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November 4, 1974

Dear Carl:

As you may know, we are representing the Marianas Political Status Commission in its negotiations with the United States concerning the future political status of the Northern Mariana Islands after termination of the United Nations Trusteeship Agreement presently in effect. A serious problem has recently developed in these negotiations which we believe warrants your consideration and we are writing this letter to request your assistance.

During the last two years, four sessions of negotiations have been held and considerable progress has been made. A status agreement which will be submitted for approval to the local legislature and to the people of the Northern Marianas, and to the United States Congress, is now being drafted. The status agreement will provide that the Northern Mariana Islands will become a self-governing Commonwealth under the sovereignty of the United States after termination of the Trusteeship. It

will also provide that about 18,000 acres of land in the Northern Marianas -- almost one-quarter of the entire land area of the islands -- will be made available to the United States for military purposes.

One of the critical issues remaining to be resolved concerns the just compensation which the United States will pay for this 18,000 acres of land. The efforts of the parties to agree on just compensation have been stymied by the insistence of the United States that it has permanent use rights -- rights which extend beyond termination of the Trusteeship -- in about half of this land, including some of the most valuable parcels. With respect to this portion of the land, the United States claims that it need only pay about two percent of the land's fair market value. The Commission has rejected the contention that the United States has permanent use rights, and insists that fair market value be paid.

As is demonstrated in the enclosed memorandum of law, we believe that the United States position is untenable. The "Use and Occupancy Agreements" on which the United States bases its position were made "as of" 1944 but actually executed in 1956. They grant from the Trust Territory Government to the United States the right to use certain public land in the Northern Marianas for an "indefinite" period in return for a

payment of \$40 an acre. They require that the use of the land by the United States be consistent with the Trusteeship Agreement. Taken in context, the Use and Occupancy Agreements are most sensibly read to grant use rights only until termination of the Trusteeship.

If the agreements are not so interpreted, we believe that they then violate the Trusteeship Agreement itself, and are therefore invalid. The agreements reflect the plainest sort of self-dealing by the United States. They were signed by one Rear Admiral on behalf of the Trust Territory and by another Rear Admiral on behalf of the United States, both acting under the direction of the Secretary of the Navy. This self-dealing, at least insofar as land use rights after termination are concerned, violates several specific provisions of the Trusteeship Agreement. Even more fundamentally, it violates the basic obligation of the United States as Trustee -- the duty to refrain from benefiting by its own acts to the detriment of the peoples of the Trust Territory.

Even if the legal issue were a closer one, we respectfully submit that the position now being taken by the United States does discredit to our Government. The land covered by the Use and Occupancy Agreements is worth tens to hundreds of times as much as the United States paid nearly 20 years ago. In effect,

the United States is seeking to use its position as Trustee to avoid paying the fair market value of the right to use land in the Northern Mariana Islands after termination of the Trusteeship. Land is the Islands' most precious resource. If the present position of the United States should become widely known in the Northern Mariana Islands or at the United Nations, the chances for the successful conclusion of the new political status agreement would be seriously impaired and considerable embarrassment for the United States could result.

We urgently request your assistance in securing a review of the present United States position at the highest levels of the Executive Branch. We are convinced of the soundness of the Commission's position as detailed in the enclosed memorandum. At the very least, the people of the Northern Marianas are entitled to a written statement explaining the United States' position. We have tried without success to obtain such a statement.

We hope that you will examine the enclosed memorandum and use your good office to persuade the United States to alter its current position and to deal fairly with the Marianas Political Status Commission on this issue. We are, of course, available at any time to provide you with assistance or further information.

A copy of the enclosed memorandum has also been delivered by Gerard Smith to the Acting Legal Advisor, Mr. Aldrich, and to Assistant Secretary of Defense Ellsworth. In view of the international delicacy of the matter and the charges of self-dealing and breach of trust to which the United States would expose itself if the present position is maintained, I venture to call the matter to your personal attention.

Sincerely,

Lloyd N. Cutler

Honorable Carlyle Maw  
Under Secretary for Security Assistance  
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