

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

<b>MARCIA FEE ACHENBACH, <i>et. al.</i>,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	<b>Case No. _____</b>
<b>v.</b>	)	
	)	
<b>THE UNITED STATES,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	
	)	

---

**COMPLAINT**

Plaintiffs Marcia Fee Achenbach and 597 other persons, or their estates, individually identified in Appendix 1, by their attorneys Anthony D’Amato, David G. Duggan, and Susan M. Keegan, bring this action against the United States of America and allege the following.

**I. OVERVIEW**

1. The members of the plaintiff class are, or are the legal representatives of, civilian citizens of the United States present in the Philippines, Guam, Wake, or Midway Islands, when they were injured or killed by the Japanese armed forces in the period of December 7, 1941 to September 2, 1945.

2. The defendant is the United States of America, including all of its offices and agencies. Said defendant deliberately stranded the plaintiffs in the Philippines, Guam, Wake, and Midway, sacrificing their health, liberty and property in order to further the

affairs of state. It did so without the plaintiffs' consent and in violation of the plaintiffs' rights as detailed herein.

3. Plaintiffs allege that the United States deliberately left them in harm's way by preventing them from securing passage back to the United States despite the overwhelming probability if not the virtual certainty of Japanese attack. American officials falsely reassured the members of the plaintiff class that the Islands were well-defended and perfectly safe. However, the Philippines was under-defended and vulnerable to enemy attack. Moreover, the United States was making strategic decisions that were intended to bring about a Japanese attack upon the Philippines. The decisions had the effect intended, and on and after December 7, 1941, plaintiffs were subjected to injuries, torture, and death, all of which were, in the aggregate, foreseeable consequences of the plans and policies of the United States. United States decision-makers knew or had reason to know of the Japanese atrocities committed against Chinese civilians such as the "Rape of Nanking" and had no reason to believe that American civilians in the Philippines, Guam, Wake, and Midway islands would be treated any differently if they were abandoned there and left subject to the tender mercies of the armed forces of Japan. Illustrative of the actual injuries and deaths suffered by typical members of the diverse plaintiff class are the accounts of some sample cases spelled out in Part III of this Complaint entitled "Plaintiffs." Of course, none of these individual cases could have been precisely foreseen, but in the aggregate they were all reasonably foreseeable given the notorious history of Japan's disregard for civilian lives in its on-going war of aggression against China.

4. Jurisdiction is based upon 28 USC § 1491 and is founded upon the First Amendment to the United States Constitution, the Due Process and Takings Clauses of the

Fifth Amendment, the Equal Protection Clause of the Fourteenth Amendment made applicable to the defendant through the Due Process Clause of the Fifth Amendment, and the Constitution in its entirety as a social contract and common-defense compact.

## **II. HISTORICAL BACKGROUND**

### ***A. Japan's Strategic Objectives***

5. Since winning the Russo-Japanese war of 1904-06, Japanese military planners debated the comparative merits of pursuing a northern strategy, i.e. attempting to conquer portions of land in east Siberia, Korea, and Manchuria, versus a southern strategy, i.e., attempting to conquer the Philippines, Dutch Indonesia, British Borneo, Thailand, and French Indochina, along with adjacent coastal areas in southeastern China including Hong Kong. Each strategy had its merits and proponents. The northern strategy, championed primarily by the Japanese Army, could strike a blow against global communism and provide ample continental living space for Japan's burgeoning population huddled on its rocky island home. The southern strategy, championed primarily by the Japanese Navy, had the advantage of affording access to strategic minerals and the rich petroleum reserves of British Borneo and Dutch-controlled Indonesia as well as advancing Japan's claim of Asian racial superiority in the Far East.

6. In Europe, in the 1930s, fascist leaders in Germany, Italy, and Spain were attempting to forge an alliance to combat communism. Japan was engaged in some of these negotiations, and to Europe's fascists, offered the advantage of opening a two-front war against the Soviet Union by attacking eastern Siberia.

7. In 1931, Japan tested its northern strategy with a quick and successful invasion of Manchuria, where it installed a puppet regime. The League of Nations and the United

States condemned Japan's action. In 1933, Japan withdrew from the League. The attack on Manchuria meant that Japan would have to face more hostility from the rest of the world, especially China. In consequence, Japan began to favor military rather than diplomatic solutions.

8. In attacking Manchuria, the Japanese government had some reason to believe that China would support Japan's northern strategy because of Chinese fears of Soviet communist expansion. But the Japanese army in Manchuria brutalized and enslaved Chinese citizens, turning China into a bitter enemy. The leader of the Chinese Nationalist government, General Chiang Kai-shek, decided that he would rather fight both the communist guerrillas and the Japanese invaders rather than place his trust in Japan. The government of Japan, in turn, was surprised by Chiang's apparently irrational military decision to fight two great military powers at the same time.

9. The unexpected vigor of China's military resistance, coupled with Premier Josef Stalin's amassing of large Soviet armies in Siberia to defend its eastern seaboard, led to the realization by Japanese military leaders that they could not pursue the manpower-intensive northern strategy against Siberia if there remained a danger of China's armies attacking their rear. The Japanese military planners therefore decided to weaken and possibly neutralize China. The Japanese army clashed with Chinese forces in July 1937, and succeeded in occupying almost the entire west coast of China. But again, the Japanese soldiers committed severe war atrocities upon the Chinese population including the infamous "Rape of Nanking." These barbarities, which served to alienate public opinion in the United States, made it impossible for the Japanese army to control the Chinese

population unless at gunpoint, thus bogging down Japanese soldiers in China in a holding pattern for the entire duration of the Second World War.

### ***B. Germany's Preparations for Global War***

10. As Germany prepared for war in the three years prior to its surprise attack on Poland on September 1, 1939, it was engaged in continuous talks with representatives of Italy and Japan. Germany wanted a tripartite offensive and defensive alliance with these other two dictatorships to help clear the way for its hegemonic designs on Europe. While Japan hesitated, Italy in May 1939 allied herself formally with Germany. According to the official history of World War II by the United States Department of the Army:

By the spring of 1939 the [Japanese] Army was ready to commit Japan fully to the Axis. But there was sharp disagreement in the Cabinet. The Navy and Foreign Ministers insisted on an agreement directed primarily against the Soviet Union and refused to accept any commitment which might involve Japan in a war against the Western Powers. App. 2, p. 52.

The Japanese government hesitated while its ambassadors assured the German government of its friendship and its sharing of goals with Germany.

11. To Japan's great surprise, on August 23, 1939, Hitler concluded a non-aggression pact with Stalin that in a secret protocol partitioned Eastern Europe between Germany and the Soviet Union. In the words of the official U.S. Army history of World War II:

The German-Soviet Pact was a stunning blow to Japan's program for expansion and to the Army's prestige. The Japanese felt betrayed and bewildered and the Premier promptly offered his resignation to the Emperor. App. 2, p. 52.

Japan had to shelve its "northern" expansionist policy against the Soviet Union because Hitler and Stalin were now allies. Japan could no longer count on a two-front war to defeat Stalin.

12. With the non-aggression pact of August 23<sup>rd</sup> as security for his eastern flank, Hitler was able to attack Central Europe. In the early morning of September 1, 1939, without declaring war, the German army and the Luftwaffe attacked Poland. The Soviet Union invaded eastern Poland on September 17, 1939. Poland surrendered to the Nazis on September 27, 1939. As Japan watched from afar, the Soviet Union attacked Finland on November 30, 1939; Finland signed a peace treaty with the Soviets on March 12, 1940. In April, German troops moved toward Western Europe, invading Denmark and Norway. A month later, the Nazis invaded France, Belgium, Luxembourg, and The Netherlands. The Netherlands surrendered to Germany within five days; Belgium surrendered in eighteen days. On June 10, 1940, Norway surrendered to the Nazis and Italy declared war on Britain and France. On June 22, France formally surrendered to the Nazi invaders. Hitler had achieved military success beyond anyone's imagination.

13. Because of Hitler's non-aggression pact with the Soviet Union, as well as the most recent clash between Japanese and Soviet troops in 1939 on the border between Manchuria and the Mongolian People's Republic that resulted in a disastrous loss of 50,000 Japanese troops, App. 3, p. 127-28, the Japanese military planners decided that Japan would embark upon a southern strategy to replace the northern strategy. This would involve attacking the countries of southeast Asia. Now that The Netherlands and France had fallen, it would be easier for the Japanese Navy to take over French Indo-China and the Dutch East Indies.

14. Japan decided that it was late, but not too late, to seek an alliance with Germany. But Hitler now raised Japan's price of admission to the Axis Powers. In return for his support of Japan's expansion in southeast Asia, he wanted a Japanese commitment

to hold the United States at bay by threatening Hawaii and the Philippines if America entered the war in Europe. Since the risk-averse Japanese Premier thought the price too high, the Army on July 16, 1940, brought about his fall and the dissolution of the Japanese Cabinet. The more militaristic Prince Konoye became Premier, and on July 17<sup>th</sup> appointed General Tojo as Minister of War. With the Army's full support, Prince Konoye signed a Tripartite Pact with Germany on September 27, 1940. The Axis Powers now consisted of Germany, Italy, and Japan. They acquiesced to Hitler's non-aggression pact with Stalin.

15. Throughout this period Japan had been importing strategic raw materials and oil from the United States. American military planners were aware of Japan's designs and preparations. In July 1940, President Roosevelt restricted the shipment of arms and ammunition, aluminum, airplane parts, aviation motor fuel, and steel scrap to Japan. But shipments of oil were not restricted. Oil was the most important import needed by Japan, as its own domestic production only accounted for 12% of its military needs—and this after a total prohibition on civilian motor vehicle traffic in Japan in 1937. App. 2, p. 56. Oil was vital to the Japanese Army and even more important to the Navy, which was entirely diesel-fueled. In addition, Japan was assembling a formidable carrier-based air force which also required petroleum. During the 1930s, Japan had prudently stockpiled about 55 million barrels of oil, which would have been enough to last a year and a half or longer. App. 4 p. 268. Based on privileged access to studies by the post-war United States Military Intelligence Division of the Supreme Headquarters Tokyo, and information furnished by Colonel Hattori Takushiro (former Chief of the Operations Section of the General Staff of the Japanese Army), Herbert Feis<sup>1</sup> concluded that by 1941:

---

<sup>1</sup> Herbert Feis served in the State Department as Advisor on International Economic Affairs. After the war, when he was a member of the Institute for Advanced Study at Princeton, he was given access to the

It was decided by Imperial Military Headquarters that to be sure of enough oil, rubber, rice, bauxite, iron ore, it was necessary to get swift control of Java, Sumatra, Borneo, and Malaya. In order to effect the occupation and protect the transport lines to Japan, it was necessary to expel the United States from the Philippines, Guam, and Wake, and Britain from Singapore. App. 4, p. 269.

Without oil, Japan would be able to conduct military operations only for about a year and a half, and then its army would be bogged down and helpless in both Siberia and China.

16. Even though the United States was itself rationing oil on the East Coast, it nevertheless continued to sell oil in large quantities to Japan from the West Coast in 1940 and up to the summer of 1941. One reason for continuing to supply Japan with oil was that the American military planners in mid-1940 did not want to precipitate war with Japan. If they had cut off oil exports to Japan, they reasoned that the Japanese Navy would have had no choice but to unleash its southern strategy, namely, to attack Borneo and the Dutch East Indies in order to secure the necessary supplies of oil.<sup>2</sup> Second, by allowing the flow of oil to continue to Japan, the United States hoped to keep alive Japan's northern strategy that American planners knew had once been Japan's preferred strategy. From the standpoint of American planning, now that Hitler and Stalin had signed a non-aggression pact and the Soviet Union had become a major threat to Europe and the United States, an attack by Japan against the Soviet Union would divide the Axis powers and thus redound to the immense benefit of Great Britain and the United States.

---

voluminous archives of the State Department, the Roosevelt papers, the diaries of the leading American officials, the records and exhibits of the International Military Tribunal for the Far East, documents from the captured German and Italian archives, and the "Magic Codes" that decrypted Japanese secret messages, a primary source of U.S. intelligence on Japanese decisions.

