

Draft  
5/16/95

## RESEARCH PROJECTS FOR CONVENTION

The following subjects have been suggested as requiring some investigation and analysis to help the delegates understand the legal parameters of their deliberations. Others will undoubtedly have to be added.

1. Fact-finding: We need to collect some materials that are obviously pertinent to our work that should be available in Saipan. These include:

- a) A copy of the AG's opinion with respect to Art. I, Sec.12 (abortion).
- b) A copy of the local opinion holding unconstitutional the amendment from the 1985 Convention re voting rights (Amendment 44).
- c) Any certification by the AG's Office since 1985 re the Schedule on Transitional Matters (This was requested in an earlier letter to the AG not yet responded to.)

2. Assessment of Local Experience: In many areas we need to collect(or generate) information regarding CNMI experience under the current Constitution. For example,

- a) We would like to know whether Art. I, Sec. 11 has been enforced or has been the subject of litigation.
- b) We would like the same information re Art. I, Sec. 9 re nuclear or radioactive waste. We also need to know what happens to radioactive waste from the hospital. We need to consider whether this provision violates Sec. 104 or another section of the Covenant.
- c) We need to evaluate the taxpayer actions that have been brought under Art. X, Sec. 9 and assess the utility of this provision.
- d) We have preliminarily opined that "damage" to private property is covered by the current eminent domain provision in the Constitution. Is there any statutory or case law on the point?
- e) We need to explore the intent underlying the retirement system provision in Art.III, Sec.20. How has it worked; how many times has it been altered by the Legislature?

f) In order to advise regarding the current provision in the Constitution re jury trial, we could use an assessment of current local practice and any problems that have developed.

3. Imposition of Limitations on Voting or Holding Office: We expect considerable discussion within the Convention of limiting the rights of persons in the CNMI to vote or hold office. We need research on many of these issues to make certain that our advice reflects the current law of the subject. For example,

*Delo  
Cruz*

a) The authority of the Convention to limit the voting or office-holding of U.S. citizens was addressed in the opinion referred to above. The Convention cannot impose new rules re eligibility to U.S. citizenship, since that subject is covered by the Covenant and the U.S. Constitution. (A recent legal memorandum submitted to the Governor takes the position that the CNMI could consent to modifications of the Covenant required so as to deny citizenship to persons born in the CNMI who do not have one parent who is a U.S. citizen; and that the U.S. could agree to such a proposition without offending Amendment 14 of the U.S. Constitution.)

b) We have taken the position that a requirement of CNMI descent cannot be imposed either on voters who are U.S. citizens or on elected or appointed positions in the Government under the U.S. Constitution. The Covenant permits only one exception to the privileges and immunities clause and other pertinent provisions of the U.S. Constitution to the extent they would otherwise bar the restraints on land alienation contained in the Covenant and Article 12. What recent case law supports this overall position?

c) Others have sought to accomplish their objectives by imposing long domiciliary or residence requirements on those who would run for Commonwealth office or be appointed to such an office. We need an update on the case law on various topics under this general heading. For example,

We have taken the position that domicile is a matter of intent and residence is a number of years. We have urged the delegates not to attach a number of years to the domiciliary requirement. Does this comport with the case law?

What flexibility does the Convention have under the U.S. Constitution to impose residency requirements as a qualification for elected office? For appointed office?

d) Similarly, it has been suggested that the ability to speak, read and write one of the two local languages might be required to run or hold office. This would have the effect of eliminating many U.S. citizens from holding elective or appointed offices in the Commonwealth government. What is the current case law on this subject?

*Berne*

4. Application of the One Man-One Vote Principle: In considering what the Convention can do regarding the size of the Legislature and the mode of election, we need to be aware of the most recent decisions on this constitutional principle. For example,

a) What flexibility does the Convention have to reduce the size of the Legislature from its present size (18) to 11 or 13 (with one seat for each Rota and Tinian and the remainder the come from Saipan). First, we need the most current population figures which (we believe) show about 45,000 in the CNMI, with Tinian having less than 2000 and Rota having slightly more than 2000. Second, we need to know under the cases whether, for purposes of applying the rule and evaluating districting decisions, all the people are counted (every man, woman and child), only those eligible to vote are counted (which would exclude children and aliens), or only U.S. citizens (which would include children but exclude aliens)?

b) Once we have answers to the above questions, we need to have a legal appraisal of the measure of variation that the U.S. courts currently permit in districting decisions. In particular, we need to explore any decisions in Hawaii to see whether separate representation for individual islands provides any more flexibility than otherwise would be the case. Assuming it does not, however, we need to know whether giving each Tinian and Rota one legislator and giving Saipan votes only 9, 10 or 11 legislators would be permitted under the U.S. Constitution. Is any constitutional question resolved if Rota and Tinian have to share a single legislator?

c) Assuming that the Convention places a cap on the size of the Legislature and the courts rule that the one man-one vote principle is offended, will the Legislature still be bound by the cap? How does one anticipate and plan for redistricting legislation (or constitutional provision?) if such an eventuality materializes?

