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Chief, of Criminal
Div'n

30TH DAY - 2ND CON CON
JULY 17, 1985

PRESIDENT: Is there a motion to resolve into the Committee of the Whole?

The motion was made and seconded. It was voted on and carried by voice vote.

PRESIDENT: The Chair, in view of about eleven committee recommendations, would like to probably take four proposals at a time, or shall we just split it in half? (one delegate suggested to split it in half, another suggested to split in three) Let's go by four. The following committee recommendations will be entertained -- Committee Recommendations Nos. 8, 55, 56, and 57.

The Chair recognized Delegate Ogumoro. (Inaudible) The Chair asked her to repeat her question. While she was working on her mike, the Chair recognized Delegate Mafnas, who informed him that even the mikes are tired. The Chair asked Delegate Ogumoro to use Delegate Cing's mike. She asked the Chair to repeat the committee recommendations that they will be entertaining. The Chair repeated the recommendations.

Delegate Ogumoro made a recommendation to entertain 58 instead of 57. There were no objections.

The Chair asked Delegate Igitol to take the Chair. Delegate Igitol called the session to order.

Delegate Nabors moved for the passage of Committee Recommendation No. 8. The motion was seconded. The Chair recognized Delegate Calvo.

Delegate Calvo: (Inaudible) ...I didn't see the amendment or whatever position paper from the committee in that regards.

The Chair recognized Delegate Mafnas on point of information.

Delegate Mafnas: The amendment was issued last night. So if you are looking at the Order of Business for today, you will never find it.

Delegate King: The Committee Recommendation No. 8 that was recommitted, I believe, like what Delegate Mafnas mentioned, was passed (out) last night.

The Chair asked if everybody has a copy. Delegate Calvo said "ahe".

The Chair recognized Delegate Lizama.

Delegate Lizama: Mr. Chairman, I don't see the rationale of this proposed Committee Recommendation. I don't see what it intends to serve. Right now, the sentencing of a person, we all know that is accomplished through the judicial process. I don't know how this proposal conflicts with the role of the judicial system. I tend to see this conflicting with the principles of the separation of powers, and I also tend to see this as conflicting with what the very significant role that the judges take in our Commonwealth and in any jurisdiction. Judges would have to consider criminal cases on a case by case basis, and it is the judge that knows better whether or not restitution is appropriate. And it is the judge also that knows better whether or not upon sentencing and upon conditioning the sentence such as providing for a probation period, that is determined by the facts that the judge see in hearing criminal cases. To me, this is an intrusion into the court process. So I will not support this one and I hope that the fellow delegates understand the rationale behind my points. Thank you.

The Chair recognized Delegate Pangelinan.

Delegate Pangelinan: I support this amendment. I think it's about time that the victims get compensation. I have questions though on the words "as a condition of probation". Does this mean that the present system says that if a person is placed under probation, that's the payment he made? Or is it really necessary to be in here. I also have a question that since this is "restitution" which means that it has to be tangible property, most of the crimes committed are by underage, minors. Should the parents be liable by the crimes committed by their teenage children? And I would like an example of showing a "compelling interest" just to clarify my doubts on this proposal.

Chair Igitol: Before I recognize anybody, does the Committee on Personal Rights ready to answer that question?

Delegate Villanueva yield the floor to Delegate Tenorio.

Delegate Tenorio: The intent of this proposal is to recognize the delegate's proposal that was submitted in support of restitution to victims of crime. We conducted the public hearing and most of the witnesses agreed that there has to be some recognitions of the victims of crime. We had a very difficult time trying to put wordings to become appropriate in the Constitution. And just after the hearing we sat down with the Attorney General and made some suggestions and with the discussion with the Attorney General, this provision came out. The intent of this provision is to recognize victims of crime. You all know that our Constitution or other Constitutions also is replete with protection of the accused and there are no provisions to protect the victims. We felt that it is proper, that under the same article, while we protect the accused, we felt that we also should have some provisions to

let off

protect the victims. The wordings may not be sufficient if the Convention finds that. We are amenable to some suggestions as to how we can make this more appropriate for Constitutional provision. But our main purpose is to get some reconitions for the victim of crime which we do not find in any of the articles in our Constitution. The last statement there perhaps could be reworded or put in some way or some fashion that could withstand the judicial review. We pose this out so that the delegates could also get their input or views so that we at least will have some provisions for the protection of victims of crimes.

The Chair recognized Delegate Reyes.

