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MEMORANDUM FOR MESSRS. Willens, Lapin, Carter and Helfer
RE: Status Report on Analysis of the Computer Printout

This survey covers the Trust Territory printout and approximately 500 statutes of the general printout. Selections have been made according to the following criteria:

A. All laws that apply solely in territories or a specific territory; except those that establish the form and procedure of territorial government.

B. All laws that apply generally but are uniquely applied in the territories or a territory; except those that refer to distinctions between equivalents (e.g., the High Commissioner of the Trust Territory is mentioned separately from governors of the states under the Communication Act of 1934, 47 U.S.C. § 303, but his function of issuing valid identity certificates to applicants to the FCC for radio licenses is the same), and those grant-in-aid appropriations that provide for different percentage allocations of funds.

C. All laws that pertain to (1) Taxes, (2) Customs, (3) Immigration, (4) Banking, (5) Labor and (6) Maritime.

Each statute selected has been identified according to the name of the Act, or chapter, under which

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it was promulgated, the date it was first enacted, and its United States Code citation. The terms and effect of each statute so identified have been descriptively summarized in either a single sentence or a short paragraph. Finally, there is a brief evaluation of each statute that treats a territory differently than a state in order to determine whether the statute could be constitutionally applied to a state as it has been to the territory.

There are, in addition, some drawbacks to this exercise which tend to limit its value:

1. Often the computer printout selects one or two sections from a long and complex Act or chapter.

Reading such sections out of context can be misleading or entirely meaningless, but analyzing entire Acts in such a situation is beyond the scope of this endeavor.

2. Most statutes cannot be readily interpreted on their face, because judicial construction often limits the operation of statutory language. Again, however, extended analysis of case law is beyond the scope of this endeavor.

3. Because of the above shortcomings, the constitutional analysis, which follows all statutes that treat territories differently from states, is necessarily sketchy and somewhat superficial.

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A. Laws that apply solely in the territories or a specific territory.

1. Micronesian Claims Act of 1971, 50 U.S.C. §§ 2018 - 2020b. The Act set up the Micronesian Claims Commission (MCC) under the Foreign Claims Settlement Commission (FCSC). The MCC consists of five members to be appointed by the Chairman of the FCSC in consultation with the Secretary of the Interior. Two of the members must be selected from a list nominated by the congress of Micronesia. The function of the MCC is to adjudicate and settle claims arising out of the Second World War, such adjudication to be made pursuant to international law and the laws of the Trust Territory.

2. Seizure and Forfeiture of Carriers Transporting Contraband (1939), 49 U.S.C. §789. The section in question makes a special provision for Guam to independently enforce and administer the chapter which deals with sanctions against interstate carriers transporting contraband. Otherwise enforcement and administration is reserved to the United States government. The federal government clearly has the authority to ban certain articles from shipment in interstate commerce though its police power (The Lottery Case), and may delegate power expressly

reserved to it by the Constitution as long as such delegation is not excessive.

3. Conveyance of Submerged Lands to Territories (1963), 48 U.S.C. § 1701-04. Upon request of the Governors of Guam, the Virgin Islands, or American Samoa the Secretary of the Interior is authorized to convey to those territories submerged lands and tidelands up to three miles out from their respective coasts. The conveyances must be either for a specific economic purpose or a compelling need. The provision would have little relevance if applied to states, since the states have sovereignty over their own submerged lands, but it does indicate the nature of federal authority over the territories.

4. Eastern Samoa, 48 U.S.C. § 1664. The section expressly exempts Eastern Samoa from the federal coast-wise laws, which restrict passenger and cargo ships engaged in U.S. coastal service to those built in the U.S. Since the federal government has power over interstate commerce, which would include coastal trade, it is limited only in that the exercise of the power must be rationally related to its purpose (McCulloch v. Maryland). The exercise of power here appears to have a rational basis.

5. Revised Organic Act of the Virgin Islands (1963), 48 U.S.C. §§ 1541-1644. One section of

the Act provides that the proceeds of federal taxes, including income and customs taxes, be paid into the Virgin Islands treasury (§ 1642). The federal government could only apply such a provision to a state if it were rationally related to the purpose of general welfare. It has done so with respect to all the states through the revenue sharing program.

