March 17, 1973

MEMORANDUM FOR HOWARD P. WILLENS AND BARRY CARTER

Re: Conversation with Mr. Herman Marcuse

I spoke with Mr. Marcuse yesterday in regard to the validity of Marianas land alienation restrictions. His position, briefly, was:

(1) If the Marianas want a close political relationship with the United States, the due process clause of the U. S. Constitution would probably govern Marianas' legislation.

(2) Alienation restrictions, on the other hand, would probably be consistent with the due process clause by analogy to "indigenous" Indian and Hawaiian homestead protective legislation.

(3) The privileges and immunities requirements of the U. S. Constitution prohibiting land alienation restrictions would apply only if the Marianas became a state of the United States.

(4) As a matter of policy, the Marianas future political status should not turn on the validity of alienation restrictions because there are economic disadvantages to those restrictions and they, in any event, can easily be evaded through the use of such devices as strawmen.

Mr. Marcuse indicated that his conclusions have been reduced to a memorandum, which, he suggested, Ambassador Williams or Mr. Wilson might be willing to make available to us.

The premise of Mr. Marcuse's analysis -- that the due process clause is likely to govern the validity of Marianas alienation restrictions -- may be questionable. As suggested in the New York Law Forum article, there should be no international or U. S. constitutional objection to a compact arrangement under which the Marianas effectively becomes a sovereign state, but by compact or treaty arranges for an exchange of benefits and burdens with the United States. The substantive restrictions on the terms of that arrangement, I think, are likely to be far and few between. I see no reason, for example, why the due process clause could not be made binding on Marianas legislation, with a proviso that alienation restrictions are in any event permissible. Similarly, although there may be requirements perhaps that liability to U. S. income tax is a necessary incident of U. S. citizenship, I see no reason why the incidents of citizenship that the Marianas might want could not be specifically provided for by themselves (e.g., access to U.S. funded programs and U. S. income tax liability, but not selective service liability). In other words, a model for the future political status of the Marianas appears to exist

that provides virtually unlimited flexibility to make the Marianas-United States relationship functionally (although not nominally) as close or as far apart as the parties might want.

If this off-the-cuff conclusion is correct and if the Marianas are more interested in the substance rather than the form of their future political status, you might consider establishing priorities in the research effort in behalf of the Marianas as follows: (1) confirming the conclusion; (2) identifying and analyzing the substantive benefits that the Marianas might want from their relationship with the United States in terms of the positive value of those benefits and whether there are any necessary correlative burdens; and (3) identifying and analyzing the pros and cons of other models of future political relationship.

Depending upon what your time needs are, I may be available and would like to help in whatever research you decide is necessary or desirable.

Jerry
GG