

August 23, 1974

MEMORANDUM FOR HOWARD WILLENS

Subject: Marianas Status Agreement

Attached to this memorandum are the following:

-- An outline of the status agreement previously sent to you;

-- Drafts of Titles I through VII and Title XI of the status agreement, superceding and supplementing drafts previously sent to you;

-- A copy of James Wilson's draft of a formula for the applicability of federal laws;

-- A copy of the letter I have sent to Herman Marcuse today.

The draft of Title I, dealing with the political relationship, has not been sent to Marcuse. It takes a somewhat different approach than either existing draft. The issues with which this Title is concerned are sufficiently sensitive and difficult that I wanted your views before putting anything across the table.

The drafts of Titles II (citizenship) and III (local constitution) are revised in accordance with my agreements with Marcuse on August 21. As you will see, I have sent these revised drafts to Marcuse today. Except as indicated in the notes at the end of the attached drafts, these Titles are virtually done -- subject to all the ad referenda.

Marcuse and I spent a good deal of time discussing Title IV (U. S. judicial authority). Marcuse believes that the federal court in the Marianas cannot be called a court of the United States because it will not be a constitutional court. I have called Doug Thompson to see whether Marcuse is right and if so whether it causes any problems for us, but he is gone until after Labor Day. Marcuse suggested that it might be wise for the status agreement not to have any provisions relating to the appointment of a district judge for the Northern Mariana Islands, so as to leave Congress the option of creating a District Court

for the Western Pacific. It is my understanding that the client would prefer to have its own court. The attached draft of Title IV attempts a compromise between the positions of the parties, largely by giving up the designation of the local federal court as a court of the United States. Have we backed off too far on this one?

With respect to Title V (applicability of United States laws), the attached draft is yet another revision of the formula, on which I solicit your comments, and which I have sent to Bob Kelley. The attached copy of a draft of the formula prepared by Wilson was given to me by Marcuse; it reflects, at best, Wilson's rusty legal hand. A potentially important problem, however, has arisen now that Wilson has focused on the formula. Wilson is no longer willing to have laws apply in the Marianas as they apply in the States, if they apply differently in Guam. His position is that if a law reaches intraterritorial commerce in Guam it should reach intraterritorial commerce in the Marianas. Marcuse agreed with me that we had all thought this issue had been settled a long time ago.

Marcuse and I did not discuss anything in Title V other than the formula (and that only briefly), and we did not discuss Titles VI or VII at all. David Lake tells me that he expects to have draft language on tax for Title VI at the beginning of next week.

Title XI is very rough; the attached is basically a first draft. I have not sent it to Marcuse.

Marcuse is very concerned about timing, because he apparently is under pressure from Wilson to have a completed draft of the status agreement (so far as there is substantive agreement) prepared by the middle of September. I told him that I thought it was possible notwithstanding the fact that I would be gone during the last week in August. After all, we have, at least internally, drafts of everything but Titles VIII (land), IX (consultation), and X (Washington representation). The latter two cannot be done at all since there is presently no agreement on what they should contain; and this is also true of just about all of Title VIII other than eminent domain.


Michael S. Helfer

Attachments

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