BRIEFING PAPER NO. 4

JUDICIAL BRANCH

TABLE OF CONTENTS

Introduction 1

I. BACKGROUND AND GENERAL CONSIDERATIONS..... 2

A. Applicable Provisions of the Covenant..... 2

B. Structure, Jurisdiction and Operations of the Court System Currently Serving the Northern Marianas..... 5

C. Objectives of Constitutional Provisions on the Judicial Branch..... 7

D. Principal Issues Facing the Constitutional Convention..... 9

1. Structure and jurisdiction of the judiciary in the Northern Marianas..... 9

2. Qualifications, selection, tenure, and removal of judges..... 12

II. SPECIFIC ISSUES FOR DECISION..... 15

A. Structure and Jurisdiction of the Judicial Branch..... 15

1. No local courts..... 15

2. Limited trial and appellate jurisdiction..... 18

3. General jurisdiction..... 19

4. Other structural alternatives..... 21

5. "Phase-in" period..... 24

B. Qualifications of Judges..... 27

1. Legal experience..... 27

2. Citizenship and residency..... 29

3. Activities prohibited to judges..... 31

4. Alternative approaches to judicial qualifications..... 33

C. Selection, Tenure, and Compensation of Judges..... 33

1. Selection..... 35

a) Popular election..... 36

b) Appointment..... 38

c) Hybrid..... 43

d) "Merit" plans..... 44

2. Terms of office..... 45

a) Tenure for life..... 45

b) Tenure for a fixed term of years..... 49

c) Hybrid tenure..... 49

3. Compensation..... 50

D. Removal and Other Protection..... 51

1. Impeachment and "address"..... 53

2. Recall..... 54

3. Other means of removal..... 55

4. Other types of sanctions against the judiciary..... 56

E. Other Constitutional Provisions Affecting the Judicial Branch..... 57

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

explores the specific issues that must be addressed and the principal alternatives for resolving each issue.[1/]

I. BACKGROUND AND GENERAL CONSIDERATIONS

A. Applicable Provisions of the Covenant

Section 203(a) of the Covenant requires that the judicial branch be "separate" from the executive and legislative branches. Section 203(d) of the Covenant provides that

> [t]he Constitution or laws of the Northern Mariana Islands may vest in [Commonwealth] courts jurisdiction[2/] over all causes in the Northern Mariana Islands over which any court established by the Constitution or laws of the United States does not have exclusive jurisdiction.[3/]

The provision is not mandatory: the delegates "may," not "must," create local courts.

1/ When appropriate, the approaches of constitutions of states of the United States will be indicated and the texts of typical constitutional provisions set out. Detailed information as to alternatives most commonly used by the states is included in Appendices A through D that are found at the end of this paper. Also, as general background, Appendix E contains a more detailed description of the current structure of the judicial system for the Northern Marianas.

2/ "Jurisdiction" is the power of a court to decide a case before it. Further discussion appears at pp. 10-13 below.

3/ Federal courts have exclusive jurisdiction over cases involving: violations of federal criminal statutes (18 U.S.C. § 3232 (1970)); admiralty (28 U.S.C. § 1333 (1970)); bankruptcy (28 U.S.C. § 1334 (1970)); actions and proceedings against consuls or vice consuls of foreign states (28 U.S.C. § 1351 (1970)); recoveries of fines, penalties or forfeitures, monetary or otherwise, incurred under any act of Congress (28 U.S.C. § 1355 (1970)); seizures under any federal law on land or upon waters not within the federal government's admiralty and maritime jurisdiction (28 U.S.C. § 1356 (1970)).

JUDICIAL BRANCH

The judicial branch to be established for the Commonwealth by the Constitution of the Northern Mariana Islands will be a separate and vital instrument of self-government under law. The Commonwealth courts will exercise multiple important responsibilities: resolution of disputes between private parties or between a private party and the goverment; adjudication of the validity of laws passed by the Northern Marianas legislature; and interpretation and application of the fundamental documents defining the authority of the Commonwealth -- the Covenant, the Constitution of the United States and the Constitution of the Northern Mariana Islands. This briefing paper discusses the issues to be considered by the Convention in framing an appropriate Constitutional provision creating the judicial branch of the Commonwealth government. The first section of the paper reviews the relevant provisions of the Covenant, the current judicial system in the Northern Mariana Islands and the major issues concerning the judiciary that are before the Convention. The second part of the paper

explores the specific issues that must be addressed and the principal alternatives for resolving each issue.[1/]

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If the Convention decides to create local courts, section 204 of the Covenant requires all local judges to take the oath or affirmation required of all officers and employees of the Commonwealth government. This requirement would be satisfied by the judge's swearing or affirming to support the Covenant, the portions of the Constitution, treaties and laws of the United States that are applicable in the Northern Mariana Islands, and the Constitution and laws of the Commonwealth government.

Article IV of the Covenant outlines the structure of the court system that will serve the Northern Marianas and sets forth the basic alternatives available to the Convention.

Section 401 provides that the United States will create a "District Court for the Northern Mariana Islands." The Commonwealth will be assigned to the ninth federal judicial circuit that now serves Guam, Hawaii, Alaska, California, Oregon, Washington, Arizona, Nevada, Idaho and Montana.

The federal district court will have the types of jurisdiction set out in section 402. First, the court will have the same authority to decide cases as that of any federal district court, except that this federal court will have jurisdiction over all cases involving a "federal question" -- i.e., matters arising under the Constitution, treaties or

laws of the United States -- regardless of the amount in controversy.[4/] Second, the federal court will possess the authority to hear local cases over which the Constitution or laws of the Marianas have not granted jurisdiction to local courts. Third, the Convention or the legislature may confer appellate jurisdiction over local cases on the federal district court. This jurisdiction may extend to appeals from local court judgments in all local cases or just in those cases specified by the Constitution. If the federal court is assigned appellate powers, it must consist of three judges when exercising its appellate functions. At least one of the judges must be a judge of a local Northern Marianas court of record.

Section 403 describes the relationship between the federal court system and the local Commonwealth courts, if such local courts are created. This section provides that appeals and removals of cases from local courts to the federal court, certiorari, federal habeas corpus proceedings concerning local prisoners and other matters involving the interplay between local and federal courts will, in general, be governed by federal laws and will be treated as if they arose in the courts of a state, except as otherwise specified

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4/ Other federal district courts have jurisdiction over cases involving federal questions only where the matter in controversy exceeds $10,000. 28 U.S.C.A. § 1331(a) (1970). Cases falling below that amount are within the jurisdiction of the state courts.

by article IV of the Covenant. For the fifteen-year period following creation of a local appellate court, however, the United States Court of Appeals for the Ninth Circuit will exercise jurisdiction in appeals of cases presenting federal questions decided by the highest local court where a decision could be obtained,[5/] unless the federal district court is granted appellate jurisdiction over those cases.

Section 403 also makes applicable to the Northern Marianas and its federal district court the provisions of Title 28 of the United States Code, which bind Guam and its federal court, to the extent those provisions are not inconsistent with article IV of the Covenant. These provisions, for the most part, are concerned with the administration of the federal district court and do not directly impinge on the work of the Convention.

Finally, the Covenant specifically provides in section 903 that cases or controversies arising under the Covenant may be tried by the federal courts (including the one in the Northern Marianas), regardless of the amount in controversy.

5/ In the states (and in the Northern Marianas after the 15-year period), such appeals would go directly to the U.S. Supreme Court.

Decisions of the federal district court in federal question and diversity cases will be appealable to the Ninth Circuit in any event. If the federal district court is designated the appellate tribunal for strictly local matters, its decisions will be final. "Federal question" cases and "diversity" cases are discussed further at § I(D)(1) below.

B. Structure, Jurisdiction and Operations of the Court System Currently Serving the Northern Marianas 6/

Despite the creation of a separate governmental administration for the Northern Mariana Islands, the courts of the Trust Territory have continued to function in the Islands. These courts have two principal levels. 7/ At the lower tier is the district court, which is composed of two full-time and two part-time judges. It may decide most civil cases involving less than $1000, family law matters and criminal cases in which the defendant's potential liability is limited to no more than a $2000 fine or a five-year prison term or both.

The second level is the Trust Territory High Court which is staffed by three full-time justices and three temporary judges from Guam. The High Court is organized into trial and appellate divisions. The Trial Division has original or trial jurisdiction over all local cases. In addition, it may review the record of any case decided by the district court and must review the records of cases involving annulment, divorce or adoption. The Appellate Division's jurisdiction also includes the power to review appellate decisions of the Trial Court in certain types of cases.

6/ Appendix E contains a more detailed discussion of the structure, jurisdiction and operations of the current judicial system.

7/ A third level, called community courts, is inactive and hears no cases. See Appendix E.

During the fiscal year running from July 1, 1975, through June 30, 1976, the district court disposed of a total of 1095 criminal, 257 civil and 76 juvenile cases; during that period, 1032 criminal, 327 civil and 34 juvenile cases were filed. The Trial Division of the High Court disposed of 118 criminal and 268 civil cases, with 80 criminal and 281 civil cases filed. The Appellate Division decided 15 cases arising in the Northern Marianas; five civil matters arising in the same area were filed.[8/]

C. Objectives of Constitutional Provisions on the Judicial Branch

The Convention should consider serving four major purposes in formulating constitutional provisions on the judiciary. These objectives will be somewhat conflicting, and it will be up to the delegates to weigh the importance of each and determine how best to strike a balance.

First, the Covenant requires that the judiciary in the Northern Marianas be independent of the executive and legislative branches of government. Independence is also an objective to be sought for its own sake. Only an independent judiciary can protect the people against abuse of governmental

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8/ Letter from Pedro M. Atalig, Assistant Director, Office of Transition Studies and Planning, Sept. 15, 1976. The chart on page E-16 of Appendix E contains a detailed breakdown of the case loads of the district courts and High Court.

power.[9/] The delegates must balance this goal of judicial independence with the need for judicial accountability.

Second, any judicial system in the Northern Mariana Islands must function efficiently. At this critical stage in its history, the Commonwealth has a unique opportunity to avoid being saddled with under-worked or incompetent courts. The judicial branch must be tailored to meet its workload in order to serve the people effectively. In short, the court system should be staffed by an adequate but not excessive number of able judges.

Third, the judiciary of the Northern Marianas must have the confidence of the people. Courts cannot function effectively if their decisions are not respected as the law of the land. Respect for the judiciary requires judicial independence and efficiency. Popular confidence in the courts

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9/ Almost two hundred years ago, Alexander Hamilton observed that the courts are a necessary bulwark against the invasion by the government of the rights of its citizens.

> This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes dissominate among the people themselves and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor part in the community.

THE FEDERALIST No. 78 (A. Hamilton).

also depends upon their objectivity in deciding cases and their sensitivity to local traditions.

Finally, as with almost every subject being considered for constitutional treatment at this Convention, the delegates should weigh the need for flexibility. The legislature will need latitude to adapt the Commonwealth's judicial system to future conditions without the need for constitutional amendment. Constitutional provisions should preserve flexibility while firmly ensuring the independence and efficiency of, and popular confidence in, the judiciary.

D. Principal Issues Facing the Constitutional Convention

1. Structure and jurisdiction of the judiciary in the Northern Marianas

The Convention will face two threshold issues in its deliberations concerning the judiciary of the Northern Mariana Islands. First, the delegates must decide whether to establish a local judicial system. Second, if the delegates elect to create a local judicial system, they must design its structure and jurisdiction. "Structure" is the organization of the court system. Organizational matters include the levels -- such as trial and appellate -- of the judicial branch, the title of each level and the administrative mechanisms for the court system. "Jurisdiction" is the power of a court to decide a case before it.

