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IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,	)	Criminal Case No. 93-163F(R)
	)	
Plaintiff,	)	<b>DECISION AND ORDER ON</b>
	)	<b>GOVERNMENT'S MOTION</b>
v.	)	<b>CHANGE VENUE</b>
	)	
RICHARD SANTOS and	)	
DAVID SANTOS,	)	
	)	
Defendants.	)	

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This matter came before the Court on September 1, 1994, on the motion of the Government to change venue from Rota to Saipan, on the grounds that the family and community relations between Defendants Richard and David Santos and the pool of prospective jurors on Rota will make it difficult for the Government to obtain a fair trial. Defendants oppose the motion.

**I. FACTS**

Defendants are lifelong residents of Rota, from a well-known local family. *Declaration of Alan B. Gordon*, (June 24, 1994) at ¶ 9. They were charged with assault and battery, assault with a

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1 dangerous weapon, and aiding and abetting assault with a dangerous  
2 weapon, in connection with events taking place on August 2, 1993  
3 on Rota. The victim of these alleged assaults is a Philippine  
4 national and until recently a contract worker on Rota. *Id.* at ¶  
5 10. A trial on these charges commenced on April 18, 1994. A  
6 total of 135 prospective jurors were summoned for the trial; 103  
7 of these individuals were excused for cause, on the grounds that  
8 they were either close relatives or friends of Defendants. After  
9 two days of voir dire, a jury was empaneled, and the trial  
10 commenced. *Id.* at ¶¶ 3-6. However, the following day, counsel for  
11 both Defendants withdrew from the case, citing ethical concerns  
12 they would not divulge to the Court. *Government Memorandum* at 2.  
13 The Court then declared a mistrial.

## 14 15 **II. ISSUES**

16 Two issues are presented for consideration:

17 1. Whether 6 CMC § 108, allowing a change of venue on the  
18 motion of the Defendant or the Government, violates the Sixth  
19 Amendment to the U.S. Constitution; and

20 2. What constitutes "good cause" warranting a change of  
21 venue on the Government's motion under 6 CMC § 108(c).

## 22 23 **III. ANALYSIS**

### 24 **A. CHANGE OF VENUE ON THE GOVERNMENT'S MOTION**

25 Title 6, CMC § 108 provides in part:

26 (a) All trials of offenses shall be held on the  
27 island where the offense was committed if a court  
28 competent to hear the case is located or regularly sits  
on that island. Otherwise all trials shall be in  
Saipan.  
[...]

1           (c) A defendant or the Commonwealth may petition  
2 the court for a change of location of trial for good  
3 cause.

4 The parties have cited no reported cases in the Commonwealth  
5 construing this statute, and the Court's own research has  
6 disclosed none. As the parties raise issues of first impression  
7 regarding both the constitutionality of this statute and the  
8 meaning of its terms, the Court looks to the precedents of the  
9 fifty states for guidance. 7 CMC § 3401.

10           1. Does 6 CMC § 108(c) Violate the Sixth Amendment?

11           The Sixth Amendment to the U.S. Constitution gives criminal  
12 defendants "the right to a speedy and public trial, by an  
13 impartial jury of the State and district wherein the crime shall  
14 have been committed...." Defendants assert that this right  
15 applies to trials in the Commonwealth by virtue of Covenant §  
16 501(a), which makes the Sixth Amendment applicable "as if the  
17 Northern Mariana Islands were one of the several states...." Of  
18 course, the right to a jury itself does not apply in the  
19 Commonwealth, by virtue of Covenant § 105. See Commonwealth v.  
20 Atalig, 723 F.2d 682 (9th Cir. 1984) cert. denied 104 S.Ct. 3581  
21 (1984); Commonwealth v. Peters, 1 N.M.I. 468, 471-4 (1991).  
22 However, Defendants claim that the remaining portions of the Sixth  
23 Amendment apply with full force and give Defendants here a  
24 constitutional right to a trial on Rota, where the offense was  
25 allegedly committed.