Delegate Reyes: The committee upon taking it up with the public hearing was informed that contrary to popular belief that burglary and crimes that -- or breaking into houses, intrusion and so forth -- that this crime is primarily committed by youngsters, it became apparent that it's not so. A lot of these crimes were committed by people between adolescents, and these are the type of people that are required to pay for this kind of crime. An example was given where one "Mom and Pop" store was burglarized six times. The victim just came crying and says "when is this going to stop? Who's going to pay me? Every time you catch the guy, you put him in jail and then give him probation. You should make them pay for these crimes." So that popular belief that burglaries are committed by minors became apparent that it is not so. And we want to give the judge the opportunity to provide restitution as opposed to the judge's probationary sentencing. So the wording there is appropriate, I think. And if we have this in our Constitution, the judge will see that restitution is made first, if possible, before the judge hands down the probationary or other type of punishment. So if the Convention feels that there is a better language to address that, the committee is happy to accept it. But let's take a look at the significance of these wordings first. Thank you.

The Chair recognized Delegate Inos.

Delegate Inos: Just briefly, Mr. Chairman. I appreciate the concern of this committee in recommiting this particular recommendation back to the floor. I support the intent and I do think that there should be an amendment to this which will reflect the real intent. I am not particularly concern in the areas of compensation. I am very concern with victims who were only needed for interrogation, for questioning and after we get what we need, we left them and we do not consider their state of mind, their mental state. So I was hoping to see a section here suggesting that maybe the Legislature provide for such programs, not necessarily in terms of compensation, but in terms of taking care of these victims. And I might even add to witnesses because often times we see crimes here and we are afraid to speak out because we lack the protection. I just want to make the committee more aware of that. At the present time, even the President of the United States, I think in 1980 has proclaimed, has given authority to -- and many states they have given authority to the Attorney General

to come up with a program, a comprehensive program in terms of victims of crimes and witnesses of crimes. Thank you.

Delegate Reyes(?): The committee recognized that but the fact remains that the person called for the investigation or to assist in the investigation is doing so on a voluntary basis. And as I understand it, if the person is subpoenaed to answer then he's entitled to some payments by the attorney issuing the subpoena. So on that form, there is compensation if the witness doesn't want to volunteer and he's subpoenaed to do so. So on that area, I think, that has been addressed on the existing system.

The Chair recognized Delegate Mafnas.

Delegate Mafnas: I support the proposal. My concern here is that whether this language, the substitute language, was it put together in close coordination with the Attorney General? (A delegate said "yes".) While I understand, Mr. Chairman, that there are procedures in the court where the victims are compensated, it's high time that we recognize those victims of crimes because many, many time they are forgotten. I was a victim of crime where my double bed was stolen. My dining table and dining chairs were simultaneously removed from their station and I was never compensated. My satisfaction that the person who committed the crime was sentenced. But I don't mind that. What about those victims who -- our elders who depend on the daily programs on their television. That's the only rest and recreation, perhaps, that they have. Many times they are not compensated. So if we have to put this in our constitution, I urge the members, the delegates to vote in favor of this proposal. Thank you.

Delegate Calvo was recognized.

Delegate Calvo: Thank you, Mr. Chairman. Mr. Chairman, I'm in favor of the Committee Substitute on Committee Recommendation No. 8, but I've got a few things that I want to clear up in mind. This, of course, is with regards to Delegate Mafnas, but when it comes to the term "restitution", do I take it then that the legislators would have to set an account or a budgetary appropriation for restitution or the person committed the crime will abide with the restitution. I have to be clear with this language. It's too legal in format and I cannot digest it.

The Chair recognized Delegate King.

Delegate King: I believe the analysis stated on paragraph 2 that since the government did not commit the crime it should not be held responsible. The perpetrator(sp?) of the crime should be responsible. So I believe that answer the question of Delegate Calvo.

Delegate Calvo: The one that I'm trying to point out here is paragraph 3 on the second sentence. There is a part here that I cannot fully understand and if the Chairman of the Committee can

enlighten my concern in this regard.

Delegate Reyes: I think what he means is that at least with this wording now the judge has the weight to provide restitution for the aggrieved on the material losses on stolen properties -- those properties that could be assessed value. Of course, the other damages like loss of sleep and things like that, you cannot assess value. That's pretty much left up to the judges. So the situation where you could assess value that's where the restitution will come in. Most of the sentencing now, as I understand from the public hearing through the judge and the attorney general, are on probationary basis or short sentences. So this will give the judge the weight to impose restitution.

Delegate Calvo: With those answers in mind, Mr. Chairman, I would then encourage all delegates to please consider this proposal. It looks compelling and of interest to the Commonwealth. I move to end debate at this time.

The motion was seconded.

Chair Igitol: I still have two more to go. Delegate Kaipat then Delegate Lizama.

