol, also appoint other Commissioners, who shall, within thirty days after the signing of this protocol, meet at San Juan, in Porto Rico, for the purpose of arranging and carrying out the details of the aforesaid evacuation of Porto-Rico and other islands now under Spanish sovereignty in the West Indies.

ARTICLE V.

The United States and Spain will each appoint not more than five commissioners to treat of peace, and the commissioners so appointed shall meet at Paris not later than October 1, 1898, and proceed to the negotiation and conclusion of a treaty of peace, which treaty shall be subject to ratification according to the respective constitutional forms of the two countries.

ARTICLE VI.

Upon the conclusion and signing of this protocol, hostilities between the two countries shall be suspended, and notice to that effect shall be given as soon as possible by each Government to the commanders of its military and naval forces.

Done at Washington in duplicate, in English and in French, by the Undersigned, who have hereunto set their hands and seals, the 12th day of August 1898.

[SEAL.] WILLIAM R. DAY.
[SEAL.] JULES CAMBON.

[TREATY]

The United States of America and Her Majesty the Queen Regent of Spain, in the name of her august son Don Alfonso XIII, desiring to end the state of war now existing between the two countries, have for that purpose appointed as plenipotentiaries:

The President of the United States,

William R. Day, Cushman K. Davis, William P. Frye, George Gray, and Whitelaw Reid, citizens of the United States;

And Her Majesty the Queen Regent of Spain,

Don Eugenio Montero Ríos, president of the senate, Don Buenaventura de Abarzuza, senator of the Kingdom and ex-minister of the Crown; Don José de Garnica, deputy to the Cortes and associate justice of the supreme court; Don Wenceslao Ramirez de Villa-Urrutia, envoy extraordinary and minister plenipotentiary at Brussels, and Don Rafael Cerero, general of division;

Who, having assembled in Paris, and having exchanged their full powers, which were found to be in due and proper form, have, after discussion of the matters before them, agreed upon the following articles:

ARTICLE I.

Spain relinquishes all claim of sovereignty over and title to Cuba.

And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

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Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones.

AMERICA'S PACIFIC DEPENDENCIES

A Survey of American Colonial Policies and of Administration and Progress toward Self-Rule in Alaska, Hawaii, Guam, Samoa and the Trust Territory

by

Rupert Emerson, Lawrence S. Finkelstein, E. L. Bartlett, George H. McLane and Roy E. James

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pg. 3

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[illegible]

was head of the Police Department and Marine Corps enlisted personnel served as the "backbone" of the native police force.

The duration of the tour of duty of naval officers on board ship or beyond the continental limits of the United States is eighteen months. Thus prewar Guam had a new Governor about every eighteen months. As a matter of actual fact, a few Governors did not serve the full eighteen months due to illness and needs of the service. A few served several months in excess of eighteen while awaiting the arrival of their successors. Not one Naval Governor of Guam was ever reappointed.

It is interesting to observe that in the 230 years of Spanish government there were some sixty Spanish governors and acting governors, serving an average term of about four years. The records show, however, that five actually served only one year or less; two served ten years; and two served eleven years. Compare this with the eighteen month terms of American Naval Governors as effected under the naval rotation system. Eighteen months, at times reduced by illness, by visits to the United States, the Philippine Islands, or other areas, or by cruises at sea, is scarcely long enough to permit a governor to become familiar with his job and the many and varied problems of civil government of thousands of native civilians on a tropical island. Several of the Naval Governors scarcely became known on the island before their terms expired.

Some of the naval governors thoroughly enjoyed their duty as civil administrators of a native population. Some took an active and personal interest in the people and their problems and worked hard and sympathetically on their behalf. Others found their duties as Governor utterly foreign to their background of training and experience as professional naval officers and developed a keen dislike for the job. Some regarded their assignments to this remote and unimportant naval station as punishment duty, which it probably was in a few cases. The post was not regarded as an asset to a naval career. A few of the Naval Governors went on to achieve flag rank, but the position was not one which served to enhance a record of naval service under review for promotion to flag rank in the promotion-poor prewar Navy.

Many of the Naval Governors were motivated by a sincere desire to improve the lot of the people they governed. It has been said, and probably with considerable truth, that others functioned as nothing more than Naval Commanders of the United States Naval Vessel The Island of Guam with some 20,000 civilian members of the crew. They "governed" the people of Guam much as they had commanded naval vessels or naval establishments on previous tours of duty. Law and order often became "discipline," legislation became "commands" or "orders," education became "training," and so on. This is somewhat borne out by the fact that the organization of the government resembled that of a navy yard or a naval vessel. The departments of government were organized and functioned like the departments of a navy yard or the divisions of a ship. Officers served as department heads and members of the staff of the Governor. Enlisted men of the Navy and the Marine Corps and certain selected American and Guamanian civilians were entrusted and relied upon to perform the routine everyday business of government. A few local civilians with many years of service were entrusted with comparatively important routine duties, but they never assumed command. The population as a whole, the people of Guam, were regarded as "wards of the Navy" to be treated kindly

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U. S. NAVY

Report

on

GUAM

1899–1950

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DEPARTMENT OF THE NAVY

WASHINGTON 25, D. C.

No masons, no carpenters, no physicians and no trained school teachers, the few schools medieval in their scanty, religion-dominated curricula;

A population so abused and oppressed over the centuries, so disease-infested, so isolated from the world, so haunted by superstition, that it was a listless, ambitionless, unorganized mass of humanity stirred only by the hope for individual survival.

That was what was handed to the Navy Department 50 years ago to rehabilitate, to organize, to administer, and to make productive. It was a task new to the Navy; it would have been as new to any Department in the Government. The assignment was handed to the Navy because Guam was accepted to be, primarily, of strategic value to the nascent Pacific empire, keystone of the maritime arch stretching from the newly acquired Territory of Hawaii to the just-purchased Philippine domain.

When the time came for Guam to fulfill its strategic function, 42 years later, its military worth had been almost completely devalued. However, the subject of this report is not Guam as a military bastion but rather the achievements of the Navy Department in its secondary responsibility; the physical and social restoration and recreation of Guam. The challenge was not only to better the material circumstances of the Guamanians but to achieve a transformation in the bodies and minds of the people. The responsibility to the Guamanians was to guide them from disease-ridden medieval peonage to the dignity and demeanor of a healthy, self-reliant citizenry in the modern world.

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Washington, D. C., Dateline - December 19th - (UP)

The Navy Department has released its ban against outside business interests entering Guam, in an effort to provide the Islanders with a more diversified economy, Capt. Jennings, Officer in Charge of Island Government, disclosed.

Jennings said applications for enterprises on Guam would be screened carefully by Rear Admiral Charles Pownall, Military Governor of Guam. Only businesses which Guamanians cannot establish themselves will be permitted to start on the Island. The policy of the Navy Department is to prevent the entrance of these enterprises until such time as the Guamanian Economy has been rehabilitated by payment of Guamanian settlements, land allocations, and restoration of civilian facilities to the point where the people have their government on an equitable basis.

During the interim, there is no objection to admission of firms which in the opinion of the Governor will provide services which Guamanians cannot undertake and which are essential to the Island's economy, Jennings said.

Jennings said the policy had been drafted last September by Pownall and Admiral Towers, CinCPac.

At a conference here with the Navy Department Officials, Admiral C. W. Nimitz, Chief of Naval Operations, approved the plan. Jennings said he knew of no new outside businesses, but admitted that such enterprises would probably be welcomed by the Navy, as plumbing, electrical appliances, and automobile repairing.

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OP22/C1f
Serial: 51P22

29 JAN 1948

VIA AIR MAIL

From: Secretary of the Navy.
To: High Commissioner of the Trust Territory of the Pacific Islands.
Deputy High Commissioner of the Trust Territory of the Pacific Islands.
Governor of Guam.
Governor of American Samoa.

Subject: Policy governing the right of entry into and the licensing of private enterprises within certain areas under naval jurisdiction.

References: (a) Commander Marianas and Governor of Guam Conf Speedltr Serial 0568 of 10 December 1947 and CinCPacFlt 1st End. Serial C1209 of 22 December thereon.
(b) CNO ltr Serial 1422P22 of 15 January 1948.

1. Reference (a) transmitted a recommendation as to the policy to be pursued with reference to the grant of authority to former and retired personnel of the Armed Forces to engage in private business in certain areas under naval jurisdition.

2. The policy of the Navy Department with respect to the protection of the economic interests of the local inhabitants of the areas under its jurisdiction is set forth in reference (b).

3. The application of the Department's policy to the grant of industrial and commercial licenses or concessions to other than local inhabitants demands more than ordinary care and circumspection in the case of grantees who are former or retired members of the Armed Forces, particularly those who have occupied governmental positions and who have enjoyed opportunities of acquiring special information or of forming associations advantageous to the conduct of private enterprise within the area under naval jurisdiction.

4. Under the authority of the Executive Orders which charge the Secretary of the Navy with responsibility for the government of Guam, American Samoa and the Trust Territory of the Pacific Islands, the Secretary is empowered to deny or to revoke the right of entry into the territory concerned to any person whose presence therein is detrimental to the public interest.

Op22/flf
Serial 51P22

He is also empowered to grant, withhold or cancel permission to engage in commercial or industrial enterprises where such enterprises are detrimental to the public interest or inimical to the interests of the local inhabitants. These powers are hereby delegated to the following officials subject to the stipulations herein set forth:

a. In Guam - To the Governor of Guam, to be exercised in consonance with the legislative power vested in the Guam Congress.

b. In American Samoa - To the Governor of American Samoa.

c. In the Trust Territory of the Pacific Islands- The power to grant, deny or revoke right of entry and similar powers over commercial concessions to local inhabitants, to the High Commissioner who may, at his descretion, delegate all or any part thereof to his Deputy. Paragraph 9 of reference (b) required approval of the Secretary of the Navy as a condition prerequisite to the grant to non-residents of rights in lands or commercial concessions.

5. The officials to whom powers are delegated in the foregoing paragraph shall keep the Secretary informed of all instances of denial or revocation of right of entry and of all grants, denials or revocations of commercial and industrial licenses and concessions. The circumstances surrounding and reasons connected with denials and revocations shall be reported in detail.

M. E. ANDREWS

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GUAM

AND ITS PEOPLE

By Laura Thompson

WITH A VILLAGE JOURNAL BY
JESUS C. BARCINAS

PRINCETON, NEW JERSEY
PRINCETON UNIVERSITY PRESS
1947

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the campaign against Japan, with the result that practically the whole northern half of the island was taken over by the military, many of its resources being destroyed in the process of developing a major Pacific base. Thus the main immediate economic problems have been: (1) the development of the naval base; and (2) the rehabilitation of facilities and native economy.

Some idea of the economic revolution taking place on the island may be gained from the realization that from being a remote naval colony with less than 1,000 transient service personnel in 1940, Guam has become a major United States naval base with an estimated 30,000 to 40,000 non-native population in 1946. Although this number will probably decrease somewhat in the near future, nevertheless according to present plans the island will continue to have a large non-native population, both of Navy personnel and of civilian employees of the naval and federal governments.

Under these circumstances the native unemployment problem which was developing before the war has ceased to exist but certain native employment problems have become acute. For example, there is plenty of work for every Guamanian but the types of employment open to him, conditions of work, wage rates, number of hours, distribution of wholesale and retail businesses, wholesale and retail prices, etc., are completely controlled by the government. At present even the housing and to a considerable extent the movements and transportation of over half the native population, namely those who were bombed out of their homes and those whose homes were condemned, are so controlled.

No Guamanian is forced to take a job but since much privately owned land has been condemned, for most natives there is no alternative. On January 1, 1946, 4,791 Guamanians were employed full time by military units and in industry, and 1,382 school children and others were employed in part-time jobs.[27] Once a native takes a job he cannot quit of his own

[27] *Ibid.*

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TREATY OF PARIS

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Upon the conclusion and signing of this protocol, hostilities between the two countries shall be suspended, and notice to that effect shall be given as soon as possible by each Government to the commanders of its military and naval forces.

Done at Washington in duplicate, in English and in French, by the Undersigned, who have hereunto set their hands and seals, the 12th day of August 1898.

[SEAL.] WILLIAM R. DAY.
[SEAL.] JULES CAMBON.

[TREATY]

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in exceptional cases, but the leases could run for a maximum of ten years and must include a ninety-days' revocation clause. Native Guamanians were authorized to lease their private holdings to aliens for a period not to exceed ten years, such leases to be renewed only with the Governor's approval.[265] In 1919 the leasing period was reduced to five years.

Prior to issuance of these instructions the Solicitor of the Navy Department had ruled that Article 9 of the Treaty of Paris probably gave "Spanish subjects, natives of the Peninsula" the right to dispose of their property, but this unrestricted right did not apply to the natives.[266]

In a letter to Representative Julius Kahn, of the United States Congress, the Secretary of the Navy defended this prohibition on the grounds that "In the absence of Congressional legislation, the Department considers that it has the full power to make any necessary regulation for the government of the island." Furthermore, the Secretary argued that there was nothing in the Constitution or statutes of the United States to prevent the Department from forbidding the sale of land to aliens, and that no treaties were violated by this action. The Treaty of March 21, 1895, between the United States and Japan gave only the right to lease land, in conformity with the Japanese law which prohibited sale of land to foreigners.[267] Again in 1934 it became apparent that Guamanians were selling their lands to non-Guamanians, and the Naval Government found it necessary to take

Zamora's quote (at page 2 & 3) of the letter to Julius Kahn comes from page 161 of Zeno

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The duration of the tour of duty of naval officers on board ship or beyond the continental limits of the United States is eighteen months. Thus prewar Guam had a new Governor about every eighteen months. As a matter of actual fact, a few Governors did not serve the full eighteen months due to illness and needs of the service. A few served several months in excess of eighteen while awaiting the arrival of their successors. Not one Naval Governor of Guam was ever reappointed.

It is interesting to observe that in the 230 years of Spanish government there were some sixty Spanish governors and acting governors, serving an average term of about four years. The records show, however, that five actually served only one year or less; two served ten years; and two served eleven years. Compare this with the eighteen month terms of American Naval Governors as effected under the naval rotation system. Eighteen months, at times reduced by illness, by visits to the United States, the Philippine Islands, or other areas, or by cruises at sea, is scarcely long enough to permit a governor to become familiar with his job and the many and varied problems of civil government of thousands of native civilians on a tropical island. Several of the Naval Governors scarcely became known on the island before their terms expired.

Some of the naval governors thoroughly enjoyed their duty as civil administrators of a native population. Some took an active and personal interest in the people and their problems and worked hard and sympathetically on their behalf. Others found their duties as Governor utterly foreign to their background of training and experience as professional naval officers and developed a keen dislike for the job. Some regarded their assignments to this remote and unimportant naval station as punishment duty, which it probably was in a few cases. The post was not regarded as an asset to a naval career. A few of the Naval Governors went on to achieve flag rank, but the position was not one which served to enhance a record of naval service under review for promotion to flag rank in the promotion-poor prewar Navy.

Many of the Naval Governors were motivated by a sincere desire to improve the lot of the people they governed. It has been said, and probably with considerable truth, that others functioned as nothing more than Naval Commanders of the United States Naval Vessel The Island of Guam with some 20,000 civilian members of the crew. They "governed" the people of Guam much as they had commanded naval vessels or naval establishments on previous tours of duty. Law and order often became "discipline," legislation became "commands" or "orders," education became "training," and so on. This is somewhat borne out by the fact that the organization of the government resembled that of a navy yard or a naval vessel. The departments of government were organized and functioned like the departments of a navy yard or the divisions of a ship. Officers served as department heads and members of the staff of the Governor. Enlisted men of the Navy and the Marine Corps and certain selected American and Guamanian civilians were entrusted and relied upon to perform the routine everyday business of government. A few local civilians with many years of service were entrusted with comparatively important routine duties, but they never assumed command. The population as a whole, the people of Guam, were regarded as "wards of the Navy" to be treated kindly

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but with firmness, dignity
enlisted men. (3)

During the days of Spanish sovereignty it had also been the practice of the Spanish governors to fill the main executive positions of the island's government with officers of the Army and Navy. Certain other functions, such as the schools, for example, were in the hands of the Church. The first United States Naval Governor lost no time in separating the functions of church and state in Guam. He found it necessary, however, to fill the executive positions of the government with military personnel under his command. As a matter of fact, the first "Official List" published on April 15, 1900, shows that the Governor himself, in addition to being the head of the Department of Government (Executive Department), was also head of the Department of Treasury, Post Office, Justice and Education. In addition he was judge of the Supreme Court which he himself had created.

With certain exceptions, the practice inaugurated by Guam's first Naval Governor has continued through the years even to this day. What was thought by Captain Leary to be a temporary government until Congress could act to provide a permanent government has enjoyed a 46-year existence. The Governors themselves no longer hold multiple jobs in the island government and there have been some exceptions through the years to the practice of having their naval subordinates at the head of government departments. These exceptions usually have occurred, however, only when certain functions of government seemed to require the services of persons having skills not normally found among personnel of the regular Navy. Thus, in the present-day government of Guam, the heads of the Departments of Education and Agriculture are American civilians with special training and skills in education and agriculture. The heads of the other departments are naval officers.

Although there have been a few instances in which civilians have headed executive and administrative offices, it never has been the practice of the naval Governors to put Guamanians in such positions. As late as 1937, for example, not a single Guamanian or other civilian, for that matter, headed any of the thirteen departments of the island government, all such positions being held by commissioned and non-commissioned (petty) officers of the Navy and Marine Corps. Guamanians of course have served as judges in some of the courts of Guam and as chairmen of the House of Council and the House of Assembly in the advisory Guam Congress. Many have held positions both as principal and as minor clerks in the various government offices.

For purposes of local administration, the island is divided into fifteen districts each under an appointive Commissioner who holds office at the pleasure of the Governor. The Commissioners and Deputy Commissioners keep the Governor advised of local happenings and serve

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3. It was Captain Leary himself who, in his General Order No. 11, dated January 19, 1900, reminded his own officers and men that "the natives of Guam are not 'damned dagoes,' nor 'niggers,' but they are law-abiding, respectful, human beings, who have been taken under the protection of the United States Government, and who are as much entitled to courtesy, respect, and protection of life and liberty in their homes and in their occupations as are the best citizens of New York, Washington, or any other home city."

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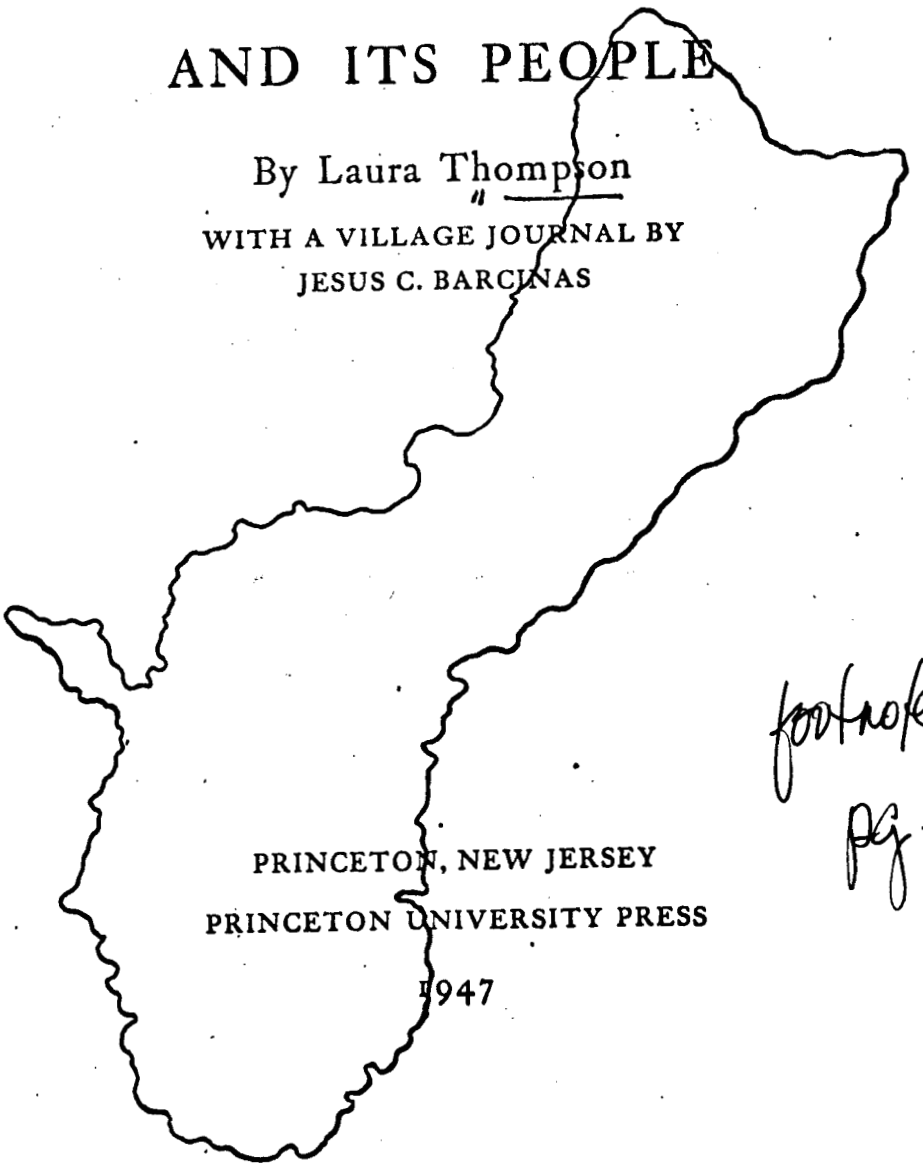
GUAM

AND ITS PEOPLE

By Laura Thompson

WITH A VILLAGE JOURNAL BY
JESUS C. BARCINAS



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PRINCETON, NEW JERSEY
PRINCETON UNIVERSITY PRESS
1947

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the men and the ringing of church bells at four A.M., the hour when the Guamanians arose; and he attempted to legislate out of existence drinking, gambling, concubinage, peonage, barter and even idleness.[15] These attempts to reform by fiat led to a host of other difficulties, so that practically all of the first governor's orders had almost immediately to be retracted or changed by other orders. Nevertheless naval civil government precedents were established and the pattern of naval rule was set during the administration of the first American governor.

Thus it came about that authority of the naval governor of Guam over the native civilian population of the island was and still is in certain respects greater than the comparable power of any other United States official, even the President himself, for in the governor rests the highest civilian appeal to justice, the supreme power of life and death.

The naval governors of Guam have continued to the present to exercise a supreme authority on the island, subject only to the President of the United States in his military capacity (the President has never exercised his authority, as far as the writer is aware), to the Navy Department and to precedent established through the years.

This concentration of power over the native population in the person of the naval governor accounts for the fact that while the framework of the Spanish municipal system was retained [16] (the *gobernadorcillos* being called commissioners; the *tenientes de justicia* and *cabezas*, deputy commissioners; and the *suplentes*, assistant commissioners), the limited democratic character which it had attained during the Spanish regime was lost soon after the American Navy took over. Elections were abolished and the municipal commissioners as well as their staffs were appointed directly by the governor,

[15] See General Orders 1, 2, 4, 5, 7, 18, 19, 21; Proclamation of January 1, 1900, Naval Government of Guam; Beers, *op. cit.*, pp. 27–29.

[16] Executive General Order 90, Naval Government of Guam.

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Guam Recorder

Issue No. 2, 1974

Price: $1.00

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General Orders Issued By The Naval Governor of Guam

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FIRST INSTALLMENT

General Order No. 1. — Government House, *Agana, Guam, August 16, 1899.*

It is prohibited to sell, issue, or in any way to dispose of any intoxicating spirituous liquors in the island of Guam, or in the contiguous waters, reefs, or lands thereof, or to any person who was not a resident of this island prior to August 7, 1899; and any person convicted of violating this order may be punished by a fine not exceeding $100 (Mexican money), or imprisonment not exceeding one month, or both, on approval of the governor, and the offender's contraband goods shall be confiscated.

Richard P. Leary, U. S. Navy,
Governor

General Order No. 2. — Government House, *Agana, Guam, August , 1899.*

On and after September 15, 1899, the importation of whisky, brandy, rum, gin, aquadiente, or of any other intoxicating spirituous liquor into the island of Guam or its contiguous waters, reefs, or lands, is prohibited, except by a special license issued by the government; and any offender against this order may be punished by fine or imprisonment, or both, upon approval by the governor, and the offender's contraband goods shall be confiscated.

Richard P. Leary, U. S. Navy,
Governor

General Order No. 3. — Government House, *Agana, Guam, August 21, 1899.*

For the protection of Government interests and as a safeguard for the residents of Guam against the machinations, devices, and schemes of speculators and adventurers, it is hereby ordered that all persons who claim ownership of land in this island or its dependencies are prohibited from selling or transferring any portion of such property without first obtaining the consent of the government. Violation of this order may be punished by fine or imprisonment, or both.

Richard P. Leary, U. S. Navy,
Governor

General Order No. 4 — Government House, *Agana, Guam, August 25, 1899.*

Public celebrations of feast days of the patron saints of villages, etc., will not be permitted. The church and its members may celebrate their religious feast days within the walls of the church, chapel, or private residence, in accordance with regulations for the maintenance of the public peace, and unless otherwise ordered, the only public holidays recognized will be Sundays and the holidays authorized by the United States statue laws and by the proclamations of His Excellency the President of the United States.

Richard P. Leary, U. S. Navy,
Governor

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EXECUTIVE GENERAL ORDERS AND NOTICES

The following Executive General Orders and Notices have been issued since the last issue of the NEWS LETTER:

EXECUTIVE GENERAL ORDER No. 310 April 21, 1919

It is hereby ordered and decreed that:

1. The lease to aliens of real property in Guam for a term of more than FIVE (5) YEARS is prohibited. The penalty for a violation of this order will be a fine of fifty (50) per cent of the value of the lease for each year over five (5) years half to be paid by the lessee and half by the lessor and an additional fine not to exceed one hundred ($100.00) dollars to be paid by the lessor.

2. All previous leases of private real property for whatsoever term and conditions and all leases which may hereafter be executed shall be recorded in the Office of the Civil Registrar of Guam upon payment of the tax as established by Executive General Order No. 156, Section 2, Paragraph 3. Failure to comply with this order within ninety (90) days for any lease that has previously been made or thirty (30) days after date of any lease that may hereafter be made shall cause the lease to be null and void.

3. Leases of government land may be granted under the following conditions:

(a) That the area of the land for agricultural purposes shall not exceed eight (8) hectares in case of single person and sixteen (16) hectares in case of married person.

(b) That the area of the land for pasture purposes shall not exceed fifty (50) hectares.

(c) That in all cases other than aliens the terms of lease for the above shall not be more than twenty-five (25) years, and for town property it shall not be more than fifty (50) years.

4. A charge of twenty-five (25¢) cents will be made for recording each lease.

5. This Order shall take effect from May 1, 1919.

6. All laws and parts of laws inconsistent with the provisions of this order are hereby repealed.

EXECUTIVE GENERAL ORDER No. 311 May 12, 1919

It is hereby ordered and decreed that:

1. On and after June 1, 1919, only such motor boats as have been inspected and passed by the Beachmaster at Piti as to seaworthiness and efficiency of engine will be allowed to run between different ports of this island.

2. Such motor boats must carry at least two oars, a life belt for each person on board, a bucket of sand or efficient foam fire-extinguisher and lights as required by law.

3. Motor boats must be inspected every three months and a written certificate given to boats which are satisfactory. This certificate must be produced upon demand by proper authority.

4. Such motor boats when underway must have on board at least one person who has been examined and passed by the Beachmaster at Piti as to his ability to run a gas engine and make such repairs as could be done at sea with the usual tools carried.

5. Such person will be given a written certificate which must be produced upon demand by proper authority.

6. The penalty for a violation of this order shall be a fine of one hundred ($100.00) dollars.

EXECUTIVE GENERAL ORDER No. 312 May 13, 1919

It is hereby ordered and decreed that:

1. Hereafter no bounty on rats and iguanas will be paid and in lieu thereof every able bodied man and every boy over sixteen (16) years of age shall bring in to the Commissioner or Deputy Commissioner of the town, barrio or district in which he lives not less than five (5) rat heads per month. For each rat head which is not brought in there will be a fine of five (5) cents.

2. All rat heads brought in will be destroyed by the Commissioner or Deputy Commissioner and attested by the school teacher or patrolman.

3. By "able bodied man" is meant any man whose usual residence is in Guam.

4. This order shall take effect from June 1, 1919.

5. All laws and parts of laws inconsistent with the provisions of this order are hereby repealed.

EXECUTIVE NOTICE No. 137 April 24, 1919

1. On account of the dry season there is a shortage of water in the public systems of Agana, Asan, Piti, and the barrios along the Agana-Piti road. All persons are urged to avoid the waste of water, especially from the Asan System, and to use the water only for necessities. The sprinkling of lawns and washing of vehicles should be discontinued as far as possible and only so much water as is absolutely necessary used for washing clothes and other similar purposes. If the people are careful to avoid the waste of water it will probably be possible to get through the dry season without interrupting the service; if the people are careless in the use of water it will be necessary to turn off water in the Asan System during a part of every day. If you waste water now you cannot have it when you need it later. All persons are urged to cooperate in the saving of water so that an interruption of the service will not be necessary.

NAVAL STATION ORDER No. 163 April 24, 1919

1. On account of the dry season a shortage of water exists. This shortage is particularly acute in the Asan System. Waste of water or use of water for non-essential purposes, especially from the Asan System, should be carefully guarded against until the beginning of the rains. The use of Asan water for sprinkling lawns and roads, scrubbing wharves, sidewalks, etc., and similar non-essential purposes will be discontinued during the present shortage. It is believed that if sufficient care is taken to eliminate waste it will be unnecessary to resort to shutting off the water system during part of the day, which will otherwise soon become necessary.

NAVAL STATION ORDER No. 164 May 14, 1919

Friday, May 30, 1919, is Memorial Day and will be observed as a holiday in accordance with Art. R. 1286, paragraph 3.

Offices and shops will be closed and only necessary authorized work will be carried on.

A salute of 21 minute guns will be fired at noon at

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in exceptional cases, but the leases could run for a maximum of ten years and must include a ninety-days' revocation clause. Native Guamanians were authorized to lease their private holdings to aliens for a period not to exceed ten years, such leases to be renewed only with the Governor's approval.[265] In 1919 the leasing period was reduced to five years.

Prior to issuance of these instructions the Solicitor of the Navy Department had ruled that Article 9 of the Treaty of Paris probably gave "Spanish subjects, natives of the Peninsula" the right to dispose of their property, but this unrestricted right did not apply to the natives.[266]

In a letter to Representative Julius Kahn, of the United States Congress, the Secretary of the Navy defended this prohibition on the grounds that "In the absence of Congressional legislation, the Department considers that it has the full power to make any necessary regulation for the government of the island." Furthermore, the Secretary argued that there was nothing in the Constitution or statutes of the United States to prevent the Department from forbidding the sale of land to aliens, and that no treaties were violated by this action. The Treaty of March 21, 1895, between the United States and Japan gave only the right to lease land, in conformity with the Japanese law which prohibited sale of land to foreigners.[267] Again in 1934 it became apparent that Guamanians were selling their lands to non-Guamanians, and the Naval Government found it necessary to take

~~The~~ Zamora's quote (at page 2 & 3) of the letter to Julius Kahn comes from page 161 of Zeno

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GUAM: ITS ECONOMY AND SELECTED DEVELOPMENT OPPORTUNITIES

Prepared for:

GUAM FINANCE AND DEVELOPMENT ADMINISTRATION
TERRITORIAL GOVERNMENT OF GUAM AGANA, GUAM, M.I.

STANFORD RESEARCH INSTITUTE
Applied Research Center of the West
MENLO PARK, CALIFORNIA

*GUAM

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Ref
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S

Role of the Military

During the period of the Naval administration, the role of the military on Guam was a paternalistic one. It provided the island people with free medical service, police and fire protection, and public works, such as the building of roads and the supplying of power and water. It levied no income tax during its entire administration of over 50 years, nor any other tax except a gross receipts tax, an amusement tax, and an excise tax which it first imposed around 1947 when money was in abundance on the island.

Prior to, and immediately following, World War II, the Navy transported practically all imports and exports to and from Guam. The Dollar Line (now the American President Lines) was the only commercial steamship company which called on Guam, and its vessels did so only about four times a year. Local merchants were encouraged and assisted by the Navy, and immediately following World War II it issued enormous amounts and varieties of stores and supplies to set Guamanians up in business.

The Navy subsidies came to an abrupt halt with the passage of the Organic Act, which gave Guam territorial status, established a civilian government, and gave the Guamanians United States citizenship. However, today the military still plays the prime role in the economy of Guam. The three major branches of the service, plus the Marine Corps and the Coast Guard, are represented on the island, the Navy and the Air Force having by for the largest representation. The following data indicate approximately the number of military personnel and those employed by the military on Guam as of September 30, 1958:

Type of Personnel	Number of Persons
Military	12,804
Military Dependents	9,726
Civil Service Employees, Stateside-Hire	2,997
Civil Service Dependents 1/	2,002
Civil Service Employees, 2/ Local-Hire	1,819
Filipino Contract Laborers 2/	4,125

1/ Estimated.

2/ Includes appropriated and nonappropriated fund employees.

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OFFICE OF STRATEGIC SERVICES

FAR EASTERN SECTION

R&A 744

DEPARTMENT OF STATE
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GUAM

A SOCIAL-POLITICAL-ECONOMIC SURVEY

R&A

June 17, 1942

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page 16

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Even the institution of American control has not greatly changed the basic pattern of life formulated by the Spanish.

The native reaction to American control has been increasingly stronger as the years have passed, being primarily favorable in tone. Population increase has been rapid, the standard of living has steadily increased, changes in Island economy have become progressively greater. Within the last decade there has been considerable native activity looking toward changing the position of the Island from that of an arbitrarily-ruled naval station to one more compatible with what the Americans have taught as the American way of life. Throughout the American period the Island has not been on trade routes or lines of call and it has led a sheltered, out-of-the-way existence dominated by United States Naval considerations. The establishment of the Pan American trans-Pacific air line in 1936 marked the end of that quiet era for Guam.

b. Contemporary social scene. The present population on the Island of Guam is definitely pro-American in sympathy, despite its composite racial make-up and Spanish-colonial background. Peacefully inclined, with its only sharp contrast that between the natives and the personnel of the United States Naval and Marine station and the Pan American Airways, it has been a satisfactory and happy American colony. The establishment of the Pan American Airways station, and the strategic considerations that resulted, altered the position of Guam considerably and will undoubtedly continue to affect the population. In the period from 1936, to December 7, 1941, Guam was the center of a considerable discussion concerning the question of establishing naval and air fortifications. Introduction of large numbers of American workers, the employment of such natives as were capable, the stimulation by relatively large amounts of money, contributed to a marked disruption of regular Island economy in this

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In reply address
the Governor of Guam,
not individual signer.

Refer to No.

NS8/A9-1
Serial No. 1315.

NAVAL GOVERNMENT OF GUAM
GOVERNMENT HOUSE
GUAM

GJM/Le

VIA AIRMAIL

July 25, 1941.

From: The Governor of Guam.
To : The Secretary of the Navy.

Subject: Annual Report for the Fiscal Year 1941.

Enclosure: (A) One copy of subject report.

1. Enclosure (A) is forwarded herewith for approval.

2. Authority, by despatch, to release the subject report is requested.

G. J. Mc Millin.

NAVY DEPARTMENT
SECY'S OFFICE RECORD DIV.
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OP. JAG. C.C. APPT. N.S.O.
SOSEO SECY. ASEC. N.P.R. SUA
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GENERAL

The fiscal year 1940-41 leaves Guam in a fairly prosperous state. The Island has gradually repaired damage caused by the severe typhoon experienced on 3 November 1940.

ECONOMICS

The affairs of the Island and its people have continued to be little affected by political, economic and industrial problems of the world at large. The standard of living, education and health of the natives continues to improve. The Federal and Island Government maintains roads, sewers, water-works, electrical service and telephones which contribute greatly toward the success of the foregoing improvement.

The market price of copra has been too low to encourage its production on a large scale. Small quantities have been produced for the local soap factories.

A typhoon, which struck the Island on 3 November, reduced the cocoanut crop to such an extent that it was necessary to slaughter some poultry and swine due to lack of this usual source of feed.

The loss of most of the banana, bread-fruit, mango and avocado crop has forced the native population to cultivate increased areas of land; and plant such quick growing crops as taro and corn. This increase in land under cultivation was due also to the efforts of the Naval Government Extension Agents and the threatened rice shortage. The Island uses approximately 10,000 lbs of rice daily.

The above mentioned economic disturbances have been largely offset by a definite increase in the Federal projects being undertaken on the Island, thus providing work for approximately 1200 additional laborers during the fiscal year. In many cases the farms have been operated by the women and children of the household, while the male members were employed as a Naval Government or Federal laborer.

Due to a strong sense of family loyalty there are but few charity cases in Guam.

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HEALTH AND SANITATION

Funds for renewal and expansion of the sewer systems on the Island were not allowed during the past fiscal year - such expansion and renewal is of utmost importance to combat insect and ground-borne diseases, especially in the town of Agana with 11,000 inhabitants living close together in a small area between the mountains and the sea where the problem in sewage disposal demands immediate action by the Federal Government.

Funds were made available, and work is underway, for an isolation ward at the Naval Hospital for the treatment of tuberculosis patients. The general health conditions of the people have been very good throughout the year, except for a mild epidemic of German measles. Sanitary

UNITED STATES NAVAL GOVERNMENT AND ADMINISTRATION OF GUAM

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by

M. Dean Zenor

STATE UNIVERSITY
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A dissertation submitted in partial fulfillment of the
requirements for the degree of Doctor of Philosophy
in the Department of Political Science in the
Graduate College of the State
University of Iowa

August, 1949

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University of Guam

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desire, to furnish certain public services, such as transportation, then outside interests may properly be permitted to enter, subject, of course, to regulation by the Guam legislature so that profits would not be excessive.

With the transfer of Guam to Interior Department jurisdiction the era of extreme paternalism will come to an end. Whether the Guamanians will be able to care for their own needs remains to be seen. The Navy Department has made good progress in preparing Guam for home rule, but only time can record whether the native inhabitants are really ready to determine local policies without the support of subsidies. In all probability the Interior Department will need to ask the United States Congress for special funds to carry out the functions handled by the Navy Department from its regular appropriations. The opportunity of the Guamanians to prove their fitness for home rule will be provided, however, and this is in keeping with the declaration of the United Nations Charter that member nations agree to "develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions."

RESTRICTED

U. S. NAVY

Report

on

GUAM

1899–1950

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DEPARTMENT OF THE NAVY
WASHINGTON 25, D. C.

No masons, no carpenters, no physicians and no trained school teachers, the few schools medieval in their scanty, religion-dominated curricula;

A population so abused and oppressed over the centuries, so disease-infested, so isolated from the world, so haunted by superstition, that it was a listless, ambitionless, unorganized mass of humanity stirred only by the hope for individual survival.

That was what was handed to the Navy Department 50 years ago to rehabilitate, to organize, to administer, and to make productive. It was a task new to the Navy; it would have been as new to any Department in the Government. The assignment was handed to the Navy because Guam was accepted to be, primarily, of strategic value to the nascent Pacific empire, keystone of the maritime arch stretching from the newly acquired Territory of Hawaii to the just-purchased Philippine domain.

When the time came for Guam to fulfill its strategic function, 42 years later, its military worth had been almost completely devalued. However, the subject of this report is not Guam as a military bastion but rather the achievements of the Navy Department in its secondary responsibility; the physical and social restoration and recreation of Guam. The challenge was not only to better the material circumstances of the Guamanians but to achieve a transformation in the bodies and minds of the people. The responsibility to the Guamanians was to guide them from disease-ridden medieval peonage to the dignity and demeanor of a healthy, self-reliant citizenry in the modern world.

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GUAM

A SOCIAL-POLITICAL-ECONOMIC SURVEY

R&A

June 17, 1942

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SECTION V

ECONOMIC

31. GENERAL, ECONOMIC SUMMARY. a. General. The Island of Guam is one with a basic tropical agricultural economy thrown seriously out of gear by the presence of the United States Naval Station. Occidental stimulation of the native Chamorro self-sufficient economy has resulted in a striking increase in population, greatly increasing the requirement of a food supply. Occidental stimulation of agriculture by moral persuasion, demonstrations by farm bureau and experiment station representatives of improved techniques, and other measures have not increased production of food sufficiently to keep pace with the growing demand of the population. This disruption has been caused by the Naval Station work projects on the Island which have set wage standards out of proportion to returns for labor in agricultural occupations. In part, these wage standards have drawn labor from agriculture into project work, and in part they have supplied the financial ability to import food from outside the Island.

A certain stimulation of local industry along modern lines resulted from American control and the presence of the Naval Station. Considerable training of local manpower in the shops, on the ships, and on land work projects would result in the accumulation of occidental modern skills in due time. The dependence upon the copra trade for cash income has provided an additional source of cash income, but its lackadaisical pursuit has not developed this source of income. Again, there was dependence upon the United States Navy for transport, since the Island has been closed to foreign shipping for several years and domestic shipping found little reason for putting Guam on the list of ports of call. The coming of Pan-American Airways and the institution of much larger Naval works projects within the last two or three years further dislocated Island economy

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U. S. NAVY

Report

on

GUAM

1899–1950

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DEPARTMENT OF THE NAVY

WASHINGTON 25, D. C.

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DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY

WASHINGTON

MAY 20 1937

My dear Mr. Chairman:

The bill S. 1450, "To confer United States citizenship upon certain inhabitants of the Island of Guam and extend the naturalization laws thereto," was referred to the Navy Department by your Committee with a request for report and recommendation.

The purpose of the bill S. 1450 is to declare certain natives and residents of the Island of Guam to be citizens of the United States and to extend the naturalization laws to certain other residents of that island.

The Navy Department is of the opinion that the enactment of this measure would be prejudicial to the best interests of both the United States and the native population of Guam.

The complicated international situation in the Far East, the questionable status of treaties, and the fact that the United States is withdrawing from the Philippines, all contribute to the undesirability of any change in the status of the people of Guam, or in the method of the administration of that island, during the present unstable conditions.

The geographical location of Guam in the midst of foreign territory, with foreign commercial and colonizing interests to be considered, together with the racial problems of that locality, combine to provide a fertile field for international disputes. It is believed that the change provided for in the proposed legislation would aggravate the danger to peaceful international relations.

At the present time, as citizens of Guam, the people of that possession enjoy the privileges of United States citizenship and have few, if any, of the obligations connected therewith. They are accorded passport

EG54/P1-4(370216)
L RP.

privileges, have no Federal taxes or tariffs to pay, receive free medical and educational services, and are in general a particularly privileged people. The Naval Island Government carefully guards them from exploitation by outsiders and protects their lands. The general policy of the naval government with reference to educational activities has been to enlighten the minds of the people and to stimulate their development through training and self-discipline. Emphasis is placed on industrial and argicultural training in order to improve the capacity of the native population for self-maintenance and economic independence. However, as attested by the fact that they are not self supporting and require not only Federal economic assistance but careful training and supervision from the paternal Island Government, there is every indication that these people have not yet reached a state of development commensurate with the personal independence, obligations and responsibilities of United States citizenship. It is believed that such a change of status at this time would be most harmful to the native people.

An estimate of cost cannot be made, but it is believed that a change in status at this time would result in such unfavorable economic conditions that considerably increased Federal assistance in the form of relief funds would be required.

The Navy Department recommends against the enactment of the bill S. 1450.

Sincerely yours,

Charles A. Thomson.

The Chairman
Committee on Territories
and Insular Affairs,
United States Senate
Washington, D. C.

The bill S. 1450. "To confer United States citizen

GUAM

AND ITS PEOPLE

By Laura Thompson

WITH A VILLAGE JOURNAL BY
JESUS C. BARCINAS

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page 26

PRINCETON, NEW JERSEY
PRINCETON UNIVERSITY PRESS
1947

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ernment is not entitled to take over the land either by outright condemnation or under the right of eminent domain since it would not be for the purpose of converting it either into a military reservation or into a public domain, but for redistribution in private holdings to individuals.

Under naval military government, therefore, no action was taken on this matter and the Agaña Guamanians were housed in temporary camps. With the re-establishment of the pre-Pearl Harbor type of naval civil government in May 1946, however, martial law gave place to the type of law under naval civil government which has been described. Even under this system, it seems, the people cannot be deprived of their property without due process of law, according to a Supreme Court decision. At the time of writing, however, although a large number of well trained and experienced technicians are being sent to Guam to defend the interests of the government, it is reported that none have been imported to help the two or three partially trained Guamanian attorneys on the island to defend native interests in the claims awards beyond which there is no appeal. Unless this is done and native interests are also defended by mainland trained and experienced lawyers, it can hardly be claimed with justice that their property rights are being upheld by due process of law.

the court.

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ce of holding court.—(1) authorized to hold or pre- nted to be held in Agaña, urt be held or continued at uam when war, insurrec- her public calamity, or the e destruction or danger of ed for holding the court ary; and may in the same rder, or in his or their dis- her place.

he public good, or the con- als, or the necessity for a ires that any action, or any , either civil or criminal, arily be triable at Agaña, another place, the judge of n authorization of the Pre- Court of Appeals, hold ses- o, Inarajan, or Agat as the finds most expedient, with hough such cases had been he judge of the court and ployees shall be furnished ortation to and from Agaña here the court is to be held. l be granted for subsistence.

ppear at place appointed.— held at a place appointed, as st section, every person held urt must appear at the place

urts.—Each of the following eals:

of Appeals.

l Court.

e Court.

Court.

eep seals.—The chief clerk of the seals.

documents affixed.—The seal ot be affixed to any proceeding ent, except:

;

record or other proceeding of a court, or of an officer thereof, or of a copy of a document on file in the office of the clerk.

Title II

JUDICIAL OFFICERS

CHAPTER I. Judicial officers in general.
II. Powers and duties of judges at chambers.
III. Disqualification of judges.
IV. Incidental powers and duties of judicial officers.
V. Miscellaneous provisions respecting courts and judicial officers.

CHAPTER I—JUDICIAL OFFICERS IN GENERAL

Section
156. Judges appointed by Governor of Guam.
157. Term of office.
158. Salary.

156. *Judges appointed by Governor of Guam.*—The judges of the Court of Appeals, Island Court, Justice Court and Police Court shall be appointed by the Governor of Guam.

157. *Term of office.*—The judges of the courts set forth in the preceding section shall hold office during the pleasure of the Governor of Guam.

158. *Salary.*—The salary of any and all judges shall be determined by the Governor of Guam.

CHAPTER II—POWERS AND DUTIES OF JUDGES AT CHAMBERS

Section
165. Powers of Presiding Justice of the Court of Appeals at chambers.
166. Powers of Island Judge at chambers.
167. Powers of judge of the Island Court.
168. Chambers, defined.

165. *Powers of Presiding Justice of the Court of Appeals at chambers.*—The Presiding Justice of the Court of Appeals, may, at chambers, grant all orders and writs which are usually granted in the first instance upon an ex parte application, except writs of mandamus, certiorari, and prohibition; and may, in his discretion, hear applications to discharge such orders and writs.

166. *Powers of Island judge at chambers.*—The judge of the Island Court, may, at chambers:

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P U B L I C H E A R I N G S

CONDUCTED BEFORE A SUB-COMMITTEE OF
THE PUBLIC LANDS COMMITTEE
HOUSE OF REPRESENTATIVES

U N I T E D S T A T E S C O N G R E S S

NOVEMBER 21, 22, 23, 1949

AT

A G A N A, G U A M
MARIANAS ISLANDS

IN

THE HALL OF CONGRESS

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CHAIRMAN MILES Was it bought for some special purpose?

FRANK LEON GUERRERO For an abattoir.

REPRESENTATIVE LEMKE Were there other business places surrounding it that would give it additional value?

FRANK LEON GUERRERO No, sir, unless it was for the purpose of raising fish - brackish water fish - because that is a swampy area around there.

GOVERNOR SKINNER. Mr. Chairman, I am certainly not well versed in the land problem. I think I have discussed it for an average of an hour a day since I have been here and I still have a great deal to learn about it. I think I have learned this much though, that the land which we are discussing was largely taken after the reoccupation. It was taken by the Naval Government of Guam. That is why these gentlemen refer to the Governor as the taking authority. However, it was taken by the Naval Government of Guam, acting on behalf of a number of Federal Departments. Since there was no United States Attorney here and no United States court, the Naval Government of Guam took the place of the Department of Justice in a normal land taking and all takings are in the name of the Governor. I know recently I have had come before me several takings of land which had no value to the Naval Government of Guam, but were for the Department of the Air Force, the Department of the Army, or the Department of the Navy. All of the land work that was done by the Naval Government of Guam was done through the Land and Claims Commission. It is my understanding that they handled all of this land work. There were, I think, five Land and Claims Commissions. They were created and then, for various reasons, they were liquidated and a new one created with the same personnel but with different authority or different appropriations. As of October 1, the Land and Claims Commission was dissolved and transferred to the Commander Naval Forces Marianas. A few of the personnel was retained in the Naval Government of Guam for purposes of record keeping, but the majority of the personnel became part of the Base Development Section of Commander Naval Forces Marianas.

Following the session yesterday afternoon, and after the Committee had expressed an interest in the land problem, I asked the Commander Naval Forces Marianas if he would ask the area Legal Officer and other members of the present Lands Commission, which is part of the Base Development agency, if they would come down and testify and I am advised by Admiral Ewen that they will be

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premises, unless the person arrested entitled himself to be discharged, as provided in the next section.

1215. *Bail bond, form and conditions of.*—When a direction to let the person arrested to bail is contained in the warrant of arrest, or indorsed thereon, he must be discharged from the arrest, upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant and abide the order of the court or judge thereupon; or they will pay, as may be directed, the sum specified in the warrant.

1216. *Officer must return warrant and undertaking, if any.*—The officer must return the warrant of arrest and undertaking, if any, received by him from the person arrested, by the return day specified thereon.

1217. *Hearing.*—When the person arrested has been brought up or appeared, the court or judge must proceed to investigate the charge, and must hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

1218. *Judgment and penalty, if guilty.*—Upon the answer and evidence taken, the court or judge must determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, he may be punished as provided in the Penal Code.

1219. *If the contempt is omission to perform any act, the person may be imprisoned until performance.*—When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he shall have performed it, and in that case the act must be specified in the warrant of commitment.

1220. *If a party fail to appear, proceedings.*—When the warrant of arrest has been returned served, if the person arrested do not appear on the return day, the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action is the [illegible] loss or injury sustained by the [illegible] by reason of the misconduct for [illegible] rant was issued, and the costs of [illegible]

1221. *Illness sufficient cause [illegible] ance of party arrested. Confr[illegible] rests for contempt.*—Whenever, [illegible] sions of this title, an officer is requ[illegible] a person arrested on a warrant [illegible] in custody, and to bring him before [illegible] judge, the inability, from illness [illegible] of the person to attend, is a sufficient [illegible] not bringing him up; and the officer [illegible] confine a person arrested upon the [illegible] a prison or otherwise restrain him of [illegible] liberty, except so far as may be [illegible] secure his personal attendance.

1222. *Judgment and orders [illegible] final.*—The judgment and orders of the [illegible] judge, made in cases of contempt, are final [illegible] conclusive.

Title IV

EMINENT DOMAIN

Section

1237. Eminent domain defined.
1238. Public use defined.
1244. Complaint in eminent-domain proceedings.
1245. Summons, what to contain. How issued [illegible] served.
1246. Who may defend. What the answer [illegible] show.
1247. Damages to be determined. Appointment [illegible] referees.
1248. Duties of referees.
1249. Report of referees.
1250. Action of court upon report of referees.
1251. Rights of plaintiff after judgment.
1252. Effect of an appeal.
1253. Costs.
1254. Fees of referees.
1255. Final judgment, its record and effect.
1256. Power of a guardian not affected by [illegible] proceedings.
1257. Persons not notified, not affected by [illegible] proceedings.
1258. Declaration of taking.

1237. *Eminent domain defined.*—[illegible] domain" is the right of government to [illegible] private property for public use, and to [illegible] priate the ownership and possession [illegible] property for such public use upon paying [illegible] owner a due compensation to be ascertained [illegible] cording to law. No private corporation [illegible]

ve the right of eminent domain in Guam.

1238. *Public use defined.*—As used in this le the words "public use" shall be construed cover any use affecting the public generally, any number thereof, as distinguished from rticular individuals.

1244. *Complaint in eminent-domain proceedgs.*—The complaint must be brought in the ime of and on behalf of the Naval Governent as plaintiff by either the Island Attorney r Attorney General and must contain:

1. The names of all owners and claimnts of the property, if known, or a statement at they are unknown, who must be styled efendants.

2. A statement of the right of the plaintiff.

3. If a right-of-way be sought, the comlaint must show the location, general route, nd termini, and must be accompanied with a nap thereof, so far as the same is involved in he action or proceeding.

4. A description of each piece of land, or ther property or interest in or to property, ought to be taken, and whether the same inludes the whole or only a part of an entire arcel or tract or piece of property, or interest n or to property. All parcels of land, or other property or interest in or to property, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

1245. *Summons in condemnation proceedings. How issued and served.*—The clerk must issue a summons, which must contain the names of the parties, a general description of the whole property, a statement of the public use for which it is sought, and a reference to the petition for the descriptions of the respective parcels, and a notice to the defendants to appear in the cause. When the defendant or claimant of land sought to be condemned is known the summons shall be served by delivering to him a true copy thereof. In case the defendant or claimant, whether known or unknown, cannot be found, then the service of summons shall be made by publication thereof. In case defendants, known or unknown, have been joined in a petition by describing them as a class then the service of the summons upon such defendants may be made by publication. Proof of service and form of the summons shall be in accordance with the Code of Civil Procedure as provided for in civil actions. The service of summons as provided for in this section shall be sufficient to give the court jurisdiction to proceed with and finally determine the case.

1247. *Damages to be determined. Appointment of referees.*—Upon the showing by the Island Attorney or Attorney General that the property sought to be condemned is for the public use, the court must either itself hear the parties, view the premises and assess damages to be paid for the condemnation, or it may appoint not more than three referees to hear the parties, view the premises and assess damages to be paid for the condemnation, and to report their proceedings to the court. The judge of the Island Court shall issue a commission under the seal of the court to the referees authorizing the duties herein prescribed.

1248. *Duties of referees.*—Before entering upon the performance of their duties the referees shall take and subscribe an oath before the judge, or clerk, that they will faithfully perform their duties as referees, which oath shall be filed in court with the other proceedings in the case. Evidence under oath may be introduced by either party before the referees, who are hereby authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties consent to the contrary, go to the premises together and view the property sought to be condemned and its surroundings, and may examine and measure the same, after which either party may, by himself or counsel, or both, argue the cause. The referees shall assess the value of the property taken and used, and shall also assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owners from the public use of the land taken: *Provided*, That consequential benefits assessed shall in no case exceed the consequential damage assessed: *Provided further*, That nothing in this section shall be so construed as to deprive the owner of the actual value of his property so taken or used.

AMERICA'S PACIFIC DEPENDENCIES

A Survey of American Colonial Policies and of Administration and Progress toward Self-Rule in Alaska, Hawaii, Guam, Samoa and the Trust Territory

by

Rupert Emerson, Lawrence S. Finkelstein, E. L. Bartlett, George H. McLane and Roy E. James

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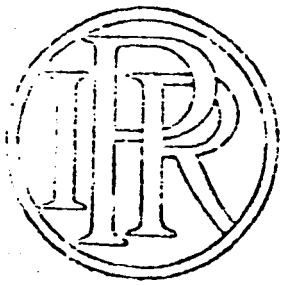

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AMERICAN INSTITUTE OF PACIFIC RELATIONS

not be permitted to stand in the way of combat operations on Guam. (14) It was also absolutely necessary that emphasis on such rights should not be allowed to impede unnecessarily the use of this highly strategic island in the prosecution of the war in its concluding phases. To this the Guamanian property owner did not then object nor does he now. Now that the war is over he would like to be reimbursed for his losses and would like to have returned to him such land as is no longer needed for military purposes. He knows he will not get all of the land back which he held before the war, but he would like to know which is going to be kept and which is going to be returned in order that he can again reorganize his life. (15)

In the face of many criminal problems arising from Guam's postwar construction-camp living and in anticipation of the complicated problems involving titles and claims to land, the Governor of Guam, by Executive Order No. 24-27 of October 3, 1947, created a new court called the Superior Court of Guam. The Executive Order creating this court was dutifully approved by the Guam Congress at its regular session on November 1, 1947. An American lawyer and former judge who had recently been appointed Presiding Justice of the Court of Appeals of Guam was also appointed Justice of the Justice Court.

This new one-judge court was given exclusive jurisdiction of all civil actions and proceedings to which the Naval Government of Guam or the United States of America is a party plaintiff, party defendant, or a party in interest. It was given concurrent jurisdiction with the Island Court of all criminal actions constituting a felony under the laws of Guam. It was given no appellate jurisdiction and "appeals" from its decisions can be taken directly to the Secretary of the Navy.

It is now apparent, even to the most ardent of the Naval Government supporters on Guam, that the new Justice Court is in reality a device by which all land condemnation proceedings are taken from the regular courts of Guam and placed in a court in which Guamanian judges have no role. By this device, too, it has become possible to prevent Guamanian judges from sitting in judgment on serious criminal cases which in the opinion of the Naval Government should not go before a court presided over by a Guamanian.

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14. 2,631 out of 3,286 dwellings on prewar Guam were entirely destroyed in the military operations incident to the recapture of the island.

15. The Secretary of the Navy's Special Civilian Committee, the so-called Hopkins Committee, in its March 25, 1947, "Report on the Civil Governments of Guam and American Samoa," had this to say about the postwar land situation in Guam: "The first order of business must be the final determination by the military services--the Army, the Navy and the Marines--of their permanent postwar requirements of land. At present, of the 138,000 acres or 217 square miles of land on Guam, the Federal Government is occupying 76,000 acres or 120 square miles. Of this, 27,000 acres or 42 square miles are owned by the United States, being former crown lands of Spain which passed over to us under the Treaty of Paris, and 52,000 acres, or 80 square miles, are owned by citizens of Guam..." (Quoted from paragraph IIC, 2a.)

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INFORMATION ON GUAM TRANSMITTED BY THE UNITED STATES TO THE SECRETARY - GENERAL OF THE UNITED NATIONS PURSUANT TO ARTICLE 73(e) OF THE CHARTER

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pg. 27

Prepared by the Navy Department
Washington, D. C. June 1948
(OpNav-P22-100C)

Significant Recent Developments: The extension, during the year, of certain legislative powers to the Guam Congress has already been noted.

In 1947, the Governor of Guam appointed a civilian lawyer with professional training and experience in the United States to serve as the presiding justice of the Guam Court of Appeals and as judge of the Superior Court of Guam.

In 1947, the Superior Court of Guam was established for the more expeditious trial of land title and land acquisition cases to which the Naval Government of Guam or the United States might be a party.

[illegible]

The civil rights of the inhabitants are not infringed upon in time of peace. Freedom of speech, press, religion and other fundamental rights are guaranteed under a bill of rights promulgated by the Governor in 1931. Limitations, which were necessarily placed upon the personal liberty during the war by certain proclamations of the Military Governor, were [illegible] when the Island Government was restored on May 30, 1946. Most limitations had been removed earlier. Since the origin of legal procedure on Guam is the civil law of Spain rather than the Anglo-Saxon common law, trial by jury is not within the experience of the Guamanian people.

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P U B L I C H E A R I N G S

CONDUCTED BEFORE A SUB-COMMITTEE OF
THE PUBLIC LANDS COMMITTEE
HOUSE OF REPRESENTATIVES

U N I T E D S T A T E S C O N G R E S S

NOVEMBER 21, 22, 23, 1949

AT

A G A N A, G U A M
MARIANAS ISLANDS

IN

THE HALL OF CONGRESS

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Superior Court. Perhaps in no other jurisdiction does a judge sit in so many capacities and try such a wide variety of criminal and civil cases. The same judges each sit in the Police Court, the Justice Court, and the Island Court. Another unusual feature about the trial of cases in Guam is that there is no jury, the trial judge being both a trier of the facts as well as of the law. Only one judge sits and hears any particular case at a time. The court of last resort in Guam to which nearly all cases of a civil and criminal nature may be appealed is the Court of Appeals of Guam. It is composed of a Presiding Justice, and four Associate Justices. Three of the Associate Justices are Guamanians. The Presiding Justice is a stateside-trained lawyer and judge who decides all questions of law before the court. By virtue of his office, he is also the Administrative Head of the Judiciary System. Questions of fact in cases under appeal are determined by the Justices of the Court of Appeals sitting on the case. However, the prime defect in the Judiciary set-up is that the justices and judges have no term certain in that they are appointed and serve at the pleasure of the Governor of Guam.

The Superior Court is a special court instituted by the Navy Department consisting of one trained, stateside judge, principally to try land condemnation cases in accordance with the recommendations of the Hopkins Committee. It was constituted by Executive Order No. 24-47 of the Governor of Guam on 3 October 1947 and approved by the Guam Congress. The Presiding Justice of the Court of Appeals is by law also made the judge of the Superior Court. Th court has original and exclusive jurisdiction over all civil actions and proceedings in which the government of Guam, the Navy Department, or the United States of America is a party in interest, and it also has concurrent jurisdiction with the Island Court in all felony cases. The Superior Court has no appellate jurisdiction. Appeals from all decisions of this court are made directly to the Secretary of Navy, as provided for by law. In each case, so the Land and Claims officials state, the land owner is talked to in the presence of the Village Commissioner who often acts as interpreter for the Chamorro-speaking land owner and the government land negotiater. In most cases a Guamai official of the government also accompanies the appraiser and negotiater. The procedure for notifying the owners that their lands have been taken is to send out an appraiser and negotiater who advises the owner of the value of his land insofar as the government is concerned and offers to settle on that basis.

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P U B L I C H E A R I N G S

CONDUCTED BEFORE A SUB-COMMITTEE OF
THE PUBLIC LANDS COMMITTEE
HOUSE OF REPRESENTATIVES

U N I T E D S T A T E S C O N G R E S S

NOVEMBER 21, 22, 23, 1949

AT

A G A N A, G U A M
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IN

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without hurting our landscape very much. Another question that has come up and there have been various statements made to us, and we will hear some more here this afternoon - one person said he got $200. for virtually two years' rental for 100 acres where the hospital is. That was way back from 1945 to 1946, and I think he has not heard anything since as to what he is to be paid. Do many of ~~thex~~ those cases come before you?

JUDGE FISCHER I presume they will eventually. That case hasn't been heard yet.

REPRESENTATIVE LEWIS Some claim they get $14.10 for one of the finest locations on the Island as far as I know - for 13 acres, per year. Would you say that that has been brought to your attention?

JUDGE FISCHER Those particular cases have not come before the court, but having tried 2,400 cases, or actually had the trial work of 2,400 cases with the Columbia River Authority - Oregon, Washington, western Montana, western Wyoming and Idaho - it has been my experience as a trial lawyer, that you never did satisfy everybody, either the Government or the land owner, in every case. In this instance, I happened to be the Judge. In other instances, I was the Government counsel

REPRESENTATIVE LEWIS I realize that it is almost impossible to satisfy everybody. Personally, I do feel - and I think you will agree with me - that in the States, we mean what we say as a rule, "just compensation." Sometimes we have a hard time ~~xxxxxxxxx~~ getting it from courts. I have had experience in many cases. Yet, society isn't perfect and we have got to accept the best we know how.

JUDGE FISCHER In a dozen cases, or so, I recall only the that case where three of the land owners were dissatisfied with the final allotment made to them. In all of the - say 9 - other cases that have come in contest before the court, I think that ~~xxxxxxx~~ every one of those persons left entirely satisfied. The main thing the people want is to exchange their land. They don't object to giving up their lands to the Government if they are paid just compensation, but they want some place to go and I can understand their unrest and unhappiness.

CHAIRMAN MILLS Are you talking about rentals, or settlement on land taken by the government?

JUDGE FISCHER Freeholds, because there have been no contested cases on rentals at all - not a single one.

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P U B L I C H E A R I N G S

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THE PUBLIC LANDS COMMITTEE
HOUSE OF REPRESENTATIVES

U N I T E D S T A T E S C O N G R E S S

NOVEMBER 21, 22, 23, 1949

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P U B L I C H E A R I N G S

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HOUSE OF REPRESENTATIVES

U N I T E D S T A T E S C O N G R E S S

NOVEMBER 21, 22, 23, 1949

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of the Land and Claims Commission, on the function in land matters of the Superior Court of the Judiciary Department of the Naval Government of Guam. That is in the original and perhaps not necessary to read at this time - their comments. (This Memorandum is Item #1 of the Appendix.)

In conclusion, the acquisition in fee of 26,000 acres of land for the armed forces to be paid for from the appropriation of $1,600,000. made available by the United States Congress in July, 1948, averages $62.50 an acre. Fee values allowed in Agana run as high as $4.00 per square meter - that is about a square yard. The distinguished members of the Public Lands Committee should be good judges as to how these allowances compare with similar stateside values.

Thank you, and I will be delighted to answer any questions that I can.

REPRESENTATIVE LEMKE In regard to this establishing of the Judiciary under HR 4499, wouldn't you feel that ~~the~~ we should re-write this provision so as to give the people of the Island of Guam the same rights and the same courts that we have in the average State in the Union - that is, a Supreme Court with inferior courts created by the ~~X~~ Congress of Guam, and that all questions affecting the Island or the people of the Island, should be final when the Supreme Court decides and that, as to the Federal issues - cases arising under the laws of the United States and the Constitution - that the jurisdiction of some District Court of California, or Hawaii, if that be desirable, be extended to this Island, and that they come here once a year and hear those cases, because I understand there aren't so very many of them? Wouldn't that be a simple solution, and we have plenty of precedent that it works in the States, and why not try it out here?

JUDGE FISCHER Well, Congressman Lemke, I will concur that that is a solution and perhaps a good solution. The District Court of northern California - San Francisco - would perhaps be more applicable and better for the purposes of Guam than would the District of Hawaii because our Codes, to a great extent - are built on California law.

REPRESENTATIVE LEMKE And, then, if the question in the state court involves a Federal question, there could be a direct appeal to the Supreme Court by certiorari, and that would satisfy - it seems to me - all necessary needs here on this Island.

JUDGE FISCHER I think that is a good solution. I am somewhat impressed with my own solution that I have worked on for over two years now, but I think that is a very, very acceptable compromise, or perhaps, a better one.

REPRESENTATIVE LEMKE Now, in regard to the number of cases that have been settled, and those that are still pending - I do not feel that it is improper for this Committee to ask you what do you take into consideration in arriving at the value of a certain piece of property? I am not talking of any particular case - but generally.

JUDGE FISCHER The value of the property at the time of the taking.

REPRESENTATIVE LEMKE How would you arrive at that, then?

JUDGE FISCHER I would take into consideration the use of the property that is given. I would take into consideration all of the evidence.

REPRESENTATIVE LEMKE Would you take into consideration the location, the desirability for residence, its desirability for business or agriculture?

JUDGE FISCHER Yes, or any other reasonable use.

REPRESENTATIVE LEMKE And would you arrive at what you think is a fair and reasonable income from such property, and would you arrive at the actual value?

JUDGE FISCHER Yes, sir, and that average, on Guam, as I said, on the final acquisition of 26,000 ~~xx~~ acres, runs about $62.50. I think my figures - I can't be certain they are right - are $62.69.

CHAIRMAN MILLS How did you say you arrived at that?

JUDGE FISCHER Well, the Congress of the United States, in July, 1946, appropriated $1,600,000. under Public Law 594 - as I recall it was Public Law 594 - ~~xxxx~~ divided among the 26,000 acres which are to be taken in fee by the armed forces - the Army, Navy and Air Force - averages $62.69, I think.

GEORGE O'BRIEN Isn't it true that a lot of that land would yield a far greater return than the $62.69?

JUDGE FISCHER I am not prepared to answer that. In Agana, we have paid, as I stated, as high as $4.00 per square meter for business property and that scales down, depending on its location. That, to my recollection, out of 27 years of experience in land acquisition and the law, corresponds to about the same situation as we would have it perhaps in Yakima, Washington. I don't know Fargo very well, but -

REPRESENTATIVE LEMKE I think the amount you say per meter would do pretty well for Fargo, too, but we have a great deal of level land. We can ~~xxxxxx~~ expand

NAVAL GOVERNMENT OF GUAM

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RESTRICTED

MONTHLY REPORT FOR NOVEMBER 1947

Period: From 1 November 1947 to 30 November 1947

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ENCLOSURES:
(A) Naval Government Staff Assignment & Station List *
(B) Photographs of Civilian Rehabilitation *
(C) Statistical Charts *
(D) November Minutes of the Guam Congress *
(E) Report of November meeting of Provost Marshal and Security Officers *

* Attached to six copies for higher echelons.

SECTION V.

JDICIARY DEPARTMENT

A) A resume of the activities of the Judiciary Department for the month of ovember, 1947 shows the heavy increase of nearly three hundred (300) per cent n the land matters handled by the Superior Court over the preceding month of ctober. Although the civil and criminal load handled by the Judiciary Depart-ent dropped slightly below the October volume, comparisons will show that this epartment, during November, handled its heaviest schedule since Guam was re-ccupied by American Forces and Civil Government instituted. (See paragraph (D).

B) The Island Court in its Civil, Criminal, Probate and Special Divisions had iled ninety-five new cases and decided sixty cases. (Two weeks were broken up ith national holidays). The Police Court, including Traffic Court had filed hree hundred thirty-eight cases and decided three hundred thirty-six cases, he Justice Court had filed seven new cases and decided ten cases. The Court f Appeals handled one criminal appeal.