An important question concerning structure and jurisdiction is the relationship of the federal district court for the Northern Mariana Islands to the local courts. In the states the role of the federal courts is largely limited to deciding two general types of cases: "federal question" cases -- those "aris[ing] under the Constitution, laws or treaties of the United States";[10/] and "diversity" cases[11/] -- those between citizens of different states, a state and one of its citizens, or between citizens of a state and citizens of a foreign country. The amount in controversy in either a federal question or a diversity case must be more than $10,000.

The federal district court for the Northern Mariana Islands will have broader jurisdiction than federal courts sitting in the states. Under the Covenant, the federal court's jurisdiction includes all "federal question" cases regardless of the amount in controversy.[12/] In addition, the delegates have the option to confer an even broader jurisdiction on the federal district court because the Covenant provides that the federal court will have the power to decide local cases over

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10/ 28 U.S.C. § 1331(a) (1970). Most federal question cases may be heard by state as well as federal courts. Some federal question cases may be heard only by federal courts. See § I(A) n.3, above for a list of those types of cases.

11/ 28 U.S.C. § 1332(a) (1970).

12/ COVENANT art. IV, § 402(a).

which no local court has been granted jurisdiction.[13]

Several basic approaches are available to the Convention. The delegates may decide to create a local court system with jurisdiction over all local cases.[14] At the other end of the spectrum they may elect not to create any local courts, with the result that the federal district court will hear all local cases.[15]

Other alternatives fall between these two extremes. The Constitution may establish local trial and appellate courts but grant them jurisdiction to decide only certain types of local matters. Alternately, the Constitution may create only local trial courts and provide that appeals from the judgments of these trial courts be heard by the federal district court.[16]

13/ COVENANT art. IV, § 402(b).

14/ The case load statistics for the Trust Territory courts currently serving the Northern Marianas indicate that a complete system of local courts would require an appellate court, consisting of a chief justice and at least two associate justices, and a trial court of general jurisdiction, composed of a minimum of three judges. Inferior courts of special jurisdiction or special divisions of the trial court may also prove necessary. For a further discussion, see Appendix E.

15/ The federal district court for the Northern Marianas is authorized by the Covenant. COVENANT art. IV, § 401. The Congress, however, has not yet appropriated funds for the operation of that court.

16/ See COVENANT art. IV, § 402(c).

The Convention also has the opportunity to "phase-in" the jurisdiction of local courts. The flexibility of this approach offers a broad range of alternatives. The Constitution may fix a minimum "phase-in" period during which local courts will gradually assume jurisdiction over an ever-increasing number of matters. The schedule for the transfer of jurisdiction from the federal court to the local judicial branch could either be specified in the Constitution or left for the legislature. To achieve the greatest flexibility, the delegates could authorize a "phase-in" period, but permit the legislature to decide the method and timing whereby local courts obtain jurisdiction over particular matters.

2. Qualifications, selection, tenure and removal of judges

If the Convention decides to create local courts or to authorize the legislature to create them, structural details, such as the number of judges and their locations, are matters probably best left to the legislature. It is likely, however, that the Convention will wish to consider certain basic issues such as the qualifications, method of selection, tenure (term of office) and method of removal of local judges. These issues, which have been addressed frequently in other constitutions, are related directly to the objectives of judicial independence, efficiency and popular confidence and are worthy of constitutional treatment.

At the same time, the Convention should be wary of addressing these issues in too much detail lest that detail impair the legislature's flexibility in implementing a workable judicial system for the Commonwealth.

Because of the relatively small number of lawyers in the Northern Marianas, the Convention should consider whether to require that judges of all or some local courts have legal training. Similarly, the Convention should consider whether a residency requirement that prevents the use of experienced judges from the United States would serve the best interests of the Northern Marianas, particularly in the early years of the Commonwealth government.

The delegates should probably specify the method of selection of judges -- whether they are to be popularly elected, appointed by the governor (with or without legislative approval) or chosen under a "hybrid" system that combines the two methods. Under a typical "hybrid" system, the governor would appoint a judge with the approval of the legislature; thereafter the judge would serve a fixed term of years and then stand for popular election on the basis of his record in office.

The length of the term of office to be served by judges is another issue the Convention might address. It is closely linked to the issues of judicial qualifications and method of selection. For example, the Convention may

wish to permit experienced lawyers from the United States to serve on certain courts in the Northern Mariana Islands, particularly in the initial years of the new government. However, reservations as to the sensitivity of such judges to local customs and traditions and their accountability to the people of the Northern Marianas may warrant limiting judicial terms to a fixed number of years with an opportunity for reelection or reappointment.

Similarly, the Convention may wish to address the issue of removal of judges for misconduct, incompetence or other grounds. The ability to remove an unfit judge before the expiration of his term of office serves as an important check on abuses by the judicial branch. The Convention must take care, however, to avoid making removal of judges too easy. Otherwise, judges might be removed for strictly partisan reasons, thereby severely undercutting the independence of the judiciary.[17/]

17/ The discussion throughout this briefing paper assumes that the Convention will choose a "unified" judicial system. In such a system, the chief judge of the appellate court would serve as the administrative head of the judicial branch, overseeing the supporting staff of the courts and insuring that work is evenly divided among the judges.

Without such a unified system, judges might be selected in a variety of ways, some by municipalities and others at the Commonwealth level. The chief judge would not have the power to facilitate the flow of judicial work. Nor would the system have the services of an administrative office designed to assist all of the judges and courts in the system.

The Convention may either provide for a unified system or opt not to do so.

II. SPECIFIC ISSUES FOR DECISION

This section deals first with the alternatives with respect to the structure and jurisdiction of the court system, including, at the outset, the alternative of establishing no local courts. A discussion of the alternatives with respect to the qualifications, method of selection, tenure and removal of judges follows. These alternatives need to be considered only if the Convention decides to establish a system of Commonwealth courts.

A. Structure and Jurisdiction of the Judicial Branch

There are five principal alternatives with respect to the structure and jurisdiction of the judicial branch: (1) no local courts; (2) local courts with limited trial and appellate jurisdiction; (3) local courts with general jurisdiction; (4) a mixed system of limited and general jurisdiction; and (5) a "phase-in" system under which jurisdiction is gradually transferred from the federal to the local courts over a period of time. Each of these alternatives is discussed below.

1. No local courts

Under the Covenant, if the Convention does not provide for a local court system, the new federal district court for the Northern Marianas will have original jurisdiction to hear all local as well as federal cases arising in the Marianas.

Because of the costs involved, some delegates may favor taking advantage of this provision in the Convenant.

Since the federal government will fund such a federal court, substantial savings to the Commonwealth government would result from such a choice. The generally favorable reputation of federal district courts also might be advanced as a reason to pursue this alternative, at least in the Commonwealth's early years.

However, a great number of local matters currently heard in the Marianas district court each year involve traffic offenses, domestic relations matters, small claims, and juvenile offenses.[18/] These matters are rarely, if ever, decided by federal courts in any state or territory. Aside from how Congress would react to the vesting of such jursidiction in a federal court,[19/] the delegates should consider whether such minor matters might be better handled by local courts staffed by local judges -- even if these judges are not lawyers. The disposition of juvenile and minor criminal cases -- and of most traffic cases -- requires a sensitivity to the local community that perhaps only a local judge, sitting on a local court, can supply.

18/ The Trust Territory district court for the Northern Marianas disposed of a total of 1428 cases during fiscal year 1976. Of these, 1096 (over 75%) involved traffic, small claims or juvenile matters. By way of comparison, the federal district court for Guam disposed of 185 civil cases and 69 criminal cases during fiscal year 1975. Administrative Office of U.S. Courts, ANNUAL REPORT pp. 345, 409 (1975).

19/ Congress has not yet funded the new federal district court for the Northern Marianas. The delegates should recognize that (footnote continued on next page)

Alternatively, such matters could be heard by a panel consisting of an attorney (who need not be a Northern Marianas resident) and a respected local resident (who need not be an attorney). A panel of this composition would offer not only legal expertise but also sensitivity to the culture and concerns of the Northern Marianas people.

If the Convention decides not to create local courts, it should specifically prohibit the legislature from creating them. Otherwise, the legislature may claim that it derives authority directly from the Covenant to establish a local court system. If the Convention wishes to leave the decision whether to create local courts for the legislature, it should expressly grant such authority to the legislature, notwithstanding the fact that the Covenant's section 203(d) provides that local courts "may" be established by act of the legislature. In general, it is advisable to resolve all questions of the authority of the Northern Marianas government in the Constitution -- even when the Covenant might arguably provide an independent basis for action by the government. This approach will avoid needless ambiguity and will adhere to the

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(footnote continued from previous page)

the Congress may be reluctant to appropriate the relatively large amounts of money required for a federal district court that has jurisdiction over purely local matters such as small claims and traffic offenses. By setting a low level of funding, Congress could discourage vesting what it considers to be "excessive" local jurisdiction in the federal court.

concept that all powers flow from, and are limited by, a constitution approved by the people.

2. Limited trial and appellate jurisdiction

The Convention should consider whether to vest limited trial and appellate jurisdiction in a local court system, leaving trials and appeals in more important or legally complex local matters for the federal court. Such an option would limit the types of local cases heard by the federal court to those requiring trained lawyers as decision-makers. These types might include, at the trial level, felony criminal cases and civil litigation involving large sums of money. At the appellate level, the federal court could be designated to hear certain cases from the local trial court that were not appealable to the local appellate court; in addition the federal court might hear appeals from certain cases decided by the local appellate court.

The limited jurisdiction option would permit the local court system to develop experience and expertise before it receives general jurisdiction over all local matters. It would reduce the financial burden on the new Commonwealth government and accommodate the fact that relatively few trained lawyers reside in the Northern Marianas at the present time. At the same time, the existence of a local judiciary would lend substance to the concept of full self-government under the Covenant and would provide a focus for a sense of confidence by the people in their judicial system.

Implementation of this alternative will require a number of specific decisions. Maximum flexibility can be obtained by permitting the legislature to decide upon the precise guidelines for dividing jurisdiction between the federal and local courts. On the other hand, the Convention may wish to assure that the concept of limited jurisdiction is realized by specifying that (either indefinitely or for a period of years) certain types of cases must go to the federal court, that other types of cases must go to the local courts, and that the legislature may decide whether the types of cases not specified will go to the federal or to the local courts.[20/]

3. General jurisdiction

There is no inherent reason why the Northern Marianas should not ultimately utilize a local judicial system that decides all non-federal cases.[21/] Even if the number of local lawyers remains limited, judges could be recruited from outside the Marianas, provided the concerns discussed above are satisfactorily resolved.

20/ This discussion does not assume that minor offenses should be treated as criminal actions. That decision will be for the legislature as it drafts a criminal code for the Commonwealth.

21/ The caseload of local matters arising in the Northern Marianas would support a fully developed, if somewhat small, local court system. See Appendix E for a statistical summary of the current workload.

Intangible concerns may support the creation of (or transition towards) a fully developed local judiciary for the Northern Marianas. Such a system is most consistent with full self-government. The people may be reluctant to refer important public issues, such as questions of interpretation of controversial Commonwealth legislation, to a federal court whose judges are appointed by the President of the United States.

