

October 29, 1976

REPORT TO THE CONVENTION
OF THE COMMITTEE ON PERSONAL RIGHTS
AND NATURAL RESOURCES

Subject: Committee Recommendation No. 4:
Personal Rights

The Committee recommends that the Committee of the Whole adopt in principle the constitutional provision attached hereto with respect to personal rights.

The Committee has considered a wide range of proposals with respect to personal rights and recommends that there be a single constitutional article dealing with all personal rights. The draft provision attached to this report contains 12 sections each of which deals with a separate personal right or group of related rights.

The Committee's recommendations are organized in three general sections. The Committee considered first those personal rights that are guaranteed by the United States Constitution and that are made applicable within the Northern Mariana Islands by the Covenant. Those rights are set out in Sections 1 through 6. The Committee then considered those personal rights that are guaranteed within the United States by the United States Constitution but are not extended automatically to the Northern Mariana Islands

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by the Covenant. Those rights to be included in the Commonwealth Constitution are set out in Sections 7 through 9. Finally, the Committee considered personal rights that are guaranteed by some state constitutions and that have been recommended by various experts, but that are not included in the United States Constitution and therefore are not extended to the Northern Mariana Islands by the Covenant. Those rights to be incorporated in the Commonwealth Constitution are set out in Sections 10 through 12. The reasons for the Committee's recommendation with respect to each proposed constitutional provision falling within these three categories are set out below.

Rights Guaranteed by the United States
Constitution and Applicable Automatically
in the Northern Mariana Islands

In general, the Committee decided to incorporate into the Commonwealth Constitution rights that are guaranteed by the United States Constitution. The Committee believed that it would be useful to collect in one place in the Constitution all of the important personal rights. This would permit citizens of the Commonwealth to look to their own Constitution for a complete statement of their personal rights and would not require them to go back through the Covenant and consult the relevant parts of the United States Constitution.

Section 1: Laws Prohibited. This section is drawn from Article I, Section 10 of the United States Constitution.

It prohibits three kinds of laws: (1) bills of attainder, which are laws that declare a person guilty of a crime and impose punishment without a trial before a court; (2) ex post facto laws, which are laws that define new criminal offenses and apply them retroactively to a period of time before the law was enacted; and (3) laws impairing the obligations of contract.

The Committee decided not to incorporate the privileges and immunities clause of Article IV, Section 2 of the United States Constitution because it is of limited benefit to citizens of the Northern Mariana Islands. Its benefits apply primarily to United States citizens who travel to the Commonwealth. The privileges and immunities clause of the United States Constitution is made applicable automatically by the Covenant and will be in force in the Commonwealth even though it is not included in the Commonwealth Constitution.

Section 2: Freedom of Religion, Speech, Press and Assembly. The Committee recommends that the general language of the First Amendment of the United States Constitution be incorporated in the Commonwealth Constitution. The Committee has not provided for any extension of that language.

The provision with respect to freedom of religion requires that the Commonwealth government refrain from aiding religion. As under the United States Constitution,

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some aid to religious institutions, such as schools, is permitted if that aid is for a non-religious purpose, such as education in science or other non-religious subjects.

The provision with respect to freedom of speech prevents interference with the free expression of ideas except where important interests in social order are involved. Because the Committee has not extended the First Amendment language, this constitutional provision does not protect obscenity or certain forms of conduct such as flag-burning that have been classified as "non-verbal" speech.

The provision with respect to freedom of the press prevents any government censorship of the press by the executive, legislative or judicial branches of the government. Because the Committee has not extended the rights guaranteed by the United States Constitution, this provision does not give newsmen the right to refuse to reveal their sources and may, in some instances, permit a court to order newsmen not to publish certain information about criminal defendants or trials.

The provision with respect to freedom of assembly prevents any government interference with political rallies, religious gatherings or other meetings. This provision also gives the people the right to petition the government for the redress of their grievances.

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Section 3: Search and Seizure. This section provides a guarantee with respect to the security of the people in their persons, homes, papers and other effects.

