

PERSONAL JOURNAL
OF
HOWARD P. WILLENS
RE: THIRD CONSTITUTIONAL CONVENTION
Saipan
Commonwealth of the Northern Marianas
1995

March 4, 1995 - August 3, 1995

(Tapes 1-9)

PERSONAL JOURNAL OF HOWARD P. WILLENS
RE: THIRD CONSTITUTIONAL CONVENTION - 1995

Saipan
Commonwealth of the Northern Marianas

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JOURNAL OF HOWARD P. WILLENS

RE: CNMI THIRD CONSTITUTIONAL CONVENTION (1995)

March 4, 1995 to April 6, 1995

March 4, 1995

The election for delegates to the Constitutional Convention took place today. Twenty-seven (27) delegates were elected, counting the 19 from Saipan and 4 each from Rota and Tinian. We were on Saipan during the last few days of the campaign which was conducted, more or less, in traditional Northern Mariana style. Principal vehicles for advertising one's candidacy are placards that posted at various locations around the island and advertisements in the local papers. Under the enabling legislation with respect to the Constitutional Convention, the candidates were prohibited from identifying themselves as members of, or supported by, one of the two political parties in the Commonwealth. Many of the statements made by the delegates were extremely general in terms regarding their plans for the Third Constitutional Convention. Others made some very specific proposals, many of which reflected a desire to turn the Third Constitutional Convention into a super legislature that would enact laws and directed to achieve the

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political objectives of the candidates. We have collected the various advertisements and delegate proposals that were advanced during the campaign and organized them in an effort to segregate the relevant proposals under the particular article of the current Constitution to which they pertain. On Friday, March 3, the delegates engaged in their last campaigning effort by various motorcades around the island, with horns blaring, sound speakers urging the particular delegate's candidacy. At various points along the road large groups of supporters, including many relatives and children, were holding up the signs of the relative or delegate that they were supporting.

March 5, 1995

The results of the election were widely publicized on Sunday, March 5, although the results were not certified for several days. One of the principal surprises was that the women candidates in Saipan for delegate positions were the most popular vote-getters. In fact, five of the top six vote-getters were women. Many of the successful women candidates are the daughters of leading political figures in the history of the Commonwealth. For example, Francis Borja, whose most recent experience is in the private sector, is the daughter of former Senator Olympia Borja,

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who was a member of the Marianas Political Status Commission and a member of the Congress of Micronesia for many years. He also ran (unsuccessfully) for the position of Lieutenant Governor in the first Commonwealth election in 1977. Two of the other women are daughters of Frank Ada, the District Administrator of the Mariana Islands District for many years and the first Lieutenant Governor of the Commonwealth under Governor Camacho; the daughters are Lillian Tenorio, who was the third highest vote-getter, and Mary Lou A. Sirok.

Another significant result of the election was that no "stateside" candidate prevailed although one came very close. Mike White, a lawyer on Saipan for nearly 25 years and married to a local woman, missed election to the Convention by only a handful of votes. By coincidence Mike White is the lawyer who appeared in court against me on February 14, 1975 in an effort to enjoin the signing of the Covenant that had been negotiated during the two-plus preceding years by the U.S. Delegation and the Marianas Political Status Commission. He now runs a firm of approximately six lawyers, which is described as the largest firm on Saipan and generally enjoys a high measure of respect. Although not a

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particular gregarious or effective campaigner, Mike White was generally viewed as "paying his dues" to the local community and his defeat was generally perceived as reflecting the widespread sentiment among the local citizens that the time was not yet ripe for a "stateside" resident to assume any prominent responsibilities in the political life of the Commonwealth. At the same time, however, we have heard from other sources that the number of "stateside" residents has reached the point (somewhere in 10-15 percent range) where they can be perceived as a "swing" vote on any particular issue. Apparently some of the ConCon delegates specifically directed their appeal to the stateside community, in some instances reportedly telling the stateside residents that their rights in the community were endangered by the positions being urged by some of the other candidates for the ConCon. I do not think that there was much basis for this general contention.

Another significant result of the election was that relatively few established political leaders were selected to participate in the Third Constitutional Convention. Some of the oldtimers included former Governor Carlos Camacho, Herman T. Guerrero, who served as Chairman of the Second

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Constitutional Convention, Jose R. Lifoifoi, who served as a Speaker of the House of Representatives in one of the early terms of the Commonwealth and was active in Carolinian circles going back to the 1960's and early 1970's. (Four successful delegates have been identified as of Carolinian ancestry.) But many other well-known political figures were unsuccessful, including David M. Sablan. Some people have commented to me since the election that the voters selected very few supporters of current Governor Froilan Tenorio, including Herman T. Guerrero mentioned above, Juan F. Tenorio, and Victor Hocog from Rota. Several of the successful delegates are known for their strong opposition to some of Governor Tenorio's policies, including Bennet Seman, the second highest vote-getter, whose position as head of the Marianas Visitors Bureau was eliminated when the Governor issued a comprehensive reorganization order in 1994. She and others are reported to be strongly committed to limiting the Governor's reorganization authority under the present Constitution and, presumably, endorsing the creation of several new independent agencies to execute responsibilities of the Commonwealth, in particular, areas of community life.

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March 14, 1995

The Saipan delegates met and elected five of their group to constitute members of the Pre-Convention Committee. The enabling legislation authorized a Pre-Convention Committee of 9 individuals: 5 from Saipan and 2 from each of the other two islands. The five Saipan delegates selected were Dr. Camacho, also selected as Chairman of the Saipan Delegation, Jack Villagomez, Bennet Seman, Hester S. Fleming, and Herman T. Guerrero. According to a newspaper report the next day, 12 of the 19 Saipan delegates aspired to membership on the Pre-Convention Committee. Several of them also indicated their desire to compete for the presidency of the ConCon, including Ms. Fleming who was the top vote-getter in the election for Convention delegate. Both Dr. Camacho and Herman Guerrero were identified as candidates for the presidency of the ConCon. It is hard for an outsider to assess the significance of Dr. Camacho's selection as head of the delegation. To some extent, it may reflect the general deference within the community to its elder statesmen - in this case the first Governor of the Commonwealth. From another perspective, however, it may be viewed as placing him a position to mediate between the extremely active and complicated political efforts already

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underway to influence the outcome of the ConCon. From word that we have received, Dr. Camacho, although head of the Democratic Party during the campaign that placed the current Governor in office, is "estranged" from Governor Tenorio. When I used the word "estranged" with one knowledgeable Saipan resident, he suggested that Dr. Camacho and Governor Tenorio had never, indeed, been close, so it was not possible to have any "estrangement." In any event, Dr. Camacho comes across as a very active individual, married several years ago and now a proud father of several young children, and somewhat mellow and less acerbic than we remember him from the First Constitutional Convention in 1976.

March 18, 1995 We learned from Sam McPhetres, an historian and teacher at the Northern Marianas College, that he was conducting a class at 6:30 at the College to which he had invited the five Saipan delegates elected to the Pre-Convention Committee. When we asked if we could attend the classroom discussion, he checked with his co-teacher and subsequently informed us that was certainly okay. We waited for some 45 minutes at the College for the class to begin and had a very unique opportunity to hear some of the concerns of the students and evaluate

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the four members of the Saipan group that attended the class. (Ms. Seman was the only absent one.) Dr. Camacho, in his new capacity as Chairman of the Saipan Delegation, exhibited considerable charm in opening the session, denigrating himself as one of the low vote-getters, and one of the senior citizens among the group. Each of the four Saipan delegates spoke briefly.

Esther Fleming is a woman of considerable stature, kind of an easy smile, and obviously quite successful in attracting the number of votes that she did in the recent election. Apparently she had run as a write-in candidate for the school board relatively recently and done extremely well. (We do not know what the political significance is of her being unable to secure the endorsement of either major political party.) In any event, she comes across as extremely proud of her success in the election but with no very specific program for the Convention except some proposals with respect to education in the Commonwealth.

Herman T. Guerrero is quite articulate, very soft spoken, and is obviously is making an effort to ensure that the Third Constitutional Convention avoids some of the mistakes (in staffing and substance) of the Second Constitutional Convention. As earlier reported, he aspires to

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the presidency of the Third Constitutional Convention. He is very close to Governor Tenorio and presumably would be looked to as one of the principal advocates within the Convention of those proposals that are identified with Governor Tenorio.

Jack Villagomez was a long-term employee of the Commonwealth Government, both under the First and Second Administrations, since 1978. He was recently the Director of the Coastal Resources Management Agency and most of his proposals are directed to preserving a separate and independent agency for dealing with environmental problems in the Commonwealth. He comes across as very political, somewhat naive, anxious to represent himself as "your spokesman in the Convention" but has a fairly detailed set of proposals to present to the Convention that undoubtedly will raise many occasions the fundamental issue as to what provisions are appropriate for a constitution and what should be best left to a legislature.

After the introductory statements by the four delegates, the students let loose with a wide variety of questions with respect to the upcoming ConCon. They had been obviously quite well-briefed by their teachers and had read the enabling legislation. Many of the questions

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pertained to Article 12, the land alienation provision of the CNMI Constitution. There was considerable misunderstanding, shared by the students and some of the delegates regarding the extent to which the Commonwealth is free in the future to continue such restraints on land alienation without U.S. approval. Some of the students rather pointedly observed that the concerns expressed with Article 12 should be directed not exclusively at statesiders or other outsiders who are trying to take advantage of the local community but rather at the local citizens themselves who are motivated by "greed" to the disadvantage of their descendants. Some of the students wanted to see more education directed at the local citizens in order to ensure that they recognized that short term economic gains may not be in their long term interest.

Many other questions pertained to the selection of legal counsel for the Convention - a somewhat surprising subject to hear featured in a college classroom in Saipan or elsewhere. It may be that the teachers had alerted the students to our presence at the session and reviewed, to some extent, the news articles that had reported on the proposals that we and others had submitted through the Pre-Convention Committee to offer our

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professional services to the Convention. At some point during the meeting both Deanne and I were introduced to the classrooms and on a few occasions Dr. Camacho addressed questions to us with respect to the meaning of certain provisions of the Covenant or the Constitution. One of the more humorous exchanges arose when the students turned to the fact that the CNMI Legislature had only appropriated \$300,000 to fund the Convention from the election of delegates through the post-Convention activities. One of the students suggested that there was no way that the Commonwealth could obtain competent counsel for a mere \$300,000! We did not disabuse her of this notion, although I felt reluctant to state publicly that we had offered our services in return for compensation of our out-of-pocket costs not to exceed \$3,000 a month.

Near the end of the meeting another interesting subject came up. An African-American student suggested that the class and community generally should focus more precisely on the distinction between ethnicity and nationality. She pointed out that there was no inconsistency with being either a Chamorro or Carolinian on the one hand and an American citizen on the other hand. She observed that many people in the

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Commonwealth described themselves as Chamorros or Carolinians and do not identify themselves as being Americans. It was a particularly poignant comment to be made by an African-American student in this distant location.

Another student, clearly the child of white stateside citizens who had committed themselves to the Commonwealth, joined in support of her classmate's point, although she had observed earlier that she was excluded from owning land in the Commonwealth even though she and her parents had elected to make Saipan their home. It raises an interesting question as to the process by which a community so distant from the United States mainland and with its own cultural remnants and language that are threatened with extinction can both preserve what remains of their culture and accept themselves as part of the larger American family.

March 20, 1995 We delivered to Dr. Camacho today a letter amplifying on our earlier proposals. We made it clear that we would work for the Convention on the same terms that we would work for the Pre-Convention Committee, namely, \$3,000 per month for out-of-pocket expenses.

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March 22, 1995 The Saipan Delegation met this evening and considered an agenda on various items as related to the Convention. The various proposals submitted by interested law firms and individuals were circulated to members of the delegation, but it appears as though little progress was made in reaching a decision. I learned about the meeting shortly in advance of it and heard about the meeting in brief from Jack Villagomez at a breakfast meeting initiated by him on March 23, 1995, and in a telephone conversation on the same day with Herman Guerrero. It looks as though some question has been raised regarding our proposal because of my representation of the Commonwealth in the Inspector General case in 1992-93, although I do not know exactly the substance of any criticism with respect to that assignment. It looks as though the Pre-Convention Committee may be slow in making any decisions with respect to legal counsel or other significant matters because the members from Tinian and Rota have not yet been designated. It is reported that the Rota delegates, 4 in number, are evenly divided with respect to who should serve on the Pre-Convention Committee. If some compromise is not reached before April 6, Governor Tenorio has the authority under the enabling legislation to designate the

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members of the Rota delegation to serve on the Pre-Convention Committee. Based on my conversation with Jack Villagomez, it looks as though there is some concern about proceeding slowly with full opportunity for all interested lawyers or firms to amplify their proposals and, if they desire, to appear before the Pre-convention Committee. As a result, much time is being lost by the Pre-Convention Committee that might have been used in educating the delegates more fully about their mission, providing details regarding the history of some of the Constitutional provisions likely to be discussed, and generally turning to the substance of the work of the Convention rather than the mechanics and politics that are necessarily associated with it. My best guess now is that there may not be any decision with respect to counsel until some time after April 6. The delegates I have spoken to seem not to have any awareness of the preparatory work that needs to be completed before the Convention actually begins; they seem to have some sense that the choice of a law firm to assist the Convention could be deferred until the Convention actually convenes.

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March 27, 1995 Last Thursday, March 23, we had at house for dinner Rex Kosack and his wife Claire. Kosack is a former Attorney General of the Commonwealth, from approximately 1982 to 1986, and I interviewed him as part our research the day before we had dinner together. Over dinner we did discuss the politics with respect to the Pre-Convention Committee and he had much advice to offer. He reported from his sources that the Pre-Convention Committee wants to fully explore the possibility of retaining local lawyers, i.e., of Northern Marianas ancestry, before they evaluate the various proposals made by stateside lawyers including ourselves. One of the members of the Pre-Convention Committee, Mr. Villagomez, had previously stated publicly that he wanted to explore the availability of the Chief Justice of the Commonwealth Supreme Court, Jose De La Cruz, who had announced his retirement from the Court some time in May of 1995. His reported plans were to go to Hawaii, where he has a house and looks forward to playing golf. Kosack also urged me not to have too high expectations for the Pre-Convention Committee or other Convention delegates. He emphasized the extent to which many of them were in the political domain for the first time and felt very insecure about making important

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decisions with respect to the Convention. He reports that the politicking for various leadership positions is active and he is advising the delegates who solicit his advice to not make any commitments until the last possible moment. He thinks it is very likely that the Pre-Convention Committee will defer making any decision with respect to staffing the Convention until the latest possible moment. It is hard to evaluate the accuracy or motivation underlying his comments on the subject. He obviously likes being in the role of a behind-the-scene adviser to selected Convention delegates and regards himself as very well-attuned to the political machinations on the island. At the same time, he probably is somewhat skeptical of our motivation with respect to the Convention and probably shares some of the concerns of other stateside lawyers who have committed themselves to the Commonwealth that we are in the status of "outsiders" who are undercutting the local bar by offering our services for expenses only. (Stan Weinberger recently wrote me to caution me that the ABA may withdraw our membership cards in the Association because we have offered our services for expenses only and observed that no lawyer had offered to advise a Constitutional Convention on that basis

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since 1787.) I tried to resist my impulse to argue with Rex about the best manner of dealing with the Pre-Convention Committee or the Convention delegates. To a considerable extent, his past 14 years on Saipan puts him in a much better position than I to evaluate the current sentiments and political aspirations on the island. I think that it is interesting that my own experience in the '70's was considerably different from what he suggests as an appropriate course of action today. The members of the Marianas Political Status Commission, although faced with the most unusual and challenging assignment of developing a future political status for their people, was anything but indecisive. To be sure, there were times when they looked for ways to avoid decisions or to find compromises, but they had the self-confidence with respect to their mission and their leadership ability to go forward and attack the issues that were presented to them during the course of the negotiations. In similar fashion, the delegates to the First Constitutional Convention in 1976 also felt prepared to make the decisions that were presented to them at the Convention. It may be that the past 15 years of self-government, and the growing number of educated and sophisticated players on

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the political scene has led to greater reluctance to step forward and act decisively because of the increased risk of criticism flowing from one source or another. So, to some extent, I am truly inclined to continue setting high expectations for the Convention delegates and it may be that, consistent with Rex's advice, that such a course of action will prove mistaken.

On Sunday, March 26, we received a call at the office from Jack Villagomez. He invited us to attend a meeting of the Saipan delegates to the Pre-Convention Committee on Tuesday evening at 6 o'clock. We agreed to do so. (The call, I believe, came on Saturday March 25 rather than Sunday.) It is a little unclear exactly what they wish to meet with us for, but we are assuming it is not part of the competition for the position of legal consultants to the Convention. Deanne and I have prepared two documents that we may consider distributing and discussing at the meeting. First, we have prepared a brief request for proposal that might be sent by the Saipan Delegation to various applicants for legal consultants so that the Pre-Convention Committee, once it is formally organized after April 6, will have sufficient information from the candidates in order to make a reasoned decision at that time.

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Of course, if they decide to interview each candidate after April 6, it virtually ensures that no decision will be made until at least two weeks later. Secondly, Deanne drafted a list of functions that needed to be performed at various stages of the Convention so as to provide the Saipan delegates with some more specific checklist of the needs that had to be met, not only by legal counsel but by other administrative support personnel that are necessary to make the Convention proceed efficiently. We will see at the meeting whether the delegates are receptive to this way of discussing their responsibilities.

Sunday
April 2, 1995

I am sitting by the pool at the Hyatt Hotel on Sunday afternoon waiting for Deanne to join me. She is busy preparing for the interview tomorrow of Senator King of Tinian, who was one of the delegates to the First Constitutional Convention. We made this arrangement impromptu with Senator King when we met him on Tinian during one of our visits there during the past week. We did attend the meeting of the Saipan delegation to the Pre-Convention Committee on Tuesday, March 28, 1995. The meeting was held at the Dan-Dan, a commercial building on Cross Island Road, slightly past the Tent Tree Point to the Northern Marianas College.

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The building is newly constructed and virtually uninhabited; the only visible tenants were the U.S. Passport Office and the Scholarship Board that serves in the office of the Governor. We arrived at the meeting place twenty minutes or so before the 6 o'clock scheduled time. (We had canceled our second scuba excursion in order to prepare for the meeting and generally not run any undue risk before the session with the delegates.) As we waited for the members of the Committee to arrive, a woman approached us and asked whether we were here for the meeting. She introduced herself as Magdalena Camacho, who had been one of the delegates to the First Constitutional Convention that we had been previously informed was no longer located on the island of Saipan. As it turned out, Ms. Camacho presently worked for the Scholarship Board and evidenced her willingness to be available for an interview at our convenience. She was extremely friendly and told us that she had considered seriously running for the Third Constitutional Convention, but her husband's pressures and the demands of a twelve-year old child prevented her from so-doing. She opines generally that the women delegates to the Convention would undoubtedly bring different, and by implication better, skills to the Convention

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than their male counterparts. She specifically commented on the women's capability of looking at matters in a rational manner and focusing on details.

Shortly thereafter, we watched some of the members of the Committee arrive and disappear into the building. Then Dr. Camacho arrived and expressed surprise when he saw us. He asked: "Mr. Willens, is your office located in this building?" This took us somewhat by surprise, since we assumed that Dr. Camacho had been advised of, and had approved Mr. Villagomez's invitation to us to appear before the Saipan delegation at this meeting. We explained our purpose to Dr. Camacho and he indicated that he had not been aware of the invitation. We said we would wait outside the building until we were invited to the meeting.

Subsequently, Mr. Villagomez appeared and escorted us into the building. When we told him about Dr. Camacho's comment, he told us that he had advised Dr. Camacho personally of the invitation and that we were, in fact, on the agenda - a copy of which he showed us.

We went to the meeting room where all the members of the Saipan Delegation were present. We were invited to sit at the table and we were

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formally introduced to the five members.

Ms. Seman was the only one that we had not previously met and she came across as a well-organized, serious-minded, and somewhat suspicious member of the Committee. (She was the former head of the Marianas Visitors Bureau who had been re-organized out of her position under the terms of the Governor's executive order of 1994. That precipitated a lawsuit in which I submitted an amicus brief to support the Governor's interpretation of the reorganization authority granted him under the CNMI Constitution. It is very possible that Ms. Seman regards me as a supporter of the Governor or, at the very best, an enthusiastic supporter of broad gubernatorial powers.)

Notwithstanding the agenda, Dr. Camacho turned to us at the outset of the meeting and invited us to speak to the Committee. He stated that he was aware that we had many other pressing commitments. I began with a brief statement of appreciation for the opportunity to appear before the Committee. I said that we were prepared to address any issues that the Committee especially wanted to hear or respond to any of their questions. I also said, however, that we had some thoughts that we were prepared to discuss with

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them if that seemed a convenient way to get the discussion underway. Not unexpectedly, they chose the latter course.

After a few comments about the importance and seriousness of the task on which they were embarked, I told the Committee that we had prepared a checklist of functions that might assist them and us in discussing some of the needs of the Convention. At that point I turned the discussion over to Deanne who, after we distributed the paper we had prepared, walked the Committee members generally through the piece of paper. The members of the Committee seemed not particularly surprised with our distribution of a working paper of this kind; they looked at it briefly and listened to her explanation of it. They made some comments regarding specific items listed on the paper, such as the preparation of 40 copies of numerous materials to distribute to the delegates, and indicated that they had already thought of that. There was really no other substantive or question raised about any of functions or responsibilities that we had listed on the piece of paper. We had made an effort to emphasize the need for competent administrative and technical support and Deanne in her comments emphasized this in particular. At some point

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during the meeting she emphasized the need to use available funds for the kind of fulltime, technically equipped, and hardworking non-legal personnel to assist the lawyers and the Convention leadership in fulfilling their responsibilities. At several times during the meeting she made reference to the fact that, based on our experience at the First Constitutional Convention, we and our staffs had been required to work throughout the night. She believes - and I agree - that this is one somewhat dramatic way of communicating to the local leadership that the Convention cannot function on the 9-5 routine that is prevalent here. (To be more specific and accurate, the routine here is essentially an 8 o'clock to 4 o'clock routine.)

After the discussion (or lack of same) regarding the working paper on functions, I turned the conversation back to the selection of legal counsel. Either at this point or some other point during the meeting, I made the point that we were not at the meeting as competitors for the task, we were rather there as friends of the Committee who could bring some experience to bear with respect to the matter. (This was taken by the Committee, not to mention Deanne, with a considerable grain of salt.) I did state our awareness of the fact

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that there were many candidates of high professional qualifications who had evidenced interest in assisting the Committee. I stated that the Committee will undoubtedly not only want to be fair but appear to fair - a formulation that borders on a cliché and seemed to have a singular lack of impact on the members of the Committee, who for the most part sat listening to us with very few expressions or body movements that evidenced any either regard with or dislike for us or our comments. I suggested that the Committee did have the legal authority to move the process forward to select the legal counsel and suggested that a request for proposal might be put out to the various candidates so that information could be obtained by the Saipan Delegation of a uniform nature [END OF SIDE A - TAPE 1] so that the qualifications of the relevant candidates could be set forth in some uniform fashion. The members of the Committee seemed to think this was good idea and I had left to Deanne to make the judgment while I was speaking as to whether to hand out the draft Request for Proposal that we had prepared for consideration at the Committee meeting. She decided (correctly) to distribute the draft Request for Proposal. This by far prompted the greatest level of interest among the Committee,

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including Ms. Seman whose extensive years in government may have familiarized her with the procurement requirements and our suggestion along this line may have persuaded her that we were now discussing a subject with which she was familiar and had some experience and views. We then reviewed briefly the 5 or 6 elements of the request for proposal and emphasized the propriety of circulating it promptly and giving the interested lawyers a very brief time frame within which to respond. Dr. Camacho, as I recall, asked whether I thought three business days was sufficient, since we had originally proposed Friday, March 31, as the closing date, and we indicated that a brief period of time was certainly sufficient for lawyers who had a real interest in having their eligibility for this task considered by the Committee. The Committee seemed particularly appreciative of this effort and gave us every indication that they were going to consider this approach after we left the meeting.

During our appearance before the Committee I can remember only a few additional exchanges of interest. We did indicate that at the First Constitutional Convention we had had the services of 3 senior lawyers and 4 junior lawyers, supported by one secretary from our law firm and 2

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very experienced local secretaries. We used every opportunity to emphasize the complexity of the operation so that the Committee would recognize the need to think carefully about how to staff the Convention and how to spend the limited funds presently available to it. We did, in this connection, make reference to the fact that if we two were retained to supervise the legal responsibilities of the Convention, we would be selecting additional lawyers, subject to approval by the Pre-Convention Committee, to assist us on this project. At some point we made some reference to the retention of local lawyers and one of the Committee members asked whether we thought that local lawyers would have some bias because of their representation of local interests. We spoke briefly about the pro's and con's of hiring local counsel - the pro's being principally their familiarity with local matters and the con's being principally their representation of clients that would make it difficult for some members of the Convention, at least, to believe that they were wholly impartial on issues that had some impact on the affairs of their clients. I made reference to the fact that the Convention would want to get access to the views of advocates of one point of view or

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another, but that the preferred way to do this might be through the submission of written comments on behalf of the clients or at public hearings during which advocates of a particular point of view might appear and testify. Although it was hard to get any sense of the feeling of the entire Committee on this subject in the absence of more candid discussion, I got the impression that several members of the Committee were opposed to the retention of local counsel because of the apparent conflict of interest or perhaps, more generally, based on a dislike of lawyers.

At another point during the meeting I expressed in a limited way our concept of serving as counsel to the Convention. If we were retained, I said that we would want to serve as part of the management team and be involved with the leadership in organizing the Convention. I might not have said it in quite such strong terms but I tried to give the impression that we were not lawyers of the kind that tended to jump through hoops when the order to do so was given.

Based upon our meeting with the Saipan Delegation and some discussion between ourselves later on, I would summarize at least my impressions as follows:

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Governor Camacho: He seems to be a very reticent about making any decisions regarding the Pre-Convention Committee until it is fully constituted. It is hard to determine whether this is part of a cautious campaign to become President of the Convention, emphasizing his long political experience and his "statesman" status as an elder in the community. Or it might simply represent his inability to organize and exercise any leadership ability. Deanne has the view that he basically doesn't like lawyers, that he would prefer lawyers that would take specific direction from him but recognizes we don't fall into that category, but also recognizes that we bring to the convention some experience and judgment that might help him if he were President of the Convention.

Herman T. Guerrero: Herman served as President of the last Constitutional Convention, which was clearly regarded as a failure - both with regard to the number of amendments that it proposed to the public but also the substance and ambiguity inherent in many of them. The so-called Amendment 25, referring to local self-government, is the

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chief example in this respect, although they also enacted an amendment that purported to deny stateside U.S. citizens the right to vote in the Commonwealth which was subsequently held in violation of the U.S. Constitution. Herman seems to determined to redeem himself in this Convention, although I hear that his prospects of being elected President are extremely remote. He currently works for Governor Tenorio, but the Governor is apparently sponsoring Victor Hocog from Rota as a potential President of the Convention. (The election of anyone for president to the position of President in the Convention seems extremely unlikely.) Herman seems fairly mild-mannered, sensitive to the political and substantive nuances, but lacks considerably in the charisma quotient that he was allotted by the Fates. On the other hand, I have reason to believe that he is extremely supportive of our candidacy and would expect us to play a major role if we were retained to serve as legal consultants.

Esther Fleming: Esther, who was the top vote-getter, came to this meeting just in a tee-shirt looking more or less as a recent

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college graduate - which she probably is. She seemed very friendly and interested in some of what we had to say. However, it is very difficult to know what her political motivations here are or where she comes out on some of the substantive issues.

Jack Villagomez: Mr. Villagomez is the secretary of the Saipan Delegation to the Pre-Convention Committee. He seems very diligent and conscientious about generating agendas, taking minutes, and trying to the best of his ability to move things along. It was at his initiative (I believe) that we were invited to the meeting. As earlier reported, I did have a brief breakfast meeting with him a week or so earlier. He is the delegate who reportedly has some fifty or so proposals already on a disk ready to be submitted to the Convention or its representatives at appropriate time period. He is related to Dr. Camacho, although his political allegiances seem to have been with the former Republican Governor.

Bennet Seman: Ms. Seman is one of the more mature members of the Committee, with more

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than a decade of experience with the Marianas Visitors Bureau. It is generally believed that she is very critical of Governor Tenorio and comes to the Convention with an agenda intended to restrict the Governor's powers. She seemed somewhat distant, bordering on inhospitable, to us during the meeting, but expressed particular interest in our draft RFP to solicit proposals from prospective legal counsel. She seems particularly skeptical, if not dubious, regarding the special interest that all lawyers (including us) may be bringing to the Convention.

The effect of our participation in the meeting was demonstrated to some extent on the following day. We received by fax from the Saipan Delegation an RFP that essentially tracked the draft that we had presented to the Committee. It also was published the next day in the *Marianas Variety*. It provided for a deadline of Monday, April 3, 1995 to submit the proposal.

Monday
April 3, 1995

We are submitting our proposal today to the Saipan Delegation of the Pre-Convention Committee. Deanne drafted the document which proposes an overall cost for legal services of \$50,000. It

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indicates that the two of us will work for \$3,000 a month and that we, if the Committee wishes, will provide two additional senior lawyers to work essentially for expenses or less. We have in mind Maya Kara, who currently works for the Marianas Legislature and Bernie Zimmerman, recently a partner in Pillsbury, Madison & Sutro. We provide the Committee with an option to identify two other lawyers who would work on comparable terms. We have included also in the budget some \$16,000 or so for local lawyers. Among other things that our proposal addresses is the estimated number of hours that we think we'll be required to adequately service the Convention. We suggest that a total of 1,700 hours is required and developed that figure by identifying specific duties that the lawyers will be called upon to perform, e.g., participation in Committee meetings, preparation of Committee reports, review and drafting of delegate proposals, attendance at Committee of the Whole and Convention sessions, etc. If this figure's anywhere near accurate and the average going rate for lawyers on the island is \$150 per hour, this would mean that legal services at a normal rate would total approximately \$250,000 for the Convention in contrast with our offer of \$50,000. I expect that

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we will be asked, along with other submitters of proposals, to appear before the full Pre-Convention Committee once it is constituted after April 6, 1995. --

The Journal would not be up-to-date without some reference to our visit to Tinian last week. We went on two separate days - Wednesday and Thursday (March 29 and March 30). Thanks to some valuable assistance provided by on the island, we were able to interview six individuals: two former members of the Marianas Political Status Commission (Messrs. Hocog and Manglona), two former delegates to the First Constitutional Convention (Ben Manglona and David Maratita), and two other knowledgeable inhabitants of the island (James Mendiola and Bill Nabors). Mr. Mendiola's assistance was provided through the courtesy of Mr. Horiguchi of Bill Fitzgerald's office, and he was instrumental in organizing those interviewees who were of the Democratic persuasion. Until recently Mr. Mendiola was the mayor of Tinian, but he has been succeeded by Herman M. Manglona. Bill Nabors works as Executive Director of the Island of Tinian and he was instrumental in organizing some of the other interviewees.

The island of Tinian certainly has changed a good deal in the last 20+ years since I first saw

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it. Not as much as or as dramatically, however, as Saipan. There are now a half a dozen or so modern buildings, a quite large high school near completion of construction, and somewhat more commercial activity than I recall from our first trips to Tinian in the 1970's. At that time, one definitely had the recollection of an assortment of tin shacks, one or two restaurants, and, perhaps, a four or six-room hotel. Now the island has a small, but modern, airport and is anticipating a substantial economic boom attributable to the development on the island of the first gambling casino operation. Tinian alone of the Northern Mariana Islands voted to allow gambling on its island and, after several years of bureaucracy and regulation, permission was finally granted to an entrepreneur from the United States called Lone Star to build and operate the first casino. It is estimated to open, at least on some modest scale, in May or June of 1995.

Notwithstanding its changes and prospects, Tinian still looks like a small rural village compared with Saipan. One cannot fly over the island of Tinian and look down on the abandoned airfields at the northern end of the island without thinking of World War II and the historic roll that these runways played in the end of that

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conflict. The North Field was not developed under the Commonwealth because of conflicting flight patterns with the Saipan Airport, so Tinian has modernized a small airfield called Tinian West Airfield which now may need to be expanded to accommodate the direct flights that are anticipated once the gambling operations on the island become fully operational.

Much of the island of Tinian seems uninhabited, although a good deal of it is subject to agriculture homesteading. The United States recently agreed to leaseback several thousand of the acres that it had leased under the terms of the Covenant and the people on the island seem very appreciative of the fact that additional acreage on their island is available for agricultural and economic development. Many of the people to whom we spoke described the circumstances under which their families first came to Tinian and began farming some of the land. One of the people that we interviewed, Ben Manglona, operates a restaurant downtown where we, and seemingly everyone else on the island, met for lunch - certainly not one of the more notable feasts that we have had in the Commonwealth.

Notwithstanding the agricultural traditions on the island, the principal industry on Tinian

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appears to be government employment. On our second day there we were shown many courtesies by Senator King of Tinian, who we made arrangements with to interview this week. We had the occasion to visit his office on at least two occasions during the day. The picture in his office was truly both unforgettable and typical. Five men and women sat at desk without apparently the slightest evidence of work to be done or any inclination to do whatever work there was in fact to be done. The number of government jobs on the small island of Tinian is staggering, and here was evidence of the fact that election to office means jobs for family and political supporters. When we asked our chauffeur at one point what these people did, he said that they stood ready to be detailed to one of the government agencies on the island if the need developed during the day. The developing of such a need struck us as probably a most rare occurrence. It is Deanne's view that public employment should be viewed as comparable to an agricultural homestead and perhaps some form of dealing with this use of government funds can be developed that would serve to limit the size of the various governmental units in the Commonwealth.

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As to the present attitudes of Tinian residents, one's attitude seemed to be greatly influenced by the results of the last election. From Mr. Mendiola we heard essentially laments about the negotiation of the Covenant, the lack of information available to the people at the time, and the difficulties that the island was presently encountering. From Mayor Manglona, on the other hand, we heard nothing but praise for the Covenant negotiators and great optimism for the future of the island.

April 6, 1995

Today's *Marianas Variety* reports that the Pre-Convention Committee met yesterday and elected Herman T. Guerrero as its Chairman. We heard this for the first time yesterday evening, while watching the Jon Anderson program which featured an interview with Dr. Carlos S. Camacho. Dr. Camacho is the Chairman of the Saipan Delegation to the Convention. Dr. Camacho said publicly that the 5 Saipan delegates to the Pre-Convention Committee (a majority of the 9-member Committee) had agreed to support Bennet Seman to be their candidate for Chairman. However, Dr. Camacho said that "someone jumped ship" and Herman T. Guerrero was elected Chairman. There was no question but that Dr. Camacho was

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suggesting that Herman had breached an agreement that he had reached with the four other members of the Saipan Delegation. Dr. Camacho throughout his televised interview was reasonably suave and quite accomplished. He responded to questions with respect to his opposition to organized gambling on the island and some other matters as well.

Dr. Camacho also mentioned that he, Mr. Guerrero, Victor Hocog, and Joe Lifoifoi were all candidates for the presidency of the Convention. Very little else of substance was said during the interview about the upcoming Convention. (Jon Anderson did his bit for us by asking a question that emphasized the importance of legal counsel to the Convention and reiterated what has become conventional wisdom to the effect that the Second Constitutional Convention in 1985 was poorly served by its lawyers.

Before we came home for dinner on Wednesday night, Deanne informed me that Herman Q. Guerrero had called and asked me to meet with Victor Hocog at the Oriental Hotel at 8:30 p.m. that evening. No specific purpose was given for the meeting, but Deanne and I agreed that I should go to meet Mr. Hocog who was being publicized in many circles as one of the more energetic and ambitious members of the Convention. So I went off to the Oriental

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Hotel with no clear understanding of what, if anything, was to be discussed or whether this was simply an occasion whereby Mr. Hocog could lay eyes on me and ascertain my positions on issues of possible importance to him.

In the lobby of the hotel I encountered not Mr. Hocog but Herman T. Guerrero. Herman looked especially tired and glum, his spirits having been seriously damaged by his viewing of Dr. Camacho's TV appearance. Herman hastened to tell that the alleged agreement among the five Saipan delegates had not, in fact, been an agreement, that he had made an effort to persuade Ms. Seman to withdraw her name from consideration as Chairman and to agree to James Mendiola of Tinian to be the Chairman of the Pre-Convention Committee. Herman was very upset with Dr. Camacho's public accusation that he had breached his agreement and I asked him whether he thought this would lose him the support of some of the women delegates to the Convention in his campaign for the presidency. He and the other candidates for the presidency have apparently been busy circulating among the Convention delegates to try to obtain assurances of their support. He suggested that many of the delegates were reticent to commit firmly to any particular candidate at this time. He was

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extremely critical, indeed vindictive, about Dr. Camacho for whom he has very little respect based on his previous performance as the first Governor of the Commonwealth and his subsequent political activities.

Ten minutes or so later, Herman and I were joined in the lobby by Mr. Hocog, who was accompanied by James Mendiola and Henry Hofschneider of Tinian. Mr. Mendiola was one of those we had interviewed on Tinian last week and was a very friendly. Mr. Hofschneider, who recently came out of the hospital, was a delegate to the 1976 Convention, stated that he recognized me immediately and proceeded to ask where Deanne was. We then had what turned out to be more than a two-hour session over beer and miscellaneous soft drinks and coffee. Notwithstanding the length of the meeting, its purpose with respect to my participation never became apparent or was made explicit. Near the end of the meeting, sometime after 10:30, Deanne joined me at the discussion with the four members of the Pre-Convention Committee.

Much of the discussion related to the politics associated with the Convention and the designation of its president. The Tinian and Rota representatives, although all of the same party as

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Dr. Camacho, were extremely explicit, indeed profane, in their comments regarding Dr. Camacho's past performance, reputation, and integrity. They seemed determined in the future work of the Pre-Convention Committee to make his life extremely difficult. They told me, for example, that none of the Tinian or Rota representatives met together with Herman T. Guerrero before they nominated and voted for him to assume the chairmanship of the Pre-Convention Committee. They never stated exactly why they were so strongly opposed to Ms. Seman, but it is fairly obvious that since she was fired from her position by Governor Tenorio, that these four delegates - all supporters of Governor Tenorio to one degree or another - did not want as chairman of the Pre-Convention Committee a known and reportedly capable adversary of the Governor's. They also made the point that their designation of Herman as chairman was a way of emphasizing the desire of Tinian and Rota representatives to cooperate with Saipan and try to work toward a more productive Convention. To some extent, this reflected their sentiment that they did not want to be dictated to generally by the majority that Saipan possesses both on the Pre-Convention Committee and in the Convention itself.

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With respect to the selection of legal counsel for the Convention, nothing very specific was said regarding the nine or so proposals received by the Committee. Some of the delegates at the meeting indicated that they had reviewed our proposal, at least superficially, and were impressed by it, however, they asked me no questions with respect to it or raised any general issues regarding the qualifications of any of the other applicants. They told me that the Pre-Convention Committee would probably establish a subcommittee to consider the various applications today, April 6, and that interviews with some, if not all, of the applicants might well take place next week. I asked that, if such an interview of us was desired, it be scheduled next week before Deanne left Saipan for eight or nine days back on the mainland. At some points during the meeting it became more or less clear that a majority of the Pre-Convention Committee was inclined to support our application and they were simply wondering about the politics and the mechanics involved in that. They told me that Dr. Camacho was seemingly opposed to our proposal, although he was not advancing the candidacy of any other lawyer or law firm. It was suggested that he was questioning the need for a legal counsel at all to

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some extent, which strikes me as most unlikely given his experience in the 1976 Convention and his use of lawyers as Governor of the Commonwealth. It seems more likely that, if this reported opposition is accurate, it reflects Governor Camacho's awareness that Deanne and I would bring to the Convention a fair amount of personal prestige and force which might handicap the leadership's ability to do whatever it chose to do. This may be nothing but fantasy on my part however.

The discussion did range over a few substantive matters of importance. Mr. Hocog, who was very impressive with respect to his English fluency and his energy level, took the initiative in asking me a few questions about substantive issues. For example, he asked me about Amendment 25 to the Constitution that purported to change the relationship between the executive branch and the delivery of public services in Rota and Tinian. I said I was not familiar with the issues in the pending lawsuit between Mayor Inos and the Governor, but I did believe that there was considerable ambiguity in the provision of the Constitution as amended by the 1985 Convention. I reviewed some of the basic issues that had been resolved by the First Convention in 1976 and the

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need to reexamine this issue in light of the last 19 years of experience within the Commonwealth. At another point, I was asked whether the Convention could tamper with the guarantee of a bicameral legislature. I responded in the negative, pointing out that the Covenant required a bicameral legislature and I described to some extent the circumstances during the last stage of the negotiations that led to this proposal from the Rota and Tinian members of the Marianas Political Status Commission. This provided some reassurance to the Rota and Tinian representatives present at the meeting. I emphasized, however, that in light of the power that the two islands possessed in the Senate, there might be less need now to ensure that the Mayor have full command over the delivery of public services, to the detriment perhaps of a uniform and cost-effective delivery of public services throughout the Commonwealth.

Both Mr. Mendiola and Mr. Hocog seemed ready to consider this matter based on their experience over the past 15 or 20 years. When I asked them in effect whether they thought they had been "screwed" by Saipan under the Commonwealth Government, they smiled rather sheepishly and quickly calculated that the residents of Tinian

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and Rota were receiving approximately \$60,000 each by virtue of the generous terms of the Covenant and the execution of Senatorial power by Tinian and Rota senators with respect to distribution of capital improvement project funds within the Commonwealth. Whether they would be prepared in a public debate to acknowledge the extent to which Rota and Tinian could live comfortably without guaranteed powers of the mayors over local services is an open question. They seem to fully expect that Ben Manglona will come in and seek to make even more clear that the Governor should have no executive responsibility whatsoever in Rota and Tinian for the delivery of public services. The Rota and Tinian delegates at the meeting with me seemed to think that this did have certain disadvantages and recognized the need to bring about some decline in public expenditures within the Commonwealth.

At another point during the meeting I was asked whether the right to vote in the Commonwealth could be limited to those of some percentage of Northern Marianas ancestry. I responded firmly in the negative. I made reference to the effort adopted by the 1985 Convention to limit the voting rights of certain U.S. citizens and the fact that this was

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subsequently held unconstitutional. Mr. Mendiola, who was also a delegate in 1985, looked somewhat sheepish when this subject was brought up.

At other points during the meeting I tried to make some of the following points. First, I emphasized the need for strong administrative, secretarial, and computer support for the Convention - urging that additional funds might be sought from the Legislature be used for this purpose rather than for legal fees. Second, I emphasized the desire for some substantive work by the Pre-Convention Committee with the delegates before the Convention began. Third, I emphasized the role of counsel and the distinction between offering legal judgments and making recommendations to the delegates as to what political judgments that they might elect to make. Four, I did emphasize that we had worked for leaders of both political parties and that we wanted to remain non-partisan with respect to our performance and responsibilities. At one point, Mr. Hocog said that Governor Tenorio was campaigning for our being retained by the Convention; it was not clear whether this was viewed as plus or a minus.

The personal vignettes from the evening are perhaps as enlightening as the substance of the

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conversation. Herman, the newly elected Chairman of the Committee, seemed even more of a passive victim than usual; he was glum, deeply offended by Governor Camacho's attack on him, and still unclear as to how exactly he intended to perform his responsibilities as Chairman of the Committee. One insight as to his political sagacity was revealed by his comment that he had been invited to join Dr. Camacho in appearing on the Jon Anderson TV program but had concluded that he had too much else to do. If he had appeared on the program, there's no doubt that Dr. Camacho would not have made the allegation regarding Herman that he did make on the program.

James Mendiola was among the most outspoken regarding his dislike of Dr. Camacho. He spent most of the evening nursing soft drinks, picking his teeth with commendable vigor, and scrunching his face up into a decipherable configuration. He was extremely deferential to Victor Hocog. It continued to be difficult to get any reading from Mr. Mendiola as to exactly what his personal priorities with respect to the upcoming Convention. He was determined, however, to assign Dr. Camacho to a subcommittee dealing with facilities, logistics, and supplies and generally

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to make his life as miserable as possible for the remainder of the Convention.

Mr. Hofschneider, despite his considerable bulk continues to retain the charm and intellect that he exhibited as a young man 19 years ago. He was extremely friendly and recalled fondly some of the events from the First Constitutional Convention, including Dr. Camacho's record as a notable absentee from the deliberations of the Convention. He seems very much secondary in importance on the Tinian delegation to Mr. Mendiola and it can be assumed that they will vote as a unit.

Mr. Hocog is clearly a growing political force in the Commonwealth. He is near the final stages of completing a major real estate project (golf course, hotel, etc.) on Rota. He is Chairman of the Commonwealth Ports Authority, for which Bill Fitzgerald serves as counsel. It is generally agreed that this is one of the most successful and efficient agencies in the Northern Marianas. He is medium height, somewhat stocky, with black hair and a mustache that has handlebar tendencies. He could be viewed as looking like a member of the Hispanic mafia. At the same time, however, he has a pleasant glint in his eye, good sense of humor, and seems to be very much someone

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who is confident of his leadership abilities. My own sense is that he would be the most effective president of the Convention among the declared delegates, although we are still waiting to see whether the Republicans - who reportedly have a majority of the members at the Convention - will manage to agree on some candidate for that office. Hocog clearly thinks that he will be part of the leadership in any event and seems to have a rather definite idea that the leadership of the Convention will, more or less, dictate exactly what the committees do and what recommendations they ultimately bring to the floor of the Convention. I think it is very likely that the meeting was set up in part to enable him to meet me and get some sense as to how we would work together.

The meeting ended shortly before 11 o'clock and we agreed to make ourselves available for an interview by the Pre-Convention Committee or its subcommittee if the delegates so wished.

[End of Journal Tape 1, Side B.]

JOURNAL OF HOWARD P. WILLENS

RE: CNMI THIRD CONSTITUTIONAL CONVENTION (1995)

April 14 - 27, 1995

April 14, 1995 Today is Good Friday, an official holiday in the CNMI. During the past week the situation has been both clarified and complicated with respect to the staffing and organization of the Third Constitutional Convention.

We learned that some 9 proposals were provided to the Pre-Convention Committee by the deadline of April 3, 1995, but nothing was heard with respect to the Committee's consideration of these proposals for several days. Contrary to the assurances received at the informal evening, a meeting that we had with members of the Pre-Convention Committee, the Subcommittee established to consider the legal proposals was chaired by former Governor Camacho. Since we believed that Governor Camacho is not one of our most enthusiastic supporters, this was not viewed as a favorable development. We did get a formal letter acknowledging receipt of our proposal and indicating that we might be called in to be interviewed at some date in the future by the Subcommittee. No such invitation to appear was received by us.

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During this past week, however, we received a letter from the Chairman of the Pre-Convention Committee advising us that the Committee had decided to retain us to provide legal services during the Pre-Convention stage of the Committee's activities. The letter dated April 11 or 12 indicated that the decision with respect to counsel to assist the Convention during the Convention itself and the Post-Convention stages would be made at some unspecified, later time. This letter was received by us late one day after we had been busy interviewing in connection with our book project and prompted some consternation by me if not Deanne. It seemed to me that his decision may have been a politically motivated one designed to put us - or indeed any other candidate - into a position where he/she could not possibly assemble the staff in a timely fashion to provide the services that the Convention in fact requires. It also occurred to us (as we mused about possible conspiracies) that the 3 candidates for the presidency of the Convention - all of whom sit on the Pre-Convention Committee - might be thinking that they would like to reserve the decision with respect to legal counsel until the Convention had elected them to the office of president. In any

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event, the news was not particularly good news and prompted a call by me to Chairman Guerrero with respect to the matter.

I spoke to Herman regarding the letter late Tuesday, April 11, and expressed some uncertainty with respect to the meaning and purpose of the letter. The letter had invited us to meet with the Pre-Convention Committee at 10 o'clock on the following morning, but I told Herman that we had a conflict at that time and asked if we could meet at some other time. We agreed that we would meet with him (and possibly with other members of the Committee) at 8:15 a.m. on Wednesday morning. I indicated that the letter raised some unspecified problems for us but did not go into details with respect to our concerns.

In considering our strategy to follow with the Committee, Deanne and I had some differences in approach. She believed that we should take this in stride, agree to provide services during the Pre-Convention stage, and make a decision after a few weeks as to whether we would be able to work with the Committee, and, therefore, keep our proposal for assisting the Convention proper alive.

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I was more concerned about our personal schedule, with respect to the proposed trip to China and the commitments in England and Scotland, and also concerned with an effort by the Pre-Convention Committee to put us in a position where we could not possibly assemble the legal and administrative staff on time to assist the Convention if they deferred decision with respect to that matter for any longer period of time. In fact, it already seemed too late by some standards with respect to doing the work that we had previously outlined. Deanne accused me - with some accuracy - of feeling the need to be "anointed" by the Pre-Convention Committee and disappointed at their reticence in so-doing promptly. I assured Deanne that I would not do anything intemperate in the next day's meeting with the Pre-Convention Committee or some of its members. We agreed that we would elicit information from the Committee as to its conception of what duties should be undertaken by the Pre-Convention Committee, and the schedule for a decision with respect to the retention of counsel to assist the Convention proper.

The meeting the next morning turned out to be surprisingly pleasant and satisfactory in every

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respect. We ended up meeting with Herman alone initially; he said that he had been unable to arrange the participation of other members of the Pre-Convention Committee. However, shortly after we began the discussion, we were joined by Committee member Hofschneider from Tinian - a friendly and outspoken supporter of our candidacy. It became clear that the Pre-Convention Committee had decided to retain us for Pre-Convention services at the suggestion of Ms. Seman, who had made reference to the fact that one of our earlier proposals had suggested that we be retained for these limited purposes. According to Messrs. Hofschneider and Guerrero, the overwhelming majority of the Committee was prepared to agree on our retention to serve the Committee and the Convention itself as counsel. In fact, Henry Hofschneider said that he had made a motion that we be retained for all purposes at the last meeting of the Pre-Convention Committee.

We explained - with Deanne carrying the lead - why it was desirable to think about legal counsel's duties as part of a unified program beginning as soon as possible. We made reference to the fact that she was returning to the United States for various commitments next week and would

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take advantage of that visit to try to talk to some of the people that we hoped to encourage to participate with us in assisting the Convention if we had been retained for that purpose. Both Henry and Herman seemed fully supportive of retaining for all purposes and it was agreed that the Pre-Convention Committee would meet again on Monday, April 17, at one o'clock p.m. to consider the matter further. They did not appear to anticipate any problem with the Committee, although they did say some things to indicate that Governor Camacho was beginning to grate on the nerves of many of the other members of the Committee. They did not state that he was particularly opposed to our candidacy and they definitely indicated that no other applicant for this honor had strong support within the Committee. To the contrary, they mentioned some considerable reservation within the Pre-Convention Committee to the retention of local lawyers. Herman picked up on a point that we had made previously, namely, that local lawyers could be actively sought out for their opinions in connection with specific topics to be considered by the Convention or its committees. So, unless the unexpected occurs (which it often does here),

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it looks as though we will be "anointed" as counsel to the Convention next Monday.

We had several entertaining and productive interviews during the week with respect to our research project. We interviewed a former Governor Pedro P. Tenorio, concluded the interview of former Commission member Camacho, Pedro De La Cruz, and Magdalena Camacho - the latter two having been delegates in the First Constitutional Convention. During the course of these interviews we elicited a considerable intelligence - and some advice - regarding the politics connected with the Third Constitutional Convention. We have now heard from more than one source that Joe LiFoifoi, an announced candidate for the presidency of the Convention, really intends to swing his support to Victor Hocog. Apparently he owes Mr. Hocog for enabling LiFoifoi to become Speaker of the House of Representatives in the Fourth Commonwealth Legislature. We learned also that there is also a widespread conception that Herman is too weak a candidate to survive as president of the Convention and that former Governor Camacho may have the support of most, if not all, of the women delegates to the Convention. If this latter point is so, then Governor Camacho (unfortunately) may

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indeed end up being the winning candidate. At the same time, however, we heard from other sources that Mr. Hocog thinks he clearly has sufficient votes to win the presidency.

As the delegates concentrate on the politics we are beginning to organize the subject matter into a form that might be useful both for us and for the Pre-Convention Committee or the delegates as a group. We have organized all the proposals for amending the Constitution by article and have incorporated the various legislative initiatives in recent years into this catalog of possible actions by the Third Constitutional Convention. We have prepared a new copy of the present Constitution, identifying those portions that have been added since the 1976, in order to have something that can be distributed to the delegates for their use. We have begun to discuss organizational and scheduling problems between ourselves and may raise some of these issues with the Pre-Convention Committee if the opportunity presents itself when we meet with them on April 17. I still have some hope of trying to persuade the Pre-Convention Committee to deal with some substantive issues before the Convention actually begins. Perhaps by circulating some document that

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advises the delegates as to what proposals have been made with respect to various articles of the Convention or eliciting from the delegates in some systematic way their own proposals in advance of the Convention. Deanne has in mind the possibility of our holding "office hours" during the next several weeks at which time individual delegates could come solicit our assistance in terms of reviewing their proposals and putting them into some standardized form. We both expect it will be difficult to get the Pre-Convention Committee to focus on substantive matters over and beyond the questions of procedural rules (now being looked at by Maya Kara), location of facilities, and securing increased funding from the Legislature.