C) Cases handled during the month of November, 1947:

	Cases Filed	Cases Decided
ISLAND COURT - Criminal	37	36
JUSTICE COURT - Criminal	7	10
POLICE COURT	71	70
POLICE COURT (Traffic Branch)	267	256
ISLAND COURT - Civil	2	0
ISLAND COURT - Probate	46	17
ISLAND COURT - Special	8	5
ISLAND COURT - Citizenship	2	2
	440	396

D) Resume of matters presented to the Superior Court - November 1947:

CIVIL CASE NUMBER 2-48

1 - Affidavit to Obtain Service by Publication
2 - Order for Service by Publication and Posting Service by Publication dated 14 Nov 1947
3 - Affidavit to Obtain Service by Publication (New Affidavit due to errors in first publication)
4 - Order for Service by Publication and Posting Service by Publication dated 20 Nov 1947

CIVIL CASE NUMBER 16-47

5 - Entry of Appearance and Stipulation - Maria Perez Torres, Lot No. 12-Urban
6 - Entry of Appearance and Stipulation - James T. Franquez, also known as Jesus T. Franquez and wife, Lot Number 32-New
7 - Entry of Appearance and Stipulation - Clotilde Eustaquo Salas and Ricardo Eustaquo Salas, Lot Number 415
8 - Entry of Appearance and Stipulation - Carmen S. Aguon, Lot Number 416
9 - Entry of Appearance and Stipulation - Maria Aflague Arceo, also known as Maria Aflague Farrell, Lot Number 417-Urban

1-15

NAVAL GOVERNMENT OF GUAM

NG(01)/A9-4/EG54
NHA:st

RESTRICTED

MONTHLY REPORT FOR DECEMBER 1947

PERIOD: From 1 December 1947 to 31 December 1947.

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(ENCLOSURES listed on next page)

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SECTION V.

JUDICIARY DEPARTMENT

(A) A study of the court calendars and statistics of the Judiciary Department shows that at the close of business December 31, 1947, the Department ended up the calendar year virtually in a current condition. Four Hundred and seventy-two (472) cases were filed during the Month of December, and four hundred and fifty-seven (457) cases were tried, leaving a carry-over of fifteen (15) cases. The Superior Court and Court of Appeals are entirely current. The load carried by the Civil, Criminal Probate, and Special Divisions of the Island and Justice Courts rose over the high of November by better than an average of one (1) case per day. This increase was in face of a painfully inadequate court staff. In view of the fact that the judiciary set-up was designed, planned, and staffed in pre-war years to meet conditions vastly different from those on Guam today, with a trebled population and multiplied problems, additional personnel must be provided.

(B) Land matters handled by the Superior Court rose 13% over the preceding month of November. Included in the matters presented to the Superior Court was the payment of $46,237.00 to 82 landowners at an average of $588.25 per defendant. If this pace is to be maintained in order that the land program may be expeditiously handled, and if this ratio of increase is continued, which it must be in order to accomplish the land rehabilitation program within a reasonable time, additional help must be forthcoming.

(C) Cases handled during the Month of December 1947:

	Cases Filed	Cases Decided
SUPERIOR COURT (Condemnation) See Par.(D)	1	
COURT OF APPEALS - Criminal	1	1
ISLAND COURT - Criminal	35	43
JUSTICE COURT - Criminal	11	14
POLICE COURT	68	65
POLICE COURT (TRAFFIC BRANCH)	305	294
ISLAND COURT - Civil	4	
ISLAND COURT - Probate	36	30
ISLAND COURT - Special	13	10
	472	457

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NAVAL GOVERNMENT OF GUAM

NG(01)/A9-4/EG54
MHA:st

QUARTERLY REPORT

PERIOD: From 1 January to 31 March 1948.

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(ENCLOSURES listed on next page)

generally parallels that of similar or comparable Stateside jurisdictions, modified in certain cases by local customs, practices, and procedures of the indigenous population. Presently these Courts are entered upon a period of transition from Military Government to Civil Government. These Courts were designed and staffed in prewar years to meet conditions vastly different from those which obtain on Guam today with a trebled population and multiplied problems.

2. The monthly average of cases filed in the original and appellate courts, exclusive of the Superior Court, for the months of January, February, and March, was 454, for a total of 1,361 cases. These courts, in contrast with any known Stateside jurisdictions, are virtually current daily in their case loads, with a normal quarterly carry-over of 25 cases, and have been in such condition for the past five months. In addition to these cases decided, some 90 Island Court cases were reviewed by the Presiding Justice of the Court of Appeals. All members and attaches of the Judiciary have had to work overtime to keep abreast of the load. Manifestly, such a workload cannot indefinitely continue to be carried by 3 Guamanian judges and the Justice of the Superior Court, especially with the calculated increase of 1,000 probate cases within the next year. Permission to increase the staff having been obtained from the Governor, clerical and reportorial help is being urgently sought and recruited. However, a dearth of qualified personnel from the indigenous population from which source these positions must be filled, makes this problem difficult.

3. A resume of the matters presented to the Superior Court shows an average increase for the quarter of 412% over that of October, which is taken as the norm. The maintenance of this average makes certain that the land rehabilitation program on Guam can be handled within a reasonable time. Another step in the streamlining of procedures in handling of land matters which should further facilitate the disposal of those cases is the proposed plan of the Justice of the Superior Court to consolidate where possible under the Code of Guam, the several main condemnation cases, both leasehold and fee. Changes in the Probate Code which will expedite the acquisition program, recommended by the Presiding Justice, have been adopted.

4. A study of the attached monthly reports for January, February, and March shows the following load carried by the respective courts:

Court	JANUARY Cases Filed	JANUARY Cases Decided	FEBRUARY Cases Filed	FEBRUARY Cases Decided	MARCH Cases Filed	MARCH Cases Decided
Island Court - Criminal	40	40	60	48	152	125
Justice Court - Criminal	5	6	3	3	3	3
Police Court	63	63	48	44	67	69
Police Court (Traffic Br.)	265	273	284	285	317	296
Island Court - Civil	1	0	3	0	3	1
Island Court - Probate	25	3	9	22	0	23
Island Court - Special	9	5	4	4	0	7

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H I G H L I G H T S

QUARTERLY REPORT - Period: 1 April to 30 June 1948

EDUCATION DEPARTMENT (Sec. III.)

1. The graduation ceremonies for George Washington High School were held in the Plaza de Espana on the evening of 18 June. An address was given by Chief Justice John C. Fischer. Governor Pownall awarded diplomas to 65 graduating seniors.

2. Closing Day ceremonies were held in the twenty elementary schools during the week 10-16 June. Captain P. S. Tambling, Civil Administrator, Mr. G. V. Hall, Director of Education, and Mr. Simon Sanchez, Superintendent of Schools, took part in the program for each of the schools. Certificates for completion of the eighth grade were given to 389 students in the various schools of Guam.

3. The Second Summer Session of the University of Hawaii began on 21 June with 119 teachers enrolled in the college classes being offered. The staff from the University of Hawaii consists of:

Dr. Robert W. Clopton	- Director
Mrs. Henrietta Krantz	- Instructor, Composition and Speech
Miss Jane Holden	- Instructor, Reading Methods
Mr. Ernest McClain	- Instructor, Music.

Mrs. Florence Vandam, staff member of the Department of Education, is teaching additional classes in "Improvement of Reading," which does not carry college credits but is designed to be of special help to the individuals in the classes.

4. Position descriptions have been prepared for all Guamanian IV-B employees preparatory to a classification of their positions by the Area Wage Classification Office in July and August. It is expected that this classification will accomplish the salary revision for teachers previously requested of the Chief of Naval Operations.

5. The school nurses have completed the program of immunization against tetanus and typhoid for all pupils in the elementary schools. The new health cards are now completed for all school children.

6. Scholarships were awarded to six graduating seniors or teachers. Tomasa I. Santos, Valedictorian, and Isabel P. Perez, Salutatorian, were awarded scholarships obtained through the Catholic Church to Siena Heights College in Michigan and Rosemont College in Pennsylvania. Lourdes Martinez and Patricia Salas, honor graduates of the class of 1948, were each awarded scholarships given by the Central Washington College of Education in the State of Washington. Julita Manibusan, teacher in Barrigada School,

JUNE Resume (Continued)

7. A Committee, consisting of eight members of the Congress, was appointed for the purpose of studying the proposed budget of the Naval Government for the fiscal year 1949.

12 June 1948

1. A preliminary report of the Budget Committee was submitted to the Congress.

2. CDR Wilson, Officer in Charge of Naval Government Public Works, appeared before the Congress and spoke on budget matters concerning his department.

SECTION VI.

JUDICIARY DEPARTMENT.

1. The Judiciary Department of the Naval Government of Guam is comprised of five Courts, namely: The Court of Appeals; the Island Courts, of which there are four branches, Civil, Criminal, Probate, and Special; The Justice Courts, civil and criminal; The Police Courts, petty offenses and traffic branch; and The Superior Court. The Judiciary Department generally parallels that of similar or comparable Stateside jurisdictions, modified in certain cases by local customs, practices, and procedures of the indigenous population. Presently these Courts are entered upon a period of transition from Military Government to Civil Government.

2. The monthly average of cases filed in the original and appellate courts, exclusive of the Superior Court, for the months of April, May, and June, was 538, for a total of 1615 cases. This is in contrast with the previous high of 454 cases. These Courts, in contrast with any known Stateside jurisdictions, are virtually current daily in their case loads, with a normal quarterly carry-over of 25 cases, and have been in such condition for the past eight months. In addition to these cases decided, some 110 Island Court cases were reviewed by the Presiding Justice of the Court of Appeals. It is expected that the removal of the Courts to the Guam Congress Building in July will ease the burden on all members and attaches of the Judiciary occasioned by overloading, over-crowding, bad lighting, and inadequate equipment. This new location may attract additional necessary personnel.

3. As reported in December, the high average attained monthly by the Superior Court (which average must be maintained to make certain that the land rehabilitation on Guam will be handled within a reasonable time) depends upon (1) an adequate land survey program and staff; (2) an adequate appraisal staff; and (3) an adequate negotiation staff, coordinated with the efforts of sufficient legal and clerical personnel in the L&C Land Title Division. These functions must be supplemented by the Land Registration and Abstract Divisions, including competent probate attorneys.

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NAVAL GOVERNMENT OF GUAM

NG(01)/A9-3/PSI:st

QUARTERLY REPORT

PERIOD: From 1 OCTOBER to 31 DECEMBER 1948.

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ENCLOSURES: (A) Naval Government Staff Assignment & Station List.
(B) Photographs of Civilian Rehabilitation.
(C) Statistical Charts (Judiciary;Local Collections;Labor; Commerce;Police Dept;Guam News)
(D) Minutes of the October meeting of the Security Council.
(E) Minutes of the November meeting of the Security Council.
(F) Minutes of the December meeting of the Security Council.

NOTE: (The above enclosures attached to six copies for higher echelons).

SECTION VI.

JUDICIARY DEPARTMENT.

1. Synopsis of this quarter's accomplishments:

(a) Greatest number of matters handled by the Superior Court (1047)—an average increase of 877% for each month in the quarter over the average of October 1947, which is taken as the norm.

(b) 1597 cases filed and 1586 cases decided, equalling the increase of 20% over the highest preceding quarter as established at the end of fiscal year 1948.

(c) Greatest number of cases handled in the Traffic Court (1326)—which is an increase of 100 cases per month over any month in the fiscal year 1948.

(d) Completion of the Genetano murder case with issuance of his death warrant.

(e) The Court of Appeals successfully demonstrated the use of magnetized wire in recording its proceedings to the end that the court reporting problem on Guam may be solved by this method.

(f) Recommendations were made by the Chief Justice for certain changes in the Codes of Guam to the end that patent discrepancies in the code may be cured.

2. The Judiciary Department of the Naval Government of Guam is comprised of five Courts, namely: The Court of Appeals, the Island Courts, of which there are four branches, Civil, Criminal, Probate, and Special; The Justice Courts, civil and criminal; The Police Courts, petty offenses and traffic branch; and the Superior Court. The Judiciary Department generally parallels those of similar or comparable Stateside jurisdictions, modified in certain cases by local customs, practices, and procedures of the indigenous population. It is believed that the courts of Guam are an ideal example of the "pre-trial" procedure provided for in the Rules of Civil Procedure for the District Courts of the United States adopted by the Supreme Court of the United States. The application of this procedure is solely responsible for this record with the limited staff to handle the load.

3. The monthly average of cases filed in the original and appellate courts, exclusive of the Superior Court, for the months of October, November, and December, was 532, for a total of 1597 cases. This is a minute decrease from the cases filed in last quarter, but is in sharp contrast with the previous high of 454 cases filed monthly in fiscal year 1948. These courts, in contrast with any known Stateside jurisdictions, are virtually current daily in their case loads and have been in such condition for the past fifteen months.

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NAVAL GOVERNMENT OF GUAM

QUARTERLY REPORT

PERIOD: From 1 January to 31 March 1949.

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ENCLOSURES:

(A) Naval Government Staff Assignment & Station List.
(B) Photographs of Civilian Rehabilitation.
(C) Statistical Charts (Local Collections; Labor; Commerce; Police Dept; Guam News).
(D) House of Assembly Adjournment Chronology.
(E) Minutes of the January Meeting of the Security Council.
(F) Minutes of the February Meeting of the Security Council.
(G) Minutes of the March Meeting of the Security Council.

NOTE: The above enclosures attached to six copies for higher echelons.

2. Councilman F. B. Leon Guerrero submitted the report of the Judiciary Committee on the bill to abolish the Superior Court of Guam. (Subject Bill, as passed by the Guam Congress, was vetoed by the Governor.) The recommendation of the Judiciary Committee was that the Council should override the Governor's veto by passing this Bill again, but it further recommended that action on this matter be held in abeyance until the House of Council resolved into a Committee of the Whole House to thoroughly discuss the Judiciary Committee's recommendation.

3. The regular order of business of the House of Council was suspended and the members proceeded to the Assembly Chamber for the purpose of hearing an address by the Governor of Guam who had requested that a special joint session be held at this time.

4. After returning to the Council Hall, a general discussion was held regarding the ability of the House of Council to function during the absence of the House of Assembly, inasmuch as the Assembly adjourned on 5 March1949 with the expressed intention of reconvening only at such time as action is taken by the United States Congress on an Organic Act for Guam.

A motion was carried, by majority vote, that the House of Council adjourn until they receive a call to reconvene from the President of the House of Council.

HOUSE OF ASSEMBLY

1. The House of Assembly did not convene on this date.

2. Assemblyman Joaquin T. Aguon attended the special joint session which was called in the House of Assembly Chamber for the purpose of hearing an address by Governor Pownall.

Isabel W. Jordan

ISABEL W. JORDAN,
Executive Secretary,
NINTH GUAM CONGRESS

SECTION VI.

JUDICIARY DEPARTMENT.

1. Synopsis of this quarter's accomplishments:

(a) Greatest number of matters handled by the Superior Court (1146)—an average increase of 920% for each month in the quarter over the average of October 1947, which is taken as the norm.

(b) Greatest number—1882 cases filed and 1891 cases decided, in all other courts, an increase of 38% over the highest preceding quarter as established at the end of fiscal year 1948.

(c) Genetano murder sentence executed by his being hung—See Island Court Case No. 713-48, Court of Appeals Case No. 3-49.

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NAVAL GOVERNMENT OF GUAM

NG(01)/A9-3/ABM:msu

QUARTERLY REPORT

PERIOD: From 1 April to 30 June 1949.

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ENCLOSURES:

(A) Naval Government Staff Assignment & Station List.
(B) Photographs of Civilian Rehabilitation.
(C) Statistical Charts (Employment Chart; Labor; Commerce; Police Dept; Guam News).
(D) Minutes of the April Meeting of the Security Council.
(E) Minutes of the April Special Meeting of the Security Council.
(F) Minutes of the May Meeting of the Security Council.
(G) Minutes of the June Meeting of the Security Council.

NOTE: The above enclosures attached to six copies for higher echelons.

Courts, Civil and criminal; the Police Courts, petty offenses and traffic branch; and the Superior Courts. The Judiciary Department generally parallels those of similar or comparable stateside jurisdictions, modified in certain cases by local customs, practices, and procedures of the indigenous population. It is believed that the courts of Guam are an ideal example of the "pre-trail" procedure provided for in the Rules of Civil Procedure for the District Courts of the United States adopted by the Supreme Court of the United States. The application of this procedure is solely responsible for this record with the limited staff to handle the load.

3. For the last quarter, it will be noted that the Presiding Justice of the Court of Appeals, who is also the Justice of the Superior Court, was on temporary additional duty in Washington, D. C., during the month of June. Mr. Lyle H. Turner was appointed and acted as Presiding Justice of the Court of Appeals during that time. Justice E. T. Calvo left for the States in May on sixty days' leave, and Judge V. C. Reyes of the Island Court departed in May for leave in the states.

4. The monthly average of cases filed in the original and appellate courts, exclusive of the Superior Court, for the months of April, May, and June, was 652, for a total of 1955 cases. This far exceeds the previous high of last quarter's average of 627 cases handled monthly. These courts, in contrast with any known stateside jurisdictions, are virtually current daily in their case loads and have been in such condition for the past 19 months. In order to facilitate the handling of the great load carried by the courts and to train local residents for positions as court attaches, the reinstitution of the Guam Law School, originally established in 1934, resulted in the completion of the first quarter for the first year's students. The final exams are now being posted, and it is to be noted that the class averages are far above that required for passing grades.

5. It is to be observed that the 920 matters handled in the Superior Court or an average of 307 matters per month, included the award of $102,575.96 in the settlement of land condemnation proceedings for the quarter. The actual orders and judgments for the quarter amounted to $96,523.85, which exceeds the amount paid in the highest quarter recorded by $16,235.57, despite the fact that there are 74 orders and judgments to be carried over to the next quarter's report in the amount of $6,052.11. The figures for this quarter indicate that the larger land cases are now being settled and the land program being brought to completion within as short a time as possible.

6. A study of the monthly reports for April, May, and June shows the following load carried by the respective courts:

Court	April Cases Filed	April Cases Decided	May Cases Filed	May Cases Decided	June Cases Filed	June Cases Decided
Court of Appeals.....	3	1	1	3	2	1
Island Court - Criminal.....	26	32	37	31	36	31
Justice Court - Criminal.....	9	10	8	8	15	15
Police Court.....	16	17	30	30	23	23

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IN REPLY REFER TO

NAVAL GOVERNMENT OF GUAM

GOVERNOR OF GUAM

File in Area

NG(01)/AM:msu
A9-3
Serial: 0338

From: Governor of Guam.
To: Chief of Naval Operations - Island Government Section.

Subj: Naval Government of Guam Combined Quarterly Report and Historical Summary for Period 1 July to 30 September 1949.

Refs: (a) CNO spdltr Ser 1438P22 dtd 26 December 1947.
(b) SecNav ltr subj. Semi-Annual Historical Summaries - Change in Requirements for - dtd 20 February 1948.

Encl: (1) Subject report - (three copies).

1. In accordance with references (a) and (b), enclosure (1) is forwarded herewith.

By direction of the Governor.

A. B. MAYFIELD, JR.,
Civil Administrator.

Copy to:

DepHiComTerPacIs,	(1)
CinCPacFlt,	(2)
ComMarianas,	(1)
Guam Congress,	(1), 50 w/o encl.
SOAR, Monterey, Calif.	(1), 10 w/o encl.
ComMarianas, PIO	(1)
Hoover Institute & Library, Stanford Univ., Calif.	(1)
Bu. of Medicine, Med. Stat. Div., Washington 25, D.C.	(1) w/o encl.
Archives	(1)

SECTION VI.

JUDICIARY DEPARTMENT.

1. Synopsis of this quarter's accomplishments.

(a) The figure of all courts combined, excepting the Superior Court, shows 3,349 cases filed and 3,347 cases decided, showing that the courts are not only keeping current, but have handled an addition of 1,408 cases over the preceding quarter.

(b) There were 196 more actions handled in the Superior Court this quarter than the 920 matters handled in the preceding quarter. This is an average monthly increase of 20%. Of 1,116 actions handled in the Superior Court during this quarter, Civil Case 5-49, the Apra Harbor fee condemnations represented $33,520.00 in payments. This equals nearly one-half of the $72,056.34 paid in all the condemnations, indicating that the fee actions are being more expeditiously processed.

(c) The Court of Appeals handed down opinions in two of the most far reaching cases in the history of jurisprudence on Guam; namely, the Hanzsek Murder Case and Asia Development Corp. vs. Moellers Ltd. (the ruling case on Admiralty Law on Guam.)

(d) The Guam Law School, reinstituted to train Guamanians employed or prospective employees in Civil Government, opened its second semester on September 12th.

(e) The use of "Soundscribers" was demonstrated as the most successful medium to solve the court reporting problem which has plagued the Judiciary Branch.

2. The Judiciary Branch of the Naval Government of Guam is comprised of five courts, namely: The Court of Appeals, the Island Courts, of which there are four department, Civil, Criminal, Probate, and Special; the Justice Courts, civil and criminal; the Police Courts, petty offenses and traffic branch; and the Superior Court. The Judiciary Branch generally parallels those of similar or comparable stateside jurisdications, modified in certain cases by local customs, practices, and procedures of the indigenous population. It is believed that the Courts of Guam are an ideal example of the "pre-trail" procedure provided for in the Rules of Civil Procedure for the District Courts of the United States adopted by the Supreme Court of the United States. The application of this procedure is solely responsible for this record with the limited staff to handle the load.

3. The criminal load is virtually current daily, and the Civil Court calender shows 68 cases on the docket awaiting action by the parties involved. Of these, 19 are cases of Collection of Debt, 17 are Annulments and Divorce, 15 are Unlawful Detainer and Illegal Entry, and 9 are Damage Actions.

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QUARTERLY REPORT

PERIOD: From 1 October to 31 December 1949.

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ENCLOSURES:

(1) Naval Government Staff Assignment & Station List.
(2) Photographs of Civilian Rehabilitation.
(3) Statistical Charts (Labor; Commerce; Police Dept; Guam News).

NOTE: The above enclosures attached to six copies for higher echelons.

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SECTION VI.

JUDICIARY DEPARTMENT.

1. Synopsis of Judiciary Department for quarter ending 31 Dec. 1949.

(a) The figures of all courts combined, excepting the Superior Court, show 2,841 cases filed and 2,775 cases decided for the quarter. Two first degree murder cases have been filed in the Island Court, and a third is in the process of being filed. Of the two cases now being heard, one Filipino is charged with the murder of another Filipino, and the second case is that of two Guamanian taxicab drivers charged with the murder of an American seaman.

(b) There were 581 matters handled in the Superior Court for the quarter. 24 contested cases were brought before the Superior Court for judgment, 8 of which were settled between the land owners and the government without formal hearings, and 16 were tried and settled after hearing to the satisfaction of all parties, with one case being held in abeyance by the court for further investigation and a viewing of the property. 3 new condemnation suits were filed for the quarter.

(c) The Guam Law School completed its second semester on 23 December 1949 with a total of 24 students taking final examinations.

(d) Chief Justice conferred with the Secretaries of the Navy and Interior Departments and other officials in Washington on various phases of the land acquisition and rehabilitation programs on Guam in which the Courts are concerned.

2. The Judiciary Branch of the Naval Government of Guam is comprised of five courts, namely: The Court of Appeals; the Island Courts, of which there are four departments, Civil, Criminal, Probate, and Special; the Justice Courts, civil and criminal; the Police Courts, petty offenses and traffic branch; and the Superior Court. The Judiciary Branch generally parallels those of similar or comparable stateside jurisdictions, modified in certain cases by local customs, practices, and procedures of the indigenous population. It is believed that the Courts of Guam present an ideal example of the "pre-trail" procedure provided for in the 1937 Rules of Civil Procedure for the District Courts of the United States adopted by the Supreme Court of the United States.

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QUARTERLY REPORT

PERIOD: From 1 October to 31 December 1949.

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3. The criminal load is virtually current daily, and of the 48 cases pending in the Civil Courts, 24 or half of the cases awaiting action by the parties are for Collections of Debt for the month of December.

4. The monthly average of cases filed in the original and appellate courts, exclusive of the Superior Court, for the months of October, November and December, was 947, for a quarterly total of 2,841 cases. In order to facilitate the handling of the great load carried by the Courts and to train legally local residents to be recruited for positions as court attaches and government officials, plans for the reopening of the second year of the Guam Law School are under consideration.

5. There have been three new condemnation suits filed by the government in the Superior Court involving the municipalities of Dededo and Barrigada, Camp Dealey, and the Tumon Bay Recreation Area. It is estimated that with the filing of some six additional fundamental condemnation suits in the Base Development Program, the entire land takings for the benefit of the armed forces will have been lodged in the Courts for final disposition and adjudication. Arrangements have been studied and considered with Base Development officials to consolidate the leasehold and fee acquisitions wherever possible thus accelerating land settlements.

6. A study of the monthly reports for October, November, and December, 1949 shows the following load carried by the respective courts:

Court	October		November		December	
	Cases Filed	Cases Decided	Cases Filed	Cases Decided	Cases Filed	Cases Decided
Court of Appeals	4	4	—	4	2	—
Island Court-Criminal	60	57	44	37	37	27
Justice Court-Criminal	2	—	2	2	12	14
Police Court	44	45	20	21	36	34
Police Court (Traffic)	754	757	691	689	1,026	1,020
Island Court-Civil	17	8	5	—	29	4
Island Court-Special	6	9	5	8	12	10
Island Court-Probate	14	8	7	9	10	8
Totals	901	888	774	770	1,166	1,117

Totals for the Quarter (Not Including Superior Court):

Cases filed 2,841
Cases decided 2,775

Motions and ex parte matters handled (Probate) 422

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unless such persons selected for appointment outside the continental United States shall have served for a minimum period of not less than one year or more than three years prescribed in advance by the head of the department or agency concerned or unless separation is for reasons beyond the control of the individual and acceptable to the department or agency concerned."

This order shall be effective as of September 23, 1950.

HARRY S. TRUMAN

THE WHITE HOUSE,
October 27, 1950.

EXECUTIVE ORDER 10178

RESERVING CERTAIN REAL AND PERSONAL PROPERTY IN GUAM FOR THE USE OF THE UNITED STATES

WHEREAS section 28 of the Organic Act of Guam, approved August 1, 1950 (Public Law 630, 81st Congress), reads:

"(a) The title to all property, real and personal, owned by the United States and employed by the naval government of Guam in the administration of the civil affairs of the inhabitants of Guam, including automotive and other equipment, tools and machinery, water and sewerage facilities, bus lines and other utilities, hospitals, schools, and other buildings, shall be transferred to the government of Guam within ninety days after the date of enactment of this Act.

"(b) All other property, real and personal, owned by the United States in Guam, not reserved by the President of the United States within ninety days after the date of enactment of this Act, is hereby placed under the control of the government of Guam, to be administered for the benefit of the people of Guam, and the legislature shall have authority, subject to such limitations as may be imposed upon its acts by this Act or subsequent Act of the Congress, to legislate with respect to such property, real and personal, in such manner as it may deem desirable.

"(c) All property owned by the United States in Guam, the title to which is not transferred to the government of Guam by subsection (a) hereof, or which is not placed under the control of the government of Guam by subsection (b) hereof, is transferred to the administrative supervision of the head of the department or agency designated by the President under section 3 of this Act, except as the President may from time to time otherwise prescribe: *Provided*, That the head of such department or agency shall be authorized to lease or to sell, on such terms as he may deem in the public interest, any property, real and personal, of the United States under his administrative supervision in Guam not needed for public purposes."

WHEREAS certain hereinafter-described real and personal property of the United States in Guam is required for the respective uses of the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Coast Guard, and it has been mutually agreed that the Department of the Navy shall act on behalf of the Department of the Army, the Department of the Air Force, and the Coast Guard with respect to their requirements as to such property;

WHEREAS certain other hereinafter-described real property of the United States in Guam has been selected by the Secretary of the Navy for transfer or sale pursuant to the act of November 15, 1945, 59 Stat. 584, to persons in replacement of lands acquired for military or naval purposes in Guam, and such property should remain available for disposition by the Secretary of the Interior in his discretion under section 28 (c) of the said Organic Act of Guam; and

WHEREAS certain other hereinafter-described personal property of the United States in Guam should remain available for the respective needs of the Department of the Army, the Department of the Navy, the Department of the Air Force, the Coast Guard, and other agencies of the United States:

NOW, THEREFORE, by virtue of the authority vested in me by the said section 28 of the Organic Act of Guam, and as President of the United States, it is ordered as follows:

1. The following-described real and personal property of the United States in Guam is hereby reserved to the United States and placed under the control and jurisdiction of the Secretary of the Navy: *Provided*, That the Secretary of the Navy shall transfer such portions of such property to the Department of the Army, the Department of the Air Force, and the Coast Guard as may be required for their respective purposes:

(a) All of that real property in Guam situated within the perimeter areas defined in the following-designated condemnation proceedings in the Superior Court of Guam, being the same property

quitclaimed by the Naval Government of Guam to the United States of America by deed dated July 31, 1950, and filed for record with the Land Registrar of Guam on August 4, 1950 (Presentation No. 22063):

Condemnation proceedings Civil No.	Perimeter area	Facility
	Acres	
2-48	4,566.757	North Field.
5-48	9.372	Mt. Santa Rosa Water Reservoir and Supply Lines
6-48	5.990	Mt. Santa Rosa-Marbo Water Lines.
7-48	5.990	Tumon Maui Well Site.
2-49	1,865.000	Naval Ammunition Depot.
3-49	44.654	Primary Transmission Line.
4-49	12.169	Mt. Santa Rosa-Marbo Water Line Easement.
5-49	6,332.000	Apra Harbor Reservation.
2-50	6.450	Accorp Tunnel
3-50	35.391	Camp Dealy.
4-50	0.637	Tumon Bay Recreation Area Utility Lines.
5-50	21.914	Agana Springs.
6-50	41.940	Asan Point Tank Farm.
7-50	85.032	Asan Point Housing.
8-50	137.393	Medical Center
9-50	45.630	Agafo Gumas.
10-50	1,798.682	Naval Communication Station
11-50	11.725	Nimitz Beach.
12-50	800.413	Command Center.
13-50	4,901.100	Tarague Natural Wells.
14-50	5.915	Agana Diesel Electric Generating Plant.
15-50	23.708	Mt. Santa Rosa Haul Road, Water Reservoir and Supply Lines, VHF Relay Station, Mt. Santa Rosa-Marbo Water Line.
16-50	4,562.107	Northwest Air Force Base.
18-50	60.480	Marbo Base Command Area—Sewage Disposal.
19-50	21.695	Loran Station, Cocos Island.
20-50	15.322	Av-Gas Tank Farm #12.
21-50	1,820.148	Proposed Boundary of NAS Agana Housing Area #7.
22-50	37.510	C. A. A. Site (Area #90)
23-50	3.525	Tumon Maui Well (Water Tunnel).
24-50	49.277	Tumon Bay Recreation Area (Road and AV-Gas Fuel Line Parcel #1).
25-50	0.208	Utility Easement from Rt. #1 to Rt. #6 (Coontz Junction).
26-50	65.300	Tumon Bay Recreation Area (Area #70).
27-50	2,497.400	Marbo Base Command.
28-50	0.918	Mt. Tenjo VHF Station Site.
29-50	285.237	Sasa Valley Tank Farm (Area #26).
30-50	17.793	Sub Transmission System Piti Steam Plant to Command Center.
31-50	28.888	Route #1 (Marine Drive) (Portion).
32-50	94.000	Sub Transmission System (31 KV Line) Piti Steam Plant to Agana Diesel Plant and POL System Sasa Valley Tank Farm to NAS Agana.
33-50	953.000	Harmon Air Force Base.
34-50	2,922.000	Radio Barrigada.
35-50	25.000	AACS Radio Range (Area #30).
36-50	37.000	Water Line Apra Heights Reservoir to Fena Pump Station and Av-Gas Fuel System.
37-50	2,185.000	Fena River Reservoir.

(b) The road system and utilities systems described in the said deed between the Naval Government of Guam and the United States of America dated July 31, 1950.

(c) The following-described areas: Mount Lam Lam Light; Rear Range Light; Mount Alutom Light; Area Number 35 Culverts; Mount Santa Rosa Light; 36 acres of Camp Witek; Adelup Reservoir; Tripartite Seismograph Station Site, Land Unit M, Section 2, Land Square 20; the Power Sub-station located on Lot 266, Municipality of Agat adjacent to Erskine Drive, City of Agat.

(d) Lots 2285-5 and 2306-1 in Barrigada.

(e) All personal property relating to or used in connection with any of the above-described real property.

2. The following-described real property of the United States in Guam is hereby reserved to the United States and transferred to the administrative supervision of the Secretary of the Interior, and shall be available for disposition by the Secretary of the Interior in his discretion under section 28 (c) of the said Organic Act of Guam:

All of those lands which have been selected by the Secretary of the Navy for transfer or sale pursuant to the act of November 15, 1945, 59 Stat. 584, to persons in replacement of lands acquired for military or naval purposes in Guam, a list and description of such lands being on file in the Department of the Navy.

3. In addition to the personal property described in paragraph 1 (e) hereof, there is hereby reserved to the United States all personal property of the United States in Guam, except that which is transferred to the government of Guam by or pursuant to section 28 (a) of the Organic Act of Guam, which on the date of this order is in the custody or control of the Department of the Army, the Department of the Navy, the Department of the Air Force, the Coast Guard, or any other department or agency of the United States; and all such personal property shall remain in the custody and control of the department or agency having custody and control thereof on the date of this order.

HARRY S. TRUMAN

THE WHITE HOUSE,
October 30, 1950.

EXECUTIVE ORDER 10179

ESTABLISHING THE KOREAN SERVICE MEDAL

By virtue of the authority vested in me as President of the United States

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CIVIL GOVERNMENT FOR GUAM

HEARING

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE
EIGHTY-FIRST CONGRESS
SECOND SESSION

ON

S. 185

A BILL TO PROVIDE A CIVIL GOVERNMENT FOR THE ISLAND OF GUAM, AND FOR OTHER PURPOSES

S. 1892

A BILL TO PROVIDE A CIVIL GOVERNMENT FOR GUAM, AND FOR OTHER PURPOSES

AND

H. R. 7273

AN ACT TO PROVIDE A CIVIL GOVERNMENT FOR GUAM, AND FOR OTHER PURPOSES

WASHINGTON, D. C.—APRIL 19, 1950

Printed for the use of the Committee on Interior and Insular Affairs

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1950

67. 28

There are some very smart people over there. They are ingenious; they are intelligent; they are energetic; they understand business; and they can do a lot for themselves just as we now find out the Puerto Ricans are beginning to do something for themselves. But they first had to have the opportunity. In Puerto Rico, when we gave the responsibility to the people, they shouldered that responsibility and are walking away with it. With all the industry going on in Puerto Rico, Puerto Ricans are earning their own way.

So, before closing, I would like to say that I happen to be one of those who is emphatically and categorically and aggressively in favor of putting more responsibility on the people of the Virgin Islands, American Samoa, American Guam, Hawaii, Alaska, and Puerto Rico. Let these people under the American flag take their position in the responsibilities which the Federal Government has assumed and thereby help pay their way through dedicating their services and their intelligence and their freedom and enterprise toward that end.

I think this bill moves in that direction. I am for it, and I hope your committee will do the necessary things in making such changes as you think advisable and let us get the bill through the two Houses and put into formal order.

Thank you.

Senator ANDERSON. Thank you, Congressman Crawford.

Mr. Lemke.

STATEMENT OF HON. WILLIAM LEMKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH DAKOTA

Mr. LEMKE. Mr. Chairman and members of the committee, I am in full accord with all that my colleague has said. I am glad to see our friend, Carl Skinner, here, and if he is not too modest, I want to say that he accomplished more in 6 months than I think all the rest of them did in 50 years.

Now, I want also to say that the chairman of my committee, Mr. Miles, and Congressman LeFevre, helped to form this bill into the present form, with the full consent of the Guamanians.

This bill is based upon our form of government. The President appoints the Governor, with the consent of the Senate. He also appoints the judges of the courts. The original idea of the courts is quite different from what we have in this bill, but we adopted the American system for the judiciary by providing that the President appoints the local court, but from their decision there is an appeal to the United States district court in California, and from there on to the circuit court, and if they feel that they have been aggrieved, to the Supreme Court of the United States. That is the same as it is in our State courts, and I think that it is proper that it be so. I can see no danger of abuse in this bill, because the President, by appointing the Governor, who has the veto power, and then also by appointing the judiciary, fully protects any interests that the United States, the mainland, may have.

Now, as to abuses, I am not going to comment on those. We found it true in Guam by this so-called one-man government who could change his mind overnight, and his dictates were law. There were plenty of signs of abuse, not only in Guam, but all over the islands we have visited.

For instance, in Guam the military took the lands of people and forgot to even ask them now much they wanted, or to pay for it. Then, finally, one of the finest places in all the islands I have ever seen—the Governor lives on it now—and Admiral Nimitz had his headquarters there, and the present admiral is there—they finally offered, after they heard our committee was coming, $14.10 rental for 14 acres of perhaps the most beautiful spot anywhere in the world.

Then we went to the island of Saipan, and we find that the military still has a large portion of agricultural land that was taken without even an offer to pay for it at all. Under this bill those settlements will be forced.

Then I will say further that some of the witnesses were afraid to testify. When we asked them why, and they said they were afraid of reprisals, I asked them, "From where or from whom?", and they spoke finally when we told them they were free to speak.

Now, it seems to me if we are going to set an example in the world of government by and for the people, it is about time we start in with some of these islands we govern, and Guam is one of them.

I feel that an organic act is long past due—that this bill should have been passed a long time ago. I can see no objection to this bill after 3 days of hearings and we had four afternoon sessions on it. The bill was unanimously approved by the Guamanians as well as by our committee, and we feel we have as near a perfect bill as we can in the first instance. No legislation that is ever recommended is perfect. There will be room perhaps later on for amendments. I would like to see the bill passed without very many amendments at this time, because the present bill is what the Guamanians expect. It is what they are accustomed to.

I would say that as far as these taxes and so forth are concerned, that I think you will find that the Guamanians will become self-supporting, but this bill will have to be in operation a little while. I am going to ask the Governor now, have they returned that 26,000 acres that the military agrees it does not need and which we in Public Lands were told 2 years ago that the military did not need and was going to return when we got over there last fall?

Governor SKINNER. Some of it has been returned, Congressman, and they plan to return most of it before July 1.

Mr. LEMKE. If that is done, will you agree with me that it will be a long step toward making the Guamanians self-supporting?

Governor SKINNER. A very long step, because they can go back to farming. Now their farm land is being held by the military for air strips, ammunition dumps, and things like that.

Mr. LEMKE. I think that is all I have to say, unless there are some questions.

Senator ANDERSON. Representative Lemke, there was a question I raised earlier. I was anxious to get the meaning of it. It is in the House bill, which is on page 2 of the House bill, lines 4 through 8. There is a statement that I would like to get clarified as to the meaning.

> The government of Guam shall consist of three branches, executive, legislative, and judicial, and shall be under the supervision of the head of such civilian department or agency of the Government of the United States as the President may direct.

Do you understand by that that the Department of the Interior shall have supervision over the legislative, executive and judicial branches of the Guamanian government?

Mr. LEMKE. I would say yes, in a general way. The President can change it if he wants to. It rests more with the President than under the Department of the Interior.

Senator ANDERSON. Of course, we do not have that in this country, do we? He does not have supervision over the legislative and the judicial branch?

Mr. LEMKE. I will state that personally I am perfectly willing for you to eliminate that part, but it was put in because we found that there might be some opposition in the House if we did not. There are always people who are afraid that some of these islands may run away with us, which I know is not the case after I have been over there.

Senator ANDERSON. Do you have any feelings, either you or Representative Crawford, on the size of the legislature and whether or not unicameral body with perhaps a limited number of members might be desirable? There was feeling in an earlier hearing of the Senate that 51 members of a bicameral body were quite a few for 26,000 voters.

Mr. LEMKE. That may be true, but they are not on a very big piece of land, and they can readily meet, and it would bring the government closer to the people.

Senator ANDERSON. While we are on that theory, a city council of a town of 25,000 could have 50 members at 15 or 16 dollars a day, and there would be some comment about it. I just wondered if you have any feeling as to the necessity for the size of the group.

Mr. LEMKE. As to the size, I have no feeling one way or the other. I feel, however, that there should be a representative body representing them because these native people are somewhat different than we are in their customs and in their households and management of their country.

Mr. CRAWFORD. Mr. Chairman, I would like to go on record in opposition to as many as 51, or more than 30, after they are set up and get under way. I see no necessity for such a large body to represent such a small number of people but, as I understand the provisions of this bill, that is something they can determine themselves after this bill becomes law, and if they are foolish enough to have 51 or 75 or 150 people sitting there eating up their substance through the tax bodies, why, that to me would demonstrate that they are poor—that would demonstrate their poor judgment in providing a government. They do not need those expensive governments, and I would like to get it in the record so that people who are here now will know my personal views on it. I hope they cut it down to 15 after the thing gets started.

Senator ANDERSON. Thank you. I want to say that I somewhat subscribe to your view. I could not say too definitely because I have never been to Guam and I have never had a chance to study it, but it would seem to me that an assembly of 15 members, with the Governor and Lieutenant Governor, would be a sufficient administrative body for that rather small number of people, and that anything that ran larger than that might run into too much administrative expense perhaps in elections and perhaps in payment of regular salaries.

I would like to insert into the record the fact that Congressman Miller, of Nebraska, has telephoned to the committee, and he desires to sponsor an amendment to the House bill, H. R. 7273, providing for the payment of Federal income taxes and providing also for the withholding provision of highly paid workers on Guam.

I think it is the opinion of Congressman Miller that there are many bank accounts over there that run up into several thousand dollars per worker, and no taxes are paid on those bank accounts, of people working for the Federal Government.

Mr. LEMKE. I feel that is up to the Ways and Means Committee, and I have introduced a bill covering all of these possessions and islands to provide that all the Federal revenue laws should apply to them. I think that would be the place to work that out. I think a point of order would lie against Mr. Miller's amendment.

Senator ANDERSON. Well, it would not lie against Mr. Miller's amendment in the Senate. It would probably lie in the House, on the general theory of the comity between the two Houses recognizing the House's right to originate bills for raising revenue.

Mr. LEMKE. I am in accord with Congressman Miller's amendment. I am not in accord with having people in the islands and possessions escape their full share of taxes.

Mr. SILVERMAN. The members of the Public Lands Committee thought it best to leave that to the Ways and Means Committee to determine that question.

Senator ANDERSON. Now, if Representative Lemke or Representative Crawford have no further statement, I would like to have statements from the members of the Guam Assembly.

Mr. SILVERMAN. May I say this: Congressman Miles wished to appear at this time to testify. He underwent an operation last week and is ill and cannot appear, but he asked me to submit for the record the report of the subcommittee, of which he was chairman, to the Public Lands Committee after an inspection trip last fall.

Senator ANDERSON. The report will be received.

Governor SKINNER. Senator, each of us has a formal statement which we would like to submit for the record. I do not think we will have to read them to the committee. With your permission, may we submit them?

Senator ANDERSON. They may be made a part of the record.

STATEMENT OF CARLTON SKINNER, GOVERNOR OF GUAM

Governor SKINNER. I appear before this committee today in behalf of the 85,000 people of the island of Guam, which has been American territory for 51 years. A minority of the residents of Guam have been deprived of the citizenship and rights of self-government which they have ardently desired since 1898 when they willingly accepted United States sovereignty.

Unfortunately for them and unfortunately for the reputation of the United States as a democratic country with a republican form of government, that minority is the permanent, indigenous population of the island—the people who were born there, who love it as their homeland and who want to make it just like any other part of the United States. The majority of the residents of the island are United States citizens because of their birth elsewhere under the American

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U.S. NAVAL MILITARY GOVERNMENT
GUAM

RESTRICTED

MONTHLY REPORT FOR MAY 1946

31 MAY 1946

Period - From 1 May 1946, to 31 May 1946. Note: The U.S. Naval Military Government of Guam terminated at 1000 May 30, 1946 and Naval Government of Guam was established. In compliance with instructions from Commander Marianas this report includes pertinent date to 2400 May 31, 1946.

Enclosures: (A) USN Military Government Unit Staff Assignment & Station List.
(B) Photographs of Civilian Rehabilitation (attached to six copies for higher echelons.)

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19. INTERESTING FACTS ABOUT MILITARY GOVERNMENT OF GUAM.

(a) Military Government of Guam has accomplished the following for the 23,300 Guamanian people:

(1) As a whole the people are better housed today than ever before in the history of Guam. There is no person or family without a home.
(2) They are better fed today than ever before. No person goes hungry.
(3) They have better medical facilities today than ever before; better than in any comparable community in the U.S. No person lacks adequate medical attention.
(4) They have better school facilities today than in many "white" communities in the U.S. There are over 7000 students in school; over two thousand more than at any time before the war.
(5) They are better paid today than ever before. The Guamanians have seven times more money in the Bank today than before the war.
(6) They are better clothed today than ever before. No person is in rags or filthy clothes.
(7) There is no Guamanian who is on public relief.
(8) Every Guamanian who wishes employment can get it, and no one can prevent him from being gainfully employed every day of the year, if he so desires.
(9) They are "safe" in their homes and at work; safe from persons who would do them harm and safe from unwarranted persecution.
(10) Commerce and Industry has been restored except as limited by commodities available for import from the United States and Hawaii and sufficient persons interested and competent to operate the many complex and modern businesses required for today's Guam.

(b) Generally, the rehabilitation of Guam has been completed; henceforth it is only a matter of improving on what now exists. For example; a family now housed in a Military Government house in Sinajana Village will rebuild a "bigger and better" house on the family lot in Agana; the "bigger and better" will include more installations of water, plumbing, and electricity. Everyone now has a place of worship but bigger and better churches will be built, and the same holds true of schools, public buildings, restaurants, barber shops, and on and on.

20. APPRECIATION OF MILITARY GOVERNMENT.

During recent weeks the Guamanian people and various Guamanian groups and organization have been very kind in their expressions of appreciation of Military Government and what it has done for Guam and its people.

21. MILITARY GOVERNMENT OF GUAM IS REPLACED BY NAVAL GOVERNMENT.

(a) The United States Naval Military Government of Guam was replaced by the United States Naval Government of Guam.

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INFORMATION ON GUAM TRANSMITTED BY THE UNITED STATES TO THE SECRETARY - GENERAL OF THE UNITED NATIONS PURSUANT TO ARTICLE 73(e) OF THE CHARTER

Prepared by the Navy Department
Washington, D. C. June 1948
(OpNav-P22-100C)

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instances where the owner of land will grant permission to another to build a dwelling or store on his property, and thereafter, taxes and assessments will be levied separately against the land and the building erected. These practices are more or less uniform throughout the island and continue up to the present date.

The holding of land by the non-indigenous population is strictly a matter of law and of various provisions contained in the Civil Code of Guam. Aliens are barred from holding any interests in the lands or from acquiring any lease of land for a period greater than five years. It is possible for United States citizens to acquire leases of portions of privately-owned land through direct negotiations with the land owners themselves, in which event the agreement is subject to the careful scrutiny and examination of the Island Government as a protection to the Guamanian owner. However, certain religious, educational, scientific or other non-profit organizations may acquire title to land if approved by the Island Government. The registration and transfer of title to real property is governed by statute patterned after the "Torrens" system. The Island Government has instituted a program to educate Guamanian land owners in the proper and legal procedures necessary to safeguard their interest in any transaction involving their lands.

The administrating authority is empowered by law to acquire privately-owned land for public use by means of gift, of purchase, or by "eminant domain." A negotiated purchase is normally followed when title to the privately-owned lands is considered valid while condemnation proceedings are instituted in the event the ostensible owners have a defective or cloudy title to the land or it is not reasonably possible to negotiate the purchase. In many instances, it has been necessary to acquire privately-owned lands for public use by means of condemnation proceedings because of the destruction of land records and the loss of valuable instruments pertaining to the title to privately-owned lands as a result of the war.

The total land area of Guam may be roughly divided into the following categories:

24.5% Arable (includes coconut groves).
22.5% Forest (contains very little useful timber).
40 % Pasture and meadow.
13 % Wasteland.

At the present time, approximately 58% of the above land is privately-owned (including small amounts of church holdings), and the remainder is owned either by the United States or by the Island Government. Except for one tract of land owned by a municipality, no land is communally held. Plans for the military development of the island may reduce private land holdings to some degree, but wherever possible, public lands of similar value and potentiality are exchanged for private lands required for the development program.

11. Agricultural Credit: There is practically no demand for credit for agricultural purposes at the present time. The Bank of Guam is prepared to entertain applications for agricultural loans on a most liberal basis consistent with sound banking practices. When additional livestock, agricultural equipment and supplies become available for purchase, there will be some demand for agricultural credits at lower rates and for a longer term than for commercial loans.

12. Agricultural Marketing: Before the war, the Department maintained and supervised a farmers' market. It has not been reactivated for the reason that the production of agricultural produce has not been sufficient to meet local demands. From the standpoint of the farmers, there are no problems of finding markets or quality considerations to be satisfied. Interest has been manifest among numerous producers to incorporate into farmers' cooperative organizations which will not only serve the membership in connection with prospective marketing problems, but through cooperative action will permit the purchase and cooperative use of transportation equipment, farm machinery, pumps, and other desirable equipment and supplies. Several small private ventures in produce markets have been undertaken, but the volume of produce available for marketing has been too small to make such operations profitable.

13. Agricultural Development Programs and Policies: The war-time and post-war development of Guam as a major military base has firmly established a wage economy, and it is extremely doubtful if the island will ever return to the basically agricultural economy it possessed before the war. On the other hand, the Island Government believes that

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MG(C1),A17-10/A9-4/EG54
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In reply address:
The Island Commander,
Navy #926, C/O F.P.O.
San Francisco, Calif.

HEADQUARTERS,
ISLAND COMMAND, GUAM

S E C R E T

2 June 1945

MILITARY GOVERNMENT SECTION, G-5, REPORT FOR ISLAND COMMAND WAR DIARY.

Period - From 1 May, 1945, to 31 May, 1945.

Enclosures: (A) Military Government Staff Assignment and Station List.
(B) Photographs of Civilian Rehabilitation.

1. MISSION. The mission of Military Government is the government and rehabilitation of the natives on the island.

2. ADMINISTRATION.

(a) Personnel. Details of personnel are:

	Officers	Enlisted
(1) Navy	59	284
(2) Marine	10	76
(3) Army	1	--
(4) Insular Force	-	33
Total	70	393

Included in foregoing figures are:

(5) Medical & Dental Personnel MG Hospital 203	19	97
(6) Hospital Maintenance	--	95
(7) On Special Assignment	16	6
(8) On general Military Government duty	35	201
(9) Trained in Military Government	24	--
(10) Temporarily Assigned	1	7
(11) Temporarily Detached	1	24

In April and May six officers with military government training were detached as in excess of local requirements. A request has been made by the Island Commander to have cancelled orders subsequently received for further detachment of four Marine Corps Officers and four Navy Officers with military government training. There are no officers currently in excess of essential military government requirements.

3. LEGAL DEPARTMENT.

(a) Exceptional Military Courts. Three cases, two for murder and one for assault allegedly occurring during the Japanese occupation, were tried by a Military Commission. One case, alleged manslaughter, was tried by a Superior Provost Court and the defendant found guilty. 40 cases, the majority involving violation of curfew, illegal manufacture of intoxicants and unauthorized use of government transportation, were tried by a Summary Provost Court. There were 38 convictions and two defendants were found not guilty.

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S E C R E T

2 June 1945

MILITARY GOVERNMENT SECTION, G-5, REPORT FOR ISLAND COMMAND WAR DIARY.

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(b) Local Courts. Orders and judgments entered by local civilian courts were:

(1) Probate cases (Island Courts)	77
(2) Civil cases (Justice Court)	1
(3) Appointment of Administrators	23
(4) Issue of duplicate copies of guaranteed claim and title	234

(c) Military Government General Orders. The following Military Government General Orders were prepared and issued:

(1) No. 10-45 - Estates of Prisoners and Internees in Enemy Countries.
(2) No. 11-45 - Taxes and Rentals.

(d) Notices or Opinions. Memoranda involving military government problems issued during the month included:

(1) Naturalization of Guamanian wives of American citizens.
(2) Judicial powers of native commissioners.
(3) Lease to Japanese Alien during Japanese occupation.
(4) Criminal jurisdiction of local courts.
(5) Night fishing.

4. WELFARE AND EDUCATION DEPARTMENT.

(a) Commissioners. The monthly meeting of native commissioners with all Military Government Officers was held on 2 May, 1945. Frequent contacts with commissioners were maintained by visiting officers.

(b) Areas reserved for civilian use. Approximately 40 acres were assigned for New Barrigada village. Much difficulty is being experienced in finding suitable sites for necessary additional native villages accessible to roads and water supply, as reservations for military units have already appropriated about 75% of the island and other planned military reservations preclude civilian use of other desirable areas.

(c) Civilian Housing. To date 1222 new dwellings have been completed by the Military Government Public Works Department at Agat, Sinajana, Talofofo, Asan, Dededo, Santa Rita and Yona. Approximately 1400 additional dwellings are necessary to replace existing shacks and shanties and to provide adequate housing of the emergency type. If additional area can be secured for the new Barrigada village, it is planned to build 250 dwellings in this locality. A further 100 dwellings is planned for an area assigned at Yigo. Dismantling of shanty areas near Piti, and at Tutujan, Mongmung, West Agana, Agana Heights, Ordot, Chalan Pago and Tamuning and their replacement with uniform and adequate emergency housing cannot be undertaken until sites in these present localities are authorized for civilian use or other sites assigned.

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2 June 1945

S E C R E T

MILITARY GOVERNMENT SECTION, G-5, REPORT FOR ISLAND COMMAND WAR DIARY.

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15. U. S. POST OFFICE, AGANA.

	May		To date	
	Number	Amount	Number	Amount
(a) Postal Savings Accounts	--	$135.00	24	$9,356.00
(b) War Bond Sales#	32	$2,362.50	310	$25,781.25
(c) Mail cancellations	4498		18171	

#War bond sales of $211,700.00 were made in December by Military Government.

C. I. MURRAY
Colonel, U. S. Marine Corps
Deputy Chief Military Government Officer

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In reply address:
The Island Commander,
Navy #926, C/O F.P.O.
San Francisco, Calif.

HEADQUARTERS,
ISLAND COMMAND, GUAM.

S E C R E T

2 May 1945

MILITARY GOVERNMENT SECTION, G-5, REPORT FOR ISLAND COMMAND WAR DIARY.

Period - From 1 April, 1945, to 30 April, 1945.

Enclosures: (A) Military Government Staff Assignment and Station List.
(B) Photographs of Civilian Rehabilitation.

1. MISSION. The mission of Military Government is the government and rehabilitation of the natives on the island.

2. ADMINISTRATION.

(a) Personnel. Details of personnel are:

	Officers	Enlisted
(1) Navy	63	299
(2) Marine	10	77
(3) Army	1	--
(4) Insular Force	-	41
Total	74	417

Included in foregoing figures are:

(5) Medical-Dental Personnel	21	104
(6) Hospital Maintenance	--	99
(7) Permanently Assigned	72	366
(8) Temporarily Assigned	2	10
(9) Temporarily Detached	2	12
(10) Land and Claims Commission*	8	4
(11) Bank of Guam*	4	--
(12) Trained in Military Government	23	--

* Attached to Military Government Section, Island Command; under administrative control of the Chief of Naval Operations.

3. LEGAL DEPARTMENT.

(a) Exceptional Military Courts. A Military Commission tried two cases, one involving alleged murder and the other alleged assault and attempted rape. Another case involving alleged murder is now being tried. All cases concern crimes committed during the Japanese occupation.

39 cases were tried before a Summary Provost Court, resulting in 38 convictions and one acquittal. Ten cases concerned unauthorized labor absenteeism and 8 were for violation of the curfew law.

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2 May 1945

MILITARY GOVERNMENT SECTION, G-5, REPORT FOR ISLAND COMMAND WAR DIARY.

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Unsightly and unsanitary shanty towns have sprung up in different localities, with hovels constructed of salvaged boxes, canvas and tin sheet. It is planned to dismantle these shanties and replace them with semi-permanent dwellings as soon as possible, or relocate the civilians concerned in other new villages as soon as dwellings there become available. The low priority which must necessarily be given on areas needed for civilian communities poses a problem of some difficulty, because of the constantly expanding requirements of military activities. As mentioned in paragraph 4(b), sanction to build new semi-permanent housing in certain shanty areas concerned has been requested from the Island Commander and the construction of from 400 to 500 dwellings has also been proposed for Agana, pending eventual decision concerning re-building Agana as a modern town. To improve housing in the rural areas, it is planned to authorize sale of necessary materials, as available, to bona-fide farmers, who will build their own farm homes.

(d) Civilian Relocation. 272 families were relocated during the month to make way for military construction and installations.

(e) Religion. A new church has been completed at Sinajana. 95 religious services were conducted in 25 churches or chapels.

(f) Civilian Morale. Mid-Pacific American Legion Post No. 1 and the Rotary Club of Guam held regular meetings during the month. The Fleet Reserve Association No. 70 was also reorganized. The 128th Naval Construction Battalion band held a concert at Agat Village and provided dance music at Inarajan at a festival. Troops are permitted to participate in native social functions upon invitation and also to visit native friends up to 2100 when not on duty and in possession of a written invitation. About 4000 visiting permits have been issued to military personnel by Headquarters of Military Government. All native communities are out of bounds to troops, except on official duty, unless permits to visit are obtained. During the month the Army Garrison Force showed movies at Umatac, Merizo and Inarajan one evening each week, and at Sinajana two evenings each week. This entertainment was enthusiastically received.

(g) Relief. The number of people subsisted on relief averaged 330, a reduction of 11 as compared with the previous month. Clothing, 12,064 lbs. of soap and 7200 spools of thread received from the "Gifts for Guam" committee were distributed.

(h) Information. Beginning April 28, 1945, publication of the "Guam Gazette", a newspaper for civilians, was taken over by the Personnel Section of Military Government Headquarters and changed into a four page sheet, issued daily instead of weekly. Matters of importance to civilians were announced in 45 public meetings conducted during the month by native commissioners.

(i) Refugee Camps. The last civilian refugee camp, that at Anigua, was discontinued on 15 April, and henceforth this community will be administered as a suburb of Agana.

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NAVAL GOVERNMENT OF GUAM

Executive Order No. 21-46.

TO THE PEOPLE OF GUAM.

All civilians who are not permanent residents of Guam are prohibited from entering into any Guamanian home, village, or community without complying with the following provisions:

(a) Between the hours of sunrise and six o'clock in the evening such civilians may enter such areas provided that they have in their possession for display to proper authorities a written invitation from an adult member of the family visited and a written pass from the Commanding Officer or Camp Commander of such civilian.

(b) In the villages or communities where there are established police headquarters such invitation and pass must be presented at the time of entering and leaving the village or community. Such pass and invitation will be displayed at any time upon the request of a member of the Guam Police Force, a local commissioner or a military policeman.

(c) All civilians who are not permanent residents of Guam must have a pass issued by the Office of the Provost Marshal, Island Command, Guam, to enter any Guamanian home, village or community between the hours of six o'clock in the evening and eleven o'clock in the evening.

(d) No civilian who is not a permanent resident of Guam shall enter into or be found in a Guamanian home, village or community between the hours of eleven o'clock in the evening and sunrise of the following day without the written authority of the Civil Administrator of the Naval Government of Guam counter-signed by the Provost Marshal, Island Command, Guam.

(e) All areas south of the Talofofo River are restricted and no civilian who is not a permanent resident of Guam is permitted in such areas except on official business and with a pass issued by the Provost Marshal, Island Command, Guam, in his possession for prompt display to proper authorities.

Violators of this order shall, upon conviction in a court of proper jurisdiction, be deemed guilty of a misdemeanor and shall be subject to a fine not exceeding one hundred dollars or imprisonment not exceeding six months or both such fine and imprisonment.

Given under my hand this 30th day of October, A.D. 1946.

C. A. POWNALL,
Governor of Guam.

AUTHENTICATED:

M. H. ANDERSON,
Civil Administrator.

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UNITED STATES PACIFIC FLEET
COMMANDER MARIANAS

A3/FF12/20-tem
Serial: 3286

17 February 1947

From: Commander Marianas and Governor of Guam.
To : DISTRIBUTION LIST.

Subj: Director of Security, Guam, Appointment of.

1. In order that the administrative mission of internal security and fire protection of all naval and civil activities on Guam may be efficiently accomplished it is desired to coordinate the security and fire protection forces of all naval and marine commands and to further coordinate these with like forces of the civil establishment.

2. To effect the above, the Commanding Officer, Marine Barracks, Guam is hereby assigned additional duty as Director of Security, Guam. In such capacity, he will supervise and coordinate the activities of the Provost Marshal, ComMarianas, the Fire Marshal, ComMarianas, the civil police and the civil fire department. He will also supervise and coordinate the activities of the security and fire protection forces of all naval and marine commands subordinate to Commander Marianas on Guam when such forces are operating outside the limits of the reservations of their commands as provided in paragraph 3 below.

3. In emergencies, acting for Commander Marianas, the Director of Security will request the assistance of security and fire protection forces of subordinate naval and marine commands on Guam for use outside their own reservations to reenforce the central security and fire protection forces of ComMarianas and/or Naval Government, Guam. Such requests will invariably be made via the commanding officer of the unit or his authorized representative, and will invariably be granted unless removal of such local forces from their area would seriously jeopardize the security and safety of the command. All such requests for use of the forces of subordinate units outside their own reservation and compliance or reason for non-compliance therewith, will be reported to Commander Marianas as soon as possible.

4. The above security and fire protection forces thus placed under the control of the Director of Security, may be used within the limits of any naval or marine reservation in situations which progress beyond the capacity of a unit's own forces to control, or when such assistance is requested by the Commanding Officer concerned or his authorized representative, or when so directed by Commander Marianas.

5. Authority is further granted to Director of Security, Guam, acting for the Governor of Guam, to employ the central naval and marine security and fire protection forces of Commander Marianas and subordinate commands thereof, to reenforce and support the public safety and law enforcement activities of the Naval Government, Guam as necessary in areas outside naval and military reservation.

/s/ C.A. POWELL

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[illegible] (5)

ENCLOSURE "E" - 6

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EXECUTIVE ORDER 8682

Establishing Naval Defensive Sea Areas Around and Naval Airspace Reservations Over the Islands of Palmyra, Johnston, Midway, Wake, and Kingman Reef

PACIFIC OCEAN

By virtue of the authority vested in me by the provisions of section 44 of the Criminal Code, as amended (U.S.C., title 18, sec. 96), and section 4 of the Air Commerce Act approved May 20, 1926 (44 Stat. 570, U.S.C., title 49, sec. 174), the territorial waters between the extreme high-water marks in the three-mile marine boundaries surrounding the islands of Palmyra, Johnston, Midway, Wake, and Kingman Reef, in the Pacific Ocean, are hereby established and reserved as naval defensive sea areas for purposes of national defense, such areas to be known, respectively, as "Palmyra Island Naval Defensive Sea Area", "Johnston Island Naval Defensive Sea Area", "Midway Island Naval Defensive Sea Area", "Wake Island Naval Defensive Sea Area", and "Kingman Reef Naval Defensive Sea Area"; and the airspaces over the said territorial waters and islands are hereby set apart and reserved as naval airspace reservations for purposes of national defense, such reservations to be known, respectively, as "Palmyra Island Naval Airspace Reservation", "Johnston Island Naval Airspace Reservation", "Midway Island Naval Airspace Reservation", "Wake Island Naval Airspace Reservation", and "Kingman Reef Naval Airspace Reservation".

At no time shall any person, other than persons on public vessels of the United States, enter any of the naval defensive sea areas herein set apart and reserved, nor shall any vessel or other craft, other than public vessels of the United States, be navigated into any of said areas, unless authorized by the Secretary of the Navy.

At no time shall any aircraft, other than public aircraft of the United States, be navigated into any of the naval airspace reservations herein set apart and reserved, unless authorized by the Secretary of the Navy.

The provisions of the preceding paragraphs shall be enforced by the Secretary of the Navy, with the cooperation of the local law enforcement officers of the United States and of the Territory of Hawaii; and the Secretary of the Navy is hereby authorized to prescribe such regulations as may be necessary to carry out such provisions.

Any person violating any of the provisions of this order relating to the above-named naval defensive sea areas shall be subject to the penalties provided by section 44 of the Criminal Code as amended (U.S.C., title 18, sec. 96), and any person violating any of the provisions of this order relating to the above-named naval airspace reservations shall be subject to the penalties prescribed by the Civil Aeronautics Act of 1938 (52 Stat. 973).

This order shall take effect ninety days after date hereof.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
February 14, 1941.

EXECUTIVE ORDER 8683

Establishing Naval Defensive Sea Areas Around and Naval Airspace Reservations Over the Islands of Rose, Tutuila, and Guam

PACIFIC OCEAN

By virtue of the authority vested in me by the provisions of section 44 of the Criminal Code, as amended (U.S.C., title 18, sec. 96), and section 4 of the Air Commerce Act approved May 20, 1926 (44 Stat. 570, U.S.C., title 49, sec. 174), the territorial waters between the extreme high-water marks in the three-mile marine boundaries surrounding the islands of Rose, Tutuila, and Guam, in the Pacific Ocean, are hereby established and reserved as naval defensive sea areas for purposes of national defense, such areas to be known, respectively, as "Rose Island Naval Defensive Sea Area", "Tutuila Island Naval Defensive Sea Area", and "Guam Island Naval Defensive Sea Area"; and the airspaces over the said territorial waters and islands are hereby set apart and reserved as naval airspace reservations for purposes of national defense, such reservations to be known, respectively, as "Rose Island Naval Airspace Reservation", "Tutuila Island Naval

Airspace Reservation", and "Guam Island Naval Airspace Reservation".

At no time shall any person, other than persons on public vessels of the United States, enter any of the naval defensive sea areas herein set apart and reserved, nor shall any vessel or other craft, other than public vessels of the United States, be navigated into any of said areas, unless authorized by the Secretary of the Navy.

At no time shall any aircraft, other than public aircraft of the United States, be navigated into any of the naval airspace reservations herein set apart and reserved, unless authorized by the Secretary of the Navy.

The provisions of the preceding paragraphs shall be enforced by the Secretary of the Navy, with the cooperation of the local law enforcement officers of the United States; and the Secretary of the Navy is hereby authorized to prescribe such regulations as may be necessary to carry out such provisions.

Any person violating any of the provisions of this order relating to the above-named naval defensive sea areas shall be subject to the penalties provided by section 44 of the Criminal Code as amended (U.S.C., title 18, sec. 96), and any person violating any of the provisions of this order relating to the above-named naval airspace reservations shall be subject to the penalties prescribed by the Civil Aeronautics Act of 1938 (52 Stat. 973).

This order shall take effect ninety days after date hereof.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
February 14, 1941.

EXECUTIVE ORDER 8684

ESTABLISHING CULEBRA ISLAND NAVAL DEFENSIVE SEA AREA AND CULEBRA ISLAND NAVAL AIRSPACE RESERVATION

PUERTO RICO

By virtue of the authority vested in me by the provisions of section 44 of the Criminal Code, as amended (U.S.C., title 18, sec. 96), and section 4 of the Air Commerce Act approved May 20, 1926 (44 Stat. 570, U.S.C., title 49, sec. 174), the territorial waters between the extreme high-water mark and the three-mile marine boundary surrounding the island of Culebra, Puerto Rico, are hereby established and reserved as a naval defensive sea area for purposes of national defense, such area to be known as "Culebra Island Naval Defensive Sea Area"; and the airspace over the said territorial waters and island is hereby set apart and reserved as a naval airspace reservation for purposes of national defense, such reservation to be known as "Culebra Island Naval Airspace Reservation".

At no time shall any person, other than persons on public vessels of the United States, enter Culebra Island Naval Defensive Sea Area, nor shall any vessel or other craft, other than public vessels of the United States, be navigated into said area, unless authorized by the Secretary of the Navy.

At no time shall any aircraft, other than public aircraft of the United States, be navigated into Culebra Island Naval Airspace Reservation, unless authorized by the Secretary of the Navy.

The provisions of the preceding paragraphs shall be enforced by the Secretary of the Navy, with the cooperation of the local law enforcement officers of the United States and of the Government of Puerto Rico, and the Secretary of the Navy is hereby authorized to prescribe such regulations as may be necessary to carry out such provisions.

Any person violating any of the provisions of this order relating to Culebra Island Naval Defensive Sea Area shall be subject to the penalties provided by section 44 of the Criminal Code as amended (U.S.C., title 18, sec. 96), and any person violating any of the provisions of this order relating to Culebra Island Naval Airspace Reservation shall be subject to the penalties prescribed by the Civil Aeronautics Act of 1938 (52 Stat. 973).

This order shall take effect ninety days after date hereof.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
February 14, 1941.

NAVAL GOVERNMENT OF GUAM
GUAM

1 March, 1936

The following "Civil Regulations with the Force and Effect of Law in Guam" are issued for the guidance of all persons on the Island of Guam. They replace "Orders and Regulations with the Force and Effect of Law in Guam" which is hereby canceled.

Unless otherwise specified, a violation or omission of any of the provisions of these Civil Regulations shall constitute a misdemeanor.

GEO. A. ALEXANDER,
Governor of Guam.

MICRONESIAN AREA RESEARCH CENTER
University of Guam
This material is for reference only.

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CHAPTER III

NAVAL GOVERNMENT EMPLOYEES

1. All persons employed by the Naval Government of Guam in positions of responsibility, including school teachers, patrolmen, and clerks, are required to take the following oath of allegiance:

"I _____, do solemnly swear that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully, denying all their enemies and opposers whomsoever; and that I will observe and obey the orders of the President of the United States, and of the Governor of Guam, and of the officers appointed over me according to the laws governing the Island of Guam.

(SEAL)

_____

Subscribed and sworn to before me this _____ day of _____ A. D. 19_____

_____

_____"

2. English is the official language of the Island of Guam, and all persons employed in offices shall speak only English during office hours. Chamorro must not be spoken except for official interpreting.

3. The hours for employees of the Naval Government of Guam will be as follows:

	Week Days	*Saturdays*
Office Force - - - - - - - -	0730 to 1200 and 1300 to 1530	- - 0730 to 1130
All other employees - - -	0630 to 1130 and 1200 to 1500	- - 0630 to 1130

4. During office hours all Government employees shall devote their time to strictly Government business. No clerical, stenographic, or typing work of a private nature shall be performed by any employee for any private party during office hours, and if work is performed outside office hours no Government typewriter or stationery shall be used for such work.

5. No person is allowed in any of the Government offices during office hours except on official business, nor shall any person not an employee be allowed to use Government typewriter or stationery at any time.

6. Any one wishing legal papers drawn up may have the work done by the clerk of any court of Guam, outside office hours for the amounts specified below:

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Guam

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CHAPTER XXX

IMMIGRATION

1. The Commissioner of Immigration and all Deputy Commissioners of Immigration shall be appointed by the Governor.

2. Immediately upon the arrival of any vessel in any harbor of Guam the Commissioner of Immigration or his deputy shall board such vessel and prepare and certify a list of all passengers for Guam on board such vessel, which list shall show the name, sex, age, occupation, nationality, residence previous to arrival, reasons for residence in Guam, and the name of at least one resident of Guam who can vouch for the good character of such persons. The passports or other identification papers of all aliens shall be taken up and together with the aforesaid list shall be immediately forwarded to the Executive Office.

