

MISCELLANEOUS COMMUNICATIONS

MISC. COM. NO. 1

October 20, 1976

To: All Convention Delegates

Attached please find a copy of a memorandum dated October 20, 1976, from Director, OTSP regarding compensation of Delegates. The memorandum is self-explanatory.

Should you have any question, please direct your question(s) to me, or to the Convention Secretary.

From: Lorenzo I. Guerrero, President, Marianas Constitutional Convention

MISC. COM. NO. 2

October 19, 1976

To: All Convention Delegates

The Convention Secretary has requested the cooperation of all Delegates in providing copies of all written speeches to him before the speech is given on the Convention Floor. This will facilitate a more accurate and efficient record keeping of the Daily Journal.

I solicit the cooperation of all Delegates to provide the Convention Secretary copy and/or copies of your speech or speeches before you deliver it on the Convention Floor.

From: Lorenzo I. Guerrero, President, Marianas Constitutional Convention

MISC. COM. NO. 3

October 29, 1976

To: Lorenzo I. Guerrero, President, Marianas Constitutional Convention

As your Marianas Liaison Officer in Washington, it is my privilege and honor to convey to you not only my personal greetings and congratulations but also from those of your friends in the Mainland upon the calling of the Marianas Constitutional Convention.

Our friends in Capitol Hill, Congressman Phil Burton, on behalf of himself and the members and staff of the House Committee on Interior and Insular Affairs, and his colleagues in the California Delegation; Senator Bennett Johnston, on behalf of himself and his colleagues in the Senate Committee on Interior and Insular Affairs; Senator Fong, on behalf of himself and the Hawaiian delegation; former Ambassador Franklin Hadyn Williams; Ambassador Phillip Manhard and the staff of the OMNS and the staff of the Office of the Territorial Affairs, Department of the Interior; former High Commissioner Will Goding; Continental and Pan American Airlines; the various services of the Armed Forces of the U.S.; former commissioners of the Micronesian War Claims Commission; the Peace Corps; former expatriate employees of and residents of the Marianas in the Mainland have called in the office to convey their best wishes to all of you for the historic occasion of our endeavor to formulate and adopt the Constitution of the Marianas toward self-government.

These friends of ours in the Mainland have asked to be remembered by you and the people of the Marianas and to extend their best wishes for a successful convention.

From: Edward DLG. Pangelinan, Marianas/Washington Liaison Officer

MISC. COM. NO. 4

November 13, 1976

To: Lorenzo I. Guerrero, President, Marianas Constitutional Convention

In compliance with your verbal instructions for public hearings, the following Delegates from the Committee on Finance, Local Government and Other Matters have been appointed from their respective Delegations to conduct public hearings on Saipan, Tinian and Rota.

Saipan: Delegate Jesus Villagomez and Delegate Oscar Raza

Tinian: Delegate Juan Tenorio and Delegate Benigno Fitial

Rota: Delegate Luis Benavente and Delegate Esteven King

From: Benigno R. Fitial, Chairman, Committee on Finance, Local Government and Other Matters

MISC. COM. NO. 5

November 17, 1976

To: Lorenzo I. Guerrero, President, Marianas Constitutional Convention

On the occasion of my return to New York, I extend to you and through you to all of the Delegates to the Constitutional Convention my admiration for the splendid job in forging a good and honorable constitution for the new Commonwealth.

Like the Founding Fathers of the American nation, you have served above the call of duty. Business and family responsibilities have been pushed temporarily to the background so that the full energies of Delegates can be devoted to the historic task of writing a Constitution.

The Constitution will soon be a reality. The work of building a Commonwealth, united and proud, will begin. When I return in the New Year, I look forward to working closely with you, Mr. President, and with my many friends among the Delegates to the Constitutional Convention, in the exacting task of achieving a secure future for the Northern Mariana Islands.

Godspeed in the weeks and months ahead.

From: Howard N. Mantel, Esquire, Institute of Public Administration

MISC. COM. NO. 6

November 16, 1976

To: Lorenzo I. Guerrero, President, Marianas Constitutional Convention

As a citizen of the Northern Marianas, I am most pleased that the Constitutional Convention, under your able leadership, appears to have overcome many if not all the problems with which it was initially confronted and is now headed towards successful completion of its historic task of drafting a constitution for our islands.

