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Robert Jarvis
jarvisb@nova.edu

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Aboitiz & Co. v. Price: **Some Lingering Questions**

by ROBERT M. JARVIS*

Over the years, I have worked with many excellent editors. But Larry Reilly, whose career this issue of the Journal celebrates, was by far my favorite. Larry was more than just an editor to me. He also was a good friend and a valued mentor, and I therefore am delighted to have this opportunity to write a piece in his honor.

I

INTRODUCTION

On January 2, 1942, Albert E. Price (1899-1980), a U.S. government bank examiner on assignment in the Philippines, became a prisoner of war ("POW") when the city of Manila fell to the Japanese.¹ For the next three years, he was interned at various locations.

* Professor of Law, Nova Southeastern University (jarvisb@nsu.law.nova.edu). Chair of the Advisory Board of the *American Journal of Legal History*.

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¹ Price was one of more than 5,000 U.S. civilians in the Philippines who were interned by the Japanese during World War II. See FRANCES B. COGAN, CAPTURED: THE JAPANESE INTERNMENT OF AMERICAN CIVILIANS IN THE PHILIPPINES, 1941-1945 (2000).

Price suffered greatly during his confinement and nearly starved to death due to the meager rations supplied by his captors. He avoided this outcome by paying ever-larger bribes to his guards, in return for which they supplied him with extra food. On February 3, 1945, Price finally was freed and allowed to return home to Salt Lake City.

On May 26, 1949, Price was sued in Utah's federal court by Aboitiz and Company, Inc. ("Aboitiz & Co."), the Filipino business that had lent him the money he had used to pay the guards.² Although Price had signed nine promissory notes, he insisted they were void for illegality.³ Price also argued that it would be inequitable to make him honor them using U.S. currency, given that

Technically, Price was not a POW because he was neither an armed combatant nor a military support contractor. See Convention Relating to the Treatment of Prisoners of War, July 27, 1929, 47 Stat. 2021, 118 L.N.T.S. 343. In everyday parlance, however, no distinction was made between military POWs and civilian internees. As such, the terms are used interchangeably in this essay. See further D. Van Velden, *The Japanese Civilian Internment Camps During the Second World War*, 4 ACTA HISTORIAE NEERLANDICA 234, 238 (1970) ("The allied governments had informed the Japanese government that with regard to Japanese prisoners of war they would adhere to the 1907 Red Cross Convention and Land Warfare Regulation, and the 1929 Prisoners of War Convention, and would also apply them to the civilian internees. The Japanese government stated that it would do likewise, on a mutual basis, even though it had not ratified the Prisoners of War Convention. . . . In general it can be said that as regards organization and views on treatment the civilian internee camps were closely allied to the prisoner of war camps.").

² Aboitiz & Co. was founded in Leyte in 1898 as Muertegui y Aboitiz. THE STORY OF ABOITIZ & COMPANY, INC. AND THE MEN BEHIND IT 72 (Patricia M. Alvarez ed., 1973). After moving to Cebu, and following a number of name changes, it went public in 1994. Now known as Aboitiz Equity Ventures, Inc. ("AEV"), it is a \$7 billion conglomerate. See <http://www.aboitiz.com/AEV/index.php>. See also MARCIANO R. DE BORJA, BASQUES IN THE PHILIPPINES 120-24 (2005) (tracing the family's roots beginning with Paulino "Txarton" Aboitiz, a Spanish seafarer who settled in the Philippines in the 1870s).

³ This defense rested on the fact that providing aid to internees (referred to as "over the wall" transactions) was strictly prohibited by the Japanese. See COGAN, *supra* note 1, at 121. Two standard contract defenses were not available to Price: "duress" and "unconscionability." Price could not claim duress because he had voluntarily sought out Aboitiz & Co. He could not assert unconscionability because the loans were made at the prevailing exchange rate and were interest-free. For a further discussion of Price's limited options at trial, see Morris G. Shanker, Comment, *The Law of Belligerent Occupation in the American Courts*, 50 MICH. L. REV. 1066 (1952). See also 6 Marjorie M. Whiteman, DIGEST OF INTERNATIONAL LAW 81-82 (1968).

Aboitiz & Co. had supplied him with a form of wartime scrip known as "Japanese invasion money."⁴

⁴ As has been explained elsewhere:

The Japanese Army brought along its own money—bales of it. It was not the regular yen currency of Japan, but a specially printed peso paper currency (showing that the invasion of the Philippines had been long planned). This currency was crude in form. It contained only the following words: "The Japanese Government—Ten Pesos" (or such other amount as might be), with some Japanese characters and designs which made it look like money. There was no promise to pay; no guarantee of the Japanese Government in any form. On January 3, 1942, the day after the occupation of Manila, the Japanese Commander-in-Chief issued a proclamation declaring this currency "legal tender for payments of all kinds at par with the Philippine peso." The proclamation stated that the Japanese Government "takes full responsibility, having the correct amount to back them up." At first this currency did circulate at par with the Philippine peso. But as the Japanese flooded the country with it, evidently wishing to make the Filipinos feel that they were prosperous under the new regime, and as the Filipinos began to realize that the Americans were coming back, it depreciated rapidly in value.

This currency was variously referred to as "Japanese Military Notes," "Japanese currency," or "Jap money." But some Americans interned in Santo Tomas facetiously called it "Mickey Mouse money." The term struck a popular chord, and from then on it was generally referred to (when [the] Japanese were not listening) as "Mickey Mouse." The day the Americans reoccupied Manila it became worthless.

L.D. Lockwood, *The Philippine Supreme Court and Postwar Problems of International Law*, 3 STAN. L. REV. 3, 5-6 (1950). For a further discussion, see, e.g., *Bank of Philippine Islands v. Rogers*, 165 F. Supp. 100 (D.D.C. 1958), *aff'd*, 281 F.2d 12 (D.C. Cir. 1959), *cert. denied*, 364 U.S. 927 (1960) (compensation suit by Filipino bank forced to exchange pre-war currency for occupation notes); RICHARD A. BANYAI, MONEY AND BANKING IN CHINA AND SOUTHEAST ASIA DURING THE JAPANESE MILITARY OCCUPATION 1937-1945 (1974); Recent Decisions, *International Law—Applicability of the Bal-lantyne Scale of Values*, 27 PHILIPPINE L.J. 788 (1952) (charting the currency's fall month by month). See also Raymond Lamont-Brown, *Wages of War*, COINS MAG., Aug. 1981, at 46 (detailing Japan's use of invasion money beginning with the 1894-95 Sino-Japanese War). Photographs of different types of Japanese invasion money can be viewed at *Japanese Government-Issued Philippine Peso*, at http://en.wikipedia.org/wiki/Japanese_government-issued_Philippine_peso, and *Japanese Invasion Money*, at http://en.wikipedia.org/wiki/Japanese_invasion_money.

Money often changes in war zones. Probably the best-known example is the replacement of U.S. currency with Confederate currency during the American Civil War. This led to innumerable problems—for both creditors and debtors—after the conflict ended. See, e.g., *Thorington v. Smith*, 75 U.S. (8 Wall.) 1 (1868); *Delmas v. Merchants Mut. Ins. Co.*, 81 U.S. (14 Wall.) 661 (1872); *Planters' Bank v. Union Bank*, 83 U.S. (16 Wall.) 483 (1872); *The Confederate Note Case*, 86 U.S. (19 Wall.) 548 (1873). For a further discussion, see Dominique G. Carreau, *Military Occupation Currency*, 19 SAN DIEGO L. REV. 233 (1982). See also Evsey S. Rashba, *Debts in Collapsed Foreign Currencies*, 54 YALE L.J. 1 (1944); Romulus A. Picciotti, *Legal Problems of Occupied Nations After the Termination of Occupation*, 33 MIL. L. REV. 25, 40-41 (1966).

On June 16, 1951, U.S. District Judge Willis W. Ritter (1899-1978) rejected both of these defenses.⁵ Finding that Price had received exactly what he had bargained for, Judge Ritter ordered him to repay Aboitiz & Co.⁶

At the end of his opinion, Judge Ritter candidly admitted he feared ruling for Price, because doing so might make it impossible for future U.S. POWs to receive help:

[T]here is at present a new wave of unrest which seems about to engulf the world again in wars. Our armed forces are now in many foreign lands and

⁵ *Aboitiz & Co. v. Price*, 99 F. Supp. 602, 629 (D. Utah 1951) (“[Price] will have to suffer, as everyone else does the losses incident to all wars.”). To support his conclusion, Judge Ritter relied principally on *Crawford v. The William Penn*, 6 F. Cas. 781 (C.C.D.N.J. 1819) (No. 3,373). See *Aboitiz & Co. v. Price*, 99 F. Supp. at 628 & n.95. In *Crawford*, an action arising out of the War of 1812, the court observed:

It would seem, from the modern cases, that contracts, made by prisoners of war in the enemy's country, have been supported. In the case of *Sparenburgh v. Bannatyne*, 1 Bos. & P. 163, Chief Justice Eyre observes, that “modern civilization has introduced great qualifications to soften the rigours of war; and allows a degree of intercourse with enemies, and particularly with prisoners of war; which can hardly be carried on without the aid of our courts of justice.” The other judges agree with him. Recoveries at nisi prius, we understand, are common, upon contracts made with the enemy by prisoners of war, upon parol, for their subsistence. *Willison v. Patteson* (Easter Term, 1817, C. P.) 7 Taunt. 439. The case of *Antoine v. Morshead*, 6 Taunt. 237, is that of a bill of exchange, drawn on England, in the enemy's country, by one British subject, a prisoner of war, in favour of another British subject, also a prisoner of war, and by him endorsed to an alien enemy; in which case the contract was supported. It is true, that the court seem[s] to rely very much upon the circumstance, that the original contract was between British subjects. But it is impossible not to perceive, that the right of the alien enemy to recover upon such bill, after the return of peace, was founded upon a new contract with an alien enemy, by virtue of the endorsement; and that, if in all cases, a bill drawn by one subject in favour of another, may pass, by endorsement, into the hands of an alien enemy, the general rule of law might be indirectly subverted. We understand this case, therefore, as going the full length of establishing an exception to the general rule, in favour of prisoners of war, in the country of the enemy, contracting for necessities. Chief Justice Gibbs seems to place it upon this ground; by saying, that, “if the objection could be supported, to its full extent, many of our miserable fellow subjects, detained in France, must have starved.” The case of *Daubuz v. Morshead*, Id. 332, is a case like the former, in principle.

