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UNITED STATES DEPARTMENT OF INTERIOR
TRUST TERRITORY OF THE PACIFIC ISLANDS
OFFICE OF THE HIGH COMMISSIONER
SAIPAN, MARIANA ISLANDS

COMMERCIAL CABLE ADDRESS
HICOTT SAIPAN

Declassified in accord with E.O. 12356
H. DeLoshmutt 9/16/85

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December 13, 1968

Mrs. Ruth G. Van Cleve
Director, Office of Territories
Department of the Interior
Washington, D. C. 20240

Dear Mrs. Van Cleve:

I realize that my necessarily cryptic teletype about your proposed joint resolution "to provide for an act of self-determination in the Trust Territory of the Pacific Islands, and for other purposes" may have been so vague for security purposes as to have lost you in the vagaries as to what our concerns are. We wanted to get off a reply to your letter of October 25 on this important issue much before this, but the High Commissioner has only recently had an opportunity to make his preliminary notes about his reactions, (none of which I recall as being negative), but time has not permitted us to make a composite reaction to this rather substantial undertaking. Too, we have our usual problem with Public Affairs reacting to the nitty-gritty problems by planting both feet firmly in mid-air.

At the outset, I think I can say there is a general reaction among the three of us (Mr. Craley included) that this is a very salutary way to proceed in resolving our impasse on our political future out here. The draft, which you were too self-effacing in labeling "very rough," is largely incisive and superbly drafted. As is inevitable in these complicated matters, some mechanical errors have crept in that I am sure would be corrected in redrafting if they have not already been so corrected. As an example, you refer on pages 26 and 28 to the Government of the Trust Territory, when I am sure that you intend to designate the Government of Micronesia since that entity would have already been created to supersede the Government of the Trust Territory. Also on page 16, I suspect that you may have omitted the word "may" in the third line of the last paragraph, which should read: "When a bill is returned by the Governor to the Congress with his objection, the Congress shall enter his objections on its journal and may proceed to reconsider it." I am sure that you would not intend to require the Congress to reconsider a bill if it finds the reasons for the veto good and sufficient.

It also occurs to me that Section 226(i) may be incomplete--and then again it may not be. There is good and justifiable reason

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for granting to the Congress the right to be the sole judge of the qualifications of its members, but we have found that the Congress is frequently relieved not to have to make those decisions. We should consider the desirability of disqualifying those convicted of felonies and other such crimes who have not had their civil rights restored--the language of the Secretarial Order.

In keeping with your request, we have not had this draft reviewed by anybody on our Legal staff out here; and since this is not one of my days to practice law, I am reluctant to comment on Sections 241 through 244 having to do with the Judiciary. It appears to be in good form, however, and I can't think of anybody better qualified to pass judgment on those sections than the Director of the Office of Territories.

Passing now to the most difficult consideration in the draft, we reach Section 263. I just don't believe that a section can be drafted that will perpetuate Micronesian land tenure systems under the United States constitution to the satisfaction of the U.S. Congress and our courts as they regard such things today. I am fully aware of that vast body of law concerning Indian rights; and I am aware of Solicitor Martin G. White's opinion (I think in 1949) that these same concepts could be extended to American Samoa; and thereby permit the extension of due process of law under the constitution to Samoa without disturbing the land tenure system, fa'a Samoa. The desirability of following these precedents is questionable, if they could be attained; and God help the witness who attempts to defend them before the Senate and House Interior Committees today. And yet these questions are basic and crucial to the accommodation of the people of Micronesia in any association with the United States. Without laboring this point any further, and it could be done ad nauseam, this confronts us with the hard dilemma of whether we can even consider an organic act for Micronesia at this time which will extend all of the due process considerations of the constitution, if in fact that is the result of an organic act. That is why I suggested in my teletype that given all of the political problems that will be created in the United Nations by embracing Micronesia in an unorganized unincorporated status, it would yet be better to go through the progressive steps of unorganized unincorporated status until the islands are ready for the more emancipated system. Perhaps we could provide for a transitional period by a statement by Congress that it is its intention that Micronesia shall proceed "as rapidly as the circumstances shall permit its progress through the enactment of organic legislation by a future Congress to all of the rights, duties, and privileges of American citizenship." This may not

be desirable, but I assure you that the alternative leaves less to be desired in its effects. This is also a frame of reference in which to inquire as to the propriety of organizing this government, and yet considering the possibility that the citizens of Micronesia might be U.S. nationals rather than U.S. citizens (Section 202).

Sections 264 and 265 are acceptable as drafted, but I wonder if they cannot be expanded to serve good purposes. While the Commission is surveying those federal statutes which should be made applicable to Micronesia, there could well be a hiatus during which federal statutes which now qualify the Trust Territory to participate as the Trust Territory of the Pacific Islands would not be applicable to the Government of Micronesia, technically. I would suggest a proviso stating that pending a specific prospective action of the Congress of the United States to make federal statutes applicable to the Government of Micronesia "all reference to the Trust Territory of the Pacific Islands in the statutes of the United States, as amended, wherever they may occur, shall also be applicable to the Government of Micronesia unless and until the Congress legislates otherwise."