On the latter point, we did learn from Herman during our brief meeting with him on Wednesday morning, that the Pre-Convention Committee had decided to go forward with two resolutions for submission to the CNMI Legislature. The first request, additional funding, or reprogramming authority for the Governor, in the amount of \$200,000. This would provide a total of \$500,000 for the entire Convention from beginning to end. It appears, however, that the Pre-Convention

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Committee had not yet developed a specific and detailed budget that could be used to support such a request for additional funding; we have no idea, therefore, whether their request for additional funding contemplated any monies that might be used for compensation of lawyers or administrative staff. In addition, the Pre-Convention Committee is recommending to the Legislature that the proposed amendments to the CNMI Constitution that emerge from the Third Constitutional Convention not be considered at the general election presently scheduled for November of 1995. The Pre-Convention Committee is understandably concerned about the intermingling of political candidacy [than?] issues with the proposed Constitutional amendments and is recommending that a special election be held with respect to the work product of the Third Constitutional Convention six months after the general election. As I understand it, this would mean that the proposed amendments to the Constitution would be considered in May 1996. This would be a very important step for the work of the Convention since it would also provide more time to translate the recommendations of the Convention, the accompanying analysis, and to develop a public

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education campaign to advise the public with respect to the proposed amendments.

April 17, 1995 Today was the day that we met with the full Pre-Convention Committee and were hired to perform services as legal counsel for the Convention throughout its three stages. When we arrived at the meeting we received an agenda that included reports from the three subcommittees including the Legal Subcommittee chaired by Dr. Camacho, and had our names under new business. When the Chairman reached the Legal Subcommittee report on the agenda, we were informed that the Subcommittee basically had recommended what we had previously been told by the Chairman, namely, that we were retained only for the Pre-Convention Committee stage of the work.

As the Subcommittee reported, Mr. Hocog elaborated on the Subcommittee's recommendation and said that they had concluded that the Pre-Convention Committee needed some experience with counsel before they could make any judgment whether counsel should be retained to assist the Convention and the Post-Convention stages. In addition, he indicated that the Subcommittee had decided that other counsel should be retained to

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assist the subcommittees without making it clear what relationship, if any, existed between committee counsel and the lawyers who were denominated as principal legal counsel by the Pre-Convention Committee. In short, we were faced with the same situation that had been presented to us several days earlier.

We made the now-familiar pitch for making a decision promptly as to who should serve as counsel for the Convention proper. We emphasized the need to make arrangements for additional legal assistance, administrative and secretarial support and equipment arrangements in sufficient time in advance of the beginning of the Convention so that it could be conducted on an efficient and well-managed basis. Deanne and I each spoke to some aspects of this issue. We also indicated that no lawyer or law firm could possibly do a first-rate job if they were hired just a day or two before the Convention actually began. I made reference to the fact that we had a substantial track record in the Northern Marianas and that the full Committee was free to solicit assessments of our work, and any dissatisfactions with our work, from those who had seen us in operation over the past many years. We also volunteered to remove

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ourselves from the room so that the Committee could discuss this matter without our being present. Another lawyer, Maya Kara, was also in the room because she was advising the Rules Subcommittee with respect to various aspects of the rules to be followed by the Convention. I made reference to the fact that Maya was one of the on-island lawyers that we wanted to associate with us if we were retained to provide overall legal direction to the Convention.

After some brief conversation regarding the points that we made, the Committee did ask us to excuse ourselves from the room. We were joined shortly thereafter by Maya. It had been made clear during the discussion while we were present that Mr. Hofschneider of Tinian had supported our retention for all purposes during the subcommittee's deliberations, but that either Dr. Camacho or Mr. Hocog or both had been reluctant to make that decision at the time. After about 10 minutes, during which period the delegates were as busy getting doughnuts and coffee as deliberating, we were called back in the room and after some preliminary reports/motions, we were retained for all purposes unanimously by the Pre-Convention Committee.

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We again expressed our appreciation at this great honor and kind words were exchanged by all. The atmosphere changed significantly from this point forward - with both Dr. Camacho and Victor Hocog approaching Deanne or me and assuring us that he had been fully in support of our retention all the time but had to overcome the reluctance of the other. As previously observed, both are candidates for the presidency of the Convention and do not have a great deal of affection for each other. It was made clear that we were expected to attend all meetings of the Pre-Convention Committee and its various subcommittees and a

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We learned a good deal during the meeting about the that decisions that had been tentatively made by the Pre-Convention Committee. Arrangements have been made and were approved at the meeting to hold at the Convention at the

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Diamond Hotel. Deanne learned that at least two rooms were set aside at the hotel for legal counsel, with an additional two rooms for the Convention leadership, and one room for each of the three island delegations. We hope to take a look at the premises some time this week. We learned that the Rules Committee was wrestling with a problem caused by the enabling legislation that called for an election of a president before any rules had been adopted by the Convention. I will be working with Maya over the next day or two to try and resolve this problem, perhaps, by an amendment to the enabling legislation that would authorize the adoption of "interim" rules governing the selection of the president of the Convention.

Several members of the Convention were particularly anxious to put us in touch with individual delegates or the three delegations as a whole. Most of the delegates have apparently been invited to the April 21 Covenant event and it was suggested that I (in Deanne's absence back in the States) might arrange to have a session with all the delegates as a group. I was very receptive to this proposal, although somewhat uncertain as to the kind of discussion that was in mind. Esther

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Fleming seems particularly interested in getting the delegates together with us to learn more about the Constitution and its history and to discuss some of the thoughts individual delegates have about subjects that should be considered by the Convention. Deanne advanced our idea of "office hours" that we could schedule to permit individual delegates to come talk to us about their thoughts and proposals that they were considering advancing at the Convention. On the whole, this concept was well-received by the Pre-Convention Committee. The end result was that I would be available on April 21 to generally socialize and talk to the delegates, but that any overall session would be deferred until next week when Deanne would be back in Saipan.

At the end of the meeting Deanne and I had separate discussions - her with Mr. Hocog, and me with Dr. Camacho. Dr. Camacho indicated that an elderly brother (Albert, 74 years old) was in Honolulu with a heart problem that would occasion a serious operation this week. Dr. Camacho said, however, that he had called me last week to indicate that he would be available for an interview in connection with our book project. We agreed to put it off until next week or later when

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Deanne would be back on the island and the Dr. would have returned from Honolulu if he went back there to be with his brother during the operation. Mr. Hocog, in his conversation with Deanne, assured her that all of her computer arrangements could be satisfactorily met and reaffirmed what he had said at the meeting, that the space at the Diamond Hotel would, more likely than not, at least a week (and perhaps more) in advance of the starting date of the Convention so that the necessary equipment and other arrangements could be made.

There was some brief discussion at the meeting regarding the starting date for the Convention. One member of the Committee suggested June 5, emphasizing various events during the month of May on the Island of Tinian and elsewhere that would require the participation of the delegates. No decision was made, however, and the matter was sent back to the Administrative Committee for further deliberation. It looks however, as though the latest possible date permitted by the enabling legislation will be selected by the Pre-Convention Committee. This is, of course, very good for us in that it permits us to get some staff assembled for this purpose

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and perhaps also to make the rescheduled trip to England and Scotland on or about May 17-27.

Both the Chairman of the Pre-Convention Committee, Herman Guerrero, and the Secretary, Jack Villagomez, indicated they would provide me with all the necessary minutes and earlier documents generated by the Pre-Convention Committee in order to bring me up-to-date. In addition, Herman and I made an informal date to meet the following morning to discuss the work of the Pre-Convention Committee.

Our initial sense is that we will be able to work well the various members of the subcommittee, despite the competition among three of them to become president of the Convention. (In this connection, Deanne observed Mr. Hocog "buttering up" the very stern Ms. Seman during the course of the Committee's meeting and suggested that, contrary to information we had earlier received, not all of the women delegates were necessarily committed to Dr. Camacho.)

April 18, 1995 Today was the first day of our official work as lead counsel for the Third Constitutional Convention. Deanne left the evening before for approximately 7 days back in the States for

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meetings in Washington and Chicago and family trips to California, New York and Cleveland.

I attended a meeting of the Subcommittee on Administrative Arrangements in the morning, the Subcommittee is chaired by Victor Hocog, who continues to defer regularly to Bennet Seman. The subcommittee basically considers such matters as the location for the Convention, appropriate staff, and, most importantly, the amount of additional funds that needed to be sought from the Legislature - either directly or through additional reprogramming authority provided to the Governor. By the time the Subcommittee wrestled with the problems of per diem expenses, travel expenses, and compensation for those not employed above a certain minimum in the private or governmental sectors, the amount of more than \$300,000 - on top of the \$300,000 already authorized - was easily arrived at. Hocog's intention was to write this up and submit it to the Legislature in some form or another later that afternoon, or, at the very least, review it with the Governor's office before so-doing. When asked about our legal expenses and the related cost of the legal effort, I generally followed the proposal that we had submitted, which called for a

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total of \$48,500 for lawyers, including law clerks and local attorneys who might be hired on selected projects. It also included \$30-\$40,000 for secretarial and administrative support, so I used the higher figure with the Subcommittee. In addition, I threw in an additional \$20,000 for so-called non-legal experts, so that we would have some funds available for Howard Mantel and others if we thought that was desirable. The Subcommittee Chairman heard me out and then casually added another \$80,000 for legal and related costs, leaving me still unsure as to whether he has any other ideas in mind with respect to the legal staff that should be used by the Committee.

When the Committee had tentatively identified the Diamond Hotel as the location for the Convention and it was agreed I would visit the facility with two members of the Committee after lunch. We did have an enjoyable (and expensive) lunch at the Japanese restaurant at the Coral Point Golf Club, following which Bennet Seman and Esther Fleming and I visited the Diamond Hotel. The public facilities there, three large rooms, look more than adequate for holding the Convention and housing most of the support staff. The

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problem is in arranging the necessary number of rooms that can be used for conferences, common delegation meetings, private meetings of counsel, and so forth. The hotel is very reluctant to remove beds from any of the rooms. The total cost for the Diamond Hotel is approximately \$100,000 when it is aimed to have some four or five private rooms available for the Convention delegates throughout the 2+ months that the Convention will occupy the period. The Diamond Hotel management suggested that one week in August was a particularly busy week because of a Japanese holiday and vacation plans.

Based on the day's meetings and meeting-and-luncheon, I certainly am getting a better idea of the personalities of the individuals involved. Mr. Quitugua of Rota is very soft-spoken, very thoughtful and careful. He has expressed to me his personal desire to get together to review some of his proposals, a few of which are clearly designed to reduce the size and cost of government. He seems to be considerably more interested in the substance of the Pre-Convention Committee's work than his colleague from Rota, Mr. Hocog. Mr. Hocog does give every impression of having a good deal of personal drive and executive

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capacity, and he clearly is involved politicking among the various members of the Committee in order to develop the necessary Saipan votes to go with the 6 he is likely to get from Tinian and Rota in the competition for the presidency of the Convention. He has a firm idea that the voting public will be confused if too many proposed amendments are put before them at the time of the referendum, which currently is hoped will be some six months after the next general election in November 1995. He pressed more than once for a legal judgment as to whether all of the proposed amendments or groups of related proposed amendments could be packaged together so that the voters would have many fewer votes to cast than was the case with the 45 amendments that emerged from the 1985 Convention. Although I do think the Constitution provision on the subject provides some flexibility, I'm not at all sure that it is desirable to package the work product of the Convention in such a way that the voters are unable to distinguish among the individual amendments (either additions or deletions) that emerge from the Convention. Everyone is persuaded that the voter's inevitable instinct here is to vote affirmatively whenever they're confronted

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with a whole mass of ballots. Perhaps we will also have to deal with the problem of how to count ballots in the referendum which are not marked either for or against the specific proposed amendment. Apparently, the vote on the 1985 amendments required that each voter deposit his ballot in the ballot box and any individual who did not vote one way or the other was considered in abstention; and under the usual rules, the abstentions were counted as going with the majority. (This seems a particularly unnecessary and ill-advised, in my opinion, and we need to think further whether the legislation governing the referendum should specifically address this problem.)

Of the women members of the Administrative Subcommittee, Ms. Seman comes across increasingly as a bright, energetic, and committed delegate. She seems to have a good sense of humor and recognizes that, although there will be undoubtedly differences of opinion, the delegates need to make an effort to respect each other and work together to achieve some acceptable result. So far at least, she has not expressed a lot of anti-Governor Tenorio sentiment that I expected, given her removal from office by the Governor's

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reorganization order of last year. On the other hand, I'm not as impressed with respect with Esther Fleming, who seems somewhat immature and not especially interested or committed to the substantive work of the Convention. It tends to bear out the general assessment I heard earlier that people (both males and females) generally believe she did not have the experience and strength to serve as president of the convention.

After lunch and the visit to the Diamond Hotel, I met with Maya to consider the recommendations to make to the Rules Committee on certain subjects that we had been asked to explore. She took the occasion at the beginning of the meeting to suggest we "clear the air" about the somewhat heated discussion we had at her house over the weekend. It was actually very revealing and insightful. Maya acknowledged that she has a very strong bias against executive power and that it is due in large measure, not to her current representation of the Legislature, but rather to her upbringing in Communist Hungary - from which her parents and she escaped shortly after the 1956 uprising. Maya concedes that she's particularly offended by many of the executive actions of the present Governor, whom she regards as a "fallback

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candidate" in the 1993 election. She maintained that she is an expert on separation of powers and left the impression that she felt that his exercise of executive power in some way breached this principle. In any event, she made it clear that one of her goals is to seek greater of diffusion of power in the hope that it will serve to withstand the overreaching efforts of the incumbent Governor.

I told her that my views were somewhat different. I emphasized that the Commonwealth is [in a very?] serious situation, in my opinion, both with respect to the federal government and its capacity to govern itself and provide necessary services and to the people. I maintained that the institutions themselves can work, as evidenced during the administration of Governor Pedro P. Tenorio, and that one should not recommend changes in the Constitution because of the deficiencies of the present incumbent Governor. I urged a longer term approach.

In the course of the conversation Maya suggested that I was bringing a "theoretical" approach to the problem and definitely gave me the impression that she (and many others on the island) think that I am so determined to protect

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our previous work that I am unwilling to examine any practical problems that have developed over the 19 or 20 years. This was, more or less, in the mainstream of those positions taken in the proposals to the effect that the problems of the Commonwealth can be best understood by those who have been living here for many years and are familiar with the intricacies of the governmental institutions and conflicts. I took issues with this assessment to a considerable extent, but conceded that there was certainly a need to have more recent and detailed experience available to the legal team advising the Convention. Perhaps wrongly, I still have the view that I have a good sense of what many of the political leaders on the island are seeking - especially the older ones that I have had the opportunity to visit with on an informal basis in the course of our research on the book. I tend to think that I am getting a fair and unusually candid assessment of the situation from many of the people with whom Deanne and I have met. I did not have any keen sense, however, of the political agendas and personalities of many of the political leaders who have risen to the fore in the last 10 years, although that particular group does not seem to be

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well-represented in this group of Convention delegates.

The conversation along these lines was useful and friendly, but certainly evidenced the tensions on both sides. She indicated that she and Deanne were working on a close and intimate relationship and that she hoped we were in a position to trust her. I raised the question of trust and confidences and she assured me that she would not be passing on any confidences that she gleaned from us to Rex Kosack or anyone else on the island, nor would she communicate to us what he and others had confided in her with respect to the Convention or our participation in it. This aspect left me far from satisfied and is something I want to discuss with Deanne further when she returns.

Turning to the substance of our work, Maya had proposed some amendments to the enabling legislation that would address the problem that we had identified at the prior day's meeting. I thought we had agreed on an approach that would delete from the legislation any reference to the "order of business" at the Convention's first day, only to find that Maya felt that she was obligated to put two alternatives before the Committee the

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next day. (This proved to be not particularly useful or well-advised.) I seem a little bit more ready than she does to make a recommendation to the Committee on what are obviously technical or legal issues, because my experience has been that they generally want that kind of guidance from us. Perhaps based on her experience with the Legislature, she takes a somewhat different view.

[END SIDE A TAPE 2]

[BEGIN SIDE B TAPE 2]

As a result of the meeting with Maya, we agreed on some approaches to amending the enabling legislation, defining the order of business for the first day, and identifying some of the major questions that had to be resolved by the Committee with respect to the vote to be taken for the president of the Convention.

April 19, 1995 I attended the 9:00 a.m. meeting of the Rules Subcommittee along with Maya. She had prepared a cover memorandum, two alternative letters to the Legislature, and other work product that emerged from our discussion the previous afternoon. The members of the Committee were confused by the alternatives and didn't fully understand the advantages of one versus the other. Ultimately

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they went with the recommendation that Maya had agreed on the day before.

With respect to voting for the president, they agreed that the interim rules should provide for a secret vote rather than a roll-call vote. (Both alternatives had been used at the two preceding Conventions.) Anticipating more than two candidates, however, the Committee rapidly concluded that the number of candidates should be reduced to the two highest after the first ballot; they showed no interest for a repeated balloting in general or repeated balloting after which the candidate receiving the least votes retires from the competition.

With respect to the designation of a presiding officer in the event that the Chairman of the Pre-Convention Committee is a candidate for the presidency of the Convention, the Committee was comfortable enough with giving the Chairman of the Pre-Convention Committee the discretion to designate any delegate to preside for this purpose. Chairman Guerrero made it clear, however, that he anticipated turning to the Vice Chairman and Secretary of the Pre-Convention Committee (in that order) to serve as presiding officer if they were not also candidates for the

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presidency. We then went through a rather laborious review of the work sheet that Maya had prepared, comparing the rules of the first two Conventions and the rules presently in force in the two houses of the Commonwealth Legislature. She is determined to see whether the rules used in the previous Convention should be changed to match one of the Legislative sets of rules even if no problem was experienced with the pertinent rule during either of the two Conventions. The Committee also has adopted a practice of deferring all the substantive issues raised by the proposed rules, such as the number of vice presidents or the number of committees. I did finally get a discussion of the number of committees going to some extent and, at Dr. Camacho's suggestion, was ultimately asked to prepare for the Committee two breakdowns into three and four committees with a topic assigned to each of those committees. I undertook to do that and the Committee will be meeting again on Monday, April 24 at 10:00 a.m.

During the meeting Chairman Guerrero raised an interesting thought with me regarding the legislative/constitutional issue. He wondered whether the Committee on Organization and Procedures of the Convention (in effect, the

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Convention's leadership) should make preliminary judgments as to which proposals offered by delegates should be characterized as "legislative" and therefore not appropriate to be referred to a committee. His thought was that this would keep the Committee focused on substantive matters that were of "constitutional" dimensions. He allowed the Committee's decision with respect to any proposal could be reversed by a majority of the Convention and at that point sent to an appropriate committee. There's much to mull over with respect to this proposal. It would permit a vehicle for applying common criteria across committee lines with respect to what is legislative and what is constitutional. He also told me that the 1985 convention did refer things to the Legislature so that Deanne's idea of resolutions on legislative matters has a firm precedent. One of the problems I see with Herman's proposal is that it puts an enormous burden on the leadership at an early stage of the Convention, and may defer the work of the committees. On the other hand, there probably is a way in the Pre-Convention days to deal with this problem and provide a sufficient agenda for each of the committees so that the committees could

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begin work. (For example, on updating or noncontroversial deletion issues, while the leadership reviews the substantive proposals.) There seems to be a growing willingness among the Pre-Convention Committee at least to discuss issues raised by the proposals and how to deal with them, in advance of the Convention.

There are plans for a social event involving all the delegates next Wednesday, April 26, and a working session the following day. Everyone seems to think that legal counsel will use this principally as a "briefing session" but have not yet made clear exactly what we should brief the delegates about. I suggested to Herman that Deanne and I have thought of a handbook that might be distributed to the delegates and it may be that the "briefing session" provides the first opportunity to touch on some of the issues that were contemplated for the handbook. Other meetings of the delegates are contemplated before the Convention begins. At least one of which might be devoted to the procedural rules to be proposed to the Convention and parliamentary procedure generally.

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April 20, 1995 I attended a meeting this morning of the Pre-Convention Committee. Reports were submitted by the various subcommittees. The Committee generally ratified the recommendations of the Administrative Subcommittee, specifically with respect to the starting date and location of the Convention. There was only modest disagreement with the proposed June 5, 1995 beginning date. Much remains to be done with respect to facilities, however, and I have recommended that legal counsel be allocated one of the two large offices at the commercial building now being used by the Pre-Convention Committee.

On the subject of the procedural rules, delegate Seman presented a report that had been prepared by Maya with respect to the need for a legislative amendment. After some discussion on this subject the Committee approved the recommendation. When the subject of the number of committees came up, Dr. Camacho repeated his request that I was going to prepare a memorandum for the Subcommittee that would discuss the pro's and con's of two different organizational structures - one involving three substantive committees and one involving four substantive committees. There was no further discussion of

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that issue at this meeting of the Pre-Convention Committee.

The meeting was being covered by the media so that microphones were constantly being thrust into people's faces and photographs were being taken. (One of me appeared the next day on the front page of the *Marianas Variety*.) As a result of the coverage, I was particularly leery discussing any possible hires among the local lawyers who had submitted proposals to the Pre-Convention Committee. I indicated that this would be pursued further with the legal subcommittee when it met next Monday, April 24.

A considerable amount of time was spent discussing the proposed budget that was produced by the Administrative Committee. Chairman Hocog was not present and so the report was presented by Ms. Seman. (The report above with respect to the rules came from the Rules Subcommittee rather than the Administrative Subcommittee.) The long and short of it is that the Committee approved the Subcommittee recommendation of requesting approximately \$434,000 from the Legislature in addition to the \$300,000 already authorized. This was the result of the deliberations that I have referred to above. The only suggestion that I

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made was that the subparagraphs distinguishing between legal counsel (namely Deanne and myself) and attorneys representing the committees be eliminated and that the sums involved be combined into a single sum for all lawyers. I emphasized again our view that all counsel should be part of a team and that those servicing the committees should be responsible to Deanne and myself. It appears to be no open disagreement with this general proposition, but language keeps creeping into the various reports suggesting that some member of the Pre-Convention Committee may be thinking of enabling the committees to hire their own independent counsel.

I did a fair amount of speaking at the meeting, but tried not to be too officious or omni-competent. A new delegate, Dr. Helen Taro-Atalig (or the reverse) joined the meeting midway. She is a slim, attractive woman somewhere around 40 years of age. She sat next to me and was very eager to open up conversation during a break period. She received her high school training in Guam, married a man from Palau and got her medical training in Fiji. She specializes in obstetrics. She is extremely well-spoken, very interested in doing the right thing and may be one

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of a group delegates that is not going to be overwhelmed by the political direction that many wish the Convention to take. If enough of this kind of delegate could be gathered into a force for cost-effective and efficient government, the Convention could be much more successful than I might have anticipated a few months ago. She said, among other things, that she ran for election because she didn't think the elected officials were performing the duties as specified in the Constitution and questioned whether they were able, indeed, to read the Constitutional provisions.

The Chairman included on the agenda an item entitled the "Report from Legal Counsel" and indicated he intended to do so in the future. When it got to this point on the agenda I summarized for the Committee some of the projects that we were working on, the proposed meeting with the bar association, and the desirability of soliciting the views of the Attorney General's Office. This prompted a conversation that led to suggestions from some of the Committee members that it hold a general meeting for the public or "interest groups" before the Convention in order to assure everyone that the Convention would be

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considering proposals from these particular sources. Some reference was made to obtaining the views of the various agencies within the executive branch and the autonomous agencies. I was given the chore of drafting some kind of a public notice soliciting such input, and I hoped to discuss this further with the Convention when it next meets at its regular session on Tuesday, April 25. I do not think at the moment that this is a particularly useful or desirable approach, although, specific requests for proposals from "interest groups" might be a useful political step to take and might put those groups on notice that we were interested in having their views in written form sooner rather later. Generally, however, I think it is better practice to wait until the committees have specific subjects on their agenda and elicit then the views of the groups affected by action under consideration by the Convention.

April 20, 1995 I attended the luncheon meeting of the bar association. As previously arranged, I presented the subject of the bar association providing assistance to the Convention by forming a committee and identifying certain issues that

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might be of significance to the bar. In this connection, I mentioned the judicial article. I tried to make my offer as forthcoming and positive as I could. There was a total absence of interest. Mike White, as President of the Bar, referred it to a standing committee for its review and decision as to what the bar might do with respect to the Convention.

There are about 20 people at the bar meeting, several of whom I knew and some of whom I met for the first time. They have a variety of committees, but very little involvement it appears to me in some of the problems of the Commonwealth. I've heard it said that the lawyers generally are extraordinarily mercenary in their approach toward the practice. This came up during the meeting when some professionals made a plea for counsel to help battered women and other victims of family abuse. The greatest concern expressed by the lawyers present was that the court did not provide attorneys fees to compensate counsel for taking on such clients.

So far as the bar is concerned with respect to the Convention, it probably is true that individual members of the bar, either on their own behalf or on behalf of clients, will present their

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views to individual delegates or at committee sessions or public hearings. To be fair, it may be that there are relatively few issues on which the members of the bar in the community could agree given their disparate preferences and clients' interests. This view was more or less confirmed in a conversation Eric Smith after the luncheon. He mentioned that at the 1985 Convention virtually no amendments won the approval of the Convention during its prescribed duration and they had to seek an extension of time from the Legislature. He said after the Legislature extended the life of the Convention, deal-making began and everyone essentially agreed to vote for everyone else's proposal in return for support for his or her own proposal. This certainly could account for the 45 amendments that were produced by the Convention.

April 21, 1995 Today I met with Dick Weil, Attorney General, pursuant to the previous day's telephone call. The purpose of the meeting was to advise Dick of a letter that he would be receiving from the Pre-Convention Committee asking for the AG's views on several subjects. Specifically we discussed the Governor's proposed set of amendments, the

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schedule on transitional matters, and other aspects of the Constitution that might be the subject of consideration by the Convention. For most of the meeting we were joined by Loren Sutton.

The Attorney General's Office is currently under review by a Portland law firm at the request of the Governor and is planned to be the subject of legislative hearings under the tortuous chairmanship of Congressman Torres. The meeting was somewhat more important than I had imagined because later that day it appeared that Dick Weil was asked by the Governor to resign and did so. Governor Tenorio is off for the Philippines to try to improve relationships between the Commonwealth and the Philippines with respect to the Commonwealth's treatment of Filipino laborers in the Commonwealth. It's quite clear that Dick is being crucified for his failure to prosecute the labor abuse cases, or alleged labor abuse cases, that were the subject of so much publicity a few months ago. It is unclear who will succeed to the position; I doubt that any lawyer in the office is going to feel very comfortable assuming the position after they see what has happened to Dick.

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I spent most of the weekend, at least that portion of my work, devoted to several assignments in preparation for the next week's Committee meeting. I reviewed the that letter that Herman was being asked to send to the Governor questioning the constitutionality of the enabling act authorizing this Constitutional Convention. This is clearly one of the worst ideas I've ever seen - both politically and legally. I intend to recommend to Herman that he not sign the letter, and plan to meet with the Governor's lawyers who have proposed this challenge to Rota and Tinian in such an untimely fashion. In addition, I prepared a draft agenda for the meeting of the delegates scheduled for next Thursday, April 27, so that the Pre-Convention Committee could consider that at its Tuesday's meeting. I also prepared a memorandum for the Pre-Convention Committee analyzing the committee structure of the Convention and, in accordance with Dr. Camacho's suggestion, outlined two different scenarios - one involving three substantive committees, and one involving four substantive committees. This will probably be discussed for the first time at the Rules Subcommittee scheduled for Monday morning, April 24. In addition, on Sunday I worked on an

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outline of the remarks that Deanne and I might make at the meeting of counsel, drawn heavily on the first of our 1976 briefing papers and the recent New York State Commission report.

April 24, 1995 At 10 o'clock the Rules Subcommittee met to continue its work on the draft procedural rules that Maya is working on. The session went reasonably well, although often getting somewhat overwhelmed by the amount of detail and the uncertainty that she brings to the discussion. Among their major decisions was the decision to permit the President of the Convention to appoint the three vice presidents rather than have them elected by the Convention as a whole. Generally the sense is that the president and the leadership, a group that will comprise the Committee on Organization and Procedures, should be allowed to have generally broad discretionary authority.

I spoke up from time to time on issues, but generally tried to restrain my impatience. Sometimes changes were proposed for no particularly good reason, and I thought that was ill-advised unless the experience in one of the

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two previous Conventions had demonstrated that there was a need for change.

At the appropriate point, I distributed my memorandum analyzing the three versus four substantive committee issues. After some brief discussion, it was agreed to think further about this and discuss it at a subsequent meeting. It may come up at the next meeting of the Pre-Convention Committee, currently set for April 25. I talked the memorandum through with considerable vigor and in some detail. Reaction generally seemed to tilt toward having only three committees rather than four; concerns over economy and representativeness seemed to be the most significant among the various factors identified in my memorandum. The delegates, generally - and I think wisely - wanted to reflect further on it. There was no significant discussion of my proposed breakdown of the subject matters or my assessment of the relationship between issues, their relative complexity or attractiveness to the delegates. I expect we will hear more of this at a subsequent meeting.

The meeting went on after lunch. I joined Maya and her husband, Bruce, for lunch and had the occasion to bump into David Sablan and his wife,

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Rita. David ran unsuccessfully to be a delegate to the Convention and I was (and am) sorry that he is not among the delegates. He could bring a good deal of experience and judgment to its deliberations.

At the end of the long day there was a brief meeting of the Legal Subcommittee chaired by Dr. Camacho. This was initiated at my request because I wanted some guidance from the Subcommittee as to whether I could approach any local lawyers with respect to their becoming part of the legal team. Dr. Camacho - somewhat to my surprise - started the meeting off in a significant discussion in Chamorro and it was somewhat hard for me to understand the thrust of the discussion. At the conclusion of this discussion in the vernacular, however, they reverted to English, and it became clear that there was widespread apprehension among the Subcommittee members as to seeking the assistance of any fulltime local lawyers. They cross-examined me to some extent about the qualifications of the local bar, but were principally concerned about lawyers trying to advance their own personal agenda by proposing language to the Convention that they thought would serve their clients' interests. I tried to

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moderate this skepticism regarding the local bar to some extent, but was unsuccessful. I tried to emphasize that Deanne and I would be reviewing the work of any local lawyers, but that didn't seem to carry very much weight.

I specifically raised the case of Mike White as the most attractive of the various applicants to be a member of the senior team. I said that I thought I could discuss with him appropriate compensation and obtain a list of clients so as to avoid possible conflicts. The Subcommittee set another meeting for later in the week to consider the matter further, but at the moment it looks as though we will be looking only off-island for any senior colleagues that we wish to add to the team. I made the point that, if this is the case, we will have to use some of the funds being sought from the Legislature to compensate qualified lawyers that we wish to add to the team from the States.

Tuesday,
April 25, 1995

We had a meeting of the Pre-Convention Committee this morning. From an administrative standpoint, there was basically nothing to report. Various, different members of the Committee expressed varying degrees of confidence about the

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Legislature's action on the Convention's request for additional funds. Victor Hocog is particularly defensive on this subject, trying to communicate generally his sense that he has full command of the situation and has received firm assurances that the Convention will get an additional \$300,000. (He never has fully explained why it is that the Legislature is not going to consider the full additional sum of \$434,000 that the Pre-Convention Committee and its subcommittees put together earlier in the process period.)

There continues to be some modest disagreement among the Committee as to the Diamond Hotel facilities. Various members of the public have called in to communicate their distaste with the Convention spending money on such "lavish" facilities. Although Herman seems somewhat more prepared than others to look for accommodations to this public criticism, other members of the Pre-Convention Committee seem determined to stick to the Diamond Hotel choice.

So far as the Legal Subcommittee was concerned, Dr. Camacho referred to the Subcommittee's scheduled meeting the next day to consider further the hiring of local attorneys.

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There was a brief discussion of this subject, but it was left to the Subcommittee to consider further and report back to the full Pre-Convention Committee.

As part of my report, I summarized my meeting with Attorney General Weil. We had circulated the letter I had prepared for the Chairman's signature, putting a series of questions to the Attorney General regarding the work of the Convention. Some of the questions, frankly, present a considerable problem for the Attorney General's office. For example, we asked their views regarding the section of Article 1 prohibiting abortion.

Some considerable time was spent in planning for the meeting of all the delegates scheduled for Thursday, April 29. Herman and I had prepared a draft agenda for the meeting which, among other things, summarized the legal briefing that Deanne and I were supposed to provide. I had worked over the weekend to prepare such a briefing, at least to the extent that it addressed some of the more general issues relating to the function of a written constitution and the distinction between "constitutional" and "legislative" matters. The Pre-Convention Committee seemed generally

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satisfied with the proposed agenda. It was uncertain from the meeting exactly how long they expected the briefing to go on, but some reference was made to the prospect that it might go on for the full day.

After the Pre-Convention Committee meeting, Esther Fleming asked me to stay and meet with her. She wanted my views as a member of the Administrative Subcommittee regarding the particular personnel that I thought needed to be hired. It was a very productive session; we agreed on who the important staff persons seemed to be and the need to obtain them from the private sector. As to other positions, such as the Sergeant-of-Arms, she agreed that they could be obtained on loan from various government agencies. With respect to the estimated cost of the transcription services, I suggested that that wait until Deanne returned, since she was expected to have had some preliminary conversations on this subject in the States during her visit.

The meeting with Esther subsequently turned into a very candid discussion of the Convention's politics. She said that she was a supporter of Governor Camacho for the presidency and that she believed that he currently had the requisite

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majority of 14 votes to win the office. She stated that Herman had only 5 votes, leaving Victor Hocog with approximately 8 votes. She confirmed that Victor had been campaigning vigorously to win the votes of some of the women but that she had told him that, notwithstanding her respect for him, she as a Saipan delegate could not bring herself to vote for someone from Rota. She reported that Victor was most offended by this kind of reasoning, apparently expecting that individual candidates would be selected on their merits.

When I queried her about the various alliances that had been made, she reported that all of the women delegates (8 in number) were members of the Republic Party but were proceeding to support Governor Camacho. She reported that Ben Manglona and his single ally from the Rota delegation were also supporting Carlos Camacho. This tends to confirm the view that partisan politics are playing a considerably smaller role with this Convention than had been the case with either of the two previous Conventions. By way of an aside, she also explained why she had withdrawn as a candidate for the presidency. She decided that her timetable and ambitions were such that

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she could afford to step aside and clearly indicated that she thought she was not as well prepared as others to assume these responsibilities at this point in her life. She stated this with a charming sense of self-effacement and honesty. She mentioned, however, that Ben Manglona had offered her his support if she in turn would promise him the chairmanship of the Committee considering local government. I expect we will hear more along these lines before the leadership team is completed.

She provided some interesting history regarding the conflict on Rota between the Manglona family and the Hocog family. Apparently this rivalry has been going on for decades and the Manglona family has been in power for most of the island's recent history. Apparently when they are in power, they retaliate very harshly on members of the opposing political persuasion; they fire all the incumbents from their government positions and generally discriminate against them in a very totalitarian and harsh manner. As a result, Esther Fleming said that most of the Hocog family had turned to teaching as a career - presumably because some security was provided in that vocation.

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With this background, she explained some of the reasons for the current dispute between Mayor Inos and Governor Tenorio's Administration. She said that Mayor Inos used to be aligned with Ben Manglona but, aggrieved by one of the recent Senate leadership conflicts that ousted him from his position as President, he left the Manglona party and ran as a Democrat for the position of Mayor of Rota. He was supported in this regard by Victor Hocog. Mayor Inos, after winning his position in a most unusual election, apparently changed his stripes once again and reverted to the Manglona political alliance. It was this departure from his previous commitments that prompted, according to Esther Fleming, the current lawsuit between Mayor Inos and Governor Tenorio regarding the appointment (and discharge) of the resident department heads on Rota.

That night I picked Deanne up at the airport at a little after 10 o'clock. She had a very successful trip back in the States, in several different cities, and brought back news of members of the family and their business and personal affairs.

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Wednesday
April 25, 1995

The Legal Subcommittee met today to consider, among other things, what direction to provide us with respect to the hiring of local attorneys. The meeting was not particularly informative with respect to the true attitudes of the members of the Subcommittee with respect to island lawyers. None of the members of the Subcommittee seemed to have any particular candidate that they thought deserved greater consideration than others. In fact, there seemed to be no particular emphasis on the inclusion of local (i.e., Chamorro or Carolinian) lawyers than other lawyers who have practiced in Saipan.

We reviewed our efforts to hire summer law clerks from the local students and reported on our conversation with Justice Villagomez along this line. In addition, we reported on our recommendation that, of all the local lawyers, Mike White seemed to us to be the most qualified and attractive candidate for inclusion on the legal team. There seemed to be no particular dissent to this point of view, and the delegates on the Subcommittee seemed generally complimentary of Mike and his nearly successful candidacy to become a delegate to the Convention. We asked for, and received, authority to pursue the matter with

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Mike and discuss his monetary concerns and time table with respect to becoming part of the team. We subsequently had a lunch with Mike to pursue this matter. The Legal Subcommittee, on the whole, seems fairly supportive of our desire to have each committee staffed by a qualified lawyer and to have the entire legal team reporting to us.

The other issue we considered at this meeting was the draft procedural guidelines that I had prepared at Dr. Camacho's request. We are operating under the assumption that the Convention is not operating under normal government procurement rules but that, nevertheless, we thought it would be helpful to set forth some guidelines that would regulate the administration and expenditure of public funds. Everyone anticipates that, sooner or later, there will be an audit of the Convention's expenditures. The draft went down with very few comments, except that it was generally recommended that no requirement of advertisement should be included in the procurement guidelines. As a substitute for such requirement, it was recommended that at least two qualified bids be sought before any procurement decision was made.

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April 26, 1995 We had a social event for all the delegates on Wednesday evening at the Royal Taga Beach Club. Deanne and I showed up at approximately 6:15 and found about half of the delegates already assembled there. It turned out to be a very pleasant and informal affair. The usual enormous amounts of food were served, including sashimi and many of the normal items found at a Chamorro buffet.

 It was an opportunity to meet many of the delegates that we had not previously met. I spent some time talking to Mariano Taitano, who was there with his youngest sister. He has a parent from Palau, has very distinctive features, and seems quite self-confident and articulate. I also spent some time talking with the youngest of the delegates, Joey San Nicholas, from Tinian, who had appeared on television with his equally young colleague, John Oliver Gonzales, a week or so before and had handled himself with considerable assurance for someone of his age.

 The most interesting part of the evening was to watch the candidates for the presidency of the Convention circulate among the delegates. Dr. Camacho appears to be extremely self-confident of his election, talked with various groups of

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delegates throughout the evening and gave generally the sense of quiet and statesmanlike assurance. Victor Hocog, on the other hand, seemed somewhat surly throughout the evening - although that may, in fact, be his normal mien. The third candidate, Herman T. Guerrero, found himself at the end of the table surrounded by many of the women delegates with a good deal of joshing and repartee in Chamorro. They seemed to have no particular reticence about speaking comfortably in their own language when we are around. Whether this has anything to do with their assessment of us is unknown. We left somewhat before the end of the event and learned the next day, indeed, that the next morning's meeting of one of the subcommittees had been cancelled by the delegates present at the end of the social event.

I met Juan Santiago Tenorio at this evening session for the first time. He was not particularly communicative or friendly. He is the one reported to be the closest to the Governor and trying to achieve the Governor's objectives in this Convention. He is, therefore, of course, one of the supporters of Victor Hocog for the presidency.

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April 27, 1995

Today was the first briefing of all 27 delegates to the Convention. I worked with Herman to prepare an agenda for the meeting, consisting essentially of reports by him and the chairman of the three subcommittees. The pièce de résistance of the meeting was supposed to be a briefing by Deanne and me; the agenda described our briefing as providing background information, discussing some general principles with respect to the functions of a written constitution, and addressing the need for proposals and some of the procedures we had in mind to assist the delegates in framing their proposals.

The Subcommittee reports took considerably longer than had been anticipated. With respect to the report of Dr. Camacho as Chair of the Legal Subcommittee, for example, the authority of the Pre-Convention Committee to retain counsel for the Convention and the Post-Convention periods was promptly challenged. The principal spokesman was Mr. Aldan, who has a substantial background in finance as a former employee with the CNMI government. He came on very strong and seemed to us at least to be pursuing some agenda quite different than what was presently before the meeting. In any event, he challenged the

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authority of the Pre-Convention Committee to retain Deanne and me and had no hesitation in providing his legal opinion that the enabling legislation did not so authorize the Pre-Convention Committee. Upon request of the Chair, I expressed our view that the enabling legislation did enable the Pre-Convention Committee to do this. Although the discussing could have resulted in some heat, Ben Manglona and others intervened to suggest that the simple solution for this was to make certain that the Convention proper, once it convened on June 5, ratified all decisions made by the Pre-Convention Committee. Indeed, I supported this approach. In addition, it was recommended we write a letter to the Attorney General soliciting his views as to whether our interpretation of the enabling legislation was correct. I subsequently wrote and Herman signed such a letter.

With respect to the rules and administrative arrangements,

[END OF TAPE 2 - SIDE B]

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RE: CNMI THIRD CONSTITUTIONAL CONVENTION (1995)

April 27 - June 4, 1995

April 27, 1995 With respect to the Rules and Administrative
(continued) Arrangements Subcommittee, there was somewhat less
discussion. It was indicated that with respect to
the rules that the Subcommittee was working
methodically to complete a draft set of the rules
that then might be circulated to all of the
delegates. There seemed to be some agreement that
a briefing session should be devoted entirely to
the rules, and many of the delegates acknowledged
their inexperience with parliamentary rule
procedures. It was originally my hope that such a
briefing session might be deferred until the week
when Deanne and I hoped to be in England and
Scotland, but that subsequently proved not easy to
accomplish. On the subject of administrative
arrangements, however, the delegates did express
some considerable reservations about the
Subcommittee's selection of the Diamond Hotel.
When it was pointed out that the hotel facilities
would cost approximately \$100,000 and that members
of the public were suggesting that the Convention
should meet in other, albeit less commodious
venues, the majority of the Convention delegates

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thought that there should be a revisiting of this decision. In addition, there was some uncertainty expressed about the Legislature's willingness to provide the additional \$300,000 requested by the Convention to meet its staffing and other needs.

By way of general impression, one came away from this first meeting with some sense of respect for the delegates elected to serve in the convention. Several of the delegates are clearly nonpolitical in orientation, at least on the surface, and appear to want to be educated sufficiently so that they can exercise their independent judgment in an informed way. There are, of course, a few very senior political leaders in the group and each of them has a very different agenda. There continues to be some jockeying among the three declared candidates for the presidency of the convention - Dr. Camacho, Herman T. Guerrero, and Victor Hocog. It all seems to be done, however, in fairly good humor. Of course, as I have learned from Esther Fleming and other sources earlier, there have been numerous delegation meetings and other meetings of so-called "core groups" to consider not only the politics but also the substance of the work of the Convention. Several of the members have the

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obvious ability to speak with force and confidence; Messrs. Aldan, Hocog, Ben Manglona, Dr. Camacho are some of the principal examples. Among the younger delegates, only John Oliver Gonzales seems ready to speak up eagerly and to utter pious admonitions about the importance of the Convention to the public and the seriousness with which delegates must necessarily view their responsibilities. Few of the other Tinian and Rota delegates, besides Messrs. Hocog and Manglona, seem eager to speak out or exercise any leadership talent that they may possess. James Mendiola, for example, was a former mayor of Tinian and is clearly aligned in the Hocog camp with respect to the presidency of the Convention. He and his colleagues from Tinian are relatively quiet, however.

Because of the length of time taken by the subcommittee reports and the Northern Marianas habit of an early lunch hour, our briefing was postponed until the afternoon. Both Deanne and I think it went off reasonably well. We had prepared some briefing notes on the subject and allocated the responsibilities as between us. Using the materials I had drafted over the previous weekend, I drew upon our early briefing

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papers and some recently published material to speak regarding the function of a written constitution, state experience, the experience of the First Constitutional Convention, and some generalized guidelines distinguishing between "legislative" and "constitutional" provisions. There seemed to be considerable interest on this and a few pointed questions. Lillian Tenorio, who is headed for law school after working many years as a senior clerk or adviser to the House of Representatives, took me up on the suggestion that "politics" should not play a role in the Convention, or some such statement that I made regarding "politics." (I think it came up probably in my passing on the suggestion that increasingly state constitutions had become political instruments through which successive political majorities would work their will by adding amendments upon amendments upon amendments. I reported to the delegates that "on the whole" the experts in the field did not think this generated a useful or readable state constitution.) In response to Lillian's question, however, I certainly had to acknowledge that politics in the grand sense of the word was

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inevitable in any such convention as was now assembled in the Commonwealth.

Deanne concluded with making a presentation on proposals, encouraging the delegates to use the available proposal form (which, of course, was not yet ready), and to get their proposals in as quickly as possible. She also announced that we would have office hours at the Pre-Convention Committee's offices every morning the following week from 8:00 a.m. to 9:00 a.m. (We later advised the delegates that we were available to make "house calls," although I admitted a preference for "bar calls.")

Deanne has some private conversations with several of the delegates during the break, as I did. She reported that Marian Aldan-Pierce still harbors some suspicions of me because of my long acquaintanceship with Ted Mitchell, against whom she had litigated on land alienation issues for many, many years. (During the following week she was announced as the new President of Duty-Free Shoppers on Saipan, one of the major private industries on the island.)

At the conclusion of the briefing, at about 3:30 or 4 o'clock, the delegates seemed generally pleased with the day's events and it was agreed

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that there would be another such all-delegate meeting the following Thursday. Herman T. and the members of the Pre-Convention Committee seemed generally pleased with the session and were complimentary of the contribution that we were making.

April 28-30,
1995

Although a Pre-Convention Committee meeting was scheduled for Friday, April 28, it was concluded that no such meeting need be held. As a result, Deanne and I had some additional time on our hands and we took advantage of it to arrange for a scuba session that afternoon. Over the weekend we spent implementing the various suggestions that had been made at the meeting or by the Chairman of the Pre-Convention Committee. I drafted several letters for his signature; she drafted reports for the Legal Subcommittee; and we moved forward to try to firm up the retention of Bernie Zimmerman, who was scheduled to come to the island in approximately 8 or 9 days. We thought, on the whole, that it would be better that he had been formally hired by the Pre-Convention Committee before he appeared on the scene. We had dinner with Paul Lawlor at a local Philippine restaurant one of these evenings, worked out at

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the health club, and spent some time at our apartment reading the various papers and last week's Sunday *Washington Post* that had arrived in my twice-a-week relief package via DHL.

Monday

May 1, 1995

The principal event of today was the weekly meeting of the Rules Subcommittee. Maya had prepared her usual comparative analysis of the four sets of rules and was nearing the completion of this horrendous task. The Committee spent most of its time reviewing, however, her implementation of the decisions that they had made at earlier sessions.

A couple significant issues were tentatively decided during the meeting - all reaching contrary decisions from what I personally had recommended rather strongly. The Subcommittee elected four substantive committees rather than three, for reasons that never became too clear. Although my memorandum on the subject tilted slightly toward three subcommittees (perhaps more than slightly), the Subcommittee members seemed to prefer four either because of the number of the leadership positions the additional committee would provide or because of the somewhat less workload that each committee would thereby have. They seemed not to

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listen, or take very seriously, our concerns about the "representative" nature of a very small committee and the need for the additional lawyer that would be required if four committees were selected.

I was even more disappointed with their decision not to stick with the requirement of both previous Conventions: that each delegate serve on only one substantive committee. As proposed by the Subcommittee, each delegate will serve on "at least one and no more than two" substantive committees. It may be that the leadership group, once it is designated by the Convention, would be able to revisit this issue and perhaps follow our advice that multiple committee assignments will make scheduling and substantive discussions within the committees very difficult. The delegates appeared not to have thought very seriously about what will happen if all four Rota and all four Tinian delegates elect the executive branch/local government committee as one of their two preferences and insist on being assigned to it. In that event, Saipan delegates at least numbering 9 would have to be appointed to the committee in order to preserve a Saipan majority. If that unfortunate scenario were to develop, Deanne's

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original suggestion of having only two committees might well be resurrected and marketed to the delegates. Again the delegates were not very articulate as to their reasons for this decision.

There obviously are other problems developing with respect to the Rules. Maya is very strong in reminding the delegates that majority rule can't always change the rules during the Convention and eliminate any super majority rules that are established in the formal set of the Convention's rules. She certainly is right in this respect, although one would hope that establishing super majorities would be accepted and carry the day in this Convention as it had in the two previous Conventions. I learned later that Herman T. and many of the Subcommittee members aren't happy with Maya's reliance on the House rules as a precedent and her commitment to pursue every nitty gritty detail. My problem with her lawyering approach is that she identifies problems but tends not to help the Subcommittee members find a solution to the problem in the most efficient and abbreviated manner.

Tuesday

The Pre-Convention met for its usual Tuesday

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May 2, 1995 morning meeting. If I recall, there was not a great deal of substance discussed at the meeting. The details on the administrative and financial side of the Convention still remain to be resolved, once the Legislature decides on the request for additional money or the Governor decides to address the problem via reprogramming. The Committee did accept the recommendation of the Legal Subcommittee that Bernie Zimmerman be retained by the Convention to work with us. Deanne also gave a report regarding the status of the local law students that we are trying to enlist as possible summer clerks to work with the Convention and the interviewing of local counsel.

The Rules Committee did make its report and present to the Pre-Convention Committee its preliminary judgment on the subject of number of committees. After a very limited discussion, the Pre-Convention Committee voted to have four substantive committees. Although it wasn't specifically discussed, it seemed to be assumed that the breakdown of subject matters would be as originally outlined in my second alternative previously circulated to the members of the Committee.

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We then turned to the question of the number of committees in which a delegate could participate. I had thought that the Rules Subcommittee had finally concluded that the restriction to only a single committee should be adopted. However, it became clear that there had been some subsequent discussion of this situation and, notwithstanding some limited advocacy by me, the delegates on the Pre-Convention Committee voted for the formulation of "at least one but not more than two" substantive committees on which a delegate could serve. It is recognized by some members of the Pre-Convention Committee that this problem can probably be left to the Committee on Organization and Procedures which will have the responsibility up till the Convention begins to make committee assignments. This could prove to be a very erroneous assumption and a decision by the Pre-Convention Committee that could seriously handicap the efficient operation of the Convention. I learned afterwards from Esther Fleming that her "core group" had discussed the matter and, notwithstanding her dissent, had concluded that there should be four committees and that delegates should have an opportunity to serve on more than one. It is still possible that this

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subject will be discussed more generally when all the delegates meet again.

As part of my legal report, I report on some of the letters that had been prepared and some of the work that we had done for the various subcommittees. I indicated that the principal task was to try to organize a briefing at the Thursday all-delegate meeting that would meet the desires of the Pre-Convention Committee and the delegates generally. Deanne and I outlined what we had in mind with respect to identification of "updating" and "legislative" provisions that might be presented to the delegates at the Thursday meeting. There seemed to be general consensus that we should pursue whatever we thought was best in connection with this matter and there was general satisfaction expressed with respect to the previous Thursday's meeting of the all delegates.

Later that day Herman T. visited our modest office at the Fitzgerald law firm. He came in, looked around with some bemusement, and sat in one of our uncomfortable chairs to exchange intelligence with us about what was going on. He seems very relaxed in dealing with us and we raised with him several issues regarding projects that we had in mind. Either at this meeting or

about his time Deanne made available to him a copy of her "updating" memorandum. I meanwhile worked on a revision of the draft on "legislative" provisions and added several provisions adopted by the 1985 Convention as ripe for deletion from the Constitution. Herman wanted several letters to be written, to the Governor, to the President of the Senate, to the Speaker of the House of Representatives, and to independent agencies soliciting their suggestions with respect to the work of the Convention. I began work on these various letters over the next few days and by the end of the week had submitted drafts to Herman for his consideration. Deanne likewise submitted to him a draft of a public announcement that might be published to encourage members of the community to submit proposals to the Convention. We certainly will have a record that this Convention is interested in having ideas from all possible sources.

Meanwhile we had conducted a few office hours and were getting detailed proposals from Delegates Villagomez and Quitugua. Both delegates have proposals that are clearly "legislative" in dimension and prove to be very difficult to persuade them otherwise. We don't know quite how

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to deal with such proposals yet, since the delegates certainly have the privilege of getting them introduced during the Convention and referred to an appropriate committee.

As the issues are developing, it seems to us that the principal issues fall into these categories:

- (1) the cost and size of the legislative branch of government, as well as its efficient handling of such things as the annual budget;
- (2) the cost and size of the executive branch, the Governor's reorganization authority, and the tension between executive power as exercised by the Governor and autonomous independent agencies;
- (3) land issues, including in particular the disposition of public lands (which is becoming increasingly scarce), and the desire of some to place in the Constitution certain of the interpretations and procedural rules regarding land alienation that have been recently enacted by the Legislature;
- (4) substantive issues such as gambling, abortion, and others are likely to come before the Convention as well.

May 4, 1995

Today was the second meeting of all the delegates to consider reports from the subcommittees and a briefing by counsel. Before the meeting began I went out on the balcony of the ConCon meeting room where James Mendiola was having one his many cigarette breaks. When I sidled up to him and asked him what was going on,

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he confided with a conspiratorial tone that Victor Hocog has, in effect, agree to withdraw competition for the presidency of the Convention and defer to Herman T. Guerrero. This apparently was a result of Victor's calculation of the votes available to him and his realization then that if both he and Herman ran for the presidency, it most likely would go to Dr. Camacho. James swore me to secrecy on this subject.

Although Herman had organized the session so as to have brief Subcommittee reports, leaving most of the morning discussion to Deanne and myself, it did not work out that way. The reports of the Legal and Rules Subcommittees went reasonably well, but the Convention got entangled in a detailed discussion about the proposed budget for the Convention. Victor Hocog had prepared a report from his Subcommittee to the delegates that had not been reviewed either by the Subcommittee or by the Pre-Convention Committee as a whole. It presented the projections for expenses in a somewhat confused manner, leaving unclear exactly how much it took to operate the Convention at any particular point in time and presented a set of details with respect to specific staff positions and corresponding salaries that could only prompt

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questions and uncertainty. Victor had prepared this in response to the earlier request at the previous week's meeting to present more detail about the way in which the additional \$300,000 being sought from the Legislature and the Governor would be spent. At his request, communicated to me through Herman, I quickly reviewed the draft letter and edited it slightly to make it more coherent before it was put in final form and duplicated for circulation to the delegates.

