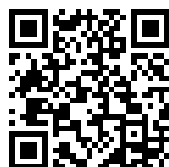

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GUAM COMMONWEALTH

HEARING
BEFORE THE
SUBCOMMITTEE ON
INSULAR AND INTERNATIONAL AFFAIRS
OF THE
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

H.R. 98

GUAM COMMONWEALTH ACT

HEARING HELD IN HONOLULU, HI

DECEMBER 12, 1989

Serial No. 101-78

PART II

Printed for the use of the Committee on Interior and Insular Affairs



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GUAM COMMONWEALTH

TUESDAY, DECEMBER 12, 1989

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INSULAR AND INTERNATIONAL AFFAIRS,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Honolulu, HI.

The subcommittee met, pursuant to call, at 9:40 a.m., in State Capitol Auditorium, Honolulu, HI, Hon. Ron de Lugo (chairman of the subcommittee) presiding.

Mr. DE LUGO. Good morning, ladies and gentlemen.

The Subcommittee on Insular and International Affairs hearing on H.R. 98, a bill to establish a Commonwealth of Guam, will now continue with our second day of hearings. I want to welcome all of you back that were here yesterday and anyone who is coming for the first time today, welcome.

We had a splendid hearing yesterday. I want to thank all of the leaders of Guam, the people of Guam, for their testimony before the subcommittee. You helped the subcommittee tremendously.

Again, I have to commend Governor Joe Ada. What a stirring and powerful presentation he made.

We will begin our hearing in just one moment, but I wanted to share with you an AP bulletin that just came off the wires:

President Bush signs legislation approving self-government plan for Palau. President Bush today signed legislation approving a self-government plan for the Western Pacific island of Palau. Palau, the world's last remaining trust territory, will hold a plebiscite on February 6 on the plan called the Compact of Free Association between the United States and the Islands. "I believe that it is time to change the relationship that is no longer appropriate for either Palau or the United States to one that provides a sound foundation for the future of Palau", Bush said in a statement.

He urged Palau citizens to vote in the upcoming plebiscite and exercise their democratic right to set their own course for the future. The legislation Bush signed creates an anti-drug program for Palau and establishes controls for the spending of U.S. aid money. Bush said that he will interpret that provision as advisory in nature. He said the intent of the plan is in keeping with his national anti-drug strategy.

Palau is the last of four parts of the trust territory of the Pacific Islands created following World War II to define the political status. The Compact of Free Association provides self-development in all areas, except defense, which is reserved for the United States. The United States also retains a 50-year right to establish a military base on Palau should it need an alternative to its current bases in the Philippines.

I want to say that I know the impact that you must feel when you hear of Palau moving forward. It strengthens your case here today. It certainly does.

I want to say that this subcommittee worked long and hard to bring about this legislation for Palau. It was a long struggle and we got 98 percent, I would say, of what this committee felt was abso-

lutely necessary to strengthen and make sure that democracy would last in Palau, that we would just not be going through the motions in setting up the people for real problems years down the line.

I think that this bill that was signed by the President strengthens democracy, it deals also with many of the unmet obligations of the trusteeship that this committee felt very strongly about and those matters are addressed in the legislation. At this time, let me recognize the gentleman from Guam.

Mr. BLAZ. Mr. Chairman, I believe it is very important for the record to show that if there is one individual that is identified with that cause in the last year, two years, it has been you. This could have taken place last year, but the chairman was not pleased with some of the issues, and he fought long and hard to make sure that they were met before we took it to the floor.

I am saying this because there were some indications yesterday as to maybe this committee and a group of islanders like you and what impact would it have. That is the one tangible impact which is so directly associated with your own cause. It might as well be called the de Lugo legislation, and it is called that because that is how powerful it was and how good it was.

I would be remiss in my obligations as a Member in Congress representing Guamanians not to call it to the audience's attention because it is the same cause which we are embarked on more or less here.

I needed to say that, Mr. Chairman, because your leadership and the tenacity of your arguments in taking on the Administration were so instrumental. We received a lot of flak last year because we didn't go through with it, but here we are this year. It is nice and sealed, and the President signed it and I salute you, sir.

Mr. DE LUGO. Thank you very much, Congressman Blaz.

Let me say to the people of Guam that I will work just as hard for your cause, just as hard, just as hard so that we can bring about commonwealth for Guam.

[Applause.]

Mr. DE LUGO. Let me also tell you a fact of life. A chairman is only as good as the members of his subcommittee. If the members of the subcommittee don't back him up, the chairman can't do anything. I have got a super-duper subcommittee here and they backed me up.

[Applause.]

Mr. FUSTER. Mr. Chairman.

Mr. DE LUGO. Yes.

Mr. FUSTER. Let me—

Mr. DE LUGO. But they are also a little long-winded—only kidding.

Mr. FUSTER. I will be very brief. I want to congratulate you because I feel the same as Ben does, it is a personal victory for you.

I only hope that next year the press will be announcing the Commonwealth of Guam and the Plebiscite in Puerto Rico, both bills approved next year by this time.

Mr. FALEOMAVEGA. Mr. Chairman, I, too, would like to state what has been said by Mr. Blaz and Mr. Fuster, certainly your outstanding leadership as the chairman of this subcommittee has been

very effective. What has to be recognized by the flag territories of the United States, and it is very unique, you know, years back as a non-voting delegate, they could not even vote in committees. They could not hold committee chairmanships. They could not even introduce bills.

They couldn't even argue on the floor of the House on any issue affecting not only their respective constituencies but also the Pacific or Caribbean regions.

So we have come a long way and I will say, Mr. Chairman, despite the fact that there is the absence of some of our fellow members of the committee, the fact is this is where it all begins.

I want to say that I could not say more than what has been said by Mr. Blaz and Mr. Fuster, we do look forward to seeing that the people of Guam get their commonwealth status.

The people of Palau got their republic status and I hope the process will continue and this is certainly a tribute to your leadership, Mr. Chairman, and I want to add that for the record.

Thank you.

Mr. DE LUGO. Thank you very much. You have all been very gracious and kind. I appreciate your remarks very much.

That is the truth, too.

I remember when we had the resident commissioner of Puerto Rico. As a young senator from my district, I used to go to Washington to lobby before we had a seat in Congress. Fernos Isern was the resident commissioner for Puerto Rico for years and years and every time I went to the Interior Committee to attend a hearing, he was sitting in the same chair.

You know what that means? It meant that he sat in the last chair, the lowest chair in the committee, and he never moved up. He had no seniority. That is not the way it is today.

The delegates from the islands can chair subcommittees, they have a great deal of power, and they can get a few things done.

We will start our hearing now and I have had a request. The Hawaii State Capitol authorities have asked us to ask the audience not to eat or drink in the room. They have been very gracious in letting us have their facilities and I want to ask everyone's cooperation, so if you feel a little hungry or anything like that, step outside and you will be able to talk and enjoy.

We want to leave the place nice and clean to show our appreciation.

Now, we are about to begin the very important second day of hearings and we have the panel of leaders of Guam, men and women who have held very important positions of leadership in the past.

We have former Governor Paul Calvo, former Lieutenant Governor Rudy Sablan, former Lieutenant Governor Kurt Moylan, former Speaker Joaquin Arriola, and the former Speaker, Larry Ramirez, and former Speaker, Carlos Taitano, and we have the present Senator representing the former governor of the Island of Guam, Senator Madeleine Bordallo, representing her husband, former Governor Ricardo Bordallo.

Now, who will lead off?

PANEL CONSISTING OF SENATOR MADELEINE BORDALLO PRESENTING FOR FORMER GOV. RICARDO J. BORDALLO; FORMER GOV. PAUL CALVO; FORMER LT. GOV. RUDY SABLÁN; FORMER LT. GOV. KURT MOYLAN; FORMER SPEAKER JOAQUIN ARRIOLA; FORMER SPEAKER LARRY RAMIREZ; AND FORMER SPEAKER CARLOS TAITANO

Ms. BORDALLO. I will lead off, Mr. Chairman.

Mr. DE LUGO. Let me recognize Senator Madeleine Bordallo to present the statement of her husband.

Please proceed.

Ms. BORDALLO. Thank you very much, Mr. Chairman.

I am here this morning to testify on behalf of my husband who had originally planned to be here so I will read his testimony.

Mr. Chairman, members of the committee, ladies and gentlemen, I am Ricardo J. Bordallo, a citizen and servant of Guam. I have had the pleasure of serving my people as a seven-term Guam legislator and as Governor in two terms. I am testifying in favor of the Guam Commonwealth Bill at the encouragement and behest of the people of Guam.

If I cannot present this testimony in person, it is because this moment is not mine to control. But I am patient. I will have other moments, and I will be free to testify without constraint. I have always been a soldier—a political soldier, who wages ideological battles against suppression and injustice. I continue my mission even now, but I am too disillusioned to pander to your favor with glowing rhetoric.

Mr. Chairman, the people of Guam have waited too long for your favor. We have waited in vain and have suffered needlessly in the process. Our patience grows thin. Gentlemen, I caution you, there are growing numbers, particularly among our young, who no longer want to wait. They are looking at alternatives and without commonwealth, other options become attractive.

As Chairman of the Commission on Self Determination from 1983 to 1987, I presided over the drafting of the Guam Commonwealth Bill. This measure was inspired by the most noble principles of American democracy and written with the same confidence and sense of purpose as the Declaration of Independence. More important, it was sanctioned by the people of Guam in the deepest belief in American justice and fair play. It is our consent to be governed.

We needed no one's permission to practice democracy in this manner. We knew what we were sacrificing in making the choice to join the American family. We know that you don't want us as a State. If you reject our commonwealth proposal, that leaves us with two alternatives. Will you be true to your oath to defend and protect the Constitution by denying the decision we have made in a free and open election?

Ironically, as the Berlin Wall crumbles under the momentum of liberty and justice and as the governments of Soviet bloc nations succumb to their peoples' cries for freedom and democracy, our nation, the bulwark of democracy, discounts the cries of her own. For nearly a century, we have been nothing more than expendable pawns in Washington's political chess games. Even now, in con-

ducting these initial hearings, Mr. Chairman, here instead of on Guam, you limit our access to democracy in action.

We have been treated arbitrarily, insensitively and expediently, like unwanted stepchildren, by the world's masters of democracy, while novice democracies make genuine efforts to extend democratic rights to their colonial possessions. Take note, masters, New Zealand's enlightened political relationship with the Cook Islands can be an important lesson.

In crafting the commonwealth bill, we were mindful of our obligations to ourselves and our nation. We drew upon the wisdom and the courage of the founding fathers who drafted the U.S. Constitution. We were as conscious then, as we are now, that this bill, like the Constitution, would be one of great import, of sweeping scope and novelty. It is something unique because it serves the needs of a people, a place, and a situation that are equally unique.

We are few; we are distant; we are politically powerless, but we are Americans. We are patriots, but patriotism cannot enlarge the size of our island or shrink the miles between us. We are loyal to American democracy, but loyalty has gained us little. Now we seek to become members of the American political family in our own separate house, far removed from yours. We seek autonomy and self-government in the form and manner best suited to our needs and situation. The Guam Commonwealth Act is based on our fundamental right as Americans to do so.

Gentlemen, commonwealth is of paramount importance to us, but some treat our quest for equality lightly. They relegate us to insignificance and insult our dignity. And in doing so, they besmirch the honor and integrity of the nation.

The fate of our proposal is in your hands, but if you discount it; if, in your opinion, we still do not merit your fullest and most attentive consideration, we will mourn the continuing denial of our human rights. Governed without our consent. Denied full representation. Excluded from the American body politic. Powerless to defend against exploitation. And, saddest of all, not completely protected by the Constitution.

While the world rejoices at the spread of freedom and democracy, how will you explain our sorrow? What will you tell the rest of the American people? What will history say about these injustices?

I leave you, Mr. Chairman, with these words from the Declaration of Independence:

* * * That among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

These powerful statements sprang from imperial oppression and insensitivity. As Americans, we celebrate this philosophy. As Guamanians, we celebrate its promise. And we will not tolerate hypocrisy any longer. President Harry S. Truman, whose administration proposed the Organic Act of Guam, wrote:

We have never sought to dominate the world, or to exploit any of its people, or force our will, our system of government on any nation, firm and dedicated as we are in our democratic institutions.

The Guam Commonwealth Bill is before you, a product of our democratic processes. We hope you and your colleagues in the Senate will act on our proposal in the same spirit that guided us to produce it.

Thank you.

[Prepared statement of Governor Bordallo follows:]

TESTIMONY
RICARDO J. BORDALLO

House Interior Subcommittee
on Insular and International Affairs
Public Hearings on H.R. 98
"The Guam Commonwealth Bill"

State Capitol
Honolulu, Hawaii
Tuesday, December 12, 1989

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, LADIES AND GENTLEMEN:

I AM RICARDO J. BORDALLO, A CITIZEN AND SERVANT OF GUAM. I HAVE HAD THE PLEASURE OF SERVING MY PEOPLE AS A SEVEN-TERM GUAM LEGISLATOR AND AS GOVERNOR IN TWO TERMS. I AM TESTIFYING IN FAVOR OF THE GUAM COMMONWEALTH BILL AT THE ENCOURAGEMENT AND BEHEST OF THE PEOPLE OF GUAM. IF I CANNOT PRESENT THIS TESTIMONY IN PERSON, IT IS BECAUSE THIS MOMENT IS NOT MINE TO CONTROL. BUT I AM PATIENT. I WILL HAVE OTHER MOMENTS, AND I WILL BE FREE TO TESTIFY WITHOUT CONSTRAINT. I HAVE ALWAYS BEEN A SOLDIER -- A POLITICAL SOLDIER, WHO WAGES IDEOLOGICAL BATTLES AGAINST SUPPRESSION AND INJUSTICE. I CONTINUE MY MISSION EVEN NOW, BUT I AM TOO DISILLUSIONED TO PANDER TO YOUR FAVOR WITH GLOWING RHETORIC.

THE PEOPLE OF GUAM HAVE WAITED TOO LONG FOR YOUR FAVOR. WE HAVE WAITED IN VAIN AND HAVE SUFFERED NEEDLESSLY IN THE PROCESS. OUR PATIENCE GROWS THIN. GENTLEMEN, I CAUTION YOU, THERE ARE GROWING NUMBERS, PARTICULARLY AMONG OUR YOUNG, WHO NO LONGER WANT TO WAIT. THEY ARE LOOKING AT ALTERNATIVES. WITHOUT COMMONWEALTH, OTHER OPTIONS BECOME ATTRACTIVE.

AS CHAIRMAN OF THE COMMISSION ON SELF DETERMINATION FROM 1983 TO '87, I PRESIDED OVER THE DRAFTING OF THE GUAM COMMONWEALTH BILL. THIS MEASURE WAS INSPIRED BY THE MOST NOBLE PRINCIPLES OF AMERICAN DEMOCRACY AND WRITTEN WITH THE SAME CONFIDENCE AND SENSE OF PURPOSE AS THE DECLARATION OF INDEPENDENCE. MORE IMPORTANT, IT WAS SANCTIONED BY THE PEOPLE OF GUAM IN THE DEEPEST BELIEF IN AMERICAN JUSTICE AND FAIR PLAY. IT IS OUR CONSENT TO BE GOVERNED.

WE NEEDED NO ONE'S PERMISSION TO PRACTICE DEMOCRACY IN THIS MANNER. WE KNEW WHAT WE WERE SACRIFICING IN MAKING THE CHOICE TO JOIN THE AMERICAN FAMILY. WE KNOW THAT YOU DON'T WANT US AS A STATE. IF YOU REJECT OUR COMMONWEALTH PROPOSAL, THAT LEAVES US WITH TWO ALTERNATIVES. WILL YOU BE TRUE TO YOUR OATH TO DEFEND AND PROTECT THE CONSTITUTION BY DENYING THE DECISION WE HAVE MADE IN A FREE AND OPEN ELECTION?

IRONICALLY, AS THE BERLIN WALL CRUMBLES UNDER THE MOMENTUM OF LIBERTY AND JUSTICE AND AS THE GOVERNMENTS OF SOVIET BLOCK NATIONS SUCCUMB TO THEIR PEOPLES' CRIES FOR FREEDOM AND DEMOCRACY, OUR NATION, THE BULWARK OF DEMOCRACY, DISCOUNTS THE CRIES OF HER OWN. FOR NEARLY A CENTURY, WE HAVE BEEN NOTHING MORE THAN EXPENDABLE PAWNS IN WASHINGTON'S POLITICAL CHESS GAMES. EVEN NOW, IN CONDUCTING THESE INITIAL HEARINGS HERE INSTEAD OF ON GUAM, YOU LIMIT OUR ACCESS TO DEMOCRACY IN ACTION.

WE HAVE BEEN TREATED ARBITRARILY, INSENSITIVELY AND EXPEDIENTLY, LIKE UNWANTED STEPCHILDREN, BY THE WORLD'S MASTERS OF DEMOCRACY, WHILE NOVICE DEMOCRACIES MAKE GENUINE EFFORTS TO EXTEND DEMOCRATIC RIGHTS TO THEIR COLONIAL POSSESSIONS. TAKE NOTE, MASTERS, NEW ZEALAND'S ENLIGHTENED POLITICAL RELATIONSHIP WITH THE COOK ISLANDS CAN BE AN IMPORTANT LESSON.

IN CRAFTING THE COMMONWEALTH BILL, WE WERE MINDFUL OF OUR OBLIGATIONS TO OURSELVES AND OUR NATION. WE DREW UPON THE COURAGE AND WISDOM OF THE FOUNDING FATHERS WHO DRAFTED THE U.S. CONSTITUTION. WE WERE AS CONSCIOUS THEN, AS WE ARE NOW, THAT THIS BILL, LIKE THE CONSTITUTION, WOULD BE ONE OF GREAT IMPORT, OF SWEEPING SCOPE AND NOVELTY. IT IS SOMETHING UNIQUE BECAUSE IT SERVES THE NEEDS OF A PEOPLE, A PLACE AND A SITUATION THAT ARE EQUALLY UNIQUE.

WE ARE FEW; WE ARE DISTANT; WE ARE POLITICALLY POWERLESS, BUT WE ARE AMERICANS. WE ARE PATRIOTS, BUT PATRIOTISM CANNOT ENLARGE THE SIZE OF OUR ISLAND OR SHRINK THE MILES BETWEEN US. WE ARE LOYAL TO AMERICAN DEMOCRACY, BUT LOYALTY HAS GAINED US LITTLE. NOW WE SEEK TO BECOME MEMBERS OF THE AMERICAN POLITICAL FAMILY IN OUR OWN SEPARATE HOUSE, FAR REMOVED FROM YOURS. WE SEEK AUTONOMY AND SELF GOVERNMENT IN THE FORM AND MANNER BEST SUITED TO OUR NEEDS AND SITUATION. THE GUAM COMMONWEALTH ACT IS BASED ON OUR FUNDAMENTAL RIGHT AS AMERICANS TO DO SO.

GENTLEMEN, COMMONWEALTH IS OF PARAMOUNT IMPORTANCE TO US, BUT SOME TREAT OUR QUEST FOR EQUALITY LIGHTLY. THEY RELEGATE US TO INSIGNIFICANCE AND INSULT OUR DIGNITY. AND IN DOING SO, THEY BESMIRCH THE HONOR AND INTEGRITY OF THE NATION.

THE FATE OF OUR PROPOSAL IS IN YOUR HANDS, BUT IF YOU DISCOUNT IT; IF, IN YOUR OPINION, WE STILL DO NOT MERIT YOUR FULLEST AND MOST ATTENTIVE CONSIDERATION, WE WILL MOURN THE CONTINUING DENIAL OF OUR HUMAN RIGHTS. GOVERNED WITHOUT OUR CONSENT. DENIED FULL REPRESENTATION. EXCLUDED FROM THE AMERICAN BODY POLITIC. POWERLESS TO DEFEND AGAINST EXPLOITATION. AND, SADDEST OF ALL, NOT COMPLETELY PROTECTED BY THE CONSTITUTION.

WHILE THE WORLD REJOICES AT THE SPREAD OF FREEDOM AND DEMOCRACY, HOW WILL YOU EXPLAIN OUR SORROW? WHAT WILL YOU TELL THE REST OF THE AMERICAN PEOPLE? WHAT WILL HISTORY SAY ABOUT THESE INJUSTICES?

I LEAVE YOU WITH THESE WORDS FROM THE DECLARATION OF INDEPENDENCE:

(QUOTE) "...THAT AMONG THESE ARE LIFE, LIBERTY, AND THE PURSUIT OF HAPPINESS. THAT TO SECURE THESE RIGHTS, GOVERNMENTS ARE INSTITUTED AMONG MEN, DERIVING THEIR JUST POWERS FROM THE CONSENT OF THE GOVERNED, THAT WHENEVER ANY FORM OF GOVERNMENT BECOMES DESTRUCTIVE OF THESE ENDS, IT IS THE RIGHT OF THE PEOPLE TO ALTER OR ABOLISH IT, AND TO INSTITUTE A NEW GOVERNMENT, LAYING ITS FOUNDATION ON SUCH PRINCIPLES, AND ORGANIZING ITS POWERS IN SUCH FORM, AS TO THEM SHALL SEEM MOST LIKELY TO EFFECT THEIR SAFETY AND HAPPINESS." (UNQUOTE)

THESE POWERFUL STATEMENTS SPRANG FROM IMPERIAL OPPRESSION AND INSENSITIVITY. AS AMERICANS, WE CELEBRATE THIS PHILOSOPHY. AS GUAMANIAN, WE CELEBRATE ITS PROMISE. AND WE WILL NOT TOLERATE HYPOCRISY ANY LONGER. PRESIDENT HARRY S TRUMAN, WHOSE ADMINISTRATION PROPOSED THE ORGANIC ACT OF GUAM, WROTE:

(QUOTE) "WE HAVE NEVER SOUGHT TO DOMINATE THE WORLD, OR TO EXPLOIT ANY PEOPLE, OR FORCE OUR WILL, OUR SYSTEM OF GOVERNMENT ON ANY NATION, FIRM AND DEDICATED AS WE ARE IN OUR DEMOCRATIC INSTITUTIONS." (UNQUOTE)

THE GUAM COMMONWEALTH BILL IS BEFORE YOU, A PRODUCT OF OUR DEMOCRATIC PROCESSES. WE HOPE YOU AND YOUR COLLEAGUES IN THE SENATE WILL ACT ON OUR PROPOSAL IN THE SAME SPIRIT THAT GUIDED US TO PRODUCE IT.

THANK YOU.

Mr. DE LUGO. Thank you very much, Senator Bordallo, for that very moving statement. Please let Ricky know that I send my warmest regards to him.

I regret that he could not be here this morning. Let me say that I want to assure former Governor Bordallo that I firmly believe that the people of Guam, to quote his statement, do merit the fullest and most attentive consideration of the Congress of the United States and, indeed, the United States as a nation, and that we will give the most serious and most sympathetic consideration to the people's proposal.

I thank you for that presentation.

Now we will hear from former Governor Paul Calvo. Governor Calvo.

Mr. CALVO. Mr. Chairman, and members of this subcommittee, I am Paul M. Calvo, a former Governor of Guam, presently in private business as President of Calvo Enterprises, a closed family corporation comprised of ten subsidiaries.

At last count, we employed close to 1,000 of Guam's people. With the welfare of our employees and all the members of their families prominent in my mind, and on behalf of all the people of Guam, which I represented as governor and congressman in the twenty-some-odd years I was in public service, I have traveled to be present before you today to testify in full support of enactment of United States commonwealth status for our island.

On February 3, 1917, 18 years after Guam was taken by the United States, my grandfather, Tomas Anderson Calvo, at the opening session of the first Guam Congress, delivered the opening remarks. Allow me to quote a portion of that speech: "It is high time that there be granted to the people, respectful, loyal and devoted to the great American nation, the same rights that have been granted to the different states, territories and possessions: and censor no one, although we be the last to be remembered and granted our rights. Our ideals are realized by the giving of that which by right should be granted, that is to say, the defining of the status of the Chamorro people, in a word, that we may know whether we are to be members of the American people, or their servitors."

It has been over 82 years since that speech was delivered. Mr. Chairman, and members of this committee, I submit that it is way over-due that the people of Guam be allowed to have a say in their own destiny. The winds of freedom and justice are blowing all over the world.

They are blowing in Poland, in Czechoslovakia, in East Germany, in Russia, in China and our President Bush is elated over all these wonderful happenings—all these expressions of self-determination.

We, as a nation, take great pride in the thought that we are the model of what a democracy should be. We, as a nation, are critical of nations who deny their citizens inalienable civil rights, therefore, dare not deny these rights to our very own.

Guam is thousand of miles away from the continental United States. It is in the path of life threatening and devastating typhoons, and, thus, has more than its share of real geophysical obstacles to overcome in building a viable economy. Guam has no significant mineral deposits. A full one-third of our land area is under

U.S. military control and much of our submerged lands are under U.S. naval jurisdiction.

To achieve an American standard of living—and then to sustain American standards—Guam must overcome remoteness, isolation, small market size and resource limitations. Additionally, Guam must also overcome a host of artificial constraints associated with inferior “territorial” unincorporated political status.

Guam needs to get away from U.S. laws, regulations and policies which discriminate against our economic initiatives and aspirations. Accordingly, the economic thrust of commonwealth is the removal of discriminatory legal treatment which accompanies our present inferior territorial status.

Guam is subjected to U.S. important quotas and, therefore, suffers from U.S. trade discrimination. Thus, Guam has developed an imbalanced mercantile service economy without significant industry or light assembly sectors.

To diversify and round out our economy, we need, in addition to our home market, an export market for goods “made in Guam”.

However, in the same manner American manufacturing exporters are denied markets in Japan, Guam is frozen out of the American market place. Commonwealth, as we have proposed it, would eliminate U.S. trade discriminations against goods made in Guam.

Without listing all the economic features of Guam’s political status reform package, it is sufficient to say:

Enhanced political viability of Guam is no threat to the United States;

The stronger the economy of Guam becomes, the better Guam can host the legitimate U.S. military interests we welcome on our island;

The United States gets no benefit from policies which discriminate against its own citizens; and

If we are not convinced we were being economically discriminated against, we would not be pursuing political status reforms in the first place.

I would just have one more minute, Mr. Chairman.

I have concentrated my remarks, primarily, on economic issues because Guam’s draft commonwealth act is an economic manifesto. We seek only to be self-supporting, as equal competitors, within the American family. Guam has no desire to secede; Guam has no intention of moving away from the United States—we are proud, patriotic Americans who have sacrificed greatly in our nation’s interest. It is not unreasonable, therefore, that we get political and economic justice in return.

Mr. Chairman, and members of this committee, I ask you, respectfully, as you consider Guam’s commonwealth act, to focus on the economic provisions and understand that they are all interrelated with the trade, labor, transportation and population issues that have been raised.

To accomplish these economic reforms, we must change outmoded political rules which harm us while doing the United States, as a whole, no good. A good economic case can be made for political status reform.

It is not unreasonable for Guam to expect economic justice from the government of the world’s largest free-market economy, and

given our economic success in spite of territorial status, we can assure you that with commonwealth, we will become the brightest jewel in America's economic crown.

Mr. Chairman, and members of this committee, please give this commonwealth act your favorable consideration. The people of Guam, through my late grandfather, asked for this 82 years ago. On behalf of the people of Guam, I plead for it now. Please, let not our grandchildren, plead for it from your grandchildren, in decades to come. If not now, then when?

Thank you for your kind attention and continuing interest in Guam and our people.

[Applause.]

[Prepared statement of Mr. Calvo follows:]

TESTIMONY OF:

HON. PAUL M. CALVO
GOVERNOR OF GUAM
(1978 - 1982)

IN SUPPORT OF

U. S. COMMONWEALTH STATUS FOR
GUAM

HONOLULU, HAWAII
December 11 - 12, 1989

INTRODUCTION

I AM PAUL M. CALVO, A FORMER GOVERNOR OF GUAM, PRESENTLY IN PRIVATE BUSINESS AS PRESIDENT OF CALVO'S ENTERPRISES, INC., A CLOSED FAMILY CORPORATION, COMPRISED OF 10 SUBSIDIARIES. AT LAST COUNT, WE EMPLOYED CLOSE TO ONE THOUSAND (1,000) OF GUAM'S PEOPLE. WITH THE WELFARE OF OUR EMPLOYEES AND ALL THE MEMBERS OF THEIR FAMILIES PROMINENT IN MY MIND, AND ON BEHALF OF ALL THE PEOPLE OF GUAM WHICH I REPRESENTED AS GOVERNOR AND CONGRESSMAN IN THE TWENTY SOME ODD YEARS I WAS IN PUBLIC SERVICE, I HAVE TRAVELED TO BE PRESENT BEFORE YOU TODAY TO TESTIFY IN FULL SUPPORT OF ENACTMENT OF UNITED STATES COMMONWEALTH STATUS FOR OUR ISLAND.

TESTIMONY

ON FEBRUARY 3, 1917, EIGHTEEN YEARS AFTER GUAM WAS TAKEN BY THE UNITED STATES, MY GRANDFATHER, TOMAS ANDERSON CALVO, AT THE OPENING SESSION OF THE FIRST GUAM CONGRESS DELIVERED THE OPENING REMARKS. ALLOW ME TO QUOTE A PORTION OF THAT SPEECH: "IT IS HIGH TIME THAT THERE BE GRANTED TO THE PEOPLE, RESPECTFUL, LOYAL AND DEVOTED TO THE GREAT AMERICAN NATION, THE SAME RIGHTS THAT HAVE BEEN GRANTED TO THE DIFFERENT STATES, TERRITORIES AND POSSESSIONS: AND WE CENSOR NO ONE, ALTHOUGH WE BE THE LAST TO BE REMEMBERED AND GRANTED OUR RIGHTS. OUR IDEALS ARE REALIZED BY THE GIVING OF THAT WHICH BY RIGHT SHOULD BE GRANTED, THAT IS TO

SAY, THE DEFINING OF THE STATUS OF THE CHAMORRO PEOPLE, IN A WORD, THAT WE MAY KNOW WHETHER WE ARE TO BE MEMBERS OF THE AMERICAN PEOPLE, OR THEIR SERVITORS. THAT THE PRINCIPLE ESTABLISHED BY THE GREAT IMMORTAL LIBERATOR OF THE GRAND AND CIVILIZED UNITED STATES OF THE NORTH AMERICA TO BE ESTABLISHED IN THIS ISLAND, AND THAT THE REDEMPTION PROMISED IN THE PROCLAMATION OF THE IMMORTAL, PRESIDENT MCKINLEY AND THE FIRST GOVERNOR OF THIS ISLAND, BE FULFILLED!" (CLOSE QUOTE)

IT HAS BEEN OVER EIGHTY TWO (82) YEARS SINCE THAT SPEECH WAS DELIVERED. MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE, I SUBMIT THAT IT IS WAY OVER-DUE THAT THE PEOPLE OF GUAM BE ALLOWED TO HAVE A SAY IN THEIR OWN DESTINY. THE WINDS OF FREEDOM AND JUSTICE IS BLOWING ALL OVER THE WORLD. THEY ARE BLOWING IN POLAND, IN CZECHOSLOVAKIA, IN EAST GERMANY, IN RUSSIA, IN CHINA AND OUR PRESIDENT BUSH IS ELATED OVER ALL THESE WONDERFUL HAPPENINGS - ALL THESE EXPRESSIONS OF SELF-DETERMINATION. WE, AS A NATION TAKE GREAT PRIDE IN THE THOUGHT THAT WE ARE THE MODEL OF WHAT A DEMOCRACY SHOULD BE. WE, AS A NATION, ARE CRITICAL OF NATIONS WHO DENY THEIR CITIZENS INALIENABLE INDIVIDUAL CIVIL RIGHTS, THEREFORE, DARE NOT DENY THESE RIGHTS TO OUR VERY OWN.

GUAM IS THOUSANDS OF MILES AWAY FROM THE CONTINENTAL U.S.; IT IN THE PATH OF LIFE THREATENING AND DEVASTING TYPHOONS, AND, THUS, HAS MORE THAN ITS SHARE OF REAL GEO-PHYSICAL OBSTACLES TO OVER-COME IN BUILDING A VIABLE ECONOMY . GUAM HAS NO SIGNIFICANT MINERAL DEPOSITS; A FULL ONE THIRD OF OUR LAND AREA IS UNDER U. S. MILITARY CONTROL AND MUCH OF OUR SUBMERGED LANDS ARE UNDER U.

S. NAVAL JURISDICTION. TO ACHEIVE AN AMERICAN STANDARD OF LIVING - AND THEN TO SUSTAIN AMERICAN STANDARDS - GUAM MUST OVERCOME REMOTENESS, ISOLATION, SMALL MARKET SIZE AND RESOURCE LIMITATIONS. ADDITIONALLY, GUAM MUST ALSO OVER-COME A HOST OF ARTIFICIAL CONSTRAINTS ASSOCIATED WITH INFERIOR "TERRITORIAL" UNINCORPORATED POLITCAL STATUS. GUAM NEEDS TO GET AWAY FROM U.S. LAWS, REGULATIONS AND POLICIES WHICH DISCRIMINATE AGAINST OUR ECONOMIC INITIATIVE AND ASPIRATIONS. ACCORDINGLY, THE ECONOMIC THRUST OF COMMONWEALTH IS THE REMOVAL OF DISCRIMINATORY LEGAL TREATMENT WHICH ACCOMPANIES OUR PRESENT INFERIOR TERRITORIAL STATUS.

GUAM IS SUBJECTED TO U. S. IMPORT QUOTAS AND, THEREFORE, SUFFERS FROM U. S. TRADE DISCRIMINATION. THUS, GUAM HAS DEVELOPED AN IMBALANCED MERCANTILE SERVICE ECONOMY WITHOUT SIGNIFICANT INDUSTRY OR LIGHT ASSEMBLY SECTORS. TO DIVERSIFY AND ROUND OUT OUR ECONOMY, WE NEED, IN ADDITION TO OUR HOME MARKET, AN EXPORT MARKET FOR GOODS "MADE IN GUAM". HOWEVER, IN THE SAME MANNER AMERICAN MANUFACTURING EXPORTERS ARE DENIED MARKETS IN JAPAN, GUAM IS FROZEN OUT OF THE AMERICAN MAKRET PLACE. COMMONWEALTH, AS WE HAVE PROPOSED IT, WOULD ELIMINATE U. S. TRADE DISCRIMINATION AGAINST GOODS MADE IN GUAM.

WITHOUT LISTING ALL THE ECONOMIC FEATURES OF GUAM'S POLITICAL STATUS REFORM PACKAGE, IT IS SUFFICIENT TO SAY:

-ENHANCE POLITICAL VIABILITY OF GUAM IS NO THREAT TO THE UNITED STATES...POLITICAL STATUS REFORM, AS WE HAVE PROPOSED IT, IS ECONOMIC REFORMS BY ANOTHER NAME, FOR GUAM....

-THE STRONGER THE ECONOMY OF GUAM BECOMES, THE BETTER GUAM CAN HOST THE LEGITIMATE U. S. MILITARY INTERESTS WE WELCOME ON OUR ISLAND;

-THE UNITED STATES GETS NO BENEFIT FROM POLICIES WHICH DISCRIMINATE AGAINST ITS OWN CITIZENS; AND...

-IF WE ARE NOT CONVINCED WE WERE BEING ECONOMICALLY DISCRIMINATED AGAINST, WE WOULD NOT BE PURSUING POLITICAL STATUS REFORMS IN THE FIRST PLACE.

I HAVE CONCENTRATED MY REMARKS, PRIMARILY, ON ECONOMIC ISSUES BECAUSE GUAM'S DRAFT COMMONWEALTH ACT IS AN ECONOMIC MANIFESTO. WE SEEK ONLY TO BE SELF-SUPPORTING, AS EQUAL COMPETITORS, WITHIN THE AMERICAN FAMILY. GUAM HAS NO DESIRE TO SECEDE; GUAM HAS NO INTENTION OF MOVING AWAY FROM THE UNITED STATES - WE ARE PROUD, PATRIOTIC AMERICANS WHO HAVE SACRIFICED GREATLY IN OUR NATION'S INTEREST. IT IS NOT UNREASONABLE THEREFORE, THAT WE GET POLITICAL AND ECONOMIC JUSTICE IN RETURN.

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE, I ASK YOU, RESPECTFULLY, AS YOU CONSIDER GUAM'S COMMONWEALTH ACT, TO FOCUS ON THE ECONOMIC PROVISIONS AND UNDERSTAND THAT THEY ARE ALL INTERRELATED WITH THE TRADE, LABOR, TRANSPORTATION AND POPULATION ISSUES I HAVE RAISED. TO ACCOMPLISH THESE ECONOMIC REFORMS, WE MUST CHANGE OUTMODDED POLITICAL RULES WHICH HARM US WHILE DOING THE UNITED STATES, AS A WHOLE, NO GOOD. A GOOD ECONOMIC CASE CAN BE MADE FOR POLITICAL STATUS REFORM. IT IS NOT UNREASONABLE FOR GUAM TO EXPECT ECONOMIC JUSTICE FROM THE GOVERNMENT OF THE WORLD'S LARGEST FREE-MARKET ECONOMY, AND

GIVEN OUR ECONOMIC SUCCESS IN SPITE OF TERRITORIAL STATUS, WE CAN ASSURE YOU THAT WITH COMMONWEALTH, WE WILL BECOME THE BRIGHTEST JEWEL IN AMERICA'S ECONOMIC CROWN!

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE, PLEASE GIVE THIS COMMONWEALTH ACT YOUR FAVORABLE CONSIDERATION. THE PEOPLE OF GUAM, THROUGH MY LATE GRANDFATHER, ASK THIS 82 YEARS AGO. ON BEHALF OF THE PEOPLE OF GUAM, I PLEAD FOR IT NOW! PLEASE, LET NOT OUR GRANDCHILDREN, PLEAD FOR IT FROM YOUR GRANDCHILDREN, IN DECADES TO COME. IF NOT NOW, THEN WHEN?

THANK YOU FOR YOUR KIND ATTENTION AND CONTINUING INTEREST IN GUAM AND OUR PEOPLE.

Mr. DE LUGO. Thank you very much, Governor Calvo.

And our next witness this morning will be former Lieutenant Governor Rudy Sablan.

Mr. SABLÁN. Thank you, Mr. Chairman.

Mr. Chairman, and members of the subcommittee, my name is Rudy Sablan, former Lieutenant Governor, immediate past member of the Commission on Self-Determination which drafted this act now before you for consideration.

I am here to testify in full support of H.R. 98 in its entirety.

Basically, the whole act must be viewed as remedial legislation. Each provision clearly suggests remedying a past wrong by continuing inequity. Over the years, the clear absence of Federal policy for Guam has nurtured misapplication for Federal decisions to the detriment of our people. The seeming inconsistencies in our approach in the act are deliberate and are designed delicately to provide specific remedies for these unilateral Federal actions.

These "worrisome weaknesses" in our act that caught the attention of the Federal Task Force are, in fact, the strength and mainstay of the Commonwealth. The act deliberately creates a hybrid, a status somewhere between statehood and free association.

As Americans, we are entitled to get what other Americans are getting. We seek only fair treatment. However, since we are not an integral part of the United States legally speaking, we seek some flexibility to accommodate our unique local setting and geographic isolation.

In fact, this already exists legally speaking. Guam already is considered outside the customs territory of the United States. The stark reality is Guam's economic destiny lies with Asia. Our political destiny, however, remains with the United States. The mutual concept provisions constitute the nuts and bolts of the act without which all other provisions are helplessly exposed to political uncertainties.

Any attempt to dilute this provision threatens to render the whole act meaningless. These provisions are crucial to Guam because we lack voting representation in Congress. They assure us certainty and stability with our relationship in the United States and provisions flowing from that relationship will be of continuity and consistency because of this binding contractual arrangement.

The provision of self-determination also deserves comment. Voting on this issue is extended to only a limited group, some assign ethnicity to this provision. Nothing could be more wrong, gentlemen. Only the resident Chamorros have been denied their right of self-determination. All others, the expatriates in Guam, including those from the United States' mainland have exercised that right when they chose Guam to be their home.

I contend that this disqualification applies even to the otherwise qualified Chamorros who elect to leave Guam and are permanently residing in the United States. They have exercised their right of self-determination and they should also be declared ineligible.

I do not state this lightly. I will deny this right to my own sister who has made her decision and choice by living permanently in California.

It is not a matter of race. Clearly, it is a matter of justice, nothing more, nothing less.

Let me close by acknowledging that only Congress with its sweeping power over Guam can grant us commonwealth status. We know, too, that Congress must have the political will to transfer some of its authority to our people. We respectfully ask Congress to do just that in the name of human decency and self-respect.

I ask please break this chain of human bondage and allow us a just share of human dignity within the American family.

We ask that you not ignore our petition, rather with care and compassion grant us the right to walk the Earth freely in concert with our fellow Americans as equals.

As your foster children, we have lived out in the porch for too long. We only ask we be permitted to come into the living room at least.

Thank you very much.

[Prepared statement of Mr. Sablan follows:]

TESTIMONY BEFORE THE SUBCOMMITTEE
ON INSULAR AND INTERNATIONAL AFFAIRS
ON HR98, THE GUAM COMMONWEALTH ACT

HONOLULU, HAWAII
DECEMBER 11-12, 1989

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

MY NAME IS RUDY SABLAN, A NATIVE OF GUAM AND FORMER LT. GOVERNOR OF GUAM AND ALSO IMMEDIATE PAST MEMBER OF THE COMMISSION ON SELF-DETERMINATION WHICH DRAFTED THE ACT CURRENTLY BEFORE YOU FOR CONSIDERATION.

I AM HERE TO TESTIFY IN SUPPORT OF HR98 IN ITS ENTIRETY. AT TODAY'S HEARING, BECAUSE OF THE LIMITED TIME ALLOTTED, I WILL CONFINE MY COMMENTS TO AN OVERVIEW OF THE ACT AS PERCEIVED BY A CHAMORRO AND TO ONLY THOSE PROVISIONS DEALING WITH MUTUAL CONSENT, CONSULTATION AND SELF-DETERMINATION. THESE PROVISIONS, IN MY VIEW, CONSTITUTE THE "NUTS AND BOLTS" OF THE ACT WITHOUT WHICH ALL OTHER PROVISIONS NECESSARILY WILL LACK CONSISTENCY, STABILITY AND CERTAINTY. THEY FORM THE SUBSTANCE OF THE ACT AND REFLECT THE GROWING, RESTLESS SPIRIT OF OUR PEOPLE. ANY ATTEMPT TO DILUTE THESE FUNDAMENTAL AND VITAL PROVISIONS THREATENS TO RENDER THE WHOLE ACT MEANINGLESS. THE ACT BECOMES NOTHING MORE THAN A RENAMING OF THE PRESENT ORGANIC ACT.

TO BEGIN, THE COMMONWEALTH ACT AS A WHOLE MUST BE VIEWED IN ITS PROPER PERSPECTIVE. THE ACT PROPOSES A WHOLE NEW RELATIONSHIP WITH THE UNITED STATES. IT SEEKS GREATER LOCAL AUTONOMY AND LESSER FEDERAL SUPERVISORY PRESENCE. IT SEEKS ALSO GREATER POLITICAL AND ECONOMIC FLEXIBILITY TO ACCOMMODATE OUR UNIQUE LOCAL SETTING AND GEOGRAPHIC ISOLATION. NEW CONGRESSIONAL RULES MUST APPLY. IT CANNOT AND SHOULD NOT BE SUBJECTED TO EXISTING CONSTITUTIONAL AND CONGRESSIONAL CONSTRAINTS CURRENTLY APPLIED TO THE STATES OR OTHER TERRITORIES. THE ACT IS NOT INTENDED NOR SHOULD IT BE VIEWED AS AN EXTENSION OR AN IMPROVEMENT OF OUR PRESENT STATUS. IT CANNOT SINCE AT PRESENT WE HAVE NO STATUS. HOW CAN ONE IMPROVE ON NOTHING?

THE ACT, IN A VERY REAL SENSE, IS A DIRECT PETITION OF THE PEOPLE OF GUAM TO THE U.S. CONGRESS. IT SHOULD BE ACCEPTED IN THAT SPIRIT. WITH THIS ACT, OUR PEOPLE HAVE WRITTEN A STATEMENT DESIGNED TO PROVIDE A CLOSER BUT MORE MEANINGFUL POLITICAL RELATIONSHIP WITH THE UNITED STATES. CLOSER RELATIONSHIP, HOWEVER, MUST BE BASED ON EQUALITY. WITHOUT EQUALITY, WHAT CAN BE CLOSER THAN A MASTER-SLAVE RELATIONSHIP? WE MUST REMOVE FROM SUCH RELATIONSHIP ANY CONDITION THAT CONTINUES FEDERAL UNILATERAL AND ARBITRARY DECISIONS WITHOUT REGARD OR CONCERN FOR OUR PEOPLE.

I BELIEVE THE FEDERAL TASK FORCE MISSED THE WHOLE POINT WHEN IT CONFINED ITS REVIEW OF THE ACT SOLELY WITHIN THE PARAMETERS OF THE U.S. CONSTITUTION. INTERESTINGLY, IT IS THE SAME CONSTITUTION THAT IS ONLY SPARINGLY APPLIED TO GUAM WHEN CONVENIENT. THE WHOLE ACT SHOULD BE CONSIDERED AS REMEDIAL LEGISLATION. A CLOSER REVIEW WILL SHOW THAT EACH PROVISION CLEARLY SUGGESTS REMEDYING A PAST WRONG OR A CONTINUING INEQUITY. OVER THE YEARS, THE CLEAR ABSENCE OF A FEDERAL POLICY FOR GUAM HAS NURTURED MISAPPLICATION OF FEDERAL DECISIONS. FEDERAL LAWS AND REGULATIONS HAVE BEEN EXTENDED AND APPLIED INCONSISTENTLY AND UNFAIRLY TO THE DETRIMENT OF OUR PEOPLE.

THE SEEMING INCONSISTENCIES IN OUR APPROACH IN THE COMMONWEALTH ACT ARE DELIBERATE AND ARE DELICATELY DESIGNED TO PROVIDE SPECIFIC REMEDIES TO THOSE MISGUIDED FEDERAL LAWS AND DECISIONS AND TO PREVENT POSSIBLE FUTURE INEQUITIES. THESE WORRISOME "WEAKNESSES" IN OUR ACT THAT CAUGHT THE ATTENTION OF THE FEDERAL TASK FORCE ARE IN FACT THE STRENGTH AND MAINSTAY OF OUR COMMONWEALTH.

THE ACT DELIBERATELY CREATES A HYBRID, A STATUS SOMEWHERE BETWEEN STATEHOOD AND FREE ASSOCIATION. AS AMERICAN CITIZENS, WE WANT AND DESERVE THE SAME BENEFITS GIVEN TO OTHER CITIZENS IN THE UNITED STATES. AS AMERICANS, WE ASK ONLY FOR WHAT ARE GIVEN TO OTHER AMERICANS. WE SEEK ONLY FAIR TREATMENT. HOWEVER, FEDERAL

MATTERS THAT ARE APPLIED TO THE STATES BUT CONSIDERED HARMFUL TO GUAM BECAUSE OF OUR UNIQUE LOCAL SETTING CAN BE EXCLUDED FROM GUAM SIMPLY BECAUSE WE ARE NOT A STATE. ALSO, FEDERAL ACTIVITIES THAT MAY BE DENIED TO THE STATES BY THE U.S. CONSTITUTION CAN BE EXTENDED TO GUAM, AS AN UNINCORPORATED TERRITORY, BY THE CONGRESS. AS A MATTER OF FACT, SOME SUCH ACTIVITIES ARE ALREADY IN PLACE BECAUSE WE ARE CONSIDERED OUTSIDE THE CUSTOMS TERRITORY OF THE UNITED STATES AND THEREFORE DO NOT COME WITHIN THE OPERATING JURISDICTION OF FEDERAL REGULATIONS.

THE QUESTION IS ASKED, WHY SHOULD GUAM BE GIVEN SOMETHING MORE THAN WHAT CAN BE GIVEN TO THE STATES? WHY SHOULD GUAM HAVE ITS CAKE AND EAT IT TOO? AS AMERICANS, WE ARE ENTITLED TO GET WHAT OTHER AMERICANS ARE GETTING. HOWEVER, SINCE WE ARE NOT AN INTEGRAL PART OF THE UNITED STATES, WE CAN AND SHOULD ENJOY SOME FLEXIBILITY FROM CONGRESS TO DO CERTAIN THINGS LEGALLY PROHIBITED TO THE STATES TO ACCOMMODATE THE UNIQUE SETTING, REMOTENESS, PHYSICAL DISTANCE AND GEOGRAPHIC ISOLATION OF OUR ISLAND. THE STATES CANNOT ENJOY SUCH FLEXIBILITY OUTSIDE THE CONSTITUTION. THE STARK REALITY IS, OUR ECONOMIC DESTINY LIES WITH ASIA. OUR POLITICAL DESTINY, HOWEVER, REMAINS WITH THE UNITED STATES.

THE MUTUAL CONSENT AND CONSULTATION PROVISIONS IN THE ACT ARE NOT IDLE EXPRESSIONS OF OUR DESIRE TO BE INFORMED AND ADVISED OF PENDING FEDERAL DECISIONS WHICH IMPACT OUR LIVES. THESE PROVISIONS, PARTICULARLY THOSE CONCERNED WITH THE UNILATERAL AND

ARBITRARY APPLICATION OF FEDERAL LAWS AND REGULATIONS TO GUAM, THE REACTIVATION OF NATIONAL SECURITY ZONING OF OUR ISLAND AND THE STATIONING OF FOREIGN TROOPS IN GUAM, ARE CRUCIAL AND FUNDAMENTAL TO GUAM BECAUSE WE LACK VOTING REPRESENTATION IN CONGRESS. SUCH PROVISIONS ASSURE US THAT THERE WILL BE STABILITY AND CERTAINTY IN OUR RELATIONSHIP WITH THE UNITED STATES AND THAT FEDERAL DECISIONS FLOWING FROM THAT RELATIONSHIP WILL HAVE SOME CONTINUITY AND CONSISTENCY BECAUSE OF THIS BINDING, "CONTRACTUAL" ARRANGEMENT.

THE MUTUAL CONSENT AND CONSULTATION PROVISIONS ADDITIONALLY WILL SEEK FROM THE FEDERAL GOVERNMENT A "HUMAN IMPACT STATEMENT", IF YOU WILL, FOR GUAM CONCERNING LOCAL HUMAN CONCERNS ON ALL PENDING FEDERAL DECISIONS. THESE LOCAL CONCERNS, PARTICULARLY INDIGENOUS CULTURAL CONCERNS, SHOULD BE GIVEN EQUAL CONSIDERATION WITH NATIONAL INTERESTS. CITIZENS OF THE VARIOUS STATES ALREADY ARE PROVIDED SUCH A HUMAN IMPACT STATEMENT THROUGH THEIR VOTING REPRESENTATIVES IN CONGRESS.

TOGETHER, THE MUTUAL CONSENT AND CONSULTATION PROVISIONS IN THE ACT ARE INTENDED TO PRODUCE FOR OUR PEOPLE A BINDING COMMITMENT RESPECTING OUR DIGNITY AS A PEOPLE AND AS AMERICANS. WE MUST HAVE THESE PROVISIONS IN THE ABSENCE OF VOTING REPRESENTATION IN CONGRESS.

REGARDING THE PROVISIONS FOR SELF-DETERMINATION, THE FEDERAL TASK FORCE TOOK GREAT PAIN AND EFFORT TO PROVIDE CONSTITUTIONAL JUSTIFICATION FOR THEIR DELETION. THIS EFFORT, IN MY OPINION, IS SIMPLY MISDIRECTED. SELF-DETERMINATION IS A BASIC HUMAN RIGHT OF A PEOPLE. IT TRANSCENDS CONSTITUTIONAL BOUNDARIES. WE SEEK THROUGH THIS ACT RECOGNITION AND AUTHORIZATION FROM THE CONGRESS TO EXERCISE THIS RIGHT OF SELF-DETERMINATION THROUGH OUR OWN LOCAL CONSTITUTION.

AMPLE LEGAL ARGUMENTS AND COURT DECISIONS EXIST TO CONFIRM THAT CONGRESS, UNDER ITS PLENARY POWERS OVER UNINCORPORATED TERRITORIES, HAS ABSOLUTE AND SOLE AUTHORITY TO EXTEND SELF-DETERMINATION TO OUR PEOPLE. IN THE EXERCISE OF THIS POWER UNDER THE TERRITORIAL CLAUSE IN THE U.S. CONSTITUTION, CONGRESS CAN FURTHER LIMIT SUCH AUTHORIZATION TO THE CHAMORROS ONLY, WITHOUT REGARD TO THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE 14TH AND 15TH AMENDMENTS TO THE CONSTITUTION, WHICH ARE INAPPLICABLE IN THIS CASE. IT STANDS TO REASON THAT IF THE CONGRESS HAS SOLE, ABSOLUTE AND UNLIMITED POWER OVER THE POLITICAL STATUS OF AN UNINCORPORATED TERRITORY, SUCH POWER NECESSARILY INCLUDES THE LESSER AUTHORITY TO LIMIT VOTING ON POLITICAL SELF-DETERMINATION TO A SEGMENT OF THE POPULATION. UNDER THIS AUTHORITY, WE ASK CONGRESS TO GRANT THIS FUNDAMENTAL RIGHT TO THE CHAMORROS WHO HAVE NEVER BEEN ALLOWED TO EXERCISE THAT RIGHT OF CHOICE. WE ASK THAT THE IMPLIED COMMITMENT OF THE UNITED STATES UNDER THE TREATY OF PARIS AND THE CHARTER OF THE

UNITED NATIONS BE FULFILLED. ARTICLE IX OF THE PARIS TREATY RECOGNIZES THAT "THE LEVEL AND POLITICAL STATUS OF THE NATIVE INHABITANTS OF THE TERRITORY HEREBY CEDED TO THE UNITED STATES SHALL BE DETERMINED BY THE CONGRESS".

UNLIKE THE RESIDENT CHAMORROS, EXPATRIATES IN GUAM, INCLUDING THOSE FROM THE U.S. MAINLAND, HAVE ALREADY EXERCISED THEIR RIGHT OF SELF-DETERMINATION WHEN THEY CHOSE TO MAKE GUAM THEIR HOME. THEY SHOULD NOT BE ELIGIBLE TO VOTE ON SELF-DETERMINATION FOR GUAM. IT IS ONLY THE RESIDENT CHAMORROS THAT HAVE NEVER BEEN GIVEN THE OPPORTUNITY TO CHOOSE A POLITICAL STATUS. WE HAVE LONG BEEN A SUBJUGATED PEOPLE WHO FOR CENTURIES HAVE BEEN DENIED OUR RIGHT OF POLITICAL CHOICE.

THE COMMONWEALTH ACT CLEARLY IDENTIFIES THOSE INHABITANTS OF GUAM WHO ARE ELIGIBLE TO VOTE FOR SELF-DETERMINATION. BECAUSE THE VOTING IS EXTENDED TO ONLY A LIMITED GROUP, THERE IS A TENDENCY ON THE PART OF SOME TO ASSIGN ETHNICITY TO THOSE PROVISIONS. NOTHING COULD BE MORE WRONG. I HOLD THE STRONG VIEW THAT EVEN THOSE OTHERWISE QUALIFIED CHAMORROS, WHETHER THEY WERE BORN OR HAVE LIVED ON GUAM PRIOR TO AUGUST 1950, WHO ELECTED TO LEAVE GUAM AND ARE NOW PERMANENTLY RESIDING IN THE UNITED STATES, HAVE IN FACT ALREADY EXERCISED THEIR RIGHT OF SELF-DETERMINATION. AS EXPATRIATES FROM GUAM AND AS FULL-FLEDGED AMERICAN CITIZENS, THEY WILL NOT BE FOUND WANTING. I FIRMLY BELIEVE THAT SINCE THESE CHAMORROS HAVE ALREADY EXERCISED THEIR RIGHT OF POLITICAL CHOICE, THEY SHOULD NOT BE ELIGIBLE TO VOTE FOR GUAM'S SELF-DETERMINATION.

I DO NOT STATE THIS LIGHTLY. I HAVE FAMILY THAT HAVE MOVED FROM GUAM AND HAVE CHOSEN TO RESIDE PERMANENTLY IN THE UNITED STATES. I WOULD DENY SUCH RIGHT TO MY OWN SISTER BECAUSE SHE HAS ALREADY MADE HER DECISION AND CHOICE. AGAIN, IT IS ONLY RIGHT AND FAIR THAT SELF-DETERMINATION BE LIMITED TO THOSE RESIDENT CHAMORROS WHO HAVE YET TO EXERCISE THIS RIGHT. IT IS NOT A MATTER OF RACE, COLOR OR RELIGION. CLEARLY, IT IS A MATTER OF JUSTICE, NOTHING MORE, NOTHING LESS.

IN CLOSING, I CANNOT OVERSTATE THE IMPORTANCE OF THIS COMMONWEALTH ACT TO US. THE RAPID CHANGES IN TODAY'S WORLD MAKE THIS NEW POLITICAL RELATIONSHIP EVEN MORE COMPELLING AND URGENT THAN EVER. OUR YOUNG PEOPLE ARE VIBRANT, INTELLIGENT, VOCAL AND RESTLESS. THEY WANT AND ARE PREPARED FOR A NEW POLITICAL STATUS FOR GUAM.

WE KNOW TOO WELL THAT ONLY THE CONGRESS WITH ITS SWEEPING POWER AND AUTHORITY OVER OUR ISLAND CAN GRANT GUAM ITS COMMONWEALTH STATUS. WE KNOW EQUALLY WELL ALSO THAT TO DO SO, CONGRESS MUST HAVE THE POLITICAL WILL TO TRANSFER SOME OF ITS INHERENT AUTHORITY TO OUR PEOPLE. WE RESPECTFULLY ASK THE CONGRESS TO DO JUST THAT, IN THE NAME OF HUMAN DECENCY AND SELF-RESPECT. I ASK, PLEASE BREAK THIS CHAIN OF HUMAN BONDAGE AND ALLOW US OUR JUST SHARE OF HUMAN DIGNITY WITHIN THE AMERICAN FAMILY.

WE ASK THAT YOU NOT DESPISE OUR PETITION. RATHER, WITH CARING
 COMPASSION, GRANT US INSTEAD THE RIGHT TO WALK THE EARTH FREELY
 AND IN COUNSEL WITH OUR FELLOW AMERICANS AS EQUALS. AS YOUR
 FOSTER CHILDREN, WE HAVE LIVED OUT IN THE PORCH FOR TOO LONG. WE
 ONLY ASK THAT WE BE PERMITTED TO COME IN TO THE LIVING ROOM AT
 LEAST.

APMAM HAM ESTA DI MAÑAGA GI GARERIA. CUMBIDA HAM FAN HALOM MASEA
 PARA Y SALA HA.

SI YU'OS MA'ASE

RUDOLPH G. SABLON

Mr. DE LUGO. Mr. Chairman?

Mr. FALEOMAVEGA. Can I ask the gentleman from Guam if he could interpret the last sentence.

Mr. SABLÁN. A translation of what I said earlier, as foster children we have been living out on the porch for too long.

Mr. DE LUGO. Thank you very much.

Thank you, Governor Sablan.

Now, we will hear from former Lieutenant Governor, Kurt Moylan.

Mr. MOYLAN. Hafa Adai. My name is Kurt Moylan, last appointed Secretary of Guam and first elected Lieutenant Governor of Guam with Governor Carlos G. Camacho in 1970. I appear before you in total support of H.R. 98 introduced by our own U.S. House Delegate Ben Blaz which grants Guamanians the right of self-determination, a right never considered or offered to the people of Guam.

I have submitted written testimony in favor of this bill outlining significant dates and events which have prevented the Chamorros from having the same rights as any American in determining the kind of political relationship they desire with the United States. My oral presentation is an expansion of my written testimony.

I am honored to appear before this Congressional committee, especially because it is chaired by a Virgin Islander, a house delegate like our Ben Blaz, a Notre Damer, and this hearing is held in the State of Hawaii, my birthplace.

In 1565, the Chamorros were subjugated by the Spaniards and 333 years later Spain ceded Guam to the United States and sold the Mariana Islands to Germany.

The nation of the Chamorro lands was allowed in division because our leaders were only interested in Guam as a strategic military outpost in the Pacific Rim. Guam is truly a colony of the United States. Its value is measured in military importance and it has been that way since 1898.

To the Navy it is a big aircraft carrier in the Pacific. To the Air Force, it is a jungle island in the middle of the Pacific Ocean. To the Department of the Interior, it is another reservation or trusteeship to watch over the natives.

I don't mean to be sarcastic, only to be factual. The colonization of Guam reads like a page in European history. Chamorros were forced into submission by the Spaniards; given as a war prize to the United States; Chamorro lands and its people are divided by the United States; Guam, the only American territory seized by Japan for three years during which time thousands of Chamorros are imprisoned, tortured and murdered; U.S. troops liberated Guam after destroying the entire island; Chamorro properties are condemned for military bases which proliferate on the island like darts on a board; no Marshall plan given to Chamorros to rebuild homes and businesses like Germany and Japan.

Finally the United States Congress enacts the Organic Act in 1950, which grants U.S. citizenship to Chamorros with limited self-government after 52 years of military governors and taking Guam as the prize of war from the Spanish.

The Organic Act was designed and drafted by Congress. It was never voted upon by the Chamorros. It certainly is not a Magna Carta.

The Chamorros never had an opportunity of structuring a political relationship with the United States. A travesty of justice. We Americans should be ashamed of ourselves since we are more interested in retaining a strong military base in Guam than giving Chamorros the right of a free people to determine the type of government and kind of relationship they wanted with the United States.

The passage of the Organic Act encouraged the migrations of Chamorros to the mainland and stagnated the economic and political growth in Guam. Since all Governors and secretaries of Guam were Federal officials, nominated by the Secretary of the Interior, who had final determination over all legislation enacted by locally-elected Guam legislators. Besides the military owning the utilities which were to be turned over to the people of Guam, the military controlled the movement of people in and out of Guam by requiring military security clearances of everyone, including Guamanian Americans returning from college.

By the while, the military population grew in Guam, Chamorros by the tens of thousands migrated to California and Hawaii to better their lives without the restrictions imposed upon them by our own Federal Government.

The United States permitted the division of North and South Korea, East and West Germany, and Guam and the Mariana Islands. It is time that we correct the injustices placed upon the Chamorro people.

Guam is not one large military base. It is an island paradise with a booming tourist economy and a strong elected government. It is where military bases are located. For too long our Congressional leaders have perceived the obedient and passive nature of Chamorros as a sign of weakness when in reality it was a sign of gratitude.

Today the people of Guam want a voice in their destiny. They want to set in motion a closer relationship with the United States in which they have their vote of approval.

H.R. 98 is the finalization on this long march to self-determination. I ask that you do all within your powers to see that this bill is passed by Congress.

Thank you and Si Yuus Maase.

[Prepared statement of Mr. Moylan follows:]

HONOLULU, HAWAII...50TH STATE

ORAL TESTIMONY

DECEMBER 11, 1989

HONORABLE RON DE LUGO
CHAIRMAN
SUBCOMMITTEE ON INSULAR
AND INTERNATIONAL AFFAIRS
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

RE: H.R.98-COMMONWEALTH BILL OF GUAM

HAGA ADAI, CHAIRMAN DE LUGO!

MY NAME IS KURT MOYLAN, LAST APPOINTED SECRETARY OF GUAM AND FIRST ELECTED LIEUTENANT GOVERNOR OF GUAM WITH GOVERNOR CARLOS G. CAMACHO IN 1970. I APPEAR BEFORE YOU IN SUPPORT OF H.R.98 INTRODUCED BY OUR OWN GUAM DELEGATE BEN BLAZ WHICH GRANTS CHAMORROS THE RIGHT OF SELF-DETERMINATION, A RIGHT NEVER CONSIDERED OR OFFERED TO THE WONDERFUL PEOPLE OF GUAM.

I HAVE SUBMITTED WRITTEN TESTIMONY IN FAVOR OF THIS HISTORICAL BILL OUTLINING SIGNIFICANT DATES AND EVENTS WHICH HAVE TRAGICALLY PREVENTED THE CHAMORROS FROM HAVING THE SAME RIGHTS AS ANY AMERICAN IN DETERMINING THE KIND OF POLITICAL RELATIONSHIP THEY DESIRE WITH THE UNITED STATES. MY ORAL PRESENTATION IS AN EXPANSION OF MY WRITTEN TESTIMONY.

I AM HONORED TO APPEAR BEFORE THIS CONGRESSIONAL COMMITTEE ESPECIALLY BECAUSE IT IS CHAIRED BY A VIRGIN ISLANDER, A HOUSE DELEGATE LIKE OUR BEN BLAZ AND THIS HEARING IS HELD IN THE STATE OF HAWAII, MY BIRTH PLACE.

IN 1565, THE CHAMORROS WERE SUBJUGATED BY THE SPANIARDS AND 333 YEARS LATER, SPAIN CEDED GUAM TO THE UNITED STATES AND SOLD THE OTHER MARIANA ISLANDS TO GERMANY. THE ALIENATION OF THE CHAMORRO LANDS AND ITS PEOPLE WAS ALLOWED THROUGH THIS DIVISION BY THE UNITED STATES BECAUSE OUR LEADERS WERE ONLY INTERESTED GUAM AS A STRATEGIC MILITARY OUTPOST ON THE PACIFIC RIM.

GUAM IS A COLONY OF THE UNITED STATES. ITS VALUE IS MEASURED IN MILITARY IMPORTANCE AND, IT HAS BEEN THAT WAY SINCE 1898... TO THE NAVY , ITS THE "BIG AIRCRAFT CARRIER IN THE PACIFIC",

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MOYLAN TESTIMONY

TO THE AIR FORCE, GUAM WAS A "JUNGLE ISLAND IN THE MIDDLE OF THE PACIFIC OCEAN" AND, TO THE DEPARTMENT OF INTERIOR... "ANOTHER RESERVATION OR TRUSTEESHIP TO WATCH OVER THE NATIVES", I DO NOT MEAN TO BE SARCASTIC ONLY TO BE FACTUAL!

THE COLONIALIZATION OF GUAM READS LIKE A PAGE FROM EUROPEAN HISTORY.. CHAMORROS FORCED INTO SUBMISSION BY THE SPANIARDS; GIVEN AS A WAR PRIZE TO THE UNITED STATES; CHAMORRO LANDS AND ITS PEOPLE ARE DIVIDED BY THE UNITED STATES; GUAM, THE ONLY AMERICAN TERRITORY SEIZED BY JAPAN FOR 3 YEARS DURING WHICH TIME THOUSANDS OF CHAMORROS ARE IMPRISONED, TORTURED, AND MURDERED; U.S. TROOPS LIBERATE GUAM AFTER DESTROYING THE ENTIRE ISLAND; CHAMORRO PROPERTIES ARE CONDEMNED FOR MILITARY BASES WHICH PROLIFERATE THE ISLAND LIKE DARTS ON A BOARD; NO MARSHALL PLAN GIVEN TO THE CHAMORROS TO REBUILD THEIR DESTROYED HOMES AND BUSINESSES LIKE GERMANY AND JAPAN; AND FINALLY, THE U.S. CONGRESS ENACTS THE **ORGANIC ACT** IN 1950 WHICH GRANTS U.S. CITIZENSHIP TO CHAMORROS WITH LIMITED SELF-GOVERNMENT AFTER 52 YEARS OF MILITARY GOVERNORS AND TAKING GUAM AS A PRIZE OF WAR FROM THE SPANISH.

THE **ORGANIC ACT** WAS DESIGNED AND DRAFTED BY CONGRESS.. IT WAS NEVER VOTED ON BY THE CHAMORROS. IT CERTAINLY IS NO MAGNA CARTER! THE CHAMORROS NEVER HAD AN OPPORTUNITY OF STRUCTURING A POLITICAL RELATIONSHIP WITH THE UNITED STATES. A TRAVESTY OF JUSTICE... WE, AMERICANS SHOULD BE ASHAMED OF OURSELVES SINCE WE WERE MORE INTERESTED IN RETAINING A STRONG MILITARY BASE IN GUAM THAN IN GIVING THE CHAMORROS THE RIGHT OF FREE PEOPLE TO DETERMINE THEIR OWN TYPE OF GOVERNMENT AND THE KIND OF RELATIONSHIP THEY WANTED WITH THE UNITED STATES.

THE PASSAGE OF THE **ORGANIC ACT** ENCOURAGED THE MIGRATION OF CHAMORROS TO THE MAINLAND AND IT STAGNATED THE ECONOMIC AND POLITICAL GROWTH IN GUAM SINCE ALL GOVERNORS AND SECRETARYS OF GUAM WERE FEDERAL OFFICIALS NOMINATED BY THE SECRETARY OF INTERIOR WHO HAD FINAL DETERMINATION OVER ALL LEGISLATION ENACTED BY LOCALLY ELECTED GUAM LEGISLATORS. BESIDES THE MILITARY OWNING THE UTILITIES WHICH WERE TO BE TURNED OVER TO THE CIVILAIN GOVERNMENT, THE MILITARY CONTROLLED THE MOVEMENT OF PEOPLE IN AND OUT OF GUAM BY REQUIRING MILITARY SECURITY CLEARANCES OF EVERYONE..

PAGE 3

MOYLAN TESTIMONY-ORAL

INCLUDING GUAMANIAN-AMERICANS RETURNING FROM COLLEGE. WHILE THE MILITARY POPULATION GREW IN GUAM, CHAMORROS BY THE TENS OF THOUSANDS MIGRATED TO CALIFORNIA AND HAWAII TO BETTER THEIR LIVES WITHOUT THE RESTRICTIONS IMPOSED ON THEM BY THE FEDERAL GOVERNMENT.

THE UNITED STATES PERMITTED THE DIVISION OF NORTH AND SOUTH KOREA, EAST AND WEST GERMANY; AND GUAM AND THE MARIANA ISLANDS. IT IS TIME THAT WE CORRECT THE INJUSTICES PLACED ON THE CHAMORRO PEOPLE.

GUAM IS NOT ONE LARGE MILITARY BASE...IT IS AN ISLAND PARADISE WITH A BOOMING TOURIST ECONOMY AND A STRONG ELECTED GOVERNMENT...IT IS WHERE MILITARY BASES ARE LOCATED. FOR TOO LONG, OUR CONGRESSIONAL LEADERS HAVE PERCEIVED THE OBDIANT AND PASSIVE NATURE OF THE CHAMORROS AS A SIGN OF WEAKNESS WHEN IN REALITY, IT WAS A SIGN OF GRATITUDE.

TODAY, THE PEOPLE OF GUAM WANT A VOICE IN THEIR DESTINY. THEY WANT TO SET IN MOTION A CLOSER RELATIONSHIP WITH THE UNITED STATES IN WHICH THEY HAVE VOTED THEIR APPROVAL. H.R.98 IS the final station on the LONG MARCH TO SELF-DETERMINATION.

I ASK THAT YOU DO ALL WITHIN YOUR POWER. TO SEE THAT THIS BILL IS PASSED BY CONGRESS.

THANK YOU AND SI YUUS MAASE.

RESPECTFULLY YOURS,


KURT S. MOYLAN
170 GOLINDRINA STREET
BARRIGADA HEIGHTS, GUAM 96913

Mr. DE LUGO. Our next witness this morning will be the Honorable Joaquin Arriola.

Mr. ARRIOLA. My name is Joaquin C. Arriola, Speaker for the 9th and 10th Guam Legislature.

I will submit my statement and summarize it, Mr. Chairman.

While America condemned the Soviet Union for crushing reform movement in Hungary in 1958 and in Czechoslovakia in 1968 and in backing the Polish government crackdown on solidarity in 1981, while America censured the apartheid policies in South Africa, while America protested treatment of Beijing students, while America applauded recent dismantling of the Berlin Wall, while America expounds the dignity of man and human rights and self-determination all over the globe, only lip service to these ideals is practiced on Guam.

America has been awfully uncaring and insensitive as far as Guam is concerned.

America has failed to promote these ideals in the Island of Guam.

From 1898 until 1941, the Naval governor of Guam was the executive. He was the legislature. He was the judiciary. There was more than martial law there on Guam. The Hitlers, the Marcos and Mussolinis could take lessons from the Naval governor of Guam as to how to be a dictator.

A movement was made in the 1930s for U.S. citizenship. The Navy opposed the movement. Here is what the secretary wrote to the Senate: "It believed such a change of status at this time would be most harmful to the native people."

Secretary of the Navy Claude Swanson wrote a letter to the Senate during the 75th Congress, First Session. Not only was citizenship legislation turned down by Congress as a result of the opposition from the U.S. Navy but that element of self-government, election of commissioners was cancelled and they, again, became appointed by the governor. Back to the same system.

Freedom during those days was such that the gooney birds had more freedom.

Protection of lives, before the Saipan invasion, life was not really that bad on Guam. There was forced labor from sunrise to sunset, some beatings, but after Saipan was invaded and after Saipan was secured the governing force on Guam became vicious. They became cruel. Here are some of the atrocities that were committed. This is after the Saipan invasion.

Spiritual leader of Guam, Father Jesus Duenas was beheaded July 9. Thirty-five people from the Merizo, fathers and mothers of U.S. military, some of them, were massacred on June 15. The next day, 30 of the largest and strongest men were executed.

In Agat, 50 young girls were raped and beaten. These brutalities probably would have been avoided if the U.S. forces had invaded Guam prior to Saipan.

There was no excuse or reason, military or political, or social reason for not invading Guam and coming to the assistance of the Chamorros before Saipan because by this time Japan was a beaten nation militarily.

In Marianas, remember the Japanese air power was nonexistent, remember the Marianas turkey-shoot? By this time, Japanese

naval vessels were nowhere to be seen. The Truk Lagoon is filled with Japanese vessels. Only group troops were around. On Guam, whatever planes were on the ground were totally inoperable. How do I know? I was there.

If the military had the slightest concern for the welfare of the Chamorros they would have made every attempt to recapture Guam and probably, possibly avoid all these losses of life.

America did not care.

Protection of products, before and after the enactment of the Organic Act in 1950, the Navy, contrary to the protestations of the secretary and, again, I read a portion of that letter to the Senate, "The general policy of the Naval government of Guam is to guard them from exploitation by outsiders and protect their lands."

Yet before the Organic Act, the U.S. Navy literally stole thousands of acres of lands from the Chamorros. The Congress in 1977 sought to remedy these injustices by enactment of the Omnibus Territory Act in 1977 but it still leaves a bitter pill for us to swallow.

Elected Governorship Act, sure it was passed but, again, ironically it was not Congress which has been impeding and opposing the aspirations of the people of Guam. It was either the Navy or Interior Department or some department from the U.S. Government.

Mr. Chairman, my time is up, but just a few seconds.

Mr. DE LUGO. Go ahead, take your time.

[Applause.]

Mr. ARRIOLA. America must practice on Guam what it preaches everywhere else. In El Salvador, Europe, South America, everywhere else.

The Guam Commonwealth Act is a challenge to Americans to show that Americans care. It is a challenge to Americans to either put up or shut up. I only trust that the Congress will act on this act expeditiously and not wait for the 21st Century.

Thank you.

[Prepared statement of Mr. Arriola follows:]

BEFORE THE HOUSE INTERIOR SUBCOMMITTEE
ON INSULAR AND INTERNATIONAL AFFAIRS,
ON H. R. 98

Statement of Joaquin C. Arriola
Speaker, 9th and 10th Guam Legislature

The idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces--the people inhabiting them to enjoy only such rights as Congress chooses to accord to them,--is wholly inconsistent with the spirit and genius, as well as the words of the Constitution. Downes v. Bidwell (1901) 182 U.S. 244, 21 S. Ct. 770, 45 L. Ed. 1088, 1142. Justice John M. Harlan, dissent, in a 5-4 decision.

Unfortunately, for the people of Guam, Justice Harlan was with the minority.

Clause 2, Section 3, Article IV is the Constitutional basis for many decisions of the Supreme Court that Congress has plenary power over "public lands". You will note that the title to this Clause is "PUBLIC LANDS".

In effect, then, we have been chattels living in "public lands" of the United States Government since 1898, when we were "given away" by Spain, to the custody, control and possession of the United States Government.

Some 33 years prior to the conquest of Guam, the XIII Amendment to the Constitution was duly ratified by the required number of States. Slaves were freed; yet, Chamorros, up to the very present time, remain chattels, living in "public lands", to be ruled, disposed, or otherwise dealt with as Congress may dictate--WITHOUT OUR CONSENT. Ironically, it was not Congress

which has impeded or blocked the aspirations of the people of Guam for their rightful place, but agencies or departments of the Executive Branch.

From 1898, until World War II, Guam was like a stationary battleship, with the Naval Commander as the supreme authority in all phases in the governance of the Chamorros--the Naval Governor was legislature; he was the judiciary; he was the executive; he was the police. The Naval Governor's word was law--no appeal, except to the Secretary of the Navy, but could you imagine the Secretary of the Navy overruling his Commander on the Guam battleship? No way, palau!

As can be expected, this totalitarian rule did not sit too well with the locals--the Chamorros started a movement for U. S. Citizenship in the early 30s. At the risk of imprisonment, Chamorro leaders started a drive to raise funds, to send a delegation to Washington, D. C. to plead for the rights of the Chamorros. The all-powerful United States Navy opposed the movement for U. S. Citizenship and some form of recognition that the Chamorros are humans, and are entitled to some rights.

The general policy of the Naval Government is to guard them from exploitation by outsiders and protect their lands. The general policy of the Naval Government with reference to educational activities has been to enlighten the minds of the people and to stimulate their development through training and self discipline. . . . However, as attested by the fact that they are not self-supporting and require not only federal economic assistance but careful training and supervision from the paternal island government, there is every indication that these people have not yet reached a state of development commensurate with the personal independence, obligations

and responsibilities of United States citizenship. It is believed that such a change of status at this time would be most harmful to the native people. (Secretary of the Navy Claude A. Swanson, Letter to Senate Committee considering Bill 1450, 75th Congress, First Session, 1937). [emphasis added]

Not only was citizenship legislation turned down by Congress as a result of this opposition from the U. S. Navy, but what element of self-government--the election of commissioners--was cancelled, and they again became appointive by the Governor. (Thompson, Laura, "Guam & Its People", 1947 ed, p. 70.)

World War II brought untold sufferings to the Chamorros who were abandoned by the U. S. Navy just prior to the invasion by the Japanese Imperial Forces. There are people who will criticize the U. S. Government for abandoning the Chamorros to the hordes from Japan, but there is no way that the military forces of the United States could hold back the tide of the Japanese invaders--the United States was just totally unprepared for war. But I do find fault with the delay in the recapture of Guam. For if the U. S. Government had the slightest compassion for their former "wards"--the Chamorros in Guam--they should have invaded and recaptured Guam before invading and securing Saipan. Examples of the atrocities committed by the Japanese occupation forces, after Saipan was secured in July 9, 1944 were: the beheading of the spiritual leader of the Chamorros--Fr. Jesus Baza Duenas, on July 12, 1944; on July 15, 25 men and 5 women, leaders in Merizo, fathers and mothers of servicemen in the U. S. Military, were massacred; the next day, another 30 of the biggest and strongest men, were executed; in Agat, 50 young girls were raped

and beaten on July 19/20. These brutalities probably would have been avoided if the U. S. Forces had invaded Guam prior to Saipan. There simply was no excuse or reason, military, political, or social, for not invading Guam and coming to the assistance of the Chamorros, before Saipan, for by this time, Japan was a beaten nation, militarily. In the Marianas, Japanese air power was non-existent--remember the Marianas Turkey Shoot? By this time, Japanese naval vessels were nowhere to be seen; the Truk lagoon is filled with Japanese vessels; only ground troops were around. On Guam, whatever planes were left on the ground were totally inoperable. How do I know? Because I was there. Thus, the U. S. Military, if they had the slightest concern for the welfare of their former "possessions" should have made every attempt to recapture the Island of Guam prior to the invasion of Saipan. America failed the Chamorros: Chamorro lives were lost; inhumanities committed.

Then, amidst all the hoopla about democracy, human rights, the dignity of human beings, etc., in 1950, the Chamorros were finally given U. S. Citizenship and some form of civil rights. Still Guam and its people remained tightly controlled by the U. S. Navy (the administration in Guam was transferred from the Navy Secretary to the Interior Secretary)--by virtue of the Guam Island Naval Defensive Sea Area and Guam Island Naval Airspace Reservation, more commonly known as the Naval Security Clearance, where no one could enter Guam, absent a prior clearance from the U. S. Navy. Thus, even after the Citizenship Act, the U. S. Navy continued to exercise control over Guam under the guise of the

Naval Security Clearance. (President Kennedy finally revoked the Naval Security Clearance in August, 1962.)

In the meantime, before and after the Organic Act, the great United States Navy literally stole thousands of acres of lands, and defrauded the Chamorros from their prized possessions --lands, notwithstanding their policy of just 10 years before, that the "Naval Government is to guard them from exploitation by outsiders and protect their lands . . ." That Congress attempted to rectify and right the misdeeds of the U. S. Navy, years later, by the enactment of the Omnibus Territories Act of 1977 (P. L. 95-134), makes this pill no less bitter. (Landowners, or more appropriately heirs of landowners, are just now beginning to receive compensation for the sloppy and unfair treatment from the U. S. Navy in the taking of their lands.)

As far as I can recall, every Legislature, from its inception, commenced petition after petition to the Congress for more self-rule. Finally, the Elective Governorship Act was passed, but again not without some struggle, for someone in the Interior Department came up with the cute idea to pacify the natives by giving them crumbs: impose a super governor on Guam--a Federal Comptroller. The Tenth Guam Legislature fought this outrageous proposal tooth and nail--we even placed a full page Ad in the New York Times and a full page Ad in the Washington Post, and in our testimony before that Subcommittee, we told the Subcommittee that we prefer not to have an Elective Governorship Bill, if the Federal Comptroller were made a part of it.

While officials in Washington condemned the Soviet Union

for crushing reformed movements in Hungary in 1958, and in Czechoslovakia in 1968, and backing the Polish government's crackdown on Solidarity in 1981; while our Washington leaders censured the apartheid policy of South Africa, initiating the movement which resulted in barring South Africa from the Olympic Games in 1964 and again in 1968; while our university students demonstrate in campuses across the nation to compel universities to divest themselves of stocks of corporations doing business in South Africa; while Washington officials applauded the recent dismantling of the Berlin Wall; while America expounds and preaches democracy, justice, the dignity of man, human rights, and self-determination, all over the globe, only lip service to these ideals is practiced on Guam. America, champion of human rights, defender of democracy, protagonist of self-determination, and advocate of the oppressed, has been awfully uncaring and inactive, and has failed to promote these ideals in the Island of Guam. What are we? Gooney birds?

You and I know our status is very unfair; there is no justice in our status; our status is un-American. As Justice Harlan argued in his dissent: our status "is wholly inconsistent with the spirit and genius, as well as the words of the Constitution." Downes, supra. America must practice--on Guam--what it preaches everywhere else.

