

Final

Bill Crowe

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MEMORANDUM OF CONVERSATION 2:00 - 5:00 P.M., 19 May 1973

Participants: Mr. Willens
Herman Marcuse
Tom Whittington
Adrian deGraffenried
Tom Johnson

The above group met to consider questions in three areas:

- (1) Existing statutes to be made applicable to the Marianas;
- (2) Whether the people of the Marianas should or would be given the option of U.S. citizenship or nationality;
- (3) Provisions of the U.S. Constitution to be made applicable to the Marianas.

I. Applicability of Statutes

Mr. Willens was asked the extent to which he expected the question of applicability of specific statutes to be dealt with in the agreement package. He replied that he expected only the most important of these questions to be answered in the agreement. However, he also commented that there could be as many as 25 or 30 such questions.

Mr. Willens volunteered that he was not prepared to deal with the questions on his original list (the applicability of the U.S. income tax, immigration laws, banking laws, social security, maritime laws, the Federal Labor Standards Act, laws regarding territorial waters and submerged lands, and customs laws) in detail and suggested that all these specific questions might better be dealt with in Washington. The Delegation lawyers agreed this would be a desirable way to proceed.

Some preliminary consideration was given to the subject areas originally listed by Mr. Willens. The major points made in this regard were:

- (a) The MSC would like some ability to limit the numbers of aliens allowed into the Marianas; for permanent residence purposes, particularly from the

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Philippines; including the right to be heard in connection with the paroling of aliens into the Marianas by the Attorney General.

(b) The MSC is unsure whether they want the Federal income tax to apply - Mr. Willens indicated that the income tax is regarded as a very sophisticated and complex method of raising revenue, and that the Marianas ~~might want~~ to enact a ~~simplified income tax law~~ of their own, at least for an initial period. However, ~~if it was to apply~~, the MSC certainly would ~~want the proceeds from that application rebated to the Marianas~~. At this stage the MSC ~~is examining~~ the possibility of a ~~phased application~~ covering a period of years ~~to permit local economic adjustments~~. Mr. Willens asked the position of the Delegation regarding the application of Federal Income tax provisions; the delegation responded that it was the position of the U.S. Delegation that the Federal Income Tax status should apply, but that beyond that point (distribution of revenues, etc.) we needed further clarification from the various federal agencies involved. Mr. Willens noted that the May 1970 offer basically followed the MSC position - limited application with revenues remaining in the Marianas, and asked if the U.S. position had changed. The reply was that the position required further consideration.

(c) Based on its preliminary thinking, the MSC ~~does not want~~ the Marianas ~~to be limited to the use of U.S. ships~~, (application of the Jones Act) ~~for trade with other U.S. areas~~.

II. Citizenship/Nationality

Mr. Marcuse explained that we are uncertain whether we are able to offer Marianas residents the option of becoming U.S. nationals at the same time as we offer them the option of becoming citizens. This has never been done before. Mr. ~~Willens asked~~ whether, if the above approach posed a problem, we ~~could make all Marianas residents U.S. nationals and provide them an expedited procedure whereby they could become citizens~~. The Delegation

did not comment on this proposal but it was ~~made clear that we were~~
~~sympathetic to the problem presented by resident alien status given the~~
~~fact that most Marianas residents would not, under this status, be citizens~~
~~or nationals of any country other than the U.S.~~

Mr. ~~Marous~~ raised the problem of how we define the group of Marianas
~~residents eligible for either citizen or national status.~~ Mr. Willens said
he had no firm ideas on this difficult question.

It was agreed that this last question and the more basic question of
whether we could offer a citizen/national option would be appropriate for
further study in Washington.

III. Application of Specific Constitutional Provisions

The Delegation lawyers began by apprising Mr. Willens of the constitutional
provisions made applicable to Guam and the Virgin Islands by the Mink amend-
ment. (The ~~Mink Amendment deals primarily with the protections in the~~
~~Bills of Rights and extends them so as to restrict activities of both the~~
~~Federal and territorial governments~~). It was stated that the U.S. Delegation
did not itself plan to insist on including any of these provisions in the
agreement package. Rather, we only intended to warn and advise the MSC that
the ~~Congress might insist on their inclusion in the Marianas Constitution or~~
~~the implementing legislation, or both.~~