Foreign merchandise imported into the Virgin Islands is not subject to trademark laws, but such merchandise imported from the Virgin Islands into the U.S. is. Since the purpose of the commerce power is to assure uniformity and avoid discrimination by states, it is doubtful that such a law would be valid if applied to a state. Finally, imports from the Virgin Islands into the U.S. are covered by 19 U.S.C. § 1301a and 26 U.S.C. § 7652.

6. Alien Owners of Land (1887), 48 U.S.C. §§ 1501-1512. The chapter proscribes acquisition and ownership by aliens of land in the territories unless they are bona fide residents or have declared their intention to become U.S. citizens. Excepted from operation of the chapter are parcels of land in any incorporated or platted city, town or village. In addition, specific provisions apply the chapter to the District of Columbia and Hawaii. Although the federal government has certain

authority as to aliens through its plenary power over foreign affairs, aliens are a discrete and insular minority. As such they might be protected from such provisions, if applied to ownership of land within a state, through the due process clause of the Fifth Amendment (Bolling v. Sharpe) On the other hand, the federal authority over alien land ownership may not depend on state sovereignty at all, in which case distinctions between restrictions on land ownership in a state and in a territory would be irrelevant.

7. Territorial Provisions of a General Nature (1873), 48 U.S.C. §§ 1451-1490. The application of this chapter is now somewhat limited since it has been substantially supplanted by special provisions (e.g., Organic Acts) for each individual territory. All accounts and disbursements of territorial governments must be made through the Government Accounting Office with approval of the Comptroller General (§ 1469). Municipal debts within a territory cannot exceed 4% of its assessed taxable property, and territorial debt is only permitted for certain specified purposes (§ 1473). Territorial governments may not subscribe to the stock of any corporation (§ 1475). Religious corporations may not hold real estate valued at more than \$50,000 (§ 1480). Customs regulations apply to ships in the United States clearing

for non-contiguous territories and to trade between territories (§ 1486). The above provisions with the exception of the last would be unconstitutional if applied to a state, unless the activities regulated were deemed an undue burden on interstate commerce.

8. Organic Act of Guam (1950, 1963), 48 U.S.C. §§ 1421-1425d. One section of the Act provides that federal tax laws shall remain in force in Guam, but that Guam may, in addition, formulate its own territorial tax (§ 1421i). All U. S. copyright laws remain in effect in Guam as well (§1421n). Finally, purchases by the Guam government must be made through the General Services Administration (§ 14231). All provisions except the last could be constitutionally applied to a state.

9. Virgin Islands Corporation Act (1949), 48 U.S.C. §§ 1407-1407i. The Act establishes a corporation under the direction of the United States President to promote the general welfare of Virgin Islands inhabitants. Unless the formation of such a corporation was a rational method of distributing federal tax funds, it would probably be unconstitutional as applied to the states, since there is no other source of federal power in the Constitution that would support such formation.

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10. General Provisions of the Virgin Islands (1917), 48 U.S.C. §§ 1391-1403b. Under several sections of the chapter all local taxes of the Virgin Islands remain in force until supplanted by Congress, except that municipal real estate taxes must be equalized; all U.S. income and customs taxes, including 27 U.S.C. §§ 71-89 and a special \$6/ton tax on sugar exports, remain in force in the Virgin Islands and the proceeds from such taxes are paid into the Virgin Islands' treasury; the Virgin Islands is granted the power to tax concessions granted by the government, income, property and internal revenue, and collect license and service fees. All of the above would be either constitutional as applied to a state or irrelevant, since the powers granted to the Virgin Islands by statute are reserved to the states by the Tenth Amendment.

There can be no discrimination in intraterritorial taxes between foreign goods and those locally produced (§ 1395). If applied to a state, the section would be constitutional by the express grant of the commerce power and the express limitation on state customs power in Art. I, sec. 10, clause 2.

Public indebtedness in the Virgin Islands is limited to a maximum of 10% of the total assessed valuation

of taxable real estate. The provision would be unconstitutional if applied to a state unless the public debt was found to be an undue burden on interstate commerce.