The Convention should especially be commended for recognizing and appreciating concerns of our fellow citizens in Rota and Tinian. By providing for their equal representation in the commonwealth legislature and permitting them adequate executive control over their internal affairs the convention has, I am confident, insured harmonious relationships among our people, but importantly has guaranteed that never again will our fellow brothers and sisters in these two islands be subject to neglect by the government in the future.

It is in this spirit of accommodation and recognition of special concerns and interests by the constitutional convention that I am writing to you and the honorable members of the convention to consider the unique situation of the Carolinian community. If I am not mistaken, there is no provision in the constitution, as tentatively approved, that insures fair representation of the Carolinian community in the legislature commensurate with its numerical proportion to the entire population; neither is there any provision that guarantees that the Carolinian share adequately in the executive power of the government.

While the proposed constitution prohibits, in the language itself and by implication, discrimination against any person on account of race, color and ancestry, discrimination against the Carolinian minority can continue, as today, to exist because there is no office in the executive branch that is charged with the function and responsibility of insuring that the Carolinian minority is accorded similar if not equal privileges and opportunities provided to the majority population by the government.

It may be argued that the Carolinian minority can find legal avenues in the U.S. Constitution, Federal statutes and in the Bill of Rights in the proposed constitution with which to promote and protect its interests. This may be true in theory but in many instances the law is overlooked and in some cases is deliberately not enforced when it is not politically expedient or against the interest of those who are charged with enforcing it.

It may be of interest to you to know that the U.S. District in Alabama recently abolished the municipal government in Mobile, Alabama because it did not provide for adequate representation of the black minority in that community. The court further ordered the Mobile community to come up with a governmental system which gives the blacks equitable say in the government.

This is the first opportunity that we have in fashioning our system of government that can be fair and representative of our unique circumstances. If we recognized and accommodated some of these unique characteristics but ignored others in this basic document now, we would leave open the future to possible interference by the federal government to set things right, a prospect that I think none among us would like to see.

I am, therefore, respectfully requesting that the constitutional convention consider the special situation of the Carolinian community and insure that they are represented fairly in the legislature and that they have an office in the executive branch that promotes and protects their interests and insures that they are given a chance to equal opportunities in jobs and other programs provided by the government and the private sector.

From: Felicidad T. Ogunoro, Member, United Carolinian Association, Saipan

MISC. COM. NO. 7

November 9, 1976

To: Deanne C. Selmer, Esquire, Marianas Constitutional Convention

I have reviewed the draft of the proposed Constitution for the Government of the Northern Marianas as it applies to the Judicial Branch.

There are some very important matters which should be brought to the attention of the delegates before this article is further considered.

The draft establishes a court in Tinian and Rota, a Land Court and such other courts as the legislature may form. The High Court of the Trust Territory and lower courts for the Mariana Islands District have statistics for past case filings and which can establish a fairly accurate base upon which to project future court needs.

Pursuant to Section 2, a specialized division of the Court is established to hear and decide "land matters". Some question comes to mind as to what is meant by the term. It is not known whether the Land Commission system is to be retained under the new government, but as will be seen it is recommended that it be kept intact.

The Land Commission is a functioning administrative body which not only makes land determinations but does the field work and survey work to perform a program of land title registrations. According to the Land Commission Office, it has issued almost 2400 Land Title Determinations since it began operations in 1968. There have been only approximately 20 appeals to the High Court which are allowed pursuant to 67 TTC 115. Therefore, the number of cases that the High Court has handled from the Land Commission have averaged less than three per year. The land registration program is

completed on Tinian and the land in the villages in Saipan is ninety percent (90%) done. This primarily leaves Rota and the agricultural land on Saipan. It would be expected that the number of appeals from the Land Commission would not increase significantly in the future.

The High Court has exclusive jurisdiction over land cases (5 TTC 53, 101). Since January 1975 to the present, there have been 525 cases filed in the High Court in the Marianas District.

Of the 525 cases only 28 are what can be classified as "land matters".

