

October 27, 1976

REPORT TO THE CONVENTION OF THE COMMITTEE
ON GOVERNMENTAL INSTITUTIONS

Subject: Committee Recommendation Number 2: The Judicial
Branch of Government

The Committee on Governmental Institutions recommends that the Convention sitting as a Committee of the Whole adopt in principle the attached constitutional provisions with respect to the judicial branch of government.

The Committee believes that the Commonwealth of the Northern Mariana Islands should have a Commonwealth court system to exercise jurisdiction over all local criminal and civil matters to the same extent as a state within the United States. For the first five (5) years of the new Commonwealth, however, the Committee believes that only a local trial court should be created with defined jurisdiction, leaving all other judicial matters (including appeals) to the United States District Court for the Northern Mariana Islands pursuant to the provisions of article IV, section 402 of the Covenant. Under the Committee's recommendation, the legislature would have the power to increase the jurisdiction of the local courts after the Constitution has been in effect for five (5) years. The Committee's recommended constitutional language also deals with the structure of the judicial branch and with the selection, tenure, qualifications, compensation, removal, discipline, and administrative duties of the judges who will serve the court system. These suggested constitutional

provisions are contained in an article of nine sections. The principal issues considered by the Committee and the reasons underlying the Committee's recommended draft constitutional provisions are discussed below.

Section 1: Judicial Power. This section authorizes the legislature to create the judicial branch of the new Commonwealth consisting of such trial and appeals courts as the legislature deems necessary. It makes clear that the ultimate objective of this Constitutional article is to vest judicial power over all local civil and criminal matters in a unified Judiciary of the Northern Mariana Islands. Section 1 provides a flexible grant of authority which will enable the Commonwealth courts to exercise all the judicial power available to the Commonwealth under the Covenant, which is virtually identical to that available to a state within the United States.

Section 2: Commonwealth Trial Court. The second section requires the legislature to create a Commonwealth trial court and to provide it with appropriate supporting personnel. That court would hear all land matters regardless of the amount involved and all civil actions except those in which the amount in controversy exceeds \$5,000 in value to the defendant. The court's jurisdiction would extend also to all criminal cases in which the defendant, if convicted, is liable to a fine which is not more than \$5,000 or imprisonment for a term which is not longer than five (5) years. After five (5) years have elapsed from the date of

the ratification of the Constitution, the legislature would have the authority to increase the jurisdiction of the Commonwealth trial court.

This section and the following two sections of the draft article reflect the Committee's belief that the Commonwealth would best be served by starting out with a Commonwealth court system with limited jurisdiction which could be increased by the legislature over time as the Commonwealth's circumstances and resources permit. The Committee attaches a high priority to the ultimate objective of a comprehensive Commonwealth judiciary, staffed with well-trained and experienced local residents able to dispense justice fairly and to earn thereby the respect of the people for their learning, objectivity and sensitivity to the needs of the Northern Marianas people. Such a judicial branch is an important component of the self-government available to the people under the Covenant. The Committee concluded, however, that it would be impractical to require in the Constitution that such a comprehensive Commonwealth court system be created immediately upon ratification of the Constitution.

First, the Committee is concerned about the limited number of experienced Northern Marianas lawyers available to serve on such Commonwealth courts. Although it may be necessary to employ some non-Marianas lawyers as judges at the outset, the Committee considers this as a transitional need only and

wishes to minimize the number of non-Marianas lawyers serving as judges in Commonwealth courts. The Committee believes that the citizens of the Commonwealth place a high value on judicial competence and experience and that it is particularly important that the first years of experience with a Commonwealth court system encourage the people to place their confidence in the new judicial system. The Committee believes that its proposal advances these objectives.

Second, the Committee is concerned about reducing the costs to be borne by the Commonwealth taxpayers. A fully developed local judiciary would be expensive to support given the limited population in the Commonwealth. By permitting the United States District Court for the Northern Mariana Islands to conduct some trials and all appeals involving local matters at the outset, the Constitution would produce substantial monetary savings for the Marianas people. Since the federal government will fund the district court, the Committee concluded that this opportunity to conserve the limited financial resources available to the Commonwealth should not be bypassed. It is the Committee's view that some portion of such savings should be used by the legislature to advance the training of local lawyers.

Third, the Committee's recommendation also reflects the generally high reputation of the United States judiciary and the flexibility available to the Commonwealth under the Covenant. If the Committee did not believe that the people of the Northern Marianas would respect the quality of justice dispensed by the Federal courts, we would not advance this.

recommendation for consideration by the Convention. In the Committee's opinion, the Commonwealth has an unusual opportunity to use the Federal District Court for some local civil and criminal cases during the early years of the Commonwealth or longer if the legislature decides that the best interests of the people so dictate.