Delegate Kaipat: Restitution of a victim is already in practice. I don't know what we are trying to do here. But first, I would like to ask a question to any of the committee members -- one questions. How will they compensate or reimburse a 16-year old victim of statutory rape who really enjoy the act?

Delegate Pangelinan: Mr. Chairman, I think the word "restitution" only meant tangible properties. You cannot retribute anything that you cannot see. So it doesn't fall under this provision. I don't know. Maybe a lawyer can elaborate on that, but that's how I see it.

Delegate Kaipat: Restitution is reimbursement of anything, giving back to the people. How are we going to give back some to a statutory rape victim a 16-year old who really enjoy the act?

Delegate Lizama: I don't how the committee intended to define restitution. This was not spelled out in the committee recommendation, however, restitution as Delegate Kaipat has just asked whether a 16-year old girl who had been raped whether she can be given restitution. It's going to be very, very difficult for that 16-year old to get restitution because it's going to take a long, long time before that girl recovers from the pains and sufferings....

Delegate Kaipat: She really enjoyed the act, but because of statutory nature, how are they going to retribute that?

Delegate Lizama: But I think the intent here is to provide for recovery of what was taken, what were taken from the person's house

or from the person's belongings. That's probably the intent. Is that the intent, Chairman King?

Delegate King: Yes.

Delegate Kaipat: So restitution is just reimbursement.

The Chair recognized Delegate King.

Delegate King: If we go down to the specific type of restitution, I think it's not appropriate for the convention to come up with specific answer. The intention of this provision is to recognize the crime of victims before the court, but it is not the intention of the committee to spell out specific type of restitution. It is up to the Legislature to come up with such provision if they want. But I believe that the court has that authority already.

The Chair recognized Delegate Nabors.

Delegate Nabors: Thank you, Mr. Chairman. Mr. Chairman, I wonder if I could get my colleagues to focus on the fact that while we are concern of victims of crime that essentially this is a legislative matter and I wonder if we shouldn't focus our time and attention on more important pressing needs. When I read line 2, "the right of the people to be secured in their person, houses, and belongings" by reading the due process, first ten amendments provisions that already exist in the Constitution. I have the assurance that my property cannot be taken without due process that you may not quarter soldiers in my house without my permission. And I really don't see that this provision adds anything whatsoever. The courts have the authority to rectify a wrong either by way of restitution or community service or both. And I don't see quite honestly that this adds anything at all to anything.

The Chair recognized Delegate King on point of clarification.

Delegate King: The intention of this is -- if the person that commit the crime appear before the judge and the judge sentence the person for example two years or three months, then the judge should try to recognize also the victims that the victims also need to be compensated if necessary. He is not only to sentence the person or the person who commit the crime or the perpetrator(sp?). He should also recognize that the victim is required also some kind of recognition before the court.

Delegate Nabors: Thank you, Mr. President. I appreciate that point of information. I would like to advise my colleagues that when I was a prosecutor in 1964, innumerable instances where the victims were sent to the Northern Islands to make copra and pay back "Kiyu", "Joeten", "Town House" and other stores that were burglarized. I didn't have a constitutional provision then, I don't need it now. The court can do it. It does it everyday.

The Chair recognized Delegate Villanueva.

Delegate Villanueva: I like this proposal because it obligates the court to recognize the victim. I realize that the attorneys here are opposing this because this can be taken out in civil suit. I also realize that in a lot of cases civil suits takes -- you need money to hire a lawyer. I like my glass window to be replaced by the person who broke it to enter my house and steal my TV set and when he's found guilty, I don't like the court to just say, "two months in jail". I would like the court to also recognize that in addition to two months in jail that that person still owes me the TV set and the glass window that's broken. And I don't have to worry about going to an attorney to get this guy to pay me back. I think, this is the intention of this proposal. And for our delegates to say "this is an issue for the Legislature", I notice that we have members of the Legislature here and if the convention does not feel that this is a constitutional provision that the Legislature would recognize this. But there are a lot of things here that are considered non-convention or non-constitution items. But this is a very simple proposal. We can call it a friendly proposal to the victim of crime. Thank you, Mr. Chairman.

The Chair recognized Delegate Nabors on point of privilege.

Delegate Nabors: Mr. Chairman, I would like our colleagues to recognize Senator Jose P. Mafnas from the island of Tinian who is currently present in the Chamber. (Applause)

Chair Igitol: Welcome, Senator Mafnas. Delegate Inos.