It is therefore apparent that to establish a specialized division for land matters is not necessary and whatever land cases do come to the courts can be handled by the regular trial court judge.

A full-time judge for Rota and one for Tinian is also indicated in the draft. Rather than go into a long dissertation as to the population of Tinian and Rota and past, present and expected future case filings for those two islands, suffice it to say that such courts cannot be rationally supported.

To cite only a few statistics immediately available, Rota has an approximate population of 1104. The case filings from June 1974 to October 1975 show a total of 114 traffic cases, 4 misdemeanor, 4 felonies, 3 civil cases, 1 juvenile, and 4 small claims. With this law case load, the T.T. District Court judge has always been on a part-time basis.

This leads to the type of judge(s) which will be sitting on the bench in the Commonwealth court.

Section 5 does not require that the appointee(s) of the Governor be legally trained. I cannot stress too much the importance of inserting a provision requiring not only a law degree and being a member of a bar, but also some length of time practicing law.

The jurisdiction which the Court will have (Section 2) is fairly extensive, particularly when considering that defendants in criminal cases can be sentenced to five(5) years. One cannot justify the new court by looking at the Trust Territory District Court system. The Commonwealth Courts will be subject to different standards and tests.

The judge(s) of the Northern Marianas will be hearing relatively more sophisticated cases. There will be formally trained lawyers appearing before them on a daily basis. If jury trials are to be held, an untrained judge simply will not be able to conduct the trial without the real possibility of errors being made. Consideration also must be given to recent United States cases dealing with non-lawyer judges (Gordon v. Justice Court, 525 P 2d 72, (Cal. S. Ct.), cert. den. 420 U.S. 938. Also note that the case of North v. Russell, docket #74-1409 was argued before the U.S. Supreme Court in December 1975. Decision pending.)

Section 7 of the draft provides for the removal of a judge by the Governor upon the recommendation of the Advisory Commission. The grounds are "for illegal or improper conduct". It is suggested that since the legislature has the impeachment power and there is the possibility of the Governor using the Advisory Commission to summarily discharge a judge, the provision be deleted.

In summary, it is recommended as follows:

1. Delete any reference to a "specialized division" of the Court for land matters and for a full-time judge in Rota and Tinian. The need for such courts is not demonstrated. The establishment of any courts in excess of those needed is nothing but a drain on the taxpayer. Such an obvious waste, may seriously affect the approval of the Constitution by the U.S. Government.
2. If the recommendation in No. 1 is accepted this leaves it up to the legislature to create the number of judgeships necessary to efficiently and expeditiously dispose of the expected case load in the Marianas. If Recommendation No. 3, set forth hereinafter, is adopted, one full-time judge will be more than sufficient.

The total population of the Marianas is approximately 15,000. A similar type judge in California, where the case load could be expected to far exceed that here, will service a population of 40,000 people.

3. The qualifications for the judges require a law degree, bar membership and some years of experience.
4. The provision for the Advisory Commission be deleted or at least modified so that impeachment by the legislature is the sole way to discharge a judge.

From: Robert A. Hefner, Acting Chief Justice, Trust Territory Government

MISC. COM. NO. 8

November 19, 1976

To: Lorenzo I. Guerrero, President, Marianas Constitutional Convention

I wish to acknowledge receipt of your letter of November 15, 1976 and a copy of the draft Constitutional provisions. The opportunity given me to express my views on the provisions is indeed appreciated. Unfortunately, the time allotted for presentation of such view is so inadequate that it is doubtful if thoroughly analyzed views can be presented in such time frame. I do have, however, cursory observations and would be happy to manifest them here. Briefly they are:

1. Proposed Expenditures. Glancing through the provisions one cannot help but noticing the tremendous sum of money it would require to govern the very small population. It is quite apparent that the proposed governmental structure is much too expensive for comparatively small number of people it will serve.

Perhaps the governmental structural proposition is appealing to the naked eye, but can the people really afford it? Should the people of the Northern Marianas be overburden with taxation just so that sustenance of an expanded governmental structure be maintained? If not, how else would it be financed aside from the usual grants, and federal aids, which are unreliable sources because they are reflections of U.S. national economy?