3. Sections 174 and 175 of the Penal Code of Guam deal with this subject.

CHAPTER XXXIV

HARBOR REGULATIONS

HARBOR OF APRA, GUAM

Guam is a Naval Base under Naval Government and the Harbor of Apra is a closed port, and "shall not be visited by any commercial or privately owned vessel of foreign registry; nor by any foreign national vessel, except by special authority of the United States Navy Department in each case (Executive Order September 23, 1912)." U. S. N. Regulations, 1920, Article 78, paragraph 1: Certain military districts on the Island are closed to visitors.

1. *Captain of the Port.* The Beachmaster is Captain of the Port for the Harbor of Apra.

2. *Duties.* He has charge of the Harbor, and the care of all beacons, buoys, lighthouses and harbor equipment.

3. *Subject to Captain of the Port.* All vessels that may enter the Harbor of Apra shall be anchored in the place designated by the Captain of the Port, and moved from one anchorage to another as he may direct.

4. *Change of Berth.* Any vessel wishing to change her berth shall first obtain permission from the Captain of the Port, except in cases of emergency.

5. *Unloading.* When a vessel with cargo is in port, the Supply Officer shall have charge of unloading.

6. *Boat schedule.* The Beachmaster will see that a proper boat schedule is observed, and that freight is landed expeditiously.

7. *Health visit.* A designated medical officer shall make the boarding visit on all incoming vessels, and shall comply with the instructions of the Health Officer of the Island in regard to quarantine; he shall also make the usual entries in the boarding book. The Boarding Officer will obtain also a list of the local passengers and through cabin passengers and forward it to the Commandant's Office by the first conveyance.

8. *Display of Colors.* Merchant vessels in port shall display their national ensign daily from 8:00 a.m. to sunset.

9. *Blue Peter.* Vessels in the Harbor intending to leave port shall, after giving the usual notice thereof, hoist the "Blue Peter".

10. *Pilot flag.* Vessels in the Harbor wishing a pilot shall hoist a pilot flag at the fore twenty-four hours before a pilot is needed.

11. *Police assistance.* Any merchant vessel in the Harbor desiring police assistance will indicate the same by making the following signal: By day, between sunrise and sunset, the International "A" hoisted at any part of the vessel; at night, a red light flashed or shown at short or frequent intervals from any part of the vessel.

12. *Custom House.* All merchandise stowed in the Custom House, Piti, will be subject to storage charges, as follows: After

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CHAPTER XXXIX

DEMONSTRATIONS AND DISTURBANCES

1. There is cited herewith the sections of the Penal Code of Guam dealing with the above:

Sections 403, 403a, 405, 408, 409, 410, 415, 416, 417, and 420.

2. Based upon the Code the following regulatory provisions shall be observed:

(a) Music in private dwellings in towns shall cease at 11:30 p.m. except by special permit and on Christmas Eve and New Year's Eve when the time is extended to 15 minutes past midnight.

(b) Dances given in regularly designated places of amusement shall cease at 1:00 a.m. unless an extension is granted by the Chief of Police.

MICRONESIAN AREA RESEARCH CENTER

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footnote # 70
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Serial: 51P22

29 JAN 1948

VIA AIR MAIL

From: Secretary of the Navy.
To: High Commissioner of the Trust Territory of the Pacific Islands.
Deputy High Commissioner of the Trust Territory of the Pacific Islands.
Governor of Guam.
Governor of American Samoa.

Subject: Policy governing the right of entry into and the licensing of private enterprises within certain areas under naval jurisdiction.

References: (a) Commander Marianas and Governor of Guam Conf Speedltr Serial 0568 of 10 December 1947 and CinCPacFlt 1st End. Serial C1209 of 22 December thereon.
(b) CNO ltr Serial 1422P22 of 15 January 1948.

1. Reference (a) transmitted a recommendation as to the policy to be pursued with reference to the grant of authority to former and retired personnel of the Armed Forces to engage in private business in certain areas under naval jurisdition.

2. The policy of the Navy Department with respect to the protection of the economic interests of the local inhabitants of the areas under its jurisdiction is set forth in reference (b).

3. The application of the Department's policy to the grant of industrial and commercial licenses or concessions to other than local inhabitants demands more than ordinary care and circumspection in the case of grantees who are former or retired members of the Armed Forces, particularly those who have occupied governmental positions and who have enjoyed opportunities of acquiring special information or of forming associations advantageous to the conduct of private enterprise within the area under naval jurisdiction.

4. Under the authority of the Executive Orders which charge the Secretary of the Navy with responsibility for the government of Guam, American Samoa and the Trust Territory of the Pacific Islands, the Secretary is empowered to deny or to revoke the right of entry into the territory concerned to any person whose presence therein is detrimental to the public interest.

Op22/flf
Serial 51P22

He is also empowered to grant, withhold or cancel permission to engage in commercial or industrial enterprises where such enterprises are detrimental to the public interest or inimical to the interests of the local inhabitants. These powers are hereby delegated to the following officials subject to the stipulations herein set forth:

a. In Guam - To the Governor of Guam, to be exercised in consonance with the legislative power vested in the Guam Congress.

b. In American Samoa - To the Governor of American Samoa.

c. In the Trust Territory of the Pacific Islands- The power to grant, deny or revoke right of entry and similar powers over commercial concessions to local inhabitants, to the High Commissioner who may, at his descretion, delegate all or any part thereof to his Deputy. Paragraph 9 of reference (b) required approval of the Secretary of the Navy as a condition prerequisite to the grant to non-residents of rights in lands or commercial concessions.

5. The officials to whom powers are delegated in the foregoing paragraph shall keep the Secretary informed of all instances of denial or revocation of right of entry and of all grants, denials or revocations of commercial and industrial licenses and concessions. The circumstances surrounding and reasons connected with denials and revocations shall be reported in detail.

M. E. ANDREWS

Copies to:
CinCPacFlt (Air Mail)
ComMarianas (Air Mail)

footnote # 72
page 43

MGU(01)/A9-4/EG54
VFB:hh

IN REPLY ADDRESS:
THE COMMANDING OFFICER,
USN MILITARY GOV'T UNIT,
NAVY NO. 926, c/o F. P. O.
SAN FRANCISCO, CALIF.

U. S. NAVAL MILITARY GOVERNMENT UNIT
GUAM

RESTRICTED

APRIL
1 ~~March~~ 1946

MONTHLY REPORT

Period - From 1 March 1946, to 31 March 1946.

Enclosures: (A) USN Military Government Unit Staff Assignment & Station List.
(B) Photographs of Civilian Rehabilitation.

1. MISSION The mission of Military Government is the government and rehabilitation of the natives of Guam and Rota.

2. ADMINISTRATION

(a) The Personnel to carry out this program as of 31 March 1946, is:

	OFFICERS	ENLISTED
(1) U.S. Navy (to include nurses)	64	178
(2) U.S. Marine Corps (Guam Police Force)	5	71
(3) Guam Insular Force (USN)	0	3
Total	69	252

This Personnel is distributed among the following units:

(1) MG Hospital #203 (Male)	9	61
" (U.S. Navy Nurses)	18	
(2) Native Medical Practitioners School	6	21
(3) Land and Claims Commission	11	32
(4) Bank of Guam	3	3
(5) Guam Police Force (Marines)	4	70
(6) Rota Island	2	6
(7) MG Headquarters; and Departments of: Education; Legal; Supply&Finance; Commerce&Industry; Labor; Public Works; Administrative (for civilians);	16	59
Total	69	252

3. EDUCATION DEPARTMENT

(a) Elementary School and High Schools. Now consist of 21 schools, 169 teachers, 3832 boys and 3475 girls making a total student enrollment of 7307. In addition to the five new frame buildings being used, three more are being constructed at Sinajana, Yigo, and Chalan Pago. The large (40' X 100') auditorium at George Washington High School is being enlarged to nearly double the present floor space and will be open on the sides for light and ventilation.

9. COMMERCE & INDUSTRY DEPARTMENT

(a) General Observations. It must be recognized that with Guam as a Naval and Air Force Base the economy of the Island must be developed, by some method, to satisfy the requirements of some 50-75,000 U.S. mainland service personnel, dependents thereof, civil service personnel, contractor personnel, and other mainland civilians to be stationed on Guam. The economic development must be geared to meet the demands of these service and service connected personnel and cannot be geared to the financial, technical, or business ability of the Guamanian entrepreneur. As expressed in previous monthly reports, there are insufficient Guamanians who have either the pre-requisite ability, experience, desire, or capital to enable them to participate in the increasing opportunities becoming available in their economy, let alone participate, except in limited fields, in a private enterprise type economy designed to meet mainland personnel requirements. This is especially true in such fields as automotive mechanics, construction, electrical and plumbing contracting, deepsea fishing, etc. Decision by higher authority as to the manner in which the requirements of mainland personnel are to be met, bearing in mind the limitations of the Guamanian as to number, technical, financial, and ability, should be expedited.

(b) Private Importation. Licensed Guamanian importers placed orders, after screening by the Commerce and Industry Department, with U.S. mainland and Honolulu concerns for food, trade goods, and other essential supplies for resale purposes totalling 330 measurement tons during the period 1 March to 31 March 1946. Total orders placed since importation authorized by the Island Commander on 9 February 1946: - 1320 measurement tons.

(1) Basic staple provisions of flour, rice, sugar, fats, oils, canned milk, and canned meats are not available to importers. Provision orders placed consist primarily of supplementary items to Naval procured supplies of canned fish, vegetables, biscuits, fruits, fruit juices, and condiments. The Guamanian importers are willing to procure basic items if made available. Military Government has requested the Bureau of Supplies and Accounts to obtain export allocations from the Department of Agriculture. Meanwhile, the Naval Supply Center, Guam is continuing to procure for civilian consumption.

(2) WSA shipping schedules and rates from the West Coast and Honolulu to Guam, as approved by the Maritime Commission, have been received. The first large consignment of privately imported commodities is anitcipated to arrive at Guam on 15 April 1946.

(c) New Businesses. Private importation of merchandise and the sale of government vehicles is permitting, in keeping with public desire, the licensing of many additional new businesses. New businesses licensed and put into operation during March included 4 retail stores, 2 school lunch counters, 1 retail jewelry store, 5 general cargo hauling businesses, 3 restaurants, 1 refreshment stand, 1 fish and produce retail business, 1 wholesale merchandise business, 1 gasoline sales and automotive repair shop, 1 cosmetics store, 4 beauty parlors, 1 bakery, 3 taxicab businesses, and 1 women's and children's apparel shop.

(d) Commerce and Trade. Wholesale trade receipts for March increased to $133,437.30 as compared to $116,296.38 for February.

Retail store trade receipts for March increased to $144,465.17 as compared to $140,495.40 for February.

(2) Hospital and Public Health Program (Cont'd)

Discharges	26
Hospital deaths	0
Dispensary Treatment	50
Patients in Hospital	4
Trachoma cases treated	207

Notes: Mass intestinal parasite treatment continues weekly.
DDT treatment of heads and garbage pits continues daily.

(3) Eight patients were sent from Rota to Military Government Hospital, Guam for treatment for trachoma and tuberculosis. (Hospital patients are not reported as immigrants.)

(k) Vital Statistics.

(1) To Guam as immigrants to accept jobs. Each case approved by DCMGO.

Miss. Mecala A. Sablan
Mr. Ignacio D. Decastro
Mr. Habiel M. Manalisay

(2) Present population of Rota: (mostly children)

Chamorros	832
Koreans	6
Total	838

Victor F. Bleasdale

VICTOR F. BLEASDALE
Colonel, U.S. Marine Corps
Deputy Chief Military Government Officer

footnote #73
page 44

MGU(01)A9-4/EG54
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IN REPLY ADDRESS:
THE COMMANDING OFFICER,
USN MILITARY GOV'T UNIT,
NAVY NO. 926, c/o F. P. O.
SAN FRANCISCO, CALIF.

U. S. NAVAL MILITARY GOVERNMENT UNIT
GUAM

RESTRICTED

1 May 1946

MONTHLY REPORT

Period - From 1 April 1946, to 30 April 1946.

Enclosures: (A) USN Military Government Unit Staff Assignment & Station List.
(B) Photographs of Civilian Rehabilitation (attached to six copies for higher echelons.

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		PHOTOGRAPHS OF CIVILIAN REHABILITATION (attached to 6 copies for higher echelons).	Encl.(B)

1. MISSION. The mission of Military Government is the government and rehabilitation of the natives of Guam and Rota.

2. U.S. SERVICE PERSONNEL.

(a) The U.S. Service Personnel to carry out this program as of 30 April, 1946, is:

	OFFICERS	ENLISTED
(1) U.S.Navy (to include 21 nurses)	69	140
(2) U.S. Marine Corps (to include Guam Police Force)	4	62
(3) Guam Insular Force (USN)	0	3
Total	73	205

(Cont'd next page)

9. COMMERCE & INDUSTRY DEPARTMENT.

(a) General Observations: Development of Guam may mean that some 50,75000 U.S. mainland service personnel, (Army, Navy, Marine Corps, etc.) dependents thereof, civil service personnel, contractor personnel, and other mainland civilians, as 23,000 natives, will be residing on the Island. The problem confronting many is how, by whom, are the needs for the material well-being of these 100,000 people to be met? Will the Army and Navy directly procure and supply all requirements for service and service connected personnel? Will another federal agency such as the U.S. Commercial Co. be asked to participate in this program? Will private enterprise be asked to perform the function? If private enterprise is not considered compatible with Military security and control, will business be restricted to native Guamanians who obviously cannot, by virtue of numbers, experience, capital, or desire, operate a private enterprise type economy designed to meet mainland personnel requirements? Will U.S. Mainland servicemen be permitted to be discharged on Guam to establish businesses? Will U.S. mainland individuals or corporations be permitted to establish themselves on Guam?

This basic question of policy must be settled. A long delay may result in adverse criticism of Naval Military Government on Guam. U.S. mainland firms believe they have a right to seek expansion of their post-war markets within U.S. Territory, U.S. servicemen believe they, as U.S. citizens, have a right to enter business on Guam. Any policy to guard the Guamanian against foreign exploitation must consider the need to guard Guamanians against exploitation by Guamanians.

(b) Private Importation. Licensed Guamanian importers placed orders after screening by the Commerce and Industry department, with U.S. mainland and Honolulu concerns for food, trade goods and other essential supplies for resale purposes totaling 440 measurement tons during the period 1 April to 30 April 1946. Total orders placed since importation authorized by the Island Commander on 9 February 1946; - 1760 measurement tons.

(1) Without export allocations, basic staple provisions, flour, rice, sugar, fats, oils, and canned milk are not available to Guamanian importers who are willing to procure such commodities. The Bureau of Supplies and Accounts has been requested to obtain export allocations from the Department of Agriculture but as yet arrangements have not been consumated.
(2) The first large consignment of privately imported commodities which was originally anticipated to arrive at Guam in April is now scheduled to arrive approximately May 10th aboard the S. S. Oglethorpe.

(c) Private Transportation. There are now over 150 civilian owned motor vehicles on the island as compared to approximately 450 in operation in December 1941. Eighteen (18) Taxicab operators with vehicles have been licensed and there are now 13 licensed truck operators with vehicles engaged in cargo hauling. These privately owned vehicles available for transportation to Guamanian civilians are in addition to the Guam Bus Lines operated by Military Government.

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Serial: 51P22

29 JAN 1948

VIA AIR MAIL

From: Secretary of the Navy.
To: High Commissioner of the Trust Territory of the Pacific Islands.
Deputy High Commissioner of the Trust Territory of the Pacific Islands.
Governor of Guam.
Governor of American Samoa.

Subject: Policy governing the right of entry into and the licensing of private enterprises within certain areas under naval jurisdiction.

References: (a) Commander Marianas and Governor of Guam Conf Speedltr Serial 0568 of 10 December 1947 and CinCPacFlt 1st End. Serial C1209 of 22 December thereon.
(b) CNO ltr Serial 1422P22 of 15 January 1948.

1. Reference (a) transmitted a recommendation as to the policy to be pursued with reference to the grant of authority to former and retired personnel of the Armed Forces to engage in private business in certain areas under naval jurisdition.

2. The policy of the Navy Department with respect to the protection of the economic interests of the local inhabitants of the areas under its jurisdiction is set forth in reference (b).

3. The application of the Department's policy to the grant of industrial and commercial licenses or concessions to other than local inhabitants demands more than ordinary care and circumspection in the case of grantees who are former or retired members of the Armed Forces, particularly those who have occupied governmental positions and who have enjoyed opportunities of acquiring special information or of forming associations advantageous to the conduct of private enterprise within the area under naval jurisdiction.

4. Under the authority of the Executive Orders which charge the Secretary of the Navy with responsibility for the government of Guam, American Samoa and the Trust Territory of the Pacific Islands, the Secretary is empowered to deny or to revoke the right of entry into the territory concerned to any person whose presence therein is detrimental to the public interest.

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Serial 51P22

He is also empowered to grant, withhold or cancel permission to engage in commercial or industrial enterprises where such enterprises are detrimental to the public interest or inimical to the interests of the local inhabitants. These powers are hereby delegated to the following officials subject to the stipulations herein set forth:

a. In Guam - To the Governor of Guam, to be exercised in consonance with the legislative power vested in the Guam Congress.

b. In American Samoa - To the Governor of American Samoa.

c. In the Trust Territory of the Pacific Islands- The power to grant, deny or revoke right of entry and similar powers over commercial concessions to local inhabitants, to the High Commissioner who may, at his descretion, delegate all or any part thereof to his Deputy. Paragraph 9 of reference (b) required approval of the Secretary of the Navy as a condition prerequisite to the grant to non-residents of rights in lands or commercial concessions.

5. The officials to whom powers are delegated in the foregoing paragraph shall keep the Secretary informed of all instances of denial or revocation of right of entry and of all grants, denials or revocations of commercial and industrial licenses and concessions. The circumstances surrounding and reasons connected with denials and revocations shall be reported in detail.

N. E. ANDREWS

Copies to:
CinCPacFlt (Air Mail)
ComMarianas (Air Mail)

Washington, D. C., Dateline - December 19th - (UP)

The Navy Department has released its ban against outside business interests entering Guam, in an effort to provide the Islanders with a more diversified economy, Capt. Jennings, Officer in Charge of Island Government, disclosed.

Jennings said applications for enterprises on Guam would be screened carefully by Rear Admiral Charles Pownall, Military Governor of Guam. Only businesses which Guamanians cannot establish themselves will be permitted to start on the Island. The policy of the Navy Department is to prevent the entrance of these enterprises until such time as the Guamanian Economy has been rehabilitated by payment of Guamanian settlements, land allocations, and restoration of civilian facilities to the point where the people have their government on an equitable basis.

During the interim, there is no objection to admission of firms which in the opinion of the Governor will provide services which Guamanians cannot undertake and which are essential to the Island's economy, Jennings said.

Jennings said the policy had been drafted last September by Pownall and Admiral Towers, CinCPac.

At a conference here with the Navy Department Officials, Admiral C. W. Nimitz, Chief of Naval Operations, approved the plan. Jennings said he knew of no new outside businesses, but admitted that such enterprises would probably be welcomed by the Navy, as plumbing, electrical appliances, and automobile repairing.

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GUAM

AND ITS PEOPLE

By Laura Thompson

WITH A VILLAGE JOURNAL BY
JESUS C. BARCINAS

footnote # 76
pg. 46

PRINCETON, NEW JERSEY
PRINCETON UNIVERSITY PRESS
1947

32437

the campaign against Japan, with the result that practically the whole northern half of the island was taken over by the military, many of its resources being destroyed in the process of developing a major Pacific base. Thus the main immediate economic problems have been: (1) the development of the naval base; and (2) the rehabilitation of facilities and native economy.

Some idea of the economic revolution taking place on the island may be gained from the realization that from being a remote naval colony with less than 1,000 transient service personnel in 1940, Guam has become a major United States naval base with an estimated 30,000 to 40,000 non-native population in 1946. Although this number will probably decrease somewhat in the near future, nevertheless according to present plans the island will continue to have a large non-native population, both of Navy personnel and of civilian employees of the naval and federal governments.

Under these circumstances the native unemployment problem which was developing before the war has ceased to exist but certain native employment problems have become acute. For example, there is plenty of work for every Guamanian but the types of employment open to him, conditions of work, wage rates, number of hours, distribution of wholesale and retail businesses, wholesale and retail prices, etc., are completely controlled by the government. At present even the housing and to a considerable extent the movements and transportation of over half the native population, namely those who were bombed out of their homes and those whose homes were condemned, are so controlled.

No Guamanian is forced to take a job but since much privately owned land has been condemned, for most natives there is no alternative. On January 1, 1946, 4,791 Guamanians were employed full time by military units and in industry, and 1,382 school children and others were employed in part-time jobs.[27] Once a native takes a job he cannot quit of his own

[27] *Ibid.*

free will and absenteeism is punished by fine or imprisonment.[28] There are three wage schedules for civilians for the same kind of work on the island: one for Guamanians, one for "continental Americans" hired in Guam, and one for "continental Americans" hired in the States. At the time of writing wage schedules for Guam showing all three categories were not available to the public. Some idea of the discrepancy between the rates may be gained from the fact that for the same work a Guamanian auto mechanic (first class) gets 43 cents an hour, while a "continental American citizen" hired on Guam gets $1.42 an hour, and a "continental American citizen" transtransferred to Guam from the States gets $1.72 an hour. Moreover, while the "continental American" employed by the federal government gets time and a half for overtime (over 40 hours a week), sick and annual leave with pay and other social security benefits, besides his transportation to and from the island, the Guamanian works overtime for the regular rate and gets no sick leave or annual leave with pay.[29]

Another employment problem is that whereas the 1,300 Guamanians and American citizens employed by the federal government when the Japanese landed on the island received "back pay" for the period of the Japanese occupation under the terms of the Missing Persons Act of March 7, 1942, the 590 Guamanians employed in the naval government of Guam did not receive "back pay" by authority of an opinion of the Judge Advocate General of the Navy on the grounds that they were not in the employ of the United States. This ruling naturally has caused considerable discontent among the naval government employees who received no compensation. According to one commentator:

> This ruling of the Judge Advocate General was widely interpreted on Guam as indicative of a lack of interest on the part of the Navy in the welfare of Guam and the Guamanians. Had the Navy followed this decision by a prompt request for remedial legislation much of this

[28] Military Government General Order, no. 14-44, Dec. 21, 1944.

[29] James, Roy E., "Military Government: Guam," *Far Eastern Survey*, Vol. 15, no. 18, 1946, p. 275.

REPORT TO

UNITED NATIONS

on

GUAM, AMERICAN SAMOA

AND OTHER ISLAND POSSESSIONS ADMINISTERED BY THE NAVY DEPARTMENT

(OPNAV-P22-100)

footnote # 77
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JULY 1946

MICRONESIAN AREA RESEARCH CENTER
University of Guam
This material is for reference only.

Prepared By:

Assistant Chief of Naval Operations (Island Government)

III. SOCIAL CONDITIONS

Civil Rights - The civil rights of the inhabitants as to freedom of speech, press, religion, assembly and others are not infringed. Limitations which were necessarily placed upon individual liberty during the war by certain of the Proclamations of the Military Governor, were of course, ended when the Naval Civil Government was restored on May 30, 1946. Most limitations had been removed earlier. The inhabitants are treated in all respects on a basis of equality with United States citizens, except for the matter of wage scales, where a differentiation exists based on the relative standards of living. By local law, it is not possible for any landowner to alienate land to a non-Guamanian without approval of the Governor. This is part of the United States policy of "Guam for the Guamanians" which is intended to avoid exploitation of the inhabitants by outsiders.

Health and Sanitation - No reliable account of the health of the natives of Guam is available prior to its occupation by United States forces at the turn of the 20th century. The population at that time was 9630 natives living under deplorable sanitary conditions. There were no sewers. The wells were polluted. Sewage contaminated river water used for washing clothes and bathing resulted in widespread skin infections. Only one doctor was present, and he without medicines, responsible for the health of the natives. The United States brought to Guam a reforming zeal in connection with sanitation and health hazards of the natives, resulting in eradication of some diseases and curtailment of others.

The high native intelligence of the Guamanian was reflected in the enthusiasm and appreciation with which these reforms were accepted and progress maintained. Early in 1899 the first free dispensaries were established by the Navy at Agana and Port Luis d'Apra. In this year 1141 patients were treated (better than 10% of the population) for diseases listed as typhoid fever, intestinal diseases, syphilis, leprosy and miscellaneous.

A hospital for lepers was constructed in 1899 but it was sometime before all lepers on the Island were rounded up, isolated and cared for in this hospital. By 1907 most of the lepers (85) were segregated in the hospital at Tumon and $16,000 granted from the United States was voted for their care. By 1913 the number of cases had dwindled to 22, all of whom were sent to the Culion Leper Colony in the Philippines, a policy which has been continually adhered to from that date.

The experiments, initiated by the doctors in those days, in the treatment of tropical diseases led to treatments which effected remarkable and widespread cures. The natives on the strength of these results constructed hospitals for their sick. The largest of these is a hospital known as the Susana Hospital. The Susana Hospital was founded in 1905 by subscription from private individuals, the largest of which was $10,000 from one Mrs. Russell Sage. The entire subscription is known as the Susana Hospital Association Fund. In 1909 the hospital buildings were destroyed by earthquake. Following this, the Navy Department allocated $6,000 from the Naval Hospital Fund for the construction of a hospital to which women and children should be admitted, known as the Naval Hospital, Guam. The Susana Hospital Association, however, continued to care for women and children in a building erected on its own land and from its own funds. In 1922 an eight-room annex to the Susana Hospital was built from the Association Funds. The management of the Susana Hospital was vested in a board of directors of which the Governor of Guam was ex-officio chairman. The Health Officer of Guam acted as the executive of the institution. The hospital therefore occupied a semi-official position in the affairs of Guam.

In the assault of Guam by United States forces in 1944, the hospital was again destroyed by the bombardment incident to military operations against the Japanese. With the cessation of active operations, the civilian hospital was moved to the site of one of the Fleet Hospitals erected for the care of wounded

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REPORT TO

UNITED NATIONS

on

GUAM, AMERICAN SAMOA

AND OTHER ISLAND POSSESSIONS ADMINISTERED BY THE NAVY DEPARTMENT

(OPNAV-P22-100)

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pg 46

JULY 1946

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Prepared By:

Assistant Chief of Naval Operations (Island Government)

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A P P E N D I X

to

REGULAR SESSION

GUAM CONGRESS

5 JULY 1947

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CHAIRMAN PRESIDING: Any more remarks?

Mr. Frank D. Perez: I move that a Resolution be drafted by the Congress in Joint Session to the effect that Guamanian claims over and above $5,000.00 be submitted to the Governor of Guam for his favorable consideration and necessary action in order that our people may be paid the full amount of $5,000.00 (other than personal claims) and that whatever balance was left could be paid at a later date.

Mr. Francisco B. Leon Guerrero: I second the motion.

CHAIRMAN PRESIDING: It has been moved and seconded that a Resolution be drafted by the Congress in Joint Session to have claims over and above $5,000.00 be paid on Guam, etc., all those in favor raise the right hand.

The motion was unanimously carried.

Mr. Francisco B. Leon Guerrero: I would like to go on record in asking Congress to support the proposal to so instruct or interpret a statement as to include the deal between different people -- between a landowner or owners and the person or persons interested in purchasing real property. There must be no obstruction against the culmination of whatever these two have agreed upon. The value of any commodity should depend upon the original owner's price and the intention and willingness of the purchaser of that commodity.

It is not for the protection of local economy that other people may interfere in the negotiations between the two parties concerned. At present, that economy is absolutely at variance with the pre-war economy. Prices of land should never be based on pre-war standards or conditions. All commodities cost more now and if we are to practice what is virtually "OPA" prices for what we sell without a corresponding control on prices of what we buy, there can be no way of maintaining a true economic balance. There have been cases of land purchases which are not approved because of allegedly exhorbitant prices agreed upon.

There have been cases of leases wherein the prospective tenant wanted to pay even higher figures than what was agreed upon, but the agreed figures were not approved and they had to take less and it is just things like this that create a black market condition.

In view of these considerations, I move that the committee will take this matter before the Governor so as to be included in the agenda of the Governor, so as to get permission for private negotiations between private individuals without any hindrance.

Mr. Frank D. Perez: I second the motion.

CHAIRMAN PRESIDING: A motion was made and seconded — all those in favor raise the right hand.

The motion was carried by the majority.

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P U B L I C H E A R I N G S

CONDUCTED BEFORE A SUB-COMMITTEE OF
THE PUBLIC LANDS COMMITTEE
HOUSE OF REPRESENTATIVES

U N I T E D S T A T E S C O N G R E S S

NOVEMBER 21, 22, 23, 1949

AT

A G A N A, G U A M
MARIANAS ISLANDS

IN

THE HALL OF CONGRESS

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to that effect.

CHAIRMAN MILES May we hear from the next witness?

A. B. WON PAT The next person who will speak before you, Honorable gentlemen, will be Honorable Frank Perez, Assemblyman from Barrigada.

FRANK D. PEREZ Honorable Chairman, members of the National Committee, Governor, ladies and gentlemen. The Speaker of the House of Assembly just gave my name and I need not introduce myself.

With reference to the Redden Bill, HR 4499, I am pretty familiar with the contents of said Bill. It is understood, regardless of the source, that there is no bill under the moon which can be perfect in its entirety. In its present form, I wholeheartedly support this Bill one hundred percent and my wish would be for the Congress of the United States to give it a favorable and a speedy passage on this Bill. There is no need to elaborate on it for we all want action in order that the status of the people of Guam may be determined once and for all by the Congress of the United States in accordance with the Treaty of Versailles, of 1898.

The topic now that I will speak on will be on the land question. It is realized by everyone, the authorities as well as the people at large, that it is a problem that cannot be tackled over-night, or weeks, months and maybe years. We all realize the problems confronting the land situation on the Island, but at the same time, we feel that the war is over and that a final settlement of the land question on the Island is ripe. A question may be propounded by you Honorable gentlemen, upon the Guamanian people for not having any of the farms developed on the Island of Guam. The answer I can give you. It is a known fact that about half or more of the area of the most arable land on the Island of Guam, suitable for agriculture and the raising of livestock, is in the hands of the military which is essential for the establishment of such installations to finally defeat the common enemy. The Guamanian people are aware of that and are very cooperative in giving up their lands and giving up their lives to defeat that common enemy. The time has come for the responsible agency to draw the line, that this area be permanently acquired for defense purposes and that other areas that are not needed, be returned to the Guamanians for their farming us and otherwise.

As far back as 1945, the Guamanian farmers who have had large stocks --

chickens, hogs, cattle -- have requested time and ~~g~~ again the responsible officials of the government for government land in exchange for their land being used by the military. I will ~~xit~~ site a case which is a personal case and I am pretty familiar with that case. In 1945, or the early part of 1946, I submitted a letter to the Government of Guam requesting specific government land not in use either by the military or by any Guamanian or Guamanians, in exchange or for purchase, with my land - one of the pieces of my land - now occupied by the government, which is the hospital area. I have approximately 160 acres of land in that particular area wherein I raised better than 3,000 layers pre-war, producing eggs, supplying the local people, cold storage, Pan American, and even shipped eggs to Honolulu. The stock I got was flown out by air from J. A. Hanson at Corvallis, Oregon. After not hearing any reply from the government for the exchange of that land, I sent in a tracer to find out whether any action was to be taken with reference to that. It is my firm belief that no civilized community or country can prosper in this world without balanced economy and that economy can only be balanced by agriculture. There has been no action taken on the letter up to this time. However, being a farmer and a livestock ~~xxxxx~~ breeder and a commercial raiser, I continued with that work and up to the present time am still raising hogs and chickens on that particular area at the hospital. I told the Commanding Officer of the Hospital that I am only too cooperative - ~~xxxx~~ after moving me two or three different times back of the area - pulling up my fences - and establi myself along the cliff - to give up my land and give up my stock provided t give me a place to put my stock and raise it there so I can make a living. is only right and proper that no person should raise any livestock in the vicinity of any hospital, regardless, in any part of the world, but it is a problem that wasn't solved and I am forced to do it because it is impossible for me to raise the pigs elsewhere. I pointed out the land which, up to this time, is not in use, but no action has been taken.

You could have seen, gentlemen, by this time, flourishing livestock farms on the Island all over, had any action been taken to protect the farmers and deed them the land or assign them the land until such time as everything is set. The only thing we can get will be a temporary permit to install facilities, that is, buildings, fencing, etc. to care for your stock, with the condition that in the event that piece of land is finally condemned for govern-

ment use, that you will not be compensated for all improvements made on the land and, gentlemen, I do not blame the Guam farmers for not having a big chicken farm, a big hog farm and big fields. It is only natural for any individual who has the ~~xxxxxx~~ heart, the sole interest in the soil, to divert temporarily or otherwise, from that profession to find another profession in order that he may live with his family. There are many of us farmers who have forced ourselves to accept positions, work for somebody, for that reason only.

I can cite another person who was a big poultry man - a hog man - a cattle man - by the name of Manuel Castro, who has a big area in the Northwest Field. He tried hard to get government land to use but to no avail. He is forced to go into Guamanian privately-owned land and ask the owner, "Please, would you allow me to rent your land until such time as I get my land back or that I may get government land back for the exchange of my property instead, to raise my eleven children?" The man is sickly. No consideration is given at all to that poor person. He went up to Yigo and finally got a piece of land whereon he started from ~~xxxxxxxx~~ scratch. He is now in a better position having stock - chickens, hogs, etc. and that, gentlemen, is one reason when you ask the question, "Why?" It is because of that reason. No individual with sound mind - anything between his ears - will go out and make an investment of ~~$~~ three to five or ten thousand dollars with no security upon the condemnation of such land that he will be reimbursed for any improvements made thereon. Thank you.

CHAIRMAN MILES Just a minute. Did you say the hospital area is on your property?

FRANK D. PEREZ About 160 acres of that land where the hospital is, is my property.

CHAIRMAN MILES Do they pay you rent?

FRANK D. PEREZ Rend paid - since 30 June 1946 - $200, that was the last payment made.

REPRESENTATIVE LEMKE I would like to ask a few questions. This land question has been a burning one in Congress too and we were assured by in 1947 that it would be promptly adjusted. What has been done since 1947?

FRANK D. PEREZ Nothing has been done since 1947. The situation is worse. I don't blame any private contractor for running his own pipe lines for water

GUAM

AND ITS PEOPLE

By Laura Thompson

WITH A VILLAGE JOURNAL BY
JESUS C. BARCINAS

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PRINCETON, NEW JERSEY
PRINCETON UNIVERSITY PRESS
1947

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the campaign against Japan, with the result that practically the whole northern half of the island was taken over by the military, many of its resources being destroyed in the process of developing a major Pacific base. Thus the main immediate economic problems have been: (1) the development of the naval base; and (2) the rehabilitation of facilities and native economy.

Some idea of the economic revolution taking place on the island may be gained from the realization that from being a remote naval colony with less than 1,000 transient service personnel in 1940, Guam has become a major United States naval base with an estimated 30,000 to 40,000 non-native population in 1946. Although this number will probably decrease somewhat in the near future, nevertheless according to present plans the island will continue to have a large non-native population, both of Navy personnel and of civilian employees of the naval and federal governments.

Under these circumstances the native unemployment problem which was developing before the war has ceased to exist but certain native employment problems have become acute. For example, there is plenty of work for every Guamanian but the types of employment open to him, conditions of work, wage rates, number of hours, distribution of wholesale and retail businesses, wholesale and retail prices, etc., are completely controlled by the government. At present even the housing and to a considerable extent the movements and transportation of over half the native population, namely those who were bombed out of their homes and those whose homes were condemned, are so controlled.

No Guamanian is forced to take a job but since much privately owned land has been condemned, for most natives there is no alternative. On January 1, 1946, 4,791 Guamanians were employed full time by military units and in industry, and 1,382 school children and others were employed in part-time jobs.[27] Once a native takes a job he cannot quit of his own

[27] *Ibid.*

U. S. NAVY

Report on

GUAM

1899–1950

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DEPARTMENT OF THE NAVY

WASHINGTON 25, D. C.

No masons, no carpenters, no physicians and no trained school teachers, the few schools medieval in their scanty, religion-dominated curricula;

A population so abused and oppressed over the centuries, so disease-infested, so isolated from the world, so haunted by superstition, that it was a listless, ambitionless, unorganized mass of humanity stirred only by the hope for individual survival.

That was what was handed to the Navy Department 50 years ago to rehabilitate, to organize, to administer, and to make productive. It was a task new to the Navy; it would have been as new to any Department in the Government. The assignment was handed to the Navy because Guam was accepted to be, primarily, of strategic value to the nascent Pacific empire, keystone of the maritime arch stretching from the newly acquired Territory of Hawaii to the just-purchased Philippine domain.

When the time came for Guam to fulfill its strategic function, 42 years later, its military worth had been almost completely devalued. However, the subject of this report is not Guam as a military bastion but rather the achievements of the Navy Department in its secondary responsibility; the physical and social restoration and recreation of Guam. The challenge was not only to better the material circumstances of the Guamanians but to achieve a transformation in the bodies and minds of the people. The responsibility to the Guamanians was to guide them from disease-ridden medieval peonage to the dignity and demeanor of a healthy, self-reliant citizenry in the modern world.

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came at the general election of 1933. Only about half the 1931 electorate bothered to register. The apathy was so reflected in the candidates that 12 congressional seats were not contested and had to be filled by appointment.

By intensifying its campaign of education and enlisting the help of native leaders, the naval government had better success in obtaining more representative votes at the 1935 and 1937 elections. The latterly elected Congress returned a petition to have United States citizenship conferred on native-born Guamanians, and sent two of its members to Washington by public subscription to present the demand. It can be noted at this point that when the United States Congress was considering the Organic Act for Guam in 1950, two spokesmen for the Guam Congress were sent to Washington by the Governor at Federal expense.

From December, 1941, until March 1946, there was, of course, no Guam Congress. For the 20 months between the recapture of the island from the Japanese and the reestablishment of some system of rehabilitation for the war-shattered communities, a naval military government unit administered Guam. This unit, like its counterparts in the Carolines and the Marshalls and other occupied Pacific areas, was composed of Naval Reserve officers who in civil life had been police officials, city and county managers, municipal experts in sanitation and housing, magistrates, engineers—in fact, an NMG unit was a prepared package of civilian governmental experts in naval uniform.

In March 1946, although desultory shooting was still going on in the northern areas of Guam, sufficient order had been restored for the naval government to convene "all members of the Guam Congress who were in office at the time of the Japanese invasion . . . for the purpose of obtaining recommendations . . . on two questions: Whether the Guam Congress should be reestablished and . . . the matter of popular representation . . . in view of the present population displacement . . ."

The Guam Congress, as elected in 1941, itself decided (and the naval military government acquiesced) that it be continued in office until an election could be held. By popular referendum a general election for the election of a new Congress was set for July 13, 1946. Interest in the election was stimulated by Governor (Rear Admiral) Pownall's declared intention of recommending to Washington that the Congress be given a more authoritative voice in the management of the island's internal affairs. In the subsequent poll, in which 9,650 votes were cast, the first woman to run for office was elected by a substantial plurality—Miss Rosa T. Aguigui, Assemblyman (House of Representatives) for the Merizo District.

In accord with Admiral Pownall's promise to the Guam electorate, Secretary of the Navy John L. Sullivan utilized the authority granted in President McKinley's proclamation of 1898 to extend the home-rule powers of the Guamanians on August 7, 1947, to override decisions of the Naval Governor on appeal to the Secretary in Washington. The Secretary's proclamation recognized the "desire for American citizenship and an organic act for . . . self-government." It provided that thereafter there would be no additions or amendments to the several civil and criminal codes that were not initiated by the Congress or subjected to its approval by the Naval Governor, with failure of approval by either agent to be referred to the Secretary of the Navy for final disposition.

Further than that on the road to insular self-government the Navy Department could not lead the people of Guam without congressional permission.

In a little less than 49 years the naval administration of Guam had guided a people from illiteracy, peonage, and apathy to where, in conservative estimate and appraisal, it had been educated to accept and intelligently to discharge the responsibilities (as well as the privileges) of citizenship.

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California Law Review

VOL. 48 MARCH 1960 No. 1

Peacetime Martial Law in Guam

W. Scott Barrett and Walter S. Ferenz***

ACCORDING to the United States Navy, Guam is under martial law and has been for many years. In February 1941 President Roosevelt issued Executive Order No. 8683[1] establishing the Guam Island Naval Defensive Sea Area and the Guam Island Naval Airspace Reservation. Administrative authority was vested in the United States Navy. To assist the Navy in enforcing the security clearance a number of regulations have been

* Member, California and Guam Bars.

** Member, California and Guam Bars.

[1] 6 Fed. Reg. 1015 (1941). The Executive order reads:

By virtue of the authority vested in me by the provisions of section 44 of the Criminal Code, as amended (U.S.C., title 18, sec. 96), and section 4 of the Air Commerce Act approved May 20, 1926 (44 Stat. 570, U.S.C., title 49, sec. 174) the territorial waters between the extreme highwater marks and the three-mile marine boundaries surrounding the islands of Rose, Tutuila, and Guam, in the Pacific Ocean, are hereby established and reserved as naval defensive sea areas for purposes of national defense, such areas to be known, respectively, as "Rose Island Naval Defensive Sea Area", "Tutuila Island Naval Defensive Sea Area", and "Guam Island Naval Defensive Sea Area"; and the airspaces over the said territorial waters and islands are hereby set apart and reserved as naval airspace reservations for purposes of national defense, such reservations to be known, respectively, as "Rose Island Naval Airspace Reservation", "Tutuila Island Naval Airspace Reservation", and "Guam Island Naval Airspace Reservation."

At no time shall any person, other than persons on public vessels of the United States, enter any of the naval defensive sea areas herein set apart and reserved, nor shall any vessel or other craft, other than public vessels of the United States, be navigated into any of said areas, unless authorized by the Secretary of the Navy.

At no time shall any aircraft, other than public aircraft of the United States, be navigated into any of the naval airspace reservations herein set apart and reserved, unless authorized by the Secretary of the Navy.

The provisions of the preceding paragraphs shall be enforced by the Secretary of the Navy, with the cooperation of the local law enforcement officers of the United States; and the Secretary of the Navy is hereby authorized to prescribe such regulations as may be necessary to carry out such provisions.

Any person violating any of the provisions of this order relating to the above-named naval defensive sea areas shall be subject to the penalties provided by section 44 of the Criminal Code as amended (U.S.C., title 18, sec. 96), and any person violating any of the provisions of this order relating to the above-named naval airspace reservations shall be subject to the penalties prescribed by the Civil Aeronautics Act of 1938 (52 Stat. 973).

civil rights.[13] The indications are that Executive Order No. 8683 was then dead and forgotten. However, the Navy resurrected the order on December 4, 1950, thus enabling it to retain its long-enjoyed power over the civilian community.[14]

B. The "Security Clearance" Program After the Organic Act

Although the Navy officially stated that it was strongly in favor of the passage of the Organic Act,[15] the Chief of Naval Operations reinstituted the security clearance entry program for Guam less than 3 months after the act became effective.[16]

Since that time the regulations have been vigorously enforced by the Navy. All persons desiring to come to Guam[17] who are not within certain excluded categories[18] are required to obtain a security clearance from the Secretary of the Navy or his subordinates before they are permitted to enter. A person coming to Guam for the first time files the application directly or indirectly with the Chief of Naval Operations. In the case of a citizen of the United States who is a resident of Guam and who desires to leave Guam temporarily with intent to return, an application for a re-entry

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clearance requirement has seriously hampered Guam's economic development, particularly as to tourist business. There are no public hotels on Guam though thousands of tourists transit the island annually. Navy red tape discourages stopovers.

[13] "All American tradition and history dictates that government shall rest upon law, rather than upon executive decree. By international treaty also, the Congress has a direct responsibility for the government of Guam. The second paragraph of Article IX of the treaty ceding Guam to the United States provides: 'The civil rights and political status of the native inhabitants of the Territories hereby ceded to the United States shall be determined by the Congress (30 Stat. 1759).' In addition to the obligation under the Treaty of Paris, the United States has additional treaty obligations with respect to Guam as a non-self-governing Territory. Under Chapter XI of the Charter of the United Nations, ratified by the Senate June 26, 1945 (59 Stat. at p. 1048), we undertook, with respect to the peoples of such Territories, to insure political advancement, to develop self-government, and taking 'due account of the political aspirations of the peoples ...' to assist them in the progressive development of their free political institutions ...." S. REP. No. 2109, 81st Cong., 2d Sess. 2 (1950).

[14] See note 16 *infra*. What was perhaps the prime initiating cause of the resurrection of the order, and the reinstitution of the entry-clearance program, *i.e.*, the Korean conflict, of course no longer justifies the Navy's conduct, even assuming it justified it then. See text at note 22 *infra*. See also text at note 56 *infra*.

[15] S. REP. No. 2109, *op. cit. supra* note 12, at 9.

[16] Entry clearance requirements were reinstituted by Letter [Directive] From Chief of Naval Operations, serial no. 5235P21, Dec. 4, 1950. This directive was superseded by subsequent regulations.

[17] Prior to the passage of the Organic Act, Guam law provided: "Residents of Guam shall not be permitted to leave Guam without a passport issued by the Governor or a certificate of identification issued by the Department of Records and Accounts." CIVIL REGULATIONS ch. 21, para. 1, at 45. After passage of the Organic Act the Department of Immigration required United States citizens coming to Guam to have a passport until Nov. 7, 1958.

[18] 32 C.F.R. § 761.10 (Supp. 1959). See text at note 65 *infra*.

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GUAM, U. S. A.

Birth of a Territory

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By

26875

RUSSELL L. STEVENS

laws of the United States apply to Guam, yet no Treasury officials are on hand to enforce them. The 1917 Immigration Act applied to Guam until it was recently supplanted by the McCarran Act, yet no federal immigration official was present in Guam to enforce the federal law until June of 1952. Many of the shipping laws of the United States by their terms apply to Guam, yet the Coast Guard did not maintain a unit in Guam until 1953. The Federal Bureau of Investigation maintains no office in Guam, although there is a considerable amount of work which requires its attention. Some of the Bureau's work is performed in Guam by the Office of Naval Intelligence. Gradual improvement is being made, and federal agencies are establishing themselves in Guam, slowly but steadily. The Plant and Animal Quarantine Service, Civil Aeronautics Administration, Coast and Geodetic Survey, Selective Service and Postal Service have local offices. An immigration office is now in full swing. These agencies are assisted by a United States District Attorney who has his office in Guam. This attorney prosecutes violations within his jurisdiction, and in such cases the District Court of Guam acts in the exercise of its federal jurisdiction.

Probably no law enforcement measure in Guam has created as much confusion and hardship as that commonly referred to as the "Security Clearance." (Now called "Entry Clearance"). The confusion is understandable. The hardship is real.

On February 14, 1941, President Roosevelt signed and promulgated Presidential Executive Order No. 8683 which, among other things, stated:

> *"- - - - the territorial waters between the extreme high water marks and the three mile marine boundaries surrounding the islands of Rose, Tutuila and Guam in the Pacific Ocean, are hereby established and reserved as naval defensive sea areas for purposes of National defense, - - - and the airspaces over the said territorial waters and islands are hereby set apart and reserved as naval airspace reservations for the purpose of national defense - - -"*

The executive order further provided that no person other than persons on public vessels of the United States might enter such areas unless authorized by the Secretary of the Navy. The Secretary was authorized to prescribe regulations necessary to carry out the executive order.

1941 was a year of war. The United States was not in active combat at the time of promulgation of the executive order, but our entry into the conflict was imminent. Guam was, at that time, under complete control of the Navy and was in fact little more than a naval base.

After the war was over, the Navy continued to enforce the provisions of the executive order. Such enforcement was made through a series of regulations and was often called the "Security Program." Persons desiring to enter Guam first had to obtain a Navy "Security Clearance."

The Organic Act, enacted in 1950, completely altered the political and governmental status of Guam and its inhabitants. The island was established as a territory of the United States and its inhabitants were granted U.S. citizenship. The local government was formed in accordance with the directions of Congress set forth in the Organic Act. The Bill of Rights of the people is patterned after that provided in our National and state constitutions. Section 33 of the Organic Act authorizes military reservations to be restricted for security purposes in the customary manner. It states:

> *"Nothing contained herein shall be construed as limiting the authority of the President to designate parts of Guam as naval or military reservations, nor to restrict his authority to treat Guam as a closed port with respect to the vessels and aircraft of foreign nations."*

When the civil government assumed its functions it was generally thought that the security program would be discontinued. This was based upon the assumption that implicit in the Organic Act is the right of the people to move freely to and from the territory of Guam, just as that right has been accepted as a matter of fact in all other territories—Hawaii, Alaska, Puerto Rico and the Virgin Islands. Necessary restrictions would be imposed, it was thought, upon entry into reservations established in accordance with Section 33 quoted above.

However, the security program was not discontinued; in fact, it was intensified. This was done principally for two reasons. First, Guam occupies a strategic position in a troubled part of the world. It is our nearest base to the Orient which is on our own soil; its safety must be guaranteed. Second, thousands of alien contract laborers

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EXECUTIVE ORDER 8682

ESTABLISHING NAVAL DEFENSIVE SEA AREAS AROUND AND NAVAL AIRSPACE RESERVATIONS OVER THE ISLANDS OF PALMYRA, JOHNSTON, MIDWAY, WAKE, AND KINGMAN REEF

PACIFIC OCEAN

By virtue of the authority vested in me by the provisions of section 44 of the Criminal Code, as amended (U.S.C., title 18, sec. 96), and section 4 of the Air Commerce Act approved May 20, 1926 (44 Stat. 570, U.S.C., title 49, sec. 174), the territorial waters between the extreme high-water marks in the three-mile marine boundaries surrounding the islands of Palmyra, Johnston, Midway, Wake, and Kingman Reef, in the Pacific Ocean, are hereby established and reserved as naval defensive sea areas for purposes of national defense, such areas to be known, respectively, as "Palmyra Island Naval Defensive Sea Area", "Johnston Island Naval Defensive Sea Area", "Midway Island Naval Defensive Sea Area", "Wake Island Naval Defensive Sea Area", and "Kingman Reef Naval Defensive Sea Area"; and the airspaces over the said territorial waters and islands are hereby set apart and reserved as naval airspace reservations for purposes of national defense, such reservations to be known, respectively, as "Palmyra Island Naval Airspace Reservation", "Johnston Island Naval Airspace Reservation", "Midway Island Naval Airspace Reservation", "Wake Island Naval Airspace Reservation", and "Kingman Reef Naval Airspace Reservation".

At no time shall any person, other than persons on public vessels of the United States, enter any of the naval defensive sea areas herein set apart and reserved, nor shall any vessel or other craft, other than public vessels of the United States, be navigated into any of said areas, unless authorized by the Secretary of the Navy.

At no time shall any aircraft, other than public aircraft of the United States, be navigated into any of the naval airspace reservations herein set apart and reserved, unless authorized by the Secretary of the Navy.

The provisions of the preceding paragraphs shall be enforced by the Secretary of the Navy, with the cooperation of the local law enforcement officers of the United States and of the Territory of Hawaii; and the Secretary of the Navy is hereby authorized to prescribe such regulations as may be necessary to carry out such provisions.

Any person violating any of the provisions of this order relating to the above-named naval defensive sea areas shall be subject to the penalties provided by section 44 of the Criminal Code as amended (U.S.C., title 18, sec. 96), and any person violating any of the provisions of this order relating to the above-named naval airspace reservations shall be subject to the penalties prescribed by the Civil Aeronautics Act of 1938 (52 Stat. 973).

This order shall take effect ninety days after date hereof.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
February 14, 1941.

EXECUTIVE ORDER 8683

ESTABLISHING NAVAL DEFENSIVE SEA AREAS AROUND AND NAVAL AIRSPACE RESERVATIONS OVER THE ISLANDS OF ROSE, TUTUILA, AND GUAM

PACIFIC OCEAN

By virtue of the authority vested in me by the provisions of section 44 of the Criminal Code, as amended (U.S.C., title 18, sec. 96), and section 4 of the Air Commerce Act approved May 20, 1926 (44 Stat. 570, U.S.C., title 49, sec. 174), the territorial waters between the extreme high-water marks in the three-mile marine boundaries surrounding the islands of Rose, Tutuila, and Guam, in the Pacific Ocean, are hereby established and reserved as naval defensive sea areas for purposes of national defense, such areas to be known, respectively, as "Rose Island Naval Defensive Sea Area", "Tutuila Island Naval Defensive Sea Area", and "Guam Island Naval Defensive Sea Area"; and the airspaces over the said territorial waters and islands are hereby set apart and reserved as naval airspace reservations for purposes of national defense, such reservations to be known, respectively, as "Rose Island Naval Airspace Reservation", "Tutuila Island Naval

Airspace Reservation", and "Guam Island Naval Airspace Reservation".

At no time shall any person, other than persons on public vessels of the United States, enter any of the naval defensive sea areas herein set apart and reserved, nor shall any vessel or other craft, other than public vessels of the United States, be navigated into any of said areas, unless authorized by the Secretary of the Navy.

At no time shall any aircraft, other than public aircraft of the United States, be navigated into any of the naval airspace reservations herein set apart and reserved, unless authorized by the Secretary of the Navy.

The provisions of the preceding paragraphs shall be enforced by the Secretary of the Navy, with the cooperation of the local law enforcement officers of the United States; and the Secretary of the Navy is hereby authorized to prescribe such regulations as may be necessary to carry out such provisions.

Any person violating any of the provisions of this order relating to the above-named naval defensive sea areas shall be subject to the penalties provided by section 44 of the Criminal Code as amended (U.S.C., title 18, sec. 96), and any person violating any of the provisions of this order relating to the above-named naval airspace reservations shall be subject to the penalties prescribed by the Civil Aeronautics Act of 1938 (52 Stat. 973).

This order shall take effect ninety days after date hereof.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
February 14, 1941.

EXECUTIVE ORDER 8684

ESTABLISHING CULEBRA ISLAND NAVAL DEFENSIVE SEA AREA AND CULEBRA ISLAND NAVAL AIRSPACE RESERVATION

PUERTO RICO

By virtue of the authority vested in me by the provisions of section 44 of the Criminal Code, as amended (U.S.C., title 18, sec. 96), and section 4 of the Air Commerce Act approved May 20, 1926 (44 Stat. 570, U.S.C., title 49, sec. 174), the territorial waters between the extreme high-water mark and the three-mile marine boundary surrounding the island of Culebra, Puerto Rico, are hereby established and reserved as a naval defensive sea area for purposes of national defense, such area to be known as "Culebra Island Naval Defensive Sea Area"; and the airspace over the said territorial waters and island is hereby set apart and reserved as a naval airspace reservation for purposes of national defense, such reservation to be known as "Culebra Island Naval Airspace Reservation".

At no time shall any person, other than persons on public vessels of the United States, enter Culebra Island Naval Defensive Sea Area, nor shall any vessel or other craft, other than public vessels of the United States, be navigated into said area, unless authorized by the Secretary of the Navy.

At no time shall any aircraft, other than public aircraft of the United States, be navigated into Culebra Island Naval Airspace Reservation, unless authorized by the Secretary of the Navy.

The provisions of the preceding paragraphs shall be enforced by the Secretary of the Navy, with the cooperation of the local law enforcement officers of the United States and of the Government of Puerto Rico, and the Secretary of the Navy is hereby authorized to prescribe such regulations as may be necessary to carry out such provisions.

Any person violating any of the provisions of this order relating to Culebra Island Naval Defensive Sea Area shall be subject to the penalties provided by section 44 of the Criminal Code as amended (U.S.C., title 18, sec. 96), and any person violating any of the provisions of this order relating to Culebra Island Naval Airspace Reservation shall be subject to the penalties prescribed by the Civil Aeronautics Act of 1938 (52 Stat. 973).

This order shall take effect ninety days after date hereof.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
February 14, 1941.

INFORMATION ON GUAM
TRANSMITTED BY THE UNITED STATES
TO THE SECRETARY-GENERAL OF THE
UNITED NATIONS PURSUANT TO
ARTICLE 73(e) OF THE CHARTER

Prepared by the Navy Department
Washington, D.C. June 1947
(OpNav-P22-100A)

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MICRONESIAN AREA RESEARCH CENTER
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of the Island Government.

Financial - The financial needs of Guam are adequately provided for by the Bank of Guam which reported total resources of $10,172,115.55 as of the close of 1946. Total deposits amount to $9,289,017.00 as of December 23, 1946 divided into 857 checking accounts aggregating $5,426,561.00 and 8,301 savings accounts aggregating $3,862,456.00. The Bank of Guam is in a sound and liquid position with approximately 70 percent of assets represented by U.S. Government obligations, primarily of short maturity.

Governmental Receipts and Expenditures - As a result of military occupation by the Japanese in 1942 and reoccupation by the United States in 1944, the economy of Guam as well as a large part of its physical facilities were almost completely destroyed. The task of U.S. Naval Military Government prior to May 30, 1946, and Naval Civil Government subsequent to that date has therefore been primarily one of reconstruction. Governmental revenues collected on the island have been nominal - amounting to $68,099.75 during the period of Military Government and $178,261.87 from May 31 through December 31, 1946. The final accounting of the governmental receipts and expenditures on Guam for the current fiscal year is incomplete as of the date of preparation of this report. The bulk of the expenditures, however, has involved maintenance and improvement of existing temporary housing and facilities.

Island Income - Figures are not available which will serve to indicate the total of Guamanian civilian income from private sources. However, the Island Government and other governmental installations provide the basis of civilian income. As of December 31, 1946, 3,104 or 25 percent of the Guamanian population over the age of 16 years were employed by the U.S. Government installations. Payrolls for the six months period ended December 31, 1946 aggregated $1,117,026.40.

Land Tenure - Transfer of real property on Guam is carefully controlled by the Governor under Guamanian laws. Transfer to any person not a citizen of the United States or Guam is prohibited unless such a person has declared intention to become a citizen in the manner provided by law. Lease of real property to such persons for any period exceeding five years is also prohibited.

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Peacetime Martial Law in Guam

W. Scott Barrett and Walter S. Ferenz***

ACCORDING to the United States Navy, Guam is under martial law and has been for many years. In February 1941 President Roosevelt issued Executive Order No. 8683[1] establishing the Guam Island Naval Defensive Sea Area and the Guam Island Naval Airspace Reservation. Administrative authority was vested in the United States Navy. To assist the Navy in enforcing the security clearance a number of regulations have been

* Member, California and Guam Bars.
** Member, California and Guam Bars.

[1] 6 Fed. Reg. 1015 (1941). The Executive order reads:

By virtue of the authority vested in me by the provisions of section 44 of the Criminal Code, as amended (U.S.C., title 18, sec. 96), and section 4 of the Air Commerce Act approved May 20, 1926 (44 Stat. 570, U.S.C., title 49, sec. 174) the territorial waters between the extreme highwater marks and the three-mile marine boundaries surrounding the islands of Rose, Tutuila, and Guam, in the Pacific Ocean, are hereby established and reserved as naval defensive sea areas for purposes of national defense, such areas to be known, respectively, as "Rose Island Naval Defensive Sea Area", "Tutuila Island Naval Defensive Sea Area", and "Guam Island Naval Defensive Sea Area"; and the airspaces over the said territorial waters and islands are hereby set apart and reserved as naval airspace reservations for purposes of national defense, such reservations to be known, respectively, as "Rose Island Naval Airspace Reservation", "Tutuila Island Naval Airspace Reservation", and "Guam Island Naval Airspace Reservation."

At no time shall any person, other than persons on public vessels of the United States, enter any of the naval defensive sea areas herein set apart and reserved, nor shall any vessel or other craft, other than public vessels of the United States, be navigated into any of said areas, unless authorized by the Secretary of the Navy.

At no time shall any aircraft, other than public aircraft of the United States, be navigated into any of the naval airspace reservations herein set apart and reserved, unless authorized by the Secretary of the Navy.

The provisions of the preceding paragraphs shall be enforced by the Secretary of the Navy, with the cooperation of the local law enforcement officers of the United States; and the Secretary of the Navy is hereby authorized to prescribe such regulations as may be necessary to carry out such provisions.

Any person violating any of the provisions of this order relating to the above-named naval defensive sea areas shall be subject to the penalties provided by section 44 of the Criminal Code as amended (U.S.C., title 18, sec. 96), and any person violating any of the provisions of this order relating to the above-named naval airspace reservations shall be subject to the penalties prescribed by the Civil Aeronautics Act of 1938 (52 Stat. 973).

issued.[2] One section, which is not in the Instruction (naval directive, or regulation) issued to the general public, provides as follows:

> *Compliance with laws and regulations.* All persons, vessels and aircraft entering the Guam Island Naval Defensive Sea Area or the Guam Island Naval Airspace Reservation, *whether or not in violation of Executive Order 8683*, shall be governed by such regulations and restrictions upon their conduct and movements as may be established by the Commander, U.S. Naval Forces, Marianas, whether by general regulation or by special instructions in any case.[3]

The foregoing regulation clearly purports to establish martial law in Guam. Civilians are under martial law whenever an Executive order authorizes a military commander to prescribe rules of action—make laws—governing civilians in military areas set up in domestic territories upon the sole standard of military necessity.[4]

One well might ask how the Navy derived authority from Executive Order No. 8683 to govern the conduct and movement of all persons on the island of Guam regardless of whether or not they had violated the order. If the Navy has that authority, then Guam is under martial law. It is the argument of this Article that the foregoing regulation is illegal, and, further, that all of the regulations issued by the Navy under the ostensible authority of the Executive order are illegal and the power exercised by the Navy in administering the security clearance program is unauthorized and unconstitutional.

I

HISTORY OF THE NAVAL "SECURITY CLEARANCE" PROGRAM IN GUAM

The unincorporated territory of Guam is an insular possession of the United States located in the Pacific Ocean about 5,200 miles southwest of San Francisco and 1,350 miles southeast of Tokyo. Guam is the largest and most southern island of the archipelago known as the Mariana Islands. It is 32 miles in length and varies from 4 to 10 miles in width. Its 206 square miles give it an area nearly 10 times that of Manhattan Island.[4a]

The United States acquired Guam from Spain in 1898. By Presidential Executive order of December 23, 1898, the Secretary of the Navy was designated by the President to administer Guam. Except for Japanese occu-

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[2] For the latest version of these regulations, see 32 C.F.R. §§ 761.1–.24 (Supp. 1959). Some have been printed in pamphlet form as OPNAV Instruction 5500.11B, Nov. 27, 1957. This pamphlet is made available to those requesting information on clearance regulations. No mention is made in the pamphlet of the other applicable regulations.

[3] 32 C.F.R. § 761.21 (Supp. 1959). (Emphasis added.)

[4] Ochikubo v. Bonesteel, 60 F. Supp. 916, 929 (S.D. Cal. 1945).

[4a] See map, App. C. For a general survey of the history of Guam, see STEVENS, GUAM, U.S.A., BIRTH OF A TERRITORY (1953). For a concise review of current social, political and economic conditions in Guam, see 1958 GOV. GUAM ANN. REP.

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By virtue of the authority vested in me by the provisions of section 44 of the Criminal Code, as amended (U.S.C., title 18, sec. 96), and section 4 of the Air Commerce Act approved May 20, 1926 (44 Stat. 570, U.S.C., title 49, sec. 174) the territorial waters between the extreme highwater marks and the three-mile marine boundaries surrounding the islands of Rose, Tutuila, and Guam, in the Pacific Ocean, are hereby established and reserved as naval defensive sea areas for purposes of national defense, such areas to be known, respectively, as "Rose Island Naval Defensive Sea Area", "Tutuila Island Naval Defensive Sea Area", and "Guam Island Naval Defensive Sea Area"; and the airspaces over the said territorial waters and islands are hereby set apart and reserved as naval airspace reservations for purposes of national defense, such reservations to be known, respectively, as "Rose Island Naval Airspace Reservation", "Tutuila Island Naval Airspace Reservation", and "Guam Island Naval Airspace Reservation."

At no time shall any person, other than persons on public vessels of the United States, enter any of the naval defensive sea areas herein set apart and reserved, nor shall any vessel or other craft, other than public vessels of the United States, be navigated into any of said areas, unless authorized by the Secretary of the Navy.

At no time shall any aircraft, other than public aircraft of the United States, be navigated into any of the naval airspace reservations herein set apart and reserved, unless authorized by the Secretary of the Navy.

The provisions of the preceding paragraphs shall be enforced by the Secretary of the Navy, with the cooperation of the local law enforcement officers of the United States; and the Secretary of the Navy is hereby authorized to prescribe such regulations as may be necessary to carry out such provisions.

Any person violating any of the provisions of this order relating to the above-named naval defensive sea areas shall be subject to the penalties provided by section 44 of the Criminal Code as amended (U.S.C., title 18, sec. 96), and any person violating any of the provisions of this order relating to the above-named naval airspace reservations shall be subject to the penalties prescribed by the Civil Aeronautics Act of 1938 (52 Stat. 973).

non-Guamanians from entering the island in order to enter business, unless there were no local people qualified or financially able to supply the particular service or handle the merchandise in question.[8]

This exclusion policy was enforced mainly through the business license provisions of the Government Code of Guam, as it existed at that time, and through regulations and orders issued by the naval governor. As a matter of fact the policy did not completely succeed because a considerable number of employees brought in by contractors eventually went into business for themselves.

In 1947 the Navy was confronted with an additional problem concerning business competition with local residents. Naval officers or personnel who had reached the age of retirement were attempting to return to Guam to enter business. To prevent this the Chief of Naval Operations issued a directive to the naval governor of Guam stating that former Navy officers or personnel who were retiring from active duty were not to be allowed to enter Guam for the purpose of engaging in private enterprise.[9] Since the Navy had complete control of the island and all of the inhabitants, no effort was made to enforce actively the provisions of Executive order No. 8683 or to enact regulations thereunder.

A. Background and Legislative History of the Organic Act

In July 1950 the United States Congress passed the Organic Act of Guam[10] which transferred administration of governmental affairs from the Navy to the Department of the Interior. The act provided a bill of rights, established civilian courts, and in other ways took away control of governmental affairs from the Navy. A District Court of Guam was created and patterned after the federal district courts. The legislature was given authority to create inferior courts and transfer causes from the district court to those inferior courts.[11]

The clear congressional intent of the Organic Act, as revealed by committee hearings and numerous exchanges of correspondence among Senators and others,[12] was to give United States citizens residing in Guam full

[8] Enlisted men were not allowed to engage in business if it "interfere[d] with the customary employment . . . of local civilians . . . ." CIVIL REGULATIONS ch. 2, para. 17, at 4.

[9] None of the specific orders or regulations are available to the writers, but this information is well verified by statements of reputable former naval officers now in business in Guam.

[10] 64 Stat. 384 (1950), as amended, 48 U.S.C. §§ 1421–25 (1958).

[11] Organic Act of Guam § 22, 64 Stat. 389 (1950), as amended, 48 U.S.C. § 1424 (1958).

[12] S. REP. No. 2109, 81st Cong., 2d Sess. (1950). See, *e.g.*, Letter From Harry S. Truman to J. A. Krug, Secretary of the Interior, May 14, 1949, in *id.* at 3; Letter from J. A. Krug to Alben W. Barkley, May 3, 1949, in *id.* at 6–9. The report stated that "given a period of peace, the growth of Guam as a transportation and commercial center for American interests in the Far East seems almost a foregone conclusion. American business enterprise in the area will want, and need, a center in which it can have the full protection of American laws and legal procedure." *Id.* at 4. The business community on Guam is generally agreed that the security

civil rights.[13] The indications are that Executive Order No. 8683 was then dead and forgotten. However, the Navy resurrected the order on December 4, 1950, thus enabling it to retain its long-enjoyed power over the civilian community.[14]

B. The "Security Clearance" Program After the Organic Act

Although the Navy officially stated that it was strongly in favor of the passage of the Organic Act,[15] the Chief of Naval Operations reinstituted the security clearance entry program for Guam less than 3 months after the act became effective.[16]

Since that time the regulations have been vigorously enforced by the Navy. All persons desiring to come to Guam[17] who are not within certain excluded categories[18] are required to obtain a security clearance from the Secretary of the Navy or his subordinates before they are permitted to enter. A person coming to Guam for the first time files the application directly or indirectly with the Chief of Naval Operations. In the case of a citizen of the United States who is a resident of Guam and who desires to leave Guam temporarily with intent to return, an application for a re-entry

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clearance requirement has seriously hampered Guam's economic development, particularly as to tourist business. There are no public hotels on Guam though thousands of tourists transit the island annually. Navy red tape discourages stopovers.

[13] "All American tradition and history dictates that government shall rest upon law, rather than upon executive decree. By international treaty also, the Congress has a direct responsibility for the government of Guam. The second paragraph of Article IX of the treaty ceding Guam to the United States provides: 'The civil rights and political status of the native inhabitants of the Territories hereby ceded to the United States shall be determined by the Congress (30 Stat. 1759).' In addition to the obligation under the Treaty of Paris, the United States has additional treaty obligations with respect to Guam as a non-self-governing Territory. Under Chapter XI of the Charter of the United Nations, ratified by the Senate June 26, 1945 (59 Stat. at p. 1048), we undertook, with respect to the peoples of such Territories, to insure political advancement, to develop self-government, and taking 'due account of the political aspirations of the peoples ...' to assist them in the progressive development of their free political institutions...." S. REP. No. 2109, 81st Cong., 2d Sess. 2 (1950).

[14] See note 16 *infra*. What was perhaps the prime initiating cause of the resurrection of the order, and the reinstitution of the entry-clearance program, *i.e.*, the Korean conflict, of course no longer justifies the Navy's conduct, even assuming it justified it then. See text at note 22 *infra*. See also text at note 56 *infra*.

[15] S. REP. No. 2109, *op. cit. supra* note 12, at 9.

[16] Entry clearance requirements were reinstituted by Letter [Directive] From Chief of Naval Operations, serial no. 5235P21, Dec. 4, 1950. This directive was superseded by subsequent regulations.

[17] Prior to the passage of the Organic Act, Guam law provided: "Residents of Guam shall not be permitted to leave Guam without a passport issued by the Governor or a certificate of identification issued by the Department of Records and Accounts." CIVIL REGULATIONS ch. 21, para. 1, at 45. After passage of the Organic Act the Department of Immigration required United States citizens coming to Guam to have a passport until Nov. 7, 1958.

