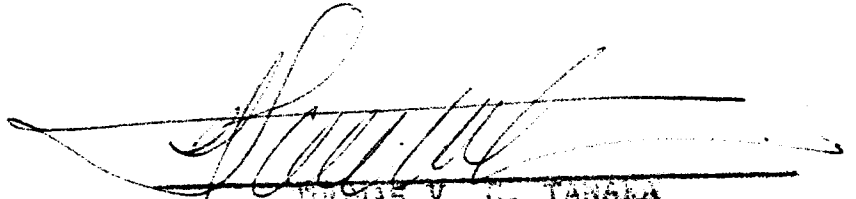


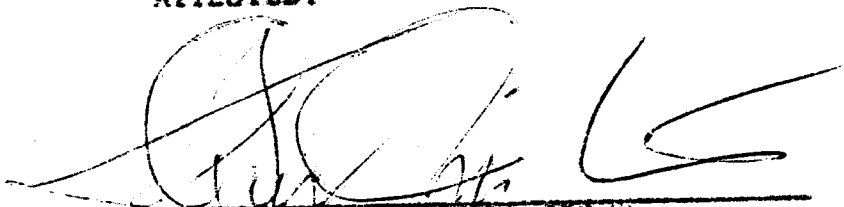
SIXTEENTH GUAM LEGISLATURE
1982 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

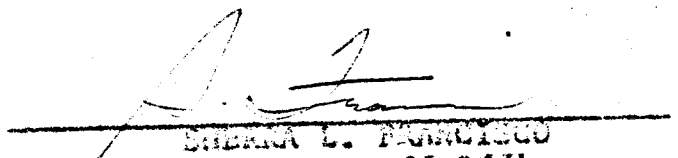
This is to certify that Bill No. 134, "An Act to add Chapter III to Title II of Part I Division Fourth of the Civil Code to provide for compensation of victims of criminal actions", was on the 15th day of April 1982, duly and regularly passed.


THOMAS V. C. YANALA
Speaker


ATTESTED:


THOMAS C. CRISOSTOMO
Legislative Secretary

This Act was received by the Governor this 30th day of April, 1982, at 4:10 o'clock P.M.


EMERITA L. PARDO
Assistant Staff Officer
Governor's Office

APPROVED:


PAUL M. GUALO
GOVERNOR OF GUAM

DATED: 5-11-82
P.L. 16-86

SIXTEENTH GUAM LEGISLATURE
1982 (SECOND) Regular Session

Bill No. 134

Introduced by: E. K. Duenas, P. F. Perez, Jr., A. R. Gupingco

E. T. Chantavros
J. I. Leon Guerrero
J. T. San Agustin
F. J. Quitugua
F. R. Santos
A. Q. Sudo
J. Q. Torres
T. V. C. Tanaka
X. S. Moylan
T. C. Crisostomo
F. F. Blas
A. C. Lanorena III
J. H. Underwood
J. F. Quan
M. Z. Bordaile

AN ACT TO ADD CHAPTER III TO TITLE II OF PART I
DIVISION FOURTH OF THE CIVIL CODE TO PROVIDE FOR
COMPENSATION OF VICTIMS OF CRIMINAL ACTIONS.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. Chapter III is added to Title II of Part I of
3 Division Fourth of the Civil Code to read:

4 "CHAPTER III

5 Compensation for Damages from Criminal Activities

6 Section 5361.1 Definitions. As used in this Chapter:

7 (a) 'child' means an unmarried person who is under
8 eighteen (18) years of age and includes a stepchild or an
9 adopted child;

10 (b) 'commission' means the Criminal Injuries Compen-
11 sation Commission established by this Chapter;

12 (c) 'dependents' means such relatives of a deceased
13 victim who were wholly or partially dependent upon his
14 income at the time of his death or would have been so
15 dependent but for the incapacity due to the injury from
16 which the death resulted and includes the child of the
17 victim born after his death;

1 (d) 'injury' means actual bodily harm and, in respect
2 of a victim, includes pregnancy and mental or nervous shock;

3 (e) 'private citizen' means any natural person other
4 than a peace officer who is actively engaged in the perfor-
5 mance of his duties;

6 (f) 'relative' means a victim's spouse, parent, grand-
7 parent, stepfather, stepmother, child, grandchild, brother,
8 sister, half-brother, half-sister or spouse's parents;

9 (g) 'victim' means a person who is injured or killed
10 by any act or omission of any other person coming within
11 the description of any of the crimes specified in Section
12 3361.10 of this Chapter; and

13 (h) 'person' means a natural person.