The anticipated total revenue in the Northern Marianas is minimal because of its small population and the non-productive nature of its economy. It stands to reason then that the future Government should be sized also to commensurate with the anticipated revenue. It would be ridiculously uneconomical for the Government to expend more than what it can generate. To assume continuous federal aids to finance local government is merely a suspension of existence. The totality of the new government's economical-financial capability should be realistically considered. Our neighbor's plight (Guam) is an example to study and not to emulate.

Another area of concern is internal development. With the anticipated "operating cost" of the new Government proportionately high, is it capable of upgrading, adding, and maintaining additional services for the people, particularly the utilities, highways, medical, educational, and all the ramifications of services in general? Will there be genuine improvements over that we are coping and groping with presently?

Obviously everything hinges on the Almighty Dollar!

2. Restrictions on Alienation of Land - Article XII. The intent here -- that to protect the people of the Northern Marianas -- is commendable, but the inconsistency is very obvious. In the first place, the people of the Northern Marianas is saying they want to join the "American Political Family System", which is based on the philosophy of equality. Yet, the proposed article violates against equality and promotes discrimination against fellow citizens. It is inimical to the United States Constitution, and, ultimately, it may not stand before the court. And, it also glows with a tinge of racism.

It is admirable that the Northern Marianas Government has taken the stand of a "Guardian Angel" to protect its peoples' properties. However, in a Democracy, it is far commendable to educate the people of its cultural values, which includes traditional land tenure system, then to

legislate protective measures and prolong their ignorance.

There are already many, many intelligent people here who understand the value of holding family properties. The few who do not will never learn in twenty-five years or fifty years this value system. They may cease to exist, but there will always be others to take their places and continue to squander their wealth, whatever there may be worth. After all, it is their property, and in a Democracy, individuals can do whatever they like with their own properties. Contrast this system of freedom of ownership and sales transaction with that of a Communistic State system.

Thank you for giving me this opportunity to express comments here and there on your monumental work. My sincere success to your leadership and your conventional group.

From: Antonio C. Tenorio, Director, Public Works, Government of the Northern Marianas

MISC. COM. NO. 9

November 18, 1976

To: Lorenzo I. Guerrero, President, Marianas Constitutional Convention

Mr. Concepcion is presently in the Mainland and will not return until next week. Therefore, as Acting Director, I have discussed the draft Constitution with my staff and offer the following comments.

1. Section 11. In light of the dire budgetary needs of education in the Marianas, the spending of \$470,000 in salaries for legislators to pass laws for approximately 14,000 people seems high. Currently this department can only expend about \$6.00 per student per year for instructional and general supplies. The legislators salaries show they receive \$33.50 per constituent. Are the legislators that much more important than our children?
2. Section 13. The department supports this section. The school board members might also be elected although whether elected or appointed, the main thing is that there should be a school board.

In most places, the school board has the responsibility of hiring personnel. Hopefully, a decentralized personnel system will allow for that option here in the Northern Marianas.

3. Article XV, Section 1. The Convention and Marianas legislators should be aware that someone must pay for "free" education. If compulsory school attendance is required while funding provided is inadequate for the needs of all students, it is like putting some of our young people in prison. They are forced to attend an institution which does nothing for them, when they might be benefited more, by other, outside-the-school experiences.

Evidence of this is obvious in many schools in the United States where riots and student unrest have erupted.

4. The major difficulty within the education system is teachers with poor preparation for teaching. While the Constitution may not be the proper document to establish a policy concerning minimum teacher qualifications, the up-grading of teachers is top priority for improvement of the overall society of the Northern Marianas.

Thank you for this opportunity to comment on the draft Constitution. When Mr. Concepcion returns, he may wish to add his own comments.

From: Roger N. Ludwick, Acting Director of Education, Northern Marianas Government

MISC. COM. NO. 10

November 19, 1976

To: Lorenzo I. Guerrero, President, Marianas Constitutional Convention

I am grateful for your invitation to comment on the draft Constitution for

our Commonwealth which the Delegates have diligently put together this past week.

My comments are meant to portray my views only and not those of my office. The latter are now being prepared and should be forthcoming shortly.

Again, I am very grateful for this opportunity to comment on the Draft Constitution and I am hopeful that my comments will prove useful to the Delegates during their final deliberations.

