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April 4, 1974

MEMORANDUM

To: Noel Kramer

From: Gil Rothenberg

Subject: Provisions relating to the non-voting delegates from Puerto Rico, Virgin Islands, Guam, District of Columbia, and American Samoa as compared with/contrasted to Section 904 of our draft.

PUERTO RICO

5 U.S.C.A. § 2106 - "member of Congress" includes "Resident Commissioner of Puerto Rico.

48 U.S.C.A. § 891 - "The qualified electors of Puerto Rico shall choose a Resident Commissioner to the United States at each general election, whose term of office shall be four years [same as § 904(b) once population exceeds 100,000; prior to that time, Commonwealth of Marianas determine the length of term] from the 3rd of January following such general election [same as § 904(b)], and who shall be entitled to receive official recognition as such commissioner by all of the departments [§ 904(a) includes "agencies"] of the Government of the United States, upon presentation, through the Department of State, [§ 904(a) makes no mention of "going through Dept. of State"] of a certificate of election [§ 904(a) says certificate of "commission"] of the Governor of Puerto Rico [presumably equal to "Chief Executive of the Commonwealth of Marianas" as contained in § 904(a)]."

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48 U.S.C.A. § 892 - "No person shall be eligible to election as Resident Commissioner who is not a bona fide citizen of the United States [no such provision in our draft] and who is not more than twenty-five years of age, [as per U.S. Constitution; our draft mentions no age limit, and presumably someone under 25 (even a minor) could be elected (unless otherwise precluded - perhaps the Constitution would prevent this anyway)] and who does not read and write the English language [no such provision in our draft]. In case of a vacancy in the office of Resident Commissioner [our draft refers only to vacancy in office of "Representative" (§ 904(b), and makes no provisions for vacancy in office of the Resident Commissioner] by death, resignation, or otherwise [same as our draft], the governor, by and with the advice and consent of the senate, [no such provision in our draft] shall appoint a Resident Commissioner to fill the vacancy, who shall serve until the next general election and until his successor is elected and qualified. [same language as our draft.]

48 U.S.C.A. § 893 - "The Resident Commissioner shall receive a salary payable monthly by the United States. [our draft requires the Commonwealth of Marianas to pay the expense of the Resident Commissioner; presumably, the language of our draft in § 904(b), to the effect that "the Representative of the Western Pacific Islands shall be entitled to all of the privileges and emoluments of office of a Representative in the

House of Representatives" means that the United States will foot the salary bill once the Representative comes into existence. Although apparently clear that the U.S. Treasury pays the salary of the Resident Commissioner of Puerto Rico (see 2 U.S.C.A. § 31), the language of 48 U.S.C.A. § 893 (underlined above) states only that such salary is payable "by the United States" - and makes no mention of the source of the funds. The argument (logical, but perhaps a bit strained) could be made that the United States is merely a conduit for the funds to pay the salary of the Resident Commissioner of Puerto Rico.] He shall be allowed the same sum for stationery and for the pay of necessary clerk hire as is allowed members of the House of Representatives of the United States. He shall be allowed the franking privilege granted members of Congress. [Presumably, the Representative of Western Pacific Islands will receive these benefits due to the language in § 904(b) of our draft referring to "privileges and emoluments" of any other Representative. The lack of mention of these privileges as to the Resident Commissioner in § 904(a), when coupled with the phrasing "the expenses of office of the Resident Commissioner shall be borne by the Commonwealth Government" in § 904(a) seems to make clear that the Commonwealth of Marianas must pay all of the expenses of the Resident Commissioner, including but not limited to) the expenses underlined above from 48 U.S.C.A. § 893.]"

48 U.S.C.A. § 894 - "The salary and traveling expenses of the Resident Commissioner from Puerto Rico to the United States shall be paid by the Sargeant-at-Arms of the House of Representatives in the same manner as the salaries of the members of the House of Representatives are paid. [See comments with respect to § 893 above]."

GUAM AND VIRGIN ISLANDS

48 U.S.C.A. § 1711 - "The territory of Guam and the territory of the Virgin Islands each shall be represented in the United States Congress by a nonvoting Delegate to the House of Representatives."

