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MEMORANDUM FOR MARIANAS POLITICAL STATUS COMMISSION FILE

SUBJECT: Applicability of U.S. Constitution--5th, 6th  
and 7th Amendments.

The United States representatives on the Joint Drafting Committee have raised the question how the grand jury provisions of the 5th Amendment, the criminal jury trial provisions of the 6th Amendment and the civil jury trial provisions of the 7th Amendment should apply in the Marianas under the new status agreement.

Grand Jury

A. States. The grand jury requirement of the 5th Amendment applies only to the federal government and does not apply to the States through the 14th Amendment, Hurtado v. California, 110 U.S. 516 (1884).

B. Guam. By an amendment to the Guam Organic Act in 1954, Congress provided that

"no provisions of [the Federal Criminal and Civil Rules of Procedure] which authorize or require trial by jury or the prosecution of offenses by indictment by a grand jury instead of by information shall be applicable to the District Court of Guam unless and until made so applicable by laws enacted by the legislature of Guam," 48 U.S.C.A. § 1424(b) (Supp. 1973). See also F.R. Crim P. 54(a) ("all offenses shall continue to be prosecuted in the District Court of Guam . . . by information as heretofore except such as may be required by local law to be prosecuted by indictment by grand jury.")

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Under this provision a grand jury indictment was not required either for federal crimes or local crimes. In 1968 Congress passed the Mink Amendment extending the 5th Amendment to Guam with "the same force and effect there as in the United States or in any State of the United States", 48 U.S.C.A. § 14210(u) (Supp. 1973). The potential conflict between these two provisions was resolved in Guam v. Inglett, 417 F.2d 123 (9th Cir. 1969), where the court held that the 5th Amendment would apply in Guam as it does in a State, so that a grand jury indictment was not required where a local crime was being prosecuted in the District Court of Guam. By implication, a grand jury indictment was not required where a local crime was being prosecuted in the District Court of Guam. By implication, a grand jury indictment was not required where a local crime was being prosecuted in the District Court of Guam. By implication, a grand jury indictment would be required if a federal crime were being prosecuted, although a local crime was the only one involved in Inglett.

C. Virgin Islands. The Mink Amendment also extended the 5th Amendment to the Virgin Islands, 48 U.S.C.A. § 1561 (Supp. 1973). The the Mink Amendment specifically provides "that all offenses shall continue to be prosecuted in the District Court [of the Virgin Islands] by information as heretofore, except such as may be required by local law

to be prosecuted by indictment by grand jury." See also F.R. Crim. P. 54(a). Thus in the Virgin Islands neither local crimes or federal crimes need be prosecuted by indictment.

#### Trials in Criminal Cases

A. States. The Constitution requires that a State provide a criminal defendant with a trial by jury, although the jury need not consist of twelve persons and, at least in non-capital cases, may return a guilty verdict with less than a unanimous vote. Williams v. Florida, 399 U.S. 78 (1970); Apodaco v. Oregon, 406 U.S. 404 (1972).

B. Guam. Prior to the Mink Amendment, there was no right to a jury trial in a criminal case--local or federal--in the District Court of Guam. E.g., Hackett v. Guam, 212 F.2d 767 (9th Cir.) cert. dismissed, 348 U.S. 801 (1954); See 48 U.S.C.A. § 1424(b) (Supp. 1973). But that Amendment extended to Guam both the 6th Amendment and the 2nd sentence of Section 1 of the 14th Amendment. Thus a jury trial is now certainly required when federal crimes are being prosecuted, although by analogy to Inglett there may be more flexibility in the kind of jury trial which must be provided when local crimes are involved.

