

1 found in the Mayor's third amended complaint. In its June 14th Decision, the Court interpreted
2 Article III, Section 17(a) and portions of Article VI of our Commonwealth Constitution. It did not
3 issue any injunctive relief. The Court disposed of several portions of the Mayor's complaint
4 summarily." With respect to those counts surviving the parties' cross-motions for summary
5 judgment, the Court identified various factual determinations which precluded summary judgment at
6 that time. The Court offered the parties an evidentiary hearing on the remaining factual issues.

7 Neither party requested an evidentiary hearing. Rather, on July 20, 1995, the Mayor filed his
8 Motion for an Order to Show Cause re: Contempt. At a July 27th status conference, the Court
9 indicated its desire to hear the motion for contempt and all other matters pending in this case at a
10 hearing set for August 17, 1995. The Mayor responded by filing renewed motions for summary
11 judgment on Counts IV, V, and IX of his complaint. In addition, the Mayor made a request to amend
12 Counts V and IX of his complaint.^{2/} Finally, the Mayor renewed his motion for injunctive relief.

13 14 15 **II. ISSUES**

16 1. Whether the Court should issue an Order to Show Cause against the Governor for failure
17 to comply with its June 14th Decision.

18 2. Whether the Court should grant the Mayor's Renewed Motions for Summary Judgment
19 on Counts IV, V, and IX.

20 3. Whether the Court should grant the Mayor injunctive relief.
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24 ^{1/} The Court granted the Mayor's motion for summary judgment on Counts I and II of his
25 complaint. However, the Court granted the Governor's motion for summary judgment on Counts III,
VIII and IX.

26 ^{2/} Having received no objection from the Governor, the Court granted the Mayor's Motion to
27 Amend. As a result, the Court now considers the Mayor's Renewed Motion for Summary Judgment
on Counts V and IX to be converted to Motions for Partial Summary Judgment.

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m. ANALYSIS

1. Mayor's Motion for Order to Show Cause

The Mayor based his Motion for an Order to Show Cause on Title 7, Sections 4103 and 4104 of the Commonwealth Code. The Mayor argued that the Governor has not complied with several portions of the June 14th Decision. During oral argument the Court questioned the propriety of an order to show cause because the Court has not specifically directed the Governor to act or not act in any way. The Mayor conceded that an order to show cause would be premature at this time. The Court denied the motion, but reserved ruling on the Mayor's motion for an injunctive order.

2. Renewed Motions for Summary Judgment

a. Count IV: Mayor's Right to Assign Employees to Help Deliver Public Services

Count IV of the Mayor's complaint originally referred to four mayoral employees on Rota who had been detailed by the Mayor to work in the Custom Service Division (CSD) and the Tax and Revenue Division of the Department of Finance (DOF) and subsequently removed from DOF by former DOF Secretary Maria Cabrera. In its Decision, the Court decided that because the services provided by DOF are primarily ministerial, former Secretary Cabrera's refusal to employ mayoral employees in the Department of Finance had to be warranted by just cause. Since the June 14th Decision, Finance largely resolved the conflict by hiring three of the four mayoral employees as Finance employees. As for the fourth mayoral employee, Mr. Harry Lopes, the Secretary of Finance has allowed him to resume his work at the CSD.

1. mootness

The Governor has argued that the just cause issue in Count IV of the Mayor's complaint has been rendered moot because all four mayoral employees are either currently employed with or working for Finance. The Mayor concedes that three of the mayoral employees have subsequently been hired by Finance and enjoy job security. However, the Mayor claims that the detailed

1 employment of Mr. Lopes will remain insecure unless the Court orders some form of injunctive relief.
2 He argues that the Secretary of DOF and secretaries of other administrative departments cannot
3 terminate a mayoral employees employment within Finance or other administrative departments
4 without just cause.

