UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Edgar Kaiser

DATE: July 23, 1969
Serial: 206

FROM : Chief Justice

SUBJECT: Organic Act for the Territory of Micronesia

In accordance with your request, my comments with reference to the proposed legislation will be in two parts:

(a) technical aspects of the subject matter, which will be covered page by page, and

(b) my feelings as to how the subject draft, or any part of it might be received by the Congress of Micronesia.

Page 1. Acceptable.

Page 2. Section 102 - Citizenship. In line 10 I suggest consideration be given to deletion of the phrase "who were citizens of the Trust Territory of the Pacific Islands" for the reason that doubt may attach that inhabitants became "citizens of the Trust Territory" on that date. July 18, 1947 was the date the Congress of the United States authorized the President to approve the Trusteeship Agreement. The Trusteeship Agreement, in Article II, merely provided that "the administering authority shall take the necessary steps to provide the status of citizenship of the Trust Territory for the inhabitants of the Trust Territory." The status of citizenship no doubt came at a later date, probably in 1951 when the Trust Territory Code was promulgated.

This section leaves in doubt the status of persons who have been naturalized under present Trust Territory law. Naturalized citizens of the Trust Territory are not mentioned. There are 166 such persons to date.

Page 3. Subparagraph b. Beginning with the word "except" in line 4, this paragraph appears to be incomplete. It may be that deletion of the word "that" following the word "except" may correct this to reflect the intention of the drafter.

Line 9, beginning with the words "shall have made". The intention of the drafter could probably be clarified by substituting the word "make" for the words "have made".

In the fourth line up from the bottom of page 3, the substitution of the word "except" for the word "but" would probably make for a clearer understanding of subsection (b), although "but" is the word used in Article III of the Amendments to the Constitution of the United States.

Page 4. Acceptable.

Page 5. Acceptable.

Page 6. Subsection (t) which extends certain provisions of and Amendment to the Constitution of the United States to Micronesia, specifically that portion which purports to make the First to Ninth Amendments applicable, appears to be inconsistent with subsection (b) on page 23 of the proposed draft. While the Fifth Amendment provides for indictment by grand jury, the above mentioned subsection (b) of the proposed draft provides that indictment by grand jury shall not be applicable to the District Court of Micronesia unless made applicable by laws enacted by the Congress of Micronesia.

Legislative or "general section."

Consideration should be given to insertion of the following language in subsection (b) or other appropriate section of the draft: "Except as otherwise provided in this Act, no law of the United States hereafter enacted shall have any force or effect within Micronesia unless specifically made applicable by act of the Congress, either by reference to Micronesia by name or by reference to 'territories'"

Page 7. Acceptable.

Page 8. Acceptable.

Page 9. Acceptable.

Page 10. Acceptable.

Page 11. Acceptable.

Page 12. Acceptable.

Page 13. Acceptable.

Page 14. Acceptable.

Page 15. Section 116 provides for a regular session of the Congress. After a few years experience in the Congress, it appeared that more than one regular session might be necessary and this was provided for in Secretarial Order Number 2918, dated February 6, 1969, in Section II to provide that "in each odd numbered year there shall also be a regular session of the Congress beginning on the second Monday in January and continuing for not to exceed fifteen consecutive calendar days". Since most of the Members of the Congress of Micronesia felt that their one regular session gave them insufficient time to consider all of the matters which came before them, they might feel at this time that the present language of Section 116 of the draft might cause a return to what was felt to be an unsatisfactory length of time for a session. They may not consider that this would be cured by the other language in Section 116 which provides that the laws of Micronesia may prescribe the duration of a session, but still might feel that more than one session is required.

Page 16. Acceptable.

Page 17. In the second paragraph of Section 118 concerning Bills returned by the Governor to the Congress, with his objections, there appears the following sentence: "If, after such reconsideration, two-thirds of the Congress agree to pass it, it shall be sent to the Governor, and shall become law unless it affects the national defense or national interest of the United States, in which event he shall within ten days transmit it to the President of the United States." I believe that at this point a provision should be inserted that the Governor, if he determines that the law affects the national defense or the national interest of the United States, must make such a determination in writing and forward the same to the Congress along with the advice that he has transmitted the Bill to the President of the United States in accordance with the provisions of this section.

Page 18. Acceptable.