Imports from the Virgin Islands into the U.S. are treated as if they were foreign goods and taxed accordingly, unless they contain less than 20% value of foreign material in which case they are admitted free of duty. Although Congress has power over interstate commerce, the purpose of the interstate commerce clause is to promote uniformity and such discriminatory legislation might be found unconstitutional if applied to a state.

Finally, all U. S. admiralty, navigation, patent, trademark and copyright laws are controlling in the Virgin Islands (§§ 1399-1400, 1405c, 1405q). Such provisions would be constitutionally applicable to the states because of the commerce and patent powers vested in Congress.

11. Jones Act (1917), 48 U.S.C. §§ 731-894. The Act provides that proceeds from U. S. internal revenue taxes on articles produced within Puerto Rico, and from U. S. income and customs taxes be paid into the Puerto Rico treasury (§§ 734,740). Such provisions would have

to be rationally related to the purpose of promoting the general welfare in order to be constitutionally applied to the states. Internal Revenue laws, 28 U.S.C. §§ 71-89, are extended to Puerto Rico. The Puerto Rico government also may not discriminate between foreign and domestic goods in its internal revenue provisions (§ 741a). Congress has authority to enforce such a law against a state through its interstate commerce power.

All Puerto Rican laws forbidding the marriage of priests are repealed (§ 736). This provision is consistent with the First Amendment guarantee of freedom of religion.

There is a mutual lack of customs duties on goods shipped between the United States and Puerto Rico (§ 938). The section would be irrelevant if applied to a state, since the states are the United States.

U. S. coastal trade laws, navigation laws and regulations are controlling in Puerto Rico (§§ 744, 746-9). The section would be constitutionally applicable to a state through Congress' interstate commerce power.

Puerto Rico is exempted from the Interstate Commerce Act, the Safety Appliance Acts and 49 U.S.C. 19a (§ 751). Since Congress could not apply the Interstate Commerce Act to purely intrastate commerce, Puerto

Rico's exemption from that portion of the Act would be tautological if applied to a state. Furthermore, while Congress could theoretically exempt a state from the operation of the Act as it applies to interstate commerce, such exemption would destroy the uniformity the commerce clause is designed to promote.

Corporations incorporated in or doing business in Puerto Rico are subject to special restrictions on stock issues and real estate ownership (§ 752). While stock issues are clearly subject to Congressional authority through securities regulations passed pursuant to the commerce clause, limitations on real estate ownership would not find a constitutional source as applied to a state.

12. Communications Act of 1934, 47 U.S.C. §§ 301-330. The Federal Communications Commission may designate any other governmental employee within a territory or possession to carry out its duties in that territory (§ 329). If applied to a state, the section would be constitutional as long as delegation of authority was not excessive.

13. Regulation of Vessels in Domestic Commerce (1793, 1874), 46 U.S.C. §§ 251-332. No foreign flag vessel may discharge a cargo of fish in any United

States ports, except that in the Virgin Islands foreign flag vessels of less than fifty feet may discharge fish for immediate consumption only. Under its foreign relations power the federal government could constitutionally make such an exemption for a state as well.

14. Department of Interior (1849), 43
U.S.C. §§ 1457-58. The chapter delegates to the Secretary of the Interior supervisory authority over the territories. The provision would clearly be unconstitutional if applied to a state, since it does not limit the Secretary's authority in any way and the states have reserved powers of sovereignty

15. Public Lands in Oklahoma (1890), 43
U.S.C. §§ 1091-1134. The chapter provides for regulation of homesteading and taking title thereby in the Oklahoma Territory. It further authorizes the Secretary of the Interior to appoint three trustees to survey and lay out each township established under the chapter. The provisions are based on the assumption that all territorial lands are federal property until granted by the federal government, an assumption that would be clearly erroneous if applied to a state.