5 The Governor's argument suggests that the actual controversy that existed between the
6 Governor and the Mayor has been dissolved by recent acts of the Secretary of Finance and is no
7 longer sufficiently real to permit declaratory relief. A controversy becomes moot when the parties
8 lack a legally cognizable interest in the outcome. *In re the Matter of Robert G. Duncan*, 3 C.R. 383
9 (1988); citing *Murphy v. Hunt*, 102 S.Ct. 1181, 1183 (1982). The party contending that a
10 controversy is moot must bear the heavy burden of demonstrating facts underlying that contention.
11 *Id.*; citing *Princeton Community Phone Book, Inc. v. Bate*, 582 F.2d 706, 710 (3rd Cir. 1978), *cert.*
12 *den.* 99 S.Ct. 454. The evidence shows that three of the four employees involved in this dispute have
13 been given permanent positions. It has also been shown that Mr. Lopes has been allowed to return
14 to work at the CSD. Based on this evidence, the Court finds that the Governor has met his burden.

15 However, beyond the current employment of these four employees, the fact remains that the
16 Governor and the Secretary of Finance have insisted that secretaries of administrative departments can
17 refuse mayoral employees detailed to their departments by the Mayor. Counsel to the Governor
18 illustrated the precariousness of Mr. Lopes' job by stating, "There's no actual harm yet. [Lopes] is
19 working. If we fire him he could bring a case . . . but we haven't." This statement, in the Court's
20 view, embodies the Governor's position that his secretaries have the authority to remove mayoral
21 employees assigned to an administrative department without revoking mayoral control over that
22 department. Such a position is untenable in light of this Court's June 14th Decision. *See Inos* at 33-
23 34.

24 Controversies which are capable of repetition, yet evading review are an exception to the
25 general rule of mootness. *Duncan* at 387; citing *ITT Rayonier, Inc. v. U.S.*, 651 F.2d 343, 346 (5th
26 Cir. 1981). This test is satisfied if: (1) the challenged action is in its duration too short to be fully
27 litigated prior to its cessation or expiration, and, (2) there is a reasonable expectation that the same
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1 complaining party will be subject to the same action again. In the Court's view, this controversy falls
2 squarely within the mootness exception. First, the Secretary of Finance's act of refusal ceased during
3 this litigation and before the parties had an opportunity to fully litigate the issue. Second, in light of
4 the Governor's position and his Counsel's representations to this Court, it appears likely that when
5 again faced with a mayoral employee who appears to be substandard for the position, the Governor,
6 through his Secretary, will repeat his actions. Under these circumstances, the Court finds that the
7 controversy regarding the Mayor's authority to detail employees still exists and requires a declaration
8 from this Court.

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10 ii. primary function analysis on department by department basis

11 As an alternative to his mootness argument, the Governor claims that the just cause standard
12 does not apply to the Customs Service Division of DOF because CSD executes Commonwealth law.
13 In essence, the Governor has taken the position that the Court's June 14th Decision calls for the
14 primary function analysis to be administered on an agency by agency basis, rather than a department
15 by department basis. Specifically, the Governor relies on the following portion of the Court's June
16 14th Decision:

17 The practical result of this distinction is that the governor may refuse to delegate any
18 authority to the Mayor over those departments whose primary function is the execution
19 of law. Conversely, where an agency's primary function is the administration of
public services, the delegation of the governor's duties to the mayor becomes
mandatory.

20 *Inos* at 18 (emphasis added). What the Governor has touched upon here is an unfortunate error in the
21 use of the term agency in that Decision. Although the Court here inadvertently used the term agency
22 in place of the term department, throughout the remainder of the Decision, the Court applied the
23 primary function analysis on a department by department basis in order to differentiate between
24 government entities that execute laws and administer public services. If, as the Governor suggests,
25 the Court were to conduct a primary function analysis on an agency by agency or division by division
26 basis, the breadth of control shared by resident department heads and their respective mayors would
27 no longer be coextensive. For example, if a primary function analysis of the Customs Service

1 Division of DOF resulted in a finding that CSD executed laws, the Governor's delegation of that
2 division of DOF to the Mayor would be discretionary and likely withheld. Likewise, the rest of
3 Rota's Resident Department of DOF would remain under the authority of the Mayor. As a result,
4 the Resident Department Head of DOF on Rota would simultaneously answer to the Secretary of
5 Finance on CSD issues and the Mayor of Rota on all other aspects of administering Rota's Resident
6 Department of Finance. Such a result would violate the spirit of Article III, Section 17(a) which
7 contemplates complete mayoral responsibility over resident department heads of administrative
8 departments unless and until such mayoral responsibility is revoked for just cause.