It has been a long struggle for us "public lands" natives--too long in my view. Congress must pass the Guam Commonwealth Act, and I trust it will do so expeditiously and not wait for the 21st century.

Honolulu, Hawaii
December 11, 1989

Mr. DE LUGO. Thank you very much, Mr. Arriola.

I am very familiar with the comments that you have made in your statement and I am very concerned about what happened prior to the invasion of Guam and the liberation of Guam.

Since that time, we have had hearings on legislation. It was Congressman Blaz's legislation to make reparations for the land that was taken, for the suffering that the people of Guam, the Chamorro people went through during the war and afterwards.

During those hearings on Capitol Hill, we had two people who had gone through this and gave their eye witness testimony and it was one of the most moving things I have ever encountered.

These types of hearings are very important for all of us and they are very important to the United States as a whole. One thing has been said over and over in every hearing because it's true, you can't find a more loyal, patriotic people anywhere than the Guamanian people as far as their relationship with the United States goes. That is common knowledge.

[Applause.]

Mr. DE LUGO. The people of Guam have paid with blood, suffering to a degree that is beyond what you should ask of any people. Our country owes a lot to the people of Guam. This goes beyond—we keep falling back on the constitutional question, or the legal question, but it is a political and a moral question.

When you go back to the statements of our founding fathers and what they said when they founded our nation, many of the acts they took were acts of conscience and heroic acts.

Our performance as a nation is not as it is projected in the movies. In many areas, it has been very difficult and it is important that we as a people face that, that we don't hide from it and that the young people face it. This is really what went on; now what are we going to do about it?

That is why we are here today. To correct that.

Our next witness will be the Honorable Larry Ramirez.

Mr. RAMIREZ. Mr. Chairman and members of the subcommittee, good morning.

I am Florencio Torres Ramirez, a resident of Guam, former political leader and a firm advocate of the Guam Commonwealth Act.

I am pleased to be here today to testify on the Commonwealth Act of the Territory of Guam, an act I hope will be realized and attained in my lifetime.

I am now 74 years old, born in 1915. I represent approximately 20 percent of Guam's elderly citizens, referred to as the "Man Amku." I am currently the President of the Guam Association of Retired Persons. As a representative of that association, I testify on their behalf. We stand together, united in our efforts and struggles to achieve a new political relationship with the United States, an equal partner in association with all states.

Political endeavors are events we continually witness in today's world among all nations and peoplehood. It is a struggle sought by all nations and people who recognize that their rights to be in their homeland have been denied. A society who realizes that their continuity is at stake if their rightful existence is not acknowledged.

Guam is our home, the indigenous Chamorro people, whose ancestors reached her shores nearly 5,000 years ago. The island is our

livelihood, the sources of our cultural identity and perpetuation and manifestation of our values and traditions, our language and history.

Through our history and contact with other nations and people, others have come to our shores to make Guam their home. They come to learn and share our ways. They also realize that our continuity as a nation and a people must be a part of their effort and responsibility. Together we seek its continuity because they realize that once they become a part of us, they will also voice the same rights we are now addressing today.

The most controversial issue of the Commonwealth Act is its constitutionality. The articles and provisions are questioned in light of the interpretation of the Constitution of the United States of America.

Let me clearly state, the issue on commonwealth only seeks the perpetuation and assurance of the livelihood of a nation and a people. Your concern should be how to ensure and uphold these rights under the articles and provisions stated in the act. Your concern should be how can the constitution uphold the rights of a people and not deny their existence.

The United States is a great nation because of its people who represent a multitude of cultures. Its greatness lies within its plurality. Its greatness lies because it has endeavored in its own way to ensure the rights of all to be within the nationhood of the United States of America.

I have been involved with political issues since 1931, at the age of 16. I was there and I knew it. Guam was then under the United States Naval government. As early as I could remember, my elders struggled to remove the Naval regime and obtain a measure of home rule.

During those years, everyone desired change no matter what, especially after the events of World War II. The history of political struggle, therefore, is nothing new among the Chamorro people. Each generation has aspired to change the political status.

The Guam Commonwealth Act is different. The act has allowed us to author our destiny. The act has allowed us to express our aspirations that will dictate the future course of our island and the generations of the future. We did not come here ill-prepared but appear before you with a document that was well-thought and considered. The act is our foundation to charter a new destiny.

We are here to uphold the Guam Commonwealth Act. To enlighten you that your presence here is to also acknowledge your obligation to fulfill your commitment. Your role is to ensure that this commitment is executed first and foremost in the interest of the people of Guam.

Sixty years has passed since I have been involved with political issues. I have been involved solely because I believe that there has to be change within the past and present status.

In our tradition, there is a saying in Chamorro, "Isau-na hau ni tumungu yan un sedi ki eyu i mismu umisagui hau." This reference means, "You are more at fault who knowingly allows injustice to befall you, than he who commits the injustice against you."

No generation on Guam has been idled since the arrival of the Europeans and other nations to her shore. All generations have

kept a watchful eye, merely because of this value. We cannot allow injustice to perpetuate. Our ancestors fought fiercely with the Spaniards. We have been subdued and subjugated but we continually strive for the better. And I believe that no future generation will lay idle unless this issue is resolved. The struggle will continue unless the issue has been addressed and the rights of our people have been recognized.

Before I conclude my address, I was involved with the public education program on the Commonwealth Act of Guam with the elders or "Man Amku." I, with a team from the Office on Commission and Self-Determination, discussed the issues with them. They understood the issues generally. But what they understood mostly that it will ensure their right to be as a nation and a people. They understood that the Act will ensure their continuity within the framework of the American society.

I convey this message to you of their full support of the act.

With these statements, I express my gratitude to you, to hear our voices as a nation and a people, a part of your nation, the United States of America. I ask you to consider all the testimonies voicing a need for political change.

In 1998, Guam will celebrate its 100th anniversary as a part of the United States. It is only 10 years from today. As a nation, we have just celebrated our 320th anniversary. We are an older nation than the United States of America. Grant us the privilege and right to determine our future through our aspirations as stated in the Guam Commonwealth Act.

[Prepared statement of Mr. Ramirez follows:]

December 12, 1989
Honolulu, Hawaii

To: United States Congressional Committee

From: Florencio Torres Ramirez
Member of the 1st through 12th Guam Legislature
Speaker of the 11th and 12th Guam Legislature
Member of the ~~Prefer~~ Guam Congress
President of the Guam Association of Retired Persons

Subject: Testimony on the Guam Commonwealth Act

Members of Congress, Distinguished Guests and Representatives of
Our Island, Guam and Sister-State of Hawaii:

I am, Florencio Torres Ramirez, a resident of Guam, former political leader and a firm advocate of the Guam Commonwealth Act. I am pleased to be here today to testify on the Commonwealth Act of the Territory of Guam, an act I hope will be realized and attained in my lifetime.

I am now seventy-four (74) years old, born in 1915. I represent approximately twenty (20) percent of Guam's elderly citizens, referred to as the, "Man Amku'." I am currently the President of the Guam Association of Retired Persons. As a representative of that population I testify on their behalf as well as all citizens of Guam. We stand together, united in our efforts and struggles to achieve a new political relationship with the United States, an equal partner in association with all states.

Political endeavors are events we continually witness in today's world among all nations and peoplehood. It is struggle sought by all nations and people who recognize that their rights to be in their homeland have been denied. A society who realizes that their continuity is at stake if their rightful existence is not acknowledged.

Guam is our home, the indigenuous Chamorro people, whose ancestors reached her shores nearly five (5) thousand years ago. The island is our livelihood, the source of our cultural identity and perpetuation and manifestation of our values and traditions, our language and history.

Through our history and contact with other nations and people, others have come to our shores to make Guam their home. They come to learn and share our ways. They also realize that our

continuity as a nation and a people must be a part of their effort and responsibility. Together we seek its continuity because they realize that once they become a part of us, they will also voice the same rights we are now addressing today.

The most controversial issue of the Commonwealth Act is its constitutionality. The Articles and Provisions are questioned in light of the interpretation of the Constitution of the United States of America.

Let me clearly state, the issue on Commonwealth only seeks the perpetuation and assurance of the livelihood of a nation and a people. Your concern should be how to ensure and uphold these rights under the Articles and Provisions stated in the Act. Your concern should be how can the Constitution uphold the rights of a people and not deny their existence.

The United States is a great nation because of its people who represent a multitude of cultures. Its greatness lies within its plurality. Its greatness lies because it has endeavored in its own way to ensure the rights of all to be within the nationhood of the United States of America.

I have been involved with political issues since ¹⁹³¹~~1930~~, at the age of ~~fourteen~~ ^{four} (14). Guam was then under the United States Naval Government. As early as I could remember, my elders struggled to remove the Naval Regime and obtain a measure of home rule. During those years, everyone desired change no matter what especially after the events of World War II. The history of political struggle therefore is nothing new among the Chamorro people. Each generation has aspired to change the political status.

The Guam Commonwealth Act is different. The Act has allowed us to author our destiny. The Act has allowed us to express our aspirations that will dictate the future course of our island and the generations of the future. We did not come here ill-prepared but appear before you with a document that was well-thought and considered. The Act is our foundation to charter a new destiny.

We are here to uphold the Guam Commonwealth Act. To enlighten you that your presence here is to also acknowledge your obligation to fulfill your commitment. Your role is to ensure that this commitment is executed first and foremost in the interest of the people of Guam.

Sixty (60) years has passed since I have been involved with political issues. I have been involved solely because I believe that there has to be change within the past and present status. In our tradition, there is a saying in Chamorro, "Isau-na hau ni' tumungu' yan un sedi ki eyu i mismu umisagui hau." This reference means, "You are more at fault who knowingly allows injustice to befall you, than he who commits the injustice against you." No generation on Guam has been idled since the arrival of the Europeans and other nations to her shore. All generations have kept a watchful eye, merely because of this value. We can not allow injustice to perpetuate. Our ancestors fought fiercely with the Spaniards. We have been subdued and subjugated but we continually strive for the better. And I believe that no future generation will lay idle unless this issue is resolve. The struggle will continue unless the issue has been addressed and the rights of our people have been recognized.

Before I conclude my address, I was involved with the Public Education Program on the Commonwealth Act of Guam with the elderlies or "Man Amku'." I, with a team from the Office on Commission on Self-Determination, discussed the issues with them. They understood the issues generally. But what they understood mostly that it will ensure their right to be as a nation and a people. They understood that the Act will ansure their continuity within the framework of the American Society. I convey this message to you of their full support of the Act.

With these statements, I express my gratitude to you, to hear our voices as a nation and a people, a part of your nation, the United States of America. I ask you to consider all the testimonies. voicing a need for political change.

In 1998, Guam will celebrate its 100th anniversary as a part of the United States. It is only ten (10) years from today. As a nation, we have just celebrated our 320th anniversary. We are an older nation than the United States of America. Grant us the privilege and right to determine our future through our aspirations as stated in the Guam Commonwealth Act.

Thank-you,


FLORENCIO TORRES RAMIREZ

Mr. DE LUGO. Thank you very much.

We now have another witness to hear from, but before we hear from Mr. Taitano, there are witnesses at the table that I understand have a flight to catch at this time.

The committee would like to, again, thank Senator Bordallo, Governor Calvo, and Lieutenant Governor Moylan for having participated in this presentation. Thank you very much. You have been very helpful and we appreciate your appearance.

I was reminded by the very fine testimony of Joaquin Arriola, that he and our delegate from Guam, Ben Blaz, were in the Japanese concentration camps together during the war years; and that Mr. Arriola is not only one of the finest attorneys on Guam, an outstanding attorney, but a talented musician as well, I understand.

Mr. SABLAN. You want to see?

Mr. DE LUGO. I understand his talent lies in the area of the piano.

Well, now we will hear from the Honorable Carlos Taitano. Welcome to the subcommittee. Your statement will be made a part of the record. You may proceed.

Mr. TAITANO. Mr. Chairman, members of the subcommittee, my name is Carlos Taitano, former Speaker of the Guam Legislature.

I have been involved in the struggle for civil and political rights for Guam since 1948. It has been a long and difficult struggle. I was naive enough in the early days to believe that when it came to basic human rights, Congress would act quickly and grant them. In my time, I have heard such statements as, we cannot allow the Guamanians to elect their own governor. The United States has a very large investment in military facilities on the island requiring tight control by Congress. Or, you will not see a Guamanian governor in your lifetime. Or, we cannot grant you American citizenship, the Navy is against it.

Some Senator from the South is against it for racial reasons. Or, when a Senator was in favor of granting full vote representation to the District of Columbia, proclaims that no Americans are truly free unless they have a voice in the election of those who write the nation's laws.

When confronted with the fact that the Chamorros are in the same situation, there was no response. When one of the leading Senators said to me when I requested to see him, he said, I will give you just 15 minutes of my time. Fifteen minutes, after years and years of political neglect; or the classic, classic answer from all over Washington, Mr. Taitano, you have to be patient. These things take time.

This is a denial of civil rights. We are talking about something that calls for immediate action.

There are other kinds of treatment the Chamorros have been getting all these years. This is the reason for the general restlessness and impatience exhibited by some of our political leaders.

We say commonwealth now, not 5, 10, 15 years from now. Human rights now.

Over 300 years after the Spanish invaded the Marianas in 1668 and 90 years after the United States replaced Spain in 1898 as the

ruling power over Guam, the island remains today as in 1668 and in 1898, a non-self-governing territory, in other words, a colony.

This breath of external governance is almost extinct today. Guam is not an independent nation and it has not been integrated into the political system of the United States. The people of Guam have been ruled by outside nations without their consent. They have been denied their right of self-determination. They live under limited home rule and abide by laws in which they have no representation with voting privileges and administered by a president for whom they do not vote.

Whether at home or abroad, I am always ready whenever the occasion requires to defend, protect and expound the ideals of the nation. Like many other Americans, I get emotional over such subjects as patriotism and the flag. But, gentlemen, I experienced deep disappointment and anger at times at the discrimination against the residents of Guam.

I was in the Guam Congress Walkout of 1949 or as some people called it, the Guam rebellion of 1949, because that was exactly what it was. It was a rebellion against the ruling authority for 50 years of political neglect. For conditions of inequality. For denial of political and civil rights.

There were 34 members who were involved in this walk out. Most of them have passed away. Will those in the group still alive see the day when the Chamorros will be granted their right of self-determination?

I must tell you that on that day in 1949 when we walked out, we were scared. We were fearful of the repercussions. We feared the power of America. We were after all still ruled by the Navy, but if we feared the anger of our rulers, we feared doing nothing even more. We feel the continuation of colonial attitudes and the damage being done to our people.

Forty years later the central issue of self-determination is unresolved. Despite the attempts of some people to confuse the issue, the question is simple, will Congress give it to us or not?

For the sake of so many of our people who have lived in hopes of realizing these dreams and aspirations, common to all who believe in the sanctity of freedom, we pray that the answer is yes.

Thank you very much.

[Prepared statement of Mr. Taitano follows:]

STATEMENT OF CARLOS TAITANO

Over three hundred years after the Spanish invaded the Marianas in 1668 and ninety years after the United States replaced Spain in 1898 as the ruling power over Guam, this island remains today, as in 1668 and in 1898, a non-self-governing territory; in other words, a colony -- a breed that is almost extinct around the world today. It is not an independent nation and it has not been integrated into the political system of the United States. The people of Guam have been ruled by outside nations without their consent. They have been denied their right self-determination. They live under limited home rule and abide by laws passed by Congress in which they have no representation with voting privileges and administered by a President for whom they cannot vote.

Since the Second World War world leaders became concerned for the many people throughout the world who had no voice in the enactment of laws that governed them and who continued to live under conditions of inequality and without regard for the rights of the individual. Since the end of that war many people under colonial rule were given the opportunity to exercise their right of self-determination. In our part of the world the United States granted this opportunity to all the islands under its control, except Guam. Naturally, Guam looks with disappointment and envy at its neighbors, island communities that came under American rule almost fifty years after Guam was acquired from Spain.

Whether at home or abroad, I am always ready whenever the occasion requires, to defend, protect and expound the ideals of the Nation. Like many other Americans, I get emotional over such subjects as patriotism and the flag. But, gentlemen, I also experience deep disappointment and anger, at times, at the discrimination against the residents of Guam.

I was in the Guam Congress Walkout of 1949, or, as some people call it, the Guam Rebellion of 1949, because that was exactly what it was. It was a rebellion against the ruling authority for fifty years of political neglect, for conditions of inequality and for denial of civil and political rights. The following year the Organic Act of Guam was passed. I was also involved in the struggle for the right to elect our own Governor and to send a delegate to Washington. There was tremendous resistance by certain key members of Congress, especially with respect to the governorship bill. One member told me that they could not allow the Guamanians to elect their own Governor, because the United States had a very large investment in military facilities on the island requiring tight control by Congress. The chief of staff of one of the leading senators offered the prediction that I would not see a Guamanian Governor in my lifetime. After the enactment of the governorship bill in 1968, the petition for a non-voting delegate to Congress was granted in 1972. The people of Guam are United States citizens, yet, these fundamental rights are doled out to them, piece by piece.

In a period of rapid political changes throughout the world, even in Eastern Europe, politically, Guam under congressional rule is moving at a snail pace, if not at a standstill. The time is long overdue for Congress to act. In this day and age, the situation on Guam is outmoded. Congress must give Guam the freedom to develop in their own way.

Mr. DE LUGO. Thank you very much.

I want to thank you all for your statements here this morning. I think they have contributed tremendously to this hearing.

Thank you very much.

The next panel will be a panel made up of leaders of the future, the Guam Youth Council and other students. The Chair looks forward to receiving this testimony from these young people.

PANEL CONSISTING OF ART SAN AGUSTIN, TRISHA ADA, ALFREDO ANTOLIN, MELISSA TAITANO, GUAM YOUTH CONGRESS; ANNALYNN SEBASTIAN, AND VINCENT AKIMOTO

Mr. DE LUGO. We have Mr. Art San Agustin, Ms. Trisha Ada, Mr. Alfredo Antolin, Ms. Melissa Taitano, Guam Youth Congress; Ms. Annalynn Sebastian and Vincent Akimoto.

I want to welcome you all here. Your statements, without objection, will be made a part of the record in their entirety.

We would like you to try and stay within the five minute rule, if possible. Thank you.

Who will lead off?

Mr. AGUSTIN. Mr. Chairman, we have a request on behalf of the Youth Congress, our testimony is actually one piece divided into four spheres and we would like to know if we can be permitted to speak one right after another?

Mr. DE LUGO. Certainly. You are well organized.

Mr. AGUSTIN. Today's testimony on behalf of the Youth Congress will be presented by myself, Arthur U. San Agustin, Speaker of the Youth Congress, followed by Trisha Ada, Chairperson, Committee on Federal Foreign and Legal Affairs, followed by Alfredo, Chairperson, Committee on Rules and ended with Melissa Taitano.

Mr. Chairman and members of the subcommittee, distinguished leaders from Guam, ladies and gentlemen. Hafa Adai.

On behalf of the youth of Guam, we are honored to be here to testify in support of H.R. 98, the Guam Commonwealth Act. We have come to state and echo the voices of our peers.

We are members of the 15 Guam Youth Congress, future leaders of our island.

The members present today before you are myself, Arthur U. San Agustin, Youth Speaker; Melissa Taitano, Youth Vice Speaker; Joshua Tenorio, Youth Legislative Secretary; Alfredo O. Antolin, Jr.; Chairman, Committee on Rules; Tricia Ada, Chairperson, Committee on Federal, Foreign and Legal Affairs; Francis Flisco, Chairman, Committee on Youth, Senior Citizens, Cultural Affairs and Human Resources; Christine Cruz, Chairperson, Committee on Education; Therese Guerrero, Chairperson, Committee on Tourism, Economic and Community Development; Rory Respicio, Chairman, Committee on Ways and Means; Melissa Cefre, Jessica Morta and Tracy Haggard, members at large.

At this time, we would like to thank you for the opportunity to express the opinions of our constituents. Before we proceed with our testimony, we would like to give a brief description of the Youth Congress.

The Youth Congress is a youth, part-time legislative body with the power to make its own rules, establish committees, hold hear-

ings, pass resolutions, and to prepare and pass bills for action as with a legislative bill.

This youth body is comprised of young men and women between the ages of 14 and 25 who represent the aspirations of the Youth of Guam. We are elected by our peers and represent public and private high schools, the University of Guam, Guam Community College and the 21 villages of our island. In total, we represent 35,000 youths on the island of Guam which is approximately 25 percent of the population of the Territory of Guam.

Years ago, your forefathers came before an official body not unlike this one pleading for their just rights as English citizens. Today, we stand before you pleading for our just rights as Chamorro people. If you lend us a deaf ear, your fathers will scream from the earth at such hypocrisy. We have been patient and tolerant of the indifference shown toward our people. We have experienced domination by three nations with each one directing the lives of our people.

With each period of domination various changes have resulted, including modernization and westernization. Now the time has come for us to take a decisive role in the destiny of our island, our home and our people.

This Commonwealth Act represents our island's desire for greater autonomy and our yearning for a right long denied, the right to political self-determination. This statement reflects both the frustration and the hope that has gained momentum after years of suppression and denial of our inalienable right to political self-determination.

Your forefathers loathed to be a colony. So do we. Our political development is not directed by our needs and aspirations but by the needs and interests of our trustee, the United States. The very act American revolutionaries detested and sought to rectify, you continue to perform.

Are you now prepared to extend the very basic principle of freedom for which your fathers died for? Let it flow, let it be nourished and let it come alive. Give rebirth to a principle hundreds of years old in which America takes pride. Such a measure on your part will truly give the people of Guam a taste of democracy, a taste of liberty, a taste of commonwealth.

[Applause.]

Mr. AGUSTIN. The United States is generous in its support to other nations to provide them the opportunity to develop themselves politically, economically and socially. She strives to ensure that true democracy is exercised in other nations outside the United States. Yet, Guam's status as a colonial possession has long been overlooked.

We are America citizens and take pride in this fact. However, we are also the people of Guam. We have an inalienable right that belongs only to us as a people. We feel it is not only your political, but also your moral obligation to support the development of Guam's political institution—to grant us commonwealth.

Today's society presents many uncertainties to us as young people. We fear what fate may hold for us with the increasing drug problem, worldwide terrorism and the arms race to name a few.

But the youth of Guam have a compounded fear, a fear of the instability of their present political relationship with the United States. We think about what to do with our lives, with our future and are hopeful that we will be able to predict what the future may hold for us. Yet we have no control over the very things that affect us and our island. Is this the legacy we will leave for our children? Is this what you want for your children and their children's children? A life where control is not theirs but is placed in the grasp of another to whom we are bound? We believe that when this grip is loosened, we could accomplish more with free hands.

Ms. ADA. A little child walks along a quiet beach, looking out toward the ocean, wondering what lies beyond the horizon. Visions of different looking people and different kinds of languages flood her mind. But what sort of languages? What sort of people? No one knows what lies beyond a horizon that one has never crossed.

Some years later, that same little child has grown up and has traveled beyond the horizon that she once saw. Now she has seen what lies beyond the horizon and has decided upon her future.

In 1950, Guam was that little child who wondered what lay beyond her horizon, the horizon of the future. Guam then crossed that horizon when Congress passed the Organic Act of Guam. As an unincorporated territory of the United States, we tried to predict what the future would hold for us, for our government, and for our youth, our future.

And now, 49 years later, Guam is that little child grown up. We have looked over our options and are finally ready to cross over our greatest horizon, to direct and ultimately secure our future.

The Guam Commonwealth Act is that vessel that will direct us towards this future and will allow us the opportunity to determine the destiny of our island. After all, it is our island, our home, our Guam.

Mr. ANTOLIN. We, the Youth of Guam, recognize that in our bid for security after World War II, our greatest commodity was our alliance with the United States. However, our present relationship is no longer acceptable. We desire to change our relationship. We want partnership, not possession.

Commonwealth will make this change. We want the American flag which stands for liberty and justice for all to continue to fly over us. Let commonwealth be the ground where the pole will stand.

It is a paradox that while the United States is asking the Eastern Bloc Nations to reform and provide their citizens the opportunity to exercise their inalienable right, she has citizens, the Chamorro people, who have yet to exercise their inalienable right to self-determination.

Allow us to exercise this inalienable right. We do not want to leave America where liberty and the pursuit of happiness is held in the highest regard. Rather, we want to become the showcase of the Federal Government, not the prize.

Where does our future destiny lie if we continue as an unincorporated territory of the United States, if we continue to be controlled by Federal agencies, if we have no say in the decisions made by Congress that directly affect our lives?

After 49 years, the people of Guam are still longing to enjoy the full benefits of American citizenship and receive the constitutional protections that we are entitled to, yet have been denied.

We, as young adults, desire greater participation in the making of our future. Our American citizenship is precious. Our loyalty has been proven at the expense of the blood and tears of Guamanian men and women who have given their lives. However, the time has come. We can no longer tolerate and accept our present political status.

Ms. TAITANO. As youth representatives, we feel the present relationship between the United States and Guam is similar to that of a child. Just as a child must obey the rules that the parent sets, Guam is expected to adhere to all the policies and laws the Federal Government sets. Unquestioning obedience is expected in both instances.

Yes, there is a time when the hands of the child will need to be held by the parent. The child can be guided through life until a certain level of maturity is reached. However, when this time comes, the parent will slowly loosen the grasp of the child's hands, while still loving and caring for that child.

When the child becomes an adult, the parent must release that hold and let the child grow—succeeding, learning and living with the assurance and confidence that the child will grow with the principles and morals taught by the parent.

We, as the Youth of Guam, feel that now is that time. The United States Government can no longer ignore that the child has grown. The people of Guam have grown politically and economically. No longer can the Federal Government deny the people of Guam our just rights.

We have come before you today to say we are ready. Let our hands go. We have come before you to say set us free. Let us grow. Let us succeed. Let us learn and let us live. And let us once and for all decide the destiny of Guam, our island, our home.

Our people, the Guamanians have made their choice. That choice is commonwealth. Rest assured that our generation will be relentless in our quest to fulfill the aspirations of our people. We assure you, our voices will be heard and justice will finally be served.

Yes, we are proud Americans, but we are first and foremost proud Guamanians.

[Applause.]

Ms. TAITANO. Mr. Chairman, members of the House Interior Subcommittee on Insular and International Affairs, on behalf of the 15 Guam Youth Congress and the Youth of Guam, we thank you for allowing us to appear.

Thank you.

[Applause.]

[Prepared statement of Mr. Agustin follows:]

FIFTEENTH GUAM YOUTH CONGRESS
163 Chalan Santo Papa, Agana, Guam 96910

Statement of the 15th Guam Youth Congress
Commonwealth Hearing
December 11, 1989

Mr. Chairman and members of the House Interior Sub-Committee on Insular and International Affairs, the Community of Hawaii, and the many people from the island of Guam. Hafa Adai! On behalf of the Youth of Guam, we are honored to be here to testify in support of H.R. 98, the Guam Commonwealth Draft Act. We have come to state and echo the voices of our peers. We are members of the Fifteenth Guam Youth Congress, the future leaders of our island. The members present today before you are Arthur U. San Agustin, Youth Speaker; Melissa Taitano, Youth Vice Speaker; Joshua Tenorio, Youth Legislative Secretary; Alfredo O. Antolin, Jr., Chairman, Committee on Rules; Tricia Ada, Chairperson, Committee on Federal, Foreign and Legal Affairs; Francis Flisco, Chairman, Committee on Youth, Senior Citizens, Cultural Affairs and Human Resources; Christine Cruz, Chairperson, Committee on Education; Therese Guerrero, Chairperson, Committee on Tourism, Economic and Community Development; Rory Respicio, Chairman, Committee on Ways and Means; Melissa Cefre, Jessica Morta and Tracy Haggard, members at large. At this time we would like to thank you for the opportunity to express the opinions of our constituents. Before we proceed with our testimony, we would like to give a brief description of the Youth Congress. The Youth Congress is a youth, part-time legislative body with the power to make its own rules, establish committees, hold hearings, pass resolutions, and to prepare and pass bills, for action as with a legislative bill. This youth body is comprised of young men and women between the ages of 14 and 25 who represent the aspirations of the Youth of Guam. We are elected by our peers and represent public and private high schools, the University of Guam, Guam Community College and the twenty-one (21) villages of our island. In total, we represent 35,000 youths on the island of Guam which is approximately 25% of the population of the Territory of Guam.

Years ago, your forefathers came before an official body not unlike this one pleading for their just rights as English Citizens. Today, we stand before you pleading for our just rights as Chamorro People.

If you lend us a deaf ear, your fathers will scream from the earth at such hypocrisy. We have been patient and tolerant of the indifference shown toward our people. We have experienced domination by three nations with each one directing the lives of our people. With each period of domination various changes have resulted, including modernization and westernization. Now the time has come for us to take a decisive role in the destiny of our island, our home, and our people.

This Commonwealth Act represents our island's desire for greater autonomy and our yearning for a right long denied, the right to political self-determination. This statement reflects both the frustration and the hope that has gained momentum after years of suppression and denial of our inalienable right to political self-determination.

Your forefathers loathed to be a colony. So do we. Our political development is not directed by our needs and aspirations but by the needs and interests of our trustee, the United States. The very act American revolutionaries detested and sought to rectify, you continue to perform. Are you now prepared to extend the very basic principle of freedom for which your fathers died for? Let it flow, let it be nourished and let it come alive. Give rebirth to a principle hundreds of years old in which America takes pride. Such a measure on your part will truly give the people of Guam a taste of democracy, a taste of liberty, a taste of commonwealth!

The United States is generous in its support to other nations to provide them the opportunity to develop themselves politically, economically and socially. She strives to ensure that true democracy is exercised in other nations outside the United States. Yet, Guam's status as a colonial possession has long been overlooked. We are Americans citizens and take pride in this fact. However we are also the people of Guam, we have an inalienable right that belongs only to us as a people. We feel it is not only your political, but also your moral obligation to support the development of Guam's political institution - to grant us Commonwealth!

Today's society presents many uncertainties to us as young people. We fear what fate may hold for us with the increasing drug problem, worldwide terrorism and the arms race to name a few. But, the youths of Guam have a compounded fear, a fear of the instability of their present political relationship with the United States. We think about what to do with our lives, with our future and are hopeful that we will be able to predict what the future may hold for us. Yet, we have no control over the very things that affect us and our island.

Is this the legacy we will leave for our children? Is this what you want for your children and their children's children? A life where control is not theirs but is placed in the grasp of another to whom we are bound? We believe that if this grip is loosened, we could accomplish more with free hands.

A little child walks along a quiet beach, looking out toward the ocean wondering what lies beyond the horizon. Visions of different looking people and different kinds of languages flood her mind. But, what sort of languages? What sort of people? No one knows what lies beyond a horizon that one has never crossed. Some years later, that same little child has grown up and has traveled beyond the horizon that she once saw. Now she has seen what lies beyond the horizon and has decided upon her future.

In 1950, Guam was that little child who wondered what lay beyond her horizon, the horizon of the future. Guam then crossed that horizon when Congress passed the Organic Act of Guam. As an unincorporated territory of the United States, we tried to predict what the future would hold for us, for our government, and for our youth ... our future.

And now, forty-nine years later, Guam is that little child grown up ... We have looked over our options and are finally ready to cross over our greatest horizon, to direct and ultimately secure our future.

The Guam Commonwealth Act is that vessel that will direct us towards this future and will allow us the opportunity to determine the destiny of our island. After all, it is our island, our home, our Guam.

We, the Youth of Guam, recognize that in our bid for security after World War II, our greatest commodity was our alliance with the United States. However, our present relationship is no longer acceptable. We desire to change our relationship. We want partnership not possession! Commonwealth will make this change. We want the American Flag which stands for liberty and justice for all to continue to fly over us. Let Commonwealth be the ground where the pole will stand.

It is a paradox that while the United States is asking the Eastern Bloc Nations to reform and provide their citizens the opportunity to exercise their inalienable right, she has citizens, the Chamorro people, who have yet to exercise their inalienable right to self-determination.

Allow us to exercise this inalienable right. We do not want to leave America where liberty and the pursuit of happiness is held in the highest regard. Rather, we want to become the showcase of the federal government, not the prize.

Where does our future destiny lie if we continue as an unincorporated territory of the United States, if we continue to be controlled by federal agencies, if we have no say in the decisions made by Congress that directly affect our lives?

After forty-nine years the people of Guam are still longing to enjoy the full benefits of American citizenship and receive the constitutional protections that we are entitled to, yet have been denied.

We, as young adults, desire greater participation in the making of our future. Our American citizenship is precious. Our loyalty has been proven at the expense of the blood and tears of Guamanian men and women who have given their lives. However, the time has come - we can no longer tolerate and accept our present political status.

The present relationship between the United States and Guam is that of a parent and a child. Just as a child must obey the rules that the parent sets, Guam is expected to adhere to all the policies and laws the federal government sets. Unquestioning obedience is expected in both instances.

Yes, there is a time when the hands of the child will need to be held by the parent. The child can be guided through life until a certain level of maturity is reached. When this time comes, the parent will slowly loosen the grasp of the child's hands, while still loving and caring for that child. When the child becomes an adult, the parent must release that hold and let the child grow-succeeding, learning and living with the assurance and confidence that the child will grow with the principles and morals taught by the parent.

We, as the Youth of Guam feel that now is the time. The United States government can no longer ignore that the child has grown. The people of Guam have grown politically and economically. No longer can you deny the people of Guam their rights. We have come before you today to say "WE ARE READY, LET OUR HANDS GO."

We have come before you to say, "SET US FREE, LET US GROW, LET US SUCCEED, LET US LEARN AND LET US LIVE. AND LET US ONCE AND FOR ALL DECIDE THE DESTINY OF GUAM, OUR ISLAND, OUR HOME."

Our people, the Guamanians have made their choice. Rest assured that our generation will be relentless in our quest to fulfill the aspirations of our people. We assure you, our voices will be heard and justice will be served.

PA'GO NA ORA, NOW IS THE TIME, GRANT US COMMONWEALTH!!!

Ms. SEBASTIAN. Mr. Chairman and members of the committee, Hafa Adai.

I am Annalynn Sebastian. I am from the village of Dededo, Guam. I am here before you today as an independent member of Guam's youth supporting Guam's Commonwealth Bill.

In order to fully express my views, I wish to share with you a story once told to me.

On a calm day an 18 year old youth was working at the neighborhood store trying to support his family. From out of the blue appears this stranger who took him away to put him to work at some foreign place.

During the first few months, the youth was put through physical abuse such as being forced to walk and run in ankle deep sand with a load on his back. At times he worked up to ten or eleven o'clock and then was rudely awakened at four the following morning.

During this same time period, the youth was subjected to humiliation. He was told to keep quiet whenever he spoke of how he was being treated and was reminded to show respect to the people in charge of him for they were superior to him, or so they were told.

Do images of oppression come to mind? I am speaking of the youth of Guam, who basically had nothing but second class citizenship to the United States, yet were drafted into their military service. This is just another example of insensitivity the U.S. has shown towards the people of Guam.

The mere fact that we are an unincorporated territory implies that although we are under the United States, we may not partake in its principles of democracy.

Mr. Chairman, history will show that whenever the United States needed our land or our youth, like family, we came through without question. We did not have our youth burning their draft cards or the flag. They didn't ask why they had to put their lives on the line.

Why? Because we considered ourselves as a part of the American family and like any true member, you help when help is needed.

Well, now we, the people of Guam, are the ones who are in need. A need to strengthen our ties with the United States, for we shall never be satisfied with a status in limbo. Nor shall we tolerate this colonialistic form of administration.

Oddly enough, we get our inspiration from the American colonists who overcame their dominant forces to emerge as a self-governing nation. A nation which is sympathetic towards other countries who are oppressed.

If America supports the struggles of the people of China and in East Germany, then why is it that Guam, which is a part of the United States, has no inherent rights to govern itself, except as Congress sees fit? Even worse, our citizenship is subjected to their whims.

Guam has a longer standing relationship with the United States than any other Pacific island, however, she has gone unrewarded for her loyalty. This is the source of my frustrations. When shall we be considered as a part of the family to be afforded the benefits of the rights of other Americans?

When the United States signed the Treaty of Paris, their goal was to be first trained in self-government. This has already been taught and still we wait. We have been waiting 91 years for self-government and we can wait no longer. Now is the time to solve this blatant disrespect of our human rights which has hindered our growth politically, socially and economically.

Mr. Chairman and members of this subcommittee, as people of Guam, we gladly acknowledge our loyalty as Americans, but we must be governed by the principle that governments derive their just powers from the consent of the governed.

As stated in the Declaration of Decolonization, “. . . based on respect for the principles of self-government of all peoples, and respect for human rights, and fundamental freedoms for all. . . .”

Thank you very much for this opportunity to address you as a member of Guam's future generation.

[Prepared statement of Ms. Sebastian follows:]

STATEMENT OF
ANNALYNN SEBASTIAN
INDEPENDANT MEMBER OF GUAM'S YOUTH

Presented to
The House Interior Subcommittee on
Insular and International Affairs
on

HR 98
Guam Commonwealth Bill

Honolulu, Hawaii
December 11,1989

Mr. Chairman,

I am Annalynn Sebastian. I am from the village of Dededo, Guam. I am here before you today as an independant member of Guam's youth supporting Guam's Commonwealth Bill. In order to fully express my views I wish to share with you a story once told to me.

On a calm day an eighteen year old youth was working at the neighborhood store trying to support his family. From out of the blue appears this stranger who took him away to put him to work at some foreign place.

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Do images of oppression come to mind? I am speaking of the youth of Guam, who basically had nothing but second class citizenship to the United

States, yet were drafted into their military service. This is just another example of insensitivity the U.S. has shown towards the people of Guam. The mere fact that we are an "unincorporated territory" implies that although we are under the the U.S. we may not partake in its principles of democracy.

History will show that whenever the United States needed our land or our youth, like family, we came through without question. We did not have our youth burning their draft cards or the flag. They didn't ask why they had to put their lives on the line. Why? Because we considered ourselves as a part of the American family and like any true member you help when help is needed. Well, now we, the people of Guam, are the ones in need. A need to strengthen our ties with the United States, for we shall never be satisfied with a status in limbo. Nor shall we tolerate this colonialistic form of administration. Oddly enough, we get our inspiration from the American colonists who overcame their dominant forces to emerge as a self-governing nation. A nation which is sympathetic towards other countries who are oppressed. If America supports the struggles of the people in China and in East Germany, then why is it that Guam, which is a part of the United States, has no rights to govern itself, except as Congress sees fit? Even worse, our citizenship is subjected to their whims.

Guam has a longer standing relationship with the United States than any other Pacific island, however, she has gone unrewarded for her loyalty. When shall we be considered as a part of the family to be afforded the benefits of the rights of other Americans?

When the United States signed the Treaty of Paris, their goal was to be first trained in self-government. This has already been taught and still we wait. We have been waiting ninety-one years for self-government and we can wait no longer. Now is the time to solve this blatant disrespect of our human rights which has hindered our growth politically, socially, and economically.

As people of Guam, we gladly acknowledge our loyalty as Americans, but we must be governed by the principle that governments derive their just powers from the consent of the governed. As stated in the Declaration of Decolonization, "... based on respect for the principles of self-government of all peoples, and respect for human rights, and fundamental freedoms for all..."

THANK YOU VERY MUCH FOR THIS OPPORTUNITY TO ADDRESS YOU AS A MEMBER OF GUAM'S FUTURE GENERATION.

Mr. AKIMOTO. Mr. Chairman, good morning, and distinguished members of the committee.

My name is Vincent Akimoto and I am representing the students from Guam of the University of Hawaii.

As a young person growing up on the island of Guam, I was taught to be proud of my heritage as an American citizen and as a native of Guam.

I was taught that as a citizen, I was guaranteed the rights of life, liberty and the pursuit of my dreams by the Constitution of the United States of America. I also learned that my country would stand for my rights as well as the rights of my fellow Americans should these rights be denied or threatened.

In my schools, I learned of the noble principles upon which my American forefathers built this nation and how the world came to recognize the genius of their dream.

Today, I see the dream still alive as the people in Europe, in China, and in other parts of the world continue to struggle for freedom.

When I was born in 1966, the Congress of the United States of America had yet to permit the people of Guam to exercise their right to elect their own governor. During this time, the country was finding itself falling into the Vietnam conflict and when our nation called for soldiers, many of my uncles and cousins immediately volunteered.

Some of my earliest memories as a child are those of a flickering television screen filled with the images of war in a land that looked so much like my own. Many of Guam's finest sons gave their lives in that war and they died believing that they were Americans.

Today, I stand before you and I ask am I an American? Am I entitled to the same rights as a person living in Hawaii or New Hampshire? Can I go to sleep tonight and awake tomorrow to discover that Congress has decided that they don't want me anymore?

I want to believe that no American would ever deny another American his unalienable rights as a citizen. I want to believe that every bit of American soil is as treasured as the next. I want to believe in the inherent goodness of my country.

Yet, I know that the price of being an American is constant vigilance against threats to freedom and a willingness to fight should threats to that freedom arise. Concomitant to this is the assurance that once has the capability to respond to those threats. The people of Guam do not have this assurance. Our status as an unincorporated territory leaves us subject to the mandates of Congress without equal representation by the people of Guam.

I do not believe that the desire for a more equitable relationship is unreasonable and, as Americans, I believe we have the right to be heard.

Ladies and gentlemen, you will not find any more loyal citizens of this country than you will find in this room. We are proud Americans but we are also people of Guam. Please help us to establish an equitable political status for our homeland so that we all may be dignified citizens.

In conclusion, I would like to thank you for allowing the students of the University of Hawaii this opportunity to be heard.

Thank you.

[Applause.]

Mr. DE LUGO. I don't think anyone sitting here—those of you watching these students testify, you are looking at the backs of their heads, but we are up here and we are watching their faces and no one could have watched you today and not be really moved.

For me, it brings back a lot of memories of once upon a time when I was your age and I was asking the same questions. What's more, I am very impressed by what you have done here today because that is not rhetoric that you are putting out as future leaders of Guam. It is not rhetoric. It is the truth.

Guam has something to be proud of here. For anyone to sit where I am sitting and watch your faces, the determination, the commitment, you have to be impressed.

What these young people are asking here today is a very legitimate question. They are asking what does their American citizenship mean. This is a question being asked of Americans in all of the insular areas.

Young people of Guam are asking it, young people of the Commonwealth of Puerto Rico are asking it, the young people of my district are asking it. What does their American citizenship mean when they live in an insular area? What is the commitment of the United States?

You are asking other very legitimate questions here today, what will be worked out by the United States with Guam when the commonwealth is established, what are the guarantees that that will not be changed because of the whims of some special interests? That has been the problem for all of the off-shore areas, that commitments are made and then because of circumstances, the competition is a little too tough or some special business interests on the mainland or some other special interests cause those commitments to be broken.

I want to thank you very much for what you have done here today.

Let me tell you, Guam is making a very, very powerful case before this committee.

[Applause.]

Mr. DE LUGO. The Chair would like to recognize the gentleman from Guam at this time, Congressman Ben Blaz.

Mr. BLAZ. Thank you, Mr. Chairman.

I just want to amplify what you have said so eloquently. It is very difficult to convey to you in the rear of the audience the sense and passion and feeling and depth of emotion that you feel up here from these young students. It makes me wonder if my own generation had been diligent in all of our efforts, it made me wonder why we didn't have the same courage to express our sentiments 45, 50, 75, 100 years ago?

I think we are way past the citations and past the references and past the treaties. I think we are now at the point where we must do whatever we can to make at least their dreams come true.

As a parent, as a Chamorro, as a Monomko, I am very much a part of you.

[Applause.]

Mr. DE LUGO. The gentleman from American Samoa, Congressman Faleomavaega.

Mr. FALCOMA. Thank you, Mr. Chairman.

As I sat here listening to the testimonies, I will say that it certainly has stirred the emotions but I say it because it comes from the heart and this is the kind of message that we have got to put across to our colleagues and to the Congress, and I just hope that perhaps the Guam Legislature will amend its law to allow a member of the Guam Youth Congress to serve on the commission.

[Applause.]

Mr. FALCOMA. This is the kind of profound message they bring because it truly comes from the heart.

I cannot second more the tribute given by Congressman Blaz on what you have said. We have in Samoa an expression that you must show dignity behind the house before you can be dignified in front of the house. I wish I could say it in the Samoan language that my Chamorro cousins will not understand, but it is true, how can we go about preaching democracy throughout the world in the front while we have not cleaned up our back yard?

[Applause.]

Mr. FALCOMA. I know General Blaz is a great marine general and I remember well in my days we didn't burn draft cards to show our loyalty, we quietly accepted what our government gave us as a responsibility and duty and I think that is the message that you young people have got to say a lot more often than Guam leaders ought to, that this is the loyalty America can expect, no less, no more.

We ought to do that for our Chamorro citizens.

Thank you.

Mr. DE LUGO. Thank you all again.

I have questions, but I will not ask them. You were terrific. You made your point. Congratulations. Thank you.

Ladies and gentlemen, the next panel of witnesses are former members of the Commission on Self-Determination and Senators of Guam. The Honorable Frank Lujan, Honorable Paul Bordallo, and Honorable Peter Perez.

PANEL CONSISTING OF FRANK LUJAN, PAUL BORDALLO, AND PETER PEREZ

Mr. DE LUGO. Your statements will be made a part of the record, gentlemen, and you may proceed as you see fit.

Mr. LUJAN. Thank you very much, Mr. Chairman.

Let me first commend the members of the young people of Guam for their stirring testimony.

The honorable members of the subcommittee, the gentleman from Puerto Rico, Guam's own General Blaz and the gentleman from American Samoa, my name is Frank Lujan. I don't hold any official position. I am just a part of the group here.

Mr. Chairman, as the chairman of the first political status commission established by the Twelve Guam Legislature back in 1973, I am very, very pleased that the original research done by that commission has contributed to the draft act that is before you now.

Mr. Chairman, yesterday you alluded to the conservatism of the executive branch, whether the president is a Democrat or a Republican.

I have a copy of a petition of the Pacific Daily News, dated August 21, 1979, and let me just read the banner headline, "White House Study Rules Out Independence, Statehood."

This was the report by the interagency task policy review on the territories and the report was requested, the president then was Jimmy Carter.

Ten years hence, today, Mr. Chairman, on the commonwealth petition by the people of Guam, we heard all the objections from the same policy review committee, by a Republican Administration. So it seems, Mr. Chairman, the more things change, the more they remain the same.

In urging you to pass the Commonwealth Act as introduced, I had originally intended to touch briefly on three points.

On the first two points, and I will refrain from further discussion because they have been adequately presented, and that is the treaty obligation of the United States under the Treaty of Paris of 1898, the charter of the United Nations, and the principle of government by the concept of the governed.

Let me just add briefly to the remarks made by Mr. Arriola. During the long, hard fight, the long dark night of the Occupation of Guam by the military forces of Imperial Japan, which lasted two and a half years, Guam was the only American territory occupied during the Second World War.

In those two and a half years, Mr. Chairman, not one Chamorro betrayed the United States. We didn't have any christening in Guam, Mr. Chairman. As a matter of fact, and Mr. Arriola mentioned this, the native Chamorro priests, Father Duenas and his nephew were beheaded for assisting in hiding the sole surviving American sailor who hid, ran away from the Japanese and hid.

But incidently, Mr. Chairman, this survivor just recently passed away.

I know the red light is on, Mr. Chairman, but let me mention another thing. During the Vietnam War, 71 Chamorros gave their life, paid the supreme sacrifice and as the youth members alluded to, we did not burn our draft cards, we didn't march out in the streets, Mr. Chairman, chanting, hell no, we won't go.

We didn't march out in the streets, Mr. Chairman, chanting, hey, hey, L.B.J., how many did you kill today? No, Mr. Chairman, Guam marched to the beat of a different drummer. We went out into the streets singing God Bless America.

Laugh if you must, Mr. Chairman, or let others mock us, because of our naive attitude but when we see Old Glory flying up there, flying in the breeze, Chamorros see to it that it remains up there fettered. That is our attitude, Mr. Chairman.

Do not fail us, Mr. Chairman. We depend on you to be our advocate. You have a awesome job in persuading your other colleagues, the members of both the House of Representatives and in the Senate.

Take that ball, Mr. Chairman, run it for us.

Thank you very much.

[Prepared statement of Mr. Lujan follows:]

TESTIMONY OF FRANK G. LUJAN

ON A BILL TO CREATE
THE COMMONWEALTH ON GUAM (H.R. 98)
BEFORE THE HOUSE INTERIOR SUBCOMMITTEE ON
INSULAR & INTERNATIONAL AFFAIRS
Honolulu, Hawaii
December 11, 1989

HISTORICAL BACKGROUND

The status issue is not new to Guam at this time. It has long been of concern to the people of our Island.

The people of Guam have continuously sought local autonomy and full civil government. As early as 1902 Guamanians petitioned the U.S. government to establish their rights and liberties, declaring that "fewer permanent guarantees of liberty and property rights exist now than under the Spanish domination." This petition was endorsed by the second Governor who referred to its "propriety and urgency" but still elective representation and self-government was not available. One of the first actions of the Guam Legislature, after it was first established in 1917, was to request the Governor to recommend to the President and Congress that the civil and political rights of the people be defined by an act of Congress. But nothing was done.

In the early '30's, the appointed naval Governor suggested that the fundamental rights of citizens now enjoyed by all Americans be proclaimed by the President and he also appealed for

"some basic law or grant not subject to change at the will of the Governor."

This effort was coupled with the long quest for Citizenship. A petition by 1,965 Guamanian leaders to President Roosevelt sought greater political recognition and was followed in 1936 by the Guam legislature unanimously requesting citizenship. At its own expense--the federally appointed Naval Governor having refused the use of public funds for this purpose--Guam sent a delegation to Washington (Messrs. Baltazar Bordallo and Francisco B. Leon Guerrero) in support of a citizenship bill. As a result, in 1937 the first bill to confer U.S. citizenship for Guam was introduced in Congress. Hearings were held, Secretary of Navy Swanson testified that it would be prejudicial to the best interests of the United States and the local inhabitants to grant such citizenship, and Secretary of State Cordell Hull, upon being pressed, also favored delay. The representatives of the Guam Congress based their case on the statements of the U.S. Naval governors themselves and, suppressing any dissatisfaction they felt with naval rule, earnestly and sincerely indicated their desire to achieve the dignity and benefits of U.S. citizenship. In Executive session the committee held hearings on the relationship of citizenship to international relations. Whatever this relationship was, it seemed benefitted by lack of citizenship for Guam for the bill died in committee.

World War II brought major ramifications in the United States and Guam status relationship. It proved, on the one hand,

the loyalty and dedication of the people of Guam; and, on the other, the difficulty and basic injustice when major political institutions are not in the hands of those whom they are supposed to serve.

After the War, Guam continued to press for civil government and for United States citizenship. Guam's experience with naval government had been, not unexpectedly, very bleak. Many of the naval governors had earnestly worked for the people of Guam, but others had a much narrower perspective. All of them had a very short tenure so that the continuing concern which a people expects from its Executive was never present.

In July 1946 the first legislation providing an Organic Act for Guam was introduced in Congress. Since it would transfer jurisdiction from the Navy Department to the Department of the Interior, the issue of self-government for Guam became tied to the irrelevant question of an evaluation of the effectiveness of the Navy's past administration. As a result, there was further delay.

In January 1947, the Guam Legislature asked the naval Governor to give it the right to take action on revisions, amendments and enactments of local laws before they became law on the Island. In August, the Governor announced that the Guam Legislature was to have legislative authority, subject to his veto; or, if a bill were repassed by a two-thirds vote, to the ultimate decision of the Secretary of the Navy. The Governor

retained the right to legislate by decree if, in his opinion, time were "of the essence".

The demand for citizenship and an Organic Act was renewed by resolution of the Guam Legislature in December 1948 and unanimously the next year. The year 1949 also brought a direct conflict between Governor Pownall then the federally appointed Naval governor, and the elected Guam Legislature. The issue, the power of the Legislature to subpoena witnesses, led to a major confrontation before it was resolved. The Guam Legislature refused to meet and the Governor attempted to declare the seats vacant and appointed substitutes.

Passage of the Organic Act in 1950, then, was the product of years of pursuit, struggle, and initiative by the territorial populace. However, the Act's provisions which contained citizenship and organized self-government were something of a disappointment. The Governor was still appointed by the President and there was no provision for any representation in Washington.

Guam persisted and in 1964 the Seventh Guam Legislature provided for an elected representative in Washington. This initiative and persistence resulted finally in obtaining for Guam in 1968 an elected governor. In 1972 Congress granted Guam a non-voting delegate in the Congress who has committee representation but no vote in the Congress itself. And again there was a great disappointment. Despite the unanimous objection of the Guam Legislature and sharp protest in testimony

of Guam officials, a federally appointed Comptroller with broad judicial and executive powers was inserted in the Elective Governor Act of 1968.

The Organic Act has been amended numerous times but Congress has not, however, over the three-quarters of a century since the United States obtained control of the Island of Guam from Spain, fully reviewed or altered the political status of Guam as an unincorporated territory of the United States. With the continual reevaluation and mounting world-wide concern for the proper political aspirations of non-self-governing and non-independent peoples, now is the time for such review and readjustment of the United States Federal relationship with the Territory of Guam.

This Political Status Commission, authorized in 1973 by the Twelfth Guam Legislature pursuant to P.L. 12-17, grew out of a long-standing local concern. Within Guam it grew out of the recent renewed interest in status concerns: most notably, the authorization by the Ninth Guam Legislature of the holding of the First constitutional Convention of Guam in 1968. The Legislature called for a comprehensive review of the Organic Act and suggested that certain provisions of that Act "are either outdated, inappropriate, or unenforceable". Delegates to the Convention were elected pursuant to a general election and met in plenary sessions from June 01, 1969, to June 29, 1970. Public hearings were held by the Convention in each of the 19 villages in the Fall of 1969 in order to canvass the wishes of the public

at large. Future political status was discussed at these hearings. Finally, we should note that the establishment of the Political Status commission had broad bi-partisan support in the Guam Legislature and was paralleled by similar concern and activity in the Guam Executive Branch.¹

From the research and analysis of the various status alternatives performed by that Commission, we now have a specific status - Commonwealth - that has been drafted by the Commission of Self-Determination, upon the direction of the people of Guam. The people of Guam has spoken. They want Guam to be a Commonwealth and Congress should respect that desire.

The United States, as a signatory of the charter of the United Nations recognized that the interests of the inhabitants of Guam are paramount and should ensure with due respect for our culture, our political, economic, social and educational advancement and our just treatment.

Under the Treaty of Paris, Congress was given the moral and legal imperatives to determine the civil rights and political status of the native inhabitants of Guam.

To the question why should the U.S. Congress grant Commonwealth Status to the people of Guam, let me emphasize three points:

¹ I have quoted at length from the Status of Guam, Report of Political Status Commission of the Twelfth Guam Legislature (September, 1974)

Treaty of Paris (October 10, 1898 and
The Charter of The United Nations

The Treaty Of Paris (Art.IX) (31 Statute 1154), states that: "The civil rights and political status of the Native inhabitants of the territories hereby ceded to the Untied States shall be determined by congress. (emphasis added). Guam was one of the territories ceded by Spain to the United States.

The Charter of the United Nations, Chapter XI, Article 73, paragraph a and b reads as follows: "Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government, recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories and to this end;

a. to ensure, with due respect for the culture of the peoples concerned their political, economic, social, and educational advancement,

their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of such territory and its people and their varying stages of advancement;"

How can certain provisions of the Commonwealth Act be unconstitutional when a treaty entered into by the United States is part of the Supreme Law of the land. Article VI, clause 2 of the U.S. Constitution states:

"This Constitution and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Laws of the Land;..."

How can certain provisions of the Commonwealth Act be unconstitutional when the United States accepted as a sacred trust the obligation to promote to the utmost the well-being of the inhabitants of Guam? How can certain provisions of the commonwealth Act be unconstitutional when the United States assumed the obligation to ensure, with respect to Guam's culture, our political, economic, social and educational advancement.

CONSENT OF THE GOVERNMENT

A basic underpinning of American Democracy is that power of the Federal Government is not inherent but comes from the people.

Guam's Organic Act stems from Congressional action. It does not even in theory take its power from the people of Guam. The extent of the power granted, therefore, depends entirely upon the Acts of Congress in each case, and is at all times subject to such alterations as Congress may see fit to adopt.

GUAM EARNED THE RIGHT OF SELF-DETERMINATION
BY ITS COMMITMENT TO LIBERTY AND DEMOCRACY

During the long dark nights of the occupation of Guam by the military forces of Japanese invaders, which lasted 2 1/2 years, not one Chamorro betrayed his allegiance to the United States. To the contrary, countless Chamorros fed, sheltered and protected those American sailors who did not want to surrender to the Japanese invaders. Unfortunately, because of the small area of Guam all but one were quickly captured. The lone survivor made it through the occupation of Guam and just recently past away. Unfortunately many Chamorros were subjected to torture and beatings in the relentless drive by the Japanese to capture Mr. George Tweed. A native Catholic priest and his nephew were subjected to brutal beatings and were finally executed by the Japanese because of their involvement protecting Mr. Tweed.

During World War II, 30 Chamorros in the U.S. Navy gave their lives for the United States. This number did not include those who died in the defense of Wake Island (12) and the members (4) of the Insular Forces (under U.S. Navy supervision) who died fighting the Japanese invaders.

Nineteen Chamorros died during the Korean War.

During the Vietnam War, 71 of the sons of Guam paid the supreme sacrifice for a war that polarized the American people. We did not demonstrate; We did not oppose the war; We did not seek refuge in a foreign country to escape the draft. We heeded our country's call to arms to fight in a war for reasons that were never made clear to us.

It has been said that more Chamorros per capital died for our country in war than any other American community.

CONCLUSIONS

The right of self-determination is inherent in any group of people. Since we have yet to exercise the opportunity to determine what should be our political status with the United States, we want to do so now.

Under the Treaty of Paris of 1898 and the Charter of the United Nations, the United States recognized the principle that the interests of the inhabitants of a non-self-governing territory (Guam) are paramount and accepted as a sacred trust the advancement of our political and economic interest.

It is a basic tenet of American democracy that government stems from the consent of the government. The basic law defining our relationship with the United States was not drafted by the people of Guam.

The bill before you was drafted by the people of Guam. It is our right to do so. We have earned that right.

I respectfully ask that you take the geography and size of Guam into consideration when you make your recommendation on our Commonwealth Act. Guam is located over 8,000 miles from Washington D.C., more than 5,000 miles from the Mainland, and approximately 3,500 miles from the great state of Hawaii.

The Constitution and Federal Laws were designed for a nation of over 200 million people with a vast land area. For those to be equally applicable to the micro economy and micro culture of Guam with a small land area and population living over 8,000 miles from Washington, is, in my view, a violation of the trust relationship existing between the United States and Guam, a non-self-governing dependency.

Because of the small area and population of Guam and the great distance from our nation's capital it is all too easy for decision makers in the states to see us only as a military outpost and forget the social, political and economic needs of our people. And we have seen this happen too many times in the past.

Nevertheless, we have faith in the basic concern and interest in our welfare present in the Congress and in the

Executive branch once our needs have been brought to the attention. We bring those needs to your attention now.

I ask this subcommittee to report out favorably to the full committee the Bill To Establish The Commonwealth On Guam.

Mr. DE LUGO. Thank you very much, Frank.

Let me say this, that I am so aware of the loyalty of Guam people and what they endured and what they did during the Second World War, and in Vietnam as well, and I think that that is what counts with a country when they can count on their people, count on their people's patriotism, count on the people that will defend their country and lay down their life for their country. That is what the Guam people have proven beyond a doubt. This is not corny, this is not something that is passe. This is what sustains a nation. This is what nations are built on.

But when you have your citizens that give you this type of loyalty, you owe a lot back, and too often in Congress and in the halls of government with the musty old legal documents, we get a little caught up and seem to forget what nations are founded on, certainly what our nation was founded on and what sustains a great nation like ours.

Our nation has made many, many, many mistakes over the years but the one quality of this great democracy of ours, I believe, that sustains it and makes it stronger all the time, is that eventually we are able to face our mistakes and own up to them and correct them whether we talk about the civil rights of the people, the black people of the United States, the abuses and the segregation that was rampant in our country, or many other injustices that have sprung up and have been nurtured that have been faced up to and overcome.

I want to thank you and, again, thank the youth of Guam for their presentation here.

I want to call on the Honorable Paul Bordallo for his presentation.

Mr. BORDALLO. Mr. Chairman, members of the committee, ladies and gentlemen, I am Paul Bordallo, born in Guam, a private businessman at one time a Senator to the Guam Legislature.

I represent no one but myself but I want to speak on behalf of myself and those of Chamorros.

I remember when my father, B.J. Bordallo, left for Washington to seek American citizenship. I was with my father the first day the Japanese took over Guam. He was hauled before the Japanese commander, taken to the palace and there beaten up. All his lands, all his cattle—we had over a thousand cattle, farms, rice, they were all confiscated and he was left without means of sustaining his family and he had 14 children to support.

I was with him when in the middle of the night or two in the morning our entire family with 14 children, a baby of two weeks old, all hauled to the jail and put in a dungeon. He was taken and beaten day and night for two weeks. His life was saved by a murderer and a prostitute.

He shared a cell with a murderer and every time he was brought back by the Japanese after hours of torture, he was looked after by this murderer, his wounds were tended and he was hauled back again for torture.

My stepmother now is the only person with the courage in Agana to go to the Japanese authorities and plead for our lives. Finally, being completely, of course, ignored by the Japanese, in fact, asked why is he there?

She went to a prostitute who was close to the Japanese and asked please save the B.J. Bordallo family.

During that night we continuously heard a woman being tortured, screaming continuously. I was 13 years old and where the statue of Panapapa is now, I was laid on the ground and held by different men and I was tortured all night. I bear the wounds with me and I was crippled until the Americans landed in 1944, for 1 year.

When I was in the hospital, hundreds of Chamorros were there with me. Ben Martinez, now Monsignor Martinez was there. He was being operated on by a whole host of doctors because the entire Pedro Martinez family were arrested and were subjects, Mr. Chairman, to cruelties that are unimaginable.

All the girls were farmed out to different sectors of the Japanese forces and I recall one night when Mrs. Martinez was crying all night and the Japanese officer—she was kneeling on the ground and the Japanese officer had his sword ready to behead her because she went to the headquarters in Maningu, pleading for the life of her children, her daughters, and she said, kill me, but let my children go.

They were threatening her and they were ready to cut her head off, and threatening her.

Mr. Chairman, after I was liberated, I learned that my playmates in Agat were all 13, 14, 15 year old kids. Speaker Arriola said 50 girls in Agat were raped, but what he did not mention is they were all put in these bomb shelters, they were screaming, crying, "boys of Guam, help us."

They were all massacred, not just the girls, but the boys. Only one survived. He told me this story. These were my playmates.

Thank you, Mr. Chairman.

Mr. DE LUGO. Thank you for sharing that with us, Paul.

[Prepared statement of Mr. Bordallo follows:]

Testimony
of the
Honorable Paul J. Bordallo
Former Senator of the Guam Legislature
before the House Subcommittee
Insular and International Affairs
Hawaii State Capitol
Honolulu, Hawaii
on December 11, 1989

My name is Paul Bordallo, 59 years of age, born and raised in Agana (Hagatna) the principal town (songsong) of Guam (Guahan).

I have traveled all the way to Hawaii because of my deep and abiding concern for the political rights and aspiration of the people of Guam.

I am here to testify in favor of the Commonwealth Act, as a private citizen of Guahan, and not on behalf of any group or organization.

This is a turning point in our history. Our language and culture, social and economic relations, and very survival as^a people depends on the new political relationship to be forged between the United States of America and the People of Guam.

The Commonwealth Act protects and advances the legitimate national interests of the United States in its presence on Guam. The Commonwealth Act does and must protect the rights and serve to advance the aspirations of the people of Guam in the exercise of their internationally recognized right to self-determination. To understand us, you must know our history and the "Chamorro Spirit".

3,500 years ago our forefathers in planned voyages thru celestial navigation established themselves and their advanced Austro-Nesian culture in the Islands of the Marianas. We say to ourselves: "Hita taotao tano", translated "We are the People of the Land". After withstanding encroachment from outsiders for 150 years after

Magellan's arrival in 1521, we were invaded by the might of Spanish Armadas in 1668 and fought them for 30 years in the Chamorro-Spanish war, being reduced in numbers in the process from 100,000 to less than 2,000 by 1730. But the Spanish respected and admired our courage and fortitude and accepted us as their equal and we in turn embraced their culture and religion. Out of this relationship arose Neo-Chamorro culture infused still by the "Chamorro Spirit", and enriched by European Christian Civilization. We joined in keeping the Marianas for the next 200 years free of pirates, free-booters, and blackbirders who were then ravaging the Western Pacific.

But the Chamorros still yearned for their previous freedom and independence, for self-rule, which was not to be enjoyed under the Spanish.

Upon invasion and annexation of Guam by the United States, our grandparents and parents were at first overjoyed, expecting that the personal liberties and democratic rights incorporated in the United States Constitution would automatically extend to Guam. But joy turned to bitterness upon learning of being consigned by President McKindly to absolute military ^{Rule} under the Navy, ^{PB.} without provision for basic human and civil rights. By 1904 the first full fledged petition for civil rights was sent to the President and Congress, and others would follow until passage of the Organic Act of Guam.

But we did not despair, for despair we do not know. Enfused with the "Chamorro Spirit" we inherited from our forefathers who conquered the vast expanses of the Pacific, we proudly sought the

education and skills required for acceptance as equal by Americans we, without exception, proved our loyalty to the United States during the 30 months under Japanese occupation in World War II. Partly in recognition of this loyalty and commitment, Congress enacted the Organic Act of Guam granting U.S. Citizenship and purportedly granting to the People of Guam the powers of government as exercised by local governments in the United States.

But again our initial joy turned to bitterness and we felt betrayed, as we discovered that the military still held sway over our island, controlling Commerce, Land and Natural resources, public utilities, harbor and airport and highways, quarantining us from the rest of the world, including fellow Americans. We had to beg for our very survival. The military's overall policy was "Love it or Leave it". It is not surprising then that many of our people, including some of our best, left Guam for the States. They were not granted the opportunity to rebuild their Island. But we Chamorros who remained again did not despair. Instead we advanced our education and skills, proudly met all challenges and continue to petition for the right of self-government. We gained the extension of beneficial federal programs and congressional representation and the right to elect our own Governor by 1970, which we vastly extended self-rule.

However the social and economic progress following this political advancement has brought to us the greatest threat.....
the threat

becoming a minority in our homeland, becoming a landless, submerged class, inundated by foreign investment and immigration. To counter this threat we seek this change in our political status.

We are confident the Commonwealth Act before you would ensure the protection of our cultural identity and assure continued social and economic progress, paving the way for the ultimate exercise of our right of self-determination, and the attainment of either Statehood, Free Association or Independence.

Allow me to explain the "Chamorro Spirit", my brother-in-law Peter Siquenza, a Chamorro, who fought in Guadalcanal tells of a Marine officer saying you can always recognize a Chamorro because he walks like he owns the world. While this is said in humor, it reflects this truth; we will never accept being inferior as persons or in relation to others, certainly not on Guam.

You tell your children to excel because they could be President of the United States. Our children attend the same schools as yours, even Stanford, Harvard, Yale, U.C.L.A. How can we inspire them to excel, what is the ultimate achievement for them as American citizens? Can you understand then why we must protect and preserve their identity as first class citizens of Guam. Until such time as we are granted equality under the Constitution of the United States we shall and must struggle to preserve our rights to Guam as our homeland for the sake of our children.

The Commonwealth Act is in the best interest of the United States and the People of Guam, Guahan!

Thank You

Mr. DE LUGO. Now, we will hear from the Honorable Peter Perez, Senor Perez.

Mr. PEREZ. Good morning. I am grateful for the five minutes that you have to put up with me.

I am Pedro Diaz Perez, one of the first generation of Chamorros under the American rule on Guam. I am a private citizen. I do not come here as an official. I happen to be a near octogenarian who refused to be pastured out.

Mr. DE LUGO. Good for you.

Mr. PEREZ. I am here not to represent the living and the dead. I am here to represent the future generations of Guam. I would like to preface my remarks with the phrase "Hasta Manana." That is a common expression in Spanish ascribed to people who procrastinate.

We the people of Guam are often times accused of procrastinating. But why not? We learned the habit from the Spaniards who were our masters for over 200 years and also from our American masters for the last 90 years.

Every time we broach the question of self-determination, the U.S. invariably ignored the question by resorting to "Hasta Manana."

In 1901, a mere two years after America occupied Guam, 32 of our island leaders, including my venerable grandfather, Gregorio Cruz Perez, petitioned America to define the status of Guam in her relations to America. The response was "Hasta Manana." And every petition thereafter was met with the same response.

In a few more years, we would have been 100 years under the American flag but not under the American tradition of freedom, liberty and democracy. How much longer can we endure. I hope it is "Nada Mas." I hope it is not, "Uno Mas," and that this Commonwealth Act we are petitioning for is "Ultima Ves."

In my lifetime, longer than I care to admit, I have watched Guam play a critical role in every war that America was a participant during the 20th Century.

Beginning with World War I when I was a tiny tot, I watched Chamorros go to war for America, including on battlefields at the other side of the world. Among those selfless Chamorro patriots were the late Governor Joseph Flores, Juan (Male) Pangelinan, Manual Ada, Juan Perez, Maximo Afilleje, Manuel Quintanilla, Pedro Cepeda, Tomas Guzman, Vicente Aquiningoc and Vicente Flores.

During World War II, hundreds of Chamorro warriors fought and died for Uncle Sam. Some of them are still entombed in the battle-ships sunk at Pearl Harbor, literally a stone's throw away from this hearing room.

Among the young Chamorros whose names are emblazoned in marble at the U.S.S. *Arizona* Memorial were G. San Nicolas Aguon, F.R. Mafnas, J.S. Quinata, F.U. Rivera, F. Santos, V.G. Meno and N. San Nicolas Fergurgur.

At the Punch Bowl Cemetery near Diamond Head, you will find the names of other Chamorros who died for Uncle Sam in other parts of the world but whose remains were never recovered.

At the outbreak of World War II, I volunteered to do my share for my adopted country and I proudly wore the U.S. Navy uniform but, like many others, I was impounded by the Japanese Imperial

forces for the duration of the war. I was imprisoned and brutalized by the enemy but this was a small sacrifice for my loyalty to America.

Then came the Korean War. This was the first war in which the draft laws were applied to the Chamorros. Needless to say, there was no need for a selective service board in Guam. In this war, as in all other wars, Guam was always over-subscribed in its quota for manpower to defend America.

In his assessment of the draft situation in Guam, the local director of the selective service board said, and I quote: "I have never had any problems getting enough men to meet the requirements of the Department of Defense. In fact, during the Korean War, a great many of those who fought were volunteers. Even at the height of the war there were more men in the waiting list than we were authorized to induct."

Can you say the same thing about other communities in America?

During the Vietnam conflict, history was fair to the willful participation of Guam. We have always tooted our horn that Guam had more fatalities in that war than any comparable community in America.

Seventy-one Chamorro names are imprinted on the Vietnam Memorial in Washington, D.C., but where we should toot our horn louder is the ratio of volunteers to draftees who stepped forward to put their lives on the line. This was our way of saying let me do something. And we hadn't heard President Kennedy deliver his immortal remarks of, "Ask not what your country can do for you, but ask what you can do for your country."

And speaking about Vietnam, have we ever burned the American flag? Have we ever done anything other than adore Old Glory? Have we ever turned our backs on America? Never.

I do not wish to be told that America is not ready to do that which is right for Guam. America is too noble a country to treat Guam casually or indifferently.

President Bush has been deeply moved by developments in Eastern Europe where people are craving for democracy and self-government. If only he would set his eyes at the Pacific and see the plight of his own adopted brothers and sisters in Guam.

Guam has spilt too much blood for America in years past. I will no longer accept "Hasta Manana."

Thank you. Mahalo. Si Yuus Maase. Gracias.

To Guam, 32 leaders of Guam—and I would like to copy others who mention about ancestors, brothers and uncles. My grandfather was one of the signers of the petition asking America to define the status of Guam in her relationship to America. That was my grandfather and here I am a great grandfather.

[Applause.]

Mr. PEREZ. How many more generations, how many forefathers, how many fathers and grandchildren does it take to answer one problem? What am I?

In another few more years we will be 100 years under the American flag but not under the American tradition of democracy, liberty and freedom.

How much longer can we endure this? I would like to borrow the phrase from Roberto Duran "No Mas." [Laughter.]

I hope it is not Nada Mas. I hope it is not Uno Mas. And I hope that what we are pleading with you people for is that it is going to result in Ultima Ves.

In my lifetime, longer than I care to admit, I have watched Guam play an important role in the history of America in every war and all the presentations here this morning have forgotten the people of my contemporaries. They spoke about Vietnam, they spoke about Korea, they spoke about World War II. Why can't they remember about those who went in World War I? Chamorros went to battlefields in Europe and there were many Chamorros in the fleet.

Now, I see the red light, so all I would like to say now is that the Chamorros have paid their dues. We do not have to go outside Honolulu. We have Chamorros with their names emblazoned in marble at the U.S.S. *Arizona* at Pearl Harbor, literally a stones throw from here. We go to Punch Bowl, you find names the names of Chamorros there, not only in Washington, D.C.

We have spilt enough blood. We have paid our dues. I personally paid a little part my dues and that was just a small way of saying let me do it my way. Let's show America in our own way of what we can do for America. This was long before Kennedy ever said, "Ask not what your country can do for you, but what you can do for your country."

No more has Hasta Manana, please.

[Applause.]

[Prepared statement of Mr. Perez follows:]

TESTIMONY OF PEDRO DIAZ PEREZ
 FORMER SENATOR, FORMER MEMBER OF
 GUAM COMMISSION ON SELF-DETERMINATION,
 AND MEMBER OF GUAM INSULAR GUARD FORCE
 (RET.) AT U.S. CONGRESSIONAL HEARINGS
 ON GUAM COMMONWEALTH ACT, HONOLULU,
 HAWAII, DECEMBER 11 AND 12, 1989.

"HASTA MANANA"!

"HASTA MANANA" IS A COMMON EXPRESSION IN SPANISH ASCRIBED TO PEOPLE WHO PROCRASTINATE. WE IN GUAM ARE OFTEN ACCUSED OF PROCRASTINATING. BUT, WHY NOT? WE ADOPTED THE HABIT FROM THE SPANIARDS, OUR MASTERS FOR MORE THAN 200 YEARS, AND FROM THE AMERICANS, OUR MASTERS FOR THE PAST 90 YEARS.

EVERYTIME WE BROACHED THE QUESTION OF POLITICAL STATUS, THE UNITED STATES INVARIABLY AND CONVENIENTLY IGNORED THE QUESTION BY RESORTING TO "HASTA MANANA."

IN 1901, A MERE TWO YEARS AFTER AMERICA OCCUPIED GUAM, 32 OF OUR ISLAND LEADERS, INCLUDING MY VENERABLE GRANDFATHER, GREGORIO CRUZ PEREZ, PETITIONED AMERICA TO DEFINE THE STATUS OF GUAM IN HER RELATIONS TO AMERICA. THE RESPONSE WAS "HASTA MANANA." AND EVERY PETITION THEREAFTER WAS MET WITH THE SAME RESPONSE! IN A FEW MORE YEARS, WE WOULD HAVE BEEN 100 YEARS UNDER THE AMERICAN FLAG BUT NOT UNDER THE AMERICAN TRADITION OF FREEDOM, LIBERTY AND DEMOCRACY. HOW MUCH LONGER CAN WE ENDURE. I HOPE IT IS "NADA MAS." I HOPE IT IS NOT, "UNO MAS," AND THAT THIS COMMONWEALTH ACT WE ARE PETITIONING FOR IS "ULTIMA YES."

IN MY LIFETIME -- LONGER THAN I CARE TO ADMIT -- I HAVE WATCHED GUAM PLAY A CRITICAL ROLE IN EVERY WAR THAT AMERICA WAS A PARTICIPANT DURING THE 20TH CENTURY. BEGINNING WITH WORLD WAR I

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WHEN I WAS A TINY TOT, I WATCHED CHAMORROS GO TO WAR FOR AMERICA, INCLUDING ON BATTLEFIELDS AT THE OTHER SIDE OF THE WORLD. AMONG THOSE SELFLESS CHAMORRO PATRIOTS WERE THE LATE GOVERNOR JOSEPH FLORES, JUAN (MALE) PANGELINAN, MANUEL ADA, JUAN PEREZ, MAXIMO AFLLEJE, MANUEL QUINTANILLA, PEDRO CEPEDA, TOMAS GUZMAN, VICENTE AQUININGOC AND VICENTE FLORES.

DURING WORLD WAR II, HUNDREDS OF CHAMORRO WARRIORS FOUGHT AND DIED FOR UNCLE SAM. SOME OF THEM ARE STILL ENTOMBED IN THE BATTLESHIPS SUNK AT PEARL HARBOR, LITERALLY A STONE'S THROW AWAY FROM THIS HEARING ROOM. AMONG THE YOUNG CHAMORROS WHOSE NAMES ARE EMBLAZONED IN MARBLE AT THE USS ARIZONA MEMORIAL WERE G. SAN NICOLAS AGUON, F.R. MAFNAS, J.S. QUINATA, F.U. RIVERA, F. SANTOS, V.G. MENO AND N. SAN NICOLAS FERGURGUR. AT THE PUNCH BOWL CEMETERY NEAR DIAMOND HEAD, YOU WILL FIND THE NAMES OF OTHER CHAMORROS WHO DIED FOR UNCLE SAM IN OTHER PARTS OF THE WORLD BUT WHOSE REMAINS WERE NEVER RECOVERED.

AT THE OUTBREAK OF WORLD WAR II, I VOLUNTEERED TO DO MY SHARE FOR MY ADOPTED COUNTRY AND I PROUDLY WORE THE U.S. NAVY UNIFORM BUT, LIKE MANY OTHERS, I WAS IMPOUNDED BY THE JAPANESE IMPERIAL FORCES FOR THE DURATION OF THE WAR. I WAS IMPRISONED AND BRUTALIZED BY THE ENEMY BUT THIS WAS A SMALL SACRAFICE FOR MY LOYALTY TO AMERICA.

THEN CAME THE KOREAN WAR. THIS WAS THE FIRST WAR IN WHICH THE DRAFT LAWS WERE APPLIED TO THE CHAMORROS. NEEDLESS TO SAY, THERE WAS NO NEED FOR A SELECTIVE SERVICE BOARD IN GUAM. IN THIS WAR, AS IN ALL OTHER WARS, GUAM WAS ALWAYS OVER-SUBSCRIBED IN ITS QUOTA FOR MANPOWER TO DEFEND AMERICA. IN HIS ASSESSMENT OF THE DRAFT SITUATION IN GUAM, THE LOCAL DIRECTOR OF THE SELECTIVE SERVICE BOARD SAID, AND I QUOTE: "I HAVE NEVER HAD ANY PROBLEMS GETTING ENOUGH MEN TO MEET THE REQUIREMENTS OF THE

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DEPARTMENT OF DEFENSE. IN FACT, DURING THE KOREAN WAR, A GREAT MANY OF THOSE WHO FOUGHT WERE VOLUNTEERS. EVEN AT THE HEIGHT OF THE WAR THERE WERE MORE MEN IN THE WAITING LIST THAN WE WERE AUTHORIZED TO INDUCT." CAN YOU SAY THE SAME THING ABOUT OTHER COMMUNITIES IN AMERICA?

DURING THE VIETNAM CONFLICT, HISTORY WAS FAIR TO THE WILLFUL PARTICIPATION OF GUAM. WE HAVE ALWAYS TOOTED OUR HORN THAT GUAM HAD MORE FATALITIES IN THAT WAR THAN ANY COMPARABLE COMMUNITY IN AMERICA. SEVENTY-ONE CHAMORRO NAMES ARE IMPRINTED ON THE VIETNAM MEMORIAL IN WASHINGTON, D.C. BUT WHERE WE SHOULD TOOT OUR HORN LOUDER IS THE RATIO OF VOLUNTEERS TO DRAFTEES WHO STEPPED FORWARD TO PUT THEIR LIVES ON THE LINE. THIS WAS OUR WAY OF SAYING "LET ME DO SOMETHING MY WAY." AND WE HADN'T HEARD PRESIDENT KENNEDY DELIVER HIS IMMORTAL REMARKS OF "ASK NOT WHAT YOUR COUNTRY CAN DO FOR YOU BUT ASK WHAT YOU CAN DO FOR YOUR COUNTRY."

AND SPEAKING ABOUT VIETNAM, HAVE WE EVER BURN THE AMERICAN FLAG? HAVE WE EVER DONE ANYTHING OTHER THAN ADORE OLD GLORY? HAVE WE EVER TURN OUR BACKS ON AMERICA? NEVER!

I DO NOT WISH TO BE TOLD THAT AMERICA IS NOT READY TO DO THAT WHICH IS RIGHT FOR GUAM. AMERICA IS TOO NOBLE A COUNTRY TO TREAT GUAM CASUALLY OR INDIFFERENTLY.

PRESIDENT BUSH HAS BEEN DEEPLY MOVED BY DEVELOPMENTS IN EASTERN EUROPE WHERE PEOPLE ARE CRAVING FOR DEMOCRACY AND SELF-GOVERNMENT. IF ONLY HE WOULD SET HIS EYES AT THE PACIFIC AND SEE THE PLIGHT OF HIS OWN ADOPTED BROTHERS AND SISTERS IN GUAM.

GUAM HAS SPILT TOO MUCH BLOOD FOR AMERICA IN YEARS PAST. I WILL NO LONGER ACCEPT "HASTA MANANA."

THANK YOU. MAHALO. SI YUUS MAASE. GRACIAS.

Mr. DE LUGO. Frank, Paul and Peter, on behalf of the subcommittee let me thank you all. We had the youth here with a tremendous presentation and we have now the voice of experience here in your golden years. I am not far away from you either. That is why I treated you gently today.

Thank you very much.

Mr. FUSTER. Mr. Chairman, Un Momento.

Mr. DE LUGO. One moment. Uno mas.

Mr. PEREZ. Okay, Uno Mas.

Mr. FUSTER. Mr. Chairman, I wanted to pose a question to you. I was tempted to put it to the younger people but I spent many years before I came to Congress as a university professor and I wasn't sure whether asking that question, would be fair but you are senior experienced persons.

I wonder if you have any thoughts you might want to share with us as to why your very legitimate aspirations have met so many "Hasta Mananas"?

The reason I raise this with you is because I am really overwhelmed by some of the things that I have experienced here. I am not even sure that I want to stay a member of this subcommittee after this. [Laughter—applause.]

As an islander and somebody who has begun this quest that you have, Mr. Chairman, earlier than you did, I probably know better than you do the obstacles that are ahead.

In your case, particularly, you have a record of patriotism that is probably unparalleled in any of us certainly because you were closer to the fire, let's say, so you had to expose yourself more and give more of yourselves.

If anybody can make a case for your very legitimate aspirations, it is your people.

