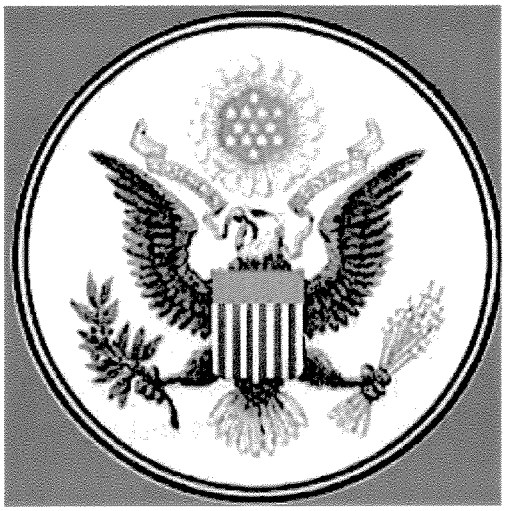
Guam War Claims Review Commission



Report on the Implementation of the Guam Meritorious Claims Act of 1945

June 2004

GUAM WAR CLAIMS REVIEW COMMISSION

Mauricio J. Tamargo, Chairman
Antonio R. Unpingco, Vice-Chairman
Benjamin J. Cruz, Commissioner
Robert J. Lagomarsino, Commissioner
Ruth G. Van Cleve, Commissioner

David E. Bradley
Executive Director

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c/o Foreign Claims Settlement Commission
of the United States
Washington DC 20579

June 9, 2004

The Honorable Gale A. Norton
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, Northwest
Washington DC 20240

Dear Madam Secretary:

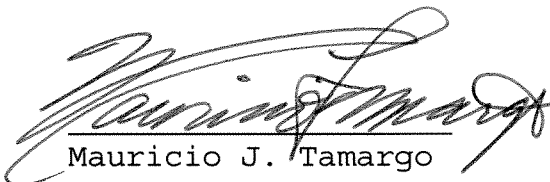
We have the honor to present to you our "Report on the Implementation of the Guam Meritorious Claims Act of 1945, Including Findings and Recommendations" in accordance with the Guam War Claims Review Commission Act, Public Law 107-333.

The process of preparing this report has forced a great many people, including ourselves, to relive an intensely painful period in the history of Guam: 32 months in which the people of Guam endured the cruel oppression of the Japanese Empire. It is our hope that our efforts have helped the people of Guam to bring closure to that period of American history.

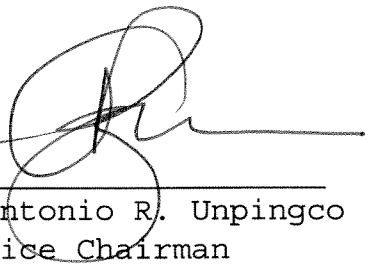
We consider it particularly propitious to be presenting this report at this time, as we approach the 60th anniversary of the liberation of Guam on July 21, 1944. At the same time, we hope that the historical information and the findings and recommendations we have compiled will be useful to the

Administration and the Congress in devising a satisfactory resolution of this long-standing injustice.

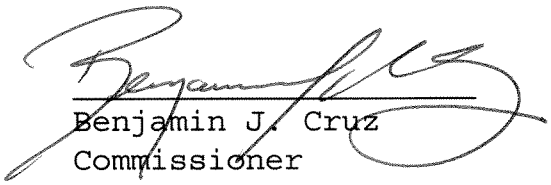
Sincerely,



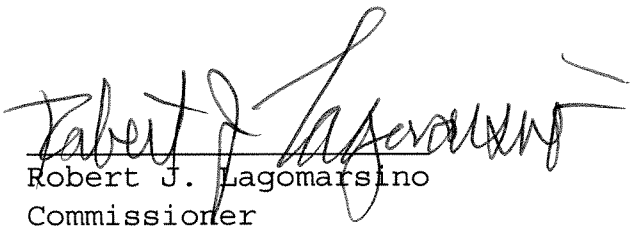
Mauricio J. Tamargo
Chairman



Antonio R. Unpingco
Vice Chairman



Benjamin J. Cruz
Commissioner



Robert J. Lagomarsino
Commissioner

Ruth G. Van Cleve
Commissioner

The same letter has been sent to the Chairmen and ranking members of the Committee on Resources and the Committee on the Judiciary of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on the Judiciary of the Senate.

GUAM WAR CLAIMS REVIEW COMMISSION

REPORT ON THE IMPLEMENTATION OF THE GUAM MERITORIOUS CLAIMS ACT OF 1945, INCLUDING FINDINGS AND RECOMMENDATIONS

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-Member Biographies-

Chairman Mauricio J. Tamargo

Chairman Tamargo currently serves as Chairman of the Foreign Claims Settlement Commission of the United States. Chairman Tamargo received his B.A. from the University of Miami, and his J.D. from Cumberland School of Law at Samford University.

Vice-Chairman Antonio R. Unpingco

Vice-Chairman Unpingco was elected to and served in the Guam Legislature for 24 years, and served as Speaker for three terms. The former Speaker received his B.A. from Portland State University.

Robert J. Lagomarsino

Mr. Lagomarsino served 19 years in the U.S. House of Representatives for the 22nd District of California, and was a member of the Committee on Interior and Insular Affairs and the Committee on Foreign Affairs. Mr. Lagomarsino received his B.A. from the University of California at Santa Barbara in 1950, and his J.D. from the University of Santa Clara Law School in 1953.

Benjamin J. Cruz

Mr. Cruz spent over thirteen years as a trial court judge on the Superior Court of Guam and is a former Chief Justice of the Guam Supreme Court. Mr. Cruz received his B.A. from Claremont Men's College in 1972, and his J.D. from the University of Santa Clara School of Law in 1975.

Ruth G. Van Cleve

Mrs. Van Cleve worked for 37 years in the Department of the Interior specializing in territorial affairs, and served for a time as Acting Assistant Secretary of the Interior for Territorial and Insular Affairs. Mrs. Van Cleve received her B.A. from Mount Holyoke College in 1946, and her LL.B. from Yale University in 1950.

EXECUTIVE SUMMARY

The island of Guam is an unincorporated territory of the United States situated in the Western Pacific Ocean approximately 3,500 miles west of Honolulu, Hawaii.

From the sixteenth century until almost the end of the nineteenth, Guam was a territory of the Spanish Empire. However, under the terms of the Treaty of Paris, following the United States' military defeat of Spain in 1898, Guam became a possession of the United States. That same year, President McKinley placed the island under the administrative control and governance of the U.S. Navy, and it remained in that status until it was seized and occupied by Imperial Japanese forces on December 10, 1941.

United States forces declared Guam secure and liberated on August 10, 1944, and immediately began organizing it as a base from which to launch air and sea attacks in the direction of the Japanese homeland. At the same time, the Navy devoted as much material and effort as could be spared to constructing shelter for the local citizens. Within weeks after the termination of hostilities, Congress promptly enacted the Guam Meritorious Claims Act of 1945 to provide "immediate relief" to the people of Guam.

COMMISSION MANDATE

The Guam War Claims Review Commission ("the Review Commission") was established to "determine whether there was parity of war claims paid to the residents of Guam under the Guam Meritorious Claims Act as compared with awards made to other similarly affected U.S. citizens or nationals in territory occupied by the Imperial Japanese military forces during World War II" and to provide a report, no later than June 10, 2004, including comments or recommendations.

In preparing the report, the Commission was required to:

(1) review the facts and circumstances surrounding the implementation and administration of the Guam Meritorious Claims Act;

(2) take oral testimony of survivors of the World War II Japanese occupation of Guam;

(3) determine whether there was parity in the treatment of Guamanians' World War II claims as compared with the claims of U.S. citizens or nationals in other areas occupied by Japan during the war;

(4) make findings and recommendations as to any further compensation to which the people of Guam may be entitled on account of their suffering/treatment; and

(5) submit a report containing the results of its investigation and its findings and recommendations to the Secretary of the Interior, the Committees on Resources and the Judiciary of the House of Representatives, and the Committees on Energy and Natural Resources and the Judiciary of the Senate. The report is due by June 10, 2004.

CREATION AND COMPOSITION OF THE COMMISSION

The Review Commission was created by the Guam War Claims Review Commission Act, which was enacted into law on December 16, 2002 (Public Law 107-333, 116 Stat. 2873), and its five commissioners were appointed by Interior Secretary Gale A. Norton on September 11, 2003.

THE COMMISSION REPORT

The report, including its findings and recommendations, is designed to address the Commission's specific mandate which was to (1) determine whether there was parity of war claims paid to the residents of Guam under the Guam Meritorious Claims Act as compared with awards made to other similarly affected U.S. citizens or nationals in territory occupied by the Imperial Japanese military forces during World War II; and (2) advise on any additional compensation that may be necessary to compensate the people of Guam for death, personal injury, forced labor, forced march, and internment.

In order to carry out this mandate, the Review Commission carefully reviewed the provisions of the Guam Meritorious Claims Act of 1945 and its implementing regulations, as well as the reports of the Navy's Land and Claims Commission detailing the progress and resolutions of the claims filed thereunder. In addition the Commission reviewed the Hopkins Committee Report and its recommendations as well as the history of legislative efforts in the U.S. Congress and on Guam. In addition, the Review Commission held hearings on Guam to listen to witness

testimony and held a legal experts conference in Washington, D.C.

The Review Commission's research clearly showed that the treatment received by the people of Guam at the hands of the Imperial Japanese forces was oppressive, cruel and barbaric. Though at first, the Japanese occupiers of Guam sought to convert the island and its population into a component of Imperial Japan's "Western Pacific Co-Prosperity Sphere," their occupation became increasingly oppressive and cruel as the war progressed. Public executions -- usually by beheading -- became frighteningly common. In addition, in early 1944 the occupiers closed all the schools on the island and imposed a regimen of forced labor on all able-bodied citizens.

Finally, in the face of the imminent attack of the island by United States forces, the occupiers issued a decree on July 10, 1944, ordering the round-up and concentration of all of the people of Guam in three areas in the south and southeastern parts of the island. By the time American forces reached that area after coming ashore on July 21, 1944, nearly all of the 22,000 men, women, and children living on the island -- except for those who managed to hide in the jungle -- had amassed in those areas, in conditions of utter deprivation.

Providing relief to the Guam population was one of the U.S. Navy's first priorities after the island's liberation. In arriving at its findings and recommendations, the Review Commission studied the administration of the Guam Meritorious Claims Act of 1945 by the U.S. Navy's Land and Claims Commission, and compared the statute and the claims program conducted pursuant to it with the following statutes:

--Philippines Rehabilitation Act of 1946
--War Claims Act of 1948
--Wake Island Amendment to the War Claims Act (1962)
--War Claims Act, Title II (1962)
--War Claims Act Amendments (1952 & 1956)
--War Claims Act Amendment (1954)
--Micronesian Claims Act of 1971
--Aleutian and Pribilof Islands Restitution Act (1988)

After a careful review and comparison of the provisions and implementation of the Guam Meritorious Claims Act and the other

statutes mentioned above, the Review Commission determined that there was a lack of parity in some aspects of the process and the amounts made available for payment to the residents of Guam. Based on this determination, the Review Commission is recommending that Congress enact legislation providing for additional compensation as set out in the findings section on page 71 and in the recommendations section on page 79 of this report.

OVERVIEW

On December 16, 2002, the "Guam War Claims Review Commission Act" (the "Review Act") was signed into law.[1] The Review Act provided for the creation of the "Guam War Claims Review Commission" (the "Review Commission"). Section 5(6) of the Review Act directs the Review Commission to submit, within 9 months after the Commission is established, a report, including comments or recommendations for action, to the Secretary of the Interior and to several Committees of Congress.[2]

In preparing this report, the Commission staff conducted extensive research of government documents held by federal repositories in Washington, DC, Maryland, and California, military archives, and archives on Guam. The staff consulted with archivists to determine the likelihood of identifying relevant materials among their holdings. These facilities maintain federal records placed in storage by civilian and military agencies of the government. The federal records typically are organized by record group and entry numbers and are contained in consecutively-numbered boxes. The records within each box, usually official memoranda, bulletins, forms, and reports issued by citizens or groups, may be organized by sub-topic, by date, by office, or in some other fashion not readily discernible. The type of organization is determined by the methods employed by the creators of the documents, by those responsible for retiring the records to the National Archives, or under the best circumstances, after a review by archivists and the creation of detailed "finding aids." Furthermore, a document may be an original with the signature of the originating official on onion skin or bond paper, or a mimeographed copy. The record may be fully intact, missing pages, or barely legible due to age and the durability of the medium. Some records had been destroyed. At times, the staff received records that appeared promising based on their description yet they contained nothing of significance upon review.

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[1]A copy of the Review Act is included as Appendix A.

[2]The Commission was established on October 10, 2003.

While the Commission has been able to construct a general chronology of the workings of the Guam Land and Claims Commissions, the nature of the records and the record keeping, as well as the amount of time that has elapsed since the records were created, make the compilation of a complete list of claims paid difficult. It would be incorrect to assert that no additional fragments or records exist. Additionally, this Commission was working under time constraints, limited financial resources, and with a very small number of staff available to conduct the historical research. When all the testimony, papers, documents, exhibits, and other evidence utilized by the Commission are reviewed, it becomes apparent that the record is far from complete.

In spite of these difficulties and constraints, the Review Commission members and staff believe that their efforts have resulted in a comprehensive report which complies with the mandate given it by the Congress in the Guam War Claims Review Commission Act. Included in these preparation efforts were some twenty meetings of the Review Commission, variously held in Washington, on Guam, and via telephone conference call, along with a total of over 1,500 hours of staff employee hours. Additionally, a member of the Commission traveled to several communities in California, Nevada, and Washington to meet with groups of Guamanians currently living in those states. In those meetings he discussed the Guam War Claims Review Commission Act and distributed and collected questionnaires completed by survivors of the Japanese occupation of Guam.

I. Introduction

The "Guam War Claims Review Commission Act" (the "Review Act") was enacted into law on December 16, 2002 (Public Law 107-333, 116 Stat. 2873) to provide for creation of a "Guam War Claims Review Commission" (the "Review Commission").

The duties of the Review Commission are set out as follows:

(1) review the facts and circumstances surrounding the implementation and administration of the Guam Meritorious Claims Act and the effectiveness of such Act in addressing the war claims of American nationals residing on Guam between December 8, 1941, and July 21, 1944;

(2) review all relevant Federal and Guam territorial laws, records of oral testimony previously taken, and documents in Guam and the Archives of the Federal Government regarding Federal payments of war claims in Guam;

(3) receive oral testimony of persons who personally experienced the taking and occupation of Guam by Japanese military forces, noting especially the effects of infliction of death, personal injury, forced labor, forced march, and internment;

(4) determine whether there was parity of war claims paid to the residents of Guam under the Guam Meritorious Claims Act as compared with awards made to other similarly affected U.S. citizens or nationals in territory occupied by the Imperial Japanese military forces during World War II;

(5) advise on any additional compensation that may be necessary to compensate the people of Guam for death, personal injury, forced labor, forced march, and internment; and

(6) not later than 9 months after the Commission is established submit a report, including any comments or recommendations for action, to the Secretary of the Interior, the Committee on Resources and the Committee on the Judiciary of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on the Judiciary of the Senate.[3]

A. Establishment and Composition of the Review Commission

Section 2(b) of the Review Act states that

> [t]he Commission shall be composed of five members who by virtue of their background and experience are particularly suited to contribute to the achievement of the purposes of the Commission.

On September 10, 2003, Secretary of the Interior Gale Norton appointed the following five individuals to serve on the Commission:

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[3]The report is due on June 10, 2004.

Antonio R. Unpingco, former Speaker, Guam Legislature

Benjamin J. Cruz, former Chief Justice, Guam Supreme Court

Robert J. Lagomarsino, former Congressman from Ventura, California

Ruth G. Van Cleve, former acting Assistant Secretary of the Interior for Territorial and Insular Affairs

Mauricio J. Tamargo, Chairman of the Foreign Claims Settlement Commission

Mrs. Van Cleve and Messrs. Lagomarsino and Tamargo were appointed directly by Secretary Norton. In accordance with Section 2(b) of the Review Act, the two members from Guam were respectively appointed from a list of three names submitted by the Governor of Guam and from a list of three names submitted by the Guam Delegate to the U.S. House of Representatives.

The Review Commission held its first meeting at the Department of Interior on October 3, 2003, at which time it unanimously elected Mauricio J. Tamargo as its Chairman and Antonio R. Unpingco as its Vice Chairman. The Review Commission also named David E. Bradley, Chief Counsel of the Foreign Claims Settlement Commission, as its Executive Director.

At a subsequent meeting, a schedule of hearings on Guam was agreed upon by the Review Commission members.

B. Historical Background: Guam Before, During, and After World War II

The island of Guam is an unincorporated territory of the United States situated in the Western Pacific Ocean some 3,500 miles west of Honolulu, Hawaii. The island has a total area of approximately 212 square miles and a current population of approximately 160,000 people[4], including some 23,000 active-duty Navy, Air Force, Marine Corps, Coast Guard, and other military service members and their families.

[4] 2000 Census, U.S. Census Bureau, U.S. Department of Commerce.

From the sixteenth century until almost the end of the nineteenth, Guam was a colony of the Spanish Empire. However, under the terms of the Treaty of Paris, following the United States' military defeat of Spain in 1898, Guam became a territory of the United States. That same year, President McKinley issued Executive Order 108-A placing the island under the administrative control and governance of the U.S. Navy, and it remained in that status until it was seized and occupied by Imperial Japanese forces on December 10, 1941.

1. World War II Occupation of Guam

With the exception of six islands in the Aleutian chain west of Alaska (from which most of the native inhabitants had previously been evacuated to safety), Guam and the Philippines were the only parts of the United States that the Japanese succeeded in occupying during World War II.

At first, the Japanese occupiers of Guam sought to convert the island and its population into a component of Imperial Japan's "Western Pacific Co-Prosperity Sphere." They changed the name of the island and gave its capital and towns Japanese names, and ordered the teaching of Japanese language and culture in the schools. They also forced the population to practice Japanese customs, such as bowing to the Japanese occupiers and in the direction of the Japanese homeland, in honor of the emperor. Failure to execute a bow in precisely the right way would draw punishment, in the form of a slap, a kick, or a blow with a rifle butt. In addition, the Japanese forced many of the Chamorro women to work for them as housekeepers and laundresses, and at their whim the Japanese raped many of them. A number of them were restricted in one particular location and forced to work on particular projects. Some were forced to march from one place to another to work and others were forced to serve as "comfort women" (i.e., prostitutes).[5]

As the war progressed, and the Japanese saw their forces meeting defeat after defeat, their occupation became increasingly oppressive and cruel. Public lashings of one or more island inhabitants became almost a daily occurrence and

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[5]Robert F. Rogers, *Destiny's Landfall: A History of Guam*, p. 171 (University of Hawaii Press) (1995).

public executions -- usually by beheading -- became frighteningly common. In addition, in early 1944 the occupiers closed all the schools on the island and imposed a regimen of forced labor on all able-bodied citizens, including men, women, and children, under which regimen they were required to work 12 hours per day, six days per week, either in farming or in the construction of shore fortifications and airfields. Most of this work, including the heavy construction, they performed with only simple tools and much of the time with only their bare hands. At the same time, the Japanese kept more and more of the available foodstuffs to themselves, allowing the islanders only a meager daily ration that was entirely inadequate to sustain them in their labors. As a result, a great many of the islanders suffered from malnutrition.