Crawford, 6 F. Cas. at 784.

⁶ *Lawsuit Bares Grim Saga of War Prison*, SALT LAKE TELEGRAM, June 26, 1951, at 13; *Utahn Must Repay Bribe Money to Philippine Firm*, OGDEN (UT) STANDARD-EXAMINER, Sept. 7, 1951, at 1A. See also PATRICIA F. COWLEY & PARKER M. NIELSON, THUNDER OVER ZION: THE LIFE AND TIMES OF CHIEF JUDGE WILLIS W. RITTER 169-71 (2007).

those of enemy nations, before long, might occupy some part of our own territory. The principles of the law of belligerent occupation assume a larger importance in this view of events, and might become of quite considerable moment.⁷

Judge Ritter's decision attracted considerable attention upon its release,⁸ and has been cited as a leading statement on the enforceability of contracts made during armed conflicts.⁹ To date, however, no one has written about Price himself.

II LIFE BEFORE MANILA

Albert Edward "Bert" Price was born on July 2, 1899, in Salt Lake City, Utah.¹⁰ His parents were Georgia Ann (née Needham) (September 10, 1864-August 9, 1943)¹¹ and Eli Edwin Price (February 10,

⁷ *Aboitiz & Co.*, 99 F. Supp. at 629. See also *id.* at 608 ("Any other view would discourage such assistance at a time when most desperately needed."). Judge Ritter clearly had on his mind the Korean War (June 25, 1950-July 27, 1953), during which more than 7,000 Americans were captured or interned. See CHARLES S. YOUNG, NAME, RANK, AND SERIAL NUMBER: EXPLOITING KOREAN WAR POWs AT HOME AND ABROAD (2014).

⁸ See, e.g., Yuen-Li Liang, *International Law*, 1951 ANN. SURV. AM. L. 3, 22; Shanker, *supra* note 3; *Case Note*, 38 A.B.A. J. 158 (1952); *Case Note*, 1 AM. J. COMP. L. 119 (1952); *Case Note*, 46 AM. J. INT'L L. 152 (1952); *Case Note*, 65 HARV. L. REV. 527 (1952). See also Rudolf B. Schlesinger, *Book Review*, 3 UTAH L. REV. 147, 147 (1952) (reviewing ARTHUR NUSSBAUM, MONEY IN THE LAW—NATIONAL AND INTERNATIONAL (1950) ("International currency problems . . . now reach into the court rooms of Salt Lake City.")).

⁹ *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 448 n.8 (1964) (White, J., dissenting). Judge Ritter's opinion also is notable as "one of the first instances [in which] the term 'customary international law' was used in American jurisprudence[.]" Jason Jarvis, *Constitutional Constraints on the International Law-Making Power of the Federal Courts*, 13 J. TRANSNAT'L L. & POL'Y 251, 270 n.111 (2003).

¹⁰ A. E. (Bert) Price, SALT LAKE TRIB., Nov. 11, 1980, at 4D [hereinafter Price Obituary]; *Albert Edward Price*, at <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=43794333> [hereinafter Price Find-A-Grave].

¹¹ *Georgia A. N. Price*, SALT LAKE TRIB., Aug. 10, 1943, at 14; *Georgia Ann Needham Price*, at <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=43794586>; State of Utah—Certificate of Death for Georgia Ann Needham Price, State File No. 1451, Registrar's No. 1577, dated Aug. 11, 1943, available at http://images.archives.utah.gov/data/81448/2260561/2260561_0001237.jpg [hereinafter Mother's Death Certificate].

1861-July 31, 1948).¹² Georgia was a native of Salt Lake City; Eli had been born in Birmingham, England, and had come to the United States as an infant.¹³ The couple belonged to the Mormon Church and married in Salt Lake City on September 11, 1882.¹⁴

Price was the youngest of the family's four children.¹⁵ His siblings were Martha May Price Urien (September 15, 1883-January 23, 1942),¹⁶ Ivy Belle Price Snell (June 15, 1886-August 11, 1968),¹⁷ and Eli Lester Price (August 8, 1888-September 18, 1963).¹⁸

Growing up, Price attended the city's public schools¹⁹ and worked part-time in his family's farm supply store.²⁰ Following high school,

¹² S. L. Merchant, 87, *Succumbs*, SALT LAKE TRIB., Aug. 1, 1948, at 31; *Eli Edwin Price*, at <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=43794664>; State of Utah—Certificate of Death for Eli Edwin Price, State File No. 1372, Registrar's No. 1532, dated Aug. 3, 1948, available at http://images.archives.utah.gov/data/81448/2224525/2224525_0001245.jpg [hereinafter Father's Death Certificate].

¹³ Mother's Death Certificate, *supra* note 11; Father's Death Certificate, *supra* note 12; *Pioneer Utahn Reaches* 87, SALT LAKE TRIB., Feb. 11, 1948, at 28.

¹⁴ See sources cited *supra* notes 11-13.

¹⁵ U.S. DEP'T OF THE INTERIOR—CENSUS OFFICE, TWELFTH CENSUS OF THE U.S.: 1900 (1901) (State of Utah, County of Salt Lake, City of Salt Lake, Ward 2, Supervisor's District 273, Enumeration District 12, Sheet 5B, at Lines 73-78).

¹⁶ *Death Claims Prominent Salt Lake Clubwoman*, SALT LAKE TRIB., Jan. 24, 1942, at 8; *Martha Matilda [sic] May Price Urien*, at <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=87205891>; State of Utah—Certificate of Death for Martha May Price Urien, State File No. 140, Registrar's No. 147, dated Jan. 25, 1942, available at http://images.archives.utah.gov/data/81448/4105000/4105000_00001267.jpg.

¹⁷ *Ivy P. Snell*, SALT LAKE TRIB., Aug. 12, 1968, at 24; *Ivy Bell [sic] Price Snell*, at <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=50057290>. For an interesting lawsuit stemming from Ivy's refusal to pay a real estate commission, see *Hansen v. Snell*, 354 P.2d 1070 (Utah 1960).

¹⁸ *E. L. Price Funeral Rites Set*, OAKLAND TRIB., Sept. 19, 1963, at 38. Eli does not have his own Find-A-Grave page and, curiously, is not listed on the Find-A-Grave pages of his parents or siblings. Eli also is the only child to have abandoned the Mormon faith (he died a Roman Catholic). *Id.* Whether this caused a rift between him and his family is unknown.

¹⁹ Price Obituary, *supra* note 10.

²⁰ When Price was born, his parents owned a grocery. For a picture of it, see http://content.lib.utah.edu/cdm/ref/collection/USHS_Shippler/id/764. In 1900, they sold this business and started a farm supply store. See *Display Ad*, YOUNG WOMAN'S J., Apr. 1901, at 150 ("ELI L. PRICE, the well-known grocer who conducted a Main Street Store for many years, has recently opened up in the GRAIN BUSINESS."). See also GEORGE E. CARPENTER, SOUVENIR HISTORY OF THE SALT LAKE FIRE DEPARTMENT 36 (1901) (display ad for "Eli L. Price, wholesale and retail dealer in flour, grain, baled hay, straw, and poultry").

he enrolled in a vocational program at the Agriculture College of Utah (now Utah State University).²¹ On October 21, 1918, Price was inducted into the U.S. Army; on December 21, 1918, he was discharged with the rank of private.²²

In 1919, Price moved to St. Anthony, Idaho, where he lived with his sister Ivy while working as a teller in her husband's bank.²³ On December 30, 1920, Price left Ivy's home to get married.²⁴ His bride was Leone Capener (December 30, 1899–September 18, 1981),²⁵ the oldest daughter of a Salt Lake City realtor.²⁶ A formal wedding

²¹ AGRICULTURAL COLLEGE OF UTAH, BULLETIN—GENERAL CATALOG 1919-1920, WITH LIST OF STUDENTS FOR 1918-1919, at 216 (July 1919) (indicating that Price split his time between Salt Lake City and Malad, Idaho, where the college had an experimental agricultural station).