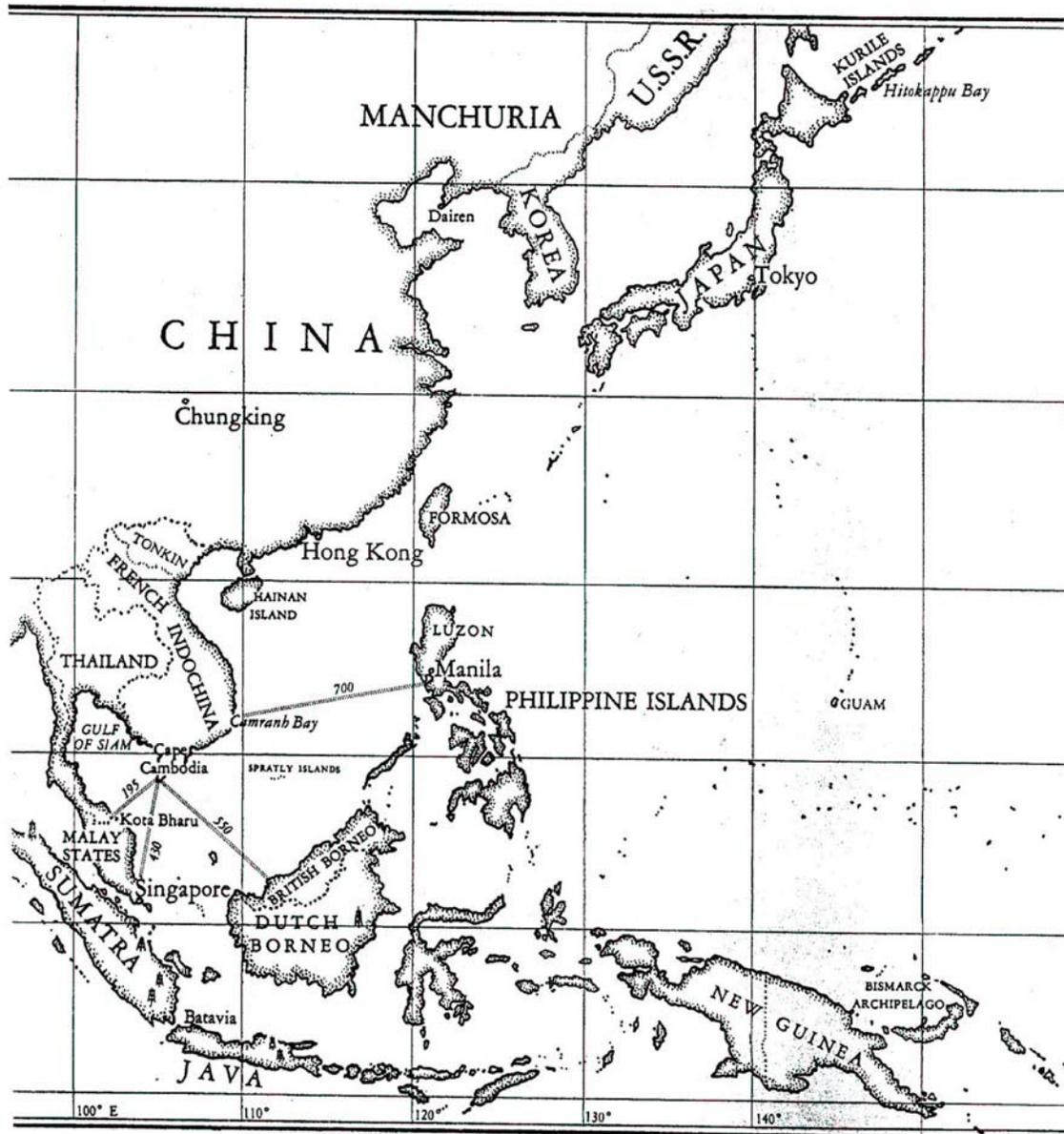
<sup>2</sup> In the spring of 1941, Admiral Kichisaburo Nomura stressed "in every talk" with Secretary of State Cordell Hull that American blockages of essential raw materials to Japan might set Japan off for the south, and if the US stopped oil, "any remaining influence of the Japanese advocates of peace would vanish." App, 4., at 199.

### *C. The Philippines and its Military Significance*

17. The Philippines lay in the way of Japan's southern strategy. With several of the best harbors in the Pacific and an undermanned American military garrison, the Philippines provided Japan's military planners with both a military target and a future base of operations. American military planners knew that if Japan employed its southern strategy, the Philippine Islands would be attacked and seized. The Philippines, comprising almost 7,100 islands with a total area of 115,600 square miles, extends for 1,150 miles from Borneo to Formosa. The Philippines is 7,000 miles from the West Coast of the United States. It is strategically located in the geographic heart of the Far East, astride the trade routes between Japan and southeast Asia with the great port of Manila at the midpoint (see Map). Not only would the Japanese Navy need Manila as a halfway port between Japan and southeast Asia, but more importantly, in the event of a war Japan could not afford to leave Manila in the hands of the United States because the American Navy at Manila could then bisect and cut off Japanese naval movements. To make matters worse from Japan's point of view, the presence of an American navy in Manila would make it impossible for Japan to ship oil from Borneo and the Dutch East Indies north to Japan by oil tankers, for the slow-moving tankers would be easy prey for bombardment from American battleships and American planes that would be launched from Luzon, the American airbase in the Philippines.

18. The United States had annexed the Philippines and Guam on December 10, 1898, as part of the Treaty of Paris ending the Spanish-American War. But it was early realized that defense of the Philippines might cost the United States more than it was then

# The Far East, 1941



The Philippine Islands lie in a direct maritime path between Tokyo and the oil rich areas of Borneo and the Dutch East Indies.

worth. The Army-Navy Joint Board decided in 1908 to locate America's major Pacific base in Hawaii rather than the Philippines, even though the army favored the Philippines. App. 2, p. 24. President Theodore Roosevelt wrote that the Philippine islands "form our heel of Achilles." App. 5, p. 408. In 1919, Captain Harry E. Yarnell, one of the American Navy planners, wrote "it seems certain that in the course of time the Philippines and whatever forces we have there will be captured." App. 2, p. 25. A small American military garrison was established in the Philippines. In 1933, after Japan's successful invasion of Manchuria, General Stanley D. Embick, commander of the harbor defenses at Manila, wrote in protest of the American "Orange Plan" ("Orange" was the military code word for Japan):

[T]he Philippine Islands have become a major military liability of a constantly increasing gravity. To carry out the present Orange Plan—with its provisions for the early dispatch of our fleet to Philippine waters—would be literally an act of madness. No milder term can be employed if facts are squarely to be faced. App. 6, p. 415.

A report of the Joint Army-Navy Board of April 1939, which became the basis for much of the strategic planning before Pearl Harbor, had called for the garrisons in Hawaii, Alaska, and Panama to be reinforced, but not in the Philippines, "apparently," in the words of the official Army historian, "on the assumption that their loss was certain." App. 2, p. 70.

19. On February 7, 1941, the U.S. Commander of Naval Operations sent a message to the Commander-in-Chief of the Asiatic Fleet determining that if Japan moved south, U.S. war planners deemed an attack on the Philippines to be inevitable. App. 7, p. 27. The American military planners had accurately predicted that the Philippines "would be one of the early objectives in a war with the United States." App. 2, p. 99. Their information was based upon the "magic intercepts"—the successful American code-breaking of Japanese military transmissions—as well as upon humint (human intelligence) from American spies

in Tokyo. Japanese records seized after the war confirmed that detailed operational plans had indeed been drawn up for the seizure of Malaya, Java, Borneo, the Bismarck Archipelago, the Netherlands Indies, and the Philippines. App. 2, p. 105. Eight hours after Japan's surprise attack on Pearl Harbor on December 7, 1941, Japan attacked the Philippines with decisive and devastating effect.

20. The islands of Guam, Wake, and Midway also were American possessions in the Pacific. They were spaced out between the Philippines and Hawaii. In December 1938, a naval board headed by Rear Admiral Arthur J. Hepburn recommended that Guam should be developed into a fully equipped fleet base with air and submarine facilities. App. 2, p. 43. Such a base would aid greatly in defending the Philippines. However, Congress refused to appropriate the necessary funds, with the result that Guam, as well as Wake and Midway, were left virtually undefended. App. 2, p. 43. The American military garrison on Guam was composed of 365 Marines, a small force of natives, and a navy consisting of three patrol boats; the largest weapon was a 30-caliber machine gun. Wake Island had 388 Marines, 5-inch coastal guns, and .50 caliber anti-aircraft guns. The largest group on Wake were American civilians including 70 Pan American Airway employees and over 1,000 construction workers. Midway had a naval air station garrisoned by a small Marine force. App. 2, p. 101.

***D. The Evacuation of Americans from Asia—But Not from the Philippines***

21. In the 1940 presidential election campaign, both Franklin Delano Roosevelt—seeking an unprecedented third term—and the Republican candidate Wendell Willkie, supported the American public's overwhelmingly pacifist sentiment. The antiwar plank of the Republican platform read: "The Republican party is firmly opposed to involving this

nation in foreign war.” The Democratic Party platform stated unequivocally: “We will not participate in foreign wars, and we will not send our Army, naval, or air forces to fight in foreign lands outside of the Americas, except in case of attack.” President Roosevelt was most emphatic in his speech in Boston on October 30, 1940, in words that were often re-quoted: “I have said this before, but I shall say it again and again and again: Your boys are not going to be sent into any foreign wars.”

22. Despite an almost constant series of negotiations with Japanese ambassadors in Washington, American planners increasingly came to believe that war with Japan was almost inevitable. On October 6, 1940, the State Department issued an advisory to all American citizens residing in Japan, China, Hong Kong and French Indo-China to return to the United States. Omitted were the Philippines, Wake, Guam, or Midway. Living in the Philippines at this time were approximately 10,000 American civilian citizens of whom some 3,000 were family members of American military personnel stationed there. (There were also approximately 1,500 British subjects, primarily Australians, living in the Philippines.)

23. American civilians in China and southeast Asia were repeatedly urged to evacuate. Travel restrictions on cargo vessels were loosened in order to accommodate Americans seeking passage. App. 8, p. 450. Loans were provided by the American government to persons who could not afford the price of passage to the United States. App. 8, p. 451. These actions were in sharp contrast to the American policy with respect to citizens in the Philippines, Guam, Midway, and Wake. Those people, who were living in islands of vital strategic importance to the Japanese Navy, were not warned. To the

contrary, American citizens on the Philippines were reassured by American officials, and reassured repeatedly, that they were living in one of the safest places on earth.

24. On October 9, 1940, three days after the State Department advisory to American citizens to evacuate the Far East (omitting the Philippines), the High Commissioner of the Philippines, Francis B. Sayre, issued a statement through the Philippines media stating “there is no reason for anxiety.... Manila is one of the safest places in the Far East today.” He added that “those of us who live here are blest beyond words.” App. 9, p. 4. Clarence Alton Belial, a radio commentator and news analyst known in the Philippines as Don Bell, was unofficially told that no warning should be broadcast telling American citizens to leave the Philippines. Additionally, he was informed that all available transportation facilities were being used for the evacuation of the families of Army and Navy personnel. Bell's public broadcast, issued shortly after Sayre's October 9<sup>th</sup> statement, echoed Sayre's calming words. App. 10, p. 209.

25. Plaintiffs Harry Schaffer and Nita Reid Schaffer were American citizens living in the Philippines. Their son Michael Schaffer was born in August 1926. Mr. Schaffer was employed by the Brent School in Baguio. In July 1941, the Brent School hosted their spring dinner. The Schaffer family attended. Frances Sayre, High Commissioner of the Philippines, was also in attendance because Mr. Sayre's stepson, William Graves, was a student at that school. At dinner, the Schaffers asked Commissioner Sayre whether they should evacuate from the Philippines. Commissioner Sayre dissuaded them from doing so, assuring them that they were safe, everything was fine, and they should not worry about leaving. The Schaffer family suffered through the war years in Japanese prison camps in the Philippines.