With my best personal regards.

From: Juan A. Sablan, Acting Deputy High Commissioner, TT Government

(Attachment to communication is as follows:)

COMMENTS ON THE DRAFT CONSTITUTION

Page 1: Preamble.

The draft Preamble seems a bit too legalistic in form and text. It needs to be restructured so that it reflect the wisdom, history, culture and traditions, and political aspirations of the people of the Northern Mariana Islands. Although our history is not written, it is nevertheless colorful and filled with some 400 years of human experience and tribulations under the four major eras of foreign stewardship. Our ancestors, brave and peace loving, sailed the hostile sea in their canoes which they hewed with primitive tools and bare hands. Their skills were to be later augmented by new knowledge and wisdom brought into the islands by the ancestors of our Carolinian brothers and sisters. Together, we have learned to improve on what we had by preserving what we must and by adopting new skills learned from the Spaniards, Germans, Japanese, and now from our future American compatriots. Our contemporary language, culture, traditions and moods all have become depository of the past 400 years of our known existence. The story is there and it must be told. Following is a proposed revised version of the Preamble which I hope the Consultants will expand and improve:

"We, the people of the Northern Mariana Islands, who cherish deeply the principles of social equality, individual freedom, liberty and the pursuit of happiness, who have lived the past under the yolk of foreign powers, who have from the past learned the wisdom to live the future in harmony, peace and security, and who now have proudly achieved our lifetime dream to live forever as a free people within the political family of the Greatest Nation on God's Earth, the United States of America, do hereby ordain and establish this Constitution for our Commonwealth and reaffirm our full allegiance to and respect for the Constitution of the United States of America. We declare our goal of establishing a Commonwealth Government in political union with the United States that preserves our personal liberty and social equality, our island heritage, our land and its resources, and our culture, history and traditions."

Page 4: Section 10: Free Public Education.

The final language of this section should be made compatible with Article XV on Education. The term "free education" needs to be defined.

Page 5: Sections 2(b) and 3(b): Compositions of the Legislature.

The senatorial seats eligibility criteria for the northern islands, based on a 1,000 population, is at best unclear. Was it meant on the aggregate or individual island?

House seats allocation should be provided in the event the islands have become eligible for senatorial seats.

Page 8: Section 6: Local Laws.

The possibility of laws being enacted for Rota and Tinian by only a handful of people (three in the case of Tinian and four for Rota, both numbers constitute simple majority) is frightening. The present language of this Section permits

It. The least the Delegates should do is to provide for a mandatory public hearing, on-island, prior to enactment of any substantive legislations, e.g. tax bills, appropriation bills, zoning bills, etc.

Page 11: Section 13: Legislative Immunity.

This Section provides a "carte blanche" immunity from arrest to members during session or committee meeting and while going to and from such a session or committee meeting. This immunity should not be extended to include commissions of felony, breach of the peace, or acts of treason against the Commonwealth or the United States.

Page 15: Section 6: Prohibition on Government Employment.

A careful review of the second sentence under this Section is necessary. It seems contradictory to allow the governor and lieutenant governor to seek other public offices.

Page 17: Section 9: Executive and Administrative Functions.

Subsection (b), first sentence, the word "fiscal" should precede the word "year" wherever the latter appears to distinguish the difference between calendar and fiscal year.

Subsection (d), the governor's power to grant reprieves, commutations and pardons should not be extended to convictions for acts of treason against the Commonwealth or the United States.

Page 18: Section 10: Emergency Powers of the Governor.

To prevent indiscriminate use of these powers, it is recommended that a time limitation be set after which the approval by the legislature to continue the state of emergency will be required. I propose sixty days duration as reasonable.

In addition to the types of calamity listed, I recommend that "man-made" disasters, public utilities, transportation and communications stoppages be included as well. Our recent experience with the Airline Pilots Association strike against Continental validates this concern.

Page 18: Section 11: Attorney General.

The functions of law enforcement and fire protection should not be placed under the direct supervision of those charged with the responsibility for prosecution of crimes. By the very nature of their profession, attorneys are prone to plea-bargaining outside of court on cases prepared by police officers. This practice has caused morale problem among the police officers throughout the Trust Territory. Professional review of the existing police organization has recommended separation of the police department from the TTG Attorney General's Office and to place it under the Office of the High Commissioner. The new Commonwealth Government will gain much to adopt this new concept.