Any human group has a right, a natural God given right to what you want, but, in addition to that, you pay with blood for the right to have it. Yet, as I mentioned yesterday, there is a gap between what you want and what is probably achievable. You are sort of putting the burden on this subcommittee and, as I told you yesterday, you could have my vote today if we had a mark-up session.

As a member of Congress I have misgivings about some of the things in the bill, the way it is drafted and the political realities but in the essence of things you could have my vote right now.

But that is not going to change things a lot and I think you should not be misguided into believing this is a very powerful committee. We have, as you mentioned, acquired strengths that delegates did not have in the past, but that fact does not change the reality that there is a big up hill journey on things that have to be done in Congress.

I can certainly commit myself with my vote in this subcommittee and in full committee and commit whatever skills I have to trying to have my colleagues in the full Congress understand the legitimacy and urgency of your petitions. But I would not be an honest person if I told you that that is still not nearly enough. You are in a process that is really uphill, and it is not easy to see hope without a lot of struggles and a lot of giving up on some of the dreams down the road. I know this. We have been through that. We have been through that.

I find myself somewhat mystified by your very hopeful aspirations about commonwealth when we are beginning to have some doubts about how far commonwealth so developed. So I wonder—and this is what I was leading to—how much thought have you given to what has to be done? How much thought have you given to why, having a perfect right to that to which you aspire, having paid a very high price for what you are, being citizens of the most democratic nation in the world, you are still in a precarious situation, in the predicament of not seeing the light at the end of the tunnel easily?

What else needs to be done in terms of your own struggle? I don't want to suggest anything to you along those lines, but you yourselves keep alluding to what is happening in Eastern Europe. What happened in Eastern Europe didn't come out of merely saying "please."

Some of those things have to be forced to occur. What I am telling you is that you have my full support but if you believe that this committee alone can do it for you, I wouldn't have that kind of hope even though I know how strong the leadership can be in people like Ron de Lugo. But the problems are many along the way.

We have had a process for you to tell us what you want. We have heard it in 50 different ways, all of them very eloquent. And I don't see how any reasonable and just person can differ with you. But it is not merely a problem of justice. That is what I am driving at. It is not merely a problem of justice. It is not merely a problem of democracy.

It is not a problem of sensitivity to your patriotism, although I agree that there is a problem along that line. There are insensitive people to your kind of patriotism. That shouldn't be the case but that is the reality of the world we live in.

I think it would serve you well to, in addition to hoping and confiding in the things that guys like ourselves can do, you give a lot of serious thought to what is the nature of the problem, to what is the nature of the obstacles, to what else needs to be done?

We have discussed some of that during the last two days. We have tried to suggest, for example, that in a very complex process such as the one you are involved in, there has to be some flexibility in order to negotiate and come to agreements, but I want to go beyond that. That is an important part of the picture, but what else needs to be done?

I wonder. Do you have any ideas that you want to share with us? I am sure you have. I wonder if you would share them with us. I am talking about what may need to be done and what other strategies and developments are needed for this process to work out.

Mr. PEREZ. Mr. Fuster, I think the main fear of our people in regards to a change of status on Guam is not necessarily the change in title because title doesn't mean a thing. It is what is incorporated in the title that counts.

I, for one, feel it doesn't make a bit of difference whether Guam becomes a commonwealth if it is just the title that changes. I hate to see that this act is watered down to the label, unacceptable to the people of Guam.

I realize this is a give and take situation. It is not a question of setting our foot down and saying this is it, or nothing.

But we hope that we will get something substantially that will be acceptable to the people when the final bill is presented to the people for ratification.

To get everything in the way it is presented now, that is very ideal and nothing better can happen to the people of Guam. But in the game of politics, in the game of negotiations, I am not kidding myself. It is a give and take situation.

Mr. DE LUGO. Paul?

Mr. BORDALLO. Mr. Fuster, from Guam I went to the Harvard Business School where one of my friends and classmates is the budget director of Puerto Rico, 1954. I returned to Guam.

The chief American interest in Guam was a military base, Japan, Philippines. They would not allow the United States to store nuclear material. Guam is the chief storage for nuclear material, missiles, bombs, military bases. It is a very, very important military base and, for this reason, the military determined what happens in Guam.

The admiral used to call himself the mayor of Guam—really—that Guam has two governments, one the military government.

I came from Stanford and Harvard Universities and I chose to remain in Guam because that is my homeland. I would not leave it.

In 1970, as a Senator, I came to Hawaii in the Pacific Conference and I blasted the military. I said the presence of the military in Guam has been an unmitigated disaster for the people of Guam.

At the same time, three years later with Professor Donald McHenry who became the United Nations Ambassador of the United States, in a meeting I said there must be a vision of Guam, and my vision—I will repeat it and I have not shared it with everyone in Guam—is that Guam and the islands with Micronesia will become the future State of Pacifica.

It would be either—this is a interim status of commonwealth that would lead ultimately and not too long in my vision to either statehood or independence. That is what I can say to you, Mr. Fuster, that as a unincorporated territory, even as a commonwealth, the truth is all these years we have had a police state in Guam.

Let me ask Congressman Blaz one question—Guam is either foreign or domestic as interpreted by the whims of the agencies involved. Now is Guam foreign or domestic to the CIA, to the security agencies of the United States? I wouldn't even have to elaborate on that.

If the American defense interests are threatened because of this Chamorro nationalism, to what extent would the United States act to suppress it? I have had to face that question.

[Applause.]

Mr. DE LUGO. Thank you.

I want to thank all of you for your contributions to this hearing.

I hope you think very carefully about the remarks of Congressman Fuster. You heard a lot of the frustrations perhaps that he reflects, a century or more of frustrations of the people of Puerto Rico as they have struggled to define their political status with the United States.

I think that what he was telling us was that it was a very, very difficult process.

I will say this to you as the Chairman of this subcommittee and one who has spent my entire adult life in politics and in the struggle for more self-government for my people and one who has lived through many, many changes, many changes that have brought more power to my people.

I say that we can change things. There is no question about that. I opened this hearing this morning by reading an Associated Press report that the President had signed the bill for Palau. We changed that situation. We stood up to the administration. We stood up to the other body as we call it back on Capitol Hill, and we made the changes that had to be made to preserve what we saw were crucial changes to preserve democracy in Palau and we can do the same thing for the people of Guam. We have to work together to do that.

[Applause.]

Mr. DE LUGO. Yes.

Mr. LUJAN. Could I respond to the professor's question?

Mr. DE LUGO. Certainly.

Mr. LUJAN. You pose the question, what can we do to persuade, to change the mind of this Congressman from the first district of South Carolina.

I don't know that we have any easy answer to that. As a professor, I think you have heard all the intellectual answers for the status question.

I thank the gentleman from American Samoa for giving that idea that we have to give you the responses that comes from the heart and let me just, from the questions you posed yesterday, just take one provision of the Commonwealth Act and that is the immigration question.

We need to control immigration into Guam. Guam is very unique. It is a small land area, a small population. The immigration laws were designed for a continent of over 200 million people—over 200 million people, and a vast land area.

We experienced during the Vietnam war when the military forces brought in over a 100,000 Vietnamese, doubling over night the population of Guam. We were scared. We were scared. So we need to have that control over immigration, Mr. Chairman, so that we can progress rationally. We need to do that, otherwise the Chamorros of Guam will disappear.

If you don't give us those provisions even if they are so controversial, Mr. Chairman, it will be a holocaust. It will be our holocaust, Mr. Chairman.

We as an ethnic group will disappear. I don't know, Mr. Chairman, whether that would move that Congressman from the first district of South Carolina, but that is the way I feel about that.

I don't know whether there is any easy answers.

Thank you very much.

Mr. DE LUGO. Thank you.

Mr. FALEOMAVAEGA. Will the Chairman yield?

Mr. DE LUGO. The gentleman from American Samoa.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

I want to say that in adding to what the gentleman from Puerto Rico has thus far stated in terms of the realities separate and apart from the ideal situation, in looking at the substance of the proposed commonwealth bill—correct me if I am wrong on this, Mr. Chairman, procedurally in terms of how Congress operates—each committee is very, very protective of its own particular turf and jurisdictions and because of the variety of substantive issues that are reflected in the bill, let me tell you, Armed Services Committee will want a look at it, Education and Labor will look at it, Judiciary Committee will want to look at it, the Ways and Means Committee will want to examine it, Foreign Affairs may want to look at it, Energy and Commerce Committee may want to look at it, Public Works and Transportation also may want to look at it, and the Merchant Marine and Fisheries Committee may want to examine it.

The point I make is we will have as many as eight or nine committees of Congress that will be saying, hey, we have a say in this. This is just on the House side.

Mr. DE LUGO. Just the House side, that is right.

Mr. FALCOMA. Just the House side, so you see, I just want to reflect on what the gentleman from Puerto Rico is saying, in it is reality that we, as mentioned, are faced with.

Given the proposal the way it now stands, I would say that with all due respect to my Chairman, this is the kind of thing that he is going to be faced with when he meets with other committee chairmen, how we can best work on this.

By the time eight other committees review this, we don't know what will be the result of this because each committee exercises its own independence on how it may want to correct or say this may not exactly be what the people, the Chamorros may want.

I want to express that concern as expressed by the gentleman from Puerto Rico.

Mr. DE LUGO. I want to thank you for that observation, I say to the gentleman from American Samoa.

I just want to say we are having one hell of a hearing.

[Applause.]

Mr. DE LUGO. We didn't come here to conduct any super official hearing and the record that is being made here today is a powerful record.

I said before and I will say it again, anyone who reads this record, anyone who was here and observed what took place yesterday and today, would have to be moved.

To tell you the truth, we are anxious to get to the administration witnesses, not to get to them to attack the administration because I think everyone has made their case. I think we are all trying to do the same thing. We all want to do the same thing. It has been outlined by the gentleman from Puerto Rico and the gentleman from American Samoa how difficult it is going to be, but it can be done.

[Applause.]

Mr. DE LUGO. I don't believe in lost causes. I believe in winning. I believe in getting it done. But we are going to have to work together to get it done and it is going to take the Guamanian leaders working with Congress and with the administration as well.

When we move this out of our committee, we have to have a package that we can defend when it goes to the other committees. You want control over immigration? That means it has to go to the Judiciary Committee. You want more power regarding headnote 3(a) or taxes. That means it has to go to the powerful Ways and Means Committee.

We have to protect your legislation and you have to help us protect it when we go before Chairman Rostenkowski and the members of that committee. And we need the help of the administration most of all.

Let me say this, I have read the testimony that is going to be given here today, this afternoon, by the assistant secretary. She doesn't rubber stamp the administration—the administration does not rubber stamp the commonwealth package. I have heard administrations, all kinds of administrations, make presentations and many, many times, too many times, it's been totally negative. But the statement that will be made by Assistant Secretary Stella Guerra this afternoon is not totally negative. It points out areas that the administration has problems with. That does not mean Congress agrees with them, but these are areas that for one reason or another, the administration and that task force has problems with.

But they did not take a totally negative position that we oppose this, nothing can be done, and so on. In my reading of the testimony that will be received this afternoon, they take a position of trying to accommodate. I do not get the feeling that their feet are set in concrete. This is the important thing.

So it will be important that the Guam leaders continue to work with the administration. We will work with the administration, too. So that all of us together for our country—the United States of America—can bring about a tremendous achievement because it will be a tremendous achievement for our country.

Our country has never really faced up to how it deals with the off-shore areas. That is what we are trying to do here today. It is not only good for the Chamorros people and the people of Guam; it is good for the United States of America. That is what this hearing is about.

Thank you very much.

Now, if you would bear with the tyranny of the Chair, I will have to keep you within the five minute rule because we are falling behind and we have a lot to do.

We have many more witnesses to hear and we will have to break for lunch and then we have to hear from the administration and there are many questions we want to ask of the administration and have time for exchanges.

Let us call the next panel. I would like to ask everyone to stay within the five minutes and when the red light comes on, just complete your thought. If not, I will cut you off.

Our next panel is Mr. Fredrick Quinene, Ms. Candy Rios, Mr. Ben Pangelinan, Democratic Party of Guam; Mr. Eduardo Calvo, Guam Chamber of Commerce, and Mr. Arthur Barcinas.

PANEL CONSISTING OF FREDRICK QUINENE, CANDY RIOS, BEN PANGELINAN, EDUARDO CALVO, GUAM CHAMBER OF COMMERCE, AND ARTHUR BARCINAS

Mr. DE LUGO. First, we will have Fred Quinene.

Mr. QUINENE. Thank you, Mr. Chairman.

Good morning, Mr. Chairman, and members of the committee. We thank you for this opportunity.

On behalf of the Chairman of the Democratic Party of Guam, my family, both immediate and extended family, I appear today to express our very strong support for passage of H.R. 98.

Without objection, permit me to offer two poems I have authored. First, "The Quest for a Commonwealth."

What is the real relationship
Of Guam to the U.S. of A?
No Matter what is really said
Guam is still a colony today.
Guam has remained all these years
Nothing but the spoils of war,
Her seeking greater self rule is
Not unlike reaching for a star.
Is our quest for a commonwealth
To be met by a torpedo?
Will Guam be forever treated
Not like family but more of a foe?
Years ago Congress had Declared
When Guam is ready she will nod,
And Guam will be self-governed
Or was that only a facade?
Was that intention Uncle Sam
Only promises ephemeral,
For granting Guam self government
Are only intends far from real?
Will your promises become true
Or are they just anomalies?
Will Guam always be subservient
And their quests be only follies?
To this day Congress still refers
To Guam as her possession,
Isn't it unconstitutional to own
People no matter what the reason?
Please be generous to this land
Grant her people true dignity.
Cease your role of master to slave
In terms of no uncertainty.
The status of commonwealth will
Replace an act that's out-dated.
For truly the Organic Act
Is now naught but antiquated.
The draft act being sent to you
Will surely be Guam's guide and tool,
Though not perfect we ask of you
The concepts you wouldn't over-rule.
Shouldn't you now Uncle Sam
Prove to the world again,
For justice you'll allow all
Their true desire to attain?

The next poem, ladies and gentlemen, is titled "What Am I," written in 1986. I think it is appropriate today.

My great and dearest Uncle Sam,
This poem is addressed to you;
For I do not know what I am.
I want to know,

I really do.
 Forget that you took control in 1898 to 1941,
 And began your rule again after World War II was won.
 In August of 1950,
 The Organic Act came to Guam.
 This act that was to fix it,
 But I still don't know what I am.
 Thirty-nine long years have gone by,
 Many years of I know not what.
 I still do not know what am I,
 Nor where I am going, nor where I am at.
 In your hollowed halls of Congress,
 Am I really represented?
 I know that in your Senate,
 I have never been consented.
 Uncle, when it suits your fancy,
 I am a citizen of yours,
 And when it does not suit you,
 I am no citizen, of course.
 You say you do not colonize,
 Yet, I know Guam is a colony.
 You see, I am your citizen,
 Then why is it I don't feel free?
 You promised me a lot of things,
 One is self-determination.
 Yet, I cannot get even this,
 Without your inclination.
 Yes, you pour all kinds of goods,
 In my lovely little island,
 But you hit me on my knee,
 When I will try to stand.
 Even when you're clothing me,
 I feel stripped of dignity,
 Which makes me ask you what am I,
 Please, Uncle Sam, will you tell me?
 It's true, you educate me,
 But for what and then for why?
 For even with all that I have learned,
 I still know not what am I.
 You say you are the champion,
 of all men who are oppressed,
 So if I am a part of you,
 Why do I still feel depressed?
 I beg of you if nothing else,
 To recognize I am a man,
 I want my self-determination,
 Please grant it for I know you can.
 I do believe my Uncle Sam,
 That I am not sure enough right now,
 That I can decide my destiny,
 For you yourself have shown me how.
 Please allow me, Uncle Sam,
 This little shred of dignity.
 I am not asking for much more,
 Than that which you have promised me.
 Let me take this cobweb
 Off of my deeply troubled mind.
 I really want to know what I am.
 This treasure I would like to find.
 Grant me the right to reach for goals,
 No matter if the goal is high.
 Allow me to expand myself,
 And let me find out what am I.

In closing, Mr. Chairman, there were comments that you, the members, made that I feel I would like to have loved to respond, but I will take the last ones.

You mentioned that committees and administration will look over the draft act. Please remind everyone the draft act does not seek to govern anybody else but ourselves.

Please, we do not want to have anything to do with education that will involve or affect the people over there. It is our education, our economics, our policies, ourselves.

Thank you, Mr. Chairman, and members.

[The poem of Mr. Quinene follows:]

*Presented on the 2nd day
of Hearing on the 98 in
the Hawaii State Capital
Building, Dec. 12, 1989.*

WHAT AM I

My great and dearest Uncle Sam,
This ~~poem~~ is addressed to you,
For I do not know what I am,
I want to know, I really do.

Forget that you ruled Guam,
From 1899 to 1941,
And then began your rule again,
After WWII was won.

In August of 1950,
The Organic Act came to Guam,
This Act made me your citizen,
But I still don't know what I am.

Thirty-^{nine} long years have gone by,
Many years of I know not what,
I still do not know What am I,
Where am going, no where am at.

In your hallowed halls of Congress
Am I really represented?
And I know that in the Senate
I have never been Consented.

Uncle, when it suits your fancy,
I am a citizen of yours,
And, when it does not suit you
I am No citizen of course.

You say you do not colonize,
Yet I feel Guam is a colony.
You say I am your citizen,
Then why is it I don't feel free?

You promised me a lot of things,
One is self-determination.
Yet I cannot get even this,
Without your inclination.

Yes, you pour all kinds of goods
Into my lovely little land,
But then you'd hit me on my knee
When I would try to stand.

Even when you're clothing me,
I still feel stripped of dignity.
Which makes me ask you, What am I?
Please Uncle Sam will you tell me?

It is true you educate me,
But for what and then for why,
For even with all that I have learned,
I still know not what am I.

You say you are the champion
Of all men who are oppressed,
So if I am a part of you,
Why do I still feel depressed?

I beg of you to recognize,
If nothing else I am a man,
I want my self determination,
Please grant it for I know you can.

I do believe my Uncle Sam,
That am mature enough right now,
That I can decide my destiny,
For you yourself have shown me how.

Please allow me Uncle Sam,
This little shred of dignity,
I am not asking for much more,
Than that which you have promised me,

Let me take this cobweb off,
Off my deeply troubled mind,
I really want to know what I am,
This treasure I will like to find.

Grant me the right to reach for goals
No matter if the goal is high,
Allow me to expand myself
And let me find out what am I.


Written by: Frederick B. Quinene

Date: August 01, 1986

(C)
Frederick B. Quinen

Quest For A Commonwealth

What is the real relationship
Of Guam to the U.S. of A?
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Guam is still; a colony today.

Guam has remained all these years
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To be met by a torpedo?
Will Guam be forever treated
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Years ago Congress had Declared
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To this day Congress still refers
To Guam as her possession,
Isn't it unconstitutional to own
People no matter what the reason?

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Cease your role of master to slave
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The status of Commonwealth will
Replace an act that's out-dated.
For truly the Organic Act
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The draft act being sent to you
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The concepts you wouldn't over-rule.

Shouldn't you now Uncle Sam
Prove to the world again,
For justice you'll allow all
Their true desire to attain?

By: Frederick B. Quinene

Mr. DE LUGO. Thank you, Frank.

That was a very beautiful reading of your poems. Thank you very much. Very moving.

Next, we have Candy Rios.

Ms. Rios. Thank you.

Mr. Chairman, members of the panel, my name is Candy Rios, a resolution which I would like to read:

Introduced by: Jose R. Duenas, Priscilla T. Tuncap, Frances P. Hudgens, Dorothy F. Perez and all other members.

Relative to requesting the House Interior Subcommittee on Insular and International Affairs to urge the Congress to enact pending legislation granting self-determination to the people of Guam.

We, the undersigned delegates of the Democratic Party of Guam, in order to form a more perfect government by establishing the Commonwealth of Guam, thereby ensuring domestic tranquillity, promoting the general welfare, and securing the blessings of liberty to the people of Guam and to their posterity, do hereby respectfully request the House Interior Subcommittee on Insular and International Affairs to urge speedy action by the Congress on the pending Guam Commonwealth Act, and to that end, submit the following:

Recital of facts. Whereas, the United States of America, with the world's oldest written constitution, has for the hundred years exemplified the ideals of personal liberty, individual freedom and self-determination, and hence, Guam's history as a basically non-self-governing dependency of the United States is a century-old anomaly that demands correction, a situation where that part of the great American union farthest removed from the North American mainland is treated not as a self-governing community incorporated within that great union but as a colony with strictly limited rights and totally subject to the whims and vagaries of Congress; and, whereas, the people having voted overwhelmingly in an island-wide plebiscite and referendum for change from its current colonial status to that of a Commonwealth of Guam; and, whereas, this act in its present form thus being the embodiment of the political desires of the people of Guam, which persuades the undersigned that for the act to be meaningful, it should be adopted by the Congress and signed by the President in the form submitted, since legislation giving Guam self-government within the American Union would adhere to the express wishes of the people involved and should not be subject to arbitrary amendment and other changes not consistent with the carefully thought out positions of the people of Guam as set forth in the pending legislation;

Now, therefore, in testimony whereof, the undersigned officers of the Democratic Party of Guam respectfully pray that the House Interior Subcommittee on Insular and International Affairs respond favorably to our petition, hereunto subscribing our names in support thereof this 8th day of December, 1989, in the city of Agana, Guam.

By: Jose R. Duenas, Chairperson; Priscilla T. Tuncap, Vice Chairperson; Frances P. Hudgens, Treasurer; Dorothy F. Perez, Secretary.

Thank you.

[Prepared statement of Ms. Rios follows:]



DEMOCRATIC PARTY OF GUAM



Resolution No. 1

Introduced by: Jose R. Duenas
Priscilla T. Tuncap
Frances P. Hudgens
Dorothy F. Perez
and all other Members

RELATIVE TO REQUESTING THE HOUSE INTERIOR SUBCOMMITTEE ON INSULAR AND INTERNATIONAL AFFAIRS TO URGE THE CONGRESS TO ENACT PENDING LEGISLATION GRANTING SELF-DETERMINATION TO THE PEOPLE OF GUAM.

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RECITAL OF FACTS

WHEREAS, the United States of America, with the world's oldest written constitution, has for the hundred years exemplified the ideals of personal liberty, individual freedom and self-determination, and hence, Guam's history as a basically non-self-governing dependency of the United States is a century-old anomaly that demands correction, a situation where that part of the great American union farthest removed from the North American mainland is treated not as a self-governing community incorporated within that great union but as a colony with strictly limited rights and totally subject to the whims and vagaries of Congress; and

WHEREAS, the people having voted overwhelmingly in an island-wide plebiscite and referendum for change from its current colonial status to that of a Commonwealth of Guam; and

WHEREAS, this Act in its present form thus being the embodiment of the political desires of the people of Guam, which persuades the undersigned that for the Act to be meaningful, it should be adopted by the Congress and signed by the President in the form submitted, since legislation giving Guam self-government within the American Union should adhere to the express wishes of the people involved and should not be subject to arbitrary amendment and other changes not consistent with the carefully thought out positions of the people of Guam as set forth in the pending legislation; now, therefore,

In testimony whereof, the undersigned Officers of the Democratic Party of Guam respectfully pray that the House Interior Subcommittee on Insular and International Affairs respond favorably to our petition, hereunto subscribing our names in support thereof this 8th day of December, 1989, in the city of Agana, Guam.

Jose R. Duenas
JOSE R. DUENAS
Chairperson

Frances P. Hudgens
FRANCES P. HUDGENS
Treasurer

Joseph A. Aguirre
Joseph A. Aguirre

Rita White Longa
Rita White Longa

Rita White Longa

Jose L. H. Perez

Guadalupe S. Lopez

Theresa M. Diego

Theresa Babauta

Priscilla T. Tunca
PRISCILLA T. TUNCA
Vice Chairperson

Dorothy F. Perez
DOROTHY F. PEREZ
Secretary

James P. Camacho

James P. Camacho

James S. Salen

Catalina M. Blas

jean n. Camacho

Matilde M. Benavente

jeophan Torres

Embrosact

Mr. DE LUGO. Thank you.

We will hear from Ben Pangelinan.

Mr. PANGELINAN. Before I start my statement, Mr. Chairman, I would like to clarify for the record that I am not speaking for the Democratic Party as you mentioned earlier. I am a proud member of the Democratic Party and I probably will be in the near future representing the Democratic Party, but not today.

Mr. DE LUGO. Good luck to you.

Mr. PANGELINAN. Si Yu'os Fan Binaba Kurason Miyu Ya U Giha Konsensia Guini Ya en che'gue i dinanchi ya en rekognisa na guaha derechon mami ni taotao Guam para bin potfin en detetmina i gobietnun mami.

May God open your hearts and guide your conscience to do the right thing and recognize that the people of Guam shall have the right to self-determination and self-government. This is the moral challenge that faces the members of this committee.

Honorable members of this committee, you have the opportunity to light the fire of America's torch of democracy, to show the world that the distant whispers and pleas for partnership shall become a roar for equality, that this shall happen in a place called Guam, America's example to the world of its commitment to human rights and the recognition of a people's right to full and equal participation in the American principal of democracy.

We appear before you today, not because we, the new generation of Guam's leaders, are more brave than our fathers and grandfathers, mothers and grandmothers, who have defended America with their lives and the lives of our brothers and sisters.

We are here today because the fire that is the human spirit that seeks justice and retribution for the benign neglect of the past which has been silenced by the gratefulness of a generation that came out of the ravages of war, is now aflame in a new generation of Guamanian-Americans that still place its hope in the conscience of democracy.

We appear and affirm our commitment that today is not a day that we pay lip service to it. We hope those who signed H.R. 98 will not pay lip service to it either.

This new generation of leadership's commitment of life service to the Commonwealth vows and promises our parents and grandparents that they, in their lifetime, in the remaining twilight of their years, we vow that we will not rest until we fulfill the luminous promise of democracy for them and they shall stand in the radiance of the flame of democracy and equality, that has been so long denied them; a denial they have endured with stoic silence that for our generation has become deafening.

We appear today to bring the attention of the nation and the world, the fact that the struggle for our moral right to self-determination and self-government and the continued suppression of this eternal moral right of man has left the democratization of America incomplete.

History has left unto our generation, this incomplete task which our country has unjustly for too long developed far too slowly in Guam. It is upon the shoulders of this generation to reawaken the conscience of the nation, that this continued injustice in Guam is a threat to justice in America, that this denial of our right to self-

determination is an eternal moral issue which may determine the destiny of our nation in its ideological struggle with forces that oppose our democratic form of government.

Our quest for commonwealth is our destiny, the destiny of our nation and we shall not be denied.

We are here to usher in the birth of a new epoch. With your support and the support of the over 160 cosponsors for Guam's Commonwealth Act, as passed by the people of Guam, we can win democracy, its rightful place before the world, that your stand today is an example of democracy in action.

Hesitation, delay and compromise of the people's will only serve to deny and corrupt our democratic heritage. The resolution of the people of Guam's quest for self-government and self-determination that is embodied in our Commonwealth Act is within the powers of Congress to forever resolve.

Just as congressional inaction has perpetuated injustice, congressional action can swiftly bring us justice. The time is now for the members of this committee to take the offensive and send to the 160 of your colleagues, who by their cosponsorship and support, will fulfill the promise of democracy.

With such overwhelming support for the will of the people of Guam, our Commonwealth Act, we can expect the fulfillment of our aspirations, without any further delay.

Only a Chamorro understands, feels and suffers the effect of the mental cancer that slowly consumes his political identity and erodes the foundation on which he anchors his heritage for future generations. Nothing can be more diabolical than the continued denial of any man his will and right to determine for himself how he will be governed.

Democracy for Guam cannot be a treat to American security; quite the opposite. It will prove to the world that America is secure, secure in the knowledge that all men were created by their God to live free.

Honorable gentlemen, we have finished our swatch that will complete the quilt of a truly democratic America. Let the thread that binds us to America be the thread of democracy and equality. It is important for us as a nation and a society to understand that by passing Guam's Commonwealth Act, we choose a new path with resolution and courage—the potential for a free government and the simple honor of men and our nation, before the eyes of the world, are at stake.

Thank you.

[Prepared statement of Mr. Pangelinan follows:]

TESTIMONY H.R. 98

Subcommittee on Insular and International Affairs

December 11, 1989

Presented By: Ben C. Pangelinan

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here today because the fire that is the human spirit that seeks justice and retribution for the benign neglect of the past which has been silenced by the gratefulness of a generation that came out of the ravages of war, is now aflame in a new generation of Guamanian- Americans that still places its hope in the conscience of democracy. We appear and affirm our commitment that today is not a day that we pay lip service to Commonwealth; we commit to pay life service to it. This new generation of leadership's commitment of life service to the Commonwealth vows and promises our parents and grandparents that they, in their lifetime, in the remaining twilight of their years, we vow that we will not rest until we fulfill the luminous promise of democracy for them and they shall stand in the radiance of the flame of democracy and equality, that has been so long denied them; a denial they have endured with stoic silence that for our generation has become deafening.

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moral issue which may determine the destiny of our nation in its ideological struggle with forces that oppose our democratic form of government. Our quest for Commonwealth is our destiny, the destiny of our nation and we shall not be denied.

We are here to usher in the birth of a new epoch. With your support and the support of the over 160 co-sponsors for Guam's Commonwealth Act, as passed by the people of Guam, we can win democracy, it's rightful place before the world, that your stand today is an example of democracy in action. Hesitation, delay and compromise of the people's will only serve to deny and corrupt our democratic heritage. The resolution of the people of Guam's quest for self government and self determination that is embodied in our Commonwealth Act is within the powers of Congress to forever resolve. Just as Congressional inaction has perpetuated injustice, Congressional action can swiftly bring us justice. The time is now for the members of this Committee to take the offensive and send to the 160 of your colleagues, who by their co-sponsorship and support, will fulfill the promise of democracy. With such overwhelming support for the will of the people of Guam, our Commonwealth Act, we can expect the fulfillment of our aspirations, without any further delay.

Although, you may look at us and see no visible scars of the denial of our right to self determination; only a Chamorro understands, feels and suffers the effect of the mental cancer that

slowly consumes his political identity and erodes the foundation on which he anchors his heritage for future generations. Nothing can be more diabolical than the continued denial of any man his will and right to determine for himself how he will be governed.

While some will argue that the Chamorros have been given the right to govern themselves, citing that Congress has allowed the election of Guam's Senators and Governor, the decision of how we are to be governed has been imposed upon us and always subject to the continuing approval of Congress. Any form of government that imposes a government upon a people, no matter how benign, without the consent of the governed is undemocratic.

It took twenty years between the Organic Act and the elected Governor Act. We no longer can enjoy the luxury of the tranquility drug of gradualism. We will not wait another twenty years for our inalienable right to self determination. Now is the time to act on the promise of democracy, to send a crystal clear signal to the 160 of your colleagues who have endorsed and co-sponsored Guam's manifesto of justice and equality- The Commonwealth Act - that the forces of justice will no longer remain silent. We are hopeful that with such overwhelming support the toll of our liberty bell will be heard now.

We have never been gradual in shouldering our share in the defense of the nation. Our parents and grandparents did not

gradually sacrifice their lands for Air Force bases, for submarine harbors, even for recreational beaches exclusively for military personnel. My brothers and sisters did not hesitate and demand a compromise when the nation sounded the call to arms for the defense of democracy. They, without hesitation and without compromise, to the last full measure answered the call. Do not ask demand that we now compromise our rights. The time is now, for Congress to swiftly and with the same love for democracy, without hesitation, without delay, without compromise give to the people of Guam the right to self determination and self government.

You have heard others say that Guam's Commonwealth Act gives to Guam special privileges, that will not be enjoyed by other members of our American family. Let me remind you that we have for so long have been of a special status that has specially denied us rights and privileges given to our American brothers and sisters. You have heard others state their fears that the defense of the nation will be compromised, that their mission will be impeded, should Congress pass Guam's Commonwealth Act. These fears are unfounded. It is time to destroy the barriers of fears that serve no purpose that to justify the continued denial of the Chamorros our right to self determination. We, Chamorros have given to the nation more than what the nation has asked in defending our democracy.

Democracy for Guam cannot be a threat to American security,

quite the opposite... it will prove to the world that America is secure... secure in the knowledge that all men were created by their God to live free.

As F. B. Leon Guerrero, B. J. Bordallo and A. B. Won Pat, who made the pilgrimage to Washington for freedom before us, we too embarked on our pilgrimage to this place, seeking a freedom that our Commonwealth Act will give our generation of Chamorros. Freedom from the suppressed fears and resentments that the denial of our right to participate in the decisions that affect our lives today and determine the course for our generation, fears and resentments that will continue unless this right to self determination is recognized and we can stand proud and tall in the family of man when we can ultimately exercise that right. We invite you to come to Guam, so that the many who were unable to join us here today can participate in our quest for Commonwealth. Freedom is participation and we want it now.

Honorable gentlemen, we have finished our swatch that will complete the quilt of a truly democratic America. Let the thread that binds us to America be the thread of democracy and equality. It is important for us as a nation and a society to understand that by passing Guam's Commonwealth Act, we choose a new path with resolution and courage- the potential for a free government and the simple honor of men and our nation, before the eyes of the world are at stake.

Mr. DE LUGO. Thank you, Pat.

Our next witness is Eduardo Calvo, Guam Chamber of Commerce.

Mr. CALVO. Mr. Chairman, members of the subcommittee, on behalf of the Guam Chamber of Commerce, I would like to thank you for this opportunity and privilege to express our full and enthusiastic support for the Guam Commonwealth Act, Bill H.R. 98, the Commonwealth Act.

My name is Eduardo A. Calvo and I am a member of the Chamber Board of Directors as well as the Chairman of the Chamber Commonwealth Committee.

The Chamber is a nonprofit organization whose membership is comprised of local Guam businesses as well as large U.S. and international companies. The stability, strength and growth of Guam's economy are the Chamber's primary concern and focus.

The Commonwealth Act truly reflects the status the people of Guam desire as part of the United States. From the Chamber's perspective, the Commonwealth Act's economic provisions help liberate Guam from unnecessary Federal restraints which restrict Guam from realizing her full economic potential.

The Commonwealth Act provides Guam with the self-governing powers and rights we deserve and need in order to continue to grow and move towards realizing our potential as part of America.

The economy of Guam has made tremendous progress over the past three decades. In just the last three years, gross business income increased from \$1.4 billion to over \$2.5 billion.

The visitor/tourist industry remains the driving private sector force in Guam's economy. Guam's major international activities are relative to this growing industry.

Our island's natural beauty and tropical environment, and a geographic location in close proximity to half of the world's population have made Guam the second most popular tourist destination in the Pacific, behind only Hawaii.

Annual visitor arrivals which totaled approximately 600,000 in 1988 is expected to exceed one million by 1992. Consequently, more and more tourist-related facilities continue to domicile on our island. Guam's hotel room count now totals 4,000 rooms and is expected to increase by an additional 7,000 rooms by 1992.

The surge in economic growth has had a noticeable effect on our island's employment and labor patterns. Guam's unemployment rate is currently a very low 2.6 percent. Our work force now totals approximately 50,000, with about 70 percent employed by private industry.

Guam's average annual business growth rate is projected at eight percent up to the year 1999 due to a continued acceleration in the growth of our island's visitor industry. It is projected that Guam's work force will more than double by the year 1999. Private sector employment is expected to increase to approximately 70,000 during the same period.

As the closest U.S. soil to the fastest growing economies of the world, Guam provides an ideal, stable and cost effective base for both East and West business entities to locate and operate from. East Asia and Western Pacific trade with the United States continues to increase and as the markets of our trading partners in the

Asia-Pacific region become more accessible to American products and services, Guam's role as the staging point for American businesses exporting to Asia-Pacific markets becomes more attractive.

In light of our island's limited land mass measuring 212 square miles and population of approximately 130,000 people, small to medium size and capital intensive U.S. export manufacturing companies are the potential beneficiaries of Guam's strategic economic role in this part of the world.

The location of Foreign Sales Corporation (FSCs) in Guam has been a major step forward in Guam's pursuits to assume such a role as a conduit for U.S. exports with markets in Asia. Since the enactment of the Foreign Sales Corporation Act in 1984, of the over 3,000 FSCs which have established worldwide, more than 300 have incorporated in Guam.

Other potential areas for Guam's economic diversification include port-related industry and fisheries development. These are two obvious industries which Guam should be able to pursue and develop in the next decade.

It is very clear that our island's economic future and prospects are bright. Further, there are no good reasons why we should not be able to realize our full economic potential and enjoy the correlative standard of living as well as become a more viable and contributing part of America.

In order to do so, however, we must have the ability to respond to opportunities and circumstances unique to Guam.

As you can see, Guam's economy has matured and is healthy. It is clear that our island's economic future and prospects are very bright. There are no good reasons why we should not be able to realize our full economic potential, provided we have the ability to respond to opportunities and circumstances unique to Guam.

The Commonwealth Act now before Congress is a product of years of hard work by the Guam Commission on Self-Determination with input and contributions from all segments of the Guam community, including the Chamber and the business sector.

The Commonwealth Act clearly reflects the status the people of Guam desire and from the Chamber's perspective the act's economic provisions are a great improvement over what we have now.

These provisions who help liberate Guam from unnecessary restraints.

Presently, Guam exists under the Organic Act as an unincorporated territory. A mere instrumentality of the United States. This status in our view greatly restricts Guam from developing a more viable and self-sustaining economy.

The multitude of Federal policies, regulations and statutes which govern our manufacturing, international trade, ocean and air transportation, immigration, customs control, and other affairs have limited Guam's economic self-sufficiency and growth.

Major barriers to Guam's economic diversification stem from the applicability of U.S. laws which bear no relevance to Guam's economic situation in the Asia-Pacific region and in some cases discriminate against Guam relative to other U.S. territories and entities.

Guam has matured and grown since 1950. In order for Guam to continue to prosper and become more viable and self-sustaining the

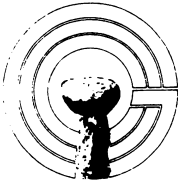
present political status must change. The Commonwealth Act reflects the desires of the people of Guam and contains the self-government powers we deserve and need.

The Commonwealth Act is good for Guam and the United States and we urge you to join in and support our quest for commonwealth.

Again, thank you on behalf of the Chamber of Commerce, Commonwealth Act.

Thank you.

[Prepared statement of Mr. Calvo follows:]



GUAM CHAMBER OF COMMERCE
PARTNERS IN PROGRESS

STATEMENT ON GUAM'S COMMONWEALTH ACT
before the
HOUSE SUBCOMMITTEE ON INSULAR AND INTERNATIONAL AFFAIRS
for the
GUAM CHAMBER OF COMMERCE
by
EDUARDO A. CALVO, BOARD DIRECTOR
December 11, 1989

INTRODUCTION

On behalf of the Guam Chamber of Commerce (the "Chamber"), I would like to thank you for this opportunity and privilege to express our full and enthusiastic support for the Guam Commonwealth Act Bill, H.R. 98 ("the Commonwealth Act"). My name is Eduardo A. Calvo and I am a member of the Chamber Board of Directors as well as the Chairman of the Chamber Commonwealth Committee.

The Chamber is a non-profit organization whose membership is comprised of local Guam businesses as well as large U.S. and international companies. The stability, strength and growth of Guam's economy are the Chamber's primary concern and focus.

The Commonwealth Act which is now before Congress is the culmination and product of years of hard work by the Guam Commission on Self Determination with input and contribution from all segments of the Guam community, including the business sector. The Commonwealth Act truly reflects the status the people of Guam desire as part of the United States. From the Chamber's perspective, the Commonwealth Act's economic provisions help liberate Guam from unnecessary federal restraints which restrict Guam from realizing her full economic potential.

The United States obtained Guam from Spain in 1898 as a result of the Spanish American War. From that time until

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1950, upon the passage of the Organic Act of Guam, the people of Guam were considered "non-citizen nationals" of the United States. This political status was uncertain in that people of Guam were neither U.S. citizens nor aliens. After much time and effort, Congress passed the Organic Act of Guam in 1950 establishing Guam as an unincorporated territory and granting the people of Guam U.S. citizenship. The Organic Act still defines Guam's existence as an unincorporated territory and in our view greatly restricts Guam from becoming a more viable and self sufficient part of America.

The Commonwealth Act provides Guam with the self-governing powers and rights we deserve and need in order to continue to grow and move towards realizing our potential as part of America.

GUAM'S ECONOMY: TODAY AND TOMORROW

The economy of Guam has made tremendous progress over the past three decades. In just the last three years, gross business income increased from \$1.4 billion to over \$2.5 billion.

The visitor/tourist industry remains the driving private sector force in Guam's economy. Guam's major

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international activities are relative to this growing industry. Our island's natural beauty and tropical environment, and a geographic location in close proximity to half of the world's population have made Guam the second most popular tourist destination in the Pacific, behind only Hawaii. Annual visitor arrivals which totaled approximately 600,000 in 1988 is expected to exceed one million by 1992. Consequently, more and more tourist-related facilities continue to domicile on our island. Guam's hotel room count now totals 4,000 rooms and is expected to increase by an additional 7,000 rooms by 1999.

The surge in economic growth has had a noticeable effect on our island's employment and labor patterns. Guam's unemployment rate is currently a very low 2.6%. Our work force now totals approximately 50,000, with about 70% employed by private industry.

Guam's average annual business growth rate is projected at 8% up to the year 1999 due to a continued acceleration in the growth of our island's visitor industry. It is projected that Guam's work force will more than double by the year 1999. Private sector employment is expected to increase to approximately 70,000 during the same period.

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As the closest U.S. soil to the fastest growing economies of the world, Guam provides an ideal, stable and cost effective base for both East and West business entities to locate and operate from. East Asia and Western Pacific trade with the United States continues to increase and as the markets of our trading partners in the Asia-Pacific region become more accessible to American products and services, Guam's role as the staging point for American businesses exporting to Asia-Pacific markets becomes more attractive.

In light of our island's limited land mass measuring 212 square miles and population of approximately 130,000 people, small to medium size and capital intensive U.S. export manufacturing companies are the potential beneficiaries of Guam's strategic economic role in this part of the world. The location of Foreign Sales Corporation (FSCs) in Guam has been a major step forward in Guam's pursuits to assume such a role as a conduit for U.S. exports with markets in Asia. Since the enactment of the Foreign Sales Corporation Act in 1984, of the over 3,000 FSCs which have established worldwide, more than 300 have incorporated in Guam.

Other potential areas for Guam's economic diversification include port-related industry and fisheries

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development. These are two obvious industries which Guam should be able to pursue and develop in the next decade.

It is very clear that our island's economic future and prospects are bright. Further, there are no good reasons why we should not be able to realize our full economic potential and enjoy the correlative standard of living, as well as, become a more viable and contributing part of America. In order to do so, however, we must have the ability to respond to opportunities and circumstances unique to Guam.

FEDERAL BARRIERS WHICH INHIBIT GUAM'S GROWTH; NEED FOR A CHANGE

The myriad of federal policies, regulations and statutes which govern our manufacturing, international trade, ocean and air transportation, immigration, customs control and other affairs have limited Guam's economic self-sufficiency and growth, as well as, Guam's contribution to the balance of trade between the United States and the countries in Asia and the Pacific. The major barriers to Guam's economic diversification stem from the applicability of U.S. laws and regulations which bear no relevance to Guam's economic situation in the Asia-Pacific region. The discussion below addresses several of these barriers.

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TRADE

Under Headnote 3(a) of the U.S. Tariff Code, manufactured goods from Guam (which is outside U.S. Customs jurisdiction) are allowed to enter into the Customs Territory of the United States free of duty with the provision that at least 30 percent of the producer's value has been added in Guam. This program benefits local manufacturers in two ways: (1) being permitted to import raw materials for manufacturing tariff-free, and (2) providing access to our country's markets free of import tariffs and quotas.

The original intent of this program was to create jobs for Americans on Guam by attracting investments in manufacturing and export creating industries. Unfortunately, the goals of this federal trade program have not been met. For example, in the early 70's under Headnote 3(a), Guam became a very active manufacturer of watches with over 500 American residents employed by ten different watch companies. However, federal regulations imposed quotas on the export products made by Americans on Guam. Consequently, the number of companies finally dwindled down to one, and that last company was finally run out of business by a further federal regulation. A once flourishing industry ceased to exist on Guam due to federal

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rules and regulations. Similarly, a quota which is still in effect was imposed for sweaters manufactured under the Headnote 3(a) Program. While the quota did not extinguish the only company in operation on Guam, a U.S. sweater manufacturer, it left no room for any other sweater manufacturers to invest in Guam. Once again the production of Americans on Guam for sale to other Americans was restricted by quota limitations.

Throughout Headnote 3(a)'s 30-year period we have witnessed investors who have engaged in manufacturing pursuits come and go -- not for the limitations in our natural resources, but the many federal trade restrictions that have effectively undermined the spirit and intent of Headnote 3(a) and become prohibitive in the sustainment of viable manufacturing operations on Guam. The imposition of tariff and quota restrictions limit trade between Americans in Guam and other Americans in the United States. This does not make sense! Article 5 of the Guam Commonwealth Act removes the federal restrictions which have unfairly hindered industry development under Headnote 3(a).

MARITIME SHIPPING

Given Guam's location in the Pacific, its limited land mass area and lack of land resources, it is only logical

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that we reach out and tap the bountiful natural resources available in the ocean surrounding our island. In the mid 70's, the migration of tuna to our part of the Pacific opened up a potentially vast fishing industry for Guam. The annual tuna harvest from the Western Pacific is approximately 500,000 tons which yields an annual value of \$500 million a year. For Guam alone, it is estimated that the tuna industry bring in over \$50 million into the economy annually. The application of certain Federal regulations however, directly impede further fisheries development on Guam. While there are other Federal policies that adversely affect fisheries on Guam, the following two are of most immediate concern and which Section 901 of the Commonwealth Act would eliminate.

1. The Jones Act. The Merchant Marine Act of 1920, better known as the Jones Act, as applied to Guam requires that any shipping between Guam and U.S. points be conducted solely on U.S. flag vessels. Guam is the only American flag territory that is subject to the provisions of this law. It does not apply to the Virgin Islands, American Samoa, the Northern Marianas nor the associated states of Micronesia.

Guam seeks a limited exemption to the Jones Act with regard to the transport of tuna (only) from Guam to U.S. ports

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on non-U.S. flag vessels. Under the Jones Act, tuna purse seiners in the Port of Guam are forbidden to offload their catch onto foreign fish carriers vessels for transshipment to U.S. canneries in Puerto Rico or the U.S. West Coast. Shipping costs from Guam to U.S. ports on non-U.S. flag vessels is more economical. More importantly, current routes by U.S. flag ships simply do not serve ports like Puerto Rico, to which Guam needs to deliver fish. Accordingly, to escape the Jones Act, the purse seiners are compelled to travel just 100 miles north to our American sister territory, Tinian of the Northern Marianas, to offload tuna to foreign fish carrier vessels for shipment to the U.S. West Coast and Puerto Rico. This different applicability of the Jones Act between two adjacent U.S. flag territories places Guam at an extreme and unfair disadvantage. This discriminatory treatment does not make sense! Under the Commonwealth Act, the Jones Act is amended to permit non-U.S. shipping of fisheries products from Guam.

Furthermore, the Commonwealth Act provides a mechanism for Guam to evaluate the continued usefulness of the other requirements the Jones Act. This is important for Guam to develop a viable fisheries industry as well as to maintain reliable shipping services and rates.

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2. Vessel Documentation Laws and Coastal Fisheries.

The application of existing vessel documentation laws mandates that vessels over 5 net tons must be built in the United States in order to be documented as a U.S. flag vessel entitled to engage in the American Coastal fisheries within the 200 mile limit. Given Guam's great distance from the mainland United States, it is prohibitively expensive to purchase fishing vessels made in the U.S. to be used in Guam's coastal waters. The net effect is that residents of Guam do not purchase new fishing vessels to be used on Guam; fisheries development involving local residents in local waters is correspondingly thwarted. Section 901 of the Commonwealth Act amends vessel documentation laws to allow vessels owned by bona fide residents of Guam and used within the 200 mile limit surrounding Guam to be documented as U.S. flag vessels irrespective of where such vessels are built. It should be noted that once again our neighbor, the Northern Marianas, is exempt from the restrictive vessel documentation requirements by virtue of a Presidential proclamation.

The above two federal restraints constitute the most severe and immediate impediments to the development of tuna and coastal fisheries on Guam. There are, however, numerous other

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recommendations that have been made as a result of studies by various federal agencies that would result in the prosperous development of Guam's fishing potential.

AIRLINES

There are federal barriers which hold Guam back from maximizing its potential as a air transportation hub in this part of the world. Guam should have the authority to sponsor qualified air service carriers to Guam. Such authority and latitude is important to Guam's economic future as our growth appears to be directly linked to the number of visitors who come to Guam by air each year. Section 902 of the Commonwealth Act is generally consistent with the Chamber's "Open Skies" position.

CONCLUSION

Guam and her economy have matured and grown immensely since 1950. In order for Guam to continue to prosper and become a more viable and self-sustaining part of America, her present political status as defined by the Organic Act must change.

The Commonwealth Act reflects the desire of the people of Guam and contains the economic provisions Guam must

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have in order to realize her potential. The Commonwealth Act is both good for Guam and the United States.

The Chamber thanks you for this opportunity and privilege to express our support for the Commonwealth Act. We also strongly request your support and assistance in Guam's quest for Commonwealth. Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eduardo A. Calvo', is written over a horizontal line.

Eduardo A. Calvo

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Mr. DE LUGO. Thank you very much.

Our final witness of this panel is Arthur Barcinas.

Mr. BARCINAS. Thank you. I request two things; that I be permitted to stand when I make my testimony; and if it is possible, if I could leave as soon as I complete my testimony because I talked to Continental and they don't think they can hold the plane.

Mr. DE LUGO. You want to get a running start, in other words. Sure, go ahead.

Mr. BARCINAS. Before you, sir, is my written testimony prepared in law school as part of my senior thesis and it explores the commonwealth question, specifically within immigration.

It also examines the commonwealth models of Puerto Rico and the CNMI covenant of the Northern Marianas. You asked about our Commonwealth Act yesterday and we received some criticism because it presented issues of statehood, free association and commonwealth and it appeared as if we were confused.

By this committee's own admission yesterday, Congress itself has failed to determine what exactly commonwealth means. At best, as I can define it, it has come to mean a desire of territories to attain greater internal autonomy while recognizing the sovereignty of the United States over these political entities.

Thus, there is no such thing as a standard commonwealth model. The articles that comprise the model of the Puerto Rico and commonwealth consists of Public Law 600, 477, Public Law 477, the Federal Regulations Act and the Constitution of the Commonwealth of Puerto Rico.

The Commonwealth of the Northern Marianas' model stems from a wholly distinct legal and political background completely different from that of Guam and Puerto Rico as unincorporated territories.

The Commonwealth Act of Puerto Rico and the Northern Marianas are by no means similar in substance—they are only similar in name.

If the language of the Commonwealth Act of Guam appears hard and uncompromising it is not our fault, but rather through the fault of the U.S. Government.

Both Puerto Rico and the CNMI have sought greater internal autonomy as we do. However, the result has been less than fulfilling. Puerto Rico today seeks an enhanced commonwealth provision. I do not understand what that means as of yet.

In the recent decision from the District Court of the Northern Marianas in the case of the United States versus Sablan, the effectiveness of the Commonwealth of Northern Marianas' model has been placed in serious question.

For Puerto Rico, part of the difficulty has been the disunity of their people about what their status should be. However, most of their shortcomings stem from their failure to adequately define their political relationship and a failure to provide safeguards to limit Federal intermeddling. All that is required for the Federal Government to legislate internally for the CNMI is that they assure they specifically name the CNMI as part of their legislation.

Judge Munson wrote in his interpretation of the Section 105, thus the basic principal of Section 105 is one of inclusion of Federal law, not exclusion.

I am sure, sir, that there are a couple of drafters in the Northern Marianas falling off a coconut tree after they heard that.

Thus, the demanding nature of our commonwealth provisions results from a basic mistrust of the Federal Government. All anyone has to do—I hope it is not considered disrespectful if entertaining, as I do, opinions of a character opposite of those expressed by the committee.

All anyone has to do is read the task force report and they can clearly understand the narrow condescending and paternalistic view held by the Federal Government.

It is from these dangerous and manipulative tendencies of the Federal Government which we seek to protect ourselves.

Mr. Chairman, the will of the people is embodied in this draft act. Given the precedence of the other commonwealth models, the people of Guam would be wise to stick to their guns and fight to retain this document in its present form.

To my people, I say stand fast because anything less would put us back on square one. This draft act affords us the best protection.

Gentlemen of the subcommittee, we are the Chamorro people and we come to ask for our rightful place in the American family.

I have come to ask on behalf of the children in my village, and I ask on behalf of the old people of my village who scraped together \$37 so that some of us can be in this room today. The future of our island, sir, lies in your hands. You can continue to impose upon us the unincorporated status or you may respect our rights.

Thank you.

[Prepared statement of Mr. Barcinas follows:]

**THE COMMONWEALTH ACT OF GUAM
THE QUESTION OF IMMIGRATION**

BY

ARTHUR R. BARCINAS

INTRODUCTION

The unincorporated territories of the United States possess a unique political and legal status in the American system of government. It is unique because Congress has the responsibility and authority to administer the external and internal affairs of the unincorporated territories.

Congress' administration of the unincorporated territories has been one of mixed blessings. There have been instances where the unincorporated territories were given preferential treatment not afforded to the individual states. Conversely, there have been instances where the preferential treatment and constitutional protection afforded to individual states have been denied to the unincorporated territories.

Congress' plenary authority over the internal affairs of the territories hangs like a dark cloud over the governments of the unincorporated territories. The most cherished power of the states, is the right to legislate and govern their internal affairs, without interference from the federal government. Congress has allowed the unincorporated territories to exercise a limited autonomy in legislating their internal affairs. However, Congress still retains the authority to invalidate any law passed by the unincorporated territories.

The greatest benefit to the unincorporated territories has been the opportunity to develop a new relationship with the United States. This opportunity allows the unincorporated

territories to fashion a division of powers which considers the uniqueness of their situations.

Puerto Rico is the only unincorporated territory to redefine its political relationship with the United States. Its present status is that of a commonwealth of the United States. However, its relationship with the United States remains ambiguous.

The only other commonwealth of the United States is the Commonwealth of the Northern Marianas. The Northern Marianas were part of a United Nations trust administered by the United States. The United States had the responsibility of helping the Northern Marianas develop their own system of government. The Northern Marianas chose a closer relationship with the United States, in the form of a commonwealth.

The unincorporated territory of Guam also seeks to redefine its relationship with the United States. Guam's primary goal is the opportunity to exercise its right of self-determination. The first step in reaching this goal is the right to exercise local autonomy over its internal affairs, free of the constant possibility of congressional interference.

As a commonwealth, the government of Guam seeks the right to control immigration into the island. Immigration control is essential to the island's ability to exercise its right to self-determination because of the harmful effects on the island's cultural, political and economic stability. Authority over immigration is crucial because Guam is located on the door steps of the Asian continent. Its geographical proximity coupled with

the presence of a receptive asian population, on the island, makes Guam a practical port of entry for many Asian immigrant groups.

This paper analyzes Guam's options in its quest for self determination. It examines the political and legal history of the unincorporated territories, more specifically how the incorporation doctrine was used to justified the disparate treatment of these territories. This paper will also discuss how the incorporation doctrine may be used to justify the granting of powers to commonwealth's, not afforded to the states.

GUAM HISTORY

"We will, in the event, pass from the era of constitutional liberty guarded and protected by a written constitution into an era of legislative absolutism."¹

The Island of Guam is the southern-most island of the Marianas Island chain. The island is approximately 30 miles long and 8 miles wide, with a total land area of only 209 square miles. Guam was first thrust onto the stage of modern history when it was "discovered" by the Spanish explorer, Magellan in 1521. It was subsequently acquired by the United States after the Spanish-American war in 1898.²

Throughout their history the Chamorro people of Guam have been dominated and controlled by other nations. The Chamorro

¹ Downes v. Bidwell, 182 U.S. 1901 at 379 (Harlan, J., dissenting).

² Treaty of Paris, Dec. 10, 1898, United States-Spain, 30 Stat 1754, T.S. No. 343.

people and their descendants have little to say about their place in the world and even less influence in determining their political, social, and economic future.

Guam's present form of government was established by Congress in 1950 by the enactment of an Organic Act.³ The Organic Act created a Guam legislature, and vested it with power "extend[ing] to all subjects of legislation of local application not inconsistent with the provisions of [the Organic Act] and the laws of the United States applicable to Guam."⁴ The provisions of the Organic Act set the limits of the Guam legislature's authority.⁵

On March 7, 1988 Congressman Ben Blaz,⁶ from the island of Guam, introduced into Congress a bill to establish the commonwealth of Guam. The Guam Commonwealth Act represents the hopes and aspiration of the island's people to establish and define a new political relationship with the United States. The desire to create a Commonwealth of Guam stems from the belief that self-determination can result only from the right

³ 384 (codified at 48 U.S.C. sec. 1421-1426 (1976)).

⁴ 48 U.S.C. sec. 1423a.

⁵ Agana Bay Development Co., 529 F.2d at 954 Organic Act of Guam, ch. 512, 64 Stat.

⁶ Guam has a single non-voting representative in the House of Representatives who has the similar privileges to State representatives 48 USC sec 1731-35 defining and limiting the powers of Congress over the Island.

of the people to freely exercise control over the island's internal affairs.

The provisions of the Guam Commonwealth Act are unique in that they seek to limit powers traditionally reserved to Congress. A controversial provision of the Commonwealth Act is the right to control immigration. The Constitution provides that the right to control immigration is a power reserved to Congress. To understand how this power may be granted to the Guam we must examine the legal and political relationship of the United States and the unincorporated territories. Because the Commonwealth Act seeks to redefine Guam's relationship with the United States, this paper is largely an inquiry into the divisions and scope of governmental power.

The future of Guam and many of the island territories has been a difficult problem to address because the United States Constitution provides little guidance concerning the treatment of territories. Congress exercises plenary control over the unincorporated territories through the territorial clause of the Constitution. The territorial clause states that "the Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or Property belonging to the United States"⁷.

The territorial clause was adopted as a compromise between the interests of larger states laying claim to lands in the

⁷ U.S. CONST. art I, sec. 3 cl.2.

northwest territories, and the smaller states concerns over representation. As a result the Congress was given control over all United States territories.⁹

At the close of the 1800's, the United States faced many new questions because of its acquisition of numerous off shore territories. It was faced with a situation where its territories were located far away from the mainland states and occupied, for the most, by peoples with distinct and different cultures. The newly acquired territories included the Hawaiian Islands,⁹ Alaska,¹⁰ American Samoa,¹¹ the Philippines, Guam and Puerto Rico.¹² Of these territories, Alaska and Hawaii were

⁹ See Leibowitz, The Applicability of Federal Law to Guam, 16 VA. J. INT'L. LAW. 1, 23-24 (1975) vol. 16:1.

⁹ Joint Resolution of Annexation of July 7, 1898. The granting of territorial status may have been easier to allow since the Hawaiian Queen Liliuokalani had been deposed in 1893 and a year later the new republic formed with Sanford B. Dole as the new president. By 1898 Hawaii was annexed by Joint Resolution of Annexation of July 7, 1898, 30 Stat. 750, and eventually granted territorial status by the 1900's.

¹⁰ Convention concerning the cession of Russian Possessions in North America, Mar. 30, 1867, United States-Russia, 15 Stat 539, T.S. No. 301. Treaty entered into as a result of the purchase of the territory by Secretary of State William Seward.

¹¹ Convention Respecting Samoan Islands, Dec. 2, 1899, United States-Germany-Great Britain, art II, 31 Samoa involved two separate transfers by the Kings and Chiefs of Manu'a and a subsequent transfer of the Swain Islands as part of the Territory Act of Congress March 4, 1925.

¹² Treaty of Paris, Dec. 10, 1898, United States-Spain, 30 Stat 1754, T.S. No. 343. Treaty resulted from the defeat of Spain in the Spanish-American War.

eventually admitted into the Union as States and the Philippines were eventually granted their independence.¹³ The status of the remaining territories would eventually take a dramatic turn, opening a new chapter in United States history.

In the early 1800's Congress struggled with the problem of how to provide funding for the territorial government of Puerto Rico. The Foraker Act¹⁴ contained one option developed by Congress. The Act provided for a special tax on goods imported into the United States from Puerto Rico. The proceeds from this tax would be returned to the treasury of Puerto Rico for the local government's use.

The constitutionality of this tax provision was examined within the context of the legal relationship between the United States and the territories. The Congressional record of the Foraker Act highlights Congress' struggle over the present and future status of the territories, specifically, Puerto Rico. The Senate committee, in attempting to justify the tariff provision of the Foraker Act, stated:

It is clear that Territories are not created, organized or supervised under the Constitution as a constitutional right, but that they are on the contrary created, organized and supervised by Congress by virtue of both inherent and constitutional power with which Congress, as the Political department of the Government, is vested, to rule and regulate the Territories of the United States; and the rights, power, privileges, and immunities granted to the inhabitants of the Territories, whatever they may be, are

¹³ July 4, 1946 pursuant to the Tydings-McDuffie Act; 73rd Cong. Sess. II Ch. 84 H.R. 88573 Pub. L. No. 127 Mar. 24 1934.

¹⁴ Act of Apr. 12, 1900, ch. 191, 31 Stat. 77.

all given by Congress and do not flow from the Constitution beyond what Congress may declare. In other words, the provisions of the Constitution do not operate beyond the States, unless Congress shall so enact . . . There is no guaranty in the Constitution that a Territory shall even have a republican form of government or that the civil and political status of the inhabitants of a territory shall be of any particular character.¹³

The House report, although consistent in result with the Senate report, supported the plenary control of the Congress based upon the provisions of the Treaty of Paris. The Senate report stated:

In all the treaties, save that relating to Alaska, provision has been made that the territory acquired should be incorporated into the Union as soon as possible, and that in the meantime the civil rights of its inhabitants should be guaranteed. In the treaty with Russia whereby Alaska was acquired no provision was made for the incorporation of the Territory to the Union, but provision was made that the inhabitants should have the immunities of citizens of the United States and protection in the enjoyment of their liberty, property, and religion. Had not these terms been made in the treaties, the territory acquired would have become subject to the legislation of Congress under its power to make all needful rules and regulations respecting it, which is without limitations.¹⁴

Minority members of the house committee concerned about the position adopted by the majority, stated:

It is wholly inconsistent with the theory and form of our Government. The exercise of such power is pure and simple imperialism, and against it we enter our most solemn protest. We never have held and cannot hold territory as a political dependency and subject to unequal taxation. No Congressional enactment nor treaty stipulation can make such provision. Our Union is one of the States with a common interest and a common destiny. The blessings of free government rest alike upon all of our people, whether in the thirteen original states or in the youngest member of the

¹³ S. Rep No. 249, 56 Cong., 1 Sess. 10-11 (1900).

¹⁴ H.R. Rep. No. 249, 56th Cong., 1st Sess., 10 (1900) Thus placing it under the plenary control of Congress and outside of the incorporation track envisioned by the Northwest Ordinance.

Union, or in the newest acquired territory. It does not matter in which form territory is acquired, it is to be had under our Constitution with the object of finally being admitted into the Union as a State.¹⁷

The minority report accurately reflected the United States' treatment of territories up until this time.

Under the provisions of the Northwest Ordinance,¹⁸ United States territories would progress through various stages of development. This process of development gave Congress broad discretion and control over the territories to establish a limited form of self government, and eventually statehood. This broad authority of Congress was tolerated because statehood was eminent.¹⁹

The passage of the Foraker Act and a series of Supreme Court decisions, commonly referred to as the Insular cases,²⁰ created a new class of territories. The new class of territories would come to be known as unincorporated territories. This new classification opened the doors for unlimited congressional control over the unincorporated territories internal affairs.

¹⁷ H.R. Rep. No. 249, 56th Cong., 1st Sess., 18 (1900).

¹⁸ Northwest Territory Ordinance of 1787, Art. V, text cited in Act of August 7, 1789, ch 8, 1 Stat. 50.

¹⁹ See Leibowitz, United States Federalism: The States And The Territories., 28 Am. U.L. Rev. 4, (1979).

²⁰ *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *Armstrong v. United States*, 182 U.S. 243, (1901); *Downes v. Bidwell*, 182 U.S. 244, (1901); and *Huns v. New York and Puerto Rico Steamship Co.*, 182 U.S. 392 (1901).

Additionally, there were no provisions made for the future status of these territories.

The insular cases served to define the relationship between the United States and the unincorporated territories. These cases focused on the applicability of the United States Constitution to the unincorporated territories.

Downes v. Bidwell,²¹ was the most significant of the insular cases, since the court specifically addressed the question of the applicability of the Constitution to Puerto Rico. *Downes* involved a constitutional challenge to the tariff provisions of the Foraker Act, which imposed a tax on oranges shipped from Puerto Rico to New York.²²

The Supreme Court ruled, in a five to four decision, that the tax imposed by the Foraker Act was constitutional. Justice White argued that there was a difference between incorporated and unincorporated territories. His concurring opinion eventually became the prevailing view.

Justice White stated, that the Constitution conferred on Congress the authority to "create such municipal organizations as it may deem best for all the territories of the United States . . . to give to the inhabitants as respects the local governments such degree of representation as may be conducive to the public well-being, to deprive such territory of representative

²¹ 182 U.S. 244 (1901).

²² Act of Apr. 12, 1900, ch. 191, 31 Stat. 77., sec 3.

government if it is considered just to do so, and to change such local government's discretion."²³

He further argued that "[i]n the case of territories, as in every other instance, when a provision of the Constitution is invoked, the question which arises is, not whether the Constitution is operative, for that is self-evident, but whether the provision relied on is applicable."²⁴ White argued that the Constitution along with its restrictions on Congress' powers, applies only to "territory which has been incorporated into . . . the United States."²⁵ Thus, he focused his inquiry as such: "Had Puerto Rico, at the time of the passage of the Act in question, been incorporated into and become an integral part of the United States?"²⁶

Consistent with the rationale advanced by the House majority report, White stated; "There has not been a single cession made from the time of the Confederation up to the present day, excluding the recent treaty with Spain, which has not contained stipulations to the effect that the United States through Congress would either not disincorporate or would incorporate the ceded territory into the United States."²⁷ White concluded,

²³ 182 U.S. 1901, 289 Justice White, Concurring.

²⁴ id. at 292.

²⁵ id. at 292.

²⁶ id. at 299.

²⁷ id. at 318-319.

since Puerto Rico was not specifically incorporated into the United States the Constitution did not automatically apply to Puerto Rico.

White did recognize that there were some constitutional limits on the powers of Congress. He argued, that at the time the Constitution was drafted the United States also included the Northwest territories. Thus, the constitution was meant to apply not only to the states but to all citizens who lived in the territories.²⁸

The insular cases have come to stand for two propositions. First, with respect to incorporated territories the Constitution applies fully. Secondly, only fundamental rights apply to unincorporated territories.²⁹ It is within this second proposition that Guam's quest for commonwealth must be analyzed.

Currently there are only two commonwealths in the American system of government, the commonwealth of Puerto Rico and Commonwealth of the Northern Marianas Islands. Despite their classifications as commonwealths they have different relationships with the United States. Both of these commonwealths serve as alternative models for Guam. Puerto Rico presents a poor commonwealth model because of its failure to establish a clear delineation of government powers. Whereas, the Commonwealth of the Northern Mariana Islands has successfully

²⁸ id. at 319-329.

²⁹ see Leibowitz; Am Un. L.R. vol. 28 no. 4 (1979), 30. for in depth discussion of the Insular cases.

determined the powers reserved for the Federal Government and powers reserved to the Commonwealth.

THE COMMONWEALTH OF PUERTO RICO

". . . . Puerto Rico occupies a relationship to the United States that has no parallel in our history" ³⁰

In 1952, Congress recognized Puerto Rico as a Commonwealth of the United States. ³¹ The granting of commonwealth status allowed Puerto Rico a "full measure of local self-government in the island" ³² Theoretically, Puerto Rico was afforded a local autonomy similar to that of the individual States. However, the Puerto Rican experience is one filled with numerous uncertainties and logical inconsistencies.

The difficulty with the Puerto Rican Compact is that it does not clearly state what comprises the agreement. There is nothing in the Compact to protect Puerto Rico from the detrimental effects of Federal Legislation applicable only to the States. If the compact agreement includes Acts 600, 477, and the Federal Relations Act, the Federal Government may not have the power to unilaterally repeal all or portions of these acts.

There is a lot of confusion surrounding the relationship between Puerto Rico and the United States. This confusion can be

³⁰ Examining Board v. Flores de Otero, 426 U.S. 572, 596 (1980).

³¹ Act of July 3, 1952, 66 Stat 237. 48 U.S.C. sec. 731(d) (1976).

³² Senate Report No. 1779, 81st Cong., 2d Sess., June 6, at 2 (1950).

traced back to the political process in approving Puerto Rico's constitution.

Puerto Rico's commonwealth find its political origins in public law 600. On August 5, 1947, Congress passed public law 600 which authorized Puerto Rico to draft a constitution. Public law 600 set out a five step process toward the enactment of the Puerto Rican Constitution. Puerto Rico would hold an election to accept public law 600. After acceptance, the legislature was authorized to draft a constitution. A second election would be held to determine if the people of Puerto Rico accepted the Constitution. After approval of the Constitution, Puerto Rico would submit the constitution to the President, who in turn transmits the constitution to Congress for approval.³³

After following all the steps laid out in public law 600, Congress conditionally approved Puerto Rico's Constitution in Public law 477.³⁴ On the condition that the Puerto Rico Constitution be consistent with the United States Constitution, the Puerto Rican Federal Regulations Act,³⁵ and Public Law 600. After such conditions were met, Puerto Rico was granted commonwealth status.

³³ The enabling act to set up a constitutional government. Act of July 3, 1950, ch. 446, 64 Stat. 319.

³⁴ Pub.L.No.477, Act of July 3, 1952, ch. 567 82nd Cong., 66 Stat. 327.

³⁵ earlier known as the "Jones Act", Act of Mar. 2, 197 ch. 145, 39 Stat. 951 upon approval of Puerto Rico's Constitution, the act was amended and renamed.

The Congress and government officials intended that the granting of commonwealth status would place Puerto Rico in a different legal and political position from that of other unincorporated territories. The preamble to Public Law 600 states: "[F]ully recognizing the principle of government by consent of this act is now adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption."

In his report to the United Nations Committee for Non-Self-Governing Territories, Mr. Mason Sears stated, "A most interesting feature of the new constitution is that it was entered into in the nature of a compact between the American and Puerto Rican people. A compact, as you know, is far stronger than a treaty. A treaty usually can be denounced by either party unless it has permission of the other."³⁴

The concept of a compact was reaffirmed by President Kennedy in his memorandum to government agencies which stated: "The Commonwealth structure, and its relationship to the United States which is in the nature of a compact, provide for self-government in respect of internal affairs and administration subject only to applicable provisions of the Federal Constitution, the Puerto

³⁴ United States Mission to the United Nations, Press Release No. 1741, Aug. 28, 1953.

Rican Federal Relations Act, and the Acts of Congress authorizing and approving the Constitution."³⁷

In 1964, Congress established a United States-Puerto Rico Commission to study and report on all factors that have a bearing on the relationship between the United States and Puerto Rico. The commission report addressed the issue of the parties' ability to unilaterally change or alter the compact. The committee concluded that: "It is inconceivable that either the United States or Puerto Rico would, by an act of unilateral revocation, undermine the very foundation of their common progress: the fundamental political and economic relationships which were established on the basis of mutuality."³⁸

In the early cases after the enactment of the Compact, it appeared that Puerto Rico would be able to exercise its right of local autonomy. In *Figueroa v. Puerto Rico* the Circuit Court stated: "Just as the people of Puerto Rico were not required to include a provision for jury trial in their bill of rights, so now, the people of Puerto Rico are free, though the amending process contained in Art. VII of their constitution, to take this

³⁷ President Kennedy's Memorandum of July 25, 1961 reprinted in Documents on the Constitutional History of Puerto Rico. at 206.

³⁸ Act of Feb 20, 1964 Pub. L. No. 88-271, 78 Stat. 17, as amended by Pub.L. 89-84, July 24, 1965, 79 Stat. 261, Status commission Rep. Sec. 4 at 13 (1966).

constitutional guaranty out of the bill of rights, without leave of the Congress."³⁹

In *Mora v. Mejias*,⁴⁰ the court ruled that the fifth amendment, Due Process clause was applicable to Puerto Rico as a result of the Compact. The Court of Appeals affirmed the lower court's opinion but did not indicate whether it was due process under the fifth or fourteenth amendment.⁴¹

Three years later, the uncertainties of Puerto Rico's commonwealth status began to surface. The court, in *United States v. Amy Valentine*, in dicta, considered the question of unilateral modification of the compact. The Court stated, "It is only the essential provisions which cannot be revoked by one party acting alone: i.e., the provisions which establish Puerto Rico's status as a commonwealth with plenary domestic authority, its association with the United States, the United States citizenship of its people, and such favorable concessions as its fiscal autonomy. In contrast, the "peripheral" provisions of the compact . . . can be changed unilaterally without affecting the inviolability of the compact."⁴²

³⁹ 232 F.2d 615 at 620 (1st Cir. 1956) under Puerto Rican law trial may be waived by counsel, unlike the federal requirement that it be done by the defendant.

⁴⁰ 115 F.Supp. 610 (D.P.R. 1953) due process challenge to minimum price setting on Rice.

⁴¹ 206 F.2d 377 (1st Cir. 1953).

⁴² 228 F. Supp 957, 981 n.24 (1968).

In *Calero-Toledo v. Pearson Yacht Leasing Co.*,⁴³ the Supreme Court determined that due process applies to Puerto Rico, but refused to say whether it was due process required by the fifth or fourteenth amendment. In *Examining Board v. Flores de Otero*,⁴⁴ the Court ruled that a Puerto Rican law excluding non-citizens from the engineering profession, was a violation of the equal protection clause of either the fifth or fourteenth amendment. In *Terrol Torres v. Puerto Rico*,⁴⁵ the Supreme Court found a similar violation of the equal protection clause. This case involved a Puerto Rican law authorizing the police to search the luggage of any person arriving from the United States. The Court determined that these searches, conducted on suspicion and without a search warrant, violated the equal protection of the laws. However, the Court refused to specify whether it was a violation of the fifth or fourteenth amendment.⁴⁶

The hesitancy of the Supreme Court to identify which due process clause applies, continues to place in doubt, Puerto Rico's status as a commonwealth. If the due process clause of

⁴³ 416 U.S. 663 (1974) (neither due process or takings provision of the fifth amendment prevented forfeiture of an innocent owners boat when it was used to transport illegal drugs.).

⁴⁴ 426 U.S. 572 (1976).

⁴⁵ 442 U.S. 465 (1979).

⁴⁶ *Torres* 442 U.S. 465, 471, (1979). "...we have no occasion to determine whether the Fourth Amendment applies to Puerto Rico directly or by operation of the Fourteenth Amendment."

the fifth amendment applies it would imply that Puerto Rico remains a federal entity. If due process of the fourteenth amendment applies, then it would imply that under the Compact, Puerto Rico enjoys the same autonomy as that of the individual states. If the Court adopts this approach then arguably all the rights enjoyed by the states should be extended to Puerto Rico.

It appears that in the area of fundamental rights the Supreme Court is willing to hold Puerto Rico to the same uniform standards applied to the states. The Supreme Court determined, in *Balzac v. Puerto Rico*,⁴⁷ that the insular legislature could deny the right to a trial by jury as guaranteed by the Sixth Amendment. The court reasoned that Puerto Rico may do so because it is unincorporated territory. It appears that if this case were before the court today, Puerto Rico would have to comply with all the provisions of the Constitution, in terms of fundamental rights.

While the Supreme Court requires Puerto Rico to apply its laws uniformly, it has failed to provide the same uniform protection to Puerto Rico as that accorded to the states. The Court's decision in 1978, in *Califano v. Gautier-Torres*,⁴⁸ implies that Puerto Rico may still be considered by the court as a federal entity and remains under the plenary control of Congress.

⁴⁷ 258 U.S. 298 (1922).

⁴⁸ 435 U.S. 1 (1978).

In *Califano*, the appellants claimed that the exclusion of Puerto Rico from the supplemental security income program of the Social Security Act interfered with their constitutional right to travel to and from any part of the United States.

The Court recognized there was a constitutional right to travel between the United States and Puerto Rico, but held that the right to travel was not infringed by a denial of benefits. The Court reasoned that there existed a "strong presumption of constitutionality "in the area of monetary benefits and in the judgment of Congress, such a presumption will be sustained as long as Congress' action is "rational and not invidious"⁴⁹.

Similarly, in *Harris v. Santiago Rosario*,⁵⁰ the Court upheld the federal program for Aid to Families with Dependent Children, which provided appreciably less assistance to Puerto Rico than to the states. The court determined there was no violation of equal protection. The majority reasoned that Congress, empowered under the territorial clause, "may treat Puerto Rico differently from the States so long as there is a rational basis for its actions."⁵¹

Under the rationale of *California* and *Harris*, it appears that there is no constitutional protection for Puerto Rico from

⁴⁹ id. at 5, n.7.

⁵⁰ 466 U.S. 651 (1980).

⁵¹ 446 U.S., 451-52.

Congress' discretionary authority to discriminate between Puerto Rico and the States.

These Supreme Court cases dealing with Puerto Rico highlighted the uncertainty of Puerto Rico's political status. In the area of individual rights, Puerto Rico is required to extend to individuals all the protections of the constitution, as is required of each state. Yet Puerto Rico is not afforded the constitutional protection of a uniform application of laws, a protection afforded to the states.

The ability of Congress to unilaterally amend the Federal Relations Act is equally disconcerting for Puerto Rico. If Congress can effect changes in all areas of this act, then there is a great possibility of congressional interference with the internal affairs of Puerto Rico.

Congress' ability to act unilaterally can be seen in its amendment of the Jones Act. Under Section 41 of the Jones Act, the Federal District Court in Puerto Rico had jurisdiction "of all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory or District of the United States not domiciled in Puerto Rico . . .," Congress was able to confer diversity jurisdiction of the district court since the court was established under the authority of the territorial clause. In 1966, Congress amended the act to provide life tenure

to the judges of the Federal District Court of Puerto Rico.⁵² In 1970, Congress again amended the act to remove the additional grant of diversity jurisdiction.⁵³ Congress' authority over the Federal Courts is not questioned, but it raises the uncertainty of Congress' ability to unilaterally amend the Federal Relations Act.

The possibility of Congressional interference became more apparent with the passage of the Deficit Reduction Act of 1984. Under this act Congress amended section 9 of the Federal Relations Act. Section 9 provided for the return of all taxes collected on Puerto Rican goods to the treasury of Puerto Rico. Congress withheld the return of rum taxes in excess of \$10.50 a gallon.⁵⁴ The Deficit Act created a strong potential for indirect interference in Puerto Rico's internal affairs.

In 1976, the Supreme Court held that Congress' attempt to make the Fair Labor Standards Act, applicable to employees of states and their local subdivisions, was beyond the scope of Congress' authority under the commerce clause.⁵⁵ In *Garcia v.*

⁵² 80 Stat. 764.

⁵³ 62 Stat. 889.

⁵⁴ Deficit Reduction Act of 1984, 98th Cong. 2d sess., June 23, 1984.

⁵⁵ *National League of Cities v. Usury*, 426 U.S. 833 (1976).

San Antonio Metropolitan Transit Authority;²² the Court overruled its earlier decision. The court determined that Congress may impose the provisions of the act on the states. Puerto Rico's compliance with the Fair Labor Act suggests that it is being treated unfairly. It is being denied the benefits afforded to states, while being required to bear the same obligations and burdens required of the states. Additionally, there are no provisions in the Puerto Rican Compact designed to protect Puerto Rico from the detrimental effects of Federal legislation meant to apply only to the States. If the compact agreement includes public law 600, 477, and the Federal Relations Act then Congress should not have the power to unilaterally repeal any part of these laws.

The goal of the Compact was to establish greater local autonomy for Puerto Rico. However, a closer examination of the judicial interpretations and legislative acts of Congress indicate that the Compact fails to meet its goal of allowing greater local autonomy for Puerto Rico. Puerto Rico is left asking the same question it asked in the early 1900's. To what extent does the United States Constitution apply? Because of the uncertainties with Puerto Rico's relationship with the United States, it fails to provide a viable commonwealth model for the island of Guam.

²² 469 U.S. 528, (1985) The Supreme Court determined that state and municipal employees must be paid in accordance with the Fair Labor Standards Act.

The Commonwealth of the Northern Marianas

The Commonwealth of the Northern Marianas (CNMI)⁵⁷ has a distinct legal and political history, different from Guam. In 1889, Germany purchased the Northern Marianas from Spain. With the defeat of Germany in World War I, the islands were occupied by Japan and were subsequently mandated to Japan by the League of Nations in 1919. On April 2, 1947, the United Nations⁵⁸ Security Council approved a trusteeship agreement where the Northern Marianas, Caroline, and Marshall islands would be placed under the administration of the United States.⁵⁹ In contrast Guam's political and historical acquisition has its origins as a United States Territory, as a result of the Spanish-American war and the subsequent Treaty of Paris.

Despite the differences in their legal and political histories Guam and the CNMI have more in common in terms of their cultural, political and economic concerns. This is so because the indigenous people of Guam and the CNMI are of the same Chamorro ancestral descent with extended family relations. Additionally, they occupy the same archipelago chain more commonly known as the Marianas Islands. Because the concerns of

⁵⁷ hereinafter CNMI.

⁵⁸ hereinafter U.N.

⁵⁹ Trusteeship for Former Japanese Mandated Islands, Apr. 2 - July 18, 1947 United States-U.N. Security Council, 61 Stat. 3301, T.I.A.S. No. 1665 (1947).

the CNMI and Guam are so similar and for the most part based upon their common heritage, it is not surprising that the Guam would look to the example set by their island cousins.

In analyzing the CNMI as a commonwealth model, we must consider the origins of their relationship with the United States. The United States' obligations as administrator of the Trust Territories requires the United States to provide for "self-government" or "independence" of these territories. U.N. Art. 76(b) of the Charter provides that the administering authority shall:

1. Foster the development of such political institutions as are suited to the trust territory and shall promote the development of the inhabitants of the trust territory towards self-government or independence, as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; shall develop their participation in government; shall give due recognition to the customs of the inhabitants in providing a system of law for the territory; shall take other appropriate measures toward these ends;⁶⁰

The United States has a similar obligation to Guam under Article 73 of the United Nations Charter. Article 73, which pertains to non-self governing territories, provides:

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interest of the inhabitants of these territories are paramount, and accept as sacred trust the obligation to promote the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and to this end:

⁶⁰ United States-United Nations Security Council, 61 Stat. 3301, T.I.A.S No. 1665 (1947).

- a. To ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses . . . "
[emphasis added]⁴¹

While it is arguable if article 73 standing alone creates an affirmative or enforceable obligation, it nonetheless evidences an international obligation that the United States has assumed.