26. On information and belief, Francis Sayre privately had other thoughts. Just one month after his reassuring statement to American civilians on the Philippines, he wrote a letter to President Roosevelt dated November 13, 1940, saying “Out here in the Far East the situation is growing more and more tense. I have the feeling that any day Japan may start moving southwards. Indeed, she is in a sense already on the way, and everyday is strengthening her grip upon Indo-China.” App. 11, p. 210.

27. On October 19, 1940, the United States began to quietly remove its military families from the Philippines, Guam, Midway, and Wake. The *S.S. Washington*, sent to Manila, only allowed military families to board even though there was plenty of extra room. App. 12, p. 952. By May 1941, all remaining military wives and dependents on the Philippines had been ordered home to the United States. App. 11, p. 212.

28. On January 7, 1941, High Commissioner Sayre sent a telegram to Secretary Hull which laid out several “difficulties” to be considered regarding the Philippines, its defense, and the thousands of American civilians left on the Islands. Sayre stated that the “smallness of the military forces defending the Philippines is a factor constantly to be borne in mind,” and that the “presence of large numbers of American civilian dependents would increase the difficulties of the small military force in defending the islands.” Sayre also stated that if Japan were to break through the insufficient defense, “a study of shipping facilities in Philippine waters clearly indicates that ships available locally would be totally inadequate to handle an evacuation.” App. 13, p. 3-4. On information and belief, the implication of Commissioner Sayre’s telegram, diplomatically left unexpressed, was a veiled inquiry as to whether the United States government was deliberately intending to place at risk the thousands of American citizens living in the Philippines.

29. In reply, the State Department advised Sayre that although his plans for evacuation should be studied, their use would be remote. He should keep the plans strictly confidential. Moreover, he should “visualize the remaining of Americans generally in the Philippines in an emergency, and plan accordingly.” App. 14, p. 3.

30. On February 5, 1941, Hugh Grant, the American Minister in Thailand, sent a telegram to Secretary Hull stating that Thailand may be placed “under Japanese domination within the very near future,” and requested “telegraphic instructions regarding the advisability of the evacuation of American women and children from this area before it is too late.” App. 8, p. 399-400.

31. On February 11, 1941, the United States Government instructed its officers in Japan, China, Hong Kong, Thailand, and French Indo-China to immediately renew to American citizens, “especially to women and children and to men whose continued presence in those areas is not highly essential,” the Government’s suggestion made in October 1940 that they withdraw to the United States. App. 8, p. 400-01. The United States omitted any warning to the American civilians in the Philippines, Guam, Midway, or Wake. However, Secretary Hull did acknowledge the responsibility of the United States government toward all American citizens living abroad in the following language:

[T]his government is making no assumption that a situation of acute physical danger to American nationals is imminent, but . . . in light of obvious trends in the Far Eastern situation, desires to reduce the risks to which American nationals and their interests are exposed by virtue of uncertainties and, through the process of withdrawal of unessential personnel, to improve its position in relation to problems which may at any time be presented of affording maximum appropriate protection to those persons who are not in position to withdraw, those interests which cannot be abandoned, and those principles and those rights to which it is the duty of the American government to give all appropriate support at all times. App. 8, p. 400-01.

32. On information and belief, the United States Department of State was confronted with a dilemma when the question came up whether to warn American citizens living in British Malaya and the Dutch East Indies to withdraw from those areas. The Philippines is in a direct line from Tokyo to these areas and therefore any warning to American citizens in Indonesia would logically require a warning to American citizens in the Philippines as well. The Department of State accordingly decided “not to extend to British Malaya, Burma and the Dutch East Indies its policy in regard to withdrawal of certain categories of American citizens.” App. 8, p. 414-15. If American nationals approach American officials for advice in regard to the question of withdrawing to the United States, “the Department desires that the officers inform them that in light of the general world situation and the uncertainties therein, they may desire on their own initiative and as a result of their own decision to take steps to return to the safety of the United States.” In addition, “The Department desires further that the officers in taking action under this instruction do so in a manner to avoid publicity.” App. 8, p. 414.

33. Previously, on September 9, 1939, the State Department had ordered all citizens in the Philippines to hand in their passports to the Office of the High Commissioner. App. 40. After that date, anyone who wanted to leave the Philippines for any other destination would have to ask the High Commissioner for the return of his or her passport, since a passport was required in order to purchase a ticket on any departing ship or plane.

34. On June 21, 1941, Congress legislated that during the existence of a national emergency as had been declared by President Roosevelt on May 27, 1941, U.S. citizens in the Philippines were barred from departing from or entering any territory of the United

States without a valid passport<sup>3</sup> issued either by the Secretary of State or by the High Commissioner to the Philippine Islands.<sup>4</sup>

35. As the war clouds gathered noticeably in the Pacific in the summer of 1941, many American civilians living in the Philippines who listened carefully to their radios attempted to repatriate themselves and their families to the United States. But the office of the High Commissioner refused to validate their American passports to travel to the United States. Lucia B. Kidder, a secretary in the High Commissioner office, wrote:

I worked in the US High Com's office for Laurence Salisbury, political adviser to the HC, but because his work did not require all my work hours, I wrote considerable correspondence for Ervin Ross, Passport Agent. At that time American citizens (civilians) all over the Philippines were writing in to try to get American passports to return to USA. Many of them had lived there most or all of their lives. Instructions came to Mr. Ross (from State Dept.) that passports were not to be issued except in cases of extreme emergency, such as a severe illness requiring medical attention in USA, or a businessman (export & import, for example) whose business depended on him going to the States. All of this, however, had to be documented at length. Erv. was troubled about this, I remember, and he and Larry had several conferences about it; but of course the upshot was that Erv had to obey his orders from Washington.

There were at least 20,000 Am. civilians in the Philippines (maybe more) in Dec. 1941. I wrote more than 1500 letters (copying a form letter). There were 2 other women writing similar letters. I reckon at least 5,000 letters were written denying passport (10,000 or more people?) I believe the other 2 women have passed on now. App. 19

36. Some persons, anxious to leave the Philippines, attempted to buy tickets to Singapore, Hong Kong, or even Tokyo, and from there to book passage to the United States. However, their passports had to be validated and approved if they wanted to depart

---

<sup>3</sup> Defense Entry and Departure Act, ch. 210, § 1, 55 Stat. 252-253 (June 21, 1941) (codified as amended at 22 U.S.C. 228-229), amending Act of May 22, 1918, ch. 81, §§ 1, 2, 4, 40 Stat. 559 (to prevent in time of war departure from or entry into the United States) (codified at 22 U.S.C. 223-226b), *repealed* by Act of June 27, 1952, ch. 477, Title IV, §§ 403(a)(15), 403(a)(43), 66 Stat. 279-280 (wartime restrictions). App 16, 17, and 18.

<sup>4</sup> 22 C.F.R. § 32.1 (1941); Under the Passport Act of 1926, 22 U.S.C. § 211a, authorization to grant and issue passports was given to the Secretary of State. *See also* 22 C.F.R. § 33.1 (1938). App 15.

from the Philippines for any destination. App. 20 and 21. Consequently, the Americans on the Philippines were denied even a roundabout route back to the United States.

37. Although the State Department on September 9, 1939, had ordered all American citizens in the Philippines to hand over their passports to the Office of the High Commissioner, some Americans apparently did not do so and retained their passports in their own possession. When these latter persons attempted to purchase travel tickets, however, the ticket agents would not sell them tickets even though they had their passports. Among the reasons given were that the departing vessels were military vessels that could not accept civilian passengers, or if some were passenger vessels, they could only accept passengers whose passports had been specifically validated and granted visas by the High Commissioner for departure from the Philippines. High Commissioner Sayre wrote in 1941 that ships in the American President Line (the largest American commercial passenger line in the Far East) were not “carrying as many passengers as they could handle.” App. 41, p. 1. On information and belief, ships of the American President Line that were temporarily docked in the Philippines en route to continental United States were not allowed to take on American civilians even though they had room for more passengers.

38. From June 1941 to August 1941, the Saunders family desperately tried to leave the Philippines. App. 21. Frank Saunders, on behalf of his son Frank Saunders, Jr., daughter Norma Louise Saunders, and wife Emma Saunders, made several trips a week to the Office of the High Commissioner, and spent hours each time trying to obtain passage home. Their papers and passports were all in order, and even in their possession, yet Frank Saunders was repeatedly sent to offices he had already visited to get passage documents, but was always denied them. “In plain everyday language, we were simply told not to

leave.” App. 21, p. 2. Meanwhile, Frank Saunders’ other daughter, Dorothy, had been evacuated as a military dependent in May 1941, as she was married to a captain in the U.S. Army.

39. When an executive of the Standard Vacuum Company asked the State Department why it was evacuating families of military personnel but not other American civilians, Alger Hiss, assistant to Stanley Hornbeck in the State Department, said that the army might presumably have reasons of its own with respect to dependents. App. 22.

40. On August 7, 1941, Stanley K. Hornbeck, U.S. Adviser on Political Relations, wrote a memorandum noting that the American military had taken over 6 or 7 ships belonging to the American President Lines, and wanted to take over the *S.S. President Coolidge* as well. Hornbeck wrote in opposition of this planned takeover:

At the present time, this is the *only* important passenger ship other than the Japanese operating on the Pacific. The service which she will be rendering shortly in bringing home American nationals from Manila, Hong Kong, Shanghai, (and possibly Japan) is of definite importance. There will probably be need for a good deal more of such service in the immediate future.” App. 8, p. 419.

Hornbeck’s recommendation was approved, and the *S.S. President Coolidge* continued its passenger service in the Pacific. On information and belief, Dr. Hornbeck’s reference to “Manila” can only be interpreted as evidence that the decision of the President and the State Department to prevent Americans from leaving the Philippines was a closely held secret of which many high officials were unaware.

41. Two months later, on October 3, 1941, another high American official, Maxwell M. Hamilton, Chief of the Division of Far Eastern Affairs of the Department of State, repeated the request that the *S.S. President Coolidge* remain in private operation on its regular Far Eastern schedule. He stated:

From a general political point of view it is important that passenger and shipping facilities between the United States and points in the Far East such as Manila and points from which travelers can proceed to free China and Malaya be maintained. App. 8, p. 430.

Thus, on information and belief, even at a date as late as October 1941, high officials in the United States government had not been informed that Manila was being kept off-limits as a debarkation point for American civilians.

42. On information and belief, the United States government also resorted to demanding the removal of announcements about ship dockings and ship departures from the Manila newspapers. The reason given to the newspapers was military security. On information and belief, the arrivals and departures were visible to the many Japanese informers in the area. Hence the real reason may have been to discourage any panicked Americans from lining up in advance of a scheduled departure to attempt to push their way onto empty departing vessels.

43. In sharp contrast to the forced isolation of over 7,000 American civilians in the Philippines, the United States government fulfilled its Constitutional duty to warn American citizens in other Asian locations. For example, as late as November 22, 1941, there were 128 American citizens remaining in Thailand. The American minister in Thailand undertook to communicate with each of these persons, reminding them of the February 1941 warning to withdraw from the country. In his memorandum on the subject, the minister refers to the “gravity of the outlook” and worries about a “Japanese invasion of this country.” App. 8, p. 442-43. On that same day, November 22<sup>nd</sup>, Secretary of State Cordell Hull sent a message to American diplomatic officers and consular officers to call to the attention of American citizens in the Japanese Empire, Japanese-occupied areas of China, Hong Kong, Macao, and French Indochina, “the advice previously given in regard to

withdrawal.” App. 8, p. 443. Hull’s message was sent only to consular offices in Shanghai, Tokyo, Chungking, Peiping, Hong Kong, Dairen, Manchuria, Saigon, and Hanoi.