14 Section 3361.2. Creation of the Criminal Injuries
15 Compensation Commission. There shall be a Criminal Injuries
16 Compensation Commission which shall be composed of seven (7)
17 members appointed by the Governor with the advice and consent
18 of the Legislature. One (1) member of the commission shall
19 be an attorney who has been admitted to practice in the
20 territory of Guam for at least five (5) years. No officer
21 or employee of the territory shall be eligible for appoint-
22 ment to the commission. The commission is placed within the
23 Department of Law for administrative purposes. Annually,
24 the members shall elect a chairperson of the commission.

25 Section 3361.3. Tenure and compensation of members.
26 The term of office of each member of the commission shall
27 be four (4) years or until his successor is appointed

1 except that (1) the terms of office of the members first
2 taking office shall expire as designated by the Governor
3 at the time of appointment, two (2) on December 31, 1982,
4 two (2) on December 31, 1983, two (2) on December 31, 1984
5 and one (1) on December 31, 1985; and (2) any member
6 appointed to fill the vacancy occurring prior to the expi-
7 ration of the term for which his predecessor was appointed,
8 shall be appointed for the remainder of the term. A vacancy
9 in the commission shall not affect its powers. If any
10 member of the commission is unable to act because of absence,
11 illness or other sufficient cause, the Governor may make
12 a temporary appointment, and such appointee shall have all
13 the powers and duties of a regular member of the commission
14 for the period of his appointment.

15 Section 3361.4. Powers and procedures of Commission.
16 Upon an application made to the commission under this
17 Chapter, the commission shall fix a time and place for a
18 hearing on such application and shall cause notice thereof
19 to be given to the applicant. The commission may hold such
20 hearings, sit and act at such times and places, and take
21 such testimony as the commission may deem advisable. Any
22 four (4) members shall constitute a quorum. The concurring
23 vote of the four (4) members shall be necessary to take any
24 action. Any member of the commission may administer oaths
25 or affirmations to witnesses appearing before the commission.
26 The commission shall have such powers of subpoena and compul-
27 sion of attendance of witnesses and production of documents
28 and of examination of witnesses as are conferred upon the
29 Superior Court. Subpoenas shall be issued under the signa-
30 ture of the chairman. The Superior Court may, upon the

1 application of the commission, enforce the attendance and
2 testimony of any witness and the production of any documents
3 so subpoenaed. Subpoena and witness fees and mileage shall
4 be the same as in criminal cases in the court, and shall be
5 payable from funds appropriated for expenses of administra-
6 tion.

7 Section 3301.5. Hearings and evidence. Where any
8 application is made to the commission, the applicant and
9 the commission's legal adviser shall be entitled to appear
10 and be heard. Any other person may appear and be heard who
11 satisfied the commission that he has a substantial interest
12 in the proceedings. In any case in which the person entitled
13 to make an application is a child, the application may be
14 made on his behalf by his parent or legal guardian. In any
15 case in which the person entitled to make an application is
16 mentally defective, the application may be made on his
17 behalf by his guardian or such other individual authorized
18 to administer his estate.

19 Where under this Chapter any person is entitled to
20 appear and be heard by the commission, that person may
21 appear in person or by his attorney. All hearings shall
22 be open to the public unless, in a particular case, the
23 commission determines that the hearing, or a portion thereof,
24 should be held in private, having regard to the fact that
25 the offender has not been convicted or to the interest of
26 the victim of an alleged sexual offense.

27 Every person appearing under this section shall have
28 the right to produce evidence and to cross examine witnesses.
29 The commission may receive in evidence any statement, docu-
30 ment, information, or matter that may, in the opinion of the

1 commission, contribute to its functions under this Chapter,
2 whether or not such statement, document, information, or
3 matter would be admissable in a court of law.

4 If any person has been convicted of any offense with
5 respect to an act or omission on which a claim under this
6 Chapter is based, proof of that conviction shall, unless
7 an appeal against the conviction or a petition for a re-
8 hearing in respect of the charge is pending or a new trial
9 or rehearing has been ordered, be taken as conclusive evi-
10 dence that the offense has been committed.