One disadvantage of a fully developed local judiciary is its cost. A portion of the cost of an elaborate judicial branch would be hidden: the court system might attract some of the most talented residents of the Northern Marianas away from public service in the executive or legislative branches.

Another disadvantage is the lack of trained personnel to serve as judges and lawyers. The absence of such personnel is a particularly strong argument against beginning the new Commonwealth government with a fullblown judicial system. As the number of individuals qualified to operate a court system increases, the force of this argument will diminish.

If the Convention decides to create a fully developed judicial branch, it need only specify that the legislature shall establish local courts having general trial and appellate jurisdiction over all matters arising under Commonwealth law.[22/] The legislature could then decide how many courts to establish and what jurisdiction each would have. Alternatively, the Constitution could establish one or more types of trial courts and an appellate court for the Commonwealth, leaving such details as the number of judges and the location of the courts for the legislature. Most modern state constitutions permit the legislature to determine the location of courts and the number of lower court judges.[23/]

4. Other structural alternatives

If a fully developed local judiciary (including a local appellate court) is created, appeals of cases decided by the highest local appellate court and involving federal questions will be heard by the United States Court of Appeals for the Ninth Circuit for fifteen years after the creation

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22/ All local courts of general jurisdiction would also be obliged to decide any federal question cases presented to them -- so long as exclusive jurisdiction were not vested in a federal court. Testa v. Katt, 330 U.S. 386 (1947).

23/ E.g., HAWAII CONST. art. V, § 1; MICH. CONST. art. VI, § 11; MONT. CONST. art. VII, § 6; VA. CONST. art. VI, § 1.

of such a local appellate court. After the expiration of this fifteen-year period, such appeals will go directly to the Supreme Court of the United States as they do in cases decided by the highest court in a state.[24/]

However, pursuant to section 402(c) of the Covenant, the Convention (or, if authorized by the Commonwealth Constitution, the legislature) may provide that the federal district court for the Northern Mariana Islands will hear such appeals in the first instance -- subject ultimately to review by the Ninth Circuit and the U.S. Supreme Court. When sitting as an appellate court, the federal district court must consist of three judges, at least one of whom is a judge of a court of record of the Northern Mariana Islands. The Convention may wish to consider whether the convenience of local litigants would be served by such an appellate tribunal. Northern Marianas residents probably would find it easier to bring appeals if the appellate court is located within the Commonwealth than if they must travel to California to take an appeal to the Ninth Circuit.[25/]

24/ COVENANT art. IV, § 403(a).

25/ Although the Ninth Circuit usually sits in California, it must also meet in Portland, Oregon and Seattle, Washington, unless the Judicial Conference of the United States otherwise permits. The court may hold a special term at any location within the Ninth Circuit. 28 U.S.C. § 48 (1970).

The Convention also might weigh the likelihood that a federal district court with an appellate role would be more sensitive to the traditions and interests of the Northern Marianas people than would the U.S. Court of Appeals sitting in California.

As noted previously, section 402(c) also permits the Convention (or, if authorized, the legislature) to place appellate jurisdiction over local matters not involving federal questions in the federal district court. If the Convention opts for limited local court jurisdiction, it may be appropriate to provide that the federal district court will hear appeals in certain types of local cases.

The Convention may also wish to decide whether the federal court or the local appellate court should exercise de novo review of certain types of cases. De novo review is the retrial of a case already decided by a lower court. The reviewing court in effect functions as another trial court: it reviews evidence and makes findings of fact without being bound by the rulings of the court below.[26/] De novo review is somewhat inefficient, but it may be desirable in certain types of cases, particularly those that are decided

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26/ While a court hearing an appeal may overturn the trial court's findings of fact only if they are "clearly erroneous," a court conducting a trial de novo is not bound by the prior trial court's factual determinations. Thus, the de novo court might reach a conclusion different from that of the first trial court even though the initial set of findings are not "clearly erroneous."

first by judges without formal legal training. To afford maximum flexibility in such matters, the Convention should consider authorizing the legislature to provide for de novo review, as it sees fit, in allocating the jurisdiction of the local court system among various trial courts or between trial and appellate courts.[27/]

5. "Phase-in" period

Whatever local court system the delegates choose to establish or authorize, they should consider the advantages of a period of transition during which local courts would gradually acquire whatever jurisdiction is ultimately envisioned by the Constitution. The Constitution itself could specify some or all of the details concerning this phase-in period, or the legislature could be authorized to transfer additional jurisdiction from the federal district court to the local court gradually. Under this approach, the speed of the transfer would depend on the judgment of the legislators as to the readiness of the local courts to assume additional responsibilities.

A phase-in period offers a very practical advantage. Because of the possibility of disputes arising

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27/ Another possibility is to provide for complete rehearings (trial de novo) of certain local trial court cases in the local appellate court and then to allow normal appeals (limited to issues of law) to be taken to the federal court.

concerning the implementation of the new Constitution (including matters affecting the local court system), it will be important to have a court in existence that is authorized to decide such controversies. The federal court would lack jurisdiction to decide disputes concerning implementation of the Northern Marianas Constitution (other than those involving the Covenant or federal law) unless such jurisdiction is provided in the Constitution.[28/] Accordingly, the delegates should consider providing for federal court jurisdiction over matters involving the Commonwealth Constitution, at least until the local courts are properly established.

The delegates may wish to go further, however, and provide for a more gradual transition of jurisdiction over certain types of local litigation from the federal court to the local courts. A phase-in period affords a means of compromising the choice between general and limited jurisdiction for the local courts of the Northern Mariana Islands. Even if limited local jurisdiction is considered desirable, a phase-in period adds flexibility to this approach, permitting a transition to whatever ultimate level of local court authority the delegates believe is optimum for the foreseeable future.

28/ If the Constitution provides for local courts with general jurisdiction, the grant of jurisdiction to the federal court must be express. If the local courts have limited jurisdiction, the remaining jurisdiction over local matters will automatically be vested in the federal court.

If a phase-in is selected, the delegates should probably establish, for the reasons discussed above, a local court of limited jurisdiction at the outset. A reasonable approach would be to establish local trial courts to decide minor criminal and civil cases (traffic cases, juvenile and petty criminal offenses, and small claim civil matters, e.g., less than $1000). Jurisdiction to hear appeals from such cases and original jurisdiction to decide all other types of cases, including all questions arising under the Commonwealth Constitution, would be vested in the federal court. Over time, a local appellate court, at first with limited jurisdiction, could be established. Also over time, as the local trial courts gather expertise or as trained lawyers become available to decide more complex cases, trial court jurisdiction over local matters could be shifted from the federal court to the local courts and the jurisdiction of the local appellate court could be expanded accordingly.

Such a period of transition could be open-ended and its implementation left to the legislature. Alternatively, the Constitution could provide a deadline by which time the transition must be completed. The Constitution could also specify the initial breakdown of federal court and local court jurisdiction and a precise timetable for the transfer of certain types of cases from the federal court to the local court. However, it may be preferable to minimize specificity in the Constitution so as to provide the legislature with flexibility to tailor the transition period to actual experience.

B. Qualifications of Judges

It is difficult to specify in a constitution -- or elsewhere -- those characteristics that will yield a good judge. This perhaps accounts for the lack of uniformity in state constitutional provisions detailing judicial qualifications. Indeed, three states -- Connecticut, Massachusetts, and New Hampshire -- do not include any such provisions in their constitutions.[29/] Nor does the U.S. Constitution prescribe qualifications of federal judges. The provisions in the remaining states fall into three broad areas: experience, citizenship and residency, and age. In addition to these kinds of provisions, the Convention may also wish to take account of the particular needs of the Northern Marianas people by imposing special requirements for judges who do not have legal training.

1. Legal experience

The Constitution may provide that only lawyers are eligible to be judges. Such a provision could be phrased in terms of membership in the bar of the Northern Mariana Islands or of the bar of a state or commonwealth of the United States.[30/]

29/ The New Hampshire Constitution requires that state judges leave office at 70 years of age. N.H. CONST. pt. II, art. 78. Connecticut's constitution contains a provision to the same effect, but permits retired judges to act in limited judicial capacities. CONN. CONST. art. V, § 6. See also MASS. CONST. ch. III.

30/ If membership in a bar is a prerequisite to selection as a judge, then the body charged with setting standards for admission to the bar will exercise an indirect, but significant, influence on judicial appointments.

About half of the state constitutions set forth a "legal experience" requirement.[31/] As a practical matter, virtually all judges of courts of general jurisdiction in every state of the United States are lawyers.

The principal argument favoring legal experience requirements is that legal training is essential in evaluating the strength of precedents and in acting within the restraints imposed by the common law. Opposition to legal experience requirements rests on the belief that a large part of the judicial function, especially at the appellate court level, consists of making judgments about social policies which require wisdom and foresight but not necessarily legal training.

The Constitution alternatively could provide that at one or both levels of the local court system some judges must be lawyers while others may -- or must -- be lay persons so that panels composed of judges of both categories would hear cases. This approach would provide legal scrutiny of each case while possibly permitting all judges to be Marianas residents.

31/ Some states impose ability or legal experience requirements beyond membership in the state bar for a period of time. For example, some constitutions contain provisions to the effect that a judge be "learned in law." WYO. CONST. art. 5, §§ 8 and 12. The Utah state charter demands that a judicial candidate be an "active member of the bar in good standing." UTAH CONST. art. VIII, § 2.
(Footnote continued on next page)

2. Citizenship and residency

Whether American judges from outside the Commonwealth may sit on local courts is a principal issue for the Convention. The Constitution may provide that local judges must be citizens of the Northern Mariana Islands.[32/] It may provide, in addition or instead, that occupants of specific judicial posts reside in particular areas of the Commonwealth. Finally, the Constitution could provide merely that local judges be citizens or nationals of the United States, thus permitting lawyers from the states and territories to be recruited for the Commonwealth courts.[33/]

(footnote continued from previous page)

It is questionable whether requirements such as Utah's have any real meaning. If they do, the Convention must decide if such provisions would increase the difficulty of obtaining local judges without materially adding to the quality of those judges.

Although the U.S. Supreme Court may in the future hold that due process of law requires law-trained judges, the recent case of North v. Russell, 96 S. Ct. 2709 (1976), held that a trial before a non-lawyer judge did not violate due process when de novo review before a law-trained judge was available.

32/ If local judges must be members of the Northern Marianas bar, then they will be required to meet whatever citizenship and residency standards the Commonwealth legislation or its designative agency imposes on Marianas attorneys.

33/ Since § 204 of the Covenant requires all judges to take an oath to uphold the Constitution of the United States, it may not make sense to permit foreign nationals to serve as local judges. That section will take effect on a date proclaimed by the President of the United States within 180 days of the approval of the Covenant and the Constitution of the Northern Mariana Islands.

Obviously, the fact that there are relatively few trained lawyers in the Northern Marianas is a strong argument against a sweeping legal training requirement and a local residency requirement. Several compromises are possible. For example, legal training might be required only for local trial courts of general jurisdiction (those likely to decide the most complex cases) and for the local appellate court. Non-lawyers can continue to decide minor criminal and civil matters as they now do in the Mariana Islands District Court.

Similarly, residency requirements could be formulated to permit the recruitment of attorneys from the states and other territories to serve on some or all of the local courts. As more fully discussed below, however, the use of judges from outside the community is an argument for providing for short judicial terms and, possibly, for the recall of judges by popular vote. These measures would be designed to assure the sensitivity and responsiveness of all judges to the traditions and interests of the people of the Northern Marianas; they would be especially appropriate if judges could be recruited from outside the local community.