### ***E. Germany Attacks Russia***

44. Every strategic plan on both sides had to be drastically reevaluated when Germany suddenly attacked the Soviet Union on Sunday morning, June 22, 1941. In Tokyo, a stunned war cabinet now realized that its preferred northern strategy was back on the table.<sup>5</sup> A “golden opportunity” was presented to “realize Japan’s long-cherished objectives in continental East Asia.” App. 23, p. 627. While the German armies were rapidly advancing toward Moscow, Germany would be well served by its Axis partner Japan if Japan would attack the Soviet Union in the east and thus present Stalin with a two-front war.<sup>6</sup> The attack would pin down Stalin’s Red Army forces and keep them from being used in defense of the Soviet heartland. Foreign Minister Matsuoka advised the Japanese Emperor that Japan must cooperate with Germany and attack Russia. He advised postponing any advance southwards. App. 4, p. 211. As the official U.S. Army historian commented, the German attack on the Soviet Union “opened up the possibility of [a Japanese] advance northward, and thus required a thorough review of Japan’s position and a reconsideration of the program established a year before.” App. 2, p. 65. The United States learned of the heated Japanese discussions on a possible major change to a northern strategy through the “magic” intercepts. App. 2, p. 93. In July 1941, Japan inducted

---

<sup>5</sup> Foreign Minister Yosuke Matsuoka had assured German Ambassador Ott in Tokyo that in the event of a German-Russian conflict, “Japan would be driven, by the force of necessity, to attack Russia at Germany’s side.” App. 23, p. 627. The authors, William L. Langer and S. Everett Gleason authors previously served as Chief of Research and Analysis of the Office of Strategic Services and assistant director of the Central Intelligence Agency (Langer), and Deputy Executive Secretary of the National Security Council (Gleason). They consulted official documents and sources for their book, which is considered authoritative.

<sup>6</sup> Ribbentrop told the Japanese ambassador on June 28, 1941, that their two countries should meet in the middle in Russia. App. 23, p. 628.

500,000 males into its armed services, its largest draft since 1937. More significantly, it doubled the size of its army in Manchuria. App. 4, p. 217-18.

45. But the augmented Japanese Army would require a large and steady supply of oil, for which it was dependent upon continuing imports from the United States. Accordingly, Japan tried to soften its negotiations with the United States. It offered a “leader’s conference” for August, 1941, between Premier Konoye and President Roosevelt. The plans for a summit conference went on-again-off-again throughout September and October. Prime Minister Churchill was apprehensive about the aggressive actions Japan might take while the United States was stalling for time. President Roosevelt reportedly told him in August, 1941, “Leave that to me. I think I can baby them along for three months.” App. 24, p. 10.

46. For the United States and Great Britain, as well as Japan, the German invasion of the Soviet Union necessitated a rethinking of their war strategies at the highest levels. A rare and revealing insight into President Roosevelt’s thinking is found in a letter he wrote on July 1, 1941, to Harold L. Ickes, Secretary of the Interior and Petroleum Administrator for National Defense:

I think it will interest you to know that the Japs are having a real drag-down and knock-out fight among themselves and have been for the past week—trying to decide which way they are going to jump—attack Russia, attack the South Seas (thus throwing in their lot definitely with Germany) or whether they will sit on the fence and be more friendly with us. App. 25, p. 1173-74.

On July 6, 1941, Secretary of State Hull, at the specific request of the President for delivery to Prince Konoye, sent a message stating that if the Japanese Government intended to enter upon hostilities against the Soviet Union, “such action would render illusory the cherished hope of the American Government [for] peace in the Pacific area.” App. 26, p. 502-03.

Langer and Gleason, in their authoritative book for the Council on Foreign Relations, use

the word “calamity” to summarize President Roosevelt’s view of the possibility of Japanese aggression against the Soviet Union. App. 23, p. 635.

47. In July 1941, there was a substantial increase in the number and frequency of person-to-person coded radio communications between President Roosevelt and Prime Minister Churchill. President Roosevelt referred to them as “telephone jobs.” In light of Germany’s attack on the Soviet Union, it was imperative for the United States and Great Britain to work out a global strategy. On information and belief, this was accomplished at the highest level between the two heads of state mostly during July, with details left for staff meetings between the two governments.

48. By the evening of July 23, 1941, President Roosevelt had not made up his mind about whether the United States should place a total oil embargo on Japan. App. 4, p.235 no.20. To embargo oil would force Japan to abandon its northern strategic objectives against the Soviet Union and to move south in order to obtain oil from Borneo and the Dutch East Indies.

49. The President’s indecision was confirmed by a remarkably explicit speech he made on the morning of July 24<sup>th</sup> to a home defense group meeting at the White House in words that were read around the world:

Here on the east coast, you have been reading that the Secretary of the Interior, as Oil Administrator, is faced with the problem of not having enough gasoline to go around in the east coast, and how he is asking everybody to curtail their consumption of gasoline. All right. Now, I am—I might be called an American citizen, living in Hyde Park, New York. And I say, ‘That’s a funny thing. Why am I asked to curtail my consumption of gasoline when I read in the papers that thousands of tons of gasoline are going out from Los Angeles—west coast—to Japan; and we are helping Japan in what looks like an act of aggression?’

All right. Now the answer is a very simple one. There is a world war going on, and has been for some time—nearly two years. One of our efforts, from the very beginning, was to prevent the spread of that world war in certain areas where it hasn’t started. One of those areas is a place called the Pacific Ocean—one of the largest areas of the earth. There happened to be a place in the South Pacific where we had to get a lot of things—rubber—tin—and so forth and so on—down in the

Dutch Indies, the Straits Settlements, and Indo-China. And we had to help get the Australian surplus of meat and wheat, and corn, for England.

It was very essential from our own selfish point of view of defense to prevent a war from starting in the South Pacific. So our foreign policy was—trying to stop a war from breaking out down there....

All right. And now here is a Nation called Japan. Whether they had at that time aggressive purposes to enlarge their empire southward, they didn't have any oil of their own up in the north. Now, if we cut the oil off, they probably would have gone down to the Dutch East Indies a year ago, and you would have had war.

Therefore, there was—you might call—a method in letting this oil go to Japan, with the hope—and it has worked for two years—of keeping war out of the South Pacific for our own good, for the good of the defense of Great Britain, and the freedom of the seas. App. 4, p. 236-237.

This speech, artfully cast in the past tense, gave no indication whether the President now intended to reverse policy and cut off oil to Japan.<sup>7</sup> When asked by the press whether his speech marked the swan song of the oil policy, the President “insisted that he had said nothing about that and would say nothing about it.” App. 4, p. 238.

50. In London at midnight of that same day, a critical phone call was placed by Presidential emissary Harry Hopkins to President Roosevelt. Hopkins had spent the evening in London in a staff meeting with Churchill and the top British military advisers. Hopkins spoke on the phone for a while, then handed the phone to Churchill. On information and belief, the President and Prime Minister recapitulated their previous conversations in which they had agreed that the greatest opportunity for saving Great Britain was the possibility of the German armies getting bogged down in Russia. But Russia needed her vast Red armies in Siberia to throw against the Nazi invaders. They could not be withdrawn from Siberia so long as Japan presented a military threat against Siberia. Prime Minister Churchill undoubtedly repeated his plea to President Roosevelt to attack Japan and prevent it from attacking Russia on its eastern flank. President Roosevelt

---

<sup>7</sup> Moreover, now that the Soviet Union and the United States were on the same side in fighting the Axis powers, the President made no allusion to the past policy of providing oil to Japan as subtle encouragement

undoubtedly repeated his position that he would not strike the first blow that would lead the United States into war. But he could take effective nonmilitary action that would prevent a Japanese attack against Siberia, namely, cutting off all oil to Japan. With only a year or two's worth of oil reserves, Japan could not afford to risk a war against the numerically huge Red army in Siberia. Thus, Japan would be forced to move south to secure oil for its military machine. But Prime Minister Churchill probably objected that an unrestrained Japanese move south would gravely endanger British Singapore, British Borneo, and Australia. President Roosevelt may have replied that it would be imperative for Japan, in a southward move, to take over the Philippines and especially its key port Manila. Otherwise American ships out of Manila and American planes out of Luzon in the Philippines would wreak havoc with the Japanese Navy's movement south and, in addition, ensure that few oil tankers from Borneo and the Dutch East Indies could avoid being sunk by American forces. But even if Japan attacked the Philippines, what would trigger the American public's outrage enough to rally the country to go to war against Japan and her ally Germany? The loss of a few islands that most Americans did not know about, and which would anyway become independent in five years, might not suffice to overcome the sluggish forces of pacifism in the United States. On information and belief, at this point the two statesmen agreed, with mutual assurances of total secrecy, to sacrifice the 7,000 American civilians and the 1,500 British civilians living in the Philippines in order to ensure outrage on the part of the American public sufficient to support the President in declaring a full-scale war against Japan. The civilians would be prevented from leaving the Philippines for the greater good of bringing the United States into the war and safeguarding President Roosevelt's promise not to lead the country into war save for purposes of self-defense. The

defense of American civilians, if attacked by Japan, would qualify in anyone's reckoning as self-defense of the United States. The Prime Minister may have reassured the President that 1,500 British subjects, though fewer in number than the American citizens in the Philippines, would also be sacrificed. Finally, the two heads of state, either overtly or tacitly, may have satisfied themselves that the sacrifice of innocent lives, though tragic, involved no loss of military assets. The American and British citizens in the Philippines were, if anything, a military liability.

51. These "telephone jobs," including the midnight phone call of July 24, 1941, were decrypted by military stenographers in both Great Britain and the United States, and shorthand verbatim transcripts were prepared. On the British side, the transcripts were prepared by the Postal and Telegraph Censorship Department located in the Prudential Buildings at 23-27 Brooke Street, London. In the United States, the telephone jobs were monitored and transcribed by the Office of Censorship of the United States Navy headed by Captain Herbert Keeney Fenn. The British Government has turned away all researchers and historians with the claim that the voluminous transcripts of the telephone conversations cannot be found. The American transcripts are presently housed in Record Group 216 of the National Archives. But the records were sealed in perpetuity by President Harry S Truman's executive order of September 28, 1945. App. 27. A later president would have the power to undo President Truman's order, but no president has ever done so. The documents remain under Exemption One of the Freedom of Information Act, the highest secrecy classification. Even under the normal 25-year mandatory review, these documents may be classified indefinitely into the future. App. 42. Hence, the evidence needed to substantiate the plaintiffs' allegations in ¶ 50, *supra*, are in the possession and control of the

defendant. Thus the plaintiffs have had to proceed, for the purpose of this Complaint, on circumstantial historical evidence to supply a plausible and reasonable account of the deal reached by President Roosevelt and Prime Minister Churchill in the course of their telephone jobs.

52 The day of July 25, 1941, was spent in meetings and preparations in London and in Washington. Then, starting on the morning of July 26, 1941, a series of history-making decisions was announced. All oil exports from the United States were officially frozen.<sup>8</sup> Another executive order froze all Japanese assets and funds in the United States. On the same day, Great Britain denounced all its treaties of trade with Japan, as well as all the treaties of its Dominions with Japan. App. 23, p. 651. President Roosevelt also announced that General MacArthur was given command of all U.S. Army Forces in the Far East. Also, by executive order, the Philippine Army was called into the service of the United States. App. 2, p. 97.

#### ***F. War in the Pacific Becomes Inevitable***

53. On July 28, 1941, the Privy Council in Japan met in the presence of the Emperor. Admiral Nagano, Chief of the Naval General Staff, said that if the American embargo continued, Japanese reserves of oil would be used up in two years. General Suzuki, President of the Planning Board, said that if the embargo continued, Japan would collapse within two years. App. 4, p. 252.

54. A vital Japanese diplomatic cable from Tokyo to Japan's ambassador at Berlin was intercepted and decoded by the American "magic" program and made available in Washington on August 4, 1941. The cable stated:

Commercial and economic relations between Japan and other countries, led by England and the United States, are gradually becoming so horribly strained that we cannot endure it much longer. Consequently, the Japanese Empire, to save its very life, must take measures to secure the raw materials of the South Seas. It must take immediate steps to break asunder this ever-strengthening chain of encirclement, which is being woven under the guidance of and with the participation of England and the United States, acting like a cunning dragon seemingly asleep. App. 4, p. 249.