Page 19. Acceptable.

Page 20. Acceptable.

Page 21. Acceptable.

Page 22. In Section 128, lines 2 and 5 contain the word "Title". This may be confusing as I do not recall seeing the word "Title" used anywhere previously in this Act. For consistency, probably the word "Act" should be used in place of "Title".

The first paragraph of Section 129 pertaining to the Judiciary appears to be acceptable. However, the second paragraph which continues into page 23 concerning the composition of the Appellate Division makes reference to "Section 243(a) of this Act." (This is on page 23, line 7). No such numbered section appears in the Act. Also, on page 23, lines 7 to 13, concerning orders prior to hearing and determination of appeal, probably should be expanded to provide for such orders by the presiding judge or any judge of the Appellate Division designated by the presiding judge to so act. This will facilitate the disposition of preliminary matters concerning an appeal and is in line with present High Court policy. The Chief Justice now designates one of the Appellate panel to handle preliminary matters, mainly to facilitate appeals in the districts in which they originate. Judges in the districts can hear arguments and decide preliminary matters without reference to Saipan.

Page 24. Section 130(a) providing for appeals to the Ninth Circuit. I believe that consideration should be given to limiting appeals not involving the Constitution, laws or treaties of the United States, in the discretion of the Ninth Circuit, to cases involving a substantial question or where some useful purpose would be accomplished by that court's review of the case. This would be on certiorari and would tend to eliminate the possibility of numerous, possibly frivolous, appeals to the Ninth Circuit, and in such cases no jurisdictional amount would need to be established. Although raising the present proposed jurisdictional amount to $5000 or more might have similar limiting effect, I believe that the certiorari approach would adequately protect the appeal rights of the people without overburdening courts superior to the District Court of Micronesia.

From the language of Section 129 (bottom of page 22 and top of page 23), it appears that only one Judge is contemplated for the District Court of Micronesia except for the unspecified number who would be members of the Appellate Division of the Court. The vast distances involved in travelling throughout the approximately 3,000,000 square miles of Micronesia and the present case load which is anticipated to increase annually at a rate of about 10% makes it imperative that consideration be given to creating three judicial districts in Micronesia. Presently the High Court consists of three judges, each being primarily responsible for two districts. Our statistical report for the month of April 1969 is attached for information.

Also, on page 23, line 16, Section 2073 of Title 28, United States Code, is mentioned. A quick check indicates that Section 2073 was repealed by Public Law 89-773, Section 2, November 6, 1966. We are unable to determine through our limited library facilities whether or not some other section was substituted for Section 2073. At least this is worth checking.

Page 24. Acceptable, except as noted previously concerning the provision for only one judge for the District Court of Micronesia. Since under Section 129(a) the District Court of Micronesia, in addition to having the jurisdiction of a District Court of the United States, would have original jurisdiction in all other causes in Micronesia, presumably without limitation, it can be seen that cases would arise in all district of the Trust Terriroty as is presently the case with the High Court, and it is very likely that the case load would increase because of the additional jurisdiction in cases involving the Constitution, laws, or treaties of the United States.

Page 25. Acceptable.

Page 26. Acceptable.

Page 27. Acceptable.

Page 28. Acceptable.

Page 29. Subparagraph (c) provides that the Governor and the Lieutenant Governor of Micronesia, and the members of their immediate staffs, shall have the status of officers and employees of the United States. It appears that the Judge of the District Court of Micronesia, also a Presidential appointee and whose operations would be subject to certain chapters of Title 28, United States Code, was inadvertently omitted from this section.

Page 30. Acceptable.

Page 31. Acceptable.

The above comments and suggestions dealt mainly with the technical and drafting aspects of the proposed Bill. The following comments represent my personal reaction from the viewpoint of how the various sections of the proposed Bill might appeal to the Members of the Congress of Micronesia and will be listed mainly under the broad topic headings of the proposed Bill.

1. Organic Act of Micronesia. I do not know why, but there appears to be an aversion to the use of the term "Organic Act". This is probably because the same language appears as to the Government of Guam and there seems to be a general reluctance to try to pattern Micronesia after Guam. I feel that this is not a serious impediment and that if the term is carefully explained to the Congress of Micronesia that an Organic Act is nothing more than an Act of Congress conferring governmental powers upon a territory, they will be willing to accept it, particularly if it is explained that this term is the generally accepted term for the conferring of such governmental powers and that it has no derogatory connotations.