Delegate Inos: Thank you, Mr. Chairman. To further convince my colleague of the importance of this provision, with your permission, I would like to read a couple of paragraphs here in regards to "victims' perspective. Victims are the people behind crimes statistics. They are the individuals who suffer the injuries inflicted by criminals and who reveal the existence of crime when they report it. Victims are the key to apprehending criminals and the justification for the states' subsequent prosecution, yet, they are often the people we know least about. Volumes have been written on the rights of defendants. The role of prosecutors have been studied and the decisions of judges have been reported in case book after case book. Much has been written on discretion and attrition in the judicial process yet we seldom consider how these decisions affect the injured party. We know comparatively little about how crime victims view the judicial process though their cooperation is central to its operation. Once a victim reports a crime to the police, the state police, prosecutors and judges take over. What actually happen to the victim frequently seems to matter only in so far as it guides law enforcement officials in determining how much attention to give the complain and how to classify the offense. For the most part, victims' opinions are rarely solicited. Personal cause incurred by the victims are considered irrelevant. Instead, what was once a private matter now becomes the business of strangers to be handled mainly as they see fit." Thank you.

The Chair recognized Delegate H. Guerrero.

Delegate H. Guerrero: Mr. Chairman, I'm in support of this one and I would like to add at the end of the sentence on line 6, "that the Legislature shall adopt provision to implement this section during the calendar year following the adoption of this section." I would like to move.

The motion was seconded. The Chair asked Delegate H. Guerrero to repeat his amendment.

The Chair recognized Delegate Mafnas.

Delegate Mafnas: Mr. Chairman, on the motion. What about if the court is asked and not the Legislature? Rather than to ask the Legislature to provide for the implementation of this proposal?

Delegate H. Guerrero: Mr. Chairman, that's another way of doing it, but I'd rather that we give the Legislature that prerogative since they are the lawmaking body of the Commonwealth and the court is basically interpreting it. So I still prefer that the Legislature be given that authority rather than the Judiciary Branch.

Delegate Mafnas: I'm not opposing the amendment. I'm just wondering. I will vote either way.

Chair Igitol: I have two more to recognize -- Delegate Mendiola and then Delegate Torres.

Delegate Mendiola: Thank you, Mr. Chairman. Looking at the proposal of what the amendment is, what else does the Legislature have to do with this. I think the proposal spelled out the whole thing that should be done. What does the Legislature have to add into this to make it clear or unclear?

Delegate H. Guerrero: I think the Legislature can set up the mechanics for it in a better language than what it is. I mean, we are setting the policy. Isn't that what the intent of the Constitution to set the policy and then the Legislature should be more specific?

Delegate Mendiola: I think, looking at the proposal, it spells out what the judge has to do, what is going to be done, the victims should be restituted, the condition. I think the Legislature has nothing any more than this.

The Chair recognized Delegate Torres on point of information.

Delegate Torres: I think, this provision in and of itself recognizes the first -- the need -- to recognize the victims of crime. Now, Delegate Mendiola questioned as to why do we need the Legislature to enter into the picture. I believe that this only gives a signal to the Legislature regarding the recognition of this

issue of the Constitutional Convention. Now the Legislature may and may not want to implement some kind of system of compensation. I originally drafted this to have a compensation program. But I agree with the committee's view that perhaps we shouldn't really say that specifically in this to make it constitutional. So by including the Legislature in this game, so to speak, then perhaps the Legislature can mobilize its resources to further accommodate the needs of the victims. Thank you.

The Chair recognized Delegate Pangelinan.

Delegate Pangelinan: I still do not see why it should go to the Legislature also. I think we are signalling to the judge that when he issue a sentence, he not only put that person on probation or in prison, but after that he's forced to work and repay the damage that he did to the victim. If the Legislature is going to get into the picture then it's going to distort the whole intention of this because I see it as -- what we are doing is that we are encouraging the crime to go on. I think the intention of this is to make sure that the criminal does not repeat its offense. We're giving him double penalty. But if the Commonwealth Government is going to bail him out, he's going to repeat it again. I don't know. That's the way I see it. I'm not a lawyer.

The Chair recognized Delegate H. Guerrero.

Delegate H. Guerrero: The language in itself is good. The question is, all the three judges have different problem, but different definition and interpretation of what's a compelling interest. I honestly think that the Legislature should spell what should be given the authority to spell out what is the compelling interest as a guideline to the judiciary system. You can take anything in here and still argue about the definition. I prefer also that the Legislature, since it's the policy making body of the Commonwealth, I honestly think that there is more public participation from there rather than just three judges making that decision. Therefore, I still prefer that the Legislature be given the authority to come up with a guideline for the court to follow.

Delegate Pangelinan: Mr. Chairman, the judge makes the ultimate decision. That's why we go to court.

Delegate H. Guerrero: But if the person has to be restituted -- what I'm saying is that the Legislature has to decide what is compelling interest -- how much is that person going to pay. That's why I'm -- what I'm asking is that the Legislature should provide that guideline.