[18] 32 C.F.R. § 761.10 (Supp. 1959). See text at note 65 *infra*.

(b) Penalties for Violators.—Navy Guam regulations set forth no less than five sections of the United States Code as providing penalties for violations of Executive Order No. 8683.[84] One of the sections cited[85] is really not applicable to the security clearance program inasmuch as it provides a penalty for entering military reservations. The entire island of Guam is not a military reservation and the Code section therefore applies to Guam only to the same extent that it applies to a United States military reservation, post or camp anywhere in the United States.

Another section cited provides a penalty for violating any regulation or order promulgated pursuant to law by military authority.[86]

A third section cited provides a punishment for knowingly making any false or fraudulent statement or representation.[87] The rather obvious reason for citing that section is seen when one considers the voluminous paper work applicants are required to execute in order to obtain a security clearance.[88]

Another section cited provides a penalty for anyone who knowingly or wilfully violates any Executive order.[89] It is this section that has been "violated" a number of times in Guam by persons who have been denied a security clearance but who nevertheless have entered the island. In their case the Navy has without fail issued them a security clearance forthwith and has not held them long enough to enable their counsel to obtain a writ of habeas corpus.[90]

Judge Adv. Gen., to Rear Adm. H. A. Houser, June 3, 1953. However, although current Navy regulations list all Naval Defensive Sea Areas and Naval Airspace Reservations set aside by Executive order, the Navy has suspended operation of entry controls in no less than nine of these areas. 32 C.F.R. §§ 761.3–.4 (Supp. 1959). Entry control with respect to Tutuila and Rose Islands was revoked by Executive Order No. 10341, 17 Fed. Reg. 3143 (1952). With respect to the other areas, "suspension of the operation of certain entry controls . . . has been accomplished administratively and is subject to reinstatement without notice at any time." Letter From Comdr. C. E. Herrick, Office of Chief of Naval Operations, to W. Scott Barrett, July 31, 1959. It is difficult, to say the least, to reconcile this administrative suspension of entry controls with respect to selected areas with a compelling duty of obeying Executive Order No. 8683 with respect to entry controls for Guam. Unfortunately, the opinion of the Judge Advocate General's department which concluded that the Navy had such a duty is unavailable. It is, as has been noted before, a *classified* document. See text at note 35 *supra*.

[84] OPNAV Instruction 5500.11B, Nov. 27, 1957, p. 7, 32 C.F.R. § 761.3(f) (Supp. 1959).

[85] 18 U.S.C. § 1382 (1958).

[86] 64 Stat. 1005 (1950), 50 U.S.C. § 797 (1958).

[87] 18 U.S.C. § 1001 (1958).

[88] Applicants are required to itemize in detail all places of residence and employment for the past 10 years. OPNAV Instruction 5500.11B, Nov. 27, 1957, p. 22, 32 C.F.R. 761.3(b)(3)(iv)-(v) (Supp. 1959).

[89] 18 U.S.C. § 2152 (1958).

[90] One petition for a writ of habeas corpus was actually filed, but the Navy issued a clearance thus rendering the case moot before the court made any decision. Bolosan v. Johnson, Civil No. 29-55, D. Guam, April 20, 1955.

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GUAM, U. S. A.

Birth of a Territory

Library
TERRITORIAL COLLEGE OF GUAM
DEPARTMENT OF EDUCATION

By

25875

RUSSELL L. STEVENS

were being brought into Guam, chiefly from the Philippines, to work on naval and other construction projects, and there was not, at that time, a Guam office of the U. S. Immigration and Naturalization Service to control and regulate the alien influx.

The security program requires that every person proposing entry into Guam submit an application to the Navy for a security clearance. His record is checked and, if his entry has naval approval, he receives a security clearance which must be in his possession upon arrival. Airlines and steamer lines will not issue tickets to Guam in the absence of clearances.

Residents of Guam submit applications to the Commander Naval Forces Marianas in Guam. Off-islanders submit applications to the Chief of Naval Operations in Washington, D.C. Clearances usually are received by Guam residents within a few days. If reconsideration of a denial is requested, however, a delay is usually very lengthy, perhaps a year or more. Clearances for off-islanders usually require several weeks. If a person is denied entry he can request reconsideration by the Commander in Chief, Pacific Fleet in Hawaii, or by the Chief of Naval Operations in Washington. There is no administrative hearing on any phase of the program. Decisions of CincPacFlt and CNO are final. All reasons for denial are secret, and are not in any case divulged to the applicant.

There are a few exceptions to the necessity for clearances, notably Guamanians born in Guam.

The program has adversely affected the economic life of the territory, as explained in a later chapter, and has occasioned considerable hardship on two classes of people: non-Guamanian residents (U.S. citizens) of the island, and permanent-resident aliens.

The territory has a sizeable non-Guamanian population. These people are, for the most part, businessmen and women. They are U.S. citizens, have their permanent abode in Guam, and live here with their families. Some of them have large investments of capital and labor in local businesses. Each of them must obtain a security clearance before departing the territory if they plan to return to Guam. Multiple-entry one-year clearances (revocable) are granted to certain of such permanent residents.

If return clearance is denied, the resident applicant must either sell out and depart permanently or resign himself to an indefinite stay in Guam. If the applicant is married to an alien, the alien husband or wife, as the case may be, cannot obtain re-entry clearance even

though the citizen spouse can. The alien spouse must depart permanently or stay home while the citizen's spouse is gone. Exceptions are sometimes made in those instances in which the alien obtained permanent resident status prior to December 24, 1952—the effective date of the McCarran Immigration Act.

The U.S. Immigration and Naturalization Service maintains an office in Guam, and regulates the entry and stay of aliens.

Acting pursuant to the provisions of law, the Service has given the legal status of permanent resident to several hundred aliens, almost all of whom are Filipinos. Aliens are allowed to enter Guam, under controlled conditions, as contract laborers. Navy policy forbids the granting of security clearance to any other aliens, but exceptions recently have been made in some cases where permanent resident status was acquired prior to December 24, 1952. As in the case of citizens who have been denied re-entry, if an alien departs Guam he cannot return unless he has obtained clearance under such an exception. Denial in such instances is pursuant to Navy policy, and not because of security considerations relative to the individuals involved. Family and other emergencies have necessitated temporary trips to the Philippines and elsewhere by many Filipino spouses married to Guamanians and others, and frequently children must accompany the parents. If they are not in a possibly excepted class, they cannot return to their Guam home, and the family must be separated for a period of time which, at this writing, is indeterminate. It is estimated that approximately two hundred families are so affected at this time. This Navy policy has no relationship with the U.S. Immigration and Naturalization Service nor any law or regulation relating to immigration.

The local naval command is acutely aware of the problems created by the security program, and tries to alleviate the hardships created. However, its actions are confined of necessity to those permitted by Navy policy.

The legality of the security program as it is now conducted has been questioned many times, although it has never been the subject of judicial interpretation. Litigation would result in a long, expensive trip to the Supreme Court, which no one thus far has cared to undertake. The points at issue are whether the Organic Act by implication superseded and nullified Executive Order No. 8683; whether the Secretary of the Navy's regulations are valid; whether existing administrative procedures are valid, particularly as concerns

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permit must be made to the Commander, Naval Forces Mariana Islands.[19]

Enforcement of the naval security program is not difficult inasmuch as the only two permissible ways to enter Guam are through naval reservations. Apra Harbor is the only sea port, and it is within the confines of the naval station.[20] All port operations are under the direction of the Commander, Naval Forces Mariana. This includes piloting, tug boats, ship repair, and to a lesser extent, cargo operations. Persons entering Guam by way of air carrier are required to land at the naval air station. There are no civilian airport facilities in Guam.

To insure that persons entering Guam have the required entry-clearance documents, the Navy has ordered civilian transportation agencies to require these documents before allowing prospective passengers to purchase a ticket. This is true of the airlines and the steamship lines.[21]

After the reinstitution of the security clearance requirement, many United States citizens were faced with the necessity of obtaining a security clearance from the Navy to come to a United States territory. Many persons, citizen and alien alike, objected to the requirement, and some were refused entry for various reasons. In answer to the many complaints, letters were written by naval officers, the Chief of Naval Operations, and even the Secretaries of Navy and Interior. The reasons given for the con-

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[19] So-called multiple-entry clearances are difficult for nonresidents to obtain and are usually limited to 1 or 2 years. Although residents are treated more liberally, those not favored with a multiple-entry clearance are required to fill out the forms and reapply for re-entry each time they leave or be excluded when they try to return to their homes. A sample multiple-entry clearance reads as follows:

> U.S. Pacific Fleet
> Commander Naval Forces Marianas
>
> My dear_____,
>
> Your application has been reviewed and authorization is hereby granted for _____to enter and re-enter the Guam Defensive Sea Area for a period of two years beginning_____ for the purpose of making repeated business trips off the island.... This letter . . . must be in your possession when traveling in the above areas.
>
> Sincerely yours,
> Island Government Officer

Note that the administrator of the clearance program is called, significantly, "The Island Government Officer."

[20] The Commercial Port of Guam is operated by the Government of Guam, but it is within the Apra Harbor area and access from the sea is controlled by the Navy. Both air and sea access to Guam in civilian areas could be arranged, however, if the Navy ceased requiring entry clearance to the entire island.

[21] The carriers comply with Navy orders, and except for occasional oversights they will not sell a ticket to Guam passengers not holding a security clearance. The Navy contends that the carriers are "fully responsible for restricting the activities of the passengers in their custody so as not to permit violation of entry clearance requirements." Letter From Rear Adm. W. B. Ammon, Commander, U.S. Naval Forces, Marianas, to G. Selwyn, Manager, Pan American World Airways, September 6, 1956, on file with the authors. Unless otherwise noted, personal letters cited are on file with the authors.

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American Guam 'Off Limits' to Americans

—BY MALCOLM BAUER

VISITING U. S. District Judge J. Frank McLaughlin brought expressions of amusement from members of the Multnomah Bar association the other night with a frank report on conditions in Guam. The judge, whose base is in Honolulu, frequently journeys to the American-owned speck in the western Pacific; and, as an official with a recognized mission, he is more favored there than the average U. S. citizen.

For the average citizen Guam is in effect off limits. The U. S. navy runs the show there, and the wartime lid is still on. As Judge McLaughlin told the lawyers, a U. S. citizen must have a passport to enter this U. S. territory. What's more, and harder to get, he must have security clearance from the U. S. navy. The traveler who rides a commercial plane into Guam on a regular refueling stop is confined to the plane or the "service section" of the air terminal.

There is at least one favored profession other than that of Judge McLaughlin in the eyes of the navy watchdogs in Guam. It is the oldest of them all. Ford Q. Elvidge, a Seattle attorney who was civilian governor of Guam from 1953 to 1956, wrote after leaving his post that he had been surprised by the number of prostitutes whose origin was in countries other than Guam. He asked a naval officer why these girls, whose vocation was apparent, were admitted in such numbers, whereas a casual tourist would be turned down.

"Governor," said the officer, "our clearance is for security, and we haven't any reason to think these girls are subversive."

The U. S. navy is, if nothing else, practical. There are about four times as many men as women on Guam.

There were, probably, few lawyers in Judge McLaughlin's audience who would want to undertake to justify legally the U. S. administration's iron hand in Guam. The security regulations are, according to the navy, based on an order issued by President Franklin D. Roosevelt three days after Pearl Harbor and a few days before Guam fell to the Japanese. Americans came back shooting in July of 1944. For all practical purposes the navy considers the war still on.

Actually the navy is not in charge of civil administration in Guam. This, since 1950, has been the responsibility of the department of interior operating through a governor appointed by the president. The governor has limited veto power over the locally-elected unicameral legislature. Civil authorities have responsibility for education, health, port facilities, police and utility systems off military reservations, which cover about one third of the island's 225 square miles.

But for a half century, from the time Spain conceded the island to the United States as a prize of the Spanish-American war, the U. S. navy was officially charged with its administration. The habit of command is difficult to break, particularly when there is no will to the breaking. The navy has means of influence. For example, it operates the island's lone power plant, and until recently severely limited the supply of energy.

Governor Elvidge said he had had no trouble with the navy. He found it convenient not to buck the brass. It helped, he reported, to play golf now and then with the admirals.

[illegible] Democratic party, with its southern and northern [illegible] The only proper course, he [illegible] was to go deeply [illegible] civil rights. He [illegible] that in his view [illegible] Mr. King was remarkably [illegible] moderate, seeking to avoid [illegible] and any show of force [illegible] arguing for his race the [illegible] guaranteed to all citizens [illegible] the constitution.

[illegible] weeks leading up [illegible] special vote on the jury [illegible] amendment, Nixon worked [illegible] to make sure [illegible] a handful of Republicans [illegible] would reject this compromise. The amendment, he argued, would interfere with a prerogative of the federal judiciary [illegible] sustained by many precedents [illegible] repeatedly affirmed.

In a situation as tense as the senate had seen in many a year, Nixon was confident that [illegible] party.

German Refund Plan Sh[illegible]

—BY ROBERT S. [illegible]

WASHINGTON — Secretary [illegible] Dulles is imparting some [illegible] to Chancellor Adenauer [illegible] that the [illegible] department [illegible] secret [illegible] ask congress to vote [illegible] $200,000,000 [illegible] refund to Germany [illegible] property [illegible] in the United States during World War II, has been shelved. This decision was reached, Adenauer is being told, at a cabinet meeting before Dulles flew to London to participate in the pre-[illegible] disarmament negotiations. Also that this backstage pigeonholing was due to three powerful officials — former Treasury Secretary Humphrey, Deputy Attorney General William Rogers and Budget Director Percival Brundage. They vigorously assailed the proposal [illegible]

[illegible] "Governor" [illegible] "Nice Kitty" probably killed as many of the neighbors mice as birds and that many of the insects birds eat are of great benefit to man. Birds eat much

—The People's Own Corner—

'God's Plan'

To the Editor: Oregonian readers have been reading "much ado about nothing" concerning cats eating birds and birds eating insects, ad infinitum.

It seems to me that God Almighty did a pretty good job when he created all things and he had the foresight and patience to see that nature was kept in balance by causing each to do exactly what so many are complaining about.

I can't help thinking that "Nice Kitty" probably killed as many of the neighbors mice as birds and that many of the insects birds eat are of great benefit to man. Birds eat much [illegible]

[illegible] recently quoted in The Oregonian as saying, "I cannot accept the assumptions of a lot of voters that the death penalty prevents murder in Oregon."

Turning from the field of opinion, conjecture and partisan politics let us see what the facts are, according to the U. S. Statistical Abstract (1950), page 137. In 1948, Michigan, with no death penalty, had 4.63 deaths per 100,000 of the population due to murder or nonnegligent homicide. This was 33 per cent higher than the record of New York, 3.49, with all its slums and gangsters; and 290 per cent higher than that of Massachusetts, 1.18, and a much more congested state. Had crime prevention been as effective in [illegible]

Tax Write-Offs Cited

To the Editor: The letter written by Paul McKee, president of the Pacific Power & Light company, in the July 15 issue of The Oregonian, left the unfortunate impression that Oregon's private utilities are building power projects at no cost to the taxpayer. While I don't blame Mr. McKee for his defensive attitude, he ought to examine the record.

The record will show, should Mr. McKee examine it, that from June, 1951, to February, 1956, the four utilities mentioned in his letter were granted subsidies from the U. S. government in the amount of $146,408,[illegible] [illegible] multipurpose public projects is all added to their "cost of operation" and to that extent the federal government is denied tax income. Not only is the federal government denied tax income because of the cost charged off to the utilities' advertising program against these government projects, but the consumer of electric power is paying for this advertising which is to his own detriment.

BRUCE A. BISHOP,
315 Governor building.

Hazards Fewer

To the Editor: Our 1957 city of Portland dwelling fire inspection campaign, which was so generously supported and pub[illegible]

[illegible] "God's Plan" [illegible] Tax Write-Offs Cited [illegible] Hazards Fewer [illegible]

[illegible] The announced [illegible] $200,000,000 [illegible] campaign setback [illegible] German chancellor [illegible] He was counting [illegible] the proposal being [illegible] mitted to congress [illegible] card in next month [illegible] in which the contin[illegible] regime is at stake.

Ambassador Heinz [illegible] who was about [illegible] Germany, has por[illegible] He is strenuously [illegible] thing to offset this [illegible] ing misfire.

The answer to th[illegible] man envoy's hopes [illegible] bearings contempla[illegible] resentative Peter [illegible] Democrat, Illinois, [illegible] the foreign commer[illegible] mittee, that has [illegible] over this legislatio[illegible] advocate of return[illegible] fiscated German pr[illegible] has scheduled pub[illegible] on this issue August [illegible]

Numerous witnes[illegible] tify in favor of Mr [illegible] Also stated to appe[illegible] department officials [illegible] ury and justice dep[illegible] counting on prev[illegible] views. The heart[illegible] extensively covere[illegible] German revenues.

Three main point[illegible] against the state [illegible] $200,000,000 return[illegible]

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The right to travel, unrestricted by unreasonable regulations, is one of the rights guaranteed to United States citizens by the fifth amendment of the United States Constitution. The right to work and to reside in any area, State, Territory, or possession of the United States is also a constitutionally guaranteed right, and no restraints may be imposed upon such rights except by reasonable regulations under law. While during World War II the rights of United States citizens were infringed upon to a greater extent than ever before, the courts nevertheless made it quite clear that only an extreme emergency such as the danger of invasion could justify restrictions on the movement of citizens. In recent passport cases the courts have held that the right to travel, to go from place to place as the means of transportation permit, is a natural right subject to the rights of others and to reasonable regulation under law, and that any restraint upon this liberty must conform with the provisions of the fifth amendment.

(a) The "Security Clearance" and "Exclusion" Cases.—During World War II United States citizens of Japanese ancestry were uprooted from their homes and relocated away from the Western Coast. This exercise of the war power was ratified by the Supreme Court in *Korematsu v. United States.*[46] The Court said:

> We uphold the exclusion order as of the time it was made and when the petitioner violated it. . . . In doing so, we are not unmindful of the hardships imposed by it upon a large group of American citizens. . . . But hardships are part of war, and war is an aggregation of hardships. All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its responsibilities as well as its privileges, and in time of war the burden is always heavier. Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direct emergency and peril, is inconsistent with our basic governmental institutions. But when under conditions of modern warfare our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger.[47]

Also during World War II, the Supreme Court upheld a curfew restriction requiring all persons of Japanese ancestry to be within their place of residence daily between the hours of 8:00 p.m. and 6:00 a.m.[48] Both the exclusion order and the curfew restriction had been imposed pursuant to Executive order.[49] In upholding the validity of the curfew, the Supreme Court stated:

> Our investigation here does not go beyond the inquiry whether, in the light of all the relevant circumstances preceding and attending their promulga-

[46] 323 U.S. 214 (1944).
[47] *Id.* at 219–20.
[48] Hirabayashi v. United States, 320 U.S. 81 (1943).
[49] Exec. Order No. 9066, 7 Fed. Reg. 1407 (1942).

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> It is well established that if an alien is a lawful permanent resident of the United States and remains physically present there, he is a person within the protection of the Fifth Amendment.[78]

Aliens who have been admitted though not with "permanent resident" status do not have constitutional protection.[79] When the language used in *Kwong Hai Chew* is applied to the Guam situation, however, it would appear that even nonresident aliens should have some rights. The Court there said:

> This preservation of petitioner's right to due process does not leave an unprotected spot in the Nation's armor. . . . Before receiving clearance for his foreign cruise, he was screened and approved by the Coast Guard. Before acceptance of his petition for naturalization, as well as before final action thereon, assurance is necessary that he is not a security risk.[80]

Before he enters Guam for any purpose an alien presumably is screened to determine whether he is a security risk. Therefore, an alien subsequently excluded by the Navy without explanation should be given some opportunity to be heard and to show that he has not become a security risk in the interim.

The Navy has exercised considerable arbitrary power in forcing repatriation of aliens, particularly to the Philippines, without lawful authority. A very much-needed and well-qualified nurse employed at the Guam Memorial Hospital was separated from her job due to the fact that her security clearance was revoked shortly after she married a United States citizen.[81] In justification of the policy of revoking an alien's clearance for marrying a citizen a Naval spokesman said that the Navy favors keeping "Guam for the Guamanians."[82] The only other justification ever given by the Navy for

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[78] *Id.* at 596.

[79] United States *ex rel.* Knauff v. Shaughnessy, 338 U.S. 537, 545 (1950). Even here the majority of the Court justified denial of procedural due process to an alien on the ground that a state of war still technically existed. The Court admitted that in peacetime Congress had provided aliens with a hearing.

[80] Kwong Hai Chew v. Colding, 344 U.S. 590, 602 (1953). The language of Mr. Justice Jackson in Shaughnessy v. United States *ex rel.* Mezei, 345 U.S. 206, 224–27 (1953) is of interest also, though in a dissenting opinion.

[81] The Government of Guam terminated Mrs. Delfina A. Cataluna's contract for the reason that the Navy had revoked her authority "to remain within, or re-enter the Guam Naval Defensive Sea Area as per letter from Commander Naval Forces Marianas dated April 22, 1957." Termination Notice, April 30, 1957, Signed by Peter C. Siguenza, Director of Personnel. Mrs. Cataluna had been hired in August 1956 on a 2-year contract.

[82] "The U.S. Navy 'does not favor the entry' of Filipinos to Guam 'for the purpose of settling permanently' because U.S. Navy policy is 'to keep Guam for Guamanians,' Rear Admiral William B. Ammon, commander of the U.S. Naval Forces in the Marianas said. Ammon's 'Guam for the Guamanians' statement was in reply to a question as to why the Navy frowns upon any effort of Filipinos to settle permanently on Guam. 'Navy policy is to keep Guam for Guamanians, therefore, it does not look with favor on the entry of any foreigner to Guam for

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[80] Kwong Hai Chew v. Colding, 344 U.S. 590, 602 (1953). The language of Mr. Justice Jackson in Shaughnessy v. United States *ex rel.* Mezei, 345 U.S. 206, 224–27 (1953) is of interest also, though in a dissenting opinion.

[81] The Government of Guam terminated Mrs. Delfina A. Cataluna's contract for the reason that the Navy had revoked her authority "to remain within, or re-enter the Guam Naval Defensive Sea Area as per letter from Commander Naval Forces Marianas dated April 22, 1957." Termination Notice, April 30, 1957, Signed by Peter C. Siguenza, Director of Personnel. Mrs. Cataluna had been hired in August 1956 on a 2-year contract.

[82] "The U.S. Navy 'does not favor the entry' of Filipinos to Guam 'for the purpose of settling permanently' because U.S. Navy policy is 'to keep Guam for Guamanians,' Rear Admiral William B. Ammon, commander of the U.S. Naval Forces in the Marianas said. Ammon's 'Guam for the Guamanians' statement was in reply to a question as to why the Navy frowns upon any effort of Filipinos to settle permanently on Guam. 'Navy policy is to keep Guam for Guamanians, therefore, it does not look with favor on the entry of any foreigner to Guam for

revocation of an alien's clearance because of marriage to a citizen is that the Navy feels it is not in the best interests of the United States to build up in Guam an alien colony whose members are qualified to become permanent residents.[22]

Just why an alien colony in Guam is detrimental to the interests of national defense has never been fully explained, particularly in view of the fact that there are presently only about 6,500 aliens on the island of Guam, and by far the greater portion of those aliens are working for the United States Government or for contractors of the Government. The fallacy of the "alien colony" argument advanced by the Navy is particularly revealed by the fact that although the United States has far more extensive operations on the island of Okinawa than in Guam, Okinawa has an "alien colony" residing thereon, numbering almost 800,000. This is more than one-hundred times the number of aliens on Guam, although the land area of Okinawa is little more than twice that of Guam. Nor has the Navy given any reason why Filipino aliens should be more detrimental to national defense because they happen to reside in Guam, than Okinawans loyal to the Japanese are detrimental to defense because they reside in the small land area of Okinawa.[22a]

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the purpose of setttling permanently,' he said." Abcede, *Guam Policy Explained*, The Manila Times, Oct. 12, 1956, p. 2, col. 1.

More recently Mr. Abcede wrote a long article in a Manila newspaper commenting on the life of the Filipino on Guam. He said in part: "Despite the enactment of the Organic Act of Guam, establishing the supremacy of civilian authority, the U.S. Navy paper curtain remains to this day. Naval intelligence has been intensifying efforts to fend off foreigners and unwanted Americans.... The clearance requirement has worked hardships on both Americans, Guamanians and Filipinos. The economic life of Guam has also been adversely affected. An estimated 200 Filipino-Guamanian families have been broken up because of this stringent requirement. Filipinos married to Guamanian women and who have been forced by circumstances to visit the Philippines found themselves unable to go back to Guam. In many instances, a breakdown of family ties resulted. The writer presented this problem to Rear Admiral W. B. Ammon, commander of the U.S. Naval Forces in the Marianas in 1956. The Navy was asked whether it discouraged the intermarriage of the two peoples and whether it frowns on any effort of the Filipinos to settle permanently in Guam. Admiral Ammon's reply is quoted: 'The Navy does not encourage or discourage intermarriages and endeavors not to become involved in domestic affairs except as necessary to administer entry clearance regulations. Navy policy is to keep Guam for Guamanians, therefore, it does not look with favor on the entry of any foreigner to Guam for the purpose of settling permanently.'" Abcede, *Filipinos In Guam*, The Manila Sunday Chronicle, July 26, 1959 (Magazine) p. 16, col. 3.

The Department of Justice maintains an Immigration and Naturalization Office in Guam, and the entry of aliens is controlled by that office. Under the ostensible authority of Executive Order 8683, however, the Navy excludes numerous aliens who have been admitted by Immigration authorities for announced reasons no better than "Guam for the Guamanians."

[22] "The long term presence on Guam of aliens in large numbers would be a detriment to the effective use of Guam for its primary mission of defense, while heavy population of the island by aliens could not fail to adversely affect the people of Guam and their own economy." Letter From Comdr. Edward L. Beach, Naval Aide to the President, to F. L. Moylan, Guam Businessman, September 20, 1956. The latter reason hardly seems a proper concern of the Navy, even if true.

[22a] As a further justification for the imposition of the security clearance, the Navy has insisted on its duty to enforce Executive Order No. 8683. See Letter From Ira H. Nunn, Navy

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GUAM, U. S. A.

Birth of a Territory

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were being brought into Guam, chiefly from the Philippines, to work on naval and other construction projects, and there was not, at that time, a Guam office of the U. S. Immigration and Naturalization Service to control and regulate the alien influx.

The security program requires that every person proposing entry into Guam submit an application to the Navy for a security clearance. His record is checked and, if his entry has naval approval, he receives a security clearance which must be in his possession upon arrival. Airlines and steamer lines will not issue tickets to Guam in the absence of clearances.

Residents of Guam submit applications to the Commander Naval Forces Marianas in Guam. Off-islanders submit applications to the Chief of Naval Operations in Washington, D.C. Clearances usually are received by Guam residents within a few days. If reconsideration of a denial is requested, however, a delay is usually very lengthy, perhaps a year or more. Clearances for off-islanders usually require several weeks. If a person is denied entry he can request reconsideration by the Commander in Chief, Pacific Fleet in Hawaii, or by the Chief of Naval Operations in Washington. There is no administrative hearing on any phase of the program. Decisions of CincPacFlt and CNO are final. All reasons for denial are secret, and are not in any case divulged to the applicant.

There are a few exceptions to the necessity for clearances, notably Guamanians born in Guam.

The program has adversely affected the economic life of the territory, as explained in a later chapter, and has occasioned considerable hardship on two classes of people: non-Guamanian residents (U.S. citizens) of the island, and permanent-resident aliens.

The territory has a sizeable non-Guamanian population. These people are, for the most part, businessmen and women. They are U.S. citizens, have their permanent abode in Guam, and live here with their families. Some of them have large investments of capital and labor in local businesses. Each of them must obtain a security clearance before departing the territory if they plan to return to Guam. Multiple-entry one-year clearances (revocable) are granted to certain of such permanent residents.

If return clearance is denied, the resident applicant must either sell out and depart permanently or resign himself to an indefinite stay in Guam. If the applicant is married to an alien, the alien husband or wife, as the case may be, cannot obtain re-entry clearance even

though the citizen spouse can. The alien spouse must depart permanently or stay home while the citizen's spouse is gone. Exceptions are sometimes made in those instances in which the alien obtained permanent resident status prior to December 24, 1952—the effective date of the McCarran Immigration Act.

The U.S. Immigration and Naturalization Service maintains an office in Guam, and regulates the entry and stay of aliens.

Acting pursuant to the provisions of law, the Service has given the legal status of permanent resident to several hundred aliens, almost all of whom are Filipinos. Aliens are allowed to enter Guam, under controlled conditions, as contract laborers. Navy policy forbids the granting of security clearance to any other aliens, but exceptions recently have been made in some cases where permanent resident status was acquired prior to December 24, 1952. As in the case of citizens who have been denied re-entry, if an alien departs Guam he cannot return unless he has obtained clearance under such an exception. Denial in such instances is pursuant to Navy policy, and not because of security considerations relative to the individuals involved. Family and other emergencies have necessitated temporary trips to the Philippines and elsewhere by many Filipino spouses married to Guamanians and others, and frequently children must accompany the parents. If they are not in a possibly excepted class, they cannot return to their Guam home, and the family must be separated for a period of time which, at this writing, is indeterminate. It is estimated that approximately two hundred families are so affected at this time. This Navy policy has no relationship with the U.S. Immigration and Naturalization Service nor any law or regulation relating to immigration.

The local naval command is acutely aware of the problems created by the security program, and tries to alleviate the hardships created. However, its actions are confined of necessity to those permitted by Navy policy.

The legality of the security program as it is now conducted has been questioned many times, although it has never been the subject of judicial interpretation. Litigation would result in a long, expensive trip to the Supreme Court, which no one thus far has cared to undertake. The points at issue are whether the Organic Act by implication superseded and nullified Executive Order No. 8683; whether the Secretary of the Navy's regulations are valid; whether existing administrative procedures are valid, particularly as concerns

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Peacetime Martial Law in Guam

W. Scott Barrett and Walter S. Ferenz***

ACCORDING to the United States Navy, Guam is under martial law and has been for many years. In February 1941 President Roosevelt issued Executive Order No. 8683[1] establishing the Guam Island Naval Defensive Sea Area and the Guam Island Naval Airspace Reservation. Administrative authority was vested in the United States Navy. To assist the Navy in enforcing the security clearance a number of regulations have been

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[1] 6 Fed. Reg. 1015 (1941). The Executive order reads:

By virtue of the authority vested in me by the provisions of section 44 of the Criminal Code, as amended (U.S.C., title 18, sec. 96), and section 4 of the Air Commerce Act approved May 20, 1926 (44 Stat. 570, U.S.C., title 49, sec. 174) the territorial waters between the extreme highwater marks and the three-mile marine boundaries surrounding the islands of Rose, Tutuila, and Guam, in the Pacific Ocean, are hereby established and reserved as naval defensive sea areas for purposes of national defense, such areas to be known, respectively, as "Rose Island Naval Defensive Sea Area", "Tutuila Island Naval Defensive Sea Area", and "Guam Island Naval Defensive Sea Area"; and the airspaces over the said territorial waters and islands are hereby set apart and reserved as naval airspace reservations for purposes of national defense, such reservations to be known, respectively, as "Rose Island Naval Airspace Reservation", "Tutuila Island Naval Airspace Reservation", and "Guam Island Naval Airspace Reservation."

At no time shall any person, other than persons on public vessels of the United States, enter any of the naval defensive sea areas herein set apart and reserved, nor shall any vessel or other craft, other than public vessels of the United States, be navigated into any of said areas, unless authorized by the Secretary of the Navy.

At no time shall any aircraft, other than public aircraft of the United States, be navigated into any of the naval airspace reservations herein set apart and reserved, unless authorized by the Secretary of the Navy.

The provisions of the preceding paragraphs shall be enforced by the Secretary of the Navy, with the cooperation of the local law enforcement officers of the United States; and the Secretary of the Navy is hereby authorized to prescribe such regulations as may be necessary to carry out such provisions.

Any person violating any of the provisions of this order relating to the above-named naval defensive sea areas shall be subject to the penalties provided by section 44 of the Criminal Code as amended (U.S.C., title 18, sec. 96), and any person violating any of the provisions of this order relating to the above-named naval airspace reservations shall be subject to the penalties prescribed by the Civil Aeronautics Act of 1938 (52 Stat. 973).

The validity of the foregoing reasons will hereinafter be discussed. Many of them are obviously invalid; keeping the "riff-raff" out of Guam and being concerned about whether civilians come to Guam to make money are simply not the concern of the United States Navy.

Officially, the Navy has set forth a number of grounds on which clearance can be denied,[29] although the regulations specifically state that the reason for a denial may not be given to any person.

II

THE LEGAL EFFECT OF THE ORGANIC ACT ON THE SECURITY CLEARANCE PROGRAM

Following the reinstitution of the security clearance program on December 4, 1950, the Attorney General of Guam wrote an opinion[30] which concluded that the Organic Act had repealed Executive Order No. 8683 by implication. The opinion relied heavily upon the wording of section 33 of the Organic Act,[31] which authorized the President to designate *parts* of Guam as naval or military reservations.

By Executive Order No. 10178[32] the President expressly reserved to the United States parts of Guam for military bases. Those parts of Guam reserved to the military constitute less than one-third of the land area of the island. There is no indication that the Senate intended the whole island to be under military control. The Organic Act also gave the President power to treat Guam as a closed part with respect to the vessels and aircraft of *foreign nations*. Had Congress been aware of Executive Order No. 8683 and intended to perpetuate it, the language of section 33 was surplusage. By saying in section 33 that "nothing contained herein shall be construed as limiting the authority of the President . . . to treat Guam as a closed port with respect to the vessels and aircraft of foreign nations," Congress expressed an intent that the President has *no authority to treat Guam as a*

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ried to government employees were allowed to enter. Subsequently Mrs. McCready entered without a clearance and promptly was granted one! Several other persons who have entered without a clearance are presently "at large" on the island and have never been prosecuted.

[29] 32 C.F.R. § 761.6 (Supp. 1959). The grounds listed include: (1) prior non-compliance with entry-control regulations; (2) wilfully furnishing false or misleading information in application for entry; (3) advocacy of the overthrow of the United States; (4) sabotage, espionage and sedition; (5) acting so as to serve the interests of another government detrimental to that of the United States; (6) deliberate unauthorized disclosure of classified defense information; (7) membership in subversive organizations; (8) serious mental irresponsibility or chronic alcoholism; (9) conviction of certain felonies; (10) illegal presence in the United States or being the subject of deportation proceedings.

[30] Dec. 13, 1951, in STATUTES AND AMENDMENTS TO THE CODES OF THE TERRITORY OF GUAM, FIRST GUAM LEGISLATURE, 1951–1952, at A-14 (1952).

[31] 64 Stat. 393 (1950), 48 U.S.C. § 1421k (1958).

[32] 15 Fed. Reg. 7313–15 (1950).

closed port to United States citizens on domestic vessels and aircraft.[33] Thus, the Organic Act does supersede and overrule Executive Order No. 8683.

Subsequent to the Guam Attorney General's opinion, the Office of the Judge Advocate General of the United States Navy issued a contrary opinion.[34] Unfortunately, the opinion is *classified* and therefore not available to the general public.[35]

III

UNCONSTITUTIONAL ADMINISTRATION OF A VOID EXECUTIVE ORDER

Beyond the determination of the effect of the enactment of the Organic Act upon the present validity of Executive Order No. 8683, the question remains whether the administration of that order denies certain fundamental personal rights guaranteed by the Constitution of the United States. For example, if the United States Navy has failed to provide an adequate administrative hearing to persons denied a security clearance, such persons may be deprived of liberty or property without procedural due process of law. Likewise, if the regulations promulgated by the United States Navy exceed the authority of the order, or if Navy practices exceed the authority of its own regulations, persons denied a security clearance may be deprived of liberty or property without substantive due process of law.

A. Constitutional Guarantees in an Unincorporated Territory

The question arises as to what extent United States citizens residing in Guam or attempting to visit Guam for any purpose are protected by guarantees extended by the federal constitution to United States citizens. The constitutional guarantees extended to a citizen residing within continental United States or in an incorporated Territory are not always extended to United States citizens residing in unincorporated territories.[36] The status of Guam is similar to that of Puerto Rico at the time of the *Balzac* case.[37] In the *Balzac* case the United States Supreme Court held that a Puerto Rican cannot insist upon the right of trial by jury except to the extent it is conferred upon him by his own representatives in his own legislature.[38] In Guam, the Court of Appeals for the Ninth Circuit held that a United States citizen residing in Guam had no constitutional right to a grand jury indict-

[33] See note 12 *supra*.

[34] The opinion is cited in Letter, *supra* note 22.

[35] "I regret that the classification of this opinion makes it impossible to comply with your request." Letter From Capt. Wilfred Hearn, Asst. Navy Judge Adv. Gen., to W. Scott Barrett, July 30, 1959.

[36] Balzac v. Porto Rico, 258 U.S. 298 (1922).

[37] *Compare* the Organic Act of Guam § 3, 64 Stat. 384 (1950), 48 U.S.C. § 1421a (1958), *with* the Organic Act of Puerto Rico (Jones Act), ch. 145, 39 Stat. 951 (1917) codified in scattered sections of 48 U.S.C. relating to Puerto Rico), as construed in Balzac v. Porto Rico, *supra* note 36, at 305–14.

[38] Balzac v. Porto Rico, 258 U.S. 298, 309 (1922).

ment,[39] but that such citizen did have that right pursuant to the Federal Rules of Criminal Procedure.[40] Congress subsequently amended the Organic Act so as to require grand jury indictment only if made available by local law.[41]

Regardless, however, of whether or not all procedural constitutional guarantees are reserved to United States citizens residing in an unincorporated territory, there are certain fundamental rights that are reserved to all United States citizens. In the *Balzac* case, the Court stated:

> The guaranties of certain fundamental personal rights declared in the Constitution, as for instance that no person could be deprived of life, liberty or property without due process of law, had from the beginning, full application in the Philippines and Porto [former sp.] Rico . . . .[42]

B. Substantive Due Process of Law Denied

In a very real sense exclusion from Guam by reason of denial or revocation of a security clearance is a deprivation of liberty and in some instances possibly of property. The only justification for depriving a citizen of liberty and the free choice of residing wherever he pleases within the confines of the United States, including its possessions, and in traveling freely throughout such areas, lies in the war power. However, the extent to which the war power can be used to deprive private citizens of their life, liberty or property without due process of law has been carefully limited,[43] the courts often quoting Mr. Justice Holmes' language in *Chastleton Corp. v. Sinclair:*

> A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed.[44]

1. Liberty—The Right to Travel and Work Where One Pleases

> There is more absoluteness about the more directly personal aspects of freedom. . . . However strong the reaction to interference with rights of property or trade, it does and ought to take second place to the reaction against interference with the legal safeguards of personal liberty. Vigilance against the temporary removal of such safeguards . . . is therefore more universally supported than protests against governmental powers over property.[45]

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[39] Pugh v. United States, 212 F.2d 761, 762 (9th Cir. 1954).

[40] *Id.* at 763 (FED. R. CRIM. P. 7(a)).

[41] Act of Aug. 27, 1954, § 1, 68 Stat. 882, amending the Organic Act of Guam § 22(b), 64 Stat. 390, as amended, 48 U.S.C. § 1424(b) (1958). To this date the local legislature has not provided for a grand jury.

[42] Balzac v. Porto Rico, 258 U.S. 298, 312–13 (1922).

[43] See, *e.g.*, Korematsu v. United States, 323 U.S. 214 (1944); Hirabayashi v. United States, 320 U.S. 81 (1943); Scherzberg v. Maderia, 57 F. Supp. 42 (E.D. Pa. 1944); Ebel v. Drum, 52 F. Supp. 189 (D. Mass. 1943); Schueller v. Drum, 51 F. Supp. 383 (E.D. Pa. 1943).

[44] Chastleton Corp. v. Sinclair, 264 U.S. 543, 547–48 (1924).

[45] FRIEDMANN, LEGAL THEORY 446 (2d ed. 1949).

The right to travel, unrestricted by unreasonable regulations, is one of the rights guaranteed to United States citizens by the fifth amendment of the United States Constitution. The right to work and to reside in any area, State, Territory, or possession of the United States is also a constitutionally guaranteed right, and no restraints may be imposed upon such rights except by reasonable regulations under law. While during World War II the rights of United States citizens were infringed upon to a greater extent than ever before, the courts nevertheless made it quite clear that only an extreme emergency such as the danger of invasion could justify restrictions on the movement of citizens. In recent passport cases the courts have held that the right to travel, to go from place to place as the means of transportation permit, is a natural right subject to the rights of others and to reasonable regulation under law, and that any restraint upon this liberty must conform with the provisions of the fifth amendment.

(a) The "Security Clearance" and "Exclusion" Cases.—During World War II United States citizens of Japanese ancestry were uprooted from their homes and relocated away from the Western Coast. This exercise of the war power was ratified by the Supreme Court in *Korematsu v. United States.*[46] The Court said:

> We uphold the exclusion order as of the time it was made and when the petitioner violated it. . . . In doing so, we are not unmindful of the hardships imposed by it upon a large group of American citizens. . . . But hardships are part of war, and war is an aggregation of hardships. All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its responsibilities as well as its privileges, and in time of war the burden is always heavier. Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direct emergency and peril, is inconsistent with our basic governmental institutions. But when under conditions of modern warfare our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger.[47]

Also during World War II, the Supreme Court upheld a curfew restriction requiring all persons of Japanese ancestry to be within their place of residence daily between the hours of 8:00 p.m. and 6:00 a.m.[48] Both the exclusion order and the curfew restriction had been imposed pursuant to Executive order.[49] In upholding the validity of the curfew, the Supreme Court stated:

> Our investigation here does not go beyond the inquiry whether, in the light of all the relevant circumstances preceding and attending their promulga-

[46] 323 U.S. 214 (1944).
[47] *Id.* at 219-20.
[48] Hirabayashi v. United States, 320 U.S. 81 (1943).
[49] Exec. Order No. 9066, 7 Fed. Reg. 1407 (1942).

> tion, the challenged orders and statute afforded a reasonable basis for the action taken in imposing the curfew. . . . [W]e decide only that the curfew order as applied, and at the time it was applied, was within the boundaries of the war power.[50]

It should be noted that the Supreme Court in both the *Korematsu* and *Hirabayashi* cases recognized that individual liberties were being restricted and that under ordinary circumstances the restriction would be unconstitutional. Nevertheless the admittedly discriminatory treatment of United States citizens was justified solely on the ground that the President and Congress could restrict the liberty of citizens by exercise of the war power at a time of great emergency.

Subsequent to the *Hirabayashi* and *Korematsu* cases several cases arose in the United States District Courts involving United States citizens of German ancestry.[51] The plaintiffs in these cases had been excluded by military order from a coastal strip along the eastern seaboard of the United States. Authority to exclude certain persons from such areas had been given to military commanders by an Executive order[52] which had been ratified and confirmed by Congress.[53]

In *Schueller v. Drum*[54] the district court acknowledged that from the evidence produced the plaintiff appeared to be a German sympathizer. Nevertheless the court held that there was not shown such danger as would warrant denial to the petitioner of her right to due process of law. In regard to the situation existing on the eastern seaboard at the time Mrs. Schueller was excluded, the court stated:

> The normal civilian life of the area was being pursued; commercial and industrial activities, their tempo heightened by a demand for greater production, were in private ownership; the courts both federal and state were open and functioning as well as all the administrative and executive departments of government, and it could not be honestly said that ordinary law did not adequately secure public safety and private rights. Accordingly, it would seem to me that Congress "cannot authorize the executive to establish by conclusive proclamation the very thing which, upon familiar principle, would have been the subject of judicial scrutiny." [citing Fairman, *Law of Martial Rule*, 55 HARV. L. REV. 1253, 1272 (1942)]
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> . . . [W]hile I am not unmindful that the issuance of the proclamation by the Commander of the area is some evidence of the finding of the necessity for his assuming control of the functions of civil government, yet where there is a direct interference as here with one's liberty and property,

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[50] Hirabayashi v. United States, 320 U.S. 81, 101–02 (1943).

[51] Scherzberg v. Maderia, 57 F. Supp. 42 (E.D. Pa. 1944); Ebel v. Drum, 52 F. Supp. 189 (D. Mass. 1943); Schueller v. Drum, 51 F. Supp. 383 (E.D. Pa. 1943).

[52] Exec. Order No. 9066, 7 Fed. Reg. 1407 (1942).

[53] Act of Mar. 21, 1942, ch. 191, 56 Stat. 173 (now, as amended, 18 U.S.C. § 1383 (1958).

[54] 51 F. Supp. 383 (E.D. Pa. 1943).

> conduct normally beyond the scope of governmental power, such action could only be justified, a constitutional guarantee of freedom can only be abridged, when the danger to the government is real, impending and imminent.[55]

Under present world conditions it cannot be said that the danger of sabotage to Guam is real, impending and imminent. Certainly it cannot be said that there is any impending danger of invasion, nor is the danger of attack any greater to Guam than it is to the entire State of Hawaii or to any city in the United States. Whether or not present conditions justify the Navy in continuing to require a security clearance from United States citizens is subject to judicial review.[56] The consistent conduct of the Navy in immediately granting a clearance in cases of entry without a clearance rather than allowing the matter to be heard by a court of competent jurisdiction indicates that even the Navy is convinced that judicial review would not be favorable to the continuation of the clearance requirement. United States citizens have been prevented from coming to Guam to engage in a legitimate occupation or to live in the place of their choice. This deprivation of those rights under present circumstances is in clear violation of the due process clause of the United States Constitution.[57]

(b) The Passport Cases.—More recently the United States courts have been confronted with the right of United States citizens to travel as affected by regulations issued by the Department of State.[58] The two cases reaching the Supreme Court did not raise the constitutional issue,[59] but the Secretary of State was held not to have authority to deny a passport to citizen applicants solely because of their refusal to be subjected to inquiry into their beliefs and associations.

In the *Shachtman* case[60] the plaintiff sued in the district court to enjoin the Secretary of State from denying application for a passport to visit Europe. His complaint was dismissed and he appealed. The plaintiff had

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[55] *Id.* at 387.

[56] *Cf.* Sterling v. Constantin, 287 U.S. 378, 400–01 (1932); Ebel v. Drum, 52 F. Supp. 189, 195–96 (D. Mass. 1943).

[57] Even a military order placing a civilian establishment "off-limits" is subject to review. If not well-founded it is unconstitutional as being a deprival of a property right without due process of law. Barn Ballroom Co. v. Ainsworth, 67 F. Supp. 299, (E.D. Va. 1946); *cf.* 32 C.F.R. § 761.18 (Supp. 1959). Apparently the Navy places the burden upon the United States citizen to prove he has "legitimate cause" to enter Guam. What is "legitimate" is committed to the Navy's sole discretion.

[58] Kent v. Dulles, 357 U.S. 116 (1958); Dayton v. Dulles, 357 U.S. 144 (1958); Boudin v. Dulles, 235 F.2d 532 (D.C. Cir. 1956); Kraus v. Dulles, 235 F.2d 840 (D.C. Cir. 1956); Shachtman v. Dulles, 235 F.2d 938 (D.C.Cir. 1955).

[59] Kent v. Dulles, *supra* note 58; Dayton v. Dulles, *supra* note 58. Although the constitutional issue was not reached, the language of the Court was extremely strong. See Kent v. Dulles, *supra* at 125.

[60] Shachtman v. Dulles, 225 F.2d 938 (D.C. Cir. 1955).

been granted "a hearing of a sort." The court did not decide whether the hearing complied with all procedural requirements, but held that the action of the Secretary of State in denying the passport was arbitrary and thus denied plaintiff substantive due process of law. The principal ground for the denial appeared to be that the Secretary of State alleged that the plaintiff was a member of an organization listed by the Attorney General as subversive. The correctness of this characterization was denied by the plaintiff.[61]

> What is involved at the present stage is a question of substantive due process—whether the refusal for the reason given, as alleged in the complaint and undisputed thus far by the Secretary, was arbitrary. If so, it is not a valid foundation for the denial, for the Government may not arbitrarily restrain the liberty of a citizen to travel to Europe. Discretionary power does not carry with it the right to its arbitrary exercise. Otherwise the existence of the power itself would encounter grave constitutional doubts.[62]

When one compares the language of the *Shachtman* case with that of the Naval Guam regulations[63] it immediately becomes apparent that the regulations deny substantive due process of law to any applicant who is denied a security clearance to enter Guam. The regulations arbitrarily provide that "under no circumstances will a notice of disapproval include a statement of the reason therefor."[64] Clearly, if the regulations are followed, any denial of a security clearance to any United States citizen is a denial of substantive due process under the fifth amendment of the Constitution. Unexplained denial of a security clearance is arbitrary administrative action outside the authority of law in view of the circumstances existing on the island of Guam at the present time.

2. *Equal Protection of the Laws*

In its Guam regulations the United States Navy has chosen to discriminate against certain "types" of United States citizens.[65] Those born on Guam or those who became citizens of the United States under the Guam Organic Act of 1950[66] may enter the Guam Island Naval Defensive Sea Area and the Guam Island Airspace Reservation without a clearance. Approximately 35,000 United States citizens are in that category, and a security clearance is not required of them, while a clearance is required of other United States citizens who were not fortunate enough to be born on Guam.

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[61] Shachtman v. Dulles, 225 F.2d 938, 943 (D.C. Cir. 1955).
[62] *Id.* at 941.
[63] 32 C.F.R. §§ 761.1–24 (Supp. 1959).
[64] 32 C.F.R. § 761.16 (Supp. 1959).
[65] See 32 C.F.R. § 761.10 (Supp. 1959).
[66] 64 Stat. 384, as amended, 48 U.S.C. §§ 1421–26 (1958).

The regulations also discriminate against citizens who do not work for the Government—for that reason alone. Civil service employees and military dependents and many other groups are not required to be cleared, nor does the Navy claim that they have been checked for security purposes.

It would seem that few would venture to vouch for the undivided loyalty of all persons belonging to any of the Navy's favored groups solely because of membership in that group. Yet the Navy arbitrarily requires no clearance of such persons. Clearly the exclusion of such large groups from the clearance requirement is for the purpose of naval convenience and has no relation to security.

Were they to be enacted by a State the naval Guam regulations would undoubtedly be in violation of the fourteenth amendment, which extends equal protection of the laws to all United States citizens. While the fourteenth amendment does not extend to authority exercised by the United States,[67] the Supreme Court has tested the validity of federal legislation under the due process clause of the fifth amendment by the same rules of equality that are employed to test the validity of state legislation under the fourteenth amendment.[68] The equal protection of the laws afforded by the due process clause of the fifth amendment has been spoken of as "that mere minimum of equal protection secured both by the due process clause and by the equal protection clause of the Fourteenth Amendment."[69] Furthermore, the statute or regulation may be so discriminating or so arbitrary and injurious in denying equal protection of the law that it may be said to violate the due process clause of the fifth amendment even though the fifth amendment contains no equal protection clause and provides no guarantee against discriminatory legislation by Congress.[70]

The Supreme Court has held that discrimination against United States citizens of Japanese ancestry was not unconstitutional as being in violation of the fifth amendment where the circumstances were such as to make racial distinctions relevant.[71] During the time United States was at war with Japan racial distinctions were relevant, as it was then possible that some United States citizens of Japanese ancestry might have loyalties toward their mother country. No such distinction is relevant at the present time in respect of Guam.[72] Discrimination against United States citizens on the

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[67] Truax v. Corrigan, 257 U.S. 312, 340 (1921).

[68] NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 43 (1937); District of Columbia v. Brooke, 214 U.S. 138 (1909).

[69] Lewis v. Brautigam, 227 F.2d 124, 128 (5th Cir. 1955).

[70] Detroit Bank v. United States, 317 U.S. 329 (1943); Hirabayashi v. United States, 320 U.S. 81, 100 (1943).

[71] Hirabayshi v. United States, *supra* note 70. The Court also said, "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people...." *Id.* at 100.

[72] It should be noted that by far the greater number of "locally born citizens" are natives of Guam whose ancestry is principally Spanish, Filipino and Chamorro.

sole ground they were not born on Guam is arbitrary and unjustifiable. The regulation appears clearly to be so objectionable on its face that it violates the due process clause of the fifth amendment.

3. Power Exercised by United States Navy Exceeds the Authority of the Executive Order

Assuming Executive Order No. 8683 is valid today, it is submitted that the practical power exercised by the Navy exceeds the authority of the Executive order, and that as a result substantial rights have been denied both United States citizens and aliens.

(a) Enforcement of Exclusions.

> Wherever law ends tyranny begins, if the law be transgressed to another's harm. And whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command to compass that upon the subject which the law allows not . . . may be opposed, as any other man who by force invades the right of another.[73]

The Navy has acknowledged that it has no power whatsoever to exclude anyone from the island of Guam.[74] In spite of that acknowledgment, however, the Navy has as a practical matter excluded numerous persons from Guam by the simple expedient of revoking their security clearance and notifying their employers that they must be repatriated.[75] A prevalent reason for the revocation of an alien's security clearance is that he has placed himself "out of status" for having had the temerity to marry a United States citizen. Employers invariably cooperate, knowing well that future importation of labor depends upon favorable Navy action on security-clearance applications. Though such action is admittedly contrary to law,[76] the Navy continues to revoke clearances, thereby arbitrarily exercising a power it does not have. The rights of aliens under the fifth amendment are also protected if they are permanent residents. In *Kwong Hai Chew v. Colding*[77] the Supreme Court so ruled, saying:

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[73] LOCKE, SECOND TREATISE OF CIVIL GOVERNMENT sec. 202 (1690).

[74] Letter From J. H. Smith, Jr., then Ass't Secretary of the Navy for Air, to Senator William Langer, in Guam Daily News, Dec. 8, 1954, p. 1, cols. 2–4.

[75] A typical exchange of letters will be found in App. A.

[76] In Wilcox v. Emmons, 67 F. Supp. 339 (S.D. Cal. 1946), the plaintiff had been excluded from a military area in continental United States. The military commander who had excluded the plaintiff acted under color of law in an honest belief that he was empowered lawfully to direct the acts of expulsion and exclusion by physical force. The court held that the exclusion order was not self-executing and that defendant did not have lawful power to expel or exclude plaintiff from such area, the statute being a limitation on the power of the military and providing for criminal penalties only. *Cf.* Ochikubo v. Bonesteel, 57 F. Supp. 513 (S.D. Cal. 1944), 60 F. Supp. 916 (S.D. Cal. 1945).

[77] 344 U.S. 590 (1953).

> It is well established that if an alien is a lawful permanent resident of the United States and remains physically present there, he is a person within the protection of the Fifth Amendment.[78]

Aliens who have been admitted though not with "permanent resident" status do not have constitutional protection.[79] When the language used in *Kwong Hai Chew* is applied to the Guam situation, however, it would appear that even nonresident aliens should have some rights. The Court there said:

> This preservation of petitioner's right to due process does not leave an unprotected spot in the Nation's armor. . . . Before receiving clearance for his foreign cruise, he was screened and approved by the Coast Guard. Before acceptance of his petition for naturalization, as well as before final action thereon, assurance is necessary that he is not a security risk.[80]

Before he enters Guam for any purpose an alien presumably is screened to determine whether he is a security risk. Therefore, an alien subsequently excluded by the Navy without explanation should be given some opportunity to be heard and to show that he has not become a security risk in the interim.

The Navy has exercised considerable arbitrary power in forcing repatriation of aliens, particularly to the Philippines, without lawful authority. A very much-needed and well-qualified nurse employed at the Guam Memorial Hospital was separated from her job due to the fact that her security clearance was revoked shortly after she married a United States citizen.[81] In justification of the policy of revoking an alien's clearance for marrying a citizen a Naval spokesman said that the Navy favors keeping "Guam for the Guamanians."[82] The only other justification ever given by the Navy for

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[78] *Id.* at 596.

[79] United States *ex rel.* Knauff v. Shaughnessy, 338 U.S. 537, 545 (1950). Even here the majority of the Court justified denial of procedural due process to an alien on the ground that a state of war still technically existed. The Court admitted that in peacetime Congress had provided aliens with a hearing.

[80] Kwong Hai Chew v. Colding, 344 U.S. 590, 602 (1953). The language of Mr. Justice Jackson in Shaughnessy v. United States *ex rel.* Mezei, 345 U.S. 206, 224–27 (1953) is of interest also, though in a dissenting opinion.

[81] The Government of Guam terminated Mrs. Delfina A. Cataluna's contract for the reason that the Navy had revoked her authority "to remain within, or re-enter the Guam Naval Defensive Sea Area as per letter from Commander Naval Forces Marianas dated April 22, 1957." Termination Notice, April 30, 1957, Signed by Peter C. Siguenza, Director of Personnel. Mrs. Cataluna had been hired in August 1956 on a 2-year contract.

[82] "The U.S. Navy 'does not favor the entry' of Filipinos to Guam 'for the purpose of settling permanently' because U.S. Navy policy is 'to keep Guam for Guamanians,' Rear Admiral William B. Ammon, commander of the U.S. Naval Forces in the Marianas said. Ammon's 'Guam for the Guamanians' statement was in reply to a question as to why the Navy frowns upon any effort of Filipinos to settle permanently on Guam. 'Navy policy is to keep Guam for Guamanians, therefore, it does not look with favor on the entry of any foreigner to Guam for

revocation of an alien's clearance because of marriage to a citizen is that the Navy feels it is not in the best interests of the United States to build up in Guam an alien colony whose members are qualified to become permanent residents.[33]

Just why an alien colony in Guam is detrimental to the interests of national defense has never been fully explained, particularly in view of the fact that there are presently only about 6,500 aliens on the island of Guam, and by far the greater portion of those aliens are working for the United States Government or for contractors of the Government. The fallacy of the "alien colony" argument advanced by the Navy is particularly revealed by the fact that although the United States has far more extensive operations on the island of Okinawa than in Guam, Okinawa has an "alien colony" residing thereon, numbering almost 800,000. This is more than one-hundred times the number of aliens on Guam, although the land area of Okinawa is little more than twice that of Guam. Nor has the Navy given any reason why Filipino aliens should be more detrimental to national defense because they happen to reside in Guam, than Okinawans loyal to the Japanese are detrimental to defense because they reside in the small land area of Okinawa.[33a]

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the purpose of settling permanently,' he said." Abcede, *Guam Policy Explained*, The Manila Times, Oct. 12, 1956, p. 2, col. 1.

More recently Mr. Abcede wrote a long article in a Manila newspaper commenting on the life of the Filipino on Guam. He said in part: "Despite the enactment of the Organic Act of Guam, establishing the supremacy of civilian authority, the U.S. Navy paper curtain remains to this day. Naval intelligence has been intensifying efforts to fend off foreigners and unwanted Americans.... The clearance requirement has worked hardships on both Americans, Guamanians and Filipinos. The economic life of Guam has also been adversely affected. An estimated 200 Filipino-Guamanian families have been broken up because of this stringent requirement. Filipinos married to Guamanian women and who have been forced by circumstances to visit the Philippines found themselves unable to go back to Guam. In many instances, a breakdown of family ties resulted. The writer presented this problem to Rear Admiral W. B. Ammon, commander of the U.S. Naval Forces in the Marianas in 1956. The Navy was asked whether it discouraged the intermarriage of the two peoples and whether it frowns on any effort of the Filipinos to settle permanently in Guam. Admiral Ammon's reply is quoted: 'The Navy does not encourage or discourage intermarriages and endeavors not to become involved in domestic affairs except as necessary to administer entry clearance regulations. Navy policy is to keep Guam for Guamanians, therefore, it does not look with favor on the entry of any foreigner to Guam for the purpose of settling permanently.'" Abcede, *Filipinos In Guam*, The Manila Sunday Chronicle, July 26, 1959 (Magazine) p. 16, col. 3.

The Department of Justice maintains an Immigration and Naturalization Office in Guam, and the entry of aliens is controlled by that office. Under the ostensible authority of Executive Order 8683, however, the Navy excludes numerous aliens who have been admitted by Immigration authorities for announced reasons no better than "Guam for the Guamanians."

[33] "The long term presence on Guam of aliens in large numbers would be a detriment to the effective use of Guam for its primary mission of defense, while heavy population of the island by aliens could not fail to adversely affect the people of Guam and their own economy." Letter From Comdr. Edward L. Beach, Naval Aide to the President, to F. L. Moylan, Guam Businessman, September 20, 1956. The latter reason hardly seems a proper concern of the Navy, even if true.

[33a] As a further justification for the imposition of the security clearance, the Navy has insisted on its duty to enforce Executive Order No. 8683. See Letter From Ira H. Nunn, Navy

(b) Penalties for Violators.—Navy Guam regulations set forth no less than five sections of the United States Code as providing penalties for violations of Executive Order No. 8683.[84] One of the sections cited[85] is really not applicable to the security clearance program inasmuch as it provides a penalty for entering military reservations. The entire island of Guam is not a military reservation and the Code section therefore applies to Guam only to the same extent that it applies to a United States military reservation, post or camp anywhere in the United States.

Another section cited provides a penalty for violating any regulation or order promulgated pursuant to law by military authority.[86]

A third section cited provides a punishment for knowingly making any false or fraudulent statement or representation.[87] The rather obvious reason for citing that section is seen when one considers the voluminous paper work applicants are required to execute in order to obtain a security clearance.[88]

Another section cited provides a penalty for anyone who knowingly or wilfully violates any Executive order.[89] It is this section that has been "violated" a number of times in Guam by persons who have been denied a security clearance but who nevertheless have entered the island. In their case the Navy has without fail issued them a security clearance forthwith and has not held them long enough to enable their counsel to obtain a writ of habeas corpus.[90]

Judge Adv. Gen., to Rear Adm. H. A. Houser, June 3, 1953. However, although current Navy regulations list all Naval Defensive Sea Areas and Naval Airspace Reservations set aside by Executive order, the Navy has suspended operation of entry controls in no less than nine of these areas. 32 C.F.R. §§ 761.3–.4 (Supp. 1959). Entry control with respect to Tutuila and Rose Islands was revoked by Executive Order No. 10341, 17 Fed. Reg. 3143 (1952). With respect to the other areas, "suspension of the operation of certain entry controls . . . has been accomplished administratively and is subject to reinstatement without notice at any time." Letter From Comdr. C. E. Herrick, Office of Chief of Naval Operations, to W. Scott Barrett, July 31, 1959. It is difficult, to say the least, to reconcile this administrative suspension of entry controls with respect to selected areas with a compelling duty of obeying Executive Order No. 8683 with respect to entry controls for Guam. Unfortunately, the opinion of the Judge Advocate General's department which concluded that the Navy had such a duty is unavailable. It is, as has been noted before, a *classified* document. See text at note 35 *supra*.

[84] OPNAV Instruction 5500.11B, Nov. 27, 1957, p. 7, 32 C.F.R. § 761.3(f) (Supp. 1959).

[85] 18 U.S.C. § 1382 (1958).

[86] 64 Stat. 1005 (1950), 50 U.S.C. § 797 (1958).

[87] 18 U.S.C. § 1001 (1958).

[88] Applicants are required to itemize in detail all places of residence and employment for the past 10 years. OPNAV Instruction 5500.11B, Nov. 27, 1957, p. 22, 32 C.F.R. 761.3(b)(3)(iv)-(v) (Supp. 1959).

[89] 18 U.S.C. § 2152 (1958).

[90] One petition for a writ of habeas corpus was actually filed, but the Navy issued a clearance thus rendering the case moot before the court made any decision. Bolosan v. Johnson, Civil No. 29-55, D. Guam, April 20, 1955.

The fifth penalty provision cited by the regulations related to the naval airspace reservations[91] and has been repealed, subject to a savings clause which provided that all orders made by the President under any provision of law repealed or amended by the act, which were in effect at the time the section takes effect, should continue in effect according to their terms until modified, or terminated, superseded, set aside or repealed by the administrator or the board or by any court of competent jurisdiction or by operation of law.[92]

C. Procedural Due Process of Law Denied

The constitutional right to a hearing has been defined in *Morgan v. United States*[93] as follows:

> The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one. Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command.[94]

Prior to the fourth day of September 1956, the Navy had administered the security clearance program for some 13 years,[95] excluding the time Guam had been occupied by the Japanese, without giving persons to whom it denied a clearance any reason or right to appeal.

As Kelsen has pointed out, the liberties granted under a bill of rights are rights only if there is the right to appeal:

> The liberties it [the Bill of Rights] states are rights in a juristic sense only if the subjects have an opportunity to appeal against acts of State by which the provisions of the constitution are violated in order to get them annulled.[96]

1. The Feraru Case—Appeal Procedure Supplied

In 1953 Arthur N. Feraru was hired by United Seamen's Service to come to Guam in their employ. Subsequently the Navy informed Mr. Feraru that his application for a security clearance had been denied. Mr.

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[91] Act of May 20, 1926, ch. 344, § 4, 44 Stat. 570 (repealed by The Federal Aviation Act of 1958, § 1401, 72 Stat. 806).

[92] Federal Aviation Act of 1958, § 1504, 72 Stat. 811, 49 U.S.C. § 1301 (1958).

[93] 304 U.S. 1 (1938).

[94] *Id.* at 18–19.

[95] During the period between the time of the reoccupation of Guam and Dec. 4, 1950, the Navy did not actually enforce the security clearance; until the passage of the Organic Act in July 1950 it had unquestioned power to exclude anyone from the island. See text at notes 7–9 *supra*.

[96] KELSEN, GENERAL THEORY OF LAW AND STATE 236 (1949).

Feraru then lost his job since the employer apparently required his services only on Guam. Subsequently, in December 1955 Mr. Feraru filed suit against the Secretary of the Navy in the United States District Court for the District of Columbia.[97] The Government filed an answer admitting substantially all of the factual allegations in the complaint but denying that plaintiffs were entitled to relief and denying on information and belief that plaintiffs were loyal to the United States.

Within nine months of the filing of the *Feraru* suit the Office of the Chief of Naval Operations issued a new directive providing a procedure, though grossly inadequate, whereby a United States citizen denied entry to Guam might appeal and receive an administrative hearing.[98] This was the first attempt on the part of the Navy to establish an administrative board to hear appeals. The directive is very brief. It places the burden upon the petitioner to justify his entry into Guam. The petitioner is also required to show that his entry would serve the best interests of the United States. The directive applies only to United States citizens. The board it establishes is composed of three naval officers or employees who are not empowered to make a final decision. That decision is made by the Chief of Naval Operations to whom the board only makes a recommendation.[99]

In January 1957 the *Feraru* suit was continued by stipulation until the Navy could complete the procedure offered the Ferarus under the new directive. Thereafter, the Feraru family, because of personal problems, were forced to delay the "hearing" offered them by the Secretary of the Navy pursuant to the directive. Their counsel thereafter agreed to dismiss the suit without prejudice rather than let it remain endlessly on the docket.[100]

Regardless of the merits of his case, there is no doubt that Mr. Feraru was denied procedural due process of law. Only after suit was filed did the Navy provide for appeal. Still more time passed before the appeal machinery was actually set up. The Navy is notoriously slow in these matters. Nor do the regulations providing for appeal take cognizance of the fact that

[97] Feraru v. Thomas, Civil No. 5603-55, D.D.C., Dec. 27, 1955.

[98] OPNAV Instruction 5420.18, Sept. 4, 1956 (reproduced in App. B). The Navy originally contended no hearing of any kind was required. "The Navy has at no time made any charges against Mr. and Mrs. Feraru. There is no statutory or legal requirement for a hearing in this case, and there has been no change in Navy Department procedures for handling requests for entry into the Island of Guam. Under the terms of Executive Order 8683 . . . no hearing is provided for and none is contemplated where refusal of entry occurs." Letter From Rear Adm. L. L. Russell to David I. Shapiro, of Deickstein, Shapiro & Friedman, New York, Counsel for Mr. and Mrs. Feraru, November 10, 1955.

[99] Compare the appellate procedure reported in Parker v. Lester, 227 F.2d 708, 712 (9th Cir. 1955). In the *Parker* case, too, the Commandant made the final decision and the burden was on petitioners to show they were good security risks.

[100] Letter From James H. Heller, Counsel for Mr. Feraru, to W. Scott Barrett, May 26, 1959.

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when one desires to travel, it is usually a desire which must be acted on immediately or it is frustrated entirely. By the time the appeal procedure had been provided, Mr. Feraru had lost his job. Few persons would have the time and money and inclination to carry a court case forward under such circumstances.

2. The Parker and Greene Cases—Appeal Procedure Inadequate

Unquestionably the Navy directive offering a limited administrative hearing does not provide the procedural due process of law required by the Constitution. In *Parker v. Lester*[101] petitioners were denied security clearances by the Commandant of the Coast Guard and were thereby deprived of their employment as merchant seamen. The commandant's order had been made pursuant to an Executive order [102] authorized by statute.[103] The principal contention of petitioners was that they were subjected to procedures that deprived them of due process of law in violation of the fifth amendment. The district court judge defined procedural due process of law as "the maximum procedural safeguards which can be afforded petitioners without jeopardizing the security program,"[104] but nevertheless held against petitioners. On appeal the court of appeals reversed,[105] holding that the regulations fell short of furnishing the minimum requirements of due process in respect to notice and opportunity to be heard.[106] In so holding the appellate court discussed the regulations provided by the Coast Guard, which were strikingly similar to the Navy directive establishing the review board.[107] The Coast Guard board in *Parker* had before it the complete record on which the Commandant's initial determination to deny clearance was made, but none of this was disclosed to the seamen, although they could appear in person and by counsel and could submit testimony and documentary evidence. The burden of showing that they were good security risks was on the seamen, notwithstanding the fact that they knew neither the names nor the identities of, nor anything else about their accusers. The Commandant had final authority to grant or deny the security clearance. The board only had power to recommend.[108] The court of appeals apparently placed great weight upon the fact that the accused seamen were not furnished with a bill of particulars setting forth the source of the data upon which their security clearances were denied.[109]

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[101] 227 F.2d 708 (9th Cir. 1955), *reversing* 112 F. Supp. 433 (N.D. Cal. 1953).

[102] Exec. Order No. 10173, 15 Fed. Reg. 7005–08 (1950).

[103] Magnuson Act § 1, 64 Stat. 427 (1950), as amended, 50 U.S.C. § 191 (1958).

[104] Parker v. Lester, 112 F. Supp. 433, 443 (N.D. Cal. 1953).

[105] Parker v. Lester, 227 F.2d 708 (9th Cir. 1955).

[106] *Id.* at 724.

[107] Discussed note 98 *supra*; see App. B.

[108] *Cf.* OPNAV Instruction 5420.18 (see App. B).