Pursuant to its obligations under the Trusteeship Agreement, the United States has been negotiating with the Trust Territories since September 1969, to determine their political status. On their own initiative the peoples of the Trust Territories of the Pacific Islands (TTPI)⁴² divided politically into four separate territories. The CNMI entered into separate negotiations, opting for a closer relationship with the United States.⁴³ By comparison, the remaining members of the TTPI sought a political status known as "Free Association". Free Association allows for a close and enduring political relationship, while maximizing internal self-government and ensuring enough autonomy to enable

⁴¹ 59 Stat. 1031, 1048, T.S. No. 993 (1945).

⁴² hereinafter TTPI.

⁴³ see S. Rep. No. 596, 94th Cong., 2nd Sess 4-5 (1976) reprinted in 1976 U.S.; Rep. No. 596, 94th Cong., 2nd Sess 4-5 (1976).

each island entity to establish their own international personality.⁴⁴

In 1976, the CNMI concluded an agreement with the United States, thus becoming a Commonwealth of the United States upon termination of the trusteeship.⁴⁵ The terms and conditions of the CNMI relationship are set forth in the Covenant to establish the Commonwealth of the Northern Marianas.⁴⁶

The Covenant consists of ten articles defining the political relationship between the CNMI and the United States. The preamble to the Covenant states that the purpose of the Covenant is to "define the future relationship between the Northern Mariana Islands and the United States. This Covenant will be mutually binding when it is approved . . ."⁴⁷ Pursuant to Section 101 of the Covenant, the CNMI will become a self-governing commonwealth under the United States sovereignty upon termination of the trusteeship.⁴⁸

⁴⁴ see Armstrong, *The Emergence of the Micronesians into the International Community: A Study of the Creation of a New International Entity*, 5 Brooklyn J. INT'L L.J. 207 (1979).

⁴⁵ Proclamation No. 4534, 3 C.F.R. 56-57 (1978) reprinted in 48 U.S.C. sec. 1681 (1976).

⁴⁶ id.

⁴⁷ Preamble to the Covenant of the Commonwealth of the Mariana Islands.

⁴⁸ The Covenant was approved by Congress and enacted into law on March 24, 1976. Act of March 24, 1976, Pub.L. No. 94-241, 90 Stat. 263 (codified in 48 USC 1681).

Additionally, Section 102 of the Covenant provides that the relationship between the CNMI and the United States "will be governed by this Covenant which, together with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, will be the supreme law of the Northern Mariana Islands."⁴⁹

Unlike the Puerto Rico compact, the CNMI Covenant specifically identifies the provisions of the United States Constitution which apply to the CNMI. These provisions also restricts the United States ability to unilaterally modify or affect the local autonomy of the CNMI.

The most significant article in terms of defining the relationship between the United States and the CNMI is Article I Section 105. Section 105 states that the United States may enact legislation for the CNMI, but its power to legislate is limited in several ways. First, if the legislation cannot be made applicable to the several states then the federal government must specifically state that the law was meant to apply to the CNMI. Second, the federal law must be consistent with Article I, the CNMI Covenant (defining the political relationship of the CNMI and the United States), Article II (citizenship and nationality), Section 501 (applicability of laws section) and Section 805 (land restrictions section). Any laws changing or attempting to modify

⁴⁹ 48 U.S.C. sec. 1681 (1976).

these sections will be void, unless the CNMI and the United States agree that it shall apply.

Section 501, which is the applicability of laws section states: "to the extent that they are not applicable of their own force, the following provision of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States." A cursory examination of the provisions of 501 showed the intent of this section was to protect the fundamental rights of all citizens of the CNMI. Just as the Constitution protects the fundamental rights of citizens.

However, the application of other provisions or amendments of the United States Constitution required the approval of both the CNMI and the United States. It is clear that not all of the provisions of Constitution were meant to apply to the CNMI. The CNMI's desire to establish a closer relationship to the United States does not support the conclusion that it intends to be governed by the same Constitutional provisions which defined the relationship between the States and the Federal Government.

The relationship between the United States and the CNMI can be properly compared to the other Trust Territories which opted for a Free Association. As Freely Associated States, the other members of the trust territory enjoy complete autonomy over their internal and external affairs.⁷⁰ The Freely Associated States

⁷⁰ 48 USC 1681 sec 201 generally.

have a greater international capacity,⁷¹ limited only by the mutual Security Agreements which preserve the United States defense interest.⁷²

Similarly, the CNMI exercises the same right of self-government as the Freely Associated States. The CNMI's Covenant protects this right by limiting the United State's power with respect to the CNMI's internal affairs. However, the United States sovereign authority in foreign affairs is preserved.⁷³

Despite the United States sovereignty in the area of foreign affairs, the CNMI Covenant establishes a new relationship. This is evidenced by some of the more controversial provisions in the covenant. An example is the scope of the CNMI's autonomy. Section 805, of the Covenant provides for restrictions on the alienation of land. Section 805 requires the CNMI government to restrict the alienation of land exclusively to persons of

⁷¹ Compact of Free Association. 48 U.S.C. sec. 1681 (Aug. 26, 1982-Jun. 24, 1943). preamble cl. 6, and Title I, Arts. I and II. The Freely Associated States exercise complete internal autonomy limited only by The Security Agreement.

⁷² Mutual Security Agreements completed pursuant to sec. 321 and 323 of the Compact of Free Association May 24, 1982-Oct 1, 1982.

⁷³ 48 U.S.C. 1681 (1976) Article I, sec. 104, "The United States will have complete responsibility for and authority with respect to matters relating to foreign affairs and defense affecting the Northern Mariana Islands."

Northern Marianas descent.⁷⁴ Because of its obvious discriminatory implications for other American citizens, it is clear that the Covenant envisions a unique relationship, in which the CNMI is not wholly governed by the United States Constitution.

In the Freely Associated States, the United States recognizes similar restriction on land imposed by the local governments. "The U.S. Congress endorses and encourages the Government of the Federated States of the Micronesia and of the Marshall Islands to regulate, in accordance with their Constitutions and laws, the alienation of long-term interests in real property. They are allowed to restrict the acquisition of such interest only to persons of Federated States of Micronesia citizenship and Marshall Islands citizenship."⁷⁵

It is highly unlikely that an American Citizen may enter the Freely Associated states of Micronesia and claim that those governments have violated his constitutional rights, simply because the Constitution does not apply there.

The Island of American Samoa, provides for similar land restriction provisions in its Constitution. The American Samoan Constitution states:

In furtherance of the provisions of the Constitution of American Samoa, Article I section 3, authorizing enactment

⁷⁴ see N. MARIANA ISLANDS CONST. art. XII sec. 1
"acquisition of permanent and long-term interest in
real property...to persons of Northern Marianas
descent."

⁷⁵ 48 U.S.C. sec. 1681 sec. 104 (C).

of such legislation as may be necessary to protect the lands, customs, culture, and traditional Samoan family organizations of persons of Samoan Ancestry, and to encourage business enterprises by Samoans, the legislature finds there are limited land resources, water, sewage facilities and economic opportunities in American Samoa. Therefore economic opportunities in American Samoa. Therefore with the increasing mobility of today's population, the only way to preserve the Samoan culture and way of life and allow the people of Samoa to determine their political and economic future is to restrict the entry of non-American Samoans into American Samoa. With this in mind the legislature has enacted this law, and it should be so construed for the protection of the people of American Samoa, their lands, and their economic and political future.⁷⁶

These land restrictions also offend our traditional understanding of what a governing body may and may not do. A land restriction such as this is clearly unconstitutional when measured against traditional governmental powers outlined in the Constitution. Again, to understand how this restriction is allowed, our focus must be on the relationship that exist between American Samoa and the United States.

This law survives because of the relationship existing between American Samoa and the Federal Government. Under the incorporation theory adopted in the insular cases,⁷⁷ Congress has plenary control over the unincorporated territories. The incorporation doctrine allows Congress to legislate for them or authorize them to enact legislation for themselves. In this

⁷⁶ AM. SAMOA CODE tit. 9, sec. 201, (1973) Aliens and Immigration. "It is prohibited to alienate any lands...to any person who has less than one half native blood, "AM SAMOA CODE tit. 27 sec. 204(b) (1973).

⁷⁷ supra.

respect, a challenge to American Samoa's laws necessarily challenges the plenary control exercised by Congress.⁷⁸

In contrast, the power of Congress, as it relates to the CNMI, is govern by the CNMI Covenant. Under the CNMI Covenant, Congress does not have the right to unilaterally rescind the CNMI law. This restriction on Congress' powers distinguishes the CNMI from the unincorporated territories.⁷⁹

The CNMI is a viable model for Guam because of its success in defining it's relationship with the United States. Specifically, with respect to the limitations placed on Congress' ability to affect the internal affairs of the islands. Additionally, it presents an attractive model because of their success in preserving their culture by securing, as irrevocable, the right to limit and restrict the alienation of land.

THE ROAD TO COMMONWEALTH

The process by which Puerto Rico and the CNMI drafted their constitution explains to some degree the disparity between the two commonwealth models. The Puerto Rican Constitution was drafted before the Commonwealth Act of Puerto Rico was approved.⁸⁰ Subsequently, the constitution was required to conform to the conditions placed on it by public law 477. Arguably, by conforming to the conditions found in public law

⁷⁸ see Insular Cases discussion infra.

⁷⁹ See analysis on sec. 105 and sec. 501, infra. United States prior to drafting it's constitution. The CNMI's.

⁸⁰ See discussion of Puerto Rico infra.

477, Puerto Rico fell under the shadow of the territorial clause, because it failed to clearly define the limits of federal power.

In contrast, the CNMI entered into negotiations with the United States. These negotiations served to define and limit the federal government prior to the enactment of the CNMI Constitution. The Constitution of the CNMI was approved pursuant to the Covenant. The applicability of the United States constitution along with the Federal Government's actions, should be analyzed within the framework of the CNMI Covenant.

Similarly, Guam seeks to define and limit the powers of the Federal Government prior to enacting its own constitution, thereby avoiding the difficulties experienced by Puerto Rico. If the Guam Commonwealth Act is approved, then the legislative acts of Congress and the Guam legislature must comply with the provisions of the Commonwealth Act.

IMMIGRATION

Immigration is the American legacy. It represents our origins as a nation and defines our existence as a people. However, the United States recognized long ago that uncontrolled immigration can have negative effects on the quality of life for American citizens. The realization that our resources are limited has come crashing into our proud history, no longer allowing America to open it's doors to all the people of the world.⁸¹

⁸¹ see G. Barth, Bitter Strength. A HISTORY OF THE CHINESE IN THE UNITED STATES: 1850-1870 (1964).

The small island territories are far more susceptible to the potential draining effects of immigration. Because of the threats to the island's cultural and economic well being, the island governments have to exercise control over immigration to the island. Control of immigration would allow these governments to adjust, plan, and control the changes so as to minimize their harmful effects.

The Constitution provides that Congress has the power to "establish a uniform Rule of Naturalization."⁸² The Supreme Court determined as early as 1817 that this power of naturalization is vested exclusively in Congress.⁸³ The National Government has "broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization."⁸⁴

For all the island territories, the right of self-determination must include the right to determine how to respond to the effects of outside factors and events intruding into the territories. Because immigration patterns can greatly affect the Island's culture and livelihood, Guam's quest for self-determination must include the right to regulate and control

⁸² U.S. Const. art.I Sec.8 cl.4.

⁸³ *Chirac v. Chirac*, 2 Wheat. (15 U.S. 259, 269 [1817]).

⁸⁴ *Takahashi v. Fish & Game Commission*, 334 U.S. 410 at 419 (1941); *Hines v. Davidowitz*, 312 U.S. 52, 66 (1941).

immigration. The concern over immigration into the islands has been address by Guam's Political Status Commission. In its report on immigration, the Commission concluded:

Immigration to Guam is threatening to change the way of life on the Island. We have noted in the introduction the rapid increase in economic life here in Guam and the concomitant growth in the labor force. We are aware that Guam is critically short of labor and we are also aware that frequently the skills which are required by investors are not readily found on the Island. The Commission is concerned that the people of Guam participate fully in this economic growth; not solely for economic gain or narrow chauvinistic interest, but because without that participation there will arise in Guam the bitter resentment and hostility toward the off-islander which is now found in the Virgin Islands where a similar rapid development has taken place. The state department and Immigration and Naturalization Service management of immigration has been much too cavalier, unnecessarily permitting the importation of personnel without due concern for the effect on the permanent residents of Guam. Methods have been found in other areas, most notably in American Samoa, to permit the off-shore areas to have greater control over all people on its Island. It is essential that similar control be vested in the Government of Guam. We are concerned both for ourselves and for the United States that our growth take place in a context of harmony and understanding. It is our belief that it cannot take place in this fashion unless the people of Guam are given greater control over this area.⁸⁸

The lack of local control over immigration has produced a discouraging climate of poor economic and cultural growth. Uncontrolled immigration threatens both the political and governmental controls available to the indigenous populations; the only real power of self-protection available to the island people.

In a report on ethnicity, prepared by the Interagency

⁸⁸ LEGISLATIVE POLITICAL STATUS COMMISSION OF THE TWELFTH GUAM LEGISLATURE, REPORT ON THE STATUS OF GUAM. at 15 (1974).

Committee on Population, the dilemma faced by Guam was addressed. In its chapter summary on ethnicity, the Committee reported:

"Chamorros continued to be the largest single ethnic group on Guam in 1980 . . . The proportions of White and Filipinos here is increasing, that of Chamorros is decreasing . . . By industry, Chamorros were mostly in the fields of public administration or professional and related services, Filipinos in retail, trade or construction and mining, Whites were in professional and related services or retail trade, and others were in retail trade or construction and mining."^{ee}

The committee's conclusions support the statements made by the Political Status Committee, concerning immigration. The fact Chamorros appear to dominate the field of public administration correlates with the Chamorro's control of the government. This control over the local government is perhaps the only means by which the Chamorros can continue to preserve their culture and retain control over their island.

The greatest threat to Chamorro culture is the danger of being absorbed by larger, more economically or politically powerful groups of people. It is often difficult to measure how a population's composition affects political trends. However the plebiscites to approve the Commonwealth act, demonstrates the fragile control retained by the Chamorro people.

On August 8, 1987 the first plebiscite was held to approve the Commonwealth Act. The election was such that the people voted on each Article separately. Any article which failed would

^{ee} GUAM'S PEOPLE: "A Continuing Heritage" A Statistical Profile of the Territory of Guam 1920-1980; Interagency Committee on Population, Government of Guam Jun. 1988.

be redrafted and another election would be held on the defeated articles. The August plebiscite resulted in all the Articles being approved, except Article 7 on immigration and Article 1 on the political relationship.

The second plebiscite was held on September, 1987. The results of which were best described:

"In the brief educational campaign in October and November 1987 prior to the second plebiscite the commission members endorsed a yes vote and abandoned any pretense of neutrality. This stance angered some non-Chamorros. Also for the first time in a plebiscite on Guam merely all incumbent and former political leaders except Filipinos urged a yes on both articles . . . The second plebiscite also saw the appearance of a different group of Chamorro advocates among the OPI-R activist.⁶⁷ Young, personable, and articulate, they mobilized a Chamorro grass-roots campaign in conjunction with the OPI-R and a new political party, The Guam National Party . . . The Commission's gamble that a bigger Chamorro turnout would approve the two mildly reworded articles proved correct. On November 7 the turnout topped 58%, or 20,765 voters, the largest proportion of whom were undoubtedly Chamorro-Guamanians. All sections in both articles were approved by margins over 3000 votes each . . .⁶⁸."

Article Seven of the Commonwealth Act requests the right to control immigration. The challenges against this provision of the Guam Commonwealth Act result largely from our basic understanding of the relationship between the States and the Federal Government.

In the federal system, there is a division of powers. This allocation of power is a contract between the individual States and the Federal Government, established by the Constitution.

⁶⁷ Organization of People for Indigenous Rights.

⁶⁸ R. Rogers: GUAM'S COMMONWEALTH EFFORT 1987-1988., 22.

Under the doctrine of Federalism, the Constitution provides a governmental structure whereby the powers of the government are divided between the Federal Government and the States. The articles of the Constitution provide for a viable central government while preserving the State's autonomy.

The Constitution provides that, "this Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."²⁰

When Congress approved the CNMI Covenant, it was an agreement between the United States and the CNMI pursuant to the treaty making powers embodied in the Constitution. In considering the relations between the Federal Government and the CNMI, it must be understood that the relationship is not governed by the principles of federalism, but rather by the provisions of the CNMI Covenant.

Similarly, all the rights and powers, including the political and legal status of Guam, is determined by Congress and is not defined by the principles of federalism that govern the relationship between the States and the Federal Government. In

²⁰ U.S. Const. art. VI sec. 2.

Sakamoto v. Duty Free,⁹⁰ the Court addressed the applicability of the Commerce Clause to Guam, the Court determined that the provisions of the Commerce Clause do not apply to Guam because it is not a state.

The classification of Guam as an unincorporated territory raise new legal and political questions never before addressed in American History. There were times when the status of unincorporated territory worked to the disadvantage of the island territories.

Specifically, a limited application of the constitution was applied to the Governments and in turn to its people. In *Attorney General v. United States*,⁹¹ the Court held that the citizens of Guam did not have the right to vote for president because that right inures to the States. Thus, since Guam is not a State its residents have no right to vote.

Just as Congress can limit the rights and authority over the unincorporated territories, Congress can also broaden its authority over matters that would not normally be allowed under the doctrine of federalism. The limitations placed on state control over immigration, arising out of the doctrine of federalism, do not necessarily apply.

The status of unincorporated territory has been used to justify the plenary control of Congress over the internal and

⁹⁰ 764 F. 2d 1285 (1985) cert. denied. 106 S. Ct. 1475 (1986).

⁹¹ 738 F.2d 1017 (1984).

external affairs of the Islands. Today it is this same doctrine which can be used to justify granting to Guam the right to control its own immigration matters, a right which, under the doctrine of federalism, would be unthinkable.

Guam's present status is a creation of Congress, and the rights and powers flow directly from congressional design. Congress may grant any rights or powers that it sees fit to grant. Any such grant of power is not restricted by any notion of federalism. As such, Congress may pass specific legislation allowing Guam to control immigration into the island.

The Government of Guam and their people have developed over the years to the point where continued plenary control over the territories are no longer practicable nor desirable. In their efforts to redefine the existing relationship, and establishing their right to self-determination, the Island of Guam proposes a contract, setting forth a new division of authority between the Federal Government and Guam. The terms of contract are defined by the Commonwealth Act of Guam.

Other constitutional considerations raised by the granting of these rights properly focus on how such a granting of authority affects the rights of other United States citizens and the rights of aliens. The granting of this authority to Guam presents no constitutional challenges to the individual rights of United States citizens. The Act provides that in its exercise of this authority, "actions by the Commonwealth of Guam shall not

impair the free movement of United States citizens to and from Guam."⁷²

In *United States v. Macintosh*, with regards to the rights of aliens, the Supreme Court stated, "Naturalization is a privilege, to be given, qualified or withheld as Congress may determine, and which the alien may claim as of right only upon compliance with the terms which Congress imposes."⁷³ Thus, there is no inherent right of aliens to immigrate into the United States or any of its territories.

Once an alien is admitted into the United States, there are certain constitutional privileges that extend to them. "All persons within the jurisdiction of the United States shall have the same right in every State and Territory . . . to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by [its] citizens . . . "⁷⁴ The protection of this statute has been extended to citizens and aliens.

In *Takahashi v. Fish & Game Commission*,⁷⁵ the Supreme Court also made it clear that aliens lawfully in this country are afforded the constitutional right to travel and live in any state

⁷² H.R. 4199, 100th Cong., 2d Sess. sec. 701(a)-(c)(1) (1988).

⁷³ 238 U.S. 605,615 (1931).

⁷⁴ 42 U.S.C. sec 1981.

⁷⁵ 334 U.S. 410 (1941).

in the union "on an equality of legal privileges with all citizens under nondiscriminatory law."⁷⁶

The draft act clearly anticipates these rights and privileges that are extended once an alien enters the United States and provides that: "Entry of aliens into Guam . . . shall not preclude a person who previously has been lawfully admitted for permanent residence in the United States and who is otherwise admissible from being readmitted in Guam upon return to the United States."⁷⁷

CONCLUSION

When Guam first entered the American Family, it was treated differently. Under the incorporation doctrine developed by the Supreme Court it is clear that not all of the provisions of the Constitution apply to unincorporated territories. For many years this doctrine has been a useful in justifying Congress' plenary control over the internal affairs of the territories.

The rationale of this doctrine may now be used to justify the granting of powers to the Guam, traditionally reserved to the federal government. Based on the experiences of Puerto Rico and The Commonwealth of the Northern Marianas, any new division of powers must be clearly set forth and not left open ended or undefined. The provisions of the Commonwealth Act would preserve

⁷⁶ id. at 419.

⁷⁷ Commonwealth draft act tit.VII sec. 701 (4)(a).

the sovereignty of the federal government, and protect Guam's right to local autonomy over its internal affairs.

Today, Guam is faced with the difficult question of remaining in the American system while preserving the cultural heritage of its people. Admittance into the Union of States would place the Chamorro people on a path of cultural extinction as experience by the indigenous people of Hawaii. To remain an unincorporated territory would place the Chamorro people in a state of continued degradation, similar to the tragic experience of the American Indians.

The people of Guam seek to exercise local control of their internal affairs. This desire to exercise their right to self determination is consistent with the foundations of our American heritage. Their quest is one that seeks as one of its noblest goals the preservation of its cultural heritage. All they ask is a means to protect their culture. And a chance to prosper within the american family; and nothing in their request infringes on the rights of their fellow citizens.

Mr. DE LUGO. I tell you, it is too bad that the professor wasn't here to hear that law student. Very, very well prepared argument. Congratulations.

I want to thank all of you for your presentations here. Thank you.

The next panel we will hear from is the Honorable Concepcion Barrett, Mr. Rufo Lujan, Mr. Mark Charfauros, Mr. Clifford Guzman, Mr. Tony Sanchez, Dr. Fae Untalan-Munoz, Mr. Vicent A. Leon Guerrero, Mr. Anthony Pangelinan and Mr. Vicent Q. Sanchez.

PANEL CONSISTING OF CONCEPCION BARRETT, RUFO LUJAN, MARK CHARFAUROS, CLIFFORD GUZMAN, TONY SANCHEZ, FAYE UNTALAN-MUNOZ, VICENT A. LEON GUERRERO, ANTHONY PANGELINAN AND VICENT Q. SANCHEZ

Mr. DE LUGO. The statement from Millani Trask will be placed in the record and we will receive Dr. Munoz's own statement.

We would like everybody to please help us along here because we have many other witnesses to hear from and we want to get to the administration witnesses. We would like as well to be able to get lunch.

So let us observe the five minute rule.

First the Honorable Concepcion Barrett.

Ms. BARRETT. Honorable members of the subcommittee, I am Concepcion C. Barrett. I am a Senator and Congresswoman before the Organic Act and I was one of the members who from the 1949 rebellion.

Larry Ramirez is a member, and I am one of the few surviving members who came to support the commonwealth bill. Your Honorable Blaz is one of my pupils and he is a very, very intelligent pupil, too. I am very proud of him.

Mr. Chairman, 39 years ago, I appeared before a similar subcommittee, of course with different members, to advocate and support the Organic Act of 1950 granting Guam U.S. citizenship and civil government. I was rewarded with one pen by which President Truman signed the law.

I am here once more to support the passage of our commonwealth bill. This bill will truly reflect the will to strive and obtain greater participation of self-determination of the people of Guam. You have taught us self-sufficiency and the ideals of democracy. As a matter of fact, we eat the American way, sleep and breathe American.

After enduring many and long constraints, it is now our duty to request the necessity for a change and to alter the Organic Act. Please unleash the shackles and grant us the Commonwealth Act for the advancement of our social and political status.

I hope and pray that this quest for more self-determination will be approved during my lifetime so we can live in peace and prosperity.

Si Yuus Maase and thank you.

Thank you.

[Prepared statement of Ms. Barrett follows:]

December 11, 1989

The Honorable Ron De Lugo
Chairman
House Subcommittee on Insular
and International Affairs
Honolulu, Hawaii

Dear Mr. Chairman,

Thirty-nine years ago, I appeared before a similar subcommittee, of course with different members, to advocate and support the Organic Act of 1950 granting Guam U.S. citizenship and civil government. I was rewarded with one pen by which President Truman signed the law.

I am here once more to support the passage of our Commonwealth Bill. This Bill will truly reflect the will to strive and obtain greater participation of self determination of the people of Guam. You have taught us self-sufficiency and the ideals of democracy. As a matter of fact, we eat the American way, sleep and breathe American. After enduring many and long constraints, it is now our duty to request the necessity for a change and to alter the Organic Act. Please unleash the shackles and grant us the Commonwealth Act for the advancement of our social and political status.

I hope and pray that this quest for more self determination will be approved during my lifetime so we can live in peace and prosperity.

Si Yuus Maase and Thank you.

Conception C. Barrett
CONCEPTION C. BARRETT

Mr. DE LUGO. Thank you very much.

I want to tell you you did a very good job with General Blaz.

Ms. BARRETT. Thank you. I am proud of him, too.

Mr. DE LUGO. We are all proud of him.

Now, Mr. Rufo Lujan.

Mr. LUJAN. Mr. Chairman, like Mr. Barcinas, I would ask to be excused right after I speak. I have a plane to catch, also.

Mr. DE LUGO. Fine.

Mr. LUJAN. Thank you, Mr. Chairman.

Mr. DE LUGO. We appreciate the fact that you have taken the time to be with us.

Mr. LUJAN. Mr. Chairman, and members of the committee, I want to express my sincerest appreciation to you for having me here today.

For the record, my name is Rufo J. Lujan, a Chamorro and native resident of Guam.

The prehistory and history of Guam is long and varied. Prehistoric human evidence goes back some 3,000 years. These findings attest to the fact that the Chamorros have been around for some time and not just a passing fancy. I think we have claimed the right to say we have always been here.

The Chamorros have been subjugated by three different nations since the initial colonization in the late 17th Century. The Spanish ruled for 230 years. The Americans had an interrupted rule from 1898 to 1941 and from 1944 to the present. The Japanese seized Guam in 1941 and ruled it for three harsh years until the recapture by the Americans in 1944.

While the American rule can be characterized as benevolent for the most part, it has been one of benign neglect. The Department of the Navy administered Guam from 1900 to 1941 and again from 1945 to 1950. Since the Navy's main interest in Guam was for a refueling station for its ships, there was virtually no economic development in the private sector of the local economy.

The Navy continued to exert control over the economic development of Guam up until 1962, even after civilian control was initiated in 1950.

The Americans, too, have not always acted in the best interest of or justly to the Chamorros. The recapture of Guam from the Japanese was fierce and resulted in the virtual destruction of the island. But, because of the Korean War and the need for military bases in Japan which was close to Korea, the United States forgave Japan of its war debts to the people of Guam. The American destruction in World War II and land taking for W.W. II and the Korean War are subjects of controversy that continue to the present.

The Chamorros of Guam have been loyal to the United States of America first as citizens of Guam and then as citizens of the United States. As citizens of Guam, the Chamorros have the dubious distinction of being the only native people under the United States to be conquered and enslaved by an enemy. The Chamorro sons of Guam died in defense for the nation that they were not even a citizen of.

As U.S. citizens, Chamorros again paid with their lives in the Korean and Vietnam wars. If the sacrifice of lives was to be meas-

ured by which Chamorros are to be judged worthy of improved political relationship then we have paid our dues.

The lack of congressional representation, remoteness from Washington, D.C., and its geographic location have worked against the Chamorros. Attempts by Guam to diversify its economy have failed because of pressure from competing mainland industries and their respective congressional delegations. Guam watches while U.S. domestic and other nation's fishermen harvest its greatest marine resource, tuna.

Guam did not begin to progress until about 20 years ago when it was granted the right to elect its own governor. Prior to then, the governors were appointed and did not have to answer to the people. During the past 20 years, the local political leadership has been under Chamorros. Guam prospered under the limited self-rule that it had been granted. It achieved political and economic maturity.

The time has come for Guam to be granted greater autonomy. The Chamorros, as a people, cry for justice, equality and the other basic tenets of American form of democracy which have made our country great.

The Chamorros demand recognition as a people and their right to self-determination. While commonwealth may not make the Chamorros master of their own destiny, it will provide for greater local autonomy. It is time that the past injustices be righted.

The United States must view Guam as a partner coexisting for their mutual benefit. Let Guam have commonwealth and grant the Chamorro people their inherent right to self-determination.

Thank you. Gracias.

[Prepared statement of Mr. Lujan follows:]

ORAL TESTIMONY
OF
RUFO J. LUJAN
BEFORE THE HOUSE INTERIOR SUBCOMMITTEE ON INSULAR AND
INTERNATIONAL AFFAIRS

Chairman Ron de Lugo and Members of the Committee, I want to express my sincerest appreciation to you for having me here today. For the record, my name is Rufo J. Lujan, a Chamorro and native resident of Guam.

The prehistory and history of Guam is long and varied. Prehistoric human evidence goes back some 3,000 years. These findings attest to the fact that the Chamorros have been around for some time and not just a passing fancy.

The recorded history of Guam began with the so-called "discovery" by Magellan in 1521. But, it was not until late in the 17th century that Spain colonized the island of Guam or Guahan. A census conducted in the late 17th century estimated the Chamorro population of between 40,000 to 100,000. But, by the late 18th century or about 100 years later, the Chamorro population was down to approximately 1,500 persons. The causes for the decline can be attributed to three (3) main factors which were: 1) military attacks; 2) forced resettlement to facilitate Christianization; and, 3) diseases for which the Chamorros, having existed in isolation from the rest of the world, had no natural immunity. But, the Chamorros did recover from the population decline so that by the time of the American acquisition of Guam as a spoil of the Spanish-American War in 1898 their number was up to about 8,000. By the end of World War II, the Chamorros numbered more than 20,000.

The Chamorros have been subjugated by three (3) different nations since the initial colonization in the late 17th century. The Spanish ruled for 230 years. The Americans had an interrupted rule from 1898 to 1941 and from 1944 to the present. The Japanese seized Guam in 1941 and ruled it for three (3) harsh years until the recapture by the Americans in 1944.

While the American rule can be characterized as benevolent for the most part, it has been one of benign neglect. The Department of the Navy administered Guam from 1900-1941 and again from 1945 to 1950. Since the Navy's main interest in Guam was for a refueling station for its ships, there was virtually no economic development in the private sector of the local economy. The Navy continued to exert control over the economic development of Guam up until 1962, even after civilian control was initiated in 1950.

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The Americans, too, have not always acted in the best interest of or justly to the Chamorros. The recapture of Guam from the Japanese was fierce and resulted in the virtual destruction of the island. But, because of the Korean War and the need for military bases in Japan which was close to Korea, the United States forgave Japan of its war debts to the people of Guam. The American destruction in World War II and land taking for WWII and the Korean War are subjects of controversy that continue to the present.

The Chamorros of Guam have been loyal to the United States of America first as citizens of Guam and then as citizens of the United States. As citizens of Guam, the Chamorros have the dubious distinction of being the only native people under the United States to be conquered and enslaved by an enemy; the Chamorro sons of Guam died in defense for the nation that they were not even a citizen of. As U. S. citizens, Chamorros again paid with their lives in the Korean and Vietnam Wars. If the sacrifice of lives was to be the measure by which Chamorros are to be judged worthy of improved political relationship then we have paid our dues.

The lack of congressional representation, remoteness from Washington, D. C. and its geographic location have worked against the Chamorros. Attempts by Guam to diversify its economy have failed because of pressure from competing mainland industries and their respective congressional delegations. Guam watches while U. S. domestic and other nation's fishermen harvest its greatest marine resource -- tuna.

Guam did not begin to progress until about 20 years ago when it was granted the right to elect its own Governor. Prior to then the Governors were appointed and did not have to answer to the people. During the past 20 years, the local political leadership have been under Chamorros. Guam prospered under the limited self-rule that it had been granted. It achieved political and economic maturity!

The time has come for Guam to be granted greater autonomy. The Chamorros, as a people, cry for justice, equality and the other basic tenets of American form of democracy which have made our country great. The Chamorros demand recognition as a people and their right to self-determination. While Commonwealth may not make the Chamorros master of their own destiny, it will provide for greater local autonomy. It is time that the past injustices be righted. The United States must view Guam as a partner coexisting for their mutual benefit. Let Guam have Commonwealth and grant the Chamorro people their inherent right to self-determination.

BIOGRAPHICAL SKETCH

OF

RUFO J. LUJAN

BORN: June 18, 1942

MARITAL STATUS: Married to Cecilia R. Lujan

CHILDREN: Four (4)

EDUCATION: BA in Biology (University of Guam), 1971

EXPERIENCE: U. S. Navy, 1961-1965
Fishery Biologist, 1971-1977
Deputy Director of Agriculture, 1977
Deputy Director of Agriculture, 1984-1985
Director of Agriculture, 1977-1978
Chief of Fish and Wildlife (CNMI), 1982-1984
Director of Land Management, 1986-1987
Project Coordinator (Construction of Senior
Citizens' Housing), 1988-1989
Chief of Aquatic and Wildlife Resources,
1989 to present

OTHER EXPERIENCE: Member, Western Pacific Regional Fishery
Management Council, 1977 to present

CIVIC: President, Sunset JC's, 1972

Mr. FALCOMA. Thank you very much. We had to excuse the Chairman for a moment, so he asked me to chair the subcommittee.

Our next witness will be Mr. Mark Charfauros.

Mr. CHARFAUROS. Thank you, Mr. Chairman. Unfortunately, like my predecessors who have a flight, I will miss mine, but that is okay. I will get another one.

Members of the Subcommittee on Territorial and International Affairs, I am Mark Charfauros, a Chamorro born and raised on the island of Guam and I am here on behalf of my family to render favorable testimony for Guam's commonwealth bill.

Today, you will hear a multitude of testimony in favor of Guam's commonwealth bill justified by such aspects as the sacrifices and loyalty of Guam's people to promote democracy around the world; the unjust treatment and compensation levied on the Chamorro people by the United States military; Guam's unique geographical location and situation that requires special attention in relation to adverse results from Federal legislation enacted indiscriminately; the need for Guam to control immigration in order to preserve not only its unique culture, language, and traditions but to also preserve Guam's extremely limited natural resources in order to ensure the self-preservation of its inhabitants; the inherited and legal right of the Chamorro people to self-determination as guaranteed by international law.

This inalienable right of Chamorro self-determination stems from the Treaty of Paris and Article 73 of the United Nations Charter and possibly of Article VI, clause 2, of the Constitution which provides as follows: "This Constitution, and laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any to the contrary notwithstanding."

So being that the Treaty of Paris and Article 73 of the United Nations Charter are both bona fide treaties made under the authority of the United States, the United States Constitution is an instrumentality that should be used to enhance and safeguard Chamorro self-determination and not as an instrumentality to deny its implementation.

Though these aspects are of extreme merit for the implementation of Guam's Commonwealth Act, I would however like to touch on something that has transpired recently in regards to the U.S. Navy's meddling in Guam's political and internal affairs.

Sometime in February 1989 a memo from the Commander in Chief Pacific (CINCPAC) to the Joint Chiefs of Staff stated objections to Guam's commonwealth draft act in regards to possible impediments of the Navy's abilities to store chemical weapons and nuclear waste. I would not be surprised that this concern include nuclear waste dumping by Naval vessels off the coast of Guam.

This deliberate interference by the Navy in Guam's political and internal affairs is not new for in 1946 the Los Angeles Daily News featured an article "Navy Dictators in the Pacific Ouster" that stated "Conditions on Guam and Samoa are shocking. Naval governors rule 40,000 native inhabitants and thousands of United States

civilians under conditions of absolutism which put Stalin and Tito to shame. These American governors rule as absolute monarchs. They make the laws, prescribe the punishments, hire and fire the judges who are responsible only to them. They condemn and take over private property under rules they themselves make. They prescribe the curriculums in the so-called public schools, they establish and collect taxes and customs."

It seems that the U.S. Navy is reluctant as always to recognize Guam as an island of people rather than a strategic location destined to serve only military objectives.

The United States Navy must come to reality and realize that its very existence is to promote and safeguard a democratic system of government incumbent with the exercise of individual freedoms and the concept of "of the people, for the people and by the people."

No military institution should be involved in the determination of political relationships of people within the free world. To do so would bring discredit to the United States as a champion of democracy and human rights.

The people have spoken and regardless of how the Navy feels the commonwealth draft act is of their making and choosing. In a true democratic system of government there can be nothing short but the complete passage of the commonwealth draft act as presented.

Si Yu'os Ma'asi' Todos Hamyo.

Thank you.

[Prepared statement of Mr. Charfauros follows:]

Hafa Adai Members of the Subcommittee on Territorial and International Affairs.

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- * The sacrifices and loyalty of Guam's people to promote democracy around the world.

- * The unjust treatment and compensation levied on the Chamorro people by the United States military.

- * Guam's unique geographical location and situation that requires special attention in relation to adverse results from federal legislation enacted indiscriminately.

- * The need for Guam to control immigration in order to preserve not only its unique culture, language, and traditions but to also preserve Guam's extremely limited natural resources in order to ensure the self-preservation of its inhabitants.

- * The inherited and legal right of the Chamorro people to self-determination as guaranteed by international law. This inalienable right of Chamorro self-determination stems from the Treaty of Paris and Article 73 of the United Nations Charter.

- * and possibly of Article VI, clause 2, of the Constitution, which provides as follows:

"This Constitution, and laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any to the contrary notwithstanding."

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No military institution should be involved in the determination of political relationships of people within the free world. To do so would bring discredit to the United States as a champion of democracy and human rights.

The people have spoken and regardless of how the Navy feels the Commonwealth Draft Act is of their making and choosing. In a true democratic system of government there can be nothing short but the complete passage of the Commonwealth Draft Act as presented.

Si Yu'os Ma'asi' Todos Hamyo

Mr. DE LUGO. The next witness will be Clifford Guzman.

Mr. GUZMAN. Thank you, Mr. Chairman.

Members of the House Interior Subcommittee on Insular and International Affairs, my name is Clifford A. Guzman, a resident of the village of Tamuning on the island of Guam and a local businessman. I wish to thank the subcommittee for allowing me to testify on the issue of Guam's political status.

The people of Guam have come before the U.S. Congress seeking to gain true internal control over Guam's political, economic and environmental future. The question of self-reliance is tied directly into these three major areas.

For 91 years, we have faithfully maintained and defended the ideologies and principles of the United States of America. We have taken great pride in that association in the past, but the teachings of democracy call us to a greater autonomy as a people, in partnership with the U.S.

We now seek a new identity with the United States—a closer relationship—closer in equality in the form of a partnership. We are not seeking to separate ourselves from America, but rather to be recognized as a contributing and equal partner to the rest of the world.

The international economic importance of Guam's geographic location makes the question of political status a vital issue. Our ability to diversify our economic base on an international level for our progeny rests on how we deal with this issue in a time that economists are now calling the Age of the Pacific.

Today we are experiencing financial growth fueled by the expanding economic powers of our neighboring countries on the Pacific Rim. As an island of limited resources, we have relied on foreign visitors and Federal funding as the driving force of our economy. This limited economical base places our future in the hands of forces outside of our control.

Our inability to control our natural resources, transportation, taxes and immigration places Guam's future in a precarious situation. As the gateway to Asia, America, Australia and the rest of the Pacific region, there exists potentially large and diversified economic opportunities that remain outside our reach.

Guam possesses the knowledge, the ability and the foresight to diversify and expand our economic base. We merely seek the freedom to do so. Guam's present economic condition is a mere reflection of our ability to foster growth, even under the constraints of long-reaching laws.

Neither the Federal Government nor the residents of Guam can afford to restrict our potential. As the economic balance of the world shifts, we must seek out diversified avenues and capitalize on opportunities as they develop. For the most part, Guam's economic status forces us to rely on foreign investments without reciprocal action on our part.

The question of political status is in essence a question of allowing a people to decide their destiny for themselves. You must allow Guam to reshape its economy from the war and the welfare state of its past into the peace and prosperity of its future.

We seek to become more than the frontline defense for democracy; rather, we strive toward becoming the Pacific vanguard of free

trade in a free society. Like any man, we seek what is best for our children, utilizing the economic tools of our age. But what good is it to know how to fish if we cannot go beyond the reefs?

As a member of the next generation, I can proudly say that we stand ready and willing to join in and assume our share of responsibility in structuring Guam's future. The American dream is based on the freedom to allow people to make their place in the world. If you believe in this, then you must allow us our dreams.

Guam has mastered the tools of a modern economy and seeks only to implement what we have learned in a way that takes our specific needs into account.

Do not forsake the very foundation that the United States of America was built upon: the belief that people can and must govern themselves.

I ask that Congress not reduce our quest to the semantics of how the commonwealth will work. I ask that you seek the high road and understand the implications and promise of what is at hand—another true democracy is in the making. It is the promise of a bright future for our people who are willing to bear the responsibility of self-government. That is the true essence of Guam's quest for the commonwealth. That is the true essence of freedom.

Thank you and si yuus maase.

Gentlemen, I am a businessman but we have a political situation in Guam that we have to address in order for other businessmen of my own people to thrive in the business community. We have to be pragmatic about things.

As in any partnership deal entered into, the two things you look for is, number one, that you will have a win-win situation on both sides, everybody comes onto the table with that attitude. Secondly, that each person that is coming to the table to form that partnership has separated their needs and wants.

The people of Guam have made a very clear effort to portray to you what those needs are. That is very apparent in the emotionalism and the history of what has gone on in the 50 or 60 statements that have been made here.

We have further taken into consideration by giving you 12 articles that we feel strongly about. Those are our needs.

Our wants are many. Our wants are negotiable. We want the world just like anybody else.

What we want from you, to answer some of the questions you have been asking about how we are going to approach this, is a very clear and distinct message from you as to what your needs and wants are. I truly believe we are both coming to the table with a win-win situation.

You want a Pacific vanguard of democracy, and we want the ability to go out and take on the world.

I think that if we can get that clear message from you, aside from all the politics, aside from differences between Congress and the administration, I think we can put this thing to bed. I think we can come up with a partnership that will be a hell of an example for the rest of the world.

Thank you.

[Prepared statement of Mr. Guzman follows:]

TESTIMONY OF CLIFFORD A. GUZMAN
"GUAM'S QUEST FOR COMMONWEALTH"

Members of the House Interior Subcommittee on Insular and International Affairs, my name is Clifford A. Guzman, a resident of the village of Tamuning on the island of Guam and a local businessman. I wish to thank the Subcommittee for allowing me to testify on the issue of Guam's political status.

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The question of political status is in essence a question of allowing a people to decide their destiny for themselves. You must

allow Guam to reshape its economy from the war and the welfare state of its past into the peace and prosperity of its future. We seek to become more than the frontline defense for democracy; rather, we strive toward becoming the Pacific vanguard of free trade in a free society. Like any man, we seek what is best for our children, utilizing the economic tools of our age. But what good is it to know how to fish, if we cannot go beyond the reef?

As a member of the next generation, I can proudly say that we stand ready and willing to join in and assume our share of responsibility in structuring Guam's future. The American dream is based on the freedom to allow people to make their place in the world. If you believe in this, then you must allow us our dreams. Guam has mastered the tools of a modern economy and seeks only to implement what we have learned in a way that takes our specific needs into account.

Do not forsake the very foundation that the United States of America was built upon: the belief that people can and must, govern themselves. I ask that Congress not reduce our quest to the semantics of how the Commonwealth will work. I ask that you seek the high road and understand the implications and promise of what is at hand -- another true democracy is in the making. It is the promise of a bright future for our people who are willing to bear the responsibility of self-government. That is the true essence of Guam's quest for the Commonwealth. That is the true essence of freedom.

Thank you and si yuus maase.

Clifford A. Guzman
President
International Design Consortium
997 South Marine Drive
Tamuning, Guam 96911

Mr. DE LUGO. Thank you very much.

Mr. Tony Sanchez.

Mr. SANCHEZ. Mr. Chairman, and honorable members of the subcommittee, as well as the representatives of the Bush Administration, Hafa Adai.

My name is Anthony P. Sanchez. I come from the beautiful southern village of Yona, on the island of Guam.

As a supplement to my testimony, I have submitted a copy of "Guahan/Guam," a history book of our island written by my father, the late Dr. Pedro C. Sanchez. A true understanding of the history of our island and our people is a prerequisite to those who would question our reasons for seeking self-determination and self-government.

We are here to ask America to support us in our process of choosing our own political direction. I ask that you trust in our judgment to know what we want and in our proposed criteria on how we seek to accomplish those goals.

Guam's history shows how we as a people have survived and adapted throughout a history of tremendous change while maintaining the underlying basis of our culture. Whereas the American democracy is founded largely on equality, the Chamorro culture is founded primarily on respect.

"Equality" deals with equal treatment of different people. "Respect" on the other hand recognizes and accepts the differences of people. This is how an estimated 150,000 people in over 180 villages lived in peace in the 1600s without a central form of government.

To allow us Chamorros to choose our own political direction is more than just a recognition of our indigenous rights, it is a key ingredient to Guam's progress.

Our culture has survived not so much out of sentimentality, but rather as a vital social interaction that works for our island. The Chamorro culture is based on peaceful coexistence among a diverse group of people within the limited natural boundaries of 214 square miles.

The issue of political status is not a question of whether we should or should not be allowed to control our destiny. It is a question of respecting our decision to do so. In these times of Glasnost, perestroika and the fall of the Berlin Wall, it is only fitting that Guam's quest for greater self-government be seriously considered by the nation that is seen by the world as the bastion of democracy.

There are those who might question whether we are ready to decide our own fate. It doesn't matter that you think we are a 100 percent ready, what does matter is that we are 100 percent willing and that is all the ready we really need to be. The real question is, how ready is the United States to allow democracy to take its course?

The Chamorro society as we know it has always embraced the principles of democracy, though not always in the form we use today. To assume that we would vote for anything that did not include respect for freedom is inconceivable to the Chamorros. Therefore, regardless of the act's present form, we cannot help but stand by the side of the greatest defender of democracy, the United States of America.

Chamorros would never compromise Guam politically, socially, economically, or environmentally. Have faith that we have made good choices that will work for Guam and America. Our act seeks to keep the principles of the Constitution, but we need creativity and innovative thinking in order to allow for recognition and equal treatment of a unique people that is Guam.

The U.S. Constitution is the most adaptable document written by a free people. We should not be constrained by its letter, but rather we should be inspired to expand the cloak of the Constitution to encompass the ambitions of our people. The Constitution has gone through 200 years of tremendous change in America.

Let's not be afraid to use the strength of that flexibility and adaptability. The Constitution has never been used as a limiting tool, but rather as a justification for greater political change.

I ask that you embrace the spirit of those great American forefathers and seek the far-reaching boundaries of the Constitution in considering the Commonwealth Act. The call of freedom is wondrous if allowed to be heard over the cynicism of man.

Seek the high road and allow us to walk freedom's road together, on equal footing and with mutual respect. Our children are depending on the very spirit in which you approach this event.

In closing, I would like to simply say that the fear of the unknown and of change is natural in every human. But where there is fear, there is also courage, the fortitude and the understanding that no problem or obstacle is greater than the will of a people. As fellow human beings, you must respect the wish of a people who seek to contribute to the world.

Thank you, Si Yuus Maase.

Do not let your personal doubts be an obstacle to Guam. Rather have faith in us and in yourselves. By giving us freedom, we will be an example to the world and a reminder of what America and its dream is all about.

Thank you, Mr. Chairman.

Thank you.

[Prepared statement of Mr. Sanchez follows:]

**TESTIMONY OF ANTHONY P. SANCHEZ
GUAM'S QUEST FOR COMMONWEALTH**

Mr. Chairman and Honorable members of the Subcommittee; Hafa Adai, my name is Anthony P. Sanchez. I come from the beautiful southern village of Yona, on the island of Guam.

As a supplement to my testimony, I have submitted a copy of "Guahan/Guam", a history book of our island written by my father, the late Dr. Pedro C. Sanchez. A true understanding of the history of our island and our people is a prerequisite to those who would question our reasons for seeking self determination and self government.

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In closing I would like to simply say that the fear of the unknown and of change is natural in every human. But where there is fear, there is also the courage, the fortitude and the understanding that no problem or obstacle is greater than the will of a people. As fellow human beings, you must respect the wish of a people who seek to contribute to the world.

Thank you, Si Yuus Maase.

Anthony P. Sanchez

PO Box 8066

Tamuning, Guam 96911

Mr. DE LUGO. Thank you very much, Tony. You look a lot like your father.

Mr. SANCHEZ. Thank you.

Mr. DE LUGO. You have a little more hair than he had. But I know he would be very proud of you today and, please, when you are talking to your mother, Floi, give her my warmest regards.

We in the Virgin Islands have fond memories of your father and mother.

Mr. SANCHEZ. Thank you, Mr. Chairman. And I hope you remember that with——

Mr. DE LUGO. Where it counts, right?

Mr. SANCHEZ. Where it counts.

If we can get through this subcommittee and get to the real meat of it, I think we are ready to play. That is the bottom line. We have been working for 91 years and we will not stop now.

Mr. FALEOMAVAEGA. Would the Chairman yield?

I think the gentleman may have the looks of his father, but he has the grace of his mother. She is from Samoa.

Mr. DE LUGO. All right.

Mr. FALEOMAVAEGA. And she happens to be my relative.

Mr. BLAZ. For the record, Mr. Chairman, the gentleman is a Chamorro from Guam.

[Applause.]

Mr. DE LUGO. Dr. Faye Untalan Munoz?

Ms. MUNOZ. Greetings. My name is Faye Untalan Munoz, a Chamorro from Guam currently employed by the University of Hawaii Graduate School of Public Health as a professor.

I am here as a Chamorro committed to the rights of Chamorros everywhere.

Hafa Adai and welcome to all my Chamorro brothers and sisters and fellow Guamanians who have made this long journey to demonstrate their concerns and their struggle in their efforts to exercise their rights for self-determination and to seek the interest of the people of Guam for a new political reality, a commonwealth status with the United States.

Hafa Adai also to the members of the subcommittee and the Chairman who are here to listen patiently to our voices, to give a compassionate ear to our needs, desires and struggles and to apply a fair and just solution to our causes. We look to you to advocate on our behalf.

I am here because I feel very strongly about the issues which are before us. Many of my brethren and colleagues have spoken so elegantly before me and have undoubtedly done well to describe our concerns as Chamorros and peoples of Guam that we are asking for.

As a strong and proud Chamorro, I want to express my feelings of pain and anger regarding the continuing long history of the Chamorro peoples' oppression by colonial powers; and I want to be part of the process to see that this oppression be discontinued. I still have faith, or more accurately, hope that there is justice and compassion in the United States system of government which espouses some of the highest ideals of humanitarian concerns—one of which is the Right to Self-Determination.

The Chamorros have long been denied that right of political self-determination. This denial is no longer acceptable.

As an optimist and believer in the good of man and the values of democracy, I have struggled with the question of why the U.S. is so reluctant to grant us this right to self-determination and to exercise complete governance of our island.

What exactly are the real interests of the United States on Guam and what role do we play as indigenous people to that interest? Is or does the United States have any real interest in the welfare of the people of Guam? Or, is the United States' interest primarily in the value of the island of Guam to serve its national interest—whether it be defense, disposal and storage of its nuclear waste?

For many wise politicians and economists, this is a very naive question. But for me, these naive questions, questions from the minds of the innocent and the unsuspecting, often help to get to the real agenda for one's behavior and actions.

Allow me to query further into the United States' real concern for the welfare of our Chamorros from a historical perspective. Perhaps from this analogy, we can realize what the U.S. feels about the Chamorros and thus what kind of faith and trust has resulted because of the U.S. indifference for us as a people.

As I observed the U.S. responses to Guam for sometime and as I listened in this last two days, it seems that the most obvious issue for the United States is control and power over Guam and not the human rights of the people, the Chamorros.

If the United States has real concern for the Chamorros for the people of the Marianas—or however they referred to them in 1898 when they took possession of the island of Guam and severed Guam from its sister islands of Saipan, Tinian and Luta, what did it think about the families and relatives that stretched throughout the Marianas Islands who for thousands of years lived as one people?

In 1945 or thereby after the Second World War and the United States again took control of Guam and the other Marianas Islands, were there any attempts to unify the Chamorros? Is it because to unify them would defeat the conquest of the United States whose practice is to divide and conquer?

There has never been any initiative by the United States government to bring the Chamorros as a people together and to accept their cultural history and social bonds; or to foster and enable them to determine their political and economic objectives as a nation of people. Can you imagine the islands of Hawaii parceled to different foreign powers? And yet, when the southern states tried to secede from the Union, they went to war to save the Union of the United States. What is the difference?

This is still the United States making the final decision. Why was it so necessary to save the Union of the United States? And why was the value and principle of a union not applied to the Chamorros of the Marianas in 1898 or thereafter? President Lincoln said himself, "A house divided cannot stand." I say a people divided cannot survive.

While the issue today is not that of Chamorro unification, the point I would like to emphasize is the real issue—the United

States' unwillingness to recognize and respect our collectivity as Chamorros, and more importantly, its total disregard of our human rights to our land, our cultural integrity, our economic and political struggle and destiny. And its consistent failure to apply its own standards of human principles to us.

Thank you.

Mr. DE LUGO. Thank you very much for your statement, Dr. Munoz.

[Prepared statement of Ms. Munoz follows:]

DRAFT

SUBCOMMITTEE ON HOUSE INTERIOR
INSULAR AND NATIONAL AFFAIRS HEARING
GUAM'S COMMONWEALTH ACT
HONOLULU, HAWAII
DECEMBER 11 AND 12, 1989

TESTIMONY

DR. FAYE UNTALAN MUNOZ

Hafa Adai and welcome to all my Chamorro brothers and sisters and fellow Guamanians who have made this long journey to demonstrate their concerns and their struggle in their efforts to exercise their rights for self-determination and to seek the interest of the people of Guam for a new political reality, a commonwealth status with the United States.

Hafa Adai also to members of the subcommittee who are here to listen patiently to our voices, to give a compassionate ear to our needs, desires and struggles and to apply a fair and just solution to our causes.

I am here because I feel very strongly about the issues which are before us. Many of my bretheren and colleagues have spoken so elegantly before me and have undoubtedly done well to describe our concerns as Chamorros and peoples of Guam. As a strong and proud chamorro, I want to express my feelings of pain and anger regarding the continuing long history of the Chamorro peoples' oppression by colonial powers; and I want to be part of the process to see that this oppression be discontinued. I still have faith, or more accurately, hope that there is justice and

compassion in the United States system of government which espouses some of the highest ideals of humanitarian concerns--one of which is the Right to Self-Determination.

The Chamorros have long been denied that right of political self-determination--this denial is no longer acceptable.

As an optimist and believer in the good of man and the values of democracy, I have struggled with the question of why the U.S. is so reluctant to grant us this right to self-determination and to complete governance of our island. What exactly are the real interests of the United States on Guam and what role do we play as indigenous people to that interest? Is or does the United States have any real interest in the welfare of the people of Guam? Or, is the United States interest primarily in the value of the island of Guam to serve its national interest--whether it be defense, disposal and storage of its nuclear waste or whatever? For many wise politicians and economists, this is a very naive question. But for me, these naive questions, questions from the minds of the innocent and the unsuspecting, often help to get to the real agenda for one's behaviors and actions. Allow me to query further into the United States real concern for the welfare of our Chamorros from a historical perspective.

If the United States had real concern for the Chamorros or for the people of the Marianas--or however they referred to them in 1898 when they took possession of the island of Guam and severed Guam from its sister islands of Saipan, Tinian and Luta, what did it think about the families and relatives that stretched throughout the Marianas Islands who, for thousands of years, lived as one people?

In 1945 or thereby after the Second World War and the United States again took control of Guam and the other Marianas Islands, were there any attempts to unify the Chamorros? Is it because to unify them would defeat the conquest of the United States whose practice is to divide and conquer?

There has never been any initiative by the United States government to bring the Chamorros as a people together and to accept their cultural history and social bonds; or to foster and enable them to determine their political and economic objectives as a nation of people. Can you imagine the islands of Hawaii partialled to different foreign powers? And yet, when the southern states tried to secede from the Union, they went to war to save the Union of the United States. What is the difference? This is still the United States making the decision--why was it so necessary to save the union of the United States? And why was^{as} the value and principle of a union not applied to the Chamorros of the Marianas in 1898 or thereafter? President Lincoln said

himself, "A house divided cannot stand", I say, 'A people divided cannot survive'.

While the issue today is not that of Chamorro unification, the point I would like to emphasize is the real issue--the United States unwillingness to recognize and respect our collectivity as Chamorros, and more importantly, its total disregard of our human rights to our land, our cultural integrity, our economic and political struggle and destiny. This very process we are undergoing today and tomorrow is further example of the United States recalcitrance to recognize our peoplehood as Chamorros and our common and collective ideals and struggles. The real issue for us is our right to self-determination and to control of our natural resources and ~~free~~^{full} governance of our island of Guam. The denial of this right is outright colonial politics; this is unnecessary, unfashionable and intolerable in 21st Century political world consciousness.

It is ironic that this same agency, the Department of Interior, is charged with the preservation of endangered species; and whose mission is to advocate and protect those species whose lives are endangered by the destruction of their natural habitats and lifestyles--and yet continue to ignore and deny the cries and struggles of endangered human beings whose lives and habitats have been ravaged and destroyed and whose human concerns and rights have been obscured in the interest of U.S. national politics.

The colonial neglect and control is an insidious one. In addition to the direct and overt control we know in the island, there is also the covert and incipient forms which allow U.S. Congress and Administration to channel or permit monies and resources to so-called stateside agencies and institution to conduct programs, to develop services to determine needs and implement them with the assumed purpose of benefiting the islands. I am not sure the islands are the real beneficiaries of these resources and methods of assistance. If monies and funds were earmarked or were designed for the islands, these monies and funds should be in the control of the islands themselves. To think the islands cannot determine their own needs, cannot develop and implement their own solutions, and cannot manage their resources, is clearly a form of colonial and intellectual imperialism.

Finally, I want to express my full support of the Commissions' Commonwealth of Guam draft, particularly those outlined in Article 1, Political Relationship and in Article 10, Land, Natural Resources and Utilities.

I salute and give my sincere Dang Kulo na si yuus maase to all those who have kept the Chamorro struggle alive--Biba todas i taotao Guam; Biba todas i Chamorro.

To the members of the subcommittee, thank you for your patience and kindness and for listening.

Mr. DE LUGO. The next witness will be Mr. Vincent A. Leon Guerrero.

Ms. MUNOZ. Excuse me, sir. I was asked to present the position by Millani Trask. I hope that that part is not going to be penalized on my time.

Mr. DE LUGO. No, that will be placed in the record in its entirety.

Ms. MUNOZ. Okay.

Thank you.

[Prepared statement of Ms. Trask follows:]

**MILILANI B. TRASK
KIA'AINA, KA LAHUI HAWAI'I
152 B Koula Street
Hilo, Hawai'i 96720**

To: Committee on Interior and Insular Affairs
From: Millilani B. Trask, Attorney At Law, Kia'aina, Ka Lahui Hawai'i
Re: H.R. 4100 - A Bill to Establish the Commonwealth of Guam

Aloha Members of the Committee on Interior and Insular Affairs:

On behalf of the 4,000 members of Ka Lahui Hawai'i, I am pleased to present this testimony in support of the efforts of the People of Guam to establish a Commonwealth.

In preparing this testimony, we have reviewed the legislation and the comments of the Department of Interior dated August 1, 1989. We have monitored the efforts of the various Native groups who for several years have worked diligently and collectively to obtain congressional approval of legislation granting commonwealth status to Guam.

Ka Lahui Hawai'i supports, without reservation, the position of the Organization of People for Indigenous Rights (O.P.I.R.), and its spokesperson, Mr. Ron Teehan. Our organization believes that all indigenous people have an inherent right to be self governing and we congratulate Mr. Teehan and the members of O.P.I.R., for maintaining a strong commitment to the ideals of liberty and democracy in establishing the right of self determination of the Chamorro people of Guam.

Dated: Hilo, Hawai'i this 7th day of December, 1989.



**MILILANI B. TRASK
Attorney At Law
Kia'aina, Ka Lahui Hawai'i**

Mr. DE LUGO. Now, we have Mr. Vicent Guerrero.

Mr. GUERRERO. Good morning, Mr. Chairman and members of the subcommittee. Good afternoon.

I am Vicent A. Leon Guerrero, a lifelong resident of Mangilao, Guam, U.S.A. where America's day begins, and a small businessman.

Thank you for allowing me to address this body today. I was able to secure reservations for this hearing only a few short days ago, and I promise to keep my address short as I am sure that there will be other opportunities to dialogue on this important issue.

You can very well see by the number of people who have made the long journey to be here today, that a parallel can be drawn with respect to our commonwealth efforts, and all the attention and energy that has been generated, with that level of excitement which our parents before us must have felt when they made the initial push to become citizens of the United States in the late '40s and early '50s.

While the granting of citizenship guaranteed our people protection under the flag of the United States, we have since learned over the course of time, that there is something sorely lacking with our current political status, and that what we may perceive as rights, are in reality, privileges afforded to us only after considerable lobbying and interpretation by others who may or may not have the proper information or an appreciation of the needs and desires of our people, or who must make decisions based on the effects on another jurisdiction not homogenous to our island or our geographical location.

Perhaps the most glaring example of this was the travel and trade restrictions placed by the Naval government up until the '60s. In effect, Guam and her citizens have been considered to be lesser Americans because of birth or because one chose to reside in Guam.

Instances such as these, as well as other Federal impediments, have slowed or prevented the development of private enterprise. As the dawn of a new decade begins, it is increasingly evident that we the people of Guam stand ready to shoulder more of the responsibility for our continued development.

When the United States signed the U.N. Charter, an assurance was made that the U.S. would advance the development of the territory to become more self-reliant but taking into consideration the wishes and desires of Guam and her people.

The Commonwealth Act as presented is a document unlike any other and one that clearly has the mandate of the people. I am sure many of us here today share in my disappointment upon reading the comments of the Federal task force.

There is a growing local sentiment that the positions held by the reviewers are nothing more than an attempt to deal with the act as an extension of the Organic Act. If this is so, Mr. Chairman, then this is totally unfair and counter to the mandate of the U.N. Charter and completely contrary to law and a complete waste of our time, resources and tax dollars.

Year in and year out, various local administrations, business representatives, private citizens and other governmental representatives journey to Washington, D.C., seeking resolution to a plethora

of issues. We have had to walk many miles and knock on the doors of many offices. However, these trips have not always resulted in measured success. You may recall the number of years it has taken our people to be afforded the right to elect our own governor, and we still lack a voting voice in the hallowed halls of Congress.

Presently, a number of issues affecting the quality of life in the territory continue to plague us. Examples such as the Jones Act, quotas in the garment industry and watch industry, and the H-2 program are but a few. These are matters that will continue to concern island leaders. We can attribute all these problems to the inadequacy of our status as an unincorporated territory.

Throughout the years, our island businesses have been made to wait for some sort of action or review by some affecting agency or command when we have attempted to introduce new and innovative business ideas, or when we must deal with our own neighbors in the Asian Pacific Basin. In some cases it was the Congress who moved quickly to slam the economic doors in our collective faces.

Commonwealth represents the coming of age for Guam and her people. For the past 39 years, our island has been enrolled in a socio-political apprenticeship program of sorts. Few can argue that Guam has ranked amongst the top of America's students of democratic ideals.

We have learned much in those years. However, like with all students, there comes a time when the student must strike out and face the real world. This time is now.

While the sweet flowers of democracy continue to spread throughout Europe, our nation must seize upon the opportunity that our commonwealth efforts presents to the nation. Through the blessings of modern technology, island residents have been offered massive doses of televised information on the events occurring in Europe, and even closer to our home in the Republic of the Philippines.

Throughout these broadcasts, a theme has rung out from the mouths of newsmakers from President Bush, Congressmen and European leaders, the basic human right of freedom and self-determination. Hearing these words spring from the mouths of the movers and shakers of the world, should be heartwarming to us in Guam. Yet when you read the comments from the Federal task force, advisors of these great and powerful national leaders, is it all rhetoric? Or is the call for the extension of the right of self-determination applicable to only America's traditional enemies? Are we to say that America is the land of the free, but only the freedom we allow you to have?

I can't help but feel the same as the citizens of Whoville, that little town in that little dust speck in the famous children's story by Dr. Seuss. As in the story, we in Guam are trying as hard as we might to marshal our bipartisan voices so we can be heard and saved from eternal extinction. We are here is our cry. We are here.

Today we are here as one unified voice, not as Democrats, Republicans or the National party members but as Chamorros, Guamanians and more importantly as Americans united together for the common cause. Biba is isla sen parat.

Thank you very much.

Mr. DE LUGO. Thank you very much.

Thank you.

[Prepared statement of Mr. Guerrero follows:]

Testimony

Vincent A. Leon Guerrero

Hawaii Commonwealth Hearings

December 1989

Mr. Chairman and Members of the Committee, my name is Vincent A. Leon Guerrero, a lifelong resident of Mangilao, Guam U.S.A "Where America's Day Begins" and small businessman. Thank you for the allowing me to address this body today. I was able to secure reservations for this hearing only a few short days ago, and I promise to keep my address short as I am sure that there will be other opportunities to dialogue on this important matter.

You can very well see by the number of people who have made the long journey to be here today, that a parallel can be drawn with respect to our Commonwealth efforts, and all the attention and energy that has been generated, with that level of excitement which our parents before us must have felt when they made the initial push to become citizens of the United States in the late 40's and early 50's. While the granting of citizenship guaranteed our people protection under the flag of the United States, we have since learned over the course of time, that there is something sorely lacking with our current political status, and that what we may perceive as rights, are in reality privileges afforded to us only after considerable lobbying and interpetation by others who may or may not have the proper information or an appreciation of the needs and desires of our people, or who must make decisions based on the effects on another jurisdiction not homogenous to our island or our geographical location. Perhaps the most glaring example of this was the travel and trade restrictions placed by the Naval Government up until the 60's. In effect, Guam and her citizens have been considered to be lessor "Americans" because of birth or because one choose to reside in Guam. Instances such as these, as well as other Federal impediments have slowed or prevented the development of private enterprise. As the dawn of a new decade begins, it is increasingly evident that we the people of Guam stand ready to shoulder more of the responsibility for our continued development. When the United States signed the U.N. Charter an assurance was made that the U.S. would

advance the development of the territory to become more self-reliant but taking into consideration the wishes and desires of Guam and her People. The Commonwealth Act as presented is a document unlike any other and one that clearly has the mandate of the people. I am sure many of us here today share in my disappointment upon reading the comments of the Federal Taskforce. There is a growing local sentiment that the positions held by the reviewers are nothing more than attempt to deal with the act as an extension of the Organic Act. If this is so Mr. Chairman then this is totally unfair and counter to the mandate of the UN charter and a complete waste of our time resources and tax dollars.

Year in and year out, various local Administrations, Business representatives, private citizens and other governmental representatives, journey to Washington DC seeking resolution to a plethora of issues. We have had to walk many miles and knock on the doors of many offices, however, these trips have not always resulted in measured success. You may recall the number of years it has taken our people to be afforded the right to elect our own Governor, and we still lack a voting voice in the hallowed halls of Congress.

Presently, a number of issues affecting the quality of life in the territory continue to plague us. Examples such as the Jones Act, quotas in the garment industry and watch industry, the H-2 program are but a few. These are matters that will continue to concern island leaders. We can attribute all these problems to the inadequacy of our status as an unincorporated territory. Throughout the years our island businesses have been made to wait for some sort of action or review by some affecting agency or command when we have attempted to introduce new and innovative business ideas, or when we must deal with our own neighbors in the Asian Pacific Basin. In some cases it was the Congress, who moved quickly to slam the economic doors in our collective faces.

Commonwealth represents the coming of age for Guam and her people. For the past 39 years our island has been enrolled in a socio-political apprenticeship program of sorts. Few can argue that Guam has ranked amongst the top of America's students of democratic ideals. We have learned much in those years. However, like with all students, there comes a time when the student must strike out and face the real

world.. This time is now!

While the sweet flowers of Democracy continue to spread throughout Europe, our nation must seize upon the opportunity that our Commonwealth efforts presents to the nation. Through the blessings of modern technology, island residents have been offered massive doses of televised information on the events occuring in Europe, and even closer to our home the Republic of the Philippines. Throughout these broadcasts, a theme has rang out from the mouths of newsmakers from President Bush, Congressmen, and European leaders, the basic Human Right of Freedom, and Self Determination. Hearing these words spring from the mouths of the movers and shakers of the world, should be heartwarming to us in Guam. Yet, when you read the comments from the Federal Task Force, advisors of these great and powerful national leaders, is it all rhetoric? Or is the call for the extension of the right of self determination applicable to only America's traditional enemies, are we to say that America is the "LAND OF THE FREE, BUT ONLY THE FREEDOM WE ALLOW YOU TO HAVE."

I can't help but feel the same as the citizens of Whoville, that little town in that little dust speck in the famous children's story by Dr. Seuss. As in the story we in Guam are trying as hard as we might, to marshal our bi-partisan voices so we can be heard and saved from eternal extinction. "We are Here!" is our cry "We are Here!"

Mr. Chairman, and members of the Committee, political maturation for Guam should represent America's success story. However, to some in the Federal sector who affect life in the Territory, achieving maturation is viewed somewhat negatively. In reality it means the possibility of a phase out of a job or area of responsibility. Take the US Navy's position for instance. They oppose this effort because, to put it simply, they won't be able to pollute our waters freely, they will not be able to unilaterally place civilians in jeopardy through storage of dangerous weaponry; finally, they aren't able to appreciate our rights to ask why. We have yet to publicly hear the responce by the Task Force on the issue of the 200 mile economic zone. We know that there are vast amounts of natural resources the surrounding sea can offer. We fully expect an almost violent reaction to this clause. We all are intelligent enough to ascertain the

reasons for such a reaction. However, can't we all share the bounties of the earth and sea beds as a family of Americans? For many years our people have given their lives in defense of the United States, Guam is the only U.S. soil in modern history to have suffered the ravages of an occupation by hostile forces. Many have also served the call to arms in other foreign lands, Guam has lost more of her sons per capita in the Vietnam Conflict than any other U.S. community.

Today we are here as one unified voice, not as Democrats; Republicans; or the National party members; but as Chamorros, Guamanians and more importantly as AMERICANS united together for the common cause. *biba isla sen parat.*

Mr. DE LUGO. Now, our next witness will be Mr. Anthony Pangelinan.

Mr. PANGELINAN. Hafa Adai, Mr. Chairman, and members of the House subcommittee.

My name is Anthony Pangelinan and I am an archaeologist, farmer and fisherman and one of those proud Chamorros that the U.S. Government cannot threaten with independence. Our people have made it known that commonwealth is the political status which we would like to pursue in our relationship with the United States of America. It seems that the U.S. Congress has many reservations about some of the provisions in our Commonwealth Act and that is why we are here today.

Well, I truly think there shouldn't even be any discussion about it. As far as I am concerned, the United States owes it to us, to not question any of our demands because of all the atrocities and dirty tricks which the U.S. has played on us giving islanders.

The indigenous people have been living in our island for over 5,000 years and our past was never so turbulent until we were exposed to the inequities of colonialism, first with the Spaniards which resulted in near genocide, and then a taste of neocolonialism with the Americans, only to be slightly interrupted by Japanese imperialism and then again back to American neocolonialism.

So here we are now attempting to attain some type of sovereignty and we still have to negotiate? What is really going on here? Are we bargaining for another new advance form of colonialism? Will America ever treat us with the dignity we deserve? Is Guam's posture to be a continuation of manipulation and abuse? It seems that our quest for commonwealth must be dependent upon accommodating the military and big business.

The military now fears that our quest is a threat to their poisoning of the few Chamorros who exist. Is this the stance of Congress? That is, is Congress' only interest in Guam linked to the strategic location and ocean resources which our island maintains? Is this hearing a token concern for the true sovereignty long overdue the people of Guam?

It must be since we are here today at the whim of this subcommittee. We couldn't even be given the dignity of having the first hearing in our own island. If you are truly concerned about the dignity of our people, please look at our needs and realize that alternatives to the needs of the military can be met.

A good example is the move of the B-52 squadron. When the decision to move was made, there was no flurry about the significance of Guam as a strategic base.

Mr. Chairman, give us the opportunity to become a self-governing entity in the Pacific while continuing the relationship with the U.S. as a commonwealth. Give us control of our 200-mile economic zone with our fish and mineral resources. Do not let the military kill our people by the poisoning of our waters with their toxic chemical and nuclear waste disposals.

Allow us to control our own immigration policies. Our land resources are limited and realistic controls must be made on the influx of aliens. Allow the indigenous people to be truly sovereign.

I appeal the the true sense of American justice and ask that you consider the many requests which we make today.

Thank you for this brief opportunity to appear before you to present my views.

Thank you.

[Prepared statement of Mr. Pangelinan follows:]

TESTIMONY BEFORE THE HOUSE SUBCOMMITTEE ON INTERIOR

HAFA ADAI! Mr. Chairman and members of the House Subcommittee on Interior.

Thank you for allowing me to testify before this committee. My name is Anthony Pangelinan and I am an archaeologist, farmer and fisherman and one of those proud Chamorros that the U.S. government cannot threaten with independence. Our people have made it known that Commonwealth is the political status which we would like to pursue in our relationship with the United States of America. It seems that the U.S. Congress has many reservations about some of the provisions in our Commonwealth Act and that is why we are all here today.

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I appeal to the true sense of American justice and ask that you consider the many requests which we make today.

Thank you for this brief opportunity to appear before you to present my views.

Anthony P. Pangelinan

December 11, 1989

Mr. DE LUGO. Our final witness on this panel is Mr. Vicent Q. Sanchez.

Mr. SANCHEZ. Thank you, Mr. Chairman and members of the subcommittee, particularly our Congressman Blaz, from Guam we come.

I am a true Chamorro testifying before this subcommittee. I am Vicent Sanchez coming from the smallest village of the island of Guam.

I have been inspired by the call of our leaders for the Chamorros to stand up and help the cause of Chamorro commonwealth for an improved relationship status with the United States of America.

Time and again the orbital character that the Island of Guam has been experiencing with the United States was reflected by island leaders as a continuing political struggle and drama of well over 90 years. What is the Chamorro people struggling for in this span of time, or was it really 90 years of some form of denial or oppression?

Until recently, we began to put into a framework the thoughts that seems to be a mystery in our character as people. We call it the Chamorro right of self determination. When such an expression was first enunciated, it brought about some public revulsion and one segment of the Guam population thought that it was to be trampled upon by the other segment.

But we can relieve our thoughts and feeling by looking back at where the march of history has stumbled.

The first white men from Europe, the Spaniards, discovered Guam in 1521. Within several decades after Spain colonized the island the conflicts that ensued between the colonizing nation and the Chamorros were in fact blunted by the messianic mission of the Catholic fathers.

The driving forces of the Spaniards and their seemingly apparent purpose to put the Chamorro under bondage led to the resurgence of civil disobedience by the Chamorros that has a far reaching effect.

Mr. Chairman, it was in 1671 that a bold, Chamorro chief by the name of Hurao, who with a vision, addressed a group of Chamorro chiefs in the ancient village of Agana. I made copies available to all of you of that speech.

Mr. Chairman, and members of the committee, this speech was the first advocacy of a Chamorro chief Hurao and leader to shake off the yoke of an oppressive ruler [Spain] as it was clear to the Chamorro people that it is not destined to promote the Chamorro liberty and customs, in fact sought to destroy them.

Mr. Chairman, let me be the first to insist that the forerunner of our present guest to provide the Chamorro people of a constitutional government, based on the choosing of that group of people that properly fall within the meaning of the draft act which states that the people within the meaning of the draft act which states that the people of Guam also ask for special recognition by our Federal Government of the unalienable democratic rights of the descendants of the original Chamorros, to ultimately choose for ourselves the nature and extent of our political relationship with the United States.

The Treaty of Paris, by which Guam was ceded to the United States from Spain, should have been the vehicle to speedily provide the basic mechanism by which the Chamorros will attain the greatest measure of self-government. Apparently, as if by some sort of conspiracy, between the U.S. President and the Congress and in cahoots with Spain, entered into a treaty which provides that the future political and civil status of the natives of Guam shall be determined by Congress.

Guam is a distant island and Congress is not indisposed to ambitiously look for the welfare of the Chamorros, especially after relegating the Chamorros as mere commodities. There were a phenomenal steady but slow growth in the social, educational, economic, aspirations of the people of Guam. This pace in steady but slow growth was to be expected after the administration of the island was assigned to the Navy Department.

Gradually Chamorros, like our ancestral leader, Hurao, by instinct, began to understand the fundamental principles of democracy, its central value being the rights of individuals. The quest for enjoyment of the full protection of the Constitution and the rights enjoyed by other Americans began to be felt and remissed. Somewhere, we have been cheated. We are only half American.

The Congress allows Guam to freely express the type of relationship most desirable to the well being of the people of Guam. I join the ranks of those who felt that it is fundamentally significant to embody in the act the principle of self-determination. To strike this down is to invalidate free expression, freedom of choice as to the type of relationship between the United States and the people of Guam that best promotes and enhances their common desire and interests.

Let me rephrase this—that to strike down the Chamorros rights of self-determination as expressed in the Draft Act as repugnant to the Constitution is like a strike call before the pitcher throws a ball to a batter.

Thank you for the honor and privilege to testify before this subcommittee.

Mr. DE LUGO. Thank you very much, Mr. Sanchez.

[Prepared statement of Mr. Sanchez follows:]

Statement of Vicent Q. Sanchez
State of Hawaii, Dec. 12, 1989

Mr. chairman and members of the committee conducting this hearing on the proposed Guam Commonwealth Act at the outset, I like to identify myself as simply an ordinary Chamorro from the tiniest village in the island of Guam, Umatac. My name is Vicente Q. Sanchez, a private citizen. I have been inspired by the call of our leaders in Guam for us Chamorro to stand up and help the cause for a Chamorro Commonwealth status or improve relationship with United States.

Time and again the orbital character that the island of Guam has been experiencing with the United States was reflected by island leaders as a continuing political struggle and drama of well over 90 years. What is the Chamorro people struggling for in this span of time, or was it really 90 years of some form of denial or oppression?

Until recently, we began to put into a framework the thoughts that seems to be a mystery in our character as people. We call it the Chamorro right of self determination. When such an expression was first enunciated, it brought about some public revulsion and one segment of the Guam population thought that it was to be trampled upon by the other segment.

But we can relieve our thoughts and feeling by looking back at where the march of history has stumbled.

The first white men from Europe, the Spaniards discovered Guam in 1521. Within several decades after Spain colonized the island the conflicts that ensued between the colonizing nation and the Chamorros were in fact blunted by the messianic mission of the Catholic fathers.

The driving forces of the Spaniards and their seemingly apparent purpose to put the Chamorro under bondage led to the resurgent of civil disobedience by the Chamorros that has a far reaching effect.

Mr. chairman, It was in 1671 that a bold, Chamorro chief by the name of Hurao who with a vision addressed a group of Chamorro Chiefs in the ancient village of Agana. I made copies available to all of you of that speech.

Mr. chairman and members of the Committee, this speech was the first advocacy of a Chamorro chief Hurao and leader to shake of the yoke of an oppressive ruler (Spain) as it was clear to the Chamorro people that it is not destined to promote the Chamorro liberty and customs, in fact sought to destroy them. Mr. chairman, let me be the first to insist that the forerunner of our present quest to provide the Chamorro people a constitutional government, base on the choosing of that group of people that properly fall within the meaning of the draft Act which states that he people of Guam also ask for special recognition by our federal government of the inalienable democratic rights of the descendants of the

original Chamorros, to ultimately chose for ourselves the nature and extent of our political relationship with the United States.

The treaty of Paris by which Guam was ceded to United States from Spain should have been the vehicle to speedily provide the basic mechanism by which the Chamorros will attain the greatest measure of self-government. Apparently as if by some sort of conspiracy, between the U.S. President and the Congress and in cahoot with Spain entered into a treaty which provide that the future political and civil status of the native of Guam shall be determind by Congress.

Guam is a distant island and Congress is not indisposed to ambitiously look after the welfare of the Chamorros, specially after relegating the Chamorros as mere commodities, there were a phenomenal steady but slow growth in the social, educational, economic, aspirations of the people of Guam. This pace in steady but slow growth was to be expected after the administration of the island was assigned to the Navy Department.

Gradually Chamorros, like our ancestral leader, Hurao, by instinct began to understand the fundamantal principles of democracy. Its central value being the rights of individuals. The quest for enjoyment of the full protection of the Constitution and the rights enjoyed by other Americans began to be felt and remissed. Some where, we have been cheated. We are only half Americans!!

There are many living example and evidence that the full meaning and protection of the Constitution do not cover the people of Guam. The solution is to devise a system where constitutional acomodation can be assured. Such a plan is conceived in the proposed Commonwealth Act for Guam.

The Congress allows Guam to freely express the type of relationship most desirable to the welbeing of the people of Guam. I join the ranks of those who felt that it is fundemantely significant to embody in the Act the pprinciple of Self-determination. To strike this down is to invalidate free expression, freedom of choice as to the type of relationship between United States and the people of Guam that best promote and enhance their common desire and interests.

Let me rephrase this, that to strike down the Chamorros rights of self determination as expressed in the Draft Act as repugnant to the constitution is like a "strike" call before a picher throws a ball to a batter!!

Thank you for the honor and privilege to testify before this committee.

SPEECH OF CHIEF HURAO BEFORE OTHER
CHAMORO CHIEFS IN THE ANCIENT VILLAGE OF
AGANA IN 1671, FOR THE CHAMORROS TO RISE AND
PROTECT THEIR LIBERTY AND CUSTOMS AGAINST THE SPANIARDS

"The European", he said would have done better to remain in their own country. We have no need of their help to live happily. Satisfied with what our islands furnish us, we desire nothing else. The knowledge which they have given us has only increased our needs and stimulated our desires. They find it evil that we do not dress. If that were necessary, nature would have provided. They treat us as gross people and regard us as barbarians. But do we have to believe them? Under the pretext of instructing us they are corrupting us. They take away from us the primitive simplicity in which we live. They dare to take away our liberty which should be dearer to us than life itself. They try to persuade us that we will be happier and some of us have been blinded into believing their words. But can we have such sentiments if we reflect that we have been covered with misery and maladies ever since these foreigners have come to disturb our peace? Before they arrived on the island we did not know insects. Did we know rats, flies, mosquitoes and all the other little animals which constantly torment us? These are the beautiful presents they have made to us. And what have their floating machines brought us? Formerly we did not have rheumatism and inflammation. If we had sickness we had remedies for them. But they have brought us their diseases but do not teach the remedies. Is it necessary that our cupidity and evil desires make us want to have iron and other bagatelles which only render us unhappy? The Spaniards reproach us because of our poverty, ignorance and lack of industry. But if we are poor, as they claim, then what do they search for here? If they didn't need us, they would not express themselves to so many perils and make such great efforts to establish themselves in our midst. For what purpose do they teach us except to make us adopt their customs and subject ourselves to their laws and lose the precious liberty left to us by our ancestors? In a word they try to make us unhappy in the hope of an ephemoreal happiness which can be enjoyed only after death.

