

November 1, 1973

MEMORANDUM FOR THE MARIANAS POLITICAL STATUS COMMISSION FILE

Subject: Meeting of the Working Committee on Political
Status/Legal Issues, November 1, 1973

The Working Committee on Political Status/Legal Issues held a meeting today from 10:00 a.m. until 1:30 p.m. in the offices of Wilmer, Cutler & Pickering. Representing the United States were the following: C. Brewster Chapman, Sol Silver, Herman Marcuse, Adrian DeGraffenried and Tom Johnson. Representing the Marianas Political Status Commission were the following: Howard Willens, Jay Lapin, F. David Lake, David Hanes and Michael Helfer. The following is a summary of the discussions had at the meeting.

1. Citizenship

Mr. Lapin presented a proposal on United States citizenship and nationality in the Marianas (Tab A), and a memorandum explaining the proposal (Tab B). The following are the most significant points discussed with respect to the various portions of the proposal:

Section (a): Mr. Marcuse asked whether nationals of the United States under existing law should also be excluded on the ground that citizenship should not be conferred on any person who has a relationship to the United States under other laws. Mr. Willens replied that this suggestion sounded reasonable to him and would be explored. Mr. Marcuse also asked whether it was necessary to include the phrase "their children" in this section. Mr. Lapin explained that the phrase was intended to apply to minors, and to prevent persons born of Marianas' domiciliaries outside of the Marianas who otherwise meet the qualifications laid out, from being excluded. It was agreed that the phrase "their minor children" should be used instead.

Subsection (a)(2): Mr. Marcuse suggested that a specific cut-off date such as January 1, 1974, be substituted in the place of "for at least five years immediately prior" to "the date of the termination of the Trusteeship." This would avoid persons moving into the Marianas from other islands simply to gain American citizenship. There is no disagreement.

Subsection (a)(3): It was agreed the same cut-off date should be used in this section as in section (a)(2). Mr. Marcuse also asked why the residency clause was necessary. Mr. Lapin explained that legal, permanent residency was included to avoid reaching persons admitted on a temporary visitor or employment permit or in the TTPI illegally. Mr. Marcuse agreed that this was a sensible goal. He then raised the question whether it was desirable to provide for the blanket naturalization of aliens. Mr. Chapman suggested that to be included under this section a person ought to have no allegiance to another country; if the person had such an allegiance he would have to be admitted to citizenship in the same way as other aliens from his country. Mr. Marcuse added that some aliens do not want to become citizens, and that it was preferable to make them take affirmative steps to renounce their other citizenship and accept American citizenship. The issue is not resolved.

Section (b): Mr. Chapman said that there was no problem in giving persons the option to become a national rather than a citizen. Mr. Marcuse said that the proviso was unnecessary because the situation was covered by the Nationality Act. Mr. Lapin replied that the intent was simply to make clear the consequences of preserving or acquiring foreign nationality.

Subsection (c)(2): Mr. Chapman suggested that minor children should be bound by their parents' decision on citizenship. Mr. Lapin replied that the Commission thought it desirable to maintain the option of nationality instead of citizenship, and that if Mr. Chapman's suggestion were taken problems could arise for children whose parents had made different choices. Mr. Marcuse suggested only in that situation should the child be given a choice.

Several general points were made during the discussion of the citizenship proposal. It was agreed that Mr. Lapin would attempt to include a definition of "domicile" in the next draft of the provision. It was also agreed that it would be necessary to prepare a register in the Marianas after the termination of the Trusteeship so that records of citizens and nationals could be maintained. In the course of the discussion Mr. Chapman suggested that with respect to restrictions on land alienation the qualifying factor should be made residency, not ancestry, in order to avoid constitutional problems. Mr. Lapin questioned whether a residency requirement alone would meet the goals of the Commission.

It was agreed that Mr. Lapin would attempt to draft a citizenship proposal reflecting today's discussion together with an explanation of the issues involved for consideration at the next round of negotiations.

2. Income Tax Laws

Mr. Lake presented and explained the memorandum which had been prepared on the applicability of United States income tax law to the Marianas (Tab C). Mr. Chapman said he agreed with the broad principles in the memorandum; in particular, he said that he saw no objection to the proposed taxation of only U. S. source income, nor to the proposed automatic return to the Marianas government of all American income taxes collected there. He also agreed that serious problems had been encountered in other territories when the Congress had imposed the equivalent of the Internal Revenue Code on those territories as a local tax code. Mr. Chapman did not specifically address the proposals relating to the incentives for corporations to invest in the Marianas, and the treatment of the Marianas as a possession for other purposes in the Internal Revenue Code, or the questions relating to the applicability of United States Social Security laws.

