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No. 25294 S

ABO V. CLARK

May 2, 1946

Plaintiff's Points & Authorities

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ORIGINAL
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MAY 2 - 1946

WILLIAM CLARK, U. S. DIST. COURT
San Francisco

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TADAYASU ABO, et al., etc.
Plaintiffs,
-vs-
TOM CLARK, etc., et al.,
Defendants.

No. 25294 -5
Cons. No. 25294-S

PLAINTIFFS' POINTS AND AUTHORITIES IN OPPOSITION TO
DEFENDANTS' MOTION TO STRIKE

I

PRELIMINARY STATEMENT

Attention is drawn to the fact that the complaint is one in equity for the following purposes (1) to rescind renunciations for duress, fraud, menace, coercion and undue influence; (2) to declare nationality under the authority of Title 8 USCA, Sec. 903; (3) for declaratory relief under the authority of Title 28 USCA, Sec. 400(2) and (4) for an injunction preventing the deportation of the plaintiffs and for an order for their release from detention. The gravamen of the charges made by plaintiffs is that they were coerced into renouncing citizenship while held in duress by the War Relocation Authority, a federal agency.

Paragraph II(1)(a) on page 12 of the complaint alleges an unlawful imprisonment for a period of years without cause, without

1 hearings on the reason therefore, and the ultimate facts of duress,
2 menace, fraud and the undue influence of groups and gangs which
3 caused the renunciations and which the War Relocation Authority,
4 a federal agency, aided, abetted and condoned and to which it was
5 accessory and against which it failed to give plaintiffs protection.
6 The supplemental complaint pleads the ultimate facts of the conti-
7 nuing nature of the duress and the mistreatment of the plaintiffs
8 by the government and its agents as though they were alien enemies
9 and not native Americans.

10 Exhibit 2 attached to the supplemental complaint and incorporat-
11 ed by reference and to which we refer as the "Fortas letter", is
12 an official record. It contains an official finding and judgment
13 of the Government that the renunciations of plaintiffs were the
14 products of coercion and duress. Its contents aid, amplify and de-
15 tail briefly the general averments of coercion and duress stated
16 in the pleadings. It is incorporated by apt words in the pleadings
17 and it supplies substantial allegations essential to the causes of
18 action. The supplemental complaint was framed for the express
19 purpose of incorporating the recitals of the exhibit as substantial
20 allegations of facts therein under the authority of Holly Sugar Corp.
21 v. Johnston, 18 Cal. 2d. 218, 225-226, and the other cases herein-
22 after cited.

23 II

24 THE MOTION TO STRIKE VIOLATES STIPULATIONS AND COURT ORDERS

25
26 On November 13, 1945, the Complaint was filed herein and
27 shortly thereafter service was had upon the defendants. Thereafter,
28 at the special request and solicitation of the Department of Justice,
29 two written Stipulations were entered into upon which court orders
30 were issued extending the defendants' time to plead to Feb. 11th
31 and Feb. 19th, 1946.

32 On March 14, 1946, plaintiffs filed and served their "Supple-

1 ment and Amendment to Complaint". Thereafter, on March 14th a
2 written Stipulation was executed and filed herein extending the
3 defendants' time to file their responsive pleadings to April 8th and
4 expressly restricting their right to move to strike to that of en-
5 deavoring to strike "Exhibit 2" from the "Supplement and Amendment
6 to Complaint" on or by April 8th. Thereafter, by a similar written
7 Stipulation and court order executed on April 3rd, the defendants
8 were required to file their answers to the complaint and supplemen-
9 tal complaint on or by April 22nd and were required to file a motion
10 to strike "Exhibit 2" from the supplemental complaint, if they were
11 inclined to file such a motion, on or by April 15th. Each of said
12 Stipulations was executed at the special request and solicitation of
13 the Department of Justice in Washington, D.C. Each of the stipula-
14 tions specifically limits and restricts the defendants' motion to
15 strike to that of endeavoring to strike said "Exhibit 2" from the
16 "Supplement and Amendment to Complaint" to the exclusion of any
17 other matter.

18 In violation of the said stipulations and court orders, however,
19 the defendants, on April 15th, belatedly filed a motion to strike
20 matter contained in the original complaint although the time when
21 such a motion could be interposed expired months ago. The defendants
22 and the Department of Justice have had two (2) months to prepare a
23 simple motion to strike said Exhibit 2 from the supplemental complaint.
24 Instead it has filed a motion to strike out substantially the whole
25 of the original and supplemental complaints. In filing the same they
26 have disregarded the elapse of time and have violated the said Sti-
27 pulations and Court orders which limited and restricted such a motion
28 to an endeavor to strike said Exhibit 2 from the supplemental complaint
29 to the exclusion of any other matter.

30 We contend that the right of the defendants to file a motion
31 to strike any portion of the original Complaint long has expired,
32 has been waived thereby and is unauthorized. We contend that the

1 present motion made by the defendants violates the consecutive
2 Stipulations and Court Orders for not being confined to an endeavor
3 to strike Exhibit 2 from the supplemental complaint. For each of
4 said reasons and because there is no merit to their motion we resist
5 the said motion in its entirety. (The fact that we stipulated that
6 a motion to strike might be filed by the defendants, were they
7 inclined so to do, for the limited purposes set forth in the stipu-
8 lations does not lend merit to the motion and does not confer vali-
9 dity upon it.).