Finally, in the face of the imminent attack of the island by United States forces, the occupiers issued a decree on July 10, 1944, ordering the round-up and concentration of all of the people of Guam in three areas in the south and southeastern parts of the island, near the villages of Yona (Manengon), Talofofo, and Inarajan. By the time American forces reached that area after coming ashore on July 21, 1944, nearly all of the 22,000 men, women, and children living on the island -- except for those who managed to hide in the jungle -- had amassed in those areas, in conditions of utter deprivation: there was very little food or medicine, no potable water, no sanitary facilities, and at most only makeshift or temporary shelter from the torrential rains. Many had no shelter at all.[6]

2. Post-War Reconstruction and Rehabilitation of Guam

United States forces declared Guam secure and liberated on August 10, 1944, and immediately began organizing it as a base from which to launch air and sea attacks in the direction of the Japanese homeland. At the same time, they devoted as much material and effort as could be spared to constructing shelter for the local citizens. This was a particular and extremely urgent need, as the American naval and air bombardment of the island carried out in the month before the American forces' attack had resulted in the destruction of virtually all of the

[6] *Id.* at 180.

structures in the island's capital of Agaña[7] and heavy destruction in several of the other towns and villages.

The urgency of the need for housing reconstruction and rehabilitation of the economy on Guam was recognized at the highest levels of the Department of the Navy. On February 19, 1945, the Chief of Naval Operations (CNO) in Washington, DC, issued a memorandum[8] to the Commander in Chief, Pacific Operations Area, with copies to the Bureau of Naval Personnel, Bureau of Yards and Docks, Bureau of Supplies and Accounts, and the Judge Advocate General, ordering the formation of a "Land and Claims Unit . . . to examine facts and make recommendations . . . to the Navy Department for appropriate action" in order to "effect the restoration of records of boundaries and ownership of all lands on the Island of Guam and to make preliminary investigation into claims resulting from military operations of the United States and Japan." In addition, the memorandum directed the Judge Advocate General to "prepare the requisite precept for the official appointment by the Secretary of the Navy of this fact-finding Land and Claims Unit."

On March 3, 1945, the Secretary of the Navy issued his official "Precept" to the CNO.[9] It read in pertinent part as follows:

> 1. The island of Guam . . . has suffered severe damage as a result of the war between the United States and Japan. Moreover, the construction of new military and naval installations necessitates the relocation of many residents of the island. The problem of rehabilitation, resettlements and relief of the native population is the responsibility of the Navy. Its solution will require extensive investigation, a well-developed plan, and enactment of appropriate legislation.

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[7] *Id.* at 190.

[8] Appendix B represents a compendium of documents from our research at the National Archives and the Navy Historical Center, and is attached to this report. For ease of reference, each document will be referenced individually as a subsection under Appendix B. The document referred to is Appendix B(1).

[9] Appendix B(2).

> 2. The Chief of Naval Operations is authorized and directed to develop a plan for the rehabilitation and resettlement, and for the repair of war damage, and for the settlement of claims, of the residents of Guam. The objective of the plan shall be the restoration, as near as may be, of the residents of Guam to their pre-war status. (Emphasis added.)
>
> 3. In the development of such plan, the Chief of Naval Operations is authorized and directed to create and establish a land and claims commission for Guam and to delegate to it such authority as may be necessary to investigate, report, and make recommendations on matters pertaining to titles to real property, boundaries of real property, restoration and preservation of boundary markers, land records, the need for resettlement, and claims of the residents of Guam arising from damages to real and personal property and for death and personal injury incident to the combat and non-combat operations of the armed forces of the United States and Japan or individual members thereof, subsequent to December 6, 1941, and to reestablish boundaries and boundary markers and conduct such surveys as may be required for this purpose. (Emphasis added.)[10]

On that same day, March 3, 1945, the CNO issued a memorandum[11] to Commander Leslie J. Watson, Civil Engineer Corps, U.S. Naval Reserve, appointing him as Senior Member of "a Land and Claims Commission for Guam," and also appointing seven other naval officers as members of the Commission. The memorandum stated that their duties would include the submission to the CNO of "findings of fact with respect to . . .[the] extent of damages caused to the persons and property of the inhabitants of Guam by the military operations of the United States and Japan,"[12] and "recommendations with respect to . . .procedures for the settlement, when authorized, of claims of inhabitants of

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[10] *Id.*

[11] Appendix B(3).

[12] *Id.*

Guam for damages to real and personal property and for personal injury or death, incident to military operations."[13]

In addition, it stated that "[t]he Commission is authorized, as directed by the Island Commander, to perform duties of a nature similar to those . . . now being performed by representatives of the Island Commander, and to take custody of such records as may be delivered to the Commission by the Island Commander or his representatives."[14]

Concurrently, the Commission was charged with making findings of fact with respect to "land titles, records, and boundaries [and] land temporarily used or acquired for permanent use by the United States"[15] and to "make recommendations with respect to . . . action to be taken to determine the ownership of land; restoration of boundaries and a land record system; [and] compensation of owners in money or in kind for land used, acquired, or to be acquired by the United States."[16]

On May 31, 1945, "Report #1" of the Land and Claims Commission for Guam[17] was forwarded to the Deputy Chief Military Government Officer. With regard to investigation of claims, the Report outlined the Commission's progress to date and the work that had been accomplished as of May 31, 1945. Specifically, the Report stated that on April 16, 1945, the Commission had commenced its "interrogation" program and used the services of Guamanian interpreters whose backgrounds had been carefully investigated. On April 23, 1945, the Commission's surveyors had arrived and commenced worked immediately. The Report indicated that with regard to the "General Interrogation and Personal Property Section," 1,500 personal interviews were completed, and the results were recorded as "personal declarations." These personal interviews/hearings were conducted at four principal centers of population and "hearings are to be held at about five additional localities." The Report further stated that approximately 2,700 personal "declarations" were expected.

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[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] Appendix B(4).

With regard to "Death and Personal Injury Section", the Report stated that

> [P]rior to the delayed arrival of the Commission's court reporters, the Commission member in charge of this section examined the available records and conferred informally with a considerable number of the best informed Guamanians. Following the arrival of the court reporters on May 2nd, formal hearings were started and will be continued from day to day for a considerable time. In these formal hearings, testimony is taken to develop the circumstances in general with respect to the actions of the Japanese during the period of the occupation and their treatment of the people. In view of the fact that many of the Guamanian officials under the pre-war Naval Government were continued in office by the Japanese, an excellent record of basic circumstances with respect to death and personal injury of Guamanian people and with respect to missing persons, is being recorded. Catholic and other influential persons are also being included in the general hearings. Following the recording of all such testimony, the section will proceed with the program of hearings covering each separate case so that facts may be established with respect to all pertinent details including facts of dependency.

The Report stated further that arrangements had been made with the civilian hospitals for the Military Government for the medical examinations and certificates that would be required incidental to the making of award recommendations.

The Report also set forth population figures which indicated that in 1945 the native population of Guam totaled 3,814 males over 21 years of age, 4,916 females over 21, 6,546 males under 21, and 6,457 females under 21.[18] Thus, of the population as a whole, only 40 percent were of adult age in 1945.

In addition, the Report contained a number of observations regarding the extent of the deaths and personal injuries

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[18] *Id.* at 8.

suffered by the residents of Guam during the Japanese occupation and the liberation of the island by U.S. military forces. It noted that

> [d]eath and injury suffered by civilians incidental to the retaking of the Island by our forces in July 1944 was not as great as one would expect, although there were a number of cases. That the cases were relatively few was due to the fact that when the Japanese forces were greatly augmented in March 1944, they took over most of the houses in what later became the area most intensively bombed and shelled by our forces preparatory to and during the July landings. A further factor is that prior to the invasion all Guamanians were confined to concentration areas outside of the area that was first invaded.[19]

The Navy's files also contain a personal letter[20] dated August 27, 1945, from Commander Watson to Captain Frank Gary in the Office of the Judge Advocate General in Washington, DC, referring to this Report. In his letter he stated

> The status of our work is as follows:
>
> (A) Findings of Fact anticipating Passage of "Guam Claims Bill."
>
> (a) Death, Missing Persons and Disappearance Section. - All reports will have been completed within 30 days - excepting for the final typing and conformance with action to be taken on our May 31st report - and with the regulations to be promulgated under the Claims Bill.
>
> (b) Personal Property Section. - within 30 days our investigations will have reached the maximum stage of completion possible until action is taken on our May 31st report and the regulations under the Claims Bill are promulgated.

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[19] *Id.* at 35.

[20] Appendix B(5).

> (c) Damage to Buildings. - All "findings of fact" necessary to perpetuate evidence, and for action by the Commission to be designated when the Claims Bill has passed, will be completed during November, or before.[21]

In his letter to Captain Gary, Commander Watson also expressed frustration over what was apparently a lack of cooperation on the part of the Commanding Officer of the Marianas area and his staff, and regarding the impending departure of many of his Commission members and staff and the lack of continuity that this would be likely to cause.

The Navy's files also contain further reports[22] by the Land and Claims Commission dated September 11, 1945, and December 18, 1945. The September 11, 1945, report indicated that extensive efforts through advertising, personal contact, and contact through village "commissioners" (mayors) had been made, and that almost 2,600 "declarations" of claim had been received, and that an additional 300 declarations were expected. Subsequently, the December 18, 1945, report indicated that on November 2, 1945, the CNO had designated a new panel to replace Commander Watson and his officers, appointing Colonel Thornton Wilson, U.S. Marine Corps, Retired, as Senior Member and Commander Albert L. O'Bannon as the other Commission Member. The report referred to this replacement panel as the "new Commission" and to that of Commander Watson as the "prior Commission." The report went on to state that

> [o]n December 1, 1945, the members of the new Commission reported on Guam to relieve the prior Commission. From informal reports made during joint meetings of the prior and new Commissions . . ., it is now known that the following minimum work load will be required of the new Commission.
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> . . .
>
> (e) Adjudication and payment of 2800 claims for loss of personal and real property.

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[21] *Id.*

[22] Appendix B(6).

(f) Adjudication of 700 claims for loss by reason of personal injury and death.
(g) Adjudication through court proceedings of 700 to 1000 probate cases for appointment of administrator or for determination of heirs of deceased persons.[23]

Included with the Commission's report were five enclosures. Enclosure (B) set out in detail the duties of the respective sections of the "new Commission." It provided that among those sections there would be

> 5. A Claims Section (Personal Injury and Death) which shall have the duties of investigating, reporting, and making recommendations for payment for loss by reason of death and personal injury incident to the combat and non-combat operations of the armed forces of the United States and Japan or the individual members of such forces subsequent to December 6, 1941.
>
> a. There are approximately 400 cases of loss by reason of death and approximately 350 cases of loss by reason of personal injury. Hearings will be necessary to preserve the testimony given as evidence of such death and personal injury. Percent of disability in cases less than death must be ascertained. Certificates of death to be prepared and sworn to by reputable inhabitants of Guam having knowledge of such fact will be obtained.
>
> . . .
>
> 6. A Claims Section (Personal and Real Property) which shall have the duties of investigating, recording and making recommendations for loss by reason of damages to personal or real property incident to the combat and non-combat operations of the armed forces of the United States and Japan or the individual members of such forces subsequent to December 6, 1941.
>
> a. There are approximately 2800 cases wherein claims are made for damage to or loss of personal and real

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[23] *Id.*

property.[24] The taking of testimony and the review of evidence necessary to verify the claims made will require an intensive investigation of every claim presented.

b. Hearings will be necessary and trips to various parts of the island will be required of the members of this section.[25] The testimony taken will be 95% through interpreters, thus retarding the speed in which the investigations can be finally completed.[26]

The Land and Claims Commission's report also included an "Enclosure C: Summary of Work Program as Presented in Joint Meeting Between the Prior Commission and the New Commission."[27]

With regard to personal injury and death claims, it stated that

> [i]t is estimated that the prior Commission has interviewed ninety (90) percent of the individual declarants having claims for death or personal injury [i.e., 90 percent of the approximately 400 claims submitted]. In the majority of the cases submitted the officer having this section in the prior Commission has recorded his written opinion and recommendation for the amount of the award in each individual case. Due to the lack of examining physicians many of the cases must be reopened by the new Commission for further certification of the injury. . . .[I]t will be necessary that each individual claimant be again called before the Commission and steps taken toward an amicable settlement of the 700 individual declarants for loss by reason of death and personal injury. The prior Commission has started a basic plan from which to begin work, but the detail work involved in processing

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[24] *Id.* The report notes elsewhere that many of these cases also involved condemnation proceedings.

[25] There is no indication in the report that Navy personnel made any such trips to investigate death and personal injury claims.

[26] Appendix B(6), *supra* note 22.

[27] *Id.*

> the cases to a conclusion for a recommended award that will be acceptable to the claimant has not commenced.[28]

With regard to the personal and real property damage claims, Enclosure C stated that

> It is estimated that the prior Commission has interviewed seventy-five (75) percent of the individual declarants having claims for loss by reason of damage to real and personal property [i.e., 75 percent of the approximately 2,800 claims submitted]. In these cases the officer having this section in the prior Commission has rendered his written opinion and recommendation insofar as buildings and furnishings are concerned but did not complete his reports and correlate losses of livestock, trees, motor vehicles, farm equipment, and other types of personal property. Until a review can be made of these reports it is impossible to say that any one of these cases is ready to be turned over to a negotiating section for settlement. The detail work has not been started insofar as final settlement action can be taken. As stated in the basic letter there are about 2800 of these cases to be processed.[29]

As for probate proceedings, Enclosure C noted that "there are 700 to 1000 probate proceedings," and that

> [s]ixteen probate cases were started and one completed by the prior Commission. In addition [to those,]... local inhabitants of Guam have initiated about 400 probate proceedings of their own accord, in which proceedings the prior Commission assisted in a few instances. These 400 probate proceedings are now in various stages of completion . . ..[30]

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[28] *Id.*
[29] *Id.*
[30] *Id.*

3. Enactment of the Guam Meritorious Claims Act

It is evident from the foregoing that the Navy had already completed a great deal of investigation and preparation for a war claims compensation program on Guam even before the United States Congress completed its deliberations on a bill to authorize and provide funds to support a claims program. This "claims bill," as Commander Watson had referred to it in his letter to Captain Gary in Washington[31], was introduced by Senator David Walsh, Chairman, Naval Affairs Committee, as Bill No. S. 1139 and was enacted into law on November 15, 1945. The statute, Public Law 224, 79th Congress[32] (the "Guam Meritorious Claims Act," or "Guam Act"), stated that its purpose was to provide for "immediate relief to the residents of Guam by the prompt settlement of meritorious claims arising in Guam."[33] It authorized the Secretary of the Navy to create a commission or commissions to, among other things, settle war claims by residents of Guam for property damage arising in Guam "when such damage, loss, or destruction is the result of or incident to hostilities or hostile occupation, or is caused by or incident to non-combat activities of the United States Army, Navy, or Marine Corps forces or individual members thereof, where the amount of such claim does not exceed $5,000[.]"[34] In addition, it covered claims for loss of use of real property ("rental claims") in cases where the U.S. military forces had a temporary need for the property.[35]

The Guam Act provided that claims could be paid in kind (i.e., with other property) or in cash. If the war claim arose out of an accident, incident, or engagement that occurred after December 6, 1941, but prior to December 1, 1945, residents of Guam had one year from December 1, 1945, to file their war claims. Otherwise, claims had to be filed within one year from the date they arose.[36] The law also provided that the settlements made by such commission(s) would be subject to regulations prescribed by the Secretary of the Navy[37], and that

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[31] Appendix B(5), *supra* note 20.
[32] Appendix B(7).
[33] *Id.*, sec. 1
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*

if the value of a claim exceeded $2,500 but was not more than $5,000, it would be subject to the approval of an officer designated by the Secretary of the Navy.[38] Property claims in excess of $5,000 and all claims for death or personal injury would require certification to Congress for appropriation and payment.[39] The statute did not provide for claims for forced labor, forced march, or internment.

4. Promulgation of Implementing Regulations

Although it appears that the "new" Land and Claims Commission continued its efforts to investigate and evaluate claims as the year 1946 began, the Commission was unable to begin disbursing compensation to claimants until the implementing regulations called for in the statute were promulgated by the Secretary of the Navy. That event finally occurred on May 3, 1946, and copies of the regulations were dispatched to Guam on May 8.

These claims regulations, entitled "Regulations for the Administration of Public Law 224, 79th Congress, Approved November 15, 1945," were twelve pages in length, double-spaced.[40] Noteworthy provisions included the following:

-- Paragraph (h) of section 2 construed the term "resident of Guam" to mean "natural persons domiciled in the island of Guam"

-- Paragraph (i) of section 2 stated that claims "arising, or which have arisen, as a result of activities of Japanese fugitives at large on the Island of Guam are deemed to be within the provisions of [the statute] relating to damage, loss, or destruction which results from 'hostilities or hostile occupation'"

-- Paragraph (a) of section 4 and paragraph (b) of section 5 specified that in cases of damage, loss or destruction of real property and personal property occurring after December 6, 1941, and before December 1, 1945, the measure of valuation would be

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[38] *Id.*
[39] *Id.*
[40] Appendix B(8).

the "market value . . . as of December 6, 1941 (Washington, D.C., time)"

-- Paragraph (d) of section 6 provided that the amount of compensation to be recommended in death and personal injury cases was to be "computed in accordance with the provisions of part 24, as amended, of the Regulations Governing the Administration of the United States Employees' Compensation Act of September 7, 1916, as amended."[41]

In May 1946, the CNO issued a directive[42] dissolving the "new" Commission and constituting a "Third Land and Claims Commission" to continue with the work of adjudicating and paying claims. In November 1946, at the direction of the Secretary of the Navy, the Naval Governor of Guam then dissolved that Commission and formed a "Fourth Land and Claims Commission," which was expanded to consist of five officers as well as an increased number of support staff.

5. The "Hopkins Committee"

Unfortunately, despite these actions, progress toward rehabilitation of the island and stimulation of its economy through infusions of compensation payments remained slow throughout both 1945 and 1946. The difficulties were such that the Secretary of the Navy issued a directive on January 8, 1947, appointing a three-member committee to evaluate the Navy's handling of its reconstruction and rehabilitation responsibilities, both on Guam and on American Samoa, and to submit a report containing recommendations for improvements. Former Dartmouth College President Ernest M. Hopkins was appointed as Chairman and the other two members were Maurice J. Tobin, former Secretary of Labor, and Knowles Ryerson, Director of the Davis Campus of the University of California, and later on, Dean of the College of Agriculture at Berkeley. According to the committee's report,[43] which was dated March 25, 1947, the committee members and staff arrived on Guam on February 24 and from there traveled on to American Samoa on March 9. While on

[41]This law remained in effect, with certain amendments expanding its coverage, until 1966, when it was reenacted as 5 U.S.C. Section 8101 *et seq.*

[42]Appendix B(9).

[43]Appendix B(10) (Excerpts).

Guam, they held formal hearings with the Governor of Guam and his staff, as well as open public hearings "without attendance of any members of the Governor's entourage or the Naval establishment,"[44] at which they provided themselves with interpreters and "extended an invitation for speakers to express themselves in Chamorro when utterances would be easier for them in their native tongue."[45] They also attended a session of the Guam Congress and had "numberless personal interviews with representatives of civic organizations or those having personal views which they wished to express."[46]

In the cover letter to its report, the committee noted that

> [i]n the case of Guam, the war brought wide-spread destruction of homes, public buildings and utilities. But over and beyond this it brought deaths to many, brutalities to more, and ruthless oppression to all over a long period. Now months after cessation of hostilities they find themselves, because of the strategic position of their native island, outnumbered in population by military forces of Army, Navy and Marines to be stationed there. In considerable number they are dispossessed of home and lands which have been destroyed or taken from them and they are without adequate understanding of the processes by which to secure replacement or compensation for these.