The delegates must weigh the conflicting considerations that apply to the issue of judicial qualifications and decide how best to assure that the Commonwealth courts will

achieve the degree of independence, efficiency and responsiveness required for an effective judiciary.[34/]

3. Activities prohibited to judges

The Convention may choose to itemize conduct forbidden to judges. Such a provision is closely related to the issue of judicial qualifications, since persons unwilling or unable to abide by such prohibitions would be disqualified.

The delegates may wish to consider including a "conflict of employment" clause in the Constitution. Such a clause prohibits judges from holding another governmental office or from practicing law.[35/] A prohibition against judges holding another office in the Commonwealth government is probably necessary to comply with the "separation-of-powers" clause of the Covenant.[36/] The Covenant does not

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34/ The Convention may wish to specify a minimum age requirement for judges or to provide that persons above a certain age may not become judges. A minimum age requirement is probably desirable to assure the wisdom and experience of candidates for judgeships. Given the limited number of residents of the Northern Mariana Islands who are qualified to serve as judges, however, it may not make sense to eliminate an otherwise qualified candidate mercly on the basis of age.

35/ Illustrative of this type of clause is that found in the Virginia constitution. That section requires that Virginia judges not

> engage in the practice of law within or without the Commonwealth, or seek or accept any non-judicial office, or hold any other office of public trust, or engage in any other incompatible activity.

VA. CONST. art. VI, § 11.

36/ COVENANT art. II, § 203(a).

require a constitutional prohibition against judges practicing law part-time, but such a prohibition may be desirable. The Constitution need not preclude judges from all legal practice. Rather, it could provide that a judge who hears one type of cases, such as criminal matters, may maintain a practice in other areas of the law, such as civil trials. Under this approach, a judge would be barred from performing legal services in the area of law with which his court is concerned.

Many state constitutions forbid judicial involvement in a broad range of political activities. The Puerto Rico constitution typifies this approach, providing that

> [n]o judge shall make a direct or indirect financial contribution to any political organization or party, or hold any executive office therein, or participate in a political campaign of any kind, or be a candidate for an elective public office unless he has resigned his judicial office at least six months prior to his nomination. 37/

Constitutional provisions such as these are designed to make judges more objective in their review of political and social events that may be involved in cases that come before them. These provisions are also intended to bolster the prestige of the judiciary by isolating its members from compromising or potentially compromising positions. On the other hand, a prohibition against all partisan activity by judges on

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37/ P.R. CONST. art. V, § 12.

small claims or traffic courts may be unnecessary. Moreover, if judges are elected to office, some form of partisan activity may be requisite and appropriate.

4. Alternative approaches to judicial qualifications

The Convention may wish to consider whether certain aspects of this issue should be left to the legislature, which will be in a better position to respond to the changing circumstances that affect the judicial branch. Perhaps the questions whether legal training should be required and whether part-time law practice by judges ought to be prohibited are matters that require the flexibility of legislative action informed by actual experience. On the other hand, the Convention may feel strongly inclined against lay judges and may wish to require legal training for all judges or, at least, judges deciding certain types of cases. To preclude a contrary legislative judgment in the future, the Convention may wish to prohibit the imposition of a local residency requirement (at least for a period of years) that would prevent the recruitment of trained lawyers from outside the Northern Mariana Islands.

C. Selection, Tenure and Compensation of Judges

"The quality of our judges is the quality of our justice . . . ."[38/] The characteristics of judges, in turn,

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38/ Leflar, The Quality of Judges, 35 IND. L.J. p. 289, at 305 (1960).

are the product in no small measure of the means by which they are selected.[39/] Thus, the delegates must decide whether to specify the selection process for judges in the Constitution and, if so, what form that process should take.[40/]

39/ Jacob, The Effect of Institutional Differences in the Recruitment Process: The Case of State Judges, 13 J. PUB. L. p. 104 (1964).

40/ Judicial selection mechanisms have had a checkered history in the United States. The Declaration of Independence indicted the King of England for making "judges dependent upon his will alone for tenure of their offices and the amount and payment of their salaries." To remedy the monarch's control of the judiciary, seven of the original states conferred upon their legislatures the power to select judges. The other six placed the power of appointment in the hands of their governors, subject to confirmation by the legislature or another body. In addition, the Constitution of the United States established a judicial branch whose members were to be nominated by the President and confirmed by the Senate.

During the period preceding the Civil War, many of the original thirteen states and all of the states newly admitted to the Union provided for the selection of judges by popular election. It was widely thought during that period that popularly elected judges would be less vulnerable to political pressures and more likely to have been chosen because of their merit than would appointed judges.

The election machinery was modified in many states around 1900. Instead of running for office under a party label, judges in those states sought election on a special ballot in which their political parties were not revealed. In 1940 the state of Missouri embraced a "merit" system of choosing its judges. Under this plan, the governor appointed a judge from a list of three candidates presented to him by a judicial nominating commission. Variations of the appointive, partisan elective, non-partisan elective and merit systems of selecting judges can be found throughout the United States today. The

(Footnote continued on next page.)

Essential to the selection of well-qualified judges is a selection process that permits effective evaluation of character and qualifications, terms of office long enough to provide job security and satisfactory pay scales.

Further, even under the best of appointment systems, there remains the need for sound disciplinary and removal mechanisms. The importance of removal and disciplinary procedures is proportional to the length of judicial terms. If the Constitution provides for short terms, an unfit judge may be removed simply by denying him another term. If, however, local judges receive long terms, mechanisms to remove or discipline an offending judge will be necessary.

This section discusses the selection process first, then considers the alternatives with respect to terms of office, compensation and removal.

1. Selection

The Convention may choose from three principal means of selecting judges: popular election, appointment, and a hybrid of the two. In addition, the delegates may

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experience of the states, therefore, will be helpful to the delegates when they decide how the judges of the local Northern Mariana Islands courts are to be chosen. Legislative Reference Bureau, HAWAII CONSTITUTIONAL CONVENTION STUDIES, ARTICLE V: THE JUDICIARY pp. 12-13 (1968). For a more detailed survey of the history of judicial selection, see Winters, Selection of Judges -- An Historical Introduction, 44 TEXAS L. REV. p. 1081 (1966).

opt to use a "merit" plan in conjunction with any of the three means of selection. The Constitution may prescribe the same or different methods of selecting judges for trial and appellate courts.

a) Popular election

Three methods of popular election of judges are used in the United States. Partisan contests are provided for in some state constitutions.[41/] In these states, candidates for judgeships run on party tickets in opposition to candidates running on other party tickets. Another constitutional approach is the selection of judges by non-partisan elections.[42/] A judicial candidate running in a non-partisan election does not seek a party endorsement, and such candidates are listed on the ballot without reference to their party affiliation, if any. Finally, a few states have non-competitive elections.[43/] In this type of election, a judge runs "against his own record." The candidate does not run against another individual; the voters' choice is between retaining or discharging the judge.

41/ State constitutions permitting partisan election of judges typically merely omit to prohibit that practice. E.g., MD. CONST. art. IV, §§ 14, 21; N.Y. CONST. art. VI, §§ 2(a), 2(c), 16(c), 21.

42/ E.g., MICH. CONST. art. VI, §§ 2, 8, 12, 16.

43/ E.g., MO. CONST. art. V, § 29. Appendix A contains a full discussion of the Missouri-ABA Plan, which utilizes non-competitive elections.

The rationale advanced for electing judges is clear: in a democracy the voters ought to choose all of their officials who make important decisions affecting the public welfare. In addition, judges who have won their offices at the polls will be aware of local traditions and political conditions. While political concerns should not be decisive in a judge's rulings, they should receive adequate and realistic consideration. Another argument for popular election is that the public scrutiny that is a part of the election process itself may reveal the nature of a judicial candidate's character more effectively than other selection methods. Further, an election offers the chance to remove an incompetent judge. Finally, electing the members of the judicial branch may foster its independence because judges who are elected by the people are not obligated in any way to officials of the executive branch or the legislature.

Substantial reasons for not adopting an elective method of selecting judges also exist. First, political skill is not necessarily indicative of judicial ability. Those who are successful in a political contest are not necessarily fit to serve in a judicial role. Second, the best-qualified candidates for a judgeship may not seek the office if they must be subjected to the burdens and strain of an election campaign. Because voters usually have inadequate means of assessing the legal education and qualifications of those who would serve as judges, the voters' choice

may be ill-informed. Third, judges who win their seats by partisan election might command less respect from the public than do those who are selected by other means. Elected judges could appear to their fellow citizens to be politicians who have obtained their offices purely because of the favor of political leaders. Finally, the elective system often compels an incumbent judge who is seeking reelection to campaign rather than devote all his time to judicial activities.[44/]

b) Appointment

The Constitution may provide that local judges be appointed. In the states with an appointed judiciary,

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44/ Using non-partisan elections is perhaps a way to remedy some of the disadvantageous aspects of an elective system. A candidate for a judgeship running on a party ticket is often treated no differently than are candidates for non-judicial posts. As a result, a judicial candidate is often expected to contribute to party campaign chests, pay for his own campaign, advertise his candidacy, attend political rallies, seek votes not only for himself but also for the party ticket and to pursue the support of minor as well as major political leaders.

On the other hand, the partisan election mechanism has received support on the ground that denying a candidate for a judgeship the support of a political party forces him to rely upon his own resources and those of his friends. In addition, a judge elected after running as a member of a political party cannot hide his political colors, and his impartiality can be more easily assessed.

the governor is the official who makes the appointments. Gubernatorial selections in most of these states are subject to confirmation by a house of the legislature or by another body.[45/] If the Convention decides upon an appointive system, it need not confer the appointing power upon the governor. Another official could be designated.[46/] Arguments in support of the appointive system are plentiful.[47/] First, the governor or other

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45/ The state senate has the power to reject judicial nominations in most of the states whose judges are selected by the governor. In some states, notably Massachusetts and New Hampshire, the governor's nominations are subject to the approval of a council. MASS. CONST. ch. III, art. 9; N.H. CONST. art. 46. The council of Massachusetts consists of eight persons elected annually. MASS. CONST. amend. 16. In New Hampshire, the council is composed of five members elected every two years. N.H. CONST. art. 60.

46/ The 1948 revision of the Model State Constitution provided that the chief justice of the state appoint judges. The framers of the Model State Constitution themselves subsequently abandoned this idea. Alternatively, a group of officials, such as the chief judge, could be charged with selecting local judges. While this approach would probably insulate the selection process from any political intrusion, it tramples on the theory that each of the branches of government ought to be subject to the check of the others. If only judges participate in the selection of their successors, the judicial branch would be converted from an entity of government restrained by the other two branches to a self-perpetuating organ distinct and independent, rather than merely separate from those branches. Perhaps because of such concerns no state has adopted this proposal.

47/ Arguments in favor of, and those in opposition to, the appointive system are marshalled in Savage, Justice for a New Era, 49 J. AM. JUD. SOC'Y p. 47, at 50-51 (1965), and Rosenman, A Better Way to Select Judges, 48 J. AM. JUD. SOC'Y p. 86, at 89 (1964).

appointing official is able to develop the staff and other resources necessary to obtain information about judicial candidates and to make reasoned judgments regarding their capabilities. In addition, responsibility for the quality of judicial appointments rests clearly on the appointing official creating an incentive to avoid bad appointments, because such selections might be politically damaging.

