THE 3rd Con Con AND THE Public

By: Stephen C. Woodruff

Amendment No. 2: On mutilating Legislature

"Amendment" No. 2 is chock full of bad ideas: a six member senate, voting powers for the lieutenant governor, four-year terms for members of the house of representatives, and island-wide election of Saipan representatives, for example. Even its best ideas—increasing funding for the legislative bureau and guaranteeing an equitable distribution of funds for individual offices, for example—are seriously flawed.

I refer to the Article II changes as a whole as "mutilating the legislature" because the overall effect would be to weaken the legislative branch in relation to the executive and to reduce its effectiveness and efficiency.

A Six Member Senate?

The chambers of a legislative body are intended to function as deliberative assemblies. They are supposed to be forums for discussion and debate, in which the members bring a wide range of experience and differing abilities, knowledge, perspectives, and insights to bear on issues of public concern. Six members is simply too small for a body to function properly as a deliberative assembly.

The opinions of the United States Supreme Court can tell us something about the proper functioning of decision-making bodies. In Ballew v. Georgia, that court held that six members in a jury is the smallest number of persons sufficient "to promote group deliberation, to insulate members from outside intimidation, and to provide a representative cross-section of the community."

Justice Blackmun noted a direct correlation between the size of a body and "the quality of both group performance and group productivity." Group size is particularly important where "complex problems laden with value choices" are faced, as is the case in the legislative process.

"In particular," Justice Blackmun wrote, "the counterbalancing of various biases is critical to the accurate application of the common sense of the community to the facts of any given case."

The functioning of juries and legislative bodies are parallel in many respects. Indeed, legislatures may be more sensitive to these elements than juries, because the legislative process is more open-ended and lacks the limiting effect of focus on specific legal questions and the guidance of a judge's instructions.

In Burch v. Louisiana, the Court made clear that six-member juries were sufficiently large only because of the requirement that their decisions be unanimous. The Court had previously held that unanimous decisions were not essential with larger juries. In Brown v. Louisiana, the Court emphasized the importance of its decisions by holding that the requirement of unanimity declared in Burch must be given retroactive application.

The proposed six-member senate contains no protection of the public interest in the form of a unanimity requirement. Indeed, it is theoretically possible for a single member to pass a bill, since the convention failed to correct the one significant flaw in Article II carried forward from the original constitution until now. Passage of a bill requires only a majority of the votes cast, not a majority of the members. Thus, if the other members present abstained and one voted yes, the bill would pass.

Anomalously, a mathematical fact of the proposed six-member senate is that the vote required to pass a bill—assuming all six members are present and voting—is the same as would be necessary to override a veto of the same bill. just four votes.

From a personal interest, employment standpoint, I might be expected to support this change. After all, it would reduce my workload by one-third. But that doesn't make it a good idea. That doesn't make it in the public interest.

The Post-Con's Defense

Post Convention Committee Chairman Herman T. Guerrero says he doesn't see why Saipan, Tinian, and Rota can't get along with just two senators when the states of the United States have done fine for 200 years with only two senators each. That argument completely misses the point.

The question isn't whether the people of the islands can be adequately represented by two senators. The question is whether the senate will be large enough to function the way it should. Or whether it would operate like a back room cabal, narrow in perspective and limited in cumulative wisdom. With a six member senate and a tie-breaking vote for the lieutenant governor, the chief executive only has to persuade three senators to go along in order to control the upper house.

In fact, the first U.S. Congress had 26 senators, two for each of the 13 original states. At 26 members, there obviously is no question about whether the body is large enough to constitute a true deliberative assembly. At nine members, the Commonwealth senate is already the smallest state legislative chamber in the United States.

Indeed, the people of the Commonwealth probably don't realize how fortunate they are to have the quality of representation they do. Only one state, New Hampshire, has a ratio of population per legislator comparable to the one the people of the CNMI enjoy.

To be continued

LETTERS TO THE EDITOR

Peeved over ConCon's 'yes' campaign

Dear Editor:

IS ANYONE else out there wondering WHY the delegates to the Third Constitutional Convention are lobbying in favor of the proposed amendments to our Constitution? For several days now, when I sit down to watch the evening news, there they are: Con Con delegates urging all of us to vote YES on this or that proposed amendment.

The Con Con delegates were elected to do one thing" draft and approve proposed constitutional amendments. They worked hard last summer and we all owe them a debt of gratitude. It is disturbing, however, that those same delegates - still announcing themselves as, and apparently acting in their capacity as Con Con delegates - are now pushing us to vote "yes".