On the subject of claims, the report stated that

> [e]xcept for sporadic claims that may hereafter be made on account of damage done by the few Japanese stragglers still in hiding on the island or occasional damage resulting from non-combat activities of the military forces still on Guam, the period fixed by the statute for the filing of claims has now expired. Prior to January 1, 1947, 229 property claims had been settled and paid, in the total amount of $258,000, and 52 death and injury claims (26 of each) had been processed to Washington in the recommended total

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[44] *Id.*
[45] *Id.*
[46] *Id.*

amount of $48,872 for the death cases and $29,131 for the injury cases.[47]

The report went on to note that 83 property claims with a total value of $120,000 were paid in January and February 1947, and that 55 death and injury claims with a total recommended valuation of $35,000 were sent to Washington during those months.[48] Thus, the claims remaining to be processed consisted of the following:

-- Property claims under $5,000	3,834
-- Property claims over $5,000	353
-- Rental claims under $5,000	1,513
-- Rental claims over $5,000	6
-- Injury and death claims	659

Based on these statistics, the report observed that "[i]t is obvious that the process of settlement and payment has been advancing too slowly and that if there is to be any benefit whatsoever to the stricken Guamanians some changes in procedure must be made."[49] In the next several pages, the committee then set forth a number of recommended changes in both the claims statute and the Secretary of the Navy's regulations. However, they prefaced their recommendations with the following:

> The slow rate of progress can by no means be blamed on the members of the Claims Commission on Guam or the Island Government. A considerable period of time elapsed between the passage of the Act and the issuance of the regulations by the Navy Department thereunder; the demobilization process and the difficulties in recruitment of qualified personnel hampered to a considerable degree getting into high gear the machinery for adjudicating the claims; and the Act itself and the regulations have proved to be unwieldy and cumbersome in some major respects.[50]

Further, they stated that

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[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*

> we have found a devotedly conscientious and capable group of Navy representatives working eagerly under difficult and frequently adverse conditions for the rehabilitation of peoples disorganized through no fault of their own by the war.[51]

In addition, the committee had noted earlier in its report that the conditions on Guam had been made even worse by "physical devastation incident to the worst typhoon in years."[52]

It does not appear that many of the committee's specific recommendations concerning the claims were adopted. Nonetheless, it is evident that the Land and Claims Commission, and the naval officers in the chain of command above it, took the committee's criticisms and suggestions seriously; records dating from the months and years after March 1947 show that the pace of the Commission's work increased substantially during that time. By the end of December 1947 the Commission had forwarded 511 death and personal injury claims to Washington for payment[53], and all such claims had been forwarded to Washington by the end of July 1948.[54] Between March and December 1947 the Commission adjudicated some 2,394 claims for property rental payments and real and personal property loss and damage,[55] and by the end of July 1949 all but 134 of such claims had been adjudicated.[56]

The Review Commission has been unable to locate the Navy's final report of the Land and Claims Commission detailing the final claim numbers and payments under the Guam Act. In its search for such a report, the Review Commission has taken note of the figures listed in the Supplementary Report of the War Claims Commission[57] as well as the figures listed in the Memorandum of July 31, 1949, referred to above. Because these final figures do not appear consistent, the Review Commission

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[51] *Id.*

[52] This was Typhoon Querida, which passed within 92 nautical miles north of Guam on September 20, 1946, with winds of up to nearly 115 miles per hour at its center. U.S. Navy Meteorology and Oceanography Command, *available at* htpps://www.cnmoc.navy.mil/nmosw/ thh_nc2/guam/apra/graphics/tab2-2a.gif

[53] Appendix B(11).

[54] *Id.*

[55] *Id.*

[56] Appendix B(17)

[57] H. R. Doc. No. 67, 83rd Cong., at 27 (1953).

has taken administrative notice of the total figures and amounts listed in the "Report Supporting Formation of a Federal Commission on War Reparations for Guam" which was submitted by Guam Senators George Bamba and Marilyn D.A. Manibusan, dated August 2, 1988, and which was made part of the record of the Hearing before the Subcommittee on Administrative Law and Governmental Relations in support of H.R. 3191 (the "Bamba Report").[58] In that report it is stated that they reviewed numerous documents made available by Congressman Blaz and the Department of Justice. Among the documents reviewed, there were

> 78 "denial" records; 4,420 listings of claims; accounting records, including but not limited to, more than 4,250 payment vouchers, check numbers, certifications, and numerous receipts by claimants themselves for death, injury and property damage awards amounting to more than $6.4 million between February 1947 and March 1950[59].

In addition, the Bamba Report noted that "twelve U.S. Appropriation Acts were examined, along with supporting documents" and that "these laws appropriated more than $4.3 million to 1,243 recipients of death, injury and property damage awards" under the Guam Meritorious Claims Act. The Bamba Report also states that an examination of the existing files reveals that

> out of 4,420 people who registered claims, more than 4,250 were paid $6,485,911.27 between February 6, 1947 and March 17, 1950. This figure does <u>not</u> include untotalled payment vouchers. Nor does it include $1,576,553.45 appropriated after March 17, 1950 (the last date of existing payment vouchers) for two deaths, one injury and 93 property damage claims representing 106 recipients.
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> In short: at least $8,062,464.72 was paid to 4,356 recipients - $4,308,483.20 to 1,234 people for death,

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[58] To Establish a Commission on War Reparations for Guam: Hearing on H.R. 3919 Before the Subcommittee on Administrative Law and Government Relations of the House Committee on the Judiciary, 100th Cong. 45-102 -- attached as Appendix C.

[59] *Id.* at 48.

injury and property damage in excess of $5,000 - and $3,753,981.52 to 3,113 recipients for property damage below $5,000.[60]

The Navy's files reflect that on October 18, 1949, the Commander, Naval Forces Marianas, acting at the direction of the Secretary of the Navy, issued a directive[61] dissolving the Fifth Land and Claims Commission and forming a Sixth Land and Claims Commission to continue and complete the settlement and payment of the claims which then remained unresolved. As mentioned above, a final report detailing the completion of the Commission's work has not been located, but it appears that the last payments to claimants were disbursed some time in 1957.[62]

II. Developments After the Close of the Land and Claims Commission Program

A. Questions of Adequacy of Compensation

One of the recommendations of the Hopkins Report[63] was for the U.S. Congress to enact an Organic Act conferring United States citizenship and a measure of self-government on the people of Guam. This recommendation was adopted and the legislation was approved on August 1, 1950.[64] Concurrent with the passage of the Organic Act, President Harry S. Truman issued an Executive Order transferring governance of the island from the Navy to the Department of the Interior, and appointed an Island Governor.[65] However, because of the tense international political climate associated with the beginning of the Cold War

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[60] *Id.* at 53. The twelve appropriations acts noted in the Bamba Report were enacted from 1947 through 1957: Pub. L. 46, 80th Cong., 61 Stat. 58 (1947); Pub. L. 271, 80th Cong., 61 Stat. 610 (1947); Pub. L. 519, 80th Cong., 62 Stat. 213 (1948); Pub. L. 785, 80th Cong., 62 Stat. 1027 (1948); Pub. L. 119, 81st Cong., 63 Stat. 231 (1949); Pub. L. 343, 81st Cong., 63 Stat. 738 (1949); Pub. L. 583, 81st Cong., 64 Stat. 25 (1950); Pub. L. 45, 82nd Cong., 65 Stat. 52 (1951); Pub. L. 11, 83rd Cong., 67 Stat. 8 (1953); Pub. L. 663, 83rd Cong., 68 Stat. 800 (1954); Pub. L. 24, 84th Cong., 69 Stat. 28 (1955); and Pub. L. 85-58, 71 Stat. 176 (1957).

[61] Appendix B (12).

[62] H. R. Doc. 156, 85th Cong., at 24 (1957) lists one individual who received compensation for property loss under Public Law 85-58, 71 Stat. 176, the appropriations bill (June 21, 1957).

[63] See *supra* note 43.

[64] 48 U.S.C. §§1421 *et seq.* (2000).

[65] Exec. Order No. 10077, 14 F.R. 5533 (Sept. 7, 1949), as amended by Exec. Order No. 10137, 15 F.R. 4241 (June 30, 1950).

-- caused by the Korean conflict, the explosion of nuclear bombs by the Soviet Union, and the U.S.-Soviet standoff over Berlin -- the United States Government continued to maintain tight control of Guam and its people throughout the 1950's and into the 1960's. All transfers of land, other than to the United States Government, required prior issuance of permits by the Governor,[66] as did the importers of commercial goods and services and the providers of transportation onto and off of the island.[67] Moreover, individuals wishing to travel to and from the island -- even including island residents -- had to obtain permission to do so.[68]

In response to the increasing swell of protest from Guam's residents over the conditions they were forced to endure, as well as other pressures, President Kennedy issued Executive Order 11045 on August 21, 1962, abolishing the restrictions and opening Guam's economy and ports to the same degree of free and open commerce and access generally allowed in the 50 states. One result of this change was to produce, almost overnight, a precipitous rise in the price of land on the island.

Based on the islanders' experience with the Navy's Land and Claims Commissions, there also lingered a feeling that many landowners had been forced to accept inadequate amounts of compensation, both in the case of claims for damage and destruction and in the case of takings of land by the Naval Government for public use. This was seen to have been partly due to an excessive urgency on the part of the Navy in completing the land condemnation process and partly due to the failure of the U.S. Congress to appropriate sufficient funds to pay compensation in fair and just amounts. In addition, the landowners believed they were disadvantaged by the fact that at the time there were few, if any, private attorneys on the island whom they could retain to represent them in the individual condemnation cases.[69]

Another cause for discontent was the signing by the United States of the 1951 Peace Treaty with Japan, which included a

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[66]Rogers, *supra* note 5 at 230.
[67]*Id.*
[68]*Id.* at 225.
[69]Appendix B(12).

discharge of all reparations claims of the United States and its nationals against Japan arising from World War II.[70] This waiver gave rise to a view among many of the people of Guam that the United States Government had unfairly deprived them of an opportunity to demand reparations from Japan for the suffering they had endured during the 32-month Japanese occupation of their island.

Also included in the Treaty was a statement that World War II claims of the citizens of the Trust Territory of the Pacific Islands ("Trust Territory"), among whom were the Chamorros of the Northern Marianas Islands, would be subject to "special arrangements" between the United States and Japan, and in 1969 the United States, as the Trust Territory citizens' Administrator, obtained an agreement[71] with Japan providing for an ex gratia contribution of goods and services equivalent in value to $5,000,000 to compensate the Trust Territory citizens for their wartime losses. Two years later, the U.S. Congress passed the Micronesian Claims Act of 1971,[72] providing for an ex gratia payment by the United States of $5,000,000 to the Trust Territory citizens on account of their wartime losses. In addition, Congress appropriated funds ultimately totaling $34,600,000 to compensate the Trust Territory citizens for property loss and damage and death and personal injury caused by U.S. forces after the dates on which the various islands of the Trust Territory had been secured. This gave rise to a perception among the people of Guam that the United States Government was giving more favorable treatment to their fellow Chamorros and others in the Trust Territory, who had never been United States nationals, than it had given to them under the Guam Meritorious Claims Act.

Yet further, many on Guam believed themselves unfairly deprived of eligibility under the provisions of Title II of the War Claims Act of 1948, as amended,[73] enacted in 1962, which provided for compensation to U.S. nationals for World War II property damage and loss claims, as well as certain personal

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[70] Treaty of Peace with Japan, September 8, 1951, TIAS No. 2,490.

[71] Agreement Between the United States of America and Japan Concerning the Trust Territory of the Pacific Islands, July 7, 1969, TIAS No. 6,724.

[72] 50 U.S.C. app. §§ 2018 et seq. (2000).

[73] 50 U.S.C. app. §§2017 et seq. (2000).

injury and death claims, in both the European and Pacific theaters of wartime operations. In the language identifying the countries and areas covered by the law, it was specified that coverage extended to claims involving "property in territory occupied or attacked by the Imperial Japanese military forces . . . except the island of Guam."[74] (Emphasis added.)

On this point, it is evident that Congress was misinformed when it excluded Guam from coverage for World War II property damage and loss claims under Title II of the War Claims Act of 1948, added in 1962, because it incorrectly assumed that all of the claims of residents of Guam had been adequately resolved under the Guam Act.[75]

In addition, by including the Philippines within the areas covered by the statute, Congress effectively reopened the claims program that the U.S.-Philippine War Damage Commission had conducted under the Philippines Rehabilitation Act of 1946,[76] giving claimants who had missed the filing deadline of February 29, 1948, a second chance to obtain compensation that claimants from other areas did not enjoy.

Together, these various factors resulted in a growing movement on the island during the 1960s and 1970s to question the adequacy of the compensation the people of Guam had received from the Navy's Land and Claims Commission, both for the wartime loss and destruction of their property and in the postwar condemnation cases, and to call for further compensation to be paid. The condemnation cases are beyond the scope of this Commission's jurisdiction, but the history of the efforts to reexamine the adequacy of the compensation for the property loss and destruction claims -- and also, to the extent applicable, the claims for other wartime losses -- are discussed below.

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[74] *Id.*

[75] 108 Cong. Rec. Part 12, 15874 (daily ed. Aug. 8, 1962) (15874 (statement of Rep. O'Hara) (consideration of H.R. 7283)).

[76] Pub. L. No. 370, 79th Cong., 60 Stat.128 (1946).

B. History of Previous Legislative Efforts in the U.S. Congress and on Guam

1. Previous Proposed Legislation

The passage of the Review Commission Act in December 2002 was the culmination of numerous prior attempts by Guam delegates to Congress to have legislation enacted to address claims arising out of the World War II Japanese occupation. Since 1983, there have been ten bills addressing such claims.[77] The first Guam delegate to Congress, Antonio B. Won Pat, introduced the first bill on September 21, 1983, in the 98th Congress. This bill, H.R. 3954, proposed the establishment of a "commission to review the facts and circumstances surrounding Guamanian losses caused by the occupation of Guam by Japanese Imperial forces in World War II." Subsequently, former delegate and retired Marine Corps General Ben Blaz and Delegate Robert Underwood continued this effort by introducing various other pieces of legislation. General Blaz introduced four bills during his four terms and Delegate Underwood introduced five bills during his five terms, with the last one, the current legislation, creating this Commission, passing in the final days of the 107th Congress.

In November 1985, General Blaz introduced H.R. 3758 which would have directed "the Comptroller General of the United States to review the report and findings of the Guam Reparations Commission." He also introduced H.R. 5187 on July 17, 1986, which sought "to establish a Commission on war claims for Guam" and in August 1987, he introduced H.R. 3191 seeking to establish a "Commission on War Reparations for Guam."

On April 18, 1989, at the request of the Twentieth Guam Legislature, General Blaz introduced H.R. 2024 and it was referred to the House Judiciary Committee and the House Committee on Interior and Insular Affairs. On April 24, 1989, the bill was then referred to the latter committee's Subcommittee on Insular and International Affairs. H.R. 2024 sought to "amend the Organic Act of Guam" to provide

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[77] H.R. 3954, 98th Cong. (1983); H.R. 3758, 99th Cong. (1985); H.R. 5187, 99th Cong. (1986); H.R. 3191, 100th Cong. (1987); H.R. 2024, 101st Cong. (1989); H.R. 4741, 103rd Cong. (1994); H.R. 2041, 104th Cong. (1995); H.R. 2200, 105th Cong. (1997); H.R. 755, 106th Cong. (1999); H.R. 308, 107th Cong., (2002); Pub. L. No. 107-333, 166 Stat. 2873 (2002).

compensation to any eligible person who received a compensable injury as a result of World War II. In this bill, compensable injury was defined as death, personal injury, or forced labor, forced march, or internment. It also sought to establish a Guam Claims Fund in the amount of $20,000,000 from which eligible claimants would receive $20,000 for claims based on death; $5,000 for personal injury and $3,000 for forced labor, forced march, or internment.

On April 23, 1990, Chairman Ron de Lugo and Ranking Republican Robert Lagomarsino of the Subcommittee on Insular and International Affairs wrote to the Speaker of the Guam Legislature seeking support for the changes that they and Senator Daniel Inouye suggested. Their letter stated that

> we have been working since the hearing with your congressman and Interior Secretary Lujan to try to overcome Bush Administration objections to the bill, H.R. 2024.
>
> We (along with Senator Inouye) have had staff draft amendments to the bill in an effort to enable it to be approved. The enclosed amendment in the nature of a substitute attempts to meet the Nation's responsibility in this matter to the greatest extent that appears to be possible. We are considering sponsoring it, depending upon the support it receives from Guam.

Senator Inouye wrote a separate letter dated April 25, 1990, to the Speaker regarding specific provisions of H.R. 2024. Senator Inouye, Delegate de Lugo, and Congressman Lagomarsino requested the consensus of the Guam Legislature on the proposed substitute bill. They indicated that, if the Legislature were to adopt a favorable resolution, they would be willing to support its introduction and passage in Congress.[78]

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[78]At least some support for H.R. 2024 apparently existed in the Guam Legislature at that time, as evidenced by the "Statement of [Guam] Senator Marilyn D.A. Manibusan in Support of H.R. 2024 Before the House Subcommittee on Insular Affairs" (sic), July 27, 1989, included in Appendix D (1). Eventually, the bill's chief supporter, Senator George Bamba, resigned from the Legislature's War Reparations Commission in protest of the Commission's failure to support it. *See* Appendix D (3).

However, on July 9, 1990, Governor Joseph F. Ada, in his capacity as Chairman of the Guam War Reparations Commission, wrote to Senator Inouye and to Congressman Lagomarsino recommending substantial changes to the proposed substitute bill.[79] The substantial changes made to the proposed substitute bill materially changed the bill's intent and the bill did not proceed further. Specifically, the Guam War Reparations Commission changed the eligibility requirement as well as the finality of awards, survivability of claims, proof of claims, the appeals process and the ex-gratia nature of the legislation.

Whereas the proposed substitute bill provided for $20,000 for death, $5,000 for personal injury, and $3,000 for forced labor, forced march or internment, the changes put forward by the Guam War Reparations Commission raised the amounts to $15,000 for personal injury, 10,000 for forced labor, and $7,000 for either forced march or internment. Later on, the Guam Legislature, on or about January 23, 1991, passed a Resolution supporting the amendments suggested by the Guam War Reparations Commission.[80]

These proposed increases, other changes and the lack of a positive response from the Guam Legislature prompted Senator Inouye, Delegate De Lugo, and Congressman Lagomarsino to conclude that further efforts to promote the legislation would not be worthwhile.

The next piece of legislation dealing with Guam war claims, H.R. 4741, was introduced by Delegate Underwood in 1994. This bill, the Guam War Restitution Act, also sought to amend the Organic Act of Guam to provide for restitution to the people of Guam who suffered death, personal injury, forced labor, forced march or internment and those who did not meet the one-year filing deadline for death and personal injury claims under the Guam Meritorious Claims Act. In remarks before the U.S. House of Representatives on August 9, 1994,[81] Delegate Underwood stated that the amounts sought

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[79]These exchanges of correspondence and other documents are attached as Appendix D (3-4).

[80]Appendix D (4).

[81]140 Cong. Rec. H7293-2 (1994).

> are quite modest by today's standards. . . . In the case of death, the compensation is $20,000 to be divided among surviving heirs. Injury is compensated at $7,000, based on the values allowed in the 1946 claims, and forced labor, forced march and internment is compensated at $5,000, again comparable to the 1946 settlements. The total cost to the federal government will be between $20 million and $80 million....(Emphasis added.)

This bill also sought to establish the Guam Restitution Claims Fund, the Guam Restitution Trust Fund, and the Guam Restitution Trust Fund Board of Directors. After payment of awards to claimants, the Trust Fund Board could make disbursements from the remaining balance of the funds (1) to sponsor research and public educational activities relating to Guamanian wartime experiences; (2) to disburse funds as benefits to eligible claimants through a revolving fund for purposes such as post-secondary scholarships and first-time home ownership loans; and (3) for administrative expenses.

In July 1995, Delegate Underwood introduced a similar bill, H.R. 2041, which also sought to amend the Organic Act of Guam and set forth award and benefit eligibility requirements for living Guamanians, or the heirs or next of kin of deceased Guamanians, who suffered a compensable injury during the occupation of Guam in World War II. The bill also sought to establish the Guam Trust Fund and the Guam Trust Fund Commission to make disbursements from the Fund to: (1) make awards available to Guamanians who personally received the compensable injury, or to their heirs or next of kin; (2) make benefits (including scholarships, medical expenses, or first-time home ownership grants) available to Guamanians who are heirs or next of kin of the decedent Guamanian who received the compensable injury; (3) sponsor research and public educational activities to commemorate the events surrounding the wartime experiences and losses of the Guamanian people; and (4) pay the Commission's administrative expenses.