2. Citizenship. The proposed Bill would immediately confer United States citizenship upon most of the inhabitants of the Trust Territory and I feel that, at first, the Congress may be reluctant to express its approval of such citizenship. From time to time, recently, I have sensed a desire on the part of the Micronesians to have their own separate identity as a nation and that they did not foresee in the immediate future the status of United States citizenship. I have sensed that they are somewhat afraid of United States citizenship as a status which would bring to them greater responsibilities than they are willing to assume. To some, placing them on an equal basis with other citizens of the United States would lead to an immediate influx of United States citizens and the loss of their lands and resources. I feel that this is one aspect of the Bill which will require careful explanation as to the rights and duties which will accrue to Micronesians upon the attainment of United States citizenship. Very important to such an explanation are the provisions of the Bill of Rights set out in Section 103 which will clearly point out that Micronesians upon the attainment of United States citizenship will have

attained first class citizenship equal to that of any other citizen of the United States.

3. The Executive. I believe that the sections dealing with the Executive will receive almost immediate acceptance by the Congress of Micronesia. I do wonder, however, whether or not it was the intention of the drafter that both the Governor and Lieutenant Governor at the outset would very likely be Micronesians since Section 104 has a requirement that the Governor shall have been a resident of Micronesia for at least three years prior to the date of his appointment. I do not raise the question as to whether or not there is presently a Micronesian qualified to hold the position of Governor or Lieutenant Governor, but merely point this out to call your attention to the provisions of Section 104 which appear to foreclose the possibility of a United States citizen who is not a Micronesian being appointed to the post because of the residence limitation. The Congress of Micronesia might well feel that these two positions should be left open to any United States citizen who qualified without regard to period of residence in Micronesia.

4. The Legislature. The provisions respecting the Legislature appear to me to be quite acceptable as there is very little difference between the proposed sections and what is now incorporated into Secretarial Order 2918. My main questions concerning these sections have to do with Section 116 which I mentioned previously.

5. The Judiciary. I feel that the provisions with respect to the Judiciary will be acceptable to the Congress without much question except as to my previous comments concerning page 24, and possibly some other questions concerning the jurisdiction and staffing of lower courts. For instance, the present District Courts would very likely have to be redesignated as Island Courts, such as the Island Court of Saipan, the Island Court of Ponape, etc. Also, if the District Court of Micronesia is limited to one division and one judge, or two divisions and two judges, it still might be necessary that the newly created Island Courts would have their jurisdiction expanded to include some actions involving land. The majority of civil cases in the High Court now in some way involve ownership of land and the present High Court has exclusive jurisdiction of those matters. If the newly created Island Courts could have their jurisdiction expanded to include some actions involving land, this would cut down on the case load of the District Court of Micronesia, thus making feasible only two divisions such as the Eastern Division and the Western Division.

6. Fiscal Provisions. The Congress of Micronesia has long protested that it has not been given enough fiscal responsibility. I believe that the proposed provisions will provide that responsibility and will be acceptable to the Congress almost entirely, particularly since the proposed Bill provides for matching funds from the United States and additional sums as may be needed in the event revenues in the Trust Territory are not sufficient to meet obligations of the Government.

7. Miscellaneous Provisions. My comments concerning page 29, the Federal status of the Judge of the District Court of Micronesia, merely point out what appears to be an inadvertent omission. I feel that this section would be accepted by the Congress of Micronesia as the proposed Bill does provide for termination of Federal status of nearly all of the present Federal employees thus bringing employment in the Trust Territory more in line with the feeling of the Congress that all employees should be employed on an equal basis.

Section 140 would probably create the most discussion and the most dissension with the Congress unless carefully explained. I believe that most of the Members would view the provisions of this section as nothing less than a complete "take over" of their lands. This, of course, is not true since the Act merely provides that the Secretary of the Interior may convey to the territory those tidelands which may be needed for governmental purposes and any proceeds from the use of those lands would have to be used solely for the benefit of the citizens of Micronesia. Land, and tidelands in particular, are a very emotional subject in this area. For instance, as far back as 1960, when the present Section 32 of the Code of the Trust Territory was promulgated, this matter was placed before the then Council of Micronesia and I recall that most of the district representatives reluctantly voted for the change in the law but the delegation from the Marshall Islands flatly refused to accept or ratify the provisions of Section 32. In essence, Section 32 provides that all lands below the high water mark belong to the Government and the Marshallese to this date maintain that such lands belong to the adjacent landowner. I repeat, I feel that the most careful preparation of the presentation to the Congress of Micronesia should be made, particularly as to any aspects which have a bearing on land ownership.