10 Without waiving our right to have the motion to strike dismissed
11 or denied for the reasons asserted in paragraph II hereof we con-
12 tend also that there are no facts alleged in our complaint and
13 supplemental complaint except the same be ultimate facts which are
14 properly pleaded and each of which is highly relevant, material and
15 pertinent to the serious issues raised therein.

16 III

17 THE FACTS AND CIRCUMSTANCES OF DURESS ARE PROPERLY PLEADED.

18
19 Mere allegations of duress, menace, undue influence, fraud or
20 mistake are "conclusions of law". It long has been the settled rule
21 that, in order to state a cause of action at law or for relief
22 in equity, the facts and circumstances constituting the duress,
23 menace, undue influence, fraud or mistake must be pleaded with par-
24 ticularity. The complaint and supplemental complaint set forth the
25 ultimate facts which caused the renunciations. The allegations
26 thereof fit the descriptions necessary to satisfy the legal and
27 equitable grounds for relief where plaintiffs' claims rest upon du-
28 ress, menace, undue influence or fraud, as appears from the follow-
29 ing definitions:-

30 1. Duress consists in the unlawful confinement or detention
31 of a person or of members of his family and also of the confinement
32 of such a person, lawful in form, but fraudulently obtained or made

1 unjustly harassing or oppressive. See Calif. Civil Code, Sec. 1569.

2 2. Menace consists in a threat of such duress and also of un-
3 lawful and violent injury to the person or property of a person
4 held under duress or of injury to the character of any such person.
5 See Calif. Civil Code, Sec. 1570.

6 3. Undue influence consists in the use by one who holds a real
7 or apparent authority over a person of such authority for the pur-
8 pose of obtaining an unfair advantage over him through taking an
9 unfair advantage of another's weakness of mind or in taking a gross-
10 ly oppressive and unfair advantage of another's necessities or dis-
11 tress. See Calif. Civil Code, Sec. 1575.

12 4. Actual fraud consists of an act committed by a party or with
13 his connivance with intent to deceive another or to induce him to
14 execute a writing by means of the suggestion of a fact he knows to
15 be false or the suppression of that which he knows to be true or of
16 a promise made with no intention of performing it or any other act
17 fitted to deceive. See Calif. Civil Code, Sec. 1572.

18 5. Constructive fraud consists in a breach of duty by which one
19 gains an advantage by misleading another to his prejudice. See
20 Calif. Civil Code, Sec. 1573.

21 The types of "duress" are summarized in 17 C.J.S., p.530, Sec.
22 171, 172 as follows:

23 "Under the common law doctrine duress of
24 imprisonment arises where a person is actually
25 imprisoned for an improper purpose without just
26 cause, for a just cause without lawful authority,
or for a just cause and under proper authority
but for an improper purpose."

27 "Maltreatment while under arrest on a well
28 founded charge will invalidate an act produced
by such maltreatment."

29 "Although the imprisonment is originally
30 lawful, yet if the party detains the prisoner
unlawfully, it is duress."

31 "Duress per minas arises when a person is
32 threatened with loss of life, with loss of limb,
with mayhem, with imprisonment, ----."

1 "Fear of imprisonment may be sufficient to
2 constitute duress."

3 And in 17 C.J.S., p. 532, Sec. 173:-

4 "Under the modern rule now generally recognized
5 a contract obtained by so oppressing a person by
6 threats as to deprive him of the free exercise of
7 his will may be avoided on the ground of duress
8 whether or not the oppression causing incompetence
9 to contract amounts to what was formerly deemed
10 duress at law or merely to the wrongful compulsion
11 remedial in equity."

12 See also the definitions of "undue influence" in 17 C.J.S. 539,
13 Sec. 180b, and the definitions of "coercion" in 14 C.J.S., pg. 1307.

14 To set aside an instrument for duress the modern doctrine
15 recognizes that the test is not so much the means by which its
16 execution was compelled but, as stated in 17 C.J.S. 534:-

17 "...it is the state of mind induced by the
18 means employed - the fear which made it impossible
19 for him to exercise his own free will".

20 The fact that Government, and its officers or agents may be
21 guilty of duress, menace, undue influence, coercion or fraud is too
22 well established to admit of doubt. See Brown v. Mississippi, 297
23 U.S. 278.

24 General averments of duress, fraud or undue influence are in-
25 sufficient inasmuch as they constitute mere conclusions of law by
26 the pleader. Murphy v. Mitchell, 249 Fed. 499,500; Voorhees v.
27 Bonestell, 83 U.S. 16; Noonan v. Lee, 67 U.S. 499; Moore v. Greene,
28 60 U.S. 69. The facts and circumstances constituting duress or
29 fraud must be stated with particularity in the pleadings. Ruwitch
30 v. Frankel (CCA-Ill.), 68 Fed.2d. 52,55, cert. den. 292 U.S. 653;
31 Scott v. Empire Land Co., 5 Fed.2d.873,875. Attention is also
32 drawn to the fact that Rule 9(b) R.C.P. requires that "the circum-
stances constituting fraud shall be stated with particularity" and that
Rule 9(f) R.C.P. makes averments of time and place material matter
to be alleged in a complaint.