²² *Albert E. Price Registration Card # 3077* (dated Sept. 12, 1918), available at <https://familysearch.org/pal:/MM9.3.1/TH-1951-26283-29639-44?cc=1968530>; *Price, Albert E.* (dated Dec. 21, 1918), in *Utah—Military Records, 1861-1970*, available in *AncestryLibrary.com*. Price's draft card described him as tall, with a large frame, brown eyes, and brown hair.

²³ U.S. DEP'T OF COMMERCE—BUREAU OF THE CENSUS, FOURTEENTH CENSUS OF THE U.S.: 1920 (1921) (State of Idaho, County of Fremont, City of St. Anthony, Ward 2, Supervisor's District 2, Enumeration District 167, Sheet 18B, at Lines 84-89). Ivy's husband George D. Snell (1872-1959) was a co-owner of the First National Bank of St. Anthony. See *George D. Snell*, SALT LAKE TRIB., May 12, 1959, at 22; *George Dixon Snell*, at <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=50057175>. See also IDAHO DELUXE SUPPLEMENT 240-46 (S.J. Clarke Pub. Co., 1920).

²⁴ Western States Marriage Record Index, *Details for Marriage ID # 24761*, at <http://abish.byui.edu/specialCollections/westernstates/westernStatesRecordDetail.cfm?recordID=24761> (reporting that on December 30, 1920, Albert E. Price of St. Anthony married Leone Capener of Salt Lake City in Rexburg, Idaho).

²⁵ *Leone C. Price*, SALT LAKE TRIB., Sept. 20, 1981, at 19B; *Leone Capener Price*, at <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=43794117> [hereinafter cited as *Leone C. Price Find-A-Grave*]. Leone's obituary gives her birth year as 1900, but this is incorrect. See U.S. DEP'T OF THE INTERIOR—CENSUS OFFICE, TWELFTH CENSUS OF THE U.S.: 1900 (1901) (State of Utah, County of Box Elder, Sunset Precinct, Supervisor's District 273, Enumeration District 206, Sheet 7A, at Line 50) (indicating that Leone was born in 1899).

²⁶ U.S. DEP'T OF COMMERCE—BUREAU OF THE CENSUS, FOURTEENTH CENSUS OF THE U.S.: 1920 (1921) (State of Utah, County of Salt Lake, City of Salt Lake, Ward 1, Supervisor's District 2, Enumeration District 92, Sheet 19A, at Lines 16-23). Leone was the second of nine children. Her parents were Fanny (also spelled Fannie) L. (née Turner) (1879-1933) and Edward T. Capener (1876-1964). See *Prominent S. L. Woman is Dead*, SALT LAKE TRIB., Apr. 24, 1933, at 14; *Fanny Leone Turner Capener*, at <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=22819899>; State of Utah—Death Certificate for Fannie Leone Capener, State Board of Health File No. 637, dated Apr. 24, 1933, available at <https://familysearch.org/pal:/MM9.3.1/TH-267-11869-169727-11?cc=1747615>; *Death Takes Developer, Ex-Farmer*, SALT LAKE

followed on January 20, 1921, after which the couple settled in St. Anthony.²⁷

Albert E. and Leone C. Price

Before long, Price was hired as a deputy examiner by the Utah state banking commission, a job that paid him \$1,950 a year.²⁸ On September 4, 1925, he accepted a similar position at the Office of the Comptroller of the Currency ("OCC"), part of the U.S. Department of the Treasury ("DOTT").²⁹ Assigned to the OCC's office in

TRIB., Dec. 1, 1964, at 4C; *Edward Theodore Rigby Capener*, at <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=19593377>.

²⁷ *Salt Lake Society*, OGDEN (UT) STANDARD-EXAMINER, Jan. 23, 1921, at 3.

²⁸ HOUSE JOURNAL OF THE LEGISLATURE OF THE STATE OF UTAH 577 (1923). See also *Payson Savings Bank is Closed*, OGDEN (UT) STANDARD-EXAMINER, Dec. 13, 1923, at 7 ("The Payson Exchange Savings bank, Payson, was closed by Seth Pixton, state bank commissioner. . . . A. E. Price, deputy bank examiner, will take charge pending the appointment of an examiner."); *Random References—From Capitol*, OGDEN (UT) STANDARD-EXAMINER, JAN. 25, 1924, at 10 ("Albert Price, of the state bank examiner's office, is in Ogden conferring with officials of the trust companies of the city.").

²⁹ Price Obituary, *supra* note 10. The end of World War I had unleashed a banking boom in the United States, and by the time Price joined the OCC it was supervising some 29,000 institutions. U.S. DEP'T OF THE TREASURY, OFFICE OF THE COMPTROLLER OF THE CURRENCY: A SHORT HISTORY 15 (2011), available at <http://www.occ.gov/about/what-we-do/history/OCC%20history%20final.pdf>.

San Francisco,³⁰ by 1930 Price was earning \$3,900 a year.³¹ It was during this time that Price and Leone had their only child, an unnamed son who was delivered stillborn on December 30, 1930.³² Over the next decade, the OCC relocated Price twice, first to Los Angeles and then to Seattle.³³

On April 9, 1940, Nazi Germany invaded Norway as part of Operation Weserübung.³⁴ In response, President Franklin D. Roosevelt issued an executive order establishing, within the DOTT, the Office of Foreign Funds Control ("OFFC").³⁵ Although the OFFC had many duties, one of its most important responsibilities was to prevent money from ending up in enemy hands.³⁶

Initially, the OFFC's jurisdiction was limited to Europe. Following Japan's occupation of French Indo-China, the OFFC's portfolio was expanded to include the Far East.³⁷ In anticipation of this change, the OCC loaned Price to the OFFC, which ordered him to Manila.

On July 26, 1941, Price said goodbye to Leone in Seattle and left for his new post. With three pieces of luggage in tow, he made his way to San Francisco, where he boarded Pan American's *Pacific Clipper*.³⁸ On August 7, 1941, following a brief layover in Honolulu, Price

³⁰ U.S. DEP'T OF THE TREASURY, ANNUAL REPORT OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY—DECEMBER 11, 1925, at 64 (1926).

³¹ *Branch, Chain, and Group Banking: Hearings Before the Comm. on Banking and Currency*, 71st Cong. 150 (1930) [hereinafter *Branch Banking*].

³² State of Utah—Death Certificate for Infant Price[/]Stillborn Price, State Board of Health File No. 2276, dated Dec. 31, 1930, available at <https://familysearch.org/pal:/MM9.3.1/TH-266-11871-53875-72?cc=1747615> (listing the cause of death as asphyxia due to "cord around neck").

³³ U.S. DEP'T OF COMMERCE—BUREAU OF THE CENSUS, SIXTEENTH CENSUS OF THE U.S.: 1940 (1941) (State of Washington, County of King, City of Seattle, Block 18, Supervisor's District 1, Enumeration District 40-221B, Sheet 9B, at Lines 78-79).

³⁴ The assault's details are recounted in JACK GREENE & ALESSANDRO MASSIGNANI, HITLER STRIKES NORTH: THE NAZI INVASION OF NORWAY AND DENMARK, April 9, 1940 (2013).

³⁵ Exec. Order No. 8,389, 3 C.F.R. 645 (1940).

³⁶ For a comprehensive look at the OFFC, one of the forerunners of the modern Office of Foreign Assets Control, see William Harvey Reeves, *The Control of Foreign Funds by the United States Treasury*, 11 L. & CONTEMP. PROBS. 17 (Spring 1945).

³⁷ Exec. Order No. 8,832, 3 C.F.R. 969 (1941).

³⁸ *Passenger List—S.S. Pacific Clipper (NC 18606)* (July 26, 1941) (at Line 5), available in AncestryLibrary.com. The *Pacific Clipper* was one of Pan American's legendary seaplanes, popularly called "flying boats." For a sense of what it was like to be a passenger aboard these luxury airplanes, see STAN COHEN, *WINGS TO THE ORIENT: PAN AMERICAN CLIPPER PLANES, 1935 TO 1945—A PICTORIAL HISTORY* (1985).

continued his journey aboard its *China Clipper*.³⁹ On August 18, 1941, after a week spent settling in, Price was attached to the staff of Francis B. Sayre, Sr. (1885-1972), the U.S. High Commissioner to the Philippine Islands.⁴⁰ A former professor at Harvard Law School, where he had specialized in criminal and international law, Sayre had been appointed High Commissioner in 1939.⁴¹

In his annual report to the president, Sayre explained why Price was needed in Manila:

By far the most important enemy-owned or enemy-operated properties in the Philippines were Japanese. Outstanding among these were the abaca plantations in Davao where the bulk of the Japanese residents of the Philippines were located. Aside from several lumber companies and a number of stores scattered in various parts of the Archipelago, most of the remaining Japanese holdings of substantial size were in Manila. These included two banks, a large brewery, a club, a hospital, a school, and a considerable number of stores and small manufacturing establishments. . . .

In Manila . . . A. E. Price, [a] bank examiner[] who had been detailed to the Office of the High Commissioner by the United States Treasury Department in connection with foreign funds control, [was] immediately assigned to [one of] the two Japanese banks.⁴²

III

CAPTURE, INTERNMENT, AND RELEASE

At the time of Price's deployment to Manila, the Philippines was a U.S. commonwealth.⁴³ Despite the mounting tensions in the region, the U.S. government never advised U.S. citizens to leave the

³⁹ *List or Manifest of Outward-Bound Passengers—S.S. China Clipper (NC 14716)* (Aug. 7, 1941) (at Line 7), available in AncestryLibrary.com.