11 Section 3361.6. Medical examination. The commission
12 may appoint an impartial licensed physician or examine any
13 person making application under this Chapter, and the fees
14 for the examination shall be paid from funds appropriated
15 for expenses of administration.

16 Section 3361.7. Attorneys' fees. The commission may,
17 as part of any order entered under this Chapter, determine
18 and allow reasonable attorneys' fees, which if the award
19 of compensation is more than One Thousand Dollars (\$1,000)
20 shall not exceed fifteen per cent (15%) of the award, to
21 be paid out of but not in addition to the award, to the
22 attorneys representing the applicant, provided, that the
23 amount of the attorneys' fees shall not, in any event,
24 exceed the award of compensation remaining after deducting
25 that portion thereof for expenses actually incurred by the
26 claimant.

27 Any attorney who charges, demands, receives, or
28 collects for services rendered in connection with any pro-
29 ceedings under this Chapter any amount in excess of that

1 allowed under this section, if any compensation is paid,
2 shall be fined not more than Two Thousand Dollars (\$2,000).

3 Section 3361.8. Reconsideration by Commission;
4 judicial review. (a) The commission may, at any time, on
5 its own motion or on the application of any person aggrieved
6 by an order or decision of the commission, reconsider the
7 order or decision and revoke, confirm, or vary the order
8 or decision, based upon the findings of the commission.

9 (b) Any person aggrieved by an order or decision of
10 the commission on the sole ground that the order or decision
11 was in excess of the commission's authority or jurisdiction,
12 shall have a right of appeal to the Superior Court, provided,
13 the appeal is filed within thirty (30) days after service
14 of an original or a certified copy of such order or decision.
15 Except as otherwise provided in this Section, orders and
16 decisions of the commission shall be conclusive and not
17 subject to judicial review.

18 Section 3361.9. Eligibility for compensation.

19 (a) In the event any person is injured or killed by
20 any act or omission of any other person coming within the
21 criminal jurisdiction of the territory after September 30,
22 1960, which act or omission is within the description of the
23 crimes enumerated in Section 3361.10, the Commission may,
24 in its discretion, upon an application, order the payment
25 of compensation in accordance with this Chapter:

26 (1) to or for the benefit of the victim;

27 (2) to any person responsible for the maintenance of
28 the victim, where that person has suffered pecuniary loss
29 or incurred expenses as a result of the victim's injury
30 or death;
31

1 (3) in the case of the death of the victim, to or
2 for the benefit of any one or more of the dependents of
3 the deceased victim; or

4 (4) to a parent of an adult deceased victim, or to an
5 adult son or daughter of a deceased victim, where the parent
6 or adult son or daughter has incurred expenses on account
7 of hospital, medical, funeral and burial expenses as a re-
8 sult of the victim's injury and death.

9 (b) For the purposes of this Chapter, a person shall
10 be deemed to have intentionally committed an act or omission
11 notwithstanding that by reason of age, insanity, drunkenness
12 or otherwise he was legally incapable of forming a criminal
13 intent.

14 (c) In determining whether to make an order under this
15 section, the commission may consider any circumstances it
16 determines to be relevant, and the commission shall consider
17 the behavior of the victim, and whether, because of provo-
18 cation or otherwise, the victim bears any share of respon-
19 sibility for the crime that caused his injury or death and
20 the commission shall reduce the amount of compensation in
21 accordance with its assessment of the degree of such respon-
22 sibility attributable to the victim.

23 (d) An order may be made under this section whether or
24 not any person is prosecuted for or convicted of a crime
25 arising out of an act or omission described in Subsection (a)
26 of this Section, provided, an arrest has been made or such act
27 or omission has been reported to the police without undue
28 delay. No order may be made under this Section unless the
29 commission finds that:

- 30 (1) the act or omission did occur; and
31 (2) the injury or death of the victim resulted
32 from the act or omission.

1 Upon application from either the Attorney General or the
2 Director of the Department of Public Safety, the commission
3 may suspend proceedings under this Chapter for such period
4 as it deems desirable on the ground that a prosecution for
5 a crime arising out of the act or omission has been
6 commenced or is imminent, or that release of the investiga-
7 tion report would be detrimental to the public interest.