I like this

It also occurs to me that we can quickly identify some of the laws of the United States which would hamper the growth and development of Micronesia if extended to this region immediately. For instance, the same reasoning that led to the exemption of the Virgin Islands and American Samoa from the coastwise shipping law in 1933 is equally applicable to Micronesia. Similarly, the full extension of the minimum wage and labor standards acts to Micronesia now would put virtually every private enterprise out of business right away. We could live with the 1956 amendment as it applies to American Samoa.

Now, for Title III. In many ways the rest of Micronesia would benefit from the exclusion of the Northern Marianas. As an aside, but not a crucial one, the Government of Micronesia would be faced with a burden of expending millions of dollars in duplicating a capitol at, say, Truk, as would seem to be in order. This money would have to be diverted from service programs at a time when the diversion cannot be afforded. But the greater compatibility of the remaining five districts, without the Marianas, might be an off-setting virtue. In many ways the people of the Northern Marianas are so similar to the Guamanians that they ought to be compelled to live with each other; but in all fairness to the people of the Northern Marianas they have not had a very objective perspective of what this union would mean to them.

The Government of the Trust Territory has always very properly refused to be drawn into the debate on anschluss with Guam, rather taking the position that it would not discuss splintering the territory geographically until the Micronesians were prepared to deal with the entire issue of the political future of Micronesia. This has enabled some rather disingenuous Guam politicians to make frequent sorties to Saipan to urge political union on the premises that "you would all become American citizens with all of their benefits immediately, such as the minimum wage that everybody by law would have to be paid." There has been no balanced discussion of the fact that this would put all of the private business establishments into bankruptcy right away; nor have such things as the "one man-one vote" issue been discussed, by which the people of the Northern Marianas would be bringing 80 or 90 percent of the public land and other natural resources into the union, while being relegated to an approximate 20 percent or less representation in the unicameral legislative body of the Territory of Guam. Taxes and deficit financing have never been discussed, to my knowledge.

I dwell on these points, with respect to Title III, to indicate that your statement on page 7 of your notes that "given the urgency which the Saipanese express for union with Guam the time should be as short as possible" is suspect. But we do not resist the idea; it should be considered thoroughly, and if the union should come about, it could be ablutional. To date, though, the "facts" have been tailored to fit schemes.

It occurs to me that if this is to be a truly all-encompassing treatment of the problems of the non-selfgoverning people of the United States in the Western Pacific, we should not foreclose the consideration of another step in later years when we might want to consider associating these islands within the framework of an existing state, whether it be Hawaii, California, or a State of Oceania encompassing the Virgin Islands, Puerto Rico, American Samoa, Guam, Micronesia (and even the District of Columbia if the Potomac hasn't silted in by then). The great leap forward in transportation and communications doesn't make this latter possibility a beyond-the-pale consideration. If one of these associations were to come about, we might make this bill a first step by permitting Guam to come into the Government of Micronesia. This is what I referred to as a "reverse union" in my wire. I don't urge this, it veritably makes me shudder; but we ought to examine every option at this point in time. Why not one government, instead of two? But the prospect of Guam becoming subordinate, both numerically and physically, could derail the whole proposal, I realize. I realize also that

this sort of venture is in conflict with my concern that the Trust Territory is not ready for organized status, and Guam could not be expected to settle for less than that.

Some other random observations might include preference for the title of Lieutenant Governor rather than Government Secretary for my successor. This is rooted in no other consideration than the fact that everybody knows what a Lieutenant Governor is, but hardly anybody knows what a Government Secretary is.

We could also reopen the question of fixing by U.S. Congress' action the salary of Congressmen of Micronesia at $3,500 out of federally appropriated funds. As you know, I regarded this move as a disaster when it was done by Secretarial Order, but I am quietly living with it and trying to make it work. Since the issue has been raised again in this draft, however, I can only say that it boggles my credulity to treat one problem by making a bigger mistake in another direction for the long run. The members are already grousing about the amount fixed by the Secretarial Order, and it will be a source of constant friction in the months and years to come. To lock this into the Federal statutes is to make it more unmanageable.

This is an occasion to consider again the preferability of permitting the Congress of Micronesia to legislate its own salaries out of local revenues. They might well expend every cent on themselves that the tax and revenue system of the government levies, but in due time the electorate would correct all inequities and chasten an imprudent and improvident Congress by turning the rascals out. This is a consideration, but I do not press it since I know that the High Commissioner prefers the compromise that is presently in existence. I know also that the precedents in territorial administration are for Federal appropriations for legislatures, but we should not be slaves to precedents that are not helpful.

I am sure that there will be many redrafts of this bill before it goes to the Congress; and quite possibly High Commissioner Norwood will be sending along some comments of his own as soon as he returns from the Marshall Islands next week, particularly if he wishes to take any exceptions to these comments.

Again, let me say that I think this is a splendid bill and I know that the High Commissioner generally endorses it. With or without the considerations set out above, it could well be a vehicle to permit real advancement out here in every respect.

Sincerely yours,

Martin P. Mangan

Martin P. Mangan
Acting High Commissioner

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OFFICE OF THE HIGH COMMISSIONER

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