

OATHS.

Oaths must meet following standards as established by Supreme Court in order to be upheld.

1. The oath must distinguish between innocent versus knowing membership in proscribed organizations.
2. The oath must distinguish between knowing membership and knowing membership with the specific intent to participate in unlawful activities.
3. The state interest to be protected by the oath must be substantial in order to infringe upon the freedom of speech and association.
4. The oath must narrowly define the proscribed behavior, for if it is vague it will unconstitutionally abridge the standards of due process.

Those who oppose oaths encompassing qualifications based upon political beliefs, speech and associations make the following arguments:

1. To make a person's political beliefs or speech or associations for government benefits, privileges or positions is wholly incompatible with a system of free expression. Such qualifications operate as a severe and pervasive penalty on free expression.
2. The administration of the oaths have a deeply destructive effect upon the social fabric; it involves "searching without limits or logic into every phase of a person's beliefs, opinions and associations; the imputation to individuals of the views of others with whom he associates; the creation of a far-reaching apparatus of investigation and enforcement; the stimulation of an atmosphere of fear and hysteria.
3. The use of beliefs, opinions, and associations as a guide to future improper conduct is of minimal value.
4. The social interests sought to be protected by the oaths can be adequately protected by prohibition of the conduct rather than the expression. Mr. Justice Douglas has said: "We have drifted more and more to penalizing belief and punishing those who will not expose their beliefs. It is the overt act, not political belief or advocacy, that should be the crime or the reason for inflicting the penalty."
5. The oaths are unnecessarily rigid means for accomplishing the state's objectives. They do not take into account the many factors which must be weighed to judge whether or not an applicant's conduct is

OATHS.

Those who justify the conditioning of government services, privileges and positions upon qualifications based upon political beliefs and associations allege:

1. The state has a paramount interest in eliminating persons who are likely to present a potential for sabotage, espionage, or other activities directly injurious to security.
2. The state has a general interest in insuring the competency and trustworthiness of its personnel in the performance of their duties.
3. Persons, aside from any question of their dangerousness or fitness, simply are not deserving of government benefits, privileges and positions when they oppose the basic principles upon which American government is founded.
4. The combination of cold war exasperation, fear, and chauvinism has produced genuine community support for loyalty oaths. On the state level, organized efforts to gain legislative repeal of oaths have been noticeably unsuccessful.
5. Because of community support, the outright elimination of simple loyalty oaths may only result in the enactment of loyalty programs which do not require a statement of beliefs and associations by the individual. Such programs can have a far greater restrictive impact on speech and association than does the loyalty oath.

FAIR TREATMENT IN INVESTIGATIONS. Protection of individuals in the course of legislative and administrative investigations and procedures. The power of lawmaking bodies to collect information as a basis for policy making is inherent in the legislative process. The complexity of modern issues and the diversity of solutions have made these investigations a necessary part of the legislative process.

Abuses in investigative processes:

1. Such investigations have necessarily impinged upon the liberties of speech and association, and upon the guarantees of trial by jury and confrontation of witnesses.
2. Subpoenaed persons may not be afforded the following rights: the right to counsel; the right of appraisal; the right to receive a transcript of his testimony and the right of immunity from prosecution for those offenses about which he testifies.
3. The legislative body may find it impossible to conduct their affairs without delegating some of their functions to administrative agencies. The agencies' increasing participation in public policy determination has resulted in complicated administrative practices and procedures which sometimes encroach upon the rights of the individual.
4. There is growing bureaucracy which comes from legislative power too broadly delegated and which interferes unduly with individual rights. Students of government feel that effective protection would result from the inclusion in the Bill of Rights of guarantees from arbitrary administrative action.

PRESENTMENT OR INDICTMENT BY A GRAND JURY.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces when in actual service in time of war or public danger..... (Article 1, sec. 8 of Hawaii Constitution.)

ORGANIC ACT OF GUAM

(Act of August 1, 1950, 64 Stat. 384,
as amended to January 4, 1971)

AN ACT To provide a civil government
for Guam, and for other purposes

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BILL OF RIGHTS

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Section 5. (a) No law shall be enacted in Guam respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of their grievances.

