

MEMORANDUM

Date: 27 Jun 95

TO Delegates, Third Constitutional Convention [Fax: 235-0842]

FROM Gregory Baka, Assistant Public Defender [Fax: 234-1009]

SUBJECT : Four proposed amendments to the CNMI Constitution

The following are four proposed changes to the CNMI Constitution:

- 1) Grand jury indictments. art. I, § "13."
- 2) Jury trial if defendant faces 1 year jail or \$3,000 loss. art. I, § 8.
- 3) Right to drug-free schools/ workplaces. art. I, § 9"(b)"
- 4) Primary elections for partisan elected offices. art. VIII, § 2.

1) Grand jury indictments. Currently, except in federal court, there is no right to a grand jury in the CNMI. Instead of felony charges being commenced after a probable cause finding by one's peers in an "indictment", the decision here is made solely by a prosecutor in an "information". Hence, cases such as "The Great Towel Case" are filed in court, while rapes go uncharged. In April 1995, three of the six mainland-hired prosecutors in the criminal division, including the chief of the criminal division, had no prosecutorial experience outside the CNMI. Establishing a grand jury system in the CNMI, as is done on Guam and in the mainland, would ensure that local citizens are keeping an eye on the cases the prosecutor chooses to file.

The Proposal, N. Mar. I. Const. art. I, § "13"

Section 13: Grand Jury Indictment.

The legislature shall provide for indictment by grand jury when a person is accused of a felony.

N. Mar. I. Const. art. I, § "13."

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2) Jury trial if defendant faces 1 year jail or \$3,000 loss. The current limit is five years/ \$2,000 (\$1,000 in civil cases). 7 CMC § 3101. The usual criminal threshold on the mainland is six months in jail. The population of the CNMI has matured socially, politically, and morally so as to be able to responsibly exercise the civic burden of jury duty. Our small population and close-knit, family-oriented culture are no obstacle and, indeed, support the original jury concept. The jury system evolved in the small villages of England in the long ago days when social ties there were similar to those in the CNMI today. A jury is supposed to be consist of peers, and serves a valuable check against abuse by prosecutors.

The Proposal, N. Mar. I. Const. art. I, § 8.:

Section 8: Trial by Jury.

~~The legislature may provide for trial by jury in criminal or civil cases.~~

(a) In criminal actions, any person accused of offenses punishable by a total of one year imprisonment or \$3,000 fine, or more, shall be entitled to trial by jury.

(b) In civil actions where the amount claimed or the property involved is worth \$3,000, or more, the parties shall be entitled to a trial by jury of all legal and equitable issues.

N. Mar. I. Const. art. I, § 8.

3) Right to drug-free schools/ workplaces. Our Constitution presently guarantees the right to a clean and healthful environment. N. Mar. I. Const. art. I, § 9. The adverse social influence of the drug epidemic suggests that this right be expanded to include drug-free schools and workplaces. Measures taken to achieve this goal may be construed to contradict other constitutional rights concerning search and seizure and privacy. Thus, for the protection of employers, employees, and to promote treatment, limits would be placed on the use of drug tests.

The Proposal, N. Mar. I. Const. art. I, § 9"(b)'

(b) Each person has the right to a drug-free and smoke-free school and workplace. Public and private employers may conduct random urine tests of students and employees to deter and detect drug abuse. Results of such tests shall be used for treatment referral and may not be used as evidence in criminal prosecutions.  
N. Mar. I. Const. art. I, § 9"(b)".

4) Primary elections for partisan elected offices. A primary election allows the people to choose who will be their candidates. A primary election promotes openness and accountability. Selection of candidates by the party leadership in secret meetings promotes favoritism and self-interest. Under this proposal it would be up to the legislature or parties to decide whether the party primaries should be "open" to all voters or "closed" to only voters registered with that party.

The Proposal, N. Mar. I. Const. art. VIII, § 2.

Section 2: Other Elections.

~~Other elections may be held as provided by law.~~

Candidates for partisan elected offices shall be chosen by primary election. Other elections may be held as provided by law.

N. Mar. I. Const. art. VIII, § 2.