C. Virgin Islands. As in other unincorporated territories, the 6th Amendment does not apply to the Virgin Islands unless specifically extended, Virgin Islands v. Bodle,

427 F.2d 532 (1970). But since the 1954 Virgin Islands Organic Act has specifically provided for jury trials in criminal cases, 48 U.S.C.A. § 1616 (Supp. 1973), ("all criminal cases originating in the District Court shall be tried by jury on demand by the defendant or by the government"; the local legislature may provide a jury of six persons in misdemeanor cases). And the Mink Amendment extended the 6th and relevant portions of the 14th Amendments to the Virgin Islands. Thus, since the District Court of the Virgin Islands has jurisdiction over all serious crimes, whether local or federal, a jury trial is available on demand for important crimes in the Virgin Islands.

#### Jury Trials in Civil Cases

A. States. The requirement of a jury trial in civil actions where the value in controversy exceeds twenty dollars contained in the 7th Amendment is not applicable to the States through the 14th Amendment, Minneapolis and St. Louis Railroad Company v. Bombolis, 241 U.S. 211 (1916).

B. Guam. Prior to the Mink Amendment, there was no right to a jury trial in civil cases in Guam, Eig, American Pac. Dairy Prod. v. Siciliano, 235 F.2d 74 (9th Cir. 1956); see 48 U.S.C.A. § 1424(b) (Supp. 1973). But that Amendment extended the 7th and relevant portions of the 14th Amendments to Guam. A jury trial in a civil case is therefore required at least where there is a federal jurisdiction

(either diversity or federal question), as opposed to local jurisdiction. By analogy to Inglett, the 7th Amendment requirement should not apply where there is solely local jurisdiction, though no case on this point has been found.

C. Virgin Islands. The Mink Amendment also extends the 7th and relevant portions of the 14th Amendments to the Virgin Islands. The treatment of the Virgin Islands should be the same as the treatment of Guam.

Alternative Positions

Treatment as a State. One alternative--indeed, the position we have up to now taken in the Joint Drafting Committee--would be to have the Marianas treated as a State is treated for purposes of the 5th, 6th and 7th Amendments. As can be seen, this would mean that federal crimes of sufficient severity would have to be prosecuted by indictment in the District Court for the Marianas Islands, that a jury requirement of the unanimous verdict of twelve persons would be required in federal criminal cases, and that civil juries would be provided in appropriate federal causes of action. On the other hand, local crimes of whatever severity could be prosecuted with or without indictment depending on local law, local crimes could be tried to juries of less than twelve or with less than a unanimous verdict, and there would be no requirement of juries in civil cases arising under local laws and outside federal jurisdiction. Provision could be made

to assure that the District Court of the Marianas would be considered a local court for these purposes when it sat with solely local jurisdiction. This approach has the advantage of being well known in our federal system and of providing the Marianas with the same kinds of protection for local preferences as is provided to the States.

Jim White, however, thinks that it would be undesirable to require grand jury indictments and trials by juries in view of the small number of people in the Marianas and the possibility that the interrelationships of the population would make it too difficult to secure convictions. The United States, however, has not raised this objection.

Flexible Treatment. An alternative would be to permit the local legislature to determine the extent to which indictment would be required or juries in criminal and civil cases provided--in both local and federal causes of action. This would give the Marianas a degree of control over the prosecution of federal causes of action which the states do not have, but which the Virgin Islands (at least with respect to indictments) has, and which Guam (apparently with respect to indictment and civil and criminal juries) had. I am very concerned, however, about not requiring jury trial in criminal cases. Jury trials in federal and local criminal cases are now required in the States and in the Virgin Islands and in Guam, and seem to me quite fundamental. In addition,

the Covenant proposed by the United States provided an exception for the Marianas for the indictment requirement and for the civil jury trial requirement, but not for the jury trial in criminal cases requirement. Accordingly, if we are to provide flexibility, I think it should extend only to the 5th and 7th Amendments, and not to the 6th.

One method of providing the appropriate flexibility would be to insert a provision into the status agreement (probably Title V) like the following:

"Nothing in this Agreement or in the provisions of the United States Constitution or federal laws applicable within or with respect to the Northern Marianas Islands shall provide a right to an indictment by grand jury or a right to trial by jury in non-criminal cases unless and until provided for by laws enacted by the legislature of the Northern Marianas Islands."