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10 iii. the just cause standard

11 Finally, the Governor claims that the Secretary of Finance had just cause to stop the four
12 mayoral employees from working in Finance because the Mayor "sent them over without consultation
13 [with the Secretary, and] without any showing on his part that these people were competent." In
14 response, the Mayor referred to his own declaration which explained that he only detailed his
15 employees over to CSD after informing the Chief of Customs and receiving an oral confirmation that
16 the CSD did in fact need these mayoral employees.

17 The parties appear to be applying the just cause standard enunciated by this Court to establish
18 the Commonwealth Government's policy for a secretarial denial of a mayoral employee. Such is a
19 misapplication of the just cause standard pronounced in the June 14th Decision. In the following
20 excerpt from that Decision, the Court explained the Mayor's duty to carry out the policies of the
21 central government and, under certain circumstances, the Governor's corresponding burden of proving
22 that the Mayor has neglected this duty:

23 Thus, while the governor has a constitutional duty to entrust the administration of
24 public services on Rota and Tinian to the respective mayors of those islands, the
25 mayors have corresponding duties to make sure that the administration of public
26 **services** is consonant with the governor's policies. While the initial delegation to the
27 mayors is mandatory, it is counterbalanced by an implicit power of revocation in the
28 **cases** where a mayor fails to discharge his or her duty to ensure that the administration
of public services reflects the policies of the Commonwealth Government. Where the
original Constitution allowed a governor to revoke the delegation of public services

1 "without cause," the current Constitution implicitly requires just cause for a governor
2 to revoke such a delegation.

3 *Inos v. Tenorio*, Civil Action No. 94-1289 at 23 (Super. Ct. June 14, 1995). In this passage, the
4 Court introduced the just cause requirement as a means by which a governor could revoke a
5 gubernatorial delegation from a mayor who has failed to implement the policies of the Commonwealth
6 government on a department by department basis. A just cause revocation of mayoral authority over
7 a resident department is a sweeping gesture which strips a mayor of his or her authority over the
8 entire resident department.

9 In the June 14th Decision, the Court defined "just cause" termination of a mayor's delegated
10 responsibility as that which is not for any arbitrary, capricious or illegal reason and which is based
11 on facts (1) supported by the evidence and (2) reasonably believed to be true. *Id.* at 24, citing *Braun*
12 v. Alaska Com. Fishing & Agr. Bank, 816 P.2d 140, 143 (Alaska 1991). A governor who revokes
13 a mayor's authority over an administrative resident department must, at the very least, be able to point
14 to an asserted Commonwealth government policy which the Mayor had notice of and failed to follow.
15 With respect to the controversy concerning the Mayor's authority to detail his employees to an
16 administrative department, the Governor has failed to show the Court any existing Commonwealth
17 government policy in the area of mayoral employee detailing. In fact, both parties requested the
18 Court to establish the policy for them.^{3/} Without such a policy, it cannot be said that the Mayor failed
19 to implement Commonwealth government policy when, pursuant to 1 CMC § 5106(h), the Mayor
20 detailed his employees to work in a resident department in order to help him "in the performance of
21 mayoral responsibilities." *Id.* Therefore, as a matter of law, the Governor has not established just
22 cause to revoke his delegation of the Resident Department of Finance to the Mayor. Accordingly,
23 the Court grants the Mayor's motion for summary judgment on Count IV.

24 The briefs and arguments of counsel with respect to this Court's pronouncement of the just
25 cause standard reveal some confusion among the parties. The Court wishes to lay this confusion to

26 ^{3/} The Court's limited role as the interpreter of the laws of this Commonwealth precludes it from
27 fulfilling this request.

1 rest at this juncture. If a governor finds it necessary to revoke the mayoral authority over a resident
2 department primarily involved in the administration of public services, he is, in essence, firing a
3 mayor from a post which the Constitution has required him to entrust to that mayor. Accordingly,
4 a just cause revocation of a mayor's delegated authority in the administration of public services shall
5 not be made arbitrarily, capriciously or for any illegal reason, and shall be based on facts supported
6 by the evidence and reasonably believed to be true.