They treat our history as fables and fictions. Haven't we the same right concerning that which they teach us as incontestable and good faith. All their skill is directed towards tricking us; all their knowledge tends only to make us unhappy. If we are ignorant and blind, as they would have us believe, it is because we have learned their evil plans too late and have allowed them to settle here. Let us not lose courage in the presence of our misfortune. They are only a handful. We can easily defeat them. Even though we do not have their deadly weapons which spread destruction all over, we can overcome them by our number. We are stronger than we think and we can quickly free ourselves from these foreigners and regain our former freedom.

Mr. DE LUGO. I want to thank all of the members of this panel for your presentations.

The Chair would like to announce that we will have one more panel and then we are going to break for lunch. The next panel will be Mr. Poka Laenui, Mr. Carl J.C. Aguon, Mr. Antonio T. Artero, Ms. Maria G. Iglesias, and Soledad A Lujan.

I want to welcome you all here before the subcommittee. We will begin with the testimony of Mr. Poka A. Laenui.

**PANEL CONSISTING OF POKA LAENUI, ANTONIO T. ARTERO,
MARIA G. IGLESIAS, AND CARL J.C. AGUON**

Mr. LAENUI. Greetings to everybody. I am Poka Laenui, I am a Hawaiian. I am not Guamanian, I am not American.

Mr. Chairman, I have already submitted my written testimony before this committee and therefore, I will not stick very closely to that, because I believe the committee will make it a part of its record anyway.

Mr. DE LUGO. Yes, it will.

Mr. LAENUI. I speak in behalf of the World Council on Indigenous People, which has consultative status with the United Nations and we are in what is known as being in Category II. We have very much engaged in advocacy of human rights for indigenous people throughout the world. The document explains the different memberships we have in various regions of the world of indigenous people. As I said, I will not go through all the documents. However, I do want to express some thoughts, having been requested by various Chamorro people to express our views on this subject matter.

First, I would like to say that the Guam Draft Commonwealth Act now before this committee and before the United States Congress cannot be hidden under the cloak of internal affairs of the United States. This matter falls squarely within the process of decolonization. The mere labeling of Guam by its administrative power, the United States of America, as a unincorporated territory does not alter the fact that we do have a situation where the colonized are crying out for decolonization.

Mr. Chairman, we have heard the term self-determination used over and over and over again before this subcommittee. What I would like to do in the interest of saving time is address two specific points and that point is self, and the second point is determination.

Mr. Chairman, what we have seen, what I have heard, and having visited Guam, is that what we have throughout the Pacific is too often times a manipulation of the self so that the people who are actually making the determination of what their future status should be is not its self, not the people who supposedly should be making that decision, but oftentimes an altered self, altered by the administering powers or those who are called the trustees whoever the trust people.

Let me give you a very specific example:

When the United States controls transmigration into Guam and when the United States says we shall determine who will participate in this election, the United States is altering this self. When

the United States says we shall control immigration into Guam, when United States says we shall control what the rules are with regards to participating in this vote, the United States are altering that self and that is a violation of the trust that the United States is charged with under Article 73 of the UN Charter.

There are other ways of controlling that the United States has been guilty of, control over education, economy, trade, and other areas to say that we have to be stuck to the United States. That is an alteration of the self, that is not the free choice that people should have the right to in accordance with what we consider today to be the international standard of true self-determination.

But the next question then becomes well, what is the solution? How do we resolve this?

Well, I don't know how to resolve it, but I would suggest that one of the things that the United States must consider immediately is to turn over control to the Chamorro people the right for them to decide who is to participate in this election process, not simply because they are American citizens and they have been to Guam for the last three months or six months, or a year, they have the right to participate and decide someone else's self-determination.

Let me jump immediately to the second aspect of the term self-determination. What is determination really? determination means to have the awareness that you can choose from total integration into the United States to absolute independence, but the United States has been guilty over and over and over again by limiting that choice to perhaps commonwealth if it conforms with the American Constitution, while the truth is that the people of Guam, the Chamorros of Guam, have by international standards, the right to be independent and that really has not been—they have not been made aware fully of this right.

We have heard just in a prior testimony the White House rules out independence—in a newspaper headline. That type of control over the people limits their real ability to choose.

Mr. DE LUGO. If you will suspend just a moment, I think that that newspaper headline was quoted by a previous witness. Mr. Farrow was involved in that when he was in the White House and he was one of those who worked on the Carter plan to extend greater self-determination to the insular areas.

The newspaper quoted from what was a consultant's proposal. It was not the White House proposal. The fact is that not only is independence available, but free association, which is independence in association with the mother country, or the father country, or whatever, and also statehood.

But it should be freely chosen by the people who make the decision.

Mr. LAENUI. And the awareness must be carried over to the people.

I know my time is up. I just wanted to share these concerns from a people who are not Chamorro but view it from what we consider to be international standards at the present time.

Mr. DE LUGO. Thank you. The subcommittee appreciates your sharing that with us.

[Prepared statement of Mr. Laenui follows:]



World Council of Indigenous Peoples

Pōkai Laenui
(Hayden F. Burgess)
Vice-President

Submission before

the Sub-Committee on House Interior, Insular
and International Affairs

By

Pōkai Laenui
(Hayden F. Burgess)
Vice-President

Compare with Delivery

Office in Hawaii

1111 Bishop Street Suite 500 Honolulu, Hawaii (808) 531-1182

Non-Governmental Organization in Consultation with the United Nations

INTRODUCTION OF THE WCIP

The World Council of Indigenous Peoples (WCIP) is an international, non-governmental organization in consultative status with the United Nations. Our members consist of indigenous organizations which cover six regions of the world: Scandinavia, North America, Central America, South America, the Pacific and Asia.

We have and continue to be actively engaged in various international forums including but not limited to the United Nations Working Group on Indigenous Populations, the U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities, the U.N. Commission on Human Rights, the International Labour Organization (ILO), the Organization of American States through its International Indigenist Institute, UNESCO, and many others.

We are pleased to be able to take part and share our views on the important issue before this committee and the Chamorro people of Guam. We hope our views will be of some assistance in bringing about the full realization of human rights to the people of Guam.

I will present in this written submission the more technical, general framework within which we view the issue presently before the committee. If given the opportunity to present oral testimony, I will give specific concerns which fall within this general framework.

THE FRAMEWORK OF GUAM'S DRAFT COMMONWEALTH ACT

The Guam Draft Commonwealth Act now before this committee and the United States Congress can not be hidden under the cloak of "internal affairs" of the United States.

This matter falls squarely within the international process of Decolonization.

These issues involve such fundamental human rights concerns that the international community, including the United States, has demanded that they belong to the scrutiny of all humanity. The very standards of that international scrutiny are contained in fundamental, international documents including the United Nations Charter, the International Bill of Human Rights, and United Nations General Assembly resolutions. The mere labeling of Guam by its administering power, the United States of America, as an "unincorporated territory" does not alter the fact that we have a situation in which the colonized are crying out for decolonization.

Lets review that process of decolonization which the United Nations through various international instruments have sketched. The International Bill of Human Rights contains three fundamental documents. The first of these is the Universal Declaration of Human Rights (GA Res. 217 (III) of 10 December 1948. Article 2 guarantees that everyone is entitled to all the rights and freedoms in that declaration. It elaborates, "Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty". (Underlined added)

The second and third documents making up the International Bill of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (Annex to GA Res. 2200 (XXI) of 16 December 1966) both state in their first Articles the identical statement:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The State Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Thus the International Bill of Human Rights lay out a clear standard of non-discrimination among people in applying human rights and further that the status as a "trust" or "non-self-governing territory" are not sufficient basis to deny the applicability of human rights.

Three further references here are helpful in further delinating the parameters within which the process of decolonization must be watched. The first is Chapter XI, Article 73 of the Charter of the United Nations entitled Declaration regarding Non-self-governing Territories. The United States of America, by virtue of this article, has accepted "the principle that the interests of the inhabitants of [Guam] are paramount, and accept as a sacred trust the obligation to promote to the utmost, . . . the well-being of the inhabitants of [Guam]. . ." (Underline added, brackets substituted for "these territories")

The next reference is U.N. General Assembly Resolution 1541 (XV) of 15 December 1960 entitled "Principles Which Should Guide Members in Determining Whether or not an Obligation Exists to Transmit the Information, Called for in Article 73(e) of the Charter of the United Nations." In that document, we find in the first principle that the administering power is obligated to continue to transmit information to the United Nations for territories which have not yet attained a full measure of self-government.

Principle VI elaborates:

A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

- (a) Emergence as a sovereign independent State;
- (b) Free association with an independent State; or
- (c) Integration with an independent State.

Of particular interest to us in view of the matter before this committee, i.e., the Guam Commonwealth Act, is Principle VII which defines free association.

(a) Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.

(b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

In tandem with GA Resolution 1541, one must also read that resolution which the United Nations General Assembly adopted one day before, the Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res 1514 (XV) of 14 December 1960. That resolution requires the following:

Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom. (Paragraph 5.)

Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations. (Paragraph 6.)

Thus we have the general framework under which the specific Guam Commonwealth Act and the general outcry of self-determination of the people of Guam must be measured.

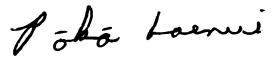
How has the United States' conduct with regards to Guam measured up to this framework? How does the present Guam Commonwealth Act fit within this international framework? How will any future action taken by the United States in relation to Guam comport with the international standards of decolonization?

In the oral presentation to be made, we wish to address two specific areas of concern which immediately come to our

attention, in which we believe the United States have failed to meet the requirements of this framework of decolonizations. The first is the attempt by the administering power to manipulate the "self" to its own benefit and the second is the limitation imposed by the administering power of the range of "determination" among which can be chosen by the people of Guam.

Unfortunately, time constraints prevent the elaboration of these points in a written position paper 24 hours in advance of the upcoming hearing and so will have to await our anticipated oral presentation.

Sincerely,



Pōkā Laemui

Mr. DE LUGO. Now, our next witness will be Mr. Antonio T. Artero.

Mr. ARTERO. Mr. Chairman, before I start, I see the green light is on but I would like to advise the Chair that my oral presentation is going to be slightly different from the written report submitted.

Mr. DE LUGO. That is quite all right. It will be on the record, too, so go ahead.

Mr. ARTERO. Honorable Ron de Lugo, honorable members of the committee and staff, greetings and warm hafa adai.

My name is Antonio Torres Artero, born on Guam, and my father is a recipient of a Congressional Medal of Freedom. As a concerned citizen, I have been privileged and have served proudly for 21 years in our Submarine Force, protecting our freedom and world peace.

As a realtor now, I offer my testimony in support of the passage of Guam's Commonwealth Act bill, H.R. 98. World history shows that Guam and its people have been more than accommodating to the various countries of the world but the people from the various countries, including the U.S., have demonstrated their support over us and exercised total dominance and control over us.

As a people we have lost our rights even to our private property. We are not questioning the United States' right to own, operate and maintain property on Guam. What we are questioning is the manner in which the properties were taken and the misuse of the properties taken.

Private property rights is deserving the protection of the military, but the military does not have the right to oppressive property takeovers.

The military base on Guam can exist on Guam without Guam having to be the military bastion. Forty-five years after World War II, the so-called land claims compensation that Congress authorized in 1977 had turned into a fiasco of a settlement proposal wherein the people involved were pitted against each other in seeking their fair share of a forced settlement and yet, still, another unjust amount.

The mishandling of the claims have blown up the class action suit into three separate options due largely to the manipulation of facts to cover up the wrongdoing of the government. Or could it be that it is a deliberate application of it the divide and conquer routine? At any rate, it clearly shows the unwillingness of the United States to render justice for us on Guam.

You can count on one hand the number of times Judge Peckam, or his replacement, came to Guam. There are many property owners who have not been compensated even to this day.

Although Guam had been flying the American flag for 91 years and the economic condition today is good for the privileged few, the situation we are in is in one word "vulnerable." It is vulnerable primarily because America's stewardship of Guam centers on total self-interest, neglect of property rights, and clearly a violation of the Constitution.

We have been given our U.S. citizenship for 38 years now and have conducted ourselves in accordance with the United States Constitution. However, unconstitutional practices have been a very consistent U.S. policy on Guam. Our concerned voice about oppres-

sion for the past 45 years is treated by America like the sound created by wood eating termites in one's home. You don't hear it until it is too late.

This commonwealth bill for Guam is making it possible for our puny voices emanating from dinky Guam 10,000 miles from Washington, D.C. to be heard for the first time. This commonwealth bill for Guam, if passed, will prevent a crashing blow to America's reputation as a world leader in democracy, peace, and freedom.

Mr. Chairman, the private property rights problem on Guam must be solved first and soon, because they stand in the way of the island-wide comprehensive economic development plan. If that cannot be done, then we are all wasting our time, because Congress cannot legislate greed.

In addition, Mr. Chairman, I would like to comment that I question why this hearing has to be conducted in Hawaii instead of on Guam. The commonwealth bill hearings must be on Guam because it concerns the people of Guam, and their participation is impaired by plane fares and hotel fees.

In closing, Mr. Chairman, I would like to say that we can only hope that the removal of the Berlin Wall will serve as an eye opener for America to acknowledge that the time is overdue for America to practice that which it preaches—democracy.

Democracy is freedom. America must allow total and unconditional political, civil and human rights to the people of Guam who are shackled with military oppression since World War II bypassing the Guam Commonwealth Act bill, return the lands that can be returned to the rightful owners, and justly compensate the land-owners who are eminently qualified for just compensation.

Mr. DE LUGO. Thank you very much, Mr. Artero.

Mr. ARTERO. Thank you, sir.

[Prepared statement of Mr. Artero follows:]



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December 11, 1989

**ANTONIO T. ARTERO TESTIMONY ON GUAM'S COMMONWEALTH BILL
 PRESENTED TO THE SUBCOMMITTEE ON INSULAR AND INTERNATIONAL
 AFFAIRS INTERIOR AND INSULAR AFFAIRS
 100TH CONGRESS OF THE UNITED STATES
 IN HONOLULU, HAWAII**

Honorable Ron de Lugo, members of your committee, and staff, greetings once again. My name is Antonio Torres Artero. I appear before you in support of Guam's Commonwealth Act.

As a concerned citizen, I have been privileged and have served proudly for 20 years in the submarine force protecting our freedom and world peace. As a Realtor now, I offer my testimony.

World history shows that Guam and its people have always been more than accommodating to people from various countries. But the people from the various countries including the U.S. have demonstrated their superiority over us and have exercised total dominance and control on us. As a people, we have lost our rights even to our private property.

We are not questioning the United States' right to own, operate, and maintain property on Guam. What we're questioning is the manner in which the properties were taken and the misuse of the properties taken. Private property rights is deserving the protection of the military but the military does not have the right to oppressive property takeover.

45 years after WWII, the so-called "Land Claims Compensation" that Congress authorized in 1977 had turned into a fiasco of a settlement proposal wherein the people involved were pitted against each other in seeking their fair share of a forced settlement and yet, still, another unjust amount. The mishandling of the claims has broken-up the class action suit into three separate options due largely to the manipulation of facts to cover up the wrong doing of the government. Or could it be that it's a deliberate application of the "divide and conquer" routine. At any rate, it clearly shows the unwillingness of the U.S. to render justice for us on Guam. You can count in one hand the number of times Judge Peckam or his replacement came to Guam. There are many property owners who have not been compensated even to this day.

1 of 2

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Page -2-

Although Guam had been flying the American flag for 91 years, and the economic condition today is good for the privileged few, the situation we're in is, in one word, vulnerable. It is vulnerable primarily because America's stewardship of Guam centers on selfish interest to the extent of total neglect of private property rights - clearly a violation of the Constitution.

If the problem with private property rights on Guam is not going to be solved soon, then we are all wasting our time because you can not legislate greed. In addition I am questioning why this hearing has to be conducted in Hawaii instead of on Guam. The Commonwealth Bill hearings must be on Guam because it concerns the people of Guam and their participation is impaired by plane fares and hotel fees.

We can only hope that the removal of the Berlin Wall will serve as an eye opener for America to acknowledge that the time is overdue for America, to practice that which it preaches, "Democracy." With democracy is freedom. America must allow total and unconditional political, civil, and human rights to the people of Guam who are shackled with military oppression since WWII by:

- 1) Passing the Guam's Commonwealth Act Bill;
- 2) Return the lands that can be returned to the rightful owners;
- 3) Justly compensate the land owners;

There's nothing we would love better than to see the Reagan Regiment for freedom that becomes the Bush Brigade, similarly for freedom, to be a freedom in reality for us on Guam USA.

Thank you once again for the opportunity to be heard.

Tony Artero
 Tony Artero, Realtor
 Member, Real Estate Commission
 USN Submariner - Retired

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Mr. DE LUGO. Next, we have Maria G. Iglesias.

Ms. IGLESIAS. Thank you. I salute you, all your wonderful panel here, and may I just say something. My speech is very short and I am not well prepared, but I will do my very best.

Mr. DE LUGO. You will do fine.

Ms. IGLESIAS. Yes sir. In some parts it is kind of strong, but like maybe anti-American feelings, but truly it is not. I am basically Caucasian too, myself. My grandfather is from Vermont and Spain. So I grew up in a business world, my parents were in business. I have a beautiful home in California. I live in luxury.

I am a business woman now. I am the only woman Chamorro in contract engineering, and I took a recent test, and I earned a high score in my written test. So I am very glad and it is a very competitive world. I compete with Koreans, and statesiders and whatever in Guam.

I love my Guam. As I said, I have a beautiful home, luxury, live in the United States, but I don't know, I still love Guam. It cannot be compensated. So I think I will die in Guam. I travel a lot, too, but I am worried about the young generation. So I would read my speech now and I hope you understand.

Like the title implies "Commonwealth" would make the Guam Chamorro more wealthy and wise. As common people we have come a long way, I must say, educated and disciplined in all walks of life. We have accredited university, written language, well matured leadership—judicial, legislative, and executive. We have capable citizenship in the professions. For example, doctors, lawyers, newspaper, bankers, even a recent Pulitzer Prize winner in photography.

In other words, our quest for commonwealth status is really overdue. We, the Chamorros, want to be the drivers of our destinies and not be dictated to by Washingtonians, who, to begin with, have no empathy and understanding of our basic human rights and values.

As Chamorros and Pacific Islanders, we are totally different in values, culture, and outlook in life from the Caucasians from the mainland. We are brown people, with sensitive feelings and our mentality with the white people is as different as night and day.

Also, decisions made in Washington are far fetched, not practical and different as night and day, from the Pacific people. As the word "pacific" implies, we are a gentle people in nature. We are loyal Americans. We are law abiding and God fearing people. Our culture is basically based in Christianity, a population of 90 percent Catholics. We live and honor the Ten Commandments, but because of our diversified backgrounds and education, most Chamorros know three languages.

We are highly expectant of a better government. The commonwealth status. We are so ably matured. We want to develop and direct our destinies and children's destinies. This is our quest and birthright. Uncle Sam has treated us as little children and the little children are breaking out of their breeches. Uncle Sam has not been a wise and fair father for the Chamorro of Guam. We have been killed and slaughtered in World War II, Korean and Vietnam Wars, wars not of our own making.

Set us free from the love-hate, parent-child relationship with the United States. Set us free. Sacrifices and sacrifices. We want better legacy for our children and children's children. To manage our destinies with better government. We don't want yokes and shackles any more. Give us commonwealth status so we can be fully members of the American family. We deserve this. It is our right. Give us commonwealth status, for it would eradicate all the past/present injustices and pains imposed on these Pacific Islanders—the Chamorro people.

Mr. DE LUGO. Thank you very much.

[Prepared statement of Ms. Iglesias follows:]

"COMMONWEALTH"

Like the title implies " Commonwealth" would make the " Guam Chamorros " More Wealthy and Wise! As common people we have come along way; I must say educated and disciplined in all walks of lives. We have accredited university, written language, well matured leadership,-Judicial, Legislative and Executive. We have capable citizenship in the professions, example.-Doctors, lawyers,newspaper, bankers, even a recent Pulitzer Winner in photography. In other words, our quest for commonwealth status is really overdue! We the Chamorros want to be the drivers of our destinies and not be dictated by "Washingtonians " -- who to begin with, have no empathy and understanding of our basic human rights and values . As Chamorros and Pacific Islanders, We are totally different in values,cultures and outlook in life as the " Caucasians." from the mainland. We are brown people, with sensitive feelings and our mentality with the white people is as different as night and day. Also decisions made in Washington are far fetched, not practical and different as night and day,with the Pacific people. As the word PACIFIC- implies; we are a gentle people in nature. We are loyal Americans. We are law-abiding and God-fearing people. Our culture is basically based in Christianity, population 90% Catholics. We live and honor the ten commandments; but because of our diversified backgrounds and education-Most Chamorros know three languages! We, re

highly expectant of a better government. The Commonwealth Status! We are so ably matured. We want to develop and direct our destinies and children's destinies. This is our Quest and birthright. Uncle Sam has treated us as little children. The little children are breaking out of their breeches. Uncle Sam has not been a wise and fair Father for the Chamorro of Guam. We have been killed and slaughtered in World War II, Korean and the Vietnam Wars! WARS of not our OWN making! ^{Set the wrong love - Hate, parent-child relationship w/ the U.S. Set us free!} Sacrifices after sacrifices! We want better legacy for our children and children's children! To manage our destinies with better government. We don't want "Yokes and shackles" anymore! Give us Commonwealth status! So we can be fully members of the American Family! We deserve this! It is our right! Give us Commonwealth for it would eradicate all the past / present injustices ^{and pains} imposed on this Pacific Islanders- the Chamorro people.

Maria G. Iglesias
Maria G. Iglesias

Maria G. Iglesias
 Rt.10 Mangilao=7343191
 Box 7051 Tamuning, Guam
 96911

Mr. DE LUGO. Now, ladies and gentlemen, we have our final witness and then we will take a break. This is Mr. Carl J.C. Aguon.

Mr. AGUON. Mr. Chairman and members of the House Interior Committee on Insular and International Affairs. Hafa adai.

I am here today to participate with my fellow people of Guam to plead our rights to self-determination before this august body of the U.S. Congress. We, the American people from Guam have passed the Commonwealth Act expressing our desires and firm belief that we are ready, willing and able to self-govern, just like our brother and sisters in the Commonwealth of the Northern Marianas.

Your support of our commonwealth initiative recognizes America's guidance and assistance for almost a century to bring Guam to economic, social, and political adulthood competent and eager to assume her place in the world society. I earnestly appeal to all of you to act favorably and speedily in the passage of Guam's Commonwealth Act.

My name is Carl J.C. Aguon. I was born after World War II in the village of Barrigada, Guam. My parents, Juan Upingco Aguon (deceased) and Maria Castro Aguon are both indigenous to Guam. I have eight other brothers and sisters, most of which are residing on Guam and others in the continental United States. I reside with my wife and four children on Guam.

My mother and father have always spoken proudly and joyously of the American occupation prior to World War II and after the war, as American citizens. They instilled in us a deep and abiding sense of American heritage and values. America is a great and beautiful nation, I remember them repeating, because her heart is pure, she is a democracy and protects and defends freedom, liberty, social and economic equality and justice worldwide.

My father fought alongside U.S. forces in the mop-up operation as a combat patrol sergeant leading a troop of about 16 Guamanians seeking Japanese stragglers immediately after the invasion. For his gallantry in combat for his island and freedom, he was awarded the Silver Star by the United States Armed Forces.

My mother, who was a school teacher for several years prior to the war, gave up her profession so she could provide a motherly home for her then three children. She strongly believes that rearing her sons and daughters is a more important and rewarding than a professional career.

The mother in a home, she often tells us, provides the foundation upon which children develop strong moral, ethical, and social values that will make them become good members of our society. This task was not easy, especially during the Japanese occupation and several years after the war. It took tremendous courage and commitment, and above all, love. Yes, my mother loves us so very much that her love continues to nourish us not only in our respective endeavors, but as parents as well.

Guam is like a child of the United States of America. Like a father, she taught us to be self-reliant and responsible. She defended us against invaders and freed us from their tyranny. Like a mother, she treated us with love and affection. She milked us with nutriment that made our bodies healthy and strong. She taught us

moral values and ethical conduct that made us good citizens of the world.

And like children who go through stages of growth and development, with its joys and sorrows, peaks and valleys, reach adulthood prepared to face the world independently. Guam has grown and matured and has achieved the economic, social and political threshold that she is now ready to leave the American family and assert her self-determination.

Do not fear for our genre for America has bestowed in her genes the imprint of democracy, in her heart the love of freedom and liberty, and in her body the permanent hunger for peace and justice.

Give to your child what is her inalienable right of self-determination and the pursuit of happiness. Listen to your sons and daughters as we present our petition. Please do not treat us like little children though we have your economic, social and political blood flowing within our veins. But give us your encouragement and blessing that we may become, just as American has, since it cut the umbilical cord to the Mother Country, and declared her independence, equal peoples of the earth. Si Yuus Maase. Thank you very much and God bless all of us.

Mr. DE LUGO. Thank you very much.

[Prepared statement of Mr. Aguon follows:]

December 11, 1989

House Interior Subcommittee on Insular
and International Affairs
House of Representative

Subject: Public Hearing Testimony on the
Commonwealth Act of Guam in Hawaii

Mr. Chairman and members of the House Interior Subcommittee on
Insular and International Affairs:

I am here today to participate with my fellow people of Guam to plead our rights to self-determination before this august body of the U.S. Congress. We the American people from Guam have passed the Commonwealth Act expressing our desires and firm believe that we are ready, willing and able to self govern, just like our brother and sisters in the "Commonwealth of the Northern Marianas."

Your support of our commonwealth initiative recognizes America's guidance and assistance for almost a century to bring Guam to economic, social, and political adulthood competent and eager to assume her place in the world society. I earnestly appeal to all of you to act favorably and speedily in the passage of Guam's Commonwealth Act.

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My mother and father have always spoke proudly and joyously

of the American occupation prior to World War II and after the war as American citizen. They instilled in us a deep and abiding sense of "American Heritage and Values." America is a great and beautiful nation, I remember them repeating, because her heart is pure, she is a democracy and protect and defend freedom, liberty, social and economic equality and justice world wide.

My father fought along side U.S. forces in the mop up operation as a Combat Patrol Sergeant leading a troop of about sixteen (16) Guamanians seeking Japanese stragglers immediately after the invasion. His gallantry in combat for his island and freedom he was awarded the "Silver Star" by the United States Arm Forces.

My mother who was a school teacher for several years prior to the war gave up her profession so she can provide a motherly home for her then three children. She strongly believes that rearing her sons and daughters is far more important and rewarding than a professional career.

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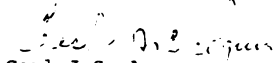
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Listen to your sons and daughters as we present our petition. Please do not treat us like little children though we have your economic, social, and political blood flowing within our veins. But give to us your encouragements and blessings that we may become, just as America has since it cut the umbilical cord of the "Mother Country" and declared her independence, equal peoples of the earth. Si Yuus Maase, Thank you very much and God Bless all of us.


Carl J.C. Aguon

132 Capitan Reyes St., Barrigada, Guam; Tel.: 671-734-3234

Mr. DE LUGO. I want to thank all of you for your presentations here.

Ladies and gentlemen, we are now going to break for lunch for a half hour. We will return at 2:30. When we return at 2:30, we will have a panel representing the Organization of the People for Indigenous Rights, and that panel will have 20 minutes at the request of the delegate from Guam, Delegate Blaz. Without objection, that will be the order.

Then we will hear from the administration.

[Whereupon, at 12:00 noon, the subcommittee was recessed, to reconvene at 2:30 p.m. the afternoon of the same day.]

[AFTER RECESS]

Mr. DE LUGO. Can we bring the people into the auditorium and close the doors?

The Subcommittee on Insular and International Affairs hearing on H.R. 98, the bill to create the Commonwealth of Guam, is hereby reconvened. As we said before we broke for lunch, the lead-off witness will be Mr. Ron Rivera. We had both Mr. Ron Rivera and Mr. Ron Tian of the Organization for Indigenous Rights scheduled at this time, but Mr. Tian has yielded his time to Mr. Ron Rivera, who has 20 minutes.

Mr. Rivera, your entire statement will be made part of the record. We look forward to receiving your testimony. Welcome to the subcommittee hearing.

STATEMENT OF RON RIVERA, ORGANIZATION OF PEOPLE FOR INDIGENOUS RIGHTS

Mr. RIVERA. Senor de Lugo, Senor Blaz, Hafa adai todos hamyo. Guahu si Ron Rivera yan para bai hu presenta giya hamyo i pusion i OPIR put este na asuntu i estao pulitikat para Guahan.

I am Ron Rivera and I am here to present to you the position of the Organization for Indigenous Rights, the only organization devoted to the protection and eventual exercise of the Chamorro peoples right to self-determination.

Since the inception of our organization in 1981, we have had the opportunity to present our position in a variety of forums including the United Nations, government bodies on Guam and, on occasion, in front of United States agencies and instrumentalities.

We are very proud of our activities and our statements. Over the years we have been consistent, direct and honest in our position. We are also particularly proud of the growing understanding and support of the right of the Chamorro people to self-determination by all segments of the population on Guam. In the very beginning of our organization, many political leaders on Guam avoided us and scoffed at our movement. Over the years, this skepticism has turned to understanding and finally, full support. We are heartened by this trend and we want you to understand its characteristics so that Chamorro self-determination is not misunderstood, misrepresented or misinterpreted by the Congress of the United States.

The principle of Chamorro self-determination is a simple one. It holds that the political status of Guam is in the hands of the Cha-

morro people. It maintains that the discussion of Guam's political status is in reality a discussion of sovereignty. It firmly believes that the right to exercise self-determination and the sovereignty it implies is an historical right borne of the direct denial of Chamorro control of their homeland caused by the exchange of colonial systems between Spain and the United States in 1898. All that has occurred since then has not confronted squarely the issue of Chamorro self-determination. At certain times since the advent of America rule, the United States has behaved irresponsibly, responsibly, generously and capriciously. But the ultimate question before us is not to assess the good and bad points of America as a colonial power.

The question is, how do we decolonize Guam and resolve the political status issue? OPIR believes, as do an increasing number of people on Guam, that we need to confront the issue of sovereignty and the relationship of the Chamorro people to their homeland in this question. To not confront and resolve this issue now is to avoid the fundamental issue underlying the debate that we are all bearing witness to.

To undermine Chamorro self-determination is to give life to imperialism at a time when we are celebrating its demise in other parts of the world. American officials may find it easy to support the cause of Estonian, Lithuanian or Latvian self-determination, but find glib reasons to oppose Chamorro self-determination in a part of the world where they have the full authority and responsibility to decolonize a colonial area. We don't think this to be hypocritical as some harsh critics of federal policy on Guam may maintain. We prefer to think of it as a blind spot upon which we hope to shed some much needed light.

Over 4,000 years ago, the Mariana Islands were settled by a group of people who came to be known as the Chamorros. Their existence was discovered by Europeans in 1521 and they were colonized by Spain in 1668. The Chamorro people have the unfortunate distinction of being the first group of Pacific Islanders to be colonized by the West.

In the ensuing 300 years, the Chamorro people have been subject to other nations without their consent. These nations have occupied Guam to further their own interests and pursue the extension of their political and/or economic power. Spain, Japan and the United States have all used Guam to further their own objectives.

Without exception, none has demonstrated serious regard for the right of the Chamorro people to engage in self-determination. Instead, there has been a process which has reduced the social and political power of the Chamorro people through in-migration. The Chamorro people today comprise approximately 50 percent of the total population of Guam. Through U.S. policy and laws which control Guam, the demographic characteristics of Guam have shifted significantly. Tragically, under the same policies and laws, nearly all have been allowed to participate in Guam elections on political status. It is a miscarriage of justice to allow military personnel and new residents to participate in a political status process which was intended only for the Chamorro people.

The relationship of the Chamorro people with the United States began with the Spanish-American War near the turn of the centu-

ry. As a result of that war, the Chamorro people of the Mariana Islands were divided. In the Treaty of Paris of 1898, Spain ceded Guam to the United States and sold the remainder of the island chain to Germany. It is instructive to note that the Treaty of Paris contained the provision, "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress." Germany subsequently lost the Northern Marianas to Japan, which obtained the islands as a League of Nations mandate as a result of being on the side of the Allies in world War I.

Following World War II, the Northern Marianas were placed under the International Trusteeship System created by Chapter XII and XIII of the United Nations Charter. This system was to cover territories detached from enemy states as a result of World War II, territories held under mandate and territories voluntarily placed under the system by states responsible for their administration. On the other hand, as a possession of the United States, Guam was voluntarily placed by the United States under the Declaration Regarding Non-Self-Governing Territories created by Chapter XI of the UN Charter.

In the United Nations publication entitled "The New Nations," the non-self-governing system is described in the following, "As a counterpoint of the trusteeship system, the charter in Chapter XI embodied a commitment by the members controlling non-self-governing territories to accept as a sacred trust the obligation to promote to the utmost . . . the well being of the inhabitants of these territories."

Further, to achieve this goal these members agreed "to develop self-government, to assist in the progressive development of free political institutions, and to transmit regularly to the Secretary General, information on the economic, social and educational conditions of these territories." As a signatory to the United Nations Charter, the responsibilities of the United States are legally binding. Article VI (cl.2) of the United States Constitution makes it clear that all treaties are to be treated as the law of the land. The United Nations Charter is a treaty of nations.

To date, despite the Treaty of Paris, the democratic traditions of the United States and the UN Charter, the Chamorro people remain in political limbo. However, the United States continues to report annually to the UN in response to its responsibilities. The early reports clearly indicate that the people being discussed for political status changes were the Chamorro people. This has been clouded by the thousands of non-Chamorros who have migrated to Guam under U.S. laws and policies.

The new residents, while fine and upstanding citizens, were never promised a right to self-determination—a process which belongs to people whose status is in question. This right is inalienable and should not be transferred or given away to others. Self-determination is not a right of American citizenship. If it were, we would have periodic political plebiscites in the 50 States. It is the right of people to whom history has not been kind.

If there were no Chamorros, no native inhabitants on Guam, there would be no serious discussion of self-determination. As a point of comparison, it would be ludicrous to presume that Wake

Island has an inherent right to self-determination. The only persons that are there now are those brought in by the United States. They have no right to self-determination, because they had no prior existence as political, social or cultural beings and no commitment had been made for them.

The Guam Commonwealth Act before you deals with the issue of Chamorro self-determination. However, it must be made emphatically clear that it is a document which was created based on the status choice of U.S. citizens and not one based on Chamorro self-determination. As you may recall, every eligible U.S. citizen (as determined by the U.S.) was allowed to vote in past plebiscites. While OPIR maintains that only the indigenous people have the right to change Guam's ultimate political status, we are not opposed to an interim federal-territorial relations act as outlined by the Guam Commonwealth Act. We are not opposed because it increases the political and economic autonomy of Guam while it recognizes Chamorro self-determination. The legislation before you can serve as a significant prelude to the eventual exercise of self-determination. What is it, yes or no, to our freedom?

We hope that you will support the document as it is currently drafted and that you endorse Chamorro self-determination. This will guarantee a future with dignity for Guam and its people. If the U.S. Congress does not see fit to support Chamorro self-determination through elimination of any reference to its exercise, we are prepared to defeat the Act in any future election. We know that the vast majority of Chamorros support our position and an increasing number of non-Chamorros support our position as well. We are fearful that opponents of Chamorro self-determination may wish to delay matters in the hope that continued immigration will eventually silence the legitimate aspirations of the Chamorro people.

Given the opposition of the Federal Interagency Task Force, in spite of the historical wrongs which they clearly acknowledge, and the attempt by some Guam officials to soft pedal Chamorro self-determination, we have begun to re-think our position and our approach to Chamorro self-determination during the past few months.

It has become clear in the discussion of the Commonwealth Draft Act that years of waiting, redrafts of fundamental positions, some waffling by a few of our political leaders, are all in the offing. Just as clear, it is obvious that further delays only serve to cloud the issue and strengthen the federal position on this issue.

To delay this resolution of Guam's political status while the demographics of Guam change is to complicate the exercise of Chamorro self-determination. To delay the legislation while keeping the legislative process open will only serve to dissipate the collective energy which has been demonstrated to you today. In short, the delaying of this legislation and, in particular, Chamorro self-determination would become a conscious strategy to frustrate the entire movement of Guam towards more autonomy.

We have no reason to believe that this is currently the base, but we do know that the Federal Government has no advantage to gain by speeding up this process. We also know that the congressional process is by nature a lengthy one. But most importantly, we know

that we have waited too damn long for self-determination and barring some unforeseen development, it appears that we will be asked to wait a few more years. Members of the committee, justice delayed is justice denied, and OPIR feels that we can no longer be reasonably expected to await the completion of a lengthy process.

Accordingly, OPIR is taking the following position with respect to the future of this legislation—Guam's political development and the Chamorro people. If by the end of 1990, there is no serious progress towards the passage of the Act and the Chamorro self-determination it implies, we will urge the Guam Legislature to enact legislation to begin the process of Chamorro self-determination. If we are unable to find a senator willing to sponsor such legislation, we will enact legislation through the initiative process.

The legislation we envision will be comprised of the following elements, among others:

1. Declare that Guam has inherent political sovereignty.
2. Redirect the focus of the Commission on Self-Determination to become caretakers of the process.
3. Begin voter registration for a special plebiscite.
4. Notify federal authorities of the intentions of Guam.
5. Notify international agencies and community.
6. Conduct the plebiscite.

Our motive in presenting this is simple. We believe in Chamorro self-determination. At the same time, we want the established process to work. However, if it doesn't work, we want to exercise our option to act in our own best interest and to bring life to our principles. It is neither an act of desperation nor of disrespect to the United States Congress, and should not be interpreted as such.

We want the wheels of democracy to work on our behalf and we feel confident that we will be successful in carrying out the plan as we have just outlined. The congressional process should and will have the opportunity to work. But it cannot be used in a way that will deny us our rights. It is important to remember that we are not petitioners in a system that we are fully part of. To expect us to be patient while the system we are not part of is given a chance to work may be appropriate for any jurisdiction within the United States. Besides, we have been patient too long, too.

A question has been asked in the past days, what are our options?

My response to that would be all possibilities are open to the Chamorro people, not just a few, including taking our struggle to the streets, as was alluded to by the gentleman from American Samoa.

At this point, Mr. Chairman, let me share some thoughts of liberation and freedom with you. Kao magahet na manlibri hit? I magahet na linibri siempre u fatto gi ya hita kumu gaige i destinu-ta gi kannai-ta. Desde ki ma tutuhon i kinalamten gubetno gi ya guahan, taya na i propiu taotao tano'-niha gi palu siha na isla gi uriya-ta, lao yanggen tumacho i taotao put i direcho-na kumu Chamorro, meggai biahi di ma despresia. In henge na gaige i direcho put i destinon Guahan gi kannai ayu siha i hagas manma chomma' gi direchon pulitikat gi tano'-ta. Esta ki ma rekognisa yan ma praktika i directhon Chamorro put estao pulitikat, taya' kabales na linibri.

True freedom will come to us when our destiny is fully in our hands. Since the beginning of governmental systems on Guam, the people of the land have never been allowed to decide the fate of their land. This right is recognized in all of the surrounding islands, but when we stand up for our rights as Chamorros, we're frequently derided. We believe that the right of Guam's destiny belongs to those who have been historically denied their political status rights here. Until the Chamorro right to self-determination on Guam is recognized and practiced, there is no full freedom.

Pruthei i directho-ta kumu taotao Guahan hit.

Protect our rights as the people of Guam.

We present this statement with respect, with dignity, and with the firm conviction that we are right. Biba Guam, Biba Chamorro. Si yu'os ma'ase'.

Mr. DE LUGO. Thank you very much for your very eloquent statement on behalf of the Chamorro people, Mr. Rivera.

[Prepared statement of Mr. Rivera follows:]

**STATEMENT OF THE ORGANIZATION OF PEOPLE
FOR INDIGENOUS RIGHTS ON THE COMMONWEALTH
DRAFT ACT**

December 11, 1989

Introduction

Hafa Adai todos hamyo. Guahu si Ron Rivera yan para bai hu presenta giya hamyo i pusision i OPI-R put este na asunto i estao pulitikat para Guahan.

My name is Ron Rivera and I am here to present to you the position of the Organization of People for Indigenous Rights, the only organization devoted to the protection and eventual exercise of the Chamorro people's right to self-determination.

Since the inception of our organization in 1981, we have had the opportunity to present our position in a variety of forums including the United Nations, government bodies on Guam and, on occasion, in front of United States agencies and instrumentalities.

We are very proud of our activities and our statements. Over the years, we have been consistent, direct and honest in our position. We are also particularly proud of the growing understanding and support of the right of the Chamorro people to self-determination by all segments of the population on Guam. In the very beginning of our organization, many political leaders on Guam avoided us and scoffed at our movement. Over the years, this skepticism has turned to understanding and finally full support. We are heartened by this trend and we want you to understand its characteristics so that Chamorro self-determination is not misunderstood, misrepresented or misinterpreted by the Congress of the United States.

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maintains that the discussion of Guam's political status is in reality a discussion of sovereignty. It firmly believes that the right to exercise self-determination and the sovereignty it implies is an historical right borne of the direct denial of Chamorro control of their homeland caused by the exchange of colonial systems between Spain and the United States in 1898. All that has occurred since then has not confronted squarely the issue of Chamorro self-determination. At certain times since the advent of American rule, the United States has behaved irresponsibly, responsibly, generously and capriciously. But the ultimate question before us is not to assess the good and bad points of America as a colonial power.

The question is how do we decolonize Guam and resolve the political status issue. OPI-R believes, as do an increasing number of people on Guam, that we need to confront the issue of sovereignty and the relationship of the Chamorro people to their homeland in this question. To not confront and resolve this issue now is to avoid the fundamental issue underlying the debate that we are all bearing witness to. To undermine Chamorro self-determination is to give life to imperialism at a time when we are celebrating its demise in other parts of the world. American officials may find it easy to support the cause of Estonian, Lithuanian or Latvian self-determination, but find glib reasons to oppose Chamorro self-determination in a part of the world where they have the full authority and responsibility to decolonize a colonial area. We don't think this to be hypocritical as some harsh critics of federal policy on Guam may maintain. We prefer to think of it as a blind spot upon which we hope to shed some much needed light.

The History of Chamorro Self-Determination

Over 4,000 years ago, the Mariana Islands were settled by a group of people who came to known as the Chamorros. Their existence was "discovered" by Europeans in 1521 and they were colonized by Spain in 1668. The Chamorro people have the unfortunate distinction of being the first group of Pacific Islanders to be colonized by the West.

In the ensuing three hundred years, the Chamorro people have been subject to other nations without their consent. These nations have occupied Guam to further their own interests and pursue the extension of their political and/or economic power. Spain, Japan and the United States have all used Guam to further their own objectives. Without exception,


none has demonstrated serious regard for the right of the Chamorro people to engage in self-determination. Instead, there has been a process which has reduced the social and political power of the Chamorro people through in-migration. The Chamorro people today comprise approximately 50% of the total population of Guam. Through U.S. policy and laws which control Guam, the demographic characteristics of Guam have shifted significantly. Tragically, under the same policies and laws, nearly all have been allowed to participate in Guam elections on political status. It is a miscarriage of justice to allow military personnel and new residents to participate in a political status process which was intended only for the Chamorro people.

The relationship of the Chamorro people with the United States began with the Spanish-American War near the turn of the century. As a result of that war, the Chamorro people of the Mariana Islands were divided. In the Treaty of Paris of 1898, Spain ceded Guam to the United States and sold the remainder of the island chain to Germany. It is instructive to note that the Treaty of Paris contained the provision, "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress." Germany subsequently lost the Northern Marianas to Japan which obtained the islands as a League of Nations mandate as a result of being on the side of the Allies in World War I.

Following World War II, the Northern Maraians was placed under the International Trusteeship System created by Chapter XII and XIII of the United Nations Charter. This system was to cover territories detached from enemy states as a result of World War II, territories held under mandate and territories voluntarily placed under the system by states responsible for their administration. On the other hand, as a possession of the United States, Guam was voluntarily placed by the United States under the Declaration Regarding Non Self-Governing Territories created by Chapter XI of the U.N. Charter.

In a United Nations publication entitled The New Nations, the non self-governing system is described in the following, "As a counterpoint of the trusteeship system, the Charter in Chapter XI embodied a commitment by the Members controlling non self-governing territories to 'accept as a sacred trust the obligation to promote to the utmost . . . the well-being of the inhabitants of these territories.'" Further, to achieve this goal these members agreed "to develop self-government, to assist in the progressive

development of free political institutions, and to transmit regularly to the Secretary General information on the economic, social and educational conditions in these territories." As a signatory to the United Nations Charter, the responsibilities of the U.S. are legally binding. Article VI (cl. 2) of the U.S. Constitution makes it clear that all treaties are to be treated as the law of the land. The United Nations Charter is a treaty of nations.

 To date, despite the Treaty of Paris, the democratic traditions of the United States and the U.N. Charter, the Chamorro people remain in political limbo. However, the U.S. continues to report annually to the U.N. in response to its responsibilities. The early reports clearly indicate that the people being discussed for political status changes were the Chamorro people. This has been clouded by the thousands of non-Chamorros who have migrated to Guam under U.S. laws and policies. The new residents, while fine and upstanding citizens, were never promised a right to self-determination - a process which belongs to people whose status is in question. This right is inalienable and should not be transferred or given away to others. Self-determination is not a right of American citizenship. If it were, we would have periodic political plebescites in the fifty states. It is the right of a people to whom history has not been kind.

If there were no Chamorros, no native inhabitants on Guam, there would be no serious discussion of self-determination. As a point of comparison, it would be ludicrous to presume that Wake Island has an inherent right to self-determination. The only persons that are there now are those brought in by the United States. They have no right to self-determination, because they had no prior existence as political, social or cultural beings and no commitment had been made to them.

The Guam Commonwealth Act before you deals with the issue of Chamorro self-determination. However, it must be made emphatically clear that it is a document which was created based on the status choice of U.S. citizens and not one based on Chamorro self-determination. As you may recall, every eligible U.S. citizen (as determined by the U.S.) was allowed to vote in past "plebescites." While OPI-R maintains that only the indigenous people have the right to change Guam's ultimate political status, we are not opposed to an interim federal-territorial relations act as outlined by the Commonwealth Act. We are not opposed because it increases the political and economic autonomy of Guam while it

recognizes Chamorro self-determination. The legislation before you can serve as a significant prelude to the eventual exercise of self-determination.

The Future

We hope that you will support the document as it is currently drafted and that you endorse Chamorro self-determination. This will guarantee a future with dignity for Guam and its people. If the U.S. Congress does not see fit to support Chamorro self-determination through elimination of any reference to its exercise, we are prepared to defeat the Act in any future election. We know that the vast majority of Chamorros support our position and that an increasing number of non-Chamorros support our position as well. We are fearful that opponents of Chamorro self-determination may wish to delay matters in the hope that continued immigration will eventually silence the legitimate aspirations of the Chamorro people.

Given the opposition of the Federal Interagency Task Force (in spite of the historical wrongs which they clearly acknowledge) and the attempt by some Guam officials to soft-pedal Chamorro self-determination, we have begun to re-think our position and our approach to Chamorro self-determination during the past few months.

It has become clear in the discussion of the Commonwealth Draft Act that years of waiting, redrafts of fundamental positions, some waffling by a few of our political leaders are all in the offing. Just as clear, it is obvious that further delays only serve to cloud the issue and strengthen the federal position on this issue. To delay the resolution of Guam's political status while the demographics of Guam change is to complicate the exercise of Chamorro self-determination. To delay the legislation while keeping the legislative process open will only serve to dissipate the collective energy which has been demonstrated to you today. In short the delaying of this legislation and, in particular, Chamorro self-determination could become a conscious strategy to frustrate the entire movement of Guam towards more autonomy.

We have no reason to believe that this is currently the case, but we do know that the federal government has no advantage to gain by speeding up this process. We also know that the Congressional process is by nature a

lengthy one. But most importantly, we know that we have waited too damn long for self-determination and barring some unforeseen development, it appears that we will be asked to wait a few more years. Members of the Committee, justice delayed is justice denied and OPI-R feels that we can no longer be reasonably expected to await the completion of a lengthy process.

Accordingly, OPI-R is taking the following position with respect to the future of this legislation, Guam's political development and the Chamorro people. If by the end of 1990, there is no serious progress towards the passage of the Act and the Chamorro self-determination it implies, we will urge the Guam Legislature to enact legislation to begin the process of Chamorro self-determination. If we are unable to find a Senator willing to sponsor such legislation, we will enact legislation through the initiative process.

The legislation we envision will be comprised of the following elements:

1. declare the Guam has inherent political sovereignty;
2. redirect the focus of the Commission on Self-Determination to become caretakers of the process;
3. begin voter registration for a special plebescite;
4. notify federal authorities of the intention of Guam;
5. notify international agencies and community;
6. conduct the plebescite.

Our motive in presenting this is simple. We believe in Chamorro self-determination. At the same time, we want the established process to work. However, if it doesn't work, we want to exercise our option to act in our own best interest and to bring life to our principles. It is neither an act of desperation nor of disrespect to the U.S. Congress and should not be interpreted as such.

We want the wheels of democracy to work on our behalf and we feel confident that we will be successful in carrying out the plan as we have just outlined. The Congressional process should and will have the opportunity to work. But it cannot be used in a way that will deny us our rights. It is important to remember that we are not petitioners in a system that we are fully part of. To expect us to be patient while the system we are not part of is given a chance to work may be appropriate for any jurisdiction within the United States. Besides, we have been patient long enough.

LIBERATION DAY 198? 199? NGAI'AN NA TA FAN LIBRI?

Kao Magahet na Manlibri hit? I magahet na linibri siempre u fatto gi ya hita kumu gaige i destinu-ta gi kannai-ta. Desde ki ma tutuhon i kinalamten gubetno gi ya Guahan, taya' na i propiu taotao tano'-niha dumisidi hafa para uttemu-ña i isla. Este na direcho ma rekognisa gi palu siha na isla gi uriya-ta, lao yanggen tumacho i taotao put i direcho-ña kumu Chamorro, meggai biahi di ma despresia. In hengge na gaige i direcho put i destinon Guahan gi kannai ayu siha i hagas manma chomma' gi direchon pulitikat gi tano'-ta. Esta ki ma rekognisa yan ma praktika i direchon Chamorro put estao pulitikat, taya' kabales na linibri.

True freedom will come to us when our destiny is fully in our hands. Since the beginning of governmental systems on Guam, the people of the land have never been allowed to decide the fate of their land. This right is recognized in all of the surrounding islands, but when we stand up for our rights as Chamorros, we are frequently derided. We believe that the right of Guam's destiny belongs to those who have been historically denied their political status rights here. Until the Chamorro right to self-determination on Guam is recognized and practiced, there is no full freedom.

PRUTEHI I DIRECHO-TA KUMU TAOTAO GUAHAN HIT PROTECT OUR RIGHTS AS THE PEOPLE OF GUAM

We present this statement with respect, with dignity and with the firm conviction that we are right. Biba Guam, Biba Chamorro. Si Yu'os ma'ase'.

Mr. DE LUGO. I have a few questions that I would like to put to you, but first, let me recognize the delegate from Guam for any statement he may have at this point.

Mr. BLAZ. Thank you, Mr. Chairman.

It is supremely ironic that the one organization that had been so vocal and so critical of a lot of things between me and them would be the one which would give such a dignified presentation. The reason I mention that that is one of the things that we are trying to determine—speaking now as a Member of Congress—is the so-called political maturity of an organization or group of people to assume the responsibility they are seeking.

Here you presented something so eloquently, so beautifully, and so persuasively. I must say that it is really a true expression of the democratic process that we who have differed so much in the past by virtue of our own particular assignments in life and our representation of certain jurisdictions, would in effect be ending the testimony of Guam with my requesting that you be granted all the time in the world to say all that you wanted, when you and I have never sat down together before.

I just feel so good about this, Mr. Chairman, and I want to thank you publicly for permitting the gentleman to spend as much time as he did.

Thank you.

Mr. DE LUGO. Thank you, Congressman Blaz.

Now, Congressman Faleomavaega.

Mr. FALÉOMAVAEGA. Thank you, Mr. Chairman.

I really appreciate the opportunity to again commend my good friend, Ron Rivera, for making his statement before the panel.

I do have one observation. I just want to correct this for the record. I get the impression that I am advocating the idea of taking to the streets if Uncle Sam does not pay heed to the needs of the Chamorro people. I think out of the frustration and all that has been said yesterday, I think any normal human being would feel that sense of frustration, and what we are trying to do is prevent that that will ever happen. Through the legislative process in our political system, we can resolve this issue in a most constructive way. Even the Samoan people—they are real nice people—but taking it to the streets—I hope that would be the last resort that we could ever think of.

From all I have heard, Mr. Chairman, yesterday and even today, it really is a sense of great frustration on the part of the Chamorro people. I hope our American people will appreciate where these true stories are coming from and, hopefully, we will give real serious consideration of their frustrations and why they are asking for what is now contained in the proposed bill.

To my friend, Mr. Rivera, please, I am not advocating we take it to the streets now, but certainly we ought to try and see if the legislative process can work. I am sure it will work if we all pitch in together.

Thank you very much, Mr. Chairman.

[Applause.]

Mr. DE LUGO. Thank you very much.

In your statement, Mr. Rivera, you say that you want the established process to work?

Mr. RIVERA. Yes.

Mr. DE LUGO. "We want the established process to work," to quote you.

You say that if by the end of 1990 there is no serious progress towards the passage of the Act, that you will then seek legislation to begin the process for Chamorro self-determination. You say that if you are unable to find a Senator who is willing to sponsor such legislation that you will enact legislation through the initiative process. That is your right.

You are referring here to the initiative process that is provided in the Organic Act?

Mr. RIVERA. Whatever meanings are available today in the initiative process we would certainly look to as a means of initiating what our proposal is.

Mr. DE LUGO. You have the initiative process because I amended the Organic Act to give it to the people.

Mr. RIVERA. Yes.

Mr. DE LUGO. So you're not totally in the hands of the U.S. politicians. People can at any time, through the initiative process, seek to amend laws or place laws on the books that they feel are best for their particular society.

Let me ask you, are you suggesting Guam should consider independence if there is no progress towards passing H.R. 98 within the next year?

Mr. RIVERA. Mr. Chairman, let me respond to that question in this way by stating our position on Chamorro self-determination. Our position on Chamorro self-determination is one that embodies that only the Chamorro people can choose the ultimate political status of Guam. Our organization has not endorsed a particular status option. What we are endorsing is that all options available to all people be available to the Chamorros as well, and will obviously include the option of independence, among others. Independence, statehood, and free association—these are the permanent political status options currently recognized and from those options the Chamorro people should be allowed to decide.

What we are endorsing and supporting is that the Chamorro people be the only ones who participate in that process. The results of that process we can only speculate at this point. We can only honestly speculate, because it has never happened and that is what we are endorsing.

Let it happen. Facilitate it happening.

Mr. DE LUGO. We will have the Administration before us in a while. That is a tough problem that you are proposing there for the United States Congress and for the United States.

Any further questions?

Mr. FALCOMAVEGA. Just one question, Mr. Chairman.

Mr. Rivera, we recently had the Guam Youth Congress representing some 35,000 members of the Guam society. How big is your organization? What is the membership of your organization?

Mr. RIVERA. Let me respond to that by saying that at the general membership meeting in November 1987, I believe around 12,000 voted yes, you may represent our membership.

Mr. FALCOMAVEGA. Do you consider your organization a major player in deciding the future of Guam's political development?

Mr. RIVERA. Yes, we do, and we consider our role in this process to be very significant.

Mr. FALEOMAVAEGA. Is your organization a part of the Commission for Self-Determination?

Mr. RIVERA. No, we are not members of the Commission on Self-Determination. We have followed the process closely. We attend every meeting and probably are the most active entity in the community in the current process of the Guam Commonwealth Act.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

Mr. DE LUGO. Thank you.

Thank you very much, Mr. Rivera.

Mr. RIVERA. Mr. Chairman, if you would allow me a few seconds to offer these thoughts to all of you, our journey as a people is similar to that of the proa, on a long journey in the Pacific. That proa has been buffeted by colonial waves and colonial winds. We have now sighted land, we are now on land, and we are scraping off the colonial barnacles because that proa is no longer recognized as being able. It is so filled with barnacles it is no longer recognizable.

In the process of decolonization we are scraping off those colonial barnacles and hopefully will see the real essence of the proa once those barnacles are scraped off.

Thank you for this opportunity.

Thank you, Congressman Blaz, for special consideration.

[Applause.]

Mr. DE LUGO. Now, ladies and gentlemen, the final panel for the day and indeed, the final panel for this series of hearings, this first set of hearings, will be the panel from the Administration led by the Honorable Stella Guerra, Assistant Secretary for Territorial and International Affairs.

I recognize everybody with you, but if you will introduce for the record those in your party.

STATEMENT OF STELLA GUERRA, ASSISTANT SECRETARY OF THE INTERIOR FOR TERRITORIAL AND INTERNATIONAL AFFAIRS, ACCOMPANIED BY REAR ADM. BILL PENDLY, DIRECTOR, PLANS AND POLICIES, CINCPAC, U.S. NAVY; NANCY BOONE, DIRECTOR, TERRITORIAL LIAISON; HERMAN MARCUSE, ESQ., U.S. DEPARTMENT OF JUSTICE; AND RUTH VAN CLEVE, SOLICITORS OFFICE, DEPARTMENT OF THE INTERIOR

Ms. GUERRA. Let me say, Mr. Chairman, that it is good to be with you and the members of the committee. This has been a good two days. Thank you for inviting us to join you today.

Mr. DE LUGO. Stella, you might pull that mike a little closer.

Ms. GUERRA. Before I begin, let me introduce the people accompanying me. To my right, I have Rear Admiral Bill Pendly, Director, Plans and Policies, CINCPAC, U.S. Navy.

Next to him is Ms. Nancy Boone, Director, Territorial Liaison in the Department of the Interior.

I have Herman Marcuse, from the Department of Justice.

And to my immediate left is Ms. Ruth Van Cleve, a friend to all of us, and familiar to all of you from the Department of the Interior's Solicitors Office.

Mr. Marcuse, Ms. Van Cleve and Ms. Boone were also members of the Federal Interagency Task Force on the Guam Commonwealth Bill.

We share in your sentiments, Mr. Chairman. This is a great day to applaud the achievement of the people of Palau and to send our good wishes.

I will begin my testimony by saying once again that I welcome the opportunity to present an overview of the Administration's position on the Guam Commonwealth bill and to answer questions regarding those views. As you know, a Federal Interagency Task Force, which spent a year carefully reviewing this important piece of legislation, presented its detailed report to the Congress on August 1 of this year. The views stated in that report remain unchanged.

The purpose of this testimony is to clarify a number of questions that have been raised concerning that report.

H.R. 98 represents a complex political relationship proposal from the people of Guam. Because the measure addresses such a variety of complicated, and often emotional issues, involving legal, constitutional, policy and practical considerations, the task force's position on many of these key subjects has in some quarters been misunderstood and misconstrued. I therefore welcome the opportunity to explain the reasoning underlying the Administration's position on some of the major proposals of the measure.

First, let me say we do understand the desires for a new political relationship which grants greater local autonomy. We fully appreciate that the new relationship may require significant changes from the status quo. We support many key provisions in the bill and are sympathetic to concerns underlying other sections.

But we also believe the terms of the new Federal-Guam relationship cannot be unilaterally determined by Guam. The Administration has concerns with several of the bill's provisions, and, therefore, we cannot recommend that the bill as drafted, be enacted into law.

At the outset, let me emphasize, as vigorously and as honestly as I can, that the Administration wholeheartedly endorses and supports commonwealth and increased self-government for Guam. We strongly urge the enactment of legislation, permissible under the Constitution of the United States, acceptable to the Congress, the Administration, and the people of Guam to achieve a commonwealth relationship which brings a greater measure of self-government to the people of Guam.

We support the right of Guam's people to draft and approve their own constitution within the framework of the U.S. Constitution. We endorse their right to create their own form and institutions of self-government with the normal powers of a government within the American political family. We agree it will be necessary to make modifications in Federal relations with Guam to conform with this form of constitutional self-government.

We also strongly support the right of self-determination for all the people of Guam. Commonwealth, which was generally defined by Guam leaders in a 1982 plebiscite as a closer relationship with the United States than the existing one, was over the other op-

tions, including independence, free association, statehood, and status quo. Statehood was the second most popular choice.

Once that choice was made, the people of Guam had, and still have, the right to work out with the United States Government, the terms, conditions and transition to that new relationship. In the American political system, however, self-determination cannot mean the right for Guam to determine the terms of that relationship unilaterally.

We also support special additional educational programs for the Chamorro people of Guam, aimed at preserving and promoting their culture, and enhancing their social and economic well-being and advancement. We believe the establishment of a Chamorro Land Trust, for the benefit of the indigenous Chamorro people, can be supported if the purpose and terms of the trust, which are unspecified in the bill, meet certain legal and constitutional tests.

We support many of the goals and objectives that underlie other provisions of the bill including;

Developing mechanisms and procedures to ensure that Federal laws and regulations that apply to Guam have taken the commonwealth's distant location and special economic needs into consideration.

The creation of a Guam advisory commission on Federal laws and Federal-commonwealth relations.

Guam's authority to create its own tax system.

Increasing Guam's role in the control of alien immigration to the commonwealth.

And consistent with defense needs, we support turning over control of Federally held utilities to the Guam Government.

We also support a joint review of trade policies and Federal labor laws with a view to making them work more effectively for Guam.

We also support developing new guidelines, different from those proposed in the bill, for Federal eminent domain policy, access and easements through Federal property, and determining excess federal property, including regular reviews of Federal land needs and minimizing use restrictions on returned lands.

There are many other provisions and principles in the bill that we also support and those are detailed in the task force report. I would now like to discuss some of the major Federal concerns with provisions of the bill, if I may.

The first general area deals with the issue of Federal sovereignty and the application of Federal laws under the proposed commonwealth vis-a-vis the degree of local autonomy and self-government.

The multiplicity of meanings for the term "commonwealth" may account for some of the confusion that accompanies the discussion of the Federal sovereignty versus local self-government.

"Commonwealth" can mean very different things, depending on whether you are speaking, for example, of the Commonwealth of Virginia, or the Commonwealth of the Northern Mariana Islands.

Let me explain how the Administration views the relationship with areas under the sovereignty of the United States that are not States but use the term "commonwealth". That term has come to mean an advanced form of political relationship with the United States, under which the people of the jurisdiction, in the exercise of their self-determination, draft and adopt a constitution, compatible

with the Constitution of the United States, creating local institutions of self-government. The United States, in turn, agrees to certain constraints on the exercise of Federal authority.

The term "commonwealth" is not definitive, however. For example, the Territory of American Samoa also has adopted a constitution under the same exercise of self-determination, yet the term "commonwealth" is not used in describing its relationship with the United States.

An important guarantee of self-government for an insular commonwealth, enunciated in the Northern Marianas' Covenant, is Federal recognition that those constitutionally created institutions of self-determination shall not be unilaterally abrogated or amended by the United States Congress.

Congress has, for example, in the case of the Northern Marianas, agreed to limit the application of its unilateral law-making authority in the Commonwealth by exempting key elements of self-government from that Congressional power.

We thus believe that there is a precedent for Congress exempting fundamental self-governing provisions of a commonwealth agreement from Congressional authority, except when changes are mutually agreed upon. We have outlined in our report which sections of the Guam bill (101, 103, 201 and 301), with modifications, we believe are "fundamental provisions" that could be subject to such a limited mutual consent provision.

Proposals in H.R. 98, however, would go considerably further, calling for a mutual-consent requirement to apply to the entire commonwealth agreement. Another provision in the bill, section 202, would further extend the concept so that no duly-enacted Federal law or regulation could apply to Guam unless the Commonwealth government consented to its application. In effect, these provisions would give Guam veto power over all Federal legislation for the Commonwealth.

The bill further provides that Congress' power to legislate for Guam would be limited by applying the Tenth Amendment to the Commonwealth. The goal is to restrict the power of Congress over Guam's internal affairs in the same way Congress' authority over the States is limited. Extending the Tenth Amendment to Guam would eliminate Congress' power under the Constitution's Territorial Clause to legislate for the territories.

Except where the fundamental elements of self-government are concerned, we firmly believe that Federal laws, in most instances, must apply to Guam as they would apply to the States and other U.S. jurisdictions.

We also believe Congress' authority under the Territorial Clause should be retained not only because the Constitution specifically restricts application of the Tenth Amendment to States, but also because application of the Tenth Amendment to Guam would, in our view, be hurtful to Guam. We believe this is to be true because it is the Territorial Clause that permits Guam to receive special and generous Federal treatment and benefits unavailable to the States.

However, because of Guam's unique relationship with the Federal Government, we believe Congress and the Executive Branch should provide additional mechanisms to address problems that

might be created when broadly written laws intended primarily for States and other U.S. jurisdictions pose an unanticipated adverse effect for the Commonwealth.

Therefore, our report suggests ways by which Guam's governor would be able to formally appeal to Federal agencies to modify rules or regulations Guam believes to be adverse. We also suggest a mechanism for Guam to directly petition Congress, under accelerated legislative procedures, to seek modifications of laws and exemption from statutes Guam believes would adversely effect the Commonwealth.

Having said this, we must strongly and unequivocally oppose a mutual consent provision that applies to the entire commonwealth agreement as well as a Guam veto over Federal legislation or regulations. The result would be legislative and regulatory chaos, as to what laws or regulations—or parts of laws or regulations—apply. Such a veto power would make it impossible for Federal agencies to carry out their program and policy responsibilities in the Commonwealth.

As part of this general application of Federal law, Constitutional guarantees likewise need to apply to United States citizens of Guam. Many now expressly apply, and H.R. 98 provides that they would continue to do so. We have made specific recommendations on certain new provisions we believe should also be extended. Among these, we have recommended the inclusion of the Twenty-sixth Amendment, the right to vote for 18 year olds, which was not mentioned in the bill, as being extended under the Commonwealth.

Significantly, among those hallowed Constitutional guarantees applicable to Guam are the due process and equal protection clauses of the Fourteenth and Fifteenth Amendments, specifically extended to Guam in 1968, which without any doubt, prohibit the deprivation of a vote based on racial or ethnic lines.

Consequently, we believe that sections 102(a) and 102(b) of the Guam Commonwealth Bill, which could be used to deny some U.S. citizens the right to vote based solely on their ethnic background, are unconstitutional.

These sections purport to give the consent of Congress to limit participation in a future exercise of self-determination to indigenous Chamorros. Such a limitation would violate the express language of the Fifteenth Amendment. It would also violate the Equal Protection Clause of the Fourteenth Amendment, by impinging in a racially motivated manner, on the fundamental right to vote.

Such provisions would be hopelessly flawed. We would violate our responsibility to the Committee and to the people of Guam were we to suggest that some court might find a compelling State interest that would justify the provisions.

Concerns we have with the bill's provisions on immigration, foreign affairs, defense rights and trade policy also involved the general problem of where the line is drawn in our Federal system between the powers and prerogatives of the national government and those of the local government.

We have not suggested that where the line should fall is always crystal clear. Given the historic and geographic circumstances of Guam and other U.S. affiliated islands, some accommodation is often called for. But the clear sovereignty of the Federal Govern-

ment and its unfettered ability to carry out its Constitutional responsibilities must be assured and protected.

Therefore, on the immigration provisions in Title VII, we have offered an alternative proposal that addresses Guam's concerns. We recommend in the report that Immigration and Nationality Act be amended so that immigrant aliens could not enter Guam unless they are related to a permanent resident of Guam or are coming to engage in an occupation or profession in short supply in Guam.

For aliens admitted elsewhere in the United States who move to Guam, the time spent on Guam would not count toward fulfilling their requirements for naturalization.

We also recommend relaxing the standards for admission of temporary alien workers. This also addresses Guam's concerns.

We have offered alternative language dealing with Guam's concern with alien immigration to the island. We also suggest amending the Immigration and Nationality Act to giving the governor of Guam greater participation in the control of alien immigration to the Commonwealth within the framework of Federal law and jurisdiction.

We also have offered alternative language dealing with Federal consultations with Guam on international treaties and defense issues. Similarly, we have offered an alternative proposal to assist Guam, in a manner similar to assistance provided to the several States, in setting up tourism and cultural affairs offices abroad as well as assisting the Commonwealth in gaining membership in international organizations which Guam is eligible to join. Such participation should obviously be consistent with the principal reason for considering a Commonwealth relationship; i.e., to develop closer ties between Guam and the United States.

But we cannot support the language of the bill's provisions on those issues where that language would infringe on, constrain or impede the overall conduct of U.S. immigration policy, foreign relations, international defense commitments, and national defense.

In Title X, Guam's language would effectively and severely restrict Federal eminent domain powers and allow a Guam controlled Joint Commission to decide what Federal lands are excess on Guam and how those properties would be disposed. We oppose those provisions not only because they would usurp Federal powers and impede the Federal Government's ability to meet defense responsibilities, but also because the Joint Commission does not meet Constitutional tests on how Federal responsibilities may be carried out.

On the issue of trade, the bill would remove what some Guamanian leaders view as trade obstacles, allowing Guam virtually duty-free and quota-free access for any product to the United States, regardless of where the product was actually manufactured, by labeling it a "Product of Guam."

As a result of Congressionally mandated trade advantages, Guam currently enjoys the most liberal trade benefits and incentives of any U.S. trading partner—far more liberal than those permitted under the recent U.S.-Canadian Free Trade Agreement. Let me repeat that: Guam now has greater access for its *bona fide* products to the United States than any other U.S. trading partner.

At the risk of some oversimplification, let me explain the existing trade benefit package, called the Headnote 3(a) Program—to which we have heard several references in these last two days—and how Guam's proposal would change it. At present there are basically two tests for most products to meet in order to qualify as a "Product of Guam" for Headnote 3(a) access to the United States:

(1) No more than 70 percent of the total value of the final product may be attributable to foreign materials.

(2) Any imported materials must undergo a "substantial transformation" in Guam in order to be considered products of Guam and, therefore, not counted against the 70 percent limit.

While the Administration wants to assist Guam to develop a more balanced economy, with light manufacturing if possible, we also have national trade interests to safeguard. Among those interests is the need to ensure that our trade laws not be subject to circumvention.

H.R. 98's proposal, by eliminating the "substantial transformation" requirement and the Guam or U.S. content requirement, substituting only a "30 percent value added in Guam" test, could allow Guam to be used for such circumvention. Let me emphasize that the concern here is not with products of Guam, which enter unrestricted, but with products of foreign countries, which are subject to duties and quotas.

For example, under the bill's proposal, a product, unable to enter the United States from its country of origin because of U.S. quotas, could be shipped to Guam, subjected to minor alterations, perhaps repackaged, and stamped "Product of Guam" and then exported to the U.S. duty free and quota free. It could have met the 30 percent value added test because the alterations, repackaging, stamping and related overhead costs could add up to 30 percent of the value of the product, and that value would have been added on Guam.

But would that item really be a product of Guam? If Guam should become a transshipment platform for Asian or other foreign goods normally excluded from the U.S. market, this would clearly circumvent our trade laws and the policies underlying them.

The goal of Headnote 3(a) trade incentives is to create significant plant investment and generate jobs for the people of Guam. Yet H.R. 98's proposal would encourage transshipment and minor assembly operations, not the long-term manufacturing commitment needed for a balanced economy.

I should also note that we cannot agree with the bill's proposal to forego entirely U.S. Customs inspection of goods shipped to the United States from Guam. The opportunities for drug smugglers and others to utilize trade between Guam and the United States to avoid U.S. Customs inspection must be recognized.

Moreover, United States law requires that the dutiable status of goods be determined at the same time that the goods are imported into the Customs territory of the United States. These problems make stationing of a U.S. Customs inspector on Guam, as called for in the bill, less useful.

As we have stated in our report, the trade agencies of the Federal Government remain willing to work with Guam to improve existing trade incentives and explore reasonable modifications, in-

cluding regulatory changes, if necessary. But we cannot support the thrust of H.R. 98's trade provisions as written.

Let me close with a few general comments about some of the major financial provisions of the bill. While we support the continued return to the Commonwealth of Federal taxes and fees that are now being turned over to Guam, we are unconvinced by the rationale that Guam offers for special Federal payments to the Commonwealth as compensation for Federal use of Guam lands and facilities.

Guam's situation is not analogous to the District of Columbia—an argument that has been offered to justify why a special Federal payment like the one the D.C. Government receives for the large Federal presence in the District, should also be made applicable to Guam. Federal law, in recognition of Guam's need for revenue, has allowed the local government to collect and retain Guam income taxes, with tax rates modeled on the Federal code. In effect, the local government collects a territorial income tax, while Guam residents in general pay no taxes to the Federal Government. D.C. residents pay both Federal and District income taxes, with the former being deposited in the U.S. Treasury.

Furthermore, the Federal Government returns to the local Guam treasury Federal income taxes from federal employees on Guam. Running at about \$45 million annually, these funds provide a significant revenue enhancement and economic boost to Guam. Nothing comparable occurs with respect to the District of Columbia.

Residents of Guam, then, are generally free from paying Federal income taxes. That is not the case in the District of Columbia, or for that matter, in any other State of the Union, be it Kansas, Idaho, Montana or other states. As you are no doubt aware, many States would dearly love to have that advantage.

That is a highly relevant difference that needs to be factored into the equation as we discuss with Guam leaders what additional Federal assistance may be justified under a Commonwealth government.

Mr. Chairman and members of the Committee, as I conclude my statement, I hope that I have made it very clear that the Bush Administration is fully supportive of commonwealth and increased self-determination for the people of Guam. We in the Executive Branch continue to welcome the opportunity to work with you, the Members of Congress, and with the people of Guam to make commonwealth a reality.

Since the beginning of the task force's works, we have held meetings and discussions and invitations have been extended to the commission's representatives of Guam's Commission on Self-Determination.

We also—and I would like to submit for the record, which I believe was sent to you along with the task force report—a chronology of the task force's activities since it started in March 1988 when the task force was formed, all the way through August 1, 1989, when the report was sent to you.

Mr. DE LUGO. We have that. Thank you.

Ms. GUERRA. Mr. Chairman, there have been numerous invitations and there have been at least a dozen meetings with the designated representatives of the commission in Washington. I think

this is important. This hearing you are holding is historic. Thank you for bringing all parties together to form a partnership so that we can move forward on this very important issue.

Thank you, and I will be happy to respond to questions.

[Prepared statement of Ms. Guerra follows:]

STATEMENT

OF

STELLA GUERRA

ASSISTANT SECRETARY

OFFICE OF TERRITORIAL AND INTERNATIONAL AFFAIRS

DEPARTMENT OF THE INTERIOR

BEFORE THE

SUBCOMMITTEE ON INSULAR AND INTERNATIONAL AFFAIRS

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 98

THE GUAM COMMONWEALTH BILL

HONOLULU, HAWAII

DECEMBER 12, 1989

Mr. Chairman,

I welcome this opportunity to present an overview of the Administration's position on the Guam Commonwealth Bill and to answer questions regarding those views. As you know a Federal Interagency Task Force, which spent a year carefully reviewing this important piece of legislation, presented its detailed report to the Congress in July of this year. The views stated in that report remain unchanged. The purpose of this testimony is to clarify a number of questions that have been raised concerning that report.

H.R. 98 represents a complex political relationship proposal from the people of Guam. Because the measure addresses such a variety of complicated, and often emotional, issues, involving legal, constitutional, policy and practical considerations, the Task Force's position on many of these key subjects has in some quarters been misunderstood and misconstrued. I therefore welcome the opportunity to explain the reasoning underlying the Administration's position on some of the major proposals in the measure.

First off, let me say we DO understand Guam's desire for a NEW political relationship which grants greater local autonomy. We fully appreciate that the new relationship may require significant changes from the status quo. We support many key provisions proposed in the bill and are sympathetic

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to concerns underlying other sections.

But we also believe the terms of the new Federal-Guam relationship cannot be unilaterally determined by Guam. The Administration has concerns with several of the bill's provisions, and, therefore, we cannot recommend that the bill as drafted, be enacted into law.

At the outset, let me emphasize, as vigorously as I can, that the Administration wholeheartedly endorses and supports Commonwealth and increased self-government for Guam. We strongly urge enactment of legislation, permissible under the Constitution of the United States, acceptable to the Congress, the Administration, and the people of Guam to achieve a Commonwealth relationship which brings a greater measure of self-government to the people of Guam.

We support the right of Guam's people to draft and approve their own Constitution within the framework of the U.S. Constitution. We endorse their right to create their own form and institutions of self-government with the normal powers of a government within the American political family. We agree it will be necessary to make modifications in federal relations with Guam to conform with this form of Constitutional self-government.

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We also strongly support the right of self-determination for all the people of Guam. Commonwealth, which was generally defined by Guam leaders in 1982 plebiscites as a closer relationship with the United States than the existing one, was overwhelmingly chosen over all other options, including independence, free association, statehood, and status quo. Statehood was the second most popular choice.

Once that choice was made, the people of Guam had, and still have, the right to work out with the United States Government, the terms, conditions and transition to that new relationship. In the American political system, however, self-determination can not mean the right for Guam to determine the terms of that relationship unilaterally.

We also support special additional educational programs for the Chamorro people of Guam, aimed at preserving and promoting their culture, and enhancing their social and economic well-being and advancement. We believe the establishment of a Chamorro Land Trust, for the benefit of the indigenous Chamorro people, can be supported if the purpose and terms of the trust, which are unspecified in the bill, meet certain legal and Constitutional tests.

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We support many of the goals and objectives that underlie other provisions of the bill, including;

- o Developing mechanisms and procedures to ensure that federal laws and regulations that apply to Guam have taken the Commonwealth's distant location and special economic needs into consideration.
- o The creation of a Guam advisory commission on federal laws and federal-Commonwealth relations.
- o Guam's authority to create its own tax system.
- o Increasing Guam's role in the control of alien immigration to the Commonwealth.
- o Consistent with Defense needs, turning over control of federally-held utilities to the Guam government.
- o A joint review of trade policies and federal labor laws with a view to making them work more effectively for Guam.
- o Developing new guidelines, different from those proposed in the bill, for federal eminent domain

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policy, access and easements through federal property, and determining excess federal property, including regular reviews of federal land needs and minimizing use restrictions on returned land.

There are many other provisions and principles in the bill that we also support and those are detailed in the Task Force report. I would now like to discuss some of the major federal concerns with provisions of the bill.

The first general area deals with the issue of federal sovereignty and the application of federal laws under the proposed Commonwealth vis-a-vis the degree of local autonomy and self-government.

The multiplicity of meanings for the term "commonwealth" may account for some of the confusion that accompanies the discussion of the federal sovereignty versus local self-government issue.

"Commonwealth" can mean very different things, depending on whether you are speaking, for example, of the Commonwealth of Virginia, or the Commonwealth of the Northern Mariana Islands.

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Let me explain how the Administration views the relationship with areas under the sovereignty of the United States that are not States but use the term "Commonwealth". The term has come to mean an advanced form of political relationship with the United States, under which the people of the jurisdiction, in the exercise of their self-determination, draft and adopt a Constitution, compatible with the Constitution of the United States, creating local institutions of self-government. The United States, in turn, agrees to certain constraints on the exercise of federal authority.

The term "Commonwealth" is not definitive, however. For example, the territory of American Samoa also has adopted a Constitution under the same exercise of self-determination, yet the term "Commonwealth" is not used in describing its relationship with the United States.

An important guarantee of self-government for an insular commonwealth, enunciated in the Northern Marianas' Covenant, is federal recognition that those Constitutionally-created institutions of self-government shall not be unilaterally abrogated or amended by the U.S. Congress.

Congress has, for example, in the case of the Northern

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Marianas, agreed to limit the application of its unilateral law-making authority in the Commonwealth by exempting key elements of self-government from that Congressional power.

We thus believe there is precedent for Congress exempting fundamental self-government provisions of a Commonwealth agreement from Congressional authority, except when changes are mutually agreed upon. We have outlined in our report which sections of the Guam bill (101, 103, 201, 301), with modifications, we believe are "fundamental provisions" that could be subject to such a limited mutual consent provision.

Proposals in H.R. 98, however, would go considerably further, calling for a mutual consent requirement to apply to the entire Commonwealth agreement. Another provision in the bill, Section 202, would further extend the concept so that no duly-enacted federal law or regulation could apply to Guam unless the Commonwealth government consented to its application. In effect, these provisions would give Guam veto power over all federal legislation for the Commonwealth.

The bill further provides that Congress' power to legislate for Guam would be limited by applying the Tenth Amendment to the Commonwealth. The goal is to restrict the

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power of Congress over Guam's internal affairs in the same way Congress' authority over the States is limited. Extending the Tenth Amendment to Guam would necessarily eliminate Congress' power under the Constitution's Territorial Clause (Article IV, Section 3, Clause 2) to legislate for the territories.

Except where the fundamental elements of self-government are concerned, we firmly believe that federal laws, in most instances, must apply to Guam as they would apply to the States and other U.S. jurisdiction. We also believe Congress' authority under the Territorial Clause should be retained not only because the Constitution specifically restricts application of the Tenth Amendment to States, but also because application of the Tenth Amendment to Guam would, in our view, be hurtful to Guam. We believe this to be true because it is the Territorial Clause that permits Guam to receive special and generous federal treatment and benefits unavailable to the States.

However, because of Guam's unique relationship with the federal government, we believe Congress and the Executive Branch should provide additional mechanisms to address problems that might be created when broadly written laws intended primarily for States and other U.S. jurisdictions

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pose an unanticipated adverse effect for the Commonwealth.

Therefore, our report suggests ways by which Guam's Governor would be able to formally appeal to federal agencies to modify rules or regulations Guam believes to be adverse. We also suggest a mechanism for Guam to directly petition Congress, under accelerated legislative procedures, to seek modifications of laws and exemption from statutes Guam believes would adversely effect the Commonwealth.

Having said this, we must strongly and unequivocally oppose a mutual consent provision that applies to the entire Commonwealth Agreement as well as a Guam veto over federal legislation or regulations. The result would be legislative and regulatory chaos, as to what laws or regulations - or parts of laws or regulations - apply. Such a veto power would make it impossible for federal agencies to carry out their program and policy responsibilities in the Commonwealth.

As part of this general application of federal law, Constitutional guarantees likewise need to apply to United States citizens of Guam. Many now expressly apply, and H.R. 98 provides that they would continue to do so. We have made specific recommendations on certain new provisions we

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believe should also be extended. Among these, we have recommended the inclusion of the Twenty-Sixth Amendment, the right to vote for 18-year olds, which was not mentioned in the bill, as being extended under a Commonwealth.