55. Five days after the historic Atlantic Conference between President Roosevelt and Prime Minister Churchill of August 9<sup>th</sup> through 12<sup>th</sup> in Newfoundland aboard the warships *Augusta* and *Prince of Wales*, President Roosevelt and Secretary Hull met with Ambassador Nomura at the White House. The President read a statement to the Ambassador, concluding with the following two sentences:

This Government feels at the present stage that nothing short of the most complete candor on its part, in light of evidence and indications which come to it from many sources, will at this moment tend to further the objectives sought. Such being the case, this Government now finds it necessary to say to the Government of Japan that if the Japanese Government takes any further steps in pursuance of a policy or program of military domination by force or threat of force of neighboring countries, the Government of the United States will be compelled to take immediately any and all steps which it may deem necessary toward safeguarding the legitimate rights and interests of the United States and American nationals and toward insuring the safety and security of the United States. App. 26, p. 556-57.

No one who was not at the meeting can know whether the President paused meaningfully after the words “American nationals” or stressed those words as he read the text to Ambassador Nomura. But since the phrase “American nationals” is subsumed within the meaning of the first phrase “legitimate rights and interests of the United States,” its separate inclusion in the sentence served to call attention explicitly to the American nationals in the Philippines and warn Japan that an attack on them was an act of war against the United

---

<sup>8</sup> Theoretically Japan could still get oil by applying for a license; in fact, no new licenses to export and pay for oil were ever issued after the freeze of July 26<sup>th</sup>. (Feis 248). The official Army historian calls the action of July 26<sup>th</sup> a “*de facto* oil embargo.” App. 2, p. 97.

States.<sup>9</sup> Perhaps to remove any doubt in the Japanese mind that the reference to “American nationals” was indeed intended to be linked to the Philippines, President Roosevelt handed but did not read aloud a second message to Ambassador Nomura that same day, August 17, 1941. The text of the second message referred to a statement by Acting Secretary Sumner Welles to Ambassador Nomura of July 28, 1941, that Japan’s forceful occupation of French Indochina was “prejudicial to the peace of the Pacific, including the Philippine Islands.” App. 26, p. 557-58.

56. Despite the warnings given to Japan, the government of the United States took no steps to evacuate American civilians from the Philippines. There were many ships going between Hawaii and the Philippines, and between the United States and Hawaii. Many were military cargo ships that transported war material to the Philippines and then went back empty to the United States. On information and belief, all 7,000 American civilians on the Philippines, or most of them, could have been repatriated without the need for any additional ships in less than a week’s time. The *S.S. Corregidor* alone could have evacuated almost 20% of the civilians in a single trip.<sup>10</sup> Yet the weeks went by and passport and travel restrictions remained in place in the Philippines.

57. In 1946, when the war was over, a Joint Committee of Congress investigated the planning of the War Department in the fall of 1941. The Committee found that the

---

<sup>9</sup> There is virtually no explicit mention of American nationals on the Philippines in any of the messages, documents, and recollections of 1941. It is impossible to conceive that the safety of so many Americans was not high, if not at the top, of everyone’s agenda at the time. However, the papers and documents were all edited and vetted by American officials, and the references to American nationals in the Philippines may have been expunged from the historical record without any indication that words were taken out. For even after the Philippines were taken over in December 1941, American officials may have felt that it would be a blow to American civilian morale to learn that the government had failed to remove the Philippine civilians from harm’s way. Therefore, the appearance of the words “American nationals” in the critical message to Ambassador Nomura takes on added significance because those words were *not* deleted, in part because their import might go unnoticed by the casual reader.

responsible officers, without exception, estimated that the impending war “would be confined to the land and seas lying south of the Japanese homeland, as forces of the Japanese Army and Navy were concentrating and moving in that direction,” and observed that “the Philippine Islands which were in this theatre constituted a threat to the flank of the Japanese force if the United States should enter the war.” App. 28, p. 295-96.

58. In the first week of November 1941, the American “magic” decoding operation intercepted various Japanese diplomatic messages that explicitly mentioned the date November 25<sup>th</sup> as a deadline. App. 29, p.100. At a Cabinet meeting on November 7, 1941, Henry L. Stimson who was present later testified to Congress that “Mr. Hull informed us that relations had become extremely critical, and that we should be on the lookout for an attack by Japan at any time.” App. 29, p. 5420.

59. A Top Secret report by the Army Pearl Harbor Board dated October 20, 1944, but only issued to the public in 1946 at the Joint Hearings on the Pearl Harbor Attack, stated:

General. Information from informers and other means as to the activities of our potential enemy and their intentions in the negotiations between the United States and Japan was in possession of the State, War and Navy Departments in November and December of 1941.

Such agencies had a reasonably complete disclosure of the Japanese plans and intentions, and were in a position to know what were the Japanese potential moves that were scheduled by them against the United States. Therefore, Washington was in possession of essential facts as to the enemy’s intentions.

This information showed clearly that war was inevitable and late in November absolutely imminent. It clearly demonstrated the necessity for resorting to every trading act possible to defer the ultimate day of breach of relations to give the Army and Navy time to prepare for the eventualities of war. App. 28, p. 158.

60. On November 20, Ambassador Nomura handed to Secretary of State Hull a draft proposal promising not to make any armed advancement into South East Asia except

---

<sup>10</sup> Plaintiff Marcia Achenbach’s parents were aboard the *S.S. Corregidor* on December 7, 1941, when it struck a mine in Manila Bay. They were among 280 survivors; over 1000 persons perished.

Indo-China where Japanese troops are presently stationed, and to withdraw those troops upon the restoration of peace between Japan and China. In return, the United States “shall supply Japan a required quantity of oil.” App. 26, p. 755-56. Nomura had been instructed that if the United States asked what the “required amount of oil” was, he should say that Japan wanted four million tons a year from the United States and one million tons a year from the Indies. App. 4, p. 311. That would be equivalent to a total of about 37 million barrels of oil, a sufficient quantity for Japan to re-institute its northern strategy and attack Russia.

61. Secretary Hull, who had already seen this proposal through “magic” intercepts, App. 4, p. 310, wrote in his diary that it was “clearly unacceptable.” App. 30, p. 1069.

The proposals would leave Japan “free to continue her military operations in China, to attack the Soviet Union, and to keep her troops in northern Indo-China.” App. 30, p. 1070.

He added:

the President and I could only conclude that agreeing to these proposals would mean condonement by the United States of Japan’s past aggression, assent to future courses of conquest by Japan, abandonment of the most essential principles of our foreign policy, betrayal of China and Russia, and acceptance of the role of silent partner aiding and abetting Japan in her effort to create a Japanese hegemony over the western Pacific and eastern Asia. App. 30, p. 1070.

62. Ambassador Nomura notified Tokyo of the chilly reception of its proposal in Washington. On November 22, 1941, he received a message from Tokyo, which was intercepted and decoded by “magic,” urging him to “stick to our fixed policy” and stating “there are reasons beyond your ability to guess why we wanted to settle Japanese-American relations by the 25<sup>th</sup>.” App. 29, p. 165.

63. On Tuesday, November 25, 1941, Secretary of War Henry Stimson received word of a large Japanese expeditionary force leaving Shanghai and going south in the

direction of the Philippines. App. 29, p. 5422. As Stimson wrote in his diary, “the question was how we should maneuver them into the position of firing the first shot without too much danger to ourselves.” App. 29, p. 5433. Implicit in this assessment by a Secretary of War is the concept that the loss of American civilian lives is not a “danger” because 7,000 women, children, infants, elderly persons, boys, and adult men who are not militarily trained, do not constitute a military asset.

64. At noon the same day, November 25, 1941, Secretaries Hull and Stimson, and Admiral Stark and General Marshall, met with the President. Mr. Stimson later testified to Congress that “the President said the Japanese were notorious for making an attack without warning and stated that we might even be attacked, say next Monday, for example.” App. 29, p. 5421. Although the “next Monday” was only six days away, even at that late hour there was sufficient time to evacuate all or nearly all the American civilians in the Philippines if any effort had been made to do so.

65. On November 26, 1941, the United States counter-proposed “Ten Points” to Japan; Point 3 was “The Government of Japan will withdraw all military, naval, air and police forces from China and from Indochina.” Japan not surprisingly interpreted this as an ultimatum. App. 28, p. 223. As the Joint Committee of Congress later found:

The action of the Secretary of State in delivering the counter-proposals of November 26, 1941, was used by the Japanese as the signal to begin the war by the attack on Pearl Harbor. To the extent that it hastened such attack it was in conflict with the efforts of the War and Navy Department to gain time for preparations for war. However, war with Japan was inevitable and imminent because of irreconcilable disagreements between the Japanese Empire and the American Government. App. 28, p. 297-98.

66. Even though a shooting war—one that would inevitably involve a Japanese takeover of the Philippines—was in the offing in the next few days, there is no mention in any non-withheld source of anyone’s written report of those critical cabinet meetings of any

discussion about the imminent danger to American civilians. However, that danger may very well have been implicit in the following statement to the Joint Committee of Congress by Secretary of War Stimson regarding the meeting of November 25, 1941:

If you know that your enemy is going to strike you, it is not usually wise to wait until he gets the jump on you by taking the initiative. In spite of the risk involved, however, in letting the Japanese fire the first shot, we realized that in order to have the full support of the American people it was desirable to make sure that the Japanese be the ones to do this so that there should remain no doubt in anyone's mind as to who were the aggressors. App. 29, p. 5421.

On information and belief, Secretary Stimson was referring to the *political* risks involved in letting the Japanese fire the first shot at the Philippines, and not the *military* risks.<sup>11</sup> If the idea of leaving 7,000 American civilians in the Philippines to the tender mercies of the Japanese army came up at all at the meeting, the five participants took that secret to their graves. No attempt whatsoever was made to evacuate a single American woman, child, or elderly person from the Philippines. On information and belief, the United States government, with full knowledge of the circumstances, knew or should have known that the American civilians on the Philippines were directly in the path of Japan's advance southward in drastically underdefended territory.

67. Even so, the Department of State took a legal step affecting American civilians in the Philippines, Guam, Wake, and Midway. It prescribed a two-month moratorium on the need for passports. On November 15, 1941, the U.S. State Department opened up entry and departure to and from United States territories even without a valid passport until January 15, 1942, although this was subjected to any exceptions the Secretary of State or High Commissioner for the Philippines deemed appropriate.<sup>12</sup> There is no indication that

---

<sup>11</sup> Neither he, nor any of the other four participants, had any inkling of a risk involving Pearl Harbor.

<sup>12</sup> 22 C.F.R. § 58.1 (1941); *Control of Persons Entering and Leaving the United States*, DEP'T ST. BULL., Vol. V, No. 125 (November 15, 1941). On January 15, 1942, the doors were again closed to the civilians of the Philippines without valid passports in their immediate possession, even though the President still allowed all

notice was given of this moratorium to American citizens on the Philippines. There is no evidence that any American citizens left the Philippines between November 15 and December 7, 1941. And on information and belief, even if an American citizen had learned of the moratorium, he still needed to get a visa, i.e., to have his passport validated by the High Commissioner. Such an applicant would then have been told that it takes several weeks to obtain permission from Washington D.C. to authorize a visa. Moreover, even if an exceptional applicant had managed to obtain a passport and a visa, he still would have been unable to purchase a ticket for departure on any vessel or plane leaving from the Philippines.<sup>13</sup>

68. No agreement having been reached by November 25<sup>th</sup>, on November 26, 1941, Admiral Nagumo's First Air Fleet left the Kuriles with 6 carriers, 423 planes, 2 battleships, 28 submarines, 2 cruisers, and 11 destroyers. It followed a northerly route and then moved circuitously south to Pearl Harbor, undetected by the United States.

69. On Thanksgiving Day, November 27, 1941, Secretary of War Henry Stimson discussed with American military leaders the messages that might be sent to the commanding officers of the various theatres "including in particular General MacArthur, who was in the Philippines, and in the forefront of the threatened area. We had already sent

---

military personnel, as well as all civilian citizens or persons owing allegiance to the United States and traveling between the continental United States, Puerto Rico, Hawaii, the Virgin Islands, Mexico, Canada, and the West Indies, to enter and depart without passports. See 22 C.F.R. §§ 58.2 – 58.3 (1941); *Requirements for Entry and Departure of American Citizens*, DEP'T ST. BULL, Vol. V, No. 125 (November 15, 1941). App. 31, 32.

