



Full Story

Definition of Virgin Islander, renegade delegate doomed fourth attempt

By MEGAN POINSKI

Thursday, November 1st 2007

After voters defeated the territory's third draft constitution at the polls, many wondered if the territory would be able to pick up the pieces and try again to draft and ratify a constitution.

Some wondered if it would be possible - or even foolhardy to try - to improve the failed draft enough that the people would accept it at the polls.

Others wondered if the Congressional legislation enabling the Virgin Islands to draft its own constitution would let them try a second time.

On Jan. 3, 1980, those questions were answered definitively. Gov. Juan Luis signed legislation to establish the Fourth Constitutional Convention.

"Without a constitution during these times of political awareness and advancement, the Virgin Islands is being deprived of its pride and status in the political evolution of self-determination," Luis wrote in his transmittal letter that accompanied the signed bill.

The convention was scheduled as a speedy affair. The 30 delegates to the convention were elected on March 11. They were sworn in less than two weeks later. The constitution had to be completely written and accepted by the delegates in a little more than four months.

Rupert Ross Jr., who was a delegate to the convention in 1977, said that in 1980, people were still in constitution-drafting mode. Constitutional issues had been a big part of the public discourse for the last three years, especially since the third constitutional draft was defeated at the polls less than a year earlier.

"One of the reasons we were given such a short period of time for the fourth convention is that we wanted to address issues of the third constitution that were problematic - like local government and a supreme court - and improve them," Ross said.

Ross was one of several familiar faces that came out for the fourth constitutional convention. Other veterans of the third constitutional convention, like Charles Turnbull

and Adelbert Bryan came back for another attempt at perfecting self-governance in the territory.

"Any race of people should have a national sense of pride in who they are," Bryan said. "They should not sit by the side and wait for Washington to decide how they will be governed."

Several new faces joined the roster of delegates. Kwame Garcia, who was one of them, said that he was ready to put his youthful exuberance to work for the territory.

"At the time, I was very politically active," he said. "I thought I could have made great contributions to the constitution. The community needed to hear younger voices in the convention."

Henry Feuerzeig was a Territorial Court judge at the time and was interested in making a real change in territorial governance - especially the territory's court system.

"I was most interested in seeing if something could be done in bringing about a fully integrated system of justice in the Virgin Islands," he said. "We needed to have a fully functioning local court, and we needed to provide for a true appellate process - not an appellate process of going from one judge to another judge."

As the elected delegates caucused to prepare for the convention, Ross said that he was not angling for any big leadership roles. Some of the people elected to represent both the St. Thomas-St. John District and St. Croix came out with their interests in becoming president of the fourth convention. However, Ross said, these candidates did not seem to have the support from a consensus of the elected delegates.

When talks continued, Ross said there was one leader that delegates could support - him. So, Ross said, he became the president of the Fourth Constitutional Convention by consensus. Ross was the only candidate nominated, and he said he was honored to take on the leadership role.

It was, however, a lot of work. Ross recalled a month where his position as convention president seemed more like a full-time job. He had to find full-time staff, consultants, office space and the requisite equipment.

"It was a lot more work than being a delegate," Ross said.

The fourth convention set about its work by tweaking the defeated document. The elected attorney general provision was removed. The provisions establishing municipal governments and a higher court were retained, but made more general. Voters on different islands and living in different areas would be able to elect to become municipalities, and would then adopt their own charters to lay down the rules for local governance. Municipalities would be allowed to petition the Senate to assess taxes for local services and could receive money from territorial government funds, but ultimate

taxing authority would remain with the Senate.

Likewise, instead of creating a specific Supreme Court that is over a Territorial Court, the fourth constitutional draft allowed for a general appellate court. Courts of lower jurisdiction could be created, and they had flexibility to set their rules.

Other things were tweaked as well, like the preamble to the constitution. Turnbull, who wrote the preambles for the third and fourth constitutions, remembered rewriting and revising the preamble in 1980. Sidney Lee, who was a delegate to the fourth convention, pointed out one of the phrases Turnbull used in the third draft constitution's preamble: "a more perfect union."

"He said, 'You can't have a more perfect union. You can only have a perfect one,'" Turnbull said.

Turnbull argued that, correct or not, the U.S. Constitution uses the same phrase in its preamble. Compromise triumphed over emulating the United States' Founding Fathers, however, and the preamble to the fourth draft constitution strives to "promote more unity among our islands."

While the specific details that were thought to be the death knell for the third draft constitution were ironed out, one new specific detail - the definition of a Virgin Islander - worked its way in. Twenty-seven years later, it is the first topic mentioned by many people talking about the last constitutional convention. Through the years, it has remained a hotly contested issue. And almost everyone with a memory of the convention will say that it is the reason that the document failed to be ratified by the electorate.

"Of course it played a significant role," Garcia said.

"It was the basic demise of the document," Ross said.

"It was the lightning rod for the most debate," Feuerzeig said.

"This didn't represent my population," Bryan said.

"People who were not born here thought it was discrimination," Turnbull said.