Significantly, among those hallowed Constitutional guarantees applicable to Guam are the due process and equal protection clauses of the Fourteenth and Fifteenth Amendments, specifically extended to Guam in 1968, which unequivocally prohibit the deprivation of a vote based on racial or ethnic lines.

Consequently, we believe Sections 102(a) and 102(b) of the Guam Commonwealth Bill, which could be used to deny some U.S. citizens the right to vote based solely on their ethnic background, are unconstitutional.

These sections purport to give the consent of Congress to limit participation in a future exercise of self-determination to indigenous Chamorros. Such a limitation would violate the express language of the Fifteenth Amendment. It would also violate the Equal Protection Clause of the Fourteenth Amendment, by impinging in an inherently invidious, i.e., racially motivated, manner, on the fundamental right to vote.

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Such provisions would be hopelessly flawed. We would violate our responsibility to the Committee and to the people of Guam were we to suggest that some court might find a compelling State interest that would justify the provisions.

Concerns we have with the bill's provisions on immigration, foreign affairs, defense rights and trade policy also involve the general problem of where the line is drawn in our federal system between the powers and prerogatives of the national government and those of a local government.

We have not suggested that where the line should fall is always crystal clear. Given the historic and geographic circumstances of Guam and other U.S. affiliated islands, some accommodation is often called for. But the clear sovereignty of the federal government and its unfettered ability to carry out its Constitutional responsibilities must be assured and protected.

We, therefore, have offered alternate language addressing Guam's concern with alien immigration to the island. We suggest amending the Immigration and Nationality Act to give the Governor of Guam greater participation in the control of alien immigration to the Commonwealth within the framework of federal law and jurisdiction.

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We also have offered alternative language dealing with federal consultations with Guam on international treaties and defense issues. Similarly, we have offered an alternative proposal to assist Guam, in a manner similar to assistance provided to the several States, in setting up tourism and cultural affairs offices abroad as well as assisting the Commonwealth in gaining membership in international organizations which Guam is eligible to join. Such participation should obviously be consistent with the principle reason for considering a Commonwealth relationship, i.e., to develop closer ties between Guam and the United States.

But we can not support the language of the bill's provisions on those issues where that language would infringe on, constrain or impede the overall conduct of U.S. immigration policy, foreign relations, international defense commitments and national defense.

Similarly in Title X, Guam's language would effectively and severely restrict federal eminent domain powers and allow a Guam-controlled Joint Commission to decide what federal lands are excess on Guam and how those properties would be disposed of. We oppose those provisions not only because they would usurp federal powers and impede the federal

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government's ability to meet defense responsibilities, but also because the Joint Commission does not meet Constitutional tests on how federal responsibilities may be carried out.

On the issue of trade, the bill ostensibly would remove what some Guamanian leaders view as trade obstacles, allowing Guam virtual duty free and quota free access for any product to the United States, regardless of where the product was actually manufactured, by labelling it a "Product of Guam."

As a result of Congressionally mandated trade advantages, Guam currently enjoys the most liberal trade benefits and incentives of any U.S. trading partner - far more liberal than those permitted under the recent U.S.-Canadian Free Trade Agreement. Let me repeat that: Guam now has greater access for its bona fide products to the United States than any other U.S. trading partner.

At the risk of some oversimplification, let me explain the existing trade benefit package - called the Headnote 3(a) program - and how Guam's proposal would change it. At present there are basically two tests for most products to meet in order to qualify as a 'Product of Guam' for Headnote 3(a) access to the United States:

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1) No more than 70 percent of the total value of the final product may be attributable to foreign materials. (The limit is 50% for garments and other "sensitive" imports.)

2) Any imported materials must undergo a "substantial transformation" in Guam in order to be considered products of Guam and, therefore, not counted against the 70 percent limit.

While the Administration wants to assist Guam to develop a more balanced economy, with light manufacturing if possible, we also have national trade interests to safeguard. Among those interests is the need to ensure that our trade laws not be subject to circumvention.

H.R. 98's proposal, by eliminating the substantial transformation requirement and the Guam or U.S. content requirement, substituting only a "30 percent value added in Guam" test, could allow Guam to be used for such circumvention. Let me emphasize that the concern here is not with products of Guam, which enter unrestricted, but with products of foreign countries, subject to duties and quotas.

For example, a product, unable to enter the United

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States from its country of origin because of U.S. quotas, could be shipped to Guam, subjected to minor alternations, perhaps repackaged, and stamped "Product of Guam" and then exported to the U.S. duty free and quota free. It could have met the 30 percent value added test because the alterations, repackaging, stamping and related overhead costs could add up to 30 percent of the value of the product, and that value would have been added on Guam.

But would that item really be a product of Guam? If Guam should become a transshipment platform for Asian or other foreign goods normally excluded from the U.S. market, this would clearly circumvent our trade laws and the policies underlying them.

The goal of Headnote 3(a) trade incentives is to create significant plant investment and generate jobs for the people of Guam. Yet H.R. 98's proposal would encourage transshipment and minor assembly operations, not the long-term manufacturing commitment needed for a balanced economy.

I should also note that we can not agree to the bill's proposal to forego entirely U.S. Customs' inspection of goods shipped to the United States from Guam. The opportunities for drug smugglers and others to utilize trade between Guam

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and the United States to avoid U.S. Customs inspection must be recognized.

Moreover, U.S. law requires that the dutiable status of goods be determined at the time the goods are imported into the customs territory of the United States. These problems make stationing of a U.S. Customs inspector on Guam, as called for in the bill, less useful.

As we have stated in our report, the trade agencies of the federal government remain willing to work with Guam to improve existing trade incentives and explore reasonable modifications, including regulatory changes, if necessary. But we cannot support the thrust of H.R. 98's trade provisions as written.

Let me close with a few general comments about some of the major financial provisions of the bill. While we support the continued return to the Commonwealth of federal taxes and fees that are now being turned over to Guam, we are unconvinced by the rationale the bill offers for special federal payments to the Commonwealth as compensation for federal use of Guam lands and facilities.

Guam's situation is not analogous to the District of

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Columbia -- an argument that has been offered to justify why a special federal payment like the one the D.C. government receives for the large federal presence in the District, should be made to Guam. Federal law, in recognition of Guam's need for revenue, has allowed the local government to collect and retain Guam income taxes, with tax rates modelled on the federal code. In effect, the local government collects a territorial income tax, while Guam residents in general pay no taxes to the Federal Government. D.C. residents pay both federal and District income taxes, with the former being deposited in the U.S. treasury.

Furthermore, the federal government pays over federal income taxes from federal employees on Guam to the local government treasury. Running at about \$45 million annually, these funds provide a significant revenue enhancement and economic boost to Guam. Nothing comparable occurs with respect to the District of Columbia.

Residents of Guam, then, are generally free from paying federal income taxes. That is not the case in the District of Columbia, or for that matter in any State of the Union. As you are no doubt aware, many States would dearly love to have that advantage. That is a highly relevant difference that needs to be factored into the equation as we discuss

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with Guam leaders what additional federal assistance may be justified under a Commonwealth agreement.

Thank you, Mr. Chairman. I would be happy to respond to any questions you may have.

Mr. DE LUGO. Madam Secretary, can we have another copy of that chronology, that is the chronology of the meetings that were held, to place in the record?

Thank you very much, Madam Secretary, and this chronology that you are providing to the subcommittee, without objection, will be placed in the record.

[The above-mentioned information follows:]

For the Record

CHRONOLOGY OF MAJOR EVENTS - GUAM COMMONWEALTH

- February/March 1988 - Guam commonwealth legislation introduced in Congress
- March 1988 - Congress requested Administration comments on Guam commonwealth bill
- June 13, 1988 - Letter of federal agencies announcing federal interagency task force on Guam commonwealth, Interior's chairmanship, and task force goals.
- June 1, 1988 - First interagency task force meeting to discuss commonwealth background, task force objectives, organization, procedures and timelines. Procedures included preliminary view would be sought from task force members, discussions would be held with Guam on agency questions, and alternative language would be developed. Task force members during and after the meeting applauded Interior's initiative and chairmanship role. Consensus of task force was approval of procedures, groundrules and dates. No objections received.
- June 29, 1988 - Meeting with OMB to discuss the June 17 meeting, our next steps, and for OMB to offer comments on the draft follow-up letter.
- July 1, 1988 - Letter to task force members reiterating major points of the June 17 meeting, showing November 30 as the date for the Administration report to Congress.
- July/August - Preliminary informal agency reviews provided.
- August 19, 1988 - Letter to task force member thanking them for preliminary views and questions, stating we were collating questions and requests for clarification of intent, would forward them to Guam for response and get back to task force member when responses received.
- August 19, 1988 - Meeting with OMB on task force's efforts and guidance on meeting the November 30 deadline

- August 20, 1988 ✓ - Questions handcarried to Chairman of Guam Commission on Self-Determination
- September 16, 1988 - Letter from Acting Chairman of Guam Commission acknowledging receipt of questions.
- October 19, 1988 - Letter to task force members calling interagency meeting on October 28.
- October 27, 1988 - Letter from Guam commission Chairman proposing meetings with federal task force to discuss the questions and further our common understanding.
- October 28, 1988 - Federal Interagency Task Force meeting to discuss efforts to date, agency reviews, lack of written answers from Guam, Guam's response proposing direct and informal discussions instead, contents of our proposed interim report to Congress and proposal for discussions with Guam. Draft interim report was distributed and comments were requested of task force by November 15.
- November 2, 1988 - Letter to Governor Ada agreeing to informal discussions between task force and Guam over next several months, and describing purpose of such discussions.
- November 3, 1988 - Letter to task force members following up on October 28 meeting, reiterating we would like clearance of draft interim report by November 15, and informing them of the contents of the November 2 letter to Guam.
- November 16, 1988 - Chairman of Federal Task Force met with Guam Commission members in Guam to discuss federal efforts.
- November 21, 1988 - Final revised interim report submitted to OMB for formal interagency clearance.
- November 28-30, 1988 - Guam Commission members in Washington to meet with Interior, congressional leaders and transition members to discuss Guam commonwealth.
- January 12, 1989 - Letter to Secretary Hodel from Chairman J. Bennett Johnston asking Interior for an update on review of S.2178.

- January 19, 1989 - Response to Senator Johnston from Janet McCoy providing update of task force's efforts, initial views and proposed plan of action for detailed review of legislation.
- January 1989 - House and Senate reintroduced Guam commonwealth bill
- February 3, 1989 - Meeting with OMB to discuss plans of the Interagency task force and the report to Congress.
- February 14/15 - Lujan, Udall, DeLugo, Blaz visit Guam to discuss Commonwealth with Guam leaders; advise Guam leaders to be flexible and patient.
- February 21 - Blaz writes to Lujan requesting expedited Task Force report to Congress by June 1.
- Late February - Oral invitation to Dorsey and Whitney to have Ada and/or Commission visit with Task Force while they are in Washington for budget hearings. Ada/Commission decline.
- February 27 - Letter from Interior to all Task Force members advising of make-up of working groups, agendas, meeting schedule, target date.
- March 2 ✓ - Secretary Lujan meets with Ada, and Commission members in Washington. Lujan emphasized his personal support for the concept of Commonwealth, said he was anxious to get the discussions started, announced the establishment of four Task Force working groups for specific discussions that were scheduled to begin week of March 13, and reiterated his June deadline for a report to Congress.
- March 2 - Press release on Secretary Lujan's meeting with the Gov. Ada and Commission, also described his plan for Task Force working group meetings to begin the week of March 13. Release also noted June deadline for report to Congress.

- March 9 - Letter from Ada to Lujan thanking him for meeting on March 2, noting Commission will be in the Capital in the coming months and keep the Secretary posted.
- March 13 - Press release announces opening of working group discussions with Dorsey and Whitney for the week of March 13 and describes composition of working groups and titles of the bill they will discuss.
- March 14 - Morning meeting with Federal Task Force members of Group I; afternoon meeting with Task Force and Dorsey and Whitney. Every Task Force working group meeting opened with Federal position, need for clarification of terms and intent of certain provisions and explanation of implementation so alternate approaches can be developed. Also reiterated need for all deliberate speed because of June deadline for report. Both Guam and Federal members reiterated understanding that we were not negotiating but that the Federal Government was seeking clarification.
- March 15 - Morning meetings with Federal Task Force members of Group II, and afternoon meetings with Group II and Dorsey and Whitney.
- March 16 - Letter from Secretary Lujan to Gov. Ada and other Commission members (Manibusan, Bordallo, Lizama) reiterating Secretary's March 2 statement to Commission that Lujan intended to do "all we can to meet the requested June 1 goal for an Administration report."
- March 16 - Morning meetings with Federal Task Force members of Group III, and afternoon meeting with Group III and Dorsey and Whitney to discuss Titles V, VI, VIII and IX.
- March 17 - Press release reported on first three sessions, saying they were useful and Federal side was learning much about Guam's position.

- March 22 - Morning meeting with Federal members of Group IV and afternoon meeting with Federal members and Dorsey and Whitney
- March 22 - Press release on the working group meetings held March 14, 15, 16 and 22.
- March 28 - Task Force meeting - Group I - to discuss Titles I and II with Dorsey and Whitney.
- March 30 - Task Force meeting - Group II - to discuss Title III with Dorsey and Whitney.
- April 5 - Task Force meeting - Group I - continued discussions on Title II, Section 202, etc.
- April 6 - Press release, noting efforts to meet June deadline, noted most recent meetings, and noted Secretary's commitment to a June deadline.
- April 7 - Secretary Lujan met with Lt. Gov. Frank Blas to discuss Commonwealth and reiterated June deadline, and asked about Guam's flexibility on the proposed Commonwealth Act.
- April 12 - Letter from Commission Chairman Ada to Lujan, in response to Lujan March 16 letter, extending an invitation for the Task Force to come to Guam.
- April 12 - Task Force afternoon meeting on Title IX, including FCC, Jones Act, maritime provisions.
- April 18 - Task Force meetings on Title VII in the morning and Title III in the afternoon. Immigration and toxic and nuclear waste management provisions.
- April 20 - Press release emphasizing Task Force aiming for June 30 report, noting recent work on immigration, hazardous waste management.

- April 24 - Letter sent to all Task Force members asking for their section-by-section comments by May 15, because Task Force goal was to have a report to Congress by June 30.
- April 25 - Letter from Glidden to Blaz on the status of Task Force efforts and target goal.
- April 26 - Letter from Blaz thanking Glidden for his efforts and reiterating importance of June deadline.
- April 27 - Glidden met with Barry Israel and Jim Lake and reiterated June deadline with Congress, Task Force did not have authority to change deadline; If Guam wants change, Commission should ask Congress to change their deadline.
- April 27 - Task Force meeting in mid-afternoon with DOD, Interior, Dorsey and Whitney to discuss land and eminent domain provisions, Title X, II, and III. Task Force had internal meeting in the late afternoon.
- April 28 - Task Force meeting, Justice, State, Interior and Dorsey and Whitney on Titles III, VII, X, and XI.
- May 1 - Task Force meeting, Justice and Interior with Dorsey and Whitney on Title I.
- May 2 - Congressman Blaz writes Tim Glidden thanking him for his April 25 letter and continuing efforts to have a timely report.
- May 3 - Internal Task Force meeting, Justice, Interior and INS on immigration issues.
- First Three
Weeks in May - Guam Commission's Washington Representative gone on business trips and unavailable to Task Force for discussions or questions regarding report.
- May 9 - Internal Task Force meeting with State, NOAA, Justice on EEZ issues.

- May 11 - Letter from Glidden to Ada declining the invitation for the Task Force to visit Guam, because of time constraints and logistical problems and reiterated the Task Force responsibility to Congress to meet June deadline; extended an invitation for the Commission to meet with the Task Force in May or June to be briefed

- May 19 - Letter to Rep. de Lugo, assuring him the Task Force shares his views on the need for movement on the Commonwealth Report, reiterating commitment to June deadline.

- May 19 - Letter to the Editor PDN outlining our efforts on the report and June deadline and emphasizing we will continue to provide a forum for discussion for Guam Commission throughout the bill's progress

- May 21 - Task Force comments collated into draft report for resubmission to Task Force members for comment.

- May 22 - Letter from Ada to Secretary Lujan, asking Interior (for the second time) to visit Guam.

- May 26 - Letter from Glidden to Ada, reiterating Task Force target for report to Congress and declining (for second time) visit to Guam; reiterated invitation to Commission to be briefed on Task Force report anytime in June.

- June 2 - Guam Commission Chairman Ada writes to Tim Glidden, requesting for the third time that Task Force representatives come to Guam.

- June 16 - Letter from Interior with draft Task Force report sent to all Task Force members for final sign-off.

- June 19 - Letter from Commission Vice-Chairman Frank Santos requesting Commission meet with Presidents's cabinet in late July

- June 26, 1989 - Task Force report to OMB for final clearance and submittal to Congress.

June 28, 1989 - Letter from Tim Glidden to Chairman Ada responding to June 2 and June 19 letters from the Commission stating the task force has completed its report, sent it to OMB for final clearance, requesting purpose of meetings with Cabinet secretaries, and suggesting it is time for meaningful, substantive discussions.

April - Continual Task Force internal exchanges
May of comments and draft positions, as well
June as negotiations and revisions.

June 1988-June 1989 - Periodic discussions and briefings with congressional staff on task force efforts

Mr. DE LUGO. It lists a series of meetings that were held with Guam leaders and with the task force.

I want to thank you for your presentation. I want to commend you on it. I am a sponsor of the bill, but if I were specifically representing Guam here and had been involved in the commonwealth process as a resident of Guam, I might feel slightly disappointed that you have not agreed with everything that we put forward. But I would say, based on my 30 years in government, and in the legislative process, and having seen many, many, many Administration reports come to the Congress, although I feel that there are many areas that you can be more positive in, I feel that given the right consultation that it could be achieved.

The response that you put together represents a great deal of effort and, indeed, sincere effort.

Ms. GUERRA. Thank you.

Mr. DE LUGO. That is how it impressed me.

Frankly, I will tell you that is not what I was expecting based on past histories of Administrations. I sat down with the task force report, went through it, and I didn't agree with everything in there, but I thought it was a good beginning, very good beginning. I believe it can form the basis to literally bridge the distance the Administration can travel and the further distance that we in Congress have the power to take it; that we could get to a place that can achieve what the people of Guam are seeking to achieve in a commonwealth. So it was not a negative experience for me, rather, it was a hopeful one.

I read your testimony last night, of course. So often we receive testimony from Administrations—I will not say which Administrations but Administrations—and the testimony is perfunctory or it is just put together, and you go through the process, but that is not what this is. Anyone reading this can see that a great deal of thought has gone into it.

So now we find ourselves in a position with the Administration, the Bush Administration, and you, Madam Secretary, stating that the Administration wholeheartedly endorses and supports commonwealth and increased self-determination for Guam. You hear the members of this subcommittee saying that we support that and we want to see the commonwealth become a reality for the people of Guam. You have heard all the witnesses on the part of the people of Guam here coming before this subcommittee saying that they support commonwealth for Guam.

Now, the question is, where do we go from here? How do we all work together to bring this about?

Well, obviously there has to be some accommodation, since there are areas in which there are problems and disagreement, and before I get into a number of questions that I have, I want to point something out. I will point out exactly where these questions or these problems come from.

Let's take, for instance, where you were saying that under Headnote 3(a) how well the people of Guam are treated, but the people of Guam in fact receive a more liberal trade policy and better incentives than any other U.S. trading partner.

Let me repeat that Guam now has greater access for its bona fide products to the United States than any other U.S. trading partner.

You say that in your statement. I think that the Virgin Islands also has a similar position and it is a very good one.

Ms. GUERRA. Yes.

Mr. DE LUGO. But it is not perfection by any means. It could be improved upon. Nevertheless, you make a very strong point that the way this language is drafted it could set up Guam as a pass-through, not for Guam products, but for products from other foreign countries in which there would be virtually no labor, no employment, nothing in the way of benefits to the Guamanian people, but rather, they would just be passed through and you slap a label on it and they come through duty free.

This was in the original draft when it was submitted to the committee and the staff of our subcommittee pointed out that this was a real problem area. And as Congressman Fuster pointed out this morning, when we seek to move this legislation through the Congress, after we pass it out of our committee, we have to deal with the other committees of jurisdiction. In this case, we will have to deal with Ways and Means—that is a powerful committee, and I cannot say that they have the sensitivity to the political aspirations of the people of Guam that we have, because they don't deal with Guam on a regular basis as we do. So they have a different role in the Congress.

So our subcommittee, and representatives of Guam talked about this, and met with the staff of Ways and Means and the Ways and Means staff pointed out the problems that existed here. Yet no changes were made, and with this big problem in the bill, it was presented to the people of Guam to ratify.

That is not fair. It can't work that way. The political problem is this: we have had for two days now people who love their country, love Guam, young people, senior citizens, and others coming here, talking about something that is fundamental and important, and that is commonwealth. They say that Congress must accept the draft commonwealth proposal as it has been introduced, ratified by the people of Guam in the referendum even though we said please don't take that referendum until these various problem areas are worked out. They say that the Congress must enact that without any changes.

Now, that is impossible. We cannot get it through the Congress, even if we wanted to, because it must go to these other committees. When it goes to Ways and Means there is no way that the Ways and Means Committee is going to accept this. They're going to make changes.

So what is the political reality here? The political reality is that if your friends in Congress work like the dickens to get this legislation through Congress, and we get the commonwealth bill through, and then it goes back for final ratification by the people of Guam, there will be those who will stand up and say, wait a minute, and denounce the Congress because changes have been made.

From the very beginning, however, everybody knew those changes had to be made. This is the reality of it. We have come to the time where we have to decide, "Are we sincere about commonwealth for Guam?"

I am. I am. But I cannot bring it about unless I get help from the political leaders of Guam. You have heard from the Administration

here that they are willing to work more on this, and we are not talking about fundamental changes. We are saying changes have to be made. I believe that improvements can be made in the headnote process, and that through the process that we are entering that the Ways and Means Committee will respond to bring about an improved and more attractive Headnote position for Guam, but that has to be negotiated.

Let me start with a series of questions to you, Madam Secretary.

You expressed the concern that section 102 could lead to a vote on self-determination by Chamorros only, and that that would be inconsistent with the Fourteenth and Fifteenth Amendments to the Constitution.

Governor Ada asserts that the bill does not call for such a vote. Does it?

Ms. GUERRA. Well, Mr. Chairman, section 102 provides for an exercise of self-determination which is to be provided by the Constitution of Guam. It also restricts this self-determination to the indigenous Chamorro people. It is the exclusion portion of it that presents the problem. While it does not use the word "vote" specifically, we cannot think of another way that you can go through this process of self-determination or this exercise of self-determination without some type of vote that would exclude people.

Mr. DE LUGO. Governor Ada, you know, asserts that inconsistencies with the Fifteenth and Fourteenth Amendments are not relevant because the entire Constitution does not apply to Guam. Is inconsistency with them relevant?

Ms. GUERRA. I will let my expert in law, if I may, answer.

Mr. DE LUGO. Mr. Marcuse of the Justice Department.

Mr. MARCUSE. The Fourteenth and Fifteenth Amendments, grant fundamental rights to the citizens of the United States. Under the Insular cases, those fundamental rights are applicable by their own force.

In addition, Congress specifically made those amendments applicable to Guam, so there is no question that the Fourteenth and Fifteenth Amendments are applicable to Guam.

Mr. DE LUGO. Well, Mr. Marcuse, I see we are getting a response here from the gentleman from American Samoa, and the gentleman from Puerto Rico. Do you want to comment on that?

Mr. FUSTER. Can you cite the Supreme Court decision that says that the Fourteenth Amendment applies to incorporated territories?

Mr. MARCUSE. No, they are unincorporated.

Mr. FUSTER. Unincorporated?

Mr. MARCUSE. Yes sir. That is the holding of the Insular cases.

Mr. FUSTER. No, it is not. The Fourteenth Amendment applies to unincorporated territories?

Mr. MARCUSE. The fundamental rights granted by the due process and equal protection clauses, are fundamental rights, and therefore, they apply to the unincorporated territories by their own force.

The Supreme Court has held that recently with respect to Puerto Rico.

Mr. FUSTER. They precisely said that they didn't know whether or not the Fourteenth Amendment applies, because it applies to

states and Puerto Rico is not a state. They say fundamental rights apply in unincorporated territories, but not the Fourteenth Amendment. There is a difference in terms of historical concepts for the Fourteenth Amendment and Fifteenth Amendment rights.

Mr. MARCUSE. But the equal protection and due process clauses certainly apply and in any event, they have been made applicable to Guam by statute.

Mr. FUSTER. That is another story.

Mr. MARCUSE. So there is no question.

Mr. FUSTER. No, there is a question because if you assume there is a constitutionally binding application nobody can change that. But if it is only a statutory thing, Congress can conceivably change that.

Mr. MARCUSE. At the present time these clauses are applicable.

Mr. FUSTER. Yes.

Mr. DE LUGO. That was Governor Ada's argument, that it is statutory.

Ms. VAN CLEVE. If I may, Mr. Chairman, the case that I believe Mr. Marcuse has in mind is the Puerto Rico case in the U.S. Supreme Court from 1976, Examining Board versus Flores de Otero. We read that as saying that the fundamental rights extended to the people of the unincorporated territories by the Insular Cases now comprehend the due process clause and equal protection clause as well. And that, in turn, comprehends the right to vote.

That is our construction of that particular case. I think it is correct to say, as I believe you were saying, that at the outset in 1901, with the Insular Cases, the due process clause was not necessarily included by court decisions. We believe it is squarely included now.

Mr. FUSTER. All I am referring to is the fact that there is a serious point made by legal scholars about whether the scope of the Fourteenth Amendment rights, equal protection and due process, properly coincide with the equal guarantees that appear in the Bill of Rights.

Ms. VAN CLEVE. There is—

Mr. FUSTER. You see, if they don't, there is a problem in trying to decide which clause is the one that applies to unincorporated territories, and the Supreme Court has refused to solve that question. Now, none of that affects the fact that the fundamental aspect of those rights which have the same content whether they are under the Fifteenth Amendment or the Fourteenth Amendment, those would be applicable, of course. But we are speaking only of the very fundamental rights, if that distinction makes any sense.

In other words, the Fourteenth Amendment may cover a broad range of rights that would not necessarily be included in the traditional fundamental rights. Some of them would be, yes. All I am saying is that one has to be very precise. I was simply saying that the Fourteenth Amendment covers it but I don't think it is that clear that it does. There are fundamental rights covering the Fourteenth Amendment that are applicable to incorporated territories. That, I will agree to.

Mr. FALEOMAVAEGA. Would the chairman yield?

Mr. DE LUGO. Yes.

Mr. FALEOMAVAEGA. I would raise an additional question also, because they are classified as unincorporated territories but in the

case of American Samoa it is unincorporated, an unorganized territory.

Ms. VAN CLEVE. I think that—if I may——

Mr. DE LUGO. Yes, Ms. Van Cleve.

Ms. VAN CLEVE. I hope it gives comfort to the delegate from Samoa to know that so far as we understand it the concept of unorganized territories plays no role whatsoever in the constitutional protection argument. In sum, the people of Samoa have the same constitutional protections under the Insular Cases as do the people of the Virgin Islands, Puerto Rico and Guam.

Mr. FALEOMAVAEGA. I beg to differ from the distinguished lady's response to this because there are some practices even under our current law and current constitution that is totally contrary to the basic provisions of the Federal Constitution, and it is currently being applied. I just want to point that out for the record, that there are some distinct differences now existing in American Samoa that is not in conformity with the federal Constitution.

Mr. DE LUGO. Moving along, you have expressed the concern that the affirmative action programs for Chamorros which would be required by section 102 might be subject to constitutional scrutiny. Governor Ada asserts that constitutional guarantees of equal rights should not be a concern because Congress' broad powers regarding territories provide a constitutional basis for such a program. How do you respond to that?

Mr. MARCUSE. The territorial clause is not omnipotent and does not supersede all other parts of the Constitution. As we said before, under the Insular Cases, the fundamental rights that are protected by the Fourteenth Amendment and Fifteenth Amendment would supersede the territorial clause. Congress could not enact legislation under the territorial clause which violates the equal protection and due process clauses.

Furthermore, while Congress has certain authority to enact discriminatory legislation in order to enforce provisions of the Fourteenth Amendment, it cannot authorize the States to enact legislation that violates the Equal Protection Clause.

Mr. DE LUGO. The states, you say. We are not talking about states.

Mr. MARCUSE. It couldn't authorize it in the territories either.

Mr. DE LUGO. You stated concerns about the bill's proposals to delegate or to allow the President to delegate federal administrative functions to Guam.

Governor Ada says that there is no constitutional debate about these proposals. Do you agree?

Ms. GUERRA. We do not agree, Mr. Chairman. The Appointments Clause in the Constitution prohibits the enforcement of federal laws by persons who are not officers of the United States, such as a person who is elected, as opposed to being appointed.

Mr. DE LUGO. Why should the Congress let the President decide whether to perform assigned functions in Guam or let the local government have the responsibility?

Mr. MARCUSE. Mr. Chairman, under the Appointments Clause federal statutes can be administered or enforced only by officers of the United States, that means by persons who have been appointed pursuant to the Appointments Clause; namely, either by the Presi-

dent, by or with the advice and consent of the Senate, or when the Congress authorizes it, by the President alone, the department heads, of course, or the courts of law.

The Governor of Guam is not an official appointed pursuant to the Appointments Clause. He is elected by the people of Guam and therefore he is not capable of administering federal statutes. That is the holding in *Buckley versus Vallee*, which was decided in 1976.

Mr. FUSTER. Can't those powers be delegated from the President to the states, to the commonwealth government?

Ms. VAN CLEVE. No.

I cannot speak to the point of Puerto Rico, but I can with respect to the Virgin Islands and Guam. There was a time, and it continues in the case of Guam today, when the Organic Act expressly permitted the President to delegate Federal powers to the Governor of Guam. That was the subject of considerable debate in 1968 at the time of the Elected Governor bill. We in the Interior Department then argued strenuously that it was a crucial provision, as we also argued in the case of the Virgin Islands, because Federal agencies by and large don't have people in the territories. Accordingly, there needs to be someone there authorized to exercise—to carry out—Federal responsibilities.

We succeeded in persuading the Congress in 1968 that that was a good idea as a practical matter. The problem is there is now this intervening Supreme Court case—*Buckley versus Valeo* in 1976—that says squarely that only officers of the United States may discharge Federal functions and accordingly, the existing provision of the Guam Organic Act cannot be implemented, nor should a comparable provision be enacted in the future.

Mr. FUSTER. You know what Puerto Rico does to help out certain law enforcement agencies in dealing with drug interdiction? For example, we federalize the local agency and it can perform the functions.

Mr. MARCUSE. But you cannot federalize a governor.

Mr. FUSTER. Well, it depends for what particular purpose. I find it very hard to believe that, even under *Buckley versus Valeo*, that there is a constraint on Congress passing a law which the President signs by which the President delegates some of his functions to us.

I don't think the *Buckley* case went so far to prohibit that situation. It was not the kind of thing in question there.

Ms. VAN CLEVE. It is an extremely inconvenient decision. It is read by the Justice Department in the manner Mr. Marcuse is suggesting.

Mr. FUSTER. Why is it though? You make the argument where you shy away from the Fifth Amendment or the Fourteenth Amendment question. You make the argument that fundamental rights—and by the way, I would agree that the right to vote in this context is covered, that is one of the problems here, that is a problem for me that is a fundamental right. When you make the, argument which is—constitutionally sound, that the territorial clause cannot prevail over fundamental guarantees. There is no question about that. But when you come to something like delegation of powers you are not talking about fundamental guarantees. The territorial clause has a scope that is broad enough in this context to

allow for arrangements that would facilitate a delegation in the territories.

It seems you are in a completely different constitutional plane. That is where I wonder whether or not you are being overly rigorous in interpreting some of this. Although when it comes to something like the right to vote, I would agree with what you are saying.

Mr. MARCUSE. Congressman, do you mean that this could be done under the territorial clause?

Mr. FUSTER. I think under the territorial clause you could delegate—the President could delegate—a federal function to a commonwealth official.

Mr. MARCUSE. But how?

Mr. FUSTER. I don't see constitutional problems with that. Whether it is a good policy or not, that is beside the question. That should be a policy matter. But as a constitutional——

Mr. MARCUSE. That could be done under the territorial clause, you are saying, to the territorial governor, but not to a State governor?

Mr. FUSTER. That is what I mean. It is very clear that the territorial clause—particularly when you are dealing with an unincorporated territory—allows Congress to do things that Congress could not do with a state. No question about that. Absolutely no question about that.

Mr. DE LUGO. It is not a fundamental right.

Mr. FUSTER. Outside of the scope of fundamental rights, yes.

Mr. MARCUSE. The question, of course, is then the governor would be subject to the direction of the President and if he disregards it, the President would have to withdraw the delegation. That would create a rather unpleasant situation.

Mr. FUSTER. That is true, but those are the policy problems.

Mr. DE LUGO. All right. I think we have had that little exchange now.

Mr. FALEOMAVAEGA. Just to reiterate what the gentleman from Puerto Rico is saying, if I may. Right now the present status of the Congress having plenary authority under the territorial clause gave or delegated full military, civil and administrative authority in the person of the President to administer American Samoa. The President just simply delegated that same authority to the Secretary of the Interior. So within the context of what the gentleman from Puerto Rico is saying there is no basis to say that there is something at a higher level. Congress makes plenary—meaning full, absolute authority—to govern the territories, flag territories of the United States.

Mr. MARCUSE. But the Secretary of the Interior is an officer of the United States.

Mr. FUSTER. That is right. I think you were arguing there is a further delegation, from the Secretary of the Interior to the Governor of Samoa, who is a locally elected official.

Ms. VAN CLEVE. Right.

Mr. DE LUGO. Let's go to eminent domain. Can we all agree on that?

Ms. GUERRA. You see how difficult it is.

Mr. DE LUGO. Regarding the question of eminent domain: The Administration points out that the power of eminent domain is an inherent power of the government. It also asserts that limiting eminent domain to times of war, as the bill proposes, would not be adequate to prevent national security.

Governor Ada, when he appeared yesterday, said that Guam does not seek to limit military flexibility in meeting defense requirements. But would the bill do so? Does the Administration object to any limitations on federal eminent domain powers in the commonwealth?

Ms. GUERRA. Mr. Chairman, yes, I would say that the bill does seek the requirement of prior consultation, which would limit the military's flexibility. The Department of Defense has always, as a matter of practice, talked with the territories or the States on some of these issues. Even in Guam today, we have an existing civilian advisory group that meets with the Admiral there.

But in answer to the question, does the bill limit the flexibility of the military, I would say yes, Mr. Chairman. It would place some constraints as well on the military's ability to respond in a timely manner to emergencies or things that require immediate reactions, or immediate decisions.

I can let Ms. Van Cleve address this a little further as far as the law is concerned.

Ms. VAN CLEVE. Mr. Chairman, I believe your question was whether the bill would impose constraints upon the military, and as the Secretary has said, indeed, of course it would. The prior consultation requirement is a constraint. In certain circumstances there is actual approval of the Government of Guam required. That is, of course, clearly a constraint.

The stricture on the exercise of eminent domain authority is again a most particular constraint.

You asked what would be our disposition with respect to the limitation on the eminent domain authority and we have proposed language which imposes quite a few limitations on the exercise of that authority. We recognize, of course, that the exercise of eminent domain is always unpopular in any community under the United States flag, indeed anywhere in the world, but it is a power of government that is essential, and it goes back to the Roman Empire.

In any event, the constraints on the exercise of eminent domain authority as proposed in our task force report and concurred in by the Department of Defense—and it is an Executive Branch report generally—are several:

Firstly, the Federal Government is to seek to obtain the property by voluntary means if possible.

Secondly, if that is not possible, it is to seek public property over private property.

In addition, there is a requirement that the government seek the smallest possible amount of land quantitatively and that it seek an interest that is as limited as possible; that is to say, a leasehold, if a leasehold will work, rather than clear title, as an alternative.

So we are saying that we have gone some distance to limit the military's—the Federal Government's—exercise of power.

Mr. DE LUGO. The way this would work, is that Guam is not asking for this limitation in time of war. This is only in peace time, correct?

Ms. VAN CLEVE. The bill, as it stands, provides the government can exercise the power of eminent domain in the case of a declared war. The difficulty is that declared wars are passé. We have not had one since World War II.

Mr. DE LUGO. We hope all wars are passé.

Ms. VAN CLEVE. Of course we entirely agree. I mean to say that the recent belligerencies in which the United States has been engaged have not been declared wars—neither in Vietnam nor Korea.

So the provision for eminent domain in time of war is not getting us very far.

Mr. DE LUGO. Your response is then that the Administration does not object to limitations?

Ms. VAN CLEVE. Precisely.

Mr. DE LUGO. Limitations that you have offered. This is a counter offer that the administration is making, that the military, in seeking land, that they will first seek to get private land, to negotiate to buy it on the open market, or the free market; and that secondly, that they would seek public lands; and thirdly, that it would be the smallest amount of land necessary to carry out the mission, whatever that mission was. Whatever other proposal you are making would follow up on that.

Let us say that the military goes ahead with eminent domain or the Administration goes ahead, and then of course, when you go to court for all of these provisions that you are recommending, they would be taken into consideration by the court. Is that correct?

Ms. VAN CLEVE. That would certainly be our expectation. Precisely.

Mr. DE LUGO. Basically, what you are proposing, does that apply out in the Northern Marianas as well?

Ms. VAN CLEVE. That is correct.

Mr. DE LUGO. I want to give the other members a chance to ask questions. I will withhold for a moment. Let me recognize the gentleman from Guam, Mr. Blaz.

Mr. BLAZ. Thank you, Mr. Chairman. I am glad we solved the Puerto Rican and Virgin Islands problems. Now we can get back to Guam. I have a question for the secretary or for Ms. Van Cleve or all of you, and I have a question that I think is appropriate to ask.

Number one, I want to say the task force report I thought was a very well done and well-thought out report, and I was very impressed with the manner in which it was prepared, and it was well done.

The question I have to ask is this. Almost to a person, the Commission of Self-Determination in the strongest possible terms, the central theme seems to be that it just doesn't answer the questions that are being asked, that we miss the point completely in the sense that what Guam is seeking, such a fundamental change, and what the response was essentially is we are taking an old Organic Act, and we dust it off, put some shampoo on it and do a little honing here and there, and we are working with the same document.

We have an old broken-down Ford, and no matter what you do, it is a broken-down Ford. This is just my—the lawyers get all confused on these things. I am not confused about these things. I don't have any legal references. All I know is a bunch of people came in very upset, and I want to ask you about this. Is it possible to take this Commonwealth bill as it was written out and just take a look at it and try to understand that the people that brought it here say that they want a fundamental change, nothing else?

Whatever it was that we had before, does not apply anymore. Take it as a document. Can we work with a document of that kind and see what we can do to make it work, to use the constitution that we have now to make it work, learn to take a document and try to patch it here and patch it there? Because we are trying to patch it and it might not work because this particular one is a little bit rotten on the inside, and we are just painting it a little bit, you know.

Do you understand what I am saying?

Ms. VAN CLEVE. No.

Mr. BLAZ. You don't. Then we will have to start again.

I was hoping you would understand, but maybe I am not stating it well.

Mr. MARCUSE. Sir, you state it well, but you create a problem which we just cannot answer in 24 hours.

Mr. BLAZ. Do I have more time?

Mr. DE LUGO. You are clear, go ahead.

Mr. BLAZ. We have listened over the last couple days here, and I want to clarify, but it appears the basic argument, whether it is legal, political, governmental or whatever, appears to be, and this is at least the assertion, that the task force report, as well written as it is, and nicely done as it is, addresses this question from an entirely different perspective than was intended.

Whether the intention was clear in the draft is beside the point. The argument now is that it was a good answer but to the wrong question. You probably get decisions like that.

Consequently—I am sorry that you laugh because I don't want to be accused of doing it for your entertainment. I want to ask to clarify. Is this possible that we may have been really looking at this thing from an entirely different viewpoint than what was intended for the people of Guam?

The problem is we are dealing with a commonwealth which defies description. However you want to make it, you can call it commonwealth, you know, but consequently I understand we are dealing with elusive items here because of the nature of what we are seeking, but the central theme, as I mentioned, was that we do not really understand.

We editorially, all of us. Do you have any response to something like that, Mr. Marcuse?

Mr. MARCUSE. As I understand it, the plan is something that comes terribly close to and probably goes beyond the sovereignty of the United States. As I understand it, this commonwealth plan looks much more like free association than being a commonwealth under the constitution, and under the sovereignty of the United States.

This has to be thought through. I don't have the authority to say yes or no about this. It is something entirely different from what we have had. It may come within the suggestion that Congressman Fuster made in his opening statement, but I think it is something that is very, very difficult and would have to be thought out very, very closely and thoroughly.

Mr. BLAZ. My understanding is that you are saying that what we have here is really a combination of—it is called commonwealth, but it has the characteristics of other options and therein lies some of the difficulty, at least.

Mr. MARCUSE. Yes, sir.

Mr. BLAZ. Is that a correct statement?

Mr. MARCUSE. Yes.

Ms. GUERRA. I will say, Congressman Blaz, that we do support a fundamental change. I think the fact that we do support commonwealth for the people of Guam is a major fundamental change, but it has to be within the framework of the Constitution of the United States.

Mr. BLAZ. Let me ask you a constitutional question on that, and then I see that my time is probably running out right now. Let me ask you this question. I asked it rhetorically in my statement yesterday, but it seems just to fly right into this argument. If people could be governed for almost a century through selected provisions of the constitution, could the people of Guam, my people, by extension of that logic and argument fashion a commonwealth based also on partial applications of the constitution, but with the people of Guam participating in the process this time around?

Mr. MARCUSE. Why not?

Mr. BLAZ. Your answer is, "Why not?"

Mr. MARCUSE. Yes.

Mr. BLAZ. You say, yes.

Mr. MARCUSE. Yes, of course the people can participate.

Mr. BLAZ. Yes, I just want to make sure that I understand you are saying yes.

Mr. DE LUGO. Do you want to expound on that? I think your answer is very important here. This is a very important exchange taking place. Will you expound on your answer, Mr. Marcuse?

Mr. MARCUSE. I don't see any reason why we shouldn't be able to talk and work with the people of Guam in working out this relationship.

Mr. BLAZ. My point is so many of the arguments being raised against the draft deal with constitutionality.

Mr. MARCUSE. Yes.

Mr. BLAZ. And people are saying this is not constitutional. That is not constitutional, and so by this, however, this exchange that we are now having, one can deduce from this statement of yours that the constitution can be selectively applied and therefore it would then be constitutional.

Mr. MARCUSE. Sir, I did not say that. I only want to say that we can work with the people of Guam to try to work out something that is within the framework of the constitution; or say it cannot be done and what the people of Guam really want is free association.

Mr. BLAZ. Let me ask a question of the Admiral, because I don't want him to think that I don't remember my roots. One of the things that popped up in the last few days was a statement made repeatedly by a number of people about a position by CINCPAC; you may have heard it this morning or the other day.

A position statement was made to the effect that the Department of Defense vigorously opposed commonwealth because it denied the armed services a place for disposing of chemical weapons. Some people said nerve gas. Before you answer, I realize, Admiral, you may not have seen it, but this was a statement made. So it is a very important thing to allay the fears of a lot of folks back here because you are from CINCPAC. And I was on Johnston Island the other day, and I know the facility. I know the answer, I think, but it would be a lot more credible coming from you since the source was CINCPAC, sir, if you would.

Admiral PENDLY. On that particular question, Congressman, we think that that came obviously from the input, the analysis which was done basically in the beginning early last year. That was sent to JCS by CINCPAC. It was a military analysis and part of the inputs being made by all components of various actions and departments.

It pointed out factually that the draft act basically would prohibit dumping or storage of nuclear chemical waste in Guam or its surrounding seas. I think that was reflected also in the article by article type of thing that came out of the interagency task force which you have.

So factually it represented what would be a restriction. However, let me assure you and reassure you and I would like to emphasize this, that the Department of Defense has no plans, absolutely no plans or intentions of storing or dumping either poison gas, chemicals or nuclear wastes on Guam or in any of the surrounding waters.

Mr. BLAZ. Rather than pursue this, I want——

Mr. DE LUGO. Go ahead and nail it down. Didn't you go to Johnston Island last Sunday?

Mr. BLAZ. I guess I should go ahead and state it. I was so concerned about that, Admiral, that I did ask for a visit to Johnston, which is a long ways from here. I was really quite impressed by what I saw.

First of all, I can confirm what you said. There are no chemical weapons in the Pacific. There are no plans for chemical weapons to be stored anywhere in the Pacific, and those which were in the Pacific have been destroyed, or are in the process of being destroyed, and about the only thing left that there is is the outside of the continental United States and is located in Germany, and that is being brought home to be destroyed, and the facility there has been destroyed in such a manner that it would be completely neutral and meet EPA concerns.

And there is no hazard, no intention of dumping it into the sea. It is very important, and I am glad you gave me an opportunity to nail it down because I was there for six or seven hours, and I was personally very convinced that we might be worried about other parts of the bill but not on the nerve gas and chemical weapons in the territory of Guam and surrounding seas.

Admiral PENDLY. I appreciate the opportunity to put that in the record, sir.

Mr. DE LUGO. Let me ask you, Admiral, is the understanding as laid out here by Congressman Blaz, is that correct?

Admiral PENDLY. It is so far as the Pacific is concerned and so far as I know, yes.

Mr. DE LUGO. So far as the Pacific is concerned.

Admiral PENDLY. I know that basically is what we are doing.

Mr. DE LUGO. Thank you very much, Admiral Pendly.

Thank you very much, Congressman Blaz.

I know that the other members are chomping at the bit and they have got questions that they want to ask. I believe that the gentleman from Puerto Rico, Congressman Fuster, is wishing to respond to a statement by the Assistant Secretary that the administration supports commonwealth and supports fundamental change. That is my guess.

Let me say that one of the real problems here is that one of the witnesses said that you give us commonwealth and give us a label and there is no fundamental change, then the real problem is mutual consent; because if you give us certain provisions, and the Governor pointed it out, too, you give us certain economic and other provisions and then later on they start to impinge on special interests, you change the rules on us.

We have to be protected, is what they are telling us. The administration says that mutual consent provisions are too broad and it is impractical.

Governor Ada says that mutual consent is essential to commonwealth. Is mutual consent at all feasible under commonwealth? How do we assure the people of Guam that commonwealth contains guarantees of self-development and self-sufficiency that aren't going to be changed six months later?

Anybody want to respond to that?

Ms. VAN CLEVE. Others will doubtless want to add, but I will be glad to begin. There are, of course, two mutual consent provisions in the Act, one having to do with the Act itself, the other having to do with the application of any federal law thereafter to Guam.

I think probably the one most significant is the former. That is the requirement in the bill that no provision of the Commonwealth Act once enacted could subsequently be amended by the Congress unless Guam concurred. We believe that it is important that there be a mutual consent requirement with respect to sections of the bill that are fundamental.

We pulled out those several sections and they appeared in the Secretary's statement.

Mr. DE LUGO. Four sections.

Ms. VAN CLEVE. That's right. These are the sections that would say the Congress cannot unilaterally eliminate, modify, or change in any way those sections that are fundamental to your government, the section that says that you, the people of Guam will function under a constitution of your own choosing.

That is one for instance. We think it is important that those be subject to mutual consent because this is fundamental to the commonwealth. It may be that we have not selected all of the right sections to be subject to mutual consent. That certainly is something

we would want to discuss. We have picked out those that struck us as being fundamental.

All of the rest of the provisions of the commonwealth legislation relate to subjects that the Congress, in our view, needs to be free to legislate about. They are subjects that are matters of national interest. They impinge upon Kansas as much as they do upon Guam.

It is our view that these are areas that are dynamic, where the Congress needs to retain authority to Act. An example is the provision in the trade section. Obviously that is a matter of international economic dynamics that changes from day to day. For the Congress to bind itself to a particular trade arrangement with Guam that would be cemented in concrete forevermore is clearly to limit an important power of the Congress to affect Federal trade. That is one example.

Mr. DE LUGO. I want to interrupt you right there. That is exactly the problem. That is exactly where the problem exists in the real world of insular survivability and that is that a trade law or provision is put into the commonwealth law and it just begins to function and so legislatively it is changed.

It is changed because whether it be the Commonwealth of Guam or the Commonwealth of Puerto Rico or the Territory of the Virgin Islands they just don't have the political clout in Washington to stave off that legislative assault. That is what has to be fashioned. Is it possible to fashion something that is going to give the protection that is needed here for areas such as Guam and Puerto Rico and the Northern Marianas?

Let me recognize the gentleman from Puerto Rico who knows just what I am talking about.

Mr. FUSTER. I think that is probably the crux of the matter here. It is the application of standards developed in the context of U.S., Federal-State relationships to situations that are really very different.

Let me back-track a little bit because I don't have any questions as such. I just have general commentary. This is directly related to the point Chairman de Lugo was making. Ben Blaz was saying a few minutes ago that this discussion is very interesting because Eni and myself were working out through our discussions not the problems of Guam, but the problems of Puerto Rico and the problems of American Samoa, and that is true to a large extent.

We have the same problems. At least we have similar problems. It is very difficult to be here as a member of the committee and not deal objectively with it when I know darn well that some of the same obstacles that the people of Guam are finding in their way we have found in our aspirations to enhance commonwealth.

When I said earlier today that I wasn't impressed by the desires of the people of Guam to become a commonwealth when we in Puerto Rico, after almost four years now, have doubts, I want to clarify. I don't mean doubts about commonwealth, I mean doubts about the ability of Congress to accommodate the legitimate aspirations regarding the development of commonwealth.

We are beginning to have doubts about that. Those doubts are reinforced by what we see in the Federal Government generally in cases like Guam's, for example, or the Northern Marianas. Certain attitudes still prevail. Mind you, I am not trying to be overly criti-

cal. I have spent a lot of my life studying the relationship between Puerto Rico and the United States.

I have taught issues on that at the University of the West Indies in Jamaica, at Harvard, issues that relate to this and the difference in the Interior Department these days and the thirties when we had our problems with the Interior Department.

There is very simply no comparability. If we had had the kind of Interior Department that exists now, with people like yourself, it would be very easy. Maybe we would be something else today. I don't know. So what I am saying is I recognize there are different attitudes today, as compared to those that prevailed in more difficult times before.

But to some degree things like the following still prevail, trying to measure by states' standards a request like that of the people of Guam or the people of the Northern Marianas or the people in Puerto Rico, concepts that are really not proper for the unique relationships that are involved.

I understand. I worked in the Justice Department. I was Deputy Assistant Attorney General for a couple years before I came to Congress, and I realized that in the Executive since they do not have a clear conceptualization about these issues, they tend to use whatever conceptual framework is available; but what is available has been developed in the context of U.S. state-federal relations.

One has to go beyond that, in part because you are dealing with very weak jurisdictions that do not have strong constituencies in Congress, jurisdictions which need special attention, special help from the federal agencies and from Congress.

Just as one has to shy away from trying to apply concepts that were developed in a different context to this very unique type of circumstance, one has to be careful of turf situations. I find problems in that, also, you know. The Federal Government protects the prerogatives of the Federal Government very much.

We have to make an effort to go beyond that as we have to make an effort to go beyond using concepts that were developed in a different context.

Let me get more specific about what I am trying to say to illustrate what I mean. You talk about constitutional problems. I was a student of constitutional law for many years, and you know one of the reasons I was fascinated about constitutional law was because it was precisely a process, more than a concept.

I have no qualms about—I said it and I want to make it clear—your reservations regarding the right to vote. I have the same qualms. My whole spirit rebels against the idea that you might deprive somebody of the right to vote just because of the racial or ethnic setup. That, to me, is against every instinct I have, and I think that there are certain constitutional protections against doing that.

But having recognized that, one has to be very careful about constitutional arguments. Anybody that has been in the field of constitutional law long enough knows that there is a certain game in the constitutional dialogue between scholars and the courts and what have you and it is very easy to show, particularly in this area, that there was originally no distinction between incorporated and unincorporated territories.

This is a distinction that originally had absolutely nothing to do with the constitution. It was invented by the courts following the Congress' lead. Then there was a doctrine of constitutional law that citizenship, ipso facto, incorporated, and then the Supreme Court told us, no, not really.

After that, it was fairly well established. Then they told us the right to a jury was not one of the fundamental guarantees that were covered by equal protection or by due process and later on the court told us, yes, there is.

And we have a case in Puerto Rico in which the right to trial was decided the other way and as soon as we tried to apply it to our case, the court told us, you are an unincorporated territory.

You know, those games go on as I know. One is almost forced to say, as the great tradition of the sociological jurisprudence of the United States has done, that constitutional law is whatever the Supreme Court wants it to be at a given moment.

How can one prior argue that this is unconstitutional when we also know that regarding territorial policies the Court follows Congress as a matter of almost unalterable rule.

So, again, I would object to prohibiting the right to vote. That is against my democratic conscience and I think we have the Constitution behind us. But not all objections are like that. When you start looking for constitutional constraints, I immediately get the impression there is something behind them more than merely a constitutional doctrine, either an embedded attitude of using existing concepts that were developed for a different context or some more fundamental objection that does not easily come to the surface. That brings me to one of the very specific points. I have been surprised at the dialogue going on in the past two days because I think that Guam's petition for commonwealth has more free association than commonwealth, or to put it in other words, I like that kind of commonwealth. I like it very much. I like it better than my own. It is a heck-of-a commonwealth.

You did better than we did when we made it in 1950 and we invented it. But what is there in the constitution that says that if it is commonwealth à la Puerto Rico versus commonwealth à la free association, that then there is a constitutional bar to that?

There is no constitutional bar to that. It is just whatever Congress wants to give you. There are serious policy questions, of course, but a constitutional bar? No. I keep seeing this kind of rhetorical semantics here, in some places in your testimony, Madam Secretary, which as Ron said, is very good testimony. If we had more testimony like this in the past from other persons like yourself, territorial-national relations would be a lot better than they are today.

Enhanced commonwealth of Puerto Rico would have been achieved, right? We might have stayed within the jurisdiction of the Interior Department. That was the first thing we did when we got commonwealth. We got out of the jurisdiction of the Interior Department.

If you would stay there indefinitely, or Manny Lujan, I would recommend to put us back into the Interior Department. But you know there are statements like this on page 12: "We oppose those provisions because they would usurp federal policy."

I think that begs the question. The issue that we have raised by the petition of Guam is that some of those federal powers should not be in the hands of the Federal Government, but rather should be in the hands of the Guamanian Government.

That is the nature of the petition. How can you say that that cannot be done because that would be a usurpation of the federal powers? It is a circular argument. Unless you can show a definite constitutional standard that says that those are federal powers that only the federal government can exercise, I find that very hard to admit.

If there is a will to do them, it can be done. That is what this reduces itself to. There has to be a special openness in dealing with jurisdictions like Guam and I hope Puerto Rico, also. A special openness. These are jurisdictions that play a crucial role in the national system that have paid very high prices to stay within the national system and that even to this day do not really enjoy the full measure of the constitutional rights and now I mean the real constitutional rights, the ones that do not change depending on who the heck sits on the court, the ones that we as a nation are committed to.

That is what we have been hearing from these people in these last two days. These are people that have, that are taking to heart sincerely what we as a nation stand for. We cannot come in a niggardly manner in dealing with a very legitimate claim talking about concepts that were developed for a different context.

There has to be an openness, a recognition that we have to let some of our prerogatives go if there is not an overriding national concern to stop them. To me, it is not enough to say there is a national interest. After the expansion of the Federal Government through the imaginative interpretation of the commerce clause by the Supreme Court everything is a national interest these days.

So there are no more local powers available. The states have been reduced to almost merely administrative units for very small functions, but that is okay within the national system because they do have two senators and a number of members that represent them.

But these folks do not have that kind of constitutional power. In our case in Puerto Rico, at least we have the option that statehood is available to us if the people ask for it, but I don't think that anybody truthfully could say that that option is open for other insular jurisdictions.

In the case of other jurisdictions, a very special case has to be made to be open to legitimate aspirations. You people have done a good job. I am not being critical in comparison to the attitudes that existed in the past. This is a very good job, yes, but it has to go a bit further, I think.

Mr. DE LUGO. I want to thank you very much for your eloquence, Jaime. You certainly summed it up beautifully. I think that also what Ruth Van Cleve was saying just a moment ago, that on the question of this, that you have agreed there are 41 sections of the Commonwealth bill that are fundamental and you said at that time, perhaps there are other sections. So you are not in concrete. You realize there has to be this broadening.

I saw that the assistant secretary, Stella is——

Ms. GUERRA. I was going to add a little aside and let Congressman Fuster know, since he was discussing the way the Department of the Interior is doing things now, we recently held a policy conference and this particular thing that you are talking about, applicability of Federal laws, is one of the areas that was addressed. It is part of addressing the needs of the territories, the insular areas as well as working with the Congress.

These are very difficult subjects but at the same time very much needs to be addressed, reviewed.

Mr. DE LUGO. Thank you, Stella.

The gentleman from American Samoa has been very patient.

Mr. FALEOMAVAEGA. Thank you very much, Mr. Chairman.

Mr. DE LUGO. Threatening to go out into the streets, I believe, if I didn't recognize him soon.

Mr. FALEOMAVAEGA. I certainly want to commend the Chairman for adding good humor to the process here, especially with the gentleman from Puerto Rico. He couldn't have said it better.

I do have a couple of questions I would like to ask the members of the panel. The question that I have here is will the administration propose its own version based on the provisions that have been proposed by the commonwealth bill?

Ms. GUERRA. My answer would be no, Congressman.

Mr. FALEOMAVAEGA. Another question for the record, can you state the total membership of the task force, this federal task force that has submitted this report in August?

Ms. GUERRA. Twenty-four Federal agencies.

Mr. FALEOMAVAEGA. Twenty-four Federal agencies, and how many federal officials were involved in the process?

Ms. GUERRA. Sixty-three.

Mr. FALEOMAVAEGA. Sixty-three and the process has taken place for how many months or years?

Ms. GUERRA. The task force was formed in March 1988 and the report was finalized the end of July and sent to Congress in early August of this year.

Mr. FALEOMAVAEGA. Madam Secretary, within the context of all the testimonies that have been presented since yesterday, and with all due respect even though the Department of Interior is the lead agency in this process, would you say that actually the Department of Defense is the real federal agency that is going to be calling the real shots on how this whole commonwealth process is going to take place within the administration?

Would you agree or disagree to that objection?

Ms. GUERRA. I would disagree, Congressman. I think that there are different agencies (there are 12 articles to H.R. 98 and each article is important and each article requires different agencies) that will be dealing with the parts in order for them to be addressed.

Mr. FALEOMAVAEGA. My understanding is the Bush Administration agrees in principle to provide commonwealth status to the Territory of Guam, but substantively and procedurally at this point it would be at this point in the Commonwealth bill were it to be approved by the Congress, it would be your recommendation that the bill be vetoed by the President under its present form?

Ms. GUERRA. I don't know.

Ms. VAN CLEVE. The Justice Department advises that we invariably refuse to answer that question. It is premature.

Mr. FALCOMAVAEGA. That is one way to get out of it.

The gentleman representing the Justice Department, Mr. Marcuse, what percentage of the document do you consider is totally unconstitutional as far as you know from your legal knowledge, 20 percent, 30 percent?

Mr. MARCUSE. Well, I——

Mr. FALCOMAVAEGA. A hundred percent?

Mr. MARCUSE. No, not 100 percent. Maybe 20, something like that.

Mr. DE LUGO. That is good news. It is not 100 percent. So now we can work down and find out. From there on everything is possible.

Let me recognize the gentleman from Guam at this time, Congressman Blaz.

Mr. BLAZ. Thank you, Mr. Chairman.

Madam Secretary, during the discussions yesterday there was talk of impasse, collision between the Congress and the Administration. However, the word, "impasse," was used a number of times. Senator Tanaka suggested, and I believe you may have been here when he did suggest that perhaps a way out of this impasse would be, as he put it, for both sides, the Administration and the commission, to get off their high horse and presumably when they look eyeball to eyeball, they can discuss a lot more things.

So it later developed that there was a case that maybe the legislature had already enacted a document that provided the commission the authority actually to expand a lot more than perhaps it had in the past to do talking and consulting and negotiating, whatever the word is, and the word is going to be difficult because each has a meaning. And we run into problems because of it.

The other side of the coin, however, was the suggestion that the Administration might well want to consider doing that. In other words, a change in the activity of the Commission on Self-Determination would be able to talk laterally to your office and for the Administration to do that.

If this were to take place, with you having taken the lead with the Secretary, presumably you could do that. The idea behind it is that a lot of things being discussed possibly could be discussed laterally between representatives of the Administration and representatives of the Commission on Self-Determination or the members themselves and iron out a few things before another hearing so that maybe through that method we can speed up the process.

I may not have stated the commission's position as well as I would like to because I was not clear myself whether or not they did or did not have that authority now. But should they decide that they want to do that, would you be in favor of a commission or some organization that would permit you with consent of the Congress to do this?

Would you be willing to sit down and talk?

Ms. GUERRA. Yes, of course. We are ready and we always have been.

Mr. BLAZ. I see. So your testimony is that you would like to do that. Would you consider this a process that would actually expedite the proceedings instead of the way it is now? You see what is

happening. The Chairman receives the testimony of the Commission and the supporting testimony, Governor Ada, and asking the question and bouncing it back to the commission and so on.

So this procedure is unduly and exceedingly procedural and consequently we may be going for years when maybe we can do this in eight months. Your testimony is you would be in favor of something like that if it were to be suggested in a formal way?

Ms. GUERRA. I am suggesting that we are ready to come to the table and work with the representatives of Guam and address the issues that need to be addressed if Congress wishes that we do that.

Mr. BLAZ. Thank you very much, Madam Secretary.

Ruth, I am sorry. I just don't have any questions for you today. I think the Chairman wants to pursue a few things. I will ask you later.

Ms. VAN CLEVE. I look forward to it.

Mr. BLAZ. I thank you, Mr. Chairman.

Mr. DE LUGO. I thank the gentleman from Guam. Let me now recognize the gentleman from Puerto Rico who has to leave.

Mr. FUSTER. I have to leave, Mr. Chairman, because I have a plane to take in about an hour, but as I said at the beginning, this is going to be a long process and I am hopeful that with some goodwill and openness of mind, we may be able to, in the not too distant future, celebrate the Commonwealth of Guam.

I just want to let you know that it was a real pleasure to participate in these hearings. They have been very, very educational for me and I have been very impressed by the things that the people of Guam have to say.

Mr. DE LUGO. I want to thank the gentleman from Puerto Rico for his participation. You have been a great help to the subcommittee.

Now, I would like to recognize the gentleman from American Samoa.

Mr. FALCOMA. Mr. Chairman, to the members of the panel, again I think there was an indication that substantively the proposed bill is more in line with free association, Madam Secretary, than with commonwealth status. My question is you know it is possible to have free association status at the same time and still maintain your status as U.S. citizens.

My question to you, Madam Secretary, will the administration accept free association status or free association relationship between the Chamorro people of Guam and that of the United States similar to the present relationship now existing between the Cook Islands and New Zealand.

You know the Cook Islands have a very unique relationship with New Zealand. The Cook Islanders are New Zealand citizens but at the same time they enjoy those things that I think in every possible way tie into the very thing that the people of Guam are seeking.

I just wanted to know your reaction to that.

Ms. GUERRA. Congressman, at the moment I could not address that.

Mr. FALCOMA. I guess that answers that question.

I would like to submit, Madam Secretary, that it seems there is an impasse, as stated earlier by my good friend, Ben Blaz, about

being stuck with just saying commonwealth. What I am saying is that commonwealth is not the only option.

Commonwealth, to me, sometimes is semantics. Even with the present status between Puerto Rico and the United States, there is no definition in writing of what a commonwealth is or should be. My point is that whether you use the term, "commonwealth," or free association, it is possible for the Territory of Guam to achieve a free association status with the United States, but still maintain that cross-relationship as the people of Guam have always maintained their citizenship and so forth.

I would like to make that observation, Mr. Chairman, and to Madam Secretary, if perhaps the administration can explore that possible option?

Ms. GUERRA. It is something we could explore, yes.

Mr. DE LUGO. Free association can be very attractive, but the problem, the real problem with free association for many of the insular areas when they look at it is a political problem, and that is that in Congress at the present time, there is not the political support to give citizenship with free association.

There is just no—that is not to say I believe that citizenship can go with free association. Look at the Cook Islands. I think it is very creative that way. I think that that is—if we had the political will, the political dynamics to bring that about. That would be very attractive, but when you tell the people of Guam or the people of the Virgin Islands or the people of Puerto Rico or any of the insular areas that you can have free association, but you cannot have U.S. citizenship, it just turns people off.

That is unfortunate, I believe. I have a lot of questions that I would like to touch on very quickly. I may not touch on them all. I may submit a number of them to you in writing. Let me ask you, did you have policy level meetings with Guam prior to the submission of the report?

I know that you have a long list of meetings that were held, but did you have policy level meetings with Guam prior to the submission of the report?

Ms. GUERRA. There were representatives named by the commission who were in consultation with the people who met with the task force's, different working groups.

Mr. DE LUGO. But the people in the task force that they met with, were they policy level people in the Federal Government meeting?

Ms. GUERRA. Some of them. My understanding is that they were.

Mr. DE LUGO. Let me say that when I read the task force report, there was one provision I have to say that I felt offended by. Whereas most of it was, I thought, enlightened and very encouraging, there was one provision that was offensive to me. I realize why it was or how it came about probably because it was just the dollars involved.

The administration opposes the proposal of Section 1102 to extend a number of health and human services to Guam because the administration argues that the additional assistance for the needy that they would bring would be culturally and economically disruptive.

I have to tell you that created a kind of opposition because after all SSI was extended to the Northern Marianas and these very same programs are in place in the Northern Marianas. It is my understanding and I will get you off the hook by telling you what I understand happened.

I understand that there was strong support for this within the administration, for extension of SSI to Guam and the commonwealth, but that in these days of the budget deficit that there was also opposition to it.

Those that opposed it won out within the task force. That is what I understand. That may or may not be true. Then, of course, if they win out, you have to come up with a reason to tell Congress why you opposed it and this was the creative reason that the administration came up with.

It really harks back to the old days. This is the sort of stuff we used to see back in the forties and fifties and sixties. I don't think that raising the standard of living is culturally disruptive to a people. That really is a throw-back. Maybe you found that in the files at Interior from the old days.

Let me ask you this: Perhaps you will ask those proposing SSI that they come up with the language, if you don't want to answer it. From the perspective of the need of individual U.S. citizens residing in the commonwealth alone, what justification is there for denying them the assistance that is provided other needy U.S. citizens?

Ruth, don't touch it.

Ms. VAN CLEVE. Well, I was going to say we would rather deal with this in writing subsequently. It really concerns another department far more than the Interior Department. I refer to HHS, of course.

Mr. DE LUGO. That is a wise decision. That is why you are a survivor.

Mr. DE LUGO. All right, let me ask you this: And this is an important question. Would the language of Section 101(a) establish a commonwealth of Guam when this bill is enacted rather than after the people of Guam have approved the Act in a referendum?

Ms. VAN CLEVE. We are fearful that it would do just that and our report has quite a lot of information towards the end by way of suggested changes in effective dates. There are a number of provisions that would create problems and things would happen out of order and that is perhaps the most serious one.

Mr. DE LUGO. But is my understanding correct, that it is your testimony that if we were to enact the Guam Commonwealth Act as it is drafted with certain changes that Congress might make along the way, that it would become a reality before it is presented to the people of Guam for referendum?

Mr. MARCUSE. Yes, sir.

Ms. VAN CLEVE. That's correct, and Mr. Marcuse is the expert on that.

Mr. DE LUGO. Mr. Marcuse, let us hear about that. That is offensive to me. You didn't draft it.

Mr. MARCUSE. No, we didn't.

Mr. DE LUGO. That is the process we would want.

Mr. MARCUSE. I think this was intentional and I think——

Mr. DE LUGO. You think it was what?

Mr. MARCUSE. Intentional.

Mr. DE LUGO. Intentional?

Mr. MARCUSE. Yes, sir.

Mr. DE LUGO. You mean intentional?

Mr. MARCUSE. No sir, it was intended that the commonwealth would be coming into effect before the statute is approved in the referendum.

Mr. DE LUGO. Really.

Mr. MARCUSE. So we——

Mr. DE LUGO. You believe, Mr. Marcuse, that Guam or those that prepared this document want Congress to enact commonwealth before it is ratified by the people of Guam?

Mr. MARCUSE. Yes, sir, I saw in the PDN an article written by a member of the Guam Commission which objected to our objection to that provision, and which said it was the very purpose that the commonwealth would become effective as soon as the bill is enacted and that it was not necessary that, first, the statute be approved in the referendum or that the constitution be effective.

I think the explanation of the Act by the judge yesterday made the same point that certain provisions of the Act would become effective upon approval of the Act by Congress before approval——

Mr. DE LUGO. One moment, please.

Mr. MARCUSE. Before approval of the Act in the referendum. If you look at it, Section 101 says "the Island of Guam shall upon enactment of this Act become a self-governing Commonwealth."

Then Section 1203(b), "... upon enactment of this Act, the following sections of Organic Act are repealed . . ."—this includes Sections 1 and 3 which deals now with the definition of the Territory of Guam.

Section 1204 says this Act upon approval by Congress be submitted to the registered voters of Guam for ratification. This Act will become effective upon approval of the Act by a majority of the voters who participate in the plebiscite at that time except as provided in Section 1203.

Section 1203 is the one that provides that Section 1 of the Organic Act would be repealed upon the approval of the Act by or passage of the Act by Congress and prior to the approval of the referendum.

Mr. DE LUGO. Well, I——

Mr. MARCUSE. That is one of the things to which we objected. We said the whole act shall become effective after approval in the referendum and after the Guam Constitution goes into effect.

Mr. DE LUGO. Well, I have to believe that that is a drafting error. I cannot believe that it——

Mr. MARCUSE. You see, in the PDN they took us to task for having misunderstood the whole arrangement of the effectiveness of the statute in steps.

Mr. DE LUGO. Well, Mr. Marcuse, I believe that that had to be a drafting error, that that is unintentional and that underlines why the bill has to be perfected.

Mr. MARCUSE. Yes, sir.

Mr. DE LUGO. And that is exactly why we hold these hearings today and why it is that legislation is not just rubber-stamped and passed through like that.

I want to thank you very much. Quickly now, I have questions here that deal with matters on which the administration has not yet taken a position. Has the administration determined its position on Section 901, which provides exemptions from federal shipping laws?

Ms. GUERRA. Not at the moment, no.

Mr. DE LUGO. You have not taken a position yet.

When will the administration take a position on that? Do you have any timetable?

Ms. GUERRA. This would be——

Mr. DE LUGO. This is the Jones Act, I assume?

Ms. GUERRA. I will be glad to send you my comments addressing this by the end of January.

Mr. DE LUGO. By the end of January.

Ms. GUERRA. We will be meeting with them.

Mr. DE LUGO. Thank you. Has the administration determined the position on H.R. 1338, Congressman Blaz's bill to transfer some 3,500 acres of military land to Guam without cost?

Ms. GUERRA. We are working with Congressman Blaz on this bill.

Mr. DE LUGO. Do we see light at the end of the tunnel?

Ms. GUERRA. Well, we——

Mr. BLAZ. Is the light at the end of the tunnel from an oncoming train?

Ms. GUERRA. We are having discussions, Mr. Chairman.

Mr. DE LUGO. Has the administration determined its position on Sections 1001(b) and 1103 which would grant Guam control of a 200-mile exclusive economic zone?

Ms. GUERRA. No, Mr. Chairman, not at this time.

Mr. DE LUGO. When would we expect the administration to take a position on that?

Ms. GUERRA. I will also include that in my comments back to you by the end of January.

Mr. DE LUGO. Thank you very much, Madam Secretary.

Mr. DE LUGO. The gentleman from American Samoa.

Mr. FALEOMAVAEGA. I have no further questions other than to offer my commendation to the assistant secretary again and the members of her staff, certainly to welcome Admiral Pendly, whom I have had the pleasure of meeting at CINCPAC, and Mr. Marcuse and Ms. Boone and the ever gracious lady, Ruth Van Cleve, who has served perhaps longer than anyone in the administration in dealing with territorial issues.

I just want to thank you for the fine statement and presentation that has been presented before the committee.

Ms. GUERRA. Thank you, Congressman.

Mr. DE LUGO. Thank you very much, Eni.

Any final remarks, or questions, Mr. Blaz?

Mr. BLAZ. No, Mr. Chairman, thank you.

Mr. DE LUGO. Well, I want to thank you very much for coming to our hearing and for putting so much work into it and for being very good witnesses. I want to thank you all and I look forward to the administration working with the Congress and working with

the leaders of Guam to perfect this legislation so that we can bring about the commonwealth that is endorsed by the Bush Administration, that has the support of our committee and has the support of all the people here and the people of Guam.

I want to thank you, Assistant Secretary Stella Guerra. It is good to have you in that position. I think you are a fine secretary. Nancy Boone, thank you. Ruth, as always, thank you very much, Ruth Van Cleve, Herman Marcuse. Mr. Marcuse, thank you for the work you have done.

Admiral Pendly, Rear Admiral Pendly, thank you very much for joining us today. Thank you.

Ms. GUERRA. Thank you.

Mr. DE LUGO. We have a number of statements for the record and without objection, they will be placed in the record: Senator Parkinson, and Doris Brooks of Guam, and also a statement from Mr. George Eustaquio and also a statement from President Amata Kabua of the Marshall Islands. All those statements will be placed in the record.

[The above-mentioned information follows:]

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MAJORITY LEADER and CHAIRPERSON, COMMITTEE ON ENERGY, UTILITIES, AND CONSUMER PROTECTION

December 11, 1989

Subcommittee on Interior and
International Affairs
Room 530, Tapa Towers
Hilton Hawaiian Village

ATTN: Leland Bettis

Leland:

Please submit Senator Parkinson's Testimony (attached)
to the Subcommittee. Due to unforeseeable circumstances, he
could not leave Guam.



Leland

20-17/contest.svr/tc

**TESTIMONY
OF
SENATOR DON PARKINSON
GUAM LEGISLATURE
ON
H.R.98 GUAM'S COMMONWEALTH ACT**

Mr. Chairman, Committee members. My name is Don Parkinson. I am a Senator with the 20th Guam Legislature. I am Guamanian but I am not Chamorro. I was born, raised and educated in Idaho. Guam is now my home.

My testimony will be very brief and to the point.

The people of Guam are loyal Americans. Despite having much of their land arbitrarily seized by the U.S. military, and despite years of being treated as second class citizens by the United States, the people of Guam are unwaveringly loyal Americans.

In writing and approving the draft Commonwealth Act, the People of Guam opted to reaffirm that Guam should be an integral part of the United States. Unlike the trend in the other U.S. Possessions in the Pacific, the people of Guam are not striving for independence as did

Testimony Senator Don Parkinson

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the Philippines. Neither are the people of Guam attempting to sever their ties with America in favor of another world power as did Okinawa. Rather, the people of Guam are opting for what is essentially status quo -- to remain a part of the United States, but without the colonial trappings of a bygone era.

Guam is not a backwater. The people of Guam are fully capable of self government. Our general elections routinely draw 70% to 85% of the electorate to the polls. How many of your congressional districts boast such a percentage of voter turnout?

The draft Commonwealth Act proposes to remove the vestiges of the old Naval Government and proposes to cast aside the paternalism of being administered by the Secretary of Interior like an Indian reservation. A close look at the Federal Task Force Report reveals that the federal government does not want to let go of the power it now holds over the Territory.

The passage of the Commonwealth Act will be good for the United States. However, it must not be a one-sided document. The final document that is passed by the United States Congress must also be good for Guam and its people. The Federal Task Force on the draft Commonwealth Act cited in numerous instances the need to consider national defense in relation to the changes they want to make and in making their recommendation for changes to the draft Act. We, on Guam, are also very concerned with national defense. However, during the entire

history of the United States involvement in Guam, "national defense" only refers to the defense of the continental United States. The United States allowed Guam to be taken over by the enemy during World War II. There is nothing in the actions of the United States that indicates that the same thing will not happen again. Therefore, the United States must allow the people of Guam to determine to the maximum extent possible how their land and their lives should be run.

The people of Guam have spoken through the passage of the Commonwealth Act. The United States should not continue to exhibit the same kind of greed and unjust treatment of Guam and its people as it has in the past. The Congress of the United States should pass the Commonwealth Act as it was passed by the people of Guam.

The draft act is not perfect, but neither is it fatally flawed. Overall, it is a good and workable document that expresses the will of the people involved. It is in the best interests of the United States to approve the draft Commonwealth Act as presented. If the United States does not approve the document, our people will not give up in their quest for improved status. If the act is turned down, other alternatives will surely be explored, just as Okinawa and the Philippines explored other options when their people perceived that they were being treated unfairly.

Testimony Senator Don Parkinson**Page 4**

In my opinion, independence or association with some more benign world power are not desirable alternatives. However, I can assure you that if this act is turned down by the Congress, many people on Guam will be looking at such options in carrying out their inalienable rights of self determination.

20-17/contest.ten



Doris Flores Brooks

SENATOR

Twentieth Guam Legislature

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December 8, 1989

Honorable Ron DeLugo
Chairman, Subcommittee on
Insular and International Affairs
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

We, the people of Guam, pursuant to Sections 5(a) and 21 of the Organic Act, petition the Congress of the United States to enact the Guam Commonwealth Act.

Since 1898 the people of Guam have served an apprenticeship in democracy. After having known only colonial rule from 1564, when the Spanish proclaimed their sovereignty over all of the Mariana Islands, we were exposed to concepts of freedom, equality and human rights that we had not previously known. But we have never fully experienced or exercised the privileges that self-government confers. We've never had "home rule."

On a variety of occasions over the years federal officials have opined that the people of Guam were making steady progress on a course leading to ultimate self-government. Harry R. Anderson, an Assistant Secretary of Interior, testifying in 1966 in favor of a bill intended to permit us to elect our own governor, said:

An appointive governor also served to fill the gap during the time that there existed a substantial question as to the political, social and economic maturity of the people and as to the availability of competent leaders in the local community capable of discharging the duties of the office of governor. But none of these things are [sic] true today in Guam, and internal and external circumstances require that we admit this fact and move ahead toward the achievement of our often expressed goal of providing meaningful self-government for the territories. The step that we are considering today would be a giant stride in that direction and is, in fact, the keystone to further progress.

Honorable Ron DeLugo
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But even with the enactment of the elected governor bill the Congress found it necessary to maintain what Representative John Saylor called "Uncle Sam's all-seeing eye." As a part of the bill passed in 1968 the Congress gave us a government comptroller, a federal watchdog to be sure we didn't stray too far.

Over the years the federal government has encouraged us but at the same time it has patronized us. What else can you say of an attitude that required that our island leaders to prove their ability before being allowed to exercise legislative or executive authority? It has told us that we can be America's example of democracy in the Pacific but not yet let us guide our own ship of state. How else can you construe a Supreme Court decision declaring the island's own supreme court a nullity?

We our Americans, albeit Pacific Island Americans. We have survived over 330 years of Spanish domination, more than 90 years of American tutelage in democracy, interspersed with nearly three years of occupation by a hostile force during World War II. We are survivors and achievers.

We believe we are competent to govern ourselves and that we are entitled to that right. It is a particularly appropriate time to grant us commonwealth. Throughout eastern Europe people are asserting their refusal to be subordinate to governments not of their making. The New York Times and the Washington Post have editorialized that these peoples' right of self-determination should not be denied. By enactment of the Commonwealth Act the Congress will demonstrate that that principle is no less applicable in Guam than it is elsewhere in the world.

Sincerely,

Original signed by
 Doris Flores Brooks

DORIS FLORES BROOKS,
 Senator

GEORGE CASTRO EUSTAQUIO
10303 OLD FORT PLACE
FORT WASHINGTON, MARYLAND 20744

December 5, 1989

Delegate Ron De Lugo
Chairman Subcommittee on
International and Territorial Affairs
Committee on Interior and Insular Affairs
Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Your decision to schedule public hearings on the Proposed Commonwealth Act at this time is commendable, especially since we all know of your hectic schedule following the havoc and destructions wrought by Hugo on the Virgin Islands and Puerto Rico.

Indeed it would be ironic and embarrassing, if the U.S. Government should fall behind the Soviet Union and East European countries in granting local self-government to the people in the off-shore territories.

May I respectfully request that this letter and my letter of August 15, 1989 to the Chairman of the Federal Task Force relative to the Guam Commonwealth Draft Act be made a part of your Committee's hearing record.

Sincerely,


GEORGE CASTRO EUSTAQUIO

GCE/ge
attachment

cc: Delegate Ben Blaz
Governor Joseph Ada
Speaker Joe T. San Agustin

GEORGE CASTRO EUSTAQUIO
10303 Old Fort Place
Fort Washington, Maryland 20744

August 15, 1989

Timothy W. Glidden, Esquire
Counselor to the Secretary and
Chairman of the Federal Task Force
Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20001

Dear Tim:

I just finished reading the Executive Branch comments on the proposed S317 (HR.98) to establish a Commonwealth for Guam which Secretary Manuel Lujan, Jr. transmitted to Senator J. Bennett Johnston on August 1, 1989.

I must admit that I share the disappointment of many people on Guam. Let me hasten to add at the outset, however, that my purpose here is to be critical and constructive but not confrontational. Although I do appreciate the bureaucratic environment within which you must operate, I find the report of the Federal Inter-agency Task Force, insensitive in general, and in some parts, blatantly hypocritical.

While the report professes in the letter to Senator Johnston to lend support to status changes for Guam, the

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substance and language of its recommendations to the Congress argue for the retention of the status quo. (Page 1 of the Report Summary). There is also certain amount of naivete on the part of past administrations of Territories, and continues to this day, as evidenced by the tone and substance of the report to the Congress.

In its overview of the territories, the administration remains oblivious to the fact that there are strident clamoring, common in U.S. territories, for change in political status relationship with the Federal Government. Besides Guam, Puerto Rico and the Virgin Islands are also striving to improve their status. These are not just few radical voices in the wilderness of our off-shore areas, but they include pleas of responsible leaders such as in the Northern Marianas Islands who felt compelled to journey to New York on May 1988 to seek United Nations support to preserve a perceived threat to the integrity of their political status covenant with the United States. Thus, there is a predictable result that will ensue from the Task Force's Report, that is, inducement for further fishing expeditions, from Guam, albeit by few "nationalistic" elements, to the United Nations.

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What is most discontenting about the administration's report, is that it chose not to deal with the most fundamental issue involved in Guam's quest for a new Federal-Territorial status relationship. As had been expressed through numerous plebiscites, the people of Guam want not just a change in nomenclature; what they want through Commonwealth government is some limitations on the powers of the Federal Government on matters that are purely local in nature and application. (For examples: environmental issues, GPA operations, education and bond issues, etc.). In short the *raison-d'être* and reason for the present draft Commonwealth Act (CA) is to grant the people of Guam greater measure of local self-government, and conversely to lessen the intrusion of the Federal Government in local affairs.