7 In the future, the Governor may place reasonable constraints on a mayor's authority to detail
8 his employees to an administrative resident department. Such constraints would amount to "policies
9 of the Commonwealth government." For example, the Governor has requested mayoral consultation
10 with the Secretary of DOF and proof of qualifications prior to the Mayor's detailing of his employees
11 to the DOF. The parties have agreed that both of these requests are reasonable. **Further**, the
12 Commonwealth Personnel Service Rules and Regulations may prove to be a useful guide with respect
13 to establishing constraints for mayoral employee detailing. An internal memorandum from the
14 Secretary of Finance to the Mayor of Rota establishing these constraints would suffice **as** notice of
15 Commonwealth government policy.

16 However, in order for such constraints to constitute "policies of the Commonwealth
17 government," as opposed to unconstitutional, piecemeal limitations on mayoral authority, any
18 constraints affecting the Mayor of Rota's detailing authority for **Rota's** resident department for DOF
19 must apply equally to the Mayor of Tinian and to the Secretary of DOF. In other words, constraints
20 leveled against one or two islands as opposed to all the islands will be deemed revocations of a
21 mayor's authority over a resident department rather than Commonwealth government policy.

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23 **b. Count V: Rota's Constitutional Right to Decentralized Services**

24 The Mayor's Third Amended Complaint alleged that the Governor had violated the
25 decentralization mandate contained in Article III, Section 17(a) of the Commonwealth Constitution
26 by revoking the authority of the Department of Commerce and Labor's (now Labor and
27 Immigration's) resident department head (RDH) on Rota to issue or extend labor permits. In its

1 decision, the Court found that although the authority to issue labor permits had clearly been taken
2 away from the RDH, the Mayor's Motion for Summary Judgment could not be granted unless it could
3 be shown that Rota's RDH had the authority to issue labor permits on January 7, 1986. *See Inos* at
4 25. In his Renewed Motion for Summary Judgment, the Mayor provided the Court with substantial
5 evidence on this issue. *See* Declaration of Nicolas A. Songsong at 2 (Aug. 7, 1995).

6 In response, the Governor conceded that labor permits were in fact issued by the RDH on Rota
7 on January 7, 1986. Nevertheless, the Governor contends that the labor permit service has remained
8 decentralized despite the fact that the RDH has been stripped of the authority to issue labor permits.
9 According to the Governor, as long as the decentralized service *remains available on Rota*, the
10 question of who performs the service rightfully resides with the Secretary of Commerce and Labor
11 because that department is primarily charged with the enforcement of Commonwealth law.

12 The Governor's argument evinces a disregard of an essential theme in the Court's June 14th.
13 Decision. After citing to the definition of "decentralization" found on page eighty-six of the Analysis
14 of the Constitution, this Court wrote:

15 The 'essence of "decentralization," then, is the retention of the same number of
16 resident department heads *with at least the same amount of supervisory responsibility*
17 *as existed on January 7, 1986 (the effective date of Amendment 25)*. . . . As such,
18 under the framers' definition of decentralization, the Governor can never reduce the
19 amount of supervisory responsibility which was afforded resident department heads on
20 Rota on January 7, 1986.

21 *Inos* at 25-26 (emphasis in original). Clearly, in the eyes of the framers and this Court, sustained
22 decentralization depends not only on the location of the service, but on continued resident department
23 head delivery of that service.

24 If a mayor's relationship with a particular administrative resident department of the central
25 government breaks down to such a point where a governor feels the need to act, his proper recourse
26 is the just cause revocation of that mayor's authority over the resident department involved. The act
27 of revocation sends an immediate message to the RDH that the mayor has been stripped of his
28 responsibility and authority and that the secretary of the department has replaced the mayor as their
immediate supervisor. After a revocation has occurred, the secretary of the department involved can

1 expect the RDH to follow his or her directives. Any necessary disciplinary action against an RDH
2 or other resident department employees will properly be in the discretion of the secretaries. However,
3 in the case where an RDH is fired, the Mayor shall retain the authority to appoint a new RDH
4 regardless of his lack of authority to administer the resident department,. See *Inos* at **32**. In this
5 manner, the People of Rota will be assured the continued delivery of decentralized services by their
6 resident department heads despite political or personal differences that may arise between their Mayor
7 and their Governor. The Court hereby grants the Mayor partial summary judgment^{4/} on that portion
8 of Count V involving decentralized services available at the former Resident Department of
9 Commerce and Labor.