<sup>13</sup> After January 15, 1942, the President specifically exempted all American citizens and military personnel from needing a passport when traveling between the continental United States, Puerto Rico, Hawaii, the Virgin Islands, Mexico, Canada, and the West Indies. 22 C.F.R. §§ 58.2 – 58.3 (1941); *Requirements for Entry and Departure of American Citizens*, DEP'T ST. BULL, Vol. V, No. 125 (November 15, 1941). The Philippines was not included in this exception. Indeed, after January 15, 1942, no American citizen in the Philippines was permitted to leave or enter any United States territory without a valid passport. 22 C.F.R. § 58.2 (1941). A civilian citizen wishing to depart from the Philippines after January 15, 1942, still needed specific authorization (a "visa") from the Secretary of State through the appropriate official channels. App 31 and 32.

MacArthur a warning but I felt that the time had now come for a more definite warning.”

App. 29, p. 5423. The message to General MacArthur (with slight variations when sent to the other area commanders) read:

Negotiations with Japan appear to be terminated to all practical purposes with only the barest possibility that the Japanese Government might come back and offer to continue period. Japanese future action unpredictable but hostile action possible at any moment period. If hostilities cannot comma repeat cannot comma be avoided the United States desires that Japan commit the first overt act period. App. 29, p. 5424.

70. On November 27<sup>th</sup>, the Chief of Naval Operations sent to the Commander-in-Chief, Pacific Fleet, the following message:

Consider this dispatch a war warning. The negotiations with Japan in an effort to stabilize conditions in the Pacific have ended. Japan is expected to make an aggressive move within the next few days. An amphibious expedition against either the Philippines, Thai, or Kra Peninsula or possibly Borneo is indicated by the number and equipment of Japanese troops and the organization of their naval task forces. App. 28, p. 110.

71. After the war, Secretary Stimson told the Joint Committee of Congress that was investigating the Pearl Harbor attack::

You will note that my notes speak only of the message to General MacArthur. This is evidence of what was the fact—namely that we all felt in Washington that the first and most likely danger was an attack on the Philippines and that such an attack would be most difficult to meet. Such information as we had been able to gather as to the movements of Japanese forces indicated a movement toward the south, which might easily be diverted either to Indochina, Malay Peninsula, Dutch East Indies, or the Philippines. We were correct in this inference. Such an attack on the Philippines was being prepared and immediately followed the attack on Pearl Harbor. The movements of the fleet which attacked Pearl Harbor were entirely unknown to us. App. 29, p. 5425-26.

72. On December 7, 1941, the first wave of Japanese planes launched from carriers bombed Pearl Harbor at 7:50 A.M. Hawaiian time and continued for the next two hours. A message from Admiral Kimmel to Washington D.C. was received at 1:50 p.m. Eastern

Standard Time: “Air raid on Pearl Harbor. This is not drill.” Secretary Knox upon reading it said, “My God, this can’t be true. This must mean the Philippines.” App. 2, p. 139.

73. Eight hours after Hawaii was attacked, Japanese armed forces invaded the Philippines. Their planes bombed Clark Field in the Philippines, catching the entire United States Far East Air Force on the ground.<sup>14</sup> Other Japanese aircraft hit Guam shortly after the Pearl Harbor attack and began the bombardment of Wake. App. 2, p. 133.

74. An American convoy of seven ships carrying men and munitions, escorted by the cruiser *Pensacola*, had been en route from Hawaii to Manila on December 7<sup>th</sup>. On Dec. 8<sup>th</sup>, the Joint Board in Washington ordered the convoy to put in a port in Fiji, and on the 9<sup>th</sup>, ordered it back to Hawaii. As the official Army history observes:

This decision of the Joint Board represented virtually the abandonment of the Philippines. There was ample precedent for such a policy in the prewar studies of the planners approved by the Joint Board, demonstrating that the Philippines could not be held in the face of a determined Japanese attack. App. 2, p. 148.

### **III. PLAINTIFFS**

#### ***A. General Allegations***

75. There are at present 598 plaintiffs who (themselves or, if deceased, through their legal representatives) have opted in to this class action by the time of the filing of this Complaint. They are individually identified in Appendix 1.

76. Each plaintiff was a civilian citizen of the United States lawfully present in the Philippines, Guam, Wake, or Midway when war broke out on December 7, 1941, or was born on any of those islands between December 7, 1941, and September 2, 1945.

---

<sup>14</sup> Damaged or destroyed were 17 B-17’s and 53 P-40’s. This devastating military setback was kept secret from the American public until it was revealed in Davis & Lindley in the summer of 1942. App. 24, p. 294-297, 316.

77. The plaintiffs' claims are all related to events that occurred on the islands of the Philippines, Wake, Guam, and Midway between December 7, 1941, and September 2, 1945. The claimants were brutalized, injured, starved, or killed by the invading Japanese armed forces. Their homes and property were taken away from them and confiscated. Many of the claimants died from injuries inflicted on them by the invading Japanese military and by bombardment from Japanese aircraft. Many of them lost their parents or siblings or nearest relatives to the Japanese. Most of them were interned in prison camps run by Japan in conditions of near-starvation, and a number of them starved to death. A number of plaintiffs suffered psychological injuries such as post traumatic stress disorder. Many of them were permanently injured mentally and/or physically, in many cases impairing their future ability to earn their living or practice a profession.

***B. Illustrative Experiences of Members of the Plaintiff Class***

***1. Marcia Fee Achenbach***

78. Plaintiff Marcia Fee Achenbach was born to Elton Fee and Dorothy Graham Fee in Cebu, the Philippines, on November 11, 1940. The Fees made their temporary home there while Elton Fee served as Manager of Standard-Vacuum Oil's office in Cebu.

79. The Philippine Islands were a possession of the United States throughout the Second World War. They were run by a High Commissioner appointed by the President of the United States. In 1934, the Tydings-McDuffie Act promised independence to the Philippines in 1946. Guam, Wake, and Midway islands were also possessions of the United States, although no provision had been made for their independence.

80. Like many Americans in the Philippines, the Fees were concerned about Japan's war in China and the possibility that Japan might expand the war. However, they

were reassured by repeated statements from the American authorities in the Philippines, including High Commissioner Francis B. Sayre and General Douglas MacArthur, that the Philippines was out of harm's way and in any event was easily defended.

81. Elton Fee, and his wife Dorothy who was pregnant, were rounded up by the Japanese and sent to be interned at the Santo Tomas camp. Dorothy Fee and the newborn Judith Belle Fee contracted dengue fever and bacillary dysentery.

82. Marcia and her sister were often kept in bed throughout the day in order to conserve their energy. The Fee family was not alone; the quality of the drinking water and food was so bad that most of the internees at Santo Tomas developed some type of intestinal parasite. App. 33, p.178. All heads had to be shaved because of the rampant head lice. Bed bugs infested the entire camp. The internees were allowed no privacy anywhere including toilet and shower facilities.

83. Marcia's family learned through reports from Cebu internees, Filipinos and neutrals, that their house had been completely pillaged by occupying forces, and their personal and household effects confiscated.

84. Marcia Achenbach, along with many of the internees, suffered and continues to suffer from physical and psychological health problems and disabilities related to her internment. In addition to the starvation-related health problems, many internees were exposed to serious diseases. Doctors identified several malnutrition-related diseases in the internees, including "hunger edema" (hypoproteinosis), night blindness (vitamin A deficiency), "true beriberi" (thiamin deficiency), and several types of dysentery (from semi starvation, spoiled food or garbage). App. 33, p. 150. Marcia's chest X-rays still show

scarring on her lungs due to exposure to tuberculosis. She has struggled with depression, anxiety, and post-traumatic stress disorder.

## ***2. Gilbert M. Hair***

85. Plaintiff Gilbert M. Hair was born on March 16, 1941, in Manila. On February 2, 1942, when Hair was eleven months old, he and his mother were arrested by the Imperial Japanese Army and ordered to leave their home and take just enough clothing for three days. They were interned at Santo Tomas. Hair's mother took one suitcase, a case of canned milk and two bottles of vitamins to the camp. They left behind their house, a Buick automobile, furniture, silver, china, artwork, crystal, Oriental rugs, antiques, and jewelry, all of which were later confiscated and removed by the Japanese.

86. During his early childhood in the Santo Tomas camp, Gilbert Hair suffered from malnutrition, scurvy, dysentery, worms, parasites, rickets, and pellagra. After liberation in 1945 and arrival in the United States, he was evaluated by Walter Reed Army Medical Hospital. His health returned due to good medical care in the United States, however, and he enlisted in the United States Marine Corps. He even played on the Second Marine Air Wing tennis team.

87. Despite the apparent good health, in his mid-twenties Gilbert Hair developed knee problems that were treated with steroids. He was diagnosed with rheumatoid arthritis and Reiter's syndrome caused by the lack of vitamin C in his diet at Santo Tomas. In 1975 he was diagnosed with Ankylosing Spondylitis: the doctors found shrinking of his spine and fusion of three (C3,4,5) vertebrae in the upper spine. The doctors reported that these deformities were caused by his malnutrition in the Japanese camps. Hair's height in 1976 was now reduced to 5 feet 6 inches.

88. Mr. Hair underwent six surgeries that resulted from his internment at Santo Tomas: right total hip replacement (October 1977), left total hip replacement (September 1980), left knee minisectomy (February 1988), right knee minisectomy (March 1989, right hip total revision, arthroplasty and allografts (April 1991), and right foot triple arthrodesis (March 1992).

### ***3. Milton Clay, Elizabeth, and Beth Vaughan***

89. Plaintiff Milton Clay Vaughan (“Clay”) was born on September 8, 1940, in Iloilo, the Philippines. His parents, Elizabeth Head Vaughan (“Mrs. Vaughan”) and Milton James Vaughan (“Mr. Vaughan”), were both American citizens. Mr. Vaughan worked as a civil engineer for the Pacific Commercial Company. Soon after Clay’s birth, his family moved to Bacolod, the provincial capital of Negros Occidental on Negros Island, located in the mid-Philippines. Now that they had an infant child, the Vaughans made general inquiries about the safety of remaining in the Philippines. They were reassured by American officials that they were perfectly safe.

90. In early December 1941, Mr. Vaughan was sent to Manila on a business trip. On December 7, eight hours after the bombing of Pearl Harbor, the Philippines was attacked by the Japanese and Mr. Vaughan was unable to return to his family. He then enlisted in the United States Army. Mrs. Vaughan was left to care for Clay, just over 1 year old, and his sister, Beth, 2.

91. Clay and his mother and sister were rounded up by the Japanese army and sent to the Fabrica camp in Bacolod. On March 2, 1943, Clay was taken, along with his family and many other internees, to Bacolod Pier to be transferred to Manila. The boat was covered in a layer of crude oil from leaking barrels which had been loaded on the boat just

before the internees arrived. There were no beds or pillows, so two-year-old Clay slept on the oil-covered hard wooden floor. There was not enough space for everyone to lie down, so the adults took turns lying down for part of the night. There were no toilet or bathing facilities on the boat, and the internees were not fed by the Japanese. The internees lived in the cramped quarters of the boat for five days before the boat even left the pier. Shortly before the boat left, pigs were brought on board and placed below the steps used by the internees, adding to the already filthy conditions. The boat arrived in Manila on March 10, 1943. The internees were taken to Santo Tomas internment camp, where Clay experienced hardships similar to those of the other internees previously discussed.

92. One day when four-year-old Clay was playing outside, a Japanese soldier walked by, whom Clay did not see. The soldier kicked the child. Clay, who was too young to understand all the rules of the Japanese, did not know why he had been kicked until his mother came out and explained to him that the soldier kicked him because he did not get up and bow when the soldier walked by, as the internees were required to do. All internees were also ordered never to look at planes flying overhead. App. 34, p. 108.

93. Under the military orders governing the camp, the Japanese soldiers in charge were generally not allowed to kill prisoners. However, any person who showed signs of rebellion against Japan could be summarily executed by the prison guards. Accordingly, the Japanese guards encouraged and tried to bribe internees to reveal the names of persons who were critical of, or had a derogatory attitude toward, the Japanese. One day the Japanese soldiers took Clay to a restricted area, encouraging the child to claim that his mother had said derogatory things about the Japanese. Clay was asked what his mother had said the previous night. Clay said nothing, but shook his head to signify that she had not

said anything. A soldier then pulled out one of the child's fingernails, and then repeated the question. Although only four years old, Clay withstood the pain and steadfastly refused to say anything that would implicate his mother.