By law the Commission on Self-Determination (CSD) was established as the regime with which the leaders of Guam can deal with the Federal Government on political status issues. But the Federal Government in its proclivity for arrogance chose to treat the CSD as mere conduit of information (Letter to Senator Johnston) rather than as an active and equal partner in the political status process.

As you well know from some of the newspaper clippings I have sent you, I was (and continue to be) critical, as well as others are such as Delegate Ben Blaz, of some provisions in the

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draft Guam Commonwealth Act (CA). In particular, I took exception to the provision that, if approved, would deny minority elements within the Guam community from full participation in the political life and economic affairs on Guam. My opposition to Section 102 of the draft Act was (and is) based not on the lack of sympathy for the aspiration and goals of the members of the CSD and their allies, but rather on the principle that one cannot fight to eliminate an injustice with another injustice. Aware of Congressional over-riding concern for the Constitutional process, I also felt very strongly that to encumber the draft Act with verbiage borne out of past historic injustices was self defeating.

But setting aside for the moment these concerns, the credibility of the Report crumbles after a careful reading of the Federal Task Force's tortuous reasoning opposing Section 102 of the draft Act. Page 9 of the Report reads:

We have given considerable thoughts as to how. . . The indigenous Chamorro people of Guam would alone be afforded the right to express themselves in an act of self-determination -- but we are of the view that constitutional constraints foreclose it.

And on Page 10:

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We cannot perceive any meaningful limitation on the exercise of the right of self-determination on the basis of race, ethnic descent or residence that would not be constitutionally infirm.

Yet, ironically that is precisely what the U.S. Government "violated" when it negotiated and had urged the Congress to approve the land alienation provision in the Northern Marianas Covenant, viewed by many as blatantly discriminatory. The provision that restrict ownership of land in the CNMI to descendants of the Northern Marianas alone has not been challenged in court by the U.S. Government.

Although the Report cited numerous Supreme Court cases on due process and equal protection clauses of the Fourteenth Amendment and Fifth Amendment in support of its opposition to the Chamorro's rights to self-determination, it made no reference to the CNMI land alienation provision nor the CNMI legislature's representation formula which violates the one-man-one-vote rule handed down by the Supreme Court.

What the report also ignores is that the uneven-handed territorial policy approach of past administrations that has given rise to the present demand for a more enlightened political status relationships. What did not escape the Federal Task Force is the logic that permits the extension of the Supplemental Social Security Income (SSI) to one off-shore area but denies the same benefit to Americans residing just one hundred miles away.

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In fairness, the report recommended that the extension of the SSI program (and others) to Guam could be handled by Congress on an ad hoc, piece meal legislation. Historically the nickel and dime approach toward solving common problems in the territories has only served the bureaucratic interest in Washington, and those who want to limit funding outlays. The Task Force's recommendation is disingenuous at best.

With respect to Section 103, the "Mutual Consent" provision, I too had some misgivings about the efficacy of this provision, outside key areas such as in the CNMI Covenant. And as a practical matter, it did not make much sense for the CSD to try to limit the authority of the Federal Government on local matters, but at the same time attempt to arrogate to local authorities government powers that are clearly Federal in character and National/International in scope and applications. No local concurrence need to be sought on defense and diplomatic/foreign affairs even if Guam has tangential interest in these policy decisions.

On the matter of the Guam Constitution, it serves no useful purpose to allow the people of Guam to write a Constitution of their own making, but require that this document be subject to several layers of approval in Washington before it becomes effective. True, the Federal Task Force only refers to Congressional imprimatur, but, as a practical matter, the

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Congress will invariably seek administration comments which very often is time consuming. It is sufficient for the enabling Act, in this case the CA, to specify that the Guam Constitution establish a representative form of government within the political framework and sovereignty of the U.S. Constitution. Thus, the ratification formula authorized under Public Law 94-584 may still be valid, notwithstanding the INS v. Chadha ruling, since arguably the Supreme Court has historically deferred to and has consistently upheld the plenary power of Congress over U.S. Territories. Moreover, any amendment to the Guam Constitution should be reported to the President and the Congress in turn, under its Article IV power, could at any time nullify any provision of the Guam Constitution it deems inappropriate.

Finally, Tim, it does not make much sense for the Administration to support the "concept" of a Commonwealth for Guam, but do nothing except build legal barriers to prevent the people from exercising local self-government.

If the Federal Government wish to continue its bureaucratic hegemony in the territories, that is a matter for Congressional policy decision. But a time comes when continued subjection to paternalistic form of authority would be wrong (a) either because the Federal Government wants to arrogantly maintain and usurp local authorities or (b) the indigenous people are incapable of local self-rule.

GEORGE CASTRO EUSTAQUIO

In short, if the Federal Government is serious about granting greater measure of self-government in the territories, then it must (a) rid itself of all vestiges and trappings of colonialism, (b) have the will and the commitment to support local initiatives to impose some limitations on the power of the Federal Government.

But I submit that after reading the Report of the Federal Inter-agency Task Force, and its insistence that the Territorial clause remain undisturbed, the prospect for self-rule in America's overseas territories is not to reassuring.

I am taking the liberty of sending copies of this letter to the Guam media, the Chairman of the CSD, Delegates Ben Blaz and Ron De Lugo, Senator J. Bennett Johnston, Guam Senators Frank Santos and Edward Reyes and the Governor of Guam.

Sincerely,



GEORGE CASTRO EUSTAQUIO

GCE/ge

cc: . The Honorable J. Bennett Johnston
 . Delegate Ron De Lugo
 . Delegate Ben Blaz
 . Governor Joseph Ada
 . Senator Frank Santos
 . Senator Edward Reyes
 . Mr. Joe Gillespie
 . Jack B. Guerrero



Office of the President
 REPUBLIC OF THE MARSHALL ISLANDS

December 07, 1989

Honorable Ron de Iugo
 Chairman
 House Subcommittee on Insular and
 International Affairs
 United States House of Representative
 Washington D.C. 20006

and

Members of the House Subcommittee
 on Insular and International Affairs
 United States House of Representative
 Washington D.C. 20006

Mr. Chairman and Honorable Members of the Committee:

I am writing to express the full support of the Government and people of the Marshall Islands for the expressed desire and aspiration of the people of Guam to attain a new political status of Commonwealth.

Over the years, the people of Guam have carefully examined the various political status options open to them. Consistent with the current political trend of the world, the people of Guam have freely and clearly made their political status choice of Commonwealth. Having had the honor of knowing the astute leadership of Guam, my Government firmly believes there are important factors upon which the choice was considered; and should deserve close attention and serious consideration of the Committee. As fellow Pacific islanders, we fully appreciate and sympathize with the reason and desire of the Guamanian people to elevate their political status. Their desire is not different from other peoples in the Pacific. Their desire is indeed universal and does connote the popular political sense of any people to be more autonomous in their governance. To a certain extent, the plight of the people of Guam is somewhat analogous to the east European countries and peoples toward whom the United States has developed a special interest and is now fervently supporting their aspirations for greater autonomy.



Honorable Ron de Lugo
and
Members of the Committee
December 07, 1989
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The people of Guam have withstood the test of time and are loyal citizens of the United States. Many Guamanians served with distinction and gave their lives for the United States in World War II, the Korean War and especially the unpopular war in Vietnam. Indeed, they deserve recognition and that their wish be given favorable consideration. To all of us, what Guam is asking its Mother Country is to be granted a Commonwealth status which will give it greater and better political stature and autonomy within the political family of the United States. Conceivably, the people of Guam are asking to be treated no less than their brothers in the neighboring Commonwealth of the Northern Marianas.

Mr. Chairman, Honorable members, we fervently hope that you will agree with the plea of the Guamanian people. The people of the Marshall Islands share and support their sentiments that the status of unincorporated territory is obsolete and unacceptable in this day and age because it is inconsistent with the spirit and principles of democracy. Further, it does not accord political dignity to the people of Guam. Moreover, such status falls far short of international norms concerning territories and dependencies. As a member of the American political family, Guam must be accorded a more appropriate political status as it happens to be in a region of the world where the degree of political autonomy equates with the degree of dignity and respect.

Mr. Chairman, Honorable Members, we, therefore, urge you and the members of your Committee to support the passage of the measure under H.R. 98 and S. 317 which will enable the people of Guam to achieve a status of Commonwealth within the political family of the United States.

Sincerely,



Elnora Kabua
President

Mr. DE LUGO. We have had, I think, hearings which have been a great help to this subcommittee. I hope that the people of Guam view them in a positive light. I hope that you feel that we have had good and substantive hearings and that this was just not a lot of pretty words and no action.

I think a lot of things have been ironed out here. I think that we have a greater understanding of each other's position and each other's hopes and aspirations and dreams.

There are obvious differences, but I think through this hearing we understand those differences now. We have a greater understanding of the differences and how we can come together to overcome them to bring about the common ground that we also have seen here.

There is a willingness by Guam's leaders to discuss ways of achieving the objectives of their people and with federal officials. We have heard the federal officials say that they are willing to work with the leaders of Guam in perfecting this legislation, and retaining the fundamental provisions of the commonwealth legislation with the people of Guam, which they want so desperately.

There are positive opportunities presented by the administration's report and the fact we have had the administration before us here saying that this is the way we see it, but we may not see it all; perhaps we could go a little further in this provision or another provision.

There is a need for new creative approaches and that was eloquently outlined by Congressman Fuster of Puerto Rico. I hope that Guam's leaders and the administration will work together and work with us as we seek to achieve commonwealth, and I mean commonwealth soon for the people of Guam who have waited too long.

As was said, we don't want to be back later on saying that we will go through this again. No, we won't go through this again. I think that you have a subcommittee here that can get it done for you. We can, if you will help us. We cannot do it alone.

We need your help. I am talking now to the people of Guam directly. We need your help. We need the help of the administration. Then we can bring this about. We will do it for the United States. And most of all we will do it for the people of Guam.

I want to thank our committee staff that helped so much in putting on these hearings: Gail Mukaihata, Daisy Minter, Dan Beard, Rick Agnew, Manase Mansur, and, of course, Jeffrey Farrow, my staff director.

I want to thank you all. You have been just great. Now Congressman Gaum, Mr. Blaz, as I call him.

Mr. BLAZ. I know I speak for the entire Guam delegation and the people of Guam when I say that I think anyone who was here and heard the hearings will go away convinced how fortunate we are to have your leadership, Mr. Chairman.

For those people who have heard the statement that they are not comfortable with the fact that this subcommittee is comprised of members from the territories, let me say this to you and maybe allay your fears.

We ought to be very, very proud and very thankful that we have a Congress which permits people from all territories to hear and deliver our message.

In the past, it was someone else that was giving the testimony in behalf of Guam and American Samoa and the Virgin Islands, while we sat in the back and listened. Today and in the last few years, it has been our people, our people who are expressing the sentiments of our people. It is the sons and daughters of Guam and the Virgin Islands and Puerto Rico expressing the sentiments of our people and the sons and daughters of Guam and the Virgin Islands and Puerto Rico who are visiting and delivering the message.

You cannot help but have it any better any other way. Above all, let me say to you that we have been at this for sometime now, and I, for one, was particularly impressed with the quality and the sincerity and the passion of the testimony of everyone from Guam.

Frankly, I did not expect that there would be that many people coming. I am glad that you all did because it means a lot to the cause when we go forward now. I want to thank my friend from American Samoa. He has been extremely helpful in giving a dimension we don't think about sometimes, but he has been a staffer. He is now a Congressman, and the reason Mr. Fuster is so good is because he went to Notre Dame as I did and, of course the others as well.

But for my part of it, let me say, Mr. Chairman, that working with you on the Palau compact and watching you the last few years, I am completely persuaded that, if I were to have a person to champion my cause—I happen to be in the minority in case you haven't figured it out, consequently I won't be a chairman of anything in this lifetime, so I ought to be nice to those people who are so fortunate as to be chairman—I want to tell you that if I were given a choice to have someone to champion the cause of Guam, I would pick an American version like you.

I want to thank you very much and the other people, and above all I want to thank my people, you have made me very proud, and I am glad and honored to be representing you all. Thank you.

The gentleman from American Samoa now.

Mr. FALCOMA. I just want to say that what Congressman Blaz has said so eloquently in behalf of the Chamorro people present here and for the people of Guam who have been listening intently in the past two days of the hearings as we have done, I want to say that even though there are only a couple Samoans present here, that I, too, would like to offer my highest commendation and deepest appreciation to you for your outstanding leadership and in taking the chairmanship of this important subcommittee as far as I am concerned, because it addresses the very needs of our territorial people and I want to let you know that you are more than welcome any day, at any time to visit Samoa with me even though it is just a little further south. But I think we will make it.

And to my good friend from Guam, yes, I happen to have a relative who is going to be playing against Notre Dame, I believe, sometime in the coming next week and I know Notre Dame, unfortunately, will not win against Colorado, but with that in view, Mr. Chairman, sincerely, thank you so much for your coming all the way here to hear our Chamorro cousins.

You have heard their views and perspectives. Again, I sincerely hope we will meet these needs like Guam has been asking for the last 400 years. Thank you very much.

Mr. DE LUGO. Thank you very much. Also, I want to thank our court reporter down here, Ray Boyum. He has taken down everything that has been said—some of you are worried now, right? That is quite a job. Thank you very much, Ray.

Of course, I want to thank Tom Dunmire, an ex-officio member of our staff and long-time friend of this subcommittee, too. I want to thank the Hawaii Association of Guam for their wonderful hospitality. I just want to say, Eni, and Ben, that I am, as you know, a member of the Public Works Committee, and because of my seniority, I was in line for several other subcommittees of national importance, great national importance.

But I passed them up because for us there is no subcommittee that is more important than this one. So it is my honor to chair this subcommittee. I am going to get the job done for you because I firmly believe that.

The subcommittee is adjourned.

[Whereupon, at 5:30 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

TUESDAY, DECEMBER 12, 1989

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

COMMENTARY ON
THE GUAM COMMONWEALTH ACT
HR-98
By George Castro Eustaquio

PART I

Rudyard Kipling's immortal proposition: "East is East and West is West and never the train shall meet" is most appropriate at this stage in Guam's quest for a new political status. In spite of Delegate Ben Blaz's valiant efforts to get a large number of non-interior Committee members of Congress to co-sponsor the proposed Guam Commonwealth Act, it is not likely that HR-98 (or the Senate version S-317) will emerge out of the House Interior and Insular Affairs Committee in its present form. The testimony presented by the Guam Delegation headed by Governor Joseph Ada, and the differing comments of the Bush Administration representatives, to the Subcommittee on Insular and International Affairs at the Honolulu hearings on December 11-12, 1989 demonstrate that the gulf and issues that separate Guam from Washington have not been narrowed much less bridged. In short, Guam and the Federal Government officials are still singing different tunes and from different sheet music.

First of all, the decision of the Commission on Self-Determination to hold a plebiscite on the draft Commonwealth Act (CA) before the concerned committees of Congress have had the opportunity to express their collective views was a serious error in judgment. Many felt, including this writer (Guam Tribune, 7/14/87), that to imbue the draft Commonwealth Act with a VOX POPULI seal of approval will not mitigate the risk of a

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congressional rejection of some sections of the proposed Act. Since there is little doubt that HR-98 as presently drafted will not be passed by Congress, this raises the question whether the Commission on Self-Determination (CSD) has the authority to unilaterally make changes in the draft Commonwealth Act without another plebiscite. The plebiscite as had been alluded to before August 8, 1987, was akin to playing the Russian Roulette. (Guam Tribune, 7/14/87).

Second, and more important to Guam, the CSD also erred in accepting the so-called legislative route toward achieving Commonwealth government instead of the negotiated covenant approach envisioned in Concurrent Resolution 131 introduced by Delegate Antonio Won Pat on May 25, 1983. (PDN/Voice 3/20/87). As it is now, members of the CSD have no control of the draft Commonwealth Act once it is introduced in the U.S. House of Representatives. To be sure, they can recommend amendments, but they can't delete amendments offered by others or rewrite the bill, only members of the committee can. For all practical purposes, then, the members of the Guam CSD have assumed the role of being petitioners seeking redress of grievances instead of being active and equal partners in the political status process. As for its relation with the administration, CSD has also been reduced to a mere conduit of information between Guam and Washington. The risk for Guam is that the Congress in working its legislative will could conceivably, though not very likely,

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approve a Guam Commonwealth Act that bears little resemblance to the draft Act (PDN/Voice 12/22/87) that had been introduced by Delegate Blaz at the request of the CSD.

What is needed now is to prevent the process from getting mired in rhetoric borne out of past misguided policies of the Federal Government. Similarly, the Bush Administration needs to refrain from erecting legal barriers that have no historic foundation or relevance to the national interest. The inescapable policy question that needs to be dealt with remains: How do we reconcile the need to maintain military capability in the Pacific, and at the same time allow our pacific off-shore territories maximum self-government?

Guam's delegation based their case on the historical hypothesis that the rights of people to determine their own political future is rooted in the liberal democratic values declared in the American Revolution of 1776. Indeed it can be argued that the Chamorros were not consulted during the negotiations that preceded the signing on December 10, 1989 of the Protocol that ceded Guam to the United States by Spain. In this sense the Treaty of Peace (Paris) was somewhat arbitrary. But, at this point in time it is a bit tardy and somewhat frivolous to argue that the people of Guam were ruled for 91 years without their consent. The fact is that the overwhelming popular desire expressed in the 1976 referendum and subsequent referenda were for closer ties with the United States. Whether

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the CSD in writing the present draft Commonwealth Act remained faithful to this mandate is a subject for another essay. In any case, the people in a plebiscite on August 8, 1987 did approve the draft Commonwealth Act, and it would be a serious mistake for Washington to dismiss the latest popular action or to continue to take the people of Guam for granted. Governor Joseph Ada, like his two predecessors, Governors Paul Calvo and Ricky Bordallo, correctly represented the sentiments and aspirations of the majority of people on Guam.

But it was clear from the moment the first unofficial draft Commonwealth Act was circulated in Washington in early 1984 (Guam Tribune, 3/9/84) that major changes in the draft Act were needed in order to gain Washington's support. In spite of the many "red flags" and numerous warnings, including Delegate Blaz's "fatally flawed" admonition for which he was roundly and unfairly criticized, the Bordallo administration followed by Governor Joseph Ada decided to press forward with the "kitchen sink" approach toward Commonwealth government. However, the Guam leadership cannot be faulted entirely for pursuing a home rule with a broad brush. Both Bordallo and Ada were at the Albuquerque meeting on December 7, 1983 with then ranking minority member of the Interior Committee, Representative Manuel Lujan, Jr., when they were encouraged to include in the draft commonwealth legislation everything including the "kitchen sink". In fairness, however, immediately following the Albuquerque

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meeting, Mr. Lujan expressed his concern to Matt Mygatt of the Associated Press "about making promises of Commonwealth status to Guamanians -- promises Congress might change. I am concerned about their expectations." Mr. Lujan's warnings was prophetic.

Indeed, if one objectively reviews the history and contributions of the Executive Branch toward the constitutional developments of the territories, the complaints of territorial officials evoked sympathy. Most of the major policy changes benefiting Guam, beginning with the Organic Act, the elective governorship and the Delegate to the U.S. House of Representatives were acts initiated by the Congress. Regrettably, there are still people in Washington who feel that "political status discussions" is an anathema. The former Assistant Secretary of the Interior for Territorial and International Affairs (OTIA), Richard Montoya, in his letter to then Delegate Antonio Won Pat dated November 21, 1983, underscore this attitude. The problems remains the immense vagaries that exist in Washington's attitude toward the political status issues for Guam. For the administration to suddenly assert that "self-determination cannot mean the right for Guam to determine the terms of that relationship unilaterally." is lacking in candor. The interest of the Federal Government in political status discussions with Guam have been cyclical and, more often than not, ambivalent. (Guam Tribune, 7/17/87). For

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the Federal Government to construct a constitutional "Berlin Wall" that renders Guam's commonwealth nugatory would not be constructive for future Federal-Territorial relations.

Nevertheless, it is encouraging to note at this time, however, that the Administration and the Congress are not ignoring the strident clamoring for a new order in the relationship between the Federal Government and Guam. But, it would no longer suffice to make mere cosmetic changes by switching labels from unincorporated territory to Commonwealth. After all, Commonwealth, once described by one Senatorial staffer, is not a term of art.

END PART I

GEORGE CASTRO EUSTAQUIO
January 1990

COMMENTARY ON
THE GUAM COMMONWEALTH ACT
HR-98

By George Castro Eustaquio

PART II

The Federal Government, particularly the Office of Territorial and International Affairs (OTIA) at the Department of the Interior, should view the proposed Guam Commonwealth Act (HR-98) as an opportunity to forge a new governmental relationship based not so much on mutual consent, but on mutual respect. Mutual respect requires OTIA to quickly reconcile itself to the fact that it is no longer the "U.S. Lord of the Territorial Manor." And to abandon its notion that off-shore territories seeking to improve their political status are fugitives from feudalism!

Happily, the present leadership of the House Interior and Insular Affairs Committee (and its Subcommittee) has resisted the temptation to act as "Colonial Secretary," for Uncle Sam's off-shore possessions. Chairman Morris Udall and Delegate Ron DeLugo have been solicitous for the well-being of the people of Guam.

It is regrettable, however, that some agencies and legal advisors are more concerned with perfecting the legal technique of governing rather than the good end that government should serve. While most of these advisors are well-intentioned, their preoccupation with the legal issues serve to hinder not only Guam's new political status aspirations, but the interest of the nation as well. There is little doubt but that the founding fathers intended the Constitution to serve the good of the nation, but not to frustrate its purpose. In 1976 when it was in

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the national security interest to negotiate and ratify the Covenant with the Commonwealth of the Northern Marianas Islands (CNMI) no compelling legal argument was offered to suggest that some provisions of the Covenant might be "constitutionally infirm". Not even a murmur from the Justice Department was heard in the committees of Congress, suggesting that the land alienation section in the CNMI might be violative of the 14th Amendment equal protection provision.

Not too long ago also when a bill in Congress was offered to restore the balance of justice upset by the extension of the Supplemental Social Security Income (SSI) to the CNMI but not to the Americans on Guam, no representative of the Department of the Interior or Justice came forth to argue the legal merits of the bill under the equal benefit theory. Until now the position of the administration on this issue is less than forthright.

Then, too, there's the blatant denial of the right to vote for the President (and Vice-President) whose daily decisions affect the lives of the people in America's off-shore areas. And there is little comfort in the knowledge that Guam products can enter the U.S. under a general system of preference, or under a more liberal application of the Headnote 3a of the USTS. Guam, as part of America, should be treated equally with other American States and its products should be accorded the benefits of the Uniformity Article of the U.S. Constitution. But the novel doctrine of "incorporation" first enunciated by U.S. Supreme

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Court Justice White in the first of several Insular Cases got in the way of good government. Indeed it would be tragic if the Congress would allow the legal opinion of the Justice Department lawyers from achieving a worthwhile national purpose under a new Federal-Territorial relationship with the people of Guam. The record of the U.S. Government is replete with episodes where the legal process have been set aside because it was in the national interest to do so. The Congress, too, under its Article IV powers, had in the past authorized the development of far-flung institutions to improve the quality of life in the off-shore territories. Although progress toward self-management were often painfully slow, tortuous and incremental, and the legal process less than perfect, the end result is always in accord with the most noble tradition of the country: self-government, by and of the people. Hence, government advisors who counsel that the Congress, under its Article IV powers, the so-called Territorial Clause, cannot delegate its authority to free territorial institution from over-government by the Federal bureaucracy in Washington are doing a disservice to the agency they work for and the nation as a whole. When it comes to the management of the territories, Washington does not appear to believe that government that governs least is the best government.

Likewise, the military on Guam should be sensitive and be more respectful of the needs of Guam to develop its natural resource for the benefit of its people. In this connection, the

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Department of Defense should not look at the power of "eminent domain" as a license to engage in real estate brokerage. DOD should only own land on Guam required to perform its assigned mission and it should never be allowed to hold in its inventory acreage of excess land, under some pretext of future military contingency, or simply because it is customary for them to own large acreage of Guam's limited natural resources.

On the other hand, Guam should not expect to receive genuine support by disregarding the roots of its relationship with the Federal Government. From the inception, Guam's value to the United States was a "coaling station" and a military outpost. For more than three scores and a decade, Guam's importance to the nation was to be strategic; hence, the Island's need for political development and economic self-sufficiency in the eyes of Washington is of secondary importance. The sections in the draft CA designed to deny the powers of eminent domain on Guam to the Department of Defense and to require the consent of the local Government on matters that are purely Federal/National in scope and application are not only ill-advised by it makes bad government. It is simply unrealistic for Guam to agitate for government powers and authority it has no capacity to enforce. To undercut the historic relationship with the defense establishment on Guam would make approval of HR-98 extremely difficult.

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Similarly, since it is questionable whether the Tenth Amendment rights can be conferred on the people of Guam by the Commonwealth Act, without judicial acquiescence, retention of this provision could isolate the draft CA from political reality.

In short, Guam's leadership cannot realistically expect swift passage of the draft CA by basing Guam's case primarily on an intangible liberal democratic values or some third world notion of "self-determination" based on UN Resolution 1514. Self-determination, in the above context, is not the route Guam should take toward achieving greater measure of local self-government within the American political family. Nor should the sovereign right of people to determine their future be exercised to achieve limited self-rule. Self-determination and local self-government are not always synonymous. But the option chosen by an overwhelming number of people, expressed through several referenda, plus three different congressional/territorial fora is for closer ties with the United States, not independence or some loose confederation such as the Freely Associated States of Micronesia. Thus, the task of the Commission on Self-Determination seem clear: (a) to secure equality for the citizens of Guam with other American in the mainland; (b) to have the U.S. Congress impose some limitation on the powers of the Federal Government on matters that are local in nature and application; and (c) for the Commonwealth Government to achieve some parity and equal footing with other U.S. jurisdiction. But

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to insist on a restrictive covenant that would impede the Defense Department from carrying out its assigned mission in the Pacific Basin area would only erode whatever support Guam may have had for its Commonwealth proposal.

In conclusion, some people on Guam, and from elsewhere, Guam Tribune, 4/20/84) seem to believe that Commonwealth is a new form of federalism. And that in some novel legal fashion the sovereignty of the United States is shared, and limited by this commonwealth relationship. If there is a lesson to be learned in the Puerto Rican experience since 1952, and more recently the CNMI, it is that the Congress will not suffer any limitation on its powers to legislate for the territories. Except for fundamental human rights, such as in the Bill of Rights, and some key areas of self-government it is not likely that the Congress will agree to limit its Article IV powers. This is not to say that the Congress will not be respectful of the wishes of the people in the territories. But it is wishful thinking to believe that the Congress will readily agree to the replacement of the Territorial Clause with the Tenth Amendment. At least, the history of judicial decisions (Insular Cases) do not suggest that the courts are willing to accede to the diminution of the plenary power of Congress over the territories.

To the credit of the Commission on Self-Determination, the draft CA acknowledges the supremacy of the U.S. Constitution, although some people in Washington are of the opinion that the

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general tone and language of the proposed act is to drift away from the American political infrastructure.

Therefore, some adjustments in our thinking and flexibility in our approach to our off-shore territories are critical. The need to ameliorate the competing ideals of local self-government and the requirement of our national government is crucial. Admittedly, a reasonable compromise would require some ingenious adjustments, but an enlightened view point -- scraping the old belief of "conflict of interest" -- could be catalytic towards change. Based upon this premise, the Congress should be persuaded that greater self-rule and increased autonomy would not present any threat to the military's employment of Guam as a strategic defense base. The first step is for the Executive Department to loosen its authority to allocate resources in the territory, and for Guam to remove from the draft Commonwealth Act the racial restrictive language that is incompatible with the principle of "freedom and equality for all".

END

GEORGE CASTRO EUSTAQUIO
January 1990

Rec'd

December 11, 1989

Honorable Ron de Lugo
Chairman
Interior Subcommittee on
Insular and International Affairs
House of Representatives
Washington, D.C. 20515

RE: H.R.98-COMMONWEALTH BILL OF GUAM

Dear Mr. Chairman:

My name is Kurt S. Moylan, last appointed Secretary of Guam and first elected Lieutenant Governor of Guam with Governor Carlos G. Camacho in 1970. I appear before you in total support of H.R.98 introduced by our own U.S. House Delegate Ben Blaz which grants Guamanians the right of self-determination.

I would like to outline significant dates in Guam's history which will assist the Subcommittee members in supporting this historic piece of legislation.

1565....Guam and the Mariana Islands were claimed by Spain.

The Chamorros were later forced into submission by Spain.

1898....Guam is ceded to the United States by Spain under the Treaty of Paris agreement. The rest of the Mariana Islands are sold to Germany. The United States allowed the division of the same people and their lands when Guam was separated from the other Mariana Islands. From this date until 1941, Guam was administered by military governors appointed by the Secretary of Navy.

1901....Guam becomes an unincorporated territory with Congress retaining complete control over the island and its people.

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1941....On December 8, 1941, a holy day in Guam, Japanese troops seized Guam from the United States. For three years, the enemy imprisoned, tortured and murdered Guamanians. Approximately 8% of the Chamorro population perished while under Japanese military rule.

1944....On July 21, 1944, U.S. troops liberated Guam from the enemy. The Secretary of Navy once again assumed military rule over Guam and its people.

1949....On September 27, 1949, President Truman appointed the first civilian Governor of Guam. Administration of Guam was transferred from the Secretary of Navy to the Secretary of Interior. At the same time, Interior assumed the trusteeship over the Mariana Islands, Palau, Yap, Truk, Kosare, Pohnpei and the Marshall Islands.

1950....On August 1, 1950, the **Organic Act of Guam** became law which granted U.S. citizenship to Guamanians and established a civilian government for the first time since Guam was taken by Spain in 1565...385 years under one form or another of military rule. The **Organic Act** provided limited civilian control since the Governor and Secretary were federal appointees, and all Legislative bills vetoed and subsequently overridden by an elected body, were subject to a final determination by the Secretary of Interior. The **Organic Act** was designed, drafted and voted upon by the U.S. Congress. Guamanians never voted on any of the provisions in the **Organic Act**. The right of self-determination was not given to the Guamanians, a right that should never have been denied by Congress and the President of the United States.

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- 1961....President Kennedy by Executive Order removed the military security clearance required of all persons entering Guam, including returning Guamanians. An unnecessary military restriction on the free movement of Guamanian-Americans was permanently removed eleven years after the enactment of the Organic Act. Guam remained economically stagnant since it was treated like a military base and another trusteeship.
- 1968....Led by Guam Delegate Won Pat and California Congressman Phil Burton, Congress enacted legislation permitting Guam to elect its own Governor and Lieutenant Governor, thereby removing forever the appointment of federal Governors by the Department of Interior. The right to elect our own leaders should have been included in the Organic Act in 1950.
- 1970....Guamanians elect their own Governor and Lieutenant Governor who are responsible to them and not to the Department of Interior. Still, self-government is limited by U.S. Congress's plenary powers over Guam.
- 1989....On December 11, 1989, in Honolulu, marks the date Congress opens hearings on H.R.98, introduced by our own Congressman Blaz. It is also fitting to recognize that a Virgin Islander and Congressman is Chairing this historic bill.

These events have bound us together in our determination to see that H.R.98 is enacted by Congress. H.R.98 has been voted by the people of Guam. It is a bill which will forge a new political relationship between Guam and the United States, a relationship based on the right of self-determination.

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Mr. Chairman, you have been instrumental in guiding through Congress legislation which created a unique relationship between the former Trusteeship island republics of the Republic of Belau, the Republic of the Marshall Islands, the Federated States of Micronesia and the Commonwealth of the Northern Mariana Islands with the United States. Congress granted these island nations the right of self-determination.

I ask that you give this same consideration to the Chamorros by giving your approval to H.R.98, a bill which should have been enacted in 1950 when the Organic Act became law.

Thank you.

Respectfully yours,



Kurt S. Moylan
170 Golindrina Street
Barrigada Heights, Guam 96913

Tel: (671) 477-8616

**TESTIMONY OF
RUFO J. LUJAN
BEFORE THE
HOUSE INTERIOR SUB-COMMITTEE ON INSULAR
AND INTERNATIONAL AFFAIRS**

Chairman Ron de Lugo and members of the Committee, I want to express my sincerest appreciation to you for having me here today. For the record, my name is Rufo J. Lujan, a Chamorro and native resident of Guam.

The prehistory and history of Guam is long and varied. Prehistoric human evidence goes back some 3,000 years. These findings attest to the fact that the Chamorros have been around for some time and not a passing fancy.

The prehistory of Guam has been characterized as having two (2) phases, i.e. the Pre-Latte Phase and Latte Phase. The Pre-Latte Phase was from the period of the earliest archaeological deposits to A.D.800. The Latte Phase was from A.D.800 until the colonization by Spain in the late 1600's.

The recorded history of Guam began with the so-called "discovery" by Magellan in 1521. The Marianas were claimed for Spain in 1565 by Legazpi. But, it was not until late in the 17th century that Spain colonized the island of Guam or Guahan.

The Chamorros did not fare well from the contact with the Spanish colonizers. A census conducted in the late 17th century by San Vitores estimated the Chamorro population at between 40,000 to 100,000. By the late 18th century or about 100 years later, the Chamorro population was down to approximately 1,500 persons.

The main causes for the decline in the Chamorro population can be attributed to three (3) main factors. The first was military attacks by the Spanish on native villages. The second was the forced resettlement of the Chamorros from the northern Mariana Islands to Guam to facilitate their Christianization. And, the third was from exposure to diseases such as smallpox, measles and influenza for which the Chamorros, having existed in isolation from the rest of the world, had no natural immunity.

But, the Chamorros did recover from the population decline so that by the time of the American acquisition of Guam as a spoil of the Spanish-American War in 1898 their number was up to about 8,000. By the end of World War II, the Chamorros numbered more than 20,000.

The Chamorros have been subjugated by three (3) different nations since the time of colonization in the late 17th century. The Spanish ruled for 230 years. The Americans had an interrupted rule from 1898 to 1941 and from 1944 to the present. The Japanese seized Guam in 1941 and ruled it for three (3) harsh years until the re-capture by the Americans in 1944; though the Japanese rule was brief, it was memorable to the Chamorros as they were brutalized and enslaved by their captors.

While the American rule can be characterized as benevolent, for the most part, it has been one of benign neglect. The Department of the Navy administered Guam from 1900 to 1941 and again from 1945-1950. The Navy's main interest in the island was as a refueling station for its ships so there was virtually no economic development in the private sector of the local economy. Even after civilian control was initiated in 1950, the Navy continued to control the economic development by imposing a security blanket on the island. Even the Chamorros themselves had to obtain a security clearance from the Navy to travel off and return to the island. The Naval Security Designation was finally lifted by the then-President John F. Kennedy in 1962.

The Americans, too, have not always acted in the best interest of or justly to the Chamorros. As I mentioned earlier, the Japanese rule on Guam was brutal and the people were impressed into forced labor. The re-capture of Guam from the Japanese was fierce and resulted in the virtual destruction of the island. Because of the Korean War and the need for military bases close to the theater of action (Japan), the United States forgave Japan of its war debts to the people of Guam. The American destruction in World War II and land taking for World War II and the Korean War are subjects of controversy that continue to the present.

The Chamorros of Guam have been loyal to the United States of America first as citizens of Guam and then later as citizens of the United States. As citizens of Guam, the Chamorros have the dubious distinction of being the only native group under the United States to be conquered and enslaved by, the then enemy of the United States, Japan; also, the Chamorro sons of Guam paid the supreme sacrifice serving in the armed forces of the United States. Then as United States citizens, Chamorros, again, paid with their lives in the Korean and Vietnam Wars. In fact because of the low numbers of the Chamorro population, Chamorros have paid more dearly in defense of the United States than other ethnic groups. If the sacrifice of lives were to be the measure by which the Chamorros are to be judged worthy of consideration for an improved political relationship with the United States and greater autonomy then we have paid our dues.

Guam and its Chamorro people have not fared well in other areas, too, by virtue of its geographic location, remoteness from Washington, D.C. and lack of representation in the U.S. Congress. In the past, Guam had attempted to diversify its economic base to reduce its over-reliance on military spending. Attempts made by Guam in the garment and watch manufacturing industries have ended in failure because of actions by the federal government brought to bear by pressure from competing mainland industries and their respective congressional delegation.

A more recent issue is the exclusion of tuna in the Magnuson Fishery Conservation and Management Act (hereinafter referred to as "Magnuson Act"). The Governors of Guam, Hawaii, American Samoa and Commonwealth of the Northern Mariana Islands, as members of the Pacific Basin Development Council, have passed a resolution urging Congress and the President of the United States to include tuna under the Magnuson Act. But, because of the powerful and influential canned tuna lobby, even the federal agencies themselves are ignoring the "call of" the people even after overwhelming data is presented justifying a change in position. Tuna happens to be the greatest marine resource that the U.S. flag Pacific Islands have but because of the lack of representation or through the

apathy of the U.S. Congress the Chamorros and the other native island peoples stand by watching while others rape, plunder, pillage and harvest their resource from the sea.

Guam did not begin to progress until about 20 years ago when the people of Guam were granted the right to elect their own Governor. From 1950 until 1970, the Governors were appointed and they did not have to be responsive to the people of Guam. With the change to an elected Governor, the Governors became answerable to the people. This, too, meant that the Governor had to show some progress if he wanted to be kept on by the people.

The leadership during the past 20 years has been under Chamorros. We have demonstrated to the United States of America and the rest of the world that we are capable of ruling ourselves. We have prospered under the limited self-rule that we have been granted. We have achieved maturity!

The time has come for Guam to be granted greater autonomy. While I favor independence, I will abide by the will of the majority and support commonwealth. Commonwealth status is a vast improvement over our present status of an unincorporated territory of the United States. What this means is that we, the Chamorros who call Guam home, are but a mere colony of the United States and have been described as but a creature of Congress. We are a people. We are not a mere possession to be treated like an object to be toyed with or treated like a pet. We cry for justice, equality and the other basic tenets of the American form of democracy which have made this country great. We demand our right to self-determination. We demand that the rights of the Chamorros be finally recognized by the United States.

I am disturbed when I hear comments that certain provisions of the Draft Commonwealth Act may not be acceptable to Congress or may be unconstitutional. It does not make any sense to me for someone to be complaining about constitutional rights when I, myself, never had the right. What is even more ironic are the comments that immigration control, provision against the alienation of land etc., are un-American when the United

States has granted these rights to Guam's neighbor to the north, the Commonwealth of the Northern Mariana Islands (CNMI). Guam is not a state; therefore it can ask for rights that states have acquiesced to the federal government as was the case with the CNMI. Never mind sophistication, if it is naive to ask for things that will benefit Guam and the Chamorro people, then we ask for it. People who do not call Guam home should have the sensitivity and compassion for the unalienable rights of the Chamorros to seek for a better life, more liberty and their happiness.

The Chamorro people have grown up. It is time that the United States recognizes this and grant the people a change from the political relationship that now exists. While commonwealth may not make Guam the master of its own destiny, it will provide for more local autonomy. It is time that the past injustices that have been heaped on the Chamorros be righted. The United States must abandon the superior-subordinate attitude that it has used in its dealing with Guam and instead view Guam and its people as partners working together in the national interest for their mutual benefit. Let Guam have Commonwealth and grant the Chamorro people their inherent right to self-determination.

December 11, 1989

House Interior Subcommittee on Insular
and International Affairs
House of Representative

Subject: Public Hearing Testimony on the
Commonwealth Act of Guam in Hawaii

Mr. Chairman and members of the House Interior Subcommittee on
Insular and International Affairs:

I am here today to participate with my fellow people of Guam to plead our rights to self determination before this august body of the U.S. Congress. We, the American people from Guam have passed the Commonwealth Act expressing our desires and firm believe that we are ready, willing and able to self govern, just like our brother and sisters in the "Commonwealth of the Northern Marianas."

Your support of our commonwealth initiative recognizes America's guidance and assistance for almost a century to bring Guam to economic, social, and political adulthood competent and eager to assume her place in the world society. I earnestly appeal to all of you to act favorably and speedily in the passage of Guam's Commonwealth Act.

My name is Carl J. C. Aguon. I was born after World War II in in the village of Barrigada, Guam. My parents, Juan Upingco Aguon (deceased) and Maria Castro Aguon are both indigenous to Guam. I have eight (8) other brothers and sisters most of which are residing on Guam and others in the continental U.S.A. I reside with my wife and four children on Guam.

My mother and father have always spoke proudly and joyously

of the American occupation prior to World War II and after the war as American citizen. They instilled in us a deep and abiding sense of "American Heritage and Values." America is a great and beautiful nation, I remember them repeating, because her heart is pure, she is a democracy and protect and defend freedom, liberty, social and economic equality and justice world wide.

My father fought along side U.S. forces in the mop up operation as a Combat Patrol Sergeant leading a troop of about sixteen (16) Guamanians seeking Japanese stragglers immediately after the invasion. His gallantry in combat for his island and freedom he was awarded the "Silver Star" by the United States Arm Forces.

My mother who was a school teacher for several years prior to the war gave up her profession so she can provide a motherly home for her then three children. She strongly believes that rearing her sons and daughters is far more important and rewarding than a professional career.

The mother in a home, she often tells us, provides the foundation upon which children develop strong moral, ethical, and social values that will make them become good members of our society. This task was not easy especially during the Japanese occupation and several years after the war. It took tremendous courage and commitment, and above all, LOVE. Yes, my mother loves us so very much that her love continues to nourish us not only in our respective endeavors but as parents as well.

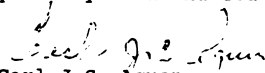
Guam is like a child of the United States of America. Like a father she taught us to be self reliant and responsible. She

defended us against invaders and freed us from their tyranny. Like a mother she treated us with love and affection. She milked us with nutriments that made our bodies healthy and strong. She taught us moral values and ethical conduct that made us good citizens of the world.

And like children who go through stages of growth and development with its joys and sorrows, peaks and valleys reach adulthood prepared to face the world independently. Guam has grown and matured and has achieved the economic, social, and political threshold that she is now ready to leave the American family and assert her self determination.

Do not fear for your genre for America has bestowed in her genes the imprint of democracy: in her heart the love of freedom and liberty and in her body the permanent hunger for peace and justice. Give to your child what is her inalienable right of self determination and the pursuit of happiness.

Listen to your sons and daughters as we present our petition. Please do not treat us like little children though we have your economic, social, and political blood flowing within our veins. But give to us your encouragements and blessings that we may become, just as America has since it cut the umbilical cord of the "Mother Country" and declared her independence, equal peoples of the earth. Si Yuus Maase, Thank you very much and God Bless all of us.


Carl J.C. Aguon

132 Capitan Reyes St., Barrigada, Guam; Tel.: 671-734-3234

Statement of Soledad A. Lujan, Chairperson, Membership Committee, Guam Association of Retired Persons, before the House Insular and International Affairs Subcommittee at Honolulu, Hawaii, 11 December 1989.

Mr. Chairman and Members of the Committee:

I am grateful and honored to be here to testify in support of the proposed Commonwealth Act for Guam. My name is Soldedad Anderson Lujan, a native chamorro of Guam. I am here in behalf of the Guam Association of Retired Persons to present to you a resolution going on record in support of the proposed Commonwealth Act. With your permission, I would like to read the resolution.

Thank you again and hope you give this matter your kind attention and consideration.

RESOLUTION
of the
GUAM ASSOCIATION OF RETIRED PERSONS

WHEREAS, the government and the people of Guam are seeking a changed political and economic status in association with the United States of America, and

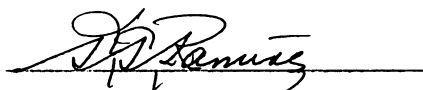
WHEREAS, the House Interior Subcommittee on Insular and International Affairs is seeking public comment on the provisions of H.R. 98, otherwise known as Guam's Commonwealth Bill, and

WHEREAS, the members of the Guam Association of Retired Persons are both intimately familiar with the experiences of the Island of Guam under the colonial administration of the United States and directly impacted by the current and prospective political and economic status of the island, and

WHEREAS, the members of the Association are whole-heartedly supportive of Guam's efforts toward political and economic change, and have been carefully following the events surrounding Guam's efforts in support of this change.

NOW, THEREFORE, BE IT RESOLVED that the Guam Association of Retired Persons does hereby express its full and undivided support for each of the provisions of the Guam Commonwealth Bill, and calls upon the Congress of the United States to expedite its passage in order to relieve the Island of Guam from the adverse effects of its status as a possession, and encourages a full partnership between Guam and the Federal Government through the adoption of Commonwealth; and

BE IT FURTHER RESOLVED that this Resolution shall be transmitted to Congressman Ron de Lugo, the Chairman of the House Interior Subcommittee on Insular and International Affairs, at their first, historic hearing on H.R. 98 in Honolulu, Hawaii on December 11, 1989.


F.T. RAMIREZ, PRESIDENT

The author is a native Chamorro who, after spending the last six years in Hawaii, is ready to return to Guam and establish a small business. He is currently employed with the Pacific Business Center Program at the University of Hawaii; he visits Guam and other islands in Micronesia to provide assistance to small businesses by offering the resources of the University of Hawaii.

**Setting up shop in Guam:
A testimony in favor of the 1988 Guam Commonwealth Act**

**By: Raymond C. Cruz
3213 George St., Hon., HI 96815**

OPPORTUNITIES. The US has always paid close attention to the opportunities available to people, whether they be American or not. With the world economies as they are, opportunities for small businesses are unfolding everyday. Guam is especially blessed with many opportunities for its people to start small businesses. Because of this, Guamanians like myself want to return to Guam, meet the entrepreneurial challenges and reap the benefits; all rightfully ours. The degree, however, that people are able to capitalize on these challenges and opportunities depends on the US. Once again, Congress will be deciding a course for Guam's people; a course which will either encourage or discourage Guamanians to return home. The Guam Commonwealth Act of 1988 is about self-determination; specifically, though, the Act expresses the people's desire to capitalize on business opportunities which exist today and those to face us in the future.

It is inappropriate that such opportunities and their availability to Guamanians lie in the hands of the United States. To correct this, I would like to see the Guam Commonwealth Act of 1988 passed. The passage of the Act will encourage entrepreneurs to return to Guam and seek their dreams in starting a small business.

Guam's location renders itself to trading opportunities with countries in Asia and the Pacific. We must be able to establish our own trade policies with countries as we wish and not be restricted by US Laws which may for the most part, be beneficial only to the fifty states -- thousands of miles away and under different business environments. The people of Guam, in order to maximize trade benefits, must dictate its own specific trade policies with selected countries. Ultimately, this climate will bring forth entrepreneurs ready to provide products and/or services.

Related to trade policies, business risk must be considered when voting for or against the Act. Business people, whenever they can control it, want to reduce risk. Assurance that policies originate and end with the people of Guam will naturally reduce risk. Guamanian business people will be apt to come to Guam since major policies will not be forced upon them

by a lawmaking body thousands of miles away.

To be fair, I must acknowledge that the United States has indeed reduced business risk by opening doors of opportunities to the people of Guam. With the security from outside invasion and the link to the United States' economy, the people of Guam have benefited. We see job creation, trade preferences and federal assistance for business development programs. While we are grateful, this is not enough. The opportunities we seek so that we may improve our quality of life are limited and must be capitalized now.

Therefore, in light of the business opportunities available to returning Guamanians, it is necessary that the US Congress adopt this act. It will open opportunities to those Guamanians who want to return to Guam as well as other Americans who also want to take advantage of doing business on Guam. I'm sure that the United States will be proud of the our people's determination to make it on their own. Please respect our wish. The decision that is before Congress is serious and will have long lasting effects for energetic and bright entrepreneurs who wish to return to Guam. Give us a chance...give us Commonwealth now.

PARTIAL DISPOSAL UNDER THE
TERRITORIAL CLAUSE
A More Permanent Status for Territories

by Charles H. Troutman
Compiler of Laws
Territory of Guam

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property of the belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States or of any particular State.

U.S. Constitution, Art. IV, sec. 3, cl. 2.

I

Theory of Disposal

All of the case law interpreting this clause of the Constitution with respect to the territories of the United States have dwelt solely on the meaning of the terms "make all needful Rules and Regulations respecting the Territory of" the United States. In doing so, the courts have emphasized that no sovereignty rests with the territories, that all powers they exercise are done so by the will of Congress alone, and that if Congress has not given a power to a territory, it does not possess it. No residual powers reside in the Territory.¹ This lack of residual powers stems from Congress'

¹ *People v Olsen*, [1977, US] 431 U.S. 195, 97 S.Ct. 1774. Organic Act does not permit the Guam Legislature to create its own Supreme Court. Statutory, not constitutional, analysis used.

People v. Okada, 715 F.2d 1347 (C.A.9 1983). Unlike states, because Guam has no inherent sovereignty, only the Congress may determine whether or not the Government of Guam may appeal criminal cases to the Ninth Circuit.

Sakamoto v. Duty Free Shoppers, Ltd., 764 F.2d 1285 (C.A.9 1985). "Commerce clause" limitations do not apply to Guam because it is not a state and because Congress has full power to regulate commerce in and through the territories through the "territorial clause" of the Constitution.

"plenary" powers over the territories. Congress may always revoke the powers of the territories through this overriding plenary power.²

Guam seeks a new status with and under the sovereignty of the United States. This status, Commonwealth, has been described as intended to be "closer" to the United States. On Guam, this term has meant closer in the sense of equality. One former member of the Commission on Self Determination described the change this way:

He (the Commission member) recognized that, as residents of an unincorporated territory, we were like "illegitimate children" to the U.S. As such, we are merely trying to get in out of the yard to the protection of the porch.³

Guam wants to be recognized as a political entity in itself, even though its limited sovereignty will differ~~ent~~ from the sovereignty of a state, and will have no voting representation in Congress. As such Guam will have recognized, residual powers inherent in the Commonwealth Bill.

As we have seen, this cannot occur under existing court doctrines using existing language in Guam's, or other, organic acts, nor is it totally clear in existing Commonwealth relationships. Short of a constitutional amendment, it seems to this author that the only means of achieving this permanency of status and sovereignty is for the United States to dispose of some of its powers under the

² As an organized political division, the territory possesses only the powers which Congress had conferred, and hence the territorial legislature could not provide for escheat unless such provision was within the granted authority.

.....
This manifestly was not a grant of the property of the United States, but it was an authority which extended to "all rightful subjects" of legislation save as it was limited by the essential requirement of conformity to the Constitution and laws of the United States and by restrictions imposed.

Christianson v. County of King, 239 U.S. 356, 36 S.Ct. 114, 117 (1915).

This Court also has held that Congress may delegate to local legislative bodies broad jurisdiction over Territories provided Congress retains, as it does here, ample power to revise, alter and revoke the local legislation.

United States v. Sharpnack, 355 U.S. 286, 78 S.Ct. 291, 297 (1955).

³ Conversation between the author and (at the time the statement was made) a member of the Commission.

"territorial clause" to the people of Guam, so that, truly, government on Guam is founded upon the consent of the governed.

Congress, in the past, has disposed of territory in many and varied ways. When disposing of territories as governmental units, the U.S. has disposed of its plenary power either by granting independence, as with the Philippines⁴, or by granting statehood⁵. In both cases, the disposal of territory was the total disposal of all that could be disposed under the circumstances. In the case of the Philippines, that was everything relating to or inherent to sovereignty. In the case of granting statehood, it is a disposal all of the sovereignty not given up by the states through the United States Constitution.

The United States has disposed of territory, both partially and completely, in other ways. From the earliest times of the republic, the United States, under this "territorial" clause of the Constitution, has been able to "dispose of" less than all of its ownership rights over land that it owns. The first such disposal which was challenged to the U.S. Supreme Court was a lease of mineral rights.⁶

⁴ On the granting of Philippine independence, 22 USCA §1393:
On the 4th day of July immediately following the expiration of a period of ten years from the date of the inauguration of the [commonwealth] government provided for in this Act, the President of the United States shall by proclamation withdraw and surrender all right of possession, supervision, jurisdiction, control or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands, including . . . , and on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution then in force.

⁵ The Supreme Court has recognized that, when a Territory becomes a state, Congress loses the right to legislate for it in a plenary manner. *State of Oklahoma v. AT&SF Railway Co.*, (No. 13, Original) 31 S.Ct. 434, 220 U.S. 227, (1910). The regulation of intra-state rail rates, while a matter for Congressional legislation while Oklahoma was a territory, became a matter of solely state concern once Oklahoma had become a state.

⁶ In *United States v. Gratiot*, 10 L.Ed. 573 (1840), the Court held, against the challenge that to "dispose of" property was an all or nothing power which could not "include letting or leasing" (at p. 578-9):

Footnote cont. to next page

Many times, the United States has transferred title of territory, here meaning "land" or "property. to other persons or states or territories.'

While it has not yet happened, there is nothing to prevent Congress from "disposing of" certain of its rights, but less than all held under the "territorial clause" to the people and government of a territory. The government of Puerto Rico has argued that the "compact" by which Puerto Rico became a commonwealth acted to create "a *sui generis* political entity which is no longer a territory or a possession of the United States per force of the exercise by Congress of its constitutional right to dispose of its territories, ..."⁸ That court concluded, however, that no such disposal had taken place. It seems that the court misunderstood the thrust of Puerto Rico's arguments, assuming that they were for some form of independence, rather than for a different status under the United States.⁹ In any event, the court held that the "compact" did not alter the relationship between U.S. courts and Puerto Rico.

Footnote cont. from previous page

"And again, . . . , in speaking of the cession of Florida under the treaty with Spain, he [the Chief Justice] says that Florida, until she shall become a State, continues to be a territory of the United States government, by that clause in the Constitution which empowers Congress to make all needful rules and regulations respecting the territory or other property of the United States. If such are the powers of Congress over the lands belonging to the United States, the words "dispose of," cannot receive the construction contended for at the bar -- that they vest in Congress the power only to sell, and not to lease such lands. The disposal must be left to the discretion of Congress."

⁷ Unconditional transfer of property was supposed to be made to the Government of Guam pursuant to 48 U.S.C.A. §1421f(a). (Organic Act, §28(a)).

Title to submerged lands, with conditions and numerous exclusions, was transferred to Guam by 48 USCA §1705.

"Title" to certain lands at Cabras Island, Guam was transferred to the Government of Guam, but under the condition that most of the income from any leases or improvements be returned to the United States by Pub.L. 96-418, §818(b)(2) -- the infamous "Brooks Amendment".

⁸ *Nestle Products, Inc. v. United States*, 310 F.Supp. 792, 795-6 (U.S. Customs Ct., 3rd Div.) (1970).

⁹ The court stated, with respect to "disposal":

Footnote cont. to next page

Later decisions seem to have reached the opposite opinion. The District Court of Puerto Rico has clearly stated, in a case where it determined that the National Labor Relations Act applied to Puerto Rico after the creation of the Commonwealth only as it applied to the several states (to interstate commerce, not intra-territory commerce, as it had applied before Commonwealth):

Puerto Rico ceased being a territory of the United States subject to the plenary powers of Congress as provided in [the "territorial clause"]. From July 25, 1952, in which the Commonwealth of Puerto Rico was born, Puerto Rico ceased being governed by the unilateral will of Congress; now it is being governed by the express, though generic, consent of the people, through a compact with Congress. Whatever authority was to be exercised over Puerto Rico by the Federal government would emanate thereon, not from Article IV of the Constitution, but from the compact itself, voluntarily and freely entered into by the people of Puerto Rico, even without an express recognition of its sovereignty, and the Congress; *a compact which cannot be unilaterally revoked by Congress or by the people of Puerto Rico. (footnote on binding nature of compacts omitted) (emphasis added)*

This opinion was cited with approval by the First Circuit Court of Appeals (which has jurisdiction over the U.S. District Court of Puerto Rico) in *Hodgson v. Union de Empleados de los Supermercados Pueblos*, 786 F.2d 43 (1983).

The Supreme Court has held that Puerto Rico "like a state, is an autonomous political entity, 'sovereign over matters not ruled by the Constitution.'" *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 102 S.Ct. 2194, 2199 72 L.Ed.2d 628 (1982) quoting *Mora v. Meijas*, 115 F.Supp. 610 (D.P.R.1953). The only problem with these statements is that the courts, with only one exception, while making these statements, have, nevertheless, ruled against whatever special consideration was being sought by the parties asserting such

Footnote cont. from previous page

Although undoubtedly the "compact" realized greater local autonomy for the people of Puerto Rico in the relationship subsisting between Puerto Rico and the United States, we fully agree with defendant that Puerto Rico did not achieve independence from United States control and protection by virtue of the "compact", . . .

claims.¹⁰ The real lesson to be learned is that, while the status sought by Guam is not impossible, Congress must state such a policy of disposition clearly, or the courts will not find any.

In the case of overall sovereignty, it has been said that the United States limits its sovereignty every time it ratifies a treaty.¹¹ Therefore, it is possible for Congress to partially dispose of its rights of property or sovereignty over "territories" of the United States.

As *free association* has been defined in the United States context, it means that there are two independent states dealing with each other as such, but that in so dealing there is a very close association between the two. Certain powers, such as the power of denial of the area to foreign powers in defense matters, has been delegated to one party by the other (by, say, the FSM to the United States) and the United States has extended a number of benefits to the Federated States of Micronesia not granted to other nations. Yet neither citizen is a citizen of the other state.

Guam is not seeking this form of relationship. Rather, Guam seeks to remain under the sovereignty of the United States, but having powers and a status suitable to its situation, even though this means non-state-like treatment in certain areas.

In my view, the United States limits states in the exercise of their sovereignty in two basic areas:

1. Those provisions restricting the states from taking action against their own citizens, -- such as most of the Bill of Rights as now interpreted, the 13th, 14th, and 15th Amendments and the Voting Amendments;
2. Those provisions which are necessary to bind the members of the union together as a full political and economic nation -- the "commerce clause", uniform customs treatment, regulating coinage of money, "privileges and immunities"

¹⁰ The only exception is *Hodgson*, where that court dismissed the claims for federal intervention under the National Labor Relations Act in a purely local Puerto Rican matter.

¹¹ In *The Law of Territorial Waters and Maritime Jurisdiction*, by Philip C. Jessup (Jennings & Co., N.Y., 1927, reprint 1970), the author states, in his Introduction:

Most treaties, though entered into by an act of sovereign will, constitute a limitation on sovereignty. To urge the contrary is to deny the obligatory force of treaties. The conclusion is therefore advanced that each littoral state is a sovereign over its three-mile zone as it is over its land areas; upon both portions of the territories servitudes may exist. At page xxxiv.

which cannot be denied citizens of one state in another state, making war, making international agreements, and conducting diplomacy.

As early as *Dred Scott v. Sanford*, the Supreme Court has held that there were certain rights which Congress could not take away just because a person lived in a territory. If Congress cannot alter those rights, which now include the right of due process, it is logical that they cannot "dispose of" a right of action which they do not possess. However, there is no reason why Congress cannot dispose of those powers it does exercise over territories, as it has in the past.

Guam is seeking from the United States those powers which are not essential to the United States overall sovereignty of Guam, and which are powers Congress can dispose of, in order that Guam may develop in its own location in the western Pacific. Since Guam is not to be within the federal union, politically or commercially, there is no legal reason why Congress cannot dispose of certain powers to Guam which states cannot have by reason of their union. Guam has always had its own customs zone and, when it so desired, its own customs duties. The Ninth Circuit has said that the "commerce clause", a grant of power to Congress to foster economic union, which would ordinarily have been exercised by the states does not apply to Guam, since Congress has whatever powers it wants in this area. As long as Guam remains outside of the United States commercial union, there is no reason why Guam cannot exercise powers denied to states so long as those powers are not inherently contradictory to United States sovereignty over Guam.

Since the Supreme Court has made it clear that Congress may delegate considerable power to a territory, so long as it retains the ultimate powers¹², and since it is this ultimate "plenary" power which has been used by the courts to deny the Guam any inherent right of self government¹³, mere delegation of power will not suffice. Rather, "disposal" of such powers to Guam is the only way by which Guam can achieve what it intends by the term "commonwealth".

It may be that Puerto Rico has achieved this status by the mere fact of being a commonwealth with its own constitution. That seems to be the judicial trend, but the Supreme Court has never defined just what a "commonwealth" is. In Guam's case, I am certain that the courts will not go in that direction without a clear statement from Congress. Unlike Puerto Rico's "compact", where discussions of status change, or lack thereof, were left to inconclusive debates on the floor of Congress, the Congress, in law, has stated clearly that a constitution of Guam, without more, will not change Guam's

¹² See Note 2.

¹³ See Note 1.

status. Guam can now draft a constitution *within the existing territorial-Federal relationship, . . . for the local self-government of the people of . . . Guam.*¹⁴ Guam has rejected such an exercise.

Under the court cases which have been rendered concerning Guam, Congress could amend such a constitution without notifying or requiring the consent of the people of Guam. The people of Guam would still not be ruled with the consent of the governed. We would still have no right of self government. This is the situation under our current status, and Congress has declared that it would not change. In effect, Guam would be acting only as a sub-sub-committee of Congress under that law.

Guam is seeking three things -- the right of self government under the sovereignty of the United States, the solution of long-standing grievances concerning our relations with the federal government, and the right to adopt our own constitution. As far as I can see, that is the order of importance of these items to the people of Guam. Short of an amendment to the Constitution, disposal of these rights to the people by Congress is the only way to forge a permanent change from our present status of unincorporated territory. Congress has the right to dispose of these powers. Does it have the will?

II

Effect on Guam

First, the effect on Guam will be limited to those rights that are actually disposed of to Guam. This argument is not intended to give Guam rights "by the back door". However, the disposal of rights to the people, as opposed to the delegation of rights, would overturn the basis for a number of court rulings which have gone against Guam.

For instance, if *People v. Olsen* were brought under a scheme of disposal, it is the intent of such a scheme that the court would look to the entire structure of the Commonwealth and ask whether, under the general intent as well as specific language, would Guam have such a power. The dissent in that case would become the majority.

The Ninth Circuit would cease to rule that "Guam marches to the beat of the federal drummer", and, when looking at the inherent nature of Guam, would be able to follow the rationale in *Atalig* rather than their ruling in *Okada*. *Atalig* held that the CNMI had enough inherent sovereignty to permit appeals by the Government to the federal court in criminal cases without special federal legislation.

¹⁴ Public Law 94-584, 94th Congress, 90 Stat. 2899 (1976). Amended by §501, Act of Dec. 24, 1981, P.L. 96-597 (94 Stat. 3479).

In *Okada*, Guam has held to have no right of self government and, unless Congress specifically authorizes such appeals, Guam has no such power.

The courts have never applied the Organic Act "liberally" with the intent of effectuating its purposes. Rather, they have assumed that Congress has the overall power and, at least in Guam's case, can have only that identity specifically given to it by Congress, with nothing else implied.

So, the purpose of disposal can be summarized by saying that it is to legitimate the territory of Guam, giving it a complete personality within the parameters of the Commonwealth Bill. It is genuine government with the consent of the governed.

Edward Reyes

DM

COMMISSION ON SELF-DETERMINATION
"Commission Forum"

OUTLINE

A. FROM SELF-GOVERNMENT TO COLONIAL DOMINATION

I. In prehistoric times Guam was a self-governing society, with a population nearly as large as Guam has today

1. Self-sustaining

a. Politically -- political subdivisions were self-governing, respect for each others jurisdictions

b. Economically -- food stuffs sufficient, time for recreation

c. Socially -- limited conflict

2. A culture of its own, without great violence, or want of life's necessities.

II. Contact and Colonization

1. Magellan's trip

2. Subsequent Missions

a. San Vitores

b. Quiroga

3. Spanish-Chamorro Wars

4. Speech of Hurao of Hagatna (provided)

III. Spanish-American War

1. As America emerged from its civil war as an industrial country, influential politicians, academicians, and newspapers, pushed for America to create an empire as European countries had done.

a. Driven by:

i.) "the white man's burden" and the mission to "civilize the uncivilized" (Sen. Cabot Lodge)

ii.) the perceived need for America to become a Naval Power (Alfred Mann)

2. Guam captured by "First Philippine Expedition Fleet from Hawaii.

a. Orders issued by Teddy Roosevelt (Asst Sec. Navy) without knowledge of President

b. Guam captured, no one left in charge of the island until 1899.

B. POLITICAL STATUS UNDER THE AMERICAN FLAG (1898-1941)

I. True to the imperial philosophy of the likes of Alfred Mann, Guam's political status came into consideration after the capture. (On the problem of annexation, and what was viewed by some as an "insoluble political problem", Mann wrote to T. Roosevelt in 1897 "as regards the problem, take them first and solve afterwards."

1. Primary reason for talking Guam was military --

Guam would serve as coaling station on route between Hawaii and the Philippines (again Mann in 1898 in a letter to Secretary of Navy Long noted that Guam should be selected in the Treaty of Paris as the island in the Ladroneas to serve as a coaling station)

2. Political and Judicial reasons for Guam's status were established by the first of the so-called Insular Cases decided by the Supreme Court in 1901.

- a. Court created the a new status for the territories captured during the Spanish-American War -- called "unincorporated territories".
- b. Unincorporated territories were to be treated differently than the previous U.S. territories. No promise of the territories becoming part of the United States was offered. Territories were owned by U.S. but not strictly a part of the U.S.
- c. Congress would decide what status of the territories were.
- 3. Some of the arguments in Insular Cases (to be provided).

II. Guam's Government (1902-1941)

- 1. Guam attempted on numerous occasion between 1902 and 1936 to become U.S. citizens.
 - a. 1902 request by Naval Governor, Commander Seaton Schroeder to the U.S. government on behalf of "a small group of Guamanians" (Carano & Sanchez, p. 201).
 - b. 1925, members of the Guam Congress (an advisory body established in 1917) asked a visiting group of eleven Congressman for American citizenship.
 - c. 1930, Governor Bradley proclaimed "Guam citizenship", and established a bill of rights for Guam citizens. Bradley thought a bill of rights was appropriate as "residents of Guam are deserving of some of some basic law...which will give them the fundamental rights of citizenship now enjoyed by all Americans."
 - Bill of Rights was not approved by Congress for Guam citizens.
 - d. Second Guam Congress was established by Bradley in 1931, to take on the affairs of internal government, and responsibilities the "United States sees fit to delegate..." An absence of candidate interest was evident in this advisory body.
 - e. In 1936, Guam Congress passed a resolution requesting the granting of U.S. citizenship. Baltazar Bordallo, and Francisco Leon Guerrero went to U.S. to request on behalf of the people of Guam.
 - f. In 1937, the U.S. Senate introduced a Bill to

grant U.S. citizenship to Guam, but the measure failed.

2. The Sacrifice of Guam

- a. By the end of WWI, the U.S. was aware of Japanese plans to expand in the Asian Area, and began plans of their own for the "recapture" of the islands.
- b. By 1932, the demilitarization of Guam was complete.
- c. By the time Baltazar Bordallo and F.B. Leon Guerrero visited Washington in 1936, the U.S. Naval Academy was already studying "Problem Guam: How to Capture a high Coral Island."
- d. Civilian dependents of military personnel were evacuated from Guam beginning in the middle of 1941.
- e. On December 10, 1941, the United States surrendered Guam to the Imperial Japanese Government.
- f. During Japanese Occupation, Guam had no civil government which represented the native population.

C. POST-WWII POLITICAL STATUS CONSIDERATIONS (1944-1950)

I. Military Occupation of Guam

1. In July of 1944, Guam was reoccupied by American Forces

- a. Nearly 8% of Guam's population had perished during the Japanese occupation, and American liberation
 - i. approximately 3% between 1941-June 1944
 - ii. approximately 5% during American bombardment period prior to reoccupation (June-July 1944)
- b. Population had awaited the return of "Uncle Sam" during the hard times of the Japanese occupation

2. Land Takings for Offense against Japan and Rebuilding of Guam

- a. Upon the recapture, the Naval Security clearance put in place in 1941 was reinstated, (and would remain in effect until 1962) and Guam land was taken (approximately 50%) for the massive war effort against Japan.
- b. Given land takings Guam's traditional land based agricultural economy was destroyed: food and shelter was provided by rebuilding efforts, and donations from military: jobs available (at lower wage rate than alien and U.S. laborers) and many employed
- c. Given the massive build-up, laborers had to be imported to perform necessary work on bases, and some outside civilian projects

3. Naval Government reestablished in 1946 by SecNav Forrestal.

a. As the Governor of Guam the Navy Admiral "exercise(d) supreme authority over the civilian native population of the island"

-- Naval Government after war was same structure as the Naval government for 43 years prior to the war

b. In June 1946 through referendum people of Guam said they wanted a popularly elected Congress with law making authority

i. election in July 1946, first female representative -- Mrs. Rosa T. Aguigui of Malleso

ii. In August 1947, SecNav Sullivan issued proclamation allowing Guam Congress some home rule powers in lawmaking

-- Guam Congress in 1949 adjourned indefinitely, and against Navy Governor's desires, over the Congresses disappointment with their limited authority

4. At the national level the Departments of War, State, Navy, and Interior were working together to transfer Guam to Interior under conditions which would assure the continuation of Navy's interests, while making sure that the U.S. position was aligned to the international political climate.

II. International Considerations

1. America had become involved in assisting Great Britain and France prior to the U.S. entrance into WWII, on the basis that they would disband their colonial empires following the war.

a. Throughout the war, and at critical junctures (Allied conferences) the U.S. continued to push for other Western countries to relinquish control over their overseas territories

b. British took great exception to American push to decolonize India, and their jurisdictions in Indo-China, but reluctantly Churchill agreed.

2. When the United Nations was formed in 1946, decolonization was at the top of the agenda, and the granting of independence to territories was mandated

-- Article 73 of U.N. Charter

3. Obviously the U.S. after having forced their allies into accepting decolonization could not maintain indefinite military control over Guam, nor could they have major bases occupying over 40% of the property in Guam, without making major changes to the nationality of the people.

D. ORGANIC ACT PERIOD (1950- Present)

INTRO -- American citizenship and measures of self-government had long been sought by the people of Guam. Other U.S. territories (e.g. Puerto Rico, and the Virgin Islands (the latter taken in 1922) had received U.S. citizenship and Organic Acts before WWII. In 1937, the Senate proposal for Guam's U.S. citizenship failed in the House of Representatives due to Navy objections -- "in the midst of foreign territory"; "racial problems of the locality"; "there is every indication that these people have not reached a state of development commensurate with the personal independence, obligations, and responsibilities of U.S. citizenship" (all SecNav Swanson, on H.R. 1450).

Following the recapture of Guam, national magazines and prominent newspapers ran stories on who was responsible for the not defending Guam prior to the WWII. Following Truman's Executive Order, the Departments of War, State, Navy and Interior put together plan which was finalized in 1947, but which was not fully implemented until August 1, 1950. The plan called for a civil government of Guam under an Organic Act, and U.S. citizenship for Guam residents.

I. Organic Act

1. Guam Organic Act led to the creation of a 21 member legislature, a judicial branch, and an appointed executive together with some provisions of the U.S. Constitution.
2. Organic Act was an Act of Congress, and not voted on by Guam residents
 - a. Organic Act did not change U.S. territorial policy; Guam was still an unincorporated territory of the United States, and subject to the will of Congress.
3. Changes to the Organic Act allowed for an elected Governor in 1970.
4. Guam's leaders were not altogether happy with federal-territorial relations and moved to amend the relationship through a Constitution.

E. CONSTITUTIONAL CONVENTION (1969-1979)

I. 1st ConCon

1. The First Guam Constitutional Convention met in 1969 and forwarded to the federal government a listing of grievances Guam had under its existing relationship with the federal government.
2. This ConCon was held without any U.S. approval for territories to draft their own Constitution.

II. 2nd ConCon, held in 1977 pursuant to U.S. Public Law 94-584 (1976)

1. The U.S. law required the Constitution to meet certain parameters which was the subject of much debate during the ConCon process

2. ConCon met and submitted proposal to U.S. government -- no action was taken by Congress so the proposed Guam Constitution came back to Guam for plebiscite approval in 1978.

- i. Constitution failed
- ii. rallying cry for the defeat was "political status before Constitution", because a Constitution would have restricted Guam's ability to amend its status.

F. POLITICAL STATUS QUEST (1980-present)

I. Constitution Failure led to Political Status Quest

- 1. In 1980, Guam Public Law 15-128 established the Guam Commission on Self-Determination, noting that "past attempts to change the status of the Territory of Guam by means of constitutional convention had failed because the views of the people of Guam were not sought prior to the initiation of such proposed constitution..."
- 2. The Commission was tasked with conducting a plebiscite on the preferred political status of the people of Guam.
- 3. In January 1982 Commonwealth and Statehood were the two highest voting getting political status options.
- 4. In September of 1982 Commonwealth was selected by a 73% to 27% vote over Statehood.

II. Commonwealth Mandate

- 1. Following up on the people's mandate for Commonwealth, in 1983 Guam's leaders met with federal officials in Albuquerque New Mexico to discuss the approach: a Congressional route was recommended because it would probably be quicker.
- 2. The law regarding the Commission was changed to reduce the number of members to a more manageable working group.

III. The New Commission on Self-Determination

- 1. 1984
 - a. The Commission worked on several drafts of a Commonwealth Act.
 - b. Draft Act #4 was reviewed by federal officials in late 1984, and some changes were suggested.
 - c. Congress recommended changing:
 - i. Guam Congressman's veto power;
 - ii. Trade provisions;
 - iii. Guam approval for U.S. bases;
 - iv. Term of the District Court Judge;
 - v. Transportation and Labor.
- 2. 1985
 - a. When the CSD met in April to make changes, Legislators recommended that the Commission not acquiesce to the recommendations of one member of Congress.

- i. Full scale changes were not made to protect the bi-partisan nature of the political status movement.
 - ii. Base approval was changed to "consultations"; Congressional veto power was changed to "mutual consent".
 - b. Additional provisions were added:
 - i. Economic Task Force recommendations (Chamber of Commerce)
 - ii. Recognition of Chamorro rights
 - c. Public hearings held throughout the island
 - i. opposition to immigration control and Chamorro rights by non-Chamorro groups.
 - d. Commission recommended that plebiscite be held on the entire Commonwealth Act in April of 1986.
3. 1986
- a. Legislature does not fund plebiscite because of upcoming elections for Governor, however, it does fund a printing of the Act. Legislature also requires voting on the Act to be Article-by-Article, rather than on the entire document as recommended by the Commission.
 - b. Congressional Research Service releases its study of the Act -- very critical. Legal Counsel response shows CRS review to be "shallow in its legal and political understanding of the Commonwealth Act, as well as historical conditions in Guam.
 - c. November, Congressman Udall recommends that the Commonwealth be split into controversial and non-controversial sections, and that Congress amend the Act before it goes to the voters of Guam.
 - d. Elections in November of 1986 meant that there were changes to the membership of the Commission. Five (5) new members came on board.
4. 1987
- a. Plebiscite date established for August 1987. Legislature funds plebiscite, and public education campaign.
 - b. April, visit by Congressman de Lugo, Lagomarsino, Blaz. Recommend that CSD not hold plebiscite until after Congress has acted on the measure. CSD tells Congressmen that this approach is unacceptable.
 - c. Commission goes village to village to answer questions, and discuss the Commonwealth Act. Media events include: debates, newspaper notices, posters, TV exposure.
 - d. August 8, First plebiscite: 10 of twelve Articles pass.
 - e. CSD requests funds for another plebiscite on two defeated Articles, requests vote section-by-section. Rewrites two Articles.

- f. 2nd Plebiscite: All sections pass by greater margin than the first 10 Articles passed.
 - g. Congressman Blaz, and Legal Counsel (Rosenblatt) recommend taking the approved act back to Washington for mark-ups prior to introduction. Commission rejects proposal, and insists on presenting the Act to Congress and Administration as was passed.
5. 1988
- a. CSD presents the GCA to Congress (February)
 - b. Retains new Legal Counsel (Mondale)
 - c. GCA introduced in the House by Congressman Blaz (R-GU), and Senators Johnston (D-LA), and McClure (R-ID)
 - d. At the recommendation of CSD, U.S. Executive Branch forms Commonwealth Task Force which is represented by 24 federal agencies. Report is scheduled for release in December. (Never released).
 - e. Commission activity is minimal due to Senatorial elections, and federal review process.
6. 1989
- a. Reintroduction of GCA in Congress (H.R. 98 -- House, and S. 317 -- Senate).
 - b. Commission has budget for a public relations firm to bring Guam nationwide attention
 - c. CSD visits Washington (February-March):
 - i. expands base of Congressional contacts about the GCA;
 - ii. interviews some of the nations biggest PR firms for Commonwealth effort;
 - iii. secures CSD access to Congressional Commonwealth study groups.

G. THE GUAM COMMONWEALTH ACT -- WHAT IT MEANS FOR GUAM.

As an unincorporated territory, Guam has no rights of its own, it is not governed by the U.S. Constitution, and is entirely subject to the will of Congress and federal agencies. Guam in the federal system operates as an agency of the federal government. A recent court case on Guam lands seized by the federal government following WWII determined that the U.S. does not have to prove it treated Guam fairly because Guam is a possession -- owned by, but not a part of the U.S.

How does the Commonwealth better Guam's political status? Guam's economy? Guam's role with its neighbors in the Pacific?

ARTICLES 1&2

These two articles of the GCA cover: Political Relationship (with U.S.) and Applicability of Federal Law.

I. Self-Government/Relationship to U.S.

1. Guam would be a self-governing body in partnership with U.S. Pacific interests, rather than owned by the U.S. and subject to changes as often as Washington wants. Guam would have to be treated fairly by the U.S. Currently Guam does not have to be treated fairly by the U.S. (Option 3 Land Claimants case: Defense presented by U.S. Attorney William O'Connor)
 - a. U.S. would recognize Guam's internal self-government;
 - b. Guam would have the right to a Constitution of its own;
 - c. Agreements between the federal government and Guam in the Commonwealth could not be changed except by mutual consent. Presently, the federal government could do anything with Guam: sell it; take away citizenship; make the entire island a military base, etc.
2. Under Commonwealth, the indigenous people of Guam -- the Chamorros -- would be recognized and given the right to self-determination in Guam's ultimate political status.
 - a. Training programs for Chamorros
 - b. Preference for federal jobs in Guam
 - c. Right to decide what Guam's ultimate political status will be.
3. U.S. Citizenship and civil rights would be extended to Guam, and could not be thereafter withdrawn by the U.S.
4. A Joint Commission would be established between Guam and the U.S. which would deal with:
 - a. problems arising from implementation of the Commonwealth;
 - b. Existing federal laws;
 - c. Long-standing grievances of Guam such as war reparations and excess federal land.

II. Article 3 Foreign Affairs and Defense

1. The U.S. would have authority to use Guam for defense purposes
 - a. Any base expansion in times of declared war would have to be in consultation with the government of Guam.
 - b. No foreign bases could be established in Guam, nor could foreign troops be stationed in Guam without consultation with Guam.
2. U.S. would assist Guam in entering regional bodies
 - a. U.S. would consult with Guam on any international treaties or agreements affecting Guam.
 - b. U.S. would assist Guam in establishing regional trade and other offices.
 - c. U.S. would seek favorable treatment for Guam exports to countries in the region.

3. Nuclear Waste, and other wastes could not be deposited in Guam waters: U.S. would be required to clean up existing dump sites.

III. Article 4 -- Courts

-- Establishment of a Supreme Court of Guam (already U.S. law)

IV. Article 5 -- Trade

1. Would establish a Guam-U.S. Free Trade Zone Area in Guam

2. Guam products would be given preference into the U.S.

3. A Trade Agreement similar to the one the U.S. has with Israel (a 30% Value Added provision) would be in effect.

Note: Currently, Guam's Trade provisions allow some of these benefits, but every time Guam establishes an industry (Watch, textiles, etc.) the U.S. has changed its regulations for that specific industry -- U.S. changes its standards in relation to Guam's industry. Under Commonwealth these items would be guaranteed, and would allow for stable economic development.

V. Article 6 -- Taxation

-- Would allow Guam to establish its own tax system (federal law provides for this now, but under Commonwealth it could not be changed if the federal government changed its mind).

VI. Article 7 -- Immigration

1. This provision would allow Guam to Control immigration into the island, in recognition of the limited land space, and limited resources such as water.

a. Currently the U.S. government controls immigration, and this has created development and infrastructural problems, and other costs which long time residents must bear.

b. In the past 8 years Guam has been the fastest growing U.S. community -- 24% population growth between 1980-88.

2. Immigrants to Guam could no longer get credit in Guam for U.S. Citizenship through naturalization.

a. Currently over 1,000 immigrants per year become naturalized in Guam.

3. Guam Only Visa for tourist purposes.

VII. Article 8 -- Labor

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1. U.S. "Coastwise Laws" (requiring the Transportation of goods between two U.S. ports to be on American built ships) would no longer apply to Guam for the purposes of transporting fish and fish products from Guam to the U.S.
2. The agreement between U.S. shipping lines (which Guam currently subsidizes) would be up for review by the Joint Commission.
3. The Governor of Guam could sponsor airlines into Guam -- in consultation with the President.
-- Presently the U.S. Department of Transportation governs which airlines are allowed into Guam and this limits economic opportunity from Asian countries.
4. Guam would remain an "essential airservice" point with respect to U.S. airlines.
5. Guam would be "domestic" for the purpose of rate setting in the telecommunications area. (Currently Guam is "foreign").

IX. Article 10 -- Land, Natural Resources, Utilities

1. Land & Natural Resources
 - a. All living and non-living resources in a 200 mile Exclusive Economic Zone (EEZ) around Guam would be property of the Commonwealth (Currently, the U.S. claims this as their property).
 - b. All federal lands released would not have to be paid for by Guam (Currently, releasable federal lands must be paid for by Guam).
 - c. The U.S. could not take any more Guam property except in times of declared war, unless approved by the government of Guam.
 - d. All historic and recreational sites on federal property would be open to access for Guam residents.
 - e. Military would provide access to landlocked private property.
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 - a. U.S. would transfer all utilities to the government of Guam.

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**The Roots of Guam's Experience as an American Colony:
Approaches to Understanding the Rationale
of a New Political Status.**

"Hurrah...score one more victory for Young America and Old Glory"

Larry Russell following the fall of San Isidro (Philippine Islands) in Edward Stratemeyer's Under Lawton Through Luzon (a popular novel for boys) 1900.

"The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."

The Treaty of Paris, Article IX (Treaty of Peace between the United States and the Spanish Empire, signed December 10, 1898.)

"Justice White, always the leading exponent of the doctrine ("incorporation") had thus answered the question "Does the Constitution follow the flag?" with the reply "Sometimes."

James F. Watts Jr., "Edward D. White," in Friedman and Israel (ed.), Justices of the United States Supreme Court (R.R. Bowker Co.: N.Y.: 1969).

"Because Guam is an unincorporated territory...the government of Guam is, in essence, an instrumentality of the federal government...Except as Congress may determine, Guam has no inherent right to govern itself."

Sakamoto v. Duty Free Shoppers (1985)

"Defendant sets forth...legal propositions in support of its conclusion that a fiduciary or trust relationship does not exist between the United States and the Guamanian people...Guam was ceded to the United States by Spain through the Treaty of Paris. It is not a treaty with the Guamanian people."