The discussion turned into a fairly lengthy and amusing interlude in the deliberations of the delegates. The press were present at the meeting and, during one or more of the breaks, interviewed several of the more outspoken delegates with respect to the budget. For example, Dr. Camacho was taking the position that the Convention should simply spend what money was available to accomplish its purpose and that, if sufficient funds were not available, they simply should close down business until the funds were available. Other delegates made passionate speeches about the need for lobbying the members of the Legislature. All this provided excellent fodder for the media.

The discussion ended somewhat inclusively, as was only appropriate the money was not yet

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available to be allocated to any category. One particular trouble for us in the projected budget was that it showed \$150,000 for counsel to support the 4 committees. I don't really know where this figure came from, but it might have prompted more criticism than it actually appears to have done. It is our view that this money will be spent, among other purposes, on transcription services, non-legal experts, and computer equipment if required. We still hear echoes of lawyers on the island making approaches to the delegates and offering their services to individual committees "separate and independent from the legal team." It basically was concluded that the figures would be worked on further, considered by the Subcommittee, and the Chairman suggested that perhaps less detail was needed. This last comment was made to me, and I think to Victor, after the briefing session.

The briefing by counsel at this meeting consisted of discussions by Deanne and myself with respect to provisions of the Constitution that required "updating" and those that might be considered "legislative" in nature. Deanne's memorandum regarding "updating" requirements had been previously circulated to the delegates and

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they had it in front of them during her discussion. For the most part the memorandum and presentation dealt with relatively simple aspects of the Constitution but revealed to the delegates that there were many specific provisions in the Constitution that could be deleted without much controversy.

My presentation on "legislative" provisions was somewhat more controversial. Although we had a draft memorandum prepared which I used for the presentation, I had concluded that it should not be circulated in advance of the meeting. This had some disadvantage so far as the delegates were concerned, although I used the board to refer to the specific articles. I think I probably went through the material too quickly and the delegates were not truly following me with respect to the individual provisions of the Constitution to which I was referring. There were some relatively controversial subjects that I characterized as "legislative" in nature. One of particular interest to Maya was the characterization of the "legislative bureau" in Article 2 of the Constitution as "legislative" in nature, namely, that it did not belong in the Constitution. Since this bureau provides both the institution and the

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funds with which she is associated, Maya feels somewhat strongly on this subject and has expressed her views in many different ways on many different occasions. My own judgment on this subject is that the objective of creating a legislative bureau in 1985 was understandable and laudable - namely, the need to provide the Legislature with some institutional and professional support that would enable it to do its job effectively without excessive intrusion of political concerns. At the same time, the legislative bureau was also motivated by desire to circumvent the budget ceiling in the Constitution and provide the Legislature with more money to play around with. My sense is that if the Constitution could mandate some mechanism that would ensure a relatively high degree of professionalism and support for the Legislature, that might be well done and appropriate to be included in this Constitution. I do not know yet whether any such provision could, in fact, accomplish this objective, given the experience of the last 10 years with the present legislative bureau, and I wonder whether it might not be best to abolish the constitutionally created legislative bureau and force the legislators to

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make judgments whether they wish to spend the substantial funds available to them on professional assistance that would help the do their work rather than family and political retainers who sit around doing nothing. Sooner or later, in my opinion, they will have to make choices like this.

At the conclusion of our presentations, there was some useful discussion. Former Lt. Governor Manglona was particularly outspoken in encouraging us to draft proposals that would implement the suggestions that were included in our presentations, specifically the deletion of particular provisions that we regarded as out-of-date or legislative in character. He also went beyond this to urge the delegates to focus in on the relatively noncontroversial aspects of the Convention's work, try to achieve a consensus in advance of the Convention on that, and then by inference, leave the Convention to deliberate on the more substantial and controversial items. Deanne and I were unsure exactly what agenda he was pursuing in this direction but he clearly was directing us to do work along these lines.

During the discussion at some point, Lillian Tenorio suggested that the delegates sponsor a

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two-day seminar to educate themselves and reflect on their obligations before the Convention began. There was some desultory conversation about this idea, but a showing of hands indicated that a majority of the delegates thought that pursuing such a seminar would be a good idea. There was no real discussion about it and it was only several days later that I learned she had prepared a 1-page outline of what she thought such a seminar might consist of.

The all-day briefing was generally successful. The delegates continued to warm-up to us and to appreciate the briefings that we are presenting. During the breaks and at various points before and after the meeting there opportunities for consultations with individual delegates, either about the Subcommittee work or matters that came up at the briefing that provide another opportunity to get to know them better. We did, of course, encourage them to continue meeting with us during our office hours to present proposals, and, indeed, that had some impact over the next several days.

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Friday During this 3-day interval we worked on
May 5, 1995 several projects. Deanne continued to be busy
to Sunday to prepare proposals, a process that requires
May 7, 1995 trying to give some meaning to the often vague and
 abbreviated suggestion of delegates and produce
 responsive memoranda for them that indicate what
 proposal we think they meant, what any problems
 are that it might raise, and advising when, in our
 opinion, the proposal offends the Covenant or the
 U.S. Constitution. Many proposals fall in the
 latter category, including large numbers that seek
 to require "CNMI descent" or decades or residency
 in the Commonwealth in order to vote or run for
 office. Deanne enjoys this particular chore, does
 it extraordinarily well, and from time to time
 gives me the opportunity to review her work
 product and make an occasional comment.

 I spent my time principally on the draft
 rules. I received a current copy on Friday from
 Maya and spent some time marking it up, trying to
 reconcile some inconsistent provisions or use of
 language, identifying substantive issues that I
 thought had to be raised with the delegates, and
 generally trying to clean it up. On the whole, it
 was my view that more time had been spent on the
 rules that were required but that, having done so,

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we might as well make it as decent a product_as we could. It was my proposal that we try to avoid any further subcommittee meetings on the subject of the rules and try to persuade the Chairman of the Pre-Convention Committee and the Committee itself to put this draft before the delegates at the briefing session scheduled for Thursday, May 11. Maya seemed to be in agreement with this proposition. After I made my comments, I reviewed the suggestions with her at her house on Sunday; she seemed to accept most of them and I backed off a few of my less important points. I did not realize at the time that there was some serious controversy lurking here.

I subsequently prepared a memorandum for the Chairman to the delegates that could be reviewed in draft form at the Pre-Convention Committee on Tuesday, May 9, 1995. I identified 8 substantive issues that might be put the before the delegates at the briefing session in order to get some direction from them as to how the next draft of the rules ought to be written. This included such matters as the handling of abstentions, what kind of super majority vote to have on approval of amendments, the number of substantive committees, the number of committees on which delegates could

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serve, coordination of public hearings and a few other less important issues. I sent a copy of this both to Maya and to Herman for input and got very little back from either of them. As a result Herman basically accepted the memorandum, had it retyped and presented it to the Pre-Convention Committee on Tuesday, May 9, for consideration by the Pre-Convention Committee.

We did have some relaxation over the weekend. I entered a local tennis tournament and found myself in a two-hour twenty-minute match under the burning sun with the number one seed in the "over 40" age grouping. Neither of us played very well, but the end result was that he beat me 7-6 in the third set. I was totally exhausted from the experience and it basically took me 3 or 4 days to fully recover the use of my legs.

I forgot to mention that on Thursday after the briefing session, Herman T. dropped in on our office to chat about things going on. Without disclosing my source, I asked him about the rumor that Victor Hocog had withdrawn from the presidency race. He smiled calmly and inquired as to my source, and seemed to suggest that this was largely true but had to be kept highly confidential because of the ongoing discussions and political

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horse-trading that was going on with respect to committee chairmanship and other positions. He mentioned that Victor wanted to be a floor leader at the Convention. He seemed reasonably relaxed and self-confident. He was generally pleased of the way in which the Convention preparation was proceeding. He indicated that he was planning to go to Tokyo on Friday, May 12 or Saturday, May 13 for 3 or 4 days in connection with a Rotary meeting. We told him about our plans to go to England and Scotland, and although he certainly was not enthusiastic, he did not interpose any strong objection.

Tuesday
May 9, 1995

Deanne and I participated in the Pre-Convention Committee today along with Bernard Zimmerman, who came in on Monday night from San Francisco to join us as part of the legal team. Bernie came off the plane complete with a straw hat and sunglasses, looking like the classic American tourist to an extent that Deanne did not recognize him. He seems to have traveled well, is a very friendly individual and is looking forward to the assignment.

The Pre-Convention Committee was relatively short and non-controversial. It looks as though

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the Legislature was going to approve the additional funds needed for the Convention, although a current struggle between the Legislature and the Governor with respect to funding generally and appointments in particular may complicate the situation.

The Pre-Convention Committee basically approved our recommended approach of putting the draft rules before the delegates with a cover memo identifying some of the issues that might be discussed at the briefing session on May 11. None of the members of the Pre-Convention Committee seemed to want to spend very much time on this and the Chairman of the Subcommittee on Rules, Bennet Seman, was cooperative and ready to let things proceed in this fashion.

There was some discussion about the content of the next briefing session. It was agreed that we would discuss the draft rules on that occasion. I raised the matter of the proposed seminar and, somewhat to my surprise, the Pre-Convention Committee apparently wanted some work done on this subject and presented to the delegates a few days later. I subsequently got from Herman a copy of the brief memo on the subject that Lillian Tenorio had done earlier. This provided a started point

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for me to reflect on what kind of a seminar might be useful and what kind of people might be consulted with respect with it.

We rotated in dealing with the office hours between 8:00 and 9:00 a.m. each morning, with Deanne carrying the principal burden in this regard. There were some delegates that really did not want to speak to anyone other than Deanne or myself. Bernie started going with Deanne over the next few days and revealed a capacity to raise many questions with respect to a delegate's proposals.

After the Pre-Convention meeting, we spent most of the afternoon in our office. Deanne was working on proposals on administrative matters. She still is making major efforts to get Pamela Carlson to come to work with us and we have a growing concern about the need for transcription assistance. I was working on the proposed seminar, miscellaneous correspondence, and other matters. Bernie started spending time in our office and we were often visited by Maya - at which point our small office felt overwhelmed with talkative people. It looks as though Maya and Bernie will get along just fine - perhaps to the extent of conspiring in opposition to the

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authoritarian habits and personalities of the lead counsel.

Wednesday

May 10, 1995

Deanne and I continued work on the various projects listed above today. She was planning a report on the proposals at the next briefing session and, as it turned out, there were some 140 proposals already submitted by the time that she made the presentation the next day. It looks as though we had been successful in urging delegates not to hold back their proposals.

It was either today or on Tuesday that I called Rex Kosack to seek his assistance with respect to the proposed seminar. We generally exchanged pleasantries and reports on how the Convention was proceeding. He was very friendly and forthcoming with respect to suggestions for the seminar, including potential speakers from the private sector, or elsewhere. He was somewhat skeptical, as I am that the seminar will produce any discussion of substance that will assist the delegates in considering specific proposals, but he recognized that some of the delegates would want to participate in such an effort.

During the conversation, however, he revealed that he was deliberately withholding his specific

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proposals with respect to Article 12 until the Convention began. When I asked why he was doing this, he said that he wanted to see who the president of the Convention was, who the chairmen of the committees were, and generally the flow of the Convention before he had these proposals introduced. I suggested to him that delaying these proposals might mean they would not be discussed in timely fashion and emphasized, without belaboring it too much, that we were making every effort to conduct the Convention's business in an orderly fashion from Day 1. He then told me some of his experience during the 1985 Convention and the extent to which "horse trading" near the end of the Convention basically meant that everyone's proposal could get the requisite number of votes to be presented to the public as a proposed amendment to the Constitution. I expressed the modest hope that we could minimize this measure of "horse-trading" during this Convention. In short, I urged him to rethink his position but that, in any event, to try to get the proposals in as quickly as possible. He said that he was not withholding them from us and we agreed that some time during the week of May 29, given our absence from the

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island for a while, we might get together and discuss the specific proposals that he is contemplating with respect to Article 12.

It was on the whole a very friendly and professional conversation. It was a reminder, however, of the extensive negotiating and conspiring going on outside the Pre-Convention Committee and its subcommittees and the considerable and substantive interest that many lawyers on the island have with respect to the work of the Convention. Although I do not think that Rex is interested in serving as counsel for an individual committee, he plainly does want to be a considerable factor in the Convention through those delegates that he advises. One of these is probably is Marian Aldan-Pierce, recently appointed President of one of the principal businesses in Saipan called Duty-Free Shoppers. She is an extremely articulate and bright woman, who rose this position after some 15 or 20 years of constantly improving herself and her reputation in the community. I believe that Rex represents DFS on some matters and we can expect, therefore, that Marian may serve as one of the principal proponents of some of the proposals that are drafted by Rex. In recent sessions, however,

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Marian has been a very constructive and supportive delegate. She seems to especially appreciate the briefings; her comments, although few in number, are always directly to the point; and she seems to wield considerable influence with other delegates. Usually the women delegates to the Convention tend to group themselves together.

I had another conversation by way of getting some inside as to the present situation with Pedro A. Tenorio. I've known Pete Tenorio for more than 20 years; he served as a member of the Marianas Political Status Commission in 1974-75; he served as head of the Office of Transitional Studies and Planning in 1976; and he was Lt. Governor of the Commonwealth from 1981 to 1989. Although he has sometimes had the reputation of being xenophobic, he has always been quite friendly and relatively open with me. I went to his office on Middle Road without an appointment and found him there and available to spend some 30-40 minutes with me.

During the conversation Pete revealed in many ways his disillusionment with the way in which Commonwealth politics were currently operating. He reported on a recent trip to Washington, D.C. where he visited with the Washington Representative and Ed Pangelinan and also visited

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members of Congress or Congressional staff. He reported on one conversation with a Congressional staffer now very influential under the Republican rule, Juan Manase - an American Samoan who has worked on the hill for the Republicans for many years. Apparently Pete was urging that Congress honor the Covenant and make available the withheld Covenant funds, notwithstanding Governor's views that the Commonwealth no longer needed these funds. (In this regard, Pete was highly critical of Governor Tenorio - who seems to be losing respect in almost every segment of the community.) Pete said that the Congressional staffer not only threw Governor's Tenorio's position back at Pete, but suggested that the United States government really no longer needed the insular areas. Pete quoted him as saying that "if you people want to go independent, that's perfectly fine with us and the U.S. Congress will undoubtedly agree with it." Pete was shocked at this kind of cavalier statement - as I was. He stated that Manase favored statehood for Puerto Rico and is, of course, somewhat favorably inclined toward American Samoa. Pete was not optimistic that the Covenant funds would be made available to the Commonwealth.

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With respect to politics generally in the Commonwealth, Pete was particularly dissatisfied with the operations of the Legislature. He truly believes that members of the Legislature are in political life for no reason other than to feather their own nest and earn as much money as they can while laboring in the public interest. Without saying so, he indicated that in his experience as a consultant representing outside interest, there was widespread bribery of legislators with respect to their approval of particular land leases. He relayed his experience with respect to representing Shimizu, a well-regarded and well-funded Japanese concern, that was interested in building golf courses on Saipan. Ultimately they did get the lease and have two 18-hole courses, which we have not yet visited, but which are generally well-regarded. Pete stated that three other contractors or applicants for land leases came out of the woodwork to compete with his client. They all got 15-year extensions over the 25-year basic leasehold in return for a commitment to pay some substantial amount of money within a short period of time, but that according to Pete none of these other concerns have either developed the property or made the requisite payment. He

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cited this as an example of the sloppy, if not corrupt, and wasteful manner in which the Commonwealth is administering its land resources. It was an extremely pleasant meeting, although very sobering because of the substance and the seriousness of Pete's comments about the current political situation in the Commonwealth. He expressed dismay at the fact that Deanne and I were working for such a little amount of money, and suggested that we should not do that. We laughed about that and he allowed as though he recognized that we had a long-standing interest in the Commonwealth but explained what we were doing. He indicated that he would like to entertain us at some occasion and we left it at that.

Friday
May 12, 1995

Today was the next briefing of all the delegates. It was scheduled for Friday rather than Thursday because the Chairman had a conflicting commitment on Thursday morning. He and I had reviewed the agenda together and, as had been proposed by several delegates, the briefing by counsel was placed ahead of the subcommittee reports.

Basically, counsel were assigned to discuss 3 subjects: the draft rules and the substantive

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issues raised by them, the status of the proposal review process, and the proposed seminar that had been suggested at the last delegate meeting. All 4 counsel were present at the meeting; this was the first time that any lawyer other than Deanne and me attended the meeting of all the delegates.

The discussion with respect to the proposed rules went reasonably well, except for the unexpected conflict that Maya precipitated with respect to the enabling legislation and its prescription of certain rules with respect to voting procedures. This came up because the first subject on the agenda for the delegates to consider was whether they wanted to count abstentions with the prevailing side on all votes rather than just on votes with respect to proposed amendments as specifically authorized by statute. I had previously circulated this memorandum to Maya for her comments and she had not responded with any suggestion that this was not a choice that the delegates could make. In the middle of the discussion, however, she interrupted rather abruptly and suggested that the matter really could not be decided by the delegates because the statute dictated that, with respect to majority votes, it should be a majority of delegates

"present and voting." A fair reading of this phrase does, indeed, suggest that people have to vote rather than abstain, in order to be counted. In any event, after some embarrassing confusion, the matter was ultimately resolved with the delegates expressing their willingness to live with the present rules - namely counting abstentions as going with the prevailing side only on votes with respect to proposed amendments.

The remaining subjects were discussed amicably and without too much controversy. The delegates decided to change the super majority for adopting proposed amendments from 3/4 to 2/3; they decided to appoint the vice presidents rather than elect them; and generally they followed the rules as they were presently drafted. I more or less presented the issues to them based on the memorandum that I had drafted and Herman had circulated to them in advance of the meeting. I would defer to the Chairman with respect to calling on people and then try to bring it to some preliminary indication by asking people to raise their hands. This process worked reasonably well; and Herman seemed, on the whole, pleased with the way this subject was handled.

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The delegates generally seemed in a reasonably good mood. Victor Hocog and David Maratita had to leave the meeting early after Victor made his report; we learned later that the two of them had to attend a ribbon-cutting ceremony at the airport to commemorate the opening of a new security facility there. And there was an interesting debate with respect to the cut off date for proposals. Ultimately the delegates elected to advance the cut off date to, I believe, July 10 - some 11 days before the deadline in the draft rules. Marian Aldan-Pierce was particularly outspoken and constructive in urging an early cut-off date, which I thought was particularly instructive since it was her lawyer (Rex Kosack) who was deliberately holding proposals back with respect to Article 12 for the political reasons summarized above. There was some confusion among the delegates as to what the cut-off date truly meant and we tried to emphasize the desirability of getting all proposals out with respect to a particular subject as early as possible so that the proposals could be considered together by the Committee and be considered in public hearing as well if that was decided upon by the Committee. The whole concept of a brand new idea near the end

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of the Convention seems somewhat illusory, but many of the delegates have recollections that this is exactly what happened during the 1985 Convention, at which point the leadership of that Convention felt they had no choice but to permit the delegates to vote on such late arriving proposals and give them the same status as proposals that had been considered for several weeks and carefully nurtured through the committee process. Deanne and I hoped that, through the process of committee agendas and deadlines to be established by the leadership of this Convention, we will be able to prevent this strategy from working at this Convention. She thinks, and I agree, that the momentum now is with those anxious to submit proposals to us in advance of the Convention. Indeed, after the meeting, Benjamin Manglona sat us down and reviewed with us the dozen or so proposals that he wished us to prepare and submit to him "in a sealed envelope."

The other issue with respect to the rules that prompted some heated discussion was the proposal that a delegate could be a member of no more than two substantive committees. Benjamin Manglona strongly urged that a special rule be developed for delegates from Tinian and Rota but

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that, at the very least, he should be allowed to sit on whatever committee he wished to. He made several semi-humorous remarks about being assigned to the "social committee" and referred to his experiences in the Legislature when he did not have the majority. Deanne reads his vigorous comments on this subject as suggesting that he is not at all confident that the president of the Convention will be someone who will honor Benjamin's preferences and that some procedural rule needs to be adopted that would ensure his ability to sit on the Executive Branch/Local Government Committee. There was some support around the table for his position, but it seems unlikely that the Saipan delegates will go along with a proposal that would permit the Rota and Tinian delegates to participate in more committees than can the Saipan delegates. After the meeting a compromise was suggested that would enable delegates who had served in either the First or Second Conventions to have their committee preference honored by this Convention and a proposed rule to that effect will be considered by the Rules Subcommittee. (We happened to discuss this later on with Dr. Camacho, whom we were interviewing in connection with our book, and he

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(although a former delegate) expressed his opposition to this preferential treatment of delegates who had previously served in one of the two Conventions.)

The whole committee structure and the opportunity to serve in more than one committee strikes me as the most troubling developments with respect to this future Convention. No matter how many times we have made the point, the delegates seem unpersuaded that multiple committee membership is inconsistent with the efficient operation of the Convention. They also underestimate the extent to which individual delegates can sponsor proposals personally in committees in which they are not members and ensure that their proposal gets a fair hearing when it reaches the Committee-of-the-Whole stage of the process. It will take a very strong leadership group to be able to honor some of the choices of the delegates without seriously impairing the operations of the Convention. It was agreed that a straw vote regarding committee preferences would be circulated early the following week which might give us some further indication as to the seriousness of this problem. There also was some concern expressed about

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Committee #4, dealing with the judicial branch, Washington Representative and other matters to the effect that it seemed less attractive than the other committees. We agreed to re-examine the assignment of topics to the various committees.

The presentation on proposals was brief but instructive. She reported that approximately 140 proposals were in the process of being reviewed after submission by the delegates. She displayed on the board the breakdown of the various proposals and, in response to questions, indicated that several of the proposals in some of the areas could be grouped around a single topic. I think the number of proposals surprised some of the delegates and did persuade some that the desirability of getting their proposals submitted in advance of the Convention was growing more apparent to them. It is still a little uncertain to me exactly at what point we could encourage delegates with similar ideas to consolidate their support behind a single proposal. It may be that suggestions along this line will emerge as we work with the preliminary committee agendas over the next few weeks in advance of the Convention. It is our idea to develop such agenda, with appropriate deadlines and schedules, to present to

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the leadership of the Convention after it is constituted in an effort to enable the Convention committees to begin their work in an orderly fashion as soon as possible.

The last subject discussed by us at the meeting related to the proposed seminar. Based on a conversation with Lillian Tenorio in advance of the meeting, I learned that she was very pleased with the proposed program that I had outlined for Herman and that had been circulated in essentially the form in which I had drafted it. The delegates considered the 3 major questions that I had put before them and concluded as follows:

First, they concluded that the seminar should be 2 half days in length, by which I think they mean morning meetings from about 8:30 to 12 o'clock on 2 consecutive days.

Second, they seemed to opt for the more formal structure and rejected the informal "bull session" approach that I had referred to in the cover memorandum. By structured, they did mean something along the lines that I had prepared.

Third, they wanted the meeting to be private rather than public. There was no real discussion of whether the press would be

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excluded, although most of the delegates recognized that it is virtually impossible to exclude the media and ill-advised to try to do so.

At the conclusion of discussing these three issues, there basically was no real discussion of the proposed organization of the panels, the statement of issues to be addressed, or the proposed speakers/moderators. The chairman did appoint a small committee to handle this, picking Lillian Tenorio as the chairman, conveniently because she was out of the room at the time. However, he also secured volunteers from Marian Aldan-Pierce, John Gonzales, and Dr. Aldan (?). Later on it was decided that a planning session would be held at 8:30 a.m. on Monday, May 15, at the DFS offices. Both Maya and I intend to participate in this meeting, although Deanne and I basically see no need for us to be actively involved in its planning. (In a private conversation with Lillian, I also commented on my decision that Deanne and I not be actively involved as moderators or otherwise in the program and she expressed agreement with that. I said we would be available to serve as resource people if that seemed useful.)

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After a few brief subcommittee reports, the meeting adjourned. The Chairman set the next date of the meeting for Thursday, May 18, although that is a date on which Deanne and I will not be present. We hope to persuade Herman to not schedule any meetings of all the delegates for the next two weeks.

Sunday

May 14, 1995

I tried to call my sister Joan today to wish her happy birthday, but was unsuccessful in reaching her. (I managed on Monday, May 15, to call her and find her at just the outset of a family gathering to celebrate Mother's and her birthday.)

Deanne and I spent most of the day working, although I'd hoped that we would spend some time recreating. She was busy working on proposals, which is now approaching 150 in number, and I spent some time working on reviewing the proposals and preparing for the meeting of the legal team on Tuesday, May 16. I also was working on a description of research projects that Deanne and I had thought of over the past several weeks with a view toward sending the list to Howard Mantel with a request that he assume some limited responsibility to undertake one of the projects.

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Deanne and I spent a lot of time reviewing the various budgets for our work and revising the figures appropriately.

Monday
May 15, 1995

I attended a meeting at 8 o'clock this morning with the subcommittee established by the delegates to plan for the forthcoming seminar. Maya also was present at the meeting. Lillian Tenorio chaired the meeting; the other members of the subcommittee were Marian Aldan-Pierce, Dr. Taro, and Dr. Aldan. John Oliver Gonzales, who was also designated as a member, did not make an appearance.

The meeting went very well. It was held in Marian's office at DFS headquarters in Garapan. The members of the subcommittee had already approached several possible candidates to speak at the seminar and received a significantly favorable response. They decided to have the seminar in the week after the Labor Day holiday on May 30 and May 31 for two half-day sessions. They basically worked within the framework that I had originally drafted but they had many ideas as to additional speakers who might be considered. They were particularly enthusiastic about having Frank Ada come, Pete A. Tenorio, Juan Sablan, and others who

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could bring to the delegates some perspective of problems in the past and challenges of the future. I still am somewhat skeptical that the discussion will be as specific and pointed as it might be, but it might still be a very useful exercise. Because the delegates seem so eminently capable of plying this themselves, I decided (and Maya subsequently agreed) that there really was no need for counsel to be further engaged in these planning sessions. Upon return to the office I received a call from Deanne indicating that Bennet Seman, chairman of the Rules Subcommittee was waiting to have a meeting of her Subcommittee. I went immediately to the ConCon headquarters only to find not sufficient members of the Subcommittee had assembled to have a meeting. I found Deanne in deep conversation with Dr. Camacho about a variety of subjects. She reported to me later that he was evidencing some concern about Maya's being retained by the Convention because of her relationship to the Legislature and her possible involvement in the drafting of legislative initiatives. Deanne thinks (probably correctly) that these allegations against Maya are emanating principally from Ted Mitchell. We will have to deal with them openly within the Subcommittee at

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some later point. Otherwise, Dr. Camacho was being extremely friendly and told Deanne that the delegates were well pleased with the progress that had been made to date and that he and they felt that Deanne and I were doing a good job.

Bennet had apparently spent some time with Deanne about the issues to be considered by the Rules Subcommittee. Among other things, she had changed the assignment of various topics among the committees, mainly to put personal rights back with land issues and to include gambling among the issues to be considered by the committee dealing with legislative matters. In both respects, her logic was difficult to challenge. On the other hand, however, she was also proposing to deal with the Committee assignment process by a form of lottery. I think this is a particularly bad idea and we will see how it unfolds when the Rules Committee has its meeting. It was tentatively decided that the Subcommittee would be scheduled to meeting Wednesday, May 17, at 9:00 a.m. - the same the day that the Pre-Convention Committee was scheduled to meet after Herman's return from Japan.

Deanne and I managed to take an hour off in the middle of the day to enjoy some sunshine at

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the Hyatt pool. This felt refreshing and Deanne felt the need for some tan to display in London and Scotland. Otherwise, we spent the bulk of the day working and Deanne, in particular, worked late into the evening to remain current on the proposals received from delegates.

Tuesday
May 16, 1995

We had the first meeting of the Legal team today at the Legislature building at 2 o'clock p.m. There were 5 of us, including recently retired Chief Justice Jose De La Cruz. We had prepared a substantial agenda for the meeting and numerous handouts. The meeting lasted approximately 2 hours and went reasonably well.

It was hard to figure out exactly how Chief Justice De La Cruz will work out as a member of the team. I indicated tentatively some of the research projects I hoped he would assume responsibility for, assisted by one of the summer interns that we are likely to have available for hire within the next week. The meeting was scheduled today because Deanne and I are leaving for England and Scotland on May 17 and wanted to provide some overall guidance as to what should be done during our absence. We are hopeful, in fact, that nothing of importance happens during our

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absence and we are going to try to encourage Herman to give the delegates some time off during the next week or 10 days. He had scheduled a meeting of all the delegates for Thursday, May 18, without realizing (I think) that there really was nothing of substance that could be accomplished at such a meeting. The matter is also complicated by the fact that Maya is planning to leave for a week in order to visit an ailing father in Los Angeles.

During the meeting we handed out the current budget allocations on which we are proceeding, the current committee assignments that will probably be considered by the Rules Subcommittee, a report by Deanne on the handling of delegate proposals, and a list of research projects that we had developed. We have tentatively given Bernie responsibility for the set of topics falling under the "one-man/one-vote" legal principle and the issues relating to the treatment of aliens that might be sustained against constitutional challenge. I suggested the Chief Justice that he might take responsibility various limitations on voting and office holding in the Commonwealth that will undoubtedly be presented to the Convention dealing with such issues as limitations based on CNMI descent or extended domiciliary or resident

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requirements. He seemed somewhat interested in these assignments but it was unclear to me whether he would, in fact, undertake to do any personal research with respect to them. His schedule is also complicated by the fact that he has been invited to give the commencement address at the University of Guam the Sunday over the Memorial Day weekend.

It seems to both of us that things are in reasonably good shape and that we can leave with fairly clear consciences. It seems to me that we have probably done more work on the preparations of proposals and organization of the Convention than we might have hoped for 4 or 6 weeks ago. With the seminar scheduled for the week before the Convention, it seems to me that our principal emphasis during the week upon our return will be to establish some draft agendas for the Convention committees, to supervise research projects underway and review the results thereof, and to generally prepare for dealing with a still unidentified leadership group. From what we hear on the politics side, it still looks as though Herman, Dr. Camacho, and perhaps even Victor Hocog are active candidates for the presidency.

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May 17, 1995

This was the morning of our planned departure for England and Scotland. We did have a meeting of the Legal Subcommittee at which to present a status report with respect to the hiring of outside counsel. There came a point in the meeting when we excused, primarily because of the subject of Maya Kara's eligibility to work as counsel for the Convention was brought before the Subcommittee. It seems clear that some people in the community, especially Ted Mitchell, have been campaigning that Maya ought to be disbarred from working for the Convention because of her 6+ years of representing the Legislature. The argument is that the Legislature has a vested interest in much of what the Convention is supposed to do, and that, accordingly, Maya cannot provide impartial and objective assistance to the Convention.

After we were excused from the meeting, we went into the Administrative Staff meeting and generally killed time. As I remember, several members of the Subcommittee came out to assure us that there was no particular problem (?). When we were eventually requested to come back in before the Subcommittee, however, it became quite clear that Chairman Camacho and several members of his subcommittee were very concerned about Maya's

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continued work with the Convention. They questioned us regarding our plans for staffing the Convention committees, and, to some extent, we appreciated the fact that we should have previously informed the Subcommittee of our intention to supervise all the other lawyers on the legal team and to emphasize that Maya, of course, would not advise on any matters specifically involving the Legislature.

The discussion went reasonably well, and the committee seemed somewhat reassured by our strong emphasis on retaining and coordinating the work of the legal team. However, there were undercurrents that both of us found somewhat disturbing. We essentially left the meeting (and later that day the island) with some uncertainty as to what would happen on this front during our absence. It appears that one of our problems, primarily due to my laxity, arose from the fact that Maya joined either Deanne or Bernie in interviewing some of the outside candidates who were interested in providing legal services to the Convention.

May 17-27,
1995

This represented our significant break from the work on Saipan in preparation for the Convention. We traveled to Japan for an overnight

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stay, then flew KLM to Amsterdam, caught a plane an hour later to London, and ended up at the Goring Hotel (recommended by Lee Marks) for the evening of May 18, 1995. The whole trip was extraordinarily successful and enjoyable. We spent Friday and Saturday in London and had two beautiful days to enjoy that city's pleasures. Actually, on the night of May 18 after we arrived, we walked four or five blocks to Sloane Square to have dinner at a neighborhood French restaurant. On Friday, we went to the Wilmer, Cutler office late in the morning where I spoke extensively with Gary Bourne about my international arbitration assignment and Deanne communicated via computer with various NITA and other business colleagues. We ended up having lunch on Friday with Dieter Lange at the Royal Automobile Club. The event was truly classic, in the sense that we began lunch at about 1:30 and ended at nearly 3:45. The Club is a block or so from the London office and obviously Dieter is a frequent user of the Club's very abundant and luxurious restaurant and athletic facilities. We even ended up the lunch with a cigar, at least I did. Dieter, as always, was charming, particularly interested in what Deanne was doing, and eager to recount to me his latest

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frustrations with the management of Wilmer, Cutler & Pickering. After lunch we shopped for books and then walked across the park on our way back to the hotel. There we found we had theater tickets for Sam Shepherd's latest play in ten years entitled, "Simpatico," which we went to and enjoyed thoroughly. We did without dinner on that occasion.

On Saturday, we enjoyed the city again. We did some errands; we visited the Hayward Gallery on the south side of the River Thames banks for an exhibition seeking to place impressionist painting in their historical context. It was educational and enjoyable. We did some further walking around the city and ended up, embarrassed to admit, that we saw the movie - Rob Roy - about the Scottish highlands rather than seeking out more intellectually demanding entertainment. That evening, after returning to the hotel, we located a Portuguese restaurant in Knightsbridge and had an enjoyable dinner there.

The next day, Sunday, we waited for the call from John Kouris, one of Deanne's NITA officials. We drove to Nottingham, approximately a 2+ hour drive where we found our hotel without too much difficulty. That evening we met the dean of the

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Nottingham law school, whose name I forget, and Nigel, his colleague, (actually I think that Nigel was the dean of the law school and his more gregarious, smooth colleague was the vice dean). In any event, we had a pleasant dinner at Nigel's house that evening. The house was actually a reconstructed railroad station that had been put on the market by British Railway after the particular railroad line ceased to function. We went to a pub for dinner, some 10 or so miles away where we had, of course, an Italian meal. The company was excellent and a very pleasant change of pace.

On the next day, Tuesday, Deanne spent her time talking to people at the Nottingham law school about their various academic and training programs. These people are planning to run UK-NITA and she wanted to have a first-hand look at their facilities, their orientation and their capabilities. I think she came away charmed by their personalities, reasonably persuaded of their capability to do the program, and we regretted somewhat that we could not be available for the June 6 opening of the UK-NITA program.

After our work in Nottingham was concluded on Monday, May 22, we took the train to Glasgow. The

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trip was approximately 4 or 5 hours in length; we were required to go to Edinburgh and then catch another train to Glasgow, about 40 minutes away. The train ride, however, was enjoyable except for the fact that we did not have any dinner. The countryside was lovely - very rural at the beginning and ending up with rolling hills as we worked our way into Scotland. Everything proceeded most efficiently.

In Scotland, on Tuesday, May 23, we had the day essentially to ourselves until an afternoon appointment. We made the decision to go to the Burrell Collection at a park a few miles outside the city of Glasgow. We took a two-tiered bus just for the kicks of it, and had a very enjoyable several hours at the Collection. It was put together by a shipbuilder, who hired experts to assist him to collect items in the widest variety of separate fields - ranging from some Egyptian works to a not very impressive collection of 19th century paintings.

The rest of the trip in Scotland involved a meeting with Alan Patterson, Dean of the Strathclyde University Law School, on Tuesday afternoon, dinner with him and a colleague that evening, and a retreat for the following two day

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to which Deanne had been invited by Richard Susskind. The retreat was held in a 19th century chateau built on Loch Lomond, set in green rolling hills, and we were blessed with extraordinarily pleasant and unusually good weather in Scotland. Deanne was both the keynote speaker for the Conference on Technology and the Law, attended by about 18-20 people, and was given the additional task of summing up at the conclusion of the meeting. The company was good; the conversation was reasonably good, I learned a little about technology (but not too much); and Deanne was a great hit. We were both campaigning rigorously to ensure occasional invitations back to enjoy Scotland and perhaps, on those occasions, to play a little golf.

On the afternoon of Wednesday, May 24, we flew to London, waited in the airport for 3 hours, caught a BA airplane to Hong Kong where we spent the night. We had an excellent meal in Hong Kong that evening and returned to Saipan the next day on Cathay Pacific and Continental Airlines, flying through Taipei. We ended up in Saipan on May 27 (my birthday) after a particularly enjoyable break our responsibilities here.

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May 28-June 4, 1995 Because of my tardiness I'm going to compress my recollections of this 10-day period into a single set of comments. Not too much has happened on Convention planning during our absence. Bernie was in the midst of some selective research assignments; seminar planning was going forward; and the politics hadn't progressed very much. Everyone that we met during the week seemed to have appreciated the week off from the regular meetings. There have been no further progress on securing supplemental funding for the Convention.

On the subject of the rules, Deanne later in the week decided to turn her attention to the rules and found them sadly defective. In particular, she wanted to make several changes to make them more gender neutral. In addition, she spent considerable time on talking through with both Maya and myself the exact procedure for processing proposed amendments through the committee and Convention approval. None of the rules problems presented any controversy, although near the end of the week Victor Hocog suggested that he might want to ask for a reconsideration of the super majority requirement for approving amendments and reduce it to a simple majority.

[END OF SIDE B TAPE 3]

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TAPE 4

JOURNAL OF HOWARD P. WILLENS

RE: CNMI THIRD CONSTITUTIONAL CONVENTION (1995)

MAY 30 - JUNE 13, 1995

The question of a super majority vote required for adoption of constitutional amendments did present itself to the Pre-Convention Committee at its last meeting on June 2 before the beginning of the Convention the following Monday. Mr. Hocog suggested that a majority vote would be sufficient to present amendments to the people, since in any event the people had the final choice on the subject. In addition, he made reference to the fact that under the current constitutional provisions, proposed amendments emanating from a convention are not ratified unless they receive a majority of the vote plus 2/3 vote in two of three of the Senatorial districts. He suggested that committee members should take some comfort in this rigorous requirement before a constitutional amendment could be ratified. Interestingly, we had just received an opinion from the Attorney General's Office to the effect that this particular constitutional provision is unconstitutional under one-man/one-vote principles. Bernie Zimmerman is took an additional look at this issue and has concluded

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that the Attorney General essentially is right. We are now exploring whether this issue should be raised in court or with the Legislature in an effort to change this particular constitutional provision before the results of this Convention and go before the people - hopefully sometime next Spring, rather than at the general election scheduled for this November.

There was no serious discussion of administrative arrangements during the last week before the Convention. The appropriations act, which also dealt with the Governor's reprogramming authority was before the Governor all week without action. Shortly before or after the Convention began, (indeed, on the first day of the Convention) the Governor vetoed the legislation. Although assurances are being made through Herman and Victor that the Governor will ultimately find the money to enable the Convention to complete its task, there are some cynics who suggest that the Governor was maintaining pressure on the Convention to ensure that it would elect Herman rather than Dr. Camacho.

Considerable discussion was held within the Legal Subcommittee during the week preceding the Convention. Shortly after our return from

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England, we prepared a report for Dr. Camacho that summarized what we had done with respect to interviewing local lawyers and also proposing a set of options on the conflict-of-interest rule. Bernie and Joe De La Cruz had worked somewhat on these issues during our absence, but very little of the work product could be salvaged. The report, however, was delivered to Dr. Camacho late on Monday evening and, as a result, he did not feel prepared to deal with it on Tuesday, May 30. It was put off until another meeting on June 1, 1995.

At the meeting to consider this report, the Subcommittee first considered the various options regarding conflicts that we put before them. Deanne and I had spent considerable time on this and we came up with the idea of identifying certain subject matter areas from which local lawyers would be excluded and then we would depend essentially on their voluntary disclosure of current conflicts to limit their participation in advising the Convention. We were striving to avoid a rigorous disclosure rule or one that analogized to strictly a lawyer's responsibility to the Convention as comparable to one's responsibility to a private client. The Committee

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seemed reasonably interested in these various options and ultimately accepted a version that combined the ingredients of several of them as the ongoing proposal of the Subcommittee.

When we reached the subject of practicing lawyers, however, the Committee continued to exhibit some serious reservations about the local bar. At this point we identified three of the seven lawyers that we regarded as deserving the most careful consideration: Mr. Bellas, Mr. Manglona, and Mr. White. The Subcommittee had some difficulty with Mr. White, not only because of the nature of his practice, but also because one of his partners is Maya Kara's husband. There was no need to pursue this matter any further with the Subcommittee in the absence of funding that would permit us to make specific arrangements with these lawyers.

During the discussion, however, Maya's own status came up once again. A few of the delegates, Mr. Kuitugua and Mr. Gonzales spoke out very strongly in opposition to her serving the Convention; so also did Mr. Hofschneider. Deanne and I were taken somewhat aback by the passion of these comments and were trying to generally downpeddle the matter and retain some flexibility

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for ourselves in obtaining the assistance that we need to do the work. Dr. Camacho seemed reasonably sympathetic to our cause, although we strongly suspect that Ted Mitchell was behind some of the delegates' antipathy to Maya's participation with us. (Deanne later that day had a more explicit conversation with some of the delegates, managed to elicit somewhat more information, but generally thought that they were agreed that the matter would remain within the competence of the Subcommittee and within the discretion of the counsel.) The Subcommittee ended with an agreement that the matter would be raised in the report or before the Pre-Convention Committee and that, once circumstances unfolded, the Subcommittee would depend on lead counsel to use discretion in deciding how best to utilize Maya. Deanne and I continued to have some disagreement as to exactly how to deal with Maya on the subject, specifically how much to tell her regarding these conversations and what course of action to suggest to her.

The judgment of the Subcommittee was borne out the following day in the Pre-Convention Committee meeting on June 2, when this subject was reached on the Committee's agenda. At that point,

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some people who were not present at the meeting:
(I think that Mr. Hofschneider was not present at the Legal Subcommittee meeting, but was present at the Pre-Convention Committee meeting.) spoke up quite explicitly, even though Maya was in the room, to express their dissatisfaction with her assisting the Convention. The basic case against Maya in this regard is that she has worked for the Legislature for 6-1/2 years, that many of the delegates harbor a deep, deep skepticism regarding the Legislature and that they believe that Maya's advice to the Convention will necessarily (whether consciously or not) be tilted toward the Legislature's point of view. Maya held up reasonably well under this very embarrassing and unfair onslaught; she tried to emphasize her responsibilities of a lawyer to be loyal entirely to the client at hand. She told us afterwards that she was used to this kind of criticism and didn't feel threatened by it at all. I myself would have found it so uncomfortable that I would have considered withdrawing from the room while the conversation regarding my integrity was underway. I find it hard to remember exactly how this conversation ended, but I think it again was left with the discretion of lead counsel to decide

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after the Convention was organized. (It may have been after this Committee meeting, on Friday rather than Thursday, that Deanne had her more informal conversation with some of the delegates regarding this subject.)

It was some time near the end of this week that we learned on a confidential basis from Herman what he had in mind with respect to organizing the Convention if he were elected as president. He has proposed a list of chairmen including Mr. Hofschneider as chairman of the Judiciary Committee, which Maya was going to help with, and that obviously complicates the situation a good deal. It means essentially that Deanne or I is going to have to work closely with that particular committee. We subsequently decided that she would work closely with the two committees on Land and the Judiciary; and that I would work with the two committees on the Executive Branch (including Local Government) and the Legislature Branch.

Much of the discussion in the week preceding the Convention obviously focused on the political competition between Dr. Camacho and Herman T. for the presidency. The political fortunes of Herman seemed to decline as the critical date of June 5

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approached. At one point we heard he had 17 or 18 votes confidently in hand; then it declined to 15 or 16; and on Sunday night before the election we heard from Mr. Horiguchi that the count was 12 v. 12 with 3 undecided delegates. Apparently one of the methods of obtaining people's commitment is to invite them all to a common meal, usually breakfast or lunch, and see whether everyone shows up. The assumption is that someone who does not show up has decided that he or she cannot commit themself to your candidacy. Mr. Hocog asked Mr. Horiguchi to draft a statement of confirmation relating to one's intention to vote for Herman which he in turn showed to us for editing purposes, and this was yet another effort to try to get people to sign up in advance as to how they intended to cast their votes. As his fortunes ebbed, Herman's jowls became larger and his manner became somewhat more subdued and resigned.

Meanwhile, back at the ranch, the lawyers were busy preparing for the work of the Convention. The principal burden of this fell on Deanne, who took unto herself the humongous task of turning every delegate's most abstract or imperfect suggestion into an orderly proposal for a constitutional amendment. By the end of the

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week we were approaching 200 proposals that had to go through counsel's review and be returned to the delegates for their review and approval. If they sign the proposals and submitted back to the Convention, they then were planned to be formally introduced once the Convention began. At one point on Friday, June 2, I got a telephone call from Rota from Benjamin Manglona, who wanted to review with me several of the draft proposals that we had submitted back to him. He was quite friendly and specific in his suggestions; he approved several of the drafts that we had prepared; and he requested my assistance in revising several more to accurately reflect his views. He is definitely going to highlight the issue of local government and make clear, through a proposed amendment, that he would like the mayors of Tinian and Rota to have essentially all the powers of the Governor with respect to the delivery of public services on those separate islands. I think from time to time that Benjamin, after 35 years in government (as he subsequently reminded the Convention) is probably going to find himself confronted with one of the more serious defeats in his political life. Because of the political composition of the delegations from

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Tinian and Rota, Benjamin is no longer able to control those two delegations, which would enable him to threaten a walkout or, at the very least, command sufficient votes to prevent any proposed constitutional amendment that he disapproves of from achieving a 2/3 vote. Because of Tinian's interest in maintaining gambling for itself, Tinian delegates have some interest in collaborating with the delegates on Saipan to achieve certain clarification of local government and more economic forms of executing local government. Then, of course, Victor and Justo from Rota provide a strong counterpoint to Benjamin and provide the majority with sufficient strength to get a constitutional amendment on local government through the Convention that will be generally satisfactory to the Saipanese, but very much opposed by the people of Rota who side with Benjamin.

As part of the delegate proposal process, streams of delegates were meeting with us (especially Deanne) to review the drafts that she had prepared for him or to request assistance in preparing new drafts. The rest of us, Bernie, Joe and I, played a much more limited role in this process.

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In addition, Deanne and I were preparing memoranda analyzing the issues that were raised with respect to each article in the constitution based on the proposals that we were aware of at the time. These analyses in turn were then packaged in draft form for the chairmen of the committees so that we could present them, after their appointment, with a proposed sequence for considering the issues within the jurisdiction of each committee. She would draft some, which I would review, and I would draft others for her review. We ended up completing this task actually early the following week. The hours were extremely long over the last several days before the Convention began; Deanne stayed up all night for at least one night and worked early into the morning on several other nights. I continued to suffer from jet lag for nearly a full week and certainly was not functioning at what I hoped continued to be my full capacity.

People were very hospitable to us during these last few days before the Convention began. On Friday evening, June 2, Bill and Paul invited the entire team out to their luxurious house on the east side of the island for a barbecued dinner. They continue to be very loyal and

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supportive with respect to the project - even to the point of Bill relieving us of any responsibilities to pay our \$300 rent per month for office in Garapan. We have not yet asked them to any specific task with respect to the Convention, although they have expressed interest in doing so. On Saturday evening, Maya and her husband invited the team for a very good dinner at their house on Capitol Hill. And on Sunday, the evening before the Convention, we convened at Joe De La Cruz' house for a combination of meeting and dinner. This was a particularly enjoyable occasion, because it provided an opportunity for us to see Joe's wife, Rita, at her most gregarious best under the influence of several glasses of wine. (I was sitting on her right and ensured that her glass was always at least half full.)

At this meeting at Joe's house, the lawyers (except for Maya) discussed the results of Bernie's legal research efforts. We have managed to formulate positions on a wide number of important issues - ranging from length of residence required for voting, and various elective offices, one-man/one-vote issues and reapportionment, and certain issues with respect to aliens. We have not been enormously successful

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in getting research done by either of the two major law firms with which we are affiliated and we are still somewhat (seriously) understaffed with respect to local lawyers who might be available to do some research on the issues. The fact is we are probably less prepared on some of the legal issues than Deanne and I want to be; and we are starting out with the point of view of wanting to provide as few formal opinions to the Convention as is possible. (We have put our hands on the collection of opinions and letters provided by the lawyers to the last Convention, which I have not yet read. Deanne has concluded that it provides a good example as to why we should not be in the business of issuing formal opinions.)

Another event during the last week before the Convention of particular significance was the two-day briefing seminar prepared by the delegates that was held on May 31 and June 1, 1995. This was the seminar originally proposed by Lillian Tenorio which she, and several other delegates, managed to put together with considerable success. There were four briefing sessions, organized along the lines that I had suggested a few weeks earlier. They dealt with the following subjects:

- (1) an overview of the task before the Convention

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looking forward to the next 20 years; (2) an evaluation of the executive branch; (3) an evaluation of the legislative branch; and (4) review of land issues in the Commonwealth.

The Committee was very successful in obtaining the participation of many of the leading political figures in the Commonwealth and several experts in the fields under discussion.

Unfortunately, only about 14 or 15 of the delegates attended; the old time political leaders who are delegates obviously did not think they could learn anything from the briefing session.

(Although, to be fair, Joe LiFoifoi subsequently told me with some exasperation that it was more important to go to a memorial service for his good friend, Larry Hillblom, in San Francisco, than it was to attend a briefing session. Larry and the Vice Speaker of the House of Representatives, Jesus Mafnas, died in a small plane crash trying to fly back from Pagan to Saipan a few weeks earlier.)

In the opening session, urging the delegates look ahead some 20 years, the participants were particularly emphatic in their emphasis on "quality not quantity" regarding amendments to the Constitution. The former Lt. Governor, Frank Ada,

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also the father of two women delegates to the Convention, was particularly effective in his exhortations to the Convention delegates. He is one of the few leading political figures who very consciously emphasizes the fact the people in the Northern Marianas are now Americans and they should start thinking of themselves as such. Some of the other political leaders find it more advantageous to downplay this status and emphasize the Chamorro and Carolinian traditions and protective instincts that are so prevalent within the community.

David Sablan served as moderator for two of the panels and was especially good in this capacity. I think it is a regret that he was not successful in his campaign to be elected as a delegate to the Convention. From what I heard from Esther Fleming, he was generally tagged as being too closely affiliated with Willy Tan, the leading Chinese (Filipino?) industrialist on the island who is viewed as bringing some of the adverse social consequences upon the Commonwealth by virtue of position in the garment industry. Several of the more competent people in the Commonwealth, such as Ben Fitial, Jack Torres, and

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Eloy Inos, work for Willy Tan now - after their successful careers in government.

One of the memorable vignettes from the panel on the legislative branch features Ben Fitial. He was Speaker of the House of Representatives during one of the early Legislatures within the Commonwealth - I think the Third or Fourth Legislature. He put a chart on the board indicating the number of public laws enacted during his tenure as contrasted with each other two-year Commonwealth Legislature. As you might have anticipated, his figure was more than twice the number of public laws enacted during other terms. (I recall that the figure for his term in office was 107, whereas the other figures ranged in the 30's and 40's.) He went on to say that he managed to accomplish this on a budget of only about \$1.2 million. He was very effective and humorous in presenting his case, although he failed somewhat to acknowledge that he was helped to achieve this legislative success by the fact that the both houses of the Legislature and the Governor's seat were occupied by the same political party at the time. His experience serves to make a point, however, that political leaders of some talent, who are capable of

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compromise as well as leadership, can accomplish a good deal in the Commonwealth notwithstanding the bicameral Legislature and other nature obstacles to effective democratic government. Two other members of this legislative panel, Ben Sablan and Pete Guerrero, who had distinguished careers in the Legislature, spoke out very emphatically in support of the Legislative Bureau within the legislative branch of which Maya is a part. I am sure this is not a coincidence, since Maya and others have disagreed with the suggestion that the constitutional provision establishing the Legislative Bureau might be eliminated by this Constitutional Convention. Actually it presents one of the more interesting questions for the Convention: Do you provide money for the Legislature and let it learn over the years that the money should be spent for qualified professional assistance to enable them to do their legislative task well; or do you try to mandate that they hire such professional staff support even if they would otherwise be disinclined to do so?

The panel on land issues was perhaps the most significant. Somewhat to my surprise, there seems to be growing sentiment among the knowledgeable

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Commonwealth leaders that the Northern Marianas can no longer afford the luxury of its homestead program and rather extravagant expenditure of its resource of public land. Public lands in the Commonwealth used to be some 90 percent of all the available land. It has now shrunk very, very substantially. Several of the panel members urged the delegates to look ahead and try to dedicate some lands to public parks, sharply modify the homestead program, and take other steps to ensure that future generations would still have some sense of what the island used to look like. It was quite well-received by the delegates and there are many proposals currently in the hopper to achieve some of these objectives.

June 5, 1995

Today was the first day of the Constitutional Convention. The chamber at the House of Representatives had been redesigned so as to provide additional seats (with microphones) for each of the 27 delegates. The seating arrangement provided for the President Pro Tem to sit on the dais considerably higher than the delegates, with the Reporter, the Convention Clerk, and me sitting just at the level below him. There is a bit of a witness box in which another lawyer can sit and

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other chairs off the left of the chamber where still others may sit along with the Public Information Officer.