The reason for the rule requiring a factual recitation in such

1 cases, in actions at law as also in suits in equity, is "to apprise
2 the other party of what he is to be called upon to answer" and also
3 that "it may be determined whether the charge is well founded".
4 See 49 C.J. 95, sec. 90(3); Fogg v. Blair, 139 U.S. 118,126; St.
5 Louis etc. R.Co. v. Johnston, 133 U.S. 566, 577; Anastasopoulos v.
6 Steger, 16 Fed. 2d. 32, cert.den. 273 U.S. 769.

7 The old rule that matter of an evidentiary nature ought not to
8 be pleaded has been relaxed to a considerable extent on the grounds
9 both of necessity and convenience. The more modern doctrine, as
10 set forth in 49 Corpus Juris 43, Sec.16(7), is stated as follows:

11 "Moreover the rule must be taken with the
12 qualification that facts essential to show a
13 cause of action, and therefore necessary to be
14 pleaded, are often evidentiary in character, as
in the case of facts constituting fraud, which,
to comply with the rule against pleading conclu-
sions of law, must be alleged as well as proved."

15 IV

16 THE FORTAS LETTER IS AN INCORPORABLE EXHIBIT 17 (Foundation Rule Requires Incorporation)

18 The great weight of authority is that a writing which is the
19 foundation of a cause of action must be pleaded in haec verba either
20 by setting it forth in the body of the pleading or by annexation
21 as an exhibit thereto and incorporating it by reference. See
22 Bates v. Daley's Inc. 5 Cal.App. 2d.95, 101; and Lambert v. Haskell,
23 80 Cal. 611; 21 Cal. Juris 47. The same rule applies in other
24 jurisdictions. See Davidson v. Falls, 215 Ky. 368, 285 S.W.209,210;
25 Gardner v. Hughes, 136 Ark.332; 206 S.W.678,679; McDonald v.Sargent,
26 171 Mass. 492; 51 N.E. 17; 49 C.J. 80, sec.72b. In equity a complaint
27 must set forth a copy or aver the terms of an instrument which is
28 vital to the plaintiffs' case and such an instrument may be annexed
29 thereto as an exhibit. See 30 C.J.S. 660, Sec. 202, stating:-

30 "A bill must set forth a copy or aver the
31 terms of an instrument vital to plaintiff's demand.
32 The proper practice is to state the substance of
the instrument relief on and to attach it or a copy

1 to the pleading --. The filing of an exhibit does
2 not dispense with the necessity of setting forth in
3 the bill by proper averment the substance of the
4 instrument and everything else that is material to
5 the case---. While, as a matter of convenience, do-
6 cuments relied on as evidence to prove the allegations
7 of a bill are usually filed therewith as exhibits,
8 it is not necessary so to file them."

9 "The general rule is that instruments properly
10 referred to and exhibited become for all purposes of
11 pleading a part of the bill, and consequently, in de-
12 termining the sufficiency of the bill on demurrer or
13 otherwise, an exhibit will be considered with the
14 averments in the bill itself and may be used in aid
15 thereof ---. and an exhibit will not be considered
16 as contradicting or qualifying a bill where it is
17 attached not to amplify or supply allegations, but to
18 bring the instrument before the court for other reasons."

11 V

12
13 (EXHIBITS ARE INCORPORABLE TO SUPPLY SUBSTANTIAL ALLEGATIONS)

14 The general rule is that an exhibit, other than the one on
15 which an action is founded, may be annexed and incorporated by re-
16 ference for the purpose of supplying substantial allegations which
17 are essential to the cause of action "if the pleadings are framed
18 for that purpose and with that end in view." Holly Sugar Corp.
19 v. Johnston, 18 Cal. 2d. 218, 225-226; Washer v. Bank of America,
20 21 Cal. 2d. 830; Silvers v. Grossman, 183 Cal. 696; See also,
21 Georges v. Kessler, 131 Cal. 183, holding that an instrument can
22 be pleaded in the body of a complaint or be annexed thereto and be
23 incorporated by reference and that, if incorporated, its recitals
24 are equivalent to recitals of matters of substance in the pleadings.
25 There is no doubt that "an exhibit may be made part of a pleading by
26 apt words". See Reinschmidt v. Crosby (Fla.), 123 So. 755, 756;
27 Silvers v. Grossman, supra.

28 VI

29
30 (EXHIBITS ARE INCORPORABLE TO AID, AMPLIFY AND EXPLAIN ALLEGATIONS)

31 In equity it is well established that an exhibit may be attached
32 to a bill in equity and be considered a part thereof and "in aid"

1 and explanation thereof. See State v. Morgans, etc., 18 Fed.2d.
2 645, 646; Nauvoo v. Ritter, 97 U.S. 389, 24 L.Ed. 1050; Columbia
3 Graphophone Co. v. 330 West Ninety-Fifth St. Corp., 269 Fed. 190,
4 192; Seebass v. Mutual Reserve, 82 Fed. 792, (under statute);
5 Smythe v. Homewood, 181 So. 491, 236 Ala. 159; 30 C.J.S. 662.