Other Comments - General:

Article 11: The Legislative Branch of Government.

The combined membership of the Senate and House of Representatives seems unwieldy large for the size of the Commonwealth population. The attendant cost for the operation and maintenance of the legislature is similarly high.

The inclusion of the rate of compensation for the members in the Constitution seems to be a poor choice. Legislation would seem a better vehicle for it.

Granting of unconditional immunity to legislators appears to be another poor taste. My earlier comments on this matter remain valid.

The Draft Constitution makes references to regular session (page 12, Section 14), but is silent as to how, where, and for how long a regular session must convene. It is not unusual for a Constitution to establish a minimum number of days the legislature must remain in session and where. The electorates is entitled to some guarantee that the legislature meets in regular session to transact the business of the Commonwealth, and it would seem that the Constitution is the best vehicle to secure that assurance.

Article III: The Executive Branch of Government.

As in the case of the legislature, the compensation rates for the governor and lieutenant governor should be by legislation.

The order of succession, in the event of vacancy in both governor and lieutenant governor positions, should be first the presiding officer of the House of Representatives and second the presiding officer of the Senate in that order.

Except for the Public Auditor, all other heads of departments should be appointed by the governor with the advice and consent of the legislature. This uniformity in the appointment process is necessary to maintain the team integrity and public accountability of the governor and the executive branch. To treat few department heads (e.g. Attorney General and Director or Superintendent of Education) differently from the rest will encourage divisive attitudes and dissensions among the staff of the executive branch.

Article V: Washington Representative.

Longevity and tenure in the Nation's Capitol by our representative is in the best interest of the Commonwealth. The limitation of term of office for this position should be identical to the terms allowed for the governor and lieutenant governor. The qualifications criteria for the incumbent is sound but why impose on him only and not on the others.

Article XI: Public Lands.

This Article is too cluttered with items that can best be provided by legislations, e.g. creation of the Marianas Public Land Corporation and the Marianas Public Land Trust entities.

Article XIV: Natural Resources.

Similar comments as above. Sections 2 and 3, for instance, can best be covered by legislations.

Article XV: Education.

This Article should only provide for the basic public policy governing free universal education. All other provisions should be by legislations.

MISC. COM. NO. 11

November 23, 1976

To: Lorenzo I. Cuerrero, President, Marianas Constitutional Convention

We write to you and the honorable members as representatives of the Carolinian Community in our society.

We have reviewed the draft constitution and found that it doesn't provide for any representation and participation of the Carolinian minority in the future Commonwealth Government. We are sure that the omission was not conscious and that the Convention, in due course, will rectify the situation.

We respectfully recommend that the Convention provide in the constitution for proportionally fair and adequate representation and participation of the Carolinians in our future government. In this respect, we humbly request that the Convention amend the draft constitution to include the following:

1. That the lieutenant governor also be of Carolinian ancestry;
2. That one of the three senators representing Saipan also be of Carolinian ancestry;
3. That ten of the twenty-five members of the House of Representatives representing Saipan also be of Carolinian ancestry.

We are confident that you will favorably disposed to the interests and concerns of the Carolinian Community as you were towards those of Tinian and Rota.

For long, our Carolinian Community has been neglected and discriminated. Our future government should not tolerate such treatment against the minority in our society. We pray that the Convention will promulgate a constitution that

will reflect the ideal that has, for the last 200 years, distinguished the people and nation we are about to join - the principle of fair and adequate representation of the people in the governance of their affairs.

In closing, we hope that you will follow the advice of one of our great forefathers and design a government of the people, for the people, and by the people.

From: Felix F. Rabauliman, President of the United Carolinian Association, Saipan; Abel R. Olopai, Vice-President, UCA; Jose R. Lifoifoi, Joaquina M. Rabauliman, Alonzo Iglisomar, Placido M. Tagabuel, Felicidad T. Ogunoro, Luis M. Limes, Benigno Fitial and Pedro JL Igitol, Members.