The opening session was actually handled with a good deal of formality and decorum. The media were all there, with cameras rolling, as the delegates marched in one by one to assume their position. They had not been consulted with respect to the location of their particular desk, so it was necessary to have one of the Convention staff more or less direct them into their seat. They all looked appropriately serious and the dress code of dark pants and white shirts with ties for the male delegates was uniformly observed. Women delegates had been instructed to wear a dress or some other appropriate garb; more fear apparently existed with respect to the male proclivity for floral patterns of a garish nature.

After the call to order, the national anthem and the Commonwealth anthem were sung. This produced a very humorous experience for me, at least, since the guitar player providing the musical accompaniment stood right next to my seat, placing the words of the two songs immediately in front of both of us. As a result, the camera focused rather extensively on us both during the

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singing of these songs and my pronunciation of Carolinian and Chamorro was obviously imperfectly reflected by the media. As usual, the national anthem was played with an island beat that is, I think, a permanent fixture in the Commonwealth.

After the adoption of the interim rules, which went as planned without problem, Chairman Guerrero stepped down pursuant to the rules and asked Victor Hocog to serve as President Pro Tem. He did so, although evidencing his lack of experience in presiding that was subsequently the subject of some critical comment in the local press. His principal problem was that, after receiving the nomination of his candidate, Herman T. Guerrero, Victor was on the verge of closing down the nominations without recognizing the delegate who wished to enter the nomination of Dr. Camacho. He finally recovered himself, however, so the two candidates were formally nominated, at which point the nominations were closed.

We had previously arranged that former Chief Justice De La Cruz would help in the counting in the votes and it seemed propitious to use the acting Chief Justice Ray Villagomez to join in this task. Both were willing to do so and Joe

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went up to sit with Ray on the higher podium to count the votes after they had been collected in a basket which I understand was usually designed to carry betel nut. They first satisfied the inquiry of the President Pro Tem that, indeed, there were 27 votes. Although they were seated right behind me, I could not hear them actually count the ballots.

The result was extraordinarily close and did indeed reflect the declining momentum of Herman's candidacy in the last several days. He won election as president by a vote of 14-13. It could not have been closer. This is further evidence of his capacity as a survivor since he now had the privilege to preside over a Convention whose stated objective was in large measure to correct the deficiencies of the 1985 Convention over which he had also presided. His long-standing secretary and assistant, Alisha Guerrero, was seated next to me in her capacity as Convention clerk and was so excited upon hearing of Herman's election that she grabbed my right knee with great vigor!

There was a recess of the Convention over the luncheon period during which Herman, Dr. Camacho and many other delegates were enjoying the

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experience of being interviewed by the press. The next items on the agenda when the Convention reconvened was to adopt the rules of procedure. President Guerrero also announced the appointment of Victor Hocog as his Floor Leader, but for political [End Side A Tape 4, Begin Side B Tape 4] reasons he was not prepared to announce the other officers and committee chairmen. It appears that the prevailing majority was somewhat concerned by the narrowness of the vote, spent a good deal of effort trying to identify the two or so delegates had not, in fact, honored their commitment to support Herman and were looking for ways to retaliate against such delegates by denying them the positions in the leadership group that had been promised to them on the assumption that they would support Herman. (Well, we later learned that the principal defectors were the two doctors, Dr. Taro and Dr. Aldan. Neither had been promised a leadership position.)

The uncertainty of the majority's position and its confidence level was reflected in the debate on the rules of procedure. The only substantive issue was raised by Juan S. Tenorio, a leader in the majority group, who proposed that the supra majority requirement of 2/3 of the

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Convention (18 delegates) to adopt a proposed amendment should be reduced to a majority. This was the issue that Victor Hocog had raised in the last meeting of the Pre-Convention Committee before the Convention began. The raising of this issue so soon after the election of the President caused the defeated supporters of Dr. Camacho to fear some conspiracy. Several members of this group spoke up to emphasize the extent to which this issue had been thoroughly considered in the Pre-Convention Committee and suggested that it was only political expediency that was now persuading supporters of the President to seek a lower threshold so that they could secure the enactment or passage of more proposed amendments. In other words, the "minority" viewed this as an effort by the "majority" to enable it to "work its way" with the Convention. (In fact, upon subsequent reflection, most of people realize it would have been in the interest of the so-called minority to have sought the lower requirements for enacting proposed amendments, especially if the Saipan delegation was anxious to secure major changes in the constitutional structure with respect to local government. It was shortly thereafter promised that the issue would come up again.) After some

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rather disorganized debate on the issue, a vote was taken and by a margin of one or two votes, the super majority requirement of 2/3 was retained in the rules of procedure. This obviously meant that at least one if not two members who had supported Herman's election as president wanted to stay with the higher threshold that had been decided upon by the Pre-Convention Committee.

The Convention also approved the report of the Pre-Convention Committee to the Convention along with the various reports that were attached to it. This went by without any discussion at all. Thereby confirming the confidence of those who had predicted early uncertainty about the authority of the Pre-Convention Committee would evaporate by the time the Convention convened. (Indeed, Tom Aldan, who had originally questioned the authority of the Pre-Convention Committee to retain counsel to assist the Convention itself, has become one of our significant supporters.)

So far as the lawyers were concerned, the remainder of Monday was devoted to administrative tasks of reviewing and approving the daily journal transcribed by the Court Reporter, drafting the summary journal for review by the President and many others, and collecting, copying, and

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assembling the materials for distribution to the Convention delegates the following morning. Unfortunately, the duplicating process was not initiated on Monday evening and it produced a log jam on Tuesday morning that produced some sense of disorder that Deanne and I were determined not to let be repeated.

June 6, 1995

This was second day of the Convention and there was a brief plenary session. After someone of the routine procedural steps, the delegates were permitted to express comments about the summary journal and the daily journal. The principal goal of today's session was to formally introduce those proposals that had been formally reviewed by counsel, signed by the delegates, and resubmitted to the Convention Court. In order to explain this procedure adequately, especially to Delegate Manglona, it was necessary to go into a recess. That portion of the Convention was not recorded by the Court Reporter. Delegate Manglona had particular difficulty in understanding what was contemplated with respect to the two methods by which proposals could be formally made part of the Convention record. Several other delegates exhibited some impatience with him, and at least

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one tried to review the procedure in Chamorro so that he might comprehend it more readily. Eventually he seemed placated by this explanation and the Convention reconvened. At this point the delegates were free to stand up to identify any proposals that had been submitted in signed form to the Convention Clerk that they did not want to in fact make part of the record at this time. It was made clear that the delegates were free to introduce other proposals that, after being given a number of other clerk, would be made part of the proceedings and available for assignment to one of the substantive committees. As a result of this process, some 161 proposals were officially made part of the Convention proceedings, without the need to either to list their numbers, state their titles, or summarize their content. So, notwithstanding the fumbling, there was some considerable utility that we had achieved by the elaborate Pre-Convention procedures established with respect to eliciting proposals from the delegates and putting them in form to be introduced to the Convention. One of the significant differences between our approach and that of the 1985 Convention is that we did not worry about constitutional language at this stage

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of the proceeding, believing that simply trying to get the idea in proper form would be sufficient to stimulate committee discussion and deliberation.

The Convention adjourned its proceeding after some remarks by a few of the delegates. There was a growing sense among the leadership that the plenary sessions were becoming simply a vehicle for political speeches by the delegates and that it was important to turn to the substantive work of the Convention.

After the Convention, Deanne continued to conduct her proposal factory at considerable strain but with consistent charm and efficiency. The delegates have been extraordinarily well-served and they are, without exception, very appreciative of the service they are getting, indeed, some of them are taking advantage of her good humor and coming in with proposals that are completely off the wall and totally inappropriate for consideration at the Convention. For example, one delegate proposed that the Constitution require that every candidate for Governor subject himself to a psychiatric examination, presumably whose results would be published as part of his campaign material.

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The staff also was busy preparing for the anticipated committee sessions which were likely to take place either Wednesday or Thursday. This consisted in part of simply organizing the proposals by article designation. Also it involved preparing draft agendas for the committees that would initially, at least, try to organize the articles for consideration by the committee in some reasonable order. **[End Side A Tape 4 - Begin Side B Tape 4]** Deanne and I each prepared two of these memoranda for our committees. We still did not resolve the Maya problem, although Deanne and I were increasingly of the view that her work should primarily should be in the background and that we should not place her in a difficult position of not being able to honor her commitments to the Speaker of the House of Representatives. We also did some drafting of the resolutions that were going to be heard on the following day.

June 7, 1995

This was the third consecutive day of plenary sessions. The administrative arrangements to prepare for today's session had been taken over by Deanne and, as a consequence, the delegates each had on their desk at the outset of the session,

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the summary journal from the earlier day, the daily journal and all of the attachments - including the 161 delegate proposals and order of the President assigning them to a specific committees. This went down extremely well and, after a good deal of discussion by Deanne, with others she has reached a decision on a series of issues that will ensure that the historical record of this Convention will be as thorough and as easy to research as is possible. She has learned from the local bar that they will be willing to spend money for CD roms that had the entire proceedings of the Convention on them and in a searchable form. That is one of the many objectives that she has in mind.

The President did announce the other members of the Committee on Organization and Procedures. These officials were pretty much as we had been previously informed. Although some consideration had been given to removing John Oliver Gonzales from the position of Secretary, he did finally win that position. In that capacity, he is supposed to be supervising the Convention's staff but I think that the reverse is more likely to be true. Still reflecting some uncertainty, the leadership decided not to publish the names of the members of

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the four committees at this time. How to assign delegates to committees was the subject of considerable political discussion, and Deanne and I were quite direct in our suggestion that the leadership should try to some extent to accommodate the preferences of those delegates who had supported Dr. Camacho. In particular, we believed it was important for Delegate Manglona to be placed on the committee considering local government and that Dr. Camacho be placed on the Committee considering land alienation and other land rights. Somewhat to our surprise, the leadership accepted these recommendations. In addition, we recommended that they not be quite as blatant as they had intended, namely, assigning each member of the "majority" to two committees and assigning each member of the "minority" to only one committee. As a result of our advice, they did let a few members of the minority serve on more than one committee when they ultimately announced their results. They apparently wanted to spend more time discussing it, so they reserved the decision until after today's plenary session. This turned out to be a wise choice, among other reasons, because it prevented much time from being devoted at the plenary session to complaints by

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the delegates regarding their committee assignments.

After the resolutions thanking the House of Representatives, commemorating former Vice Speaker Mafnas, and various administrative matters, there was an opportunity for various delegates to express their views on the floor. Apparently an article in the *Marianas Variety* had described the Convention as being essentially run by the Governor's "strong men" and this prompted a considerable protest from Delegate Manglona. He spoke with great passion, and seemingly extemporaneously, about the need for unity and encouraging sympathy for the "poor" people of Rota. One gets the sense that Benjamin has been in political life too long; he frequently made mention to his 35 years in politics and his desire to achieve his "dream" that the people of Rota would achieve full and happy integration into the Commonwealth. In fact, as everyone realizes, Benjamin really wants Rota to be conducted and ruled essentially as an independent entity within the Commonwealth with full responsibility for enforcing Commonwealth laws and delivering public services on that island. In any event, there were various other statements, several in Chamorro,

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endorsing the call for unity and some of the more sophisticated members of the Convention were obviously treating this as a waste of their time. Donald Mendiola, one of the delegates that we know very little about, spoke in Chamorro apparently with great humorous effect, based on the laughter that he engendered among the delegates.

Among the speeches, however, were invitations by Joe LiFoiFoi inviting Dr. Camacho to serve on the Land Committee. A similar invitation was made to have Benjamin Manglona to serve on the Local Government Committee. This was well-received and was in fact implemented when the committee assignments were published later that day.

After this plenary session I did participate in a portion of the leadership meeting where they were making committee assignments. When I walked in the room, they basically were discussing assignments in Chamorro and they continued to do that even though I was there, however, they did not exhibit a great deal of interest in where the delegates from the "minority" wanted to serve, although they did seem to permit the women delegates essentially to serve on the committees of their choice. (I heard the next day that Esther Fleming was particularly unhappy with the

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fact that she received only one committee and had wanted to serve on two committees.) On more than one occasion Herman pointed out within the leadership group and to the minority that, if the Pre-Convention Committee had followed the advice of counsel, the leadership would not have the discretion given them by the rules of procedure to assign some delegates to one committee and other delegates to two committees. I'm not too sure that this made counsel any more popular.

What we did agree to in the leadership meeting was that Deanne and would meet with the chairs and vice chairs of the committees as soon as possible to review with them the memoranda that we had prepared and to discuss the time for the first organizational meeting of each committee. We generally managed to talk to each of the chairmen that day and committee meetings of pre-committees were set for the next day, Thursday, and another committee meeting was set for Tuesday, June 13. The meetings with the committee chairmen generally went well; they are a very decent group of people, although with a considerable difference in political experience. For example, Henry Hofschneider who is Chair of the Judiciary Branch Committee, was a delegate in the First Convention,

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has a rather strong personality, and is an able manager of committee meetings. Former Speaker Joe LiFoifoi, Chairman of the Land Committee, also has many years of political experience and an excellent sense of where the delegates are and intend to go. However, the two chairmen of my committees have somewhat less experience - Felix Nogis, one of the four Carolinian delegates to the Convention, who is Chair of the Executive Branch and Local Government Committee, and Tom Aldan, Chair, of the Legislative Branch and Public Finance Committee. As a result of these meetings, I was scheduled to participate in a meeting of the Executive Branch Committee on Friday in the morning and a meeting of the Legislative Branch Committee in the afternoon. Deanne was scheduled to have a meeting with the Judiciary Committee on Friday in the morning and a meeting with the Chair and Vice Chair of the Land Committee also on Friday.

Thursday
June 8, 1995

The President announced that there would be no plenary sessions for a week until Thursday, June 15, in order to let the delegates to concentrate on their committee work.

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I attended a morning meeting of the Committee on Executive Branch and Local Government, chaired by Felix Nogis. Felix is one of the four Carolinian delegates to the Convention. He is an extremely pleasant, well-mannered, delegate who obviously has very limited experience in the political domain.

This Committee includes several members of the majority, including Delegates James Mendiola, Victor Hocog, and Frances Borja. It got off somewhat to a bad start, however, because Delegate Manglona took exception with the proposed agenda that had been prepared for the Chairman by me and circulated to members of the Committee. Delegate Manglona believed that the agenda did not highlight the important issue of local government sufficiently, and suggested that this reflected the biases of counsel. I responded fairly directly to Delegate Manglona, who I have known for 23 years, and suggested that nothing in the proposed agenda indicated either any personal views of counsel or intended to subordinate the issue. Very few members of the Committee came to my rescue at the outset, although subsequently the Chairman and other members did so. During a break in the Committee meeting, Joe De La Cruz and

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Delegate Aldan had a private session with Manglona after which it looked as though the issue had been largely resolved. Increasingly I'm coming to the view that Benjamin Manglona is not any more able to read carefully the materials placed before him and is increasingly aware of the extent to which his positions on local government are not shared by the overwhelming majority of the delegates to this Convention.

Because of the Chairman's inexperience, he often directed the delegates questions to me and it communicated the impression that he was essentially deferring to me excessively. I will try to deal with this in subsequent discussions with him in Committee meetings. When the issues got difficult, however, I was greatly reassured by the constructive participation of Frances Borja and Mary Lou Sirok. For example, the issue of subcommittees came up early in the meeting and was heartily supported by Delegate Manglona. Use of subcommittees, to me, would have significantly extended the work of the Committee, provided for duplication of Committee meetings, and would have made it difficult for me to attend both subcommittee meetings at the same time. After some discussion on this issue, a majority of the

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delegates opposed the concept of subcommittees. There was much reassurance expressed to Delegate Manglona, however, that the issue of local government was of great importance and that, whenever the Committee so desired, the proposed agenda could be altered to initiate the discussion of local government.

Based on this meeting, I was greatly reassured by the participation of Joe De La Cruz in the Committee discussion period. It was obviously very helpful to have him available, during breaks, and otherwise, to speak in Chamorro with members of the Committee. In this instance, he was summoned by Delegate Aldan during a break to help placate Delegate Manglona and it worked out quite well.

Based on this initial meeting, it looks as though the Committee has several strong participants, regardless of their participation in the "majority" or the "minority." Delegate Villagomez will always be a problem, since he fails to listen to the discussion and is anxious to hear himself speak at the slightest inclination to do so.

The next meeting of the Committee was set for the following Monday at 9:00 a.m.. I subsequently

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made arrangements with Delegate Nogis to get together with him in advance of that meeting.

In the afternoon I attended the meeting of the Committee on Legislative Branch and Public Finance, chaired by Delegate Aldan. Although I had also prepared an agenda for this meeting, the session of the Committee turned out to be very brief and nonproductive. Although Tom Aldan is a stronger personality, he also has considerable inexperience in running a committee and really had no sense exactly what he wanted to accomplish in this initial organizational session. The Committee basically followed his suggestion regarding the order of matters to consider, although they altered my proposed agenda somewhat by desiring to take the issue of gambling before they addressed the more wider range of issues raised by proposals with respect to Article 2 dealing with the Legislative Branch. This Committee includes Delegate LiFoifoi and Marian Aldan-Pierce, who serve as Chair and Vice Chair, respectively, of the Committee on Land and Personal Rights. By the time that Marian came in approximately 30 minutes after meeting began, Chairman Aldan was almost ready to call the meeting to a conclusion. There was very little

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discussion, accordingly, of the substance of the issues that the Committee had under its jurisdiction and whether they would desire to solicit expert opinion or have public hearings on some of those issues. Frances Borja is also on this Committee and Delegate Villagomez is as well - one plus and one minus, so to speak.

After the meeting, Delegate Borja drove me back to the Convention headquarters at the Legislature because Deanne was using the car for other purposes. Frances is the daughter of former Senator Olympio Borja, who was a member of the Marianas Political Status Commission and a delegate in the First Convention. Indeed, she looks very much like her father. She is extremely well-educated, fluent in both English and Japanese, and is in the private sector helping to run the family business - which is a substantial one. She has a very practical sense of what is going on and is anxious to consider issues on the merits. She has been designated as the Third Vice President of the Convention, being from the same Senatorial district as the President. (Her automobile is a very nice black Lexus which handles the roads on Saipan extremely well and causes me to miss my stolen Acura Legend.)

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One of the reasons why Frances Borja drove me back was that she had indicated an interest in talking to us about some of her proposals. She was one of the few delegates at the time who had not yet submitted any proposals. I met with her and was joined by Joe De La Cruz. She only had two proposals to suggest, both simple and direct, and seemed somewhat apologetic by her delay in presenting these to us for our review and incorporation in the appropriate form. One of her proposals was addressed to the budgetary process, specifically to eliminate the continuing resolution approach so as to create a threat of discontinuing all public activities and salaries in the event that the Legislature and the Governor had not agreed on a budget at the start of the new fiscal year. Several other proposals had been addressed to this same problem.

Deanne had met with her Committee on the Judiciary and Other Elected Offices on the same day. Her Chairman, Henry Hofschneider, a former delegate from the First Constitutional Convention, is a much more experienced and sophisticated delegate. He was able, according to Deanne, to run the committee session without too much difficulty. He did, however, impose a change in

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the agenda recommended by Deanne, namely, to take up the judicial article first and then turn to the problem of the Washington Representative.

Apparently, he contacted the local office and of the Washington Representative and suggested that the Representative might want to appear in person in Saipan in order to testify on proposals that threatened to eliminate his office. Henry always was very direct in manner.

Friday
June 9, 1995

After the committee meetings on Thursday, most of the effort on Friday and over the weekend was to revise the agendas for the committees, review the proposals that Deanne continued to generate, and deal with other administrative matters. Among the latter, Deanne organized the staff to begin to assemble the records pertaining to the Pre-Convention period in order to turn them over to Archives. Her general theory is that we might as well begin on this archival function in the hope that we will be able to complete it before the Convention is terminated.

I was invited to join the meeting of the Committee on Organization and Procedures held on Thursday. The Committee generally discussed the meetings of the committees, the draft agendas for

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the committee deliberations, and the various requests received for delegates reassignments to committees. This meeting went reasonably well, and I seem to feel comfortable and invited to contribute my views on various organizational matters. I took occasion to emphasize the need for the committees to start work, to slow down (if not stop) the flow of irrelevant proposals, and generally to urge the majority to exercise firm control over the committee meetings. There seemed to be some general responsiveness to this plea, and I subsequently incorporated many of my points in a memorandum presented to the President for his signature. This memorandum outlined the schedule for committee meetings during the following week, admonished the delegates to work hard within the committees, and generally emphasized the need to start turning the attention of the delegates to the consideration of proposed constitutional amendments. Herman seemed generally satisfied with the staff work being done on his behalf within the Convention. Indeed, he certainly should be. He has developed a habit of dropping into our office regularly, sitting down, and generally chewing over the present status of the Convention. He has decided to emphasize the work

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of the committees during the next week and not to have another plenary session until Thursday, June 15. We generally agree with this strategy.

While all the other work is going on, however, Deanne is continuing to operate the proposal factory. Delegates continue to come in to seek her assistance in drafting proposals, which by the time the weekend was over, were approaching a figure of 400 in number. Some good ideas continue to come up in these later stages, although many of the proposals now have become duplicative. The delegates on the whole, are extraordinarily pleased with the service they have gotten with respect to their proposals, and the strategy of getting these proposals out in advance of the Convention beginning has worked reasonably well.

On Friday morning, Bernie had arranged a picnic on Madagaha with the staff to which we were, of course, invited. The picnic went off reasonably well, although Pamela called at the last moment to claim that she had missed the boat to the island. Enterprising as she is, however, Pamela found a way out to the island notwithstanding this problem. Deanne and I might well have gone, although I was stuck in the

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meeting of the Committee on Organization and Procedures and Deanne was busy generating proposals.

Saturday
June 10, 1995

Bernie and I had a meeting this morning with Chairman Aldan of the Committee on Legislative Branch and Public Finance. The purpose of the meeting was to review with him the agenda for the next few meetings of the Committee. I had prepared a brief agenda that addressed the articles on elections, eligibility to vote, and gambling. Tom Aldan is very self-confident and stated that he thought some of these issues that we considered substantial and difficult would be addressed by his Committee in 10 or 15 minutes. He generally approved the agenda that I had developed, although there was some sensitivity when Bernie and I appeared to disagree on the sequence in which issues might be considered. Bernie and I subsequently had a conversation designed to "clear the air" with respect to any tensions that existed between us with respect to his role in assisting the Convention.

Although Deanne and I had planned to go to the health club and have some relaxation time, on Saturday, it never did materialize. She was busy

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generating proposals and I spent the bulk of the afternoon preparing an agenda for the Committee on Executive Branch and Local Government. The weekend time seems particularly precious to use in anticipation of a week full of committee hearings and organizational matters that would make it difficult to have any productive work time. By this time, there were more than 100 proposals relating to the executive branch, and my agenda was an effort to propose a way of dealing with the proposals by way of framing specific questions for the Committee to address. This format seems to have worked reasonably well on paper and the next week will indicate how well it works in practice.

Sunday
June 11, 1995

Today was day that Deanne and I were able to spend a little time in the sun at the Hyatt and in the health club. This took place, of course, after the Sunday morning tradition of eating pancakes at Shirley's Restaurant. Unlike the other patrons, we bring our own bottle of maple syrup which Deanne has certified as authentic from [____/] New York maple syrup. On this particular Sunday, we left the bottle behind us and the waitress, Karen, (a Filipina, of course) ran out to the car from the restaurant to return the

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bottle of syrup to us before we departed from the premises.

After our brief respite, we spent about four hours or so in the office preparing for next week. Deanne was busy doing proposals, reviewing Pre-Convention materials for archival purposes, and generally doing administrative work. I was completing the agenda for the Committee on Executive Branch and Local Government, reviewing the work that Bernie did on an agenda for the Committee on Legislative Branch and Public Finance, and drafting a truly obsequious and sophomoric press release for the President to issue to the media on Monday morning. The idea of the press release was to generally outline the schedule for the following week, to identify some of the issues that the committees would be considering during those sessions, and generally to provide the impression that the Convention, although it was not in plenary session, was nonetheless addressing itself diligently to the work at hand.

Monday
June 12, 1995

Our day began early today. At about 7:15 a.m.. I had a meeting with Felix Nogis, Chairman of the Committee on Executive Branch and Local

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Government, at 7:30 a.m. and Deanne had a series of things that she wanted to do early in the morning.

I had prepared for Felix a detailed agenda for consideration of Article 3, dealing with the executive branch. He was very receptive to the approach when I met with him early in the morning and, after signing the agenda, asked that I duplicate it in sufficient in numbers not only for members of the Committee but also for all delegates to the Convention. Apparently there was some publicity over the weekend during which members of the "minority" complained that they were not made sufficiently aware of the agendas of the various committees.

At 8 o'clock a.m. I joined Felix in the meeting of the leadership. The President had no fixed agenda for the Committee meeting; indeed, it appeared later in the day that he had forgotten to bring explicitly before the leadership the question of holding public hearings on Article 12 later in the week. I had shown him in advance the press release that I had drafted over the weekend and, after reading it, he evidenced his intention to release it to the press. He seemed reasonably pleased with it.

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During the leadership meeting, we discussed the schedule for the next few days, some publicity regarding the Convention over the weekend, the assignment of Delegate Sam Nicholas of Tinian to the Committee on Legislative Branch and Public Finance, and the legal counsel's recommendation that John Manglona be handled to the legal staff. On this latter point, Henry Hofschneider pointed out that neither of the representatives from Tinian on the leadership committee were present at the meeting and that they might take exception to this appointment because of John's family relationships. I emphasized our need for additional legal support, our judgment that John was among the most qualified and diligent of the local attorneys, and that it was important in our opinion to have an additional Chamorro lawyer as part of the team. There was some concern expressed about the fact that neither Justo Kuitugua nor Victor Hocog of Rota were present at the meeting, but it was agreed that we could proceed with utilizing John until those two individuals had been fully briefed about the matter and had agreed to his retention. I suggested that his being hired by us might be used

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with Benjamin Manglona as a political plus, but this seemed to fall on deaf ears.

The first substantive meeting of the Committee on Executive Branch and Local Government went reasonably well. Everyone seemed in reasonably good humor, including Delegate Manglona, who was definitely on his best behavior. There was some excessive reliance on motions to accomplish the business of the Committee and there were the expected technical complexities because of the fact that many of the delegates did not have some of the proposals that were being discussed. However, this was easily remedied by copying those proposals, and the delegates generally in good humor proceeded to address the issues as outlined in the agenda that I had made available to them as approved by the Chairman.

Somewhat to my surprise, the press was present in the room when reached the Committee location some 15 minutes after the scheduled start time for the meeting. One of the early issues was whether to reduce the residence requirements from 10 to 7 years. It had originally be at 7 years in the 1976 constitution, but had been increased to 10 years in the 1985 Convention. I made the point that the legal requirements that had supported the

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7 years in 1976 were even more persuasive today, but the delegates essentially decided to accept the legal risks involved and retain the 10-year residence requirement for the governor. The press was seen as interviewing Ben Manglona on this subject during one of the recesses. Although I was not particularly enthusiastic about the delegates not accepting our legal advice, it seemed to me that it was essentially a political judgment to make and that they had been well-informed of the legal risk involved. As they pointed out, if the 10-year residency requirement was struck down as unconstitutional, the Legislature had the constitutional authority to decide on some other appropriate requirement that would comport with the legal rules.

Other questions that came up during this Committee meeting related to the procedure for compensating the governor and the lieutenant governor, whether the two officials should run on a joint ticket, and some updating proposals that had been made by counsel. The Committee generally was receptive to our updating proposals. They rejected the idea of separate election for governor and lieutenant governor for the obvious reasons. They also wanted the Legislature to be

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required to either accept or reject the compensation recommendation issued by the legislatively established salary commission - certainly a reasonable outcome of this discussion. Joe De la Cruz was seated next to Benjamin, and I was seated next to the Chairman, and this arrangement seems to work out reasonably well. Joe will undertake the responsibility to write the draft sections of the report regarding Article 3 and I am hopeful that we will make progress along these lines.

My general sense of the Committee is that the women members are especially strong and constructive, especially Frances Borja and Mary Lou Sirok who speak less than I would like them to do. The principal problems in the Committee are Delegate Villagomez, who talks too much on frivolous issues, and Dr. Aldan, who is incapable of sticking to the agenda. Benjamin was on his best behavior, very courteous to everyone in the Committee room on this occasion. Tom Aldan is a strong member of the Committee and very supportive of the Chairman and counsel. Juan Santiago, on the other hand, seems to have some inner ear that leads him to an agenda wholly different from the one on paper in front of him and, notwithstanding

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his reputation as one of the Governor's major advisers, seems to come across as possessing a moderate intelligence and even less ability to focus on the issues at hand. He was, however, reasonably complimentary of the proposed agenda and the procedures we adopted at the conclusion of the meeting, therefore demonstrating that we have a strong appeal to people of his intellect and experience.

Somewhat later, I find my way back to the Legislature where I found a note from Deanne to meet her and the President as soon as possible at the Nikko Hotel to have the previously scheduled luncheon with Representative Heinz Hofschneider. We have been encouraged by Herman to eat lunch with Representative Hofschneider in order to get to know him and hear some of his views on land issues. He is a fairly short individual, perhaps five feet four inches, but with obvious intelligence and a high level of energy. Based on the luncheon conversation, his concern about Article 12 relates primarily toward the need for the local landowner to be fully informed of what the local purchaser of the land intends to do with it before the transaction can be consummated. In other words, he would impose on the local

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purchaser an obligation to inform the prospective seller of any financial arrangements that the prospective purchaser has with an outside investment interest. It is unclear exactly what options are available to the owner after such disclosure, but it appears as though Representative Hofschneider would try to eliminate any profit to the middle man through such disclosure by permitting the seller to deal directly with the ultimate lessee or developer. He was very critical of the land exchange program (as many have been), primarily because of the statutory reform enacted a few years ago that insisted that such exchanges be based on an appraiser's evaluation of the properties involved. In addition, he is reluctant to set aside all or most of the remaining public land for public parks or other conservation uses. Although he acknowledges the many abuses in the homestead program, he still thinks there should be some continuation of the program even if land is made available only to those who are willing to pay a more market-oriented sum for being able to develop the property. He seems to join those who believe that homesteads, once granted, should not be allowed to be sold to investors or others.

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After the luncheon, with some delay, I ran off to the meeting of the Committee on Legislative Branch and Public Finance. The meeting had not begun when I arrived some 15 minutes late. This meeting went reasonably well. Chairman Aldan is somewhat more self confident and directive as a chairman than Chairman Nogis is. The members generally worked on the agenda that Bernie and I had prepared, and disposed of three separate articles: elections, eligibility to vote, and gambling. The Committee accepted our various "updating" recommendations and came out with respect to gambling the way we had anticipated. Reports on all three articles can now be prepared for presentation to the plenary session on Thursday, June 15. Bernie was very pleased with the outcome of the meeting and he and I seem to be working better together since our session over the weekend.

Back at the Legislative headquarters, I learned from Deanne and her meeting with the Committee on the Judiciary had gone very successfully. Armed with the chart that she had provided (what else?) the Committee moved systematically and rapidly through the various differences between the two versions of a judicial

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article that had been previously circulated and discussed. In most instances, the Committee came out in support of the Supreme Court's version of the article rather than the Legislature's. This, too, appears to be an article as to which a report can be submitted for consideration in the plenary session on Thursday, June 15. This marks a very, very substantial move forward. (Deanne told me later that the Carolinian delegate on the Committee commented that the Carolinian community was having an extensive judicial article and other proposals drafted by some unnamed lawyer. He was generally twitted by the other members of the Committee, who emphasized they had been able to get their proposals in on time and that it was unlikely that his proposals could be considered because of the pace at which the Committee was moving. He took this advice in reasonably good humor, according to Deanne.) She is very complimentary of Chairman Hofschneider's skill and charm in persuading his Committee to move ahead promptly. She also reported that John Manglona, the newest addition to our legal staff, performed quite responsibly. It looks as though he will be accepted as a member of the legal team, even though some initial reservation was expressed

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because of his family relationships to the Manglonas of Rota.

We had a staff meeting to conclude the day, or at the afternoon, at which reports regarding the various committees were made. Joe and I disagreed about the outcome of a critical issue in the Executive Branch and Local Government Committee, which only demonstrates to me that having two lawyers present is probably better one. Deanne and the others discussed the general format for Committee reports to the plenary session. People seemed generally pleased with committee substantive work, and we will see how it plays in the press and among the delegates once they convene near the end of the week in plenary session.

Tuesday
June 13, 1995

The Marianas Variety today carried Herman's press release verbatim as the full story recounting the past and contemplated activities of the Convention. According to Herman, he was approached by Ted Mitchell and asked whether Herman's reference in the article with respect to "tempers running high on Article 12 issues" referred to Ted. Herman was characteristically bland and nonresponsive but told us later that Ted

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could assume whatever wanted to. We decided there was an old Chamorro saying to the effect, "if the shoe fits, wear it."

The Committee on Legislative Branch and Public Finance met today to begin its work on Article 2 (legislative branch). They worked from the lengthy agenda that Bernie and I had prepared for . . .

(End of Side B Tape 4)

JOURNAL OF HOWARD P. WILLENS

RE: CNMI THIRD CONSTITUTIONAL CONVENTION (1995)

JUNE 13-26, 1995

Tuesday
June 13, 1995

I am in the midst of a discussion of the meeting of the Committee on Legislative Branch and Public Finance on Tuesday, June 13, 1995. The Committee first discussed the issue as to whether it wanted a part time or full time Legislature. Discussion of this issue was somewhat less than satisfactory, since it was very difficult to really spell out the differences between these two alternatives. When finally asked, I made some reference to the legislative information that I had obtained from Howard Mantel and emphasized that one of the principal ways to ensure a part time legislature was to pay the legislators a very modest money, for example, \$15-\$20 a day. Both Bernie and I made reference to the fact a relatively few states, principally in the northeastern part of the United States, continued to carry out this tradition of part time/citizen legislators. There was a useful discussion of "professional" legislators, the dependence on staff, and other relevant considerations. But on the whole, the Committee seemed to ready to accept a full time legislature although they were

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determined to embark on a substantial programming of downsizing, and, we hope, a reduction of costs.

The Committee then turned to the series of questions identified in our agenda with respect to the size and composition of the two houses, qualifications, length of terms, and possible term limits. They reached a decision on all of these important issues in an amazingly short period of time, which concerns me to some extent. They had no trouble, for example, in wanting to downsize the House of Representatives from its present figure of 18 to 11, 12 or so members. They agreed they wanted to be briefed by counsel as to the legal principles that would have to be followed to guide their determination on this subject. They also agreed without any difficulty to reduce the Senate from 9 to 6 and assign to the Lt. Governor the new responsibility of presiding over the Senate and breaking ties in the event that was required. They also had no difficulty in concluding that the Northern Islands should be treated as part of Saipan for all purposes.

There was a somewhat more interesting decision about qualifications. The members of the Committee take a very strong view that once a candidate is convicted as a felon, he or she is

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forever barred from holding public office even if a pardon has been granted. The younger members of the Committee are particularly hostile to the concept of redemption and rehabilitation.

With respect to the age qualifications, eloquent presentations by the two members of the Committee under 25 were sufficiently persuasive to [*] keep the present age limit at 21 rather than increased to 25 as proposed by on or more of the delegates. The question is still outstanding about the members of the Senate, where there is a proposal to increase the age requirement from 25 to 35. Bernie and I had to wrestle with apparently conflicting sections in the Constitution as to whether the President of the Senate, who can assume the position of acting Governor under a very rare set of circumstances, necessarily must have the same age qualification as Governor, namely 35, and does this provide a sufficient reason for increasing the age minimum from 25 to 35. There seem to be no particular enthusiasm for revising the residency requirements for the legislators, fortunately.

With respect to length and number of terms, the Committee members also readily voted to increase the House term to 4 years and the Senate

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term to 6 years. There seems to be some sense that this effort will perhaps reduce the expenses of campaigning, or at least the preoccupation with running for re-election, and there is a vague hope that a longer term might encourage a higher quality of candidate to run for office.

On the much debated topic of term limits, the Committee voted for a limitation of 2 terms for the members in each house. This debate really was not very illuminating and seems, in part, somewhat against their sense of needing a full time legislature. We may hear more about this as the topic gets reconsidered in the Committee and on the floor of the Convention.

Having addressed these very substantial terms, it was agreed that at the next meeting of the Committee, Bernie would make a presentation regarding the one-person/one-vote rules, present the relevant data to the members, and advise about the various alternatives available to them regarding the size of the House that might be relatively defensible against challenge under the equal protection provision of the U.S. Constitution.

The Committee on Executive Branch and Local Government also met on Tuesday. The principal

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subject of this discussion was Section 9 of Article 3. Two broad areas were discussed, the first relating to the processing of the budget and the problem of not having a budget in the absence of prompt agreement between the Legislature and the Governor. The second question was raised by Section 9b regarding the delivery of an annual report by the Governor to the people through the Legislature.

With respect to the first subject, the discussion was extended but still somewhat disappointing. Many of the delegates in the Committee and, indeed, in the Convention seemed determined to do something to compel the two branches of government to reach agreement on a budget for the fiscal year in a timely fashion. The experience here in the Commonwealth has been that for several years there was no official budget and the government operated under the continuing resolution approach that's specifically provided for in the Constitution. Numerous proposals were prepared to delete this provision from the Constitution. Other proposals would provide that, if the Legislature did not act within a fixed period of time, the Governor's proposed budget would become effective.

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After a fairly desultory discussion of this, the members of the Committee ultimately deferred to Tom Aldan, who served several years ago as Director of Finance. Tom generally has a fairly compelling and persuasive manner. He more or less persuaded the other members that there was no problem here that could not be cured by a modest proposal. He had such a proposal to put before the members of the Committee and, indeed, it seems to me as though it would have no beneficial effect whatsoever. It would operate to restrict appropriations only if the anticipated budget proposed by the Governor included revenues less than had been available during the preceding year. It is most unlikely that such a budget would ever be presented by a Governor in the Commonwealth irrespective of what the real financial facts might be. It is my hope that the Committee will come back and revisit this, perhaps if useful testimony is presented on this subject at public hearings that the Committee may have next week.

After the committee meetings and a staff meeting, considerable effort was expended toward preparing draft reports of what had been acted on and generally working on new proposals. We did prepare reports on the three articles that the

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Committee on Legislative Branch and Public Finance were prepared to review and present to the Convention at its plenary session scheduled for Thursday, June 15. There was a good deal of confusion about the format, and there was some difficulty in getting the pieces of papers produced. Ultimately I took the materials* from Bernie and wrote the three reports myself. That went reasonably well. In addition, there was a need to begin drafting the sections of the committee report for the Committee on Executive Branch and Local Government. Joe took the initial chore of doing that. He also had been asked to write an opinion on whether the Convention delegates enjoyed some privileges of immunity, which would permit them to liable or slander their fellow delegates without risk of legal sanctions. (This was the request that Dr. Camacho made of me a few days earlier.)

Deanne was busy preparing for the public hearings on Article 12 scheduled for Friday, June 16. After the hearing notice went out, she prepared a detailed summary of Article 12 issues. This was circulated on Wednesday (or perhaps Thursday) to various lawyers** on the island and others who had expressed interest in the hearing.

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It took some of the lawyers quite aback. We bumped into Rex Kosack at Dan's Coffee Shop at lunch on Wednesday, where Deanne showed him the issue list and he continues to think that he has weeks within which to submit his proposals, but our entire strategy is to compel him and others with interest in the areas to make their proposals as quickly as possible so that the Committee and subsequently the Convention, has the time within which to evaluate them and make specific and defensible recommendations for amending Article 12.

Wednesday
June 14, 1995

I attended a meeting of the Committee on the Legislative Branch and Public Finance today. This was the day on which the Committee was presented with the draft reports regarding Articles 7, 8 and 21. The reports with respect to Article 7 and 8 dealing with fairly technical and updating subjects, won the approval of the Committee without any difficulty. There was a useful discussion about gambling, where the issue was raised as to whether the Committee wanted to, by constitutional amendment, forestall the legislature from amending current laws so as to expand the gambling activities of a traditional

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nature that are currently permitted. The Committee made clear its intention to do precisely that, and we indicated that we could prepare language to accomplish that effect. As a result the report regarding Article 21 was changed before it was distributed to all the delegates for consideration at the plenary session set for the following day.

After disposing of these three reports, Bernie made his presentation on equal protection issues and case decisions. This was extremely well-done and well-received. There were a few exceptions, however, particularly from Delegate Aldan (Dr. Aldan) and young Delegate Gonzales. Both made speeches to the effect that they felt that the 14th Amendment was being imposed them by the United States Government and that that was unfair to the local people. Young Delegate Gonzales was particularly offensive on the subject, unable to recognize that the legal principles were designed to benefit local citizens as well as others and that, if he wanted to be relieved of those pressures, he simply had to make the very difficult political judgment of not allowing Tinian and Rota to each enjoy the benefit of a single representative. It is clear that no

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member of the Committee wants to undertake that particular political hurdle. Notwithstanding these modest dissents, all the other members of the Committee finally agreed to recommend a House of Representatives of 13 members, with 11 for Saipan and 1 each for Rota and Tinian. This size, according to Bernie, stands a very good chance of being sustained against challenge under one-person/one-vote issues. However, it does require a positive case to be made as to why Tinian and Rota should each have the benefit of a single representative. After some further discussion generally in this area, we adjourned the meeting, leaving the financial aspects of the Legislative Branch for the next meeting.

We spent a good deal of time on Wednesday preparing for the plenary session, including the voluminous and numerous pieces of paper that had to be prepared for consideration by the Committee on Organization and Procedures in the morning before the plenary session was held. In particular, we spent time with the President, who wanders around to our office from time to time, discussing the schedule for the next week or so. Also on the schedule I proposed two day visits to

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Rota and Tinian for public hearings on those islands.

That evening we were invited, along with the entire legal staff to Joe De La Cruz' lovely house for drinks and appetizers, which were sufficient in quantity and variety to comprise an entire meal. The guest of honor was a Senator from the Legislature of Hawaii, and the Vice President of Palau, who never showed up because he was watching a baseball game pitting Palau against Guam. Deanne and I spent a couple of hours there, including watching the Chairman perform as the interviewee on the Jon Anderson talk show. I had prepared earlier in the day a set of 10 or 11 questions for him to consider, had reviewed them briefly with him, and he did fine. He does have a certain bland, passive style that generates some considerable impatience. In fact, Jon Anderson as the interviewer seemingly was so anxious for Herman to answer the questions that Jon would often would answer the questions that he had posed himself. Most of the calls from the audience related to Article 12 issues. The only animation exhibited by Herman during the interview which we watched from Joe's bedroom, was when he was asked how he regarded the legal staff. He responded

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enthusiastically: "They are great." That brought many cheers from the audience in which I was a member. And we thanked him for it the next day. Actually we have had more social occasions in the month or so we have been here working on the Convention than we had during the four months previously. Joe De La Cruz and his wife are particularly gracious host and hostess and we now have received invitations to numerous confirmations, baptisms, and rosaries commemorating the deceased. It is hard to see how much work is done in a community of actively practicing Catholics.

June 15, 1995

Today was the day of a scheduled plenary session. After much preparatory work, including the provision of detailed cheat sheets by Deanne to guide the dialog of the President and the Floor Leader, the plenary session was severely truncated because of the death of Dr. Camacho's mother. After an introductory statement and the presentation of the Convention's resolution to the widow and family of the recently deceased Vice Speaker Mafnas, the Convention was scheduled to adjourn. Unfortunately, the President recognized Delegate Aldan who gave an impassioned speech in

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Chamorro to the effect that the Convention was ignoring the extraordinary intellectual talents of himself and the two other medical doctors in the Convention. Apparently Dr. Aldan went out of his way to suggest that anyone without a medical degree was not very well equipped to handle the complexities of this Constitutional Convention. Based on his performance to date, I would suggest that the contrary proposition was more supportable. In any event, he severely antagonized many of the delegates in the Convention, and I heard later that Juan Tenorio, in particular, accosted him severely in the chambers after the session concluded.

Because of the unexpected adjournment of the plenary session, it left the staff with some time to consider where it was and plan for future committee meetings. The most important planned session was the scheduled public hearings on Article 12, the land alienation provision in the Constitution, set for the next day, June 16, 1995.

It was on this day that I heard, either informally or otherwise, that the Supreme Court had appointed me as an Amicus Curiae in the pending case challenging the apportionment of the Commonwealth's upper house under the terms of

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Section 203(c) of the Covenant. This apparently had its reach in Deanne's suggestion to Justice De La Cruz.

June 16, 1995

Today was the day of the public hearings on Article 12. Deanne sat on the podium next to her Chairman, Joe LiFoioi, and remained silent for most of the day until finally stimulated to respond to questions, protect the delegates, and generally harass some of the lawyer witnesses. The hearing went on from approximately 9:00 in the morning until sometime around 4:00 in the afternoon, completely fatiguing the delegates and those few people in the audience who remained. The featured speakers were Ted Mitchell and Rex Kosack; both presented their widely different arguments with considerable force. Rex was by far the more professional and civil of the two. Ted apparently cannot address this subject, or perhaps any other subject [**recording lost a few words here**] who disagree with his positions. He apparently numbers among the delegates on the committee, however, a few who take everything he says as authoritative and is, therefore, a force to be reckoned with. By scheduling the hearings and conducting them in the way in which they were,

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Deanne and her committee successfully achieved our principal objective - which was to flush out of the legal community and elsewhere, any specific proposals that people wanted the Convention to consider with respect to Article 12. They all solemnly swore to submit their written and specific proposed amendments by Wednesday, June 21. I stayed only to hear most of Ted's statement and his initial responses to questions.

I continue to wonder what kind of specific amendments he will offer that will, in his opinion, make Article 12 less than dead words on a page, as he claimed. He was enormously abusive not only of practicing lawyers (and their clients) who opposed his view but also with respect to the recent decisions of the Commonwealth Supreme Court and those of the Ninth Circuit that had rejected his arguments. I expect that whatever personal relationship we used to have will be completely disintegrated by the time I file my Amicus brief in the pending Supreme Court case where he represents the plaintiff seeking to overturn as unconstitutional the provision in the Covenant mandating equal representation in the Senate for the islands of Tinian, Rota, and Saipan.

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We had expected to have Committee meetings of both the Executive Branch and Legislative Branch Committees on Friday, but the length of the public hearings on land and the desire of all delegates to participate resulted ultimately in the cancellation of both committee meetings. The Legislative Branch Committee, however, tried to make amends by scheduling the first Saturday meeting of a Convention committee.

I had learned about the cancellation of the Thursday session at the COP meeting early Thursday morning.

Saturday
June 17, 1995

This was the first Saturday meeting scheduled by any of the Convention committees. The committee involved was the Legislative Branch and Public Finance Committee. It was extremely well-attended and the members of the Committee, plus the few additional attendees were in extremely good humor. Many of them had tee-off times on the local golf course shortly after 11:00 and were hoping that the meeting could be done by that time.

It was a very productive meeting in the sense that it addressed the various financial questions with respect to the cost of the Legislature. The

cost of the Legislature in recent years has been slightly under \$5 million, representing the total of the \$1.2 million for salaries and benefits, the \$2.8 million provided in the 1985 Constitution, and the additional \$800,000 provided for the Legislative Bureau. There is a general consensus in the community and in the Committee that this is an excessive amount of money for a Legislature of 27 legislators. It becomes even more so in view of the proposed downsizing of the Legislature recommended by the Committee to a total of 19 legislators.

After some discussion, the Committee initially decided to go with an approach that would provide a sum for the Legislature that would be some percentage, say 2 percent, of the actual budget of the Commonwealth to be used for legislative expense purposes. It was contemplated that this would cover all of the items summarized above. It was proposed by the Committee that this amount of money would pay the salaries and benefits of the legislators, and that the remainder of the available sum would be divided evenly between the Legislative Bureau on the one hand and the office expenses of the individual legislators on the other. Bernie and I worked out

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the figures over the next few days and the whole approach raises some problems.

There really was no substantial movement in the Committee to abolish the Legislative Bureau. The Committee is very concerned with the uses to which the legislators put public funds and there seems to be a general readiness to try to abolish the prolific hiring of so-called "community workers." I learned from someone that the number of community workers hired by both houses of the Legislature ranges in the 35-40 number and that very little work is done by any of these individuals. It essentially confirms Deanne's view that employment in a government job is equivalent to having a homestead and is simply a way toward a very remunerative retirement. The community workers are the ones who handle the canopies, perform constituent services, and generally run errands. They typically have no secretarial or other skills that could be put to use to help the Legislature accomplish its basic legislative task.

There was an interesting discussion as to the proposal designed to abolish so-called "gratuities" paid by legislators to their constituents. There is widespread acceptance of

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this practice, although some debate as to whether it truly is "cultural" in nature. Several members of the Committee suggested that it was not. On the other hand, they (and I) recognize that one could not truly prohibit by constitutional provision the freedom of individual legislators to make gifts to their constituents out of their salaries or other personal funds. What the Committee is trying to prevent, however, is use of funds designed for office expenses to go into these constituent or political uses. One way to accomplish this, of course, is to substantially reduce the amount of money each legislator has for running his/her own office - perhaps no more than would be needed to hire one secretary and permit an occasional attendance at an international conference. If this were the approach followed by the Committee, then the significant amount of money that has otherwise been used for these purposes by individual legislators could go into a significant increase in the funding of the Legislative Bureau.

There is general desire to have the legislator be well-staffed with lawyers, economists, and other professionals who would help the Legislature do its job. There also seems to

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be a desire to make certain that the Committees are well-staffed - a point that was made by Ben Fitial during his appearance at the seminar a few weeks ago.

In any event, the Committee deliberations were good-humored, thoughtful for the most part, and the members felt that they had accomplished a significant day's work as they left for the golf course. They were particularly enthused by the fact that, during a 10-minute recess, they huddled together in the lobby of the building - munching the sweets that are always available - and rapidly reaching a compromise that they thought was a creative burst. So far as I'm concerned, I would prefer a bare bone cap on expenditures in the Constitution with some protection against inflation. The issue for me is how hard to encourage the Committee to reexamine this already rejected alternative.

The other commitment we had on Saturday was to meet 3 o'clock with Bill Blair, a lawyer from Guam who used to practice with Paul Lawlor. Bill represents Duty-Free Shoppers and has worked on Article 12 issues for a decade or more. He was anxious to talk to us and Deanne and I sat with him in the lobby of the Hyatt Hotel for more than

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two hours as he commented on the summary of issues that Deanne had prepared for the Article 12 hearings on the previous day. His comments were thoughtful and very useful. He was especially appreciative of the opportunity we gave him to present his views. By the end of the session I was nearly asleep on the lounge at the Hyatt.

The last thing we had to do on Saturday was attend a party to celebrate the christening of a grandson of Herman Q. Guerrero. Herman Q. is one of my former colleagues from the Marianas Political Status Commission and an individual who has been extremely friendly with us. It was a wonderful party, attended by a hundred fifty or individuals. We generally have learned about these Chamorro parties that the host and hostess generally cook for approximately 2-3 times as many people as they invite. It is generally the practice for families to hold at least one of these massive parties during the year and they make enough food not only for those individuals that are brought along by those actually invited but also to enable the guests to take home a substantial food to feed their families for the next day or two. The buffet have such a wide range of dishes, mostly meats and fish, that it's

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virtually impossible to take a sample of everything on your dish. At this particular party, there was a whole cooked pig, very large fish, ham, beef, multiple forms of chicken, several local dishes, as well as a very lavish dessert table.

We happened to sit with many of Herman T. Guerrero's relatives. Herman T. Guerrero is probably a nephew of Herman Q. or something close to that. We met Herman T. Guerrero's father, a man of 79 who was the founder of the famous Herman's Bakery on the island that was started with the encouragement of the Naval Administration shortly after World War II. It was the only bakery on the island when I first came to Saipan in the early 1970's. Deanne spent some time talking with both a brother and sister of Herman T. Guerrero. The host, Herman Q., insisted on taking me around and introducing me to all the dignitaries on the island. Several of the younger people that we met were students in the United States and most of them appeared to plan to return to Saipan after completing their college education. In any event, it was a very pleasant evening and at the time we were scheduled to attend another such evening at Chairman LiFoifo's

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house on Sunday evening. As it happened, we did not make that particular social commitment.

Sunday
June 18, 1995

Today Deanne and I spent most of our time in the office working on various projects. In particular, I spent a good deal of time on Sunday reviewing material and trying to think through the Amicus brief in the Supreme Court case. I had the occasion from time to time to raise certain issues with Deanne and on the whole am gradually coming to some sense of what I want to try to accomplish.

We went out to the airport early in the morning to meet Sandy Fentress, Deanne's secretary, but her plane was two hours late. Alisha Guerrero was also there armed with the keys to Sandy's future apartment, and the three of us went out to breakfast together because of the plane's delay in arriving. Alisha is an extremely friendly and competent woman, very well-connected on the island, and a loyal colleague of Herman T. Guerrero's for more than 10-15 years. She basically both mothers and sisters him and reports that her husband frequently asks whether she is married to Herman T. Guerrero rather than to him. There's not much serious risk of this involved, since Herman T. Guerrero, the President of the

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Convention, is gay - a most unusual situation in this very macho community. In any event, Alisha is a big supporter of ours, and is the person to whom we look for prompt reimbursement of our various expenses.

Sandy did bring in the documents that she had secured from my house at the last moment before her departure. I reviewed the documents on Sunday and found there some extremely probative materials that I had not recollected that bear directly on the issues on the case. Both the parties and the Court will be somewhat surprised by my factual submission and the interesting legal question is whether there is going to any objection to those materials being presented to the Court at this late date.