Delegate Pangelinan: The judge will still make his own definition despite what the statute said, I would think.

Delegate H. Guerrero: Yes, but if there is a limitation on the statute, the judge can't go beyond that limitation, unless I'm wrong.

Delegate Pangelinan: I don't know. May we hear from the lawyers?

The Chair recognized Delegate Reyes.

Delegate Reyes: Mr. Chairman, if the intent of the committee is to put this as a one-liner item under personal rights and if it falls under there, I think those are all the rights given to the individual. So I don't think the Legislature would need to be given the situation to address this again.

The Chair recognized Delegate Torres.

Delegate Torres: I just like to briefly respond to Delegate Pangelinan's concern then discuss a little on this victims of crime issue. I tend to look at this in a positive way. I don't think the Legislature will muddy the water, so to speak. If anything, I think the Legislature will supplement or perhaps expand on this issue as it is now. Perhaps the Commonwealth is the only place which has this provision in its Constitution. I tend to agree with my colleague Nabors that this is really a legislative issue, but I would just like to remind my colleague also that we had discussed and we had deliberated on legislative issues which we considered to be constitutional. Constitutional because the Legislature did not do its work. So back to victims of crime -- I'm sure that our lawyers who are more knowledgeable in the justice system will say and will rightfully say that we don't need extra protection for the victims. The mechanism of restitution is there. Why add another burden? Well, to that, let me just point out to our own Constitution, particularly Article I on page 2, Section 4 and it is very explicit here. Section 4 (a) - "The accused has the right to assistance of counsel and, if convicted, has the right to counsel in all appeals." Section 4 (b) - "The accused has the right to be confronted with adverse witnesses and to have compulsory process for obtaining favorable witnesses." I believe that the democratic system of justice is scaled perhaps deliberately in favor of the accused. Now the victim is left without a way in which he or she can recover except when that victim can afford costly and time consuming litigation expenses. I think this proposed amendment recognizes and is in line with the current trend not only in the Pacific territories, but across the United States. I question Delegate Lizama when he stated that we don't really need this. I wonder whether he has been reading on the latest developments regarding this issue. In the United States, there has been a growing trend for more protection for victims. Now if the present system, if the status quo is working then why in God's name are they working for this victim of crime issue. As I said this may be a legislative issue, but I think it's time that we address it in our Constitutional Convention if anything but to recognize the rights of victims and not only recognize the rights of the accused and assume that the victims will be taken care of later on. Thank you.

There was a motion to end debate. The motion was seconded by several Delegates. The Chair recognized Delegate Lizama.

Delegate Lizama: Fellow delegates, if you look at the proposed amendment, the first sentence -- "the right of the people to be secured in their persons, houses and belongings against crime shall be recognized at sentencing."

The Chair recognized Delegate Mendiola on point of information.

Delegate Mendiola: I think we are talking about the amendments.

Chair Igitol: Yes.

Delegate Lizama: What was the amendment? Was that amendment seconded?

Chair Igitol: It was seconded.

Delegate Lizama: Well, I could still discuss, I mean bring up my points and still refer to the amendment. But first of all, I would like to direct my fellow colleagues to the first sentencing. Now, this one is signalling the Legislature to do something, perhaps with our criminal code. Now going into the second sentence, this is signalling the judiciary system to act off when it comes to sentencing. Now, I think with respect to sentencing, I don't think the Legislature should be given much say in how the sentencing should be operated or processed. I cannot understand the logic behind the amendment allowing for the Legislature....

The Chair recognized Delegate H. Guerrero on point of information.

Delegate H. Guerrero: I believe, to clarify Delegate Lizama's point. I would have preferred to separate the first sentence as subsection (a) and (b) as subsection (b), therefore, probably the language of the Legislature -- I'm only making reference to what ought to be a second statement.

Delegate Lizama: You're going to provide a subsection here, (a) and (b)?

Delegate H. Guerrero: Well, the first one is talking about the rights of the person. The second is talking about restitution.

Delegate Lizama: This sentence is not signalling the courts to do something. This is signalling the legislature to act. Now the second sentence is signalling the court to act.

Delegate H. Guerrero: It also applies the person's right on the first sentence. Isn't that's what it's talking about?

Delegate Lizama: Delegate Torres made reference to the United States, yes, I agree with him. There has been a tremendous training. In fact, the state of Washington has a program providing for restitution for victims. And I also recognize the fact that in

the United States there are several states that have enacted laws, making it more tougher for the accused to just get out of the criminal process and just simply be given a suspended sentence, or just simply a probationary period. I agree with that. But who is to determine that though? Is it the Legislature that should be given the authority to do that to make that determination or is it the court that should be given the authority?