This law was passed April 10, 1972 [86 Stat. 118].

The population of Guam in 1970 was 84,996. The population of the Virgin Islands in 1970 was 62,468.

48 U.S.C.A. § 1712 - "(a) The Delegate shall be elected by the people qualified to vote for the members of the legislature of the territory he is to represent at the general election of 1972, and thereafter at such general election every second year thereafter. [Thus, the term of each of the delegates from Guam and the Virgin Islands is only two years, in contrast to the four-year term contained in our draft.] The Delegate shall be elected at large, by separate ballot and by a majority of the votes cast for the office of Delegate. If no candidate

receives such majority, on the fourteenth day following such election a runoff election shall be held between the candidates receiving the highest and the second highest number of votes cast for the office of Delegate. [Our draft contains no such provisions with respect to the procedure for the election of the Representative. Arguably, it would seem that (to take one example) a mere plurality of votes cast could suffice for the election of the Representative of the Western Pacific Islands. On the surface, insertion of provisions in our draft similar to the ones underlined immediately above would appear to be advisable.] In case of a permanent vacancy in the office of Delegate, by reason of death, resignation, or permanent disability, the office of Delegate shall remain vacant until a successor shall have been elected and qualified. [Our draft explains a "vacancy" in terms of "death, resignation, or otherwise" whereas the provision underlined above substitutes the phrase "permanent disability" for "otherwise." The significance (if any) of our use of "otherwise" is unclear. An additional difference is that while our draft would enable a successor to be appointed (provided there is agreement between the leaders of Guam and the Marianas), the provision underlined above contains no such option. Furthermore, while our draft provides that an election of the successor (if no agreement is reached) must wait until

the next general election, the provision underlined above makes no explicit reference to having to wait until the next general election before a successor could be elected. Although the first sentence of 48 U.S.C.A. § 1712(a) (underlined above) provides for election of the Delegate at the general election, and perhaps implicit in that statement is the fact that special elections are not allowable to elect the Delegate, the language of the last sentence of 48 U.S.C.A. § 1712(a) (underlined immediately above) does not appear to preclude such a special election. Indeed, the provisions in 48 U.S.C.A. § 1714 (quoted below), by specifically referring to a "special election to fill a vacancy in the office of Delegate," actually authorizes such a special election]. (b) The term of the Delegate shall commence on the third day of January following the date of the election [same as our draft]."

48 U.S.C.A. § 1713 - "To be eligible for the Office of Delegate a candidate must --

(a) be at least twenty-five years of age on the date of the election, [no such age requirement in our draft],

(b) have been a citizen of the United States for at least seven years prior to the date of the election [no such provision in our draft],

(c) be an inhabitant of the territory from which he is elected [no such provision in our draft], and

(d) not be, on the date of the election, a candidate for any other office [no such provision in our draft]."

48 U.S.C.A. § 1714 - "The legislature of each territory may determine the order of names on the ballot for election of Delegate, the method by which a special election to fill a vacancy in the office of Delegate shall be conducted, the method by which ties between candidates for the office of Delegate shall be resolved, and all other matters of local application pertaining to the election and the office of Delegate not otherwise expressly provided for herein [no such provision in our draft. This provision (section 4 of the original bill) did meet with some problems pertaining to constitutionality, but they were subsequently dismissed, Congress being convinced that the provision was not unconstitutional. See pages 2232-33 of the attached legislative history of the bill for a summary of that constitutional problem]."

48 U.S.C.A. § 1715 - "The Delegate from Guam and the Delegate from the Virgin Islands shall have such privileges in the House of Representatives as may be afforded him under the Rules of the House of Representatives. [Of course, none of the Delegates have the right to vote on the House floor.] Until the Rules of the House of Representatives are amended to provide otherwise, the Delegate from each territory shall receive the same compensation, allowances, and benefits as a member of the House

of Representatives, and shall be entitled to whatever privileges and immunities are, or hereinafter may be, granted to the Resident Commissioner for Puerto Rico: 'Provided,' that the right to vote in committee shall be as provided by the Rules of the House of Representatives: [On January 3, 1973, the Rules of the House of Representatives were changed. The Delegates from Guam and the Virgin Islands now have the right to vote in committee. See Rule XII of the House Rules.