Judges selected under appointive mechanisms are, some believe, generally of a higher quality than those who are elected. Very often, the best-qualified potential judges will not subject themselves to a political campaign. Moreover, the appointment of judges often produces a judicial branch which is balanced religiously, ethnically and racially, since the appointing official is able, over the long run, to take account of such concerns. Finally, appointed judges are arguably less susceptible to political pressures than are those who are elected. An elected judge must continuously maintain his political standing to ensure his reelection, whereas an appointed judge (especially if he serves for a long term or for life) is under less pressure. The strength of the federal bench gives weight to arguments for an appointed judicial system.[48/]

48/ Much of the independence of federal judges, however, probably results from their lifetime tenure rather than from the method of their selection.

There are, however, significant disadvantages to the appointment of judges. First, the governor of the Northern Mariana Islands will be elected and therefore susceptible to political pressure. In consequence, a judge selected by the governor might owe his office as much, if not more, to political factors than would an elected judge. In addition, the voters may fail to defeat a governor who has made a number of poor judicial selections, because many factors other than the governor's aptitude for sizing up judges will determine whether he is returned to office.

Second, appointive schemes usually require that the governor's nominee be confirmed by the upper house of the state legislature. The confirmation process, if adopted by the Convention, may detract from the independence of the judicial branch: if appointments are for terms of years, the process may produce judges who are eager to conform their decisions to the wishes of the confirming body. As a result, appointing rather than electing judges might not reduce the degree of political involvement in the selection process. Rather, the appointive system might give rise to political activities more invidious than those flowing from an elected judiciary, because an appointed judge is chosen by few instead of many and after his appointment might seek to curry favor with those few.

Third, the purely appointive system could fail to furnish a regularized and non-political way in which judicial candidates may be identified and evaluated.[49/] The appointing of judges is an intrinsically undemocratic process, isolating the electorate from direct control of the judicial system. Finally, since a confirming body possesses only a veto power over the appointing official's nominations, the system might offer no real protection against the possibility that poor judges eventually will be seated.

New Jersey is an example of a state with appointed judges. Under the New Jersey constitution of 1947, the governor appoints most judges in the state, subject to the confirmation of the state senate.[50/] Judges

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49/ Judicial selection has involved an element crucial to the American political system: offices of prestige with which the party faithful may be rewarded. Some observers believe that this characteristic affects appointed as well as elected judiciaries. As Duane Lockard has noted, "No doubt a major role in 'politicizing' the selection of judges belongs to party politicians who aimed at control over offices and patronage rather than restraint on judicial discretion." D. Lockard, THE POLITICS OF STATE AND LOCAL GOVERNMENT p. 464 (1963). Adolph Berle put it more bluntly: "Both the appointive and the elective methods mean that the judges are chosen by the chieftains of the political parties . . . ." Berle, Elected Judges or Appointed?, N.Y. Times, Dec. 11, 1965, (Magazine), p. 26, quoted in id. p. 483.

50/ Article VI, § VI, ¶ 1 of the New Jersey constitution provides:

> The Governor shall nominate and appoint, with the advice and consent of the Senate, the Chief Justice and Associate Justices of the Supreme Court, the Judges of the Superior Court, the Judges of the County Courts and the judges

(Footnote continued on next page.)

of the supreme and superior courts receive an initial seven-year appointment. If at the end of that term they are reappointed, they hold office for life during their good behavior.[51/]

The New Jersey Plan establishes a judiciary with a secure tenure. It also permits the easy removal of an incompetent judge after the expiration of the initial seven-year period. The disadvantage of the Plan is the difficulty of removing judges serving a lifetime appointment whose incompetence or corruption is not sufficient for impeachment but is enough to detract significantly from their ability to perform judicial functions.

c) Hybrid

Some states use selection methods that include features found in the elective and appointive systems. This "hybrid" approach involves two principal stages. First, the governor appoints a judge. The governor may be required to select from a list prepared by a nominating committee. Alternatively, the governor's nominee may be

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> of the inferior courts with jurisdiction extending to more than one municipality. No nomination to such an office shall be sent to the Senate for confirmation until after seven days' public notice by the Governor.

51/ New Jersey state judges must retire at 70 years of age.

subjected to screening and approval by a judicial qualifications commission.[52/] Second, after serving a period whose length varies from state to state, the judge runs for election. The election is non-competitive, with the judge running "against his own record." A key decision under this system is how soon after appointment a judge must seek election. That period must be long enough to permit the judge to establish his "record" and short enough to maintain the control of the voters over the judiciary.

d) "Merit" plans

"Merit" plans may be used in conjunction with the appointive, elective or hybrid system of judicial selection. There are two basic types of "merit" plans. Under the first, a non-partisan judicial nominating commission recommends candidates for judgeships to the governor. The commission is usually composed of laymen, lawyers and judges. Missouri uses this type of "merit" program.[53/]

The second type of plan calls for a non-partisan judicial qualifications commission to review the governor's nominees for judgeships. The commission has a membership similar to that of a nominating commission. This method is utilized by California.[54/]

52/ "Merit" selection procedure involving judicial nominating and qualifications commissions are discussed below.

53/ The nominating commission used by Missouri is discussed in Appendix A.

54/ The qualifications commission used by California is explained in Appendix B.

2. Terms of office

a) Tenure for life

The Constitution may provide that local judges will hold office during their "good behavior." Such a provision would give the local judiciary lifetime terms of office. The United States Constitution adopts this approach.[55/] Massachusetts is an example of a state that has adopted this approach.[56/] Alternatively, the Convention may opt to grant local judges a modified form of life tenure. Under this approach, a local judge's term of office would extend until he reached a fixed age, when retirement would be mandatory. New Hampshire uses this system.[57/]

Life terms offer several advantages. Such a tenure provision fosters the separation of the judicial branch from the other branches of government. A lifetime

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55/ Article III, § 1 of the U.S. Constitution provides, in relevant part, that "[t]he Judges, both of the superior and inferior courts, shall hold their Offices during good Behavior . . . ."

56/ Chapter III, art. 1 of the Massachusetts constitution provides, in relevant part, that "[a]ll judicial officers, duly appointed, commissioned and sworn, shall hold their offices during good behavior . . . ."

A discussion of the Massachusetts system of lifetime judicial appointments is contained in Drinan, Judicial Appointments for Life by the Executive Branch of Government: Reflections on the Massachusetts Experience, 44 TEXAS L. REV. p. 1103 (1966).

57/ N.H. CONST. arts. 73, 78.

appointee to the bench need not be concerned about the effect of his decisions on the prospects of his reappointment. Lifetime tenure, therefore, may increase the objectivity with which the judiciary decides questions before it. In addition, a judge serving for life might enjoy greater statute than a judge chosen for a lesser term.

Lifetime appointment systems have, however, two substantial disadvantages. First, life tenure may permit a judge to ignore societal conditions since the judge cannot be called to account for his decisions except by removal. In addition, there is no way to remove a judge with a life appointment who is not worthy of such tenure (or less worthy than another candidate) but who nonetheless is competent and honest enough to escape impeachment.

Lifetime tenure might also present unique disadvantages for the Northern Marianas. Until there has been sufficient experience with a new local court system, it may be risky to appoint any judge for life. If lawyers will be recruited from outside the Northern Marianas to serve as local judges, the people may want a stronger assurance against unsympathetic and insensitive selections than can be provided under a lifetime tenure system.

Modified lifetime tenure, with retirement mandatory at a fixed age, has all the advantages and disadvantages

of tenure for life. While it has some additional advantages,[58/] it also has some peculiar disadvantages. Mandatory retirement, whether coupled with tenure during "good behavior" or with tenure for a period of years, would deprive the Commonwealth courts of experienced judges who are otherwise capable of continued effective service. The adverse effect of a mandatory retirement provision can be softened, however, by permitting capable retired judges to be recalled to judicial service by the chief judge of the Northern Mariana Islands appellate court or by some

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58/ Mandatory retirement schemes are designed to protect the judicial branch and those litigating before it from judges disabled because of age. Mandatory retirement provisions are also used to increase the productivity of the judicial branch. Senior Judge J. Earl Major of the Seventh Circuit has observed that mandatory retirement necessarily results in the appointment of judges younger and more energetic than those who are replaced. Major, Why Not Mandatory Retirement for Federal Judges?, 52 A.B.A.J. p. 29 (1966).

Twenty-four states have constitutional provisions setting mandatory retirement ages. Fifteen states and Puerto Rico require retirement of judges at the age of 70 years: Alaska, Connecticut, Florida, Hawaii, Illinois, Kansas, Maryland, Michigan, Nebraska, New Hampshire, New Jersey, New York, Puerto Rico, Vermont, Virginia and Wisconsin. Iowa and South Carolina prescribe 72 years as the age of retirement. Retirement is required when a judge reaches 75 years by Missouri, Oregon, Texas, Virginia and Washington. Louisiana specifies 80 years as the age of retirement.

The states of Kansas and Michigan permit a judge to finish a term which he started before reaching the age of 70.

other official or body of the Commonwealth government. Retired federal judges may be recalled in this manner.[59/]

In addition to, or instead of, a mandatory retirement provision, the Constitution may permit local judges to retire with a pension at an age when they elect to do so. The Constitution may prescribe the age that a judge must attain and the number of years he must have served to be eligible to retire, as well as the amount of money or percentage of salary he will receive as a pension. It is more sensible, however, to leave such details for the legislature while constitutionally guaranteeing local judges "reasonable" or "adequate" pensions.

59/ Three advantages flow from permitting retired judges to continue to serve. First, the retired judges increase the judicial staff available to hear cases, often with the result that the backlog of court dockets is alleviated. Second, retired judges may be assigned where the demand for their services is the greatest, so that using them is a highly flexible means by which the localized needs of the judicial branch may be met. Third, the prospect of judicial service after mandatory retirement might stimulate lawyers to accept judicial appointments, while diminishing the likelihood that retired judges will appear as counsel in the courts where they formerly presided. If the delegates choose to include a post-retirement service provision in the Constitution, they may either prescribe limitations to post-retirement judicial service or leave the specification of these limitations to the legislature.

b) Tenure for a fixed term of years

Another approach available to the Convention is to provide that local judges serve for fixed terms of years. The terms of appellate judges may be the same as, or different from, those of trial judges. Most states prescribe fixed terms for their judges, ranging from two to 15 years.

Fixed terms would allow for the inexperience of local judges. If, after the expiration of his term, a judge has not adequately mastered his job, he can be replaced. In addition, appointing local judges for fixed terms would permit the Commonwealth government to hire American lawyers who are not Northern Marianas residents to serve as judges until it is possible to appoint Northern Marianas lawyers to replace them on the local bench.

c) Hybrid tenure

The Constitution could adopt a hybrid type of judicial tenure plan. In New Jersey, for example, a state judge serves an initial term of seven years. If the judge is reappointed, he serves "during good behavior" but only until mandatory retirement at 70 years of age.[60/]

A hybrid tenure plan need not include a mandatory retirement provision. The Constitution might, for example,

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60/ N.J. CONST. art. V, § VI, ¶ 3.

provide that a judge who is retained in office after his probationary term may serve for life. Nor must a hybrid plan involve only appointed judges. The Constitution might require a judge appointed for a probationary term to win life tenure in an election, or an elected judge could be required to obtain a gubernatorial appointment to a life-time post.