⁴⁰ SIXTH ANNUAL REPORT OF THE HIGH COMMISSIONER TO THE PHILIPPINE ISLANDS 63 (1943) [hereinafter H.C. Report]. In addition to Price, Sayre's staff included five other DOTT employees engaged in foreign funds control work. *Id.* at 68.

⁴¹ *Francis B. Sayre Dies at 86; Ex-Commissioner to Philippines*, N.Y. TIMES, Mar. 30, 1972, at 41.

⁴² H.C. Report, *supra* note 40, at 46. Price also oversaw a Chinese-owned bank. *Id.* at 63.

⁴³ From 1565 to 1898, the Philippines had been a Spanish colony. After a brief taste of freedom (1899-1901), the country became a U.S. insular possession. In 1935, it was elevated to a U.S. commonwealth, a status it retained until achieving independence in 1946. See generally KATHLEEN NADEAU, THE HISTORY OF THE PHILIPPINES (2008).

Philippines.⁴⁴ As a result, Price likely did not fully appreciate the gravity of his situation until December 8, 1941, when Japan began its attack on the country.⁴⁵ After a brief defense, Manila was proclaimed an "open city" on December 26, 1941;⁴⁶ on January 2, 1942, the Japanese army assumed control.⁴⁷

Sayre later gave the following account of this tumultuous period:

[Mr. Price] reached the [Japanese] bank[] [he was overseeing] on the morning the Philippines were attacked (December 8), well before the bank[] [was] scheduled to open for business, and took charge of records and other property. No banking business was conducted [by the] bank subsequent to the outbreak of war. . . .

After the Japanese entered the city all Americans were ordered to register and to keep off the streets. . . . Mr. Price [was] in Manila when it was occupied by Japanese forces and [was] detained by the enemy.⁴⁸

⁴⁴ *Relief for American Citizens Captured and Interned by Japanese: Hearing Before a Subcomm. of the Comm. on the Judiciary*, 80th Cong. 28 (1947) (quoting Senator J. Howard McGrath (D-R.I.) as saying: "I should like to put in the record the remarks of United States High Commissioner Sayre, who was in the Philippines at the time of the Japanese attack, and he stated that the reason for not giving notice to American citizens to leave was due to 'advice from Washington not to do so.' Washington felt that with due regard to the national interest it would be inadvisable to issue such notice."). See also RICHARD CONNAUGHTON, *MACARTHUR AND DEFEAT IN THE PHILIPPINES* 110 (2001) ("[T]he Department of State . . . did not wish to create an impression that the Philippines was alien territory or that they were more concerned with the lot of Americans rather than Filipinos. There was also a lame excuse about the shortage of shipping space. . . . [T]he effect of this unwise decision was that those civilians who put their trust in the wisdom of the State Department suffered three and a half years of internment.").

⁴⁵ Japan's conquest of the Philippines is described in CLAYTON CHUN, *THE FALL OF THE PHILIPPINES 1941-42* (2012).

⁴⁶ *Manila Declared Open City*, N.Y. TIMES, Dec. 26, 1941, at 1. An open city is one that is "declared undefended and free of military activity. For this guarantee, an open city is given immunity from attack or bombardment." NORMAN POLMAR & THOMAS B. ALLEN, *WORLD WAR II: THE ENCYCLOPEDIA OF THE WAR YEARS, 1941-45*, at 603 (1996; Dover Pubs. reprint ed. 2012). As these authors point out, such declarations were not always respected. *Id.* (citing the bombings of Belgrade, Manila, and Rotterdam).

⁴⁷ Charles Hurd, *Manila and Cavite Base Fall, Army Fights On*, N.Y. TIMES, Jan. 3, 1942, at 1.

⁴⁸ H.C. Report, *supra* note 40, at 8, 46, 63. According to Judge Ritter, Price nearly managed to avoid his fate: "When the Japanese struck, defendant had finished his work in the Philippines and was about ready to return to the United States." *Aboitiz & Co.*, 99 F. Supp. at 625-26.

Initially, Price was held at Sayre's official residence,⁴⁹ but after just a few days he was sent to a mansion known as Ynchausti House.⁵⁰ At the start of hostilities, it had been placed at the disposal of the Filipino Red Cross by Manuel M. de Ynchausti (1900-61), a local sugar baron who was forced to ride out the war in New York City.⁵¹

On October 31, 1942, Price and 11 other members of Sayre's staff were transferred from Ynchausti House to Baldwin House.⁵² Lo-

⁴⁹ Designed in a "modified colonial style" and completed in 1940 at a cost of \$375,000, the High Commissioner's 47-room compound was located on Dewey Boulevard, Manila's main thoroughfare. See *The American High Commissioner's New Home*, 20 AM. CHAMBER COM. J. PHILIPPINES 35 (June 1940). After commandeering it, the Japanese put the building to various uses. American troops later turned its massive ballroom into a courtroom for the war crimes trials of Generals Masaharu Homma and Tomoyuki Yamashita. Since 1946, the building has served as the chancery of the U.S. embassy. See *Embassy of the United States, Manila*, at http://en.wikipedia.org/wiki/Embassy_of_the_United_States_in_Manila.

⁵⁰ *Abolitiz & Company vs. Albert E. Price (Civil 1650)—Reporter's Transcript of Evidence and Proceedings* (Dec. 13, 1950), at 3 [hereinafter Reporter's Transcript] (copy on file with the author).

Ynchausti House numbered among Manila's grandest dwellings. See *The Ynchausti Residence*, at <http://www.ynchaustifoundation.org/family/mansion/> [hereinafter TYR] (explaining that "the Ynchausti residence . . . was known as one of the largest and most luxurious of its time; [it] cover[ed] twenty-two rooms and requir[ed] a staff of twenty-four. . . . The sprawling home was situated on a one-hectare property right next to Malate Church in Manila."). The structure was destroyed in 1945 during an American bombing run. *Id.*

In reporting on Price's location, writers typically referred to Ynchausti House by its street address (Villa 911 del Pilar or, more accurately, 911 Calle M.H. del Pilar). See, e.g., *Government Officials in Manila*, 6 DEP'T ST. BULL. 472, 473 (1942) [hereinafter *Government Officials*]; H.C. Report, *supra* note 40, at 9. Originally known as Calle Real, the street had been renamed in honor of Marcelo H. del Pilar, a revolutionary Filipino lawyer. TYR, *supra* ("At the time of its construction [in the 1870s], and through most of its life, the entrance of the house was located along the Calle Real, now M.H. del Pilar."). For a profile of del Pilar, see MAGNO GATMAITAN, MARCELO H. DEL PILAR, 1850-1896: A DOCUMENTED BIOGRAPHY (1966).

⁵¹ JOSÉ A. DE AGUIRRE, *ESCAPE VIA BERLIN: ELUDING FRANCO IN HITLER'S EUROPE* 5-6 (1944; U. Nevada Press reprint ed. 1991) ("[I]n early 1939, a wealthy and influential Basque, Manuel María de Ynchausti . . . found himself in New York . . . en route . . . back to the Philippines. . . . Although he planned to stay in New York for only a brief time . . . the spread of the war in Europe interrupted his trip, and he ended up living in New York more than eight years.").

⁵² Nathaniel P. Davis, *Internment in Manila—Part I*, 21 FOREIGN SERV. J. 5, 10 (Jan. 1944) [hereinafter Davis Part I] ("It is my opinion that the motive [for the change] was a desire on the part of the military to occupy the Ynchausti house, an opinion supported by the fact that Japanese nationals did move in as soon as the Americans moved out.").

cated on fashionable Naushon Road next to the city's polo club, Baldwin House was a three-acre, Southern-style plantation owned by Newland Baldwin Sr. (1883-1943).⁵³ Immediately after the Japanese invasion, U.S. Consul General Nathaniel P. Davis (1895-1973) had received permission from Baldwin to use it as a temporary lodging facility for Davis's staff (a total of 27 people).⁵⁴

Due to the chaotic conditions in Manila, Price's internment was not officially confirmed until November 9, 1942.⁵⁵ In breaking the news, one paper wrote:

Mrs. Price said today she has been advised by both the State Department and the Treasury Department that her husband is held a prisoner in a private home in Manila. She received a letter [yesterday] which relayed word through E. D. Hester, of Washington, D. C., economic advisor to the Philippine Government, that Mr. Price "is treated courteously and has ample food."

She has not heard directly from her husband for a number of months, although she has written to him regularly. Whether or not he has received her letters she does not know. Mr. Price, a native Salt Laker, left here for the Philippines in July of 1941.⁵⁶

On September 26, 1943, the Davis staffers at Baldwin House were repatriated.⁵⁷ On October 20, 1943, the Sayre staffers were relocated

⁵³ Tom Moore, *Baldwin Family*, at <http://www.cnac.org/emilscott/baldwin01.htm>. Baldwin's father Barry (1844-1923) had come to Manila in 1898 to open a local outpost of Macondray & Company, a well-known San Francisco trading house. See *MACONDRAY & CO., INC., 1848-1948: ONE HUNDREDTH ANNIVERSARY 10-13, 20 (1948)* [hereinafter *Macondray History*].