26           However, as the Government points out, the Sixth Amendment  
27 right to trial in the district where the crime was committed has  
28 never been incorporated into the Fourteenth Amendment. Thus, this

1 constitutional provision is not applicable to the various states,  
2 but is only binding in Federal courts. See *Caudill v. Scott*, 857  
3 F.2d 344, 345 (6th Cir. 1988); U.S. v. *Nailon*, 211 F. Supp. 676,  
4 678 (E.D. Pa. 1962), citing *Gaines v. Washington*, 48 S.Ct. 468  
5 (1928). Indeed, a number of states have statutes authorizing a  
6 change of venue on the motion of either the Government or the  
7 Defendant. See Annotation, "**Change** in Venue by State in Criminal  
8 **Case**," 46 A.L.R. 3d 295, 307-310 (collecting cases).

9 Since the "**local trial**" portion of the Sixth Amendment is not  
10 binding on the States, it cannot be binding on the Commonwealth.  
11 Moreover, the Commonwealth Constitution is silent on the issue of  
12 venue in criminal cases. The Court therefore holds that 6 CMC §  
13 108(c) is constitutional.

## 14

### 15 2. Meaning of "Good Cause."

16 In U.S. mainland jurisdictions, the courts apply somewhat  
17 varied standards for granting a motion for change of venue in a  
18 criminal trial. However, the majority of states and Federal  
19 courts require a very substantial showing of jury partiality  
20 before a change will be ordered. For example, in U.S. v.  
21 *Guerrero*, 756 F.2d 1342, 1346 (9th Cir. 1984), the court set the  
22 standard as "**whether** it is possible to select a fair and impartial  
23 **jury**." Other jurisdictions likewise place a heavy burden on the  
24 moving party to justify a venue change. See *Commonwealth v.*  
25 *Gelatt*, 393 A.2d 303, 304 (Pa. 1978) (before state's motion for  
26 venue change can be granted, "**there** should be the most imperative  
27 **grounds**" (emphasis in orig.), citing *Commonwealth v. Reilly*, 188  
28 A. 574 (Pa. 1936)); *Mast v. Superior Court*, 427 P.2d 917, 918

1 (Ariz. 1967) (court rule authorized change of venue where "a fair  
2 and impartial trial cannot be had in the county where the action  
3 was brought"); *Newberry* v. Commonwealth, 66 S.E.2d 841, 845 (Va.  
4 1955) (mere inconvenience in obtaining jury not sufficient; "it  
5 must appear that impartial jurors cannot with reasonable effort be  
6 obtained"). While these cases are based on diverse state  
7 constitutions and statutes, they generally accord with the common  
8 law rule as expressed in *State v. Holloway*, 146 P. 1066, 1068  
9 (N.M. 1915):

10 It is our conclusion by common law the accused had the  
11 right to be tried in the county in which the offense was  
12 alleged to have been committed, where the witnesses were  
13 supposed to have been accessible, and where he might  
14 have the benefit of his good character if he had  
15 established one there; but if an impartial trial could  
16 not be had in such county, it was the practice to change  
17 the venue upon application of the people to some other  
18 county where such trial could be obtained.<sup>1/</sup>

19 Here, the Government bases its motion on "the almost  
20 universal relationship between the Defendants and the residents of  
21 Rota," citing *Smith v. Commonwealth*, 55 S.W. 718, 719 (Ky. 1900),  
22 which granted a prosecution motion for change of venue on similar  
23 grounds. However, *Smith* appears to be a minority opinion even in  
24 the jurisdiction which rendered it. In *Commonwealth v. Hargis*,  
25 36 S.W.2d 8, 9 (Ky. 1931), the defendant was a bank president who  
26 claimed to have done business with more than half the adult  
27 population of the county and to be "related practically to all the  
28 people of [the] county eligible for jury service." Nevertheless,  
the Court affirmed a denial of the state's motion to change venue,  
pointing out that a jury was successfully empanelled despite these

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<sup>1/</sup> Emphasis added. This holding was reaffirmed by *State v. Valdez*, 495 P.2d 1079, 1082 (N.M. App. 1972)

1 obstacles. See also *Howard v. Commonwealth*, 20 S.W.2d 721 (Ky.  
2 1929) (affirming denial of motion to change venue where defendant  
3 had "numerous relations" in county).<sup>2/</sup>

4 In *People v. Mendes*, 219 P.2d 1, 4 (Cal. 1950), the defendant  
5 moved to change venue on the grounds:

6 that he was a foreign national accused of murdering a  
7 popular officer of a small community; that the decedent,  
8 his family, and the prosecuting attorneys were well  
9 known to, or friends of, a large fraction of the jury  
panel; and that the newspaper accounts of the homicide  
both stimulated and reflected a hostile and biased  
attitude against him in the county.