10 For further clarification of the decentralization issue, the Court wishes to address a related
11 mayoral concern. During the hearing, Counsel to the Mayor took issue with the fact that the
12 Governor appeared to be revoking mayoral control over the resident departments which primarily
13 execute the law. Counsel expressed concern that the Governor, through the issuance of Directive 164,
14 stripped the Mayor of control over these "execution of law" departments without offering a good
15 reason. He also pointed out that the Mayor no longer controls the RDHs in those departments.
16 Although Counsel may be correct on all counts, his client is without a remedy. A governor's decision
17 to revoke mayoral control over resident departments primarily involved in the execution of laws
18 involves a **political** question which, as the Court has held, is embodied in the words "as deemed
19 appropriate" appearing in Article III, Section 17(a) of our Commonwealth Constitution. The Mayor
20 has characterized the Court's holding on this issue as untenable.

21 The Mayor's arguments are somewhat alarmist. While the Mayor's control over resident
22 departments primarily functioning to execute law on Rota is somewhat fragile, the same cannot be
23 said about the supervisory role of the resident department heads of those departments. The
24 responsibility of these RDHs is constitutionally protected. In any case, to the extent that the People
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26 ^{4/} Earlier in the August 17th proceeding, the Court granted the Mayor's Motion to **Amend** Count
27 V of his Third Amended Complaint.

1 of Rota experience elation or frustration over their Mayor's lack of control over resident departments,
2 the democratic system remains intact as a means by which their voices will be heard.

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4 **c. Count IX: The Mayor's Expenditure Authority**

5 This litigation has presented the Court with several difficult constitutional issues of first
6 impression. The issue presented in the Mayor's expenditure authority claim has been no exception.
7 In Count IX, the Court was called upon to define the parameters of the Mayor's authority to spend
8 funds appropriated for the Island of Rota. As evidence, the Mayor presented this Court with House
9 Joint Resolution No. 8-25 which he claims authorized him to expend appropriated funds to hire three
10 employees for the Customs Service Division of Rota's Department of Finance. In response, the
11 Governor pointed out that Public Law No. 9-25 superseded H.J.R. No. 8-25 and omitted any grant
12 of mayoral expenditure authority.

13 At that time, the Court raised a factual issue: whether the Mayor's efforts to approve the
14 expenditure of funds for three employees in Rota's Customs Service Division of the Department of
15 Finance preceded the passage of Public Law 9-25. Accordingly, the Court denied the parties' cross-
16 motion for summary judgment on Count IX. The Mayor has responded with substantial evidence
17 showing that he attempted to approve the expenditures before the passage of Public Law 9-25.
18 However, upon further consideration, the Court now finds this factual issue to be irrelevant to the
19 question at hand: Whether, and to what extent, Article VI, Section 3(b) of the Commonwealth
20 Constitution grants the Mayor expenditure authority over funds appropriated for the Island of Rota.

21 Article VI, Section 3(b) provides:

22 The mayor shall *administer* government programs, public services, and *appropriations*
23 provided by law for the island or islands served by the mayor, and shall report
quarterly to the Governor relating to those programs and services or appropriations.

24 Comm. Const. Art. IV, §3(b) (1985)(emphasis added). In interpreting Section 3(b), the Court looks
25 to Amendment 25. The Court has a duty to assign Section 3(b) a meaning consistent with the rest of
26 Amendment 25 including Article III, Section 17(a). Accordingly, the Court will rely on its prior
27 holding to set the framework for a discussion of Section 3(b).