Delegate H. Guerrero: You are not following what I'm saying that the first one should have probably be considered as a subsection (a) and the second sentence should be made subsection (b) and still keep that amendment that I offer.

There was a motion to end debate. The motion was seconded.

Delegate Mafnas: May I ask the Chair, is the motion to end debate debatable?

Chair Igitol: No.

Delegate Mafnas: Will you kindly stick to our Rules?

The motion to end debate was voted on and carried by voice vote.

Chair Igitol: We are now voting on the amendment.

Delegate Lizama: Can you read the amendment, Mr. Chairman?

Chair Igitol: The amendment is to add new sentence after -- I mean line 6 "The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section." That's the motion.

The motion was voted on by voice. There was a division. The Chair requested for the raising of hands vote. Motion was carried to adopt the amendment (10-3).

The Chair recognized Delegate Mafnas.

Delegate Mafnas: With all due respect to our esquires regarding the court, having the system to require restitution to the victims, how can I be reimbursed if the accused is given a jail sentence period. I am a victim of something that is beyond my control. There are many of our people who have repeatedly suffered. It's not only television set, chairs, even their food. Vehicles are being ripped off, stolen from their own garage, dumped in Marpi area. True enough that based on Mr. Nabors' experience as former Deputy Attorney General for the Trust Territory, that perhaps that was way back. The time has changed where these people, the victims of crime must be recognized. The only time the government recognizes these people who are truly innocent is when they need to acquire or obtain more information relative to the crime committed. They are not even compensated for the time that they spent at the

police station for the interrogation. They are not even compensated when they are asked to appear in the court as the government witness. When the judge says, "the court of the Commonwealth finds you guilty, I hereby sentence you to 6 months in jail, that will be it." The only recourse I see for this victim is to go through a civil action. He doesn't have the money. He doesn't have the time. So I strongly support this, Mr. chairman, and I ask my fellow delegates to let those voices of those who have not been heard for many, many years for crimes committed be heard(? tape was turned off for a second) by passing this recommendation. I thank you.

(end of tape A)

Delegate Villagomez: I support the proposal. Last week, two blank checks were taken from my office. One of them came to the bank with a forged name, Ramon Villagomez, which I didn't sign in the sum of \$1,500. The other one has not come in yet, maybe \$5,000. So I'm still nervous. I would be very happy if I get paid whatever amount is put on the check and the other check that already come in. However, I would like to just clarify that paragraph 2 here requires that restitution be one of the conditions -- at least one of the conditions of probation. So if a person is put under probation, he has to work and pay the victim if there is any damage. I would like to propose a language that will probably be more clear and that would read, "Restitution to the crime victim shall be a condition of probation and parole, except upon a showing of compelling interest." And I would like to move that sentence number 2 be changed to be stated that way. (At the request of one delegate, he repeated the proposed amendment.)

The motion was seconded. The Chair recognized Delegate Nabors.

Delegate Nabors: I wholeheartedly agree with my colleague that crime often leaves the victim without his property or any means of getting any restitution. I too had a very sad experience and in the span of one month there were three burglaries at my house. Each time I called the police, I stood there about 45 minutes answering questions about what my name is, how old am I, where was I born, where do I work, and I told finally the police officer, "hey, go to my neighbors and see if they have frozen chicken in their refrigerator." That's what I lost. Don't interrogate me. I'm the victim. Not the criminal. But this inverably(sp?) happens. Now philosophically, I believe that an individual is a product of his environment. And we are having lots of crimes and I believe that it results from the culture that we live in. It's a very relaxed culture. We are able to grow things of substinance at will and when they get hungry, they look for food primarily and booze. Those are the only things that I ever lost. I don't know if it's a blessing or a curse, but if anyone processed a \$1500 check in my account it wouldn't be any good. But, Mr. Chairman, I think that we can send a signal to the Legislature by resolution. Again, I don't think that we need to waste our time for the reason

that most criminals are destitute or minors or both. And any hope of getting restitution is pretty remote. I can assure you. If they had money, they wouldn't have to steal. And I believe that if you put in the words "compelling interest", that if the crime is committed against a person who has a fair sum of money the judge probably will decide that no resitution is needed. So, I therefore would like to suggest that we not amend this measure that we file it and include it in the resolution as a signal to the Legislaure. Thank you.

The Chair recognized Delegate Pangelinan.

Delegate Pangelinan: That's exactly my point. I think a lot of us misunderstood what compelling interest mean here and I don't understand Delegate Villagomez' amendment unless he has a different definition of compelling interest. May I give an example of what a compelling interest is, I mean, -- like Delegate Nabors say, if my neighbors are very, very hungry and they have 12 children and they come to my house and stole a loaf of bread to eat, that's a compelling interest as I see it in this definition. Maybe the judge says, "for heaven's sake..." -- and I'm a millionaire, I'm a millionaire, and they stole that bread from me. (There were several laughs) I was a millionaire.