It is for these reasons that section 2 requires the creation of a Commonwealth trial court but limits its jurisdiction for five years. The definition of jurisdiction is admittedly arbitrary, but the Committee concluded it struck an appropriate balance between the available extremes of giving the Commonwealth court too little to do or too much to do. The proposed jurisdiction of the Commonwealth trial court is greater than that currently possessed by the district courts under the TTPI court system. The Committee rejected the alternative of giving the trial court criminal jurisdiction for misdemeanors only on the grounds that the authority over more serious offenses might attract more qualified persons to the position and more experience with a local judiciary would be acquired in a shorter period of time.

Although section 2 refers to a Commonwealth trial court, the Committee contemplates that as many judges and supporting personnel would be appointed to this court as are necessary to serve the needs of the Commonwealth. In order to make certain that civil and criminal cases arising

on Rota and Tinian are promptly considered, the proposed section requires the designation of at least one (1) full-time judge to hear cases on each of these islands.

The Committee believes that the proposed language provides sufficient flexibility to permit the legislature to determine the number of judges and supporting staff required to enable the Commonwealth trial court to get off to a good start. We recommend against any more specific language than is contained in the proposed section 2.

The proposed section 2 requires the creation of a specialized division within the Commonwealth trial court to hear all land matters. The Committee decided to create such a division in order to increase the efficiency and expertise with which these cases are resolved. The division would be staffed with as many judges as appropriate to hear land cases promptly. Judges assigned to the specialized land division shall be free to handle other cases in the court if their workload permits. The Committee decided not to require any special qualifications for judges assigned to the specialized land division, although the Committee emphasized its view that such judges should be expert in land matters and possess the ability to deal with such controversial matters objectively. The Committee is confident that the governor and the Senate will consider such matters carefully in evaluating the qualifications of

any nominee proposed for this judicial position.

Section 3: Commonwealth Appeals Court. Section 3 would empower the legislature to create a local appellate court after the Constitution has been in effect for five (5) years. This section clearly permits the legislature to vest all appellate jurisdiction in a Commonwealth appeals court after five (5) years have elapsed from the effective date of the Constitution, if the legislature concludes that the Commonwealth judiciary is ready for such additional responsibility. The reasons for the gradual approach are the same as those discussed above in considering the proposed section 2. The language of the proposed section grants maximum flexibility to the legislature in creating appellate courts and in deciding whether to require (or only permit) appeals in particular kinds of cases.

Section 4: Jurisdiction of the United States District Court for the Northern Mariana Islands. Section 4 vests jurisdiction in the United States District Court for the Northern Mariana Islands over those civil and criminal cases (both trial and appellate jurisdiction) which are not assigned by this article or the legislature acting pursuant to this article to the courts of the Commonwealth. When sitting as an appellate tribunal, the district court would consist of three (3) judges, at least one (1) of whom must be regularly serving as a judge in a court of record of the

Commonwealth. For the reasons set forth above, the Committee concluded that using the District Court for local matters was an appropriate transitional response to the special needs and circumstances of the new Commonwealth.

Section 5: Appointment and Qualifications. This section grants the governor the power to appoint judges of the Commonwealth courts with the advice and consent of the upper house of the legislature. This section also provides that judges will serve initial six (6) year terms and will be eligible for reappointment for one (1) or more terms. The legislature would have the authority to increase the terms of judges upon reappointment to a period of not more than twelve (12) years. Finally, the section requires that judges be at least thirty (30) years of age and United States citizens or nationals. The legislature would have the power to require other qualifications.

a) Method of Selection. The Committee concluded that appointment was a better method to select judges than through popular election. As the appointing official, the governor would have the resources and staff necessary to develop detailed and objective views concerning the qualifications of judicial candidates. The people will be able to give credit for good appointments and to fix blame for bad choices. Because the governor will depend on

the people for reelection, the Committee believes that this accountability will influence the governor to appoint well-qualified persons to the bench. There can be no firm guaranty of this, of course, as experience in the United States demonstrates. For this reason, the Committee concluded that confirmation by the Senate would provide a useful check on the governor's appointment power.