6 The same rule obtains in California where it has been held repeat-
7 edly that exhibits, other than the one on which a suit is based,
8 may be incorporated in a pleading to aid the allegations thereof.
9 See Santa Rosa Bank v. Paxton, 149 Cal. 195, 198; Estate of Cook,
10 137 Cal. 184, 191; Ward v. Clay, 82 Cal. 502, 505. Even if the
11 exhibit is not the one forming the foundation of the action it may,
12 nevertheless, be incorporated to amplify allegations of fact or
13 to aid defective allegations. Washer v. Bank of America, 21 Cal.
14 2d. 822, 830; People v. Reid, 195 Cal. 249, 260-261, holding in-
15 corporation of recitals in affidavits to be proper; Silvers v.
16 Grossman, 183 Cal. 696, 700; 21 Cal. Jur. 48, sec. 26. It is also
17 permissible to attach an exhibit to a bill in equity simply to
18 "amplify" the allegations of the bill. Richardson v. Curlee, 158
19 So. 189, 191, 229 Ala. 505; Virginia, etc., v. Satsuma, etc.,
20 148 So. 853, 857, 227 Ala. 55; Pool v. Menefee, 88 So. 654, 656,
21 205 Ala. 531.

22 It is also proper to annex and incorporate documents which
23 do not form the basis for a cause of action if the pleading be
24 framed for such a purpose provided the incorporated material relates
25 to the grounds upon which the plaintiff rests his claim. In
26 Holly Sugar Corp. v. Johnston, 18 Cal. 2d. 218, 225-226, where a
27 written protest which was incorporated in the complaint but which
28 did not form the foundation for the action, nevertheless, was held
29 proper as constituting material allegations of ultimate facts in
30 the following language;

31 "It is equally well settled that an instrument
32 which is made a part of the complaint by reference
and attached as an exhibit, but which did not con-

1 stitute the contract upon which the complaint is
2 based, may not supply substantial allegations to
3 the statement of a cause of action unless the
4 pleading is framed for that purpose and with that
5 end in view. (Silvers v. Grossman, supra, at p.700;
6 Santa Rosa Bank v. Paxton, supra, at p. 108; Estate
7 of Cook, 137 Cal. 184, 191). The instant case comes
8 precisely within this exception. The complaint
9 directly refers to the protest not simply as evidence
10 of compliance with the requisite procedural formality
11 before bringing suit, but as a means of "setting
12 forth the grounds upon which the plaintiff rests its
13 claims," and for that express object a copy of the
14 necessary document was incorporated by the use of apt
15 words of reference above quoted. Furthermore, the
16 protest was made under oath, which circumstance
17 imports verity to its contents and removes any question
18 as to the pleaders intent to make its own the aver-
19 ments contained in the attached exhibit."

20 Exhibit 1 to the complaint is incorporated by apt words on
21 page 20. It is a notice of rescission of the renunciations and
22 sets forth the specific grounds and reasons for the rescissions.
23 Exhibit 2 to the supplemental complaint is the "Fortas letter"
24 incorporated therein by apt words on page 4, line 2. Exhibit 3 to
25 the supplemental complaint is the written protest over the conti-
26 nuing nature of the duress. It is incorporated by apt words on
27 page 8, line 14. Each of the said exhibits satisfies the require-
28 ments of the foregoing rules authorizing the incorporation of ex-
29 hibits for the purpose of aiding, explaining and amplifying the
30 allegations and for supplying substantial allegations to the plead-
31 ings. Since the adoption of the new rules liberalizing the rules
32 of federal procedure the incorporation of written documents to
33 pleadings has been recognized as a matter of right in the federal
34 jurisdiction. See Rule 10(c) R.C.P.

VII

(OTHER APPLICABLE RULES AUTHORIZING INCORPORATION OF EXHIBITS)

35 Although there is no hard rule that an instrument needs to be
36 set out in extenso in a bill in equity it must be set out if the

1 bill shows that is essential to the proper construction of parti-
2 cular clauses which it contains. See U.S. v. United Shoe Mach. Co.,
3 234 Fed. 127, 128. It is also a rule in equity that any and every
4 document essential to make out the plaintiff's case where the terms
5 are not actually recited in the bill should be made an exhibit to
6 the pleadings. See Marshall v. Turnbull, (CC-NY), 34 Fed. 827;
7 Everglades D. League v. Napoleon B. Browerage Drainage District,
8 253 Fed. 246, 251, writ of error dismissed. 251 U.S. 567.

9
10 "Where interpretation of public records is involved and their
11 legal effect is to be adjudged good pleading requires either that
12 the records be set forth at length in the body of the pleadings
13 or that copies of them be filed." See 49 C.J. 80, sec. 72(b),
14 citing Newport v. Lang, 160 S.W. 495, 155 Ky. 776, where the court
15 stated that unless this is done "the courts will be left to the
16 interpretation of such records which are contained in the conclu-
17 sions reached by the pleader or his attorneys".

18 Although "documents which are mere evidence should, as a
19 general rule, be pleaded only according to their legal effect"
20 it is the rule that in a suit in equity which involves "a judicial
21 interpretation" of an instrument the instrument itself should
22 be set out in a pleading according to its terms or be annexed there-
23 to as an exhibit. Edgar v. Emerson, 139 S.W. 122, 124, 235 Mo.
24 552; 49 C.J. 80, sec. 72.