3. Compensation

No state constitution recently enacted or revised fixes judicial salaries or prescribes a range of compensation for judges. Either of these approaches would require a constitutional amendment every time it is considered appropriate to modify -- or, at best, change significantly -- the level of judicial compensation. Rigid constitutional formulations concerning salaries offer one substantial advantage. Such provisions prevent the legislature from reducing judicial salaries to reflect displeasure over unpopular decisions.

But these types of provisions are probably not necessary to assure the independence of the judiciary. Adequate protection can be provided by a constitutional "no diminution" clause, which prohibits the reduction of a judge's salary during his term of office. The effect of such a clause is to assure a judge that during his term his salary will

never be less than it is on the first day of his term and to afford the legislature appropriate discretion to increase judicial salaries to take account of inflation. Over half of the state constitutions contain "no diminution" clauses.[61/]

The Convention may also wish to provide that all Commonwealth judges will receive the same compensation.[62/] This would facilitate the temporary assignment of a judge at one level of the judicial branch to a court at another level.

D. Removal and Other Protection

Removal and other protection against incompetent, dishonest or disabled judges is an important part of the provisions for a judicial system. The delegates ought to consider specifying the exclusive grounds for removal when

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61/ The language of a "no diminution" clause is straightforward. For example, the Missouri Constitution provides, in relevant part, that "no judge's . . . salary shall be diminished during his term of office." MO. CONST. art. V, § 24.

62/ In addition, the Constitution may include a provision guaranteeing pensions to retired judges. Four state constitutions make this guarantee. CAL. CONST. art. VI, § 20; LA. CONST. art. V, § 23(A); N.J. CONST. art VI, § VI, ¶ 3; WYO. CONST. art. 5, § 5 (constitutional pension guaranteed for supreme court justices and district court judges; legislature has power to guarantee by law pensions for other judges). The constitution of Hawaii assures judges of pensions if the state enacts a general pension law for state employees. HAWAII CONST. art. V, § 3. The details of the pension program may be left to the legislature, subject to a "no diminution" clause like that applicable to salaries.

removal occurs other than by vote of the people. Abuses of the impeachment process by the legislature, for example, can be minimized by specifying that impeachment shall be reserved for cases of criminal conduct or serious judicial misconduct.[63/] If the Constitution permits the legislature to specify the means of removal or discipline of sitting judges, the independence of the judiciary will be threatened. For this reason, virtually every state constitution specifies the means for judicial removal and states that these shall be the sole means.

Although the availability of legislative removal mechanisms is desirable to assure that corrupt or clearly incompetent judges can be removed from office, the process of removal should not be so easy that a judge could be removed for purely partisan reasons or because of an unpopular decision.

This section discusses removal by impeachment, address, recall, advisory commission, internal judicial branch action and forced retirement. It also describes briefly two means of disciplining judges without removal: censure and suspension.

63/ For example, the Mississippi constitution provides, "The governor and all civil officers of this state, shall be liable to impeachment for treason, bribery, or any high crime or misdeameanor in office." MISS. CONST. art. IV, § 50. The West Virginia constitution specifies as grounds for impeachment "maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdeameanor." W. VA. CONST. art. IV, § 9.

1. Impeachment and "address"

Impeachment is usually a two-step process.[64/] First, the lower house of the legislature sets forth the ground or grounds upon which it believes that a judge should be removed from office. This specification of the judge's wrongdoing is usually approved by a majority vote of the members of the lower house. The upper house of the legislature, sitting in effect as a court, then decides whether the specification is sufficient, typically by two-thirds vote of all the members of the upper house. About four-fifths of the states constitutionally provide for impeachment. The usual grounds for impeachment are conviction of a serious crime or misconduct in office.

64/ The Ohio provision is an example:

> The House of Representatives shall have the sole power of impeachment, but a majority of the members elected must concur therein. Impeachments shall be tried by the Senate; and the Senators, when sitting for that purpose, shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted, without the concurrence of two-thirds of the Senators.
>
> The Governor, Judges, and all State Officers, may be impeached for any misdemeanor in office; but judgment shall not extend further than removal from office, and disqualification to hold any office, under the authority of this State. The party impeached, whether convicted or not, shall be liable to indictment, trial, and judgment, according to law.

OHIO CONST. art. 11, §§ 23, 24.

"Address" to the executive consists of a concurrent resolution passed by both houses of the legislature,[65/] instructing the governor to remove immediately the judge who is the subject of the legislature's address. Each house must act by a specified vote larger than a majority of its members. "Address" is a less formal, and thus more easily invoked, means of removing a judge whose performance does not satisfy the legislature.

2. Recall

Recall is a device by which a judge is removed from office following a special recall election.[66/] This election is triggered by the submission of petitions containing the signatures of a required number or percentage of voters. If the delegates choose to include a recall provision in the Constitution, they may opt to specify that number or percentage or leave the decision for the legislature. Recall of judges is available only in five states.[67/]

65/ States providing for the removal of judges by address include Arkansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New York, Ohio, Rhode Island, Texas, Utah, Washington, West Virginia and Wisconsin.

66/ For a general discussion of recall, see BRIEFING PAPER NO. 8: ELIGIBILITY TO VOTE AND ELECTIONS § II(C)(3).

67/ These states are Arizona, Nevada, North Dakota, Oregon and Wisconsin.

3. Other means of removal

Twenty state constitutions confer upon the judicial branches the power to remove their incompetent, dishonest or disabled judges.[68/] Public removal proceedings are usually conducted by the state supreme court or by a special tribunal established by the state constitution.

Hawaii permits its governor, should an advisory commission so recommend, to remove judges from their duties.[69/] Commissions of this type, usually appointed on a non-partisan basis with attorneys, lay persons and judges as members, have the power to conduct investigations and to assess the importance of the facts revealed by their inquiries.

68/ These states are Alabama, California, Colorado, Georgia, Illinois, Louisiana, Maryland, Michigan, Missouri, Montana, New Jersey, New Mexico, New York, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Virginia and Wyoming.

New York's judges are subject to removal by the state Court on the Judiciary. This court is composed of a total of six judges drawn from the state's two appellate courts. N.Y. CONST. art. VI, § 22. The New York system is discussed fully in Appendix C.

State judges in California may be removed by the state supreme court upon the recommendation of the California Commission on Judicial Qualifications. CAL. CONST. art. VI, § 18. California's approach is discussed fully in Appendix D.

69/ HAWAII CONST. art. V, § 4.

Modern state constitutions tend to include clauses providing for forced retirement. These provisions permit the involuntary retirement of a mentally or physically disabled judge prior to the mandatory retirement age, if any. Involuntary retirement is not brought on by a judge's wrongdoing but rather by his mental or physical incapacity. An example of a forced retirement scheme is outlined in the New Jersey constitution, which provides:

> Whenever the Supreme Court shall certify to the Governor that it appears that any Justice of the Supreme Court, Judge of the Superior Court or Judge of the County Court is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendation, the Governor may retire the Justice or Judge from office, on pension as may be provided by law. 70/

New York and California are other examples of states with forced retirement plans.71/

4. Other types of sanctions against the judiciary

For serious misconduct not sufficient to warrant removal, the Constitution may authorize the suspension of the offending judge. Authority to suspend could be conferred on the governor, the local appellate court or other judicial

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70/ N.J. CONST. art. VI, § VI, ¶ 5.

71/ These are described in Appendix C and Appendix D.

body, the legislature or on a judicial qualifications commission. Thirteen state constitutions provide for suspending judges.[72/]

The Constitution may also authorize the censure of judges. Censure, like suspension, would be applied in the case of an offending judge whose actions do not warrant impeachment.

E. Other Constitutional Provisions Affecting the Judicial Branch

Some state constitutions either provide, or authorize the legislature to provide, for court staffs, rules of admission to legal practice, discipline of lawyers, rules of practice before the courts and an administrative office of the courts. Perhaps only the latter two items are deserving of any detailed constitutional treatment.

The trend of modern constitutions is to authorize the highest state court to adopt rules of practice and procedure for the courts within the state, subject to any laws enacted by the legislature to the contrary. For example, the New Jersey constitution states that the

> Supreme Court shall make rules governing the administration of all courts in the state, and, subject to law, practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the

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72/ These are Alaska, California, Colorado, Georgia, Illinois, Indiana, Louisiana, Michigan, Missouri, Montana, Pennsylvania, Texas and Wyoming.

discipline of the persons admitted.[73/]

A variation of this approach would permit the legislature to disapprove any rule adopted by the courts; failure to take any legislative action within a fixed period of time would automatically permit the rule to go into effect. Although not constitutionally prescribed, this approach is followed for adoption of rules of practice, evidence and procedure for the federal courts in the United States.

The trend of the states is also to create administrative structures for the courts, although generally by legislation rather than by constitutional means. In 1965, only about 25 state governments included an administrative office for the courts. Today, 48 state governments, as well as those of the District of Columbia and Puerto Rico, have such an office.[74/] The administrative office would handle such functions as preparing payrolls, budgets and accounting information, purchasing books and supplies, and assembling statistical information on the work of the court system. The office could also be charged with overseeing the

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73/ N.J. CONST. art. VI, § II, ¶ 3. The Maryland constitution contains a similar provision, MD. CONST. art. IV, § 18(a), as does the Michigan constitution. MICH. CONST. art. VI, § 5. The Hawaii constitution confers on the supreme court the authority to issue rules of civil and criminal procedure. HAWAII CONST. art. V, § 6.

74/ Council of State Governments, THE BOOK OF THE STATES 1976-77 p. 89 (1976).

administrative personnel of the Commonwealth courts. The head of the office would be responsible to the judiciary and could be appointed by all of the Commonwealth judges, the judges of the appellate court or by the chief judge of the appellate court.

The delegates may wish to consider other facets of the judicial branch as subjects of possible constitutional provisions. In such matters, as with those that have been discussed above, the Convention should be guided by its judgment as to the importance of constitutional treatment, as against deferral to legislative discretion and flexibility. The judicial system, unlike the other branches of government, requires special constitutional protection against unlimited legislative or executive power. The delegates should keep in mind the paramount objective of any constitutional treatment of this subject: to specify with the greatest economy of language and purpose those aspects of the judicial system of the Northern Mariana Islands that will be fundamental to its capacity for independence, efficiency and responsiveness to the needs of the people.

APPENDIX A

The Missouri-ABA Plan of Judicial Selection

Six states -- Alaska, Colorado, Iowa, Kansas, and Nebraska, as well as Missouri -- use the method of selecting judges popularly known as the Missouri-ABA Plan. Endorsed by the American Bar Association and first instituted in the State of Missouri in 1940, the Plan seeks to combine the best aspects of the appointive and elective systems. In these six states, judges are selected after an extensive process. When a judicial vacancy occurs in Missouri, names of candidates to fill the position are submitted to the Appellate Judicial Commission in the case of an appellate court vacancy and to the Circuit Judicial Commission in the case of a trial court vacancy. The Appellate Commission consists of the chief justice of the state supreme court (who serves as the commission's chairman), a lawyer elected by the bar of each of the state's appellate districts (three in Missouri), and a lay person selected by the governor for each of those appellate districts. The Circuit Commission typically has a smaller membership. In Missouri it is composed of two attorneys, two lay persons, and the presiding judge of the intermediate appellate court district where the vacancy exists. Members of both commissions are barred from service in any other public office or political party position.