B. Laws that apply generally, but are uniquely applied in a territory or territories.

1. The following statutes are based on essentially the same premise. They operate to control

commerce between states, between points in the same state if the transaction passes through another state, between the states and the territories and between points in the same territory. In short, interstate commerce for the purpose of these statutes includes commerce between the states and within the territories. However, unlike its plenary control over the territories through Art. IV, Sec. 3, Cl. 2, Congress has no power to regulate commerce contained within a state without a specific finding that such trade burdens interstate commerce. Therefore, the statutes as they are applied to the territories could not be constitutionally extended to the states.

a. Part IV of the Interstate Commerce Act (1887), 49 U.S.C. §§ 1001-22. The chapter concerns licensing and regulation of interstate carriers generally.

b. Part III of the Interstate Commerce Act (1887), 49 U.S.C. §§ 901-23. The chapter deals with licensing and regulation of interstate water carriers.

c. Seizure and Forfeiture of Carriers Transporting Contraband Articles (1939), 49 U.S.C. §§ 781-89. Provides for seizure and forfeiture of

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any interstate carrier transporting contraband.

d. Part II of the Interstate Commerce Act (1887), 49 U.S.C. §§ 301-27. Provides for licensing and regulation of interstate motor carriers. The chapter has special provisions for Alaska and Hawaii that are designed to facilitate their transition to statehood.

e. Bills of Lading (1916), 49 U.S.C. §§ 81-122. The chapter provides that bills of lading issued in a state for orders shipped in the continental United States must have duplicates and must not be issued in parts, whereas bills for orders shipped to Alaska, Panama, the Phillippines, Hawaii or foreign countries may dispense with duplicates and may be issued in parts. The chapter establishes civil liability for failure to observe the above provisions.

f. Supplementary Legislation to Interstate Commerce Act, 49 U.S.C. § 65. The section allows the federal government to procure services from any carrier lawfully operating in the territory where the services are to be performed without advertising for bids as it is required to do otherwise.

g. Part I of the Interstate Commerce Act (1887), 49 U.S.C. §§ 1-20c. The chapter provides generally for treatment of interstate commerce and sets out

the limits of authority consistent with the above premise.

h. Communications Act of 1934, 47 U.S.C. §§ 301-330. The Act regulates radio communication, transmission and submarine cable broadcasting, and shipment of communications receivers.

i. Livestock Transportation Act (1906), 45 U.S.C. § 71. The section establishes regulations for transportation of animals on interstate carriers.

j. Hours of Service Act (Railroads) (1907), 45 U.S.C. §§ 61-65. The Act regulates interstate carriers' employees' hours of service.

k. Employers' Liability Act (1908), 45 U.S.C. §§ 51-52. The Act establishes a statutory remedy for wrongful death of employees of interstate carriers.

1. Safety Appliance Act (1893), 45 U.S.C. §§ 8-43. The Act authorizes the Secretary of Transportation to regulate the safety of ashcans and couplers on interstate rail carriers.

2. Military Selective Service Act (1971), 50 U.S.C. App. §§ 454-66. The Trust Territory is not within the definition of United States and therefore residents of the Trust Territory would not appear to be subject

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to conscription. Although Congress has plenary power over the armed services and power to draft men into the army, it is questionable whether it could rationally exempt a state from operation of the Act.

3. Merchant Marine Act, 1920, 46 U.S.C. §§ 866-891v. The Act establishes certain provisions for coastal trade. There can be no transport of merchandise between ports of the U.S., including its territories, unless the vessel is built in and documented under the laws of the United States, and owned by U.S. citizens. Failure to report rebuilding of properly documented ships of over 500 tons outside the United States subjects the owner to forfeiture and fine (§§ 883-883a). These sections are potentially of great importance, but their effect on the territories is not immediately clear. Extensive research is required to determine whether all the territories, particularly the Trust Territory, are included in the coverage of the coastwise laws (See § 877), and whether the term "United States" is limited to the states or includes the territories as well.

Under the Act foreign trade is defined as that between a port of the United States, including its territories and possessions, and a foreign country. Foreign trade also includes any stop at a territory or possession, if such stop is intermediate in what would otherwise be a

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voyage in foreign trade (§ 891u). As a practical matter the distinction may not be too important, since the federal government can regulate trade between states, and, if the territories were states, it could reach similar trade. However, it does give the federal government complete authority over transactions within the port as well, and under certain circumstances would be unconstitutional if applied to a state because of the limitation of the commerce power.

4. Public Printing and Documents (1968), 44 U.S.C. §§ 1-3502. The title authorizes the Public Printer to furnish franks to members of Congress and to the Commissioner of Puerto Rico. The authorization fails to include officials of the other territories, and as such would have to have a rational basis if applied to a state.