(b) No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

(c) The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant for arrest or search shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

(d) No person shall be subject for the same offense to be twice put in jeopardy of punishment; nor shall he be compelled in any criminal case to be a witness against himself.

(e) No person shall be deprived of life, liberty, or property without due process of law.

(f) Private property shall not be taken for public use without just compensation.

(g) In all criminal prosecutions the accused shall have the right to a speedy and public trial; to be informed of the nature and cause of the accusation and to have a copy thereof; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

- (j) No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted.
- (k) No person shall be imprisoned for debt.
- (l) The privilege of the writ of habeas corpus shall not be suspended, unless, when in cases of rebellion or invasion, or imminent danger thereof, the public shall require it.
- (m) No qualification with respect to property, income, political opinion, or any other matter apart from citizenship, civil capacity, and residence shall be imposed upon any voter.
- (n) No discrimination shall be made in Guam against any person on account of race, language, or religion, nor shall the equal protection of laws be denied.
- (o) No person shall be convicted of treason against the United States unless on the testimony of two witnesses to the same overt act, or on confession in open court.
- (p) No public money or property shall ever be appropriated, supplied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or association, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such.
- (q) The employment of children under the age of fourteen years in any occupation injurious to health or morals or hazardous to life or limb is hereby prohibited.
- (r) There shall be compulsory education for all children, between the ages of six and sixteen years.
- (s) No religious test shall ever be required as a qualification to any office or public trust under the government of Guam.
- (t) No person who advocates, or who aids or belongs to any party, organization, or association which advocates the overthrow by force or violence of the government of Guam or of the United States shall be qualified to hold any public office of trust or profit under the government of Guam.
- (u) The following provisions of and amendments to the Constitution of the United States are hereby extended to Guam to the extent that...

PROPOSED BILL OF RIGHTS

The following is a proposed outline of some subjects usually found in Bill of Rights. The list is tentative and subject to changes as further study and research is done in each area.

1. Political Power. All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.

2. Religion.
Permissible monetary aids to religion:
a. To use public funds to furnish nonsectarian textbooks to pupils in parochial schools.
b. To use public funds for the transportation of pupils attending parochial schools; safety concern on highway.

3. Payment for certain damages to private property. This addition to the Bill of Rights would require the government to pay for damage it causes to private property in connection with a "public" project-such as a highway. At the present time the government must pay only if it physically takes land in eminent domain cases.
b. Paying only for land "taken," while ignoring other damages or loss of value to landowners, appeared to be an artificial and unjust distinction.

4. Voting right of felons. This would restore the right to vote to felons
a. at the time of their final discharge, which is the completion of their prison term, plus any parole or probation (even earlier if the Legislature would so provide). Now, a felon is forever barred from voting unless he receives a pardon from the Governor.
b. This amendment recognizes the fact that our prison system is designed to rehabilitate felons. After their release, they ought to reenter society and feel that they are playing a full role in it. Excluding them from voting emphasizes their second class status and hinders rehabilitation.

5. Collective bargaining for public employees. The Legislature may authorize government workers to organize and bargain collectively. Now such employees may organize and "present grievances" to the government.

6. Guarantees against unreasonable invasions of privacy. This addition to the a. Bill of Rights would guarantee additional protection for citizens against "unreasonable invasions of privacy." For instance, no wiretapping or "bugging" could be done without a court order. b. Although court decisions and statutes already enforce parts of this "right of privacy," the increasing use of electronic devices and the enlargement of government's role in modern life require that there be constitutional protection of each citizen's privacy.
7. Allow courts to dispense with bail under certain conditions. This addition to the a. Bill of Rights would allow a judge to do away with all bail in cases where he is satisfied the defendant or witness will appear in court when ordered to do so. Offenses involving possible life imprisonment, however, are excluded from this provision. b. Because the only reason for bail is to guarantee that a defendant or witness appears at the trial. In reality, however, it often has worked to the disadvantage of the poor. If a judge is reasonably sure that a defendant or witness will appear, there is no reason to require bail.
8. Counsel for indigents. This would require Guam to supply counsel for poor a. defendants who are unable to afford a lawyer. This would be required in any case which might result in more than sixty days in prison or jail. b. To insure that no defendant is denied the help of a lawyer simply because of lack of funds.
9. The Right to Know. The basic argument for open government is that the a. successful functioning of a democracy depends upon its members having access to the information necessary for making decisions. b. Open government may operate to provide officials with more accurate information; individual citizens will be able to correct factual misconceptions, particularly in local government where the public is apt to have greater knowledge of the issues involved. In addition, as the people are better able to know and understand the demands of government and the significance of particular issues, they will be better prepared to accept necessary, and perhaps difficult and unpalatable measures essential to the public good. When information is withheld, public opinion is shaped by rumor rather than accurate information and the popular judgments that are subsequently formed may be widely erroneous.