Another bill, introduced as H.R. 2200 in July 1997, also sought to amend the Organic Act of Guam, to set up a Trust Fund and to pay eligible claimants $20,000 for claims based on death; $7,000 for claims based on personal injury; and $5,000 for claims based on forced labor, forced march, or internment.

The successor to H.R. 2200, Bill No. H.R. 755, which had originally been introduced on February 11, 1999, as the Guam War Restitution Act, was later amended in Committee and became the Guam War Claims Review Commission Act. It subsequently passed the House on September 12, 2000, and was reported to the Senate on September 13, 2000. Although H.R. 755 died in the Senate that year, it was later reintroduced in the next Congress as H.R. 308.

This reintroduced Guam War Claims Review Commission Act was referred to the House Committee on Resources and was passed in the House of Representatives by voice vote on March 13, 2001. The Senate passed the legislation without amendment and by unanimous consent on November 20, 2002. The Guam War Claims Review Commission Act was signed by the President on December 16, 2002 and became Public Law 107-333.

2. Estimated Costs of Proposed Legislation

The final cost of H.R. 2024, had it been amended as proposed by Senator Inouye and Messrs. De Lugo and Lagomarsino, and enacted into law, would have been considerably more than the $20,000,000 originally proposed in the bill. According to the U.S. Census Bureau, 8,551 of the residents of Guam were 45 years of age or older in 1990.[82] However, this does not take into account the unknown number of individuals 45 or older born on Guam who were not living on the island in 1990.

If it is assumed that all of the 8,551 individuals referred to above were survivors of the Japanese occupation, that all of them were subjected to forced labor, forced march, or internment, and that none had previously submitted a claim, the appropriation that would have been required under the substitute to cover their claims would have amounted to $25,653,000. If it is assumed instead that 20 percent of that same group suffered personal injury at the hands of the Japanese occupiers (which would have entitled them to claim for $5,000 rather than $3,000), further funds of $3,420,400 would have been required. As for death claims, it is generally accepted that 900 to 1,100 Guamanians died during the occupation. Thus, if it is assumed

[82] 1990 Census of Guam, *available at* http://www2.census.gov/prod2/cen1990/cph6/cph-6-g.pdf .

that 1,000 of these deaths were caused by the Japanese, an appropriation of another $20,000,000 would have been required.

Accordingly, the cost of H.R. 2024, as amended by the substitute, ultimately could have totaled as much as approximately $49,000,000. By comparison, the Guam War Reparations Commission estimated that its counter-proposal would have cost some $160,000,000, and Delegate Underwood put the estimated cost of his proposal at "between $20 million and $80 million."[83]

III. Hearings on Guam

On December 8th and 9th, 2003, the Guam War Claims Review Commission held public hearings at the Guam Legislature Session Hall in Agaña, Guam. In preparation for the hearing, the Commission during the previous months had distributed questionnaires to Guamanians on Guam and on the U.S. mainland, asking survivors for details of their experiences during the Japanese occupation. The Commissioners selected 90 Guamanians to recount and relive their compelling stories for the two-day hearing using a cross-section of over 8,000 questionnaires.

On the first day, the Commissioners heard from Governor of Guam Felix Camacho, Speaker of the Guam Legislature V.C. Pangelinan, Guam Delegate to the U.S. House of Representatives Madeleine Bordallo, and former Guam Delegate to the U.S. House of Representatives Robert Underwood. The Commission heard testimony from numerous participants consisting of survivors, relatives of survivors, and many former Guam government officials and historians. Most of the testimony consisted of survivors relaying horrific incidents of murder, beatings, rape, and torture of the people of Guam during the occupation.

One of the main objectives of the public hearing was to determine if any of the remaining survivors of the Japanese occupation remembered receiving compensation from the Guam Land and Claims Commission of 1945. After each witness provided his or her personal testimony, Chairman Tamargo asked if the witness or his or her family remembered filing a claim with the Guam Land and Claims Commission. Most of the participants in the

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[83] *Supra* note 81.

hearing responded by saying that they did not personally remember filing a claim or that they had not heard any mention from their parents or family members of submitting a claim to the Naval Government.[84]

Almost without exception, witnesses testified that they were subjected to, or witnessed rape, or were beaten, kicked, slapped, or terrorized and threatened. They also witnessed beheadings of individuals who were suspected of helping Americans hiding on the island.

Many of the witnesses testified in the Chamorro language of the island because they could express themselves better in their native language than in English. Those on the Commission and the staff who did not speak Chamorro used a simultaneous translation system to understand the Chamorro-speaking witnesses. That system was manned by volunteer translators from the University of Guam who were experts in both languages, Chamorro and English.

Highlights of the two-day hearing are summarized below. The full transcript of the two-day hearing is attached as Appendix E to this Report.

- In one incident testified to, a witness was too upset to speak but informed the Review Commission in writing that while she was eight months pregnant, a Japanese officer beat her and threw her to the ground. She gave birth two days later.

- A witness indicated that while her mother was in the Japanese Manengon concentration camp, her mother was raped by a Japanese officer and that she, herself, is the product of that rape. Therefore her father is an unknown Japanese officer. Several other witnesses testified that they were raped and some were raped while being pregnant.

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[84] The Review Commission has examined the list of those claimants who were granted awards by Congress in enacted appropriations bills and has found that many of those who testified did receive compensation. The Review Commission attributes this disparity to the fact that most of the witnesses were either too young to have been informed by their parents of their awards or too many years have passed and they do not now remember the awards. Additionally, some witnesses testified to incidents for which the Review Commission found no claim or award.

- A witness testified that her father was appointed Commissioner, or mayor, of their village. When another person escaped from the Japanese and cut the telephone line near the village, the Japanese informed her father, and the Commissioner, that they were going to call a meeting of the village to find the guilty party. Moreover, at that meeting, they threatened to kill every father and son in the village unless they found the guilty person. The witness testified that her father committed suicide so as to take the blame and thereby save the lives of many others in his village.

- Another witness testified that as a small boy he was holding a dog when a Japanese officer cut the dog in half covering him with the dog's blood. The Japanese officer then laughed at the boy.

- One witness testified that he was present when both his brother and his sister were slaughtered but his family received only $2,000 for their loss.

- One witness testified that her grandmother, while carrying a 15-month-old baby on the forced march to the concentration camp at Manengon was beaten severely as she marched, all the while turning and shielding her baby from the blows. The young mother of three died shortly after arriving at the camp. Her granddaughter grew up to be the witness testifying.

- Another witness testified that as a ten-year-old boy he was forced to watch two Japanese soldiers and an interpreter beat his father to death. Some time later as the family was preparing to go on the forced march to a concentration camp his brother and his sister were summoned by the Japanese soldiers. He later found out that his brother was one of a group of men put in a cave and then killed by grenade and machine gun, and his sister was part of a group of girls who were sexually abused and were going to be killed in the jungle when his sister escaped in the darkness.

- One witness recalled that, as an eight-year-old boy, he watched as his father was repeatedly beaten and paraded

naked through the village for his loyalty to America and as a warning to the others that they should be loyal to Japan. One of the brothers of the witness had both of his hands severely burned and another brother was burned to death.

- Another witness testified that she saw her mother tied to a tree and repeatedly beaten, which caused permanent damage as the broken bone fused to her lungs. Her mother later was forced to watch as Japanese soldiers pulled her son's fingernails out and then beheaded him. One of the witness's brothers was beaten severely while on a forced labor detail and another brother was buried alive while on a forced labor detail.

- It is also worth mentioning that many witnesses testified that Japanese soldiers evicted them from their homes and took all their food and livestock. In fact, one witness who was born during the occupation recalled her mother telling her that she was so malnourished that when she was born she was bleeding from the eyes and rectum, and that her mother feared she would die.

- Many of the witnesses testified that in the last year of the Japanese occupation they were forced to march great distances to three different concentration camps with little or no time to collect provisions, resulting in many of the elderly dying along the way or shortly after arriving at the camps. They also testified that conditions at the camps were horrendous. There was little or no shelter. Most of the people had only foliage over their heads to deflect the torrential rains. They had no food and no water. Some were near a small river but that river was very polluted with human waste.

- Witnesses also testified that all able-bodied Chamorros were forced to work on different projects. Some worked at military construction, such as airstrips or coastal defensive positions; others had to work on farms or rice paddies. Some had to work on multiple farms hiking vast distances and over sloping hills each day not only to one farm, but then, later in the day, to another farm. They were forced to do it every day whether they were healthy or not. If they were unable because they were sick, they were beaten and threatened with death.

- Many of the witnesses testified that they were beaten for being suspected of hiding George Tweed, a U.S. Navy radioman known by the Japanese to be hiding in the jungle. Many of the Guamanians in fact did courageously help hide Tweed. Several families took turns hiding and feeding the Navy radioman.[85]

- Several witnesses testified that they saw their fellow Guamanians stabbed by the Japanese with their bayonets. One testified that, as a little girl of seven, she was stabbed by a Japanese soldier with his bayonet in front of her mother. Neither the mother nor the little girl cried out for fear of being killed. The little girl was allowed to simply limp to her mother.

It was clear to the Review Commission that during the Japanese occupation of Guam the local inhabitants were treated in the most brutal, cruel, and despicable manner. Many of the survivors testified that they continue to endure the psychological effects of the war. It has been suggested to the members of the Review Commission that much of the emotional testimony at the hearings are classic symptoms of Post-Traumatic Stress Disorder.

The great majority of the witnesses expressed their deep loyalty to the United States, saying that they remained loyal to the United States before, during, and after the Japanese occupation. They also believed it was this loyalty that caused the Japanese to brutalize the Guamanians as they did. Almost all the witnesses also took a moment in their testimony to reiterate their continued strong loyalty to the United States.

An example of that American loyalty was seen in a case where a witness who testified that during the Japanese occupation, when he was an infant, his parents hid the family's large American flag in his pillow. He testified further that his family did this knowing that if the flag were to be discovered by the Japanese, they would in all likelihood have been killed. The flag was folded into a square shape so as to fit inside the

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[85] He survived because of the help and assistance given to him by the Guamanians, and was rescued by a U.S. Navy destroyer on July 10, 1944. Rogers, *supra*, note 5, at 178.

pillow. During his testimony he and his wife, out of their deep respect and love for the flag, undid the square and refolded the flag in the proper triangular shape.

Numerous witnesses testified that many of their relatives served in the United States armed forces, both before and after World War II; additionally, they have a long tradition of serving in the U.S. armed forces, especially in the Navy. In fact, twelve of the sailors who were killed in the attack on Pearl Harbor were Chamorros from Guam.

There were many acts of courage and bravery testified to by the people of Guam. Some of them were overt, and some were covert, including the risky help provided to U.S. Navy radioman George Tweed. In one case, one young man, with only a knife, alone at first, then with others, killed a number of Japanese soldiers and saved his whole village from the mass execution the Japanese soldiers were preparing for them.

Many of the witnesses testified that, more important than any additional compensation the survivors may be entitled to, they want the United States Congress and their fellow American people to know what they, the people of Guam, suffered during the Japanese occupation of the island. They want, most of all, to have recognition by their nation, the United States, for all that happened on Guam during that time. They also want the American people educated or made aware of what the people of Guam went through at the hands of the Japanese on account of their loyalty to America.

Another desire expressed by a number of witnesses was that the Japanese government should apologize and/or recognize and acknowledge what was done to the people of Guam by the Japanese Imperial Forces during their occupation of Guam.

Below are the names of the participants at the Guam War Claims Review Commission public hearing on Guam (in the order in which they spoke):

December 8th	December 9th	December 9th (cont.)
Governor Felix Camacho	Former Speaker Joe T. San Agustin	Manuel L.G. Sablan
Speaker Vicente C. Pangelinan	Archbishop Anthony S. Apuron	Teresa Borja
Congresswoman Madeleine Bordallo	Marian Taitano	Julia Garcia (for Catalina Blas)
Former Congressman Robert Underwood	Hannah Gutierrez	Jesus P. Sablan
Joe Perez	Former Senator Carmen Kasperbauer	Eddie Cruz
Maria G. Manibusan	Ben Gumataotao	Magdalena Bayani
Josefina Mantanona	Former Governor Paul Calvo	Nicolosa Huihui
Regina Reyes	Joaquin San Nicolas	Joseph A. Cruz
Maria Leon Guerrero	Mary T. Flores	Frank T. Guevara
Francisco S.N. Flores	Lourdes T. Uncangco	Former Senator Eddie R. Duenas
Vicente Taisipic	Jesus Naputi	Jose S.N. Chargualaf
Maria P. Rosario	Juanita Cruz	Maria S. Martinez
Rosa Camacho	Josefina Selvidge	Arthur Toves
Antonio T. Lizama	Ben Garrido	Former Mayor Roman Quinata
Dr. Rosa Carter	Rosa Castro	Antonio Arceo Quidachay
Pedro Cruz	Victor Toves	Simon Cruz
Edward L.G. Aguon	Jose Garrido	Juan C. San Agustin
Vicente San Nicolas	Jose Pinaula	Francisco P. Sablan
Joseph Crisostomo Aguon	Eduardo Paulino	Lourdes Laguana Perez
Juan M. Unpingco	Dolores Meno	Antonio A. Sablan
Former Senator Tony Palomo	Joseph Taitague	Diana Aflague Brown
Manuel Merfalen	Former Governor Joseph F. Ada	Former Mayor Ignacio "Buck" Cruz
Barbara De la Cruz	Former Senator John Anderson	Dr. Jose Q. Cruz
Elvina R. Rios	Former Senator Pilar Lujan	Jesusa C. Cruz
Nick Pangelinan	Antonio T. Artero	Juan U. Baza
Johnny S. Sablan	Dr. Jose Nededog	Eloy Hara
Rita Franquez	Lucia McDonald	Manuel Cruz
Catalina Duenas	Maria S. Roberto	Jonathan Sinoben
Blandina G. Marquardt	Former Senator Paul Bordallo	Concepcion Judicpa
Former Senator Ted Nelson	Jose Pangelinan	Frank L.G. Castro
Cristobal Reyes	Eugenio Santos	Angel C. Santos
Dennis Zermeno (for George L. Charfauros)	Avelina M. Calaguas	Doris Charfauros
	Juan G. Roberto	Rosalia Charfauros
	Cesaria C. Arce	Senator Carmen Fernandez
	Rita Cruz	
	Antonio S. Cruz	
	Juan Q. Guzman	

IV. Legal Experts' Conference in Washington, DC

In order to fulfill its duties under section 5 of the Act, including the duty to "determine whether there was parity of war claims paid to the residents of Guam" under the Guam Meritorious Claims Act as compared with similarly situated individuals, the Commission believed it to be important to consult with experts in the area of international and domestic war claims. Accordingly, a legal experts' conference was held in Washington, DC, on February 20, 2004. Guam Delegate Madeleine Bordallo was in attendance, and the following individuals participated:

David J. Bederman, Professor of Law, Emory University School of Law

Ronald J. Bettauer, Deputy Legal Adviser, Department of State

Gen. V.T. "Ben" Blaz

Brigadier General, U.S. Marine Corps (Ret.)
Former Delegate, U.S. House of Representatives

Mary W.E. Comfort, Attorney Adviser, Department of State

Tink D. Cooper, Attorney Advisor, Department of Justice; Legal Counsel to the (former) Office of Redress Administration, Civil Rights Division

James G. Hergen, Assistant Legal Adviser, Department of State

David H. Rogers, Esq.

Former Chairman, Micronesian Claims Commission
General Counsel (retired), Foreign Claims Settlement Commission, Department of Justice

Joe T. San Agustin

Former Speaker, Guam Legislature
Former employee, U.S. Navy Guam Land and Claims Commission

The participants shared their knowledge and information on a variety of issues but more specifically they focused on:

a) the types of losses covered in different World War II claims programs;

b) types of claimants eligible in different programs;

c) initial outreach and efforts to give notice in claims programs;

d) basis for valuation of lost or destroyed property and other losses; and

e) justifications/rationales for placing limits on amount and type of compensation awardable.

Summary of D.C. meeting

Highlights and pertinent points of the meeting are summarized below. The complete transcript of the February 20, 2004, meeting is attached as Appendix F.

At the meeting, General Blaz, former Delegate from Guam, who had not been able to be present at the hearings conducted on Guam on December 8-10, 2003, stated that he recognized that the work of the Commission was not easy and emphasized that a definite resolution of this long outstanding issue needs to be recommended to the Secretary of the Interior. Further, he hoped that the Guam delegate to Congress would not be put in the position of having to go before Congress seeking reparations and that another approach was needed. General Blaz recounted that together with Senator Daniel Inouye, he traveled to Guam in 1989. He said that legislation agreeable to the Congressional leadership both here and in Guam was about to be adopted but that unfortunately it did not materialize.

Former Speaker of the Guam Legislature, Mr. San Agustin, recounted for the Commission that as a young man he had worked for the Land and Claims Commission on Guam from 1946 until 1950 and that he daily dealt with people who submitted claims and people who sought hearings but were denied them. Also, he dealt with people whose homes had been destroyed and had nowhere to go. Generally, Mr. San Agustin described for the Commission the

conditions on Guam at the time, particularly insofar as the Guam Meritorious Claims Act program was being conducted. He believed that those claimants represented by attorneys, such as the Catholic Church, fared better than those without attorneys. He noted his concerns: that attorneys working for the Navy who conducted the land appraisals were not adequately familiar with land values back in 1941; and that the Navy did not allow claims to be filed by Guamanians who were not then physically on the Island.

In response to the Chairman's questions regarding the composition of the Land and Claims Commissions, Mr. San Agustin indicated that approximately 100 people worked at the Commission and more than two-thirds of the staff were working on land claims. Because of virtually intolerable conditions on the island, turnover rate among the non-Guamanian staff was very high.[86]

With regard to personal injury claimants, Mr. San Agustin stated that most of those claimants were employed by the government and had heard of the program by word of mouth, while most of the rest of the population had not. In terms of outreach, "Commissioners" (now known as mayors) of the various island villages were instructed to publicize the program through the "grapevine" system -- some of the "mayors" did and some did not.

Mr. Bradley briefly discussed the Philippines Rehabilitation Act, passed in 1946, which made no provision for personal injury or death claims. It covered claims of Philippine citizens (who had the status of U.S. nationals) and allowed for claims for property damage or loss by U.S. nationals and citizens. The Act allowed for a one-year filing period. In comparing the two programs and in the course of discussions, Commissioner Cruz noted for the record that members of the Philippine Commission were appointed by the President and at least one member was a Filipino, whereas members of the Guam Act were naval personnel appointed by the Secretary of the Navy and the Naval governor of Guam.

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[86]See Appendix B(5).

The discussion then turned to general international law and the manner in which claims programs are generally conducted. Ronald Bettauer, Deputy Legal Adviser from the Department of State, stated that the cornerstone of a fair program is one where there is adequate notice and an adequate period of time for filing. He stated that claimants also need to understand the claims criteria and the types of claims allowed under the statute or settlement agreement. Sometimes a claimant may be able to claim for every loss and sometimes that is not possible. He explained that when certain types of claims are not covered, that may speak not to the fairness of the process, but to whether the statute was well advised or should have covered more. Mr. Bettauer elaborated that on its face, the Guam Act appears to provide for full compensation and appropriations were to be made for full payment. However, to determine how the program might have been actually implemented is a much harder task.

Mr. Bettauer elaborated on the question of valuation as of the time of loss, and was of the opinion that the state of the records may have had more impact on the valuation process than did the level of competence of the military lawyers. In this regard, he stated that full value for the loss is normally interpreted in terms of market value at the time of the taking or injury plus appropriate interest to the time of payment. He noted, however, that value at the time of loss becomes a much more difficult issue when there is no actual market, as in non-market economies such as those of the former Eastern European countries.