25 Although, under Rule 9(e) R.C.P., it is not necessary to set
26 forth matter showing the jurisdiction of an officer to render a
27 judgment or decision it is essential to set forth the judgment,
28 decision or finding of such officer. In paragraph (c), pg. 2 line
29 21 and (d), pg. 4, line 2, of the supplemental complaint it is
30 charged that Hon. Abe Fortas, as the Under Secretary of the Interior,
31 made a judgment and finding that the renunciations of the plaintiffs
32 were the products of duress and coercion. Exhibit 2

1 which is incorporated therein sets forth a general detail of that
2 judgment and finding which is incorporated therein by apt words.
3 It is an official document executed by the officer in charge of the
4 federal agency to whose charge the plaintiffs were committed at
5 the time of renunciation. The "Fortas letter" sets forth the
6 ultimate facts of duress and coercion which caused each renunciation.
7 It forms the foundation of plaintiffs' claims. It is vital to the
8 plaintiffs' case. It amplifies, aids and explains the allegations
9 of duress in the pleadings. It supplies allegations of substantial
10 fact to the pleadings. It is essential to the proper construction
11 of those allegations. The document itself requires a judicial
12 interpretation and application. In incorporating it as an exhibit
13 by apt words the plaintiffs have complied with the provisions of
14 Rule 9(e), 9(d) and 9(b) R.C.P. The fact alone that the document
15 is an official one, executed by a public officer and constituting
16 a public record which is not published in an official report form
17 renders it necessary and proper to be pleaded and incorporated
18 as an exhibit. Consequently, its annexation and incorporation
19 by reference would seem to be not only proper but necessary as
20 well.

21 CONCLUSION

22 The defendants' chief complaint is that they do not know how
23 to answer the allegations contained in our pleadings. They
24 recognize that in order to answer the plaintiffs' pleadings truth-
25 fully they necessarily must admit the truth of the facts recited
26 therein and thereby immediately render their answer susceptible to
27 a motion for judgment on the pleadings and for summary judgment
28 in favor of plaintiffs. Obviously the defendants do not wish this
29 to happen and, consequently, would prefer to have the Fortas letter
30 stricken so that by general denials in an answer they might have
31 a tenderable issue reserved which might bring them up to the
32

1 trial stage of the case. The defendants are trapped by the plead-
2 ings and wish to delay a judgment being entered in favor of plain-
3 tiffs on the pleadings. Nevertheless, the plaintiffs are entitled
4 to have the defendants file an answer admitting the truth that
5 the renunciations were the results of the duress and coercion
6 alleged and as proved by the official finding set forth in the
7 "Fortas letter". There is no good reason for the defendants to
8 avoid the basic issues and seek to have the court tied up in some
9 1,500 ~~separate~~ individual trials involving years in court upon
10 issues easily tendered and ^{determined} ~~tried~~ on the pleadings alone.

11 For the foregoing reasons the plaintiffs respectfully submit
12 the defendants' motion to strike comes too late, is violative of
13 the aforesaid stipulations and court orders, is wholly without
14 merit and that the court has jurisdiction only to dismiss or deny
15 said motion.

16
17
18
19 Wayne M. Collins,
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21 San Francisco, 4, Calif.
22 Garfield 1218
23 Attorney for Plaintiff
24
25

26
27 Receipt of a copy of the foregoing Points and Authorities
28 is hereby admitted this 1st day of May, 1945.

29 Tom C. Clark, Acting Sec. Gen.
30 Frank J. Hennessy, U.S. Attorney.
31

32 -13- By: Assistant U.S. Attorney

Attorneys for Defendants

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With Clerk, U. S. Dist. Court
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8 IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 TADAYASU ABO, et al., etc.,)

11 Plaintiffs,)

12 -vs-)

13 TOM CLARK, etc. et al.,)

14 Defendants.)
15 -----

No. 25294-S

Cons. No. 25294-S

16 PLAINTIFFS' SUPPLEMENTAL MEMORANDUM

17
18 Our purpose in moving the court for summary judgment and for
19 judgment on the pleadings is to render unnecessary individual
20 trials of some 1,600 plaintiffs which would take a minimum period
21 of between 5 and 7 years. There is ample evidence contained in our
22 affidavits in support of our motions and also ample evidence of
23 which the Court takes judicial cognizance that more than suffices
24 to determine the factual issues of duress which vitiate the renun-
25 ciations. In addition, it is quite apparent, that as a matter of
26 law the renunciations are void.

27 Each and all of the renunciations were the result of govern-
28 mental duress combined with the duress of pressure groups. The
29 facts of the double duress are not disputed. They are set forth
30 with precision in the Fortas letter. They are stated in the affi-
31 davits of Mr. Nakamura and Mr. Sasaki. They are alleged by each
32 plaintiff in his verified and amended complaints which were

1 offered herein as affidavits on the pending motions in lieu of ob-
2 taining some 1,600 individual affidavits of merits. The defaults
3 of Mr. Best and Mr. Myer are to be construed as admissions of these
4 facts. Even the affidavits of Mr. Burling and Miss Hankey demon-
5 strate the same facts. In addition, that duress was the cause is
6 a matter of public notoriety and is a matter of which the Court
7 takes judicial cognizance.