PROPOSED BILL OF RIGHTS

THE FOLLOWING IS A PROPOSED OUTLINE OF SOME SUBJECTS USUALLY FOUND IN THE BILL OF RIGHTS. THE LIST IS TENTATIVE AND SUBJECT TO CHANGES AS FURTHER STUDY AND RESEARCH IS DONE IN EACH AREA.

10. ACADEMIC FREEDOM. IS THAT ASPECT OF INTELLECTUAL LIBERTY CONCERNED WITH THE PECULIAR INSTITUTIONAL NEEDS OF THE ACADEMIC COMMUNITY. THE CLAIM THAT SCHOLARS, BOTH FACULTY AND STUDENTS, ENGAGED IN THE PURSUIT OF KNOWLEDGE ARE ENTITLED TO PARTICULAR PRIVILEGE FROM IDEOLOGICAL COERCION IS BASED UPON THE CONVICTION THAT "THE INVALUABLE SERVICE RENDERED BY THE UNIVERSITY TO SOCIETY CAN BE PERFORMED ONLY IN AN ATMOSPHERE ENTIRELY FREE FROM ADMINISTRATIVE, POLITICAL, OR ECCLESIASTICAL CONSTRAINTS ON THOUGHT AND EXPRESSION.

A. PRO-ACADEMIC FREEDOM. (1) THE TEACHER IS ENTITLED TO FULL FREEDOM IN RESEARCH AND IN THE PUBLICATION OF THE RESULTS, SUBJECT TO THE ADEQUATE PERFORMANCE OF HIS OTHER ACADEMIC DUTIES.... (2) THE TEACHER IS ENTITLED TO FREEDOM IN THE CLASSROOM IN DISCUSSING HIS SUBJECT, BUT HE SHOULD BE CAREFUL NOT TO INTRODUCE INTO HIS TEACHING CONTROVERSIAL MATTER WHICH HAS NO RELATION TO HIS SUBJECT.... (3) THE COLLEGE OR UNIVERSITY TEACHER IS A CITIZEN, A MEMBER OF A LEARNED PROFESSION, AND AN OFFICER IN AN EDUCATIONAL INSTITUTION. WHEN HE SPEAKS OR WRITES AS A CITIZEN, HE SHOULD BE FREE FROM INSTITUTIONAL CENSORSHIP OR DISCIPLINE, BUT HIS SPECIAL POSITION IN THE COMMUNITY IMPOSES SPECIAL OBLIGATIONS.....

B. PRO-ACADEMIC FREEDOM. ACADEMIC FREEDOM OF STUDENTS.... FREE INQUIRY AND FREE EXPRESSION ARE ESSENTIAL ATTRIBUTES OF THE COMMUNITY OF SCHOLARS. AS MEMBERS OF THAT COMMUNITY, STUDENTS SHOULD BE ENCOURAGED TO DEVELOP THE CAPACITY FOR CRITICAL JUDGMENT AND TO ENGAGE IN A SUSTAINED AND INDEPENDENT SEARCH FOR TRUTH. THE FREEDOM TO LEARN DEPENDS UPON APPROPRIATE OPPORTUNITIES AND CONDITIONS IN THE CLASSROOM, ON THE CAMPUS, AND IN THE LARGER COMMUNITY.