[109] Parker v. Lester, 227 F.2d 708, 716 (9th Cir. 1955): "Thus if the Commandant's information is that at a certain time and place the accused seaman in a conversation with an ac-

The Navy directive providing for a limited hearing makes no provision whatsoever for informing the person whose application for entry clearance has been denied as to the source of information upon which the determination was based. Another directive sets forth a form letter which is sent to all persons whose requests for entry authorization are denied.[110] That letter merely states that their entry has been denied because it is not considered in the interests of national defense. The person is then advised that he may appeal the decision by submitting a letter to the Chief of Naval Operations, setting forth in full why the granting of the application would be in the best interests of national defense. Officers are expressly instructed to give no reason whatsoever when they deny a clearance.[111]

In *Greene v. McElroy*[112] an employee of an aircraft factory having access to classified information had his security clearance revoked, thereby causing him to lose his job. The Court of Appeals for the District of Columbia Circuit held that one having access to classified matter may be deprived of his employment without any procedural safeguards. That decision was discussed and criticized in the *California Law Review*,[113] the author concluding that Greene should have been given one or more of the following rights: (1) The right to know the evidence used against him; (2) the right to know the identity of his accusers and to cross-examine them; and (3) the right to inspect reports made by his accusers to the Government.

The Supreme Court granted certiorari and decided the case on June 29, 1959.[114] The Court, Mr. Chief Justice Warren writing the opinion, reversed the court of appeals. The constitutional question was not reached. Rather, the Court apparently preferred to decide the case on the ground that the type of hearing given the petitioner "was the product of administrative decision not explicitly authorized by either Congress or the President."[115] In that connection the Court said:

> Before we are asked to judge whether, in the context of security clearance cases, a person may be deprived of the right to follow his chosen profession without full hearings where accusers may be confronted, it must be made clear that the President and Congress, within their constitutional powers, specifically have decided that the imposed procedures are necessary and warranted and have authorized their use. . . . Such decisions cannot be assumed by acquiescence or non-action. . . . They must be made explicitly

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quaintance spoke disparagingly of the American Flag, the seaman will have no information that this incident is being considered, for to mention the charge would be to disclose the informer."

[110] OPNAV Instruction 5500.11B, Nov. 27, 1957, p. 31; see note 2 *supra*. The form letter is not printed in the Code of Federal Regulations.

[111] OPNAV Instruction 5500.11B, Nov. 27, 1957, p. 28; 32 C.F.R. § 761.16 (Supp. 1959).

[112] 254 F.2d 944 (D.C. Cir. 1958).

[113] 46 CALIF. L. REV. 828 (1958).

[114] Greene v. McElroy, 360 U.S. 474 (1959).

[115] *Id.* at 508.

> not only to assure that individuals are not deprived of cherished rights under procedures not actually authorized . . . but also because explicit action, especially in areas of doubtful constitutionality, requires careful and purposeful consideration by those responsible for enacting and implementing our laws. Without explicit action by lawmakers, decisions of great constitutional import and effect would be relegated by default to administrators who, under our system of government are not endowed with authority to decide them.[116]

Significantly, the United States Navy cites as its only authority for enforcing the security clearance entry requirement in Guam the Executive order issued by President Roosevelt in 1941. Congress did not ratify that order although the President was authorized by Congress to make it.[117] It is by no means clear that either the President or Congress within their constitutional powers have specifically decided that the procedures imposed by the United States Navy are necessary and warranted. Citizens and aliens alike have been deprived of liberty and property,[118] and the procedures used have afforded less due process than that given to Greene. It must therefore be assumed that Congress and the President intended to afford those affected by the Guam naval security-clearance entry requirement the traditional safeguards of due process.

The issue in the *Greene* case was whether the Department of Defense had been authorized to create an industrial security clearance program under which persons having access to classified information may lose their jobs on the basis of facts determined in proceedings in which they are denied the traditional procedural safeguards of confrontation and cross-examination. It is at once apparent that the authorization given to the Defense Department to administer its clearance program was much more complex and granted greater authority than has been given to the Navy by virtue of Executive Order No. 8683. The appellate procedure offered to Greene appeared to give him an opportunity for a fair hearing which was considerably better than that given by the appellate procedure offered to those denied a security clearance to enter Guam.[119]

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[116] Greene v. McElroy, 360 U.S. 474, 507 (1959).

[117] By virtue of the Act of Mar. 4, 1909, ch. 321, § 44, 35 Stat. 1097, as amended, ch. 180, 39 Stat. 1194 (1917), added by ch. 20, § 19, 40 Stat. 39 (1917) (now, as amended, 18 U.S.C. § 2152 (1958)).

[118] Joseph Siciliano, a local businessman, somehow incurred the enmity of the Navy and has been excluded from Guam and told never to return. The actual reasons are known to no one but the Navy. Siciliano's substantial business interests in Guam have diminished or vanished due to his prolonged absence.

[119] The Board made the final decision. Greene was informed of charges against him but not of the identity of the informers. Greene had access to three appeal boards, the Personnel Security Board (PSB), The Industrial Employment Review Board (IERB) and the Eastern Industrial Personnel Security Board (EIPSB). Greene had been cleared in 1952 by the IERB, which reversed the PSB. On March 27, 1953, the PSB and the IERB were abolished. On April 17, 1953, the Secretary of the Navy arbitrarily and without further hearing revoked Greene's clearance. More than one year later Greene was granted a hearing before the EIPSB which affirmed the Navy's decision.

footnote #99
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GUAM, U. S. A.

Birth of a Territory

Library
TERRITORIAL COLLEGE OF GUAM
DEPARTMENT OF EDUCATION

By

26875

RUSSELL L. STEVENS

Many of the schools have playgrounds which are inadequate in size and area, and have little or no playground equipment. Of the entire system, only four schools, including the high school, have lunchroom facilities. More than half the schools lack proper sewage systems, and most of them do not have full water and power connections.

Children of stateside parents on the island attend Adelup, Mongmong, and Wettengell Elementary Schools, George Washington High School, and Catholic private schools. A few such students attend schools in the outlying districts, but this is exceptional. Generally speaking, attendance at outside schools has proved unsatisfactory because of racial differences and the fact that the Chamorro language is used so frequently by the children and sometimes the teachers in such schools. English is the standard language, but it is inevitable that conversations will lapse at times into the native tongue.

A territorial college has been established, which is primarily directed to the education of teachers. Credits earned at the college are accepted at Ohio State University, which is supplying much of the personnel for this advanced educational program. The college has not progressed far to date, but teaching has begun and the founders of this final link of the educational system of Guam are confident that in the future the college will provide an excellent source of teaching material as well as a good background for further education in the continental United States.

Although urban life in Guam today is haphazard, utilities uncertain and housing often poor, steady and rapid progress is apparent. Those who are not dismayed by inconveniences are creating an enjoyable life and will soon see the emergence of a new American community equal to the best in the mainland United States. In addition to the material conveniences we demand in our American lives, Guam offers even more than can be created elsewhere—it has a natural beauty which cannot be created.

CHAPTER VI

ECONOMY

Guam has no appreciable amount of mineral resources. There is no gold, iron ore, or any other type of metallic ore with the possible exception of a few traces which have no commercial value. There are no forests of sufficient size and quality for commercial development except on a limited scale for local consumption. Fish life in the vicinity of the island has not been shown to be sufficiently abundant for large-scale commercial development. Therefore, the economy varies with the influx of outside capital, mostly in the form of wages.

Prior to and immediately following the Second World War the economy depended upon the Navy, in which was vested complete power and supervision over the affairs of Guam. The Navy dictated all economic terms. It brought all imports into the island, and took all exports out, with negligible and unimportant exceptions. It completely controlled the travel of persons to and from Guam. Development of local business was directly dependent upon the sanction and approval of the Navy. "Outsiders" were not allowed to engage in business except on a small scale, and following the war until 1950, statesiders were urged to establish businesses only if interests therein were owned by Guamanians. There was no incentive for outside capital to come to Guam, and no possibility of large profits for outsiders. Local merchants were nurtured and assisted by the Navy, and were enabled to make substantial profits only because they had the blessing and approval of appropriate Navy officials.

Following the war, some merchants were able to finance purchases interest free. Huge amounts of stores and supplies of all kinds were issued from Navy supplies and quickly turned into profits. In addition, war claims were paid in the amount of several million dollars, and some individual claims rose to very high figures. As a re-

UNITED STATES NAVAL GOVERNMENT AND ADMINISTRATION OF GUAM

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by

M. Dean Zenor

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A dissertation submitted in partial fulfillment of the
requirements for the degree of Doctor of Philosophy
in the Department of Political Science in the
Graduate College of the State
University of Iowa

August, 1949

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University of Guam

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taxes, but these revenues according to the proposed organic act would be retained on the island to help defray costs of the local government as in the Virgin Islands and Puerto Rico. Statistics are not available on incomes of Guamanians, but it is not likely that most of the natives would have sufficient incomes to require the payment of income taxes, particularly in view of the prevalence of large families.

The Navy Department during its administration of Guam has never thought in terms of an American standard of living. Post-war wages for Guamanians have been kept low purposely in order that the natives would not become accustomed to a standard of living which could not be maintained over a period of time. The effect of Guamanian assumption of governmental responsibilities on the native standard of living is conjectural. It may be that the annual income of the island will not be sufficient to defray governmental expenses and still provide a decent standard of living. In such case it would appear to be incumbent upon the United States Congress to provide annual appropriations for welfare activities on the island, inasmuch as a fairly complex society was the choice of the United States, not the native inhabitants of the island.

The educational system begun in 1901 by the Naval Government will no doubt be continued with the present course of study. Because of the limited opportunities for employment, it would appear desirable for education to be largely of a vocational nature —

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locally or which were bona fide importations into Guam and resold in the regular course of trade from local shelves. Issuance of the certificates is closely regulated, and if their issuance is requested for doubtful merchandise, shippers are referred to the United States Bureau of Customs for final answer.

The efficacy of the aforesaid section 27 depends upon a companion situation in Guam which also has been the subject of much speculation and study; that is, the status of Guamanian import duties.

During the period of naval control of the island, a local tariff law was in existence which included import regulations and a schedule of import duties. It is important to remember that those duties and regulations were the product of the local government, that is, the Naval Government of Guam, and not the product of the Customs Bureau of the United States. The Treasury Department of the United States did not oppose issuance of such regulations, without which Guam could have become a port for evasion of import duties of the United States. Ordinarily, if the Congress of the United States has preempted a field of legislation over which the United States may or must exercise exclusive jurisdiction, local legislatures are prohibited from acting. However, in the case of Guam the United States Congress had not acted, and Guam was not a port of entry. Therefore, although goods could be imported into Guam from foreign countries, they were subject to duties roughly the same as the duties would have been if the same goods were imported into the United States.

One of the first acts of the Guam Legislature after its assumption of power as a branch of the civil government of Guam, was to enact a law to repeal the local customs duties. Since the United States customs duty laws did not extend to Guam, repeal of local tariff laws left the field open for importation of goods into Guam from foreign countries free of duty. This created what is often referred to, erroneously, as Guam's "free port". The status of Guam is entirely different from that of Hong Kong, and it is not a free port as that term ordinarily is used. It is true that goods and merchandise may enter Guam from any country free of duty, if they are not excluded as imports from "Iron Curtain" countries, since the United States has not extended its customs duty laws to Guam and the local legislature has not re-enacted customs duties. However, it does not follow that such goods can be reshipped to the United States and there imported free of duty. If such were the case, the entire structure of our tariff laws would be in danger.

Another factor which militates against the idea of Guam's being a "free port" as that term is applied to Hong Kong, is the status of Guam's only harbor. Apra Harbor in its entirety, together with its environs, is a military reservation under control of the Navy. Not only is American traffic in and out of the harbor closely scrutinized and regulated by the Navy, but also section 32 of the Organic Act permits the President to treat Guam as a closed port with respect to the vessels and aircraft of foreign nations. A portion of the harbor is utilized as the Commercial Port under supervision of the government of Guam, but such port is subject to the overriding requirements of the Navy.

A number of interesting proposals and ideas have been suggested and discovered, some of which were designed intentionally to evade the customs laws of the United States. For instance, one suggestion was to purchase goods in Japan, import them into Guam free of duty, change the labels and transship the goods to the United States. The theory of course was to evade duties ordinarily paid upon Japanese merchandise.

At some point between mere token alteration of goods and outright manufacture of goods in Guam a line must be drawn to indicate the presence or absence of a "manufacture". It seems fairly certain that if raw materials are brought into Guam from abroad and changed on the island from their status as raw materials to manufactured articles, the articles may be admitted into the United States free of duty as the product of Guam. This assumption depends upon a complete change in the nature of goods, and a considerable amount of labor and capital expended thereon. The most difficult field of decision is that involving assembly. Assembly of watches in Guam from foreign parts represents a close case, as does the manufacture of expensive jewelry from foreign-produced gems.

The Congress of the United States acted on September 1, 1954, to limit the provisions of Section 27 of the Organic Act, and similar provisions contained in the laws regulating other insular possessions. 68 Stat. 1139 provides, among other things, that duty-free entry is permitted to articles which are the growth, product or manufacture of Guam which do not contain foreign materials to the value of more than 50% of their total value. Thus a percentage line was drawn by Congress. But several questions still remain in determining what is a "product" or "manufacture" and in determining "value". Only specific cases can decide the questions, and each case will stand on

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crew changes could be made in Guam, which now are precluded by the absence of facilities.

With a proper hotel, a small tourist trade would be possible. The combined effect of all this on the territory's economy is obvious. However, so long as freedom of movement is prohibited no sound businessman will invest the large amount required for a hotel.

Thousands of businessmen pass through Guam each year. The territory has several definite economic possibilities, but they are not seen by such businessmen. Many of them do not learn of the possibilities until they are on their way from the States, or until Guam's development is obvious during the air approach. It is then too late to obtain a security clearance, and the travelers must continue on their way. In addition, there have been many instances when proposed trips to Guam were cancelled by businessmen in the States when they learned of the delay and inconvenience occasioned by the security program.

The economy of the territory is almost entirely dependent, at this time, on federal spending. All sound-thinking citizens recognize the necessity of broadening the economic base, and much thought is being directed to possible economic development. However, development depends upon the cooperation and assistance of the federal and local governments.

The Guam Chamber of Commerce was reactivated in 1947 during the early days of rehabilitation following cessation of hostilities. Almost from the inception of its organization, the Chamber of Commerce was granted a charter by the United States Chamber of Commerce, with which it remains affiliated today.

It is an active group and has been increasingly influential in civic and territorial affairs. The officers and directors of the Chamber have given and continue to give unstintingly of their time and effort toward the development of a broader economic foundation upon which the future wellbeing of the community can be predicated. Its membership comprises representatives of the principal businesses in the territory. The Chamber of Commerce has consistently insisted upon improvement of the relationship between private enterprise on the one hand, and both the federal and local governments on the other hand, as the indispensable element in its efforts to insure a realistic economic future.

On many occasions the Guam Chamber of Commerce has assumed leadership on critical and controversial issues of fundamental

interest to the territory. It has taken its stand on every issue, its position being based on its objectives for the territory—namely, good government, good business and good citizenship. Included in the Chamber's activity has been the Navy security program, land problems, governmental tax programs, the commercial port of Guam, competition between federally subsidized instrumentalities (e.g.—ship's stores, post exchanges, commissaries, liquor lockers) and private enterprise, and future economic development.

The Chamber was responsible for obtaining, with the cooperation and support of local naval authorities, one-year multiple security clearances for local businessmen, and was instrumental in bringing the commercial port of Guam to its present high level of efficiency through the services of off-island port terminal specialists. During a recent visit to Guam by the Special Subcommittee on Territorial and Insular Affairs of the U. S. Congress, the Chamber conducted an open forum to acquaint the congressmen with the problems of the territory. This was the first open forum of its type ever held in the territory. Enthusiastic attendance by the community gave ample evidence of the interest of the people in securing congressional assistance in solving the problems discussed at the meeting. Space does not permit a full discussion of that noteworthy occasion, but for the reader who may be interested, a complete account of the meeting is set forth in the Report of the Special Subcommittee, Committee Print Number Three, which is available from the Superintendent of Public Documents, Washington, D. C.

Continuing its service to the community, the Guam Chamber of Commerce presently is investigating the possibility of a tax and economic survey of the territory by mainland experts, with the hope that a more realistic tax program can be devised, and economic possibilities discovered. As this goes to press, the Chamber has requested the Bank of America, San Francisco, to send its staff economists to Guam to conduct an economic survey. From this survey, the first factual indication of the territory's economic future will be available to its business and civic leaders.

Although economic expansion of Guam must remain limited because of factors inherent in its small size and isolated geographical position, there are definite possibilities for growth. Included are truck farming, animal husbandry, raising of medicinal and useful herbs, fishing and marine life, inter-island and territorial transportation, communication and public utility services, assembly and

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Peacetime Martial Law in Guam

W. Scott Barrett and Walter S. Ferenz***

According to the United States Navy, Guam is under martial law and has been for many years. In February 1941 President Roosevelt issued Executive Order No. 8683[1] establishing the Guam Island Naval Defensive Sea Area and the Guam Island Naval Airspace Reservation. Administrative authority was vested in the United States Navy. To assist the Navy in enforcing the security clearance a number of regulations have been

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1 6 Fed. Reg. 1015 (1941). The Executive order reads:

By virtue of the authority vested in me by the provisions of section 44 of the Criminal Code, as amended (U.S.C., title 18, sec. 96), and section 4 of the Air Commerce Act approved May 20, 1926 (44 Stat. 570, U.S.C., title 49, sec. 174) the territorial waters between the extreme highwater marks and the three-mile marine boundaries surrounding the islands of Rose, Tutuila, and Guam, in the Pacific Ocean, are hereby established and reserved as naval defensive sea areas for purposes of national defense, such areas to be known, respectively, as "Rose Island Naval Defensive Sea Area", "Tutuila Island Naval Defensive Sea Area", and "Guam Island Naval Defensive Sea Area"; and the airspaces over the said territorial waters and islands are hereby set apart and reserved as naval airspace reservations for purposes of national defense, such reservations to be known, respectively, as "Rose Island Naval Airspace Reservation", "Tutuila Island Naval Airspace Reservation", and "Guam Island Naval Airspace Reservation."

At no time shall any person, other than persons on public vessels of the United States, enter any of the naval defensive sea areas herein set apart and reserved, nor shall any vessel or other craft, other than public vessels of the United States, be navigated into any of said areas, unless authorized by the Secretary of the Navy.

At no time shall any aircraft, other than public aircraft of the United States, be navigated into any of the naval airspace reservations herein set apart and reserved, unless authorized by the Secretary of the Navy.

The provisions of the preceding paragraphs shall be enforced by the Secretary of the Navy, with the cooperation of the local law enforcement officers of the United States; and the Secretary of the Navy is hereby authorized to prescribe such regulations as may be necessary to carry out such provisions.

Any person violating any of the provisions of this order relating to the above-named naval defensive sea areas shall be subject to the penalties provided by section 44 of the Criminal Code as amended (U.S.C., title 18, sec. 96), and any person violating any of the provisions of this order relating to the above-named naval airspace reservations shall be subject to the penalties prescribed by the Civil Aeronautics Act of 1938 (52 Stat. 973).

non-Guamanians from entering the island in order to enter business, unless there were no local people qualified or financially able to supply the particular service or handle the merchandise in question.[8]

This exclusion policy was enforced mainly through the business license provisions of the Government Code of Guam, as it existed at that time, and through regulations and orders issued by the naval governor. As a matter of fact the policy did not completely succeed because a considerable number of employees brought in by contractors eventually went into business for themselves.

In 1947 the Navy was confronted with an additional problem concerning business competition with local residents. Naval officers or personnel who had reached the age of retirement were attempting to return to Guam to enter business. To prevent this the Chief of Naval Operations issued a directive to the naval governor of Guam stating that former Navy officers or personnel who were retiring from active duty were not to be allowed to enter Guam for the purpose of engaging in private enterprise.[9] Since the Navy had complete control of the island and all of the inhabitants, no effort was made to enforce actively the provisions of Executive order No. 8683 or to enact regulations thereunder.

A. Background and Legislative History of the Organic Act

In July 1950 the United States Congress passed the Organic Act of Guam[10] which transferred administration of governmental affairs from the Navy to the Department of the Interior. The act provided a bill of rights, established civilian courts, and in other ways took away control of governmental affairs from the Navy. A District Court of Guam was created and patterned after the federal district courts. The legislature was given authority to create inferior courts and transfer causes from the district court to those inferior courts.[11]

The clear congressional intent of the Organic Act, as revealed by committee hearings and numerous exchanges of correspondence among Senators and others,[12] was to give United States citizens residing in Guam full

[8] Enlisted men were not allowed to engage in business if it "interfere[d] with the customary employment . . . of local civilians . . . ." CIVIL REGULATIONS ch. 2, para. 17, at 4.

[9] None of the specific orders or regulations are available to the writers, but this information is well verified by statements of reputable former naval officers now in business in Guam.

[10] 64 Stat. 384 (1950), as amended, 48 U.S.C. §§ 1421–25 (1958).

[11] Organic Act of Guam § 22, 64 Stat. 389 (1950), as amended, 48 U.S.C. § 1424 (1958).

[12] S. REP. No. 2109, 81st Cong., 2d Sess. (1950). See, *e.g.*, Letter From Harry S. Truman to J. A. Krug, Secretary of the Interior, May 14, 1949, in *id.* at 3; Letter from J. A. Krug to Alban W. Barkley, May 3, 1949, in *id.* at 6–9. The report stated that "given a period of peace, the growth of Guam as a transportation and commercial center for American interests in the Far East seems almost a foregone conclusion. American business enterprise in the area will want, and need, a center in which it can have the full protection of American laws and legal procedure." *Id.* at 4. The business community on Guam is generally agreed that the security

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its own merits. It is doubtful whether many general rules can be applied.

To date, in spite of many proposals and suggestions, no local producer or manufacturer is taking advantage of the unique Guam import-export situation. It is entirely possible that this situation may give rise to enterprises of great potential profit.

If a manufacturer is able to bring his product within the field of duty-free status, he still has major hurdles to cross, as do all businessmen. These include, among other things, shortages of power, land and labor.

Guam has its own peculiar types of difficulties which plague the efforts of businessmen. One of the first considerations of any businessman is the availability of a place in which he can conduct his affairs. He needs one or more buildings, and the buildings require land. It is extremely difficult to purchase land, and even long-term leaseholds are looked upon with disfavor. Until recently the common leasehold was for a year, and seldom were leases executed which extend beyond five years. Even today, leases of 10 or 20 years are rare. Guamanians realize that once their land is gone they may never be able to replace it. The family system being based essentially upon old word ideas, the people like to have land for their children, and to do a limited amount of subsistence farming and animal husbandry.

Now and then a Guamanian is found who is willing to part with all or a portion of his land, but the Guamanian idea of the value of property is something entirely foreign to the average American. Guamanians often conceive their land to be worth many times its actual value. We have pumped millions of dollars into the island with a resultant inflated economy. Shortly after the war, automobiles were selling for several thousands of dollars. Small dress shops and clothing stores were netting fifty thousand dollars per year or more. Beer halls and restaurants often netted five hundred to a thousand dollars per day. In the midst of such an economy, it is not surprising to find inflated ideas as to the value of land, even though the period of such extreme inflation is passed.

If the businessman is successful in securing a parcel of land in a suitable location, he faces the task of having a building erected on the land. Shortages of labor and supplies and the demand for construction have inflated construction costs to far above the United States average. Businessmen often find the cost prohibitive. In such instances, some businessmen retire in defeat, while a few others

resort to business in shacks. This usually consists of throwing up a simple frame structure in the cheapest possible manner, or in moving onto the lot a rusty and dilapidated quonset hut. As military areas are cleaned up hundreds of quonsets are thrown onto the market at nominal prices. These are immediately taken up for use as homes or businesses. The cost of moving a quonset and converting it for use as a business in itself is expensive and often out of reason. Even so, many businesses are conducted in quonsets today and Guam is an island of false fronts. A tour through the business areas reveals quonset after quonset partially or totally hidden behind a frame front which gives a frame-building appearance.

Advisability of capital improvements depends upon several factors. In spite of the high cost of land and construction, permanent improvements might be advisable, and frequently made by businessmen, if there were incentives in the form of tax gains or otherwise. Thus far, the government of Guam has provided no incentive. Several suggestions have been made, including a period of freedom from local taxes (other than income) and accelerated depreciation rates. If buildings could be written off in a few years more of them would be constructed. The time probably will arrive when Guam, like progressive areas such as Puerto Rico, will actively seek to entice outside capital into the territory. However, long-range progress and development will not be possible in the absence of a sound and far-sighted economic program on the part of the government, and so long as the present security program, described elsewhere, is continued.

Leading the list of improvements now non-existent but which should be made, is a hotel. A few transient quarters are available, but they are in temporary buildings and offer only the essentials. Many visitors stay with friends or business associates for the few days they remain in Guam. However, it is doubtful if a hotel will be constructed so long as the security clearance program remains in effect is it is today. If air passengers were free to stop in Guam en route to the Orient, a substantial impetus would be provided the local economy. A hotel would be an inevitable result, it is believed, since almost every plane carries persons who would spend a few days in the territory if possible. There are presently eight commercial plane stops each week, and more during some weeks. Once a proper hotel was available, those visitors now able to stop but forced to rent inferior quarters, would be afforded proper facilities. Further, air

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Applied Research Center of the West
MENLO PARK, CALIFORNIA

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A second problem is one that is voiced by a number of private business men on Guam. They say that they invest considerable time and money training a Guamanian in the servicing of equipment or appliances, instead of hiring a Filipino. Then, just about the time their investment is about to pay off, the man goes to work for the military or the territorial government at a job requiring similar technical skill and at a higher wage than the private enterprise can pay.

A third, and less significant problem, is the lack of understanding on the part of the local people of servicing costs, with a resulting reluctance on their part to ask for service or to pay for it once it is rendered.

Tourism

Guam is considered to have only limited tourist attractions. Tourism on the island in any degree comparable to that which generally is associated with the term in Hawaii, Tahiti, the United States, Mexico, or the Caribbean area is unlikely. For example, unlike Hawaii, there is no native culture. Even with its limited tourist attractions, the requirements of the Navy for a special entry authorization before one can visit the island would more than likely not encourage potential visitors. Therefore, investment in extensive tourist facilities on the island is believed to be a poor risk at this time.

However, the island has some needs related to travel or tourism. With the existing level of construction and the proposed increased activity in this field, there is a lack of sufficient and suitable accommodations for the executives or higher level supervisory employees of contractors and companies involved in related work who are on the island on either a semipermanent, temporary, or visitor basis. In fact, first class accommodations are nonexistent, and there also is a shortage of housing for those whose families accompany them to Guam. Many of the people in these categories, as well as distinguished persons on short-term visits, must rely on friends or business associates for accommodations. In other cases, the military has provided temporary quarters in a BOQ[1/] or similar housing. This latter practice (which is now on a fairly large scale) would have to be curtailed, however, if investment in a new hotel or hotels were to be a successful operation. A small modern hotel or lodge with air conditioning, pool, coffee shop, restaurant,

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1/ The term "BOQ" means Bachelor Officers' Quarters.

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THE EVENING SUN, BALTIMORE, WEDNESDAY, NOVEMBER 15, 17

Spirit Of Democracy Is Stirring On Guam

Agana, Guam, Nov. 14—A restless spirit of democracy is stirring in America's newest territory.

Guam's 34,000 native residents show pride in the citizenship conferred on them in 1950, but they are eager to elect a representative to Congress and want to develop an economy not rooted in the military.

"The most widespread grievance is the tight security check the Navy requires of every person, including United States citizens, entering the island.

"It is the principal deterrent to establishing a sound economy," says the Chamber of Commerce. "It is keeping out legitimate free enterprise. It is violently opposed to our principles of democracy."

Legislative View

Members of the Guam Legislature take a more moderate view.

"We can't be the sole judge of security," says Eduardo T. Calvo, Rules Committee chairman. "We want the system relaxed, not abandoned."

The close scrutiny of visitors is rooted in the strategic location of Guam, 2,000 miles off Red China, and the Air Force and naval bases here.

"What if the military were to pull out?" says Carlos P. Taitano, founder of the new Territorial Party. "We want something to fall back on—a fishing industry, maybe a cannery, some shipping, more farming and light manufacturing."

Feeling Over Land

There is some lingering feeling over land taken by the armed services for their use.

"Before the war there were 7,500 acres of cultivated farm land extending north from Agana," says Frank Perez, Territorial Party chairman. "Now the military has taken virtually all of this because it was flat and suited to their purposes.

"We need help to develop the Savannah areas elsewhere. So much of our food is imported."

These disputes are overshadowed by an all-pervading pride in belonging to the American national family. Guam became an American possession in 1898 after the Spanish-American War.

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VOL. 48 MARCH 1960 No. 1

Peacetime Martial Law in Guam

W. Scott Barrett and Walter S. Ferens***

ACCORDING to the United States Navy, Guam is under martial law and has been for many years. In February 1941 President Roosevelt issued Executive Order No. 8683[1] establishing the Guam Island Naval Defensive Sea Area and the Guam Island Naval Airspace Reservation. Administrative authority was vested in the United States Navy. To assist the Navy in enforcing the security clearance a number of regulations have been

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[1] 6 Fed. Reg. 1015 (1941). The Executive order reads:

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of the Guam security clearance.[122] His speech was commented upon in an editorial in the *Portland Oregonian*.[123] The editorial referred to an incident involving Ford Q. Elvidge, Governor of Guam from 1953 to 1956. Governor Elvidge wrote after leaving his post that he had been surprised by the number of prostitutes in Guam whose origins were in other countries. He asked a Navy officer why these girls, whose vocation was apparent, were admitted in such numbers whereas a casual tourist would be turned down. "Governor," said the officer, "our clearance is for security, and we haven't any reason to think these girls are subversive."

The editorial comment continued:

> There were probably few lawyers in Judge McLaughlin's audience who would want to undertake to justify legally the U.S. administration's high hand in Guam. The security regulations are, according to the Navy, based on an order issued by President Franklin D. Roosevelt.... [A]ctually the Navy is not in charge of civil administration in Guam. This, since 1950, has been the responsibility of the Department of Interior operating through a governor appointed by the President. The Government has limited the veto power over the locally elected unicameral legislature.... It is not clear why Guam should be the most stringently guarded of all U.S. territories ... [for] the scars of war have disappeared from Guam. Its beaches rival in beauty any in the Pacific. Its climate is near perfection. But U.S. tourists are not likely soon to explore its charms. The U.S. Navy doesn't want to be bothered. In fact, a Naval spokesman has been heard to take credit for keeping all sorts of "riffraff" out of Guam under cover of the Security Program.[124]

One can only conclude that the United States Navy is intentionally enforcing the naval security clearance while realizing at the same time that it is unsupported by statute and is unconstitutional. The words of Judge McLaughlin are again appropriate, though he was commenting upon the fact that the Army continued martial law on Hawaii long after it was necessary. He said:

> Yes, "they did it." They did it intentionally. They did it with design aforethought. They did it in knowing disregard of the Constitution. They did it because Hawaii is not a State. They did it because they did not have faith that Americanism transcends race, class and creed.[125]

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[122] Judge McLaughlin has visited Guam as Judge of the Guam District Court, Appellate Division.

[123] Baner, *American Guam Off-Limits to Americans*, Portland Oregonian, Aug. 4, 1957, p. 42, cols. 4-5.

[124] *Ibid.*

[125] ANTHONY, HAWAII UNDER ARMY RULE 118 (1947), quoting from the *Honolulu Advertiser*, Feb. 28, 1946.

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DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY

WASHINGTON

MAR 20 1937

My dear Mr. Chairman:

The bill S. 1450, "To confer United States citizenship upon certain inhabitants of the Island of Guam and extend the naturalization laws thereto," was referred to the Navy Department by your Committee with a request for report and recommendation.

The purpose of the bill S. 1450 is to declare certain natives and residents of the Island of Guam to be citizens of the United States and to extend the naturalization laws to certain other residents of that island.

The Navy Department is of the opinion that the enactment of this measure would be prejudicial to the best interests of both the United States and the native population of Guam.

The complicated international situation in the Far East, the questionable status of treaties, and the fact that the United States is withdrawing from the Philippines, all contribute to the undesirability of any change in the status of the people of Guam, or in the method of the administration of that island, during the present unstable conditions.

The geographical location of Guam in the midst of foreign territory, with foreign commercial and colonizing interests to be considered, together with the racial problems of that locality, combine to provide a fertile field for international disputes. It is believed that the change provided for in the proposed legislation would aggravate the danger to peaceful international relations.

At the present time, as citizens of Guam, the people of that possession enjoy the privileges of United States citizenship and have few, if any, of the obligations connected therewith. They are accorded passport

miles to Guam, and it would be very expensive for them to send a delegation here. This is no reason, however, why they should longer be denied justice (applause).

REJECTION OF GUAM CITIZENSHIP PETITION

On July 11, 1936, the Guam Congress, at a joint session, unanimously passed a resolution to petition the U. S. Congress to grant American citizenship to the people of Guam and to request that the naval government of Guam appropriate $5,000 to aid in sending two Guamanians to Washington, D.C., to submit the petition to the Congress of the United States. The money requested was denied by the naval governor.

In the meantime, Guam was visited on October 19, 1936, by a U. S. Senator and his wife, Sen. and Mrs. William Gibbs McAdoo. During their visit, the people of Guam, under the leadership of B. J. Bordallo, Chairman of the House of Council, and Edward T. Calvo, Chairman of the House of Assembly, staged a peaceful demonstration in which placards pleading for U. S. citizenship were carried in front of the governor's palace. McAdoo addressed the crowd, stating that the request for U. S. citizenship must be conducted through the proper channel. Because the people of Guam were wards of the Navy, the proper channel was the Secretary of the Navy.

Subsequently, the general public, including the school children of Guam, raised the money to send two delegates to Washington. The delegates were B. J. Brodallo and Francisco B. Leon Guerrero. Shortly after their arrival in the nation's capital, citizenship legislation was introduced in the U. S. Senate by Senators Ernest W. Gibson, a Vermont Republican, and Millar Tydings of Maryland, a Democrat. Through the help of friends, including Thomas Beck, President of Crowell Publishing Company, Guerrero and Bordallo were able to obtain an appointment to meet with President Franklin D. Roosevelt. Although the President expressed sympathy toward the Guamanian cause, he made no commitment.

When the bill (S. 1450) was finally heard by the Senate Committee on Insular Affairs, the Navy Department voiced objection. The Secretary of the Navy, Claude A. Swanson, sent the following letter to the Committee (1):

> The complicated international situation in the Far East, the questionable status of treaties, and the fact that the United States is withdrawing from the Philippines all contribute to the undesirability of any change in the status of the people of Guam or in the method of administration of that island during the present unstable conditions.
>
> The geographical location of Guam in the midst of foreign territory, with foreign commercial and colonizing interests to be considered, together with the racial problems of that locality, combine to provide a fertile field for international disputes. It is believed that change provided for in the proposed legislation would aggravate the danger to peaceful international relations.
>
> At the present time, as citizens of Guam, the people of that possession enjoy the privileges of the United States citizenship and have few, if any, of the obligations connected therewith. They are accorded passport privileges, have no Federal taxes or tariffs to pay, receive free medical and educational services, and are, in general, a particularly privileged people . . . . The general policy of the Naval Government is to guard them from exploitation by outsiders and protect their lands. The general policy of the Naval Government with reference to educational activities has been to enlighten the minds of the people and to stimulate their development through training and self-discipline. Emphasis is placed on industrial and agricultural training in order to improve the capacity of the native population for self-maintenance and economic independence. However, as attested by

REPORT TO

UNITED NATIONS

on

GUAM, AMERICAN SAMOA

AND OTHER ISLAND POSSESSIONS ADMINISTERED BY THE NAVY DEPARTMENT

(OPNAV-P22-100)

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JULY 1946

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University of Guam
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Prepared By:

Assistant Chief of Naval Operations (Island Government)

III. SOCIAL CONDITIONS

Civil Rights - The civil rights of the inhabitants as to freedom of speech, press, religion, assembly and others are not infringed. Limitations which were necessarily placed upon individual liberty during the war by certain of the Proclamations of the Military Governor, were of course, ended when the Naval Civil Government was restored on May 30, 1946. Most limitations had been removed earlier. The inhabitants are treated in all respects on a basis of equality with United States citizens, except for the matter of wage scales, where a differentiation exists based on the relative standards of living. By local law, it is not possible for any landowner to alienate land to a non-Guamanian without approval of the Governor. This is part of the United States policy of "Guam for the Guamanians" which is intended to avoid exploitation of the inhabitants by outsiders.

Health and Sanitation - No reliable account of the health of the natives of Guam is available prior to its occupation by United States forces at the turn of the 20th century. The population at that time was 9630 natives living under deplorable sanitary conditions. There were no sewers. The wells were polluted. Sewage contaminated river water used for washing clothes and bathing resulted in widespread skin infections. Only one doctor was present, and he without medicines, responsible for the health of the natives. The United States brought to Guam a reforming zeal in connection with sanitation and health hazards of the natives, resulting in eradication of some diseases and curtailment of others.

The high native intelligence of the Guamanian was reflected in the enthusiasm and appreciation with which these reforms were accepted and progress maintained. Early in 1899 the first free dispensaries were established by the Navy at Agana and Port Luis d'Apra. In this year 1141 patients were treated (better than 10% of the population) for diseases listed as typhoid fever, intestinal diseases, syphilis, leprosy and miscellaneous.

A hospital for lepers was constructed in 1899 but it was sometime before all lepers on the Island were rounded up, isolated and cared for in this hospital. By 1907 most of the lepers (85) were segregated in the hospital at Tumon and $16,000 granted from the United States was voted for their care. By 1913 the number of cases had dwindled to 22, all of whom were sent to the Culion Leper Colony in the Philippines, a policy which has been continually adhered to from that date.

The experiments, initiated by the doctors in those days, in the treatment of tropical diseases led to treatments which effected remarkable and widespread cures. The natives on the strength of these results constructed hospitals for their sick. The largest of these is a hospital known as the Susana Hospital. The Susana Hospital was founded in 1905 by subscription from private individuals, the largest of which was $10,000 from one Mrs. Russell Sage. The entire subscription is known as the Susana Hospital Association Fund. In 1909 the hospital buildings were destroyed by earthquake. Following this, the Navy Department allocated $6,000 from the Naval Hospital Fund for the construction of a hospital to which women and children should be admitted, known as the Naval Hospital, Guam. The Susana Hospital Association, however, continued to care for women and children in a building erected on its own land and from its own funds. In 1922 an eight-room annex to the Susana Hospital was built from the Association Funds. The management of the Susana Hospital was vested in a board of directors of which the Governor of Guam was ex-officio chairman. The Health Officer of Guam acted as the executive of the institution. The hospital therefore occupied a semi-official position in the affairs of Guam.

In the assault of Guam by United States forces in 1944, the hospital was again destroyed by the bombardment incident to military operations against the Japanese. With the cessation of active operations, the civilian hospital was moved to the site of one of the Fleet Hospitals erected for the care of wounded

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INFORMATION ON GUAM
TRANSMITTED BY THE UNITED STATES
TO THE SECRETARY-GENERAL OF THE
UNITED NATIONS PURSUANT TO
ARTICLE 73(e) OF THE CHARTER

Prepared by the Navy Department
Washington, D.C. June 1947
(OpNav-P22-100A)

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of the Island Government.

Financial - The financial needs of Guam are adequately provided for by the Bank of Guam which reported total resources of $10,172,115.55 as of the close of 1946. Total deposits amount to $9,289,017.00 as of December 23, 1946 divided into 857 checking accounts aggregating $5,426,561.00 and 8,301 savings accounts aggregating $3,862,456.00. The Bank of Guam is in a sound and liquid position with approximately 70 percent of assets represented by U.S. Government obligations, primarily of short maturity.

Governmental Receipts and Expenditures - As a result of military occupation by the Japanese in 1942 and reoccupation by the United States in 1944, the economy of Guam as well as a large part of its physical facilities were almost completely destroyed. The task of U.S. Naval Military Government prior to May 30, 1946, and Naval Civil Government subsequent to that date has therefore been primarily one of reconstruction. Governmental revenues collected on the island have been nominal - amounting to $68,099.75 during the period of Military Government and $178,261.87 from May 31 through December 31, 1946. The final accounting of the governmental receipts and expenditures on Guam for the current fiscal year is incomplete as of the date of preparation of this report. The bulk of the expenditures, however, has involved maintenance and improvement of existing temporary housing and facilities.

Island Income - Figures are not available which will serve to indicate the total of Guamanian civilian income from private sources. However, the Island Government and other governmental installations provide the basis of civilian income. As of December 31, 1946, 3,104 or 25 percent of the Guamanian population over the age of 16 years were employed by the U.S. Government installations. Payrolls for the six months period ended December 31, 1946 aggregated $1,117,026.40.

Land Tenure - Transfer of real property on Guam is carefully controlled by the Governor under Guamanian laws. Transfer to any person not a citizen of the United States or Guam is prohibited unless such a person has declared intention to become a citizen in the manner provided by law. Lease of real property to such persons for any period exceeding five years is also prohibited.

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Op22/C11
Serial: 51P22

29 JAN 1948

VIA AIR MAIL

From: Secretary of the Navy.
To: High Commissioner of the Trust Territory of the Pacific Islands.
Deputy High Commissioner of the Trust Territory of the Pacific Islands.
Governor of Guam.
Governor of American Samoa.

Subject: Policy governing the right of entry into and the licensing of private enterprises within certain areas under naval jurisdiction.

References: (a) Commander Marianas and Governor of Guam Conf Speedltr Serial 0568 of 10 December 1947 and CinCPacFlt 1st End. Serial C1209 of 22 December thereon.
(b) CNO ltr Serial 1422P22 of 15 January 1948.

1. Reference (a) transmitted a recommendation as to the policy to be pursued with reference to the grant of authority to former and retired personnel of the Armed Forces to engage in private business in certain areas under naval jurisdition.

2. The policy of the Navy Department with respect to the protection of the economic interests of the local inhabitants of the areas under its jurisdiction is set forth in reference (b).

3. The application of the Department's policy to the grant of industrial and commercial licenses or concessions to other than local inhabitants demands more than ordinary care and circumspection in the case of grantees who are former or retired members of the Armed Forces, particularly those who have occupied governmental positions and who have enjoyed opportunities of acquiring special information or of forming associations advantageous to the conduct of private enterprise within the area under naval jurisdiction.

4. Under the authority of the Executive Orders which charge the Secretary of the Navy with responsibility for the government of Guam, American Samoa and the Trust Territory of the Pacific Islands, the Secretary is empowered to deny or to revoke the right of entry into the territory concerned to any person whose presence therein is detrimental to the public interest.

Op22/flf
Serial 51P22

He is also empowered to grant, withhold or cancel permission to engage in commercial or industrial enterprises where such enterprises are detrimental to the public interest or inimical to the interests of the local inhabitants. These powers are hereby delegated to the following officials subject to the stipulations herein set forth:

a. In Guam - To the Governor of Guam, to be exercised in consonance with the legislative power vested in the Guam Congress.

b. In American Samoa - To the Governor of American Samoa.

c. In the Trust Territory of the Pacific Islands- The power to grant, deny or revoke right of entry and similar powers over commercial concessions to local inhabitants, to the High Commissioner who may, at his descretion, delegate all or any part thereof to his Deputy. Paragraph 9 of reference (b) required approval of the Secretary of the Navy as a condition prerequisite to the grant to non-residents of rights in lands or commercial concessions.

5. The officials to whom powers are delegated in the foregoing paragraph shall keep the Secretary informed of all instances of denial or revocation of right of entry and of all grants, denials or revocations of commercial and industrial licenses and concessions. The circumstances surrounding and reasons connected with denials and revocations shall be reported in detail.

M. E. ANDREWS

Copies to:
CinCPacFlt (Air Mail)
ComMarianas (Air Mail)

Washington, D. C., Dateline - December 19th - (UP)

The Navy Department has released its ban against outside business interests entering Guam, in an effort to provide the Islanders with a more diversified economy, Capt. Jennings, Officer in Charge of Island Government, disclosed.

Jennings said applications for enterprises on Guam would be screened carefully by Rear Admiral Charles Pownall, Military Governor of Guam. Only businesses which Guamanians cannot establish themselves will be permitted to start on the Island. The policy of the Navy Department is to prevent the entrance of these enterprises until such time as the Guamanian Economy has been rehabilitated by payment of Guamanian settlements, land allocations, and restoration of civilian facilities to the point where the people have their government on an equitable basis.

During the interim, there is no objection to admission of firms which in the opinion of the Governor will provide services which Guamanians cannot undertake and which are essential to the Island's economy, Jennings said.

Jennings said the policy had been drafted last September by Pownall and Admiral Towers, CinCPac.

At a conference here with the Navy Department Officials, Admiral C. W. Nimitz, Chief of Naval Operations, approved the plan. Jennings said he knew of no new outside businesses, but admitted that such enterprises would probably be welcomed by the Navy, as plumbing, electrical appliances, and automobile repairing.

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GUAM

AND ITS PEOPLE

By Laura Thompson

WITH A VILLAGE JOURNAL BY
JESUS C. BARCINAS

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pg. 66

PRINCETON, NEW JERSEY
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the campaign against Japan, with the result that practically the whole northern half of the island was taken over by the military, many of its resources being destroyed in the process of developing a major Pacific base. Thus the main immediate economic problems have been: (1) the development of the naval base; and (2) the rehabilitation of facilities and native economy.

Some idea of the economic revolution taking place on the island may be gained from the realization that from being a remote naval colony with less than 1,000 transient service personnel in 1940, Guam has become a major United States naval base with an estimated 30,000 to 40,000 non-native population in 1946. Although this number will probably decrease somewhat in the near future, nevertheless according to present plans the island will continue to have a large non-native population, both of Navy personnel and of civilian employees of the naval and federal governments.

Under these circumstances the native unemployment problem which was developing before the war has ceased to exist but certain native employment problems have become acute. For example, there is plenty of work for every Guamanian but the types of employment open to him, conditions of work, wage rates, number of hours, distribution of wholesale and retail businesses, wholesale and retail prices, etc., are completely controlled by the government. At present even the housing and to a considerable extent the movements and transportation of over half the native population, namely those who were bombed out of their homes and those whose homes were condemned, are so controlled.

No Guamanian is forced to take a job but since much privately owned land has been condemned, for most natives there is no alternative. On January 1, 1946, 4,791 Guamanians were employed full time by military units and in industry, and 1,382 school children and others were employed in part-time jobs.[27] Once a native takes a job he cannot quit of his own

[27] *Ibid.*

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U.S. Committee to Study the Civil Administration of Guam and American Samoa.

HOPKINS COMMITTEE

REPORT FOR THE SECRETARY

ON THE

CIVIL GOVERNMENTS

OF

GUAM AND AMERICAN SAMOA

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Land Acquisition
(see page 18)

APPENDIX "C"

There is one extraneous matter which should be mentioned. It is a predominant and all pervasive cause of unhappiness and discontent in American Samoa. Obviously however any recommendation in regard to it is beyond the province of this committee. Our reference is to the barriers existent between American and British Samoa. The average native in his frequent exasperation does not reason beyond the fact that some one ought to correct a perplexing and irritating situation that divides people of a common heritage from each other, makes complicated and difficult family relationships, and renders contacts among friends subject to red tape and official complications. Meanwhile the more thoughtful argue that the original division between the respective islands was an arbitrary one in which no consideration was given to the interests of the populations, that with the passage of time the iniquities have increased, and that a great and wise government ought to be able to do something about it.

In like manner, the problem of Guam in the future is closely tied in with the other Marianas Islands. Should the United Nations act favorably upon the present application of the United States for sole trusteeship over this territory, Guam and the other Marianas should be administered as a single unit.

To summarize, before passing to detailed recommendations, we have found a devotedly conscientious and capable group of Navy representatives working eagerly under difficult and frequently adverse conditions for the rehabilitation of peoples disorganized through no fault of their own by the war.

In the case of Samoa, it is the island economy which has been disrupted and its ancient culture, of which its people have been so proud, is threatened. The people there are fearful of being modernized too rapidly and are resistant to many of the changes in life which the war has forced upon them. It is to have more control at such points that they are eager for early action giving them greater self-determination.

In the case of Guam, the war brought wide-spread destruction of 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 of Army, Navy and Marines to be stationed there. In considerable number they are dispossessed of home and lands which have been destroyed or taken

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Peacetime Martial Law in Guam

W. Scott Barrett and Walter S. Ferenz***

ACCORDING to the United States Navy, Guam is under martial law and has been for many years. In February 1941 President Roosevelt issued Executive Order No. 8683[1] establishing the Guam Island Naval Defensive Sea Area and the Guam Island Naval Airspace Reservation. Administrative authority was vested in the United States Navy. To assist the Navy in enforcing the security clearance a number of regulations have been

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** Member, California and Guam Bars.

[1] 6 Fed. Reg. 1015 (1941). The Executive order reads:

By virtue of the authority vested in me by the provisions of section 44 of the Criminal Code, as amended (U.S.C., title 18, sec. 96), and section 4 of the Air Commerce Act approved May 20, 1926 (44 Stat. 570, U.S.C., title 49, sec. 174) the territorial waters between the extreme highwater marks and the three-mile marine boundaries surrounding the islands of Rose, Tutuila, and Guam, in the Pacific Ocean, are hereby established and reserved as naval defensive sea areas for purposes of national defense, such areas to be known, respectively, as "Rose Island Naval Defensive Sea Area", "Tutuila Island Naval Defensive Sea Area", and "Guam Island Naval Defensive Sea Area"; and the airspaces over the said territorial waters and islands are hereby set apart and reserved as naval airspace reservations for purposes of national defense, such reservations to be known, respectively, as "Rose Island Naval Airspace Reservation", "Tutuila Island Naval Airspace Reservation", and "Guam Island Naval Airspace Reservation."

At no time shall any person, other than persons on public vessels of the United States, enter any of the naval defensive sea areas herein set apart and reserved, nor shall any vessel or other craft, other than public vessels of the United States, be navigated into any of said areas, unless authorized by the Secretary of the Navy.

At no time shall any aircraft, other than public aircraft of the United States, be navigated into any of the naval airspace reservations herein set apart and reserved, unless authorized by the Secretary of the Navy.

The provisions of the preceding paragraphs shall be enforced by the Secretary of the Navy, with the cooperation of the local law enforcement officers of the United States; and the Secretary of the Navy is hereby authorized to prescribe such regulations as may be necessary to carry out such provisions.

Any person violating any of the provisions of this order relating to the above-named naval defensive sea areas shall be subject to the penalties provided by section 44 of the Criminal Code as amended (U.S.C., title 18, sec. 96), and any person violating any of the provisions of this order relating to the above-named naval airspace reservations shall be subject to the penalties prescribed by the Civil Aeronautics Act of 1938 (52 Stat. 973).

issued.[2] One section, which is not in the Instruction (naval directive, or regulation) issued to the general public, provides as follows:

> *Compliance with laws and regulations.* All persons, vessels and aircraft entering the Guam Island Naval Defensive Sea Area or the Guam Island Naval Airspace Reservation, *whether or not in violation of Executive Order 8683* . . . shall be governed by such regulations and restrictions upon their conduct and movements as may be established by the Commander, U.S. Naval Forces, Marianas, whether by general regulation or by special instructions in any case.[3]

The foregoing regulation clearly purports to establish martial law in Guam. Civilians are under martial law whenever an Executive order authorizes a military commander to prescribe rules of action—make laws—governing civilians in military areas set up in domestic territories upon the sole standard of military necessity.[4]

One well might ask how the Navy derived authority from Executive Order No. 8683 to govern the conduct and movement of all persons on the island of Guam regardless of whether or not they had violated the order. If the Navy has that authority, then Guam is under martial law. It is the argument of this Article that the foregoing regulation is illegal, and, further, that all of the regulations issued by the Navy under the ostensible authority of the Executive order are illegal and the power exercised by the Navy in administering the security clearance program is unauthorized and unconstitutional.

I

HISTORY OF THE NAVAL "SECURITY CLEARANCE" PROGRAM IN GUAM

The unincorporated territory of Guam is an insular possession of the United States located in the Pacific Ocean about 5,200 miles southwest of San Francisco and 1,350 miles southeast of Tokyo. Guam is the largest and most southern island of the archipelago known as the Mariana Islands. It is 32 miles in length and varies from 4 to 10 miles in width. Its 206 square miles give it an area nearly 10 times that of Manhattan Island.[4a]

The United States acquired Guam from Spain in 1898. By Presidential Executive order of December 23, 1898, the Secretary of the Navy was designated by the President to administer Guam. Except for Japanese occu-

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[2] For the latest version of these regulations, see 32 C.F.R. §§ 761.1–.24 (Supp. 1959). Some have been printed in pamphlet form as OPNAV Instruction 5500.11B, Nov. 27, 1957. This pamphlet is made available to those requesting information on clearance regulations. No mention is made in the pamphlet of the other applicable regulations.

[3] 32 C.F.R. § 761.21 (Supp. 1959). (Emphasis added.)

[4] Ochikubo v. Bonesteel, 60 F. Supp. 916, 929 (S.D. Cal. 1945).

[4a] See map, App. C. For a general survey of the history of Guam, see STEVENS, GUAM, U.S.A., BIRTH OF A TERRITORY (1953). For a concise review of current social, political and economic conditions in Guam, see 1958 GOV. GUAM ANN. REP.

pation during World War II this administration continued until August 1, 1950. The island was therefore directly administered by a naval governor who was a naval officer assigned to the post for a tour of duty. Civil government was organized but only for the carrying out of such naval policies as might be established by the governor or the Secretary of the Navy.

For some years prior to the beginning of World War II it had been obvious that Japan had been building up military forces in the Pacific Islands. Saipan and Tinian are approximately 120 miles from Guam and Rota only 40 miles from Guam. All these islands were known by 1940 to be strongholds of Japanese military forces, both air and naval.

To preserve the security of the defense efforts in Guam and other Pacific Islands such as Wake, Johnston and Midway, President Franklin D. Roosevelt promulgated Executive Order No. 8683.[5] Insofar as Guam was concerned the Executive order established two defensive areas known as the Guam Island Naval Defensive Sea Area and the Guam Island Airspace Reservation. The Secretary of the Navy was delegated the power to authorize entry at his discretion and to prescribe such regulations as were necessary for carrying out the provisions of the order.[6]

When Guam was recaptured by the United States in July 1944, Executive Order No. 8683 was not immediately reinstated.[7] In May 1946 the naval government was reestablished and the Navy resumed administration of civil affairs in Guam. Following resumption of the naval government, the civilian economy of the island began to expand, and labor, goods and services were in great demand. The Navy adopted the policy of preventing

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[5] 6 Fed. Reg. 1015 (1941); see note 1 *supra*. For a case illustrating the scope accorded Executive orders validly promulgated, see Perko v. United States, 204 F.2d 446 (8th Cir.), *cert. denied*, 346 U.S. 832 (1953).

[6] Executive Order No. 8683 expressly refers only to *aircraft* entering the airspace reservation and to vessels *and persons* entering the Defensive Sea Area. In practice, the Navy enforces the order in reverse, being apparently more concerned about "persons" entering Guam by aircraft than by vessel.

[7] "Guam is a naval base under naval government and the Harbor of Apra is a closed port, and shall not be *visited by any commercial or privately owned vessel of foreign registry;* nor by any foreign national vessel, except by special authority of the United States Navy Department in each case. (Executive Order 26 September 1912). United States Navy Regulations, 1920, Article 78, paragraph 1: *Certain military districts on the island are closed to visitors.*" CIVIL REGULATIONS WITH THE FORCE AND EFFECT OF LAW IN GUAM ch. 34, at 73 (U.S. Gov't Printing Office ed. 1947) [hereinafter CIVIL REGULATIONS]. (Emphasis added.) Though first promulgated in 1936, the "Civil Regulations" were reprinted in 1947 and no reference was made to Exec. Order No. 8683 in the 1947 edition. ("Civil Regulations with the Force and Effect of Law in Guam" were issued originally on March 1, 1936, by order of G. A. Alexander, Governor of Guam, and replaced the theretofore existing "Orders and Regulations with the Force and Effect of Law in Guam." The "Regulations" were suspended during Japanese occupation and were reestablished July 21, 1944, by order of Admiral Nimitz. For a brief discussion of the origin and development of "Civil Regulations," as well as of other pre-Organic Act Guam laws, see United States v. Johnson, 181 F.2d 577, 580 (9th Cir. 1950).)

non-Guamanians from entering the island in order to enter business, unless there were no local people qualified or financially able to supply the particular service or handle the merchandise in question.[8]

This exclusion policy was enforced mainly through the business license provisions of the Government Code of Guam, as it existed at that time, and through regulations and orders issued by the naval governor. As a matter of fact the policy did not completely succeed because a considerable number of employees brought in by contractors eventually went into business for themselves.

In 1947 the Navy was confronted with an additional problem concerning business competition with local residents. Naval officers or personnel who had reached the age of retirement were attempting to return to Guam to enter business. To prevent this the Chief of Naval Operations issued a directive to the naval governor of Guam stating that former Navy officers or personnel who were retiring from active duty were not to be allowed to enter Guam for the purpose of engaging in private enterprise.[9] Since the Navy had complete control of the island and all of the inhabitants, no effort was made to enforce actively the provisions of Executive order No. 8683 or to enact regulations thereunder.

A. Background and Legislative History of the Organic Act

In July 1950 the United States Congress passed the Organic Act of Guam[10] which transferred administration of governmental affairs from the Navy to the Department of the Interior. The act provided a bill of rights, established civilian courts, and in other ways took away control of governmental affairs from the Navy. A District Court of Guam was created and patterned after the federal district courts. The legislature was given authority to create inferior courts and transfer causes from the district court to those inferior courts.[11]

The clear congressional intent of the Organic Act, as revealed by committee hearings and numerous exchanges of correspondence among Senators and others,[12] was to give United States citizens residing in Guam full

[8] Enlisted men were not allowed to engage in business if it "interfere[d] with the customary employment . . . of local civilians . . . ." CIVIL REGULATIONS ch. 2, para. 17, at 4.

[9] None of the specific orders or regulations are available to the writers, but this information is well verified by statements of reputable former naval officers now in business in Guam.

[10] 64 Stat. 384 (1950), as amended, 48 U.S.C. §§ 1421–25 (1958).

[11] Organic Act of Guam § 22, 64 Stat. 389 (1950), as amended, 48 U.S.C. § 1424 (1958).

[12] S. REP. No. 2109, 81st Cong., 2d Sess. (1950). See, *e.g.*, Letter From Harry S. Truman to J. A. Krug, Secretary of the Interior, May 14, 1949, in *id.* at 3; Letter from J. A. Krug to Alban W. Barkley, May 3, 1949, in *id.* at 6–9. The report stated that "given a period of peace, the growth of Guam as a transportation and commercial center for American interests in the Far East seems almost a foregone conclusion. American business enterprise in the area will want, and need, a center in which it can have the full protection of American laws and legal procedure." *Id.* at 4. The business community on Guam is generally agreed that the security

civil rights.[13] The indications are that Executive Order No. 8683 was then dead and forgotten. However, the Navy resurrected the order on December 4, 1950, thus enabling it to retain its long-enjoyed power over the civilian community.[14]

B. *The "Security Clearance" Program After the Organic Act*

Although the Navy officially stated that it was strongly in favor of the passage of the Organic Act,[15] the Chief of Naval Operations reinstituted the security clearance entry program for Guam less than 3 months after the act became effective.[16]

Since that time the regulations have been vigorously enforced by the Navy. All persons desiring to come to Guam[17] who are not within certain excluded categories[18] are required to obtain a security clearance from the Secretary of the Navy or his subordinates before they are permitted to enter. A person coming to Guam for the first time files the application directly or indirectly with the Chief of Naval Operations. In the case of a citizen of the United States who is a resident of Guam and who desires to leave Guam temporarily with intent to return, an application for a re-entry

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clearance requirement has seriously hampered Guam's economic development, particularly as to tourist business. There are no public hotels on Guam though thousands of tourists transit the island annually. Navy red tape discourages stopovers.

[13] "All American tradition and history dictates that government shall rest upon law, rather than upon executive decree. By international treaty also, the Congress has a direct responsibility for the government of Guam. The second paragraph of Article IX of the treaty ceding Guam to the United States provides: 'The civil rights and political status of the native inhabitants of the Territories hereby ceded to the United States shall be determined by the Congress (30 Stat. 1759).' In addition to the obligation under the Treaty of Paris, the United States has additional treaty obligations with respect to Guam as a non-self-governing Territory. Under Chapter XI of the Charter of the United Nations, ratified by the Senate June 26, 1945 (59 Stat. at p. 1048), we undertook, with respect to the peoples of such Territories, to insure political advancement, to develop self-government, and taking 'due account of the political aspirations of the peoples ...' to assist them in the progressive development of their free political institutions ...." S. REP. No. 2109, 81st Cong., 2d Sess. 2 (1950).

[14] See note 16 *infra*. What was perhaps the prime initiating cause of the resurrection of the order, and the reinstitution of the entry-clearance program, *i.e.*, the Korean conflict, of course no longer justifies the Navy's conduct, even assuming it justified it then. See text at note 22 *infra*. See also text at note 56 *infra*.

[15] S. REP. No. 2109, *op. cit. supra* note 12, at 9.

[16] Entry clearance requirements were reinstituted by Letter [Directive] From Chief of Naval Operations, serial no. 5235P21, Dec. 4, 1950. This directive was superseded by subsequent regulations.

[17] Prior to the passage of the Organic Act, Guam law provided: "Residents of Guam shall not be permitted to leave Guam without a passport issued by the Governor or a certificate of identification issued by the Department of Records and Accounts." CIVIL REGULATIONS ch. 21, para. 1, at 45. After passage of the Organic Act the Department of Immigration required United States citizens coming to Guam to have a passport until Nov. 7, 1958.

[18] 32 C.F.R. § 761.10 (Supp. 1959). See text at note 65 *infra*.

permit must be made to the Commander, Naval Forces Mariana Islands.[19]

Enforcement of the naval security program is not difficult inasmuch as the only two permissible ways to enter Guam are through naval reservations. Apra Harbor is the only sea port, and it is within the confines of the naval station.[20] All port operations are under the direction of the Commander, Naval Forces Mariana. This includes piloting, tug boats, ship repair, and to a lesser extent, cargo operations. Persons entering Guam by way of air carrier are required to land at the naval air station. There are no civilian airport facilities in Guam.

To insure that persons entering Guam have the required entry-clearance documents, the Navy has ordered civilian transportation agencies to require these documents before allowing prospective passengers to purchase a ticket. This is true of the airlines and the steamship lines.[21]

After the reinstitution of the security clearance requirement, many United States citizens were faced with the necessity of obtaining a security clearance from the Navy to come to a United States territory. Many persons, citizen and alien alike, objected to the requirement, and some were refused entry for various reasons. In answer to the many complaints, letters were written by naval officers, the Chief of Naval Operations, and even the Secretaries of Navy and Interior. The reasons given for the con-

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[19] So-called multiple-entry clearances are difficult for nonresidents to obtain and are usually limited to 1 or 2 years. Although residents are treated more liberally, those not favored with a multiple-entry clearance are required to fill out the forms and reapply for re-entry each time they leave or be excluded when they try to return to their homes. A sample multiple-entry clearance reads as follows:

> U.S. Pacific Fleet
> Commander Naval Forces Marianas
>
> My dear_____,
>
> Your application has been reviewed and authorization is hereby granted for _____to enter and re-enter the Guam Defensive Sea Area for a period of two years beginning_____ for the purpose of making repeated business trips off the island.... This letter ... must be in your possession when traveling in the above areas.
>
> Sincerely yours,
> Island Government Officer

Note that the administrator of the clearance program is called, significantly, "The Island Government Officer."

[20] The Commercial Port of Guam is operated by the Government of Guam, but it is within the Apra Harbor area and access from the sea is controlled by the Navy. Both air and sea access to Guam in civilian areas could be arranged, however, if the Navy ceased requiring entry clearance to the entire island.

[21] The carriers comply with Navy orders, and except for occasional oversights they will not sell a ticket to Guam passengers not holding a security clearance. The Navy contends that the carriers are "fully responsible for restricting the activities of the passengers in their custody so as not to permit violation of entry clearance requirements." Letter From Rear Adm. W. B. Ammon, Commander, U.S. Naval Forces, Marianas, to G. Selwyn, Manager, Pan American World Airways, September 6, 1956, on file with the authors. Unless otherwise noted, personal letters cited are on file with the authors.

tinued enforcement of the security clearance requirement were many and included the following:

1. The clearance is necessary so long as the Korean War continues to exist.[22]
2. Because of the huge expenditure of appropriated funds on defense projects, Guam draws from nearly every walk of life civilians whose purpose is making as much money as possible, directly or indirectly, from the salaries of military and government employees.[23]
3. Many aliens are excluded because their long-term presence would be detrimental to the effective use of Guam for its primary mission of defense.[24] (This reason did not prevent entry of aliens married to citizens if the citizen-spouses worked for the Government.)
4. The island of Guam is an important United States naval and military base, and its protection fully warrants those measures authorized by Executive Order No. 8683.[25]
5. The Navy is required by Executive Order No. 8683 to enforce the order.[26]
6. The clearance is necessary to enable the Navy to assist the local government in keeping the "riff-raff" out of Guam.[27]
7. Entry into Guam is limited to persons who contribute to its "strategic development."[28]

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[22] Letter From Ira H. Nunn, Navy Judge Adv. Gen., to Rear Adm. H. A. Houser, June 3, 1953.

[23] Letter from Comdr. Edward L. Beach, Naval Aide to the President, to F. L. Moylan, Guam Businessman, September 20, 1956, citing a certain report from the Secretary of the Navy. In a recent letter, answering a request for a copy of the full report, Commander C. E. Herrick stated that it could not be found. Letter From Comdr. C. E. Herrick, Office of Chief of Naval Operations, to W. Scott Barrett, July 31, 1959.

[24] "The very presence of large numbers of aliens owing allegiance elsewhere would constitute an obvious threat to security." Letter From Charles S. Thomas, then Secretary of the Navy, to Gayle Shelton, then President, Guam Chamber of Commerce, September 21, 1956.

[25] *Ibid.* This view was also expressed by Douglas MacKay, Secretary of the Interior. Letter From Douglas MacKay to G. M. O'Keefe, Guam Businessman, June 8, 1953 (during the Korean War). Pearl Harbor is also a naval defensive sea area, but no clearance is necessary to enter the island of Oahu, which is no more than twice the size of Guam. Also, almost as great a percentage of Oahu is occupied by military reservations.

[26] Letter From Ira H. Nunn, *supra* note 22: "[T]he existence of this Defensive Sea Area is not inconsistent with the newly acquired status of Guam, nor is there any legal authority to discontinue security clearance as long as the Executive Order is in effect."

[27] Remarks of a naval officer, quoted in Bauer, *American Guam Off-Limits to Americans*, Portland Oregonian, Aug. 4, 1957, p. 42, cols. 3–4.

[28] "Because of the strategic importance of Guam, entry into this area has been limited to persons who contribute to the strategic development of this area.... Inasmuch as Mr. McCready does not work for the United States Government, you do not qualify . . . [to enter Guam]." Letter From Adm. Arleigh Burke, Chief of Naval Operations, to Mrs. Gordon McCready, July 25, 1956. Mrs. McCready is the Japanese-national wife of many years of a local businessman. Mrs. McCready had asked why she could not join her husband when aliens mar-

The validity of the foregoing reasons will hereinafter be discussed. Many of them are obviously invalid; keeping the "riff-raff" out of Guam and being concerned about whether civilians come to Guam to make money are simply not the concern of the United States Navy.

Officially, the Navy has set forth a number of grounds on which clearance can be denied,[29] although the regulations specifically state that the reason for a denial may not be given to any person.

II

THE LEGAL EFFECT OF THE ORGANIC ACT ON THE SECURITY CLEARANCE PROGRAM

Following the reinstitution of the security clearance program on December 4, 1950, the Attorney General of Guam wrote an opinion[30] which concluded that the Organic Act had repealed Executive Order No. 8683 by implication. The opinion relied heavily upon the wording of section 33 of the Organic Act,[31] which authorized the President to designate *parts* of Guam as naval or military reservations.

By Executive Order No. 10178[32] the President expressly reserved to the United States parts of Guam for military bases. Those parts of Guam reserved to the military constitute less than one-third of the land area of the island. There is no indication that the Senate intended the whole island to be under military control. The Organic Act also gave the President power to treat Guam as a closed part with respect to the vessels and aircraft of *foreign nations*. Had Congress been aware of Executive Order No. 8683 and intended to perpetuate it, the language of section 33 was surplusage. By saying in section 33 that "nothing contained herein shall be construed as limiting the authority of the President . . . to treat Guam as a closed port with respect to the vessels and aircraft of foreign nations," Congress expressed an intent that the President has *no authority to treat Guam as a*

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ried to government employees were allowed to enter. Subsequently Mrs. McCready entered without a clearance and promptly was granted one! Several other persons who have entered without a clearance are presently "at large" on the island and have never been prosecuted.

[29] 32 C.F.R. § 761.6 (Supp. 1959). The grounds listed include: (1) prior non-compliance with entry-control regulations; (2) wilfully furnishing false or misleading information in application for entry; (3) advocacy of the overthrow of the United States; (4) sabotage, espionage and sedition; (5) acting so as to serve the interests of another government detrimental to that of the United States; (6) deliberate unauthorized disclosure of classified defense information; (7) membership in subversive organizations; (8) serious mental irresponsibility or chronic alcoholism; (9) conviction of certain felonies; (10) illegal presence in the United States or being the subject of deportation proceedings.

[30] Dec. 13, 1951, in STATUTES AND AMENDMENTS TO THE CODES OF THE TERRITORY OF GUAM, FIRST GUAM LEGISLATURE, 1951–1952, at A-14 (1952).

[31] 64 Stat. 393 (1950), 48 U.S.C. § 1421k (1958).

[32] 15 Fed. Reg. 7313–15 (1950).

closed port to United States citizens on domestic vessels and aircraft.[33] Thus, the Organic Act does supersede and overrule Executive Order No. 8683.