We got so involved in our work and felt so overwhelmed that we continued working to about 7:30 or 8:00. At that point neither of us was particularly enthusiastic about going to another Chamorro buffet, so we went home and had a quiet dinner together. We were looking forward to an extremely busy next week.

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Monday
June 19, 1995

There was a plenary session today, and it was expected that the delegates would consider for the first time recommendations from the committees. The first three reports came from the Legislative Branch and Public Finance Committee and dealt with eligibility to vote, elections, and gambling. Only the last of the three was expected to be particularly controversial or of interest to the media.

It was a reasonably good first plenary session for this purpose. Deanne had essentially prepared notes for all the delegates to provide them with a script from which to read. This worked on most occasions, but not all.

In advance of the plenary session, I met with the Committee on Organization and Procedures for breakfast at the Hafadai Hotel. Marian Aldan-Pierce ultimately picked up the bill. The meeting was, as I described later, a "circus." The approximately 12 members of the Committee were there; several conversations went on at the same time; there was barely enough room on the table for the variety of papers that everyone was carrying with them. I had Deanne's various procedural notes and other instructive guides to review with the Committee.

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They seemed as much interested in discussing the schedule for the next week as they were the issues more immediately at hand and so there was some considerable discussion with respect to the proposed public hearings in Rota on June 29 and 30, and the committee meetings to be scheduled for earlier that week. The Convention is planning to take a recess from July 1 through July 4. Because of the confusion and setting for the meeting, it was especially difficult to get anything done. Herman T. - no matter what his strong virtues may be - is not a very effective manager of meetings of any size. But ultimately people thought that they had reached sufficient agreement on what had to be decided so that they then turned their attention to eating from the extremely unpleasant buffet.

Going back to the plenary session, the Convention finally did manage to resolve itself into a Committee-of-the-Whole. Justo Kuitugua, in his capacity as First Vice President, presided over the Committee-of-the-Whole. I sat next to him on the podium armed with Deanne's ten pages of instructions as to how to run a Committee-of-the-Whole. The instructions provided that whenever the presiding officer was confronted with a point

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of order or a procedural issue that he didn't understand, he was to turn to counsel, ask for advice, and then state "so ordered." This places a considerable burden on counsel, many of whom have not looked at procedural rules since their days in the high school student council.

With respect to substance, there were difficulties both with the report on eligibility-to-vote and the report on gambling. With respect to the first, questions were raised as to why the Committee had decided not to deal with this section in the Constitution. References were also made to pending legislation in the Commonwealth Legislature and recent court decisions on the subject. The Committee Chairman undertook to look at these matters further. With respect to gambling, the debate was quite confused. The President, who relishes his position when can sit among the delegates rather than preside, asked some questions designed to confuse and place into doubt whether the certain social forms of gambling, like card playing at wakes would be prohibited under the new provision. There was considerable question as to why the proposed amendment focused on "casino gambling" rather simply "gambling." There seemed to be

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considerable desire among the Convention delegates not to intrude on various forms of social gambling even though many of them assumed that such forms of gambling were presently illegal under Commonwealth law. I tried to make the point that nothing in the proposed amendment was designed to change either the law or the enforcement practices in the Commonwealth that presently regulated such matters. I do not think I was very successful in communicating this point of view. There also was some difference among the delegates as to whether, in fact, they wanted to expressly sanction forms of gambling that were, under present law, illegal, even if they were customary among the people. In any event, the discussion got so confused that it was quite clear that the matter should not be voted on for first reading purposes during that session.

As I think it worked out, the two easiest reports were set down for first reading and vote at the following plenary session (set for Thursday) whereas the Committee was going to reconsider what to do with respect to the gambling issue and decide whether it wanted to change its recommendation or its report with respect to it before the matter was considered further by the

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delegates. So, on the whole, it was not a sterling performance, but it was the first plenary session to consider substantive recommendations and as such taught us all about the difficulties one could expect to encounter.

There were really no other substantive or procedural issues of importance that came up during the plenary session.

On the afternoon of Monday, there was a meeting of the Committee on Executive Branch and Local Government. The Committee picked up on its agenda and began with the question of the Governor's emergencies powers. The principal discussion here revolved around the definition of "calamity" which the Governor had invoked recently to justify certain actions with respect to the water situation on Saipan. There was a general feeling that the term "calamity," which had not been defined by the Legislature as it was required to do by the 1985 Constitutional amendments, did not fit this particular problem - no matter how important it might be to the citizens and voters on Saipan. Benjamin Manglona was particularly useful in explaining some of the issues that were presented to him during his tenure as Lt. Governor when he was asked to sign emergency executive

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orders under this section of the Constitution. In any event, counsel was ultimately asked to look for an appropriate definition of "calamity" and propose some resolution of the matter for the Committee members. The Committee then turned to the interesting question of the Office of the Attorney General and, specifically, whether it should become an elected office. There were many proposals on this subject submitted to the Convention, as well as many other proposals dealing with the qualifications of the Attorney General. The conversation was a reasonably good one with delegates hitting on the principal reasons both for and against this proposal. There certainly is an overwhelming desire to have more competent and independent-minded legal advice for the people of the Commonwealth that seemed to have been provided in recent years, at least, by people who held that position. At the same time, there was concern about the reasonably limited supply of qualified local lawyers and some uncertainty as to whether those most qualified among the local lawyers would be inclined to run for this political office. We discussed the state experience to some extent. At the end of the conversation, opinion seemed reasonably divided on

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the subject, but, rather than take a vote, the members of the Committee decided to put the matter off until they held public hearings on the question.

The next subject considered at the meeting was the issue of the Public Auditor. This was a particularly unsatisfactory discussion, since there seems to be considerable confusion about the functions of the office, dissatisfaction with the way in which its recommendations are handled by the Attorney General's Office, and some interest in exploring consolidating the two offices.

Actually I'm dictating this particular report while driving to and from the Dandan offices for a meeting of the Committee on Organization and Procedures. Nearly two thirds of the way there, I was buzzed by Deanne and told the meeting was back at the legislative building. The drive is lovely and my driving by and recording was just witnessed by a substantial cow who was ... tethered about three feet from the two-lane road.

[END SIDE A TAPE 4]
[START SIDE B TAPE 4]

Tuesday
June 20, 1995

I've been able to spend very little time on my Amicus brief during the past few days. I did do a short draft of the factual section of the brief and have an outline that I'm reasonably

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satisfied with, but basically the events of the day and the burdens of the Constitutional Convention, plus the meetings and the miscellaneous activities, fatigue me so considerably that I find it difficult to work at all in the evening. I'm looking for three or four hours of reasonably free time within which to draft some of the remaining portions of the brief. I did, however, manage to go to the Archives today, and satisfied myself that most of the documents on which I intend to rely in the Amicus brief are, in fact, found on microfilm in the Archives. We donated these microfilm tapes near the end of our sabbatical stay in Saipan in late 1993 and, as a result, I can plausibly argue that all the materials on which I'm relying were available to the parties (not to mention the Court) if anyone had the knowledge and the diligence to pursue that source of historical material.

The meeting of the Legislative Branch and Public Finance Committee today consisted primarily of revisiting some of the financial issues that they had discussed at their last meeting. Bernie had conducted some additional research and prepared two memoranda, after several drafts, in

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which he tried to lay out the implications of the proposal for financing the Legislature that the Committee had adopted so enthusiastically the previous Saturday. Frankly, the concept of using a percentage of Commonwealth collections has always left me somewhat unenthusiastic and the working out of the formula as contemplated by the Committee members tends to confirm my bias. On the other hand, they seemed to be still enamored of that approach. In addition, Bernie and I had been lobbied consistently by Maya, Lillian Tenorio (one of the delegates who has served in the House of Representatives for many years as an assistant), and the head of the Legislative Bureau. I'm still not persuaded that the Legislature could not reasonably be cut in funds by approximately 30 percent without any serious impact on their ability to perform their legislative mission. I am now, however, persuaded (perhaps out of weakness) that we might as well continue to have a Legislative Bureau to assist the Legislature that is mandated by Constitutional provision. We received a very decent memorandum on this subject from Howard Mantel.

After dealing with these issues, the Committee did make some modest progress down their

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agenda. In fact, under Chairman Aldan's leadership, the Committee is well within reach of concluding its initial review of Article 2 relating to the legislative branch in only one more meeting. It seems uncertain to me that we can present Article 2 to the plenary session before the trip to Rota scheduled for July 29 and July 30.

The meeting of the Executive Branch and Local Government Committee proceeded somewhat more slowly. Felix Nogis, a member of the Carolinian group of delegates in the Convention, is a very mild-mannered and pleasant man. However, he has very limited experience and some considerable insecurity about trying to chair the meeting. As a result, Thomas Aldan, who is Chairman of the Legislative Branch Committee, is sort of increasingly cruel in his efforts that Felix stays to the agenda strictly and makes sure that nothing is discussed without a motion on the floor of the Committee. We spent a fair amount of time on the attorney general and public auditor issues since the delegates in the Committee had apparently wanted to revisit the question of having an elected rather than an appointed attorney general. When a straw vote was actually taken on this

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issues, the Committee was almost equally divided. It will be interesting to see what, if any, attention they give to the testimony to be presented at the hearings run by the Committee on Tuesday, June 27. I have spent a fair amount of time to get the notices and schedules for these hearings put together.

Certainly, it's fair to say that the delegates have been without exception extremely friendly to Deanne and myself. Their cordiality and generosity of spirit extends as well to the secretaries and assistants working with us. In fact, they are very insistent that we make certain that everyone is invited to the many buffets and celebrations that characterize the life on Saipan. On Tuesday night, there was a Carolinian-sponsored event to which we were all invited; Deanne and I decided that we would not go after working in the office till about 7:30. We also had planned to meet Paul and Bill for dinner, on the occasion of Bill's daughter's visit, but it turned out that this was a confusion of plans and as a result we ate by ourselves at Dan's Coffee Shop.

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Wednesday
June 21, 1995

For reasons unknown to me, I woke up extremely tired and grumpy and stayed in that mood all day. I have been getting up at about 5:00 or 5:30 every morning and today, as yesterday, I used the time to place a call to Washington, D.C. with respect to pending matters relating to the stolen automobile. This time I spoke to my temporary secretary about the whereabouts of the missing automobile title. Once getting up at that time in the morning, however, it virtually ensures that I am ready to retire at about 4:00 o'clock in the afternoon. The day was full of committee meetings and, to a considerable extent, wasted effort. I did spend some time in the morning when we arrived at the office (about 7:10) to prepare for the COP leadership meeting at 8:30. I wanted to work through the statements to be made by Chairman Aldan when he returns to the plenary session tomorrow and re-presents two of the three reports on the proposed amendments that he raised first on Monday. I thought I had successfully worked through the gambling issue but, after Bernie spent some time with it, I realized that I had overlooked one significant point. When I reviewed this subsequently with the Committee, they basically directed us to change our position on an

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amendment to Article 21, so as to make certain that the Legislature would have no authority whatsoever to authorize any kind of gambling if this constitutional amendment were enacted.

The leadership meeting left me in a bit of a grump. Herman T. (our President) derived considerable pleasure from pointing out the inconsistencies between certain scheduling documents that we had prepared. In part this was due to changes in the Committee assignments that had been negotiated by the Chairman, but in truth it was based, in fact, on the fact that Deanne and I had independently two separate documents and I had not reviewed them with sufficient care. Also, Herman, to whom I had given the documents some 16 hours earlier had apparently not decided to focus on them and identify the inconsistencies until he was in the meeting. I think it is fair to say that Herman basically cannot work for more than ten hours on a day, if that much, and cannot be depended upon to really look very carefully at matters. In any event, I let him know after the meeting that I wasn't particularly satisfied with being embarrassed in front of the leadership group.

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One of Deanne's Committees, the one on Judicial Branch, Education and Other Matters, was conducting hearings today on the education issue. The hearing seemed reasonably well attended and I learned subsequently that the public school system was requesting a fixed budget of 45 percent of the Commonwealth's revenues and the Northern Marianas College was requesting another guaranteed 6 percent. There is an incredible amount of money wasted on this island and in this community with respect to education. Deanne and her Committee are exploring reasons to try to get more value for the dollars expended.

As a result of the hearing of the Committee on Education the meeting of the Committee on Executive Branch and Local Government was postponed until 5 o'clock in the afternoon. At that time, it was guaranteed to be a very short meeting. That proved to be the case. As a result, I had some more time to spend on the revision of the materials for the plenary session, to revise the schedules and notices required for the Rota public hearings, and to do other ministerial tasks. I did try to slip in about 30 minutes to review some materials relating to the Amicus brief.

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The meeting of the Committee on Legislative Branch and Public Finance went reasonably well in the Senate chamber. We had never had a meeting in this room before and it is really somewhat more congenial to a committee meeting than the House chamber, because the members of the Committee can sit around a common U-shaped table and the Chairman and counsel can sit in the chair usually reserved for the presiding officer. The Committee essentially completed its agenda on Article 2. The President attended the meeting, as he has the other Committee meetings in recent days, and raised a couple of issues close to his heart. He's especially offended by the extent to which the Legislature can pass resolutions or take other actions apparently not requiring gubernatorial approval, which nevertheless have the effect of committing the Commonwealth. Except for the issue relating to public land issues - an area from which I think the Legislature ought to be excluded completely - it was hard to find out exactly what was bothering Herman T. There has to be a way, however, to make certain that any action taken by the Legislature that, in fact, binds the Commonwealth should be done by a legislation which necessarily under the Constitution has to be

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approved or vetoed by the Governor before it becomes effective. This was one of a handful of issues on which Herman T. speaks with considerable feeling.

The break between the Committee on Legislative Branch and the 5 o'clock meeting of my other Committee was filled with miscellaneous activity. I was working on some documents; I was visited by a Senator Hocog, whom I had never met before, to discuss some issues of local government; I discussed with former Attorney General Weil his scheduled appearance before the Executive Branch Committee in public hearings next week; I dealt with some various administrative matters. There is, on the whole, not much time for thinking in this exercise and the flow of papers is so enormous that it is a challenging, to say the least, to maintain one's files in any reasonably intelligent and accessible condition. Deanne and I saw very little of each other during the day, because of our different schedules. Our office at the Convention headquarters, however, which we equipped with rented furniture, is working out quite nicely, and, in addition, I now have a new computer, with various windows

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programs, which will force me finally to master this particular version of the technology.

After the Committee meetings, Deanne and I went down the Garapan office with the intention of meeting Bill and Paul for dinner at the Korean Barbecue. As it happened, it didn't work out that way. Apparently the plans never were firmed up sufficiently and the lawyers weren't able to contact us to let us know of this fact. Accordingly, Deanne and I went and ate at Dan's Coffee Shop.

Thursday
June 22, 1995

We had a plenary session today that caused some considerable publicity - not so much by the substantive actions taken, as by the politics revealed during the course of the meeting. With respect to substance, the plenary session went quite well. The work of the Legislative Branch and Public Finance Committee on three articles successfully were passed by 27 to 0 votes at first reading. One of these was the more controversial provision with respect to gambling. We had revised this amendment since the last discussion on the floor of the Convention, to eliminate the reference to "casino gambling" and to make clear that in the future all forms of gambling under

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this amendment (if adopted by the people) would require approval by the people in the Senatorial district involved by a 2/3 vote in a popular initiative. There was very little speechifying on the floor about this amendment as the media cameras went ahead.

The other subject of significance raised in the Committee-of-the-Whole was the first discussion of Article 4 dealing with the Judicial Branch. Deanne was sitting on the podium as counsel to the presiding officer of the Committee-of-the-Whole who I think was James Mendiola as the Second Vice President of the Convention. There were no serious issues raised except for the proposal that the judicial branch be required to send its budget to the Governor for review and transmittal to the Legislature. Tom Aldan, whom Deanne thinks was put up to this assignment by acting Chief Justice Villagomez, proposed an amendment that would permit the Court to send its budget directly to the Legislature without any review or change by the Governor. After a short debate on this subject, the amendment was accepted by the Convention and will be incorporated into the proposed amendment by the Committee before the subject returns to the floor of the Convention.

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Deanne had prepared cheat sheets for all the people who spoke during the course of this meeting, including the presiding officer of the Committee-of-the-Whole, the committee chairmen presenting the report, the floor leader, and everyone else. If everyone followed their cheat sheets accurately, these Convention meetings would proceed like a well-choreographed ballet. Unfortunately, some of them are unable to perform their assigned missions efficiently or accurately.

The principal political problem at the plenary session involved the charge by Delegate Manglona that he was not recognized by the Chair, although he had conspicuously raised his hand. The Chair tried to defend himself - in a very inept fashion - and Delegate Camacho leaped to the defense of his colleague and testified before the assembled media and Convention delegates that he had indeed seen Delegate Manglona raise his hand and be ignored. Herman T.'s rather inept management of the Convention in its plenary sessions, permits these kind of disputes to arise - which only provoke the already paranoid minority into believing that the majority is determined to deny them an opportunity for consideration of their proposals. This is total hogwash. Of

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course, but greater care by the presiding officer to call upon leaders of the minority would go a long way toward denying them the political issues that they seem to be desperately searching for. As a result of this encounter, the TV cameras and reporters during the breaks were busily interviewing Delegates Manglona and Camacho about the now legendary "hand raising" incident. No one on the majority side rose to defend the Chairman's position on this subject. One of the ironies here, of course, is that Delegate Camacho is virtually the only delegate who has not submitted any proposals to the legal staff or the Convention for its consideration. In some of his comments on the floor of the convention, he basically complained that he didn't have the staff that, for example, Delegate Marian-Aldan Pierce did and so he wasn't able to present his proposals. This, again, is ridiculous, since the legal staff, has, if I may say, been highly commended for providing competent and neutral assistance to any delegate of the Convention with respect to the framing of his/her proposals.

This attack on the leadership and legal team came during the rather ill-advised motion to advance the cut-off date for proposals from July

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10, 1995 to June 30, 1995. This was an effort that had been attempted during the Pre-Convention days and was renewed now by Delegate Aldan-Pierce who is a member of the leadership, in an effort to provide some clear indication to the delegates that after some 60 days or so, delegates should really get their proposals in so that the committees can proceed to do their work. This rather modest effort at efficiency was seized upon by the minority as evidencing the leadership's determination to prevent them from having every opportunity to present and debate their proposals. In any event, the majority expected that it would win this, if only by the 14-13 vote that elected Herman T. above Delegate Camacho. As it happened, however, two of the so-called majority, including young Delegate Oliver Gonzales, voted to abstain and as a result, the leadership lost the vote. There was much gnawing of teeth and haranguing as a result of this political defeat.

We met Marian Aldan-Pierce later that evening at a buffet thrown by Delegate Taitano to celebrate the baseball victory of the Commonwealth team. This was a largely male-oriented group. (Now that I remember it, actually, the unsuccessful effort to meet Paul and Bill for

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dinner took place on this evening rather on Wednesday as previously reported.) In any event, Deanne had a hard time finding this particular residence or facility where the buffet was being held. We had worked till about 7:15 or so on various committee and related matters, but after we arrived, we found our entire staff there. Deanne had a few bites and I had a few substantial drinks before the shower started. We did have a pleasant exchange with Marian Aldan-Pierce about the events of the day and she reported that she and others had severely chastised Delegate Oliver Gonzales for his refusal to support the majority on this point. Young Oliver, who has proclaimed repeatedly that he intends to be Governor in the future, was reminded by Marian that if he pushes to have a political future in the Commonwealth he had better learn to work with his political colleagues. Otherwise, she said, he would become known in the community as "Mr. Present" - a reference to his voting "present" rather than in the affirmative on the effort to advance the deadline for delegate proposals. She did not report to us whether he was appropriately chastised. (We have learned from other sources that young Oliver severely dislikes Marian because

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she has married a stateside citizen, she is successful in the private sector (as President of DFS), and has litigated Article 12 issues in a way that young Oliver and others think does not sufficiently protect the community.)

Thursday was also the day we had public hearings on Article 2, relating to the executive branch. The Committee had invited the leadership of the Commonwealth Legislature and other former legislators. The testimony, however, was essentially presented by members of the Legislature and the Director of the Legislative Bureau.

I sat on the podium with Chairman Aldan and few other members of the Committee to listen to the Legislative's Bureau's Director's testimony. The Director is one Greg Sablan - a former politician who was given this job. He did an abysmal job in presenting his views - snickering from time to time in response to the questions and consulting with members of the Legislature sitting on his right and his left before responding to the some of the more difficult questions. For example, he initially took the position that the Legislative Bureau should be taken out of the Constitution. When pressed by Chairman Aldan and

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others, subsequently, he changed his position and stated that it should remain in the Constitution.

Unfortunately, many of the delegates are not skilled in asking questions. They ask too many questions at one time, they feel embarrassed if the witness does not immediately understand their question or is reluctant to answer it, and they are reluctant, of course, to ask any question which is implicitly critical of the witness. Of course, I suffer from none of these cultural disabilities and could not resist myself from practicing my cross-examination skills on Director Sablan. It was not one of my best performances, although my interrogating him as to what he does as Director rather than "direct" did prompt some interest among the listeners.

After an hour or so of the hearings, I surrendered my seat on the podium to Bernie and returned to the draft Amicus brief. I have been spending considerable time on this and am somewhat apprehensive that I do not yet have a draft suitable for Deanne's review and further revision. I am determined to get such a draft prepared over the weekend.

The hearings did go reasonably well, however, in part because Bernie and others assisted in the

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administrative arrangements. Deanne has set a schedule that provides that the transcripts of the public hearings and all the accompanying statements and exhibits are to be made available for review within two or three days at the most after the hearings. People ... [words not on tape] every witness is invited to review the testimony and make any reasonable corrections. No hearings in the Commonwealth have ever been handled with such efficiency and responsiveness to the needs of the witnesses.

Friday
June 23, 1995
and Saturday
June 24, 1995

I recall that on Saturday there were meetings of both the Executive Branch and Legislative Branch Committees. Without any notes in front of me at the moment (since I am driving), I cannot remember which of the two committees met also on Friday. But the work in both committees is proceeding, albeit slowly. I recall now that there was a meeting of the Executive Branch Committee on Friday, at which time Joe distributed his summary of the recent court decision in the Inos case. This was the case involving an interpretation of so-called Amendment 25 - the result of the 1985 Convention's effort to deal with the problem of local government. The opinion

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written by Judge [Muisbun?--I have the name wrong] - is really quite a decent effort to parse the awkward effort of Amendment 25 to deal with this issue. As the legal staff has analyzed it, Governor Tenorio won more than he lost in his encounter with Mayor Inos of Rota. The opinion was worked out a good deal by Ramona Manglona, one of our law clerks, Joe and myself. The end product was written by Joe and really was quite well-done. We have made a copy available to the President of the Convention and I expect that, sooner or later, we will be distributing it to every Convention delegate.

I think this was the meeting of the Executive Branch Committee where we met in the Senate chambers rather than the House chambers. This room includes an oval seating arrangement and really presents a very good setting for committee meetings. Herman T. participated in this committee meeting as he does in most these days.

One of the interesting outcomes of the Committee meeting was the Committee's decision not to change the Governor's reorganization authority under Section 15. There must be at least 10-20 proposals on this specific subject, each one of which proposes some substantial change in the

Governor's power or requires that any of his reorganization efforts be approved by both houses of the Legislature. Delegate Manglona spoke out in favor of a change, but appeared only to be concerned by the fact that under the present wording of Section 15, a single house of the Legislature could act to affirm the Governor's reorganization order and thereby enable it to go into effect. I explained the background of Section 15, the compromise between legislative and executive power reflected therein, and outlined some of the options that some of the delegates could consider. They seemed appreciative of this effort and, to my surprise, ended up deciding to vote for the status quo. They have fallen into the habit of moving for the "status quo" rather than to put the burden on the proponent of any change to make a motion, have it discussed, and presumably voted down. Every so often we have a somewhat related emotion of a motion to "kill" which is a combination of ending debate and voting the proposal down in one fell swoop. I think the "motion to kill" has considerable potential and should find its way into Mason's Manual on Parliamentary Procedures.

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The Executive Branch Committee also agreed to keep the present constitutional limit of 15 for the number of departments. There was some discussion as to what exactly constituted agency or instrumentality of the executive branch - an issue as to which I could contribute relatively little. But on the whole, the members of this Committee, either independently or collectively, have decided to reserve their discussion to those issues that they regard the most important. As I should have mentioned earlier but I didn't, they also had been very reluctant to broaden Section 15 to impose a new requirement on the Legislature to create a Commonwealth-wide insurance program, free medical services, etc.

I think it is fair to say that the Executive Branch Committee is nearing the end of its work. It has reserved decision on the Carolinian Assistant and related matters until after the public hearings scheduled for June 27, 1995. I hope that at the meeting following those hearings, the Executive Branch Committee will be able to give the staff some direction so that we can work on the language and accompanying report. Joe has taken the lead in drafting the report, but, based

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on my hasty review of it, it appears as though it will have to be substantially rewritten.

We did have some discussion of the proposed hearings, and I made sure that additional letters of invitation were sent out to the Carolinian Assistant, the Resident Executive for Indigenous Affairs, and the Special Assistant for Women's Affairs. There is a considerable disposition on the part of some members of the Committee to abolish all three constitutional offices. My own view is that the Convention will probably end up with something like a constitutionally-prescribed council on indigenous affairs which will collect a variety of cultural activities and make certain that the interests of both the Carolinian and the Chamorro communities on the island will be protected in the years ahead.

There was another meeting of the Executive Branch Committee on Saturday, but I elected to miss it and work on my brief instead. Joe subsequently reported that the Committee was discussing the constitutional provision relating to the retirement plan and that the head of the plan had been invited to attend the meeting. Since Tom Aldan is a former Director of the Retirement Fund and a leading member of this

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Committee, it appears that he and Joe have been given some responsibility to come up with a constitutional language proposal to deal with the difficulties that the Fund is apparently encountering. I think it may be much more detailed than it need be.

The meeting of the Legislative Branch and Public Finance Committee on Saturday was both good-humored and reasonably productive. We spent most of the session dealing with the questions of legislative budget and the Legislative Bureau. I had done some campaigning in advance of the meeting with Bennet and others, urging them to reconsider the termination of the legislative budget by reference to either the Commonwealth's annual budget or its actual collections. It seemed to me that this method, although well-intentioned and useful, provides more administrative difficulties and headaches than the benefits that it achieves. In the course of the meeting, therefore, I spoke out in favor of a dollar cap with inflation protection, with specific amounts allocated for office expenses and related leadership expenses, with the remainder going to the Legislative Bureau. Bernie also elicited the delegates' views with respect to the

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qualifications of the director, especially in light of his performance during the Legislative hearings a few days earlier. There was some helpful discussion on this subject, with a strong sentiment that the director of the Bureau should have some professional qualifications, although one of the leaders (Floor Leader Hocog) emphasized that some substantial period of actual experience (10 or 15 years) might be a sufficient substitute for a college or post-graduate degree for the position. As a result of the discussion, Bernie and I were given some leeway to develop alternative proposals and bring them back to the Committee at its next meeting, scheduled for the following Monday.

There was also a sort of a meaningless debate about what to do with the members of the Legislature if they are charged with a felony and subsequently convicted. Many righteous statements were made about legislators being "models" for our children and so forth. The ultimate sentiment was to agree to suspension of a legislator after one's conviction at trial of the crime. Many of the delegates had started out the debate wanting to suspend a legislator, or indeed any public official, if that person was charged with a crime.

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We were able to develop some support among the Committee for the hallowed principle of "innocent until proved guilty." But the Committee seemed to want its Legislature to be required to suspend people once convicted, and expel them once the conviction is upheld on appeal.

There are basically not too many sections left in this Article dealing with the legislative branch that requires the attention of the Committee. It is necessary to resolve these issues regarding the legislative budget and the Legislative Bureau, but Bernie and I have planned to let John Manglona introduce the delegates to the many issues relating to Article 10 (taxes and public finance), which is the next Article on the Committee's agenda.

We hosted the entire team and the former Chief Justice De La Cruz and his wife, Rita, at a dinner at the Hyatt on Friday evening. Rita, who was instrumental in persuading Joe to help us out, was leaving to go to Hawaii to spend the rest of the summer there with the children. She is a wonderfully graceful and gregarious person who has entertained and otherwise helped our team a good deal. This was our effort to reciprocate. The dinner was good, the wine flowed, stories were

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told and everyone had a very, very good time. The next morning we received a thank you note and a box of chocolates from Joe and Rita to acknowledge the good time that they had. Generally the staff seems to be in reasonably good humor and surviving the rigors of working for Deanne and me simultaneously.

Saturday
June 24, 1995
and Sunday
June 25, 1995

I spent the better part of the remainder of Saturday on the brief. Deanne and I for the first time in a couple of weeks found time to go to the Hyatt Center pool on both Saturday and Sunday pool for a half an hour or so of sunshine. It felt very good. It was the first time in at least two weeks. On Sunday we even had the courage to go back on the machines for a brief renewal of our muscles.

I happened to bump into David Kahn at the health club on Saturday and found myself quite out of temper and rude with him. I do get offended at the concept of this ill-trained lawyer coming in periodically to the Northern Marianas charging an outrageous rate for his services, trying to do likewise for his wife, and peddle a line of legal advice and strategy for the Governor that creates not much more than general trouble for the

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Commonwealth. I've never met a statesider here in Saipan that is more thoroughly disliked by all elements of the community. On this occasion, I took issue with David regarding the Governor's legal statement in his Commonwealth speech of May 23, 1995, that the Constitutional Convention was not permitted under the Covenant to alter or diminish the legislative powers of the Commonwealth's Legislature. David more or less acknowledged that he was the source of legal advice on that point and stated that he based it on the difference in wording between the Covenant provisions dealing with the executive branch on the one hand and the legislative branch on the other. I was thoroughly ashamed of myself.

On Sunday morning we went to our weekly visit to Shirley's Coffee Shop for their superb pancakes. We spent most of the time in the office except for the afternoon break at the health club, with Deanne continuing to produce proposals - which now number approximately 550. She is relentlessly pursuing the matter and refuses to compromise her standards even when the proposals coming in from outside sources are unconstitutional, racist, and/or stupid. I spent most of my time on the Amicus brief and by the

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conclusion of Sunday had finally achieved a draft that I thought was suitable for review by Deanne. She took it home that evening and did some editing, but generally was very supportive. She has undertaken to get an affidavit from the archivist so as to enhance the admissibility and probative value of the various exhibits that I want to attach to the brief.

I think it was on Saturday night that we went out to dinner (I forget where) and ended up at the island garden for a dance or two when the band began at about 9:30. We did finally meet up with Bill Fitzgerald, his daughter and her friend from Washington, at the Korean Barbecue - I think it was on Thursday evening. I always manage to eat too much at that place and suffer from it the next day.

For a moment of reflection, Deanne has had some very interesting conversations with individual members of the Convention who are among the "minority." She has had long conversations with Esther Fleming and Lillian Tenorio, the latter destined for law school. Both are particularly bright and attractive women. Lillian is one of the two daughters in the Convention of former District Administrator and Lt. Governor,

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Frank Ada, who I have known for more than 20 years. Most of his children were educated in the States, and Lillian has served in the House of Representatives for the last few years as a hired hand for the leadership. Her views about the Legislature, however, are very realistic and border on the cynical; she has been a strong force within the Convention for imposing meaningful limitations on the Legislature's access to public funds. In the course of these conversations, Deanne has learned much about the personal background and aspirations of these two women. She has also learned how paranoid they are about the majority and the extent to which they, under the demagogic leadership of former Governor Camacho, are constantly musing about what conspiracies the Convention leadership is about to impose upon them. For example, Deanne reported that they are convinced that the majority has two or three critical proposals - that no one knows anything about at the moment - that they intend to get enacted by the Convention and then they intend to close the Convention down for lack of funds. This is certainly absurd. What is of equal interest, of course, is that the majority group spends almost as much time wondering about what

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conspiracies the minority is cooking up. In any event, these one-to-one conversations firm up the relationships between Deanne and the individual delegates and we both think they will stand the Convention in good stead when it comes to a vote on critical issues. This paranoia is part of the reason why the minority made such an issue out of the attempt to advance the cut-off date for delegate proposals and are extremely apprehensive about the leadership's current plan to eliminate the super majority rule for constitutional amendments and reduce it to a simple majority. I think the leadership realizes that this latter effort perhaps carries with it more costs than benefits and I am urging in the leadership that they proceed very slowly with respect to that particular objective. So far as I'm concerned, I do not think that the majority or super majority difference really is going to affect much in this Convention, with the possible exception of proposed amendments to Article 12's prohibition on land alienation.

Monday
June 26, 1995

This morning I went to a meeting of the leadership group...

[END SIDE B TAPE 4]

JOURNAL OF HOWARD P. WILLENS

RE: CNMI THIRD CONSTITUTIONAL CONVENTION (1995)

June 26 to July 12, 1995

Monday
June 26, 1995

I attended a meeting of the leadership group this morning - better known as the Committee on Organization and Procedures or COP. We spent a good deal of time discussing the schedule and the final decision was to cancel the plenary session set for Tuesday. The only proposal ready for first reading on that occasion would be Article 4 dealing with the judicial branch, and it was generally believed in light of the previous conversation on Article 4 that there would be no significant controversy with respect to it. Since so much time goes into preparing for plenary sessions, speechifying at the plenary session, and abandonment of committee work, the leadership agreed with me that it might be better to put off the plenary session until July 6, after the Convention has held its public hearings on Rota. The leadership group is really quite responsive now to suggestions from me, although often President Guerrero is critical of any mistakes that he sees and somewhat overly anxious to have 15 copies of every single piece of paper. They spend very little time discussing substance in

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these meetings; so far as these discussions are concerned, you would think that the Convention was simply a vehicle for political competition between this so-called "majority" and the so-called "minority" which seems to have a tradition of winning the close encounters.

As a result of the meeting, we had to alter the notice of public hearings for Tinian. Somewhat to my surprise, two of the leadership group (James Mendiola and Henry Hofschneider of Tinian) returned from a weekend on their island to report that the Tinian residents were really not interested in attending a public hearing on Saturday. As a result, we prepared a revised hearing that offered the possibility of completing public hearings on all four committee agendas by the end of the day on Friday, July 7. Although I am going to miss the Rota public hearings because of the need to prepare my brief for filing on June 30, I do intend to go over to Tinian and perhaps visit their new and humble casino. Reports about the casino actually sound very depressing; about 90 percent of the people who gamble are local residents and there is no business development effort to attract so-called "high rollers" from Guam or foreign countries. I think it will be a

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long time before the legalization of gambling on Tinian begins to yield 1/10 of the economic benefits that its promoters advertised during the campaign that legalized casino gambling on Tinian.

I spent a good deal of time on Monday morning working with Bernie on the revision of the constitutional provisions relating to legislative budget and the Legislative Bureau, the group of professional staff that is institutionalized in the Constitution. Although I originally thought the provision mandating a legislative bureau should probably be struck from the constitution, I've changed my view on the subject - much to Deanne's dismay. I do share basically the view that one ought to allow the Legislature to appropriate however much money it wants to, waste it if it so decides, and then suffer, one hopes, the inevitable consequence of defeat at the polls. But I am somewhat discouraged by the track record here of the last five years in particular, and have learned, from Howard Mantel's work, that many state legislatures have made a concerted effort to provide some mechanism for enabling legislators to be better assisted, better equipped, and generally able to deal with the better funded and more professionally staffed executive branch

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counterparts. Bernie and I have some difficulty in reaching agreement on drafting; his drafting is not very economical or effective. He also wants to include in the legislative history more material than can be accommodated. Deanne has already rewritten one of his draft reports and I will be spending time on it while he and his recently arrived wife (Grace) will be visiting Rota and then going on to Palau for a vacation.

Our effort along these lines, however, prove to be quite successful at the afternoon meeting of the Legislative Branch and Public Finance Committee. Bernie did prepare an updated agenda which was quite useful, and the Committee proceeded quite efficiently to deal with it. The long and short of it was that we have now succeeded in persuading the Committee to stick with some kind of a cap and have worked out draft language, with supporting legislative history, aimed at defining the public purposes to which these funds can be put and prohibiting for the first time the use of such funds for personal or political activities. It will be interesting to see what kind of reaction this gets in the Legislature and in the community at large. The delegates on the whole seem very determined and

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united to impose some restrictions on the legislators and by that means provide them with an excuse for turning down constituent requests for canopy services or other services or payments that the constituents have come to expect here in the Commonwealth.

While I was visiting in the leadership in the morning, Deanne had the first opportunity to meet with the minority with respect to the Article 12 issues. She reported that former Governor Camacho was there and that he was about as "sour" with his own political colleagues as he was with the opposition. Deanne thinks she is having some success in encouraging this group to look for middle ground with respect to Article 12. She has honed in on two or three issues, which she has discussed both with the defenders of Article 12 and the so-called business community and is marching them irrevocably toward a compromise that might make some sense and be approved by a large majority in the Convention. We do not yet have specific proposals from Ted Mitchell, however, and Deanne's latest report is that he may not submit any. In any event, the group was very appreciative of Deanne's showing up and, again, seemed to express surprise that the legal team was

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here to help all members of the Convention, notwithstanding their political and substantive differences. At the moment, at least, we are getting generally good reviews and some of the delegates have commented among themselves that Deanne and I "seem to work like a team." I think that Deanne's long-standing assistant, Pamela, probably said it best when she said that, in her view, we were truly "two originals" and that accounted for our being able to get together. Other people in the past have said it in a different and less flattering way, namely, that we deserve each other.

Tuesday
June 27, 1995

Today we had public hearings for the Executive Branch and Local Government Committee. The focus of the hearings was on Article 3, relating to the executive branch, and the principal subjects were the Attorney General's Office (whether the attorney general should be elected or appointed), the Office of the Public Auditor, and the three constitutionally prescribed offices for Carolinian Affairs, Women's Affairs, and Chamorro Affairs. The hearing was scheduled to last from 9 o'clock to 11:30; in fact, it lasted until 3 o'clock in the afternoon. Breaks

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were taken every hour or so, both for the sake of the new reporter who appeared on the scene today from Guam but also to feed the delegates. The secretarial office outside of the President's office has food constantly available - ranging from doughnuts to fajitas to Big Macs to candy to potato chips - in short, anything with high fat and caloric content and nothing with any redeeming virtue whatsoever. Among the last, some quick snacks during the lunch hour enabled us all to survive the hearing.

The hearing generally went quite well, with five former representatives of the Attorney General's Office all unanimous in their view that the position should remain an appointed one. They responded quite forthrightly to many questions regarding the shortage of lawyers in the Commonwealth, the extent to which the Attorney General has to, on occasion, say no to his client the Governor, and generally resisted any suggestion that they had been subjected to intimidation by their client or the Legislature (with one exception being mentioned by Mr. Kosack). It will be interesting to see whether the closely divided Committee with respect

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to the election/appointment issue changes its mind as a result of these public hearings.

I took the occasion to stage a challenge to David Kahn, whom I identified as the "mystery lawyer" responsible for the Governor's ill-advised statement in the Commonwealth speech of May 23, 1995. Unfortunately, the cameras had left and so I was unable to ham it up quite an enthusiastically as I had planned. It seemed to go down reasonably well and, in accordance with the President's advice, I check with Juan Santiago (the Governor's closest acquaintance in the Convention) to see if he had any objection to my raising this issue. He apparently shares the widespread dislike for Mr. Kahn so he had no objection to my citing provisions from the Covenant's legislative history that clearly refute David's reading of the Covenant. According to Joe De La Cruz, our assistant from Tinian, the visitors in the gallery were generally shaking their heads in approbation of my denunciation of the "mystery lawyer's" misguided advice that had led our beloved Governor, known to be a strong supporter of the Covenant, down this unfortunate path. I put many of my questions to Mr. Sutton

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who was not quite willing to play Charlie McCarthy to my Edgar Bergen.

The last two hours of the hearing concentrated on the Carolinian Assistant spot. There were about six or so witnesses testifying strongly in support of retaining the provision in the Constitution, including some very articulate and emotional political leaders. It is interesting to me that what was a compromise in the 1976 Constitution has now achieved such symbolic importance that, if one can believe the witnesses, it's deletion from the Constitution would be an irretrievable and gross offense to the Carolinian people. Several of the Carolinian witnesses demanded to know what the reasons for the dozens of proposals seeking to delete this and the other two specialized offices from the Constitution. No one in the Committee had the courage to respond to such demands for an explanation. Delegate Manglona took the occasion to confer with the Carolinian representatives, to assure them that he was firmly on their side and to win some TV time that evening making those points.

Actually the history regarding the Covenant has become distorted over the years with respect

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to the role of the Carolinians. Several of the witnesses have suggested that involving the Carolinians intimately in the Government of the Commonwealth was a compromise essential for winning their support for the Covenant. The fact is, that the official Carolinian representative on the Marianas Political Status Commission refused to sign the Covenant and the Carolinian community itself was sharply divided in the plebiscite vote on the Covenant in 1975. The Carolinians at the time were, to be sure, concerned about living in a community dominated by the Chamorro majority and cast lingering glances towards their ethnic relatives in the other districts of the Trust Territory set among the Caroline Islands. This somewhat ambiguous history regarding Carolinian support for the Covenant has now been rewritten so as to make it absolutely essential to continue the Carolinian Office in the Constitution as a way of honoring this longstanding commitment.

Basically I think it is very likely that the Carolinian advocates will win their day. And I am inclined to think they should. I hope, however, that the Committee and the Convention will be able to draw some line between that office and the two other offices dealing with Women's Affairs and

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Indigenous Affairs. Putting the motion aside, however, the best proposal I have seen would involve some Council of Indigenous Affairs that would include both Chamorro and Carolinian representatives, and would indeed develop programs, with some respectable funding, designed to preserve the language and the culture of these two rapidly fading new American minorities.

Wednesday
June 28, 1995

Because the hearings the previous day had taken so long, my meeting of the Legislative Branch and Public Finance Committee had been cancelled. There was mounting enthusiasm for the proposed trip to Rota, where Deanne intended to go along and I planned to stay back to work on the Amicus brief.

We did have a meeting of the Executive Branch and Local Government Committee, however, to consider the results of yesterday's hearings. I spent some time in the morning trying to prepare an agenda for the Committee meeting, expecting that they would like to at least exchange initial views regarding the testimony at the hearings, both with regard to the Attorney General's Office and the Carolinian and other special assistance slots. To my surprise, however, they rejected the

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agenda wholeheartedly and spent the entire morning discussing the retirement plan provisions of the Constitution.

This had to be one of the more discouraging mornings of the Convention. It appeared that the leadership was so sensitive, i.e., afraid, of dealing with the Carolinian position in a Committee hearing that they basically wanted to discuss anything but that more controversial issue. I suggested to Herman T. and other members of the leadership that it might be useful to get some reading of the Committee sentiment, but they were determined to try to resolve the entire matter in private meetings with the Carolinian leadership. I think they may be making a big mistake and giving the opposition a clear cut issue on which to contend that the leadership was not favorably disposed toward the Carolinian community on Saipan.

The Committee meeting proceeded for more than two hours to considered detailed "legislative" provisions that would go into the Constitution. Tom Aldan, formerly Director of the Retirement Fund, led the charge and it ended up with people currently receiving retirement benefits voting for more protection for their benefits and, indeed,

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granting increased benefits to the former governors and lieutenant governors, one representative of each category of whom was in the Committee room. The cameras were there for awhile, I think in order to cover an anticipated debate on the Carolinian Special Assistant that had been the subject of yesterday's hearing. Instead, however, they captured the discussion of the delegates on the retirement plan detailed provisions. Frances Borja was more articulate than usual in suggesting to the majority in the Committee that they were spending time unnecessarily on legislative provisions that should be left to the Legislature. The President weighed in to the same effect.

I made one or two comments to this effect, but then essentially withdrew from the debate. When the Chairman turned to me and asked whether I had comments, I reminded him I was not a delegate and it was his Committee to lead and try to direct toward matters of constitutional significance. According to a report that I received later that day from Deanne, the delegates in the room knew I was quite unhappy with the direction in which they were proceeding. One delegate told Deanne that, "when we see Howard muttering, we know he is

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unhappy with us." She maintains that they are always observing my demeanor to try and ascertain whether I am approving of the direction in which they go. I think this is as much wifely devotion and blarney as it is delegate respect.

The upshot of the meeting was essentially to delegate to counsel the responsibility of drafting alternate provisions for the Committee's consideration. I asked Joe to do the drafting, but he is off to Rota and I think it is unlikely that he will do so. From reports given to me by Deanne from Rota, however, later that day, it sounded as though the delegates - well-fed and full of alcohol - realized that they may have gone too far during the day and were looking forward to seeing some draft provision that essentially protected the Retirement Fund. The matter is of critical significance here because so many people look to the Retirement Program of the Government as essentially providing assured income for their families in the years ahead.

I drove Deanne and Pamela to the airport. We had a blunt conversation about some of the recent developments, most of which involved a prima donna named Sonia from Guam who had come over to serve as a court reporter. Les Martin, who has served

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us with distinction for the past several weeks, is returning to Los Angeles for a previous commitment. We have prevailed on him, however, to return in a few weeks. In any event, Sonia - whose physical appearance pleased the male delegates - turned out to be somewhat of a disappointment and, as a result of poor management tactics by several on the legal team, she basically quit the following day. When the disk with her recording arrived, it was reported to be wholly confused and basically impossible of retrieval. Les took it with him on the plane to Los Angeles and promised us that he would do his best with it. We do have a saviour, however, that Bernie located in the form of one Michelle from Los Angeles, who will be arriving out here in time for the plenary session on July 6.

The whole scene in the hallway in our Legislative Bureau of offices though is worth recording. Bernie and Deanne were exchanging accusations as to whose responsibility it was. Deanne had clearly assigned responsibility to Bernie for dealing with the court reporters, and he felt under the obligation to inform Sonia that she would not be retained after the first two weeks. At this point, not unexpectedly, she quit

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- leaving us unsupported for the next two weeks until Les was scheduled to return on or about July 16. Deanne told Bernie that, on the whole, he should not have told her at this time of his intention, whereas he with the rectitude that only a liberal can generate, said that he simply cannot deal with people in that fashion. After this pleasant exchange had taken place, he basically said that he hadn't come out to Saipan to incur this kind abuse and threatened to leave immediately. As Deanne mentioned to me later on, he seems to have prepared that speech some time long before this particular episode prompted it. When all the furor was over, however, and they were all in Rota eating and drinking heavily, Deanne reported that Bernie and his wife, Grace, were extremely happy individuals.

Thursday
June 29, 1995

Everyone and his brother and sister is in Rota, except yours truly. I have remained behind to work on my brief, which has turned out to be more of an administrative task than I had anticipated. It was compounded somewhat when the secretary I am using indicated that she had lost the disk that I had provided her, and there was no one in our facility able to find and copy the last

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version of the brief on Sandy's computer. Fortunately, Maya came to my rescue and we were able to develop a substitute disk for the secretary to use. I spent many hours cite checking, reviewing drafts, finding mistakes, and I certainly could have used another pair of eyes. I met in the morning with Maya and the other attorneys scheduled to argue the case on behalf of the defendants and we discussed briefly the strategy for dealing with the anticipated argument that Ted Mitchell, on behalf of the plaintiff, would present to the CNMI Supreme Court. Unfortunately, none of the four lawyers representing the defendant seems to have the slightest capability of dealing with these issues. That probably is overly harsh.

I also spent time on rewriting Bernie's draft report regarding Article 2. The writing of these reports is not really that difficult, once you have some experience in doing it. I am hopeful that we can get the legislative article report in draft form before the Committee next week and before the Committee-of-the-Whole the following week.

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Wednesday
June 28, 1995
to Tuesday
July 4, 1995

Deanne left for the hearings on Rota early Wednesday afternoon and reported in by telephone for each of the next few days. The hearings went reasonably well, although dominated by the politics of the situation. Various members of Benjamin Manglona family testified at great length and with passion about how Rota was discriminated against by the majority population on Saipan and would never have entered the Commonwealth if it had not known that it was not going to have full control over affairs on its island. There is an incredible of rewriting of history that is going on out here, both by the inhabitants of Rota and by the Carolinian community with respect to the Covenant negotiations and the commitment that was made on that occasion to the perceived minorities within the Northern Marianas. Very little of this is true.

Apparently, Victor Hocog proved to be a wonderful host on Rota. The buffet dinners and parties were spectacular, the liquor flowed smoothly, and our secretarial staff was extremely well-treated by the delegates and enjoyed themselves tremendously. Bernie and Grace were in Rota helping with the hearings and then went on to

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Palau for five or six days of vacation. A problem is brewing there.

Deanne came home from the hearings Friday afternoon, reporting to me that the last session on Local Government was proceeding uneventfully. She apparently left 30 minutes too soon, because subsequent reports indicated that Delegate Manglona and a witness named Quitugua almost engaged in fisticuffs over accusations that they exchanged. Quitugua is apparently a longstanding political opponent of Benjamin's and reportedly has done a superb imitation of Benjamin on occasion. In any event, the issue arose over the usual, to extent that the Mayor of Rota would be given powers equivalent to the Governor's with respect to the spending of funds and the delivery of public services on Rota. Deanne and I have still not come up with a wondrous compromise on local government that will win the support of 2/3 of the Convention.

While Deanne was gone I concentrated for two days to get my brief filed on Friday, June 30. It was not quite as easy as I might have expected, given the shape that the text was in, because the secretary that I was using was unfamiliar with such matters as table of authorities and

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attachments. As a result, I spent a lot of time making certain that it was done correctly, and Lou (Jim Sirok's secretary, and her assistant, Lisa) did their best to help. The final product was circulated and served on Friday at about noon, after I had checked over the assembly and printing job to see that it had been done accurately. The argument is set for July 6 and should be a lot of fun. Deanne is extending invitations to everyone on the island to come see the anticipated confrontation between Ted Mitchell and myself.

Once the brief was behind me, I went back to the rewriting of the report on Article 2 and other miscellaneous assignments. Deanne and I spent the better part of the weekend and the Monday and Tuesday holiday concentrating on the work of the Convention. It marked the halfway mark in the 60 days of the Convention's life and we both feel that we are somewhat behind. It is our hope that after this short week, because of the Tinian hearings, that the Convention will move at a more expedited pace beginning on Monday, July 10, 1995. I hope this proves to be the case.

We did get a little time off to spend at the health club and the pool on Saturday and Monday. We paid our usual Sunday morning visit to

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Shirley's for pancakes and generally spent most of the other time in the office. Paul and Bill were in Rota on business so we did not have them around for company and there was really not much socializing going on.

We did manage to get some personal correspondence done. We also talked to some members of the family. We're in the midst of trying to close the real estate transaction with respect to Angel Fire and having the usual difficulties in coming to closure on that point. We ended the July 4 holiday with a party at Bill's and Paul's lovely house to which our staff was invited. Everyone had a wonderful time; and the food was terrific.

Wednesday
July 5, 1995

It is now Wednesday morning and I'm on my way to the Hafadai Hotel for a 7:30 breakfast meeting with the Committee on Organization and Procedures. It will be interesting to see to what extent the Committee shares our sense of urgency and is aware of some of the political developments. One of the more important political developments is that the Commonwealth Senate just amended the proposed legislation to extend the date for the vote on the Convention's proposed amendments. In their

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process of so-doing, they are seeking to impose a super majority of 2/3 on the Convention and also seem to be anticipating a conflict between amendments that the Legislature is proposing to the Constitution and those that are likely to emerge from the Convention.

I attended a meeting of the Committee on Organization and Procedures this morning - a breakfast meeting at the Hafadai Hotel. It was nearly as chaotic as the last one I attended at that location. I circulated for the members a short memorandum regarding the action of the Senate recently amending the legislation that was introduced in order to provide for an special election in 1996 to vote on the amendments that this Convention produces. In the absence of such legislation, the amendments would necessarily go before the voters at the next general election scheduled for November 1995. It is generally agreed that such a date would provide too little time within which to mount the necessary education campaign regarding the amendments. In any event, the Senate proposed some amendments designed to deal with conflicting amendments put before the electorate at the same time and to require the Convention to adhere to the 2/3 super majority

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rule for votes on proposed amendments. It is unclear exactly what political steps the leadership will take to deal with this, since as a last resort the bill, even if defective, could go before the Governor for signature and he could sit on it for forty days until the Convention essentially had completed its business. The most important point at issue here is to make certain that the amendments are not considered until next year.

To a lesser extent, we discussed the schedule for this week and next week. I expressed our point of view that the Committees on Land and on the Executive Branch were the ones that needed the most meeting time. I mentioned some of the less controversial articles that Deanne and I hoped to get to the floor of the Convention within the next several days.

I gave Tom Aldan the memos that I was considering presenting to the floor. He seemed not to have any problem except with my short version of an amendment to the retirement section of Article 3. He seems determined to write a detailed constitutional provision with respect to the intricacies of the retirement program in the Commonwealth. Many of the delegates are opposed

to this, but I think it will ultimately take a leadership decision in order to restrain his enthusiasm. For the most part, however, everyone seemed in reasonably good humor having survived the Rota public hearings and looking forward to the Tinian hearings.

When I came back from the meetings, Deanne was bustling around producing what seemed like an endless number of reports for constitutional provisions for her two committees - ranging from Washington Representative, to corporations, to education, to preamble, etc. The meeting of the Committee of Executive Branch and Local Government was reasonably noncontroversial. The Committee did finally make a decision with respect to the Attorney General and, in light of the testimony at the public hearings, decided to keep it an appointed (rather than elected) office, but to ensure that the Attorney General could only be removed for cause. In addition, the Committee recommended that the residency requirement be wholly eliminated from the Constitution. This last recommendation did prompt some debate with young delegate Gonzales expressing concern about the possibility of an Attorney General being appointed who knew nothing of the culture and

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traditions of the island. The requirement of Senatorial confirmation seems to provide some safeguards in this respect.

The Committee also considered two of the minor proposals that I brought to the attention of the Committee. They were prepared, however, to vote on only one - the new combined article entitled "Commonwealth Unity." There still is some concern about deleting the Code of Ethics article from the Constitution. I was given the chore of chasing down some appropriate constitutional language on this score.