8 Section 3361.10. Violent crimes. (a) The
9 crimes to which this Chapter applies are the following and
10 no other:

11 (1) murder (Criminal and Correctional Code Section
12 16.50)

13 (2) manslaughter (Criminal and Correctional Code
14 Section 16.40)

15 (3) aggravated assault (Criminal and Correctional
16 Code Section 19.20)

17 (4) assault (Criminal and Correctional Code Section
18 19.50)

19 (5) kidnapping (Criminal and Correctional Code Section
20 22.30)

21 (6) restraint of another unlawfully in circumstances
22 exposing him to risk of serious bodily injury or holding
23 another in a condition of involuntary servitude (Criminal
24 and Correctional Code Section 22.50)

25 (7) child stealing (Criminal and Correctional Code
26 Section 22.40)

27 (8) harboring a child (Criminal and Correctional Code
28 Section 22.50)

29 (9) criminal sexual conduct in the first degree (Cri-
30 minal and Correctional Code Section 25.15)

31 (10) criminal sexual conduct in the second degree
32 (Criminal and Correctional Code Section 25.20)

1 (11) criminal sexual conduct in the third degree
2 (Criminal and Correctional Code Section 25.25)

3 (12) criminal sexual conduct in the fourth degree
4 (Criminal and Correctional Code Section 25.30) and

5 (13) assault with intent to commit criminal sexual
6 conduct (Criminal and Correctional Code Section 25.45)

7 (b) For the purposes of this Chapter, the operation of
8 a motor vehicle, boat or aircraft that results in an injury
9 or death shall not constitute a crime, unless the injuries
10 were intentionally inflicted through the use of such vehicle,
11 boat or aircraft.

12 (c) Any fine imposed pursuant to Section 80.50 of
13 Title 3 of the Guam Code Annotated upon conviction of any
14 of the crimes specified in subsection (a) of this Section
15 shall be paid into the Criminal Injuries Compensation Fund
16 established by Section 3361.13 of the Civil Code.

17 Section 3361.11. Award of compensation. The commis-
18 sion may order only from available balances in the Criminal
19 Injuries Compensation Fund the payment of compensation under
20 this Chapter for:

21 (1) expenses actually and reasonably incurred as a
22 result of the injury or death of the victim;

23 (2) loss to the victim of earning power as a result of
24 total or partial incapacity;

25 (3) pecuniary loss to the dependents of the deceased
26 victim;

27 (4) pain and suffering to the victim; and

28 (5) any other pecuniary loss directly resulting from
29 the injury or death of the victim which the commission deter-
30 mines to be reasonable and proper.

1 Section 3361.12. Relationship to offender. No
2 compensation shall be awarded, except for expenses specified
3 in Section 3361.14 (1) of this Chapter, if the victim was
4 at the time of his injury or death living with the offender
5 as spouse or as a member of the offender's household.

6 Section 3361.13. Recovery from offender. Whenever
7 any person is convicted of an offense that includes any
8 crime enumerated in Section 3361.10 of this Chapter and an
9 order or the payment of compensation is or has been made
10 under this Chapter for injury or death resulting from the
11 act or omission constituting such offense, the commission
12 may institute a derivative action against the person and
13 against any person liable at law on his behalf, in the name
14 of the victim or such of his dependents as have been awarded
15 compensation under this Chapter in the Superior Court for
16 such damages as may be recoverable at common law by the
17 victim or such dependents without reference to the payment
18 of compensation. The court shall have jurisdiction to hear,
19 determine and render judgment in any such action. The time
20 for the occurrence of the act or omission until conviction of
21 the offense and, thereafter, as long as the offender is in
22 confinement for conviction of the offense, shall not consti-
23 tute any part of the time limited for the commencement of
24 the action by the commission under the applicable statute of
25 limitations. Any recovery in the action shall belong to the
26 territory, provided, that the commission shall amend its order
27 of compensation to provide for the payment of any portion
28 of the recovery in excess of the amount of compensation
29 prescribed in the order to any of the persons entitled to

1 receive compensation under Section 3361.9 of this Chapter
2 in such proportions and upon such terms as the commission
3 shall deem appropriate.