Clause 2 (as revised) reads in part as follows:

'[E]ach Delegate to the House shall be elected to serve on standing committees of the House and shall possess in all committees on which he serves the same powers and privileges as the other members.'

'Provided further,' that the clerk hire allowance of each Delegate shall shall [sic] be a single per annum gross rate that is 60 per centum of the clerk hire allowance of a Member:

[Our draft's "privileges and emoluments" phrasing would not so limit the clerk hire allowance. The Representative of the Western Pacific Islands would presumably receive 100% of the allowance. In addition, note that the Resident Commissioner of Puerto Rico receives 100% of the clerk hire allowance -- see 48 U.S.C.A. § 893 (quoted above)]. 'Provided further,' that the transportation expenses of each Delegate that are subject

to reimbursement under section 43b of Title 2, shall not exceed the cost of four round trips each year. [Our draft's "privileges and emoluments" phrasing would not so limit the transportation expenses. In addition, note that 2 U.S.C.A. § 43b provides that the Resident Commissioner of Puerto Rico shall receive the same transportation expenses as any other Member of the House of Representatives]."

DISTRICT OF COLUMBIA

§ 202(a)(P.L. 91-405) - " . . . the 'Delegate to the House of Representatives from the District of Columbia' . . . shall be elected by the voters of the District of Columbia Election Act. The Delegate shall have a seat in the House of Representatives, with the right of debate, but not of voting, shall have all the privileges granted a Representative by section 6 of Article I of the Constitution, and shall be subject to the same restrictions and regulations as are imposed by law or rules on Representatives. [The provisions underlined above are essentially the same as our draft's "privileges and emoluments" phrasing. Unlike the Virgin Islands and Guam, the D.C. Delegate is not limited to 60% in his clerk hire allowance.] The Delegate shall be elected to serve during each Congress. [This 2-year term contrasts without draft's provision for a 4-year term]."

§ 202(b) - "No individual may hold the office of Delegate to the House of Representatives from the District of Columbia unless on the date of his election --

- . . . (2) he is at least twenty-five years of age [no such provision in our draft];
- (3) he holds no other paid public office [no such provision in our draft]; and
- (4) he has resided in the District of Columbia continuously since the beginning of the three-year period ending on such date. [no such provision in our draft].

He shall forfeit his office upon failure to maintain the qualifications required by this subsection."

§ 203 - "In the event that . . . a vacancy occurs . . . in the office of Delegate more than twelve months before the expiration of its term of office, the Board [D.C. Election Board] shall call special elections to fill such vacancy for the remainder of its term of office. [Presumably, if less than twelve months until the next election, the office of Delegate would remain vacant]."

AMERICAN SAMOA

There is no delegate to Congress from American Samoa. Rather, there is what is called a "Delegate-at-Large to United States Government."

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This Delegate's powers are described in full in the attached xerox copies of the American Samoan Code and Constitution. In brief, the Delegate is elected by the people of American Samoa in much the same way as are the representatives to the Samoan Legislature. [Our draft provides (in Section 904(a)) for either the election of, or appointment of, such Delegate (called the Resident Commissioner to the United States)]. There are provisions for run-off elections [no such provision in our draft] and for personal qualifications [no such provision in our draft].

The functions of the Delegate-at-Large are quite similar to those that are listed in our draft, but various differences in language between the two should be noted. Furthermore, the Delegate-at-Large must submit monthly reports to the heads of the Samoan government. [no such provision in our draft].

While the Samoan Delegate is elected for a term of four years, our draft states only that the term of the Resident Commissioner shall be determined by the government of the Marianas.

The expenses of maintaining the Samoan Delegate in Washington are borne by the Samoan government. Our draft provides for a similar result.