The Committee is persuaded that appointed judges would be more respected and less vulnerable to political pressures than elected judges. The selection process recommended by the Committee would free judges from the temptation of engaging in political activities to enhance their chances of reelection. Moreover, prospective judges would not feel compelled to attach themselves to political parties and engage in partisan activity in order to have a chance for appointment to the bench. As a result, judicial aspirants who are highly suited for the bench but who are averse to political activity would not be excluded from consideration. It seems clear, furthermore, that the skills involved in running successfully for office do not ensure the degree of legal ability or judicial objectivity desired for Commonwealth judges. Finally, a governor who has the power to appoint all local judges would have the capacity to

balance judicial selections among the various geographical and cultural groups within the Commonwealth.

b) Qualifications. The Committee recommends that the Constitution require that all judges be at least thirty (30) years of age in order to provide some assurance of the maturity required to discharge judicial functions and some practical experience after graduation from law school. The Committee also recommends that United States citizens or nationals be eligible for appointment to Commonwealth judgeships. The Committee is concerned with obtaining the best-qualified judges available for the local bench. Permitting nationals as well as citizens to serve as judges may increase the likelihood that this objective will be achieved. The Committee is continuing to consider the problem of nationals in connection with other matters under its jurisdiction, most particularly qualifications for officers of the legislative and executive branches of government. The Committee reserves the right, therefore, to revisit this issue after such further deliberations.

The constitutional language endorsed by the Committee would leave the issue of residency requirements to the legislature. The legislature's decision would, the Committee believes, turn on the Commonwealth's initial experience with its courts.

and on the presence within the Northern Marianas of persons qualified to be judges. Although the Committee is generally sympathetic with residency requirements for legislative and high executive officials, it does not want to impose any such requirements for the judicial branch during the first years of the new Commonwealth. Leaving the matter to legislative discretion will enhance the Commonwealth's ability to secure the best qualified judges and preserve the opportunity to impose such restrictions in the future if they appear desirable.

The Committee's proposed language does not require that Commonwealth judges be lawyers. The Committee expects that all judges will most probably be attorneys. The Committee believes, however, that the flexibility to define the precise scope of legal training necessary should be given the legislature. That body could then determine whether graduation from an accredited law school, admission to a bar in the United States or either will be necessary to satisfy the legal training requirement. The Committee intends that a Marianas resident who has been graduated from any law school will be deemed to have received training at an accredited institution.

The legislature would have authority to prescribe other qualifications for judges. The Committee believes that this is the best way to ensure the flexibility needed for a judicial system whose shape and functions will almost certainly change over time.

c) Tenure. The Committee's proposed section 5 would fix the duration of the initial term of every Commonwealth judge at six (6) years. At the legislature's option, the length of succeeding terms could be increased to a period ranging up to twelve (12) years.

The Committee believes that this approach would give a newly-appointed judge a sufficient period in which to develop his judicial capabilities and to demonstrate that he is worthy of reappointment. The relative brevity of the initial term would also permit the appointment of judges from outside the Commonwealth until there are a sufficient number of qualified Northern Marianas residents to serve as judges. The Committee rejects shorter terms (such as two or four years) because they might make it difficult to attract qualified judges and because a judge serving such a short term might concentrate on improving his chances for reappointment rather than meeting his responsibilities of dispensing justice expertly and fairly.

If judges demonstrate during their first term of six years that they are fully qualified to be members of the Commonwealth judiciary, the Committee concluded that a longer term of office might be appropriate. The Committee is aware that short terms of office have often been an obstacle in the United States to obtaining the best qualified judges. For a lawyer with a successful practice, going on the bench

means abandoning his private practice, foregoing any political activity, and devoting his full professional energies to his judicial responsibilities. The Committee believed that a longer term -- of up to twelve (12) years -- for second and succeeding terms might be helpful in encouraging qualified judges to make themselves available for reappointment.

On the other hand, the Committee rejected the alternative of lifetime judicial appointments. The Committee considered but was not persuaded by the advantages of such appointments. The Committee believes that appointing judges for life would deprive the Commonwealth of the ability to rid itself of jurists whose incompetence or dishonesty, while substantial, is not sufficient to justify their removal under the proposed section 7.

Section 6: Compensation. The Committee's recommended language would empower the legislature to fix the compensation of judges. Once a judge's rate of pay is set, however, it could not be decreased during the judge's term of office. The Committee has under consideration in connection with the legislative branch of government the use of an expert commission to advise the legislature with respect to governmental salaries. If the Committee pursues this approach, it reserves the right to revisit this proposed section and adjust it accordingly.

Section 7: Sanctions. The Committee's proposed language would render judges subject to impeachment. The procedures for removing a judge through impeachment would accord with those applicable against other civil officers. The grounds recommended by the Committee as adequate for impeachment are straightforward: commission of a crime, neglect of duty or conduct which brings the judiciary into disrepute.