Section 3(a) provides that a search or seizure can be conducted only pursuant to a warrant, and that the warrant must be issued by a court after a showing of probable cause. This is an extension of the Fourth Amendment. Under the United States Constitution some searches may be conducted without a warrant and with less than a showing of probable cause. The Committee believes that an extension of the Fourth Amendment protection is appropriate for the Commonwealth in order to establish a uniform rule governing all searches and seizures.

Section 3(b) deals specifically with searches and seizures through wiretapping. It provides the same protections against these actions of the government by requiring a warrant in every case. The Committee believes that wiretapping should not be prohibited in the Commonwealth because there are some types of crimes, such as drug trafficking, that are very difficult to prosecute without such evidence. The Committee has included this provision so that the policy with respect to wiretapping in the Commonwealth will be absolutely clear.

Section 3(c) is an extension of the Fourth Amendment. It provides that the victims of illegal searches or seizures will have a cause of action against the Commonwealth government. Under the Fourth Amendment, the only sanction for an illegal search or seizure is the application of the exclusionary rule that prevents the evidence obtained by these methods from being used in the criminal trial. The Committee believes that a more sensible policy is to compensate those who are adversely affected and to leave the courts free to decide whether the evidence gathered by these methods should be used in the trial based on considerations of the probative nature of the evidence itself. The Committee recognizes that there may be a need for limitations on the amount of money damages for which the Commonwealth will be liable in such cases and has permitted the legislature to set such limits.

Section 4: Criminal Prosecutions. This section contains nine separate fundamental rights pertaining to prosecution of criminal cases.

Section 4(a) provides that the criminal defendant shall have the right to be represented by a lawyer in all cases and in all appeals. This is an extension of the

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right provided by the Sixth Amendment of the United States Constitution, which guarantees counsel only in cases in which the defendant may be sentenced to prison and only through the first appeal. Under the Committee's recommended provision, a defendant can waive his right to counsel. If a defendant elects to be represented by counsel and is too poor to pay legal fees, the Commonwealth will have the responsibility of providing counsel. The Committee recognizes that extending the right to counsel also extends the burden on the Commonwealth, both in financial resources and in the minimum time necessary for the trial of cases. However, the Committee believes that this right is important in securing a fair trial and an effective judicial system.

Section 4(b) is taken directly from the Sixth Amendment to the United States Constitution and has not been extended. It provides that the accused has the right to be confronted with the witnesses against him so that he can meet that evidence and present his own defense effectively. It also provides that the accused has the right of compulsory process to obtain witnesses in his favor. This means that the court will issue subpoenas to persons who have relevant information but who are unwilling to testify voluntarily. In this manner, the defendant can have the benefit of all available evidence at his trial.

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Section 4(c) is taken directly from the Fifth Amendment to the United States Constitution and has not been extended. It provides that no person can be compelled to testify against himself. This means that no witness in a trial or other administrative proceeding can be compelled to testify against himself. It also means that no defendant can be compelled to testify at all at his own trial. A defendant in a criminal case is entitled to have the Commonwealth prove the offense without any testimony from him. The defendant can, of course, elect to testify in his own behalf.

Section 4(d) is taken directly from the Fifth Amendment to the United States Constitution and has not been extended. It requires a speedy and public trial. The Committee considered an extension of this right that would require a trial in the municipality from which the defendant came. The Committee rejected this proposal because it believed that trial at the place where the crime was committed was more appropriate.