In response to Commissioner Cruz's query regarding military compensation commissions, Mr. Bettauer pointed to the military compensation commission that was set up after the invasion of Grenada. Commissioner Cruz also noted for the record that the "whole program was a military operation" more concerned with acquiring more land for the military and it was a program run without oversight by the Department of Justice or State.

Professor Bederman added that there is long precedent, dating from the Civil War, that pursuant to the President's Commander-in-Chief responsibilities under Article II of the Constitution, military forces can engage in these claims adjustment/settlement processes. Particularly, with the Guam Act, and to the extent that Guam was recognized by Congress as

a naval reservation prior to the war, this in itself was not an extraordinary situation that military officers were deciding claims and dispensing payments. The Judge Advocate General's Corps assists in settling claims for damage following military exercises.

Mr. San Agustin noted that a letter from the Governor of Guam to the Secretary of the Navy dated February 25, 1948, in response to comments raised in the Hopkins Report, stated that because it was impossible to ascertain the precise time of loss or damage, the date of the Japanese invasion, December 1941, was taken as the date of loss for purposes of evaluation.

Mr. Bettauer was questioned regarding any U.S. government obligation or compensation for U.S. citizens who were injured in wartime or had been detained in Nazi concentration camps. He stated that the concentration camp internees were U.S. citizens who were detained in Germany and although Germany had made compensation to citizens of other countries, it had not done so with respect to citizens of the United States. Accordingly, those claims of U.S. citizens could be "espoused," or asserted, by the U.S. Government against Germany. However, Mr. Bettauer stated that the U.S. Government is never legally obligated to espouse a claim against a foreign government because "espousal is a discretionary act on the part of the executive" and claims that are "settled via espousal are, in part, to remove irritants in international relations between the United States and the foreign governments." He further explained that "part of the theory is that when you espouse a claim of a national, that makes it a claim of the country and you're claiming that the foreign country did not act in accordance with its international obligations to the national and thereby the injury is, in a sense, to the nation. And so that is the basis on which we were able to espouse the Nazi persecution claims, which were essentially claims on holding people in concentration camps..." He elaborated further that the Holocaust settlements were not done under international law or, as the Germans asserted, out of a sense of a legal obligation, but rather they represented small amounts as compensation to anyone who was subjected by Germany to forced or slave labor.

In response to a query from the Chairman whether an entire island could be declared a "camp of some sort," Professor Bederman had the following response:

> In terms of your question, there has to be an important analytical distinction made between a territory that is under enemy occupation, and the individuals on that island [who are] subject to occupation by hostile military force. Japan was subject to the Hague Conventions, which governed belligerent occupation. Just because an individual may be located on an island that is subject to belligerent occupation does not make that individual interned or confined under relevant laws of war standards.

He further stated that

> [t]he crucial question would be whether an individual was subject to treatment different and worse from the island population at-large. And so that may bear on your inquiries to the extent of whether all eligible Guamanian residents or domiciliaries on the island at this time would be considered interned by the enemy. I think the more precise question is [whether] they were all subject to belligerent occupation [and] all had their right of movement ended.

In addition, Professor Bederman stated that

> under international law, at that time and this time, it is a prerogative of an occupying force to limit the movement of individuals under occupation. But that is not the same as if [the] Imperial Japanese forces relocated people from their homes, concentrated them in special camps -- then those individuals might be regarded as having been interned.
>
> Obviously, [if] they were subject to forced labor, that would be different. But to simply [imply]... that every individual on Guam from December 1941 until the liberation was, therefore, confined or interned, I think would probably run contrary to applicable international law standards.

James Hergen, the Assistant Legal Adviser for East Asia and the Pacific at the Department of State and a retired Army JAG officer, commenced by confirming the expertise of the military

claims officials and the careful review that is made of their work. He further stated that

> no claims settlement that I am aware of, especially regarding World War II, was comprehensive or clean or complete. Everyone who suffered at the hands of the Imperial Japanese Army in the Pacific, to this day, feels aggrieved whether they were the beneficiaries of some kind of claims settlement program or not.

While some "may have been awarded certain amounts under various claims programs...they did not receive what they felt was fair, what was just and they are still seeking compensation." Mr. Hergen made reference to specific cases before the Supreme Court relative to the 1951 Peace Treaty that extinguished "claims of millions, uncounted millions of people who suffered horrible atrocities at the hands of the Japanese." He specifically mentioned that there existed "a class of 400,000 people, all Americans who suffered injury in World War II, whether on the mainland or anywhere else, who never really got compensated."

Commissioner Cruz noted that the size of the Island of Guam and its distance from the nearest land mass gave it a unique situation and as a result the whole island could be considered a "giant prison."

Professor Bederman stated that "any kind of forced march, internment, dislocation from one's homes and forced labor, that is certainly a violation [of international law]. . . ."

David Rogers, former Chairman of the Micronesian Claims Commission, gave an overview of the Micronesian claims program. He stated that the Micronesian program was really two distinct programs and resulted from two separate pieces of legislation which became Title I and Title II. Title I was for war damage claims and Title II was for property expropriated by the U.S. Government for its use after the war and for personal injuries, death etc., which had occurred after the islands were secured by the United States military. Payments made under Title I for war damage were ex gratia meaning that there was no legal liability for the war damage caused and it was done as a gift. Accordingly, no interest was awarded on awards made under Title

I. Under Title II, which paid compensation for the value of the expropriated property, interest was calculated.

Mr. Rogers further stated that because the United States had a trust relationship with the people of Micronesia, in essence, the latter were considered "wards" of the United States for whom "the United states had a substantial duty." The United States negotiated a settlement with Japan in which the U.S. contributed $5 million and Japan contributed in goods and services the equivalent of $5 million. However, the settlement funds were only enough to pay one-third of the Title I awards made by the Micronesian Commission. Mr. Rogers elaborated on the other diplomatic issues between the United States and Japan.

It was noted that one of the difficulties encountered in administering this program was the size of the territory, which is approximately equal in area to the continental United States, except that it consists of islands. If compressed, the islands would be one-half the size of the state of Rhode Island.[87] The only way to communicate was to send people out on field trip vessels, scheduled every two months, and invariably the vessels would break down and people could not get out on schedule to promote the program. The radio was used to publicize the program and representatives were sent out to a number of islands to be present for the filing of claims. Approximately 11,000 claims were filed and approximately 200 claims were denied for filing after the deadline had passed.

The population of Micronesia was approximately 55,000 and the five-member commission included two Micronesians whose names were put forward by the Congress of Micronesia and the selection made by the Secretary of the Interior. This program had an appeals process where claimants could either provide additional documentation or appear for an oral presentation to the Commission.

Mr. Rogers then discussed the valuation of land in that area and explained that in Micronesia value of land depended on the reason for transfer of the land. As an example, he mentioned that if the church or some charity needed land, then the price

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[87] Ruth G. Van Cleve, *The Office of Territorial Affairs,* p. 125 (Praeger , Library of U.S. Government Departments and Agencies)(1974).

of the land would be significantly lower and if it was being transferred for a commercial purpose, then price/value would be different. In terms of inheritance, he discussed the importance of cultural hierarchy versus strict adherence to probate laws. For instance, in order for a widow to inherit, a determination of whether she had been a good or bad wife was very important. However, the commission chose to follow the traditional American usage regarding legal family relationships.

Mr. Rogers stated that death claims presented a problem but that the Commission recommended awards based on age: starting at $500 for a child and up to a maximum of $5,000 at age 21 and then sliding downwards slowly. The rationale was the concept of how much support was being provided to people left behind. He indicated that under Title II, the commission was sued because of allegations that they had not taken "future earnings and future support" into account. Mr. Rogers stated that there were some private attorneys handling claims before the Commission but noted that the statute limited recovery for attorneys to only one percent of any award. Ten or twelve attorneys worked at the Commission and the Micronesian Legal Services assisted many claimants with the filing of the claims.

Mr. Rogers elaborated that under Title II, there were some large awards because there were large amounts of prime land that the Trust Territory had taken and was still using at the time the Commission was doing its work. Originally it was thought to pay $2,000 per acre but in that manner, the entire fund would have been used up and then the concept of paying rent for the land was instituted and the maximum amount of rent per acre was set at $1,500.

The question of the nationality of the claimants was discussed. Professor Bederman pointed out that the people of Micronesia were not regarded as citizens of Japan but were under the League of Nations mandate to Japan. Hence, under Title I, any payments to those claimants was ex gratia as the U.S. had no legal obligation to them. Although the people of Micronesia were not under the trusteeship of the United States during World War II, they were when the settlement of claims was negotiated. Professor Bederman added that the Micronesians were never nationals of the U.S., rather they were citizens of the Trust Territory.

According to Mr. Rogers, under Title I, a small number of awards were made for forced labor. Mr. Bradley noted that such awards had been made under the theory that the Japanese had entered into implied contracts with the Micronesians for labor and when the Japanese defaulted, the debt then became personal property. The Chairman noted that the awards that may have been paid were made for personal property losses and not for forced labor.

Professor Bederman gave a brief history of the legal status of Micronesia from the early 20th century to date. At the request of Commissioner Cruz, Mr. Rogers discussed again the fact that under Title I, no interest was calculated but interest was calculated for awards made under Title II. Mr. San Agustin noted that the conditions in Guam in 1945 could not have been the same in Micronesia in 1971 as people in Guam had no homes to go to and no radio from which to receive notice of claims program.

Ms. Cooper discussed the Civil Liberties Act of 1988 and its background.[88] She then elaborated that the bill was signed by President Reagan on August 10, 1988, and was meant to be a 10-year program during which time applications from Japanese-Americans would be processed. The purpose of the Act was four-fold: (1) to acknowledge the injustice done to American citizens of Japanese ancestry; (2) to apologize for the injustice during the war; (3) to pay restitution to eligible individuals for their treatment during the war; and (4) to provide money for a public education fund to inform the American public about the internment. One of the unique features of this Act was that it required the U.S. Attorney General to identify and locate all eligible claimants without having the claimants make an application to the Department of Justice.[89] Another key provision of the Act was to pay the oldest individuals first. Four basic criteria for eligibility were that claimants: (1) had to be alive on the date the Act was passed, namely August 10,

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[88]In 1980 Congress established a commission to study the relocation and the internment of civilians during World War II. This commission issued its report, entitled "Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians," in 1980. The commission's report and recommendations became the basis for the Civil Liberties Act of 1988, cited *infra* note 98.

[89]Government records contained detailed listings of the names of over 110,000 internees in the ten camp rosters and other relevant information.

1988; (2) had to be of Japanese ancestry or be the spouse or parent of a person of Japanese ancestry; (3) had to be an American citizen or permanent resident alien; and (4) had to have been evacuated/relocated or interned or, otherwise, deprived of liberty or property as a result of specific federal government action during the internment period, which was defined as December 7, 1941, through June 30, 1946.

Ms. Cooper elaborated that if an individual was alive on August 10, 1988 (date of enactment), but died subsequent to that date, there were three classes of heirs who were able to receive payment in order of priority (spouse, children, or parents). Each eligible claimant received $20,000 for his/her evacuation/relocation/internment. Prior to the bill's passage, there was discussion to the effect that an apology would suffice and that no monetary payment was required.

Ms. Cooper explained that Title I of the Act dealt with the Japanese-American program and Title II dealt with the Aleutian program, which was administered by the Department of the Interior. Under the Aleutian program, there was compensation for three different types of losses: (1) Individuals would receive $12,000 each; (2) there was separate compensation for damaged church property and $1.4 million was set aside for that; (3) the larger portion of the money was set aside for community losses and the Secretary of the Interior had identified various villages that had been demolished during the war and the Secretary of the Interior worked with each of the villages to set up seven trustees from each village. Then the trustees for each village were given a sum of money to help distribute for that particular village or community. Under the Aleutians Act, this money was primarily to be directed toward the benefit of the elderly, disabled, and seriously ill persons, as well as to student scholarship programs and to help preserve Aleutian culture and to improve community centers.

Since the Department of Justice did not administer this portion of the Act, Ms. Cooper was not sure how the program was conducted, but believed that claims had to be filed with the Secretary of the Interior. She also stated that $5,000,000 was provided for educational purposes under Title I of the Act. This funding was used to republish the Commission's Report of

"Personal Justice Denied"[90] for wider dissemination and to provide grants to various individuals on the West Coast, both at universities and at the high school level, to publicize the government's action taken during World War II.

Professor Bederman added that other than Guam and the Philippines, the only other U.S. territory that was actually occupied by the Japanese were the westernmost islands of the Aleutian chain. When Imperial Japanese forces moved into some of the islands after December 7, 1941, some residents of the islands were actually under Japanese occupation. There is little information on conditions there. With regard to some of the more easterly islands, towards the main body of Alaska, the U.S. Navy undertook to evacuate the people before the impending Japanese occupation. According to Professor Bederman, the Aleutians had some choice as to whether they would stay with relatives in Alaska or whether the Navy would take care of them. Their freedom of movement was not limited and they were not interned as were the Japanese Americans. Their condition was similar to a "refugee" situation. Little is known of the condition of the Aleuts who remained behind and lived under Japanese occupation.

Mr. Bradley added that in "Personal Justice Denied", there is a section on the experiences of the evacuated Aleutians and the poor treatment they received. Many were forced to live in deplorable conditions and some lived in abandoned canneries. In addition, upon their return to their villages after the war, little attention was given to the reconstruction of their destroyed villages.

V. Review Under Section 5(4) of the Guam War Claims Review Commission Act

Section 5(4) of the Review Act requires the Review Commission to "determine whether there was parity of war claims paid to the residents of Guam" under the Guam Act as compared with similarly situated individuals who were in other territories occupied by the Japanese during World War II. In order to carry out this directive, the Commission has carefully reviewed the following statutes in comparison with the Guam Act:

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[90]See *supra* note 88.

--Philippines Rehabilitation Act of 1946[91]
--War Claims Act of 1948[92]
--Wake Island Amendment to the War Claims Act (1962)[93]
--War Claims Act, Title II (1962)[94]
--War Claims Act Amendments (1952 & 1956)[95]
--War Claims Act Amendment (1954)[96]
--Micronesian Claims Act of 1971[97]
--Aleutian and Pribilof Islands Restitution Act (1988)[98]

On the following page is a chart comparing the provisions of the Guam Act with these respective statutes. These comparisons are then discussed in the next section below.

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[91]Pub. L. 370, 79th Cong., approved June 30, 1946, 60 Stat. 128; amended by Pub. L. 87-616, approved Aug. 30, 1962, 72 Stat. 411.
[92]50 U.S.C. app. §§2001 et seq. (2000) (Pub. L. 896, 80th Cong., approved July 3, 1948, 62 Stat. 1240).
[93]50 U.S.C. app. 2005(h) (2000) (Pub. L. 87-617, approved Aug. 31, 1962, 76 Stat. 413).
[94]50 U.S.C. app. §§2017 et seq. (2000) (Pub. L. 87-846, approved Oct. 22, 1962, 76 Stat. 1107).
[95]50 U.S.C. app. 2005 (2000) (Pub. L. 303, 82rd Cong., approved April 9, 1952, 66 Stat.47).
[96] 50 U.S.C. app. 2005(a) (2000) (Pub. L. 744, 83rd Cong., approved Aug. 31, 1954 , 68 Stat.1033).
[97] 50 U.S.C. app. §§2018 et seq. (2000) (Pub. L. 92-39, approved July 1, 1971, 85 Stat. 92). It should be noted that this statute, and the program conducted pursuant to it, technically are not comparable to the Guam Act and the program conducted under it because the Micronesian Claims Act and claims program did not involve war claims of United States citizens or nationals, but rather were limited to citizens of the Trust Territory of the Pacific Islands – the Northern Marianas, Marshall Islands, and Caroline Islands. Nevertheless, the Review Commission has included the statute among those being compared to the Guam Act, in order to allow it to determine whether the United States Government treated the war claims of the people of Guam more favorably or less favorably in comparison with those of their fellow Chamorros on Saipan and the other islands of the Northern Marianas. The reason for its inclusion is that it is a concern that is raised by the people of Guam and presents many similarities that merit discussion.
[98] 50 U.S.C. App. §§1989c-1 *et seq.* (Pub. L. 100-383, approved Aug. 10, 1988, 102 Stat. 911 (Title II)) . It is also noted, however, that many years before the passage of this Act, on August 7, 1944, President Franklin Roosevelt approved an allocation of $200,000 from his "Emergency Fund for the President, National Defense, 1942-45" to be used by the Interior Department for rehabilitation of the Aleutian and Pribilof Islands. (Report of the Commission on Wartime Relocation and Internment of Civilians, "Personal Justice Denied", 1996, *supra* note 88.
A question has been raised as to whether comparison of the Guam Act with the Aleutians Act is within the scope of the Review Commission's jurisdiction, since the claimants compensated under the Aleutians Act technically were not "similarly situated U.S. citizens or nationals in territory occupied by the Imperial Japanese military forces during World War II" but rather had been evacuated from their home islands before the Japanese forces arrived. However, the Review Commission has received a memorandum from the Office of the Solicitor in the Department of the Interior expressing the opinion that it is permissible for the Review Commission to include the Aleutians Act in its comparisons with the Guam Act. *See* Appendix I (2).

	Guam Act (1945)	Phil. Rehab. Act (1946)	War Claims Act (1948)	Wake Island (1962)	War Claims Act, Title II (1962)	War Claims Act, (1952 & 1956)	War Claims Act (1954)	Micronesia Act (1971)	Aleutians Act (1988)
Losses Covered:	Property, real and personal; personal injury; death; loss of use of property	Property, real and personal	Civilian Internment; Death; Personal Injury while interned or in hiding; (POWs compensated for inadequate rations and inhumane treatment, including forced labor)	Civilian Internment; Death; Personal Injury while interned or in hiding	Property, real and personal; death and personal injury of passengers on commercial vessels on the high seas prior to December 1941	Property provided to U.S./Phil. Forces by religious organizations in Philippines	Sequestration of bank accounts by Japanese in Philippines	Real/Personal property damage/loss, before U.S. liberation (Title I) and after U.S. liberation (Title II); personal injury/death caused by Japanese (Title I) & by U.S. (Title II); forced labor before liberation	Dislocation due to forced evacuation by U.S. to internment camp or other facility
Nationality requirement as of date claim arose:	Permanent residency on Guam between 12/7/41 & 7/21/44	Citizen of Phillipines or U.S. (plus Switzerland, Canada, Sweden, Nicaragua, and Australia–based on reciprocity with those countries)	U.S. Citizen	Citizen of Guam	U.S. National (including U.S. citizens)	Affiliated w/ U.S. Religious organizations; or same denomination	U.S. National as of 12/7/41 and continuously thereafter until 1954, or heir thereof	Citizen of Trust Territory of Pacific Islands as of 7/18/47; heir of decedent who, if then living, would have been eligible for such citizenship; and heir of either of above	Any Aleut who, as a civilian, was subjected to relocation or was born while mother was relocated; communities comprising the six evacuated villages
Filing Period:	11/15/45 to 12/1/46, or within one year of incident if occurring after 12/1/45	3/1/47 to 2/29/48	1/30/50 to 3/31/52	8/31/62 to 2/28/63	7/15/63 to 1/15/65 (extended from 7/15/64)	4/9/52 - 8/1/54 (U.S. affiliated); 8/6/56 - 2/6/57 (same denomination)	8/31/54 - 8/31/55	10/16/72 - 10/16/73	8/10/88 - 8/10/92 (?)
Claimants Covered:	Natural persons; estates of decedents; legal entities owned by Guamanians	Natural persons; Estates of decedents; legal entities owned by Citizens of Phillipines or U.S.	Natural persons; heirs of decedents	Natural persons; heirs of decedents	Natural persons; estates of decedents; legal entities owned by U.S. citizens	Religious organizations and natural persons comprising the staffs thereof	Natural persons and their heirs; legal entities at least 50% owned by U.S. nationals from 12/7/41 to 1954	Natural persons and estates and heirs thereof; legal entities owned by individuals who did or would have become TTPI citizens on 7/18/47	Natural persons alive at time of enactment of statute and communities they comprise
Basis For Valuation of Property:	If claim arose before 12/1/45, market value as of 12/6/41; otherwise, market value on date claim arose	Actual cash value at time of loss/damage	$60/mo. ($25/mo. During minority)	$60/mo. ($25/mo. During minority)	Actual cash value at time of loss/damage	Actual amount expended; "fair value" of materials provided	Dollar value of account at time of sequestration	Market value at time of loss or destruction	Replacement value of community property lost and destroyed
Proportion of awards actually paid:	100%	In full up to $500; 52.5% of amounts over $500, plus up to an additional $25,000 in 1964	100%	100%	In full for all awards up to $10,000; 72.46% of awards over $10,000; awards to businesses reduced by amounts of Fed. Tax benefits realized on account of losses claimed	In full up to $500; pro rata payment above $500	In full up to $500; pro rata payment above $500	34.24% for pre-liberation awards; 99.9% for post-liberation awards	100%
Funds available for paying awards:	$12,728,600	$462,000,000	$18,095,009	$91,782	$235,559,252	$181,537,769	$181,537,769	$11,762,000 (Title I); $32,600,000(Title II)	$21,400,000
No. of awards paid:	6,365	1,157,494	11,653	35	7,039	77	3,167	Apprx. 10,500 of 10,976 filed	520 (as of 7/22/91; no further data available)
Basis for compensating for death, injury and forced labor	For death: value of lost prospective support of dependents, based on regs under Fed. Employees Comp. Act of 1916, up to $50/mo., plus burial and memorial expenses; For personal injury: same calculation under regs, plus reasonable hospital expenses; Forced Labor Not Compensated	N/A	For death: value of lost prospective support of dependents, up to $7500, plus burial and memorial expenses; For personal injury: same calculation, up to $7500, plus reasonable hospital expenses	For death: value of lost prospective support of dependents, up to $7500, plus burial and memorial expenses; For personal injury: same calculation, up to $7500, plus reasonable hospital expenses	For death: $25,000; For personal injury, $200/mo. of disability	N/A	N/A	For death, $500 to $5000, depending on age; for injury, percentages of amounts awardable for death, depending on severity; for forced labor, $10-15/mo.	No compensation for death or forced labor; for presumed injury from forced relocation: $12,000 per person

A. Comparison of Provisions of the Guam Act with Those of Other War Claims Statutes

1. Types of Losses Allowed

(a) Personal and real property

The Guam Act, the Philippines Rehabilitation Act of 1946, Titles I and II of the War Claims Act of 1948, as amended, and the Micronesian Claims Act of 1971 allowed for claims based on personal and real property losses. The Guam Act and the Micronesian Claims Act also allowed compensation for "loss of use" of real property, which was not the case in other programs.