⁵⁴ Davis Part I, *supra* note 52, at 6-7 (explaining that Baldwin "welcomed" Davis's staff because their presence "would presumably serve to [protect the property] from less desirable uses."). For a profile of Davis, see *Nathaniel P. Davis, A Career Diplomat*, N.Y. TIMES, Sept. 14, 1973, at 42.

⁵⁵ *Salt Lake Man is Japanese Prisoner*, OGDEN (UT) STANDARD-EXAMINER, Nov. 9, 1942, at 5.

⁵⁶ *Salt Laker Captive of Japs in Philippines*, DESERET NEWS (SALT LAKE CITY), Nov. 9, 1942, at 8.

⁵⁷ Nathaniel P. Davis, *Internment in Manila—Part II*, 21 FOREIGN SERV. J. 66, 109 (Feb. 1944) [hereinafter *Davis Part II*]. The Davis staffers were released as part of the second "Gripsholm Exchange," so named because of the Swedish ship used to carry them back to the United States. See *1,440 on Gripsholm Wildly Happy Here; Reticent on Trials—Civilians Freed by Japanese Burst Into Song at Sight of Statute of Liberty*, N.Y. TIMES, Dec. 2, 1943, at 1. See also BRUCE ELLEMAN, *JAPANESE-AMERICAN CIVILIAN PRISONER EXCHANGES AND DETENTION CAMPS, 1941-45*, at 84-94 (2006) (describing the complicated negotiations leading up to their release). Although Price was not included (due to his lack of diplomatic credentials), the deal afforded him the

to Santo Tomas, a prison camp that before the war had been a Roman Catholic university.⁵⁸ The Sayre staffers had known for some

means to get a letter to Leone in Salt Lake City. *See 3 More Utah Men Freed in Philippines*, SALT LAKE TRIB., Feb. 24, 1945, at 14 [hereinafter 3 More Freed] ("Mrs. Price last heard from her husband in January, 1944, when the Gripsholm brought mail to the United States from prisoners in the Philippines.").

Upon learning that Price had been captured, Leone had moved from Seattle back to Salt Lake City to be closer to the couple's families. She ended up renting a room at the New Grand Hotel and remained there until Price was freed. During the ordeal, Price's mother, as well as his sister Martha, passed away. *Id.* *See also supra* notes 11 and 16.

⁵⁸ FREDERIC H. STEVENS, SANTO TOMAS INTERNMENT CAMP, 1942-1945, at 141 (1946) [hereinafter STIC]. As perhaps the most notable Japanese detention facility in the Philippines, much has been written about Santo Tomas. A helpful overview of these works appears in RUPERT WILKINSON, SURVIVING A JAPANESE INTERNMENT CAMP: LIFE AND LIBERATION AT SANTO TOMÁS, MANILA, IN WORLD WAR II, at 200-02 (2014). *See also Santo Tomas Internment Camp*, at http://en.wikipedia.org/wiki/Santo_Tomas_Internment_Camp.

At Santo Tomas, Price was assigned to kitchen duty, where he became a hero to his fellow POWs. *See Seattle Man Smuggled to Internees*, SEATTLE POST-INTELLIGENCER, Feb. 9, 1945, at 7 ("A. E. Price, former national bank examiner in Seattle, was a member of 'pipe-line' smugglers who helped keep internees at Santo Tomas Prison Camp in the Philippines alive with supplies of food, money and clothing from 'outside[.]' [Price and his co-workers used] bribery, cajolery and polite black-mail [to] operat[e their] smuggling business."). For a further description of Price's time at Santo Tomas, see *Ex-Salt Lakers Recount Inflation Scourge, Jap Barbarity at Santo Tomas Prison*, SALT LAKE TRIB., Feb. 27, 1945, at 11 (quoting Price as saying that in addition to losing weight, he suffered a hand infection at the camp).

Beginning in September 1944, Price kept a diary of his experiences at Santo Tomas, and the entry for December 8, 1944 is particularly heart-wrenching:

Friday 3rd anniversary of war. How much longer? Rice and corn deliveries from Jap bod[e]ga running 20% short in weight. Only about 200 grams of food per day which amounts to less than 3 oz. per meal per day. Some soya bean meal given us to make up shortage in cereal weight. Camp under total blackout for past two nights. Curfew at 7:00 PM all lights out at 8:00 PM. Bought 4 kilo[s] of rice—cost \$140.00. Lord what a price. The horrible monotony and boredom of this existence seems almost unbearable at times. Hand much better. When I think that we must spend another Christmas here, I feel like cutting my throat. I wish it were possible for me to describe the deadly monotony of the place, of seeing the same asinine people day after day[,] of waiting and hoping and praying for deliverance and finding that the hopes and prayers are unfruitful, of the constant pangs of hunger day after day and the feeling of helplessness and futility that grips one.

Albert E. Price, *The Diary of Albert E. Price During 1944 and 1945 When He Was Interned at Santo Tomas in Manila* (n.d.; n. pag.) (unpublished) (copy on file with the author).

time they were going to be moved,⁵⁹ and, as explained by Judge Ritter, Price had taken steps to get ready:

Reports had reached the prisoners that conditions at Santo Tomas were much worse than at Baldwin House. Defendant [Price] knew that he would need money desperately, with which to bribe Japanese guards, and with which to buy himself food. Defendant had exhausted the funds he had on his person. He cast about for some method by which to obtain the money to take to Santo Tomas.

Interned with Price was a woman. She and Price had been employees in the High Commissioner's office. She had resided in the Philippine Islands for some time and Price had been there for only a short while. Price asked her if it was possible for her, by way of the underground, to arrange for him to borrow the money. She was able, through her acquaintance, and the knowledge of her people in the town, to make the contact for Price. She arranged (it is not clear how) that if Price on a certain day were able to get out of the Baldwin House and to go to the Philippine General Hospital in Manila he would meet a Mr. Brady in the corridor of the hospital, near the dental office. Prisoners were permitted to go outside the walls of [Baldwin House] only for medical and dental care.

On the appointed day Price and three or four others left Baldwin House wearing red arm bands [identifying them as Americans], under a close guard, and were taken to the Philippine General Hospital. He made his contact with Brady. Defendant arranged with Brady for the loan of the money. Defendant's friend in the prison camp had done her work well.

At this time Brady (who was presumably the agent of the plaintiff bank [Aboitiz & Co.]) asked about Price's financial standing and was told that Price had no estate and was dependent solely upon his salary as bank examiner, which was \$8500 a year.

It was agreed Brady would provide the money and that one Tom Fu, an old chinaman [sic] employed at the Baldwin House, would bring in the notes

⁵⁹ Davis Part II, *supra* note 57, at 108-09 ("When I learned that the members of the office of the former High Commissioner who were interned with us, numbering twelve persons, were not to be repatriated, I asked Mr. Okazaki [of the Japanese consulate] whether or not they would be permitted to remain at the Baldwin House. . . . He told me that his personal view was that 'the authorities would find it inconvenient' to continue to maintain a separate place of internment for so small a group. . . .").

After the Sayre staffers left, Baldwin House was then occupied by the Japanese Ambassador to the Philippine Republic and part of his staff as an "unofficial residence." On February 10, 1945, the American Army came through Pasay on its way to captur[ing] the southern half of Manila and the Japanese had to leave. As a parting gift, and for no military reason whatever, they burned the house to the ground leaving only the concrete walls standing[.]

Macondray History, *supra* note 53, at 37.

for Price's signature. When the notes were returned to Brady he would send the money by Tom Fu to defendant. That, subsequently, was done. "Fu was able to get the money in, for which I naturally paid him quite well," Price testified.

Tom Fu, apparently, was trusted by both the Japanese and Americans, for he was allowed freely to go through the guards.

Later on Price arranged through Tom Fu for additional loans from Brady, and notes were exchanged for money brought in by the chinaman.

The notes in question were brought in to defendant by Tom Fu undated and without the name of the payee (undoubtedly to reduce the risk of Japanese reprisal).

The money was military pass-money issued by the Imperial Japanese Government. It was used by defendant at Santo Tomas to obtain food, other necessities and privileges through bribery of Japanese army guards. The cost of this traffic and the excessiveness of the bribes increased as the war went on.

During the last seven or eight months of defendant's internment, food was scarce and adequate amounts could not be obtained at any price. Japanese confiscation, inflation, and black markets aggravated the scarcities. The internees endured terrible suffering, and many died, including one R. B. North, also a national bank examiner, interned with defendant. North died at Santo Tomas in October, 1944. Price lost weight during his internment from 180 pounds to 95 pounds. North and defendant Price executed, jointly and severally, six of the nine notes here sued upon [five on June 16, 1943 and one on September 8, 1943]. Price alone signed the other three [on August 28, 1943].⁶⁰

⁶⁰ *Abolitiz & Co.*, 99 F. Supp. at 605-07 (footnote omitted).