The Committee believes that impeachment is a necessary vehicle for legislative oversight of the judicial branch. The grounds for impeachment which the Committee's proposed language would prescribe are sufficiently narrow to prevent legislative incursions into the independence of the court system. The Committee's concern for this independence motivated it to reject address and recall as methods of removing judges.

The Committee also recommends a second mechanism for disciplining judges. The article offered by the Committee would obligate the legislature to create an Advisory Commission on the Judiciary. Composed of lawyers and representatives of the public, the Commission would scrutinize the behavior of local judges. It would have the power to recommend that the governor remove, suspend or otherwise sanction a judge. The Committee is convinced that this approach permits an expert and nonpartisan review of judicial performance and a flexible

means of recommending disciplinary measures by the governor which can be tailored to suit the particular judicial misconduct.

Section 8: Limitations on Activities of Judges.

The Committee believes that the Constitution should specify a broad range of activities which are denied to judges. In the Committee's view, judicial participation in such activities would, at best, appear unseemly and, at worst, give rise to charges of conflict of interest.

Under the Committee's proposed language, a judge serving in a full-time position would be prohibited from holding any other compensated office under the government of the Commonwealth or of the United States. This limitation would serve two purposes. First, it would ensure that no judge will decide the legality of an action of a branch of government in which the judge is employed. Second, such a prohibition is probably required by the "separation-of-powers" clause of the Covenant.

The recommended article would also forbid a full-time judge from practicing law. This prohibition is designed to prevent a judge from appearing as a lawyer before fellow members of the judiciary. It is also intended to eliminate the possibility that a judge will try a case involving a question similar to an issue presented in another case in which the judge is appearing as counsel. Such restrictions are commonplace in the United States.

Finally, under the proposed section 8, a judge would be barred from engaging in a wide variety of political activities. The Committee believes that judges should be removed from politics to the fullest extent possible so as to increase the likelihood that they will be objective in deciding matters involving political concerns. The proposed language is taken almost verbatim from the Puerto Rico constitution and is admittedly comprehensive in its coverage. In the Committee's view, such a broad prohibition will protect Commonwealth judges by enabling them to reject any request that they engage in any political activity on the grounds that it might violate this section of the Constitution. If a person is unwilling to abandon all political activity, it is the Committee's view that such a person is not qualified for judicial office.

Section 9: Rule-Making Power. The Committee recommends that the judiciary receive authority to formulate rules in several areas relating to judicial administration. First, the proposed constitutional language of section 9 would authorize the Northern Marianas judiciary, acting either as a body or through a committee of its members, to propose rules governing civil and criminal procedures in the courts. Second, the proposed section would empower the judiciary to adopt rules relating to judicial ethics, dealing with such matters as outside employment (to the extent not dealt with in section 8) and conflicts of interests. Third, section 9

would authorize the Commonwealth courts to adopt rules governing the admission of lawyers to the bar as well as the discipline of attorneys after their admission. Other rules on matters of judicial administration would also be authorized under section 9.

These proposed rules would be submitted promptly to the legislature for review. The legislature would have sixty (60) days in which to reject a rule submitted by the judiciary. If either house of the legislature does not disapprove a rule within that period of time, the rule would then take effect. The Committee is convinced that granting the judicial branch the authority to issue such rules would promote the efficient administration of justice. The Committee believes that the full opportunity afforded the legislature to disapprove a suggested rule would serve as a sufficient check on the judiciary's possible abuse of this power. Since the Committee has tentatively concluded that the legislative branch can determine the frequency and length of its sessions, it concluded that the sixty (60) day period provided sufficient time for the legislature to act to disapprove a proposed judicial rule.

The Committee's proposed section 9 is permissive rather than mandatory. Since it is desirable to have some rules available as soon as the Commonwealth courts begin functioning, section 9 provides further that the rules governing these subjects in the United States District Court

for the Northern Mariana Islands shall govern until such time as the Commonwealth courts adopt their own rules. The Committee has requested counsel to report whether additional language is necessary in section 9 to prevent the application of any rules applied in United States courts which are inconsistent with either the Covenant or other provisions of the Constitution.

The Committee believes that its proposed constitutional article on the judicial branch would form the basis for a court system capable of dispensing justice with efficiency and sensitivity to the needs of the people of the Northern Mariana Islands. The Committee recommends that the Convention adopt in principle the attached article.

Respectfully submitted,

~~Jose P. Mafnas, Chairman~~

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