Attorneys for the United States of America (defendants) In the matter of the Guam Land Cases Filed Under the Provisions of the Omnibus Territories Act of 1977 and Which Were Subject to Ostensible Option 3 Elections (U.S. District Court of Guam, 1988)

INTRODUCTION

Conquest. Possession. Colonization. Unincorporation. This is the living history of Guam and other prizes of America's war with Spain in 1898.

For many Americans, this colonial history poses gross conflicts with our understanding and appreciation of American democracy. Indeed "an American colony" in the 1980's would seem to be

beyond the imagination of most Americans. America never gloated over its "empire" the way other western countries had. From the beginning of the colonial experience, the forces against such policies were ardent, indirectly leading sentiment which effectuated the removal of the more obvious colonial problems (e.g. the Philippines). However, most Americans' understanding of the state of affairs of the "smaller" colonial problems (e.g. Guam) has been lost.

U.S. possessions gained in the Spanish American war were taken, used for strategic purposes, brought within the framework of American interests, and then either granted independence or kept as colonies. This underlying relationship of metropolitan power and peripheral possession continues to be problematic for Guam's political, social, and economic development. While Guam's current quest for a new political status would limit Washington's powers of Congressional and Administrative governance of Guam, America's 1898 colonial experiment is not history revisited for Guam. It is today's territorial experience and something Guam is clearly trying to change through the electorally endorsed Guam Commonwealth Act.

The Commonwealth Act could be examined in a vacuum. It is easy to look at the Act, criticize perceived "problems," and point a finger of accusation at its so-called discrimination. However, the point of fact is that Guam's quest for a new political status did not arise in an isolated and sterile environment. Guam's quest for Commonwealth, and the forerunning quest for citizenship and civil rights, arose from and were fueled by a very clear discrimination. This discrimination was perceived to be not only against Guam's inhabitants, but equally in relation to other U.S. territorial possessions who achieved rights to self-determination, or citizenship, and Organic Acts, many years before Guam.

To examine the nature of the Commonwealth Act, without appreciating the historical context in which it has evolved, is in itself a form of discrimination. For those who are absent cultural and historical roots in Guam and that flag their disagreement with the Act only contribute to ignoring the problems Guam experiences as a colonial possession, and the contribution, intended or otherwise, which settler populations have made to the colonial experience. Applying the tests of an American governmental or constitutional norm to Guam is inappropriate: as far as American law is concerned these premises were never envisaged to apply. The Executive Branch annexed the island in 1898 and has run the administrative programs. In 1901 the Supreme Court determined that Guam had not received a promise of becoming a part of the United States. The Congress was only too willing to follow the Supreme Court's lead and in 1950 denoted Guam as an "unincorporated territory" of the United States. Never has Guam been promised anything more than being a U.S. colony.

To appreciate the evolution of Guam's current Commonwealth quest, one must examine the conditions under which Guam has advanced its interests vis-a-vis the interests of the United States, which in 1898 were utilitarian, and in 1989, strategic. Interest in the homeland of Guam's Chamorros by Spanish, Japanese, and American colonizers has always relegated the people to a secondary role. The property of the Chamorro homeland, as opposed to an interest in the people by the Pacific powers in Guam's history, must not be ignored. It has set the tone of not only the control of the people, but also the reaction of the people to such treatment.

Some will see a contradiction between what Guam is seeking and the U.S. Constitution or U.S. policy. However, such points ignore the schizophrenia of American jurisprudence, policy and conflicts as these have been applied ad hoc to U.S. insular territories in general, and Guam specifically.

Guam's dissatisfaction with its past and existing status has amply illustrated through Guam's political status history under the American flag. Guam has been the catalyst for every improvement in its colonial relationship with the United States since 1898.² For example, Guam's quest for civil rights and citizenship predated the Organic Act by nearly fifty years; Guam pursued an elected chief executive for many years before Congress extended the "right", as was also the case with Guam's first constitutional convention, and elected Washington delegate.

That the Commonwealth Act attempts to reverse some of the elements of discrimination, conflicts and contradictions of U.S. territorial policy as it has applied to Guam is not a righting of past wrongs. The Commonwealth Act is an attempt to change a continuing wrong, and a continuing discrimination inherent in the colonial philosophy of existing territorial policy as it applies to U.S. interests in Guam.

To understand the drive of the people of Guam for a better relationship with the United States involves an examination of the roots of American colonial policy in Guam: the territorial doctrine of incorporation, and its companion "unincorporation." The myriad impact of this policy on specific conditions is not the intent of this paper, although they are well documented and numerous. Rather, it will examine the impetus behind the existence of the continuing policy. It is hoped that a better understanding to the rationale behind Guam's quest for a new political status will be advanced by this approach.

U.S. COLONIAL POLICY: THE TERRITORIAL DOCTRINE

The Constitutional Edict

The roots of the territorial doctrine lie with the "Northwest Ordinance" of 1787, passed before the U.S. Constitution but

ratified by the 1st Congress. The Northwest Ordinance established the first model of the U.S. territorial system and colonial policy which enabled the United States to expand its jurisdiction westward across the North American continent, and ultimately to Hawaii and Alaska. The Ordinance provided for rapid evolution from the status of dependent territories to statehood, equal in every respect to the status of the original thirteen states.

Concurrent developments at the Constitutional Convention also brought territorial policy into the framework of the American nation's soon-to-be-adopted guiding principles. In response to conflicts among the original states and disagreements over their western extent, the framers of the Constitution adopted Article IV, Section 3. The first clause of the Section permits the formation of new states both from territories and from eastern states. The second clause of the Section, the "territorial clause," gave Congress the power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States". The two clauses of Section 3 together formed the basis for territories acquired by the United States to be overseen by the federal government, with the expectation that statehood would be the future political status of such jurisdictions.⁴

The territorial expansion of the United States, adding the Southwest Territory in 1790 and the Louisiana Purchase in 1803, continued the principle of territorial evolution established by the Northwest Ordinance and the Constitution. Although the Louisiana Purchase raised concerns about the wisdom of incorporating a territory dominated by inhabitants of French descent, the Treaty ceding the territory to the United States provided:

"that the inhabitants of the ceded territory shall be incorporated into the Union of the United States and admitted as soon as possible according to the principles of the Federal Constitution..." (Emphasis provided)

When the United States acquired new territory from Mexico in 1848, the federal government treated the areas as part of the United States from the date of cession. Secretary of State James Buchanan instructed the post-office agent in California that:

"the constitution of the United States, the safeguard of all our civil rights, was extended over California on May 30, 1848, the day on which our late treaty with Mexico was finally consummated."⁶

Although the treatment of new territories varied at times during the first century of American expansion, the essential pattern remained unchanged. Following the Northwest Ordinance, Congress had established that territories were infant states, to be admitted into the Union as soon as their evolution allowed for it. Moreover, it was assumed that the Constitution followed the

flag. This, then, was the established policy which American policy-makers were to deal with when they faced the problems of governing the territories acquired by the War between the U.S. and Spain in 1898.

The Insular Cases

The temper of American policy leading up to the Spanish-American War was set by an American desire to establish its role in the world-wide imperialist movement. Academicians and religious leaders popularized America's role as one of a mission to civilize the backward peoples of the world. Others saw the expansion as a natural outgrowth of the "frontier thesis". Naval proponents wrote of the importance of sea power which necessarily involved a policy of expansion beyond the American continent.¹⁰ Politicians, such as Theodore Roosevelt and Henry C. Lodge, promoted "imperialism," saving their strongest criticisms for "anti-imperialists." More than a hint of racial superiority and dominance colored nearly every "imperialist" mission to absorb some of the "waste places of the earth" in order to advance civilization and for "the advancement of the race."¹¹

That these new areas would become a part of, and incorporated into, the United States does not appear to have been on the new colonial agenda. This position was made abundantly clear in Congress' endorsement of the use of force against Spain in Cuba. When Congress passed its joint Resolution of April 20, 1898, allowing the President the use of the entire armed forces to liberate Cuba, the "Teller Amendment" provided:

"That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over the said Island, except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the Island to its people."¹²

The executive branch, however, took more liberty with exercising war that the Teller Amendment had provided, as all Spanish colonies in the Caribbean and the Pacific became targets of war. After three months of "a splendid little war"¹³ with Spain, the government of Spain sued for peace. In the Treaty of Paris signed on December 10, 1898, Spain relinquished sovereignty over Cuba, and formalized the cession of the Philippines, Guam and Puerto Rico. "This put the United States in the anomalous position of having fought a war against Spain at least officially for Cuban self-determination, only to deny that principle to the colonies acquired in the peace settlement."¹⁴

Nevertheless, the United States had for the first time through treaty acquired extra-continental territories populated by persons of an alien race, culture, and heritage. Moreover, it was the first time in American colonial history that no promise

of citizenship, Constitutional protections, or statehood was implied or offered to acquired territories.

The treatment of the new American territorial appendages had not been established in American law. Congress had no established mechanism of dealing with such political units, and the Executive Branch in crafting the Treaty of Paris acquiesced to Congress' territorial domain in dealing with the civil and political rights of the "native inhabitants" in the conquered territory. In 1897, naval strategist Alfred Mahan had urged Undersecretary of the Navy Roosevelt to go beyond Naval Secretary Long's perceived "insoluble political problem" of annexing Pacific islands, and to "take them first and solve afterwards."¹⁵ Into this void stepped the Courts.

In 1901, the first territorial cases brought to the Supreme Court -- the first of the so-called "Insular Cases" -- created a new status in American law, specifically for such areas. The cases were very controversial, and the Supreme Court's decisions were by the narrowest of margins, 5-4. Mr. Justice Charles Warren, in his The Supreme Court in United States History (1922) noted from his historical perspective that:

"this judicial drama of truly Olympian proportions constituted by far the most important fact in the Court's history, during the period since [Justice] Waite's death."¹⁶

The two cases which came before the Supreme Court in January of 1901 were De Lima v. Bidwell¹⁷ and Downes v. Bidwell¹⁸. The first case involved a suit against the Collector of the Port of New York for charging duty on sugar from Puerto Rico as if it were a foreign country. The second was a challenge to the so-called Foraker Act of 1900 which imposed special duties on goods from Puerto Rico.

In De Lima v. Bidwell the plaintiffs argued that Puerto Rico was not a foreign country, and that duties exacted should be returned. In Downes v. Bidwell, the plaintiffs contended that Congressional enactment of statutes imposing duties on products from Puerto Rico was in violation of the Constitution's "uniformity clause," which declared "all duties, imposts, and excises shall be uniform throughout the United States." In the first case, the Supreme Court held that duties were illegally exacted because, upon the ratification by the Senate of the Treaty of Paris, "Puerto Rico was not a foreign country within the meaning of tariff laws but a territory of the United States."¹⁹ In Downes v. Bidwell the Court held that the Foraker Act was legal: in dealing with the new territories the Congress was not bound by the Constitution's "uniformity clause," and neither did the peoples of the territory have the inherent right to such Constitutional protections.²⁰

Although Downes has been viewed as the more important case for purposes of precedent, both cases brought to the fore the fundamental question of whether the insular territories were a

part of the United States. In De Lima, one dissenting Justice pointed out that "foreign country" and "domestic territory" had only been settled for customs duty, and that matters of sovereignty remained unresolved. On the other hand, Downes evoked direct debate around fundamental Constitutional issues among the Justices.

The absence of Constitutional restrictions on the Congress and the inapplicability of Constitutional protections for the insular territories was ultimately defined by the Court under the new doctrine of territorial incorporation -- and unincorporation. Justice White came to the conclusion that the question of whether the taxes levied on Puerto Rico under the Foraker Act were repugnant to the Constitution was:

"to be resolved by answering the inquiry, Had Puerto Rico, at the time of the passage of the act in question, been incorporated into and become an integral part of the United States?"²¹

Drawing on the word "incorporated," which had no judicial meaning but had been used from time to time in treaties during America's territorial expansionism, Justice White concluded that "incorporation" (retroactively applied to earlier territories) was not a promise of ultimate statehood, but that the Union of States was made up of States and incorporated Territories. The Territories which had been ceded to the United States were incorporated, according to White, "under the express pledge that they should forever remain a part thereof."²²

On the question of Puerto Rico's status as a territory, White reasoned that the provisions of the Treaty of Paris that allowed "The civil rights and political status of the native inhabitants of the ceded territories to be determined by Congress,"²³ negated any intention to incorporate the acquired territories. Thus, he concluded that the uniformity clause of the Constitution was not applicable to Congress in legislating for Puerto Rico.

Only "fundamental provisions" of the Constitution were to apply to unincorporated territories, but the Constitution was not to follow the flag to the new "unincorporated" parts of the United States.²⁴ Mr. Justice Gray stated the doctrine clearly when he noted:

"If Congress is not ready to construct a complete government for the conquered territory, it may establish a temporary government, which is not subject to all restrictions of the Constitution."²⁵

Given the very controversial nature of the cases, and the creation of a new status within American Constitutional law, the dissenting position of four Supreme Court Justices' was strident. Looking more closely at the sovereignty test in Downes than in De Lima, the dissenting Chief Justice Fuller noted that "there seems to be some concurrence in the view that Porto Rico

belongs to the United States, but never-the-less, and not withstanding the act of Congress, is not a part of the United States subject to the provisions of the Constitution..."²⁶ The new judicial theory of "incorporation" and unincorporation bothered the Chief Justice greatly, and he pointed directly to the political climate of imperialism in the country as the motivation behind the prevailing Justice's view:

"That theory (incorporation) assumes that the Constitution created a government empowered to acquire countries throughout the world, to be governed by differing rules than those obtaining in the original States and territories, and substitutes for the present form of republican government, a system of domination over distant provinces in the exercise of unrestricted power..."²⁷

Responding to the expressed racial and social worry of the Court about the "millions of people" to whom the Constitution might apply if the Treaty of Paris was viewed to be a matter of "incorporation" into the United States, Chief Justice Fuller said:

"these arguments are merely political, and 'political reasons have not the requisite certainty to afford rules of judicial interpretation.'"²⁸

Justice Harlan, too, was concerned about the extra-Constitutional powers which were afforded Congress in dealing with extra-continental territories. That the United States might take on new territories "by conquest or treaty, and hold them as mere colonies or provinces -- the people inhabiting them to enjoy such rights as Congress chooses to accord to them -- is inconsistent with the spirit and genius as well as the words of the Constitution," Harlan wrote. "Monarchical and despotic governments, unrestrained by written constitutions, may do with newly acquired territories what this government may not do consistently with our fundamental law."²⁹

Harlan was concerned that, from the new doctrine, a "radical and mischievous change in our system of government will be the result." "We will," he wrote, "in that event, pass from the era of a constitutional liberty guarded and protected by a written constitution into an era of legislative absolutism."³⁰ In a later case, Mr. Justice Harlan expressed more philosophically the problems he perceived with the doctrine of incorporation. With such a doctrine he saw that territories were dependencies

"whose inhabitants will be regarded as 'subjects' or 'dependent peoples,' to be controlled as Congress may see fit, not as the Constitution requires, nor as the people governed may wish...a colonial system entirely foreign to our government and abhorrent to the principles that underlie and pervade our Constitution."³¹

The Insular cases which followed (Hawaii v. Mankichi (1903); Dorr v. United States (1904); Rassmussen v. United States (1905); Dowdell v. United States (1911); Ocampo v. United States

(1914); Balzac v. United States (1922)) cemented the constitutional status of unincorporated territories. In his opinion in Balzac v. United States, Chief Justice Taft noted that the status of territory acquired by the Spanish American War and the Treaty of Paris had "become the settled law of the court..."³² He further left open to Congress the sole ability to change the status of such territories when he said that if "Congress intended to take the important step of changing the treaty status of Porto Rico by incorporating it into the Union,"³³ it would have done so by plain declaration....

APPROACHES

Young Larry Russell's romantic exclamation following the conquest of San Isidro was clearly an overreaction to the impact of Old Glory and the success of Young America in the "new territories." Forty Three (43) years after the Treaty of Paris, the successes of extended defense perimeters, new markets, and the "empire" in Guam and the Philippines were sacrificed. Arguably, the failure of "Young America" to capitalize on its empire building quest was related to its unwillingness to expend the time and resources in maintaining its empire. Underlying this unwillingness was an absence of commitment to extend the empire in a manner which had, until 1898, been a part of the American territorial tradition: the Constitution had always followed the flag.

Without an American constitutional commitment, Congress' will, (as opposed to liberty guarded and protected by a written constitution), oversaw the extension of Old Glory but not the principles or protections it was understood to represent. Since WWII, measures of the Constitution have been extended to the unincorporated territory of Guam, but even these continue to be "legislative constitutionalism," rather than an application of the Constitution under its own force.

In 1950, the Congress did extend civil rights to the people of Guam, but the island's political status remained unchanged. Guam's colonial status was formalized by the Organic Act of 1950: "Guam is hereby declared to be an unincorporated territory of the United States..."³⁴ This declaration followed a United Nation's recognition that Guam was a non-self-governing territory, and as such the United States accepted responsibility to "develop self-government, (and) to take due account of the political aspirations of the people..."³⁵ The Organic Act did not satisfy the international commitment made by the U.S. to decolonization. Indeed, the U.N.'s Decolonization Committee and General Assembly urged the United States to allow elected Governor's and Constitutions in the territories at times analogous to when Guam leaders were pursuing these same measures (i.e., Prior to Congress' expressed extension of these fundamental democratic rights). The U.S. Mission to the U.N. annually reports on the status of Guam.

While the 1950 Organic Act legislatively extended additional measures of self-governance, citizenship, and portions of the Constitution, these "privileges" were purely legislative, and not Constitutional. For example, those Guam residents and their descendants who were extended citizenship³⁶ have only "legislative citizenship," rather than a "constitutional citizenship" as do naturalized citizens in Guam and, ³⁷ other U.S. citizen settler populations and their dependents. The fact that as an unincorporated territory Guam's "native inhabitants" have only an extension of the U.S. Constitution, and not the force of the Constitution itself, illustrates the limited force and effect of the principles of American democracy to Guam.

Legislative actions such as the Organic Act have not served to alter the fundamental relationship between the federal government and the territory. Indeed, the legislative statement of Congress' plenary power over Guam -- "Guam is hereby declared to be an unincorporated territory..." -- came hand in hand with the extension of U.S. citizenship. Congress still possesses the power to create, repeal, or amend any measure it so desires.

Perhaps most telling about the colonial nature of the territorial doctrine -- and particularly as it applies to "unincorporated territory" -- is the designation of "territory" as property. As such, the application of the Constitution to property acquired and owned by the United States is a matter which could as easily be withdrawn as it was extended. "Territory" only becomes, and exists as, a legitimate political unit at Congress' discretion.

Under these continuing conditions, the U.S. Constitution, which "offers the means of remedying present ills without sacrificing past gains,"³⁸ has but circumspect ability to right past and present ills experienced in Guam because it has no force or effect of its own in such "territory." In the territories, "legislative absolutism" governs the inhabitants. It must be Congress, then, which addresses the past and present ills which limit Guam's ability to be self-governing. It must be Congress that reconciles the effects of their past actions with respect to a native homeland. It must be Congress which comes to grips with its responsibility to the people of Guam and America's international commitment to decolonization.

Many of the measures which the Congress chose to extend to Guam under the Organic Act and subsequent federal legislation have been contested by Guam in the draft Guam Commonwealth Act. These areas are clearly matters which have been electorally determined not to be in the best interests of the islands continuing relationship with the United States. Issues such as immigration control -- and the parallel issue of the right of the Chamorro people to determine the island's ultimate political status -- form a strong thrust toward ameliorating federal activities which are not seen to be in Guam's interest.

However, more fundamental in relation to the issue of colonial oversight is the provision for mutual consent.

While the Guam Commonwealth Act would not take Guam from under the "territorial clause" of the Constitution, Section 103 does provide a limit on the discretionary rule of Congress. "In order to respect the self-government granted to the Commonwealth of Guam under this Act, the United States agrees to limit the exercise of its authority so that provisions of this Act may be modified only with the mutual₃ consent" of the governments of the island and the United States.

The territorial clause, as would be modified by the GCA, (i.e. subject to the mutual consent provision of Section 103), would still be required to "dispose of ... Territory" upon the exercise of the ultimate right of self-determination. If Guam were to choose full integration (i.e., statehood), the territorial clause is the only mechanism for Guam to be granted that status. Conversely, if Guam were to choose independence, or free association, a mechanism to modify the Commonwealth Act and dispose of territory, could only come from Congress. The provision for mutual consent, then, accomplishes the goal of limiting Congress' discretionary prerogative, while reserving its power for recognition of Guam's right to full self-government: as either a state or as a republic.

One obvious question remains unanswered in approaching an understanding of Guam's rationale to a new political status. Against the backdrop of Guam's colonial history, one might expect a natural response of Guam's leaders to be an advocacy for independence. Why then, is Guam pursuing a close, continued relationship with the United States, given Guam's long -- and still unfulfilled -- quest for self-government? The answer to this question is more complex than matters of simple patriotism and pride in Uncle Sam, and all the answers are not intended to be offered here. However, hypotheses are forwarded to provide a further glimpse of how Guam's colonial status and its future under Commonwealth are interrelated.

Perhaps the most telling aspect of Guam-U.S. relations has been the position of absolute control from which the U.S. government has managed (or mismanaged) the affairs of Guam. From a vantage of great wealth, immeasurable strength, powerful information, and abundant resources, the U.S. government has found a strategic value in retaining Guam. Congress has the legal ability to do so as it sees fit.

Conversely, Guam in a relatively powerless position, dependent economy, restricted sources of information and limited resources, has found material benefits as a dependent that many independent nations might only dream of. Additionally, it could be asserted that many Guamanians, appreciating the "overarching issue of survival and its implications for viability both inspire the federal-local relationship which exists (security

factors) and argue persuasively for that relationship's preservation."⁴⁰ The U.S. has, then, been in a position to settle its interests from its position of power, and many Guamanians have been made to appreciate benefits from this relationship that might not otherwise exist.

In the atmosphere of a bountiful dependency, it is not surprising that the options for the future which Guam possesses have only recently been subjected to widespread exploration. It has only been in the period of the past few years (paralleled by a less dependent economy, political status action groups, and the failure of the Constitutional Convention process) that residents have looked beyond the status quo of Guam as an unincorporated territory. As "options" (rather than just amendments to the status quo) have opened new doors of opportunity, Guamanians have brought with them their strong and long-expressed sentiments in support of the principles that the American Founding Fathers fought for. Mr. Baltazar Bordallo, a pre-war Guam Congressman, in appearing before a Senate Committee in 1937 supporting Guam's citizenship request, noted that the American Founding Fathers "never intended that this country should maintain two forms of government, one for its citizens, and another, a different form, for its subjects."⁴¹ That sentiment undoubtedly continues today in the minds of Guam's leaders as they examine the myriad impact of the territorial clause on the affairs, conduct of government, and life in Guam.

Indeed, the textbook reading of American principles, which characterized the very first petition against U.S. treatment of Guam, has continued in Guam's desire to be closer to the United States through Commonwealth. It is an appreciation for the principles of American democracy and the desire to apply these principles to Guam-U.S. relations (irrespective of how unincorporated territories are treated by Constitutional law) that brings an element of U.S. perceived "independence" to Guam's desire for a "closer relationship". That Guam would desire to limit Presidential and Congressional discretion in broad matters affecting Guam is not widely viewed in U.S. governmental circles as bringing Guam closer to the United States. Guam's expressed desires to exercise Chamorro self-determination is, in itself, a challenge to continued Congressional oversight and equally is not seen as bringing Guam closer to the United States.

True to the "power and possession" nature of the current Guam-U.S. relationship, the federal government in the past ninety years has developed a culture of unquestioned control. They view this as their right. Missing from this insular view, purporting continued control over areas not promised to be part of the United States, is a refusal to see that the territorial policy conflicts greatly with America's incipient principles of self-government. After all, the foundation of the American nation was based on moving beyond mere colonial dependency. Guam's desire for a closer relationship with the United States

through requested respect, mutual consent, and an acknowledgment that the existing territorial relationship has outlasted its usefulness, provides Congress with a challenging task. The federal government must decide if the principles which caused American colonists to reevaluate their relationship with England are to be ignored in dealing with its own colonies quests for self-government.

Even Justice White and his prevailing colleagues in Downes v. Bidwell noted:

"It must be assumed that the legislative department of the government which within its lawful sphere is but the expression of the political conscience of the people of the United States, will be faithful to its duty under the Constitution, and therefore will terminate the occupation by the United States of territory which has been temporarily acquired, and which is demonstrated to be unfit to be incorporated into the United States, if it would be a violation of duty under the Constitution to hold it permanently."⁴²

Guam has been an American colony for nearly half of the life of the nation. While the great democracy overlooked the humble requests of the Chamorro people for the most basic civil rights for over fifty years leading up to the Organic Act, a more critical juncture has been reached through the proposed Guam Commonwealth Act. Guam is no longer asking just for basic civil rights. Guam has democratically forwarded to the federal government its desire for respect, equality, and mutuality. It is time for Congress to come from behind the veil of "domain" and recognize the legitimate rights for home rule which the people of Guam hold. As the relative benefits of Americanism wane in relation to Guam's growing economic independence, the U.S. government must come to terms with how well it exercises its guiding principles. Presently these principles stand in conflict with the colonial treatment the U.S. government has imposed upon its "unincorporated territories."

ENDNOTES

¹ The Philippines was granted self-government in 1907, a Commonwealth status in 1916, which was the path toward independence in 1942; Puerto Rico was granted an Organic Act in 1900, and citizenship in 1917; the U.S. Virgin Islands (acquired in 1917), was granted citizenship in 1927, and was provided an Organic Act in 1936. See, "Issues Affecting U.S. Territory and Insular Policy", (Report by the U.S. General Accounting Office, February, 1985) p. 10.

² This is proof not only of discrimination, but equally of the dissatisfaction of being subjected to a discrimination which Guam's earliest leaders found contradictory to American ideals. Bordallo, Penelope A Campaign for Political Rights on Guam, Mariana Islands 1899-1950. (Unpublished thesis, 1982) The first petition for self-government and citizenship in no uncertain terms described navy rule as "distasteful and highly repugnant to the fundamental principles of civilized government, and peculiarly so to those on which is based the American Government..." (p.296-70) In 1937, Guam Congressman Baltazar Bordallo told the U.S. Congress that the Guam delegation could not stand by silently while "prejudicial allegations" were made against their people. (p.136)

³ Boyer, W.W. "The First 130 Years of American Colonial Policy: 1787-1917" (Speech at Conference on U.S.-Offshore Area Relations, College of the Virgin Islands, 1981) (passim)

⁴ Leibowitz, Arnold "Federal Law and Guam," Virginia Journal of International Law (Volume 16:1, 1975) p. 23-4

⁵ cited in Boyer, op.cit.

⁶ Ibid.

⁷ GAO Study, op.cit., pp 4-5 (passim)

⁸ The pseudoscientific philosophy of Herbert Spencer's "Social Darwinism" was popularly espoused by prominent strategists, politicians, and military of the time. Spencer adapted Darwin's survival of the fittest into the concept of an Anglo-Saxon manifest destiny. The spread of Anglo-Saxons, and their government to the less fortunate in Asia and the Pacific was not only to advance the interest of their race, but also to civilize other peoples. Religious leaders such as Rev. Josiah Strong saw expansionist moves in much the same way. This combined belief in progress and human inequality (along with self-confidence and hope of gain), constituted the principal attitudes that underlay the popularly known "white man's burden."

⁹ Fredrick Jackson Turner's, Problems in American History (1892) traced the movement of "Americanism" from east to west,

and its institutional movement, ravages, and culture. The inherent "problem" of this boundless nation was "where to next?"

10 The foremost proponent of the naval advocacy was Captain Alfred Thayer Mahan. His major work, The Influence of Sea Power Upon History, 1660-1783 (1890) extolled the virtues of a big navy as the route to national greatness. Colonies were required to extend defense perimeter of a great nation, and a merchant marine to carry trade to and from colonies that would be defended by the navy. Mahan became a popular figure in this aspect of "imperialism," and became a regular writing companion of Theodore Roosevelt.

11 As cited by Farrell, Don The Americanization 1898-1918: The Pictorial History of Guam p. 9

12 Ibid p. 14

13 This quote is popularly attributed to Henry Cabot Lodge.

14 Unterberger, B.M. "National Self-Determination" in Encyclopedia of American Foreign Policy p. 637

15 Cited in Farrell, op.cit., p.10 Farrell also notes Mahan's involvement in selecting Guam, from amongst other Spanish possessions in the Pacific, in the planning for the Treaty of Paris. In a August 1898 report to Secretary of Navy Long, Mahan recommend that "Spain would cede to the U.S. 'an island in the Ladrone to be selected by the United States.' He suggested that an examination be made of the harbors in the island group 'before a 'selection' is made,' and recommended that a coaling station be acquired in 'one of the Ladrone Islands -- probably Guam." Ibid. p.38

16 Coudert, Fredrick "The Evolution of the Doctrine of Territorial Incorporation," 26 Columbia Law Review. Coudert was the attorney for the Plaintiff in the Downes case.

17 (1901) 182 U.S. 1, 21 Supreme Court Reporter 743

18 (1901) 182 U.S. 244, 21 Supreme Court Reporter 770

19 182 U.S. 1, 21 Sup. Ct. 743. It is interesting to note that Guam's status as a foreign country or territory is still not resolved by U.S. law. At times Guam is treated as a foreign country, and at other times as a part of the United States.

20 References to this issue are woven throughout the Downes v. Bidwell case. At times the point is made indirectly (e.g. "In short the Constitution deals with states, their people, and their representatives" -- italics are the Court's: 182 U.S. 244, 21 Sup. Ct. 770, p. 778). At other times the Courts decision is firmly etched ("...the provision of the Constitution just

referred to (the uniformity clause) was not applicable to Congress in legislating for Puerto Rico." : Ibid. p.808).

21 Ibid. p. 792

22 Ibid. p. 802

23 Treaty of Paris (Treaty of Peace between the United States of America and the Empire of Spain), Article IX.

24 Ibid. p.785 These "fundamental rights" were: religion; personal liberty and individual property; free access to courts; the due process of law; immunity from illegal searches and seizures as well as cruel and unusual punishment; and "other immunities as are indispensable to a free government."

25 Ibid. p.810

26 Ibid.

27 Ibid. p. 820

28 Ibid. 821

29 Ibid. 822-3

30 Ibid. 822

31 Hawaii v. Manichi (1903): 190 U.S. 197, 32 Supreme Court Reporter, p. 799.

32 Balzac v. Puerto Rico (1922): 258 U.S., 298, 42 Supreme Court Reporter, p. 346

33 Ibid.

34 Organic Act of Guam (64 Stat. 384).

35 U.N. Charter, Chapter XI, Article 73

36 The group of persons granted citizenship were statistically Chamorro. Section 4(2) of the Organic provided citizenship for "All persons born in the island of Guam who resided in Guam on April 11, 1899, including those temporarily absent..." and all persons born on the island after 1899.

37 For a distinction between citizenship gained through the 14th Amendment, and that gained by legislation, see Rogers v. Bellei 91 S.Ct. 1060, 1071 (1971). The leading case, still cited, on 14th Amendment citizenship is United States v. Wong Kim Ark, 169 U.S. 649, 18 S.Ct. 456 (1897).

Rogers held that citizenship gained outside the 14th Amendment of the U.S. Constitution, i.e., by one who gained citizenship

outside the United States, could be divested by statute. Afroyim v. Rusk, 87 S.Ct. 1660 (1967), held that the United States could not involuntarily divest a person of citizenship if it were gained through the 14th Amendment.

For all persons born after 1952, and so long as 8 U.S.C.A. Section 1101(a)(38), making Guam a part of the United States for the purposes of Immigration and Naturalization remains law, citizenship is protected by the 14th amendment, and Congress cannot divest persons of citizenship. (See Immigration and Naturalization Act of 1952, House Report No. 1365 U.S. Code Congress and Administration News, 1653, 1685.)

However, the Organic Act, Section 5(u) in applying new portions of the Constitution to Guam, applies only the second sentence of the 14th Amendment to Guam, and not the first sentence on protection of citizenship. In the Congressional discussion of the applicability of this provision in the Organic Act, there was concern that application of the full ten amendments added would somehow make Guam an incorporated territory, something which Congress very intentionally did not intend to happen. Therefore one must assume that omission of the first sentence of the 14th Amendment was intentional.

It has been said that once applied, a constitutional provision could not be taken away. However, the only place that the Supreme Court has addressed the issue was in Downes v. Bidwell. The discussion on this issue in the case was in relation to the District of Columbia, which formerly had been a part of two states of the Union (Virginia and Maryland). The court said that the "mere cession of the District of Columbia to the federal government relinquished the authority of the states, but it did not take it out from under the aegis of the Constitution." The court continued, "Indeed, it would have been a fanciful construction to hold that territory which had once been part of the United States ceased to be such by being ceded directly to the federal government." Guam is of course not part of the United States, so the Constitution as a whole, and under its own force is not applicable. Therefore, there is no compelling reason to believe that what Congress has extended to unincorporated territories such as Guam via legislation could not be taken away by legislation.

38 The Honorable Peter W. Rodino, Jr. Chairman of the Committee on the Judiciary of the House of Representatives, the Forward to The Constitution of the United States: Bicentennial Edition (Washington:U.S. Gov. Press, 1987).

39 Draft Guam Commonwealth Act, Article 1, Section 103.

40 John D. Gilliam. Political Status and the Developing Economy of Guam, (Foundations of Guam's Economy Series) p. 7 Gilliam states his hypothesis that "The indigenous people of Guam are understandably sensitive to this population's fragile and

precarious state; within the lifetime of Guam's present indigenous leadership the entire population of Guam was enslaved and threatened with extermination." (Gilliam's emphasis) p.6

41 Bordallo, op.cit., p.274

42 Downes, op.cit., p.771



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MAJOR, U.S. ARMY (RET)
PRESIDENT/DIRECTOR

DEC 19 1989

December 13, 1989

The Honorable Ron de Lugo, M.C.
U.S. House of Representatives
2238 Rayburn House Building
Washington, D.C. 20515

Dear Congressman de Lugo:

Although I was unable to personally attend the hearing in Hawaii on Guam's quest for Commonwealth, I would like to submit the following for the record.

I am in support of the Commonwealth Act with a few exceptions and believe that Guam and its people are most deserving when it comes to establishing a closer political association with the United States.

There is no question that the people of Guam including non-Chamorros are not only among the most patriotic of Americans but also embrace the ideals and values that made our Nation great.

Having suffered through 400 years of cruel domination by Spain which resulted in a near demise of the Chamorros as a race followed by U.S. military rule and appointed governments until the late 1960's as well as a brief but very brutal and sadistic military occupation by Japan during WWII, the people of Guam have most certainly known and suffered a history of hardship and injustice. Personally, I can think of no other people more deserving of being full-fledged American citizens than the people of Guam. I first visited Guam as a service-man in September, 1962 and made return trips in 1966, 67, 70 and 73. In January, 1974 I left Thailand where I had been residing since my retirement from the U.S. Army in November 1973 and made my way to Guam where I established a permanent home and residence.

My wife as well as our children are of Chamorro ancestry. I consider myself a Guamanian and consider Guam my home. Guam's future, therefore, is an extremely important and vital matter to me personally.

P.O. Box 9369 • Tamuning, Guam 96911 • 646-8545 • 646-4457 • 646-8097

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Congressman deLugo
December 13, 1989

There are thousands of other citizens on Guam who fit into the category of non-Chamorro Guamanians. Citizens who feel they have made major and important contributions to the development of Guam which now stands as a showplace of prosperity and economic opportunity in this part of the Pacific. Citizens who with a great deal of pride refer to Guam as their home.

With this in mind, it is of utmost importance and great care must be taken to insure that all of Guam's citizens and not just those of Chamorro ancestry have a voice and a vote in determining Guam's future.

It would be a terrible injustice to see a situation develop on Guam where families are split when it comes to who is allowed to vote on Guam's future. Under the present Commonwealth Draft Act, the Chamorro wife of a non-Chamorro Guamanian and their children would be allowed to vote on Guam's future while the husband would be excluded.

To me this would be an intolerable position certain to raise constitutional concerns.

I believe that any of the sections that would deny citizens the right to vote based solely on race is blatantly unconstitutional and should be removed from the draft act.

I also believe that the military defense of Guam as well as the stationing of necessary military personnel and resources to maintain and meet the obligations and interests of national security of the United States rest with the federal government. I don't believe the military should be required by law to coordinate such activity with or through a local government, especially during times of national emergencies. Personally, I would like to see a section that would reinforce the commitment of the United States to the military defense of Guam.

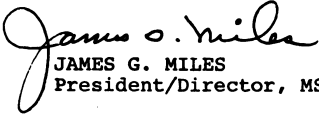
The matter of immigration should also remain under the purview of the federal government. This will provide a check and balance against run-away and illegal immigration if left solely to the local government. This is one area in particular where there is a tremendous potential for corruption on the part of local officials.

Again, for the record, I am supporting the Commonwealth Draft Act with the exceptions as noted above.

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Congressman deLugo
December 13, 1989

Thank you for the opportunity to submit this written testimony.

Sincerely yours,

A handwritten signature in cursive script that reads "James G. Miles". The signature is written in dark ink and is positioned above the printed name and title.

JAMES G. MILES
President/Director, MSA

JGM/sc

cc: Congressman Ben Blaz
Governor Joseph F. Ada
Speaker, Guam Legislature

REPORT SUMMARY: GUAM COMMONWEALTH BILL
(S.317 and H.R. 98)

TITLE I - POLITICAL RELATIONSHIP

Sec. 101 (a,b,c,d) - Commonwealth and Self-Government: Support Commonwealth, under U.S. sovereignty, through locally-adopted Constitution with normal powers of government. Suggest minor modifications and changes in wording for consistency and clarity.

Sec. 102 (a,b,c,d,e,f,g) - Self-Determination: Cannot support separate Chamorro vote (a,b) because it is unconstitutional, but do support Chamorro-only Federal programs (c,d) aimed at preserving their culture and promoting their social and economic advancement; also support Chamorro Land Trust (f) and Guam's right to establish reasonable residency requirements (g). Think reference in (e) to protection of citizenship rights under 14th Amendment is unnecessary and suggest deletion.

Sec. 103 - Mutual Consent: Support a mutual consent provision (no changes in fundamental political relationship provisions of Commonwealth Act unless both parties agree), specifically on sections 101, 103, 201 and 301, but not on the entire Act.

TITLE II - APPLICABILITY OF FEDERAL LAW

Sec. 201 - Applicability of the United States Constitution: Support continued application of Territorial Clause to a Commonwealth of Guam, because the Tenth Amendment applies only to States; Agree that constitutional provisions now in effect remain and suggest additional constitutional provisions which should also apply to the Commonwealth.

Sec. 202 - Effect of Federal Law: Offer alternative approach that provides statutory authority for Governor of Guam to appeal the application of new administrative rules and regulations to Guam, and offer an amendment that would require of any law applicable to Guam that is not applicable to the States, that Guam must be specifically named therein for the law to apply to the Commonwealth. We also suggest a formal procedure for the Commonwealth government to directly appeal to Congress the application of any nation-wide law to Guam and seek exemption from the statute or modification of it. These are offered in lieu of the blanket requirement that no Federal law apply to Commonwealth without its consent, which we cannot support.

Sec. 203 - Joint Commission: Cannot support Guam-Federal Joint Commission on constitutional grounds, but offer alternative language on Guam-only advisory and consultative Commission and agree to an authorization of funding to support such a commission.

Summary, page 2

Sec. 204 - Delegation of Authority: Cannot support delegation of Federal authority to Governor of Guam on constitutional grounds, but offer alternative language recommending the establishment of presidentially-appointed Federal officer to address problems underlying this provision.

TITLE III - FOREIGN AFFAIRS AND DEFENSE

Sec. 301 - United States Authority: Support complete U.S. authority and responsibility over foreign affairs and defense.

Sec. 302 (a,b,c) - Consultation with Guam: Offer alternative language on consultation with Guam on international treaty and defense issues (a,c) and alternate language on 'security zones' and 'foreign military personnel' proposal (b).

Sec. 303 (a1,a2,b) - United States Consular and Trade Assistance: Offer modified language to assist Guam in setting up tourism promotion and cultural offices abroad (a1) as well as alternative language on Guam's membership in international organizations (a2), supporting the Commonwealth's membership where Guam is eligible. Support provision (b) seeking favorable treatment for Guam exports from GATT nations.

Sec. 304 - Nuclear Waste: Offer alternative language to help meet Guam's objectives of preventing nuclear/toxic waste storage and disposal as well as providing mechanism for compensation for any injuries resulting from storage or use of toxic materials.

TITLE IV - COURTS

Sec. 401 to 404 - Judicial Relationship of Guam to the United States: Support modifications in court system to adjust to a Commonwealth status, and offer alternate language to implement those changes, but cannot support proposed changes in appellate review procedures and transition period.

TITLE V - TRADE

Section 501 - Guam-United States Free Trade Area: We propose specific review of perceived problems in current trade arrangements. Guam already is outside U.S. Customs territory, operates on an open trade basis, and receives more beneficial treatment than that given to beneficiaries of other preferential trade programs. We offer the review to correct deficiencies in current program and to discuss ways of improving overall trade.

Summary, page 3

TITLE VI - TAXATION

Sec. 601 to 605 - Mirror Image Tax/Guam Income Tax Authority: Support giving Guam authority to create its own tax system, with suggested clarifications, modifications, and additional language to ensure Guam's locally-developed tax system meets the stipulations and requirements of 1986 Tax Reform Act.

TITLE VII - IMMIGRATION

Sec. 701 - Guam Immigration Authority: Support Guam's objective and offer alternative that, by amending the Immigration and Nationality Act, gives Governor of Guam greater authority to control alien immigration to Commonwealth within the framework of Federal law and jurisdiction.

Sec. 702 - Guam-Only Visa: Support Guam's objective on visa-waiver and believe existing law gives Guam that authority and provides mechanisms to expand the visa waiver to other nations on a case-by-case basis as they become eligible and meet statutory requirements.

TITLE VIII - LABOR

Sec. 801 - Federal Employment: Believe there is a de facto local hiring preference for Federal Civil Service jobs on Guam, and therefore a statutory requirement is probably not necessary, leaving Congress the option of enacting a modified version.

Sec. 802 - Guam Labor Laws: Propose that problems Guam sees with specific Federal labor laws be enunciated so that Congress can evaluate whether appropriate amendments to those laws are necessary. Cannot support blanket exemption from all Federal labor laws because of infringement on U.S. sovereignty and problems similar to section 202 confusion and conflict in statutes.

TITLE IX - TRANSPORTATION AND TELECOMMUNICATIONS

Section 901 - Maritime Shipping: Comments on this section are still being worked out and will be forwarded when completed.

Sec. 902 - Airlines: Offer alternative language to address Guam's objectives of greater involvement in bi-lateral aviation agreements and continuation of essential air service.

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Sec. 903 - Telecommunications: Support Guam's objective, but believe it can be accomplished under existing regulations.

TITLE X - LAND, NATURAL RESOURCES AND UTILITIES

Sec. 1001(a) - Authority Over Land and Resources: Support eminent domain authority for Guam over non-Federal lands and property.

Sec. 1001(c.d.) - Federal Eminent Domain Power: Offer alternative language that provides new guidelines for Federal exercise of U.S. eminent domain power.

Sec. 1001(e.f) - Use Restrictions on Returned Federal Land: Offer alternate language that provides new guidelines for determining and setting use restrictions and limitations on excess Federal land returned to Guam.

Sec. 1002 - Transfer of Excess Federal Property: Offer alternate language proposing new guidelines on the determination of excess Federal property, because the bill's proposal to give Guam-controlled Joint Commission the power to determine excess Federal property is unconstitutional.

Sec. 1003 - Access to Federal Property: Offer alternate language setting new guidelines on access and easements over Federal property, noting that the major issues underlying this provision are being addressed under existing laws and negotiating mechanisms.

Sec. 1004 - Authority Over Utilities: Offer alternate language establishing guidelines for turning over Federally-controlled utilities to the Government of Guam.

Sec. 1001(b) - Exclusive Economic Zone: Defer comment on these issues pending completion of Federal discussions and review.

TITLE XII - UNITED STATES FINANCIAL ASSISTANCE

Sec. 1101 - Return of Taxes and Fees: Support continued return of income taxes and other Federal fees collected on Guam, and provide language to replace other inadvertent deletions from current law.

Sec. 1102 - Equal Finance with States: We point out that Guam's request to be treated as a State for Federal program purposes would not result in greater payments, and could result in an overall reductions in Federal Program payments. Also state that

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extension of SSI to Guam would have a disruptive cultural and economic effect on Guam. We suggest a careful, statute-by-statute or program-by-program review of such laws as require modification and welcome further discussion so the Federal Government may tailor programs or adopt new programs to fit the precise needs of the Commonwealth.

Sec. 1103 - Return of Economic Zone Fees: Defer comment on this section until Federal discussions and review are completed.

Sec. 1104 - Federal Payment: Because Guam already receives substantial Federal income taxes as a payment from the United States Government as well as other financial benefits that other States and the District of Columbia do not receive, we cannot support a D.C.-modelled annual payment for Guam.

Sec. 1105 - Transition Assistance: Support limited funding for a Guam Commission and limited funding for a plebiscite. No estimates were provided for long term CIP program or economic development loan fund. Therefore, must reconsider at a future time.

TITLE XII - TECHNICAL AMENDMENTS AND INTERPRETATION

Sec. 1201 TO 1207 - Interpretation and Jurisdiction: We support the section generally, and add clarifications; modifications, and additional language.

PREAMBLE: We point out that because a Preamble expresses the aspirations of the people, it does not have the force and effect of law. However, to make it consistent with recommendations made for other sections of the bill, we have offered modifications.



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THE DRAFT "GUAM COMMONWEALTH ACT"

**[Prepared Specifically for the House committee on
Interior and Insular Affairs]**

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May 27, 1986**

The Draft "Guam Commonwealth Act"

Before undertaking a specific analysis of the various provisions of the Draft "Guam Commonwealth Act", dated December 18, 1985, and drafted by the Guam Commission on Self-Determination to establish a federal-territorial relations act to create a Commonwealth status with the United States, some general, overall observations would seem appropriate.

One Sided. Drafted solely by a "local" Commission, established by local law for this purpose, its design is to create what the Commission members believe is best for all the people of Guam. Obviously, there is much greater emphasis on the establishment of obligations by the United States to and for the proposed Commonwealth, than on the interests, rights or privileges of the United States. Realistically, however, without a proper balance the document becomes legally and politically troublesome.

Covenant with the Northern Marianas. A number of provisions are intentionally based on the Covenant to Establish a Commonwealth of the Northern Marianas Islands in Political Union with the United States of America [hereinafter "CNMI"]. The use of such model, however, may not necessarily be accurate or appropriate. Interestingly, no negotiations with the United States seem to be contemplated. Further local changes may be forthcoming until a plebiscite is held. First, the CNMI was the final product of negotiations and each provision was probably the result of a give-and-take as to each item and perhaps as a concession or inducement for the inclusion or exclusion of other provisions. Second, while the political goal may be analogous, the particular references to the Northern Mariana Islands as points of consideration seem at

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times misplaced or misinterpreted and such may, in their actual application, be different (historically and ideologically) to those of Guam. Further, in the approximately ten years since that document was drafted, concepts and opinions may have cast a different light on what was intended or hoped to have been achieved by the original provisions. In addition, strictly from a legal perspective there is always a danger in taking ideas or language out of context.

Legal Shortfalls. As will be discussed in more detail later, from a drafting stance there are a number of terms used in various places which would be better understood if defined. There are also a number of ambiguous concepts that should be clarified, and gaps which probably should be filled.

Legislative History. The pronouncements in an earlier draft that a "legislative history" at the end of each section is required in all congressional bills as explanatory legal notes is inaccurate and puzzling. There is no such requirement, and such language has no legal force or effect. In fact, it is perhaps misleading to even refer to such as a legislative history. Such material would seem to be better labeled as "Drafters' Notes" to more accurately describe their content, i.e., what the drafters' may have intended by the particular section or why and where the draft language was used. Thus, for the purposes of this Report, such explanatory material will be described under the term "Drafters' Notes".

Self-Determination. This concept is mentioned in various places in the Draft. While this point alone would perhaps only be adequately addressed in a separate, extensive analysis, some brief comments may be in order now with some further elaboration later in reference to particular attempted usage in the Draft. Under international law, the right of self-determination is rather

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confusing and highly controversial. See, e.g., M. Pomerance, Self-Determination in Law and Practice (1982). While many aspects of the application of any such right or the proper method of its exercise are arguable, in general, its reference in the Draft seems to prompt a number of legal issues. Notably, it appears that the Draft, while calling for the recognition of such a right, is not to actually constitute its exercise. The Commonwealth status is, apparently, to be interim in nature only (even though specific language to that effect in earlier versions has now been dropped), one which would seem to imply that the Commonwealth could terminate that status unilaterally. That kind of postponement would seem to be legally uncertain and practically problematical. As will be discussed in detail later, a number of legal issues arise generally, and in particular to this proposed action. Does the freely determined choice of a commonwealth status constitute the actual exercise of the right of self-determination? Legally, is there such a thing as an interim status on the road to self-determination? Can the same people exercise the right to self-determination twice under similar circumstances with regard to the same foreign sovereign? Within the scope of any such right, what group constitutes the "self", and who and how is such a determination to be made?

SECTION-BY-SECTION ANALYSIS

Preamble. The nature of the text set forth here is uncertain. As a Preamble it has little possible legal effect. The preamble of a statute merely sets forth the goal of the statute. Glove fur Dyeing Corporation v. United States, 467 F. Supp. 177 (D.D.C. 1978), aff'd 612 F.2d 586 (Customs and Pat. App. 1979). It contributes to a general understanding of the statute but is not an operative part of it, and where the enacting or operative parts of the

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statute are unambiguous it cannot be controlled by language in the preamble.

Association of American Railroads v. Costle, 562 F. 2d 1310 (D.C. Cir. 1977).

Portions of this Preamble also seem to be incorrect or so broadly stated as to raise an incorrect conclusion. For example, the Treaty of Paris of 1898 and the Charter of the United Nations are cited to support the idea of their embracing the establishment of this Commonwealth and that the United States has an obligation to protect the right of self-determination and heritage of the Chamorro people. These documents, however, either individually or together, do not support such an alleged "obligation". Besides the obscurity of the terms and notions presented in the Preamble, there does not appear to be a proper basis in law or fact for the kind or breadth of the sort of commitments presumptively implied in the term "obligations" and the "rights" so described. The Treaty of Paris of 1898 does not contain such a commitment. Actually, it would seem that the reading of such document supports the opposite conclusion, i.e., that the Congress has the right to determine the future status of Guam. Article IX of that Treaty reads, in part: "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." 30 Stat. 1754, 1759 (1898). As to the Charter of the United Nations, any United States commitment to self-government is actually a form of inner self-determination, and is referred to only twice in the Charter. Article 1(2) of the Charter, which deals with the purposes of the organization, states that one aim is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace." Article 55 provides: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and

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friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote higher standards of living, full employment, and conditions of economic and social progress and development." "Apart from these general articles there is nothing in the Charter which specifies the right of developing countries to acquire independence and self-determination and no rules which safeguard the independence of new developing nations once they have emerged as states." I. Delupis, International Law and the Independent State (1974), at 7. This principle of self-determination, "with all its ambiguity, is referred to only twice...almost in passing" and cannot be considered as an operative principle of the Charter. It is not a legal right that can be invoked as such. M. Pomerance, Self-Determination in Law and Practice (1982), at 9.

The Drafters' Notes indicate that this is supposed to be a recognition of the principle of self-determination. However, quite a different meaning and impression is left by the actual language. Recognizing such a principle as a matter of policy is obviously distinct from declaring that the United States is obligated to do certain things. It would even seem a further amorphous notion to imply that the United States is legally obligated to create this Commonwealth as a step towards, or as an interim status in, fulfillment of that principle.

ARTICLE 1. POLITICAL RELATIONSHIP

Sec.101. Short Title.

It is indicated that the title "Guam Commonwealth Act" is intended to emphasize the importance of the new "status" of the island. While the qualifying word "interim" has been dropped from earlier drafts, it seems apparent that the drafters still intend that this status should be a temporary

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one, and that the people of the Island are to retain a sovereign right to alter that status by some unilateral act at a later time. However, if the Congress were to enact a proposal along the lines drafted here, the legal result would arguably seem to be otherwise. Unlike the Northern Mariana Islands which entered into a negotiated covenant with the United States, which Congress approved by legislation, what appears to be designed here is solely a federal statute, the operative provisions of which are intended to and do read that the Congress is establishing the Commonwealth status. From the legal perspective of the United States, that status would be considered permanent. Only some subsequent federal legislation could alter or terminate that status, presumably after some form of mutual consultation and consent. Thus, it would seem that a sounder legal approach might be for Guam to shift its emphasis from one assertive in character to one protective in nature. Rather than attempting to establish controversial unilateral rights on its behalf which may or may not be capable of being fully justified or developed legally, practically or politically, a prudent operational approach might indicate pursuit of provisions to assure that the unilateral legal right of the United States to affect the status of the Island be tempered by consultation with and/or consent of the proposed Commonwealth.

Sec. 102. Creation of the Commonwealth.

The Drafters' Notes indicate that it follows sections 101 and 102 of the CNMI. Yet, it leaves out and confuses some very important substantive provisions contained in that other document. First, the Northern Mariana Islands is to be a self-governing commonwealth "in political union" with the United States and under its sovereignty. There is no mention in this crucial Draft provision of the status being one political in

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nature or in the legal and practical reality that the United States would not consider such a status unless it has full sovereign rights over the Island and its adjacent islands and waters. Second, there is nothing in the cited sections of the CNMI indicating that, in effect, the local constitution is to be the supreme law of the commonwealth together with applicable provisions of the United States Constitution, laws, and treaties. The legal ramifications of such an enactment could be great. Theoretically, it could allow provisions of the Constitution of Guam, including any later amendments, to override any applicable United States provisions. Arguably, it even purports to place the Constitution of Guam on the same legal plateau as the Constitution of the United States. Thus, the Commonwealth could, for example, negate a statute passed by the Congress dealing with the Commonwealth by adopting, for example, simply an amendment to the local Constitution conflicting or contradictory to that enactment. Therefore, it would seem crucial to make it clear that in all respects federal law will have the same status with respect to any proposed commonwealth as it does to a state. Further, it would probably be unconstitutional for the Congress to enact such a provision. In no way can the Congress legally make the Constitution of the United States subject or subordinate to the Constitution of Guam.

Sec. 103. Guam Sovereignty and Citizenship.

(a) This subsection contains a number of potential problems. First, that the Congress recognizes that only a portion of the population of Guam has accepted being under United States sovereignty is of little legal import and of much practical and legal confusion. It certainly does not carry with it the clear and convincing statement and legally sound ramifications if Section 102 were to read and establish the self-governing Commonwealth "under United States

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sovereignty". It implies not only that there are subclasses of people on Guam that either Congress will treat differently or not deal with at all, but that only certain populace acts will or can be recognized by the United States as having any validity. This would seem to open up the entire gamut of potential problems pertaining to minority rights.

Second, any recognition by the Congress of what might constitute the indigenous population of Guam might not necessarily satisfy or effectuate any test or result that might otherwise be determinable under international legal principles for any present or future exercise of the right of self-determination. The Chamorro people of Guam, born on Guam before August 1, 1950, and their descendants, may not necessarily constitute the actual or complete "self" for the proper exercise of the right of self-determination. The first and pivotal question is: who is the "self" to whom the right of self-determination attaches? It is far more complex than merely deciding whether it should be a race, a territorial area or a community. Selection of a unit requires decisions on further delimitation. For example, who would be the inhabitants or members of the race or community? Thorny questions arise in identifying and affording rights to "indigenous" and "settler" populations, particularly if a time-based calculation enters the calculus together with space-bound and group-bound considerations. A "critical date" or "critical period" may enter as a further controversial factor. In Alsace-Lorraine, for example, the Allies agreed that it would be "insultingly illegitimate" to view the population of 1919 as the "self" that could separately determine its fate because it would be preferring the historic rights of an earlier community over the desires of the existing inhabitants. "The necessity of defining the 'self' which is to exercise 'self-determination' lies at the heart of what is probably

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the most basic dilemma in the matter of self-determination: recognition of the rights of one 'self' entails a denial of the rights of a competing 'self'." M. Pomerance, Self-Determination in Law and Practice (1982), at 2. General Assembly Resolution 1514 (XV) states that the right of self-determination belongs to "all peoples". "In order to reconcile conflicting claims to 'selfhood' the definition of the self must be internationally determined. The United Nations has adopted a territorial rather than an ethnic criterion to define the self." Comment, Self-Determination in Hong Kong: A New Challenge to an Old Doctrine, 22 San Diego L. Rev. 839, 853 (1985).

Third, the existence and scope of the right of self-determination is not settled. For example, due to the provisions of the sixth paragraph of General Assembly Resolution 1514, there is doubt as to the acceptance of the principle of the right to self-determination of peoples as distinguished from the self-determination of territories. It can be maintained that the principle is one of "political organization" and not a legal principle. Individuals or groups of individuals are not yet subjects of international law but are just beneficiaries. Arguably, General Assembly resolutions dealing with such a right are not binding rules of international law since that body does not have prescriptive rights. It can also be contended that the principle lacks clear definition and is self-contradictory in nature, and thereby is lacking in universal application. Y. Makonnen, International Law and the New States of Africa (1983), at 19, 21-22.

Fourth, this Draft provision raises the legal issue of whether the choosing of commonwealth status is the actual exercise of the right of self-determination, and if it is, can the same people exercise the right again at a subsequent time? The gist of the Draft provision appears to be that

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commonwealth status is not one of the three modes by which self-determination may be accomplished as found in General Assembly Resolution 1541, namely, emergence as a sovereign independent state, free association with an independent state, or integration with an independent state. However, the exercise of such a right does not seem to be limited to those three enumerated alternatives. If one is to argue that self-determination has ripened into a legal right, it would have to be on the basis that the principle has been reiterated in a long line of General Assembly resolutions. In the Western Sahara case, 1965 I.C.J. 4, 23 (advisory opinion), the International Court of Justice, in discussing the principle of self-determination, reviewed resolutions 1514 and 1541, and also cited with approval Resolution 2625 (XXV), the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations. That Resolution expands the application of the principle of self-determination. It proclaims that "the establishment of a sovereign and independent State, the free association or integration with another State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people" (emphasis added). Thus, one might argue with some persuasion that, at the least, a freely chosen commonwealth status is just such a political status and therefore a proper and effective exercise of the right of self-determination. Interestingly, the United States has taken the position concerning the CNMI that the choice of commonwealth status does, in any event, conform to the requirements of "free association" in Resolution 1541. See, M. Pomerance, Self-Determination in Law and Practice (1982), at 92-93.

If it could be established in fact and in law that the freely determined

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act by the people of Guam is an exercise of a right of self-determination, no authority has been found that would support an argument that such a right could be exercised again at a later time and with a possibly different result. In other words, it would seem that the right cannot be exercised twice by the same people in the same territory and involving the same foreign sovereign, and its due exercise thereby extinguishes whatever legal right exists in that regard. Thus, no legal right would appear to remain with such people to change their previously chosen status by merely determining they want a new status. That is not to say, however, that an opted for commonwealth status could not be revised or otherwise terminated by whatever mechanism(s) may be agreed to within the political union. What it does mean, in effect, is that if Guam becomes a Commonwealth of the United States, it would not have the right of succession.

(b) It would seem meaningless for the Congress to pronounce recognition of the residency and/or citizenship rights contained in the Constitution of Guam.

(c) This subsection is confusing, especially when read in conjunction with Section 102.

(d) The matter covered in these items seem to be strictly a matter of local law and policy, and should be contained not in federal commonwealth legislation but in local law as an exercise of self-government, if at all. Certain concepts presented have constitutional overtones. For example, restricting the right to vote in local elections to a residency requirement of five years might be unconstitutional. See, Dunn v. Blumstein, 405 U.S.330 (1972), where a Tennessee durational residency requirement of one year for state elections was held to impair voting rights and the right to travel. The Drafters' Notes refer to precedents in Hawaii, Alaska and the Northern Mariana

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Islands for the Chamorro Land Trust. No such germane precedents appear to exist, with any federal involvement or authorization.

Sec. 104. Full Self-Government.

Subsection (a) appears to be inadequate. If the establishment of the Commonwealth of the Northern Mariana Islands is to be any precedent, that Covenant in this regard sets forth what the three separate branches will be and where the power in each branch shall be vested. Likewise, the CNMI provides that the Constitution will be submitted to the United States for approval and determination as to its consistency with the applicable Constitution, treaties and laws of the United States. The Draft has no approval requirement and is unclear as to who, how or when any determination for consistency is to be made.

By virtue of the fact that Guam would have self-government, as if it were a government of a state, it would have sovereign immunity in its own right and therefore could not be sued on the basis of its own laws without its consent. Thus, the inclusion of subsection (b) would seem to be unnecessary.

Subsection (c) would or should be a policy decision of local government and would, therefore, seem inappropriate in the Draft. Having self-government would enable Guam as a matter of local sovereign authority to establish, maintain, and operate a public educational system.

Sec. 105. Mutual Consent.

While this provision may be based on Sec. 105 of the CNMI as indicated by the Drafters' Notes, it is far more sweeping. The CNMI basically only provides that there is to be mutual consent for alteration of the fundamental provisions of the Covenant designed to protect the right of local self-government. The Draft, on the other hand, is a broad, and virtually all-inclusive, attempt to restrict the Congress in enacting legislation that will

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affect Guam unless the latter consents thereto. In effect, such a provision would give the proposed Commonwealth a veto power over all legislation affecting it. Even the exceptions as to national defense or foreign affairs found in earlier drafts have been excised. Further, this veto-type power would extend to rules and regulations of United States administrative agencies. This provision would seem to carry a small precedent well beyond its designed limited scope and particular setting.

ARTICLE 2. APPLICABILITY OF FEDERAL LAW

Sec. 201. Applicability of U.S. Constitution.

From the perspective of the Congress, probably the most serious legal defect concerning this proposed section is the application of the Tenth Amendment of the Constitution to the proposed Commonwealth. To make that Amendment applicable to Guam would be to curtail the greater authority that Congress would otherwise have over Guam as a territory under Article IV, Section 3, Clause 2 of the Constitution, which allows the Congress to enact laws which affect matters within the territory which it could not do concerning a state by virtue of the Tenth Amendment. The Tenth Amendment was not made applicable the CNMI. In the same vein, there is an apparent discrepancy in the Constitutional provisions made applicable to the CNMI and those proposed in the Draft. Particularly, why would the United States want Article IV, Section 4 to be applicable and have the federal government "guarantee" the Guam government against domestic violence? If modeled after the CNMI, why are not the same provisions that are included there also included in the Draft? It would also seem inappropriate to extend U.S. citizenship by Constitutional edict, especially when the proposed Commonwealth is suggesting it should have a unilateral right to terminate the Commonwealth status.

Sec. 202. Effect of Federal Law.

In spite of the Drafters' Notes that this provision is similar to Sec. 105 of the Marianas Covenant, it is quite different and much broader. Sec. 105 provides that the United States can enact legislation applicable to that Commonwealth but if such legislation cannot also be made applicable to the States then the Northern Mariana Islands must be specifically mentioned in the legislation for it to be effective therein. The design of that provision is to assure that when the Congress exercises its special authority under Article IV, Section 3, Clause 2 of the Constitution, it will take into account any particular circumstances existing in the Northern Marianas. On the other hand, the import of the Draft provision is that no subsequent federal legislation, rule or regulation can be made applicable to Guam unless Guam consents to it. In effect, this would give Guam a form of veto power over Congressional and administrative action.

Sec. 203. Joint Commission.

Contrary to the Drafters' Notes, this Commission does not generally follow the CNMI. That Covenant established a United States Commission to survey the laws of the United States and to make appropriate recommendations to Congress. All of the appointees were to be made by the President. The Draft attempts to establish a joint commission, with the Guam members (majority) to be appointed by the Governor of Guam. The nature of, and United States control and responsibility to the United States, is quite different in the instance of a joint commission than with a United States commission. After indicating that this Commission is to make its own regulations and procedures, the Draft unexplainably continues on to set forth some of those procedures. The

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responsibilities of the Commission are extensive, ambiguous, and appear to bestow it with certain authority which might subject the Congress to possible negotiation and mediation processes. The responsibilities appear to be monumental. Likewise, it reaffirms indications throughout the Draft that the commonwealth status is to be only temporary or interim in nature, and gives the impression that commonwealth status cannot or should not be a maximum political autonomy. The prescribed tasks would seem to possibly require a large working staff, all of which would have to be funded by the United States. It also might be noted that the CNMI Commission was modeled after the similar commission set up in the Organic Act of Guam (48 U.S.C. Sec. 1421c), and that the CNMI Commission, even with a more limited scope than the one envisioned in the Draft, issued only its Second Interim report in August, 1985, approximately five years after its first meeting.

Sec. 204. Delegation of Authority.

While it arguably might be constitutional for the Congress to authorize the President to make the kinds of delegation provided for in this section, it would seem that there are adverse legal/policy considerations that might negate this kind of contemplated action. First, by removing federal agency participation there is an absence of federal control. There is even, it would seem, a built-in lack of provision for, or delay in, the President being advised about what is being done (or not being done) as the provision only calls for consultation from time to time. Even those concepts are ambiguous. What does "consultation" mean? Who is involved, and how is the Congress to be informed? How are the agencies which, apparently, will still have to make the appropriations for implementation, to be advised on what they have to do or how to spend the money? What kind of administrative review, if any, would be

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available if the Governor oversteps his authority? How would a delegation of "partial performance" be practically carried out? Second, this mechanism does not seem to have any precedent with respect to the relationship between the United States and other commonwealths or territories. If there is some reason for federal legislation not to be implemented in Guam, arguably it is the Congress that should make such a determination. It would seem that a more reasonable alternative, if it is decided that certain administrative actions on certain subjects should have the input of any special circumstances in Guam, might be to provide for a system of agency notice to Guam in certain instances, an opportunity for and consideration of the local government's comments thereon, and perhaps in some particular limited subject areas even a final review and approval by the Governor of Guam, similar to the procedure now provided for pertaining to administrative grants under the Coastal Zone Management Act (16 U.S.C. Sec. 1454).

ARTICLE 3. FOREIGN AFFAIRS AND DEFENSE

Sec. 301. United States Authority.

Since this legislation purports to establish Guam as a Commonwealth of the United States, it would seem superfluous to include the fact that the United States is to have the authority over and be responsible for the defense of that entity. Such would be implied in the status itself, and to mention it here would seem to be more appropriate if the status intended was one of an independent nature, such as free association, rather than a commonwealth. Further, the language employed is misleading in the sense that one supposes that exceptions will follow in later sections as to that defense responsibility or authority, when in fact the later provisions on military security zones seems merely to be an attempt at limiting the exercise of that authority.

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Likewise, it would also seem unnecessary, or at least redundant, to make reference to such authority over foreign affairs. Technically, the material in the ensuing sections are not "exceptions" to the United States' authority and responsibility for foreign affairs in the international sense but merely some modification on domestic operation concerning treaty making and an additional aspect of assisting in certain trade matters.

Sec. 302. Consultation With Guam.

This prescribed consultation function is inconsistent with commonwealth status, and would seem more appropriate if free association were being contemplated. Further, there is great ambiguity towards and about what may constitute the "well-being of the people of Guam"; who or how such a determination can or should be made; or even what procedures could or should govern any consultation process, and any safe-guards that might be necessary if "sensitive" treaty negotiations are contemplated. Further, treaty negotiations are strictly an Executive function, and any Congressional statement to this effect is without binding effect and unenforceable.

Subsection (b) is ambiguous, and will probably not effectuate what is intended. Consultation with the Governor of Guam may mean merely that the United States has to notify and give an opportunity for comment before a base is established. The declaration of war proviso only refers to military security zones and foreign military personnel being stationed there. Even that qualification seems unrealistic from the perspective of both the United States and Guam. Most hostilities occur without a formal declaration of war, and awaiting such action could negate real emergency situations and/or allow a specified action for the United States to avoid the operation of such a provision.

Sec. 303. United States Consular and Trade Assistance.

Subsection (a)(1) according to the Drafters' Notes is taken from Section 904(b) of the CNMI. However, there appears to be an important distinction. In that document, the offices to be established are limited in purpose, namely for promoting local tourism and other economic or cultural interests of the islands. Here, the purpose for such offices is apparently open-ended.

Subsection (a)(11) is inconsistent with the proposed commonwealth status. To become a member of an international organization or to enter into international agreements denotes a right of sovereignty, or quasi-sovereignty. As a Commonwealth of the United States, sovereignty would rest with the United States.

Subsection (b) uses the word "shall" while "will" is contained in the CNMI. Such may connote a stronger mandatory action on the part of the United States. In either case, efforts to obtain such favorable treatment for exports may or may not be successful.

Sec. 304. Nuclear Waste.

This section is much broader than its title indicates. The Drafters' Notes state that this section parallels the provisions of the Compact of Free Association with the Marshall Islands and the Federated States of Micronesia. However, it seems much broader than those provisions. For example, that Compact only covers disposal of "toxic" chemicals "in an amount or in a manner which would be hazardous to public health or safety." Here, since such qualifying words or terms are absent, all dumping and utilization would apparently be prohibited. Further, the "clean up and make safe" chemical waste dump sites used or being used by the military is open-ended. Likewise, the

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United States would be absolutely liable for any injuries with no ceiling on monetary awards.

ARTICLE 4. COURTS

Sec. 401. Judicial Relationship of Guam to the United States.

This is one time the Drafters' Notes should have indicated that the provision is fashioned after the CNMI. A similar provision is found in Sec. 403(a) of the CNMI. To a great extent, the corpus of this section is already contained in Federal law. See 48 U.S.C. Sec. 1424-2. However, that law provides for a fifteen year period for possible review of all local decisions by the United States Court of Appeals for the Ninth Circuit.

Sec. 402. Jurisdiction of District Court.

It is difficult to determine what is intended by this Section, and it would seem to have a specific, limited effect. The way the provision reads, the newly designated district court would lose the authority now contained in 48 U.S.C. Sec. 1424 to hear certain local causes. Interestingly, that kind of provision from the Guam Organic Act to allow a U.S. District to hear certain local causes of action without satisfying the usual prerequisites for federal suits, was used as a model for the kind of jurisdiction to be exercised by the District Court for the Northern Mariana Islands and is contained in Section 402(b) of the CNMI. Likewise, that document contains an exception for that District Court from the sum or value of the matter in controversy. No such exception is contained here, and apparently for the Court to exercise jurisdiction the \$10,000 threshold would be applicable. Perhaps, that is what is intended, but if it is the Drafters' Notes are rather skimpy.

Sec. 403. Applicable District Court Rules.

This kind of provision would seem unnecessary, since, for example, Rule

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54(a) of the Federal Rules of Criminal Procedure would have to be amended to conform to whatever procedure the Congress deems necessary for the District Court of Guam.

Sec. 404. District Court Judge, United States Attorney, Marshal.

Selection and tenure of the District Judge, United States Attorney, and the Marshal would seem to be already provided for in federal law, or in federal law that would have to be amended to conform with any enactment of this sort. See, 28 U.S.C. Secs. 133, 503, and 506. Thus, this provision would appear to be unnecessary.

ARTICLE 5. TRADE

Sec. 501. Guam-United States Free Trade Area.

This cumbersome provision contains numerous problems. While it might not be inconsistent with the General Agreement on Tariffs and Trade for the United States to enter into a free trade arrangement with a constituent territory, certain prerequisites and formalities would appear to be necessary under Article XXIV thereof. Further, it appears that the present federal statutory scheme concerning the entering into of free trade areas involves only foreign countries. See, 19 U.S.C. Sec. 1212. Likewise, there does not seem to be any adequate reason for the change of the local percentage level from that already contained in general headnote 3a. In this regard, whatever change is made for Guam would also be applicable to the Northern Marianas by virtue of Sec. 603 of the CNMI. Further, the "value added" determinations seem especially difficult and cumbersome under the guidelines presented. The determination by the Governor of Guam on a certificate of origin seems to be an absolute decision.

Sec. 502. Coordination of Policy.

This section is confusing, and the Drafters' Notes add further ambiguity

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1985. It might be noted that current Congressional action might drastically affect this situation. See, for example, Section 671 of the tax reform bill adopted by the House (H.R. 3838).

Sec. 602. Enforcement Institutions.

This section would seem to be unnecessary in light of the purported commonwealth status of Guam. It would be appear that the Congress would not have to give authority for the local government to assess and collect these local taxes, as was apparently the need for the enactment of Section 31 in the Guam Organic Act. See, Senate Report No. 2176, 85th Cong., in 1958 U.S. Code Cong. and Admin. News 3647. There is no comparable provision in the CNMI.

Sec. 603. Rebate of Taxes.

This provision, if necessary at all, could be added to the authority in Sec. 601. It certainly would not seem necessary to add the purposes for which the rebates may be given. However, if the CNMI is to be followed, in that document there is no authority for "reductions" of taxes, and the rebate authority is confined and limited to taxes on income derived from sources within the Northern Mariana Islands.

Sec. 604. Guam Income Tax Authority.

In effect, this provision makes the creation of the mirror image interim in nature. However, the way that it is worded has certain adverse legal consequences. The Congress cannot require itself to take repealing action, and if the one-year interval should happen to bridge two congresses, an earlier Congress cannot bind a later one. It would seem no matter what kind of language is employed, it would be discretionary upon the Congress whether or not it would repeal a statute. Perhaps, if this is really what is intended, a

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sunset provision should be employed which would have the effect of terminating the provision after a period of one year.

Sec. 605. Bonds Tax Exemption.

The absence of Drafters' Notes for this provision is mystifying, particularly when the provision seems to be fashioned after Sec. 607 of the CNMI. However, that provision contains certain limitations on authorization of public indebtedness, a concept conspicuously absent here.

ARTICLE 7. IMMIGRATION

Sec. 701. Guam Immigration Authority.

The Drafters' Notes do not seem to reflect the content of this section. First, there does not seem to be a precedent either with regard to the CNMI or American Samoa that is being followed here. For example, the CNMI provision dealing with immigration is concerned with the applicability of the Immigration and Nationality Act, primarily because Congress will have to take further action on this with respect to that entity when the trusteeship is terminated. Second, rather than what would seem appropriate in giving the United States control over the admission of aliens, this provision purports to award that kind of authority to Guam itself. Such authority extends far beyond the purpose espoused in the Drafters' Notes of treating Guam as outside of the area for customs searches.

Sec. 702. Port of Entry.

This provision seems to be in direct contravention with existing United States law and the authority of the Attorney General over entry places for aliens. See, 8 U.S.C. Secs. 1101(a)(13) and 1229.

Sec. 703. Guam-Only Visa.

This provision not only appears unprecedented by giving a local entity

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joint authority over the issuance of visas, but it would seem that its provisions would produce difficulty not only in the eventual execution of its design but even to fashion out the "appropriate measures" called for in the adoption to implement and enforce such provisions.

ARTICLE 8. LABOR

Sec. 801. Federal Employment.

This provision might be subject to a Constitutional challenge, and the strength of any such challenge might well depend on the actual definition of "resident" under Guam law. Even if sustainable if done by the Congress, one might well argue that as a matter of policy the Congress should avoid such residential restrictions for civil service employment. Noteworthy in this regard is the absence of any similar provision in the CNMI.

Sec. 802. Guam Labor Laws.

First, contrary to the Drafters' Notes, this is not a similar grant of authority in Section 503(c) of the CNMI, a provision which merely makes the federal minimum wage provisions inapplicable there. That sought of provision is consistent with United States precedent that local conditions may deem such an exemption feasible. See, 29 U.S.C. Sec. 206. The authority apparently intended here is much broader.

ARTICLE 9. TRANSPORTATION AND TELECOMMUNICATIONS

Sec. 901. Maritime Shipping.

The Drafters' Notes indicate that a similar exception from the coastwise laws is found in the CNMI. Actually, the provision in that document, Sec. 503(9b), merely indicates a temporary form of exception until such time as the trusteeship is terminated and then whatever exception and the extent thereof

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will be determined by the Congress. The provision here establishes a broad exception. Further, subsection (c) is baffling. If Guam is exempted by the other provisions from the coastwise laws, then this provision would seem unnecessary. In addition, the coastwise laws are applied to the territories and possessions of the United States pursuant to 46 U.S.C. Sec. 877 and not Sec. 883. It is also unclear as to what Commission is being referred to here. Presumably, it is the Interstate Commerce Commission, but it appears unclear as to what role, under the circumstances posed, such Commission would have to play.

Sec. 902. Airlines.

The provisions of this section seem largely unprecedented, and raise a number of complex legal and policy issues. First, while the Congress may be able by federal law to exempt an entity from the domestic operation of a treaty, multilateral or bilateral, it is quite another issue whether such would have an international effect, and whether the other party or parties could still hold and/or expect that such obligations and responsibilities would be adhered to by certain United States possessions. Under international law, unless a different intention appears, an international agreement binds a party in respect of its entire territory. See, Art. 29 of the Vienna Convention on the Law of Treaties. Second, to exempt Guam from all such treaties, even if such could be effectuated legally, might raise certain legal/policy aspects to be considered. Namely, many international agreements contain provisions that might be beneficial to Guam, either directly or indirectly. As an example, the Warsaw Convention limits liability for airline companies concerning their international flights. If that Convention is no longer applicable to Guam, it is possible that airlines might lose that liability ceiling for international

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flights that originate there, and for the leg of such flights, at least for passengers that board the aircraft in Guam. If that result is feasible, airlines might be reluctant to service Guam for international flights. In other words, there can be great legal dangers and many policy considerations that should enter into a decision to usher forth a broad exemption as that proposed here. A great number of applicable treaties would apparently fall within the intended or unintended purview of the broad sweep posed here. Not only should a detailed examination be made of each and every such applicable document that could fall within a proposal of this kind, but the action of granting such an exemption might be considered a precedent for future conduct for the United States and, perhaps, also for the other party or parties to such treaties.

ARTICLE 10. LAND, NATURAL RESOURCES AND UTILITIES

Sec. 1001. Authority Over Land Resources.

This section attempts to cover so much subject matter, and does so largely in a legally unacceptable fashion. The Drafters' Notes indicate that part of this is merely a rewording of Section 806(a) and (b) of the CMMI Covenant. Yet, there is more than a rewording here. There is an attempted inroad into federal powers and authority.

The Government of Guam would, as a government, have the inherent power of eminent domain, and it is meaningless for the Congress to bestow such power. Likewise, it is beyond the power of Congress to in any way curtail the federal power of eminent domain, which is an inherent power of government for the United States Government. Such is attempted here.

The authority suggested for Guam concerning pollution control, scientific research, management, exploration and exploitation of ocean resources and

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energy sources within the 200 mile exclusive economic zone is authority not given to the states. Even the concept of "exclusive economic zone" is one apparently left exclusively to the field of international law and relations. Its basis is traced to the development of customary international law, reflected in the 1982 U.N. Law of the Sea Convention, a treaty which the United States is not a party to and which there has been the indication that the United States will not even sign. However, President Reagan proclaimed a 200-mile Exclusive Economic Zone on March 10, 1983, underscoring the United States assertion that the non-seabed parts of the UN Convention do reflect customary international law.

The provisions exempting Guam from federal regulations governing the transfer or sale of excess federal property appear to be unprecedented. While it might be within the power of the Congress to remove restrictions on land already transferred, this might be another instance in which each such transfer with its accompanying restrictions should be examined before a blanket provision of this kind can or should be considered.

Sec. 1002. Transfer of Excess Federal Real Property.

This section seems problematical in a number of regards. First, there is no provision for the retention or acquisition of land by the United States for any future military or security use. Second, there seems to be no stated rationale for allowing the transfer of property without the Guam Government paying for subsequent alterations or additions. Third, it would seem cumbersome and potentially difficult to allow final determinations to be made by the Joint Commission.

Sec. 1003. Access to Federal Property.

The compromising of military security requirements appears to be a

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nebulous standard, one which the Joint Commission may not be able to resolve. The United States should be allowed to freely make and amend rules for access to each such property.

Sec. 1004. Authority Over Utilities.

"Within ninety days" may prove to be an unworkable scheme, particularly with the unilateral right granted here for Guam to refuse acceptance of any portion thereof. It is conceivable that by allowing Guam to make a sole determination of this sort, the United States might not be able to run any of the declined utilities without great difficulty. It would seem that a more workable and reasonable plan might, assuming that this kind of transfer is deemed proper as a matter of policy, be for the United States and Guam merely to commence discussions within ninety days for mutual agreement on what portions of such utilities can or should be so transferred.

ARTICLE 11. U.S. FINANCIAL ASSISTANCE

Sec. 1101. Return of Taxes and Fees.

Interestingly, while continuing existing law (see, 48 U.S.C. Sec. 1421h), it does not continue the authorized practice therein of advancing estimated collections at the beginning of Guam's fiscal year.

Sec. 1102. Equal Finance for Guam Citizens With States.

The text of this section is broader than the heading, since it would make Guam itself as well as its citizens eligible for federal benefits and financial assistance. It would also have a broad affect on the Northern Mariana Islands, since under the CNMI their receipt of such benefits is based on a two prong test of applicability to Guam and of general application to the States.

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Sec. 1103. Return of Economic Zone Fees.

As discussed earlier in connection with section 1001, the United States 200-mile exclusive economic zone is solely a matter of international law, with an apparent federal preemption of that area.

Sec. 1104. Federal Payment.

This provision seems inappropriate here, and would seem to be better located, if at all, in local law in guiding the Governor to prepare a budget. No comparable provision appears in the CNMI, and it seems unpersuasive to use the District of Columbia as a model. The District of Columbia is not a commonwealth.

Sec. 1105. Transition Assistance to the Commonwealth.

This provision for United States assistance appears overly broad, and even without possible limitations as to time and amount. Such a potentially open-ended commitment by the United States is far more extensive than just paralleling the CNMI, as described cryptically in the Drafters' Notes. Even the presently established Guam Development Fund, 48 U.S.C. Sec. 1428 et seq., has a limited amount prescribed therein.

ARTICLE 12. TECHNICAL AMENDMENTS AND INTERPRETATION

Sec. 1201. Interpretation and Jurisdiction.

The addition of this provision is bewildering, and the references in the Drafters' Notes seem to be unrelated to the scope of the wording. Subsection (a) is meaningless, particularly if addressed to a court in a potential conflict over involving the application of a provision thereof. As to (b), any court involved with such a statute would have the capacity, if necessary, to interpret it. The cases cited in the Drafters' Notes are apparently unrelated

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to the concept here. For example, the Cordova & Simonpietri case merely holds, in effect, that a court would have to look at what the Congress intended by a particular statute to determine if a commonwealth is to be included within a "state" under its provisions.

Sec. 1202. Continued Effectiveness of Local Laws.

This provision seems unnecessary.







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