Although Judge Ritter chose not to identify her, the woman who helped Price was Ruth A. (née Patterson) Lovell (1909-81). See Reporter's Transcript, *supra* note 50, at 10 (copy on file with the author) ("THE COURT: Who was your original contact, before you went out to meet Mr. Brady? . . . THE WITNESS: Her name was Mrs. Patterson."). A native of Fresno, and a graduate of Stanford University (A.B., 1930; A.M., 1931), Ruth had found work as a high school librarian after getting her master's degree in education. Following a visit to the Philippines, she decided to move there and in 1937 accepted a job as the secretary to the president of Wise & Company, a British import-export firm. In 1939, she joined Sayre's staff as a stenographer. Just after the Japanese invasion, she married a British mining engineer named Glenn H. Lovell (1898-1969) (their wedding took place during an air raid). When the war ended, Ruth joined the newly-opened U.S. embassy in Manila and later served in Bonn, London, and Paris. See Ruth Anita Lovell, *Bonn Personnel Officer: Pomp, Pageantry, Pride of Public Service*, 56 *TO DRAGMA* 24 (Winter 1964) (publication of Alpha Omicron Pi sorority). It was at Wise & Company that Ruth made the connections that later allowed her to help Price. See *id.* at 24 (explaining that she took the job because it was "a good opportunity to acquire contacts"). For a further look at Ruth's time in the Philippines, see *Troth of Former Fresnan in Manila is Revealed Here*, *FRESNO BEE*, Dec. 15, 1941, at 6A; *Fresno Woman Federal Aide is Held by Japanese*, *FRESNO BEE*, May 20, 1942, at 5B; *Fresno Woman is Liberated From Internment Camp*, *FRESNO BEE*, Feb. 27, 1945, at 1B; *Ex-Fresnan Reports Progress in Reconstruction of Manila*, *FRESNO BEE*, Jan. 9, 1952, at 8A.

Santo Tomas was liberated by the U.S. Army on February 3, 1945.⁶¹ It was not until February 26, 1945, however, that the War

Because Price had no information about "Brady," Judge Ritter necessarily was vague in describing him. In fact, he was Manila lawyer Frank W. Brady (1903-70). A graduate of the University of the Philippines (B.S.C., 1926; LL.B., 1934), he had been a sole practitioner since 1939. See *Philippine Visitor Looks at America*, NEVADA STATE J. (Reno), Nov. 27, 1949, at 6 (explaining that the purpose of his trip was to seek war reparations for various Filipino businesses; while in Reno, Brady also secured a divorce from his wife Carmen). Brady's clients included Aboitiz & Co. See E-mail from Joyce Brady Velde to the author, dated June 30, 2014, at 4:04 p.m. (copy on file with the author) ("One of my father's legal clients was Aboitiz, and my father helped internees and others with information and goods, whenever possible."). For a further look at Brady's career, see Frank W. Brady, *The Settlement of Controversies: The Will and the Way to Prevent Lawsuits*, 45 A.B.A.J. 471 (May 1959).

Tom Fu (birth and death dates unknown), whose last name also was spelled Foo, was Newland Baldwin Sr.'s servant. Following the Japanese invasion, he remained employed at Baldwin House until the Baldwins were sent to Santo Tomas, at which time he went to work for a Manila family named Smith. *Report of Investigation of Alleged Atrocities by Members of the Japanese Imperial Forces in Manila and Other Parts of Luzon, Philippine Islands* ¶ 34 (Apr. 9, 1945) (IG 333.5) (prepared by Lt. Col. R. Graham Bosworth, U.S. Army—Office of the Inspector General), available at http://battleofmanila.org/IG_Report/htm/IG_333_5_03.htm.

The fourth person mentioned by Judge Ritter—Price's fellow bank examiner R. B. North—was Reynolds B. North (1894-1944). Born in Green Bay, Wisconsin, on September 22, 1894, North attended law school at the University of Wisconsin (1912-13; 1915-17) but did not graduate. E-mail from Kerri Allard, Assistant Registrar for Student Services—University of Wisconsin, to the author, dated June 12, 2014, at 5:08 p.m. (copy on file with the author). In 1917, he took a job at the Miller Rubber Company in Akron, Ohio. *Reynolds Bacon North Registration Card # 2221* (dated May 29, 1917), available in AncestryLibrary.com; U.S. DEP'T OF COMMERCE—BUREAU OF THE CENSUS, FOURTEENTH CENSUS OF THE U.S.: 1920 (1921) (State of Ohio, County of Summit, City of Akron, Ward 2, Supervisor's District 14, Enumeration District 139, Sheet 11A, at Line 20). By 1930, North was working as an OCC assistant bank examiner and was stationed in Minneapolis. Branch Banking, *supra* note 31, at 149. The OCC later moved him to Wichita and then to San Francisco. U.S. DEP'T OF COMMERCE—BUREAU OF THE CENSUS, SIXTEENTH CENSUS OF THE U.S.: 1940 (1941) (State of California, County of San Mateo, City of San Mateo, Supervisor's District 8, Enumeration District 4-43, Sheet 15B, at Line 56) [hereinafter North 1940 Census Data].

North left for Manila on July 29, 1941; like Price, he traveled on a Pan American flying boat from San Francisco with a layover in Honolulu. *Passenger List—S.S. Honolulu Clipper (NC 18601)* (July 29, 1941) (at Line 15), available in AncestryLibrary.com; *List or Manifest of Outward-Bound Passengers—S.S. Honolulu Clipper (NC 18601)* (July 31, 1941) (at Line 17), available in AncestryLibrary.com. At the time of his departure, North was living in San Mateo, California, and had a wife (Ann (née Smith) (1900-87)) and two sons (Roger (1923-63) and Jerome (1931-2010)). North 1940 Census Data, *supra*, at Lines 57-59; *Reynolds Bacon North*, in Allen Family Tree, available in AncestryLibrary.com.

Department announced Price was alive.⁶² The next day, Price cabled his boss, Preston Delano (1886-1961), the U.S. Comptroller of the Currency, and advised him that, barring orders to the contrary, he planned to return home at the first “available opportunity.”⁶³ On March 30, 1945, Price, along with a group of other former internees, arrived in San Francisco aboard a U.S. Navy transport ship.⁶⁴

IV LITIGATION

Following his return to the States, it seemed Price would be allowed to put the horrors of Santo Tomas behind him. But in 1949, Aboitiz & Co. sued Price in the federal district court in Salt Lake City.

In Manila, North performed the same foreign funds control work as Price and ended up at Ynchausti House and then Baldwin House in the same way. H.C. Report, *supra* note 40, at 24, 28, 46, 63; Davis Part I, *supra* note 52, at 10. North was transferred to Santo Tomas at the same time as Price and died there, from a “heart attack” (a Japanese wartime euphemism for starvation), at 11:00 p.m. on October 19, 1944. *Report of the Death of an American Citizen—Reynolds Bacon North* (dated July 4, 1945) (indicating that after North was cremated, the remains were given to Price “for delivery to widow”), available in AncestryLibrary.com. See also *Local Boy to Holiday in the East*, SAN MATEO (CA) TIMES, Dec. 11, 1941, at 12 (reporting that North had been in Manila since July 1941 and was “fine, safe, and well”); *Reynolds North Interned by Japs*, SAN MATEO (CA) TIMES, May 21, 1942, at 16; *Green Bay Man Dies in Jap Prison Camp*, RACINE (WI) J.-TIMES, Jan. 23, 1945, at 3.

⁶¹ *Aboitiz & Co.*, 99 F. Supp. at 604. Price later remarked, “I shall never forget the deep sense of gratitude we felt when the American army came to free us.” *Cigaretts [sic] Cost \$15 Per Pack in Manila*, OGDEN (UT) STANDARD-EXAMINER, Feb. 27, 1945, at 3. For a further discussion, see RALPH DIOGUARDI, *ROLL OUT THE BARREL . . . THE TANKS ARE COMING: THE LIBERATION OF THE SANTO TOMAS INTERNMENT CAMP* (1983). See also 3 *More Freed*, *supra* note 57 (reporting that when General Douglas MacArthur entered the camp, Price was one of the first prisoners he met).

⁶² *More Civilians Saved in the Philippines*, N.Y. TIMES, Feb. 26, 1945, at 8.

⁶³ *Husband of Utahn Freed by MacArthur*, OGDEN (UT) STANDARD-EXAMINER, Feb. 27, 1945, at 5. Delano served as U.S. Comptroller of the Currency from 1938 to 1953. See *Preston Delano, Ex-Treasury Aide: Former Controller of the Currency Dies at 75*, N.Y. TIMES, Sept. 1, 1961, at 17.

⁶⁴ *336 Prisoners of Japs Reach U. S.*, OGDEN (UT) STANDARD-EXAMINER, Mar. 30, 1945, at 2A. The internees’ arrival went largely unnoticed by the public, in contrast to the “huge crowds which [had] greeted two shiploads of returning army and navy men” just a short time earlier. *Id.*

Unlike U.S. military personnel, U.S. civilians are ineligible for the U.S. POW medal. 10 U.S.C. § 1128(a). In 2005, legislation was proposed (see S. 72 and H.R. 3329) that would have added 5 U.S.C. § 4531, thereby allowing the medal to be awarded to any federal civilian employee “forcibly taken and held captive by armed forces or agents of a foreign government hostile to the United States.” Because the bills applied retroactively to April 6, 1917, Price would have received a posthumous medal had they been enacted.