(b) Personal injury and death

The Guam Act, Title I of the War Claims Act, the Wake Island Amendment, and the Micronesian Claims Act allowed for claims based on personal injury and death. However, except in the case of the Guam Act and the Micronesian Claims Act, such benefits were available only to civilian American citizens. Title II of the War Claims Act allowed for claims for personal injury and death, but only where the personal injury or death was incurred on board vessels engaged in commerce that were attacked by enemy forces on the high seas before December 11, 1941.[99] The other statutes did not authorize compensation for personal injury or death.

(c) Civilian internment

The War Claims Act of 1948 and the Wake Island Amendment authorized compensation for internment of civilians by Japanese military forces during World War II. Claimants were entitled to compensation at the rate of $60 per month of internment if they were adults, and $25 per month of internment if they were minors. To be eligible, they had to have been either physically confined by the enemy or in hiding to avoid capture.[100] In

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[99] 50 U.S.C. app.2017b (2000) [War Claims Act of 1948, as amended in 1962, subsec. 202(d)].

[100] 50 U.S.C. app. 2005(a)(2000). It is also to be noted, however, that in at least one case (Claim of Gladys Slaughter Savary, Claim No. C-87087), the War Claims Commission held that a person was considered to be eligible for compensation based on a finding that she "was by force of the Japanese Army restrained in her movements and activities, was subjected to arrest, and

addition, section 5(f) of the War Claims Act provided that claimants were eligible for lost wages under the "Act to provide benefits for the injury, disability, death, or enemy detention of employees of contractors of the United States, and for other purposes, approved December 2, 1942," and for disability and death benefits under that Act, in the event they were injured or died during their internment, regardless of whether they were in fact employed.[101] The statutes also provided that the entitlement to compensation passed to specified classes of survivors of an internee if he or she was no longer living at the time the award of compensation was issued.[102]

The Aleutian and Pribilof Islands Restitution Act ("Aleutians Act") provided for compensation to individuals for their evacuation by the United States to internment camps or other temporary facilities. Each claimant received a lump-sum compensation payment of $12,000. In order for the compensation to be payable, the internee had to have been alive at the time the claims statute was enacted.

(d) Forced labor

The claims program conducted under the Micronesian Claims Act was the only program in which compensation was paid for forced labor. Moreover, even in that case the payment of forced labor claims was not specifically authorized in the statute. Rather, they were paid on the basis of the theory that there were implied contracts with the Micronesian laborers (who had been living under Japanese governance for some twenty years before World War II) which the Japanese failed to honor, thereby

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surveillance, her premises searched and property seized to such an extent as to establish that she was captured and held by the Imperial Japanese Government within the meaning of the Act and governing regulations." See *Settlement of Claims by the Foreign Claims Settlement Commission of the United States and its Predecessors from September 14, 1949, to March 31, 1955*, U.S. Government Printing Office, Washington, DC, at 552.

[101] Subsec. 5(f)(1) of the Act, *supra* note 92 above. The benefit payable was $37.50 per week up to a maximum of $7,500.00 for disability and a further $7,500.00 if death subsequently resulted from the same injury. See *Supplementary Report of the War Claims Commission*, *supra* note 57 at 28. However, such benefits did not accrue to any person to whom benefits had been paid, or would be payable, under the Federal Employees Compensation Act , as amended July 28, 1945, the Act of December 2, 1942, referred to in subsec. 5(f), or the Missing Persons Act. *Id.* at 17, footnote 32.

[102] *Id.*, subsec. 5(d).

giving rise to debts which were mentioned in the 1969 U.S.-Japanese claims agreement.[103]

(e) "Forced march"[104]

None of the claims statutes authorized compensation for "forced march."[105]

2. Nationality Requirement

Title I of the War Claims Act of 1948, as it related to civilian internees, was the only statute that limited eligibility to United States citizens; except for the Micronesian Claims Act, all of the others covered both citizens and nationals of the United States. The Micronesian Claims Act was open only to persons who were citizens of the Trust Territory of the Pacific Islands as of July 18, 1947, and the survivors of decedents who, if living, would have been eligible to claim such citizenship.

3. Filing Period

The War Claims Act of 1948 (civilian internee program) and Title II of that Act, added in 1962, provided for filing periods of 26 months and 18 months, respectively. The Aleutians Act provided for a filing period of four years. The Wake Island claims statute allowed for a filing period of only six months. As was the case with the Guam Act, the rest of the statutes provided for a filing period of one year.[106] However, the ability of Filipinos who did not file claims under the Philippines

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[103] *Supra* note 71.

[104]The Review Commission Act requires the Review Commission to consider "forced march" as a category of wrong giving rise to a claim for compensation.

[105]The Foreign Claims Settlement Commission's Holocaust Survivors' Claims Program, conducted between 1996 and 1998 under authority of Public Law 104-99, approved January 26, 1996, 110 Stat. 26 (22 U.S.C. 1644 note), provided for adjudication of the claims of U.S.-citizen Holocaust survivors, including individuals who endured forced marches at the hands of Nazi German forces. However, the Office of the Solicitor of the Department of the Interior has advised the Review Commission in an opinion memorandum dated February 12, 2004, that the Review Commission's jurisdiction does not encompass World War II claims of U.S. nationals arising in Europe. See Appendix H, attached.

[106]It is noted, however, that the implementing regulations of the Guam Act were not finalized until May 3, 1946, thereby shortening the one year filing period to only 7 months.

Rehabilitation Act of 1946 to file under Title II of the War Claims Act in effect amounted to an extension of the one-year filing period provided for in the Philippines Rehabilitation Act.[107] This made for a total filing period of 2-1/2 years under the latter.

4. Claimants Covered

Filing of a claim under the Guam Act was open to anyone residing on Guam between December 7, 1941, and July 21, 1944, or, where permitted, his or her successor in interest.[108] It was also open to entities owned by such persons.[109] One of the claimants that received compensation under the statute was the Gaiety Theater, Inc.,[110] which owned the movie house in Agaña, the island capital; another was the Catholic Church on Guam.[111] None of the other statutes was more expansive than the Guam Act in this regard.

5. Basis for Valuation of Property

The Guam Act was silent on this point. However, the implementing regulations promulgated by the Navy in May 1946 provided that in the case of claims based on loss or destruction of property before December 1, 1945, the amount of compensation payable would be computed based on the market value of the property as of "December 6, 1941 (Washington, DC, time)."[112] Otherwise, the amount was to be based on the property's fair market value at the time of loss or damage. Under the other statutes that covered property loss and damage, except for the Philippines Rehabilitation Act of 1946, the measure of valuation was stated to be the property's post-war fair market value. Under the Philippines Rehabilitation Act, awards were based on the replacement cost of the property, less depreciation, or its

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[107] *Supra* note 91.

[108] Appendix B(8). Subsec. 4(d) provided that real property claims survived; subsec. 6(g) provided that personal injury claims did not survive.

[109] *Id.* at subsec. 4(d).

[110] Appendix B (15) (Pub.L. 583, 81st Cong.(1950)), granting a payment of $12,707.50.

[111] Appendix B (14) (Pub.L. 271, 80th Cong. (1947)), granting a payment of $524,950.55.

[112] Appendix B(8), subsec. 5(b).

actual cash value at the time of loss or damage, whichever was lower.[113]

6. Proportion of Awards Actually Paid

Claims found meritorious under the Guam Act were paid in the full amount that the Land and Claims Commission determined to be due the claimant in each case. The largest individual payment for loss and destruction of real and personal property went to Mr. Pedro Martinez of Agaña, Guam, in the amount of $245,112.72.[114] On the other hand, Gaily R. Kamminga received only $7,129.50 for the destruction of two houses, two bungalows, a ranch house, livestock, crops, trees, building materials, and personal effects[115]. Claims for American-citizen civilian internment and by religious organizations in the Philippines were also paid in full,[116] as were the amounts due the Aleuts.[117] In contrast, claims under the Philippines Rehabilitation Act were paid in full only up to $500 per claim; amounts above $500 were payable to the extent of 75 percent.[118]

Claims for sequestered bank accounts in the Philippines were paid in full up to $500; amounts over $500 were only paid to the extent of 66-2/3 percent.[119] Claims under Title II of the War Claims Act were paid in full up to $10,000,[120] except that claims based on the death of passengers on vessels engaged in commerce attacked by enemy forces on the high seas were paid in full for $25,000.[121] As for the claims under the Micronesian Claims Act, amounts found to be due for death, personal injury, and property

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[113] Final and Ninth Semiannual Report of the U.S.-Philippine War Damage Commission (U.S. Government Printing Office, 1951) at 8.

[114] Appendix B (15) at 35.

[115] *Id.* at 33.

[116] Supplementary Report of the War Claims Commission, *supra* note 57 at 151.

[117] U.S. Department of Interior, Bureau of Indian Affairs, Alaska Region, News Release (Dec. 11, 1990) and Status Report (July 22, 1991); Appendix I.

[118] See *supra* note 91, subsec. 102(c). As it turned out, however, the funds appropriated by Congress only allowed for 52.5 percent to be paid at the time. Payment of the remaining 22.5 percent of the awards made under the statute, up to a maximum of $25,000, was later authorized by Public Law 87-616, cited in note 91.

[119] See *supra* note 96, subsec. 17(d).

[120] See *supra* note 94, Sec. 213; except for awards given priority under paragraph (a)(1) of that section, awards of over $10,000 were ultimately paid pro rata to the extent of 72.16 percent. Source: Annual Report of the Foreign Claims Settlement Commission of the United States for 1968 at 24.

[121] *Id.*

loss and damage after the Japanese occupation ended were paid to the extent of 99.9 percent, but claims arising during the Japanese occupation were only paid to the extent of 34.24 percent.[122]

7. Basis for Compensating for Death and Personal Injury

In the case of claims for death and personal injury under the Guam Act, the Land and Claims Commission computed the amount of compensation payable based on regulations promulgated under the Federal Employees Compensation Act of 1916, as amended. In all cases the amount of compensation that could be recommended for payment was limited to $4,000.[123] The amount recommended was intended to compensate for loss of prospective support of the decedent's or injured's dependents, up to a maximum of $50 per month, although in the case of injuries occurring after December 6, 1941 (Washington, DC, time), and before August 1, 1944, the amount of compensation payable was computed based on the claimant's average earnings during the first eleven months of 1941. In addition, a reasonable amount was allowed for hospitalization expenses of the injured and for burial expenses of the deceased. An award for personal injury barred any further award for death if the death resulted from the earlier injury.[124]

In contrast, subsection 5(f) of the War Claims Act provided for a $7,500 cap for personal injury claims, and another award up to $7,500 was allowed if death later resulted from the same personal injury. Subsequently, the Foreign Claims Settlement Commission ("FCSC") determined that under Title II of the War Claims Act, added in 1962, an award of $25,000 was appropriate compensation for death of any passenger on board a vessel engaged in commerce and attacked by enemy forces on the high seas prior to December 11, 1941,[125] and amounts up to a maximum

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[122]Derived by dividing the total amount of awards of $34,349,509, listed in the Final Report of the Micronesian Claims Commission, included in the Annual Report of the Foreign Claims Settlement Commission of the United States for 1976 at 103, into $11,762,000, the amount available for payment of Title I claims, as listed in the Micronesian Claims Commission's Final Report at 100.

[123]Appendix B(8), Subsec. 6(d).

[124]*Id.*, subsecs. 6(b)-(d).

[125]It will be noted, however, that these claims are not properly comparable to the claims under the Guam Act, since they did not arise in territory attacked by Japan.

of $10,000 were payable for personal injury and disability, based on the length of time the claimant was disabled.[126]

The Micronesian Claims Act of 1971 made no express provision for a level of compensation for claims for injury and death. Analogizing to relevant precedents, including the Guam Act, the Micronesian Claims Commission determined that claims for death would be paid according to a sliding scale from $500 to $5,000 based on the age of the decedent at the time of death and the consequently greater or lesser amount of support lost by his or her dependents as a result.[127] Claims for personal injury were paid on a percentage basis using that same scale.[128] According to the statistics compiled at the end of the program, the values respectively attributed to Title II death and injury claims (for which the United States was responsible) were 0.7 percent and 5 percent of the values attributed to Title I death and injury claims (for which Japan was responsible)[129].

8. Basis for Compensating for Forced Labor

As previously mentioned, the claims program conducted under the Micronesian Claims Act was the only program in which compensation was awarded for forced labor. However, the Act was silent regarding the level of compensation for forced labor claims. The Micronesian Claims Commission determined that the appropriate level of compensation was $10 per month if the work was of the type usually performed by the laborer and was performed at home, and $15 per month if otherwise.[130]

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[126]See, e.g., Claim of Edward T. Wilkes, et al., Claim Nos. W-10922, W-10923, and W-10924, Decision No. W-3576, 23rd Semiannual Report of the Foreign Claims Settlement Commission of the United States, p. 77 (1965); Claim of Robert Newton Pritchard, Claim No. W-009, Decision No. W-2271, 22nd Semiannual Report of the Foreign Claims Settlement Commission of the United States at 46 (1965).

[127]Annual Report of the Micronesian Claims Commission for 1973, included in the Annual Report of the Foreign Claims Settlement Commission of the United States for 1973, at 40.

[128]*Id.* at 48.

[129]Final Report of the Micronesian Claims Commission, *supra* note 122 at 103.

[130]*Id.* at 86.

B. Review of Implementation of the Guam Act in Comparison with Implementation of Other War Claims Statutes

1. Adequacy of Notice to Potential Claimants

One of the most frequently heard complaints about the Navy Land and Claims Commission's administration of its program under the Guam Act is that potential claimants did not have adequate notice or opportunity to learn of the program and submit their claims. In this regard, the Navy's reports from the time stated that it had already begun its investigation of claims on Guam in the spring of 1945, and claimants then had until December 1, 1946, in which to file their claims. However, the implementing regulations were not promulgated until May 3, 1946, thereby shortening the one year filing period. Furthermore, it appears that some of the local village commissioners (mayors) who were charged with dissemination of information to the people, may not have given accurate or timely information to potential claimants.[131]

In contrast, claimants in the Philippines had the fixed period of one year -- from March 1, 1947, to February 29, 1948 -- to submit their claims. Little previous investigation of claims, except for preliminary surveys of war damage, had been conducted before then, and in fact, the distribution of claim forms, which was accomplished through placing supplies of the form in the hands of school teachers on the 7,000 islands of the Philippine archipelago, did not begin until the first day of the filing period.[132] It is true that claimants who did not submit their claims during the filing period had a second opportunity to do so after enactment of Title II of the War Claims Act in 1962. However, the FCSC's awards for Philippine property losses

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[131]Appendix B(11). Other documents indicate that there was some notice by public meetings. The Land and Claims Commission Report for May 1945 stated: "The Section handling death and personal injury claims is holding daily hearings with prominent Guamanians relative to details of death or injury of local residents during Japanese Occupation." (Report for Island Command War Diary, June 2, 1945). Further, another report indicated that the Navy held seven monthly meetings, from June to December 1946, with the local village commissioners of fifteen municipalities to discuss many issues which included payments of claims for persons in Agat. In turn, the local commissioners held at least two public mass meetings each month to disseminate new orders, notices, etc., published during that period.

[132] *Supra* note 113 at 6-7.

under this statute amounted to only $1.13 million, out of a total of almost $341 million awarded under the statute.[133]

In the case of the Micronesian Claims Act of 1971, claimants also had a period of only one year in which to submit their claims, despite the fact that the area of the earth's surface covered by the Trust Territory was as large as the continental United States. As for the filing period provided for under Title II of the War Claims Act, added in 1962, the FCSC initially set a period of one year, but was allowed by the statute to extend the period by six months, which it ultimately did.[134] This was an advantage not available to claimants under either the Guam Act or other claims statutes. Of course, in both of these cases the claimants had the advantage of modern radio and television communication not available to claimants under the Guam Act.

The number of claims filed under the Guam Act as a proportion of the population of Guam at the time, compared with claims under other statutes, is also a basis for comparison as to the adequacy of notice. According to the Land and Claims Commission's files, the Commission received a total of 5,465 claims,[135] or one for approximately every four citizens on the island. This is a higher proportion than was the case in Micronesia, where 10,648 claims were filed,[136] or one for approximately every five citizens of the Trust Territory. In contrast, nearly 1,157,500 claims were awarded in the Philippines, or one for approximately every 35 citizens of the archipelago.[137] On the other hand, claimants under the Aleutians Act had four years in which to file, which meant that the question of notice actually was not even an issue.[138]

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[133]Annual Report of the Foreign Claims Settlement Commission of the United States for 1967at 197.

[134]*Id.*, at 96.

[135] Appendix B(18).

[136]Report of the Micronesian Claims Commission, January 1-December 31, 1973, *supra* note 127 at 75.

[137] *Supra* note 113 at 57. According to the Encyclopedia Britannica, the 1940 population of the Philippines was approximately 40,500,000.

[138] *Supra* note 98.