Even more disturbing is the fact that the Post-Convention Committee, which is wholly dependent on our tax dollars, apparently is paying for the TV time during which the delegates are telling us to vote yes. In other words, you are paying to have someone you elected tell you to vote yes. Are we taxpayers also paying for anyone to get on TV and tell us to vote NO on certain proposed amendments? Of course not.

The Con Con delegates instead should simply be telling us two things: 1) what the amendments are about, and 2) that we should vote. They should NOT be telling whether to vote "yes" or "no" for any particular amendment. If they continue to do so at taxpayers expense, then the Post-Convention Committee should also pay for TV or for other media access of those persons who would urge us to vote NO on any or all of the proposed amendments.

I am considering voting NO on several amendments.

Sincerely,

JUAN T. LIZAMA

Attorney-at-Law

BOE improves on ConCon ballot

THE ballot form for the Con-Con election on March 2, published yesterday by the Board of Elections, changes the way the questions about amending the Constitution are put to the voters, the Post-Convention Committee said in a press release.

"We think that the ballot for the 1996 Con-Con election is much improved over the ballot that was used in the 1985 Con-Con election," Convention Delegate Bernadita T. Seman said. "The 1985 ballot gave the voters only a few words about each amendment. The 1996 ballot provides a full description, in plain language, of the proposed changes."

The format of the 1996 ballot is also changed from the 1985 format.

In 1985, all three languages were put together on the same ballot.

"No one here uses all three languages. You use one or another as your primary language. So we specified separate ballots in separate languages," said Seman. "That way, the voter can use a ballot that is all in English, or a ballot that is all in Chamorro, or a ballot that is all in Carolinian," she said.

The Board of Elections, selected different colors for each of the separate ballots. The Carolinian ballot is gold, the Chamorro ballot is light blue, and the English ballot is white.

The individual language ballots are only 11 pages long. The 1985 ballot was 22 pages long.

"We also thought that the 1985 ballot was very deficient in its lack of information for the voters," Seman said. "Before we put the ballot together, we went around and asked a lot of people what they thought of that ballot, and what their ideas were for improvement.

"The Washington Representative, Juan N. Babauta, for example, told us that he thought the 1985 ballot was confusing and should be shorter and contain more information. Other people told us that the ballot should tell people exactly what they are voting on rather than just have a little title or label," Seman said.

Seman pointed to Amendment #10 on the 1985 ballot as an example.

"That 1985 Amendment #10 was 13 lines long, but it didn't tell the voters anything about the amendment other than a new section was going to be added to Article II establishing a legislative bureau."

The text of that portion of the 1985 ballot appears in the box.

"This doesn't tell the voters that the Director of the Legislative Bureau can be removed without cause. And it doesn't tell the voters that $800,000 of their money would be spent on this Legislative Bureau," Seman said. "There were a lot of important things in that 1985 Amendment #10. The actual constitutional language had six subsections. But the ballot assumed that the voters read everything about Amendment #10 and remembered it all."

"You can compare this to our proposed Amendment #10 that covers taxes and public finance. That Amendment is also 13 lines long, but those 13 lines tell the voters all of the things that are in Amendment #10. The text of that portion of the 1995 ballot appears in the second box."

"This explains to you what you are voting on right there on the ballot. You don't have to remember all this from your reading of the proposed language," Seman said.

Seman, who is working with the Post-Convention Committee as an alternate member, pointed to the numbering plan as an example of the efforts of the Committee to make the ballot easy for the voters to understand.

"We numbered each Amendment to correspond to the Article of the Constitution that it amends, whenever possible," Seman explained.

"So, for example, Amendment Number 9 relates to Article IX on Initiative, Referendum, and Recall. And Amendment Number 10 relates to Article X on Taxation and Public Finance. This way, the voters are not confused by the numbering of the amendments."

The 1996 ballot has 19 proposed amendments.

The Post-Convention Committee's published materials about the constitutional amendments began appearing in this and other newspapers in September 1995.

The cycle of two complete sets of all amendments, in both Chamorro and English, completed last week.

A Carolinian set also finished last week.

"Some voters told us these inserts in the newspapers were hard to read," Seman said. "We did our best to make them readable, but we wanted the voters to have all of the amendment language with an identification of each proposed change from the current Constitution. These inserts in the newspapers were very detailed."

"We hope that the shorter ballot format, which has important information about each proposed amendment, together with the very lengthy public education materials, will help all voters understand the proposed changes," Seman said.

When asked about recent criticisms about the way the ballot language has been phrased, Seman explained that the proposed language had been reviewed carefully by the Post-Convention Committee and that lawyers and lay people had been consulted to be sure that it was clear.