94. After liberation, Clay, Beth and Mrs. Vaughan were given transport back to the United States, but prior to departure Mrs. Vaughan was required to sign a promissory note in the amount of \$825.00 to the government as payment for their voyage. Mrs. Vaughan was also required by the United States Army Counterintelligence Corps to sign a paper promising that she would not reveal information about the internment for at least 40 years. She learned that her husband Mr. Vaughan, who had enlisted in the U.S. Army and survived the Bataan Death March, died in the summer of 1942 in Japanese hands as a prisoner of war.

#### ***4. Dr. Theodore Stevenson***

95. Plaintiff Theodore Stevenson was a physician who had been a medical missionary under the Presbyterian Mission of the United States of America at Canton, China. He was taken by the Japanese army to the Santo Tomas camp, where he spent his time administering medical help to fellow internees. He was later transferred to the Los Banos camp where he would be an internee and also serve as the medical director. Many of the internees at Los Banos suffered from diseases caused by the tropical climate and lack of sanitation; there was overcrowding and open sewage. During the summer of 1943, 40% of the internees at Los Banos contracted bacillary dysentery. (In comparison, at the Baguio internee camp, 80% of the population suffered from bacillary dysentery.) App. 10, p. 45.

96. The Japanese later transferred Dr. Stevenson back to Santo Tomas. In August 1944, the medical staff under Dr. Stevenson's direction did a study involving the

examination of 3,000 adults. The doctors found marked nutritional deficiencies leading in many cases to beriberi (which can cause, among other things, irreversible damage to the optic nerve) and to hypoproteinemia (swollen ankles and legs that may lead to permanent impairment). App. 10, p. 46. Dr. Stevenson and his staff were forced to keep an extremely demanding schedule during this time, as the hospitals were overcrowded. Early in the Santo Tomas interment, the hospital housed approximately 80 people at a time. By liberation, the number of hospitalized persons was over 300. App. 10, p. 46. Moreover, the Japanese guards at the camp insisted upon obtaining Dr. Stevenson's personal medical services despite the availability of their own hospital facilities.

97. The prisoners were dying at an increasing rate from diseases and malnutrition. It was Dr. Stevenson's job to fill out the death certificates. He duly stated in many cases that the internees had died of malnutrition or starvation. In 1944, the Japanese abruptly ordered Dr. Stevenson to change the death certificates to indicate that the deaths resulted from natural causes.<sup>15</sup> Dr. Stevenson refused. He was placed in special confinement in a Japanese prison where he remained until he was rescued by United States troops at liberation.

### ***5. Dona and David Civian***

98. Plaintiff David Civian was born in Manila on June 12, 1925, an American citizen because both his parents were American citizens. On January 3, 1942, while his father was in the United States on an extended business trip, seventeen-year-old David and his mother Mrs. Dona Civian were taken by the Japanese army interned at Santo Tomas. In

---

<sup>15</sup> Although the Japanese flouted many of the rules of the Geneva Conventions pertaining to prisoners of war, some officials may have become concerned by 1944 of postwar accountability under those Conventions. They intended to register the altered death certificates with Geneva. See App. 10, p. 45.

August 1944, while working with the crew who transported goods to the camp from supply warehouses, a Filipino sneaked a couple of bananas to David. The guards beat the Filipino for the act of generosity. David was then slapped hard in the face eight or nine times with leather gloves by one of the Japanese guards. By the time that he had returned to camp, his vision was beginning to blur. David suffered massive retinal detachment from the blows. After liberation, David underwent eye surgery in Stanford Lane hospital, San Francisco, but the efforts of a leading surgeon proved to be unsuccessful. Severe beatings to the head combined with malnutrition left him blind in the left eye.

***6. Plaintiff's Decedent Carroll Grinnell***

99. Plaintiff's decedent Carroll Grinnell was born in Pennsylvania on June 13, 1898. Between 1922 and 1941, working for General Electric, he had been posted in both Japan and the Philippines. On December 7, 1941, Mr. Grinnell was in the Philippines serving as the Far East Commercial Manager and President of General Electric. At this point, because the Philippines had been attacked, the United States no longer prevented American citizens from leaving the Philippines. All passport restrictions and ticket blockages were abandoned. Mr. Grinnell managed to organize passage home for many American civilians and for himself on a single available ship. At the last minute before the ship embarked, he gave his ticket to a young woman with two children. On January 7, 1942, he was captured by Japanese soldiers and sent to Santo Tomas for internment.

100. In his work for General Electric, Mr. Grinnell had acquired knowledge of Japanese language and culture that proved invaluable to him and the other internees. He had become known throughout the camp as a tactful, diplomatic executive. Many internees were able to purchase food on the basis of loans extended by Manila banks on Mr.

Grinnell's personal line of credit. App. 35, p. 133. He used his executive training to organize many of the internees' committees, including the finance, supplies, patrol, and release committees. On July 28, 1942, the internees elected him to a new executive committee, and the Japanese commandant of the camp appointed Mr. Grinnell chairman of that committee. App. 36, p. 52. He served in that position until the Japanese military authorities reorganized the camp activities in February 1944. At that time they appointed Mr. Grinnell Chairman of a new internee committee. App. 36, p. 270. On December 23, 1944, Mr. Grinnell was arrested on suspicion of aiding the Filipino guerrilla forces. Approximately two months later his body was discovered near Harrison Park in Manila. He had been beheaded. App. 36, p. 271.

***7. Gustav, Helen, and Dennis Scheuermann and Gwendolyn Scheuermann  
Mugliston.***

101. Plaintiff Gustav Scheuermann and his family moved to the Philippines in 1936. He took a job as a mining engineer in Luzon. In October 1941, his Japanese friends warned him to get his family out of the Philippines. Gustav flew with his wife and two children to Manila to purchase tickets back to the United States. But in Manila he was refused tickets and informed that no civilians would be allowed to leave the island. Thereupon Mr. Scheuermann visited a U.S. official to get permission for his family to leave. The official told him that civilians were not allowed to leave the Philippines because their leaving would show a lack of faith in the peace negotiations between Japan and the United States. Gustav then asked if he could send his family back to the United States if he stayed behind. Again, he was refused. The Scheuermann family was interned first in Santo Tomas and then in Los Banos.

### ***8. Plaintiff's Decedent John Howard Hell***

102. Plaintiff's decedent John Howard Hell was 33 years old and in hiding with the Filipino guerrillas in January 1942 when he was captured by the Japanese and sent first to Santo Tomas and then to the camp at Los Banos. App. 37, p. 202. In May 1943, he helped organize the internees to plant vegetables. By January 1945, the gardens had been harvested and replanted twice. App. 37, p. 202. The produce slightly alleviated the meager diets of the 2,000 internees at Los Banos. In January 1945, the Japanese guards took the harvest for themselves.

103. The Los Banos camp was located in the middle of an experimental agricultural station with acres of bananas and coconuts. App. 33, p.193. The prisoners were not allowed to gather any of this food. By the end of 1944, however, Japanese guards began leaving the camp and returning periodically. It was thus possible, although risky, for some of the internees to slip out and gather some of the food and then sneak back into camp. On January 15, 1945, John Hell slipped out of camp with a canvas knapsack to gather some food for a young pregnant woman internee. The post appeared to be clear when he tried to reenter the camp. A Japanese guard saw him and shot him in the back. The knapsack filled with bananas and coconuts spilled out on the ground beside his dead body. App. 37, p. 205.

### ***9. Plaintiff's Decedent Lewis Robinson***

104. Plaintiff's decedent Lewis Robinson was born in the Philippines in 1940. His father had moved from the United States to the Philippines in the 1920s to take up a position as general manager of a mine owned by a mining company, J.H. Marsman & Company. In 1941, fearing for his family's safety in the Philippines, his father attempted to

secure passage to the United States for his wife, Lewis, and two other children. All the family passports and documentation were in order. They had sufficient cash to pay for passage to the United States. However, they were refused tickets. They were told that seats were not available on any plane or ship. After the invasion, the Japanese interned the Robinson family at the Holmes Camp and later at the Bilibid Camp in Manila. While in the camps, Lewis contracted polio. Although there were qualified physicians in the camps, there were no supplies or medication with which to treat Lewis. He was completely paralyzed by the disease. After liberation, Lewis underwent intensive medical intervention in the United States, but was unable to recover. He died in 1957, at the age of 17.

***10. Curtis Brooks and Bernard Brooks***

105. Plaintiffs Curtis Brooks and his twin brother Bernard were born to American parents in Manila in 1928. On January 9, 1942, Japanese soldiers took the Brooks family to Santo Tomas. In the course of their internment, they each suffered from beriberi. Their father, Mr. Walter Brooks, died of a heart attack brought on by starvation and dysentery, just one week before the camp was liberated by the Allies. App. 38, p. 89. Immediately after the liberation, the Japanese began shelling the camp. A mortar shell killed their mother, Mrs. Emilie Becker Brooks. The twins returned to the United States on February 23, 1945, as orphans.

***11. Plaintiff Thomas Barnes***

106. Plaintiff's father, George Sheldon Barnes, worked in Manila as an insurance adjuster. He and his wife, plaintiff's mother Dorothy Lee Barnes, and their two children Carole and Georgia, lived in a rented apartment in Manila. App. 39, p. 12. After the Japanese attack, the Barnes family was sent on a bus to Santo Tomas. There the guards told

Mrs. Barnes, “No make babies,” but at the same time they confiscated her diaphragm. Mrs. Barnes became pregnant and gave birth to her third child Peter on October 14, 1942. In January 1943, Mr. Barnes and other internees who were guilty of fathering a child were put in a jail within the camp for 30 days as punishment.

107. During their detention at Santo Tomas, the Barnes family suffered from extreme malnutrition. The plaintiff's sisters recall their parents' dread of starvation and the constant need to scavenge the scraps of food that may have fallen on the ground from some of the other internees. Plaintiff's sister Carole lost all her teeth before she was twenty, and Mr. and Mrs. Barnes each lost all their teeth following their detention in Santo Tomas. By keeping a low profile, the Barnes family managed to escape torture. But in March 1944, young Georgia (plaintiff's sister) witnessed the torture by Japanese guards of two Philippine boys who were caught inside the camp trying to get some food. She watched as the guards yelled, pushed and punched the boys with the butts of their guns. They then tied up the boys and beat them until they fell unconscious, “crumpled up on the pavement like discarded toys.” App. 39, p. 119. A guard then inserted a hose into the mouth of one of the boys, holding his mouth over the hose and filling him with water. With a devilish shout of glee the guard jumped on the boy's stomach. App. 39, p.119.

### ***12. Erle F., Louise, Donal, and Earl Douglas Rounds***

108. Plaintiff Donal Rounds was born in the United States on October 7, 1927. He and his parents moved to the Philippines in 1932. His father, class member Erle F. Rounds, was a Northern Baptist minister who did missionary work on the island of Panay. On December 7, 1941, Donal was a student in a boarding school in Manila while his parents and his younger brother remained on Panay. Donal was taken by the Japanese and sent to

Santo Tomas. He had no communication with his family, which had fled into the jungle to hide from the Japanese. Upon liberation, Donal was suffering from beriberi due to malnutrition. It was at that time that he learned that his mother, father, and younger brother on December 22, 1943, had been captured and summarily beheaded by the Japanese.

***C. The Conditions Progressively Worsened for all Internees***

109. By 1944, food in all the prison camps in the Philippines was in such short supply that people were given only two small meals per day: one ladle of watery rice gruel or cornmeal in the morning and one ladle of slightly thicker rice, sometimes with a few vegetables, at night. There was no protein, salt or fat in their diets. App. 34, p. 106. The official ration for each internee was 125-150 grams of husked rice per day. This allotment proved to be deceptive as guards often short-weighted the portions. The ration was further reduced by the fact that a quarter of the weight consisted of inedible husks, dirt, pebbles, rat droppings, and stalks. App. 33, p. 190. Occasionally a handful of fish heads and eyes from Japanese cooking discards went into the soup. App. 33, p. 191. Some internees tried to supplement their diet by growing vegetables; however, their produce was confiscated. App. 33, p. 196. By late 1944, internees in the camp were reduced to eating cats, dogs, rats, weeds, and even poisonous lily roots. As the war became grimmer for Japan, camp rules became more strict. Internees were prohibited from picking weeds for personal consumption and could no longer lick their cans clean. Cans were rinsed, and the rinse water was poured into the pot for the next meal.<sup>16</sup> App. 33, p.191.