8
9 On page 3 of their supplemental brief the defendants miscon-
10 strue the precise wording of plaintiffs' affidavits concerning the
11 persons actually guilty of "the major part of the physical manifes-
12 tations of the organization's purposes". Nowhere in our affidavits,
13 our verified pleadings or briefs do we assert that the whole organi-
14 zation or that all of its members were guilty of the coercion,
15 intimidation and violence that caused the renunciations. What is
16 stated therein is that a number of the original organizers or
17 leaders of the organizations and the strong-arm squads obedient to
18 them were guilty of those acts. Those persons were a mere fraction
19 of the membership. It is those organizers, leaders and strong arm
20 squads who were arrested by the Department of Justice's order during
21 the renunciation period who were responsible. Those persons along
22 with many innocent persons were removed from Tule Lake and now are
23 in Japan. Not one of those terrorists is a party to these pro-
24 ceedings. Those persons, aliens who were active resegregationists
25 and Nisei members of their families, were all repatriated to Japan
26 along with several thousand aliens and children guiltless of wrong.
27 The Government is directly responsible for the activities of those
28 leaders because it sponsored the movement as a "cultural" one for
29 the internees whom it led to believe would all be removed to Japan.
30 The leaders went too far in carrying out those government sanctioned
31 purposes simply because, in their desire for distinction and pres-
32 tige, they sowed the seeds of violence in the field of terror the

1 government had plowed. It was not only accessory to the lawless-
2 ness but was principal to it. As such the actions of the leaders
3 are excusable while those of the Government are not. In conse-
4 quence the pressure group violence also was a distinct type of
5 governmental duress to which the internees were subjected and this
6 type played the most prominent part in the renunciations.

7 There is little use in the defendants endeavoring to suggest,
8 by resort to summarized opinions and conclusions based upon hear-
9 say and speculation, that a few plaintiffs in these suits were
10 leaders in the pressure groups. The character of material on which
11 they draw their conclusions is asserted to be derived from records
12 in possession of the Department of Justice relating to matter ob-
13 tained at renunciation and mitigation hearings and elsewhere, that
14 is, from matter obtained through the instrumentality of duress.
15 How false and unreliable matter so obtained is and also that it
16 was the product of duress is explained in Mr. Burling's affidavit
17 on page 28. Many persons became members of the various organiza-
18 tions which started out as "cultural organizations" under the
19 sponsorship and blessing of the federal W.R.A. authorities. See
20 Fortas letter. Many persons feeling condemned to removal to Japan
21 as the sole method of liberation from a wrongful and hopeless
22 internment were drawn into the organizations in preparation for a
23 future life in Japan and a great majority of the officers and
24 members joined only for cultural and educational reasons. It was
25 out of this movement that a small group of terrorists sprang
26 and finally seized control of the organizations but these did not
27 represent the will of the majority by any means. What they were
28 may be likened to a communist faction arising in a labor union which
29 seizes control of the machinery of the organization but does not
30 represent the membership which is its victim. The W.R.A. did every-
31 thing possible to assist the resegregationist movement's objectives.
32 It even sponsored a half holiday for the people to celebrate the

1 Japanese Emperor's birthday and gave them a banquet and a baseball
2 game to celebrate the occasion. See The Spoilage, pg. 237. On
3 the same day it tore down the partially completed fence which had
4 been intended to be completed to enable the segregation of inter-
5 nees bent on repatriation to Japan from those intending to stay
6 here. It is little wonder that terrorists were able to use the
7 organizations as "innocents clubs". They had the active aid of
8 the government in the accomplishment of their purposes.

9 The active pressure groups did not have a membership of
10 3,000 as Mr. Cooley suggests on page 5 of his supplemental brief.
11 He cites page 321 of The Spoilage as an authority to support his
12 guess of the number. There, however, it is stated that although
13 the resegregationists boasted 10,000 names on the resegregation
14 petition their active membership "would not at the most have ex-
15 ceeded 2,000 evacuees, mostly transferees, and a few old Tuleans"
16 and that of these "about 750 evacuees belonged to the Bokoku".
17 That estimate appears exaggerated inasmuch as a "Wakida" estimated
18 the membership at the commencement of October, 1944, to be "550 at
19 the outside". (Attention is drawn to the fact that signatures to
20 the petition were the result of intimidation and coercion. See
21 pgs. 306-307).

22 Of course, the W.R.A. was anxious to avoid blame for the
23 renunciations and, in consequence, spread the report that the
24 chief factor that precipitated the mass renunciations was stark
25 fear of community hostility which drove them into renunciation
26 to insure internment. Obviously, this was one of the factors
27 responsible but it was by no means the only one. The W.R.A.,
28 Mr. Burling and Miss Hankey now would prefer that to have been
29 the sole cause because it would suggest the W.R.A. was not wholly
30 responsible for dereliction in its duty to protect the evacuees.
31 Current history, however, prevents such a distortion of facts.
32 On page 2 of her affidavit, Miss Hankey informs us that The Spoilage,

1 insofar as it relates to the post segregation period, is based
2 upon her field notes. Being unfamiliar with the Japanese tongue,
3 and having been a periodic visitor to Tule, she obtained from
4 unknown informants only what information they dared or were willing,
5 under the circumstances, to yield. On page 5 of her affidavit she
6 states her belief that her data "far exceeds in accuracy and relia-
7 bility the information gained by most Caucasians who were in con-
8 tact with the Japanese in the Centers". She is somewhat naive
9 if she believes she received verbatim information from aliens and
10 kibel whose lack of proficiency in the English tongue is notorious.
11 Her association, however, with the Caucasian officers and personnel
12 and with Mr. Burling inclined her to adopt views which they were
13 anxious to have her adopt. She did not live under the tensions and
14 terror to which the evacuees were exposed and, consequently, could
15 not understand the situation except superficially. Mr. Nakamura,
16 a citizen internee and officer of the W.R.A., and Mr. Sasaki, an
17 alien internee, lived through it all and the Reverend Grubbs ob-
18 served^{it}/daily and their affidavits tell us what went on in that
19 concentration camp.