Section 4(e) is taken from the Fifth Amendment to the United States Constitution and has been extended by the Committee to cover double jeopardy between the federal and Commonwealth jurisdictions. Under the Fifth Amendment, a defendant cannot be prosecuted twice by the same jurisdiction -- that is he cannot be prosecuted twice by the Commonwealth or twice by the federal government. However,

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it is possible for a defendant to be prosecuted twice -- once by the federal government and once by the state government -- for the same offense, if that offense happens to be a violation of both federal and state statutes. Under the Committee's recommended provision, there would be only one opportunity to prosecute a defendant. The Commonwealth and federal prosecutors would be required to confer and decide which should undertake the prosecution. Once one jurisdiction had prosecuted a defendant, the other jurisdiction would be barred. The Committee points out that this would affect only a small number of cases and would not affect cases where the crime resulted in more than one type of charge being brought against the defendant. The federal prosecutor could prosecute bank robbery charges, for example, and if the defendant were acquitted, the Commonwealth prosecutor could then prosecute for a subsidiary offense arising out of the same crime such as illegal possession of a gun.

Section 4(f) is taken directly from the Eighth Amendment to the United States Constitution and has not been extended. This provision prohibits excessive bail. It does not require that defendants be able to put up bail and be released from prison in all cases. The legislature might decide that certain crimes, for example murder or drug trafficking, are so serious that no person accused of those crimes and against whom a sufficient

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amount of evidence exists should be permitted to leave jail pending trial. In those cases the severity of punishment increases the likelihood that the accused will not return to stand trial once freed. The Committee recommends a prohibition on excessive bail so that if the legislature provides for bail in certain types of cases a judge cannot set bail higher than poor persons can afford just to keep them in jail. The draft provision requires only that for cases where the legislature permits bail, the bail not be excessive.

Section 4(g) is also taken directly from the Eighth Amendment to the United States Constitution and has not been extended. It provides that excessive fines shall not be imposed. This provision does not require or prohibit the imposition of fines for offenses for which the legislature finds them to be appropriate. The provision only requires that when fines are available as a punishment and they are imposed, that they not be excessive in relation to the crime.

Section 4(h) has also been taken directly from the Eighth Amendment to the United States Constitution and has not been extended. It prohibits cruel and unusual punishments. This means that the legislature may not devise or use punishments such as starvation, torture, non-voluntary medical experimentation or things other than prison terms, probation and other forms of partial release.

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Section 4(i) is a specific extension of the Eighth Amendment to cover capital punishment. The Committee believes that capital punishment should be abolished because mistakes are sometimes made in prosecuting criminals and if an innocent person were put to death by the Commonwealth an irremediable injustice would have been done. The Committee considered the burden on the Commonwealth of keeping prisoners in custody for long sentences as would be required without the death penalty. The Commonwealth decided that this burden was reasonable because the Committee believes that no risk should be taken with a human life. The Committee also considered the use of capital punishment as a deterrent and decided that this was probably outweighed by the possibility of rehabilitation in some cases, therefore capital punishment should not be used.

Section 5: Due Process. This provision is taken directly from Section 1 of the Fourteenth Amendment to the United States Constitution and has not been extended. This provision requires the Commonwealth government to observe strict standards of fairness in dealing with the people. The protections of this section do not extend to interference with civil rights by a private individual. The legislature, however, has the option to extend such protection by statute.

Section 6: Equal Protection. This provision was taken from Section 1 of the Fourteenth Amendment to the United

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States Constitution and has been extended significantly. The first sentence of the Committee's recommended provision is the standard equal protection clause. Similar clauses are found in every state constitution. This provision guarantees that the government will treat all persons similarly situated in the same manner. It forbids classifications that are irrational. The second sentence of this provision requires special protection against certain kinds of classifications: race, color, religion, ancestry or sex. This is an extension of the Fourteenth Amendment protection which applies strict scrutiny only to race and ethnic classifications. The Committee's recommended provision forbids classifications based on these two factors and adds religion, ancestry and sex. The Committee believes that these are important protections and should be made explicit in the Commonwealth Constitution. The Committee decided not to extend the language of this section to include discrimination based on alienage.