By the conclusion of the meeting, there remained only two important items left for the Committee to consider with respect to Article 3. The first is the retirement section which I have referred to above. The other is the center provisions relating to the Carolinian Assistant, Indigenous Affairs Office, and Women's Affairs Office. The political leadership has not decided, as we have recommended, to sit down with the four Carolinian delegates to the Convention and try to strike some kind of a political deal that they will find acceptable.

There was no time for lunch today. I settled for one of Deanne's bananas, some pistachios nuts,

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and a portion of a Baby Ruth bar. I wonder how many calories that amounted to.

We did finally get a new reporter in from California today to serve in Les' stead until he returns in a couple of weeks and to replace the disappointing candidate from Guam. She seems enthusiastic and hope will do just fine.

Guest Speaker I'm pleased to present a guest speaker for
Deanne C. Siemer this personal journal. Here she is, Deanne C.
Siemer.

This is an insert and an account with respect to the trip to Rota to present the issues facing the delegates to the people of Rota.

The vanguard of the Constitutional Convention group left Saipan on Wednesday morning early in order to arrange for the public hearings that were to be held on Thursday and Friday on Rota. The basic arrangements that had been made were for two committees to meet on each day. The Legislative Committee met in the morning on Thursday, and the Judiciary Committee met on the afternoon of Thursday. The Land Committee met in the morning of Friday, and the Executive Branch and Local Government Committee met on the afternoon of Friday. There had been some difficulty with

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respect to the schedule because Benjamin Manglona, one of the delegates from Rota, was concerned that there would not be an appropriate level of interest expressed in the local government issues on a Friday afternoon even though local government was dear to the hearts of all Rotanese. The first contingent of delegates and ConCon staff left on the one o'clock plane on Wednesday afternoon. The Convention delegates were staying at a resort personally owned by one of the delegates, Victor Hocog. The resort had just been opened and was still in the process of being completed. On Wednesday night, Delegate Hocog hosted a very substantial buffet dinner at his house on Rota to which nearly all of the delegates in the majority group and most of the delegates in the minority group came. All the delegates finally wound up on Rota except for two, Jack Villagomez and Carlos Camacho, who were attending to a funeral of Dr. Camacho's 97-year old mother who had died a week before. The hearings got underway on Thursday morning without event. Joe Cruz, the committee attendant from Tinian, did excellent work in obtaining signatures from everyone in the audience and obtaining speaker certificates from everyone who planned to speak. It was quite surprising

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that everyone in the audience agreed to sign these documents indicating that they were there. There were relatively few people who attended the hearings usually not more than 30 or 40 at a time. The Mayor of Rota was the lead speaker with respect to each committee session and his long [harangue?] in Chamorro usually went on for an hour or so. The translations were done for the staff by Ramona Manglona. We had initially taken [Cinta?] Kaipot to the hearing so that she also could translate, but it turned out that the Chamorro spoken in Rota was beyond her translation capabilities. Indeed, she confessed she didn't understand most of it. Ramona Manglona, although she's from Saipan, could understand the Rotanese Chamorro since she is married to a Rotanese, John Manglona, who is the son of former Mayor, Prudentio Manglona, and nephew of Benjamin Manglona, one of the delegates. The Legislative Committee hearing drew relatively few witnesses, although the Committee members asked a number of questions of the witnesses who did appear. Immediately after that committee, it was decided among the committee chairs not to permit anymore questions from the Committee. The general view was that they had heard enough from their

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colleagues and the less they heard the quicker they would be finished with these hearings. The Legislative Committee Chair, a person of considerable force, simply ended the hearing at 12 noon, declaring that it was over and if anyone else had any other views they could submit them in writing. The Committee then got up and left - for lunch..which was always a major event. After lunch which took slightly longer than the allotted hour, the Judiciary Committee gathered around the delegate table. All the delegates, except the two who did not make the trip, showed up for their respective committee assignments and sat through the entire affair, paying attention, taking notes and generally deporting themselves as though they were interested in the comments of those who were appearing in front of them. The Judiciary Committee had on its agenda education which was a subject that drew probably the most comments of any. A number of parents appeared, the School Board Chairman appeared again, although he had appeared at the hearing in Saipan, made the same kinds of comments, and had a number of his retainers with him who also testified. The Judiciary Committee hearing lasted until about 4 o'clock or 4:15 and probably was the best

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attended hearing of the four. The Chair was quite generous in allowing those who had not prepared to testify but were inspired by the moment to come up to the microphone and present their views. Several had seen that there were written statements used at the hearing in the morning so they went home during the lunch hour, put together some written statements, and appeared again. One of those who testified was Lee Taitano, a polish woman who's married to Chris Taitano who works at the Environmental Control Board Agency in Rota. Ms. Taitano came to the United States, to Syracuse, New York, in her teens and wound up in the University of Hawaii. She served a term as a graduate student in Micronesia and decided to settle first in Saipan and then in Rota. Ms. Taitano had worked for the Mayor's office and was eloquent in expressing the former Mayor Prudentio Manglona's view of local government. Prudentio Manglona appeared at the Committee hearing to urge decentralization of the school system, indeed, decentralization was a theme echoed by most of the witnesses. On Thursday night, there was a banquet by the ocean, also hosted by Mr. Hocog for the delegates and the staff. The barbecue, which consisted of

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barbecuing an entire pig and several large fish, was held at a beach, the name of which I can't remember, which was extraordinarily scenic at sunset. It was Pamela Carlson's birthday, a birthday cake was duly produced, happy birthday was sung several times in increasingly discordant tones and Pamela was suitably overcome, embarrassed, and grateful. The barbecue, at which there was an open bar, lasted until the early morning hours, but all the delegates showed up for the Land Committee meeting on Friday morning which was unexceptional, most witnesses urging that Article 12 be preserved, there not being any question that Article 12 would be preserved given the provisions of the Covenant. There was not much intellectual endeavor required with respect to this particular hearing. The delegates all recessed again for lunch which was held at the Chamorro Cafe across the street. When the Executive Branch and Local Government Committee met in the afternoon, the Mayor once again was the lead off speaker. By this time most of the delegates were hard-pressed to write anything down about the Mayor's views since this was the fourth time on which he had expressed them. Then Prudentio Manglona took the floor to begin with

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slightly before World War II to express the hopes and dreams of the people of Rota for an Office the Mayor which would have unbridled power and unlimited funding. Funding was a constant theme of those who followed the Mayor. It seems that mayoral functions can only be accomplished with adequate funding and adequate funding is not to be found on Rota. The hearing was progressing nicely. At about quarter of 4:00 in the afternoon, at which time I left and went back to Saipan, almost immediately thereafter Antonio Quitigua, a former congressman, took the rostrum to begin his own history of the development of the Office of Mayor in Rota, which included apparently some allegations of corruption on the part of one of its occupants, the aforesaid Prudentio Manglona and his brother Benjamin. Leaping to the defense of the family name, Benjamin Manglona attempted to begin a fist fight with Mr. Quitigua, a practice apparently well recognized on Rota as a means of resolving oratorical disputes. They were restrained by a number of people, among the most foresighted of which managed to turn off the recording device that was being used to record the proceedings. The cable TV crew which had come, being promised a show of fireworks with respect to

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Article 12, had left when that did not occur and were long gone by the time this particular incident happened. The Chair of the Committee was unable to deal with this outburst and therefore declared the hearings to be over, which was a relief to all the delegates who were in the process of leaving in any event because that night there was the opening banquet for the resort and the delegates needed to ready themselves for this event which was going to begin earlier than most of these, at 5:30 with cocktails around the pool. The delegates spent a good deal of time at that function and the next day conducted a golf tournament, other important business, and most of them returned to Saipan on Sunday morning where they had Monday and Tuesday, the Fourth of July, to recover from this adventure.

The Committee on Organization and Procedures had planned several meetings while on Rota. The first of which occurred on Wednesday and was the planning meeting for the entire series of Rota hearings. The meeting was scheduled to occur at a location to be announced. It turned out that location was the bar at Victor Hocog's new resort and the delegates [End Side A Tape 6 - Start Side B Tape 6] arranged themselves around the bar to

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conduct their meeting which lasted from about 3:30 until about 5:30 that afternoon. Relatively little business was discussed although every member of the COP was in attendance with the exception of one foursome that was out playing golf. Joe De La Cruz also joined the meeting. There was a considerable discussion of the retirement provision that had provoked some indications of disapproval from Senior Lead Counsel Willens which was commented on and giggled about considerably around the bar. One delegate noted that Howard had been twitching during Chair's discussion of the need for extensive, detailed legislation of the Constitution on this subject. Another delegate noted that Howard had been muttering and had thus indicated his disapproval. The President attended to secure from the Chair an agreement a more general provision could be used so that counsel would not have to twitch or mutter again. That agreement seemed to be forthcoming and the only other business that was discussed was the question of whether, since the President of the United States had to be born in the United States, the Governor of the Commonwealth could be required to be born in the Commonwealth. Having delivered a lecture

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on this subject on numerous other occasions, I was glad to repeat it once again and, since by this time the delegates were in quite a good mood, it all seemed to be well-accepted this principle of historical accident seemed to be accepted and the need for a "born-in-the-Commonwealth" requirement seemed to have been passed over. After this initial COP meeting there was a consensus that no further COP meetings would be required since there was nothing to govern in these procedures and the committee hearings would proceed smoothly without further governance except at the breakfast, lunch and dinner meetings that were anticipated by the group.

Friday
July 7, 1995

I may not have covered some of the meetings that took place on Wednesday, July 5, so let me go back to July 5. After the COP meeting in the morning of July 5, there was a meeting of the Executive Branch and Local Government Committee. This session went better than some of the earlier sessions had. The Committee did proceed to make a decision with respect to the Attorney General. They decided, especially in light of the hearings that had occurred during the previous week, to keep the position as an appointed one. However,

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they were sufficiently concerned by the some of the developments of recent history that they wanted to impose a requirement that the attorney general could be removed from his office only for cause. As this will work out, one speculates, each governor will be given the opportunity to appoint an attorney general of his choice, and then, more or less, be required to live with that attorney general unless there is some basis for firing him. In practice, however, this may not be a very significant change, since the governor will always be able to elicit from his attorney general a resignation in the event that the two of them are unable to work together. In addition, the Committee was prepared to eliminate the residency requirement for an attorney general - a development somewhat at odds with the prevailing sentiments within the Convention, but thoroughly supported by the testimony at the public hearing. There did seem to be a feeling within the Committee that the governor should be able to appoint an attorney general from any place whatsoever without any residency requirement. We all recognized, however, that the Legislature would probably attach some high value to a candidate who had experience within the community.

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With respect to the Carolinian Assistant issue, the Committee essentially decided to defer judgment until a scheduled luncheon meeting on the following day with the Carolinian delegates. It was hoped that this would yield some consensus both within the Carolinian group and the delegates more generally as to whether to retain Section 18 as it presently exists, to strengthen it, or to try combine it into some form of council dealing with indigenous affairs, perhaps supported with additional funding from the Marianas Public Land Trust. This luncheon meeting did ultimately take place and I was informed today (Saturday) that a consensus was reached to retain Section 18 as it presently stands. (There is a conflict in recollection as to whether Tom Aldan is prepared to depart from his council proposal in light of this development.)

The afternoon meeting of the Legislative Branch and Public Finance Committee went reasonably well. The Committee did approve the new amendment to Article 7 with respect to the barring effect of a felony conviction. It was agreed that this would be presented to the plenary session on Thursday, July 6. With respect to the draft report regarding Article 2, the Committee

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was generally pleased with the report. We reviewed 2/3 of it and there were very few comments that any member of the Committee suggested. We stopped short of reviewing Section 16 and Section 17, the two critical sections pertaining to the costs of the Legislature and the Legislative Bureau, and that was saved for a meeting scheduled to be held the following day, July 6. Chairman Aldan seemed generally pleased with this development and was optimistic that the Article 2 amendments and the supporting report could be presented to the plenary session on Tuesday, July 11, 1995.

Thursday
July 6, 1995

Today, there was a plenary session preceded by the usual meeting of the Committee on Organization and Procedures. We did have the various papers prepared that Herman now routinely wants in advance of any such meeting; the papers include an order of business, a schedule for the next week, a draft report to be given by him as Chairman of the Committee, resolutions to be introduced, and a cheat sheet for the floor leader and President as to how to move the business of the Convention in the plenary session forward expeditiously. This has worked generally

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successfully, although the delegates still have some difficulty in distinguishing between a motion to close debate and a vote on the substantive motion itself. They tend to compress both motions into one, usually preceded by a statement by the presiding officer that he or she hereby "closes the debate" and proceeds to take a vote on the underlying motion. This abbreviated technique so far at least seems to work just fine. Only the purest among us are offended by this sign of disrespect for Robert's Rules of Order.

With respect to the substance of the plenary session, it went reasonably well. Because of Deanne's exhortations, the committees had hustled to produce a recommendations for amendments (or in some cases for no action) on some seven different articles of the Constitution, including the preamble. Very few of these were substantive, as a result of the plenary session, the judicial branch article was enacted on first reading, so also was an amendment to Article 7 relating the effect of a felony conviction on holding elected or appointed office in the Commonwealth. There also were accepted changes to the preamble and to the new Article 22 entitled Commonwealth Unity. There was a fight over the new wording to the

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preamble, with the delegates from the First Constitutional Convention maintaining that the original language was "just fine, thank you." The proposed language was making some reference to "island ways" and tried to make the preamble somewhat more specifically related to the island community here in the Northern Marianas. When Deanne told the presiding Chair, Frances Borja, that her father had drafted the original preamble, she prompted voted against the proposed new language.

The greatest debate of the day was at the President's initiative with respect to the Commonwealth Unity article. This article collects different provisions relating to the Commonwealth seal, the Commonwealth flag, oath of office, and so forth. The President of the Convention, seemingly unconscious of the media and the embarrassment to which he subjects the Convention, [proceeded to raise an?] issue about the color blue in the seal and flag of the Northern Marianas. He suggested that there was a need for a dark blue rather than the light blue that seems to fade away, in his judgment, in the current version of the flag and the seal. This prompted a considerable discussion about the various degrees

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of blue that might be written into the Constitution, ranging from baby blue, royal blue, deep pacific blue, or as [wag?] said, cordon blue. In any event, it looked as though this major issue was going to be relegated back to the Committee but someone prevailed in the exercise of common sense and put the matter to a vote. As a result, the President's concern for dark blue was obliterated by an overwhelming majority vote for the proposed Article 22.

Fortunately, the evening media did reasonably well by the Convention. They have treated the Convention very gently, to say the least. They did display this particular dispute as providing a light touch for the Convention. The subjects that will come up during the next set of plenary hearings will begin to be much more substantive and difficult.

On Thursday afternoon I went to attend the oral argument in the Sablan v. Tenorio case at 1 o'clock. This the case in which I had filed the Amicus brief. After the attorneys straggled in, the court called the argument to order at about 1:15. One of the defendants' four counsel, Michael Dotts, was not present at this table when acting Chief Justice Villagomez began the

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proceeding. Deanne and the three loyal staff showed up to cheer me on.

At the beginning of the argument, Justice Villagomez asked the parties how they intended to divide the thirty minutes that each had allocated to them. He also suggested that I had requested time, which was not indeed the case. In any event, after soliciting statements of no objection from the two parties, he assigned me ten minutes.

The argument went on for about two hours and twenty minutes. Ted Mitchell, who was reasonably graceful and civil in his argument and responses to questions, argued for approximately fifteen minutes. Some of the questions from Special Judge Mack were particularly troublesome, since she was trying to emphasize the predominance of majority rule as the guiding principle here rather than the right to vote. Ted was able to seize on this to some advantage. He generally tried to deny or minimize the differences among the islands and suggested that the issues at play in 1975 were issues of power and money, rather than the cultural and social values of the society that were sought to be preserved by the insular cases.

The defendants were not particularly effective in their argument, with one of them

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suggesting that the Commonwealth Supreme Court had no power to deal with this question of mal-apportionment in the Senate. After he had completed his alternative arguments, he was asked by Justice Villagomez why he had bothered to argue if the first point he made was, in fact, correct. Counsel stumbled a bit and mumbled it off as simply an alternative argument. None of the Justices seemed particularly interested in the arguments advanced by any of the defense counsel.

I took my ten minutes and more. By Deanne's calculation, I spoke for about forty minutes. It was an extremely enjoyable argument, the Justices seemed, on the whole, interested, and there were a few laughs here and there. My judgment is that two of three of the Justices will definitely uphold the constitutionality of Section 203(c) of the Covenant, and Judge Mack may be brought along. It certainly is very difficult for a stateside person, including myself, to really evaluate with any sensitivity the significance of the compromise made by the founding fathers in 1975.

Friday
July 6, 1995

I am recording now from outside the newly constructed gymnasium on the island of Tinian. The Convention is holding public hearings

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today, notwithstanding the request, signed by all the elected officials to defer the hearings for a week, that arrived at the Convention's headquarters yesterday. Apparently, the political leadership, worn out from a week of debauching in Korea, felt unable to get its act together in advance of today's hearing. Since Tinian is only about three minutes away from Saipan by airplane, however, it was generally agreed that the hearings would go forward and at such time as the people of Tinian did get their act together, they could appear in Saipan and testify before the Convention.

We all flew over this morning on a special plane, one of those chartered to service the newly established casino on Tinian. Everyone was in a jolly mood; only a few of the delegates were absent, including Dr. Camacho and Jack Villagomez. When we arrived, however, we found that the gymnasium had not been prepared for the hearings and certainly no one was awaiting for the start of the hearings scheduled for 8:30. We arrived at about 8 o'clock, and spent the next hour and a half drinking coffee, eating breakfast and generally socializing. Deanne, of course, was busy editing the transcript from yesterday's

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hearing, which was the first work product of our newly arrived court reporter from San Francisco. Her name is Michelle, and she looks she will be more than able to handle the assignment.

The morning hearing focused on the articles under the jurisdiction of the Committee of the Judicial Branch and other elected offices. Most of the testimony was from the professional educators from Saipan and Tinian, all of whom testified in favor of increasing the public funds available to the school, decentralizing the school system, retaining an elected school board, and generally keeping everyone out of the school's business. The delegates have heard this on several occasions and are becoming increasingly bored by these repetitious exhortations to give them more money and make them less accountable. There was some little testimony on other issues as well, including the Washington Representative. Most of the testimony, however, was in the vernacular, and as a result, one had to depend on the written statements. The hearings convened at one o'clock after a luncheon break, at which two of the other two Convention committees consolidated their forces to hear only a single witness. We took a break at 1:15 and spent the

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next forty-five minutes in the Tinian casino, where I played Black Jack with modest success.

The picture here in the gymnasium of the delegates lined up at tables under the basketball hoop with birds flying around in the courthouse, are one of those memorable scenes that you see only in the Northern Marianas. It is quite hot inside the gymnasium although there is a modest breeze outside, the sun is extremely hot.

The hearings resumed approximately 2 o'clock to hear testimony regarding the [tape skips] local government. This was the subject that on Rota caused the near fistcuffs. However, because of the Mayor's lack of preparedness the issue was not quite as dramatically confronted here. The Mayor's position was presented by Bill Nabors, a long-time survivor of the Northern Marianas whom we have interviewed for our book. Bill has been out in the Northern Marianas since the middle 1960's and was a key adviser to the Marianas District Legislature in the years just before and after the status negotiations with the United States.

Okay, I'm now situated in the garden of the Villagomez residence on the Island of Tinian. I'm watching Pamela take a picture of the lovely pool

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and the children in the pool underneath the veranda. I'm watching Mary wash her hands, having survived handily at the slot machines at the casino from which we recently came. At the casino I played an enthusiastic game of Black Jack, fueled by several beers. On the whole, my luck near the end turned toward the affirmative until my wife came and extricated me from my winnings. I'm now watching Henry Hofschneider walk by me with a plate full of [raw?] delicacies and he looks like he's going to enjoy it thoroughly. Well, signing off for now but I'll be back later. Goodbye.

We stayed at the buffet supper for approximately an hour and a half. The food was fairly typical of such an event, probably not as spectacular or luxurious as the feast that Deanne and the others had in Rota. What was particularly memorable about this particular evening was the ever presence of flies with whom one had to compete for every piece of food. It was reasonably sociable, most of the delegates continue to be especially friendly with the secretarial staff. The men for the most part, however, are grouped around a large table and socialized among themselves. The relations

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generally on Tinian, notwithstanding the political differences among the parties, are much more civilized than the relationships on Rota.

Deanne reported that Juan Santiago had never been more friendly. She attributed it to the fact that he and the others had seen me gamble with such raw abandon at the Black Jack tables and decided that the eligibility requirements for brotherhood here in the Northern Marianas. She also heard a good deal from Victor Hocog about the chicken fighting ventures that he and Juan Santiago are involved in. Apparently, Victor raises fighting chickens and then takes them to the United States, to the Philippines or to Guam and bets on his chickens in the traditional cock fighting method. We cannot think of a more disgusting sport. Victor has found it very profitable, however, and told Deanne that he made approximately \$800,000 over several years through the raising and fighting of his chickens. Indeed, this is how he raised capital for the gold course venture on Rota that recently opened.

Deanne and I decided to not wait for the shuttle and take the 7 o'clock plane back to Saipan. Apparently, most of the other delegates and staff made the same decision with respect to

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the 8 o'clock plane, leaving almost no one there for the charter plane when it returned at 10 o'clock p.m.. Apparently everyone anticipated that we would have dinner and then return to the casino for several hours before the charter plane returned to carry us back to Saipan. Deanne and I were extremely tired, however, although the events of the public hearing on Tinian scarcely were not very demanding or fatiguing.

Saturday
July 8, 1995

Deanne and I spent most of the day working on various Convention-related projects. I began work on the draft report relating to Article 3 (executive branch) that the Committee would have to consider during the following week. It seems clear that, to Deanne and me at least, that the committees have to begin to get major articles before the Convention if we are to have any chance of completing our work by August 4. The work on Article 3 was not especially difficult. Joe De La Cruz had done a very decent draft and I was able to work from that and the text of the Constitution to make various changes in the report. Some of the language still remains to be drafted however. Deanne also was working on reports and is beginning to think through the shaping of the

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analysis of the Constitution that ultimately will have to be approved by the delegates. The analysis is of great importance, and to some extent, represents a distillation of the various committee reports that accompanied draft amendments to the floor for consideration by the Convention. However, there are necessary differences in style and a need for uniformity that justifies getting on this work sooner rather than later.

We also had our conversation with Bernie and Grace with respect to the exchange of letters and the various misunderstandings between Deanne and Bernie. We also had written some notes about the current financial reimbursement situation. In any event, the meeting went about as well as it could have with Bernie insisting he wanted to stay and was going to do all the work that we asked of him. He continues to describe himself as someone committed to candor in a way that leaves both of us somewhat discomforted. As a result of this discussion, Bernie and I were able to reach agreement on his payment schedule so that he would be compensated on essentially the same terms as applies to Deanne and myself.

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Sunday
July 9, 1995

Today was a rainy day in Saipan, a sign of more such days to come as the rainy season approaches. We both worked for most of the day, although Deanne continued her work late into the night in an effort to keep up with the never ending stream of requests for proposals. The deadline for proposals is July 10 and the delegates are determined to get their full quota of proposals in, aided by her tolerance and professional skills.

I continued to work on the draft report for Article 3 and to prepare for the meeting of my two committees on Monday. I did take a break from the Convention to do some further reading in the textbook on International Arbitration in an effort to collect my thoughts for a subject of the September presentation to the Australian convention. It basically looks as though there will be no recreational time between now and the end of the Convention - which I still hope will be August 4, 1995.

Monday
July 10, 1995

Today we begin the last four weeks of the Convention. Three plenary sessions are scheduled for the week - on Tuesday, Thursday and Saturday. Two of the four committees are meeting five times

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this week and the other two committees are meeting three times. The Executive Branch and Local Government Committee and the Land and Personal Rights Committee are the two committees that require the additional time and attention; both involve the most sensitive issues before the Convention.

The morning meeting of the Executive Branch and Local Government Committee went reasonably well. Finally the Committee addressed the subject of the Carolinian Assistant provision of Section 18. Confronted by the strong rhetoric and emotionalism of the Carolinian representatives who testified at the public hearings, the Committee basically elected to retain the position of Carolinian Assistant. They had no difficulty in abolishing the special slot for Women's Affairs. They had somewhat more difficulty in abolishing the position for Indigenous Affairs, since the purists among the delegates felt that if the Carolinian Assistant was to be retained, there was certainly no rational argument against maintaining the equivalent position to defend Chamorro culture, language, and traditions. It is hard to argue with such a logically stated position.

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Nevertheless, the Committee elected finally to eliminate the position for Indigenous Affairs and to replace it with a proposed Council for Indigenous Affairs. Tom Aldan had a proposal on this subject that had been somewhat overtaken by events, since it called for the abolition of the Carolinian Assistant slot. Nevertheless, we were able to persuade the delegates to adopt the concept of the Council in principle and I was given the assignment of drafting appropriate language for the Committee to consider at its next meeting. I did so later in the afternoon and, to my surprise, the effort was more or less accepted as appropriate by Tom Aldan.

The other critical issue remaining for consideration by the Committee relates to the retirement program. I am still somewhat nonplussed by the delegates' views on this subject and do not know exactly how to solve the problem.

The afternoon meeting of the Legislative Branch and Public Finance Committee consisted of a working session with four visitors from the outside. They were Eloy Inos, a former Director of Finance with whom I had worked during Governor Guerrero's administration, David Hawkins, and David Berger, both from the private sector also,

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and Congressman Reyes, Chairman of the House, Ways and Means Committee. The discussion was slow to begin but ended up somewhat more productive than I might have imagined; we did get some interesting views and instructions as to how to handle the budgeting processing issue and an up-to-date report about the work of the unfunded task force. It seems quite clear that reasoned persons who have studied the problem, agree that Commonwealth citizens are undertaxed, but that more care has to be taken in increasing the taxes to make the burden more equitable. We now have some work to do to draft appropriate recommendations that might implement some of the thoughts communicated at the meeting. I think that the delegates generally felt somewhat intimidated by the complexity of the taxation and budget processing issues and the expertise of the visitors.

Chairman Aldan was quite cooperative, however, in letting me get the signatures of the Committee members in order to present the Article 2 report to the plenary session on Tuesday, July 11. We both reassured members of the Committee that they would be able to reconsider their principal recommendations after the matter had been initially presented to

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the floor of the Convention. I subsequently spent time on revising the Committee report, preparing talking points for the Chairman, and trying also to move the Executive Branch and Local Government Committee towards completion of its work. It is still our hope that a draft report regarding Article 3 might be presented to the Convention before the end of the week.

Deanne had some considerable success in her committees. She was able to produce a draft report on Article 14 dealing with natural resources, after fighting off another effort to create another independent agency in the Commonwealth to deal with environmental problems. She also had to wrestle with a proposal to protect and expand the Commonwealth jurisdiction at least 200 miles out into the deep waters of the Pacific in order to secure for the Commonwealth exclusive rights to the nodules and the fuzzy creatures that live near the vents of the earth's tectonic plates. Very detailed proposals on this subjects were provided the Convention by Lt. Governor Borja, undoubtedly drafted by Don Woodworth in Washington.

Deanne is now, as I speak on Monday evening, at the office continuing to work on proposals

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which now have reached the number of 600. We have spent some time thinking about how to handle delegate amendments to articles that have passed first reading, with me trying to reduce to some extent the voluming and hopeless efforts to suggest amendments at the last stages of the Convention's deliberations. We are both keenly aware of the fact that the 1985 Convention foundered largely on its inability to deal with last minute amendments made on the floor of the Convention that the delegates were ill-prepared to deal with in their effort to conclude the Convention. We are determined not to let such a prospect occur under our regime.

Tuesday
July 11, 1995

Today was the day of three committee meetings and one plenary session from about 1:45 to about 4 o'clock p.m.. The Executive Branch and Local Government Committee met this morning and inconclusively discussed the proposal for a so-called Council for Indigenous Affairs. I had drafted a constitutional proposal to accomplish what I thought was Tom Aldan's concept as revealed in his written proposal and at the discussion of the Committee meeting yesterday. It appears,

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however, that I fell far short of what he truly had in mind.

I had cleared the proposal with him in advance of the meeting and made one change to reflect the fact that the only income expected from the Marianas Political Land Trust would be the investment revenue. This was the trust fund set up to invest and protect the money earned by the Commonwealth by leasing land on Tinian and Saipan to the United States pursuant to the Covenant and related documents. When the proposal came up for discussion, however, Tom promptly added orally several additional functions and responsibilities to the Council that soon turned it into a major department of government aimed at spending its money, moreover, principally for Commonwealth citizens of NMI descent.

During the discussion, I opined limiting the benefits of the Council to persons of CNMI descent was in violation of the U.S. Constitution - a position that Deanne and I have taken consistently and which we believe is surely correct. Aldan, with apologies expressed to counsel, went on to state that he was confident that I could defend such a constitutional amendment if it were adopted by the Convention. He took issue with me further

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when I suggested that the functions being assigned to the Council were reaching far beyond the protection of Carolinian and Chamorro language, culture, and traditions that was the principal cause for the proposal in the first place.

It was, as a result, an extremely unsatisfactory session. Some of the delegates agree that Tom's proposal seeks to achieve too much with too little awareness of how, in fact, it would operate with respect to existing programs and offices. Many think it might be better simply to leave the resident executive for indigenous affairs in the Constitution and move on to other matters. After the meeting, I redrafted the proposal somewhat to embrace some of Tom's additional ideas, and I will make another effort at the meeting tomorrow to see if the Committee will settle for something both constitutional and sensible. I am not optimistic.

The luncheon was highlighted to a visit to the dentist that Deanne had arranged. All sorts of implements were put into my mouth that I had never seen before, but the end result seemed to be generally satisfactory. As a result, however, we were some ten minutes late for the beginning of the plenary session in the afternoon.

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The plenary session was almost as unsatisfactory as the morning Committee meeting. This was the day when Article 2 on the legislative branch was to be presented to the Committee-of-the-Whole and discussed in detail. Henry Hofschneider was the presiding Chair of the Committee-of-the-Whole and I sat next to him. Shortly after discussion began with respect to the report on Article 2, however, Joe LiFoifoi made a motion to approve the report which was promptly seconded. The Chair did not know quite what to do except put the motion to a vote, although I had suggested that he might suggest that the motion was out of order or that it could be laid on the table or some similar procedural device aimed at keeping the discussion going. His judgment may certainly have been right, or in any event an accurate reading of the sentiment of the delegates, because when the motion was in fact put to a vote, it was adopted by an overwhelming majority and that ended the discussion on this very complicated and important set of proposed amendments.

Joe LiFoifoi told me after the session that he was confident that the report was going to be ultimately adopted without any difficulty. He

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described it as basically a course in political science, downsizing the government, etc. and indicated that by that description that he thought it was certainly very much acceptable in terms of principle. It may be that the delegates don't see some of the political significance to the proposal and the extent to which it might be severely criticized by some elements of the community.

The Committee-of-the-Whole then went on to consider the report with respect to Article 14, dealing with natural resources, coming out of one of the committees that Deanne has been assisting. It went down quite easily, save for some discussion about a neighboring island to Rota which was designated to be preserved as a wilderness area. Deanne appears to have fought off successfully the many efforts to have an elaborate discussion about the exclusive economic zone in the Constitution that would proclaim the Commonwealth's exclusive rights to developing the marine resources extending out to at least to 200 miles from the islands in the Commonwealth.

After the meeting, Deanne and I did our various little projects, getting caught up to date, but got increasingly fatigued. We went out to dinner at one of the restaurants at the San

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Rogue Shopping Center, where most of the Japanese seem to spend their time shopping and eating. The meal was just fair and I ended up at home whereas Deanne went back to the office. Tomorrow is another day.

I'm getting somewhat pessimistic now about the Convention concluding its business by August 4. The lack of leadership is growing evermore apparent as the crises multiply and the problems become more complex. In the absence of a strong leadership, the possibilities for lack of restraint as evidenced by Tom Aldan's many proposals and the division over the critical issues like local government become evermore likely. It may be that the delegates simply feel they will have to use every available day, including the additional 15 days provided by the enabling legislation, in order to reach some accommodation on these more controversial issues. Deanne and I are truly going to have turn to the local government issue within the next few days.

July 12, 1995 Deanne today completed the process of writing all the delegate proposals in appropriate format for introduction into the Convention. The total proposals exceeded 620. It was truly an amazing

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accomplishment and very few of the delegates really appreciate the dimensions of the task. We are hoping we will not have a similar number of delegate amendments, and have proposed a series of procedures designed to keep delegate amendments from coming to the floor initially without first being processed by counsel and considered by the pertinent and substantive committee.

Today was another day of constant committee meetings, with plenary sessions held on Tuesday and scheduled for tomorrow. Deanne reports that she was able generally to get her education article through, her article dealing with initiative, referendum, and recall, and her article on civil service. Each involved very difficult technical issues. In addition, she's making good progress on Article 11, dealing with public lands. In this area the Convention, for better or worse, may be making one of its most significant contributions. The delegates seemed prepared to set aside a very large percentage of existing public land to be reserved as public parks for future generations and to deny those lands to commercial development. Among other consequences, this will mean that relatively

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little public land will be left for the ill-conceived and poorly executed homestead program.

The morning meeting of the Legislative Branch and Public Finance Committee went reasonably well. Chairman Aldan spent considerable time trying to get the delegates in the Committee to agree to his proposal to declare null and void a recent tax reform bill enacted by the Legislature. It was the one reportedly passed without public hearings and, indeed, without the Legislature's even reading the bill. Notwithstanding the temptations and the self-interest involved, the delegates were courageous enough to turn down the Chairman's invitation to assume a role as supra-Legislature. Maybe the constant haranguing by counsel regarding the difference between constitutional and legislative enactments has had some effect. The Committee then went on to consider the deficit reduction aspects of Article 10 and essentially assigned to counsel the responsibility of trying to draft something meaningful in this area to reduce the extent and duration of deficit in the Commonwealth.

There was some discussion of Article 2 dealing with the legislative branch in view of yesterday's abbreviated consideration of it at the

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plenary session. It was agreed by divided vote to delete the references to specific dollar salaries in the transitional schedule. This came as a pleasant surprise to me and occurred over the opposition of the Convention's President. The only other issue on which the Committee divided was extending the two-year term of representative in the lower house to four years. There are many good reasons for doing this, but Delegate Borja, who has spoken out on relatively few matters, has selected this as one of her important issues. She and I discussed it later and she maintained she has the votes to keep the change from taking place on the floor of the Convention. She has advised Deanne and her brother is getting the files of her father's documents up for us to review in connection with our book project. She is a very competent, young leader in the Commonwealth.

Deanne had a Committee meeting in our office this morning with Delegates Fleming, Seman, Mendiola and Kuitugua with respect to the proposed education article. They're all extremely attractive and bright individuals trying to do the best job they can. Decentralization the school system seems to be winning general approval within the Convention, and is surprising many delegates

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who recognize, for the first time, that decentralization of public services also involves serious responsibilities for local government. It will be most interesting to see what the most strident local government advocates have to say about this unexpected gift in their laps. Delegate Seman apparently told Deanne that she characterized the proposal as a "traditional Chamorro compromise" and went on to say that essentially gave everyone a little bit of something, but in essence told the advocates of local government that they were going to get these responsibilities whether they wanted them or not.

I was in the process of a serious meeting with the President about various strategic and scheduling issues early this morning. We had discussed some issues involving the delegates' continued interest in legislating on various subjects, when he reported that he had a serious call of another nature and we would have to resume this meeting later on. We never did.

In the Executive Branch and Local Government Committee we finally disposed of two critical issues - dealing with the proposed council of indigenous affairs and the section dealing with the retirement system. Tom Aldan was the leader

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on both issues and we had our differences on both subjects. Overnight, however, he and I had both worked out alternative versions of the proposed Council on Indigenous Affairs and there were relatively few differences between them. The Committee did finally adopt this proposal, which has grown considerably beyond its original idea, and we have the chore of preparing appropriate text that somewhat simplifies the version that Tom Aldan drafted. I had to leave the retirement discussion with no regret, at about 5:15 to attend a meeting with David Kahn at the Hyatt Hotel bar. I still haven't heard from Joe De La Cruz what happened on retirement, but I think we now have a Committee consensus on the subject.

The discussion with Kahn was very productive. However, I emphasized the fact that we had not received detailed and expert assistance from the executive branch in developing these far-reaching and numerous proposals to change the constitution. This never would have happened in a state. Kahn had basically something substantive to say about each of our ideas, many of which were very substantive and useful. Deanne and I are planning to circulate most of these proposals after first reading to the concerned agencies in the hope of

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trying to identify any serious mistakes or shortcomings before they are presented back to the Convention for second reading. It is a testimony to the fact that we really have no substantial expertise or experience in the Convention, at least not to the extent that individual delegates feel competent enough to speak out knowledgeably about some very important contemporary issues. There is an enormous risk of mistake here and Deanne and I are both concerned about it.

Kahn is concerned with the various actions being considered by the Conventions with respect to, for example, the budget processing issue, the retirement system, public lands, and virtually everything else of significance - except perhaps what we are intending to with downsizing the Legislature. He does not realize the pressure that mounts within a Constitutional Convention, based on the last decade of experience, that weighs heavily on the delegates. There's such an enormous sense of power within a Constitutional Convention, when the delegates finally realize that they are indeed a super legislature, that is very difficult to persuade the delegates to exercise any restraint. I am pleased when, from time to time, a majority of the delegates in a

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particular committee returns to our distinction between constitutional provisions and legislative provisions and admonishes their colleagues that the subject under discussion falls into the legislative category and should be accordingly rejected. The Governor has told Kahn that the members of the Administration are free to speak out on any particular subject to the Constitutional Convention and that he as Governor will support those recommendations of the Convention that he approves and he will oppose those that he does not approve. I wish we had more input from the Governor's branch officials before the Convention comes to conclusion.

[End Side B Tape 6]

JOURNAL OF HOWARD P. WILLENS

RE: CNMI THIRD CONSTITUTIONAL CONVENTION (1995)

July 13 to July 24, 1995

Thursday
July 13, 1995

Today was the day of another plenary session at which four articles were going to be considered either for first reading or in the Committee of the Whole. At such, the morning plenary session was preceded by a Committee on Organization and Procedures. The COP meeting went reasonably well. The members had no serious difficulty with the proposed agenda, although COP member Frances Borja announced her determination to bring to the floor her insistence that the term for representatives in the House remain at two years rather than be increased to four years. There was some friendly debate about it within the leadership group, but no one seemed offended at Frances' suggestion that she wanted to press this matter further. Although I disagree, and take issue, with some of her arguments, it is hard either to disapprove of what she is doing or to not recognize that this is indeed a constitutional issue level of the kind that ought to be debated seriously among the delegates.

We had some discussion about the politics in COP. The Committee has decided not to press its

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previously expressed desire to reduce the number of votes for adoption of a proposed amendment on final reading from two-thirds of the Convention delegates to a simple majority. They basically don't think they have the votes to bring about that change in the rules. What I suggested to them was that some of the proponents for change in the local government area had been slow to recognize that it will be difficult for them, too, to muster two-thirds of the Convention delegates to achieve changes in the status quo that they believe are necessary. As it stands now, the relevant provisions of Article 3 and Article 6 dealing with local government, as construed by the courts in a recent opinion, essentially resolve the major issues in favor of the central government. To that extent, therefore, the leadership group, even though it is ready to consider some rational change in the relationship between the central and local governments, is not under any serious pressure to take the initiative on these difficult and sensitive subjects.

Right now, we recognize that there might be some political trading going on between Delegate Manglona and his supporters, seeking changes in the local government article, and former Governor

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Camacho and his allies who might be more interested in bringing about changes with respect to the land alienation provisions of Article 12. Some horsetrading is clearly going on among these three groups, and the question remains whether it yields sufficient votes to bring about the necessary two-thirds to accomplish the major changes desired by both of these individual groups.

The plenary session went reasonably well, with the usual humorous moments, one of which involved David Maratita quoting Ecclesiastics to the effect that "there is a time" which he used to the utter confusion of the assembled crowd. Delegate Taitano shortly after David spoke inquired of him as to which way he was going to vote on the subject that was under discussion at the time the Biblical reference was made.

We had somewhat more success in the plenary session than had been anticipated. Deanne's committee proposals dealing with civil service and the initiative, referendum and recall went through reasonably well. There was the customary debate on recall provisions and whether they ought to be made less stringent in order to permit all the wrongdoers elected to office here to get booted

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out. Jack Villagomez, increasingly a pain in the neck, was the leading force seeking to lessen the requirements necessary to get a recall campaign amounted. He lost on this suggestion, as he does on most, and changed his vote on a major issue later in the session because of this defeat.

The impact of the proposed amendment regarding civil service may never be known for many years. Extending the civil service to the local government, except for those personal staff positions of the Mayor, seems a fairly substantial change from current practice. It certainly seems appropriate to place under civil service all those persons whose positions are funded by Commonwealth money, with some usual exceptions for professional, managerial and so forth. The proposal also includes the Legislative Bureau personnel under the civil service. Deanne and her committee hoped that imposing these restrictions may bring some measure of, if not professionalism, at least accountability, to the extremely large and unproductive staff at the local government level. It might also mean that many of these employees cannot be kicked out of office when the political winds change, and this, in turn, may reduce to some extent on Rota and Tinian the

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attention that people attach to the local government issue. When it comes down to it, it appears that the Rota and Tinian political leaders, at least the traditional ones, don't really care about what local matters their government administers; they are interested only in getting access to Commonwealth funds and political services over which they can exercise complete dominion.

The natural resources revision of Article 413 ??? went through without difficulty, as did the very substantial report and set of proposed amendments dealing with Article 2 (the Legislative Branch). The only real substantive issue here was the two-year versus four-year issue raised by Frances Borja. Although her motion to keep the two-year term as is lost by a vote of 13-11, she was quite satisfied, since this meant that the proposed change was not likely to win the two-thirds vote required on second and final reading. It does seem to me somewhat strange for a member of the leadership, who has been arguing for a majority requirement rather than a two-thirds requirement, to find such personal support and take sustenance from the current rule requiring two-thirds when the issue at stake is one of

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importance to them. Just another comment on human nature from here on Saipan.

After the plenary session which went on past the noon hour, there was the customary luncheon served in the President's office. As Pamela Carlson, our loyal and competent Administrative Assistant, quotes, "This place is like a nursery - they have a feeding every two hours." (Indeed, today there was an offer of lasagna to be served at 4:00 o'clock in the afternoon.)

There were two committee meetings in the afternoon. The two committees proceeding more slowly, either because of personnel or the difficulty of the issues, are my Committee on Executive Branch and Local Government and Deanne's Committee and Land and Personal Rights. She is making substantial progress on getting Article 11, dealing with public lands, through the committee. She is also having some considerable success in getting very substantial revisions of the education provisions of the Constitution through her other committee.

The Committee on Executive Branch and Local Government turned for the first time to Article 6 related to local government. I distributed to the committee members the two-page outline of issues

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that had been previously used in connection with the public hearings on Rota and Tinian. My thought was that beginning with some fairly innocuous discussion might be useful. Vice Chair James Mendiola presided over the committee meeting, since Chairman Nogis was absent on a family-related problem. Mendiola is a reasonably competent and experienced politician and runs a meeting with much more facility than does Felix.

The discussion started out innocuous enough but ended in a burst of angry rhetoric by Benjamin Manglona. There was a rather desultory conversation of preserving local government on the three major islands, eliminating it for the northern islands, and some unaddressed issues as to the Mayor and the Municipal Council. The trouble seemed to come when I tried to get the members of the committee to focus on what powers of local government might be assigned to the Mayor and the Municipal Council, expressly putting to one side the more difficult issue as to the role of the Mayor in administering the role of public services run by Commonwealth-wide departments. It is this latter issue, of course, that participated litigation to interpret the 1985 Convention amendment that has been a knawing issue here in

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the Commonwealth since the days of the Covenant and the first Constitutional Convention.

The delegates were sort of unable to get a grasp on this delineation of the issues, and I suggested that I might take some of the proposals that had been introduced on the subject and organize them in a way that might help the delegates to focus on the kind of powers that might be assigned to local governments. They seemed to have some interest in my doing that. Then in the course of the conversation, Delegate Villagomez made some reference to the fact of three Governors with one on each island. Deanne just entered the room . . . signing off now. By referring to the Mayors as would-be Governors, Delegate Villagomez unintentionally triggered an outburst from Benjamin Manglona. He spoke with increasing passion and rhetoric, culminating in a walk-out from the committee meeting, and reportedly a hurling of his glasses down the corridor of the Legislature's halls. The thrust of his comments was that the people of Rota really don't want very much, what they have exercised under the 1985 Convention amendments is perfectly reasonable, the Mayor and the personnel in the Senatorial District have to comply with

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Commonwealth laws and regulations, and he doesn't see what the big difficulty here is. He culminated this challenge by suggesting that Rota might have to reconsider its affiliation with the Commonwealth of the Northern Marianas and may look for a better deal for affiliating with Guam. By the time he completed his oration, most of the members of the committee had left and, since Benjamin sits only about six feet in front of me, it looked as though he was directing this oratorical burst at me, which I do not think was the case.

In any event, the meeting ended shortly thereafter, and there was much gossiping in the hall about Benjamin's outburst. The people from Saipan, and several of those from Tinian and Rota as well, don't particularly share his extreme position. They also don't seem to have very much of an idea exactly how to accommodate his concerns or reach some compromise. In fact, I am not sure that people are looking for compromise, and they are quite confident that Benjamin will walk out of the Convention before it is concluded and will not sign the document that emerges from the Convention's deliberations.

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Thursday was Grace's birthday, and we were invited by Bernie and Grace to join them at the Hyatt for a decent dinner. We did so and had an enjoyable evening. It even started out with some champagne, with which we toasted Grace, who is really contributing a good deal to the work of the Convention. I am getting a little tired of the menu at the Hyatt, however.

Friday
July 13, 1995

Today was a day of constant committee meetings and related bustling around trying to complete the transcript of the period day's plenary session. In the Committee on Executive Branch and Local Government, I asked the committee to review a draft report on Article 3, resolve any outstanding issues, and generally approve it for submission to the Convention at the Saturday plenary session. In order to do so, the committee had to resolve issues relating to the retirement plan and the proposed Council for Indigenous Affairs. There was the usual uncertainty about the retirement plan, but ultimately the committee more or less went along with the proposed accommodation between Tom Aldan's views and mine. I don't think that either of us is particularly happy with the result. We did hear an impassioned

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speech regarding the subject from Joe LiFoiFoi, with whom we are both getting friendlier, who is one of the more senior members of the group and obviously a retired citizen who cares a lot about the integrity and the conservative management of the retirement fund. We did manage to complete these tasks, and I went back to my room to get the thing ready for circulation Friday afternoon to the delegates.

Deanne in her committees was working on Article 15, dealing with education, and Article 11, dealing with public land. Her committee is proposing some very radical and constructive suggestions with respect to the preservation of public lands in the Northern Marianas. What we haven't thought through is how best to preserve the public lands during the interim between conclusion of the Convention's work and the placing of the amendments on the ballot for the voters sometime early next year. She reports that one of the private lawyers here is busy drafting leases to be negotiated on behalf of his client after the Convention concludes its work in order to avoid any protective measures or more restrictive measures that the Convention seeks to impose on such transactions. Deanne is

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quite determined not to let this particular lawyer achieve his objectives.

The afternoon meeting of the Legislative Branch Public Finance Committee dealt with Article 10, dealing with taxation and public finance. Bernie and John Manglona are sharing the burden of this committee's work. Unfortunately, we had to resubmit to the committee some proposals that had been filed recently and raised issues as to which the committee had already acted. With only one exception, the committee rejected these new suggestions. The exception was an unfortunate one, since the committee elected to impose on the Commonwealth Legislature an absolute requirement that no law could be enacted except by a majority of all members. They are especially concerned that if only a quorum is present, a majority of that quorum is obviously less than one-half of the body, and it would be inappropriate to have laws enacted by such a sparse representation from among the elected officials. There are many ways of dealing with this problem, obviously, but for the moment we will have to go forward with this proposal unless the committee reconsiders it.

Friday night was another return to the Hyatt for dinner, this time to celebrate Sandy's

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departure and thank her for her good work. We went out during the day to the Trade Winds store and bought her some Indonesian art to memorialize her trip to the Western Pacific. She was, I think, seriously regretful about leaving, but has to return to mother her two children and to look for another legal secretarial job. Pamela, our loyal Administrative Assistant, is trying to persuade Sandy to go into business for herself and, on some projects, join forces with Pamela. She may well do so. We had as our guests Sandy, Pamela, Mary and our reporter Michelle. I was the host and only male, but I and they all survived.

Saturday
July 15, 1995

Today was a plenary session, preceded by a meeting of the Committee on Organization and Procedures. The committee meeting was scheduled to begin at 8:30 a.m., but, given it was a Saturday and the plenary session did not start until 10:00 a.m., the committee members did not really straggle in until close to 9:00 a.m. We had a short and reasonably productive committee meeting, although my efforts to get some committee discussion about what was coming to the floor ended up with a bit of an uncontrolled discussion regarding the public lands provisions of

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Article 11. Marian Aldan Pierce handled the onslaught quite competently. The effort by the members to insist on more regular and longer committee meetings near the end of the session prompted an outburst from Joe LiFoiFoi, who reminded the delegates in the strongest possible terms that he had a family to support and could not devote so much time to the Constitutional Convention.

After a few false starts, the plenary session got under way about 10:15 a.m. and lasted until after 4:00 p.m. in the afternoon. We covered Article 3, dealing with the executive branch, in excruciating detail; we dealt with Article 11, and we had an initial report regarding the radically new provision on education. None of these articles was set for first reading on Saturday, but some of them were scheduled to return to the plenary session for that purpose on Tuesday, July 18.

Delegate LiFoiFoi chaired the Committee of the Whole discussion, and I served as his legal advisor. During discussion on Article 3, I was asked to respond to several questions by delegates by Chairman Nogis. One of the interesting things we saw happen on Saturday was the reading of

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questions by Delegate Santos from Rota. Obviously someone had asked her to direct a specific question to me for purposes unknown either to her or to me. We are going to try to have a speech made on this subject, so that delegates are more careful about letting themselves be used to achieve some effort by lawyers or others to create legislative history that will help them in pending matters.

Somewhat to our surprise, a discussion of the residency requirement for the Governor precipitated a 30-minute or more discussion as to the need of the local community to protect itself against other United States citizens or strangers who want to live in their islands. Delegate Aldan made a motion to reduce the current 10-year requirement to seven years, based on legal advice that we had provided his committee and others with respect to what is acceptable under current U.S. Supreme Court rulings. This elicited strong comments from Delegate Camacho, and to some extent from Delegate Manglona, with the cameras running. Camacho took the occasion to suggest that the Governor should be required to be of CNMI descent, to which I responded when asked that this was without question in violation of the U.S.

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Constitution. Several of these speeches were in Chamorro, although the delegates frequently summarized their comments briefly in English after they concluded their statement in the vernacular. Pleasantly, the debate precipitated several strong statements from Delegates Villagomez and Lillian Tenorio defending the proposal and suggesting that, as U.S. citizens, we ought not to be discriminating against other U.S. citizens. At one point, I thought I made a rather effective statement about the many protections they had built into the society that seemed to present nearly insuperable barriers to the assumption of high office by a person not of local origin. It did not seem to have much effect on the debate, however. The extended discussion, which TV cameras thoroughly enjoyed, ended with a vote to substitute the seven years by a majority of about 13 or 14 to 11. This means that the change may have difficulty achieving the two-thirds requirement if the committee decides to press for it on final reading.

There was a somewhat similar discussion with respect to the proposal with respect to the Attorney General position. The committee was recommending elimination of a residency

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requirement, and that prompted some of the same discussion. I had included in the report that the Attorney General would undoubtedly be someone "sensitive to the customs and traditions" of the local people, and this just prompted even more debate about how could anyone who was not a member of the local community, or at least a member of the local bar, be sensitive to those customs and traditions. At one point, Lillian Tenorio, sitting only three or so feet away from Deanne, gave a speech in which she suggested that it was unreasonable to focus on such matters since if either I or Deanne were nominated for Attorney General they certainly would want to have us serve in that position, notwithstanding our lack of the residency requirement. This brought many guffaws from the audience and at least one loud "no" to the proposition.

For the most part, all the reports went through without too much discussion. The public lands proposal about permanent preserve has not yet identified the areas that would be so protected. Deanne reports that to some extent the subcommittee working on the matter is getting a run-around from the public agencies involved, who see this effort as a considerable threat to their

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leasing of the land for commercial purposes. It will be interesting to see whether we can get sufficiently accurate and complete data to enable this effort to be accomplished. Deanne and I may have to get personally involved in some of the meetings with Commonwealth officials.

Delegate Camacho created another stir with impassioned speeches with respect to certain of the public lands provisions. It turns out that his family is currently in negotiation with the Government, seeking an exchange of land at a ratio of 100 to 1, and protesting the unreasonableness of the Commonwealth's refusal to accept such a bargain. According to Deanne, the land exchange has contemplated a ratio of 10 to 1, but that is unacceptable to the former Governor. Under proposed amendment to Article 11, Commonwealth agencies would find it more difficult to use land exchanges to obtain land for public purposes and would have to resort to the imminent authority contained in the Constitution that has never been used since 1978.

On a human level, the legislative chamber was colder than ever and got increasingly so by the end of the day. People ended up wearing shirts, sweaters and small jackets in order to protect

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themselves against the air-conditioning. Tempers occasionally got a little short; Bernie got concerned with the quality of the debate and kept urging the Chairman to terminate the discussion or organize it in some reasonable way. Delegate LiFoiFoi, formerly a speaker in the Commonwealth House of Representatives, knows how to manage a meeting, however, and is quite determined to let everyone speak his piece so that subsequently one could on first reading enforce the Convention's rules more stringently. I agree with him as to this strategy.