20 There is much in the Thomas book, "The Spoilage", and in the
21 Hankey affidavit that is not stressed. The fears to which the
22 whole camp were subjected are not emphasized because it is an
23 attempted sociological and not a psychological study. It is to be
24 noted also that much of the material contained in that book was
25 derived from matter supplied by the Department of Justice and the
26 War Relocation Authority - parties interested in preserving and
27 protecting their reputations, in excusing their omissions, negli-
28 gence and betrayal of their public trust and in whitewashing the
29 two agencies.

30 The Spoilage, which Miss Hankey informs us, was made up in
31 part from her notes, informs us as follows:
32

1 The Hoshi-Dan and Hokoku "leaders had welcomed the recently
2 passed Denationalization Bill and were attempting to have the
3 Nisei and Kibei members renounce American citizenship en masse."
4 Pg. 333. "Two administrative decisions announced simultaneously
5 on December 17 transformed general reluctance to accept the pres-
6 sure group program as a whole to popular support of the main
7 Resegregation issue - renunciation of American citizenship". (The
8 characterization of the groups as pressure groups is self-explana-
9 tory.). "The first of these decisions was the rescission by the
10 Western Defense Command of the order excluding Japanese Americans
11 from the West Coast. The second was the decision by the War
12 Relocation Authority to force resettlement by liquidating all re-
13 location projects within a year". (Contrary to the statements made
14 by Mr. Burling and Mr. Cooley, the book mentions that cancellation
15 of the mass exclusion orders was not intended to release all of
16 the Tuleans from imprisonment but that a good many were to be
17 restricted and would be recipients of individual exclusion orders.).
18 On page 335 it appears that the residents who were made eligible
19 for resettlement might experience "forced resettlement" which
20 created a reaction "compounded of surprise, anxiety, doubt and
21 complacent rationalization" and that they "assumed that exclusion
22 would mean their continued detention by the Army or the Department
23 of Justice at Tule Lake or some other segregation Center". On
24 pg. 336 it is stated that "Reports quickly spread that irrespective
25 of the statements made or answers given, almost everybody called
26 for a hearing was issued an individual exclusion order" and that
27 persons would be expected "to resettle outside the zones of
28 exclusion". On page 337-338 it is stated that reports circulated
29 that "Army officers were asking citizens whether they wished to
30 leave camp and resettle (outside the exclusion zones) or to renounce
31 their citizenship". (Army officers, consequently, were inviting
32 and soliciting renunciations.).

1 The matter set forth at pages 343 to 350, are devoted to
2 establishing that renunciation was accepted by many internees to
3 insure their continued internment to prevent falling victim to
4 community hostility. Other fears also motivated the internees.
5 See pages 350 to 353 for illustrations of fear of family separa-
6 tion, familial pressure and communal pressure.

7 According to Dr. Thomas "the most prevalent explanation" for
8 renunciations was "the pressure tactics" of the pressure group
9 leaders. (See page 353). If this book was largely written from
10 the field notes of Miss Hankey it is obvious that Miss Hankey
11 heretofore attributed the decisive role to violence in those notes
12 and that she has forgotten for convenience or by reason of per-
13 suasion to stress that fact in her affidavit herein.

14 Dr. Thomas' book which was published in December, 1946, sheds
15 some light on the violence of pressure group leaders and gangs
16 that played such a decisive role in the renunciations. On page
17 306 it is stated that the "Ishikawa petition obtained some 6,500
18 signatures, many of them as the result of pressure. The proponents
19 in many cases silenced their critics by physical violence, or
20 threat of violence, or by inu branding", etc. A supplementary
21 list, likewise obtained, contained 1,000 signatures. On page 307
22 the book stresses that:

23 "They utilized the unrest and suspicion during
24 the wave of violence against inu by branding their
25 critics as "loyals" and informers. Because of the
26 general belief that the "strong-arm" boys among the
27 Resegregationists had been responsible for the inu
28 beatings and murder, residents were reluctant to
29 antagonize this group by reporting its activities.
30 As a result the administration failed to obtain
31 concrete evidence of the source of the terroristic
32 tactics and the Resegregationists were enabled to
proceed with their program without hindrance."

33 On page 311 it is pointed out that the pressure groups
34 planned to "utilize force to expel from the camp those residents
35 who did not share their views". That the W.R.A. Administration

1 was not interested in protecting the citizen internees is stated
2 on page 313 as follows:

3 "Although it was apparently unwilling to inhi-
4 bit the formation of the organization or to inter-
5 fere with its activities, which were ostensibly in
6 line with WRA-sanctioned "pursuance of the Japa-
7 nese way of life," it made some effort to iden-
8 tify the leaders."