Rights Guaranteed by the United States
Constitution within the United States But
Not Applicable Automatically in the Commonwealth

The Committee considered five fundamental rights guaranteed by the United States Constitution but not made applicable automatically by the Covenant in the Northern Mariana Islands. These are the right to bear arms, the right not to be required to house soldiers, the right to a grand jury indictment in certain criminal cases, the right to

trial by jury in criminal cases, and the right to trial by jury in civil cases. The Committee's recommended provision includes a form of each of these rights except the right to indictment by grand jury. The Committee decided that the grand jury procedure was costly, time-consuming and not required in a relatively small community such as the Commonwealth.

Section 7: Availability of a Militia

This section incorporates the language of the Second Amendment to the United States Constitution. It permits the Commonwealth to form a militia if that is necessary and guarantees the right to bear arms in order to have armed and trained citizens available to serve in the militia. The Committee believes that a militia might be necessary to help keep order during times of disaster or other emergency. This Amendment guarantees the right of the Commonwealth to organize such a militia -- on land, at sea or in the air -- but does not require the legislature to do so. The Committee believes that the protection available from the United States military forces will suffice in most instances. The Committee's proposed constitutional provision does not guarantee the right of an individual to possess any particular gun. Under this proposed provision, the legislature could enact a gun control law if that were to become necessary.

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Section 8: Quartering Soldiers. This section is taken from the Third Amendment to the United States Constitution and has not been extended. It prohibits the quartering of soldiers in civilian homes during peacetime, and permits such action during wartime only as provided by the legislature. The Committee discussed including refugees in this provision, but decided that such a contingency could be left to the legislature.

Section 9: Right to Trial by Jury. This section authorizes the legislature to specify the particular kinds of criminal and civil cases in which the parties involved will have the right to request a jury trial. The Committee did not want to guarantee the right to trial by jury in all cases in the Northern Mariana Islands because of the expenses associated with juries, the difficulty of finding jurors unacquainted with the facts of a case, and the fear that the small closely-knit population in the Northern Mariana Islands might lead to acquittals of guilty persons in criminal cases. Nonetheless, the Committee believes that in some cases, especially those where defendants face serious criminal charges and long terms of imprisonment, the right to trial by jury should be guaranteed. Therefore, this section gives the legislature the authority to designate the categories of cases in which a jury trial may be requested. Within these categories of cases, any defendant

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may elect to have a jury trial. The choice rests solely with the defendant. At the present time, all criminal defendants in the Northern Mariana Islands have the right to trial by jury, yet there have been very few such trials. The Committee expects that this practice will continue, particularly in light of evidence that judges and juries generally reach the same verdicts.

Rights Not Guaranteed by the United
States Constitution Within the
United States

Each of the rights in this section is in addition to the protection offered by the United States Constitution. The Committee provided for these additional protections because it believed that they met significant needs within the Commonwealth. The Committee also considered constitutional protection for access to governmental hearings and documents, collective bargaining and humane treatment of prisoners. The Committee decided that these matters are more appropriately left to the legislature.

Section 10: Free Public Education. This section guarantees the right of each person to attend a free public school. This does not mean that each public school must accept all students that apply. Each school may restrict enrollment to students within a certain age range or of certain abilities, but if persons are not allowed to attend certain schools, there must be other free public schools that

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are open to them: Similarly, if existing schools cannot house all of the potential students in the Commonwealth, new schools must be built. This section does not prohibit schools from adopting disciplinary and administrative rules or from refusing to accept students who are serving criminal sentences.

Section 11: Clean and Healthful Environment. This provision protects the environment in the Commonwealth. The Committee does not believe that there are significant environmental problems at the present time. However, it believes that this is an appropriate constitutional provision in order to provide protection for the future.

Section 12: Privacy. This provision protects the right of each person to privacy. This means that a person should not be subjected to unwanted publicity or intrusion into his affairs unless there is a compelling government interest that overcomes the individual's interest.

Delegate Proposals. The Committee considered Delegate proposals numbered 25, 31 and 67 that pertain to the article on personal rights.

With respect to proposal number 25, Sections 1, 2, 3, and 5 are consistent with the Committee's proposed Constitutional provision. Section 7 of the proposal is covered in more limited form by Section 10 of the Committee's proposed provision. Consideration of Sections 6 and 9 was deferred.