Subsequent to the Guam Attorney General's opinion, the Office of the Judge Advocate General of the United States Navy issued a contrary opinion.[34] Unfortunately, the opinion is *classified* and therefore not available to the general public.[35]

III

UNCONSTITUTIONAL ADMINISTRATION OF A VOID EXECUTIVE ORDER

Beyond the determination of the effect of the enactment of the Organic Act upon the present validity of Executive Order No. 8683, the question remains whether the administration of that order denies certain fundamental personal rights guaranteed by the Constitution of the United States. For example, if the United States Navy has failed to provide an adequate administrative hearing to persons denied a security clearance, such persons may be deprived of liberty or property without procedural due process of law. Likewise, if the regulations promulgated by the United States Navy exceed the authority of the order, or if Navy practices exceed the authority of its own regulations, persons denied a security clearance may be deprived of liberty or property without substantive due process of law.

A. Constitutional Guarantees in an Unincorporated Territory

The question arises as to what extent United States citizens residing in Guam or attempting to visit Guam for any purpose are protected by guarantees extended by the federal constitution to United States citizens. The constitutional guarantees extended to a citizen residing within continental United States or in an incorporated Territory are not always extended to United States citizens residing in unincorporated territories.[36] The status of Guam is similar to that of Puerto Rico at the time of the *Balzac* case.[37] In the *Balzac* case the United States Supreme Court held that a Puerto Rican cannot insist upon the right of trial by jury except to the extent it is conferred upon him by his own representatives in his own legislature.[38] In Guam, the Court of Appeals for the Ninth Circuit held that a United States citizen residing in Guam had no constitutional right to a grand jury indict-

[33] See note 12 *supra*.

[34] The opinion is cited in Letter, *supra* note 22.

[35] "I regret that the classification of this opinion makes it impossible to comply with your request." Letter From Capt. Wilfred Hearn, Asst. Navy Judge Adv. Gen., to W. Scott Barrett, July 30, 1959.

[36] Balzac v. Porto Rico, 258 U.S. 298 (1922).

[37] *Compare* the Organic Act of Guam § 3, 64 Stat. 384 (1950), 48 U.S.C. § 1421a (1958), *with* the Organic Act of Puerto Rico (Jones Act), ch. 145, 39 Stat. 951 (1917) codified in scattered sections of 48 U.S.C. relating to Puerto Rico), as construed in Balzac v. Porto Rico, *supra* note 36, at 305–14.

[38] Balzac v. Porto Rico, 258 U.S. 298, 309 (1922).

ment,[39] but that such citizen did have that right pursuant to the Federal Rules of Criminal Procedure.[40] Congress subsequently amended the Organic Act so as to require grand jury indictment only if made available by local law.[41]

Regardless, however, of whether or not all procedural constitutional guarantees are reserved to United States citizens residing in an unincorporated territory, there are certain fundamental rights that are reserved to all United States citizens. In the *Balzac* case, the Court stated:

> The guaranties of certain fundamental personal rights declared in the Constitution, as for instance that no person could be deprived of life, liberty or property without due process of law, had from the beginning, full application in the Philippines and Porto [former sp.] Rico . . . .[42]

B. Substantive Due Process of Law Denied

In a very real sense exclusion from Guam by reason of denial or revocation of a security clearance is a deprivation of liberty and in some instances possibly of property. The only justification for depriving a citizen of liberty and the free choice of residing wherever he pleases within the confines of the United States, including its possessions, and in traveling freely throughout such areas, lies in the war power. However, the extent to which the war power can be used to deprive private citizens of their life, liberty or property without due process of law has been carefully limited,[43] the courts often quoting Mr. Justice Holmes' language in *Chastleton Corp. v. Sinclair:*

> A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed.[44]

1. Liberty—The Right to Travel and Work Where One Pleases

> There is more absoluteness about the more directly personal aspects of freedom. . . . However strong the reaction to interference with rights of property or trade, it does and ought to take second place to the reaction against interference with the legal safeguards of personal liberty. Vigilance against the temporary removal of such safeguards . . . is therefore more universally supported than protests against governmental powers over property.[45]

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[39] Pugh v. United States, 212 F.2d 761, 762 (9th Cir. 1954).

[40] *Id.* at 763 (FED. R. CRIM. P. 7(a)).

[41] Act of Aug. 27, 1954, § 1, 68 Stat. 882, amending the Organic Act of Guam § 22(b), 64 Stat. 390, as amended, 48 U.S.C. § 1424(b) (1958). To this date the local legislature has not provided for a grand jury.

[42] Balzac v. Porto Rico, 258 U.S. 298, 312–13 (1922).

[43] See, *e.g.*, Korematsu v. United States, 323 U.S. 214 (1944); Hirabayashi v. United States, 320 U.S. 81 (1943); Scherzberg v. Maderia, 57 F. Supp. 42 (E.D. Pa. 1944); Ebel v. Drum, 52 F. Supp. 189 (D. Mass. 1943); Schueller v. Drum, 51 F. Supp. 383 (E.D. Pa. 1943).

[44] Chastleton Corp. v. Sinclair, 264 U.S. 543, 547–48 (1924).

[45] FRIEDMANN, LEGAL THEORY 446 (2d ed. 1949).

The right to travel, unrestricted by unreasonable regulations, is one of the rights guaranteed to United States citizens by the fifth amendment of the United States Constitution. The right to work and to reside in any area, State, Territory, or possession of the United States is also a constitutionally guaranteed right, and no restraints may be imposed upon such rights except by reasonable regulations under law. While during World War II the rights of United States citizens were infringed upon to a greater extent than ever before, the courts nevertheless made it quite clear that only an extreme emergency such as the danger of invasion could justify restrictions on the movement of citizens. In recent passport cases the courts have held that the right to travel, to go from place to place as the means of transportation permit, is a natural right subject to the rights of others and to reasonable regulation under law, and that any restraint upon this liberty must conform with the provisions of the fifth amendment.

(a) The "Security Clearance" and "Exclusion" Cases.—During World War II United States citizens of Japanese ancestry were uprooted from their homes and relocated away from the Western Coast. This exercise of the war power was ratified by the Supreme Court in *Korematsu v. United States.*[46] The Court said:

> We uphold the exclusion order as of the time it was made and when the petitioner violated it. . . . In doing so, we are not unmindful of the hardships imposed by it upon a large group of American citizens. . . . But hardships are part of war, and war is an aggregation of hardships. All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its responsibilities as well as its privileges, and in time of war the burden is always heavier. Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direct emergency and peril, is inconsistent with our basic governmental institutions. But when under conditions of modern warfare our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger.[47]

Also during World War II, the Supreme Court upheld a curfew restriction requiring all persons of Japanese ancestry to be within their place of residence daily between the hours of 8:00 p.m. and 6:00 a.m.[48] Both the exclusion order and the curfew restriction had been imposed pursuant to Executive order.[49] In upholding the validity of the curfew, the Supreme Court stated:

> Our investigation here does not go beyond the inquiry whether, in the light of all the relevant circumstances preceding and attending their promulga-

[46] 323 U.S. 214 (1944).
[47] *Id.* at 219–20.
[48] Hirabayashi v. United States, 320 U.S. 81 (1943).
[49] Exec. Order No. 9066, 7 Fed. Reg. 1407 (1942).

> tion, the challenged orders and statute afforded a reasonable basis for the action taken in imposing the curfew. . . . [W]e decide only that the curfew order as applied, and at the time it was applied, was within the boundaries of the war power.[50]

It should be noted that the Supreme Court in both the *Korematsu* and *Hirabayashi* cases recognized that individual liberties were being restricted and that under ordinary circumstances the restriction would be unconstitutional. Nevertheless the admittedly discriminatory treatment of United States citizens was justified solely on the ground that the President and Congress could restrict the liberty of citizens by exercise of the war power at a time of great emergency.

Subsequent to the *Hirabayashi* and *Korematsu* cases several cases arose in the United States District Courts involving United States citizens of German ancestry.[51] The plaintiffs in these cases had been excluded by military order from a coastal strip along the eastern seaboard of the United States. Authority to exclude certain persons from such areas had been given to military commanders by an Executive order[52] which had been ratified and confirmed by Congress.[53]

In *Schueller v. Drum*[54] the district court acknowledged that from the evidence produced the plaintiff appeared to be a German sympathizer. Nevertheless the court held that there was not shown such danger as would warrant denial to the petitioner of her right to due process of law. In regard to the situation existing on the eastern seaboard at the time Mrs. Schueller was excluded, the court stated:

> The normal civilian life of the area was being pursued; commercial and industrial activities, their tempo heightened by a demand for greater production, were in private ownership; the courts both federal and state were open and functioning as well as all the administrative and executive departments of government, and it could not be honestly said that ordinary law did not adequately secure public safety and private rights. Accordingly, it would seem to me that Congress "cannot authorize the executive to establish by conclusive proclamation the very thing which, upon familiar principle, would have been the subject of judicial scrutiny." [citing Fairman, *Law of Martial Rule*, 55 HARV. L. REV. 1253, 1272 (1942)]
>
> . . . [W]hile I am not unmindful that the issuance of the proclamation by the Commander of the area is some evidence of the finding of the necessity for his assuming control of the functions of civil government, yet where there is a direct interference as here with one's liberty and property,

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[50] Hirabayashi v. United States, 320 U.S. 81, 101–02 (1943).

[51] Scherzberg v. Maderia, 57 F. Supp. 42 (E.D. Pa. 1944); Ebel v. Drum, 52 F. Supp. 189 (D. Mass. 1943); Schueller v. Drum, 51 F. Supp. 383 (E.D. Pa. 1943).

[52] Exec. Order No. 9066, 7 Fed. Reg. 1407 (1942).

[53] Act of Mar. 21, 1942, ch. 191, 56 Stat. 173 (now, as amended, 18 U.S.C. § 1383 (1958).

[54] 51 F. Supp. 383 (E.D. Pa. 1943).

> conduct normally beyond the scope of governmental power, such action could only be justified, a constitutional guarantee of freedom can only be abridged, when the danger to the government is real, impending and imminent.[55]

Under present world conditions it cannot be said that the danger of sabotage to Guam is real, impending and imminent. Certainly it cannot be said that there is any impending danger of invasion, nor is the danger of attack any greater to Guam than it is to the entire State of Hawaii or to any city in the United States. Whether or not present conditions justify the Navy in continuing to require a security clearance from United States citizens is subject to judicial review.[56] The consistent conduct of the Navy in immediately granting a clearance in cases of entry without a clearance rather than allowing the matter to be heard by a court of competent jurisdiction indicates that even the Navy is convinced that judicial review would not be favorable to the continuation of the clearance requirement. United States citizens have been prevented from coming to Guam to engage in a legitimate occupation or to live in the place of their choice. This deprivation of those rights under present circumstances is in clear violation of the due process clause of the United States Constitution.[57]

(b) The Passport Cases.—More recently the United States courts have been confronted with the right of United States citizens to travel as affected by regulations issued by the Department of State.[58] The two cases reaching the Supreme Court did not raise the constitutional issue,[59] but the Secretary of State was held not to have authority to deny a passport to citizen applicants solely because of their refusal to be subjected to inquiry into their beliefs and associations.

In the *Shachtman* case[60] the plaintiff sued in the district court to enjoin the Secretary of State from denying application for a passport to visit Europe. His complaint was dismissed and he appealed. The plaintiff had

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[55] *Id.* at 387.

[56] *Cf.* Sterling v. Constantin, 287 U.S. 378, 400–01 (1932); Ebel v. Drum, 52 F. Supp. 189, 195–96 (D. Mass. 1943).

[57] Even a military order placing a civilian establishment "off-limits" is subject to review. If not well-founded it is unconstitutional as being a deprival of a property right without due process of law. Barn Ballroom Co. v. Ainsworth, 67 F. Supp. 299, (E.D. Va. 1946); *cf.* 32 C.F.R. § 761.18 (Supp. 1959). Apparently the Navy places the burden upon the United States citizen to prove he has "legitimate cause" to enter Guam. What is "legitimate" is committed to the Navy's sole discretion.

[58] Kent v. Dulles, 357 U.S. 116 (1958); Dayton v. Dulles, 357 U.S. 144 (1958); Boudin v. Dulles, 235 F.2d 532 (D.C. Cir. 1956); Kraus v. Dulles, 235 F.2d 840 (D.C. Cir. 1956); Shachtman v. Dulles, 235 F.2d 938 (D.C.Cir. 1955).

[59] Kent v. Dulles, *supra* note 58; Dayton v. Dulles, *supra* note 58. Although the constitutional issue was not reached, the language of the Court was extremely strong. See Kent v. Dulles, *supra* at 125.

[60] Shachtman v. Dulles, 225 F.2d 938 (D.C. Cir. 1955).

been granted "a hearing of a sort." The court did not decide whether the hearing complied with all procedural requirements, but held that the action of the Secretary of State in denying the passport was arbitrary and thus denied plaintiff substantive due process of law. The principal ground for the denial appeared to be that the Secretary of State alleged that the plaintiff was a member of an organization listed by the Attorney General as subversive. The correctness of this characterization was denied by the plaintiff.[61]

> What is involved at the present stage is a question of substantive due process—whether the refusal for the reason given, as alleged in the complaint and undisputed thus far by the Secretary, was arbitrary. If so, it is not a valid foundation for the denial, for the Government may not arbitrarily restrain the liberty of a citizen to travel to Europe. Discretionary power does not carry with it the right to its arbitrary exercise. Otherwise the existence of the power itself would encounter grave constitutional doubts.[62]

When one compares the language of the *Shachtman* case with that of the Naval Guam regulations[63] it immediately becomes apparent that the regulations deny substantive due process of law to any applicant who is denied a security clearance to enter Guam. The regulations arbitrarily provide that "under no circumstances will a notice of disapproval include a statement of the reason therefor."[64] Clearly, if the regulations are followed, any denial of a security clearance to any United States citizen is a denial of substantive due process under the fifth amendment of the Constitution. Unexplained denial of a security clearance is arbitrary administrative action outside the authority of law in view of the circumstances existing on the island of Guam at the present time.

2. *Equal Protection of the Laws*

In its Guam regulations the United States Navy has chosen to discriminate against certain "types" of United States citizens.[65] Those born on Guam or those who became citizens of the United States under the Guam Organic Act of 1950[66] may enter the Guam Island Naval Defensive Sea Area and the Guam Island Airspace Reservation without a clearance. Approximately 35,000 United States citizens are in that category, and a security clearance is not required of them, while a clearance is required of other United States citizens who were not fortunate enough to be born on Guam.

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[61] Shachtman v. Dulles, 225 F.2d 938, 943 (D.C. Cir. 1955).
[62] *Id.* at 941.
[63] 32 C.F.R. §§ 761.1–.24 (Supp. 1959).
[64] 32 C.F.R. § 761.16 (Supp. 1959).
[65] See 32 C.F.R. § 761.10 (Supp. 1959).
[66] 64 Stat. 384, as amended, 48 U.S.C. §§ 1421–26 (1958).

The regulations also discriminate against citizens who do not work for the Government—for that reason alone. Civil service employees and military dependents and many other groups are not required to be cleared, nor does the Navy claim that they have been checked for security purposes.

It would seem that few would venture to vouch for the undivided loyalty of all persons belonging to any of the Navy's favored groups solely because of membership in that group. Yet the Navy arbitrarily requires no clearance of such persons. Clearly the exclusion of such large groups from the clearance requirement is for the purpose of naval convenience and has no relation to security.

Were they to be enacted by a State the naval Guam regulations would undoubtedly be in violation of the fourteenth amendment, which extends equal protection of the laws to all United States citizens. While the fourteenth amendment does not extend to authority exercised by the United States,[67] the Supreme Court has tested the validity of federal legislation under the due process clause of the fifth amendment by the same rules of equality that are employed to test the validity of state legislation under the fourteenth amendment.[68] The equal protection of the laws afforded by the due process clause of the fifth amendment has been spoken of as "that mere minimum of equal protection secured both by the due process clause and by the equal protection clause of the Fourteenth Amendment."[69] Furthermore, the statute or regulation may be so discriminating or so arbitrary and injurious in denying equal protection of the law that it may be said to violate the due process clause of the fifth amendment even though the fifth amendment contains no equal protection clause and provides no guarantee against discriminatory legislation by Congress.[70]

The Supreme Court has held that discrimination against United States citizens of Japanese ancestry was not unconstitutional as being in violation of the fifth amendment where the circumstances were such as to make racial distinctions relevant.[71] During the time United States was at war with Japan racial distinctions were relevant, as it was then possible that some United States citizens of Japanese ancestry might have loyalties toward their mother country. No such distinction is relevant at the present time in respect of Guam.[72] Discrimination against United States citizens on the

[67] Truax v. Corrigan, 257 U.S. 312, 340 (1921).

[68] NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 43 (1937); District of Columbia v. Brooke, 214 U.S. 138 (1909).

[69] Lewis v. Brautigam, 227 F.2d 124, 128 (5th Cir. 1955).

[70] Detroit Bank v. United States, 317 U.S. 329 (1943); Hirabayashi v. United States, 320 U.S. 81, 100 (1943).

[71] Hirabayshi v. United States, *supra* note 70. The Court also said, "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people...." *Id.* at 100.

[72] It should be noted that by far the greater number of "locally born citizens" are natives of Guam whose ancestry is principally Spanish, Filipino and Chamorro.

sole ground they were not born on Guam is arbitrary and unjustifiable. The regulation appears clearly to be so objectionable on its face that it violates the due process clause of the fifth amendment.

3. Power Exercised by United States Navy Exceeds the Authority of the Executive Order

Assuming Executive Order No. 8683 is valid today, it is submitted that the practical power exercised by the Navy exceeds the authority of the Executive order, and that as a result substantial rights have been denied both United States citizens and aliens.

(a) Enforcement of Exclusions.

> Wherever law ends tyranny begins, if the law be transgressed to another's harm. And whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command to compass that upon the subject which the law allows not . . . may be opposed, as any other man who by force invades the right of another.[73]

The Navy has acknowledged that it has no power whatsoever to exclude anyone from the island of Guam.[74] In spite of that acknowledgment, however, the Navy has as a practical matter excluded numerous persons from Guam by the simple expedient of revoking their security clearance and notifying their employers that they must be repatriated.[75] A prevalent reason for the revocation of an alien's security clearance is that he has placed himself "out of status" for having had the temerity to marry a United States citizen. Employers invariably cooperate, knowing well that future importation of labor depends upon favorable Navy action on security-clearance applications. Though such action is admittedly contrary to law,[76] the Navy continues to revoke clearances, thereby arbitrarily exercising a power it does not have. The rights of aliens under the fifth amendment are also protected if they are permanent residents. In *Kwong Hai Chew v. Colding*[77] the Supreme Court so ruled, saying:

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[73] LOCKE, SECOND TREATISE OF CIVIL GOVERNMENT sec. 202 (1690).

[74] Letter From J. H. Smith, Jr., then Ass't Secretary of the Navy for Air, to Senator William Langer, in Guam Daily News, Dec. 8, 1954, p. 1, cols. 2–4.

[75] A typical exchange of letters will be found in App. A.

[76] In Wilcox v. Emmons, 67 F. Supp. 339 (S.D. Cal. 1946), the plaintiff had been excluded from a military area in continental United States. The military commander who had excluded the plaintiff acted under color of law in an honest belief that he was empowered lawfully to direct the acts of expulsion and exclusion by physical force. The court held that the exclusion order was not self-executing and that defendant did not have lawful power to expel or exclude plaintiff from such area, the statute being a limitation on the power of the military and providing for criminal penalties only. *Cf.* Ochikubo v. Bonesteel, 57 F. Supp. 513 (S.D. Cal. 1944), 60 F. Supp. 916 (S.D. Cal. 1945).

[77] 344 U.S. 590 (1953).

> It is well established that if an alien is a lawful permanent resident of the United States and remains physically present there, he is a person within the protection of the Fifth Amendment.[78]

Aliens who have been admitted though not with "permanent resident" status do not have constitutional protection.[79] When the language used in *Kwong Hai Chew* is applied to the Guam situation, however, it would appear that even nonresident aliens should have some rights. The Court there said:

> This preservation of petitioner's right to due process does not leave an unprotected spot in the Nation's armor. . . . Before receiving clearance for his foreign cruise, he was screened and approved by the Coast Guard. Before acceptance of his petition for naturalization, as well as before final action thereon, assurance is necessary that he is not a security risk.[80]

Before he enters Guam for any purpose an alien presumably is screened to determine whether he is a security risk. Therefore, an alien subsequently excluded by the Navy without explanation should be given some opportunity to be heard and to show that he has not become a security risk in the interim.

The Navy has exercised considerable arbitrary power in forcing repatriation of aliens, particularly to the Philippines, without lawful authority. A very much-needed and well-qualified nurse employed at the Guam Memorial Hospital was separated from her job due to the fact that her security clearance was revoked shortly after she married a United States citizen.[81] In justification of the policy of revoking an alien's clearance for marrying a citizen a Naval spokesman said that the Navy favors keeping "Guam for the Guamanians."[82] The only other justification ever given by the Navy for

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[78] *Id.* at 596.

[79] United States *ex rel.* Knauff v. Shaughnessy, 338 U.S. 537, 545 (1950). Even here the majority of the Court justified denial of procedural due process to an alien on the ground that a state of war still technically existed. The Court admitted that in peacetime Congress had provided aliens with a hearing.

[80] Kwong Hai Chew v. Colding, 344 U.S. 590, 602 (1953). The language of Mr. Justice Jackson in Shaughnessy v. United States *ex rel.* Mezei, 345 U.S. 206, 224–27 (1953) is of interest also, though in a dissenting opinion.

[81] The Government of Guam terminated Mrs. Delfina A. Cataluna's contract for the reason that the Navy had revoked her authority "to remain within, or re-enter the Guam Naval Defensive Sea Area as per letter from Commander Naval Forces Marianas dated April 22, 1957." Termination Notice, April 30, 1957, Signed by Peter C. Siguenza, Director of Personnel. Mrs. Cataluna had been hired in August 1956 on a 2-year contract.

[82] "The U.S. Navy 'does not favor the entry' of Filipinos to Guam 'for the purpose of settling permanently' because U.S. Navy policy is 'to keep Guam for Guamanians,' Rear Admiral William B. Ammon, commander of the U.S. Naval Forces in the Marianas said. Ammon's 'Guam for the Guamanians' statement was in reply to a question as to why the Navy frowns upon any effort of Filipinos to settle permanently on Guam. 'Navy policy is to keep Guam for Guamanians, therefore, it does not look with favor on the entry of any foreigner to Guam for

revocation of an alien's clearance because of marriage to a citizen is that the Navy feels it is not in the best interests of the United States to build up in Guam an alien colony whose members are qualified to become permanent residents.[82]

Just why an alien colony in Guam is detrimental to the interests of national defense has never been fully explained, particularly in view of the fact that there are presently only about 6,500 aliens on the island of Guam, and by far the greater portion of those aliens are working for the United States Government or for contractors of the Government. The fallacy of the "alien colony" argument advanced by the Navy is particularly revealed by the fact that although the United States has far more extensive operations on the island of Okinawa than in Guam, Okinawa has an "alien colony" residing thereon, numbering almost 800,000. This is more than one-hundred times the number of aliens on Guam, although the land area of Okinawa is little more than twice that of Guam. Nor has the Navy given any reason why Filipino aliens should be more detrimental to national defense because they happen to reside in Guam, than Okinawans loyal to the Japanese are detrimental to defense because they reside in the small land area of Okinawa.[82a]

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the purpose of setttling permanently,' he said." Abcede, *Guam Policy Explained*, The Manila Times, Oct. 12, 1956, p. 2, col. 1.

More recently Mr. Abcede wrote a long article in a Manila newspaper commenting on the life of the Filipino on Guam. He said in part: "Despite the enactment of the Organic Act of Guam, establishing the supremacy of civilian authority, the U.S. Navy paper curtain remains to this day. Naval intelligence has been intensifying efforts to fend off foreigners and unwanted Americans.... The clearance requirement has worked hardships on both Americans, Guamanians and Filipinos. The economic life of Guam has also been adversely affected. An estimated 200 Filipino-Guamanian families have been broken up because of this stringent requirement. Filipinos married to Guamanian women and who have been forced by circumstances to visit the Philippines found themselves unable to go back to Guam. In many instances, a breakdown of family ties resulted. The writer presented this problem to Rear Admiral W. B. Ammon, commander of the U.S. Naval Forces in the Marianas in 1956. The Navy was asked whether it discouraged the intermarriage of the two peoples and whether it frowns on any effort of the Filipinos to settle permanently in Guam. Admiral Ammon's reply is quoted: 'The Navy does not encourage or discourage intermarriages and endeavors not to become involved in domestic affairs except as necessary to administer entry clearance regulations. Navy policy is to keep Guam for Guamanians, therefore, it does not look with favor on the entry of any foreigner to Guam for the purpose of settling permanently.'" Abcede, *Filipinos In Guam*, The Manila Sunday Chronicle, July 26, 1959 (Magazine) p. 16, col. 3.

The Department of Justice maintains an Immigration and Naturalization Office in Guam, and the entry of aliens is controlled by that office. Under the ostensible authority of Executive Order 8683, however, the Navy excludes numerous aliens who have been admitted by Immigration authorities for announced reasons no better than "Guam for the Guamanians."

[82] "The long term presence on Guam of aliens in large numbers would be a detriment to the effective use of Guam for its primary mission of defense, while heavy population of the island by aliens could not fail to adversely affect the people of Guam and their own economy." Letter From Comdr. Edward L. Beach, Naval Aide to the President, to F. L. Moylan, Guam Businessman, September 20, 1956. The latter reason hardly seems a proper concern of the Navy, even if true.

[82a] As a further justification for the imposition of the security clearance, the Navy has insisted on its duty to enforce Executive Order No. 8683. See Letter From Ira H. Nunn, Navy

(b) Penalties for Violators.—Navy Guam regulations set forth no less than five sections of the United States Code as providing penalties for violations of Executive Order No. 8683.[84] One of the sections cited[85] is really not applicable to the security clearance program inasmuch as it provides a penalty for entering military reservations. The entire island of Guam is not a military reservation and the Code section therefore applies to Guam only to the same extent that it applies to a United States military reservation, post or camp anywhere in the United States.

Another section cited provides a penalty for violating any regulation or order promulgated pursuant to law by military authority.[86]

A third section cited provides a punishment for knowingly making any false or fraudulent statement or representation.[87] The rather obvious reason for citing that section is seen when one considers the voluminous paper work applicants are required to execute in order to obtain a security clearance.[88]

Another section cited provides a penalty for anyone who knowingly or wilfully violates any Executive order.[89] It is this section that has been "violated" a number of times in Guam by persons who have been denied a security clearance but who nevertheless have entered the island. In their case the Navy has without fail issued them a security clearance forthwith and has not held them long enough to enable their counsel to obtain a writ of habeas corpus.[90]

Judge Adv. Gen., to Rear Adm. H. A. Houser, June 3, 1953. However, although current Navy regulations list all Naval Defensive Sea Areas and Naval Airspace Reservations set aside by Executive order, the Navy has suspended operation of entry controls in no less than nine of these areas. 32 C.F.R. §§ 761.3–.4 (Supp. 1959). Entry control with respect to Tutuila and Rose Islands was revoked by Executive Order No. 10341, 17 Fed. Reg. 3143 (1952). With respect to the other areas, "suspension of the operation of certain entry controls . . . has been accomplished administratively and is subject to reinstatement without notice at any time." Letter From Comdr. C. E. Herrick, Office of Chief of Naval Operations, to W. Scott Barrett, July 31, 1959. It is difficult, to say the least, to reconcile this administrative suspension of entry controls with respect to selected areas with a compelling duty of obeying Executive Order No. 8683 with respect to entry controls for Guam. Unfortunately, the opinion of the Judge Advocate General's department which concluded that the Navy had such a duty is unavailable. It is, as has been noted before, a *classified* document. See text at note 35 *supra*.

[84] OPNAV Instruction 5500.11B, Nov. 27, 1957, p. 7, 32 C.F.R. § 761.3(f) (Supp. 1959).

[85] 18 U.S.C. § 1382 (1958).

[86] 64 Stat. 1005 (1950), 50 U.S.C. § 797 (1958).

[87] 18 U.S.C. § 1001 (1958).

[88] Applicants are required to itemize in detail all places of residence and employment for the past 10 years. OPNAV Instruction 5500.11B, Nov. 27, 1957, p. 22, 32 C.F.R. 761.3(b)(3)(iv)-(v) (Supp. 1959).

[89] 18 U.S.C. § 2152 (1958).

[90] One petition for a writ of habeas corpus was actually filed, but the Navy issued a clearance thus rendering the case moot before the court made any decision. Bolosan v. Johnson, Civil No. 29-55, D. Guam, April 20, 1955.

The fifth penalty provision cited by the regulations related to the naval airspace reservations[91] and has been repealed, subject to a savings clause which provided that all orders made by the President under any provision of law repealed or amended by the act, which were in effect at the time the section takes effect, should continue in effect according to their terms until modified, or terminated, superseded, set aside or repealed by the administrator or the board or by any court of competent jurisdiction or by operation of law.[92]

C. Procedural Due Process of Law Denied

The constitutional right to a hearing has been defined in *Morgan v. United States*[93] as follows:

> The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one. Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command.[94]

Prior to the fourth day of September 1956, the Navy had administered the security clearance program for some 13 years,[95] excluding the time Guam had been occupied by the Japanese, without giving persons to whom it denied a clearance any reason or right to appeal.

As Kelsen has pointed out, the liberties granted under a bill of rights are rights only if there is the right to appeal:

> The liberties it [the Bill of Rights] states are rights in a juristic sense only if the subjects have an opportunity to appeal against acts of State by which the provisions of the constitution are violated in order to get them annulled.[96]

1. The Feraru Case—Appeal Procedure Supplied

In 1953 Arthur N. Feraru was hired by United Seamen's Service to come to Guam in their employ. Subsequently the Navy informed Mr. Feraru that his application for a security clearance had been denied. Mr.

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[91] Act of May 20, 1926, ch. 344, § 4, 44 Stat. 570 (repealed by The Federal Aviation Act of 1958, § 1401, 72 Stat. 806).

[92] Federal Aviation Act of 1958, § 1504, 72 Stat. 811, 49 U.S.C. § 1301 (1958).

[93] 304 U.S. 1 (1938).

[94] *Id.* at 18–19.

[95] During the period between the time of the reoccupation of Guam and Dec. 4, 1950, the Navy did not actually enforce the security clearance; until the passage of the Organic Act in July 1950 it had unquestioned power to exclude anyone from the island. See text at notes 7–9 *supra*.

[96] KELSEN, GENERAL THEORY OF LAW AND STATE 236 (1949).

Feraru then lost his job since the employer apparently required his services only on Guam. Subsequently, in December 1955 Mr. Feraru filed suit against the Secretary of the Navy in the United States District Court for the District of Columbia.[97] The Government filed an answer admitting substantially all of the factual allegations in the complaint but denying that plaintiffs were entitled to relief and denying on information and belief that plaintiffs were loyal to the United States.

Within nine months of the filing of the *Feraru* suit the Office of the Chief of Naval Operations issued a new directive providing a procedure, though grossly inadequate, whereby a United States citizen denied entry to Guam might appeal and receive an administrative hearing.[98] This was the first attempt on the part of the Navy to establish an administrative board to hear appeals. The directive is very brief. It places the burden upon the petitioner to justify his entry into Guam. The petitioner is also required to show that his entry would serve the best interests of the United States. The directive applies only to United States citizens. The board it establishes is composed of three naval officers or employees who are not empowered to make a final decision. That decision is made by the Chief of Naval Operations to whom the board only makes a recommendation.[99]

In January 1957 the *Feraru* suit was continued by stipulation until the Navy could complete the procedure offered the Ferarus under the new directive. Thereafter, the Feraru family, because of personal problems, were forced to delay the "hearing" offered them by the Secretary of the Navy pursuant to the directive. Their counsel thereafter agreed to dismiss the suit without prejudice rather than let it remain endlessly on the docket.[100]

Regardless of the merits of his case, there is no doubt that Mr. Feraru was denied procedural due process of law. Only after suit was filed did the Navy provide for appeal. Still more time passed before the appeal machinery was actually set up. The Navy is notoriously slow in these matters. Nor do the regulations providing for appeal take cognizance of the fact that

[97] Feraru v. Thomas, Civil No. 5603-55, D.D.C., Dec. 27, 1955.

[98] OPNAV Instruction 5420.18, Sept. 4, 1956 (reproduced in App. B). The Navy originally contended no hearing of any kind was required. "The Navy has at no time made any charges against Mr. and Mrs. Feraru. There is no statutory or legal requirement for a hearing in this case, and there has been no change in Navy Department procedures for handling requests for entry into the Island of Guam. Under the terms of Executive Order 8683 . . . no hearing is provided for and none is contemplated where refusal of entry occurs." Letter From Rear Adm. L. L. Russell to David I. Shapiro, of Deickstein, Shapiro & Friedman, New York, Counsel for Mr. and Mrs. Feraru, November 10, 1955.

[99] Compare the appellate procedure reported in Parker v. Lester, 227 F.2d 708, 712 (9th Cir. 1955). In the *Parker* case, too, the Commandant made the final decision and the burden was on petitioners to show they were good security risks.

[100] Letter From James H. Heller, Counsel for Mr. Feraru, to W. Scott Barrett, May 26, 1959.

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when one desires to travel, it is usually a desire which must be acted on immediately or it is frustrated entirely. By the time the appeal procedure had been provided, Mr. Feraru had lost his job. Few persons would have the time and money and inclination to carry a court case forward under such circumstances.

2. The Parker and Greene Cases—Appeal Procedure Inadequate

Unquestionably the Navy directive offering a limited administrative hearing does not provide the procedural due process of law required by the Constitution. In *Parker v. Lester*[101] petitioners were denied security clearances by the Commandant of the Coast Guard and were thereby deprived of their employment as merchant seamen. The commandant's order had been made pursuant to an Executive order [102] authorized by statute.[103] The principal contention of petitioners was that they were subjected to procedures that deprived them of due process of law in violation of the fifth amendment. The district court judge defined procedural due process of law as "the maximum procedural safeguards which can be afforded petitioners without jeopardizing the security program,"[104] but nevertheless held against petitioners. On appeal the court of appeals reversed,[105] holding that the regulations fell short of furnishing the minimum requirements of due process in respect to notice and opportunity to be heard.[106] In so holding the appellate court discussed the regulations provided by the Coast Guard, which were strikingly similar to the Navy directive establishing the review board.[107] The Coast Guard board in *Parker* had before it the complete record on which the Commandant's initial determination to deny clearance was made, but none of this was disclosed to the seamen, although they could appear in person and by counsel and could submit testimony and documentary evidence. The burden of showing that they were good security risks was on the seamen, notwithstanding the fact that they knew neither the names nor the identities of, nor anything else about their accusers. The Commandant had final authority to grant or deny the security clearance. The board only had power to recommend.[108] The court of appeals apparently placed great weight upon the fact that the accused seamen were not furnished with a bill of particulars setting forth the source of the data upon which their security clearances were denied.[109]

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[101] 227 F.2d 708 (9th Cir. 1955), *reversing* 112 F. Supp. 433 (N.D. Cal. 1953).

[102] Exec. Order No. 10173, 15 Fed. Reg. 7005–08 (1950).

[103] Magnuson Act § 1, 64 Stat. 427 (1950), as amended, 50 U.S.C. § 191 (1958).

[104] Parker v. Lester, 112 F. Supp. 433, 443 (N.D. Cal. 1953).

[105] Parker v. Lester, 227 F.2d 708 (9th Cir. 1955).

[106] *Id.* at 724.

[107] Discussed note 98 *supra*; see App. B.

[108] *Cf.* OPNAV Instruction 5420.18 (see App. B).

[109] Parker v. Lester, 227 F.2d 708, 716 (9th Cir. 1955): "Thus if the Commandant's information is that at a certain time and place the accused seaman in a conversation with an ac-

The Navy directive providing for a limited hearing makes no provision whatsoever for informing the person whose application for entry clearance has been denied as to the source of information upon which the determination was based. Another directive sets forth a form letter which is sent to all persons whose requests for entry authorization are denied.[110] That letter merely states that their entry has been denied because it is not considered in the interests of national defense. The person is then advised that he may appeal the decision by submitting a letter to the Chief of Naval Operations, setting forth in full why the granting of the application would be in the best interests of national defense. Officers are expressly instructed to give no reason whatsoever when they deny a clearance.[111]

In *Greene v. McElroy*[112] an employee of an aircraft factory having access to classified information had his security clearance revoked, thereby causing him to lose his job. The Court of Appeals for the District of Columbia Circuit held that one having access to classified matter may be deprived of his employment without any procedural safeguards. That decision was discussed and criticized in the *California Law Review*,[113] the author concluding that Greene should have been given one or more of the following rights: (1) The right to know the evidence used against him; (2) the right to know the identity of his accusers and to cross-examine them; and (3) the right to inspect reports made by his accusers to the Government.

The Supreme Court granted certiorari and decided the case on June 29, 1959.[114] The Court, Mr. Chief Justice Warren writing the opinion, reversed the court of appeals. The constitutional question was not reached. Rather, the Court apparently preferred to decide the case on the ground that the type of hearing given the petitioner "was the product of administrative decision not explicitly authorized by either Congress or the President."[115] In that connection the Court said:

> Before we are asked to judge whether, in the context of security clearance cases, a person may be deprived of the right to follow his chosen profession without full hearings where accusers may be confronted, it must be made clear that the President and Congress, within their constitutional powers, specifically have decided that the imposed procedures are necessary and warranted and have authorized their use. . . . Such decisions cannot be assumed by acquiescence or non-action. . . . They must be made explicitly

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quaintance spoke disparagingly of the American Flag, the seaman will have no information that this incident is being considered, for to mention the charge would be to disclose the informer."

[110] OPNAV Instruction 5500.11B, Nov. 27, 1957, p. 31; see note 2 *supra*. The form letter is not printed in the Code of Federal Regulations.

[111] OPNAV Instruction 5500.11B, Nov. 27, 1957, p. 28; 32 C.F.R. § 761.16 (Supp. 1959).

[112] 254 F.2d 944 (D.C. Cir. 1958).

[113] 46 CALIF. L. REV. 828 (1958).

[114] Greene v. McElroy, 360 U.S. 474 (1959).

[115] *Id.* at 508.

> not only to assure that individuals are not deprived of cherished rights under procedures not actually authorized... but also because explicit action, especially in areas of doubtful constitutionality, requires careful and purposeful consideration by those responsible for enacting and implementing our laws. Without explicit action by lawmakers, decisions of great constitutional import and effect would be relegated by default to administrators who, under our system of government are not endowed with authority to decide them.[116]

Significantly, the United States Navy cites as its only authority for enforcing the security clearance entry requirement in Guam the Executive order issued by President Roosevelt in 1941. Congress did not ratify that order although the President was authorized by Congress to make it.[117] It is by no means clear that either the President or Congress within their constitutional powers have specifically decided that the procedures imposed by the United States Navy are necessary and warranted. Citizens and aliens alike have been deprived of liberty and property,[118] and the procedures used have afforded less due process than that given to Greene. It must therefore be assumed that Congress and the President intended to afford those affected by the Guam naval security-clearance entry requirement the traditional safeguards of due process.

The issue in the *Greene* case was whether the Department of Defense had been authorized to create an industrial security clearance program under which persons having access to classified information may lose their jobs on the basis of facts determined in proceedings in which they are denied the traditional procedural safeguards of confrontation and cross-examination. It is at once apparent that the authorization given to the Defense Department to administer its clearance program was much more complex and granted greater authority than has been given to the Navy by virtue of Executive Order No. 8683. The appellate procedure offered to Greene appeared to give him an opportunity for a fair hearing which was considerably better than that given by the appellate procedure offered to those denied a security clearance to enter Guam.[119]

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[116] Greene v. McElroy, 360 U.S. 474, 507 (1959).

[117] By virtue of the Act of Mar. 4, 1909, ch. 321, § 44, 35 Stat. 1097, as amended, ch. 180, 39 Stat. 1194 (1917), added by ch. 20, § 19, 40 Stat. 39 (1917) (now, as amended, 18 U.S.C. § 2152 (1958)).

[118] Joseph Siciliano, a local businessman, somehow incurred the enmity of the Navy and has been excluded from Guam and told never to return. The actual reasons are known to no one but the Navy. Siciliano's substantial business interests in Guam have diminished or vanished due to his prolonged absence.

[119] The Board made the final decision. Greene was informed of charges against him but not of the identity of the informers. Greene had access to three appeal boards, the Personnel Security Board (PSB), The Industrial Employment Review Board (IERB) and the Eastern Industrial Personnel Security Board (EIPSB). Greene had been cleared in 1952 by the IERB, which reversed the PSB. On March 27, 1953, the PSB and the IERB were abolished. On April 17, 1953, the Secretary of the Navy arbitrarily and without further hearing revoked Greene's clearance. More than one year later Greene was granted a hearing before the EIPSB which affirmed the Navy's decision.

CONCLUSION

If naval officials were convinced that their security-clearance program was legally unassailable it would seem that some of the many violators would have been prosecuted. On the contrary, as has been pointed out, no one has been prosecuted, and violators who enter the island without a clearance are immediately issued one or are permitted to stay without a clearance rather than allow the entire program to be tested in the civil courts.[120]

If there is some doubt in the minds of naval officials as to the legality of the clearance, why do they insist on continuing to enforce it? The answer hardly can be found in the official reasons given by the Navy as set forth in the introduction to this Article. Many of the reasons given are not valid at the present time due to change in circumstances, and many others have no justification in law. Although one can only speculate, the real reason seems to be that the Navy hesitates to relinquish power which it has exercised for many years over the entire populace of Guam. The Navy once ruled Guam with an iron hand, and the enforcement of Executive Order No. 8683 may be an attempt to retain as much of that rule as possible.

In Hawaii during World War II martial law was in existence. J. Garner Anthony, who was for a time Attorney General of Hawaii during World War II, summed up the reasons why martial law in Hawaii was allowed to continue for years after it was necessary. His words are equally applicable to Guam at the present time:

> Perhaps one of the reasons why martial law in Hawaii was allowed to continue for years without correction from the War Department in Washington lies in the application to the situation in Hawaii of the precept that judgment of the military commander in the field should not be disturbed, a principle valid enough at or near the battlefield, but dangerous when applied generally. No one likes to admit error. It is only human to defend a position once it is publicly asserted. However, in the face of convincing proof most people will give way. In the military system this would be looked upon as a sign of weakness. Once a decision is reached by a military commander, change will be resisted even in the face of almost conclusive evidence of error.[121]

Others have also spoken out against the Navy security-clearance requirement in Guam. In a speech before the Multnomah County Bar Association in Portland, Oregon, in August 1957, Judge J. Frank McLaughlin of the United States District Court of Hawaii spoke out against the legality

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[120] Numerous individuals have entered through the Air Force base in Guam without a naval clearance, though they are not included in the Navy's exempt groups. See note 28 *supra* and text at note 89 *supra*.

[121] ANTHONY, HAWAII UNDER ARMY RULE 122 (1947).

of the Guam security clearance.[122] His speech was commented upon in an editorial in the *Portland Oregonian*.[123] The editorial referred to an incident involving Ford Q. Elvidge, Governor of Guam from 1953 to 1956. Governor Elvidge wrote after leaving his post that he had been surprised by the number of prostitutes in Guam whose origins were in other countries. He asked a Navy officer why these girls, whose vocation was apparent, were admitted in such numbers whereas a casual tourist would be turned down. "Governor," said the officer, "our clearance is for security, and we haven't any reason to think these girls are subversive."

The editorial comment continued:

> There were probably few lawyers in Judge McLaughlin's audience who would want to undertake to justify legally the U.S. administration's high hand in Guam. The security regulations are, according to the Navy, based on an order issued by President Franklin D. Roosevelt.... [A]ctually the Navy is not in charge of civil administration in Guam. This, since 1950, has been the responsibility of the Department of Interior operating through a governor appointed by the President. The Government has limited the veto power over the locally elected unicameral legislature.... It is not clear why Guam should be the most stringently guarded of all U.S. territories . . . [for] the scars of war have disappeared from Guam. Its beaches rival in beauty any in the Pacific. Its climate is near perfection. But U.S. tourists are not likely soon to explore its charms. The U.S. Navy doesn't want to be bothered. In fact, a Naval spokesman has been heard to take credit for keeping all sorts of "riffraff" out of Guam under cover of the Security Program.[124]

One can only conclude that the United States Navy is intentionally enforcing the naval security clearance while realizing at the same time that it is unsupported by statute and is unconstitutional. The words of Judge McLaughlin are again appropriate, though he was commenting upon the fact that the Army continued martial law on Hawaii long after it was necessary. He said:

> Yes, "they did it." They did it intentionally. They did it with design aforethought. They did it in knowing disregard of the Constitution. They did it because Hawaii is not a State. They did it because they did not have faith that Americanism transcends race, class and creed.[125]

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[122] Judge McLaughlin has visited Guam as Judge of the Guam District Court, Appellate Division.

[123] Baner, *American Guam Off-Limits to Americans*, Portland Oregonian, Aug. 4, 1957, p. 42, cols. 4–5.

[124] *Ibid.*

[125] ANTHONY, HAWAII UNDER ARMY RULE 118 (1947), quoting from the *Honolulu Advertiser*, Feb. 28, 1946.

action to separate you from your position for disqualification not earlier than 1 May 1957 for the following reason:

(a) Your separation was requested by the Department of Navy, letter dated 9 March 1957 which indicated that your Guam entry clearance had been revoked. Since you are no longer in possession of the necessary clearance, it is therefore necessary to separate you from the service.

2. You are hereby informed of your right to reply personally and in writing to this notice of proposed separation and to show cause why the action should not be taken. You may submit affidavits and evidence in support of your answer. Your reply must be made within seven calendar days of receipt of this notice. A written reply should be made to the Civilian Personnel Office.

3. No decision to separate you has been made or will be made until after the time allowed you for reply. Your reply will be given full and careful consideration before final decision is made. Whether you reply or not, a written notice of final decision will be given you.

4. You will be continued in a work status during the notice period in your present position until you are instructed to clear the base for transportation to the Philippines Islands on or about 1 May 1957.

BY ORDER OF THE COMMANDER:

s/ William L. Puett
WILLIAM L. PUETT
Civilian Personnel Officer

APPENDIX B

Establishment of Naval Defensive Sea Area Review Board

DEPARTMENT OF THE NAVY
Office of the Chief of Naval Operations
Washington 25, D. C.

OPNAV 5420.18
Op—215
Ser. 4365P21
4 Sept 1956

OPNAV INSTRUCTION 5420.18

From: Chief of Naval Operations

To: Distribution List

Subj: Naval Defensive Sea Area Review Board; establishment of

Ref: (a) General Order No. 13

(b) OPNAV INSTRUCTION 5500.11A (Security clearance procedure for entrance of individuals to Guam, Trust Territory of the Pacific Islands, Bonin-Volcano Islands and Marcus Island, Midway, Wake and Johnston Island)

1. Purpose. This Instruction establishes the OPNAV Naval Defensive Sea Area Review Board and sets forth the policies and procedures governing operations of the Board.

APPENDIX A

(1) *Denial of Clearance by Commander Naval Forces Marianas:*

U. S. PACIFIC FLEET
COMMANDER NAVAL FORCES MARIANAS
Fleet Post Office
San Francisco, California

FF5—9/20
A2—9/1
Ser 15424
Mar. 9, 1957

From: Commander Naval Forces Marianas

To: Commander 3rd Air Division (SAC) Andersen Air Force Base
ATTN: Provost Marshall

Subj: Guam entry clearances; denial of

1. In view of information obtained by Commander Naval Forces Marianas during the processing of the following Filipino contract laborers for regular Guam entry clearances, the authorization for these men to remain within, or re-enter the Guam Naval Defensive Sea Area is hereby denied:

* * * * * * * * * * *

PALICAN, Feliciano (Clerk) Laundry

* * * * * * * * * * *

2. It is requested that these Filipino contract laborers be repatriated to the Philippines as soon as possible. It is further requested that the Commander Naval Forces Marianas be notified when the repatriation of the above men has been accomplished.

/s/ G. W. Roberts
/t/ G. W. ROBERTS
By direction

Copy to:

. . . .

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(2) *Letter Cancelling Employment*

Central Civilian Personnel Office
3960TH AIR BASE GROUP (SAC)
United States Air Force
APO 334, San Francisco, California

BPCP 29 March 1957

SUBJECT: Notice of Proposed Separation (Disqualification)

TO: Mr. Feliciano Palican
3960th Supply Squadron

ATTN: Base Laundry
APO 334

1. This notice is issued in accordance with the provisions of Civil Service Regulation 9.102(a) and Chapter AFS1 of AFM 40-1. You are hereby given 30 days notice of proposed

Vol. 48
1960

2. Composition of the Board. The OPNAV Naval Defensive Sea Area Review Board is hereby established in the Office of the Chief of Naval Operations and will be composed as follows:

a. One (1) Rear Admiral USN who will act as Chairman and will be designated by the DCNO (Administration).

b. One (1) civilian member GS-14, or above, designated by the DCNO (Administration).

c. One (1) Captain USN or one civilian GS-14, member, who will be appointed by the DCNO (Administration).

d. There will be a Recorder to provide staff assistance to the Board who will be appointed by the DCNO (Administration).

3. Duties and Responsibilities of the Board. The Board will act only in the case of U.S. citizens who make application for entry into a defensive sea area and who are denied entry. Such individual whose entry is denied under the provisions of reference (b) may petition the Board for further consideration of the case, by submitting a request in writing to the Chief of Naval Operations. The petitioner may appear at his own expense or be represented by counsel, and may present a reasonable number of witnesses who have intimate knowledge of the circumstances. In this connection, the Board has the right to restrict the number of witnesses is so far as contribution of additional information is concerned. After fair and reasonable effort to ascertain facts has been made, the Board will recommend to the Chief of Naval Operations the final disposition in the case.

4. Policy. It is incumbent upon the petitioner to provide full justification for his entry and to show that the interests of the United States are served by such entry.

5. Procedures. In order to execute its mission the Board may take the following action as appropriate:

a. Request testimony (not under oath) from interested parties as deemed necessary, except that the petitioner may at his option testify under oath or submit sworn statements. The Board does not have the power of subpoena.

b. Request services of technical specialists who are able to assist the Board in the establishment of fact.

c. Obtain from other sources information which will enable the Board to render its determination without prejudice or bias.

d. The Board will prepare a brief of the significant issues and facts in presenting its recommendation to the Chief of Naval Operations for his final decision.

e. The Board may establish such other procedures as it deems necessary.

ARLEIGH BURKE

Distribution:

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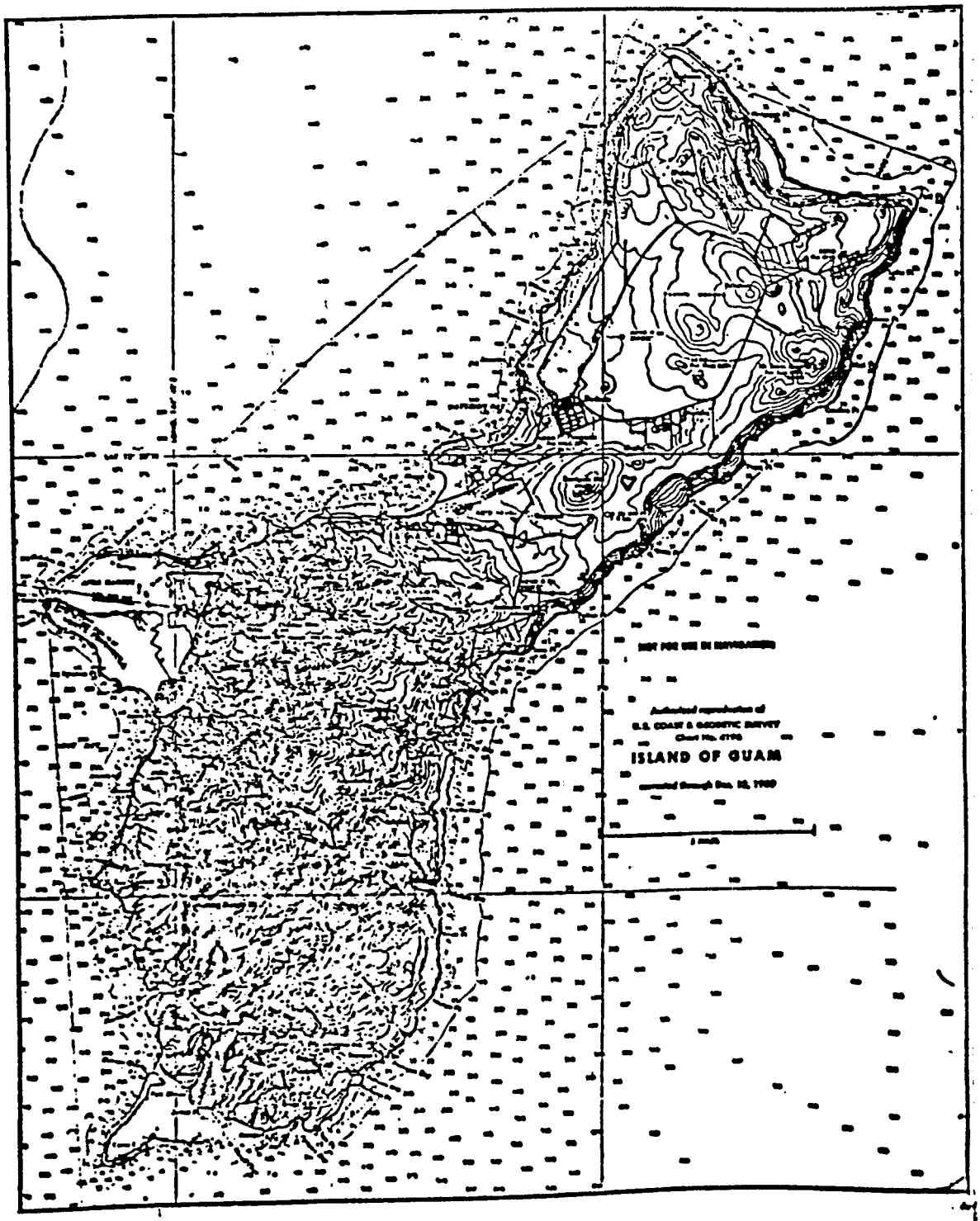
APPENDIX C



MEMORANDUM
OF
CIRCUMSTANCES AND AUTHORITIES
RELATING TO
"ABNORMAL SOCIO-ECONOMIC INFLUENCES
IN THE TERRITORY OF GUAM,
1898 THROUGH AUGUST 23, 1963"

GUAM LANDOWNERS ASSOCIATION

John A. Bohn, Attorney
August 12, 1981
Edited & Revised: 1986/1988/1993
Ronald E. Teehan, Jr., Secretary, B.O.D.
Patrick L. Clymer, Volunteer Editing Staff

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note: Final must be renumbered

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I.

HISTORY OF UNITED STATES ADMINISTRATION OF GUAM PRIOR TO AUGUST 23, 1962, REVEALS CLEAR INDICIA OF CONTINUING AND ABSOLUTE STATE OF DEPENDENCE OF THE CIVILIAN POPULATION UPON MILITARY AUTHORITIES

A.) Domination of Guam by Pre-War Naval Government:

i.) Treaty of Paris and Creation of Naval Government

The dependence of the Guamanian people upon the government of the United States can be original traced to conquest by the United States during the Spanish-American War, and the Treaty of Paris of 1898, whereby it was provided that "the Civil rightsand political status of the native inhabitants of the territory hereby ceded to the United States shall be determined by Congress." However, by Executive Order of President McKinley, it was provided that "the Island of Guam in the Ladrones is hereby placed under the control of the Navy. The Secretary of the Navy will take such steps as are necessary to establish the authority of the United States and to give it the necessary protection and government." (Executive Order No. 108A). [emphasis added]

Pursuant to the President's Directive declaring Guam to be a Naval Station, a Senior Naval Officer was appointed for a short term by the President to head the Island Goverment and command the Naval Station. The resulting governmental and political structure has been decribed by various authorities as ranging from a martial law situation to a ship command:

> "The Military Commander was instructed... by the President to consider as continuing in force the municipal laws of the Territory in respect to private rights and property and repression of crime 'within the absolute domain of Naval authority'. The Governor also used his power to expel from the island or prevent from coming there any person whom he considered undesirable, establishing thereby a precedent which in subsequent years was exercised to close the port of Guam, to control immigration..., and to prevent observations and investigations of native conditions." (Laura Thompson, "Guam and Its People", pp. 65-66 hereinafter "Thompson"). [emphasis added]

> "The duration of tour of duty of Naval Officers beyond

the continental limits of the United States is 18 months...not one Naval Governor of Guam was ever reappointed...several of the Naval Governors scarcely became known on the island before their term expired...some took an active and personal interest in the people's problems..., others found their duties as governor utterly foreign to their background of training and experience as professional Naval officers and developed a keen dislike for the job. Some regarded their assignments to this remote and unimportant Naval Station as punishment duty, which it probably was in a few cases. The post was not regarded as an assest to a Naval career...and not one which served to enhance a record of Naval service under review for promotion in the pre-war Navy...It has been said that [some governors] functioned as nothing more than Naval Commanders of the United States Naval Vessel Island of Guam, with some 20,000 civilian members of the crew. They "governed the people of Guam much as they had commanded Naval vessels or Naval establishment on previous tours of duty. Law and order often became "discipline", legislation became "commands" or "orders", and education became "training"... Officers served as department heads and members of the staff of the Governor. Enlisted men of the Navy and Marine Corp and certain selected American and Guamanian civilians were entrusted and relied upon to perform the routine everyday business of government...The population as a whole was regarded as a 'ward of the Navy' to be treated much like Naval enlisted men." (Roy E. James, former Commander, USNR, "America's Pacific Dependencies", 1949, p. 79). [Emphasis added]

Such descriptions of the pre-war Naval Government have only been disputed by the Navy as a matter of degree. There has never been any question that Naval authorities continously exercised absolute control over the affairs of Guam:

"Since the Island of Guam became American Territory its affairs have been administered by the Navy in the interest of Naval Station, which is the primary American interest on the island. As a result of the unique interest of the Navy in the island, the natives of Guam occupy peculiar and very close relationship to the Navy and have been considered wards of the Navy. Since the acquisition of the island by the United States, the inhabitants of the island have been under the special and sole protection of an administration by the Navy Department under a Naval Officer designated as the Governor of Guam." (House Report No. 1135, Meritorious Claims Act, 79th Congress, First Session, October 19, 1945, quoting letter from Acting Secretary of the Navy Hensel to Speaker of the House, dated June 9th, 1945). [emphasis added]

ii.) Policy of Paternalism Resulted in Control of Economy and Restricitions on Use of Real Property

One of the initial orders of Guam's first Military Governor, Richard P. Leary restricted the sale and leasing of any privately-owned lands and required express consent of the Naval Governor prior to disposal of any real property (General Order No. 3, August 21, 1899). Subsequently, sale of land on Guam to aliens or leasing such land for longer than a specified period, was also prohibited (Executive General Order No. 310, April 21, 1919). The Navy defended such prohibitions on the grounds that "in the absence of congressional legislation, the department considers that it has the full power to make any necessary regulation for the government of the island." (Letter the Secretary of the Navy to Representative Julius Kahn, United States Congress, November 13, 1909).

The basic reality of the government's adminstrations in the economic sphere during the pre-war period on Guam arose from the relative isolation on the island. "Throughout the American period, the island has not been on trade routes or lines of call, and it has led a sheltered, out-of-the-way existence dominated by United States Naval considerations" (Office of Strategic Services Far Eastern Section, " Social-Political-Economic Survey of Guam", June 17, 1942). "During the period of Naval administration, the role of military in Guam was a paternalistic one... Prior to, and immediately following World-War II, the Navy transported practically all imports and exports to and from Guam." (Stanford Research Institute, "Guam: Its Economy and Selected Development Opportunities," 1959). [emphasis added]

By the advent of World-War II and with increasing development of the island thereafter, the economy of Guam still remain cut-off from the influence of the outside world. As stated in the Annual Report of the Governor of Guam for the year 1941, " the affairs of the island and its people have continued to be little affected by political, economic and industrial problems of the world at large." Even at the time the Organic Act was under consideration both in Guam and in Washington, commentators looked back over the period of Naval administration as "the era of extreme paternalism" (Michael Zenor, "United States Naval Government and Administration of Guam", August, 1949, p. 225). The Navy attitude towards the social and economic life of the natives of Guam is set forth in its "Report on Guam, 1899-1950", submitted by the Chief of Naval

Operations as a review of the Naval Government up to the time of the Organic Act:

> "No masons, no carpenters, no physicians and no trained school teachers, the few schools medieval and their scanty, religion-dominated curricula;
>
> "A population abused and oppressed over the centuries, so disease-infested , so isolated from the world , so haunted by superstitions, that it was a listless, ambitionless, unorganized mass of humanity stirred only by the hope for individual survival. That was what was handed to the Navy Department 50 years ago... It was a task new to the Navy;... the assignment was handed to the Navy because Guam was to be primarily of strategic value to the Pacific empire, keystone of the maritime arch stretching from the newly acquired territory of Hawaii to the just-purchased Philippine domain... The challenge was...to achieve a transformation in the bodies and minds of the people. The responsibility was to guide them from disease-ridden medieval peonage to the dignity and demeanor of a healthy citizenry....
>
> With Guam converted from a hand-to-mouth agrarian culture to a wage economy, it is estimated that more than 90% of the financial welfare-and hence standard of living-depended on the expenditures of the Navy and its personnel. This remains unhealthy from the economist's point of view, although under it the Guamanian people have risen from a state little better that barbarism to a community which accepts normal neccessities of life..."(Navy Report, supra, pp. 3 & 14). [emphasis added]

Notwithstanding such "accomplishments" claimed by the Navy, there has been great doubt expressed as to the actual beneficial effect of these policies upon the native population. The Office of Strategic Services characterized Guam in 1942 as an island "with a basic tropical agricultural economy thrown seriously out of gear by the presence of the United States Naval Station... and by Naval Station work projects which have set wage standards out of proportion to returns for labor in agricultural occupations' ("Social-Political-Economic Survey", supra, p. 20). As a result of this policy of economic paternalism, particularly with regard to the price of labor and the use of land, the fundamental principles of a money economy were nevertheless hardly understood by the majority of native Guamanians during the period of Naval Government administration:

"The average Chamorro has very little idea of economics, or of the value of money. The prices he charges for anything he wishes to purchase are largely dependent upon what he thinks [the buyer] will pay" ("Strategic Study of Guam ONI-99," Office of Chief of Naval Operations, Division of Navy Intelligence, February, 1944, p. 294). [emphasis added]

iii.) Executive Power and Individual Right

From the time the first Naval Governor took power in 1899, a pattern of strict executive authority emerged in the administration of Guam prior to World-War II. Among the actions taken by first Governor were the expulsions of all Spanish priests, a prohibition against all public religious celebration and processions, and the outlawing of cockfighting, ringing churchbells at 4:00 a.m., drinking, gambling, barter and even idleness (Executive Orders No. 1,2,4,5,7,18,19&21; Proclamation of January 1, 1900; see also generally Thompson, supra, at pp. 66-67). These attempted "reforms" inevitably led to many other difficulties, with the result that most of these initial orders had been retracted or modified. Nevertheless, a precedent had been established for Naval administration thereafter:

"Thus it came to be that authority of the Naval Governor over the native civilian population of Guam was in certain respects greater than the comparable power of any other United States officials, even the president himself, for in the governor rested the highest civilian appeal to justice...the Naval governors continued to exercise a supreme authority on the island, subject only to the President of the United States in his military capacity, and to the Navy Department." (Thompson, supra, p. 67). [emphasis added]

This executive power was most acutely felt in the area of administering a fiscal policy. As was stated by Commander Roy E. James, USNR, a trained and experienced lawyer who served in the military government staff on Guam during and after World War II,
and who made a special study of the native population:

"The Governor levied taxes, prescribed customs duties, and fixed license fees; he determined the time, place and the manner of payment of taxes and fees. He prescribed the penalties for non-payment, granted waivers, and issued exemptions at will. He exercised complete control over the monies in the Treasury of the Naval Government. In his Annual

> Report to the Secretary of the Navy he reported the amount spent and indicated the purposes for which such expenditures had been made, but there was no check as to the propriety of the purposes for which local revenues were used." (Roy E. James, article in Pacific Affairs, Volume 19, #4, Dec., 1946, p. 41). [emphasis added]

As a result of such wielding of executive power by the Naval Governor, very little attention was paid to the civil rights of Guamanians, except briefly during the year 1930, when Governor Willis W. Bradley issued a proclamation setting forth a "Bill of Rights for Guam" modelled after the first ten amendments of the United States Constitution. The " Bill of Rights" never went into effect, however, because the Secretary of the Navy informed the Governor that it did not meet with the approval of the Navy Department (Thompson, supra, p. 68). Similarly, a further proposal to confer United States citizenship upon natives of Guam was emphatically opposed by the Navy Department in 1933 ("The Navy Department does not consider that the public interests make it desirable to take up questions of citizenship of inhabitants of Guam," Memorandum from Admiral W.H. Standly to President Franklin D. Roosevelt, 1933) and again in 1937:

> "The general policy of the Naval Government is to guard them from exploitation by outsiders and protect their lands. The general policy of the Naval Government with reference to educational activities has been to enlighten the minds of the people and to stimulate their development through training and self discipline... However, as attested by the fact that they are not self-supporting and require not only federal economic assistance but careful training and supervision from the paternal island government, there is every indication that these people have not yet reached a state of development commensurate with the personal independence, obligations and responsibilities of United States citizenship. It is believed that such a change of status at this time would be most harmful to the native people." (Secretary of the Navy Claude A. Swanson, Letter to Senate Committee considering Bill 1450, 75th Congress, First Session, 1937). [emphasis added]

Not only was citizenship legislations turned down by the Congress as a result of this opposition, but also the only actual element of self-government which had been allowed to that time (the election of commissioners) was cancelled in 1936 when the Naval Governor removed these offices from the

elective list and returned them to appointive positions at his discretion. (Thompson, supra, at p. 70)

Although a "Guam Congress" was occassionally assembled beginning as early as 1917, it served a purely advisory, as opposed to legislative function:

> "The first Guam Congress was not a legislative body. It could initiate discussion on any matter....and make recommendations to the governor, but the actual legislation was prepared and promulgated by the governor. The Congress functions as a sort of advisory council on such matters as the governor might care to submit to it for consideration. It had no authority whatsoever with respect to taxation or the appropriation and expenditure of local tax receipts .... In subsequent years the Congress found it increasingly difficult to consider and make recommendations on the larger matters affecting the economic and social progress of the island,....tended to act only on matters pleasing to the governor, thus confining its discussions to village matters." (Commander Roy E. James, " The Guam Congress," Pacific Affairs, December, 1944 pp. 409-410). [emphasis added]

Thus was continued throughout the pre-war Naval administration a fundamental inconsistency and conspicuous contrast between the principles of traditional American individual freedom, espouse on one hand by government officials, and the specific policies and practices of a highly centralized authoritarian government, on the other hand, which could only have led to frustration and low morale for the natives of the island.

iv.) Exploitation of Guamanian " Respect for Authority"

As previously discussed above in section (i), the Naval Government attempted to transfer nearly intact to Guam an alien type of rigid political structure, developed centuries before for absolute control of military personnel under conditions of Naval warfare, and in so doing to supress local institutions and customs considered to be incompatible with it. Nevertheless, a significant cultural phonomenon of the previous Spanish regime which remained unchanged was the respect for authority instilled in all Guamanian children from birth throughout the formative years (Thompson, supra, p. 287). The result was the creation of strong hierarchical patterns:

> "...respect for parents and ancestors was reinforced by respect for the supernatural, the clergy, the officials and the government. This

superior-inferior authority system was upheld by certain sanctions acquired by children at an early age, such as fear of "taotaomona," the padre, the patrolman, and especially the fear of ridicule." (Ibid.)

This characteristic of the people was not lost upon officials of the Naval Government. As set forth in the "Strategic Study of Guam" prepared by the military in 1944 in anticipation of reoccupation of Guam:

> "All classes are docile, stand in great awe of the law and manifest the greatest respect for its humblest officer. No threat of personal violence may move a stubborn Chamorro, but a mention of the law will end opposition and make him a willing prisoner, if not a doer. The governor, or "y magaleje," as he is known, is to him the personification of power." (Strategic Study", supra, p. 287). [emphasis added]

Almost coincidentally with the foregoing observation by the military , Pascual Artero, a Guamanian then living under conditions of harsh Japanese occupation, described his response to interrogation by Japanese solidiers: " I said that the American Government was my father, but that he had died, and that the Japanese had taken his place as my stepfather." (Autobiography of Pascual Saez Artero, 1948, p.59) [emphasis added]

After defeat of the Japanese and subsequent reoccupation of Guam by American forces (the social impact of which will be discussed below in greater detail) this "respect for authority" took on an additional aspect of extreme gratitude expressed by the native population as the American forces swept over and took control of the island. This attitude of "cooperation" was probably as much an expression of thanks as it was a reflection of traditional deference to authority. During the hearing held by the Sub-Committee on Public Lands of the United States House of Representatives, held on Guam in November, 1949, to obtain Guamanian views concerning the proposed Organic Act, the question of extensive military land acquisitions, and how there had been so little popular resistance thereto, was the subject of the witnesses presentations:

> "With regard to the matter of these stipulations -the way our people stipulated to the amount [of compensation]that they are supposed to receive from the government [for their land] - I must stress to the honorable members that the word "governor" or "government" in our language means a great deal to us. Both words mean "Gobietno" or "Magaleje." "Magaleje" means he is the greatest man, and when his agents

> come around to the people of Guam, they have a very great respect for the word "governor" in our language, and whenever anyone mentions to anybody that the governor wants this or that, one will sign because the governor wants it without hesitation." (Testimony of Judge Jose C. Manibusan, November 22, 1949, Transcript, p. 83) [emphasis needed]
>
> "Most of the people don't care any way to argue with their government. It must be remembered that the people of Guam have been under a military government for three centuries." (Testimony of Frank Leon Guerrero, November 22, 1949, Transcript p. 59). [emphasis added]

Unfortunately, before the advent of hostilities in 1941, the people of Guam had yet to be tested in their traditional deference to authority, as a new kind of "governor" was to take charge of their lives with a harshness never before experienced on the island.

B.) Terror and Suffering of Japanese Occupation During World War II

i.) Invasion of Guam and Establishment of Japanese Military Authority

On December 8, 1941, following a brief bombardment and struggle, Japanese military forces came ashore and took possesion of the island. This began a 2 1/2-year occupation and made Guam the only territory under United States administrations to be subjected to an actual invasion by the enemy during World-War II. As will be discussed below, during this period of occupation the people of Guam suffered death, sickness, hunger, rape, and forced labor, loss of property and continouous 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 and culture converting the people of Guam to their own way of thinking, as they had endeavored in every country which they had overrun in previous years." (Russell L. Stevens, "Guam, Birth of a Territory", 1956, p. 155).