Mr. Willens said he did ~~not see any objection~~ to somehow making most of
these provisions applicable in some way, ~~but~~ that he ~~wanted to be sure~~ that
the ~~provisions restricting Congress authority to legislate would also apply~~
~~with respect to the Marianas.~~ He wanted to know whether the proposed consti-
tutional articles would provide this assurance or would limit the Marianas
government. None of the lawyers present were certain whether the protection
he desired would be provided by these articles absent a provision in the
agreement specifically so stating. It was obvious however, that some would

limit the Marianas Government. It was agreed that this question should be further researched in Washington. Mr. Willens noted that U.S. sovereignty should not be questioned and that he felt undue emphasis was being put on it by the U.S. delegation. The U.S. lawyers noted that this issue should be made quite clear and that we wanted to insure against any later interpretation that the commonwealth was a free association status. Mr. Willens assured that this was not the case. Mr. deGraffenried asked if the MSC felt Congress would approve its status if there was any hint that U.S. sovereignty or U.S. Congressional authority under article IV, section 3, clause 2 would not apply. Mr. Willens said no, but that they did desire to protect their fundamental status relationship.

In this regard, Mr. deGraffenried queried about the specific foreign affairs authority desired by the MSC. Mr. Willens noted that he wanted to include a separate section on this to provide that the Marianas be consulted in foreign affairs matters. He went so far as to state that the Marianas have a "veto" power, but quickly restated, after Mr. deGraffenried asked about the specifics of the proposed clause, that the MSC was only concerned that they might not be consulted about foreign affairs areas related to them, e.g., a treaty permitting Japanese use of territorial waters and harbors, or the immigration of alien workers (Filipinos).

Next, Mr. deGraffenried proposed that Article I, Section 10, Clause 1 and 3 be made specifically applicable if such a clause were to be included. These clauses prohibit the states, inter alia, from entering into treaties, alliances, or compacts with foreign states. Mr. Willens said he did not expect to deal with foreign affairs in the context of applicable provisions of the constitution. It was pointed out that the language of these clauses was less ambiguous than anything we might draft since it has (presumably) been the subject of some litigation. Mr. Willens, said that since he was not familiar with the way in

which these clauses had been interpreted he would like to defer the question of their applicability to the Washington agenda.

The conversation then shifted to the question of the applicability of Article IV, section 3. Mr. Willens made it completely clear that he and the MSC regarded it as essential that the agreement provide that its fundamental provisions may be modified only by mutual consent. It became clear that Mr. Willens was not suggesting that Congress not be able to enact legislation affecting the internal affairs of the Marianas. Rather, he was agreeable to making article IV, section 3, clause 2, specifically applicable to the Marianas so long as it was clear that this power was limited when it came to provisions of the agreement fundamentally affecting the status of the Marianas.

As examples of legislation which should be subject to mutual consent he cited legislation which would merge the Marianas with Guam, or make it a separate unincorporated territory. Mr. deGraffenried asked if he had in mind the sort of matters which the Virgin Islands have proposed be subject to mutual consent (the above examples plus, the promise to refrain from making the Virgin Islands independent or incorporated into a state) and Mr. Willens so affirmed.

Indeed, Mr. Willens went so far as to state that he believed that if the MSC could be given a "mutual consent" clause on basic changes in the agreement, that with this limitation they would have no problem accepting 4-3-2 and could even put it in the title of the agreement; in addition, they could fall off from their desire to call the agreement a compact. It appeared to the U.S. lawyers that Mr. Willens was sincere in his belief that a mutual consent clause is essential to MSC approval, that this is a deeply felt requirement of the MSC, and that an agreement on the status portion of the agreement would fall into place if this single ingredient is supplied.

ALSO WILL WANT TO MAKE SURE THAT (C) IS IN THE AGREEMENT

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It was also agreed that Article IV, section 3, clause 1 (Privileges and immunities) should be applicable, subject to appropriate exceptions regarding alienation of land. Mr. Willens confirmed that there was no intention to request other exceptions to the applicability of this clause. The views expressed in the May 18 working session regarding protection against U.S. citizens becoming residents of the Marianas, or engaging in business there, etc. were individual views, not those of the MSC.

Mr. Willens asked in turn that the Marianas be given the benefit of the Full Faith and Credit and Privileges and Immunities Clauses. We advised him that existing law already provided for ~~such~~ reciprocity with respect to the Full Faith and Credit Clause and that the constitutionality thereof had been upheld by the courts. In these circumstances it appeared likely that the courts would uphold legislation pursuant to which the citizens of the Marianas would be entitled to all privileges and immunities of citizens in the several states.

It was also understood there would be no requirements of indictment by grand jury, or of a jury trial in civil cases in the Marianas.