4 Section 3361.14. Eligibility for compensation. In the
5 event a private citizen incurs injury or property damage in
6 preventing the commission of a crime within the territory,
7 in apprehending a person who has committed a crime within
8 the territory, or in materially assisting a peace officer
9 who is engaged in the prevention or attempted prevention of
10 such a crime or the apprehension or attempted apprehension
11 of such a person, the commission may, in its discretion,
12 upon an application, order the payment of compensation in
13 accordance with this Chapter:

14 (1) to or for the benefit of the private citizen; or

15 (2) to any person responsible for the maintenance of
16 the private citizen, where that person has suffered pecuniary
17 loss or incurred expenses as a result of the private citi-
18 zen's injury.

19 Section 3361.15. Award of compensation. The commission
20 may order the payment of compensation under this Chapter for:

21 (1) expenses actually and reasonably incurred as a
22 result of the injury of the private citizen;

23 (2) pain and suffering to the private citizen;

24 (3) loss to the private citizen of earning power as a
25 result of total or partial incapacity; and

26 (4) pecuniary loss to the private citizen directly
27 resulting from damage to his property.

28 Section 3361.16. Terms of order. Except as otherwise
29 provided in this Chapter, any order for the payment of com-
30 pensation under this Chapter may be made on such terms as

1 the commission deems appropriate. Without limiting the
2 generality of the preceding sentence, the order may provide
3 for apportionment of the compensation, for the holding of
4 the compensation or any part thereof in trust, for the
5 payment of the compensation in a lump sum or periodic
6 instalments, and for the payment of compensation for hos-
7 pital, medical, funeral or burial expenses directly to the
8 person who has provided such services. All such orders
9 shall contain words clearly informing the claimant that all
10 awards and orders for payments under this Chapter are subject
11 to the making of an appropriation by the Legislature to pay
12 the claim, except as otherwise provided in Section 3361.13
13 of this Chapter.

14 Section 3361.17. Limitations upon award of compensa-
15 tion. (a) No order for the payment of compensation shall
16 be made under this Chapter unless the application has been
17 made within eighteen (18) months after the date of injury,
18 death or property damage.

19 (b) No compensation shall be awarded under this Chapter
20 in an amount in excess of Ten Thousand Dollars (\$10,000).

21 Section 3361.13. Criminal Injuries Compensation Fund;
22 when payments authorized. (a) There is established a
23 Criminal Injuries Compensation Fund from which the commission
24 may make payments as provided in Subsection (b) of this
25 Section. The Attorney General shall be the certifying
26 officer of the fund, and all payments therefrom shall be paid
27 by him upon order of the commission.

28 (b) Where the commission has made an award pursuant to
29 this Chapter, the commission shall make such payments to or
30 on behalf of the victim, or to or for the benefit of one or

1 more of the dependents of a deceased victim, or to or
2 for the benefit of other persons who have suffered pecuniary
3 loss or incurred expenses on account of hospital, medical,
4 funeral or burial expenses as a result of the victim's
5 injury or death. Payments made pursuant to this Section
6 shall not exceed the total amount of the award.

7 Section 3361.19. Recovery from collateral source.

8 (a) In determining the amount of compensation to be awarded
9 under this Chapter, the commission shall deduct amounts or
10 benefits received or to be received from any source, whether
11 from the offender or from any person on behalf of the offen-
12 der, or from public or private funds, and which amounts or
13 benefits result from or are in any manner, directly or in-
14 directly, attributable to the injury or death which gave
15 rise to the award; provided, that no deduction shall be made
16 for death benefits received or to be received under any
17 insurance policy covering the life of a deceased victim.

18 (b) Where compensation is awarded under this Chapter
19 and the person receiving same also receives any sum required
20 to be, and that has not been deducted under Subsection (a)
21 of this Section, he shall refund to the territory the lesser
22 of the sum or the amount of the compensation paid to him
23 under this Chapter.

24 Section 3361.20. Legal Adviser. The Attorney General
25 shall serve as legal adviser to the commission.

26 Section 3361.21. Exemption from execution. No com-
27 pensation payable under this Chapter shall, prior to actual
28 receipt thereof by the person or beneficiary entitled there-
29 to, or their legal representatives, be assignable or subject
30 to execution, garnishment, attachment or other process
31 whatsoever, including process to satisfy an order or

1 judgement for support or alimony.

2 Section 3361.22. Survival and abatement. The rights
3 to compensation created by this Chapter are personal and
4 shall not survive the death of the person or beneficiary
5 entitled thereto, provided, that if such death occurs after
6 an application for compensation has been filed with the
7 commission, the proceeding shall not abate, but may be
8 continued by the legal representative of the decedent's
9 estate.