10 The California Supreme Court affirmed the trial court's denial of  
11 the motion, stating that "[t]he popularity of the decedent, the  
12 fact that the inhabitants are well known to each other in a small  
13 county, and the customary newspaper publicity, do not necessarily  
14 warrant the granting of a motion for change of venue." See also  
15 *People v. McKay*, 236 P.2d 145, 148 (Cal. 1951). The facts of  
16 *Mendes* are directly analogous to those presented here (albeit with  
17 the roles reversed).

18 In support of its motion for a change of venue to Saipan, the  
19 Government extrapolates from the statistical percentage of jurors  
20 who were excused for cause at the first trial and predicts that a  
21 similar percentage will be disqualified from any future jury pool.  
22 As for the remaining jurors, the Government argues that they might  
23 become social pariahs in the tightly-knit Rotanese society if they  
24 were to find Defendants guilty. *Government Memorandum* at 6.

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26 <sup>2/</sup> The Government cites *Hobbs v. Commonwealth*, 206 S.W.2d 48,  
27 49 (Ky. 1947), where the Court of Appeal affirmed a change of  
28 venue. However, the *Hobbs* court relied primarily on the ground  
that "such a state of lawlessness exists" in the original county  
that a fair trial could not be had. The Court appears to have  
viewed the defendant's extensive family connections as a secondary  
consideration.

1 However, measured against the standards of the authorities cited  
2 above, these arguments do not amount to a showing that the  
3 Government cannot get a fair trial on Rota. It may be that most  
4 of the potential jurors in the jury pool will have to be excused  
5 for cause when this matter is tried. However, increased  
6 inconvenience and expense incurred in drawing an impartial jury  
7 are not proper criteria for determining the propriety of a change  
8 in venue. See *Rhoden v. State*, 179 So.2d 606, 607 (Fla. App.  
9 1965); *Newberry v. Commonwealth*, supra, 66 S.E.2d at 845. If an  
10 impartial jury can be empaneled, the trial must go forward at its  
11 current venue.

12 Sound policy reasons also support the Court's holding. Title  
13 6 CMC § 108(a) clearly establishes a presumption that trials be  
14 held on the island where the offense took place. The Government's  
15 statistical extrapolations regarding family ties among indigenous  
16 Rotanese, and its arguments that jurors on Rota would be unable to  
17 resist community pressures, apply equally well to any criminal  
18 case on Rota involving a "local" defendant. If the Court were to  
19 grant a change of venue based on these grounds, it would  
20 substantially erode the presumption of the statute and replace it  
21 with a presumption in favor of holding trials on Saipan. "Local"  
22 defendants on Rota would then be deprived of the benefit of their  
23 good character in the community without a specific showing that  
24 jurors were biased in their favor. See *Holloway*, supra, 146 P. at  
25 1071; *Valdez*, supra, 495 P.2d at 1082. This result is to be  
26 avoided if the people of Rota are to continue to enjoy full access  
27 to justice.

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1 Finally, the Court acknowledges the real possibility that the  
2 Government's contentions regarding rampant jury partiality on Rota  
3 will be borne out at the retrial of this matter. Therefore, if  
4 jury voir dire demonstrates that an impartial jury cannot be  
5 empaneled despite the Court's and the parties' efforts, the  
6 Government may renew its motion and the Court will revisit this  
7 issue.

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9 **III. CONCLUSION**

10 For the foregoing reasons, the Government's motion to change  
11 venue is DENIED.

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13 So ORDERED this 30<sup>th</sup> day of September, 1994.

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16 MARTY W.K. TAYLOR, Associate Judge  
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