Delegate Mafnas: Oh, you were. (laughter)

Delegate Pangelinan: I don't know. This is my whole confusion on this.

Delegate Torres was recognized on point of information.

Delegate Torres: When Delegate Pangelinan said what she had just said, it reminds me of the argument -- the historical argument of which comes first -- chicken or the egg. I mean, you know, let's deal with this. We are not talking about eggs or chicken. We are talking about victims -- people.

Delegate Pangelinan: So let's eliminate compelling interest.

Delegate Torres: Could I be enlighten what your definition of compelling interest is?

Delegate Pangelinan: That's just exactly what Delegate Nabors said that most of these crimes were committed by underage, juveniles.

Delegate Torres: Is there any statistics to back that thing up?

The Chair recognized Delegate King on point of information.

Delegate King: I think if Delegate Pangelinan sympathize the 12 children then she should not bring that case to court. Just forget it. But if you don't sympathize then bring that to court then it will become a case. And that's the court to decide it. But if you want to decide it yourself, and you sympathize the family don't

bring it to court.

Delegate H. Guerrero: Mr. Chairman, just to follow up on his argument by Delegate King, first the chicken and then the bread. What next, the television? The furniture? I mean you have to draw the line somewhere. I mean if they need the television and so forth you have to decide at one point or another, "hey, this is it. I can't afford to give you my house."

The Chair recognized Delegate Ogumoro.

Delegate Ogumoro: Thank you, Mr. Chairman. I share the concern of Delegate Pangelinan. I think....

Delegate Mafnas: Point of order.

Delegate Ogumoro: On the amendment.

Delegate Mafnas: Okay, thank you.

Delegate Ogumoro: I think she is not clear and I too I'm not too clear on the proposed floor amendment so perhaps the mover of the amendment should try to explain what that phrase exactly means. Thank you.

The Chair recognized Delegate Villagomez.

Delegate Villagomez: Thank you. In deciding whether to put a person on probation, and probation means that the person is not put in jail but he is under the jurisdiction of the Government. The probation officer oversees his life, if he works, his employment is monitored and his whereabouts are monitored by the Probation Officer. So he is under sentence. He is under punishment, but he is not in jail. He's out at his house or his parents' house. And normally, when a person is put on parole, there are several conditions placed under the probation. For example, that he may not drink beer, that he may not be in a bar, that he may not be out after 8:00 p.m. If it involves a car accident, that he may not drive. That he may not do several things which the court deems are important in order to keep him in line in order to keep him from getting in trouble again. Now, in many instances the court requires the individual to pay restitution, even though there is no statute. The court would say, "you shall seek employment and upon being employed on a monthly basis, you shall pay to the victim the sum of \$50 every month." That is already done today. Many instances the court does not do that. The court just put the person under probation. Now with this provision in the constitution, the court is required to order the criminal to work and pay restitution....

Delegate Pangelinan: Point of information, Mr. Chairman. I thought there is an amendment already that this should go to the Legislature, and now we're talking about what the court will do. I thought we already decided that the Legislature will make that

decision for the court.

Delegate Villagomez: But you were asking what does compelling interest mean and I'm leading up to an explanation of what compelling interest means.

Delegate Pangelinan: But, maybe we don't need it anymore if the Legislature is going to decide.

The Chair recognized Delegate Nabors on point of privilege.

Delegate Nabors: Colleagues, I'd like to, if we could, break and recognize two additional distinguished Senators who are visiting us this afternoon, Senator Inos from the great island of Luta, and Senator Guerrero from the prosperous island of Saipan. (Applause)

Chair Igitol: Welcome to the Convention, Senators.

The Chair recognized Delegate Mafnas on point of privilege.

Delegate Mafnas: We would like to thank the Senate for acting promptly on the bill extending the time of the convention from 30 to 35 days.

The Chair recognized Delegate Villanueva who yield the floor to another speaker because he could not remember what he was going to say. The Chair recognized Delegate Mendiola.

Delegate Mendiola: I think Delegate Pangelinan has stated out a pretty good statement and is Delegate Villagomez going to withdraw the motion? I think the motion of President Guerrero has been adopted -- like the Legislature shall provide implementation of the proposal. Why should we have to define all these sentences if we have the Legislature to define it.

The Chair recognized Delegate Inos on point of information.

Delegate Inos: We are talking on another amendment here the one that Delegate Villagomez... We are not talking about the one that President Guerrero amended.