At the conclusion of the meeting, we did go and buy Sandy her goodbye presents. It was on Saturday rather than on Friday that we did the shopping and that she was scheduled to depart on an early evening plane. After we did our shopping, we stopped for some necessities (bourbon included) at a store on the way up the Capital Hill and heard loud guffaws and invitations from the nearby brewery/restaurant. Some native delegates had assembled there, and they were inviting us to join them. We went in and drank a good deal of beer and ate a modest dinner with eight or nine of the delegates, including Mary Lou Sirok, Frances Borja, Bennett Seman, Lillian

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Tenorio, Joe LiFoiFoi, David Maratita, David Igata???, President Guerrero and Delegate Taitano. In any event, it was great fun and everyone is truly very friendly. Especially after a few beers, the table created a considerable uproar and drew the attention of the few other people trying to have a quiet drink or meal. As Deanne commented later, we have had much more informal socializing with the delegates at this convention than we did 19 years ago -- although our recollections are somewhat vague, to say the least. The delegates do seem more comfortable in dealing with us, more self-confident in using the language and generally more familiar in dealing with statesiders like ourselves who are sharing a venture with them like this Convention. Most of these delegates are in their early 30's, some in their 40's, and very few who are older. Delegates Camacho, Manglona, LiFoiFoi and Maratita, are among the older delegates. After some scurrying around to locate Sandy and give her her presents, we escorted them all to the airport where we said our fond goodbyes. It was an exhausting day.

Sunday
July 16, 1995

Today was another exhausting day, with no

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break for sun or recreation. The picnic originally scheduled for all Convention delegates was scheduled late on Saturday in view of the inclement weather and the threatened continuation of such. Notwithstanding the predictions, Sunday turned out to be a fairly decent day on which we could have enjoyed a break from business.

Deanne and I spent most of the day in the office, with me doing some of my work at home. We are trying hard to complete the more difficult sections now, Article 6 for me and Article 12 for her, in order to get them presented to the commission and considered on first reading during the week of July 17. It is a very tight schedule, and we may slip by a few days. I am concentrating on reviewing the Article 6 materials and trying to formulate some kind of a draft that seems to make sense. Deanne also spent a considerable amount of her time working on the transcript of the plenary session from the previous day. This is turning out to be an extremely tedious and onerous job, and she is assuming key responsibility for supervising staff and making sure it ends up reasonably clean and legible. No historian will ever appreciate the amount of effort that she is undertaking in order to produce a clean and

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complete record of this Convention that will be readily available shortly after its conclusion. Whether it concludes on schedule -- August 4 -- is now seriously open to question.

Monday
July 17, 1995

Today was a day of four committee meetings. Our schedule for this week is the same as last week -- with plenary sessions scheduled for Tuesday, Thursday and Saturday. During the Executive Branch and Local Government Committee meeting, we heard testimony from the Mayor of Saipan and the Mayor of the northern islands. The exchanges between the Mayors and the delegates were conducted largely in Chamorro, so I did not get much of an understanding of what the issues were. As might have been expected, the Mayor of the northern islands gave an impassioned speech in favor of continued local government for the northern islands and predicted, in this connection, that with an active homestead program, the population in the northern islands would achieve a level of 1,000 within the next few years. Under the present Constitutional provisions, this would enable the citizens of the northern islands to have their own separate senatorial district and their own agencies of

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local government. Based on this testimony, I am recommending that the figure be substantially increased.

There does seem to be some considerable support for giving the Mayor of Saipan at least the real responsibilities for local government, including the power to tax, and a municipal council that has the authority to enact municipal ordinances on local matters. I plan to draft such a provision.

After the appearance of the two Mayors, although the lunch hour was long past, the meeting continued to discuss some aspects of Article 3. I presented to the committee three or four issues that had been raised during the Committee of the Whole discussion and sought their guidance on those points. We did get entangled somewhat in the budget processing problem, where a solution seems difficult to win any consensus, but I got enough direction to prepare a memorandum for the chairman to circulate to the delegates the next day along with a revised Article 3 and accompanying report. It is anticipated that this will come before the Convention for first reading on Tuesday, July 18.

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I also circulated a short proposed Article 19 dealing with ethical standards. I got no reaction from the committee on this subject.

While I was busy in the meeting, Deanne conducted the staff meeting by herself. She concentrated on administrative matters, especially getting personnel available to work on the plenary session transcripts. Our first court reporter, Les, has returned to assist us, and we now have two court reporters to help with the increasing volume of plenary session discussions.

Deanne's meetings concentrated on Article 11, dealing with public land and education. We had hoped that both subjects might get through the committee discussion in order to reach the floor on Tuesday, but neither was able to win sufficient agreement within the committee to justify reporting out to the committee. The land issues, of course, prompted the most impassioned speeches, and the delegates are understandably somewhat reluctant to make binding decisions with respect to such matters on too tight a time schedule.

During the afternoon session of the Legislative Branch of Public Finance Committee meeting, we concentrated on Article 10, dealing with taxation and public finance. Bernie had

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arranged a revised agenda for this meeting, but unfortunately found it necessary to identify every specific new proposal on which he wanted committee judgment. As a result, a lot of garbage was approved by the committee for inclusion in the Constitution on a tentative basis. I made a few feeble efforts to prevent the inevitable from happening, but have some support from some of the delegates, especially the women members, to take a harder look at these issues later on with a few toward getting them out of the Constitution. Bernie and I did collaborate on a meaningful deficit reduction program, the essence of which is to require the Government to shrink its personnel costs in any year where there is a deficit that remains to be eliminated. It will be interesting to see whether such a proposal wins approval in the Convention and, if so, it will in fact be honored by the Governor and the Legislature. It really does seem to be the only way to deal with this amounting deficit problem -- currently estimated at somewhat between \$30 and \$80 Million.

Deanne had yet another committee meeting at 5:00 p.m. while I continued work on the revisions to Article 3 and on local government and related matters. By the time she got out, it was nearly

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7:00 p.m., and we went off to dinner at one of the local Chinese restaurants. She then returned to the office for several more hours of work. This is getting to be an extremely demanding and fatiguing exercise.

She reported one discussion during the meeting of her committee dealing with the Constitutional amendment issue. I had written a draft provision with respect to the mutual consent issue under the Covenant. Under the Covenant certain provisions cannot be modified without consent of both the United States and the Commonwealth. However, the Covenant does not indicate how the consent of the Commonwealth is to be communicated. My proposed Constitutional amendment addresses this and establishes a series of rather difficult hurdles before any proposed amendment to the Covenant can be put before the people for their approval. During the committee discussion, Deanne got questions on the subject. She explained that this was written by lead counsel (namely me) who had negotiated on behalf of the Northern Marianas people, had defended the Covenant ever since, and was ready to give a table-thumping defense of this provision. After this explanation, she reported, the delegates

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stopped the questioning and elected to follow our recommendation. When the subject of endangered species came up during the same meeting, Deanne told the delegates that the only endangered species on this island are elderly Haolie??? lawyers who have advised more than one Constitutional Convention. This brought considerable laughter from the assembled delegates.

Tuesday
July 18, 1995

Today was a plenary session day scheduled for the afternoon with a meeting of the Committee on Organization and Procedures in the morning. At the COP meeting, I tried to get the members to focus on the articles that were coming before the Committee of the Whole for the first time. This did produce some considerable discussion with respect to Article 12, although that was not yet ready for discussion on the floor.

We also had some brief discussion of local government issue, and it confirmed that the leadership really has no unified position on the subject. I spoke generally about the draft Article 6 that I had prepared and intended to review with the Committee on Executive Branch and Local Government during its morning meeting for

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the first time. This precipitated some considerable difference between the members of the leadership group from Tinian and Rota on the one hand and those from Saipan on the other. When the issue of costs came up, some of the Saipan delegates (especially Tom Aldan) eagerly embraced the proposed requirement that the cost of local government be borne by the local citizens and not be paid from Commonwealth funds. After the COP meeting, delegates Hofschneider, Quitugua and Hocoq all discussed with me the cost factor. It looks as though it's going to be very difficult to get any requirement in the Constitution that local citizens support their own local government personnel and agencies.

In the meeting of the Executive Branch and Local Government Committee, there were several preliminary matters. Delegate Aldan insisted that we revisit the budget processing provision of Section 9(a) and delete the sentence contained therein imposing on the Legislature an obligation to submit an approved budget to the Governor at least 30 days before the start of the fiscal year. He seems to have no awareness that these changes were designed to reflect the concerns among the delegates as revealed during the Committee of the

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Whole, and the committee itself did not necessarily need to vote on this themselves. In any event, he carried the day by a few votes, and that will be reported to the delegates when the Convention does finally consider Article 3 for first reading in the plenary session.

After some other preliminary matters, including rapid adoption of the short Article 19 dealing with ethical standards, I began talking my way through the draft Article 6. We got hung up initially on the question of whether the northern islands should have some right to local institutions of government at the specified point at which the population in the northern islands amounts to 1,000. This provision is currently in Article 2 and has been there since 1976. Aldan made an initial motion to increase the 1,000 to 2,500 and, somewhat to my surprise, this was resounding defeated. For reasons I do not fully understand, Chairman Nogis has a very strongly held view on this issue (perhaps because the northern islands residents are primarily Carolinian) and had done some lobbying in advance of the meeting on this issue. I was tired and disgusted by the whole matter and subsequently learned that some of the delegates wanted to

revisit the issue and perhaps ensure that the population of 1,000 be a population of 1,000 registered voters. This in effect would more than double the present minimum population required for creating a new senatorial district in the northern islands. Still to be resolved are questions as to whether, upon reaching this population level, all the institutions of local government provided in Section 6 for the other three senatorial districts will automatically become available to the citizens of the northern islands. One can make reasoned arguments on both sides of this question.

After the discussion regarding the northern islands, we did manage to cover a few sections of the proposed draft. At the present rate, however, there is no chance that a draft Article 6 can be presented to the floor by Saturday, July 22, which is the deadline for considering all articles on first reading.

In the afternoon we had a very long and not particularly productive plenary session. Before we even got to the substance of the order of business, nearly 20 or 25 minutes were taken up with considering a resolution introduced by Delegate Maratita with respect to the atomic bombing of Hiroshima and Nagasaki in August 1945.

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His resolution was designed to express regret for this action and the victims and did in that connection make reference to the fact that the island of Tinian (from which he comes) was the point at which the United States planes were loaded and took off. This precipitated a discussion as to whether Tinian should be mentioned in the resolution and what impact such a resolution would have upon Japanese tourists interested in visiting the Northern Marianas. The resolution obviously never should have been brought to the floor without having been circulated initially among the delegates, but no such rule is presently in place, and the President seems reluctant to impose any rules whatsoever.

After many recesses, breaks and disjointed conversation, the resolution was referred back to the maker by a vote of about 13 to 11. He was quite taken aback and hurt by this rejection and announced to the Convention that he would not be resubmitting the resolution for the Convention's consideration.

In the Committee of the Whole, the agenda was to discuss Article 18, dealing with processes for amending the Constitution and the Covenant. This was the area where we had prepared for the first

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time a provision setting forth a process for amending those provisions of the Covenant protected by the mutual consent provision. Deanne was not in the meeting, because she was busy working on reports with respect to other articles, and the chairman of the committee had no particular interest in this provision. He asked me to explain the provision, and this engendered another 30 to 45 minutes of discussion.

My proposal on the subject was initially described as "hogwash" by Delegate Aldan. I explained the need for a process, which generally got support, but I was unable to communicate effectively as to the need and desirability of having some formal expression of United States position on a proposed amendment before the issue was put to the people for their consent to such proposed amendment. I thought it was a rather obvious point, as did Deanne, but it seemed to the delegates as requiring United States consent to a proposed amendment before the views of the people could ever be elicited on the subject. This was not my intention, I told them, and there were many ways in which the aspirations or desires of the people with respect to an amendment of the Covenant be obtained outside of this process. The

distinction between eliciting the views of the people on a proposed amendment, and the precise process by which such an amendment would be approved by the Northern Marianas, was not easily understood or explained by me. As a result, the offending sentence was removed from the draft.

The Convention then turned to the proposed change in the amendment process which gives somewhat less weight to the individual senatorial districts. The present provision of the Constitution requires a majority vote for approval of an amendment to the Constitution plus two-thirds vote in each of two senatorial districts. This is the provision that the Attorney General has suggested is probably unconstitutional. We on the legal team tend to agree with this in view of some of the changing decisions since 1976. We have not yet figured out a strategy for dealing with the situation, however. During the course of the discussion, Delegate Villagomez proposed that the approval of a Constitutional amendment be two-thirds of all voters in the Commonwealth and proposed deleting any reference to individual senatorial districts. This prompted a considerable resistance from Delegate Manglona, who was eloquent and I think honest in expressing

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his views, and he finally managed to muster sufficient support from the Tinian and Rota delegates so that the proposed amendment went down overwhelmingly. In other words, the committee's proposal was accepted, and Delegate Villagomez's proposal was defeated by a vote of 20 to 2. I think this shows on the whole a good instinct within the Convention to try to stay together and not deal with these inflammatory issues to the extent that they can be avoided.

We do have to figure out a strategy for dealing with the Constitutional amendment process. We need **[End Side A Tape 7 - Start Side B Tape 7]** **[UNCLEAR]** a scheduled vote on the proposed Constitutional amendments in late February 1996. It might be possible to get a decision with respect to the present Constitutional provisions by that time. It is unclear to me, however, exactly what relief the court is likely to provide in the event **[UNCLEAR]** amendment is unconstitutional. For example, would it provide any guidance as to whether the proposed amendment dealing with Constitutional amendment is any more valid than the present one. Or would **[UNCLEAR -- TAPE IS IN VERY BAD SHAPE HERE FOR SEVERAL MINUTES]**

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and a special visit by Deanne with several delegates to discuss the abortion provisions of the Constitution with Bishop Camacho, the ranking Catholic prelate on the island.

Deanne in her committees was concentrating on the education [UNCLEAR] that was coming to the floor the following day, more discussion of Article 12, and generally cleaning up other matters with respect to Constitutional amendment. She had a subcommittee meeting early in the morning in our office to discuss the various proposals designed to restrict the number of aliens, or dependents of aliens, on the island. The subcommittee consisted of Delegates Seman, Quitugua and Mendiola. They were joined later by Teracita??? Santos from Rota. Seman was by far the most logical of the group and recognized the many Constitutional and practical issues involved with trying to deal with the alien problem in the Constitution. Grace had done a legal memorandum at Deanne's request on these various issues and had laid out some of the concerns that had to be dealt with. As the conversation unfolded, it became clear that both Quitugua and Mendiola to some extent wanted to impose severe restrictions on aliens bringing in dependents to the Northern

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Marianas; as far as they were concerned, the Constitution should exclude dependents from accompanying any aliens who were employed below a certain salary level. Seman took issue with this, pointed out the ongoing enforcement problems, and I subsequently learned that as a result of this subcommittee meeting, the full committee had decided not to take any action on the matter but to refer the whole set of issues to the Legislature. Good luck!

In the morning, the Committee on Legislative Branch and Public Finance concluded its deliberations on Article 10. Bernie and I had collaborated with the language of the proposed amendment and the accompanying report. The draft report was reasonably good, although John Manglona had not contributed as much as we had hoped. The most significant contribution of this particular article will be an effort to impose a meaningful program of deficit reduction on the Commonwealth by limiting salary increases and new hires so long as there is a deficit.

During the committee session we heard from the Public Auditor, Leo Lemat???, who explained to the delegates what the recently concluded audit showed about the Commonwealth's financial

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situation. His letter, based on a thorough audit done by a private firm, revealed a deficit in the Commonwealth of just under \$30 Million. According to the Public Auditor, there only had been a few years since 1978 in which the Commonwealth had not had a deficit. This was subsequently disputed by Delegate Hocog who maintained later in the meeting that there was no year at all since 1978 in which the Commonwealth had not incurred a deficit. The Public Auditor stayed well within the bounds of his professional competence and refused to speculate with the delegates as to what reforms might be undertaken in the Constitution or otherwise to reduce deficits. He contributed such wise words as saying that there are only two ways to deal with a deficit -- one is to increase revenues and the other is to decrease costs.

The most significant disappointment during the committee meeting was its reversal of its earlier position to eliminate from the Constitution the prohibition against levying any property taxes on real property other than commercial property. Notwithstanding this provision giving the Legislature authority to impose taxes on commercial real estate, no such taxes have in fact been adopted by the .

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Legislature. There was a considerable amount of rhetoric, mostly at the sophomoric level, about how levying property taxes on the indigenous population would drive them off their land and render them homeless. There is such a total lack of confidence in the Legislature, and such a reluctance to bear any financial burdens for the government structure in the Marianas, that it is at times extremely frustrating. If the current leadership in the United States Congress were present at these deliberations, I am convinced that all the present benefits that the Commonwealth now enjoys would be quickly withdrawn.

Notwithstanding the accomplishments and the disappointments, the committee considered its deliberations on Article 10. Subsequently, Bernie completed the report reflecting the committee's most recent decisions, went about securing signatures, and it will be considered for first reading at the plenary session on Thursday, July 20.

My afternoon meeting of the Executive Branch and Local Government Committee spent most of its time discussing the draft Article 6. This was the second session at which the draft was prepared.

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We made some little headway, but eventually got bogged down in the more substantial policy dispute as to whether the Governor should be required to delegate executive power to the Mayors. Somewhat to my dismay, Delegate Hocog gave an impassioned speech -- far outdoing Delegate Manglona -- about how such delegation was essential to deal with the problems of Rota and Tinian. Delegate Manglona was visibly pleased at this rhetoric coming from his most likely opponent for the position of Mayor on Rota in 1997.

I was discouraged by the little participation in the conversation by the delegates from Saipan. For reasons I don't fully understand, Delegates Borja, Sirok and Igata really don't speak up on these issues in any way that reflects an awareness of the issues involved, the governmental costs involved, and the threat that such proposals present to having any effective Commonwealth here at all. By the end of the meeting, I think that Delegate Manglona recognized that I was not going to support his legal position, and I expect that relations will become significantly cooler in the days ahead.

I kept urging Chairman Nogis to adjourn the meeting before any votes were taken on this

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subject. I will make every effort in the COP meetings to develop some strategy trying to get us through Article 6 so that we can then discuss the critical policy issues as to what services get delegated and whether executive power gets delegated to the Mayors by the Governor. I do not think I can avoid this for more than one more meeting, and I need some political cooperation from the leadership in order to conclude the discussion on local government and get the matter to the floor.

The meeting went on from about 3:15 p.m. to 6:30 p.m., with me trying to get an adjournment for the last 30 minutes of the meeting. Delegates were walking in and out of the meeting and really were not very involved in the debate. After the meeting, I was assured by Juan Tenorio that Victor did not really mean what he was saying and I should not worry about it.

By coincidence, Deanne and I went out for dinner and bumped into Victor Hocog and David Igata at the Brewhouse, the relatively new restaurant serving a range of decent beers. We joined them and had a very convivial time. Victor made it clear he was putting on an act for Benjamin's benefit, that he did intend to run for

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Mayor, that he thought he could beat Benjamin, and that his sentiments on this subject really rested with the people of Saipan. We discussed some political strategies that might enable him to take credit for some of the accomplishments of the Convention so that Benjamin would not campaign against him on the grounds that Victor had conspired or agreed to the limitations of local government that Benjamin finds so odious. As Deanne commented later, Victor is a very effective politician, a ready smile, lots of slapping on the back, and a good practical and colloquial style of dealing with issues and people.

Thursday
July 20, 1995

There was a plenary session today at which five separate articles were considered on first reading. They included Article 3, dealing with the executive branch, Article 10, dealing with tax and public finance, Article 15, dealing with education, Article 19, dealing with ethical standards, and Article 18, dealing with Constitutional amendment and mutual consent.

As I recall, the meeting went surprisingly easy. There were really no serious problems raised with respect to the Article 3 issues on first reading. I think it was the next day that

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Delegate Taitano raised his suggestions with respect to the retirement system, but during the plenary session on Thursday there were virtually no questions or debate. Chairman Nogis summarized the changes that had been made in the draft since the discussion in the Committee of the Whole. He managed to confuse the issue as usual, among other reasons by beginning to read the individual sections word for word. No one wanted that process to continue.

Deanne had written elaborate statements for her committee members to make in introducing the matter. For example, Esther Fleming, who sits right in front of me, was given the task of reading the introductory statement with respect to the very substantial revision of the educational article, soon to be collapsed into Article 3 where it had been lodged and 1976 but extricated in 1985. Esther has done an extremely job and has worked very competently with Deanne in recent weeks. Esther was the campaign manager for Camacho in his effort to become president of the Convention and had been extraordinarily successful in rounding up 13 votes that almost put him into the presidential slot. That would have meant that

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we would have been fired -- a consequence I still find somewhat difficult to comprehend.

There was no substantial discussion about Article 10, notwithstanding its substantially changed provision with respect to deficit reduction. We are trying to come at the deficit issue and excessive cost of government in several different ways. This is one of them: the proposed draft section requires a freeze on government salaries and positions so long as there is a deficit. Since there has been a deficit in virtually every year since the inception of the Commonwealth, this would impose a drastic limitation on government personnel costs that I do not think have yet been realized by either the Governor or any other political leader.

I do remember the discussion about Article 18 dealing with amendment and mutual consent. This was the occasion on which Delegate Aldan called the proposed provision (which I had written) on mutual consent as "hogwash". He seemed particularly interested in having the issue of amendments to the Covenant go directly to the people, and he and others read the draft provision as requiring that the United States express its consent to a proposed amendment to the Covenant

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before it was placed before the people. I tried to explain that this was not the case, but the fact is that my sentence was not as well drafted as it should have been. I emphasized that there were many different ways to acquire information about the wishes of the Marianas people to an amendment of the relationship with the United States, but that when it came to providing consent on a very specific proposal, there was a need for a very deliberate process. Most of the delegates seemed to understand that, but the majority view as I recall was that the matter should be reconsidered within the committee. It was subsequently reconsidered, and the sentence was modified. I may have my dates somewhat out of order here.

I forget what happened for the rest of the day, since I am dictating this three days later, and every day seems like an eternity. I am sure there was a meeting of the Committee on Executive Branch and Local Government. As I recall, we were continuing the work on the draft I had prepared for Article 6, and I think we made some progress on this front.

The one thing I do remember is Pamela referring to the delegates' frequent breaks as

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required for their two-hour feedings. It is truly amazing -- the amount of food that people here consume with such enthusiasm. It is not unknown that the Convention takes a break for five minutes, which turns into 20 minutes, only to recess for lunch 10 minutes after they reconvene. Lunch is increasingly a phenomenon joined by everyone in the President's office, secretarial room and general lobby of the Legislative Building. Alicia Guerrero, the President's loyal and very smart colleague for many years, also has a catering business. There is some suspicion that she is making a substantial amount of money from catering the lunches and other events at the Convention. She is an extraordinarily talkative, very funny and very supportive staff member. She knows the President throughout, given the more than 10 or 15 years she has worked with him, and has been a great supporter of the legal staff's.

Deanne meanwhile was continuing her heavy work on Articles 11 and 12, dealing with land issues. She was trying to present some kind of a compromise proposal to her committee in an effort to bridge the difference between the business interests and those like Ted Mitchell interested in "strengthening" Article 12 -- whatever that

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means. She has spent an extraordinary amount of time in consulting individually with knowledgeable lawyers in the community with respect to these issues and trying to identify four, five or six changes on which a consensus could be achieved.

Friday
July 21, 1995

I remember attending a meeting of the Committee on Executive Branch and Local Government today, after spending a good deal of the time the previous evening and on Friday trying to write a draft report to accompany Article 6 to the floor. It was our schedule that a package of materials relating to Section 17 of Article 3 and Article 6 would be sent to the floor for discussion on Saturday, July 22. I recommended to the President and members of COP that, in essence, the question be discharged from the committee and presented to the Convention as a whole. This resulted in part from the discussions within the Committee on Executive Branch and Local Government, some of which had taken place the day before, where it was quite clear that the rhetoric on this subject was getting overdone and it would be impossible to bridge the differences among the delegates within any single committee. Benjamin truly has handled himself quite maturely, given the more than 35

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years of public service he has devoted to the Commonwealth and his emotional attachment to his constituents and family on Rota. One gets the sense that he is aware that he no longer carries the influence with the younger people that he used to and that he has already repeated himself so many times that his persuasive efforts have lost any force. There are simply too many people in this Convention who know for a fact exactly how Benjamin and his family have ruled Rota ruthlessly for two or three decades. There is very little sympathy for Constitutional provisions that permit him, or indeed any other family political unit, to dominate the political scene on Rota to this extent in the future. There must have come a time in Italy with the city states when the feudal lords recognized the changing times in the same manner that is occurring here.

It was either in this session or the day previously where Victor made another speech, this time suggesting that wise and creative counsel for the committee could find some basis for compromise. What Victor really has in mind, at least for political purposes, is an effort that would permit the Governor to delegate to the Mayors responsibility for the execution of

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Commonwealth laws, but expressly provide that such delegation was revokable for cause. Although I did not tell Victor, I saw substantial difficulties with this particular approach, especially in light of the court's decision in the Inos decision a month or so ago.

I tried very hard to get some direction from the committee regarding the alternative proposals I had put before them with respect to the funding of local government and imposing some cap on local government. The committee was particularly unready to be disciplined during this session, and they used up all the available time on very peripheral issues. As a result, I essentially had to excuse myself at about 1:15 p.m. in order to join Deanne (and a larger group than I had anticipated) in a meeting with the so-called "intellectuals" of the island at 1:30 p.m. in the office of Sam McPhetres.

Sam had invited to the meeting, which was established pursuant to an invitation by us to him, a group including a recent Commissioner of Education, two members of the faculty from the Northern Marianas College, and Brian McMann, a lawyer whom we both respect and have dealt with on Article 12 problems. Brian for many years was

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counsel to the Marianas Political Land Corporation.

In any event, we had made available to these citizens copies of the "Constitution du jour" which is our short term for the Constitution consisting of those articles that have passed on first reading. Obviously some of the important articles were not included. The discussion, however, went reasonably well. Bernie and Grace were there and joined in. Pamela and Mary were there to witness our performance, and Deanne and I for the most part did the talking on behalf of the legal staff of the Convention.

We walked through several articles of the draft Constitution. It is always interesting to see what people focus on. In this case, discussion began with Section 1 of Article 1, dealing with the protection of the "traditional art of healing" that we had placed in the Constitution in 1976. I explained a little of the history, but some of the attendees were concerned that some of these traditional healers might develop some poisonous or otherwise offensive technique that would be constitutionally protected notwithstanding scientific evidence that it was killing people. We discussed this at some length.

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As Deanne noted later, I seemed to be inventing defenses of the Constitutional provision with considerable creativity and some considerable lack of persuasiveness.

This meeting was just an evidence of the "outreach" program that Deanne has undertaken, assisted by four or five of our younger assistants -- a truly motley group. We are delivering copies of the Constitution with the articles approved on first reading to almost every literate person on the island, asking them to sign to acknowledge that they have received a copy of said Constitution, and acknowledging the invitation received by them to comment on the Constitution before it is finally adopted. What good this will do I do not know, but it keeps a lot of people busy, and has surprised many Commonwealth bureaucrats who have never been asked for their views before about anything of such significance. Having now been asked for their views, they really don't know quite how to either formulate them or communicate them. It will make a terrific record, however, to demonstrate what an extraordinarily open convention this has been and how everyone on the island was given ample opportunity to critique the Constitution before it was finally adopted by

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the delegates. (By this time, it should be obvious that the Convention's leadership had concluded that public hearings, put more precisely further public hearings, were not in the cards. I think I agree with that decision. By the time we have all the articles passed on first reading, we will be within eight or nine days of the conclusion of the Convention.)

Grace and I remained at the meeting with the "intellectuals" long after Bernie and Deanne went back to attend various meetings. Grace and I had a good chat on the way back. She is really a very competent and entertaining colleague, much more so than her anxious husband.

Saturday
July 22, 1995

Today was the plenary session that lasted throughout the day. We had hoped to consider the local government issues at least for discussion purposes at this session, but due in part to the long feeding breaks, this never happened. Today was essentially spent on Article 11, dealing with public land, and Article 12, dealing with the most controversial subject of all -- restraints on land alienation.

The presentation on public lands went very well. Deanne had young Joey San Nicholas from

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Tinian present the report, since he had served as chairman of the subcommittee dealing with the project. The whole thing was surprisingly well done and may prove to be one of the major accomplishments of this Convention. It is amazing how a Convention truly serves to capture at a particular point in time the public's attention through its delegates to those public problems that either have emerged recently as foremost in the public's mind or has attracted the interest of the individuals who may have been elected to the Convention for totally different purposes. In this instance, the Convention is embarking on a major effort to protect large tracts of land on the three major islands from economic development for decades to come -- in the name of their children's children and their children and so forth. It will be interesting to see the extent to which the Governor, his economic advisers or business interests on the island try to oppose the Constitution on the grounds that such efforts at preservation are denying the Commonwealth the fullest opportunities to develop its assets and grow its economy.

During the discussion, however, there was very little challenge either to the concept and

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principle or to the particular land that had been identified as preserved for the purposes identified in the draft Article 11. Most of the discussion pertained to the homestead program, the land exchange program and other longstanding issues. Delegate Camacho began to **heat his up rather a good deal???**, notwithstanding the notes that Alicia was handing me at all times to the effect that he and his family had important economic interests in these issues.

Deanne was sitting on the podium to answer questions and provide legal assistance to the committee chair of the day, Delegate David Igata -- one of the four Carolinians in the group. David is a very popular vote-getter, a member of the Saipan Municipal Council, and a fairly competent member of the Convention. I am somewhat surprised from time to time regarding his comments; he nearly always seems to be at the periphery of an issue and doesn't really reflect the kind of legislative and political experience that his public offices would seem to suggest that he has. He did, however, run a very good meeting.

The drama of the day centered around the discussion of Article 12, dealing with land alienation restraints. Delegate Camacho had been

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provided a paper prepared by Ted Mitchell that challenged virtually every provision of the proposed draft, notwithstanding Ted's representations to Deanne in private sessions that he agreed with many of the recommendations that were being made. He was, of course, in the audience, and very active and agitated in talking to reporters during every possible break in the session. The discussion did get mean and personal later on, even to the extent that Delegate Camacho suggested that the legal counsel work for the delegates and not the other way around. Deanne answered all of his questions to the best of her ability very coolly and professionally, and won considerable plaudit from the delegates for so doing.

Most of the debate focused on the change on the definitional period from 1950 to 1960 and, more importantly, in the changed provision from "void abenicio"??? for "voidable" in the enforcement provision of Article 12. Deanne wisely called on former Chief Justice Dela Cruz to explain this issue, which he did at some length in Chamorro. This was well received both by the media and the delegates, who then asked him many questions in Chamorro, and he responded with

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considerable vigor and, I think, clarity. When he occasionally descended into English, however, I heard him say that the change amounted to a "loosening" of Article 12, which of course we would have suggested was not quite accurate and that "strengthening" might have been a more appropriate term. In any event, Joe was particularly good on this issue and went out of his way to tell the delegates that this was essentially a political judgment for them to make, that his role, as indeed the role of the legal team in general, was simply to advise the delegates as to the alternatives before them and not to give them direction, or indeed express any preference, as to which choice they ought to make. We heard the next day from Alicia that, based on the gossip out in the community, many of the local community had heard this exchange and had wished that the former Chief Justice had given some specific direction to the delegates as to which of the two alternatives he thought was preferable. We will have to keep this in mind when and if Joe agrees to participate in any campaign to support the product of this Convention.

Another piece of dispute arose about various materials that had been supplied to Deanne by

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lawyers on the island that she had solicited for comments with respect to the problem. Although these letters and materials theoretically had been available to every delegate, they had not been circulated or made part of the daily journal. Delegate Camacho and Delegate Villagomez tried to make an issue out of this, which prompted a rather strong statement by Deanne that no documents had been withheld, all documents were available for the delegates, and all delegates had known of this all the time. She got very strong support from the members of her committee, both in the session and at the beer-drinking session later that day.

During one of the breaks, we had a discussion with Ted, apparently quite close to a microphone, about some of the issues. He seemed to be behaving in a reasonably civil and professional way. We did get into a dispute about some hypothetical he was presenting to the Convention through Delegate Camacho. The payoff to this particular conversation was reflected in a letter faxed to us on Sunday where Ted recreated this conversation, charged us with malfeasance in a variety of forms, and asked us to provide him within 24 hours documentary support from the Covenant negotiations and the 1976 Convention that

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supported our views. Like most of the other lawyers on the island, we have decided to ignore Ted's letter, except to the extent of writing a letter saying that his recounting of our conversation was incorrect. All this goes to show that we have to keep personalities out of this for the next 10 days, and emphasize that the issues are before the delegates for their decision. Getting engaged in personal or professional disputes with lawyers on the island does not seem like a very productive exercise. I expect, however, that Ted will not relent and that the next eight days are going to be extremely unpleasant with respect to discussions regarding Article 12.

Sunday
July 23, 1995

Today the delegates were having the deferred picnic on Monagaha??? Island. Deanne went, and I elected to stay behind. I spent most of the time in the office and some at home until she returned at about 2:00 p.m. We are busy getting set for what are the last eight or so days. I am concentrating on the local government issues, and she is trying to do a lot of administrative tasks and prepare a report on Article 12. She reported after the picnic that the delegates, or at least

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some of them, were anxious to know when we were leaving the island and who was going to defend this product against the onslaught of the island's lawyers if we are not around. She has assured them that we will be around and that we will be returning to help defend the result of the Convention's efforts. Indeed we will -- and with a vengeance.

Monday
July 24, 1995

This began a week of plenary sessions every day, scheduled in the afternoon at 1:30 p.m. except for the Saturday morning session. At the same time we scheduled overlapping meetings of the four committees, with two meeting at 9:00 a.m. and two meeting at 11:00 a.m. or 10:45 a.m. There was a daily meeting of the Committee on Organization and Procedures at 8:00 a.m. every morning, although it was a rare committee meeting of this group that was not delayed until 8:15 a.m. or so.

In any event, the principal effort in which I was engaged this day was to work on local government with the Committee on the Executive Branch and Local Government. We were still reviewing a draft Article 6, dealing with the organization and powers of local government. The delegates have considerably less interest in this

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particular issue than they do in the more challenging political issue of exactly what role the Mayors and local government will play in delivering Commonwealth public services to the residents of Tinian and Rota. We were making some progress on this subject, with the debate on this day centered about the level of Commonwealth funding that local government could anticipate in the future. There is a strong effort by the Saipan delegates to put a cap on such funding, and indeed to end Commonwealth funding of local government after a fixed period, say five years with a reduction of 20% in each year. I was given some instruction to draft a proposal along these lines.

Deanne was principally concerned today with working on education provisions, having meetings with representatives of the educational committee, supervising the outreach program staffed by our young colleagues, continuing to receive a barrage of letters from all sources with respect to the draft Article 12, and generally trying to finalize work with respect to Article 11. Of course, there is always the ongoing challenge of reviewing the transcript after it works its way through the reporters, an initial level of reviewers, and then

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comes to Deanne for final sign-off. I frequently hear her chortling in the room as she recaptures one of the unique exchanges among the delegates on the various subjects. Certain notable quotes are singled out of the transcript and posted on the bulletin board on the President's outer office. One of those most recent statements was from Teracita Santos of Rota who complained to a recent plenary session that "whenever the subject of local government comes up, I feel constipated." She told Deanne at some point after this meeting that she really was becoming somewhat disenchanted with Benjamin on subjects and would, if she had her choice, simply elect not to attend meetings where local government was going to be discussed and he was going to deliver one of his inflammatory speeches.

The afternoon plenary session was the day on which the subject of local government was brought to the floor. The basic documents that were distributed to the delegates were a draft Article 6 with some unresolved issue flagged in the document, an accompanying report that I had been working on, and a short options paper with respect to Section 17 of Article 3. This was the memorandum that I had prepared earlier for the

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Executive Branch Committee that set out the four principal choices before the Convention on this subject. They were: (1) preserve the status quo in Section 7 as interpreted by the court recently in the Inos decision; (2) go back to the principle of the 1976 Convention which made all delegation by the Governor to the Mayor of responsibility for public services permissive in nature; (3) accept the position of the Rota and Tinian leaders to the effect that the Governor should be required to delegate all responsibility for the execution of public laws as well as the delivery of public services; (4) delineate the responsibility for delivery of public services in more specific terms and exclude any delegation of responsibility for the execution of public laws.

The discussion on the floor went on for a considerable period of time, really more than two or so hours. It was the first subject on the agenda, because originally it had been proposed to be included on the Saturday plenary session. As was expected, there were many speeches about "the poor people of Rota", the historical great compromise that permitted the Commonwealth to be formed, and the disadvantage that the Rota and Tinian citizens have because of their sparse

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economic development compared with their brothers and sisters on Saipan. Benjamin had a prepared speech that he delivered early on in the session. We had copies of it and followed line by line as he trod this familiar ground. On the one hand, one can truly feel sorry for him since it seems so clear that he no longer has the influence that he used to have and his coming to realize that, in the group of younger and better educated delegates, he has some difficulty in persuading them of the correctness of his position. On the other hand, he is someone who has devoted more than 35 years to public service in the Commonwealth and, so far as we know, is one of the few who has not benefitted financially (and illegally) from his seeking of and holding public office. Many of the people who know the Rota situation well say, somewhat to my surprise, that he and his family were really among the principal obstacles to economic projects of one kind or another in Rota over the years.

Bennett Seman presided as chair of the Committee of the Whole, and I accompanied her to the position. She is an extremely short, very feisty and smart delegate with whom both Deanne and I have come to work very closely. She seemed

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to enjoy the experience thoroughly, and the President's recent decision to let a series of women delegates chair the meeting has provided a great example for the women of the community who are watching on television. Of course, the women in the community especially like to see Deanne on the podium taking on the male delegates and everyone else on various legal questions.

I forget exactly how it came to a head, but eventually there was a motion made to adopt the fourth option -- the one that essentially favored the Saipan position. When the vote was finally taken, with several people absent, there were 13 in favor of that proposal, seven opposed and one (Delegate Gonzales) who

[End Side B Tape 7]

JOURNAL OF HOWARD P. WILLENS

RE: CNMI THIRD CONSTITUTIONAL CONVENTION (1995)

July 24 to July 29, 1995

Monday
July 24, 1995

I think I was commenting on the vote of 13 in favor of the fourth alternative, seven opposed, and one abstention. This sent a rather clear message to the members of the Rota and Tinian delegations, with one absent, that they were unable to persuade any of the Saipan representatives to take their point of view. This was a considerable blow to Benjamin Manglona, although not unexpected. To some extent, this is attributable to the fact that the position taken by the Tinian and Rota leaders, some with more conviction than others, is that essentially the Mayors need to have all the responsibilities of the Governor with respect to those public services delivered on their islands. This is simply a concept that runs counter to the strongly held views of many Saipan delegates, who would much rather go back to the principles of the First Constitutional Convention, and seeks to give the Rota and Tinian local governments powers that they are not presently titled to exercise under Section 17 as interpreted by the court. The current legal morance??? results in large measure

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from the inadequate drafting of Section 17 as was done at the 1985 Convention.

There were several strong statements made on the floor regarding this subject. Tom Aldan of Saipan gave one of the most coherent and forceful presentations on the subject. My comments are not to be influenced by the fact that he used some of the talking points that I had made available to him -- and him alone -- with respect to the issue of local government. Among other points, he emphasized the fact that the separation by water, in an age of modern communication and transportation, no longer had the significance that it did decades ago. He used Hawaii as an example with some effect. He also spoke of the cost considerations, the multiple levels of government, and some of the old traditions in Rota and Tinian with respect to employing their citizens in well-paying government jobs that could no longer be tolerated. The President of the Convention and Delegate Villagomez, as I recall, also made strong statements on the subject. We were spared some of the rhetoric from Victor Hocog from Rota, who is likely to run for Mayor against Benjamin at the next election, because he was getting a health check in Hawaii.

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After the consideration of the local government issue, the Convention turned for the first time to the passage of articles on second and final reading. The first such proposed amendment was the modification of the Preamble, where Deanne and others had labored hard to add additional language that might capture the island lilt and make some reference to protection of "our island ways". This had received some opposition on first reading, and after no discussion whatsoever, went down to defeat. Many of the traditionalists in the group decided that the original preamble from 1976 was just fine and did not want to see any change.

The next subject presented on first reading was Article 1, where the report to the Convention from the committee summarized the actions taken by the committee since the consideration of this article on first reading. Essentially the committee had rejected basically all the proposals that had come in to change various of the provisions in this Bill of Rights. The most important contribution was Deanne's new section entitled "Life". This was the provision that she had discussed along with several delegates with Bishop Camacho and had proposed it as an

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alternative to the Constitutional provision on abortion that everyone concedes is not permitted under the terms of the United States Constitution. Deanne's provision speaks about life as something that is valued in the Commonwealth and protected in the Commonwealth from the point of conception until old age. It remains to be seen in the legislative history what she says as to the implication of such a provision with respect to the authority of the Legislature to enact the laws on abortion and other subjects. She was able, however, to convince Bishop Camacho and his legal advisers here and in New York that this was an innovative and startling new concept that the Catholic Church should stand behind and support enthusiastically.

After this article passed on first reading, there was a round of applause and a collective sigh of relief. Now that the delegates are embarked on considering articles for second reading, there is a growing sense that perhaps the Convention can complete its work on time and be proud of its results.

After the day's session, we regrouped in our offices. When I came back to my office, Deanne was in the midst of a meeting with Agnes McPhetres

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and various representatives of the educational community. They talked for more than an hour and a half about their needs for further revisions in the text of the proposed Constitutional provisions and in the legislative history, while I tried to craft a proposal for the Committee on Executive Branch and Local Government that would embody the decisions made during the plenary session with respect to the local government issues. I had done some work on these matters before the decision of the Committee of the Whole, but now needed to finalize a draft provision regarding Section 17 and a revised Article 6 that would reflect some of the decisions made by the full Convention. On Article 6, I had presented several overall issues to the Convention for their consideration, including abolition of the office of the Mayor for the northern islands, the mode of election for municipal councils including some special arrangements for the northern islands, and some proposed phasing out of Commonwealth funding for local government. The Committee of the Whole had after a brief discussion made some preliminary judgments on these issues that I was now able to incorporate in the draft.

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Tuesday
July 25, 1995

Today's schedule was essentially the same as yesterday's. At the meeting of the Committee on Executive Branch and Local Government, we continued our review of Article 6. The principal issue in contention now is the planned reduction of Commonwealth funding for local government personnel and services in the years ahead. The original proposal was to require a 100% reduction over five years after the Constitutional amendments became effective. As a result of some shrewd negotiating by the Tinian and Rota representatives, the compromise now provides for a 50% reduction over five years with a grace period. The negotiation then turned to whether the grace period should be one fiscal year or two fiscal years. I drafted a provision following this discussion that provided for a one-year grace period.

It is difficult to anticipate the variety of ways in which the Commonwealth's politicians will ensure that local government employment is available for every local resident who needs a job. They have much to say about the lack of economic development on those islands and the obviously favored treatment that Saipan gets from foreign investors and developers. On the other

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hand, much of the difficulties of the past can be laid on the shoulders of the political leaders on both Rota and Tinian. In any event, the various Constitutional provisions relating to civil service, deficit reduction, personnel limitations and budgetary limitations will all serve in some mysterious way (we hope) to bring about a change in attitude and a significant reduction in Commonwealth funding for local government.

Figures were provided at one point during these committee discussions that dramatize the issue. As I recall, we were told that the municipal council of Tinian employs 33 people (I've been told previously 38), although the municipal council essentially had nothing to do except attend a few meetings periodically and provide oversight to the Tinian Casino Gambling Commission. I've also been told that the salaries for some of these local government jobs are really quite high. For example, I was told that Delegate San Nicholas, only 21 years old, is occupying a local government job at a reported salary of \$40,000. We've also been told that the offices of the Mayors of Rota and Tinian employ considerably more people than do the municipal councils. For example, I have been told that the municipal

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council on Rota employs more than 100 people. When you put the number of employees of the municipal council together with the number of employees hired by the Mayor, you basically have found positions for every adult above the age of 16 on the island who wants a job and elects not to take one in the private sector even if it were available. The level of salaries and benefits at all government levels in the Northern Marianas is higher than comparable positions in the private sector. This is one of the reasons why the various committees have inserted requirements in the Constitutional provisions that all the members of the Civil Service Commission, for example, be drawn from the private sector. There may be a similar such provision with respect to the board of the new Marianas Land Bureau.

At the end of the meeting of the Committee on Executive Branch and Local Government, I distributed the draft Section 17 that I had been working on for several days. It is very narrowly limited, both with respect to the areas in which delegation would take place and the power that would be assigned to the Mayors within these areas. The draft as presented made clear that the Governor was not required to delegate any

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responsibilities whatsoever for the enforcement of Commonwealth laws, rules and regulations. This is one of the key issues that divides the delegation of Saipan on the one hand and the other two delegations on the other. I handed it out with an explanatory memorandum that identified its provisions, spelled out their purposes and limitations, tried to explain what problem as revealed in the litigation to date was attempted to be solved, and so forth. I encouraged delegates to read and reflect upon the draft with the promise that it would be the first item on the agenda for the next day's committee meeting.

On a personal level, these days were also the scene of two rather unpleasant developments. First, Grace and I had an unpleasant encounter, which probably reflected my distemper, and she was packing up to leave. I found Deanne, and fortunately Deanne was able to persuade her that my barks were worse than my bite and she should stay. She graciously agreed to do so, and our relationship has been warm and friendly ever since. Also, I found myself unfortunately involved in one of Ted Mitchell's lawsuits. I had been asked by a lawyer in Michael Dotts' office by the name of David Banes for an opportunity to

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discuss certain aspects of the 1976 Constitution. He and a paralegal came in one morning pursuant to our arrangement, although I had told Michael on the day previously that I would not really have the time to spend on the matter. In any event, Banes came in, we chatted for a few moments, and he subsequently ask that I file an affidavit in the case. I refused to do that, asking Pamela to tell Banes that I was unavailable. Banes subsequently filed an affidavit of his own whose contents essentially tracked what he had wanted me to swear to. When I called him up and chewed him out, he promised to withdraw his affidavit. I learned the next day that he had not in fact withdrawn it and that Ted understandably was up the wall on the subject.

During the afternoon plenary session, the Convention rather rapidly, or at least more so than I had anticipated, adopted Articles 2, 3, 4 and 5 on second reading. There was now a ceremonial burst of applause at the conclusion of each favorable vote. Virtually every vote on second reading was by unanimity, with 25 delegates present, or with one or two in opposition or abstaining.

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With respect to Article 2, the only substantive issue was the motion by Delegate Borja to keep the term for representatives at two years rather than four years as recommended initially by the committee. Frances had done a reasonably good job of organizing support for her motion, and she did get a majority of the delegates to stay with the status quo. If in fact the voters attached a high importance to being able to vote people in and out of office every two years, this departure from the committee's recommendation is really not a very serious one. I had hoped, as had many delegates, that the Commonwealth might experiment with a four-year term for all of its Commonwealth-wide offices in the hope of encouraging better people to run, providing more continuity in service, and perhaps bringing about more unity between the executive and legislative branches of government. These were probably vain hopes to begin with, but in any event, they no longer stand any chance of being tested because of the Convention's decision.

With respect to Article 3, there were a few amendments relating to the Carolinian assistant section and the section relating to the retirement plan provisions. As I recall, nothing critical

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was changed with respect to the Carolinian assistant, although the Convention did accept the committee's recommendation that the guaranteed salary level of this special office be eliminated. This was done without any opposition from the Carolinian delegates.

With respect to the retirement provisions, the Convention did delete some of the special privileges provisions that were in the proposed draft. Lillian Tenorio was the aggressive proponent of some of these changes, and she did an excellent job in carrying the day. Even the retired delegates, including Chairman Aldan, were somewhat embarrassed by these provisions and just as glad to see them go. I was concerned that political opposition to the work of the Convention might use these provisions as evidence of self-interest on the part of the Convention delegates and use it generally to taint the results of the Convention's work.

There was virtually no discussion at all with respect to Article 4, dealing with the Judicial Branch, and Article 5, dealing with Washington representation. The Convention delegates felt they had done a complete day's work by passing these four articles on second and final reading.

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There was one drama involving efforts by Delegate Ben Sablan to reconsider the vote on Article 3, because he and other delegates had not realized that the section dealing with education was comprehended within the motion to approve Article 3. This had been made rather clear both in the phrasing of the motion and by the chair. However, the Committee on Judiciary and Other Elected Offices had submitted the report dealing with the education and civil service matters, because they had been previously viewed as separate articles and were not being recommended to be replanted in sections of Article 3. In any event, there was a scurrying about with respect to motions to reconsider, motions to suspend the rules, and it was left rather inclusively and with some ill feeling. My recommendation had been that the floor leader and the President simply permit a vote on these specific sections of Article 3 as to which some delegates had concern. That advice was not followed, although I thought they had agreed to it during the inevitable break that followed this disturbance on the floor.

The real concern here seemed to be the use that Benjamin Manglona is making of the education article as evidence that the Convention is willing

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to delegate responsibility for executing Commonwealth law to some agencies but not to others. He used some of the language in the report with respect to education to support his proposition that delegation of responsibility for executing public laws was done with respect to school boards. We subsequently put out a single piece of paper that laid out exactly what responsibilities the local school board had and did not have and the fact that the Secretary of Education would continue to have the responsibility for enforcing and administering Commonwealth law. We are trying to persuade the delegates who want to have this matter reconsidered that putting such a statement into the record should adequately satisfy their need for clarification on this point.

These have been exhausting days, with 11 or 12 hours of non-stop work, consisting of drafting, conferring, committee meetings and dealing with the leadership. Not to mention press releases and the daily transcripts. The legal team staff, on the whole, seems enthusiastic and devoted to getting the job done well. We are in fact developing a record here both for the Convention and for ourselves that will be unrivaled in its

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attention to detail and thoroughness. What use we will make of it is another guess. We have been talking about at least two potential articles on the work of this Convention -- one for the political scientist and one for the readers of law reviews.

Wednesday
July 26, 1995

Because of the need for work on local government, the leadership on our recommendation decided to cancel the plenary session scheduled for today. Instead, the Executive Branch and Local Government Committee met to consider further Section 17 of Article 3 and Article 6. Benjamin at the outset of the meeting circulated a substitute Section 17.

Benjamin's substitute Section 17 really offers no room for compromise. It requires mandatory delegation of all the agencies and offices that are currently being delegated, including their enforcement responsibilities. Furthermore, it is couched not in terms of delegation but of assigning the Mayors these responsibilities in the Constitution. Such a provision would leave it very unclear exactly what responsibilities, if any, the Governor would continue to have in Rota and Tinian. This is, of

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course, exactly what Benjamin wants; namely, the establishment of three Governors in fact on each of the three major islands. The Saipan delegates will never agree to this, nor should they.

When the meeting began, Chairman Nogis asked Benjamin to speak to his amendment. He gave an impassioned speech in support of his proposal and expressed dissatisfaction with the draft that had been previously given to the committee members. I don't know who is doing his drafting, but they are not doing a very good job. After such rather civil conversation on the subject, Tom Aldan made a motion to reject Benjamin's proposal as contrary to the direction of the Committee of the Whole that had been given two days earlier.

Technically, Tom's motion is completely in order because Benjamin's proposal does provide that the execution of common laws responsibility should be given to the Mayors, which was the alternative rejected during the plenary session on Monday. In any event, the motion was made and seconded, and after a very brief debate it was approved.

I think it was during this meeting that there was an exchange between Villagomez and Manglona that really prompted the outburst by Benjamin. In response to a question, Villagomez volunteered

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certain anecdotes from his experience on both Tinian and Rota with respect to the administration and enforcement of local laws in those areas. He served in some capacity in the Fish and Wildlife Service, I think, on Rota and in some other capacity on Tinian. He recounted an example where the local people charged with the responsibility essentially did not enforce it and undercut the authority of the central department. His examples actually were very useful. They did, however, provoke this outburst from Benjamin to the effect that people always speak about Rota and Tinian's mistakes and never about the many mistakes that take place on Saipan.

Sometime after Benjamin stormed out of the room and the cameras actually left, there ensued a discussion that led to what was thought for 36 hours at least to be a compromise. It emanated from some confusing and general statements by Victor Hocog to the effect that he had an idea that might respond to the Saipan delegate's concern. Victor apparently had the thought that there should be complete delegation of law enforcement responsibility to the Mayors at the outset of their term of office, but that the delegation could be revoked at any time for any

reason by the Governor. As Victor saw it, this would permit the Mayors to keep the responsibility and to make every effort to get along with the Governor so that the Governor would not exercise his revocation power. After some discussion of this, including some questions put by me to Victor, I thought I understood what he had in mind and subsequently prepared a draft sentence that I thought would incorporate his proposal.

My proposed sentence was a substitution for the last sentence of draft subsection (b) of the proposed Section 17. It would substitute for the sentence giving the Governor complete discretion to delegate law enforcement responsibilities as he saw fit -- a general statement of permissive delegation that Victor wanted to eliminate. When Victor saw my proposal, perhaps without reading it, he suggested that it be made a separate subsection. I subsequently did submit it as a separate subsection with two sentences. In each alternative, however, I made clear that the mandatory delegation of enforcement responsibilities related only to the areas in which responsibility for the delivery of public services had been delegated under subsection (a).

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This was the aspect of it that Victor clearly missed.