Aboitiz & Co. was represented by Warwick C. Lamoreaux (1906-87); Price was represented by Benjamin Franklin Riter, Jr. (1886-1966).⁶⁵ Lamoreaux was a 1938 Harvard Law School graduate and a former state senator.⁶⁶ Riter was a 1910 Columbia Law School graduate and a retired U.S. Army general.⁶⁷ Not to be outdone, Judge Ritter was a 1924 University of Chicago Law School graduate and a former law professor at the University of Utah.⁶⁸

Judge Willis W. Ritter

⁶⁵ *Aboitiz & Co.*, 99 F. Supp. at 604. Riter was assisted by his partner Fred L. Finlinson (1906-95); Lamoreaux was aided by a junior associate named David K. Watkiss (1924-97). *Id.* Finlinson was a 1935 law graduate of the University of Utah. See Fred Lyman Finlinson, DESERET NEWS (SALT LAKE CITY), Sept. 22, 1995, at <http://www.deseretnews.com/article/441373/DEATH—FRED-LYMAN-FINLINSON.html>. Watkiss was a 1949 law graduate of the University of Utah. See *S.L. Services to Honor Lawyer David K. Watkiss*, DESERET NEWS (SALT LAKE CITY), Apr. 30, 1997, at <http://www.deseretnews.com/article/557892/SL-services-to-honor-lawyer-David-K-Watkiss.html?pg=all>.

⁶⁶ *Warwick (Rick) Crawford Lamoreaux*, SALT LAKE TRIB., Aug. 23, 1987, at B15; *Warwick Crawford (Rick) Lamoreaux*, at <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GSln=lamoreaux&GSfn=warwick&GSbyrel=all&GSdyrel=all&GSob=n&GRid=21178734&df=all>.

⁶⁷ *Gen. Riter, S.L. Lawyer, Civic Leader, Dies at 79*, SALT LAKE TRIB., May 26, 1966, at 2B; *Gen Franklin Riter*, at <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=174239>.

⁶⁸ Rudy Johnson, *Federal Judge Willis W. Ritter, Who Fought Retirement, Dies at 79*, N.Y. TIMES, Mar. 5, 1978, at 37; *Willis William Ritter*, at <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=31110375>. As a law professor, Judge Ritter had enjoyed a first-rate reputation:

The case's court file still exists,⁶⁹ and reading it reveals the following chronology:

May 26, 1949: Aboitiz & Co. sues Price for "\$11,250.00, together with interest and general relief."⁷⁰

May 27, 1949: At 8:20 a.m., U.S. Deputy Marshal John L. Babcock (1923-98)⁷¹ delivers the summons and complaint to Price's home. Because Price already has left for work, Leone accepts service.

July 28, 1949: Price moves for an order requiring Aboitiz & Co. to "make more definite and certain the allegations of each of its causes of action."

August 15, 1949: Price moves for an order requiring Aboitiz & Co. to "give security for costs which may be awarded the defendant . . . for not less than \$250.00."

Ritter was probably the most modern member of the faculty. He introduced instruction in taxation to the school, often lectured on current governmental problems, and kept his course materials up-to-date. While he covered many subjects in the curriculum, students recall that he seemed most delighted to teach the mental gymnastics involved in the real property and wills and trusts courses.

Donald N. Zillman, *The University of Utah College of Law: An Analytical History—Part I*, 10 J. CONTEMP. L. 141, 178-79 (1984) (footnote omitted).

⁶⁹ E-mails from Marene S. Baker, Archivist, U.S. National Archives—Denver, to the author, dated June 3, 2014, at 2:54 p.m., and June 4, 2014, at 12:04 p.m. (copies on file with the author) (explaining that the file is housed "in the National Archives at Denver [in] RG [Records Group] 21 Records of the U.S. District Court of Utah [under] CV-1650, Aboitiz and Company [v.] Price in Entry 6 Civil Case Files, 1938-1953, box 143" and consists of "2 folders [totaling] 260 pages").

⁷⁰ Aboitiz & Co. lent North and Price 22,500 Japanese invasion pesos. *Aboitiz & Co.*, 99 F. Supp. at 606-07 (explaining that the five notes dated June 16, 1943 were for 500 pesos each; the three notes dated August 28, 1943 were for varying amounts totaling 10,000 pesos; and the note dated September 8, 1943 was for 10,000 pesos). North received 6,250 pesos while Price received 16,250 pesos. *Id.* The notes, however, made North and Price "jointly and severally liable" for the entire debt. *Id.* They also stated that "the rate of exchange [is] to be One U. S. Dollar for Two Pesos (Philippine currency), at the option of the lender." *Id.* This figure was in accordance with the prevailing local exchange rate. STIC, *supra* note 58, at 27 n.† ("Philippine money is based on U. S. currency, one peso being equal to fifty cents."). The notes did not bear interest. *Aboitiz & Co.*, 99 F. Supp. at 608. Today, \$11,250 is the equivalent of \$152,882.50. See S. Morgan Friedman, *The Inflation Calculator*, at <http://www.westegg.com/inflation/infl.cgi>.

⁷¹ Babcock had a long and colorful career as a U.S. deputy marshal, first in Salt Lake City and then in San Francisco. See, e.g., *Marshal Nabs Prisoner Who Escaped Hospital*, SALT LAKE TRIB., July 19, 1945, at 9; *Matean Wins Award for Performance*, SAN MATEO (CA) TIMES, Jan. 12, 1962, at 23; *U.S. Marshal, Aide Beaten in Chinatown*, OAKLAND TRIB., Feb. 8, 1962, at 1; *Felon Loosed By Mistake is Hunted in Bank Heist*, FRESNO BEE, Jan. 10, 1965, at 16A.

October 28, 1949: Judge Ritter orders Aboitiz & Co. to post \$250 as security for Price's costs and gives it 45 days to file an amended complaint.

May 6, 1950: Aboitiz & Co. files its amended complaint.

June 6, 1950: Aboitiz & Co. tenders a check for \$250 as security for Price's costs and serves a copy of its amended complaint on Price's lawyers.

June 26, 1950: Price moves to dismiss the amended complaint because it "fails to state a claim against the defendant upon which relief can be granted."

July 27, 1950: Judge Ritter denies Price's motion to dismiss the amended complaint and gives him 20 days to answer it.

October 10, 1950: Price files his answer to the amended complaint. In it, he insists he owes Aboitiz & Co. nothing because: 1) he was forced to sign blank pieces of paper and "does not know what was finally filled in on said blank pieces of paper;" 2) he did not "receive all of the proceeds from the said transactions"; 3) the loans lacked consideration because Japanese invasion money "was illegal;" and, 4) the dealings between the parties were void because the Japanese "prohibited all commercial activities between enemy aliens and . . . civilians of the Philippine Islands."

October 20, 1950: Judge Ritter's orders the case "set on the non-jury [trial] calendar in December." Subsequently, in an undated order, he directs the parties to be prepared to argue three issues: "(1) Whether or not the defendant Price signed the pieces of paper sued on in this action. (2) What law governs in this case, the Philippine law before or after the Japanese invasion, the military law of the Japanese Army of Occupation, or the law of the forum? (3) Whether or not the transaction was void as tainted with illegality or because the consideration was illegal."

December 8, 1950: Judge Ritter schedules the trial for December 13, 1950.

December 12, 1950: The parties enter into a written stipulation that Price signed all nine promissory notes, thereby eliminating the first two defenses contained in Price's answer to the amended complaint and leaving only the second and third issues to be argued at trial.

December 13, 1950: The trial begins at 10:00 a.m. After Judge Ritter accepts the parties' stipulation, Aboitiz & Co. enters into evidence the nine promissory notes. It then rests its case without presenting any witnesses. Ritter begins his defense by calling Price to

the stand and having him describe the circumstances of his internment. Following cross-examination, Riter moves to have the case dismissed. Judge Ritter denies the motion and then hears argument regarding the choice-of-law question. After lunch, Price is recalled to the stand and testifies in greater detail about his dealings with Brady. When he is done, Judge Ritter takes the matter under advisement and orders both sides to submit their closing briefs by December 26, 1950.

December 26, 1950: Both sides submit their closing briefs. Aboitiz & Co.'s argues: "The court in this case is asked by the defendant to deny a just right acquired by brave Filipinos, who risked their personal safety in order to help our citizens keep from starving. The defendant's contention is that because his Japanese oppressors punished Filipinos who helped the internees that their aid was unlawful and contracts based thereon unenforceable. It is sincerely believed that such a holding by the court would in effect be a repudiation and condemnation of any helpful or friendly acts of assistance rendered to our government or its citizens in time of need and peril."⁷²

Price's brief counters: "[T]he notes in question were invalid because they represented a transaction made illegal by the order of the Commander of the Japanese forces. Being void in their creation they would have no validity in any jurisdiction of the United States. Therefore the question of the place of performance is not reached."

June 16, 1951: Judge Ritter rules for Aboitiz & Co. Although he awards it the full amount it is seeking (\$11,250), he declines its request for interest and orders "[e]ach party to stand his own costs."

June 25, 1951: Price moves for a new trial on two grounds: "1. Insufficiency of the evidence to justify the decision of the court. 2. That the decision of the court is against the law."

July 25, 1951: Judge Ritter denies Price's motion for a new trial.

August 3, 1951: Price files a notice of appeal.