A vacancy in the office of the Samoan Delegate is to be filled by a special election, except that if any such vacancy shall occur within three months of the next regular election, no special election is held and the Governor of Samoa instead appoints a qualified person to fill such vacancy for the remainder of his predecessor's term.

Gil Rothenberg

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(b) There is hereby authorized and appropriated the sum of \$ _____ to support the work of such commission.

Section 904. (a) For the purpose of maintaining a liaison between the Commonwealth of the Mariana Islands and the Government of the United States, the Commonwealth Government may appoint, or provide by law for the election of, a Resident Commissioner to the United States, whose term of office shall be determined by the Commonwealth and who shall be entitled to receive official recognition as such Commissioner by all of the departments and agencies of the Government of the United States upon presentation of a certificate of commission from the Chief Executive of the Commonwealth. The salary and expenses of office of the Resident Commissioner shall be borne by the Commonwealth Government.

(b) At such time as the combined population of the Commonwealth of the Mariana Islands and the Territory of Guam exceeds 100,000 persons, or sooner as may be determined by the United States Congress, the qualified electors of the Commonwealth and of the Territory of Guam, in an election at large to be scheduled by agreement between the Chief Executive of the Commonwealth and the Governor of Guam (or in the case of a dispute by the United States Congress), shall choose a Representative of the Western Pacific Islands who shall represent both the Commonwealth of the Mariana Islands and the Territory of Guam without

partiality in the House of Representatives of the Congress of the United States and may, with the consent of the Government of the Commonwealth, assume the duties and responsibilities of the Commissioner referred to in subsection (a) above. The Representative of the Western Pacific Islands shall be entitled to all of the privileges and emoluments of office of a Representative in the House of Representatives except a vote on the floor of the House. The initial term of office of the Representative of the Western Pacific Islands shall expire on the third of January of the second proceeding even numbered year following his election; thereafter, such Representative shall be elected for a term of four years from the third day of January following his election. In case of a vacancy in the office of Representative of the Western Pacific Islands by death, resignation, or otherwise, the Chief Executive of the Commonwealth and the Governor of Guam shall together appoint a successor to fill the vacancy, who shall serve until the next general election and until his successor is elected and qualified. In case the Chief Executive of the Commonwealth and the Governor of Guam are unable to agree on an appointment, the office shall remain vacant until the next general election and until a successor is elected and qualified.

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April 4, 1974

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MEMORANDUM

TO: Mr. Willens

FROM: R. Kelley

RE: Marianas - Meeting with Administrative Assistant to
Puerto Rico's Representative in Congress

This memorandum will summarize my conversation on April 2, 1974 with Richard Falknor, the administrative assistant to Mr. Jaime Benitez, Puerto Rico's "Resident Commissioner," i.e., non-voting delegate to the House of Representatives. Mr. Falknor has served as administrative assistant to Mr. Benitez since 1971, according to the Congressional Staff Directory. Prior to that he served as legislative assistant to Senator Jackson (1961-63), staff member of the Senate Committee on Interior and Insular Affairs (1963-65), and on the staff of Congressman Foley of Washington (1967-71).

General. My meeting with Mr. Falknor was cordial and productive.* / Mr. Falknor stated that he had at one time worked with a lawyer from our firm in connection with an Indian claims matter (but he did not recall the lawyer's name). Apart from our discussion of federal financial legislation summarized below, Mr. Falknor expressed a great deal of curiosity as to how the status agreement would proceed through the Congress for approval. I indicated that we had some information

* / Our meeting was somewhat more brief than might have been the case. Mr. Falknor had returned within the hour from Washington State, where a member of his family had died.

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prepared that outlined the nature of the current negotiations (I had in mind our Summary Report Regarding U.S.-Marianas Status Negotiations, dated March 1974) and offered to provide Mr. Falknor with that information. Mr. Falknor stated he would appreciate any such information and that he thought it would be useful to arrange a meeting between you and Mr. Benitez where the broader questions relating to the status negotiations might be discussed.