Mr. Marcuse asked why the requirement of residency was included in Paragraph A-1 of the proposal. Mr. Lake explained that otherwise a tax loophole could be created in the Marianas. Mr. Silver stated that OMB was opposed to the automatic return of tax revenues to Guam. Mr. Chapman stated that OMB was simply interested in increasing revenues, and that the historical reason for returning tax revenues to the territories was to avoid the expensive annual budget cycle process, and to spare Congress the chore of reviewing the details of the programs of every territory. He added that the concept of returning tax revenues to the Marianas was included in the earlier Commonwealth proposal, which also foresaw a decreasing level of federal assistance as the Marianas reached economic self-sufficiency.

Mr. Chapman agreed to present further comments on the proposal after the United States had an opportunity to review it, so it could be considered at the next round of negotiations.

3. Customs and Excise Tax Laws

Mr. Hanes presented and explained the memorandum which had been prepared on the applicability of United States customs and excise tax laws to the Marianas (Tab D). Mr. Chapman raised the following significant points. First, he thought there were serious policy problems, if not constitutional problems, with permitting the Marianas to tax goods going from the Marianas to the United States and its territories, or coming from the United States and its territories to the Marianas. Second, he thought that it would be difficult to persuade Congress to agree to increase from

50% to a higher percentage that portion of the value of any product which may be attributable to a foreign country before the product is excluded from the customs benefits available to products produced in the Marianas and transferred to the United States.

On a more general matter, Mr. Chapman stated that it should be made clear to the Commission that the Marianas will not be able to tax American government activity in the Marianas, particularly the proposed military base. Mr. Lapin asked what the American position on this was and Mr. DeGraffenried replied that the Marianas would have power to tax federal government activity to the same extent that a State can do so. Mr. Lapin asked that we be informed if there be any change in that position.

Mr. Willens asked Mr. Chapman to present the United States' views on this proposal just as he had agreed to do on the income tax proposal, and Mr. Chapman agreed.

4. Review of Laws

Mr. Willens suggested that it was appropriate to exchange views on how the working group should proceed in its overall review of federal laws. Mr. Lapin stated that studies have been undertaken on behalf of the Commission in the six areas of law identified as potentially important during the last negotiations. With respect to other areas of law, little progress had been made. The computer printout which the United States had provided was incomplete and difficult to work with. He proposed that the working group attempt to identify laws outside the six areas already under review which may be controversial or which may warrant special attention as part of the status agreement; the burden of finding these laws, he said, was properly on the Commission. But, Mr. Lapin suggested, the United States was most competent to identify other laws which would have to be made applicable in the Marianas before or at the time the Trusteeship terminates. Mr. Chapman stated that he preferred a simpler approach which he has suggested before: a Commission to review the laws and prepare an Omnibus Bill. With respect to laws not already applicable in the TTPI, Mr. Chapman suggested that the regulatory laws were most important and ought to be reviewed first; this he said would limit the scope of the inquiry substantially. Mr. Lapin repeated that the United States was in the best position to tell the Commission which laws it proposed to have apply.

Mr. Chapman suggested that instead of reviewing every federal law, it should be assumed that every law (except those dealt with in the status agreement) will apply in the Marianas

after termination if it is a law which is within the power of Congress to pass "with respect to the several States." Mr. Lapin pointed out that there were two separate issues involved: one, the authority of the United States to pass laws applicable in the Marianas, a question which would be dealt with in the status agreement; and consistent with the powers granted to the United States, the existing laws which would actually apply at the time the Trusteeship was terminated. After further discussion of this distinction Mr. Chapman pointed out that the questions of the applicability of specific laws in the Marianas was beyond the scope of this working group, and said that he did not have the staff or expertise to identify areas of potential controversy. He also stated that it would be pointless to attempt to draft an Omnibus Bill before the status agreement was concluded. Mr. Johnson and Mr. DeGraffenried suggested that to draft an Omnibus Bill would delay the conclusion of the status agreement at least one or two years. After further discussion Mr. Lapin suggested that one possible formula would be the following: as of the termination of the Trusteeship, all laws which apply in Guam would apply in the Marianas to the extent that they could apply if the Marianas were a state. It was agreed that a formulation like this might be workable. Mr. Lapin agreed to attempt to develop this formulation in more detail.

Michael S. Helfer

cc: Mr. H. Willens
Mr. J. Lapin
Mr. D. Hanes
Mr. F. D. Lake
Mr. B. Carter
Mr. J. Leonard