

August 7, 1974

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MEMORANDUM FOR THE MARIANAS POLITICAL
STATUS COMMISSION FILE

SUBJECT: Meeting of the Joint Drafting Committee

A meeting of the Joint Drafting Committee was held on August 6, 1974 in the Interior Department Offices of James Wilson. Attending for the United States were Mr. Wilson, Herman Marcuse, Adrian DeGraffenreid, and Andre Surena. Attending for the Marianas Political Status Commission were Howard Willens and Michael Helfer.

Mr. Wilson opened the meeting by stating that the session of the Congress of Micronesia had been extended until Friday, August 9. The House has passed public land legislation which is basically acceptable to the United States. The House bill will now go to conference in an attempt to reconcile it with the previously passed Senate bill.

Mr. Willens told Mr. Wilson that a resolution officially requesting the return of public lands to the Marianas and at least tentatively designating the Marianas Public Land Corporation as the recipient of those lands was being developed. Mr. Wilson stated that if the Congress of Micronesia does not pass acceptable land legislation, the Department of Interior will act to authorize the High Commissioner to transfer public lands to the districts in accordance with the United States Policy Statement upon the request a District Legislature. This was said to be confidential.

Mr. Wilson also reported that Senator Salii has introduced a bill which provides that the Micronesian Constitution will not come into effect in any district if disapproved by three-quarters of the voters in that district. This bill also provides that the Constitution and the status agreement providing for free association will be put to the voters at the same time. Mr. Wilson said that the bill will be vetoed if the latter provision stays in it, for the decision when to put the status agreement to a vote is one solely for the United States as the Administering Authority. Mr. Wilson said that no action had been taken on a variety of revenue sharing bills pending in the Congress.

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Mr. Wilson brought up the topic of separate administration. He said that the request for separate administration from the District Legislature would be most productive if it sought action by the Administering Authority to separate the administration of the Marianas from the other districts in a general way. It might, said Mr. Wilson, seek (a) separate executive authority for the Marianas; (b) termination of Marianas participation in the Congress of Micronesia together with termination of the Congress responsibility for the affairs of the Marianas; and (c) retention of local revenues by the Marianas and a fair division of the assets of the TTPI. Whether the resolution discussed Marianas' participation in the Micronesian Constitutional Convention, or the relocation of the Capitol, said Mr. Wilson, was entirely open. With respect to the crucial matter of timing, Mr. Wilson suggested that the resolution should request that separate administration take effect as soon as possible and that the United States make the decision on timing in consultation with the leadership of the District. Mr. Willens asked if the United States would have any objection if the District Legislature established a committee to consult with the United States with respect to separate administration and to prepare for it. Mr. Wilson said there was no objection.

The discussion turn to Item 5(d) on the Agenda, United District Court. Mr. Wilson stated that the United States wanted simply to extend the jurisdiction of the District of Guam in order to conserve resources. Mr. Helfer noted that a difficulty was created by the Organic Act which vested the judicial power of Guam in the District Court of Guam. It was not, therefore, truly a federal court. Especially since both sides agreed that the District Court for the Marianas could be granted local jurisdiction by the Commonwealth Legislature, it was appropriate for the Maraians to have a separate court. Mr. Wilson said the United States wanted to preserve some flexibility in this regard. Mr. Willens suggested that the establishment of the Court did not necessarily require that a separate judge be appointed for that court; the judge in Guam could sit in the District Court for the Marianas. After further discussion it was agreed that Mr. Willens would recommend that the MPSC withdraw from its position that the court for the Maraians be an Article III Court. With respect to the timing of the establishment of the District Court for the Marianas, it was agreed that the Court should be established at the same time that the laws of the United States generally became applicable to the Marianas under the formula.

With respect to Item 5(e)(1), the Jones Act, there was a brief discussion. It was suggested that the applicability of the Jones Act should certainly be delayed until termination of the Trusteeship. With respect to Item 5(d)(2), Social Security Tax, Mr. Wilson stated that the United States had no objection to folding the Marianas portion of the Trust Territory Social Security Fund into the Federal Social Security Fund. With respect to that portion of the Commonwealth Agreement which phases the Social Security Tax in over a period of five years in the Marianas, Mr. Wilson stated he thought the United States had no objection in principle but he would consult with persons in the Executive Branch and in Congress.

With respect to Item 6(a), Mr. Wilson said that the United States felt strongly that the Marianas should receive the same treatment as Guam with respect to customs. He had no objection to a specific statement that the Marianas would be outside the customs union of the United States, and to a statement that the United States would seek to have the Marianas treated as a developing territory. Mr. Surena suggested that in drafting the status agreement, no reference should specifically be made to the General Agreement on Tariff and Trade, but rather to United States international obligations as a whole. A brief discussion was held concerning CA § 611, granting the Commonwealth exclusive authority over excise taxes. Mr. Marcuse said that the problem is the phrase "exclusive" for this could be read to prevent Congress from making any excise taxes applicable to the Marianas. Mr. Helfer stated that the concern was special or local taxes in the Marianas, not uniform taxes. Mr. Wilson suggested that the section was not needed because the Marianas would have the authority to impose such excise taxes and sales taxes in any event.

