

Political/Legal 01/5

RICHARD H. WILMER
LLOYD N. CUTLER
JOHN H. PICKERING
MANUEL F. COHEN
HUGH R. H. SMITH
LOUIS T. OBERDORFER
J. ROGER WOLLENBERG
CHARLES C. GLOVER, III
MARSHALL HORNBLOWER
HENRY T. RATHBUN
REUBEN CLARK
SAMUEL J. LANAHAN
WILLIAM R. PERLIK
SAMUEL A. STERN
ARNOLD M. LERMAN
ROBERT P. STRANAHAN, JR.
MAX O. TRUITT, JR.
JOEL ROSENBLUM
HOWARD P. WILLENS
ANDREW T. A. MACDONALD
ROBERT A. HAMMOND, III
DANIEL K. MAYERS
TIMOTHY B. DYK
DAVID R. ANDERSON
J. RODERICK HELLER, III
ARTHUR F. MATHEWS
JAMES S. CAMPBELL
DENNIS M. FLANNERY
DANIEL MARCUS
JAMES ROBERTSON
EZEKIEL G. STODDARD
ALFRED E. DAVIDSON
GERARD C. SMITH
COUNSEL

WILMER, CUTLER & PICKERING

1666 K STREET, N. W.
WASHINGTON, D. C. 20006

CABLE ADDRESS: WICRING WASH., D. C.
INTERNATIONAL TELEX: 440-239
TELEX: 89-2402
TELEPHONE 202-872-6000

EUROPEAN OFFICE

5, CHEAPSIDE
LONDON, EC2V 6AA, ENGLAND
TELEPHONE 01-236-2401
TELEX: 851 883242

CABLE ADDRESS: WICRING, LONDON

RICHARD A. ALLEN
PETER A. BELL
PETER D. BEWLEY
PETER W. BILLINGS, JR.
STEPHEN F. BLACK
TIMOTHY N. BLACK
MICHAEL L. BURACK
BARRY E. CARTER
RICHARD W. CASS
BARRY O. CHASE
RAYMOND C. CLEVENGER, III
LOUIS R. COHEN
JAMES R. FARRAND
ROBERT A. GERARD
PAUL D. GEWIRTZ
C. BOYDEN GRAY
RONALD J. GREENE
ROBERT C. HACKER
DAVID G. HANES
ALLEN H. HARRISON, JR.
MICHAEL S. HELFER
CHARLES E. HILL
C. LORING JETTON, JR.
SALLY KATZEN
NEIL J. KING
MICHAEL P. KLEIN
JOHN H. KORNS
NOEL ANKETELL KRAMER
F. DAVID LAKE, JR.
WILLIAM T. LAKE
JAY F. LAPIN
ROBERT B. MCCAW
MARY A. McREYNOLDS
A. DOUGLAS McLAMEO
DAVID E. MENOTTI
PAUL J. MODE, JR.
ROBERT R. MORRIS
DANIEL D. POLSBY
STEPHEN B. PRESSER
JOHN ROUNSAVILLE, JR.
DANIEL C. SCHWARTZ
THEODORE S. SIMS
DOUGLAS G. THOMPSON, JR.
STEPHEN A. WEISWASSER
ALAN S. WEITZ
VAUGHN C. WILLIAMS
GARY D. WILSON
WALTER T. WINSLOW, JR.

November 13, 1973

C. Brewster Chapman, Jr., Esq.
Associate Solicitor, Territories
Division of General Law
U.S. Department of the Interior
Washington, D.C. 20240

Dear Brewster:

Thank you for your letter of November 9 and your very constructive approach to the problems we have been discussing in the working group of lawyers.

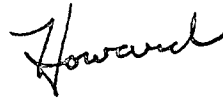
As I mentioned yesterday, we, too, did some work subsequent to our last meeting to explore whether a comparatively simple and practical approach could be developed which would help the parties deal with the question as to what U.S. laws should be applicable to the proposed Commonwealth of the Marianas. Enclosed is our current working draft. As you will note, it does not attempt to address the several other matters which your more ambitious draft did and we have made no effort to integrate the two drafts at this time. We will be giving the matter further study.