1 As this Court has previously expressed, the framers of Amendment 25 sought to achieve a
2 balance "between the need for consistency with the directives of the central government and the desire
3 to ensure equitable distribution of public goods to all areas of the Commonwealth." *Inos* at 18. The
4 framers differentiated between departments primarily responsible for the execution of law and those
5 primarily concerned with the administration of public services in order to effectuate this difficult
6 equilibrium: Likewise, the framers drafted Section 3(b) with an eye toward implementing this
7 exacting, if not tedious balance.

8 The plain language of Section 3(b) directs the Mayor to "administer . . . appropriations
9 provided by law." The Mayor interprets this phrase as a general grant of expenditure authority over
10 all funds appropriated to the Island of Rota. The Governor disagreed. However, he has not afforded
11 this Court with an alternative interpretation. Likewise, the Court could not see an alternative meaning
12 for Article VI, Section 3(b) of the Commonwealth Constitution.

13 The act of *administering* is synonymous with the acts of managing, conducting, giving out,
14 distributing an object. 2 WORDS AND PHRASES⁶⁴⁹ (1993). An *appropriation* is simply the byproduct
15 of the legislative act of setting aside a specific portion of public revenue to be applied to a
16 governmental expense. 3A WORDS AND PHRASES⁴⁵³. When the two words are combined, one would
17 be hard pressed not to see that the authority to administer appropriations is synonymous with the
18 power to expend public funds once they have been earmarked for a specific government expense."
19 Applying this definition to the framework of Section 3(b), the Mayor of Rota has the authority to
20 spend public funds appropriated by the Legislature for the Island of Rota.

21 If Article VI, Section 3(b) of the Commonwealth Constitution had been created in a vacuum,
22 this Court's analysis would end here. Such is not the case. As previously mentioned, the Mayor's
23 expenditure authority is subject to the confines of the delicate balance created by Amendment 25.
24 Thus, the Governor has discretion to revoke the Mayor's expenditure authority over those departments

25 ^{5/} The Court's holding takes Black's Law Dictionary's differentiation between an "appropriation"
26 (setting apart funds) and an "expenditure" (disbursement of funds) into account. In the Court's view,
27 the verb "to administer" coupled with the object "appropriation" equals the authority to expend the funds
28 which have been set aside for Rota.

1 primarily responsible for the execution of Commonwealth law. However, absent a showing of just
2 cause, the Governor cannot deny the Mayor's authority to spend appropriated funds for those resident
3 departments primarily responsible for the delivery of public services.

4 In case the Court's analysis has not already made it clear to all parties, the Court hereby
5 mandates that the Mayor of Rota does not need to rely on mayoral expenditure authority language like
6 that found in H.J.R. No. 8-25 in order to justify his expenditure of funds appropriated for Rota.
7 Rather, the Mayor's authority to expend funds appropriated for Rota's resident departments primarily
8 involved in the administration of public services exists so long as he acts in a manner consistent with
9 the policies of the Commonwealth government. With respect to those resident departments primarily
10 involved in the execution of law, the Mayor's authority to expend funds is a political question in the
11 hands of the Governor. Thus, the Mayor's expenditure authority will rightfully remain coextensive
12 with the Governor's delegation and/or revocation of his authority over the resident departments.

13
14 **T M r' iunctive Relief**

15 This controversy began with eleven Counts. The Court has worked with both parties to
16 resolve the majority of this dispute. Despite the fact that Count X, and the Mayor's newest
17 amendments to Counts V and IX are still pending, the Court now stands ready to issue appropriate
18 injunctions based on the Court's findings in its June 14th Decision and this Decision.

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20 **Count I:** The Governor and the Governor's Representative on Rota are hereby enjoined from:
21 (1) acting as his "eyes and ears" on Rota with respect to any resident department, (2) providing direct
22 supervisory assistance to the Mayor or the resident department heads, (3) assisting in the execution
23 of laws or the delivery of public services under the control of the resident departments, and (4)
24 otherwise interfering with the functions which the Governor has been constitutionally obligated to
25 delegate to the secretaries of the executive departments pursuant to Article III, Section 14 of the
26 Commonwealth Constitution.

1 Judgment on Counts V and IX are all GRANTED. Injunctive relief is partially GRANTED in the
2 manner stated above.

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4 So ORDERED this 18 day of October, 1995.

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EDWARD MANIBUSAN, Associate Judge

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