Many of the delegates to the convention felt that the document was an opportunity for them to set in place a definition of who they were, building an identity for the people of the Virgin Islands.

"I don't think we could have got away with not putting a definition in," Garcia said.

The definition appears near the beginning of the constitution, after the bill of rights and the principles of government. It appears innocuous enough, defining a Virgin Islander as

a person who was born in the Virgin Islands or a descendant of at least one parent born in the Virgin Islands. It also defines a Virgin Islands citizen as a Virgin Islander, a U.S. citizen who has lived in the Virgin Islands for at least a year, and former Danish and unaffiliated citizens residing in the Virgin Islands at the time of the transfer to the United States in 1917.

Ross said that this definition is nothing compared to proposals brought forward through the drafting process. Some delegates had proposed that only native-born Virgin Islanders could seek office or be commissioners. Bryan said that he fought for things like exempting native-born Virgin Islanders from paying property taxes and allowing them fully paid university educations.

As it appeared in the constitutional draft, the definition was meant to be a harmless compromise, Turnbull said. He compared it to a pin that people could wear. It signifies that they are a member of a group, but gives them no more rights or privileges than anyone else. Turnbull said that many people advocating this viewpoint failed to realize that many people who have made great contributions to Virgin Islands society were born in Puerto Rico, back in times when the Virgin Islands did not have adequate medical facilities. Others came to the Virgin Islands from other islands, the mainland United States, or other nations and adopted the territory as their home. People who had lived in the Virgin Islands for decades did not take kindly to a constitution that said they were not Virgin Islanders, Turnbull said.

The delegates tried to make people understand what this definition did not do at every opportunity, Feuerzeig said, but it quite obviously was not enough.

Bryan said that the definition did not go far enough to ensure the specific rights that have been earned by his people - descendants of slaves brought to the Virgin Islands from Africa.

"If I can't make the world better for my population, I am wasting my time on this earth," he said.

Beginning to cross that bridge, however, made the prognosis for the document much worse, Ross said.

"Even though in the final document, the definition was meant to empower the people of the Virgin Islands, there was the perception that the document discriminated and disenfranchised some of the people," Ross said. "Many of those people did not participate in the election, or they voted against it."

According to Daily News accounts, the finished constitutional draft was signed by delegates minutes before the July 31, 1980, deadline. However, Ross admitted last month that the signing probably took place about 10 minutes after midnight - the clock had been stopped by his order to facilitate last-minute debate and signatures.

"If the deadline had not been in place, we'd still be debating today," Ross said.

In the end, 26 delegates signed the draft constitution. Bryan and delegates Denise Richards and John Collins - all disapproving of the fact that the constitution did not require the governor to be native born - did not sign the document. Delegate Olaf Hendricks was absent.

Delegates did not stay united in their support for long. When the proposed constitution went to Congress for its preliminary approval, delegate John James changed his affiliation. Although James had signed his support on the document, he paid his own way to Washington, D.C., to appear before the Senate Committee on Energy and Natural Resources and lobby that Congress defeat the draft constitution.

According to a Daily News report on May 9, 1981, James told committee members that the proposed constitution was "an impossibility," and faulted provisions in the document, including the new court structure, the sections dealing with workmen's compensation, the voting requirement, and the amendment process. V.I. citizens, he said, were "lulled into apathy" about the proposed constitution.

Ross said that James was a delegate who supported leaving the Revised Organic Act of 1954 - or many vestiges of it - in place and adopting it as a constitution. As the convention went on and more big changes were proposed, James argued more for adopting the Revised Organic Act. But, Ross said, James had a unique strategy for defeating the draft. Instead of fighting the other delegates, James presented his viewpoint to Congress in hopes that they would see that the proposal was too flawed and raised several red flags.

Congress still approved the constitution, and the convention officially censured James, who became a vocal opponent to the constitution. Which, Ross and Garcia said, created confusion.

"You may have a small minority, but when it gangs up on you, it becomes large," Garcia said.

If the controversy over the definition of a Virgin Islander, problems with what the constitution said, and a delegate who signed the document and campaigned against it were not enough to bring the document down, the lack of public education may have dealt it a final blow.

"Delegates sort of baked the cake and put it on the table, but people didn't eat it," Turnbull said. "And we said, 'If you don't eat it, that's your choice.' We thought it was OK if people didn't like one article or two. We thought it was good. The people who supported it assumed it would pass. But a lot of people didn't vote. I feel that a majority of the people did support the constitution, or would have if they knew what it was really about."

On Nov. 3, 1981, voters failed to ratify the constitution. About 60 percent of the people who came out to the polls voted it down.

Even though the constitution was not adopted, it was not a failure. The document's interim appellate court procedure, allowing for a panel of two federal judges and one Territorial Court judge to determine appeals, later became part of the law.

"I guess the most gratifying part was that clearly a lot of what we did was ultimately embodied in the Organic Act," Feuerzeig said. "It was not a wasted effort."

And now, the process is beginning again.

"It is never too far out for the process to continue," Ross said. "The process can always continue. It's a shame it's taken 27 years for us to get here again."