A commission beginning the selection process receives suggestions from any source that wishes to propose the name of a potential judge. After evaluating the applicants, the commission submits a list of three nominees to the governor. The chief executive then chooses one of the three to fill the vacancy. The new judge serves in office for at least one year. He must run "against his own record" at the general election following the end of the probationary period. If the voters retain the judge in office, he then serves for a fixed term of years. In Missouri, that term is six years for a trial judge and twelve years for an appellate judge.[1/] If the voters opt not to retain a judge, the appointive process, with the commission again providing a panel of three names from which the governor designates one, is repeated.

A judge appointed and subsequently continued in office by the voters seeks reelection simply by filing a letter of intent with the secretary of state sixty days prior to the general election immediately preceding the expiration of his term of office. Under the Missouri Plan, judges are prohibited from political campaigning or from spending any funds to secure their reelection.

1/ Judicial terms are 10 years in Alaska and Colorado, eight years in Iowa, and six years in Nebraska and Kansas.

The Missouri Plan has many distinct advantages besides the absence of political activity. Good judges may be sure of their tenure in office, largely because of the non-competitive position they occupy on the ballot when running for reelection. Such job security makes judicial service more attractive to well-qualified candidates, many of whom have enjoyed success either at the private bar or in government service. In Missouri during the period from 1920 to 1940, only two members of the state supreme court were successful in obtaining reelection at the expiration of their terms. In contrast, during the succeeding twenty-five years under the Missouri Plan, all of the state supreme court justices seeking reelection were successful -- and by large majorities.

In addition, the Missouri experience indicates that the prior political affiliation of a judge seeking reelection has no bearing on the success of his effort. Similarly, party trends have no impact on a judge's continuation in office.

Moreover, proponents of the Missouri Plan argue that the nominating commission offers only well-qualified candidates for judgeships. The Plan, however, incorporates the participation of the governor, who remains responsible in the public's mind for the quality of the judges chosen. Advocates of the Plan maintain that despite the governor's role,

the Plan minimizes the influence of politics on the process of choosing judges because of the intervening role of the nominating commission.

The Plan's prohibition on campaigning liberates a judge from the necessity of mending political fences and campaigning for reelection. This enables the judge to devote attention to judicial rather than political concerns.

The Missouri Plan does have weaknesses, however, The public is denied the opportunity to elect judges directly. In addition, rather than removing the judicial selection process from politics, the scheme may merely substitute the politics of the bar and the governor for those of party leaders and organizations. Moreover, the Plan so blurs responsibility for selecting judges that the public is deterred from fixing culpability for bad selections on any one official, such as the governor. Similarly, the Plan could vest too much power over initial nominating decisions in the bar. The bar's power might result in the selection of judges picked more for their narrow technical abilities than for their experience, compassion, and dedication to the needs of the community.

APPENDIX B

The California Plan of Judicial Selection

The state of California employs a modified form of the purely appointive system. Under the California Plan, the governor appoints state judges. Those judges must be approved by a non-partisan commission. Judges on California's intermediate appeals bench and Supreme Court hold office for 12-year terms. At the conclusion of a term of office, a judge may request to be placed on the ballot at the next election. The judge runs "against his own record" and without opposition. If the voters respond affirmatively to the question of a judge's continuation in office, the judge is elected to another 12-year term. If the voters reject the judge's candidacy, the governor appoints a successor, again subject to the approval of the state commission, for a 12-year term.

While the California Plan combines many of the strengths of the purely appointive system and the electoral method of selecting judges, it has provoked criticism on the ground that the state commission is often nothing more than a rubber stamp for the governor's appointments to the bench.

APPENDIX C

The New York Plan of Judicial Removal

The New York constitution was amended in 1948 to establish a court on the judiciary.[1] This tribunal is composed of four judges drawn from the state's intermediate appellate court and the senior associate judge and chief judge of the state's court of appeals (the highest state court). The court on the judiciary exercises statewide jurisdiction to remove judges from office for cause and to retire judges for mental or physical incapacity.[2] An affirmative vote by four of the six judges sitting on the court on the judiciary is required for the removal or retirement of a judge.

The court on the judiciary acts on an ad hoc basis. It meets subject to the call of the chief judge. The chief judge may summon the court on his own motion and is required to convene the court should he receive a request from the governor, the presiding justice of any department

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1/ N.Y. CONST. art. VI, § 22.

2/ Before its hearings on the removal or retirement of a judge begin, the court on the judiciary must notify the governor, the temporary president of the state senate, and the speaker of the state assembly of the name of the accused judge and the nature of the charges against him. If, within thirty days of receiving this notification, a legislator demands the removal of a judge on the same grounds as those offered by the court and these charges are entertained by a majority of the assembly, then the court's proceedings will be stayed until the legislature resolves the issue of the judge's removal. A proceeding by the court on the judiciary to determine whether a judge should be involuntarily retired is not stayed. N.Y. CONST. art. VI, § 22(e).

of the intermediate appellate court, a majority of the state's judicial council, or from a majority of the executive committee of the New York State Bar Association.

Complaints directed against a judge may be submitted to the chief judge of the court of appeals, the presiding justice of a department of the intermediate appellate court, the judicial conference, the state court administrator, or the governor. Complaints concerning judges of the state trial courts and inferior courts are first investigated by the appropriate department of the intermediate appellate court.

APPENDIX D

The California System of Judicial Removal

Created in 1960, the California Commission on Judicial Qualifications has jurisdiction to investigate complaints concerning a state judge at any level and to recommend removal to the state supreme court.[1/] The Commission's constitutional mandate encompasses complaints dealing with a judge's willful misconduct, willful failure to perform duties, habitual intemperance, and disabilities likely to burden a judge permanently.[2/]

Following a review of the evidence, and after hearing additional evidence if necessary, the state supreme court determines whether to accept or reject the Commission's findings. If the findings are accepted by the court, it may order the removal or retirement of the judge whose fitness is at issue. Retirement is ordered in the case of a permanent disability. A judge thus involuntarily retired retains the same rights and privileges as those to which he would have been entitled if his retirement had been voluntary.

1/ CAL. CONST. art. VI, § 18.

2/ Id.

APPENDIX E

The Current Structure, Jurisdiction, and Operations of Courts Serving the Northern Mariana Islands

Introduction

During the transition from Trust Territory to Commonwealth status, the Northern Mariana Islands are being served by the courts of the Trust Territory.[1/] Part IV of Secretarial Order No. 2918[2/] and Title V of the Trust Territory Code define the judicial authority of the Trust Territory government and describe the courts exercising that authority.

I. Structure and Jurisdiction

The Trust Territory judicial system consists of three levels of courts. The High Court's jurisdiction extends throughout the entirety of the Trust Territory. District courts and community courts serve administrative districts and municipalities, respectively, in the Trust Territory.

1/ United States Department of the Interior (Secretarial Order No. 2989), 41 FED. REG. p. 15892 (April 15, 1976) [hereinafter cited as Secretarial Order No. 2989].

2/ United States Department of the Interior, 34 FED. REG. p. 157 at 160 (Jan. 4, 1969).

A. High Court

1. Number of judges

The High Court is composed of four permanent members and three temporary members. The court's chief justice and three associate justices are its permanent complement. Three Guamanian judges sit on the High Court on a temporary basis.[3/] The work of the court is divided between a Trial Division and an Appellate Division. Two special judges are required to sit in the Trial Division of the High Court when the Trial Division is hearing a murder case.[4/]

2. Trial Division

The Trial Division of the High Court possesses original jurisdiction over all local civil and criminal cases. These cases include matters involving probate, admiralty, maritime, and land titles.[5/] The Trial Division also has jurisdiction to hear appeals from all district court judgments from which the losing party takes an appeal.[6/] In addition, the Trial Division must review the record of

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3/ United States Department of State, REPORT TO THE UNITED NATIONS ON THE ADMINISTRATION OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS p. 22 (1975) [hereinafter cited as STATE DEPARTMENT REPORT].

4/ TRUST TERRITORY CODE tit. 5, § 204 [hereinafter cited as TTC].

5/ TTC tit. 5, § 53.

6/ TTC tit. 5, § 54(2).

every case concerning annulment, divorce or adoption decided by a district or community court, even if the losing litigant does not appeal. The Trial Division has the discretion to review the record of a final decision of a district or community court in any type of case, despite the failure of the losing party to appeal.[7/]

The chief justice and the three associate justices comprise the Trial Division.[8/] Sessions of the Trial Division are conducted in each administrative district, including the Northern Marianas. Generally only one of the permanent members of the High Court presides over a session of the Trial Division. The chief justice is headquartered in Saipan, with the associate justices stationed in other administrative districts.

A justice sitting in the Trial Division has the power to appoint one or more assessors whose function is to inform the justice as to the local law and custom involved in a case. Assessors function only in an advisory capacity and do not participate in deciding cases.[9/]

7/ TTC tit. 6, § 354.

8/ TTC tit. 5, § 52.

9/ TTC tit. 5, § 353.

3. Appellate Division

The Appellate Division has jurisdiction to hear appeals in three broad areas. First, it has the power to review all decisions of cases originally tried by the Trial Division. Second, the Appellate Division may review appeals of district court cases that are decided by the Trial Division and that involve the construction or validity of any law of the United States, any law or regulation of the Trust Territory or any written enactment of any official, board or body in the Trust Territory intended to have the force of law. Third, the Appellate Division's jurisdiction extends to hearing appeals from a decision of the Trial Division reversing or modifying a judgment of a district or community court when the Trial Division's decision affects the substantial rights of the party bringing the appeal.[10/] In addition, the Appellate Division has the discretion to hear an appeal from any district or community court decision before the Trial Division has heard the appeal.[11/]

The Appellate Division is composed of three judges selected by the chief justice of the High Court. These judges may either be permanent or temporary members of the High Court. Two judges constitute a quorum, entitling the

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10/ TTC tit. 5, § 54(1).

11/ TTC tit. 5, § 54(3).

Appellate Division to act. Two of the three judges must concur before the Appellate Division decides a case.[12/] Sessions of the Appellate Division are held at times and locations set by the chief justice.[13/]

B. District courts

One district court is located in Saipan, with a sub-district court sitting in Rota. The district court for the Marianas District consists of a presiding judge and three associate judges.[14/]

The jurisdiction of the Marianas district court is concurrent with that of the Trial Division and extends to two principal areas. The district court has the power to hear all civil cases in which the amount of money or value of property at issue is not greater than $1,000, with the exception of admiralty and maritime cases and matters involving the adjudication of title to, or any interest in, land. The district court may, however, award alimony or child support despite the fact that the award is greater

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12/ TTC tit. 5, § 52. The appellate Division has held that the absence of one of the three judges of the Division does not prevent the other two from deciding a case, since the requisite quorum still would exist. Guerrero Family, Inc. v. Micronesian Line, Inc., 5 TRUST TERRITORY REPORTS 531 (1971) [hereinafter cited as T.T.R.].

13/ TTC tit. 5, § 55(1).

14/ 1975 STATE DEPARTMENT REPORT, app. 2, pt. A, chart (5).

than the $1,000 maximum. In addition, the district court may grant to one spouse in a divorce or maintenance suit an interest in land held by the other spouse, but the court may not decide the validity of the latter spouse's interest in the land.