Attached to this memorandum is a draft of a letter I propose to send to Mr. Falknor, thanking him for the time he spent with me. In that letter, I suggest that he and I arrange a mutually convenient time for you to meet with Mr. Benitez. Also attached is a copy of the biographic information on Mr. Benitez that appears in the 1974 Congressional Directory.

Federal Financial Aid Legislation. At the outset of our conversation, I explained to Mr. Falknor that, as counsel to the Marianas Political Status Commission, we were concerned with the matter of how to apply existing federal financial aid legislation to the Marianas. I asked Mr. Falknor if there was anything in the Puerto Rican experience that might be helpful in our consideration of this problem.

Mr. Falknor stated that it is Puerto Rico's tactic to strive for treatment no different from that accorded to the several states. He stated that for Puerto Rico, with a population of nearly three million, this might be easier to justify than for the Marianas with their population of 15,000

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persons. On the other hand, Mr. Falknor said, if grant program funds are apportioned solely on a per capita basis, no member of Congress would object to treating the Marianas as a State, since 15,000 people would not make that much difference one way or the other.

I asked whether the set-aside formulas were usually to the benefit of the territories. As an example, I showed Mr. Falknor the Older Americans Act of 1967, as amended, 42 U.S.C. § 3023. That Act provides that each State shall be allotted an amount in proportion to the ratio that the over-60 population in a State bears to the over-60 population in all States, except that no State shall be allotted less than one-half of one percent of the authorized funding, and Guam, American Samoa, the Virgin Islands, and the TTPI shall be allotted no less than one-fourth of one percent. Mr. Falknor stated that such set-aside formulas are in most cases to the benefit of the territories and possessions and that in the case of the Marianas, with its small population, such a formula would be decidedly in its favor since it would place the Marianas on a par with territories of much larger population.^{*/} Mr.

*/ The population figures for the territories listed in 42 U.S.C. § 3023 are:

TTPI	101,000
Guam	87,000
Virgin Islands	28,000

Source: U.S. Department of Commerce, Bureau of the Census, Pocket Data Book USA 1971, Table 4 at 39.

Falknor said that Puerto Rico strives to be included in the set-aside formula applicable to the several States, rather than the formula applied to the territories, and is meeting with success in this effort.

With respect to the problem of a territory having sufficient funds to meet the matching requirements of federal grant programs, I showed Mr. Falknor the exception to the matching grant formula contained in the Law Enforcement Administration Act, 42 U.S.C. § 3731(c). Under that Act, if the administrator of the program determines that an "Indian tribe or other aboriginal group"^{*/} does not have sufficient funds available to meet the local share required, the administrator may increase the federal share to the extent he "deems necessary." (When Mike Helfer and I met with George Eustaquio, the administrative assistant to Representative Won Pat of Guam, Mr. Eustaquio stated that this inability to meet the matching share was a persistent problem for Guam.) Mr. Falknor stated that he could well imagine that this matching share requirement would be a problem for the Marianas and that we might wish to give the administrators of federal programs wide discretion, similar to that accorded in the case of grants to the Indian tribes and Alaskan Eskimos, to waive the matching share for the Marianas.

For Mike Helfer, I asked how Puerto Rico was treated under the Social Security and Aid to Dependent Children legislation. Mr. Falknor stated that with respect to "income

^{*/} The phrase "other aboriginal group" refers to the Alaskan Eskimos, Mr. Falknor said.

maintenance and social services" (it was not clear whether Social Security was included in this reference) Puerto Rico was poorly treated. Congressmen express a fear that if a full range of such benefits were available in Puerto Rico, there might be an exodus of Americans to the sunny climes of Puerto Rico, where they would live on welfare. Mr. Falknor said he felt that the real reason, however, centered on an "anti-Latin prejudice." He argues to Congressmen that if such services were extended to Puerto Rico to the same extent that they are available in the States, Puerto Ricans would not be tempted to emigrate to the U.S.

Mr. Falknor said that his office did have a report which compiled all federal assistance legislation for which Puerto Rico was eligible and that he would be glad to provide me with a copy of that report. I will call Mr. Falknor in the course of the next few days to obtain that report.

Enclosures

cc: MSH
NAK

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