C. Laws that pertain to: taxes, customs, immigration, banking, labor, maritime.

1. Taxes

a. Part II of the Interstate Commerce Act (1887), 49 U.S.C. §§ 301-327. Under the Act states and territories are forbidden to tax employees of interstate carriers if they did not earn more than 50% of their income

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in the state or territory. The section does not impair the right to tax such employees if they are residents of particular states or territories.

b. Revised Organic Act of the Virgin Islands (1968), 48 U.S.C. §§ 1541-1644. One section of the Act provides that the proceeds of federal taxes, including income and customs taxes, be paid into the Virgin Islands treasury (§ 1642). The federal government could only apply such a provision to a state if it were rationally related to the purpose of general welfare. It has done so with respect to all the states through the revenue sharing program.

c. Organic Act of Guam (1950, 1963), 48 U.S.C. §§ 1421-1425d. One section of the Act provides that federal tax laws shall remain in force in Guam, but that Guam may, in addition, formulate its own territorial tax (§ 1421i).

d. General Provisions of the Virgin Islands (1917), 48 U.S.C. §§ 1391-1403b. Under several sections of the chapter all local taxes of the Virgin Islands remain in the force until supplanted by Congress, except that municipal real estate taxes must be equalized; all U.S. income and customs taxes, including 27 U.S.C. §§ 71-89 and a special \$6/ton tax on sugar exports, remain in

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force in the Virgin Islands and the proceeds from such taxes are paid into the Virgin Islands' treasury; the Virgin Islands is granted the power to tax concessions granted by the government, income, property and internal revenue, and collect license and service fees. All of the above would be either constitutional as applied to a state or irrelevant, since the powers granted to the Virgin Islands by statute are reserved to the states by the Tenth Amendment.

e. Jones Act (1917), 48 U.S.C. §§ 731-894. The Act provides that proceeds from U. S. internal revenue taxes on articles produced within Puerto Rico, and from U. S. income and customs taxes be paid into the Puerto Rico treasury (§§ 734,740). Such provisions would have to be rationally related to the purpose of promoting the general welfare in order to be constitutionally applied to the states. Internal Revenue laws, 28 U.S.C. §§ 71-89, are extended to Puerto Rico. The Puerto Rico government also may not discriminate between foreign and domestic goods in its internal revenue provisions (§ 741a). Congress has authority to enforce such a law against a state through its interstate commerce power.

f. Merchant Seamen (1884), 46 U.S.C. § 601. No portion of the wages of any seaman certified under the Act may be withheld according to the tax laws of any state, possession or territory.

g. Railroad Retirement Act of 1937, 45 U.S.C. § 2281. No annuity or pension secured by the Act can be subject to any tax, garnishment, attachment or other legal process, notwithstanding any laws of the United States, states or territories.

h. Internal Revenue Code of 1954, 26 U.S.C. § 872. The provision deals with the gross income of non-resident aliens and expressly excludes from gross income of such persons interest derived from United States Bonds, series E and H, while they were residents of either the Trust Territory or the Ryuku Islands. Although the provision indicates that the Trust Territory is treated differently than a state for purposes of taxing non-resident aliens who formerly resided in the territory, it is hardly of major importance.

2. Customs

a. Equal Export Opportunity Act (1972), 50 U.S.C. App. § 2403. The section empowers the president, through the Secretary of Commerce, to prohibit or curtail the export of rare materials from the United States or its territories in order to reduce the inflationary impact of a disproportionate balance of payments.

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b. Trading with the Enemy Act (1917), 50 U.S.C. App. §§ 2-43. The Act criminalizes trade with an "enemy of the United States."

c. Revised Organic Act of the Virgin Islands (1968), 48 U.S.C. §§ 1541-1644. Foreign merchandise imported into the Virgin Islands is not subject to trademark laws, but such merchandise imported from the Virgin Islands into the U.S. is. Since the purpose of the commerce power is to assure uniformity and avoid discrimination by states, it is doubtful that such a law would be valid if applied to a state. Finally, imports from the Virgin Islands into the U.S. are covered by 19 U.S.C. § 1301a and 26 U.S.C. § 7652.