5. Operations of the Legislative Branch: We need research on some issues that have been raised with respect to the Legislature. For example,

a) What is the experience in the States with "part-time" legislatures? How is a legislature compelled to be "part-time" -- by limiting their salaries, their session days per year,

and by other means? What problems have developed along these lines?

b) What is the experience in the States with efforts to put a financial cap on the expenditures that the Legislature can make for its own purposes, eg, salaries, expenses, professional and support staff, etc.? Is there any wisdom on such efforts to curtail legislative expenditures? Is there a way to do it without putting any specific dollar numbers into the Constitution?

c) What is the experience in the States with efforts to require by constitutional provision that the Legislature hire qualified professional staff? Are there any State constitutions that attempt to direct the Legislature to do so? If so, how is it done? And how does it work?

6) Operations of the Executive Branch: Several issues have been raised with respect to the Executive Branch. For example,

a) What is the current experience and wisdom regarding the election of executive branch officials other than the Governor and Lieutenant Governor, eg. the Attorney General. When the Attorney General is an elected position, does the candidate usually run separate from the Governor's ticket or as part of it?

b) There is growing interest in more autonomous agencies in the Executive Branch -- to regulate natural resources for example. What is the current experience and expert judgment in the States regarding the use of such agencies?

c) It has been suggested that the Governor should not have the authority to reorganize the Executive Branch departments without the approval of both houses of the Legislature, whereas the current constitutional provision permits him to do so if only one of the two houses agrees. Is there any recent experience or wisdom in the States re the exercise of such reorganization authority by the Governor?

7. Judicial Branch: A few issues have emerged regarding the Judiciary.

*Delo Cruz*  
a) We need some research on giving the CNMI Supreme Court the right to issue advisory opinions regarding conflicts between the legislative and executive branches of the Government. We understand that a few States do give their courts some authority along these lines. We would like to know what States have done so, what authority has been given, and how it has worked out.

b) There is support here for permitting judges, after completing one term, to be reappointed by having their names be

placed on the ballot and winning a majority of the votes after a non-partisan campaign. Is these any recent experience in the States that argues against such an approach?

*Hawaii  
M. Mey  
Ayer*

8. Local Government: We need some help in exploring precedents that might assist the Convention in dealing with this very controversial subject. In particular, we would like to have some definitions of matters left to local government entities in the States (such as counties, cities, or municipalities), what taxing authority they are given, and whether the State government can preempt or overrule any specific action by the local government. We would like in particular to see the relevant provisions of the Hawaii Constitution or any laws there that give local government authority to the individual islands within Hawaii.

*Beane*

9. Treatment of Aliens: There is a considerable controversy re the treatment of aliens in the CNMI. We need to be able to advise the Convention re any U.S. Constitutional constraints on the Commonwealth's ability to discriminate against legal aliens. For example, is the CNMI free to require aliens to pay fees as a condition for sending their children to the public schools? Can the CNMI decide not to return rebates of taxes paid by aliens although such rebates are made to U.S. citizens in the Commonwealth? Can the CNMI require employers to expel alien employees from the Commonwealth for violating CNMI law? For being pregnant? For having an illegitimate child? What have the States of Texas, Florida and California done with respect to legal aliens, if anything, that has withstood legal attack?

10. Miscellaneous: Some topics resist categorization. For example,

a) Some delegates want to require the Government to operate only in accord with sound fiscal and economic policies. Do any State constitutions try to mandate such good government objectives? Does anything along these lines work?

b) We could use some information re qui tam actions as a possible alternative to taxpayer suits?

c) One diligent delegate wants to see the Indian Treaty materials cited in the legendary Georgetown Law Journal article. Others are interested generally in Indian law, which they think provides the Indians with more rights of self-government and ability to preserve their culture than is afforded under the Covenant?