The second area over which the district court exercises jurisdiction encompasses criminal cases in which the defendant is charged with violating a Trust Territory law carrying a maximum punishment of a $2,000 fine or a five year prison term or both.[15/]

The Marianas district court also has the power to hear appeals from decisions of Marianas community courts in all civil and criminal cases.[16/]

C. Community courts

The community courts for the Northern Marianas have jurisdiction over most civil matters where the amount of money or value of property at issue is $100 or less. The community courts possess no authority to decide admiralty or maritime cases regardless of the amount in controversy. The power of the community courts to determine the ownership of land is limited to decisions concerning the right to immediate possession.[17/]

15/ TTC tit. 5, § 101(1)(b).

16/ TTC tit. 5, § 101(2).

17/ TTC tit. 5, § 151.

In the area of criminal law, the community courts may decide cases in which a punishment of not more than a $100 fine or six month jail term or both may be imposed.[18] The jurisdiction of the community courts in civil and criminal cases is concurrent with that of the district courts.[19]

Three community courts, presided over by one judge each, serve the Northern Marianas.[20]

II. QUALIFICATIONS OF JUDGES

A. Legal Experience

The chief justice and the three associate judges of the Trust Territory High Court are attorneys admitted to practice in a jurisdiction of the United States. These jurists must meet the standards set by United States Civil Service regulations for full-time judicial work.[21] Temporary judges of the High Court must be "learned in the law."[22]

At the present time, the temporary members of the High Court are full-time Guamanian judges.[23]

18/ Id.

19/ Id.

20/ 1975 STATE DEPARTMENT REPORT p. 23. The Mariana community courts are presently inactive.

21/ 1975 STATE DEPARTMENT REPORT p. 22.

22/ TTC tit. 5, § 203.

23/ 1975 STATE DEPARTMENT REPORT p. 22.

The Trust Territory Code requires that two or more special High Court judges be appointed for each administrative district, including the Marianas. These judges hear murder cases and participate with the presiding High Court judge in deciding questions of fact and in passing sentence.[24/] These special judges do not need to have studied law.[25/]

District and community court judges are not required to be lawyers.

B. Citizenship and Residency

Members of the High Court are not required to meet any citizenship or residency standards. While judges of the district and community courts also need not satisfy citizenship requirements, the Trust Territory Code provides that those judges should be Trust Territory citizens "to the maximum extent consistent with [the] proper administration of" the courts.[26/] All of the district and community judges currently serving in the Marianas are Marianas citizens.

C. Language

No language requirements are presently imposed on district and community judges serving in the Northern Mariana

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24/ TTC tit. 5, § 204.

25/ Helgenberger v. Trust Territory, 4 T.T.R. 530 (App. Div. 1969).

26/ TTC tit. 5, § 354.

Islands. During fiscal year 1974, however, translators began to render parts of the Trust Territory Code and Rules into Chamorro for the benefit of judges who do not understand English.[27/]

D. Training of Judges

No formal training programs specifically designed for Marianas judges currently exist.

E. Part-time Judges

The chief justice and associate justice of the Trust Territory High Court serve full-time. Temporary judges and special judges of the High Court serve only part-time. During fiscal year 1975, the presiding judge of the Marianas district court and one associate judge of that court were full-time employees. Two other associate judges sat on the bench part-time.[28/] No community court judges currently are active in the Marianas.

F. Conflict of Employment

Judges of the district court may not serve as officers or employees of the Trust Territory government or

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27/ Trust Territory of the Pacific Islands, ANNUAL REPORT TO THE SECRETARY OF THE INTERIOR p. 9 (1974). Justices and temporary judges of the High Court all speak and understand English.

28/ 1975 STATE DEPARTMENT REPORT, app. 2, pt. A, chart (5). All community court judges in the Marianas serve part-time.

of any political subdivision of that government.[29] Special judges of the High Court are not disqualified from service on the district court.[30]

III. SELECTION OF JUDGES

The Secretary of the Interior appoints the chief justice and the associate justices of the High Court,[31] as well as the temporary judges of the court.[32] Special judges of the High Court are selected by the high commissioner.[33]

Prior to separate administration, the high commissioner appointed the presiding judge and associate judges of the district court serving the Northern Marianas.[34] The high commissioner's appointments were subject to confirmation

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29/ TTC tit. 5, § 251.

30/ Id.

31/ Secretarial Order No. 2918, pt. IV; TTC tit. 5, § 201(1).

32/ Secretarial Order No. 2918, pt. IV; TTC tit. 5, § 203. The chief justice may assign temporary High Court judges appointed by the Secretary of the Interior to sit in the Trial Division of the High Court. TTC tit. 5, § 203.

33/ TTC tit. 5, § 204(1). The High Court justice or judge who is to preside over a murder case assigns two of the special judges of the district where the trial will be conducted to hear the case with him. TTC tit. 5, § 204(2).

34/ TTC tit. 5, § 251.

by the Congress of Micronesia.[35] District judges are currently selected by the resident commissioner.[36]

The Trust Territory Code authorized the district administrator of the Mariana Islands District to choose community court judges.[37] These judges could have been nominated by popular vote or by another method designated by the district administrator. While the district administrator was required to "give due consideration to all nominations," he [was]

> "not . . . bound to appoint a person nominated if he [was] not satisfied that the nominee [was] properly qualified for the appointment, but . . . in that case [he could] appoint a qualified person without further nomination." [38]

The resident commissioner now has the power to appoint community court judges. The community courts in the Northern Marianas are presently inactive.

35/ Id.

36/ Pursuant to Secretarial Order 2989, pt. III, § 2, the resident commissioner has assumed the power of the high commissioner to name district judges.

37/ TTC tit. 5, § 301.

38/ TTC tit. 5, § 302.

39/ Secretarial Order 2989, pt. III, § 2.

IV. TERMS OF JUDGES

Members of the High Court serve at the pleasure of the Secretary of the Interior. District court judges serve for three-year terms.[40/] The resident commissioner fixes the terms of community court judges.[41/]

V. COMPENSATION OF JUDGES

Salary levels of the permanent members of the High Court are fixed by United States Civil Service regulations. The chief justice is classified as a GS-16; the three associate justices are assigned GS-15 slots.[42/] A GS-16 earns a salary in the range of $36,338 to $37,800 per year. The range for GS-15 salaries is from $31,309 to $37,800. The salary of the presiding judge of the Marianas district court is set by the chief justice, with the approval of the resident commissioner, and may not be reduced during the judge's term of office.[43/] The presiding judge received $10,296 in compensation during fiscal year 1975.[44/]

40/ TTC tit. 5, § 251.

41/ TTC tit. 5, § 301, as modified by Secretarial Order 2989, pt. III, § 2.

42/ 1975 STATE DEPARTMENT REPORT, app. 2, pt. B, chart (4).

43/ TTC tit. 5, § 251, as modified by Secretarial Order 2989, pt. III, § 2.

44/ 1975 STATE DEPARTMENT REPORT, app. 2, pt. A, chart (5).

The chief justice also determines the salary levels of special judges, associate district judges, community judges and assessors.[45] These salary levels must be approved by the resident commissioner.[46] The full-time associate judge of the district court was paid $7,259 in fiscal year 1975. The two part-time associate judges were paid $3.49 per hour. Community court judges, who also served part-time, received $1.36 per hour.[47]

VI. REMOVAL OF JUDGES

The permanent justices and temporary judges of the High Court are subject to removal only by the Secretary of the Interior. The Trial Division of the High Court has the power to remove a district[48] or community[49] judge for cause after a hearing. In addition, the Trial Division may suspend a community court judge for cause.[50] A judge of a community court need not be granted a hearing before he is suspended.

45/ TTC tit. 5, § 205.

46/ Id., as modified by Secretarial Order 2989, pt. III § 2.

47/ 1975 STATE DEPARTMENT REPORT, app. 2, pt. A, chart (5).

48/ TTC tit. 5, § 251.

49/ TTC tit. 5, § 301.

50/ Id.

VII. COURT STAFFS AND JUDICIAL ADMINISTRATION

The courts now serving the Northern Marianas employ a clerk of courts, three assistant clerks, a probation officer, and clerical personnel.[51] All Trust Territory courts may call upon the services of the administrative office of the Trust Territory Courts.[52]

The chief justice is presently charged with the administrative supervision of all Trust Territory courts. The chief justice also recommends a budget for the Trust Territory courts to the Secretary of the Interior.[53]

VIII. CASE LOADS

The Trust Territory courts handled a total of 1,543 cases in the Northern Mariana Islands during fiscal

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51/ 1975 STATE DEPARTMENT REPORT, app. 2, pt. A, chart (5). The Report indicates that these staff members received the following salaries during fiscal year 1975:

Clerk of Courts.	$ 5,387/yr.
Assistant Clerk of Courts. . .	4,264/yr.
Assistant Clerk of Courts. . .	2,662/yr.
Assistant Clerk of Courts. . .	1.28/hr.
Probation Officer.	4,014/yr.
Clerk Typist	2,246/yr.
Summer Trainee Clerical. . . .	0.66/hr.
Court Reporter	5,720/yr.
Janitor/Janitress.	1,893/yr.
Temporary Clerk Typist	0.71/hr.

52/ The director of the administrative office was paid $9,672 for fiscal year 1975. During the same period, the deputy director's salary was $7,259.

53/ Secretarial Order No. 2918, pt. IV; TTC tit. 5, § 1(3).

year 1976. Table I shows in detail recent case loads of courts serving the Northern Marianas.

IX. RULES OF PRACTICE AND PROCEDURE

The chief justice of the Trust Territory currently has the power to issue rules governing the pleading, practice, procedure, and the conduct of business of the Trust Territory courts, provided that the rules do not violate the law.[54/]

54/ TTC tit. 5, § 202.

TABLE I

CASES FILED

	CRIMINAL			CIVIL			TOTAL
Appellate Division of the High Court							5
Trial Division of the High Court		80			281		361
District Courts	Traffic	Misde-meanor	Felony	Regular	Small Claims	Juvenile	
1975 July	83	3	1	7	6	1	101
August	93	11	1	1	29	4	139
Sept.	55	4	2	7	10	3	81
Oct.	22	3	3	4	6	0	38
Nov.	37	3	1	14	7	0	62
Dec.	52	6	3	15	31	1	108
1976 Jan.	33	6	2	13	12	4	70
Feb.	37	15	2	83	16	3	156
Mar.	54	6	0	17	2	7	86
Apr.	225	6	0	16	14	4	265
May	112	4	2	9	0	2	129
June	131	12	2	7	1	5	158
TOTAL	934	79	19	193	134	34	1,393
Community Courts	0	0	0	0	0	0	0

TABLE I

CASES DISPOSED OF

	CRIMINAL			CIVIL			TOTAL
Appellate Division of the High Court							15
Trial Division of the High Court		118			268		386
District Courts	Traffic	Misde-meanor	Felony	Regular	Small Claims	Juvenile	
1975 July	132	11	6	2	7	2	160
August	72	3	4	2	20	17	118
Sept.	51	19	7	11	1	2	91
Oct.	31	13	6	5	13	2	70
Nov.	37	7	7	4	29	0	84
Dec.	46	6	5	10	50	0	117
1976 Jan.	33	7	7	25	16	7	95
Feb.	26	22	10	24	0	14	96
Mar.	40	7	1	15	0	15	78
Apr.	159	21	10	18	0	3	211
May	107	10	2	1	0	10	130
June	150	17	3	4	0	4	178
TOTAL	884	143	68	121	136	76	1,428
Community Courts	0	0	0	0	0	0	0