d. Territorial Provisions of a General Nature (1873), 48 U.S.C. §§ 1451-1490. Customs regulations apply to ships in the United States clearing for non-contiguous territories and to trade between territories (§ 1486).

e. General Provisions of the Virgin Islands (1917), 48 U.S.C. §§ 1391-14036. Imports from the Virgin Islands into the U.S. are treated as if they were foreign goods and taxed accordingly, unless they contain less than 20% value of foreign material in which case they are admitted free of duty. Although Congress has power over interstate commerce, the purpose of the interstate commerce

clause is to promote uniformity and such discriminatory legislation might be found unconstitutional if applied to a state.

f. Jones Act (1917), 48 U.S.C.

§§ 731-894. There is a mutual lack of customs duties on goods shipped between the United States and Puerto Rico (§ 938). The section would be irrelevant if applied to a state since the states are in the United States.

g. Clearance and Entry (1799),

46 U.S.C. § 91. The section requires all ships departing for a non-contiguous United States territory or a foreign port to file a cargo manifest with the collector of customs of the embarkation port.

3. Immigration.

4. Banking.

5. Labor.

a. Merchant Seamen (1884), 46 U.S.C.

§§ 599-643. Under the Act all seamen must obtain a continuous discharge book showing certificates of identification and all discharges in order to obtain employment on non-fishing merchant vessels of over 100 tons (§ 643). No attachments may be made of the wages of any seaman, except for the benefit of his wife and children.

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b. Officers and Crews of Vessels

(1884), 46 U.S.C. §§ 224A-243. The chapter deals generally with registration documents for maritime personnel. All ships that do not comply with the provisions of the Officer Competency Certificates Convention of 1936 are subject to detention by the collector of customs in any port of the United States and its territories, except the Panama Canal Zone (§ 224A). Seaman's documents may be denied anyone who has been convicted under narcotics laws of the United States, states and territories within ten years prior to his application (§ 239B). Applicants for registry as a doctor must hold valid licenses issued by a state or territory (§243).

c. Railway Labor Act (1926), 45

U.S.C. §§ 151-52. The Act requires good faith efforts on the part of interstate carrier officers to negotiate labor disputes, collective bargaining on the part of employees and mediation by a Mediation Board in case of irreconcilable disputes. The Act also permits carriers and unions to require employment with an interstate carrier to be conditional upon obtaining membership in the union, all state or territorial laws to the contrary notwithstanding.

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d. Hours of Service Act (Railroads) (1907), 45 U.S.C. §§ 61-65. The Act regulates interstate carriers' employees' hours of service.

e. Employers' Liability Act (1908), 45 U.S.C. §§ 51-52. The Act establishes a statutory remedy for wrongful death of employees of interstate carriers.

f. Occupational Health and Safety Act of 1970, 29 U.S.C. §§ 652 - 3. The Act provides for the establishment of a commission to regulate occupational health and safety. It reaches commerce among the states (under § 652(f) the Trust Territory is treated as a state) and within the District of Columbia, other territories and possessions, but not within the Trust Territory. By reading the statute as a whole, the Trust Territory, unlike the other territories, is treated almost exactly like a state. The Act is clearly constitutional under the commerce clause and Article IV, Section 3, clause 2 which gives Congress plenary control over the territories. There is no explanation as to why the Trust Territory is treated like a state rather than a territory, but such distinction may be of little practical value since Congress can reach almost any occupational activity within the states under the aggregation theory of the commerce power.

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6. Maritime.

a. Vessels in Territorial Waters (1917), 50 U.S.C. §§ 191-95. The section authorizes the Secretary of the Treasury, once a national emergency is declared, to regulate movement and inspection of all ships in United States navigable waters.

b. Arsenal, Arms and War Materials (1917), 50 U.S.C. § 82. The section authorizes the president to commandeer ship-building factories in the United States, including its territories, and use total output in the case of war or national emergency.

c. Part III of the Interstate Commerce Act (1887), 49 U.S.C. §§ 901-23. The chapter deals with licensing and regulation of interstate water carriers.

d. General Provisions of the Virgin Islands (1917), 48 U.S.C. §§ 1391-14036. All U.S. admiralty, and navigation laws are controlling in the Virgin Islands (§§ 1399-1400).