C. CON-ACADEMIC FREEDOM. A CONTRIBUTING FACTOR IN THIS SITUATION HAS BEEN THE LACK OF GUIDELINES FOR THE USE OF THE COURTS. HOWEVER, A SERIES OF RECENT SUPREME COURT DECISIONS SUGGEST TO SOME OBSERVERS THAT THE COURT HAS OPENED UP THE POSSIBILITY OF A SUBSTANTIAL DEGREE OF JUDICIAL PROTECTION FOR ACADEMIC FREEDOM AS A CONSTITUTIONALLY RECOGNIZED RIGHT. WIEMAN V. UPDEGRAFF.

D. CON-ACADEMIC FREEDOM. THE COURTS MUST ACCOMMODATE THE SCHOLARS' DEMANDS FOR FREEDOM WITH THE COMPETING DEMANDS OF THE INSTITUTION AND THE STATE FOR

11. ASSOCIATION, FREEDOM OF. IS THE RIGHT TO ASSOCIATE FOR SUCH ADVOCACY OF BELIEFS AND IDEAS.

A. PRO-ASSOCIATION. IT IS BEYOND DEBATE THAT FREEDOM TO ENGAGE IN ASSOCIATION FOR THE ADVANCEMENT OF BELIEFS AND IDEAS IS AN INSEPARABLE ASPECT OF THE "LIBERTY" ASSURED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, WHICH EMBRACES FREEDOM OF SPEECH.
N.A.A.C.P. V. ALABAMA

B. PRO-ASSOCIATION. THAT FREEDOM OF ASSOCIATION ENCOMPASSES ALL HUMAN INTERESTS FOR IT IS IMMATERIAL WHETHER THE BELIEFS SOUGHT TO BE ADVANCED BY ASSOCIATIONS PERTAIN TO POLITICAL, ECONOMIC, RELIGIOUS OR CULTURAL MATTERS.

C. PRO-ASSOCIATION. THAT INDIVIDUALS OF LIKE PERSUASION ARE FREE TO ASSOCIATE IN ORDER TO ACCOMPLISH IN CONCERT WHAT THEY MAY BE TOO WEAK TO ACCOMPLISH ACTING ALONE.

D. CON-ASSOCIATION. ASSOCIATIONS WERE THOUGHT TO BE ADVERSE TO THE AGGREGATE INTERESTS OF THE COMMUNITY AND TO CREATE ANIMOSITY AND JEALOUSY BETWEEN CITIZENS.

E. CON-ASSOCIATION. THE COURT HAS SAID THAT THE FREEDOM OF ASSOCIATION FOR ENTAILS PROTECTION OF THE PRIVACY OF ASSOCIATION FOR COMPELLING THE DISCLOSURE OF MEMBERSHIP MAY EFFECTIVELY CURTAIL FREEDOM OF ASSOCIATION.

F. SUGGESTED DRAFT:

1. NO LAW SHALL BE ENACTED...ABRIDGING THE FREEDOM OF SPEECH, OF ASSOCIATION, OR OF THE PRESS.....

12. MINIMUM AGE OF LEGISLATORS. LOWERS THE MINIMUM AGE REQUIREMENT FOR LEGISLATORS TO THE AGE OF MAJORITY (20 YEARS OLD). NOW SENATORS MUST BE AT LEAST 25.

A. PRO-MINIMUM AGE OF LEGISLATORS AT 20. YOUNG PEOPLE, AS A GROUP, SHOULD NOT BE EXCLUDED FROM SEEKING TO SERVE IN THE LEGISLATURE. THEY OUGHT TO BE GIVEN THE OPPORTUNITY TO RUN FOR OFFICE AND HAVE THE PEOPLE ACCEPT OR REJECT THEM ON THEIR ABILITIES, RATHER THAN BEING BARRED FROM RUNNING BY AN ARBITRARY AGE BARRIER.

13. CODES OF ETHICS AND DISQUALIFICATION FOR DISLOYALTY. REQUIRES THAT GUAM HAVE CODES OF ETHICS FOR ALL APPOINTED AND ELECTED OFFICIALS AND EMPLOYEES. ADOPTS A NEW PROVISION PROHIBITING GOVERNMENT EMPLOYMENT FOR ANY PERSON INVOLVED

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