In addition, I feel that before the Bill is finalized, (a) it should contain some provision concerning preservation of Micronesian ownership of land until such time as the Congress of Micronesia sees fit to change the provisions of the present Section 900 of the Code of the Trust Territory which provides that only Micronesians may hold title to land. I feel that sooner or later they will come to realize that this section is a serious impediment to economic growth,

but I feel the decision should be theirs to make at such time they feel it should be made; (b) some provision should be made concerning the preservation of and respect for local customs somewhat similar to what is now in Section 21 of the Trust Territory Code; (c) some provision which will lead to the eventual release of unused military retention areas to the Government of Micronesia; (d) establish after consultation with the Congress of Micronesia the location of the seat of Government for the Territory of Micronesia.

The above comments are by no means exhaustive, but I hope they will be of some value in the drafting of the final version of the Organic Act.

R. K. Shoecraft

TRUST TERRITORY OF THE PACIFIC ISLANDS
Chambers of the Chief Justice
Saipan, Mariana Islands

JUDICIARY STATISTICAL REPORT for the month of APRIL 1969

	Cases pending first day of this month			Cases filed during this month			Cases disposed of during this month			Cases pending last day of this month		
	Criminal	Civil	Juvenile	Criminal	Civil	Juvenile	Criminal	Civil	Juvenile	Criminal	Civil	Juvenile
ELLATE DIVISION	3	20	0	0	5	0	1	6	0	2	19	0
AL DIVISION of the												
	0	39	0	1	3	0	0	5	0	1	37	0
	0	46	0	1	3	0	0	0	0	1	49	0
	4	36	0	1	3	0	3	3	0	2	39	0
	3	22	0	2	9	0	0	3	0	5	28	0
	3	6	0	0	1	0	1	3	0	2	65	0
	2	2	0	0	3	0	0	0	0	2	2	0
	12	211	0	5	19	0	4	14	0	13	216	0

	Mis.	Fel.	Reg.	S.C.	Juv.	Mis.	Fel.	Reg.	S.C.	Juv.	Mis.	Fel.	Reg.	S.C.	Juv.	Mis.	Fel.	Reg.	S.C.	Juv.
	69	10	54	4	1	82	2	5	0	1	64	1	4	0	0	87	11	55	4	2
	6	0	65	0	1	13	0	4	2	1	7	0	11	0	2	12	0	58	2	0
	28	3	15	3	13	48	2	12	3	6	26	0	3	0	1	51	5	50	6	18
	34	4	16	10	37	17	4	17	16	23	13	2	8	25	2	73	8	13	31	59
	17	3	11	2	2	78	1	3	4	3	84	2	7	3	3	11	2	6	3	2
	6	2	4	0	3	22	1	2	1	5	24	2	2	1	5	10	1	4	0	3
	161	32	165	19	57	366	10	47	24	39	219	5	35	29	13	223	27	191	46	83

...ICTS - Records received during this month:

	Criminal	Civil
Marianas	0	0
[illegible]	26	1
[illegible]	0	26
[illegible]	5	25
Truk	0	134
Yap	0	0

MIS - Miscellaneous
FEL - Felonies
REG - Regular Civil
S.C. - Small Claims

OS. 413629

140. b. Nothing in this section shall impair the existing agreements between the Trust Territory Government and the United States Government or any agency or department thereunder regarding land-use and retention, and the Government of Micronesia takes title to all such land as set forth in Section a above subject to such agreements as stated.

Section _____

The United States Government shall have the right to acquire land for public use in Micronesia in accordance with federal condemnation procedures; provided that, except in the case of a national emergency declared by the President, such procedures shall not be used until the need for such land has been reviewed and established by a commission set up by the Congress of Micronesia. In the event the commission does not approve the proposed taking by the United States, the need for the proposed taking may be appealed to the President for final determination.

retained lands
use occupancy agreement.