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e. Jones Act (1917), 48 U.S.C. §§ 731-894. U.S. coastal trade laws, navigation laws and regulations are controlling in Puerto Rico (§§ 744, 746-9). The section would be constitutionally applicable to a state through Congress' interstate commerce power.

f. Federal Boat Safety Act of 1971, 46 U.S.C. § 1452. The section provides for uniform boat construction and performance standards in order to assure boating safety. The section covers all territories except the Trust Territory and treats them as states.

g. Maritime Academy Act of 1958, 46 U.S.C. §§ 1381-86. The section provides for federal assistance to all state and territorial merchant marine academies.

h. Merchant Marine Act, 1928, 46 U.S.C. §891u. Foreign marine trade for the purpose of the Act is that between the United States, its territories and possessions and a foreign country. It also includes any intermediate stop at a territory or possession on what would otherwise be a voyage in foreign trade.

i. Merchant Marine Act, 1920, 46 U.S.C. §§ 866-885. The Act authorizes the Secretary of Commerce to establish international steamship lines to be

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sold to U.S. citizens only.

The coastwise laws of the United States are extended to the territories of the United States (§ 877).

Passenger vessels capable of holding less than sixteen passengers are exempt from inspection regulations that apply to passenger boats capable of holding more than sixteen (§ 882).

The Act establishes certain provisions for coastal trade. There can be no transport of merchandise between ports of the U.S., including its territories, unless the vessel is built in and documented under the laws of the United States, and owned by U.S. citizens. Failure to report rebuilding of properly documented ships of over 500 tons outside the United States subjects the owner to forfeiture and fine (§§ 883-883a). These sections are potentially of great importance, but their effect on the territories is not immediately clear. Extensive research is required to determine whether all the territories, particularly the Trust Territory, are included in the coverage of the coastwise laws (See § 877), and whether the term "United States" is limited to the states or includes the territories as well.

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j. Shipping Act, 1916, 46 U.S.C.

§§801-844. The Act regulates marine commerce generally. Any transfer of interest in a ship under the American flag to one not a citizen of the United States may only be performed with the consent of the Secretary of Commerce (§ 808).

Common carriers by water between ports of states or territories may not discriminate in their services by rebates or any other method. A non-citizen who violates the regulation may, upon investigation by the Federal Maritime Commission (FMC), be refused entry into any United States port by the Commissioner of Customs (§§ 812-813). However, service contracts by marine carriers engaged in foreign commerce may provide for a dual rate structure if reviewed and approved by the FMC (§ 813a).

All agreements between carriers must be filed with the FMC (§ 814).

No carriers subject to the Act may give free or reduced rate passage to either military or civilian employees of the federal government (§ 817b).

Except for legal process issued under federal, state or territorial law, no carrier may give information about shipments or consignees to the detriment of the consignee (§819).

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During time of war any boat registered under the U.S. flag may not be reregistered under foreign flag without the permission of the Secretary of Commerce (§ 835).

k. Death on the High Seas by Wrongful Act (1920), 46 U.S.C. §§ 761-68. The Act provides a statutory cause of action for any death caused by a marine carrier's negligence on the high seas beyond a league from the shore of any state, territory or possession.

l. Suits in Admiralty by or Against Vessels or Cargoes of the United States (1920), 46 U.S.C. §§ 741-52. The chapter provides that no vessel may be subject to arrest or seizure by judicial process in the U.S. or its possessions because of a claim arising from a time when such vessel was owned by or operated for the federal government.

m. Merchant Seamen (1884), 46 U.S.C. §§ 599-643. No portion of the wages of any seaman certified under the Act may be withheld according to the tax laws of any state, possession or territory (§ 601).

Under the Act all seamen must obtain a continuous discharge book showing certificates of identification and all discharges in order to obtain

employment on non-fishing merchant vessels of over 100 tons (§ 643). No attachments may be made of the wages of any seaman, except for the benefit of his wife and children.

n. Motorboat Act of 1940, 46 U.S.C.

