

March 29, 1973

MEMORANDUM FOR HOWARD WILLENS, JAY LAPIN, DAVID HANES
SUBJECT: Some Issues on the Marianas

We have not completed our work on analogies, especially for commonwealth status or free association. However, I thought it might be useful to take a quick, rough cut at listing the more important legal issues which will require specific, directed research.

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Some Outstanding Issues

A. General Political Status

1. Is there any legal distinction between the labels "commonwealth" and "free association"?

2. Commonwealth. Read the Puerto Rical material and cases. Is the NYU Law Forum article accurate in its discussion of the U.S.-Puerto Rico "compact"?

How strong is the argument that this compact cannot be changed without the consent of both parties? If wrong, can such a compact be written?

3. Do any of the political status alternatives require a particular status for individuals -- i.e., U.S. citizen, U.S. national, Mariana citizen?

B. Citizenship

1. What are the rights, privileges and duties of a U.S. citizen for each of the political status alternatives where U.S. citizenship is a possible option (see question A3) and has been selected? Of a U.S. national where this is a possible option which has been selected? What are the differences in rights, privileges and obligations between the

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options of U.S. citizenship and U.S. nationality in each of the political status alternatives where either option is possible?

2. What provisions are there in the U.S. immigration laws for importation of foreign workers? How would political status alternatives (e.g., unincorporated territory vs. commonwealth) affect the applicability of these provisions?

C. Limits on Land Alienation

1. What are the U.S. constitutional restrictions and other legal limits on control of land alienation:

--for alternative political statuses?

--for the choice between being U.S.

citizens and U.S. nationals?

(these limits on alienation could be for various classes of "outsiders" -- e.g., non-resident citizens, aliens.)

D. Taxes

1. For what alternative political status alternatives would present U.S. tax laws allow the Marianas Government (and its political subdivisions, such as power authorities) tax-exempt treatment of its bonds? In those cases where tax-exempt treatment would be denied, what are the obstacles -- IRS regulation, statutes, or the Constitution?

E. Customs Laws

1. What, if any, are the U.S. constitutional and other legal limits to alternative customs arrangements (see list of alternatives in the questions for Jim Leonard):

--for political status alternatives?

--for the three alternative statuses of individuals (e.g., U.S. citizen, U.S. national, and Marianas citizen)?

2. Does the Mariana Islands have any important non-U.S. trading partners who have special tariff preference for less-developed countries? What political status alternatives if any, would qualify the Marianas (as a less developed entity) for these special trade preferences?

F. International Institutions Which Lend or Provide Technical Assistance (i.e., Asian Development Bank, World Bank, U.N. Development Program, FAO).

1. For each of these institutions, which political status alternatives would make the Marianas eligible for assistance? How substantial is such assistance likely to be? What are the advantages/disadvantages of this assistance relative to tax-exempt bonds, U.S. grants-in-aid, etc.?

G. Amending the Political Status

1. For each of the political status alternatives, what, if any, alternative approaches are there for allowing amendments to the basic political status relationship? (Look

not only at the legal theories and the usual analogies, but also to other analogies -- e.g., international agreements, such as the SALT agreements, and other legal documents, such as anti-trust consent decrees).

H. Terminating the Political Status

1. The same question as at G1, except the issue is terminating vs. amending.