2. Types of Losses Covered and Amounts of Compensation Allowed

The Guam Act covered claims for death, personal injury, and the loss, damage, and destruction of real and personal property. Additionally, the Guam Act covered claims for loss of use of real property. As previously noted, the regulations governing the Land and Claims Commission's proceedings placed a ceiling of $4,000 on claims for death and personal injury, but there was no limitation on the amount that could be sought for property loss, damage, destruction and loss of use -- although property claims for more than $5,000, and all death and personal injury claims, had to be approved by the U.S. Congress. There have been suggestions that claimants limited their property claims to $5,000 or less in order to avoid the Congressional approval requirement.[139] In any event, the files of the Land and Claims Commission include over two hundred claims in which payments of over $5,000 were recommended, and in fact there were several instances in which the Commission increased its recommendation to a figure higher than that sought by the claimant.[140]

With regard to death and personal injury claims, the Hopkins Report criticized the Navy for using the regulations in effect under the Federal Employees Compensation Act of 1916 as the basis for computing awards.[141] Considering, in particular, the remote location and the unsettled conditions in which the Commission personnel were forced to carry out their work, the Hopkins Report suggested that it would have been much more sensible, at least in the case of the death claims, to adopt a simple method of computation based on a measure such as remaining life expectancy at the time of the decedent's death.[142]

In fact, such a basis was used in determining the amounts to be awarded in death claims under the Micronesian Claims Act. In its decision in Claim of Minniah Melong, Harvey Melong, and Don Melong, Claim No. 1090-J (March 12, 1973, affirmed by Final

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[139] Appendix B(10) at 12.

[140] E.g., Claim of Gregorio Cruz Perez of Sinajana-- he sought $6,407.80 but was awarded $7,303.30;0; Claim of Alejandro Concepcion Quan of Santa Rita--he sought $10,664.75 but was awarded $11,178.50. See Appendix B(15).

[141] See Appendix B(10) *supra* note 43.

[142] *Id.*

Decision December 12, 1973),[143] the Micronesian Claims Commission adopted a sliding scale of $500 to $5,000 for compensating claims for death, which provided $500 for the death of decedents 12 years old or less at the time of death, with an increase of $500 for each additional year of age up to age 21 and a decrease of $100 per year for each additional year up to age 61, at which age and above the amount awardable remained at $1,000.

It is noteworthy, however, that the Micronesian Claims Commission mentioned in its decision that it had devised this scale after studying the Land and Claims Commission's treatment of death claims on Guam, with the latter's maximum of $4,000 increased to $5,000 to account for the 25-year interval between the time when the Land and Claims Commission was making its recommendations for awards and the time when the Micronesian Claims Commission was doing its work.[144] According to the Land and Claims Commission's files, the average paid in the death claims on Guam was about $1,900.[145] In 1976 dollars, that was equivalent to about $4,000.[146] In contrast, the average amount awarded for wartime deaths of Micronesian decedents was $3,216.39[147] and the average award for deaths after an island's secure date was $728.41.[148] Moreover, the actual payments for wartime deaths only amounted to approximately 34.2% of the Commission's awards, since the awards granted under Title I of the statute amounted to nearly $34.35 million but only $11.762 million was available from which to make payments.[149]

Recognizing that this deficiency existed, Congress enacted further legislation in 1977[150] authorizing the appropriation of additional Federal funds to cover the unpaid portion of the Micronesian Claims Commission's award under Title I of the

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[143] *Supra* note 127 at 83.

[144] *Id.* at 85

[145] Appendix G.

[146] Consumer Price Index -Urban, 1913-2004, Bureau of Labor Statistics, U.S. Department of Labor.

[147] Total amount of awards of $8,767,869, listed in the Final Report of the Micronesian Claims Commission, *supra* note 120 at 103, divided by 2,726, the total number of Title I death claims filed, as listed in the Micronesian Claims Commission's Report for January 1-December 31, 1973, *supra* note 127 at. 75.

[148] *Id.*

[149] Id. at 100.

[150] Pub. L. 95-134, approved October 15, 1977, 91 Stat. 1159.

Micronesian Claims Act.[151] However, the statute provided that any such authorization would be contingent upon the contribution of an equivalent additional amount of goods and services by Japan, and to date, Japan has failed to make any such further contribution.[152]

The two other statutes which provided for compensation for death claims were Title I of the War Claims Act of 1948, subsection 5(c), and Title II of that Act, added in 1962. Under Title I, compensation could be claimed for the death of civilian American citizens interned by or in hiding from Japanese military forces in areas attacked by Japan in World War II. Such claims were processed by the Bureau of Employees Compensation, which was a component of the Federal Security Agency until it was transferred to the U.S. Department of Labor in 1950.[153] The maximum amount awardable was $7,500.00.[154]

Under Title II of the War Claims Act, the only deaths covered were of passengers on vessels engaged in commerce on the high seas that were attacked by enemy forces before the United States entered World War II. As noted above, in 1965 the FCSC fixed the compensation amount at $25,000, regardless of the decedent's age at the time of death or any other factor.[155] In 1949, this would have been equivalent to $27,225.00.[156] However, this Commission is not aware of any other claims for death of civilians in wartime in which such amounts have been awarded.

3. Valuation of Property

The regulations implementing the Guam Act provided that except for claims arising after the liberation of Guam, the Land and Claims Commission was to determine property values on the

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[151]The statute also authorized appropriation of additional funds to cover the unpaid portion of the awards made under Title II. This was accomplished the following year, as part of the Department of the Interior Appropriations Act for Fiscal Year 1979 (Pub. L. 95-465, approved October 17, 1978, 92 Stat. 1289), which included an appropriation of $12.6 million for payment to Title II award holders.

[152]Verified by the Office of Insular Affairs, U.S. Department of the Interior.

[153]Reorganization Plan No. 19 of 1950, effective May 13, 1950, 64 Stat. 1271, 15 Fed. Reg. 3178.

[154]Supplementary Report of the War Claims Commission, *supra* note 57 at 16.

[155]See *supra* note 126 and discussion on page 58.

[156]*Supra* note 146.

basis of values existing on December 6, 1941.[157] The Hopkins Report criticized the Navy on this point, stating that because replacement costs were "far in excess" of those values, the "so called relief is apt to be only a hollow gesture."[158]

This Commission has also reviewed a memorandum from the "Commander Marianas and Governor of Guam" to the Secretary of the Navy dated February 25, 1948, that responded to the Hopkins Report's criticisms and recommendations.[159] On the issue of property valuation, the memorandum stated that

> [i]t is the Governor's understanding of the theory of the [Guam Act implementing] regulations that it was difficult, if not impossible, to ascertain the exact time of loss or damage, particularly in the case of personal property -- all that could be determined was that the property existed at the time of the Japanese invasion in 1941 and that sometime between that date and the reoccupation of Guam by the American Armed Forces the property was lost or damaged -- therefore, the December 1941 value standard was adopted as being the only known standard existing when the property was known to exist. Furthermore, it is the Governor's understanding of the Navy Department's position that the Meritorious Claims Act did not seek to make the people whole so far as their property was concerned, which would require higher value standards, but to grant the people certain relief. It is the Governor's feeling that the Navy's position is sound and should be adhered to in this respect, especially inasmuch as a great number of claims have been processed through to payment based upon the value standard prescribed by the Regulations. <u>Furthermore, the value standard used throughout has been liberally interpreted</u>. (Emphasis added.)[160]

For its part, the U.S.-Philippine War Damage Commission was authorized to pay compensation equivalent to either the

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[157] *Supra* note 40, Appendix B (8).
[158] Hopkins Report, *supra* note 43 at 13.
[159] Appendix B(19).
[160] *Id.*

replacement cost of the property at issue or its actual cash value, whichever was lower.[161] But "[w]ith high reproduction costs in the postwar period, all claims were settled on the basis of actual cash value at the time of loss which the Commission determined to be representative pre-war values less depreciation."[162] Moreover, all awards in excess of $500 were paid only to the extent of 75 percent, and the last 22.5 percent, not to exceed $25,000, was not paid until 1963.[163]

In the Micronesian claims program, claimants received compensation for property losses on the basis of their property's fair market value at the time of loss or destruction. As in the Land and Claims Commission's program, it appears that the Micronesian Claims Commission used a set of standard values for many items that were frequently claimed. For example, in the Micronesian program sailing canoes were assigned values from $50 for a craft up to 14 feet long up to $100 for a 23-foot craft, chests and dressers were respectively valued at $5 and $15, coconut palms were valued at $4 each for the first 10, $3 each for up to an additional 140, and so on, and breadfruit trees were valued at $7 each for the first 10, and $2 each for all additional.[164] Here again, claims for wartime losses were only compensated pro rata.[165]

It appears that the claimants who fared best in receiving compensation for property claims were those who filed under Title II of the War Claims Act, added in 1962. The FCSC determined the amounts of their awards on the basis of the actual, fair market value of the property in issue at the time of loss or destruction.[166] In this case as well, however, while awards up to $10,000 were paid in full, larger awards were only paid pro rata. Awards over $10,000 were paid only to the extent of 72.46 percent of the excess over $10,000.[167]

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[161]Final and Ninth Semiannual Report, U.S.-Philippine War Damage Commission, *supra* note 113 at 8.

[162]*Id.*

[163]*Id.*

[164]Final Report of the Micronesian Claims Commission, *supra* note 122 at 72.

[165] *Id.*

[166]Decisions and Annotations, Foreign Claims Settlement Commission of the United States (U.S. Govt. Printing Office, 1968), at 654.

[167] *Supra* notes 92 and 118.

4. Composition of the Commissions Which Administered the Guam Act and the Other Claims Statutes

To the extent that such comparison has a bearing on determination of parity, the Review Commission notes that the Guam Act provided that the "Secretary of the Navy, and such other officer or officers as the Secretary of the Navy may designate . . . are hereby authorized to appoint a claims commission or claims commissions, each composed of one or more officers of the Navy or the Marine Corps" to evaluate and settle the claims arising on Guam covered by the statute. As discussed previously in this report, the successive Land and Claims Commissions appointed pursuant to the statute were variously composed of between two and eight officers. In contrast, the U.S.-Philippine War Damage Commission was composed of three civilian Commissioners appointed by the President of the United States, two of whom were United States citizens and one of whom was a citizen of the Philippines.[168] Similarly, the Micronesian Claims Commission, a five-member Commission, consisted of three United States citizens and two Trust Territory citizens.[169] The members were all appointed by the Chairman of the FCSC, in consultation with the Secretary of the Interior.[170] The Micronesian members were selected from a list provided by the Congress of Micronesia.[171] All of the other relevant war claims statutes were administered by the War Claims Commission and its successor, the Foreign Claims Settlement Commission of the United States, each with three American-citizen members appointed by the President and confirmed by the Senate.[172]

The Commission received information from the people of Guam which reflects the view that the Chamorros should have been represented on the Land and Claims Commission. However, Congress wrote the Guam Act so as to specifically assign legal responsibility for the claims to the Navy, to be administered by uniformed officers.

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[168]Philippines Rehabilitation Act of 1946, *supra* note 91, subsec. 101(a).

[169]Micronesian Claims Act of 1971, *supra* note 97.

[170]*Id.*

[171]*Id.*

[172]See Annual Report of the Foreign Claims Settlement Commission of the United States for 2002, *available at* http://www.usdoj.gov/fcsc/annrep02.htm.

5. Legal Representation Before the Land and Claims Commission and the Other Commissions Which Administered War Claims Statutes

The Commission has reviewed correspondence from former Guam Congress Chairman Jose Flores to former Secretary of the Interior Harold Ickes expressing the need for legal representation for the claimants before the Navy's Land and Claims Commission[173]. It appears that there were few, if any, attorneys in private practice on Guam during the 1945-1950 period. In contrast, at least some claimants before the U.S.-Philippine War Damage Commission had legal representation, for there had been law schools in the Philippines for many years before World War II. In the program conducted in Micronesia in the 1970's, many claimants had legal representation before the Micronesian Claims Commission; in the majority of cases it was provided without charge to the claimants by Micronesian Legal Services, a public agency funded from U.S. Government sources.

In all of the war claims statutes under discussion, except for the Aleutians statute, the remuneration payable for legal representation was limited to between 1 percent and 10 percent of the compensation actually received by the claimant.

6. Interest on Awards

It has been suggested that the residents of Guam who submitted claims under the Guam Act were unjustly deprived of interest as part of their awards. However, a review of the programs conducted under the other World War II claims statutes with which this Commission has compared the Guam Act discloses that only the claims awarded under Title II of the Micronesian Claims Act of 1971 included an interest component. As explained by Mr. David Rogers at the Legal Experts' Conference in February 2004, interest was properly awardable in those cases because the claims in question, which had arisen after the dates of the various Trust Territory islands' being secured by U.S. forces, were in the nature of takings by the United States Government, and it is well settled that when the United States Government effects a taking, it owes interest to compensate the claimant for the delay in receiving compensation after the taking date.

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[173]Appendix B (20); see also Appendix B (13).

It should also be noted, however, that although the Guam Act did not provide for payment of interest, the implementing regulations required that lump-sum amounts found due in claims for death and personal injury were to be discounted at 4 percent per annum, compounded annually.[173] This requirement originated in the Federal Employees Compensation Act of 1916, cited in the regulations.[174] The same requirement is found in the current version of the law, enacted in 1966.[175]

None of the war claims statutes provided for interest as a component of the compensation payable for losses resulting from the belligerents' actions in conducting operations of war.

7. Availability of Appeals

All the statutes as implemented provided for no outside review of decisions or awards and all appeals for rehearing were before the same commission.

8. Compensation for Internment of Civilians

The War Claims Act of 1948 included a section providing for compensation for civilian United States citizens captured and interned in areas attacked by Imperial Japanese forces during World War II.[176] Compensation was payable at the rate of $60.00 per month of internment for adults and $25.00 per month of internment for minors.[177] In addition, the Federal Security Agency, later succeeded by the Department of Labor, paid compensation to civilian American citizens and their survivors for personal injury and death during internment or while in hiding to escape capture. Such compensation was computed based on an imputed wage of $37.50 per week, up to a ceiling of $7,500.[178] These were the only statutes that made provision for such compensation.[179] In fact, Congress intentionally excluded

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[173]Appendix B(8), sec. 6(d).

[174]*Id.*

[175]5 U.S.C. 8135 (2000).

[176]50 U.S.C. app. 2005 (2000).

[177]*Id.*

[178]See *supra* note 118.

[179]The Aleutians Act, *supra* note 98, did not authorize compensation for internment as such, but rather provided for compensation to each "eligible Aleut" "who, as a civilian, was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian

American citizens interned in Europe from eligibility for civilian internee compensation, on the ground that they had been repeatedly warned to leave Europe before World War II began and had disregarded the warnings at their own peril.[180]

The Navy's files indicate that there were a number of civilian United States citizens residing on Guam when Japanese forces invaded and occupied the island on December 10, 1941, and that the Japanese took them to Japan for internment for the duration of the war.[181] Some died there.[182] But because the residents of Guam who sought to claim compensation for civilian internment while on Guam were United States nationals but not citizens, their claims were denied.[183] In denying their claims, however, there is no indication that the War Claims Commission went beyond their lack of United States citizenship to consider any other question, such as whether the restrictions which the Japanese forces imposed on the population of Guam could be said to have amounted to civilian internment.

9. Forced Labor

As previously noted, the only instance in which claims for forced labor were compensated was in the Micronesian Claims Commission's program under the Micronesian Claims Act of 1971. However, that compensation was paid under the theory that there was an implied contract between the Micronesians and the Japanese which gave rise to a debt covered by the 1969 agreement obtained from the Japanese by the United States on behalf of the citizens of the Trust Territory. This theory would not apply in the case of Guam, since the Japanese were hostile occupiers of the island and, except in a few cases, the population did not willingly agree to work for them but rather had to be forcibly coerced to do so.[184]

Islands west of Unimak Island to an internment camp, or other temporary facility or location, during World War II." See "Personal Justice Denied," *supra* note 88 at 317-359.

[180]H. R. Rep. No. 976, 80th Cong., pp. 2-7 (1948).

[181]One was James Holland Underwood, grandfather of former Delegate from Guam Robert A. Underwood. He was interned for exactly 45 months. (Source: Microfilm records of the former War Claims Commission, maintained by the Foreign Claims Settlement Commission of the United States).

[182]E.g. George Ernest Wusstig, Claim No. SC-145925. *Id.*

[183]One was Cecilia Leilani Cruz, Claim No. MC-127707. *Id.*

[184]Rogers, *supra* note 5 at 176.

VI. Findings of the Review Commission

After extensive research, review, discussion, and analysis, as set forth in the preceding pages, the Review Commission makes the following findings:

A. General Findings

1. Moral obligation to pay compensation for war damages. The Review Commission affirms that there is a moral obligation on the part of our national government to pay compensation for war damages, in order to ensure to the extent possible that no single individual or group of individuals bears more than a just part of the overall burden of war. That the United States Congress recognized this obligation with respect to Guam is evidenced by its prompt enactment of the Guam Meritorious Claims Act of 1945 (the "Guam Act"), within weeks after the termination of World War II. The Review Commission also affirms, however, that the United States Government is not obligated as a matter of law to pay such compensation.

2. Substantial compensation paid previously. The Review Commission finds that the compensation paid to claimants under the Guam Act, some $8 million, was a substantial measure of compensation in redress of the losses sustained by the residents of Guam during and after World War II.

3. Cruelty of Japanese occupiers. The Review Commission finds that the Japanese occupation of Guam was particularly cruel, oppressive, and brutal, and that the loyalty and steadfastness shown by the people of Guam in the face of the atrocities and barbarism inflicted on them by their Japanese occupiers was all the more extraordinary in the circumstances in which they were forced to live.

4. Guam erroneously excluded from coverage of Title II of the War Claims Act. The Review Commission finds that the Congress was misinformed when it excluded Guam from coverage for World War II property damage and loss claims under Title II of the War Claims Act of 1948, amended in 1962, because it incorrectly assumed that all of the claims of residents of Guam had been adequately resolved under the Guam Act. In fact, there were a number of such claims that had not been timely filed

under the Guam Act due to lack of notice and a short, truncated filing period.

5. Congressional awareness of need for additional compensation. The fact that in April 1990, after a hearing on Delegate Ben Blaz's bill, H.R. 2024, to pay additional compensation to Guamanians, the bi-partisan leadership of the Subcommittee on Insular and International Affairs of the Committee on Interior and Insular Affairs of the U.S. House of Representatives, along with Senator Daniel Inouye, offered to introduce an amendment in the nature of a substitute to H.R. 2024, is strong evidence that there was Congressional awareness of and willingness to provide additional compensation.

6. Regrettable that previous proposed claims legislation rejected by Guamanian legislators. The Review Commission considers it regrettable that the Guam Legislature did not positively respond to the Inouye/De Lugo/Lagomarsino substitute proposal, which was made after consultation with the Administration in 1990. Fourteen years have passed since then and, in the meantime, many claimants who could have been included under the legislation and compensated have died. It is now 60 years since the Japanese occupation and the people of Guam cry out for closure.

7. Limitation on eligibility. The Review Commission finds it would be appropriate to limit eligibility for any further compensation for suffering during the Japanese occupation of Guam to individuals who were alive as of 1990, and their descendants, because that year represents the last time that the Administration, the leadership of the U.S. Congress, and the leadership of the Guam Legislature were within reach of achieving agreement on claims legislation to arrive at the closure which the people of Guam have been seeking.

8. Hopkins Report Recommendations. The Review Commission finds that the U.S. Congress and the Navy should have adopted the 1947 Hopkins Report's recommendations regarding the Guam-related claims, including raising the ceiling on the amounts that could be paid to claimants on Guam and abandoning the complicated processes followed in calculating amounts due in death and personal injury claims.

9. Parity as to types of claims covered. The Review Commission finds that there was parity with respect to the types of claims covered by the Guam Act as compared with the types of claims covered by the Philippines Rehabilitation Act of 1946 in that the latter did not cover claims for personal injury, death, or loss of use of real property, whereas the Guam Act did.