§ 526u. The Act provides for safety regulations to be applied to the operation of motorboats. It treats Guam, the Virgin Islands, Puerto Rico and the District of Columbia as states, and does not mention any other territories.

o. Regulation of Vessels in Domestic Commerce

(1793, 1874) 46 U.S.C. §§ 251-332. The Act establishes five great districts of seacoasts and navigable rivers for the purposes of maritime administration. There are two districts incorporating the continental United States, and one each covering Puerto Rico, Alaska and Hawaii (§ 293). There is no mention of any other possessions or territories.

The change of a vessel's master must be reported to the customs collector of the port at which the vessel next arrives (§ 276).

No vessel not wholly owned by a U.S. citizen or citizens and not registered according to the provisions of the chapter may engage in towing or salvaging operations (§ 316).

Vessels built in the United States and wholly owned by citizens thereof which are not propelled by sail or other internal motive power do not have to be registered under the chapter (§ 332).

No foreign flag vessel may discharge a cargo of fish in any United States port, except that in the Virgin Islands foreign flag vessels of less than fifty feet may discharge fish for immediate consumption only. Under its foreign relations power the federal government could constitutionally make such an exemption for a state as well.

p. Officers and Crews of Vessels (1884), 46 U.S.C. §§ 224A-243. The chapter deals generally with registration documents for maritime personnel. All ships that do not comply with the provisions of the Officer Competency Certificates Convention of 1936 are subject to detention by the collector of customs in any port of the United States and its territories, except the Panama Canal Zone (§ 224A). Seaman's documents may be denied anyone who has been convicted under narcotics laws of the United States, states and territories within ten years prior to his application (§ 239B). Applicants for registry as a doctor must hold valid licenses issued by a state or territory (§243).

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q. Carriage of Explosives (1887), 46 U.S.C. § 170. The section establishes regulations for ships carrying explosives anywhere in the navigable waters of the United States and its territories, except the Panama Canal Zone.

r. Passenger Act of 1882, 46 U.S.C. §§ 151-61. The chapter establishes regulations for vessels carrying passengers to or from ports in the United States and its territories in their steerage compartments.

s. Clearance and Entry (1799), 46 U.S.C. 91. The section requires all ships departing for a non-contiguous United States territory or a foreign port to file a cargo manifest with the collector of customs of the embarkation port.

t. Registry and Recording (1792), 46 U.S.C. §§ 11-18. The chapter establishes preconditions for the registration of ships in the United States merchant marine. Only ships wholly owned by United States citizens or by corporations chartered in the United States and controlled by United States citizens, engaged in the coastwise trade or trade with Guam, Tutuila, Wake, Midway, and Kingman Reef or trade with a foreign country, and certified by the Coast Guard as seaworthy may be registered under title 46 and permitted to contract with

the Postal Service (§ 11). Provisional registration may be issued by United States consuls abroad to ships purchased abroad by American citizens (§ 12). Every vessel registered under title 46 must have a home port in either the United States or Puerto Rico (with no mention of any other territories or possessions) (§ 18).

u. Merchant Marine Academy (1961), 42 U.S.C. §§ 1126b - 1. The provision concerns admission to the Merchant Marine Academy. Each state is allotted a number of admittees according to its representation in Congress, but the Secretary of Commerce, upon designation from the Secretary of the Interior, is authorized to admit four persons from the Trust Territory. Normally graduates of the Academy are entitled to positions in the merchant marine, but those from the Trust Territory must become citizens of the United States before they are accorded the same right. If such a provision were applied to a state, it would be an unconstitutional denial of equal protection under the due process clause of the Fifth Amendment (Bolling v. Sharpe).

v. Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. § 1402. The Act, which treats the Trust Territory as if it were a state, regulates dumping of refuse in the ocean. Although it may not have much relevance for the Mariannas, it could be of potential importance to a people who probably derive their chief livelihood from the sea.

w. Functions and Powers of the Coast

Guard (most recently amended 1970), 14 U.S.C. § 81. The provision confers upon the Coast Guard the authority to establish, operate and maintain aids to navigation for the protection of commerce and the armed forces. Included in the jurisdiction of the Coast Guard are all the national and territorial waters of the United States. Again, although this section may not have much relevance for island fishermen, it could be of potential importance as the Mariannas become more sophisticated in their use of navigational aids.

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