Chair Igitol: There was a motion made by Delegate Villagomez. That's a second amendment.

Delegate Mendiola: Yes, but why do we need the second amendment when we have the Legislature to define the meaning of this proposal.

Delegate Lizama: Point of information, Mr. Chairman. I'm a little confused too, Mr. Chairman, because as Delegate Pangelinan just stated, the motion that was submitted by President Guerrero was already adopted. Now that motion added another sentence into this proposed amendment. Now the motion that is being provided by Delegate Villagomez is to add the words "and parole". Delegate

Villagomez' motion is not going to amend the already adopted motion submitted by President Guerrero, other than to add the words "and parole" after the word "probation".

Chair Igitol: That's correct.

The Chair recognized Delegate Nabors on point of information.

Delegate Nabors: Mr. Chairman, in consultation with the attorney general, it is his opinion that this proposal is adequate as it was originally presented without the amendment concerning the Legislature and I would ask my colleague, President Guerrero, to consider withdrawing his motion and let's end debate.

The Chair recognized Delegate Lizama on point of information.

Delegate Lizama: While I will not argue with Delegate Nabors, I don't think that just because the Attorney General had said something about the quality or the rationale of this proposed amendment -- let's not forget the fact that the Attorney General is the prosecutor of the Commonwealth. Now, you know well as an attorney that the Attorney General is going to try to stiffen every possibilities for innocent people to be prevented, for example, going through the process of arguing in court. What kind of restitution should be provided by the court. Now, with this type of an amendment you are going to lock every, every accused person, convicted person, because if there's already been a lot, why go through the process of sentencing.

The Chair recognized Delegate Nabors on point of information.

Delegate Nabors: I understand that we currently have at least two judges who are very reluctant....

Delegate Lizama: Then let's get rid of the judges who are reluctant to penalize persons who have been convicted.

Delegate Villanueva: Point of order.

Delegate Nabors: ...and require victims to go to the small claims court or to retain private counsel. Now, maybe Delegate Mafnas is correct. Maybe 1964 would be -- about, almost 20 years ago -- maybe I'm old-fashioned -- when I was prosecuting we didn't have that kind of problem, but perhaps things have changed. And if that is the case, and if it would expedite justice, then I favor this proposal.

The Chair recognized Delegate Lizama on point of information.

Delegate Lizama: I favor also the intent of providing restitution to the victims of crimes. However, I would not support any amendment that would impose or super impose the court to condition probation, for example, on a strict application or requiring the person to provide restitution. I have represented in the past

several juveniles, and to tell you the truth none of them ever got out of the sentencing without having to be required to pay restitutions. I don't see the need for conditioning probation on restitution.

There was a motion to end debate. There were several seconds to the motion.

The Chair recognized Delegate Kaipat.

Delegate Kaipat: Mr. Chairman, after listening to the subsequent debates since my last speech I have come to the point that my decision have changed from the beginning. I think the intention of this proposal is very good, and I think that it should belong to Article I as a part of our Bill of Rights or Personal Rights. After learning that there is something as restitution, in practice in our court, yet the people still come out with complaints why there is no compensation for the victim? The criminal being prosecuted and sentenced, but the victim -- everybody is talking about the victim. This indicates that perhaps maybe about 75% of the victims were not compensated and maybe only 25% compensated for a reason. Delegate Nabors mentioned earlier that in his practice, most of those criminals were very young and very poor, and no matter how big spelling on restitution spelled on the judge's desk, he will not go. So I think, probably, the best way is to just have something in our constitution. And I don't think the Congress should be involve here. I think this should be in our bill of rights, one of the additional sections in the bill of rights to constantly remind any judge that there must be a restitution on every victim. And as far as restitution is concern, they may come in variety. Delegate Ramon Villagomez has proposed some examples. Thank you, Mr. Chairman.

There was a motion to end debate. The motion was seconded.

Chair Igitol: I'd just like to recognize one more before we entertain the motion to end debate. Delegate Villanueva?

Delegate Villanueva: I remember what I was going to say now, Mr. Chairman.

Delegate Villagomez: Mr. Chairman, may I restate my motion?

The Chair recognized him.

Delegate Villagomez: The motion is to amend, starting on sentence 2, just cross out "no victim of crime shall be deprived of" and start with the next letter (sic) "restitution" so it will read "restitution to the crime victim shall be a condition of probation and parole except upon a showing of compelling interest."

The motion was seconded. There was a motion to end debate on the amendment. The motion was seconded and carried by voice vote. The motion to amend was restated by the mover. The motion was

voted on and carried by voice vote. Delegate Nabors moved to the previous question. Delegate Mafnas seconded. The motion was voted on and carried by voice vote.