After the initial invasion, "the Japanese disembarked at Agana and dispersed at all places, killing at random without consideration of the women, the children or the old people, slaughtering a great number of persons who were trying to escape." (Artero Autobiography, supra, p.56)

"On the day of the invasion, Guamanians were captured by the Japanese troops and taken to Agana, where they were given identification passes. The pass was a piece of cloth about two inches wide and from four to six inches long. It bore Japanese inscriptions indicating that the bearer was a native. For several days the Guamanians came by the thousands and stood in lines for hours waiting for passes. The plaza areas were crowded with frightened islanders. They were unprepared to face their conquerors, for they had never fully believed that Japan would really fight against the United States. That Japan would ever capture Guam was 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 pass and the first encounter with the Japanese was, for many, a terrfying 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 Rabaul, and the Navy units that had been present at the surrender of the island 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 greatest injury to the pride of the Guamanians was the changing of the name of their homeland to 'Omiyajima' (Great Shrine Island) and that of their capital city to 'Akashi' (Red or Bright Stone). In the same vein of keeping the populace always aware of the fact they no longer lived under American supervision, the military ordered schools to teach Japanese instead of English." (Major O.R. Lodge, USMC, "The Recapture of Guam," 1954, p. 8)

"During the first few days of Japanese occupation the Guamanians learned, by force of arms, sticks, and fists, 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 to them. 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 sentry box or 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, supra, p. 274).

"From the beginning the Japanese gave orders to remove the cross from the front of the cathedral and from the churches, belfrys, and clocks. Then, little by little, the Japanese forbade the native priests from saying mass. Only one Japanese priest was allowed to say mass in private. The cathedral and churches were used as garrisons, places for storage, or for whatever they wish."
(Artero, supra, p. 11).

"Troops were stationed as far south as the Talofofo River and in Sumay, Piti, Asan, Sinajana, Barrigada, Dededo, Tumon, and Agana Heights....Curfew hours were set from sunset to sunrise, and complete blackout were ordered. Agana was virtually a Japanese army camp...Civilian affairs of the island were delegated to a minor branch of the army 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 soon ran out of supplies. One by one they closed, until only the Japanese Kohatsu Company, located at the Atkins-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 Japanese 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. 160).

"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 in one great cattle farm, which they made between Agat, Talofofo and Jumuyong Manglo... The largest part of the rice grown was shipped to Saipan, meanwhile the population went hungry due to the fact that the Japanese obliged 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).

ii.) Hardship and Physical Suffering Under Increasingly Harsh 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, they succeeded in killing every American except one: Navy radio 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, or 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 Agana Cathedral. The Guamanians were compelled to attend. At such gatherings Homura told the people about the '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 hundreds of people to assemble with Japanese flags in front of the palace. These people were compelled to march through the main streets of Agana shouting 'Banzai! Banzai! Banzai!' every few hundred yards 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, supra, pp. 279-280).

The most dreaded and feared of all Japanese, however, were members of the keibitai police force:

> "The force was quartered in the old Agana 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 one general procedure. When a person was accused of a crime--and there were a thousand and one crimes, from speaking English to murder and spying--the police would seize him for questioning. They assumed that a man was guilty until he proved himself innocent. This was in conflict with with the concept of justice which the Guamanians had learned through experience with the American court system. Questioning was alway 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 drowning with a water hose. There was no way of escaping the punishment. If a person admitted his guilt, he was punished for the offense. 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, supra, p. 282).

iii.) 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 the kaikontai. The kaikontai came to Guam early in 1944. Its purpose was to provide food for thousands of returning army troops sent to defend the island against American forces, whose 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 minseibu was drafted into agricultural projects. Guamanian men, women and children were forced to work 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, supra, p. 287).

On February 23, 1944, twelve American bombers attacked the Orote 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. Every male from twelve to sixty years of age was drafted into labor battalions. These battalions completed the airstrip at Orote and built one at Jalaguag, the present location of Agana Naval Air

Station, and started a third one in Dededo. They paved roads, dug air raid shelters, in the hillsides, and build pillboxes and gun emplacements on the beaches and in other areas. Such work was done without heavy equipment. Only wheelbarrows, picks, and shovels were available. Men worked through the day under the worst conditions. They were often kicked, slapped, punched, and clubbed by their Japanese and Korean supervisors." (Carano & Sanchez, supra, 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 drastically increased forced labor demands and further reduced the already small pittance of food supplied to the natives . A bare subsistence ration was issued to the worker, and those too sick or weak to produce had even this withheld." (Lodge, supra, p. 9).

"In 1944, they started the air strip which is NAS now. They took every man, women, 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, Tai, Talofofo, Inarajan and several other locations:

"Finally, the Japanese ordered all people living in the military areas to evacuate their homes, and hearded 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 Japanses rule." (Lodge, supra, p. 9)

"The people took with them as much food as they could carry on bullcarts, on the backs of cows and carabaos, and on their own shoulders

and backs. At about 7:30p.m. the long walk began. Men, women, and children, the well and the sick, marched 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 strectchers 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 club against the flesh and the painful cries of men and women resounded throught the line of march as the Japanese guards punished those who fell behind. Many who dropped from exhaustion were picked up by relatives and friends and dragged along the way. The people of Yigo marched along the Price-Tai road to Manengon, behind Yona. The people of Dededo, Barrigada, and Mangilao followed behind them. The latter group proceeded all the way to Talofofo, where they stayed until their liberation. Residents of Agat and Apla moved into the Yona region. Those who lived in Inarajan, 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 know they were on the defensive... We were escorted by Japanese soldiers and just followed them. They were about 500 people at first. We marched through Yona till we got to the Ilig River. The march was 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. Almost every camp was a 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 had been confined in the camps. It was believed by many 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 posssesions were transferred to the enemy, Pedro Martinez, a businessman of Guam, and respected citizen of the community, had only an aging expression to show for his sufferings...When the Japanese realized that their occupation would be coming to an end, they decided to give him a bittler 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 had their hands tied and lifted, and remained in that position all night. At regular intervals, a Japanese officer would fire a pistol by their ears..." (Msgr. 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 a continous 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 Limtiaco 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 Charfauros was among the survivors of the massacre in Merizo before the American invasion, when thirty men and women were packed into a man-made cave and shot or stabbed by Japanese guards...." (Pacific Profile, July, 1964, 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 punishment which was witnessed by the whole family. The Japanese would submerge his head in a bucket of water and then my 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 ComNavMar is across the river. We saw the American planes. There were about eighty of us carrying bombs. We dropped the bombs and ran. The American planes were strafing us so the Japanese ran too. We took off till we came back to the camp. 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).

C.) Destruction and Civilian Dislocation During American Bombardment and Invasion of Guam:

During the first few months of 1944, the Japanese rapidly increased the number of troops on Guam in anticipation of an imminent American attack on the Marianas Islands. "On March 20th, 5,100 men of the 6th Expeditionary Force arrived and completed the roster of major units charged with the defense of Guam. By the 4th of June, the 18th Regiment rejoined the division. This brought military strength on the island to approximately 18,500." (Lodge, supra, p. 11).

The Japanese had good reason to make such preparations, for by that time American Naval Forces, commanded by Admiral Spruance, had prepared a detailed plan of attack for Guam, with "W Day" originally set for June 18th. For strategic reasons related to the invasion of Saipan, however, W Day was moved back to July 21st, with the result that a much more prolonged preliminary air and sea bombardment against Guam was made possible, longer than aagainst any other island in the Pacific during the war:

"The first American Naval shells to hit Guam were fired from ships of a small task group on June 16th, the day after the landing on Saipan." (Philip A. Crowl, "Campaign in the Marianas", 1960, p. 320)

"The bombardment phase was stepped up on July 4th. One carrier group lay to off the island sending its planes in during daylight hours to strafe and bomb the Japanese and smash defensive installations. The destroyers of the group threw 5-inch shells into Agana, Asan, and Agat during the night." (Lodge, supra, p. 33).

"On July 8th began the greatest single Naval bombardment program of the war. For 13 days the Japanese garrison on Guam was treated to the most spectacular display of shore bombardment that the U.S. Navy had yet produced...Coordinating with the planes from two task groups that arrived in the area about the same time, the cruisers and destroyers were responsible for one-half of the island, while the planes bombarded the remainder. At noon each day, the two exchanged areas of responsibility." (Crowl, supra, p.321)

"The scope of the bombardment grew as additional supporting units arrived in the area. A continual procession of ships shuttled back and forth between ammunition and fueling depots at Saipan and Eniwetok, making a lethal pause to spread devastation on Guam. From July 11th onward, at least one battleship was always present to lend its massive broadsides to NGF salvos. The umbrella of carrier planes that blanketed the island neutralized effectively any remaining air opposition still present on Guam's crater-pocked airstrips." (Lodge, supra, p. 33)

"On the last three days before the landing, the Japanese on Guam witnessed the full weight of American Naval airpower in a mounting crescendo of aerial fury. On July 18th, planes from two task forces flew 662 bombing sorties and 311 strafing attacks; on the 19th, the number increased to 874 and 392; and on the day before the landings, to 1,430 and 614. The total tonnage of bombs, depth charges, and rockets dropped and launched during these three days came to 1,131." (Crowl, supra, pp. 324-325).

"On Guam, as W day drew near, the destructive rain of shells and bombs increased...In the seas immediately surrounding the island lay a vast armada: 6 battleships, 9 cruisers, and 67 destroyers... On W Day, July 21st, 342 round of 16-inch, 1,152 rounds of 14-inch, 1,332 rounds of 8-inch, 2,430 rounds of 6-inch, 13,130 rounds of 5-inch and 9,000 rounds of 4.5-inch rockets were hurled into the landing areas [see map #4, "Naval Gunfire Disposition, W Day", attached as Exhibit "A"] (Lodge, supra, pp. 35, 36 & 106).

As indicated by the foregoing narratives, the complete devestation of the invasion zone (see "Gunfire Disposition" diagram, supra) was clearly intended to reduce Japanese resistance; however, the inevitable byproduct was the total destruction of most of what had previously represented the main population centers for the island's natives.

i.) Actual Destruction Resulting from American Invasion

The bombardment of the coastal zones preliminary to the invasion of July 21, 1944, began a pattern of destruction which continued until the island was secured several weeks later. During the combat phase of the invasion, American artillery, both on land and sea, maintained pressure on Japanese troops as American forces pushed inland:

> "So green in vegetation and so pretty a sight had Guam always been, not it was all burned. It had neither a tree, nor a coconut with leaves. All now was burned or destroyed by bullets and bombs. Some fire lasted several days, with great blasts, especially when they burned the site. There was a deposit of 20,000 tanks of gasoline that the Japanese had saved." (Artero, supra, p. 101).

> "The Americans were giving nothing but bullets, bombs and bomb-blasts. From our cave in Toguag which looked towards Agana, we saw the destruction of the town where we had our property; two big houses, plus another under construction, butcher-shop, machinery, etc...The whole town was in flames for days at a time." (ibid., p. 110)

> "On the last eventful night, August 6, the trees became vey small, cut down by bullets which fell like torrential rain. The dogs found refuge in the innermost caves and deepest holes. We, the twelve of us in my family, crowded together in the extreme end of the cave. The ships several hundred yards from us fired to the north and the bullets flew like hail across the mouth of the cave, rebounding against the rocks. It was a continous drumming; huge stones rolled down, giant trees were cut in two, losing branches and leaves, until not a leaf was left." (ibid., pp. 114-115).

The appearance of the war zone after the last Japanese stragglers were driven towards the northern end of the island was uniformly described as one of complete devastation by various commentators of both military and civilian background:

> "On all sides there is nothing but destruction. Before our Marines landed on Guam last July, the Navy first hurled a bombardment at the old city of Agana, and when it was over not a house stood intact. The town was rubble, and even the palmtrees which fringed the shore were broken, their tops cut off by shells as cleanly as though giant machetes had been wielded." (Quentin Reynolds," These Are Americans", Collier's, May 19, 1945, p. 12).

> "Of the 3,286 dwellings in Guam, more than 2,500 were destroyed. Agana, the capital, formerly a city of 12,000 inhabitants, was a heap of rubble. The next larger communities of Agat, Sumay, Piti, and Asan were also levelled." ("Navy Report on Guam, 1899-1950", supra, p. 8)

> "During the bombardment and recapture of Guam by United States Forces, all the coastal towns, except those at the southern end, were destroyed. Nothing was left of Agana, the capital which housed half of the pre-war population, but a mass of rubble. The American bombardment completely wiped out the towns of Agana, Piti, Sumay, Asan, Anigua and Agat, which together housed over two-thirds of the native population. It wrecked practically all installations and commercial developments, and damaged plantations, gardens, and jungle resources." (Thompson, supra, pp. v and 160).

> "This sub-committee personally observed the tremendous damage and destruction of property and the disruption of civilian life on the island of Guam resulting from the Japanese invasion and subsequent reconquest by the American Armed Forces." (House Report to accompany H.R. 2913, "Authorizing Rehabilitation on the Island of Guam", Committee on Naval Affairs, Report No. 570, 79th Congress, First Session, May 14th, 1945, p. 1).

> "The committee understands that the town of Agana, the largest on the Island, is a complete wreck... The Japanese invasion and occupation resulted in extensive destruction to private property on the island, and further damage resulted from our reconquest. As a result of the two periods of combat and the actions of the Japanese, the people of Guam have suffered extensively." (House Report to accompany S. 1139, "Relief of the Resident of Guam through Settlement of Meritorious Claims",

Committee on Naval Affairs, Report No. 1135, 79th Congress, First Session, October 9, 1945, p. 2).

"The pre-war village of Agat completely destroyed during the reoccupation of Guam by American military forces...The village of Asan was completely destroyed during military operations....Estimates have been made about the percentage of damage in Agana caused by bombardment and military operations during the war. It is safe to say that 95% of all private and public buildings were destroyed. All utilities and streets were badly damaged." (Russel J. Otten, Head of Negotiating and Appraisal Branch, Base Development Department "Data for Real Estate Appraisal Work on the Island of Guam", March 31, 1951, pp. 16,17, & 40).

This tremendous damage to Guamanian property, however, was a concrete problem which could at least be dealt with through program of reconstruction of facilities, utilities, and residences. A far more difficult challenge faced the relatively small native population with regard to the disastrous social and psychological effects of a harsh Japanese military regime, followed quickly by the shock and disorientation of a massive invasion by tens of thousands of American troops.

ii.) Post-Invasion Dislocation of Refugees

As American troops proceeded across the island in pursuit of the retreating Japanese, more and more of the native population emerged from the jungle to cross the battleline seeking the protection of American forces. Many of these instances provoked moving and emotional scenes as Guamanians felt freedom from the Japanese for the first time in over two years:

"Near the Pago River about a mile from its mouth, troops of the 307th Infantry discovered a concentration camp in which the Japanese had assembled some 2,000 Chamorros. Although the enemy had left the area, the natives were apparently still too frightened to depart, and greeted the men of company L, first into the area, as liberators. The scene was a moving one, as sick, hungry, but joyful Chamorros exhibited tiny, hitherto hidden American flags. While the troops pressed rations and cigarettes on them, the natives told of their oppression under the enemy and of their constant faith that the Americans would return." (Crowl, supra, p. 382).

"The turning point of the campaign, securing the FBL, saw the Guamanians beginning to flock to the protection of the Americans. Corps estimated that military agencies had 1,331 civilians under their care by 31 July. The number had swelled to 5,530 by 2 August and two days later, it had leaped to 12,000. Unfortunately, the combat units were ill-

prepared to handle this tremendous civilian problem. However, after the treatment the Japanese had given the Guamanians, they appreciated any help that could be offered." (Lodge, supra, p. 120).

"We now feared the bullets even more than we feared the Japanese. At the break of day each of us packed whatever we could carry and started our Exodus.... The road was almost impassible because of the branches, fallen trees, and debris and we had to carry the children in our arms. The eerie noises of the deer which were wounded accompanied our steps. Before the sun had risen we had climbed the hill at Pagua and walked almost a mile to the road. Here my pen comes to a halt...it is impossible to describe those moments. My two sons, Vicente and Jesus were leading the march. Between the branches they saw people--probably Japanese they thought--and were ready to flee when all at once they recognized them as Americans. We started to cry for sheer joy and to embrace each other. A captain came up to me and aasked if there were more of us around.... Our clothes were soaked and torn, but who cared? We bubbled with happiness to find ourselves among the American soldiers." (Artero, supra, pp. 116-117).

As an interim measure while hostilities were still taking place with Japanese troops, a "civil affairs" unit began making arrangements for the natives to stay in several refugee camps until the combat situation stabilized. These efforts were limited not only by virtue of the widespread destruction of previous residential areas, as discussed above, but also as a result of the inevitable chaos and disorientation:

"Protective compounds for civilians were established which rapidly became sprawling civilian refugee camps. Persons in all conditions of health and dress poured in by the hundreds, and on some days by a thousand or more. By assembling bamboo, coconut leaf and thatch most of the refugees took shelter from the torrential rains. At the peak of the "civilian invasion" apporoximately 18,000 people were cared for in the three civilian refugee camps, one at Asan (later moved to Anigua), one at Old Agat (later moved to a location a mile and a half south), and one near Yona at Manengon... Destruction from Naval gunfire and aerial bombing was so complete in Agana, Asan, Piti, Sumay and Agat, which formerly housed about 15,000 of the island's population, that the resulting shelter problem, not foreseen to that extent in planning, was a serious one." (Paul B. Souder, "The Problems of Feeding, Clothing and Housing 18,000 War Refugees", Pacific Profile, July, 1965, p. 24).

During the several months following the securing of the island, cessation of hostilities, and the driving of the last enemy stragglers into the northern jungles, a further major problem of resettlement developed as the result of the tremendous influx of additional military personnel, materials and construction units. While it might have been anticipated that many dislocated and homeless Guamanians, still confused and in a state of shock from the invasion trauma, could soon have returned to their ranches and homes (or what was left of them), the new America goal of "advancing the war effort" took priority over the needs of prompt civilian resettlelment:

> "After all Guamanians had been released from Japanese concentration camps, they were cared for in refugee camps hurriedly set up near Anigua, Agat, Yona, Talofofo and Dededo They numbered more that 18,000. As soon as an area was cleared of Japanese stragglers, the Guamanians were encouraged to return to their homes and farms. Because of war damage, however, and in view of the need of the military forces for vast tracts of lands, most of the Guamanians had no homes ro return to... The most difficult task of the Welfare Department was that of relocating the civilian population. This problem was complicated by the ever-increasing demands of the military for land. In many instances, large groups of people were moved several times in order to satisfy the needs of the military." (Carano & Sanchez, "History of Guam", 1964, pp. 311-312). [emphasis added]

> After the reoccupation in July, 1944, the military establishment rapidly increased. Installations of all kinds were rushed to completion by all arms of the services. Of necessity, whatever lands were required , both public and private, were taken by the military subject to future compensation with little regard for ownership. As a result of these takings, large segments of the Guam population were displaced, villages which had survived the reoccupation were converted to airfields, camps, warehousing and storage areas, and to other military uses...That this drastic program of land conversion to military use...has caused widespread displacement of the population was evidenced by the respective census figures for 1940 and 1950. (Robert Coote, "Land Use Conditions and Land Problems on Guam", 1950, pp. 9 & 10).

iii.) Massive Military Construction in Pursuit of the War Effort

The Mariana Islands were merely a stepping stone towards an ultimate victory over the Japanese, and many of the original invasion forces that occupied Guam in August, 1944, were soon transported out for further operations in Iwo

Jima and Okinawa. Long before the invasion of Guam, the Naval command decided that the island would become a major supply depot and origination point for bombing runs on Japan, and as a result, thousands of construction personnel soon began to rush massive military facilities to immediate completion. Again, the natives of Guam were to step aside in the face of military necessity as the appearance of their devastated island changed dramatically over a few short months.

> "On Guam there are now five airbases: one at Sumay, another at Agua (between Agana and Barrigada), another at Macheche (part of Dededo), another at Machano (above Uruno), and the largest one at Upi. This was all done within six months. In the meantime, there were more than 100 ships at port." (Artero, supra, pp. 120-121).

> "By the end of the war the entire face of Guam had been changed. A busy naval operation base occupied Apra Harbor, and Navy planes crowded the fields at Agana and on Orote Peninsula. On the northern plateau, B-29's of the Twentieth Air Force rested on fields bulldozed from the jungle that had impeded that advance of the III Amphibious Corps. On the heights above Agana was the advance headquarters of the Pacific Fleet, nerve center of Nimitz' strikes against the Japanese homeland. Scattered throughout the island were vast naval and military supply installations. Encamped in the south, reunited for the first time since August, 1944, were the Marine elements of the assault forces that had taken Guam. The island population on 31 August 1945 had swelled to over 220,000 with 21,838 natives, 65,095 Army, 77,911 Navy, and 58,712 Marine troops." (Lodge,supra, p.164) [emphasis added]

By 1945, however, it had become apparent that the development of these major military bases on Guam was going to have far more of an impact than merely construction of facilities. Vast areas of land, particularly in the northern part of the island, were originally "restricted" as combat zones; however, as hostilities ended and the military construction efforts continued , the question of use and ownership of these properties became more and more of a critical issue to native landowners living in the refugee camps:

> "As the island was turned into a major military base by United States for the prosecution of the war in the Pacific, a large part of the land area of Guam was taken over for military purposes. Farm lands were turned into airfields; villages which escaped destruction during the actual fighting were moved elsewhere. Except for the south portion of the island,

the whole land utilization patttern was subjected to a rapid and drastic alteration...

"The American reoccupation, including the preoccupation bombardment, resulted in the almost complete destruction of the capital city of Agana and some coastal villages, including Piti, Sumay, and Agat, in which lived over two-thirds of the Guamanian population. Following reoccupation, a large military base for further action against Japan rushed to completion....This required the taking for military purposes of almost the entire nort part of the island together with other scattered areas elsewhere. Land taking have continued to date [1950] resulting in uncertainty among many Guamanians as to whether they will be left in possession of their lands. (Coote, supra, pp. 2 & 3)

D.) Post-War Naval Government and Its Policies of "Civilian Rehabilitation"

i.) Basic Principles of Approach by Military Government

As previously discussed in Section C, military authorities quickly began to build up Guam as a war facility immediately after the securing of the island in August, 1944. From that time until May 30,1946, when a Naval Civil Government comparable to the pre-Pearl Harbor type was reestablished, Guam was governed by military authorities:

"The interim Government followed in general the model of the Military Government Section of the Office of the Chief of Naval Operation for the administration of occupied areas and was manned mainly by trained Civil Affairs officers. Its chief concern was to keep the civilian population from interfering with the operations of the Armed Forces and to begin the huge task of rehabilitating the people of Guam, who were suffering from the devastating effects of the American bombardment, as well as from nearly three years of occupation by the Japanese." (Thompson, supra, pp. 74-75).

As part of this rehabilitation program, on November 15, 1945, the United States Congress passed the "Meritorious Claims Act", providing a mechanism by which Guamanians who suffered damages or injury as the result of hostilities could obtain monetary awards in settlement of claims made within one year after the bill's enactment. Both the House and Senate Reports recited the following identical language as the policy underlying this legislation:

"In the future this island will become one of the most important United States naval and air bases in the Pacific. Its people have been loyal wards of the United States. The Committee believes that the enactment of this Bill is just and warranted, that it would be helpful in retaining the good-will of these people in the future, and that it will be a sound investment in our future security." (Senate Report to accompany S.1139, Committee on Naval Affairs, Report No. 442, June 28, 1945, p.2; House Report to accompany S. 1139, October 19, 1945, p. 3, 79th Congress, First Session).

On November 8, 1945, Congress also passed legislation "authorizing rehabilitation on the island of Guam," whereby $15 million (reduced to $6 million in the Senate) was appropriated to fund remedial construction on the island by the Navy Department. The policy underlying this bill was identical to that of the Meritorious Claims Act, specifically "to retain the goodwill and loyal support of the natives of the island...the amount authorized to be expended will be a sound investment in our future security.' (Senate Report to accompany S.1466, committee on Naval Affairs, Report No. 705, 79th Congress, First Session, November 8, 1945, p. 2).

The clear purpose of the government's policy was to pursue civilian rehabilitation on one hand, while on the other hand to develope the island to solidify Guam's military facilities and secure a "base network" in furtherance of high-level strategic goals in the Pacific:

"Admiral Nimitz, during a conference of high-ranking officers who had flown to Washington to discuss Guam, referred to a 'top priority strategic project--reconversion of Guam into a Pacific base second only to Pearl Harbor' with repair facilities capable of supporting all units operating in the Western Pacific...Kwajalein and Eniwetok in the Marshalls, Truk and Ulithi in the Carolines were important 'stepping stones' linking Pearl Harbor and Guam, which would become the 'Pearl Harbor of the Western Pacific.' 'Eventually our installation in the Guam-Saipan area will be our key Pacific base'." (Earl S. Pomeroy, "Pacific Outpost American Strategy in Guam and Micronesia," pp. 176-177).

During these first few years of military-governed development, the native population still felt little resentment or bitterness over the initial restrictions; in fact, they expressed a strong patriotism by indulging in massive purchases of United States war bonds, totalling by April, 1945, an amount of over $239,000, "or approximately $10.00 for every man, woman, and child on the island." (Military

Government of Guam, Monthly Report for Island Command War Diary, 2 April 1945, p. 14). What made this outpouring of financial support to the United States military effort all the more impressive was the continuing deprivation of the island population as the result of constant displacement and resettlement during the military construction programs.

ii.) Civilian Displacement and Related Social-Economic Problems

As previously discussed, substantial delays in the civilian resettlement program resulted from extensive military construction which took priority on Guam during the first year of reoccupation by American forces. The problem was aggravated, however, by instances of consecutive relocation of families after military construction plans were either altered or enlarged for particular areas. Numerous accounts of the displacement problem have been given, among them a description by Judge Paul Shriver in Civil Case No. 34-50, Naval Government of Guam -vs- Pedro M. Cepeda:

> "When Guam was re-taken by our forces, a process of major development began. Land was occupied as needed for military purposes. Roads were constructed and improvements made without reference to existing property lines. Most buildings had been destroyed and most of the people were left without homes. In short, Guam suffered a very high degree of destruction and displacement of the indigenous population...The needs of the armed services subsequently increased due to the post-war importance of Guam as a defense base. Large construction projects were begun. Thousands of workers were brought in and the resulting impact of these combined expenditures was to change the economy of Guam from primarily an agrarian economy to a business and service economy." (Cepeda, supra, February 13, 1952, p. 1).

> "Since the war, large areas of Barrigada have been taken by the government for military installations...The Village of Dededo was retirely removed to make the space available for Harmon Field...Most of the district of Machanao has been take for military use. The Tarague area is closed...More than half of the lowland in Piti has been taken by the government for permanent military use...Since the war, Sinajana has received much of the population formerly living in Agana...Mongmong also received a large share of the former residents of Agana...The Village of Sumay has been removed to provide space for military installations in the Apra Harbor area. Most of the former residents of Sumay now live in

Santa Rita on the slope of Mount Alifan." (Otten, "Data for Real Estate Appraisal Work on Guam", supra, pp. 18, 19, 22, 24, 26, & 30).

As a practical matter, the native population initially found themselves restricted to a small portion of the island, with the remainder considered "off-limits" by the military pending completion of the base development program.

"Whatever privately-owned land was deemed necessary for military installations was taken outright by the military command, subject to future compensation, and over 400 acres of the best land were converted into a farm run by the Foreign Economic Administration, designed to supply food chiefly for military use in the forward area. Guamanian residents of such condemned land, as well as those whose homes had been demolished by the American bombardment, were kept in temporary camps built by the military government. As a result, only about 70 square miles remained in native ownership by 1946." (Thompson, supra, pp. 124-125). [emphasis added]

"Much difficulty is being experienced in finding suitable sites for additional native villages, as reservations for military use have already appropriated 75% of the island, and other planned military reservations preclude civilian use of other desirable areas." (Monthly Report for June, 1945, "Report for Island Command War Diary", 2 June 1945, p.2). [emphasis added]

"Senator Tydings: Mr. Chairman, the town of Agana, which is the biggest town on the island is nothing but a wreck. There is nothing in it now. It is all mowed down.. The natives there had herds of cattle and other things which were killed in the course of the fighting...I do not know of any finer wards that we have got in the world than in Guam. They are absolutely loyal. They have suffered like they have suffered everywhere. Their men, women, and children have been killed in the course of the fighting. We have taken over their best lands in many cases for Army and Navy installations, principally naval installations. We do not need as much, perhaps, as we have got now, so we can let them have some of this land back again, which they need for their own subsistence. In view of the fact that the Guam people are very loyal, they are good people, good wards to us, I think it is a good investment in that particular island. It is very important that we deal with them absolutely on the square. (Hearing before Committee on Naval Affairs Re. S. 1139, June 26, 1945, p. 31-32)..

"Although the Federal Government had previously owned large areas of the land, much of it was not suitable for military needs, particularly not for the huge airfields required by the air force...By the time the demands of the military and other governmental agencies had

been met, only about 70 of the total 225 square miles of the island were in the possession of Guamanians." (Zenor, supra, p. 164).

The residential problems of the civilian population were further compounded by the lack of any farm land available for cultivation of basic subsistence food items. "The military acquired much of the productive farm areas. Since World War II, many cultivated lands that were among the richest and most fertile were taken by the government for military bases. Most spoken of is Harmon Air Field, which was build on one of the most thriving farm areas, but which has since been abandoned and now lies idle." (Stanford Research Institute, "Guam: Its Economy", supra, p. 67).

Had these difficulties been resolved through a relatively prompt resettlement program, the native population could have been spared much of the disorientation that is inherently a part of constant relocation. However, even two or three years later, the plans of the military had yet to be implemented. Part of this was the result of budget cut-backs in Washington which impeded military construction efforts:

> "The inevitable postwar retrenchment along military and naval lines affected construction. In November, 1946, following an election campaign in which much was said of cuts in budgets and taxes, Admiral Towers told reporters further that the Navy was studying the Pacific defense program with a view to revision along 'realistic and economic lines.' Development of Guam would cost only a fraction of earlier estimates; construction would be basic, with the possibility of rapid expansion in time of need." (Pomeroy, supra, p. 177). [emphasis added]

The problem of fiscal cut-backs, together with natural reductions in the armed forces on Guam with cessation of hostilities, resulted in numerous delays in construction, particularly in the Agana area.

> "Congressman Poulson: I have placed in the record a clipping from the Honolulu Star-Bulletin dated March 26, 1947, which says in part, 'Two and one-half years after the American bombardment completely destroyed Guam's capital city of Agana, including the homes of its eleven thousand Guamanian residents, and sixteen months after Congress appropriated $6 million for the rehabilitation of Guam's towns, not a single house has been rebuilt in Agana.' Have any new homes been built in Agana since the war to replace those destroyed? "

Undersecretary of the Navy Sullivan: No permanent homes have been built in Agana." (Questionnaire submitted by Congressman Norris Poulson to the Department of the Navy, June 9th, 1947; reprinted in Transcript of Proceedings, Guam Congress, June, 1947, p. 3).

The slow pace of construction was paralleled by an equal slow return of occupied property to the native population. On March 21, 1947, the Naval Governor of Guam, Rear Admiral C.O. Pownall, authorized the release of a map entitled "Land Reserved for Guamanian Use," (copy attached hereto as Exhibit "B"), which illustrated the severe limitations still existing on civilian settlement. "The 1948 Report to the United Nations indicated that only 58% of the land is now privately owned, and that this figure may be reduced somewhat when the final needs of the armed forces are determined." (Zenor, supra, p. 165; citing the United States Navy Department, "Information on Guam transmitted by the United States to the Secretary General of the United Nations," 1948, p. 29).

By 1949 "very little of the construction of Agana had been completed...The actual progress may be summed up in this statement by the Bishop of Guam:

> 'One does hear now and again the reflection that this "rehabilitation business" is rather long in coming, and the dribs and drabs that do come along come in some peculiar ways. Promises are heaped on promises and delivery is another thing...No new permanent business buildings seem to be going up. What temporary structures there are will soon have yielded to the ravages of tropical climate.'" (Zenor, supra, p. 182; quoting Bishop of Guam in UMATUNA SI YUUS, Catholic Church Bulletin, August 29, 1948, as reprinted in the Guam Echo, September 30, 1948, p. 3).

The foregoing narrative renders all more questionable a military government statement in May, 1946, upon transfer of authority to the new "Civil Government," that "the rehabilitation of Guam has been completed; henceforth, it is only a matter of improving on what now exists." (Final Monthly Report for Island Command War Diary, 31 May 1946, p. 34). [emphasis added]

iii.) Military Control of Civilian Conduct

One of the major restrictions on the native population during the post-war reoccupation was the severe limitation on day-to-day travel and conduct introduced by military authorities. As previously discussed, Guamanian civilians were restricted to living in designated areas of the island (see Exhibit "B"), and governmental policy was to maintain strict segregation between

military and civilian populations. "All native communities are out of bounds to troops, except on official duty, unless permits to visit are obtained." (Monthly Report for May 1945, "Report for Island Command War Diary," 2 May 1945, p. 3). Further restrictions were created by Executive Order No. 21-46, issued by the Naval Governor Pownall on October 30, 1946:

"TO THE PEOPLE OF GUAM:

All civilians who are not permanent resident of Guam are prohibited from entering into any Guamanian home, village, or community without complying with the following provisions:

(a) Between the hours of sunrise and six o'clock in the evening such civilians may enter such areas provided that they have in their possession for display to proper authorities a written invitation from an adult member of the family visited and a written pass from the Commanding Officer or Camp Commander of such civilian.

(b) In the villages or communities where there are established police headquarters, such invitation and pass must be presented at the time of entering and leaving the village or community. Such pass and invitation will be displayed at any time upon the request of a member of the Guam Police Force, a local commissioner or a military policeman.

(c) All civilians who are not permanent residents of Guam must have a pass issued by the Office of the Provost Marshall, Island Command, Guam, to enter any Guamanian home, village or community between the hours of six o'clock in the evening and eleven o'clock in the evening.

(d) No civilian who is not a permanent resident of Guam shall enter into or be found in a Guamanian home, village or community between the hours of eleven o'clock in the evening and sunrise of the following day without the written authority of the Civil Administrator of the Naval Governement of Guam countersigned by the Provost Marshall, Island Command, Guam.

(e) All areas south of the Talofofo River are restricted and no civilian who is not a permanent resident of Guam is permitted in such areas except on official business and with a pass issued by the Provost Marshall, Island Command, Guam, in his possession for prompt display to proper authorities.

In order to facilitate enforcement of these numerous restrictions, "all residents of Guam over 16 years of age were required to possess at all time a 'certificate of identification' which was to be presented in all matters having legal signficance." (Zenor, supra, p. 16). Further, island security measures were carefully coordinated; a directive from the Commander, Naval Forces Marianas and Governor of Guam (Letter dated 17 February 1947, Serial No. 3286) consolidated the efforts of the Provost Marshall, Guam Police, Joint Army and Marine Patrols and ComNavMar Intelligence for purposes of enforcing restrictions. The net effect of these strict controls on all civilian activity was apparent not only to the Guamanians, isolated in their disignated residential areas, but also to the relatively few civilian Statesiders who came to the island:

> "The Statesiders that I have associated with have constantly complained to me about the lack of freedom that they feel on this island. They feel choked. Things are so different from what they are at home-restricted areas, do not enter, you can't do this and you can't do that. Every little thing you want to do, you have to get permission from ten or fifteen government officials. This very choking air of restriction is something unique on Guam. There is a feeling that an American citizen who comes here has that is so peculiar, it is almost impossible to describle until you have lived through it." (Testimony of Frank D. Perez, Public Hearing before the Sub-Committee on Public Lands, United States House of Representatives, held in the Hall of Congress, Agana, Guam November 22, 1949, p. 41). [emphasis added]

Restrictions on the island were so comprehensive that the military government did not even find it immediately necessary to reinstitute the "security clearance" program originally created in 1941 by Executive Order No. 8683 (discussed in further detail in Section F, infra). "Civil Regulations With the Force and Effect of Law on Guam," originally promulgated in 1936 by the Naval Governor, suspended during the Japanese occupation, and reestablished as of July 21,, 1944, by Admiral Nimitz, were reprinted in 1947 with no reference whatsoever to Executive Order No. 8683.

With Guam remaining a highly strategic military compound during these post-war years, all civilian travel to and from the island was automatically and carefully controlled by the Naval Command:

> "All dispatches originated by the Naval Governor of Guam authorizing entry to Guam are cleared through ComMarianas F-

20...Copies of GovGuam clearance dispatches are sent to Internal Affairs Department NavGovt PIO, and Customs and Immigration Department...Requests to remain on Guam are cleared by Guam Police Department, Internal Affairs Department prior to the permit letter issued by Customs and Immigration Department. Return travel bonds are required." (Undated 1948 Memorandum from Naval Governor of Guam to Civil Administrator on the subject of "Entry Guam, Clearance For").

"Written clearance from either CNO, Cincpacflt, ComSoPac, ComMarianas, ComNavPhil or ComNavWesPac is required for civilian travel to:

a.) U.S. Naval Activities or Naval Units under administrative control of Cincpacflt.
b.) Areas under Naval Civil or Island Government including the Trust Territory.
c.) Localities in the Pacific Command which have not been opened to unrestricted civilian travel.

Issuance of such written clearance will in all cases be subject to the advance approval of the Commander to whose area the travel is proposed and such screening of applicants as the issuing authority may deem advisable. In all instances CNO and Cincpacflt will be kept informed on clearance granted." (Pacific Fleet Letter 10L-48, Headquarters of the Commander in Chief, February 16, 1948, on the subject of "Travel in the Pacific, Clearance For," p.2). [emphasis added]

"Under the authority of the Executive Orders which charged the Secretary of the Navy with responsibility for the Government of Guam, American Samoa and the Trust Territory of the Pacific Islands, the Secretary is empowered to deny or to revoke the right of entry into the territory concerned to any person whose presence therein is detrimental to the public interests." (Letter from Secretary of the Navy M.E. Andrews to the Naval Governor of Guam, et al., Serial no. 61P22, January 29, 1948, on the subjects of "Policy Governing Right of Entry Into...Areas Under Naval Jurisdiction." Paragraph 4). [emphasis added]

Implementation of this screening program was accomplished by requiring each potential visitor to fill out a detailed application, to be sent in duplicate to the Naval Governor of Guam and the Chief of Naval Operations, respectively. (See form letter and application used in 1947, attached hereto as Exhibits "C" and "D"). As a practical matter, all such "applications" forwarded to the Naval Governor of Guam were to be approved by the Commander in Chief of the Pacific Fleet: "In accordance with provisions of PacFlt restricted ltr 30L-46 dtd 30

December 1946, civilian travel to the Marianas area is controlled by CinCPaC." (Letter from Naval Governor of Guam to Chief of Naval Operations, Serial No.3260, September 10, 1947, p.1) [emphasis added]

A further major control program developed following resumption of the Naval Civil Government in May, 1946, when the civilian economy of the island began to show the impact of massive constuction and influx of personnel. This expansion, which produced a surge in demand for labor, goods and services, resulted in the development of a Navy policy of controlling all aspects of the island's economy.

iv.) Naval Government Control of Civilian Commercial Activity

The policy of military authorities on Guam with respect to the economy developed from concerns expressed by the Commerce and Industry Department in the last few months of the Military Government:

> "It must be recognized that with Guam as a Naval and Air Force Base, the economy of the island must be developed, by some method, to satisfy the requirements of some 50-75,000 U.S. mainland service personnel, dependents thereof, civil service personnel, contractor personnel, and other mainland civilians to be stationed on Guam. The economic development must be geared to meet the demands of these service and service-connected personnel and cannot be geared to the financial, technical, or business ability of the Guamanian entrepreneur. There are insufficient Guamanians who have either the prerequisite ability, experience, desire, or capital to enable them to participate in the increasing opportunities becoming available in their economy, let alone participate, except in limited fields, in a private enterprise-type economy designed to meet mainland personnel requirements...Decision by higher authority as to the manner in which the requirements of mainland personnel are to be met bearing in mind the limitations of the Guamanian as to number, technical, financial, and ability, should be expedited. (Monthly Report for April, 1946, "Report for Island Command War Diary." 1 April 1946, p. 14). [emphasis added]

> "Develpment of Guam may mean that some 50 to 70,000 U.S. mainland service personnel (Army, Navy, Marine Corps, etc.), dependents thereof, civil service personnel, contractor personnel, and other mainland civilians, as well as 23,000 natives, will be residing on the island. The problem confronting many is how and by whom are the needs for the

material well-being of these 100,000 people to be met? Will the Army and Navy directly procure and supply all requirements for service and service-connected personnel? Will another federal agency such as the U.S. Commericial Co. be asked to participate in this program? Will private enterprise be asked to perform the function? If private enterprise is not considered compatible with military security and control, will business be restricted to native Guamanians who obviously cannot, by virtue of numbers, experience, capital, or desire, operate a private enterprise-type economy designed to meet mainland personnel requirements? Will U.S. Mainland servicemen be permitted to be discharged on Guam to establish businesses? Will U.S. mainland individuals or corporations be permitted to establish themselves on Guam? This basic question of policy must be settled. A long delay may result in adverse criticism of Naval Military Government of Guam. U.S. mainland firms believe they have a right to seek expansion of their post-war markets within U.S. Territory. U.S. servicemen believe they, as U.S. citizens, have a right to enter business on Guam. Any policy to guard the Guamanian against foreign exploitation must consider the need to guard Guamanians against exploitation by Guamanians." (Monthly Report for May 1946, "Report for Island Command War Diary," 1 May 1946, p. 16). [emphasis added]

The resulting policy adopted by the Navy had several specific aspects of concrete control, probably the foremost being the prevention of non-Guamanians from entering the island to do business. This exclusion policy was enforced mainly through the business license provisions of the Government Code of Guam, as it existed at that time, and through regulations and orders issued by the Naval Governor:

"The policy of the Navy Department with respect to the protection of the economic interests of local inhabitants of Guam is set forth in CNO ltr Serial No. 14P22 of 15 January 1948...The Navy Department is also to grant, withhold or cancel permission to engage in enterprises that are detrimental to the public interest or inimical to the interest of local inhabitants...The Secretary of the Navy shall be kept informed of all instances of the denial or revocation of right of entry and of all grants, denials or revocations of commercial and industrial licenses and concessions. The circumstances surrounding and reasons connected with denials and revocations shall be reported in detail." (Letter from Secretary of the Navy Andrews of January 29, 1948, supra, pp. 1-2). [emphasis added]

"Capt. Jennings, Officer in Charge of Island Government, said applications for enterprises on Guam would be screened carefully by Rear Admiral Charles Pownall, Military Governor of Guam...The policy of the

Navy Department is to prevent the entrance of private enterprises until such time as the Guamanian economy has been rehabilitated by payment of Guamanian settlements, land allocations, and restoration of civilian facilities to the point where the people have their government on an equitable basis." (News Release by Navy Department, reported by United Press International, dateline Washington, D.C., December 19, 1948). [emphasis added]

A second method of controlling the economic sector was through the implementation of a "Wage Schedule", which allowed statesiders significantly higher salaries than natives for identical work:

"While there is plenty of work available for the Guamanians, the types of employment, conditions of work, wage rates, number of hours, distribution of wholesale and retail businesses, wholesale and retail prices, etc., are completely controlled by the government...Once a native takes a job he cannot quit on his own free will and absenteeism is punished by fine or imprisonment. (General Order No. 14-44, December 21, 1944). There are three wage schedules for civilians for the same kind of work on the island: One for Guamanians, one for 'continental Americans' hired on Guam, and one for 'continential Americans hired in the States.. Wage schedules showing all three categories are not made available to the public. Some idea of the discrepency can be inferred from the fact that a Guamanian auto mechanic gets $0.43 an hour, a 'continental American' hired on Guam get $1.42 an hour, and a 'continental American' from the States gets $1.72 an hour. Also while the 'continental American' with the Federal Government gets time and a half for overtime, sick and annual leave with pay, and other social security benefits, besides transportation to and from the island, the Guamanian works overtime for the regular rate and gets no sick leave or annual leave with pay." (Thompson, supra, pp. 161-162; citing Roy E. James, USNR, "Military Government: Guam" Far Eastern Survey, Volume 15, No. 18, 1946, p. 275). [emphasis added]

In its 1946 "Report by the Naval Government of Guam to United Nations," the military authorities explained the foregoing "schedule" as follows: "The inhabitants were treated in all respects on a basis of equality with United States citizens, except for the matter of wage scales, where a differentiation exists based on the relative standard of living." ("Report to United Nations", supra, p. 8). [emphasis added] Similarly, in the same year the Governor of Guam issued a "Memorandum to the Guamanian People" on the subject of "Wage Scales and Economic Policy," which included the following:

"The Naval Government desires to avoid inflationary reactions which have been prevalent elsewhere...It is evident that the Gumanian cost of living reflects stateside conditions and is far above the normal or desired level for the island... The Naval Government will continue its day-by-day job of economic survey in its entirety, and will continue to keep the Navy Department informed." ("Memorandum", supra, December 28, 1946, pp. 1-2). [emphasis added]

A third method of limiting economic activity was the continued enforcement of restrictions on the use and alienation of real property by civilians:

"By law, it is not possible for any landowner to alienate land to a non-Guamanian without approval of the Naval Governor. This is part of the U.S. policy of 'Guam for the Guamanians' which is intended to avoid exploitation of the inhabitants by outsiders." ("Report to United Nations," 1946, supra, p. 8). [emphasis added]

"Transfer of real property on Guam is carefully controlled by the Naval Governor under the law...Lease of real property to [non-Guamanians] for any period exceeding five years is also prohibited." ("Report to United Nations," 1947, supra, p. 26). [emphasis added]

"I would like to go on record with a statement to support transactions between a landowner and a person interested in purchasing real property. There must be no obstruction against the culmination of whatever these two have agreed upon. The value of any commodity should depend upon the owner's price and the willingness of the purchaser. It will not protect the local economy if other people interfere in the negotiations between the two parties. At present, that economy is absolutely at variance with the pre-war economy. Prices of land should never be based on pre-war standards or conditions. All commodities cost more now and if we are to allow controlled prices for what we sell without a corresponding control on prices of what we buy, there can be no way of maintaining a true economic balance. There have been land purchases which were disapproved because allegedly exhorbitant prices agreed upon. There have been leases where the prospective tenant wanted to pay an even higher rental, but the original figure was not approved; it is things like these that create a black market condition." (Statement of Francisco B. Leon Guerrero, member of Guam Congress, Session for May 1947; Transcript reproduced in Monthly Report of the Naval Government of Guam, June 1947, p. 22). [emphasis added]

Further, landowners whose property had been occupied by military authorities were only allowed use and access of their property if they were able

to obtain a temporary "Revocable Permit" which allowed them limited rights of occupancy until such time as the militaary decided to take permanent possession thereof. The inevitable result was that very few landowners were inclined to expend time, effort, or money for farming or other commercial development if they were subject to immediate eviction by the military without compensation for improvements:

> "You might have seen, gentlemen, by this time fourishing livestock and farms all over the island had any action been taken to protect the famers and deed them the land... The only thing we can get is a temporary permit to install facilities, that is, buildings, fencing, etc., to care for the stock, with the condition that in the event that piece of land is finally condemned for the government use, that you will not be compensated for all improvements made on the land...It is only natural for any individual who has the heart, the sole interest in the soil, to divert from that profession to find another in order that he may live with his family. There are many of us farmers who have forced ourselves to accept positions and work for somebody else, for that reason only." (Testimony of Frank D. Perez, supra, Transcript, p. 52). [emphasis added]

The ultimate effects of all the comprehensive social and economic controls on the native inhabitants of Guam, as well-meaning as they might have been, were inevitably profound and lasting. Laura Thompson described this atmosphere in 1947 as being an even more complete domination of the island by military authorities than even existed under the executive power of the pre-war Naval Governors:

> "Judging from present reality, the tendency of Guam seems to be toward still more minute regulation of the public and personal lives of Guamanians than even before. Whereas formerly, although prices in the native market were controlled there was a degree of flexibility in the economic life; now it appears that the government is attempting to regulate completely the economy of the island. Public utilities formerly privately owned, such as bus transportation and the manufacture of ice, have been taken over by the government; all native business enterprises, wholesale and retail, are government authorized and licensed; all imports and exports are regulated; the native is told exactly where, how, and according to what design to rebuild his home...At present even the movements and transportation of the native population, who were bombed out of their homes and whose homes were condemned, are also controlled." (Thompson, supra, pp. 161, 165, 166). [emphasis added]

After fifty years of Navy control, therefore, it appeared that the natives of Guam still had a long road ahead before realizing the Navy's professed goal of "guiding them from disease-ridden medieval peonage to the dignity and demeanor of a self-reliant citizenry in the modern world," and "educating them to accept and intelligently to discharge the responsibilities and privileges of citizenship." (Department of the Navy, "Report on Guam, 1899-1950," supra, pp. 3 and 22).

E.) DEVELOPMENT AND IMPLEMENTATION OF POST-WAR MILITARY LAND ACQUISITION PROGRAM ON GUAM

i.) Original plan of land acquisition program

As discussed above in Section C(iv), United States Military forces took control of the entire island after the reoccupation in order to further the war effort against Japan. "On August 11, 1944, military government was put into effect after the island was secured and all lands were taken by the military commander because of the military necessity and for the preservation of the nation's safety." (Judge John C. Fischer, Superior Court of Guam, Civil Case No. 9-47, Opinion dated October 24, 1947, p.1). On November 15, 1945, Congress approved Public Law 225 "authorizing the Secretary of the Navy to transfer land for resettlement in Guam," whereby public lands belonging to the United States which were not required for military use could be disignated for the resettlement of natives of Guam "who were displaced as a result of the extensive military and naval construction programs." (Senate Report to accompany S.2246, Committe on Naval Affairs, Report No. 1397, May 29, 1946, p. 2).

> "Current Naval and Military programs on Guam have necessitated the extensive acquisition of private real property on the island. There are now over 160 military and naval reservations on Guam and they occupy over half of the more valuable lands on the island as well as considerable portions of the pasture and forest areas. This increase in military and naval land requirements has created a problem in the rehabilitation of residents who have had to be moved from property acquired for governmental use and who therefore have to be resettled elsewhere in the island." (Senate Report to accompany S1362 , Committee on Naval Affairs, September 26, 1945, Report No. 596, p. 1). [emphasis added]

> "Senator Tydings: The Navy and Army together have taken most of the land already. I do not think they paid some of the natives for it yet.

Captain Gary: No sir; they haven't.

Senator Tydings: I talked with one of these Guam people and he said this operation was wonderful but it disrupted the whole life of the island. He described the life they used to have. He said, 'you have taken everything from us. We haven't got any grazing land; we haven't got any agricultural land, you have taken it for the Army and Navy, and we have not even been paid for it...They are entitled to consideration, because their villages have been absolutely wiped out." (Hearings before Committee on Naval Affairs Re S.1139, June 26, 1945, p. 32-33). [emphasis added]

"Under this legislation the Navy Department proposed to place in a pool the government-owned lands which might be suitable to exchange for privately-owned property needed for the Armed Forces. The plan was for the Naval Government to buy up all areas needed for defense purposes, and in return give the former owners priority to purchase from the Naval Government land of similar quality and value." (Zenor, supra, p. 165).

The initial express authority for the military acquisitions on Guam was provided by companion legislation with the Meritorious Claims Act in November, 1945, entitled an act "authorizing the Secretary of the Navy to acquire in fee certain lands on Guam." Pursuant to the Meritorious Claims Act's establishment of the Land and Claims Commission, which had the dual function of not only settling war damage claims, but also surveying and designating lands for military acquisition, the "acquisition act" further provided for an appropriation of $1,630,000 "to purchase approximately 26,000 acres at an average costs of about $35.00 an acre." (Report to accompany S.2246, supra, p. 2).

"The Navy Department believes it necessary to request authority and funds to purchase land on Guam which must be purchased to carry out its program. The Department has requested an appropriationn totalling $1,630,000, of which all but $30,000 will be available to purchase land which thereafter the governemnt will own absolutely. The $30,000 will be used to effect leases containing options to purchase if ownership of the land becomes necessary in light of future Navy requirements on Guam...The Navy intends to lease about 22,000 acres of land valued at approximately $482,000, and estimates that $30,000 is a fair yearly rental for this property." (Ibid, p. 2).

Among the numerous failures in implementation which arose in the wake of these legislative schemes was a delay in appropriation of funds (to be further discussed in Section E(ii)(a), infra) and the related severe shortage of personnel to handle technical and legal aspects of acquiring real estate. The latter

responsibilities were customarily performed by a federal agency or the United States Attorney for the respective district. However,

> "...since there was no U.S. Attorney here and no United States Court, the Naval Government of Guam took the place of the Department of Justice in a normal land taking and all takings are therefore in the name of the Governor. I have had come before me several takings of land which had no value to the Naval Government of Guam, but were for the Department of the Air Force, the Department of the Army, the Department of the Navy. All of the land work was done by the Naval Government of Guam through the Land and Claims Commission." (Testimony of Governor Carlton Skinner, Naval Governor of Guam, Hearings before Sub-Committee of the Committee on Public Lands, U.S. House of Representatives, November 22, 1949, Transcript, p. 63).

The Land and Claims Commission went through several consecutive reorganizations during a five-year period following the reoccupation. Although the official "Land & Claims Commission" which received express congressional authorization through the Meritorious Claims Act did not come into being until late 1945, a previous commission had been in existence for over seven (7) months to handle, among other things, some preliminary technical aspects of military land acquisition. "Officers forming this commission reported on 22 March [1945]. A preliminary study of matters of organization has been undertaken." (Monthly Report for April, 1945, Report for Island Command War Diary, April 2, 1945, p. 14). Within two months the Commission's "Tract Acquision Section completed reports on four allocations, those of Naval Air Station, Agana; 5th Field Depot; 41st Navall Construction Battalion Areas; and 136th Naval Construction Battalion Area." (Monthly Report, supra, June 2, 1945, p. 15).

By August of 1945, the Naval command anticipated passage of the Meritorious Claims Act pending in Congress and perceived a dual function of the Commission that could be developed:

> "If necessary regulations are promulgated by the end of the year, the Commission would be taking over the work of two agencies: 1.) a commission to settle claims; 2.) a real estate department of the Naval Military Government to carry out details of real estate acquisitions and disposal, to accomplish probate and condemnation procedures and to negotiate with land owners." (Monthly Report, supra, August 2, 1945, p. 14). [emphasis added]

Upon passage of the Claims Act, the "new" Land and Claims Commission was appointed by a precept from the Chief of Naval Operations dated 2 November 1945. "These officers replaced the old eight-man commission, and have also been directed to take the necessary initial steps preparatory to the acquisition of land on Guam which will be used for naval and Military post-war developments. (Monthly Report, supra, January 1, 1946, p. 10). [emphasis addd]

> "By letter from the Chief of Naval Operations dated 9 November 1945 (Serial No. 90P22), the Commission was directed to take all steps preliminary to filing condemnation proceedings for acquisition by the United States of approximately 87 sq. miles of Guam contemplated for the post-war development." (Monthly Report, supra, March 1, 1946, p. 26).

The Commission acted immediately to establish procedures to carry out the acquisition order:

> "For the pupose of acquisition of land, the Commission has prepared a Declaration of Taking Order, and an amendment to the Code of Civil Procedure of Guam for service of summons by publication in condemnation proceedings, and an amendment to the Civil Code of Guam allowing the interchange of the terms Military Government and Naval Government. These amendments have been submitted to the Island Commander for approval." (Monthly Report, supra, February 1, 1946, p. 12).

As the Commission's acquisition program slowly began to develope during 1946, it became critically apparent by the end of the year that some effort had to be made to justify legally the continuous occupation of private real property which had existed for over two years after the invasion. Although the commission's original regulations promulgated by the Secretary of the Navy on May 31, 1946, "expressly exempted from consideration any rental payments for the occupation of private real property, on October 11, 1946, the regulations were amended to permit payment of rent." (Memorandum entitled "Real Estate Appraisals for Loss of Use under Public Law 224" (unsigned, undated) obtained from Real Estate Division, ComNavMar, p. 4).

> "Most of the lots for which 'loss of use' was claimed by landowners were located in areas selected for permanent use of military forces on Guam... 'Loss of use' was processed by the Negotiation and Real Estate Appraisal Section of the Commission. Claims were accepted for all parcels

used for various government activities either in connection with hostilities or with non-combat activities. The only kind of use which was excluded from consideration was police action. Those parcels over which patrols or members of the armed forces may have passed during the hostilities without actual making encampments, supply dumps or other similar uses were not considered for rental claims." (Ibid., p. 5).

The decision of the Secretary of the Navy to make rental payments up to July 1, 1946, which was not reached until October, 1946, was a precursor of the subsequent decision to commence filing of so-called "island-wide leaseholds" beginning in 1947. The first such condemnation action was Civil Case No. 15-47, filed on June 18th, 1947, and represented a retroactive payment of "rental" to Guamanian landowners whose property was subjected to military occupation during the fiscal year July 1, 1946 through June 30, 1947.

"When Civil Case No. 15-47 was filed, it was believed that a large part of the land included in the case would be acquired later for the Base Development of Guam. At that time enabling legislation did not exist and funds were not available for the purchase of land on Guam for the Base Development Program. A Land Acquisition Plan was developed as early as October, 1944, but changes in plans for Base Development caused many changes in the Land Acquisition Plan." (ComNavMar Memorandum, "Appraisals for Loss of Use" supra, p. 8).

In implementing payment of rental pursuant to Civil Case No. 15-47, the Naval Government found it necessary to use a flat 6 rate schedule (based on 1941 "appraised value"), rather than analyze each lot individually as having a separate leasehold value.

"If the Government had decided to negotiate a lease on each parcel of land necessary for the Base Development Program during fiscal year 1947, it would have been an impossible task because the Land Claims Commission did not have a staff of appraisers and negotiators until October, 1946. Lack of title information and survey date made it impractical to attempt to lease the private land with standard leases." (ibid., p. 13). [emphasis added]

The practice of employing "island-wide leasehold" condemnation actions in order to justify military occupation of private land did not end with the fiscal year ending June 30, 1947. Similar actions were filed in 1948 (#3-48), 1949 (#1-49),

and 1950 (#1-50), as the Base Development Program continued to experience delays and problems:

> "Delay in enacting legislation in providing appropriation for the acquisition of land for the Base Development Program made it necessary to continue to take leasehold estates in large areas of private land of Guam for fiscal years following 1947. When an appropriation finally did become available, lack of title data and surveys increased the delays connected with the land program". (ibid., p. 8).

ii.) Problems in Implementation and Increasing Civilian Grievances Regarding Land Acquisition Program

(a) Administrative difficulties resulting from congressional inaction

As set forth in the preceding section, the original procedural concept adopted by the Naval Government in pursuit of of the Land Acquisition Program was to implement exchanges of government-owned property being taken for military use. In order to begin exchange of public and private lands, the Navy Department in 1946 asked Congress for an appropriation of $1,630,000.00 with which to by the private lands needed for defense purposes.

> "The Chairman: If we pass this bill, how much additional land to that additional 200,000 acres be vested in the United States Government?
> Commander O'Bannon: Approximately 40 square miles of land that we are using here will be used in military development, and then for that 40 square miles we can transfer 40 square miles out of land that we already now own.
> Senator Saltonstall: Wouldn't it be well to put that somewhere in this act, because it looks now from the point of view of the committee as if we were blowing out $1,600,000 for new land where we've got all this land, and if we really intend to transfer some to get rid of some, and to make a horse trade and not to increase our holdings down there indiscriminately, why not say so?
> Captain Nunn: We could well do that, sir, providing we do not abandon the idea of acquiring other land in here for development of naval purposes in accordance with present plans (Hearings before Committee on Naval Affairs on S. 2246, May 28, 1946, p. 4).

> "The magnitude of such an exchange program can be realize from the estimate that nearly 5,000 separate parcels of land were involved. Further, the quality of the land to be acquired by the Government and that

to be made available for transfer and resettlement may not be all similar, thus creating the problem of adjudication of land values and replacement costs for improvements. It took the United States Congress nearly two (2) years to appropriate the necessary funds for the project and it was estimated that at least six (6), and probably ten (10), years will be required to complete the transfers with existing personnel." (Zenor, supra, p. 166).

The difficulties which resulted in the overall land Acquisition Plan were therefore directly traceable to the failure by Congress to provide prompt and adequate funding for a program which had theoretically already been created. As indicated in a response to congressional question posed in 1947, the Secretary of the Naval stated that:

> "No land has been condemned as yet by court action because there are no appropriations as yet available for the purchase of this land. Public Law 594 authorized the Navy Department to acquire the land needed on Guam for permanent Army, Navy, and Marine installations. A subsequent appropriation act prohibited the use of previously appropriated funds for the acquisition of real estate after February 25,1946. Therefore it has been necessary to request the sum of $1,600,000.00 be included in the 1948 appropriation bill. If this item is allocated, it will permit payments for the land and initiation of condemnation proceedings." (Answer to Questionnaire furnished to Secretary of the Navy by Congressman Norris Poulson, June 9th, 1947, reprinted in Transcript of Proceedings, Guam Congress, July, 1947, p. 7). [emphasis added]

Aside from administrative difficulties, one obvious result of the delay in funding was that the time money was eventually appropriated, inflation had caused original projections to become obsolete, thus rendering the appropriation ineffective. For example, concurrent funding for the "rehabilitation" of the civilian community on Guam proved inadequate even when limited to the reconstruction of the communities of Agat and Agana:

> "Of the funds allocated by Public law 301, 79th Congress to be used for the rehabilitation of Guam, $500,000.00 was set aside for acquisition of land in Agat and Agana. However, property values have proven to be greater than originally anticipated, hence it has not been possible to acquire all the lands required for streets, utilities, parks, and sites for schools and other public buildings with the funds authorized. (Naval Government of Guam, "Project Descriptions for Fiscal year," Re Agana land Acquisition, 1949) [emphasis added]

The focus of the severe administrative and practical problems affecting the Land Acquisition Program was the government instrumentality, the Land and Claims Commission. As previously discussed in Section E(i), supra, the Commission, which originally was created on an informal basis to assist in construction of war facilities, was reorganized pursuant to the Meritorious Claims Act to take concrete steps toward formal acquisition of real property for the military. However, as is indicated by the Naval Government's Monthly Reports (which included a continuing review of the Commission's progress), the problems of obtaining adequate personnel caused immediate severe delays:

> "The Commission reports itself very greatly handicapped by the lack of yeomen, indicating that no action has yet been taken on the request of 30 March 1945 for additional personnel." (Monthly Report, supra, July, 1945, p. 18).

> "Because of the status of necessary legislation and the lack of land acquisition directives, there will probably be a considerable period of time between the conclusion of the Commission's investigation and the beginning of actual land acquisition". (Monthly Report, supra, September, 1945, p. 12)

> "The Commission has been hampered in its work program through lack of personnel, having no skilled appraisers and no one who can take dictation. However, 78 civil service positions, covering all phases of the work of the Commission, as outlined in our letter to the Personnel Directory, Pearl Harbor dated 9, January 1946, have been classified, only 14 of which have been allowed to date." (Monthly Report, supra, April, 1946, p. 23)

> "Due to the accelerated demobilization plan of the Navy, the existing Survey Section will be at a standstill by 15 June 1946". (Monthly Report, supra, May 31, 1946, p. 33).

> "The Commission has no stenographic help at present due to the demobilization program." (Monthly Report, supra, May 31, 1946, p. 32).

> "The work of the Commission is still limited by lack of sufficient personnel, particularly in Legal Section, but it is expected that several attorneys should report aboard during November, which should allow a program to commence". (Monthly Report, supra, October, 1946, p. 29).

Another significant cause of the delays experienced by the Commission was the failure of the Secretary of the Navy to establish promptly procedural regulations outlining the standards and methods to be employed:

> "It will be a definite boost to the island's morale when the Regulations under the Meritorious Claims Act are forthcoming, and a final determination of allowed claims may be made." (Monthly Report, supra, May 1, 1946, p. 34)

> "Progress [of the Land and Claims Commission] has been inordinately slow. The Hopkins Committee reported in 1947 that'... 'a considerable period of time elapsed between the passage of the Act and the issuance of regulations by the Navy Department thereunder; the demobilization process and difficulties in recruitment of qualified personnel hampered things to a considerable degree; and the Act itself and the regulations have proved to be unwieldy and cumbersome in major respects'." (Zenor, supra, pp. 183-184).

A more general problem affecting the progress of the Acquisition Program was the inability of the military command to reach final determinations as to the exact geographical areas which were needed. Even as late as October, 1949, " a final decision regarding the lands to be expropriated by the Joint Chiefs of Staff was still lacking." (Naval Government Quarterly Report, July 1 through September 30, 1949, p. 22). In 1946, as the land program had been just getting under way.

> "the members of the Land and Claims Commission did not anticipate such a long delay in completing the Acquisition Program on Guam. It was not anticipated that future military plans would result in some of the selected areas being changed for sites considered better for the intended use and that certain activities would be discontinued, thereby removing the the necesesity for acquisition of a particular areas". (ComNavMar Memorandum, "Apparaisals for Loss of Use, " supra, p. 6). [emphasis added]

One technique adopted by the Commission to obtain additional time during this period of delay was to allow individual landowners the right to return to their property for a limited term, with the understanding that the property could be condemned in fee at any time, the landowner evicted, and all improvements confiscated without separate compensation.

"Any disposal or transfer of government lands must necessarily await final determination by the Island Command and proper authorities in the Army and Navy Departments as to their definite future military requirements. There is, however, authority available to the Land and Claims Commission, to be exercised only with the approval of the Naval Government, whereby a permit, revocable at will, may be issued to any individual permitting temporary occupancy of land. Temporary occupancy under such a permit may be determination of military needs, and prior to the time that government lands are made available for sale or transfer under the Land Transfer Act." (Memorandum from Land and Claims Commission on the subject of "Land Transfer Act-Regulations and Interpretation of", October 2, 1946, p. 2). [emphasis added]

As previously discussed in S E(i), supra, another device employed during this delay period was the immediate distribution of "rentral" under "island-wide leaseholds" (e.g., Civil Case No. 15-47), calculating "lease values" by application of a flat percentage rate to pre-war tax assessment values:

"Many of the claims investigators employed by the Land and Claims Commissions were unskilled in real estate valuation. There was always a shortage of qualified real estate appraisers. This situation made it necessary to adopt a 'schedule of values.' ... When Civil Case No. 15-47 was filed... it appeared impractical to base compensation for leaseholds in condemnation proceedings on then existing rentals paid by private parties. The alternative which was selected was a system of taking the value of each parcel of land and estimating an annual rent at 6% of this value... In support of the use of this 'schedule of values' it may be said that it provided uniformity in payment of rent for private real property. There is no way of determining the amount of administrative costs saved by these savings offset any possible over-payments to a large extent." ("Appraisals for Loss of Use"; supra, pp. 6-9). [emphasis added]

"The Commission hereby adopts as a standard table of rental values for payment for loss of use of real property the 'schedule of values' set forth herein. For the purpose of paying for loss of use, a computation of 6% shall be allowed as the fair rental for each year of occupancy by the Armed Forces... Under the terms of Public Law 224, 79th Congress, rental payments for real property shall be computed based upon 1941 values." (Memorandum from J.A. Roberts, Senior Member, Land and Claims Commission, and Albert L. O'Bannon Officer-In-Charge, Land Division, and Negotiating and Land Appraisal Section, Land and Claims Commission, concerning "Standard Table of Rental Values", February 15, 1947, pp. 1 and 3).

With the continuation of these extended delays in the Land Program caused by lack of Congressional appropriations, shortage of staff, and failure to issue regulations, the attempted defensive methods of the Land and Claims Commission soon began to create more and more friction in the civilian community, as the intentions of military authorities became increasingly questioned with regard to "land requirements for permanent military use and development."

(b) Growing criticism of inadequacies of military land program

Pursuant to a precept issued by Secretary of the Navy James V. Forrestal on January 8, 1947, a special civilian commission, most commonly referred to as "The Hopkins Committee," travelled to Guam to perform a study of post-war conditions. Deeply impressed upon the Committee were the strong feelings expressed by Guamanian citizens concerning the critical effects of the military land acquisitions:

> "At the public hearings and in our private talks with the people of the island, there was constantly evident the undercurrent of uncertainty and insecurity caused by the fact that great numbers of families had lost their homes and did not know what the future had in store for them. Agana, the capital and metropolis of the island with a prewar population of over 12,000, was laid completely waste by the war so that scarcely a house was left standing. Many smaller municipalities were severely damaged. In addition, with the reoccupation by American forces and the development of the island as a major base for the onslaught on Japan, thousands of others were forced to move from their homes and their sites taken for air fields, supply centers, ammunition dumps, housing areas, recreation spots and the like. None of the municipalities which have been projected to take the place of those destroyed or preempted has yet been made ready for settlement or resettlement, and there is no clear indication when they will be. Also, many Guamanians find themselves still unable to go back to their small farms or 'ranches', to live or even to farm in an effort to raise fresh food stuffs to supplemnt that which is on sale in local stores.
>
> "The first order of business must be the final determination by the military services--the Army, the Navy and the Marines--of their permanent postswar requirements of land. At present, of the 138,000 acres or 217 square miles of land on Guam, the Federal Government is occupying 76,000 acres or 120 square miles. It is recognized that the

national defense should have indicated that they do not need permanently all the land they are now occupying and that they intend to release some. The uncertainty is the crippling force in this connection as regards the local inhabitants.