In your consideration of this subject over the next few weeks, I hope that you will keep the following in mind:

1. We regard the applicability problem as separate from the questions of U.S. authority under Article IV, Section 3, Clause 2. Nevertheless, we expect that the formal status agreement would have some cross-references between the provisions dealing with these two important areas and this accounts for some of the language contained in the enclosed draft.
2. We will be reporting to the client regarding these problems during our pre-negotiations meetings with the Commission. We obviously will be recommending that the kind of approach that our working group is exploring should be fully pursued, both on a technical and practical basis, to see whether or not it should be endorsed by the Commission. I do not know what the Commission's reaction will be, but I expect that we will be given the authority to continue work along these lines in future meetings of the working group.
3. It seems clear that, before such an approach could be adopted as more than a working hypothesis by the Marianas, the Commission or its representatives should undertake the chore of identifying the problems which might be generated for the Marianas if the approach were followed. As you suggested, it may well be that the members of the Commission have sufficient breadth of experience with respect to Guam that they will be able to make some preliminary judgments on this matter without further expenditure of time or effort. I hope that this is the case, since it would greatly simplify our undertaking. Even if some factual investigation is necessary, I hope that it could be promptly accomplished through conferences with knowledgeable government officials and others in Guam who would be in a position to assist us in identifying the problem areas.

Under these circumstances, I do not know how much substantive progress we can make at the working level before the next session of negotiations. I suggest that we talk later in the week to see if a short meeting among us might be useful.

Sincerely,



Howard P. Willens

Enclosure

B⁰¹ 03242

Application of Federal Laws in the Marianas

Except as otherwise specifically provided in this Status Agreement, every statutory law of the United States having general applicability in the United States and having provisions applicable in Guam, shall, on the date of termination of the Trusteeship, be made applicable in the Marianas in the same manner and to the same extent as such law is applicable on that date in Guam; provided, if the manner and extent to which such law is applicable in Guam would be beyond the authority granted to the United States by this Status Agreement, then such law shall be applicable in the Marianas in the same manner and to the same extent as it is applicable on that date in the State of Hawaii. Nothing in this section shall, however, be deemed to diminish the authority of the United States, consistent with the other provisions of this Status Agreement, to enact, repeal or modify statutory laws of the United States applicable in the Marianas.

November 5, 1973

Federal Authority in the Marianas

(a) Except as otherwise specifically provided in this Status Agreement, the people of the Marianas, in the exercise of their sovereign right of self-determination, grant to the Government of the United States the authority to exercise in the Marianas those powers, and no others, which the Government of the United States has the authority to exercise in the several States under the Constitution of the United States; provided, the powers hereby granted to the Government of the United States shall not be limited by provisions of the Constitution of the United States expressly made inapplicable in the Marianas by this Status Agreement, nor shall the authority of the Government of the United States be denied merely because of a lack of uniformity in the exercise of such powers as between the Marianas and the several States.

(b) The people of the Marianas recognize that sovereignty over the Marianas will be vested in the Government of the United States by and to the extent of the grant of authority in this Status Agreement. Nothing in this Status Agreement, however, shall be deemed to incorporate the Marianas into the United States. The people of the Marianas further recognize that the Government of the

01-05244

United States may exercise the powers granted to it by this Status Agreement under Article IV, Section 3, Clause 2, of the United States Constitution. Nothing in this subsection, however, shall be deemed to expand the powers granted to the Government of the United States by the people of the Marianas in subsection (a).

* * * * *

Application of Federal Laws in the Marianas

Except as otherwise specifically provided in this Status Agreement, every statutory law of the United States having general applicability in the United States and having provisions applicable in Guam, shall, on the date of termination of the Trusteeship, be made applicable in the Marianas in the same manner and to the same extent as such law is applicable on that date in Guam; provided, if the manner and extent to which such law is applicable in Guam would be beyond the authority granted to the United States by this Status Agreement, then such law shall be applicable in the Marianas in the same manner and to the same extent as it is applicable on that date in the State of Hawaii. Nothing in this section shall, however, be deemed to diminish the authority of the United States, consistent with the other provisions of this Status Agreement, to enact, repeal or modify statutory laws of the United States applicable in the Marianas.