⁷² Judge Ritter later chastised Lamoreaux for the inadequacy of his brief:

After his *Aboitiz* decision, Ritter saw Lamoreaux on the street. "You damn fool, you had a jewel and didn't recognize it. I did your work for you. I spent months in research because it merited it. I had to go to the treatises, protocol [sic]—you'll never know the research I did for this case. It was a cause célèbre and you didn't recognize it." Lamoreaux agreed and praised Ritter's opinion "as a masterpiece without the aid of counsel."

COWLEY & NIELSON, *supra* note 6, at 171.

September 5, 1951: The parties settle the case for \$5,700.⁷³ As a result, Price drops his appeal.

September 17, 1951: Judge Ritter enters an order approving the settlement.

September 20, 1951: As required by the settlement, the nine promissory notes are returned to Price.⁷⁴

June 3, 1959: Aboitiz & Co.'s \$250, deposited nine years earlier to secure Price's costs, is still in the court's registry. When this fact is brought to Judge Ritter's attention, he orders the funds sent "to the Treasury of the United States as unclaimed moneys."

As voluminous as it is, the court file leaves open five questions:

- 1) Why did Aboitiz & Co. wait until 1949 to sue Price?⁷⁵ It is clear that the company remained operational throughout the war and afterwards, and there was no interruption in its ownership or management that would have impeded its bringing an action.⁷⁶
- 2) Why did Lamoreaux, who had excellent political instincts, agree to represent Aboitiz & Co. against a defendant who was likely to receive a great deal of sympathy from his fellow Salt

⁷³ This amount presumably reflects 50% of Aboitiz & Co.'s claim (\$5,625) and a portion of its out-of-pocket costs. According to Judge Ritter's biographers, Price was able to afford the settlement (as well as his lawyers' bills) because

[during his internment], Price was accruing a healthy unpaid salary, for he was still an employee of the United States. . . . Price was eventually rescued . . . and returned to Salt Lake City, emaciated and nearly starved to death, but safe. Eventually recovered, he was paid his large accumulated salary.

Id. at 170.

⁷⁴ Because the notes had been held as evidence since the trial, it fell to Deputy Court Clerk Mary Jane C. Due (1922-91) to get them to Price's attorneys. In 1952, Due began studying law part-time at the University of Utah. After graduating in 1956, she became an oil and gas lawyer for the U.S. government. See *Mary Jane C. Due*, DESERET NEWS (SALT LAKE CITY), Oct. 30, 1991, at <http://www.deseretnews.com/article/192549/DEATH—MARY-JANE-C-DUE.html?pg=all>.

⁷⁵ At the time of the lawsuit, Utah's statute of limitations for actions based on written contracts was six years. See UTAH CODE ANN. § 104-2-22 (West 1943). Because Judge Ritter found that Price's duty to repay did not begin until he was back in the United States, see *Aboitiz & Co.*, 99 F. Supp. at 625-26, Aboitiz & Co. had at least until March 30, 1951 to file. However, by waiting until 1949, Aboitiz & Co. missed its chance to also sue North, inasmuch as his estate had been probated in 1945. See [Final] Notice to Creditors, SAN MATEO (CA) TIMES, July 5, 1945, at 9 (requiring all claims against North to be filed with the San Mateo Superior Court by December 7, 1945).

⁷⁶ Alvarez, *supra* note 2, at 31-49.

Lakers? Perhaps the fact that Judge Ritter was Utah's only federal judge,⁷⁷ and owed his job to Lamoreaux,⁷⁸ made the case more appealing to Lamoreaux.

- 3) Why did the U.S. government not step in and defend Price? Interestingly, a librarian in the DOTT's General Counsel's office wrote to the Clerk's Office twice in July 1951 seeking a copy of Judge Ritter's decision,⁷⁹ which suggests that the DOTT's lawyers were following the case.
- 4) Why did Judge Ritter, at the end of his opinion, say that Price should try to "get compensation through a claim against the Japanese government"?⁸⁰ Was this just a sop, or did he actually think Price could obtain such indemnification?⁸¹
- 5) Lastly, and most curiously, Aboitiz & Co. made loans to many Santo Tomas internees and later forgave them, even when the debtors wanted to pay.⁸² Why did it treat Price's loans differently?

⁷⁷ Bruce S. Jenkins, *Hon. Willis W. Ritter—Lessons Learned From the Principles, Practices, and Personality of Utah's First Chief U.S. District Judge*, 56 FED. LAW. 26, 28 (Mar./Apr. 2009) (explaining that Utah did not receive a second federal judge until 1954).

⁷⁸ COWLEY & NIELSON, *supra* note 6, at 169 (quoting Judge Ritter as telling Lamoreaux in another matter, "Rick, but for you, I wouldn't be sitting here.").

⁷⁹ See Letters from Charlotte Dobyns, Library of the General Counsel—U.S. Department of the Treasury, to O.K. Clay, Clerk of the U.S. District Court for the District of Utah, dated July 11, 1951 and July 30, 1951 (copies on file with the author).

⁸⁰ *Aboitiz & Co.*, 99 F. Supp. at 629.

⁸¹ Regardless of his intention, Judge Ritter's suggestion became moot almost immediately. See Treaty of Peace with Japan, Sept. 8, 1951, 3 U.S.T. 3169, 136 U.N.T.S. 45. Among other things, the treaty extinguished all POW claims. See *Mitsubishi Materials Corp. v. Superior Court*, 6 Cal. Rptr. 3d 159 (Ct. App. 2003) (upholding the waiver as a proper exercise of the federal government's treaty-making powers). For a further look at the treaty, see Richard J. Zanard, Note, *An Introduction to the Japanese Peace Treaty and Allied Documents*, 40 GEO. L.J. 91 (1951).

⁸² In 1902, Claire Wislizenus (1875-1972) moved from St. Louis to the Philippines after her husband Adolph (1864-1926) was appointed to the Cebu Court of First Instance by President Theodore Roosevelt. See *Judge Wislizenus, Once of St. Louis, Dies in Philippines*, ST. LOUIS POST DISPATCH, Nov. 14, 1926, at 4. Following Adolph's death, Claire remained in Cebu and on January 19, 1943, was interned at Santo Tomas. See *Claire Wislizenus Japanese Internment 1941-1945*, at http://www.rkeller.com/Home_Page/Clair_manuscript.html (memoir written by Claire and transcribed by her great-grandson). According to this document:

One man in Cebu, Don Ramon Aboitiz, made himself responsible for thousands of pesos, which were advanced [to] us through the years, and when he came to Los Angeles in 1948 and I, along with some of the other Ce-

V CONCLUSION

On February 28, 1957, Price retired from the OCC—in recognition of his 32 years of faithful service, he received the DOTT's Albert Gallatin Award.⁸³ In his later years, Price was associated with various Salt Lake City banks.⁸⁴ On November 9, 1980, at the age of 81, he passed away from "a lingering illness."⁸⁵ Although his obituary recounts his years of internment, it says nothing at all about the *Aboitiz & Co.* lawsuit.⁸⁶

buanos tried to repay some of the money, which we had received in camp, he refused to accept a cent. He just smiled and said, "You don't owe me anything. No one owes me anything." In contrast to this, I may mention that a note I had given for a hundred dollars to the General Electric Co. manager was promptly collected by the main office in New York as soon as I was known to have arrived in the States.

Id.

It is unlikely that Price knew about Ramon's statement—if he had, he almost certainly would have argued that it constituted a "renunciation" of his loan. See Utah Code Ann. § 61-1-124 (West 1943) ("The holder may expressly renounce his rights against any party to an instrument before, at or after its maturity."). That Ramon (1887-1974) could waive Aboitiz & Co.'s receivables is clear:

While the board [of directors] nominally saw to it that the stockholders' interests were upheld, they seldom met formally. Don Ramon alone directed the company and though he liked to have the consensus of the others on major decisions, it was his own better judgment which had final sway.

Alvarez, *supra* note 2, at 28. See also *id.* at 4 (explaining that Ramon served as president of Aboitiz & Co. for 46 years and describing him and the business as "synonymous"). For a further profile of Ramon, see *Ramon Aboitiz*, at <http://rafi.org.ph/triennialawards/about-the-awards/rafi-founders/ramon-aboitiz/>.

⁸³ Price Obituary, *supra* note 10. The Gallatin Award is the DOTT's highest civilian honor. It is named after A.A. Albert Gallatin (1761-1849), the fourth (and longest-serving) U.S. Secretary of the Treasury. See further NICHOLAS DUNGAN, GALLATIN: AMERICA'S SWISS FOUNDING FATHER (2010). See also David Kurtz, *Appreciating Albert's Award*, July 13, 2013, at <http://inquisineer.blogspot.com/2013/07/appreciating-alberts-award.html>.

⁸⁴ See, e.g., *Utahn Attains Control of Murray Bank*, SALT LAKE TRIB., Mar. 11, 1959, at 24 (Price elected vice president of the Murray State Bank); *S.L. Group Bids for Control of St. George Bank*, SALT LAKE TRIB., June 10, 1965, at 10B (Price part of a syndicate seeking to buy the Bank of St. George); *United Bank Opens in Rites Today*, SALT LAKE TRIB., Aug. 24, 1973, at 8B (Price named senior vice president of United Bank).

⁸⁵ Price Obituary, *supra* note 10.

⁸⁶ *Id.*