10 Section 3361.23. Rule-making powers. In the perfor-
11 mance of its functions, the commission may adopt, amend
12 and repeal rules and regulations, not inconsistent with this
13 Chapter, prescribing the procedures for conducting its
14 business, the procedures to be followed in the filing of
15 applications and the proceedings under this Chapter and
16 such other matters as the commission deems appropriate.

17 Section 3361.24. Commission staff. Supervisory,
18 administrative and clerical personnel necessary for the
19 efficient functioning of the commission may be appointed.

20 Section 3361.25. Annual Report. The Attorney General
21 shall transmit annually to the Governor and to the Legisla-
22 ture a report of the Commission's activities under this Chap-
23 ter including the name of each applicant, a brief description
24 of the facts in each case, and the amount, if any, of compen-
25 sation awarded. The Attorney General shall transmit the re-
26 port, together with a tabulation of the total amount of com-
27 pensation awarded, and a legislative bill appropriating funds
28 necessary to replenish the Criminal Injuries Compensation
29 Fund for the compensation awarded."

1 Section 2. A new Section 9 Government Code Annotated 80.53
2 is added to read:

3 "Section 80.53. When Restitution Required. The court
4 shall require restitution in all cases wherein the offender
5 has been convicted of a crime involving damage to property
6 of the victim when the offender is or, given a fair oppor-
7 tunity to do so, will be able to pay the restitution."

8 Section 3. Section 9 Government Code Annotated 80.91 is
9 amended to read:

10 "Section 80.91. In lieu of or in addition to a fine,
11 confinement, or probation, a judge in any felony case where
12 force or violence is not an element of the offense of which
13 the dependant stands convicted, or in any misdemeanor, petty
14 misdemeanor, or violation case, including juvenile cases,
15 but excluding every case in which the offense of which the
16 defendant stands convicted carries a mandatory sentence of
17 confinement or involves damage to property of the victim,
18 may impose a sentence that contains any or all of the
19 following elements:

20 (a) Restitution as provided for in Chapter 30 of the
21 Criminal and Correctional Code;

22 (b) Alternative community service; or

23 (c) Participation in a self-improvement and rehabili-
24 tative program.

25 This provision shall not apply to any case in which
26 the crime of which the defendant stands convicted is punish-
27 able by fine only."

28 Section 4. (a) No later than January 1, 1986, the Criminal
29 Injuries Compensation Commission shall report to the Governor and
30 and the Legislature its recommendation on continuing the program

1 providing victims compensation for damages from criminal activi-
2 ties. The Commission shall make recommendations as to any
3 changes in the statute required to improve the program if it
4 favors continuation.

5 (b) Unless otherwise provided by law, no applications for
6 compensation shall be filed by any person after April 30, 1986.

7 (c) Unless otherwise provided by law, Section 1, of this
8 Act shall expire on December 31, 1986. The Commission shall
9 continue in existence until December 31, 1986 for the purpose
10 of winding up its affairs and disposing of all applications
11 filed before May 1, 1986.

DATE 4-15-82

SIXTEENTH GUAM LEGISLATURE

VOTING RECORD

BILL/RESOLUTION NO. 134

MAIN SPONSOR EP

SENATOR	AYE	NAY	NOT VOTING	ABSENT
BLAS, Frank F.	✓			
BORDALLO, Madeleine Z.	✓			
CHARFAUROS, Edward T.	✓			
CRISOSTOMO, Thomas C.	✓			
DUENAS, Edward R.	✓			
GUTIERREZ, Carl T. C.	OT			
KASPERBAUER, Carmen A.	✓			
LAMORENA, Alberto C., III	✓			
LEON GUERRERO, Jose I.	✓			
MOYLAN, Kurt	✓			
PEREZ, Peter F., Jr.	✓			
QUAN, John F.	✓			
QUITUGUA, Franklin J.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francisco R.	✓			
SUDO, Ramon Q.	✓			
TANAKA, Thomas V. C.	✓			
TORRES, Jess Q.	✓			
UMAGAT, Lloyd L.	✓		✓	
UNDERWOOD, James H.			✓	
UNPINGCO, Antonio R.	✓			

T O T A L

18 0 2 1