

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

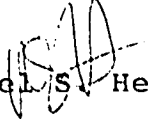
for the Western Pacific. It is my understanding that the client would prefer to have its own court. The attached draft of Title IV attempts a compromise between the positions of the parties, largely by giving up the designation of the local federal court as a court of the United States. Have we backed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

0537

Mutually binding?
remedy for US
breach

TITLE I

Political Relationship

Section 101. The Northern Mariana Islands shall upon termination of the Trusteeship Agreement become a self-governing commonwealth in political union with and under the sovereignty of the United States of America. The Northern Mariana Islands shall then be known as the "Commonwealth of the Northern Mariana Islands."

Section 102. (a) The relations between the Commonwealth and the United States shall be governed by this Agreement.

(b) The [fundamental] provisions of this Agreement defining the political relationship between the Commonwealth and the United States, providing for United States citizenship and nationality, guaranteeing to the people of the Commonwealth local self-government under their own constitution and laws, assuring financial support from the United States for an initial period of time, and establishing procedures for the exercise of the federal power of eminent domain, may be modified only with the consent of the Government of the United States and the Government of the Commonwealth of the Northern Mariana Islands.

Make sure list is complete

(see attached)

9/10/74
The Method of giving consent?

Section 103. The people of the Commonwealth shall have and shall retain the right of local self-government and shall govern themselves with respect to local affairs in

accordance with a Constitution of their own adoption.

Section 104. (a) Consistent with the right of local self-government of the people of the Commonwealth, the United States may enact federal legislation ^{N.M.I.} effective ^{applic to} within the Commonwealth.

90 back to 207.

(b) This Commonwealth Agreement, together with the provisions of the Constitution and treaties of the United States, and federal laws, applicable within the Commonwealth, shall be the supreme law of the Commonwealth and the courts of the Commonwealth shall be bound thereby, anything in the Constitution or laws of the Commonwealth to the contrary notwithstanding.

separate

Section 105. The United States shall have full responsibility for and authority with respect to the foreign affairs and defense of the Commonwealth.

Section 106. (a) All members of the legislature of the Commonwealth and all officers and employees of the government of the Commonwealth shall take an oath or affirmation to support this agreement, the provisions of the Constitution of the United States and federal laws applicable within the Commonwealth, and the Constitution and laws of the Commonwealth.

(b) The Commonwealth shall not be considered an agency or instrumentality of the United States.

Section 107. [Alternative one] It is the intention of the parties hereto that cases or controversies arising under

this Commonwealth Agreement shall be justiciable in the courts of the United States and that the ^{undertakings} limitations on the exercise of ~~federal authority specified herein~~ shall be enforceable in ~~such proceedings~~.

[Alternative two] It is intended that the undertakings by the United States and by the Commonwealth provided for in this Agreement shall when there is a case or controversy be enforceable in courts established by the United States.

[Alternative three] [Add a sentence for cosmetic reasons reflecting the expectation that each side will live up to its obligations, along with a reference to enforcement in court, and move the entire matter into the WHEREAS clauses or into the equivalent of the Titles found in the Covenant, if there are any in the final document.]

~~Section 108. The following provisions of the Constitution of the United States shall be applicable ^{to and} within the Commonwealth as if the Commonwealth were a State of the Union: Article I, Section 9, Clauses 2, 3, ~~6~~ and 8; Article I, Section 10, Clauses 1 ~~and 3~~; Article IV, Section 1, sentence 1; Article IV, Section 2; Amendments 1 through 9 inclusive ~~{indictment and jury trial in noncriminal cases still open}~~; Amendment 13, Section 1; Amendment 14, Section 1; Amendment 15, Section 1; Amendment 19, sentence 1; Amendment 26, Section 1. [Future amendments to the Constitution of the United States shall not apply within the Commonwealth without~~

Indictment
Sentence 11.

*Unless specifically extended
to be C.W. by Cong, res by law.*

the consent of the Government of the Commonwealth and the Government of the United States.]

Section 109. (a) Citizens of the Commonwealth shall be entitled to all privileges and immunities of citizens in the several states.

(b) Full faith and credit shall be given in the United States, its territories and possessions and in the several states to the public acts, records and judicial proceedings of the Commonwealth.

(c) A person charged in the Commonwealth with treason, felony, or other crime, who shall flee from justice, and be found in the United States, its territories and possessions, or in a state, shall on demand of the Executive authority of the Commonwealth be delivered up, to be removed to the Commonwealth.

NOTE: I am prepared to agree with Marcuse to move Sections 108 and 109 to Title V.

Section 110. [Sovereign immunity if needed.]

[NOT] → *legis history*