But he did not miss it for a while -- and that was the problem. Early in the afternoon of Wednesday, the delegates from Tinian and Rota thought they had achieved a major compromise based on Victor's grand concept, which no one really seemed to understand. As a result, there was agreement that the revised proposal with respect to Section 17, and the accompanying substantial rewrite on Article 6, could go to the floor the following day for first reading. This was a source of much enthusiastic support among the staff, as well as the delegates.

As a result, I spent the remainder of the afternoon and into the evening preparing a relatively long report on Section 17 and Article 6. I had done some work on both subjects over the past several days, but a good deal needed to be revised and rewritten in light of the committee discussions. I was banging away on this until close to 8:30 p.m. or 9:00 p.m., whereas Deanne was doing likewise with respect to Articles 11 and 12. Unlike me, she had the additional chore of conferring with all the lawyers on island with respect to Articles 11 and

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12, which took up a good deal of her time. Many of them also visited the office to present their views in person.

Thursday
July 27, 1995

We began the morning with some enthusiasm, making revisions in the draft report on Article 6 and Section 17, getting signatures, and getting it duplicated. When I showed it to Victor, I suggested that he might not want to sign initially, since I knew he had some reservations about aspects of the proposals. I went on to get six members of the committee to sign (out of a total of 11) and then asked that copies be made. I subsequently learned from Frances Borja that Victor had in fact signed the report before it was duplicated. I also saw Victor, however, deep in discussions with Mike Malone, working for the Senate and basically serving as staff assistant for Benjamin Manglona. This was not good news.

We did have a leadership committee meeting on Thursday, during which the schedule for the day was announced and it seemed as though there was general agreement at that time that a compromise had been reached on the delicate issues related to local government. There was no indication, as I remember, that anyone from Tinian and Rota

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expressed dissatisfaction with the proposed compromise as it had been developed the day before and was written about in the report to the Convention from the committee.

I felt so confident about this situation that I went off to get the long-awaited haircut that Deanne was reminding me about. When I came back at about 11:30 a.m., I learned that everyone had been looking for me in a frantic fashion, and a committee meeting was quickly assembled. It was during this meeting that Victor explained that he had mistakenly signed the report, that he would not support it on the floor, and that counsel had not embodied in the report the recommendation that Victor had in mind. This was somewhat difficult for me to understand, since the previous afternoon I had given Victor two copies of revised Section 17, incorporating his proposal, so that he could take one to his scheduled meeting to Benjamin and see if it provided a basis for compromise. It was probably at that meeting that some first concern was precipitated.

The resulting conversation in the committee was far from satisfactory. Even Tom Aldan seemed to have some lack of understanding as to the language that had been put before him. I

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explained it, but without any particular effect. Benjamin incidently was no longer in the room and had refused to attend the meeting since he had walked out the day before. The session quickly turned into an all-out discussion of law enforcement responsibilities with a lot of familiar ground being re-plowed -- both by the Rota spokesmen and by the Saipan defenders of the status quo.

I tried again to get people to talk about the subject areas that were not included in the proposed Section 17, such as public health, public safety, labor, immigration and environmental services. Under some questioning from counsel, it appeared that there were some modest programs and services in public safety and public health that might be delegated to the Mayors, but there was strong opposition to delegating any of the functions of the more traditional law enforcement agencies, such as labor and immigration, especially in view of the court decision that placed these areas of responsibility clearly under the Governor's authority.

At the end of the committee meeting, it was still somewhat unclear what was going to happen. It was evident that Victor was very unhappy. I

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forgot to mention that on the day previously after Benjamin had walked out, it looked as though Governor Camacho was going to go also. I had a brief discussion with him near the front door of the Legislative Building, where he very grimly told me that the events in this Convention had been predetermined from the beginning by the leadership and by lead counsel. This was his reiteration of the complaint that counsel; namely Deanne and I, were directing the Convention delegates rather than being directed by them. I don't know whether he believes it or not, but Deanne takes it somewhat more personally than I do.

It all came to a head later that day as we prepared for the 1:30 p.m. plenary session, at which time Section 17 and Article 6 were going to be presented for first reading. Victor left the building very conspicuously with JQ in tow, and that left us without any Rota delegates. Most of the Tinian delegates were also absent, though not all of them. In any event, under the circumstances, the President called the plenary session off. For most of the afternoon, the Saipan delegates milled around, not knowing

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whether they had a Convention going forward or not.

We initially were told that Victor and JQ had gone to the hospital, to help place into the morgue the body of a Rotan family member. How much time and how many hands it required in this exercise, I do not know, but the President subsequently told me that he went to the hospital and didn't see any sign whatsoever of Victor and JQ. So much for their political and family responsibilities.

We subsequently heard that they had indeed walked out, that some of them were closeted with Benjamin in the office of Mike Malone on the Senate side of the building, and that they were not planning to come back until the Saipan delegates agreed to the proposals that Victor thought had incorporated his recommended compromise. There was not much disposition along this line. Now we were finally faced with the long-threatened walk-out, and the President asked me what legal basis we had for going forward.

This precipitated an emergency cry for help back to Washington, and a note for Bernie that he didn't get until the next morning. On the legal front, through the research that Bernie did and

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that I did, as well as some useful suggestion from the University of New Mexico Law School faculty, we did in fact develop a range of arguments that might, just might, have gotten us over the basic front door steps if we wanted the challenge of the Convention's going forward under these circumstances. One nice little tidbit that Bernie learned was that in fact the United States Constitution was put together in direct violation of the procedures set forth for amendment in the Articles of Confederation.

Putting aside the legal niceties, however, it was quite depressing to be faced again with the same kind of walk-out that we had in 1976. This time, however, it looked as though Benjamin and his allies had control of all the delegates from Tinian and Rota. Marian and others had conversations with Victor during the late afternoon of Thursday, during which he placed a heavy share of the responsibility on my shoulders for not capturing correctly the compromise proposal that he had articulated and with which he thought the Saipan delegates had agreed.

Deanne had a meeting at 6:30 p.m. with some lawyers with respect to Article 12, and I had a 7:00 p.m. date with Paul at Dan's Coffee Shop to

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drink his favorite scotch. I went off to my rendezvous, where a growing group gathered including Randy Finell???, Brian McMann and subsequently Bill ? of Guam, as well as Paul and myself. Deanne joined us a few hours and many scotches later. It did not look at that point in the evening as though any compromise could be readily reached. I was concerned, however, that the Saipan delegates did not have the leadership to really defend a course of continuing with the Convention rather than giving in precipitously to the demands of their colleagues from Rota and Tinian.

I do remember having a long conversation with Alicia late in the afternoon before I went to Dan's for my meeting with Paul. Virtually everyone had left the premises by that time, and she was cleaning up some administrative and other matters. She said that Herman went away, overcome with stress, and that most of the other delegates were very discouraged. She offered her political judgments as to what was going on and why, in particular, Victor was behaving the way he was. Everyone takes it for granted that, once you declare for office in one of these islands (but especially Rota), virtually any subsequent conduct

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can be excused as being related to your political fortunes. This is certainly what appears to have happened to JQ, a delegate of some considerable intellect and judgment that Deanne in particular has become very friendly with. It was very discouraging to see him march off with Victor, but consistent with this tradition, it was explained as accounted for by the fact that he wanted to run for a position in the Senate in the fall elections. Alicia told me that she had spoken with Victor and that she expected to receive a fax from him later in the evening setting forth his proposal, that is, the terms on which he and the others would return to the Convention. She called me at about 9:30 p.m. when I was at Dan's to tell me that Deanne was on her way and that the proposal had not yet arrived. She said that Victor indicated that it would probably not come until the morning. (It never came in the morning either.) After the long evening at Dan's and the discouraging day, I went home, whereas Deanne went back to the office to continue work on an Article 12 report in the hope that the Convention would resume and that sooner or later we would reach this most controversial subject.

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Friday
July 28, 1995

I woke up at 4:00 a.m. or so, busily writing the speech that I thought Herman should deliver. At about 5:00 a.m. I got up and was in the office at 5:30 a.m. banging out a very sophomoric political speech about the walk-out and "what a sad day it was" for the people of the Commonwealth and the world in general. Sometime after 8:00 a.m. the few remaining members of the leadership came into the Convention. We had a leadership meeting consisting of Herman, Tom Aldan, John Gonzales, Frances Borja, Felix Nogis, John Tenorio later on, and Marian Aldan Pierce. There was no one from Tinian or Rota there. In fact, we saw David Maratita from Tinian on the premises, but by the time the plenary session was scheduled to convene, David had left and presumably rejoined his Tinian and Rota colleagues at some hangout. The hangout subsequently proved to be the conference room of the Commonwealth Ports Authority, where Victor is the Chairman of the Board. **[CONFUSION AS TO TAPE WORKING AND WHERE HPW IS.]** Just to recapitulate: Marian was supposed to call Victor at 9:00 a.m. to see what proposal he had to present to the leadership as a condition to the Rota and Tinian delegates rejoining the Convention. I went off to prepare

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for the session in the hope that it would materialize, as well as do other work. The telephone call did not in fact come through at 9:00 a.m., but about a half hour or so later, Victor did call Herman, and they had an extended conversation. Then Victor wanted to talk to Felix Nogis, the Chairman of the Executive Branch Committee, and he invited Felix and the committee to meet with him and the Rota and Tinian delegates at the CPA Headquarters at the airport at 10:30 a.m. It was quite clear from the conversation, as Felix reported it, that Victor thought he had been misled by me in particular with respect to the supposed compromise that he had initiated and directed me to implement.

I attended the meeting, although I volunteered not to go if the delegates thought it would be better if I were not there. Apparently Victor had not stated one way or the other as to my presence at the meeting. I drove over there with Marian Aldan Pierce. She told me during the drive back and forth that she had been with Victor the evening before for dinner, along with Juan Santiago and Herman. It was during the course of the conversation the previous evening, according to Marian, that Victor had accused me of

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misrepresenting the facts and generally distorting the situation and making a fool of him. She stated that Juan Santiago defended me, at least to the extent of saying that he was never present at any conversation where I misrepresented to Victor or did not do what the delegates told me to do.

When we got to the conference room, all the Rota and Tinian delegates were there. So were the omnipresent donuts. Everyone seemed very hospitable, except for Victor. For most the meeting, he essentially refused to look at me, and he conversed almost exclusively in Chamorro, so as to make certain I didn't understand entirely what was going on. However, I could recognize some of the terms, and Delegate Gonzales sat next to me and interpreted a few of the key ideas that Victor was communicating. As predicted, it was a massive attack on me and my deception. During the course of it, he made some comment that Bernie had taken issue with me on the subject and represented that what Victor wanted should have been in the report. (I knew something like this would happen, because of Bernie's gregarious participation in efforts the day before to settle this matter in hallway conversations. I finally had to tell him quietly but firmly to please not engage in those

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conversations, and I subsequently discussed it with him in his office. Actually, he took it reasonably well.)

After Victor made his overall statement, Aldan took the lead in Chamorro and basically, I think, defended the process by which the proposed revision of Section 17 had emerged from the committee. Tom showed him some of the earlier drafts indicating that the final draft in fact contained all the same language that was in the earlier draft that Victor had seen and approved. The real problem is that Victor does not read very well, does not think very well and is quite embarrassed by the situation. Deanne subsequently told me that Benjamin and his lawyers had essentially told Victor that he had been made a fool of, that all Haolie??? lawyers cannot be trusted, that I had deceived him and misrepresented the facts, and that now he had learned one of the main lessons of surviving here in the Northern Marianas -- namely, never trust a Haolie lawyer.

After some discussion, the question was finally asked as to what the Rota and Tinian delegates wanted as a condition of their returning to the meeting. They were circulating among

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themselves a two-page memorandum, but it never was handed over or shown to any of the Saipan delegates who were present at the meeting. There were several there, including several members of the committee plus some who were not. When it came down to it, it appeared all the Rota and Tinian delegates wanted was to essentially preserve the status quo with respect to Section 17 of Article 3. This had been the political compromise that many of us had been talking about for some time; namely, that after extended discussion neither side to this controversy was able to persuade the other of the need for change in one direction or the other and that, therefore, the best situation was to leave the status quo. From my perspective, this was a perfectly happy accommodation, since Section 17 as interpreted by the court in the Inos case basically left with the Governor full discretionary authority with respect to the enforcement of Commonwealth laws and regulations. What Rota and Tinian got from this accommodation was somewhat more guarantees to decentralize public services than they would have received under the proposed revision of Section 17. They also harbor the hope, I am sure, that with a different Governor and a new Mayor of Rota,

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there may be much more substantial delegation both of responsibilities for public services and the execution of Commonwealth laws.

Near the end of the meeting as we were taking our leave, Victor came to my end of the table, I looked him in the eye and apologized to him for any misunderstanding that existed between us. He accepted it rather begrudgingly, did not appear very friendly, but at least responded briefly in English to me. Outside the building I offered my hand, and he took it with some effort to show a mutual effort at reconciliation.

The next step in this drama came in an effort to incorporate this understanding in something that I entitled "A Memorandum of Understanding." The Rota and Tinian people, although expressing some concern about being arrested, if they showed up at the Convention headquarters, ended up requesting some written statement signed by the majority of the Saipan delegates setting forth the condition of our understanding. I had drafted something at the meeting that essentially made two points: (1) that Section 17 would remain exactly as it is; and (2) that the Mayors' powers under section of Article 6 with respect to the delivery of public services would remain exactly as they

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presently are. I do think that Benjamin and the others want to leave the Convention taking the position that they protected "Amendment 25" from the vigorous attack of the Saipan delegates and left the Rota and Tinian people exactly as they were on this subject before the Convention began. The understanding seemed clear at the meeting, but as always that clarity disappeared somewhat over the next few hours.

I did draft the Memorandum of Understanding incorporating these two points back at the Convention headquarters and then asked Felix to solicit signatures. When I came back 45 minutes later, he reported that he had only about six signatures and that many of the Saipan delegates refused to sign it. At that time, Victor was on the premises, and he found it apparently acceptable. The Saipan delegates, or at least many of them, were somewhat fatigued by this controversy and basically did not want to sign any such document until the Rota and Tinian delegates appeared or signed it themselves. I had thought that the document would be taken to the airport to get the signatures of the Rota and Tinian delegates, but that never materialized, and this historic document never really got signed by

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anywhere near all of the delegates. It seemed, however, that Victor and one or two Tinian representatives were available to participate in the afternoon session.

We did have an afternoon session, and we rather hurriedly considered a wide variety of articles on second reading, the most important of which was Article 11, dealing with Commonwealth land. We dealt with Articles 7, 8, 10, 11, 14, 15 and 16. It really became somewhat funny later in the day as we hurriedly tried to bring relatively non-controversial articles before the group, so long as we had a quorum. Victor was the only Rota delegate present, and we had David Maratita and James Mendiola [UNCLEAR] from Tinian. Everyone was very friendly toward them, of course, since they had enabled the Convention to go forward. I was later told that the only reason Victor really showed up was out of personal loyalty to Juan Santiago, who basically was telling me that he had tried to convince Victor that he was not going to get any political mileage out of any continued walk-out, since Benjamin would always represent that Victor had screwed things up and that Benjamin had been the leader in achieving this tactical compromise.

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Saturday
July 29, 1995

We had another busy session today and did have a quorum present to transact Convention business. Both Bernie and I had done some legal research, with assistance from Wilmer, Cutler and the New Mexico Law School, with respect to legal bases for challenging the quorum requirement contained in the enabling legislation. There may still come a time when such a challenge will have to be amounted or, to put it another way, to defend the capacity of the Convention to conduct business even in the absence of representatives from either or both of the Rota and Tinian delegations. There are some rather attractive arguments, although wholly unprecedented, that might be raised under the United States Constitution, the Commonwealth Constitution and the Covenant. Even if the defense of the Convention under these circumstances might go down in flames, it would be fun arguing.

Deanne was busy in every spare moment dealing with the flow of faxes, letters from Ted Mitchell and others. The letters from Ted were becoming increasingly shrill and personal; he derived great pleasure from sending letters in late at night and must surely have been surprised when he found responses on his fax machine bearing times such as

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2:00, 3:00 and 4:00 in the morning as Deanne made an effort to keep up with him and make certain that his client in the Convention, Dr. Camacho, could not claim that Ted's letters went unanswered. None of them did. Actually, Sunday night Deanne sent back some particularly vigorously worded letters to Ted which, according to Ted the next day, were very personal in nature. It is somewhat humorous to see his reaction, after weeks of sending highly personal and inflammatory letters, when he receives a letter that is relatively mild in comparison but still suggests that his lawyering and advocacy on this subject has been less than perfect.

We did get the local government to the floor for first reading on Saturday, along with many others articles on second reading. The discussion with respect to local government was relatively mild, compared with all the drama that preceded the Saturday session. As I recall, none of the Rota delegates except Victor were present at the Saturday session. (But I could be mistaken.) There was an extended exchange between Victor and myself as he tried to develop some legislative history to the effect that no change in the relationship between the central government and

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the Mayor was contemplated by the action taken at the Convention. The questions he put to me were entirely reasonable and appropriate. I tried to explain that the Convention's decision to stay with Section 17 of Article 3, and its retention of the provisions of Section 3 of Article 6 relating to the powers of the Mayors, would stand to confirm the Convention's conclusion that the status quo on this subject was its ultimate objective. I suggested, perhaps rather vaguely, that some statement in the analysis of the Constitution could confirm this intention of the Convention. (I subsequently did include some statements to this effect in the analysis.)

When time came to take a vote, Tinian Delegate Joey San Nicholas and Rota Delegate Quitugua voted against it. That refreshes my recollection as to who was present during the meeting.

Subsequently during the Convention session on Saturday, the Convention passed on second reading Article 9, dealing with initiative, referendum and recall; Article 17, entitled "Ethical Standards"; Article 18, entitled "Constitutional Amendment and Mutual Consent"; and Article 19, entitled (thanks to Deanne) "Commonwealth Unity".

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The only real discussion of substance that was raised with respect to these articles came up with respect to Article 18. Saipan Delegate Tom Aldan presented an amendment to change the ratification procedures with respect to future amendments to the Constitution. Article 18 has been substantially amended to as to restrict the availability of a Constitutional Convention in the future, to eliminate amendments by legislative initiative, and to change the procedures with respect to amendment by popular initiative. Unfortunately, the Convention was considerably confused on these issues because the report of the committee was presented by Vice Chair Donald Mendiola, due to the absence of Chairman Hofschneider from the Convention sessions. (Henry was reportedly in Guam on family business, but there were those who maintained that his "family business" could have been resolved in 10 minutes rather than the three days it took, and that Henry was absenting himself from the Convention while the local government issue was being thrashed out so that he would not have to take a position on the subject that might impair his political aspirations.) Vice Chair Mendiola is one of the more colorful characters in the Convention; there

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is considerable controversy whether he is under the influence of beetlenut or some other traditional medicine or whether he is simply slow. In any event, his shortcomings, plus the lack of a committee report that stated clearly exactly what the Convention was being asked to vote upon, generated the kind of paper confusion that we had not really seen for many weeks. Deanne and I commented later that the delegates had become so accustomed to having everything before them in precise order and up to date that they really were particularly nonplussed when, all of a sudden, the orderly conduct of business was not possible.

Delegate Aldan was successful in getting the ratification changed in the future so as to provide, with respect to popular initiatives, that amendments to the Constitution by this method could be ratified by 60% of the vote throughout the Commonwealth. Benjamin Manglona came up to me during a break to confirm his understanding that this would happen only in the future and would not affect the ratification of the amendments that this Convention was now considering. I assured him that was the case. Actually, we were both under a misapprehension; namely, that Aldan's amendments pertain to the amendments proposed by

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Convention rather than those proposed by popular initiative. There was some of the usual oratory on this subject, with Delegate Aldan becoming increasingly articulate in recent days about the principle of majority rule and his reluctance any longer to go along with giving Rota and Tinian voters a controlling veto with respect to the enactment of Constitutional amendments.

The other amendment that was effected during this session did provide that, with respect to future amendments proposed by a Constitutional Convention, their ratification could be achieved by a majority vote unless higher requirements were established by the Convention itself. This was a new concept to me; I had never heard any discussion with Deanne or others about this concept. It is an interesting approach, and may of course lead to further efforts next time around by the Legislature in the enabling legislation establishing the Convention to assure that the Convention would ultimately come out with some higher standards that might recognize the traditional power possessed by Rota and Tinian. My sense is that gradually the power of Rota and Tinian is going to be diminished, especially as the older generation gives way to a younger group

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of politicians and economic development on those islands provides some alternative to local government employment as a way to keep residents on the island.

At the conclusion of this Saturday session, the Convention had acted on second reading with respect to all articles except Article 6 (local government) and Article 12 (restraints on land alienation). It was generally agreed that the Convention had done all it could do and that the complex subject of Article 12 should be left for the Monday session.

JOURNAL OF HOWARD P. WILLENS

RE: CNMI THIRD CONSTITUTIONAL CONVENTION (1995)

July 30 to August 3, 1995

Sunday
July 30, 1995

This was a day of non-stop work. Now that the lawyers on the island knew that Article XII was not going to be discussed until Monday, they spent the day barraging Deanne with faxes with respect to the text of the proposed amendment and increasingly with respect to the Analysis that would explain the intention of the Convention with respect to this controversial article. By this time, as I may have recounted already, the provision relating to disclosure in Section 1 of Article XII had been rejected by the committee. There seemed to be no particular interest in renewing that requirement, which was opposed with equal vigor, if not vehemence, by Ted Mitchell on the one side and the business lawyers on the other.

The letters coming in and the communications in general were in sharp contrast with each other. Whereas Ted's letters were increasingly personal, antagonistic and non-productive, the contributions of the business lawyers were for the most part constructive. The more sensible of these lawyers recognized that they had to establish some

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priorities in deciding what provisions of the article were most important to them. When this question was put to them, almost without exception they agreed that the change of the enforcement standard from "void abenicio" to "voidable" was the most important change for them. Ted's strategy was increasingly misdirected and poorly managed. As the events of the next few days demonstrated, if he had handled his resources better, he would have achieved much more than in fact emerged from the Convention with respect to amending Article XII.

While Deanne was concentrating on the Article XII issues, I was dealing with local government. I was not aware at the time that there would be any serious objection to the text of Article VI as it was passed by the Convention on first reading. Nor was I aware of any effort to revisit some of the issues put to rest by the compromise resolution with respect to Section 17 of Article III. I was to be disabused of these notions the following day.

I also spent a good deal of time working on the Analysis, now nearly a 100-page document of single-line text, trying to set forth in one coherent and consistently styled document the

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intention of the Convention with respect to all of the provisions that were amended or newly adopted. Deanne and I did not really have much help on this, once Grace had done the very useful task of taking the committee report and basically turning them into a very rough single document.

As I recall, our schedule was so discombobulated by this time that we even missed our Sunday morning breakfast of pancakes at Shirley's Coffee Shop. On some of these mornings over the next few days, we got up at 5:00 a.m. or 5:30 a.m. and went into the office early, since that was the only time that we really had the quiet within which to do some of the necessary work. I was already too tired by this time to do very much constructive writing, much less creative legal work.

Monday
July 31, 1995

Today was another one of those crises in the Convention. I forget whether we had a committee meeting of any kind scheduled for the morning. I think the Committee on Legislative Branch and Public Finance was dealing with the Schedule on transitional matters, which Bernie was handling. Neither Deanne nor I wanted to take a serious look at this for the next day if we could avoid it. In

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fact, the various provisions in the Schedule on transitional matters came from different committees and, as such, needed to be reviewed by those committees.

Sometime in the late morning, we learned that the Tinian delegates were not going to show up for the plenary session. As we were told, they were summoned back to a meeting on the island of Tinian to confer with the Mayor and other officials on the island with respect to the deliberations of the Convention relating to local government. So although some from Tinian were on the premises of the Convention site in the morning and shortly before the session began, when the session did begin at 1:30 p.m. and roll call was taken, all four representatives from Tinian were absent. This raised once again the prospect of going forward without the quorum required by the Statute and the Convention's own rules.

There was an ample audience assembled on this occasion, because it was anticipated that Article XI would be considered on second reading today. I was asked a question by either the floor leader or someone else, as to whether the Convention had the authority to proceed with its deliberations notwithstanding the absence of the

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four Tinian delegates. In one of my more hesitant and qualified legal opinions, I explained that the Convention could go forward in its deliberations without a quorum present, but then decide not to take any votes until in fact there was a quorum. On the other hand, I also suggested that there were substantial Constitutional issues raised with respect to the quorum requirements imposed by the Statute, making reference in this connection to requirements imposed by the U.S. Constitution, the Commonwealth Constitution and the Covenant. This was based on the research that emanated from Wilmer, Cutler and Pickering and also the work that Bernie had done in connection with the New Mexico School of Law. I made it clear, however, to the delegates that this was an area where there were no precedents, where the issues were complex and where there was certainly no assurance that the Convention's actions could be sustained in the absence of a quorum.

I also suggested as an alternative that the Convention could go forward and vote on the matters before it and then vote again when a quorum was in fact in place. After some discussion on this subject, the floor leader, with his customary bravado, suggested to the President

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that there be a recess of two hours so as to provide him time to go to Tinian and bring back the four Tinian delegates. His request was couched in such a firm manner that one had the sense that he was going to descend on Tinian with armed troops and bring back the four delegates in iron handcuffs if need be. Although the idea of a recess did not strike me as necessarily the best way to deal with this problem, it was readily embraced by the President and the remainder of the Convention. As a result, we recessed at about 3:00 p.m. with a deadline set for resumption at 5:00 p.m. to consider the issues before the Convention if at that time there was a quorum.

During the next two hours, Deanne and I, as well as the other lawyers and staff, continued to do our work. We were emphasizing constant preparation of transcripts, assembly of records, work on the Analysis, continued negotiations about Article XII, and a barrage of other administrative and substantive problems. Sometime after 5:00 p.m., Victor Hocog and the Tinian delegates once again appeared on the scene. I was told that a compromise had been reached on one critical issue relating to local government. Apparently, the greatest concern among the Tinian leadership

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was the provision in Section C of Article XVI that imposed an automatic reduction over a five-year period of Commonwealth funding for local government personnel and services. As passed on first reading, this provision specified that, after a grace period, the local governments would have to reduce the amount received from the Commonwealth by 10% each year. This had been a subject of some considerable discussion in the committee, where representatives of both Tinian and Rota expressed their concern that their local economies would not be able to generate the necessary revenues to permit these reductions to be offset by locally raised revenues.

The compromise was really rather simple and straightforward. The Tinian delegates wanted the five-year automatic reductions eliminated, but agreed to have the level of Commonwealth funding during this five-year period reduced by the amount of revenues raised locally. Victor thought this was a great deal for the Commonwealth, since in Tinian there was already a functioning gambling operation which over time might yield very substantial revenues for the local government and thereby reduce accordingly the amount needed from the Commonwealth treasury. The compromise did,

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however, open up the prospect that the local governments could sit on their hands for five years, not raise any local revenues, continue to receive the same high level of Commonwealth funding, and then apply the considerable political pressure available to them in the Senate to force the Legislature to continued funding at the same level after the grace period plus five years were over.

Notwithstanding the merits of the compromise, it seemed a modest enough concession to agree to in order to bring the delegates back and permit the Convention to go forward with the required quorum. This is what everyone agreed to do, and the Tinian delegates showed up in reasonably good humor when the Convention resumed at about 5:30 p.m.

The issue of local government did come up first on the agenda and was rapidly disposed of. In fact, after the proposed compromise was circulated in written form among the delegates, there was virtually no discussion whatsoever about Article XII, and this very controversial subject was put to bed. I forget whether it was at this session or the earlier one where Victor cross-examined me with respect to the status quo

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compromise. I think it was at the earlier session. There were a few questions raised with respect to the article, but nothing of substance. There was no indication of a further effort by Benjamin to raise some of the fundamental issues with respect to Article VI and VII and Section 17 of Article III. This surprise came the next day.

The Convention then began its discussion of Article XI. Deanne was sitting up on the podium to assist the Chair of the Committee of the Whole. I think the Chair of the Committee of the Whole was Esther Fleming, which was a good choice because of her close affiliation with Dr. Camacho in the early days of the Convention and her charming and even-handed manner in dealing with people and issues.

The discussion of Article XII went through the issues section by section. The surprise at the beginning, carefully orchestrated by Ted, was to have Dr. Camacho submit an entirely new Article XII with an Analysis for distribution to the delegates accompanied by a motion to substitute that version of Article XII for the one that had come from the committee. No strategy could have been as ill advised as this was. First, it asked the delegates to set aside the

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carefully-worded version crafted by the committee and thereby alienated the members of the committee. Second, springing such an alternative at the last moment was asking the delegates to consider something thoughtfully without giving them the time or the opportunities to do so. As a result, the so-called substitute motion got short shrift. After some effort by Camacho to explain his reasoning, which was essentially to point to the Analysis obviously drafted by Ted, the motion to adopt the substitute was handily rejected. Camacho was assured that he could speak to individual sections of Article XII as they came before the Committee of the Whole and, on that occasion, point out why the version of that particular section contained in the substitute motion should be preferred to the recommendation that came from the committee.

The discussion went on for several hours. I believe that the Committee of the Whole and the Convention did not adjourn until about 9:30 p.m. that evening. Mitchell was there throughout the session. As Deanne opined with respect to the various sections, including the discussion of those sections in the Analysis, the lawyers on the island who were watching on television were

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sending her faxes to urge her to correct certain statements or make certain additional statements that would help them in the future to interpret the sections of Article XII. We had never seen anything quite like this phenomenon.

One of the truly interesting aspects of this debate was the focus on the definition of the term "acquisition" so as to permit parents to give by gift or will their land to their children or their grandchildren even if those children or grandchildren no longer met the definition of being of Northern Marianas descent. This was an issue raised during the public hearings and was of great concern to the delegates in the committee. With the increasing occurrence of intermarriage by local children with stateside citizens and others, it does not take many generations to fall below the 25% requirement currently in the Constitution. Deanne had previously opined that there were some reasons why not to tamper with the 25% requirement, in the face of proposals made at earlier stages of the Convention to reduce it to 6% or even lower (i.e., "a drop of Northern Marianas blood"). This particular provision of the committee revision got great support from the delegates and is generally thought to be one of

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the provisions that will make the Constitutional amendments on this subject very acceptable to the local community.

There was the anticipated extensive discussion of the new "voidable" standard in Article VI. Many hypotheticals were presented; Chief Justice Dela Cruz was asked once again to opine on this subject, and he studiously refused to express a personal preference as he had refused to do so on an earlier occasion. One of the delegates, young delegate San Nicholas from Tinian, gave a very thoughtful speech in support of the new standard and, to my surprise, it was not written by Deanne. Several other statements on the floor had been prepared with Deanne's assistance. Eventually the Committee of the Whole did vote overwhelmingly to adopt the new standard, over the opposition of Camacho and a few of his supporters.

The real battleground then became whether certain provisions of the revised Article XII would operate retroactively, or prospectively only, and to deal with what effect those new provisions would have on the existing statutory provisions on the same subject. It was in this area, according to Deanne, where Ted and Delegate

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Camacho, if they had managed their campaign better, could have achieved more of their objectives. One of their primary goals from the very beginning was to eradicate from the books the provisions of this Statute enacted in 1983, at the instigation of the business community, that established the Statute of Limitations, put limitations on attorneys' fees, provided new criteria for the courts with respect to examining corporate records, etc. Deanne believes that both of the new provisions in the Constitution will operate in effect to eradicate the relevant provisions of the Statute from the books, or more appropriate, to supersede them, but an out and out motion to declare the Statute null and void was narrowly defeated. Other such efforts with respect to specific subjects were also narrowly defeated, notwithstanding very thoughtful efforts to do so led by Lillian Tenorio and others. It was in this area that tempers got high and the delegates were becoming increasingly impatient in dealing with the subject.

When it was all over, the Committee of the Whole rose to the plenary session and, in short order, adopted both Article VI and Article XII on second reading. This then concluded the official

consideration by the Convention of all the articles of the Constitution. It left only the Schedule on transitional matter and the Analysis for subsequent deliberation by the Convention.

It was an exhausting day, and we went home feeling just that way.

It was either on Monday or Tuesday that we had a new development with respect to local government. Victor Hocog, still determined to strike out an independent position that might distinguish him from Delegate Manglona without doing the Commonwealth any harm, renewed his proposal for Section 17 of Article III. Victor urged once again that there be complete delegation of all public services and law enforcement responsibilities to the Mayors, but that the Governor would retain the authority to withdraw that delegation at any time with or without cause. None of us saw any particular support for this proposition, but Victor maintained vigorously that this would satisfy some of his constituents in Rota, and he could claim to have won something of significance for them if the Convention were to accept this proposition. He furthermore reported that the Acting Governor, Lt. Governor Borja, preferred this approach.

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In any event, Joe Dela Cruz and I scheduled a meeting with the Acting Governor at 1:00 p.m. on that day (whichever one it was). (It was probably Monday.) We went over and found Jesse Borja in the latter stages of his lunch. He was a former Justice of the Commonwealth Supreme Court and a long-standing colleague and friend of Joe Dela Cruz. We put the issue to him and had a rather interesting conversation. Jesse did indeed state that the alternative proposal had some advantages. He is primarily concerned with trying to avoid 18 months more of litigation between Mayor Inos of Rota and Governor Tenorio with respect to various aspects of the Constitutional provisions on the subject as they presently stand. Both Joe and I sympathized with that objective.

We all agreed, however (as lawyers), that the substitute really made no sense whatsoever. We worried together about what a court might do in interpreting a first sentence that provides for mandatory delegation of all responsibilities and then, in the second sentence, purports to retain in the Governor complete discretion to withdraw the delegation at any time and for any reason. I probably worried about this more than I should in an effort to persuade the Lt. Governor to take a

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less supportive position with respect to this proposed amendment. We talked about the litigation situation and generally what the Convention was doing. Jesse is a very straightforward, decent fellow. There are rumors that he might run for Governor if the present Governor continues to maintain that he is a one-term Governor. I have also heard, however, that the present Governor doesn't think his Lt. Governor has the necessary political skills. Joe and I returned to the Convention site fully anticipating that this would come up and somewhat unsure as to how we would deal with it in light of our conversation with the Lt. Governor. As it happened, Victor never pressed this proposal on the floor of the Convention.

Tuesday
August 1, 1995

We spent considerable time in the morning doing further work on the Schedule. Monday night had been an all-nighter for Deanne, and I had worked for most of the evening. By this time I was suffering from fatigue and a small medical problem that complicated my life. But, in any event, we were concentrating on the Analysis -- with Deanne focusing almost exclusively on the Section 12 analysis, because of its incredible

importance with respect to future interpretation of the Constitutional provisions, with me focused on the remainder of the document. We were required to get the Analysis in allegedly final form for distribution to the delegates on Wednesday so that they could discuss it at the Wednesday session. Working on the Analysis was one of those incredible jobs that both Deanne and I have done so many times over the years, trying to produce in this case a 100-page document that is coherent, consistently written, substantively correct, and records the suggestions of the delegates and others whose wishes we decide to honor.

The session itself with respect to the Schedule went reasonably well. Various of the committees, including the Committee on Executive Branch and Local Government, had met separately to consider those provisions in the Schedule that affected their work. This afforded an opportunity for everyone to think again about some of the decisions that they had made, and individual provisions of the Schedule were revised with that in mind. For example, in the Committee on Executive Branch and Local Government, there was still further conversation about what to do with

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the 15 employees presently in the Office of the Mayor of the Northern Islands. Since that office was going to be eliminated under the Constitution, there was some debate about whether these 15 employees should be guaranteed positions in the offices of the Mayor or the Municipal Council of Saipan in the future. The ultimate result of this debate was somewhat hardheaded and practical; namely, these people were political appointees and knew that they had no tenure after the end of the Mayor's term, and therefore they should begin to look for jobs as soon as these amendments to the Constitution are ratified by the people.

One of the more interesting issues involved in the Schedule was our effort to anticipate what the Legislature might do when we were out of town through exercise of its legislative initiative authority to amend the Constitution. We had made frequent reference to the fact that the Legislature currently had pending for consideration by the voters at the November 1995 election a proposal to increase their legislative budget by nearly 100%. We used this in part to support our recommendation that the legislative initiative method for amending the Constitution be

repealed, and our draft Constitution so recommended.

The Legislature was resisting our numerous entreaties to withdraw their legislative initiative. Indeed, their proposed amendments to the enabling legislation set forth a rule to the effect that if two amendments on the same subject were voted on by the voters at the same time, the one that received the most votes should prevail. As Bernie's research demonstrated, such a rule in fact had the considerable basis in the common law in various states within the United States. I was not particularly happy with this proposal and drafted a provision for the Schedule that I hoped would deal with the Legislature's possible efforts to subvert the recommendations of this Convention once we had adjourned.

As finally adopted by the Convention, the Schedule on this subject makes clear that any amendment emanating from this Convention is to prevail over any legislative initiative on the same subject irrespective of the number of votes received by the two proposed amendments. It also seeks to prohibit the Legislature from passing any law inconsistent with that objective. It goes further to attempt to specify that no further

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exercise by the Legislature of its legislative initiative should be placed for the people, either at the November 1995 election or thereafter, until the people have had an opportunity to vote on whether the Legislature should continue to have this authority to amend the Constitution.

There are two obvious problems with this approach. First, the rules are set forth in the Schedule on transitional matters which, together with the proposed amendments to the Constitution, has no legal effect until ratified by the people. So there is an open question as to whether a subsequent ratification of this set of rules by the people will serve to operate retroactively to nullify anything that the Legislature had sought to do in the interim. Second, there is the related problem as to what the legal affect of the Schedule is, since there are some court decisions here in the Commonwealth to the effect that the Schedule is not part of the Constitution.

The Schedule went through with relative ease during the plenary session. Our surprises were not over, however, because Delegate Manglona was still trying to resurrect a proposal with respect to local government. He came to see me either on Monday or Tuesday with proposed amendments to

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Sections 1 and 17 of Article III, which essentially raised all the issues that he had raised earlier only to find them rejected. Nonetheless, he went out to campaign with individual members of the Saipan delegation and reported to me that most of them were going to support his efforts. When I pursued this with the Saipan delegates, they assured me that they had no such intention, they were simply being polite to Delegate Manglona, and they intended to vote him down if he pressed the issues on the floor. It was unclear to me whether he was going to do so on Tuesday or save this for what was hopefully the last day of deliberations, Wednesday.

Tuesday night was an all-nighter for Deanne, and I spelled her early in the morning. We did a substantial rewrite of the Analysis, there were the usual mechanical difficulties, and we had to have the Analysis ready for distribution to the delegates sufficiently in advance of the afternoon session so that theoretically they would have some time to read it.

No description of the last three nights or four nights before the end of the Convention would be complete without some effort to recapture the tone and substance of the communications that were

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faxed to Deanne's office from Ted Mitchell. Ted was absolutely relentless in writing letters at all times of the day and night, especially late at night, with increasingly abusive and strident statements about how Deanne's and the committee's work were undercutting Article XII's protection of the Northern Marianas people. He rarely had a specific suggestion to make with respect to language or the Analysis. He chose instead to maintain that we were departing from the lofty principles of the 1976 Constitution, that we were ignoring what the courts had done to Article XII, and that we were leaving him and the people of the Northern Marianas absolutely without relief from the predatory mainland and other violators of Article XII.

Deanne developed the technique of responding to these letters almost as promptly as they arrived, among other reasons because one of Ted's strategies was to write his letters, then have his client, Delegate Camacho, complain that the letters had not been circulated to the committee or responded to by Deanne. As a result of Deanne's strategy, she would drop her work on the Analysis at whatever hour of the night an incoming letter from Ted arrived, and then write a brief,

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also increasingly strident, response. On one occasion, I softened a few of the letters, but, even so softened, they still provoked a surprising response from Ted. After weeks of lambasting Deanne for her biases and so forth, Ted expressed surprise at her personal attack on him. All Deanne did, of course, was to suggest that Ted was interested in bolstering his litigating position in order to win the case he was presently prosecuting in court. There was one letter that I remember where Ted, in a burst of frustration as he saw defeat looming ahead, suggested that Deanne come over to his office, review all his Article XII case files, and then undertake to decide which of them she would undertake so that she could bring her lawyering skills to the side of these clients that Ted had so far at least been unsuccessful in representing. It certainly was a last-ditch effort by Ted. I think we both felt somewhat sorry for Ted under the circumstances, but I think that our relationship has now been severed beyond repair.

Wednesday
August 2, 1995

Today was the day that the Analysis was the only item on the agenda for the afternoon meeting. As I recall, we were busy working on the Analysis

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through the morning. Before I had left the previous night, we had xeroxed 40 copies of the first 43 pages of the Analysis, but I had been unable to continue -- in part because of fatigue, and in part because Deanne was still working on the 20 pages or so dealing with Article XII. On Wednesday morning, I did a light edit of the Article XII materials, incorporated some of the comments suggested by Maya, and we then put it to bed for distribution to the delegates.

The discussion of the Analysis in the plenary session went extremely well. I sat on the podium with Delegate Tomas Aldan, who chaired the meeting with his usual authoritarian manner. We proceeded through the Analysis article by article with ample time for delegates to raise questions with respect to the language used, omissions or proposed additions. This produced some useful suggestions, which were reflected in the final version, and in our minds at least should have put to rest any suggestions that the delegates had not been given a full opportunity to review the Analysis before it was adopted. (At the final session on Thursday, the delegates approved a resolution adopting the Analysis as a complete and accurate statement of their collective attention with

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respect to the amendments that they were proposing.)

There was another unexpected crisis that developed on Tuesday and Wednesday. (Incidentally, after Benjamin took another reading of the sentiments of the Saipan delegates, he elected not to submit his proposed amendment to Article III to accomplish his objectives. Their refusal to consider his latest proposal undoubtedly contributed to his decision to not sign the final document.)

The unexpected development of the last days involved a proposed amendment to Article XVI, dealing with corporations. Absolutely no amendments to this section had been proposed or considered by the committees for the past nearly two months. At the last moment, however, the business community on the island, working through Delegates Igitol and Lifoifoi, presented an amendment to Article XVI on the floor that purported to protect the "right to work" of everyone on the island but in fact was designed to prevent organization of labor unions by non-resident aliens. None of us were aware of the background of this proposal or the serious legal

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issues raised by it at the time it was presented on the floor by Delegate Igitol.

The above is not exactly correct, because Deanne was asked by Delegate Igitol to consult with respect to the proposal shortly before it was presented on the floor. She also had some input from one of the private attorneys on the island, Michael Dotts, who was also instrumental in generating delegate support for this proposal. There was apparently a recent decision by Judge Munson to the effect that non-resident aliens did have the right to organize on the island, based on a U.S. Supreme Court decision that none of us were aware of. In any event, Deanne did her best to try to construct a reasoned justification for the proposal which, if nothing in addition were said with respect to it on the floor, might possibly -- and only possibly -- withstand Constitutional challenge. She knew enough about the law to maintain that if any improper purpose was revealed with respect to any such amendment or enactment, that would ensure its failure to withstand a court challenge. As a result, the statement she wrote stayed away from anything that might look like it was discriminating against the non-resident aliens.

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In fact, this was nearly a hopeless task. The key sentence of the amendment sought by the business community provided that "resident citizens" have the right to organize. Well, it seems clear that the citizens have the right to organize in the absence of such a Constitutional amendment, and it was unclear that the amendment, if enacted, would operate in any way to restrict the right of non-resident citizens or aliens to organize. In other words, in my opinion at least, the amendment was a serious legal mistake. We could do little about it, however.

When the amendment did come to the floor, there was a series of questions addressed to counsel with respect to it. In turns, Deanne, who carried the laboring oar, Bernie and I all tried to speak to it. My own impression is that we all sounded extremely sensitive, guarded and reserved in our legal opinions. Deanne kept reiterating her view as to the stated reasons for the proposal, denying that they revealed any impermissible discriminatory intent, and therefore tried to answer the questions in that light. The smarter of the delegates recognized that she was straining. For my part, I couldn't resist the effort to suggest that the proposed amendment

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might violate certain provisions of the Covenant with respect to the applicability of the National Labor Relations Act, which I knew from prior research has been held to apply in the Commonwealth, and to bemoan (if belatedly) the fact that such late-submitted amendments suffer because they do not get the considered legal analysis that the delegates have come to depend upon. I had hoped that this would strike a responsive chord that might persuade a sufficiently large minority of the delegates to reject this amendment.

When it came to a vote, however, there was virtually no opposition. The amendment did achieve the necessary two-thirds vote, and, at that point, became incorporated in the draft Constitution. I believe this discussion took place on Tuesday.

On the next day, however, some delegates seem to have had second thoughts. Grace and Bernie had obtained copies of some of the relevant decisions and were circulating some of the pages among the delegates. It was quite clear that the District Court Judge here had clearly held that the non-resident aliens had a right to organize on the island, whether the local hotels and other

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companies liked it or not, and that the Commonwealth's control over immigration did not operate to provide the Commonwealth from any exemption from the NLRA or other relevant provisions of federal laws and the U.S. Constitution. When delegates saw these materials, according to Bernie, they had a decision to raise it again and perhaps reconsider it.

In the plenary session on Wednesday, they did in fact raise this issue again. Delegate Igitol expressed some of his concerns and asked for some expression of opinion from the delegates as to what they wanted to do. Rather than have anyone make a motion to reconsider or whatever, there was a show of opinion after we read a short paragraph that Bernie had prepared to the effect that the adoption of the proposed amendment to Article XVI the previous day was out of order and therefore null and void. Why we hadn't raised these issues the day before, I am not quite sure, but we hadn't. In any event, the delegates were now given a situation where, after our ruling, they were working on a blank slate. The question now was whether Delegate Igitol or anyone else would choose to reintroduce this proposed amendment. After a couple of expressions of opinion by the

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delegates, Delegate Igitol made another one of those famous motions to give the proposed amendment "a state funeral." This carried the day, and we avoided including in the Constitution what certainly would have been held to be unconstitutional even before the matter was put to the voters as a general or special election.

Thursday
August 3, 1995

This was the 60th day of the Convention -- the last day permitted by the enabling legislation unless the Convention by a three-fourths vote decided to extend for up to 15 days. After the session on Wednesday relating to the Analysis, the major effort was to put the Constitution and the Analysis in final form and sent to the printers. Pamela had made arrangements to have two original copies and some 40 nicely bound copies with appropriate Commonwealth seal on both the Constitution and the Analysis. The materials were due at the printer at 6:00 a.m. on Thursday morning.

Wednesday night was a long one, especially for Deanne, Pamela and others. I stayed until approximately 1:00 a.m., and then relieved Deanne at about 7:00 a.m. She had ended up doing a substantial rewrite of the Analysis, and I spent a

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little time proofing it the following morning. There were the usual technical and other problems. As usual, we did not have quite enough time to put in all the comments that we thought might have been included in the Analysis. By this time, the Article XII advocates had more or less given up, because the record with respect to Article XII was now rather firmly set in the Convention's proceedings.

On Thursday morning, once the materials went off to the printer, we were preoccupied with administrative arrangements in preparing certain resolutions for consideration by the Convention on its last day. One of these set forth its approval of the Analysis, and the second sought to deal with any procedural irregularities that might have occurred throughout the Convention's 60 days. Not unexpectedly, Mason's book on parliamentary procedure had a section that expressly charted the course for excusing the legislative body from any such procedural irregularities. I prepared these two resolutions with Maya's assistance.

We had a last-minute crisis, stimulated by lawyers in Washington, who wanted to make certain that the Schedule on transitional matters included the three sections from the 1976 Schedule that had

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not yet been certified by the Attorney General as executed. I asked Bernie to deal with this, and the next thing I knew the Acting Attorney General, Sebastian Aloit, was in our office asking on behalf of the Washington lawyers to stop everything so that our Schedule could be redrafted to include these old provisions. I took an excessively strong position in opposition to this, questioned the need for any action at all, and tried to explain the situation to Sebastian. He was being quite reasonable under the circumstances, although he did not fully understand why the people in Washington were asking him to do what he was asking me to do. The end result was a compromise that I thought was perfectly appropriate; namely, enactment of a resolution by the Convention to the effect that its preparation of its own Schedule in no way altered the effectiveness of the Schedule provisions from the 1976 Schedule that had not been considered as executed. Apparently all this arose during the course of Section 902 negotiations with the United States with respect to the Northern Marianas claim to the Exclusive Economic Zone extending 200 miles out from the shores of the Northern Marianas. The lawyers

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involved were, of course, MacMeekin and Woodward, who undoubtedly were very frustrated by our failure to feature the EEZ in the pertinent provisions of the Constitution and the Analysis. As it turned out, our compromise proved not to be acceptable to the lawyers in Washington, for reasons unknown to me, but by the time their rewrite reached us on the floor of the Convention, the delegates were literally already in the process of voting on the resolution we had drafted on this subject. Sebastian appeared somewhat relieved that the matter was now literally taken out of his hands.

The Convention's last day went very smoothly and happily. After the resolutions were enacted and a few copies of the Constitution and Analysis arrived, we embarked on the signing ceremony. As the delegates marched to the podium one by one, Deanne and I and Joe Dela Cruz shook their hands on the way up to the podium, and Bernie and others shook their hands as they descended from the podium. I felt like we were in a reception line. There were numerous photographers eagerly taking pictures of every delegate signing, with President Guerrero and Pamela among the most aggressive memorializers of the event.

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Six or seven of the women had agreed in advance to dress in red, and it made quite a stunning picture. Deanne and I in our blue suits had our picture taken with them at one point when we were receiving the scroll attesting to our good work. The women were particularly festive.

After the signing ceremony and an appropriate recess, speeches began and went on for several hours. Of the 24 delegates present, at least 20 of them gave remarks -- some very long (like Jack Villagomez), and some very short. They ranged from the humorous to the serious and on the whole were a very considerable testimonial to the Convention's work and the satisfaction that the delegates found in their work. Deanne had written two of the speeches -- one for Joe Lifoifoi dealing with Article XII in a simply stated but impressive fashion, and the other delivered by JQ Quitugua on the subject of local government. In his remarks, JQ tried to distinguish between real local government that offered opportunity in the future for Tinian and Rota to govern themselves on local matters with the current view of local government espoused by Delegate Manglona which tended to make the Mayor's office simply an adjunct of the Governor's office. It was a rather

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useful and thoughtful piece, and we should use it in the political education campaign.

There were three delegates who did not sign the document. Benjamin Manglona sent in a letter stating his dissatisfaction with the Convention's work on local government and, more or less, asserted that the Saipan delegates had never been sympathetic to the concerns of the Tinian and Rota delegates with respect to the abuses inflicted on them by the central Commonwealth government. He took with him his young cohort, Teracita Santos, who Deanne thinks might have assumed a more independent role in the Convention if Deanne and the other women had been able to spend more time with her.

In addition, former Governor Camacho refused to attend because of his dissatisfaction over the Convention's treatment of Article XII. Whereas there was some respect for Manglona because of his service to the community and his principled stand over the years with respect to local government, there was virtually no respect whatsoever left in the Convention for Camacho. His letter, broadly circulated, turned into a shrill attack on the committee considering Article XII and Deanne's performance as counsel for the committee. It got

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some publicity in the paper the next day, but was totally written off by the delegates in the Convention. There was nothing but contempt for Camacho, his frequent absences, and his refusal to participate on issues in the Convention other than Article XII, and his role as mouthpiece for Ted Mitchell's very personalized and intense view of what Article XII was designed to accomplish.

Many of the speeches were full of kind words for the legal staff. Tom Aldan in particular was very complimentary of the work that Deanne and I had done. Jack Villagomez's speech continued his "dream" of the voyage of his canoe, as well as a look into the future and the ultimate destination of many of the delegates to the Convention. He had me as the assistant manager of the golf club on Agriguan and Deanne as the head of the agricultural center or extension of the University of the Northern Mariana Islands. He really can be a good speaker, although this particular effort was somewhat too long and too complicated. Joey San Nicholas, the young Tinian delegate, gave a speech in which he willed various items to fellow delegates -- including "Amendment 25" to Juan Santiago Tenorio and a group of 2x4s to Frances Borja. (I learned from Deanne that Joe Lifoifoi

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was so taken with young San Nicholas that he has agreed to fund his campaign for the Municipal Council on Tinian when he decides to run in two or four years.)

It got to be a very long day, although a happy one. We did have several recesses during the speechifying. Just before the President concluded with his own speech, Deanne and I went through our floor leader/lead counsel routine. She sat in Victor Hocog's chair, while I remained in mine, and she accosted me with a series of questions to which I was supposed to respond humorously. It worked reasonably well. We then called on the various members of the legal team and administrative staff to acknowledge their very substantial contribution to the effort. They all were appreciative of this. I concluded with a few serious words complimenting them on their effort and their ability to confront some of the community's most serious problems within such a short timeframe and with such a good effect. With a burst of bravado, I said that Deanne and I would be available to defend the Constitution at their beck and call and laid down the gauntlet to any lawyers on the island who might want to challenge it.

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When it was all over, everyone was fatigued but still happy. Arrangements were made to sign more copies of the Constitution the following day. At that point, everyone embarked on several days of partying, beginning with a lavish spread at Juan Santiago's home that evening. It was followed by a party at Marian Aldan Pierce's on Friday, Joe Lifoifoi's on Saturday, and a Sunday brunch at the Aqua Resort hosted by President Guerrero Sunday morning. These sessions provided an excellent opportunity to get to know some of the delegates a little bit better, particularly those with whom we would be working on the post convention committee.

I'm dictating this on Sunday, August 6, 1995. This will be the end of my Journal. One important unresolved issue remains to date on which the amendments will be put to the electorate. The Legislature has not yet acted on the amendment to the enabling legislation that would provide for a special election next February or March. We are still optimistic that this will be accomplished, but have contingency plans in the event that the amendments go on the ballot in the November election. If that is the case, our plan for the fall will be almost as hurried as the past several

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months, as we work to conduct a political education campaign and make certain that the amendments get on the ballot in an appropriate and defensible way.