"By the same token, no additional land, not presently occupied by the military forces, should be taken if it can possibly be avoided. Only if such land is actually essential to the national defense should the ousting of the local residents even be considered. Merely because a particular site happens to strike someone's fancy is no justification for calling upon the might of the National Government and the eventual execrise of the power of eminent domain. If another location now owned or occupied by the Federal Government would serve the purpose, the status quo should be maintained." (Hopkins Committee, "Report on Civil Government of Guam & American Samoa," March 25, 1947, p. 15-16). [emphasis added]

The Committee expressed further concern with regard to the extremely slow progress being made in the reconstruction and rehabilitation of commercial and residential areas destroyed during the American invasion, particularly the top-priority projects of Agana and Agat:

"For various reasons--delay in getting authorization from Congress, difficulties in placing the contract, demobilization of personnel resulting in much lost motion on plans, technical engineering difficulties, and scarcity of essential material, actual reconstruction of Agana and Agat had not yet commenced. It is essential that these two municipalities be rebuilt promptly. The economy of the island stagnates while the weeds grow in the former streets of its metropolis and general unrest and uneasiness flourish. Reconstruction must proceed apace, if the island is to be a healthy place economically a socially." (Ibid, p 17). [emphasis]

Citing the three (3) pieces of legislation passed by Congress after the war (Meritorious Claims Act, Land Transfer Act, and Land Acquisition Act), the Report reflected civilian frustrations which had arisen in the wake of delay and lack of results. Immediate steps would have to be taken to remedy what was clearly embarrassing and morally unacceptable reality:

"Although the Land Acquisition Act has been on the books for over seven months, no use had as yet been made of it, partly because the military services have not yet reached definite conclusions as to just what land they want permanently, but also because no money has as yet been appropriated by Congress for these acquisitions. (Although the Act authorized an appropriation of $1,630,000 to accomplish the purpose of

the Act, no actual appropriation has as yet been made.)... Nor has any land been conveyed to Guamanians under the Land Transfer Act. Persons who have been dispossessed of their homes and land by military forces have yet to receive any land, comparable or otherwise, in return." Ibid, p. 18-19). [emphasis added]

"On Guam, the war brought wide-spread destruction of homes, public buildings, and utilities. But over and beyond this, it brought death 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 of the Army, Navy and Marines stationed here. In considerable number they are dispossessed of homes and lands which have been destroyed or taken from them, and they are without adequate understanding of the processses by which to secure replacement or compensation for these... 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 reapportionment of land and reconstruction of homes. Only so can justice be done to a valiant group of Americans who at grest 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 still lack land for subsistence to replace that taken from them for military uses. It would seen 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." (Ibid, p. 5-6).

The commitee's report, which was circulated to the Island Command by June, 1947, came as a significant jolt to those having authority over the Land Program. Taking the report as a pointed directive to "accelerate" formal acquisition proceedings through new administrative mechanism, the Navy Department originated the concept of a supplementary forum created solely for the "processing of condemnation matters".

iii.) Creation of Superior Court and Acceleration of condemnation

a.) Status of the judiciary and the bar 1947.

At the time of the Hopkins Committee Report's distributions in 1947, the local courts established by the Naval Government were staffed by officers and men under the Island Command and employed judges personally appointed by

the Governor of Guam (Guam Code of Civil Procedure, 1947, Section 156). Accordingly, the practical result in any action in condemnation was that the plaintiff had under its control the very judicial system which in theory determined fair compensation to be paid to defendant landowners.

A further problem was illustrated in Title IV of the Guam ACode of Civil Procedure, which was intended to establish specific procedures for actions in condemnation brought by the Naval Government. Although detailed rules were set forth indicating how the government was to proceed in its capacity as plaintiff (Section 1245), the subsequent provision (Section 1246), entitled "Who may defend. What the asnswer may show", was completely omitted from the text. Aside from the question of the Naval Government's intentions with regard to this omission, as a practical matter, any defendant landowner who might have been inclined to contest the question of fair compensation received no guidance whatsoever from the Code.

The disparities between condemnation parties inherent in judicial structure of this nature were observed by Laura Thompson at the time of her study in 1947:

> "Although a large number of well-trained and experienced technicians are being sent to Guam to pursue the interests of the Naval Government, it is apparent that none have been imported to help the two or three partially-trained Guamanian attorneys on the island to defend native interests in the compensation awards. Unless this is done and native interest are also hardly be claimed with justice that their property rights are being upheld by due process of law." (Thompson, supra, p. 126). [emphasis]

The problem of government restrictions upon admission to the Guam Bar, referred to by Thompson, is illustrated by the request made in 1948 by Fountain D. Dawson, then acting as investigator with the Land and Claims Commission, for admission to private practice of the island. After the Naval Governor rejected Dawson's request, the matter was brought to the attention of the Secretary of the Navy by a congressional inquiry. In response to a cable from the Judge Advocate General, acting in behalf of the Secretary of the Navy in the congressional inquiry, the Naval Governor explained Dawson's rejection s follows:

> "Dawson is a claims investigator for the Land and Claims Commission. It is neither necessary nor desirable that he be admitted to

the bar of Guam. The senior member of the Land and Claims Commission (J.A. Roberts) with the approval of the Naval Governor has determined under NCPI 45-12.2 that private employement as a member of the bar of Guam is incompatible with employment as a claims investigator. This is consistent with policy as necessary to prevent outside practice of law on Guam to the detriment of the government's position. Even attorneys with the condemnation proceedings are admitted specially for that purpose only." (Restricted Cable No. 290140Z, Naval Governor of Guam C.A. Pownall to Judge Advocate General, December 29, 1948). [emphasis]

In the face of the Hopkins Committee Report and within the aforesaid judicial context, the Governor of Guam, by Executive Order No. 24-47 of October 12, 1947, created a new court called the Superior Court of Guam.

"The Executive Order was dutifully approved by the Guam Congress at its regular session on November 1, 1947. The American lawyer and former judge who had recently also been appointed presiding justice of the Guam Court of Appeals was appointed Justice of the new Superior Court. This new one-judge court was given exclusive jurisdiction of all civil actions and proceedings to which the Naval Government or the United States was a party. It was given no appellate jurisdiction and 'appeals' from its decisions could be taken only directly to Secretary of the Navy." (James, "America's Pacific Dependencies", supra. p. 87). [emphasis added]

"In 1947, the Governor of Guam appointed a civilian lawyer with professional training and experience in the United States to sewrve as judge of the Suprerior Court of Guam , which was established for the more expeditious trial of land acquisition cases to which the Naval Government or the United States was a party. (Naval Government of Guam, "Report to the United Nations", 1947, p. 9). [emphasis added]

(b) Intended goal and actual performance of Superior Court

The first and only judge of the Superior Court was Judge John C. Fischer, appointed by the Naval Governor to preside over the opening of the first term on October 1, 1947. As was stated by Judge Fischer in subsequent hearings held before the Subcommittee on Public Lands, U.S. House of Representatives, on November 22, 1949, "the Superior Court is a special court instituted by the Navy Department consisting of one trained, stateside judge, principally to try land condemnation cases." (Transcript of Hearings, supra, p. 75). The Judge also

reviewed his extensive experience in condemnation, "having tried 2,400 cases with the Columbia River Authority--Oregon, Washington, Montana, Wyoming and Idaho-- as the government counsel." (Transcript, supra, p. 79). Of the Superior Court's objectives, Judge Fischer stated that the major goal was

> "to adjudicate land condemnation and eminent domain cases and the furtherance of the Land Acquisition Program of the Armed Forces of the United States; ...appeals from all decision of the Superior Court are made directly to the Secretary of the Navy... The results of the Court to date have been that over 3,000 cases involving individual claims on tracts of land have been negotiated and stipulations of settlement entered into by landowners and the United States Government representatives. Of these 3,000 cases there have been only about a dozen contested, and in all those 3,000 cases, judgement have been signed by the Justice of the Superior Court." (Transcript, supra, p. 74-75). [emphasis added]

As is suggested by the foregoing statement, the primary emphasis, if not the sole directive, underlying the existence of the Superior Court was expedited "processing" of land condemnation cases. Still feeling the sting of the Hopkins Committee criticism the Navy Department placed highest priority upon maximizing the production of the Court and obtaining "stipulated judgements" from the greatest number of landowners in the least amount of time. This major emphasis was reflected in Judge Fischers's report to the Naval Government, as the Superior Court's condemnation caseload accelerated dramatically from 1947 to 1949:

> "The Judiciary Department resume for the month of November 1947 indicated a heavy increase of nearly 300% in land matters handled by the Superior Court over the inital month of October." (Naval Government of Guam, Monthly Report, November, 1947, p. 4).

> "Land matters handled by the Superior Court in December rose 13% over the preceding month of November. Included in the matters presented to the Superior Court were awards to 82 landowners at an average of $588.25 per defendant. If this pace is to be expeditiously handled, and if this ratio of increase is continued, which it must be in order to accomplish the land program within a reasonable time, additional help must be forth-coming." (Monthly Report, December, 1947, p. 5). [emphasis added]

> "The resume of matters handled by the Superior Court shows an average increase for the quarter of 412% over that of October, 1947, which is taken as the norm. Maintenance of this average makes certain that the

land program on Guam can be handled within a reasonable time... However, such a Court, especially with a projected increase of 1,000 probate cases next year. Clerical and reportorial help is being urgently sought and recruited, but a dearth of qualified personnel from the indigenous population, from which source these positions must be filled, makes this problem difficult." (Quarterly Report, January through March, 1948, p. 8).

"This quarter included the greatest number of matters ever handled by the Superior Court (521)--an average increase of 430% for each month in the quarter over the average of last October... The highest average being attained monthly to make the Superior Court (which average must be maintained to make certain that the land program on Guam will be handled within a reasonable time) depends upon...an adequate negotiating staff, coordinated with the efforts of sufficient legal and clerical personnel in the Land Division of the Land and Claims Commission." (Quarterly Report, April through June, 1948, p. 15). [emphasis added]

"This quarter's accomplishments included the greatest number of matters handled by the Superior Court (1,047)--an average increase of 877% for each month in quarter over the average of October, 1947," (Quarterly Report, October through December, 1948, p 13).

"This quarter's accomplishments included the greatest number of matters handled by the Superior Court (1,146)--an average increase of 920% for each month in the quarter over the average of October, 1947... It is to be oberved that there are 99 more matters, or an average of 33 per month, handled in the Superior Court this quarter than in the preceding quarter. As stated in previous reports, this ratio of increase must be maintained and administrative procedure simplified if the land program is to be completed within a reasonable period." (Quarterly Report, January through March 1949, p. 16-17). [emphasis added]

"It is to be observed that the 920 matters handled in the Superior Court, or an average of 307 matters per month, included awards of $102,575 in the settlement of land condemnation proceedings for the quarter. The figures indicate that program being land cases are now being settled and the land program being brought to completion within as short a time as possible." (Quarterly Report, April through June, 1949, p. 15).

"This quarter's accomplishments included 196 more matter handled in the Superior Court this quarter than the 920 matters handled in preceding quarter. This is an average monthly increase of 20%... The 1,116 matters, consisting of Appearances and Stipulations, Judgements, and Motions and Ex Parte matters, handled in the Superior Court averaged 372

per month The necessity fo more surveys to accelerate the Land Acquisition Program is apparent. It is also evident that the attrition and diminution of personnel in the Land and Claims Commission will result in a slowing down of the Land Acquisition Program on Guam. Further, final decision of all land to be expropriated by the Joint Chiefs of Staff is still lacking." (Quarterly Report, July through September, 1949, 22). [emphasis added]

In the fall of 1949 Judge Fischer travelled to Washington, D.C. to meet with military officials with regard to the progress of the land program:

"Chief Justice conferred with the Secretaries of the Navy and Interior Departments and other officials in Washington on various phases of the Land Acquisition Program on Guam in which the Court is concerned." (Quarterly Report, October through December, 1949, p. 25). [emphasis added]

Pursuant to these discussions, the Judge was able to return to island and advise the Naval Government that the Land Acquisition Program, at least from the Court's point of view, was "nearing completion":

"It is estimated that with the filing of some six additional fundamental condemnation suits in the Base Development Program, the entire land takings for the benefit of the Armed Forces will have been lodge in the Court for final disposition and adjudication." (Quarterly Report, October through December, 1949, p. 26). [emphasis added]

Within six (6) months, and prior to the critical date of transition of administrative control from military to civilian on August 1, 1950 pursuant to Organic Act of Guam, the remaining condemnation suits referred to by Judge Fischer were filed in the Superior Court, thus effectively vesting title to the vast bulk of military landholdongs in the Naval Government. Executive Order No. 10178, issued by the President on October 30, 1950 and entitled "Reservation of Property on Guam for the Use of the United States," specially provided that all real property condemned during the existence of the Superior Court was to continue under the ownership of the United States Government pursuant to a Quitclaim Deed executed by the Naval Government of Guam to the United States and dated July 31, 1950, the day before official effectiveness of the Organic Act. The Executive Order contained the following list of condemned properties and

represented a recapitulation of the amount of land transferred in fee to the military during the brief period of the Superior Court's existence:

Case No.	Purpose	Acres
2-48	North Field	4,566.757
5-48	Mt. Santa Rosa Water Reservoir	9.372
6-48	Mt. Santa Rosa -Marbo Water Lines	5.990
7-48	Tumon Maui Well Site	5.990
2-49	Naval Ammunition Depot	4,803.000
3-49	Primary Transmission Line	44.651
4-49	Mt. Santa Rosa-Marbo Water Line	12.169
5-49	Apra Harbor Reservation	6,332.000
2-50	Acecorp Tunnel	6.450
3-50	Camp Dealy	35.391
4-50	Tumon Bay Recreation Area Utility Lines	0.637
5-50	Agana Springs	24.914
6-50	Asan Point Tank Farm	41.360
7-50	Asan Point Housing	85.032
8-50	Medical Center	137.393
9-50	Agafo Gumas	45.630
10-50	Naval Communication Station	4,798.682
11-50	Nimitz Beach	11.726
12-50	Command Center	800.443
13-50	Tarague Natural Wells	4,901.100
14-50	Agana Diesel Electric Generating Plant	5.945
15-50	Mt. Santa Rosa Haul Road	23.708
16-50	Northwest Air Force Base	4,562.107
18-50	Marbo Base Command Area	60.480
19-50	Loran Station, Cocos Island	21.695
20-50	Av-Gas Tank Farm #12	15.322
21-50	Proposed Boundary of NAS Agana, Hsng.	1,820.148
22-50	C.A.A. Site (Area #90)	37.519
23-50	Tumon Maui Well	3.575
24-50	Tumon Bay Recreation Area	49.277
25-50	Utility Easement from Rt. #1 to Rt. #6	0.208
26-50	Tumon Bay Recreation Area	65.300
27-50	Marbo Base Command	2,497.400
28-50	Mt. Tenjo VIIF Station Site	0.918
29-50	Sasa Valley Tank Farm	285.237
30-50	Sub Transmission System Piti Steam Plant	17.793
31-50	Route #1 (Marine Drive)	28.888
32-50	Sub Transmission System	94.000
33-50	Harmon Air Force Base	953.000
34-50	Radio Barrigada	2,922.000
35-50	AACS Radio Range (Area #30)	25.000

36-50	Water Line Apra Heights Reservoir to Fena Pump Station	37.000
37-50	Fena River Reservoir	2,185.00

While the foregoing list represents a vivid illustration of the accelerated acquisitions which occurred from 1948 to 1950, two cases not included in the list (which were pending prior to creation of the Seperior Court), Civil Cases No. 9-47 and 16-47, were among the most controversial of the matters handled by the Court. Rather than being for "public use" or military construction condemnation was instituted as a first stage in the "rehabilitation of Agat and Agana, respectively. A number of observers have questioned the legality of such an application of the power of eminent domain (e.g. "not for the purpose of converting it either into a military reservation or into a public domain, but for redistribution in private holdings to individuals," Thompson, supra, p. 126); however, it was extreme unhappiness on the part of affected landowners which reflected the most significant aspects of these first two condemnation precedents on Guam:

> "Two officials of the government, a Guamanian and Naval Officer came to the house and asked her to sign a paper consenting to sell her land to the government. She said she had signed the paper and told me that if she were asked by a Guamanian she would sign any paper offered to her, especially when accompanied by a Naval officer... The paper she signed was later brought into court as evidence. The appraisal of the property was made by a person representing the government. The owner of the land was not represented at any time the land was being appraised... A so-called expert land appraiser brought in from the United States had signed this appraisal even before he left the United States to come to Guam. This was submitted into Court as the proper and fair value of the land. In spite of the fact that the case [Civil Case No. 9-47] was started in the Island Court, the Judge said the case was taken from his files without consultation and brought into a new court just created for that very purpose. A new hearing was held and the same witnesses testified. The government expert testified and brought out the same appraisal made prevoiusly. The owner of the land is still unable, both physically and financially, to appeal to a higher Court." (Testimony of A.T. Bordallo, Hearings before Committee on Public Lands, supra, Transcript, pp. 116-117). [emphasis added]

The Court's official record on Case No. 9-47 gives a significantly different impression of the nature of the proceeding than that described above. In a four-

page written opinion issued by Judge Fischer after a trial, held only two weeks after the creation of the Court, the major considerations in the Court's approach to condemnation on Guam were set forth:

> "This is an action by the Naval Government of Guam for acquisition of lands for the purpose of the rehabilitation of the village of New Agat... The Naval Government has continued to govern this insular possession until Japanese agression wrested the island from American hands on December 12, 1941, and held it until repossessed by American Armed Forces on August 11, 1944. Military Government was put into effect after the island was secured and all lands were taken by the military commander because of the military necessity and for the preservation of the nation's safety... Pursuant to Executive Order No. 25-47, approved October 3, 1947, this case was held on October 17, 1947... The government appraiser recommended and the government put up $3,714.50. To say this is a generous act by the Naval Government would be to argue the obvious. The referee's proposal of $400 per acre is what in real estate parlance is known as "puffing" and cannot be taken seriously. If such a recommendation were followed even though contrary to good conscience, its application to future acquisitions could well wreck the island economy, result in ruinous and inflated lands values, and most likely alienate the support of many of the friends of the Guamanian rehabilitation program in the United States." (Civil Case No. 9-47, Superior Court of Guam, "Judgement and Opinion" by Judge John C. Fischer, October 24, 1947, p. 1 & 3) [emphasis added]

As is made clear by the foregoing statement of Judge Fischer, a significant policy advocated by the Superior Court in condemnation matters was to avoid "ruinous and inflated land values" which "could wreck the island economy... and alienate the friends of Guam" in the United States. The Court was therefore primarily more sensitive to financial limits imposed by of government official in Washington with regard to the amount of compensation to be paid for Guam land acquisitions, than to the specific determination of actual fair value for each parcel of land taken. For example during the hearings before the House Public Land Sub-Committee in 1949, the following statements were made by Judge Fischer and Russel J. Otten, Negotiating Branch, Base Development Department:

> "Judge Fischer: The acquisition in fee of 26,000 acres of land for Armed Forces, to be paid for from the appropriation of $1,600.000 made available by Congress in July, 1948, averages $ 62.50 acre...

Question: Would you take into consideration the location, the desirability for residence, desirability for business or for agriculture?

Judge Fischer: Yes, or any other reasonable use.

Question: Would you arrive at what you think is a fair and reasonable income from such property, and would you arrive at the actual value?

Judge Fischer: Yes, and that average on Guam, as I said on the final acquisition of 26,000 acres, runs about $62.50.

Question: How did you say you arrive at those figures?

Judge Fischer: Well, the Congress of the United States in July, 1948 appropriated $1,600,000,000 under Public Law 594, to be divided among the 26,000 acres which are to be taken in fee by the Armed Forces--Army, Navy, and Air Force--and the average is $62.50."

(Transcript, supra, p. 78) [emphasis added]

Question: Are you familiar with the property where the admiral's house was built?

Mr. Otten: Yes Sir.

Question: The statement has been made that the property was 13 acres, and that the rent paid to the owner was $14.10 per acre, do you feel that is right?

Mr. Otten: I believe it is.

Question: $14.00 for 13 acres?

Mr. Otten: I can't remember the exact area, but if you are quoting from our records, I believe it is right."

(Transcript, supra, p. 102).

The initial conclusion which may be drawn is that, given finite congressional appropriation and a ceiling on total available compensation, the job of the Superior Court became in essence an administrative determination of how best to "divide up the pie," rather than a judicial ascertainment of "just

compensation." Accordingly, pressure to avoid "excessive" awards of compensation to landowners would have been more intense than in the ordinary stateside condemnation proceedings. Initially in 1947, minimum property values were not difficult for the Superior Court to rationalize, the Government sucessfully took advantage of what it perceived as the extremely low values reflected in its own official records:

"Senator Byrd: What is the average value of land on Guam?

Commander Watson: Astonishingly low. The reason land values are low on Guam is that land has never been sold there in an over-the-counter way. It has never been freely sold, and an analysis of land or sales of land have been between relatives. The very best Guamanian farm land is considered to be worth only about $90.00 a hectare...

Senator Byrd: Is that fertile land?

Commander Watson: Yes, that would be bottom land... The whole central portion and southern part of the island are covered with a grass that has a low pasture value, and the other end is a thick forest, and the trees have very little commercial value."

(Hearing before Committee on Naval Affairs, United States Senate, 79th Congress, First Session, in S. 1362, September 25, 1945, p. 16 & 17). [emphasis added]

"Compensation is based upon alleged land values from December, 1941. That is, land values are based on tax assessment appraisals which are never a true index of actual value. These valuations were what the Land and Claims Commission use to base their settlement figures." (Public Lands Sub-Committee Hearings, supra, Testimony of Frank Leon Guerrero, Transcript p. 60).

Beyond the Naval Government's restrictions on alienation of property and the resulting phenomenon of unrecorded transaction all of which contributed to maintenance of extremely low values, the negotiating methods by which "settlement offers" were submitted to individual condemnees for approval in the form of "stipulated judgement" have been frequently commented upon and variouly described hundreds, if not thousands, of individual Superior Court

defendants. Without going into detail with regard to methods of pursuasion actially used by the Negotiating Branch of the Land and Claims Commission, it is sufficient to note the observations and comments of representatives of Congress who were advised by the landowners themselves:

> "These had been an intimation here on the floor, and a bit of information privately given to us, that Guamanians are afraid to oppose the government--that they are afraid even to speak up here and to give their honest convictions. On what that founded if not founded by the Government they had before [the Committee] arrived here?" (Public Lands Sub-Committee Hearings; supra, Statement of Representative Lemke, Transcript p. 80). [emphasis added]

> "They just say that it is on a lease basis and here is the money. There is no discussion--nothing verbal or in writing as to just compensation for the land. It is just an arbitrary amount, stamped on the paper, and they say, 'that is all you get for that'." (ibid, Statement of Frank D. Perez, Transcript p. 54-55). [emphasis added]

> "In the Agat land case, the landowners did not want monetary consideration. Everybody asked for an exchange in kind. In most cases the people of Guam never argued with the Government–never haggled about prices." (ibid, Statement of Frank Leon Guerrero, Transcript, p. 58).

> "I am glad, Mr. Otten, that you have such a high opinion of these negotiators. If your high opinion is warranted, they are absolutely different from any negotiators that I have had contact with, and I have had contact with quite a few of them in litigation where the goverment took property on the mainland. I would say that they used duress, they used persuasion, they do everything under the sun to make a name for themselves to brow-beat the owner down. Unfortunately, people representing the Government are always over-zealous to find facts favorable to the government and to submit them as just. In other nation, it is determined by a jury of twelve. Here, unfortunately, the only appeal is to the Secretary of the Navy. It is therefore a question of whether he is a disinterested party. In my opinion, he is not." (ibid, Statement of Representative William Lemke, Transcript, p. 97 & 118). [emphasis added]

> "As to abuses, I am not going to comment on those. The Committee found it true on Guam that a one-man government would change his mind overnight, and his dictates were law. There were plenty of signs of abuse... For instance on Guam the military took the lands of the people and forgot to even ask them how much they wanted, or to pay for it. Where the Governor now lives and Admiral Nimitz had his headquarters-- they finally offered, after they heared our committee was coming, $14.10

of rental for 14 acres of one of the most beautiful spots anywhere... I will say further that some of the witnesses were afraid to testify. When we asked them why, they said they were afraid of reprisals." (Hearings before Committee on Interior and Insular Affairs, United States Senate, 81st Congress, Second Session, on Legislation "Providing Civil Government for Guam," April 19, 1950. Statement of Representative Lemke, Transcript, p. 36-37). [emphasis added]

By the end of 1948 and continuing into 1949, increasing dissastisfaction and complaints voiced by Guamanians regarding the Superior Court's "processing" of compensation awards surfaced in the form of a resolution passed by the Guam Congress. Significant the Guam Congress and the Naval Government since reestablishment of the forum in 1946, thus indicating the depth of feeling about the Superior Court, and notwithstanding lingering gratitude and patriotism still apparent in the wake of the American reoccupation. The resolution asked for the revocation of the Naval Governor's Executive Order No. 25-47 and the abolition of the Superior Court as a judicial forum:

"Eighteen months [after the creation of the Superior Court] the Guam Congress adopted a resolution for the revocation of the Executive Order establishing the Court on the grounds of economy and nonnecessity. The action came as a surprise and created the first altercation between the Congress and the Naval Government." (Department of the Navy, "Report on Guam. 1899-1950," 1950, p. 19).

Not surprisingly, the resolution was emphatically rejected by the Naval Governor and the Secretary of the Navy, citing administrative reasons to justify continuation of the Court's existence; civilian dissatisfaction, however, was not considered relevant or significant in the Naval Government's vigorous opposition to the action:

"During the existence of the Court, Judge Fischer has reduced the docket of some 6,000 condemnation cases by one third and handled many ex parte matters, none of which was appealed. The reasons given by the Guam Congress for the revocatory resolution were visibly invalid, and on June 14, 1949, Secretary of the Navy Matthews disapproved the resolution after adducing evindence that its real purpose was an unvoiced dissastisfaction with the real estate values established in the condemnation proceedings. " ("Report on Guam", U.S. Navy, supra, p. 19). [emphasis added]

"A year after the creation of the Superior Court, a Bill was passed by the Guam Congress to abolish it. The Guamanians felt that actions of the Court in land condemantion cases were confiscatory. Dissatisfaction was also expressed over the dual function of the Superior Court Judge, also acting as Presiding Judge of the Court of Appeals. In January, 1949, the Naval Governor vetoed the Bill to abolish the Superior Court giving as his reason the large volume of land cases still requiring attention." (Zenor, supra, p. 87-88).

"It is now apparent, even to the most ardent of the Naval Government supporters on Guam, that the new Superior Court is in reality a device by which all land condemnation proceedings are taken from the regular courts of Guam and placed in a Court in which Guamanian judges have no role." (Roy E. James, "America's Pacific Dependencies", supra, p. 87). [emphasis added]

The relatively narrow question of the existence of the Superior Court became moot upon the effective date of the Organic Act of Guam, August 1, 1950. With the establishment of the District Court of Guam, all pending condemnation matters were transferred from the Superior Court by an "Order of Removal" issued by the new District Court Judge, Paul D. Shriver, on December 22, 1950:

"Whereas certain condemnation proceedings have heretofore been filed in the Superior Court of Guam...and the lands in which an interest has been acquired by and on behalf of United States Government are in futherance of the Base Development Program of the United States of America on Guam, and said lands are suitable and necessary therefore... [And whereas] by virtue of Public Law 630, entitled "An Act to Provide Civil Government for Guam", jurisdiction over all such proceedings is now vested in this Court;... IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED...that the clerk of the District Court of Guam be directed to docket each of said [Superior Court] proceedings in the records of the District Court of Guam pursuant to the Rules of Civil Procedure for the United States District Courts." (Civil Case No. 1, District Court of Guam, order of Judge Paul D. Shriver, December 22, 1950, pp. 1 through 3).

The transition from the Superior Court to the District Court was also proceded by an administrative shift by the Naval Government of personnel involved in the Land Acquisition Program:

"The Land & Claims Commission was dissolved and transferred to the Commander Naval Forced Marianas. While a few personnel were retained by the Naval Government for record keeping, the majority of the

personnel became part of the Base Development Section of Commander Naval Forces Marianas." (Public Lands Sub-Committee Hearings, supra, Testimony of Governor Carlton Skinner, Transcript, p. 63).

Upon being handed the judicial burden of an accelerating Land Acquisition Program, the new District Court Judge, Paul D. Shriver, observed the many difficulties and pitfalls of the program which remained unchanged despite establishment of a new civil administration and judicial forum. Looking back over the previous six years of the Land Program, Judge Shriver made the following comment in his significant 1950 opinion in Civil Case No. 34-50, Naval Government of Guam -vs- Pedro M. Cepeda, et al.:

> "During the initial period when the Armed Services were trying to determine the extent of their permanent needs, leasehold interest for a period of one year, renewed from year to year, were condemned... As, however, it has become necessary for the government to condemn land in fee simple,... I am therefore confronted with the necessity of attempting to arrive at a fair value or just compensation for the land in question. The problem would not be too great if the same facilities were available to the defendants as to the government, but this is a new and strange situation to the Guamanians, having to give up their lands, and they are bewildered by their desires as new and patriotic American citizens to yield to the wishes of their government on the one hand and their views as to the value of the land taken from them on the other. The government has at its disposal the same legal mechanism, including highly qualified expert witnesses, as it might have in a stateside community, but the defendants do not have access to similar experts who could only be obtained at prohibitive cost to them. It develops upon the government and the court, therefore, to make doubly sure that the interests of the former landowners are protected." (Naval Government v. Cepeda, supra, Opinion dated February 13, 1952, p. 3). [emphasis added]

The question was therefore presented whether, in Judge Shriver's own words, "the government and the court [made] doubly sure" that the interests of "bewildered" Guamanians, the "new and patriotic American citizens," would now be "protected" in condemnation proceedings under the new civil government, or whether the same circumstances which had previously caused civilian discontent would continue to exist during Guam's decade.

E.) Continuing Naval Domination During the First Dacade of Guam "Civil Administration"

i.) Passage of Organic Act and Reinstitution of "Entry

Clearance" Requirements under Executive Order No. 8683

In July, 1950, United States Congress passed the Organic Act of Guam (48 USC § 1421) which transferred responsibility for administrative affairs of Guam from the Navy to the Department of Interior. Included in this enactment was a Bill of Rights and an authorization for the creation of a District Court of Guam, patterned after the federal district courts in the United States.

> "The clear congressional intent of the Organic Act, as revealed by committee hearings and numerous exchange of correspondence among senators and others, was to give the United States citizens of Guam full civil rights. [Quoting statements from S. Rep. No. 2109, 81st Congress, Second Session p. 2 (1950)]. The indications were that Executive Order No. 8683 was then dead and forgotten. However, the Navy resurected the Order on December 4, 1950, thus enabling it to retain its long-enjoyed power over the civilian community." (W. Scott Barrett and Walter S. Ferenz, "Peacetime Martial Law on Guam", Vol. 48, No. 1, California Review, March, 1960, p. 5; hereinafter referred to as "Barrett and Ferenz") [emphasis added]

> "Under the Organic Act enacted in 1950, local government was formed in accordance with the directions of Congress. A Bill of Rights for the people was patterned after that provided in our national and state constitutions... When the civil government assumed its functions, it was generally thought that the security program would be discontinued. This was based upon the assumption that implicit in the Organic Act is the right of the people to move freely to and from the territory of Guam, just as that right has been accepted as a matter of fact in all other territories- Hawaii, Alaska, Puerto Rico and the Virgin Islands. Necessary restrictions would only be imposed, it was thought, upon entry into actual Naval or military reservations... However, the security program was not discontinued; in fact, it was intensified." (Stevens, supra, p. 93). [emphasis added]

Aside from social and political questions raised with regard to the reinstitution of the "security clearance" program on Guam, major legal questions were ultimately raised with respect to Navy's authority to implement an Executive Order originally promulgated by President Roosevelt in 1941 under circumstances of impending hostilities, the text of which read as follows:

> "The territorial waters between the high water marks and the 3-mile marine boundaries surrounding the islands of Rose, Tutuila and Guam, in

the Pacific Ocean, are hereby established and reserved as Naval Defensive Sea Areas for purposes of national defense,... and the airspaces over the said territorial waters and islands are hereby set apart and reserved as Naval Airspace Reservations for the purpose of national defense...

In order to assist subsequent enforcement of the "security clearance" program, the Navy proceeded to adopt regulations such as the following, which was not issued to the general public:

"Compliance with Laws and Regulations: All persons, vessels and aircraft entering the Guam Island Naval Defensive Sector Area or the Guam Island Airspace Reservation, whether or not violation of Executive Order No. 8683...shall be governed by such regulations and restrictions upon their conduct and movements as may be established by the Commander, United States Naval Forces Marianas, whether by general regualtions or by special instruction in any case." (32 C.F.R. § 761.21). [emhpasis added]

Barrett and Ferenz saw the foregoing regulation as clearly puporting to establish martial law on Guam: "Civilians are under martial law whenever an executive order authorizes a military commander to prescribe rules of action and make law governing civilian in military areas set up in domestic territories upon the sole standard of military necessity (Ochikubo v. Tonesteel, 60 F. Supp. 916, 292 (S.D. Cal. 1945)." (Barrett and Ferenz, p. 2).

Of equal significance with the legal and political aspect of the "security clearance" program was the zealous manner in which Naval authorities proceeded with implementation.

"The regulations have been vigorously enforced by the Navy. All persons desiring to come to Guam who are not within certain excluded categories are required to obtain a security clearance from the Secretary of the Navy or his subordinates before they are permitted to enter. A person coming to Guam for the first time files the application directly or indirectly with the Chief of Naval Operations...Applications are required to itemize in detail all places of residence and employment for the past 10 years (OPNAV Instruction 5500. 11B, p. 22; 32 C.F.R. 761.3 (B))." (Barrett and Ferenz, pp. 4 and 19). [emphasis added]

"The security program requires every person proposing entry into Guam to submit an application to the Navy for a security clearance. His record is checked and, if his entry has Naval approval, he receives a security clearance which must be in his possession upon arrival. Airlines

and steamerlines will not issue tickets to Guam in the absence of clearances. Off-islanders must submit applications to the Chief of Naval Operations in Washington, D.C. Clearance for off-islanders usually requires several weeks. There is no administrative hearing on any phase of the program. Decisions of CincPacFlt and CNO are final. All reasons for denial are secret, and are not in any case divulged to the applicant." (Stevens, supra, p. 94). [emphasis added]

"Enforcement of the Naval security program is not diffcult inasmuch as the only permissible ways to enter Guam are through Naval reservations. Apra Harbor is the only sea port, and it is within the confines of the Naval Station. Persons entering Guam by way of air carrier are required to land at the Naval Air Station. There are no civilian airport facilities on Guam. To insure that persons entering Guam have the required entry clearance documents, the Navy has ordered civilian transportation agencies to require these documents before allowing prospective passengers to purchase a ticket. This is true of both of the airlines and the steady ship lines. The carriers have complied with the orders of the Navy, which contends that the carriers are 'fully responsible for restricting the activities of the passengers in their custody so as not to permit violation of entry clearance requirements' (letter from Rear Admiral W.B. Ammon, Commander United States Naval Forces Marianas, to G. Selwyn, Manager, Pan American World Airways, September 6, 1956).' (Barrett and Ferenz, p. 6). [emphasis added]

While the discussion in this memorandum will not review detail the numerous legal arguments raised against the existence the "security clearance" program per se, some of the justification suggested by the Navy over the decade, which were many and divers significantly included the following (cited in Barrett and Ferenz p. 11):

1.) "The clearance program was necessitated by the Korean War". This of course fails to explain the continuation of the program after cessation of hostilities.

2.) "Civilians only come to Guam for the purpose of making as much money as possible from the salaries of military and government employees". (Letter from Commander Edward L. Beach, Naval Aide to the President, to F.L. Moylan, September 20, 1956). Particularly after the passage of Organic Act, the presence on Guam of civilian businessmen was clearly not intended to be a concern of the United States Navy. [see also Affadavit of Joseph Siciliano, filed in conjuction herewith]

3.) "Guam is an important United States Naval Base, thus warranting the measures authorized by Executive Order No. 8683". (Letter from Secretary of the Interior Douglas MacKay to G.M. O'Keefe, June, June 8, 1953). Pearl harbor is also a Naval Defensive Sea Area, but no clearance is necessary to enter the island of Oahu, which is no more than twice the size of Guam with almost as great a percentage occupied by military reservations.

4.) The security clearance program is necessary to enable the Navy to assist the local government in keeping the "riff raff" out of Guam. (United States Naval Officer quoted in Bauer, "American Guam Off-Limits to Americans", Portland Oregonian, August 4, 1957, p. 42).

While the latter justification certainly suggests sweeping social implications with respect to control over the native population, one spesific result which was clearly evident was the arbitrary exercise of the power to force repatriarion of aliens, particularly to the Philippines, without lawful authority. One explanation for the policy of revoking an alien's clearance given by Naval spokesmen was that the Navy favored "keeping Guam for the Guamanians," on the grounds that it was not in the best interests of Guam to allow a build-up of aliens qualified to become permanent residents.

" The United States Navy 'does not favor the entry' of Filipinos to Guam 'for the purpose of settling permanently' because United States Navy policy is 'to keep Guam for the Guamanians', Rear Admiral William B. Ammon, Commander of the United States Naval Forces Marianas, said. In reply to a question as to why the Navy frowns upon any effort of Filipino to settle permanently on Guam, he said 'Navy policy is to keep Guam for Guamanians, therefore, it does not look with favor on the entry of any foreigner to Guam for the purpose of settling permanently'." (Abcede, "Guam Policy Explained," Manila Times. October 12, 1956, p.2, Col. 1). [emphasis added]

"Despite the enactment of the Organic Act of Guam, establishing civilian authority, a United States Navy paper curtain remains to this day. Naval intelligence has been intensifying efforts to fend off foreigners and unwanted Americans." (Abcede, "Filipinos in Guam", Manila Sunday Chronicle, July 26, 1959, p. 16, Col. 3). [This and above quote cited in Barrett and Ferenz at pages 17 and 18].

"If a return clearance is denied, a resident applicant must either sell out and depart permanently or resign himself to an indefinite stay in Guam. If the applicant is married to an alien, the alien husband or wife, as

the case may be, cannot obtain re-entry clearance even though the citizen spouse can. The alien spouse must depart permanently or stay home while the citizen spouse is gone. As in the case of citizens who have been denied re-entry, if an alien departs Guam, he cannot return unless he has obtained clearance. Denial in such instances is pursuant to Navy policy, ...which has no relationship with the United States Immigration and Naturalization Service, nor any law or regulation relating to immigration." (Stevens, supra, pp. 94-95).

Regardless of the status of individuals affected, whether they were merely alien laborers or full United States citizens, the Navy's implementation of its "security clearance" program raised at the very least major constitutional questions respecting denial of Procedural Due Process; Equal Protection of the Law; Right to Travel, and exceeding the authority of an executive order probably void on its face (see generally, Barrett and Ferenz, pp. 8 through 24). However, to the civilian population of Guam during the 1950's these issues had relatively little immediate impact as compared to social and economic disruption caused by the Navy's zealous enforcement of "entry clearance" requirements.

ii.) Social/Economic Impact of Security Clearance Program, 1950-1962

As previously discused in Section D(iv), supra, immediately following reoccupation in 1944 the Naval Government adopted a policy to restrict free enterprise on Guam, not only with respect to prohibiting non-Guamanians from doing business on the island, but also restricting the day-to-day commercial activity allowed to the few Guamanian entrepreneurs.

"Prior to and immediately following the Second World War the economy depended upon the Navy, in which was vested complete power and supervision over the affairs of Guam. The Navy dictated all economic terms. It brought all imports into the island, and took all exports out. It completely controlled the travel of persons to and from Guam. Development of local business was directly dependent upon the sanction and approval of the Navy. 'Outsiders' were not allowed to engage in business, and following the war until 1950, statesiders were allowed to establish businesses only if interest therein were owned by Guamanians. There was no incentive for outside capital to come to Guam, and no possibility of profits for outsiders. Local merchants were nurtured and assisted by the Navy, and were enabled to make profits only because they

had the blessing and approval of the appropriate Naval officials. There have been those who challenged the contention that Guam should be permitted to develop freely as any territory. It is better, they have said, that Guam should remain no more than a military base, totally dependent upon the strong arm of the Federal Government." (Stevens, supra, p. 119-128). [emphasis added]

"The Navy Department during it administration of Guam has never thought in terms an American standard of living. Postwar wages for Guamanians have purposely been kept low in order that the natives would not become accustomed to a standard of living which would not be maintained over a period of time." (Zenor, supra, p. 223).

In addition to the Navy's history of economic control over the island, the effects of which continued even after the enactment of the Organic Act, the lack of separate and comparable civilian facilities in such areas as transportation and utilities resulted in an extension of dependency upon the military by the native population during the 1950's:

"The factor which militates against the idea of Guam's being a 'free port' is the status of Guam's only harbor. Apra Harbor in its entirety, together with its environs, is a military reservation under control of the Navy. Not only is American traffic in and out of the harbor closely scrutinized and regulated by the Navy, but also Guam is a closed port with respect to vessels and aircraft of foreign nations...Nearly all commercial power on Guam is supplied by the Navy. However, the Navy feels that a considerable portion of its plant capacity must be reserved for potential military needs, with the result that power for civilian use is restricted and rationed. Every application for power is carefully screened. (Stevens, supra, p. 123 and 128). [emphasis added]

It was in the context of such existing restrictions upon commercial activity that the so-called "security clearance" program was instituted in 1950, with the result that essentially implicit burdens upon civilian businessmen became outright prohibitions:

"[Under the security clearance program] citizens and aliens alike have been deprived of liberty and property [with out due process of law]. Joseph Siciliano, a local businessman, somehow incurred the enmity of the Navy and has been excluded from Guam and told never to return. The actual reasons are known to no one but the Navy. Siciliano's substantial business interests in Guam have diminished or vanished due to his

prolonged absence." (Barrett and Ferenz, p. 24). [see Siciliano Affidavit, filed in conjunction herewith]

"So long as freedom of movement is prohibited, no sound businessman will invest a large amount of money. Thousands of businessmen pass through Guam each year. The territory has definite economic possibilities, but they are not seen by such businessmen. Many of them do not learn of the possibilities until on their way from the States during the air approach. It is then too late to obtain a security clearance, and the travellers must continue on their way. There have been many instances when proposed trips to Guam were cancelled by businessmen in the States when they learned of the delay and the inconvenience occasioned by the security clearance program." (Stevens, supra, p. 126).

The fact that the "security clearance" program deterred many individual businessmen from investing in Guam cannot be disputed; in addition, however, it was clear that the economy of Guam was being directly held back and repressed during the 1950's as a result of these deterrents.

"[As stated in S.Rep. No. 2109, 81st Congress, Second Session (1950)] 'given a period of peace, the growth of Guam as a transportation and commercial center for American interests on the Far East seems almost a foregone conclusion'...The business community on Guam, however, is agreed that the security clearance requirement has seriously hampered Guam's economic development, particularly as to tourist business. There are no public hotels on Guam, although thousands of tourists transit the island annually. Navy red tape discourage stopovers." (Barrett and Ferenz, p. 4 and 5). [emphasis added]

"Long-range progress and development will not be possible in the absence of a sound economic program on the part of the government, and so long as the present security program is continued...It is doubtful whether a hotel will be constructed so long as the security clearance program remains in effect. If air passengers were free to stop on Guam in route to the Orient, a substantial impetus would be provided to the local economy." (Stevens, supra, p. 125).

"The requirements of the Navy for a special entry authorization before one can visit the island does not encourage potential visitors. Investment in extensive tourist facilities on the island is therefore believed to be a poor risk under these circumstances." (Stanford Research Institute, "Guam: Its Economy and Development Opportunities", 1958, p. 130).

Whether under the circumstances the civilian sector could have taken action challenging continuation of security clearance restrictions is problematical. Clearly, geographical remoteness between Guam and the sources of authority (Department of the Navy) and judicial review (the Supreme Court) in Washington, D.C. was a practical and financial barrier to such action; additionally, the tradition of not challenging an exercise of Naval authority, previously discussed in Section A(iv), was surely a factor. That Guamanians were unhappy with the unjustified extension of Navy control over the island beyond the effective date of the Organic Act, which was to have symbolized the ultimate independence of Guam from military domination, was nevertheless beyond question.

> "A restless spirit is stirring in America's newest territory. Guam's 34,000 native residents want to develop an economy not rooted in the military. <u>The most widespread grievance is the tight security checks the Navy requires of every person, including United States citizens, entering the island. 'It is the principal deterrant to establishing a sound economy,' says the Chamber of Commerce. 'It is keeping out legitimate free enterprise. It is violently opposed to our principles of democracy'</u>." ("Spirit Stirring on Guam", Baltimore Evening Sun, November 15, 1956, p. 6). [emphasis added]

iii.) <u>Conclusion</u>

The "security clearance" program was continued on Guam by the Navy Department until August 23, 1962, notwithstanding the likelihood of its unconstitutionality and the obvious severe negative impact it continued to have on the island, both socially and economically. While the program's ramifications upon the lives of the native population during the 1950's were profound and readily apparant, questions remained unanswered, even after 1962, as to the Navy's motivations in such an unwarranted attempt to extend its historical domination over Guam, even after passage of the Organic Act. Possibly five decades of absolute authority over native affairs made immediate divestment of military prerogative difficult for the Navy to accept. Probably a better explanation, however, was suggested in 1960 by Barrett and Ferenz in the conclusion of "Peacetime Martial Law on Guam".

> "In a speech before the Multnomah County Bar Association in Portland, Oregon, in August, 1957, Judge J. Frank McLaughlin of the United States District Court of Hawaii spoke out against the legality of the

Guam security clearance. His speech was commented upon in an editorial in the Portland Oregonian:

> 'There were probably few lawyers in Judge McLaughlin's audience who would want to undertake to justify legally the U.S. administration's high hand in Guam. The security regulations are, according to the Navy, based on an order issued by President Franklin D. Roosevelt...It is not clear why Guam should be the most stringently guarded of all U.S. territories...[for] the scars of war have disappeared from Guam. But U.S. tourists are not likely soon to explore its charms. The U.S. Navy doesn't want to be bothered. In fact, a Naval spokesman has been heard to take credit for keeping all sorts of "riffraff" out of Guam under cover of the Security Program.'

One can only conclude that the United States Navy is intentionally enforcing the naval security clearance while realizing at the same time that it is unsupported by statute and is unconstitutional. The words of Judge McLaughlin are again appropriate, though he was commenting upon the fact that the Army continued martial law on Hawaii long after it was necessary. He said:

> Yes, "they did it." They did it intentionally. They did it with design aforethought. They did it in knowing disregard of the Constitution. They did it because Hawaii is not a State. They did it because they did not have faith that Americanism transcends race, class and creed.'"

(Barrett and Ferenz, pp. 25-26).

II.

EXISTENCE OF GUAMANIAN CIVILIAN DEPENDENCE UPON THE GOVERNMENT BEFORE AUGUST 23, 1962 RESULTED IN CREATION OF DE FACTO FIDUCIARY DUTY ON THE PART OF UNITED STATES

A.) "Fiduciary relationship" broadly defined to include informal, as well as technical relations

Black's Law Dictionary defines "fiduciary relation" as

"including both technical fiduciary relations and those informal relations which exist whenever one man trusts and relies upon another... It exists where there is special confidence reposed in one who, in equity

and good conscience, is bound to act in good faith and with due regard to the interests of one reposing the confidence." (Black's Law Dictionary, 4th ed., 1968, pp. 753-4).

It has been a settled rule in courts throughout the country, that "the term 'fiduciary relation' is a broad one not susceptible of exact definition. It may exist under variant circumstances." (Roecher v. Story (1931) 91 Mont. 28, 5 P2d 205, 210):

> "Courts of equity have carefully refrained from defining the particular instances of fiduciary relations in such a manner that other and perhaps new cases might be excluded. It is settled by an overwhelming weight of authority that the principle extends to every possible case in which a fiduciary relation exists as a fact, in which there is confidence reposed on one side, and a resulting superiority and influence on the other. The relation and the duties in it need not be legal, it may be moral, social, domestic, or merely personal." (3 Pomeroy, Equity Jurisprudence 956a (5th ed., 1941)).
> [emphasis added]

> "A fiduciary relation does not depend on a technical relation created by or defined by law, but exists in cases where special confidence has been reposed in one who, in equity, is bound to act in good faith and with due regard to the interest of the one reposing confidence." (Miller v. Henderson, (1934) 140 Kan. 46, 33 p2d 1098, 1100).

> "The origin of the confidence is immaterial. It may be moral, social, domestic or merely personal. If the confidence in fact exists, and is reposed by one party and accepted by the other, the relation is fiduciary." (Schweickardt v. Chessen (1928) 329 Ill. 637, 161 N. E. 118, 123).

> "[The term 'fiduciary'] contemplates good faith, rather then legal obligation, as the basis of the transaction. The term includes those informal relations which exist whenever one party trusts and relies upon another,as well as technical fiduciary relations." (Cartwright v. Minton (Texas Ct. App.) 318 S. W. 2d 449, 453).

> "[A 'fiduciary relation'] arises whenever trust, continuous or temporary, is especially reposed in the skill or integrity of another, or property or pecuniary interests in whole or in part, or bodily custody of one person is placed in the charge of another." (Patton v. Shelton (1931) 328 Mo. 631, 40 S. W. 2d 706, 712)

"Fiduciary relations include not only all legal and technical relations such as guardian and ward, attorney and client, principal and agent, and the like, but it extends to every possible case in which a fiduciary relation exists in fact, and in which there is confidence reposed on one side and resulting domination and influence on the other. " (Fisher v. Burgiel (1943) 382 Ill. 42, 46 N.E.2d 380, 385;cited with approval in Carrol v. Caldwell (1957) 12 Ill. 2d, 487, 147, N.E.2d 69, 79: "The fiduciary relation may be moral, social, domestic or even personal in its origin.") [emphsis added].

Guam Civil Code Section 2219, enacted in 1953 and identical to the respective section in the California Civil Code, defines the generic concept of a "trustee." In interpreting this section, the California courts have characterized "fiduciary relations" with the following language:

"Even if a relationship is not fiduciary in the strict legal sense of that term, a fiduciary relation may exist as a fact,...and may be moral, social, domestic or merely personal." (Foster v. Keating (1953) 120 CA2d 435, 261 P2d 529).

"A 'fiduciary relation' may be said to exist whenever trust and confidence is reposed by one person in the integrity and fidelity of another, and the very existence of such a relation precludes the party in whom trust and confidence is reposed from participating in profit or advantage resulting from dealing of the parties to the relation." (Twomey v. Mitchum, Jones & Templeton, Inc. (1968) 262 CA2d 690, 69 CalRptr 222).

Among the various elements of the resulting duty of a fiduciary, the most important is the obligation to act with utmost good faith within the scope of the relation concerning the interests of the party reposing trust and confidence. "A fiduciary is held to the highest standards of fidelity and honesty in his dealings with the party reposing confidence." (Kinsbach Tool Co. v. Corbett-Wallace Corp. (Texas, 1942) 160 S.W.2d 509). The foregoing was most vividly summarized by Justice Cardozo:

"Many forms of conduct permissible in a workaday world for those acting at arms-length are forbidden to those bound by fiduciary ties...uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty... Only thus has the level of conduct for the fiduciary been kept at a level higher than that trodden by the crowd." (Meinhard v. Salmon, 249 N.Y. 458, 464; 164 N.E. 545, 546).

B.) Status of United States Indian tribes as "wards of the country" represents "fiduciary relation" analogous to that arising from dependence of Guamanian civilians before August 23, 1962.

The fiduciary relation of trust and confidence is often found when one party is "dependent" upon the other (Peckham v. Johnson (Texas Ct. App., (1936) 98 S.W.2d 408), as well as "where confidence is reposed on one side and resulting superiority and influence on the other is present." (O"Donnell v. Snowdon & McSweeney Co., 237 Ill. App. 156). Courts have been even more specific in characterizing the relationship between the United States government and the American Indian tribes as that of guardian and ward; in the Handbook of Federal Indian Law (United States Government Printing Office, 1945), Felix Cohen reviewed the common law theory of such a relationship as follows:

> "Typically, in a guardian and ward relation, the guardian (a) has custody of the ward's person and can decide where the ward is to reside; (b) is required to educate and maintain the ward out of the ward's estate; (c) is authorized to manage the ward's property for the benefit of the ward; and (d) is precluded from profiting at the expense of the ward's estate, or acquiring any interest therein." (Cohen, supra, at 169).

The doctrine regarding the relationship of the American Indian tribes to United States government was first set forth in the landmark case of Cherokee Nation v. State of Georgia (1831) 5 Pet. 1, 30 U.S.1, 8 L.Ed. 1, wherein Chief Justice John Marshall stated

> "The Indians are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian. They look to our government for protection, rely upon its kindness and its power; appeal to it for relief to their wants; and address the president as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States, that any attempt to acquire their lands, or to form a political connection with them, would be considered by all as an invasion of our territory, and an act of hostility." (Cherokee Nation, supra, 5 Pet. at 31). [emphasis added].

The United States Supreme Court subsequently held that "protection" was the primary reason for maintaining the concept of guardianship; this protection, however, has now been limited to property and pecuniary interests of the Indians. (Board of Commissioners v. Seber (1942) 318 U.S. 705; 19 Cal. L. Rev. 511). Nevertheless, the rationale of protection has continued to find its source in the Court's consistent characterization of the Indian tribes as "a dependent people, a weak and defenseless people who are wards of the nation and dependent wholly upon its protection and good faith." (Antoine v. Washington (1974) 420 U.S. 194, 200; see also United States v. Kagama (1886) 118 U.S. 375; and Seminole Nation v. United States (1941) 316 U.S. 286). Other holdings of the Supreme Court, such as the following, are of particular significance when compared to the Navy's own characterization of Guam's civilian population during its administration (see e.g., quotation from "Navy Report on Guam: 1899-1950," supra, at page 4 of this Memorandum):

> "[United States conquest of the Indians left them] an uneducated, helpless and dependent people, needing protection against the selfishness of others and their own improvidence. Of necessity, the United States assumed the duty of furnishing that protection, and with it the authority to do all that was required to perform that obligation and to prepare the Indians to take their place as independent, qualified members of the modern body politic. This was classically summarized in United States v. Kagama, 118 U.S. 375, 384-5):
>
> > 'From the Indians' very weakness and helplessness, so largely due to the course of dealing of the federal government, arises the duty of protection'." (Seber, supra, 318 U.S. at 715). [emphasis added].

Pursuant to such findings and observations, federal courts have expressly characterized the relationship of the Indian tribes to the United States government as that of guardian and ward: "The Indians are the wards of the nation. They are communities dependent upon the United States. Dependent largely for their daily food. Dependent for their political rights." (Kagama, supra 118 U.S. at 384). [emphasis added]. "From the beginning of our government to the present time, the Indians have been treated as 'wards of the nation'" (Cherokee Nation v. Kansas Railway Co. (1889) 135 U.S. 6410 "under the guardianship of the United States." (Choctaw Nation v. Atchinson, Topeka &

Santa Fe Railway Co. (10th circ., 1968) 396 F2d 578; see also Squire v. Capoeman, 351 U.S.1; Armstrong v. United States (10th Circ., 1962) 306 F2d 520.

Given the Indian tribes' status with respect to United States government, it is significant to consider comparable statements and references respecting Guam's civilian population taken from Part I of this Memorandum:

> "The civil rights and political status of native inhabitants of the territory of Guam shall be determined by Congress." (Treaty of Paris, 1898, supra, Memorandum, p. 1).

> "The Secretary of the Navy will take such steps as are necessary to give [the territory of Guam] necessary protection and government." (Executive Order Nol. 108-A, supra, Memorandum, p. 1).

> "The population [of Guam] as a whole was regarded as a 'ward of the Navy.'" (Roy E. James, 1949, supra, Memorandum, p. 2).

> "As a result of the unique interest of the Navy in the island of Guam, the natives...have been considered wards of the Navy... The inhabitants of the island have been under the special and sole protection of the Navy Department." (House Report No. 1135, quoting letter from Acting Secretary of the Navy H. Struve Hensel to Speaker of the House Sam Rayburn, June 9, 1945, supra, Memorandum, p. 2).

> "The general policy of the Naval Government is to guard [the inhabitants of Guam] from exploitation by outsiders and to protect their lands... They are not self-supporting and require not only federal economic assistance but also careful training and supervision from the paternal island government. ... These people have not yet reached a stage of development commensurate with the personal independence, obligations, and responsibilities of United States citizenship." (Secretary of the Navy Claude Swanson, letter to United States Senate, 1937, supra, Memorandum, p. 6).

> "Senator Tydings:... I do not know of any finer wards that we have got in the world than in Guam. They are absolutely loyal.... They have suffered like they have suffered everywhere. Their man, woman, and children have been killed in the course of the fighting.... In view of the fact that the Guamanian people are very loyal, they are good people, good wards to us, I think [the Meritorious Claims Act] is a good investment in that particular island." (Hearings on S. 1139, 79th Congress, June 26, 1945, supra, Memorandum, p. 27).

Despite the fact that in 1924 American Indians became citizens of the United States by virtue of an act of Congress, the courts have consistently held that the mere acquisition of citizenship had no effect upon the continuation of "wardship" status (United States v. Antelope (9th Circ., 1975) 523 F.2d 400). Accordingly, the Indians' condition of "incompetency," requiring maintenance of "guardianship," was held to have continued, justifying restrictions upon commerce and upon alienation of real property, which would otherwise be in violation of common law rules against restraints on alienation of real property. (Serber, supra, 318 U.S. 705; Maryland Casualty Co. v. Citizens Nat. Bank of West Hollywood (1966) 361 F2d 517). The Ninth Circuit in Particular has been in accord:

> "The Supreme Court of the United States has consistently rejected all arguments that federal power to regulate the Indians has diminished as federal control has been relaxed. Thus, the Court has held that the grant of national and state citizenship to the federal government." (In re Carmen's Petition (1958) 165 F.Supp. 942, 948; aff'd, 9th Circ., 270 F2d 809; cert. den 361 U.S. 934).

The foregoing judicial policy acquires significance when consideration is given to an argument that passage of the Organic Act in 1950 may have affected the previously express "wardship" status of Guamanian natives. Such a Policy represents the realistic recognition that " weakness and dependence" do not disapper merely through passage of legislation. It is evident that Congress also found no such particular effect to have arisen from passage of the Organic Act when it saw fit to incorporate the date of August 23, 1963 (rather than August 1, 1950) as the point in time cutting off the right to recovery for property acquisitions arising under Section 204 of the Omnibus Territories Act of 1977.

While application of such principles as the foregoing to the status of the native Guamanians in question may be realized only through analogy, the approach adopted by the federal courts in over a century of adminstering justice in the affairs of the Indian tribes has always been pronounced, direct and unequivocal.

> "The ultimate goal of the federal government in its guardianship policy has been to protect Indians from exploitation and abuse while preparing them to enter the mainstream of American society." (In re Humboldt Fir, Inc. (1971) 426 F. Supp. 292).

"The government's conduct...in dealing with the Indians should be judged by the most exacting fiduciary standards." (Seminole Nation v. United States (1941) 316 U.S. 286, 296; see also Pyramid Lake Paiute Tribe v. Morton (D.C. Dist. Ct., 1973)354 F.Supp. 252; Rockbridge v. Lincoln (9th Circ., 1971) 449 F.2d 567, 570).

III.

CONCLUSION: STATUS OF DEPENDENCE ESTABLISHES UNFAIR INFLUENCE AS A MATTER OF LAW UNDER SECTION 204 (a); ALTERNATELY, PRESUMPTION OF UNFAIR INFLUENCE AS A RESULT OF THE EXSISTENCE OF A FIDUCIARY RELATIONSHIP BETWEEN GUAMANIAN CIVILIANS AND THE UNITED STATES GOVERNMENT BEFORE AUGUST 23,1963

Section 204 (a) of the Omnibus Territories Act of 1977 allows a right to recovery to any claimant who establishes certain threshold requirements, including, inter alia, that the real property in question was acquired by the United States for less than fair market value "as a result of (1) duress, unfair influence or other unconscionable action, or (2) unfair, unjust and inequitable actions of the United States." [emphasis added].

Although there is no formal legal doctrine of "unfair influence," it can reasonably be assumed that Congress' intent was to liberalize and expand the traditional equitable doctrine of "undue influence" by striking "undue" and inserting the term "unfair." That Congress intened to make more flexible such costomary technical doctrines may be inferred from statements of the House-Senate conferees concerning this provision, such as the following:

"SENATOR JOHNSTON:... I think that we should always require the United States to act with fairness and propriety in its dealings with individuals. If, in fact, the United States did take advantage of the situation or orchestrated the situation then I believe that justice should be done ." (Congressional Record, Volume 123, no. 153, 95th Congress, First Session , September 28, 1977).

It is settled that the doctrine of "undue influence" also includes the concept of "unfairness"; for example, when a fiduciary enters into a beneficial transaction

with a party who has placed trust or confidence in the fiduciary, "unfairness" may arise. (Dawson, "Economic Duress," 45 Mich. L. Rev. 253, 279). Other similar term have also been held to merge within the concept of "unfairness," such as "duress" (Creek Nation v. United States (1971) 26 Ind. Cl. Comm. 419); "unconscionability" (Western Shoshone Identifiable Group v. United States (1972) 29 Ind. Cl. Comm. 50); "dishonesty, injustice, or employing a trick or artifice" (Phillips v. United Brotherhood of Carpenters, 66 A.2d 227, 229); and "inequality" (Pryor v. Bryan, 66 P. 348). Accordingly, it is submitted that a discussion concerning the stricter concept of "undue influence" falls within the purview of Section 204 (a)'s more general reference to "unfair influence.."

According to the Restatement First of Contracts, the "ultimate question" in the determination of the existence of "undue influence" is

> "Whether the result was produced on the one hand by influencing a freely exercised and competent judgment , or on the other by dominating the mind or emotions. The weakness or dependence of the person persuaded is a strong circumstance tending to show that persuasion may have been unfair." (Restatement First of Contracts, §497, comment c) . [emphasis added].

Although in discussing "undue influence" courts have customarily "not undertaken to define any fixed principle" (Faulkner v. Beatty (1958) 327 p.2d 41; see also Scurry v. Cook (1950) 59 S. W. 2d 371), there have been two general elements considered essential to any showing of "undue influence " as a distinct equitable doctrine: 1) the opportunity to exercise such influence (most commonly arising through a fiduciary relationship); and 2) a resulting loss of free will.

The rule specifically applicable in California regarding establishment of the elements of undue influence is set forth the leading case of Odorizzi v. Bloomfield School Dist. (1966) 246 Cal. App. 2d 123, 54 Cal.Rptr. 533, wherein the "overpersuasion" necessary for a finding of undue influence was defined as including (1) unusual manner, time or location of the transaction site; (2) the degree to which one party controlled the terms and timing of the negotiations; and (3) the presence and availability of outside advisors. (Odorizzi, supra, at 133). A more general rule was stated by the Supreme Court of South Dakota, which relied upon a four-point test requiring (1) a person subject to influence; (2)

the opportunity to exert undue influence; and (3) a disposition by the superior party to exert influence; and (4) a result indicating the use of undue influence. (Davies v. Toms (1954) 63 N.W. 2d 406).

With respect to application of the doctrine of undue influence in actions arising under Section 204 (a), it is significant to note the considerable emphasis placed upon the question of availability of "outside, disinterested advisors" at the time of the transaction in question (Odorizzi, supra, at 133; see also 14 ALR2d 666); whether the superior party may have taken "unfair advantage" of the other's "economic, emotional or personal condition" (Brosher v. First National Bank of Birmingham (1936) 168 So. 42), and whether the party benefitting from the transaction actively solicited commencement of the negotiations (14 A.L.R. 2d 670).

As mentioned above, however, the most common means of establishing the existence of "undue influence " has been through showing that there existed a fiduciary relationship between the respective parties to the transaction in question.

> "Where a transaction is the result of moral, social, or domestic force exerted upon a party, thus controlling free action of his will and preventing any true consent, equity may relieve [the person influenced] on grounds of undue influence .... In most instances, undue influence naturally has a field to work upon in the conditions or circumstances of the person influenced, which render him peculiary susceptible in yielding - his dependent or fiduciary relationship toward the one exerting the influence his mental or physical weakness, his pecuniary necessities, his ignorance, and his lack of advice." (Link v. Link (1971) 179 S.E. 2d 697). [emphasis added]

The final step in finding undue influence in a transaction between fiduciaries was described by the Supreme Court of Michigan in In re Wood's Estate, 132 N.W. 2d 35, as follows: "Once a fiduciary relationship is established, and the fiduciary benefits [from the transaction], the law recognizes a presumption that he in whom trust was reposed exercised his influence unduly." (ibid. at 40). [emphasis added]. The court went on to quote the California case of Ross v. Conway (1892) 92 Cal. 632, 28 P. 785):

> The rule is inflexible that in every transaction between persons standing in a fiduciary relation, the law will presume that he who held an influence over the other exercised it unduly to his own advantage....

> Without any proof of the exercise of power beyond what may be inferred from the nature of the transaction itself, the court will impute an exercise of undue influence. The transactions will not be upheld unless it is shown that the other party had independent advice , and that his act was not only the result of his own volition, but that he both understood the act he was doing and comprehended its result and effect." (Ross, supra, at 786). [emphasis added].

Guam Civil Code Section 2235, enacted in 1953, codifies the same principle as it arises in transactions between trustee and beneficiary. The courts of California have interpreted the identical provision in California Civil Code Section 2235 using such language as the following holding of the Supreme Court of California:

> "A person making a claim upon a contract obtained from another as to whom she stands in a fiduciary relation will be presumed to have taken undue advantage of the other person, unless it shall appear that such person had independent advice and acted on his own volition and with full comprehension of the results of his action." (Herbert v. Lankershim (1937) 9 C2d 409, 71 P2d 220). [emphasis added]

> "A grantee holding a fiduciary relationship towards the grantor will be presumed to have taken undue advantage of the grantor in the absence of showing that the grantor had independent advice and acted not only of his own volition, but with full comprehension of the results of his action in executing the deed." (Sparks v. Sparks (1951) 101 C.A.2d 129,225 P2d 238). [emphasis added]

Without reiterating or elaborating upon the facts set forth in detail in Part I of this Memorandum, it is submitted that the circumstances under which the United States undertook land acquisitions from natives of Guam between July 21, 1944 and August 23, 1963, involved "unfair influence" either as a matter of law or, alternatively, that at the very least a presumption thereof must be deemed to have arisen by virtue of the existence of a fiduciary relationship with civilians from whom interests in real property were acquired.

The analogy previously discussed regarding the "wardship" of the American Indians is significant in this connection. As a practical matter, two distinct types of "wardship" appear to have existed on Guam subsequent to the Treaty of Paris: The first much resembled a ship command, remaining more or less in a constant state with an express intended purpose of remedying perceived

social and historical "backwardness"; this era came to a sudden and absolute end on December 8, 1941, when the Japanese began their harsh occupation. After liberation in 1944, the subsequent "wardship" under renewed United States authority maintained certain structural characteristics of the pre-war model, but was otherwise completely different both in form and substance. With the natives on Guam in a state of physical and mental shock, disorientation, emotional trauma and dislocation after 2 1/2 years of torture, execution, forced labor, hunger, sickness and insults, the question of competency in general, and capacity to do business in particular, was much more aggravated and profound. Similarly, the capacity of the United States as a "guardian" was significantly different in the post-war era, as the goal of accomplishing a prompt military construction program and furthering national security interests became of paramount importance. No longer was Guam to remain a remote, insignificant Naval refueling station manned only by a small garrison; admirals soon replaced captains and accountability to the Department of the navy in Washington became of prime consideration in the decision-making process of the Naval government.

Building upon the pre-war model of paternalistic and benevolent "wardship" under circumstances of post-war destruction and disruption, the United States therefore found itself in the midst of deepening dependency on the part of native Guamanians struggling to reassemble shattered lives. It is difficult to conceive how under these circumstances one could deny the existence of a fiduciary obligation on the part of the United States arising from a reality so pervasive and absolute. It is furthermore apparent that notwithstanding the profound state of weakness in which the native population found itself, the United States increased and intensified its already rigid controls over every aspect of civilian life. As described by Thompson, supra, at page 37 of this Memorandum, in her 1947 observations of post-war Guam,

> "The tendency seems to be towards still more minute regulation of the public and personal lives of Guamanians than even [before the war when there] was a degree of flexibility in the economic life. Now it appears that the government is attempting to regulate completely the economy of the island. Public utilities,...all native business enterprise, wholesale and retail, are government authorized and licensed; all imports and exports are regulated; the native is told exactly where, how, and according to what design to rebuild his home. At present even the movements and transportation of the native population, who were

bombed out of their homes and whose homes were condemned, are also controlled."

Did the United States have a fiduciary duty, or otherwise, to protect the interests of native Guamanians from whom real property was acquired after the war and, if so, can breach of such duty be inferred from the government's actions during this period? It is difficult today to project the feelings of gratitude and patriotism which sprung from the wartime emotions prevailing so intensely during the years following liberation from the Japanese; however, the fact that such deep feelings existed does not negate the basic question which has been posed in this proceeding, both by history and by express legislative mandate from the United States Congress: Were the natives of Guam sufficiently strong, independent and well-advised during the Land Acquisition Program to negotiate and bargain at arms-length with representatives of the United States government, or were they at that time physically, mentally, economically and culturally in a state of dependence upon the very government seeking to become their adversary in a transaction of major business complexity and legal significance?

It is submitted that the latter characterization is far closer to the truth; the actions and administrative measures, as well as the omissions, of the United States government in pursuing its Land Acquisition Program on Guam flew in the face of fiduciary responsibility and, by any reasonable legal standard, involved an exercise of "unfair influence." Whether some of these failures, such as delay in appropriations from Washington in support of the rehabilitation program, could be considered reasonably excused or characterized as unavoidable consequences of the post-war era, is not relevant to the narrow question of ascertaining the status of the natives of Guam and their relation to the government. It should perhaps be noted nevertheless that other methods and procedures than those adopted might have been more productive and desirable: Larger and speedier remedial appropriations; availability of expert professional assistance to the natives in adversary proceedings; greater accountability on the part of the military in justifying acquisitions; and a more careful and realistically-timed resolution of the crucial issue of land valuations.

Viewing this period today from the armchair of history presents numerous inescapable conclusions, many of which have been discussed in the course of this Memorandum. At the very least, it can be said that the era of

domination/dependence exemplified by the United States' administration of Guam prior to the removal of military security restrictions in 1962, was one of profound consequences; today, however, relatively few are able to communicate from first-hand knowledge their experience during this critical era, and thus of necessity much is left to establish through secondary and documentary authority. Nonetheless, recalling the words of the Hopkins Committee from 1947 effectively illustrates the foundation of any historical judgement of these events:

> "On Guam, the war brought widespread destruction, but over and beyond this, it brought death to many, brutalities to more, and ruthless oppression to all over a long period. Now months after cessation of hostilities the Guamanians find themselves, because of the strategic position of their island, outnumbered in population by military forces of the Army, Navy, and Marines. They are dispossessed of homes and lands which have been destroyed or taken from them, and they are without adequate understanding of processes by which to secure replacement or compensation... There is no lack of knowledge on the part of the Navy as to what ought to be done... 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 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 the amount awarded. It has been neither." (Hopkins Committee Report, supra, page 49 of this Memorandum.)