"People who are strongly opposed to the amendments will probably find fault with a few of the words," Seman said. "But we think the wording is clear. You have to take the ballot language in the context of all the very highly detailed information we have published in the newspapers. The ballot language needs to be short and precise. We think we have accomplished that."

Seman said it was necessary to summarize some of the smaller changes in order to keep the ballot language from being too long.

"We said that some updating and consistency changes were made. These are relatively minor items. Sometimes when you change language in one place, you need to make a corresponding change in another place. If somebody wants to quarrel with us on that, I guess they think the voters are not smart enough to read what has been published over and over again in the newspapers."

The Board of Elections confirmed that copies of the detailed information published in the newspapers about the Constitution will be available at the polling places during the coming Con-Con balloting.

The 1985 ballot had 44 amendments. The number of the Amendment did not relate to the Article of the Constitution being amended. All of those amendments were approved by the voters.

"There was a lot of criticism of the 1985 Convention's staff work during the public education campaign. In fact, we didn't have much public education at all back in 1985," ConCon president Herman T. Guerrero said. "The staff in 1985 didn't put together any Analysis of the amendments so the people and the courts would know what they meant. The staff also didn't create a very good record of the Convention. I was very dissatisfied with it. The lawyers from the Attorney General's office worked hard for us, but the staff consultants performance was not very good."

Guerrero served as President of both the 1985 and 1995 Constitutional Conventions. "I wanted it to be different this time. The 1995 Convention proposed important changes, and I wanted to be sure that there would be full information on the proposed amendments and an informed public debate," he said.

The Post-Convention Committee organized 15 village meetings in the evening and 10 meetings for government workers so that voters can ask questions and hear the delegates explain the proposed amendments. Eight of those meetings have been held this week. A meeting today is set for Rota.

Variety - Feb. 9, 1996

Letters Letters Letters

ConCon delegate rebuts Woodruff

Dear Editor:

Your columnist, Steve Woodruff, a recent law school graduate who is counsel to the Senate, wrote that the amendment to Article 1 with respect to quartering soldiers was ìnothing more than someoneís personal stylistic preference.î I proposed that amendment and urged my fellow delegates to vote for it. And I can tell you that it was the product of careful thought and consultation, not just my or anyone elseís personal preference.

I was elected to be a Constitutional Convention delegate by the voters. I took that responsibility seriously. I looked at every part of our Constitution to see if changes needed to be made. I consulted with my constituents, who voted for me, and also with candidates for the Con-Con who were not elected.

My Proposal No. 53 on quartering soldiers was submitted on May 9, 1995. This was not something that came in at the last minute and no one had time to consider. I wanted to protect against the quartering of militia in private homes, and I thought that occupants should be protected as well as owners.

My job as a delegate was to look as far into the future as I could. I can foresee the day when the term ìsoldierî might mean only the United States Army because there might be other types of armed forces in the Commonwealth. If some governor in the future created a militia of some sort, or deputized a private group for some police purpose, then I donít want these militia people housed in private houses against the wishes of the owner or tenant. So I proposed changing the word ìsoldierî to the words ìmember of any armed forceî to cover this possibility.

This proposal was discussed carefully in the Committee on Land and Personal Rights, on which I served. My fellow delegates thought that this protection should be limited to owners, and should not cover occupants. In the spirit of compromise, I gave up on that part of my proposed amendment, but my fellow delegates agreed with me about broadening the coverage of this protection for the future.

Just because the word "soldier" is used in the U.S. Constitution, which was included in the Third Amendment which became effective in 1791, there is no reason why we, who are planning for the year 2000 and beyond, have to use that term. I thought my proposal was a useful updating of our Constitution.

Amendment #1, of which this change from "soldier" to "member of any armed force" is a part, was approved by the delegates by a vote of 23 to 0. Four delegates were absent that day.

Your columnist may disagree with me about the importance of this amendment. I thought it was a good change. Apparently he does not. But he should not belittle my efforts as ìsomeoneís personal stylistic preference.î I assure you, I was trying my best to study the issues and make the best choices for the Commonwealth. I am not a lawyer, as your columnist is. But he only graduated from law school a year or so ago, after graduating he has never worked for a law firm where his work would be subject to scrutiny by senior lawyers, and I have heard reports that he has made important mistakes in his work as a lawyer for the legislature. Our lawyers for the Con-Con included the former Chief Justice of the CNMI Supreme Court, one of the most respected lawyers in the Commonwealth.

Sincerely,

Justo S. Quitugua