10. Technical non-comparability of the Micronesian Claims Act and the Guam Act. The Review Commission recognizes that the Micronesian Claims Act and the program conducted pursuant to it, are technically not comparable to the Guam Act and the program conducted thereunder because the Micronesian Claims Act and claims program did not involve war claims of United States citizens or nationals. However, because it appears to be a cause of concern for the people of Guam in terms of parity of treatment, the Commission has included a comparison of it. In this regard, the Review Commission finds that there was parity with respect to the types of claims covered by the Guam Act as compared with the types of claims covered by the Micronesian Claims Act. Although the latter was enacted twenty-six years after the Guam Act, it did not provide greater actual amounts of compensation for wartime losses than did the Guam Act.

11. Payments under the Aleutians Act. The Commission finds that there was lack of parity between the Guam Act and the Aleutians Act, in that the Aleutians Act provided for payment of a greater amount of compensation than did the Guam Act and also provided for compensation to be paid in a single, uniform lump-sum amount to each claimant.

12. Civilian Internment. The Review Commission finds that there was lack of parity with respect to the types of claims covered by the Guam Act as compared with the types of claims covered by the War Claims Act of 1948, in that the Guam Act did not cover claims for civilian internment by the enemy.

13. Filing period. The Review Commission finds that there was lack of parity with respect to the filing period provided for in the Guam Act as compared to all of the other claims statutes covered by this report, with the exception of the 1962 Wake Island Amendment to the War Claims Act of 1948, in that the Guam Act effectively provided for only a seven-month period for filing of claims, due to the delay between the enactment of the Guam Act on November 15, 1945, and the Secretary of the Navy's

promulgation of the Implementing Regulations on May 3, 1946. All of the other statutes, except for the Wake Island Amendment, provided for an actual filing period of at least one year.

14. Failure of some Guamanians to file claims based on incorrect information regarding eligibility. The Review Commission finds that as a result of inaccurate dissemination of information regarding claims eligibility by some local village "commissioners" (mayors) in informing the people of the Guam claims program, a number of the residents of Guam were erroneously dissuaded from filing claims under the Guam Act during the filing period.

15. Work of the Navy Land and Claims Commission. The Review Commission finds that the U.S. Navy put forth vigorous good-faith efforts to address the war damage and loss claims of the residents of Guam, beginning as early as January 1945, but that it was hampered by the lack of modern communications media on the island; by the ongoing build-up of forces on the island in preparation for the Allied assault on Japan; by the frequent turnover of Navy personnel, as evidenced by the fact that before 1950 a total of seven Land and Claims Commissions were successively appointed; and by the fact that at the same time the Navy was dealing with the claims, it was also responsible for conducting a large-scale land acquisition program on the island, under which the U.S. Government eventually came to occupy nearly three-fourths of the island.

16. Composition of Claims Commissions. The Review Commission finds that there was lack of parity with respect to the composition of the Land and Claims Commission established by the Guam Act as compared to the Commissions established by the Philippines Act and the Micronesian Claims Act, in that the latter statutes provided for inclusion of a Filipino Commissioner and of two Micronesian Commissioners on the respective Commissions. The Guam Act required that the Land and Claims Commission be composed exclusively of uniformed officers of the U.S. Navy or Marine Corps. The Commission recognizes that at the time, the Navy Department was charged with administration of Guam and that hostilities continued during the early period of implementation of the program by the Navy.

17. Lack of legal counsel. The Review Commission finds that there was lack of parity with respect to the prosecution of the

claims filed under the Guam Act as compared to claims under the other statutes covered by this report, in that claimants under the Guam Act had no possibility of obtaining private counsel to represent them before the Navy's Land and Claims Commission, due to the absence of private attorneys in practice on Guam in the 1940's.

18. Interest. The Review Commission finds that there was lack of parity with respect to payments of interest on claims, in that residents of Guam did not receive interest payments on claims for property loss and damage that arose after the securing of Guam by U.S. military on August 10, 1944. Claimants under Title II of the Micronesian Claims Act with claims for property losses arising after the secure dates of the various Micronesian islands did receive such interest payments.

19. Appeals. The Review Commission finds that there was parity with respect to the finality of claims and availability of appeal under the Guam Act as compared to the other statutes covered by this report, in that both the Guam Act and the other statutes provided that the determinations on claims were final and conclusive, and not subject to any outside review.

20. Conditions on Guam during Japanese occupation. The Review Commission is not aware of any comparable situation other than on Guam where virtually the entire population was either interned, in hiding to avoid capture, or subjected to forced march at one time or another while under Japanese occupation during World War II. In fact, it could well be argued that, as in the War Claims case of Gladys Slaughter Savary, cited in footnote 100 above, the restrictions and control placed on the residents on Guam were tantamount to civilian internment of the entire population.

21. Nationals but not citizens. The Review Commission finds that there was lack of parity for the residents of Guam under the Guam Act as compared to the War Claims Act of 1948 because the latter covered only claims of persons who were United States citizens during World War II and did not cover loyal Guamanians who had the status of U.S. nationals at that time. Although residents of Guam were later granted United States citizenship under the 1950 Guam Organic Act, the grant was not retroactive.

B. Findings on Real and Personal Property Claims

1. Congressional approval requirement. The Review Commission finds that there was lack of parity with respect to claims for property loss and damage under the Guam Act as compared to claims filed under the other statutes covered by this report, in that, unlike those other statutes, the Guam Act included a $5,000 ceiling on payments that could be disbursed by the Navy on Guam in satisfaction of claims; property claims of over $5,000 had to be approved by Congress. This unfairly produced pressure on some claimants with valid property claims of over $5,000 to reduce their claims below the $5,000 ceiling in order to obtain payment quickly.

2. Pro rata vs. full payment of awards. The Review Commission is satisfied that there was parity with respect to the payment of Guamanians' claims for wartime loss and damage of real and personal property under the Guam Act as compared with awards made in similar such claims under the Philippines Act, the War Claims Act of 1948, and the Micronesian Claims Act, in that the awards made for wartime property losses under all of the latter were only paid pro rata, whereas the awards made under the Guam Act were paid in full. For example, the Philippine Act specified that at the outset the amount due in each claim of over $500 found valid was to be reduced by 25 percent.

3. Measure of valuation. The Review Commission is satisfied that there was parity with respect to the payment of Guamanians' claims for loss and damage of real and personal property under the Guam Act as compared with awards made in similar such claims under Title II of the War Claims Act, added in 1962. Although the Foreign Claims Settlement Commission applied a more favorable measure of valuation in its adjudication of claims under that statute, this advantage was offset by the fact that payments on those claims were not disbursed until the mid-1960's, rather than in the late 1940's and early 1950's as was the case with the claims on Guam, and by the further fact that awards in those claims of over $10,000 per claim were only paid pro rata.

C. Findings on Death Claims

1. Maximum amount payable: Guam Act vs. War Claims Act. The Review Commission finds that there was lack of parity with respect to death claims under the Guam Act as compared to death claims under the War Claims Act of 1948, in that the maximum that could be claimed under the Guam Act was $4,000.00, whereas the maximum that could be claimed under the War Claims Act was $7,500.00. Additionally, payments found due in death claims under the Guam Act had to be approved by Congress.

2. Maximum amount payable: Guam Act vs. Micronesian Claims Act. The Review Commission finds that there was lack of parity with respect to death claims under the Guam Act as compared to death claims under Title II of the Micronesian Claims Act. Although the maximum that could be claimed under the Guam Act was $4,000.00, whereas the maximum that could be claimed under Title II of the Micronesian Claims Act was $5,000.00, payments under the Guam Act required Congressional approval.

3. Appropriate method of compensation: death claims. The Review Commission finds that the most appropriate method for apportioning compensation for death claims is to grant one single uniform lump-sum amount covering all death claims.

D. Findings on Personal Injury Claims

1. Disparity in amounts of compensation. The Review Commission finds that there was lack of parity with respect to the personal injury awards issued to residents of Guam under the Guam Act as compared to the personal injury awards issued to American citizens or other American nationals resulting from the occupation by Japanese Imperial Forces during World War II, in that the amount that could be awarded for the loss of prospective earnings to a resident of Guam compared to the amount that could be awarded to a civilian American citizen was grossly disparate. For example, under the Guam Act, a resident of Guam injured on the first day of the occupation and unable to work during the thirty-two months of Japanese occupation would have been eligible to claim a maximum only of $1,600 in lost wages ($50 X 32 months) while an interned civilian American citizen similarly injured would have been able to claim $37.50 per week for the one hundred twenty-eight weeks of the occupation, for a total claim of $4,800.00.

2. Death resulting from previous injury. The Review Commission finds that there was lack of parity with respect to the personal injury awards that could be issued to residents of Guam under the Guam Act as compared to the personal injury awards issued to American citizens or other American nationals resulting from the occupation by Japanese Imperial Forces during World War II, in that under the Navy's Guam Act Implementing Regulations, a claim based on the death of a person that resulted from an injury for which compensation had previously been awarded was expressly barred, whereas under the War Claims Act, the survivor(s) of a person who died as the result of an injury for which compensation had been awarded under section 5(f) of the War Claims Act of 1948 could claim additional compensation of up to $7,500.00 based on the person's death.

3. Disparity in basis for calculating compensation amounts. The Review Commission finds that there was lack of parity between the Guam Act and the War Claims Act of 1948, in that the wage level used in claims for personal injury and death under the Guam Act was limited to the average wage paid to a claimant or decedent between January 1 and November 30, 1941, up to a maximum of $50.00 per month, whereas under the War Claims Act of 1948 the wage level was specified to be $37.50 per week.

4. Appropriate method of compensation: personal injury claims. The Review Commission finds that due to the passage of years since the 1944 liberation of Guam and the loss of relevant records, it is virtually impossible to differentiate among the survivors of the Japanese occupation of the island as to the types of harm they suffered--whether it was damage resulting from personal injury (including rape and malnutrition), internment (including hiding to avoid capture), forced labor, or forced march--or the extent of the harm suffered in each of their cases. Accordingly, the Review Commission finds that the most appropriate method for apportioning compensation for their suffering would be to grant one single uniform lump-sum amount covering all categories of harm, irrespective of how many types of harm a person may have suffered.

5. Psychological damage to survivors of Japanese occupation. From the testimony given during the hearings held on Guam, the Review Commission finds that a significant number of the survivors of the Japanese occupation of the island continue to suffer psychologically from their experience.

VII. Recommendations

Under the Guam War Claims Review Commission Act, this Commission is directed to "advise on any additional compensation that may be necessary to compensate the people of Guam for death, personal injury, forced labor, forced march, and internment."

After extensive research, review of information, discussion, and analysis, and the findings made in the preceding section, the Review Commission submits the following recommendations:

1. Recognition - The Review Commission recommends that Congress acknowledge both the suffering of the Guamanians during the Japanese occupation of Guam in World War II and the loyalty shown by the Guamanians to the United States during the war.

2. Category I: Claims for Death - The Review Commission recommends that Congress provide funding in an amount sufficient to pay compensation in a single lump-sum total amount of $25,000 to the eligible survivor(s), as defined below, of each resident of Guam who died or was killed, and whose death would have been compensable under the Guam Act and its regulations during the Japanese attack and occupation of the island, or incident to the liberation of the island.

Eligibility - The Review Commission recommends that eligibility under this category of claim be limited to the spouse, child or children, or parents, respectively, in this order of priority, who constitute the classes of survivors identified as eligible successor claimant(s) in subsection 5(d) of Title I of the War Claims Act of 1948, as amended (50 U.S.C. App. 2004(d)).

Justification - The compensation figure of $25,000 is comparable to the $20,000 in compensation to which the eligible survivors of decedents killed by the Japanese occupiers would have been entitled under the 1990 substitute to the proposed legislation, H.R. 2024, as well as other proposed legislation. Further, when adjusted forward from the 1940's, it is comparable to the $7,500 to $15,000 for death which eligible Guamanians could have sought under subsection 5(f) of the War Claims Act of 1948, had they not been excluded from the coverage of that law. Based on the figure of 1,000 deaths cited on page 31 above, total

funding of $25 million would be required to pay these Category I claims.

3. Category II: Claims for Personal Injury, Including Rape and Malnutrition; Forced Labor; Forced March; and Internment, Including Hiding to Avoid Capture - The Review Commission has found that, due to the passage of years since the 1944 liberation of Guam and the loss of relevant records, it is virtually impossible to differentiate among the survivors of the Japanese occupation of the island as to the types of harm they suffered--whether it was damage resulting from personal injury (including rape and malnutrition), internment (including hiding to avoid capture), forced labor, or forced march--or the extent of the harm suffered in each of their cases. Therefore, the Review Commission found that the most appropriate method for apportioning compensation for their suffering would be to grant one single uniform lump-sum amount covering all categories of harm, irrespective of how many types of harm a person may have suffered. Accordingly, the Review Commission recommends that Congress provide funding in an amount sufficient to pay compensation in a single lump-sum amount of $12,000 to each person who was a resident of Guam during the Japanese occupation and who personally suffered one or more of the types of harm in question, or to the eligible survivor(s) of such individual, subject to the conditions set forth below.

Eligibility - The Review Commission has found that it would be most appropriate to limit eligibility in Category II claims to individuals who were alive as of the year 1990. That year represents the last time that the Administration, the leadership of the U.S. Congress, and the leadership of the Guam Legislature were within reach of achieving agreement on legislation to compensate the claims of the people of Guam arising from World War II. The Review Commission, therefore, recommends that, in the case of individuals who suffered the types of harm described above, who were living in 1990 but who are no longer living, the compensation provided for in Category II claims be limited to the spouse, child or children, or parents, respectively, in this order of priority, who constitute the classes of survivors identified in the War Claims Act of 1948, as amended (50 U.S.C. App. 2004(d)).

Justification - After adjustment forward from the 1940's, the compensation figure of $12,000 is at least comparable to the

compensation of up to $9,420 that the eligible survivors of the Japanese occupation of Guam or their eligible successors would have been entitled to for 32 months of internment ($60 per month, or $1,920), and up to $7,500 for either personal injury or death authorized under the War Claims Act, had they not been excluded from the coverage of that law. Based on the 1990 census figure of 8,551 survivors on Guam in 1990 cited on page 31 above, funding of approximately $101 million would be required to pay these claims. However, this does not include the unknown number of eligible survivors living off the island in 1990.

4. Deductions - The Review Commission recommends that before any payment of compensation is made in a claim under Category I or Category II above, there should be deducted any amount of compensation previously paid under the Guam Act of 1945 of $1000 or more, in the case of Category I payments, or of $500 or more, in the case of Category II payments.

5. Adjudication of Claims - The Review Commission makes the following additional recommendations:

-- Administration by the FCSC - The FCSC, because of its experience and expertise in adjudication of claims, should be charged with creating a sub-commission modeled after the Micronesian Claims Commission. It is further recommended that this new Commission be composed of some Guamanian and some non-Guamanian commissioners.

-- Filing period - A filing period of one year should be set for the filing of claims. The one-year period should commence on the effective date of any required implementing regulations.

-- Appeals and Finality - Objections to and appeals of the new Commission's decisions should be to the Commission, and upon a rehearing, the decision should become final and not subject to outside review by any court or agency.

-- Release and Notice - The acceptance of payment by an eligible individual under this proposal should be in full satisfaction of all claims arising out of the Japanese occupation of Guam during the war.

-- Interest - No interest should be payable on the amounts awarded.

6. Establishment of Foundation to Fund World War II Loyalty Scholarships - The Review Commission recommends the establishment of a Trust Fund for scholarship, medical facilities, and other public purposes for the benefit of the people of Guam. The Review Commission further recommends that within 90 days after the end of the period for the filing of claims as recommended above, the Board of Directors of the Trust Fund be authorized to submit a claim to the Guam Commission, on behalf of the Trust Fund, for any person who, while eligible as a Category I or Category II claimant, failed to file a claim for compensation. Any awards issued in such claims would be deposited in the Trust Fund.

Further, in the event that an individual refuses in writing to accept an award and files the refusal with the Board of Directors of the Trust Fund, the amount of such award would pass to the Fund and no payment may be made to such individual at any time after such refusal. Additionally, credit for uncashed checks that become stale after the normal one-year period should be transferred to the Fund and should not be reissued to the payee.

The activities of the Trust Fund should be modeled after the fund established under the Aleutian and Pribilof Islands Restitution Act of 1988. Disbursements may be made from the Trust Fund to sponsor research and educational activities, so that the events surrounding the wartime occupation and liberation of Guam as well as the loyalty of the people of Guam will be remembered, and so that the causes and circumstances of this and other wartime events may be illuminated and understood.

VIII. APPENDICES

A. Public Law 107-333, 116 Stat. 2873, Guam War Claims Review Commission Act (December 16, 2002)

B. Historical Documents from National Archives and Navy Historical Archives

1. Memorandum from the Chief of Naval Operations to the Commander in Chief, Pacific Operations Area (February 19, 1945)
2. Memorandum from the Secretary of Navy to the Chief of Naval Operations (March 3, 1945)
3. Memorandum from the Chief of Naval Operations to Commander Leslie Watson (March 3, 1945)
4. Report from Deputy Chief Military Government Officer to Chief of Naval Operations (May 31, 1945)
5. Letter from Commander Leslie Watson to Captain Frank Gary (August 27, 1945)
6. Reports from Guam Land and Claims Commission (September 13, 1945 and December 18, 1945)
7. Public Law 224, Guam Meritorious Claims Act (1945)
8. Navy Implementing Regulations for Public Law 224 (May 3, 1946)
9. Directive from Chief of Naval Operations to Captain James Roberts (May 24,1946)
10. Hopkins Committee Report for the Secretary on the Civil Government of Guam and American Samoa, Commander in Chief, Pacific Operations Area, Fleet No. II (March 25, 1947) (Guam excerpts)
11. Memorandum of Claims Filed under Public Law 224, Guam Land and Claims Commission (December 1, 1948); Report for Island Command War Diary (June 2, 1945); and Report of Guam Land and Claims Commission (1946)
12. Directive from Commander, Naval Forces, Marianas, to Commander Irving Klein (October 18, 1949)
13. Memorandum from Commanding Officer to Chief of Naval Operations (September 21, 1945)
14. Property Claim of Catholic Church (Page 4 of Senate Doc 87, incorporated within Public Law 271 - 1947 as an appropriation)
15. Property Claim of Pedro Martinez (Page 35 of House Doc. 564, incorporated within Public Law 583 - 1950 as an appropriation)
16. Letter from Guam Land and Claims Commission (October 7, 1947)
17. Memorandum of Guam Land and Claims Commission (July 31, 1949)
18. Letter from Assistant Secretary of the Navy to Director, Bureau of the Budget, Percival Brundage, (October 22, 1956) (claim was incorporated within Public Law 85-58 as an appropriation)
19. Memorandum from Commander Marianas and Governor of Guam to Secretary of Navy (February 25, 1948)
20. Letter from Chairman Jose Flores to Harold Ickes, Secretary of Interior (October 21, 1946)

C. Hearing Before the Subcommittee on Administrative Law and Governmental Relations on H.R. 3191 to Establish a Commission on War Reparations for Guam, August 4, 1988 (The "Bamba" Report)

D. Hearings and Documents Relating to H.R. 2024 (1989)

1. Hearing Before the Subcommittee on Insular and International Affairs on H.R. 2024 to Amend the Organic Act of Guam, July 27, 1989, Statement of Senator Marilyn D.A. Manibusan
2. Hearing Before the Subcommittee on Insular and International Affairs on H.R. 2024 to Amend the Organic Act of Guam, July 27, 1989, Statement of the Honorable Robert J. Lagomarsino
3. Series of Letters to and from Guam Reparations Commission
4. Guam Legislature, Resolution No. 1 (January 23, 1991)

E. Transcript of Hearings on Guam December 8 and 9, 2003

F. Transcript of Legal Experts Conference, Washington, D.C. February 20, 2004

G. Spreadsheet of Death and Personal Injury Claims

H. Department of Interior, Office of Solicitor's Opinions to the Guam War Claims Review Commission
1. Memorandum of February 12, 2004
2. Memorandum of May 6, 2004

I. Department of Interior, Bureau of Indian Affairs, Alaska Region
1. News Release of December 11, 1990
2. Status Report of July 22, 1991

J. Names and Locations of Historical Records Reviewed