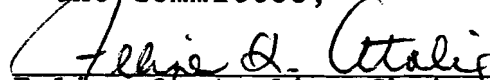
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With respect to proposal number 31, this matter is covered in more limited form by Section 9 of the Committee's proposed provision.

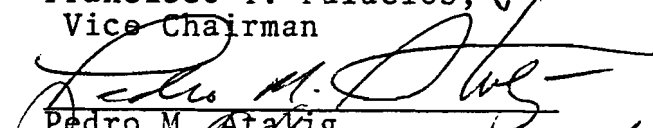
With respect to proposal number 67, Section 1 is covered by Section 4(a) and (d) of the Committee's proposed provision. Consideration of Section 2 has been deferred.

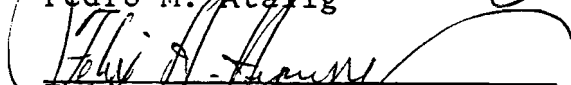
The Committee has deferred consideration of constitutional provisions with respect to the rights of juveniles and will consider that matter when it considers other delegate proposals dealing with personal rights.

Respectfully submitted by
the Committee,

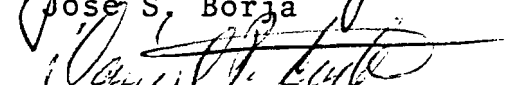

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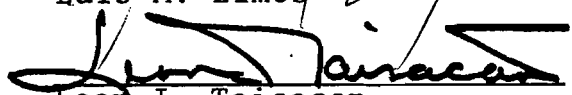

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ARTICLE __
PERSONAL RIGHTS

Section 1: Laws Prohibited. No law shall be made that is a bill of attainder, an ex post facto law, or a law impairing the obligation of contracts.

Section 2: Freedom of Religion, Speech, Press and Assembly. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

Section 3: Search and Seizure. The people shall have the right to be secure in their persons, houses, papers and belongings.

a) No search or seizure shall be conducted without a warrant issued by a court and no warrant shall issue but upon probable cause supported by oath or affirmation and describing particularly the place to be searched and the persons or things to be seized.

b) No wiretapping or other comparable means of surveillance shall be used except pursuant to a warrant.

c) Any person adversely affected by an illegal search or seizure shall have a cause of action against the government within limits provided by law.

Section 4: Criminal Prosecutions. In all criminal prosecutions certain fundamental rights shall pertain.

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a) The accused shall have the right to assistance of counsel in all cases, including all appeals.

b) The accused shall have the right to be confronted with the witnesses against him and to have compulsory process for obtaining witnesses in his favor.

c) No person shall be compelled to be a witness against himself.

d) There shall be a speedy and public trial.

e) No person shall be put twice in jeopardy for the same offense regardless of the governmental entity that first institutes prosecution.

f) Excessive bail shall not be required.

g) Excessive fines shall not be imposed.

h) Cruel and unusual punishment shall not be inflicted.

i) Capital punishment is prohibited.

Section 5: Due Process. No person shall be deprived of life, liberty or property without due process of law.

Section 6: Equal Protection. No person shall be denied the equal protection of the laws. No person shall be denied the enjoyment of civil rights or be discriminated against in the exercise thereof on account of race, color, religion, ancestry or sex.

Section 7: Availability of a Militia. In order that a militia may be available if necessary in times of emergency, the right of the people to keep and bear arms shall not be infringed.

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Section 8: Quartering Soldiers. No soldier in time of peace may be quartered in any house without the consent of the owner, nor in time of war except in a manner prescribed by law.

Section 9: Trial by Jury. The legislature may provide for trial by jury in serious criminal and civil cases as defined by law.

Section 10: Free Public Education. Each person shall have the right to a free public education.

Section 11: Clean and Healthful Environment. Each person shall have the right to a clean and healthful environment.

Section 12: Privacy. The right of individual privacy shall not be infringed except upon a showing of compelling government interest.