---

<sup>16</sup> Although recent newspaper and magazine exposures of the Japanese treatment of American military prisoners of war may have partially desensitized the American public to prison camp atrocities committed during World War II, it must be emphasized that the members of the plaintiff class who suffered in the Philippines camps were not soldiers. They had not taken up arms against Japan. They were ordinary American unarmed civilians including men who were not militarily trained, women, boys, girls, infants, the infirm and the elderly.

110. The starving men, women and children watched throughout the latter half of 1944 as cartloads of fruit and vegetables, sent by various relief organizations in Manila, were turned away by the guards. App. 35, p. 125; App. 33, p. 193. The American Red Cross made many attempts to have relief packages reach the prisoners. They were successful only once—after a typhoon in November, 1943 App. 35 p. 88-89; App.33, p. 184. Since food was available in Manila, it is difficult to assume that the Japanese officials in the internee camps did not intend to carry out a program of deliberate malnutrition if not starvation. By the time of the American liberation on February 3, 1945, many people in the Santo Tomas camp had died of starvation and malnutrition. In the last eight weeks before liberation, elderly people were dying at the rate of 8 to 10 per day.

#### **IV. STATUTE OF LIMITATIONS**

111. The six-year statute of limitations for actions against the United States of 28 U.S.C. § 2401, is an affirmative defense.

112. The period of limitations should be tolled by reason of the secrecy in which the United States has kept its decision to subject the plaintiffs and their decedents to attack by the Japanese Armed Forces in order to precipitate the United States into a total war against the Axis Powers. This United States has concealed the evidence for its acts by keeping the stenographic transcripts of the Roosevelt-Churchill telephone calls of the summer of 1941 under seal, and on information and belief, by redacting nearly all references to the American civilians on the Philippines in the voluminous records of World War II that have been published by the United States and made available to historians and researchers, with no indication (for example, by ellipses or other marks) that they have been redacted and expurgated..

113. The secret United States policy was not reasonably discoverable by the plaintiffs or their decedents. Of the thousands of historians from all over the world, hundreds of Ph.D. theses on the causes of World War II, hundreds of thousands of research articles on the subject, plaintiffs are not aware of a single one that claims that American civilians in United States-owned territories in the South Pacific were deliberately kept in harm's way in order to precipitate a war with Japan and the other Axis powers. If all these historians and students of history were unable to come up with this thesis, then it is clearly unreasonable to expect that the victims of the United States' actions and misrepresentations should have come up with such a thesis. The success of the United States in keeping this matter secret for over sixty years demonstrates beyond a reasonable doubt that plaintiffs or their decedents should not be charged with knowledge that they had a cause of action against the United States.

114. Because many unredacted records, transcripts of telephone conversations, and other original documents and papers, remain in the exclusive possession and control of the United States, the defendant is equitably estopped to assert the bar of the statute of limitations in this action.

## **V. ALLEGATIONS REGARDING CAUSES OF ACTION**

### **Count One: *Violation of the Right to Travel Within U.S. Territory***

115. Plaintiffs repeat and reallege ¶¶ 1 - 110 of the Complaint as if fully set forth.

116. As American citizens, plaintiffs or their decedents were guaranteed the right to travel freely within the territory of the United States, including its territories and possessions, under the First, Fifth, and Fourteenth Amendments to the Constitution.

117. The United States prevented the plaintiffs or their decedents from freely exercising their right to travel by barring and prohibiting their passage from the Philippines, Wake, Midway, or Guam back to the continental territory of the United States during the years 1940 and 1941. It did so by refusing to issue, renew, validate, or return passports to Americans who attempted to repatriate at a time when passports were statutorily required for travel. In addition, it prohibited Americans from departing on empty military and cargo vessels, it barred the public announcement of ship departures from Manila, and it instructed ticket agents not to sell tickets to American citizens even if they happened to have their passports with them.

118. The United States knew or should have known that preventing the plaintiffs or their decedents from returning home to continental United States would subject them to injury and death by Japan's armed forces, as an attack upon the Philippines by Japan was inevitable and the Philippines were militarily underdefended.

119. The United States foresaw or reasonably could have foreseen the plaintiffs' injuries and maltreatment because it was put on notice that Japan's armed forces behaved with brutality and barbarity toward civilians in China.

120. Plaintiffs or their decedents have all been severely injured or killed by the actions of Japan's armed forces during plaintiffs' confinement.

WHEREFORE, plaintiffs Marcia Fee Achenbach *et al.* respectfully request that this court enter judgment against the defendant United States of America in an amount to be proved at trial, and that they have the costs of this action.

**Count Two: *Violation of Due Process***

121. Plaintiffs repeat and reallege ¶¶ 1 - 110 of the Complaint as if fully set forth.

122. As American citizens, the plaintiffs or their decedents had a right to return to their own country, guaranteed by the Due Process Clause of the Fifth Amendment.<sup>17</sup>

123. The United States violated plaintiffs' due process right to return to their country by requiring that they secure passports and visas or other travel documents from the High Commissioner for the Philippines.

124. The United States knew or should have known that preventing the plaintiffs or their decedents from returning to continental United States would subject them to injury and death by the Japanese invaders.

125. Plaintiffs or their decedents have been injured and killed by the foreseeable actions of the Japanese military invaders during the claimants' confinement in the Philippines. Plaintiffs will prove their injuries at trial.

126. By causing the plaintiffs to be injured or killed in violation of the Due Process Clause, the United States should be held liable.

WHEREFORE, plaintiffs Marcia Fee Achenbach *et al* .respectfully request that this court enter judgment against the defendant United States of America in an amount to be proved at trial, and that they have the costs of this action.

**Count Three: *Violation of Equal Protection***

127. Plaintiffs repeat and reallege ¶¶ 1 - 110 of the Complaint as if fully set forth.

128. As American citizens, plaintiffs have the right to the equal protection of the laws guaranteed by the Fourteenth Amendment and made applicable to the United States by the Fifth Amendment.

---

<sup>17</sup> This inalienable right of return was upheld by *Worthy v. United States*, 328 F2d 386 (5<sup>th</sup> Cir. 1964).

129. The United States created a class of persons defined by their innocent presence on the Philippines, Guam, Midway, and Wake Islands. Plaintiffs or their decedents are members of this class.

130. The United States knew or should have known that preventing the plaintiffs or their decedents from leaving the Philippines, Guam, Midway, and Wake Islands would subject them to injury and death at the hands of the Japanese invaders.

131. Plaintiffs or their decedents have been injured or killed by the actions of the Japanese Armed Forces during plaintiffs' confinement. Plaintiffs will prove their injuries at trial.

132. By depriving the class of persons defined in ¶ 125, *supra*, of equal protection of the laws compared to other American citizens, foreseeably resulting in their injury or death, the United States should be held liable.

WHEREFORE, plaintiffs Marcia Fee Achenbach *et al.* respectfully request that this court enter judgment against the defendant United States of America in an amount to be proved at trial, and that they have the costs of this action.

**Count Four: *Violation of Trust***

133. Plaintiffs repeat and reallege ¶¶ 1 - 110 of the Complaint as if fully set forth.

134. As American citizens, plaintiffs or their decedents were owed by the United States utmost candor and honesty, particularly on matters of their safety and security.

135. The United States breached its duty of truthful representation to the plaintiffs, and omitted to make other statements necessary to render the statements made not misleading.

136. The United States knew or should have known that by willfully misrepresenting to the plaintiffs that they were safe and secure in the Philippines in 1940 and 1941, they would be subjected to injury or death by the Armed Forces of Japan.

137. Plaintiffs or their decedents have been injured or killed by the actions of the Japanese Armed Forces during plaintiffs' confinement. Plaintiffs will prove their injuries at trial.

138. By making misrepresentations as to plaintiffs' safety or omitting to make truthful statements which in turn led the plaintiffs to be injured or killed as a foreseeable consequence of the United States' misrepresentations and omissions, the United States should be held liable.

WHEREFORE, plaintiffs Marcia Fee Achenbach *et al.* respectfully request that this court enter judgment against the defendant United States of America in an amount to be proved at trial, and that they have the costs of this action.

**Count Five: *Violation of the Principle of Common Defense***

139. Plaintiffs repeat and reallege ¶¶ 1 - 110 of the Complaint as if fully set forth.

140. As American citizens, plaintiffs and their decedents had the expectation, based upon one of the purposes of the United States as set forth in the Preamble to its Constitution, that the United States would provide for the common defense and not for the defense of some civilian citizens at the expense of other civilian citizens.

141. The United States violated this principle of common defense by forcibly maintaining the plaintiffs or their decedents in harm's way in order that they would be attacked by Japan and thereby provoke the American public into a world war against Japan, Germany, and Italy.

142. The United States knew or should have known that preventing the plaintiffs or their decedents from returning to its continental territory would subject the plaintiffs to injury and death at the hands of the Japanese invaders.

143. Plaintiffs or their decedents have been injured or killed by the actions of the Japanese invaders during the plaintiffs' confinement. Plaintiffs will prove their injuries at trial.

144. By violating the principle of common defense and causing the plaintiffs to be injured or killed, the United States should be held liable.

WHEREFORE, plaintiffs Marcia Fee Achenbach *et al.* respectfully request that this court enter judgment against the defendant United States of America in an amount to be proved at trial, and that they have the costs of this action.

**Count Six: *Violation of the Takings Clause***

145. Plaintiffs repeat and reallege ¶¶ 1 - 110 of the Complaint as if fully set forth.

146. As American citizens, plaintiffs have the right under the Fifth Amendment to be justly compensated by the United States for the taking of their property for public use.

147. Plaintiffs or their decedents lost property, including homes, real estate, personal possessions, financial assets, and their personal property in their bodily integrity, during the Japanese occupation of the Philippines, Guam, Midway, and Wake Islands.

148. The United States brought about the taking of plaintiffs' property by the foreseeable consequences to the plaintiffs of keeping them in harm's way of the Japanese invaders who were already known, by their depredations in China, for looting, pillaging, and confiscating the property of innocent civilians including their right to bodily integrity.

149. Plaintiffs or their decedents have had their property taken in violation of their right to just compensation. In this regard, although some plaintiffs including Gilbert Hair received minuscule amounts under the War Claims Act of 1948, 50 U.S.C. §§ 2001 et seq., for their personal deprivations, these amounts were not calculated on the basis of just compensation to the individuals as required by the Fifth Amendment but rather on the basis of Japanese assets seized in the United States at the outset of hostilities. On this arbitrary basis, Mr. Hair was awarded compensation of fifty cents per day of his imprisonment in the Santo Tomas camp. Plaintiffs will prove their damages at trial.

WHEREFORE, plaintiffs Marcia Fee Achenbach *et al.* respectfully request that this court enter judgment against the defendant United States of America in an amount to be proved at trial, and that they have the costs of this action.

Respectfully submitted,

---

ANTHONY D'AMATO  
D'Amato Keegan & Duggan, LLC  
Attorney for the Plaintiffs

PLAINTIFFS' ATTORNEYS:

Anthony D'Amato  
Room 311  
Northwestern Law School  
357 E. Chicago Ave.  
Chicago, Illinois 60611  
(312) 503-8474 phone  
(312) 503-1676 fax  
Member of the Bar of the United  
States Court of Federal Claims

Susan M. Keegan  
D'Amato, Keegan & Duggan, LLC  
Suite 1610  
140 South Dearborn Street  
Chicago, Illinois 60603  
ARDC No. 3125305  
(312) 726-7400 phone  
(312) 443-1665 fax  
Member of the Bar of the United  
States Court of Federal Claims

David G. Duggan  
D'Amato, Keegan & Duggan, LLC  
140 South Dearborn Street  
Suite 1610  
Chicago, IL 60603  
ARDC No. 03128581  
(312) 551-0670 phone  
(312) 443-1665 fax