9 The book abounds in descriptions of the threats and acts of
10 violence against the internees which kept them in a state of terror.
11 See pages 306 to 332. Also see the significant letter on page 355
12 thereof from which the following pertinent material is quoted, viz:

13 "I appeared at the renunciation hearing the first
14 part of March when the camp was livelier than usual
15 by the activities of the radical organizations to
16 make us all renounce our citizenship. Their power
17 was augmented by the fervor aroused by periodic
18 removal of these agitators by the Department of
19 Justice. Once a member of the organization, there
20 was no way of withdrawing from that organization
21 and of feeling safe to roam in the colony. It was
22 so bad that those who did not renounce stated in
23 public they had renounced in order to avoid the
24 consequences of a person who did not renounce.
25 During the time hearings were conducted in this
26 center, these organizations were permitted to dis-
27 play their might and power so ostentatiously as
28 though their selfish aim was the intention of every-
29 one in this camp. It is just disgusting to believe
30 that the Justice Department and the WRA remained
31 on the sideline to watch us all renounce against
32 our wishes when we couldn't act freely and express
our true feelings toward this country. It may seem
as though the hearings were conducted in privacy;
however, when others within the block kept curious
watch to see who did or who did not receive special
hearing notices, there was the sad predicament of
being eyed as a double-crosser. I've never be-
lieved that such gangsterism could ever have been
tolerated by any law-enforcing body.

33 "Before I appeared at the hearing, I debated
34 about appearing and pondered if there wasn't some
35 way to avoid renunciation. There was no way out
36 with so much fear harassing me with additional
37 worries over my brother (Jack's) apprehension, so
38 I was compelled to appear at that hearing. At my
39 hearing I was unable to express myself thoroughly
40 except to say that I wanted to take mother to Japan
41 so she will be able to join her daughter. I re-
42 gret that I did not tell ... my reasons for renounc-
43 ing at that time. My hearing was about 2 minutes
44 long. No doubt the Hearing Officer was aggravated
45 by my hair clipped short which was no fault of mine.
46 I avoided wearing regulation sweaters with the rising
47 sun emblem."

1 Dr. Thomas draws attention to the fact that the authorities
2 endeavored to rescue the citizens from the situation in which they
3 found themselves and to which the Government had condemned them
4 when it was too late. On page 357 she states, "All of these
5 official actions came too late. Mass withdrawal from American
6 citizenship had already taken place." The protection the govern-
7 ment gave its victims consisted of doing nothing for them but
8 much against them. On page 361 she summarizes, in conclusion, as
9 follows:

10 "With mass renunciation of citizenship by Nisei
11 and Kibei, the cycle which began with evacuation was
12 complete. Their parents had lost their hard-won
13 foothold in the economic structure of America.
14 They, themselves, had been deprived of rights which
15 indoctrination in American schools had led them to
16 believe inviolable. Charged with no offense, but
17 victims of a military misconception, they had suf-
18 fered confinement behind barbed wire. They had
19 been stigmatized as disloyal on grounds often far
20 removed from any criterion of political allegiance.
21 They had been at the mercy of administrative agen-
22 cies working at cross-purpose. They had yielded
23 to parental compulsion in order to hold the family
24 intact. They had been intimidated by the ruthless
25 tactics of pressure groups in camp. They had
26 become terrified by reports of the continuing
27 hostility of the American public, and they had
28 finally renounced their irreparably depreciated
29 American citizenship."

30 Disillusionment, resentment, bitterness, hopelessness, despair
31 and terror, all the direct results of the "evacuation-imprisonment"
32 program, contributed their part to the renunciations. All these
abnormal mental conditions were directly caused by the Government.

According to the affidavits of Mr. Burling and Miss Hankey all
the renunciations were the direct result of the duress of which the
government itself was guilty. Although those affidavits are based
upon opinion, conclusion and hearsay they do assert that all the
renunciations were caused by the evacuation and prolonged detention
of citizens, the hopelessness of their economic condition and future
in this country, their fear of resettlement because of community

1 hostility ^graging against them, fear of family separation, fear of
2 deportation, fear of their continued internment while alien members
3 of their families were to be deported and numberless other genuine
4 fears born of degrading internment. All this was not only a de-
5 preciated citizenship but a complete repudiation by the government
6 of every right that attaches to citizenship and hence of citizen-
7 ship itself. What was to be expected of them?

8
9 The "evacuation-imprisonment" program was wholly unjustified
10 from start to finish. That it was the spawn of malice is a matter
11 of public notoriety. Even Dillon S. Myer, the director of W.R.A.,
12 in the W.R.A. final report on the subject, declares it was the
13 product of racism and an entirely unjustified discrimination that
14 established a pattern for undemocratic behaviour in the eyes of
15 freedom-loving peoples. What is more to the point is that the
16 whole program was pernicious and that the renunciation phase marked
17 the culmination of the grossest outrage in American history.

18 Respectfully submitted,

19
20
21 _____
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27 Receipt of a copy of the foregoing Plaintiffs' Supplemental
28 Memorandum is hereby admitted this 17th day of February, 1947.

29 TOM C. CLARK, Attorney General.
30 FRANK J. HENNESSY, U.S. Attorney.

31 By: _____
32 Assistant U.S. Attorney.

Attorneys for Defendants.