With respect to Item 6(b), freedom of the United States Government from local taxation, it was agreed that there was no difference in principle and that the drafters would attempt to reconcile the differences in phasing of CA § 605 and Cov. § 503. With respect to Item 6(c), limitations on local indebtedness, Mr. Wilson stated that the United States was concerned about a territory receiving substantial financial assistance incurring too much debt. Mr. Willens stated that the matter was one of considerable significance since it called into question the degree of self-government the Commonwealth would have. Mr. Willens asked whether the United States could say whether the 10% limitation was a significant practical limitation. Mr. DeGraffenreid agreed to attempt to obtain this information. Mr. Wilson suggested

that a possible position would be to limit the restriction on debt to the period during which the United States Government was providing substantial direct financial assistance to the Marianas. It was then agreed to delay consideration of Item 6(d), Internal Revenue Code, until the next meeting.

Extended discussion was had concerning Item 7(a), United States direct financial support. Mr. Wilson expressed the view that the inclusion of specific amounts in the status agreement will be a commitment by the United States, upon approval, to provide those funds to the Marianas. At least if the status agreement is actually enacted into law, Mr. Wilson said, this will be a five year authorization for appropriations. Mr. Wilson expressed the strong opposition of Congress to a multi-year appropriation. Mr. Willens stated that this was an important matter to the MPSC, which believes that a multi-year appropriation is necessary in order to protect local self-government. After further discussion the matter was left unresolved. Mr. Wilson said that the United States had no objection to carry-over provisions for funds granted to the Marianas, but that it did have problems in permitting funds carried over to be used in accounts other than those for which they were appropriated. Mr. Wilson pointed out that the local legislature could allocate its own revenues in order to respond to changing needs. Mr. Willens said the MPSC should consider this proposal. Mr. Wilson went on to say that it was important to the United States that it be understood that the funds would be made available to the Marianas in accordance with the standard procedure by which funds could be drawn down from the United States Treasury as they were obligated; the Marianas would not receive yearly or quarterly checks from the United States Government. After receiving assurances from Mr. Wilson that there would be no internal review of the proposal for which the funds were being used as the funds were drawn down, Mr. Willens stated that the MPSC would probably agree to the standard procedure Mr. Wilson outlined. Mr. Wilson then raised the question whether it was desirable to put all the financial aid provisions together as had been done in the Covenant or to put them in the various substantive parts of the document as had been done in the Commonwealth Agreement. After discussion this matter was left for the drafters.

A series of other issues relating to the financial provisions were then discussed. With respect to the formula by which funds collected by the United States in the Marianas would be covered over to the local treasury, Mr. Marcuse pointed out that the United States version is based on the existing statutory provision with respect to Guam. It was agreed that there was no substantive difference between the two versions and that at most there was a drafting problem. With respect to CA § 804 and Cov. § 604, it was agreed that the report required by these sections should be a report only on the expenditure of direct financial assistance and should continue only so long as such assistance is provided. With respect to CA § 802, Mr. Wilson stated that the United States had no objection to language in the agreement indicating an intent that direct financial assistance would continue beyond the first multi-year period. With respect to CA § 803(b), Mr. Wilson agreed that it was a technical provision to which the United States had no objection, since it simply provides for a pro rata payment for that portion of the fiscal year which remains after the effective date of this portion of the status agreement. With respect to CA § 803(c), Mr. Wilson stated that OMB opposes use of the Guam Consumer Price Index because it has not been fully tested. However, Mr. Wilson said, if OMB does not provide another suitable index, the Guam Index will be acceptable to the United States. With respect to CA § 803(d), Mr. Willens explained that it was intended to prevent a gap in payments upon the expiration of the first multi-year appropriation. It was agreed that the necessity for and the drafting of this provision should await resolution of the question whether the status agreement will provide a multi-year appropriation. Finally, it was agreed that issues raised by CA § 805, concerning consultation with respect to the appropriate level of funding for the successive multi-year periods, would await discussion of CA § 1001 concerning consultation generally.

A brief discussion was had concerning CA § 801 and Cov. § 601, relating to the general principles to govern the financial obligations of the United States. It was agreed that the differences between the draft could be resolved

by appropriate drafting. A brief discussion was also had concerning federal programs. Mr. Wilson expressed the view again that the provision of federal programs and services was essentially a financial assistance provision and reference to it should be made in the financial assistance section of the status agreement, even though it was covered technically by the applicability of laws formula. He stated that the United States had no objection to making certain portions of the Public Health Services Act applicable in the Marianas even though they are not presently applicable in Guam; but the United States has a problem with making other federal programs not applicable in the territories generally applicable in the Marianas. The discussion then turned to the question of the use of federal direct financial assistance by the Marianas as the local share in federal grant-in-aid programs. It was agreed that this was an important matter only for the first few years. Mr. Willens suggested that the Marianas be permitted to use direct financial aid for matching during the first multi-year period. Mr. Wilson agreed to consider this suggestion.

The next meeting of the Joint Drafting Committee will be held in Mr. Wilson's office on Thursday, August 8 at 2:30 p.m.

Michael S. Helfer

cc: Howard P. Willens